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## Non-Reformist Reforms and Struggles over Life, Death, and Democracy

**ABSTRACT.** Today's left social movements are challenging formal law and politics for their capitulation to a regime of racial capitalism. In this Feature, I argue that we must reconceive our relationship to reform and the popular struggles in which they are embedded. I examine the turn of left social movements to "non-reformist reforms" as a framework for reconceiving reform: not as an end goal but as struggles to reconstitute the terms of life, death, and democracy. Non-reformist reforms aim to undermine the prevailing political, economic, social order, construct an essentially different one, and build democratic power toward emancipatory horizons. Today's thinking about non-reformist reform is both an effort to rethink the kinds of laws, policies, norms, relationships, and modes of organization that we might build to govern society, and an effort to democratize relations of power: to have fundamentally different people at the helm.

Part I identifies the return of a commonsense on the left that racism and capitalism are entangled and co-constitutive of the unequal and undemocratic world. Part II lays out left critiques of reformism and offers a schematic history for "non-reformist reforms" as a competing conceptual frame to the neoliberal or liberal reformism dominant in the legal academy. In centering productive contradictions between reform and revolution, the heuristic requires engaging with systems as they are, allows one to hold in view bold and radical horizons, and facilitates the identification of strategic battles that might serve as a bridge through popular agitation.

Because non-reformist reforms emerge from theories of change rooted in building popular power, Part III attends to actually existing sites of struggle in the United States: abolition and decriminalization; decolonization and decommmodification; and democratization. I turn to major campaigns, including #StopCopCity in Atlanta; organizing to cancel rent by KC Tenants in Kansas City, Missouri, and to cancel student debt by the Debt Collective; and the Democratic Socialists of America's (DSA) joint campaign for the Protect the Right to Organize (PRO) Act and the Green New Deal.

Part IV turns to the disciplinary reorientations required for engaging law as a partial terrain of mass politics. I outline four fundamental distinctions between non-reformist reforms and liberal and neoliberal approaches to reform. Non-reformist reforms require a horizon beyond legalism; they embrace antagonism and conflict rather than depoliticization and neutrality; they aim to shift the balance of power; and they build mass organization and prepare the people to govern.

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## **FEATURE CONTENTS**

<b>INTRODUCTION</b>	2500
<b>I. MOVEMENTS AGAINST RACISM AND CAPITALISM</b>	2511
<b>II. REFORM AND REVOLUTION</b>	2515
A. Reformism	2518
B. Non-Reformist Reforms	2527
C. “Multiple Grammars of Struggle”	2531
<b>III. ACTUALLY EXISTING SITES OF STRUGGLE</b>	2534
A. Abolition and Decarceration	2537
B. Decolonization and Decommodification	2543
C. Democratization	2557
<b>IV. REORIENTING REFORM</b>	2562
A. Beyond Legalism	2562
B. Antagonistic and Conflictual	2564
C. Intervening in the Balance of Power	2568
D. Building Democratic Organizations and Preparing to Govern	2571
<b>CONCLUSION</b>	2576

## INTRODUCTION

In the United States, law is idealized as a product of tripartite government, an exercise of democratic process or popular will held in place by checks and balances. But whichever branch you examine—the judiciary, the legislature, or the executive—individually or collectively, at the local, state, or federal level, you will not find a map of democratic process or popular will. The Supreme Court is composed of nine Justices with life tenure and the power to veto legislation and executive action; Congress is captured by corporate power and gerrymandered districts with two senators per state regardless of population; and the route to the presidency is carved out of the Electoral College rather than the popular vote.<sup>1</sup> Both parties have closer ties to billionaires, millionaires, and each other than they do to the people they purport to represent.<sup>2</sup> Even the vote—the ostensible center of electoral democracy—is subject to rampant suppression and disenfranchisement.<sup>3</sup> Antidemocratic institutional features in our system of laws are rife.<sup>4</sup>

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1. See generally Pamela S. Karlan, *The New Countermajoritarian Difficulty*, 109 CALIF. L. REV. 2323 (2021) (arguing that the Electoral College, along with the Senate, functions to disproportionately empower a numerical minority of white conservatives); Franita Tolson, *Countering the Real Countermajoritarian Difficulty*, 109 CALIF. L. REV. 2381 (2021) (raising a similar argument).
  2. E.g., Karl Evers-Hillstrom, *Majority of Lawmakers in 116th Congress Are Millionaires*, OPEN SECRETS (Apr. 23, 2020, 9:14 AM), <https://www.opensecrets.org/news/2020/04/majority-of-lawmakers-millionaires> [https://perma.cc/FNR4-R8QZ]; Nikolas Bowie, *Corporate Personhood vs. Corporate Statehood*, 132 HARV. L. REV. 2009, 2013, 2025 (2019) (reviewing ADAM WINKLER, *WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS* (2018)).
  3. E.g., Bertrall L. Ross II & Douglas M. Spencer, *Passive Voter Suppression: Campaign Mobilization and the Effective Disfranchisement of the Poor*, 114 NW. U. L. REV. 633 (2019).
  4. See Nikolas Bowie, *Antidemocracy*, 135 HARV. L. REV. 160, 172-74 (2021) (arguing that antidemocracy is structured into the state and our laws, and involves the “protection of property-based social hierarchies”); JACOB M. GRUMBACH, *LABORATORIES AGAINST DEMOCRACY: HOW NATIONAL PARTIES TRANSFORMED STATE POLITICS* 195 (2022) (arguing that the “nationalization of the parties has upended the role of states as ‘laboratories of democracy,’ . . . converting Republican states in particular to laboratories *against* democracy”); see also Jeremy Waldron, *The Core of the Case Against Judicial Review*, 115 YALE L.J. 1346, 1353 (2006) (judicial review “disenfranchises ordinary citizens and brushes aside cherished principles of representation and political equality”); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 806 (2021) (“[T]he criminal legal system is itself antidemocratic: by inflicting punishment and mass enforcement and surveillance, the criminal legal system takes away political power through a variety of simultaneous and complementary means.” (first citing Janet Moore, *Democracy Enhancement in Criminal Law and Procedure*, 2014 UTAH L. REV. 543; and then citing Dorothy E. Roberts, *Democratizing Criminal Law as an Abolitionist Project*, 111 NW. U. L. REV. 1597 (2017))); Chris Maisano, *It Would Be Great if the United States Were Actually a*

It is unclear whether law's aspiration can even be described as democratic. Legal, legislative, and administrative processes are exercises in technocratic expertise – defined by those with concentrated economic and political power.<sup>5</sup> The violence of policing and incarceration is an engine of the state.<sup>6</sup> Courts facilitate political, economic, and social stratification by providing cover for evictions, deportation, incarceration, debt collection, and family separation against the poor and working class.<sup>7</sup> Environmental and infrastructural catastrophe are a feature of life across the United States into its colonies and territories, as are depressed wages, widespread hunger, ballooning debt, reduced life expectancy, sprawling housing insecurity, and a healthcare system that puts profit over people.<sup>8</sup> The

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*Democracy: An Interview with Aziz Rana*, JACOBIN (Feb. 16, 2021), <https://www.jacobinmag.com/2021/02/us-constitution-interview-aziz-rana> [<https://perma.cc/3PVY-M8K8>] (quoting Aziz Rana as explaining that “[t]he central eighteenth-century architects of the federal constitution were deeply suspicious of mass democracy . . . [and] created a legal-political framework that placed massive roadblocks in the path of ordinary people using the vote to exercise majority rule” and simultaneously “conducive to capture by . . . corporations and forces of white supremacy”).

5. Ursula Huws, *Decommodification in the Twenty-First Century*, VERSO (Feb. 18, 2021), <https://www.versobooks.com/blogs/5001-decommodification-in-the-twenty-first-century> [<https://perma.cc/H25D-HLFS>] (theorizing that in response to the “massive decommodification” involved in the postwar welfare state, neoliberalism required a “global wave of recommodification”).
6. See, e.g., Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565, 567 (2017) (arguing that police are the face and modality of the state in race-and-class subjugated communities); TRACI BURCH, TRADING DEMOCRACY FOR JUSTICE: CRIMINAL CONVICTIONS AND THE DECLINE OF NEIGHBORHOOD POLITICAL PARTICIPATION 133 (2013) (“[T]he criminal justice system has a demobilizing effect on disadvantaged communities.”); AMY E. LERMAN & VESLA M. WEAVER, ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL 18–22 (2014) (arguing that the criminal law and carceral power undermine democracy and the citizenship of directly impacted people).
7. There is a growing body of scholarship showcasing the wide array of courts and their social function. See, e.g., Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964 (2021); Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704 (2022); Shaun Ossei-Owusu, *Kangaroo Courts*, 134 HARV. L. REV. F. 200 (2021); Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359 (2022); Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243 (2022); Lauren Sudeall & Daniel Pasciuiti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 VAND. L. REV. 1365 (2021); Matthew Clair & Amanda Woog, *Courts and the Abolition Movement*, 110 CALIF. L. REV. 1 (2022); Angélica Cházaro, *Due Process Deportations*, 98 N.Y.U. L. REV. 407 (2023); Lina Foster, *The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States*, 11 U. MIA. RACE & SOC. JUST. L. REV. 1 (2020).
8. See, e.g., *Life Expectancy in the U.S. Dropped for the Second Year in a Row in 2021*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 31, 2022), [https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2022/20220831.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/20220831.htm) [<https://perma.cc/F2NY-3EZY>]; Noam Levy,

state ignores or facilitates these problems. No wonder public faith in the U.S. government is hovering near record lows.<sup>9</sup>

For those of us who see the world around us on fire, the question is what is to be done. For the law professor, the lawyer, and even the law student, reform and regulation are the ever-present terrain.<sup>10</sup> In courtrooms, classrooms, and law reviews, the circuitry of conversation moves from diagnosing a problem to suggesting a reform. Not long ago, it felt as if conversations about reform assumed the legitimacy of the prevailing political, economic, social, and juridical order: tweaks of doctrine or, perhaps, policy; the audience and discussants one and the same — our colleagues, the courts, agencies, bureaucrats, perhaps legislators.<sup>11</sup> These debates often felt inflected by such hopelessness that I sometimes felt the political horizon was not much further than my nose. That a “reform” could be imagined as a “solution” suggested our discourse reduced questions of life and death to the tiniest of “problems” — now solvable by the expert and political classes.

Neoliberal reform projects have funneled social problems into the market and the prison to solve; and both are insulated from popular input.<sup>12</sup> Legal scholarship often mirrors the fundamental faith in the market and the prison. Private-law scholarship emphasizes “overcom[ing] inefficiencies and press[ing] toward

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*Some Hospitals Rake in High Profits While Their Patients Are Loaded with Medical Debt*, NPR (Sept. 28, 2022, 5:01 AM ET), <https://www.npr.org/sections/health-shots/2022/09/28/1125176699/some-hospitals-rake-in-high-profits-while-their-patients-are-loaded-with-medical> [https://perma.cc/2Q4Z-EDHF].

9. For discussions by legal scholars of fundamental problems with U.S. democracy and the public’s faith in the political system, see, for example, Michael J. Klarman, *The Supreme Court, 2019 Term — Foreword: The Degradation of American Democracy — and the Court*, 134 HARV. L. REV. 1 (2020); and Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546 (2021).
10. Advancing reforms is a distinctive part of the legal scholarly project. See Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 414 (2018); Carol S. Steiker, *Promoting Criminal Justice Reform Through Legal Scholarship*, 12 BERKELEY J. CRIM. L. 161 (2007).
11. Across fields, “[t]he agent of law reform” has been conceived as “not the people but the technician: the judge, economist, or bureaucrat who would calculate hypothetical consumer and producer surplus to order law and policy to serve the aims of wealth maximization.” Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1800 (2020).
12. *Id.* at 1807, 1812, 1817, 1828. Neoliberal law and politics have pushed a “‘color-blind’ mantra of individual achievement and meritocracy” combined with “the liberal multicultural politics of ‘recognition,’” a “‘formal commitment to legal equality,’” and the relegation of racism as the “‘outcome[.]’ of ‘individual choices’ exercised through the market.” ANDY CLARNO, NEOLIBERAL APARTHEID, PALESTINE/ISRAEL AND SOUTH AFRICA AFTER 1994, at 12 (2017).

wealth-maximizing outcomes” while public-law scholarship focuses on “narrowly defined differential treatment of individuals, especially by the state.”<sup>13</sup> Across scholarly siloes, concern for economic power or distribution is diminished, obscuring the structuring force of concentrated economic power.<sup>14</sup> Faith in markets is too often paired with a deep “pessimism about . . . politics and the effectiveness of the state,” rendering collective action the task of fools.<sup>15</sup>

But over the almost two decades of my career as a lawyer and law professor, conversations about reform have shapeshifted.<sup>16</sup> In 2011, three years after the global financial crisis hit, Tunisian produce vendor Mohamed Bouazizi immolated himself in protest of unemployment, indebtedness, and police harassment.<sup>17</sup> His act sparked the Arab Spring, which, in turn, set off Occupy Wall Street in New York City.<sup>18</sup> Since then, a drumbeat of protest has disrupted seemingly settled terms of law and policy.<sup>19</sup> These popular protests cannot be read as

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13. Britton-Purdy et al., *supra* note 11, at 1790, 1806; see Ganesh Sitaraman, *The Puzzling Absence of Economic Power in Constitutional Theory*, 101 CORNELL L. REV. 1445 (2016) (arguing that constitutional theory must overcome or mitigate the influence of economic power). See generally JOSEPH FISHKIN & WILLIAM E. FORBATH, *THE ANTI-OLIGARCHY CONSTITUTION: RECONSTRUCTING THE ECONOMIC FOUNDATIONS OF AMERICAN DEMOCRACY* (2022) (theorizing that the Constitution imposes a duty on government to fight oligarchy).
  14. Britton-Purdy et al., *supra* note 11, at 1793-94.
  15. *Id.* at 1791, 1805 (noting that the Twentieth-Century Synthesis has “obscured from view the kinds of political mobilization that are essential for engaging . . . fundamental questions” about the shape of the state, the economy, and the social). To the extent these policies and discourses manifest in “critiques of ‘big government,’” they are deployed against “programs perceived as racially redistributive — such as affirmative action, reparations, or indigenous land claims.” CLARNO, *supra* note 12, at 12; see Arun Kundnani, *What Is Racial Capitalism?*, KUNDNANI (Oct. 23, 2020), <https://www.kundnani.org/what-is-racial-capitalism> [<https://perma.cc/8HJH-3DFU>] (“Political opposition to market systems mounted by movements of the global South or racialized populations in the North is then read by neoliberal ideology as no more than the acting out of cultures inherently lacking in the appropriate traits of individualism and entrepreneurial spirit. . . . The surplus dispossessed come to be represented through a series of racist figures — ‘welfare queens,’ ‘Muslim extremists,’ ‘illegals,’ ‘narcos,’ ‘super-predators’ . . . distinctive to the neoliberal era.”).
  16. For a sample of this increasingly critical orientation toward law, which in turn remakes questions of reform, see, for example, Paul Butler, *The System Is Working the Way It Is Supposed To: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419 (2016).
  17. See Thessa Lageman, *Remembering Mohamed Bouazizi: The Man Who Sparked the Arab Spring*, AL JAZEERA (Dec. 17, 2020), <https://www.aljazeera.com/features/2020/12/17/remembering-mohamed-bouazizi-his-death-triggered-the-arab> [<https://perma.cc/R4LK-YCRJ>].
  18. See Michael Saba, *Wall Street Protestors Inspired by Arab Spring Movement*, CNN (Sept. 17, 2011, 11:19 AM EDT), <https://www.cnn.com/2011/09/16/tech/social-media/twitter-occupy-wall-street/index.html> [<https://perma.cc/H7YK-QPN9>].
  19. See, e.g., GIANPAOLO BAIOCCHI, *WE, THE SOVEREIGN* (2018) (cataloguing contemporary left and anti-neoliberal movements and moments of protest around the world); Claire Harbage

simple or linear—they are uneven and filled with contradictory impulses.<sup>20</sup> In the United States, mass protests took place during the summer of 2020 in response to the police murder of George Floyd, and expressed hope and futility by tens of millions of people.<sup>21</sup> These protests meditated not on questions of efficiency or wealth maximization but on life and death.<sup>22</sup> They embodied popular revolts against the state, the status quo, and electoral democracy.<sup>23</sup>

This decade-plus of riots and social movements is like nothing we have seen since the 1960s and 1970s. It is impossible to know when this period of heightened protest will die down. We may already be within its recesses. But that the struggles are global, popular, and iterative speaks to the systemic nature of the problems.<sup>24</sup> In the United States, large majorities of the public support greater regulation of guns and the environment, easy access to abortion, some version

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& Hannah Bloch, *The 2010s: A Decade of Protests Around the World*, NPR (Dec. 31, 2019, 9:37 AM ET), <https://www.npr.org/sections/pictureshow/2019/12/31/790256816/the-2010s-a-decade-of-protests-around-the-world> [https://perma.cc/8HMA-WWFQ].

20. See JACKIE WANG, *CARCERAL CAPITALISM* 276-77 (2018) (counseling against flattening narratives about protests). And of course, there are right-wing protests. *E.g.*, Jennifer Smola Shaffer, *Drag Storytime Organizers, Police Offer Different Explanations amid Proud Boys Protest*, COLUMBUS DISPATCH (Dec. 3, 2022, 7:25 PM ET), <https://www.dispatch.com/story/news/local/2022/12/03/royal-oak-school-drag-storytime-canceled-proud-boys-protest-columbus/69691753007> [https://perma.cc/4FUN-CTAW].
21. Or of the sort that Nigeria saw in fall 2020, also against police; that India saw that winter into the spring, with 250 million farmers, workers, and students protesting the deregulation and privatization of agriculture; that Brazil saw in 2013 in the face of public transit fare hikes; that France saw in 2018 against gas taxes. See BAIOCCHI, *supra* note 19, at 2-3; Veena Dubal & Navyug Gill, “*Long Live Farmer-Laborer Unity*”: *Contextualizing the Massive Resistance Going on in India*, LPE PROJECT (Dec. 28, 2020), <https://lpeproject.org/blog/long-live-farmer-laborer-unity-contextualizing-the-massive-resistance-going-on-in-india> [https://perma.cc/27PG-4LCY]; Emmanuel Akinwotu, “*The Lights Went Out and the Shooting Start*”: *#EndSars Protestors Find No Justice One Year On*, GUARDIAN (Nov. 1, 2021, 03:01 PM EDT), <https://www.theguardian.com/global-development/2021/nov/01/nigeria-end-sars-protesters-find-no-justice-one-year-on> [https://perma.cc/CX6Z-YP4R]; Adam Nossiter, *France Suspends Fuel Tax Increase that Fueled Violent Protests*, N.Y. TIMES (Dec. 4, 2018), <https://www.nytimes.com/2018/12/04/world/europe/france-fuel-tax-yellow-vests.html> [https://perma.cc/E29E-GWTX].
22. Robert Cover famously recognized the dynamic relationship between law and death. Robert Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986) (“Legal interpretation takes place in a field of pain and death.”).
23. See ASTRA TAYLOR, *DEMOCRACY MAY NOT EXIST, BUT WE’LL MISS IT WHEN IT’S GONE* 9 (2019) (describing in the United States “a highly proscribed notion of democracy . . . that limits popular power to the field of electoral politics, ignoring the other institutions and structures (workplaces, prisons, schools, hospitals, the environment, and the economy itself) that shape people’s lives”).
24. See GRUMBACH, *supra* note 4, at xix (arguing that 2020 “revealed an American political system that lacked the capacity to solve [a range of] fundamental challenges”).

of Medicare for All, a higher minimum wage, paid sick and parental leave, and greater taxation of millionaires and billionaires – and yet these preferences rarely take shape in law and policy.<sup>25</sup> It is curious the extent to which the political class has chastised grassroots demands like defunding the police or the Green New Deal for their unpopularity, when it is increasingly clear that the structures of the state fortress law and policy from public needs and aspirations.<sup>26</sup> To put it plainly: what does popularity have to do with law and policy anyway?

A familiar scholarly posture for the law professor is to defend and defer to formal law and politics, its forums, and processes: the courtroom, the vote, notice-and-comment, and so on. This posture typically involves skepticism of protest as anarchy and of radical demands as counterproductive.<sup>27</sup> There are whole bodies of scholarship oriented toward legitimating state power, even state violence.<sup>28</sup> Law faculty come in and out of judicial, legislative, and executive offices,

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25. Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSPS. ON POL. 564, 577 (2014). Martin Gilens and Benjamin I. Page further report the finding of a statistical model that economic elites and organized business groups have substantial independent impacts on American policymaking, while the general public has little to no impact. *Id.*
26. See *id.* at 577; K. Sabeel Rahman & Kathleen Thelen, *The Role of the Law in the American Political Economy*, in THE AMERICAN POLITICAL ECONOMY: POLITICS, MARKETS, AND POWER 76, 94, 96 (Jacob S. Hacker, Alexander Hertel-Fernandez, Paul Pierson & Kathleen Thelen eds., 2021) (arguing that “business interests” have “leveraged legal doctrine to shift the balance of power between capital and labor through cases that undercut the countervailing power of workers and other groups to exercise political voice and to contest the political interests of business” and “establish[ed] limitations on the very capacities of government itself,” so as to “preclud[e] more far-reaching regulations or redistributive policies”).
27. Consider the new wave of academic work critical of abolition and protest. See, e.g., Rachel E. Barkow, *Promise or Peril?: The Political Path of Prison Abolition in America*, 58 WAKE FOREST L. REV. (forthcoming), <https://ssrn.com/abstract=4232267> [<https://perma.cc/8NZJ-G9DL>] (providing reasons why an abolitionist framework may “ultimately produce more harm than good”); see also TOMMIE SHELBY, THE IDEA OF PRISON ABOLITION 150-95 (2022) (arguing that prison, if reformed, can be a legitimate tool to fight crime).
28. Consider, for example, the procedural-justice scholarship focused on policing. E.g., Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283, 350 (2003). For a powerful critique, see Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2083-87, 2126-47 (2017).

There are also scholarly traditions, and centers and clinics at law schools, that take seriously protest and organizing, social movements and movement lawyering. For a survey of some of this work, see Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 832-37 (2021). Some relevant articles also include Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1646-60; Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775, 776-80 (2017); Renee Hatcher, *Solidarity Economy Lawyering*, 8 TENN. J. RACE GENDER & SOC. JUST. 23 (2019); Nicole Smith Futrell, *The Practice and Pedagogy of Carceral Abolition in a Criminal Defense Clinic*, 45 N.Y.U. J.L. & SOC. CHANGE 159 (2021);

often at the highest echelons of state power. We advise corporations and the police.<sup>29</sup> We serve on commissions and working groups to study problems raised by streets protests.<sup>30</sup> We do this work often to the exclusion of those who organized, protested, and even risked or lost their lives for the state to take these issues seriously. We are essential parts of the state's arsenal to reassert the status quo in which inequality and violence flourish.<sup>31</sup>

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Justin Hansford, *Demosprudence on Trial: Ethics for Movement Lawyers*, in *Ferguson and Beyond*, 85 *FORDHAM L. REV.* 2057 (2017); Amy J. Cohen & Bronwen Morgan, *Prefigurative Legality*, 48 *LAW & SOC. INQUIRY* (forthcoming 2023), <https://ssrn.com/abstract=4268294> [<https://perma.cc/WG9D-Z7L8>]; and Veryl Pow, *Grassroots Movement Lawyering: Insights from the George Floyd Rebellion*, 69 *UCLAL. REV.* 80 (2022).

29. *E.g.*, *NYU Law Professor Barry Friedman to Aid in Investigation of NYPD as Special Advisor to the NY Attorney General*, N.Y.U. (June 15, 2020), <https://www.nyu.edu/about/news-publications/news/2020/june/nyu-law-professor-barry-friedman-to-aid-in-investigation-of-nypd.html> [<https://perma.cc/K3B6-FLP6>]. There are whole host of relatively new university centers at elite universities including at law schools that have police funding. See *Our Partners & Funders*, N.Y.U. SCH. OF L. POLICING PROJECT, <https://www.policingproject.org/our-partners> [<https://perma.cc/FPN6-CE9G>]; Isabella Tapia, *Teach-In Condemns NYU Law Policing Project*, WASH. SQUARE NEWS (Apr. 25, 2022), <https://nyunews.com/news/2022/04/25/teach-in-nyu-law-policing-project> [<https://perma.cc/5CBE-6X57>]; Letter from NYU Students to Trevor Morrison, Dean, N.Y.U. L. Sch. (Apr. 15, 2022), <https://docs.google.com/document/d/1qHWVP2gPqirTFQDXhd4schKiJU9EAYiKsQqOkmCiVns/edit> [<https://perma.cc/7PZJ-3ZT2>]; Angela Koenig, *UC Public Safety Research Center Established: New Center Is a Resource Hub for Law Enforcement, Community, and Elected Officials*, UC NEWS (Feb. 7, 2022), <https://www.uc.edu/news/articles/2022/02/uc-public-safety-research-center-opens-in-school-of-criminal-justice.html> [<https://perma.cc/E5LR-M3GN>].
30. See *Final Report of the President's Task Force on 21st Century Policing*, PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, at v (May 2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) [<https://perma.cc/FW3F-D873>]; Barry Friedman, Brandon L. Garrett, Rachel Harmon, Christy E. Lopez, Tracey L. Mears, Maria Ponomarenko, Christopher Slobogin & Tom R. Tyler, *Changing the Law to Change Policing: First Steps*, JUST. COLLABORATORY ET AL., [https://law.yale.edu/sites/default/files/area/center/justice/document/change\\_to\\_change\\_final.pdf](https://law.yale.edu/sites/default/files/area/center/justice/document/change_to_change_final.pdf) [<https://perma.cc/WBX3-6KR2>]; *Commissioners and Staff*, N.Y. STATE L. REV. COMM'N, <https://lawrevision.state.ny.us/commissioners-and-staff> [<https://perma.cc/N4BN-VVXH>]. We also staff commissions to study problems raised by other elites, including our colleagues. *Final Report*, PRESIDENTIAL COMM'N ON THE SUP. CT. OF THE U.S. 2-4 (Dec. 8, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/SCOTUS-Report-Final-12.8.21-1.pdf> [<https://perma.cc/7RSY-M9P5>].
31. See, e.g., ISAAC D. BALBUS, *THE DIALECTICS OF LEGAL REPRESSION: BLACK REBELS BEFORE THE AMERICAN CRIMINAL COURTS* 86-88 (1973) (describing a meeting convened in Los Angeles to address "ghetto revolts" following the 1968 assassination of Dr. Martin Luther King, Jr., where "no effort was made to include anyone who even in the vaguest sense could be called a representative of the ghetto").

In this Feature, I argue that we must reconceive our relationship to reforms and the popular struggles in which they are embedded.<sup>32</sup> I examine the turn of left social movements to “non-reformist reforms” as a framework for reconceiving reform: not as an end goal but as struggles to reconstitute the terms of life, death, and democracy. Today’s left social movements are challenging formal law and politics for their capitulation to a regime of racial capitalism and how it reproduces raced, classed, and gendered domination, exploitation, dispossession, and exposure to premature death.<sup>33</sup> The turn to non-reformist reform is part of a larger meditation on what strategies and tactics will help build a more equal and just society, one that works for the many rather than the few, where people have their needs met and democracy extends to all realms of life well beyond the ballot box.<sup>34</sup>

Non-reformist reforms aim to undermine the prevailing political, economic, social order, construct an essentially different one, and build democratic power toward emancipatory horizons. They seek to redistribute power and reconstitute who governs and how. Today’s thinking about non-reformist reform is both an effort to rethink the kinds of laws, policies, norms, relationships, and modes of organization that we might build to govern society, and an effort to democratize relations of power: to have fundamentally different people at the helm.

Social movements highlight the relationships between our understanding of the world around us (criticism), the world we fight for (horizon), and the reforms, strategies, and tactics that might bridge the two (praxis). The discourse

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32. The Law-and-Political-Economy (LPE) framework requires shifting from concerns with efficiency to power. Britton-Purdy et al., *supra* note 11, at 1818, 1823-24, 1827. They elaborate strategies to “reorient legal institutions and thought toward” democracy: “strengthening existing institutions of electoral democracy”; creating a “democratic political economy . . . answerable to its citizens’ rule”; and “experiment[ing] with alternatives to the prevailing technologies of elite governance,” including “reconceiv[ing] regulatory bodies as sites of democratic contestation.” *Id.* at 1929-31.

33. A concern with racism and capitalism undergirds an understanding of racism as the “state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.” RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 28 (2007).

34. See TAYLOR, *supra* note 23 (“Typically, democracy is considered to consist of one person, one vote, exercised in periodic elections; constitutional rights; and a market economy.”).

on non-reformist reforms, then, reflects theories of social change<sup>35</sup> on the margins of legal scholarship.<sup>36</sup> There is an underlying argument within the Feature—I do not go to any real length to substantiate it—that protest and organizing put pressure on and transform law. But I avoid fetishizing law as the ultimate object of emancipatory projects that aim to change the many lifeworlds we inhabit.<sup>37</sup>

Law and lawyers have a place in social-change work, but to assert the roles as primary is to capitulate to a conception of power that is top-down and centralized rather than everywhere and relational. What does it mean to think about law in relation to emancipation and long freedom struggles?<sup>38</sup> To begin, it requires that we understand law as a site of domination, exploitation, expropriation, and legitimation—and lawyers as central partners therein.<sup>39</sup> Law is neither above nor below politics or reason, nor is it the entire domain of politics or reason itself. Law is a partial and dynamic terrain of political, economic, and social struggle. It is a place and a language where power is shaped and contested, and

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35. I use vocabulary—like “the capitalist class”—uncommon in legal scholarship, precisely for how reconstituting the terms of debate might broaden and multiply roads of possibility. See generally MATTHEW T. HUBER, *CLIMATE CHANGE AS CLASS WAR: BUILDING SOCIALISM ON A WARMING PLANET* 19–21 (2022) (explaining that for Marxists, “class is an objective material relationship to production” and that “the classes who control production also possess oversized power over society as a whole” as opposed to liberal conceptions that focus on levels of wealth, income, and lifestyle (emphasis omitted)).
  36. Lani Guinier & Gerald Torres, *Changing the Wind: Notes Towards a Demosprudence of Law and Social Movements*, 123 *YALE L.J.* 2740, 2749–50 (2014) (“[D]emosprudence focuses on [how] ongoing collective action by ordinary people can permanently . . . chang[e] the people who make the law and the landscape in which that law is made.”); see also Bowie, *supra* note 2, at 2032–40 (examining the mobilizing of the IWW and its 1912 strike in a Lawrence, Massachusetts textile mill to argue “the Supreme Court isn’t the only place where corporate rights have been protected or taken away”); Douglas NeJaime & Reva Siegel, *Answering the Lochner Objection: Substantive Due Process and the Role of Courts in a Democracy*, 96 *N.Y.U. L. REV.* 1902, 1922–33 (2021) (attending to “the [protest] practices . . . innovated by groups facing conditions of overwhelming subordination” from which “modern substantive due process decisions grew”).
  37. Cf. Sameer Ashar, *Deep Critique and Democratic Lawyering*, 104 *CALIF. L. REV.* 201, 217–19 (2016) (defining deep critique as “thinking beneath and beyond liberal legalist approaches to social problems”).
  38. For an illuminated account rooted in the impasses of its time, see Cornel West, *The Role of Law in Progressive Politics*, 43 *VAND. L. REV.* 1797 (1990).
  39. See Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 *CALIF. L. REV.* 741, 746 (1994) (“[T]he crits sought to show that legal doctrine is contradictory; that legal rules are indeterminate; and that the operation of legal institutions is systematically biased in favor of economically and socially privileged elites.” (footnotes omitted)).

where relations of class, race, gender, and ability are made and remade.<sup>40</sup> It is a tool, a strategy, a tactic, and it contributes to the terms of life, death, and democracy.<sup>41</sup>

Part I identifies the broad return of a commonsense on the left that racism and capitalism are entangled and co-constitutive of the unequal and undemocratic world around us.<sup>42</sup> This turn toward materializing racism asserts the dynamic relationship of racism to economic processes and relations.<sup>43</sup> It understands racism as rooted in and reproducing uneven structures of organized exploitation (e.g., wage labor), expropriation (e.g., gentrification), and violence (e.g., incarceration). The turn to antiracist and anticapitalist politics has reconstituted the terrain of racial-justice discourse and organizing and attendant conversations on law and policy. Once racism and capitalism are understood as soldered together, it becomes clear that emancipatory projects must take them on together. That freedom struggles cannot succeed by approaching law narrowly, with trust, or in isolation. As horizons of emancipation are illuminated, the strategies and tactics expand beyond formal legal process and law itself. Reform and regulation can no longer be end goals; instead, they live among an array of contradictory strategies and tactics for emancipation.<sup>44</sup>

Part II lays out left critiques of reformism and offers a schematic history for “non-reformist reforms” as a competing conceptual frame to the neoliberal or

40. To think of law as a site of struggle builds on the insights of critical scholars past and present. See Akbar et al., *supra* note 28, at 825-27; see also Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 325 (1987) (calling for scholars to root their critiques of law in the experience of “people of color in America”); David Kairys, *Introduction to THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 1, 6 (David Kairys ed., 1982) (calling for law to “acknowledge the fundamental conflicts in society”).

41. See NICOS POULANTZAS, *STATE, POWER, SOCIALISM* 146-47 (Patrick Camiller trans., 1978); STUART HALL, CHAS CRITCHER, TONY JEFFERSON, JOHN CLARKE & BRIAN ROBERTS, *POLICING THE CRISIS: MUGGING, THE STATE AND LAW AND ORDER* 183-84 (2d ed. 2013); BALBUS, *supra* note 31, at 256-62; John Whitlow, *If You Can Unmake It Here: Crisis, Contingency, and Law in the Making and Unmaking of Neoliberal New York*, 121 S. ATL. Q. 339, 340 (2022).

42. See, e.g., DONNA MURCH, *ASSATA TAUGHT ME: STATE VIOLENCE, RACIAL CAPITALISM, AND THE MOVEMENT FOR BLACK LIVES* 87-158 (2022); David McNally, *It’s Called Capitalism: Naming the System Behind Systemic Racism: An Interview with Keeanga-Yamahitta Taylor*, SPECTRE J. (June 1, 2022), <https://spectrejournal.com/its-called-capitalism-naming-the-system-behind-systemic-racism> [<https://perma.cc/V23L-P5BA>].

43. These conversations are not linear or teleological. Almost three decades ago, Angela P. Harris called for a “jurisprudence of reconstruction” that would have “some understanding of how [race,] material relations of production and consumption and discourse affect one another.” Harris, *supra* note 39, at 777-78.

44. E.g., BEATRICE ADLER-BOLTON & ARTIE VIERKANT, *HEALTH COMMUNISM*, at xiv (2022) (“[E]ven as we fight within the US for policies like Medicare for All, the task at hand is much greater . . . . It is the total reformation of the political economy of health, and in so doing, the total reformation of the political economy.”).

liberal reformism dominant in the legal academy. In centering productive contradictions between reform and revolution, the heuristic facilitates strategic and tactical questions that “reformist reforms” do not: it requires engaging with systems as they are, allows one to hold in view bold and radical horizons, and facilitates the identification of strategic battles that might serve as a bridge through popular agitation. Rooted in the mid-twentieth-century writings of the French Austrian philosopher André Gorz and recently retooled by the geographer Ruth Wilson Gilmore, non-reformist reforms are a response to the impasse of liberal reformism and traditional conceptions of armed revolution.<sup>45</sup> They offer another way of responding to the capture of law, politics, and the state.

Because non-reformist reforms emerge from theories of change rooted in building popular power, Part III attends to actually existing sites of struggle in the United States: abolition and decriminalization; decolonization and decommodification; and democratization.<sup>46</sup> I turn to major campaigns, including #StopCopCity in Atlanta; organizing to cancel rent by KC Tenants in Kansas City, Missouri, and to cancel student debt by the Debt Collective; and workers organizing for collective power, and the Democratic Socialists of America’s (DSA) joint campaign for the Protect the Right to Organize (PRO) Act and the Green New Deal. While others may disagree with my characterizations of these as prevailing winds, I offer the assessment to provoke debate about the sort of reform projects legal scholars may pursue in alignment with the emancipatory organizing of our time.<sup>47</sup> This work of “movement law” – thinking in conversation with emancipatory movements – provides a distinctive way to deploy expertise through more collaborative practices than scholars typically pursue.<sup>48</sup>

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45. See generally RALPH MILIBAND, *SOCIALISM FOR A SCEPTICAL AGE* 4 (1994) (observing “revolution” and “revolutionary” are “ambiguous” terms “understood to involve the overthrow of the existing state [and] the transformation of the social order”).

46. I am drawing on an archive focused on the Movement for Black Lives, the Democratic Socialists of America (DSA), the Red Nation, Sunrise Movement, Critical Resistance, and other organizations I name throughout the text and footnotes. I have examined interviews, podcasts, media coverage, campaign and political education materials, litigation and legislation. While detail is lost with breadth, my hope is that new possibilities become visible.

47. My account is necessarily incomplete and subjective. The social-movement ecosystems I write about are sprawling, multifaceted and contradictory. This is especially true because I construe social movements broadly, for example, by including the DSA, which some may conceive of as an electoral organization, as well as labor organizing. Cf. Catherine L. Fisk & Diana S. Reddy, *Protection by Law, Repression by Law: Bringing Labor Back into the Study of Law and Social Movements*, 70 EMORY L.J. 63, 138 (2020) (“By examining [how] one movement’s experience with law shapes other movements’ experience with law over time we are better able to generalize about law and social movements, plural.”).

48. See generally Akbar et al., *supra* note 28 (identifying four methodological moves in the work of scholars of movement law).

Part IV turns to the disciplinary reorientations required for engaging law as a potential terrain of mass politics. I outline four fundamental distinctions between non-reformist reforms and liberal and neoliberal approaches to reform. Non-reformist reforms require a horizon beyond legalism; they embrace antagonism and conflict rather than depoliticization and neutrality; they aim to shift the balance of power; and they build mass organization and prepare the people to govern.

## I. MOVEMENTS AGAINST RACISM AND CAPITALISM

The United States has witnessed extraordinary social movement activity in the last fifteen years: Occupy Wall Street; the protests against the State of Georgia's execution of Troy Davis; immigrant organizing against #Not1More deportation; the rebellions against police violence in cities like Ferguson, Baltimore, and Minneapolis that caught on from coast to coast; the anti-pipeline protests against extractive development including the #NoDAPL encampment at Standing Rock; the Women's March and the protests against the Muslim Ban; the occupation of Nancy Pelosi's office announcing the Green New Deal; the squatting of a vacant home by Moms 4 Housing in Oakland; and the solidarity protests with the Palestinian people of the East Jerusalem neighborhood of Sheikh Jarrah.<sup>49</sup> These protests were profound for how they individually and collectively unsettled the legitimacy of the status quo and gestured at the possibility of building broad constituencies for radical change while recovering histories of long

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49. See, e.g., NICK ESTES, OUR HISTORY IS THE FUTURE: STANDING ROCK VERSUS THE DAKOTA ACCESS PIPELINE, AND THE LONG TRADITION OF INDIGENOUS RESISTANCE 1-23 (2019); OCCUPY!: SCENES FROM OCCUPIED AMERICA 2-6 (Astra Taylor et al. eds., 2011); Erin Baldassari & Molly Solomon, *How Moms 4 Housing Changed Laws and Inspired a Movement*, KQED (Oct. 19, 2020), <https://www.kqed.org/news/11842392/how-moms-4-housing-changed-laws-and-inspired-a-movement> [<https://perma.cc/SB3B-PGE6>]; *The History of the #Not1More Campaign*, #NOT1MORE, <http://www.notonemoredeportation.com/the-history-of-the-not1more-campaign> [<https://perma.cc/YFV6-KCBT>]; Kathryn Abrams, *Contentious Citizenship: Undocumented Activism in the Not1More Deportation Campaign*, 26 BERKELEY LA RAZA L.J. 46, 47 (2016). Of course, there was organizing that preceded these moments, including, for example, the DREAMers. See, e.g., Daniel Altschuler, *The Dreamers' Movement Comes of Age*, DISSENT MAG. (May 16, 2011), [https://www.dissentmagazine.org/online\\_articles/the-dreamers-movement-comes-of-age](https://www.dissentmagazine.org/online_articles/the-dreamers-movement-comes-of-age) [<https://perma.cc/M8YP-6KRM>]. For a further description of the campaigns that helped to organized anti-enforcement mobilization in the immigration arena between 2009 and 2012, see generally Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464 (2017).

freedom struggles.<sup>50</sup> An ecosystem of formal organizations and ad hoc formations have supported this work, from what is loosely referred to as “Black Lives Matter” or the Movement for Black Lives (M4BL), to the DSA; Boycott, Divestment, and Sanctions; and myriad prison-abolitionist, environmental and housing-justice, Indigenous, feminist, and communist collectives.<sup>51</sup> Some are long-standing, some new, and some have already come and gone. Simultaneously, teachers, nurses, baristas, flight attendants, railroad workers, app-deployed drivers, and Amazon warehouse workers are reclaiming the strike and organizing drives to form unions and workers’ collectives in the face of almost boundless economic power.<sup>52</sup>

Organizers and activists in racial- and economic-justice movements invoke both racism and capitalism as the target of their work.<sup>53</sup> From M4BL to the DSA to tenants’ and debtors’ unions, people are grappling with the idea that capitalism and white supremacy are soldered to one another through long and varied historical processes, including colonialism and settler colonialism.<sup>54</sup> While debates about the relationship between race and class – or one’s primacy over the

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50. Jane F. McAlevey has helpfully distinguished between advocacy, mobilizing and organizing. JANE F. MCALEVEY, *NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GILDED AGE* 9-12 (2016).
  51. See, e.g., Jaskiran Dillon, *What Standing Rock Teaches Us About Environmental Justice*, in *STANDING WITH STANDING ROCK: VOICES FROM THE #NoDAPL MOVEMENT* 235, 235 (Nick Estes & Jaskiran Dhillon eds., 2019); RAINA LIPSITZ, *THE RISE OF A NEW LEFT: HOW YOUNG RADICALS ARE SHAPING THE FUTURE OF AMERICAN POLITICS* 1-29 (2022); MURCH, *supra* note 42, at 5-7; Yousef Munayyer, *BDS: Where It Came from and Where It Is Headed*, 106 *GEOGRAPHICAL REV.* 283, 285 (2016).
  52. See, e.g., Chris Brooks, *How Amazon and Starbucks Workers Are Upending the Organizing Rules*, in *THESE TIMES* (May 31, 2022), <https://inthesetimes.com/article/amazon-starbucks-workers-organizing-unions-momentum-movement-moment> [<https://perma.cc/YZV8-62CJ>]; *Class Struggle and Racial Justice After the Union Drive at Amazon, A Roundtable*, SPECTRE J. (June 11, 2021), <https://spectrejournal.com/class-struggle-and-racial-justice-after-the-union-drive-at-amazon> [<https://perma.cc/7EKH-N8EJ>].
  53. See, e.g., MURCH, *supra* note 42, at 9-10, 14, 101.
  54. Questions of gender, sexuality, and heteropatriarchy are also central – indeed many have remarked that one of the distinct features of this wave of left social movement activity is its grappling with and practices of intersectionality. See, e.g., BARBARA RANSBY, *MAKING ALL BLACK LIVES MATTER: REIMAGINING FREEDOM IN THE TWENTY-FIRST CENTURY* 3 (2018); DEVA R. WOODLY, *RECKONING: BLACK LIVES MATTER AND THE DEMOCRATIC NECESSITY OF SOCIAL MOVEMENTS* (2021); Amna A. Akbar, *Long and Variegated Struggles: On “Abolition. Feminism. Now.”*, *LA REV. OF BOOKS* (June 28, 2022), <https://lareviewofbooks.org/article/long-and-variegated-struggles-on-abolition-feminism-now> [<https://perma.cc/7URM-AVPT>]. On intersectionality, see Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991), which discusses the experiences of women of color as the product of intersecting patterns of racism and sexism.

other – continue to haunt the left, social movements today understand that racialized inequality and capitalist exploitation must be taken on and fought together.<sup>55</sup> The centrality of this analysis focused on racism, capitalism, and colonialism, marks the radicalization, a reemergence, or a growth, of a left flank of racial-justice organizing and of a socialist left in the United States.

The turn to racial capitalism – if not the phrase, the proposition that racism and capitalism are partners – is central to the radicalization of theories and practices of social change.<sup>56</sup> It explains why people on the left cannot believe in law, the state, or the market as neutral vessels. It is central to why they adopt horizons beyond the state as we know it. And it key to why they adopt strategies and tactics beyond what formal law and politics can offer.

The “promise” of the racial capitalism frame lies in how it opens sites of struggle and in turn the possibility of solidarity across those sites.<sup>57</sup> By linking capitalist exploitation with racial domination, the frame requires the braiding of racial-justice with economic-justice struggles.<sup>58</sup> It allows for an understanding

55. See also Enzo Rossi & Olúfémí O. Táíwò, *What's New About Woke Racial Capitalism (and What Isn't)*, SPECTRE J. (Dec. 18, 2020), <https://spectrejournal.com/whats-new-about-woke-racial-capitalism-and-what-isnt> [<https://perma.cc/5GXX-VEEZ>]. Compare Adaner Usmani & David Zachariah, *The Class Path to Racial Liberation*, 5 CATALYST J. (2021), <https://catalyst-journal.com/2021/12/the-class-path-to-racial-liberation> [<https://perma.cc/6S7R-AA34>], with Robin D.G. Kelley, *Insecure: Policing Under Racial Capitalism*, SPECTRE J. (Nov. 8, 2020), <https://spectrejournal.com/insecure-policing-under-racial-capitalism> [<https://perma.cc/M5BY-JFWG>].

56. As the South African activists credited with the phrase explained: “Capitalism was not the solution to racism but the soil upon which it grew.” Kundnani, *supra* note 15 (citing MARTIN LEGASSICK & DAVID HEMSON, *FOREIGN INVESTMENT AND THE REPRODUCTION OF RACIAL CAPITALISM IN SOUTH AFRICA* (1976), a pamphlet written by South African Marxists who participated in the anti-apartheid movement in the 1970s); see also Jodi Melamed, *Racial Capitalism*, 1 CRITICAL ETHNIC STUD. 76, 77 (2015) (“Capital . . . can only accumulate by producing and moving through relations of severe inequality among human groups – capitalists with the means of production/workers without the means of subsistence, creditors/debtors, conquerors of land made property/the dispossessed and removed. . . . [R]acism enshrines the inequalities that capitalism requires.”). Neville Alexander, who was incarcerated with Nelson Mandela and cofounded the leftist National Forum, included the term “racial capitalism” in a 1983 manifesto. DESTIN JENKINS & JUSTIN LEROY, *HISTORIES OF RACIAL CAPITALISM* 4 (2021).

57. Kundnani, *supra* note 15.

58. The term “focus[es] our attention on the broader forms of social organization that are constitutive of social life under capitalism, beyond . . . work and production.” Olúfémí O. Táíwò & Liam Kofi Bright, *A Response to Michael Walzer*, DISSENT MAG. (Aug. 7, 2020), [https://www.dissentmagazine.org/online\\_articles/a-response-to-michael-walzer](https://www.dissentmagazine.org/online_articles/a-response-to-michael-walzer) [<https://perma.cc/J4AQ-T25Q>]; see also Robin D.G. Kelly, *Freedom Struggle Is a Labor Struggle, Then & Now*, AGAINST THE CURRENT (Feb. 2021), <https://againstthecurrent.org/atc210/the-freedom-struggle-is-a-labor-struggle-then-now> [<https://perma.cc/V6K2-A57P>] (“Spatial segregation explains so much that a workplace focus cannot – hidden costs of living, food deserts, limits on mobility

of social change that centers not simply the “working class” and the shop floor, but a broad range of dominated and exploited classes in a diverse range of social, political, and economic settings: debtors in schools and hospitals, and incarcerated people in prisons, jails, and detention centers, for example.<sup>59</sup> It breaks movements and organizations out of narrow and issue-specific struggles.<sup>60</sup> Recognizing the entangled development of capitalism and colonialism, it creates pathways to build larger blocs of organized insurgency—linkages for instance between Indigenous sovereignty and environmental justice.<sup>61</sup> The return to the

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to access decent jobs, home/property values and impact on intergenerational wealth, school funding, and services like access to sanitation, fire fighters, and libraries.”).

59. NANCY FRASER & RAHEL JAEGGI, *CAPITALISM: A CONVERSATION IN CRITICAL THEORY* 165 (2018) (“By conceiving capitalism as something larger than an economic system, it renders visible, and intelligible, a broader spectrum of social contestation than orthodox paradigms do.”).
60. JENKINS & LEROY, *supra* note 56, at 13; *see also* Jodi Melamed & Chandan Reddy, *Using Liberal Rights to Enforce Racial Capitalism*, *ITEMS* (July 30, 2019), <https://items.ssrc.org/race-capitalism/using-liberal-rights-to-enforce-racial-capitalism> [<https://perma.cc/S7BL-CVQ5>] (explaining that in liberal accounts “[r]acism is primarily construed as rights-denial, and political and economic participation and cultural belonging are seen as stymied or entirely foreclosed by racist barriers to full rights,” whereas “from a racialist capitalist perspective, . . . the concept of rights is not automatically antagonistic to racism”); Mark Golub, *Racial Capitalism and the Rule of Law*, *ITEMS* (Feb. 19, 2019), <https://items.ssrc.org/race-capitalism/racial-capitalism-and-the-rule-of-law> [<https://perma.cc/Y9UZ-2F3S>] (“[R]acial violence is typically framed as a breakdown or violation of the rule of law” but “beneath . . . illegal racist violence lies a system of rights and legalities upon which white supremacist social order more fundamentally depends.”).
61. As historians Destin Jenkins and Justin Leroy explain, “[R]acial justice cannot be achieved . . . under a generalized call for economic justice,” and “capitalism cannot be rehabilitated through inclusion of previously excluded groups,” or the extension of “political and legal rights” thereto. JENKINS & LEROY, *supra* note 56, at 13. Distinct conceptions of injustice advance distinct “conceptions of the collectives that suffer injustice” and “propose different sorts of remedies.” NANCY FRASER & AXEL HONNETH, *REDISTRIBUTION OR RECOGNITION?: A POLITICAL-PHILOSOPHICAL EXCHANGE* 13–14 (2003); *cf.* Amna A. Akbar, *supra* note 10 (comparing the Obama DOJ’s reports on the Ferguson and Baltimore police with the Vision for Black Lives); *see also* Amna A. Akbar, *Our Reckoning with Race*, *N.Y. REV. BOOKS* (Oct. 31, 2020), <https://www.nybooks.com/online/2020/10/31/our-reckoning-with-race> [<https://perma.cc/W6LG-JEK7>] (describing today’s movements goal of building grassroots majorities around more materialist antiracist agendas). The implication of taking racial capitalism seriously is to understand that

black and white labor are divided materially as well as ideologically. Their respective relations to the means of production are of a quite different character. There is therefore no prospect that black and white might become conscious of their true, shared interests and, as in the old slogan, “unite and fight.” Rather there would have to be an autonomous black struggle against racial capitalism.

Kundnani, *supra* note 15.

racial-capitalism frame is linked to the return of non-reformist reforms and a growing sense of futility around reformism.

## II. REFORM AND REVOLUTION

In April 2020, Harmony Goldberg and the Grassroots Power Project (GPP) published a booklet asserting that the pandemic created interlinked crises of public health, the economy, and the state which, in turn, intensified struggles over life and death.<sup>62</sup> In such moments, the “right and the super-rich” take advantage of instability to “reshape[] our economy, our government and our society” toward greater profits and the consolidation of “[racial] capitalism, in its neoliberal form.”<sup>63</sup> The question for the left is how to formulate “demands for immediate relief as building blocks that can lay the foundation” so that “we will be strongly positioned to lead the rebuilding of our society and economy on new terms.”<sup>64</sup> Organizing for such change will require connecting how “people are experiencing the crisis” with “bold reforms.”<sup>65</sup> It will be necessary to organize in such a way to address disproportionate “impacts on Black, Latino and Native communities,” “low-wage service and care workers,” and “undocumented,” and “incarcerated people.”<sup>66</sup>

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62. Harmony Goldberg, *Stepping into the Moment: The Corona-Crisis*, CONVERGENCE MAG. (Apr. 8, 2020), <https://convergencemag.com/articles/stepping-into-the-moment-the-corona-crisis> [<https://perma.cc/6GKC-J9CL>]; see Stuart Hall & Bill Schwarz, *State and Society 1880-1930*, in *THE HARD ROAD TO RENEWAL: THATCHERISM AND THE CRISIS OF THE LEFT* 95, 96 (Stuart Hall ed., 2021) (“Crises occur when the social formation can no longer be reproduced on the basis of the pre-existing system of social relations.”).

63. The GPP invokes the frameworks of neoliberalism and racial capitalism in its materials. See, e.g., *Our Analysis of Society Today*, GRASSROOTS POWER PROJECT, <https://grassrootspowerproject.org/about/our-theory-of-power> [<https://perma.cc/T7Q7-STWR>]; *Training for Transportation: A Report on the First Strategy College*, GRASSROOTS POL’Y PROJECT & PEOPLE’S ACTION INST. 4 (July 23, 2019), <https://grassrootspowerproject.org/wp-content/uploads/2021/11/GPP-Strategy-College.Full-Report-2019.pdf> [<https://perma.cc/79CX-GQR4>] (“We started our systems analysis through the lens of ‘racial capitalism’ . . .”). For another account of how powerful elites and corporations take advantage of moments of disruption to consolidate their power and advance their interests in the context of disaster, see NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* (2007).

64. Goldberg, *supra* note 62. At the time of writing, organizers had started making “immediate relief to large-scale structural change,” including demands for Medicare for All, the Green New Deal, and Universal Basic Income. GPP cites The Center for Popular Democracy, People’s Action, Sunrise Movement, and Working Families Party as doing essential work pushing a “People’s Bailout” and thinking about “a transformative approach” to demands that “link[] immediate relief with long-term rebuilding.” *Id.*

65. *Id.*

66. *Id.*

Drawing from socialist feminist writings of the mid-twentieth century, the Grassroots Power Project uses the phrase “stepping stone reforms” for demands that pave the way to the world the organization and others like it are hoping to build.<sup>67</sup> Across the U.S. left today, such frameworks for thinking about reform toward abolitionist, socialist, communist, or anarchist horizons have proliferated with a focus on undermining neoliberalism, racial capitalism, and the carceral state. A range of terms from the mid-twentieth century are being revived and redeployed – as are larger debates about socialist strategy, reform and revolution, and the theories of social change in which these terms are nested.<sup>68</sup> The terms reflect various conceptions of the horizon for social change, the agential classes or coalitions for agitation and remaking, and the strategies, tactics, and modes of social organization such transformation will require.<sup>69</sup>

Most common today is the term “non-reformist reform.” Non-reformist reform is typically associated with a democratic-socialist tradition. But it is being used broadly, including by prison abolitionists, many of whom embrace anti-capitalist politics but may or may not claim socialism or communism. The syntax of “non-reformist reform” poses a riddle at the heart of projects that seek transformation, emancipation, or liberation in the face of an unjust system: is it possible for “reforms” to change the essential character of a system rather than to improve it? To foment new social formations that might make the grounds ripe for future revolution?<sup>70</sup> The non-reformist reform framework suggests reform is less about expertise than it is about intervening in the balance of power among

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67. *Id.*; see also JULIET MITCHELL, WOMAN’S ESTATE 73 (1971) (referring to “stepping-stones” as reforms that take women’s oppression seriously on the road to socialism). Katrina Forrester draws on the framework in her superb essay on demands, in particular wages for housework and the socialization of housework. Katrina Forrester, *Feminist Demands and the Problem of Housework*, 116 AM. POL. SCI. REV. 1278, 1283-85 (2022).

68. On strategy, see, for example, SOCIALIST STRATEGY AND ELECTORAL POLITICS: A REPORT (Verso Books ed., 2019); and WE ORGANIZE TO CHANGE EVERYTHING: FIGHTING FOR ABORTION ACCESS AND REPRODUCTIVE JUSTICE (Natalie Adler, Marian Jones, Jessie Kindig, Elizabeth Navarro & Anne Rumberger eds., 2022).

69. For a helpful survey of the various terms, from Leon Trotsky’s “transitional demands,” adopted by the Fourth International, to Juliet Mitchell’s “stepping-stones,” see Forrester, *supra* note 67, at 1281, 1285-86 (2022). See also LEON TROTSKY, THE DEATH AGONY OF CAPITALISM AND THE TASKS OF THE FOURTH INTERNATIONAL: THE MOBILIZATION OF THE MASSES AROUND TRANSITIONAL DEMANDS TO PREPARE THE CONQUEST OF POWER “THE TRANSITIONAL PROGRAM” (Dimitri Verstraeten trans., 2002) (1938) (describing the “transitional program”); MITCHELL, *supra* note 67, at 73.

70. Any left project of non-reformist reform would reject “the Twentieth-Century Synthesis” of neoliberal law and economics. See Britton-Purdy et al., *supra* note 11, at 1789-90.

classes.<sup>71</sup> While the framework does not often provide clear-cut differentiations between reformist and non-reformist reforms, it reorients conversations about reform around antagonism, militancy, and building independent organized power.<sup>72</sup> And it rejects default orientations focused on either rights and liberal legalism, or the market and the prison, as adequate responses to inequality and various social problems. It considers the dual nature of reform, as inherently conciliatory to an unequal order and an essential ground for popular struggle.

But the framework is not simply an alternative to liberal reformism; it is an alternative to revolution or armed insurrection. The turn to non-reformist reform emerges out of a sense that revolution is neither desirable nor viable. On desirability, it is a rejection of a form of centralism and vanguardism.<sup>73</sup> On viability, the concern is about political repression, as well as the world-historical might of U.S. carceral and military power. The turn is an embrace of the necessity of building democratic majorities to reconstitute power, the state, and society. It is part of a larger return of the left toward mass politics and democratic domains. The framework imagines revolutionary and transformative processes through disruption, repetition, and the building of new democratic spaces.

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71. For a powerful push for contending with power, see, for example, Simonson, *supra* note 4, at 787-88. See also K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 682-83 (2020) (examining the prospects of community control as a way to shift power in local governance); cf. Sameer Ashar & Annie Lai, *Access to Power*, 148 DÆDALUS 82, 83 (2019) (“Access-to-justice approaches that assume the existence of a legal system that dispenses justice obscure the structural and unequal distribution of economic, social, and political power and foreclose opportunities for people to work toward a truly just society.”).

72. On accounts of power within legal scholarship, see, for example, Bowie, *supra* note 4, at 210-11 (“Because of [our social and relational] interdependence, ordinary people possess a latent form of power that they can activate by withholding their cooperation, as in strikes, boycotts, and other mass actions.” (citing FRANCES FOX PIVEN, *CHALLENGING AUTHORITY: HOW ORDINARY PEOPLE CHANGE AMERICA* (2006))); and Simonson, *supra* note 4, at 803-04 (“A focus on power in police reform asks whether directly impacted people have real influence on the scope and policies of policing in their neighborhoods, counties, cities, and states . . . to influence policy outcomes . . . and control the distribution of state resources.”).

73. For an argument that the turn to democratic socialism is a rejection of both Leninism and social democratic politics, see Rafael Khachaturian & Stephen Maher, *Socialist Strategy and the Capitalist Democratic State*, VERSO (May 16, 2019), <https://www.versobooks.com/blogs/4320-socialist-strategy-and-the-capitalist-democratic-state> [https://perma.cc/QJN9-ADWA]; and POULANTZAS, *supra* note 41, at 127.

### A. Reformism

On the left, the term “reformism” is used pejoratively – as a short-hand criticism of prevailing liberal and neoliberal conceptions of reform.<sup>74</sup> These criticisms are worth unpacking, in part because they are rarely articulated within legal scholarship.<sup>75</sup>

The primary concern is that to focus on reformism is to orient action toward entrenching, rather than overthrowing or substituting, a fundamentally corrupt

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74. Criticisms of reformism run parallel with concerns about electoralism or engagement with electoral politics. For differing points of view within the DSA about whether the organization should endorse Sanders and prioritize electoral strategy, see *Introduction to NLR*, 116/117 NEW LEFT REV. 5 (2019). For a survey of those concerns in a book that ultimately argues in favor of “class struggle campaigns,” see MEAGAN DAY & MICAH UETRICH, *BIGGER THAN BERNIE: HOW WE GO FROM THE SANDERS CAMPAIGN TO DEMOCRATIC SOCIALISM* (2020). For an argument to reclaim and reorient union organizing toward class struggle, see JOE BURNS, *CLASS STRUGGLE UNIONISM* 16-40 (2022).
75. The default vision of reform that has long characterized legal scholarship is now under great stress. As a result, we have seen a new wave of critical scholarship. See, e.g., Ryan D. Doerfler & Samuel Moyn, *Democratizing the Supreme Court*, 109 CALIF. L. REV. 1703 (2021); Diana S. Reddy, “*There Is No Such Thing as an Illegal Strike*”: *Reconceptualizing the Strike in Law and Political Economy*, 130 YALE L.J.F. 421 (2021); Ossei-Owusu, *supra* note 7; Simonson, *supra* note 4; Dorothy E. Roberts, *The Supreme Court, 2018 Term – Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1 (2019); Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156 (2015); E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509 (2019); E. Tendayi Achiume & Devon W. Carbado, *Critical Race Theory Meets Third World Approaches to International Law*, 67 UCLA L. REV. 1462 (2021); Subini Ancy Annamma & Jamelia Morgan, *Youth Incarceration and Abolition*, 45 N.Y.U. REV. L. & SOC. CHANGE 471 (2022); Chaz Arnett, *From Decarceration to E-Carceration*, 41 CARDOZO L. REV. 641 (2019); Zohra Ahmed, *Bargaining for Abolition*, 90 FORDHAM L. REV. 1953 (2022); Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. 1937 (2021); Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. 864 (2020); Jasmine E. Harris, *Reckoning with Race and Disability*, 130 YALE L.J.F. 916 (2021); K-Sue Park, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, 131 YALE L.J. 1062 (2022); Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093 (2019); Veena B. Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 CALIF. L. REV. 65 (2017); Karen M. Tani, *Welfare and Rights Before the Movement: Rights as a Language of the State*, 122 YALE L.J. 314 (2012); Noah D. Zatz, *Get to Work or Go to Jail: State Violence and the Racialized Production of Precarious Work*, 45 LAW & SOC. INQUIRY 304 (2020); Khiara M. Bridges, *Race, Pregnancy, and the Opioid Epidemic: White Privilege and the Criminalization of Opioid Use During Pregnancy*, 133 HARV. L. REV. 770 (2020); S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097 (2022); Asli Ü. Bâli & Aziz Rana, *Constitutionalism and the American Imperial Imagination*, 85 U. CHI. L. REV. 257 (2018); Aziz Rana, *Colonialism and Constitutional Memory*, 5 U.C. IRVINE L. REV. 263 (2015).

system, institution, or set of relations.<sup>76</sup> As Rosa Luxemburg explained in *Reform or Revolution*,

[P]eople who pronounce themselves in favor of legislative reform in place of and in contradistinction to the conquest of political power and social revolution do not choose a more tranquil, calmer, and slower road to the same goal, but a different goal. Instead of taking a stand for the establishment of a new society they take a stand for surface modification of the old society . . . . Our program becomes not the realization of Socialism, but the reform of capitalism; not the suppression of the system of wage labor, but the . . . suppression of the abuses of capitalism instead of the suppression of capitalism itself.<sup>77</sup>

In other words, reform as an end goal—reformism—is a project distinct from reform toward revolutionary or transformative ends. If capitalism is the problem, then abolition rather than reform should be the goal. Parallel arguments are made for white supremacy, heteropatriarchy, and the prison-industrial complex.<sup>78</sup>

Reformism telegraphs to the public that the system, institution, or set of relations it seeks to tweak are here to stay; that the problem is not structural or symptomatic but stray.<sup>79</sup> As such, it insulates labor exploitation, land dispossession, environmental destruction, and more as problems for regulation, rather than products of status quo power relations. In form and substance, reformism shields the status quo and its protectorate from ongoing challenges necessary to

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76. The dictionary definitions of “reform” emphasize that a reform is a mode of improving or amending what is wrong, corrupt, or unsatisfactory. See, e.g., *Reform*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/reform> [<https://perma.cc/2H2D-K3RJ>]; Meagan Day, *Single-Payer Is a “Non-Reformist Reform,”* MEDIUM (Nov. 20, 2017), <https://medium.com/@meaganday/single-payer-is-a-non-reformist-reform-fe3751aa7f27> [<https://perma.cc/77H9-KGD3>] (“Reformism is when your mission is to tinker with the system to make people’s lives better, but not really alter the basic structure at the end of the day. And reformists prefer changes that give people a much-needed helping hand, but don’t really undermine capitalism.”); see also ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 40 (2003) (“[T]he prison itself was a product of concerted efforts by reformers to create a better system of punishment.”).

77. ROSA LUXEMBURG, *REFORM OR REVOLUTION AND OTHER WRITINGS* 3 (2006) 58.

78. In the context of arguments about the provision of health and care, see BEATRICE ADLER-BOLTON & ARTIE VIERKANT, *HEALTH COMMUNISM* 67 (2022).

79. In the canonical prison-abolitionist text, *Are Prisons Obsolete?*, for example, Angela Y. Davis explains that “frameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond the prison.” DAVIS, *supra* note 76, at 20.

contest their power and build another world. In so doing, reformism consolidates the hand of those in power and deepens preexisting inequalities.<sup>80</sup>

Reformism becomes an essential strategy of the ruling class to reestablish its rule;<sup>81</sup> to do as little as possible to quell revolt that might force deeper changes and self-rule.<sup>82</sup> Reformism does not try to remake power, politics, or the state, but it engages with power, politics, and the state as it is constituted. Even when what fuels the reform is street politics, the political class will take ownership over the path forward. They will coopt the energy from the streets to reassert their own power and make excuses for or divert attention away from their inability to act.<sup>83</sup>

Consider the Congressional Democrats' offering of the George Floyd Justice in Policing Act soon after the 2020 protests began. The summerlong rebellions and protests came amidst the early days of the global pandemic and almost six years after the rebellion against Darren Wilson's murder of Michael Brown in Ferguson. Most Democrats criticized the demand "defund the police" as naive,

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80. Cf. Goldberg, *supra* note 62 ("Decades of [] neoliberal austerity have decimated our government's social welfare programs . . . [and] the most effective tool we have to contain [the pandemic]: a functional state.").

81. See STANLEY ARONOWITZ, *HOW CLASS WORKS: POWER AND SOCIAL MOVEMENT* 94 (2003) ("The term ruling class signifies the power bloc that at any given historical period exercises economic and political dominance and ideological hegemony over the society as a whole and over the class within which it functions.").

82. For a discussion of this dynamic, including the example of the Chicago Police Department's creation of an Office of Restorative Justice Strategies, see ANGELA Y. DAVIS, GINA DENT, ERICA R. MEINERS & BETH E. RICHIE, *ABOLITION. FEMINISM. NOW.* 162-64 (2022), which describes how "[s]uccessful organizing that mobilizes people and makes effective demands on the state is sometimes coopted and absorbed because of the carceral state's [power]." See also Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (exploring the principle of "interest convergence," which provides that "[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites"); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1356, 1361 (1988) (arguing that scholars who focus on "forces that [lead] to retrenchment" in civil-rights reforms fail to "incorporate racism into their analysis," which "renders their critique of rights and their overall analysis of law in America incomplete"); Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997) (describing the dynamic of "preservation-through-transformation," by which "status-enforcing state action evolves in form as it is contested").

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

nonsensical, and unpopular.<sup>84</sup> On June 8th, Nancy Pelosi, Chuck Schumer, and members of the Congressional Black Caucus donned kente cloth and kneeled in silence for eight minutes and forty-six seconds before announcing their legislative rebuke.<sup>85</sup> The bill included a laundry list of police reforms and committed hundreds of millions of dollars to the police. It delimited qualified immunity that shields police from liability for brutality; banned chokeholds, no-knock warrants, and racial profiling; promoted greater adoption of body cameras and more trainings on racial profiling; and established a national police-misconduct registry.<sup>86</sup> The Lawyers' Committee for Civil Rights Under Law, the NAACP LDF, the National Urban League, and the National Action Network endorsed the legislation.<sup>87</sup> Police unions opposed it.<sup>88</sup> President Trump promised to veto

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84. E.g., Kenya Evelyn, *Barack Obama Criticizes "Defund the Police" Slogan but Faces Backlash*, GUARDIAN (Dec. 2, 2020), <https://www.theguardian.com/us-news/2020/dec/02/barack-obama-criticizes-defund-the-police-slogan-backlash> [https://perma.cc/WCK8-8J58].

85. Isabella Gomez Sarmiento, *Kente Cloth: From Royals to Graduation Ceremonies . . . to Congress?*, NPR (June 11, 2020, 5:09 PM ET), <https://www.npr.org/sections/goatsandsoda/2020/06/11/875054683/kente-cloth-from-royals-to-graduation-ceremonies-to-congress> [https://perma.cc/5Q27-FB3X].

86. George Floyd Justice in Policing Act, H.R. 7120, 116th Cong. (2020).

87. *Justice in Policing Begins with George Floyd Act*, LAWYER'S COMM. FOR CIVIL RTS. UNDER L. (Feb. 24, 2021) <https://www.lawyerscommittee.org/justice-in-policing-begins-with-geo-floyd-act> [https://perma.cc/2P5C-AUDK]; Cf. *Coalition Letter on H.R. 7120 "George Floyd Justice in Policing Act"*, LEADERSHIP CONF. ON CIV. & HUM. RTS. (June 18, 2020), <https://civilrights.org/resource/coalition-letter-on-h-r-7120-george-floyd-justice-in-policing-act> [https://perma.cc/KQ8A-7PTA] (calling on Congress to "strengthen" the bill, while criticizing its provision of "hundreds of millions of additional federal dollars to state and local law enforcement agencies" rather than redirecting federal spending "toward rebuilding communities of color, especially Black communities").

88. Luke Broadwater & Catie Edmondson, *Police Groups Wield Strong Influence in Congress, Resisting the Strictest Reforms*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/06/25/us/politics/police-reforms-congress.html> [https://perma.cc/XUV2-FAVN].

it.<sup>89</sup> The bill passed the House within weeks and never made it out of the Senate.<sup>90</sup> It was the most robust police reform bill the House had passed in decades.<sup>91</sup>

The triumphant version of this story sees democracy at work: Congressional Democrats forced by street protests to take stronger action than they would have otherwise. But there is a more critical story in which the Democrats knew the bill would not pass Congress, let alone President Trump's desk. This was counterinsurgency: theater designed to deflect and to slow down the street protests — which had been subjected to police and National Guard crackdowns all over the country.<sup>92</sup> The Democrats acted to safeguard the legitimacy of the police along with their party and bourgeois democracy more broadly, and to reassert the primacy of conventional police reform over defund. They attempted to reseal a loop broken by the street protests, which, by virtue of their scale, endurance, and vibrancy, called into question the ability of policing or the channels of representative democracy to serve the people at all. Theirs was an effort to quell the protest that propelled them to act, while asserting their responsiveness all along.<sup>93</sup>

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89. *US House Passes 'George Floyd' Police Reform Bill*, BBC (June 26, 2020), <https://www.bbc.com/news/world-us-canada-53188189> [<https://perma.cc/ZAV3-5DS3>].
90. *Id.* The same occurred in 2021. Nicholas Fandos, Catie Edmondsom & Karen Zraick, *The House Passes a Policing Overhaul Bill Named for George Floyd, Whose Death Spurred Nationwide Protests*, N.Y. TIMES (Mar. 4, 2021), <https://www.nytimes.com/2021/03/04/us/george-floyd-act.html> [<https://perma.cc/V2ET-W2R7>]; Felicia Sonmez & Mike DeBonis, *No Deal on Bill to Overhaul Policing in Aftermath of Protests over Killing of Black Americans*, WASH. POST (Sept. 22, 2021, 7:35 PM EDT), [https://www.washingtonpost.com/powerpost/policing-george-floyd-congress-legislation/2021/09/22/36324a34-1bc9-11ec-a99a-5fe2b2da34b\\_story.html](https://www.washingtonpost.com/powerpost/policing-george-floyd-congress-legislation/2021/09/22/36324a34-1bc9-11ec-a99a-5fe2b2da34b_story.html) [<https://perma.cc/22CR-KHZP>].
91. *U.S. House Passes Most Ambitious Policing Reform Effort in Decades*, GUARDIAN (Mar. 3, 2021, 10:16 PM EST), <https://www.theguardian.com/us-news/2021/mar/03/george-floyd-justice-in-policing-act-us-house-democrats> [<https://perma.cc/Z8N2-JFQE>].
92. See BALBUS, *supra* note 31, at 12 (arguing that repression of mass protests by arrests and legal process attempts to “depoliticize collective violence and to militate against the growth of the consciousness and solidarity of participants”).
93. As the host of Revolutionary Left Radio explained in a recent conversation about housing struggles with tenant organizers from Brooklyn Eviction Defense, “[M]eaningful incremental reform [is] always . . . spearheaded by bottom-up mass movements, and then, if it gets passed as policy, it’s the establishment Democrats and the liberals that try to take credit for that incrementalism and then weaponize it against more revolutionary forms of or theories of political change.” *Brooklyn Eviction Defense: Tenant Organizing for the People*, REVOLUTIONARY LEFT RADIO, at 10:05, 11:25 (Mar. 4, 2022), <https://revolutionaryleftradio.libsyn.com/bed> [<https://perma.cc/FKX2-65EC>]. As a member of Brooklyn Eviction Defense put it, “[T]hese weren’t just somehow backroom deals that happened between . . . amicable . . . and . . . well-meaning politicians.” *Id.* at 10:23.

The Democrats went on the attack against defund and the broader left with its demands for redistribution.<sup>94</sup> But as far as the political class went to lambast mass protest – to render it criminal, as the act of outsiders – it is protest and organizing that creates the social crises required for emancipatory social change.<sup>95</sup> We can see the necessity of protest, disruption, and radical demands in changing what is possible in the histories of suffrage, civil rights, and the abolition of chattel slavery,<sup>96</sup> even as we notice protest, like any tool, from litigation to lobbying, is both incomplete and put to use by right-wing and revanchist forces.

Reformism communicates a conception of the state as a neutral arbiter of equally situated competing interests. This implies that poor, working-class, and oppressed people should focus on voting and elections to “secure legislation to regulate capitalism,” and thereby “improve their working conditions and living standards.”<sup>97</sup> It requires people to plead with elected officials and rely on a narrow band of methods “that end up preventing them from securing their own reform goals.”<sup>98</sup> Reformism fosters continual reliance on the ruling class, attempting to foreclose contesting fundamental questions of the shape of the state or the economy.<sup>99</sup> It prevents the dominated classes from building independent

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94. That posture remains – see, for example, Thomas Franck, *Biden Calls on States to ‘Fund the Police,’ Mental Health Programs Using Federal Money*, CNBC (May 13, 2022, 10:21 PM EDT), <https://www.cnbc.com/2022/05/13/biden-tells-states-to-increase-cops-mental-health-programs-to-fight-crime.html> [https://perma.cc/952F-385L], though there is a small number of Congressional Democrats who are not so hostile. See, e.g., Annie Karni & Stephanie Lai, *House Passes Police Funding Bills, with Democratic Rifts on Vivid Display*, N.Y. TIMES (Sept. 22, 2022), <https://www.nytimes.com/2022/09/22/us/politics/house-passes-police-funding-bills.html> [https://perma.cc/XPF4-4JKF].
95. In their classic 1977 text, Frances Fox Piven and Richard A. Cloward contended that disruption is the primary and limited tool for the poor to wrest changes from the state and elected officials. See FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL*, at xiii-xv (1977).
96. See generally DEVA R. WOODLY, *RECKONING: BLACK LIVES MATTER AND THE DEMOCRATIC NECESSITY OF SOCIAL MOVEMENTS* (2021) (exploring the Movement for Black Lives as a social movement with a political philosophy that has changed policy and public discourse); MANISHA SINHA, *THE SLAVE’S CAUSE: A HISTORY OF ABOLITION* (2016) (exploring the history of abolition and emancipation from the American Revolution to the Civil War); W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA, 1860-1880* (1935) (exploring the history of Reconstruction through the lens of Black and labor struggle).
97. Robert Brenner, *The Problem of Reformism*, *AGAINST THE CURRENT* 42 (Apr. 1993), <https://www.solidarityus.org/pdfs/cadreschool/rbrenner.pdf> [https://perma.cc/HS5D-VRHG].
98. *Id.*
99. E.g., Dylan Rodriguez, *Police Reform as Counterinsurgency*, in *ABOLITION FOR THE PEOPLE: THE MOVEMENT FOR A FUTURE WITHOUT POLICING & PRISONS* 154, 157 (Colin Kaepernick ed., 2021) (defining reformism as “the ideological and political position that fixates on reform as

political power and encourages an embrace of formal law and politics as the primary terrain of struggle.<sup>100</sup> When such efforts (almost inevitably) fail, it is for lack of trying, or the unpopularity or foolishness of the cause.

A growing body of research demonstrates the state is neither “neutral” nor “capable of being used by anyone.”<sup>101</sup> The state is dominated by the capitalist class, corporate power, organized money, and the rich.<sup>102</sup> Relying primarily on formal law and politics diverts attention from the work required to reconstitute politics and the economy. A member of the DSA and the L.A. Tenants’ Union explains: “[T]he fate of [the DSA] depends on whether or not it is willing to struggle with the working class where they are . . . over the long haul.”<sup>103</sup> Such

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the primary if not exclusive engine of social change/justice,” and a “soft form of counterinsurgency”). See generally KEVIN A. YOUNG, TARUN BANERJEE & MICHAEL SCHWARTZ, *LEVERS OF POWER: HOW THE 1% RULES AND WHAT THE 99% CAN DO ABOUT IT* (2020) (counseling for a redirection of social movement energy toward attacking corporate power). There is a growing body of scholarship criticizing criminal legal reform and how it has contributed to the expansion and consolidation of the prison-industrial complex. See, e.g., KAY WHITLOCK & NANCY A. HEITZEG, *CARCERAL CON: THE DECEPTIVE TERRAIN OF CRIMINAL JUSTICE REFORM* (2021); MAYA SCHENWAR & VICTORIA LAW, *PRISON BY ANY OTHER NAME: THE HARMFUL CONSEQUENCES OF POPULAR REFORMS* (2020); Alec Karakatsanis, *The Punishment Bureaucracy: How to Think About “Criminal Justice Reform,”* 128 *YALE L.J.F.* 848, 852 (2019). Parallel shifts are taking place in legal scholarly discussion of whether violence is integral to or departure from police function. See, e.g., Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 *GEO. L.J.* 1479, 1483, 1517-24 (2016); Devon W. Carbado, *From Stop and Frisk to Shoot and Kill: Terry v. Ohio’s Pathway to Police Violence*, 64 *UCLA L. REV.* 1508, 1551-52 (2017); India Thusi, *Policing Is Not a Good*, 110 *GEO. L.J. ONLINE* 227, 241, 247-50 (2022); Aya Gruber, *Policing and “Bluelining,”* 58 *HOUS. L. REV.* 867, 890-910 (2021).

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

101. Brenner, *supra* note 97, at 42.

102. See Kate Andrias, *Separations of Wealth: Inequality and the Erosion of Checks and Balances*, 18 *U. PA. J. CONST. L.* 419, 421 (2015) (“Organized wealth . . . [is] the key driving force in American politics.”); Gilens & Page, *supra* note 25, at 577 (“[M]ajorities of the American public actually have little influence over the policies our government adopts.”); K. Sabeel Rahman, *Democracy Against Domination: Contesting Economic Power in Progressive and Neorepublican Political Theory*, 16 *CONTEMP. POL. THEORY* 41, 54 (2017) (“[T]he modern state is generally more responsive to the economic elite, particularly on matters of economic policy.”); Bertrall L. Ross II, *A Constitutional Path to Fair Representation for the Poor*, 66 *U. KAN. L. REV.* 921, 923-24 (2018) (identifying a lack of political representation for the poor); Deva Woodly, *Critical Exchange, Political and Ethical Action in the Age of Trump*, 17 *CONTEMP. POL. THEORY* 331, 344 (2018) (“[O]ur regular electoral process routinely leaves some — usually white, upper-class men — on top, and others arrayed in an intersectional hierarchy that cascades below.”).

103. DSA Members, *America’s New Left*, 116/117 *NEW LEFT REV.* 118, 135 (2019).

“deep local organizing” is “arduous” and “time-consuming.”<sup>104</sup> Focusing on legislative or electoral battles distracts from building “sites of power independent of the political system” beyond a campaign cycle.<sup>105</sup>

The strongest version of the Marxist critique of the state sees the state at its essence as an instrument of class domination.<sup>106</sup> But the Greek sociologist and lawyer Nicos Poulantzas offered a more dynamic account refusing the state either as an object of class power (the strong Marxist account) or a neutral arbiter

104. *Id.* at 134-35.

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

The related idea that lawyers translating demands through litigation, lobbying, or legislation has an inherently conservatizing effect has been developed at some length in legal scholarship. One version of this critique has been in the context of rights and via the debate among critical legal scholars. See, e.g., Mark Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363, 1363-64 (1984); Alan D. Freeman, *Truth and Mystification in Legal Scholarship*, 90 YALE L.J. 1229, 1230-31, 1235 (1981); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2322 (1989); LIBBY ADLER, GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM (2018) (examining how LGBT equal-rights discourse encourages legal advocates to promote a more narrow range of goals); Wendy Brown & Janet Halley, *Introduction* to LEFT LEGALISM, LEFT CRITIQUE 1, 5-16 (Wendy Brown & Janet Halley eds., 2002) (distinguishing between left legalism and liberal legalism). For an approach rooted in left social movements, in particular with an abolitionist orientation, see Dean Spade, *Intersectional Resistance and Law Reform*, 38 SIGNS: J. WOMEN CULTURE & SOC'Y 1031, 1032-33 (2013). Another approach comes through the literature on law, lawyers, and social movements, and the role of courts therein. For a survey and rejoinder to the idea that courts are inefficacious and lawyers are unaccountable, see Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987, 1994 (2017); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 24-25 (1991); STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE 4 (1974); Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 472 (1976); and MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004). For arguments that the terrain of law is not necessarily more compromised than other terrains of politics or organizing, see Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection of Law and Organizing*, 48 UCLA L. REV. 443, 479-90 (2001); Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 939-42 (2007).

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

among varied interests (the liberal account).<sup>107</sup> He conceived of the state as a relation rather than a thing: a “material condensation (apparatus) of force between classes and fractions of classes as they are expressed in a specific manner.”<sup>108</sup> This meant that the state has some autonomous qualities—rather than a simple extension of ruling class power—in part due to competing interests among fractions of the ruling class. The state encompasses a set of variegated spaces and relations in which struggles are waged.<sup>109</sup> So too does the law “absorb” popular struggles and thus become “riven with social contradictions.”<sup>110</sup> While Poulantzas rejected the idea that the state was neutral and therefore could be used by anyone toward any end, he believed popular struggles could shift the balance of power in ways that were absorbed by the state. The question for Poulantzas, and for many on the left, is how to create ruptures or breaks within the political, economic, social order for deep transformation.

The intimate relationship between the state and the ruling class suggests that pursuing reforms as a primary or exclusive strategy for any movement or party

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107. Rafael Khachaturian, *The State as Social Relation: Poulantzas on Materiality and Political Strategy*, in RESEARCH HANDBOOK IN LAW AND MARXISM 173, 175-76 (Paul O’Connell & Umut Özsu eds., 2021) (arguing Poulantzas challenged the Leninist conception of the state as an object—a blunt instrument for class rule—with no autonomy as to the ruling class and the social democratic vision of the state as having autonomy, “a neutral arbitrator between contending classes,” able to “incorporate working class interests into a pluralist consensus”).
108. Nicos Poulantzas, *The Political Crisis and the Crisis of the State*, in THE POULANTZAS READER: MARXISM, LAW, AND THE STATE 294, 307-08 (James Martin ed., 2008). Poulantzas “advanced a conception of the capitalist state as a constellation of social forces and powers, to which the class struggle was immanent.” Khachaturian, *supra* note 107, at 175-76. Poulantzas explained the state under capitalism works to organize the dominant classes and to disorganize the dominated classes. POULANTZAS, *supra* note 41, at 127 (explaining that the state “represents and organizes the dominant class or classes”); *id.* at 140 (explaining that the state “disorganiz[es] and] divid[es] the dominated classes”).
109. POULANTZAS, *supra* note 41, at 11-27; *see also* RALPH MILIBAND, THE STATE IN CAPITALIST SOCIETY 49-53 (1969) (differentiating between “the government” and “the state,” and enumerating that beyond the government, the state is composed of administrative and bureaucratic bodies, the military and the police, courts and judges, and “various units of subcentral government”).
110. Khachaturian, *supra* note 107, at 181-83. “Poulantzas understood law (the state’s juridico-political structures) as a central element in the organization of hegemony and as a technique for the creation of cohesion and consensus, both within the power bloc and between the power bloc and the dominated classes.” *Id.* at 181. Poulantzas rejected reformism and emphasized “that a transition to democratic socialism would be brought about by a ‘stage of real breaks, the climax of which—and there has to be one—is reached when the relationship of forces on the strategic terrain of the State swings over to the side of the popular masses.’” *Id.* at 186 (quoting POULANTZAS, *supra* note 41, at 258-59); *see also* John Whitlow, *If You Can Unmake It Here: Crisis, Contingency, and Law in the Making and Unmaking of Neoliberal New York*, 121 S. ATL. Q. 339, 346-50 (2022).

that seeks fundamental transformation is inherently concessionary.<sup>111</sup> But while working toward reforms risks “corruption or quenching of the work for the long-term goal” of transformation, renouncing reforms may be “paralysing to action.”<sup>112</sup> This widely understood tension on the left leads to engagement with reform projects, and the necessity of a framework for pursuing reforms understood as part of a fundamental struggle for power.

### B. *Non-Reformist Reforms*

The basic formulation of the non-reformist reform is twofold. First, a non-reformist reform aims to undermine the political, economic, and social system or set of relations as it gestures at a fundamentally distinct system or set of relations in relation or toward a particular ideological and material project of world-building.<sup>113</sup> Second, a non-reformist reform draws from and builds the popular strength, consciousness, and organization of revolutionary or agential classes or coalitions—most clearly, in doctrinaire Marxism, for example, the working class.<sup>114</sup> It is part of a democratic project.<sup>115</sup>

Embedded in the concept is a theory of change: a criticism of the prevailing political, economic, and social system or set of relations, who benefits from it, and at whose expense, and how; a horizon for a radical new state, society, or

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

112. MATHIESEN, *supra* note 83, at 231.

113. ANDRÉ GORZ, *STRATEGY FOR LABOR: A RADICAL PROPOSAL* 7 (Martin A. Nicolaus & Victoria Ortiz trans., Beacon Press ed. 1967) (1964); *see also* Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 *HARV. L. REV. F.* 90, 103-06 (describing three “hallmarks of non-reformist reform”); Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 *UCLA L. REV.* 1544, 1553, 1560 (2022) (describing abolitionist non-reformist reforms); Chris Maisano, *supra* note 4 (arguing that socialists should embrace reforms with “revolutionary implications,” that “increase the practical power of marginalized groups and make it easier for those oppressed groups to assert influence going forward in political life”).

114. NANCY FRASER & RAHEL JAEGGI, *CAPITALISM: A CONVERSATION IN CRITICAL THEORY* 146 (2018) (“The traditional Marxist idea was that class struggle is the most characteristic and potentially emancipatory form of conflict in capitalist society.” (emphasis omitted)). A common articulation on the racial-justice left is that of directly impacted people or “[t]he people closest to the problem are closest to the solution.” *Tara Raghuvver on Hijacking Kansas City's Elections by Being Ruthless About Basebuilding*, *CRAFT OF CAMPAIGNS* PODCAST, at 12:25 (Nov. 22, 2022).

115. *See* MILIBAND, *supra* note 45, at 4 (defining “radical reform” as “measures of reform which are intended to make a serious indent into one or other aspect of the social order, again in democratic and egalitarian directions”).

world; and an evolving praxis of how to bridge the two.<sup>116</sup> For example, labor organizer Jane McAlevey distinguishes among advocacy, mobilizing, and organizing. Advocacy involves elites, “lawyers, pollsters, researchers, and communications firms”; mobilizing involves “dedicated activists who show up over and over at every meeting and rally for all good causes”; and organizing builds “a continually expanding base of ordinary people, a mass of people never previously involved,” with the “primary goal” to “transfer power from the elite to the majority.”<sup>117</sup> McAlevey differentiates modes of praxis here, but folded within each of her descriptions is a theory of social change. Whereas advocacy and mobilizing are more in sync with liberal legal conceptions, organizing is aligned with left theories that envision a transformation of state and society, not simply as a matter of substance, but in terms of who holds power and who governs.<sup>118</sup>

In the 1960s, French Austrian philosopher André Gorz made his essential contribution to Marxist theories of social change by coining the term “non-reformist reform.”<sup>119</sup> His criticism was focused on capitalism and his horizon on socialism: “no less than the hegemony of the working class, the public ownership of the means of production.”<sup>120</sup> Because capitalism would not buckle of its own contradictions or due to spontaneous working-class revolt, the challenge was “link[ing] the struggle for socialism to the everyday demands of . . . workers;”<sup>121</sup> to make manifest “what socialism can bring” and to establish “intermediate objectives by means of which socialism can be seen as possible.”<sup>122</sup> The contradictory valence of reform emerged from a question of praxis: is it “possible from within [capitalism] . . . to impose anti-capitalist solutions which will not immediately be incorporated into and subordinated to the system?”<sup>123</sup>

The non-reformist reform is democratic in character. Gorz explained that not only must a non-reformist reform be “implemented or controlled by those who

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116. See generally LUXEMBURG, *supra* note 77 (“Between social reforms and revolution there exists for the social democracy an indissoluble tie. The struggle for reforms is its means; the social revolution, its aim.”).

117. MCALEVEY, *supra* note 50, at 9-12.

118. In practice, left movement formations often deploy some mix or all of these. In McAlevey’s view, there is no short cut for organizing, and overreliance on advocacy and mobilizing are “short cuts,” that she argues are ultimately ineffectual. *Id.* at 2

119. GORZ, *supra* note 113; André Gorz, *The Way Forward*, 52 NEW LEFT REV. 47 (1968) [hereinafter Gorz, *The Way Forward*]; André Gorz, *Reform and Revolution*, 5 SOCIALIST REG. 111 (1968).

120. GORZ, *supra* note 113, at 11.

121. *Id.* at 5-6.

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

123. *Id.* at 6.

demand it,” it “requires the creation of new centers of democratic power.”<sup>124</sup> This would entail, he went on, the “decentralization of the decision-making power, a restriction on the powers of State or Capital, an extension of popular power, that is to say, a victory of democracy over the dictatorship of profit.”<sup>125</sup> He called for something broader and deeper than a version of democracy limited to the vote or electoral politics. He spoke of power for workers against “Capital” and within and over “agriculture, the university, property relations, the region, the administration, the economy . . . companies, schools, municipalities . . . [and] large enterprise.”<sup>126</sup>

The terrain of the struggle Gorz described is not limited to law and the state, but a broader set of arenas where political, economic, and social relations take shape. Non-reformist reforms must engage the market, the economy, and the social head on. Gorz’s account of non-reformist reforms, then, has less to do with the law or the state per se, than a more expansive account of remaking a broader set of rules, relations, and institutions through which we live. This is “a strategy of progressive conquest of power by the workers,” he explained, that does not “exclude the possibility or even the necessity for a revolutionary seizure of power at a later stage.”<sup>127</sup>

Almost fifty years later, Ruth Wilson Gilmore called for non-reformist reforms in the context of prison abolitionist struggles.<sup>128</sup> In her many writings, Gilmore centers the prison as a central site in the struggle against racial capitalism.<sup>129</sup> For Gilmore, non-reformist reforms are “changes that, at the end of the

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124. *Id.* at 8 n.3.

125. *Id.* (emphasis omitted).

126. *Id.* at 8 nn.3 & 10.

127. *Id.* at 10–11; MILIBAND, *supra* note 45, at 4 (noting that an orientation toward revolution “does not reject the struggle for reform, but sees it as a preparation for a seizure of power based on an insurrectionary popular upheaval”). Mathiesen also suggested that an aspect of the process is opening up terrains of struggle: there will always be more to abolish. MATHIESEN, *supra* note 83, at 232. This echoes or refracts not simply Gorz’s progressive-conquest concept but also Davis’s concept of freedom as a constant struggle. ANGELA Y. DAVIS, *FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT*, at xi–xii (2016).

128. GILMORE, *supra* note 33, at 242; see also Ruth Wilson Gilmore & Craig Gilmore, *Restating the Obvious*, in *INDEFENSIBLE SPACE* 141, 141 (Michael Sorkin ed., 2008) (speaking of non-reformist reforms in terms of how to “change what the state is”).

129. Another key intellectual in the context of prison abolition is Thomas Mathiesen. In his writings, Mathiesen drew on his experience working for prison abolition in the 1960s and 1970s in Sweden, Norway, and Denmark. MATHIESEN, *supra* note 83, at 5–11, 231–32. Mathiesen’s works are important to understanding reform struggles in the context of prison abolitionist commitments, but they appear to be less central than Gilmore’s work in the United States.

day, unravel rather than widen the net of social control through criminalization.”<sup>130</sup> By using the word “changes,” like Gorz, she makes the case for a capacious view of reform and power, not simply focused on the state or formal law.<sup>131</sup> People must “develop[] capacities in organizations” and “combine[]” with other collective formations to “shake the ground.”<sup>132</sup> The task for movements is “to go deeply into the state in all its aspects – its legitimacy, the ideological apparatuses it wields to normalize the everyday horror of mass incarceration, its budget process, its inner contradictions, its intrastate antagonisms and frictions.”<sup>133</sup> These are places where people are “struggling to piece together lives torn apart by poverty, illness, undereducation, war, long-distance migration, flight. Here, where we fight, is where the state is.”<sup>134</sup> It is through these struggles that people build dynamic understandings of the state and their own power as they attempt to remake state, society, and themselves.

Most recently, the contemporary Indigenous organization The Red Nation has developed the richest social movement account of non-reformist reforms attendant to racism, capitalism, and colonialism.<sup>135</sup> Their materials assert that fighting prison and police are central but insufficient proxies for the entire ideological and material battle with capitalism and colonialism.<sup>136</sup> The organization rebukes reforms as “attempts to treat the symptoms of a crisis” and reformists as those who “compromise our future by aligning with the interests of the ruling class.”<sup>137</sup> But the organization refuses to “relinquish the power of state institutions” and “the sheer resources available to humanity” that the state has the potential to wield.<sup>138</sup> Thus, the organization advocates for a program of “non-reformist reform” that “has the abolition of capitalism via revolution as its central

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130. GILMORE, *supra* note 33, at 242.

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

132. *Id.* at 248. Gilmore often repeats the commandment to organize. See, e.g., Ruth Wilson Gilmore, *What Is to Be Done?*, 63 AM. Q. 245, 258, 262 (2011) (“Organize.”).

133. Gilmore & Gilmore, *supra* note 128, at 159.

134. *Id.*

135. The organization formed in 2014 to redress the erasure of “Native struggles within mainstream social justice movements, and to speak out and fight against the ongoing destruction of Native life and land.” House Organ, *Native Liberation Struggles in North America: The Red Nation 10-Point Program*, 26 CAPITALISM NATURE SOCIALISM 1, 2 (2015).

136. Their early ten-point program explains that “[p]olitical possibilities for Native liberation . . . can only emerge from directly challenging the capitalist-colonial system of power through collective struggle and resistance.” *Id.* at 6.

137. THE RED NATION, *RED DEAL: INDIGENOUS ACTION TO SAVE OUR EARTH* 36–37 (2021).

138. *Id.* at 40.

goal.”<sup>139</sup> Its “philosophy of reform” is focused on “reallocat[ing] social wealth back to those who actually produce it: workers, the poor, Indigenous peoples, the Global South, women, migrants, caretakers of the land, and the land itself.”<sup>140</sup> This articulates a broad conception of the agential class that extends far beyond any traditional Marxist conception of the working class.

The Red Nation’s non-reformist reforms center its multiple commitments to prison abolition, anticapitalism, anticolonialism, communism, and queer Indigenous feminism.<sup>141</sup> Their non-reformist reforms will include “grassroots Indigenous seed bank networks where thousands of sustainable farmers, share, trade, and feed their communities,” “runs for city council elections where left candidates implement a people’s platforms for climate and social justice,” and “land back camps or tribal council resolutions that reject colonial water settlements by banding with other Indigenous nations to blockade all government and corporate efforts to commodify water.”<sup>142</sup> Here, the Red Nation gestures at an ambitious agenda of emancipation. Equally important, they signal an expansive understanding of necessary action: one beyond organizing for legislation, executive orders, and court orders. Their non-reformist reforms, in essence, include any strategy or tactic that aims to undermine the prevailing order, build a new one, contribute to the organization of the oppressed classes, and remake political, economic, social relations. Minimally, this view suggests a theory of social change that cabins law and legal process to a tactical terrain of action. It counsels against fetishizing or reifying the legal process, legalism, or the state as worthy of distinct or primary concern. Maximally, it threatens to dissolve any particularly important place for law or legal process within emancipatory struggle.

### C. “Multiple Grammars of Struggle”

One advantage of the heuristic of non-reformist reform is precisely that it does not require a completely shared vision for the future. In its capaciousness, it allows for diverse coalitions to come together who share some goals or agree to take some steps together.<sup>143</sup> But whether a social movement formation embraces reform or non-reformist reform as a strategy to build power depends on any number of ideological, strategic, and tactical questions. Across the left social-

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139. *Id.* at 21.

140. *Id.* at 37-38.

141. THE RED NATION, COMMUNISM IS THE HORIZON, QUEER INDIGENOUS FEMINISM IS THE WAY (2020) [hereinafter THE RED NATION, COMMUNISM IS THE HORIZON]; see House Organ, *supra* note 135, at 1; THE RED NATION, *supra* note 137.

142. See THE RED NATION, *supra* note 137.

143. Kate Redburn and Erin Murphy helped me to see this.

movement ecosystem, organizations engage in what #StopCopCity activists have dubbed “multiple grammars of struggle.”<sup>144</sup> Campaigns include organizations juggling frames of analysis and theories of social change – racial justice, anticapitalism, antiracial capitalism, anti-neoliberalism, gender justice, disability justice. They encompass multiple political tendencies including anarchist, communist, and more state-oriented socialist projects and strategies.<sup>145</sup>

The Red Nation’s view that “communities face state violence daily, a violence that holds us hostage, forcing us to engage with [the state]” is widely shared.<sup>146</sup> But the nature of the engagement varies. I have heard anarchist organizers explain that they will only engage in battles against the reach of the state – demanding the state release an incarcerated person or to defund the police, for example – but they hesitate to make affirmative demands. The Latinx and Chicana movement hub Mijente distinguishes between organizing within, against, and without the state<sup>147</sup>: “contesting for power within the state,” “defending our communities against the state,” and “dreaming beyond the state . . . to imagine new forms of governance that bring us closer to abolitionist futures . . . and to build the skills, relationships and infrastructure needed to increase our collective chances of survival and well-being.”<sup>148</sup> The context of housing illustrates this distinction. Contesting power within the state might include campaigns to cancel rent, establish tenant protections, and guarantee homes; contesting power

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144. “Multiple Grammars of Struggle” – To Defend the Atlanta Forest and Stop Cop City, MILLENNIALS ARE KILLING CAPITALISM (Oct. 7, 2022), <https://millennialsarekillingcapitalism.libsyn.com/multiple-grammars-of-struggle-to-defend-the-atlanta-forest-and-stop-cop-city> [https://perma.cc/BK3M-YYT9] (an activist by the name of Paul uses the phrase in the podcast).

145. *Abolition & the State: A Discussion Tool*, INTERRUPTING CRIMINALIZATION 5 (2022), <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/63743b68cd71d319d5229a6f/1668561795501/Abolition+and+the+State.pdf> [https://perma.cc/5MVX-MSEX] (“[T]here is a diversity of perspectives about which forms of governance and what relationship(s) to state power, state institutions, and levels of state government get us closer to the world we want.”).

146. THE RED NATION, COMMUNISM IS THE HORIZON, *supra* note 141, at 15.

147. Mijente, *Building Sin, Contra y Desde El Estado*, YOUTUBE (Apr. 13, 2022), <https://www.youtube.com/watch?v=NoN57mNL2Y8> [https://perma.cc/QP5N-TF3Y]; see also MICHAEL HARDT & ANTONIO NEGRI, ASSEMBLY 234 (2017) (theorizing the requirement for left social movement and party organizations for “being *inside*, that is, effectively immersed in social reality, and being *against* capitalist reality and the forms of command that block the potential of the multitude”).

148. *Abolition & the State: A Discussion Tool*, *supra* note 145, at 24 (citing *¿Sin el Qué?*, MIJENTE (Mar. 10, 2020), <https://mijente.net/2020/03/sin-el-que> [https://perma.cc/5ZK7-A4QM]). To illustrate the distinction with regard to housing: contesting power within the state might include campaigns to cancel rent, establish tenant protections, and guarantee homes; against the state might include physical blockades and occupations of housing court, disrupting eviction proceedings; beyond the state might include occupations of abandoned homes or land, or building mutual aid networks. For more examples, see Mijente, *supra* note 147.

against the state might include physical blockades and occupations of housing court to delay eviction proceedings; and contesting power beyond the state might include occupying abandoned homes or land, engaging in rent strikes against landlords, or building mutual aid networks.<sup>149</sup> Organizations within the same campaign or coalition may even deploy all these tactics in overlapping and crisscrossing ways.

There is also the question of priority among strategies and tactics. Anarchists, for example, see mutual aid<sup>150</sup> and prefigurative projects<sup>151</sup> as constitutive for building a horizontal society. But state-oriented socialists and communists tend to be more skeptical and deprioritize mutual aid and prefigurative projects.<sup>152</sup> The scholar Jackie Wang explains this tension:

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149. For more examples, see Mijente, *supra* note 147.

150. For a powerful treatment of mutual aid, see DEAN SPADE, *MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT)* (2020). See also WILLIAM C. ANDERSON, *NATION ON NO MAP: BLACK ANARCHISM AND ABOLITION* (2021) (theorizing abolitionist struggles with a focus on Black anarchist politics and thinkers).

151. Prefiguration is a strategy and tactic of “enacting a desired future in the present.” Cohen & Morgan, *supra* note 28, at 11. Rather than “litigation, legislation, and electoral politics,” prefiguration is a method of social change that “does not entail a great rupture miraculously coordinated from above or a revolutionary ground swelling from below” but “the accumulation of millions of everyday practices that presuppose current socio-economic structures and yet call forth new social worlds.” *Id.* at 3; see also Sameer M. Ashar, *Pedagogy of Prefiguration*, 132 *YALE L.J.F.* 869, 877 (2023). For a helpful explication of the centrality of prefiguration within Occupy Wall Street, and a criticism of the overreliance on prefiguration, see JONATHAN MATTHEW SMUCKER, *HEGEMONY HOW-TO: A ROADMAP FOR RADICALS* 115-43 (2017).

152. Many DSA members see within their work the defense of existing experiments of prefiguration. As some DSA members put it: workers councils, left union caucuses, neighborhood assemblies, and Cooperation Jackson are “prefigurative forms across the terrain of social struggle” that the DSA must “find a way to weave [] together into a common complex that prefigures tomorrow’s socialism today.” Antje Dieterich, Daniel Gutiérrez & Victor Hertzfeld, *On Reforms and Revolutions*, *NEW POL.* (Sept. 27, 2017), <https://newpol.org/reforms-and-revolutions> [<https://perma.cc/64NQ-YKA3>].

Cooperation Jackson is “a network of cooperatives and worker-owned, democratically self-managed enterprises,” in Jackson, Mississippi. COOP. JACKSON, <https://cooperationjackson.org> [<https://perma.cc/WJ4B-R2L5>]; see also Kali Akuno, *Build and Fight: The Program and Strategy of Cooperation Jackson*, in *JACKSON RISING: THE STRUGGLE FOR ECONOMIC DEMOCRACY AND BLACK SELF-DETERMINATION IN JACKSON, MISSISSIPPI* 3 (Kali Akuno & Ajamu Nangwaya eds., 2017) (detailing the ideological framework and program strategy behind Cooperation Jackson); Kali Akuno *on Cooperation Jackson and Solidarity in Jackson, Mississippi and Beyond*, *YOUTUBE* (Feb. 15, 2018) <https://www.youtube.com/watch?v=36UcFcxCckM> [<https://perma.cc/8ERA-76WW>]; Bernard E. Harcourt, *Cooperation Jackson: History, Theory, Praxis*, *COLUM. L. SCH.* (Oct. 2, 2022), <https://blogs.law.columbia.edu/utopia1313/bernard-e-harcourt-cooperation-jackson-history-theory-praxis> [<https://perma.cc/XL9Q-PSYM>] (analyzing the theory, history, and practice of Cooperation Jackson).

The anarchist part of me believes that mutual aid is necessary for building collective social bonds, for experimenting with new forms of life, and modes of being together, modeled on community and care. The pragmatist replies that not everything can be solved with mutual aid, given the level of investment required to address environmental racism and upgrade our crumbling toxic infrastructure.<sup>153</sup>

There are also debates about whether to prioritize engagement with the state over building worker and other form of collective power. Within the DSA, for example, some push to work with the Democratic Party while others emphasize the need to establish an independent workers party.<sup>154</sup>

### III. ACTUALLY EXISTING SITES OF STRUGGLE

It is in the places where people experience and organize around conflicts over dignity and resources, life and death, that mass insurgency must grow. In this Part, I identify prevailing winds of contemporary protest and organizing with which law faculty, lawyers, legal workers, and students interested in emancipation should engage. The three intersecting areas are abolition and decarceration; decolonization and decommmodification; and democratization.<sup>155</sup> Abolitionist

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153. *Abolition & the State: A Discussion Tool*, *supra* note 145, at 15. Wang continues:

Part of me believes the state will always be repressive and should be overthrown . . . part of me thinks that if we are stuck with the state, we should demand Medicare for all, social housing, free college, the cancellation of student debt, and so forth. The anarchist part of me thinks we should abolish the family. The pragmatist thinks that cash payments to families could go a long way in ending child poverty. The pragmatist thinks a federal-jobs guarantee could help a lot of people, the anarchist retorts that we should abolish work itself.

*Id.*

154. See, e.g., Charles Post, *What Happened to the “Dirty Break”: The Evolution of a Socialist Electoral Strategy*, SPECTRE J. (Sept. 17, 2021), <https://spectrejournal.com/what-happened-to-the-dirty-break> [<https://perma.cc/VF9V-8D8C>] (reporting that at the 2021 DSA national convention a motion to eventually form “an independent workers party” was defeated 435 in favor and 569 opposed); Eric Blanc, *We Should Focus on Scaling Up Working-Class Power, Not Debating the Dirty Break*, SOCIALIST CALL (Aug. 6, 2021), <https://socialistcall.com/2021/08/06/dsa-dirty-break-electoral-strategy> [<https://perma.cc/X3LY-7F72>].

155. See generally Robin D.G. Kelley, Robyn Maynard & Leanne Betasamosake Simposon, *Afterword to REHEARSALS FOR LIVING* 269 (2022) (noting that abolition and decolonization have become “popular, irresistible slogans”). Attending to existing sites of struggle may also highlight linkages not otherwise obvious. See, e.g., Daniel Aldana Cohen & David Bond, *Toward a Theory of Climate Praxis: Confronting Climate Struggle in a World of Struggle*, in CRISIS UNDER CRITIQUE: HOW PEOPLE ASSESS, TRANSFORM, AND RESPOND TO CRITICAL SITUATIONS 271, 280, 288 (Didier Fassin & Axel Honneth eds., 2022) (identifying how in post-Sandy New

campaigns across the country take on mass criminalization as antithetical to a just and equal society, and make calls for investments in communities and non-carceral state capacity. Campaigns to decommodify and decolonize center the needs of people and the planet over profit and private property. Democratization campaigns expand democracy far beyond a narrow or siloed conception of politics, with labor organizing and the economy a key front.

These three areas embody an aspiration to disrupt aspects of our juridical order and its fealties to the prison and the market. Within each, there are campaigns at the local, state, and federal level. Each has some broad appeal in the public and across domains of social-moment activity. Each builds on popular insurgencies.

Together, these campaigns reveal a larger concern with building a state, market, and/or society responsive to popular input and human and planetary need. They are necessary if incomplete components of a larger strategy to chip away at pillars of the state captured by the capitalist class and prison-industrial complex.<sup>156</sup> These campaigns refuse the division between politics and the economy essential to liberal conceptions of state and law, and the elevation of the economy over politics essential to neoliberal conceptions. Given the almost theatrical display of the relationship between economic and political power embodied by oligarchic figures like Jeff Bezos or the Koch brothers, attempting to maintain a sharp distinction between politics and the economy is increasingly hard to reconcile with any vision of emancipatory politics.<sup>157</sup>

In my view, the campaigns below are within the domain of non-reformist reforms. But such assessments are better made by collective social-movement

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York, local residents tied climate crisis to housing: “Housing precarity was as existential a threat as climate extremes – and the two had just merged”).

156. For an example of the underlying analysis, see Andrea J. Ritchie, *The Demand Is Still Defund the Police*, *ABOLITIONIST* 1, 3 (2021), [https://abolitionistpaper.files.wordpress.com/2021/12/abby\\_issue\\_35\\_english-web-1.pdf](https://abolitionistpaper.files.wordpress.com/2021/12/abby_issue_35_english-web-1.pdf) [<https://perma.cc/KB8M-JYP3>], which states that “neoliberal policies gut the social safety net and loot the commons for private profit, causing widespread unemployment, poverty, and homelessness. The fallout of these economic policies is met with increased criminalization . . . more and more police . . . jails and prisons.”
157. See generally Maisano, *supra* note 4 (“Socialists [of the early twentieth-century Socialist Party] understood all the elements of their agenda as critically about power building. How do you create a society in which those most oppressed have the material and political capacity to impose their interests and gain equal and effective freedom? For this reason, they didn’t necessarily separate between economic demands and constitutional demands. An eight-hour day and strong protections for unionizing and the right to strike all increased the bargaining power of workers at the point of production. Similarly, democratic alterations to the constitutional system, like simplifying the amendment process or abolishing the Senate, also enhanced the bargaining power of workers, but in the political system. Each reform shifted the basic distribution of power in the society and made it harder for business and racial elites to dominate either economic or legal-political life.”).

formations than by an academic in the *Yale Law Journal*. Such assessments require an analysis of conditions and power in the time and place in which an organization or campaign intervenes. They require debate. That the debate should sharpen collective strategy and tactics—collective power and consciousness even—is constitutive to the concept of non-reformist reform itself.

Moreover, the lines between reformist and non-reformist efforts are blurry. The same demand may look non-reformist from one point of view and reformist from another; non-reformist when proposed and reformist down the line. The same demand within a campaign may be fought for in reformist and non-reformist ways. Imagine a campaign calling for a five-percent cut of a multibillion dollar budget for the police.<sup>158</sup> Within the coalition backing that demand, you might find an abolitionist organization advocating the cut as a step toward prison and police abolition, while a reformist organization hopes the cut will recalibrate police function to a proper, somewhat diminished level. The abolitionist organization might emphasize the fundamental violence and illegitimacy of the police, while the reformist one might emphasize the need to reestablish police legitimacy. The abolitionist organization may disrupt city hall as it organizes people to voice their support for the campaign through phone calls to city council, while the reformist organization testifies in the hearing and disavows disruption. Given the immensity of police budgets in the United States, if won, such a campaign could make a real impact in the lives of ordinary people. But the demand is non-reformist only to the extent the campaign is undertaken as a strategic step in a larger ongoing struggle.

The slippery nature of the non-reformist reform is about intersecting and conflicting structures of domination and who assesses the demand, where, and for what purposes. It is also about the necessary relationship of any reform to ongoing and dynamic power struggles among dominated and dominant classes. Tension inevitably exists between grammars of struggle. A key set of debates, for example, resides within the compatibility of demands for rights or even popular power within the settler state and demands for decolonization or indigenous sovereignty.<sup>159</sup>

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158. Akbar, *supra* note 10, at 470 (discussing the LA for Youth campaign calling for such a budget cut from the police and sheriff's offices and an investment in youth programs).

159. See, e.g., Eve Tuck & K. Wayne Yang, *Decolonization Is Not a Metaphor*, 1 *DECOLONIZATION: INDIGENEITY EDUC. & SOC'Y* 1, 23 (2012) (recognizing an “incommensurability” between decolonial and other agendas: “The pursuit of worker rights (and rights to work) and minoritized people’s rights in a settler colonial context can appear to be anti-capitalist, but this pursuit is nonetheless largely pro-colonial”); KAI BOSWORTH, *PIPELINE POPULISM: GRASSROOTS ENVIRONMENTALISM IN THE TWENTY-FIRST CENTURY* 29 (2022) (“Reclaiming popular sovereignty (the ‘power of the people’) presumes a form of politics that risks erasing historical

My identification of prevailing winds cannot be conclusive, not least because, as the early months of the pandemic illustrated, the world can change dramatically—and in response to changing conditions, the types of protests and demands that emerge will also change and look differently from place to place. But the areas I highlight are long-standing focal points within emancipatory struggles. I therefore offer the assessment to provoke thinking about the sort of non-reformist reform projects legal scholars may pursue in alignment with such movement. The work of political, economic, social transformation, after all, is “a project for an emerging counterhegemonic bloc of social movements.”<sup>160</sup>

### A. Abolition and Decarceration

Prison-industrial complex (PIC) abolitionist organizing has become a center of gravity for social movement campaigns all over the country. Campaigns make demands to remove the police from school and university campuses and to shut down jails and prisons old and new.<sup>161</sup> Heuristics like “invest-divest” or “defund police, fund communities” have been featured in policy platforms, local campaigns, and protest signage.<sup>162</sup>

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difference by accepting that although settler colonialism must be critiqued, it can be superseded by a state that lives up to its ideals.”). For a discussion of the focus on such tension within legal scholarship, see Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1787, 1847 (2019), which states that “[r]ights-based frameworks, generally aimed at integration, were not only insufficient to protect Native Nations: they were used to further the colonial project.” Cf. ROBYN MAYNARD & LEANNE BETASAMOSAKE SIMPSON, REHEARSALS FOR LIVING 229 (2022) (“In an anti-Black colony like Canada, it’s not possible to talk about decolonization or to organize and mobilize around decolonization without simultaneously supporting abolition and the total annihilation of the enduring legacy of slavery in all state institutions.”); Manu Karuka, *Black and Native Visions of Self-Determination*, 3 CRITICAL ETHNIC STUD. 77, 92 (2017) (“Concrete connections between Black Lives Matter, #NoDAPL, and Environmental Justice activists are building interlocking infrastructures of Black liberation and Indigenous resurgence to remake this continent as a place of Indigenous and Black flourishing.”).

160. FRASER & HONNETH, *supra* note 61, at 86; *see also* GILMORE, *supra* note 33, at 247-48 (describing the need to combine activist experiments and formations as a way of building power and achieving scale).

161. *The Demand Is Still Defund the Police: Lessons from 2020*, INTERRUPTING CRIMINALIZATION (2021), <https://www.interruptingcriminalization.com/s/DefundThePoliceUpdate.pdf> [<https://perma.cc/385L-YTNS>].

162. *See* Akbar, *supra* note 10, at 430-34; Amna A. Akbar, *How Defund and Disband Became the Demand*, N.Y. REV. (JUN 15, 2020), <https://www.nybooks.com/online/2020/06/15/how-defund-and-disband-became-the-demands> [<https://perma.cc/VZ7N-TBWQ>]; Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781 (2020); Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN. L. REV. ONLINE 120, 122 (2021); Anthony O’Rourke, Rick Su &

Through decades of campaigns against carceral infrastructure, prison-abolitionists have demarcated an approach that focuses on reducing the scale and power of the carceral state.<sup>163</sup> In popular education tools, the prison abolitionist organization Critical Resistance has differentiated between a “reformist reform[]” that “expand[s] the reach of policing” and an abolitionist step that dents the scale or legitimacy of the police, or the money, tools, and technology at their disposal.<sup>164</sup> Mainstay reforms like training or the purchasing of technology like body cameras or Tasers are reformist for how they legitimize and expand policing. Abolitionist steps take the shape of limiting police jurisdiction or suspending or refusing to hire police who engage in excessive force. For example, efforts to remove police from schools and universities limits police jurisdiction,<sup>165</sup> just as investments in the social wage in the form of education, housing, and health preempts the perceived need for police later.<sup>166</sup>

*Stop Cop City.* The grassroots #StopCopCity campaign in Atlanta is an illustrative example of a non-reformist reform in its aims, strategies, and tactics. The ongoing campaign builds on the growing popular consciousness around police

Guyora Binder, *Disbanding Police Agencies*, 121 COLUM. L. REV. 1327, 1328-30 (2021); Rick Su, Anthony O’Rourke & Guyora Binder, *Defunding Police Agencies*, 71 EMORY L.J. 1197, 1198-1200 (2022).

163. Rachel Herzing, *Let’s Reduce, Not Reform, Policing in America*, OPEN SOC’Y FOUNDS. (Oct. 6, 2016), <https://www.opensocietyfoundations.org/voices/let-s-reduce-not-reform-policing-america> [<https://perma.cc/76QD-JGT5>] (arguing that rather than improving policing we should focus our efforts on reducing policing); Mariame Kaba, Opinion, *Police “Reforms” You Should Always Oppose*, TRUTHOUT, Dec. 7, 2014, <https://truthout.org/articles/police-reforms-you-should-always-oppose> [<https://perma.cc/R294-88YU>]; Janaé Bonsu, *Beware of Police “Reforms” That Reinforce the Very System Killing Us*, IN THESE TIMES (June 12, 2020) <https://inthesetimes.com/article/22593/defund-police-reforms-abolition-black-lives-matter-racism> [<https://perma.cc/8EMH-UB2A>]. For a scholarly take on the power of the sheriff to define the criminal law, see Aaron Littman, *Jails, Sheriffs, and Carceral Policymaking*, 74 VAND. L. REV. 861, 865-66 (2021).
164. *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE [https://static1.squarespace.com/static/59ead8f9692ebee25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR\\_NoCops\\_reform\\_vs\\_abolition\\_Crside.pdf](https://static1.squarespace.com/static/59ead8f9692ebee25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_Crside.pdf) [<https://perma.cc/B8UL-7PFP>].
165. See Fanna Gamal, *The Miseducation of Carceral Reform*, 69 UCLA L. REV. 928, 936 (2022) (analyzing demands to divest from incarceration and invest in public education from the perspective of public schools).
166. Detention Watch Network, a network of organizations organized around abolishing immigrant detention, released its own chart delineating abolitionist steps from reformist reforms in the project of ending immigrant detention. See *Ending Immigration Detention: Abolitionist Steps vs. Reformist Reforms*, DET. WATCH NETWORK 1, [https://www.detentionwatchnetwork.org/sites/default/files/Abolitionist%20Steps%20vs%20Reformist%20Reforms\\_DWN\\_2022.pdf](https://www.detentionwatchnetwork.org/sites/default/files/Abolitionist%20Steps%20vs%20Reformist%20Reforms_DWN_2022.pdf) [<https://perma.cc/E4HN-R9JD>]. In contrast to reformist reforms, abolitionist steps “mov[e] us closer to liberation by chipping away at ICE enforcement and incarceration.” *Id.* For an abolitionist critique of the right to counsel in deportation proceedings, see Cházaro, *supra* note 7.

capture of local budgets and raises fundamental questions about the relationship among the state, police, and capital. Over the last few years, the campaign has brought together a range of activists, organizers, and community members, including the Black-led Community Movement Builders, the Atlanta DSA, the South River Forest Coalition, Defend the Atlanta Forest, and Muscogee Creek peoples.<sup>167</sup> This dynamic coalition cannot easily be captured by any schematic. But the challenge the coalition poses to Cop City is irreducibly radical in potential for how it posits the police training facility as a municipal development project against the health of the land and the people, while it mobilizes people in Atlanta and around the country against the project.

In June 2021, the city council announced its intention to collaborate with the Atlanta Police Foundation to build a police training facility in unincorporated DeKalb County, a predominantly Black, poor, and working-class community.<sup>168</sup> The Foundation says the facility will redress low police morale, speed up police response, reduce fatal police interactions, and “reimagine law enforcement training” and “community engagement.”<sup>169</sup> The facility would include a firing range, a burn building, and a SWAT Facility.<sup>170</sup> The #StopCopCity campaign emerged to stop the Foundation’s and the city’s efforts to legitimize police power in the face of public revolt. Kamau Franklin with Community Movement Builders argues that the introduction of the “idea of a militarized training center . . . after

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167. *Refund Our Communities! Stop Cop City!*, DEFUND APD, REFUND CMTYS. (DARC) 1 (July 2021) [hereinafter *DARC Flyer*], <https://atlds.org/wp-content/uploads/2021/07/DARC-Canvass-Flyer-71721.pdf> [<https://perma.cc/FJW3-33XA>]; Charles Bethea, *The New Fight over an Old Forest in Atlanta*, NEW YORKER (Aug. 3, 2022), <https://www.newyorker.com/news/letter-from-the-south/the-new-fight-over-an-old-forest-in-atlanta> [<https://perma.cc/L3YM-WPXD>]; “Multiple Grammars of Struggle”, *supra* note 144, at 10:57; Gloria Tatum, *Native Americans Share Concerns over Fate of Forest*, STREETS OF ATLANTA (May 2, 2022), <https://streetsofatlanta.blog/2022/05/02/native-americans-share-concerns-over-fate-of-forest> [<https://perma.cc/FKC3-2XHD>].
168. Andrew Boryga, *Atlanta’s ‘Cop City’ Will Become a Reality, Despite Pushback*, DAILY BEAST (Sept. 9, 2021, 12:43 PM ET), <https://www.thedailybeast.com/atlantas-cop-city-will-become-a-reality-despite-pushback> [<https://perma.cc/G4NN-KF5G>].
169. *Public Safety Training Center*, ATLANTA POLICE FOUND., <https://atlantapolicefoundation.org/programs/public-safety-training-center> [<https://perma.cc/F9XZ-5UAN>]; *A Guide to Understanding the Proposed Atlanta Public Safety Training Center, a.k.a. “Cop City”* [UPDATE: IT PASSED], BUTTER ATL (Aug. 16, 2021), <https://butteratl.com/a-guide-to-understanding-the-proposed-atlanta-public-safety-training-center-a-k-a-cop-city> [<https://perma.cc/GP3F-FHSJ>].
170. *Vision Safe Atlanta*, ATLANTA POLICE FOUND. 9 (Sept. 2017), <https://atlantapolicefoundation.org/wp-content/uploads/2017/09/VISION-SAFE-ATL-Infrastructure.pdf> [<https://perma.cc/G9UK-JA4G>].

the 2020 uprisings,” indicates a purpose to “stop movements and continue to over-police Black and Brown communities.”<sup>171</sup>

Organizing to stop the building of a new multimillion-dollar carceral infrastructure project is a straightforward prison-abolitionist non-reformist reform. The campaign attacks a literal expansion of the local police footprint, an effort by the police and political class to reestablish the legitimacy of the police after the momentous challenge posed by the mass insurgency of 2020. Moreover, the campaign frames prisons and police as central to a long history of land theft from Indigenous people, and the devaluation of Black life and labor. Campaign materials explain the Weelaunee Forest slated for the police training facility was stolen from Muscogee Creek peoples in the early 1800s<sup>172</sup> before becoming the Atlanta Prison Farm where “incarcerated Black laborers were sold into indentured servitude.”<sup>173</sup> The development marks a “continuation of the racist practices the state has used to criminalize, capture, and exploit Black people for free labor.”<sup>174</sup> In other words, the facility is an exercise in racial and economic domination rather than public safety.

In addition to situating the project within a long history of market exploitation, land dispossession, and state violence, the campaign has criticized the lack of democratic decision-making within the public-private partnership. The project is backed by an array of Atlanta-based multinational corporations including Verizon, Delta, and Coca-Cola.<sup>175</sup> In a socialist vein, campaign materials advance a critique of the limits of democracy in a state under capitalism. A DARC flyer

171. Sonali Kolhatkar, *Resistance to Atlanta's Cop City Ramps Up*, YES MAG. (Mar. 9, 2023), <https://www.yesmagazine.org/social-justice/2023/03/09/resistance-atlantas-cop-city> [https://perma.cc/ZM3X-GBNE].
172. “No Cop City”: Police and a Movie Studio Want to Bulldoze a Forest in Atlanta, but Locals Have Other Ideas, IT’S GOING DOWN (May 19, 2021), <https://itsgoingdown.org/no-cop-city-atl> [https://perma.cc/FPL2-RB7U]. An aspect of the development plan includes the expansion of a film studio. *Id.*; *In Solidarity With the Movement to Stop Cop City and Defend Weelaunee Forest*, DEFEND THE ATLANTA FOREST (Jan. 19, 2023), <https://defendtheatlantaforest.org/solidarity> [https://perma.cc/7S4A-57YU].
173. *Tell City Council to Stop Cop City!*, ATLANTA DSA, <https://actionnetwork.org/petitions/defend-the-forest-stop-cop-city> [https://perma.cc/99L4-EHKT].
174. *DARC Flyer*, *supra* note 167, at 2.
175. *Crime Is Toast Award Show & Breakfast*, ATLANTA POLICE FOUND., <https://web.archive.org/web/20220314230423/https://atlantapolicefoundation.org/annual-event-list/crime-is-toast2019> [https://perma.cc/9L5L-FYAB]; Aja Arnold, *Atlanta Poised to Approve Massive Police Training Facility Despite Public Opposition*, INTERCEPT (Aug. 11, 2021, 5:02 PM), <https://the-intercept.com/2021/08/11/atlanta-police-training-center> [https://perma.cc/5LHL-9G5X]; Leticia McCadden, *Atlanta Committee for Progress to Support Mayor Bottoms’ Plan to Address Violent Crime*, ATLANTA COMM. FOR PROGRESS (Apr. 1, 2021), [http://www.atlprogress.org/\\_pdf/ACP\\_Public\\_Safety\\_Release\\_04-01-21.pdf](http://www.atlprogress.org/_pdf/ACP_Public_Safety_Release_04-01-21.pdf) [https://perma.cc/P3TP-V2HT] (endorsement from Atlanta Committee for Progress, a business roundtable).

explains that the mayor and council's alignment with the Foundation and its corporate backing is indicative of a broader "alignment with corporations over the working-class people of metro Atlanta."<sup>176</sup> The city's lease with the Atlanta Police Foundation was "largely formulated in closed-door meetings" and there was no "public discussion over alternate uses."<sup>177</sup> The city council's proposed lease to the Foundation for building a \$90 million facility on 381 acres of public forested lands priced the land at \$10 per year for up to fifty years.<sup>178</sup> In addition to criticizing the "extreme discount," the campaign argues the city "grant[ed] the police and a private foundation more resources at a time when locals are struggling to pay their rent and meet basic household needs."<sup>179</sup>

From the outset the campaign has linked the struggle against police to the struggle over public lands. The Foundation's proposal requires significant deforestation and destruction of wetlands within Atlanta's "largest remaining green space."<sup>180</sup> Local community members, forest defenders, and environmental-justice activists have protested that the deforestation will harm air quality in the surrounding poor and working-class Black and brown communities.<sup>181</sup> Residents have also expressed concerns about the environmental and health hazards posed by the nature of the development itself: specifically, the guns, explosives, and toxic weapons police will use on site.<sup>182</sup> A community survey showed overwhelming support for the "building of more green space" and "parks and recreation."<sup>183</sup> Campaign participants have made a range of additional demands for

176. *DARC Flyer*, *supra* note 167, at 2.

177. *Id.* The project to build a new police-training facility is "being pushed by the Atlanta Committee for Progress, a committee of over 40 corporate elite figures including the CEOs of Coca-Cola, Home Depot, and Cox Enterprises (which owns the Atlanta Journal-Constitution)." *Id.*

178. *Id.*

179. *Id.*

180. *Id.*; Arnold, *supra* note 175; Sam Worley, *Next Stop, Cop City? What's Happening with the Controversial Plan for a New Police and Fire Training Center in DeKalb*, ATLANTA MAG. (Sept. 13, 2021), <https://www.atlantamagazine.com/news-culture-articles/next-stop-cop-city-whats-happening-with-the-controversial-plan-for-a-new-police-and-fire-training-center-in-dekalb> [<https://perma.cc/K9JN-4255>]. There is a long history of campaigns against prisons as environmental hazards. *E.g.*, Rose Braz & Craig Gilmore, *Joining Forces: Prisons and Environmental Justice in Recent California Organizing*, 96 RADICAL HIST. REV. 95, 100-02 (2006).

181. See *DARC Flyer*, *supra* note 167.

182. See Dianne Mathiowetz, *No Cop City! Battle for the Atlanta Forest Not Over*, WORKERS WORLD (Sept. 21, 2021), <https://www.workers.org/2021/09/59085> [<https://perma.cc/2TKR-JA53>]; Worley, *supra* note 180.

183. *Community Survey on Development of Police/Fire Training Facility in South Atlanta: Report of Findings September 2021*, SOC. INSIGHTS RSCH. (Sept. 2021), <https://site-2670551-5163-2537.mystrikingly.com> [<https://perma.cc/Q2JT-7HU2>].

alternative uses including land-back-style claims and housing for unhoused and housing-insecure people.<sup>184</sup>

After tremendous protesting and organizing, the campaign built enough democratic power to force the city to hold hearings over the course of 2021 and confront the overwhelming public opposition to the facility.<sup>185</sup> In September 2021, the city council voted 10-4 to approve the lease for the new police training facility after sixteen hours of public comment, with seventy percent of resident callers against the lease.<sup>186</sup> But this loss marked the radicalization and expansion of the struggle, rather than its cessation. Organizing against the development continues, with some activists sabotaging construction equipment<sup>187</sup> and a Georgia state trooper killing a young forest defender Manuel Esteban Paez Terán during a police raid on January 18, 2023.<sup>188</sup>

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184. See ATLANTA DSA, *supra* note 173; *A Series of Visions*, SAVE ATLANTA PRISON FARM, <http://www.savetheoldatlantaprisonfarm.org/vision> [<https://perma.cc/JW46-FDCS>]; Akil Vicks, *Atlanta is Building a 'Cop City' on the Site of a Former Prison Farm*, JACOBIN (July 12, 2022), <https://jacobin.com/2022/07/atlana-cop-city-south-river-forest> [<https://perma.cc/A58V-DGN4>]; Andrew Lee, *The Community Fight to Save a Forest and Stop Cop City*, ANTI-RACISM DAILY (June 3, 2022), <https://the-ard.com/2022/06/03/the-community-fight-to-save-a-forest-and-stop-cop-city> [<https://perma.cc/P348-8BG9>]; Nic Sanford Belgard, *The Land at the Center of Cop City and Why We Must Defend It*, INDIGENOUS PEOPLES POWER PROJECT (Mar. 8, 2023), <https://www.ip3action.org/the-land-at-the-center-of-cop-city-and-why-we-must-defend-it> [<https://perma.cc/96PT-2295>]; Mark Auslander, *Songs of the Forest: A "Re-Matriation" Gathering in Weelaunee (South River) Forest*, MARK AUSLANDER (Apr. 26, 2022), <https://markauslander.com/2022/04/26/songs-of-the-forest-a-re-matriation-gathering-in-weelaunee-south-river-forest> [<https://perma.cc/7S77-FHDM>].
185. J.D. Capelouto & Anjali Huynh, *Council Delays Vote on New Atlanta Police Training Center as Opposition Grows*, ATLANTA J.-CONSTITUTION (June 17, 2021), <https://www.ajc.com/news/atlanta-news/council-delays-vote-on-new-atlanta-police-training-center-as-opposition-grows/TU2SACV475E35FE2EHUA4DHYQM> [<https://perma.cc/DLF4-G4V6>]; Doug Richards, *Proposed Police Academy Gets City Council, Public Scrutiny*, 11ALIVE (Aug. 16, 2021, 7:14 PM EDT), <https://www.11alive.com/article/news/politics/police-academy-gets-city-council-public-scrutiny/85-72b2aa6b-e2fe-4eb7-82b4-a87f03f26648> [<https://perma.cc/9WPQ-KE8A>]; J.D. Capelouto, *2 Public Input Sessions Planned for Proposed Atlanta Police Training Center*, ATLANTA J.-CONST. (July 7, 2021), <https://www.ajc.com/news/atlanta-news/2-public-input-sessions-planned-for-proposed-atlanta-police-training-center/D5TB2UUFAVB2HM5BQMZESBJTAQ> [<https://perma.cc/UWR8-N6PR>].
186. *Stop Cop City!*, ATLANTA DSA, <https://atlds.org/stopcopcity> [<https://perma.cc/TD5C-YEHY>]; Boryga, *supra* note 168; Micah Herskind, *Cop City and the Prison Industrial Complex in Atlanta*, PRINCETON UNIV. DEP'T OF AFR.-AM. STUD. (Feb. 17, 2022), <https://aas.princeton.edu/news/cop-city-and-prison-industrial-complex-atlanta> [<https://perma.cc/J6YC-8T6E>].
187. "Multiple Grammars of Struggle," *supra* note 144, at 10:57-11:50.
188. Maya Yang, *'Cop City' Protector Manuel Terán Shot at Least 13 Times by Police—Autopsy*, GUARDIAN (Feb. 3, 2023, 10:30 PM EST), <https://www.theguardian.com/us-news/2023/feb/03/cop-city-protester-manuel-teran-shot-13-times-autopsy> [<https://perma.cc/V5EM-84YZ>].

## B. Decolonization and Decommodification

Demands for decolonization and decommodification have proliferated since the historic Standing Rock protests against the Dakota Access Pipeline. These demands converge on demands against private property: a regime central to both capitalism and colonialism.

The 2016-2017 #NoDAPL protests are widely viewed as marking the contemporary revival of indigenous resistance, in part because the nations of the Oceti Sakowin (sometimes known as the Sioux Nation) had not come together for seven generations.<sup>189</sup> Indigenous tribes and others demanded cessation of the \$3.8 billion Energy Transfer Partners oil-pipeline project that threatened the water and territory of Standing Rock and four states.<sup>190</sup> “Mni Wiconi,” or water is life, was a key concept, as was the idea that protestors were water protectors.<sup>191</sup>

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189. *E.g.*, ESTES, *supra* note 49, at 1-3, 14.

190. *Id.* at 2-4. There is a longer history of such demands. *E.g.*, Deborah Dinner, *The Universal Childcare Debate: Rights Mobilization, Social Policy, and the Dynamics of Feminist Activism, 1966-1974*, 28 *LAW & HIST. REV.* 577, 604 (2010) (“By defining childcare as a right not a commodity, activists hoped not simply to dissolve the boundaries separating public from private institutions but rather to demarcate these boundaries anew so as to prevent the commodification of childrearing and the exploitation of female workers.”); Note, *Price and Sovereignty*, 135 *HARV. L. REV.* 755, 756, 776 (2021) (drawing on the history of price controls in the United States to argue that price controls “represent an unusually direct challenge to neoliberalism’s central economic and political premises” and as a policy “remind Americans that even the most sacred signals of the market are well within their collective control”). For legal scholarship engaging decommodification, see, for example, Aditi Bagchi, *Lowering the Stakes of the Employment Contract*, 102 *B.U. L. REV.* 1185, 1188 (2022); Michael Pappas & Victor B. Flatt, *Climate Changes Property: Disasters, Decommodification, and Retreat*, 82 *OHIO ST. L.J.* 331, 334 (2021); Brishen Rogers, *Capitalist Development, Labor Law, and the New Working Class*, 131 *YALE L.J.* 1842, 1847 (2022); Nate Ela, *Urban Commons As Property Experiment: Mapping Chicago’s Farms and Gardens*, 43 *FORDHAM URB. L.J.* 247, 248 (2016); and Faith Meixell, *Housing for the People: A Tenant Opportunity to Purchase Act for New York City*, 48 *FORDHAM URB. L.J.* 255, 275 (2020). The LPE Blog has also featured a number of posts. See Laura Wolf-Powers, *Property Commodification as a Municipal Strategy, Property Tax Reform as an Imperative*, LPE PROJECT (June 30, 2022), <https://lpeproject.org/blog/property-commodification-as-a-municipal-strategy-property-tax-reform-as-an-imperative> [<https://perma.cc/BXP8-RPDX>]; Sheila Foster, *From Vacancy to Decommodification: Co-Cities and the Enabling State*, LPE PROJECT (May 25, 2022), <https://lpeproject.org/blog/from-vacancy-to-decommodification-co-cities-and-the-enabling-state> [<https://perma.cc/M3Q2-B4MP>]; Jacob Udell, Celeste Hornbach, Oksana Mironova & Samuel Stein, *Social Housing and Housing Justice: Pathways to Housing Decommodification*, LPE PROJECT (May 31, 2022), <https://lpeproject.org/blog/social-housing-and-housing-justice-pathways-to-housing-decommodification> [<https://perma.cc/8J2E-29QG>]; Molly Gordon & Ann Sarnak, *Taking the Market off Land: Symposium on Decommodifying Urban Property*, LPE PROJECT (May 23, 2022), <https://lpeproject.org/blog/taking-the-market-off-land-symposium-on-decommodifying-urban-property> [<https://perma.cc/29GV-RLZH>].

191. ESTES, *supra* note 49, at 14-15.

Indigenous scholar Nick Estes explains such “Indigenous ways of relating to human and other-than-human life exist in opposition to capitalism, which transforms both humans and nonhumans into labor and commodities to be bought and sold,” and “settler colonialism, which calls for the annihilation of Indigenous peoples and their other-than-human kin.”<sup>192</sup>

Demands for decolonization have included demands for respect for treaty rights against extractive pipeline and mining projects, and for indigenous sovereignty in the form of land back.<sup>193</sup> The Red Nation’s Red Deal, for example, calls for a “complete moratorium on oil, gas, and coal extraction[;] . . . the restoration of Indigenous land, water, and air to a healthy state; and special protections for workers and the land.”<sup>194</sup> The organizing and intellectual production of Indigenous people have also pointed to the necessary entanglement of questions of Indigenous sovereignty with environmental justice. Even the ongoing involvement of Muscogee Creek people in the campaign against Cop City—most recently with young people delivering a “letter of eviction” to the mayor, city council, the police, and police foundation from Muscogee homelands—as well as the campaign’s use of the language of “forest defenders” speaks to the growing power of decolonization demands.<sup>195</sup>

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192. *Id.* at 16.

193. The Red Nation defines decolonization as: “dismantling the police forces and prison-industrial complex, state surveillance and repressive apparatus, and the US military . . . the mass return of all land stolen from Indigenous peoples and the right to self-determination for Indigenous nations [and] self-determination for Black relatives and their right to live on the land.” THE RED NATION, COMMUNISM IS THE HORIZON, *supra* note 141, at 16. See also Nick Estes & Jaskiran Dhillon, *The Black Snake, #NoDAPL, and the Rise of a People’s Movement*, in STANDING WITH STANDING ROCK: VOICES FROM THE #NODAPL MOVEMENT 1, 5 (Nick Estes & Jaskiran Dhillon eds., 2019) (pointing to the “political possibilities of imagining and reimagining Indigenous decolonization and the political project of getting free—freedom for ourselves and the planet”); Eve Tuck & K. Wayne Yang, *Decolonization Is Not a Metaphor*, 1 DECOLONIZATION: INDIGENITY, EDUC. & SOC’Y 1, 31 (2012) (arguing that decolonization requires “incommensurability,” or a “change in the order of the world . . . to break the relentless structuring of the triad [of ‘settler-native-slave’],” including by “repatriating land to sovereign Native tribes and nations, abolition of slavery in its contemporary forms, and the dismantling of the imperial metropole.” (footnote omitted)); *The LEAP Manifesto: A Call for a Canada Based on Caring for the Earth and One Another*, <https://leapmanifesto.org/en/the-leap-manifesto> [<https://perma.cc/BT9A-6MXC>] (calling for “a country powered entirely by renewable energy, woven together by accessible public transit, in which the jobs and opportunities of this transition are designed to systematically eliminate racial and gender inequality,” which is to be achieved by “respecting the inherent rights and title of the original caretakers of this land”).

194. THE RED NATION, COMMUNISM IS THE HORIZON, *supra* note 141, at 11.

195. *Eviction Notice from the Muskoke People to Mayor Andre Dickens and Cop City*, DEFEND ATLANTA FOREST (Mar. 10, 2023), <https://defendtheatlantaforest.org/2023/03/10/eviction-notice-from-the-mvskoke-people> [<https://perma.cc/86TQ-H8AL>].

Decommodification demands have multiplied amidst struggles over housing, healthcare, and debt during the pandemic. Campaigns have included demands for entitlements to necessities like housing or aspects of a social wage like free college.<sup>196</sup> Together, these campaigns speak to growing demands for government to meet the needs of people and planet over profit. These campaigns call for the state to suspend its loyalty to the market and capital in favor of popular need: to roll back or counteract the privatization of land, housing, health care and so much else.<sup>197</sup>

*Cancel Rent.* The financialization of housing and housing-related debt has produced cyclical housing crises.<sup>198</sup> The treatment of housing as a commodity or a wealth-generating asset rather than a human need, right, or entitlement has led to skyrocketing rents and increasingly unaffordable housing.<sup>199</sup> Early in the pandemic, demands for canceling rent, pausing debt payments, and stopping

196. See Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 *YALE L. & POL'Y REV.* 281, 284 (2016) (observing the use of the language of the “commons” to resist “privatization and/or commodification . . . to lay claim to, and protect against the threat of ‘enclosure’ by economic elites, a host of urban resources and goods which might otherwise be more widely shared by a broader class of city inhabitants” (footnote omitted)).

197. See Mathew Lawrence, *Owning the Future*, *TRIB. MAG.* (April 26, 2019), <https://tribunemag.co.uk/2019/04/owning-the-future> [<https://perma.cc/4P2C-UB76>] (“Privatisation was at the heart of organised capital’s revolt from the late 1970s onwards, enshrining the world of shareholder primacy, financialisation, and inequality,” and so “[a]ny transformation of our economy” will likely require “similarly deep shifts in property relations and ownership. It will also require the creation of durable coalitions capable of demanding and embedding change, something that new ownership models – by expanding the constituencies that have a stake and a say in a transformed economic model – can help create.”); see also Foster & Iaione, *supra* note 196, at 283 (“[P]ublic officials in cities around the world . . . are commodifying and selling to the highest bidders the collective resources of the city.” (footnote omitted)).

198. See Rep. of Leilani Farha (Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right of Non-Discrimination in This Context), at 3, U.N. Doc. A/HRC/34/51 (Jan. 18, 2017), [https://digitallibrary.un.org/record/861179/files/A\\_HRC\\_34\\_51-EN.pdf](https://digitallibrary.un.org/record/861179/files/A_HRC_34_51-EN.pdf) [<https://perma.cc/PS67-A93N>] (“[T]he ‘financialization of housing’ refers to structural changes in housing and financial markets and global investment whereby housing is treated as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets.”); Conor Dougherty, *The Rent Revolution Is Coming*, *N.Y. TIMES* (Oct. 15, 2022), <https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html> [<https://perma.cc/P34A-XXRF>]; Ingrid Leijten & Kaisa de Bel, *Facing Financialization in the Housing Sector: A Human Right to Adequate Housing for All*, 38 *NETH. Q. FOR HUM. RTS.* 94, 94 (2020); Jaime Jover, *A Global Right-to-Housing Movement Versus Financialization*, *METROPOLITICS* (June 23, 2021), <https://metropolitcs.org/A-Global-Right-to-Housing-Movement-Versus-Financialization.html> [<https://perma.cc/LFU8-W62X>]. On the larger context of housing, housing precarity, race, class, and the economy, see generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016); and KEEANGA-YAMAHTTA TAYLOR, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* (2019).

199. Dougherty, *supra* note 198.

foreclosures proliferated all over the country as tens of millions of people lost work and therefore their ability to pay their bills.<sup>200</sup> Over forty million people faced possible eviction.<sup>201</sup> The subsequent eviction moratoriums that went into effect all over the country embodied the power of the state to intervene on behalf of the people against landlords within the market.<sup>202</sup> Not only did these demands speak to widespread need, they made real headway in ways that would be have been unimaginable months before.

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200. See Adam Gabbatt, *Thousands of Americans to Take Part in the Biggest Rent Strike in Decades*, GUARDIAN (May 1, 2020, 5:00 AM EDT), <https://www.theguardian.com/world/2020/may/01/coronavirus-america-rent-strike-protest> [<https://perma.cc/97P2-DHBD>]; Michelle Conlin, *'This Is Not Justice.' Tenant Activists Upend U.S. Eviction Courts*, REUTERS (Feb. 8, 2021, 6:05 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-insi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112> [<https://perma.cc/TB2F-98QY>]; *Rent Strike in Action: Rent Withholding Wins Repairs in Milwaukee*, RENT-STRIKE (Apr. 30, 2021), <https://www.rentstrike2020.org/post/rent-strike-in-action-rent-withholding-wins-repairs-in-milwaukee> [<https://perma.cc/24TG-WCHM>]. There are many toolkits, manuals, and organizing guides available online. E.g., *Eviction Defense Manual: DeKalb County Edition for Private Market Renters*, HOUS. JUST. LEAGUE (2020), <https://drive.google.com/file/d/1YapYIb42xgcu9p8Wvbkoo-bkJHTiWu9/view> [<https://perma.cc/H8EN-MYRV>]. On the long history of rent strikes in the United States and around the world, see, for example, Joel Schwartz, *The New York City Rent Strikes of 1963-64*, 57 SOC. SERV. REV. 545, 549 (1983); Lucas Poy, *A Tale of Two Cities: The Tenants' Strikes of 1907-08 in Buenos Aires and New York. Exploring the Global Historical Roots of Tenants' Organization*, 3 RADICAL HOUS. J. 131, 137 (2021); Gil Cornfield, Melody Heaps & Norman Hill, *The Chicago Freedom Movement's Quest for Economic Justice*, CHI. REP. (Jan. 15, 2018), <https://www.chicagoreporter.com/the-chicago-freedom-movements-quest-for-economic-justice> [<https://perma.cc/RF4X-NWWP>]; and Keeanga-Yamahatta Taylor, *The Housing Struggle Then and Now*, SOCIALIST-WORKER.ORG (Mar. 19, 2010), <https://socialistworker.org/2010/03/19/housing-struggle-then-and-now> [<https://perma.cc/YLC3-U2FS>].
201. See Emily Benfer, David Bloom Robinson, Stacy Butler, Lavar Edmonds, Sam Gilman, Katherine Lucas McKay, Lisa Owens, Neil Steinkamp, Diane Yentel & Zach Neumann, *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk> [<https://perma.cc/94CH-FXET>]; Abigail Higgins & Olúfémi O. Táíwò, *Enforcing Eviction*, NATION (Aug. 19, 2020), <https://www.thenation.com/article/society/police-eviction-housing> [<https://perma.cc/RKE7-JEUQ>]; Jonah E. Bromwich, *The Evictions Are Coming. Housing Activists Are Ready.*, N.Y. TIMES (Dec. 23, 2020), <https://www.nytimes.com/2020/12/23/style/rent-evictions-new-york.html> [<https://perma.cc/WH4Q-HPLJ>]; *No Job, No Rent: Ten Months of Organizing the Tenant Struggle*, DEMOCRATIC SOCIALISTS OF AM. (Feb. 2021), <https://www.stompoutslumlords.org/wp-content/uploads/2021/02/No-Job-No-Rent-Stomp-Out-Slumlords-Feb-2021-Report-1.pdf> [<https://perma.cc/S9ZS-JVEU>].
202. Local housing courts paused their eviction dockets pursuant to emergency state laws. E.g., Jordyn Grzelewski, *'People Have to Have a Home to Stay In': How Cleveland-Area Housing Courts Are Handling Evictions During the Coronavirus Pandemic*, CLEVELAND.COM (Mar. 28, 2020, 10:12 AM), <https://www.cleveland.com/business/2020/03/people-have-to-have-a-home-to-stay->

In March 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which included an eviction moratorium for properties with ties to federal housing programs or federally backed mortgages.<sup>203</sup> After the four-month moratorium elapsed, the Centers for Disease Control and Prevention (CDC) promulgated a broader set of eviction protections for nonpayment of rent to prevent the spread of the coronavirus.<sup>204</sup> Realtor associations and rental property managers brought suit, complaining the moratorium unfairly “shifted the economic burdens of the pandemic” from renters to landlords.<sup>205</sup> In a per curiam decision, the Supreme Court found in favor of landlords when it determined the CDC lacked power to issue the moratorium.<sup>206</sup>

The eviction moratoriums were a loud and public disavowal of the state’s libertarian and laissez-faire approach to market relations – and a momentary retraction of the twin powers of courts and sheriffs on behalf of landlords over tenants. They gestured at a state that works for tenants and in service of housing for its use value rather than powerful and organized market forces focused on housing for its exchange value. Instead of an actual cancellation of rent, the moratoriums were a temporary and partial halt on landlords’ use of the legal process and sheriffs’ enforcement powers. They were meant to stabilize rather than undermine the capitalist economy and private property, thereby rendering them a limited measure. The Supreme Court’s rebuke of the CDC’s issuance of a limited moratorium speaks to the central problem of the courts for projects aiming to undermine the state’s fidelity to landlords, private property, and the real-estate industry.

At the local level, the organizing of KC Tenants illustrates a non-reformist approach. KC Tenants is a “citywide tenant union [started in 2019] . . . led by a multigenerational, multiracial, antiracist base of poor and working-class tenants

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in-how-cleveland-area-housing-courts-are-handling-evictions-during-the-coronavirus-pandemic.html [https://perma.cc/XE56-S624]; Christopher Gavin, *Mass. Housing Court Has Halted ‘Non-Emergency’ Proceedings Due to Coronavirus*, BOSTON.COM (Mar. 16, 2020), https://www.boston.com/news/local-news/2020/03/16/massachusetts-housing-court-evictions-coronavirus [https://perma.cc/6GA9-E4PP].

203. Pub. L. No. 116-136, § 4024(b), 134 Stat. 281, 493-94 (2020). For a criticism of the CARES Act and an approach focused on mitigating housing instability more broadly, see Michelle D. Layser, Edward W. De Barbieri, Andrew J. Greenlee, Tracy A. Kaye & Blaine G. Saito, *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445, 485 (2021).
204. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sept. 4, 2020). The order was extended legislatively once and by CDC three times. MAGGIE MCCARTY, DAVID H. CARPENTER & LIBBY PERL, CONG. RSCH. SERV., IN11673, THE CDC’S FEDERAL EVICTION MORATORIUM 1 (2021).
205. Emergency Application for Vacatur at 32, Alabama Ass’n of Realtors v. HHS, 141 S. Ct. 2485 (2021) (No. 21A-23), 2021 WL 8939368, at \*32.
206. *Alabama Ass’n of Realtors*, 141 S. Ct. at 2490; see also DAVID H. CARPENTER, CONG. RSCH. SERV., LSB10632, LITIGATION OF THE CDC’S EVICTION MORATORIUM 4 (2021).

in Kansas City.”<sup>207</sup> The organization focused their first campaign on “building the base of our organization.”<sup>208</sup> They understood the need for a “long-term power organization” to avoid getting “lost in the sauce of electoral politics” and to win social housing.<sup>209</sup> Central to KC Tenants’ strategy is wresting material benefits for tenants from the state and from landlords. To that end, KC Tenants is focused on organizing tenants: a group of people structurally disempowered by and within the market and the regime of private property. An aspect of this work is to embolden tenants as a class that shares grievances and aspirations.<sup>210</sup> Their campaigns build organization and power among tenants against landlords and within the political process.

By 2021, KC Tenants had built enough organizational capacity to have won a tenants’ bill of rights, a right to counsel in eviction proceedings, and a local eviction moratorium.<sup>211</sup> Eventually, the organization became frustrated with the limits of the formal political process to provide housing for tenants and turned to “direct action to intervene in a violent system that exists to protect private profits

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207. *About*, KC TENANTS, <https://kctenants.org/about> [<https://perma.cc/T6U3-PLXJ>]; *Citywide Tenant Union*, KC TENANTS, <https://kctenants.org/member> [<https://perma.cc/DYX8-VJQQ>]; see also *The State of Missouri Tenants: Listening to Tenants in America’s Heartland*, KC TENANTS (2022), [https://kctenants.org/assets/uploads/kct\\_listening\\_final\\_4-29-compressed.pdf](https://kctenants.org/assets/uploads/kct_listening_final_4-29-compressed.pdf) [<https://perma.cc/6CFH-TXEL>] (detailing the KC Tenants approach); Dougherty, *supra* note 198 (profiling KC Tenants); *COVID Organizing Toolkit*, KC TENANTS [https://docs.google.com/document/d/1Ex-KZYllhZo-yB1RNA8\\_VJWzJP8OiiFzrXFe6PNltRo/edit](https://docs.google.com/document/d/1Ex-KZYllhZo-yB1RNA8_VJWzJP8OiiFzrXFe6PNltRo/edit) [<https://perma.cc/SG2Z-L2K3>] (providing a toolkit for organizing during COVID).
208. *Craft of Campaigns*, Tara Raghuveer on *Hijacking Kansas City’s Elections by Being Ruthless About Basebuilding*, PLAYER, at 14:20-15:23 (Nov. 22, 2022), <https://player.fm/series/craft-of-campaigns/tara-raghuveer-on-hijacking-kansas-citys-elections-by-being-ruthless-about-basebuilding> [<https://perma.cc/PM9M-S5NH>].
209. *Id.*
210. Dougherty, *supra* note 198.
211. Courtlynn Stark, *What Are Your Rights as a Renter in Kansas City? Here’s What You Should Know*, KAN. CITY STAR (Sept. 21, 2021 1:31 PM), <https://www.kansascity.com/news/local/article252921773.html> [<https://perma.cc/UX56-P6AK>]; Kan. City, Mo., Comm. Substitute Res. No. 190934 (2019), <https://htv-prod-media.s3.amazonaws.com/files/kc-tenants-bill-of-rights-resolution-1573697486.pdf> [<https://perma.cc/SX5N-VQQR>]; Bryant Maddrick, *KCMO City Council Approves ‘Tenants’ Right to Counsel*, KSHB (Dec. 11, 2021, 4:55 PM), <https://www.kshb.com/news/local-news/kcmo-city-council-approves-tenants-right-to-counsel> [<https://perma.cc/KPB9-9PHR>]; *Right to Legal Counsel for KC Tenants Facing Evictions Begins June 1*, LINC (May 31, 2022), <https://kclinc.org/news/2022/5/31/right-to-legal-counsel-for-tenants-in-kc-begins-june-1> [<https://perma.cc/9HT7-CXRA>]. Like many recent bills of rights passed around the country, the bill provides no private right of enforcement. For a discussion of New York City’s right to counsel in eviction proceedings, see John Whitlow, *Generitification and Countermovement: The Right to Counsel and New York City’s Affordable Housing Crisis*, 46 FORDHAM URB. L.J. 1081, 1082-87 (2019).

at the expense of human lives.”<sup>212</sup> From late 2020 into early 2021, the organization disrupted and delayed at least a thousand evictions. Members chained themselves to courthouse doors and systematically interrupted online hearings with statements like “Judge Grate, you are making people homeless! You are killing people!”<sup>213</sup> Over time, KC Tenants shifted not only its tactics but also its goals: away from ongoing eviction moratoriums, toward social housing “outside the scope of the private market, not available for profit or speculation.”<sup>214</sup>

Building on KC Tenants’ victories, in late 2022, the new sister organization KC Tenants Political Power<sup>215</sup> ran a successful local referendum campaign for \$50 million in bond funding for “affordable housing for very low to moderate-income households.”<sup>216</sup> The organization pushed for the housing trust fund to

212. Conlin, *supra* note 200.

213. *Id.*; Jodi Fortino, *Tenants’ Group Chains Themselves to Jackson County Courthouse to Shutdown Evictions*, KCUR (Oct. 15, 2020, 2:13 PM CDT), <https://www.kcur.org/news/2020-10-15/tenants-group-chains-themselves-to-jackson-county-courthouse-to-shutdown-evictions> [<https://perma.cc/C7T3-KGLT>]; KC Tenants, FACEBOOK (Oct. 16, 2020), <https://www.facebook.com/kctenants/posts/the-people-have-closed-court-yesterday-kc-tenants-leaders-surrounded-by-more-tha/635097903820791> [<https://perma.cc/2234-FV8M>] (noting that those disrupting the October session read from a statement that demanded “End evictions, people are dying”). In September 2020, the organization also sued a county circuit judge who allowed eviction proceedings to continue in the face of the federal eviction moratorium. Complaint, KC Tenants vs. Byrn, No. 20-cv-784, 2020 WL 5894589 (W.D. Mo. Sept. 30, 2020); Dan Margolies, *Tenant Group Calls Evictions an ‘Act of Violence’ and Sues Presiding Jackson County Judge*, KCUR (Sept. 30, 2020, 12:43 PM CDT), <https://www.kcur.org/news/2020-09-30/tenants-group-calls-evictions-an-act-of-violence-and-sues-presiding-jackson-county-judge> [<https://perma.cc/E2D6-2K5U>]; Dan Margolies, *Federal Judge Declines Tenants’ Request to Halt Eviction Lawsuits*, KCUR (Nov. 24, 2020, 3:12 PM CST), <https://www.kcur.org/news/2020-11-24/federal-judge-declines-tenants-request-to-halt-eviction-lawsuits> [<https://perma.cc/7VY2-8MRY>]; Tasbeeh Herwees, *Housing Insecure*, ACLU MAG. 17-23 (Winter 2021), [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_winter21\\_spreads-compressed.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_winter21_spreads-compressed.pdf) [<https://perma.cc/TV5P-G3RD>].

214. Ian Volner, *Kansas City’s Tara Raghuvver Has a ‘North Star’ and It’s True Social Housing*, DWELL (June 13, 2022), <https://www.dwell.com/article/kansas-city-tara-raghuvver-kc-tenants-social-housing-dd403f87-aa8857bf> [<https://perma.cc/SB2K-HXMB>].

215. Mili Mansaray, *KC Tenants Announces Sister Organization Focused on Building Political Power*, KAN. CITY BEACON (Oct. 14, 2022), <https://kcbeacon.org/stories/2022/10/14/kc-tenants-power> [<https://perma.cc/4WJE-U6DH>]. KC Tenants has also birthed the KC Homeless Union. Celisa Calacal, *The KC Homeless Union Met with Mayor Q for Four Days Straight. Here’s What They Agreed On*, KAN. CITY BEACON (Apr. 12, 2021), <https://kcbeacon.org/stories/2021/04/12/kansas-city-homeless-union-solutions> [<https://perma.cc/PC8D-NH3Q>]; Goldberg, *supra* note 62.

216. See *Sample Ballot General Election November 8, 2022*, KAN. CITY BD. OF ELECTION COMM’RS (Nov. 8, 2022), [https://www.kceb.org/useruploads/Sample\\_Ballot\\_11-22\\_Rev\\_11-19-22\\_Final.pdf](https://www.kceb.org/useruploads/Sample_Ballot_11-22_Rev_11-19-22_Final.pdf) [<https://perma.cc/LYY8-XNK5>]; Leslie DelasBour, *Kansas City Votes YES on Question 2, Approving \$50 Million To Create Deeply Affordable Housing*, KSHB (Nov. 9, 2022 8:21 PM),

give tenants ultimate “power and oversight” over the fund to ensure “people come before profit.”<sup>217</sup> These successive campaigns have centered on obtaining democratic victories for social housing in non-reformist ways against long odds: in the face of the concentrated economic and political power of the real-estate industry and the regressive hold of debt-based municipal funding.<sup>218</sup>

KC Tenants’ director Tara Raghuvver explains the organization aims to build a society that “prioritize[es] private profits over people’s lives. And in order to shift that, we have to guarantee housing as a public good.”<sup>219</sup> Their campaign for housing as a public good is part of a larger effort against capitalism more broadly. KC Tenants’ work demonstrates the strategic assessment of the Grassroots Power Project: that with organizing, eviction and foreclosure moratoriums can create openings for moratorium demands on the whole range of “monthly pay-

<https://www.kshb.com/news/local-news/kansas-city-votes-yes-on-question-2-approving-50-million-to-create-deeply-affordable-housing> [<https://perma.cc/9L6K-P7C2>]; Mansaray, *supra* note 215; David Medina, *KCMO City Council Pushes Housing Ordinance Despite Pushback from KC Tenants*, KSHB (Aug. 18, 2022, 11:15 PM), <https://www.kshb.com/news/local-news/kcmo-city-council-passes-housing-ordinance-despite-pushback-from-kc-tenants> [<https://perma.cc/9MG9-HWJH>].

217. *People’s Housing Trust Fund*, KC TENANTS, <https://kctenants.org/htf> [<https://perma.cc/JRK6-8KBL>]; *A Vision for a People’s Housing Trust Fund for Kansas City*, KC TENANTS (June 2021), <https://drive.google.com/file/d/1LaxUMFqzeGXToGodIGaO9EWKsNIXkwL4/view> [<https://perma.cc/PS6F-NEUH>]; Roshan Abraham, *Housing in Brief: KC Tenants Fighting for Community Control of Affordable Housing Funds*, NEXT CITY (Oct. 21, 2021), <https://nextcity.org/urbanist-news/kc-tenants-fighting-for-community-control-affordable-housing-funds> [<https://perma.cc/WRT4-F285>]; Celisa Calacal, *Local Housing Group and Mayor Share Differing Visions on a Housing Trust Fund for Kansas City*, KAN. CITY BEACON (Oct. 27, 2021), <https://kcbeacon.org/stories/2021/10/27/housing-trust-fund-kansas-city> [<https://perma.cc/DQJ5-HRMM>]; Celisa Calacal, *‘We Are the Solution to the Problem’: KC Tenants Proposes \$30M Fund for Housing Trust Fund*, KAN. CITY BEACON (July 14, 2021), <https://kcbeacon.org/stories/2021/07/14/kc-tenants-housing-trust-fund> [<https://perma.cc/2348-CNES>]; Josh Merchant, *FAQ: How Kansas City’s Question 2 Ballot Measure Would Fund ‘Deeply Affordable Housing,’* KCUR (Nov. 3, 2022 4:00 AM CDT), <https://www.kcur.org/politics-elections-and-government/2022-11-03/kansas-city-question-2-affordable-housing-election-2022-missouri> [<https://perma.cc/L649-BQF3>]; *see also* *KC Tenant’s Draft Ordinance*, <https://docs.google.com/document/d/1fEVQMRoZrgqyOq6PSJNFK1q938lpyIUzC4hFbeqoJ4/edit> [<https://perma.cc/4QBP-HFS2>] (providing a draft of the ordinance enacting the trust fund).
218. As Destin Jenkins brilliant book shows, municipal bond funding creates a real limit on emancipatory horizons. DESTIN JENKINS, *THE BONDS OF INEQUALITY: DEBT AND THE MAKING OF AMERICAN INEQUALITY* (2021).
219. Herwees, *supra* note 213, at 23. The LA Tenants Union and Stomp Out Slumlords project in DC echoed this orientation toward human need over commodity through their framing of rent strikes as a tactic toward “Food Not Rent.” *Food or Rent?*, LA TENANTS UNION, <https://foodnotrent.org> [<https://perma.cc/J5AA-TRQB>]; *No Job, No Rent: Ten Months of Organizing the Tenant Struggle*, *supra* note 201, at 14-15.

ments” like “rent, mortgage, and utility payments,” and even “debt forgiveness.”<sup>220</sup> Momentarily shifting “the relationship between government and private property,”<sup>221</sup> such moratoriums could “lay the groundwork for . . . policies like universal rent control, social housing, a homes guarantee, debt cancellation, nationalization of utilities and more.”<sup>222</sup> Despite a string of important victories, the odds remain long because the opposition is strong and the structure of the state stands in the way.

*Cancel Debt.* Over forty million people in the United States hold close to two trillion dollars in student debt. The growing movement against student debt seeks to cancel that debt as it seeks to decommodify education and a larger array of privatized goods.<sup>223</sup>

In the shadow of the federal government’s bank bailouts, Occupy Wall Street led to the birth of an organization of debt resisters in 2012 called Strike Debt.<sup>224</sup> Strike Debt hosted debtors’ assemblies, published the Debt Resisters’ Operations Manual, and planned direct actions to burn debt and shut down “predatory

220. Goldberg, *supra* note 62.

221. *Id.*

222. *Id.* In terms of building pathways to public control, minimally, this might include “attaching strings to corporate bailouts” that require “paying workers a \$15 minimum wage or generous sick leave.” *Id.* (noting that this has happened “in the last bailout package”). More maximally, it could entail a conversion of “[c]orporate debt . . . into [public] ownership stakes, which could be used to direct our economy towards meeting public needs.” *Id.* Bailouts of “private landlords or mortgage-lending banks” could involve “rent control” or “full or partial government ownership of the banks,” whereas bailouts of “hospitals and private insurers” could pave the road toward public hospitals and “single-payer health care.” *Id.* (explaining that, similar to the 2008 financial crisis, the global pandemic created “an opening to nationalize significant aspects of the US economy, from fossil fuel corporations to the airline industry”).

223. See @DebtCrisisOrg, TWITTER (Dec. 22, 2022, 8:02 AM), <https://twitter.com/DebtCrisisOrg/status/1605911530884718600> [<https://perma.cc/GU7X-XFT9>]; Zack Friedman, *Student Loan Debt Statistics in 2022: A Record \$1.7 Trillion*, FORBES (May 16, 2022, 8:30 AM EDT), <https://www.forbes.com/sites/zackfriedman/2022/05/16/student-loan-debt-statistics-in-2022-a-record-17-trillion> [<https://perma.cc/GNU6-NCSM>].

224. Rebecca Hiscott, *You Are Not a Loan: Strike Debt and the Challenge of the Rolling Jubilee*, OCCUPY (May 28, 2013), <https://www.occupy.com/article/you-are-not-loan-strike-debt-and-challenge-rolling-jubilee> [<https://perma.cc/G9J3-DUY5>]; see also *Occupy Theory Assembly on May 13th*, TIDAL, <https://web.archive.org/web/20120508033019/http://occupytheory.org/act/occupy-theory-assembly-on-may-13th.html> [<https://perma.cc/4WZE-52MF>] (promoting one of the “open assemblies” which led to Strike Debt); Libby A. Nelson, *Occupy Student Loans*, INSIDER HIGHER ED (Nov. 15, 2011), <https://www.insidehighered.com/news/2011/11/15/occupy-protests-focusing-increasingly-student-debt> [<https://perma.cc/DB7W-MX8K>] (discussing how student loans became a major focus of the Occupy protests); Luke Herrine, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281, 325-26 (2020) (discussing how student mobilization led to politicians taking notice of the student-debt issue).

lenders.”<sup>225</sup> The “Rolling Jubilee” was a signature “mutual-aid project.” To vanquish millions of dollars of medical and student debt, the organization raised funds and bought and then discharged the debt on the derivative market for pennies on the dollar.<sup>226</sup>

In September 2014, Strike Debt launched the Debt Collective, akin to “a more traditional labor union,” with the goal of forming “a platform for organization, advocacy and resistance by debtors.”<sup>227</sup> Since then, the Debt Collective has experimented with strategies and tactics to take on student debt as part of an effort toward “a full cancellation of all debts.”<sup>228</sup> Their prominent campaigns include organizing with students from the for-profit Corinthian Colleges, Inc. in debt strikes and more. Their organizing led the Department of Education to discharge billions in student loans for Corinthian and other for-profit colleges.<sup>229</sup>

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225. *The Debt Resistors' Operations Manual*, STRIKE DEBT & OCCUPY WALL ST. 105 (Sept. 2012), <https://strikedebt.org/The-Debt-Resistors-Operations-Manual.pdf> [<https://perma.cc/5H8R-R57H>].

226. For specifics on the types and amounts of debt Rolling Jubilee abolished, see *Debt Abolition*, DEBT COLLECTIVE, <https://debtcollective.org/what-we-do/debt-abolition> [<https://perma.cc/JR3T-DCQY>]. Strike Debt faced challenges grappling with issues of race. See Pamela Brown, *When Theory Meets Heart: The Rolling Jubilee and Lessons of Occupying Debt*, 7 OCCASION 1, 10 (2014), (“[T]he Rolling Jubilee was never able to grapple with the racial dimensions of debt. As a result, the goal of the project—to spark a debtors movement—did not materialize, and the organizers who remain attached to the campaign do not appear to have struggled to understand why.”); Nicholas Mirzoeff, *You Are Not a Loan: Debt and New Media*, in *NEW MEDIA, OLD MEDIA: A HISTORY AND THEORY READER* 356, 365 (Wendy Hui Kyong Chun, Anna Watkins Fisher & Thomas Keenan eds., 2d ed. 2016) (“Strike Debt could not adjust its perspective to deal with the uneven, deeply racialized playing field of credit.”).

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

228. *The Debt Resistors' Operations Manual*, *supra* note 225, at 105. The Debt Collective’s website now notes their goal is debt abolition: “We are building a movement to abolish debts and win a world where no one has to take on debt to survive.” *What We Do*, DEBT COLLECTIVE, <https://debtcollective.org/what-we-do/debt-abolition> [<https://perma.cc/3K49-HRR8>].

229. See Press Release, Consumer Fin. Prot. Bureau, CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme (Sept. 16, 2014), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme> [<https://perma.cc/YT4K-BR2C>]; Astra Taylor, Opinion, *What the Corinthian Colleges Case Tells Us About Student Loan Relief*, WASH. POST, June 2, 2022, 6:00 AM EDT, <https://www.washingtonpost.com/opinions/2022/06/02/corinthian-colleges-loan-forgiveness-astra-taylor> [<https://perma.cc/3K49-HRR8>].

Through the 2020 campaign cycle, the Debt Collective campaigned for the cancellation of student debt.<sup>230</sup> A central part of their work was “establishing the executive office’s power to cancel debts.”<sup>231</sup> With people out of work and unable to pay their bills, the March 2020 CARES Act paused federal student loan repayment. The pause was extended several times by Presidents Trump and Biden amidst pressure and protest. On April 4, 2022, the Debt Collective held a day of action in Washington, D.C., demanding that President Biden “[p]ick up the pen” to cancel student debt for all 45 million Americans affected.<sup>232</sup> Their emphasis on the presidential power to cancel debt by executive order illustrated the ease with which President Biden could grant immediate relief to millions of debtors. Two days later, the administration extended the pause through August 2022.<sup>233</sup>

Debt strikers called on the administration to “use their power for the good of the people”<sup>234</sup> and toward “free public education for all.”<sup>235</sup> In response to growing public pressure, in August 2022, the long pause on debt payments morphed into a partial cancellation. President Biden announced that he would cancel up to \$20,000 of student debt for debtors earning less than \$125,000 a year—

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[//perma.cc/CRR5-HAP4](https://perma.cc/CRR5-HAP4)]; Gregory Wallace, ‘Corinthian 15’ Launch ‘Debt Strike’ over Student Loans, CNN MONEY (Mar. 1, 2015, 2:49 PM ET), <https://money.cnn.com/2015/03/01/pf/college/student-loan-debt-strike/index.html> [<https://perma.cc/YNF2-Y8HR>]; *How We Won on Student Debt, with Ann Larson and Eleni Schirmer of the Debt Collective*, TIME TO SAY GOODBYE, at 1:03:00-1:03:20 (Sept. 7, 2022), <https://goodbye.substack.com/p/how-we-won-on-student-debt-with-ann> [<https://perma.cc/WQ54-EQTP>].

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

231. *How We Won on Student Debt*, *supra* note 229, at 43:22-43:59.

232. See *PICK UP THE PEN, JOE: April 4th Day of Action for Student Debt Cancellation*, ACTION NETWORK (Apr. 4, 2022, 12:00 PM), <https://actionnetwork.org/events/pick-up-the-pen-joe-april-4th-day-of-action-for-student-debt-cancellation> [<https://perma.cc/EA55-ZLTG>].

233. Press Release, U.S. Dep’t of Educ., Biden-Harris Administration Extends Student Loan Pause Through August 31 (Apr. 6, 2022), <https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31> [<https://perma.cc/PRR9-M62M>].

234. *In the Red: Out of the Darkness*, DEBT COLLECTIVE 13 (Apr. 2022), <https://wordpress-cdn-prod.debtcollective.org/wp-content/uploads/2022/04/01121912/Inthered-Issue1-April2022.pdf> [<https://perma.cc/C5MT-5TS2>].

235. *Id.* at 14-15; see also *id.* at 22 (“I demand student debt abolition because public funding for higher education has been inexorably gutted since Ronald Reagan came into power . . .”).

adding an element of so-called means testing that the Debt Collective has consistently opposed as regressive.<sup>236</sup> Close to twenty-six million borrowers had applied for relief by November.<sup>237</sup> Conservative groups challenged the president's authority through multiple lawsuits.<sup>238</sup> Two cases are now pending at the Supreme Court—again pointing to the power of the high court to hold popular victories hostage.<sup>239</sup> The Biden Administration has extended the pause on student-loan payments until at least mid-2023.<sup>240</sup>

In ways that echo KC Tenants, the Debt Collective has brought attention to the exorbitant costs of higher education—and the resultant indebtedness of tens of millions of people—while organizing debtors as a class with “a shared economic condition” that can be the source of collective power.<sup>241</sup> An aspect of this effort has been to take on the shame of indebtedness by organizing people to

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236. 550+ Organizations Tell President Biden to Cancel Student Debt Immediately, STUDENT BORROWER PROT. CTR. (June 6, 2022), <https://protectborrowers.org/550-organizations-tell-president-biden-to-cancel-student-debt-immediately> [<https://perma.cc/JYR4-4NKN>]; Fed. Student Aid, *One-time Federal Student Loan Debt Relief*, U.S. DEP'T EDUC., <https://studentaid.gov/manage-loans/forgiveness-cancellation/debt-relief-info> [<https://perma.cc/PS3M-C6YG>]; Fed. Student Aid, *The Biden-Harris Administration's Student Debt Relief Plan Explained*, U.S. DEP'T EDUC., <https://studentaid.gov/debt-relief-announcement> [<https://perma.cc/SJV6-CNFL>]; *How We Won on Student Debt*, *supra* note 229, at 50:47-51:04 (explaining that “the bigger loss for me isn't that we got a small amount of \$10,000. It's that people are going to have to apply for it, to me, it's the more violent machination of the President's policy”).
237. Annie Nova, *26 Million Borrowers Have Applied for Student Loan Forgiveness. But GOP Challenges Put Plan at Risk.*, CNBC (Nov. 3, 2022, 12:13 PM EDT), <https://www.cnbc.com/2022/11/03/close-to-26-million-americans-have-applied-for-student-loan-forgiveness.html> [<https://perma.cc/R475-HLX7>].
238. *E.g.*, Juliana Kaplan, *A Conservative Group Is Suing to Block Biden's Student Debt Forgiveness, but It Faces Legal Hurdles*, BUS. INSIDER (Sept. 27, 2022, 2:15 PM), <https://www.businessinsider.com/conservative-group-sues-block-student-debt-forgiveness-face-legal-hurdles-2022-9> [<https://perma.cc/EV6V-PK9R>]; *Conservative Advocacy Group Sues to Block Biden's Student-Loan Relief Plan*, CBS NEWS (Oct. 10, 2022, 3:39 PM), <https://www.cbsnews.com/news/biden-student-loan-relief-plan-lawsuit-job-creators-network-foundation> [<https://perma.cc/YR5E-ZNM8>].
239. *Nebraska v. Biden*, No. 22-CV-1040, 2022 WL 11728905 (E.D. Mo. Oct. 20, 2022), *cert. granted before judgment*, 143 S. Ct. 477 (Dec. 1, 2022) (No. 22A444); *Brown v. U.S. Dep't of Educ.*, No. 22-CV-0908, 2022 WL 16858525 (N.D. Tex. Nov. 10, 2022), *cert. granted before judgment sub nom. Dep't of Educ. v. Brown*, 143 S. Ct. 541 (Dec. 12, 2022) (No. 22-535).
240. Cody Hounanian, *Biden Administration Extends Federal Student Loan Payment Pause, Advocates Call for Pause to Continue Until Debt Is Canceled*, STUDENT DEBT CRISIS CTR., <https://studentdebtcrisis.org/biden-extends-federal-student-loan-payment-pause> [<https://perma.cc/8PZM-KUJ9>].
241. *How We Won on Student Debt*, *supra* note 229, at 1:03:44-1:04:40.

publicly declare their debts.<sup>242</sup> The organization also emphasizes that debt is distributed disproportionately within communities of color and women, and frames debt relief as a racial- and gender-justice strategy.<sup>243</sup>

The Debt Collective's campaign has strong non-reformist qualities. While President Biden's plan pales in comparison to the organization's ambitions, his accession to some form of the organization's demand telegraphs a distinct horizon. The debt cancellation demonstrates how "the public sector can come in and correct . . . tyrannies of the private sector" in higher education and beyond. The debt relief raises debtors' sense of their collective power.<sup>244</sup> Further, it raises expectations for the public of a "government [that can] do something to help me" and for "fully funded public goods," providing "a very very small taste of socialism."<sup>245</sup> Even with this limited victory, the campaign illustrates the possibility of a fundamentally distinct scheme of state and social provision. It creates new terrain for struggle.

The campaign builds on and produces the power of debtors while seeking concrete relief and growing the ranks of the organization and the movement. Ann Carson, a cofounder of the Debt Collective, situates building the organization within the larger project to build "working-class organizations of all kind[s]," including but beyond labor unions.<sup>246</sup> Another organizer, Eleni Schirmer, describes how working against student debt connects "labor and workers movements" and "creditors and debtors," and provides possibilities for solidarity.<sup>247</sup> The organization has brought labor to the table by identifying overlapping interests of debtors and workers this way: "[E]very win that we have at the bargaining table is going to be undermined as long as workers are having to go and pay hundreds if not thousands of dollars a month for student loans that they had to take to basically get these damn jobs in the first place."<sup>248</sup>

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242. Take for example, cofounder Astra Taylor's argument in a recent op-ed. Astra Taylor, *Opinion, Debtors, Unite! You Have Nothing to Lose but Your Shame*, N.Y. TIMES, Sept. 6, 2022, <https://www.nytimes.com/2022/09/06/opinion/biden-student-loan-debt-relief.html> [https://perma.cc/DCZ2-VW9N].

243. *In the Red: Out of the Darkness*, *supra* note 234, at 28-29.

244. *How We Won on Student Debt*, *supra* note 229, at 1:00:53-1:01:04 ("[D]ebtors when organized have power and can force wins even from a president who didn't want to do have to do this").

245. *Id.* at 55:20-56:40.

246. *Id.* at 1:04:30-1:05:10.

247. *Id.* at 26:00-26:25.

248. *Id.* at 26:50-27:12.

Organizing against student debt is tied not simply to worker power but calls for free and public education and campaigns to cancel other forms of debt, including housing and carceral debt.<sup>249</sup> In various coalitions at the local level, the Debt Collective is organizing to cancel lunch debt for secondary-school lunches<sup>250</sup> and against utility debt.<sup>251</sup> Forging connections among varied debts allows the movement to target indebtedness and its disciplining function, while it pulls within the ambit of its organizing a whole range of debtors. At the same time, the organizing gestures at a society where people have access to a whole range of social entitlements. In 2019, at a press conference featuring members of the Debt Collective, Bernie Sanders, Pramila Jayapal, and Ilhan Omar introduced the College for All Act, which would have eliminated all student loan debt—about \$1.6 trillion at that time—and made public college free.<sup>252</sup>

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249. See *Campaigns*, DEBT COLLECTIVE, <https://debtcollective.org/what-we-do/campaigns> [<https://perma.cc/RH2Q-3R5Z>]; see also *Abolish Bail Debt: Press Conference*, ACTION NETWORK (Oct. 29, 2021, 11:00 AM), <https://actionnetwork.org/events/abolish-bail-debt-press-conference-rsvp> [<https://perma.cc/AS34-RED9>] (promoting the October 19, 2021 launch of the Debt Collective’s “Abolish Bail Debt Tool”); *About the Bail Tool*, CANCEL BAIL DEBT, <https://abolishbaildebt.org/about.html> [<https://perma.cc/GN8A-SN9S>] (explaining the Bail Debt Tool). In 2020, along with the LA Tenants Union and other organizations, the Debt Collective launched the Tenant Power Toolkit. *About Us*, TENANT POWER TOOLKIT, <https://tenantpowertoolkit.org/about.html> [<https://perma.cc/4MR3-J6TP>].
250. The Coalition includes local chapters of the Debt Collective and DSA. Emily Rizzo, *Bucks School Lunch Debt Relief Set to Expire; Groups Work to Keep It Going*, WHYY (Feb. 25, 2022), <https://whyy.org/articles/bucks-school-lunch-debt-relief-set-to-expire-groups-work-to-keep-them-going> [<https://perma.cc/4DSN-P7KG>]; BuxMont DSA, *Bucks Cancel Lunch Debt Assembly*, YOUTUBE (Oct. 29, 2021), <https://www.youtube.com/watch?v=SlzqKzs3iFQ> [<https://perma.cc/HU94-6GJV>]; see also Abbye Atkinson, *Philando Castile, State Violence, and School Lunch Debt: A Meditation*, 96 N.Y.U. L. REV. ONLINE 68, 69-70 (2021) (discussing Philando Castile’s use of his “own personal funds to help children and their families pay off delinquent school meal debt”).
251. *You Say ‘Free Market’—We Say Exploitation!*, DEBT COLLECTIVE (2021), <https://us20.campaign-archive.com/?u=f9411e6e69ac46a2b197ad951&tid=e473795a84> [<https://perma.cc/AP4D-EVYC>]; Umme, *Cancel Electricity Bills for Texans!*, DEBT COLLECTIVE (Feb. 23, 2021, 5:03 PM), <https://community.debtcollective.org/t/cancel-electricity-bills-for-texans/4811> [<https://perma.cc/GX27-8FUR>]; The Debt Collective (@StrikeDebt), TWITTER (Feb. 23, 2021, 5:15 PM), <https://twitter.com/StrikeDebt/status/1364338003628466176> [<https://perma.cc/5KWR-X3AL>]; *Cancel Electricity Bills and Put Our Electricity Back in the Power of People*, ACTION NETWORK, <https://actionnetwork.org/letters/cancel-electricity-bills-and-put-our-electricity-back-in-the-power-of-people> [<https://perma.cc/JUN8-P8TN>].
252. S. 1947, 116th Cong. (2019); The Power Rep., *Debt Collective Members Join Members of Congress in Washington to Endorse the College for All Act*, DEBT COLLECTIVE (June 25, 2019), <https://powerreport.debtcollective.org/reports/collegeforall> [<https://perma.cc/ZN78-9PNS>]. In the House, the Act was introduced in two bills: the College for All Act, H.R. 3472, 116th Cong. (2019), and the Student Debt Cancellation Act, H.R. 3448, 116th Cong. (2019). In April 2021, Bernie Sanders and Pramila Jayapal introduced a revised College for All Act, which did not

### C. Democratization

Democratization campaigns shed light on how neoliberalism aims to break social bonds and organization – in particular, of workers and the poor – and puts the state in service of the market and the prison. They also shed light on the limits of so-called bourgeois or electoral democracy, with its focus on the vote and its assertion of a division between politics and the economy. A central place where power is being contested is at work: the place of “private government,” where “bosses govern workers” in extraordinary ways.<sup>253</sup> The powerful worker organizing happening in key areas of the economy – including on campuses and schools, at hospitals and on railroads, in Amazon warehouses and Starbucks coffeehouses – speaks to a desire for collective organization against behemoth corporations and concentrated economic power.<sup>254</sup> These campaigns attempt to build pathways for a countervailing force against oligarchic power, and to shift

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mention eliminating student loan debt. See H.R. 2730, 117th Cong. (2021); S. 1288, 117th Cong. (2021).

253. ELIZABETH ANDERSON, *PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON'T TALK ABOUT IT)*, at xxii, 41-47 (2017); see also ELLEN MEIKSINS WOOD, *DEMOCRACY AGAINST CAPITALISM: RENEWING HISTORICAL MATERIALISM* 290 (1995) (arguing that democracy requires not “simply ‘economic democracy’ as a greater equality of distribution,” but “democracy as an economic regulator, the driving mechanism of the economy” (emphasis removed)); Bowie, *supra* note 4, at 181 (“Since the nineteenth century, waves of organizers have attempted to remedy the oppression most American workers face by democratizing the workplace.”). Bowie writes of the Industrial Workers of the World – often referred to as the Wobblies – of the early twentieth century as seeking “the democratic control of industry by labor and for labor, instead of private capitalists, as at present.” *Id.* (quoting JUSTUS EBERT, *THE TRIAL OF A NEW SOCIETY* 34 (1913)).
254. E.g., John Logan, *America Is in the Middle of a Labor Mobilization Moment – with Self-Organizers at Starbucks, Amazon, Trader Joe’s, and Chipotle Behind the Union Drive*, CONVERSATION (Sept. 2, 2022, 8:18 AM EDT), <https://theconversation.com/america-is-in-the-middle-of-a-labor-mobilization-moment-with-self-organizers-at-starbucks-amazon-trader-joes-and-chipotle-behind-the-union-drive-189826> [<https://perma.cc/9N7V-ELXS>]; John Cassidy, *The Averted National Rail Strike Is a Parable of Contemporary American Capitalism*, NEW YORKER (Dec. 6, 2022), <https://www.newyorker.com/news/our-columnists/the-averted-national-rail-strike-is-a-parable-of-contemporary-american-capitalism> [<https://perma.cc/UT6T-2JJA>]; Ross Grooters, *What Would It Take for Rail Workers to Win?*, LABOR NOTES (Dec. 2, 2022), <https://labornotes.org/2022/12/what-would-it-take-rail-workers-win> [<https://perma.cc/BU9D-HFPW>]; Yacob Reyes, *Nurses Across the U.S. Strike Against COVID Working Conditions*, AXIOS (Jan. 13, 2022), <https://www.axios.com/2022/01/14/nurses-united-states-protesting-coronavirus> [<https://perma.cc/9JY2-HD3U>]; Shawn Hubler, *University of California Academic Workers Reach Deal to End Strike*, N.Y. TIMES (Dec. 16, 2022), <https://www.nytimes.com/2022/12/16/us/university-of-california-strike-deal.html> [<https://perma.cc/W986-T8K3>].

power away from the concentrated top toward the many. The strike is a key tool against bosses and for more democratic power at work.<sup>255</sup>

While many in the left social ecosystem champion the necessity of voting—and even engaged in voter-turnout efforts to ensure Trump’s 2020 defeat<sup>256</sup>—many campaigns reveal a distinct conception of democracy. Democracy must extend beyond the ballot box, to work, the economy, and a broader set of social institutions.<sup>257</sup> Moreover, democracy requires the pursuit of political equality among people.<sup>258</sup> Reflective of this broad and substantive rather than procedural approach to democracy, there are a range of campaigns that organize workers at

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255. Again, Bowie on the Wobblies: “[I]f workers could prevent employers from making money without their cooperation, they could force employers to respect workers as equals entitled to share in making decisions.” Bowie, *supra* note 4, at 182.

256. *E.g.*, LIPSITZ, *supra* note 51, at 137.

257. See TAYLOR, *supra* note 23, at 12 (“Democracy cannot be reduced to a system of laws to abide, a set of ‘indicators’ to meet, or a ten-point proposal to enact but is instead something more emergent and experimental, a combination of order and flux rooted in both procedure and principle, modes of production (how we organize the creation of goods necessary for our survival) and popular sentiment.” (emphasis omitted)); NeJaime & Siegel, *supra* note 36, at 1951 (“Many democratic theories highlight the inadequacy of equating democracy with voting.”); Aziz Rana & Jedediah Britton-Purdy, *We Need an Insurgent Mass Movement*, DISSENT MAG. (Winter 2020), <https://www.dissentmagazine.org/article/we-need-an-insurgent-mass-movement> [<https://perma.cc/23RE-HMLZ>] (“The revival of a self-described socialist left and the broader turn of the Democratic Party’s progressive wing to ‘big, structural change’ have brought back the understanding that robust democracy requires economic freedom as well as the political kind.”); see also NeJaime & Siegel, *supra* note 36, at 1940–49 (arguing for an expanded understanding of democracy and democratic participation to include a broader set of institutions beyond those of formal politics, including the family).

258. Bowie, *supra* note 4, at 164. Bowie defines democracy as the pursuit of political equality requiring “the elimination of economic and social inequalities,” *id.* at 167–69, and “a rigorous commitment to democracy everywhere—from our workplaces to our fundamental law—not just for some people on Election Day,” *id.* at 219. See also BURCH, *supra* note 6, at 15–16 (“The extent to which people feel acknowledged, respected, and included as equal members of the polity [by social, economic, and political institutions] is a key measure by which to judge the health of a democratic society.”); FRASER & HONNETH, *supra* note 61, at 44 (“In the democratic perspective, justice is not an externally imposed requirement, determined over the heads of those whom it obligates . . . [but] it binds only insofar as its addressees can also rightly regard themselves as its authors.”); MILIBAND, *supra* note 45, at 118 (“A social order in which basic needs are no longer subject to ability to pay would create conditions in which a sense of community, diffused through the whole of society, would be encouraged to flower and would enrich both individual and social life.”); WOOD, *supra* note 253, at 213 (“Capitalism, then, made it possible to conceive of ‘formal democracy,’ a form of civic equality which could coexist with social inequality and leave economic relations between ‘elite’ and ‘labouring multitude’ in place.”).

work, and seek greater participation in budgeting, municipal politics, and more.<sup>259</sup>

For socialists and communists, the working class's "structural position in the economy" means that they have a latent power "to disrupt production and exchange" within the market that in turn is a key source of political power.<sup>260</sup> The ultimate task is "to help foment and defend the advance of the working-class and other oppressed social sectors in a struggle for democratic socialism."<sup>261</sup> This view sees political and economic power as relational rather than distinct. In turn, it requires organizing for both.

*The PRO Act and the Green New Deal.* The DSA's twin campaigns for the Green New Deal and the Protect the Right to Organize (PRO) Act illustrates this understanding of a connection of political and economic power.<sup>262</sup> The DSA has contrasted its socialist Green New Deal from the resolution introduced in Congress and championed by the Sunrise Movement.<sup>263</sup> Their Green New Deal

259. E.g., Brandon Jordan, *How Communities Are Using Direct Democracy to Shape City Budgets*, WAGING NONVIOLENCE (Sept. 28, 2016), <https://wagingnonviolence.org/2016/09/direct-democracy-participatory-budgeting> [<https://perma.cc/5GSK-AE5U>]; Akbar, *supra* note 113, at 111. For a persuasive criticism of the limits of participatory-budgeting demands for actually shifting power, see GIANPAOLO BAIOCCHI & ERNESTO GANUZA, *POPULAR DEMOCRACY: THE PARADOX OF PARTICIPATION* (2017).

260. Joseph M. Schwartz & Bhaskar Sunkara, *What Should Socialists Do?*, JACOBIN, (Aug. 1, 2017), <https://jacobin.com/2017/08/socialist-left-democratic-socialists-america-dsa> [<https://perma.cc/GTH5-GTVR>]; see also Don McIntosh, *Talking Socialism: Interviewing Jacobin's Bhaskar Sunkara*, DEMOCRATIC SOCIALISTS OF AM. (June 18, 2021), <https://www.dsausa.org/democratic-left/sunkara> [<https://perma.cc/GG6R-RPXY>] (discussing the importance of the working class as the "agent of change" for socialists); cf. YOUNG ET AL., *supra* note 99, at 187 ("The dominance of corporations . . . derives first and foremost from their control over the investment of capital. This gives them enormous economic, political, and social power, since they can disrupt, or threaten to disrupt, the functioning of the entire society by withholding capital.").

261. Dieterich et al., *supra* note 152.

262. Don Gonyea, *House Democrats Pass Bill that Would Protect Worker Organizing Efforts*, NPR (Mar. 9, 2021, 9:18 PM ET), <https://www.npr.org/2021/03/09/975259434/house-democrats-pass-bill-that-would-protect-worker-organizing-efforts> [<https://perma.cc/83HP-GZUC>]; Sam Mellins, *Socialists and Organized Labor Are United to Change Pro-Boss Labor Laws*, JACOBIN (Apr. 13, 2021), <https://jacobin.com/2021/04/dsa-pro-act-unions-organizing> [<https://perma.cc/9HB3-DLAL>]; Celine McNicholas, Margaret Poydock & Lynn Rhinehart, *Why Workers Need the Protecting the Right to Organize Act*, ECON. POL'Y INST. (Feb. 9, 2021), <https://www.epi.org/publication/why-workers-need-the-pro-act-fact-sheet> [<https://perma.cc/9WBF-9P63>]. The Chamber of Commerce fought the Protect the Right to Organize (PRO) Act. *Stop the PRO Act*, U.S. CHAMBER OF COM., <https://www.uschamber.com/major-initiative/stop-the-pro-act> [<https://perma.cc/Y8DE-2Q24>].

263. There are also Green New Deals for public housing and public schools. See generally Amna A. Akbar, *This Could Be Housing*, 121 S. ATL. Q. 261, 276-79 (2022) (describing DSA's two campaigns, as well as the Sunrise Movement's approach to the Green New Deal).

would “[d]ecarbonize the economy fully by 2030,” “[d]emocratize control over major energy systems and resources,” “[c]enter the working class in a just transition,” and “decommodify survival by guaranteeing living wages, healthcare, [and] childcare.”<sup>264</sup> Notice the emphasis on decarbonizing, democratizing, and decommodifying – latent within this plan is an ambition to remake the economy, transforming our relationship to land, pushing toward public ownership, and assuring basic human needs.

But rather than attempting to reshape the Green New Deal in Congress, after President Biden’s election the DSA embraced the PRO Act as its “highest national [legislative] priority.”<sup>265</sup> The PRO Act would promote workers’ abilities to organize, strike, and collectively bargain. It would fertilize the ground for greater alignment between recent polling showing that seventy-one percent of people in the United States approve of unions – the highest approval rate since 1965 – and the fact that only nine to twelve percent of U.S. workers belong to unions.<sup>266</sup> In other words, the PRO Act would roll back a panoply of pro-management laws and expand space for building worker power.<sup>267</sup>

It may seem curious to champion a bill designed to facilitate labor organizing in relation to climate legislation. But the DSA argues their prioritization as necessary for building the kind of power required “to take on the bosses” and to win “a bold transformative plan to avert the climate crisis.”<sup>268</sup> Their vision of redressing climate crisis requires a transformation of the economy and therefore work

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

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

266. Justin McCarthy, *U.S. Approval of Labor Unions at Highest Point Since 1965*, GALLUP (Aug. 30, 2022), <https://news.gallup.com/poll/398303/approval-labor-unions-highest-point-1965.aspx> [<https://perma.cc/CX54-2ZFB>]; Bureau of Lab. Stats., *Union Members – 2021*, U.S. DEP’T OF LAB. (Jan. 20, 2022, 10:00 AM ET), <https://www.bls.gov/news.release/pdf/union2.pdf> [<https://perma.cc/RV2F-WG5J>]; Justin McCarthy, *What Percentage of U.S. Workers Are Union Members?*, GALLUP (Sept. 1, 2022), <https://news.gallup.com/poll/265958/percentage-workers-union-members.aspx> [<https://perma.cc/3E92-JN6A>].

267. E. Tammy Kim, *As Pro-Union Sentiment Reaches a Fifty-Year High, U.S. Law Remains Pro-Management*, NEW YORKER (Dec. 27, 2022), <https://www.newyorker.com/culture/2022-in-review/as-pro-union-sentiment-reaches-a-fifty-year-high-us-law-remains-pro-management> [<https://perma.cc/82X6-W3Y3>]; see also Bowie, *supra* note 2, at 2013 (“[T]he current Supreme Court is often described as the most business-friendly in history.” (citing Lee Epstein, William M. Landes & Richard A. Posner, *How Business Fares in the Supreme Court*, 97 MINN. L. REV. 1431, 1431-32 (2013))).

268. *Workers & the World Unite!*, *supra* note 265; see also *Path to a Green New Deal*, DEMOCRATIC SOCIALISTS OF AM., <https://pro-act.dsausa.org/greennewdeal> [<https://perma.cc/W6R2-2SNT>] (explaining the link between labor empowerment and climate action).

and production. As such, the DSA has worked closely with unions and on building a climate-labor alliance.<sup>269</sup> Organizers with the DSA’s Ecosocialist Working Group explain the PRO Act creates “preconditions for massively expanding unionization” that could seed the massive disruption required – including through secondary climate strikes and labor strikes – to take on the fossil-fuel industry and to remake the economy.<sup>270</sup>

In this reframe, the struggle for the PRO Act and the Green New Deal takes on non-reformist hues. These are not simply battles for unionization and the environmental regulation, but for shifting the balance of power: “put[ting] power back in the hands of the working-class majority” and transforming the political economy.<sup>271</sup> The prioritization of these campaigns reflects a strategic assessment of the roadblocks for worker organizing and for fighting the fossil-fuel industry. Without “a reinvigorated labor movement,” there is no “power to reshape the economy”<sup>272</sup> or to “break[] the corporate stranglehold on our political system.”<sup>273</sup> In other words, the power and organization of workers in the economy is a touchstone for the power and organization of the working-class within the state and society. One cannot exist without the other. Connecting these legislative battles, then, partly redresses the long-standing Marxist critique of social movement focused on redistribution without contending for the means of production.

Speaking to the depressed political power of working people, despite the unprecedented popularity of unions within the public, the PRO Act passed the House in 2021, but never made it out of committee in the Senate.<sup>274</sup> It was featured in the Biden White House’s original version of the 2021 Build Back Better

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269. Kate Aronoff, *This Is What the Beginning of a Climate-Labor Alliance Looks Like*, NEW REPUBLIC (Mar. 10, 2021), <https://newrepublic.com/article/161653/pro-act-climate-labor-alliance> [<https://perma.cc/FP64-LL4>].

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

271. *Id.*

272. *Path to a Green New Deal*, *supra* note 268 (“The point of a radical Green New Deal is to build . . . a colorful democracy for all, to live through sun and storm.”); KATE ARONOFF, ALYSSA BATTISTONI, DANIEL ALDANA COHEN & THEA RIOFRANCOS, *A PLANET TO WIN: WHY WE NEED A GREEN NEW DEAL* 191 (2019). For a powerful illustration of how environmental justice will require remaking the political economy, see Alyssa Battistoni, *Living, Not Just Surviving*, JACOBIN (Aug. 15, 2017), <https://jacobin.com/2017/08/living-not-just-surviving> [<https://perma.cc/9SL4-U6L5>].

273. Ghazarian & Siddique, *supra* note 270.

274. Gonyea, *supra* note 262.

bill—but was cut before the Inflation Reduction Act and Infrastructure Investment and Jobs Act took shape and became law.<sup>275</sup>

#### IV. REORIENTING REFORM

Non-reformist reforms reorient liberal and neoliberal approaches to reform in significant ways. They require a horizon beyond legalism; they embrace antagonism and conflict rather than depoliticization and neutrality; they aim to shift the balance of power; and they build mass organization and prepare the people to govern.

##### A. *Beyond Legalism*

A “reformist reform” comports with the “rationality and practicability of a given system” as it “rejects those objectives and demands—however deep the need for them—which are incompatible with the preservation of the system.”<sup>276</sup> In contrast, the non-reformist reform gestures beyond the law and what the state allows. In the Red Nation’s conception, the non-reformist reform “fundamentally challenges the existing structure of power by prioritizing, organizing, and elevating the needs and demands of the masses.”<sup>277</sup> The organization goes on: “We don’t want to improve the system by implementing policies from the top down, we want to destroy it—either by fire or a million small cuts—in order to replace it.”<sup>278</sup> A fundamental characteristic is that the non-reformist reform puts pressure on prevailing legal arrangements and the power relations they overlay. Rather than conforming to legal logics, non-reformist reforms must break them. In this sense, non-reformist reforms are beyond legalism, reaching for alternative possibilities.

Campaigns like Stop Cop City, or to cancel rent or student debt, push beyond conventional reform discourse to reshape and contest the power of the state. But these campaigns are also beyond legalism in their rejection of formal legal and political processes for their inefficacy—for how those processes are captured by those with concentrated economic and political power, rather than the people. Campaigns for non-reformist reforms then rely on “inside” and “outside” strategies. This entails a combination of legal and extralegal strategies and

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275. Timothy Noah, *There’s an Excellent Labor Provision (Sssh!) in the Build Back Better Act*, NEW REPUBLIC (Nov. 1, 2021), <https://newrepublic.com/article/164228/pro-act-reconciliation-labor-unions> [<https://perma.cc/PB6V-FV6N>].

276. GORZ, *supra* note 113, at 7.

277. THE RED NATION, COMMUNISM IS THE HORIZON, *supra* note 141, at 37.

278. *Id.*

tactics.<sup>279</sup> Inside strategies are those that adhere to and abide by the rules of formal law and politics: lobbying, litigation, voting. Outside strategies rely, instead, on protest, disruption, strikes, even mutual-aid networks – the building and exercising of autonomous and unruly power. These strategies disrupt the rules and institutions of formal law and politics and make new pathways possible. As Cornel West explained in his essay *The Role of Law in Progressive Politics*, “significant extraparliamentary social motion [that] brings power and pressure to bear on the prevailing status quo” is necessary for affirmative, progressive, or positive legal work. Without it, only defensive work is possible.<sup>280</sup>

Embracing non-reformist reformism forces essential questions about the contradictory place of law in emancipatory struggle. To accept that reformism is not the horizon but a tool or tactic, one must understand the emancipatory project as one beyond regulation, legalism, and legal process. For if one fallacy is that law is apolitical or above politics, it is equally untrue that law is all of politics, or that it sets the terms of politics altogether. The rules under which we live are more capacious than what courts, legislatures, or executives say and do. There is the law of capital; the afterlives of slavery; and power of the prison, the patriarchy, the family, and the church.<sup>281</sup> We should proliferate our understanding of where law takes shape and in relation to what, who acts on it, who it acts on, who benefits, who loses, and who resists – and how resistance individual and collective reshapes law. The aim should be more ambitious than to understand sociologically the life of the law – of where the law lives and the myriad ways it works<sup>282</sup> – but to understand all the places where it can be undone and remade.

Michael Denning recently advanced the Italian Marxist Antonio Gramsci’s concept that “everyone is a legislator.”<sup>283</sup> Everyone is a legislator because “everyone contributes to modifying the social environment,” everyone “tends to estab-

279. West, *supra* note 38, at 1797, 1800, 1805-06.

280. *Id.* at 1797.

281. See, e.g., KATHARINA PISTOR, *THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY* (2019); SAIDIYA V. HARTMAN, *SCENES OF SUBJECTION. TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH CENTURY AMERICA* (1997); MELINDA COOPER, *FAMILY VALUES: BETWEEN NEOLIBERALISM AND THE NEW SOCIAL CONSERVATISM* (2019).

282. For a generative critique of focusing on law on the books and law in action, see Christopher Tomlins, *How Autonomous Is Law?*, 3 ANN. REV. L. & SOC. SCI. 45, 60-61 (2007), which treats law as relational, explores the rise in the 20th century of society as the primary relational other of study, and poses justice and memory as alternatives. See also Justin Desautels-Stein & Akbar Rasulov, *Deep Cuts: Four Critiques of Legal Ideology*, 31 YALE J.L. & HUMAN. 435, 509-514 (2021) (articulating challenges to the contemporary critical legal project); Corinne Blalock, *Neoliberalism and the Crisis of Legal Theory*, 77 LAW & CONTEMP. PROBS. 71, 71-73 (2014) (identifying the failure of critical legal theory to grapple with now-dominant neoliberalism).

283. Michael Denning, *Everyone a Legislator*, 129 NEW LEFT REV. 29, 31 (2021).

lish norms, rules of living and behavior” as they partake in daily life “in the workplace, the neighborhood, the household, the police precinct, the schools, even the legislature.”<sup>284</sup> We set, contest, shape, refuse, and follow norms and rules every day. This fuller picture of law or rules in action—in relation—compels a more unruly concept of law, one that attends to the many ways that power moves. It restores to each person a sense of power and broadens our understanding of what makes up the world all around us. Law becomes a partial set of relations, always unstable and subject to contestation—stitched through the economy, and social, political, and ideological power relations—their histories and even their ghosts<sup>285</sup>—that define how we live.

If we broaden our view of the relevant rules that make up the world, we decenter the importance of formal law as we account for a broader world of rule-making and norm-setting, their promulgation and contestation. Contending with law in relation gestures toward theories of social change that do not rest on judges and lawyers, or even equally situated people with competing interests before a legislature. Now, we must account for the ordinary and latent power we each exercise every day over many terrains. We attend to a larger set of strategies, tactics, and forums.

### *B. Antagonistic and Conflictual*

Reformism attempts to relegate political, economic, social struggles onto depoliticized, individuated, and technical legal terrains. But non-reformist reforms are antagonistic: drawing from the Marxist understanding of class struggle as inherent in capitalist social relations,<sup>286</sup> they highlight material conflicts along the dimensions of class, race, and gender. Non-reformist reforms politicize and charge conflict, rather than attempt to deflate it. Rather than deferring to or pleading with representatives of the state, then, non-reformist reforms fundamentally contest the power, expertise, and worldview of the ruling class. Campaigns for non-reformist reforms seek to create social conflict among and between classes in order to build class consciousness and force people to pick a side.<sup>287</sup> As members of the NYC-DSA explained, “[T]he struggle for reforms

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284. *Id.* at 36–37, 44 (internal quotation marks omitted).

285. See AVERY F. GORDON, *GHOSTLY MATTERS: HAUNTING AND THE SOCIOLOGICAL IMAGINATION* (1997).

286. See HADAS THIER, *A PEOPLE’S GUIDE TO CAPITALISM: AN INTRODUCTION TO MARXIST ECONOMICS* 7 (2020) (“At its core, capitalism was defined by Marx as a social relation of production. He meant that politics are . . . the outcome an exploitative relationship between two classes of people: bosses and workers.” (emphasis omitted)).

287. Mathiesen explains that campaigns must create

must be subordinated to the class struggle (not vice versa).<sup>288</sup> While reformism aims to depoliticize, non-reformist reforms aims to turbocharge engagement with race, class, and gender struggles.<sup>289</sup> It is only in unleashing these struggles that any significant emancipatory progress can be made.

Consider how many campaigns for defunding the police are often accompanied by demands to fund communities or alternative state capacity. These demands make a fundamental objection to the capture of state budgets by police and suggest an alternative path forward.<sup>290</sup> They confront the police as a key font of racialized power and state violence within a capitalist economy – situating police in opposition to communities, asking you to choose – as they agitate toward abolitionist horizons. While these campaigns are criticized for how they turn on police, it is from this posture that these campaigns develop power and momentum.

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a *dilemma*; through the conscious experience of in fact having to choose between a continuation of the prevailing order (possibly with minor changes) and a transition to something which is unknown. Such a conscious experience is no sufficient condition for the inception of abolition . . . but it is certainly a necessary one.

MATHIESEN, *supra* note 83, at 59; *see also* Simonson, *supra* note 4, at 844 (arguing that “[c]ontestation is necessary for democracy,” including “political action that involves direct opposition to reigning laws, policies, or state practices,” and “from populations and communities that have historically had a reduced voice in generating reigning ideas about how to govern and provide security”).

288. Jack L. & Isaac KD, *Stuck in a Loop? A Critical Assessment of DSA’s Strategic Orientation Towards the Fight for Reforms*, SOCIALIST F. (Spring 2022), <https://socialistforum.dsausa.org/issues/spring-2022/stuck-in-a-loop> [<https://perma.cc/S3HB-JKYC>] (“History also shows that socialists must aim to thoroughly *delegitimize* the bourgeois state while fighting for working class democracy in the economic and political spheres.”).
289. *Abolition & the State*, *supra* note 145, at 23 (“We need to make demands on the state that will have maximal mobilizing effect and make more people into active participants who have the capacity to co-govern our lives and work.” (quoting Dean Spade)). For analysis of a set of reforms to deepen how “ordinary people can effectively participate in and influence politics which directly affect their lives,” by fostering “the commitment and capacities of ordinary people to make sensible decisions through reasoned deliberation and empowered because they attempt to tie action to discussion,” *see* Archon Fung & Erik Olin Wright, *Thinking About Empowered Participatory Governance*, in *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* 3, 5 (Archon Fung & Erik Olin Wright eds., 2003).
290. Reforms must work to shrink the prison and work to “unveil whatever the system veils” about its “true nature.” MATHIESEN, *supra* note 83, at 229.

Materially, campaigns for non-reformist reforms must aim “to make people’s lives better.”<sup>291</sup> The demands must provide or seek to provide something tangible, real, and meaningful. Recall the campaigns to cancel rent and debt. Both campaigns speak to material needs: whereas cancel rent speaks to house, cancel debt speaks to education, utilities, and more. Both campaigns aim to keep money in people’s pockets. The DSA’s Medicare for All demand illustrates this orientation as well. The DSA has called for “a single, universal [healthcare] system with comprehensive coverage that is free at the point of service,” one that “prioritizes the health of working-class Americans over the profits of insurance companies and their billionaire executives”<sup>292</sup> and “eliminate[s] private insurance.”<sup>293</sup> Universal single payer, campaign materials explain, will “materially improve the lives of millions of people.”<sup>294</sup> That improvement, centrally, can “change the public’s thinking . . . enabling people to imagine and work toward an alternative to the

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291. Democratic Socialists of Am., *supra* note 100, at 25:21-28:20 (statement of Meagan Day); *see also* James Cole, *A Profound Break*, MEDICARE FOR ALL (May 4, 2018), <https://medicareforall.dsausa.org/blog/a-profound-break> [<https://perma.cc/TP23-JB>]6 (stating that a revolutionary reform has “got to improve the lives of workers”); *Capital with Angela Davis*, LIT REV. PODCAST, at 01:09:19 (Apr. 11, 2022), <https://www.thelitreview.org/season4.html> [<https://perma.cc/M6PL-SG37>] (discussing non-reformist reforms as “reforms that really help human beings” and “give us a sense of our power”).
292. DEMOCRATIC SOCIALISTS FOR MEDICARE FOR ALL, <https://medicareforall.dsausa.org> [<https://perma.cc/L8L9-XADV>]; *see also* *Launching a Medicare for All Campaign: A DSA Organizing Guide*, DEMOCRATIC SOCIALISTS FOR MEDICARE FOR ALL, <https://medicareforall.dsausa.org/organizing-guide/launching-a-medicare-for-all-campaign> [<https://perma.cc/PET9-E2XJ>] (providing a Medicare for All organizing guide). The DSA views only Bernie Sanders and Pramila Jayapal’s bills as “true” Medicare-for-All bills. DSA for Medicare for All, *We Want Medicare for All and Nothing Less*, VIMEO 02:59, 03:45 (Nov. 11, 2019, 5:05 PM) [hereinafter *Medicare for All and Nothing Less*], <https://vimeo.com/372485809> [<https://perma.cc/6WS2-ADUR>].
293. *Medicare for All and Nothing Less*, *supra* note 292, at 3:45. A recent survey showed eighty-two percent of the public believes the healthcare system prioritizes profits over patient well-being. NAT’L P’SHIP FOR HEALTHCARE & HOSPICE INNOVATION, VIEWS AND EXPERIENCES OF AGING AND END-OF-LIFE CARE IN THE US 14 (2022), <https://www.hospiceinnovations.org/wp-content/uploads/2022/11/NPHI-Survey-Views-and-Experiences-of-Aging-End-of-Life-Care-in-the-US.pdf> [<https://perma.cc/VA2W-WJVU>].
294. Louise Parker & Anonymous, *Essay on the Fight for a Single-Payer Universal Healthcare System*, DSA BUILD, <https://dsabuild.org/m4apopularfront> [<https://perma.cc/8VXW-MXW9>]; *see also* Philly DSA Bulletin Team, *Bulletin: May Day Picnic This Saturday! Striking Stop & Shop Workers Get the Goods*, PHILLY DSA (Apr. 25, 2019), [https://www.phillydsa.org/bulletin\\_4\\_25\\_19](https://www.phillydsa.org/bulletin_4_25_19) [<https://perma.cc/QDW7-PY5F>] (“Medicare for All is a ‘non-reformist reform’: a concrete demand that makes people’s lives immediately better . . . .”); Cole, *supra* note 291 (stating that a revolutionary reform has “got to improve the lives of workers,” and the Medicare for All will do so); *cf.* Teresa Kalisz, *Rethinking Reforms*, REGENERATION MAG. (Apr. 19, 2019), <https://regenerationmag.org/rethinking-reforms> [<https://perma.cc/WZ2Q-7BEU>] (discussing the limits of Medicare for All proposals).

capitalist structure,” even “provide a gateway to understanding and implementing socialism.”<sup>295</sup> The material demand must be connected concretely to the possibility of a different world.

But it is not enough to assume that a campaign for the right substantive demand would itself expand space for understanding the problems with capitalism or implementing socialism. The historian James Weinstein has reflected that the Socialist Party of the early 1900s, the Communist Party from 1919 to 1956, and the New Left failed due to repression and weakness.<sup>296</sup> As to weakness, he argues in all three eras the left assumed that fighting for reforms “would in itself lead people” to understand the need for “a comprehensive revolutionary movement.”<sup>297</sup> As a result, they “relegat[ed] the need for a socialist revolution to the back rooms of party headquarters and the private lives of movement organizers” rather than taking the arguments to the public, in meetings and on the streets.<sup>298</sup>

Ideologically, then, the non-reformist reform must put the prevailing order, however conceived, (for example, capitalism, racial capitalism, and/or the prison-industrial complex) and the horizon of a radically reconstituted world (say, socialism, communism, and/or abolition democracy) in competition for a popular audience. The formations fighting for non-reformist reforms must do more than simply advance a particular change: they must ground their campaigns and organizing in horizons for the society and state reconstituted. The contradiction, competition, and antagonism must be created and then sustained to motivate struggle over time.<sup>299</sup> The founding editor of *Jacobin*, Bhaskar Sunkara, explains, “We must combat the dominant ideology of market individualism with a compelling vision of democracy and freedom, and show how only in a society characterized by democratic decision-making and universal political, civil, and social rights can individuals truly flourish.”<sup>300</sup>

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295. Louise Parker & Anonymous, *supra* note 294.

296. JAMES WEINSTEIN, *AMBIGUOUS LEGACY: THE LEFT IN AMERICAN POLITICS*, at vii-viii (1975).

297. *Id.* at viii.

298. *Id.*

299. Mathiesen writes of the need for both contradiction and competition. MATHIESEN, *supra* note 83, at 47-48 (“The main problem [is] that of obtaining the combination of *the contradicting and the competing*; the main problem is that of avoiding your contradiction becomes non-competing and that your competition becomes agreement. The main aim is that of attaining *the competing contradiction*.”).

300. Schwartz & Sunkara, *supra* note 260.

### C. *Intervening in the Balance of Power*

“The crucial factor in non-reformist reforms isn’t the ‘what,’” but “the ‘who’ and the ‘how,’”<sup>301</sup> how they foment “concrete changes in the balance of forces between the working class and the capitalist class.”<sup>302</sup> Non-reformist reforms must be assessed within an understanding of the conjuncture: the time and place, the balance of forces between the relevant classes, the strength of organized power of the dominated classes, and the defining social struggles of the era.<sup>303</sup> They seek to shift the balance of power toward the working class and away from the capitalist class, or toward race-and-class subjugated communities and away from the carceral state. They must “alter the terrain upon which later struggles will be waged . . . [and] expand the set of feasible options for future reform. Over time their cumulative effect could be to transform the underlying structures that generate injustice.”<sup>304</sup>

Strategies and tactics require ongoing assessment. Whether victorious or not, non-reformist reforms can lead to demobilization, which is counterproductive within an account of social change that requires mobilized and organized blocs of people to contest the ruling class.<sup>305</sup> Something celebrated as a non-reformist reform at the time of its adoption sets a new floor for action for the future; a non-reformist reform on day one may not be a non-reformist reform on

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301. Cole, *supra* note 291.

302. Kalisz, *supra* note 294.

303. See HALL ET AL., *supra* note 41, at xiv-xv; see also Asad Haider, *A New Practice of Politics: Althusser and Marxist Philosophy*, VERSO (Mar. 28, 2018), <https://www.versobooks.com/blogs/3713-a-new-practice-of-politics-althusser-and-marxist-philosophy> [<https://perma.cc/4TG4-Y8SP>] (defining conjuncture as “the balance of forces and network of contradictions constituting a particular political situation”). Haider further explains:

“Conjuncture” is a concept developed by Gramsci and Althusser that designates a specific moment in the life of a social formation and refers to a period when the antagonisms and contradictions, which are always at work in society, begin to “fuse” into a *ruptural unity*.” Conjunctural analysis deploys a type of periodisation based on a distinction between moments of relative stability and those of intensifying struggles and unrest, which may result in a more general social crisis. The concept covers the development of contradictions, their fusion into a crisis and its resolution. . . . So long as a period is dominated by roughly the same struggles and contradictions and the same efforts to resolve them, it can be said to constitute the same conjuncture.

Haider, *supra*.

304. FRASER & HONNETH, *supra* note 61, at 79-80.

305. See Kalisz, *supra* note 294 (“After winning a reform, the working class could demobilize, leaving no permanent organization. Even worse, as a part of the compromise, provisions might be included that could end creating new avenues for the capitalist class or state to fight or prevent class struggle.”).

day 3,000. Angela Y. Davis recently spoke about workers' struggles around the duration of the workday: at the outset, "there was a struggle for a 15-hour day," and then twelve, ten, and eight.<sup>306</sup> This is a struggle for workers to establish freedom over time and power against the boss. It does not end with establishing eight hours. She explains: "Somehow we have become fixated on this eight-hour day," but "that struggle should continue."<sup>307</sup> Moreover, the same demand in one time or place may look very different in another. The rise of the gig economy, for example, has reconstituted labor exploitation and insecurity and the demands that workers are making in response today.<sup>308</sup>

One must ask questions beyond the broad demand. How a demand in its particularities and implementation intervenes in the balance of class forces and whether it interrupts or extends the political, economic, or social relations that capitalism enshrines are essential considerations.<sup>309</sup> Gorz explained that a demand for "the construction of 500,000 new housing units a year" could be reformist or non-reformist in nature.<sup>310</sup> If the construction entailed "subsidizing private enterprise with taxpayers' money to guarantee its profits" – deferring to the ultimate logic of capital, private property, and a state committed to the enrichment of private enterprise – it would lean reformist.<sup>311</sup> If it entailed "the expropriation of those who own the required land, and . . . the construction would be a socialized public service, thus destroying an important center of the accumulation of private capital," it would take on a more non-reformist character.<sup>312</sup> From this we can extrapolate a series of consequential questions: Against whom does the demand leverage its power, toward whom does it redistribute power and resources, and who controls its implementation? Does it prioritize human need, or does it prioritize profit? Does it emphasize the use value of the housing units and the land on which it sits, or does it emphasize its exchange value as a commodity?

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306. *Capital with Angela Davis*, *supra* note 291, at 1:03:00; see also MARTIN HÄGGLUND, *THIS LIFE: SECULAR FAITH AND SPIRITUAL FREEDOM* 24-25 (2019) (arguing that the struggle for freedom is a struggle to define what we do with our time, something that capitalism does not allow).

307. *Capital with Angela Davis*, *supra* note 291, at 1:03:14.

308. Veena Dubal, *A Brief History of the Gig*, *LOGIC MAG.* (May 4, 2020), <https://logicmag.io/security/a-brief-history-of-the-gig> [<https://perma.cc/B33K-QLSC>].

309. See GORZ, *supra* note 113, at 4-5; FRASER & HONNETH, *supra* note 61, at 78.

310. GORZ, *supra* note 113, at 7 n.2.

311. *Id.*

312. *Id.*

Evaluating a reform for its non-reformist potential requires accounting for the balance of forces across the state and political economy.<sup>313</sup> The political theorist Nancy Fraser distinguishes between a strategy to regulate capitalism and redistribute its spoils – a conventional reformist approach – and a transformative strategy to achieve democratic control over the means of production.<sup>314</sup> But even these can be viewed differently in context. In the Fordist era, some leftists viewed social democracy not only as a compromise but as a developmental stage toward a socialist state: intended “to institute an initial set of apparently affirmative redistributive reforms, including universal social-welfare entitlements, steeply progressive taxation, macroeconomic policies aimed at creating full employment, a large non-market public sector, and significant public and/or collective ownership.”<sup>315</sup> These policies did not “alter[] the structure of the capitalist economy,” but, the idea was “together they would shift the balance of power from capital to labor,” thereby seeding a long-term transformation.<sup>316</sup> The defeat of the New Left and the arrival of neoliberalism, however, forestalled that transformation.<sup>317</sup>

Recall the DSA’s demand for universal single-payer health care. *Jacobin’s* Meagan Day explains that the power of single payer is partly that it increases the “ability [of working people] to intentionally act in conflict with the ruling class.”<sup>318</sup> Decommodifying health care raises the floor for labor and creates space for unions and other formations to agitate around other demands.<sup>319</sup> And “[i]t takes control of a major system away from the private sector and places it in the

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313. Mathiesen centered the strength of “welfare state principles” in Norway in his analysis of effective strategies. MATHIESEN, *supra* note 83, at 24–28 (arguing reforms like “better health and educational services for prisoners” might undermine rather than strengthen the prison in Norway because of the state’s strong commitments to “welfare state principles for everyone, including the outcasts of society,” and such principles are “impossible” to institute in prison).

314. FRASER & HONNETH, *supra* note 61, at 74 (“Far from simply altering the end-state distribution of consumption shares, [socialism] would change the division of labor, the forms of ownership, and other deep structures of the economic system.”).

315. *Id.* at 80.

316. *Id.*

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

318. Day, *supra* note 76.

319. Meagan Day & Bhaskar Sunkara, *Why America Needs Medicare for All*, N.Y. TIMES (Aug. 10, 2018), <https://www.nytimes.com/2018/08/10/opinion/medicare-for-all-health-costs.html> [<https://perma.cc/U3LT-FYG7>]; Meagan Day, *I’m Gay and I Want Medicare for All*, JACOBIN (June 6, 2019), <https://jacobin.com/2019/06/medicare-for-all-lgbtq-healthcare-rights> [<https://perma.cc/5UG5-TT3E>]. For an analogous scholarly argument, see Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLAL. REV. 758, 829–31 (2020).

hands of the public . . . embolden[ing] the working class to imagine new dimensions of political possibility.”<sup>320</sup> The question is sustaining and deepening the struggle over time.

#### D. *Building Democratic Organizations and Preparing to Govern*

The non-reformist reform must not simply be antagonistic; it must build popular organized power. Gorz’s strategy “assume[d] a mature workers movement . . . with numerous shows of strength through things such as mass strikes.”<sup>321</sup> That there is no such workers movement or left party in the United States is of central importance to developing a coherent program of non-reformist reforms.<sup>322</sup> One could imagine the project of non-reformist reforms as part of an effort to “facilitate the process of growth and strengthening of the working class movement.”<sup>323</sup> Indeed, the campaigns discussed throughout the Feature are not only efforts to win particular demands, but to build power, organization, and a popular base for today’s movements.

Members of the Louisville DSA explain that the goal of non-reformist reforms is to build “sustainable organization that brings socialists together with the rest of the multiracial working class,” consisting of “tens of millions of working-class people.”<sup>324</sup> Non-reformist reforms center collective, democratic mass organization that prepare the poor, working-class, Black, and brown people — now dominated classes — to govern.<sup>325</sup> Such reforms build autonomous or independent organizations and formations, including independent political parties,

320. Day, *supra* note 76.

321. Kalisz, *supra* note 294.

322. Mathiesen’s discussion of the Norwegian Association of Penal Reform, and its ultimate embrace of the “principle of immediacy,” or immediate implementation, also spoke to a mature movement and organization with considerable power. MATHIESEN, *supra* note 83, at 26-28.

323. Kalisz, *supra* note 294 (“Until the strength and organizational level of the working class is such that it creates these challenges to capitalists and the state, any major reform is going to be much more limited . . . than the proponents of non-reformist reforms envision.”).

324. Greta Smith & Robert Levertis Bell, *A Hierarchy of Socialist Political Objectives*, SOCIALIST CALL (Jan. 7, 2022), <https://socialistcall.com/2022/01/07/socialist-strategy-demandspeoples-budget-louisville> [<https://perma.cc/8HQT-Y994>]. Their chart places “non-reformist reforms” in the “hierarchy of socialist political objectives” between “ameliorative action” and “basic reforms” on the one hand, and “higher level of organizational sophistication” and “deepened ties between socialists and broader working class” on the other. *Id.*; cf. Vivek Chibber, *Our Road to Power*, JACOBIN (Dec. 5, 2017), <https://www.jacobinmag.com/2017/12/our-road-to-power> [<https://perma.cc/G38Z-MJS2>] (arguing that the Socialist left is “only tenuously connected to working-class communities”).

325. Gorz emphasized the need to build autonomous political power. See GORZ, *supra* note 113, at 9-10. For a criticism about the limits of spontaneous mass protest to produce social change, see Gorz, *The Way Forward*, *supra* note 119, at 48-49.

unions, social-movement organizations, and more experimental forms.<sup>326</sup> Campaigns must be developed and implemented to build myriad forms of organization,<sup>327</sup> through which collective and class consciousness may be formed.<sup>328</sup>

The sociologist Thomas Mathiesen's works are useful here.<sup>329</sup> His writings draw from his work with the prison abolitionist Norwegian Association of Penal Reform (KROM).<sup>330</sup> Mathiesen insisted on the need of a "parallel fighting organization." This would allow organizers to stay focused on the contradiction between "the so-called 'revolutionary' (long-term abolishing) and 'the reformist' elements" in the organization's policies.<sup>331</sup> KROM served as an "alternative public place in penal policy, where argumentation and principled thinking represent the dominant values," independent from mass media, focused on the dignity of social movements, and restoring "the feeling of responsibility on the part of intellectuals."<sup>332</sup> The organization allowed its members to maintain their commitment to counterhegemonic values and ideas as they engaged in concrete campaigns.<sup>333</sup> Moreover, its regular meetings and conferences created "continuity"

326. For the DSA, the focus is on building working-class consciousness and organization: the development of "the autonomous power of workers and other structurally oppressed social sectors." Dieterich et al., *supra* note 152. Michael Hardt and Antonio Negri explain that "[t]here is no political realism without organization—moreover organization toward a definite goal. . . . Democracy requires more not less focus on organization, especially because the adequate and effective forms of organization needed today have to be invented." MICHAEL HARDT & ANTONIO NEGRI, *ASSEMBLY* 233, 290 (2017); see also RODRIGO NUNES, *NEITHER VERTICAL NOR HORIZONTAL: A THEORY OF POLITICAL ORGANIZATION* 21 (2021) (arguing that the working class cannot overcome the forces of power without collective organization).

327. Day, *supra* note 76 ("[N]on-reformist reform[s] . . . broaden[] the popular political imagination, and giv[e] shape and solidity to working-class institutions and political formations.").

328. For an account of socialist labor struggles that built working-class consciousness and pluralist socialist organization with a focus on the International Ladies Garment Workers Union, see William E. Forbath, *Class Struggle, Group Rights and Socialist Pluralism on the Lower East Side: Radical Lawyering and Constitutional Imaginary in the Early 20th Century* 18, 22-25 (May 13, 2020) (unpublished manuscript), <https://ssrn.com/abstract=3485241> [<https://perma.cc/W3RH-ADBM>].

329. See MATHIESEN, *supra* note 83.

330. See *id.* at xiii-xvii.

331. *Id.* at 56-58.

332. *Id.* at 28-29.

333. Ruth Wilson Gilmore also talks about this in her discussion of an organization of mothers with incarcerated sons called Mothers Reclaiming Our Children (ROC). The organization's "frontline relation to the state was not that of petitioners for a share of the available social wages, but rather in opposition to the state's form and purpose with respect to the life chances of the mothers' family members and those like them." GILMORE, *supra* note 33, at 247.

and “belonging.”<sup>334</sup> The organization gestated the necessary militancy and consciousness required for long-term struggle.<sup>335</sup>

Similarly, Gorz explained that the central engine for societal transformation is building “autonomous” popular power, independent from the state and capital, rather than “subordinate” to them. Whereas subordinate power entails participation, autonomous power is “the power of the workers to challenge, in opposing the effects and the methods of implementation, the very premises of the management’s policy.”<sup>336</sup> Such power is disruptive and reproductive alike, requiring “constant mobilization”: “the indispensable relay station for the elaboration and pursuit of the integral objectives of a policy aimed at replacing capitalism.”<sup>337</sup> Without autonomous, independent, and organized power, there is little possibility for a horizon of a society run by the poor or the working class.<sup>338</sup>

Non-reformist reforms mobilize and build popular constituencies willing to fight for democratic power. Demands for non-reformist reforms may reveal the possibilities of newly awakened constituencies or collective consciousness.<sup>339</sup>

334. MATHIESEN, *supra* note 83, at 33.

335. *See id.* at 31-36.

336. GORZ, *supra* note 113, at 9. For Gorz, the union is central. *Id.* at 14.

337. *Id.* at 10. This is consistent with Mathiesen’s insistence on nondisciplined reforms. Disciplined reforms are “‘politely’ written or polite oral requests followed by equally ‘polite’ forms of refusals . . . which let the decision-makers fairly easily have their way.” MATHIESEN, *supra* note 83, at 26. Nondisciplined reforms are “insistent” and “persistent . . . hammering away in a maximum fashion again and again.” *Id.*

338. In very practical terms, the need to build “lasting democratic working class institutions” and expand “militant democratic rank-and-file working-class organizations” is to ensure that “reforms that are won are not rolled back shortly after the initial victory.” Kalisz, *supra* note 294; *see also* Cole, *supra* note 291 (emphasizing the importance of “the degree to which the passage of Medicare for All could contribute to renewed labor militancy”).

339. This is a key work of movements. In a related vein, the Black Panther Party reconceived the “lumpenproletariat” from “the forgotten people at the bottom of society,” including in Marxist theory itself, “into the vanguard of the proletariat.” Eldridge Cleaver, *On the Ideology of the Black Panther Party (Part 1)*, FREEDOM ARCHIVES 2 (1969), <http://www.freedomarchives.org/Documents/Finder/Black%20Liberation%20Disk/Black%20Power%21/SugahData/Books/Cleaver.S.pdf> [<https://perma.cc/UDC9-825G>]. In theorizing the un- and under-employed as central to revolutionary politics, the Party was centering Black struggle within Marxist theory, typically focused on the working class as the most consequential agential force to contend with and overthrow capitalism. *See* LAURA PULIDO, BLACK, BROWN, YELLOW, AND LEFT: RADICAL ACTIVISM IN LOS ANGELES 142-45 (2006) (“The hallmark of the BPP’s politics was its emphasis on the lumpen proletariat, or what today might be called the ‘underclass.’”); *see also* Joshua Anderson, *Huey P. Newton and the Radicalization of the Urban Poor*, in HIDDEN CITIES: UNDERSTANDING URBAN POPCULTURES 3, 3 (2012) (explaining how Newton reconceptualized the lumpenproletariat as “the revolutionary class that will bring about a change in the socio-

Anti-capitalist feminists in the mid-twentieth century debated that women's domestic labor be waged and that housework "be incorporated into the industrial economy."<sup>340</sup> Political scientist Katrina Forrester has argued these demands and the surrounding debates created "a constituency for feminist class politics" and "allowed feminists to frame the home as a site of struggle" in order to "center housewives [and domestic workers] in revolutionary strategy."<sup>341</sup> In particular, the demand for wages for housework recharacterized "domestic labor as productive," thereby placing women "as workers in the revolutionary class."<sup>342</sup> A primary function of the demand was "to reveal and create . . . the constituency of women workers among whom the campaign sought to build power."<sup>343</sup>

Organizations that are not beholden to electoral politics, let alone the two parties, are essential to creating a force sufficiently powerful to upend political, economic, and social relations through daily, concrete, and cumulative action.<sup>344</sup> Mass democratic organizations are necessary to contest the state and its relation-

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economic order"); Garrett Epps, *Huey Newton Speaks at Boston College, Presents Theory of 'Intercommunalism,'* HARV. CRIMSON (Nov. 19, 1970), <https://www.thecrimson.com/article/1970/11/19/huey-newton-speaks-at-boston-college> [<https://perma.cc/L6J8-76Y5>] ("The Panthers seek to organize the 'unemployable' elements of society, or 'lumpenproletariat,' Newton said, because they form the only revolutionary class in technological society."). The Panthers drew their conception of the lumpenproletariat from Frantz Fanon. See FRANTZ FANON, *THE WRETCHED OF THE EARTH* 129-30, 136-37 (Constance Farrington trans., Grove Press 1963) (1961) ("It is within this mass of humanity, this people of the shanty towns, at the core of the *lumpenproletariat*, that the rebellion will find its urban spearhead.").

340. See, e.g., Forrester, *supra* note 67, at 1278-79; ANGELA DAVIS, *WOMEN, RACE, AND CLASS* 223-24 (Vintage Books 1983) ("Teams of trained and well-paid workers, moving from dwelling to dwelling, engineering technologically advanced cleaning machinery, could swiftly and efficiently accomplish what the present-day housewife does so arduously and primitively.").

341. Forrester, *supra* note 67, at 1280.

342. *Id.* at 1282.

343. *Id.*

344. Rana & Britton-Purdy, *supra* note 257 ("[T]he left needs a permanently mobilized set of parallel institutions that stand outside electoral life but continuously intervene within it."); see also Gorz, *supra* note 113, at 9-10 (arguing that building democratic power for the working class requires "constant mobilization"). Rafael Khatchaturian explains that Poulantzas's conception of the state as a social relation had concrete implications for political strategy: "In very general terms . . . a tactical combination of organized, electoral participation by a unified left on the terrain of the state, and—equally importantly—popular struggles outside the state apparatuses via new structures of direct democracy at the base exerting continuous pressure on existing state institutions." Rafael Khatchaturian, *The State as Social Relation: Poulantzas on Materiality and Political Strategy*, in RESEARCH HANDBOOK IN LAW AND MARXISM 173, 184 (Paul O'Connell & Umut Özsü eds., 2021).

ship to organized power and money. They have the possibility of creating collective consciousness and group feeling,<sup>345</sup> and developing group capacity: “In the context of a disciplined campaign, even losses and setbacks develop organizers’ skills, build relationships, test strategies, and set up the next round. Each win in these local brawls, meanwhile, fortifies organizing elsewhere.”<sup>346</sup>

Non-reformist reforms are not simply about transforming society so that there are a different set of ultimate rules, norms, expectations, and relations that govern and shape our every day. Organization prepares the movement “to assume the leadership of society . . . to control and to plan [its] development . . . and to establish certain limiting mechanisms which will restrict or dislocate the power of capital.”<sup>347</sup>

This is perhaps the fundamental distinction from reformism: non-reformist reforms are about changing who has power. They prepare the left, the working-class, the people, to govern.<sup>348</sup> They are part of a progressive battle for democratic power over all aspects of the economic, social, and political domains – far greater than what liberal legal discourse considers.<sup>349</sup>

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345. See, e.g., Alyssa Battistoni, *Spadework: On Political Organizing*, N+1 (Spring 2019), <https://www.nplusonemag.com/issue-34/politics/spadework> [<https://perma.cc/6RUH-E3X6>] (“[T]he union was intensely democratic – we were, after all, seeking some amount of self-rule in our workplace and asking more people to take part in it. But democracy was more than aggregating our individual preferences or adhering to procedures; it was more like the attempt to find the general will. We were declaring ourselves a people, and that meant coming to see ourselves as part of a collective, not just a sample of rational actors.”); see also VIVIAN GORNICK, *THE ROMANCE OF AMERICAN COMMUNISM* 7-9 (1977) (describing how working for the Communist Party engendered solidarity among Gornick’s father and his friends).

346. ARONOFF ET AL., *supra* note 272, at 175-76 (arguing that with dynamic and contentious view of how power operates, “setbacks” are “premise, not punchline”).

347. *Id.* at 8.

348. Working-class organization and working-class rule are a key aspiration for socialists and communists. See Bowie, *supra* note 2, at 2029-30 (discussing Bill Haywood of the IWW’s argument that for workers to “democratize . . . industrial government . . . ‘those who do the work’” must form “a democratic organization of workers that engaged in industrywide strikes, which in turn would force corporate executives to cede decisionmaking power to their employees”).

349. See Jay Clayton, *Who’s Afraid of Public Ownership?*, LPE PROJECT (July 25, 2022), <https://lpeproject.org/blog/whos-afraid-of-public-ownership> [<https://perma.cc/8MPY-CPNG>]; MILIBAND, *supra* note 45, at 100 (1994) (“[T]here was a time when the extension of public ownership, to the point where it would encompass most of economic activity, was, at least in theory, part of a programmatic consensus on the left.”).

## CONCLUSION

We are living during extraordinary times. The United States faces questions about its capacity for multiracial democracy as its antidemocratic institutional features become increasingly clear—and their entangled relationship to concentrated economic power harder and harder to deny. The role of racism and capitalism in thwarting democracy is on display every day. In this context, it is hard to see a role for the lawyer or the law professor that is not inherently conciliatory to the status quo.

In past works, I have proposed how scholars might think broadly alongside emancipatory movements or considered the radical direction of today's movement demands.<sup>350</sup> Here, I have focused on the possibilities of thinking about non-reformist reforms. I have contended that we should reconceive how we evaluate reforms and reshape our relationships to the popular struggles in which they are embedded. We should understand reform not in terms of efficiency or solution or even the rule of law, but as part of larger struggles to reshape the terms of life, death, and democracy. To seek transformation of state, society, and who is in charge.

The framework of non-reformist reforms opens an array of reforms beyond what a liberal or neoliberal legal framework allows precisely because it aims to break the hold of prevailing norms of discourse and legalism—what people expect from state, society, and each other, and even themselves. But organizing is about changing expectations by tying concrete wins to new horizons—giving people a sense of power, capacity, and hope—and thereby opening new terrains of struggle<sup>351</sup> In this way, politics and the economy can be remade.<sup>352</sup>

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350. *E.g.*, Akbar et al., *supra* note 28; Stahly-Butts & Akbar, *supra* note 113; Akbar, *supra* note 113.

351. JANE MCALEVEY & BOB OSTERTAG, RAISING EXPECTATIONS (AND RAISING HELL): MY DECADE FIGHTING FOR THE LABOR MOVEMENT 12 (2012); *see also* MICHELE MOODY-ADAMS, MAKING SPACE FOR JUSTICE: SOCIAL MOVEMENTS, COLLECTIVE IMAGINATION, AND POLITICAL HOPE 187-221 (2022) (“[S]ocial movements must be ready to engage in what I call *narrative activism*. They must endeavor to revise and sometimes to replace narratives underwriting ways of life that unjustly limit agency, deny human dignity, and marginalize and oppress some social groups.”).

352. *See* Stuart Hall, *Blue Election, Election Blues* (1987), *reprinted in* SELECTED POLITICAL WRITINGS: THE GREAT MOVING RIGHT SHOW AND OTHER ESSAYS 238, 246 (Sally Davison, David Featherstone, Michael Rusting & Bill Schwarz eds., 2017) (“Politics does not reflect majorities, it constructs them.”); *see also* Battistoni, *supra* note 345 (“[T]he comradely element of organizing can also open up space for building relationships with people beyond those boundaries. It’s not that class and race and gender disappear, transcended by the cause—but the need to work together to achieve a shared end provides a baseline of commonality that makes it possible to relate across difference and essential to figure out how.”); Paul Fryer & Jacob M. Grumbach, *Labor Unions and White Racial Politics*, 65 AM. J. POL. SCI. 225, 236 (2021) (noting

Three prevailing winds occupy much of the terrain within today's campaigns for non-reformist reforms: around abolition and decarceration; decolonization and decommodification; and democratization. These winds are worth following because they are channeling popular struggles and power. Within them lay strategic pathways for undermining a regime in which profit is more valuable than life; and in turn life valued and power distributed by race, class, and gender.

The stories we tell about reform – how reform happens, what sort of reforms we should pursue, and to what end – are just that: stories. Like any story, these stories communicate values, heroes, and villains. They require us to draw on traditions. They shape action and have real stakes. We should revisit our stories about reforms, our commitments to the values, heroes, villains, and traditions that they propagate. We might consider we have much of it wrong, and then work with others to get the stories right, and to shift our roles therein. We might engage in what movements call: study and struggle.<sup>353</sup> Because if we understand the problem to be domination, exploitation, dispossession, and exposure to premature death – and if we link this violence to racism and capitalism – then it becomes clear we must do a lot more than champion better demands. We must build popular power, and that requires we diminish our own.

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that participating in unions reduces racial resentment among whites and leads to greater support for “affirmative action and other policies designed to benefit African-Americans”).

353. *E.g.*, *About*, STUDY & STRUGGLE, <https://www.studyandstruggle.com/about> [<https://perma.cc/F3ZN-8YEA>].