
ESSAY

THE BREAKING POINT: A CRITICAL DISABILITY ANALYSIS OF ABOLITION

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INTRODUCTION

In order for something to be built, something has to be destroyed, and this jail’s administration has to be destroyed. We’re too far along as a society to continue to be submerged in the wrongs and the corruptions, instead of to stand for what’s right. . . . I wish people understood that jail isn’t really what they think it is; it’s a façade. This place isn’t meant to help you get better. . . .

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We are immensely grateful to the interviewees for sharing their time, energy, and lived experiences with us. We are also grateful to the attorney who introduced us to each of them and invaluable supported us along the way. We cannot thank the artists enough for contributing their time and talents to this project. Finally, thank you to Professor Peggy Cooper Davis for her support and guidance at this project’s inception.

Too many people see history as just that—in the past. They don't realize that history is now."¹

For disabled and chronically ill incarcerated people, the inequities of the criminal legal system increase exponentially in deadly, life-altering ways.² The inadequate medical and mental health care inside prisons and jails are even more dangerous given that 38 percent of people in prisons have at least one disability—nearly twice the rate of disability in the general population.³ And yet, the voices of disabled and chronically ill people are not heard, nor are their opinions heeded.

In October 2020, ten disabled and/or chronically ill individuals incarcerated in the same county jail shared with us their thoughts, experiences, and hopes for the future. We worked with them to construct narratives describing their experiences at the jail.⁴ We then reached out to disabled, neurodivergent, and/or chronically ill artists to bring the narratives to life through visual media. The narratives and art coexist on a website called The Breaking Point Project (“BPP”), which blurs the boundaries of storytelling, art, affect, and the law to demonstrate that one cannot in practice be extricated from the others.⁵ As two

¹ *Narrative 3*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-03> [<https://perma.cc/X7RZ-FR8B>].

² We use identity-first language to emphasize the centrality of disability to many disabled people's identities. See Cara Liebowitz, *I Am Disabled: On Identity-First Versus People-First Language*, THE BODY IS NOT AN APOLOGY (Mar. 20, 2015), <https://thebodyisnotanapology.com/magazine/i-am-disabled-on-identity-first-versus-people-first-language/> [<https://perma.cc/YJ8Q-6PEG>] (“My disability, among many other things, is integrated into who I am. There is no way to separate me from my disability.”). We hold an anti-racist, anti-capitalist, anti-imperialist understanding of disability that also encompasses neurodivergence, Madness, and all others who identify with the disability community. We also use Talila Lewis's definition of ableism. Talila Lewis, *Ableism 2020: An Updated Definition*, TALILA A. LEWIS: BLOG (Jan. 25, 2020), <https://www.talilalewis.com/blog/ableism-2020-an-updated-definition> [<https://perma.cc/FF84-WPEM>] (“A system that places value on people's bodies and minds based on societally constructed ideas of normalcy, intelligence, excellence and productivity. These constructed ideas are deeply rooted in anti-Blackness, eugenics, colonialism and capitalism.”).

³ LAURA MARUSCHAK, JENNIFER BRONSON & MARIEL ALPER, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., NCJ 252642, DISABILITIES REPORTED BY PRISONERS: SURVEY OF PRISON INMATES, 2016, at 4 tbl.4 (2021), <https://bjs.ojp.gov/library/publications/disabilities-reported-prisoners-survey-prison-inmates-2016> [<https://perma.cc/WKW9-8Y39>].

⁴ Identifying information has been removed from the narratives to protect interviewees from potential retaliation by jail staff.

⁵ BPP developed from our interests in disability justice and prison abolition, conversations with abolitionists, the spotlight COVID-19 has placed on poor medical care within prisons and jails, and the overall dearth of humanizing context in the legal field. Prisons and jails are intentionally shrouded in secrecy, and we envision BPP as part of the countless efforts to bring those secrets to light and create meaningful change. THE BREAKING POINT PROJECT, <http://www.thebreakingpointproject.com> [<https://perma.cc/5BE8-76EW>].

Disabled⁶ law students, we were uniquely positioned to embark on this project. For us, the personal is very much political.

* * *

IN THE HOLE/100 BEATS PER MINUTE
Margaret Chase, Copyright 2020

POET ASTHMATIC BEREAVED BROTHER CAMPER
MUSIC-LOVER BIBLE-READER PROBLEM-SOLVER
MOVIE-WATCHER SCHIZOPHRENIC
FAMILY-PHONER THINKER
ADVOCATE
NARRATOR



The one thing I wish people on the outside knew is how people view others when they're in positions of power. . . . Imagine if the shoe was on the other foot. Just because you've got the power and authority to do it doesn't mean it's cool. Don't look down on someone because they're different; you only hurt people when you do that.⁷

* * *

Disability justice and abolition are inextricably intertwined. In this paper, we explore the abolitionist potential of the Constitution and the ways in which it can be used to protect and expand the rights of incarcerated disabled

⁶ The capitalization of Disabled indicates our identification with Disability culture and shared community with all people who experience ableism, as well as our determination to fight for the collective liberation of all Disabled people.

⁷ *Narrative 10*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-10> [<https://perma.cc/2SS2-3JZZ>].

people. In Part I, we discuss the current state of the prison abolition movement. In Part II, we explore the abolitionist history of the Thirteenth and Fourteenth Amendments,⁸ which serve as the foundation for a new vision of the Constitution as an anti-slavery document.⁹ In Part III, we examine forms of capital punishment and juvenile life without parole (“JLWOP”) sentences that violate the Eighth Amendment. In Part IV, we outline a new avenue of reconstructed Eighth Amendment argumentation that incarcerating disabled people constitutes cruel and unusual punishment. This involves considering the evolution of the public’s expectations for how the State treats disabled people and of how our understanding of the Eighth Amendment should evolve under an anti-slavery understanding of the Constitution. We also discuss the connection that ought to exist between the Americans with Disabilities Act (“ADA”) and the Eighth Amendment. We conclude with our vision of BPP’s future and further areas for exploration of the intersection of disability justice and abolition.

This paper demonstrates how storytelling may provide one pathway toward a more expansive civil rights interpretation of the Constitution to protect the rights of incarcerated disabled people.¹⁰ By humanizing the impact of jurisprudential theorizing, storytelling seeks to break through the sterile veneer of the law and expose its effects on peoples’ lived experiences.

I. THE MOVEMENT FOR ABOLITION

The abolitionist movement is not new, nor is it confined to abolishing jails and prisons.¹¹ In 2018, the Abolition Collective published its manifesto for abolition: “[W]e aim to support studies of the entanglement of different systems of oppression . . . to create spaces for collective experimentation with

⁸ Together with the Fifteenth Amendment, these constitute the Reconstruction Amendments. *The Reconstruction Amendments*, NAT’L CONST. CTR., <https://constitutioncenter.org/learn/educational-resources/historical-documents/the-reconstruction-amendments> [<https://perma.cc/BKE7-US6V>].

⁹ See generally, e.g., Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1 (2019) (discussing the abolitionist history and potential of the Reconstruction Amendments).

¹⁰ “Voices briefs,” which add first-person narratives of non-parties to the record in appeals, are one method of legal storytelling that has risen in prominence over the last few years. Linda Edwards, *Academic Highlight: Telling Stories in the Supreme Court*, SCOTUSBLOG (Dec. 26, 2017, 12:47 PM), <https://www.scotusblog.com/2017/12/academic-highlight-telling-stories-supreme-court/> [<https://perma.cc/LL8A-3V9D>].

¹¹ Abolition has gained more attention in mainstream media in recent years. See, e.g., Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [<https://perma.cc/H9J5-SWZ6>] (“I’ve been advocating the abolition of police for years. . . . The idea is gaining traction in Minneapolis, Dallas, Los Angeles and other cities.”); Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES MAG. (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html> [<https://perma.cc/B3JN-NST6>] (highlighting the long-time work of abolitionist Ruth Wilkins Gilmore).

those tensions.”¹² Abolitionists trace the connection from slavery to Jim Crow laws, mass incarceration, and inhumane carceral conditions to argue that it would be impossible to reform systems predicated on the subjugation of Black people; instead, those systems must be dissolved entirely.¹³

The grotesque violations of the rights of disabled people by jails and prisons provide fertile ground for the abolition movement.¹⁴ Because state and federal carceral institutions are public entities,¹⁵ they must adhere to the rights outlined in the ADA.¹⁶ For example, in *Olmstead v. L.C.*, the Supreme Court held that “[u]njustified isolation . . . is properly regarded as discrimination based on disability.”¹⁷ Section 35.152(b)(2) of the Code of Federal Regulations applies this integration mandate to detention facilities, providing a clearly entrenched foundation for abolitionist claims regarding disabled people.¹⁸ Incarceration on the basis of disability itself is thus inherently discriminatory under Title II.

* * *

¹² Abolition Collective, Editorial, *Manifesto of the Abolition Journal*, 1 ABOLITION: J. OF INSURGENT POL. 4, 5 (2018).

¹³ Roberts, *supra* note 9, at 4-5.

¹⁴ This is especially true given the added dangers of COVID-19 for incarcerated disabled people. People with disabilities often have secondary chronic conditions that place them at greater risk of infection. *People with Certain Medical Conditions*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 20, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> [<https://perma.cc/3jZ9-QD7M>]. Infection rates inside prisons are nearly four times the national rate, and incarcerated people are fifty-one percent more likely to die from coronavirus as compared to demographically similar people on the outside. KEVIN T. SCHNEPEL, COUNCIL ON CRIM. JUST., COVID-19 IN U.S. STATE AND FEDERAL PRISONS 3 (2020), <https://covid19.counciloncj.org/2020/12/06/impact-report-covid-19-and-prisons/> [<https://perma.cc/7K94-JCM2>]; *see also A State-by-State Look at Coronavirus in Prisons*, THE MARSHALL PROJECT (July 1, 2021, 1:00 PM), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> [<https://perma.cc/D4K3-HB5C>] (tracking COVID-19 infections and deaths in prisons across the United States from March 2020 through June 2021).

¹⁵ Section 35.152(a) of the regulations implementing the ADA explicitly applies Title II to both public and private detention facilities. 28 C.F.R. § 35.152(a); *see also* Pa. Dep’t of Corr. v. Yeskey, 524 U.S. 206, 210 (1998) (stating that Title II of the ADA covers the operations of State and local jails and prisons). Federal prisons fall under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

¹⁶ “A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service” 28 C.F.R. § 35.130(b)(1)(i).

¹⁷ *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999).

¹⁸ “Public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals.” 28 C.F.R. § 35.152(b)(2).



“Solitary”

Kaitlin Grant, 2020

Digital photograph

I was in solitary for over a year . . . I just started talking to walls and stuff. One time, my brother came to the hole, and I asked to be in the cell next to him so he could help with my case. I said I’d cover my window otherwise. They said, ‘Cover your window and kill yourself.’¹⁹

¹⁹ *Narrative 9*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-09> [<https://perma.cc/8JP3-E4WC>].

* * *

Despite the abolitionist roots of the Reconstruction Amendments, constitutional law has too often been used to condone violence against Black and disabled people.²⁰ In Frederick Douglass's view, white men in power interpreted the Constitution to maintain white supremacy in the United States: first by focusing on the Constitution's intention to uphold slavery, and then, after Congress adopted the Fourteenth Amendment, by ignoring Congress's intent in order to eschew meaningful equality.²¹ Prominent white leaders like Thomas Jefferson and James Madison touted this "colonizationist" view of anti-slavery thinking,²² utilizing their privilege to silence Black leaders. As with most movements, white voices prevailed,²³ and their incrementalist and institutionalist view of the anti-slavery movement still dominates today. However, despite the Court's often restrictive interpretation of key constitutional provisions, we argue that the language and intent behind those provisions can be construed to fight for the rights of incarcerated individuals and ultimately argue for the abolition of the prison industrial complex.

II. ABOLITIONIST UNDERPINNINGS OF THE RECONSTRUCTION AMENDMENTS

The current era has regrettably seen courts continue to construe the originally liberating Thirteenth and Fourteenth Amendments narrowly to keep success just out of reach for abolitionist attorneys or incarcerated people filing complaints *pro se*. Prisons and jails were not created to adequately adhere to the

²⁰ See, e.g., David H. Gans, *The 14th Amendment Was Meant to Be a Protection Against State Violence*, THE ATLANTIC (July 19, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/14th-amendment-protection-against-state-violence/614317> [<https://perma.cc/S2VH-DW98>] (criticizing the Supreme Court's long-standing failure to protect "the Fourteenth Amendment's promise of equal citizenship"); Roberts, *supra* note 9, at 50 ("[T]he views of the white supremacists who gutted the Thirteenth and Fourteenth Amendments have gained greater prominence than have the views of the slavery abolitionists who inspired the constitutional amendments and of the Radical Republicans who drafted them."); cf. Dorothy E. Roberts, *The Meaning of Blacks' Fidelity to the Constitution*, 65 FORDHAM L. REV. 1761, 1761 (1997) (considering why Black people who have been wronged in the name of the Constitution remain faithful to its tenets).

²¹ "The Supreme Court has hauled down this flag of liberty in open day, and before all the people, and has thereby given joy to the heart of every man in the land who wishes to deny to others what he claims for himself. It is a concession to race pride, selfishness and meanness, and will be received with joy by every upholder of caste in the land, and for this I deplore and denounce that decision." Frederick Douglass, Speech before the Civil Rights Mass Meeting at Lincoln Hall, Washington, D.C. (Oct. 22, 1883), in PROCEEDINGS OF THE CIVIL RIGHTS MASS-MEETING 12 (Washington, D.C., C.P. Farrell 1883).

²² Timothy Sandefur, *Frederick Douglass and the American Dream*, 40 CATO J. 213, 216 (2020).

²³ We understand the immense privilege we carry as white law students. It was important to us to ensure interviewees had control over their stories and the framing of this project, and to center their voices and stories rather than our own.

rights of any people, let alone disabled people, and have a long history of violating those rights. Advocates must, therefore, be willing to keep pushing the boundaries courts have imposed on the Constitution to not only argue for the humane treatment of disabled incarcerated people but to go even further by arguing for the abolition of carceral systems that isolate and abuse disabled individuals.

The Constitution has not always been understood as upholding a racist and ableist status quo. The Reconstruction Amendments were born out of the violence and subjugation of slavery in the period after the Civil War.²⁴ Since their passage, these amendments have undergone a series of convoluted interpretations and have been incongruously utilized to both promote racial equity and uphold white supremacy.²⁵

The Thirteenth Amendment formally abolished slavery, and has much broader implications for civil rights when interpreted as a guarantee against deprivation of fundamental rights by the State.²⁶ Per the Thirteenth Amendment, Congress may enact any legislation necessary to uphold the principles of equality and liberty.²⁷ Under this framework, the Enforcement Clause provides an anchoring point for larger civil rights applications of the Amendment.²⁸ Thirteenth Amendment scholarship throughout the 21st century has applied involuntary servitude as broadly as forced reproduction,²⁹ subminimum wages,³⁰ and, most pertinent to our purposes, incarceration.³¹

²⁴ See, e.g., Gans, *supra* note 20; Scott Allen Carlson, *The Gerrymandering of the Reconstruction Amendments and Strict Scrutiny: The Supreme Court's Unwarranted Intrusion into the Political Thicket*, 23 T. MARSHALL L. REV. 71, 73-79 (1997) (contrasting the promise and subsequent judicial narrowing of the Reconstruction Amendments).

²⁵ For an in-depth discussion of this history, see Eric Foner, *The Supreme Court and the History of Reconstruction—and Vice-Versa*, 112 COLUM. L. REV. 1585 (2012).

²⁶ See Alexander Tsesis, *A Civil Rights Approach: Achieving Revolutionary Abolitionism through the Thirteenth Amendment*, 39 U.C. DAVIS L. REV. 1773, 1844 (2006) (“The Thirteenth Amendment is the bridge between a Constitution beholden to the aristocratic practices of slavocracy and one committed to coequal liberty.”).

²⁷ U.S. CONST. amend. XIII, § 2.

²⁸ See, e.g., Alexander Tsesis, *Enforcement of the Reconstruction Amendments*, 78 WASH. & LEE L. REV. 849, 852-53 (2021) (criticizing judicial encroachment on the enforcement powers of the Reconstruction Amendments and arguing for more protective legislation); A. Christopher Bryant, *The Pursuit of Perfection: Congressional Power to Enforce the Reconstruction Amendments*, 47 HOUS. L. REV. 579, 598-601 (2010) (discussing the deliberate choice of the Framers of the Reconstruction Amendments to place enforcement powers in the hands of Congress, rather than the Court).

²⁹ See, e.g., Dov Fox, *Thirteenth Amendment Reflections on Abortion, Surrogacy, and Race Selection*, 104 CORNELL L. REV. ONLINE 114, 115 (2019) (“[A]bortion bans are vulnerable to a plausible Thirteenth Amendment challenge: namely, that criminalizing abortion access subjects women to ‘involuntary servitude.’”).

³⁰ See, e.g., Ruben J. Garcia, *The Thirteenth Amendment and Minimum Wage Laws*, 19 NEV. L.J. 479, 502-04 (2019) (arguing that the Thirteenth Amendment might be broadly interpreted to prohibit an unequal wage floor for disabled and tipped workers).

³¹ See, e.g., Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899, 957 (2019) (“The market in policed bodies, which is the American prison system, is perhaps an even more dangerous and pernicious chokehold . . . precisely

The Fourteenth Amendment went further in its mandate: states may not “deprive any person of life, liberty, or property, without due process of law”³² This language was adopted shortly after the 1866 Memphis massacre, during which white supremacists murdered 46 Black people.³³ Afterward, abolitionist members of Congress were still forced to compromise with their colleagues on the ultimate language of the Fourteenth Amendment.³⁴ Historian Eric Foner noted that these compromises “reflected ambivalent attitudes . . . about the scope of racial equality. They attempted a partial, not total, modification of the existing federal system.”³⁵ This modification was carried out by an all-white Congress³⁶ and interpreted by an all-white Supreme Court,³⁷ which distorted the impetus for the Fourteenth Amendment.³⁸

Martha Jones, a lawyer and historian whose scholarship focuses on how Black Americans have shaped American democracy, argues that the Reconstruction Amendments gain further meaning from the ways in which newly freed people enacted their citizenship through interstate travel, religious assembly, legal participation, and property ownership.³⁹ This articulation is particularly relevant to our interviewees’ determination to tell their stories as a way to achieve meaningful change. Despite the jail’s numerous attempts to subjugate, isolate, and silence them, these incarcerated individuals remain fiercely determined to assert their freedom and equality. They continue to advocate for themselves on the inside, and in the meantime, share

because it operates as an open secret. For a nation insistent and even successful in its opposition to sweatshops, it ignores those within its own borders. Incarceration successfully masks slavery and it does so cunningly through the unrelenting vestiges of racial bigotry, finely tuned fear, and stereotypes.”)

³² U.S. CONST. amend. XIV, § 1.

³³ Christopher Blank, *Do the Words ‘Race Riot’ Belong on a Historical Marker in Memphis?*, NPR: CODE SWITCH (May 2, 2016, 5:29 PM), <https://www.npr.org/sections/codeswitch/2016/05/02/476450908/in-memphis-a-divide-over-how-to-remember-a-massacre-150-years-later> [https://perma.cc/W3FF-XARM] (discussing the atrocities of the Memphis Massacre and noting its hastening effect on the Fourteenth Amendment’s passage).

³⁴ See Foner, *supra* note 25, at 1591 (noting the conflicting attitudes of the legislators considering passage of the Reconstruction Amendments).

³⁵ *Id.*

³⁶ *Id.* at 1592.

³⁷ Not until October 2, 1967, did Justice Thurgood Marshall break the Court’s all-white history by becoming the first Black Supreme Court Justice. *Oct 2, 1967 CE: Thurgood Marshall Becomes First Black Justice on U.S. Supreme Court*, NAT’L GEOGRAPHIC, <https://www.nationalgeographic.org/thisday/oct2/supreme-court-swears-first-african-american-justice> [https://perma.cc/6S8N-Q267].

³⁸ See Roberts, *supra* note 9, at 50 (“It is safe to say that the views of the white supremacists who gutted the Thirteenth and Fourteenth Amendments have gained greater prominence than have the views of the slavery abolitionists who inspired the constitutional amendments and of the Radical Republicans who drafted them.”).

³⁹ MARTHA S. JONES, *BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA* 12 (2018); see also Roberts, *supra* note 9, at 64 (“Thus, by resisting white domination and acting like citizens, black people have secured greater freedom apart from official recognition of their rights, thereby changing the Constitution’s meaning to encompass their freedom.”).

their stories with us to advocate outside jail walls. Through narrative, they actively perform their citizenship regardless of whether jails, courts, or the outside world recognize the scope of their freedoms as protected by the Constitution.

III. EVOLVING INTERPRETATIONS OF “CRUEL AND UNUSUAL”

The Eighth Amendment was adopted to prevent “cruel and unusual punishments.”⁴⁰ Unfortunately, the Supreme Court has interpreted “cruel and unusual” narrowly to require deprivation of a basic human need or serious harm, and “deliberate indifference” by the defendant.⁴¹ The Court responds leniently to “restrictive and even harsh” behavior,⁴² empowering prisons and jails to treat incarcerated individuals cruelly. When the Supreme Court finds a punishment in violation of the Eighth Amendment, it attributes the unacceptability to “evolving standards of decency.”⁴³

The application of the Eighth Amendment to categorically prohibit capital punishment and life sentences for individuals under the age of eighteen paves a path for expanded Eighth Amendment protections for disabled incarcerated people based on their disability status. In *Atkins v. Virginia*, the Court held that executing people with intellectual disabilities constitutes cruel and unusual punishment.⁴⁴ It deemed such punishment “excessive” and in violation of “evolving standards of decency” due to the impact of intellectual disability on culpability.⁴⁵ Despite this unequivocal holding, more than one-third of those executed across the country in the last four years had an intellectual disability or brain injury.⁴⁶ As recently as January 14, 2021, the federal government took the life of Corey Johnson, who

⁴⁰ U.S. CONST. amend. VIII.

⁴¹ See *Farmer v. Brennan*, 511 U.S. 825, 834-35 (1994) (holding that prison officials may be liable under the Eighth Amendment if they were aware of a substantial risk of serious harm and showed “deliberate indifference” in disregarding it); *Whitley v. Albers*, 475 U.S. 312, 319 (1986) (stating that a violation of the Eighth Amendment requires “more than [an] ordinary lack of due care for the prisoner’s interests or safety”).

⁴² *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

⁴³ See, e.g., *Miller v. Alabama*, 567 U.S. 460, 469, 477 (2012) (finding that JLWOP sentences for alleged homicides violate the Eighth Amendment due to youths’ immaturity, impulsiveness, and vulnerability); *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding that capital punishment for crimes committed by those under age eighteen is unconstitutional under the Eighth and Fourteenth Amendments).

⁴⁴ 536 U.S. 304, 321 (2002).

⁴⁵ *Id.* at 321. The Court was likely influenced by ableism. *Id.* (“[T]heir demeanor may create an unwarranted impression of lack of remorse for their crimes.”).

⁴⁶ *What Lisa Montgomery Has in Common with Many on Death Row: Extensive Trauma.*, THE MARSHALL PROJECT (Jan. 8, 2021, 6:00 AM), <https://www.themarshallproject.org/2021/01/08/what-lisa-montgomery-has-in-common-with-many-on-death-row-extensive-trauma> [<https://perma.cc/7G4U-Z9GH>].

had a well-documented intellectual disability.⁴⁷ The inefficacy of the *Atkins* decision in practice supports a call for more comprehensive, codified protections for disabled people in the criminal legal system.

The Court has made slightly more progress in its consideration of punishments for children. The Court held in *Graham v. Florida* that JLWOP—which it compared to a death sentence⁴⁸—for non-homicide offenses was unconstitutional.⁴⁹ In *Miller v. Alabama*, the Court went a step further, ruling that mandatory JLWOP sentences violate the Eighth Amendment.⁵⁰ The majority emphasized the role of mitigating factors, noting that children experience punishment more severely than adults.⁵¹ Judges and juries considering a JLWOP sentence must now take into account how children are different from adults and “how those differences counsel against irrevocably sentencing them to a lifetime in prison.”⁵²

Per the current understanding of the Eighth Amendment, there are certain qualities of childhood that make JLWOP an almost always socially unacceptable option. Below, we argue that the Court’s reasoning in cases such as *Atkins*, *Graham*, and *Miller* should be extended to cover disabled and chronically ill individuals, who experience jail and prison in fundamentally different ways from non-disabled people. Thus, their disproportionate punishment provides sufficient impetus for the Court to incorporate protections for disabled people into its consideration of categorically unconstitutional punishment.

* * *

Despite the aforementioned successes in limiting acceptable forms of criminal punishment under the Eighth Amendment, courts have been far less willing to find that inhumane conditions of incarceration or treatment of incarcerated disabled people—beyond those with severe mental health conditions—constitute cruel and unusual punishment.⁵³ A finding of

⁴⁷ Jaclyn Diaz, *Federal Government Executes Corey Johnson for 1992 Murders*, NPR (Jan. 15, 2021, 2:52 AM), <https://www.npr.org/2021/01/15/957127755/federal-government-executes-corey-johnson-for-1992-murders> [<https://perma.cc/A53M-TFRB>].

⁴⁸ *Graham v. Florida*, 560 U.S. 48, 69 (2010) (“[L]ife without parole sentences share some characteristics with death sentences that are shared by no other sentences. . . . [T]he sentence alters the offender’s life by a forfeiture that is irrevocable.”).

⁴⁹ *Id.* at 82; *see also id.* at 79 (“Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.”).

⁵⁰ 567 U.S. 460, 465 (2012).

⁵¹ *Id.* at 477.

⁵² *Id.* at 480.

⁵³ A survey of court decisions on solitary confinement notes “how much federal judges have taken for granted profound human isolation as ‘incident’ to ‘normal’ confinement and how little they have seen themselves obliged to intervene.” Judith Resnik, Hirsra Amin, Sophie Angelis, Megan

“deliberate indifference” requires that the defendant was not only aware of the risk to a person’s health or safety but also dismissed that risk.⁵⁴ Such a standard is extremely difficult for plaintiffs to prove, particularly given the imbalance of power between carceral officers and incarcerated individuals, and courts’ general deference to prison and jail staff.⁵⁵

* * *

Hauptman, Laura Kokotailo, Aseem Mehta, Madeline Silva, Tor Tarantola & Meredith Wheeler, *Punishment in Prison: Constituting the ‘Normal’ and the ‘Atypical’ in Solitary and Other Forms of Confinement*, 115 NW. U. L. REV. 45, 50-52 (2020).

⁵⁴ *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

⁵⁵ Resnik et al., *supra* note 53, at 53, 154-56.



“untitled”
Oaklee Thiele, 2020
Ink and charcoal

I just came off a five-month stint in solitary. Let me tell you—it’s petrifying. The constant dimness, the blood and vomit covering the cells, the neglect and abuse from guards. It’s terrible to be going through all of that. Especially for someone with mental illness like me, the hole is no joke.⁵⁶

* * *

If the Court’s interpretation of the Eighth Amendment is subject to “evolving standards of decency,” society must assess the decency of allowing someone to live and die in extreme pain and seclusion. Of the ten people we interviewed, seven mentioned not receiving the pain medication they desperately needed;⁵⁷ eight described the jail’s refusal to provide necessary

⁵⁶ *Narrative 3*, *supra* note 1.

⁵⁷ See *Narrative 1*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-01> [<https://perma.cc/7R36-VVLW>]; *Narrative 2*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-02> [<https://perma.cc/79W5-YLCS>]; *Narrative 4*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-04> [<https://perma.cc/ZC37-YVLV>]; *Narrative 5*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-05>

medical procedures, including surgery, bloodwork, and x-rays;⁵⁸ four needed assistive devices such as wheelchairs, canes, and walkers, but jail staff refused to provide the devices;⁵⁹ and five discussed being put in solitary confinement, which worsened their mental and physical health.⁶⁰ Most people who required prescription-strength medication were told their only option was to buy Tylenol from the commissary—including those with preexisting liver conditions for whom long-term Tylenol usage can result in liver failure, and possibly death if not treated quickly.⁶¹

To the interviewees, these acts by jail staff constitute deliberate indifference and cruelty; most readers would agree with this assessment. As discussed above, though, courts allow incarcerated people to endure substantial harm as long as they receive a minimum amount of care.⁶² It may appear nearly impossible for an incarcerated plaintiff to succeed in a case against prison or jail officials on Eighth Amendment grounds, but that by no means requires advocates on either side of the jail walls to stop striving to make success a reality. As the Abolition Collective's manifesto reminds readers, "Abolitionist politics is not about what is possible, but about making the impossible a reality. Ending slavery appeared to be an impossible challenge . . . and yet they struggled for it anyway."⁶³

[<https://perma.cc/G5D9-TM29>]; *Narrative 7*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-07> [<https://perma.cc/ZYE9-MPMV>]; *Narrative 8*, THE BREAKING POINT PROJECT, <https://www.thebreakingpointproject.com/no-08> [<https://perma.cc/8YS7-2VVM>]; *Narrative 9*, *supra* note 19.

⁵⁸ See *Narrative 1*, *supra* note 57; *Narrative 2*, *supra* note 57; *Narrative 3*, *supra* note 1; *Narrative 4*, *supra* note 57; *Narrative 5*, *supra* note 57; *Narrative 7*, *supra* note 57; *Narrative 8*, *supra* note 57; *Narrative 9*, *supra* note 19.

⁵⁹ See *Narrative 1*, *supra* note 57; *Narrative 3*, *supra* note 1; *Narrative 8*, *supra* note 57; *Narrative 9*, *supra* note 19.

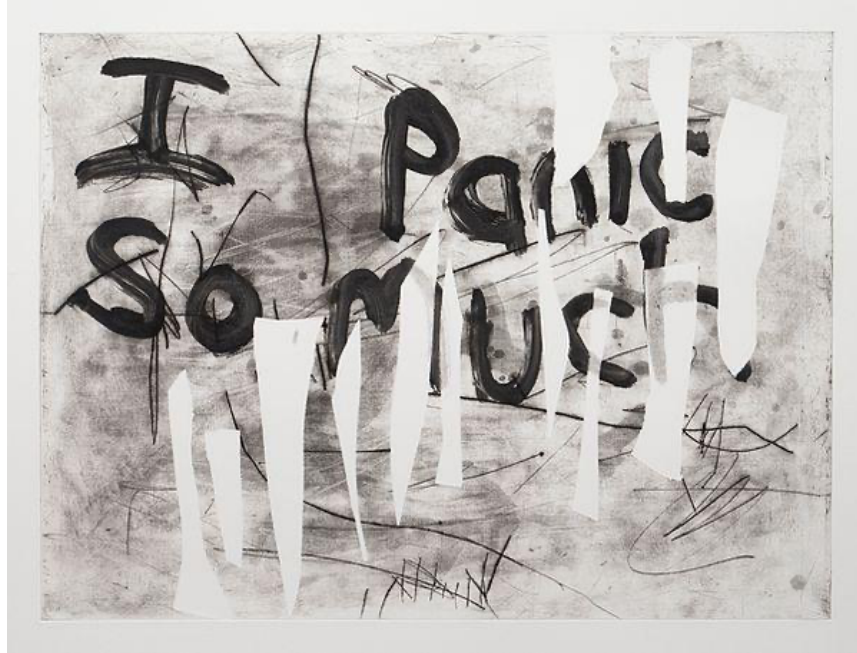
⁶⁰ See *Narrative 1*, *supra* note 57; *Narrative 2*, *supra* note 57; *Narrative 3*, *supra* note 1; *Narrative 9*, *supra* note 19; *Narrative 10*, *supra* note 7.

⁶¹ See, e.g., *How Bad is Acetaminophen for the Liver?*, AM. ADDICTION CTRS. (Sept. 17, 2020), <https://americanaddictioncenters.org/over-the-counter-medications/acetaminophen> [<https://perma.cc/4KVK-DADW>].

⁶² See, e.g., *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) ("Medical treatment violates the [E]ighth [A]mendment only when it is 'so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.'") (quoting *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986)). *But see* *Brown v. Plata*, 563 U.S. 493, 511 (2011) ("A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.").

⁶³ *Manifesto of the Abolition Journal*, *supra* note 12, at 4.

* * *



“I panic so much”
Benjamin Merritt, 2020
Etching, aquatint, and monoprint

It’s freezing in here and the cold triggers my asthma. It seems like it’s colder in our cells than it is outside. I can’t breathe out of my nose half the time. There are no words to describe not being able to breathe. I panic so much. I don’t want to die from not being able to breathe.⁶⁴

* * *

⁶⁴ *Narrative 7, supra* note 57.

IV. AN ABOLITIONIST READING OF THE EIGHTH AMENDMENT

A. *Extending Categorical Protections*

The Fourteenth Amendment's Due Process Clause applies the Eighth Amendment to the states.⁶⁵ Because the Fourteenth Amendment was drafted with an abolitionist, anti-slavery outlook, the Eighth Amendment should be understood in the same context. Further, most Eighth Amendment jurisprudence involves state action and thus ought to be infused with the anti-slavery understanding upon which the Fourteenth Amendment was founded.

An abolitionist understanding of the Fourteenth Amendment and the types of reasoning the Court used in cases such as *Atkins*, *Roper*, and *Graham* are instructive for advocates seeking greater Eighth Amendment protections of disabled or chronically ill incarcerated people. Through its decision in *Graham*, the Court demonstrated an openness to categorically striking certain types of non-capital punishments.⁶⁶ Subsequently, in *Miller*, the Court struck down mandatory JLWOP sentences—not because a majority of states already barred them, as was a focal point in *Graham*, but because such sentences could not be individualized. The Court recalled the reasoning behind *Graham*: “imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”⁶⁷ Such an argument should be extended to disabled people, who are currently subjected to physical and mental torture in jails and prisons without proper consideration of their disability.⁶⁸

The Court has held unconstitutional mandatory death sentences without consideration of mitigating factors or the unique characteristics of the defendant.⁶⁹ It has also likened JLWOP sentences to capital punishment,⁷⁰ and argued that a lengthy sentence for a child often ends up being longer than

⁶⁵ See, e.g., *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947).

⁶⁶ See *Graham v. Florida*, 560 U.S. 48, 61-62 (2010) (explaining the circumstances that warrant categorical rules against capital punishment); see also Robert Craig & André Douglas Cummings, *Abolishing Private Prisons: A Constitutional and Moral Imperative*, 49 U. BALT. L. REV. 261, 309 (2020) (arguing that *Graham* paved the way for future categorical exceptions and that incarcerating people in private prisons, for example, categorically violates the Eighth Amendment based on “modern conceptions of human dignity”).

⁶⁷ *Miller v. Alabama*, 567 U.S. 460, 474 (2012).

⁶⁸ A categorical exemption is not a perfect solution, particularly in the long term. See Natalie A. Pifer, *Re-Entrenchment Through Reform: The Promises and Perils of Categorical Exemptions for Extreme Punishment Policy*, 7 ALA. C.R. & C.L. L. REV. 171, 204 (2016) (stating that categorical exemptions might “simply reconfigure rather than eliminate the experience of extreme conditions for vulnerable groups”); *id.* at 217 (“The discourse of categorically exempting risks losing site [sic] of rethinking *how* we punish in favor of rethinking *who* we punish . . .”).

⁶⁹ *Atkins v. Virginia*, 536 U.S. 304 (2002) (disabled individuals); *Roper v. Simmons*, 543 U.S. 551 (2005) (individuals under age eighteen).

⁷⁰ *Graham v. Florida*, 560 U.S. 48, 69-70 (2010).

for an adult, who might not live through the end of the sentence.⁷¹ We take these points a step further: for disabled or chronically ill people, prison and jail sentences can be equivalent to death sentences because of the dearth of medical care and physical abuse to which people are subjected. Further, a shorter sentence may effectively become a life sentence as disabled or chronically ill people may die while still incarcerated.⁷² As one Eighth Amendment scholar argues, “a sentence exceeding one’s life expectancy” ought to merit the same judicial concern as mandatory JLWOP did in *Miller*.⁷³

B. “They Don’t Care”

Compounding an already shortened life expectancy due to incarceration,⁷⁴ many of the people we interviewed experienced worsening medical conditions due to a lack of care and/or assistive devices.⁷⁵ One person urgently needed his gallbladder removed, but months later, the jail still had not performed the procedure, resulting in extreme back and stomach pain.⁷⁶ Another’s throat cancer went undiagnosed for months, leaving him nearly unable to eat, drink, or swallow.⁷⁷ A third arrived at the jail with a Hepatitis-C diagnosis, advanced liver disease, and a lengthy sentence, yet the jail refused to treat him or check his liver. As he explained, “[T]hey’re afraid they’ll find something and have to treat it.”⁷⁸

Others described progressing symptoms due to the jail’s dismissal of their mental health needs. One “woke up every day with anxiety and panic attacks” but was made to wait months for a psychiatry appointment. “As long as you

⁷¹ *Miller*, 567 U.S. at 475.

⁷² Each year of imprisonment reduces one’s lifespan by approximately two years. Emily Widra, *Incarceration Shortens Life Expectancy*, PRISON POL’Y INITIATIVE (June 26, 2017) https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/ [https://perma.cc/LRC4-EX4S]. One study found that approximately two-thirds of all deaths among incarcerated people “resulted from conditions that existed when the inmate entered prison.” Michael Massoglia & William Alex Pridemore, *Incarceration and Health*, 41 ANN. REV. SOCIO. 291, 295 (2015).

⁷³ William W. Berry III, *Evolved Standards, Evolving Justices? The Case for a Broader Application of the Eighth Amendment*, 96 WASH. U. L. REV. 105, 141 (2018).

⁷⁴ According to one study, “for each year served in prison, a person could expect to lose approximately 2 years of life.” Evelyn J. Patterson, *The Dose—Response of Time Served in Prison on Mortality: New York State, 1989–2003*, 103 AM. J. PUB. HEALTH 523, 526 (2013). The majority in *Graham* also argued that incarcerating people until they die changes their lives “by a forfeiture that is irrevocable.” 560 U.S. at 69.

⁷⁵ See *Narrative 3*, *supra* note 1 (“I still need the cane, but it disappeared when I went to solitary and I haven’t had it since.”); *Narrative 9*, *supra* note 19 (“I’ve asked for a cane or a walker, but they ignored it.”).

⁷⁶ *Narrative 2*, *supra* note 57.

⁷⁷ *Narrative 4*, *supra* note 57.

⁷⁸ *Narrative 5*, *supra* note 57.

ain't hanging yourself in your cell, they don't care," he said.⁷⁹ Another interviewee waited an entire week to get her recently increased mental health medication when she arrived at the jail: "I didn't know that the higher you go, the worse you detox. I was in there hallucinating. . . . I thought I was sleeping, but I wasn't. I thought I was falling."⁸⁰

* * *



"Medication"

Aurora Berger, 2020

Graphite and digital composite⁸¹

* * *

Those we interviewed were effectively tortured in jail because staff refused to provide the care they needed. Such treatment is patently disproportionate under the Eighth Amendment; torture as punishment or as a means of achieving a retributive goal is constitutionally excessive.⁸² Certain methods of carrying out the death penalty have been deemed "punishments of torture" and thus unnecessarily cruel and prohibited by the Eighth Amendment.⁸³ Justice Sonia Sotomayor has also repeatedly raised concerns about the use of lethal injections, which expose people "to what may well be the

⁷⁹ *Id.*

⁸⁰ *Narrative 8, supra* note 57.

⁸¹ *Narrative 4, supra* note 57.

⁸² *See, e.g.,* *Graham v. Florida*, 560 U.S. 48, 59 (quoting *Wilkerson v. Utah*, 99 U.S. 130, 136 (1879)).

⁸³ *Wilkerson v. Utah*, 99 U.S. 130, 135-36 (1879).

chemical equivalent of being burned at the stake.”⁸⁴ By allowing such executions to continue, she lamented, “[T]he Court disregards an objectively intolerable risk of severe pain.”⁸⁵ Meanwhile, those we interviewed were subjected to such an “intolerable risk of severe pain” for months when they were refused necessary pain medication or treatment for their chronic health conditions.⁸⁶

The lack of transparency surrounding execution procedures has helped insulate such processes from successful constitutional challenges. As Sotomayor pointed out, a firing squad might be more humane than lethal injection, but it is less palatable to the public due to its “visible brutality.”⁸⁷ She continued, “[t]he States may well be reluctant to pull back the curtain for fear of how the rest of us might react to what we see,” and incarcerated people should not pay the price of preserving society’s “collective comfort.”⁸⁸ The same is true for the well-hidden abuse of disabled and chronically ill people in prison. As one interviewee pleaded, “I want everyone to know. Tell somebody what happened in my life and maybe help them.”⁸⁹ By working alongside incarcerated individuals to publish narratives describing what they have endured—while simultaneously affirming their humanity—we hope to educate and activate a wide audience to speak out against such treatment. We view this as a significant step in the movement for abolition.

C. Integrating the ADA with the Eighth Amendment

The abolitionist potential of the Eighth Amendment is strengthened when linked to the ADA, whose passage afforded groundbreaking protections to disabled people that remain unparalleled to this day, covering everything from employment discrimination to ramps and sign language interpreters. While anti-discrimination protections still have far to go, the thirty years since the ADA’s passage have seen increased freedoms and equity for disabled people. Commonly referred to as the integration mandate, the ADA’s implementing regulations require public entities to “administer services,

⁸⁴ *Glossip v. Gross*, 576 U.S. 863, 949 (2015) (Sotomayor, J., dissenting); see also *Arthur v. Dunn*, 137 S. Ct. 1521, 1522 (2017) (Sotomayor, J., dissenting) (mem.).

⁸⁵ 576 U.S. at 958, 135 S. Ct. at 2786.

⁸⁶ See *Narrative 7*, *supra* note 57 (“Everything hurts. Sometimes the pain gets so excruciating that I get headaches from it.”); *Narrative 8*, *supra* note 58 (“[A] captain . . . bent my feet up to my shins. I was crying, screaming in pain, and heard my feet crack. . . . I was in severe pain before, but that’s just made it even worse.”); *Narrative 10*, *supra* note 7 (“I had to stand by the vent and suck in the fresh air while wiping down the walls of the [maced] cell myself because of the chest pain. My heart felt real heavy; it hurt. It’s the worst asthma attack I’ve had.”).

⁸⁷ *Glossip*, 576 U.S. at 977.

⁸⁸ *Id.*; see also William W. Berry III & Meghan J. Ryan, *Cruel Techniques, Unusual Secrets*, 78 OHIO ST. L.J. 403, 406 (2017) (“[T]he secretive nature of lethal injection has resulted in a series of executions that may in reality constitute a form of hidden torture by masking severe physical and psychological pain.”).

⁸⁹ *Narrative 8*, *supra* note 57.

programs, and activities in the most integrated setting appropriate.”⁹⁰ In *Olmstead*, a landmark decision in civil rights protections for disabled people, the Court held that “[u]njustified isolation . . . is properly regarded as discrimination based on disability.”⁹¹

In the incarceration context, *Olmstead* could momentarily support abolition efforts centered around the solitary confinement of disabled people. For example, people with disabilities and serious mental illness are disproportionately subjected to solitary confinement and harsh conditions—factors demonstrated to lead to further deterioration of mental health and even suicidal events.⁹² Evidence demonstrating that solitary confinement not only causes direct harm to individuals with disabilities but also violates the ADA may strengthen the impact of Eighth Amendment claims.⁹³ Practitioners have begun expanding the reach of *Olmstead* to enact a general community integration mandate to achieve goals such as ending the school-to-prison pipeline and improving post-incarceration reentry programs.⁹⁴ Applied to the prison industrial complex writ large, the integration mandate, particularly in combination with the Eighth Amendment, could call for the end to mass incarceration across the board. If we establish that people with disabilities must be integrated into the community and that conditions of incarceration erect inescapable barriers to fulfillment of that mandate due to prisons and jails’ lack of capacity to provide adequate healthcare, ending mass incarceration remains the only solution.

⁹⁰ 28 C.F.R. § 35.130(d).

⁹¹ *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999).

⁹² U.S. DEP’T OF JUST., REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 84 (2016), <https://www.justice.gov/dag/file/815551/download> [<https://perma.cc/Y83L-6EKT>]; see also *Narrative 7*, *supra* note 57.

⁹³ See, e.g., *Porter v. Clarke*, 923 F.3d 348, 357 (4th Cir. 2019) (“[S]olitary confinement poses an objective risk of serious psychological and emotional harm to inmates, and therefore can violate the Eighth Amendment.”); *Ga. Advoc. Off. v. Jackson*, No. 19-1634, 2019 U.S. Dist. LEXIS 238805, *23 (N.D. Ga. Sept. 23, 2019) (finding plaintiffs had a substantial likelihood of succeeding on Eighth Amendment and ADA claims against prison’s policy of putting people with mental health conditions in isolation). Plaintiffs have particularly struggled to overcome the requirement that cruel and unusual punishment be the result of deliberate indifference. See, e.g., *Farmer v. Brennan*, 511 U.S. 825 (1994); *Valentine v. Collier*, 141 S. Ct. 57 (2020) (mem.) (Sotomayor, J., dissenting).

⁹⁴ Jamelia N. Morgan, *The Paradox of Inclusion: Applying Olmstead’s Integration Mandate in Prisons*, 27 GEO. J. ON POVERTY L. & POL’Y 305, 309 (2020); see also, e.g., Press Release, U.S. Dep’t of Just., Department of Justice Reaches Landmark Americans with Disabilities Act Settlement Agreement with Rhode Island (Apr. 8, 2014), <https://www.justice.gov/opa/pr/departments-justice-reaches-landmark-americans-disabilities-act-settlement-agreement-rhode> [<https://perma.cc/UP4V-7SZP>] (invoking *Olmstead* to win a statewide settlement agreement between the Department of Justice and Rhode Island blocking state-funded segregated workshops for people with intellectual disabilities); *Hiltibran v. Levy*, 793 F. Supp. 2d 1108 (W.D. Mo. 2011) (requiring the State of Missouri to provide Medicaid-funded incontinence supplies to prevent the placement of individuals with incontinence unnecessarily into facilities).

CONCLUSION

Prisons and jails are not equipped to care for the physical and mental health of incarcerated people. Like slavery, they form a system that abuses bodies and minds and cannot be redesigned to achieve its purported goals of rehabilitation and punishment. One can never be truly free when the vestiges of such treatment follow them for a lifetime. Those we interviewed will leave jail with worsened mental and physical health because those charged with their care are incentivized to ensure this outcome for the benefit of control.

If the Eighth Amendment is truly meant to protect people from cruel and unusual punishment, especially in circumstances with such stark imbalances of power, then it should be a potent tool in the movement for abolition. It intends to protect individuals' freedoms, not restrict them, and ought to be construed as broadly as possible to make those protections a reality for incarcerated people.⁹⁵ The Supreme Court has changed its position in the past and should do so again in the future; the law relies on people to translate it into action, charging those with power and privilege to make these changes a reality. We have the power to "reclaim an abolition constitutionalism—or construct a new one—that facilitates . . . the freedom struggle" begun by those who came before.⁹⁶

However, if the greater public remains unaware of how carceral systems mistreat disabled and chronically ill individuals, there will be little impetus for political or practical change. Narratives such as those shared throughout this paper represent one avenue of addressing the biases and misinformation that uphold the criminal legal system and galvanizing the legal community and society at large into action. Through storytelling, the public can learn about others' experiences and develop a level of compassion they might not have otherwise. Those we interviewed shared their stories in hopes that people on the outside would join their struggles for reform and, ultimately, abolition.

We intend to continue speaking with disabled people in jails and prisons across the country and partner with artists to bring their stories to life. As the breadth of the project grows, so too, we hope, will its impact. Now, the public must listen, learn, and take action. In the words of one interviewee, "We need people; we need you."⁹⁷

⁹⁵ See, e.g., Col. R.G. Ingersoll, Speech before the Civil Rights Mass Meeting, Washington, D.C., Oct. 22, 1883, in PROCEEDINGS OF THE CIVIL RIGHTS MASS-MEETING, *supra* note 21 ("Every court should . . . give the broadest meaning to every statute or constitutional provision passed or adopted for the preservation of freedom.").

⁹⁶ Roberts, *supra* note 9, at 51.

⁹⁷ Narrative 3, *supra* note 1.