Decarceration's Inside Partners

Seema Saifee

*University of Pennsylvania Carey Law School*

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This Article examines a hidden phenomenon in criminal punishment. People in prison, during their incarceration, have made important, sometimes extraordinary, strides toward reducing prison populations. In fact, stakeholders in many corners, from policymakers to researchers to abolitionists, have harnessed the legal and conceptual strategies generated inside the walls to pursue decarceral strategies outside the walls that were once considered impossible. Despite this outside use of inside moves, legal scholarship has directed little attention to theorizing the potential of looking to people on the inside as partners in the long-term project of decarceration.

Building on the change-making agency and revolutionary ideation inside the walls, this Article points the way to an alternative approach to decarceration: thinking alongside people banished from the polity. Criminal law scholars routinely recount their stories but rarely do we consider people held in prison as thought leaders, let alone as equal partners, to progress toward a noncarceral state. Despite conducting extensive research on prisons and those held inside them, legal scholars know—and wonder—tremendously little about the decarceral work, decarceral ideas and “think tanks” that surge behind bars. The absence of our curiosity reflects and reproduces the ideological work of carceral punishment.

This Article demonstrates that an alternative vision of decarceration that resists this ideological work opens up more promising paths to create the legal and social change that our current moment demands. It calls on law scholars and all those committed to large-scale decarceration to find ways to discover, ignite and emancipate more decarceral visions on the inside. And it argues that, unless we make this challenging shift, we suppress
innovative, effective and more conceivable possibilities to radically transform our carceral state.

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INTRODUCTION

It was 1972 in a hamlet sixty miles north of New York City. Lawrence White was composing a vision statement for a think tank he chaired. From inception, his founding mission centered on issues of concern to people in prison. Top among those issues was reducing prison populations.¹

Lawrence conceptualized the prison as a “direct relationship” between the state and the predominantly Black and Latinx communities in the nation’s urban neighborhoods.² This concept remained abstract.³ Over the next decade, construction of prisons boomed.⁴ The state prison population in New York doubled.⁵ To support their concept, Lawrence’s intellectual partner, Edwin, had an idea to cross-reference government data to determine the zip codes that produced the growth in the state prison population.⁶ The researchers found that 75% of the state’s entire prison population came from the urban neighborhoods that had experienced the most dramatic increases in their prison populations.

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² Id. at 114, 132, 152, 214-15.
³ Id. at 152.
⁶ Burton, supra note __, at 130-31, 153.
population came from just seven predominantly Black and Latinx neighborhoods in New York City.\textsuperscript{7} The neighborhoods had among the highest rates of poverty, unemployment, and failing schools and the lowest life expectancy in the city.\textsuperscript{8}

With the data, the team then elaborated the abstract “direct relationship” as an overinvestment in prisons and a disinvestment in the neighborhoods disproportionately replenishing them.\textsuperscript{9} Synthesizing their research into praxis, the group proposed a new approach to reduce crime and punishment: re-direct funds from the state prison budget toward social, educational and economic development in the seven neighborhoods.\textsuperscript{10} Issued in 1979, and again in 1990, this visionary plan of action, rooted in a community-focused commitment to social justice, was not well-received.\textsuperscript{11}

Decades later, the group’s collective genius upended the dominant narrative of American crime and punishment.\textsuperscript{12} The once mysterious catchphrase “invest-divest” has now swept the nation, transforming dialogue in circles both radical and mainstream. The groundbreaking concept, more to the point, was incubated neither in an elite endowed foundation nor in freedom. Lawrence (Larry White), Edwin (Eddie Ellis), and many more began steering the free world from a think tank founded inside a maximum security prison.\textsuperscript{13}

* * *

America’s carceral footprint has earned criticism and condemnation from within and outside the nation. There is widespread understanding in many corners that the expansive systems of carceral control in the United States demand far-reaching change. The project of reducing the nation’s prison population has provisional ideas from many quarters, but little agreement as to who, how, how much, or how fast to decarcerate.\textsuperscript{14} As

\textsuperscript{7} The Seven Neighborhood Study Revisited, Center for NuLeadership 3-4, https://static1.squarespace.com/static/58eb0522e6f2e1dfce591dee/t/596e1246d482e9c1c6b86699/1500385865855/seven-neighborhood+revisited+rpt.pdf.
\textsuperscript{8} Id. at 4; see infra pp. ___-___.
\textsuperscript{9} See infra pp. ___-___.
\textsuperscript{10} See infra pp. ___-___.
\textsuperscript{11} See infra pp. ___-___.
\textsuperscript{12} See infra Part I.B.1.
\textsuperscript{13} See infra Part I.B.1.
\textsuperscript{14} See Allegra M. McLeod, Beyond the Carceral State, 95 Tex. L. Rev. 651, 681 (2017) (book review) [hereinafter McLeod, Beyond the Carceral State] (noting “the increasing public commitment to decarcerate at least in certain jurisdictions alongside the current lack of viable proposed means to achieve that end”); Ben Grunwald, Toward an Optimal Decarceration Strategy, 33 Stan. L. & Pol. R. (forthcoming 2022) (manuscript at 2)
numerous scholars have shown, large-scale decarceration requires moving beyond low-level drug and non-violent crimes to dramatically reducing reliance on carceral punishment for offenses that criminal law classifies as violent.\textsuperscript{15} How do we accomplish this?

Many thoughts have emerged. One common refrain is: “to reduce the prison population, prosecutors are going to be the ones who have to lead the way.”\textsuperscript{16} There are many reasons to doubt this measure. Prosecutors have fueled the rise of prison populations.\textsuperscript{17} This is, in part, a function of electoral politics.\textsuperscript{18} Perhaps more so, the ideology of prosecution is in fundamental
tension with large-scale decarceration. Among prosecutorial offices that adopt decarceral platforms, their initiatives target mostly low-level drug and non-violent offenses. This is also true for the tiny subset of top law enforcers dubbed “progressive prosecutors.” If prosecutors exclude crimes classified as violent from meaningful decarceral initiatives, how can they take the lead in reducing, on a large scale, carceral punishment for violent crime? “[A]lmost all politicians steer clear of this topic.”

An Intellectual History of Mass Incarceration, 60 B.C. L. REV. 1949, 1955 (2019) (noting that “measures of general public punitiveness cannot provide a full account of how or why experts, political officials, and legal professionals built a carceral state”).


20 See, e.g., Toobin, supra note __ (reporting that the Milwaukee County District Attorney “divide[s] our world in two,” that is, “people who scare us, and people who irritate the hell out of us,” and the latter group—people charged with low-level offenses—were the focus of his diversion and deferred-prosecution initiatives); Press Release, United States Attorney’s Office Opposes Release of Violent Offenders (Apr. 4, 2020), https://www.justice.gov/usao-dc/pr/united-states-attorneys-office-opposes-release-violent-offenders (announcing during coronavirus pandemic that any prison releases by U.S. Attorney’s Office in Washington D.C. would be for “non-violent inmates”); Barbara Bradley Hagerty, Releasing People From Prison is Easier Said Than Done, ATLANTIC (July 8, 2020), https://www.theatlantic.com/ideas/archive/2020/07/releasing-people-prison/613741/ (“Even with the threat of a deadly virus, so far governors have drawn the line at violence.”).  

21 See, e.g., Rachel E. Barkow, Can Prosecutors End Mass Incarceration?, 119 Mich. L. REV. 1365, 1381-82, 1386-88 (2021) (discussing the limited power of progressive prosecutors to reduce the prison population); Darcy Covert, The False Hope of the Progressive-Prosecutor Movement, ATLANTIC (June 14, 2021) (arguing that “progressive prosecutors’ approach won’t bring about meaningful change”); Cynthia Godsoe, The Place of the Prosecutor in Abolitionist Praxis, UCLA L. REV. (forthcoming 2022) (arguing that progressive prosecutors are “at best a half-measure” to achieve real change and at worst risk legitimating the system).

22 Pfaff, supra note __, at 186. Even some critics of mass incarceration are reticent to discuss the topic of violence. James Forman, Jr., Racial Critiques of Mass Incarceration: Beyond the New Jim Crow, 87 N.Y.U. L. REV. 21, 49-50 (2012) (arguing that avoiding the topic of violence disserves the anti-carceral movement and cedes terrain to proponents of tough-on-crime measures who can “present themselves as the sole defenders of public safety”).
If prosecutors are ill-positioned to lead the decarceral way, so too are judges and legislators. Some legal scholars have renewed calls to engage “experts” to guide criminal policy decisions through data-driven methods. A growing number of scholars have criticized the myth that deferring to the judgment of “experts” with elite educational credentials will lead to superior decision-making, let alone deep, systemic change. Like system actors, the expertise of elite academics and pseudo-professionals is embedded in the construction and maintenance of the carceral state. Although stakeholders both within and outside the system who hold traditional markers of expertise do play an important role in reducing prison populations, these actors, alone, are unlikely to shepherd us to transformative decarceral futures.

A clinical crime-by-crime category-focused mindset to decarceration also risks mirroring the machinery that created our present crisis. Addressing “one of the most pressing human-rights challenges of our time” demands more than mainstream proposals by mainstream actors. Scholars have argued that substantial decarceration demands both reducing reliance on carceral punishment for violent crime and confronting how the law thinks about

23 See, e.g., BARKOW, PRISONERS OF POLITICS, supra note __, at 186 (“In casting institutional blame for the irrational set of criminal justice policies we have, it is important not to overlook the role of [federal and state] judges.”); Bellin, supra note __, at 837, 856 (arguing that legislators and judges have a greater responsibility for mass incarceration than prosecutors); Jonathan Simon, An Unenviable Task: How Federal Courts Legitimized Mass Incarceration, in LEGITIMACY AND CRIMINAL JUSTICE: AN INTERNATIONAL EXPLORATION 245 (Justice Tankebe & Alison Liebling eds., 2013) [hereinafter, Simon, Unenviable Task] (“To an important degree the American judiciary, both federal and state[,] have been complicit in normalizing mass incarceration”); Matthew Clair & Amanda Woog, Courts and the Abolition Movement, 110 CALIF. L. REV. (forthcoming 2022) (manuscript at 2-4, 11) (arguing that criminal courts “function as institutions of punitive social control,” playing a central role in legitimating the racialized violence and control of police and prisons “while mythologizing themselves as institutions that afford justice”); Jonathan Simon, Can Courts Abolish Mass Incarceration?, in THE LEGAL PROCESS AND THE PROMISE OF JUSTICE: STUDIES INSPIRED BY THE WORK OF MALCOLM FEELEY 260-61, 265 (Rosann Greenspan, Hadar Aviram & Jonathan Simon eds., 2019) (explaining why court-based interventions might provide the dynamic needed to progress toward decarceration, but cautioning that “[i]t will take more than courts to abolish mass incarceration”).


25 I discuss this further in Part III. See Benjamin Levin, Criminal Justice Expertise, FORDHAM L. REV. (forthcoming 2022) (manuscript at 2, 8) (arguing that “there’s good reason to be skeptical that simply choosing the right experts will address deep-seated cultural attitudes about punishment and the proper scope of criminal law”).

26 See infra Part III; see also David Runciman, Why Replacing Politicians with Experts is a Reckless Idea, THE GUARDIAN (May 1, 2018) (“When a machine goes wrong, the people responsible for fixing it often have their fingerprints all over it already.”)

27 See infra Part III.

28 Beckett, supra note __, at 21.
violence which is central to our carceral state. Put another way, changing how the law and the public think about violence is central to decarceration. These twin aims—reducing the prison population and fundamentally reckoning with our ideas about violence—are inseparable. There is an underexplored and siloed site where aspirational visions and interventions to advance these dual aims have originated: inside prison cages.

With limited to no resources, formal education, or social interaction, some people held in cages have initiated ambitious legal and conceptual strategies to reduce prison populations. People in prison have ushered in new metrics to measure public safety, generated innovative ways of thinking to make complex social problems more understandable to policymakers, and spearheaded advancements in criminal procedure to reduce the numbers of people cycling into prison. I call these steps “inside decarceral moves.” These strides are not limited to formal law or legal discourse. People in prison have conceptualized alternative frameworks to understand why the criminal legal system has locked them up, pushing reformers and abolitionists alike toward new strategies—on the front and back ends—to reduce prison populations. In fact, the criminal legal system and a wide range of actors outside the system have harnessed the work and ideas generated inside the

29 Alice Ristroph, Criminal Law in the Shadow of Violence, 62 ALA. L. REV. 571, 575-76, 621 (2011); Sklansky, supra note __, at 2-8; id. at 45, 232 (arguing that “the line between ‘violent’ and ‘nonviolent’ offenses has become the most important dividing line in criminal law,” but explaining that the distinction and the significant weight placed on it are modern developments); id. at 236 (“The overreliance on violence as a legal category helped to create mass incarceration and now helps to sustain it.”). To be sure, “violent crime” is a misleading heuristic. Across states, crimes that count as “violent” for purposes of sentencing enhancements encompass conduct where no one was harmed, while excluding conduct that would be seen as violent under ordinary meanings. Ristroph, supra, at 573-75, 621 (“[T]he meaning of ‘violent crime’ varies depending on the purpose for which the category is deployed.”); Sklansky, supra note __, at 69-70 (noting that the categories vary across jurisdictions and even within the same state).

30 Ristroph, supra note __, at 576; Sklansky, supra note __, at 3-6, 87 (observing that moral beliefs about violence are reflected in legal rules, statutes and precedents, and noting the enduring role played by race and racism in shaping those beliefs); see also Gottschalk, supra note __, at 200 (“Drawing a firm line between nonviolent drug offenders and serious, violent, or sex offenders in policy debates reinforces the misleading view that there are clear-cut, largely immutable, and readily identifiable categories of offenders who are best defined by the offense that sent them to prison.”); Beckett, supra note __, at 20 (arguing that “shrinking and transforming [the U.S. penal system] will require multi-faceted strategies that address its varied drivers including the increasingly tough policy response to violence”); JAMES FORMAN, JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 230-31 (2017) (arguing that “the label ‘violent offender[ ]’ . . . ensures that we will never get close to resolving the human rights crisis that is 2.2 million Americans behind bars”); Pfaff, supra note __, at 100, 227, 232 (arguing that “if we hope to end mass incarceration,” shifting people’s attitudes toward violence and violent crime is the most “fundamental change that we need” and the most challenging project).
walls to pursue decarceral strategies outside the walls that were once considered a pipe dream. This phenomenon has received practically no legal attention. The transformative role that people in prison have shouldered to reduce prison populations has been obscured by the systems we have built.

If decarceration demands reckoning with how the law thinks and, by implication, how we think about violence, it inextricably entails reckoning with how the law thinks about the people it puts in prison. Framing decarceration in this way makes apparent the essential role of people in prison to this effort: in that, many people in prison who experience the daily violence of the law spend their days reckoning with *how the law thinks about them*. In that deep contemplation, people in prison have opposed—and produced ideas to expose—the enduring narratives and structures that land them and others behind bars, generating theories, analyses, and actions directed to transformative decarceral ends.

In one sense, it should not come as a surprise that people in prison have decarceral ideations: to exist in a prison is to imagine a world without the prison. Given how many people we incarcerate and whom we incarcerate, it may even be intuitive that some promising legal and conceptual ideas for reducing prison populations have originated in prisons. In another sense, this phenomenon is astounding. People whom our criminal law places under civil death, who are surviving carceral exile and who are subject to the oppression, isolation and indignity of state control are imagining new, rich and hopeful modes of dismantling the punitive reach of the carceral state. Their visions were born in suffering, in prison cages that were designed neither to invite nor to facilitate innovation, but to quash it.

Of course, for over a century, people in prison have produced knowledge, including political, social and intellectual thought, that has transformed scholarship and activism. Antonio Gramsci developed the concept of cultural hegemony and the notion of “organic” intellectuals. Angela Y. Davis transformed radical thinking in her intricate conceptualization of the prison-industrial-complex. This Article, in fact, was inspired by Davis’s call to acknowledge people in prison as equal

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31 See infra note ___ (noting that America has imprisoned leaders of Black, Latinx and tribal communities for generations).
32 *Selections from the Prison Notebooks of Antonio Gramsci*, 3-4, 12, 181-82 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971) (theorizing the central role of ideology in the ruling class’s ability to exercise hegemony).
33 See *Angela Y. Davis, Abolition Democracy: Beyond Empire, Prisons and Torture* 100-01 (2005) [hereinafter *DavíS, Abolition Democracy*] (describing Davis’s correspondence with George Jackson while both were in jail and its lasting impact on her thinking).
partners whose participation is essential to anti-prison work. George Jackson expressed a vision for African-American freedom rooted in a deep knowledge of American colonialism, racism, capitalism and imperialism. And, in a landmark text for the civil rights movement, Martin Luther King, Jr.’s letter from a Birmingham jail revolutionized collective thought on civil disobedience both in the United States and beyond this nation’s borders. Recent legal scholarship co-authored by Terrell Carter, who is serving a life sentence without the possibility of parole; Kempis Songster, who served thirty years of a life sentence before his release from prison; and law professor Rachel López provides a first-hand account of the often-collective processes inside the walls that lead people in prison to generate new concepts of law. This is too short a list of people whose brilliance—born inside cages—continues to influence the ideas and work of scholars and activists today. This Article aims to articulate something distinct: people in prison

34 See Angela Y. Davis, Freedom Is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement 26 (2016) [hereinafter Davis, Freedom Is a Constant Struggle] (“Whenever you conceptualize social justice struggles, you will always defeat your own purposes if you cannot imagine the people around whom you are struggling as equal partners.”); id. (“It may not always be easy to guarantee the participation of prisoners, but without their participation and without acknowledging them as equals, we are bound to fail.”)


37 Terrell Carter, Rachel López & Kempis Songster, Redeeming Justice, 116 NW. U. L. Rev. 315, 321-24 (2021) (describing how people incarcerated in a Pennsylvania state prison developed a concept to challenge life-without-parole sentences, recognizing the law’s failure to take into account the human capacity for change). Thinking alongside people on the inside, López documented that the European Court of Human Rights was developing a similar concept in human rights law at the same time her co-authors conceptualized a distinct reading of the Eighth Amendment from behind bars. Id. at 315, 321-23, 337-38 (arguing for reading a right to redemption in the latent concept of human dignity in the Eighth Amendment).

38 For a few examples of this influence, see Kimberlé Williams Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv. L. Rev. 1331, 1350-51 (1988) (describing Antonio Gramsci’s concept of hegemony and ideology and its importance to critical legal theory); Jocelyn Simonson, The Place of “the People” in Criminal Procedure, 119 Colum. L. Rev. 249, 259 n.30 (2019) [hereinafter Simonson, The Place of “the People”] (stating that “ingrained ideas about the legal and political world [can] legitimate and normalize systemic injustices” and citing Gramsci); Dorothy E. Roberts, The Supreme Court, 2018 Term -- Foreword: Abolition Constitutionalism, 133 Harv. L. Rev. 1, 110-11 (2019) (conceptualizing George Jackson’s invocation of the Constitution as one that advanced an abolitionist reading of the text);
have ushered in ideas and actions that direct toward near-term and long-term reduction in prison populations. Notwithstanding the talent on the inside, however, legal scholars know—and perhaps more fundamentally—wonder tremendously little about the decarceral imaginations and “think tanks” that surge behind bars. Despite routine narration of their stories—usually starting with a crime—and vast study of prisons and jails, legal scholars rarely consider people in prison to be thought leaders, let alone equal partners, to progress toward a noncarceral state. Our inability to imagine people in prison producing viable ideas for decarceration that engage the legal, social, economic, and structural inequalities for which our criminal law has placed them in exile, let alone to unearth the visions on the inside, reflects and reproduces the ideological work of carceral punishment.

Ideology plays a central role in upholding the carceral state. Angela Y. Davis describes the ideological work accomplished by the prison. The very existence of the prison, Davis writes, “relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism.”

For two recent and notable exceptions, see generally Carter, López & Songster, supra note __, at __ (describing a study group in prison that developed a reading of the Constitution challenging the legal precept that people sentenced to life without parole are incapable of redemption, co-authored with a person in prison and a person who was formerly in prison); and V. Noah Gimbel & Craig Muhammad, Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy, 40 Cardozo L. Rev. 1453, 1521 (2019) (representing the first full-length law review article on police abolition, co-authored with a person in prison, and highlighting violence-reduction projects in prison led by people in prison). Law reviews also occasionally publish solo writings by people in prison. See, e.g., Introduction: Jailhouse Lawyering, 69 UCLA L. Rev. DISCOURSE 1 (2021) (featuring a collection of essays by jailhouse lawyers and journalists behind bars and noting that the legal academy “often—if not always—exclude[s] jailhouse lawyers when discussing who is a lawyer and what it means to be one”); Thomas C. O’Bryant, The Great Unobtainable Writ: Indigent Pro Se Litigation After the Antiterrorism and Effective Death Penalty Act of 1996, 41 Harv. C.R.-C.L. L. Rev. 299, 301 (2006) (describing the realities of indigent pro se litigation by people in prison post-AEDPA).

ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 15-16 (2003) [hereinafter, DAVIS, ARE PRISONS OBSOLETE?] (describing how the prison “functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers”); see also DAVIS, ABOLITION DEMOCRACY, supra note __, at 37, 69, 112-13 (stating that in the United States, “the role of prisons” has “evolved into . . . a default solution to the major social problems of our times”); id. at 65 (“Ideologies play a central role in consolidating the prison-industrial-complex”); ANGELA Y. DAVIS, FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT 22, 24 (2016) [hereinafter DAVIS, FREEDOM IS A CONSTANT STRUGGLE].
Simonson examines the ideological work of criminal procedure. The “people/defendant” dichotomy, Simonson reveals, “assume[s] a clean separation” between the interests of the public and the interests of the lone person who stands accused.\textsuperscript{41} This reigning ideology, Simonson argues, moves us “toward practices that are more punitive than the multifaceted interests of the public dictate” and facilitates the exclusion of marginalized populations who participate in everyday communal interventions “on the other side of the ‘v.’.”\textsuperscript{42}

Implicit in Davis’s and Simonson’s insights is another ideological function that criminal law, the legal profession, and the media interact to perform: together, they shape the popular imagination of “the inmate.” In a technocratic savior-based legal culture, people in prison are primarily seen as objects to cage, save or study. Put another way, the ideology of criminal law and the legal profession legitimates\textsuperscript{43} our distorted ways of thinking about people in prison. This dominant ideology, in turn, blinds us from seeing a path to far-reaching change: in that, the same site that allows us to disclaim responsibility to think about the structural inequalities in our society is a place where visionary ideas have been seeded to intervene in those very inequalities.

This Article argues that it is essential for legal scholars and stakeholders committed to large-scale decarceration to find ways to think alongside and invest in ongoing conversation with people in prison to cultivate decarcellal moves and promote decarcellal futures. It presents a theoretical and normative argument for why looking to the inside is an important addition to the project of decarceration. Inside-outside collaborations can deepen—and, to date, have deepened—perspectives on decarcellal strategies beyond the limited imaginations in elite legal circles. This Article thus goes beyond a call to listen to the voices or center the experiences of people in prison and argues that it is essential to ignite and invest in their visions for decarceration. Imagining with people banished

\textsuperscript{41} Simonson, \textit{The Place of “the People”}, supra note __, at 249, 271.
\textsuperscript{42} \textit{Id.} at 252-55.
\textsuperscript{43} “The legitimating function of legal ideology is a core insight of both critical legal studies and critical race theory.” \textit{Id.} at 259 n.30 (“In Gramscian terms, legal ideology plays a role in perpetuating hegemonic relationships.”); see Crenshaw, supra note __, at 1350 (“Critical scholars derive their vision of legal ideology in part from the work of Antonio Gramsci”); Alan David Freeman, \textit{Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine}, 62 MINN. L. REV. 1049, 1051 (1978) (describing how “the law serves largely to legitimate the existing social structure and, especially, class relationships within that structure”).
from the polity is central to envisioning the freedom that can make decarceration more conceivable.44

Legal scholars, including Mari Matsuda, Lani Guinier, Gerald Torres, Amna Akbar, Sameer Ashar, Jocelyn Simonson, Ngozi Okidegbe and many more have thought and written extensively about the place of directly-impacted populations—in the free world—in law, policy and social change.45 Collective imagining alongside communities engaged in struggle is, indeed, part of a long tradition in critical legal scholarship.46 I situate this argument within that tradition, notably, Matsuda’s call to critical scholars to “look to the bottom”—to communities that have the least advantage—to generate new concepts of law and social change;47 and Akbar, Ashar and Simonson’s concept of movement law, a methodology for creating space in legal scholarship to co-generate new theories for change in conversation with social movements whose intellectual traditions, imaginations, strategies and horizons for change “gesture at new possibilities” that expand our thinking.48

To be clear, this Article makes no demand that people in prison take on this collective role, let alone lead the way. Such a mandate would equate to compelling extraction of strategies to decarcerate from people whom we have incarcerated. To the contrary, this Article reveals that engineers of decercral change—from “everyday activists”49 to luminaries—exist in

44 Cf. Dorothy Roberts, Democratizing Criminal Law as an Abolitionist Project, 111 NW. U. L. REV. 1597, 1607 (2017) (calling for a vision of democratizing criminal law in which “black communities have greater freedom to envision and create democratic approaches to social harms—for themselves and for the nation as a whole”); LANI GUINIER & GERALD TORRES, THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 11-22, 37 (2003) [hereinafter, GUINIER & TORRES, MINER’S CANARY] (describing how collective imagining by racialized communities can lead to new legal, social and political understandings and “enlarge the idea of what is possible”).


46 See generally Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, Movement Law, 73 STAN. L. REV. 821, 832-42 (2021) (detailing decades-long history of critical scholars inspired by or cogenerating ideas with social movements); see also infra nn. ____.

47 Matsuda, supra note __, at 344-45, 349; see infra Part II.B.

48 Akbar, Ashar & Simonson, supra note __, at 825-26, 861-62, 875; see infra Part II.B.

49 Jane Mansbridge & Katherine Flaster, The Cultural Politics of Everyday Discourse:
prisons, and it anticipates that many more, if so emboldened, have the capacity and the will to generate ideas that hold promise to promote decarceral aims. To that end, this Article is not centrally concerned with prison reform, improving conditions in prisons, or broader issues of governance and policymaking. Its focus is the decarceral work and decarceral imaginations that take root inside prisons. Inspired by Angela Y. Davis, this Article thus considers people in prison as our partners, not our objects of study or charity. To that end, discovering and developing inside decarceral imaginations does not contemplate a one-time survey or series of questionnaires. A survey would be limited in scope and ability, prompt finite responses, and is not conducive to, or a substitute for, long-term, generative dialogue. As Lani Guinier stated, “[i]deas get a toehold when there is an ongoing conversation.”

__The Case of “Male Chauvinist,”__ 33 CRITICAL SOCIO. 627, 628, 635-36 (2007) (describing how ordinary people take actions in their everyday lives to respond to instances of injustice that social movements and intellectuals have made salient, becoming part of the process of making new ideas and challenging dominant understandings).

50 Certainly, people in prison can create influence in these domains too which may have decarceral effects. See, e.g., JAMIE BISSONETTE WITH RALPH HAMM, ROBERT DELLELO & EDWARD RODMAN, WHEN THE PRISONERS RAN WALPOLE: A TRUE STORY IN THE MOVEMENT FOR PRISON ABOLITION 112, 125-26, 160, 168, 205 (2008) (discussing a citizen-observer program in which over 1,000 volunteers monitored conditions in a Massachusetts prison and “the critical role of the prisoners’ own agency” in securing direct access to civilians which, in turn, built opposition to prisons); MUMIA ABU-JAMAL, JAILHOUSE LAWYERS: PRISONERS DEFENDING PRISONERS V. THE USA 189-90, 209-10 (2009) (chronicling numerous ways, including through lawsuits, in which people in prison “brought change to a system that was determined to resist change” and “exposed [the prison system] to the bright light of day”); DAVIS, ARE PRISONS OBSOLETE?, supra note __, at 58 (describing a college program introduced in a New York prison as a direct result of demands by people in prison); M. Eve Hanan, Invisible Prisons, 54 U.C. DAVIS L. REV. 1185, 1223, 1229-33 (2020) (arguing that the subjective experience of imprisonment, as understood by people who are incarcerated, is essential to improving sentencing policy); Jocelyn Simonson, Democratizing Criminal Justice Through Contestation and Resistance, 111 NW. U. L. REV. 1609, 1619-20 (2017) [hereinafter Simonson, Democratizing Criminal Justice] (discussing the influence of prison hunger and labor strikes in sparking reforms to solitary confinement practices in California prisons); Jules Lobel, Participatory Litigation: A New Framework for Impact Lawyering, 74 STAN. L. REV. 87, 87-88, 92, 114, 153, 157 (2022) (demonstrating that people in prison were active partners in directing the Pelican Bay class-action lawsuit and that the collaborative, non-hierarchical partnership was crucial to ending California’s use of prolonged solitary confinement).

51 DAVIS, FREEDOM IS A CONSTANT STRUGGLE, supra note __, at 26 (“[I]f you think of the prisoners simply as the objects of the charity of others, you defeat the very purpose of antiprison work. You are constituting them as an inferior in the process of trying to defend their rights.”)

This Article proceeds in three parts. Part I describes diverse ways in which people in prison have made strides to reduce the reach of the carceral state. It shows how decarceral steps conceptualized and implemented inside prison have come to fruition in conversation and collaboration with others on the inside and outside. Part I also examines how system actors and change-oriented actors outside the system have made enormous use of the capacity on the inside to enrich and accelerate the decarceral work on the outside. Part II presents a theoretical account of what I call “looking to the inside” in the project of decarceration, focusing on two justifications: disrupting the ideological function of the prison and revealing the democracy-enhancing agency of people in prison. Part III explores the limits of adopting a lens of expertise to understand the value of people in prison in the ambition for long-term decarceration. At a time when criminal law scholars are debating the role of experts in criminal policy and staking competing claims to expertise, Part III also examines the limits of expertise—and the frame itself—to achieving large-scale decarceration. In conclusion, I argue that thinking alongside people in prison is essential to cultivate and progress toward imaginative, hopeful and transformative decarceral futures. If we fail to make this challenging shift, we miss—and suppress—more humane, innovative and effective possibilities to radically transform our carceral state.

I. INSIDE DECARCERAL MOVES

One way to denaturalize the status quo is to unveil its hidden realities. A criminal legal system that churns out carceral sentences and limits the right to counsel post-conviction, tautologically, produces an un counsel ed population whose agency has upended legal, policy and popular discourse. This Part documents different ways in which people in prison have made decarceral moves. I define decarceral moves as legal or conceptual strategies that can reduce new prison admissions, for long stays or at all, release more people from prison or transform conventional understandings of the reasons people land in prison.53 Part I examines this phenomenon in two domains: changing formal law and producing informal knowledge. In each sphere, people in prison have influenced dramatic transformation far beyond their cells.

53 Cf. Todd R. Clear & James Austin, Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations, 3 Harv. L. & Pol’y Rev. 307, 312 (2009) (“There is no way to change the prison population without changing either the number of people who go to prison or how long they stay there.”); James Austin et al., Ending Mass Incarceration: Charting a New Justice Reinvestment 4, 8 (2013) (“If policy makers want to reduce the costs of corrections, they have to reduce the number of people who enter the system, their length of stay, or both,” especially for people convicted of violent crimes).
Most of the people whose ideas are described here are Black and Brown and were removed from poverty to prison. Part I describes how the criminal legal system and non-system actors harnessed their work—and continue to rely on it today—to pursue new decarceral strategies. To be clear, I do not begin any account—unless the decarceral move is contingent upon it—with the crime for which they were convicted.\textsuperscript{54} The ideas in the pages to come were all generated in prison by people convicted of crimes classified as violent; some were admittedly involved in violence, and some had compelling evidence of innocence but were not able to prove it in a courtroom. Facts about the crimes or convictions are mentioned, but not at the outset.\textsuperscript{55} This Article centers their ideas.

A note about language. “[W]e . . . persist in thinking of a convicted person as a special sort of individual, one cut off in some mysterious way from the common bonds that unite the rest of us.”\textsuperscript{56} As if the cage were somehow endemic to their very existence, we choose to adopt their locus as some type of nationality, calling them prisoners, inmates, offenders and convicts. Throughout this Article, I describe people in prison as people in prison.\textsuperscript{57}

\textsuperscript{54} Cf. IAN MANUEL, MY TIME WILL COME 3-4 (2021) (“In the stories told of my life, each begins with a crime.”); see generally BRYAN STEVENSON, JUST MERCY: A STORY OF JUSTICE AND REDEMPTION 24, 148, 186, 228 (2014) (telling stories that begin with histories: of families, neighborhoods, communities, geographies and institutions).

\textsuperscript{55} I make this framing choice consciously because introducing these innovations through the mantle of guilt or innocence may invite the reader into the cognitive trap of valuing each move differently based on whether the person who generated it was factually innocent or not. Nonetheless I make this choice while mindful not to avoid acknowledging the offenses or the topic of violence. I include information about the alleged crimes and convictions in footnotes. These choices are far from perfect but aim to balance focusing on the decarceral ideas. I continue to grapple with whether this is the right approach.

\textsuperscript{56} John Griffiths, Ideology in Criminal Procedure or a Third “Model” of the Criminal Process, 79 YALE L.J. 359, 385 (1970); see also ANGELA Y. DAVIS, FREEDOM IS A CONSTANT STRUGGLE, supra note __, at 22 (describing prison as the “notion of a place to put bad people”); Simonson, The Place of “the People,” supra note __, at 250, 271, 287 (describing how the ideology of criminal procedure pits the entire community against the lone accused person); Bernard E. Harcourt, Reducing Mass Incarceration: Lessons From the Deinstitutionalization of Mental Hospitals in the 1960s, 9 OHIO ST. J. CRIM. L. 53 (2011) (“The . . . question is whether . . . the public imagination of the ‘convict’ could ever be reshaped.”).

\textsuperscript{57} See Open Letter from Eddie Ellis, Center on NuLeadership for Urban Solutions 1-2, https://ejicenter.org/wp-content/uploads/2017/07/CNUS-AppropriateLanguage.pdf (“We habitually underestimate the power of language. . . . We think that by insisting on being called ‘people’ we reaffirm our right to be recognized as human beings, not animals, inmates, prisoners or offenders. We also firmly believe that if we cannot persuade you to refer to us, and think of us, as people, then all our other efforts at reform and change are seriously compromised.”)
A. Changing the Law

This Section examines two distinct inside moves to challenge longstanding laws or precedents that have put thousands of people in cages and kept them there for lengthy terms. It describes how people behind bars have created influence—and law—that carries long-term, continuing and far-reaching decarcal consequences.

1. Non-Unanimous Juries

In 1985, Calvin Duncan was sent to Louisiana’s Angola prison to serve a life sentence. At Angola, twenty-four-year-old Duncan trained to be an “inmate counsel substitute.” People on Louisiana’s death row had counsel on their death-qualifying offenses, but no legal representation on their non-capital convictions. Duncan’s assigned job was to assist people on the latter cases, for 20 cents an hour.

In hundreds of cases, Duncan found that the Louisiana Appellate Project (“LAP”), the state indigent defense organization that provides appellate counsel in all non-capital felony appeals, almost never sought review in the Louisiana Supreme Court via a writ of certiorari. Absent a writ, people in prison would find their constitutional claims defaulted in

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59 Id.; see also State v. Hicks, 992 So. 2d 565 (La. Ct. App. 2008) (observing that the Louisiana Department of Public Safety & Corrections created the “inmate counsel substitute” as one way to effectuate the right of access to the courts articulated by the U.S. Supreme Court in Bounds v. Smith, 430 U.S. 817 (1977), overruled in part on other grounds by Lewis v. Casey, 518 U.S. 343, 354 (1996)). Cf. Robin Bunley, Making Bricks Without Straw: Legal Training for Female Jailhouse Lawyers in the Louisiana Penal System, 69 UCLA L. REV. DISCOURSE __ (2021) (contrasting the comparatively minimal and deficient training offered to counsel substitutes incarcerated in Louisiana’s prisons for women).

60 Telephone Interview with G. Benjamin Cohen, Chief of Appeals, Orleans Parish Dist. Att'y's Office (Oct. 11, 2021). Cohen was previously Of Counsel at The Promise of Justice Initiative, a non-profit organization in New Orleans that provides litigation, advocacy and support services for people impacted by the criminal legal system. In that capacity, he was counsel of record for the petitioner in Ramos v. Louisiana. See Brief for Petitioner, Ramos v. Louisiana, No. 18-5924 (June 11, 2019); Matt Sledge, New Orleans DA Jason Williams hires Ben Cohen, Lawyer who Led Push Against Split Juries, TIMES-PICAYUNE, Feb. 9, 2021.

61 Telephone Interview with Cohen, supra note __; Bazelon, supra note __.

federal court. Duncan made a written public records request for LAP’s policies on exhaustion. The head of appeals denied the request on the basis that Duncan was not a “person” entitled to request the records.

In Angola, Duncan met G. Ben Cohen, a lawyer who represented people on Louisiana’s death row. Duncan forwarded him LAP’s public records response. Unable to persuade LAP to exhaust its clients’ claims to the state’s highest court, Duncan decided to take on this role. Alone and by organizing other inmate counsel substitutes, Duncan preserved constitutional claims for hundreds of people in prison. Nearly everyone in Angola went to Duncan to file writs in the Louisiana Supreme Court. With a ninth-grade education, Duncan did “what the entire public defender system . . . failed to do.”

Among the claims that Duncan preserved was a challenge to Louisiana’s non-unanimous jury rule. Of the over 6,000 people imprisoned in Angola, three out of four are serving a life sentence without parole. Hundreds among them were convicted by a 10-to-2 or 11-to-1 vote, where

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63 O’Sullivan v. Boerckel, 526 U.S. 838, 848 (1999) (holding that the failure to present claims for discretionary review to a state court of last resort procedurally bars federal review); Telephone Interview with Cohen, supra note __ (stating that this was why the vast majority of case law coming from the Louisiana Supreme Court was driven off state writs).
64 Telephone Interview with Cohen, supra note __.
65 Id.; see LA. REV. STAT. ANN. § 44:31.1 (excluding, with limited exception, people serving a felony sentence who have exhausted their appellate remedies from the definition of “person” entitled to access public records).
66 Telephone Interview with Cohen, supra note __.
67 Id.
68 Email from G. Ben Cohen to author (Oct. 11, 2021); Telephone Interview with Cohen, supra note __; Louisiana Appellate Project, supra note __.
69 Telephone Interview with Cohen, supra note __ (stating that Duncan exhausted claims to the Louisiana Supreme Court so people in prison could later file a federal habeas petition or petition for certiorari to the U.S. Supreme Court); Email from G. Ben Cohen to author (Oct. 11, 2021).
70 Telephone Interview with Cohen, supra note __ (“[Duncan] put the entire criminal legal system on his back”); Email from G. Ben Cohen to author (Oct. 11, 2021). Cf. ABU-JAMAL, supra note __, at 137-44, 207 (exploring why many people in jails and prisons “turn to those imprisoned with themselves” given the absence of high quality indigent defense in the free world and the hollowed meaning of the right to effective assistance of counsel).
71 Email from G. Ben Cohen to author (Oct. 11, 2021).
72 Id.; see also Bazelon, supra note __.
73 Roby Chavez, Aging Louisiana Prisoners Were Promised a Chance at Parole after 10 Years. Some are Finally Free, PBS (Nov. 26, 2021), https://www.pbs.org/newshour/nation/aging-louisiana-prisoners-were-promised-a-chance-at-parole-after-10-years-some-are-finally-free (stating that Angola, which was built on the site of a former slave plantation, is the largest maximum-security prison in the United States).
one or two jurors voted to acquit. In Angola, Duncan too often came upon divided verdicts where he thought the one or two dissenters had it right. He researched how split verdicts in criminal cases could be constitutional.

In a deeply fractured set of opinions in the 1972 case *Apodaca v. Oregon*, five Justices of the U.S. Supreme Court found that the Sixth Amendment did not require unanimous verdicts in state criminal trials. The tangled decision had grave implications in Louisiana, which has historically boasted the highest incarceration rate in the nation. Duncan resolved to petition the Court to reconsider *Apodaca*. The split verdict rule did not implicate his own case; he was convicted by a unanimous jury. Still, Duncan understood split verdicts as “a civil rights issue affecting many, many people.”

Louisiana and Oregon were the only states that allowed a person to be convicted of a serious felony by a non-unanimous jury.
presented the plan to Cohen, who agreed to take to the high court any split-jury case Duncan brought to him.84

Between 2004 and 2019, the duo filed twenty-two petitions for a writ of certiorari.85 The nearly two dozen petitions could be brought because Duncan meticulously exhausted constitutional claims in hundreds of cases to ensure that people in Angola had access to the courts.86 The Court denied certiorari every time.87 Duncan and Cohen’s persistence did not escape notice. In the 2010 Second Amendment incorporation case McDonald v. City of Chicago,88 Justice Stevens declared that the Court has “resisted a uniform approach to the Sixth Amendment’s criminal jury guarantee” by demanding unanimous verdicts in federal, but not state trials, and “[i]n recent years . . . repeatedly declined to grant certiorari to review that disparity.”89 It was the Justice’s final dissent.

Accompanying his exhaustion-plus-certiorari approach was an effort to build momentum in the Louisiana state courts. To that end, from inside prison, Duncan underscored to the indigent defense bar the importance of preserving the unanimity issue at trial.90 As a result, in about 2008, the Orleans Public Defenders instituted a policy to move for unanimous juries in all criminal trials.91 In their template pleading, the defenders added a crucial fact: the split jury rule was first enshrined in Louisiana’s constitution in 1898.92 The stated purpose of the 1898 constitutional convention was to “establish the supremacy of the white race.”93

84 Bazelon, supra note __ (quoting Cohen).
85 Telephone Interview with Cohen, supra note __.
86 Id. (describing the almost-two dozen petitions as “the tip of the iceberg”).
87 Bazelon, supra note __.
88 561 U.S. 742 (2010).
89 Id. at 867-68 (Stevens, J., dissenting) (citing Pet. for Cert. in Lee v. Louisiana, No. 07–1523, cert. denied, 555 U.S. 823 (2008)); Email from G. Ben Cohen to author (Dec. 30, 2021) (noting that Lee had different counsel of record but Duncan shepherded that petition, encouraging Lee to exhaust the claim).
90 Telephone Interview with Colin Reingold, Director of Strategic Criminal Litigation, The Promise of Justice Initiative, former Litigation Director and Senior Counsel, Orleans Public Defenders (Jan. 6, 2022) (stating that Duncan, through Cohen, “drilled into” the Orleans Public Defenders to preserve the jury unanimity issue in every case that went to trial); Email from G. Ben Cohen to author (Jan. 6, 2022) (same).
91 Telephone Interview with Reingold, supra note __ (stating that members of the private bar observed public defenders filing pre-trial motions for unanimous juries so they eventually began to preserve the issue as well).
92 Telephone Interview with Reingold, supra note __.
After nearly thirty years, Duncan was released in 2011. He continued to fill a role he assumed on the inside, but with far greater resources. Every day, he read all of the opinions issued by the Louisiana Court of Appeals. When a split verdict was affirmed on appeal, Duncan informed the inmate counsel substitute at Angola who then exhausted the jury unanimity claim in the state supreme court. Duncan and Cohen then chose cert-worthy cases to take to the U.S. Supreme Court. After his release, Duncan also began traveling the state to talk about changing the jury rule, educating the defense bar, community groups and law schools about the rule’s racist origins.

As the defense bar began to preserve the right to a unanimous jury and presented Equal Protection arguments based on the rule’s racist origins, state courts took interest but rejected the claims, based in part on a vacuum of evidence on disparate impact, which one court foreboded “would be impossible . . . to show.” This judicial refrain led The New Orleans

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94 Liptak, supra note __. Innocence Project New Orleans (“IPNO”) secured Duncan’s release in 2011 as part of an agreement with the state in which he received time served in exchange for pleading guilty to a lesser charge. Innocence Project New Orleans, Calvin Duncan, [hereinafter IPNO-Duncan] (noting that Duncan was convicted of first-degree murder in 1985 where the evidence against him was a fifteen-year old witness who made a cross-racial identification nine months after the crime and “guilty knowledge” statements that Duncan allegedly made to police when he was arrested). Duncan always maintained his innocence. Id.; Liptak, supra note __. Taking on his case in 2003, IPNO discovered that the state withheld evidence that Duncan had no guilty knowledge of the crime, that the assailant’s description was not consistent with Duncan’s appearance and that the identification procedure was unreliable. IPNO-Duncan, supra.

95 Telephone Interview with Cohen, supra note __.

96 Telephone Interview with Cohen, supra note __.

97 Id. Duncan mailed the appellate opinions to the inmate counsel substitute. Telephone Interview with Katherine Mattes, Director, Criminal Justice Clinic, Tulane Law School (Oct. 12, 2021). Otherwise, by the time defense counsel awaited the decision in the mail, sent it to the prison and the prison delivered it to the individual (assuming they were not, in the interim, transferred to another prison) there would be little time left to file a writ. Id.; Telephone Interview with Cohen, supra note __.

98 Ellisa Valo, Liberty and Justice After All, LEWIS & CLARK MAGAZINE (Spring 2021), https://www.lclark.edu/live/news/45928-liberty-and-justice-after-all; Telephone Interview with Cohen, supra note __.

99 Bazelon, supra note __.

100 See, e.g., State v. Hankton, 122 So. 3d 1028, 1037-38, 1041 (La. Ct. App. 2013) (acknowledging the racial animus to “disenfranchise” Black voters in the 1898 constitution but finding no evidence shown that race motivated the non-unanimous jury provision, and asserting that the state’s 1974 adoption of a revised non-unanimity rule, whose stated purpose was “judicial efficiency,” cleansed any racial animus that may have motivated its introduction in 1898); State v. Webb, 133 So. 3d 258, 285-86 (La. Ct. App. 2014) (finding no proof of discriminatory purpose or disparate impact).

101 Webb, 133 So. 3d at 286.
Advocate, Louisiana’s largest daily newspaper, to scour records in thousands of felony trials, revealing the profound and enduring racial impact of Louisiana’s jury scheme. The newspaper’s analysis showed that in parishes across Louisiana between 2011 and 2016, forty percent of jury convictions ended with one or two holdouts and that Black people were thirty percent more likely than white people to be convicted by split juries. More limited data in Louisiana’s most populous parish, East Baton Rouge Parish, showed that Black jurors, while still far more likely to convict than not, were almost three times more likely to cast a dissenting vote than white jurors. Retrieving this data was a daunting task.

The Advocate’s 2018 series was published just as the state legislature began debating a bill—it’s first serious push to change the law since 1974—that would allow Louisiana voters to amend the state constitution to require unanimous verdicts. The grassroots group Voice of the Experienced (“VOTE”), founded by Norris Henderson, who was imprisoned in Angola with Duncan, spearheaded a vigorous campaign to educate voters to support the ballot initiative. Representing the state’s forty-two district attorneys,
the Louisiana District Attorneys Association initially took a strong position against the bill. 

After the newspaper’s coverage began, the association opted to stay neutral; the bill then gained bipartisan momentum and passed both chambers. In November, 2018, by a nearly 2-to-1 margin, Louisiana voters overwhelmingly approved the constitutional amendment to require unanimous verdicts in all felony trials, leaving Oregon the only remaining state to allow less-than-unanimous juries. The amendment, however, applied only prospectively.

The bill’s sponsor praised The Advocate’s Pulitzer-Prize winning series, stating that without the investigative reporting “it would have been impossible to be successful, not just with the legislators but in getting the public to vote for it.” The sponsor omits that the non-unanimous jury rule was known, for decades, to journalists covering the Louisiana courts. What made the newspaper’s reporting “ripe” was Duncan’s methodical and rigorous push to build the issue in the courts. Duncan’s work inspired new push the legislature to change the law; Norris Henderson, What I Learned About Voting Rights in the Fields of Angola, MARSHALL PROJECT (Mar. 12, 2020). By this time, advocacy, academic scholarship and popular writing on the historical roots and modern outgrowth of the jury rule, and coverage on the Supreme Court petitions, had proliferated. See, e.g., THOMAS AIELLO, JIM CROW’S LAST STAND: NONUNANIMOUS CRIMINAL JURY TRIALS IN LOUISIANA (2015) (exposing the law’s “design[ ] to increase convictions to feed the state’s burgeoning convict lease system”); Angela A. Allen-Bell, How the Narrative about Louisiana’s Non-Unanimous Criminal Jury System Became a Person of Interest in the Case Against Justice in the Deep South, 67 MERCER L. REV. 585, 592-97 (2016); Angela A. Allen-Bell, These Jury Systems are Vestiges of White Supremacy, WASH. PO. (Sept. 22, 2017), https://www.washingtonpost.com/opinions/these-jury-systems-are-vestiges-of-white-supremacy/2017/09/22/d7f1897a-9f13-11e7-9c8d-cf053f30921_story.html (stating that eliminating unanimity “paved the way for quick convictions that would facilitate the use of free prisoner labor as a replacement for the loss of free slave labor’’); Ken Daley, Should Juries be Unanimous? Treme Murder Case Raises Question for U.S. Supreme Court, NOLA.COM (Sept. 13, 2017), https://www.nola.com/news/crime_police/article_1436dfe9-b963-5e6d-8aa2-beacdec3be2.html (discussing racist roots of Louisiana’s law and certiorari petition of Dale Lambert); Andrew Cohen, A Vestige of Bigotry, THE MARSHALL PROJECT (Sept. 25, 2017), https://www.themarshallproject.org/2017/09/25/a-vestige-of-bigotry (same); Email from G. Ben Cohen to author (Dec. 30, 2021) (stating that Lambert was a split jury case Duncan brought to him to take to the U.S. Supreme Court).

108 Simerman & Russell, supra note __.
109 Id.; Granger, supra note __.
110 Granger, supra note __; Simerman & Russell, supra note __.
111 Simerman & Russell, supra note __ (stating that the amendment applied only to trials involving crimes committed on or after January 1, 2019).
112 Granger, supra note __ (quoting state senator JP Morrell).
114 Telephone Interview with Simerman, supra note __ (emphasizing that the newspaper...
subjects of data collection, dramatically changing how the courts, prosecutors, legislators and the public thought about, to borrow a phrase from Kimberlé Crenshaw, the “endurance of structures of white dominance.” Those racist structures would become central to the long-awaited Supreme Court decision.

In 2019, the Supreme Court granted certiorari in the 23rd petition that Duncan and Cohen co-wrote: *Ramos v. Louisiana*. In 2020, the Court overturned the 2016 murder conviction of Evangelisto Ramos, who was serving a life sentence without parole after a 10-to-2 verdict. Calling *Apodaca* “gravely mistaken,” the Court ruled that the Sixth Amendment required a unanimous jury verdict in state criminal trials for serious offenses. The momentous decision announced a new rule of criminal procedure.

“Without Calvin [Duncan], *Ramos* wouldn’t exist.” His unremitting drive to eradicate laws rooted in racial animus continues to reduce the prison population. Today, countless people accused of serious felonies in Oregon and Louisiana will likely face lower charges that carry less time in prison, with some saved entirely from conviction and imprisonment. The impact is not limited to future cases or those that were

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115 Adelson et al., *supra* note ___ (referencing a rare evidentiary hearing in 2017 where a New Orleans trial judge denied a challenge to the split jury rule in the absence of “a full-scale study” that “shows disproportionate impact”); Telephone Interview with Reingold, *supra* note ___ (stating that this pre-trial hearing took place only because Duncan “drilled into” the defense bar the importance of preserving the unanimity issue); Telephone Interview with Simerman, *supra* note ___ (stating that verdict data could be collected at any time, but Duncan’s work to raise the issue in the courts gave the journalists a “reason to do th[e] project”).


119 *Id.* at 1397, 1405.

120 *Id.* at 1406.

121 Telephone Interview with Cohen, *supra* note ___ ("Calvin was a relentless force in a place that is designed to suppress hope."); Valo, *supra* note ___ ("The reason why we don’t have nonunanimous jury convictions anymore is because Calvin didn’t give up.") (quoting Lewis & Clark Law School Professor Aliza Kaplan);

pending on direct appeal at the time *Ramos* was decided. Politicians in Louisiana and Oregon have harnessed the *Ramos* decision to pursue new strategies to reduce the time people stay in prison, release people in prison, or both. Although the Supreme Court held in a subsequent case that the new rule announced in *Ramos* did not apply retroactively to overturn final convictions on federal collateral review, the top prosecutor in New Orleans opted not to await the retroactivity decision, vowing to review the roughly 340 cases in Orleans Parish whose split-jury convictions became final. Oregon lawmakers are considering taking up the Court’s invitation to apply the new rule in state post-conviction proceedings. A bill proposed in the Oregon legislature would open the door to vacating hundreds, or, by some estimates, more than 1,000, past non-unanimous convictions to be re-tried, pled out or dismissed. And the Louisiana Supreme Court is poised to decide a case that could determine whether more than one thousand people who remain in prison following split verdicts are entitled to new trials. ("*Apodaca* sanctions the conviction at trial or by guilty plea of some defendants who might not be convicted under the proper constitutional rule (although exactly how many is of course unknowable."); Brief of Amicus Curiae State of Oregon in Support of Respondent, at 12, *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020) (No. 18-5924) (stating that the number of affected cases pending on direct appeal in Oregon “easily may eclipse a thousand”).

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124 McGill, *supra* note ___ (noting that the 300-plus people with split- verdicts in New Orleans are out of about 1,600 in the state); Sledge, *supra* note ___; Ortiz, *supra* note ___. The district attorney also moved to vacate convictions of twenty-two people convicted of felonies by split juries. Kevin McGill, *Prosecutor Moves to Vacate 22 Non-Unanimous Jury Convictions*, ASSOC. PRESS (Feb. 26, 2021), https://www.usnews.com/news/best-states/louisiana/articles/2021-02-26/prosecutor-moves-to-vacate-22-non-unanimous-jury-convictions (noting that five cases were reviewed to determine whether charges should have ever been filed and, of the seventeen being re-tried, sixteen agreed to plead guilty as charged or to lesser charges, seeking reductions in sentences that would likely have kept them behind bars for life); Erik Ortiz, *Ahead of Supreme Court’s Decision on Split Juries, New Orleans DA tackles ‘Jim Crow Office’*, NBC (May 9, 2021), https://www.nbcnews.com/news/us-news/ahead-supreme-court-s-decision-split-juries-new-orleans-da-n1266688 (noting that these twenty-two split jury convictions occurred between 1974 and 2014).

125 Vannoy, 141 S. Ct. at 1559 n.6 (“States remain free, if they choose, to retroactively apply the jury-unanimity rule as a matter of state law in state post-conviction proceedings.”)


127 See *State v. Reddick*, 332 So.3d 1173 (La. 2022) (granting writ) (oral argument May 10, 2022).
Duncan’s inside-outside synergistic collaboration ushered in new constitutional and public understandings about the enduring role of racism in shaping who the law sends to prison. In a somewhat surprising turn, the *Ramos* Court began its opinion by underscoring the racist origins of Louisiana and Oregon’s majority-jury rules. In Louisiana, the Court observed, the 1898 constitutional convention delegates were aware that overt exclusion of Black jurors would be struck down by the Supreme Court and sought to undermine the influence of Black jurors in a different way, by “sculpt[ing] a ‘facially race-neutral’ rule permitting 10-to-2 verdicts in order ‘to ensure that African-American juror service would be meaningless.’” The Court also foregrounded the roots of Oregon’s rule, which traced back to the Ku Klux Klan and efforts to dilute the vote of racial and religious minorities. Melissa Murray conceptualizes this move to reflect the Court’s interest in reconsidering and overruling precedent, in part, to redress racial injustice.

Over 1,500 people remain in Louisiana prisons following non-unanimous verdicts, of whom 80% are Black and more than 60% are serving

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128 *Ramos*, 140 S. Ct. at 1394.
129 *Strauder v. State of West Virginia*, 100 U.S. 303, 304, 310 (1880) (prohibiting states from systematically excluding Black people from juries); see also *Ramos*, 140 S. Ct. at 1417 (Kavanaugh, J., concurring in part) (noting that Black jurors had won the right to serve on juries through the Fourteenth Amendment in 1868 and the Civil Rights Act of 1875).
131 *Ramos*, 140 S. Ct. at 1394.
132 Melissa Murray, *Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 HARV. L. REV. 2025, 2079-81 (2021) (“[T]he Ramos majority went beyond simply recasting *Apodaca* as an improperly reasoned Sixth Amendment ‘outlier.’ Race, the Ramos majority insisted, also shaped its consideration of *Apodaca*’s precedential value.”) (internal citation omitted). *See Ramos*, 140 S. Ct. at 1405 (criticizing the *Apodaca* plurality for “spen[ding] almost no time [in the decision] grappling with . . . the racist origins of Louisiana’s and Oregon’s laws”). In their concurrences, Justices Sotomayor and Kavanaugh echoed these concerns; *id.* at 1408 (Sotomayor, J., concurring) (“[T]he racially biased origins of the Louisiana and Oregon laws uniquely matter here.”); *id.* at 1417-18 (Kavanaugh, J., concurring in part) (stating that “the Jim Crow origins and racially discriminatory effects” of non-unanimous juries operate “as an engine of discrimination against black defendants, victims, and jurors” and “strongly support overruling *Apodaca*”); see also Charles Barzun, *The Constitution and Genealogy*, Balkinization (July 6, 2020), https://balkin.blogspot.com/2020/07/the-constitution-and-genealogy.html (“Historical arguments about the social and political origins of legislation used to be, except in rare cases, treated as irrelevant to their constitutional validity. Now such histories—which we might call “genealogies”—may be relevant to constitutional analysis as a matter of law.”).
life sentences without parole. The majority-jury rule incentivized prosecutors to charge more serious crimes than the evidence warranted that carried more severe penalties, resulting in “more people serving more time in prison.” This is why the comparatively small number of new prison admissions that followed jury trials “carve[d] a larger footprint in Louisiana’s towering incarceration rate.” In a system of pleas, split juries cast a long shadow. The majority-jury rule gave prosecutors an advantage in plea negotiations, leading accused people to weigh a guilty plea – often to more severe charges for which prosecutors would have a hard time obtaining a unanimous conviction – “against the tall odds of convincing at least three jurors that [the state] got it wrong.” Non-unanimous juries helped

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133 New Report: 80% of People Still Imprisoned Due to Jim Crow Jury Verdicts are Black, Most are Serving Life Sentences, The Promise of Justice Initiative (Nov. 18 2020), https://promiseofjustice.org/news/2020/11/18/new-promise-of-justice-initiative-report-80-of-people-still-imprisoned-due-to-jim-crow-jury-verdicts-are-black-most-are-serving-life-sentences (finding that 62% of people still in prison after split verdicts are serving life sentences compared to just 16.3% of Louisiana’s overall adult prison population). Even the latter percentage is the highest in the nation. Skene, supra note __. See also Promise of Justice Initiative, supra (stating that the non-unanimous jury rule helped make Louisiana the state with the most wrongful convictions per capita in the Deep South); Nicholas Chrastil, A ’Jim Crow Jury’ Prisoner Fights for Freedom, AL JAZEERA (Oct. 4, 2021), https://www.aljazeera.com/features/2021/10/4/a-jim-crow-jury-prisoner-fights-for-freedom (stating that is impossible to know how many people were convicted by split juries in Louisiana). For similar reasons it remains unclear how many people were convicted by split juries in Oregon. See Crombie, supra note __ (noting stark racial disparities in split verdict convictions in Oregon).

134 Russell et al., supra note __. A Republican state senator who was an assistant district attorney in New Orleans in the late 1980s admitted to filing more severe felony charges than the evidence could support simply to ensure that unanimity would not be required. John Simerman, For Prosecutors, Louisiana’s Split-Verdict Law Produces Results, NOLA.COM (Apr. 21, 2018), https://www.nola.com/news/courts/article_e737f0e7-7d8a-5fc7-84bf-22f33277ea89.html (stating it was easier “to convict ’em with 10 out of 12 (jurors) – I’m not proud of that – than it is 6 out of 6”) (quoting Sen. Dan Claitor); id. (noting that non-unanimous juries offer a “longer menu” of compromise verdicts if the jury decides not to convict of the most serious charge). Misdemeanors and some felonies in Louisiana are tried by “six-pack” juries where unanimity is required. Id.; See Burch v. Louisiana, 441 U.S. 130, 134 (1979) (holding that a non-unanimous six-person jury in a state criminal trial for a nonpetty offense is unconstitutional).

135 Russell et al., supra note __.

136 Russell et al., supra note __ (noting that because the law armed prosecutors with such an advantage, the deals offered were not as favorable to the accused, which almost “force[d] some [people accused of crimes] to go to trial, figuring they ha[d] little to lose”).
Louisiana become the nation’s leader in locking people up for life. 137 Spearheading their demise from inside a cage 138 occasioned their elimination.

2. Armed Career Criminal Act

Popular writing and legal elites chronicle the myriad ways that people in prison depend on the legal profession to secure their release from prison. Far less attention is paid to—and far less is known about—how the legal system and the legal profession harness the agency and aptitude behind bars to generate long-term decarceral outcomes.


138 In fact, Duncan’s “legacy is broader than one specific legal issue.” Telephone Interview with Cohen, supra note __. Almost anyone in Angola at the time whose claims survived to federal court on any constitutional issue reached that pinnacle via Duncan. Id.; see also KAREN HOUPPERT, CHASING GIDEON: THE ELUSIVE QUEST FOR POOR PEOPLE’S JUSTICE 148-49 (2013) (stating that Duncan initiated the non-capital appeal in Juan Smith’s case, which culminated in the U.S. Supreme Court reversing Smith’s murder conviction by an 8-to-1 vote in Smith v. Cain, 565 U.S. 73 (2012), resulting in the vacatur of Smith’s death sentence). He also won federal habeas petitions for and secured the release of others in Angola. Liptak, supra note __; Telephone Interview with Mattes, supra note __ (stating that Duncan secured habeas relief for a person with mental illness whom he observed was unable to initiate a case and, as such, he had access to information that people on the outside did not). Journalist Wilbert Rideau was released in 2005 after Duncan helped him secure a new trial. See Liptak, supra note __ (noting that Rideau described Duncan as “the most brilliant legal mind in Angola,” stating, “I would not be [out] but for Calvin.”); WILBERT RIDEAU, IN THE PLACE OF JUSTICE: A STORY OF PUNISHMENT AND DELIVERANCE 236, 337 (2010). Duncan was even a resource for seasoned attorneys. Liptak, supra note __ (stating that capital defense lawyers advised now-Tulane Law Professor Katherine Mattes, whose legal question stumped them, to visit Duncan, who was able to answer her legal question); Video Interview with Emily Bolton, Director, APPEAL; former Director and Founder, Innocence Project New Orleans (Oct. 14, 2021) (stating that Duncan’s vision led her to focus on the “lost” population – over 4,000 people sentenced to life without parole – when launching IPNO); IPNO-Duncan, supra note __ (noting that Duncan helped establish IPNO while he was in prison); see also Bazelon, supra note __ (stating that Duncan helped train other inmate counsel substitutes before his release). He also brought to prosecutors’ attention the forgotten “10-6ers,” the oldest and longest-serving people in Louisiana prisons who are only now being resentenced and released. Email from G. Ben Cohen to author (Dec. 29, 2021); see also Neil Vigdor, They Were Promised a Chance at Parole in 10 Years. It’s Been 50, N.Y. TIMES (Oct. 1, 2021), https://www.nytimes.com/2021/10/01/us/louisiana-inmates-release.html (reporting that dozens of people whose plea deals made them eligible for parole in ten years and six months have remained in prison for over fifty years after Louisiana stiffened and then eliminated parole eligibility in the 1970s); Chavez, supra note __ (explaining that prosecutors and other stakeholders were unaware of the “10/6 lifers”).
In 2015, William Dale Wooden was indicted in federal court in Tennessee on a felon-in-possession charge. He maintained his innocence. His federal public defender advised him that he was facing a sentence of 21 to 27 months in prison if he were to plead guilty. Relying on that advice, Wooden entered a guilty plea in August, 2016. His counsel’s assessment was correct. The presentence report recommended that Wooden receive a sentence within the Guidelines range of 21 to 27 months’ imprisonment. The government filed a notice that it did not object. Having served much of his expected sentence, Wooden anticipated release by Christmas 2016.

Shortly before sentencing, the government changed course and sought to label Wooden a career criminal under the federal Armed Career Criminal Act (“ACCA”). The 1980s-era law mandates a fifteen-year minimum sentence on a person convicted of a felon-in-possession charge who also has three prior convictions for a “violent felony,” a “serious drug offense” or both, “committed on occasions different from one another.” The ACCA imposes one of the harshest punishments in federal law.

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142 Id. at 2; Wooden Order, at 2, 5-6.
143 Wooden Order, at 2.
144 Id.
145 Id.; Wooden Mem. in Supp., at 2.
146 The government relied on an intervening case, United States v. Gundy, 842 F.3d 1156 (11th Cir. 2016). Wooden Mem. in Supp., at 2, 6; Wooden Order at 2-3.
147 18 U.S.C. § 924(e)(1). Enacted in 1984, ACCA’s original iteration imposed a mandatory-minimum sentence of fifteen years for unlawful possession of a firearm, if the accused person had “three previous convictions . . . for robbery or burglary, or both,” under state or federal law. Armed Career Criminal Act of 1984, Pub. L. No. 98-473, § 1802, 98 Stat. 2185. Two years later, Congress amended the provision to apply where the three prior convictions were “for a violent felony or a serious drug offense, or both.” Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, § 1402(a), 100 Stat. 3207-39. In 1988 Congress added the provision that predicate offenses must have been “committed on occasions different from one another.” Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7056, 102 Stat. 4402 (1988). The statute puts no limit on the age of the convictions which can be used as predicates. See also United States v. McElvea, 158 F.3d 1016, 1019-20 (9th Cir. 1998) (discussing legislative history).
148 Brief of the National Association of Federal Defenders as Amicus Curiae in Support of Petitioner, at 1, Wooden v. United States, 141 S. Ct. 1370 (2021) (No. 20-5279) [hereinafter Br. of Federal Defenders]; see also Rachel E. Barkow, Categorical Mistakes: The Flawed Framework of the Armed Career Criminal Act and Mandatory Minimum
The government argued that Wooden was “precisely the kind of individual whom the ACCA was meant to punish.”\textsuperscript{149} Two decades earlier, in 1997, Wooden and others breached the exterior of a minisorage facility in Georgia on one night and broke through the drywall that connected ten of the units.\textsuperscript{150} The government argued that the incident, which involved ten separate storage units and resulted in convictions on ten counts of burglary, qualified as ten separate ACCA predicate offenses “committed on occasions different from one another.”\textsuperscript{151}

Wooden withdrew his guilty plea on the felon-in-possession charge.\textsuperscript{152} In 2018, he was convicted by a jury.\textsuperscript{153} At sentencing, the government argued that the two-decade-old mini-storage burglaries “were committed on occasions different from one another” based on the principle that “[y]ou cannot be in two locations at the same time.”\textsuperscript{154} Wooden challenged his designation as a career criminal, arguing that the ten minisorage burglaries arose out of a single occasion on the same date, at the same time and in the same place.\textsuperscript{155} The district court rejected his argument, concluding, under circuit precedent, that “[it was possible to discern the] point at which the first offense was completed and the second began” and “it was possible for [him] to stop at any point between the mini warehouses.”\textsuperscript{156} Finding that he had built a criminal “career” over the course of one night, the
district court sentenced Wooden to 188 months in prison for unlawful possession of a gun.\footnote{Minute Entry., Wooden, No. 15-cr-12, Dkt. No. 87 (E.D. Tenn. Feb. 21, 2019).} The Sixth Circuit affirmed.\footnote{Wooden, 945 F.3d at 500, 505 ("Whatever the contours of a 'mini' warehouse, Wooden could not be in two (let alone ten) of them at once.").}

Two months into the COVID-19 pandemic, indigent and in federal prison, Wooden requested the assistance of counsel to take his case to the U.S. Supreme Court.\footnote{Wooden, No. 15-cr-12, Dkt. No. 97 (E.D. Tenn. June 1, 2020) (handwritten letter from Wooden to federal district court stating that he unsuccessfully reached out to his appellate counsel and the federal defenders’ office for assistance).} Hearing no response from the district court, and with the deadline imminent, Wooden, \textit{pro se}, prepared a petition for a writ of certiorari.\footnote{Pet. for Cert., Wooden v. United States, No. 19–5189 (July 24, 2020) [hereinafter Wooden Pet. for Cert.]; The district court eventually denied his request for appointment of counsel. Wooden, No. 15-cr-12, Dkt. No. 99 (E.D. Tenn. July 30, 2020).} In the questions presented, he raised the “absence of clear statutory definition” in ACCA’s occasions clause.\footnote{Wooden Pet. for Cert., at 4, 9-10; see Wooden, 945 F.3d at 504.} He argued, as his counsel did below, that the ten burglaries in his case should be treated as “one criminal episode.”\footnote{Wooden Mem. in Supp., at 7.} He added his own arguments, emphasizing that the Sixth Circuit recognized that the occasions clause lacked “statutory direction” because Congress did not define “committed on occasions different from one another.”\footnote{Wooden Pet. for Cert., at 4 (emphasis added); Telephone Interview with Andrew Tutt, Senior Associate, Arnold & Porter (Oct. 20, 2021) (noting that the vagueness challenge was not a cert-worthy issue but that Wooden included the argument in his \textit{pro se} petition because he had read \textit{Johnson v. United States}, 576 U.S. 591, 594, 597 (2015) (striking down ACCA’s residual clause as void for vagueness). Most people in prison have no formal legal education but they do learn about the law. \textit{Mumia Abu-Jamal, Jailhouse Lawyers: Prisoners Defending Prisoners v. the USA 31} (2009) ("[It is learned] not in the ivory towers of multi-billion-dollar endowed universities [but] in the bowels of the slave ship, in the hidden, dank dungeons of America—the Prisonhouse of Nations. It is law learned in a stew of bitterness, under the constant threat of violence, in places where millions of people live, but millions of others wish to ignore or forget.").} With a ninth-grade education,\footnote{Telephone Interview with Andrew Tutt, Senior Associate, Arnold & Porter (Oct. 20, 2021) (noting that the vagueness challenge was not a cert-worthy issue but that Wooden included the argument in his \textit{pro se} petition because he had read \textit{Johnson v. United States}, 576 U.S. 591, 594, 597 (2015) (striking down ACCA’s residual clause as void for vagueness). Most people in prison have no formal legal education but they do learn about the law. \textit{Mumia Abu-Jamal, Jailhouse Lawyers: Prisoners Defending Prisoners v. the USA 31} (2009) ("[It is learned] not in the ivory towers of multi-billion-dollar endowed universities [but] in the bowels of the slave ship, in the hidden, dank dungeons of America—the Prisonhouse of Nations. It is law learned in a stew of bitterness, under the constant threat of violence, in places where millions of people live, but millions of others wish to ignore or forget.").} he asked the Court to “once again review a portion of § 924(e) [ACCA] as void-for-vagueness.”\footnote{See Minute Entry, Wooden v. United States, No. 20-5279 (Sept. 22, 2020), at https://www.supremecourt.gov/docket/docketfiles/html/public/20-5279.html.} The Supreme Court ordered the government to respond.\footnote{Inmate Petitioned SCOTUS Alone, Then Arnold & Porter Stepped In, BLOOMBERG}
interpretation of ACCA’s occasions clause that had resulted in anomalous ACCA consequences for nearly identical conduct across the nation. The firm reached out to the federal prison to set up a telephone call with Wooden. Now represented by counsel, Wooden argued in reply that the Court should grant certiorari to resolve a decades-long recurring circuit conflict on how to determine when offenses are “committed on occasions different from one another” for purposes of the ACCA enhancement. The Court granted certiorari. It was the first time the ACCA occasions clause was squarely before the U.S. Supreme Court.

In March, 2022, the Supreme Court ruled unanimously in Wooden’s favor. Eight Justices concluded that “[c]onvictions arising from a single criminal episode, in the way Wooden’s did, can count only once under ACCA.” The people affected by this decision “likely number[ ] in the

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168 See Rachel Kunjummen Paulose, Power to the People: Why the Armed Career Criminal Act Is Unconstitutional, 9 VA. J. CRIM. L. 1, 82 (2021) (“The circuits are split on the interpretation of the different occasions test. The interpretation of seven words in the ACCA has led to widely disparate results for factually similar crimes.”) (internal citation omitted); H.W. PERRY, JR., DECIDING TO DECIDE: AGENDA SETTING IN THE UNITED STATES SUPREME COURT 246 (1991) “[T]he single most important generalizable factor in assessing certworthiness is the existence of a conflict or ‘split’ in the circuits.”).

169 Inmate Petitioned SCOTUS Alone, supra note ___ (“getting in touch with Wooden ‘took a fair amount of work[ ]’”) (quoting partner at Arnold & Porter).

170 Reply Br. for the Petitioner, at 1, Wooden v. United States, No. 20-5279 (Jan. 6, 2021) [hereinafter Reply Br.]; see also Paulose, supra note __, at 69 (“The most pitched battles [in the lower federal courts] involve not the crimes separated by years, but crimes separated by seconds, minutes, or hours.”); Reply Br., at 21 (“And since a split-second’s difference between offenses will trigger a fifteen-year mandatory-minimum, the Government’s approach magnifies the consequences of error.”).

171 Wooden v. United States, 141 S. Ct. 1370 (2021) (mem.) (granting cert.). Wooden also raised a Fourth Amendment challenge, arguing that law enforcement used deception to gain access to a constitutionally protected area – his home – which led directly to his firearm possession conviction. See Wooden Pet. for Cert., at 2, 5-7; Reply Br., at 3. The Court granted certiorari only on the occasions clause question. See Wooden, 141 S. Ct. 1370 (2021) (mem.) (granting cert on question two).


173 Id. at 1067. The Court described a “range of circumstances [that] may be relevant” to the occasions inquiry, including whether the offenses were committed in “an uninterrupted course of conduct,” or “separated by substantial gaps in time or significant intervening events”; proximity of location; the character and relationship of the offenses; and, in harder cases, ACCA’s history and purpose. Id. at 1070-71 (stating that “[f]or the most part, applying this [multi-factored] approach will be straightforward and intuitive”). But see id. at 1080 (Gorsuch, J., concurring in the judgment) (stating that “a long list of non-exhaustive, only sometimes relevant, and often incommensurable factors promises to perpetuate confusion in
People sentenced under the ACCA comprise a small portion of the federal criminal caseload, but their sentences are substantial. The mere existence of the harsh sentencing law also has considerable indirect effects. Although retroactivity is unclear, Wooden’s challenge has future implications for untold numbers of people who otherwise would have been subject to the severe mandatory minimum as well as consequences for other recidivist statutes.

Significantly, Wooden’s pro se petition teed up a Sixth Amendment challenge to the occasions clause that every circuit court in the nation has rejected for two decades. In fact, the Court’s decision in Wooden all but
invited the Sixth Amendment question to be presented in a follow-on case.\footnote{Wooden, 142 S. Ct. at 1068 n.3 (stating that two amici briefed “whether the Sixth Amendment requires that a jury, rather than a judge, resolve whether prior crimes occurred on a single occasion” but declining to address the constitutional question because Wooden did not raise it); see also id. at 1087 n.7 (Gorsuch, J., concurring in the judgment) (foreshadowing that “[a] constitutional question simmers beneath the surface of today’s case” that the Court does not take up “[b]ut there is little doubt we will have to do so soon”).} The constitutional challenge—grounded in over twenty years of Supreme Court jurisprudence and an “unusual confession of error by a sitting Supreme Court Justice”—creates an opening for the entire ACCA provision to be struck down as unconstitutional.\footnote{Paulose, supra note __, at 21-57 (recounting in detail Supreme Court cases). In a 5-4 decision, the Supreme Court in \textit{Almendarez-Torres}, 523 U.S. 224, 226-27, 247 (1998), held that the existence of a prior conviction that triggers enhanced penalties is a sentencing factor that could be found by a judge, not an element of the offense that must be found by a jury beyond a reasonable doubt. Two years later, the Court held that “any fact that increases the penalty for a crime beyond the prescribed statutory maximum” is an element of the crime that “must be submitted to a jury, and proved beyond a reasonable doubt.” \textit{Apprendi v. New Jersey}, 530 U.S. 466, 490 (2000). The \textit{Apprendi} Court recognized a narrow exception for the “fact of a prior conviction.” \textit{Id.} at 487-90 (stating that \textit{Almendarez-Torres} is “at best” an exceptional departure from the Court’s jurisprudence). The four Justices who dissented in \textit{Almendarez-Torres} formed the majority in \textit{Apprendi}, joined by Justice Thomas, who cast the fifth and deciding vote for the majority in \textit{Almendarez-Torres}. \textit{Id.} at 520 (Thomas, J., concurring) (admitting that he “succumbed to “error” in \textit{Almendarez-Torres}). For two decades, Justice Thomas has continued to express regret for his vote in \textit{Almendarez-Torres} and urged its reversal. See, e.g., \textit{Shepard v. United States}, 544 U.S. 13, 27 (2005) (Thomas, J., concurring in part) (“[A] majority of the Court now recognizes that \textit{Almendarez-Torres} was wrongly decided. The parties do not request it here, but in an appropriate case, this Court should consider \textit{Almendarez-Torres}’ continuing viability. Innumerable criminal defendants have been unconstitutionally sentenced under [its] flawed rule . . . ”) (internal citations omitted); \textit{Mathis}, 136 S. Ct. at 2259 (Thomas, J., concurring) (“I continue to believe that depending on judge-found facts in [ACCA] cases violates the Sixth Amendment and is irreconcilable with \textit{Apprendi}. . . . This Sixth Amendment problem persists regardless of whether ‘a court is determining whether a prior conviction was entered, or attempting to discern what facts were necessary to a prior conviction.’”).} Wooden’s \textit{pro se} petition has opened the way to put a major dent in a 1980s-era tough-on-crime law.

For a Supreme Court that pursues the perfect “test case” to change the law—a venture that is challenging to set up in civil cases\footnote{See \textit{Supreme Court Lawsuits in Search of a Plaintiff}, BLOOMBERG LAW (Apr. 16, 2018), \url{https://news.bloomberglaw.com/business-and-practice/supreme-court-lawsuits-in-search-of-a-plaintiff}.} and next to impossible in criminal law\footnote{I thank Andrew Tutt for making this point about test cases.}—the agency of people in prison can be critical. Not unlike most lawyers, most people in prison do not anticipate what issues
will interest the Supreme Court, but their circumstances embolden them to take steps to respond to injustices that their experience and the law have made salient. Presenting legal claims that their lawyers forego, they become part of the process of shaping new constitutional meanings, pushing us toward new possibilities to incrementally and—as the next Part shows—dramatically reduce our carceral footprint.

B. Idea-Generation

Accompanying the work to challenge unjust state and federal laws from inside the walls is deep contemplation by people in prison to conceptualize alternative frameworks to understand why the criminal legal system has locked them up. Inside-born innovations have engaged incarceration differently, pushing the outside to new ways of thinking about the structures of inequity, trauma, racism and disinvestment that drive people into prison and fuel violence outside the walls. This Section examines two groundbreaking ideas seeded inside prison walls that have inspired, shepherded, and deepened the decarceral work outside the walls.

1. Neighborhood-to-Prison Migration

In September, 1971, more than one thousand people held in New York’s Attica Correctional Facility took over the state prison in a historic uprising against the brutal conditions in American prisons and jails. People incarcerated in Attica took some staff hostage in a demand to end dehumanizing conditions and racial abuse. After failed negotiations, Governor Nelson Rockefeller, New York State Police, law enforcement from outside counties and corrections officers launched a disastrous operation to reclaim the prison. Deploying enormous lethal force to suppress the rebellion, authorities tortured people in prison and pursued a cover-up that lasted decades.

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183 Cf. supra note __ [Jane Mansbridge FN] and accompanying text.


185 Bailey, supra note __.


187 Thompson, supra note __, at 227-241, 486-91; Erik Wemple, Journalists Bungled
After the Attica rebellion, hundreds of people were transferred to Green Haven, a maximum security prison in New York. Transfers continued for years from the state’s most brutal prisons, culminating in the New York Department of Corrections (“NY DOCCS”) issuing a directive to send the “toughest,” most violent, and “hard-core inmate[s]” to Green Haven. Among the transferees were people whose revolutionary consciousness was viewed as disruptive to prison operations.

Social anthropologist Orisanmi Burton recounts the intellectual formation that followed. In Green Haven, Larry White realized that people in prison needed new strategies of resistance that “mobilized ideas.” With a sixth-grade education, White, who grew up in deep poverty, founded a study group called the “Think Tank.” Eddie Ellis, a Black Panther who witnessed the Attica rebellion, joined the Think Tank along with others sent to Green Haven. At this time, study groups could meet with relative ease, sometimes with community sponsors, in the tolerance for reform that followed the rebellion. That would soon change.

Coverage of the Attica Uprising: 50 Years Later, the Consequences Remain, WASH. PO. (Sept. 30, 2021), https://www.washingtonpost.com/opinions/2021/09/30/attica-chronicle-media-disaster/ (noting that the state attempted to cover up murdering its own employees by casting blame on the people in prison when autopsies confirmed gun shots from authorities); Getlen, supra note __; Bailey, supra note __.


190 NYDOCCS “took all the so-called ringleaders from the different prisons and for some reason put us all in the same joint.” Burton, supra note __, at 122 (quoting Larry White); Pam Widener, Man of the Year: Eddie Ellis at Large, PRISON LEGAL NEWS 49 (1996), https://www.prisonlegalnews.org/media/publications/Prison_Life_October_1996.pdf.

191 Burton, supra note __, at 119 (noting that White was sent to Green Haven after leading a 1970 rebellion in Auburn prison, before Attica).

192 Id. at 116, 129 (noting that White founded the study group in 1972); see also Center for NuLeadership on Human Justice and Healing, https://www.nuleadership.org/history (observing that the Attica rebellion sparked innovative ideas by people in prison, including the “formation of study and organizing groups emerging in prisons throughout the nation”).

193 Burton, supra note __, at 5-6, 59, 106; id. at 216, Appx. I, Green Haven Think Tank Document 3 (1972) (describing members of the Think Tank as “socially concerned” people “whose activity has been defined by prison policies as ‘radical’, ‘militant’ and ‘disruptive’.”); Widener, supra note __, at 50 (noting that members were mostly “lifers”).

194 Burton, supra note __, at 114, 129, 135, 138-39 (noting that the Think Tank organized community events and discussions in the prison and invited lawmakers into the prison and lobbied them to change laws); Widener, supra note __, at 51; Don Goodman & Maggie
Between 1971 and 1981, New York’s prison population had more than doubled.\textsuperscript{195} Eighteen new prisons were constructed, opened or renovated between 1971 and 1979.\textsuperscript{196} The Commissioner of NY DOCCS announced that the department was no longer engaged in rehabilitation but only on “finding the next cell.”\textsuperscript{197} Areas in prisons once slated for programming and special events were repurposed to warehouse more bodies.\textsuperscript{198} In his proposed budget for the 1982-83 fiscal year, New York Governor Hugh Carey requested over $322 million for NY DOCCS with at least $241 million slated for prison expansion.\textsuperscript{199}

To counter this impulse for expansion, the Think Tank advanced a concept and a methodology to show that incarceration was not a viable solution to crime.\textsuperscript{200} People held in Attica during the Attica rebellion had theorized the prison as a “relationship” between the state and Black and Latinx communities in mostly urban neighborhoods, which were also a “kind of carceral site.”\textsuperscript{201} This metaphor was rooted in the Black intellectual tradition.\textsuperscript{202} White elaborated this concept—which people in Attica

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\item\textsuperscript{197} Id. at 151 (citing sworn affidavit of NY DOCCS Commissioner) (“As of December 4, 1981, the inmate population of 25,490 represents 112 percent of the system’s capacity.”).
\item\textsuperscript{198} Id.; see also Shon Hopwood, How Atrocious Prisons Conditions Make Us All Less Safe, Brennan Center (Aug. 9, 2021) (stating that “[a]s prison systems expanded over the last four decades, many states rejected the role of rehabilitation and reduced the number of available rehabilitation and educational programs” but noting research showing programs reduce recidivism rates and violence in prisons); Sheppard, supra note __ (discussing connection between overcrowding, limited program space, people being idle, and violence).
\item\textsuperscript{199} Burton, supra note __, at 151-52.
\item\textsuperscript{200} Id. at 152; see also id. at 130-31, 218, Appx. I, Green Haven Think Tank Document 5 (1972) (re-defining the Think Tank’s purpose as “allow[ing] inmates an opportunity to enter into the process of solving the broader problems of their life-situation, which they view as not one of a struggle against prison conditions, but rather the broader social problems of the communities to which they will return”).
\item\textsuperscript{201} Id. at 113-14 (describing how the Attica Brothers watched as prisons broke people to no longer value human life and returned them, dehumanized, back to their communities to commit crimes against their own people) (citing McKay Commission hearings); id. at 113 (“It was common parlance for captives to describe brick and mortar facilities as ‘maximum security’ prisons and the communities of the free world as ‘minimum security’ prisons”).
\item\textsuperscript{202} See, e.g., W.E.B. Du Bois, The Souls of Black Folk 8 (1903) (describing the “shades of the prison-house closed round about us all”); W.E.B. Du Bois, Black Reconstruction in America 701 (1935) (condemning the failure of Reconstruction for
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\end{footnotesize}
described as a genocide process—as a “direct relationship,” based on the abstract notion that the state prison population appeared to be drawn from “a very small pool” of Black and Latinx neighborhoods.

To substantiate this anecdotal evidence, Eddie Ellis had an idea to cross-reference New York state census data with NY DOCCS’ population data to determine the neighborhoods that supplied the state’s prison population. The Think Tank obtained technical support from a Black-led non-profit urban research center. The study group found that 85% of New York’s prison population was Black or Latinx and that 75% of the state’s entire prison population came from just seven neighborhoods in New York City. The neighborhoods were encompassed by seventeen assembly


Burton, supra note __, at 113-16, 152 (“Captives knew this from experience, as they often found themselves imprisoned alongside many of the people they knew in the street.”); Sophia Giovannitti, A Conversation with Larry White: The Radical Anti-Prison Activist and Teacher for Life, SSENSE.COM (Dec. 17, 2020), https://www.ssense.com/en-us/editorial/culture/a-conversation-with-larry-white-the-radical-anti-prison-activist-and-teacher-for-life [hereinafter Giovannitti, A Conversation with Larry White] (interviewing Larry White, who described the processes in prison that led him “to understand the connections between prison and the communities I came from”); Widener, supra note __, at 49-50 (“Every prison I was in,” [Eddie Ellis] said, “I seemed to know everyone,” either directly from the neighborhood or within two degrees of separation).

Burton, supra note __, at 153.

THE SEVEN NEIGHBORHOOD STUDY REVISITED, CENTER FOR NULEADERSHIP 3, https://static1.squarespace.com/static/58eb0522e6f2e1dfce591dec/t/596e1246d482e9c1e6b86699/1500385865855/seven-neighborhood+revisited+rpt.pdf [hereinafter SNS] (describing various state and census data used to conduct the study). The Metropolitan Applied Research Center (“MARC”), then headed by psychologist and civil rights activist Dr. Kenneth Clark, provided research design support. Id. A project director at MARC was initially hesitant to work with people in prison, but the Think Tank was persistent, writing letters seeking assistance. Burton, supra note __, at 138. MARC eventually became an early ally. Id.; see also Charlayne Hunter, Urban Analyst to Replace Clark at Research Center, N.Y. TIMES (May 4, 1975), https://www.nytimes.com/1975/05/04/archives/urban-analyst-to-replace-clark-at-research-center.html. In the 1940s and 1950s, Dr. Kenneth Clark and Dr. Mamie Clark famously designed a series of experiments, called the “Doll Test,” to study the psychological effects of racial segregation on Black children. Leila McNeill, How a Psychologist’s Work on Race Identity Helped Overturn School Segregation in 1950s America, SMITHSONIAN MAG. (Oct. 26, 2017), https://www.smithsonianmag.com/science-nature/psychologist-work-racial-identity-helped-overturn-school-segregation-180966934/ (reporting that the doctors’ research and expert testimony played a role in the U.S. Supreme Court’s decision in Brown v. Board of Education, 347 U.S. 483, 494 (1954)).
districts. The seven neighborhoods were set apart by “social conditions that by every possible measure—health care, housing, family structure, substance abuse, employment, education—rank at the very bottom in the state.”

With data to support its hypothesis, the Think Tank articulated the “direct relationship” between the prison and the communities as an overinvestment in prisons and a disinvestment in the seven neighborhoods. From their research, which became known as the “Seven Neighborhoods Study,” the Think Tank developed “The Non-Traditional Approach to Criminal and Social Justice.” The study group sought to use the data to determine where interventions were most needed and published papers arguing that the fundamental solution to crime, violence and drugs inhered in the community. The study group proposed shifting funds from the state’s

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207 SNS, supra note __, at 3 (explaining that the state assembly districts were identified for geographic reference and political support); Goodman & Smith, supra note __, at 99.
208 Widener, supra note __, at 50 (quoting Ellis); see also SNS, supra note __, at 4; Darren Mack, Opinion: In Plan to Close Rikers, Community Reinvestment is Key to Repairing Harms of Incarceration, CITY LIMITS (Apr. 1, 2021), https://citylimits.org/2021/04/01/opinion-in-plan-to-close-rikers-community-reinvestment-is-key-to-repairing-harms-of-incarceration/ (“These communities have been historically deprived of resources and then criminalized in their struggle to survive.”).
209 Burton, supra note __, at 153; see also Goodman & Smith, supra note __, at 99-100; Widener, supra note __, at 51 (stating that the Think Tank continued over the next decade to analyze the prison/community relationship); Eddie Ellis, Non-Traditional Approach to Criminal and Social Justice, in BLACK PRISON MOVEMENTS USA, NOBO JOURNAL OF AFRICAN AMERICAN DIALOGUE 94-100 (Africa World Press 1995) [hereinafter Ellis, Non-Traditional Approach] (discussing historical research conducted by the Think Tank).
210 SNS, supra note __, at 2. This vocabulary housed criminal justice under a larger commitment to social justice. The “non-traditional” model rejected “traditional” theories and approaches to crime and punishment. Burton, supra note __, at 152; Widener, supra note __, at 53 (stating that the new approach was based on the notion that the failure of social institutions serving Black and Latinx communities was directly responsible for crime and punishment); Juan Rivera, A Non-Traditional Approach to a Curriculum for Prisoners in New York State 120-26 (1992), in WRITING AS RESISTANCE, THE JOURNAL OF PRISONERS ON PRISONS ANTHOLOGY (Bob Gaucher, ed. 2002) (contrasting the “traditional” or “Eurocentric, white, and middle-class” approach that rests fault with the individual, with a “non-traditional” approach that takes into account institutional failures in communities as understood from Afrocentric and Latinocentric perspectives); Ellis, Non-Traditional Approach, supra note __, at 94 (discussing the philosophies and goals of the Non-Traditional Approach). See generally THE NON-TRADITIONAL APPROACH TO CRIMINAL AND SOCIAL JUSTICE, RESURRECTION STUDY GROUP (Jan. 1997) (on file with author) (providing a detailed historical account of the “direct relationship” from an Afrocentric and Latinocentric perspective).
211 SNS, supra note __, at 5 (“Almost exactly the same neighborhoods that had so many of its people in prison had the worst schools in the city. It seemed clear to us, then and now, if we know where the failing schools are and they are the same neighborhoods that account
prison budget to reappropriate for education and economic development in the seven neighborhoods.\textsuperscript{212} At the time—indeed for decades—this radical proposal, rooted in a long-term abolitionist agenda,\textsuperscript{213} met with little support.

The Green Haven study, conducted in 1979-1980, and issued again in 1990, won little popular attention until 1992, when the \textit{New York Times} “catapulted” the findings.\textsuperscript{214} In a front page article in the \textit{Times}, the Think Tank, via Ellis, who was now out on work release, brought to mainstream circles the “symbiotic” relationship—the “umbilical cord”—between prison and the seven neighborhoods.\textsuperscript{215}

In 1994, Ellis was released after serving twenty-three years in prison.\textsuperscript{216} He then helped to establish an outside arm to facilitate the Think

\textsuperscript{212} Burton, supra note __, at 153; see also Goodman & Smith, supra note __, at 103-04; Greaves, supra note __ (interviewing Ellis, who suggested that the criminal legal system should aim to address social and economic problems which will lead to less people going to prison and less need for prisons). Cf. Burton, supra note __, at 121-22 (“Black radical knowledge production makes no claims to objectivity or to ‘detachment’ . . . [but] ‘grow[s] out of a concrete intellectual engagement with the problems of aggrieved populations confronting systems of oppression.’”) (citing ROBIN D. G. KELLEY, FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION (2002)); Erin Collins, Abolishing the Evidence-Based Paradigm, BYU L. REV. (manuscript at 60) (forthcoming 2022) (“Data cannot, as QuantCrit scholars remind us, speak for [i]tself[f]. . . . It can help describe the impact of a law, policy, or procedure, but it does not prescribe the path forward. We choose both the meaning we draw from data, and what we do with that message.”)

\textsuperscript{213} See Burton, supra note __, at 217, Appx. I, Green Haven Think Tank Document 4 (1972) (describing Think Tank’s “[l]ong range priorities” as “[r]eduction of prison populations and the phasing-out of existing prison models”).

\textsuperscript{214} SNS, supra note __, at 2; Francis X. Clines, Ex-Inmates Urge Return to Areas of Crime to Help, N.Y. TIMES (Dec. 23, 1992), https://www.nytimes.com/1992/12/23/nyregion/ex-inmates-urge-return-to-areas-of-crime-to-help.html (describing the study as a “radical new approach to penology” by “unaccredited street penologist[s] without portfolio”); Greaves, supra note __ (interviewing Ellis, who explained that the study was not well received when released in the 1980s).

\textsuperscript{215} Clines, supra note __ (quoting Ellis).

\textsuperscript{216} A leader in the Black Panther Party, Ellis was arrested for a fatal shooting in 1969 and sentenced to 25 years to life. Widener, supra note __, at 48 (stating that Ellis was targeted under the FBI’s Counter Intelligence Program (“COINTELPRO”)). Ellis continued to maintain his innocence until his passing in 2014. \textit{Id.} at 48-49 (stating that no physical evidence connected Ellis to the crime and that he had no connection to the victim).
Tank’s research and writing, extending his work on the inside. In 2001, Ellis was a senior consultant at the Open Society Institute (“OSI”). Ellis shared the Think Tank’s demographic data with Eric Cadora, then a program officer in OSI’s After Prison Initiative. With the Think Tank’s data, and access to greater data, including home residences, and geographic mapping software, Cadora charted at the census block level the neighborhoods that the Think Tank had identified at the district level. The maps showed that the vast majority of people in New York state prisons came from an “astonishingly small” number of poor, segregated, predominantly Black and Latinx neighborhoods, and primarily concentrated on particular blocks in those neighborhoods. Cadora later collaborated with architect Laura Kurgan to map on a larger scale the home address of everyone held in New York state prisons.

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217 Think Tank founder Larry White would remain in prison for another thirteen years, thirty-two years in total. Giovannitti, A Conversation with Larry White, supra note __. White, in his own words, was “state-raised.” Id.; Burton, supra note __, at 118 (quoting White, who “grep[ ] up in prison”). In 1947, twelve-year-old White was placed in a youth house for “wayward kids.” Giovannitti, A Conversation with Larry White, supra note __; Burton, supra note __, at 118. Since adolescence, he was in and out of juvenile facilities, adolescent facilities and adult prisons. Burton, supra note __, at 118; Giovannitti, A Conversation with Larry White, supra note __. White returned to prison for the last time in 1976 to serve 25 years to life for armed robbery and second-degree murder. Burton, supra note __, at 118; Giovannitti, A Conversation with Larry White, supra note __. In 2007, White was paroled at the age of 72. Giovannitti, A Conversation with Larry White, supra note __.

218 Widener, supra note __, at 54-55 (describing the Harlem Community Justice Center). Ellis went to college in prison, where he obtained associate’s and bachelor’s degrees followed by a master’s degree from New York Theological Seminary. Id. at 51; Clines, supra note __.

219 SNS, supra note __, at 5.


221 SNS, supra note __, at 5-6; Robert F. Moore, On the Inside, Cons Wondered About Numbers, N.Y. DAILY NEWS (Mar. 18, 2007), https://www.nydailynews.com/news/cons-wondered-numbers-article-1.216876 (stating that Cadora plotted the Green Haven group’s findings with the aid of computer software); see also LAURA KURGAN, CLOSE UP AT A DISTANCE: MAPPING, TECHNOLOGY, AND POLITICS 187-88 (2013) (stating that after the New York Times article, Cadora gathered state incarceration data to test the Think Tank’s research on a larger scale); Brett Story, The Prison in the City: Tracking the Neoliberal Life of the “Million Dollar Block,” 20 THEOR. CRIMINOLOGY 257, 259 (2016).

York state prison. They attached a dollar figure to the maps to denote when the state spent at least one million dollars a year to incarcerate residents of a single city block, coining the now-famed expression “million dollar blocks.” A 2003 map, for example, depicts that New York spent $17 million to incarcerate 109 people who lived on 17 blocks in Brownsville, a neighborhood in Brooklyn. Brownsville has among the highest rates of poverty, unemployment, failing schools and infant mortality and the lowest life expectancy in New York City.

The Think Tank’s concept and method, made into visuals on Cadora and Kurgan’s maps, “upended the prevailing narrative about crime and [punishment],” shaping new perspectives about the purpose of criminal law and new ways of thinking and advocating for change. Maps were soon requested in other states, and neighborhood-to-prison mapping became a national initiative. The data visuals showed the same stark pattern in cities

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223 Gray & Lämmerhirt, supra note __, at 33-34. The mapping project was a collaboration of the Justice Mapping Center and Columbia University’s Spatial Information Design Lab, now the Center for Spatial Research. Lauren MacIntyre, Rap Map, NEW YORKER (Jan. 1, 2007), https://www.newyorker.com/magazine/2007/01/08/criminal-justice-dept-rap-map.

224 MacIntyre, supra note __ (stating that Cadora multiplied the minimum sentence of each person incarcerated by the estimated annual costs to imprison an individual ($32,400) and combined those numbers to calculate the incarceration costs per block); Emily Badger, How Mass Incarceration Creates ‘Million Dollar Blocks’ In Poor Neighborhoods, WASH Po. (July 30, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/07/30/how-mass-incarceration-creates-million-dollar-blocks-in-poor-neighborhoods/ (stating that this figure did not include money spent incarcerating people in federal prison or local jails). Cf. John Pfaff, Criminal Punishment and the Politics of Place, 45 FORDHAM URB. L.J. 571, 572 n. 10 (2018) (expressing skepticism on dollar value on the basis that some prison costs are fixed and the marginal cost of locking up one more person is much less than the average).

225 Kurgan, supra note __, at 186; Email from Laura Kurgan to author (Jan. 15, 2022).


228 MacIntyre, supra note __; Diane Orson, ‘Million-Dollar Blocks’ Map Incarceration’s Costs, NPR (Oct. 2, 2012), https://www.wbur.org/npr/162149431/million-
across the nation, revealing “previously unseen dimensions” of the criminal legal system. 229 The spatial analysis created “a radically new understanding of crime, poverty, and imprisonment.”230 Given the extent to which people cycle in and out of—and back into—prison, the spatial concentration of incarceration revealed a “mass migration of sorts.”231

The Think Tank’s theory and research shifted attention from the limited (and limiting) question of where crimes are committed to where people lived before entering prison, fundamentally redefining – and creating new metrics to measure – public safety. “The way in which data is collected

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230 Paglen, *supra* note ___ (“The project is a powerful critique of mass incarceration.”); see also The Pattern, supra note ___, at 4 (“The geography of incarceration differs considerably from that of crime.”); Austin et al., *supra* note ___, at 5 (arguing that these already-disadvantaged neighborhoods were punished into deeper distress, isolation, and disenfranchisement by concentrated incarceration and forced migration of residents to and from prison).

231 Paglen, *supra* note ___, The Pattern *supra* note ___, at 5 (stating that 95% of people in prison are released and that most return to their home communities); Center for Spatial Research, *supra* note ___ (stating that “roughly forty percent do not stay more than three years before they are reincarcerated”); Dana Goldstein, *The Misleading Math of Recidivism*, *The Marshall Project* (Dec. 4, 2014), https://www.themarshallproject.org/2014/12/04/the-misleading-math-of-recidivism (clarifying that a large number of people return to prison not for new crimes but technical parole violations – such as missed appointments or positive drug test results – and that studies of “recidivism” rates are influenced by the measure selected); Ryan G. Fischer, *Are California’s Recidivism Rates Really the Highest in the Nation? It Depends on What Measure of Recidivism You Use*, UC Irvine, Center for Evidence-Based Corrections THE BULLETIN 1-2 (Sept. 2005) (documenting that two-thirds of Californians are reimprisoned within three years, over half for parole violations, and partially attributing this high rate to California’s practice of placing virtually all people released from prison on parole supervision).
often reflects something about the people who collect it.”\[^{232}\] Traditional crime mapping tools, such as the NYPD’s COMPSTAT (“computerized statistics”) software, are commonly used by law enforcement to detect crime “hot spots” in order to allocate law enforcement resources to reduce crime.\[^{233}\] Crime mapping technology compiles data on the time, location, type and frequency of reported incidents.\[^{234}\] Because these technologies measure data that is critical to policing success, metrics are chosen based on how law enforcement define public safety.\[^{235}\] The dominant law enforcement worldview, whose muse is high-crime areas, now competed with the stark view from below: high-incarceration neighborhoods. Considering that the residential data used to create the maps was accessible to states and localities\[^{236}\] this shift in focus betrayed something more elemental: data “echoes its collectors.”\[^{237}\] “What data set to focus on, and how to frame it, is

\[^{232}\] Lena V. Groeger, *When the Designer Shows Up in the Design*, PROPUBLICA (Apr. 4, 2017), https://www.propublica.org/article/when-the-designer-shows-up-in-the-design (explaining that before data is interpreted or analyzed, an assumption must first be made about what data to seek out to help answer a question).


\[^{234}\] Id.; Groeger, *supra* note __.


\[^{236}\] See Chasin, *supra* note __ (interviewing Kurgan, who noted that the maps were prepared with government data but the stories they told were transformative).

\[^{237}\] Groeger, *supra* note __ (reporting that Kurgan described typical crime mapping tools as “part of the problem of mass incarceration, because they frame crime in an oversimplified way”); see also Kate Crawford, *The Hidden Biases in Big Data*, HARV. BUS. REV. (Apr. 1, 2013), https://hbr.org/2013/04/the-hidden-biases-in-big-data (“Data are assumed to accurately reflect the social world, but there are significant gaps, with little or no signal coming from particular communities.”); id. (“[A]s we increasingly rely on big data’s
a decision” produced by normative choices and shaped by power, politics and enduring structural inequities. Most data on imprisonment had focused on the state and county level. The neighborhood-prison-spending maps exposed a legal system that was “spending millions to imprison people but little on the communities to which they return.”

Despite their dire circumstances in prison—yet, paradoxically, by reason of those circumstances—the Think Tank marshalled a theory and supporting data that prominent scholars and policy organizations have cited authoritatively and whose reach has stretched beyond criminal law and policy, transforming research in public health. The idea to collect the data numbers to speak for themselves, we risk misunderstanding the results and in turn misallocating important public resources.”).

Groeger, supra note __.

See THE POLITICS OF NUMBERS 3 (William Alonso & Paul Starr eds., 1987) (arguing that “political judgments are implicit in the choice of what to measure, how to measure it, how often to measure it, and how to present and interpret the results”); Aziza Ahmed, Trafficked? AIDS, Criminal Law and the Politics of Measurement, 70 U. MIAMI L. REV. 96, 151 (2015) (“While measurement and indicators are treated as an objective and neutral way to move away from ideological debates and towards documenting realities . . . measuring and data-gathering itself is a political process.”); see also Gray & Lämmerhirt, supra note __, at 34 (quoting Kurgan) (“when [crime] maps are made . . . they often stop at the very first element: what crimes were committed and where”).

MacIntyre, supra note __.

See Jeffrey Fagan, Valerie West & Jan Holland, Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods, 30 FORDHAM URB. L.J. 1551, 1552, 1568 (2003) (emphasizing that “there have been few studies of the spatial concentration of incarceration in neighborhoods in the nation’s largest cities” and citing to the New York Times article on the Green Haven study group’s seven neighborhood study); R. Richard Banks, Beyond Profiling: Race, Policing, and the Drug War, 56 STAN. L. REV. 571, 596 & nn.151-153 (2003) (observing that the spatial concentration of incarceration produces neighborhood effects) (citing VERA INST. OF JUSTICE, THE UNINTENDED CONSEQUENCES OF INCARCERATION, Foreword (1996) and Loïc Wacquant, Deadly Symbiosis: When Ghetto and Prison Meet and Mesh, 3 PUNISHMENT & SOC’Y 95, 114-15 & n.33 (2001)) (both Vera and Wacquant cite to the Green Haven study as their source); Dick Price & Sharon Kyle, Million Dollar Hoods: Why L.A. Cages More People Than Any Other City, LA PROGRESSIVE (July 9, 2018), https://www.laprogressive.com/million-dollar-hoods/ (discussing UCLA historian who was inspired by the Green Haven study to launch a complementary project in 2016 that found similar neighborhood effects in the local jail system in Los Angeles County).

After seeing the Seven Neighborhood data, Columbia University Professor Robert Fullilove focused his public health research on the role of mass incarceration in driving the HIV epidemic. See Robert E. Fullilove, Mass Incarceration in the United States and HIV/AIDS: Cause and Effect?, 9 OHIO ST. J. CRIM. L. 353, 357 (2011) (arguing that “the greatest engine driving the [HIV] epidemic was the cycling of inmates in and out of prison and in and out of their communities”); Ellis Memorial, at 10 (stating, about his shift in research, that he “owe[s] it all to [the Think Tank’s] pioneering contributions” because “[w]hen we looked at the data [Ellis] cited, it became clear that those were the [seven]
was born in prison, by people surrounded by people in prison, contemplating their oppression within a framework rooted in the Black intellectual tradition. The Think Tank study group initiated a decarceral praxis that opened up new routes to disrupt over-reliance on criminal punishment, engaged complex problems more intelligently and humanely, and guided those on the outside to more effective and sustainable community solutions. Based on a deep understanding of the racial and class inequities that undergird criminal punishment, the Think Tank urged a neighborhood-focused agenda rooted in social justice, a concept that scholars and scientists today are championing to dramatically reduce reliance on incarceration.243

Gathering a different set of data and framing that data differently made the social and economic dimensions of incarceration more understandable to a wide range of stakeholders.244 Facing budget shortfalls, lawmakers invited Cadora to present the maps and began to talk about incarceration differently, with some undertaking reforms to lower prison populations.245 The maps created space to develop a neighborhood-driven neighborhoods with the highest rates of HIV/AIDS in [New York] city”). Increased attention to the high concentration of incarceration in neighborhoods thus carries the potential to guide decisions on public health. See Kamala Mallik-Kane & Christy A. Visher, Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration, URBAN INSTITUTE 8 (2008) (concluding that attending to health needs of people in and returning from prison can affect the course of epidemics); Janaki Chadha & Ruth Ford, What Drives NYC’s Health Disparities?, CITY LIMITS (Jan. 4, 2017), https://citylimits.org/2017/01/04/what-drives-nycs-health-disparities/ (describing how poor health outcomes reflect history of neighborhood disinvestment); Nolan Hicks, Vaccine Efforts Still Lagging in Poorer NYC Neighborhoods, N.Y. POST (Mar. 30, 2021), https://nypost.com/2021/03/30/vaccine-efforts-still-lagging-in-poorer-nyc-neighborhoods/.

243 See, e.g., Eugenia C. South, To Combat Gun Violence, Clean Up the Neighborhood, N.Y. TIMES (Oct. 8, 2021), https://www.nytimes.com/2021/10/08/opinion/gun-violence-biden-philadelphia.html (describing large-scale empirical studies demonstrating that greening and cleaning vacant land in segregated, disadvantaged neighborhoods resulted in up to a 29% decline in gun violence and noting qualitative reports that the place-based geographic interventions improved community members’ well-being); James Austin, Todd Clear & Garry Coventry, Reinvigorating Justice Reinvestment, 29 FED. SENT. REP. 6, 13-14 (2016) (describing the original concept of justice reinvestment as “housed within an ideal of social justice”); see also Mack, supra note __ (stating that the New York City Council approved a plan in 2019 to close Rikers Island and established a commission to make recommendations on reinvestment in impacted communities).

244 Orson, supra note __ (explaining how the maps became a guide to targeting resources); see also Groeger, supra note __.

245 Orson, supra note __ (interviewing Cadora, who described the legislators transforming into “urban planners”); id. (noting that Connecticut legislators who examined the maps questioned why the state was spending $6 million a year to return people to prison for parole violations when it could invest in the social and economic well-being of the neighborhood); see also Gonnerman, supra note __ (noting that Connecticut changed its
safety agenda that Cadora and Susan Tucker, the founding director of OSI’s After Prison Initiative, coined “justice reinvestment.” The 2003 proposal—divestment of monies from prisons and targeted investment in million-dollar blocks—was initially considered a “fantasy scenario.” But the initiative soon gained momentum and attracted broad bipartisan support.

In response to initial success by states piloting the model, the Justice Department teamed up with Pew Charitable Trusts in 2010 to launch the Justice Reinvestment Initiative (“JRI”). JRI states, however, have not made significant progress to reduce prison populations. They have instead channeled reinvestment largely into law enforcement and criminal law agencies, including community corrections, with virtually no neighborhood investment, “stripp[ing] [justice reinvestment] of its core purpose.” As scholars and advocates have argued, one “key but missing element” of justice

spending priorities; id. (reporting that Louisiana’s governor requested even more maps); MacIntyre, supra note __ (interviewing Cadora, who stated that New York legislators shifted from tough- or soft-on-crime rhetoric to “What are we going to do about Bed[ford]-Stuy[vesant]?” (a neighborhood in Brooklyn)); Austin et al., supra note __, at 24-26 (discussing how incarceration mapping helped states develop ideas for shifting spending).

246 Tucker & Cadora, supra note __, at 2 (“The goal of justice reinvestment is to redirect some portion of the $54 billion America now spends on prisons to rebuilding the human resources and physical infrastructure — the schools, healthcare facilities, parks, and public spaces — of neighborhoods devastated by high levels of incarceration.”).

247 Id. at 2, 4 (stating that the initiative seeks community-level solutions); Gonnerman, supra note __; see also Ed Chung & Betsy Pearl, How to Reinvest in Communities When Reducing the Scope of Policing, CENTER FOR AMERICAN PROGRESS (July 29, 2020).

248 Chung & Pearl, supra note __; Austin, Clear & Coventry, supra note __, at 7.

249 Chung & Pearl, supra note __; Justice Reinvestment Initiative (JRI), BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE (2012). JRI is a multi-million dollar federal grant program that provides funding to state, local and tribal governments to reduce corrections spending and invest savings in evidence-based strategies to enhance public safety. See id.; Chung & Pearl, supra note __.

250 Austin et al., supra note __, at 16; Chung and Pearl, supra note __ (stating that thirty-five states have participated in JRI); Austin, Clear & Coventry, supra note __, at 6, 11 (“More than half the states have engaged in justice reinvestment activities. When we compare their collective progress on prison population reduction to the non-JRI states, there is no meaningful difference.”); id. at 14 (expressing concern that justice reinvestment, as practiced to date, may have helped to institutionalize high rates of imprisonment).

251 Austin et al., supra note __, at 4, 6, 10 (“The lack of targeted reinvestment in high incarceration communities is probably the most glaring weakness of JRI.”); id. at 8, 20 (arguing that programmatic initiatives, such as substance abuse treatment and in-prison and re-entry services, while laudable, cannot alone produce meaningful reductions in prison populations); Austin, Clear & Coventry, supra note __, at 6, 11-13 (describing a strong literature on the long-term social and economic benefits of community investments but noting that JRI restricts states to investments in “proven” strategies with speedy crime reduction outcomes); Jeremy Welsh-Loveman & Samantha Harvell, Justice Reinvestment Initiative Data Snapshot: Unpacking Reinvestment, URBAN INSTITUTE 1-2, 7 (2018).
reinvestment is an organized, sustained demand for prison reductions and neighborhood re-investment rooted in the long-term interests, priorities and visions of local communities. Scholars have argued that JRI will not achieve long-term and continuing reductions in prison populations absent early partnerships with local officials, grassroots leaders and residents to develop a decarceral strategy responsive to the needs of those most affected.

The Think Tank’s animating goals were to reorient the criminal legal system to address social and economic problems. As scholars have shown, without enabling such transformative change, initiatives, like JRI, that are motivated by cost-cutting largely preserve the status quo and threaten to entrench carceral practices. Perhaps more overlooked is that both the justice reinvestment concept, and scholars and advocates who criticize the formalized JRI for departing from that concept, do not explicitly consider people in prison—whose circumstances are the ostensible focus of community investments—among the “residents” who might have valuable locally-tailored strategies for stronger and safer neighborhoods. I raise these shortcomings to bring a paradox into focus: new ways of thinking ushered in by people in prison exclude people in prison from those new ways of thinking. People in prison developed a heightened understanding of a

252 See Austin et al., supra note __, at 4-5, 8, 19; see also Tucker & Cadora, supra note __, at 4 (“The solution to public safety must be locally tailored and locally determined.”).  
253 See Austin et al., supra note __, at 4, 8, 19, 25 (noting that a lasting reduction on crime depends on efforts to revitalize high incarceration neighborhoods). The failure to reinvest monies into social justice, health and infrastructure for communities “is a symptom of [JRI’s] failure to meaningfully engage these communities in the first place.” Chung and Pearl, supra note __. As a result, JRI reinvestment strategies have reflected the priorities of state policymakers. Id. (advocating for community control over redirected investments); see also Tucker & Cadora, supra note __, at 5 (envisioning localities making their own decisions on how to spend reallocated dollars).  
254 Greaves, supra note __; see also McLeod, Beyond the Carceral State, supra note __, at 706 (arguing that decarceration requires more transformative visions that reorient the state and the law “from punitive to social ends”).  
255 See McLeod, Beyond the Carceral State, supra note __, at 665, 670-71 (describing decarceration driven primarily by cost-cutting as “neoliberal penal reform”); Gottschalk, supra note __, at 5 (“[M]ounting budgetary and fiscal pressures will not be enough on their own to spur cities, counties, states, and the federal government to make deep and lasting cuts in their incarceration rates and to address the far-reaching political, social and economic consequences of the carceral state.”).  
256 See, e.g., Tucker & Cadora, supra note __, at 5 (advocating to “mobilize people returning home from prison” to join with other community members to rebuild and redesign the neighborhood, but in a post-release context); Austin et al., supra note __, at 4, 21 (discussing role of local stakeholders and “residents” in discussions about reinvestment); id. at 25 (highlighting a state that gave “scant attention” to “which kinds of investments might best improve the circumstances of people returning to the neighborhoods so vividly mapped in [million dollar blocks]”).
problem that has plagued them and confounded scholars, policymakers and
advocates, but are disregarded as collaborators, let alone thought leaders, in
developing a heightened understanding of its solutions. This simultaneous
use and disregard—taking their finished research but ignoring the potential
on the inside for the unfinished—reproduces the very ideology that the Think
Tank upended. Making tremendous use of the Green Haven study but
discounting the implications that its intellectual formulation and vision for
community-specific investment came from “inside the bowels of the prison
system” turns a blind eye to the possibilities that people in prison can
generate valuable or even better interventions than traditional “experts.”

Justice reinvestment, as practiced, in this way simultaneously
recognizes and ignores that substantial numbers of residents in million dollar
blocks are in prison. This is perhaps not surprising because people in prison
are routinely excluded from American deliberative processes. But when
large constituencies in high-incarceration neighborhoods are, by definition,
icarcerated, and successful reinvestment in their neighborhoods is rooted in
developing the visions of local constituencies, this omission is consequential.

This missing element is crucial for another reason: neighborhoods
hurting from poverty and criminalization have been chronically deprived of
role models who succeeded in or outside the community, in part because
generations of leaders from Black and Brown communities were sent to
prison. Emboldening neighborhood-specific idea-generation on the inside

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257 SNS, supra note __, at 6. “[Decades] before the emergence of the Justice
Reinvestment concept, Eddie [Ellis and others in Green Haven prison] delineated the
neighborhoods that fill the cells of [New York]’s prison system and raised [their] voice in
demand for an investment in those very communities.” Clinton Lacey, former Deputy
Comm’r, New York City Dep’t of Probation, A Memorial for Edwin “Eddie” Ellis, at 12-
13, CENTER FOR NU LEADERSHIP ON URBAN SOLUTIONS (Sept. 12, 2014),
https://www.nuleadership.org/assets/downloads/Hyperlink_EddieEllisBio_EEmemorialPro-
gramFINAL.pdf [hereinafter Ellis Memorial].

258 Cf. Goodman and Smith, supra note __, at 103-04 (interviewing Ellis, discussing the
next generation of the Think Tank and ideas generated in lifer’s groups in other prisons
around community safety); Burton, supra note __, at 37 (stating that “the Think Tank’s
activism inspired others within the prison system” and that “[t]oday there is an entire
constellation of organizations that function within and outside of the New York State Prisons
system [including a recent generation of activists] and many of them trace their political-
intellectual genealogy to Attica by way of the Think Tank”).

259 See WARD CHURCHILL & JIM VANDER WALL, AGENTS OF REPRESSION: THE FBI’S
SECRET WARS AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN
MOVEMENT 60-66, 257 (2002) (documenting Black and tribal community leaders who were
imprisoned in the 1960s and 1970s as part of the FBI’s covert and targeted campaign
(COINTELPRO) to decimate the Black Panther Party, the American Indian Movement and
other freedom movements to prevent their ideas from influencing youth); see also Ta-Nehisi
Coates, The Black Family in the Age of Mass Incarceration, THE ATLANTIC (Oct. 2015),
is tied, therefore, not only to the successful transition of people returning home but also to the success of the community itself. If community leaders are eventually coming out of our prisons, then igniting, developing and investing in their talent and visions for community-driven safety is an overlooked form of investing in the health of the communities to which they will return.

Indeed, the Think Tank envisioned that people in prison would play a role in community-specific investment because their “futures [we]re tied up with those communities.”260 This was not just a reference to back-end or in-prison programming, but to tightening the relationship between people in prison and their neighborhoods.261 Because 95% of people in prison will return to their home communities, the study group insisted that “what we do in the prisons can’t be done in the abstract, removed from these neighborhoods and their Afrocentric and Latino cultures.”262 Their insight to enhance this connection remains unfinished.

https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/ (describing the “American tradition of criminalizing Black leadership” well before COINTELPRO); Widener, supra note __, at 49 (indicating that COINTELPRO used the legal system to remove people with “undesirable political views” into prison); Eugenia C. South, If Black Lives Really Matter, We Must Invest in Black Neighborhoods, WASH. POST (Mar. 16, 2021), https://www.washingtonpost.com/opinions/2021/03/16/black-neighborhoods-parks-safety/ (stating that “mass incarceration extracts resources and talent from Black communities”); Giovannitti, A Conversation with Larry White, supra note __ (“We didn’t have models of people who made it outside the community.”) (quoting Larry White). The incarceration of leaders of color has persisted over the decades, though the connection is “not [always] immediately legible as political.” Burton, supra note __, at 4-6 (stating that imprisoning Panthers facilitated the emergence of revolutionary consciousness in prisons); Greaves, supra note __ (interviewing Eddie Ellis, who projected that in the 21st Century, Black and Latinx community leaders will come out of the universities and prisons); ASSATA SHAKUR, ASSATA: AN AUTOBIOGRAPHY 52 (1987) (“Black revolutionaries do not drop from the moon. We are created by our conditions. Shaped by our oppression. We are being manufactured in droves in the ghetto streets, places like attica, san quentin, bedford hills, leavenworth, and sing sing. They are turning out thousands of us.”); Ben Brazil, Ferin Kidd Went From Prison to Fighting for Black Voices in Orange County, L.A. TIMES (July 8, 2020), https://www.latimes.com/social/daily-pilot/entertainment/story/2020-07-08/erin-kidd-went-from-prison-to-fighting-for-black-voices-in-orange-county (profiling community activist in Orange County, California who first had access to Black male role models in prison).

260 Burton, supra note __, at 153 (quoting Ellis at 1990 Green Haven Seminar).

261 See Clines, supra note __ (noting that Ellis taught classes in the seven neighborhoods while on work release).

262 Clines, supra note __ (quoting Ellis). The Think Tank submitted a proposal to the legislature to require housing, education and crime-prevention duties as a condition of parole and to receive community development training in prison. Id. (describing classes by Ellis encouraging people in prison to become creatively involved in community interventions);
Of course, most decarcal ideas seeded in prison will be unfinished; the status and isolation of people in prison deprives them of resources, power, access, credibility and significance to comprehensively advance, let alone implement, their visions. Allegra McLeod has argued that the unfinished quality of alternatives to criminal law reform is not a flaw but “a source of critical strength and possibility.”263 Aspirational ideas to reduce reliance on incarceration can transform into more conceivable, and even essential, possibilities for change.264 As organizer and abolitionist Mariame Kaba stated about “invest-divest,” the once-obscure concept popularized in 2014 by the Movement for Black Lives, “[Eddie Ellis] made it possible for us to think that thought.”265

Widener, supra note __, at 51; Ellis, Non-Traditional Approach, supra note __, at 99, 105 (advocating for collective action between people in prison and the community); Goodman & Smith, supra note __, at 104 (interviewing Ellis, who stated that “what takes place in [the prison] shapes what takes place in the community”). Indeed, other people in prison have expressed a similar ethos. See Gimbel & Craig, supra note __, at 1506 (discussing an initiative based inside prison and created by people in prison “that seek[s] to stem cycles of violence and empower communities devastated by mass incarceration by bridging the gap between prisoners and the communities to which they will eventually return”); id. at 1502 (“Since the majority of incarcerated gang members will return to their communities, any sensible approach to reducing the gang threat must start behind prison walls.”).

263 Allegra M. McLeod, Confronting Criminal Law’s Violence: The Possibilities of Unfinished Alternatives, 8 HARV. UNBOUND 109, 113-14, 123 (2012-2013) [hereinafter McLeod, Unfinished Alternatives] (calling on law scholars to engage seriously with partial, aspirational and in-process alternatives to conventional criminal law administration and explaining that the unfinished character holds promise to produce new conceptual approaches and “new ways of thinking and speaking about criminal law”); see also THOMAS MATHIESEN, THE POLITICS OF ABOLITION: ESSAYS IN POLITICAL ACTION THEORY 13 (1974) (“the alternative lies in the unfinished, in the sketch, in what is not yet fully existing”).

264 See McLeod, Unfinished Alternatives, supra note __, at 114, 119-20, 132 (“[U]nfinished alternatives may make it feasible for fundamentally distinct approaches to become incrementally conceivable, workable, and enforceable, and for new voices to gain increased visibility—producing an opening first at the level of ideas, then within our institutions, and perhaps ultimately within locations of power and in our criminal law and politics.”).

265 MARIAME KABA, WE DO THIS ’TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE 150-51 (2021) (“Eddie [Ellis] was [constantly] talking about [invest/divest] in the early 2000s. . . . [in] room after room after room”); see also Goodman & Smith, supra note __, at 103 (interviewing Ellis, who was able to disseminate the concept because he was released from prison, who emphasized that the model was formulated and developed not by him alone but by many members of the Think Tank who remained inside); Alexandra Marks, N.Y. Prison Religion Program Helps Turn Lives Around, CHRISTIAN SCI. MONITOR (Mar. 11, 1997), https://www.csmonitor.com/1997/0311/031197.us.us.2.html (stating that in the mid-1990s Ellis was “spearheading a state-wide effort to urge [New York] Governor [George] Pataki to take the $21 million dollars slated to build three new jails and instead put it into neighborhood services”).
2. **Rethinking Violence**

Developing these unfinished ideas holds potential to progress toward more transformative, long-term decarceral aims. In this Section, I present one example of how an organic outside-inside conversation can spark this innovation.

Empirical research has shown that non-carceral community-driven violence interventions can dramatically reduce involvement in gun and extreme violence.\(^{266}\) Recognized as a pioneer in the violence reduction field, Eddie Bocanegra today “runs one of the most innovative violence-prevention programs in the country.”\(^{267}\) His initial vision for a novel intervention, which laid the foundation for his current work, was spurred by a generative conversation in prison.\(^{268}\)

In 2005, twenty-nine-year-old Bocanegra, who had been in prison since age eighteen, received a visit from his brother Gabriel.\(^{269}\) A decorated Army veteran, Gabriel had just returned from his second tour in Iraq.\(^{270}\) Gabriel struggled with combat-related trauma and advised Bocanegra that he,

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\(^{266}\) See, e.g., Roge Karma, *How Cities Can Tackle Violent Crime Without Relying on Police*, VOX (Aug. 7, 2020), [https://www.vox.com/21351442/patrick-sharkey-uneasy-peace-abolish-defund-the-police-violence-cities](https://www.vox.com/21351442/patrick-sharkey-uneasy-peace-abolish-defund-the-police-violence-cities) (“We now have a pretty well-established base of evidence telling us that residents and local organizations are at least as effective as the police in controlling violence”) (quoting sociologist Patrick Sharkey); *id.* (emphasizing that community groups need funding equal to what police would receive to be effective); Patrick Sharkey et al., *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime*, 82 AM. SOC. REV. 1214, 1234 (2017); Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer*, VERA INST. OF JUSTICE 5 (July 2017) (finding that increased incarceration has no effect on violent crime and in some instances may increase crime in neighborhoods with concentrated incarceration); Amanda Alexander & Danielle Sered, *Making Communities Safe Without the Police*, BOSTON REVIEW (Nov. 1, 2021), [https://bostonreview.net/articles/making-communities-safe-without-the-police/](https://bostonreview.net/articles/making-communities-safe-without-the-police/) (“In cities and towns across the country, people have produced safety in ways the criminal punishment system has not and cannot.”); David Alan Sklansky, *Addressing Violent Crime More Effectively*, BRENNAN CENTER (Sept. 27, 2021), [https://www.brennancenter.org/our-work/analysis-opinion/addressing-violent-crime-more-effectively](https://www.brennancenter.org/our-work/analysis-opinion/addressing-violent-crime-more-effectively).


\(^{270}\) Golden, *supra note ___*; Cornish, *supra note ___.}
too, was experiencing the traumatic effects of violence. Along with the stabbings and suicides that occurred in prison, and the violence that the structure of incarceration itself inflicted, Bocanegra had been exposed to household violence, violence unfolding in school, and fatal shootings during his childhood in Little Village, Chicago. “Eddie, actually there were some nights that growing up as a kid living in Little Village was probably worse or equally as bad as Iraq,” Gabriel said.

Bocanegra observed parallels between his brother’s reaction to violence on the battlefield, his own reaction to violence in the neighborhood, and a hypervigilance among people surrounding him in prison who committed, witnessed and survived violence. Gazing across the visit room table at the Bronze Star on Gabriel’s uniform, he wondered how Gabriel’s acts of violence were valorized.

Sparked by his brother’s wisdom, and observing people in prison, Bocanegra began to develop a different understanding of gun violence that has since informed the violence-prevention field. After fourteen years in prison, he was released in 2008. Through a local church, Bocanegra mentored kids who were in the same street gangs in which he was involved at a young age. He was then recruited to join CeaseFire, now known as Cure Violence, a street outreach program that intervened on the spot to mediate and prevent heated disputes from escalating into violence, but the model was limiting. Reflecting on his meeting with Gabriel, he began to

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272 See Cornish, supra note __; Golden, supra note __.
273 Cohen, supra note __.
274 See Golden, supra note __.
275 Golden, supra note __.
276 Cohen, supra note __; Golden, supra note __. In retaliation for a shooting that left his friend paralyzed, eighteen-year-old Bocanegra fatally shot another eighteen-year-old, whom he thought was in a rival gang. Golden, supra note __; Katie Mingle, After Committing Murder as a Teen, a Chicago Man Dedicates His Life’s Work to His Victim, WBEZ CHICAGO, https://www.wbez.org/stories/after-committing-murder-as-a-teen-a-chicago-man-dedicates-his-lifes-work-to-his-victim/8b74459e-b1f6-4227-8ac6-056fa88e7ea6. Bocanegra was convicted of murder and sentenced to 29 years in prison. Cohen, supra note __.
277 Golden, supra note __; Telephone Interview with Eduardo Bocanegra, Senior Director, READI Chicago (Nov. 11, 2021).
278 Golden, supra note __. Although Cure Violence, or the “Interrupters Model,” is often hailed as the model of violence intervention, research has shown mixed results. Cure Violence (Chicago, Illinois), YOUTH.GOV, https://youth.gov/content/cure-violence-chicago-illinois; Karma, supra note __; Ashley Luthern, Gun Violence as a Public Health Issue: How Does the “Cure Violence” Interrupter Model Work?, MILWAUKEE JOURNAL SENTINEL
think about new ways to conceptualize urban youth, whom the criminal law and society labeled as “thugs.”

Growing up in poor, disinvested communities, with no opportunity or mobility, in families struggling with substance abuse and domestic violence, Bocanegra understood that he and others in prison carried chronic trauma from an early age. This constant exposure to trauma, he began to understand, fueled neighborhood violence. Joining a gang meant protection and ownership over their lives. Youth found social capital in the streets, only to escape near-death shootings, watch loved ones get shot before their eyes, and carry guns to survive. Building a connection to the violence in warfare, Bocanegra began to understand urban youth who lived in communities with high rates of gun violence as “child soldiers,” and the inner-city streets of Chicago as “kind of a combat zone.”

(Sept. 25, 2019),  https://www.jsonline.com/story/news/special-reports/milwaukee-violence/2019/09/25/public-health-how-cure-violence-interrupts-shootings/2390180001/ (explaining that the model takes a public health approach, treating violence as a contagion, and “pay[s] and train[s] trusted insiders of a community to anticipate where violence will occur and intervene before it erupts.”). Turnover is high. See José Santos Woss, Violence Interrupters: A Key Element of Justice Reform, FRIENDS COMM. ON NAT’L LEGISLATION (Dec. 9, 2021),  https://www.fcnl.org/updates/2021-12/violence-interrupters-key-element-justice-reform (noting that the model can re-traumatize interrupters); see also Gimbel & Craig, supra note __, at 1520 (arguing that Cure Violence “does not pretend to offer solutions to the underlying social problems giving rise to pervasive violence in the first place”).

279 See Golden, supra note __.
280 See id.
281 See Golden, supra note __; Eddie Bocanegra, Erica Ford & Mike McBride, There’s a Proven Way to Reduce Gun Violence in America’s Cities, We Just Need to Fund it, TIME (July 8, 2021),  https://time.com/6078496/reduce-gun-violence-americas-cities/ (discussing this intergenerational cycle of trauma and violence); Erica J. Adams, Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense, JUSTICE POLICY INST. 1 (July 2010) (stating that between 75 and 93 percent of youth entering the juvenile justice system each year have experienced some degree of trauma).

282 See Golden, supra note __ (interviewing Bocanegra, who described becoming involved in street gangs at an early age for safety purposes, including to protect his siblings).


Any effort to interrupt this cycle of trauma and violence and equip adolescents with some tools to begin to heal would require young people to recognize signs of their own trauma and its roots in the exposure to violence.\textsuperscript{285} Understanding the barriers to youth engagement, Bocanegra thought war veterans might be uniquely qualified to mentor young people in CeaseFire zones.\textsuperscript{286} He reasoned that neighborhood youth joined gangs, and young adults enlisted in the armed forces, for a similar reason: identity.\textsuperscript{287} To check his bias, he administered an informal survey to a dozen urban youth.\textsuperscript{288} Inviting them to rank their top three choices, the survey asked, “Who do you respect?” followed by twenty or thirty options: firefighters, police, teachers, coaches, doctors, lawyers, veterans, street gangs and more.\textsuperscript{289} The top two responses were, overwhelmingly, veterans.\textsuperscript{290} He debriefed the kids, who explained that veterans, too, wore insignia, carried guns, went on missions, had ranks, and had a strong sense of brotherhood and belonging.\textsuperscript{291}

In 2013, the YMCA of Metropolitan Chicago recruited Bocanegra, who was pursuing a master’s degree at the University of Chicago, to lead its new Youth Safety and Violence Prevention Program.\textsuperscript{292} He shared his

\begin{footnotes}
\item[285] See Golden, supra note __.
\item[286] Rhee, Veterans, supra note __; Michelle Miller, Urban Warriors: Stemming the Tide of Street Violence, CBS NEWS (July 31, 2016), https://www.cbsnews.com/news/urban-warriors-stemming-the-tide-of-street-violence-2/. Angela Y. Davis has described the “striking similarities in the human populations of [the military and the prison].” See DAVIS, ABOLITION DEMOCRACY, supra note __, at 36 (“[M]any young people—especially young people of color—who enlist in the military often do so in order to escape a trajectory of poverty, drugs, and illiteracy that will lead them directly to prison.”).
\item[287] Telephone Interview with Bocanegra, supra note __; Golden, supra note __ (interviewing Bocanegra, who stated that, with few employment opportunities and role models in the community upon which to model his future, identity formation was key to his involvement with street gangs).
\item[288] Telephone Interview with Bocanegra, supra note __.
\item[289] Telephone Interview with Bocanegra, supra note __; Taylor Brown, Urban Warriors: The Unexpected Pair, COMMUNITY REC MAGAZINE (Jan. 8, 2021), https://communityrecmag.com/urban-warriors-the-unexpected-pair/; Rhee, Veterans, supra note __; Cornish, supra note __.
\item[290] Telephone Interview with Bocanegra, supra note __; Brown, supra note __.
\item[291] Telephone Interview with Bocanegra, supra note __; Rhee, Veterans, supra note __; Cornish, supra note __.
\item[292] Telephone Interview with Bocanegra, supra note __ (stating that post-release, he was a community organizer, through which he built connections with state representatives, and the YMCA was familiar with his community work); Nissa Rhee, Healing is Prevention, U. OF CHICAGO MAG. (May-June 2015), https://mng.uchicago.edu/law-policy-society/healing-prevention# [hereinafter Rhee, Healing] (noting that Bocanegra was featured in the 2011 documentary, The Interrupters); see generally THE INTERRUPTERS (Kartemquin Films 2011).
\end{footnotes}
concept for a youth violence intervention and an evidence base to cement it.293 The next year, the YMCA, in collaboration with the Adler School of Professional Psychology, launched Urban Warriors, a dynamic weekly mentoring program that paired veterans who served in Iraq or Afghanistan with adolescents from Chicago neighborhoods with the highest levels of poverty and violence.294 The program was piloted in Little Village, Bocanegra’s childhood neighborhood.295

Feeling an instant bond, the veterans shared how experiencing violence affected them, providing guidance on processing and responding to trauma.296 The teens gradually opened up: some expressed being on high

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293 Telephone Interview with Bocanegra, supra note__ (stating that he deepened his understanding and vocabulary about the effects of trauma on brain development in children through his course and community work). After his release, Bocanegra, who obtained his GED in prison, attended college and graduate school where he pursued degrees in social work and he began to incubate his idea with social scientists who studied trauma. Id. Skeptical of his idea, the YMCA performed more formal pre-assessments of its youth. Id. The results echoed the findings in Bocanegra’s informal surveys. Brown, supra note___. In fact, combat veterans and urban youth had far more in common. See Lois Beckett, The PTSD Crisis That’s Being Ignored: Americans Wounded in Their Own Neighborhoods, PROPUBLICA (Feb. 3 2014), https://www.propublica.org/article/the-ptsd-crisis-thats-being-ignored-americans-wounded-in-their-own-neighbor (stating that research shows that people in neighborhoods hurting from violence develop post-traumatic stress disorder (“PTSD”) at rates comparable to, or even higher than, war veterans); id. (citing research that people with PTSD may be more likely to carry a weapon to “restore feelings of safety”); Jill Tucker, Children Who Survive Urban Warfare Suffer From PTSD, Too, SAN FRANCISCO CHRONICLE (Aug. 25, 2007), https://www.sfgate.com/education/article/Children-who-survive-urban-warfare-suffer-from-2524472.php#ixzz2KKiW4CXq (citing research that up to one third of children in neighborhoods with high violence have PTSD, nearly twice the rate of troops returning from war zones in Iraq).

294 Brown, supra note__; Cornish, supra note___. The YMCA identified youth from the juvenile system and housing projects, targeting those in gangs or on probation, and received referrals from the courts and schools. Sweeney, supra note__; Rhee, Healing, supra note___. Up to 90 percent of the youth living in the areas that Urban Warriors served were exposed to serious and chronic forms of violence. Rhee, Veterans, supra note__ (stating that some youth experienced physical or sexual abuse and some were homeless). The military veterans Bocanegra recruited grew up in the same neighborhoods as the youth. Brandis Friedman, Urban Warriors, WTTW CHICAGO (Mar. 18, 2015), https://news.wttw.com/2015/03/18/urban-warriors. Some were once involved with gangs and some were not much older than their mentees. Miller, supra note__; Rhee, Veterans, supra note__ (stating that veterans and youth came together on a weekly basis, for sixteen weeks, for team building, talking, playing games, field trips, and teaching strategies for coping with trauma and loss).

295 Sweeney, supra note__.

296 Rhee, Veterans, supra note__; Sweeney, supra note__ (stating that the veterans “kn[e]w well the struggle of surviving a dangerous place”); Cornish, supra note__; Miller, supra note___. The program provided a sense of purpose that veterans struggle to find, giving
alert after a shooting, hearing a loud vehicle drive by, or seeing someone selling drugs on the street. This hypervigilance was common among veterans returning home. A pre-assessment instrument administered by the University of Chicago found that many youth in the pilot program had more symptoms of PTSD than their veteran mentors. Since completing the program, some teens expressed a greater sense of self-worth, were no longer involved in gangs, returned to high school, and spoke of plans to go to college.

The innovative research-based model gained national attention. It was “on the cutting edge of what emerging science was telling us about the effects of trauma.” The MacArthur Foundation awarded the program a $400,000 grant. In 2015, then-mayor of Chicago Rahm Emanuel

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297 Cornish, supra note __; Rhee, Veterans, supra note __ (stating that of the 435 people killed in Chicago in 2014 (the year the program launched), 46 percent were between the ages of fifteen to twenty-four).

298 Cornish, supra note __; Rhee, Veterans, supra note __ (discussing “chronic hyperarousal,” a severe symptom of PTSD).

299 Telephone Interview with Bocanegra, supra note__; Golden, supra note __; see also Tucker, supra note __ (citing research that up to one third of children in neighborhoods with high violence have PTSD, nearly twice the rate of troops returning from war zones in Iraq; Leslie Morland, et al., 31 PTSD RESEARCH QUARTERLY 1, U.S. DEP’T OF VETERANS AFFAIRS (2020), https://www.ptsd.va.gov/publications/rq_docs/V31N3.pdf (stating that decades of research has found “a robust relationship between the incidence of PTSD [in veterans] and elevated rates of anger, aggression and violence”).

300 Rhee, Veterans, supra note __; Miller, supra note __; Sweeney, supra note __; Joseph Darius Jaafari, An Unlikely Bond Between Chicago Teens and Veterans is Saving Lives in the City, NATIONSWELL (Aug. 24, 2018), https://nationswell.com/chicago-veterans-teens/ (stating that outcomes have been mostly anecdotal).

301 Rhee, Veterans, supra note __.

302 Rhee, Veterans, supra note __ (quoting Professor Deborah Gorman-Smith, director of The Chicago Center for Youth Violence Prevention). At the time, a growing body of scientific literature showed that children who were exposed to violence and endured trauma before adolescence struggled to learn in school and had “measurably different” brains and brain function than those who did not experience high levels of trauma. Avi Asher-Schapiro, Should Growing Up in Compton Be Considered a Disability?, VICE (Oct. 20, 2015), https://www.vice.com/en/article/d3933m/should-growing-up-in-compton-be-considered-a-disability (reporting on a lawsuit in which families and teachers argued that trauma was a disability that the Compton, California school district had failed to accommodate).

announced his intent to secure funding to extend the program to “every part of the city of Chicago.” Bocanegra was invited to speak to the Centers for Disease Control and Prevention about the program, and the mayor’s office invited him to speak to members of the Obama White House.

The innovation disrupted the prevailing narrative on neighborhood violence, shaping new ideas and inspiring a wide array of stakeholders to think differently about—and value—urban youth. Igniting his thinking in prison accelerated Bocanegra’s leadership in the polity upon his release, paving a path to forge partnerships and open new ways to understand—and reduce—violence. His work would soon usher in new collaborations.

Following Chicago’s surge in gun violence in 2016, the University of Chicago Crime Lab drew from rigorous research to develop a concept for a violence intervention: combining cognitive behavioral therapy (CBT) with paid transitional employment for people at the highest risk of gun violence. The lab brought the idea to Heartland Alliance, an anti-poverty and human rights organization. Partnering with local community-based organizations, Heartland launched “READI Chicago,” an initiative that connects people at the highest risk of gun violence in Chicago to eighteen months of subsidized transitional employment, paid group CBT sessions, and wraparound support services.

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304 Rhee, Veterans, supra note __. Since its formation, Urban Warriors has served more than 400 youth across genders in multiple Chicago neighborhoods. Brown, supra note __.
305 Rhee, Veterans, supra note __; Telephone Interview with Bocanegra, supra note __.
306 Rapid Employment and Development Initiative (READI)-Chicago, RESULTS FOR AMERICA (Dec. 9, 2020), https://catalog.results4america.org/program/readi-chicago/readi-connecting-chicagos-highest-risk-youth-to-transitional-jobs-support-services-and-cognitive-behavioral-therapy [hereinafter READI, Results for America] (stating that Chicago experienced a 58% increase in homicides and a 43% increase in non-fatal shootings in 2016); Chicago Ends Year With 762 Killings, the Most in 2 Decades, ASSOC. PRESS (Jan. 1, 2017), https://www.nytimes.com/2017/01/01/us/chicago-2016-killings.html (noting that the bulk of the shootings were in five neighborhoods); MAX KAPUSTIN, ET AL., GUN VIOLENCE IN CHICAGO, 2016, U. CHICAGO CRIME LAB 13 (Jan. 2017) (stating that Black men ages 15 to 34 are four percent of Chicago’s population but over 50% of its homicide victims).
307 READI, Community-Based Approach, supra note __.
308 READI CHICAGO: A COMMUNITY-BASED APPROACH TO REDUCING GUN VIOLENCE, U. CHICAGO CRIME LAB 2 (Sept. 2021) [hereinafter READI, Community-Based Approach] (stating that participants have access to an additional six months of coaching, support services and CBT sessions to help transition to unsubsidized employment). Press Release, Heartland Alliance Announces Innovative Program Designed to Reduce Gun Violence and Provide Economic Opportunity for Those at Highest Risk of Gun Violence Involvement (June 8, 2018) [hereinafter Press Release, Heartland Alliance] (stating that READI is funded primarily through private philanthropy). The CBT sessions are designed to help participants cope with trauma and learn techniques for dealing with stressful situations to help avoid violent confrontations. Kotlowitz, supra note __; Working Together Toward Safer
In 2017, Heartland recruited Bocanegra to build, lead and implement READI.\(^{309}\) Bocanegra hired a team whose members were predominantly from the same neighborhoods as prospective participants to make recommendations on outreach and engagement.\(^{310}\) Barriers were considerable. The population READI serves—those most likely to shoot or be shot—had little to no traditional work histories, were not connected to existing programs or social services, or were homeless.\(^{311}\) Few, if any, public institutions served READI’s target population.\(^{312}\)

Despite many obstacles, fifty-five percent of individuals who were offered READI participated, an “incredible” success rate considering they “have been disappointed so many times in their lives by different social systems.”\(^{313}\) The levels of violence experienced by READI participants are staggering. Ninety-six percent have been arrested and 80% have been victims of violence.\(^{314}\) Of the individuals referred, over one-third had been shot.\(^{315}\)

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\(^{309}\) READI, Results for America, supra note __.


\(^{311}\) See Patrick Smith, Anti-violence programs are working. But Can They Make a Dent in Chicago’s Gun Violence?, WBEZ CHICAGO (Nov. 1, 2021), https://www.wbez.org/stories/chicago-anti-violence-efforts-succeed-but-shootings-rise/07af00be-03ae-4a4d-adba-71e688301a60 (stating that the only public institution to which many in the target population had any sustained connection was the criminal legal system). READI identifies prospective participants through referrals from community partner organizations, re-entry from jails and prisons, and a risk-assessment tool developed by the Crime Lab to predict a person’s risk of becoming involved in gun violence. READI, Community-Based Approach, supra note __ at 1-2; READI, Results for America, supra note __; see also Working Together, supra note __, at 8 (noting that participants are predominantly Black men ages 18 to 32); id. at 4-5 (stating that 87% of shooting victims in Chicago in 2016 were 18 and older).

\(^{313}\) Smith, supra note __ (quoting Cornell University Professor Max Kapustin); READI, Community-Based Approach, supra note __ at 2.

\(^{314}\) Working Together, supra note __, at 8, 14.

\(^{315}\) READI, Community-Based Approach, supra note __ at 2.
The average READI participant has been arrested seventeen times. Since its launch, over 800 people have enrolled. READI participants worked 75% of the weeks available to them during in-person programming and are highly engaged.

A randomized control trial to evaluate READI is still in progress, but as of September 2021, READI participants have 79% fewer arrests for shootings and homicides. In June, 2021, President Biden invited Bocanegra to the White House to discuss investing in community-based violence interventions. The next month, Attorney General Merrick Garland and Senator Dick Durbin visited READI Chicago, where the two met with Bocanegra, his partners and READI participants to learn more about the initiative and its outcomes. Other cities across the nation have reached out to discuss adapting READI to their jurisdictions.

II. LOOKING TO THE INSIDE

The preceding Part reveals that people who are incarcerated have generated and found ways to bring about, during their incarceration, ideas
that expand possibilities, incrementally, to move toward a noncarceral state. A range of system and non-system actors continue to rely on these inside moves today to confront the violence of the carceral state. Part II builds on the influence produced by these inside moves by presenting a theoretical account for why it is essential to think alongside people on the inside in the project of decarceration. This Part argues that our current moment demands looking to the inside to promote decarceral futures both in order to stand up to the ideological work of the criminal legal system and further our democracy.

A. Disrupting the Carceral Mindset

The criminal legal system and the polity rarely consider people in prison as agents of change, much less transformative change directed to decarceral ends. The shrouding of this phenomenon is a symptom of incarceration itself. Laying bare this phenomenon—and its concealment—manifests what scholar and activist Angela Y. Davis calls the ideological work of the prison.

Davis observes that “the prison is present in our lives and, at the same time, it is absent from our lives.” As Davis argues, it is difficult to imagine a world without prisons but we are reluctant to think about what takes place in them. Every year the state removes hundreds of thousands of mostly poor, economically, racially and socially marginalized people from their homes and communities, often to remote locations. This de jure

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323 See James Forman, Jr., Locking Up Our Own: Crime and Punishment in Black America 229 (2017) (“I have described mass incarceration as the result of a series of small decisions, made over time, by a disparate group of actors. If that is correct, mass incarceration will likely have to be undone in the same way.”); Renagh O’Leary, Compassionate Release and Decarceration in the States, 107 Iowa L. Rev. 101, 111 (forthcoming 2022) (“Mass incarceration was built piece by piece and must be dismantled the same way.”); Allegra M. McLeod, Prison Abolition and Grounded Justice, 62 UCLA L. Rev. 1156, 1156, 1161, 1239 (2015) (describing abolition as “an aspirational ethic” that entails a “gradual project of decarceration” in which investment in positive, alternative social projects and institutions supplant criminal legal enforcement).

324 Davis, Are Prisons Obsolete?, supra note __, at 16 (stating that the existence of the prison “relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism”).

325 Id. at 15 (2003) (“It is as if prison were an inevitable fact of life, like birth and death.”); see also Decarceration Nation, Episode 106 – David Sklansky, 7:47 (June 7, 2021), https://decarcerationnation.com/106-david-sklansky/ (stating that we have become used to high rates of incarceration and long sentences in this nation and that most people do not see or think of prisons, which are out of sight and located far from major metropolitan centers).

326 Davis, Are Prisons Obsolete?, supra note __, at 15.

327 See Akbar, Abolitionist Horizon, supra note __, at 1805; Beatrix Lockwood & Nicole
segregation produces a banishment from civic life\textsuperscript{328} that exiles people from sight, thought and significance. The prison accomplishes both a material and a symbolic separation.\textsuperscript{329} As Davis describes, the prison “functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are [disproportionately] drawn.”\textsuperscript{330} For meaningful decarceration to occur, it is essential, as Davis states, to attend to this ideological role.\textsuperscript{331} Thinking alongside people in prison is an important step toward resisting and refusing—and, ultimately, unsettling—the ideological work of the prison.

The phenomenon described in the preceding pages remains obscured in part also by a legal profession that sees people in prison largely as clients to save or culprits to cage. If meaningful decarceration requires confronting the ways in which the law and the public think about and understand violence,\textsuperscript{332} it necessarily requires confronting the ways we think—and don’t think—about people in prison. Engaging in collaboration with people on the inside holds promise to transform how the law and the legal profession think about people in prison. Avoiding this collective work means that we really do depend on the divisions created by criminal law to maintain social control.

The ideological work performed by the prison, and the criminal legal system more generally, hides—and the decarceral imaginations in prison reveal—another source of knowledge. Almost all the decarceral moves in Part I—challenging the jury rule, researching the neighborhoods that supply the prison population and reflecting on intergenerational neighborhood trauma that fuels violence—were shaped by close observation and frequent encounters with people in prison. Each intervention, as such, was compelled by circumstances, but the prison served as more than just a site that, by its nature, motivated decarceral moves; the systemic operation of injustice, and


\textsuperscript{329} See \textit{Davis, Freedom is a Constant STRUGGLE, supra note \textsuperscript{328}, at 22 (“The very existence of the prison forecloses the kinds of discussions that we need in order to imagine the possibility of eradicating [violence].”)}.

\textsuperscript{330} \textit{Davis, Are Prisons OBSOLETE?, supra note \textsuperscript{329}, at 16.}

\textsuperscript{331} \textit{Davis, Freedom is a Constant STRUGGLE, supra note \textsuperscript{328}, at 22 (“[W]e have to imagine the abolitionist movement as addressing those ideological . . . issues as well. Not just the process of removing the material institutions or facilities.”)}.

\textsuperscript{332} \textit{See supra notes \textsuperscript{328} and accompanying text.}
the collective operation of punishment, occasioned access to a text in prison—the people locked inside it. That access to systemic injustice generated a deep reflection that produced analysis and action directed toward transformative, decarceral ends. For Duncan it was over-exposure to unexhausted and what appeared to be factually inaccurate split-jury convictions; for Bocanegra it was over-exposure to a hypervigilance that appeared to be rooted in cycles of trauma and violence; for the people in Green Haven it was over-exposure to neighborhood saturation that appeared to be pervasive. This is just a slice of the trends they observed and analyzed in confinement. Collective enclosure with people oppressed by similar economic, social, legal and political circumstances offers another way to think about this phenomenon: the sustained exposure, wisdom to understand the problems that they observed and theorized as structural, resistance to their circumstances and deep humanity created an alchemy to analyze problems differently and to combine theory and action to challenge the enduring narratives that land people in prison.

A serious willingness to entertain strategies for decarceration outside the institutional framework must include finding ways, as equal partners, to think alongside people in prison. To decline to discover and develop decarceral imaginations inside prison walls, particularly after having made tremendous use of the groundbreaking ideas birthed within, enables the prison to continue to lock us into a carceral mindset as we claim to be moving in the direction of a decarceral one.

333 This notion of a “text” is inspired by Jennifer Gordon’s work about the ways in which poor immigrant workers develop strategies for social change. Jennifer Gordon, We Make the Road by Walking: Immigrant Workers, The Workplace Project, and the Struggle for Social Change, 30 HARV. C.R.-C.L. L. REV. 407, 428, 435 (1995) (describing a community-based immigrant workers center that employed popular education techniques pioneered in Latin America by Paulo Freire and in the United States by Myles Horton to “use their own experiences as a text for analyzing the problems that their communities face”); id. at 435 n.85 (“These popular education techniques, rooted in the teaching of literacy, bring together groups of poor and often illiterate people to reflect on their lives, analyze the causes of the problems that they face, and develop group strategies to combat those problems.”); id. at 435-36 (contrasting this approach, “set up to provide group opportunities for reflection that will lead to analysis and action,” with the traditional legal and lawyer-led approach which would have been inadequate to tackling the workers’ needs).

334 See id. at 435.

335 See Widener, supra note __, at 49 (stating that the Think Tank sought to “make sense of the prison experience,” “what they were doing there,” and “the purpose of prison”); Telephone Interview with Mattes, supra note __ (noting that Duncan had access to information that the outside did not because he was “embedded” within the prison diaspora); Email from G. Ben Cohen to author (Dec. 29, 2021) (stating that Duncan brought the “10-6ers” to the attention of Louisiana prosecutors, who were unaware of this longest-serving and forgotten contingent).
On that point, a solidaristic generative process can inspire ideas in people who are confined and people who are free. Aspirational moves on the inside have shaped scholarly trajectory, elevated judicial, political and public consciousness, and awakened new ideas to reckon with our carceral state. An inside-outside process of co-ideation can produce different sources of data and methods of collection and measurement, different ideas about law, community health and root causes of crime, new paths to decarceration that can inform judges, prosecutors, lawmakers, traditional experts and advocates, and rich perspectives on decarceral strategies beyond the limited ideas conceived in law’s perch. Collective envisioning also holds the potential to transform how people in prison think about their own power to make change.

The inside moves described in Part I oriented a wide range of actors toward new ways to think and speak about law, safety, health and society. These moves were not lawyer-led or lawyer-initiated. But it was through collective conversation and investment of time, resources and allyship that the visions shaped and continue to shape long-term and near-term transformation. Given the isolation of carceral constraint, a collective process is essential. Collective imagining enables different understandings to become more visible, creating the potential to build more transformative possibilities. The next Part identifies a gap, and thus an opening, in legal scholarship to pursue this collective challenge.

336 Video Interview with Robert Fullilove, Professor of Clinical Sociomedical Sciences, Columbia University, Mailman School of Public Health (Nov. 5, 2021) (stating that his scholarly career was based on the research and wisdom produced by the Think Tank); Ellis Memorial, supra note __, at 10 (same).
337 Cf. Simonson, Power Lens, supra note __, at 853 (arguing that directly impacted people “might also seek data and information from less traditional sources”); McLeod, Beyond the Carceral State, supra note __, at 658-59 (arguing that even limited initiatives can serve as an opening toward more transformative ends).
338 Cf. Monica C. Bell, Safety, Friendship, and Dreams, 54 HARV. C.R.-C.L. L. REV. 703, 710 (2019) (“The legal scholar’s impulse is to say: Enough description. We know the problem. How are we going to fix it? But ‘we’ do not have a rich understanding of ‘the problem.’”).
339 Cf. Lani Guinier & Gerald Torres, Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements, 123 YALE L.J. 2740, 2786-87, 2790 (2014) (discussing the lawmaking potential of social movements); Gordon, supra note __, at 410, 445-47 (describing the process of creating a theory of social change alongside immigrant workers, whose “daily reality” provided a text to develop a “long-term process of analysis leading to action”).
B. Prison’s AntiDemocratic Paradox

Looking to the inside to envision decarceral futures recalls Mari Matsuda’s famous call to legal scholars to “look to the bottom” as “a new epistemological source.” Matsuda encouraged critical legal scholars to listen to those with the least advantage and study and support the organized struggles and campaigns of people of color who have experienced subordination. Matsuda argued that adopting the perspective of “grass roots philosophers who are uniquely able to relate theory to the concrete experience of oppression,” or what Antonio Gramsci called “organic intellectuals,” can lead to concepts and theories about law that are “radically different from those generated at the top.”

In the over three decades since Matsuda’s seminal article, legal scholars have echoed this demand, recognizing that bottom-up visions and interventions born within grassroots movements and communities marginalized by the system have made a profound impact on the criminal legal system, generate new understandings about the law, present alternate conceptualizations of the problems to be addressed and offer a more expansive, grounded and transformative framework for change.


341 Matsuda, supra note __, at 324-325, 349 (calling on scholars to look to “the actual experience, history, culture, and intellectual tradition of people of color in America”).


343 Matsuda, supra note __ at 325-26, 362, 373 (discussing reparations as a “legal concept generated from the bottom”); Akbar, Ashar & Simonson, supra note __, at 839 (“For decades now, Matsuda has distilled brilliance born within collective struggle.”).

344 See, e.g., Akbar, Radical Imagination, supra note __, at 408, 410, 426, 476, 479 (“Radical social movements are important not simply for what changes they effectuate in law . . . . They articulate harms so pervasive, structural, or intersectional as to make them difficult for legal institutions to recognize let alone redress. They offer alternative frameworks for the way forward . . . . Their visions for social change, the way they point to the limits of what formal legal channels can handle or hear, can be profound.”); id. at 425 (discussing the importance of “invest[ing] in the[ ] creative potential [of social movements] to transform the state”); Akbar, Abolitionist Horizon, supra note __, at 1837-46 (explaining why legal scholars should take abolitionist organizing seriously); Simonson, The Place of “the People,” supra note __, at 266-70, 287-97 (describing bottom-up forms of communal contestation and their effect on everyday criminal adjudication); Simonson, Democratizing Criminal Justice, supra note __, at 1613, 1623 (calling for bottom-up forms of agonistic participation in criminal justice policymaking); McLeod, Beyond the Carceral State, supra
Articulating the concept of “movement law,” Amna Akbar, Sameer Ashar and Jocelyn Simonson have encouraged scholars to turn beyond studying social movement critiques to co-creating ideas and scholarship with grassroots struggles.345

This work is inspiring, transformative, and critical. I envision the idea of looking to “the inside” as sharing theoretical and solidaristic space with looking to “the bottom.” Looking to the inside is, in many ways, bottom-adjacent: people in prison are typically removed from communities on the bottom. I note, however, two important distinctions in looking to the inside in the manner proposed in this Article. I raise these distinctions not to distance both moves, which I see as complementary, but to argue why the moves, which share many parallel aims, should nonetheless be theorized separately.

First, when legal scholars study, engage and bring critical perspectives from “the bottom” into scholarly discourse, the focus is mainly on constituencies in the body politic, that is, constituencies that are “free.”346

See supra note __, at 705 (arguing that the “ambitious visions of decarceration [from movement actors] . . . offer a set of transformative aspirational ideas which might orient current reform efforts, rescuing more moderate criminal-law reform from its weakest and most disappointing possible futures”); see also Guinier, supra note __, at 47 (describing the “often undervalued[ ] power of social movements or mobilized constituencies to make, interpret, and change law”); JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS 237-80 (2007) (discussing the change-making capacity of immigrant workers, whom Gordon describes as “non-citizen citizens”).

See Akbar, Ashar & Simonson, supra note __, at 844-45, 881 (calling on legal scholars to cogenerate ideas alongside grassroots struggles seeking to transform the status quo); Akbar, Radical Imagination, supra note __, at 408, 410, 426, 476, 479 (calling on legal scholars to “imagine collaboratively” with social movements); see also Janet Moore, Marla Sandys & Raj Jayadev, Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform, 78 ALB. L. REV. 1281, 1283-88 (2015) (discussing the power of participatory defense as a new model for challenging mass incarceration, coauthored with a movement leader who developed the participatory defense framework); Simonson, Power Lens, supra note __, at 830-48 (supporting the movement demand to shift governance and policymaking power downward to populations most harmed by mass incarceration and the domination of everyday policing).

See supra notes __-___. I use the term “free” in the narrow sense of physical liberty from carceral punishment. Conditions on the bottom deny marginalized communities freedom from social, political, racial and economic inequality, freedom from life-threatening harm, freedom of personhood, and freedom from state supervision. See Matsuda, supra note __, at 389-90. Among those on the bottom, as well, are people whose liberty was at one point restricted. Id. at 363, 367-68 (discussing movement by Japanese-Americans to seek reparations for internment during World War II). It is also important to note that some of the social movements whose bottom-up visions have informed legal scholarship collaborate with people who are incarcerated. See, e.g., Akbar, Radical Imagination, supra note __, at 436 (discussing Critical Resistance, a grassroots prison abolitionist organization and co-
There are exceptions. Jocelyn Simonson describes how people in prison engage in bottom-up interventions in the form of hunger and labor strikes. Simonson argues that this collective contestation has influenced changes in prison conditions, destabilized the prison’s complete control over those confined, and awakened public consciousness on degrading conditions of confinement, forced labor, and the larger dynamics of mass incarceration. I aim to propose something distinct: looking to people who are unfree as partners in decarceration. The ideological work of criminal law, and the restraint on communication accomplished by the prison, cannot be overstated here; both, of course, heighten the challenges associated with exploring meaningful partnerships. As the inside moves in Part I demonstrate, however, the circumstances—and contemplation of freedom—in prison can produce reflections, analyses and strategies that enrich the outside in innovative ways and, by design or in effect, direct toward decarceral ends.

This brings me to a second distinction, perhaps more suitably described as a contradiction, in looking to the inside. Amna Akbar, Jocelyn Simonson, and other scholars who study and work alongside grassroots movements that are rooted in a decarceral agenda, call on scholars to engage perspectives from the bottom both to create alternative frameworks for change and to “democratize” criminal law. While the concept I propose—
looking to the inside to discover, develop and co-envision decarceral moves—is grounded in the goal of decarceration, there is a democratic tension in looking to the inside. People in American prisons, in every practical sense, have virtually no democratic existence. Their disappearance is not limited to formal channels of voting \(350\) or jury service. The vast majority are denied, by law or in effect, any meaningful participation in civic society or community life. Shutting out their visions from formal and informal channels of popular participation is American democracy in action. This reveals a paradox. Preventing us from seeing people in prison as agents of decarceral change is, in part, the work of American democracy. Yet, in refusing to accept what Dorothy Roberts, Amna Akbar, Jocelyn Simonson and Janet Moore have all described as criminal law’s antidemocratic function, \(351\) some people in prison have converted their oppression and
go of governing power.\(^{350}\)\(^{351}\)

\(^{350}\) See Hansi Lo Wang, Most Prisoners Can’t Vote, But They’re Still Counted in Voting Districts, NPR (Sept. 26, 2021), https://www.npr.org/2021/09/22/1039643346/redistricting-prison-gerrymandering-definition-census-congressional-legislative; Vaidya Gullapalli, Another Reason to End Prison Gerrymandering: To Identify and Invest In Neighborhoods Most Affected by Incarceration, THE APPEAL (Feb. 28, 2020), https://theappeal.org/another-reason-to-end-prison-gerrymandering-to-identify-and-invest-in-neighborhoods-most-affected-by-incarceration/ (discussing prison gerrymandering, “the practice of counting people where they are incarcerated rather than where they lived prior to incarceration,” which swells the political power of largely white, rural prison districts and diminishes the voting power of the largely Black and Brown districts from which people in prison are disproportionately drawn). See also DAVIS, ABOLITION DEMOCRACY, supra note __, at 80-81, 98-99 (describing the risks in reducing democracy to the right to vote).

\(^{351}\) See Simonson, Democratizing Criminal Justice, supra note __, at 1610 (describing three levels of the antidemocratic nature of the criminal legal system); Akbar, Abolitionist Horizon, supra note __, at 1805 (describing “the carceral state’s central role in denying primarily Black, brown, and poor people participation in formal democratic channels and civic and community life—let alone determining the conditions of their lives and engagement with their communities”); Dorothy E. Roberts, Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework, 39 COLUM. HUM. RTS. L. REV. 261, 279-80 (2007); Roberts, supra note __, at 1604 (arguing that criminal law’s antidemocratic function requires an abolitionist approach); Janet Moore, The AntiDemocratic Sixth Amendment, 91 WASH. L. REV. 1705, 1715 (2016) (arguing that denying poor people the right to choose counsel blocks pressure from marginalized communities to strengthen the right to counsel, concentrates unchecked judicial power and undermines the legitimacy of the criminal legal system).
subjugation into “theor[ies] for future action”\textsuperscript{352} that have had transformative effects on law, political discourse and society. While the carceral state—a function of American democracy—has shut down their civic participation, their individual and collective imagining has advanced democratic ideals. Excluded from democracy by American democracy, people in prison have educated democratic leaders and the public about the harms of the systems they have built, pushed them to think about how to be less punitive and less violent, and enabled our democracy to progress. Collective imagining with people on the inside thus not only unsettles criminal law’s antidemocratic center, but also accomplishes a new vision of democracy.\textsuperscript{353} It unearths latent possibilities for political, social and economic liberation, while revealing that the agency of people exiled from American democracy is, and holds promise to remain, democracy-enhancing.

III. REVISITING EXPERTISE

It may be tempting to assume that this Article argues that people in prison have a certain kind of expertise that can facilitate decarceration. Although their capacity and knowledge might warrant the expert label, it is important to examine whether the vocabulary of expertise best captures the decarceral moves in prison. I raise this threshold question for two reasons. First, in a technocratic legal culture, an impulse emerges to retrofit different forms of insight, knowledge, training or skills into the mantle of expertise.\textsuperscript{354} Second, if the language of expertise is not the appropriate framework for understanding the decarceral work described in this Article—and I conclude that it is not—does that carry implications for the place of expertise in the project of decarceration? I situate this question within current debates on the value of expertise in criminal policymaking.

In recent years, a number of legal scholars have renewed calls to create agencies led by social scientists and policy “experts” to guide decisions

\textsuperscript{352} Gordon, \textit{supra} note __, at 446-47, 450 (describing, in a different context, the struggle for social change alongside immigrant workers to develop strategies to “convert their daily experiences [of exploitation and abuse] into a theory for future action”); \textit{see also} Burton, \textit{supra} note __, at 154 (asserting that Think Tank members presented themselves “as part of a legitimate political constituency”).

\textsuperscript{353} \textit{Cf.} DAVIS, ABOLITION DEMOCRACY, \textit{supra} note __, at 44, 99 (urging us to think about “different versions of democracy” and “different criteria for democracy,” including “democracies in which those social problems that have enabled the emergence of the prison-industrial-complex will be, if not completely solved, at least encountered and acknowledged”).

\textsuperscript{354} \textit{Cf.} Pierre Schlag, \textit{Expertopia: The Rule of Expertise and the Rise of the New Technocrats} (manuscript at 68) (“[E]xpertise has but one move, or one tendency: to reduce everything to the order of expert knowledge.”).
on public safety and crime reduction based on empirical data.\textsuperscript{355} This approach is grounded in the idea that academics with elite educational credentials who regularly study these issues may be better able to resist “penal populism,” the tendency to set criminal policy by catering to ill-informed, irrational voters, who are driven by emotions, fear and punitive impulses.\textsuperscript{356} Many scholars have challenged the idea that engaging these experts will lead to more “rational” decisions, deconstructing the ways in which policy analysis and scientific method, often portrayed as neutral and objective tools, necessarily involve normative and political choices at every inflection point.\textsuperscript{357} As K. Sabeel Rahman argues, “[t]o overlook the political and moral dimensions of expert judgment—or to rely solely on expert rather than collective decision-making—is to displace the potential and

\textsuperscript{355} See, e.g., Barkow, supra note __, at 165-85 (calling for “expert bodies that use empirical data and studies to guide their decisions about criminal justice policy”); Rappaport, supra note __, at 810-12 (arguing for reform that “emphasizes an evidence-based approach to criminal justice problem-solving focused on achieving outcomes consistent with democratic values”).

\textsuperscript{356} See Barkow, supra note __, at 1-10 (discussing the importance of engaging experts “to make sure we are making the right calls to maximize public safety and are spending our limited resources most effectively”).

responsibility for public judgments about the most important questions of how to structure our politics, society, and economy.\(^{358}\)

A small but growing number of law scholars have promoted a new vision of expertise in policymaking that embraces a “different kind of expert”—people in racially and economically marginalized communities who speak from experience about the harms of policing, criminalization and incarceration.\(^{359}\) Jocelyn Simonson argues that opening the concept of expertise in this way brings in missing knowledge and engages deeper critiques that can destabilize the status quo.\(^{360}\) Shifting and expanding the definition of expertise also shifts power to define and measure safety and security.\(^{361}\) This radical understanding of expertise recognizes the wisdom of people directly impacted by the system who are “consistently excluded from most forms of public participation in the criminal legal system.”\(^{362}\)

In their competing, yet somewhat complementary, visions of good governance, both camps—described by scholars as “bureaucratizers” and

\(^{358}\) Rahman, supra note __, at 100; see also id. at 99 (“Experts are not neutral technocrats, but political agents who engage in moral and political judgment, and whose conceptualizations and arguments help shape and create social world.”); Harcourt, supra note __, at 421 (“When th[e] choices are made by technocrats, the methods no longer merely implement political decisions. They no longer serve democratic politics. Instead, the methods reshape our politics.”).

\(^{359}\) Simonson, Power Lens, supra note __, at 850-52 (“[They] do not just become important subjects of policing governance; they become experts themselves”; see also Akbar, Radical Imagination, supra note __, at 425 (arguing that the Movement for Black Lives “is about a vision to imagine expertise very differently than law scholarship”); Monica C. Bell, The Community in Criminal Justice: Subordination, Consumption, Resistance, and Transformation, 16 DU BOIS REV. 197, 208 (2019) (“as subordinates of the criminal justice system, members of marginalized communities are especially knowledgeable about systemic injustice and thus especially capable of and responsible for rectifying it”); Bell, supra note __, at 712.

\(^{360}\) Simonson, Power Lens, supra note __, at 853-54.

\(^{361}\) Id. at 851, 853-55 (arguing that these new experts “might also seek data and information from less traditional sources”); Ngozi Okidegbe, The Democratizing Potential of Algorithms, 53 CONN. L. REV. (manuscript at 37-40, 45) (forthcoming 2021) (calling for communal expertise in the production of pretrial risk assessment instruments); see also Collins, supra note __ (manuscript at 37, 40) (arguing that the evidence-based paradigm—the leading model for criminal law reform—is undemocratic because it “narrowly limit[s] what counts as evidence” and “disqualifies wide swaths of knowledge as a basis for reform or intervention, including observational, community, and experience-based knowledge”).

\(^{362}\) Simonson, Power Lens, supra note __, at 850-53. Cf. Levin, supra note __ (manuscript at 7, 57-59) (underscoring the potential of this deconstructive move but questioning whether “expertise” is the best way of describing the move to shift power to marginalized communities and identifying the risks of reifying exclusion and power imbalances in adopting a vocabulary of “expertise”).
“democratizers”—lay a claim to expertise. The implications for decarceration on each side are far less clear. Although this Article is not centrally concerned with policymaking broadly conceived, current debates in criminal policy about turning to experts, and which experts to turn to, are relevant to decarceration. Benjamin Levin argues that the traditional expert’s footprint is embedded in the carceral state. The destabilizing move to shift expertise to impacted communities traditionally excluded from criminal policymaking is, for many scholars, rooted in a decarceral agenda, but some scholars have surfaced a tension between a more equitable process for popular participation in criminal policymaking and the goals of decarceration.

See Joshua Kleinfeld, Manifesto of Democratic Criminal Justice, 111 NW. U. L. REV. 1367, 1399 (2017) (separating scholars into “democratizers” and “bureaucratic professionalizers”); Levin, supra note ___ (manuscript at 4, 11) (describing both sides as adopting a “shared appeal to the language of experts or expertise”).

Levin, supra note ___ (manuscript at 4-8, 34, 42) (arguing that vocational and educational experts “have been key players in constructing the carceral state”); id. at 34 n.166 (arguing that “framing the problems with the criminal system as its irrationality or emotion-driven dimensions understates the ways in which rationality and what purports to be cold neutrality actually have operated as significant drivers of mass incarceration and the new penology”); id. at 41 (“Some of the most maligned theories and practices of criminal law’s administration over the last half century haven’t been the product of tough-on-crime voters or politicians; they have been crafted by the sorts of experts frequently offered as potential technocratic saviors.”); id. at 15-17, 21, 42 (arguing that the turn to education-based expertise is in many ways a response to what some commentators see as the “resounding failure” of “a system steeped in vocational expertise” of police, corrections and crime labs whose “false claims to expertise” contributed to mass incarceration); id. at 42 (stating that “the expert-driven universe of criminal justice policy reflected an emphasis on . . . formal rationality” and a logic of social control) (citing Malcolm M. Feeley & Jonathan Simon, The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications, 30 CRIMINOLOGY 449, 454 (1992)) (describing a fundamental shift in the dominant ideology of criminal punishment in the 1970s and 1980s toward the management of marginalized groups).

See, e.g., Akbar, Radical Imagination, supra note ___, at 426 (describing the Movement for Black Lives’ vision for reform as “rooted in a decarceral agenda rooted in an abolitionist imagination”); Simonson, The Place of “the People”, supra note ___, at 303-06 (suggesting that opening up criminal adjudication to more popular input on behalf of the accused has the potential to lead down a path toward large-scale decarceration, but stating that drawing a direct line between the two “requires more study”).

See Rappaport, supra note ___, at 719-20, 759 nn.276-78, 760 nn.279-82, 808-09 (2020) (predicting that popular participation will not dismantle the carceral state and collecting studies showing that laypeople can be punitive, in contrast to the claim that democratizing criminal adjudication will lead to leniency); Trevor George Gardner, By Any Means, A Philosophical Frame for Rulemaking Reform in Criminal Law, 130 YALE L.J. FORUM 798, 805 (2021) (“It would be a categorical mistake to equate the pursuit of an equitable process of crime policymaking—even as it relates to race-class subordinated
democratically exiled and have virtually no traditional credentials, but some of whom have made important, difficult decarcel moves.

If decarceration is a non-neutral value-laden choice, how can purportedly “neutral” experts lead us to it? More to the point, if deferring to the professional judgment of “neutral” experts has expanded the carceral state, it can also undermine decarceration. And if opening the definition of expertise, on its own, might not serve decarcel ends, another question arises: is “expertise,” traditional or inverted, the pathway to decarceration? Reflexively turning to expertise to resolve complex social problems masks a broader problem: the frame itself.

The “draw of expertise” is premised on a longstanding intuition that expertise is an inherent virtue. Anna Lvovsky disrupts this “virtue-based vision of expertise.” Complicating the familiar association between expertise and deference in the context of policing, Lvovsky exposes a counterintuitive phenomenon: case law where conceded claims of expertise do not insulate police conduct from scrutiny but drive adverse judgements against the state. Across a range of disputes about police misconduct, Lvovsky demonstrates that it was not poorly-trained or overzealous officers who fueled judicial concerns about legality, but well-trained, highly experienced, “sophisticated” officers who “masterfully” performed their

[15-Aug-22]
As Lvovsky argues, “[o]ur moral intuitions surrounding expertise as a virtue have blinded us to the extent to which expertise is, essentially, just another tool of the police.” The courts’ embrace of concededly expert policing as “a source of active mistrust,” Lvovsky contends, “invites us to look with renewed skepticism” at a range of disciplines grounded on deference to professional judgment and “upend[s] our intuitions about the value of expertise itself.”

The “deceptive allure” of expertise that wrests uncritical judicial deference across a range of doctrines also infiltrates our processes for social change. In these final pages, I argue that the aspirational work inside prison signals that it is essential to move beyond expertise to decarcerate. I reach this conclusion by considering the limits of a framework of expertise to understanding inside decarceral moves. I then propose a different way of thinking about inside decarceral work.

To be clear, I do not mean to oppose the role or value of “experts” who hold traditional academic credentials to advance decarceration. Indeed, imaginations formulated inside prison have come to fruition in conversation and collaboration with those who bear traditional markers of expertise, and the project of decarceration needs many hands on deck. Nor do I mean to suggest abandoning radical movement claims over expertise. Deconstructing expertise...
and shifting expertise is destabilizing, inspiring and essential. Rather, I seek to question the instinctive pull toward “expertise” to understand enlightened knowledge, and highlight the limits of the frame for progressing toward decarceration. I consider both moves—reimagining expertise and contesting the frame altogether—as complementary and denaturalizing. Far from debating in these final pages who has the expertise to reduce our prison population—a question that presupposes a coherent theory as to the value of expertise in the project of decarceration—I surface three limits of adopting the frame of expertise in the ambitious project of decarceration. My caution is premised on the idea that the mantle of expertise can corrupt thought.

First, a stay-in-your-lane overtone hovers over expert claims. The expert’s value is typically cabined to insights in the domain in which the expert has expertise. Exalting expertise inevitably invites the following question: what “expertise” would the ordinary person in prison possibly have? Conditions of confinement? Prison-as-experienced? The very language, accompanied by the ideological work of carceral punishment, invites skepticism that people in prison might have acumen, value or knowledge beyond the four corners of the cage. The implications of this skepticism are pronounced in a nation that incarcerates so many people. Sophisticated levels of knowledge on the inside extend far beyond prison walls, to law, politics, capitalism, public health, neighborhood priorities, violence reduction, peer relations and much more. Jules Lobel unveils this dynamic in the context of attorney-client collaborations, explaining that the Pelican Bay class-action lawsuit challenging California’s use of prolonged solitary confinement resulted from a collective, non-hierarchical partnership with people held in prison whose active role in directing that litigation and “wealth of knowledge . . . [beyond] the prison regime” was critical to the lawsuit’s successful outcome. All told, people in prison have, in a myriad of ways, shaped legal and social change. Their engagement has awakened public consciousness, shaped the evolution of constitutional meaning and

375 Simonson, Power Lens, supra note __, at 851; Levin, supra note ___ (manuscript at 6-7) (arguing that expanding the meaning of expertise “highlights the politicized project of selecting experts in the first place and denaturalizes experts’ privileged status”).

376 See, e.g., Frederick Schauer & Barbara A. Spellman, Analogy, Expertise, and Experience, 84 U. Chi. L. Rev. 249, 262 (2017) (“[T]he expertise of experts tends to be limited to their domain of detailed knowledge.”).

377 Lobel, supra note ___, at 92, 150, 153-54, 157, 159 (stating that the Pelican Bay hunger strikers “offer[ed] the[ir] lawyers such a wealth of knowledge” beyond the prison regime, including on strategy central to the class-action lawsuit, and noting that some had mastered the law, others were widely read in philosophy, neuroscience, politics, and Black consciousness thought, and others had closely analyzed social relations in a carceral setting); id. at 159 (“Imagining a more egalitarian society requires developing nonhegemonic relationships between professionals and the people with whom they work, based in part on the recognition of different forms of intelligence and expertise.”).
deepened popular and policy discourse. “[T]he law’s infatuation with expertise”\(^{378}\) contributes to why we do not think of people in prison as change agents in progressing toward a noncarceral state.

Second, the very notion of expertise suggests that there is some “correct” response to complex social problems and that experts are the ones to “solve” them.\(^{379}\) This concept ties into the aura that experts are a source of infallible truth.\(^{380}\) However, many concepts and practices developed by “infallible” experts—whose expertise has expanded the power of the carceral state—have been widely discredited.\(^{381}\) Meanwhile, some “fallible” people

\(^{378}\) Lvovsky, supra note __, at 492.

\(^{379}\) See Wendy E. Wagner, A Place for Agency Expertise: Reconciling Agency Expertise with Presidential Power, 115 Colum. L. Rev. 2019, 2024 (2015) (“This important role of agency-as-expert coincided with the inherently optimistic belief that there were ‘objectively correct solution[s] to the country’s problems.’”); Meazell, supra note __, at 744 (“Legal institutions and the citizenry at large suffer from a science obsession, assuming that if only we had answers from science, we would know what regulatory decisions are ‘correct.’”).

\(^{380}\) See RAPHAEL SASSOWER, KNOWLEDGE WITHOUT EXPERTISE: ON THE STATUS OF SCIENTISTS 101 (1993) (noting the common view of “expertise as a privileged, divine-like attribute”). A halo of “mystic infallibility” surrounds the expert label. U.S. v. Addison, 498 F.2d 741, 744 (D.C. Cir. 1974) (“voiceprint” expert); see also U.S. v. Amaral, 488 F.2d 1148, 1152 (9th Cir. 1973) (eyewitness expert); Lvovsky, supra note __, at 487-88 (noting that prosecutors invoke credentials of police to “bathe their observations in the aura of authority”). This halo creates a substantial risk of distracting factfinders, both technicist-minded judges and lay jurors, from rigorous scrutiny over claims of expertise. Lvovsky, supra note __, at 486, 536, 559 (suggesting that the “mysticism of police expertise” may explain judicial warnings against “second guessing” police decisions); State v. Young, 35 So.3d 1042, 1050 (La. 2010) (noting that “merely being labeled” a specialist in eyewitness identification has the broad potential to mislead the jury); Peter J. Neufeld & Neville Colman, When Science Takes the Witness Stand, 262 SCI. AM. 46, 48 (May 1990) (“the esoteric nature of an expert’s opinions, together with the jargon and the expert’s scholarly credentials, may cast an aura of infallibility over his or her testimony”).

\(^{381}\) See, e.g., Katherine Beckett & Megan Ming Francis, The Origins of Mass Incarceration: The Racial Politics of Crime and Punishment in the Post-Civil Rights Era, 16 ANN. REV. L. & SOC. SCI. 433, 435 (2020); HARCOURT, ILLUSION OF ORDER, supra note __, at 163 (describing how broken windows policing turns entire classes of people into “subjects that need to be controlled”); James Forman Jr. & Kayla Vinson, The Superpredator Myth Did a Lot of Damage. Courts Are Beginning to See the Light, N.Y. TIMES (Apr. 20, 2022), https://www.nytimes.com/2022/04/20/opinion/sunday/prison-sentencing-parole JUSTICE.html (describing how the superpredator theory, the brainchild of a political scientist and since disproven, drove excessive sentences and laws that allowed young people to be tried as adults); Spencer S. Hsu, FBI Admits Flaws in Hair Analysis Over Decades, WASH. Po (Apr. 18, 2015), https://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4- b510-962f6abc310_story.html (reporting that nearly every examiner in an elite FBI forensic unit gave flawed testimony in over 95% of trials in which they offered evidence against criminal defendants over more than a two-decade period and that hundreds of state and local crime lab analysts were FBI-trained); NAT’L ACADEMY OF SCIENCES, NAT’L RESEARCH
in prison have produced pioneering decarceral-oriented change. If expertise operates as a gateway to deference and authority—privileges that people in prison have rarely, if ever, enjoyed—sublimating people in prison to the perch of expertise also risks colluding in the framework’s “flawless” ideology.

Third, expertise finds its purchase in a hierarchy of knowledge. In his seminal article, economist and philosopher F. A. Hayek argued that knowledge is not concentrated in a central authority but is dispersed among individuals throughout society. He calls this “local knowledge.” Indeed, it was, in part, local knowledge that produced the decarceral ideas described in these pages, at times alongside advocates and scholars with traditional credentials. To label this cross-pollinated phenomena “expertise” conspires in the frame’s appeal to superior and exclusive knowledge and risks sideling the difficult and often collective struggles that occur within exile. As a consequence, adopting the frame of expertise reifies the status quo and runs up against what Marie Gottschalk describes as “the convulsive politics from below that we need to dismantle the carceral state and ameliorate other gaping inequalities.”

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Cf. E. Johanna Hartelius, The Rhetoric of Expertise 1 (2011) (“[B]eing recognized as an expert generates not only status and power but considerable influence. Those [so] labeled reap the financial and symbolic benefits. . . . Their voices are heard above others.”). “[E]xpertise is a relational bid for social standing, an assertion of superiority over the ‘ordinary’ layperson.” Lvovsky, supra note __, at 541; id. at 494 (arguing that the mantle “devalues more informal authorities”).

“Even if expertise and technocracy become somehow disentangled, there’s still a risk that appeals to expertise suggest that only some subset of the polity is qualified to decide or opine.” Levin, supra note __ (manuscript at 53 n.278 & 58) (“[T]he power of the expertise claim generally rests on its exclusivity.”)


Id.

Gottschalk, supra note __, at 282; James Boyle, The Politics of Reason: Critical Legal Theory and Local Social Thought, 133 U. PA. L. REV. 685, 699 (1985) (“By appearing to be neutral to ends, or by merely offering means to reach pre-selected ends, the ideology of technocracy actually buttresses the status quo.”); Pierre Schlag, A Reply—The Missing Portion, 57 U. MIAMI L. REV. 1029, 1037 (2003) (describing, as complementary, a move to “reveal the emptiness of the claims to expertise” and one that shifts expert authority to those
the work of “experts” undercuts the communal consciousness that is essential to movements for freedom. As organizer and activist Derecka Purnell stated, “the idea of being an abolitionist expert feels counter to the communal politics of abolition.” Expertise creep is a particular concern for decarceration, a relatively new, aspirational mission that has only tentative ideas from many quarters.

There are other reasons to rethink the frame of expertise, traditional or inverted, in decarceration. Inside decarceral moves expose the limits of professional judgment in a carceral state. Traditional experts certainly could have designed a study of the zip codes that send people to prison. Supreme Court “experts” could have brought the same or similar challenges to the high court; some, in fact, tried with no success.

Expertise also seems inadequate to capture the contemplation that perseveres in shackles. What emboldens people under confinement to study the law and bring cases to courts, often tirelessly, with no counsel and limited resources? And for many, to bring cases that have no impact on them? What motivates them to design research to understand an issue that has confounded advocates, law enforcement, researchers and policymakers? Even lived experience comes up short. Although lived experience is one significant source of the wisdom on the inside, and inside moves certainly are shaped by the social and economic

who are excluded, but arguing that both moves reinscribe and reinforce “precisely the sort of rhetorics and hierarchies they contest’); Levin, supra note ___ (manuscript at 59) (“Expertise might become a shorthand for legitimacy and standing, but I wonder whether that rhetorical or framing move has costs in that it implies an acceptance of the logic of qualified participation”); id. (manuscript at 42) (“dismantling these unjust institutions would require much more than greater expert involvement; it would require a deep reckoning with the fundamental logics that have allowed these institutions to proliferate in the first place.”); Akbar, Abolitionist Horizon, supra note __, at 1806 (“Bureaucracy and democracy—experts, the public, politics, and data—got us into the mess of mass criminalization in the first place. It will take an upheaval of our conceptions of crime, punishment, and expertise to undo mass criminalization and stop police violence.”); Simonson, Power Lens, supra note __, at 860 (“Nor should we look to the usual experts to create roadmaps for transformational change.”).

Cf. Davis, Freedom Is a Constant Struggle, supra note __, at 2 (“It is essential to resist the depiction of history as the work of heroic individuals in order for people today to recognize their potential agency as a part of an ever-expanding community of struggle.”).


oppression during and preceding confinement, lived experience alone does not seem to fully explain mastering or critiquing the law; a vision to design new data metrics; turning ambitious theories into action; or the full extent of the epistemic value of people in prison in generating decarceral moves.

I propose a different way of theorizing these inside moves. There appears a capacity in common to the moves in Part I: a deep resistance to captivity moored to opposing how the law thinks about the people it sends to prison. Many people in prison have local knowledge of the broader reasons they are in prison and the deep incentive to resist carceral logics. Their contemplation and resistance to how law and society understand them has generated work and ideas to oppose the laws and circumstances that land them in prison, tapping into an organic intellect and agency to chip away at the carceral state’s power.

Importantly, and on this point, imaginations behind bars have produced important decarceral steps precisely because people in prison are not “neutral” or detached. Inside pursuits are driven by oppression, elevated yet subjugated knowledge, deep humanity, and the capacity to think, create and believe in ideas that the deprivation of freedom can make more conceivable on the inside than on the outside. This brings to mind what Antonio Gramsci called “an optimism of the will.” Similarly, while criminal punishment sends a message to people in prison that they are

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390 Cf. Burton, supra note __, at 121-22 (“Black radical knowledge production makes no claims to objectivity or to ‘detachment’ . . . but ‘grow[s] out of a concrete intellectual engagement with the problems of aggrieved populations confronting systems of oppression.’”) (citing ROBIN D. G. KELLEY, FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION (2002)).

391 Cf. Lobel, supra note __, at 153 (“Ironically, the [Pelican Bay hunger strikers’] extreme isolation in oppressive conditions induced them to study law”); BISSONETTE ET AL., supra note __, at 22, 27-28, 68, 76, 145, 158, 168, 221 (describing cross-racial organizing by people in a Massachusetts prison who “resisted the role they had been consigned to in society” and detailing the over two-month period when the entire guard force went on strike and nearly six hundred people held captive ran the maximum security facility, preventing violence from erupting in a prison that once boasted the nation’s highest rate of homicide).

392 See MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS & OTHER WRITINGS 1972-1977 78, 82 (Colin Gordon ed., 1980) (“[B]y subjugated knowledges one should understand . . . a whole set of knowledges that have been disqualified as inadequate to their task or insufficiently elaborated . . . located low down on the hierarchy . . . which owes its force only to the harshness with which it is opposed by everything surrounding it”).

393 SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 175 & n.75 (Quintin Hoare & Geoffrey Nowell-Smith eds., 1971) (combining the “pessimism of the intelligence” with an “optimism of the will”). Allegra McLeod describes this maxim, written while Gramsci was imprisoned by Mussolini, as “the courage to try to alter [current] possibilities” to “attempt difficult things despite the odds.” McLeod, Beyond the Carceral State, supra note __, at 657 n.22.
inconsequential, “it does not follow that individuals surrender a desire to create change, or the belief that it is possible.”\textsuperscript{394}

Thinking about the mobilization of ideas inside the walls as unmoored to expertise, but anchored in resistance, can have implications for how people in prison think about their own agency to create change and for valuing more collective processes between legal scholars, traditional experts, and people in prison.\textsuperscript{395} Pushing against the reflexive draw to expertise as the source of these moves opens up a window to see that people in prison have also used law, data and innovation, including in ways that expose how the law thinks (and does not think) about who it sends to prison—an ambition that is essential to decarceration.\textsuperscript{396}

At the risk of stating the obvious, disconnecting from the mantle of expertise in decarceral work will be difficult. As Anna Lvovsky argues, the credentials, designations and social privilege that many lawyers and scholars enjoy and see as central to our own performance may make us “especially susceptible” to “the promise of professional problem solving.”\textsuperscript{397} But in a carceral state that remains in deep crisis, it is crucial to check that reflex and examine the ways in which the perch of expertise can imprison our thinking.

It is important to note that some people in prison described in Part I were able to move forward the ideas seeded on the inside only or in large part due to their release from prison. They had jobs or family support and a roof over their heads (which, for some, was a direct result of their inside work, which accelerated connections on the outside) that enabled them to focus on continuing the work begun on the inside. Still, generating, and having someone on the outside invest in generating, these moves while inside prison was critical to the success of their work and their visions, particularly when release was all but uncertain.

This is not to suggest that all, or even most, people in prison will have good legal or community-specific interventions or that we can reach all who do. The next task is to think through possible methodologies to maximize this collective work. I begin, again, by recognizing the obvious: this task

\textsuperscript{394} Hannah L. Walker, Mobilized by Injustice: Criminal Justice Contact, Political Participation, and Race 5 (2020) (analyzing how negative criminal justice experiences mobilize alternate forms of political engagement by marginalized communities); see also Henderson, supra note __ ("[W]e asked ourselves: Do we want to change our conditions, or do we want to change our circumstances?") (quoting Norris Henderson, imprisoned in Angola for nearly thirty years).

\textsuperscript{395} Cf. Davis, Freedom is a Constant Struggle, supra note __, at 2 ("It is essential to resist the depiction of history as the work of heroic individuals in order for people today to recognize their potential agency as a part of an ever-expanding community of struggle.").

\textsuperscript{396} See supra pp. __-__ [introduction].

\textsuperscript{397} Lvovsky, supra note __, at __541-42.
will be complicated by the constraints of carceral confinement.\textsuperscript{398} As Angela Davis has stated, however, “[i]f you’re serious about developing egalitarian relations, you will figure out how to make these connections.”\textsuperscript{399} In these final words, I gesture toward a preliminary set of non-exhaustive next steps.

One step toward finding ways to think alongside people in prison is to engage in the four methods in movement law scholarship described by Amna Akbar, Sameer Ashar and Jocelyn Simonson. Adapted to the inside, these modes include: paying attention to “existing modes of resistance” on the inside “as a source for new insights”; studying strategies of resistance on the inside that are often obscured in elite legal circles; centering the intellectual traditions and histories of resistance on the inside to denaturalize established understandings of law and democracy; and adopting a collective, solidaristic stance.\textsuperscript{400} Using these four methodological moves, movement law scholars explore new “terrain[s] of critique” alongside communities in struggle and “treat movement actors and activists as equal research partners in the generation of questions and answers about the world.”\textsuperscript{401}

The partnership this Article envisions is not just for legal scholars to undertake. As revealed in Part I, people in prison have inspired a wide range of stakeholders toward new ways of thinking. To shift focus of decarceral know-how, it is critical for researchers, policymakers, social scientists, practitioners and community members committed to large-scale decarceration to join in this collaborative work. Thinking with people in prison to develop decarceral strategies can begin with immersion in inside-outside study groups or embrace of movement law techniques, from

\textsuperscript{398} Cf. Davis, Freedom is a Constant Struggle, supra note __, at 26 (“It may not always be easy to guarantee the participation of prisoners, but without their participation and without acknowledging them as equals, we are bound to fail.”)
\textsuperscript{399} Id. at 27.
\textsuperscript{400} Akbar, Ashar & Simonson, supra note __, at 848-70.
\textsuperscript{401} Id. at 849, 863.
participatory action research to coauthoring scholarship, to cocreate knowledge, new subjects of data collection—including ideas about what to measure and how to measure it—and new theories for change. Social

402 Scholars in law and related disciplines have engaged in participatory action research to understand, analyze and find solutions to complex social problems. See Lauren Johnson, Cinnamon Pelly, Ebony Ruhland, Simone Bess, Jacinda K. Dariotis & Janet Moore, Reclaiming Safety: Participatory Research, Community Perspectives, and Possibilities for Transformation, 18 STAN. J. C.R. & C.L. (forthcoming) (manuscript at 3-4, 10) (describing research in which predominantly Black community members in Cincinnati are collectively redefining public safety and strategies to achieve it alongside academic researchers). This methodology prioritizes the knowledge and the research questions of communities who are “too often viewed as research subjects.” Id. at 8.; see also Emily M.S. Houh & Kristin Kalsem, It’s Critical: Legal Participatory Action Research, 19 MICH. J. RACE & L. 287, 294 (2014) (“[L]egal participatory action research . . . treat[s] those ‘at the bottom’ as equal research partners who are presumptively best situated to identify, analyze, and solve the problems that directly affect them.”); Editha Rosario-Moore & Alexios Rosario-Moore, From the Ground Up: Criminal Law Education for Communities Most Affected by Mass Incarceration, 23 CLINICAL L. REV. 753, 754-55 (2017) (“In concert with Critical Legal Theory, [participatory action research] challenges both the objective neutrality of the law and claims of empirical objectivity made by social researchers.”).

403 See, e.g., Moore, Sandys & Jayadev, supra note __, at 1281 (discussing participatory defense as a new model for challenging mass incarceration, coauthored with a movement leader who developed the model); Carter, López & Songster, supra note __, at 315 (describing a study group formed by people in prison that developed a concept grounded in the Eighth Amendment to challenge life-without-parole sentences, co-authored with a person in prison and a person released from prison); Gimbel & Muhammad, supra note __, at ___ (discussing a range of non-police models for curbing violence, co-authored with a person in prison); see generally Akbar, Ashar & Simonson, supra note __, at 862, 875.

404 Cf. Simonson, Power Lens, supra note __, at 851-55 (arguing that directly-impacted populations might envision new data sources and new methods of data collection and measurement).

405 A growing body of participatory action research is taking shape in the prison context. See, e.g., Danielle L. Haverkate, et al., On PAR with the Yard: Participatory Action Research to Advance Knowledge in Corrections, 5 CORRECTIONS: POLICY, PRACTICE & RESEARCH 28, ___ (2020). Although typically focused on conditions inside prisons, including health, education and safety in prison, see Lauren Farrell, et al., Participatory Research in Prisons, URBAN INSTITUTE (2021) 1-2, 6-8 (describing examples of participatory research with people in prison and strategies to promote wellbeing of people behind bars), recent participatory research has tapped the knowledge and skills of people in prison “to better understand what was and was not working with reentry in Arizona.” Haverkate, et al., supra, at ___ (describing a collaborative project in which policymakers and researchers in Arizona codesigned a survey instrument with people in prison and prepared them to conduct interviews inside prison on issues relating to recidivism and reentry). While this Article does not envision collaborations premised entirely on survey administration, participatory action research offers one established model by which scholars and policymakers can cocreate a research agenda, research questions, methods of data collection, analysis of findings and actionable plans for change with people in prison. Id. at __; Farrell, et al., supra note __, at 2, 4, 9, 11 (describing the key elements of participatory research in prisons and the importance of and challenges to relationship-building in light of power imbalances).
movements that organize and campaign alongside people on the inside, non-profit groups led by people who were once incarcerated, faculty in law and other disciplines who lead inside-outside courses or otherwise teach in prisons, and organizations that work with people formerly in prison can serve as resources and entry points to connecting with study groups and individuals thinking on the inside.406 This project might eventually aspire to more imaginative long-range possibilities, such as the creation of nationwide “decarceration centers,” somewhat like law school clinics, but for the purposes of locating organic activists on the inside, thinking in dialogue together to develop innovative decarcal theories and collaborations, and co-imagining strategic and conceptual interventions to progress toward near-term and long-term decarceration.

CONCLUSION

Sociologist Tony Cheng has argued that the participation of the public in police-community meetings often becomes “input without influence.”407


407 Tony Cheng, Input Without Influence: The Silence and Scripts of Police and Community Relations, 67 SOC. PROBS. 171, 176 (2019) (finding that community meetings become “a mechanism of legitimating the input process, but only further reinforcing the social order”); see also K. Sabeel Rahman & Jocelyn Simonson, The Institutional Design of Community Control, 108 CALIF. L. REV. 679, 698 (2020) (“[W]hen people directly affected by the criminal legal system attempt to intervene in policy debates over criminal law and procedure, they find their calls muted because they are members of a population that has been systematically disenfranchised by the very systems of criminal law that they aim to reform.”).
This maxim brings into focus a paradox in American democracy: many people in carceral institutions have created influence without input. Responding to inequality made salient by the law, by the prison, and by a deep reflection on who the law sends to prison, people held in cages have generated remarkable strategies, ideas and moves that direct to decarceral ends. Their innovative strides have made it more conceivable to gradually reduce the carceral footprint, opening up possibilities to create long-term legal and social change.

As many scholars and activists have argued, our current moment requires a profound commitment to transformative change. If we are serious about meaningful decarceration it is essential to think alongside different ideas, different actors and different partners. Some people in prison have produced important, even stunning, decarceral work and fresh, brilliant ideas that would be startling even if generated by those not subject to carceral punishment. Ambitious ideas to reduce prison populations and reimagine public safety are percolating on the inside; some are inchoate and some are yet to be conceptualized. These interventions continue to remain hidden to the outside but can be sparked by ongoing collective imagining. Our moment demands looking to people inside prison as decarceral partners. The test is whether we have the will to do so.