The Chicago Torture Justice Movement and an Abolitionist Theory of Law

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After the protests and uprisings of 2020, police and prison abolition is now an undeniable part of mainstream political discourse. Millions in the United States have begun to ask foundational questions about the carceral state and the coercive institutions that lie at its center, institutions they had previously taken for granted: Do we want a society that empowers armed agents of the state to use violence against residents? Do we want a society that keeps residents locked in cages? What would a world without these things look like?

This paper addresses itself to one part of this latter question by investigating the relationship between abolition and law. This question is an important one, in part, because there is an intuitive answer that is both logically tempting and quite dramatic. One might think that to abolish police and prisons would be to abolish law altogether; a law that cannot forcibly interrupt or punish disobedience might seem like no law at all. Where abolitionists presently engage with the law, it is often in a *pragmatic, tactical* manner. The law is seen as an external force developed outside of abolitionist spaces and without inherent legitimacy that nonetheless might be used as a vehicle to accomplish some limited ends.[1] In this way, abolitionists use the law to further what we might call the *negative* project of abolition, that is, its aim to mitigate and/or eliminate carceral and white supremacist systems. Abolition, however, is not only a negative endeavor; it also finds *positive* expression as "open-ended project of world-building."[2] This

[1] Derecka Purnell, spoken in the "Law and Abolition" panel, *Making and Unmaking Mass Incarceration Conference*, December 6, 2019, 4. Transcript available here: https://mumiconference.com/transcripts/.

[2] Andrew Dilts, "Crisis, Critique, and Abolition," in *A Time for Critique*, edited by Didier Fassin and Bernard E. Harcourt, (Columbia University Press, 2019), 232.

paper, then, asks: can one conceive of a *positive* abolitionist theory of law, a form of legality specific to "abolition democracy?"[3] What form might this theory take?

This, of course, is an enormous and complicated inquiry. I therefore approach it with reference to concrete struggle. Specifically, I seek to outline a provisional answer by way of a case study of what has been called the "Chicago torture justice movement."[4] Between 1972 and 1991, Chicago police detective Jon Burge—with the active or silent complicity of many within the Chicago Police Department and the City government[5]—tortured hundreds of Black people in order to coerce confessions. There has been a long, multi-faceted, political and legal campaign for justice for torture survivors, which has borne fruit most powerfully in the landmark Chicago "reparations ordinance," and accompanying resolution, of 2015.[6] The ordinance provided fiscal restitution to torture survivors, as well as for a dedicated mental health facility on the South Side, curricula in Chicago Public Schools about the Burge torture case, and a public memorial (still yet to be built), while the resolution articulated an apology on behalf of the City. While this campaign wasn't explicitly abolitionist in its aims, the movement and its successes are often cited by abolitionists as exemplary of certain principles, strategies, and tactics associated with their position and movements.[7] I follow these cues, engaging the Chicago torture justice movement to find grounded insight for abolitionist theorizing.

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[3] Angela Y. Davis, *Abolition Democracy: Beyond Empire, Prisons, and Torture* (Seven Stories Press, 2005) 72-73; W. E. B. DuBois, *Black Reconstruction in America, 1860-1880,* (The Free Press, 1998).

[4] Andrew S. Baer, *Beyond the Usual Beating: The John Burge Torture Scandal and Social Movements for Police Accountability in Chicago*, (University of Chicago Press, 2020) 8. Though I will not, for space reasons, be providing a full historical background on Chicago police torture, the Burge scandal, and this movement, Baer's book is an excellent source for this. For a more in-depth history, focusing more on the movement's various legal fights and strategies, see Flint Taylor, *The Torture Machine: Racism and Police Violence in Chicago,* (Haymarket Books, 2019). For a more interpretive and reflective review of these events, see Laurence Ralph, *The Torture Letters: Reckoning With Police Violence*. (University of Chicago Press, 2020).

[5] See Ralph, *The Torture Letters.*

[6] Chicago City Council Ordinance, "Reparations for Burge Torture Victims," May 6, 2015, Record No. SO2015-2687; Chicago City Council Resolution, "Substitute Resolution," May 6, 2015, Record No. SR2015-256.

[7] See Mariame Kaba, "A World Without Prisons: A Conversation with Mariame Kaba," interview by Dan Sloan, *Lumpen Magazine* 24, issue 3 (2016): 30. https://issuu.com/lumpenmagazine/docs/lumpen127_final; Allegra M. McLeod, "Envisioning Abolitionist Democracy," *Harvard Law Review* 132 (2019): 1613-1649; Angela Y. Davis, Gina Dent, Erica R. Meiners, and Beth E. Richie, *Abolition. Feminism. Now.,* (Haymarket 2022), 141-142; Dylan Rodriguez, "Abolition as Praxis of Human Being: A Foreword," *Harvard Law Review* 132 (2019): 1602-1604; Derecka Purnell, *Becoming Abolitionists: Police, Protests, and the Pursuit of Freedom*, (Penguin, 2021).

In this paper, I argue that the Chicago torture justice movement demonstrates rudiments of what a positive abolitionist theory of law might look like. This vision rejects the familiar functions through which law most frequently appears to us: an *enforcing* function, whereby law is a body of rules enforceable by violence, and an *adjudicating* function, whereby the law is a means of objectively understanding and fairly resolving disputes. At the same time, this vision affirms other functions of the law—an *aspiring* function and a *grounding* function. The former refers to the law's capacity to be a site for the articulation and imagination of what society could and should be; the latter refers to law's capacity to help constitute the social world that structures present relations. This functional model befits an inclusive and pluralist understanding of law, not narrowly as rules set down by the State, but as any collective's publicly-held, semi-determinate default commitments and associated protocols.

In a final, concluding section, I undertake a synthetic theoretical interpretation of the above: that an abolitionist theory of law may be understood as a radical reconfiguration of the relationship between law and time. By articulating future aspirations and securing part of the groundwork social and moral structure in which persons' lives can unfold, law's claims abut the lived present on both sides. However, because enforcement and adjudication are foreclosed to it an abolitionist imaginary, the law is refused entry to the present itself. Paradoxically, then, the law works to structure a present that is open to salutary imagination and political action *free* from legal violence. Rather than sovereign protocols for legitimate coercion, then, law becomes a site for the free collective imagination, contestation, codification, and/or celebration of what legal theorist Robert M. Cover would call "systematic understandings of commitments to future worlds,"[8] visions that can in turn inspire and facilitate present action but never determine it.

[8] Robert M. Cover, "The Folktales of Justice: Tales of Jurisdiction," *Capital University Law Review* 14, no.2 (1985): 181.

Nothing in this vision, it should be stated, implies any necessary attachment to presently existing law and legal institutions. Instead, it specifies the basic *conceptual* contours of an alternative, abolitionist form of law that might be fashioned, be it out of present legal structures or wholly new ones.

The Enforcing Function

The enforcing function of law refers to law's capacity to deploy coercive force in the service of articulated rules and norms. This function of the law is implicit in Max Weber's famous definition of the state: a "human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory."[9] Within such an understanding of the State, the law is that which sets the possibilities and limits of this legitimate physical force. More recently, the legal philosopher Frederick Schauer has affirmed coercive force as the most fundamental aspect of law, against philosophers of law who see violence as inessential to it: "Law makes us do things we do not want to do. It has other functions as well, but perhaps the most visible aspect of law is its frequent insistence that we act in accordance with its wishes, our own personal interests or best judgment notwithstanding."[10]

The attitude of abolitionists toward the enforcement function of law is familiar and fairly straightforward. Abolitionists, by definition, oppose police and prisons, and since police and prisons are the entities that accomplish the enforcement function of law, abolitionists necessarily reject this function. In a 2020 *New York Times* op-ed, prominent abolitionist organizer Mariame Kaba writes: "We can't reform the police. The only way to diminish police violence is to reduce contact between the public and the police… a 'safe' world is not one in which the police keep

[9] Max Weber, "Politics as Vocation," in *The Vocation Lectures*, edited by David Owen and Tracy B. Strong, translated by Rodney Livingstone, (Hackett, 2004), 33.
[10] Frederick Schauer, *The Force of Law*, (Harvard University Press, 2015), 1.

black and other marginalized people in check through threats of arrest, incarceration, violence and death."[11] This rejection objects to the enforcing function at the level of its conceptual foundations. In Kaba's telling, the relationships of "safety" and "violence" to policing are inverted from their conventional positions, with policing seen to *decrease* safety by *increasing* violence, rather than—as in the common imagination—*increasing* safety by *decreasing* violence.

The case of the Chicago torture justice movement affirms this abolitionist aversion to the enforcement function of law. The movement emerged explicitly in opposition to a stark example of the violence of law enforcement—torture—which many members saw as continuous with more everyday forms of violence. Moreover, it sought to respond to this violence in a way that did not itself rely on the enforcement function of law.

This first idea—that torture and everyday police violence differ only in *degree*, not in *kind*—might initially seem incendiary. For some leaders of the movement, as well as everyday Chicago residents,[12] however, such a continuum was axiomatic. One can see this exemplified in a 2015 article written by Chicago torture justice movement organizers Alice Kim and Vicky Casanova Willis, reflecting on the then-recent passage of the reparations ordinance. From the outset of the piece, it is clear that its aperture is wider than the specific campaign for justice for torture survivors: "Ferguson, New York, Florida, Baltimore, Chicago. Everywhere, it seems, Black life matters not."[13] Kim and Willis continue in this vein for a few more sentences and then hone in on their central topic: "In May 2015, Chicago became the first city in the history of the

[11] Mariame Kaba, "Yes, We Mean Literally Abolish the Police," *New York Times,* June 12, 2020, https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html.
[12] Ralph, *The Torture Letters*, 133. See also ibid., xx.
[13] Alice Kim and Vickie Casanova Willis, "Power In Naming: Reparations, Memorials, and Chicago Police Torture," *Discover Society*, June 3, 2015, printed in *Reparations Now/Reparations Won*, edited by Chicago Torture Justice Memorials. 2015, 74. This document, self-published by the Chicago Torture Justice Memorials organization, collects in one place a number of written/spoken materials by activists and survivors over the course of the campaign. It is available through the Invisible Institute's Chicago Police Torture Archive, here: https://static1.squarespace.com/static/5ac2e04c4611a0b878a29437/t/5fd7e86082d9655a6680e31c/1607985274885/ReparationsNowReparationsWon_Final_EmailVersion.pdf.

United States to provide reparations for racially motivated police violence, specifically a group of African-American men and women who were tortured by former Commander Jon Burge and his detectives."[14] Chicago police torture, then, is framed as "racially motivated police violence," a broad category that places it within the ambit of a broader, national struggle.[15] Torture is merely a *specification* of its particular mode, in this particular case. We Charge Genocide (WCG)—a group of young, Black Chicagoans and part of the torture justice movement who visited the UN Committee Against Torture in Geneva in 2014, and who this paper will return to later—went further still, focusing the report it submitted to this committee not on the Burge torture cases, but on police violence against black youth more broadly.[16] In this line of thinking, torture is not only *like* other, more widespread forms of police violence, but potentially an appropriate label for these forms as well. Indeed, for abolitionist scholar Dylan Rodriguez, this group "left an indelible imprint on contemporary abolitionist praxis and its accompanying critical public discourse," largely for its radical refusal to exceptionalize "torture" and "police brutality," aiming its critique instead at policing in Chicago as a whole.[17] The outcry at police torture, then, was inseparable from a wider critique of the violence of policing in general.

Secondly, and crucially, the movement did not only target the enforcing function of law in its substantive demands, but rejected it as a means to achieve its goals. Torture, of course, is an egregious violation of both positive law and moral norms; in the conventional legal imagination, the response to such violations is violent enforcement: arrest, incapacitation, and punishment of perpetrators. The Chicago torture justice movement, however, exemplifies a

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[14] Ibid., 75.

[15] For a similar universalizing gesture, see Alice Kim, "Breaking Walls: Lessons from Chicago," in *The Long Term: Resisting Life Sentences, Working Towards Freedom*, (Haymarket Books, 2018) 311. For reflections on the possibility of a "political" response to torture that is capacious enough to resist the everyday cruelties of the criminal law, see Mattia Pinto, "Beyond Criminalization: Torture as a Political Category," *Critical Legal Thinking* blog, March 1, 2021, https://criticallegalthinking.com/2021/03/01/beyond-criminalisation-torture-as-a-political-category/.

[16] We Charge Genocide, "Police Violence Against Chicago's Youth of Color," September, 2014, http://report.wechargegenocide.org/.

[17] Rodriguez, "Abolition as Praxis of Human Being," 1602-1604.

different sort of response. Certainly, there were efforts to charge and convict Burge and his accomplices, but these were not seen as central to or sufficient for the success of the movement in its later years, when calls for reparations became its dominant frame.[18] In the words of Mariame Kaba: "the thing about the reparations ordinance that's important is that it's an abolitionist document, right? Because it's a document that did not rely on the court, prison, and punishment system, to try to envision a more expansive view of justice."[19] This "more expansive view of justice" did not require the enforcing function of the law to be made effective.

The Adjudicating Function

The adjudicating function of law is its capacity to resolve conflicts fairly through ostensibly rational, objective, and impersonal means. This is the vision of law that, for some, is mythologized in Aeschylus's *Oristeia*, which concludes, after a story about an "endless cycle of blood vengeance," with Athena establishing legal institutions and incorporating the Furies into the city as reasoning and measured passions.[20] It is the vision of law that is symbolized in the famous image of the blindfolded goddess of justice, holding its scales. As Robert M. Cover reminds us, it is also the mode through which law regulates and targets its enforcement function, as "legal interpretation takes place in a field of pain and death."[21]

Abolitionists tend to reject this function of the law on two grounds: first, that the law cannot *in fact* achieve the objectivity and impersonality it promises, and second, that even if it could, this would be insufficient for justice in real situations of harm. Normatively, adjudication is premised on even-handedness, on a bedrock commitment to review cases on their merits, regardless of the status of the parties involved. Abolitionists tend to regard such ideas, however,

[18] Kim, "Breaking Walls," 312.
[19] Kaba, "A World Without Prisons," 30; See also McLeod, "Envisioning Abolition Democracy," 1621.
[20] See Martha Nussbaum, *Anger and Forgiveness: Resentment, Generosity, Justice*, (Oxford University Press, 2016), 1.
[21] Cover, "Violence and the Word," *The Yale Law Journal* 95 (1986): 1601.

as exculpatory ideological babble, out of step with reality. For instance, they point frequently to the criminal legal system's failure to consistently convict police officers for clear abuses.[22] These failures are not seen as incidental or even as systemic digressions that might be correctable through reform efforts, but rather as expected outputs of a legal system that is *constitutively* unequal. Indeed, abolitionists question whether these omissions should be considered failures at all, because to describe them this way presumes implausibly that the criminal legal system embodies an authentic intention of fair and impersonal adjudication.[23] In this way, they deny that adjudicating function is *in fact* a function of the law, at least where its operation intersects with race and/or State violence.

This, of course, leaves open a question: if this was not the case, would abolitionists *then* endorse the adjudication function of law? Even here, the answer may be no. Many abolitionists are skeptical of the formalistic, adversarial, punishment-focused legal system to provide satisfying justice, even given genuinely fair and unbiased procedures. Kaba, for her part, bemoans that "our adversarial court system discourages people from ever acknowledging, let alone taking responsibility for, the harm they caused."[24] The very structure of adjudicative processes, on this view, encourages strategic behavior that militates against genuine accountability. Adjudication will therefore tend to fail both harmed parties and harm-doers, even if somehow untainted by inherent biases.

This is not to say that abolitionists are not interested in acceptable resolutions in the aftermath of harm and/or conflict, only that they do not tend to look to conventional structures of

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[22] See, for instance, Critical Resistance, "On Policing," January 2009, http://criticalresistance.org/wp-content/uploads/2016/07/CR-statement-abolition-of-policing-2009.pdf; Mariame Kaba and Andrea J. Ritchie, "We Want More Justice for Breonna Taylor Than The System That Killed Her Can Deliver," *Essence Magazine,* 2020, https://www.essence.com/feature/breonna-taylor-justice-abolition/.

[23] Andrew Dilts, "Justice as Failure," *Law, Culture, and the Humanities* 13, no. 2 (2017): 185; Mariame Kaba, "Towards the horizon of abolition: A conversation with Mariama Kaba," interview by John Duda, *The Next System Project*, 2017, https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba.

[24] Mariame Kaba, "So You're Thinking About Becoming an Abolitionist," *Level,* October 2020, in *We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice*, edited by Tamara K. Hopper, (Haymarket Books, 2021), 4.

adjudication to deliver them. Instead, many abolitionists are proponents of restorative and transformative justice models of accountability.[25] Here, some fundamental precepts of adjudication are rejected. Parties are not regarded formalistically and impersonally by a third-party authority vested with the power to judge them and impose sanctions. Blind justice does not officiate the proceedings; indeed, no one "officiates" at all. Encounters are *facilitated* by community groups or mutually-trusted parties, but these facilitators possess no epistemic or decision-making authority over the parties involved. Moreover, legalistic determinations of guilt and innocence give way in importance to forward-looking imperatives of repair. In these ways, restorative/transformative justice provides a way to respond to conflict and wrongdoing *outside* of sovereign adjudication.

Such a standpoint towards the adjudication function of law is observable in the Chicago torture justice movement. While the movement did pursue a vigorous legal campaign through conventional courts to earn compensation for torture survivors and to prosecute Burge and his accomplices, this effort was seen as possessing inherent limitations. It was difficult to succeed, and success was seen to be insufficient for justice anyway.

The movement faced a long series of hurdles to win legal victories. Joey Mogul, a lawyer with the People's Law Center, which led the legal efforts of the movement, recalls some of these difficulties, both technical and institutional: "The statute of limitations precluded Burge and his men from being held criminally or civilly responsible for their crimes of torture… They enjoyed decades of torturing with impunity, courtesy of a cover up by the Chicago Police Department's

[25] See, for example, Angela Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2003) 113; Mariame Kaba, "Justice in America Episode 20: Mariame Kaba and Prison Abolition," interview by Josie Duffy Rice and Clint Smith, *The Appeal,* March 20, 2019. https://theappeal.org/justice-in-america-episode-20-mariame-kaba-and-prison-abolition/; Ejeris Dixon and Leah Lakshmi Piepzna-Samarasinha (eds.), *Beyond Survival: Strategies and Stories from the Transformative Justice Movement,* (AK Press, 2020).

chain of command and governmental officials, including former Mayor Richard M. Daley."[26] Similar frustrations plagued the pursuit of victories before the Illinois Torture Inquiry and Relief Commission (TIRC), a semi-formal body inaugurated in response to public pressure in 2009 to provide remedies to torture survivors outside of the conventional process.[27] Here, too, arcane adherence to a strict and inflexible set of rules governing the "credibility" of claims as well as implicit bias toward police narratives made a favorable judgment difficult for some plausible torture victims.[28] In this way, the efforts of the Chicago torture justice movement illustrate—or at least demonstrate some affinity with—the abolitionist critiques of adjudication identified above. Such adjudication does not achieve the objectivity it claims to; its operation is structured to favor dominant interests; and its formalism inhibits, rather than facilitates, justice.

The critique did not end there; the movement also suggested that even adjudicative *victories* should not be seen as sufficient for justice. Indeed, Alice Kim writes that even after Burge's 2010 conviction on perjury charges, "justice remained elusive for [his] torture survivors" because this conviction did nothing to remedy the "systemic harm" done to survivors, or the "endemic" racism of the criminal legal system.[29] This critique seems to extend not only to the possible *results* of legal fights—restitution and/or sanctions, seen as too limited, individualized, and narrowly compensatory to feel broadly satisfying—but to the legal *process* itself. Indeed, torture survivor Anthony Holmes, at Burge's sentencing hearing, said: "When I

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[26] Joey Mogul, "Reparations: A Blueprint To Address Systemic Police Violence," *Time.com*, May 12, 2015, in *Reparations Now/Reparations Won*, 78. For more on some of these hurdles, see G. Flint Taylor, "Chicago Police Torture Scandal: A Legal and Political History," *City University of New York Law Review* 17, no. 2 (2014): 329-381.
[27] Kim D. Chanbonpin, "Truth Stories: Credibility Determinations at the Illinois Torture Inquiry and Relief Commission," *Loyola University Chicago Law Journal* 45, issue 4 (2014): 1088, 1103-1104.
[28] Ibid., 1121.
[29] Kim, "Breaking Walls," 312; See also Mogul," Reparations," 79.

testified at Burge's trial it was hard because I couldn't say what I wanted to say, I had to only answer the questions."[30]

Restorative and transformative justice, by contrast, allows for processes of repair that exceed the compensatory and facilitates survivor participation in ways beyond adversarial formalism. It is perhaps no coincidence, then, that movement activist Dorothy Burge, when speaking to the Chicago City Council Finance Committee on the eve of the reparations ordinance vote, analogized the process of passing the ordinance to "a restorative justice process."[31] This analogy extends beyond the mode and context of repair to the activities of the movement themselves. Historian Andrew S. Baer argues that the Chicago torture justice movement, by engaging harmed parties and allowing them to participate as leading partners in winning repair, allowed for a measure of "dignity restoration" not attainable in the courts: "Participation in the decision-making and agenda-setting processes of social movements can have a *restorative effect* on survivors of police violence."[32] That word—"dignity *restoration*," "*restorative* effect"—suggests the different grammar of justice made imperative in the Chicago police torture case—a grammar that aligns with broader abolitionist imperatives after wrongdoing. This grammar was not available through law in its adjudication function, and so despite its legal efforts in Chicago courts, the movement could hardly be said to affirm it.

The Aspiring Function

Inasmuch as Burge's conviction was a valuable, motivating end for movement activists, this was plausibly less an indication of the *inherent,* case-specific value of legal judgment or

[30] Anthony Holmes, "This Is What It Feels Like," Sentencing Hearing in *US v Burge*, January 19, 2011, in *Reparations Now/Reparations Won*, 14.
[31] Dorothy Burge, "Reparations: A Beginning Of A Healing Process," remarks at the Chicago City Council Finance Committee Hearing, April 14, 2015, in *Reparations Now/Reparations Won*, 60.
[32] Andrew S. Baer, "Dignity Restoration and the Chicago Police Torture Reparations Ordinance," *Chicago-Kent Law Review* 92, Issue 3 (2018): 776. Emphasis my own.

legal violence, but rather about what Saira Mohamed theorizes as the "aspirational expressivism" of criminal law[33]—its *communicative* capacity to articulate hopes for human conduct. In this sense, such efforts are perhaps better considered in terms of what I call law's *aspiring* function. If this is right, then though efforts to convict Burge proceeded according to familiar legal modes, beholden to adjudication and enforcement, they plausibly point to a latent desire to exceed these.

The aspiring function of law is its capacity to represent and articulate positive visions for society. Though conceived in the present, it claims a kind of oracular force that can impel movement toward a redeemed future state of enhanced rightfulness, where its precepts are fulfilled in full. Law, as Cover describes, is the material through which communities fashion "system[s] of tension or… bridge[s] linking a concept of reality to an imagined alternative."[34] It becomes, as in Drucilla Cornell and Kenneth Michael Panfilio's concept of "transformative constitutionalism," a resource "for the possible symbolization and embodiment of revolutionary change."[35] Aspiring is what law does when operative in what we might call its *normative mood*—when it articulates, either positively through endorsement or negatively through prohibition, a view of proper social ordering. Among the characteristic sources of this function of law are constitutional preambles, progressive interpretations of rights, and legal interdictions on violence.

While not always articulated in the idiom of "law," abolitionist thought and practice routinely relies on a notion of a normative force pulling on the present from beyond it. A myriad of voices make frequent references to what they call the "horizon" of abolition;[36] as Amna A.

[33] Saira Mohamed, "Deviance, Aspiration, and the Stories We Tell: Reconciling Mass Atrocity and the Criminal Law," *The Yale Law Journal* 124 (2015): 1674. In this article, she is speaking explicitly about the international criminal law, but I think her theory can be applied more widely.
[34] Robert M. Cover, "Nomos and Narrative—The Supreme Court 1982 Term," *Harvard Law Review* 97, no. 4 (1983): 9.
[35] Drucilla Cornell and Kenneth Michael Panfilio, *Symbolic Forms for a New Humanity*, (Fordham University Press, 2010) 159. See also Beau Breslin, *From Words to Worlds: Exploring Constitutional Functionality*, (Johns Hopkins University Press, 2009) 47.
[36] See, for instance, Kaba, "Towards the horizon of abolition: A conversation with Mariama Kaba;" Charmaine Chua, "Abolition is a Constant Struggle: Five Lessons from Minneapolis," *Theory & Event* 23, no.4 (2020): 130; Abolition Collective, "Introduction," 5.

Akbar writes, characteristically of this material, "the horizon metaphor grounds today's efforts in our imaginations for the world we want to live in tomorrow."[37] This notion of a "horizon" of abolition anchoring present-day practice may be seen as functionally analogous to a kind of aspirational law.

Other work demonstrates the plausibility of this view. Allegra M. McLeod interprets the writings of the Short Corridor Collective—a reading group of men kept in solitary confinement in California—as "offering a critical account in which the law itself came to be revealed as criminal."[38] This formulation, by referring to the present law as "criminal," implies the existence—figurative, at least—of a kind of external, aspirational law that could assign this label to present legal realities. A similar operation as at work in the common movement saying, which echoed across American cities in 2020: "the whole damn system is guilty as hell!" Law, in its aspirational mode, provides resources for the critique of the present—to call it "criminal" or "guilty"—a project in which abolitionists are powerfully invested.

Of course, the aspirational function of law has a positive as well as a negative exigency. It allows for the declaration and affirmation of common principles and hopes, which may help constitute political communities. Indeed, for Beau Breslin, constitutions are inherently "aspirational" documents that "furnish political communities with specific identities and attempt to… order a populace around some collective goal."[39] Abolitionists, too, sometimes ground their political identities in common, aspirational principles, which animate the action they take. Incarcerated abolitionist organizer Stevie Wilson reproduces something of the common, apologetic logic for the rule of law—the desire for "a government of laws, not men"—in one of

[37] Amna A. Akbar, "An Abolitionist Horizon for (Police) Reform," *California Law Review* 108 (2020): 1787.
[38] Allegra M. McLeod, "Law, Critique, and the Undercommons," in *A Time for Critique*, 252-270; Allegra M. McLeod, "Prison Abolition and Grounded Justice," *UCLA Law Review* 62 (2015): 258.
[39] Breslin, *From Words to Worlds,* 47-49, 183.

his central credos for abolitionist organizing: "It is important that we remember that it is not groups or personalities that guide us; it's principles and ethics."[40] In a similar vein, Kaba and Rachel Herzing—cofounder of the prison-abolitionist organization Critical Resistance—write that "if you declare yourself to be [an abolitionist], you're committing to some basic obligations," and then go on to express three of them: abolitionists call for "the elimination of policing, imprisonment, and surveillance," they "[reject] the expansion in breadth or scope or legitimation of all aspects of the prison-industrial complex," and they "[refuse] premature death and organized abandonment, the state's modes of reprisal and punishment."[41] On this account, to be an abolitionist—much like to be a committed citizen under a constitution—is in part to live according to certain established precepts related to collective social aspiration.

One might reply, however, that is one thing to articulate hopes for the future, and another to *legislate* about it. Is abolitionist talk of horizons and really analogous to law? For Cover, law is distinguished from mere literature by the "committed action" taken on its behalf.[42] Aspiration may locate itself in the future, but if a group is to "live its law" in the present, it must be prepared to demonstrate the seriousness of its commitment against a world that does not automatically cleave to it.[43] The privileged form for this committed action in Cover's eyes is violence,[44] and indeed, we can recognize enforcement and adjudication as the characteristic modes the state deploys to affirm its commitment to its law. This, of course, puts the independence of the aspiring function of law in question, and with it, the possibility of an abolitionist appropriation thereof. Can commitment be enacted other than violently?

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[40] Stevie Wilson, "Dis-Organizing Prisons and Building Together Inside/Outside," in *Making Abolitionist Worlds*, 25.
[41] Mariame Kaba and Rachel Herzing, "Transforming Punishment: What is Accountability without Punishment," in *We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice*, edited by Tamara K. Hopper, (Haymarket Books, 2021): 133-134.
[42] Cover, "Nomos and Narrative," 49.
[43] Ibid.
[44] Cover, "Violence and the Word."

It seems to me that *any* positive act that involves sacrifice of any kind—of time, of energy, of comfort, etc.—performed with the purpose of bringing reality in line with principle—may constitute "committed action" on behalf of that principle, with potency in proportion to the scale of the sacrifice as apparent to oneself and to others. Instead of through *pain*, movements can substantiate their convictions through *work*, a self-authored "controlled discomfort" wedded to creativity and amenable to collectivity.[45] Indeed, for the cultural theorist Elaine Scarry, the discovery that ideals could be substantiated through work rather than pain—accomplished at some remote, early moment in history—represented a sea change in human conscience.[46] Cover, despite his explicit enthusiasm for Scarry's "brilliant" work on the expressive and affirmative functions of violence, notably does not engage this part of her argument.[47]

On this understanding, abolitionists routinely sacrifice in ways that can be taken as indicative of commitment to their collective principles—they devote time and resources to movements and/or to mutual aid networks, they enact nonviolent responses to conflict and wrongdoing within their movement spaces and communities, they assent to be accountable to one another in their political efforts, etc. Such "work" makes abolitionist aspirations, in a sense, *real*; they have force in the world and in lives beyond the texts in which they may be found.

What relation did the Chicago torture justice movement have to codified aspiration? First, the movement drew powerfully on international law in order to amplify an aspirational commitment to a world without police violence. While the movement had stalled by the end of the 1990s, a pivot over the next several decades to an international strategy made a decisive difference.[48] Certainly, this appeal was partly pragmatic, a tactical use of available legal

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[45] Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World,* (Oxford University Press, 1985), 171.
[46] Ibid., 174.
[47] Cover, "Violence and the Word," 1602.
[48] See Toussaint Losier, "A Human Right to Reparations: Black People against Police Torture and the Roots of the 2015 Chicago Reparations Ordinance," *Souls: A Critical Journal of Black Politics, Culture, and Society* 20, no. 4 (2018): 399-419.

resources to improve their strategic position. However, I want to argue, the movement's turn to international law did not reduce to this. International law also provided a resonant source of aspirational material from and through which to engage in critique and action.[49]

In the middle of the first decade of the 2000s, lawyers and activists associated with a movement organization known as Black People Against Police Torture (BPAPT), submitted reports to the UN's Committee Against Torture (CAT),[50] and the UN's Committee Against Racial Discrimination,[51] alleging that the state's failure to prevent and respond to the Burge torture ring constituted violations of various international legal articles that the United States was party to. These early instances were followed, more famously, by the We Charge Genocide (WCG) case, mentioned above. In 2015, this group traveled to Geneva to deliver a shadow report to the UN CAT, alleging that Chicago Police's treatment of black and brown youth amounted to torture. The report made arguments with close and careful reference to specific articles of the Convention Against Torture even as it advanced a radical interpretation of these articles in line with movement axiom detailed previously: that no firm line separates police torture from everyday police violence.[52]

The purpose of WCG's submission, as well as those of its predecessors, of course, was not to persuade the UN to physically intercede in Chicago. This would have been to affirm the enforcing function of law. Instead, WCG deployed particular articles of the Convention Against Torture—for example, Article 2 (1): "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its

[49] For fruitful reading on the political possibilities of international law for marginalized groups, see Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, (Reed Elsevier, 2002); Seyla Benhabib, "Democratic Iterations: The Local, The National, and The Global," in *Another Cosmopolitanism,* (Oxford University Press, 2006), 45-80.
[50] Losier, "A Human Right to Reparations," 410,
[51] Ibid., 413; Joey L. Mogul and Andrea J. Ritchie, "In The Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States," *DePaul Journal for Social Justice* 1, no. 2 (2008): 175-250.
[52] We Charge Genocide, "Police Violence Against Chicago's Youth of Color," September, 2014.

jurisdiction"[53]—as an aspirational foothold from which to apply critical pressure on a reality that did not conform with it, the status quo of police violence against black and brown youth in Chicago.[54] This argument was compelling enough to resonate; in a 2014 report, the UN Committee Against Torture called explicitly for the City of Chicago to pass the reparations ordinance, among other broader remedies for police violence.[55]

WCG's legal appeal to the UN, then, sought to use what Cover refers to as the law's "resource[s] of signification" to name and valorize norms in order to impel society toward their fulfilment.[56] More than simple fodder for formalistic legal arguments, it drew political force from what Chicago torture justice advocates recognize as the "transformative power" of "naming,"[57] functioning to build commitment and drive within the Chicago torture justice movement for transformative action. As Mariame Kaba recounts, "I think the delegation brought a lot of energy back to the city… one of the things we decided was to use the momentum of the UN support in their admonition to the city to pass the reparations ordinance, to give new momentum to that fight."[58] Indeed, WCG became an important player in the organizational ecosystem that led the final charge to pass the ordinance.[59] In its deployment of international law, then, the movement sought to tap into its aspirational function so as to launch a powerful critique of present oppression and to animate forward-looking political projects of resistance.

This is the movement's most conventional relationship to this function of law, but it is perhaps not the only one. The movement also codified its common aspirations in venues fully

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[53]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified 1984, UN General Assembly, https://www.ohchr.org/en/professionalinterest/pages/cat.aspx.
[54] We Charge Genocide, "Police Violence Against Chicago's Youth of Color," 11.
[55] Nicholas Kaplan, "'Reparations NOW!': Municipal Reparations, International Tribunals, and the Chicago Torture Justice Memorials Campaign," *Public Interest Law Reporter* 20, issue 3 (2015): 121-122; United Nations Committee Against Torture, "Concluding observations on the combined third to fifth periodic reports of the United States of America," December 19, 2014, 14. The report can be viewed and downloaded here: https://digitallibrary.un.org/record/790513/?ln=en#record-files-collapse-header.
[56] Cover, "Nomos and Narrative," 8.
[57] Kim and Willis, "Power in Naming," 77.
[58] Kaba, "A World Without Prisons: A Conversation with Mariame Kaba," 30.
[59] See Mogul, "The Struggle For Reparations in the Burge Torture Cases," 222.

outside of conventional legal institutions, for instance, in coordinated processes of art-making. Even if this cannot count as exemplary of legal practice as we know it, it still illustrates a practical relation to aspiration and its critical possibilities that can inform an abolitionist legal theory. In an interview, Alice Kim spoke about this practice in the context of the movement's invitation to artists to design potential memorials to torture survivors:

> One thing that crystallized for me is that the practice of art making gives you permission to imagine the impossible. And so in these speculative memorials, we weren't saying, 'Do what's realistic.' Anything is fair game. And so it gives you permission to imagine the impossible—and once it's imagined it's no longer entirely impossible! You can see how the practice of art making can actually inform the practice of organizing, activism, and movement building.[60]

In the same interview, Kim cites the scholarship of the radical black historian Robin D. G. Kelley to argue that art, for the movement, was an attempt to "unleash radical imagination."[61]

Through art, then, the movement identified its regulative "horizons," seeking intentionally to imagine and prefigure social and political change. Such a view of art aligns with that of the philosopher Alva Noë, for whom "art, really, is an engagement with the ways our practices, techniques, and technologies organize us, and it is, finally, a way to understand our organization and, inevitably, to reorganize ourselves."[62] Indeed, Kim glosses Chicago Torture Justice Memorials' (CTJM) public call for "speculative memorials commemorating the Burge torture cases" as a means of "asking the public—and ourselves—to reimagine what justice could look like in the Burge torture cases."[63] Much like law, then, art externalizes hopes and intentions for organization and reorganization, housing them in a common, expressive object. Indeed, the

[60] Alice Kim, in "Justice Radically Imagined: Interview With CTJM Members," interview by Rebecca Zorach at the Art Institute of Chicago, 2013, in *Reparations Now/Reparations Won,* 40.
[61] Ibid., 36.
[62] Alva Noë, *Strange Tools: Art and Human Nature,* (NY: Hill and Wang, 2015) xiii.
[63] Kim, "Breaking Walls," 312.

first draft of what would become the 2015 reparations ordinance, written by Joey Mogul, was first displayed in a gallery as an entrant in CTJM's "speculative memorials" project.[64]

This remarkable fact suggests that we might view the movement's artistic practice as a kind of inchoate aspirational law-making in and of itself. While Cover aimed to *distinguish* law from artistic practices like literature, his particular distinction in fact affirms the conceptual *closeness* of law and creative activity in general—the latter is the former when appended to worldly commitment. Inasmuch as the Chicago torture justice movement affirmed the visions achieved in art-making with committed action, then the "radical imagination" it achieved might be thought of as a kind of analogue for law.[65] And it did affirm them; CTJM and its fellow movement organizations held actions and rallies, lobbied aldermen, hosted public art exhibitions, ran teach-ins, executed a media strategy, met with officials, wrote legal reports, flew WCG to Geneva, organized social media campaigns, and convened a conference, among other activities in service of their visions.[66] The worldly force lent to those aspirations by the work and sacrifice involved in pursuing them separated them decisively from "literature."

The Grounding Function

The grounding function of law is law's capacity to structure and maintain the common worlds in which we live. It corresponds closely to the jurist Alain Supiot's notion of the "anthropological function" of the law: "A legal system does not fulfil its anthropological function unless it guarantees that every newcomer on this earth finds a world that pre-exists them

[64] Ibid., 312-313. See also Joey L. Mogul, "The Struggle for Reparations in the Burge Torture Cases: The Grassroots Struggle that Could," *Public Interest Law Reporter* 21, issue 3 (2016): 220.
[65] For more on the intersection between law and art, see Carrol Clarkson, *Drawing the Line: Toward an Aesthetics of Transitional Justice* (Fordham University Press, 2014); Desmond Manderson, *Danse Macabre: Temporalities of Law in the Visual Arts,* (Cambridge University Press, 2019); Desmond Manderson (ed.), *Law and the Visual: Representations, Technologies, and Critique* (University of Toronto Press, 2018). For more on the link between art and abolition, see Amanda Priebe, "It Has to Burn Before it Can Grow: An Interview with Amanda Priebe," interview by Brooke Lober, in *Making Abolitionist Worlds,* 238-253.
[66] CTJM, *Reparations Now/Reparations Won*, 30-57. See the running timeline at the bottom of the pages.

and guarantees their identity over time."[67] Indeed, other legal theorists and anthropologists of law emphasize law's expressive role in social coordination[68] and in the establishment of systems of compelling norms.[69] In both cases, law helps constitute a kind of social background that shapes the terms of common life. Grounding is what law does in what we might call its *institutive mood*—when it yields, either through direct intention or aggregate effect, structures and systems that underwrite and shape existing social life. Among the characteristic sources of this function of law are traffic and parking rules, zoning and land use laws, rules for contracting, specifications for public education, and the establishment of political and bureaucratic institutions. While it may sometimes blur and coexist with the aspiring function of the law in the same legal material—the areas of law above can express certain unrealized hopes for the future of social life, just as constitutional rights can establish certain grounding expectations for interaction—the two functions are nonetheless conceptually distinct.

Abolitionists frequently emphasize the imperative to transform the underlying structures of society and culture so as to achieve freedom and justice. Abolition, in the words of Ruth Wilson Gilmore, is "about presence, not absence. It's about building life-affirming institutions."[70] While this statement has the specific intention of reminding the reader that abolition is not merely a negative, but also a positive, project, it can also be read to specify something about the *nature* of this positive project. This project cannot reduce to affirming positive *aspiration*, for which the "absence" of the aspired-for conditions in the present is a constitutive condition. Abolition, for Gilmore, must strive to transform the *existing* groundwork

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[67] Alain Supiot, *Homo Juridicus: On The Anthropological Function of the Law,* translated by Saskia Brown. (Verso, 2017) 37.
[68] Richard H. McAdams, *The Expressive Powers of Law: Theories and Limits*, (Harvard University Press, 2010).
[69] Joseph Raz, *The Concept of a Legal System*, (Oxford University Press, 1980).
[70] It is difficult to identify the source of this quote, but it is commonly shared by abolitionists. See, for instance, Abolition Journal, "If You're New to Abolition: Study Group Guide," *Abolition Journal,* June 25, 2020, accessed February 28, 2022, https://abolitionjournal.org/studyguide/; MPD 150, "What are we talking about when we talk about a 'police-free future?'" https://www.mpd150.com/what-are-we-talking-about-when-we-talk-about-a-police-free-future/.

of social-life, to build the "life-affirming institutions" from and through which aspirational horizons can be pursued. She links the abolitionist struggle to the "place-making" capacity of human beings: they can "combine people, and land, and other resources with… social capacity to organize [themselves] in a variety of ways," in order to build what she calls "abolition geography"—worlds that are "the antagonistic contradiction of carceral geographies."[71] Carceral geographies, in Gilmore's understanding, are the result of a kind of malign deployment of law's grounding function. They exceed "their prison or even law enforcement aspects" to encompass an array of socioeconomic processes like "gentrification," "commodity chains," and "finance capital,"[72]—processes in which, as scholars of Law and Political Economy would tell us, law is deeply implicated.[73] Abolition geographies, as the contradiction of carceral geographies, would figure to encompass the same scope.

At the same time, the *antagonistic* character of this contradiction suggests something further about the kind of groundwork appropriate for abolition geography: the kind of sociality it seeks to support is defined less by adhesion to fixed, hegemonic norms and structures as by opportunities for the *re-envisioning* of these. Gilmore's examples of abolition geography in action make this clear. Grassroots educational projects in Palestine during the first intifada attempted to inspire reflection on ways "the ad hoc abolition geographies of that time-space [could] become and become again sustained through conscious action," decolonial schools in Guinea-Bissau "articulated possible futures for localities and beyond," and solidarities in California prisons enabled collective action to be taken against solitary confinement in the

[71] Ruth Wilson Gilmore, "Abolition Geography and the Problem of Innocence," in *Futures of Black Radicalism,* edited by Gaye Theresa Johnson and Alex Lubin, (Verso, 2017) 227.
[72] Gilmore, "Abolition Geography," 229.
[73] Jedediah Britton-Purdy, Amy Kapczynski, and David Singh Grewal, "Law and Political Economy: Toward a Manifesto," *LPE Project*, November 6, 2017, https://lpeproject.org/blog/law-and-political-economy-toward-a-manifesto/.

1970s.[74] In all cases, abolition geography sought to establish the social infrastructure for forms of transformation and resistance. Abolitionist exercises in grounding, then, aim less at a kind of stasis—which, to maintain its rigid fixity, would require recourse to the enforcement and adjudication functions of the law—than a kind of oppositional dynamism, a dynamism which is resourced by certain social frameworks, but not determined by them.

With this specification in mind, I think we can think of making abolition geography as a kind of grounding lawmaking, or at least, think of law in its grounding function as potentially compatible with this effort. What is lawmaking, after all, if not an effort to "combine people, and land, and other resources with our social capacity to organize ourselves in various ways"? Indeed, though this effort may be partly pragmatic, some abolitionist campaigns today seek to enlist traditional legislative mechanisms toward these place-making ends, making demands on the State to shift resource distributions in order to fund social programs in black communities, authored by community members.[75] Allegra M. McLeod's notion of "grounded justice," which involves a number of legislative interventions—like "redeveloping and 'greening' urban spaces" and "creating… safe harbors for individuals at risk of or fleeing violence"—intended to "prevent the need for carceral responses," for instance, offers one vision of such abolitionist place-making, transposed into a more familiar legislative key.[76] Even Gilmore's examples of abolition geography—while more informal, organic, and radically democratic than those typically involved in lawmaking today—need not be excluded from the category conceptually. There is no reason that the form taken by lawmaking in "abolition democracy" need resemble lawmaking as we know it.

[74] Gilmore, "Abolition Geography," 232-233, 239-240.
[75] Amna A. Akbar, "Toward a Radical Imagination of Law," *New York University Law Review* 93 (2018): 410, 469.
[76] McLeod, "Prison Abolition and Grounded Justice," 1156.

This function of law was central to the Chicago torture justice movement in a way that is quite intuitive; it was at the heart of the 2015 ordinance itself—the movement's crowning achievement, and it's most obvious exercise in lawmaking. The contents of this ordinance, I think, may be plausibly theorized as an attempt to deploy the grounding capacities of law, its ability to partially shape and reshape the background conditions of collective life. At the same time, the ordinance undertook the grounding task in the spirit of abolition geography, establishing common worlds that do not enforce themselves, but rather open social life up to individual and collective acts of revision and novelty. I identify some examples below.

First, the Chicago Torture Justice Center, the mental health facility that resulted from the ordinance, provides a range of goods to the community at large—offering "politicized healing" for survivors of "police violence and race-based trauma," with various specific modes of material and psychological support; providing organizing space for various political efforts to counter police violence; and hosting a number of other community groups/events.[77] The Center supports communities of survivors, navigating and interpreting the world through the radicalizing lens of their experiences, while also materially improving their day-to-day lives through psychic healing. Moreover, it provides social infrastructure for civic and political activity, supporting salutary relationships and action by and in the service of the South Side communities.

The school curricula also transform the social groundwork by contributing to shaping the consciousness and knowledge of Chicago youth during formative years. The curricula also orient students toward questions of the possible transformation of their worlds, and not only because it tells the story of Chicago activists' successful efforts to win passage of the reparations ordinance. The high school curriculum suggests a class discussion on the question: "What is torture? Would

[77] See Chicago Torture Justice Center, "Chicago Torture Justice Center," accessed February 27, 2022, https://www.chicagotorturejustice.org/.

you revise the legal definition in any way?"[78]—a more or less explicit invitation to engage in what Cover refers to as "jurisgenesis," the "paideic," communal, "creation of legal meaning" from which all law stems.[79] Indeed, Cover notes the deep link between education and aspirational legal projects: "Precisely because the school is the point of entry to the paideic and the locus of its creation, the school must be the target of any redemptive constitutional ideology."[80] In a similar way, abolitionist theorists Stefano Harney and Fred Moten, who draw frequent inspiration from Cover's notion of "jurisgenesis,"[81] emphasize the value of what they call "study"—a kind of collective "intellectuality"[82] opposed to the status quo, and characterized—in a manner paralleling the oppositional plasticity of Gilmore's "abolition geography"—not by "instruction" in some stable truth but as perpetual "revision" of the given.[83] School curricula, by providing for such paideic, transformative study, shift the groundwork of social life in Chicago, and the possibilities within it. Indeed, as we've seen, more than one of Gilmore's examples of abolition geography emphasized liberatory practices of education.

Finally, though it has not yet been built, the public memorial too can be understood as a legal effort to reshape social groundwork. Public memorials shape relationships between individuals and the place they reside, its past, and those they share it with. Indeed, public art also figures in Gilmore's examples, which highlight communal efforts to create a public mural in spaces in Oakland marked off as anti-gang injunction zones, wherein police would be

[78] Chicago Public Schools, *Reparations Won: A Case Study In Police Torture, Racism, And The Movement For Justice In Chicago: High School United States History Curriculum*, 2017, pp. 13. Available here: https://blog.cps.edu/wp-content/uploads/2017/08/ReparationsWon_HighSchool.pdf.
[79] Cover, "Nomos and Narrative," 11-13.
[80] Cover, "Nomos and Narrative," 66.
[81] See Stefano Harney and Fred Moten, *All Incomplete*, (Minor Compositions, 2021), 45, 48-49, 93, 162; Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning and Black Study*, (Minor Compositions, 2013), 141; Fred Moten, *Stolen Life*, (Duke University Press, 2018), 6-8; Fred Moten, *The Universal Machine*, (Duke University Press, 2018), 101.
[82] Harney and Moten, *The* Undercommons, 110.
[83] Harney and Moten, *All Incomplete*, 68.

empowered to questioning and searches with few of the standard obstacles.[84] Burge torture survivor Darrell Cannon described his hopes for the future memorial as follows:

> I would say a building that people can come into, where they can stand and look, read, sit down, and have lively discussions in a building that belongs to us. Why not have our own building… where any and everyone can come in, a comfortable environment where you can sit down, think, and contemplate—'This really went on where I lived'?[85]

For Cannon, then, the memorial is conceived of as a community space that will promote "study" in the broad meaning Harney and Moten give it, a space that will transform people's relations to themselves, each other, their city, and their past. Inasmuch as law produces effects like these, components of what Kaba called the "more expansive view of justice" envisioned by the Chicago torture justice movement, it might be positively affirmed by abolitionists.

Conclusion: Abolition and the Time of the Law

In this final section, I speculate as to the theoretical consequences of the above for an abolitionist theory of law. I do not claim that this theory figured consciously, or even unconsciously, in the tactics of the Chicago torture justice movement. My point is only that, in this movement's engagement with law's four functions, the potential outlines of a more general theory may be glimpsed and identified. The below is an initial attempt to name these outlines, refine them, and consider their potential.

In rejecting law's enforcing and adjudicating functions, but retaining a role for its aspiring and grounding functions, as exemplified by the Chicago torture justice movement, an abolitionist theory of law may be thought of as a radical reconfiguration of the relationship between law and time. In its grounding function—where it contributes institutional and narrative structures that help constitute extant social life—law's claims are temporally situated in the *past*,

[84] Gilmore, "Abolition Geography and the Problem of Innocence," 233.
[85] Darrell Cannon, in "Justice Radically Imagined: Interview With CTJM Members," 38.

anterior to the present. Once its initial implementation is complete, the reparations ordinance will contribute to a structure of common life that present actors will *inherit* and which their actions will presuppose. In its aspiring function—where it articulates goals and principles for ideal sociality—law's claims are temporally situated in the *future*, posterior to the present. The Convention Against Torture, in the hands of the Chicago Torture Justice Movement, exerted force on the present by seeking to pull it toward a normative horizon it had not yet (and still has not) reached.[86]

But because life is always lived in the present—between past and future—all legal determination remains provisional unless it can be affirmed *now,* in those concrete instances where the commitments of law are at stake.[87] As Cover teaches us, it is through its enforcing and adjudicating functions that law typically seeks to accomplish this affirmation. In doing so, it assimilates the present into pre-given orders of temporal determination: determination from the past by way of law's grounding function, and determination from the future by way of its aspiring function.

Here is where an abolitionist theory of law departs from the standard model; it *refuses* the intercession of enforcement and adjudication, preserving a free and self-determining present. While law in its aspiring and grounding functions may *guide* action through the envisioning and affirming of horizons and/or the structuration of common conditions, it does not, finally, decide it. Purified of attachment to enforcement and adjudication, abolitionist exercises in aspiration—as in the Chicago torture justice movement's engagement with international law and collective art-making—and grounding—as in reparations ordinance the movement won passage of—do not

[86] Strategies of legal justification, I think, also operate in this temporally bifurcated way. All law draws its legitimating force from outside of the present—from the justness of the past procedure that made the law and/or the justness of the future the law promises to bring about.
[87] See Keally McBride, *Punishment and Political Order,* (University of Michigan Press, 2007), 30-31.

seek not to impose determinate social visions. Instead, they seed and cede the present for creative, collective action.

In this temporal separation of law from its ends, an abolitionist theory of law takes lessons from Jacques Derrida, who posited a diachronic, aporetic relation between law and justice. Though it is "just that there be law," law is definitively not justice for Derrida.[88] The latter exceeds the terms of human life on Earth; it is "an experience of the impossible" that always evades presence, effective in the world only as the messianic trace of a wholly redeemed and unrepresentable state that is consigned perpetually to the past, as "before memory," and the future, as "irreducibly to come."[89] This trace demands the erection of systems of law that can calculate, decide, and enforce in our unredeemed present—faculties that respond to and evoke the demands of justice even as they fall constitutively short of its dictates. Law and justice, then, both exclude and reinforce one another, operating together to consign each other to their proper temporal sphere. An abolitionist theory of law accepts this diachrony and the productive tension it grants, but radically inverts it. In its view, it is *law* that inheres in the past and future but not the present, and it is *justice*—or perhaps, in its conceptual schema, a kind of abolitionist freedom—which may be had in the present.

However, unlike in Derrida's model, where justice is *constitutively* foreclosed access to the present by virtue of its unrepresentable character, law actually *could* be made present by way of enforcement and adjudication. Ensuring the existence of the salutary diachrony described above, then, requires positive efforts of refusal, intellectual and practical strategies to jam the temporal pincer of the law and deny it access to the present. Like thinking itself for Hannah

[88] Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" in *Deconstruction and the Possibility of Justice,* edited by Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson (Routledge 1992), 16.
[89] Ibid., 16, 19, 27.

Arendt, an abolitionist theory of law requires an account of "a fighting present," one which resists determination of both past and future pressures.[90]

This idea of a free present animated by constant refusal of law accords with notions of "fugitivity" or "marronage," which has also captured the interest of abolitionists and adjacent movement actors.[91] For radical democrats like Sheldon Wolin, democracy is not definitively present but a "recurrent possibility" marked by the fleeting "fugitive" interruption of the routine by new forms of political participation and claims-making.[92] Scholars in the fields of Black studies and Black political thought have also seized on this term, understanding by it a particular form of freedom, characteristic of the experience of escaped slaves, involving perpetual flight from unfreedom.[93] In either mobilization of the term, what is desired is not attained once and for all, but is instead a kind of fragile, ongoing *achievement*, situated "between past and future."[94] Indeed, Michelle Velasquez-Potts conceives of abolition in these fugitive temporal terms: "Abolition time isn't linear, with the world one builds towards awaiting to be grasped. Rather, abolition is a practice that's lived and experienced in the day to day. It's to live in a world yet to be made."[95]

An abolitionist theory of law, then, might be said to be built around the establishment of a kind of *fugitive legal present,* actively wrested "in the day to day" from the law that would determine it. As Angela Y. Davis, Gina Dent, Erica R. Meiners, and Beth E. Richie have recently

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[90] Hannah Arendt, *The Life of the Mind: Thinking*, (Harcourt 1978), 207.
[91] See, for instance, Harney and Moten, *The Undercommons*; Barbara Ransby, "Political Quilters and Maroon Spaces," in *Making All Black Lives Matter: Reimagining Freedom in the 21st Century*, (University of California Press, 2018), 148-156.
[92] Sheldon S. Wolin, "Fugitive Democracy," in *Fugitive Democracy and Other Essays,* edited by Nicholas Xenos, (Princeton University Press, 2016) 111.
[93] See Neil Roberts, *Freedom as Marronage,* (University of Chicago Press, 2015); Juliet Hooker, "'A Black Sister to Massachusetts': Latin America and the Fugitive Democratic Ethos of Frederick Douglass," in *Theorizing Race in the Americas: Douglass, Sarmiento, Du Bois, and Vasconcelos,* (Oxford University Press, 2017): 25-66; Harney and Moten, *The Undercommons*; George Shulman, "Fred Moten's Refusals and Consents: The Politics of Fugitivity," *Political Theory* 49, no. 2 (2021): 272-313.
[94] Neil Roberts titles a chapter of his book "Marronage Between Past and Future" (See Roberts, *Freedom as Marronage,* 141-172).
[95] Michelle Velasquez-Potts, "Embodied Refusals: On The Collective Possibilities of Hunger Striking," in *Making Abolitionist Worlds,* 229. This recalls Thomas Mathieson's association between abolition and "the unfinished." See Thomas Mathieson, *The Politics of Abolition Revisited*, (Routledge, 2015) 58.

taught us, abolition is "a *now* practice."[96] An abolitionist theory of law likewise maximizes the centrality of *now*, investing the present with normative urgency and resources, while refusing its assimilation to legal determination, grounded in force. It suggests, in other words, that law might be rethought so as to facilitate, rather than destroy, what Stephen Best and Saidiya Hartman identify as the "political interval in which all captives find themselves—the interval between the no longer and the not yet," in which a kind of "fugitive justice" can be found.[97]

In this fugitive interval, actors might seek to hijack law at the present of its contingent renewal,[98] seize its arsenal of normative weapons, and claim the right to decide how (or if) they should be deployed. They would confront the law, to borrow Arendt's words, "not just [passive objects] that [are] inserted into the stream, to be tossed about by its waves that go sweeping over [their] head, but [fighters] who [defend their] own presence," making "antagonists" of "the past, which [they] can fight with the help of the future," and "the future, which [they] fight supported by the past."[99] While the temporal antagonisms and alliances this phrase presumes may not always take these precise forms in practice, this description of the task of the thinker offers a resonant model for a positive abolitionist relation to law. Persons *refuse* its force and sovereign authority, claiming for themselves the freedom to decide what must be done in the present. Dethroned and made contingent, however, law offers resources for that freedom to orient and assert itself. The foment of movement activity that followed WCG's UN visit in 2014, as well as the paideic and political collectives the ordinance promises to foster, are two examples of such freedom, animated but undetermined by law.

[96] Davis, Dent, Meiners, and Richie, *Abolition. Feminism. Now.,* 16.
[97] Stephen Best and Saidiya Hartman, "Fugitive Justice," *Representations* 92 (2005): 3.
[98] At stake in this renewal, arguably, is the project of modern law as such, which, as Peter Fitzpatrick argues, is constituted paradoxically between the immanent determination of social reality and the capacity to respond in new instances to a changing world that exceeds such determination (Peter Fitzpatrick, *Modernism and the Grounds of Law*, [Cambridge University Press, 2001], 6).
[99] Ibid., 207-208.

The aspiring and/or grounding material that abolitionist actors might build future legal systems out of might be derived from presently existing legal materials—such as the UN Convention Against Torture—formal legal materials drafted by movements—such as the reparations ordinance—or informal imaginative practices that communicate visions and commitments—such as collective art-making—so long as the material provides resources for abolitionist interpretation and/or action. The source and character of aspirational and grounding material is less important that the fact that it is *chosen*, and that it is relegated to its appropriate temporal zone: outside of the present, affirmable there only by way of non-legal acts, by the fugitive work of making abolition.

Again, this vision extrapolates beyond the activity of the Chicago torture justice movement. But nonetheless, that this movement was able to enact pieces of such abolitionist legality even in the oppressive circumstances of the present exemplifies an important truth about this understanding of law, worth highlighting at this paper's close: its availability to movements and communities *today.* Though such an abolitionist form of law may one take its place in "abolition democracy," it need not wait for it to arrive. It exists now for anyone who, with others, will live it.

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