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Abolition and Environmental Justice

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Abolition and Environmental Justice

Allegra McLeod

ABSTRACT

During the coronavirus pandemic, movements for penal abolition and racial justice achieved dramatic growth and increased visibility. While much public discussion of abolition has centered on the call to divest from criminal law enforcement, contemporary abolitionists also understand public safety in terms of building new life-sustaining institutions and collective structures that improve human well-being, linking penal divestment to environmental justice. In urging a reimagination of public safety, abolitionists envision much more than decriminalization or a reallocation of police functions to social service agencies or other alternatives to imprisonment and policing. Instead, for abolitionists, meaningful public safety requires, among other things, a just transition away from an extractive fossil fuel driven economy characterized by vast racialized inequality and held in place by penal bureaucracy, and towards new regenerative economic, social, and ecological systems. This Article explores the connections between abolition and environmental justice, examining social movement organizing, litigation, and proposed legislation. These abolitionist environmental justice projects aim both to confront the harms associated with criminal law enforcement and ecological catastrophe and to build a more sustainable and just future. These efforts represent a necessary turn towards addressing multiple interlocking crises together rather than treating the harms involved in criminal law enforcement, climate change, and racial capitalism as separate and distinct. This Article attends carefully to and attempts to think with abolitionist and environmental justice movement participants, engaging the ideas and strategies generated by these movements as sources of insight into law's injustice and possible abolitionist futures.

AUTHOR

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Whatever it is, coronavirus has made the mighty kneel and brought the world to a halt Our minds are still racing back and forth, longing for a return to ‘normality’, trying to stitch our future to our past and refusing to acknowledge the rupture. But the rupture exists. And in the midst of this terrible despair, it offers us a chance to rethink the doomsday machine we have built for ourselves. Nothing could be worse than a return to normality. Historically, pandemics have forced humans to break with the past and imagine their world anew. This one is no different. It is a portal, a gateway between one world and the next. We can choose to walk through it, dragging the carcasses of our prejudice and hatred, our avarice, our data banks and dead ideas, our dead rivers and smoky skies behind us. Or we can walk through lightly, with little luggage, ready to imagine another world. And ready to fight for it.

-Arundhati Roy¹

“The drive for prison abolition resembles and is deeply connected to struggles for climate justice.”

-Nadia Ahmad²

“Fighting for abolitionist futures means that we have to undermine climate change and environmental degradation, and resist militarism and policing as solutions to these problems.”

-Derecka Purnell³

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1. Arundhati Roy, *The pandemic is a portal*, FINANCIAL TIMES (April 3, 2020), <https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca> [<https://perma.cc/WBK9-LR2V>].
 2. Nadia Ahmad, *The Cliodynamics of Mass Incarceration, Climate Change, and “Chains on Our Feet”*, 49 FORDHAM URB. L.J. 371, 396 (2022).
 3. Derecka Purnell, BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM 239 (2021).

I. CONNECTING ABOLITION AND ENVIRONMENTAL JUSTICE: AN INTRODUCTION

In 2020, during the first year of the coronavirus pandemic, an estimated three million people died of COVID-19,⁴ and some fifteen to twenty-six million people took to the streets calling for an end to police violence.⁵ For months after George Floyd was killed by officer Derek Chauvin's knee on his neck, unable to breathe, police used tear gas on human beings demanding change—seeking to put an end to the uprisings for racial justice by subjecting participants to the pain caused by toxic gas.⁶

Tear gas is a potent aerosolized chemical agent, which causes extreme coughing and retching.⁷ The Geneva Conventions designated it a chemical warfare agent after World War I, and in 1993, the nations who signed those

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4. See *The True Death Toll of COVID-10: Estimating Global Excess Mortality*, WORLD HEALTH ORGANIZATION <https://www.who.int/data/stories/the-true-death-toll-of-covid-19-estimating-global-excess-mortality> (“While 1,813,188 COVID-19 deaths were reported in 2020, recent WHO estimates suggest an excess mortality of at least 3,000,000.”) [<https://perma.cc/27DS-FDCT>].
 5. See, e.g., Larry Buchanan, Quoctrung Bui, & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/FM7S-2FJ4>].
 6. K.K. Rebecca Lai, Bill Marsh, & Anjali Singhvi, *Here are the 100 U.S. Cities Where Protesters Were Tear-Gassed*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/interactive/2020/06/16/us/george-floyd-protests-police-tear-gas.html> [<https://perma.cc/XM9N-REX6>]; Lisa Song, *Tear Gas Is Way More Dangerous Than Police Let On—Especially During the Coronavirus Pandemic*, PROPUBLICA (June 4, 2020), <https://www.propublica.org/article/tear-gas-is-way-more-dangerous-than-police-let-on-especially-during-the-coronavirus-pandemic> [<https://perma.cc/NJ6A-8VAD>]; Tess Riski, *Portland Police Have Used Three Controversial Weapons Against Protestors in the Past Two Weeks: The City is Being Sued for All Three*, WILLAMETTE WEEK (June 10, 2020, 9:00 AM), <https://www.wweek.com/news/city/2020/06/10/portland-police-have-used-three-controversial-weapons-against-protesters-in-the-past-two-weeks> [<https://perma.cc/7KEX-3R3W>]; Bradley W. Parks & Sergio Olmos, *Portland Police Crack Down Fast On Protestors Saturday Night*, OR. PUB. BROADCASTING (Sept. 5, 2020), <https://www.opb.org/article/2020/09/06/portland-protest-100-days> [<https://perma.cc/2A58-R949>] (marking the 100th day of protests and continued, frequent use of tear gas and other police violence).
 7. Sharon Lerner, *Federal Agents Used Toxic Chemical Smoke Grenades in Portland*, THE INTERCEPT (Oct. 10, 2020, 8:00 AM), <https://theintercept.com/2020/10/10/portland-tear-gas-chemical-grenades-protests> [<https://perma.cc/WP88-XZDK>] (outlining the various health effects of chemical weapons).

treaties banned the use of tear gas during war.⁸ Yet, tear gas continues to be manufactured in large quantities by a multi-billion dollar U.S. weapons industry that pays factory workers in towns low wages, while placing their health at risk, and polluting economically precarious surrounding areas.⁹ The toxic gas is then shipped to police and security forces across the United States and around the world where it is frequently deployed in response to protests, having migrated from theaters of conventional warfare to widespread use as a domestic control agent against those seeking racial, economic, and environmental justice.¹⁰

“I can’t breathe”—a phrase that has become a rallying cry of the contemporary movements for abolition and racial justice—brings together police violence, penal abolition, and environmental justice.¹¹ Recalling the

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8. See Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva Protocol) (Signed at Geneva, June 17, 1925) (entered into force February 8, 1928) <https://2009-2017.state.gov/t/isn/4784.htm> [<https://perma.cc/B3Y2-2PYC>]; McKenzie Sadeghi, *Fact Check: It’s True Tear Gas Is a Weapon Banned in War*, USA TODAY (June 6, 2020, 5:00 AM), <https://www.usatoday.com/story/news/factcheck/2020/06/06/fact-check-its-true-tear-gas-chemical-weapon-banned-war/3156448001> [<https://perma.cc/5HFE-UWJE>].
 9. See, e.g., Michael Rohnick, *Explosion at Weapons Factory Near Jamestown Injures 5*, THE HERALD, Feb. 15, 2020 (describing numerous safety incidents at tear gas factory and an environmental lawsuit alleging pollution of surrounding air and water brought by people living near the Combined Tactical Systems plant in Jamestown, Pennsylvania, which manufactures much of the tear gas used by police forces in the U.S. and around the world); Jen Kinney, *The Global Tear Gas Business is Booming*, THE WORLD, Nov. 29, 2018 (describing how tens of thousands of tear gas cannisters are produced by Combined Tactical Systems for use by police in a multibillion dollar industry as schools in communities adjacent to the tear gas factory have been instructed to wait to send children home until poisonous gas cleared).
 10. See K.K. Rebecca Lai, Bill Marsh & Anjali Singhvi, *Here Are the 100 U.S. Cities Where Protestors Were Tear-Gassed*, NY TIMES (June 18, 2020), <https://www.nytimes.com/interactive/2020/06/16/us/george-floyd-protests-police-tear-gas.html> [<https://perma.cc/UP5S-XYWX>] (“At least 100 law enforcement agencies—many in large cities—used some form of tear gas against civilians protesting police brutality and racism . . .”); Jen Kirby, *The disturbing history of how tear gas became the weapon of choice against protestors*, VOX (June 3, 2020, 8:50 AM), <https://www.vox.com/2020/6/3/21277995/police-tear-gas-protests-history-effects-violence> [<https://perma.cc/KPE5-WTCD>]; Minneapolis Police Fire Teargas at Protesters After Death of George Floyd, Guardian News, May 27, 2020; Kinney, *supra* note 9.
 11. See, e.g., Lindsay Dillon & Julie Sze, *Police Powers and Particulate Matters: Environmental Justice and the Spacialities of In/Securities in U.S. Cities*, 54 ENGLISH LANGUAGE NOTES 13 (2016) (placing the environmental justice literature in conversation with critiques of anti-Black police violence and attending closely to the killing of Eric Garner and other Black people, including to the role of environmental factors in their deaths); Alexandria Wilson, *Defunding the Police as Environmental Justice*, ADVOCATES FORUM: ENVIRONMENTAL JUSTICE 47, 48 (2021) <https://crownschool.uchicago.edu/sites/default/files/uploads/>

final pleas of George Floyd and Eric Garner, these words implicate interdependent systems of penal and ecological harm.¹² These words also summon the urgent need for alternative frameworks for collective life that displace these interlocking oppressive regimes with sustainable, just alternatives.¹³ The deep connections between carceral and environmental catastrophes require multidimensional responses, not ones that treat penal and ecological problems as siloed, but that address with appropriate urgency our interlinked crises, embracing a holistic vision for social and economic transformation.¹⁴

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- AdvocatesForum_2021_Inside-Defunding_Police.pdf (“[A]nti-Black violence such as policing contributes to the normalization of environmental racism. . .”).
12. See, e.g., JULIE SZE, ENVIRONMENTAL JUSTICE IN A MOMENT OF DANGER 16–17 (2020) (“Air pollution and asthma are linked to broader struggles against police violence . . . ‘I can’t breathe’ . . . condenses persistent patterns of pollution and police violence . . . The inability to breathe is a metaphor and material reality of . . . ongoing legacies of racism.”).
 13. See, e.g., Mariame Kaba, *The Journey Continues, in Abolition For the People*, LEVEL (Oct. 30, 2020), <https://level.medium.com/so-youre-thinking-about-becoming-an-abolitionist-a436f8e31894> [<https://perma.cc/TM32-Q7L6>] (“While some people might think of abolition as primarily a negative project—‘Let’s tear everything down tomorrow and hope for the best’—PIC abolition is a vision of a restructured society in a world where we have everything we need: food, shelter, education, health, art, beauty, clean water, and more.”); TRANSFORM HARM (last visited Aug. 3, 2022), <https://transformharm.org> [<https://perma.cc/526D-S5KG>] (providing an archive of resources for ending violence by focusing on transformative justice, community accountability, restorative justice, abolition, healing justice and anti-carceral feminisms); THE RED NATION, THE RED DEAL 12–13 (2021) (“We draw from Black abolitionist traditions to call for divestment . . . from the caging, criminalizing, and harming of human beings *and* from the exploitative and extractive violence of fossil fuels. . . . With the resources we gain from divestment, we could end world hunger, illiteracy, child hunger, homelessness, and build renewable energy tomorrow.”).
 14. See RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA 249–51 (2007) (describing the possibilities of an emergent abolitionist politics that brings together environmental justice and anti-prison constituencies); see also Ruth Wilson Gilmore, Interview with Huma Gupta and China Sajadian, *Environment In Context - Red, Green, and International: Abolition Geographies and Environmental Movements with Ruth Wilson Gilmore*, STATUS/الوضع (Aug. 25, 2021), <https://www.jadaliyya.com/Details/43252> [<https://perma.cc/37EG-Z9AK>] (“abolition must be green, Gilmore insists, it must also be anti-capitalist and internationalist.”); Ingrid Joylyn Paredes, *Why Evidence-Based Climate Justice Includes Abolition*, SISTER (Sept. 22, 2020), <https://sisterstem.org/2020/09/22/why-evidence-based-climate-justice-includes-abolition> [<https://perma.cc/GN85-HJ3Y>] (“When we call for climate action, we must call to end environmental racism. It’s state violence. Whether by pollution or by the hands of the police, the refrain, ‘I can’t breathe,’ resonates”); see also ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? (2003) (exploring the critical and constructive social, political, and economic dimensions of contemporary abolitionism).

Teresa Raiford, founder of Don't Shoot Portland and a Black feminist former mayoral candidate, decried the use of tear gas in her city: "We're out . . . for justice for Black people and asking the state to stop its violence against us," Raiford said, "and the city responds by using tear gas when we're in the middle of a pandemic of respiratory disease."¹⁵ The use of tear gas makes those subject to it more vulnerable to COVID-19 and other respiratory illnesses.¹⁶ It was not until September 11, 2020, with a thick blanket of smoke settling over the city of Portland, as wildfires worsened by climate change engulfed the state of Oregon and much of the western United States, that Portland Mayor Ted Wheeler ordered the city's police to cease using tear gas on protestors.¹⁷

At the same time, an emergency was unfolding inside prisons in Oregon and other western U.S. states affected by the wildfires. Incarcerated people were evacuated and crowded in smoke-filled dormitories and in cage vans and transfer prisons, forced together at heightened risk of exposure to COVID-19, often without adequate food or water. Incarcerated people were forced to throw up or urinate in their socks as many were ill from the smoke and unable to access toilets.¹⁸ When fights broke out in the face of these stressful circumstances, guards used pepper spray on prisoners, making it more difficult still to breathe.¹⁹ It is worth recalling that the people imprisoned in Oregon are disproportionately Indigenous, Latinx, and Black,²⁰ the result of a

15. Conrad Wilson, Rob Manning & Rebecca Ellis, *Don't Shoot PDX Sues Portland Over Police Use of Tear Gas*, OR. PUB. BROADCASTING (June 5, 2020, 9:06 PM), <https://www.opb.org/news/article/tear-gas-portland-lawsuit> [<https://perma.cc/46QA-RHRR>].

16. See Joseph J. Hout et al., *o-Chlorobenzylidene Malononitrile (CS riot control agent) Associated Acute Respiratory Illnesses in a U.S. Army Basic Combat Training Cohort*, 179 MIL. MED. 793 (2014); Ashkar Rambachan, *A Medical Call to Ban Tear Gas: It Can Be Especially Lethal in a Pandemic*, S.F. CHRON. (June 12, 2020, 8:57 AM), <https://www.sfchronicle.com/opinion/openforum/article/A-medical-call-to-ban-tear-gas-It-can-be-15334639.php> [<https://perma.cc/K5W7-7UBE>] ("A U.S. Army study of over 6000 recruits found that those exposed had a higher chance of subsequent acute respiratory illness . . .").

17. *Portland Mayor Orders End to Police Use of Tear Gas as Thick Smoke Blankets Oregon*, DEMOCRACY NOW! (Sept. 11, 2020), https://www.democracynow.org/2020/9/11/headlines/portland_mayor_orders_end_to_police_use_of_tear_gas_as_thick_smoke_blankets_oregon [<https://perma.cc/336A-BHH6>].

18. Jayati Ramakrishnan, *Oregon Prisoners Report 'Inhumane' Conditions Following Fire Evacuations, Transfers*, THE OREGONIAN (Sept. 13, 2020, 4:00 AM), <https://www.oregonlive.com/crime/2020/09/oregon-prisoners-report-inhumane-conditions-following-fire-evacuations-transfers.html> [<https://perma.cc/C2GY-94LB>].

19. *Id.*

20. *Oregon Profile*, PRISON POL'Y INITIATIVE (last visited Aug. 3, 2022), <https://www.prisonpolicy.org/profiles/OR.html> [<https://perma.cc/8FK3-H4LE>]. See also ROBYN MAYNARD & LEANNE BETAMOSAKE SIMPSON, REHEARSALS FOR LIVING (2022) (discussing

long history of white colonization and white settlement of the northwestern United States, during which Oregon literally forbade Black people from residing in the state of Oregon²¹ after the land there was forcefully taken from Indigenous tribes and given to white settlers.²²

These same western states have relied heavily on incarcerated firefighters to quell worsening wildfires.²³ Incarcerated firefighters risk their lives for very little pay—between two and five dollars per day—both because they are exempt from minimum wage laws²⁴ and legally prevented from unionizing.²⁵ In the summer of 2020, these firefighters returned at night to smoke-filled, overcrowded prisons, struggling to breathe.²⁶

Prisons, much like those rural areas adjacent to domestic weapons plants, have long been toxic spaces that have devastated the health of those forced inside while posing environmental harm to surrounding areas.²⁷

the “racially uneven distribution of harms that the climate collapse engenders”) (“Black and Indigenous communities—are collectively positioned on the very forefront of the unfolding catastrophe.”).

21. See DeNeen L. Brown, *When Portland Banned Blacks: Oregon’s Shameful History as an ‘All-White’ State*, WASHINGTON POST (June 7, 2017, 10:23 AM), <https://www.washingtonpost.com/news/retropolis/wp/2017/06/07/when-portland-banned-blacks-oregons-shameful-history-as-an-all-white-state> [<https://perma.cc/DRE9-UJRW>].
22. See John Notarianni, *The US Government Took the Land of Oregon’s Native People 170 Years Ago This Week*, OREGON PUBLIC BROADCASTING (Sept. 27, 2020, 5:12 PM), <https://www.opb.org/article/2020/09/27/the-us-government-took-the-land-of-oregons-native-people-170-years-ago-this-week> [<https://perma.cc/J6LD-FSDM>] (summarizing the Donation Land Claim Act which only allowed white settlers to claim land in Oregon, resulting in 2.8 million acres of stolen land in five years).
23. See Tess Riski, *Department of Corrections Deploys Nearly 150 Prisoners to Fight Oregon Wildfires*, WILLAMETTE WEEK (Sept. 9, 2020, 4:52 PM), <https://www.wweek.com/news/courts/2020/09/09/department-of-corrections-deploys-nearly-150-prisoners-to-fight-oregon-wildfires/> [<https://perma.cc/T47H-R5YV>] [hereinafter Riski, *Prisoners to Fight Oregon Wildfires*]; *Wildfires and Climate Change*, CENTER FOR CLIMATE AND ENERGY SOLUTIONS, <https://www.c2es.org/content/wildfires-and-climate-change> [<https://perma.cc/G9K3-GCLB>].
24. See Riski, *Prisoners to Fight Oregon Wildfires*, *supra* note 23; Exemptions from Minimum Wage and Overtime, OAR 839–020–0150 (2) (2003); see *Harker v. State Use Indus.*, 990 F.2d 131, 136 (4th Cir. 1993) (“If the FLSA’s coverage is to extend within prison walls, Congress must say so, not the courts.”).
25. *Jones v. North Carolina Prisoners’ Lab. Union*, 433 U.S. 119, 119 (1977).
26. Ramakrishnan, *supra* note 18.
27. See CANDICE BERND, ZOE LOFTUS-FARREN & MAUREEN NANDINI MITRA, AMERICA’S TOXIC PRISONS, EARTH ISLAND JOURNAL 2 (2017) (“[T]he toxic impact of prisons extends far beyond any individual prison, or any specific region in the United States. Though some prisons provide particularly egregious examples, mass incarceration in the U.S. impacts the health of prisoners, prison-adjacent communities, and local ecosystems from coast to coast.”); Madeline Verniero, *The Truth About Toxic Prisons*, REGULATORY REVIEW (Oct. 5, 2021),

Exacerbating these perils, climate change presents especially grave dangers for incarcerated people and the dispossessed communities from which imprisoned people overwhelmingly come.²⁸ For example, extreme heat events are most damaging to people, such as prisoners, who are living in cramped and crowded conditions, without air conditioning, with preexisting health challenges, and with few resources and little control over their surroundings.²⁹

As wildfires burned in the western United States and the coronavirus pandemic ravaged communities around the country and throughout the world, powerful petrochemical companies quietly advanced antiprotest legislation, ensnaring protestors calling for racial justice and an end to police violence, though these policies were aimed primarily at increasing criminal penalties for demonstrators seeking climate justice and divestment from fossil fuels.³⁰ Oregon considered, though ultimately did not pass a law that would create new criminal penalties for peaceful protestors blocking traffic, making this a felony offense punishable by five years in prison and \$125,000.³¹ Numerous jurisdictions, encouraged by the conservative lobbying group, the American Legislative Exchange Council or ALEC, did pass “critical infrastructure” criminal measures, applying felony penalties to people who engage in protest actions targeting oil and gas facilities.³²

West Virginia Governor Jim Justice signed his state’s Critical Infrastructure Protection Act one day after the state’s shelter-in-place orders took effect, creating felony charges applicable to those who would challenge two widely-

<https://www.theregreview.org/2021/10/05/verniero-truth-toxic-prisons/>
[<https://perma.cc/6XRY-7JCA>].

28. See, e.g., IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II (D.R. Reidmiller, C.W. Avery, K.E. Easterling, K.L.M Kunkel, T.K. Lewis, T.K. Maycock & B.C. Stewart eds., 2018) (reflecting widespread consensus on grave threat of climate change and its causes).
29. Cynthia Golembeski, Andrea Armstrong, Ans Irfan, Michael Méndez & Nicholas Shapiro, *Climate Change and Incarceration*, THINK GLOBAL HEALTH (April 29, 2022), <https://www.thinkglobalhealth.org/article/climate-change-and-incarceration> [<https://perma.cc/W57A-QGQ9>].
30. Alleen Brown, *A Powerful Petrochemical Lobbying Group Advanced Anti-Protest Legislation In The Midst Of The Pandemic*, THE INTERCEPT (June 7, 2020, 9:11 AM), <https://theintercept.com/2020/06/07/pipeline-petrochemical-lobbying-group-anti-protest-law> [<https://perma.cc/R6DU-L6H3>].
31. *US Protest Law Tracker*, ICNL (last visited Aug. 7, 2022) <https://www.icnl.org/usprotestlawtracker/?location=41&status=&issue=&date=&type=> [<https://perma.cc/P29V-NTP4>].
32. Brown, *supra* note 30.

opposed pipelines planned in the state, the Atlantic Coast and Mountain Valley Pipelines.³³ These pipelines would transport gas extracted by fracking through pristine mountain areas and farmlands to Virginia and North Carolina, permitting the petrochemical industry to continue to expand. Even Kentucky's Democratic governor Andy Beshear signed a similar criminal measure, followed shortly thereafter by South Dakota's governor.³⁴ Arkansas enacted a law that makes trespassing on a pipeline site punishable by six years in prison.³⁵

Indigenous-led pipeline protestors have since been subject to draconian criminal charges.³⁶ These measures are continuous with longstanding support for and linkages between the fossil fuel industry and U.S. criminal law enforcement documented by public accountability research.³⁷ This research has shown, for example, how oil and gas companies bankroll police foundations, raising private funds for police weapons and surveillance technology that far exceed public budgets.³⁸

As people are increasingly harmed by environmental crises, displaced not just within but across national borders, penal measures are often the response, including to climate migrants who are subject to immigration

33. West Virginia Critical Infrastructure Protection Act, House Bill 4615 (effective June 5, 2020), https://www.wvlegislature.gov/Bill_Text_HTML/2020_SESSIONS/RS/signed_bills/house/HB4615%20SUB%20ENR_signed.pdf [<https://perma.cc/RG7V-VQQT>].

34. *Id.*; see also Kaylana Mueller-Hsia, *Anti-Protest Laws Threaten Indigenous and Climate Movements*, BRENNAN CENTER (Mar. 17, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/anti-protest-laws-threaten-indigenous-and-climate-movements> [<https://perma.cc/2UXV-E7Z9>].

35. Jeremy Miller, *Republicans Want to Make Protesting a Crime*, SIERRA (May 25, 2021), <https://www.sierraclub.org/sierra/republicans-want-make-protesting-crime> [<https://perma.cc/X6QW-PNBW>].

36. Alexandria Herr, "They Criminalize Us": How Felony Charges Are Weaponized Against Pipeline Protestors, GUARDIAN (Feb. 10, 2022), <https://www.theguardian.com/us-news/2022/feb/10/felony-charges-pipeline-protesters-line-3> [<https://perma.cc/2XG6-D77C>].

37. See, e.g., Gin Armstrong & Derek Seidman, *Fossil Fuel Industry Pollutes Black and Brown Communities While Propping Up Racist Policing*, EYES ON THE TIES (July 27, 2020), <https://news.littlesis.org/2020/07/27/fossil-fuel-industry-pollutes-black-brown-communities-while-propping-up-racist-policing> [<https://perma.cc/BSY3-WCPF>] ("This symbiotic relationship between the fossil fuel industry and police often means that the companies that are polluting Black and Brown communities . . . are the same ones that are aligned with and propping up police forces in these same cities . . .").

38. See Nina Lakhani, *Revealed: Oil Giants Help Fund Powerful Police Groups in Top U.S. Cities*, GUARDIAN (July 27, 2020), <https://www.theguardian.com/us-news/2020/jul/27/fossil-fuels-oil-gas-industry-police-foundations> [<https://perma.cc/HRD8-A7P9>].

arrests and detention or confined in makeshift camps.³⁹ This is another instance of imposing what Professor Nadia Ahmad has described as “climate cages,” which “restrict mobility, worsen prison conditions, and increase carcerality” following ecological crises.⁴⁰

In the confluence of these circumstances, multiple overlapping oppressive systems are brought into sharp relief: racialized police violence, militarization, the brutality of imprisonment, and ecological devastation. Reliance on criminal law enforcement has produced the opposite of public safety—threatening people’s health and well-being.

This Article explores these and other ways in which ecological upheaval and penal bureaucracy are entwined and how movements for abolition and environmental justice are forging compelling frameworks for necessary transformation. In collaboration, these movements seek divestment both from harmful penal and environmental practices, which together produce and deepen racialized economic inequality. Together these movements are also working to imagine and build an alternative set of systems that better protect and serve human beings and our planet.

Informed and inspired by this work of contemporary abolitionist environmental justice movements, and with the hope of contributing to these emerging frameworks for transformative change, this Article thinks with social movement participants, engaging the strategies, tactics, and ideas generated by abolitionist and environmental justice movements as sources of insight into law’s

39. See, e.g., Candice Bernd, *Climate Refugees in Toxic Immigrant Jails Are Victims of Environmental Racism*, PRISON LEGAL NEWS (Nov. 6, 2017), <https://www.prisonlegalnews.org/news/2017/nov/6/climate-refugees-toxic-immigrant-jails-are-victims-environmental-racism/> [<https://perma.cc/D6C6-6ZYJ>] (“[M]any of the immigrants the U.S. government locks up in for-profit immigration jails are environmental refugees. This is especially true for immigrants fleeing the Northern Triangle countries of Guatemala, Honduras and El Salvador . . .”); Alleen Brown, *Migrants Fleeing Hurricanes and Drought Face New Climate Disasters in ICE Detention*, THE INTERCEPT (Mar. 31, 2022, 7:45 AM), <https://theintercept.com/2022/03/31/ice-detention-climate-crisis-migrants/> [<https://perma.cc/4XQ5-SRN4>] (describing how people fleeing environmental disasters in their home countries often find themselves in U.S. immigration detention in facilities plagued by toxic pollutants, extreme heat, and other environmental hazards).

40. Nadia Ahmad, *Climate Cages: Connecting Migration, the Carceral State, Extinction Rebellion, and the Coronavirus through Cicero and 21 Savage*, 66 LOYOLA L. REV. 293 (2020); see also Nadia Ahmad, *The Cliodynamics of Mass Incarceration, Climate Change, and “Chains on Our Feet”*, 49 FORDHAM URB. L.J. 371, 396 (2022).

injustice and possible alternatives.⁴¹ In what follows, I argue that efforts that bring together communities affected by conjoined harms—such as environmental and penal practices—promise to mobilize broader collectives necessary to effectuate meaningful political and economic change.

This is not to say that every problem in the criminal process always implicates environmental concerns or that every instance of environmental harm necessarily entails a connection with criminal law enforcement, but that these harmful practices often operate in mutually reinforcing ways that are being powerfully challenged in tandem and should be more frequently addressed together. Moreover, the exigency of our current crises requires this multidimensional approach, which promises to open up a novel array of solidarities and new political, economic, legal, and legislative possibilities.

Part II offers a brief history of two recent collaborations between abolitionists and environmental justice organizers in California and Kentucky. Focusing on the cases *Critical Resistance et al v. California Department of Corrections*⁴² and *Barroca v. Bureau of Prisons*,⁴³ Part II examines further the connections between carceral and environmental harms and the promise of shared struggle.

Part III considers other intersections of environmental and penal injustice and their common relationship to racial capitalism. Whereas racial capitalism has long operated to extract, dispossess, and exploit,⁴⁴ while producing and maintaining racialized differences and elevating profit and efficiency over other values,⁴⁵ abolitionist environmental justice pursues a reorganization of public values, a redistribution of wealth, and alternative frameworks for governance and mutual support.

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41. See also Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1649 (2019) (“hold[ing] at its center those voices, otherwise largely absent in legal discourse . . . to envision abolition democracy by learning from their aspirational work, imaginings, and ideas”); Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 825 (2021) (arguing for taking “seriously the epistemological universe of today’s left social movements, their imaginations, experiments, tactics, and strategies for legal and social change” and describing this methodology as “movement law”).
 42. Case No. 211365 RDR, Kern County Superior Court, Bakersfield.
 43. Case No. 1:18-cv-2740, U.S. District Court for the District of Columbia, <http://abolitionistlawcenter.org/wp-content/uploads/2019/06/amended-complaint-Barroca.pdf>.
 44. See, e.g., Angela P. Harris, *Foreword: Racial Capitalism and Law*, in HISTORIES OF RACIAL CAPITALISM vii (Destin Jenkins and Justice Leroy, eds. 2021).
 45. See CEDRIC ROBINSON, BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION 9–10 (Univ. N.C. Press, 3d ed. 2020) (1983) (identifying how capitalism has long entailed racialized economic exploitation such that capitalism is and has always been racial capitalism).

Part IV begins to reflect on the possibilities for further collective struggle organized around these redistributive goals, particularly by engaging proposed legislation and other abolitionist and environmental justice visioning projects, including the Green Deal, the Red Deal, and local participatory budgeting measures. All of these projects integrate work to end penal and environmental harms in order to build a more just and sustainable future.

II. SHARED STRUGGLES AGAINST TOXIC PRISONS

In California at the turn of the twenty-first century, and then in Kentucky a few years later, movements for abolition and environmental justice converged to resist two planned prisons. Abolitionists, community members, local businesses, union members, and environmentalists came together to challenge the construction of the Delano II prison in California's Central Valley. In Kentucky, a coalition of anti-prison organizers, environmental justice advocates, residents, and incarcerated people successfully ended the planned construction of a federal prison on a former Kentucky mining site in Letcher County.

Participants organized around these two specific prison construction projects, motivated by the ways that prisons endanger the health of incarcerated people, their families, and communities while simultaneously harming people living close to prisons as well as nearby ecosystems. Together, these particular experiences in California and Kentucky served to build a larger emergent framework for understanding the connections between movements for abolition and environmental justice and the broader potential of collective struggle to address these interlocking concerns.⁴⁶

A. Resisting California Prison Construction, Organizing for Environmental Justice

Rose Braz and Craig Gilmore, prison abolitionists who have helped forge solidarities between anti-prison and environmental justice organizers in California, identify a group of mothers in East Los Angeles (East LA) as

46. See Candice Bernd, Maureen Nandini Mitra & Zoe Loftus-Farren, *America's Toxic Prisons: The Environmental Injustices of Mass Incarceration*, TRUTHOUT (June 1, 2017), <https://truthout.org/articles/america-s-toxic-prisons-the-environmental-injustices-of-mass-incarceration> [<https://perma.cc/E22P-363N>] (“[M]ass incarceration in the U.S. impacts the health of prisoners, prison-adjacent communities and local ecosystems from coast to coast.”).

important contributors to the connections between environmental justice and abolitionist movements.⁴⁷ In the 1980s, Juana Beatríz Gutiérrez, Aurora Castillo, and Lucy Ramos, three Latina mothers in East LA, came together to organize against a prison in California planned for their community.⁴⁸ California officials selected Boyle Heights, a historically Chicano neighborhood, as the site for the planned prison, news that local residents faced with rage and dismay.⁴⁹ Juana Beatríz Gutiérrez, Aurora Castillo, and Lucy Ramos recalled previous state construction plans that had harmed their community, including the large freeway built two decades earlier, which ran through East LA, displacing residents and creating toxic pollution and excessive noise for those that remained.⁵⁰ While whiter and wealthier communities had been able to resist highway and prison construction projects, Boyle Heights residents feared for their own community. But Gutiérrez, Castillo, and Ramos were determined to resist and the three women, with the help of a local priest John Moretta, formed an organization, the Mothers of East LA or Madres del Este de Los Angeles (MELA), which would protest and successfully resist the prison planned for their neighborhood—an important early victory for the struggle for environmental justice in California.⁵¹

Gutiérrez recounted: “In the past, people didn’t fight back because they thought that if the government said something it would be done and there was nothing you could do about it. Now that we’re organized and informed, they won’t be able to do to our barrio what they’ve done before.”⁵²

MELA organized marches and protests on a weekly basis, with hundreds of mothers from the neighborhood front and center, often wearing white scarves on their heads and accompanied by their children. The mothers wrote letters and lobbied state legislators, calling attention to the personal and environmental harms that would be worsened if the planned prison were to move forward. According to Aurora Castillo: “It was not just our children we were fighting for but also the health and well-being of whole future

47. Rose Braz & Craig Gilmore, *Joining Forces: Prisons and Environmental Justice in Recent California Organizing*, 96 *RADICAL HIST. REV.* 95, 98 (2006); see also GILMORE, GOLDEN GULAG, *supra* note 14, at 249–51.

48. *Mothers of East Los Angeles*, NAT’L PARKS SERV. (Sept. 28, 2021), <https://www.nps.gov/articles/000/mothers-of-east-los-angeles.htm> [<https://perma.cc/5C6H-8RXZ>].

49. See *id.* (“Many residents were furious when they heard about the plan.”).

50. See *id.*

51. See *id.*; see also SHELIA FOSTER AND LUKE COLE, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* (2000) (examining the movement for environmental justice and early struggles against environmental racism).

52. NAT’L PARKS SERV., *supra* note 48.

generations.”⁵³ MELA ultimately succeeded and California cancelled the planned prison.⁵⁴

Soon, however, MELA confronted a new threat and the mothers were compelled to organize again, this time against a planned waste incinerator sited for their community which would spew toxic pollution into the area of the adjacent Latinx and Black neighborhoods.⁵⁵ The mothers continued to protest and lobby, pairing their campaign with litigation challenging the environmental impact of the incinerator.⁵⁶ After the company suffered an early loss in court, its executives abandoned the project.⁵⁷ Shortly after, the mothers in partnership with environmental groups protested a pipeline that was planned to run through their community. Using the same tactics, the mothers succeeded in forcing the abandonment of the proposed oil pipeline.⁵⁸

Through these campaigns, Gutiérrez, Castillo, and Ramos became early leaders in the movement against environmental racism and for a vision of environmental justice that takes seriously toxic threats to all human beings and communities, including especially those most impacted and marginalized by environmental crises. The mothers remained active in California politics as more men and women from East LA faced arrest and incarceration in the Central Valley, where so many prisons were built during the California prison boom of the 1990s.

The mothers again encouraged linking the struggles against criminalization and incarceration of their community members to concerns about environmental justice.⁵⁹ In the late 1990s, anti-prison activists and abolitionist organizers in California entered the fight against a prison planned for the Central Valley, Delano II, engaging in more traditional anti-prison lobbying at the state legislature and organizing in affected communities.⁶⁰ But when initial efforts to oppose the prison were unsuccessful, organizers planned a coordinated strategy that included grassroots political work, media reports aimed at shifting public opinion and policy, and environmental litigation.⁶¹ Braz and Gilmore

53. See NAT'L PARKS SERV., *supra* note 48.

54. See NAT'L PARKS SERV., *supra* note 48.

55. See NAT'L PARKS SERV., *supra* note 48.

56. See James M. Gomez, *Incinerator Foes Enlist New Allies: Vernon Protest March Gains Wider Support*, L.A. TIMES (Nov. 13, 1988, 12:00 AM) (describing City Council lawsuit filed to prevent construction of planned facility).

57. See NAT'L PARKS SERV., *supra* note 48.

58. See NAT'L PARKS SERV., *supra* note 48; Braz & Gilmore, *supra* note 47, at 98–100.

59. Braz & Gilmore, *supra* note 47, at 98–100.

60. Braz & Gilmore, *supra* note 47, at 100.

61. Braz & Gilmore, *supra* note 47, at 100.

identify a conference in the Central Valley of California in 2001 at which Juana Gutiérrez spoke, “Joining Forces: Environmental Justice and the Fight Against Prison Expansion” as a critical moment in the shared struggle of penal abolitionists and participants in the movement for environmental justice in California.⁶² But these connections had been foundational to the organizing of the MELA for decades.⁶³

Through this collaboration between anti-prison and environmental justice organizers, Braz and Gilmore describe “a growing awareness among antiprison activists of the similarities between abolitionist and environmental justice activism.”⁶⁴ According to Braz and Gilmore:

The environmental justice movement fights racial and class discrimination in environmental policy making, the selective enforcement of environmental laws, and the targeting of communities of color and poor communities for environmentally disastrous land uses, such as toxic waste disposal sites. Communities of color and poor communities bear an unequal and unfair number of environmentally destructive land uses, land uses that take from the community but do not give back to it. The environmental justice movement seeks to end environmental and economic injustices by eliminating the location of environmentally toxic facilities anywhere.⁶⁵

Relatedly, abolitionists seek to end the racialized violence imposed by prisons and policing by eliminating incarceration and punitive surveillance, mindful of the racialized environmental harms imposed by these practices. They aim instead to build alternative social and economic arrangements more conducive to human flourishing.

Similarly, environmental justice advocates have increasingly come to appreciate the connections between their own commitments and abolitionist work. According to environmentalist Tamara Toles O’Laughlin, who is the founder of Climate Critical Earth, an antiracist feminist environmental justice organization, a commitment to environmental justice entails both

62. Braz & Gilmore, *supra* note 47, at 100; *see also* GILMORE, *GOLDEN GULAG*, *supra* note 14, at 249–51.

63. Braz & Gilmore, *supra* note 47, at 98 (“Environmental justice and antiprison activists have been slow to understand the connections that the MELA made between new prisons and toxic waste incinerators, joined because each posed threats to their families’ welfare.”).

64. Braz & Gilmore, *supra* note 47, at 96.

65. Braz & Gilmore, *supra* note 47, at 96.

“the demand to defund and divest from the police and fossil fuels, and to reinvest in the resilience of people and planet for a just recovery.”⁶⁶ Toles O’Laughlin explains that fossil fuels and penal bureaucracy are “connected predatory systems.”⁶⁷

Going forward, the Delano II campaign built a legacy of connecting damage to the environment to the fight against prison and jail building projects around the country.⁶⁸ Early on in the campaign against Delano II, which was slated to have 5000 beds, organizers learned the planned prison would need to pass a California Environmental Quality Act Review.⁶⁹ This Review would offer an opportunity to learn about and present evidence regarding the harmful impact of the planned prison on various communities and sectors, beyond those contingents traditionally drawn into anti-prison and environmental justice organizing.

Although the prison was promoted as bringing economic benefits to the surrounding area, abolitionist geographer Ruth Wilson Gilmore’s has demonstrated that these promised benefits were illusory rather than real.⁷⁰ Organizers began to make connections to people in the prison towns, building a large and diverse coalition in the Central Valley.⁷¹

In preparation for the environmental review, organizers learned that the prison portended a slew of dangerous effects, mobilizing a host of different constituencies. Pollution from the facility harmed the local water supply and endangered species, which brought in traditional environmental groups.⁷² Domestic violence increased after prisons were built, which concerned organizations addressing violence against women, especially in the home.⁷³

66. Alexandria Herr, *How The Fossil Fuel Industry Drives Climate Change and Police Brutality*, GRIST (July 28, 2020), <https://grist.org/justice/how-the-fossil-fuel-industry-drives-climate-change-and-police-brutality> [<https://perma.cc/5TDJ-T5WV>] (quoting Tamara Toles O’Laughlin).

67. *Id.*

68. *Id.* at 100.

69. *Fighting Toxic Prisons*, *infra* note 97.

70. GILMORE, GOLDEN GULAG, *supra* note 6 at 161 -166 (describing the failure of rural prison projects to bring promised economic opportunities); RUTH WILSON GILMORE, ABOLITION GEOGRAPHY: ESSAYS TOWARDS LIBERATION 200-04 (2022) (exploring how prison functions as “a geographic solution to socioeconomic problems” that fails to resolve the underlying problems but instead relocates or reorganizes those problems).

71. *Fighting Toxic Prisons: Restoring Land and Lives*, THE ABOLITIONIST (May 16, 2019), <https://criticalresistance.org/resources/fighting-toxic-prisons-restoring-land-and-lives> [<https://perma.cc/UW5E-DUSG>].

72. *Id.*

73. *Id.*

Local businesses suffered as contracts went to companies from elsewhere, which was of interest to the local chambers of commerce.⁷⁴ More children faced expulsion from schools which mobilized parent-teacher associations and teachers' unions.⁷⁵

The coalition even won the support of farmworkers and farmers, often each other's antagonists in local political disputes, as well as the California State Employees Association, which then had 80,000 members. Ruth Wilson Gilmore has explained that prison "guards could not believe that these public-service employees would go up against other public-service employees," but "state-employed locksmiths, secretaries, janitors and so forth didn't *need* to work in prisons but might have to, if the guards' union got all the resources."⁷⁶

The environmental analysis and litigation thus offered a means of broadening both the anti-prison and environmental movements' vision and reach, forging an especially wide-ranging partnership of anti-prison, racial justice, and environmental advocates as well as public sector employees who worked in tandem to submit an amicus brief while also dramatically expanding the force of the campaign to stop the prison. Plaintiffs on the lawsuit included the Friends of the Kangaroo Rat, a species whose survival would be jeopardized by the prison construction, joined by Critical Resistance and the National Lawyers Guild Prison Law Project. Signatories on the amicus brief included: "the National Association for the Advancement of Colored People (NAACP) chapters from Fresno, Los Angeles, and Santa Cruz; the Center on Race, Poverty, and the Environment; the Rainforest Action Network; the Ecology Center; and the California chapter of the National Association of Social Workers."⁷⁷

Eventually, more than 1000 individuals, organizations, and state agencies submitted comments in the environmental review—presenting substantial objections ranging from concern for destroyed farmland of statewide importance and habitat for endangered species to neglect of the language access needs of Delano's predominantly Chicano/Mexicano population.⁷⁸ These collaborations illuminated the possibilities and the deep connections between movements to reduce penal and environmental harm as well as the

74. *Id.*

75. *Id.*

76. Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html> [<https://perma.cc/Y5XU-95PM>].

77. Braz & Gilmore, *supra* note 47, at 101.

78. Braz & Gilmore, *supra* note 47, at 101.

need for more collective efforts to amplify power in confronting these oppressive regimes by calling attention to urgent conjoined threats of penal violence and ecological destruction.

In the end, the coalition did not prevail in defeating Delano II, and the prison began operating in 2005, but the wide-ranging efforts of this diverse group of opponents delayed the opening for several years. Ruth Wilson Gilmore reports further that the coalition's efforts exhausted the constituencies in California committed to further prison construction:

It got to the point where in Sacramento, they were saying, "Just let us build this one, and we won't build any more." That's how they talked to us, because they got so tired of us. "Just let us do this, this will be our last one." Before the ribbon cutting, the secretary of corrections said, "This is probably the last prison we're going to open in this state." He did not say "because the abolitionists got in our way," or "the abolitionists organized all these people that got in our way," but the implication was there.⁷⁹

Beyond the coalition's impact on California's pro-prison politics, their multidimensional approach offered a capacious framework for conceptualizing and challenging penal bureaucracies' negative consequences. This framework operates by using, among other tools, environmental impact analysis and litigation in ways that reach far beyond traditional environmental or anti-prison concerns.⁸⁰

Since this campaign of the early aughts, these connections between penal and environmental harms have developed into a more general framework for an abolitionist politics carefully attentive to environmental justice and an environmental justice movement engaged with the violence of prisons and policing. A 2016 report, *We are not disposable: The Toxic Impact of Prisons and Jails*, generally describes prisons and jails as "environmental health disasters . . . unhealthy for those locked inside them, for those who work there, for those living in the neighborhoods where the facility is located

79. Braz & Gilmore, *supra* note 47, at 101.

80. For example, the Delano II campaign established that the California Department of Correction's "Environmental Impact Report" was flawed in that it underestimated the harmful effects of the proposed prison on Delano's poor and crowded schools; the Delano Joint Unified School District submitted a report criticizing the adequacy of mitigation monies proposed by the state.

. . . .”⁸¹ As the Report exposes, as jails and prisons “produce toxins that spread into the wider environment, they ultimately harm us all.”⁸²

In the epilogue to *Golden Gulag*, Ruth Wilson Gilmore describes this kind of coalitional or solidaristic work as perhaps “what class politics *should* be”—bringing together “[f]armworkers, prisoners’ families, immigrant rights activists, environmental justice organizers, and prison abolitionists.”⁸³ The campaign against Delano II, and the decades of work of the Mothers of East LA before it, laid the ground at once for an abolitionist class politics and for an abolitionist environmental justice movement that would confront ecological catastrophe alongside other conjoined harms in order to begin imagining and building new, more sustainable economic, political, and environmental systems.

B. Opposing a Prison Planned on a Former Appalachian Mine Site

Inspired by the burgeoning connections between environmental justice and abolitionist movements, a coalition of people in Kentucky began to mobilize against the planned construction of a federal penitentiary in Letcher County on a former coal mining site—United States Penitentiary-Letcher or USP-Letcher. The coalition raised both environmental concerns in a similar register to those in the campaign against Delano II, and the Kentucky anti-prison coalition also focused their objections on the ways extractive capitalism had long devastated the ecology and people of the Appalachian region.⁸⁴ Like the Central Valley in California, Eastern Kentucky and Central Appalachia have been areas of concentrated rural prison expansion since the 1990s.⁸⁵ With the coal industry in decline as a regional employer, state officials promoted prison construction as a “new economic engine” to “fuel” renewed economic growth, with prisons often located on former coal mining sites—an exploitative and extractive framework for a twenty-first century political economy which the

81. WE ARE NOT DISPOSABLE: THE TOXIC IMPACTS OF PRISONS AND JAILS, CALIFORNIANS UNITED FOR A RESPONSIBLE BUDGET (CURB) (2016).

82. *Id.*

83. GILMORE, *GOLDEN GULAG*, *supra* note 14, at 249-51.

84. See JUDAH SCHEPT, *COAL, CAGES, CRISIS: THE RISE OF THE PRISON ECONOMY IN CENTRAL APPALACHIA 208* (2022) (describing the original organizers as “seasoned organizers in the fight against mountaintop removal mining, and deeply rooted in the region’s social-justice-movement landscape” with a “larger vision centered on challenging regional power structures and organizing for grassroots democratic decision making and local self-determination”).

85. *Fighting Toxic Prisons*, *supra* note 71.

organizers staunchly rejected in favor of an alternative sustainable social economy and a genuinely democratic egalitarian local politics.⁸⁶

The planned site for USP-Letcher was a mountain top in Letcher, Kentucky, the peak of which had been removed for coal mining. The planned facility would confine 1216 people and be operated by the Federal Bureau of Prisons. USP Letcher was projected to cost in excess of 444 million dollars to build and would span 570 acres. The surrounding unincorporated hamlet of Roxana, Kentucky has a population of less than one hundred people.⁸⁷

Skeptical of the claims of prison proponents, that the prison would bring economic benefits to the region, community members in Letcher County began organizing as the Letcher Governance Project (LGP), challenging the closed approach of the planning process for USP-Letcher. Abolitionist scholars Judah Schept and Sylvia Ryerson observe community members' objections that the process focused almost exclusively on "wealthy and powerful people in the county, without the input of local landowners and citizens."⁸⁸ The LGP likened this exclusion of the concerns of a majority of the county's residents to the approach of the coal companies, which also prioritized the interests of local and global elites rather than the vast majority of community members whose health and economic interests were imperiled by the mines and likewise would be undermined by prison construction as opposed to other approaches to regional development.⁸⁹

Relatedly, the movement against USP-Letcher exposed how the proliferation of prisons in central Appalachia proceeded in the same model of destructive extraction that the coal industry had long imposed on the region, adopting a short-sighted and often ill-informed capitalist profits-over-all mentality, seeking to extract all remaining value out of land rendered environmentally unsafe by the mines through building prisons on those same sites. As Panagioti Tsolkas, a founder and coordinator of the Campaign to Fight Toxic Prisons and former editor of the *Earth First! Journal*, explained, some of the same Kentucky families that profited from the coal mines also stood to benefit from the contracts associated with constructing USP-Letcher and other prisons in the area; and

86. *Fighting Toxic Prisons*, *supra* note 71.

87. Jennifer Hijazi, *Inmates Contest Plan for Prison Above Kentucky Mine*, COURTHOUSE NEWS SERVICE, Nov. 28, 2018, <https://www.courthousenews.com/kentucky-federal-prison-plans-draw-inmate-suit>.

88. Judah Schept & Sylvia Ryerson, *Building Prisons in Appalachia: The Region Deserves Better*, BOS. REV. (Apr. 28, 2018), <https://bostonreview.net/articles/prisons-are-not-future-appalachia-deserves> [<https://perma.cc/PHT6-XQPC>].

89. *See id.*

Congressman Hal Rogers (R-Kentucky) promised contracts in constructing the prison as kickbacks for campaign and other contributions while he worked to promote and protect the interests of these same wealthy companies and families.⁹⁰ Moreover, just as the mines imperiled the miners' health, with mining executives hoarding the resulting wealth, the Appalachian prisons, including USP-Letcher, sought to maximize the value of those same sites at the expense of the health and well-being of people incarcerated in and employed by the prisons.⁹¹ Whereas the mines primarily employed poor white people, in part as a consequence of discrimination against Black mine workers during an earlier historical moment, the decision to build prisons to maximize profits in environmentally unsafe areas would disproportionately present toxic harms to people of color detained in prison as well as poor white people.⁹²

In lieu of this exploitative and extractive model of economic development, the LGP proposed “inclusive and transparent local democracy,” objecting to the prison, and advocating instead for “community driven solutions that foster healing our land and people, such as centers for drug rehabilitation, cancer treatment, mined land reclamation, and investment in small business development and renewable energy.”⁹³ According to the LGP, “study after study has shown that prisons do not create the amount of jobs or economic benefits that officials often tout” Instead, the LGP insisted, “Appalachia deserves real economic alternatives that are not built on human suffering.”⁹⁴

Organizing under the hashtag, “#our444million”—the projected cost of USP-Letcher—the LGP disrupted a regional “innovation summit” with posters reading “Prisons Are Not Innovation” and instead demanding sustainable economic alternatives and environmental justice for the region.⁹⁵ Judah Schept has described how “#Our444million is about demanding community controlled investment in a *healthy and just* future for Appalachia, one that is not built on fossil fuels or incarceration.” #Our444million demands “investment . . . to help *heal from and restore* these toxic sites, which have had devastating health impacts on coalfield communities.”⁹⁶ By contrast, “[w]hen you build a prison

90. *Fighting Toxic Prisons*, *supra* note 71.

91. Robert Todd Perdue, *Linking Environmental and Criminal Injustice: The Mining to Prison Pipeline in Central Appalachia*, 11 ENV'T JUST. 177, 181 (2018).

92. See David Pellow & Jasmine Vazin, *The Intersection of Race, Immigration Status, and Environmental Justice*, SUSTAINABILITY 1 (2019).

93. Schept & Ryerson, *supra* note 88.

94. Schept & Ryerson, *supra* note 88.

95. Schept & Ryerson, *supra* note 88.

96. Schept & Ryerson, *supra* note 88.

there, money is directed towards further toxicity and away from the huge need to deal with the devastation left behind by mountaintop removal mining.⁹⁷ The anti-prison movement became directly focused on offering a range of economic and environmental alternatives, transitioning away from extraction and exploitation of criminalized and impoverished communities towards cooperative, democratic economic and environmental planning for the region.

The LGP also forged ties with environmental groups concerned about threats to a rare old growth forest, the Lilley Cornett Woods, one of the few remaining old growth forest ecosystems in the Eastern United States, located less than a mile from the planned prison site. Additionally, environmental groups opposed the projected effects of water, noise, and light pollution, as well as increased traffic on endangered habitats already devastated by coal mining.

Local organizers won support from national environmental and social justice organizations as well, including the Sierra Club, the Center for Biological Diversity, the Human Rights Defense Center, and Color of Change. These organizations further objected to the planned prison based on the risks the prison would create for incarcerated people due to the environmentally unsafe conditions on the former mining site.

Advocates in the local community along with incarcerated people likely to be transferred to USP-Letcher commenced litigation with the support of the Abolitionist Law Center, and this broad range of individuals and organizations participated in the federal environmental impact review. The plaintiffs in the lawsuit to challenge the planned construction of USP-Letcher were incarcerated people themselves at risk of being transferred to the prison.⁹⁸ Their lawsuit, brought initially by the Abolitionist Law Center, sought to raise awareness and oppose the construction and maintenance of the prison at this site, foregrounding the significant environmental and public health risks to incarcerated people and their families.⁹⁹

During the Federal Environmental Impact Statement Process, the public entered more than 20,000 comments, calling attention to the myriad

97. *Fighting Toxic Prisons*, *supra* note 71; *see also* SCHEPT, COAL, CAGES, CRISIS, *supra* note 84.

98. *See* Complaint for Declaratory and Injunctive Relief, *Barroca v. Bureau of Prisons*, No. 1:18-cv-2740 (D.D.C. Nov. 26, 2018).

99. *See* Complaint for Declaratory and Injunctive Relief, *Barroca v. Bureau of Prisons*, No. 1:18-cv-2740 (D.D.C. Nov. 26, 2018).

problems that would be created by USP-Letcher. This campaign obstructed the prison's planned construction for over two years.

In April 2019, the federal lawsuit, *Barroca v. Bureau of Prisons*,¹⁰⁰ was amended and refiled with support from the public interest environmental law firm, Green Justice, and a newly formed group in East Kentucky known as Friends of Lilley Cornett Woods and the North Fork Watershed.¹⁰¹

After the suit was re-filed, the BOP withdrew its intent to build USP-Letcher. In June 2019, federal officials formally cancelled the prison construction project and for now at least USP-Letcher has been abandoned.¹⁰²

Beyond the victory of the coalition, which built its strategy from decades of organizing in Appalachia against mining and prison interests, the coalition succeeded in connecting anti-prison and environmental advocacy to an alternative economic and political vision for the region. The Letcher Governance Project, in calling for “a just and diversified regional economy that is not built on fossil fuel industries and prisons,”¹⁰³ presented a crucial framework for bringing together the urgent political, ecological, and economic agendas of the movements for abolition, environmental justice, and social democratic alternatives to capitalism.

This broader framework is the legacy of the Letcher Governance Project campaign against USP Letcher—as Elizabeth Sanders of the LGP explained, “it’s not a win” if the primary outcome of the coalition’s work is that “this doesn’t get built.”¹⁰⁴ Rather, to “win would be a successful conclusion to the ongoing struggle by activists to transition away from predatory economic opportunities, including coal mining and prison construction, in one of the most impoverished and exploited areas in the nation.”¹⁰⁵

100. *Barroca et al v. Bureau of Prisons et al*, Case No. 1:18-cv-02740 (D.D.C. Judge James E. Boasberg) (Green Justice Legal).

101. See also Darcy Reddan, *Inmates Say \$444M Fed Prison Project is “Pork Barrel Politics,”* LAW360 (Nov. 27, 2018, 3:10 PM) <https://www.law360.com/articles/1105092> <https://perma.cc/2LRB-QFQT> (“A group of inmates filed a complaint in D.C. federal court Monday seeking to block the Federal Bureau of Prisons’ \$444 million proposal to build a penitentiary in Kentucky that the inmates claim is unneeded and would damage the surrounding environment, calling the project ‘pork barrel politics.’”).

102. SCHEPT, *supra* note 84, at 221 (describing the end of the planned prison with the Bureau of Prison’s official withdrawal of its attempt to build USP Letcher).

103. Schept & Ryerson, *supra* note 88.

104. Panagiotti Tsolkas, *Plans for a New Federal Prison on Coal Mine Site in Kentucky Withdrawn*, PRISON LEGAL NEWS (Sept. 8, 2019), <https://www.prisonlegalnews.org/news/2019/sep/8/plans-new-federal-prison-coal-mine-site-kentucky-withdrawn> [<https://perma.cc/6LJ4-NYBF>].

105. *Id.*

The goal going forward, then, for abolitionist environmental justice is a path away from extractive racial capitalism and its punishing conditions towards social provision organized through reinvestment and restructuring of local, national and global economic practices.

III. CONFRONTING TOXIC COMPROMISES: ECOLOGICAL CATASTROPHE, CRIMINAL LAW ENFORCEMENT, AND CAPITALISM

As the organizers in Letcher County, Kentucky urged, a framework for meaningful change to current harmful environmental and penal practices must address the toxic connections and compromises associated with our existing extractive racial capitalist political economy.¹⁰⁶ As #our444million laid bare, environmental and penal harm ultimately result from and perpetuate a form of extractive racial capitalism that is incompatible with human wellbeing.¹⁰⁷

Far beyond Kentucky and Appalachia, environmental harm is at once produced and exacerbated by racial capitalism insofar as the priority of market-based logics and profit subordinate ecological and other urgent human concerns across the United States and around the world.¹⁰⁸ Capitalism relies on the accumulation of private wealth at the expense of other values, including the environmental stewardship, equity, and human well-being.¹⁰⁹

106. See, e.g., MANNING MARABLE, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA* (1983); Robin D.G. Kelley, *What did Cedric Robinson Mean by Racial Capitalism?*, BOSTON REVIEW, January 12, 2017 (“Capitalism and racism did not break from the old order but rather evolved from it to produce a modern world system of ‘racial capitalism.’”); MAYNARD & BETASAMOSAKE SIMPSON, *supra* note 20 (exploring dynamics of racial capitalism in the present).

107. See also Naomi Klein, “*On Fire*,” in *ALL WE CAN SAVE: TRUTH, COURAGE, AND SOLUTIONS FOR THE CLIMATE CRISIS* 46–47 (Ayana Elizabeth Johnson & Katharine K. Wilkinson eds., 2020) (“[T]he indifference to life that was expressed in the exploitation of individual workers . . . and in the decimation of individual mountains and rivers has trickled up to swallow our entire planet, turning fertile lands into salt flats, beautiful islands into rubble . . .”); Regine Clement, “*Catalytic Capital*,” in *ALL WE CAN SAVE: TRUTH, COURAGE, AND SOLUTIONS FOR THE CLIMATE CRISIS* (Ayana Elizabeth Johnson & Katharine K. Wilkinson eds., 2020) 171 (“[W]e are a society overly driven by capital and wealth; many of our values and mindsets are rooted in the desire for money. . . . At the same time, rapid global economic growth has led to mass inequality.”).

108. See, e.g., NAOMI KLEIN, *THIS CHANGES EVERYTHING: CAPITALISM VS. THE CLIMATE* 18 (2014) (“[W]e have not done the things that are necessary to lower emissions because those things fundamentally conflict with deregulated capitalism, the reigning ideology for the entire period we have been struggling to find a way out of this crisis.”).

109. See TIM JACKSON, *POST GROWTH: LIFE AFTER CAPITALISM* 4, 32 (2021) (“Economic growth has brought extraordinary affluence. . . . But the massive explosion of economic activity

Racialized labor exploitation reinforces the racial inequality and immiseration that has persistently constituted and enabled capitalist extraction of land and labor and the production of wealth.¹¹⁰ So too current consumption patterns of fossil fuels, plastics, meat, and other products place capitalism on a collision course with sustainable management of the planet's finite resources, accelerating pollution and climate change.¹¹¹ Market-based logics, racialized political polarization, and privatization in turn make any large scale national and international government subsidies or other programs to address these crises appear unthinkable.¹¹²

Relatedly, the priority extended to wealth accumulation and market-based logics has allowed for moneyed interests, like the fossil fuel industry, to play an outsized role in the political process such that even celebrated environmental victories are organized around concessions to and compromises with extractive capitalist interests. The major environmental legislation signed by President Joe Biden, the Inflation Reduction Act, offers a compelling case in point. The Inflation Reduction Act will invest \$369 billion in climate solutions, including solar, wind and other sustainable energy and food sources funded by a modest corporate tax increase to 15 percent on certain corporate profits.¹¹³ The legislation is rightly heralded for making significant progress in an area where action is urgently required. But to secure coal mining beneficiary West Virginia Senator Joe Manchin's support, as well as the support of others committed to protecting similar interests, the Act mandates additional oil and gas leasing in order for new wind and solar projects to be approved, among other concessions.¹¹⁴ The legislation also requires the federal government to offer up parts of the Gulf of Mexico and Alaska's Cook Inlet for oil and gas development. This

has also wreaked unparalleled havoc. . . . Sea levels rise. Oceans acidify. The affluence we aspire to has been purchased at an unpayable price.”).

110. See CEDRIC ROBINSON, *supra* note 45; Kelley, *supra* note 106; MAYNARD & BETASAMOSAKE SIMPSON, *supra* note 20; Harris, *supra* note 44.
111. See NOAM CHOMSKY & ROBERT POLLIN, CLIMATE CRISIS AND THE GLOBAL GREEN NEW DEAL 53 (2020) (“[B]asic elements of capitalism, both ideological and institutional, lead directly to destruction of the basis of organized social life—if unconstrained.”).
112. See WENDY BROWN, IN THE RUINS OF NEOLIBERALISM: THE RISE OF ANTIDEMOCRATIC POLITICS IN THE WEST 81 (2019) (tracing the replacement of more democratic values with ones organized around market and market-based logics); JULIE SZE, ENVIRONMENTAL JUSTICE IN A MOMENT OF DANGER (2020) (“[C]apitalism and carbon live out and through systematic dispossession, production, extraction, and disposability—in short, death and violence.”); NAOMI KLEIN, ON FIRE: THE (BURNING) CASE FOR A GREEN NEW DEAL 36, 46 (2019).
113. Inflation Reduction Act of 2022, Pub. L. No. 117-69, 136 Stat. 4371.
114. See *id.*

legislation thus captures a core problem with tethering environmental or other reform to currently configured racial capitalist political and economic interests: the framework intended to enable change is already captured by capitalist imperatives. The reform agenda is designed to accommodate the interests of the fossil fuel industry. It literally trades progress on climate for further oil and gas development, which threatens to hold in place the status quo and ultimately to obstruct necessary change.

Beyond the way that capitalist imperatives have deeply influenced the political process impeding change and imagination, currently existing political, economic, and social configurations are at the same time further secured by the threat of criminal law enforcement against those who would seek to upend the status quo, whether by challenging racialized police violence or pipeline construction. Criminal law enforcement serves generally to protect existing distributions of private wealth and advantage under capitalist regimes, securing private property and other private interests against incursion by those who are disadvantaged, most often racialized minorities, Indigenous people, and poor white people. As criminal law enforcement overwhelmingly targets those subject to inherited disadvantage who are often survivors of the most devastating impacts of environmental crises, prisons in turn harm the health and well-being of those locked inside, pollute surrounding areas, and contribute to the toxic dispossession of all whose lives they touch.¹¹⁵

Meanwhile the fossil fuel industry and other actors that perpetuate environmental damage privately subsidize criminal law enforcement to protect their agenda against challenge even beyond the generous public subsidy for prisons and policing. Specifically, oil companies and other businesses rely on criminal law enforcement to suppress organized opposition to pipeline construction and other extractive projects and to incarcerate environmental activists who threaten to halt their destructive activities—benefits these companies enjoy in part because of direct financial support to criminal law enforcement in turn for this protection.¹¹⁶

115. See, e.g., Kim Kelly, *The Climate Disaster Inside America's Prisons*, THE NEW REPUBLIC (Sept. 18, 2019), <https://newrepublic.com/article/155092/climate-disaster-inside-americas-prisons> [<https://perma.cc/XBC9-7MVB>] (“The specter of climate change is a hazardous fact of life for the prisoners forced to labor in sweltering Texas fields . . . fight[]wildfires for pennies in California, and . . . left trapped in the path of Hurricane Dorian when South Carolina prison officials declined to evacuate them ahead of the storm.”).

116. Kaylana Mueller-Hsia, *How an Oil Company Pays Police to Target Pipeline Protesters*, BRENNAN CTR. FOR JUST. (Oct. 7, 2021), <https://www.brennancenter.org/our->

As abolitionists have called attention to these extractive industries—both extractive energy companies and large banks—that bankroll police departments,¹¹⁷ the idea abolitionists seek to expose is that these entities thereby preserve the overwhelming upwards distribution of wealth that characterizes our society through reliance on police foundations able to secure military grade and other equipment to maintain order and discipline among vulnerable populations.¹¹⁸ While these dynamics are plainly on display in the work of police to protect pipeline projects against Indigenous and other communities protesting the environmental devastation those projects cause, similar dynamics are manifest in the militarized police response to protests calling for racial, social, and economic justice, even if the financial linkages are not always so immediate and plain to see.

Similarly, in the face of the upheavals caused by climate change, human displacement is managed in large part through penal bureaucracies that enjoy both public and private sector support. Immigration enforcement officers respond to mass displacement by incarcerating migrants in private detention settings, militarizing and fortifying borders, rather than seeking other more humane and sustainable ways to address imminent environmental and humanitarian concerns.

Abolitionist environmental justice organizing thus aims to disrupt these environmental, economic, and penal practices through collaborations that enable alternatives to our current capitalist political economy and its capture of political imagination and political processes. Through these collaborations,

work/analysis-opinion/how-oil-company-pays-police-target-pipeline-protesters
[<https://perma.cc/L5RN-V9XP>].

117. Armstrong & Seidman, *supra* note 37.

118. See Derek Seidman, *Scandal-Ridden Wells Fargo Rips Off Customers While Funding the Gun Industry & Carceral State*, EYES ON THE TIES (Mar. 15, 2018), <https://news.littlesis.org/2018/03/15/scandal-ridden-wells-fargo-rips-off-customers-while-funding-the-gun-industry-carceral-state> [<https://perma.cc/X3A5-NZXB>] (“Wells Fargo has a history of providing financial support to police foundations, which often use these funds to acquire weapons that cannot be purchased under their public budgets.”); Zachary Warmbrodt, *New Racial Justice Target: Defund the Police Foundations*, POLITICO (Sept. 18, 2020, 4:30 AM), <https://www.politico.com/news/2020/09/18/new-racial-justice-target-defund-police-foundations-417423> [<https://perma.cc/GK7F-X3M7>] (highlighting the millions corporations pay to police foundations who, in turn, purchase patrol cars, security monitoring software and bonuses to officers criminally charged for murder); Nina Lakhani, *Revealed: Oil Giants Help Fund Powerful Police Groups in Top US Cities*, THE GUARDIAN (July 27, 2020, 11:00 AM), <https://www.theguardian.com/us-news/2020/jul/27/fossil-fuels-oil-gas-industry-police-foundations> [<https://perma.cc/HRD8-A7P9>] (summarizing the findings from the Public Accountability and LittleSis report).

movements for abolition and environmental justice have forged a vision of the processes and political formations crucial to bringing about necessary change. As environmental justice organizers and thinkers Simmone Ahiaku and Thumy Phan propose:

[C]limate justice and abolition can no longer be viewed as separate. Both teach us that learning (and unlearning) are ongoing processes of imagining, collectively organizing and collective action. Both require us to approach our society with consideration, care and critique. Both require abolishing the current systems that seek to extract, exploit and dominate people and the planet. It's time to think about how we can carve out space for something new and different—something that is life affirming and liberating.¹¹⁹

Through this orientation towards radical imagination, critical attention to private and state violence, collective action and mutual aid, abolitionist environmental justice movements are pursuing divestment from poisonous gas and other toxins, whether disseminated by fossil fuel companies or police. At the same time, these movements pursue a redistributive agenda through social and public investment in truly green infrastructure, green schools, green jobs, green affordable housing, as well as access to clean water, healthy food and air. In the process, abolitionist and environmental justice movements are creating the alternative systems that participants hope will one day exist on a larger scale.¹²⁰ It is to that vision of possible alternative futures that we now turn.

IV. ENVIRONMENTAL JUSTICE AND ABOLITIONIST FUTURES

Movements for abolition and for environmental justice are calling for new ways of organizing collective life on earth, new politics and new economics, new solidarities, wider circles of concern than the family or the nation, new ways of

119. Simmone Ahiaku, “*Building Back Differently*”: A Case for Climate Justice Through Abolition, SHADO (May 24, 2021), <https://shado-mag.com/do/building-back-differently-a-case-for-climate-justice-through-abolition> [<https://perma.cc/XB2B-DNC3>].

120. See MAYNARD & BETASAMOSAKE SIMPSON, *supra* note 20, at 24 (“The climate catastrophe was born . . . from the slave plantation, the settler town, the prison, the reservation. It is unsurprising, then, that the solutions being forwarded by those in power are more of the same—the border wall, the immigration detention centre, the refugee camp, the open-pit mine. For us to live in anything that I hope we can one day call freedom, it is necessary to put an end to the death-drive-disguised-as-worldview—the murderous episteme that is being imposed on us by the master/settler/CEO.”).

imagining and realizing public safety and well-being. What is more, abolitionists and environmental justice activists are in the process of creating new economic and political systems, through local efforts as well as national, regional, and global proposals for a just transition.

A. Invest-Divest: From Local Participatory Budgeting to the BREATHE Act

Among the most resonant contributions of contemporary abolitionist organizing is the Movement for Black Lives' Invest-Divest framework introduced in its 2016 and 2020 Platforms.¹²¹ The Movement for Black lives and its member organizations have been successful in several cities, winning ground in Invest-Divest (or Divest-Invest) campaigns through local pressure for participatory budgeting. In Los Angeles, the City Council cut the Los Angeles Police Department's (LAPD) budget by \$150 million, much of it coming from funds earmarked for police overtime pay. Los Angeles Councilmember Curren Price, who pushed for the cuts at the urging of the Movement, said two-thirds of the savings would ultimately be funneled into services for Black, Latinx and other disenfranchised communities, such as hiring programs and summer youth jobs.¹²² In June 2020 in Oakland, California, the board of education voted to abolish its own police force, joining a growing number of U.S. school districts moving to scale back the presence of law enforcement on their campuses.¹²³ Under the newly adopted measure, some \$2.5 million in money previously earmarked for school district police will be reallocated toward student support positions, including social workers, psychologists and other mental or behavioral health professionals. These local Invest-Divest campaigns reflect an abolitionist conception of public safety as necessarily bringing together freedom from police and other penal violence with positive investment in communities and the creation of a new more redistributive and sustainable economic and political order. This Invest-Divest framework and the vision of the Movement for Black Lives

121. *Invest-Divest*, MOVEMENT FOR BLACK LIVES (last visited July 26, 2022), <https://m4bl.org/policy-platforms/invest-divest> [<https://perma.cc/C84R-F2H5>].

122. See Larry Perel, *LA City Council Cuts LAPD Officers to Lowest Number in 12 Years*, KCRW FEATURES (July 2, 2020), <https://www.kcrw.com/news/shows/kcrw-features/lapd-budget-cut-curren-price-interview> [<https://perma.cc/F7JD-2EM6>].

123. See Theresa Harrington, *Oakland School Board Unanimously Agrees to Eliminate Its Police Force*, EDSOURCE (June 25, 2020), <https://edsource.org/2020/oakland-school-board-unanimously-agrees-to-eliminate-its-police-force/634544> [<https://perma.cc/FH5N-CX3Z>].

more generally have inspired other racial justice and climate justice organizers to create platforms and proposed legislation reflecting a critical analysis of their struggles as linked with abolitionist and environmental justice efforts.¹²⁴

In July 2020, The Movement for Black Lives, a group of more than 150 Black-led organizations founded in 2014, introduced the BREATHE Act proposal, the culmination of a project by its policy table. The Movement for Black Lives describes itself as abolitionist rather than reformist in practice, committed to divesting from “prisons, police and all other institutions that inflict violence on Black people” and replacing those with “institutions that value and affirm the flourishing of Black lives” and offer new models of public safety.¹²⁵

The BREATHE Act proposal is divided into four sections that each address different approaches to sustainable public safety in the hopes of offering a model for federal, state and local legislation: Section One would divest from federal criminal law enforcement and defense spending, noting the disproportionate criminalization of Black and Brown communities, LGBTQIA people, Indigenous people, and people with disabilities.¹²⁶ Specific changes contemplated by the bill include, but are not limited to, eliminating surveillance tactics that are used to target Black, Brown, Indigenous, and Muslim communities, such as predictive policing, facial recognition technologies, drones and similar tools; developing a plan to eliminate not just federal immigration and criminal detention but also electronic ankle monitoring and other similar tracking tools; and replacing laws like the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities. Section Two would provide federal grant incentives to localities to decarcerate their jails and prisons and to invest in restorative and transformative justice alternatives. Another alternative public safety program promoted in Section Two involves violence interruption, including interruption of domestic violence. Section Two of the BREATHE Act also emphasizes other design related solutions for improving public safety—an approach associated with permaculture, a sustainable agricultural movement, and with universal design efforts that

124. See, e.g., *infra* Part IV.C.

125. See *About US, Who We Are: We Are Abolitionist*, MOVEMENT FOR BLACK LIVES (last visited Feb. 12, 2023), <https://m4bl.org/about-us> [<https://perma.cc/manage/create?folder=7486-117090-139831>].

126. See *The Breathe Act*, [breatheact.org](https://perma.cc/Rf2E-NRSG) [<https://perma.cc/Rf2E-NRSG>].

seek to improve visibility and accessibility by using design to improve human well-being. Some of the design interventions that improve public safety contemplated in the proposal include park redevelopment, neighborhood greening, streetlights and sustainable infrastructure programs that offer employment opportunities.¹²⁷

Section Three demonstrates that environmental justice is central to the BREATHE Act's vision. It calls for the creation of a grant that will fund solutions for environmental justice issues that affect Black communities around the country. The proposal also calls for the creation of clear state plans to meet 100 percent of their electricity demand with "clean, renewable, and zero-emission energy sources."¹²⁸ This focus on environmental justice in the BREATHE Act reflects a growing awareness that environmental justice is a core part of racial justice and this connection is central to an abolitionist account of racial justice.

Section Four of the BREATHE Act seeks to set in place mechanisms that would ensure a more just distribution of economic and political power, resources, and opportunity, including through public financing of elections and a commitment to reparations that entails, as in a longstanding bill H.R. 40, a "commission to study reparation proposals" and the harms that give rise to a call for reparations.¹²⁹ These proposals reflected in the BREATHE Act grow out of years of collective study and reflection by the Movement for Black Lives developed in its 2016 and 2020 Platforms. The vision of the Movement for Black Lives likewise emphasizes reparations in this broad, critical register—not a fixed economic sum for the persistent legacies of slavery, but a commitment to inquire deeply and to engage in a full reckoning as to what would be required to realize racial justice and to grapple meaningfully with the violence and inequity of the past.

The BREATHE Act has not yet been translated into a single piece of actionable congressional legislation, though it has inspired other pieces of related proposed legislation. Democratic Representatives Rashida Tlaib and Ayanna Pressley have both expressed their support for the proposal.¹³⁰ According to Representative Tlaib: "The BREATHE Act is bold . . . It pushes

127. *See id.*

128. The Breathe Act Federal Bill Proposal Section 3: Allocating New Money to Build Healthy, Sustainable, and Equitable Communities, <https://breatheact.org/wp-content/uploads/2020/09/FINAL-Section-3-Summary.pdf> [<https://perma.cc/JH4D-U926>].

129. Commission to Study and Develop Reparation Proposals for African Americans Act, H.R. 40, 118th Cong. (2023).

130. *See, e.g., The People's Response Act*, M4BL (last visited Feb. 12, 2023) <https://breatheact.org/the-peoples-response-act> [<https://perma.cc/D96V-5627>].

us to reimagine power structures and what community investment really looks like . . . We can start to envision through this bill” she has said, “a new vision for public safety. One that protects and affirms Black lives.”¹³¹ In this regard, we might understand the BREATHE Act and related projects as an example of what abolitionist and historian Robin D. G. Kelley describes as a Black Radical tradition of Freedom Dreams.¹³²

B. A Green New Deal

The Green New Deal first captured public attention when members of the Sunrise Movement, a youth movement to stop climate change, occupied the offices of Representative Nancy Pelosi in November 2018 calling for comprehensive action to address climate and other environmental crises. Several months later, in February 2019, Representative Alexandria Octavio Cortez (D-New York), who had been present with Sunrise Movement activists in Pelosi’s office, and Senator Ed Markey (D-Massachusetts) introduced a non-binding resolution, The Green New Deal Resolution. The Green New Deal Resolution envisions an equitable transition to clean energy.¹³³ Subsequently, other Green New Deal bills were introduced at the federal level targeting housing, urban development, and education. The basic idea of these Green New Deal measures is to connect an updated version of the economic justice and jobs programs associated with Franklin D. Roosevelt’s New Deal of the 1930s to a just transition to more environmentally sustainable practices across various sectors—linking movements for environmental and economic justice. In short, the Green New Deal imagines large-scale government subsidy and direction to create widespread employment opportunities in clean energy and sustainable development, with attention to those most impacted by environmental harm, especially racialized minority communities and those whose current jobs may become obsolete with

131. See Angely Mercado, *The BREATHE Act Would Defund Police – and Fund Environmental Justice*, GRIST (July 10, 2020), <https://grist.org/justice/the-breathe-act-would-defund-police-and-fund-environmental-justice> [<https://perma.cc/STG5-TEXR>] (quoting Representative Tlaib).

132. See ROBIN D.G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* (2003) (theorizing the power of Black radical imagination—Freedom Dreams—to transform society).

133. John Feffer, *What Remains of the Green New Deal?*, FOREIGN POL’Y IN FOCUS (May 5, 2022), <https://fpif.org/what-remains-of-the-u-s-green-new-deal> [<https://perma.cc/L2EZ-ZLNY>].

divestment from fossil fuels and implementation of other environmentally conscious measures.

At the federal level, the Green New Deal mobilization has stalled. Some limited environmental provisions of these legislative measures passed in 2021 in the bipartisan Infrastructure Law and American Rescue Plan or were included in the Inflation Reduction Act, but the overwhelming majority fell apart. Manchin, who has received major donations from the fossil fuel industry and made millions from his own coal company, refuses to support environmental measures without a simultaneous commitment to increased fossil fuel production as discussed in the preceding Part.¹³⁴ Although Manchin justifies his opposition to environmental legislation in terms of avoiding increases to the federal deficit, as a financial deficit hawk, he has spent his career defending the financial interests of his own coal company and the fossil fuel industry more generally. Consequently, as addressed above, environmental gains in recently passed federal environmental legislation are offset by other provisions that secure the interests of the fossil fuel industry.

The challenge remains, then, to marshal sufficient popular pressure to overcome the powerful interests backing the status quo—from the fossil fuel industry to the political class beholden to polluters, from the criminal law enforcement lobby to the big banks that service the extractive economy. According to Rajiv Sicora, Senior Policy Advisor for Representative Jamaal Bowman (D-New York): “[W]e’re not going to have federal climate legislation at the scale that we need without making a lot more noise, without being a lot more disruptive, and without finding ways to counter the power of the fossil fuel industry and other corporations that are lobbying furiously against it.”¹³⁵ To apply this pressure and mount an effective resistance to our current crises requires solidarities between movements for environmental justice, decarceration, quality public education, and against economic inequality and exploitation.

This multidimensional coalitional approach is being taken up in new proposed federal Green New Deal legislation inspired in part by successful coalitional efforts at the local level. For example, the federal Green New Deal for Public Schools Act, introduced by Representative Jamaal Bowman, would

134. Andy Hirschfield, *Joe Manchin Has Made \$5.2 Million From His Coal Company—and Gets Big Donations From Fossil-Fuel Industry*, SALON (Oct. 2, 2021, 8:00 AM), https://www.salon.com/2021/10/02/joe-manchin-has-made-52m-from-his-coal-company--and-gets-big-donations-from-fossil-fuel-industry_partner [<https://perma.cc/S3MQ-7XCE>].

135. Feffer, *supra* note 133.

allocate \$1.43 trillion over ten years to hire additional teachers, expand school social services, install solar energy sources and electrical vehicle charging stations at schools, remove toxic materials, support garden and tree planting, update curriculum, and make green retrofits to existing schools so that every school in the United States reaches zero carbon emissions. Rajiv Sicora suggests the idea is not just about greening public schools but putting young people and educators at the forefront of a green transition and creating one million new jobs in the process: “We need to be fighting the same fight. It can’t just be lowest common denominator stuff. Retrofitting every public school in the country is one example.”¹³⁶

This strategy is inspired in part by successful local coalition efforts. In Seattle, for instance, teachers and environmental justice advocates brought the building trades into a campaign in solidarity with students and parents that won \$19 million in bonds to install solar panels on school roof tops.¹³⁷

Representative Cori Bush (D-Missouri) introduced the Green New Deal for Cities Act, which envisions robust federal subsidies for local and state environmental projects—expanding public transit, replacing lead pipes, building bike lanes, installing electric vehicle charging stations, and phasing out fossil fuel infrastructure as well as compensating historical environmental injustice.¹³⁸ The structure of this legislation is based on the model used for pandemic aid to cities, counties, states, territories, and tribes, but is repurposed to address climate change. This initiative promises to mobilize and potentially subsidize local environmental efforts, bringing together city and state government, building trades, labor, and environmental justice movements. The labor movement has been drawn to the jobs creating potential of Green New Deal initiatives and with recent union organizing efforts at Amazon and Starbucks, the labor movement may become an increasingly powerful participant in environmental justice advocacy. Aiming to redirect popular outrage about high gas prices, progressive Democrats have also introduced legislation that would crack down on the windfall profits of oil companies and other industry, offering direct rebates to individual people in an effort to marry the struggles for environmental and economic justice. Progressive legislators and organizations are promoting these various bills collectively and a diverse set of supporters now include not only the Sunrise

136. Feffer, *supra* note 133.

137. Feffer, *supra* note 133.

138. Feffer, *supra* note 133.

Movement and the Climate Justice Alliance, but also Black Lives Matter, March for Our Lives, and the American Federation of Teachers.

Even if all of these measures fail to become law, their widespread appeal to many diverse constituencies amplifies an approach crucial to addressing our current crises, drawing into coalition the Movement for Black Lives, the labor movement, educators, cities, parents, youth, abolitionists, and those struggling for environmental and economic justice.¹³⁹ Together, these efforts—Green New Deal proposals at the city, state and federal levels, along with local participatory budgeting and the BREATHE Act—present an emergent model for creating a new politics and economics, forged from new collectivist solidarities, seeking a new understanding of public safety, a new politics, a new economics, and a more expansive conception of well-being.

C. The Red Deal

The Red Nation, a collective of Indigenous feminist abolitionists, have proposed a Red Deal, building on the Green New Deal proposals, but “draw[ing] from Black abolitionist traditions . . . call[ing] for . . . divestment away from the caging, criminalizing and harming of human beings and from the exploitative and extractive violence of fossil fuels.”¹⁴⁰ The Red Deal envisions divestment from military spending and occupation and investment in dignified work to restore the planet, clean air, clean water, free universal education, health care, as well as a broader project of decolonization, anticapitalism, and the return of stolen lands or land back. The Red Nation proposes that Indigenous “communism is the horizon, queer Indigenous feminism is the way.”¹⁴¹ Drawing on the Divest-Invest model associated with the platform of the Movement for Black Lives, the Red Deal expands its divestment focus beyond the redirection of funds from local, state and federal criminal law enforcement bureaucracies to divesting from U.S. militarism on a global scale. The Red Deal proposes repurposing the almost limitless resources allocated to military adventures and suggests, that “[w]ith the resources we gain from divestment” at this scale, “we could end world hunger, illiteracy, child hunger, homelessness, and build renewable energy tomorrow.”¹⁴²

139. See also Klein, *ALL WE CAN SAVE: TRUTH, COURAGE, AND SOLUTIONS FOR THE CLIMATE CRISIS*, *supra* note 107.

140. THE RED NATION, *THE RED DEAL*, *supra* note 13.

141. THE RED NATION, *COMMUNISM IS THE HORIZON QUEER INDIGENOUS FEMINISM IS THE WAY* (2019), <http://therednation.org/wp-content/uploads/2020/09/TRN-pamphlet-final.pdf> [<https://perma.cc/S8HW-G523>].

142. THE RED NATION, *THE RED DEAL*, *supra* note 13.

The aim of this visioning project is not only to expand the scope of imagined or potential reinvestment but also to name more fully the problems to be eliminated—extractive capitalism and Indigenous dispossession—and to create solutions that center Indigenous claims of justice and ways of living sustainably on earth. While the Red Deal is unlikely to be taken up in the U.S. Congress, like the BREATHE Act or the Green New Deal proposals, it appropriately directs abolitionist and environmental justice efforts to longstanding, and, I believe, inextricable connections to Black radical, feminist, Indigenous, queer, anticapitalist, internationalist, and other liberatory commitments.

As the decades long efforts of abolitionists open new possibilities and draw new audiences, it is worth recalling that abolition is not just a call to reduce the racialized violence of policing or prisons in favor of more humane punishment, more social spending, and alternative first responders; instead, abolitionists have long sought to build new forms of genuinely egalitarian coexistence, radically reimagined and more just economic, political, and social systems that are decolonial, anticapitalist, democratic, and feminist. The Red Deal centers that radical vision, connecting abolition to environmental justice and justice for Indigenous people.

D. Global Mobilization

There is widespread recognition among abolitionists and environmental justice organizers that efforts to advance abolition and environmental justice must also be international or global in scope, rather than focused on domestic politics alone.¹⁴³ Punitive logics are global in scope. In fact, since the end of the Cold War, countries around the world have turned to austerity economics and politics coupled with robust spending on policing, prisons, militarization, and criminal punishment as a framework for neoliberal capitalist governance. This framework features so-called free market policies accompanied by expansive criminal law enforcement against dispossessed racialized minorities, Indigenous, and poor people.¹⁴⁴ Similarly, the environmental justice movement understands that ecological catastrophe necessarily implicates people, practices, and governments around the world

143. See, e.g., *Study & Struggle Critical Conversation #4: Abolition Must Be International*, HAYMARKET BOOKS (Dec. 1, 2021), <https://www.haymarketbooks.org/events/401-study-amp-struggle-critical-conversation-4-abolition-must-be-international> [<https://perma.cc/9SAG-EU5K>].

144. See, e.g., Allegra M. McLeod, *Exporting U.S. Criminal Justice*, 29 YALE L. & POL'Y REV. 83 (2010) (exploring the proliferation across national contexts of commitments to neoliberal economic austerity measures alongside a burgeoning penal sector).

and cannot be meaningfully addressed by one country on its own. Thus, any just transition should ultimately be part of a global shift in politics, economics, penal practices, and environmental measures.

Towards this end and in the effort to forge a global abolitionist environmental justice movement, abolitionists have formed international organizations and forged cross border working relationships, including through the Global Prison Abolitionist World Without Prisons Coalition, which emerged in 2020 from the collaboration of the Alliance of Middle Eastern and North African Socialists, Lausan Hong Kong, the Emergency Committee for Rojava, various Brazilian socialist and antiracist organizations, Socialist Workers Alliance of Guyana, Movimento Negro Unificado, the Abolitionist Collective of Canada and the United States, Black and Pink, as well as Egyptian, Indian, Kashmiri, Kurdish, Turkish, Palestinian, and U.S. activist-scholars such as Dr. Romarilyn Ralston and Dr. Joy James.¹⁴⁵ According to the Coalition's Statement of Purpose, the "coalition actively draws connections between national and international struggles and between political prisoners and social prisoners, who are mostly working-class victims of poverty, racism, marginalization and neglect. Our position regarding prison abolition is informed by the need for an alternative to capitalism because capitalism is carceral and authoritarian . . ."¹⁴⁶ The goals of the coalition include: the "immediate release of prisoners based on restorative and transformative justice practices"; "advocating safe housing, healthcare, necessities and documentation for all migrants and refugees"; "opposing execution and torture including police brutality/murder"; and "promoting debate on an alternative society free of alienated labor and the logic of capital."¹⁴⁷ Participants join in transnational virtual and in person discussion, teach ins, study groups, and travel exchanges in order to develop abolitionist internationalist analyses, critique, and strategy.¹⁴⁸ The coalition's collaborative projects include exchanges between Brazilian,

145. *About*, WORLD WITHOUT PRISONS, <https://www.worldwithoutprisons.org/about> [<https://perma.cc/XD2K-KDYT>].

146. *Statement of Purpose*, WORLD WITHOUT PRISONS, <https://www.worldwithoutprisons.org/31--2> [<https://perma.cc/K8K8-LM5V>].

147. *About*, WORLD WITHOUT PRISONS, *supra* note 145.

148. See Nicole Froio, *In Building Global Solidarity, Abolitionists Look for Links Between Struggles*, SHADOWPROOF (July 15, 2021), <https://shadowproof.com/2021/07/15/in-building-global-solidarity-abolitionists-look-for-links-between-struggles> [<https://perma.cc/H8XF-TEB5>].

Palestinian, and U.S. abolitionist organizers, international conferences, and mutual support.¹⁴⁹

Contemporary abolitionists have also pressed their case in international fora. One contingent of abolitionist young people from Chicago formed an organization, We Charge Genocide, and petitioned the United Nations (UN) with some success to treat racialized police violence in the United States as an international human rights violation.¹⁵⁰ A delegation from Ferguson also represented Mike Brown's mother before the UN, following in a tradition of the Black freedom struggle that has looked to international fora to decry racial injustice and recognize pervasive violations of international humanitarian norms perpetrated by state actors within the United States.¹⁵¹

Beyond serving as an advocacy strategy, these efforts have contributed an analysis and critical framework for understanding racial injustice and carceral violence in internationalist and anti-imperialist terms. These efforts recognize the long historical relationships between U.S. military support for oppressive governments abroad to further U.S. national or commercial interests and the militarization of policing domestically in response to social movements, and call in turn for a more equitable distribution of wealth and opportunity.

The environmental justice movement has also adopted an internationalist political imaginary and approach, pursuing various global frameworks for achieving shared goals. One idea is a "Marshall Plan for the Earth." In *This Changes Everything: Capitalism Versus the Climate*, Naomi Klein suggests that a Marshall Plan for the Earth is necessary to address our unfolding ecological crises, because "we need a massive mobilization larger than any in history."¹⁵² According to Klein: "We need a Marshall Plan for the Earth . . . [to] mobilize financing and technology transfer on scales never seen before. It must get technology onto the ground in every country to ensure we reduce emissions while raising people's quality of life."¹⁵³ This framework adopts an approach

149. *Id.*

150. *We Charge Genocide UN Shadow Report*, WE CHARGE GENOCIDE (last visited July 26, 2022), <http://report.wechargegenocide.org> [<https://perma.cc/8PAN-2SXD>].

151. Jon Swaine, *Michael Brown's Parents to Testify Before UN About Ferguson Police Violence*, THE GUARDIAN (Nov. 10, 2014, 11:49 AM), <https://www.theguardian.com/us-news/2014/nov/10/michael-brown-parents-un-police-target-human-rights> [<https://perma.cc/55ZA-EE2U>]; <https://www.blackpast.org/global-african-history/primary-documents-global-african-history/we-charge-genocide-historic-petition-united-nations-relief-crime-united-states-government-against> [<https://perma.cc/RX2K-PAFF>].

152. See Klein, ALL WE CAN SAVE: TRUTH, COURAGE, AND SOLUTIONS FOR THE CLIMATE CRISIS, *supra* note 107, at 5–7, 40.

153. See Klein, ALL WE CAN SAVE: TRUTH, COURAGE, AND SOLUTIONS FOR THE CLIMATE CRISIS, *supra* note 107, at 5.

akin to the Green New Deal, BREATHE Act, Red Deal, and other Divest-Invest efforts, but on an international scale with the goal of replacing extractive and carceral capitalism with sustainable forms of human flourishing.

CONCLUSION

Many resist calls for abolition and environmental justice because in our dysfunctional, uninspired political present, both entail fundamentally changing the status quo, a feat that often seems unattainable or even unfathomable. Major obstacles to environmental justice and abolition include the rise of reactionary politicians stoking anxious regressive public sentiment as well as legions of cowardly neoliberals unwilling to take major action to avert environmental catastrophe or address the urgent need for decarceration. But our survival depends on fundamental change. We must treat this moment—the pandemic, our unfolding ecological catastrophe, the racialized suffering imposed by the carceral state—as a portal. To invoke again Arundhati Roy’s words, this moment must be a portal that enables us to imagine and fight for another world, one no longer reliant on fossil fuels, racial capitalism, prisons and policing, and instead committed to restorative economics, eco-social abolition democracy, and sustainable and solidaristic forms of collective life.¹⁵⁴ If these struggles are to have any chance of prevailing, our critical analyses and efforts must be joined to confront interconnected crises together.

154. See Arundhati Roy, *The pandemic is a portal*, FINANCIAL TIMES (April 3, 2020), <https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca> [<https://perma.cc/WBK9-LR2V>].