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## Reflections of a Non-Abolitionist Admirer of the Police Abolition Movement

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# Reflections of a Non-Abolitionist Admirer of the Police Abolition Movement

Corey Stoughton\*

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While calls for abolition are not new,<sup>1</sup> the idea is having a moment. One would be hard-pressed to find any serious scholarly work on police reform from the past five years that does not engage with – even if it does not embrace – the abolitionist perspective. As one abolitionist scholar put it, the nationwide protests sparked by the police killing of George Floyd in 2020 “catapulted prison and police abolition into the mainstream and, in the process, unsettled the intellectual foundations of liberal police reform efforts.”<sup>2</sup>

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1. See e.g., Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261, 283–85 (2007) (“My claim against mass incarceration, capital punishment, and police terror is not that they are imposed in a discriminatory fashion. Rather, I argue that these immoral practices have flourished in the United States in order to impose a racist order.”); Ruairi Arrieta-Kenna, *The Deep Roots – and New Off-Shoots – of ‘Abolish the Police’*, POLITICO (June 12, 2020, 7:30 PM) (tracing the movement’s origins back to W.E.B. du Bois’s advocacy for ‘abolition-democracy’ in his book, *Black Reconstruction*) [perma.cc/66XK-4Z2T].

2. See Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CAL. L. REV. 1781, 1783 (2020) (advocating for the necessity of an abolitionist approach for reform projects when combatting the structural persistence of police violence).

At organizations fighting police abuse, including the one where I currently work, internal debates on the topic of police abolition vs. reform (or “harm reduction”) approaches are active and lively. As a practitioner with experience in a wide variety of police reform spaces in America and overseas, I can testify to the movement’s influence on even the most entrenched institutional reformers. Not everyone agrees with police abolition, but everyone is taking it seriously.<sup>3</sup>

This essay does not seek to engage directly with the important debate about abolition vs. reform, but rather to offer one practitioner’s perspective on how people on both sides of that debate can work together – and are working together – to achieve shared goals. Contrary to the classic stereotype of left-leaning political movements, I have not found the abolition vs. reform debate to be distracting, debilitating, or undermining of progress toward shared goals. Rather, the creative and energizing exchange has strengthened social movements and produced outcomes that both abolitionists and reformers support.

The productivity of this discourse is a credit to police abolition movements. Professor Paul Butler has called the abolition movement “the third gift people who fight for African American freedom will have provided to the country after they defeated slavery and the old Jim Crow.”<sup>4</sup> Aspects of that gift can be acknowledged regardless of one’s view of the merits or feasibility of the movement’s goal to dismantle policing in America. Despite my own skepticism of abolition, I have witnessed first-hand the concrete value the abolition movement has brought to the fight against abusive policing. Abolitionists’ critique of “reformism” elevated attention to a lack of analytical rigor underlying many aspects of traditional approaches to addressing abusive policing.<sup>5</sup>

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3. See Steve Crabtree, *Most Americans Say Policing Needs ‘Major Changes’*, GALLUP (July 22, 2022) (surveying Americans on their opinions about police reform ranging from complete abolition to no reform at all) [perma.cc/526H-WQWZ].

4. PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 230 (2017).

5. See Devin J. McCowan, *The Jurisdiction-Stripping Consent-Decree: A Practical Tool Towards Police Abolition*, 98 N.Y.U. L. REV. 2197, 2208 (2023) (“No reform effort has led to an end of the constant discriminatory police brutality that we continue to suffer today—partially because not all reforms efforts were geared towards curbing police misconduct.”)

This has dissuaded some reformers from continuing to pursue unproven – and possibly unproductive or even counter-productive – remedies for abusive policing and prompted greater creativity and innovation in litigation remedies and legislative proposals.<sup>6</sup>

This essay briefly lays out how the conversation surrounding abolition has interacted with traditional police reform advocacy, from a personal perspective of an advocate on the ground, with examples drawn from that experience of how abolitionist movements have contributed to the struggle against abusive policing. Those contributions have produced concrete results that should be deemed positive regardless of one’s position on the merits of abolishing the police. My hope is that this essay encourages both abolitionists and fellow abolition-skeptics to continue to engage in a dialogue that strengthens the discourse around the critically important issue of policing and police reform.

### I. *Abolition and Reform: The Debate on the Ground*

Police abolition has arrived as both an intellectual position and a public policy platform. The past several years have seen a plethora of academic engagement with the topic, in both legal academic journals and long-form journalism.<sup>7</sup> The Harvard Law

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6. See Ram Subramanian & Leily Arzy, *State Policing Reforms Since George Floyd’s Murder*, BRENNAN CTR. FOR JUST. (May 21, 2021) (“In response to these community-led movements – many of which rallied around calls to ‘Defund the Police’ – cities and counties have begun restructuring how local budgets and law enforcement are deployed in service of public safety.”) [perma.cc/EG9U-78LW].

7. Examples of legal academic engagement with the abolition issue are scattered throughout the citations in this essay. See, e.g., McCowan, *supra* note 5, at 2224–29 (explaining the history of the abolition movement and proposing proactive steps to abolition). For evidence of the issue’s strong presence in the discourse of long-form journalism. See, e.g., Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, NEW YORKER (May 7, 2021) (“At its core, abolitionist politics are inspired by the necessity for what Martin Luther King, Jr., described as the “radical reconstruction” of the entirety of U.S. society.”) [perma.cc/E5Ys-JJH8]; Madison Pauly, *What a World Without Cops Would Look Like*, MOTHER JONES (June 2, 2020) (arguing that police reform measures like implicit bias training and body cameras have not worked and people now calling to defund the police) [perma.cc/BL9M-LHKW]; Amna Akbar, *How Defund and Disband Became the Demands*, N. Y. REV. OF BOOKS (June 15, 2020) (“The call for radical reform of the police may seem new, but abolitionist

Review has declared police abolition to be a “mainstream” position.<sup>8</sup> In the New York City Council, among many other state and local legislatures around the country, one can find abolitionist themes in the platforms of successfully elected representatives, such as “ending our reliance on police”<sup>9</sup> and “[w]e can’t reform our way out of a racist police system that’s working exactly as designed”<sup>10</sup> – sentiments that less than a decade ago would have been politically anathema almost anywhere, including in New York City. More mainstream politicians, including the sitting President of the United States, have been compelled to distance themselves from such ideas only confirming abolitionism’s place in the national conversation.<sup>11</sup>

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organizing against the ‘prison industrial complex’ goes back decades.” [perma.cc/MK6Z-Q7YT]; Josie Duffy Rice, *The Abolition Movement*, VANITY FAIR (Aug. 25, 2020) (arguing that police abolition is possible. “Defunding the police – divesting money from the back-end solution of policing and investing it on the front end – is a first step along the path.”) [perma.cc/R778-LTU2]; Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020) (“The only way to diminish police violence is to reduce contact between the public and the police.”) [perma.cc/4QPN-J3J3].

8. See Note, *Pessimistic Police Abolition*, 136 HARV. L. REV. 1156, 1156 (2023) (“The movement for police abolition seeks to eliminate, or massively downsize, American policing. Mariame Kaba’s *Yes, We Mean Literally Abolish the Police* marks the movement’s new life in the mainstream.”). Indeed, the Harvard Law Review takes the often-intertwined issues of police and prison abolition so seriously that its frequent engagement with the topic has occasioned some pearl-clutching within academia. See e.g. Paul Horowitz, *Some Questions About the Harvard Law Review and its Scholarly Treatment of Prison Issues*, PRAWFSBLOG (Dec. 21, 2019, 12:16 PM) [perma.cc/W59D-LGEU].

9. See *A New Vision of Public Safety for New York City*, CABÁN FOR COUNS. (“Ending our reliance on police is only a part of the solution – the bigger piece is properly funding the social services and basics people need for stability.”) [perma.cc/MBL6-C79W].

10. See Simantini Dey, *Meet Mira Nair’s Son Zohran Mamdani, a Democratic Socialist and Rapper Who Won Seat in NY State Assembly*, NEWS18 (last updated Nov. 2, 2020, 22:39 IST) (“Mamdani’s primary goals are to guarantee housing and healthcare for all. Apart from that he also wants to defund the NYPD and aims to bring change to ‘the racist police system that’s working exactly as designed – as a means of control over [B]lack and brown New Yorkers.”) [perma.cc/7QNH-WU8D].

11. See Jonathan Martin et al., *Biden Walks a Cautious Line as He Opposes Defunding the Police*, N.Y. TIMES (last updated Apr. 20, 2021) [perma.cc/8XTA-HZQ5].

In the face of continuing protest marches calling to “defund the police” nationwide in the aftermath of George Floyd’s killing, Mr. Biden’s campaign said in a

There exists a debate within the abolition movement about what abolition is, and what the movement stands for.<sup>12</sup> For purposes of this essay, I think of ‘the police abolition movement’ as people actively seeking what abolitionist thought leader Mariame Kaba describes as “the complete and utter dismantling of prisons, policing, and surveillance as they currently exist within our culture.”<sup>13</sup> This definition seems to accurately describe many of the colleagues I have worked alongside at The Legal Aid Society and its community partners who have, with intelligence and grace, pressed me and other organizational leaders to embrace an abolitionist vision.

Despite the incontrovertible evidence of a nationwide problem of police violence against Black people – evidence I have seen up close from, among other things, my involvement in the legal response to the violence and harassment inflicted by some members of the NYPD on New Yorkers of color through hyper-aggressive stop-and-frisk, so-called “quality of life” enforcement

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statement that he “hears and shares the deep grief and frustration of those calling out for change” and that he “supports the urgent need for reform.” But a campaign spokesman, Andrew Bates, said flatly that Mr. Biden was opposed to cutting police funding and believed more spending was necessary to help improve law enforcement and community policing.

See also Sam Gringlas, *Biden Opposes Defunding Police, Campaign Says*, NPR (June 8, 2020, 1:59 PM) (reporting that Vice President Biden does not believe that the police should be defunded but understands the frustration and call for change.) [perma.cc/5RNL-RYMH].

12. See e.g., Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 Harv. L. Rev. 1, 6–7 (2019).

It is hard to pin down what prison abolition means. Activists engaged in the movement have resisted “closed definitions of prison abolitionism” and have instead suggested a variety of terms to capture what prison abolitionists think and do — abolition is “a form of consciousness,” “a theory of change,” “a long-term political vision,” and “a spiritual journey.”<sup>27</sup> Professor Dylan Rodríguez, a founding member of Critical Resistance, lyrically describes abolition as “a practice, an analytical method, a present-tense visioning, an infrastructure in the making, a creative project, a performance, a counterwar, an ideological struggle, a pedagogy and curriculum, an alleged impossibility that is furtively present.”

13. See AIRGO, Episode 29 – Mariame Kaba, AIRGO, at 34:42 (Feb. 2, 2016), [perma.cc/G7SS-9UHH]; see also Kaba, *supra* note 7 (“We don’t want to just close police departments. We want to make them obsolete. We should redirect the billions that now go to police departments toward providing health care, housing, education, and good jobs.”) [perma.cc/2LNV-8H5Q].

actions, and violent assaults on racial justice protests – I am not persuaded by police abolition.<sup>14</sup> I am by no means alone among those who have been employed at public defenders and civil rights organizations that focus on abusive policing, where a range of views are represented. Clarity about the harms policing has perpetuated – including clarity that those harms are racist – is not enough to justify police abolition. It must also be the case that policing fails to deliver on its fundamental purpose of public safety and other alternatives would do better. On those questions, it seems to me, the jury is out.<sup>15</sup> There is credible evidence that policing is effective at preventing crime.<sup>16</sup> And I have yet to encounter a persuasive articulation of how public safety can be addressed in a world without any police.<sup>17</sup>

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14. In articulating this view, I do not claim to speak for any other person in a leadership role at The Legal Aid Society, or indeed for any other person at all.

15. This point about the weak empirical basis for this particular premise of the abolition movement – alongside a call for investment in research on this point – was recently made well in *Pessimistic Police Abolition*. See *Pessimistic Police Abolition*, *supra* note 8, at 1157–58 (“Empirical evidence has suggested, over and over again, that policing does decrease crime. According to one leading study, hiring an additional officer prevents about 0.06 to 0.10 homicides.”).

16. See Patrick Sharkey, *Why Do We Need the Police?*, WASH. POST (June 12, 2020), (“One of the most robust, most uncomfortable findings in criminology is that putting more officers on the street leads to less violent crime.”) [[perma.cc/9YY3-ZE48](https://perma.cc/9YY3-ZE48)]; Aaron Chalfin et al., *Police Force Size and Civilian Race* 4 AM. ECON. REV.: INSIGHTS 139, 142 (2022) (finding a greater anticrime police effect on Black victims than white ones); Jonathan Klick & Alexander Tabarok, *Using Terror Alert Levels to Estimate the Effect of Police on Crime*, 48 J. L. & ECON. 267, 277 (2005) (finding a general anticrime effect); see also John M. MacDonald et al., *The Effect of Private Police on Crime: Evidence from a Geographic Regression Discontinuity Design*, 179 J. ROYAL STAT. SOC’Y SERIES A 831, 838–42 (2015) (same); Steven Mello, *More COPS, Less Crime*, 172 J. PUB. ECON. 174, 189 (2019) (“The corresponding instrumental variables estimates imply that an additional officer per 10,000 residents reduces victimization costs by about \$35 per capita, with an implied crime-police elasticity of – 1.17.”); John MacDonald et al., *The Effects of Local Police Surges on Crime and Arrests in New York City*, PLOS ONE, June 16, 2016, at 1, 10–11 (“The increase in probable cause-related stops after the formation of impact zone had the strongest association with reduced burglary and robbery reports, suggesting that physical presence of more police and enhanced apprehension may have generated a detent effect specific to those crimes.”).

17. The frequency with which abolitionists invoke the word “imagination” when turning to the question of alternatives does not create confidence in the realism of their proposals. See, e.g., Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 405–06 (2018) (“In forwarding a decarceral agenda rooted in an abolitionist imagination, the Vision demands

I offer this brief summary of my non-abolitionist point of view not to persuade any reader of its merits but to lay the foundation for a different point: even a non-abolitionist like me has to acknowledge the benefits the abolition movement has delivered to the cause of reducing abusive policing. The abolitionist critique has challenged old ways of thinking and, in so doing, refined police reform movements for the better. The remaining sections of this essay discuss two specific examples of that refinement, with examples drawn from my own experience on the ground.

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shrinking the large footprint of policing, surveillance, and incarceration and shifting resources into housing, health care, jobs, and schools.”); Melissa Stein, *Toward the Abolitionist Imagination*, POL’Y RSCH. ASSOCS. (Sept. 1, 2021) (“Such a realignment of power will require us to embrace the abolition of aspects of our current criminal legal system. What that looks like, no one really knows; but we can and must imagine.”) [perma.cc/TWJ9-MSKT]; *Abolition and Imagination: Divesting from Police, Investing in Community Health + Wellbeing*, EQUI INST. (June 8, 2020) (imagining a world where the entire prison industrial complex is abolished including “the web of imprisonment, policing, and surveillance.”) [perma.cc/8AX9-3XUN]; Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1619 (2019) (attributing the lack of clarity around abolitionist alternatives to the fact that “our present imaginative and institutional resources are constrained by the parameters of our highly unequal world”). To be fair, many abolitionists acknowledge that the movement’s vision remains a work in progress, see, e.g., Jamelia Morgan, *Lawyering for Abolitionist Movements*, 53 CONN. L. REV. 605, 609 (2021) (“[A]bolitionists 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.”); McLeod, *supra* note 17, at 1637 (“Ultimately, for abolitionists, the question of what democracy and justice might look like without prisons and police remains open”). But then it should come as no surprise that those of us working in the public policy of the here and now are not prepared to embrace its experimental agenda. The scholar Derecka Purnell has published the most reality-grounded and honest work on this question I have yet encountered in her moving and highly recommended book. See generally DERECKA PURNELL, *BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM* (Astra House 2022). However, the fact that her ultimate vision depends upon the dismantling of American capitalism itself illustrates the difficulty of framing abolition as a readily conceivable public policy position.



*II. The Abolitionist Critique Has Exposed Weak Reformism and Inspired Better Reform.*

The abolition movement's critique has exposed a lack of analytical rigor in much police reform (or "reformism"), pushing advocates to interrogate assumptions and question unproven models and methods. The movement has also provided a roadmap for better, achievable outcomes. These contributions – one deconstructive, the other constructive – each have independently produced positive results on the ground, holding out a promise of more effective and sustainable reductions in abusive policing.

The abolitionist critique of course, does not start from a place of trying to improve reform measures. It is a frontal attack on the very idea of reforming police.<sup>18</sup> The movement has reacted particularly strongly to former President Barack Obama's Task Force on 21<sup>st</sup> Century Policing, which issued a series of recommendations in May 2015 that still define the mainstream liberal police reform agenda.<sup>19</sup> The Task Force's 62 recommendations cover a broad range of ground, but there is a distinct focus on principles of procedural justice, a concept criticized by many abolitionists as sanitizing unacceptable police power.<sup>20</sup> Many of the Task Force's recommendations run afoul of the central demand of the abolition movement to curtail police power and funding, such as encouraging police departments to proactively initiate "positive nonenforcement activities to engage communities" in schools and other locations, (recommendation 1.5),<sup>21</sup> expanding investments in training programs

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18. See Davis Alan Sklansky, *Police Reform in Divided Times*, AM. J. L. EQUAL., Aug. 15, 2022, 3, 17 ("By the middle of the second decade of the twenty-first century, a small but growing number of activists and scholars were losing faith in the project of police reform and were calling for the police to be abolished altogether.").

19. See generally OFF. COMTY. ORIENTED POLICING SERV., FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (2015) [hereinafter 21ST CENTURY POLICING].

20. See, e.g., McLeod, *supra* note 17, at 1643–44 (criticizing the Task Force for its focus on procedural justice, which she describes as focusing "on a feeling of respect or fairness rather than on realizing substantively just conditions at a more fundamental level.").

21. 21ST CENTURY POLICING, *supra* note 19, at 14.

(recommendations 5.1-5.13),<sup>22</sup> promoting the legitimacy of new police technology (recommendation 3.3)<sup>23</sup> and funding officer wellness initiatives (recommendations 6.1-6.4).<sup>24</sup>

Even before the President’s 21<sup>st</sup> Century Policing Task Force, the dominant model of police reform germinated in the United States Department of Justice, Civil Rights Division’s approach to so-called “pattern or practice” investigations – legal actions launched in response to evidence of systemic abuses of police power that generally result in a consent decree mandating certain reforms, often overseen by an independent monitor.<sup>25</sup> In 2017, at the very end of the Obama Administration, the Civil Rights Division published a document outlining its approach to police reform and cataloguing the reform measures it typically pursues.<sup>26</sup> Those reforms largely align with the philosophy of the President’s 21<sup>st</sup> Century Policing Task Force and many of them – for example, building ambitious re-training programs, funding officer wellness and support systems, and growing internal police accountability systems – are exactly the sort of “reformism” abolitionists have aimed at.

While I believe there is a strong case for reforming policing and would vigorously defend the bulk of this mainstream model, no system is beyond repair, especially a reform agenda that exists alongside relentless headlines about abusive policing. The fixing of abolitionism’s skeptical eye on this agenda has prompted a healthy jolt of self-reflection and fomented greater creativity. Abolitionists have questioned the assumption that improved policies and

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22. *Id.* at 53–60.

23. *Id.* at 35–36.

24. *Id.* at 63–67.

25. See John Guzman, *What is a Pattern-Or-Practice Investigation?*, L. DEF. FUND (Mar. 8, 2023) (explaining how pattern-or-practice investigations are conducted by the Department of Justice and the limitations in holding police departments fully accountable) [[perma.cc/73SG-PJ7Q](https://perma.cc/73SG-PJ7Q)].

26. See CIV. RTS. DIV., U.S. DEPT. JUST., *THE CIVIL RIGHTS DIVISION’S PATTERN AND PRACTICE POLICE REFORM WORK: 1994-PRESENT (2017)* (“The purpose of this report [is] to make the Division’s police reform work more accessible, and transparent. The usual course of a pattern-or-practice case, with examples and explanations for why the Division approaches this work the way it does, is set forth in this report.”). In full disclosure, I contributed substantially to the drafting of that document during my time working in the Civil Rights Division.

training – often the central tenets of any police reform agreement – can prevent future harm, viewing such harm as a feature not a bug and such initiatives and reifying the power of a toxic institution. As one journalist’s summary of the abolitionist perspective put it, “New York banned chokeholds. Seattle required de-escalation training. Los Angeles restricted shooting at moving vehicles. But those reforms did not stop police from killing Eric Garner, Charleena Lyles or Ryan Twyman, who died when officers used the very tactics that the changes were supposed to prevent.”<sup>27</sup>

In the face of such killings, abolitionists conclude that nothing can eradicate the violence at the heart of policing. They also question reformers’ reliance on programs such as implicit bias training as a core remedy for racially biased policing, in the face of compelling academic evidence that such training is generally ineffective, a criticism that underscores the absence of an evidence base for many other reformist training programs beyond that context.<sup>28</sup> While reformers may not take the leap from this point to giving up on the institution of policing entirely, reformers are at least compelled to acknowledge that policies and training cannot be lauded victories in themselves.<sup>29</sup>

And yet, policies and training so often are lauded as ends in themselves, particularly within the legal community, which tends to focus on the black-and-white question of who won the case, rather than the more meaningful question of what did they win,

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27. Sam Levin, *It’s Not About Bad Apples: How US Police Reforms Have Failed to Stop Brutality and Violence*, THE GUARDIAN (June 16, 2020, 6:00 PM) [perma.cc/2EH8-MCST].

28. See Michael Hobbes, *‘Implicit Bias’ Trainings Don’t Actually Change Police Behavior*, HUFFPOST (June 12, 2020, 5:45 AM) (arguing that it is easy to produce evidence of implicit bias in U.S. policing but the ability to create training sessions to reduce it is not as clear) [perma.cc/TQ53-P2TT]; Chris Mooney, *The Science of Why Cops Shoot Young Black Men*, MOTHER JONES (Dec. 1, 2014) (describing the use of the Implicit Association Test in determining one’s implicit bias) [perma.cc/3DM4-GEYN].

29. Such reforms are not always just words on paper – they often lead to better outcomes. For example, comprehensive reform initiated by a DOJ consent decree resulted in a 33% decline in use of force between 2015 and 2019 and a 49% reduction between 2015 and 2021, with the “most serious force incidents” declining by 60% in the same period. SEATTLE POLICE MONITOR, USE OF FORCE PRELIMINARY ASSESSMENT 3 (2022).

and whether that achieved the client's goals.<sup>30</sup> This is a criticism that did not originate with the abolitionist movement,<sup>31</sup> but abolitionists have been particularly successful in holding legal reformers accountable for remembering it.<sup>32</sup>

The abolitionist jolt also addresses a certain complacent tendency in the legal community to cut-and-paste. If we haven't done it before, we find out who has and start with their model. Institutional power reinforces this tendency. President Obama's 21<sup>st</sup> Century Policing task force was press-released as a project to identify best policing practices and offer recommendations, and it was released with a guidebook to ensure it would be used as a model.<sup>33</sup> And the 2017 release of the Civil Rights Division report on its police reform model was intended to make information about the Division's model more accessible to others pursuing police reform strategies; indeed, the document has been cited in other legal cases to validate the pursuit of those strategies.<sup>34</sup> These outputs become the default model, with a powerful gravitational

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30. See generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *Clinical L. Rev.* 33 (2001) (emphasizing the importance of cultural competency trainings for lawyers).

31. See, e.g., Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L. J.* 470, 516 (1976) ("But to the extent that civil rights lawyers have not recognized the shift of [B]lack parental priorities, they have sacrificed opportunities to negotiate with school boards and petition courts for the judicially enforceable educational improvements which all parents seek.").

32. See Janell Ross, 'Where's the Glory in Helping Goliath Beat David?' *Inside Ben Crump's Quest to Raise the Value of Black Life in America*, *TIME* (May 4, 2021, 12:00 PM) (discussing people who criticize Ben Crump's method of only securing large settlements for families of police brutality victims rather than true police reform) [pema.cc/AL2U-5293].

33. OFF. COMTY. ORIENTED POLICING SERV., *THE PRESIDENT'S TASK FORCE ON 21<sup>ST</sup> CENTURY POLICING IMPLEMENTATION GUIDE: MOVING FROM RECOMMENDATION TO ACTION* (2015).

34. As counsel to the plaintiff class in *Davis v. City of New York*, 959 F.Supp. 2d 324 (S.D.N.Y. 2013), one of the three consolidated cases challenge various aspects of the NYPD's stop-and-frisk practices, I am aware that the report has been cited in post-judgment motion practice urging the court to expand community engagement as part of the post-judgment remedial process overseen by an independent monitor. A Westlaw search reveals the guidance has been cited in at least one other brief supporting a similar proposition. Brief for Policing & Criminal Justice Organizations and Scholars as Amici Curiae Supporting Affirmance in *Pernell v. Lamb*, 84 F.4th 1339 (2023) (No. 4:22-CV-304-MW-MAF).

pull. One can agree or disagree about the merits of the model, but no one can defend uncritically adopting it.<sup>35</sup>

Police reformers did not need the abolition movement to raise these concerns. Indeed, many prominent establishment voices were calling for the development of a stronger evidence base to support the prevailing model of police reform long before the abolition movement grabbed significant public attention.<sup>36</sup> But the visibility of the movement's critique, particularly since 2020, has prompted an unprecedented level of self-reflection amongst reformers (myself included). In the community of advocates where I currently work, it is no longer tenable to ignore the potential for some police reforms to reinforce the already significant power police departments wield in local governments, to further enlarge already exorbitant police budgets, or to reify the central role of policing in responding to social problems that could be better addressed with non-law enforcement-led solutions.<sup>37</sup>

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35. This is the policy-world version of what Amna Akbar has noted amongst her fellow legal academics, when she writes "I suspect an aspect of the persistence of repair agendas stems from both the difficulty of seeing alternatives and some path dependency within the scholarship and our professional pathways to the academy." Akbar, *supra* note 2, at 1814. As among academics – whose contributions to policy change are not negligible but also cannot compare to the impact of advocates – path dependency and a lack of creativity are likely to blame for the staid nature of police reform agendas, leaving them ripe for critique and refreshed thinking.

36. See Amelia Thomson-DeVeaux & Maggie Koerth, *Is Police Reform A Fundamentally Flawed Idea?*, ABC NEWS (June 22, 2020, 6:00 AM) ("Policing data is imperfect. Due to a lack of systematic or reliable data on police misconduct, the fact that the data we do have is mostly from police departments themselves, and an emphasis on crime and police presence, it's liable to miss important variables.") [perma.cc/68FH-V4F9].

37. This is not to overlook the fact that some of the abolitionist critique takes on a straw man. One common example of this is defining "reformism" as focused only on the most extreme forms of abuse or the most virtuous-appearing victims and, therefore, willing to reinforce systemic harassment, discrimination, and violence falling outside those narrow categories. See, e.g., McLeod, *supra* note 17, at 1616 ("Whereas reformist efforts aim to redress extreme abuse or dysfunction in the criminal process without further destabilizing existing legal and social systems--often by trading reduced severity for certain 'nonviolent offenders' in exchange for increased punitiveness toward others--abolitionist measures recognize justice as attainable only through a more thorough transformation of our political, social, and economic lives."). While any practicing reformer will be familiar with the perennial political pressure to accept carve-outs to reform proposals that leave some populations behind, it is rare to find a reformer who

Examples of this are myriad. To offer one, drawn from my work: The Legal Aid Society works in coalition with several other organizations and impacted individuals to address the NYPD's approach to gang policing, including the maintenance of what the NYPD calls the "Criminal Group Database" – a database of alleged gang members that is 99% Black or Hispanic (70% Black, 29% Hispanic).<sup>38</sup> The database is based on questionable assumptions, intentionally excludes well-known white supremacist gangs, and results in greater targeting and surveillance by police, as well as harsher outcomes if a person becomes enmeshed in the criminal legal system.<sup>39</sup> A conventional reformist approach to this issue – that is, the model that has been done before and the draws on the principles of procedural justice at the heart of the dominant liberal reform model – focuses on legal and policy demands for procedural safeguards such as greater transparency, a process for challenging one's inclusion in the database, requirements to purge dated information, and requiring supervisory review before individuals can be added.<sup>40</sup> This approach was roundly rejected by the coalition, largely under the leadership of abolitionist voices, who view such measures as the proverbial lipstick on a pig.<sup>41</sup> Their aim

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does not actively push back against that pressure, and rarer still to find one who starts from that place.

38. See Jasmine Johnson, *Gang Databases: Race and the Constitutional Failures of Contemporary Gang Policing in New York City*, 94 ST. JOHN'S L. REV. 1033, 1033 (2020) ("[T]he New York City Police Department ('NYPD') has a gang database – a criminal intelligence system utilized by the NYPD to keep track of alleged 'gang members' in New York City.").

39. See CITY N.Y. DEPT. INVESTIGATION, 16-2024, DOI'S OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD ISSUES REPORT EXAMINING NYPD'S USE AND OPERATION OF THE CRIMINAL GROUP DATABASE (2023) ("[I]nclusion in the database could have negative impacts, such as increased police surveillance, higher cash bail, expulsion from public housing . . . enhanced scrutiny or other disparate treatment by educational institutions.").

40. See Sara Robinson, *When a Facebook Like Lands You in Jail*, BRENNAN CTR. JUST. (July 6, 2018) (arguing that the discriminatory application of the NYPD's gang database goes against the values found in the Handschu Agreement) [perma.cc/ZASX-9LG2].

41. The G.A.N.G.S. coalition, made up of organizers, advocates, and directly impacted communities and whose mission is abolishing criminalization tools predicated on gang or crew labels, discussed this approach over the course of several meetings. The author was present or reviewed files of those present for

is not merely to address the harm of the people who have been labelled gang members for completely arbitrary or ridiculous reasons, but to address the harm of every person who has been victimized by a fundamentally racist decision to treat Black criminal activity differently from indistinguishable white criminal activity and, in so doing, criminalize Black friendships and entire Black communities. The notion of “cleaning up” the gang database without addressing the deeper injury produced by its creation is unacceptable from this perspective. This demand requires the lawyers and policy experts not to follow reform models that have been done in other places, but to develop an entirely novel strategy.

Although such forced creativity has inherent value, there is always the risk that no such strategy will emerge. Still, abolitionists cannot be accused of failing to generate constructive proposals. In addition to challenging complacency and generating creativity, abolitionists have attempted to construct a new center of gravity for police reforms. In 2014, following the release of President Obama’s 21<sup>st</sup> Century Policing Plan, a prominent abolitionist thought leader published an op-ed setting forth what she described as a “simple guide for evaluating any suggested ‘reforms’ of U.S. policing in this historical moment.”<sup>42</sup> Her guide urged rejection of any reform where the answer to any of the below questions is yes:

1. Are the proposed reforms allocating more money to the police?
2. Are the proposed reforms advocating for more police and policing (under euphemistic terms like ‘community policing’)?
3. Are the proposed reforms primarily technology-focused?

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those meetings. For more information on the G.A.N.G.S. Coalition, see @gangscoalition, Twitter.

42. See Mariame Kaba, *Police “Reforms” You Should Always Oppose*, TRUTHOUT (Dec. 7, 2014) [perma.cc/54QR-KVLV]. The themes underlying Ms. Kaba’s framework permeate much abolitionist thinking about what constitutes abolition as opposed to “reformism.” See, e.g., Matthew Clair & Amanda Woog, *Courts and the Abolition Movement*, 110 CAL. L. REV. 1, 25 (2022) (“[W]e identify three guiding principles as central to the police and prison abolitionist movement: (1) power shifting; (2) defunding and reinvesting; and (3) transformation.”).

4. Are the proposed reforms focused on individual dialogues with individual cops, or more generally reinforce a ‘bad apple’ theory of oppressive policing at the expense of addressing a corrupt and oppressive policing system?<sup>43</sup>

While still framed in the negative, this guide was adapted by many abolition-minded reform groups as a framework and widely circulated as a constructive tool for designing advocacy strategies.<sup>44</sup> In a subsequent article, a group of abolitionist thinkers summarized this approach as embracing “non-reformist reforms — those measures that reduce the power of an oppressive system while illuminating the system’s inability to solve the crises it creates.”<sup>45</sup>

Here, again, we have already seen the impact of the abolitionist project in the real world. The most frequently cited example of this phenomenon is the shift away from law enforcement-led responses to people in mental health crisis.<sup>46</sup> An extraordinarily high number of police killings arise in the context of mental health crisis.<sup>47</sup> Where traditional approaches to this issue have involved enhanced training programs for police officers to better equip them to manage such encounters, more and more mainstream voices are calling for a move to limit or even eliminate the role of police officers in responding to people in crisis.<sup>48</sup> More

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43. Kaba *supra* note 42.

44. See e.g., Tracie Guy-Decker, *A Response to We Do This ‘Til We Free Us*, JOYOUS JUST. (July 30, 2021) (encouraging other activists to utilize Mariame Kaba’s guide for evaluating police reform suggestions) [perma.cc/9RRW-Z6FC].

45. See Dan Berger et al., *What Abolitionists Do*, JACOBIN (Aug. 24, 2017) (arguing for the organization of concrete reform animated by a radical critique of state violence) [perma.cc/NE7M-MTBJ].

46. See Jennifer Peltz & Jesse Bedayn, *Many Big US Cities Now Answer Mental Health Crisis Calls with Civilian Teams – Not Police*, AP NEWS (last updated Aug. 28, 2023) (“As part of a \$19 million settlement this spring with Glass’ parents, Colorado’s Clear Creek Country this month joined a growing roster of U.S. communities that respond to nonviolent mental health crises with clinicians and EMT’s or paramedics, instead of police.”) [perma.cc/NFP3-CT3X].

47. See generally Amam Saleh et al., *Deaths of People with Mental Illness During Interactions with Law Enforcement*, 58 INT’L J. L. PSYCH. 110 (2018).

48. See, e.g., Jackson Beck et al., *Behavioral Health Crisis Alternatives: Shifting from Police to Community Responses*, VERA INST. JUST. (Nov. 2020) (“Too often, encounters between the police and people in crisis end in handcuffs with an enforcement action . . . too often, they do not end in voluntary assessment, and



recently, the killing of Tyre Nichols by Memphis police officers during a traffic stop in January 2023 prompted not only the sort of DOJ investigation that often follows such high-profile incidents, but also widespread calls to reduce or even end the role of police officers in routine traffic enforcement.<sup>49</sup> Both of these examples underscore the shift in emphasis away from traditional programs of investing in policing to improve policing and engaging in creative solutions that are, while not in fact abolitionist, are clearly responsive to the abolitionist critique.

In my own work, I have seen this phenomenon most acutely in litigation I helped lead challenging the NYPD's violent response to the protests in 2020 following the killing of George Floyd. Our clients, many of whom themselves identify strongly with the police abolition movement, were clear from the beginning that any resolution of their case could not turn on solutions that reinforced the police power that brutalized them or betrayed the calls to defund police that were heard on the streets of New York that summer. That mandate made it impossible for our team of attorneys to lean on traditional approaches to instances of police violence, such as de-escalation or peer-intervention training programs. Instead, the settlement reached in that case centers on a novel "tiered approach" to policing protests that rests on a presumption against the deployment of officers to protests and creates thresholds for deployment that require the police to justify the public safety concern that warrants the presence of law enforcement where people gather to exercise their constitutional right to freedom of expression.<sup>50</sup>

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referral to the long-term supports people with mental illnesses and substance use disorders need to thrive.") [perma.cc/K5AQ-6FFE].

49. The Memphis City Council passed a bill that would end pretextual police stops – that is, allowing police to use the pretext of minor traffic infractions to investigate drivers or passengers for more serious criminal activity. Nick Valencia, *Memphis Leaders Pass Measure That Ends Police Stops for Minor Infractions, Three Months After Tyre Nichols' Death*, CNN (Apr. 12, 2023, 6:08 PM) [perma.cc/WV3M-GE5H]. Several other cities are considering similar measures. See Jamiles Lartey, *How Police Traffic Stops May Change After Tyre Nichols' Death*, MARSHALL PROJECT (Feb. 11, 2023) ("The state of Virginia, and cities like Philadelphia, Pittsburgh, and San Francisco have halted such traffic stops. Lawmakers in Washington state proposed similar legislation last week.") [perma.cc/U2UD-5QJK].

50. Press Release, NYCLU, NYCLU, The Legal Aid Society, and Attorney General James Announce Agreement with NYPD to Reform Policing of Protests

As a movement of advocacy toward the goal of abolishing police, abolitionism's success is debatable. The list of "transformative" abolitionist reforms dubbed 'Vision for Black Lives' – a list created by groups associated under the umbrella of the Movement for Black Lives – contains many dozens of specific proposals, very few of which have been enacted at a state or local level and none of which has manifested in federal policy change.<sup>51</sup> But as a movement to jolt advocates out of complacent promotion of unproven strategies and prompt a wave of creative thinking about ways to address police abuse, it is a clear success. In short, while I remain unpersuaded by the fundamental aspiration of the police abolition movement, I have learned from listening to abolitionists. They have educated me about flaws in police reform strategies I previously pursued and caused me to stop pursuing them. I continue to believe there is – indeed, there must be – a place for such reforms in effective movement lawyering. But every dominant orthodoxy needs challenge to prevent it from sliding into obsolescence.

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(Sept. 5, 2023) [perma.cc/4BHV-GSL2]. The settlement, filed in September 2023, has been challenged by one of New York's police unions and is awaiting court approval. In April 2024, the Southern District of New York accepted the settlement agreement. *In Re New York City Policing During Summer 2020 Demonstrations*, No. 1:20-cv-8924 (S.D.N.Y. Apr. 17, 2024).

51. See *Vision for Black Lives*, MOVEMENT BLACK VOICES (laying out policy proposals aimed at "end[ing] the war on Black communities," and "the demilitarization of law enforcement") [perma.cc/8NW5-JAJW]. Some abolitionists have held up initial moves in 2020 toward police budget cuts in Seattle and Portland, and Los Angeles. See Mina Barahimi Martin, *Follow the Money: 2022*, ACLU WASH. (Nov. 22, 2022) (noting that elected officials' promises of shrinking Seattle PD's budget had not been fulfilled, and indeed that budget increases demonstrated "backsliding" on this goal) [perma.cc/PHV8-AJPA]; Rebecca Ellis, *A Year After Big Cuts, Mayor Ted Wheeler Wants to Add to the Portland Police Bureau*, OR. PUB. BROAD. Nov. 11, 2021 ("A year after Portland City Council unanimously agreed to a historic funding cut to the Portland Police Bureau, Mayor Ted Wheeler said his colleagues have mostly united around a plan to funnel \$5.2 million back to the bureau to beef up the city's public safety response.") [perma.cc/F8AL-JMZX]; David Zahniser, *Union Contract Would Increase LAPD Budget by Nearly \$400 Million by 2027, Report Says*, L.A. TIMES (Aug. 22, 2023) (noting that the addition of hundreds of millions of funds to the LAPD budget would push the overall police budget to a record high of \$3.6 billion by 2027) [perma.cc/8LX8-H5U8].

To acknowledge that the abolition movement made reform better is not to reduce the movement to that purpose. For the non-abolitionist, the end of reform is better policing. For the abolitionist, reform is at best “a strategy or tactic toward transformation,” meaning contesting and ultimately eliminating policing.<sup>52</sup> These are not compatible visions. But even if the collaboration between holders of these visions is just a tactical alliance, it is a tactical alliance that is producing good results. Perhaps those good results will lay a foundation for abolition, or perhaps they will seed in abolitionists’ fertile imaginations a positive vision of policing that, for too many people struggling in present realities, remains as yet inconceivable.

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52. Akbar, *supra* note 2, at 1781, 1788. This is one view of how an abolitionist sees reform, but it should be acknowledged that it is not the only view. In the unmistakably clear words of one Chicago organizer “[r]eform is only a way to steal more resources from the community.” These are the words of Kristiana Rae Colón, a Chicago playwright and co-director of the #LetUsBreathe Collective. Levin, *supra* note 27.