

Law's Exposure: The Movement and the Legal Academy

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Last August, I went to a vigil for Mike Brown in Columbus, Ohio—a couple hundred people huddled under a park pavilion. Naming police violence and poverty, black folks from all walks of life placed the inequality in their communities within the death and deprivation spiraling out of the Atlantic slave trade.¹ Young black organizers absorbed the grief and responded with a parallel: The devaluation of black life persists, from then to now, but so do the traditions of African-American resistance.² A better world will come only if we demand one, they insisted—if we make this world uncomfortable.

The organizers were from the Ohio Student Association (OSA), a youth-led racial and economic justice organization that counts itself part of the national Freedom Side coalition, modeled after the civil rights-era Council of Federated Organizations (COFO).³ At the vigil, OSA organizers recounted the experience of John Crawford, a 22-year-old black man killed by police officer Sean Williams at a Wal-Mart less than two hours away, four days before Darren Wilson killed Mike Brown. As one organizer spoke, others collected contact information from the crowd to circulate details about upcoming

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1. See Claudia Rankine, *The Condition of Black Life Is One of Mourning*, N.Y. TIMES (June 22, 2015), http://www.nytimes.com/2015/06/22/magazine/the-condition-of-black-life-is-one-of-mourning.html?_r=0.
2. E.g., Donna Murch, *Ferguson's Inheritance*, JACOBIN (Aug. 5, 2015), <https://www.jacobinmag.com/2015/08/ferguson-police-black-lives-matter/>; Brittney Packnett, *Resistance Is Black Tradition*, EBONY (Aug. 8, 2015), <http://www. Ebony.com/news-views/ferguson-forward-resistance-is-black-tradition-403#.VcfKPE3bKUn>.
3. Freedom Side includes the Dream Defenders, Black Youth Project 100, United We Dream, and more. See FREEDOM SIDE, <http://freedomside.org/> (last visited Sept. 7, 2015).

actions. People started to disperse, and the organizers sang songs of freedom.⁴ Like many of the other organizers I would later encounter,⁵ the OSA organizers were radiant in their embodiment of possibility and their grounding in history. In their words and actions, I felt the long history of the black freedom struggle come alive.

Within a week I was meeting with them regularly—their temporary office in a social justice-oriented church was down the street from mine. Whenever I stopped by, organizers would be hard at work: huddled around laptops and fielding calls; strategizing about how to change local politics, cancel student debt, and raise the minimum wage; planning the next move in their Justice for John Crawford campaign. They dropped names like James Chaney and Gloria Richardson, C.L.R. James, and Heather Booth. Community events were political education and consciousness-raising sessions. There were members organizing around the state and others flying around the country to partake in training and strategy sessions in support of the burgeoning national movement. As they pushed the work forward, they confronted ongoing tactical questions. Debates ranged from the value of Twitter to the role of protest given their commitment to the slow haul of community organizing.

I jumped into their Justice for John Crawford campaign: advising on civil disobedience actions, organizing legal observers and jail support, and accompanying organizers to meetings with cops and prosecutors. In our collaborations, I felt a thrilling confusion. The organizers' work felt much more rebellious—much more visionary, really—than the litigation, community lawyering, and reform campaigns with which I was familiar. I had long felt that the mass mobilization of subordinated people was necessary for real social change, that lawyering and litigation were inadequate on their own.⁶ But as the organizers put into practice what I had preached, their actions tested many of my ingrained instincts.

In the past year, I have had the extraordinary opportunity to work with OSA and the broader Movement for Black Lives.⁷ I have had an education and even an awakening. I have mustered the will to look squarely at the

4. For example: "Harriet Tubman was a freedom fighter, and she taught us how to fight. We go'n fight all day and night, until we get it right. Which side are you on, my people? Which side are you on? We're on the Freedom Side!" On each iteration, the name of the individual invoked in the first line is exchanged for that of another inspirational figure (e.g., Malcolm X, Fred Hampton, Rosa Parks, and so on). The words seem to be an adaption of a 1930s labor movement favorite, which Pete Seeger later popularized. *See* HARLAN COUNTY, USA (First Run Features 1976).
5. This includes organizers from #Cbus2Ferguson and Columbus Citizens for Police Review, two local organizations focused on ending police brutality, People's Justice Project, a new organizing outfit focused on ending mass incarceration, and Pursuing Our Dreams, a community-building organization.
6. GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).
7. *See* THE MOVEMENT FOR BLACK LIVES, <http://movementforblacklives.org/> (last visited Aug. 25, 2015).

relationship between our system of laws and the violence it enacts every day in black communities.⁸ I have been reminded of what study of any movement will tell you: Movements are messy and multifaceted experiments in motion, full of big personalities and foot soldiers, excitement and turmoil, conflict, love, and hope. I have revisited my assumptions about law, legal process, and social change, struggled with the place of lawyering in social movements, and thought hard about how we teach law.

In this essay, I share notes on my learning and invite you to join me. As the movement continues to represent one of the deepest popular challenges to law in recent history, and as the organizing in Ferguson creates a sea change, law faculty and lawyers should be paying close attention.⁹ Indeed, this movement is but one in a wave of resurgent left-leaning movements in the United States—Occupy, the Fight for \$15, #Not1More, the Dreamers—all pushing for a change in law and politics as usual.¹⁰ These movements contest the empirical and normative assumptions we often pass over in legal education. The movements, and their challenges to law, deserve careful study.

I start by providing an accounting of the movement, lay out the challenges it presents to law, and finish by suggesting pedagogical techniques to integrate the movement's teachings into our classrooms. This rebellious movement borrows from movements of old as it paves its own sprawling paths. There's no sense in trying to tell a grand story about what remains, in many ways, a strong opening gambit. Instead, I provide a provisional sketch from one embedded point of view—my own—well knowing that the arc of this movement is not yet clear.¹¹

8. For a history of the conflation of blackness and criminality as a root of this violence see KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010).
9. On July 31 and August 1, 2015, 700-plus lawyers, law students, and legal workers—mostly black and of color—attended the Law for Black Lives conference in New York City organized by the Center for Constitutional Rights. The conference is testimony to the rapt attention many are already paying to these questions. See, e.g., Brooke Tucker, *Can the U.S. Constitution Save Black Lives?*, ACLU OF MICHIGAN (Aug. 4, 2015), <http://www.aclumich.org/blog/2015-08-04/tucker-can-law-be-enough-save-black-lives-0>.
10. The recent disruptions of Bernie Sanders on the campaign trail, and the refusal of a Democratic Party endorsement come to mind. See Lauren Gambino, *Black Lives Matter Network Disavows Political Ties After DNC Backs Movement*, THE GUARDIAN (Aug. 31, 2015, 6:22 PM), <http://www.theguardian.com/us-news/2015/aug/31/black-lives-matter-democratic-national-committee>; *Melissa Harris-Perry Show: Jeanne Theoharis: Social Movements Cause Discomfort* (MSNBC television broadcast Aug. 15, 2015), <http://www.msnbc.com/melissa-harris-perry/watch/theoharis-social-movements-cause-discomfort-505795139705>; *Statement*, BLACK LIVES MATTER NETWORK (Aug. 30, 2015), <https://www.facebook.com/BlackLivesMatter/posts/488330528004864>.
11. I aim to name enough of what I see in order to substantiate the claim that the movement presents serious challenges to law, and then to discuss those challenges. To reflect the way things are in motion, I sometimes refer to a movement and movement actors and at other times use the term “Movement for Black Lives,” borrowing a phrase invoked recently by organizers. See *supra* note 7 and accompanying text. I rely as much on secondary sources as on

Nonetheless, the Movement for Black Lives deserves our attention for at least two reasons. First and foremost, the movement represents long-standing and deeply held critiques in black and outsider communities of our social order, and specifically of law's purpose and function. Moreover, the movement has succeeded in bringing the malcontent of outsider communities into mainstream discourse, disrupting law's legitimacy in the larger public eye. We must give these critiques and disruptions the space they truly demand, unless we are prepared to defend a vision of legal education that accounts only for unflagging faith in law. Disruption to the public imaginary of law's functioning—and the reasons and meaning behind it—*should* seep into our teaching and thinking. These disruptions point us to law's violence, and remind us that the social, political, and economic contexts of lawmaking and law enforcement are crucial to understanding the life of the law.

Moreover, the movement has created a public testament to the myriad ways beyond the courts that the law changes, the pressures to which it responds and through which it is constituted. It points to a much more complex shape and history of law and lawyering in the United States. Our eyes and ears should always be attuned to the many messy processes that make law—and not just the ones in which we are already expert.

The movement exposes to the mainstream what black communities have argued—and black freedom struggles have organized against—for centuries: Law is not fair, it does not treat people equally, and its violence is lethal and routine.¹² These critiques, and the possibility that they might point to truths, make many lawyers and faculty deeply uncomfortable. This should come as no surprise: The critiques center very different histories and very different social, political, and economic realities than what many in the bench, bar, and academy take for granted. They pose serious foundational challenges to the empirical and methodological assumptions of much of law, our scholarship, and our teaching.

We all engage with and teach ideas with which we have disputes or about which we are uncertain—because we believe that those ideas have currency.¹³

conversations and collaborations with organizers, faculty, lawyers, and law students across the country that are involved in the movement.

12. It is beyond the contours of this essay to argue the relationship between law and structural inequality—feminist, critical race, and critical legal scholars have made these claims powerfully for decades. See, e.g., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Crenshaw et al. eds., 1995); Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS* 515 (1982).
13. Many lawyers and law faculty have challenged the profession with virtually all of the same questions posed by the Movement for Black Lives. On the idea that law constitutes inequality by reifying status quo power relations, see, for example, DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); Derrick Bell, *Racial Realism*, 24 *CONN. L. REV.* 363 (1992); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *HARV. L. REV.* 1331 (1988). On the possibilities and limits of lawyering for subordinated communities, see Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 *CLINICAL L. REV.* 355 (2008); Gary Bellow, *Steady Work:*

Our responsibility is not to agree with the movement's critiques or tactics, but to study, teach, and debate them in the spheres in which we hold power.

The Movement for Black Lives

The Movement for Black Lives can be rendered in different ways, since the organizers motivated by #BlackLivesMatter¹⁴ and related struggles for decarceration, abolition, police reform, black liberation, and economic and gender justice are engaged in countless battles in local stages across the country.¹⁵ As with the celebrated movements of the past, debate and disagreement, experimentation, trial, error, and correction are everywhere. Short- and long-term goals vary among members of the movement, as do the tactics, strategies, and underlying commitments to liberal, reformist, and radical politics.

At this early moment, a full taxonomy of the movement is impossible, but naming some of the moving pieces may help explain why. There are the Ferguson and Baltimore rebellions—evoking earlier uprisings in Watts and Detroit—precipitated by police killings of black people.¹⁶ There are organizations that came up in the wake of Occupy and Trayvon Martin's

A Practitioner's Reflections on Political Lawyering, 31 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 297 (1996); Christine Zuni Cruz, [*On The*] *Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999); Bill Ong Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 ASIAN AM. L.J. 1 (2007); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2000); Dale Minami, *Asian Law Caucus: Experiment in an Alternative*, 3 AMERASIA J. 28 (1975); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994); Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731 (1993); Kim Taylor-Thompson, *Individual Actor v. Institutional Player: Alternating Visions of the Public Defender*, 84 GEO. L.J. 2419 (1996); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-88); Lucie E. White, *Representing "The Real Deal,"* 45 U. MIAMI L. REV. 271 (1990-1991); TAKING PUBLIC DEFENSE TO THE STREETS, BRENNAN CTR. FOR JUSTICE, <http://www.nlada.org/DMS/Documents/1307720680.4/takingpublicdefense.pdf> (last visited Sept. 20, 2015).

14. Patrisse Cullors, Opal Tometi, and Alicia Garza authored the hashtag in the wake of George Zimmerman's acquittal for the murder of Trayvon Martin. Alicia Garza, *A Herstory of #BlackLivesMatter*, FEMINIST WIRE (Oct. 7, 2014), <http://www.thefeministwire.com/2014/10/blacklivesmatter-2/>. Cullors, Tometi, and Garza went on to found the Black Lives Matter network. See BLACK LIVES MATTER, <http://blacklivesmatter.com/> (last visited Sept. 1, 2015).
15. For accountings, see, for example, Gene Demby, *The Birth of a New Civil Rights Movement*, POLITICO MAG. (Dec. 31, 2014 04:47 PM), <http://www.politico.com/magazine/story/2014/12/ferguson-new-civil-rights-movement-113906.html#VKwp540lfOT>; Jay Caspian Kang, *Our Demand Is Simple: Stop Killing Us*, N.Y. TIMES (May 4, 2015), <http://www.nytimes.com/2015/05/10/magazine/our-demand-is-simple-stop-killing-us.html>; Trymaine Lee, *2014: The Year of Michael Brown*, MSNBC (Dec. 29, 2014, 11:02 AM, updated 2:09 PM), <http://www.msnbc.com/msnbc/2014-michael-brown-ferguson>; Mychal Denzel Smith, *How Trayvon Martin's Death Launched a New Generation of Black Activism*, THE NATION (Aug. 27, 2014), <http://www.thenation.com/article/181404/how-trayvon-martins-death-launched-new-generation-black-activism>.
16. Adam Serwer, *Eighty Years of Fergusons*, BUZZFEED (Aug. 25, 2014, 5:32 PM), <http://www.buzzfeed.com/adamserwer/eighty-years-of-fergusons#.kmGOvV79a5>.

death, new startups in formation, community-organizing outfits from the 1980s and 1990s, and old-timers who never quit.¹⁷ There are the 26 formal chapters of the Black Lives Matter network, black-led organizations that have taken up #BlackLivesMatter as an organizing principle, and an even broader set of racial justice organizations and allied groups supporting the movement. There are queer and gender-justice outfits committed to ensuring the experiences of black cis- and transgender women, queer and gender nonconforming people, are part of the conversation.

There are those comfortably functioning within the traditional nonprofit structure, those that aim to co-opt the nonprofit model, and those that reject altogether the role of nonprofits in any liberation struggle. There are organizations focused on long-term community organizing, those concentrating on the politics of spectacle and protest, and those that reject the binary. Some are focused on local campaigns while others have their eyes on the national stage. Some are making policy demands, while others refuse. Some are engaging the Democratic Party, while others protest and disrupt. Together and separately, each and every one of these elements in the constellation of this movement deserves careful study.

At its core, the movement challenges the pillars of policing and criminal justice, with its larger target white supremacy and structural inequality.¹⁸ Police routinely brutalize and kill black people. Law cultivates that violence as it facilitates a routine disregard by those of us who are not living in decimated communities, and keeps in place the socioeconomic conditions that allow such inequality to persist.¹⁹ Much of the organizing has embodied a radical approach,²⁰ making demands that not only go beyond criminal justice reform

17. For example, respectively, Dream Defenders out of Florida; #Cbus2Ferguson from Columbus, Ohio; Los Angeles Community Action Network (LACAN); and Harry Belafonte.
18. For vying views of the criminal justice system by black law scholars, see, e.g., RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* (1997); Regina Austin, "The Black Community," *Its Lawbreakers, and a Politics of Identification*, 65 S. CAL. L. REV. 1769 (1992); Kim Taylor-Thompson, *The Politics of Common Ground*, 111 HARV. L. REV. 1306 (1998) (reviewing KENNEDY, *supra*); Alina Ball, Comment, *An Imperative Redefinition of "Community": Incorporating Reentry Lawyers to Increase the Efficacy of Community Economic Development Initiatives*, 55 UCLA L. REV. 1883 (2008). See also Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012).
19. For work on the violence of law, see, e.g., ROBERT COVER, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* (1975); see also Robert Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1979); Jacques Derrida, *Force de Loi: Le "Fondement Mystique De L'Autorité"* (*Force of Law: The "Mystical Foundation of Authority"*), 11 CARDOZO L. REV. 920 (1989-1990); Robert Hale, *Force and the State: A Comparison of "Political" and "Economic" Compulsion*, 35 COLUM. L. REV. 149 (1935). See also Duncan Kennedy, *The Stakes of Law: Or Hale and Foucault!*, 15 LEGAL STUD. F. 4 (1991).
20. Radical politics within the black community has long been the subject of exploration. See, e.g., STOKELY CARMICHAEL & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* (1967); HAROLD CRUSE, *REBELLION OR REVOLUTION?* (1968); Bernice Johnson Reagon, *Coalition Politics: Turning the Century*, in *HOME GIRLS: A BLACK FEMINIST ANTHOLOGY*

or retrenchment but transcend standard American conceptualizations of the variety of relief that the state should guarantee. Take, for example, the Ferguson Action Demands, which include “full employment,” “decent housing,” “quality education,” and “full recognition of our human rights.”²¹ While campaigns have pushed for concrete reforms,²² many organizers have refused to adopt a programmatic approach. Calling up more radical elements of the civil rights, black liberation, and anti-war movements of the 1960s and 1970s, today’s movement gestures toward a longer struggle toward self-governance and participatory democracy.

The movement’s actions have been organized more broadly around institutions of law. Around the country, courthouses and statehouses have become sites for die-ins, protests, and funeral processions. Demands have been mapped onto legal mechanisms, with campaigns for special prosecutors, indictments of police, and civilian review boards, and even appeals to the United Nations.²³ Organizers have made clear that law holds inequality in place at the same time that they use the law as a tool for organizing. Stated another way, organizers condemn law as fundamental to the problem, and as a tool to work toward solutions.²⁴

Recognizing the violence of our criminal justice system as an expression of pervasive anti-black racism,²⁵ the movement is fueled by a vision for a bold

(Barbara Smith ed., 1983). Of course there is also a long history of radical politics. *See, e.g.*, DAN GEORGAKAS & MARVIN SURKIN, *DETROIT: I DO MIND DYING: A STUDY IN URBAN REVOLUTION* (1998); ROBIN D. G. KELLEY, *HAMMER AND HOE: ALABAMA COMMUNISTS DURING THE GREAT DEPRESSION* (1990).

21. *See Demands*, FERGUSON ACTION, <http://fergusonaction.com/demands/> (last visited Aug. 25, 2015). These demands are rough analogues of the platforms of the Black Panther Party and the Young Lords. *See, e.g.*, DONNA MURCH, *LIVING FOR THE CITY: MIGRATION, EDUCATION, AND THE RISE OF THE BLACK PANTHER PARTY IN OAKLAND, CALIFORNIA 128–29* (2011); *THE YOUNG LORDS: A READER 11–13* (Darrel Enck-Wanzer ed., 2010).
22. Most recently, Campaign Zero, a project of We the Protesters, has emerged, pushing for a package of policy solutions—including body cameras, training, demilitarization, the end of for-profit policing, and the end of broken windows policing—in order to stop police killings of African-Americans. CAMPAIGN ZERO, <http://www.joincampaignzero.org/#vision> (last visited Sept. 7, 2015); WE THE PROTESTERS, <http://www.wetheprotesters.org/> (last visited Sept. 7, 2015).
23. *E.g.*, FAMILY OF MICHAEL BROWN, ET AL., *WRITTEN STATEMENT ON THE POLICE SHOOTING OF MICHAEL BROWN AND ENSUING POLICE VIOLENCE AGAINST PROTESTERS IN FERGUSON, MISSOURI* (2014), <http://fergusontogeneva.org/FergusonReport.pdf> (submitted to the 53rd Session of the U.N. Committee Against Torture).
24. As fair as it would be to see this as a contradiction, it is a contradiction long explored and inhabited by outsider communities and those with radical imaginaries. *See, e.g.*, Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 *HARV. CIV. RTS.-CIV. LIBERTIES L. REV.* 323, 341 (1987); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 *HARV. CIV. RTS.-CIV. LIBERTIES L. REV.* 401, 430 (1987). *See also The Masters Tools Will Never Dismantle the Master’s House*, in AUDRE LORDE, *SISTER OUTSIDER: ESSAYS AND SPEECHES BY AUDRE LORDE* (1984).
25. Longer-standing organizations like the Organization for Black Struggle and Malcolm X Grassroots Movement—important players in the movement—have long made this critique.

reshaping of America. But the movement's visions are multiple and not always clear.²⁶ The most repeated refrains—"black lives matter" and "stop killing us"²⁷—point to the goal of a world in which the regularity, normalcy, and tolerance for black death and dehumanization have been ended. Alongside the push for greater police accountability, organizers have called for a considerably smaller footprint for police and prisons,²⁸ and for outright abolition of these institutions.²⁹ Movement leaders take an intersectional approach³⁰ that incorporates race, sex, gender, and class into the movement's analysis.³¹ Moreover, the history of chattel slavery—of black people as commodities to be bought, traded, and sold on the market—has been invoked to frame capitalism as central to the devaluation of black life,³² creating a vein of anti-capitalist

See THE ORGANIZATION FOR BLACK STRUGGLE, <http://obs-stl.org/> (last visited Sept. 7, 2015); MALCOLM X GRASSROOTS MOVEMENT, <https://mxgm.org/> (last visited Sept. 7, 2015).

26. I have heard organizers say that demands themselves are hard to articulate precisely because the world we live in is so far away from the one in which black life would matter.
27. See, e.g., Kang, *supra* note 15.
28. See MARBRE STAHLY-BUTTS & ANAND SUBRAMANIAN, CTR. FOR POPULAR DEMOCRACY & POLICYLINK, BUILDING MOMENTUM FROM THE GROUND UP: A TOOLKIT FOR PROMOTING JUSTICE IN POLICING (2015), <http://www.policylink.org/sites/default/files/JusticeInPolicing-9.pdf>.
29. Monica J. Casper, *Black Lives Matter / Black Life Matters: A Conversation with Patrisse Cullors and Darnell L. Moore*, FEMINIST WIRE (Dec. 1, 2014), <http://www.thefeministwire.com/2014/12/black-lives-matter-black-life-matters-conversation-patrisse-cullors-darnell-l-moore/>. Critical Resistance remains the leading abolitionist outfit in the country. See CRITICAL RESISTANCE, <http://criticalresistance.org/> (last visited Sept. 20, 2015). For a recent sketch of abolitionist claims—and the argument that law scholars take them seriously—see Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156 (2015). The abolitionist vision is in tension, of course, with the nearer term calls for indictments and imprisonment of police who have killed Black folks. See Marlene Martin, *Cell Blocks for Killer Cops?*, JACOBIN (May 10, 2015), <https://www.jacobinmag.com/2015/05/black-lives-matter-police-violence-prison/>.
30. On intersectionality, see Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1990-1991); Devon Carbado et al., *Intersectionality: Mapping the Movements of a Theory*, 10 DUBOIS REV. 303 (2013).
31. Garza, *supra* note 14. In response to the relative failure of organizers and the country to take seriously the deaths of black women and girls, the #SayHerName campaign emerged after Rekia Boyd was killed in Chicago by an off-duty cop, and Sandra Bland died in jail three days after she was arrested during a routine traffic stop. KIMBERLÉ WILLIAMS CRENSHAW & ANDREA J. RITCHIE, AFR. AM. POL'Y F., SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN (2015), http://static1.squarespace.com/static/53f20d90e4bob80451158d8c/t/55a810d7e4b058f342f55873/1437077719984/AAPF_SMN_Brief_full_singles.compressed.pdf; Treva Lindsay, *Race in the US: Herstory*, ALJAZEERA (Sept. 5, 2015, 11:14 AM), <http://www.aljazeera.com/indepth/features/2015/09/race-herstory-150904052450065.html>.
32. Kali Akuno, *Until We Win: Black Labor and Liberation in the Disposable Era*, COUNTERPUNCH (Sept. 4, 2015), <http://www.counterpunch.org/2015/09/04/until-we-win-black-labor-and-liberation-in-the-disposable-era/>.

and socialist critique³³ and provoking collaborations with anti-consumerist and living-wage campaigns.³⁴

Contesting Law's Imaginary

A central, if implied, claim of the movement is that law is instrumental in the devaluation of black life in the United States. The movement's challenge to law is articulated through two types of claims: empirical (about how law works in practice) and methodological (about how to change law). Both of these approaches challenge American mythologies about our democratic constitutional order.

The Empirical Claim

The empirical claim is that law does not function as is often imagined, the imagination of law's functioning being central to the legitimacy we invest in our system of government. This claim has many dimensions worth exploring, but here I point to two central applications: police killings and the disjuncture between procedural rights and substantive justice.

Police Killings. In organizing around accountability for police killings in black communities, movement actors have raised questions around the role of legal process in limiting police violence and have challenged the purported fairness, neutrality, and evenhandedness of police and the state. A key tactic has been to name and count the dead. The hashtag #Every28hours emerged momentarily alongside #BlackLivesMatter, drawing from the statistic compiled by the Malcolm X Grassroots Movement (MXGM) that every twenty-eight hours, police, security, or vigilantes take another black life.³⁵ By including security and vigilantism in its calculation, MXGM points to a broad social phenomenon—an entrenched social practice, even—of reviling, debasing, and extinguishing black life. The state and public become participants in anti-black racism and violence. Law becomes a permissive force for that violence.³⁶

33. These critiques are properly understood within the post-Occupy resurgence of interest in socialism and Marxism. Many movement organizers came to activism through Occupy. See Phillip Agnew on #BlackLivesMatter: *From Dreams Deferred to Dream Defenders*, ASIA PACIFIC FORUM (Dec. 29, 2014), http://www.asiapacificforum.org/show-detail.php?show_id=375 (originally broadcast on WBAI radio). On the general resurgence of socialist thinking and organizing, take for example the new group LeftRoots, or the rise of *Jacobin* magazine. See LEFTROOTS, <https://leftroots.net/> (last visited Sept. 7, 2015); JACOBIN, <https://www.jacobinmag.com/about/> (last visited Sept. 6, 2015); Jennifer Schuessler, *A Young Publisher Takes Marx Into the Mainstream*, N.Y. TIMES, Jan. 21, 2013, at C1.
34. Sarah Jaffe, *Black Poverty Is State Violence, Too: Why Struggles for Criminal Justice and Living Wage Are Uniting*, SALON (Dec. 5, 2014), http://www.salon.com/2014/12/05/black_poverty_is_state_violence_too_why_struggles_for_criminal_justice_and_living_wage_are_uniting/.
35. MALCOLM X GRASSROOTS MOVEMENT, OPERATION GHETTO STORM: 2012 ANNUAL REPORT ON THE EXTRAJUDICIAL KILLINGS OF 313 BLACK PEOPLE BY POLICE, SECURITY GUARDS, AND VIGILANTE (2013), <https://mxgm.org/wp-content/uploads/2013/04/Operation-Ghetto-Storm.pdf>.
36. In legal scholarship, Wesley Hohfeld first delineated the powerful contrast between prohibitions and permissions in law. See, for example, Wesley Hohfeld, *Some Fundamental*

Gathering and then publicizing the data are in themselves acts of resistance.³⁷ It is beyond reproach that in this era of Big Data and Big Brother—when preferences for Nike high-tops over Vans slip-ons have become commodified data points—our governments do not compile or make public information on police killings. The MXGM statistic has become an important assertion of the existence and power of black organizing in the face of long-standing public failure to report on, name, and discuss police killings in black communities.

Organizing has implicated law in the widespread normalization of police violence. Police turn to guns and deadly violence once a day or more, with no meaningful accountability afforded by legal process. As a matter of black-letter law, of course, police may not use lethal force unless necessary.³⁸ In practice, however, there is a vast domain in which cops can and do exercise the permitted discretion. When the use of force is challenged, more typically than not, it is found to be justified. The persistent findings of justification or propriety—whether through internal reviews by police departments, grand jury proceedings and trials, or civil rights litigation—have allowed something akin to a right by omission to emerge. More often than providing a limit, then, the law's permissiveness ultimately sanctions the violence.

This legal apparatus protects consumerism and economic well-being in middle- and upper-class white America, even as it creates and tolerates violence and inequality in poor black neighborhoods.³⁹ Movement organizers have contrasted the tolerance for police violence with the widespread condemnation by mainstream media and politicians of property destruction on the part of so-called rioters in Ferguson and Baltimore. Organizers argue, in effect, that law and order is more concerned with maintaining white comfort and market stability than protecting black life.⁴⁰

Stepping back from law's current entanglements with economic inequality in the U.S., organizers root the criminal justice apparatus in the history of

Legal Conceptions as Applied in Judicial Reasoning, 23 YALE L.J. 16 (1913). See also Joseph William Singer, *The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld*, 1982 WIS. L. REV. 975 (1982). For one recent elaboration of how the United States and Mexico employ prohibitions and permissions to create and manage undocumented Mexican migration to the United States, see Gerald P. López, *Don't We Like Them Illegal?*, 45 U.C. DAVIS L. REV. 1711 (2013).

37. Investigative journalists have joined the effort, with the *Washington Post* and other major outlets attempting to quantify the crushing regularity of police lethality in the United States. See, for example, the *Washington Post's* ongoing compilation of police killings for 2015: *705 People Shot Dead by Police This Year*; WASH. POST, www.washingtonpost.com/graphics/national/police-shootings/?hpid=z2 (last visited Sept. 20, 2015).

38. See *Tennessee v. Garner*, 47 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989). See also AMNESTY INT'L, *DEADLY FORCE: POLICE USE OF LETHAL FORCE IN THE UNITED STATES* (2015), http://www.amnestyusa.org/sites/default/files/aiusa_deadlyforcereportjune2015.pdf.

39. TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 20–21 (2015).

40. See Chaumtoli Huq, *American Devotion to Order Over Justice Must End*, ALJAZEERA AMERICA (Aug. 25, 2015 2:00 AM), <http://america.aljazeera.com/opinions/2015/8/american-devotion-to-order-over-justice-must-end.html>.

enslavement and its progeny.⁴¹ Mass incarceration is the new slavery, Jim Crow, and segregation.⁴² Policing emerges from slave patrols, put into place to protect white property interests in and over black life.⁴³ The violence of criminal justice thus transforms, through this analysis, from an aberration in American history into part of a long tradition of brutalization and inequality. Criminal justice becomes denaturalized as a social good, and reconstituted as a tool to control the marginalized and dispossessed. Importantly, this rendering of American history also transforms the civil rights movement from a redemptive moment for law and correction of the wrongs of American slavery into a limited set of important victories in an ongoing people's struggle for equality.⁴⁴

Procedural Rights vs. Substantive Justice. The movement challenges the procedural protections that are celebrated as hallmarks of fairness in our criminal justice system. Organizers have pointed to how legal process works differently depending on your race, sex, gender, and access to resources; and legal process holds you to a different standard depending on whether you are law enforcement or not. Grand jury proceedings are relatively pro forma, moldable to the prosecutor's whim: Grand juries almost always indict when considering whether to charge crimes against the public,⁴⁵ and almost never when considering potential charges against police.⁴⁶ Procedural regularity does not always lead to substantive justice.

But it is not simply that procedural regularity is disconnected from substantive justice. Procedural protections provide the appearance of

41. Joining these activists are widely respected historians who trace the origins of our current reality back to the revolution against the British. For one prominent example, see GARY B. NASH, *THE FORGOTTEN FIFTH: AFRICAN AMERICANS IN THE AGE OF REVOLUTION* (2006).
42. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003); RUTH WILSON GILMORE, *THE GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007); Loïc Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, 3 *PUNISHMENT & SOC'Y* 95 (2001). See also Peggy Cooper Davis, *The Legal Erasure of Black Families*, ALJAZEERA AMERICA (July 25, 2015, 2:00 AM), <http://america.aljazeera.com/opinions/2015/7/the-legal-erasure-of-black-families.html> (rooting the realities of foster care and child welfare in slavery).
43. For an account drawing the connection between contemporary police and slave patrols, see, for example, Victor E. Kappeler, *A Brief History of Slavery and the Origins of American Policing*, E. KY. U. POLICE STUD. ONLINE (Jan. 7, 2014), <http://plsonline.eku.edu/insideloook/brief-history-slavery-and-origins-american-policing>.
44. Some have argued that these victories laid the groundwork for our current state of inequality. See, e.g., NAOMI MURAKAWA, *THE FIRST CIVIL RIGHT: HOW LIBERALS BUILT PRISON AMERICA* (2014).
45. See, e.g., Jeffrey Fagan & Bernard E. Harcourt, *Fact Sheet: Questions and Answers for Columbia Law Students about Grand Juries*, COLUM. LAW SCH. (Nov. 2014), http://www.law.columbia.edu/media_inquiries/news_events/2014/november2014/Facts-on-Ferguson-Grand-Jury.
46. Josh Voorhees, *Darren Wilson Is Not an Outlier: Why Cops Are Almost Never Indicted for Shooting Someone in the Line of Duty*, SLATE (Dec. 2, 2014), http://www.slate.com/articles/news_and_politics/politics/2014/12/darren_wilson_no_true_bill_why_cops_are_almost_never_indicted_for_shooting.html.

regularity and compliance for police violence without providing meaningful accountability or limits.⁴⁷ In this way, process can undermine substance. As illustrated by Bob McCulloch's case against Darren Wilson as made to a St. Louis grand jury, the existence of procedural protections leaves much room for discretion, in which substantive power and the status quo exert great sway.

Our liberal constitutional order focuses on individualized process and individualized remedy; it is absolutely insufficient for dealing with the structured injustice in which we live. Procedural protections distract from the structural problems with overcriminalization, mass incarceration, and the criminal justice system's eclipse of the social welfare state.⁴⁸ Of course our criminal justice system is rife with irregularity, poverty, and violence. But putting aside its adherence to procedural norms, the fact remains that our carceral society houses two million people—including tens of thousands of children—behind bars and subjects seven million more to other forms of criminal justice supervision. If the substance is bad enough, does the procedure that got us there matter?⁴⁹

The Methodological Claim

The methodological claim challenges conventional wisdom about how law changes and the role of law in social change. While the theories of social change on which the movement is operating are multiple and in motion,⁵⁰ by and large organizers have refused to work within the traditional confines of legal process or to celebrate law as the end of their struggle. Instead, they have lifted up disruption and contestation as tactics, and relied on law only as a tool for incremental change in a broader campaign for a radical restructuring. In the process, they have shed light on law's operation, recast law's morality, and questioned its relationship to haunting social problems.

The Politics of Disruption. Whereas law assumes stability and continuity as a value, the movement sees disruption as necessary. Reform strategy developed after the civil rights movement has tended to centralize the importance of voter registration, court-centered litigation strategies, and discrete issue campaigns

47. For one critique of rights-seeking projects drawing from organizing approaches, see Dean Spade, *Intersectional Resistance & Law Reform*, 38 SIGNS 1031 (2013).

48. See LOIC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (2009).

49. Not just radicals, liberals, and centrists challenge the criminal justice system; self-proclaimed conservatives have offered deep and sweeping condemnation. See e.g., WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* (2011).

50. Just as there are different approaches to lawyering, there are different approaches to organizing for social change. See, e.g., SAUL D. ALINSKY, *RULES FOR RADICALS: A PRACTICAL PRIMER FOR REALISTIC RADICALS* (1989); KIM BOBO ET AL., *ORGANIZING FOR SOCIAL CHANGE: MIDWEST ACADEMY MANUAL FOR ACTIVISTS* (2010); ERIC MANN, *PLAYBOOK FOR PROGRESSIVES: 16 QUALITIES OF THE SUCCESSFUL ORGANIZER* (2011); FRANCIS FOX PIVEN & RICHARD CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (1978).

as the avenues through which change occurs.⁵¹ This strategy reflects liberal notions of the state and judicial process, wherein the judicial and electoral processes are the neutral hydraulics behind an essentially just system capable of self-correction, and the potential corrections are relatively marginal. In contrast, the movement rejects the state's neutrality and capacity for doing justice without being pushed to do so. The structural nature of inequality is central to much of the movement's analysis. As such, movement actors have rejected exclusive reliance on conventional or insider strategies for change.⁵² They have deployed a broad set of disruptive tactics, reflecting an understanding of politics and power beyond the three branches of government.

For starters, the movement takes direct aim at the representational claim at the heart of our constitutional order: that our government and our laws represent and work for the collective. Organizers have laid bare that law plays to the status quo and powerful interests.⁵³ In Ferguson, organizers stressed that a white-majority local government and police force were governing a predominantly black municipality.⁵⁴ By bringing attention to the white-majority local government in Ferguson in the context of Mike Brown's killing, organizers brought sharp attention to the nonrepresentational nature of the organs of American lawmaking and its devastating consequences. At the same time, they challenged the neutrality and fairness of our legal system, thus contesting a bedrock institution of our constitutional democracy.

In taking to the streets and community organizing, the movement makes clear that the ordinary channels of accountability cannot be relied on. In turn, the movement conveys that it would be ineffective for black people to engage the system as it is. Instead, organizers have encouraged spectacular civil disobedience and long-term power-building in marginalized communities. Organizers are not asking but demanding.⁵⁵ Contrary to traditional litigation and voting disconnected from a larger campaign, the movement's approaches are confrontational with the state, or turn away together to come back another day stronger. Disruption by way of civil disobedience and community

51. For a well-known rejection of the idea that courts propel social change, see GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2008).

52. Darryl Pinckney, *In Ferguson*, *N.Y. REV. BOOKS*, Jan. 8, 2015, at 6.

53. When law changes, it does just enough. Reva Siegel has provided one accounting of this "preservation-through-transformation" theory—Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 *STAN. L. REV.* 1111, 1113 (1997)—and Michelle Alexander has provided another, see ALEXANDER, *supra* note 42.

54. Jeff Smith, *In Ferguson, Black Town, White Power*, *N.Y. TIMES*, Aug. 17, 2014, at A19; Christine Byers, *Embattled Ferguson Police Chief Resigns; Protests Resume*, *ST. LOUIS POST-DISPATCH* (Mar. 12, 2015, 6:00 AM), http://www.stltoday.com/news/local/crime-and-courts/embattled-ferguson-police-chief-resigns-protests-resume/article_3cd9e079-8dd5-523d-a84d-335d73a714f9.html; Wesley Lowery, *Ferguson Voters Elect Two Black Candidates to City Council*, *WASH. POST* (Apr. 8, 2015), http://www.washingtonpost.com/national/ferguson-poised-to-elect-at-least-one-more-black-to-city-council/2015/04/07/9b25612a-dd5e-11e4-acfe-cd057abefaga_story.html.

55. Kai Wright, *Black Lives Matter Is a Demand, Not a Plea*, *THE NATION* (Aug. 12, 2015), <http://www.thenation.com/article/black-lives-matter-is-a-demand-not-a-plea/>.

organizing becomes the primary strategy for change. Law and engagement with legal process become secondary.

In elevating these disruptive tactics, organizers have lifted up the more radical elements of civil rights history that are often written out of popular accounts. Ella Baker—a founder of the Student Nonviolent Coordinating Committee (SNCC) and the Mississippi Freedom Democratic Party—is revered for her emphasis on community organizing, participatory democracy, and group leadership.⁵⁶ Assata Shakur—a member of the Black Panther Party and the Black Liberation Army who was imprisoned for killing a New Jersey state trooper—is celebrated for her commitment to fighting for her people no matter the cost.⁵⁷ Organizers cite Baker for the idea that “strong people don’t need strong leaders,” responding to critiques that the movement is leaderless.⁵⁸ Sweatshirts emblazoned with the words “ASSATA TAUGHT ME” are now commonplace movement swag, and her words have become an oft-repeated mantra to build energy at protests.⁵⁹ The invocation of Shakur, who broke out of prison in 1979 to flee to Cuba, is the ultimate embodiment of the movement’s disruptive ethos, which places the history of black people above the comfort of white audiences.⁶⁰

Law as a Tool. Many of the movement’s actions have focused on courthouses, where organizers have demonstrated the existence of an attentive constituency to whom the court proceedings should be accountable. At the same time, movement actors have made clear that they do not expect indictments or justice through legal process. Organizers rely on law and legal process not for justice, but as sites for democratic contestation and movement building in a larger battle to shift the balance of power.

Law is transformed from its common image in the liberal imagination—as the cure-all for the ails of inequality—into just one tool among many for challenging a social order in which race, gender, sex, and class determine power relations and the material conditions in which people live. Lawyers, lawsuits, and voting are not the ends, or even near to the ends, but instead

56. For portrayals of the vision, opinions, and practices of Ella Baker, see for example, JOANNE GRANT, *ELLA BAKER: FREEDOM BOUND* (1999); CHARLES M. PAYNE, *I’VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE* (2d ed. 2007); BARBARA RANSBY, *ELLA BAKER & THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION* (2003).

57. ASSATA SHAKUR, *ASSATA: AN AUTOBIOGRAPHY* (2001).

58. Demby, *supra* note 15.

59. The mantra: “It is our duty to fight for our freedom. It is our duty to win. We must love each other and support each other. We have nothing to lose but our chains.” SHAKUR, *supra* note 57, at 52.

60. Shakur was recently placed on the FBI’s Most Wanted Terrorists list. Press Release, Fed. Bureau of Investigation, *New Most Wanted Terrorist: Joanne Chesimard First Woman Added to List* (May 2, 2013), <https://www.fbi.gov/news/stories/2013/may/joanne-chesimard-first-woman-named-most-wanted-terrorists-list/joanne-chesimard-first-woman-named-to-most-wanted-terrorists-list>.

the partial means in a long process of changing the power structure in this country. Litigation becomes a tactic of movement work—alongside organizing, protest, direct action, media and policy work—for a movement with its sights far beyond justice the courts can deliver.⁶¹

Elements of the movement have adopted a hyperlocal approach—which many have misdiagnosed as anarchic—as an embodiment of a different politic, one working to shift power from the top to the grass roots. It is also a rejection of law as a solution. Organizers are not focused primarily on the passage of federal laws or the recognition of constitutional rights. They are organizing to build local power.

By relying on a broad set of disruptive tactics, the movement insists that people's imagination and people's struggle—rather than the benevolence of law or the inherent goodness of legal process—ended slavery and generated the celebrated civil rights victories of the past; and that people's struggle will create the change needed today.⁶² Organizers have made clear that it is not the law or the lawmakers who must be thanked: it is the people who took to the streets, who organized their communities, who made demands on those in power, and who made the people in power and the mainstream sufficiently uncomfortable so as to propel change. In this way, the movement reconstitutes law's relationship to power and morality. Law is not an unalloyed good, benevolently responsive to those it marginalizes; it is molded and recast by bold contestation.

Toward a Richer Pedagogy

How do we think and teach about law when one of the boldest U.S.-based social movements of recent history underscores law's central role in devaluing black life? What would it mean to accept as legitimate critique the movement's

61. The ArchCity Defenders, the Civil Advocacy Clinic of St. Louis University School of Law, Equal Justice Under Law, and others have filed a number of important lawsuits in and around Ferguson, which have borrowed from, supported, and been supported by organizing. See Complaint, *Templeton v. Dotson*, No. 14-cv-02019 (E.D. Mo. Dec. 8, 2014); Complaint, *Fant v. Ferguson*, No. 15-cv-00253 (E.D. Mo. Feb. 8, 2015); Complaint, *Jenkins v. Jennings*, No. 15-cv-00252 (E.D. Mo. Feb. 8, 2015); Complaint, *Pierce v. Velda City*, 15-cv-00570 (E.D. Mo. Apr. 2, 2015); Complaint, *Powell v. St. Ann*, No. 15-cv-00840 (E.D. Mo. May 27, 2015). See also Trymaine Lee, *Ferguson Protestors Win Injunction to Stop Cops Using Tear Gas*, MSNBC (Dec. 12, 2014), <http://www.msnbc.com/msnbc/ferguson-protesters-win-injunction-stop-cops-using-tear-gas>; Koran Addo, *ArchCity Defenders Saw Problems with Municipal Courts Before Ferguson Turmoil*, ST. LOUIS POST DISPATCH (Apr. 15, 2015), http://www.stltoday.com/news/local/metro/archcity-defenders-saw-problems-with-municipal-courts-before-ferguson-turmoil/article_f1493907-7c8c-55af-a68b-6e36dfoc2cae.html; Rachel Lippmann, *Jennings Settles Federal Lawsuit over Municipal Court; Voluntary Reforms Coming Elsewhere*, ST. LOUIS PUB. RADIO (Aug. 27, 2015), <http://news.stlpublicradio.org/post/jennings-settles-federal-lawsuit-over-municipal-court-voluntary-reforms-coming-elsewhere#stream/o>. Litigation was used as an organizing strategy during the Civil Rights Movement, as well. See, e.g., TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT 175-211* (2011).
62. See Jeanne Theoharis, *What Julian Bond Taught Me*, THE NATION, Aug. 17, 2015, <http://www.thenation.com/article/what-julian-bond-taught-me/>.

most profound challenges to the history, legitimacy, and function of law? Many of us are struggling with these questions.

As a preliminary matter, we should take stock of how we think and teach about law—at individual, collective, institutional, and transinstitutional levels.⁶³ The crisis in legal education has led us to some evaluation, but we have much more territory to explore.⁶⁴ We should ask whether ours is a commitment to teach law from a perspective of the believers—who tend to be white and upper or middle class—or whether we are willing to entertain doubt and the social, political, economic conditions from which that doubt emerges. Are we interested in exploring with our students the law's violence, concepts of justice, and how we might move toward a more just world? What are the basic assumptions we communicate about law's fairness and neutrality? Whose experiences does our teaching account for? Whose voices, whose histories, are embodied in the cases and commentaries in our casebooks?⁶⁵ Whom don't we name?⁶⁶ To what end? For what reason?

In response to the movement's empirical claim, we must have the courage to investigate law's relationship to race, gender, sex, and capitalism through inquiries grounded in our now and our past.⁶⁷ We must study the dialectic between social structures, ideologies, and political commitments that motivate and constitute the law. We must uncover law's assumptions and ask if they are fair to make. We are not practiced in engaging theories of justice, the politics of law, or lawmaking beyond the courts,⁶⁸ and we do not give students—or, arguably, ourselves—the space to express full moral agency. We must exercise our capacity for justice-based inquiries, and generate space for students to cultivate this more creative capacity.

63. For justly famous modern critiques of legal education, see Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982); Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. LAW & SOC. ACTION 71 (1970). For a vision of legal education that features the close study of movements see Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989); Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989).
64. See ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM* (2013) [hereinafter WEST, *TEACHING LAW*]; Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. (forthcoming 2016). For a larger context, see ROBIN WEST, *NORMATIVE JURISPRUDENCE: AN INTRODUCTION* 107-76 (2011).
65. Law is not alone in ignoring slavery, even in the obvious places. See, e.g., K. B. Turner et al., *Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts*, 17 J. CRIM. JUST. EDUC. 181 (2006).
66. For an argument that law schools should teach the law that governs the lives of the millions living in prison and jail or under probation and parole, see Sharon Dolovich, *Teaching Prison Law*, 62 J. LEGAL EDUC. 218 (2012).
67. Race may be the hardest to talk about meaningfully. See Susan Bryant & Jean Koh Peters, *Talking about Race*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* (Susan Bryant et al., eds., 2014).
68. WEST, *TEACHING LAW*, *supra* note 64.

These inquiries may feel more value-laden or political than what law faculties are accustomed to—but this is a vestige of habit and acculturation. More often than not, we remain within the limited moral universe of argument as recognized by a legal system focused on efficiency and procedural regularity. We leave critical theory, the relationship of law to inequality, and social movements to seminars or clinics. These decisions about what or how we teach are not neutral, objective, or apolitical. They are decidedly political, and they have consequences for the shape of the profession and law.

In classrooms and court opinions, what goes named and unnamed generates a view of how the world is and how it should be—even how it *could* be. Those visions borrow from the world at the same time they mold and reconstitute it. Efficiency and procedural regularity are social, political, economic values that generate a particular social, political, and economic order. Our horizon is far too close.

Examining how law functions in the world would require us to name structural realities and ask questions beyond those about efficiency and regularity.⁶⁹ It would involve adding depth and texture to the empty presentation of social realities in court opinions. We would have to consider how law governs those at the margins. We would have to ask how lawmaking reconstitutes social problems and inequalities. This might involve bringing organizers, newspaper clippings, and reports by community-based organizations into the classroom. What is the social context for this section 1983 suit, for this call for affirmative action, for mass incarceration, for the foreclosure crisis, for the campaign for marriage equality?⁷⁰ What are the limits of what litigation might do to address this problem? Does fashioning this claim in a language that law recognizes make it unrecognizable to the people suffering the harm? Does that matter? We must be willing to ask big questions and investigate their answers with students, organizers, and affected communities.

We might also engage legal and intellectual history differently to prepare our students for the complex world they are inheriting. In many first-year courses, for example, we invoke the historical and intellectual precedent for the field. But in historicizing we tend to exclude any recounting of the development of these disciplines against the backdrop of slavery and Jim Crow (or the expropriation and dispossession of the indigenous people of this land). There are obvious places to look—criminal law, property, labor

69. The sort of questions we might ask in most any course: What is the relationship between law and inequality? Law and justice? How does law participate in and reflect the construction of race, gender, sex, and class? What is the relationship between law, property, and capitalism? When we speak of preserving law and order, what order do we preserve? Whom does it serve? Who hurts in our current order? Who benefits? What is the relationship between law, power, and the people? Does law serve the people? Does it serve power? What is the relationship between electoral politics, money, and the three branches of government? What would it mean for the law to serve the people— in the language of Occupy, the 99% rather than the 1%?

70. See Phyllis Goldfarb, *Pedagogy of the Suppressed: A Class on Race and the Death Penalty*, 31 N.Y.U. REV. L. & SOC. CHANGE 547 (2007).

law, contracts—but there are connections to explore everywhere we turn. In theorizing, we overlook accounts that take seriously charges of the law's self-interest in preserving its legitimacy and the status quo: We hide its interest in protecting capital and we avoid the most damning critiques.

Consider, for example, the traditional method of teaching the theories of punishment in first-year criminal law. We teach utilitarianism and retribution, focusing on texts by old white men from 200 years ago. Certainly utilitarianism and retribution continue to animate our thinking on why we punish.⁷¹ But across the political spectrum it is virtually indisputable that our criminal justice system does a lot more than deter crime, promote happiness, and punish wrongdoers. There is an avalanche of literature grappling with *how we actually punish*—and the social functions of punishment—that challenges the explanatory power of these theories. This literature adds layers to the traditional accounts, theorizing the role that race, gender, class, the politics of fear, and the decline of the social welfare state play in the rise of modern punishment. It raises questions about whom we punish as culpable and why, and with whose happiness we are primarily concerned. Why not put Alexander, Wacquant, Simon, and Gottschalk in conversation with Bentham and Kant?⁷²

Over the years I've heard colleagues fret over what might happen if we taught students about the political machinations underlying legal process. Inquiries of the sort I've outlined are avoided, it seems, because they verge on exposing the law as naked, barren, or corrupt, which in turn might undermine the project in which we have invested our lives. But talking about legal process and legal reasoning in a way that recognizes the porousness of the barrier between the law and the world opens up our teaching. It recognizes the fullness of our students and what they are capable of. It does not close down the discussion.

Many of our students—especially those subordinated by race, gender, sex, and class—come to law school with an acute understanding of law's entanglement with power, our country's violent history, and our unequal present. By refusing to name these realities in the classroom, we ask our students to submerge and forget what they know to be true from their lived experience. We miss opportunities to let them teach us. We fail to equip them to return to their communities with tools to respond to their realities. We exclude the possibility that in their classmates they will find comrades and allies in the struggle to demand better from the law.

I have the great pleasure to teach across the curriculum: a clinic, a seminar, a first-year course. Increasingly, I have made it a practice to open up my classes

71. For an argument to use *The Wire* to complicate our teaching of the theories of punishment, see Kristin Henning, *Teaching Fiction?: The Wire as a Pedagogical Tool in the Examination of Punishment Theory*, 64 J. LEGAL EDUC. 120 (2014).
72. ALEXANDER, *supra* note 42; MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWES: THE POLITICS OF MASS INCARCERATION IN AMERICA* (2006); JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (2009); WACQUANT, *supra* note 48.

to this sort of ambitious reinvestigation of law. I am surprised every time by the acuity of student observations and the richness of the conversation. Our students are more sophisticated than we give them credit for. They experience the contradictions inherent in living with relative privilege in this unequal world. They can read between the lines of court opinions. They are capable of respectable debate about big social problems.

In our teaching decisions, we often limit students' capacity to engage in full-throttled analysis of law and the world. We do not model real talk and we do not cultivate space to think critically about law and the profession. If we joined them in attempts at honestly and plainly naming the realities around us, we would learn that they are more than capable of seeing how law functions in a three-dimensional way. Seeing law's complex role in the world would equip them to enter the profession as savvy lawyers, poised to work with others to respond to injustice.

In response to the movement's methodological critique, we should move beyond an imagination of law limited to appellate opinions and litigators. More and more, we provide opportunities to study trial processes and lawmaking in the legislative and administrative contexts.⁷³ But there is more work to be done. We might look more deeply and critically at the pressures, influences, limits, and possibilities of these processes. We might further investigate the political contexts in which significant judicial opinions emerge.⁷⁴

Perhaps more to the point, we might look at the insider and outsider actors that exercise influence on lawmaking, whom they represent, what makes them influential or not, and so on. Looking at those dynamics would open up a conversation about the methods of influencing law, which would give us deeper insight into law's functioning, whom it represents and excludes, and to what pressures it responds and how. It would allow us to explore with students the sources of law's legitimacy, its purposes, and its functions.

Consider, for a moment, some of the results of organizing in Ferguson: The entire local government and police department have been shaken up. The Department of Justice wrote one of the most transparent indictments of our criminal justice system's devastating profit-driven footprint in African-American

73. The successful campaign for reparations by ordinance for torture victims of Chicago cop Jon Burge—in which the People's Law Office played an important role—is worth studying. CHICAGO TORTURE JUSTICE MEMORIALS, <http://chicagotorture.org/> (last visited Sept. 6, 2015); Joey Mogul, *Reparations: A Blueprint to Address Systemic Police Violence*, PEOPLE'S LAW OFFICE, <http://peopleslawoffice.com/reparations-a-blueprint-to-address-systemic-police-violence/> (last visited Sept. 20, 2015); Hal Dardick & John Byrne, *Council Panel Endorses \$5.5 Million Reparations Fund for Burge Victims*, CHI. TRIB. (May 5, 2015), <http://www.chicago.tribune.com/news/local/breaking/ct-burge-reparations-hearing-met-20150505-story.html>; Kristen Gwynne, *Chicago to Pay \$5.5 Million in Reparations for Police Torture Victims*, ROLLING STONE (May 6, 2015), <http://www.rollingstone.com/politics/news/chicago-to-pay-5-5-million-in-reparations-for-police-torture-victims-20150506>.

74. For example, in teaching about the Court's desegregation jurisprudence, faculty might assign Mary L. Dudziak, *Brown as a Cold War Case*, 91 J. AM. HIST. 32 (2004); BROWN-NAGIN, *supra* note 61; and JEANNE THEOHARIS, *THE REBELLIOUS LIFE OF MRS. ROSA PARKS* (2013).

communities.⁷⁵ Most recently, new municipal court Judge Donald McCullin withdrew over 10,000 warrants, and changed the jail time and bond policies for minor traffic and housing code violation arrest warrants.⁷⁶ Furthermore, this movement has successfully changed the national conversation about race, police, law, and inequality. It has forced us to confront the daily brutality and lethality of police in African-American communities; it has refused the logic of colorblindness and it has insisted that race remain a central organizing force of American life. All this, and the work has just begun.

Now consider: Could litigation have done this on its own, and in such a short time frame? Litigation has, of course, been a tool in achieving this change.⁷⁷ But if you suspect—as I do—that this profound change in, through, and beyond law could not have taken place through the courts as a primary vehicle, could not have taken place without a broader disruptive organizing campaign, then why are we not discussing this broader set of tools in our classrooms?

To move beyond litigators and lawyers, we could provide students with opportunities to collaborate with or learn from movement and community-based organizations. While this may be done more easily in clinics, seminars, and externship placements, even doctrinal faculty can invite movement actors and organizers to their classrooms. Organizers could talk to First Amendment students about a copwatch program; to criminal procedure students about stop-and-frisk; to family law students about the criminalization of poverty in black families through child welfare systems; to human rights students about a reparations campaign for a history of police violence.⁷⁸ Clinics could take

75. U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

76. Lilly Fowler, *Ahead of New Law, Ferguson Municipal Court Announces Major Changes*, ST. LOUIS POST DISPATCH (Aug. 24, 2015), http://www.stltoday.com/news/local/metro/ahead-of-new-law-ferguson-municipal-court-announces-major-changes/article_8f48b96b-225d-590c-883f-48b832e313c6.html.

77. The relationship between law and organizing is complex and dynamic, but there are models. Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25 (2011). For thoughtful case studies, see Scott L. Cummings & Steven A. Boutcher, *Mobilizing Local Government Law for Low-Wage Workers*, 2009 U. CHI. LEGAL F. 187 (2009); Scott L. Cummings, *Litigation at Work: Defending Day Labor in Los Angeles*, 58 UCLA L. REV. 1617 (2011).

78. On reparations, for example, see *supra* note 75, and on copwatching see Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. (forthcoming 2016).

on a wide array of projects in support of local movement formations.⁷⁹ Where there is no room for organizers in the classroom, faculty could support student involvement through student groups and the like.

Working directly with movement actors and affected communities would give students an opportunity to practice assuming the role of lawyer, to appreciate the breadth of stakeholders in lawmaking, to see the law in action through other lenses, and to make connections between law and marginalization.⁸⁰ Students could get involved in ways big and small depending on their background, their interests, and their time commitments. Options include legal observing, jail support, community organizing, research for campaigns, voter registration, and more. Such experience would give them a greater and more realistic sense of the possible shapes of lawyering in this world.⁸¹ It might inspire a lifetime of justice work.

Teaching in this way would require us to recognize our own need to study: this and other movements and histories with which we are relatively unfamiliar, other approaches to lawyering, different dimensions to the social problems papered over by the areas of law in which we specialize. New study reveals new ways of seeing and new possibilities. In studying this movement, for example, law's bluntness and vulnerability emerge. On the one hand, it is practically beyond debate that the law is committed to the world as it is, that it is resistant to change. On the other hand, law is fragile. What else explains the tanks in response to protests?⁸²

79. Clinics have already been hard at work supporting various movements and organizing efforts. For example, the Civil Advocacy Clinic of St. Louis University School of Law has been deeply involved in supporting organizing in Ferguson, *supra* note 61; the UCLA International Human Rights Clinic prepared the report DIGNITY & POWER NOW, BREAKING THE SILENCE: CIVIL AND HUMAN RIGHTS VIOLATIONS RESULTING FROM MEDICAL NEGLECT AND ABUSE OF WOMEN OF COLOR IN LOS ANGELES COUNTY JAILS (2015), http://dignityandpowernow.org/wp-content/uploads/2015/07/breaking_silence_report_2015.pdf; and the UC Irvine Immigrant Rights Clinic sued the anti-immigrant Arizona sheriff Joe Arpaio on behalf of Puente Arizona, Lisa De Bode, *Judge Blocks Sheriff Arpaio's Workplace Raids of Undocumented Workers*, ALJAZEERA AMERICA (Jan. 6, 2015, 1:54 PM), <http://america.aljazeera.com/articles/2015/1/6/arpaio-blocked-fromraidingundocumentedworkersinarizona.html>.
80. Ashar, *Law Clinics and Collective Mobilization*, *supra* note 13; Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, *supra* note 64.
81. Radical lawyers have written a considerable amount about law and lawyering in social movements. *See, e.g.*, LEN HOLT, *THE SUMMER THAT DIDN'T END* (1965); ARTHUR KINOY, *RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE'S LAWYER* (1993), WILLIAM KUNTSLER & SHEILA ISENBERG, *MY LIFE AS A RADICAL LAWYER* (1996); EVELYN WILLIAMS, *INADMISSIBLE EVIDENCE: THE STORY OF THE AFRICAN-AMERICAN TRIAL LAWYER WHO DEFENDED THE BLACK LIBERATION ARMY* (2000); Michael E. Tigar, *Lawyer's Role in Resistance*, 27 *GUILD PRAC.* 196 (1968). *See also* LAW AGAINST THE PEOPLE: ESSAYS TO DEMYSTIFY LAW, ORDER AND THE COURTS (Robert Lefcourt ed., 1971); Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470 (1976).
82. U.S. DEP'T OF JUSTICE, OFFICE OF CMTY. ORIENTED POLICING SERVS. & INSTIT. OF INTERGOVERNMENTAL RESEARCH, *AFTER-ACTION ASSESSMENT OF THE POLICE RESPONSE TO THE AUGUST 2014 DEMONSTRATIONS IN FERGUSON, MISSOURI* (2015), <https://assets.documentcloud.org/documents/2328941/after-action-assessment-of-the-police-response.pdf>.

Movements make clear that change can and does happen, and not simply through lawyers, litigants, and judges, or even through legislatures and elections.⁸³ Change happens when people demand something different, and when they insist by whatever means at their disposal that their demands will be heard. While we all know better than to think that law happens only in appellate courts, and that change happens only through formal legal mechanisms, our teaching suggests otherwise.

These realities are not new—nor are attempts to survive and change them. What has changed is that we are standing before a wave of bold, disruptive black organizing that has forced us to listen. The rebellions in Ferguson and Baltimore have provided a sharp reminder that law and order protects the prosperity of the few, at the same time that it allows for widespread inequality. As law teachers, we facilitate the stability of these disturbingly different worlds when we participate in law's mythologies. We fail the world and we fail our students. We can no longer stand by and look on.

We must bring the Movement for Black Lives into our classrooms. The questions raised by the movement may make us uncomfortable, and taking them on in the classroom may require risks—but we need to get uncomfortable. For too long, too many of us have looked the other way, even when we know better. It is time to look at the law beyond our conventional ways of seeing. It is time to bring in the people who for too long have been outside the classroom, and yet are so central to law's operations.

83. There is a growing literature on how movements shape law, and not just through courts. See Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 *YALE L.J.* 2740 (2014); Randall Kennedy, *Martin Luther King's Constitution: A Legal History of the Montgomery Bus Boycott*, 98 *YALE L.J.* 999 (1989); Kenneth W. Mach, *Rethinking Civil Rights Lawyering and Politics in the Era Before Brown*, 115 *YALE L. J.* 256 (2005).