

Should We Abolish Hate Crime Law or Is There a Case for Its Reconstruction?

Roxana Willis*

I write this essay in the summer of 2024, as anti-immigration riots surface across the U.K.¹ The riots were initially sparked by a knife attack against a group of children taking part in a summer holiday dance class in Southport. Six-year-old Bebe King, seven-year-old Elsie Stancombe, and nine-year-old Alice Aguiar were killed during the attack, and ten others were seriously injured. Before the identity of the perpetrator was known, the false name of “Ali al Shakati” circulated online; Ali was claimed to be a “Muslim immigrant,” an “asylum seeker,” and the perpetrator of the attack.² Hundreds of protestors moved by far-right propaganda congregated outside a mosque in Southport, a hotel housing asylum-seekers in Oldham, Parliament in central London, and elsewhere, chanting slogans such as “stop the boats,” “we want our country back,” and “save our kids.”³ In the days that followed, the courts released the name of the remanded suspect, seventeen-year-old Axel Rudakubana, who was born in Cardiff, reportedly to Rwandan parents.⁴ Despite Axel not being an immigrant nor an asylum seeker nor Muslim, anti-immigration and anti-Muslim rallies formed across the country, some turning violent. Targets of violence include the police, institutions accused of supporting asylum seekers, and people racialized as Muslim, black, immigrant, or asylum seeking.

* Assistant Professor in Law at the London School of Economics and Political Science, U.K.; Guest Researcher at the Max Planck Institute (MPI) of Crime, Security and Law, Germany. Acknowledgments: I would like to thank Nicola Lacey for editorial comments on this work, and the UCL Institute for Law, Politics and Philosophy for the invitation to present an earlier version of these ideas at the colloquium series 2023-24. I am also grateful to Victoria Klinkert, Martha McCurdy, and Insa Koch for sharing ideas during a collaborative project to design a decolonial law course—with special thanks to Victoria, whose lecture on abolitionism, centering black feminist and activist thought, I draw on here. From the MPI, a special thanks to Tatjana Hörnle, Martha Basazienw Kassa, and Rachel Pougnet for support and space to work. Finally, many thanks to James for feedback and help formatting this work.

¹ The facts are summarized in this BBC report: Jeremy Culley & Hafsa Khalil, Southport Stabbings: What We Know so Far about Knife Attack, BBC News, 2024 (<https://perma.cc/7NUR-BWEU>).

² Fact Check: Southport stabbing suspect was born in the UK, say police, Reuters, July 31, 2024 (<https://www.reuters.com/fact-check/southport-stabbing-suspect-was-born-uk-say-police-2024-07-30/>).

³ UK charges 17-year-old over Southport stabbings as far-right protests rage, Al Jazeera, 2024 (<https://perma.cc/QLS4-25TJ>).

⁴ Culley & Khalil, *supra* note 1.

Writing at the height of ongoing riots, which are part of a history of racial violence and riots in the U.K.,⁵ it might be difficult to fathom the question I wish to address here, which is whether we should abolish hate crime law. Clearly, racism and racially motivated violence is a very real issue in Britain and other European states.⁶ Moreover, hate crime scholars have long argued that when a person is targeted because of their race (and other protected characteristics), the harm is heightened; pithily captured by Paul Iganski's phrase "hate crimes hurt more."⁷ In fact, research indicates that the harm of bias-motivated offenses stretches beyond the individual, and can affect all persons who share the targeted characteristics of the victim; hence a hate crime harms a whole community of sorts.⁸ Beyond this, hate crimes are said to harm wider civil society, not only by violating laws which prohibit individuals harming others, but by undermining moral assertions that modern society is post-racial, and hence no longer ordered in line with white supremacist ideologies of old.⁹ Relatedly, offenders who commit hate crimes are also said to be more morally culpable than offenders who are not motivated by bias—racist and other bigoted forms of intention worsen the wrongdoing.¹⁰ These heightened wrongs are then used by advocates to justify enhancing the sentences of those who commit crimes motivated by hate. Hence, hate crime is a form of retributive justice, punishing individuals for their increased culpability and the greater harm caused.

Hate crime legislation tends to involve a base crime receiving a more severe sentence due to an offender's biased motivation, either through sentencing enhancement, the creation of aggravated offenses, or the creation of special offenses.¹¹ Writing in the U.S. context, Avlana Eisenberg describes an archetypal case of hate crime as involving the following elements: "(1) animus; (2) a defendant who belongs to one identity group and a victim who belongs to a different group; and (3) a choice of victim that is largely symbolic, such that one victim is interchangeable with, and serves as a representative of, other members of the victim's identity group."¹² However, hate crime convictions usually do not satisfy

⁵ Panikos Panayi, *Racial Violence in Britain in the Nineteenth and Twentieth Centuries* (1996); Satnam Virdee, *Racism, Class and the Racialized Outsider* (2014); Benjamin Bowling, *Violent Racism: Victimization, Policing, and Social Context* (1999); David Olusoga, *Black and British: A Forgotten History* (2d ed. 2023).

⁶ I write during a period when the far right came close to winning the parliamentary elections in France, and as the AfD has the highest chances of election in Germany, and as the far-right government of Hungary maintains power, as an indication of a political climate hostile to immigrants and other disadvantaged groups.

⁷ Paul Iganski, *Hate Crimes Hurt More*, 45 *Am. Behav. Scientist* 626 (2001).

⁸ Neil Chakraborti, *Victims of Hate Crime*, in *Handbook of Victims and Victimology* 141 (Sandra Walklate ed., 2d ed. 2017); Barbara Perry, *In the Name of Hate: Understanding Hate Crimes* (2001).

⁹ Antony R. Duff & Sandra E. Marshall, *Criminalizing Hate?*, in *Hate, Politics, Law: Critical Perspectives on Combating Hate* 115 (Thomas Brudholm et al. eds., 2018).

¹⁰ Christopher Heath Wellman, *A Defense of Stiffer Penalties for Hate Crimes*, 21 *Hypatia* 62 (2006).

¹¹ For an overview of the current law in the English and Welsh context, and the difference between aggravated offenses, sentencing enhancement, and specialist offenses, see Law Commission, *Hate Crime Laws: Final Report* 13-60 (2021) (<https://perma.cc/QCB5-A6HR>).

¹² Avlana Eisenberg, *Expressive Enforcement*, 61 *UCLA L. Rev.* 858, 860 (2013).

all of these elements. Proving biased motivation is notoriously difficult,¹³ which has led to much looser requirements for conviction. For example, under the English and Welsh law, an offender is liable for a hate offense if they “demonstrate” hostility during its commission, which can involve the use of prejudicial words.¹⁴ Even with these looser requirements, securing a conviction can be challenging; research indicates that police, judges, juries, as well as other gatekeepers, can be reluctant to classify certain biased-based behaviors as abnormal and as indicative of hate.¹⁵

Returning to the recent riots in Britain, hate crime law could be an important tool for the state to respond to the racialized violence occurring countrywide. Indeed, local newspapers have reported multiple incidents reflective of the archetypal hate crime case, such as a black man (yet to be named) attacked by a group of white men, one draped in an England flag, in a park in Manchester; a man believed to be Muslim stabbed at a train station in Liverpool ahead of a far-right rally at a nearby mosque; a taxi driver of South Asian appearance pulled out of his car by a crowd of demonstrators shouting “paki” as they smash the car up; numerous reports of Muslim women being spat at and subjected to unveiling; and arson attacks and destruction of hotels accommodating asylum-seeking persons.¹⁶ These incidents involve base offenses—including offenses against the person and criminal damage—that appear to be aggravated by racial hostility, which have a knock-on effect on all racialized persons in Britain who are warned to be careful and avoid certain areas until the unrest calms down.¹⁷ Speaking on behalf of the nation, Prime Minister Keir Starmer promises that “we will not tolerate attacks on mosques or our Muslim communities” (though he stops short of describing such attacks as racist), such actions implicitly being an attack against the wider, law-abiding civil society.¹⁸ According to Starmer, the state will respond by establishing a national “standing army,” “ramp[ing] up criminal justice,” and using

¹³ Elizabeth Burney & Gerry Rose, *Racist Offences—How Is the Law Working? The Implementation of the Legislation on Racially Aggravated Offences in the Crime and Disorder Act 1998* (2002); Law Commission, *supra* note 11, at 9; Gail Mason, *R v. Gouros: Interpreting Motivation under Victoria’s New Hate Crime Laws*, 34 *Crim. L.J.* 323 (2010).

¹⁴ See *The Crime and Disorder Act 1998*, § 28(1); see also Law Commission, *supra* note 11, at 1.

¹⁵ Abenaa Owusu-Bempah, Mark Austin Walters & Susann Wiedlitzka, *Racially and Religiously Aggravated Offences: “God’s Gift to Defence”?*, *Crim. L. Rev.* 463 (May 2019); Evelyn Alsultany, *How Hate Crime Laws Perpetuate Anti-Muslim Racism*, 20 *Meridians* 414 (2021); Andras L. Pap, *Neglect, Marginalization, and Abuse: Hate Crime Legislation and Practice in the Labyrinth of Identity Politics, Minority Protection, and Penal Populism*, 49 *Nationalities Papers* 221 (2021); Sandhya Fuchs, *“We Don’t Have the Right Words!”: Idiomatic Violence, Embodied Inequalities, and Uneven Translations in Indian Law Enforcement*, 43 *PoLAR* 177 (2020).

¹⁶ For general reports of these offenses, see Nadine White, *Beatings, Stabbing and Mosques Sieged: Racist Attacks Carried out by Far-Right Mobs*, *The Independent*, Aug. 5, 2024 (<https://perma.cc/9M6M-U3FD>); see also Sabrina Penty, *Mob of Racist Thugs Drag Asian Man out of His Car and Smash It Up*, *Mail Online*, Aug. 3, 2024 (<https://perma.cc/G9L3-N24Z>).

¹⁷ Neil Lancefield & Natalie Wilson, *Full List of Countries Issuing Travel Warnings to UK amid Far-Right Riots*, *The Independent*, Aug. 9, 2024 (<https://perma.cc/6YBZ-FZM5>).

¹⁸ Prime Minister Keir Starmer Statement on Riots After COBRA (2024) (<https://perma.cc/Q5R5-TJRY>).

“the full force of the law” to quell the disorder. Recourse to hate crime law will likely form part of this mission.

For those receptive to abolitionist arguments, the response proposed by the British state raises critical questions. When the state ramps up criminal justice, who is likely to be targeted by the increased reach of criminal law? Will empowering the police make people disadvantaged by race safer? Will increased policing and imprisonment resolve underlying tensions? Is interpersonal violence the only form of violence present; what other forms of racial violence are evident? What is the role of the state in the creation of the conditions that have fueled the unrest? Have state policies contributed to the generation of hate and fear toward racialized others? In what ways have media elites contributed to these tensions? Who ought to be held responsible? Is reliance on the criminal justice system an appropriate response? These questions, among others, bear on the central issue addressed in this essay—whether we should abolish or reconstruct hate crime law.

While there is a tradition of abolitionism in Europe,¹⁹ in this paper I draw on the ideas of black feminist abolitionists in the U.S. and U.K., including Angela Davies, Ruth Gilmore, Aviah Day, Shanice McBean, Mariame Kaba, and a wealth of materials developed by abolitionist organizations including Abolitionist Futures, Critical Resistance, Sisters Uncut, and Care Not Cops, among others.²⁰ The basic premise of the abolitionist argument I engage with is that the criminal justice system is an inherently racist institution, rooted in the biological racisms of old, which continues to disproportionately harm black and other racialized peoples. Accordingly, the criminal justice system—and its component parts such as the police, prisons, and institutions of retributive punishment—is seen as a major source of contemporary racism. This leads Gilmore to offer the following, widely cited definition of contemporary racism: “the state sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.”²¹ Abolitionists show how prisons and police disproportionately target, violate, and restrict the lifespan and life chances of black people in the U.S. and beyond. Therefore, abolitionists are highly skeptical of extensions of the criminal justice system, since any increase in the scope of prisons and police will ultimately heighten the levels of state violence to which black people and other people racialized outside of whiteness are exposed. Abolitionists push for radical alternatives: instead of building more prisons, we should abolish them, and instead of empowering the police, we should defund them.

¹⁹ Vincenzo Ruggiero, *Penal Abolitionism* (2010).

²⁰ Angela Y. Davis, *Are Prisons Obsolete?* (2003); Ruth Wilson Gilmore, *Abolition Geography: Essays Towards Liberation* (Brenna Bhandar & Alberto Toscano eds., 2022); Angela Y. Davis et al., *Abolition. Feminism. Now.* (2022); Aviah Sarah Day & Shanice Octavia McBean, *Abolition Revolution* (2022); Mariame Kaba, *We Do This ‘Til We Free Us* (Tamara K. Nopper ed., 2021).

²¹ Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* 28 (2007).

While prisons and the police have been a central focus for abolitionists, a growing critique is developing, advocating for hate crime abolitionism.²² In a nutshell, hate crime abolitionists argue that, because hate crime law results in increased sentences for criminal offenses motivated by racial hostility and other forms of animosity, it is essentially a punitive response which increases rates of incarceration, empowers the police, and diverts more public funds into the criminal justice system. Not only do these laws fail to address hate and bias-motivated violence, but they also increase the level of state-sanctioned violence to which disadvantaged persons are exposed. Therefore, instead of widening the scope and spread of hate crime law, we should resist its expansion and aim for its abolition. These debates provide an excellent entry point for us to reflect on the theme of this Special Issue, which is whether we should aim to abolish the modern criminal law, and with it a whole host of racialized and classed violences it executes, or whether there is a case for reconstructing the criminal law to achieve progressive social change.

Asking whether we should abolish or reconstruct aspects of the criminal law departs from the more common question in abolitionist debates, which is whether to abolish or reform.²³ “Reconstruct” is a useful concept since it points to a core issue in the abolish-reform debate and the persuasive notion of a “non-reformist reform.”²⁴ Abolitionist scholars are understandably critical of the tendency for law reform to be co-opted and pulled into the mechanisms of the state to produce the same harmful effects as the pre-reform system.²⁵ As we will soon see in greater depth, hate crime law reform provides a prime example of this reformism at work: anti-racist activists put pressure on states to respond to racial and homophobic violence, yet instead of implementing structural changes to address the root problem, laws are introduced purportedly to address racial and other forms of bias-motivated violence. However, in consequence, the law reform does not address inequality

²² Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (2d ed. 2015); Dean Spade, *Intersectional Resistance and Law Reform*, 38 *Signs J. Women Culture & Soc’y* 1031 (2013); Jane Spade & Craig Willse, *Confronting the Limits of Gay Hate Crimes Activism: A Radical Critique Symposium: Hate Crimes 2000: A Symposium and Community Forum on Hate in America*, 21 *Chicano-Latino L. Rev.* 38 (2000); Amy Swiffen, *New Resistance to Hate Crime Legislation and the Concept of Law*, 14 *Law Culture & Human.* 121 (2018); S.M. Rodriguez, *Queer Abolitionist Alternatives to Criminalising Hate Violence*, in *The Routledge International Handbook of Penal Abolition* 190 (Michael J. Coyle & David Scott eds., 2021); Lisa A. Crooms, “Everywhere There’s War”: A Racial Realist’s Reconsideration of Hate Crime Statutes, 1 *Geo. J. Gender & L.* 41 (1999); Alsultany, *supra* note 15; Lily Herbert, *Problematizing Hate Crime-Related Data to Examine Systemic Issues in the Reporting, Prosecution, and Conceptualization of Hate Crime* (2023); Tamara K. Nopper, *On Inheritances: Examining Contemporary Anti-Asian Violence and Black-Asian Solidarity*, 44 *Ethnic Stud. Rev.* 27 (2021); Sarah Lamble, *The False Promise of Hate Crime Laws, Abolitionist Futures* (Mar. 15, 2021) (<https://perma.cc/48KZ-2D4N>).

²³ “Reconstruct” is a term Niki Lacey and Celia Wells adopt in their alternative textbook on criminal law in England and Wales to capture a range of nuanced activity that could include legal reform, reinterpretation, and more. Nicola Lacey, Celia Wells & Oliver Quick, *Reconstructing Criminal Law: Critical Perspectives on Crime and the Criminal Process* (3d ed. 2003).

²⁴ Andre Gorz, *Reform and Revolution*, 5 *Socialist Reg.* 111 (1968); Andre Gorz, *The Way Forward*, *New Left Rev.* 47 (1968); Gilmore, *supra* note 21.

²⁵ For an excellent discussion of these issues, which I draw on here, see Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 *Yale L.J.* 2497 (2023).

and, if anything, only perpetuates it. In contrast to reform such as this, a non-reformist reform is a type of change that cannot be absorbed into the system to reproduce the same harmful effects. As Amna Akbar explains, “non-reformist reforms aim to undermine the prevailing political, economic, social order, construct an essentially different one, and build democratic power toward emancipatory horizons. They seek to redistribute power and reconstitute who governs and how.”²⁶ In keeping with this vision, rather than pursuing abolition per se, which might be taken to mean eradication and absence, abolitionists often pursue *transformation* of the harmful present toward more hopeful and compassionate horizons.²⁷ With these discussions in mind, I deploy the notion of “reconstruction” to explore whether we can move beyond legal reformism and find ways to transform how, and for whom, the criminal law operates.

In the first part of the essay, I outline a case for abolishing hate crime law. The focus of my discussion is on racial violence; however, since racialization²⁸ is infused with experiences related to sexuality, gender, class, disability, and so on, intersectional disadvantage is central to these discussions, even when not explicitly referred to. In this section, I draw on a distinction between two forms of racism, as articulated by Charles W. Mills:²⁹ the first sense concerns a biological understanding of racism, in which individuals are treated differently because of the color of their skin; and the second sense concerns a structural form of racism, which addresses how laws, policies, and various other operations of the state and elite institutions disproportionately violate the life chances of the racialized poor.³⁰ Abolitionist critique reveals that while hate crime law aims to address the first form of racism, it completely overlooks and compounds the second kind of racism, in which it is principally implicated. This discussion provides the background context for section two, where we examine the potential for hate crime law to be reconstructed in ways that address abolitionist critiques. I suggest that there is potential to reconstruct hate crime law toward

²⁶ Id. at 2507.

²⁷ Kaba, *supra* note 20; Prison Culture, ‘Transformative Justice’ (<https://perma.cc/4FGN-XQ5B>); Ruth Gilmore, What If Prisons Were Abolished?, YouTube (July 29, 2020) (<https://www.youtube.com/watch?v=2moblH7sFKM>) (<https://perma.cc/5QR8-85MU>).

²⁸ I use the term “racialization” to refer to the process through which people are racialized. This takes us beyond a conception of race as an essentialist biological construct, which simply exists “out there,” to a process of being treated a certain way on account of perceived race. Racialization, as such, occurs to all persons, whether they are included or excluded from whiteness. Yet the effects of racialization are markedly different, disadvantaging some, in different ways and different contexts, while advantaging others.

²⁹ Charles W. Mills, New Left Project Interview with Charles Mills, in *Black Rights/White Wrongs: The Critique of Racial Liberalism* 3 (2017).

³⁰ I use the term “racialized poor” to refer to persons racialized outside of whiteness. Although all persons are racialized, scholars writing about the concept of race reveal that to be racialized within whiteness often entails a silent process, where whiteness is treated as the norm from which nonwhite persons diverge. Notably, when I refer to the racialized poor, I include disadvantaged groups who might ostensibly be included in whiteness but who are in fact racialized as the wrong kind of white. See Alastair Bonnett, *White Identities: Historical and International Perspectives* (2000); Steph Lawler, *White Like Them: Whiteness and Anachronistic Space in Representations of the English White Working Class*, 12 *Ethnicities* 409 (2012).

emancipatory ends if we reconceptualize hate crime as a state crime. In so doing, we could begin to respond to the second form of racism, which the modern criminal law has failed to address to date.

I. A Case for Abolishing Hate Crime

The main arguments for abolishing hate crime law stem from its effects, which include the increased criminalization of poor and racialized persons while failing to address racism and other forms of biased violence. Here, I use the term “criminalization” to refer to a series of processes whereby states define what constitutes a crime, to which corresponding criminal and penal mechanisms then respond.³¹ For us to grasp the abolitionist position, I begin by outlining the origins of hate crime and how the (neo)liberal logic of the law shapes its development. This provides a suitable context for engaging with abolitionist critiques. Essentially, abolitionists argue that hate crime law involves the state responding to one form of racial violence, individually conceived, while overlooking and, in fact, perpetuating, a second form of racial violence, which is structural and committed by the state itself. By the end of the section, I bring into view a case for abolishing hate crime law, which we respond to thereafter.

A. *The Origins of Hate Crime*

The move by states to criminalize bias-motivated offenses contrasts with the exclusionary foundations on which modern liberal law was built. As postcolonial scholars and historians have well documented, influential Enlightenment ideas about the rights of men were never universal: often through mechanisms of the emergent modern law, entire groups were excluded by classification as “dependents,” “slaves,” “subjects,” and “criminals.”³² And while Enlightenment thinkers, writing from the seventeenth century onwards, encouraged individuals to avoid interpersonal uses of violence—becoming a marker of incivility within the metropole³³—self-proclaimed “civilized” actors committed extreme and widespread violence against persons who were enslaved, colonized, or killed *en masse* to make way for settler colonies.³⁴ It was through the classification of subjugated peoples as “other”

³¹ Cf. Nicola Lacey, *Historicising Criminalisation: Conceptual and Empirical Issues*, 72 *Mod. L. Rev.* 936 (2009).

³² Homi Bhabha, *Of Mimicry and Man: The Ambivalence of Colonial Discourse*, 28 *October* 125 (1984); Frantz Fanon, *Black Skin, White Masks* (2008); Catherine Hall, *Civilising Subjects: Metropole and Colony in the English Imagination, 1830-1867* (2002); Achille Mbembe, *Critique of Black Reason* (Laurent Dubois trans., 2017); Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (1995); Edward W. Said, *Orientalism* (1979) (25th anniversary ed. 2023); Ann Laura Stoler, *Race and the Education of Desire: Foucault's *History of Sexuality* and the Colonial Order of Things* (1995).

³³ J. Carter Wood, *Violence and Crime in Nineteenth Century England: The Shadow of Our Refinement* (2004); Martin J. Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (2004).

³⁴ Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (rev. ed. 2022); Michael Taussig, *Culture of Terror—Space of Death. Roger Casement's Putumayo Report and the Explanation of Torture*, 26 *Comp. Stud. Soc. Hist.* 467 (1984).

that the rights, and corresponding privileges and powers, of European colonizers were justified. Therefore, far from prohibiting discrimination, during the early centuries of empire building, the law proved itself a tool for classifying subordinates and arranging bias-based violence against them, all of which was driven and sanctioned by the modern state.³⁵

When we acknowledge that the law was used to classify and mark certain groups as legitimate targets of coercive labor and violence, the global spread of hate crime law appears to mark a drastic shift from the racisms of old. Instead of excluding groups based on race, religion, and other characteristics, hate crime law ostensibly provides formerly excluded persons with protection from violence.³⁶ The development of hate crime law in North America seems to follow this arc, having emerged as a response to members in various formations of the Ku Klux Klan using overt (often fatal) violence to reinstate the social inferiority of black persons, no longer directly enslaved by law.³⁷ Notably, early waves of legislative reform in the U.S. came in the form of access to civil rights, followed by the protection of these rights through anti-discrimination laws. Although the expansion of civil rights (and subsequent protections) meant that racialized persons, who had been excluded through enslavement and colonialism, were now included in the citizenry—hence, acquiring rights the majority already enjoyed—others experienced this elevation of minority rights as a threat to the privileges of whiteness.³⁸ It is in this context that hate crime law emerges: the state draws on the apparatus of the criminal law to punish individuals who, acting on that apparent threat, use personal violence to subordinate fellow citizens, for the overt discriminations of the past are no longer authorized by the state.

Abolitionist accounts prompt us to reflect more deeply on this foundational legal reality and to interrogate the narrative that large-scale racialized violence is merely a matter of the past. Notwithstanding the significance of victories hard-won by civil rights activists—

³⁵ For examples, see Folúkè Adébísi, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (2023); Lisa Lowe, *The Intimacies of Four Continents* (2015); Sherene H. Razack, *Settler Colonialism, Policing and Racial Terror: The Police Shooting of Loreal Tsingine*, 28 *Feminist Legal Stud.* 1 (2020); Andrea Smith, *Sexual Violence and American Indian Genocide*, *J. Relig. Abuse* 31 (1999); Andrew Fitzmaurice, *Discovery, Conquest, and Occupation of Territory*, in *The Oxford Handbook of the History of International Law* 840 (Bardo Fassbender & Anne Peters eds., 2012).

³⁶ For a discussion in the U.K. context, see Maleiha Malik, “Racist Crime”: Racially Aggravated Offences in the Crime and Disorder Act 1998 Part II, 62 *Mod. L. Rev.* 409 (1999).

³⁷ Brian Levin, *From Slavery to Hate Crime Laws: The Emergence of Race and Status-Based Protection in American Criminal Law*, 58 *J. Soc. Issues* 227 (2002); Ely Aaronson, *From Slave Abuse to Hate Crime: The Criminalization of Racial Violence in American History* (2014).

³⁸ A. Leon Higginbotham, *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process* (1996). For contemporary examples, see Katherine J. Cramer, *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker* (2016); Arlie Russell Hochschild, *Strangers in Their Own Land: Anger and Mourning on the American Right* (2016); Roxana Willis, *A Precarious Life: Community and Conflict in a Deindustrialized Town* 155-83 (2023).

which led to the abolition of slavery, the withdrawal of colonial forces, and the wider inclusion of select groups in the civil order³⁹—the claim is that the extreme inequalities created by those practices *continue* to structure society and differentially determine mortality and life chances. As such, critical academics contend that the logics of slavery and colonialism are enduring, by persisting as a hierarchical racialized order.⁴⁰ This contention challenges a view of history that treats practices such as colonialism and slavery as discrete incidents or periods firmly in the past, with more or less clear cut-off points (the abolition of slavery and the withdrawal of colonial forces). Rather, this work enlists notions such as “afterlives,” “legacies,” and “continuities” to mark out how exploitative relationships and structuring practices persist—still along racialized lines, only transmuted now into new forms.⁴¹ For example, Du Bois discusses whiteness as a kind of “dominion”—a fantastical “sense of entitlement” home to the environment of chattel slavery and imperial conquest, but one that “helps shape everything from foreign policy to routine social interactions.”⁴² The idea of a continuum has also been influentially applied to violence, where extreme and overt forms of violence such as genocide, slavery, and colonialism are treated as intricately connected with other forms of violence, such as structural and symbolic—the latter forms providing potential conditions for mass atrocities.⁴³ Scholars who discuss such continuums and continuities recognize that, while significant changes have occurred in the centuries following slavery, because the logic of racialized exploitation has not been disrupted, abusive relationships persist. From this viewpoint, the effects of colonialism, slavery, genocide, expropriation, and exploitation are ongoing, and the injustices produced are still to be addressed.

B. Two Senses of Racism

Concretely for the modern day, then, is the argument that the enduring, structuring forces of “racial capitalism” enable a predominantly white male elite to amass vast amounts of resources at the expense, and through the exploitation, of communities consigned to material poverty and premature death.⁴⁴ Through the expansion of civil rights, it is now possible for (some) racialized persons to enjoy elite privileges, but—the argument goes—

³⁹ Deva R. Woodly, *Reckoning: Black Lives Matter and the Democratic Necessity of Social Movements* (2023).

⁴⁰ Adébiśí, *supra* note 35; Justin Leroy, *Racial Capitalism and Black Philosophies of History*, in *Histories of Racial Capitalism* 169 (Destin Jenkins & Justin Leroy eds., 2021); Saidiya V. Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Route* (2021); Catherine Hall et al., *Legacies of British Slave-Ownership: Colonial Slavery and the Formation of Victorian Britain* (2014); Ann Laura Stoler, *Imperial Debris: On Ruins and Ruination* (2013).

⁴¹ See sources cited *supra* note 40.

⁴² Ella Myers, *Beyond the Psychological Wage: Du Bois on White Dominion*, 47 *Pol. Theory* 6, 22 (2019).

⁴³ *Violence in War and Peace: An Anthology* (Nancy Scheper-Hughes & Philippe Bourgois eds., 2004).

⁴⁴ Cheryl I. Harris, *Whiteness as Property*, 106 *Harv. L. Rev.* 1707 (1993); Adébiśí, *supra* note 35. See also arguments made by abolitionist scholars. E.g., sources cited *supra* note 20; Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (rev. ed. 2000).

rather than eliminating racism, these changes have severed certain biological classifications from the concept of race. Thus (a minimal number of) visibly nonwhite persons can enjoy the privileges of white supremacy, leaving untouched patterns of mass accumulation in the hands of a few, to the fatal detriment of countless (predominantly nonwhite) others.⁴⁵ Accordingly, the abolitionist view is that liberal states have failed to implement policies to alter the course of racial capitalism in any meaningful way. Consequently, and despite moving away from the prejudices of old, the most disadvantaged nationally and globally continue to be poor people of color (where women fare worst).⁴⁶

A particularly notable abolitionist example of this pattern of racial capitalism, in which modern states commit violence that sits along a historical continuum with slavery, is the expansion of the Prison Industrial Complex.⁴⁷ “Prison Industrial Complex” is used to describe how prisons in the United States operate: poor groups of primarily black persons are assigned to periods of (increasingly indefinite) imprisonment for the benefit of predominantly white elites, who extract profits from the mass unfreedom of those whose ancestors were formerly enslaved and colonized. Prison abolitionists argue that, because ever more exploitable lives are required to feed the industrial complex, the state provides this fodder by widening the reaches of the criminal justice system. However, the process of criminalization is far from neutral; critical researchers have shown that the groups assigned for imprisonment in the present are the same groups criminalized during the centuries of empire building, from the racialized gang to the immoral poor, from the terrorist to the bogus asylum seeker, and from the risky gays to the deceitful trans women.⁴⁸ While the violence of criminalization and imprisonment is not as overt as the chains of slavery, abolitionists argue that governing powers continue to facilitate the appropriation of land, the capture and containment of primarily non-white peoples, and the use of these lives for the purposes of wealth accumulation through the growth of penal institutions.⁴⁹ Likewise, they point out, the expanding punitive border regimes and accompanying detention centers, which incarcerate and eject predominately poor and nonwhite migrants, operate on a comparable

⁴⁵ Wealth, Influence, and Class: The British Elite Explained, YouTube (Sept. 9, 2024) (<https://www.youtube.com/watch?v=gcPIp28XkL0>) (<https://perma.cc/ST8E-L27X>).

⁴⁶ Amia Srinivasan, *The Right to Sex: Feminism in the Twenty-first Century* 149-79 (2022).

⁴⁷ Davis, *supra* note 20; Gilmore, *supra* note 21; Beth Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (2012); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010).

⁴⁸ An example from the vast literature is Stuart Hall et al., *Policing the Crisis: Mugging, the State and Law and Order* (1978) (35th anniversary ed. 2019). See also the discussion of folk devils below. On trans experiences, see Talia Mae Bettcher, *Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion*, 22 *Hypatia* 43 (2007).

⁴⁹ See sources cited *supra* note 44.

logic.⁵⁰ Accordingly, criticism of these prison and immigration industrial complexes have a global relevance.⁵¹

The Prison Industrial Complex brings into view a different kind of racial violence to that explicitly addressed by hate crime law. Hate crime statutes are designed so that the state and its corresponding criminal justice institutions respond to interpersonal forms of bias-motivated violence committed by individuals committing discrete acts. Yet the above abolitionist arguments urge us to focus on a more oblique and enduring form of racial violence that is perpetrated by the state itself. We can describe this alternative form of violence as structural since it is a product of laws and policies implemented by states, which sanction a range of practices and create socioeconomic conditions that disproportionately harm certain racialized groups.⁵² Thus, there is more than one type of racial violence to address: interpersonal violence, as when a group of young men, motivated by white supremacy, fatally attack a young black man as he waits for a bus home (as in the case of Stephen Lawrence in the U.K.); and structural violence, which is evident when the police fail to investigate a homicide because they presume the victim was part of a gang, and that his death was gang-related, because he was black (as occurred in the botched police investigation of Lawrence's murder). Whereas interpersonal violence is often consigned to a moment in time, structural violence ultimately stretches further and includes an assortment of state policies that affected the life opportunities of the victims and offenders up to that fatal moment and after.⁵³

A correlative distinction between two senses of racism, as articulated by Charles W. Mills, is relevant here—in the first sense,

racism is the belief that (i) humanity can be divided into discrete races, and (ii) these races are hierarchically arranged, with some races superior to others. The second sense would then refer to institutions, practices, and social systems that illicitly privilege some races at the expense of others, where racial membership (directly or indirectly) explains this privileging.⁵⁴

Hate crime law targets racism that falls under this first sense—the comparatively more obvious racism that motivates interpersonal uses of violence—while leaving completely untouched the racism of the second sense. We can refer to what this second sense denotes as structural racism, which abolitionist scholars reveal the magnitude of, as well as its interconnection with the first form.

⁵⁰ Tanya Golash-Boza, *The Immigration Industrial Complex: Why We Enforce Immigration Policies Destined to Fail*, 3 *Sociol. Compass* 295 (2009); César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 *B.U. L. Rev.* 245 (2017).

⁵¹ S.M. Rodriguez, *African Feminisms for Abolitionist Futures: Archival Hauntings in a Speculative Geography*, 36 *Agenda* 29 (2022); Shailesh Kumar, *Thinking Beyond Penal Reform in India: Questioning the Logic of Colonial Punishments*, in *The Routledge International Handbook of Penal Abolition* 258 (Michael J. Coyle & David Scott eds., 2021).

⁵² Paul Farmer, *On Suffering and Structural Violence: A View from Below*, 125 *Daedalus* 261 (1996).

⁵³ Bowling, *supra* note 5; Benjamin Bowling & Coretta Phillips, *Racism, Crime and Justice* (2002).

⁵⁴ Mills, *supra* note 29, at 4.

The racially motivated murder of Stephen Lawrence, which has become the most high-profile case of racial violence in the U.K., provides an example of the two forms playing out in practice.⁵⁵ In response to the activism of the Lawrence family and public outcry over police failings, the (New) Labour government introduced hate crime legislation that enabled longer prison sentences for violent offenders motivated by white supremacy (hence, targeting racism of the first sense).⁵⁶ But this law reform did not and could not address the institutional racism (of the second sense), which characterized the police's failure to investigate Lawrence's murder properly.⁵⁷ Instead of acknowledging its role in perpetuating racism, the British state adopted strategies to deflect and divert attention away from its responsibility. A common strategy of state deflection is an offer to fund public inquiries to investigate contentious failures, which create time for anger and unrest to defuse while keeping the harmful structures in place. Even when the outcomes of these investigations implicate the state—in the case of the U.K., from the Scarman report to the McPherson report to the Angiolini inquiry⁵⁸—blame can be offloaded onto certain police forces and individuals, leaving the state and its violent policies intact.⁵⁹

C. Racial Neoliberalism and the Racialized Folk Devil

An important background to modern structural racism is its political-economic dimension, which is also central to some abolitionist critiques. That is, we need to discuss neoliberalism—or more specifically, racial neoliberalism.⁶⁰ Notwithstanding criticisms of the term,⁶¹ understanding the state as neoliberal clarifies its exclusive focus on the first kind of racism in purporting to address racial violence. “Neoliberalism” describes an ideological shift that occurred during the Reagan-Thatcher era, involving a move away from what limited welfare provisions the state provided in the post-war era toward deregulation of markets and activities occurring in the so-called private sphere.⁶² While the state was supposedly rolled back, its punitive powers exponentially increased and the criminal justice

⁵⁵ This case is of comparable influence to the racially motivated homicide of James Byrd Jr. in the U.S., and the homophobic motivated killings of Matthew Shephard in the U.S. and Kenneth Zeller in Canada.

⁵⁶ Benjamin Bowling, Stephen Lawrence: His Death Changed British Law Forever but Trust in Police Has yet to Recover, *The Conversation* (Apr. 19, 2018) (<https://perma.cc/9NY3-3YG3>); Simon Cottle, *The Racist Murder of Stephen Lawrence: Media Performance and Public Transformation* (2004).

⁵⁷ See Jon Burnett, Britain: Racial Violence and the Politics of Hate, 54 *Race & Class* 5, 6 (2013).

⁵⁸ The Angiolini Inquiry (<https://www.angiolini.independent-inquiry.uk/>); see also Stephen D. Ashe, SHF Race Report: 40 Years of Tackling Racial Inequality in Britain (2021) (<https://perma.cc/HNX5-82JL>); Stuart Hall, From Scarman to Stephen Lawrence, 48 *Hist. Workshop J.* 187 (1999).

⁵⁹ Lee Bridges, Race, Law and the State, 43 *Race & Class* 61 (2001).

⁶⁰ Nisha Kapoor, The Advancement of Racial Neoliberalism in Britain, 36 *Ethnic & Racial Stud.* 1028 (2013); Arun Kundnani, *What Is Antiracism? And Why It Means Anticapitalism* (2023).

⁶¹ Kevin Vallier, Neoliberalism, in *The Stanford Encyclopedia of Philosophy* (Winter 2022 ed.) (Edward N. Zalta & Uri Nodelman eds., 2022) (<https://perma.cc/YT8R-CNYP>).

⁶² Useful overviews and criticism come from Wendy Brown, *In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West* (2019); Kundnani, *supra* note 60.

system widened to protect the interests of capitalist classes.⁶³ Core to neoliberal ideology (as with the form of liberalism that preceded it) is the fiction of the individual who is conceived as fully autonomous and responsible for their actions and resulting outcomes. So, while the private entrepreneur is (in theory) left alone to pursue profit and accumulate resources, those who break the law are held responsible for this moral transgression and are subjected to the full force of state control. In addition to challenging this public/private divide, critical scholars have shown how the state, and the laws and policies it implements, is just as vital for the flourishing of the capitalist as it is to the sanctioning of those it criminalizes. While the role of the state is a source of empowerment for some, it is the perpetrator of violence for others. The racial component of racial neoliberalism points to the unequal outcomes produced by neoliberal policies, which disproportionately harm the racialized poor who are recurrently targeted by the punitive expansion of the state. Rather than this merely being a chance outcome or the result of individual failings, critical scholars show how these outcomes are historically constituted, stemming from centuries of racially violent law and policy still to be redressed.

Connected with neoliberal politics is a particular pattern of criminalization. Indeed, this process, which arises in different spheres and in a multitude of ways, is pronounced in the emergence of contemporary hate crime laws. The background factors that prompted hate crime laws to be introduced across a range of jurisdictions from the 1990s onwards are strikingly similar, and mirror those that led to enhanced sentencing in sexual offense cases.⁶⁴ The pattern involves one or two exemplary cases of bias-motivated homicides gaining a disproportionate amount of media attention.⁶⁵ Despite murders such as these being exemplary of the racial and homophobic violences that disadvantaged peoples experience daily—when we place homicide on a continuum with less overt yet enduring forms of violence that create the conditions for extreme acts of violence—the media presents these select incidents as exceptional and detached from the everyday violences facilitated by the state.⁶⁶ In so doing, rather than placing the long histories of racism, wider social contexts, and the complicity of the state under the microscope, the issue is presented to the general populace as a “new social problem” that involves a minority of bad individuals who hold outdated

⁶³ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (2002); Robert Reiner, *Law and Order: An Honest Citizen's Guide to Crime and Control* (2007); Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (2009).

⁶⁴ Kristin Bumiller, *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence* (2008).

⁶⁵ Swiffen, *supra* note 22; Spade & Willse, *supra* note 22; Cottle, *supra* note 56; Sarah Lambie, *Retelling Racialized Violence, Remaking White Innocence: The Politics of Interlocking Oppressions in Transgender Day of Remembrance*, 5 *Sexuality Rsch. & Soc. Pol'y* 24 (2008).

⁶⁶ See Clara S. Lewis, *Tough on Hate? The Cultural Politics of Hate Crimes* (2014); Peter Fitzpatrick, *Racism and the Innocence of Law*, 14 *J.L. & Soc'y* 119 (1987). Similar points are raised in relation to violence against women, e.g., in Neil Websdale & Alexander Alvarez, *Forensic Journalism as Patriarchal Ideology: The Newspaper Construction of Homicide-Suicide, in Popular Culture, Crime, and Justice* 123 (Frankie Y. Bailey & Donna C. Hale eds., 1998).

bigoted views—views that lead them to commit acts of extreme violence against random persons on account of their gender, race, sexuality, and so on.⁶⁷ Framing the issues as such is crucial for the cogs of criminalization to turn since it focuses social and institutional attention on the bad individual—the rapist, the white supremacist, the homophobe—and prompts only certain kinds of resolution, namely by asking how the state, a supposedly neutral arbitrator, should intervene to hold offenders to account.⁶⁸

This criminalizing process is intricately connected to the widely discussed, cyclical activity whereby state agents, legal institutions, and media elites work in tandem to circulate ideas about, and in the process demonize, the racialized and immoral poor, thus churning out folk devils.⁶⁹ The recent U.K. anti-immigration riots provide a prime illustration of these forces at work. In the period leading up to the riots, a central feature of government discourse and policy and media reporting was the claim that the number of “small boats” crossing the English Channel (from France) is increasing to out-of-control levels, where the sense of danger is implicitly posed as some imminent threat to the security of the nation.⁷⁰ Not only did this discourse (which is ongoing) allege the small boats carry illegal immigrants, bogus asylum seekers, and other criminal characters, but further that they are run by a network of human traffickers and international gangs.⁷¹ This moral panic about small boats forms part of a longer elite-steered practice of demonizing racialized persons, from the moral panics created around the threat posed by black and Indian persons who rebelled during colonialism,⁷² to the association of Muslim persons with terrorism post 9/11, and various other forms of demonization since then.⁷³

The 2024 riots did not simply occur against this backdrop; the state-led and media-fueled moral panic crafted their ideal conditions and the villain to fear: the folk devil (predominantly brown, always Muslim) who arrives in a small boat with malicious intentions to damage the British way of life. Only with such tinder could a false rumor about a “terrorist,”

⁶⁷ See Bowling, *supra* note 5.

⁶⁸ Lamble, *supra* note 65; Spade, *supra* note 22; Burnett, *supra* note 57.

⁶⁹ Hall et al., *supra* note 48; Imogen Tyler, *Revolting Subjects: Social Abjection and Resistance in Neoliberal Britain* (2013); Jon Burnett, *The War on Welfare and the War on Asylum*, 57 *Race & Class* 96 (2015).

⁷⁰ E.g., *Small boat arrivals—last 7 days*, GOV.UK (<https://perma.cc/V758-LWD6>). Headlines such as these are common for the BBC alone, not to mention tabloid constructions of the “problem.” Id.; Amy Walker & PA Media, *Small Boats: More than 700 Migrants Cross Channel in a Day*, BBC News, May 2, 2024 (<https://perma.cc/ZT63-GBVL>).

⁷¹ Responding to the apparent threat, the newly elected Labour government is purportedly “taking steps to boost our border security, setting up a new Border Security Command . . . equipped with new counter-terror-style powers . . . to smash the criminal smuggling gangs.” Home Office, *Latest Statement in Response to Small Boat Crossings*, Home Office in the media, Aug. 27, 2024 (<https://perma.cc/7BGW-CEN6>).

⁷² Priyamvada Gopal, *Insurgent Empire: Anticolonial Resistance and British Dissent* (2019); Hall, *supra* note 32.

⁷³ Muneer Ahmad, *Homeland Insecurities: Racial Violence the Day After September 11*, 20 *Soc. Text* 101 (2002); Arun Kundnani, *The Muslims Are Coming! Islamophobia, Extremism, and the Domestic War on Terror* (2014).

an “asylum seeker” called “Ali al Shakati” spread like wildfire—perfectly fitting the bill for whoever purposely attacked and murdered young girls attending a pop-themed dance class—and move a sector of the population to demonstrate in purported defense of the nation.⁷⁴ In response to the civil unrest, those involved in the violent riots were labelled as “thugs” and “yobs” by the press and government, once again individualizing the issue and preparing the narrative soon required by the state to justify expedited convictions of identified individuals involved and enhanced sentencing provisions (echoing the state response to the 2011 riots).⁷⁵ The laws and policies that preceded the riots and fueled the moral panic are left out of political and media commentary, which includes fifteen years of ongoing austerity politics with no signs of respite.⁷⁶ By depoliticizing and individualizing the causes of the riots, the second, structural racism—which ensures that there is an easily exploitable class for capitalist needs—remains intact.

D. Elite Capture of Activist Demands for Social Change

It is the relative invisibility of structural racism alongside the heightened focus on individualized, interpersonal racism that makes hate crime law, as presently construed, appear to be a logical solution to racial violence. Thus, the demands of antiracist activists can always be (re)directed toward the pursuit of law reform to the exclusion of any structural reform needed to address inequality and structural racism. Mirroring feminist activism in the 1990s, which involved certain factions of the feminist movement pushing the state to respond to sexual violence by widening the reach of the criminal law,⁷⁷ antiracist activists in the U.S. and U.K. were a driving force behind the introduction of hate crime laws.⁷⁸ While the demands of antiracist groups have always been wide-reaching, including calls for the state to address discrimination and socioeconomic inequality, the voices and interests of more privileged sectors of antiracism disposed to criminal law reform ultimately won out.⁷⁹ Though neoliberal politics presents structural reform as unrealistic and unachievable, the potential for criminal law reform is locatable more easily in sight. Indeed, Ely Aaronson’s

⁷⁴ Some scholars now frame this sort of relationship between speech and violence as “stochastic.” See James Angove, *Stochastic Terrorism: Critical Reflections on an Emerging Concept*, 17 *Critical Stud. Terrorism* 21 (2024).

⁷⁵ For a useful overview of these events, see Tyler, *supra* note 69; Paul Lewis et al., *Reading the Riots: Investigating England’s Summer of Disorder* (2011); Tim Newburn, *Racism? Poverty, Drink and Social Media? We Still Don’t Know Why Britons Rioted a Month Ago—and We Need Answers*, *The Guardian*, Sept. 4, 2024 (<https://perma.cc/FLY7-YN6S>).

⁷⁶ Policies of the newly elected Labour government in the U.K.—such as refusal to amend the child benefits cap shown to contribute to child poverty and lifting the winter fuel cap to help pensions afford to heat their homes—show limited signs of moving away from austerity.

⁷⁷ See, e.g., Bumiller, *supra* note 64.

⁷⁸ Doug Meyer, *Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws*, 22 *Critical Criminology* 113 (2014); Bill Dixon & David Gadd, *Getting the Message? “New” Labour and the Criminalization of “Hate,”* 6 *Criminology & Crim. Justice* 309 (2006).

⁷⁹ Dixon & Gadd, *supra* note 78.

work on the history of hate crime law reform in the U.S. reveals how deep-seated the tendency for activists' efforts to result in reformism is, with changes occurring only when the form of reform aligns with the interests of elites.⁸⁰

Notwithstanding well-placed criticism of this tendency for activist causes to be co-opted by elites and steered toward reformism, it is important nevertheless to acknowledge the legitimacy of disadvantaged groups wishing for recognition and inclusion into the law. A prime example of this importance is apparent in discussions about hate crime in contemporary India. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 in India can be seen as an early example of hate crime law, which provides special protection to Dalit persons (formerly known as untouchables) from discrimination and violence.⁸¹ Sandhya Fuchs's rich ethnographic work points to the importance of the Prevention of Atrocities Act for some Dalit communities in India since, despite obstacles that prevent enforcement of the law, it recognizes caste discrimination and Dalit activists have been able to use it as a mobilizing force.⁸² Fuchs further points out the hope that the legislation provides persons disadvantaged by caste, since it becomes a tool to improve rights and opportunities.⁸³ This sense of hope is also evident in Mohsin Bhat's research with Muslim Dalit activists who are currently excluded from the protection of the Prevention of Atrocities Act, but who aspire to one day secure legal recognition of their disadvantaged status.⁸⁴ Here, we see the recurring pattern that arises with contemporary social activism noted above, in which disadvantaged people mobilize for change and, through collective efforts, place pressure on the establishment. Despite desiring structural change, the change that is in sight, the one that is most attainable, is liberal law reform such as inclusion into hate crime provisions.

Even though the Prevention of Atrocities Act provides protections for a specific group of persons discriminated by caste, it inevitably individualizes structural issues, which limits its application and effectiveness. This is apparent in Fuchs's nuanced discussion of false claims.⁸⁵ A common issue in all forms of bias-based violence cases, globally, is for victims to be accused of lying,⁸⁶ something which has been especially pronounced for

⁸⁰ Aaronson, *supra* note 37.

⁸¹ M. Mohsin Alam Bhat, *Mob, Murder, Motivation: The Emergence of Hate Crime Discourse in India*, 16 *Socio-Legal Rev.* 76 (2020); Sandhya Fuchs, *Rethinking the Atrocities Act: Proving Prejudice and Interpreting Evidence in Rajasthan*, 28 *South Asia Multidisc. Acad. J.* (2022) (<https://perma.cc/4A8R-CECL>).

⁸² Sandhya Irina Fuchs, *Symbiotic Justice: Hate Crimes, Police Humiliation, and Layered Legal Consciousness in Dalit Human Rights*, *Soc. & Legal Stud.* 1 (2024) (<https://doi.org/10.1177/09646639241236924>).

⁸³ Fuchs, *supra* note 81; Fuchs, *supra* note 82.

⁸⁴ M. Mohsin Alam Bhat, *Court as a Symbolic Resource: Indra Sawhney Case and the Dalit Muslim Mobilization*, in *A Qualified Hope: The Indian Supreme Court and Progressive Social Change* 184 (Gerald N. Rosenberg et al., eds., 2019).

⁸⁵ Sandhya Fuchs, *Truth Clashes: Caste Atrocities, False Cases, and the Limits of Hate Crime Law in North India*, 30 *J. Royal Anthropological Inst.* 669 (2024).

⁸⁶ Briana Alongi, *The Negative Ramifications of Hate Crime Legislation: It's Time to Reevaluate Whether Hate Crime Laws Are Beneficial to Society*, 37 *Pace L. Rev.* 326 (2016).

women who report sexual violence.⁸⁷ In relation to false claims in India, Fuchs explains how a problem surfaces when a Dalit person, who has been uncontestedly discriminated against and encountered severe and prolonged caste-based violence, struggles to frame their claim in accordance with the limited narrative allowed by law, which can lead to distortion—hence, the law is unable to capture the wider reality of caste-based violence.⁸⁸ The problem we see occurring here has long been observed by scholars of race; Ben Bowling, for instance, explains that the law focuses on a snapshot in time instead of accounting for the wider series of moments in which a given snapshot is intricately embedded.⁸⁹

E. Criminal Justice as a Source of Violence

Some advocates of criminal law reform presume that expanding the criminal law leads to greater levels of personal security and protection, especially for those whom the reformed law purports to defend.⁹⁰ However, for those intersectionally disadvantaged by race, class, gender, sexuality, and disability, the penal operations of the state, including the police and prisons, are major sources of violence to contend with.⁹¹ Accordingly, critical accounts challenge the mainstream idea of law as the antithesis of violence—i.e., that violence is a social problem out there to be found (or which finds us), which the law and police can root out and prevent—and work from an alternative premise that the process of criminalization is inherently violent.⁹² From this viewpoint, any expansion of the criminal law means a greater likelihood of exposure to violence.⁹³ This is why abolitionist scholars point to the absurdity of empowering the police in response to racial violence—they argue that the police are not designed to protect everyone in society equally and are, in fact, among the biggest perpetrators of violence against intersectionally disadvantaged persons, especially those racialized as black.⁹⁴ Mindful of the origins of modern policing, which lie in

⁸⁷ Leigh Goodmark, *Imperfect Victims: Criminalized Survivors and the Promise of Abolition Feminism* (2023).

⁸⁸ Fuchs, *supra* note 85.

⁸⁹ Bowling, *supra* note 5.

⁹⁰ This is apparent in scholarship which advocates for the widening of hate crime law. See, e.g., Joanna Perry, *The Migration and Integration of the Hate Crime Approach in India*, 11 *Jindal Global L. Rev.* 7 (2020).

⁹¹ Davis, *supra* note 20; Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 *Ann. Rev. Pol. Sci.* 565 (2017); Rodriguez, *supra* note 22.

⁹² For an excellent account, see Swiffen, *supra* note 22.

⁹³ As Rodriguez explains, “queer people of colour in particular know that increased police or ICE surveillance damages our communities more than it can ever help.” Rodriguez, *supra* note 22, at 195.

⁹⁴ There is a wealth of research on police violence directed at: black people, e.g., James M. Jones, *Killing Fields: Explaining Police Violence Against Persons of Color*, 73 *J. Soc. Issues* 872 (2017); Indigenous people, e.g., Razack, *supra* note 35; Muslim persons, e.g., Alsultany, *supra* note 15; people marked as alien, e.g., Pap, *supra* note 15; women, e.g., Davis et al., *supra* note 20; LGBTQ+ people, e.g., Kristina B. Wolff & Carrie L. Cokely, “To Protect and to Serve?”: An Exploration of Police Conduct in Relation to the Gay, Lesbian,

slavery and colonialism,⁹⁵ and the continuing role of police in upholding the racialized order by policing disadvantaged groups,⁹⁶ it is unsurprising that even the bigotry of old (racism of the first kind) is rife in its ranks—researchers recurrently find among police officers beliefs in white supremacy, misogyny, homophobia, and ableism.⁹⁷ Therefore, while some persons of relative advantage among the discriminated might feel comfortable reporting incidents to the police, the most intersectionally disadvantaged are unlikely to, and even when they do, research indicates that an effective response may not be available.⁹⁸ In response to these facts on the ground, Dean Spade argues that the promise for formerly excluded groups to be included into violent institutions though greater police protection will not resolve transphobic, homophobic, and other violence—rather, to meet such aspirations, the violent institutions of the state must be transformed.⁹⁹

These developments in hate crime law scholarship mirror the debate between “carceral feminists” on the one hand and “abolitionist feminists” on the other.¹⁰⁰ Critical scholars accuse carceral feminists of supporting punitive law reform measures to address issues of gendered violence, in part because law-and-order responses align with primarily white and middle-class interests represented by those feminists.¹⁰¹ In contrast to the carceral approach, abolitionist feminists bring the experiences of black women to the fore and, in so doing, reveal how expansions of penal power disproportionately harm black communities and worsen violent conditions and outcomes.¹⁰² Since the state, police, prisons, immigration controls, and so on are prime sources of racial violence, rather than empowering these institutions, abolitionist feminists call for them to be dismantled, and with this,

Bisexual, and Transgender Community, 11 *Sexuality & Culture* 1 (2007); and persons living with disabilities, e.g., Liat Ben-Moshe, *Decarcerating Disability: Deinstitutionalization and Prison Abolition* (2020).

⁹⁵ Mike Brogden, *The Emergence of the Police—the Colonial Dimension*, 27 *Brit. J. Criminology* 4 (1987).

⁹⁶ Adam Elliott-Cooper, *Black Resistance to British Policing* (2021).

⁹⁷ E.g., in the U.K., see the incidents covered by the reports in Ashe, *supra* note 58. In the German context, see Philip Oltermann, *German Soldier Found Guilty of Planning Terror Attacks Posing as a Refugee*, *The Guardian*, July 15, 2022 (<https://perma.cc/2ZAJ-2LAU>); Germany probes over 400 police due to far-right views, *Deutsche Welle*, Apr. 4, 2024 (<https://perma.cc/5CEF-NDR3>). And in the U.S., consider the “storm” on the Capitol building. Olivia Rubin, *Number of Capitol Riot Arrests of Military, Law Enforcement and Government Personnel Rises to 52*, *ABC News*, Apr. 23, 2021 (<https://perma.cc/7FBE-5P8F>).

⁹⁸ Eisenberg, *supra* note 12; Jenny Bourne, *Does Legislating Against Racial Violence Work?*, 44 *Race & Class* 81 (2002); Kıvanç Atak, *Racist Victimization, Legal Estrangement and Resentful Reliance on the Police in Sweden*, 31 *Soc. & Legal Stud.* 238 (2022). On relations with police, see also *supra* note 91.

⁹⁹ Spade, *supra* note 22.

¹⁰⁰ Srinivasan, *supra* note 46, at 149-79.

¹⁰¹ Elizabeth Bernstein, *Carceral Politics as Gender Justice? The “Traffic in Women” and Neoliberal Circuits of Crime, Sex, and Rights*, 41 *Theory & Soc’y* 233 (2012); Aya Gruber, *The Feminist War on Crime: The Unexpected Role of Women’s Liberation in Mass Incarceration* (2020).

¹⁰² Davis et al., *supra* note 20; Day & McBean, *supra* note 20; Michelle Jacobs, *The Violent State: Black Women’s Invisible Struggle against Police Violence*, 24 *Wm. & Mary J. Race Gender & Soc. Just.* 39 (2017).

a dominant cause of violence can be eliminated.¹⁰³ In like manner, in the hate crime law literature, we can see certain mainstream calls for more hate crime law, either by widening the categories of victims in jurisdictions with existing hate crime law or by introducing new hate crime law in countries yet to enforce it.¹⁰⁴ In so doing, these scholars inadvertently advocate for greater police and prison powers, hence representing the hate crime carceral position. Conversely, hate crime abolitionists call for fewer or no hate crime laws in order to reduce the penal power of the state. Moreover, hate crime abolitionists argue that not only are the police inappropriate responders to racism, but that hate crime law poses a deeper problem by increasing the power, funding, and legitimacy of the police.¹⁰⁵ As Amy Swiffen explains, “[t]he new resistance to hate crime legislation responds to a contradiction in the application of the laws, which is that the police and legal system are a significant source of the violence that hate crime legislation is ostensibly trying to address.”¹⁰⁶ Since abolitionists understand the police—and the racial capitalist state—to be a prime source of racialized (and other biased forms of) violence, rather than extending the remit of the police, abolitionist activists and scholars call for the police to be defunded and dismantled.¹⁰⁷

F. Racially Disadvantaged Persons as Hate Crime Offenders

It seems to me that the work of hate crime abolitionists explains why hate crime law operates in the way that it does and produces what might otherwise be construed as counterintuitive outcomes. A growing body of research shows that hate crime laws, of various forms, have resulted in racialized persons being disproportionately convicted for hate crime offenses.¹⁰⁸ If hate crime law is supposed to protect persons disadvantaged by race (alongside other forms of disadvantage), then the disproportionate use of these laws against disadvantaged persons is troubling. Black persons in particular face statistically higher rates of conviction for hate crime offenses: a pattern that is repeated in various jurisdictions and

¹⁰³ Sources cited *supra* note 20.

¹⁰⁴ E.g., Neil Chakraborti & Jon Garland, *Reconceptualizing Hate Crime Victimization through the Lens of Vulnerability and “Difference,”* 16 *Theoretical Criminology* 499 (2012); Perry, *supra* note 90.

¹⁰⁵ As Nopper explains, “[a]ny time you’re talking about hate crime law, you’re talking about more legitimacy for the police, and you’re also talking about, frankly, more funding for the police,” *supra* note 22, at 34.

¹⁰⁶ Swiffen, *supra* note 22, at 137.

¹⁰⁷ Kaba, *supra* note 20; *Abolishing the Police* (Koshka Duff ed., 2021).

¹⁰⁸ For example, in the U.S.: Herbert, *supra* note 22; Marc L. Fleischauer, *Teeth for a Paper Tiger: A Proposal to Add Enforceability to Florida’s Hate Crimes Act* Comment, 17 *Fla. St. U. L. Rev.* 697 (1989); Karen Franklin, *Good Intentions: The Enforcement of Hate Crime Penalty-Enhancement Statutes*, 46 *Am. Behav. Scientist* 154 (2002); Rachel Kuo & Matthew Bui, *Against Carceral Data Collection in Response to Anti-Asian Violences*, 8 *Big Data & Soc’y* 1 (2021); Eugene McLaughlin, *Rocks and Hard Places: The Politics of Hate Crime*, 6 *Theoretical Criminology* 493 (2002); Nopper, *supra* note 22; Evan Vipond, *Trans Rights Will Not Protect Us: The Limits of Equal Rights Discourse, Antidiscrimination Laws, and Hate Crime Legislation Helping Hand or Iron Fist?*, 6 *W. J. Legal Stud.* 1 (2015). And in the U.K.: Bridges, *supra* note 59; Dixon & Gadd, *supra* note 78; Ivan Hare, *Legislating Against Hate—the Legal Response to Bias Crimes*, 17 *Oxford J. Legal Stud.* 415 (1997).

across a range of offenses.¹⁰⁹ This outcome is most apparent in the U.S.¹¹⁰ Comparatively, in certain parts of the U.K., hate crime has at times been treated as an issue primarily involving racial minority offenders targeting white victims.¹¹¹ Andras Pap observed a similar phenomenon in Hungary, where Roma Gypsy persons were singled out for committing hate crimes against white victims.¹¹² In the German context, research indicates that Muslim persons are especially vulnerable to being cast as hate offenders, for homophobia as well as antisemitism.¹¹³

From a certain standpoint, even wondering why racialized persons lie within the remit of conviction for hate crime is already wrongheaded, for such a thought is at odds with the logic of legal liberalism. Since the normative starting point of the liberal law is the presumed equality among individuals, everyone is capable of being convicted of a crime, including those who may appear to be afforded special protection by the same law. This results in the (supposedly) symmetric application of law, which feminist and antiracist scholars have explored extensively in relation to the counter-productive effects on addressing issues of inequality, discrimination, and difference.¹¹⁴ Rather than protecting persons disadvantaged by race, gender, sexuality, and so on, laws are designed to protect people who are discriminated against or targeted for a criminal offense on account of their race, gender, or sexuality. Consequently, a white, cisgender, straight man has as much resort to anti-discrimination and hate crime laws as does a black transgender gay woman.¹¹⁵ Instead of developing laws to redress historically constituted and ongoing disadvantage, special protection laws

¹⁰⁹ Although not convicted at trial, consider the recent case of a black man in the U.K. charged under the Malicious Communications Act 1988 for the use of a raccoon emoji in a tweet to a sitting black Conservative MP, and the case of a black woman recently taken to court, charged under the Communications Act 2003 for use of the word “n***a” in a tweet about a black footballer. See Nels Abbey, *Why Was a Black Man Put on Trial for Using a Raccoon Emoji?*, *The Lead*, Mar. 14, 2024 (<https://perma.cc/3C4K-HW2S>); Nadine White, *Black Woman Charged after Using N-Word on Social Media*, *The Independent*, July 24, 2024 (<https://perma.cc/7QDB-N6QR>).

¹¹⁰ Lisa Crooms works through the nuances of a string of leading U.S. Supreme Court judgments, which indicates that the law might even be interpreted more expansively in cases involving black defendants and narrowly in cases involving white defendants. See Crooms, *supra* note 22.

¹¹¹ Larry Ray & David Smith, *Racist Offenders and the Politics of “Hate Crime,”* 12 *Law & Critique* 203 (2001); see also Burnett, *supra* note 57.

¹¹² Pap, *supra* note 15.

¹¹³ On the scapegoating of Muslim persons for homophobia, see Jin Haritaworn, *Queer Injuries: The Racial Politics of “Homophobic Hate Crime” in Germany*, 37 *Soc. Just.* 69 (2010); Christopher Ewing, *The Color of Desire: The Queer Politics of Race in the Federal Republic of Germany After 1970* (2023). On the scapegoating of Muslim persons for antisemitism, see Esra Özyürek, *Subcontractors of Guilt: Holocaust Memory and Muslim Belonging in Postwar Germany* (2023).

¹¹⁴ Nicola Lacey, *Legislation Against Sex Discrimination: Questions from a Feminist Perspective*, 14 *J.L. & Soc’y* 411 (1987); Nicola Lacey, *From Individual to Group?*, in *Discrimination: The Limits of Law* 99 (B.A. Hepple & Erika M. Szyszczak eds., 1992); Pap, *supra* note 15; Jen Neller, *Hate Crimes as Crimes Against Dignity* (2023) (<https://perma.cc/U86J-GKCC>); Spade & Willse, *supra* note 22.

¹¹⁵ Disability is a notable exception to the symmetric approach, which illustrates how asymmetric protection can be accommodated in law.

misrecognize issues of inequality as rooted in individual difference, which leads to perverse outcomes, such as black persons being disproportionately convicted for racist hate crimes. When we divorce our analysis from historically embedded inequality and imbalanced power relations, the harm of discriminating against a man is artificially equal to discriminating against a woman, and prejudice against a white person is equivalent to prejudice against a black person. This is an example of how the law perpetuates white ignorance, by failing to acknowledge the racialized violence of the past, and how this resonates in the present.¹¹⁶

While the colorblind approach of the liberal law explains how racialized persons *can* be convicted of hate crime offenses, it is structural racism (captured by Mills’s description of the second sense of racism) that explains the frequency and tendency for racialized persons to be charged with these crimes. From the vantage point of critical analysis, which brings into view racial inequalities inherited from the past, disproportionate outcomes such as these are very much to be expected. When we recognize that the modern law emerged and has developed to protect the rights of a predominately white capitalist class through the suppression and exploitation of a mass of racialized others, who remain subordinate by being cast as immoral through the mechanisms of the criminal law, it makes sense that any expansion of the criminal law will ultimately harm those whom the criminal law is designed to target. And that this outcome will repeat itself even when criminal laws are purportedly introduced to assist disadvantaged persons. Without structural change and radical reform of the criminal law, these consequences are inevitable. Commenting on the U.S. context, in Lisa Crooms’s words, “[t]his leads to the ironic, if unsurprising, conclusion that the very laws intended to combat oppression instead serve to punish those struggling against that oppression.”¹¹⁷ Commenting on a similar phenomenon that has arisen in relation to new criminal laws targeting violence against women, which have counterintuitively led to the increased criminalization of poor women of color and their racialized partners, Amia Srinivasan remarks “once you have started up the carceral machine, you cannot pick and choose whom it will mow down.”¹¹⁸

What we have, then, are laws that purport to address racial violence, which in fact leave wider and more enduring forms of violence to continue unabated. Consequently, disadvantaged groups that hate crime law purports to protect are in fact harmed by these very same laws. Such adverse outcomes bear on the question we now address—whether to abolish hate crime law or reconstruct it in ways that might finally address structural racism.

II. Toward Reconstruction

The case for abolishing hate crime law is compelling. Abolitionists show that, in general, when the criminal law is used to address “social problems,” the process of criminalization

¹¹⁶ Charles W. Mills, *White Ignorance*, in *Black Rights/White Wrongs: The Critique of Racial Liberalism* 49 (2017).

¹¹⁷ Crooms, *supra* note 22, at 44.

¹¹⁸ Srinivasan, *supra* note 46, at 170.

disproportionately harms the racialized poor. And despite hate crime law appearing to offer a means by which disadvantaged groups can finally be protected by the modern state, hate crime law produces the same effects as other criminal laws, and hence hate crime law contributes to increased criminalization—and ultimately the unfreedom—of black people and other intersectionally disadvantaged groups. Far from being an anomaly, abolitionists warn us that such outcomes from criminal reforms are very much expected. Moreover, abolitionists provide us with an explanation for why these outcomes happen: the origins of the modern criminal law are rooted in the logic of racial capitalism, through which the state and other elite actors continually cast the racialized poor as immoral and criminal in order ultimately to treat them as exploitable resources. Notwithstanding certain vital, essential changes, such as the abolition of slavery and gains in civil liberties, the structure of the modern state and its criminal justice institutions have not been altered to disrupt the processes of racial capitalism; on the contrary, the criminal law is a chief mechanism to ensure its continuity. Therefore, rather than resolving or simply punishing biased violence, hate crime legislation perpetuates the long-running violences of the state.

If we are sympathetic to the abolitionist case outlined here, we might question what to do with hate crime law. Even scholars critical of hate crime law contend that doing away with it altogether is unfeasible or undesirable since this would signal that the state is no longer committed to a more inclusive politics, affirming the exclusionary politics of far rights groups.¹¹⁹ Hate crime laws have been described as “message crimes” and “expressive crimes” because of their symbolic effect.¹²⁰ By implementing hate crime laws, liberal states communicate that the overt racisms—those on which the modern liberal state was built—are no longer permissible. Notably, this message has led to a common misunderstanding that hate crime laws provide special protections for marginalized groups.¹²¹ However, as we have seen, this is not the case; on the contrary, such laws work against the interests of the most disadvantaged in society.¹²² Therefore, rather than tackling hate, by inadvertently communicating the inverse message that disadvantaged groups are afforded special protection, hate crime laws (as with anti-discrimination law more generally) are in fact prone to perpetuating hostility.¹²³ This is apparent in some of the far-right critique levied at the British government during the 2024 riots, which involved high-profile figures (including Elon

¹¹⁹ Neller, *supra* note 114; Pap, *supra* note 15. In relation to anti-discrimination law, Lacey comments: “Given its social power, we simply cannot afford to abandon the legal process as a site for political action,” and that “if we are not prepared to think in this imaginative and speculative way about law, we abandon it to its current oppressive status and our skeptical stance simply becomes self-fulfilling prophecy. . . . Changing law must remain one modest but important part of the radical political enterprise.” Lacey, *supra* note 114, at 121–22.

¹²⁰ Dixon & Gadd, *supra* note 78; Eisenberg, *supra* note 12.

¹²¹ Savannah Walker, *Policing Hate: The Problematic Expansion of Louisiana’s Hate Crime Statute to Include Police Officers*, 78 *La. L. Rev.* (2018).

¹²² Notably, a group that has managed to secure special treatment of this kind is police officers in U.S. states that have adopted the “Blue Lives Matter” bill. See *id.*

¹²³ Cf. sources cited *supra* note 38.

Musk) accusing the state of being more punitive toward far-right protestors compared to those on the left, making such allegations as “two-tier policing.”¹²⁴ In this political climate, the outright abolition of hate crime law could be leveraged as a victory for the far right and be used to stir up further racial violence. We must, then, think strategically about what to do with this law.

Despite appearances, abolitionism does not mean instantaneously eradicating laws and institutions. Rather, as Gilmore characterizes it, it is a constructive notion, which involves “building the future from the present, in all of the ways we can.”¹²⁵ Hence, we can think of abolitionism as a process, which might involve everyday practices and movements taken toward a transformed society.¹²⁶ As such, stepping-stone reforms of a “non-reformist” nature are compatible with abolitionism, so long as the goal of such stepping stones is to dismantle racial capitalism and its violences and create spaces of democratic engagement.¹²⁷ But, although so-called non-reformist reforms might be aimed toward transformation, experience recommends vigilance, since what is conceived as non-reformist at one time is still liable, at another, to be captured by the logics of racial capitalism and used to conceal the harshness of, or even to cement, ongoing inequalities.¹²⁸ Accordingly, if the path is to be laid with non-reformist reforms, it is advisable to be prepared to adapt and innovate the ideas we put forward so our efforts are not derailed. With these points in mind, if we acknowledge the violence inherent in current hate crime law, but appreciate that there are hurdles to its immediate abolition, we can work toward reigning it in.

A. Resisting the Expansion of Hate Crime Laws

A starting point in limiting the reach of hate crime law is to refuse its introduction into new jurisdictions. A range of international human rights organizations and political bodies actively encourage the global spread of hate crime law.¹²⁹ At the regional level, E.U. institutions push for internal legal developments in this area, such as the proposed creation of the new Hate Crime Directive to enhance the reach of hate crime law throughout the Union.¹³⁰ The influence of the E.U. reaches further, with peripheral states hoping for inclusion into the E.U. encouraged to adopt hate crime laws to show their commitment to the

¹²⁴ See Lilie Chouliaraki & Kathryn Claire Higgins, The Truth About “Two-Tier Policing,” British Politics and Policy at LSE (Aug. 15, 2024) (<https://perma.cc/3U92-S7AX>).

¹²⁵ Ruth Wilson Gilmore & Léopold Lambert, Making Abolition Geography in California’s Central Valley, *The Funambulist* magazine, Dec. 2018 (<https://perma.cc/B4GQ-ULZZ>).

¹²⁶ See Abolitionist Futures (<https://abolitionistfutures.com>).

¹²⁷ Akbar, *supra* note 25, at 2516.

¹²⁸ Olúfemi Táíwò, *Elite Capture: How the Powerful Took over Identity Politics (and Everything Else)* (2022); Gilmore, *supra* note 20.

¹²⁹ For a critical account, Spade & Willse, *supra* note 22; S.M. Rodriguez, *The Economies of Queer Inclusion: Transnational Organizing for LGBTBI Rights in Uganda* (2019).

¹³⁰ Time to Criminalize Hate Speech and Hate Crime Under EU law, European Parliament, Jan. 18, 2024 (<https://perma.cc/44QL-AVEW>).

values of the European community (a phenomenon which is critiqued as part of the process of Europeanization).¹³¹ The spread of these laws is encouraged despite insufficient evidence that these reforms deter biased violence, and even though they may harm marginalized groups. The top-down spread of hate crime law also happens at the international level, driven by institutions such as the OSCE in collaboration with global humanitarian organizations and news media outlets.¹³² Abolitionist scholars, including Spade and S.M. Rodriguez, are highly critical of these processes, which have been analyzed as a kind of industrial complex working in tandem with the interest of capital.¹³³ Lawyers and academics who encourage the global expansion of hate crime laws are complicit in these processes; as Akbar reminds us, “[w]e are essential parts of the state’s arsenal to reassert the status quo in which inequality and violence flourish.”¹³⁴ If our goal really is progressive social transformation, then we should refuse to support the expansion of these laws—refusal being a key tool in the abolitionist toolbox.¹³⁵

In countries where hate crime law has already gained an institutional foothold, such as in the U.K., we can resist its expansion by refusing to work toward ever wider categories of victims.¹³⁶ Notwithstanding the significance of victim recognition and the importance of having the experiences of violence acknowledged and recognized, experience shows that legal recognition of disadvantaged groups is a false promise for change. Instead of engaging in consultations with the state to discuss who should be protected as victims of hate crime,¹³⁷ we should challenge the dominant narrative that the form of hate crime law currently on offer is adequate, or even perhaps change the terms of the debate to ask who best fits the role of offender¹³⁸—a point I return to.

In addition to refusing the expansion of hate crime law, critical scholars have proposed ways that existing laws could be reinterpreted to limit their application. A major issue presently is the counterintuitive tendency for racialized and other marginalized persons to be convicted under hate crime law, which stems from the normative foundations of liberal law, according to which people are equal holders of rights and responsibilities despite historically embedded disadvantages. Pap suggests that hate crime law could explicitly account

¹³¹ Piotr Godzisz, *The Europeanization of Anti-LGBT Hate Crime Laws in the Western Balkans*, 71 *Crime L. & Soc. Change* 291 (2019).

¹³² *Id.*

¹³³ Sources cited *supra* note 129.

¹³⁴ Akbar, *supra* note 25, at 2506.

¹³⁵ Herbert, *supra* note 22; Carole Mcgranahan, *Theorizing Refusal: An Introduction*, 31 *Cultural Anthropology* 319 (2016); Isaac Rivera et al., *Portraits for Change: Refusal Politics and Liberatory Futures*, 40 *Soc’y & Space* 627 (2022); Audra Simpson, *The Ruse of Consent and the Anatomy of “Refusal”: Cases from Indigenous North America and Australia*, 20 *Postcolonial Stud.* 18 (2017).

¹³⁶ Pap, *supra* note 15.

¹³⁷ See *Law Commission*, *supra* note 11.

¹³⁸ James A. Tyner, *Hate-Crimes as Racial Violence: A Critique of the Exceptional*, 17 *Soc. & Cultural Geography* 1060 (2016).

for disadvantage—for example, a person could be protected under the law because they are disadvantaged by race rather than on account simply of possessing a racial characteristic, which is neutral between those who are actually disadvantaged by their race and those who are not.¹³⁹ Jennifer Neller offers a different approach, with perhaps similar effects, by recommending the concept of dignity to be nurtured in hate crime jurisprudence, wherein dignity is conceived as something inherent within all human beings and thus as something that the state cannot deny but might fail to adequately shield.¹⁴⁰ For instance, when a crime involves hostility based on a person's race, it may also undermine their dignity, and for this reason requires a response. While neither of these approaches eliminates the possibility of a person racialized outside of whiteness being convicted of a hate crime offense, by being responsive to power imbalance and socioeconomic disadvantage, they might reduce the likelihood of such cases.

Mark Walters proposes another reform: for restorative justice interventions to replace longer prison sentences in certain hate crime cases.¹⁴¹ However, restorative justice provides us with a prime example of how a potentially non-reformist reform can become a core instrument for reformism. In the early days of restorative justice activism and jurisprudence, when these ideas were still on the margins, some advocates envisioned that restorative justice would eventually replace retributive punishment and prisons.¹⁴² However, the form of restorative justice that has gained traction and influence is the model that easily fits into the logics of (neo)liberalism and criminalization. In countries where restorative justice is on the penal menu, it tends to be preserved for low-level or youth offenses (offenses that we might argue ought to be decriminalized) and is often offered in combination with retributive forms of punishment such as imprisonment and even the death penalty.¹⁴³ Hence, restorative justice, like hate crime activism and so many other well-intentioned reforms, was coopted by the carceral logic of neoliberalism. It is for these reasons that abolitionist scholars call for transformative justice instead, where the aim is to challenge

¹³⁹ Pap, *supra* note 15.

¹⁴⁰ Neller, *supra* note 114.

¹⁴¹ Mark Walters & Carolyn Hoyle, *Healing Harms and Engendering Tolerance: The Promise of Restorative Justice for Hate Crime*, in *Hate Crime: Concepts, Policy, Future Directions* 228 (Neil Chakraborti ed., 2010); Mark Austin Walters, *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms* (2014).

¹⁴² John Braithwaite, *Setting Standards for Restorative Justice*, 42 *Brit. J. Criminology* 563 (2002); Kay Pranis, *Restorative Justice, Social Justice, and the Empowerment of Marginalized Populations*, in *Restorative Community Justice* 287 (Gordon Bazemore & Mara Schiff eds., 2001); Rob White, *Communities, Conferences and Restorative Social Justice*, 3 *Criminology & Crim. Just.* 139 (2003); Allison Morris, *Critiquing the Critics: A Brief Response to Critics of Restorative Justice*, 42 *Brit. J. Criminology* 596 (2002); David G. Gil, *Toward a "Radical" Paradigm of Restorative Justice*, in *Handbook of Restorative Justice: A Global Perspective* 499 (Dennis Sullivan & Larry Tifft eds., 2006).

¹⁴³ Chris Cunneen & Carolyn Hoyle, *Debating Restorative Justice* (2010).

and alter the unequal and unjust status quo—to transform society in radical ways that undermine the logics of racial capitalism, rather than to restore unequal and exploitative conditions.¹⁴⁴

It seems to me that proposals to alter the symmetric application of the law, and suggestions to address hate crime through restorative justice, are ultimately reformist and thus unlikely to lead to the requisite radical change. Although these proposals have the potential to limit the violent effects of current hate crime laws—for example, by reducing the tendency of the law to criminalize disadvantaged persons and lowering rates of incarceration through alternative forms of punishment—both (albeit reluctantly in some instances) accept and operate within the individualistic framework that has come to dominate the law. Consequently, these reforms enable the law to remain captivated by the first of Mills’s senses of racism and to ignore the second.

B. Beyond Carceral Reform

When considering alternative ways to respond to hate that depart from the focus on interpersonal violence between individuals, we encounter the difficult questions that abolitionists must grapple with. In our case, these include what to do with the perpetrators of violence who are motivated by bigotry and what to do with the base act of violence on which the hate crime offense is built. Such challenging questions reflect those that abolitionist feminists have faced—*what about the sex offenders?*¹⁴⁵ For us, the question might be phrased, *what about the violent white supremacists?* Learning from abolitionist feminism, when reflecting on racial violence, we might ask: *which white supremacists do we want to target?* Should this include the police, and other state agents, among whom hateful beliefs are especially prevalent? When police officers hold such beliefs, they are positioned to act on them with great power and impunity, which poses heightened risks. Relatedly, which violences should we address? Are we satisfied to tackle only the individual, interpersonal forms, or should we demand that greater attention be directed toward the violences of elites and the state?

It might be tempting to redesign the law to target elite actors instead of poor racialized ones; a version of this kind is evident in India’s Prevention of Atrocities Act, which specifies protection for Dalit persons. Indeed, research shows that racism is a top-down phenomenon, sourced from the moral ideals of elites, and therefore the more appropriate offender is the person who benefits from white supremacy instead of punishing those who are harmed by it, though to different degrees.¹⁴⁶ However, in my view, it is vital that we move beyond the individualistic limits of the criminal law, which permit the scapegoating of individuals while leaving harmful structures in place. Abolitionist feminists highlight

¹⁴⁴ Davis et al., *supra* note 20; Kaba, *supra* note 20; Prison Culture, Transformative Justice, *supra* note 27.

¹⁴⁵ Srinivasan, *supra* note 46 at 149-79; Adina Ilea, What About “the Sex Offenders”? Addressing Sexual Harm from an Abolitionist Perspective, 26 *Critical Criminology* 357 (2018); Davis et al., *supra* note 20.

¹⁴⁶ 1 Theodore Allen, *The Invention of the White Race* (2012); Catherine Hall, *White, Male and Middle Class: Explorations in Feminism and History* (1992); McClintock, *supra* note 32; Robbie Shilliam, *Race and the Undeserving Poor: From Abolition to Brexit* (2018).

problems that surface when carceral reform targets more powerful actors. For example, when men who pay for sex (the Johns) are criminalized instead of those who provide sex services, it ends up pushing the work into dangerous and unregulated spaces where sex workers are ultimately exposed to heightened risks, while nothing is done to tackle the root causes that make sex work a necessity.¹⁴⁷ In the case of hate crime, it is possible to imagine how a group perceived as relatively advantaged could be scapegoated for racism.¹⁴⁸ Indeed, scapegoating to deflect from wider causes of inequality is evident when Dalit activists took the issue of police failure to enforce the Prevention of Atrocities Act to India's national human rights body, as documented by Fuchs.¹⁴⁹ Although the state adjudicator took the issues seriously, which the attendees Fuchs spoke with appreciated, ultimately the response involved the adjudicator reproaching low-level police officers while leaving the responsibility of more powerful actors and institutions unaddressed. This is reminiscent of how the U.K. responds to institutional police racism and misogyny, which entails the commission of an inquiry that finds certain police officers or police forces responsible for the problem of institutional racism, while the racist policies and violences of the state remain in force.¹⁵⁰ These experiences indicate that, even when laws are designed to protect oppressed members of society, without structural change, such reforms—restricted as they are by the individualistic logic of the modern law—risk altering or expanding the targets of state violence and are unlikely to lead to progressive change.

Activist tools have been developed that can help us move beyond the carceral logic of the criminal law.¹⁵¹ For example, Abolitionist Futures provides a framework to distinguish between reformist and abolitionist steps (or non-reformist reforms); the framework is rooted in police abolitionism but works as a helpful indicator for carceral risks more generally.¹⁵² When thinking about an action for change, the work of Abolitionist Futures urges us to ask whether the proposed change will reduce police funding; challenge the notion of police as increasing public safety; reduce the powers, tools, tactics, or technologies of the police; and reduce the scale of the police. If our proposals strengthen the police, then, ultimately, they will feed the carceral machine and lead to greater state violence against the racialized poor whom criminalization and police action predominantly target. Therefore, instead of thinking about how the criminal law could target different groups of people, we must explore whether and how the law could be used to tackle the root causes of racism, which requires structural, institutional, economic, and cultural changes.

¹⁴⁷ This argument is covered well in Srinivasan, *supra* note 46, at 149–79.

¹⁴⁸ Indeed, we can even imagine how a group might be racialized as relatively privileged and powerful, demonized accordingly, and become the target of extreme state violence—as occurred in Germany and Rwanda in the last century.

¹⁴⁹ Fuchs, *supra* note 82.

¹⁵⁰ Ashe, *supra* note 58.

¹⁵¹ Victoria Klinkert introduced me to the impressive work of Abolitionist Futures during a collaborative teaching project at the University of St. Gallen, Switzerland, and the LSE, U.K.

¹⁵² Defund the Police, Abolitionist Futures (<https://abolitionistfutures.com/defund-the-police>).

C. Toward Non-Reformist Law Reform

Rather than relying on the state and its carceral mechanisms to respond to violence, abolitionists urge us to dream bigger.¹⁵³ As we have discussed, abolitionist goals are not entirely opposed to law reform (of a non-reformist nature); however, the law—which so often depends on the expertise of professionals—must, on this approach, be decentered and treated as one tool among many others for achieving structural change.¹⁵⁴ One way abolitionists suggest the law could help transform the conditions in which racial capitalism thrives is through public law provisions. For instance, wealth could be shared more fairly through altered taxation policies,¹⁵⁵ access to welfare could be enhanced through the adoption and wider enforcement of socioeconomic and cultural rights,¹⁵⁶ working conditions could be improved by strengthening workers' rights,¹⁵⁷ and wealth could be more fairly distributed through international reparations and the dismantling of immigration controls.¹⁵⁸

The necessity of changing harmful areas of administrative law to improve socioeconomic inequality is pronounced in Spade's influential work.¹⁵⁹ Writing in the U.S. context, Spade reveals how trans people experience an assortment of legal exclusions, such as limited access to healthcare and welfare, which exacerbates the inequalities that they face, leaving them exposed to criminalization and premature death. And because securing rights, such as gay marriage and adoption, fails to improve the material conditions for the most disadvantaged persons among gay and trans communities, Spade calls for activist efforts to be directed toward reforms that bring about material changes. Proposals that involve public law provisions, by having the potential to address structural racism, appear to be non-reformist in nature and thus of transformative potential. Indeed, Spade's work reveals how administrative law can contribute to criminalization, and hence progressive changes to administrative law have an indirect impact on the criminal law by reducing the punitive reaches of the state, and thus protecting vulnerable groups from criminalization and the harms that stem from this. Therefore, in relation to criminal law, reducing exposure to criminalization,

¹⁵³ Robin D.G. Kelley, *Freedom Dreams the Black Radical Imagination* (2002); Angela Y. Davis, *Freedom Is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement* (Frank Barat ed., 2016); Adébişi, *supra* note 35.

¹⁵⁴ Spade, *supra* note 22; Akbar, *supra* note 25; Lacey, *supra* note 114.

¹⁵⁵ Wealth, Elites and Tax Justice: Interview with Professor Mike Savage, London School of Economics and Political Science (<https://perma.cc/UB4C-2CAX>).

¹⁵⁶ Martha Nussbaum, *Capabilities and Social Justice*, 4 *Int'l Stud. Rev.* 123 (2002); Jeff King, *Judging Social Rights* (2012).

¹⁵⁷ Jon Burnett, *Work and the Carceral State* (2022).

¹⁵⁸ Nadine El-Enany, *Subjects and Citizens: Cordoning off Colonial Spoils*, in *Bordering Britain* 73 (2020).

¹⁵⁹ Spade, *supra* note 22.

as well as pushing for decriminalization, are tools for reform, which aligns with abolitionist aspirations. Applying this to hate crime law, our goal could be to decriminalize hate crime.¹⁶⁰

While striving for administrative law reform is clearly important for transforming unequal conditions and beginning to address structural racism, in keeping with the theme of this Special Issue, I wish to reflect further on whether the criminal law, beyond punitive individualism, has transformative potential. I think hate crime law has the potential to be a valuable tool for transformation if we radically reconstruct it so that hate crime becomes a state crime, following an approach forwarded by Melanie Collard¹⁶¹ and James Tyner,¹⁶² among others.¹⁶³ When we move beyond one-dimensional understandings of violence as interpersonal and recognize violence in its historically constituted and ongoing structural and symbolic forms, then state violence is pronounced. Racial violences committed by modern states include extreme and overt forms such as enslavement, settler genocides, and colonialism, which continue to shape life chances in the present, though some racial violence has transmuted into obscurer forms such as imprisonment, structural inequalities, unequal exposure to ill-health, and higher rates of mortality facilitated by law and policy; though perhaps less obvious, these forms of violence are still severe in effect.

On this view, when a pandemic or epidemic occurs and historically oppressed groups are disproportionately exposed to preventable illness and death, the state commits hate crime.¹⁶⁴ When state law and policy fails to address educational, health, employment, and housing inequalities, the state commits hate crime. When the state fails to prevent the police from disproportionately targeting historically oppressed groups and inflicting violence through stop-and-search and fatal uses of force, the state commits hate crime. When the state responds inadequately to the causes that drive people to attempt to cross the Channel, and ever more lives are lost to its waters (at least six people died in the week I write, including five children and a pregnant woman), the state commits hate crime.¹⁶⁵ And when the state fails to address racism despite reports that it is rife within its ranks, and then continues to fuel racialized tensions through the scapegoating of immigrants thereby creating conditions for hate crimes (as presently conceived), the state commits hate crime.¹⁶⁶

¹⁶⁰ Lamble, *supra* note 22.

¹⁶¹ Melanie Collard, *Hate in the Time of the Covid-19 Pandemic: Dehumanisation as a Side Effect; Re-Humanisation as a Remedy*, 80 *Crime L. & Soc. Change* 153 (2023).

¹⁶² Tyner, *supra* note 138.

¹⁶³ The wider hate crime abolitionist literature cited throughout this article is also significant here.

¹⁶⁴ This is the argument of Collard, *supra* note 161.

¹⁶⁵ See Andrew Harding, *France Sees Channel Migrant Deaths as a Problem of Britain's Making*, BBC News, Sept. 4, 2024 (<https://perma.cc/4TT2-USYF>). Unusually, this report points to state responsibility.

¹⁶⁶ This approach could, and indeed should, also accommodate the crimes the state commits beyond its national borders.

State racial violence can be understood as involving acts and omissions.¹⁶⁷ Acts are evident when states implement law and policy that disproportionately harm racialized groups, such as those introduced under the global “War on Terror,” which led to the mass surveillance, military persecution, and killing of groups identified as Muslim. Or when states participate in the creation of racialized folk devils and stoke fear and resentment, which leads to anti-immigration riots and racialized persons becoming targeted by interpersonal violence. Or when states implement punitive immigration regimes, which force the most disadvantaged of the racialized poor into modern forms of labor exploitation without access to healthcare and other welfare provisions. Spade provides further examples of state policies, actively implemented, which expose certain groups to criminalization and premature death.¹⁶⁸

In terms of omission, the state is liable for a failure to act when issues of societal racism come to the fore, but instead of redressing these issues, the state either denies their existence or commissions an inquiry to avoid action. This is evident in the U.K. Government’s refusal to acknowledge its part in stoking the 2024 riots and its failure to hold itself (and the former government likewise) accountable for various forms of institutional and structural racisms found in a multitude of inquiries and reports. Moreover, when we acknowledge the ongoing violences of slavery and colonialism, we can see that the British state is responsible for having *created a dangerous situation* in which racialized persons and other demonized groups are exposed to a range of violences which the state must address.¹⁶⁹ Likewise, the British state can be conceptualized as having *assumed responsibility* when it intervened in the life opportunities of large sectors of global peoples, and it is now responsible for preventing premature death.¹⁷⁰ When we move away from viewing certain historic ruptures, such as chattel slavery and colonialism, as temporally siloed events and recognize how structural violence channels itself through an assortment of activities that have been set in motion, there is great potential for the law to respond.

D. The Difficult Task of Transforming Hate Crime into a State Crime

Even if thinking afresh about state responsibility for hate crime is vital, we might wonder how such a vision could become reality—a difficult issue that I only touch on here. States are unlikely to hold themselves to account and implement laws that redress state wrongdoing. This challenge applies as much to international criminal law, which requires states to sign treaty agreements, as to domestic law, which requires states to draft and enact laws directly. Still, there is certainly scope within the framework of international criminal law to address racial violence committed by states. Indeed, Collard proposes pursuing a

¹⁶⁷ See Collard, *supra* note 161.

¹⁶⁸ Spade, *supra* note 22.

¹⁶⁹ Cf. *R v Miller* [1983] 2 AC 161.

¹⁷⁰ Cf. *R v Stone and Dobinson* [1977] QB 354; see also Alice Ristroph, *Responsibility for the Criminal Law*, in *Philosophical Foundations of Criminal Law* 107 (R.A. Duff & Stuart Green eds., 2011).

human rights approach within international criminal law toward this end.¹⁷¹ Neller's suggestion to center dignity could also be of value here, since it brings to the fore state responsibility when a person's dignity is undermined by hate, hence centering the state's accountability to its citizenry.¹⁷² Beyond existing human rights law, there is potential to advocate for the recognition of new crimes, such as the push by Vanuatu, Fiji, and Samoa for the International Criminal Court to recognize the crime of ecocide, alongside the crime of genocide, for which heads of state could be charged.¹⁷³ In relation to racial violence, an international crime of *dehumanization* or *demonization* of historically disadvantaged groups could be formulated, for which state, media, and other elite entities would be responsible. Such a move could help to disrupt current patterns of racialized criminalization.

There may also be opportunities to develop a state crime of hate at the domestic level. Again, human rights law could provide a powerful mechanism.¹⁷⁴ In the U.K. context, the so-called Mau Mau case is a notable example of how the racial violence of the state can be addressed through law.¹⁷⁵ In this case, as explained by Leigh Day solicitors, lawyers "acted on behalf of 5,000 Kenyan nationals who were subjected to torture and other forms of ill-treatment at the hands of the British colonial administration during the Kenya Emergency in the 1950s."¹⁷⁶ Crimes committed by the British government included arbitrary and unlawful killings, severe offenses against the person, and inhumane and degrading treatment. This case resulted in the British government issuing an apology and compensating surviving victims. Notably, despite involving serious criminal offenses, the case was pursued through the civil law. There are certainly advantages to using civil law, which involves a lower burden of proof and can result in compensation for those directly harmed by state violence. But we are still left with the question of whether there is a place for the criminal law.

In reflecting on the role of criminal law, we ought to ask whether it is only for states to determine what is criminal or whether citizens own this determination. Of course, here we touch on the classic debate in jurisprudence between positivist and natural lawyers.¹⁷⁷ But, importantly, we do not need to become natural lawyers to displace the dominance of the state. If the government of modern liberal states is in some sense to represent the people

¹⁷¹ Collard, *supra* note 161.

¹⁷² Neller, *supra* note 114.

¹⁷³ Fiona Harvey, Pacific Islands Submit Court Proposal for Recognition of Ecocide as a Crime, *The Guardian*, Sept. 9, 2024 (<https://perma.cc/5LN6-N8FM>).

¹⁷⁴ Collard, *supra* note 161; Fuchs, *supra* note 82.

¹⁷⁵ *Ndiki Mutua et al. v. the Foreign and Commonwealth Office* [2012] EWHC 2678 (QB).

¹⁷⁶ Leigh Day, *The Mau Mau Claims* (<https://perma.cc/Y7M5-M8FA>).

¹⁷⁷ David Dyzenhaus, *The Grudge Informer Case Revisited Symposium: The Hart-Fuller Debate at Fifty*, 83 N.Y.U. L. Rev. 1000 (2008). In a nutshell, positivist lawyers contend that what constitutes law is what states legally enact, whereas natural lawyers contend that there are higher morals that the law and states are subservient to and bound by.

or to enact the people's will, then the people are guardians of the law and ultimately influence what becomes effective law (alongside a requirement that minority groups are protected and represented). With this in mind, we might explore ways to enhance opportunities for deliberative democracy in the sphere of criminal law so that the balance is not so skewed toward elite (state) control of legislative mechanisms. For example, we might ask how public inquiries, presently used to hold states to account, can become more democratic, and how the outcomes of inquiries can be enforced by the masses. Perhaps a kind of democratic determination of criminality would include strategies of mass refusal (e.g., collective refusal to pay certain taxes) when states fail to take responsibility for and implement actions to redress structural violence.¹⁷⁸

There could also be substantial symbolic value gained by redefining and declaring hate crime as a state crime. Take, for instance, grassroots movements which have pushed elite institutions to recognize the wrong of holding onto objects taken by force during the colonial eras.¹⁷⁹ By adopting the language of theft and robbery, activists have shifted the narrative about objects displayed in museums, universities, and other state institutions. No longer can items be displayed without scrutiny. In some instances, the weight of the wrongs involved and subsequent pressure to respond has led to the return of stolen artifacts to stakeholder communities and states. In these cases, despite the lack of state recognition of a crime, delegitimization from below has produced a kind of reparative outcome. In the case of racial violence, with which we are concerned here, the idea that hate crime is chiefly a state responsibility could be a tool to push for policy changes in relation to immigration, poverty, and other forms of inequality to which the most intersectionally disadvantaged are ultimately exposed.

There are perhaps yet other ways the criminal law could be creatively reharnessed toward social justice ends, moving beyond approaches that center the culpability of individuals. We might think about the use of corporate criminal law to hold institutions to account. Although approaches to corporate crime have been of limited reach and effectiveness to date, there is potential for the law to be interpreted and implemented in more socially progressive ways.¹⁸⁰ While the modern criminal law is geared toward individualizing offenders, victims, and offenses, critical criminal law scholarship shows that the law contains many other moral sources and opportunities—social protection and risk reduction are common goals pursued through the criminal law.¹⁸¹ Relatedly, it is possible for the sanctions

¹⁷⁸ Cf. Extinction Rebellion, Don't Pay for Dirty Water Campaign Vows to Get Ten Thousand to Boycott Water Bills, Nov. 15, 2023 (<https://perma.cc/93RS-JPUP>).

¹⁷⁹ Kim Willsher, "We Want Our Riches Back": The African Activist Taking Treasures from Europe's Museums, *The Guardian*, Feb. 7, 2021 (<https://perma.cc/BN2X-LGJZ>); Dan Hicks, *The British Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution* (2021); Lauren Bursey, *Colonial-Looted Cultural Objects in England*, 8 *Santander Art & Culture L. Rev.* 341 (2023).

¹⁸⁰ E.g., Celia Wells, *Corporations and Criminal Responsibility* (2001); Michael R. Mason, *The New Accountability: Environmental Responsibility Across Borders* (2005).

¹⁸¹ See, e.g., Lacey, *supra* note 31; Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests, and Institutions* (2016).

of the law to stretch beyond retribution, rehabilitation, and restoration in the pursuit of collective ends. Debates around reparations for slavery, and examples of reparations being implemented by institutions outside of the law (such as the approach adopted by the University of Glasgow) provide examples of how alternative sanctions to redress collective grievances could be developed.¹⁸²

Activists could thus recapture and reorient the narrative around hate crime by reframing it as a state crime. Here, I have outlined some preliminary ideas of how this could be achieved. Crucially, generating further ideas and implementing effective action requires collaborative and inclusive processes, led by communities and activist groups at the forefront of these issues.¹⁸³ Law reform at domestic, as well as international, levels might rely on legal professionals and access to expertise, yet, as Spade shows, it is very possible for lawyers to work as allies in this process.¹⁸⁴ Even if activist efforts to reframe hate crime as a state crime of sorts were of limited effect (just as current hate crime laws are ineffective at deterring and preventing racial violence), the symbolic function of this reframing could be a meaningfully transformative step: it communicates that the ongoing racial violences of the past are wrongs that the state and global citizens have a stake in redressing. This, in turn, can have mobilizing force. Such an approach is arguably less conducive to neoliberal capture because it requires thinking about the state in an altogether different way. Moreover, this approach is non-reformist because it works against individualizing racism and reframes the state as responsible to the people, rather than endorsing the punitive narrative that people are chiefly responsible to the state.

III. Conclusion

In this article, I have presented the abolitionist case against hate crime law, partly by discussing the burgeoning case against hate crime legislation itself, but also by transposing abolitionist arguments against carceral feminism, policing, and the prison industrial complex to the case of hate crime law. In my view, the abolitionist case against hate crime law is a compelling one, because the criminal law operates within the individualizing logic of racial capitalism and is bound to impact those it purports to defend negatively. In particular, hate crime law enlarges the significance of interpersonal bias-motivated violence at the same time that it distracts from the structural violence that underpins it—violence which, as in the case of slavery and colonialism, percolates through to the present in transmuted forms, or which the state is otherwise complicit in. Moreover, this abolitionist analysis explains the counterintuitive result that people of color are disproportionately likely to be charged as perpetrators of hate crime. Because the criminal law is blind to structural, institutional violence, its special protection laws mislocate hate crime in the individual, and because it is

¹⁸² University of Glasgow, *Slavery in Britain: Making Reparation* (2020) (<https://perma.cc/TX7F-E9DT>).

¹⁸³ Spade, *supra* note 22; Day & McBean, *supra* note 20.

¹⁸⁴ For an interesting approach in the U.K. context, see the work of academics at Queen Mary, University of London, and the International State Crime Initiative: School of Law, Queen Mary (<https://perma.cc/D28K-QH2X>).

founded on a view of its subjects as equal regardless of historically embedded and ongoing violence, it has symmetric application—irrespective of how a subject has been racialized. Therefore, it will both apply to those racialized as non-white *and* fail to recognize when it disproportionately captures and criminalizes them, even though purportedly aiming most to protect them.

Persuaded by the abolitionists' case, I explored whether and how hate crime law could be reformed in ways that respond to abolitionist critiques. Centering the idea of “non-reformist” law reform, in contrast to liberal reformism, helps us to build a suitable framework for this task. From within such a framework, it looks like law reform proposals that involve individualized responses and work within the dominant logic of the modern criminal law, while more likely to lead to reform, are too easily absorbed by the system, and will thus be of minimal progressive effect and may even perpetuate current violences. In search of a non-reformist solution that aims to disrupt and dismantle racial capitalism, I examined several law reform proposals with significant transformative potential. It seems to me there is great potential for public law reform to transform structures of inequality and reduce state violence, and furthermore, the civil law could become an important instrument for holding the state to account for past and ongoing wrongs. However, in keeping with the challenge posed by this Special Issue, I returned to the question of whether *criminal* law reform could address abolitionist criticism. Ideas on hate crime circulating in the critical literature have led me to support proposals for hate crime to be reconceived as a state crime. This pursuit is non-reformist in nature; it pushes the state to recognize and respond to the past and ongoing harms that reduce the life chances of the racialized poor, leaving them exposed to premature death. By reconceiving hate crime as a state crime, the structural harms of racism can be addressed, along with the deep social injustices inherited from the past that haunt the present.