

Drug Crimes: The Case for Abolition

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ABSTRACT

Nonwhite communities experience higher rates of arrest, prosecution, and incarceration than white communities for drug offenses, and these disparities have persisted even in the wake of decriminalization and legalization. Although a diverse array of political stakeholders increasingly agree that drug policies should be reformed, they are nearly unanimous in their opposition to abolition. While select drug crimes may be worthy of reduced punishment or conversion into civil offenses, these stakeholders contend that the abolition of criminal institutions will inevitably jeopardize public safety.

This Article challenges the widespread presumption that drug law and policy correlates with the protection of the public. Drug crimes are, instead, an essential vehicle for the subordination of nonwhite people and for the misallocation of resources across racial groups. Part I of the article contests the presumed correlation between illicit drugs and violence and illuminates how drug criminalization erodes individual and collective safety. Part II addresses how drug policy sustains white and American hegemony, respectively, by legitimating racist ideologies and by justifying force against marginalized people both in and outside of the country's borders. Finally, Part III explains how abolition represents a viable path away from the harms of prohibitionist policies.

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INTRODUCTION

In November of 2006, officers with the Atlanta Police Department used a battering ram to burst into the home of Kathryn Johnston.¹ The ninety-two-year-old woman proceeded to fire one shot from a rusty .38 revolver,² presumably under the belief that someone was attempting to unlawfully enter her home. Law enforcement responded with thirty-nine shots of their own, killing Johnston and injuring three of their fellow officers.³

On March 13, 2020, officers with the Louisville Police Department also used a battering ram, this time to burst into the home of twenty-six-year-old Breonna Taylor.⁴ Ms. Taylor and her boyfriend, Kenneth Walker, were asleep in bed when they first heard loud banging at their door. After officers broke the apartment door off its hinges, Mr. Walker fired one shot, believing that Ms. Taylor's ex-boyfriend was attempting to break in. Officers responded with several shots of their own, with one officer—Brett Hankson—blindly unloading ten rounds into the apartment. Five shots struck Ms. Taylor, who eventually died from the injuries that she sustained.⁵

Despite being nearly fifteen years apart, the similarities between these two incidents are striking. First and foremost, in both incidents, officers had been granted no-knock warrants after alleging that drugs were being sold on the premises.⁶ Second, no drugs were actually found at either location.⁷ Third, officers lied in order to secure the warrants and then conspired to suppress evidence of their deception.

¹ See Max Blau, *How Atlanta Proved Black and Blue Lives Matter*, CNN (Nov. 23, 2016, 1:42 PM), <https://www.cnn.com/2016/11/23/us/atlanta-police-kathryn-johnston-lessons-learned/index.html> [<https://perma.cc/G4W7-9JTY>].

² See ACLU, *KATHRYN JOHNSTON AND POLICE SYSTEM FAILURE 2 (2007)*, https://www.aclu.org/sites/default/files/images/asset_upload_file332_30599.pdf [<https://perma.cc/37EA-PJYF>].

³ *Id.*

⁴ See Richard A. Oppel Jr. et al., *What to Know About Breonna Taylor's Death*, N.Y. TIMES (Dec. 12, 2022), <https://www.nytimes.com/article/breonna-taylor-police.html> [<https://perma.cc/2AR8-86EY>].

⁵ *Id.*

⁶ Compare Nicholas Bogel-Burroughs & Serge F. Kovalski, *Breonna Taylor Raid Puts Focus on Officers Who Lie for Search Warrants*, N.Y. TIMES (Aug. 6, 2022), <https://www.nytimes.com/2022/08/06/us/breonna-taylor-police-search-warrants.html> [<https://perma.cc/RGF8-AVTJ>] (explaining how a detective with the Louisville Police Department secured the no-knock warrant by falsely telling the judge that Taylor was receiving drug packages at her home), with Blau, *supra* note 1 (confirming that the officers involved in Johnston's murder claimed that cocaine would be found on the premises when they sought a no-knock warrant).

⁷ Compare Bruce Schreiner et al., *Police Release Details of Breonna Taylor Investigation*, AP NEWS (Oct. 7, 2020), <https://apnews.com/article/breonna-taylor-shootings-crime-louisville-greg-fischer-8fbef32575ba3d17a5170a68c9841ffd> [<https://perma.cc/2GFH-V8XV>] (confirming that no drugs were found in Taylor's home after officers executed the no-knock warrant) with ACLU, *supra* note 2, at 2 (“While the 92-year-old woman lay bleeding on the floor, the officers handcuffed her and searched her home only to find no [suspected drug dealer] and no drugs.”).

The law enforcement officers involved in the fatal killing of Ms. Johnston not only lied to secure their warrant; they also engaged in deceptive, illegal practices days before executing the warrant. Specifically, three narcotics officers—Greg Junnier, Jason Smith, and Arthur Tesler—planted marijuana on a suspected drug dealer, Fabian Sheats, and threatened to arrest him unless he could offer some type of information about criminal activity in the area.⁸ In order to escape his own wrongful detention, Sheats gave them Ms. Johnston’s address and claimed that they would find both a drug dealer and a kilogram of cocaine at the residence.⁹ Rather than confirm the accuracy of the claim, by having a confidential informant make a purchase at the location, at least one of the officers lied on an affidavit in order to secure a no-knock warrant.¹⁰ After executing the warrant and discovering no drugs inside, the officers proceeded to plant three baggies of marijuana in the home.¹¹ Their actions only came to light after they attempted to pressure an informant into corroborating their story, and the informant instead chose to go to the media.¹² All three men eventually plead guilty to federal charges.

Several of the officers involved in Breonna Taylor’s death also made false statements to secure their warrant. Officer Joshua Jaynes was the first to fabricate facts for the warrant, by falsely claiming that a postal inspector had informed him that a suspected drug dealer was receiving packages at Taylor’s home.¹³ Jaynes’ colleague, Kelly Goodlett, was aware that this information was false.¹⁴ Rather than report Jaynes’ deception, however, Goodlett chose to add fabricated facts of her own: she inserted a paragraph into the warrant that claimed a drug dealer, Jamarcus Glover, was using Taylor’s apartment as his current address.¹⁵ When the two officers presented the warrant to their superior, Sergeant Kyle Meany, for final approval before submission to the court, Meany was aware that both of his subordinates were lying; yet he still signed off on their request.¹⁶ After no drugs were found in Taylor’s

⁸ See ACLU, *supra* note 2, at 1–2.

⁹ *Id.*

¹⁰ See *Ex-Atlanta Officers Get Prison Time for Cover-up in Deadly Raid*, CNN (Feb. 24, 2009), <http://edition.cnn.com/2009/CRIME/02/24/atlanta.police/index.html> [<https://perma.cc/BNV3-U2RN>] (confirming that one of the officers was convicted on a state count of making false statements “after filling out an affidavit saying that an informant had purchased crack cocaine at Johnston’s home...”).

¹¹ See Blau, *supra* note 1.

¹² See generally Ted Conover, *A Snitch’s Dilemma*, N.Y. TIMES MAGAZINE (June 29, 2012), <https://www.nytimes.com/2012/07/01/magazine/alex-white-professional-snitch.html> [<https://perma.cc/EL8M-CHRW>].

¹³ See Bogel-Burroughs & Kovaleski, *supra* note 6.

¹⁴ See Dylan Lovan, *Former Louisville Cop Pleads Guilty in Breonna Taylor Case*, AP NEWS (Aug. 23, 2022, 3:40 PM), <https://apnews.com/article/kelly-goodlett-pleads-guilty-breonna-taylor-killing-6dfa31e6b4d2d2609c2ae4edc0ab2ad4> [<https://perma.cc/N6FZ-JX9V>].

¹⁵ *Id.*

¹⁶ See Dylan Lovan, *Breonna Taylor Warrant Details Deepen Mistrust in Police*, AP NEWS (Oct. 8, 2022, 7:37 PM), <https://apnews.com/article/police-kentucky-breonna-taylor-louisville-merrick-garland-23195fa577f56470a4cce00aff429b7> [<https://perma.cc/2VTZ-5M7A>].

home and Taylor's death began to attract national attention, Jaynes and Goodlet met again, this time in Jaynes' garage, in order to settle upon the story that they would tell investigators.¹⁷ Although federal cases were eventually opened against all three of the officers, Kentucky's own attorney general chose not to prosecute any of the officers for Ms. Taylor's death.¹⁸

The largest social movement in American history unfolded in the summer after Breonna Taylor's death, sparked not just by her death but also by the death of George Floyd at the hands of Officer Derek Chauvin.¹⁹ And although calls to abolish the police, and the broader prison industrial complex of which they are a part, have been made since at least the late 1990s,²⁰ the summer of 2020 saw abolition enter mainstream discourse.²¹

Yet despite these developments, and despite the corruption and dishonesty that incited the deaths of Johnston and Taylor at the hands of law enforcement, there are those who remain skeptical of, if not outright opposed to, abolition.²² Their opposition to ending the War on Drugs, in particular, is partially grounded in the belief that drug use and drug sales represent a plain threat to individual and collective security.²³ Assorted stakeholders believe that if the state is to fulfill its public safety

¹⁷ See Lovan, *supra* note 14.

¹⁸ See Tessa Duval, *The DOJ Charged 4 Louisville Cops in the Breonna Taylor Case. Why Didn't Daniel Cameron?*, LEXINGTON HERALD-LEADER (Aug. 5, 2022, 11:02 AM), <https://www.kentucky.com/news/politics-government/article264194301.html> [<https://perma.cc/6UAB-FQRN>] (“At the conclusion of its criminal investigation [the state attorney general's] office ultimately only brought charges against one ex-detective, Brett Hankison, for allegedly endangering Taylor's neighbors.”).

¹⁹ See generally Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/YW43-KBJH>].

²⁰ See BEN GOLDSTEIN ET AL., *ABOLITION NOW! TEN YEARS OF STRATEGY AND STRUGGLE AGAINST THE PRISON INDUSTRIAL COMPLEX XI* (AK Press ed., 2008), <https://criticalresistance.org/wp-content/uploads/2012/06/Critical-Resistance-Abolition-Now-Ten-Years-of-Strategy-and-Struggle-against-the-Prison-Industrial-Complex.pdf> [<https://perma.cc/3Q6H-GYE2>] (noting that approximately 3500 people convened in Berkeley, California in 1998, to examine the prison industrial complex and to explore the practical potentials of abolishing it).

²¹ See Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 MICH. L. REV. 1199, 1199 (2022) (explaining how the mass protests that unfolded after the police killings of George Floyd and Breonna Taylor “brought the basic components of the abolitionist movement to the attention of the mainstream media.”). See also Amna Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1783 (2020) (citation omitted) (explaining how the nationwide protests “catapulted prison and police abolition into the mainstream and, in the process, unsettled the intellectual foundations of liberal police reform efforts.”).

²² See, e.g., Rachel E. Barkow, *Promise or Peril?: The Political Path of Prison Abolition in America*, 58 WAKE FOREST L. REV. 245, 252–55 (2023) (contending that calls for abolition could compound the harms of incarceration by inciting public backlash against efforts to downsize prisons and by discouraging the pursuit of more practical reforms).

²³ As one legal scholar explains in compelling terms: “The edifice of drug policy relies on the premise that drugs cause violence, with incarceration as the primary tool. The war on drugs launched

obligations,²⁴ then the state must retain the discretion to arrest people suspected of drug activity, and it must also retain the discretion to cage people both pretrial and post-trial. The deaths of unarmed Black people, like Johnston and Taylor, are often conceived as an unintended consequence of the state fulfilling this obligation, while the officers involved in their deaths are characterized as “bad apples,” anomalies within otherwise law-abiding police departments.²⁵ Within such a paradigm—which frames drug use as a threat to safety and police violence as exceptional and abnormal—legal reform emerges as the most practical intervention. Reforms might include eliminating or restricting the use of no-knock warrants—so as to reduce nonwhite communities’ exposure to police violence—or additional training for law enforcement on the proper deployment of force. Divestment from courts, district attorney’s offices, and police departments, however, is thought to be antithetical to public safety, in that these divestments would deprive criminal institutions of the very resources that they need to prosecute perpetrators of drug crimes and to prosecute those officers who disobey the law. In fact, such divestment might be conceived as state-sanctioned discrimination, given the long history of criminal laws

by the Nixon administration, and carried forward from the Reagan administration to the Obama administration, solidified America’s belief that drugs are dangerous and linked with violent crime.” Shima Baradaran, *Drugs and Violence*, 88 S. CAL. L. REV. 227, 231 (2015) (citation omitted). Cf. Wayne L. Mowery, Jr., Comment, *Stepping Up the War on Drugs: Prosecution and Enhanced Sentences for Conspiracies to Possess or Distribute Drugs Under State and Federal Schoolyard Statutes*, 101 DICK. L. REV. 703 (1997) (advocating for the war on drugs and increased penalties for drug offenses in order to protect society).

²⁴ See, e.g., Barry Friedman, *What is Public Safety?*, 102 B.U. L. REV. 725, 728 (2022) (citation omitted) (“Public safety is the first duty of government.”); Steven J. Heyman, *The First Duty of Government: Protection, Liberty and the Fourteenth Amendment*, 41 DUKE L. J. 507 (1991) (contending that the Fourteenth Amendment guarantees citizens the right to state protection).

²⁵ As Lopez illuminates, regardless of whether stakeholders rely upon intentional theories of discrimination—which emphasize the malice of individual actors like police officers—or cognitive theories of racial discrimination that emphasize unconscious biases, they regularly drop “the question of whether and to what extent race serves important cultural, political, or material interests.” See Ian F. Haney Lopez, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023, 1039–40 (2010). See also Dylan Rodriguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1575, 1576 (2019) (“Contemporary reformist approaches to addressing the apparent overreach and scandalous excesses of the carceral state—characterized by calls to end ‘police brutality’ and ‘mass incarceration’—fail to recognize that the very logics of the overlapping criminal justice and policing regimes systematically perpetuate racial, sexual, gender, colonial, and class violence through carceral power.”).

being under-enforced in Black communities²⁶ and the support that select Black leaders have lent to the War on Drugs.²⁷

Yet stories like those of Kathryn Johnston and Breonna Taylor also reflect the devastating consequences of prohibiting drug use and drug distribution, particularly for Black communities. Although rates of drug use are relatively the same across racial groups,²⁸ as are rates of drug sales,²⁹ Black people have seemingly been singled out for criminalization: they are disproportionately arrested,³⁰ prosecuted,³¹ and incarcerated³² for drug offenses. Black people are not only more likely than

²⁶ See RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* 29–75 (1997) (describing how the government, from slavery through Jim Crow, declined to protect Black people from violence committed by white actors). See generally Alexandra Natapoff, *Underenforcement*, 75 *FORDHAM L. REV.* 1715, 1722–39 (2006) (describing modern examples of the state under-enforcing criminal laws, including in impoverished Black neighborhoods).

²⁷ James Forman has challenged texts that label mass incarceration “the New Jim Crow” in part because, unlike state-sanctioned segregation, Black people have lent support to tough-on-crime policies. See, e.g., James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 *N.Y.U. L. REV.* 21, 36–44 (2012); JAMES FORMAN, JR., *LOCKING UP OUR OWN* 11 (2017) (“Many black officials advocated tough-on-crime measures in race-conscious terms.”).

²⁸ According to data released by the Substance Abuse and Mental Health Services Administration, between 2015 and 2019, 19.6% of white people used an illicit substance compared to 20.8% of African Americans. See *CTR. FOR BEHAV. HEALTH STAT. & QUALITY, RACIAL/ETHNIC DIFFERENCES IN SUBSTANCE USE, SUBSTANCE USE DISORDERS, AND SUBSTANCE USE TREATMENT UTILIZATION AMONG PEOPLE AGED 12 OR OLDER (2015–2019)* 13 (2021), <https://www.samhsa.gov/data/sites/default/files/reports/rpt35326/2021NSDUHSUChartbook102221B.pdf> [<https://perma.cc/R7YX-875N>]. See also MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 7 (rev. ed. 2012) (citation omitted) (“Studies show that people of all colors use and sell drugs at remarkably similar rates.”).

²⁹ Compare Rates of Drug Use and Sales, by Race; Rates of Drug Related Criminal Justice Measures, by Race, *THE HAMILTON PROJECT* (Oct. 21, 2016), https://www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice [<https://perma.cc/4EWV-RSNJ>] (“Black and white Americans sell and use drugs at similar rates, but black Americans are 2.7 times as likely to be arrested for drug-related offenses.”) with Leah J. Floyd et al., *Adolescent Drug Dealing and Race/Ethnicity: A Population-Based Study of the Differential Impact of Substance Use on Involvement in Drug Trade*, 36 *AM. J. DRUG & ALCOHOL ABUSE* 1, 3 (2010) (reporting that 4.5% of white males and 2% of white females disclosed selling drugs compared to 6.4% of Black males and 1.6% of Black females).

³⁰ See, e.g., ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE* 17 (2013), <https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf> [<https://perma.cc/JL4T-9F5X>] (finding that Black people are 3.73 times more likely than whites to be arrested for marijuana possession, and that such disparities are widespread and exist in every region of the country).

³¹ See Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the “War on Drugs” Was a “War on Blacks”*, 6 *J. GENDER RACE & JUST.* 381, 397 (2002) (citations omitted) (“Since the passage of the Anti-Drug Abuse Act of 1986, which first enacted the crack/powder sentencing disparity, virtually all federal cocaine prosecutions have been against African Americans charged with the possession or sale of crack cocaine.”).

³² See SENT’G PROJECT, *REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE* 7 (2018), <https://www.sentencingproject.org/app/uploads/2022/08/UN->

whites to be impacted by a SWAT raid;³³ race also influences the justification that will be advanced for the raid, with 68% of raids in Black communities being justified on the basis of drugs compared to a rate of just 38% when a suspect is white.³⁴

Scholarship across various disciplines indicates that drug policy—far from being tied to concerns about public safety—has, instead, been an avenue for criminalizing and deploying violence against marginalized communities both in and outside of the country’s borders.³⁵ Assorted institutions not only condition their responses to drug use on race, gender, and socioeconomic status, with criminalization often being reserved for those who lie at the intersection of multiple marginalized identities;³⁶ political stakeholders also persistently link drugs and violence.³⁷ In doing so, these stakeholders build public support for ever-more-punitive drug policies, and they also legitimate the over-representation of nonwhite communities in rates of arrest and incarceration.

Report-on-Racial-Disparities.pdf [https://perma.cc/Q4WE-EBY7] (citation omitted) (“Of the 277,000 people imprisoned nationwide for a drug offense, over half (56%) are African American or Latino.”).

³³ Although SWAT teams often do not record race information, or record such information unsystematically, an ACLU review of existing data found that 39 percent of SWAT deployments involved Black people, 11 percent involved Latinos, and 20 percent involved whites; even though “there were more deployments that impacted only white people or a mix of white people and minorities, many more people of color were impacted.” See ACLU, WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING 35 (2014), <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf> [https://perma.cc/6NVX-NP6H].

³⁴ *Id.*

³⁵ The drug war has not only served as a vehicle for displacing urban and rural populations outside of the United States; it also “acts as a mechanism through which the number of (primarily Central American) migrants traveling through Mexico to the United States can be controlled through harsh policing...” See DAWN PALEY, DRUG WAR CAPITALISM 34 (2014). See also Michael Tonry, Race and the War on Drugs, 1994 U. CHI. LEGAL F. 25, 27 (1994) (“The War on Drugs foreseeably and unnecessarily blighted the lives of hundreds of thousands of young, disadvantaged Americans, especially black Americans, and undermined decades of effort to improve the life chances of members of the urban black underclass.”).

³⁶ The fact that Johnston and Taylor were both Black and women may have contributed to their vulnerability to the violence of law enforcement. See generally Kimberlé W. Crenshaw, From Private Violence to Mass Incarceration: Thinking Intersectionally about Women, Race, and Social Control, 59 UCLA L. REV. 1418, 1438–42 (2012) (describing the intersectional vulnerability of Black women and girls, wherein their low-income status, coupled with stereotypes of Black women as incubators of Black pathology, render them vulnerable to police contact and police violence); Dorothy Roberts, Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy, 104 HARV. L. REV. 1419, 1432–36 (1991) (explaining how hospitals and health care professionals collaborated with prosecutors during the crack epidemic to target poor, pregnant Black women for arrest and prosecution on drug offenses). However, drug criminalization has detrimental effects for the entire Black community. See Nunn, *supra* note 31, at 383–84 (explaining how the War on Drugs has not only virtually erased Black men from Black communities, but has generally incited conflict, violence, and death within those same communities).

³⁷ See generally Baradaran, *supra* note 23, at 235–53.

This Article proceeds from the position that drug criminalization is an essential engine for the subordination of Black and other nonwhite communities.³⁸ The visible and non-visible injuries that Black people sustain because of drug prohibition—from the mental and physical trauma of being stopped and frisked to the more fatal injuries inflicted by police and corrections officers—are not unintentional but the inevitable consequence of using the criminal process to mediate class- and race-based conflicts.³⁹ Abolition,⁴⁰ not legal reform, represents the most viable solution for redressing the ongoing harms of the War on Drugs and for protecting Black communities from state-sanctioned violence.

Part I of the Article analyzes the presumed nexus between drug criminalization and public safety. There is a prevailing presumption that illicit substances cause violence, either because of the effect that they have on users, themselves, or because of the violence committed by sellers to protect or expand their share of the illegal market. However, correlation is not causation; countless stakeholders, both in and outside of the academy, have outright rejected the causal relationship between drugs and violence, and various studies have shown that drug use is not a precondition for crime, generally, or violent crime, specifically. In fact, a host of legalized drugs have been shown to induce violence in users, especially alcohol, yet these substances are not primarily or exclusively regulated through the criminal process. Further, studies have shown that criminalization, in and of itself, drives the violence associated with the drug trade. Rather than improve public safety, prohibition arguably undermines our individual and collective security.

Having disputed the presumed relationship between drug policy and public safety, Part II offers an alternative explanation for why the state selectively criminalizes certain substances and not others: drug policy is an essential site for the

³⁸ While this article focuses on the relationship between drug criminalization and racial subordination, scholars have separately uncovered how judicial interpretations of select constitutional amendments have contributed to the marginalization and oppression of nonwhite communities. See generally Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125 (2016) (exploring how Supreme Court interpretations of the Fourth Amendment have enabled racial profiling and exposed Black people to police surveillance and force); CAROL ANDERSON, *THE SECOND: RACE AND GUNS IN A FATALLY UNEQUAL AMERICA* (2021) (describing how the Second Amendment has persistently been interpreted to work against the rights of African Americans).

³⁹ See generally JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (2007) (contending that crime has become central to the exercise of authority in America and has become integral to managing the poor); Michael J. Klarman, *The Racial Origins of Modern Criminal Procedure*, 99 MICH. L. REV. 48 (2000) (exploring how the Supreme Court sought to improve the treatment of Black criminal defendants in the Jim Crow south through a series of state criminal procedure cases it heard between the First and Second World Wars).

⁴⁰ The collective Critical Resistance defines abolition as both a practical organizing tool and a long-term goal, as a “political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment.” What is the PIC? What is Abolition?, CRITICAL RESISTANCE, <https://criticalresistance.org/mission-vision/not-so-common-language/> [https://perma.cc/5B8T-WJER]. See also *infra* Section III.

hegemony of the United States and for white hegemony, respectively. The United States assures its dominance within the global order in part through its drug policies. State-sanctioned campaigns like the War on Drugs supply justification for the United States government to train and arm both law enforcement and paramilitary groups within Latin America. However, this funding and collaboration has not stemmed the tide of drugs being transported outside of, nor imported into, the United States. This is because such partnerships are not chiefly intended to eliminate the demand for illegal substances; they are intended to make Latin American markets the most hospitable to corporate interests and, concomitantly, to ensure that the United States retains its financial and political preeminence.

Yet drug policy is not exclusively a vehicle for preserving the hegemonic influence of the United States; it is also a pillar of white hegemony. In order to solve the distinct crises attending the exploitation of labor—specifically the rebellions organized by enslaved people and poor whites to overthrow the capitalist order—wealthy elites in the colonial and antebellum era conditioned bondage on a person’s race.⁴¹ This race-based regime allowed persons classified as white to derive distinct privileges—whether exclusion from enslavement or, later, access to better wages—while also fostering cohesion around the state-crafted identity of ‘whiteness,’ regardless of class.⁴² Legal institutions were, and remain, essential for distinguishing racial groups, especially by conditioning access to select resources on a person’s race. Drug policies should be read within this context: as conditioning resources, like safety and substance use treatment, on a person’s racial identity, thereby legitimating the dominant position occupied by persons classified as white.

Part III explains how abolition can solve the problems attending drug criminalization. Not only have racial disparities persisted in the wake of recent efforts to decriminalize and legalize select drugs; traditional legal reforms also leave the broader criminal legal system intact and lend further legitimacy to the very institutions that disproportionately harm nonwhite communities. Abolition, in contrast, offers a framework for conceptualizing the harms generated by the carceral system while also illuminating potential solutions.

I. REVISITING THE RELATIONSHIP BETWEEN DRUGS AND VIOLENCE

Paul Goldstein identified three theoretical lenses, or models, for analyzing the relationship between drugs and violence: a psychopharmacological lens, an

⁴¹ See generally Nikole Hannah-Jones, Democracy, in *THE 1619 PROJECT: A NEW ORIGIN STORY* 7, 19 (Nikole Hannah-Jones et al., eds., 2021) (citation omitted) (“Whiteness proved a powerful unifying elixir for the burgeoning nation. Whether laborer or elite planter, ‘neither was a slave. And both were equal in not being slaves.’ And so it served the interests of both groups to defend slavery.”).

⁴² See Cheryl I. Harris, Whiteness as Property, 106 *HARV. L. REV.* 1707, 1741 (1993) (“The material benefits of racial exclusion and subjugation functioned, in the labor context, to stifle class tensions among whites. White workers perceived that they had more in common with the bourgeoisie than with fellow workers who were Black.”).

economic compulsion lens, and a systems-based lens.⁴³ The psychopharmacological model assesses how violent behavior arises from the long- and short-term use of select substances;⁴⁴ the economically compulsive model suggests that substance users engage in economically oriented violent crime in order to support their drug use;⁴⁵ and the systemic model is intended to capture “the traditionally aggressive patterns of interaction within the system of drug distribution and use.”⁴⁶ These models can be restated as claims: first, that illicit drug use causes a person to be violent; second, that people using drugs will commit crimes, whether violent or otherwise, in order to maintain their addiction; and third, that violence is endemic to the drug trade. The accuracy of each claim is debatable.

A. The Relationship Between Illicit Drug Use and Violence is Unclear

Although scholars have acknowledged that there may be a relationship between drug use and violence, they have persistently emphasized that the connection is complex and cannot be reduced to cause-and-effect.⁴⁷ Part of the challenge of making an accurate assessment of the relationship, if any, is how the studies are carried out. Specifically, both theoretical and empirical investigations of the relationship between drugs and violence routinely lump all illicit drugs together, implying that they have similar or identical impacts on a person’s propensity for

⁴³ See Paul Goldstein, *The Drugs/Violence Nexus: A Tripartite Conceptual Framework*, 15 J. DRUG ISSUES 493, 494 (1985). This article relies on Goldstein’s framework because it is routinely deployed in scholarship analyzing the possible connections between drug use and violent crimes. See, e.g., Heith Copes, Andy Hochstetler & Sveinung Sandberg, *Using a Narrative Framework to Understand the Drugs and Violence Nexus*, 40 CRIM. JUST. REV. 32, 32 (2015) (citation omitted) (“Although numerous scholars have sought to explain the drug-violence nexus, the tripartite conceptual framework outlined by Goldstein and his associates is one of the most well known.”); Trevor Bennett & Katy Holloway, *The Causal Connection Between Drug Misuse and Crime*, 49 BRIT. J. CRIMINOLOGY 513, 513 (2009) (“One of the most influential explanations of the causal connection between drug use and crime was developed by Paul Goldstein in a series of articles published in the later 1980s.”).

⁴⁴ Goldstein, *supra* note 43, at 494–96.

⁴⁵ *Id.* at 496.

⁴⁶ *Id.* at 497.

⁴⁷ See, e.g., Jeffrey Fagan, *Interactions Among Drugs, Alcohol, and Violence*, 12 HEALTH AFF. 65, 67 (1993) (explaining how the “weight of evidence suggests that substance use provides a provocative context for violence, but there is limited evidence that alcohol or drugs directly cause violence.”); Francisco E. Thoumi, *The Relationship between Illegal Drugs and Violence: Is There a Cause and Effect?*, 5 PORTAL 38, 38 (2010) (“The empirical evidence shows clearly that there is no direct ‘cause and effect’ relationship between drugs and violence.”); Javier Fernandez-Montalvo, Jose J. Lopez-Goni & Alfonso Arteaga, *Violent Behaviors in Drug Addiction: Differential Profiles of Drug-Addicted Patients With and Without Violence Problems*, 27 J. INTERPERSONAL VIOLENCE 142, 144 (2012) (citations omitted) (“Although there is some evidence about the influence of certain drugs in the development of violence [sic] behaviors, the connection between substance use and violent behavior is complex and is suggestive rather than conclusive.”).

violence.⁴⁸ However, when empiricists have sought to understand the effects of specific substances, differences immediately become apparent.

For example, a review of the scientific literature on the relationship between drugs and violence found that evidence “to support a link between heroin and violence is virtually nonexistent.”⁴⁹ In fact, the researchers found “no compelling evidence exists to support an association between violence and amphetamines, Phencyclidine/Ketamine, or heroin.”⁵⁰

A separate study carried out in 2003 sought to examine the relationship between violence and type of substance abuse among 184 current and former residents of an inpatient drug and alcohol treatment facility.⁵¹ The researchers were specifically interested in assessing whether the abuse of particular drugs would be predictive of violent behavior. They found “a weak relationship between substance abuse and violence among [the population]” and that most of the residents did not exhibit violent tendencies.⁵² They further explained that “the violence committed by an addict population may stem more from lifestyle characteristics. . . or some other general propensity toward deviance rather than from particular demographic variables, drug dealing, or drug use itself.”⁵³

In one prominent study in which researchers actually found a correlation between substance use and violence, the majority of the persons studied were addicted to cocaine and alcohol; the number of persons who were addicted to heroin, cannabis, and amphetamines was negligible.⁵⁴ Despite these significant limitations, the researchers did not account for the differing effects of the respective substances, simply concluding that “violent behaviors are quite frequent in addicted patients.”⁵⁵ They did not confirm whether any one substance is a greater contributor to violent

⁴⁸ See Robert Nash Parker & Kathleen Auerhahn, Alcohol, Drugs, and Violence, 24 ANN. REV. SOCIO. 291, 293 (1998), <https://www.annualreviews.org/doi/pdf/10.1146/annurev.soc.24.1.291> [<https://perma.cc/N58A-MP25>] (“Different drugs certainly do have different pharmacological effects, which may or may not influence the user’s tendency toward violence; this should be treated as a prominent empirical question, rather than as an afterthought usually addressed only when results are disaggregated by drug type.”).

⁴⁹ Id. at 295.

⁵⁰ Id. at 298. Despite the extensive research into the relationship between cocaine use and violence, the scholars were also “unable to say with certainty that cocaine use and violent behavior are related.” Id.

⁵¹ See generally Eric J. Workowski, Criminal Violence and Drug Use: An Exploratory Study Among Substance Abusers in Residential Treatment, 37 J. OFFENDER REHAB. 109 (2003), https://www.tandfonline.com/doi/pdf/10.1300/J076v37n03_06 [<https://perma.cc/D3KZ-RJLL>].

⁵² Id. at 118.

⁵³ Id.

⁵⁴ See generally Fernandez-Montalvo et al., *supra* note 47, at 145 (reporting that 49.6% of participants had been referred to the treatment program for cocaine addiction, 43.3% had been referred for alcohol addiction, and the remaining 7.1% of the sample were addicted to other substances).

⁵⁵ Id. at 151.

behaviors over the others, nor did they examine whether alcohol and cocaine use have differing effects when used independently or in tandem.

Separate studies have found that alcohol, rather than illicit substances, “is the substance most likely to lead to psychopharmacological violence.”⁵⁶ Since the late 1960s, studies have shown that the primary substance implicated in violent conduct has been alcohol.⁵⁷ Even as researchers have sought to examine the psychopharmacologic effects of other illicit drugs, they have continued to find that “most psychopharmacologically induced violent crimes continued to involve alcohol.”⁵⁸ In fact, alcohol addiction has been shown to increase the likelihood that a person will perpetrate violence as well as be a victim of violence.

Brenda Miller studied parolees and their spouses in 1990, in order to determine whether spousal violence was linked to the perpetrator’s alcohol or drug problems and to determine whether such violence was also linked to the victim’s alcohol or drug problems.⁵⁹ She found that “there was more violence initiated by the parolee in couples in which either or both of the individuals in the relationship experienced high levels of alcohol problems than when both had low levels of alcohol problems.”⁶⁰ Not only were women alcoholics more likely than a random sample to experience spousal violence; the researcher also found that the relationship between alcohol, drug problems, and spousal violence was complex. Of particular significance, Miller noted that alcohol problems did not increase the level of violence when the parolee had drug problems. Stated in alternative terms: drug use may have *ameliorated* rather than worsened the violence that was associated with alcohol addiction.⁶¹

Thus, studies that assess violence within populations that use both alcohol and unlawful substances, but that do not seek to draw distinctions according to the substance used, risk attributing the violent effects of alcohol abuse to the use of illicit drugs. Such studies may lead the public to believe that alcohol is less of a threat to public safety than those substances that are criminalized, or they may contribute to the conclusion that illicit substances pose distinctive threats to personal wellbeing and public safety unseen amongst legalized substances. The reality, however, is that

⁵⁶ See Fagan, *supra* note 47, at 68.

⁵⁷ See MARIO DE LA ROSA ET AL., *DRUGS AND VIOLENCE: CAUSES, CORRELATES, AND CONSEQUENCES* 1, 2 (1990) [hereinafter *CAUSES & CORRELATES*].

⁵⁸ *Id.* See also Parker & Auerhahn, *supra* note 48, at 294 (citations omitted) (“Studies of the drug and alcohol involvement of homicide offenders and victims also support the notion that alcohol is, overwhelmingly, the substance most frequently implicated in this particular form of violence.”).

⁵⁹ See generally Brenda A. Miller, *The Interrelationships Between Alcohol and Drugs and Family Violence*, in *CAUSES & CORRELATES*, *supra* note 57, at 177–207.

⁶⁰ *Id.* at 186.

⁶¹ *Id.* at 187.

a host of authorized substances, beyond alcohol, have been shown to induce violence.⁶²

These facts, taken together, indicate that violence is not distinct to illicit drugs. Rather, substances that are widely available, like alcohol, may be more likely to incite violence when consumed.

B. The Relationship Between Illicit Drug Use and Crime is Unclear

Concerns about illicit drugs are not limited to the effect that they may have on a person's mood or proclivity for violence; Goldstein also illuminated how the substances may induce a person to commit crime, particularly violent crime.⁶³ However, much as researchers have been unable to prove a direct causal link between illicit drug use and violent behavior, the literature surrounding the relationship between drug use and crime "suggests that criminal activity is neither an inevitable consequence of illicit drug use . . . nor a necessary or sufficient condition for criminal behavior."⁶⁴ Many substance users commit no crime beyond merely possessing the prohibited substance, while many people who commit crimes never use illegal substances.⁶⁵

Rather than there being a causal relationship between drug use and crime, evidence indicates that "many of the risk factors for drug use are also shared with those for involvement in violence."⁶⁶ These shared factors include mental health

⁶² A study conducted by Moore and colleagues in 2009, for example, identified 1527 cases of violence disproportionately reported for 31 prescription drugs. See generally Thomas J. Moore, Joseph Glenmullen & Curt D. Furberg, Prescription Drugs Associated with Reports of Violence Towards Others, 5 PLOS ONE 1 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002271/> [<https://perma.cc/ERG3-74DN>]. Varenicline, a drug prescribed to aid in smoking cessation, was found to have "the strongest association with violence by every measure used in [the] study," while antidepressant drugs also consistently showed an elevated risk for violence. *Id.* at 4. The authors emphasized how drugs that increased the availability of serotonin or dopamine in the brain were especially likely to induce violence. *Id.*

⁶³ According to this reasoning, substance addiction induces a person to commit crimes in order to obtain money to purchase drugs. Violence arises during commission of the crime because of "the perpetrator's own nervousness, the victim's reaction, weaponry (or the lack of it) carried by either offender or victim, the intercession of bystanders, and so on." Goldstein, *supra* note 43, at 496.

⁶⁴ Arthur J. Lurigio & James A. Swartz, "Up to Speed"—The Nexus Between Drugs and Crime: Theory, Research, and Practice, 63 FED. PROB. 67, 69 (1999), <https://www.uscourts.gov/federal-probation-journal/1999/06/speed-nexus-between-drugs-and-crime-theory-research-and-practice> [<https://perma.cc/FJH4-ANC2>].

⁶⁵ *Id.* See also Jan M. Chaiken & Marcia R. Chaiken, Drugs and Predatory Crime, 13 CRIME & JUST. 203, 206 (1990) (finding that "the types of drugs used by offenders and the frequency with which they use them are important in understanding the connections between drug abuse and predatory crime.")002E

⁶⁶ WORLD HEALTH ORG., INTERPERSONAL VIOLENCE AND ILLICIT DRUGS 6 (2020), <https://www.who.int/publications/m/item/interpersonal-violence-and-illicit-drugs> [<https://perma.cc/DB4U-WBE2>]. See also Chaiken & Chaiken, *supra* note 65, at 212 (1990) (emphasis

problems, parental substance use, and low socio-economic status.⁶⁷ One prominent study, for example, found that people who use substances are often diagnosed with a childhood history of conduct disorder—which is marked by excessive and persistent violations of age-appropriate norms—and that such diagnoses significantly increase the risk of committing violent crime.⁶⁸ A separate study found that patients dealing with substance addiction not only had histories of abuse, but that such abuse increased the probability that they would exhibit violent tendencies.⁶⁹

Even where studies have found possible correlations between substance use and crime, such crimes are often nonviolent. Studies of opiate and heroin users in the 1950s and 1960s, for instance, found that they were more likely to engage in nonviolent property crimes than in other types of crime.⁷⁰ A 1997 study found that most drug offenders do not have violent criminal records; only 12% of federal drug offenders and 24% of state drug offenders had ever been convicted of a violent offense.⁷¹ Baradaran and McIntyre conducted their own analysis of national pretrial crime data years later, in order to determine what factors, if any, were most relevant to predicting a defendant's dangerousness while on pretrial release.⁷² They discovered that defendants charged with drug crimes were amongst the safest to

added) (concluding that “the onset of drug use, the onset of predatory crime, or both, can occur in early puberty as products of similar external factors.”).

⁶⁷ WORLD HEALTH ORG., *supra* note 66, at 6.

⁶⁸ The researchers specifically found that a diagnosis of conduct disorder increased the likelihood of both violent victimization and offending. See generally Michelle Torok et al., *Conduct Disorder as a Risk Factor for Violent Victimization and Offending Among Regular Illicit Drug Users*, 41 J. DRUG ISSUES 25, 35–36 (2011).

⁶⁹ The researchers found that patients with violence control problems presented with both more severe addictions and with more comorbid problems, and that 60% of patients associated with violent behaviors had experienced some form of abuse. See Fernandez-Montalvo et al., *supra* note 47, at 152–53.

⁷⁰ See De La Rosa et al., *supra* note 57, at 2 (“It was generally accepted that opiate or heroin users were more likely to engage in nonviolent property crimes than in other types of crime. This was supported by data from major metropolitan areas showing a positive correlation between rates of heroin addiction and property crimes and a negative correlation between rates of heroin addiction and crimes against persons.”).

⁷¹ Eric L. Sevigny & Jonathan P. Caulkins, *Kingpins or Mules: An Analysis of Drug Offenders Incarcerated in Federal and State Prisons*, 3 CRIMINOLOGY & PUB. POL’Y 401, 413 (2004). Separate findings published by the Bureau of Justice Statistics found that, in state prisons, violent offenders were the least likely to meet established criteria for drug dependence or abuse. See CHRISTOPHER J. MUMOLA & JENNIFER C. KARBERG, BUREAU JUST. STATS., *DRUG USE AND DEPENDENCE, STATE & FEDERAL PRISONERS*, 2004 7 (2006). Within federal prisons, amongst persons incarcerated for violent offenses, only 24% were found to have been under the influence of an illicit drug when they committed the offense. *Id.* at 5.

⁷² See generally Shima Baradaran & Frank L. McIntyre, *Predicting Violence*, 90 TEX. L. REV. 497 (2012).

release pretrial, in part because they were less likely to commit a violent crime while on pretrial release than almost any other defendants.⁷³

Rather than prove that illicit drug use causes people to commit crime, the research instead shows that there is “no simple general relation between high rates of drug use and high rates of crime.”⁷⁴ In fact, one recent review of the literature concluded that “most psychopharmacologically induced violent crimes [continue] to involve alcohol.”⁷⁵ Such findings undermine claims that criminalization is necessary, or sufficient, to deter crime amongst persons who use illicit substances.

C. Prohibition May Contribute to Violent Crime

Even if drug use, alone, does not induce a person to be violent or commit crime, concerns may remain about the drug trade itself. Several studies have shown, for example, that the relationship between drug sales and crime is stronger than the relationship between drug use and crime.⁷⁶ Such findings might lend legitimacy to policies that prohibit the sale and possession of drugs. However, such prohibitionist policies may, in and of themselves, be responsible for jeopardizing public safety.

Two separate studies are of particular note. The first, conducted in 1999, found that prohibitions on drugs and alcohol could cause the homicide rate to increase.⁷⁷ Specifically, the researcher found that “the homicide rate is currently 25%–75% higher than it would be in the absence of drug prohibition.”⁷⁸ It is not, in other words, inevitable that people will resort to killing one another in order to obtain or secure

⁷³ *Id.* at 561 (showing that only 1.6% of people arrested for a drug sale were subsequently arrested for a violent felony while on pretrial release, a figure that fell to just 1.1% when the person was initially arrested for drug possession).

⁷⁴ Chaiken & Chaiken, *supra* note 65, at 210.

⁷⁵ As the researchers explain: “[A]lthough certain types of illicit drugs, e.g., stimulants, hallucinogens, may be associated with violent behavior, most psychopharmacologically induced violent crimes continued to involve alcohol.” De La Rosa et al., *supra* note 57, at 2.

⁷⁶ See generally Chaiken & Chaiken, *supra* note 65, at 213. But see TINA L. DORSEY & MARIANNE W. ZAWITZ, BUREAU JUST. STATS., DRUGS & CRIME FACTS (2005), <https://bjs.ojp.gov/content/pub/pdf/dcf.pdf> [<https://perma.cc/Z6N2-FC5F>] (finding that, in 2007, only 3.9 percent of homicides were drug-related) and U.S. SENT’G COMM’N, REPORT TO THE CONGRESS: COCAINE & FEDERAL SENTENCING POLICY 91 (2002) https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200205-rtc-cocaine-sentencing-policy/200205_Cocaine_and_Federal_Sentencing_Policy.pdf [<https://perma.cc/AHZ9-QW6>] (reporting that, in 2000, “almost three-quarters (74.5%) of federal crack cocaine offenders had no weapon involvement.”).

⁷⁷ Jeffrey A. Miron, Violence and the U.S. Prohibitions of Drugs and Alcohol, 1 AM. L. & ECON. REV. 78, 79 (1999) (finding that “prohibitions of drugs and alcohol have been associated with increased rather than decreased homicide rates over the past century...”).

⁷⁸ *Id.*

their profits from the drug trade.⁷⁹ Rather, the enforcement of drug policies increases the size of illicit markets—by decreasing opportunities to legally circumvent a prohibition—while also increasing the violence within those markets, by disrupting contractual arrangements and destroying reputational capital.⁸⁰

The second study of significance sought to assess the specific consequences of drug arrests on the rate of non-drug crimes.⁸¹ Using data from the 1980s to 2006, Benson found that escalating drug enforcement leads to higher rates of property and violent crime.⁸² As resources are diverted to drug-law enforcement, there are fewer resources available for the control of non-drug crimes. This led Benson to conclude that drug enforcement *causes* property and violent crimes.

Empiricists are not alone in concluding that drug criminalization undermines public safety. A Drugs and Violence Task Force formed in 1994 was asked to issue a report to the United States Sentencing Commission on the link between drugs and violence. Their final report, which was never published, found that “drug-crime relationships were not nearly as clear or as strong as politicians and legislatures had presumed based upon the motivations for enacting the drug laws.”⁸³ Instead, they found evidence that drug convictions and long-term imprisonment actually led to *greater* drug use and violence amongst youth.⁸⁴ A study conducted by Canadian researchers, decades later, reached similar conclusions about the relationship between enforcement and violence: “gun violence and high homicide rates are likely a natural consequence of drug prohibition. . . .”⁸⁵

As one scholar has explained: alcohol did not cause violence in the 1920s during Prohibition and, similarly, drugs, themselves, are not the cause of homicides.⁸⁶ During the era of U.S. alcohol prohibition, the prohibitionist policies,

⁷⁹ See Thoumi, *supra* note 47, at 39 (“The existence of strong criminal organizations does not necessarily indicate high levels of violence. Criminal organizations control the use of violence to avoid the government focus on them.”).

⁸⁰ See Jeffrey A. Miron, *Violence, Guns, and Drugs: A Cross-Country Analysis*, 44 *J. L. & ECON.* 615, 617 (2001).

⁸¹ See generally Bruce L. Benson, *Escalating the War on Drugs: Causes and Unintended Consequences*, 20 *STAN. L. & POL’Y REV.* 293 (2009).

⁸² *Id.* at 294.

⁸³ Debora W. Denno, *When Bad Things Happen to Good Intentions: The Development and Demise of a Task Force Examining the Drugs-Violence Interrelationship Symposium on Drug Crimes*, 63 *ALB. L. REV.* 749, 756 (2000).

⁸⁴ *Id.* at 757–58 (citations omitted) (“There was no evidence that [conviction and long-term imprisonment] decreased either drug use or violence; moreover, there had actually been increases in both types of behaviors among youth. The Final Report concluded that the retention of such policies, premised on the belief that drugs cause violence, could hinder the adoption of other, more appropriate, remedies.”).

⁸⁵ URB. HEALTH RSCH. INST., *EFFECT OF DRUG LAW ENFORCEMENT ON DRUG-RELATED VIOLENCE: EVIDENCE FROM A SCIENTIFIC REVIEW* 6 (2010), <https://www.bccsu.ca/wp-content/uploads/2016/10/violence-eng.pdf> [<https://perma.cc/8ARG-HRNY>].

⁸⁶ See David Boaz, *A Drug-Free America – or a Free America?*, 24 *U.C. DAVIS. L. REV.* 617, 629 (1991).

rather than the liquor that they prohibited, caused the homicide rate to rise.⁸⁷ The violence that came to be associated with the liquor business fell after the repeal of Prohibition; and rates of violent crime today could also be reduced if not eliminated were prohibitions on today's illicit substances abandoned.⁸⁸ Ultimately, the violence currently attributed to the drug trade is "exaggerated and may be attributable to drug law enforcement and prohibition rather than drug use or the nature of the industry."⁸⁹

II. DRUG POLICY AS VEHICLE FOR AMERICAN & WHITE HEGEMONY

Italian philosopher Antonio Gramsci is credited with birthing the concept of hegemony,⁹⁰ which describes how dominant groups retain control over subordinated classes of people.⁹¹ According to Gramsci, the hegemony of dominant groups requires subordinated groups to adopt ideologies that justify, or normalize, the unequal distribution of resources within society.⁹² Dominant classes then deploy the coercive powers of the state against those persons who reject prevailing ideologies and refuse to consent to their own domination.⁹³

Critical legal scholars have since built upon Gramsci's insights, by uncovering how legal institutions generate and affirm ideologies that normalize the

⁸⁷ See Jeffrey A. Miron, *An Economic Analysis of Alcohol Prohibition*, 28 J. DRUG ISSUES 741, 742 (1998) (finding that "at its peak, prohibition [of alcohol] raised the homicide rate by more than 25% relative to its average value over the entire sample.").

⁸⁸ Boaz, *supra* note 86, at 630 (citation omitted) ("When Congress repealed Prohibition, the violence went out of the liquor business. Similarly, when Congress repeals drug prohibition, the heroin and cocaine trade will cease to be violent.").

⁸⁹ Baradaran, *supra* note 23, at 290.

⁹⁰ See, e.g., Douglas Litowitz, *Gramsci, Hegemony, and the Law*, 2000 BYU L. REV. 515, 515 (2000) (citation omitted) ("Hegemony is a Marxist concept derived largely from the work of Antonio Gramsci."); Lenore Lyons, *Foreword to HEGEMONY: STUDIES IN CONSENSUS AND COERCION*, at ix (Richard Howson & Kylie Smith eds., Routledge 2008) (crediting Antonio Gramsci with the theory of hegemony).

⁹¹ See John Arena, *Race and Hegemony: The Neoliberal Transformation of the Black Urban Regime and Working-Class Resistance*, 47 AM. BEHAV. SCIENTIST 352, 355 (2003) (explaining how the concept of hegemony "addresses how the dominant class in a capitalist social formation is able to obtain the consent of subordinate classes to their exploitative class location without having to primarily rely on massive physical force.").

⁹² Gramsci specifically contended that members of the dominant group rely upon traditional intellectuals, like philosophers, as well as religious leaders to disseminate select ideologies to working class people, ideologies that limit "the original thought of the popular masses in a negative direction..." Antonio Gramsci, *Critical Notes on an Attempt at Popular Sociology*, in *SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI* 419, 419–20 (Quentin Hoare & Geoffrey Nowell Smith eds., 2000) [hereinafter *PRISON NOTEBOOKS*].

⁹³ See Antonio Gramsci, *The Intellectuals*, in *PRISON NOTEBOOKS*, *supra* note 92, at 12 (explaining how subordinated groups consent to their own domination, but those members who buck prevailing ideologies are disciplined through the apparatus of state coercive power).

subordination of select groups.⁹⁴ Kimberle Crenshaw, in particular, uncovered how legal institutions have been integral to racist ideologies, particularly the belief that whites are superior to nonwhite people.⁹⁵ Legislatures and courts did not merely authorize enslavement and segregation, rather, the dissemination and enforcement of discriminatory laws sustained the belief that Black people were unintelligent, inferior, and prone to crime and that whites were smart, superior, and law-abiding. These racist ideologies induced poor whites to acquiesce to their own domination by wealthy, white elites.⁹⁶

Drug policy is a pillar of white hegemony. Drug use, itself, is routinely racialized: cocaine was thought to induce violence in Black people,⁹⁷ opium use was connected to Chinese immigrants and framed as a threat to the country's socio-economic progress,⁹⁸ and marijuana was linked to Mexican criminality.⁹⁹ Popular discourse surrounding crack cocaine has emphasized the violence it allegedly incites in Black men and women,¹⁰⁰ while discussions of methamphetamine use—often associated with poor whites—has focused on the effects it has on a person's physical

⁹⁴ See, e.g., Robert W. Gordon, *Some Critical Theories of Law and Their Critics*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 641, 648 (David Kairys ed., 1998) (“Law, like religion and television images, is one of these clusters of belief...that convince people that all the many hierarchical relations in which they live and work are natural and necessary.”).

⁹⁵ See Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *HARV. L. REV.* 1331, 1373–74 (1988) (“Laws and customs helped create ‘races’ out of a broad range of human traits . . . Whites became associated with normatively positive characteristics; Blacks became associated with the subordinate, even aberrational characteristics.”). See also IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (10th ed. 2006) (describing the myriad ways that courts used naturalization cases to determine who qualified for classification as white and who did not).

⁹⁶ See Crenshaw, *supra* note 95, at 1372 (“Throughout American history, racism has identified the interests of subordinated whites with those of society’s white elite . . . Racism helps create an illusion of unity through the oppositional force of a symbolic ‘other.’”).

⁹⁷ See Catherine Carstairs, “The Most Dangerous Drug”: Images of African-Americans and Cocaine Use in the Progressive Era, 7 *LEFT HIST.* 46, 51 (2000) (“Although some employers may have promoted cocaine consumption, the use of cocaine was nonetheless a source of great anxiety for journalists, police chiefs and lawmakers, who feared that cocaine would cause African-Americans to become violent.”)

⁹⁸ See generally Diana L. Ahmad, *Opium Smoking, Anti-Chinese Attitudes, and the American Medical Community, 1850–1890*, 1 *AM. NINETEENTH CENTURY HIST.* 53 (2000).

⁹⁹ Baradaran, *supra* note 23, at 244 (citation omitted).

¹⁰⁰ See, e.g., Cindy Brooks Dollar, *Criminalization and Drug “Wars” or Medicalization and Health “Epidemics”: How Race, Class, and Neoliberal Politics Influence Drug Laws*, 27 *CRITICAL CRIMINOLOGY* 305, 307 (citation omitted) (“Political dialogue, disseminated through various media outlets, depicted crack-cocaine as highly addictive and linked to extensive violent crime.”); ALEXANDER, *supra* note 28, at 52 (“Thousands of stories about the crack crisis flooded the airwaves and newsstands, and the stories had a clear racial subtext. The articles typically featured black ‘crack whores,’ ‘crack babies,’ and ‘gangbangers’ . . .”).

appearance.¹⁰¹ These discourses shape state responses to substance use; the use and sell of crack cocaine has largely been met with criminalization while opioid use—largely associated with white, middle class users—has been treated as a public health crisis.¹⁰²

Prohibitionist policies ultimately serve to distinguish racial groups and, in this way, fortify white hegemony. First, because Black people are disproportionately arrested and incarcerated for drug offenses,¹⁰³ drug policy contributes to the belief that Black people have a propensity for crime and substance abuse that is absent within white communities. Second, drug enforcement supplies the state with grounds to disproportionately use force against nonwhite communities. This type of targeting convinces poor whites to affirm the prevailing racial order;¹⁰⁴ classification as white allowed poor whites to evade enslavement and second-class status during Jim Crow, while today, such classification allows poor whites to evade the worst effects of drug criminalization, including the loss of liberty through incarceration. Third, the drug war and other prohibitionist policies allow the state to destabilize communities of color and advance private interests under the guise of safety and security, mirroring similar outcomes in the international arena.¹⁰⁵

Because hegemony is a theory for describing how power is exercised by dominant groups,¹⁰⁶ it can not only supply insights into how drug policy is deployed to subordinate certain communities within the United States; it can also illuminate how these same policies subordinate groups outside of the country's borders. Stakeholders that critique prohibitionist policies rightfully emphasize how these policies have not led to a decrease in illicit drug production and trafficking nor to a

¹⁰¹ See Dollar, *supra* note 100, at 309 (describing how popular depictions of methamphetamine use have not only emphasized the physical injuries that users sustain but have been used to “symbolize the ‘instability’ of white hegemony by illustrating unemployed Whites as menacing and disrupting peaceful, productive rural communities.”).

¹⁰² See generally Dollar, *supra* note 100. See also Christina Johns, *The War on Drugs: Why the Administration Continues to Pursue a Policy of Criminalization and Enforcement*, 18 *SOC. JUST.* 147, 157 (1991) (“By focusing on minority illegal drug use and trafficking, [presidential administrations have] . . . abetted a larger process of dividing the population into two groups, good people and bad people, respectable citizens and ‘criminals,’ the worthy and the unworthy, us and them.”).

¹⁰³ See *supra* notes 30–32.

¹⁰⁴ Studies have shown that, if white people are informed that a policy has an adverse impact on Black people, this increases their support for the policy. Further, white people who associate crime with people of color are more likely to support punitive criminal justice policies. See PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 71–72 (2017).

¹⁰⁵ For example, in a lawsuit filed after the death of Breonna Taylor, attorneys for the Taylor family uncovered how the raid was “part of a broader effort to evict residents who were impeding the city’s Vision Russell redevelopment initiative.” See Brenden Beck, *The Role of Police in Gentrification*, *THE APPEAL* (Aug. 4, 2020), <https://theappeal.org/the-role-of-police-igentrification-breonna-taylor/> [<https://perma.cc/WU93-WWPP>].

¹⁰⁶ See MINDIE LAZARUS-BLACK & SUSAN F. HIRSCH, *CONTESTED STATES: LAW, HEGEMONY AND RESISTANCE* 7 (1994) (citation omitted) (“Gramsci coined the term hegemony to refer to power that maintains certain structures of domination but that is ordinarily invisible.”).

reduction in drug use.¹⁰⁷ However, equally significant is how drug policy has been integral to American hegemony over Mexico and other Latin American countries.¹⁰⁸

Economic elites and foreign policy elites that are based in and outside of the United States have long pursued a “transnational grand strategy,” which aims to: expand the economic reach of transnational corporations, promote free markets, and sustain both a liberal world order and capitalist democracies.¹⁰⁹ Drug policies are ultimately a vehicle for the United States to assure favorable investment climates for private corporations in Latin America and elsewhere. Specifically, the drug war supplies cover for the repression of political dissidents who oppose neoliberal policies and who threaten the economic order.¹¹⁰

For example, before Mexico entered into the North American Free Trade Agreement, labor unions and environmental groups within the country expressed opposition, as did popular majorities in Canada, Mexico, and the United States.¹¹¹ The Mexican government proceeded to deploy its counternarcotics officers against these and other dissidents, using drug enforcement as a pretext for political repression.¹¹² Plan Colombia, launched by the Colombian and American governments in 2000 in order to allegedly stem the production of cocaine, saw similar outcomes; the war on drugs “effectively forced indigenous and peasant communities off of their territories in order to open up land for foreign-owned

¹⁰⁷ See, e.g., Suzanne Reiss, *Beyond Supply and Demand: Obama’s Drug Wars in Latin America*, 43 *NACLA REP. ON AM.* 27, 28 (2016) (“The drug war has failed to achieve even its stated goals, as critics have long emphasized—there has been no net decrease in illicit drug production and trafficking, even while the devastating human and environmental costs of drug war militarism continue to rise.”); Baradaran, *supra* note 23, at 232 (“[D]espite the billions of dollars spent on the war on drugs since the 1970s, drug use has remained constant throughout the past forty years.”).

¹⁰⁸ See generally Julien Mercille, *Violent Narco-Cartels or US Hegemony? The Political Economy of the ‘War on Drugs’ in Mexico*, 32 *THIRD WORLD Q.* 1637 (2011); Gian Carlo Delgado-Ramos & Silvia Maria Romano, *Political-Economic Factors in U.S. Foreign Policy: The Colombia Plan, the Merida Initiative, and the Obama Administration*, 38 *LATIN AM. PERSP.* 93 (2011).

¹⁰⁹ See WILLIAM AVILES, *THE DRUG WAR IN LATIN AMERICA: HEGEMONY AND GLOBAL CAPITALISM 2* (2017).

¹¹⁰ Dawn Paley, *Drug War as Neoliberal Trojan Horse*, 42 *LATIN AM. PERSP.* 109, 125 (2015) (“Historically, the drug war has been used in Mexico as a way to attack and undermine left-wing organizations. . . . Where once drug war assets were used to criminalize weak and fragmented guerilla movements and populations in Mexico’s high mountain regions, today the tools of the drug war have been deployed in major urban centers and extensive regions, in particular areas rich in natural resources.”). See also Patrice McSherry, *Preserving Hegemony: National Security Doctrine in the Post-Cold War Era*, 34 *NACLA REP. ON AM.* 26 (2016) (contending that the war on drugs has replaced the war against Communism as the primary U.S. military mission in Latin America, a paradigm that has entailed the United States funding military, security, and intelligence forces that weaken civilian and democratic institutions).

¹¹¹ See Mercille, *supra* note 108, at 1646.

¹¹² *Id.* at 1646–47.

corporations.”¹¹³ Yet when discussing these policies, American politicians and media routinely frame them as necessary for the nation’s security and public safety,¹¹⁴ thereby using drug policy as a site for affirming select ideologies: that prohibitionist policies are necessary to assure our collective safety, and that American foreign policy is motivated by security concerns rather than corporate interests.

Drug policy, far from being tied to safety and security, is an essential vehicle for both American and white hegemony.

III. THE CASE FOR ABOLITION

In 1998, former prisoners, organizers, scholars, and a host of other stakeholders convened a conference that sought to challenge the idea that imprisonment and policing are a solution for social, political, and economic problems.¹¹⁵ They not only sought to address the alarming growth of the prison system; they also sought to make abolition a practical theory of change.¹¹⁶ Since that original convening, a host of stakeholders have expanded upon¹¹⁷ and critiqued abolitionist thinking,¹¹⁸ while activists have made growing calls to wholly divest from carceral institutions.¹¹⁹

It is important to note, at the outset, that abolition does not entail the throwing open of prison doors nor does it involve the immediate elimination of

¹¹³ Paley, *supra* note 110, at 113. See also Doug Stokes, *Better Lead Than Bread? A Critical Analysis of the US’s Plan Colombia*, 4 *CIVIL WARS* 59, 74 (2001) (“[I]t is obvious that the US is primarily concerned with a counter-insurgency war against Marxist guerillas. The drug war component of Plan Colombia is merely an extension of an overall war strategy of selectively targeting the sources of funding for Washington’s enemies.”)

¹¹⁴ See generally Baradaran, *supra* note 23.

¹¹⁵ See *Critical Resistance: Beyond the Prison Industrial Complex 1998 Conference*, *CRITICAL RESISTANCE* (Sept. 26, 2018), <https://criticalresistance.org/updates/critical-resistance-beyond-the-prison-industrial-complex-1998-conference/> [<https://perma.cc/YV6U-UDB5>].

¹¹⁶ *Id.*

¹¹⁷ See generally Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 *COLUM. HUM. RTS. L. REV.* 261, 284 (2007) (advocating for an abolitionist movement that drastically reduces the prison population, that repeals mandatory sentences for drug offenses, and that will implement new procedures for identifying and punishing patterns of police abuse); ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003) (advocating for the abolition of jails and prisons and the development of institutions based on reparation and reconciliation).

¹¹⁸ See, e.g., Mark A.R. Kleiman, *Neither Prohibition nor Legalization: Grudging Toleration in Drug Control Policy*, 121 *DAEDALUS* 53, 80 (1992) (contending that the legal and enforcement machinery of drug prohibition should remain intact and labeling abolition a utopian dream); Barkow, *supra* note 22.

¹¹⁹ See generally Invest-Divest, *THE MOVEMENT FOR BLACK LIVES*, <https://m4bl.org/policy-platforms/invest-divest/> [<https://perma.cc/CJ8D-GQJC>].

institutions traditionally associated with public safety.¹²⁰ Instead, abolition is best conceived as a positive *and* negative project; stakeholders pursue a gradual project of decarceration while simultaneously creating new institutions and regulatory frameworks for responding to harmful behavior.¹²¹ This “both/and” perspective is a hallmark of abolitionist philosophy and stands in stark contrast to the “either/or” logic that marks traditional reform.¹²² Pursuant to abolitionist thinking, state and individual violence are connected; addressing interpersonal violence also requires addressing how the state perpetuates harm by depriving communities of resources and by shielding state actors from accountability.¹²³ Violence should not be exclusively conceptualized as individualized disorder and interpersonal harm but, instead, stakeholders should reserve their attention for the “racialized political, economic, militarist, and environmental roots and manifestations of violence.”¹²⁴

A. *Abolition as Framework*

The clearest distinction between abolitionists and legal reformers lies in their assessment of the purpose of the criminal legal system. For reformists, criminal institutions have been designed to assure public safety; measures can and should be taken to punish state actors who abuse their authority, but the institutions of which they are a part should remain intact.¹²⁵ The disproportionate harm that communities of color experience both in and outside of the carceral system can be solved, or at least ameliorated, through legal interventions. Abolitionists, in contrast, proceed from the position that “today’s carceral punishment system can be traced back to slavery and the racial capitalist regime it relied on and sustained.”¹²⁶ The purpose of

¹²⁰ See Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 *UCLA L. REV.* 1156, 1161 (2015).

¹²¹ *Id.* See also Dorothy E. Roberts, *Abolition Constitutionalism*, 133 *HARV. L. REV.* 1, 43 (2019) (citation omitted) (“An essential component of prison abolitionist theory is the principle that eliminating current carceral practices must occur alongside creating a radically different society that has no need for them.”).

¹²² See ANGELA Y. DAVIS ET AL., *ABOLITION. FEMINISM. NOW.* 3 (2022).

¹²³ *Id.*

¹²⁴ See Allegra McLeod, *An Abolitionist Critique of Violence*, 89 *U. CHI. L. REV.* 525, 527 (2022).

¹²⁵ Compare BARRY FRIEDMAN ET AL., *CHANGING THE LAW TO CHANGE POLICING: FIRST STEPS* (2020), https://law.yale.edu/sites/default/files/area/center/justice/document/change_to_change_final.pdf [<https://perma.cc/SB4Q-QNYV>] (advocating for new regulations of federal and state law enforcement following the police killing of George Floyd, but making no mention of eliminating carceral institutions altogether) with Akbar, *supra* note 21, at 1802 (2020) (“Even as more legal scholars examine the structural nature of police violence, the prevailing frame for thinking about solutions remains focused on reforming the police.”).

¹²⁶ Roberts, *supra* note 121, at 7. See also ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE* 33 (2005) (“[S]lavery as an institution . . . managed to become a receptacle for all of those forms of punishment that were considered to be barbaric by the developing democracy.”).

the criminal punishment system is to oppress Black people and other politically marginalized groups.¹²⁷ The problem, in their estimation, is the prison industrial complex, or how the state uses surveillance, policing, and imprisonment in order to solve economic, social, and political problems.¹²⁸

Abolitionist philosophy thus invites scholars and the public to interpret contemporary drug policies as a vehicle for racial subordination, while also supplying a rationale for prohibitionist policies that is lacking within reformist discourse. An abolitionist lens, for example, would emphasize how select substances have historically been criminalized in order to justify violence against nonwhite communities, and encourage an assessment of how contemporary drug policies continue to render these communities vulnerable to state-sanctioned violence. This same lens would recognize the apparent contradiction in continuing the drug war despite studies demonstrating the weak relationship between drugs and violence.¹²⁹ Rather than treat such a contradiction as peculiar, however, abolitionist thinking would emphasize how prohibitionist policies are situated within a broader prison industrial complex and, thus, serve both corporate and state interests. Namely, such policies allow both corporations and the state to derive direct profits from legalized substances¹³⁰—even if they pose equal, or greater, risks to public safety than illicit drugs—while also deriving profits from persons incarcerated for unlawful substances.¹³¹

¹²⁷ See Akbar, *supra* note 21, at 1823.

¹²⁸ See What Is Abolition?, CRITICAL RESISTANCE, <http://criticalresistance.org/wp-content/uploads/2012/06/What-is-Abolition.pdf> [<https://perma.cc/8S5V-JQAX>].

¹²⁹ See DAVIS ET AL., *supra* note 122, at 5 (explaining that abolition feminism does not shy away from contradictions but, rather, conceives contradictions as “generative and necessary sites for collective analysis and labor.”).

¹³⁰ In the United States, excise taxes for alcoholic beverages were approximately sixteen billion dollars in 2012, which included ten billion dollars in federal revenues and six billion dollars in state revenues. See Christopher S. Martin, Thomas K. Greenfield & Thomas F. Babor, The Key Problem is that Alcohol Research is Underfunded Despite Large Industry Profit and Billions of Dollars in Annual Alcoholic Beverage Tax Revenues, 77 J. STUD. ALCOHOL & DRUGS 545, 546 (2016). The global alcoholic beverage market was valued at \$515 billion in 2019, with North American markets contributing 24% towards the total. See Trish Novicio, 15 Most Valuable Alcohol Companies, YAHOO! (Feb. 27, 2021), [shorturl.at/eBNOV](https://perma.cc/4H4F-GF4W) [<https://perma.cc/4H4F-GF4W>].

¹³¹ Prisons, in particular, continue to generate tremendous profits for state governments: incarcerated people “produce more than \$2 billion a year in goods and commodities and over \$9 billion a year in services for the maintenance of the prisons where they are warehoused.” See ACLU, CAPTIVE LABOR: EXPLOITATION OF INCARCERATED WORKERS 6 (2022), <https://www.aclu.org/wp-content/uploads/legal-documents/2022-06-15-captivelaborresearchreport.pdf>. These figures do not reflect the profits that private corporations derive from the construction of prisons and from the supervision of imprisoned people and formerly incarcerated people; direct revenues for these corporations reached nearly four billion dollars in 2017, with the companies also generating profits from “privatized fine and ticket collection to bail bonds and privatized probation services.” See Prison Conditions, EQUAL JUST. INITIATIVE, <https://ejl.org/issues/prison-conditions/> [<https://perma.cc/J4XT-D7KQ>].

Yet abolition is not exclusively a pathway for conceptualizing the problems attending the modern carceral state; it also supplies a framework for assessing the utility of contemporary proposals. Specifically, abolitionists endorse “non-reformist reforms,” defined as measures that reduce the scale, scope, power, authority, and legitimacy of carceral institutions.¹³² Such reforms should not reproduce the harms of the current criminal legal system nor create new impediments for accomplishing abolition.¹³³ Rather, these measures should reduce the power of the carceral system while simultaneously exposing that system’s inability to solve the crises that it creates.¹³⁴

Abolitionists have deployed this framework in the context of the death penalty. Rather than simply endorse the abolition of the death penalty, for example, abolitionists emphasize how one proposed alternative—life without parole—would do little to stem the widescale violence that is meted out to communities of color by police and prisons.¹³⁵ The goal, in other words, should not be to substitute one harmful practice for another; the goal should be transformation, so that society is no longer structured to only meet the needs of the few rather than the many. Abolition of the death penalty should be understood as the first, rather than the last, step towards ending the mass caging of human beings.

A “non-reformist reform” framework would be especially useful in the realm of drug policy, as states increasingly decriminalize and legalize certain substances. Measures that decriminalize substance use and drug sales are not inherently at odds with abolition,¹³⁶ and the non-reformist framework would illuminate the potential weaknesses and strengths of these types of interventions. The value of decriminalization, for example, is readily apparent: it stands to reduce the number of people arrested and incarcerated for drug offenses and, concomitantly, the harms arising from prohibitionist policies.¹³⁷ However, selective decriminalization can lend legitimacy to the continued criminalization of other substances, thereby

¹³² MON MOHAPTRA ET AL., 8 TO ABOLITION: ABOLITIONIST POLICY CHANGES TO DEMAND FROM YOUR CITY OFFICIALS 1, https://static1.squarespace.com/static/5edbf321b6026b073fef97d4/t/5ee0817c955eaa484011b8fe/1591771519433/8toAbolition_V2.pdf [<https://perma.cc/2CU3-LA4B>].

¹³³ See John Duda, *Toward the Horizon of Abolition*, in *WE DO THIS ‘TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* 93, 96 (Tamara K. Nopper ed., 2021).

¹³⁴ Roberts, *supra* note 121, at 114.

¹³⁵ See generally Amna Akbar, *Demands for a Democratic Political Economy*, 134 *HARV. L. REV. F.* 90, 102–103 (2020).

¹³⁶ See generally Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 *UCLA L. REV.* 1544, 1547–50 (2022) (explaining how abolitionists pursue non-reformist reforms as opposed to traditional reforms, and how the former entails depriving the criminal legal system of resources, legitimacy, and power in order to bring about its eventual elimination).

¹³⁷ See *DRUG POL’Y ALL., IT’S TIME FOR THE U.S. TO DECRIMINALIZE DRUG USE AND POSSESSION* 13 (2017), <https://shiftwa.org/wp-content/uploads/2019/10/Drug-Policy-Alliance-Time-to-Decriminalize-Report-July2017.pdf> [<https://perma.cc/3GR2-UNL2>] (contending that decriminalization will reduce the number of people arrested, incarcerated, or otherwise swept into the criminal legal system, while also making communities safer by reducing prohibition-related violence).

justifying continued expenditures for the criminal legal system.¹³⁸ The civil fines that become a substitute for criminalization can also inadvertently harm communities of color, especially if police agencies—which disproportionately stop and frisk communities of color¹³⁹—remain responsible for ticketing. In addition, decriminalization that is divorced from a public health paradigm would place no affirmative obligation upon the state to meet people’s needs, particularly if they have been diagnosed with a substance use disorder.

A non-reformist reform framework would not merely illuminate the potential harms attending decriminalization; it would also situate drug policies within a broader constellation of criminal laws designed to target and subordinate nonwhite communities. The value of policy campaigns or interventions would therefore turn less on whether criminalization has been eliminated for any one substance, and instead be measured in relation to whether a given policy disrupts patterns of subordination and reallocates resources to traditionally marginalized groups. The elimination of criminal liability for drug possession might be conceived as insufficient, for example, if communities of color would then be disproportionately targeted for new, civil offenses requiring the payment of fines or fees. In contrast, decriminalization that is divorced from civil fines and, instead, is paired with new investments in these communities—whether for substance use treatment or otherwise—would qualify as the type of non-reformist reform that disrupts the misallocation of resources across racial groups and impedes their continued subordination under the law.

B. *Abolition as Practice*

Abolition stands to address the underlying causes of drug addiction and violence rather than contribute to their persistence. Studies have shown that there are common risk factors for both drug use and violence,¹⁴⁰ including untreated mental illnesses and low socioeconomic status. Prohibitionist policies have also been shown to increase rather than decrease rates of violent crime.¹⁴¹ These findings indicate that the state’s failure to meet people’s needs, along with its use of violence to respond to unlawful behavior, has undermined rather than fortified public safety.

¹³⁸ See, e.g., INTERRUPTING CRIMINALIZATION, ABOLITION AND THE STATE: A DISCUSSION TOOL 25 (2022), <https://www.interruptingcriminalization.com/abolition-and-the-state> (describing how marijuana legalization can “create conditions under which individuals operating beyond state-approved institutions and regulations are criminalized.”).

¹³⁹ See generally Joseph Goldstein & Ashley Southall, ‘I Got Tired of Hunting Black and Hispanic People’, N.Y. TIMES (June 17, 2020), <https://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html> [<https://perma.cc/4KJA-4ZN2>].

¹⁴⁰ See *supra* notes 66–69.

¹⁴¹ See generally *supra* Subpart I.C.

The paramount goal of abolition is to build safe communities by meeting people's needs.¹⁴² The objective isn't merely divesting from the prison industrial complex but redirecting funds towards communities.¹⁴³ In particular, city funding is to be invested in healthcare infrastructure, neighborhood-based trauma centers, and non-coercive drug and alcohol treatment, as well as community-based food banks and schools.¹⁴⁴ These types of interventions would not only meet people's immediate needs; they also account for the empirical findings about the causes of substance use and violent conduct.

Similarly, abolitionists have established alternative methods for responding to wrongdoing that do not require state violence nor continued commitment to prohibitionist paradigms. As prominent abolitionists Mariame Kaba and Andrea Ritchie explain: "Turning away from systems of policing and punishment doesn't mean turning away from accountability."¹⁴⁵ Instead, they advocate for a reparative response to harmful behavior, comprised of five elements: repair, restoration, acknowledgment, cessation, and nonrepetition.¹⁴⁶ This reparations model rejects individualized responses to systemic problems, and those who experience harm are entitled to nonrepetition. In the context of Breonna Taylor, her family would not only be entitled to compensation for their pain and suffering; all persons would be entitled to an immediate cessation of the actions that caused her death, including an end to the drug war.¹⁴⁷

Abolitionists have not simply described these alternatives to the punitive carceral system; they are actively implementing these interventions while also drafting legislation to guide local and federal policymakers in divesting from the criminal legal system. Across the country, abolitionists have endorsed or developed violence-prevention programs that "bring people at risk of participating in violence to resources that will reduce the risk of those individuals perpetrating harm to others or falling victim to harm themselves."¹⁴⁸ In Chicago, abolitionist organizers not only chronicled the torture that Black residents experienced at the hands of Chicago police officers under the command of Jon Burge; they also solicited proposals from the broader community about how to memorialize the torture and continue the work

¹⁴² See *What Is Abolition?*, supra note 128, at 1 ("The best way to reduce harm is by building safe, healthy communities where people have their basic needs met.").

¹⁴³ See Akbar, supra note 21, at 1830 ("Demands to divest from police and prisons are often accompanied by demands to invest in social provision and collective care: for example, housing, health care, and education.").

¹⁴⁴ See MOHAPTRA, supra note 132, at 4.

¹⁴⁵ Mariame Kaba & Andrea J. Ritchie, *We Want More Justice for Breonna Taylor than the System That Killed Her Can Deliver*, in *WE DO THIS 'TIL WE FREE US*, supra note 133, at 65.

¹⁴⁶ *Id.* at 66.

¹⁴⁷ *Id.*

¹⁴⁸ McLeod, supra note 124, at 551.

towards justice.¹⁴⁹ Their efforts culminated in a torture memorial project, and the city of Chicago agreed to “appropriate more than five million dollars in reparations for survivors, and to create a center that provides medical, mental health, and other support services to survivors of police trauma.”¹⁵⁰

Simultaneously, abolitionists have supplied a roadmap for change in the realm of drug policy by endorsing select non-reformist reforms. The Drug Policy Reform Act, for example, has been endorsed by the Movement for Black Lives.¹⁵¹ The bill would “end criminal penalties for drug possession at the federal level, shift the regulatory authority from the Attorney General to the Secretary of Health and Human Services (HHS), expunge records and provide for resentencing, and reinvest in alternative health-centered approaches.”¹⁵² The bill reflects the essential tenets of abolitionist philosophy: it would meet people’s immediate needs by eliminating the collateral consequences of drug convictions, including the denial of public benefits and exclusion from public housing, while also reducing the scale of the carceral system, by shifting regulatory responsibilities from the Department of Justice to HHS.¹⁵³ Because it abstains from investing additional funds in the criminal legal system, and calls for non-punitive responses to substance use, it also does not impede broader abolitionist goals.

Abolitionists have also generated model legislation of their own, which would address the distinct harms arising from the War on Drugs and other punitive policies. Specifically, the BREATH Act is a proposed federal bill based on the input of over fifty organizations that represent Black communities.¹⁵⁴ The Act sets forth steps to: divest from incarceration and policing; invest in new, non-punitive, non-carceral approaches to community safety; allocate new money to build healthy, sustainable, and equitable communities; and hold political leaders to their promises.¹⁵⁵ Section 1 of the Act would prohibit domestic spending on law enforcement while also

¹⁴⁹ See Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1624–25 (2019).

¹⁵⁰ *Id.* at 1627.

¹⁵¹ See *The People’s Response Act*, THE MOVEMENT FOR BLACK LIVES, <https://breatheact.org/the-peoples-response-act/> [https://perma.cc/6RQ5-C59M].

¹⁵² DRUG POL’Y ALL., U.S. House Representatives Bonnie Watson Coleman & Cori Bush Introduce Federal Bill to Decriminalize Drug Possession, Replace with Health-Centered Approach (June 15, 2021), <https://drugpolicy.org/news/us-house-representatives-bonnie-watson-coleman-cori-bush-introduce-federal/> [https://perma.cc/FSH8-DBSJ].

¹⁵³ See generally DRUG POL’Y ALL., SUMMARY OF THE DRUG POLICY REFORM ACT (DPRA) OF 2021 (2021), https://academyforjustice.asu.edu/wp-content/uploads/2023/03/Drug-Policy-Reform-Act_2021.pdf [https://perma.cc/333H-P865].

¹⁵⁴ See THE MOVEMENT FOR BLACK LIVES ET AL., A ROADMAP TO COMMUNITY SAFETY: A GUIDE FOR STATE LAWMAKERS 7, <https://breatheact.org/wp-content/uploads/2021/10/State-Policy-Guide.pdf> [https://perma.cc/KAQ4-JJ83].

¹⁵⁵ See generally THE MOVEMENT FOR BLACK LIVES, THE BREATH ACT: FEDERAL BILL PROPOSAL (2020), https://breatheact.org/wp-content/uploads/2020/09/The-BREATH-Act-V.16_.pdf [https://perma.cc/VY8K-8UXH].

prohibiting funding for international drug interdiction efforts.¹⁵⁶ Section 2 establishes a Community Public Safety Agency, to be housed within the Department of Health and Human Services, which will not only issue grants for non-carceral, non-punitive interventions, but will prioritize community-based organizations when making such allotments.¹⁵⁷ Section 3 establishes a series of grants to meet people's basic needs, including grants for universal school meals¹⁵⁸ and for the construction of 12 million new homes.¹⁵⁹

The People's Response Act,¹⁶⁰ introduced by Congresswoman Cori Bush and others in June of 2021, incorporates central features of the BREATH Act. The Act would create a Division of Community Safety within HHS, responsible for promoting "qualified approaches to community safety," defined as services and programs that are "disconnected from carceral institutions, including law enforcement, criminal courts, prosecution, probation, child welfare services, or immigration enforcement."¹⁶¹ The Act also creates a series of grants for community-based organizations to implement housing security programs, to provide support for youth and families, and to develop violence and abuse interruption and prevention programs.¹⁶²

CONCLUSION

Drug criminalization has caused tremendous harm to marginalized communities residing in and outside of the United States. The public safety justifications for prohibiting drug use are questionable, with multiple studies undermining claims that illicit drug use causes violent behavior or violent crime. Whereas legal reform stands to further jeopardize our collective safety, abolition stands to repair the harms caused by the War on Drugs while also ensuring such harms do not persist into the future. Abolitionists have supplied a framework for assessing proposed legal interventions and also generated concrete proposals of their own. Rather than reject these proposals, stakeholders should embrace both the abolitionist vision and abolitionist praxis.

¹⁵⁶ *Id.* at 4.

¹⁵⁷ *Id.* at 33–35.

¹⁵⁸ *Id.* at 64.

¹⁵⁹ *Id.* at 97.

¹⁶⁰ H.R. 4194, 117th Cong. (2021).

¹⁶¹ *Id.* at 4.

¹⁶² *Id.* at 21–22.

