



# Idealizing Abolition

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## Abstract

The United States system of policing is in drastic need of change. Some recent critics have encouraged that we avoid trying to repair the system—and abolish it altogether. In advancing this position, they often invoke ideas of “dreams,” “speculative imagination,” and “horizons” to guide efforts at fixing the problems of policing. In this essay, I caution against the overuse of this sort of idealized discourse in debates about policing. Specifically, I show how idealizations risk being counterproductive with respect to abolitionists’ activist goals, in that they suggest that if abolition is desirable, approximating abolition is also desirable; fail to clarify what the conditions of application of their view are; and operate without the feasibility-sensitivity that one should expect from a non-evaluative position. My goal is not to suggest that our system of policing is fine as is. Nor is it to diminish the importance of having a long-term revolutionary vision. By pointing out the ways in which the idealizations invoked are inconsistent with abolitionists’ activist agenda, I hope to help clarify the merits of police abolition as a guiding strategy for change and caution against the use of certain forms of idealized thinking in our efforts at police reform.

**Keywords** Abolition · Criminal law · Ideal theory · Reparation

## 1 Introduction

These days, abolitionists like to speak at the level of grand idealizations. Consider, for instance, Dylan Rodríguez’s declaration: “Abolition is a dream toward futurity vested in insurgent, counter-Civilizational histories—genealogies of collective genius that perform liberation under conditions of duress.”<sup>1</sup> Or take Dorothy Roberts’s description: “Abolitionists are engaged in a collective project of radical

<sup>1</sup> Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1575, 1575 (2019).

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speculative imagination.”<sup>2</sup> Or consider also Amna Akbar’s argument for “an abolitionist horizon,”<sup>3</sup> which takes as its starting point “a bold vision, grounded in the Black freedom struggle, for a radically different world.”<sup>4</sup> These sorts of abstractions are meant to provide a vision of radical social movements’ claim for abolition to guide change. But talk of “dreams,” “imaginings,” and “horizons” also brings to mind something different than the reality on the ground and masks prevailing problems within our system of policing.<sup>5</sup>

What’s more is that this idealized discourse comes at a moment when political philosophers are growing increasingly skeptical of abstracting away from the intricacies of our current legal and political systems.<sup>6</sup> Focusing on political ideals is thought to distort the non-ideal features of our current society. And attempting to apply these political ideals to real-world circumstances is alleged to be imprudent.<sup>7</sup> Indeed, for many, the term “ideal theory” has been used to signify “useless, unrealistic, naïve, utopian—perhaps even ideological or dangerous—currents in contemporary political philosophy.”<sup>8</sup> Untenable visions about a radically different future, these theorists claim, have no proper place in theorizing about injustice.

To be clear, I’m not invested in whether views of police abolitionism as put forward by contemporary abolitionists constitute an “ideal theory.” As recent theorists have pointed out, the current debate about the ideal/non-ideal theory distinction “has reached dizzying heights of conceptual sophistication”<sup>9</sup> and what the labels “ideal” and “non-ideal” mean in this debate is “far from clear.”<sup>10</sup> Moreover, because there is a wide range of how one idealizes in normative theory, the ranked, categorical distinction that has become popular in political philosophy may be more properly

<sup>2</sup> Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 120 (2019).

<sup>3</sup> Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CAL. L. REV. 1781 (2020).

<sup>4</sup> *Id.* at 1783.

<sup>5</sup> Although I focus on police abolitionism here, it is worth noting that there are many types of abolition advocacy. The recent police abolitionists are building on arguments from the prison abolition movement in the 1960s and 1970s—and extending it to an area where reform has been lagging. See Eduardo Bautista Duran & Jonathan Simon, *Police Abolitionist Discourse? Why It Has Been Missing (and Why It Matters)*, in THE CAMBRIDGE HANDBOOK OF POLICING IN THE UNITED STATES 85–103, 87 (Tamara Rice Lave & Eric J. Miller eds., 2019) (“[P]olicing reform lags behind that of prisons.”). By highlighting police abolition in this essay, I do not intend to suggest that these problems are not interconnected. I merely intend to engage a more recent debate that some claim are being ignored by academics and question whether “abolition talk may be what has been missing in police reform discourse.” See *id.* at 87, 99.

<sup>6</sup> See, e.g., Charles Mills, “*Ideal Theory*” as *Ideology*, 20 HYPATIA 165 (2005).

<sup>7</sup> David Wiens, *Against Ideal Guidance*, 77 J. POL. 433, 433 (2015).

<sup>8</sup> Zofia Stemplowska & Adam Swift, *Ideal and Nonideal Theory*, in THE OXFORD HANDBOOK OF POLITICAL PHILOSOPHY 373 (David Estlund ed., 2012).

<sup>9</sup> CHRISTIAN SCHEMEL, JUSTICE AND EGALITARIAN RELATIONS 18n.28 (2021).

<sup>10</sup> Laura Valentini, *The Case for Ideal Theory*, in THE OXFORD HANDBOOK OF INTERNATIONAL POLITICAL THEORY 663–676, 665 (Chris Brown & Robyn Eckersley eds., 2018).; see also Zofia Stemplowska & Adam Swift, *Ideal and Nonideal Theory*, in THE OXFORD HANDBOOK OF POLITICAL PHILOSOPHY (David Estlund ed., 2012) (“The first Polish encyclopedia, prepared in the eighteenth century by Benedykt Chmielowski, had an entry on ‘horse’ that informed the reader: ‘what a horse is everyone can see.’ Ideal theory is rather less straightforward. Recent debates have seen the term used in different ways and its critics attacking a variety of different targets.”).

characterized as a spectrum.<sup>11</sup> We should not, then, get too caught up in disputes about what counts as “ideal theory” here. What’s important for us is the strand of that debate which warns against the misuses of idealizations. Rather than using the phrase “ideal theory” to dismiss a position as utopian, the task of a theorist is to figure out which idealizations are being made, whether they are misleading, and whether the idealization could be counterproductive to achieving the desired state of affairs. This will be my focus.

In what follows, I point out some problems with the use of idealizations in recent abolitionist discourse.<sup>12</sup> My hope is that by getting a handle on how contemporary police abolitionists use idealizations, we might better understand the merits of the position being advanced. The problem is not that abolitionists invoke unreal idealizations *per se*. The problems are (a) that they have not done much to guard against objectionable forms of idealizations that hinder the abolitionist project and (b) that they have failed to tell us how to correctly use idealizations to advance our current state of policing. At bottom, my worry is that idealizations used by abolitionists are inconsistent with their activist agenda.<sup>13</sup> What abolitionists are doing is not merely a philosophical exploration of the issues. Instead, their activist position aims at providing proposals that would be beneficial to our present society.<sup>14</sup> By over-emphasizing the imaginative aspect of their project and underplaying the existing barriers

<sup>11</sup> Jacob T. Levy, *There is No Such Thing as Ideal Theory*, 33 *SOC PHIL POL* 312 (2016).

<sup>12</sup> Following Onora O’Neill, I use “idealization” here to refer to falsities introduced for theoretical and practical purposes. ONORA O’NEILL, *TOWARDS JUSTICE AND VIRTUE: A CONSTRUCTIVE ACCOUNT OF PRACTICAL REASONING* 41 (1996). In his notorious discussion of ideal theory, John Rawls specified two particular idealizations that were important for his theory of justice: strict compliance and favorable conditions. JOHN RAWLS, *A THEORY OF JUSTICE* 216 (Harvard University Press, rev. ed. 1999) (1971). But there are many other idealizations that are present in philosophical theories. See Valentini, *supra* note 10 (“Other idealizations include statements such as: ‘there is no disagreement about justice across different societies’; ‘soldiers in war face no uncertainty’; ‘society is a closed system’; or ‘individuals are always altruistically motivated.’”). Many forms of theorizing, to some extent, rely on idealizations—that is, we imagine that the world might be different (better?) than it is currently by appealing to values or ideals that currently do not hold. My goal here is merely to point out some of the idealizations used by abolitionists, examine whether they are counterproductive, and assess other reasons why they may be objectionable.

<sup>13</sup> Cf. Keyvan Shafiei, *Sky’s the Limit: A Case Study Envisioning Real Anti-Racist Utopias*, in *THE MOVEMENT FOR BLACK LIVES: PHILOSOPHICAL PERSPECTIVES* 298 (Brandon Hogan et al. eds.) (“[A]ctivists and organizers...are not merely articulating idealized visions of what the world ought to look like. Rather, activist work is spurred and driven by the recognition that something has to be done here and now.”).

<sup>14</sup> Compare, for instance, Waldron’s fascinating discussion of the aims of political philosophy in Jeremy Waldron, *What Plato Would Allow*, in *NOMOS XXXVII: THEORY AND PRACTICE* 138–78 (Ian Shapiro & Judith Wagner Decew eds., 1995). Waldron ends his essay stating:

“I guess most of us—authors, readers, fellow-symposiasts—are from time to time asked the following question by those not cursed with philosophical pretensions: ‘What’s the point of your work? What difference is it going to make? How is it going to help the fight against poverty, racism, and sexism?’ My bottom line is that we are not really doing political philosophy, and thus paradoxically that we are probably not really being of much use, unless we are largely at a loss as to how to answer that question.”

*Id.* at 171. My point here is that, unlike Waldron’s philosopher, the activist cannot be at a loss as to how to answer these questions—indeed, fighting against present forms of injustice ought to be their starting point.

to achieving their ideal, police abolitionists have done little to move us toward practical solutions to fix our broken system of policing.

## 2 What Police Abolition is not

Before highlighting the idealized discourse in abolitionist thought, we should clarify some common confusion about the abolitionist project. An obvious way to understand abolition is as a call for the immediate and unconditional end to something that is problematic. The slave abolition movement was about the immediate and unconditional termination of slavery.<sup>15</sup> The death penalty abolitionist movement calls for the immediate and unconditional end to state administered killings.<sup>16</sup> When something is unequivocally evil, and serves no good societal function, it cannot be put to any just use—and should be terminated straightaway.<sup>17</sup>

Most contemporary police abolitionists don't quite view things this way. This is partly because police actually do perform valuable societal functions. Even communities that fear the police often rely on police services. Indeed, the neighborhoods most subject to police violence are often the heaviest users of police services because they have few other resources.<sup>18</sup> Although police often do not do their job well, abolitionists appear to recognize that the most vulnerable in our society would be worse off even if we immediately and unconditionally dismantled them. Abolishing the police, say many abolitionists, does not mean an immediate destruction of police departments that would leave our communities vulnerable to violence.<sup>19</sup>

But rejecting the immediate destruction of police isn't merely about protecting the vulnerable from violence. Nor is it a concession to those who criticize the abolitionist's focus on an institution resistant to political change. When abolitionists acknowledge that the destruction of police departments is inadequate, they are highlighting the shortcomings of a purely *negative* approach to abolition. Abolition is about more than destroying. For abolition to be successful, there must also be a *positive* mission to accompany the negative task. Contemporary abolitionists are quick to point out that the abolition project is not “a negative vision of abolition (i.e. fire all cops),” but rather a project aimed at “the creation of new non-police institutions empowered to supersede the police monopoly on violence reduction.”<sup>20</sup> The basic idea here is straightforward: in order for abolition to be workable, new institutions

<sup>15</sup> RANDALL KENNEDY, SAY IT LOUD: ON RACE, LAW, HISTORY, AND CULTURE 415 (2021).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Duran & Simon, *supra* note 5, at 93.

<sup>19</sup> Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N. Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> (“But don't get me wrong. We are not abandoning our communities to violence. We don't want to just close police departments. We want to make them obsolete.”).

<sup>20</sup> V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence through Abolition Democracy*, 40 CARDOZO L. REV. 1453, 1454 (2019). Gimbel and Muhammad argue that community-based violence initiatives “challenge the police monopoly on the maintenance of order in the community.” *Id.* at 1467.

have to be introduced to incorporate the least well off into the social order. Indeed, some abolitionists go so far as to dismiss the negative project altogether and declare that “[w]e should understand abolition not as the ‘elimination of anything but...as the grounding of a new society.’”<sup>21</sup> Abolition, then, is not (merely) about abolition. It is about constructing new institutions to replace an old social order.

This point also shows why the contemporary abolitionists should not be grouped with libertarian or conservative theories advocating for a smaller state. There’s a long-standing libertarian tradition of advocating that the police function, much like everything else, should be privately provided—and, thus, we should abolish the public police force as we know it.<sup>22</sup> And some of the dialogue around policing these last few years has encouraged efforts by right-leaning organizations seeking support for establishing a smaller state footprint.<sup>23</sup> But the abolitionist I have in mind is not going to get on board with these types of programs. Rather than demanding something *less* from the state, the contemporary abolitionist is demanding something *different*.<sup>24</sup> As Akbar puts it, “[d]emands to *divest* from police and prisons are often accompanied by demands to *invest* in social provision and collective care: for example, housing, health care, and education. By demanding investments, these campaigns suggest alternate modes that the state can take to respond to all manner of currently criminalized social problems.”<sup>25</sup> On this view, government intervention is not the problem—the problem is the way the government intervenes. And the hope is that by divesting from policing resources we will open up opportunities for the state to invest in more equitable projects.<sup>26</sup> So, contrary to what is sometimes believed, what the contemporary abolitionist is striving for is unrelated to the projects by those seeking a minimal state.<sup>27</sup> Just as abolition is not a negative project to get rid of police immediately, it is also not a project geared at reducing government influence in our lives.

<sup>21</sup> Roberts, *supra* note 2, at 120 (quoting Fred Moten & Stefano Harney, *The University and the Undercommons: Seven Theses*, 22 Soc. TEXT 101, 114 (2004)).

<sup>22</sup> See Jake Monaghan, *Policing and Punishment*, in THE ROUTLEDGE COMPANION TO LIBERTARIANISM 368 (Matt Zwolinski & Benjamin Ferguson eds., 2022) (“Anarcho-libertarians will say that the police function, like everything else, should be provided entirely by private agencies.”).

<sup>23</sup> Tracey Meares & Gwen Prowse, *Policing as Public Good: Reflecting on the Term “To Protect and Serve”* as *Dialogues of Abolition*, 73 FLA. L. REV. 1, 17 (2021).

<sup>24</sup> *Id.*

<sup>25</sup> Akbar, *supra* note 3.

<sup>26</sup> Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1614 (2019) (“Organizers in Freedom Square and across the city amplified the penal-abolitionist platforms of the Movement for Black Lives and Black Youth Project 100 (BYP100), demanding that the state divest from policing and imprisonment and invest in new forms of more equitable and just coexistence.”).

<sup>27</sup> Cf. Monaghan, *supra* note 22, at 368, 373 (noting that “libertarian answers...are especially relevant given the calls to ‘defund’ or ‘abolish’ the police as a result of growing frustration with the state of American policing exacerbated by the Minneapolis Police Department’s killing of George Floyd,” and that “in fact, libertarians would likely be more accepting of likely outcomes of abolition than most others.”).

### 3 What is Police Abolitionism?

Understanding those features about the contemporary abolitionist helps clarify some things. We know that contemporary abolitionists are not merely putting forth a negative project that requires the immediate and unconditional destruction of police departments. We also know that they are not advancing a position that requires us to minimize the state's presence in our lives. But, of course, that doesn't tell us exactly what police abolition *is*. Defenders of police are quick to deride abolitionists as being unable to offer an alternative where the public feels safe.<sup>28</sup> And abolitionists cannot simply shrug off complaints about safety and carry on with their critique.

Nor do they want to. As the abolitionist writer Derecka Purnell puts it: "When people dismiss abolitionists for not caring about victims or safety, they tend to forget that we are those victims, those survivors of violence."<sup>29</sup> Abolitionists want us to broaden our understanding of what makes us safe and question our reliance on police to perform the task.<sup>30</sup> To the abolitionist, policing in the United States is an extension of racialized chattel slavery that continues to keep Black people in their place in a racial capitalist society.<sup>31</sup> The task of the abolitionist is to situate police within our general history of racialized violence and advance demands for more equitable alternatives.<sup>32</sup>

Yet this restatement doesn't tell us exactly what police abolition is. It's tough to get on board with a view that doesn't provide a structured and clear vision of a radical change. Yes, the United States has a policing problem. Yes, fatal violence by the police is much more common in this country than other developed nations.<sup>33</sup> And, yes, disproportionate policing of marginalized communities creates and maintains concentrated inequality.<sup>34</sup> Most of us know this. And knowledge of these facts partly explains why a majority of Americans now report that our system of policing needs

<sup>28</sup> See, e.g., Kennedy, *supra* note 15, at 457-8 ("No political movement can do away with human evil and thus moot the necessity for protection against it. I, for one, am repulsed by the prospect of a polity in which serious criminality (for instance, rape, murder, robbery) faces no credible threat of containment, deterrence, and punishment.").

<sup>29</sup> Derecka Purnell, *How I Became a Police Abolitionist*, THE ATLANTIC (July 6, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/how-i-became-police-abolitionist/613540/>. See also JAMES FORMAN, LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 11 (2017) ("African Americans have always viewed the protection of black lives as a civil rights issue, whether the threat comes from police officers or street criminals.").

<sup>30</sup> Akbar, *supra* note 3, at 1816 ("Police abolition challenges the existence of police as 'an inevitable fixture in society.'") (internal citation omitted).

<sup>31</sup> Roberts, *supra* note 2, at 20; Akbar, *supra* note 3, at 1817-18 ("Abolitionist organizers locate the history of policing in slave and border patrols... The roots of modern police can be traced to slave patrols, the Ku Klux Klan, militias, and early police forces.").

<sup>32</sup> See Akbar, *supra* note 3, at 1787 ("Abolition situates prison and police within a history of racialized violence and exploitation, attends directly to the centrality of prisons and police in our political economy, and demands that we focus on shrinking the scale of prisons and police as we build alternatives.").

<sup>33</sup> FRANKLIN E. ZIMRING, WHEN POLICE KILL xi (2017).

<sup>34</sup> Akbar *supra* note 3, at 1797-99.

“major changes,” while only 6 percent say that no changes are needed at all.<sup>35</sup> The current support for change in policing is unprecedented.

Yet there remains relatively little support for abolition.<sup>36</sup> Part of this is, no doubt, because of confusion about what abolition is. It’s easy to knock down a cartoon version of the phrase “abolish the police.” And, even among those who are sympathetic to the movement, there is divergent opinion about what the phrase means.<sup>37</sup> Some abolitionists go so far as to claim that “abolition may mean different things in different contexts.”<sup>38</sup> Others provide an anxiety-producing conception that makes abolitionism a hard position to pin down. Here’s Dylan Rodríguez:

Now and long before, abolition is and was a practice, an analytical method, a present-tense visioning, an infrastructure in the making, a creative project, a performance, a counterwar, an ideological struggle, a pedagogy and curriculum, an alleged impossibility that is furtively present, pulsing, produced in the persistent insurgencies of human being that undermine the totalizing logics of empire, chattel, occupation, heteropatriarchy, racial-colonial genocide, and Civilization as a juridical-narrative epoch.<sup>39</sup>

Perhaps abolition is all those things to some. But I find it hard to understand—better yet scrutinize—all those ideas at once. Rattled off opinions about a moving target are unlikely to help the cause of fixing our broken system of policing. There’s no hope for a discourse of police abolitionism where the concept takes on so many positions.

But we needn’t get caught up in the many things that abolition could be. Even while recognizing the elusiveness of the position, most abolitionists acknowledge that there are general ideas embraced by many contemporary proponents of the position.<sup>40</sup> Two stand out. First, because the precursors to our current system of policing were slave patrols that surveilled Black people, any attempt at reform is futile—it

<sup>35</sup> Steve Crabtree, *Most Americans Say Policing Needs “Major Changes,”* GALLUP (July 22, 2020), <https://news.gallup.com/poll/315962/americans-say-policing-needs-major-changes.aspx>.

<sup>36</sup> *Id.*; see also Mihir Chaudhary et al., *A People’s Abolition: How Policed Communities Describe and Enact Liberatory Futures*, 102 Soc. Sci. Q. 3058, 3061 (2021) (“Support for abolishing police (i.e., eliminating the police force) is relatively low, comes behind other reforms, tends to be embraced among a key group—the youngest generation of adults and the least advantaged—and receives greater enthusiasm when framed more broadly as encompassing a reduction in reliance on police.”).

<sup>37</sup> See Sean Illing, *The “Abolish the Police” Movement, Explained by 7 Scholars and Activists*, VOX (June 12, 2020, 11:00 AM), <https://www.vox.com/policy-and-politics/2020/6/12/21283813/george-floyd-blm-abolish-the-police-8cantwait-minneapolis> (“One thing is clear: The movement is hardly monolithic.”); Meares & Prowse, *supra* note 23, at 4 (“One complication around terms such as ‘police abolition’ and its close cousin, ‘defund the police,’ is that the phrases mean different things to different people—even within the movement itself.”).

<sup>38</sup> McLeod, *supra* note 26, at 1618 n.28.

<sup>39</sup> Rodríguez, *supra* note 1, at 1578.

<sup>40</sup> McLeod, *supra* note 26, at 1618 n.28 (noting understandings of abolition that “convey broad principles embraced by many abolitionists”). This, of course, does not mean that these features are embraced by all abolitionists.



would be senseless to expect our current police forces to be rid of racism against Black people.<sup>41</sup> As an evolution of these slave patrols, policing cannot be reformed.

It would be inaccurate, though, to suggest that slave patrols were the precursor to all modern police forces in the United States. The historical picture is much more intricate with the police taking many forms across space and time. Some historians suggest that three central frames explain the role of police in early American life: capitalism, racism, and xenophobia.<sup>42</sup> The police developed differently in different places partly to accommodate the demands of those in positions of power. Understanding the police as a form of class control in northern cities, and as a tool for settler colonialism in western cities, may be just as informative in understanding how police forms developed in response to social powers as understanding the role of police as slave patrols in southern and middle-ground cities.

Moreover, we should be careful of arguments that extract the current value of something based on its historical origin. We don't reject a ban on smoking cigarettes in public just because Nazi Germany was the first to implement such a ban.<sup>43</sup> And it's not appropriate to dismiss political positions simply because they were originally advanced by a hated politician. If we have independent reasons to believe that smoking in public is harmful, or that the political position is a reasonable one to adopt, then the origin of the position becomes less important. The so-called genetic fallacy warns against discrediting a theory, experience, or point of view simply based on its origin or originator.<sup>44</sup>

Second, contemporary abolitionists appeal to idealizations to show the appeal of their position. I mentioned earlier that the abolitionist project is no longer framed

<sup>41</sup> Chaudhary et al., *supra* note 36, at 3059 (“Police abolitionists in the US historically link policing to the surveillance of enslaved black people through slave patrols and the enforcement of the Black Codes and Jim Crow thereafter. This history, they argue, renders useless policing reforms that uphold regimes of racial control and repression.”). See also, Christy E. Lopez, *Defund the Police? Here's What that Really Means.*, WASH. POST (June 7, 2020, 6:37 PM), <https://www.washingtonpost.com/opinions/2020/06/07/defund-police-heres-what-that-really-means/> (“The ‘abolition’ language is important because it reminds us that policing has been the primary vehicle for using violence to perpetuate the unjustified white control over the bodies and lives of black people that has been with us since slavery.”); Akbar, *supra* note 3, at 1817 (“Abolitionist organizers locate the history of policing in slave and border patrols.”); Dorothy Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM.R. L. REV. 261, 263 (2007) (highlighting “three key institutions—mass incarceration, capital punishment, and police terror—whose origins can be traced to black enslavement and whose modern day survival radically contradicts liberal democratic ideals”).

<sup>42</sup> See, e.g., Simon Balto & Max Felker-Kantor, *Police and Crime in the American City, 1800-2020*, in OXFORD RESEARCH ENCYCLOPEDIA OF AMERICAN HISTORY (2022) (demonstrating the evolution of policing and crime in America).

<sup>43</sup> Maarten Boudry et al., *The Fake, the Flimsy, and the Fallacious: Demarcating Arguments in Real Life*, 29 ARGUMENTATION 431, 442-44 (2015).

<sup>44</sup> *Id.* However, this does not mean that the origin of something cannot be brought forward as a relevant consideration bearing upon its status. We may, for instance, view with skepticism a liar's claim that they forgot that it was their turn to perform a duty. Still, as a deductive mode of inference, we should be cautious when the historical roots of something is the sole cause for dismissal. Just as a well-known liar may be telling the truth today, a historically discriminatory institution may be able to be used for good. At a minimum, though, it seems pointing out the historical flaws of an institution may play a burden-shifting role that requires defenders of the institution to hold onto the institution. Abolitionists should take care in explaining how history should shape attitudes today without falling into fallacy.



merely as a negative project (“get rid of all cops”). It is instead based on a positive project aimed at creating “new non-police institutions.”<sup>45</sup> The use of idealizations to describe the positive project of abolition is a ubiquitous—yet overlooked—feature of contemporary abolitionist discourse. And these idealizations are often used to get around objections to the abolitionist position. For instance, when told that abolishing the police would leave the vulnerable worse off, the abolitionist tells us that abolition applies when favorable conditions are present that would make the police “obsolete.”<sup>46</sup> Or, when told that we would never reach a state where the police departments are completely eradicated, abolitionists suggest that we treat the abolitionist ideal as an endpoint that we should try to approximate.<sup>47</sup> Sometimes, abolitionists are reluctant to say what positive responses would be needed in this idealized state. Though the abolitionist ideal is a society without police, they claim that to make it easier to understand the kinds of alternative responses that are needed we must first remove police from our communities.<sup>48</sup> Even when acknowledging this paradoxical position, the recommendation from abolitionists remains the same: take incremental steps to abolish the police, even if it won’t occur in our lifetime.<sup>49</sup>

These examples aren’t all that’s out there. The champions of contemporary abolitionism enthusiastically encourage us to use our radical speculative imagination.<sup>50</sup> And once we start to use our imagination, it takes us many places. Abolitionism has become a position where grand idealizations are meant to guide us to a better future, and the presence of these idealizations permeates abolition talk.

The puzzle here, though, is that contemporary abolitionism is also, primarily, an activist stance—it’s a call for us to engage with the realities of a racist, violent,

<sup>45</sup> See *supra* note 20 and surrounding text.

<sup>46</sup> See, e.g., Kaba, *supra* note 19 (“But don’t get me wrong. We are not abandoning our communities to violence. We don’t want to just close police departments. We want to make them obsolete.”); Lisa Guenther, *These Are the Moments in Which Another World Becomes Possible: Lisa Guenther on Abolition*, ABOLITION (July 10, 2015), <https://abolitionjournal.org/lisa-guenther-abolition-statement/> (“Abolition is both a negative process of dismantling oppressive structures and a positive process of imagining, creating, and sustaining the sort of relationships, practices, and institutions that would make oppressive structures obsolete.”); Ben Austen, *Chicago After Laquan McDonald*, N.Y. TIMES MAG. (APR. 20, 2016), <https://www.nytimes.com/2016/04/24/magazine/hicago-after-laquan-mcdonald.html> (QUOTING PAGE MAY, A FOUNDER OF ASSATA’S DAUGHTERS, SAYING “WE ARE ABOLITIONIST IN OUR POLITICS...WE ARE FIGHTING FOR A WORLD IN WHICH THE POLICE ARE OBSOLETE.”); AKBAR, *supra* note 3, at 1783 (quoting Rachel Herzing explaining that “the only way to stop the violence of policing is to make the cops obsolete”).

<sup>47</sup> See, e.g., Rachel Herzing, *Big Dreams and Bold Steps Toward a Police-Free Future*, TRUTHOUT (Sept. 16, 2015), <https://truthout.org/articles/big-dreams-and-bold-steps-toward-a-police-free-future/> (“Plans for change must include taking incremental steps with an eye toward making the cops obsolete, even if not in our own lifetimes.”); See *What Is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, <https://criticalresistance.org/mission-vision/not-so-common-language/> (“An abolitionist vision means that we must build models today that can represent how we want to live in the future. It means developing practical strategies for taking small steps that move us toward making our dreams real and that lead us all to believe that things really could be different. It means living this vision in our daily lives”); Duran & Simon, *supra* note 5, at 85 (arguing that “partial abolitionism is a coherent and productive stance for reformers to take”).

<sup>48</sup> Duran & Simon, *supra* note 5, at 99.

<sup>49</sup> *Id.*

<sup>50</sup> See *supra* notes 1–4 and surrounding text.

and destructive system that is resistant to change. A common belief among political philosophers concerned with these same issues is that gross idealizations help ground oppressive social relations and obstruct progress for racial minorities and other subjugated groups.<sup>51</sup> Indeed, some theorists have claimed that the “ideal society approach” is representative of a conservative platform that abstains from more progressive remedies to injustice.<sup>52</sup> For this reason, one may not expect to find such ideals in discourse guiding a radical social movement. The abstractions that have become common in abolitionist discourse may distort the actual problems in our system of policing.

If we conclude that these idealizations are central to the abolitionist picture, does it follow that the position could be dismissed as excessively utopian—and, hence, not helpful for an activist agenda? Not quite. Again, abolitionism is *primarily* an activist position. And even while encouraging us to use our imagination, abolitionists are careful to point out that they are not “naïve dreamers.”<sup>53</sup> The abolitionist aims to ground their position in actual experience. Indeed, abolitionists criticize conventional accounts of “legal justice” for speaking in idealized terms that are at odds with actual legal processes.<sup>54</sup> Though an idealized version of our constitutional rights seems to provide protection, see what happens when one gets stopped by a police officer who discovers a warrant from an unpaid parking ticket.<sup>55</sup> Sure, abolitionism is “committed to a set of ideals.”<sup>56</sup> But these ideals are meant to guide the practical.

Maybe that solves the puzzle. But I still can’t shake the feeling that some of the grand idealizations in abolitionist discourse deserve the position. So far, I have only gestured at ways that idealizations could be counterproductive to achieving practical solutions. The account of abolition discussed in the last two sections is an attractive position when you consider it as a dualistic picture guided by ideals to end a system partly linked to slave patrols. It is less attractive when we look at the objectionable forms of idealization attached to the abolitionist project and see the ways that they could be counterproductive in practice. So, let’s take a closer look at these idealizations in the next section.

<sup>51</sup> Mills, *supra* note 6, at 170 (noting that historically subordinated groups have always viewed “glittering ideals as remote and unhelpful”).

<sup>52</sup> SONU BEDI, *PRIVATE RACISM* 2–4 (2020).

<sup>53</sup> Dan Berger et al., *What Abolitionists Do*, JACOBIN (Aug. 24, 2017), <https://jacobin.com/2017/08/prison-abolition-reform-mass-incarceration>.

<sup>54</sup> McLeod, *supra* note 26.

<sup>55</sup> *See, e.g.*, *Utah v. Strieff*, 579 U.S. 232 (2016).

<sup>56</sup> Even Charles Mills—one of the most relentless critics of excessive idealization—accepts that a “simple appeal to an ideal” is common for many (including non-ideal) theories. CHARLES MILLS, *BLACK RIGHTS/ WHITE WRONGS* 75–78 (2017).

## 4 The Ideal of Police Abolition

My focus is on how abolitionism guides us in solving our current problems of policing rather than whether the idealizations they invoke adequately depict a just society. Is it a given that an ideal society would be a policeless society? Not really. But it seems to be a common assumption. Some theorists deny that an ideal society would have a need for the police, or even criminal justice in general.<sup>57</sup> The thought here is that idealized societies provide no means for governmental figures to administer justice. As James Madison notoriously declared, “If men were angels, no government would be necessary.”

Still, it’s a debatable assumption. Given our limitations as humans, it is possible that morally perfect people would have good-faith disagreements about issues of moral concern.<sup>58</sup> It seems possible that some of those disagreements exist in the criminal realm. And societies that attempt to eradicate harmful conduct entirely may only be able to do so by having us give up individual liberties.<sup>59</sup> At least, this seems to be the lesson of various science fiction books and movies. Rather than utopias, crimeless societies often appear as dystopias where there is no room for individual choice.<sup>60</sup> And societies that adopt a treatment ideology to deal with wrongdoing appear as paternalistic societies that treat autonomous beings as patients.<sup>61</sup> Does any of this mean that police must be the ones that respond to the harmdoing? Not quite. Abolitionists have thoughts about the right people to address these harms, and perhaps this project could be put forward without violating our basic liberties. Still, it’s worth acknowledging that a society in which police are obsolete may not be as utopian as some initially make it out to seem. More should be said about why an ideal society would be a policeless one. (But I won’t be the one to say much more about it here.)

Let’s also assume, then, that the abolitionist ideal of a policeless society is a worthy goal to pursue. I’m more interested in how we are meant to use this abolitionist ideal for guidance. Contemporary abolitionists seem to think that the abolitionist ideal offers a solid framework for pursuing practical projects. But I question whether this is true for three reasons.

One: Even if abolition is a desirable goal to pursue, we should be on guard for arguments suggesting that approximate, or second-best, arrangements are also

<sup>57</sup> See Jake Monaghan, *Idealizations and Ideal Policing*, 22 *PHILOSOPHER’S IMPRINT* 1 (2022) (“[A]n ideal world of the sort many political philosophers are interested in would have no need for criminal justice or, presumably, the police.”). As Monaghan notes, however, some other theorists, such as Rawls, take a more modest approach to ideal theory that does not obviate an active role for police. See *id.* at 2.

<sup>58</sup> For an influential take on this subject, see Gregory Kavka, *Why Even Morally Perfect People Would Need Government*, 12 *SOCIAL PHIL. AND POL’Y* 1 (1995). Some of the examples Kavka discuss include disagreements about abortion and smoking in public.

<sup>59</sup> Máximo Langer, *Penal Abolitionism and Criminal Law Minimalism: Here and There, Now and Then*, 134 *HARV. L. REV. F.* 42, 67–68 (2020).

<sup>60</sup> *Id.* (“And as science fiction literature and movies like *Minority Report* suggest, the societies that have been imagined with perfect crime prevention and no crime are often dystopias—for example, totalitarian societies in which there is no room for individual choice and individual liberties — rather than utopias.”).

<sup>61</sup> *Id.*

desirable. Understandably, some abolitionists have taken a more cautious approach when advocating for permissible ways to fix the problems of policing in our society. Sometimes this appears as a straightforward endorsement of “partial abolition.” Eduardo Bautista Duran and Jonathan Simon, for instance, argue that “partial abolition” projects are an overlooked feature in abolitionist discourse—yet it could help make complete abolition more imaginable.<sup>62</sup> Other times it appears as theorists backtracking to criminal law minimalism when faced with the challenges of abolitionism.<sup>63</sup> And recently, many abolitionists have been advocating for “defunding the police” as a step toward abolition.<sup>64</sup> Indeed, some abolitionists suggest that we should pursue abolition even if we have no chance of ever achieving it.<sup>65</sup>

At first glance, these positions appear unproblematic. When certain goals feel out of reach, it seems appropriate to think that a desirable outcome would be a feasible approximation of the goal. So, if we have this ideal of ridding the workplace of race-based discrimination, then a feasible approximation—say, significantly reducing racial discrimination—would be a desirable outcome if eradicating racial discrimination can’t yet be achieved.<sup>66</sup> Or, more simply: if you cannot submit your paper by the deadline, a desirable outcome would be to submit it as close to the deadline as possible. The further the submission is from the initial deadline, the less acceptable the tardiness may become. When we are unable to achieve our goals, regardless of how lofty, feasible approximations might seem like the next best thing. Even if we can’t reach the horizon, perhaps we should still get as high up on the hill as possible.

The problem with these partial abolitionist strategies, though, is that they risk leaving out a crucial element. As David Estlund reminds us, “a car with a missing

<sup>62</sup> Duran & Simon, *supra* note 5, at 87 (“We think this tendency to express itself in partial abolition projects is an important feature of abolitionist thought and political movements that has been overlooked by those who assume abolitionism is inherently absolutist and which may have application to police abolition today. Yes abolition always seeks to imagine a world without (slavery, capital punishment, prisons), but generally seeks to abolish where possible partial features of those greater evils whose ending can help make complete abolition more imaginable”).

<sup>63</sup> See Langer, *supra* note 59, at 58–59 (discussing examples of “criminal law backtracking”).

<sup>64</sup> See, e.g., Purnell, *supra* note 29 (“Defunding the police is one step on a broad stairway toward abolition.”); Christy E. Lopez, *Abolish Carceral Logic*, 17 *STAN. J. C. R. & C. L.* 379, 383 n.18 (2022) (“Abolitionists describe defunding the police as a step on the road to abolition—an initial demand meant to narrow the scope of policing and reduce its intensity, while building up communities in other ways with the aim of showing how alternative modes can better meet community needs, and, ultimately, that we can live in a world without police.”); Amy Goodman, *Defund the Police: Linda Sarsour & Mychal Denzel Smith on What Meaningful Change Would Look Like*, DEMOCRACY NOW! (June 8, 2020) [https://www.democracynow.org/2020/6/8/bill\\_de\\_blasio\\_nypd\\_police\\_funding](https://www.democracynow.org/2020/6/8/bill_de_blasio_nypd_police_funding) (quoting Michael Denzel Smith saying, “[T]he defund the police demand is an abolitionist demand...the call for defunding the police really is sort of the first thing.”); Meares & Prowse, *supra* note 23, at 4 (calling “defund the police” the “close cousin” of police abolition); Akbar, *supra* note 3, at 1843 (“Abolitionist demands like ‘defund the police’ remind us that if we are interested in building a more just world, we cannot wage our battles simply on the terrain of rights, litigation, rule of law, or administrative innovation.”).

<sup>65</sup> Lopez, *supra* note 41 (“For most proponents, ‘defunding the police’ does not mean zeroing out budgets for public safety, and police abolition does not mean that police will disappear overnight—or perhaps ever.”).

<sup>66</sup> Nicholas Southwood & David Wiens, *Devoting Ourselves to the Manifestly Unattainable*, 104 *PHILOSOPHENOMENOL RESEARCH* 1, 6 (2021).

brake pedal is approximately like a car with a brake pedal, but most of the value is missing.”<sup>67</sup> The theorem of the second best (or the fallacy of approximation) shows that there is no necessary connection between hitting some distant normative target and moving in its direction.<sup>68</sup> This is because the value contribution of any set of features may be dependent on other features that are not present. Thus, to use a popular example, one should not assume that taking two of three prescribed pills is better than taking one (or none). The chemical interaction of the pills may make it the case that taking two of the pills will cause your body to react in a way that is worse than if you had refrained from taking the pills altogether.<sup>69</sup>

The question then becomes whether there are ways in which partial abolition could make things similarly worse off. One possibility is that abolitionists could succeed in eliminating target institutions but not in replacing them with the alternative institutions that they say are necessary for their transformative project.<sup>70</sup> As Christy Lopez puts it, “[o]fficials can answer calls to ‘defund the police’ and claim they are doing the people’s will without putting a penny into the services those same people are demanding.”<sup>71</sup> Indeed, that is what we already see occurring in some places.<sup>72</sup> Officials are merely following a common playbook in this country where they divest from a disputed function without reinvesting in the necessary resources.<sup>73</sup> Partial abolition would likely make things worse off if the abolished institutions are not replaced with the necessary substitutes.

Another possibility could be that, as critics of the defund movement have argued, reducing police funding in many municipalities would result in worse—not better—policing.<sup>74</sup> Abolitionists sometimes suggest that smaller police departments would

<sup>67</sup> DAVID ESTLUND, *UTOPIAPHOBIA: ON THE LIMITS (IF ANY) OF POLITICAL PHILOSOPHY* 271 (2020).

<sup>68</sup> *Id.*; Levy, *supra* note 11, at 329.

<sup>69</sup> Estlund, *supra* note 67, at 272.

<sup>70</sup> In this respect, it would be similar to what happened with the deinstitutionalization of mental health. As Langer explains it: “The idea wasn’t just to empty out mental hospitals; it was to replace them with community mental health services. But we only got the first part.” Langer, *supra* note 59.

<sup>71</sup> Lopez, *supra* note 64, at 400.

<sup>72</sup> See *id.*; Audie Cornish, *How “Defunding Police” Is Playing Out in Austin, Texas*, NAT’L. PUB. RADIO (Feb. 22, 2021, 5:01 PM), <https://www.npr.org/transcripts/970107572> (“[M]ore than half the cuts were just a reshuffling. For example, the city moved its forensics lab away from the police—same department, different oversight.”); Melissa Harris-Perry, *Policymakers Are Twisting “Defund the Police” into “Refund the Police,”* THE TAKEAWAY (Apr. 4, 2022), <https://harkaudio.com/p/the-takeaway-gbh-prx-wnyc-studios/how-policymakers-are-twisting-defund-the-police-into-refund-the-police-wnyc-and-prx> (April 4, 2022) (“In Los Angeles, the city council voted in 2020 to shift 150 million from the LAPD budget to reinvest in communities of color but added 50 million in fiscal year 2022 with more proposed for 2023. In Austin, Texas, the city council cut the police budget by one-third amid protests back in 2020, but the Austin police department budget now stands at a record high. In New York City, then-mayor Bill de Blasio pledged in 2020 to shift \$1 billion from the police department’s \$6 billion budget but increased the budget by 200 million for the fiscal year 2022.”).

<sup>73</sup> Lopez, *supra* note 64, at 400.

<sup>74</sup> See e.g., Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 1 (2020). This problem could be exacerbated by the so-called “Washington Monument strategy,” in which agencies respond to budget cuts by getting rid of the most popular and visible services an agency provides—and not by making reasonable cuts. See Jonathan Bernstein, *The ‘Washington Monument’ sequester strategy*, WASH. POST (Feb. 10, 2013, 4:59 PM), <https://www.washingtonpost.com/blogs/post-partisan/wp/2013/02/19/the-washington-monument-sequester-strategy/> (“thus the Park Service would react to a budget cut by

lead to less violence. Mariame Kaba, for instance, notes “an immediate demand we can all make: Cut the number of police in half and cut their budget in half. Fewer police officers equals fewer opportunities for them to brutalize and kill people.”<sup>75</sup> But it’s not clear that a smaller police force means less police violence.<sup>76</sup> It could instead mean veteran officers fleeing and being replaced with officers who are overworked, underpaid, and underqualified.<sup>77</sup> Or it could mean that some police departments “make up for their inability to offer competitive wages and benefits by insulating officers from disciplinary oversight and accountability.”<sup>78</sup> Indeed, when Vallejo, California cut its budget in half after the financial crisis of 2008 we did not see police violence decrease. Instead, the number of fatal shootings by police (as well as other misconduct) drastically increased.<sup>79</sup> As one resident of Vallejo put it, “Do I really want a man or woman who’s worked 16 hours straight, with a gun in their hand, with state-sanctioned ability to take my life, who is tired—do I want that person authorized to police me?” The answer is obvious: no.

Treating partial abolition, then, as desirable because it approximates abolition may be counterproductive to abolitionists’ goals. It simply cannot be assumed that removing some obstacles without removing them all would improve matters. Indeed, given that contemporary abolitionism’s positive posture is based on lessons about what happens when the abolitionist ideal is not fully satisfied, it is surprising that so many abolitionists rely on approximation arguments.<sup>80</sup> If we are settling for a second-best scenario because the abolitionist horizon is unreachable, it might be better for us to get our heads out the clouds.

Two: Abolitionists ought to take more care in explaining the conditions of application of their view. Conditions of application are circumstances under which prescriptions hold.<sup>81</sup> If a view prescribes that “One ought to abide by the law *if* most of one’s fellow citizens comply with it,” then the duty to abide is conditional on

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Footnote 74 (continued)

threatening to close the Washington Monument, figuring that disappointed tourists would flood their Member of Congress’s office complaining about it”).

<sup>75</sup> Kaba, *supra* note 19.

<sup>76</sup> Peter Jamison, *This California City Defunded Its Police Force. Killings by Officers Soared*, WASH. POST (June 23, 2020, 9:00 PM), [https://www.washingtonpost.com/local/public-safety/this-california-city-defunded-its-police-force-killings-by-officers-soared/2020/06/22/253eeddc-b198-11ea-856d-5054296735e5\\_story.html](https://www.washingtonpost.com/local/public-safety/this-california-city-defunded-its-police-force-killings-by-officers-soared/2020/06/22/253eeddc-b198-11ea-856d-5054296735e5_story.html) (“Beyond consequences such as decreased responsiveness to burglaries, car thefts and other lower-priority offenses, this city has learned the hard way that a smaller police force is not necessarily a less deadly one.”).

<sup>77</sup> *Id.*

<sup>78</sup> Rushin & Michalski, *supra* note 74, at 307.

<sup>79</sup> Lopez, *supra* note 64, at 401.

<sup>80</sup> The precedent for the current abolitionist’s position is W.E.B. DuBois’s *BLACK RECONSTRUCTION IN AMERICA* (1935) and Angela Davis’s *ARE PRISONS OBSOLETE?* (2003) and *ABOLITION DEMOCRACY* (2005). Both DuBois and Davis explain how the negative project of abolishing slavery was unsuccessful because it was unaccompanied by a positive project of building democratic institutions to integrate Black people in the social order. As Davis puts it, “a host of democratic institutions are need to fully achieve abolition.” *Id.* at 96. It is hard for me to see why a partial abolitionist project would not merely repeat the mistakes of the past.

<sup>81</sup> Valentini, *supra* note 10.

circumstances of widespread compliance.<sup>82</sup> Without other’s compliance, the view does not give us much guidance on when, if ever, we should obey the law.

A similar lack of guidance is present within some abolitionists’ views. I mentioned earlier that many abolitionists do not just want to get rid of police—they want to make the police obsolete. In defending this position, abolitionists often speak of their project as one that defers the elimination of police until other substitutes are in place; in other words, we should get rid of all police departments, *if* the police are obsolete. Consider Mariame Kaba’s claim responding to the often-invoked criticism that immediate abolitionism would leave communities unsafe: “We are not abandoning our communities to violence. We don’t want to just close police departments. We want to make them obsolete.”<sup>83</sup> Rachel Herzing makes a similar statement: “[T]he only way to stop the violence of policing is to make the cops obsolete.”<sup>84</sup> But, strictly speaking, none of this tells us what we are required to do before the police are obsolete. Presumably, we would have in the back of our minds other institutions that would replace our current police forces. As one proponent of abolitionism puts it: “As we abolish policing, what we need to think about is what other systems we can put in place to make sure people are getting their needs met.”<sup>85</sup> Fair enough. But should we be doing more than thinking? Inaction is sometimes defended by abolitionists on the grounds that we need to remove police from our communities to make it easier to understand the kinds of alternative responses that are needed.<sup>86</sup> But then there’s a catch-22: we can’t get rid of the police until we succeed in replacing it with substitutes; but we can’t succeed in replacing it with substitutes until we get rid of the police.<sup>87</sup> Forms of idealization that condition police abolition on achieving a world that looks very different than ours does not provide sufficient guidance of what we should do before the radical changes to our basic structure are in place. And for those who think it’s appropriate to “build models today that can represent how we want to live in the future,”<sup>88</sup> see the perils of second-best and approximation arguments above.<sup>89</sup>

<sup>82</sup> *Id.*

<sup>83</sup> See *supra* note 19.

<sup>84</sup> Akbar, *supra* note 3, at 1783.

<sup>85</sup> Illing, *supra* note 37.

<sup>86</sup> See *supra* note 48 and surrounding text.

<sup>87</sup> Duran & Simon, *supra* note 5.

<sup>88</sup> Roberts, *supra* note 2, at 119.

<sup>89</sup> Notice that even when abolitionists attempt to offer plans for immediate action those plans fail to recognize that our broken system of policing may be a consequence of the problem—and instead treat the system as if it is the problem in itself. Shifting responsibility from the police to other entities will not matter much if those other entities maintain the same punitive inclinations that contributes to the police’s behavior. Abolitionists suggest that we could greatly reduce harm and make the police obsolete by shifting our funding to housing authorities, school districts, and mental health departments. But this assumes that those institutions are immune from the carceral logic that permeates many public institutions in this country. That assumption may not be one to hang your hat on. As one commentator sympathetic to the cause of abolition observes: “I have investigated housing authorities, school districts, and mental health departments that were as or more carceral-minded than the law enforcement agencies they worked alongside—and that caused similar harm. I find very little solace in the idea of not having police and shifting those responsibilities to agencies like those.” Lopez, *supra* note 64, at 414. We should be similarly skeptical of such shifts.



Three: We should bear in mind the feasibility constraints in abolition discourse. This is not to suggest that every theory needs to be sensitive to the likelihood that it would be adopted. If a theory is purely evaluative, for instance, feasibility constraints may not be an adequate way to assess its validity. It's no response to an evaluative theory to point out that persons won't live up to their moral obligations. This is especially true if the demandingness of a theory is merely a by-product of people's weakness of will or selfishness.<sup>90</sup> As David Estlund has argued, "ought implies can" does not mean "ought implies will."<sup>91</sup>

So, if abolitionism is merely meant to be evaluative—and not action-guiding—then feasibility insensitivity is irrelevant.<sup>92</sup> The ideal of abolition would be used as a criterion to assess the "badness" or "unjustness" of our current system of policing.

Yet mere evaluation is not the aim of abolitionists. Abolitionists are quick to point out that they are advancing "a strategy toward fundamental transformation."<sup>93</sup> For the abolitionist, the ideal system of the police is none at all. "In this way," Akbar tells us, "[abolition] invites a dialectical relationship between radical imagination and practical projects."<sup>94</sup> And this makes sense. The theoretical argument for police abolition is meant to support a movement that is responding to the racist, violent, and other injustices in our system of policing. The motivation for the abolitionist ideal is not just to track the morally correct answer.

It seems wrong, then, to conclude that feasibility-sensitivity could be ignored by abolitionists. Abolitionists should not advance principles that are counterproductive if adopted as part of our existing institutions and laws. If one could predict harmful consequences or a greater lack of compliance from advancing a just position, one has reason to advance a modified version of that position. For instance, it could be true that in a just society the richest segment of the population is taxed at 70 percent.<sup>95</sup> Yet if one could foresee that such a tax rate would likely result in a significant amount of tax evasion, tax avoidance, and the wealthy relocating to places with a more favorable tax regime, then we have reason to tax the rich more modestly. Or, it could also be true, as Peter Singer has argued, that morality requires us to give away any surplus income to combat global poverty. But if the demandingness of this prescription would likely result in people not donating to reduce global poverty—or, even worse, if it is likely to lead to people ignoring the cause altogether—then we have reasons not to advance such an extreme request.

<sup>90</sup> Valentini, *supra* note 10, at 672.

<sup>91</sup> Estlund, *supra* note 67, at 27.

<sup>92</sup> Valentini, *supra* note 10, at 671.

<sup>93</sup> Akbar, *supra* note 3, at 1842.

<sup>94</sup> *Id.*

<sup>95</sup> These examples are mentioned in Valentini, *supra* note 10, at 672.

My point is merely that feasibility-sensitivity matters to positions that purport to be action-guiding.<sup>96</sup> Since abolitionism is primarily an activist position, it cannot over-rely on using idealizations to suggest a correct answer to what a system of policing looks like in a just society. As such, abolitionists need to say more about whether the ideal state of affairs they advocate for is not only possible, but also likely to happen. We can't get on with imagining, envisaging, and dreaming without ever anchoring these aspirations to what people are likely to do on the ground.

## 5 Why not Repair?

For the reasons stated above, I do not think that the idealizations invoked in abolitionist discourse provide a solid framework for pursuing an activist agenda. Understanding the use, and misuse, of idealizations in abolitionist discourse helps us realize the ways in which the imaginative part of abolitionist discourse can be counterproductive to eradicating our current policing problems. Specifically, I have pointed out how the idealizations invoked by abolitionists risk being counterproductive with respect to abolitionists' activist goals: they 1) suggest that if abolition is desirable, approximating abolition is also desirable; 2) fail to clarify what the condition of applications of their view is; and 3) operate without the feasibility-sensitivity that one should expect from a non-evaluative position. This is not to say that the abolitionist program is not amenable to developing an alternative framework that is less reliant on "radical speculative imagination." But it does mean that the abolitionist's own exposition of what they'd like to achieve has inherent problems that need to be resolved.

To be clear, when I advocate for a program less reliant on speculative imagination, I am not encouraging an excessive pragmatism that attracts as broad a basis of political support as possible. Even though a majority of the country agrees that policing needs "major changes," the actual changes that tend to get broad support are those advancing community policing techniques or changing practices to establish greater accountability for the few "bad apples" that abuse their power.<sup>97</sup> These

<sup>96</sup> Two points are worth clarifying. First, my point here is not to suggest that oppositional defensiveness is enough to defeat the abolitionist project. If sensitivity to feasibility constraints implied that a view could be defeated by oppositional defensiveness, then most calls for social transformation would be defeated at the outset. And, in some sense, broad claims about a view's lack of feasibility have been a go-to move for those wanting to dismiss progressive agendas. The feasibility of a position is important for views meant to guide social change, but mere conjectures that a position is unfeasible is not enough for the opponents of abolitionism to reject the position. Second, it could be said that even if we are unlikely to achieve abolition, the extreme rhetoric employed by abolitionists has mobilization potential that makes it practically useful. Of course, abolitionists are unlikely to admit that their position is wrong—but yet be mobilizing. Indeed, they probably can't: once they admit that the position is wrong, it is likely that such an admission would eliminate its potential to mobilize. Either way, it's not clear that we have reason to believe that such rhetoric provides the motivational potential that would justify it. Perhaps just as plausible is that these broad calls for abolition is alienating prospective centrists or left of center allies and zaps some of the energy for other worthwhile reform efforts.

<sup>97</sup> See Crabtree, *supra* note 35.

sorts of modifications don't provide the substantive changes that abolitionists are interested in.

Instead, what I have in mind is a program that has desirable goals, clear applicability now, and sensitivity to feasibility constraints. One model for this could be based on repair. A repair agenda is sometimes rejected in abolitionist circles as inadequate because it purportedly ignores history and distracts from impactful work.<sup>98</sup> By centering repair, the argument goes, we are both assuming that the police could be fixed and tying up resources that could be spent toward solving other societal problems. As one community activist put it, "Our police is not working—we need to replace it with something new. It's more than a repair."<sup>99</sup> That more is usually abolition or transformation.

But there is no reason to think that a repair framework must rest on tossing money at police departments in order to solve our problems. There's also no reason that the repair framework rests on repairing the police force that we currently have. The goal here is to repair our society, not (just) the police. To fix our problems, we have to go beyond policing. A reparative framework that focuses on eliminating oppression, establishing institutions that allow us to be treated as equal under the law, and creating a society where persons relate to each other as equals in their day-to-day lives would get us pretty close to eradicating a lot of the problems that concern abolitionists. An approach that centers repair, I would suggest, would be both more theoretically sound and politically effective than relying on imaginative thinking in the way that contemporary abolitionists seem to.

Sometimes, too, I get the sense that some activists would agree.<sup>100</sup> Though not as present as imaginative thinking, the notion of repair often makes its way into discourse criticizing police violence. For instance, when two activist groups in Chicago—Black People Against Police Torture and the National Conference of Black Lawyers—addressed systematic police torture, they "insisted on characterizing the relief sought as 'reparations.'"<sup>101</sup> By centering reparation, the groups were able to call to mind "the racialized character of the violence."<sup>102</sup> The notion of repair and reparation links the experience of police violence to the long legacies of racial violence in this country—and, thus, fits as a proper framework to incorporate our response to police violence.<sup>103</sup> The fit seems so natural that even those who criticize the repair agenda still invoke the concept when recommending solutions to

<sup>98</sup> Lopez, *supra* note 64, at 412 ("Indeed, the abolitionist argument is that such engagement often takes the form of 'reformist reforms' or a 'repair agenda' that ignores history and distracts from the work that will actually bring about the change communities need.") (citing Akbar, *supra* note 3, at 1813).

<sup>99</sup> See Duran & Simon, *supra* note 5 (internal citation omitted).

<sup>100</sup> See, e.g., McLeod *supra* note 26, at 1615 ("Justice for abolitionists is an integrated endeavor to prevent harm, intervene in harm, obtain reparations, and transform the conditions in which we live.")

<sup>101</sup> McLeod, *supra* note 26, at 1626.

<sup>102</sup> *Id.*

<sup>103</sup> Katherine Franke has recently invoked the notion of repair to guide us in fulfilling the promise of earlier abolitionist movements and move toward freedom for all. See KATHERINE FRANKE, REPAIR: REDEEMING THE PROMISE OF ABOLITION (2019).

our policing problems.<sup>104</sup> Critics seem to think that a reparative framework is inadequate. But maybe it is less so if we revise the target of repair to incorporate our broader relations with all social and political institutions in our society.

Does any of this mean that there is no room for imaginative thinking when discussing the problems of the oppressed? Not quite.<sup>105</sup> There's something to be said for the imaginative approach in some instances. Advancing a long-term revolutionary vision could, among other things, help remind activists what they want to build—and not just what they want to knock down. My goal here is not to crush people's dreams. And, I admit, I still find it somewhat hard to agree with Charles Mills's claim that historically subordinated groups have always viewed "glittering ideals as remote and unhelpful."<sup>106</sup> If anything, the opposite is closer to the truth. There is a long history of "escapism," where historically subordinated groups used stories, games, and dreams to help manage their pain and oppression. And optimism about the future has appeared to be the go-to move for oppressed groups trying to envision a situation better than the one they currently face.<sup>107</sup> There are various examples in Black political thought: from Howard Thurman's claim that you "never scale down your dreams to the level of that which is your immediate experience" to Barack Obama's "audacity of hope" that is insistent upon us believing that "America can change" and working to reclaim "the American Dream." Indeed, an appeal to glittering ideals arguably forms the heart of Martin Luther King's "I Have a Dream" speech, which is today lauded as the high point of the civil rights movement and serves as a lesson on how to mobilize people to mitigate the causes of injustice.

<sup>104</sup> Compare Akbar, *supra* note 3, at 1813 ("Scholars advocating for repair fail to deal with the centrality of police violence and the larger social, economic, and political contexts in which police have exercised that violence over time."), with Akbar, *supra* note 3, at 1845 ("Communities must work together to reimagine safety; to care and provide for one another; and to prevent, intervene in, *repair*, and transform harm in response to all manner of social problems."). One way to reconcile this tension may be to read the criticism of repair as being directed at those who want to repair the police force but read the recommendation of repair as being directed at the broader task of fixing the interconnected problems in our society.

<sup>105</sup> Indeed, one could at once reject abolitionism and maintain that we need radical changes to our form of policing or criminal justice in general. Cf. TOMMIE SHELBY, *THE IDEA OF PRISON ABOLITION* 11 (explaining why the author considers himself to be part of the "black radical tradition" even though he rejects prison abolitionism).

<sup>106</sup> Mills, *supra* note 6, at 170.

<sup>107</sup> Robin Kelley's groundbreaking book, *Freedom Dreams*, is sometimes thought to be a defense of the unrestrained hope and optimism that frequently appears in Black radical thought. At times, Kelley seems to invite this reading. For instance, in the book's opening he writes: "The idea that we could possibly go somewhere that exists only in our imaginations—that is, 'nowhere'—is the classic definition of *utopia*. Call me utopian, but I inherited my mother's belief that the map to a new world is in the imagination, in what we see in our third eyes rather than in the desolation that surrounds us." ROBIN D.G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* 2-3 (2002). In addition, his defense of surrealism suggests that we should build "a new future on the basis of love and creativity rather than rationality." at 193. And Kelley ends the book by inviting us to create a new society "limited only by our imaginations." *Id.* at 196. However, Kelley has more recently rejected interpretations of Black radical thought as one that is "independent of the day-to-day struggles on the ground." ROBIN D.G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* xviii (Beacon Press, rev. ed. 2022) (2002). According to Kelley, the movements fighting for a radically different future "were fueled not by false optimism but by a deep understanding of *reality*." *Id.* at xix. The freedom dreams grounded in reality—and not the ones limited only by our imaginations—are less susceptible to the misuse of idealizations identified in this paper.

But perhaps there is a different lesson that we can take. One of King's main concerns was that America had defaulted on its "promissory note" that "all men—yes, black men as well as white men—would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness." In a lesser-known sermon, King seems to become weary of relying on dreams: "Ultimately we all die not having received what was promised. Our dreams are constantly tossed and blown by staggering winds of disappointment."<sup>108</sup> Still, he maintains his prophetic optimism, noting our "power to absorb the most excruciating pain without losing our sense of hope,"<sup>109</sup> and reminds the congregation that "God will take care of us."<sup>110</sup> But what if we want to cash in that promissory note sooner? What do we say to the victim of police violence who follows Malcolm X and exclaims "I don't see any American dream; I see an American nightmare"?<sup>111</sup> Smoothly murmuring "keep hope alive" and a pat on the back may get a sullen person through the day, but it isn't the sort of thing that should guide a social movement. Right here, right now, there are problems of policing that need to be addressed. And some of these problems may be distorted by appealing to grand idealizations, or—as some have resorted to—analyzing dialogues with "a 49-year-old black man, self-described 'Wakandan,' from LA."<sup>112</sup> But if abolitionists prefer to continue to focus on dreams, speculative imaginations, and horizons without appreciating their distorting effects, then so be it. They just shouldn't be too surprised when those dreams are tossed and blown by the staggering winds of disappointment.

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<sup>108</sup> Dr. Martin Luther King, Jr., *Unfulfilled Dreams*, (Mar. 3, 1968).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Malcolm X, *The Ballot or Bullet*, PUB. BROAD. SERV. (Apr. 3, 1964), <https://www.pbs.org/video/american-experience-ballot-or-bullet/>.

<sup>112</sup> Chaudhary et al., *supra* note 36, at 3069. Wakandan is the name of the people from the fictional country, Wakanda, in East Africa that is depicted in Marvel's comic *The Black Panther*.