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## Lawyering for Abolitionist Movements

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## Essay

### Lawyering for Abolitionist Movements

JAMELIA MORGAN

*In this brief Essay, I offer frameworks for different ways of thinking about lawyering for abolitionist movements. In so doing, I offer a set of preliminary roles, functions, and questions that can be used to guide lawyers seeking to support movements for abolition. As I argue, in this movement for radical social change, there is a role for lawyers to play in supporting abolitionist movements in their calls to remake the world.*

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# Lawyering for Abolitionist Movements

JAMELIA MORGAN\*

## INTRODUCTION

This past summer, we witnessed social uprising spurred by yet another tragic iteration of police violence that, for many, lay bare the scourge of structural racism as a relenting plague in American society. In the midst of this national reckoning, abolitionist organizers seized the moment and set forth public demands to end the systems of policing and punishment as we know them.<sup>1</sup> In this movement and others, abolitionists have worked to decouple associations between crime and punishment altogether, defining crime as a social construction and explaining punishment and the rise of the carceral state as products of racial capitalism, settler colonialism, and social control, among other forms of subordination.<sup>2</sup> In recent months, demands by abolitionist groups to defund the police, end bail, #FreeThemAll, #SayHerName, and #StopLAPDSpying, among others, have grown stronger—even attracting the attention of mainstream media. These demands for radical change have not stopped at the criminal legal system and carceral state. Abolitionist groups have also called for a Green New Deal, an end to evictions, the cancellation of rent and student debt, and Medicare for All.<sup>3</sup>

Though this surge in abolitionist organizing and momentum is unprecedented, the work of abolitionist organizers is not new. For decades, abolitionist theorists and organizers have worked to discredit widespread justifications of punishment as necessary responses to all kinds of social problems.<sup>4</sup> Indeed, they reject criminal law as a way to respond to a vast

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<sup>1</sup> See, e.g., Josie Duffy Rice, *The Abolition Movement*, VANITY FAIR (Aug. 25, 2020), <https://www.vanityfair.com/culture/2020/08/the-abolition-movement>; Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

<sup>2</sup> Michael Rembis, *The New Asylums: Madness and Mass Incarceration in the Neoliberal Era*, in *DISABILITY INCARCERATED: IMPRISONMENT AND DISABILITY IN THE UNITED STATES AND CANADA* 139, 140 (Liat Ben-Moshe, Chris Chapman & Allison C. Carey eds., 2014) (“[P]unishment may be a consequence of other forces and not an inevitable consequence of the commission of crime.”).

<sup>3</sup> See Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 90–91 (2020); Amna A. Akbar, *The Left Is Remaking the World*, N.Y. TIMES (July 11, 2020), <https://www.nytimes.com/2020/07/11/opinion/sunday/defund-police-cancel-rent>.

<sup>4</sup> See, e.g., RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 2, 12–15 (2007); Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1159 (2015) (“[T]here is good reason to doubt the efficacy of

array of social problems including poverty, predation, sexual violence, substance use dependency, education inequality, untreated psychiatric disabilities, and limited access to mental health care. As scholars and organizers like prominent abolitionist scholar Angela Y. Davis have argued, the prison industrial complex (“PIC”) must be understood as part of a social, political, and economic context that both shapes its contours and explains its expansive growth over the past several decades.<sup>5</sup> This context and connection to the historical antecedents of the PIC—chattel slavery, racial capitalism, settler colonialism, and the dispossession of Native lands, as well as the eugenics policies that promoted the forcible sterilization of disabled people (including individuals with physical, developmental, and intellectual disabilities) and the forced segregation of disabled people into large state-run mental hospitals—are the bedrock of abolitionist analysis.<sup>6</sup> Indeed, this historical, political, economic, and social context forms what Amna Akbar refers to as the “abolitionist critique,” a critique rooted in the historical, material, and ideological foundations that inform the structural account or analysis of abolitionist theorists and organizers.<sup>7</sup> This structural account or analysis informs how abolitionists frame social problems; what they identify as barriers to transformative change; and why abolitionists maintain that reformist reforms will not succeed in dismantling the PIC and other social institutions, structures, and systems that contribute to human oppression, dispossession, exploitation, and deprivation.<sup>8</sup>

Central to abolitionist praxis is the decoupling of social responses to harm and conflict from the criminal legal system and toward non-punitive and non-carceral systems of accountability and care. Abolitionists aim to dismantle and resist punitive and carceral institutions and the logics that identify them in order to prevent these systems from operating as tools of racial, gender, disability, and class-based subordination.<sup>9</sup> This project of dismantling reliance on carceral systems, racialized and gendered policing, and surveillance is accompanied by what Allegra McLeod calls a set of “positive projects”

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incarceration and prison-backed policing as means of managing the complex social problems they are tasked with addressing, whether interpersonal violence, addiction, mental illness, or sexual abuse.”)

<sup>5</sup> See ANGELA Y. DAVIS, *The Prison Industrial Complex*, in *ARE PRISONS OBSOLETE?* 84, 84–104 (2003).

<sup>6</sup> See, e.g., LIAT BEN-MOSHE, *DECARCERATING DISABILITY: DEINSTITUTIONALIZATION AND PRISON ABOLITION* 28 (2020); KELLY LYTLER HERNÁNDEZ, *CITY OF INMATES: CONQUEST, REBELLION, AND THE RISE OF HUMAN CAGING IN LOS ANGELES, 1771–1965* 36 (2017); GILMORE, *supra* note 4, at 1–2, 12–15.

<sup>7</sup> See Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 *CALIF. L. REV.* 1781, 1815–25 (2020).

<sup>8</sup> See, e.g., ANGELA Y. DAVIS, *Slavery, Civil Rights, and Abolitionist Perspectives Toward Prison*, in *ARE PRISONS OBSOLETE?*, *supra* note 5, at 22, 22–39; Dan Berger, Mariame Kaba & David Stein, *What Abolitionists Do*, *JACOBIN* (Aug. 24, 2017), <https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration>.

<sup>9</sup> See generally Kate Levine, *Police Prosecutions and Punitive Instincts*, 98 *WASH. U. L. REV.* (forthcoming 2021) (manuscript at 54–55) (available at <https://ssrn.com/abstract=3719408>).

focused on recreating social systems, social relations, and social provisions that are not just alternatives, but new ways of restructuring society.<sup>10</sup>

Abolitionists recognize that justice cannot come from the criminal legal system, at least not as it is currently constituted. In their recent calls to prosecute police for the killing of Breonna Taylor, long-time abolitionist organizers recognize this while acknowledging the difficulty that comes with accepting that the criminal legal system will not protect the lives of Black women:

Turning away from systems of policing and punishment doesn't mean turning away from accountability. It just means we stop setting the value of a life by how much time another person does in a cage for violating or taking it—particularly when the criminal punishment system has consistently made clear whose lives it will value, and whose lives it will cage.<sup>11</sup>

In this excerpt, Mariame Kaba and Andrea Ritchie assert that justice will not come from prosecuting and imprisoning the officers that killed Breonna Taylor, but they do not suggest that justice is not possible. Instead, they seek what they call a “broader and deeper conception of justice for Breonna Taylor and other survivors and family members harmed by police violence.”<sup>12</sup> This is consistent with abolitionist theory and praxis that looks beyond punitive and carceral systems for accountability, justice, and redress.<sup>13</sup>

It would be an understatement to say that abolition is an ambitious and long-term project. Leading abolitionist theorist Ruth Wilson Gilmore captures this ambition in her famous quote, which, to paraphrase, is that to create an abolitionist society, abolitionists have to change one thing: everything. At the same time, abolitionists do not purport to have every aspect of the “abolitionist horizon” figured out today. Abolitionists acknowledge that much of abolitionist praxis involves experimenting and living in the tension between the old world and the new. As abolitionist thinker and organizer Mariame Kaba explains, abolitionist praxis offers not a blueprint, but a process of experimentation and resistance:

[W]e're doing abolitionist work all the time. When you're an organizer or an activist or just somebody in the community and you're pushing against climate change . . . you're really doing

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<sup>10</sup> McLeod, *supra* note 4, at 1161 (describing “a set of principles and positive projects oriented toward substituting a constellation of other regulatory and social projects for criminal law enforcement”).

<sup>11</sup> Mariame Kaba & Andrea J. Ritchie, *We Want More Justice for Breonna Taylor Than the System That Killed Her Can Deliver*, ESSENCE (July 16, 2020), <https://www.essence.com/feature/breonna-taylor-justice-abolition/>.

<sup>12</sup> *Id.* Kate Levine argues in recent work, “[A]n abolitionist ethic demands a far more nuanced response to police violence from those who seek to radically reduce the prison industrial complex than simply calling for the prosecution and imprisonment of individual police officers.” Levine, *supra* note 9, at 27.

<sup>13</sup> See, e.g., McLeod, *supra* note 4, at 1217–18.

abolitionist work. If you're building and pushing for universal education for all[,] you're doing abolitionist work. You're pushing for living wages, you're doing abolitionist work. So[,] I think it's an expansive vision and an expansive framework. It's not a blueprint. That work of making the thing we have to do ourselves. We have to come up with the strategies, the demands. . . . [T]he things that are going to be needed to reach that horizon. But I think that vision, it's a good north star to have.<sup>14</sup>

The fact that calls for radical change to end the carceral state so often reveal the complicity of law in the perpetuation of subordination and structural violence against negatively racialized and historically—and currently—marginalized groups is not lost on abolitionist theorists and organizers. Legal scholars have similarly recognized the need to reckon with law, legal institutions, and pathways for legal change in movements for abolition and radical social change. Legal scholars Allegra McLeod, Amna Akbar, and Dorothy Roberts have all called for serious engagement with abolitionist critiques and abolitionist frameworks and have identified ways of interpreting, applying, and implementing laws and policies in a manner consistent with abolitionist goals.<sup>15</sup>

Perhaps influenced by these movements for abolition and radical social change, more legal organizations are expressing a commitment to supporting abolitionist movements and the change they seek. Abolitionists have been publicly identified as lawyers committed to working toward abolitionist goals while operating within the legal system.<sup>16</sup> These organizations—like Abolitionist Law Center,<sup>17</sup> Amistad Law Project,<sup>18</sup> Law for Black Lives,<sup>19</sup> and Movement Law Lab,<sup>20</sup> to name a few—have secured legal and political victories while operating organizations committed to abolitionist principles and values. Though not publicly identified as abolitionist organizations,

<sup>14</sup> Ann Friedman & Aminatou Sow, *Police Abolition*, CALL YOUR GIRLFRIEND, at 11:17 (June 5, 2020), <https://www.callyourgirlfriend.com/episodes/2020/06/05/police-abolition-mariame-kaba>.

<sup>15</sup> See, e.g., Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 4–6 (2019); Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 408 (2018); McLeod, *supra* note 4, at 1161, 1185–87, 1207–10.

<sup>16</sup> See *NLG Statement in Support of #8toAbolition*, NAT'L LAWS. GUILD (June 10, 2020), <https://www.nlg.org/nlg-statement-in-support-of-8toabolition/>; *About*, ABOLITIONIST L. CTR., <https://abolitionistlawcenter.org/about/> (last visited Jan. 28, 2021) (explaining that “[t]he Abolitionist Law Center continues to work closely with the Human Rights Coalition and other allies in pursuing our shared vision of prison abolition and social justice”).

<sup>17</sup> See *generally About*, ABOLITIONIST L. CTR., *supra* note 16.

<sup>18</sup> See *generally About Amistad Law Project*, AMISTAD L. PROJECT, <https://amistadlaw.org/about> (last visited Jan. 28, 2021).

<sup>19</sup> See *generally Our Work*, LAW FOR BLACK LIVES, <http://www.law4blacklives.org/our-work-1> (last visited Jan. 28, 2021).

<sup>20</sup> See *generally Mission*, MOVEMENT L. LAB, <https://movementlawlab.org/mission> (last visited Jan. 28, 2021).

even traditional civil rights and civil liberties organizations like the ACLU<sup>21</sup> and the NAACP Legal Defense Fund<sup>22</sup> have expressed support for abolition in recent months.<sup>23</sup>

In this Essay, I suggest ways for thinking about lawyering in support of abolitionist movements. Abolitionist lawyering may seem to be aligned with any number of models for lawyering centered in social movements, whether resistance lawyering, cause lawyering, movement lawyering, or even public interest lawyering.<sup>24</sup> Though beyond the scope of this Essay, given the moment, it seems appropriate to think through how abolitionist lawyers are aligned with and distinguishable from these existing models, as well as the ethical implications for such lawyering practices. As compared to other forms of lawyering for social change, lawyering in support of abolitionist movements is decidedly adversarial and confrontational, and, though it need not be antagonistic, it may be. Indeed, abolitionist lawyers seem to pose a more direct affront to the carceral state and other institutions, legal or otherwise, that abolitionists maintain marginalize, oppress, or exploit. Key questions like how abolitionist lawyering map onto these existing lawyering models may be explored in future research on the topic. For now, I focus on how we can define prototypes for lawyering alongside and within abolitionist movements. In the paragraphs that follow, I articulate a few models that link abolition theory and organizing with legal advocacy.

## I. ABOLITIONIST LAWYERING

There are numerous frameworks for understanding abolitionist lawyers:

### A. *Abolitionist Lawyering*

Abolitionist lawyers can be movement lawyers,<sup>25</sup> cause lawyers,<sup>26</sup>

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<sup>21</sup> See generally *ACLU History*, ACLU, <https://www.aclu.org/about/aclu-history> (last visited Mar. 31, 2021).

<sup>22</sup> See generally *About Us*, NAACP LEGAL DEF. & EDUC. FUND, INC., <https://naacpldf.org/about-us/> (last visited Mar. 31, 2021).

<sup>23</sup> See *Should We Abolish the Police?*, ACLU (July 24, 2020), <https://www.aclu.org/news/criminal-law-reform/should-we-abolish-the-police/>; *LDF and Co-Counsel File Lawsuit on Behalf of Black Residents in West Philadelphia Who Endured Militaristic Police Violence During Protests*, NAACP LEGAL DEF. & EDUC. FUND, INC. (July 14, 2020), <https://www.naacpldf.org/press-release/ldf-and-co-counsel-file-lawsuit-on-behalf-of-black-residents-in-west-philadelphia-who-endured-militaristic-police-violence-during-protests/>.

<sup>24</sup> See Susan D. Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447, 452–59 (2018) (discussing similarities and differences between movement lawyering and public interest lawyering in the 1970s).

<sup>25</sup> See generally Carle, *supra* note 24, at 452 (defining movement lawyering “as the use of integrated advocacy strategies, inside and outside of formal lawmaking spaces, by lawyers who are accountable to mobilized social movement groups to build the power of those groups to produce or oppose social change goals that they define”).

<sup>26</sup> See generally Douglas NeJaime, *Cause Lawyers Inside the State*, 81 FORDHAM L. REV. 649, 651

rebellious lawyers,<sup>27</sup> or resistance lawyers.<sup>28</sup> Role or assignment will determine how to define abolitionist lawyers and how to identify the type of social change lawyering for which abolitionist lawyers are best aligned. Yet, at bottom, abolitionist lawyers are committed to legal practices consistent with what Allegra McLeod terms a “prison abolitionist framework” and a “prison abolitionist ethic.” That said, the work of these lawyers need not solely be focused on divesting from, downsizing, and eventually abolishing prisons, given the breadth of radical social changes that abolitionists have adopted in recent decades. McLeod’s prison abolitionist framework and ethic provide helpful grounding in articulating the political commitments and values that will guide abolitionist lawyering from legal strategies to client representation. As McLeod explains:

By a “prison abolitionist framework,” I mean a set of principles and positive projects oriented toward substituting a constellation of other regulatory and social projects for criminal law enforcement. By a “prison abolitionist ethic,” I intend to invoke and build upon a moral orientation elaborated in an existing body of abolitionist writings and nascent social movement efforts, which are committed to ending the practice of confining people in cages and eliminating the control of human beings through imminently threatened police use of

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n.4 (2012) (commenting that “[i]n the seminal first volume of their cause lawyering series, Professors Austin Sarat and Stuart Scheingold explained that cause lawyering ‘is frequently directed at altering some aspect of the social, economic, and political status quo.’”) (quoting Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority: An Introduction*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 3, 4 (Austin Sarat & Stuart Scheingold eds., 1998)). *See also id.* (explaining that “[t]he objective of the attorneys that we characterize as cause lawyers is to deploy their legal skills to challenge prevailing distributions of political, social, economic, and/or legal values and resources”).

<sup>27</sup> *See generally* Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 *CLINICAL L. REV.* 663, 669 (2017) (“Movement lawyering as rebellious lawyering is at its core a practice of love in action that combines humility, love, and courage. By centering the leadership of those directly impacted, building a framework and praxis of intersectionality, and having the courage to do what is just and necessary even when we are fearful and may suffer, we can model the world that we seek and that does not yet exist—and get just a little bit closer to achieving it.”); Editors-in-Chief & Board of Editors, *Preface to the Symposium: Rebellious Lawyering at 25*, 23 *CLINICAL L. REV.* 1 (2016) (describing rebellious lawyering as “offer[ing] a vision of progressive lawyering as holistic problem-solving and political collaboration with communities confronting systemic subordination”); Kara R. Finck, *Applying the Principles of Rebellious Lawyering to Envision Family Defense*, 23 *CLINICAL L. REV.* 83, 93 (2016) (“Two of the themes in *Rebellious Lawyering* stand out as most applicable to the work of family defenders and a reimagined family defense practice: a foundational belief in a client centered interdisciplinary law practice, which is achieved through a model of collaborative interdisciplinary practice; and deliberate engagement with the community to determine the priorities, policies and practices in the child welfare and family court system.”).

<sup>28</sup> *See generally* Daniel Farbman, *Resistance Lawyering*, 107 *CALIF. L. REV.* 1877, 1880 (2019) (“A resistance lawyer engages in a regular, direct service practice within a procedural and substantive legal regime that she considers unjust and illegitimate. Through that practice, she seeks both to mitigate the worst injustices of that system and to resist, obstruct, and dismantle the system itself. . . . Resistance lawyering is rooted in direct service within the hostile system rather than collateral attack against it through other systems.”).

violent force.<sup>29</sup>

Beyond this, abolitionist lawyering is lawyering rooted in what Amna Akbar terms “abolitionist critique”—a structural analysis that can be incorporated into legal advocacy to further abolitionist goals.<sup>30</sup> The theories and models of lawyering highlighted in Amna Akbar’s *Toward a Radical Imagination of Law* and Dorothy Roberts’ *Abolition Constitutionalism* offer useful guides for how to identify abolitionist lawyering.<sup>31</sup> Certainly abolitionist lawyering is lawyering aligned with what Akbar, relying on prior work by Robin D.G. Kelley, calls a “radical imagination.”<sup>32</sup> Abolitionist lawyering provides an alternative framework—abolition—for reimagining social and legal responses to subordination, harm, violence, and predation. Abolitionist lawyering, like community lawyering, is grounded in social movements.<sup>33</sup> Finally, it is consistent with what Dorothy Roberts calls “abolition constitutionalism.”<sup>34</sup>

#### B. *Lawyering in Support of Abolitionist Groups*

Lawyering that works with and is led by abolitionist groups works to dismantle systems of surveillance, policing, and punishment, and to build and develop systems of care and support, equitable wealth distribution, a new economic order, an inclusive social order, and more. Tactics are, of course, varied, but lawyering in support of abolitionist groups differs from abolitionist lawyering in that it is legal advocacy focused primarily on harm reduction and non-reformist reforms, while grounded in movements.

#### C. *Lawyering While Abolitionist*

This category includes traditional lawyering done by individuals who personally adopt and practice abolition, although their current legal work is not in service of abolitionist goals or contributing to the building of abolitionist futures. I suspect that there are lawyers who personally identify

<sup>29</sup> McLeod, *supra* note 4, at 1161–62.

<sup>30</sup> Akbar, *supra* note 7, at 1815–25.

<sup>31</sup> See generally Roberts, *supra* note 15; Akbar, *supra* note 15.

<sup>32</sup> Akbar, *supra* note 15, at 412.

<sup>33</sup> See Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 380–85 (2013).

<sup>34</sup> Roberts, *supra* note 15, at 7. Roberts identifies “three central tenets . . . of abolitionist philosophy” that are central to her understanding of abolition constitutionalism:

First, today’s carceral punishment system can be traced back to slavery and the racial capitalist regime it relied on and sustained. Second, the expanding criminal punishment system functions to oppress black people and other politically marginalized groups in order to maintain a racial capitalist regime. Third, we can imagine and build a more humane and democratic society that no longer relies on caging people to meet human needs and solve social problems.

*Id.* at 7–8 (citations omitted).

as abolitionists, or may even donate to abolitionist organizations, but are currently engaged in legal work that does not further the goals of abolition and, indeed, is completely at cross purposes with abolitionist goals. An example could be a staff attorney who works at a well-resourced, public interest law firm to pay off student loans, but plans to transition into legal work more aligned with their personal values in support of abolition and abolitionist movements. In this scenario, lawyering while abolitionist poses a fundamental conflict between one's personal values and professional work that may lead some to see lawyering while abolitionist as a temporary, though necessary, means to an end, rather than a long-term professional role. Lawyering while abolitionist might raise questions as to what role these lawyers can play as inside actors, including, but not limited to, acts of resistance.<sup>35</sup> Discussing the category of lawyering while abolitionist also invites questions as to whether abolitionists can work as general counsel for corporations, prosecutors' offices, or government counsel. I cannot wade into the deep waters of that debate, but, again, I highlight this category as a starting point for future discussions.<sup>36</sup>

## II. THE ABOLITIONIST LAWYER'S ROLES

Abolition will not come entirely through law or litigation, though lawyers can certainly work toward obtaining abolitionist remedies. Lawyers have a role to play in efforts to decarcerate and move resources away from the carceral state.<sup>37</sup> At first glance, decarceration—getting people out of prison and jail—may seem perfectly aligned with abolitionist goals. Yet, though decarceration is an important and necessary step to be aligned with abolitionist goals, legal advocacy for decarceration should also include efforts to shift resources from the carceral state *and* invest resources that promote care, individual flourishing, and collective wellbeing.

Abolitionists oppose reforms that invest additional resources into the carceral state or otherwise extend the longevity of carceral institutions, policies, and practices. That said, Dan Berger, Mariame Kaba, and David Stein remind us that if we look across history, at times, abolitionists have themselves supported *non-reformist* reforms “that reduce rather than strengthen the scale and scope of policing, imprisonment, and surveillance.”<sup>38</sup> Abolitionists emphasize that reformist reforms will fail to

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<sup>35</sup> Farbman, *supra* note 28, at 1880–81.

<sup>36</sup> See Cynthia Godsoe (@cynthia\_godsoe), TWITTER (Jan. 14, 2021, 1:07 PM), [https://twitter.com/cynthia\\_godsoe/status/1349780144643301378](https://twitter.com/cynthia_godsoe/status/1349780144643301378) (detailing a recent post on Twitter where law professors debated the question of whether a government attorney can ever be classified as a radical).

<sup>37</sup> See *Challenging the Money Bail System*, CIV. RTS. CORPS, <https://www.civilrightscorps.org/work/wealth-based-detention> (last visited Mar. 31, 2021) (detailing how the Civil Rights Corps litigation challenging bail systems, fines, and fees have led to the release of thousands of people from pre-trial detention).

<sup>38</sup> Berger, *supra* note 8.

upend the structural violence imbedded in the system of policing and the punishment bureaucracy and, if anything, will strengthen the capacity of the state to police and punish.<sup>39</sup> However, they have supported these reforms because they view them as necessary to reduce immediate harms or human suffering, or as a step on the pathway toward abolition.<sup>40</sup> What this suggests is that the goal of harm reduction, though not strictly abolitionist, is a tactic used by abolitionists.

When, and under what circumstances, is harm reduction a viable tactic that can further abolitionist goals? And when should non-reformist reforms be pursued over reformist goals that perhaps align with harm reduction? Of course, the specific circumstances will inform the answer to these questions, but the fact that non-reformist reforms are being pursued suggests, at least, that such lawyering can be aligned with abolitionist goals.

Lawyers can help resolve the complicated issues posed by the call for abolition, particularly in how they present legal claims and how they formulate requests for remedies and injunctive relief. For example, one central myth about abolition is that it has no response to violence, and it will lead to lawlessness fueled by a lack of accountability.<sup>41</sup> That view is not consistent with abolitionist theory and praxis. For abolitionists, the focus is on accountability—what Akbar refers to as modes of accountability—and consequences, rather than punishment.<sup>42</sup> Importantly, the focus of abolitionist theory and organizing is on changing the conditions that lead to harm.<sup>43</sup> At the same time, with respect to redress for harms caused, abolitionist organizers recognize that survivors have a kaleidoscope of interests and not all survivors envision accountability and redress coming from the carceral state.<sup>44</sup> Ultimately, abolitionists seek to reclaim conflict

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<sup>39</sup> See ANGELA Y. DAVIS, *Imprisonment and Reform*, *supra* note 5, at 40–59; Berger, *supra* note 8.

<sup>40</sup> See Berger, *supra* note 8.

<sup>41</sup> See, e.g., Nick Herbert, *The Abolitionists' Criminal Conspiracy*, THE GUARDIAN (July 27, 2008, 10:00 AM), <https://www.theguardian.com/commentisfree/2008/jul/27/prisonsandprobation.youthjustice> (describing the aims of abolitionists as “hopelessly utopian”).

<sup>42</sup> See Akbar, *supra* note 7, at 1832–34 (describing examples of other modes of accountability).

<sup>43</sup> See *What Is Abolition?*, CRITICAL RESISTANCE, <http://criticalresistance.org/wp-content/uploads/2012/06/What-is-Abolition.pdf> (last visited Apr. 1, 2021) (“We take seriously the harms that happen between people. We believe that in order to reduce harm we must change the social and economic conditions in which those harms take place.”).

<sup>44</sup> See *Towards the Horizon of Abolition: A Conversation with Mariame Kaba*, THE NEXT SYS. PROJECT (Nov. 9, 2017), <https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba> (documenting a conversation between John Duda and Mariame Kaba). Kaba said, “I became an abolitionist through my work in domestic violence and sexual assault organizations and in the ‘field.’ It was really seeing how so many survivors were—I don’t want to say failed, because it’s by design—were targeted, not supported, and not helped through the criminal punishment system that we have. So many survivors also just did not want the involvement of this system—they were begging to not involve the cops, for so many reasons. The ones who did reach out [often] then turned out to be criminalized by the same systems that were supposed to be helping them.” *Id.* (alteration in original). See also DANIELLE SERED, *UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR* 5–7, 13–14 (2019).

processes from the state—processes that we, as a society, have outsourced to state agencies, whether the police, child services, or 911 for a whole host of reasons ranging from noise complaints to mental health crises. Lawyers can play a role in clearing pathways to allow for, or to create, policies and practices that permit these alternative modes of justice, conflict resolution, accountability, and care.

Lawyers can work with abolitionists to identify how to reconfigure the state towards positive projects and away from carceral impulses, or to identify how to shift resources from the state to non-state actors aligned with abolitionist goals. Abolitionists vary in terms of what role they envision the state serving with respect to social provision in the abolitionist future. On this point, fundamental questions exist as to what role the state will have in abolitionist future with respect to housing, health care, education, and welfare, as well as to the model of democratic inclusion, participation, and governance in such a future.<sup>45</sup> Lawyers can help think through the architecture of these social arrangements.

At the same time, perhaps instead of just making a taxonomy of lawyers connected to abolitionist movements, it would make sense to develop a set of questions that can be used to determine whether (and, if so, in what ways) legal advocacy aligns with abolitionist movements and their goals. Abolitionist organizers and social workers Cameron Rasmussen and Dr. Kirk “Jae” James pose a series of questions, adapted with permission from Dean Spade, that should inform mutual aid, and it is plausible that these questions can similarly inform legal advocacy:

- Is the work accountable to the people it proposes to be working for and with? (i.e., does it include their leadership? Does it shift power? Does it work to reduce and eliminate coercion?)
- Does it provide material relief? If yes, at what cost to one’s agency and at what risk?
- Does it perpetuate dichotomies and ideologies of good vs. bad, deserving vs. undeserving, violent vs. nonviolent, or criminal vs. innocent?
- Does it legitimize or expand carceral systems? (i.e., does it use, affirm, or expand criminalization, incarceration, surveillance, and/or punishment?)
- Does it mobilize those most affected for ongoing struggle? (i.e., is this building power?)<sup>46</sup>

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<sup>45</sup> See Akbar, *Demands for a Democratic Political Economy*, *supra* note 3, at 90–91.

<sup>46</sup> Cameron Rasmussen & Kirk “Jae” James, *Trading Cops for Social Workers Isn’t the Solution to Police Violence*, TRUTHOUT (July 17, 2020), <https://truthout.org/articles/trading-cops-for-social-workers-isnt-the-solution-to-police-violence/>.

As with other models of lawyering for social change, there is no one way to engage in this type of work. Abolitionist lawyers and lawyers in support of abolitionist movements should focus on their function, rather than the precise label that can be used to describe their legal advocacy. Lawyers can work to identify legal impediments to defunding police departments, or they can work to draft language for legislative bills seeking to divert resources from police departments and local ordinances seeking reparations. In their legal advocacy, lawyers in support of abolitionist movements can work to figure out how to render legible complicated laws and policies and help to clear pathways for more transformative social change. Beyond traditional lawyering, possible roles for abolitionist lawyers are varied. In working with local community groups, they can also help build and grow legal awareness and know-how among those proximate to pressing forms of state violence. They can join study groups aimed at developing political consciousness in organizing and community spaces. Abolitionist lawyers and lawyers in support of abolitionist movements can help provide frameworks, though not necessarily clear-cut answers.<sup>47</sup>

#### CONCLUSION

In this movement for radical social change, there is a role for lawyers to play in supporting abolitionist movements in their calls to remake the world.<sup>48</sup> This brief Essay offers frameworks for different ways of thinking about abolitionist lawyering. Precise definitions and specific types of roles and responsibilities are difficult, given the ever-shifting nature of the tasks that abolitionist lawyers are, and will be, called to respond to. However, the abolitionist ethic and abolitionist critique should guide the lawyering of those who adopt the abolitionist lawyer moniker.

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<sup>47</sup> See, e.g., *About Study and Struggle*, STUDY & STRUGGLE, <https://www.studyandstruggle.com/about> (last visited Jan. 19, 2021).

<sup>48</sup> See Akbar, *The Left Is Remaking the World*, *supra* note 3.

