Combating Habitual Hegemony:

Prison Abolitionism

These uses of criminal law administration as a central means of resisting the abolition of

slavery, Reconstruction, and desegregation, continue to inform criminal processes and

institutions to this day by enabling forms of brutality and disregard that would be unimaginable

had they originated in other, more democratic, egalitarian, and racially integrated contexts.

(McLeod 2015: 1193)

These continued legacies of brutality and disregard not only inform but are integral to our prison system today. In an effort to both move away from relying on respectability politics in the civil rights movement and to challenge these habitual social scripts, leading civil rights activists have proposed prison abolitionism. Prison abolitionism is not born from political naiveté or utopia. In fact, through campaigns of decarceration, decriminalization and excarceration, prison abolitionism is a necessary step in combating the reinvention and even continuance of previous systems of racial brutality, disregard, control, hegemony and oppression. In what follows I will be using "we" and "our" to recognize and acknowledge not only my participation and role in the maintenance of the current status quo but also in hopes that my audience will similarly acknowledge their active part in this maintenance. The words, "we" and "our," are historically and contemporarily used in ways that erase and make invisible the distinct realities of certain peoples and groups. In an effort to address this legacy, I want to acknowledge their purpose and use in my work. I must also acknowledge that there are many who are working to voice and demonstrate resistance and dissent in an effort to alter these current schemes.

Michelle Alexander and her contemporaries—including: Bryan Stevenson, Ta-Nehisi Coates, Tim Wise, Angela Davis, Marc Lamont Hill—are among those actively pursuing resistance and change to the hegemonic order. In Alexander's (2012) work, *The New Jim Crow,* she established three major systems of racial control in American history: slavery, Jim Crow, and mass incarceration. Despite shifting and deceptive rhetoric, the technologies and systems of cruelty and control meant to maintain racial hegemony have been preserved through the transformation and translation between these systems. According to Andrea Smith (2012), the formation of these racial caste systems can be understood through the lenses of white supremacy and settler colonialism. Smith identifies three pillars, or primary logics, of white supremacist settler colonialism: "(1) slaveability/anti-Black racism, which anchors capitalism; (2) genocide, which anchors colonialism; and (3) orientalism, which anchors war" (2012). The first pillar, slaveability, has manifested in different forms, including: sharecropping, indentured servitude, convict leasing, and what is typically referred to as slavery in American history (Smith 2012). The continued commodification of black bodies that can be observed in each of these manifestations is rooted in an ontology that holds black individuals as inherently slaveable and merely property (Smith 2012). The second pillar, genocide, requires the disappearance—or rather, the continued disappearance—of indigenous peoples, allowing for colonizers to claim land with little to no concerted competition (Smith 2012). Orientalism, the third and final pillar, is the logic of categorizing other groups of people or nations as inferior to one's own (Smith 2012).

The formation and continued maintenance of the United States can be understood through Smith's pattern of settler colonialism. We can see this in our continued slaveability of African Americans, our continued genocide of indigenous peoples, and our evolving orientation and

xenophobia towards certain groups and nations. The continued nature of these processes correlates with Bonds and Inwood's (2015) argument of a continued production—or rather reproduction—of white supremacist systems throughout American history. They argue, "If privilege and racism are the symptoms, white supremacy is the defining logic of both racism and privilege as they are culturally and materially produced" (Bonds and Inwood 720). Today, these themes of white supremacy are manifested in the legal system's use and abuse of incarceration.

Almost immediately following the *official* end of slavery in America in 1865, criminal law was a way to continue slavery's mechanisms of control. Black codes were laws specifically designed to criminalize and penalize caricatured blackness (Demby 2016). "Caricatured blackness"—as Marc Lamont Hill used during an interview with Gene Demby from NPR's *Code Switch* program—refers to activities that were criminalized because they were stereotyped and colored activities—such as transiency. During Reconstruction, previously permissible activities were suddenly racialized and criminalized (McLeod 2015: 1188). These new offenses even included "mischief" and "insulting gestures" (McLeod 2015: 1188). More recently, certain drug use has been heavily criminalized under tough on crime agendas. The starkest example is the differentiated criminalization of powder versus crack cocaine. President Ronald Reagan declared a war on drugs with the main focus on crack cocaine usage (Alexander 51). Perhaps shockingly, this declaration of war came a few years before crack cocaine even hit the streets and in the midst of a political climate where less than less than 2 percent of the American public viewed drugs as the most pressing concern in the United States (Alexander 49). Crack cocaine is stigmatized as a lower-class drug used by African Americans, whereas powder cocaine is seen as a party drug used by more affluent whites. As a result, the same sentence lengths are extended

for conviction for the sale of five hundred grams of powder cocaine and a conviction for the sale of five grams of crack cocaine (Alexander 112).

This gross sentencing discrepancy allows for prisons to be filled with more black and brown individuals. For example, over the course of only three years, two thousand people were charged with federal crack cocaine violations (Alexander 116). Of these recorded two thousand, all but eleven were black and not a single individual charged was white (Alexander 116). Horrifyingly, however, Alexander cites a study published in 2000 from the National Institute on Drug Abuse, that reported "white students use cocaine at seven times the rate of black students, use crack cocaine at eight times the rate of black students, and use heroin at seven times the rate of black students" (Alexander 99). So not only are African Americans policed and penalized at a higher rate than whites, but whites—specifically college-aged whites—use both crack and powder cocaine at higher rates. This is unfathomable given the conviction rates. President Barack Obama's Fair Sentencing Act in 2010 reduced the 100 to 1 crack/cocaine sentence discrepancy to an 18 to 1 ratio (Graff 130). This is unfortunately still grossly inequitable. For sentencing to be equitable, the ratio should simply be 1 to 1. Unfortunately, the transition of systems of racial control into the current system of mass incarceration is not limited to sentencing.

The forms and spaces of punishment during slavery were translated into forms and spaces of penal punishment that are still used today. Rashad Shabazz, author of *Spatializing Blackness: Architectures of Confinement and Black Masculinity in Chicago*, argues:

> In the United States, carceral power, which was born out of transatlantic slavery, was expressed on the plantation and in the broader geography of the South. Carceral power was central to the punitive economy of slavery and the legal

> codification of servitude . . . And as Black people emerged from slavery, the
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> technologies of cruelty that emerged to capture, hold and transport them were
>
> repackaged for the new carceral age. (6)

Even before this emergence from slavery, we can see spatial similarities between Southern

slavery and Northern penitentiaries: the demographic makeup of each were either solely or at

least disproportionately black and the routines and rules were completely determined by whites;

both systems were placed in isolated and surveilled spaces; and slaves and inmates alike were

forced to work far below free labor wages while working extensive and intensive hours (McLeod

2015: 1189). Contrary to progressive hopes, slavery—in name and practice—is still present

today. Involuntary servitude is still legal in the case of those "duly convicted" (McLeod 2015:

1189). This—in the form of convict leasing or captive prison labor—is an exemption to the

Thirteenth Amendment's end to slavery (McLeod 2015: 1189). In the late 1800s, prior slaves

were even leased from prisons to plantations to continue in the same role they were supposedly

freed from (McLeod 2015: 1189). Thus, when slavery *ended*, its mechanisms and spaces of

control were easily preserved and expanded through incarceration. The expansion was enabled

through what Shabazz characterizes as a geography of confinement, policing, and surveillance

which was "mapped onto" black communities (Shabazz 3).

Michael Foucault similarly argues these technologies of punishment had moved beyond

the prison yard to supposedly non-criminalized parts of society (Shabazz 5). These technologies

were made part of the "seemingly mundane disciplinary procedures" of everyday life (Shabazz

5). After examining these "seemingly mundane disciplinary procedures"—such as zero tolerance

policies in schools and stop and frisk laws—in the context of our legacies of racism and

violence, these procedures are anything but mundane. They are divisive, redundant, and only

perpetuate racial hegemony. This redundancy is noteworthy as well. A resilient system has built in redundancies, so that the failure of one response does not mean a failure to achieve the system's end goal. These redundancies ensure that no person of color is easily, or even possibly, able to remain unaffected by the influence of hegemonic norms of carceral white supremacy. When similarly examining the remnants and translations from the Jim Crow era, we can see that what was once an era of domestic terrorism is now an era of "color-blind" laws that are used to control black and brown bodies, minds and futures. It's no coincidence that the states with the highest lynching rates are the states with the highest execution rates (Stevenson 2014). Either way, systematic racism is actualized through a disproportionate threat of premature death—and this was absolutely perfected and utilized through our system of slavery (Gilmore 29).

Beyond technologies and geographies of carceral control, many of the opportunities that African Americans were denied of under the systems of slavery and Jim Crow are still restricted as a result of criminalization. We have essentially removed any hope of a convicted felon being able to access forms of social assistance in hopes of escaping a cycle of criminality. For instance, we have stipulated a five-year lifetime cap on welfare assistance for any individual; however, in the case of an individual convicted of a felony drug offense, there is a lifetime ban on both welfare and food stamp eligibility (Graff 125). President Bill Clinton only perpetuated this unduly punitive trend with his 1994 Crime Bill, which both permits public housing authorities to evict any tenant that is even just suspected of being involved in drug-related criminal activities and permits employers to discriminate against felons in hiring decisions (Alexander 53). As I previously discussed, our shared conceptions of what a drug user and criminal look like is already highly racialized. Under Clinton's act, this stereotyping and racialized suspicions are

essentially permissible. In 1994, Pell Grant eligibility was also officially stripped from convicted felons (Masci 814).

The right to vote was not initially granted to African Americans—specifically African American men—after the *end* of slavery. Eventually, however, this basic democratic right was finally granted to African American men and women through the Voting Rights Act of 1965 and then the 19th Amendment in 1920. Nevertheless, literacy tests and other forms of discrimination continued voter suppression. This anachronist process is still incredibly prevalent today. Felony disenfranchisement is where certain jurisdictions permanently strip those convicted of felonies from the basic right to vote (Stevenson 16). According to the African American Intellectual History Society's Prison Abolition Syllabus, over 6 million potential voters are disenfranchised as a result of this process. To put this in perspective, the popular vote in the 2016 presidential election was won by less than 3 million votes (McDonough 2016). Perhaps if these over 6 million individuals had been able to contribute their voices, the winner of the popular vote may have also become the next president. As one can imagine, those disenfranchised are overwhelmingly disproportionate by race; while 2 percent of the U.S. population is disenfranchised through felony disenfranchisement, a striking 13 percent of African American males are disenfranchised (Selma and Leighton 522). Disproportionate incarceration and conviction rates, thus, is part of the maintenance and continuance of racial hegemonic, white supremacist, and settler colonial ideals. This line of reasoning stems from the "colorblind" rhetoric and reasoning behind many of the justice systems' mechanisms. While we may deny racial motivations and framing, they are nonetheless the reality.

Talking directly about race is no longer necessary because the concept of race is now synonymous with crime. David Roediger claims that "Race-neutral or colorblind programs . . .

left Jim Crow intact" (176). In the New Deal's economic reforms, the deleterious nature of colorblindness carries on in the case of criminal justice policies. Color-blindness serves as a defense for continuing to conduct systemic racism. If we don't see race, we can't see racism. If we deny race, we can deny racism. Consequently, color-blindness does not help to challenge or address racial hegemony. Roediger also cites Ralph Ellison's point that it can be the tendency of some to view history as "simply background and not as a functioning force in current society" (184). This is an eloquent synopsis of the issues faced in an effort to enact change in a "colorblind" or "color-conscious" society. A color-blind society is incapable of examining and even acknowledging remnants of racial hostility, oppression, and hegemony. Color blind rhetoric does not combat the ability of racism that infect the justice system. In fact, it only allows it to inflict more damage. By merely whitewashing our vocabulary to make it more "politically correct" and less morally reprehensible, we are not addressing the underlying forces of racism within the justice system.

The American prison system was created by and through white supremacist motivations and these original intentions are therefore inseparable from the institution. Any attempt to remove race from the current justice system—whether that be through claiming colorblindness or not—is ultimately futile. Gene Demby, from NPR's program, *Code Switch*, interviewed Morehouse College's Professor Marc Lamont Hill on the topic of prison abolitionism (2016). Lamont was asked, "if you could wave a magic wand and take the racial and class bias out of criminal systems would you still feel we would need to make these changes or do you think racial bias just sort of underlines the inhumanity of these things?" (Demby 2016). The changes Demby referenced were Hill's arguments for prison abolitionism (2016). In Hill's response, he noted:

The prison itself is born out of the exploitation of labor and the white supremacist impulses that undergird it are inseparable from the institution itself . . . the prison itself is an outgrowth of a state that defends class at all costs. The prison is just a more politically correct, warmer and fuzzier version of that slave system (Demby 2016).

In other words, Hill did not believe that we could ever separate racial or class bias from the prison system. When Demby pushed him on this point, Hill responded, "If the system was fair, would I be OK with prison? I'm saying that if the system was fair, there would be no prison" (Demby 2016). He additionally compared Demby's thought experiment of separating racism and classism from the prison system to trying to separate racism from slavery (Demby 2016). Demby wrote a reflection on his interview after he was able to better digest the arguments of Hill (2016). The realization that Demby was able to eventually come to—and which Hill had been trying to get across—was that "Prison abolitionists feel . . . reforms don't go far enough; that 'reform' implies a broken prison system and not one functioning exactly as it was meant to, as a mechanism of social control" (Demby 2016).

Prison abolitionism, therefore, is the movement that seeks to either entirely eliminate or at least minimize the use of incarceration by the criminal justice system. In place of prisons, it aims to establish or at least encourage more humane and more effective systems. Prison abolitionism is an intriguing concept because people may agree that the justice system is racist and deem that ending slavery and Jim Crow were morally necessary. However, those same individuals do not typically agree that prisons—despite achieving the same ends, as I have already established—should be abolished. Nonetheless, this is due—in part—to that inflammatory and naïve misconceptions of prison abolitionism. The primary misconceptions

include: prison abolitionism results in an immediate elimination of prisons or incarceration similar to the supposed end of slavery with the Thirteenth Amendment; secure confinement is no longer an option; and similar to the previous point, all violent offenders should be able to live freely among society.

In actuality, Prison abolitionism is instead an extremely process oriented movement, which aims for eventual decarceration, excarceration, and decriminalization (Davis and Rodriguez). Decarceration is the process of reducing either the number of individuals imprisoned or the rate of imprisonment in a given jurisdiction; it can also be described as the removal of individuals from prisons (Davis and Rodriguez). We currently have many offenders—roughly half of the prison population, in fact—held on non-violent offenses (McLeod 2015: 1168). Prison abolitionists argue that these kind of individuals—those that are not categorized as the "dangerous few"—should be some of the first to be released from prison through decarceration (McLeod 2015: 1168). Excarceration, on the other hand, is the original avoidance of incarceration (Davis and Rodriguez). This involves the use of alternative responses to crime and criminality, such as restorative justice circles or drug and alcohol rehabilitation and treatment (Davis and Rodriguez). Similarly, decarceration entails the positive substitutions of these kinds of responses, rather than the mere negative action of removing the option of incarceration (McLeod 2015: 1156). Prison abolitionism is also not committed to the termination of all kinds of secure confinement either (McLeod 2015: 1171). Secure confinement, though, is much different in both intention and scale to incarceration. Incarceration is seen as an end; whereas, secure confinement allows for hope of rehabilitation and reintegration (Demby 2016). Reintegration to society may not be possible for all, but it is unjust and inhumane for any individual or institution to determine that someone is ever beyond hope in the fashion that our

current justice system conducts itself. Along the same vein, prison abolitionism is not committed to denying the existence of the "dangerous few" (McLeod 2015: 1171). Prison abolitionism does argue, however, that "Any such dangerousness on the part of those incarcerated currently is exacerbated by features of prison society that a wider embrace of an abolitionist ethic and framework would improve" (McLeod 2015: 1171). If successful, the processes of prison abolitionism could render prisons obsolete and make society safer.

Prison abolition has the potential to shift our practices of justice from exclusionary and punitive to restorative and inclusive (Davis and Rodriguez). According to Allegra M. McLeod, "An abolitionist framework requires positive forms of social integration and collective security that are not organized around criminal law enforcement, confinement, criminal surveillance, punitive policing, or punishment" (2015: 1164). In addition, this process requires a shift in resources from punishment to education, housing, health care, and other public resources and services. Our dominant and default response cannot continue to be prison. McLeod claims "The general reluctance to engage seriously an abolitionist framework represents a failure of moral, legal, and political imagination" (McLeod 2015: 1156). Our racial legacies are stained in violence, the legacy of slavery, and orientalism, but it doesn't have to continue. Prison abolitionism is not only morally necessary, it will hopefully at minimum challenge the continued maintenance of racial hegemony. Racial control has become habitual and is almost taken for granted. The United States was founded on settler colonial intentions rooted in white supremacy and we have been wholly unsuccessful at changing this.

Inevitably, the most common argument against prison abolitionism is that it is far too radical. However, quite honestly, that is the point; that is what is necessary. Conversations that focus on reform erroneously assume that the justice system is merely failing to meet the ends it

was intended to achieve when it is in fact *fulfilling* the racist ends it was intended to achieve. These discussion are therefore failing to completely acknowledge the United States' legacies of racial exclusion, oppression, control and violence. In order for prison abolitionism to become a reality or even a remote possibility, this nation has to have a concerted and constructive dialogue about race in America. This cannot just be a history lesson. Our historical legacies are inseparable from the realities we are facing—enduring—today.

Through and by mechanisms of prison abolitionism a new socio-spatial landscape can be created—one that is necessary to combat systemic racism. This requires a shift in norms and attitudes towards crime and punishment. We must be able to separate these two concepts by dismantling the common language and attitudes surrounding punishment and justice as it pertains to incarceration. Put quite simply, "One of the first challenges is to be able to talk about the many ways in which punishment is linked to poverty, racism, sexism, homophobia, and other modes of dominance." (Davis and Rodriguez). This can begin by becoming or remaining skeptical of colorblind intentions. Because it isn't about reform, rehabilitation, or reintegration. It never has been and never will be until we challenge—through prison abolitionism—the essentially habitual maintenance of racial hegemony.

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