

## Abolition

### *Thinking beyond Carceral Logics*

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During the afternoon of April 20, 2021, people across the United States were tensely waiting to learn what the Minneapolis jury would decide in the murder trial of former police officer Derek Chauvin. Chauvin was being tried for killing George Floyd after pressing his knee into the back of Floyd's neck for nine minutes and twenty-nine seconds while he was facedown on the pavement. Due to the COVID-19 pandemic, a trial that would only have been witnessed by family and other locals was televised nationally and reported on every night in great detail. After millions watched Chauvin kill George Floyd on video, taken by teenage witness Darnella Frazier, Black Lives Matter protests and calls to abolish and defund the police occurred across the country, sometimes met with police and vigilante violence.

As the judge read out the verdicts on the three charges against Chauvin, second-degree murder – guilty; third-degree murder – guilty; and second-degree manslaughter – guilty, there was a collective national sigh of relief. But the reaction was also more emotional. Television news cut away from regularly scheduled programming to broadcast some of the reactions. The Congressional Black Caucus members were shown huddled together looking at their phones and other devices, nodding and hugging as they listened to the verdicts. Citizens outside the courthouse, also watching on their phones, cheered. Fists were raised high, many people looked up to the heavens in gratitude, people held each other, and some broke down in tears.

It is undeniable that many people felt deeply gratified by the carceral response to Chauvin's callous cruelty. There is a long list of police officers who have not been arrested, tried, and convicted of horrible crimes against Black people, and this history certainly contributed to the anxiety that people felt about whether "justice would be served" in the killing of George Floyd. Interestingly, almost immediately after the verdict was announced, many argued that this did not amount to "justice" but rather "accountability." Minnesota's attorney-general, Keith Ellison, who led the

prosecution of Chauvin, said “I would not call today’s verdict ‘justice’ because justice implies true restoration.”<sup>1</sup> President Joe Biden, noted that:

such a verdict is also much too rare. . . [I]t seems like it took a unique and extraordinary convergence of factors: a brave young woman with a smartphone camera; a crowd that was traumatized – traumatized witnesses; a murder that lasted almost 10 minutes in broad daylight for, ultimately, the whole world to see; officers standing up and testifying against a fellow officer instead of just closing ranks, which should be commended; a jury who heard the evidence, carried out their civic duty in the midst of an extraordinary moment, under extraordinary pressure. For so many, it feels like it took all of that for the judicial system to deliver. . . basic accountability.<sup>2</sup>

While the jury returned a guilty verdict, holding Chauvin legally accountable, genuine accountability doesn’t seem to capture what resulted from convicting Chauvin. As abolitionist Danielle Sered has argued,

Accountability requires five key elements: (1) acknowledging responsibility for one’s actions; (2) acknowledging the impact of one’s actions on others; (3) expressing genuine remorse; (4) taking actions to repair the harm to the degree possible, and guided when feasible by the people harmed; and (5) no longer committing similar harm.<sup>3</sup>

Connie Burk has suggested that, “Accountability is not something that happens to bad people. Accountability is a human skill. It is a skill that each of us must commit to developing as an internal resource for recognizing and redressing the harms we have caused to ourselves and others.”<sup>4</sup> In this more robust sense, Chauvin’s verdict is not accountability, it is not justice, it is a legal judgment of wrongdoing that will lead to his incapacitation.<sup>5</sup>

The desire to punish wrongdoers through courts and prisons motivates “tough on crime” policies. Citizens often feel that the violence they have suffered needs to be publicly recognized, and the courts become the place for that recognition. This

<sup>1</sup> Vanessa Romo, *Minnesota Attorney General Calls Chauvin Guilty Verdict “First Step” toward Justice*, NPR (Apr. 20, 2021, 6:31 PM), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/20/989284035/minnesota-attorney-general-calls-chauvin-guilty-verdict-first-step-in-justice>.

<sup>2</sup> *Remarks by President Biden on the Verdict in the Derek Chauvin Trial for the Death of George Floyd*, THE WHITE HOUSE (Apr. 20, 2021, 7:11 PM), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/20/remarks-by-president-biden-on-the-verdict-in-the-derek-chauvin-trial-for-the-death-of-george-floyd/>.

<sup>3</sup> DANIELLE SERED, *UNTIL WE RECKON*, 96 (2019).

<sup>4</sup> Connie Burk, *Think. Re-think. Accountable Communities*, in *THE REVOLUTION STARTS AT HOME: CONFRONTING INTIMATE VIOLENCE WITHIN ACTIVIST COMMUNITIES*, 267 (Ching-In Chan, Jai Dulani, & Leah Lakshmi Piepsna-Samarasinha, eds., 2016).

<sup>5</sup> Indeed, it is quite likely that Chauvin doesn’t see himself as accountable, and as of this writing it seems that he is appealing the conviction.

desire for court recognition of violence done to animals is becoming more prominent in the realm of animal law.<sup>6</sup>

One example is from the state I live in, Connecticut. In 2012, a twenty-two-year-old man, Alex Wullaert, strangled his dog, Desmond, after Desmond peed on him and bit him. He then dumped Desmond's body, which was later found and reported. Desmond was microchipped, and that is how Wullaert was located. There were a number of hearings and continuances, and at each one, animal activists protested outside the court seeking the maximum sentence, which could have been five years in prison. Wullaert was ultimately sentenced to a rehabilitation program and the activists were furious. Some yelled, some cried. They began organizing for harsher penalties, and in 2016, then-Governor Malloy enacted "Desmond's Law," the first law in the country that allows animal advocates to testify in animal cruelty cases. Proponents of the law have suggested that they don't see the law as promoting increased carceral responses to animal abuse,<sup>7</sup> but the motivation for the law was to punish wrongdoers that harm animals like Desmond, and state punishment is carceral. Representative Diana Urban who sponsored the law, makes this carceral response explicit – the reason she sponsored the animal advocates law was to see higher sentences.<sup>8</sup> Two years after the law was passed, Robin Cannamela, the president of the group that rallied around Desmond's Law, known as "Desmond's Army" said that the law is making an impact. "Since Desmond's Law, we have seen a significant increase in jail time."<sup>9</sup>

The heinousness of the murder of George Floyd, the horrible cruelty of Desmond's demise, and the tragedies that have befallen so many others due to senseless violence and death generate visceral, often understandable, demands for strong punitive state action. But as the Chauvin and Wullaert verdicts show, *justice* is rarely, if ever, what the legal system can produce. The idea of "justice" has deep philosophical roots, and while an easy way to understand justice is to reduce it to whatever it is that the "justice system" metes out, it is a more nuanced notion. There are many different ways to understand justice – as a virtue, as a feature of institutions or whole societies, as an ideal. Justice can be applied to the distribution of goods in a society, justice can be applied to policies that impact disadvantaged groups, justice can be thought of as a way of addressing systematic discrimination. I don't have space in this chapter to argue about what the best conception of justice is,<sup>10</sup> but for present purposes, I will understand justice as a type of empathetic fairness; justice is

<sup>6</sup> See Justin Marceau for a careful, in-depth discussion. JUSTIN MARCEAU, *BEYOND CAGES* (2019).

<sup>7</sup> Jessica Rubin, *Desmond's Law: Early Impressions of Connecticut's Court Advocate Program for Animal Cruelty Cases*, 134 *HARVARD LAW REVIEW*.

<sup>8</sup> Marceau, *supra* note 6, at 79.

<sup>9</sup> Michelle Tuccitto Sullo, *Animal Advocates Help to Bring Justice for Abused Cats & Dogs*, *NEW HAVEN REGISTER* (Jan. 27, 2019, 1:23 PM) <https://www.nhregister.com/news/article/Animal-advocates-help-to-bring-justice-for-abused-13565197.php>.

<sup>10</sup> Two good resources: JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTATEMENT* (2001); and David Miller, *Justice*, *The Stanford Encyclopedia of Philosophy* (2017).

sensitive to the ways in which inequality of resources and opportunities limit what is fair to demand of others. Justice, in the variety of ways it is understood, tends to provide one with what they are due, and I agree, if this is understood in the actual contexts in which people live.<sup>11</sup> In most instances, the criminal “justice” system isn’t addressing justice at all, rather as we see in the judgment against Chauvin, it is punishment, even vengeance, that, perhaps unwittingly, motivates the ongoing commitment to an imperfect, undemocratic carceral system that has caused so many men, women, and children to suffer and die in prison.

In this chapter I will discuss prison abolition as presenting both a critique of and an alternative to the criminal legal system. I will first present a brief history of the idea and practice of abolition in its various forms. I will then address two criticisms that have been made against prison abolition – that it doesn’t adequately acknowledge the “victims” of harm and that it is naïve or utopian. I will end by discussing how recent trends in animal law that increase carceral responses to cruelty to animals are wrongheaded and urge those who care about animals, equity, and freedom for all to work toward alternatives to the violence of mass incarceration through a care ethics of abolition.

### 21.1 FORMS OF ABOLITION

The term “abolition” is best known in the context of opposition to the Atlantic slave trade in which Africans and those of African descent were denied personhood. Early abolitionists were opposed to the violent accumulation of wealth due to forced labor. According to Manisha Sinha, abolitionists, though primarily focused on resisting slavery, had wide reaching concerns. Many early abolitionists

joined such international radical movements as utopian socialism, feminism, and pacifism and championed Native American, immigrant, and workingmen’s rights. Some even anticipated contemporary American scourges, criticizing the criminalization of blackness and the use of capital punishment and force by the state. Abolitionists were the intellectual and political precursors of twentieth-century anticolonial and civil rights activists, debating the nature of society and politics, the relationship between racial inequality and democracy, nation and empire, labor and capital, gender and citizenship.<sup>12</sup>

Abolitionists included those who were enslaved and those recently freed, as well as members of communities that were implicated in the slave trade, including African people, British and Spanish people, and religious people, most notably Quakers. Quaker abolitionists in the United States, including John Woolman and Joshua

<sup>11</sup> In this sense I am speaking of “non-ideal” justice. See: Marcus Arvan, *Nonideal Justice as Nonideal Fairness*, J. AM. PHIL. ASS’N 5 (Apr. 30, 2019).

<sup>12</sup> MANISHA SINHA, *THE SLAVE’S CAUSE: A HISTORY OF ABOLITION*, 3 (2016).

Evans, traveled the country to speak out against slavery and express “concern for Native Americans, animal abuse, violence and war.”<sup>13</sup>

With the abolition of slavery, after the Civil War, many abolitionists were actively reimagining how to bring the ideals of democracy into fuller practice. W.E.B. Dubois, in *Black Reconstruction*, noted that “abolition-democracy” demanded the structural reform of labor, education, and opportunities.<sup>14</sup> It wasn’t enough to emancipate Black people from slavery; many envisioned building a free and equal society in which the disadvantages that emerged from the system of slavery were not permanent. But this wasn’t to be. The end of Reconstruction and the reimplementa-tion of Black Codes, further perpetuated forms of unfreedom for Black people. For example, they could be prosecuted for not carrying proof of employment, leading to incarceration and with it, forced labor. In the South, “convict leasing” put the growing population of Black prisoners to work. Dubois, quoting from a “Southern white woman” notes:

In some states where convict labor is sold to the highest bidder the cruel treatment of the helpless human chattel in the hands of guards is such as no tongue can tell nor pen picture. Prison inspectors find convicts herded together, irrespective of age; confined at night in shackles; housed sometimes, as has been found, in old box cars; packed almost as closely as sardines in a box. During the day all are worked under armed guards, who stand ready to shoot down any who may attempt to escape from this hell upon earth—the modern American Bastille. Should one escape, the blood-hounds, trained for the purpose, are put upon his track, and the chances are that he will be brought back, severely flogged and put in double shackles, or worse.<sup>15</sup>

As the shocking conditions of convict leasing became widely known, pressure built to end the practice and one by one Southern states didn’t renew or initiate leases. Alabama was the final state to end convict leasing in 1928. The “abolition” of convict leasing, like the “abolition” of slavery, didn’t end the extraction of uncompensated labor from Black people. As has been popularized in Ava DuVernay’s 2016 film *13th*, the exploitation of prisoners as laborers, legally written into the US Constitution, continues to this day; incarcerated workers receive, on average, fourteen cents/hour at the low end and one dollar and forty-one cents/hour at the high end.<sup>16</sup>

Not long after the publication of George Jackson’s *Soledad Brother*, and his death trying to escape prison, Quaker prison abolitionists, led by Fay Honey Knopp, published *Instead of Prisons* in 1976. The first chapter in the book lists quotations from lawyers, judges, prisoners, those employed or formerly employed by prisons,

<sup>13</sup> *Id.* at 20.

<sup>14</sup> W.E.B. DUBOIS, *BLACK RECONSTRUCTION IN AMERICA* (First published in 1935; Free Press Ed. 1998).

<sup>15</sup> *Id.* at 698.

<sup>16</sup> Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, PRISON POLICY INITIATIVE (Apr. 10, 2017)<https://www.prisonpolicy.org/blog/2017/04/10/wages/>.

authors, activists, and others who all condemn prisons. For example, in the minutes for the 1870 Congress of the American Prison Association, it is reported that “Judge Carter, of Ohio, avowed himself a radical on prison discipline. He favored the abolishment of prisons, and the use of greater efforts for the prevention of crime.”<sup>17</sup> In 1938, Columbia University professor Frank Tannenbaum, in his book *Crime and the Community* wrote: “We must destroy the prison, root and branch. That will not solve our problem, but it will be a good beginning. . . Let us substitute something. Almost anything will be an improvement. It cannot be worse. It cannot be more brutal and more useless.” Writing in the *New York Times Magazine* on January 30, 1955, the former head of the psychiatric clinic at Sing Sing prison wrote: “We profess to rely upon the prison for our safety; yet it is directly responsible for much of the damage that society suffers at the hands of offenders. On the basis of my own experience, I am convinced that prisons must be abolished.”<sup>18</sup> In some ways calls for abolition, of slavery, of convict leasing, and of prisons are continuous.

Between 1990 and 2005, the number of state and federal prisons rose 43 percent. As the prison boom was growing in California, Ruthie Gilmore, Angela Davis, and others formed the abolitionist organization Critical Resistance to oppose what they called the prison-industrial complex (PIC).<sup>19</sup> But calls for prison abolition began before the era of mass incarceration.<sup>20</sup>

“Abolition” has also been invoked in the animal protection/liberation movement. Activists have demanded that we “abolish zoos” or “abolish fur.” Animal law professor and activist Gary Francione has developed a perspective on animal rights that he calls “the abolitionist approach.”<sup>21</sup> This approach calls for the abolition of all animal exploitation. In particular, the abolitionist approach acknowledges that other animals have one right: the basic right not to be treated as the property of others. And it is on the basis of recognition of this right “that we must abolish, and not merely regulate, institutionalized animal exploitation – because it assumes that animals are the property of humans.” In calling themselves abolitionists, and demanding the right not to see animals as property, the abolitionists in the animal

<sup>17</sup> From the Minutes of the 1870 Congress of the American Prison Association/ American Correctional Association as quoted FAY KNOPP & JON REGIER, EDS, *INSTEAD OF PRISONS: A HANDBOOK FOR ABOLITIONISTS*, (eds.), 1976.

<sup>18</sup> Ralph S. Banay, *Should Prisons Be Abolished? An Expert Says They Do Not Cure Crime, and Argues That the Real Problem Is Not One of Keeping Criminals In, but of Keeping Them Out.*, N.Y. TIMES, 13 (Jan. 30, 1955).

<sup>19</sup> <http://criticalresistance.org/about/history/>. See also ANGELA DAVIS, *ARE PRISONS OBSOLETE* (2003) and RUTH WILSON GILMORE, *GOLDEN GULAG* (2007).

<sup>20</sup> Though there isn’t a specific “start date” for mass incarceration, the prison population doubled during the Reagan years, from 1981 to 1989 and grew exponentially after the 1994 Crime Bill was passed. Between 1972 and 2009, there was an estimated 700 percent growth in the prison population.

<sup>21</sup> See Gary L. Francione, *The Six Principles of the Abolitionist Approach to Animal Rights*, ANIMAL RIGHTS: THE ABOLITIONIST APPROACH <https://www.abolitionistapproach.com/about/the-six-principles-of-the-abolitionist-approach-to-animal-rights/>.

movement are drawing a parallel between the treatment of animals and the institution of racial slavery.

But, unlike the seeming continuities between the abolition of slavery and the abolition of prisons, there are dangers associated with using abolitionist language in the animal context. Any project that makes comparisons between people and animals that fails, as Claire Jean Kim writes, to question “the difference between slave and animal...how recognition of this difference was built into law and practice...and how this shaped the forms of violence and coercion inflicted upon slaves and animals, respectively”<sup>22</sup> is flawed. Animal abolitionist projects (and this goes beyond just Francione’s abolitionist approach, including some of PETA’s campaigns and centrally, in the legal arena, the work of the Nonhuman Rights Project) tend to erase the specific harms of slavery on the enslaved people, perhaps unwittingly, recasting the slave as an animal or property, as a way of challenging property status.

To keep animals center stage, animal abolition relentlessly displaces the issue of black oppression, deflecting attention from the specificity of the slave’s status then, and mystifying the question of the Black person’s status now. According to animal abolition’s narrative of racial temporality, Black people at some point (variously, Emancipation, Reconstruction, the civil rights movement) moved demonstrably from slavery to freedom, from the outside in, from abjection to inclusion.<sup>23</sup>

The animal abolitionists seem to suggest that with the end of slavery, that is, no longer categorizing Black people as property, the institutions of anti-blackness and the afterlives of slavery cease to be as problematic, making animal freedom the next frontier.<sup>24</sup> Put differently, legally changing the status of Black people from property to persons did not accomplish for Black people the imagined freedom that animal abolitionists hope to bring about for animals.

There is a way of imagining animal abolitionism that does not succumb to the dangers of false comparisons, erasure, and imagined teleological successes toward Black freedom. The way to do this is to see the work against anti-blackness and against animal exploitation as part of the same abolitionist project. Black liberation and animal liberation can better see the structures of power they are independently resisting and better imagine a more just world by critically engaging with the white “humanist” assumptions at the heart of hierarchies of worth. Abolition in the prison

<sup>22</sup> Claire Jean Kim, *Abolition* 23 in *CRITICAL TERMS FOR ANIMAL STUDIES*, (Lori Gruen ed., 2018).

<sup>23</sup> *Id.* at 18.

<sup>24</sup> Kim cites Steven Best, who makes this point quite vivid, “Having recognized the illogical and unjustifiable rationales used to oppress [Black people], women, and other disadvantaged groups, society is beginning to grasp that speciesism is another unsubstantiated form of oppression and discrimination.” *Id.* at 23. Of course, the oppression of Black people, including Black women, is rationalized in quite distinct ways from the oppression of other groups, given that Black people have a unique history and, some would argue, distinct ontological status.

context is a particularly apt place to locate the critical links between dehumanization and deanimalization. As Lisa Guenther writes: “intercorporeal relations are vital for both human and nonhuman animals. . . . The problem with intensive confinement is not just that it treats human prisoners like animals, but that it fails to treat them like animals, where animals are understood as living beings whose corporeal and intercorporeal relations with other living beings”<sup>25</sup> are crucial for having a meaningful life.

## 21.2 REACTIONS TO PRISON ABOLITION

Abolition evokes a variety of reactions ranging from incredulity and disdain to curiosity and excitement. These reactions also vary depending on audience and the context in which the topic of prison abolition is being raised. When questions about alternatives to prisons are posed that don’t mention the word “abolition” there appears to be tremendous support among the public. For example, the ACLU conducted a survey in 2017 that found that 61 percent of Americans believe that people who suffer from drug addiction and commit serious crimes don’t belong in prison but should receive treatment.<sup>26</sup> And 87 percent believe that when people with mental health disabilities commit crimes that involve violence, they should be sent to mental health programs where they can receive treatment from professionals.<sup>27</sup> Such strong public support for noncarceral responses to violent crimes are welcome in a country like the United States that, as of this writing, locks up over 2 million people. And as Joy James has noted, abolitionist alternatives to prison are already available for “those with wealth and power: existential whiteness, money or capital and connections to governing elites. Elite ‘offenders,’ if prosecuted and convicted, are largely redirected to therapy, counseling, drug treatment and expensive residential treatment centers.”<sup>28</sup>

Though some abolitionist alternatives to incarceration are generally accepted and already in practice for a privileged few, more often than not, people have the mistaken view that abolitionists would like to see the immediate closing of all prisons. Perhaps that is what some abolitionists imagine, like the immediate end to slavery and the immediate end to killing animals for fur, but for the most part what abolitionists want is to immediately end our acceptance of punitive responses to crime and begin imagining alternatives. In a society like ours, organized by profound inequality, releasing people who have nothing into a world in which

<sup>25</sup> LISA GUENTHER, *SOLITARY CONFINEMENT: SOCIAL DEATH AND ITS AFTERLIVES* (2013).

<sup>26</sup> *91 Percent of Americans Support Criminal Justice Reform, ACLU Polling Finds*, ACLU (Nov. 16, 2017) <https://www.aclu.org/press-releases/91-percent-americans-support-criminal-justice-reform-aclu-polling-finds>.

<sup>27</sup> *Id.*

<sup>28</sup> Joy James, *The Alchemy of Abolitionisms*, Foreword in *THE ROUTLEDGE INTERNATIONAL HANDBOOK OF PENAL ABOLITION* (Michael J. Coyle & David Scott eds., 2021).



resources for reentry are absent, has the likelihood to create more harm. This is one of the reasons why abolitionists work to develop more just and meaningful social policy that will help support community needs and build alternative, humane institutions. These efforts involve promoting “nonreformist reforms” that allow for the development of policies and practices that minimize harms, while not contributing to or reinforcing the harmful prison system.<sup>29</sup>

There are a number of examples of reform efforts that are consistent with the ultimate goal of prison abolition; these include ending solitary confinement and the death penalty, working to stop the construction of new prisons and the creation of more beds to fill, fighting the expansion of surveillance, providing educational opportunities for incarcerated people, mutual aid for communities, and more. As Mariame Kaba suggests, nonreformist reforms are “those measures that reduce the power of an oppressive system while illuminating the system’s inability to solve the crises it creates.”<sup>30</sup> Calls for more humane treatment, better training for police, and releasing “nonviolent” offenders are reforms that don’t challenge the system and would be rejected by most abolitionists as they will simply make the current cruel system a bit more tolerable. Abolitionists, while working to improve everyone’s health and safety, ultimately hope to eliminate not just prisons that have “come to seem natural and inevitable,”<sup>31</sup> but to expand our imaginations to allow us to envision a more caring, just society.

### 21.2.1 *What about “victims”?*

One of the challenging questions that abolitionists are often asked is, “Why focus on freeing the perpetrators of harm rather on supporting the victims who were harmed?” This is an important question, but it is best not to think of the focus of abolitionist concern as either/or – many of those who commit crimes are themselves victims. The question is also probably better posed to the current criminal system.

<sup>29</sup> There are a of myriad harms that prisons cause, but here is a brief indication of some of them written by five incarcerated men sentenced to a combination of 225 years in a maximum-security prison:

After our initial humiliation upon being strip searched when we enter prison, we lose all control of our lives. We will eat, bathe, and shave when told. We will be expected to follow direct orders, no matter how absurd or unfair. Noncompliance will be met with force...the depressive environment tends to stifle intellectual curiosity. We simply become too tired and sullen to engage in intellectual pursuits. Simply put, we dwell in our cells, we are not actively using our minds, and in a very real sense, we are thus losing our minds. The loneliness caused by prisons in general and prison cells in particular is exacerbated by the loss of intimacy and the loving touch of friends and family”

John Bryant, James Davis, David Haywood, Clyde Meikle, Andre Pierce, *Life Behind Bars in ETHICS OF CAPTIVITY* 105 (Lori Gruen ed., 2014).

<sup>30</sup> Mariame Kaba, et al., *What Abolitionists Do*, JACOBIN MAGAZINE, Aug. 24, 2017 <https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration>.

<sup>31</sup> Allegra McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1219 (2015).

Many are led to believe that the system of punishment that now exists is designed to elevate the status and claims of victims and that guilty verdicts achieve justice for victims of crime. But as was made glaringly clear in trial of Derek Chauvin, justice for George Floyd and his family was not what the guilty verdicts provided. The carceral system does not and cannot achieve justice for the victims.

I recently witnessed two separate sentence-modification hearings, just a few months apart, for incarcerated men who were students in the prison education program I work with. In both cases, the victims of the crimes, committed over twenty-five years ago, testified and their poignant, painful testimony suggested that they hadn't gotten any relief from the lengthy incarceration of these two men. In fact, these victims seemed to be responding as if the crimes had happened recently, rather than decades ago, and it looked to me that the fact that these two men have spent a combined fifty years in prison had not amounted to "paying a debt" to the victims at all. Indeed, I was struck by how unjust it was not to provide these victims with some form of direct support or care to help them to deal with their pain and loss.

Abolitionists do care about those who are harmed and, through restorative justice work, provide support for those victims. Kaba suggests that in her experiences with restorative justice work, many victims want the harm to be addressed in "a real way" – acknowledgment that they have been hurt, that there was someone who caused their pain, and they want to know that the person took responsibility for the harm, has remorse for doing it, and won't do it again.<sup>32</sup> When, at their sentence modification hearings, the incarcerated men I know took responsibility for the pain they caused, apologized deeply for it, and expressed sincere remorse, it seemed that the adversarial context of the criminal court did not allow the victims to hear or believe what was being said. The system has done very little, if anything at all, to help victims, materially, epistemically, or psychologically even though punishment is often justified by appeals to giving victims what they are due.

Given that human victims are not supported, or even treated well by the carceral system, and that their pain is a cover for the further infliction of pain in the form of imprisonment of those who committed harm, there is something quite perverse about animal lawyers' efforts to elevate the status of harmed animals to "victims" in the criminal legal system. As Justin Marceau highlights "Just as claims about victims' rights in the human context have been used as a political ploy to promote mass incarceration, the claimed interest in protecting animal victims that runs through animal protection discourse is essentially a farce, or more charitably, a misdirection."<sup>33</sup> The state, through the criminal legal system, justifies the infliction of harm on others that would be impermissible if citizens did it to one another, by suggesting that victims deserve punitive responses to crime. But not all victims want to

<sup>32</sup> Kaba, *supra* note 30.

<sup>33</sup> Justin Marceau, *Animals as Victims*, ARIZ. L. REV. (2021)

participate or be complicit in harming others. Many family members of victims protest against the death penalty or sentences that amount to death in prison in favor of mercy, and often they are ridiculed for their nonpunitive beliefs. The victims who do believe long prison sentences for the perpetrators will somehow provide them with peace or relief don't usually find it, and they too suffer without care or support. Elevating animals to "victims" by seeking tough sentences for animal cruelty is likely to lead to equally disappointing results.<sup>34</sup>

That many victims believe that they will get some sort of peace from locking people up for long periods of time, even when they realize that peace never comes, reveals a central problem with the carceral logics of our current punishment system. It perpetuates a myth that punishment is an answer to one's pain and loss. Similarly, when animal lawyers believe that it will be helpful for animals to achieve the status of victim by pushing for tougher sentences for the small percentage of people who can be charged with animal cruelty, they too are caught in a trap of carceral logics that promises something it cannot deliver. Our criminal system is not designed to provide victims with elevated status, peace, satisfaction, or basic respect. It is a system of punishment, not a system that is designed to meet the needs of victims or their advocates. Yet the justification of the criminal punishment system requires that victims believe the myth that they will be protected and have their needs satisfied. In this way, oddly, the criminal system is utopian, that is, the system requires that people imagine that society will be better and that they will be safe when citizens who commit harms are punished.

### 21.2.2 *Is Abolition "Utopian"?*

While the prison-industrial complex seems to rely on a utopian idea of "justice," critics often focus their anti-utopian critique on abolitionists. Utopian thinking needn't always be "optimistic" or "hopeful" but rather can be thought of as a conceptual vocabulary that sets the ways we think about that which is not right in front of us, that which is yet to come. William Paris writes,

[U]topias have been attempts to carve an alternate space of life that was sufficiently disconnected from the dominant social order. . . [U]topia need not concern itself with designing the perfect life. Instead, utopia may take up the task of creating social spaces that allow for deliberation over different ideas about how we might organize our social relations. Utopia is the creation of an alternative public sphere for testing out ideas and disagreements over novel forms of social life.<sup>35</sup>

<sup>34</sup> "Victim" also reduces the complexity of a person or animals' experiences to the harms they have endured, not their relationships, their achievements, their fun, their play, etc.

<sup>35</sup> William Paris (forthcoming in HA: THE JOURNAL 2021).

We might think all social theorizing is utopian. And some have argued that the punishment system is indeed utopian.<sup>36</sup> Michael Coyle notes, for example, that “Though undoubtedly to the vast majority of ‘criminal justice’ scholars the notion of their work as fundamentally utopian would strike them as absurd, there are those who have pointedly recognized how ‘criminal justice’ is comprehensively utopian.” He cites one scholar who argues that we can understand the utopian nature of the criminal system by imagining it as a place where we are delivered to safety from “crime.”<sup>37</sup>

Cages, confinement, and captivity are so central to our social imagination that it is challenging to think beyond them, and utopian thinking may help unsettle our imaginations so we can start to expand the horizons of possibility. It’s remarkable to me that most of the incarcerated people whom I have worked with think it’s easier to imagine being in solidarity with other animals than it is thinking beyond prisons. This shows how ingrained the ideas of prisons and punishment are in our culture. They are, as Angela Davis notes, anchors of our social order.<sup>38</sup> To move beyond carceral logics and their punitive manifestations in practice, we need what Erica Meiner calls for – “a jailbreak of the imagination in order to make the impossible possible.”<sup>39</sup>

Utopian thinking can free the imagination from the constraints of the violent, oppressive, and limiting social conditions that currently exist in the United States, but such thinking is aimed not only at some hope for a peaceful future. By imagining otherwise, imagining a world without cells for humans and cages for nonhumans, we are being asked to think in fundamentally different, new ways in response to harm. Abolitionism, as James Foreman, Jr., notes “is the idea that you imagine a world without prisons, and then you work to try to build that world.”<sup>40</sup> And abolitionists work around the country trying to build that world, starting in communities, posing very practical demands. Abolitionists are providing mutual aid; working to redirect city budgets to allocate funds in caring, healthful ways; providing support for those who are food-insecure, housing-insecure, and vulnerable to substance use; developing opportunities to support youth; creating community-based harm-reduction programs; working on supporting victims of harm through restorative justice practices and holding those who caused harm accountable; as well as other practical efforts to build a more caring world. And these sorts of community

<sup>36</sup> Michael J. Coyle, 2018. *Who Is Mired in Utopia? The Logics of Criminal Justice and Penal Abolition*, 45 *SOCIAL JUSTICE*, 79, 79–116 (2018).

<sup>37</sup> *Id.* at 86–87.

<sup>38</sup> ANGELA DAVIS, *supra* note 19.

<sup>39</sup> Mariama Kaba, *A Jailbreak of the Imagination: Seeing Prisons for What They Are and Demanding Transformation*, *TRUTHOUT* (May 3, 2018), <https://truthout.org/articles/a-jailbreak-of-the-imagination-seeing-prisons-for-what-they-are-and-demanding-transformation/>.

<sup>40</sup> Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, *N.Y. TIMES*, (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html>.

programs cost money, so abolitionists organize and protest to demand that the money pouring into policing and prisons be redirected to some of these efforts building community accountability as a condition for expressions of meaningful, entangled agency.

Abolition in the prison context, like abolition in the context of slavery and animal use, provides a framework for reimagining our own agency, for reenvisioning community, and for reframing justice. There are many people who are currently unable to think beyond the fixed carceral features of modern life. And, of course, there are some who think that it is genuinely a utopian fantasy to think we can do without prisons when there are those who are incorrigibly, irredeemably criminal in our midst. They think we need prisons, if nothing else, for those who are often referred to as the “dangerous few.” But, as Kaba writes, “the carceral system has always used sensationalized cases and the specter of unthinkable harm to create new mechanisms of disposability.”<sup>41</sup> If there are irredeemably violent people out there, chances are slight that they will be apprehended, given historical records. Perhaps they are among us, but it is utopian to imagine our system will be able to find all of them. Second, and more importantly, there are very few institutions, particularly expensive and inhumane institutions like prison, that can be justified by appeal to the handful of people that it might make us happier imagining are not among us. The vast suffering that is not just caused but perpetuated by prisons can’t possibly be justified by fears of the “dangerous few.” They become blocks or diversions from imagining genuinely just social arrangements.

### 21.3 A CARE ETHICS OF ABOLITION

Allegra McCleod, in her discussion of developing a prison abolitionist ethic, writes:

an abolitionist ethic recognizes that even if a person is so awful in her violence that the threat she poses must be forcibly contained, this course of action ought to be undertaken with moral conflict, circumspection, and even shame, as a choice of the lesser of two evils, rather than as an achievement of justice. . . . Even when confronting the dangerous few, on an abolitionist account, justice is not meaningfully achieved by caging, degrading, or even more humanely confining, the person who assaulted the vulnerable among us.<sup>42</sup>

Protecting the vulnerable in communities, particularly those who are not in any way a part of potentially dangerous or violent activities, is a very real ethical concern that abolitionists must address. In the ethics literature, there is a division made between “an ethics of justice” and “an ethics of care,” where the former focuses on the application of abstract principles and the latter is concerned with making our social

<sup>41</sup> Kaba, *supra* note 39.

<sup>42</sup> McCleod, *supra* note 31, at 1171.

as well as personal relationships better. Unfortunately, this distinction, like so many others, has led many theorists to think that care is opposed to justice, when in fact, an ethics of care is very much concerned about justice, but has a different way of framing the contexts and conditions under which justice is to be achieved. An ethics of care focuses on the particularities of caring relationships, informed by differences in context, as well as the racial, economic, ethnic, cultural, and differently gendered experiences of individuals and those they care for in community. An ethics of care, rather than an ethics of justice, is better suited to be the basis for an abolitionist ethics.

I've written elsewhere about the ways that the different focus of these ethical orientations matter not just for actions and policies but also for understanding ethical problems.<sup>43</sup> An ethics of justice does not attend to the specifics of each individual situation, much like the legal system has to abstract from contexts and particularity in its deployment of impartial reason. An ethics of justice springs from a picture of individuals that exist outside of their relationships and seeks to ignore the community connections that individuals have, unless, for example, it is to the others who were part of criminal activity.

We turn to ethical theories in conditions of conflict, to gain insights into how we might find solutions to hard social and political problems. An ethic of care has to address situations of conflict, of course, but also is concerned with how people come to see a moral problem as a problem in the first place and works to develop moral imagination not only as a way to reframe problems, but also as a way to move toward more just and sustainable solutions. In the exercise of moral imagination, care ethics is attentive to differences in power and works to provide analyses of the economic, political, racial, gendered, as well as the cultural underpinnings of systems of exploitation, commodification, and cruelty. By analyzing the specific contexts in which systems of power operate, care ethics is concerned about the larger structures that allow or contribute to injustice. Care ethics also directs our attention to the specific beings that are involved in the conflicts, and in so doing has helped reframe concerns about other animals. Care ethics encourages the development of empathy and compassion for all, no matter what species they belong to or what mistakes they have made.

One of the incarcerated students in an ethics class in the maximum-security men's prison where I teach wrote his final paper about an ethics of care and its value in helping us rethink mass incarceration. I was struck by the example he used in opening his paper:

I was in the prison recreational yard with about ten other prisoners when a bird landed in the yard some distance away from us. One of the prisoners walked over to the bird (that turned out to be a baby bird) who tried to fly away but could not.

<sup>43</sup> LORI GRUEN, *ENTANGLED EMPATHY* (2015).

Upon noticing the bird's trouble the prisoner picked the bird up and tried to give it the lift it might have needed. The bird flapped its wings to no avail and crashed into a wall. Before long we had to leave and when we did the bird was still stuck in the yard.

The next morning the baby bird was still in the yard. This time no one tried to help the bird because we did not want to see it smash the wall again. So we went about our normal activities until someone pointed out that another bird had just entered the yard. The prisoner who tried to help the baby bird the day before walked toward the two birds and realized that the other bird had brought a worm for the baby bird. An enthused conversation ensued about the mother bird bringing the worm for her child. I concluded that the mother was acting because she cared for her child.<sup>44</sup>

Animals, including human animals, have deep capacities for care. Of course, those incarcerated share those capacities and may engage in care for other animals that may have entered the prison, and of course, they care for each other when they are able to admit it.<sup>45</sup> Care is a capacity that has to be nurtured, or cared for, and the criminal punishment system not only is detached from care, but promotes that sort of detachment. An abolition ethic would involve reimagining our caring relations and encourage and deepen them. It also requires an analysis of the impacts of failures of care, both before carceral solutions are sought when harms are committed and in critiquing the dehumanizing and deanimalizing conditions that exist in prisons.

An abolitionist ethic of care would have us rethink key ethical concepts like responsibility and deservingness. A care ethic can serve as a normative framework for seeing one way that state punishment is unethical because it treats some people as deserving less care. Although David Boonin doesn't identify as a care ethicist, his argument against punishment is compatible with it. He argues that "punishment involves the state's intentionally harming some of its citizens, and it involves treating the line between those who break the law and those who do not as justifying treating people on one side in ways that it would not treat those on the other."<sup>46</sup> One can hear echoes of childhood admonishments here – "two wrongs don't make a right." Of course, there are important considerations of context that need to be attended to here, and care ethics attempts to consider a variety of particularities about situations when making a determination of what is the right thing to do. In addition, when

<sup>44</sup> Final Paper by Matt Abraham, Spring 2017.

<sup>45</sup> Reginald Dwayne Betts writes powerfully about this.

We are taught not to admit this, but I realize that when I met Keese, for first time in a long while I found someone that cared about me. Call it naive, but Keese and I decided that we might trust each other, even in that strange unsettling place where we met, razor wire surrounding us, circumscribing our freedom.

Reginald D. Betts and Lori Gruen, *Are Prisons Permissible? Increasing Social Visibility of the Experiences of Incarcerated People*, PHILOSOPHICAL TOPICS (forthcoming 2022).

<sup>46</sup> DAVID BOONIN, *THE PROBLEM OF PUNISHMENT* (2008).

someone who has “done wrong” and committed harm is seen through a caring lens, and that person responds to being seen in this way, many possibilities are opened.

As I mentioned earlier, often those who commit crimes are victims themselves. They probably don’t care for those they harmed when they harmed them, but they also may not care for themselves. An abolitionist ethic of care can help both victims and those who caused harm reframe their experiences. Part of the solution to seemingly intractable conflicts is to care for oneself, in relations of respect and self-respect with others. As Sarah Ahmed notes, the “work [of] self-care is about the creation of community, fragile communities, assembled out of the experiences of being shattered. We reassemble ourselves through the ordinary, everyday and often painstaking work of looking after ourselves; looking after each other.”<sup>47</sup> An ethics of care is not meant to be a paternalistic intervention, where care covers over pity or some equally contemptuous attitude, but rather it is an ethics that works to create the conditions in which caring for oneself and for others are developed and practiced. It is restorative and transformative work.

An abolition ethic of care for other animals would not endorse carceral solutions to animal cruelty. Animal lawyers decry the failure of the courts to take seriously violations of animal cruelty laws, given that such crimes are often not prosecuted and when they are, sentencing usually doesn’t involve incarceration. Developing an abolitionists ethics of care may have more positive impact for animals. Often, when people are exposed to caring, empathetic ways of perceiving other animals, when they come to understand animals as sensitive, complex, relational beings who feel physical pain but also suffer when they are kept in cages or when their psychological well-being isn’t promoted,<sup>48</sup> they change their attitudes. Accelerated rehabilitation, the sentence that Alex Wullaert received after killing Desmond, rather than being rejected, could be a place to start. One can imagine requiring participation in an animal cruelty prevention and education program as a “nonreformist” reform, if the program involves serious community work, rather than just filling in online forms after watching videos about animals. Animal lawyers who seek to promote greater awareness of the plight of animals may wish to direct their attention to the content of such programs, helping to develop a required curriculum that is grounded in an ethics of care. Someone who was fatally cruel to an animal may not do such a thing again, but they may not have changed their attitudes about their relationships to other animals (and it isn’t at all clear that going to prison would do that either). Developing empathetic, caring attitudes toward other animals, other people, and oneself may very well go a long way toward elevating the status of animals and preventing crimes against them.

<sup>47</sup> Sarah Ahmed, *Selfcare as Warfare*, FEMINIST KILLJOYS (Aug. 25, 2014), <https://feministkilljoys.com/2014/08/25/selfcare-as-warfare/>.

<sup>48</sup> MARC BECKOFF & JESSICA PIERCE, *WILD JUSTICE: THE MORAL LIVES OF ANIMALS* (2010).



Carceral responses to cruel assaults on others, whether human or nonhuman, are understandable yet misguided attempts to try to bring about some sort of justice. As I've argued here, there are alternatives to this system that inflict more harm and do very little to fundamentally change people's attitudes toward causing harm. Abolitionists have been working to develop ways of reimagining our relationships and our responses to harm that don't involve punitive action by the state. An abolitionist ethic of care is a promising area for revaluing those who are harmed, those who cause harm, and the broader community who are impacted not just by the pain of harms that have been committed, but by the harms that are inflicted by the state in their names. Empathetic reimagining our carceral institutions and our anthropocentric attitudes is crucially needed to promote freedom and flourishing.<sup>49</sup>

<sup>49</sup> I'd like to thank Jay Bernstein, Reginald Dwayne Betts, Alice Crary, David Haywood, Justin Marceau, Andre Pierce, and Sitar Terrass-Shah for stimulating comments/conversations. They don't share my views, but they informed them directly or indirectly.