

Death and Other Penalties

PHILOSOPHY IN A TIME OF MASS INCARCERATION

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Critical Theory, Queer Resistance, and the Ends of Capture

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One of the most notable accomplishments of queer studies has been in showing how various regimes of normativity are interconnected and mutually constitutive—how reproductive futurity and heteronormativity are articulated in relation to racialization, (dis)ability, and other socially structuring and institutionally enforced axes of difference—in such a way that much work done under the rubric of queer studies today takes for granted that queerness can be defined as against (and as other to) normativity writ large. Perhaps as a consequence of such success, the relationship between queerness and antinormativity can become vaguely tautological—what is queer is antinormative; what is antinormative is queer—and so elastic that useful distinctions between how different normativities get enforced in practice can begin to fade. Conversely, what is now being called critical prison studies, as a field, has had relatively little to say about trans/queer people, or how queer theory and/or politics might differently mitigate its optics. Here then, we have gathered to think about the uses and limits of both queer theory and abolitionist analysis in our work toward collective liberation.

QUESTION: To what extent or in what ways is this formulation of queerness-as-antinormativity useful for thinking about the politics of gender and sexuality that shape the prison industrial complex (PIC)? Are there ways in which thinking about the specificity of queer and trans existence in and resistance to the PIC that reverberate back to challenge or complicate these assumptions about what queerness is and what work it can be used to do?

ERIC A. STANLEY: I think there is, and must be, an antagonism between *queer* as an optic, a way to read and to act against normative and normalizing power, and *queer* as a sexual and/or gendered identity. The radical potentiality of queer is in this antagonism becoming a feedback loop, where its own work is constantly under self-erasure and revision. To this end, however, I believe that a queer analysis can and must extend beyond those who identify as such.

There is also the critique that queer theory, as a field and/or methodology, can normalize antinormativity, against its own aims. Or an argument that in its reach to be infinitely antinormative it produces, by way of excess, new normativities. I think, however, this would be a misreading inasmuch as queer, under my definition, like all deconstructive projects, continues to evade those forms of legibility. Queer, then, becomes a placeholder for a horizon and a way to speak toward that which remains beyond representation but also threatens representation itself.

The emerging analyses and practices of prison abolition are working in a similar way. Here, abolition is not a specific political platform; however, there are a number of demands we might do make under its banner. This is one of the common misconceptions of prison abolition—that those of us who organize toward it already know, and must already know, in advance, the best ways to address the various forms of violence and harm the PIC purports to attend to. The affective common sense of carceral life that we all inhabit works in part by naturalizing its own necessity and by not allowing us to imagine beyond its domain. Abolition, like queer theory and perhaps deconstruction, too, makes us not know in advance. As analytics, they are about expanding space in an ever more psychically and physically contracted world.

However, it is also important that we continue to argue for the importance of understanding how trans and queer people, specifically trans women of color, are uniquely targeted by the PIC. For far too long,

and this continues, the “prisoner,” at least in much U.S.-based prison scholarship and activism, remains a straight, nondisabled, nontrans male. There are, of course, the important feminist interventions of the 1980s and 1990s that have begun to highlight women in prison. However, much of this work, for various reasons, has had little to say about trans and/or queer people. This is not a call to add trans/queer people to obligatory lists but for all of us working against prisons, to act in solidarity with trans/queer imprisoned people and to use trans/queer theory when thinking about incarcerating logics at large.

CHE GOSSETT: In thinking about queer and/or trans abolitionist imaginaries, gender self-determination, and critical theory, I’m drawn toward queer, trans, intersectional, and AIDS activist of color genealogies and the revolutionary trans and queer liberationist political coordinates they crystallized. Struggling from within and against racial capitalism, the anti-queer and antitrans violence of criminalization and left movement exile,¹ organized abandonment via the state, political repression and surveillance,² carceral containment and the slow violence of neoliberal sociopolitical and economic rationality that threatens to exhaust radical organizing potentiality, and queer left and trans revolutionary political formations have historically pushed against and beyond the policed and policing boundaries of assimilationist political paradigms and sought to materialize alternate pathways and landscapes of radical queer and/or trans futurity.

In contrast to the antifuturity institutionalized via domestic warfare, mass incarceration, deportation, and so forth, on the one hand, and nonfuturity evidenced by the well-resourced forward momentum of “LGBT” neoliberal “diverse/multicultural” nonprofitization in the name of “progress” and “feminism” from which sex workers, homeless people, street youth, trans women of color, those living with HIV/AIDS, and (dis)abled are evacuated on the other, radical queer and trans liberationist, AIDS activists of color have imagined queerly utopian alternatives. Ortez Alderson, black queer liberationist and antiwar and AIDS activist, and many others have fought to bring into being radical queer erotic lifeworlds that were also resolutely determined in constant struggle against forces and forms of anti-queer, antitrans, and antiblack violence.³

Not only do these political formations continue to provide queer left, revolutionary trans, and AIDS activist inspiration for current organizing against the criminalization of HIV/AIDS and sex work, for example, they are also articulations of yearnings for freedom that shape abolitionist

political imaginaries and inform queer and/or trans critical theories of abolition.

Gender self-determination, in the face of policing, was dramatized and actualized in the uprisings against police violence by trans people of color (from Compton’s to Dewey’s to Stonewall). Gender self-determination is abolitionist in its antipolicing ethos and is ultimately an abolitionist political project. The prison industrial complex is a site of antiblack penal slavery in which gender is violently regulated and trans identities/embodiment are treated as invalid and nonexistent within the bio (and necro) political logic of penology/penalty.⁴ Part of the radical potentiality of queer and/or trans PIC abolitionist critical theory lies in the horizontal/participatory design and overlapping nature of much of the work that situates and grounds it, as well as scholarship and political theory that centers trans resistance and resilience in the face of forced disappearance. Conditions faced by incarcerated trans and gender-nonconforming people have historically been overlooked in (anti) prison studies and discourse, as Eric points out. Many studies are non-trans-centric and frequently tautologically link medically/coercively binary assigned sex (“male/female”) to binary gender (“man/woman”), which results in both the invisibilization of intersex and reinforces the hegemony of binary gender. In the *Captive Genders*⁵ anthology edited by Eric Stanley and Nat Smith, however, we find incarcerated and nonincarcerated queer and/or trans voices articulating—albeit through distinct and even dissonant optics—critiques of the PIC harmoniously unified in an abolitionist calling for the end(s) of capture.

It speaks volumes about neoliberal multicultural carceral culture (and nonprofit rhetoric) that the PIC is portrayed and positions its assemblage-like self-/state-constituted being as necessary and, especially, culturally competent. “LGBT” people—especially low income and of color—can now be, or already are, incorporated into the culturally competent and politically relevant PIC—complete with trans-specific and queer-specific cages (initiated in Los Angeles, for example, by two gay police officers honored at Pride).⁶ Queer and/or trans prison abolitionist critical theory reinvigorates queer and/or trans abolitionist imaginaries and collective energies so often at risk of dissolution into exclusively nonprofit brand forms of organizing that are compatible with, rather than dynamically and principally opposed to, prevailing neoliberal carceral multicultural culture.

Finally, in thinking about the ways in which queerness has been outlawed, as Eric points out, I wonder if we might repose the question

around queerness as antinormativity and the PIC. Rather than exclusively asking what queerness might contribute to PIC abolition, which figures queerness as an addendum PIC abolition rather than immanent within it, perhaps we might consider how abolition is already eroticopolitically queer. In the face of policing, closets, and cages—abolition is a queer desire.

NICK MITCHELL: I think the antinormative reflex that has habituated so much queer studies scholarship over the last decade or so has a lot to offer those of us who are thinking about how to both theorize and historicize the modern carceral state in the service of prison abolition. Habituating ourselves in attending to the violent consolidation of regimes of gender and sexual normativity in particular might enable us to better understand how the structures of everyday life that sustain the carceral state get reproduced. Here, I'm thinking, for example, of Roderick A. Ferguson's genealogy (in *Aberrations in Black*) of the postslavery production of the black family in the United States through the punitive regulation and policing of black sexuality. Abolitionist thought and praxis often takes for granted that the abolition of slavery was incomplete, and that that incompleteness is marked by the ways in which the political and economic functions of slavery—along with their terroristic regime of subjection—found a new life in various forms of criminalization. These include the formal and informal institutionalization of white supremacy through the Black Codes and the convict lease system. What Ferguson gets us to understand is, first, that in this postabolition-but-not-quite-postslavery moment, heteronormativity is actively conscripted to do the work of white supremacy, and, second, that the mode of power that disciplines nonheteronormative black American populations gets consolidated, at the turn of the twentieth century, through the social sciences in general and through the disciplinary apparatus of sociology in particular.

I would be in favor of abolitionist theory and praxis attending to this double movement whereby the white supremacist freight of heteronormativity is implemented both at the level of social structure and in the institutions of knowledge. Whether we call the nonheteronormative “queer,” it is through such a queer optic, as Eric puts it, that we can trace the complicity—at times, even the symbiosis—between disciplinary knowledge and the carceral state. At the turn of the twentieth century, W. E. B. Du Bois was already writing, in *The Souls of Black Folk*, of how sociologists “gleefully count [the Negro's] bastards

and his prostitutes” and connecting it to how white supremacy insinuates itself as “purity against crime.”⁷ So we are already, at this point, in the presence of a discourse whose criminalizing gaze is trained upon black sex workers and black children. And it's also through such a queer analytic that we can come to regard the heteronormativity that underwrites the institution of the family as a problem rather than a solution. Criminological literature often celebrates the heteronormative family as a solution to recidivism. Yet for many queer and trans prisoners, “family” does not necessarily hold the promise of refuge and is often a space in which relations of violence are repeated and even intensified.

Regarding the use of the concept of antinormativity, the question for me has to do with whether, and how, antinormativity can found a politics that lives beyond oppositionality. Perhaps it also has to do with the fact that oppositionality, that is, the taking of a stand against the norm, may not exhaust all the political possibilities that become available to us when we are asking about how not only to oppose directly but also to *inhabit* normativity in a way that is corrosive to it. Without fetishizing the political as such, I do think that the experimental, practical, and concrete ethos that is at work in the practice of the aspiration toward prison abolition is worth learning from. We don't know what abolition will look like, but we do want to try working in these directions to establish abolitionist organizational forms, we do want to try and forge these kinds of connections. It's a well-established point, in the work of Critical Resistance, that the principle of collective self-determination in the context of communities that live under the death-making forces that combine conditions of impoverishment with the apparatuses of surveillance and policing is one that's corrosive to the PIC. Whether that principle is, in fact, true is a question that has to be worked out on the ground, a question that is worked out in praxis. Thinking about that, I am always wondering: What is the practical context that would put pressure on the use value of the concept of antinormativity? It's a question that I don't yet know how to answer but one that I think needs continuously to be posed if the concept is to continue to live a useful life. And I continue to take seriously Cathy Cohen's challenge to queer politics back in 1997 as a reminder that the “anti” in antinormativity does not guarantee “an encompassing challenge to systems of domination and oppression.”⁸

LIAT BEN-MOSHE: Current scholarship on imprisonment (take, for example, *The New Jim Crow*) doesn't take up antinormatively as its

main scope, as Eric mentions. What drew me to focus on resistance to incarceration as an activist/scholar is what I thought was the core question of sociology—where are the people, what are they doing, how are their lives connected to structures of oppressions and privilege? As disability studies was my guiding framework of analysis, it became quite clear that those considered abnormal, deficient, deviant, crazy, malformed, and maladjusted are the main populations interpolated and disappeared by a variety of spaces and processes of containment and confinement. In that sense, I think that we have to bear in mind the composition of who is incarcerated, and included in it are also those not yet segregated but considered the most vulnerable to the threat of confinement: what I have been calling, following Harriet McBryde Johnson¹⁰ and Robert McRuer,¹¹ “the incarceration yet to come.” As Che mentions (later on in our conversation), many of those currently incarcerated in prisons are aging there, because of mandatory minimums and three-strikes laws, among other factors that have made life without parole much more prevalent over the last decade. In addition, a disproportionate number of those imprisoned report having mental health issues or crises, and, as we can imagine, the prison environment itself is quite disabling (in terms of environmental hazards, aging in such toxic spaces, sharing of needles and the spread of hepatitis and HIV, and the compromised and diminished capacities that happen from living in a prison for prolonged periods of time). In short, carceral forces both target particular populations as disposable and amenable to incarceration (and as profitable through the PIC and nursing home industry), and they also construct and reproduce members of these populations as nonnormative subjects while doing so.

I think that this antinormative stance, enabled by a queer and disability studies/disability justice position, can be, and should be, the starting point of any abolitionary discussion and action, and it has been the stance adopted by some of the activists behind successful closure campaigns of carceral spaces. Let me explain what I mean here.

A question raised often in the context of abolition of carceral spaces, such as prisons, psychiatric hospitals, and residential institutions for those with intellectual and other disabilities, is what to do with those deemed as having the most challenging behaviors. In prison abolition circuits, this discussion is known as “what to do with the dangerous few,” and in the developmental and psychiatric disabilities realm it is the question of “what to do with the most significantly/profoundly disabled.”

Robert McRuer suggests that crip theory, which combines disability and queer studies, will “draw attention to critically queer, severely disabled possibilities in order to bring to the fore the crip actors who . . . will exacerbate in more productive ways, the crisis of authority that currently besets heterosexual/ able-bodied norms.”¹² By “severely disabled,” McRuer is not merely referring to the level of impairment a person is presumed to have but also to a queer position. By reclaiming severe as “fierce” or defiant, McRuer reverses able-bodied standards that view severe disabilities as the mark of those who will never be integrated (the adage of “everyone should be included, except for . . .”). From their marginal state, “severe disabilities” and queer subjects are positioned to reenter the margins and point to the inadequacies of straight and nondisabled assumptions.

Translated to praxis, some prison abolitionists and activists in the fields of developmental disabilities and antipsychiatry indeed begin their critique and suggestions for alternative social arrangements from the positionality of “severe” cases. A lesson learned from successful closures of residential facilities for those with intellectual and psychiatric disabilities was that people who are labeled as those with the most significant needs should move to community placements early on in the process of closure and throughout the process. If left to the end, such people would most likely be placed in segregated settings. For example, in the early 1970s Jerome Miller, commissioner of the Massachusetts Department of Youth Services at the time, closed the state’s major juvenile offender facilities and placed youths in community programs or homes instead. Those deemed as the most violent and dangerous youth were the first to be decarcerated.¹³ Another example is the work of prominent prison abolitionist Fay Honey Knopp. After working to draft the abolitionist manual *Instead of Prisons*, Knopp sought to work with what the public perceives as the “toughest” cases, and she devoted the rest of her life to working with sex offenders and sexual abusers.¹⁴ The thought behind this commitment was that if she could demonstrate the ineffectiveness of prisons for this segment of the imprisoned population, then there will be no doubt that prisons are also an ineffective response to lesser criminalizable acts like theft or drug use. I think these examples illustrate the ways we should center nonnormativity in general in our discussions, as the question suggests, and begin our conversations from the position of those who are perceived as the most “severe” and defiant in imagining more just futures.

QUESTION: Citing gays in the military, gay marriage, and gender responsive prisons, many have argued that our contemporary moment is one of neoliberal “inclusion.” How are these politics and others working to expand rather than reduce the scope and practices of incarceration? For example, both prison reform and mainstream LGBT politics make constant demands in the name of the U.S. Constitution, which in turn legitimates it. Beyond a simple legal strategy, there seems to be a fetishistic attachment to the law. What drives this physical and affective attachment, and how might it obscure the ways we might imagine new forms of governance beyond and against the state?

ERIC: I find it terrifying how thoroughly legalized our social movements and, in turn, our political imaginations have become. “The Constitution” or an action’s constitutionality is now the baseline for everything from work against solitary confinement and capital punishment to arguments for gay marriage. While I understand that it is the only material way to make a claim before the court for many of these issues, the reliance on this strategy seems to also be dictating much discussion beyond its more strategic deployment. My primary concern here is not the actual argument but for the affective afterlives that such practices produce and the possibilities they foreclose.

For us to believe in, or to make arguments on the basis of, an action’s constitutionality beyond the court legitimates settler colonialism and chattel slavery. Abolition reminds us that the law is not the arbitrator of justice and is perhaps its primary inhibitor; this is a point that Jacques Derrida also makes in “Force of Law.”¹⁵ I wonder then, what are the deep psychological attachments people have to the law? It seems in part a symptom of the cultures of scarcity that have been politically produced. Or maybe people cling to the law, even with its violence, because they are afraid that things could get even worse?

NICK: First of all, I want to register my appreciation for the form of the question, precisely because I think it allows us to get away from the question of whether this or that legal reform is good or bad and to move toward asking about the law itself as an object not only of critique but of love, attachment, seduction—how else could it so thoroughly capture the dominant imaginary? Gina Dent always opens up her “Women and the Law” course by talking about the force that is our dominant culture’s “love of the law,” a love that is so prevalent that it is made to feel like

legal reform is the natural, if not the only, way of pursuing justice on a large scale. So we think about our love of the law not only to form a critical relation to our own habits of thinking and feeling about the law but also to imagine the law and the state as entities—as *subjects*, really—that both solicit such feelings and attachments, and also institutionalize and naturalize the forms that they take. So before dismissing that form of attachment, I think it may be worth attending to it in order to learn something about it. If, as Lauren Berlant suggests, affects are the way that the present presents itself, turning to the form of dominant attachments to the law might tell us something about the *historicity* and the *contingency* of the present.¹⁶

The question becomes, then, why have these calls for neoliberal inclusion gained the kind of momentum that they have in the present moment? The mainstream LGBT movement has been brilliant in forging strategic partnerships with the military and PICs that confer legitimacy onto and often enhance institutions that historically and contemporarily continue to perpetuate imperialist, antiequeer, and racist violence. As Priya Kandaswamy puts it in a brilliant essay, “The language of marriage has effectively been used to undermine welfare rights and to depoliticize economic inequality altogether.”¹⁷ By enhancing prison sentences through “hate crimes” legislation, the state is able simultaneously to position itself as *against* hate and *for* love, even as it supports neoliberal policies that corrode the very material conditions that make loving relationships sustainable. We need to consider the most recent explosion both of gay marriage and of *antigay* marriage legislation against the background of the subprime mortgage and state budgetary crises. Because it’s here, I think, that we have an example of the state actively soliciting confidence not only in its capacity to recognize love but also in *its status as an object of love* in a moment when it, and its citizens, appears most bankrupt.

The distinction Eric makes between law and justice is such a crucial one, precisely because it is the distinction that the legalistic imagination wants to obliterate—not only by training us to see law and justice as synonymous and thereby positing legal reform as the ultimate horizon of sociopolitical transformation but also by violently circumscribing the scope, depth, and shape of transformation to which we might aspire.

LIAT: I want to continue on this thread that Nick and Eric provided, about the seduction of the legal system and its incompatibility with

notions of justice and extend it to the ways in which those imprisoned have attachments to the law even when it has wronged them. The fact that those imprisoned use the law to find ways to fight their own oppression and subjugation by the same system should, of course, not be surprising, and I am not trying to critique individual acts but rather to discuss the lure of the legal system in fixing what is a *social* injustice. Mumia Abu-Jamal, writing about jailhouse lawyers,¹⁸ observes that it is the people who try to fight the system using its own tools (i.e., the legal route) that end up the most wounded at the end of the process. In his own words, they literally go crazy, as something snaps when they realize that the system does not follow its own rules for everyone. Many of them believe that once they find the right case law or loophole and can cite it to a judge, they will be vindicated. But that rarely happens, and when it does not, the same jailhouse lawyers lose all hope in the system. So ironically, it is the inmates who are rebellious and have no faith in the system from the get-go who have a better chance of accepting their incarceration, not as just but as a fact of life in an inherently unjust social structure.

And of course, this attachment to the law needs to be analyzed precisely, because even seemingly progressive or liberatory laws and regulations are based on assumptions that cut against any efforts for justice and equality. To give some literal examples, like the clause in the Thirteenth Amendment, court cases dealing with the institutional release of people with disabilities, prison release, and early release construct clear boundaries of who is worthy or unworthy of rights and freedom. The contention by mental health groups like NAMI (National Alliance of Mental Illness) that jails are becoming the biggest mental health facilities in the United States is cited often in antiprison circles but does very little in the way of abolition. What such calls do is to emphasize that so-called “mentally ill” people should not be in jail because they need treatment, not incarceration. However, that further legitimates the boundaries of freedom. If “they” don’t “deserve” to be incarcerated, that means that others, in fact, should be incarcerated.

This is, of course, the neoliberal/multicultural inclusion impetus that Eric discusses and the question poses. Wendy Brown further insists that rights must not be confused with equality and that they “are more likely to become sites of the production of identity as injury than vehicles of emancipation.”¹⁹ For instance, Brown suggests that if a woman’s rights are violated, it is then up to the state to uphold those rights as they have been written into law. Protection is then institutionalized, creating a female

dependence on state power. There is no discussion of transcending the existing patterns of male dominance within the masculinist state because women have been granted equality under the law. The liberal philosophy of writing rights into law thus entrenches and subjugates women into the existing systems of traditional subordination, allowing no real way out of the cycle of dependency, protection, and regulation. The state is being sought as a source of remedies to catastrophes of its own creation. In the same vein, one can also discuss the legislation, and later on implementation and enforcement, of hate crime laws to be used as punishment against those who perpetrate homophobic-based violence against LGBTQA folks. What such legislation does is to increase the net of the carceral state, while we know it disproportionately affects LGBTQA people much more. Additionally, such forms of activism (which are not based on intersectional holistic abolitionist approaches to harm reduction) also obscure the ways in which the state itself is an agent of violence against LGBTQ people via its use of incarceration, for instance in the CeCe McDonald case.²⁰ The organization Justice Now, for example, looks at incarceration as a form of violence against women and thus changes the terms of the debate in relation to suggested responses to domestic violence and other forms of violence targeting women. The same analysis can be used in the case of LGBTQ hate crime legislation. The queer antinormative stance suggested earlier could be used as a corrective to discourses of rights and inclusion, as well as to open up ways of discussing their allure and seduction, as is further elaborated in the writing of Dean Spade, for example.²¹

QUESTION: Without assuming a codified distinction between theory and action, what is the place of “theory” or the academy in a movement against an apparatus that determines life and death in the present? Or, given the current landscape of social and physical death that is the PIC, how might theory be pressed to free people both intellectually and materially?

LIAT: I want to reply by connecting this important question to the first question about the connection between queerness, as antinormativity, and the politics of penal/prison/carceral abolition. For me, prison abolition and anticarceral and antisegregationist mindsets are both theoretical and practical frameworks. I perceive them as a utopian stance, as suggested by Munoz²² and others. It helps us imagine a different world and opens up possibilities for conversations, actions, and potentialities

that could move us into the future we want to have. In a recent conversation with Noam Chomsky, Angela Y. Davis reminded us that the future is always connected to the present and past, and that twenty years ago the present we have now (in terms of violence, rate of incarceration, oppression, racism, etc.) was unimaginable as the future. In the same vein (but from the opposite stance), she pushed us to imagine the most radical future possible, further than our lifetime and further than our present. It's this radical imagining that I see as the role of "theory," the constant link between now and then. So in essence, I think of theorizing abolition as engaging in "the politics of the future."

To complicate things further, though, I also think that the latest conversations in queer theory about the figure of the child and notions of the future (see Edelman,²³ Munoz, etc.) could be both aided and complicated by a prison abolitionist stance. What does it mean to think about the future if (for some) there is no future? Ruthie Gilmore defines racism as "the state-sanctioned or extralegal production and exploitation of group differentiated vulnerability to premature death."²⁴ This definition connects racism to discussions of no future or, in Lauren Berlant's parlance, slow death, as related to the politics of incarceration. Slow death, according to Berlant, refers to "the physical wearing out of a population and the deterioration of people in that population that is very nearly a defining condition of their experience and historical existence."²⁵ Thus, Berlant moves us from a discussion of control to a discussion of management, or from thinking about epidemics to rethinking the endemic, using Foucault's classification. As Berlant reminds us, "In this shift Foucault dissolves the attention to scenes of control over individual life and death under sovereign regimes and refocuses on the dispersed *management of the biological threat* posed by certain populations to the reproduction of the normatively framed general good life of a society. Slow death occupies the temporalities of the endemic."²⁶

I think that this "management of threat" is where we are at right now in terms of the politics of incarceration and decarceration, especially if we take an intersectional analysis that looks at processes of state preparation of (certain) populations for both premature death and slow death, via mechanisms of segregation and disappearance, taking into account the matrices of race/gender/ability/class. In their call for prison abolitionists to think about carceral (as opposed to prison or penal) abolition, Piche and Larsen²⁷ write about the increased use of preventative detention in Canada and state that "governing through security is about shaping the

present in response to the imagined harms of the future."²⁸ So it is again the future that haunts both abolition and incarceration. More specifically, the politics of risk management seem to be at the core of contemporary practices of imprisonment and segregation, in relation to preemptive detention (based on racial and gender profiling) and of being labeled "at risk" of doing something or having something done to oneself (which often leads to psychiatric hospitalization and treatment, being a "potential threat to oneself or others"). In essence, it is not about "crimes" or "illness" but about the possibility of being a future threat (which is discussed further by Deleuze²⁹ and Puar³⁰).

ERIC: Picking up on what Liat just began with, specifically the figure of the child, we also see the reliance on this figure for both proprison expansion (saving the children from dangerous predators) and in antiprison work (critiquing the school to prison pipeline). This is a point that activist/scholar Erica Meiners is really helping us pay attention to. This kind of analysis, which pushes our organizing beyond even the limits of what we might know, is, I think, the promise of trans/queer theory. At its best, it can help us anticipate responses and prefigure a politics that also makes demands that go beyond response or reaction.

Thinking about our current moment, it seems the biopolitical shift toward the management and production of populations that Foucault began to sketch at the end of *History of Sexuality Vol. 1* is still useful. However, I wonder if perhaps we are in a different or perhaps another epoch, along side the biopolitical? I suggest this because I'm not sure the state, at least the United States, is working primarily through ideology of *security*. Certainly, the rampant Islamophobia post 9/11 (and before) in the United States would be good evidence of this; however, I am unsure if it is as orderly as Foucault might have it. There are definitely moments of the "internal enemy" discourse that have material effects, but I think the reality that ideology has given way to a new form of power is an even more horrifying reality. This is to suggest that the formations of domination (not that he would have used that word) that Foucault points us toward are far more complex than he was able to anticipate, and perhaps even contradictory. Returning to the question of the academy, I think it's important to point toward its limits in relation to abolitionist politics. The academy is, after all, a highly classed, raced, ableist, and gender normative space (even in its gender nonnormativity). There is a conservatizing logic I always see at work, where once people

are given tenure-track jobs they often become part of the same systems that their “research” is built on critiquing. For me, this is different from saying “activists” are outside the academy or an argument like that. This attachment to normative power is always at work in the nonprofit activist world as well. The question for me, then, is not who the real activists are but how might we use our analytic vocabularies, and even our direct action skills, to press upon the academy, as we might any hierarchical institution, so that another university might be? This might even mean leaving this university in the ruins it is in and building something else.³¹

Of course we know that the academy is not the only, nor even the primary, place where what gets called “theory” lives. For example, we know that prisoners themselves produce the most powerful theorizing about the PIC. I think the challenge for us all is how we might, under the duress of capitalism, be in these institutions and not of them.

CHE: In considering questions about the temporal and the political—specifically forms of futurity that we are all going to be able to inhabit—recent empirical prison studies, most saliently perhaps one called *The Graying of Prisons*, show that the fastest-growing segment of the prison population are people over fifty years of age (deemed elderly in the United States).³² This dismal reality is yet more proof of the astonishing and imperiling reach of what Foucault called the carceral continuum that stretches not only throughout space in its construction of sites of confinement, detention, and incarceration but also throughout time. When people die in prison, their bodies are often placed in unmarked graves on the prison grounds if they don’t have legally related family. In *Precarious Life*, philosopher Judith Butler examines what makes certain lives grievable (i.e., human) and others expendable/disposable in relation to Israeli militarized state warfare against Palestinian people struggling for self-determination (i.e., existence). Carceral violence is also an instrument of Israeli apartheid and Palestinian political repression as well as mass detention of African migrants, labeled “infiltrators” under antiblack racist and xenophobic Israeli laws.³³

Turning this optic inward and examining the U.S. context, there is a domestic frame of war and an ideological front to the carceral that we need to dismantle along with the material dimensions of the PIC, and this is where queer and/or trans critical theory of abolition is instrumental. The figure of the criminal so central to neoliberal carceral culture is one that the public is urged to turn away from in disgust, fear, and hatred—fear, disgust, and loathing of blackness, of the poor, of

gender-nonconformity, (dis)ability, and queerness. Yet queer and/or trans abolitionist critical theory provides us with a counterdiscourse, in the case of texts like *Queer (In)Justice* by Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, and Dean Spade’s *Normal Life*—which might be thought of as both offering a queer and/or trans abolitionist discursive frame and working within an emergent queer and/or trans abolitionist discursive field—where the ableist, antiques, and antitrans dimensions of the figure(s) of the criminal are demystified. Most importantly perhaps, along with the demystification of the figure(s) of the criminal, is the collective queer and/trans organizing for the support of human beings who are *criminalized*, as seen in the work of organizations like the Hearts on a Wire Collective in Philadelphia, Pennsylvania; the Sylvia Rivera Law Project in New York City; the Transgender, Gender Variant and Intersex Justice Project in San Francisco; and the Bent Bars Collective in London. Such queer and/or trans abolitionist political formations work for social transformation, support incarcerated queer and/or trans people, and call for forms of accountability that do not rely on the forms of violence, abjection, dehumanization, and inhumanity so fetishized and lionized within neoliberal carceral culture and instrumentalized in prisons throughout the allegedly “post-racial”—though actually antiblack—neoliberal capitalist carceral United States.

QUESTION: How are certain identities pitted against each other, by activists, scholars, and the state, in the struggle for liberation from the PIC? For instance, the practice of compassionate release, exemption from the death penalty, and even the language of “innocent” versus “guilty” all, in different ways, produce deserving and undeserving prisoners.

ERIC: The pitting of differently oppressed groups against each other, or what we sometimes call lateral violence, is perhaps the primary methodology the state uses in maintaining its power. We know that the raw force of the state, while brutal and relentless, cannot alone contain the desires and needs of all the people who suffer under its domain. We are seeing this in the current immigration debates in the United States as many mainstream “immigrants’ rights” groups are arguing that *their* immigrants are law-abiding, tax-paying, Harvard-attending, otherwise model citizens. While one might understand the need for such rhetoric to be used strategically in specific cases, its proliferation has produced the categories of “good” versus “bad” immigrants; this is something that Yasmin Nair has written about at length.³⁴

This bifurcation is also evident in the claims that the PIC is horrid only because it sometimes, or oftentimes, captures “innocent” people. While this is true, this argument renaturalizes the necessity and justifies the use of prison for those who are “truly guilty.” Prison abolitionist groups like Critical Resistance remind us that “abolition is for the guilty,” or that the real fight for abolition must be done not based on the position of the people in its grips but on the grounds that the prison is itself a space of violence that reproduces destruction.

Further, what has recently become known as trans theory is useful for thinking about this innocent/guilty binary. Trans theory continues to press on us to see the ways the gender binary and the powers that binary upholds are central to the ordering of modernity. In other words, this kind of trans theory is pushing itself beyond its proper objects of trans and gender nonconforming people. To this end, using trans theory for thinking about the question of innocence, we can see how building a politics based on innocence has effects beyond itself. That is to say that we must work these binaries not to the point that we finally have some clarity but as an endless process that knows that, even at the moment of deconstruction, new formations appear.

LIAT: I can think of various examples in which these processes are at play (of pitting identities or struggles against each other and revealing both the potential and danger of some forms of coalitional politics). Some of the most obvious have to do with the tension between abolition and reform, of course, in which calls for reform in some areas lead to the net expansion of the carceral regime as a whole. In my work, I have seen this happen with the ways that carceral spaces tend to linger and reproduce themselves. For instance, from the early 1960s (in the field of mental health) and 1970s (in the field of intellectual and developmental disabilities) many pushed for the closure of psychiatric hospitals and large state institutions that warehoused people with a variety of impairments. In most states in the United States, this push led both to the decarceration of these populations and to the closure of many of these edifices. However, it may not be very surprising to learn that many of these vacated institutions later reopened as prisons, as Foucault stressed the way the continuity of confinement operates across settings.

Another example is the use, by the state but also by progressive activists and abolitionists, of exceptions in the struggle for liberation. For instance, in the case of abolition of the death penalty, many fought

for the creation, and later on enforcement, of exception to the death penalty in the hopes to chip away at the carceral beast (what is referred to as “abolition by attrition”). The problem with these exceptions is that they tend to reify specific populations as vulnerable and “special” and therefore in need for such exceptions. This happens with the strategy of compassionate release as well, which aims at decarceration of those with terminal illnesses and certain medical conditions. In both cases, in order to successfully decarcerate or ward off execution it has to be legally demonstrated that the person is defined as “mentally retarded” (in the case of the death penalty), that they have a debilitating condition that will make them a burden on the state, or that they are dying. In making the case, though, one has to rely on ableist assumptions and rhetoric in order to achieve such exceptions for specific individuals. Once decapacitation has been proven, that only serves to prove symbolically and legally that people with disabilities are indeed a burden on the state and/or that they are not responsible for their actions, which creates a slippery slope in terms of identity, activism, legality, and ethics in relation to other decisions for people with (specific) disabilities (e.g., the right to bear and raise children, the right to vote, to have a bank account, etc. are all contentious issues for people with intellectual disabilities). Simultaneously, what such activism does it to demonstrate that *some* people don’t belong in prison or should not be on death row. But of course this call ends up bypassing the question: Who does belong in prison? Whose lives are worth fighting for?

QUESTION: How might AIDS and abolitionist critical theory cooperatively and productively challenge HIV criminalization and the forced disappearance of politics and peoples that the PIC aims to maintain? And how might disability justice help to bring these communities and analytics together?

ERIC: Before I can attempt to answer this, I think it’s important to note the disappearance of both AIDS activism and what we might call “HIV/AIDS theory.” This powerfully signals the extent to which the ablist of the assimilationist gay agenda in the United States is working to expel, quite literally, bodies that do not fit into the narrative of American progress. People often argue that even if the gay marriage movement, for example, is not helping most of us, it is not hurting either. But I am reminded of how the annual benefit for the AIDS Emergency Fund was recently split with half the proceeds now going toward Marriage Equality California.

That said, there is much amazing organizing going on that already understands work on HIV/AIDS as the coming together of disability justice and queer theory/politics. I am thinking about AIDS Action Now! in Toronto and the current iterations of ACT UP, which unlike those before are placing issues of HIV criminalization, HIV inmate segregation, and “condoms as evidence” all at the center of their organizing work. I think disability justice, prison abolition, and trans/queer politics are useful in thinking about how we might organize, in our contemporary moment, against this HIV criminalization in ways that do not work to simply argue that “All People With AIDS are Innocent” as ACT UP famously did in the 1990s. While the sentiment of the poster and slogan are both necessary and true, our moment calls on us to argue not only that people with AIDS are innocent but that innocence/guilt or freedom/unfreedom as binary oppositions need to be undone. This is precisely where an abolitionist analysis can push us beyond claims made in the name of normativity.

CHE: Building on Eric’s observation about the recent resurgence in AIDS activism, current AIDS activist work is clearly prioritizing issues faced by people of color, sex workers, queer and/or trans people, namely, HIV and sex work criminalization. Linking the War on Drugs to the escalation of the HIV epidemic, this speaks the ways in which PIC abolition is central to HIV/AIDS prevention and treatment. Collectives and organizations—from ACT UP chapters in San Francisco, New York City, and Philadelphia, to Queerocracy, to the SERO Project—are drawing much-needed attention to HIV criminalization and the War on Drugs as penal enterprises that disproportionately target homeless, sex workers, queer/trans, and/or people of color. This summer, I was a part of the inspirational and moving “We Can End AIDS” march at the International AIDS conference in Washington, D.C. The march was led and comprised primarily of poor people of color, sex workers, queer, and/or trans people. Yet, despite the much-celebrated “lifting of the HIV travel ban,” sex workers and drug users from abroad were denied entry into the United States under “moral turpitude” regulations and so a parallel conference took place in India. It was a powerful merge into an AIDS activist collective social body (representing both those who were present and those who have passed away), which, like the Occupy movement, formed a multitude with an assemblage of political aims—decriminalizing HIV, sex work, lifting the needle exchange ban, etc.—united in the intention that radical change is in motion.

Yet, I also wonder: how might decriminalization campaigns be in sync with abolitionist end(s) to capture? How might AIDS activism for HIV decriminalization, sex work decriminalization, and an end to the War on Drugs incorporate an abolitionist politic(s) that moves beyond moral and political economizing in relation to the PIC? How must the push for decriminalization move away from the rhetoric of innocence (we are not criminals, don’t treat us like criminals) that shifts the burden of carceral containment instead of continuing to dismantle it? One of the strengths and singularities of abolitionist political theory writ large is that it argues that every measure of carceral confinement is unacceptable in its inhumanity and dehumanization. It is not only “mass” incarceration as excess that is unjust but rather *any and all forms* of confinement constitute modes of destructive relationality that must be abolished in its entirety. Campaigns to decriminalize HIV and sex work are crucial. It’s powerful to witness the resurgence of activism about prisons and criminalization as an AIDS issue, especially in a political environment focused so much on neoliberal ways of talking about AIDS as an individual problem or stigmatizing character flaw (bad/shameful behaviors, etc) rather than a political issue. Yet, how can we organize and theorize in such a way that we win the immediate campaigns for decriminalization without sacrificing abolitionist political horizons? Abolition forces us to continually question and rework our political paradigms and thought styles, with the recognition that prisons and cages work in the service of heteropatriarchy, white supremacy, antiblackness, and other synchronized oppressions.

AIDS theory and cultural critique have grappled with critical questions of survival, resiliency, outrage, and activism under the duress and anguish of loss and mourning. These questions have been engaged across academic disciplines, from sociology and anthropology of AIDS to cinema studies and art history. Marlon Riggs and Essex Hemphill both engaged those topics while also addressing questions about blackness and the politics of authenticity: the meanings and violence of racial representation. Riggs and Hemphill spanned artistic disciplines and infused artistic forms. Riggs and Hemphill used film (*Black is, Black Ain’t* and *Brother to Brother*) as well as liberatory poetics (*Conditions*) as optics through which they posed a fundamental existential and theoretical challenge to white supremacist sociosymbolic order. Black queer love was indeed a “revolutionary act,” especially within the context of the Reagan antiblack, anti-queer epoch of AIDS, the political contours of which Cathy Cohen has dynamically mapped out in *Boundaries of Blackness: AIDS and*

the Breakdown of Black Politics. Black self love in and as black queer love remains a “revolutionary act” in the face of white settler colonial bio and necropolitics of heteropatriarchy, gender binary normalization, and medically assigned sex naturalization, which aim to police the boundaries of blackness through the regulation of sexuality, (inter)sex, and gender(s). In terms of a wider scope of decoloniality and AIDS activism, anthropologist Adriana Garriga-Lopez has critically analyzed the sociology and anthropology of AIDS in relation to genealogies of Puerto Rican AIDS activism in her *New Proposals* journal article “Boricuas ACTing UP in New York and San Juan: Diasporic Puerto Rican HIV/AIDS Activism and Anthropology.”³⁵ Extending the legacy of ANC member and AIDS activist Simon Nkoli, South African AIDS and sex work activist groups like SWEAT and Treatment Action Campaign have been doing mass mobilization against sex worker criminalization.³⁶ There is an enduring need for more theoretical work at the intersection of AIDS (activist) theory and prison abolitionist critique, considering the ways in which carceral logic and rhetoric—risk, phobia, threat—and ableist logic and rhetoric (which has roots in a eugenic hierarchy of “the human”) continues to frame so much of the discourse of HIV/AIDS, in both public health/epidemiology and the doctors office (“high risk behavior” etc.).

NICK: The transnational struggles against HIV/AIDS, from the 1980s to the contemporary moment, provide one powerful way of grasping the historicity of the queer collective thought that provided the conditions of possibility for a queer studies. The point of tracing that legacy should not be to mine activist roots for the academic legitimacy they might be converted into but rather to think about the multifarious forms of struggle that make collective and collectivizing knowledge possible, by offering them a sense of urgency that cannot be found when collectivities are not on the move. This is by no means the only intellectual, organizational, or political legacy that makes our field possible, of course, but it remains a crucial site to be able to think and move with, a site that can place pressure onto the theoretical and political claims we might make and a site that can move us toward geopolitical connections, analyses, and solidarities that we might not see as necessary to our political organizing.

ACT UP, from the start, has taught us to recognize epidemics as social phenomena and to recognize the state’s response to HIV/AIDS as one of generating surplus life and populations, populations that can be dispensed with, populations whose death can be seen as the effect

of their mismanagement of their own lives (whether through drug use or sexuality) and not of state machinations. Unsurprisingly, such ideologies go hand in hand with the procedures of criminalization, and they have the effect of renovating older and more obsolete forms of racism, racialization, and antiequeness. At the same time, I think it’s important for activists who are trying to challenge the PIC to turn to anti-HIV struggles in places like South Africa, which have challenged the state not only to imagine but also to *plan* for public health outcomes that might under different conditions have appeared impossible. It is a serious and complicated victory that South Africa’s National Strategic Plan is working toward the outcome of no new HIV infections by 2032, while at the same time fighting AIDS-related stigma and discrimination, and supporting the rights of people with AIDS.³⁷ How might we plan concretely and think transnationally, for instance, to completely end prison expansion in the same period?

QUESTION: How does paying attention to the expansion of neoliberal practices such as the “freeing of markets” and the “confining of borders and bodies” in this historical moment aid us in broadening what we mean by confinement to include other sites of incarceration? And how might centering abolition and antiprison perspectives change our analysis of everyday life for those free and unfree, inside and outside carceral spaces?

CHE GOSSETT: Neoliberal multicultural carceral culture hails us and beckons us to abandon hope and to become desensitized to the violence that is happening to people in prison and to the prison as violence. As anyone with a loved one who is/has been locked up affectively knows, you suffer agonizing loss. We are instructed not to care about the sexual violence that happens to hundreds of thousands of incarcerated people each year, *especially to queer and/or trans and gender-nonconforming people*—as has been documented in the studies informing the Prison Rape Elimination Act—even though this sexual violence for many incarcerated survivors is a routinized and legalized constant, as Angela Davis points out in *Are Prisons Obsolete?* Davis talks about incarcerated people being abused and humiliated in ritual acts of sexual violence like the “strip search,” which is common practice in prisons, often both before and after one is visited by family and friends. Not only is the incarcerated subject made to suffer but in the penological/criminological rhetoric “associates” are made to feel vicarious trauma/shame as well, as anyone who’s ever visited someone in jail or prison has affectively experienced.

As a visitor, you are made to feel only a degree of what the prison is functionally designed to do—violate and destroy one's sense of meaning, self, and bodily integrity—although this happens every time you visit, so its accumulated intensity over time. There's the waiting—you wait because time is not yours to control, you are on prison time.³⁸ You remove your belt, shoes, any metal objects, go through the metal detectors, and the metallic electronic doors close behind you, sealing you into the world of the prison, a world set apart from the nominally free world, although for so many of us—as black, poor, queer, and/or trans people—those boundaries are porous and unstable. You are often denied touch; you must communicate through bulletproof glass, with a phone, across these barriers and controls that constitute the deadening reality of carceral space and time.

Futurity is haunted by the violence of carceral time and space to come. Carceral space to come is both virtual as in biometric criminological surveillance and real/material as in cages and white bare concrete walls and panopticons and "Secure Housing Units." It is against this antifuture that guarantees both the continuance of captured life and the "premature death" that Orlando Patterson wrote of in *Slavery and Social Death* and generates alternate forms of sociality, freedom dreams, and collective liberation to which abolitionist critical theory and action aspire. Here, the historical and ideological differences between liberal constitutional promises of "emancipation" and black abolitionist imaginings of freedom have continued relevance and resonance. Queer and/or trans abolitionist critical theories deconstruct "freedom"—as the violence of neoliberal modes of governmentality and quasi-democratic representative state power (concretized in what philosopher Antonio Negri theorizes as "constituted power," which delimits and contains revolutionary change).³⁹ Queer and/or trans abolitionist critical theory works against the grain of the "repressive tolerance" of the PIC, through which, as Marcuse cautioned: "Tolerance is extended to policies, conditions, and modes of behavior which should not be tolerated because they are impeding, if not destroying, the chances of creating an existence without fear and misery."⁴⁰

ERIC: I also see how this expanded understanding of the carceral is allowing for important connections to be made in solidarity work against pinkwashing. Pinkwashing, in this context, is primarily a media campaign produced by the Israeli government through which they promote Zionism by arguing that Israel is the only "gay friendly"

country in the region. A transnational network of queer Palestinians and non-Palestinians have built an analysis that understands the practices of apartheid used by the Israeli government to be a formulation of capture, not unlike that traditionally used in prisons, which not only responds to the practices of pinkwashing but also deepens our analysis of settler colonialism in Palestine and elsewhere. To this end, antipinkwashing activists are critiquing not only the PIC but also the forms of isolation, segregation, and destruction mandated by Zionism crystallizing in the continued practices of Israeli occupation of '48 Palestine.⁴¹

LIAT: It seems to me that queer and disability theory and justice aids us in understanding non- and antinormativity in relation to the capture, containment, and incarceration of a variety of nonconforming body/minds. This focus should lead us to an expansion of what gets constituted as the carceral to include analysis/activism around detention centers, psychiatric wards, group homes, nursing homes, and residential placements (for people with disabilities, populations that are perceived being "at risk," aboriginals/native peoples, especially in Canada, etc.). Neoliberalism, ubercapitalism, racism, and every other oppressive and alluring force certainly doesn't care where people disappear into and neither should we, in our analysis of and struggles against incarceration. This point is demonstrated by the "sequence occupance" described earlier or the continuity of confinement, by which many psychiatric hospitals, TB hospitals, and asylums closed down (as a result of a variety of forces including budgetary cuts but also changes in discourse and the direct advocacy of those most affected by these spaces), but a few years later, prisons opened on the same ground and often in the same building as these so called "historical" carceral spaces. Another intersection is the increasing prevalence of the use of psychopharmaceuticals in all these residential placements. And their continuations beyond the walls of particular institutions into compliance with drug treatment orders, as discussed by Erick Fabris⁴² as "chemical incarceration," which Fabris does not use metaphorically but quite literally to explain the restraint of people and the making of docility through means that go into one's body and psyche without the need for physical cages.

I want to stress here, though, that I don't think that prisons are "just like" psychiatric hospitals, for example, or vice versa. It is certainly the case that many self-advocates (a descriptor for people with labels of intellectual disabilities who are involved in organizing) describe their

time in residential facilities as “being imprisoned,” but it is also the case that they are often seen as “innocent” or “eternally child-like.” Perhaps they are the eternal children but not the ones thought of in discussions of futurity, as many of them (especially those who lived in residential facilities up until the 1970s) were castrated and/or forced to take birth control or abort children once pregnant, so their own reproductive power had been denied to them (and, of course, what is a prison sentence without visitation rights if not the complete denial of reproductive rights?). So in essence, we do not have the same image or reasoning for incarcerating people with intellectual disabilities as we do with people with some other Othering conditions, such as men of color, sex workers, or people who are perceived to be mad or crazy (as in almost any case of stop and frisk or “driving while black,” or even the recent mass shootings in Sandy Hook Elementary in which the shooter was immediately proclaimed to be “mentally ill” and later as “aggressive autistic”). So what is important to keep in mind is not that all these cases and forms of containment and carceration are the same but that they operate on the logic of disappearance, which is related to the logic of neoliberalism more broadly. It is perhaps the core of the discourse of “safety,” “danger,” and precariousness that is demarcated on the bodies (and minds) of some but not others.

NICK: So much of what we are talking about is related to the ways in which prison continues to operate at and as a border, to cite the well-known dialogue between Angela Y. Davis and Gina Dent.⁴³ Today, with the Obama administration’s massive efforts to increase the deportations of brown people—now up to approximately 400,000 per year—the border function of carcerality and the carceral function of the border is even more pronounced. The alibi for these enhanced efforts is, of course, in President Obama’s words, the claim that his administration is not targeting undocumented peoples in general but undocumented people who commit violent crimes in particular—he promises that deportation efforts will center on undocumented people who are “criminals, gang bangers, people who are hurting the community” rather than “students” and “folks who are here just because they’re trying to feed their families.”⁴⁴ So here again, we see the line being drawn between “good” and “bad,” “innocent” and “criminal” undocumented folks, even as the statistics show that far fewer a percentage of the people being deported have any sort of criminal record.

QUESTION: If liberation is the goal of trans/queer prison abolition, what work is making this materialize now? Or, where might we look to see the edges of capture, if not yet their ends?

ERIC: As desperate as it often feels, and perhaps is, in our struggle against the PIC, I also see the ways an abolitionist analysis continues to grow in new and unexpected ways. This is something I always try to emphasize when teaching, the fact that organizing against the PIC is as old as the PIC itself and that we are part of a powerful genealogy that has at times succeeded in our battles against the enormity of history. I was recently watching footage of Angela Davis being interviewed from jail, and even then, in 1972, she was calling for prison abolition. And while prison abolition is still to come, the campaign to free her was actually successful. In that instance, against the impossibility of the state apparatus, we actually won. More recently, I’ve been inspired by the upswell of support around the case of CeCe McDonald, a black trans woman that was sent to prison for defending herself against a 2011 racist and transphobic attack. I also look to organizations like Transgender, Gender Non-conforming, and Intersex Justice Project (TGJJP) and their work on building real leadership by and for formerly and currently incarcerated trans women of color. What these examples show us is that even if the liquidation of racialized gender nonnormativity is the intention of dominant power, the trans/queer resilience remains and even flourishes against massive destruction.

LIAT: To put a simplistic materialist claim on the table, my hope for the present and the future is that neoliberalism will implode itself, and there are signs that this is indeed beginning to be the case. With the financial downturn come measures that we could only dream of ten or even five years ago. Some of them are horrific in terms of the complete stripping of what is (barely) left of the welfare state in terms of public housing, assistance, community mental health, and health care more generally. Conversely, with austerity and budget cuts we are also witnessing the shrinkage in correctional budgets across several states and with it the closure of a number of prisons and residential institutions for people with disabilities. The question now is not so much will a certain facility close but where will they relocate the people? In other words, the fight for closure in some arenas ends but the fight against transincarceration begins and, with it, new and old and tested tactics and strategies.

One of the main challenges we face as abolitionists is perhaps not so much in the way of closing carceral spaces but in the construction of (new and old) enemies to incarcerate. Attachments to such ideas as “safety,” for example, need to be examined. Sarah Ahmed⁴⁵ challenges the assumption that emotions are individual matters that come from “within” and suggests that they create the boundaries of bodies, collectives, and discourses. It is the emotional reading of fear and hatred that binds the community together and indeed constructs it as “a community.” Ahmed demonstrates that these attachments work best when the “ordinary citizen” is perceived to be in crisis and under attack. In this case, it is not so much the “ordinary citizen” but normalcy itself that is seen as being under attack. The affective economy of fear creates not only a sense of shared community (community in crisis struggling to maintain its core values) but also creates what it is not (the object that is seen as threatening its existence). But while it may seem easy (even though it is hardly done enough) to apply such theorization to racist and queer/transphobic policies that encourage, support, and create police brutality, for example, we are, of course, all complicit. The practice of claiming “safe spaces” for queer or LGBTQI folks with its related symbols (e.g., stickers seen on doors of “allies” or offices across college campuses) is another form of the allure of feeling safe in particular locales (white middle-upper-class college campuses) and not others. It also means that we need to be wary of our attachment to knowledge, particularly knowing what the future holds.

Knowing the future in terms of alternatives to incarceration seems antithetical to the abolitionist mindset. Abolition can be conceptualized as a strategy beyond resistance, as it does not acknowledge the structure as it is but envisions and creates a new worldview in which oppressive structures do not exist. But it does so from the world as it is now, without waiting for all questions to be answered or alternatives to be set in place. This “refusal to wait” is further highlighted in Julia Oparah’s⁴⁶ insightful article on present-day “maroon abolitionists,” which brings to light the unique prison abolition perspectives of gendered, oppressed, and racialized activists who are rooted in African diasporic traditions of resistance and spirituality. Oparah refers to them as maroon abolitionists because maroon refers to the communities of runaway slaves and indigenous people who have formed in the Americas since the seventeenth century. Maroon also implies the resistance of nonblack populations such as indigenous and exiled whites. While white abolitionists were fighting against slavery because of moral, religious, and

ideological convictions, “maroon abolitionists” were fighting for their communities’ liberation and survival. They therefore rejected the call for gradual emancipation and called instead for an immediate end to slavery. Prison abolitionists therefore often emphasize activism that originates and takes into account those who are most affected by oppression and incarceration, as I think we should. But it is important to understand that prison abolition is not about helping prisoners, and antipsychiatry and disability justice are not about helping “people with special needs.” Abolition of the segregationist mindset is about societal change that will improve the lives of all of us, inside and outside carceral spaces, the borders of which are eroding anyway.

CHE: In *Arrested Justice: Black Women, Violence, and America’s Prison Nation*, Beth Richie offers a black feminist analytic through which she scrutinizes the radical loss that accompanied the rights-based gains of the antiviolence movement since the 1960s. In a chapter aptly titled “How We Won the Mainstream and Lost the Movement,” Richie identifies and demystifies the underside of the Violence Against Women Act and the ways in which it was attached to the larger PIC-buoying Violent Crime Control and Law Enforcement Act signed by President Clinton in 1994.⁴⁷ The Violent Crime Control and Law Enforcement Act undid Pell Grant access for incarcerated people in federal and state institutions and dismantled hard-fought and hard-won aims for educational access, as articulated in the political manifesto authored by state captives rebelling against antiblack, antihuman conditions of penal servitude during the Attica uprising. “Modernize the inmate education system” was one of the practical proposals of the peace terms of the demands of the resisters.⁴⁸ The response of Governor Rockefeller to the Attica uprising was to eliminate the Attica rebellion, in what he confided to President Nixon was “a beautiful operation” during which forty-three people were killed.⁴⁹ In the wake of the rebellion and massacre, the push for educational access in prisons intensified and educational reform was instituted. The incarcerated activism and resistance of the Attica rebellion galvanized outside support (legislative and awareness campaigns) and changed conditions for incarcerated people across the country. Yet white supremacist, homo, and AIDS phobe Jesse Helms (also responsible for HIV travel ban legislation) introduced an amendment that would strip incarcerated people of Pell Grant access that was championed by “tough on crime” Congress.⁵⁰ The pattern of rights-based legislative reform being attached to prison and military industrial-based expansion

is historically rehearsed and contemporarily repeated, from VAWA to the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, which passed in 2009 and was attached to the National Defense Authorization Act that allotted \$130 billion for continued U.S. military occupation in Iraq and Afghanistan.⁵¹ As a result of these corrosive carceral-military industrial-complex-enhancing political compromises, what once were radical movement aims are refashioned and folded into neoliberal carceral and military expansionist enterprises. Struggles by incarcerated activists and their liberatory political imaginaries, seen in the legacy of the Attica rebellion and in queer and trans liberation organizing on the inside, are substituted for narrower political goals and horizons. Rather than thinking about “the movement” solely from a standpoint of the nonincarcerated, it is important to consider the ways in which incarcerated activism also shapes the political landscape of movement work “on the outside.” It is also important to note that such rigid dichotomies are more conceptual than material for many poor, of color, queer, trans, sex workers, undocumented, and/or criminalized peoples who navigate quotidian biopolitical technologies of surveillance, punitive protocols, and police violence even when living “on the outside.” I am inspired by the work of queer and/or trans collectives such as Hearts on a Wire in Philadelphia, Pennsylvania; Black and Pink in Boston, Massachusetts; Bent Bars in London, United Kingdom; and other political formations through which queer and/or trans people are cultivating resistance and resiliency in the face of policing and penalty.

NICK: I continue to turn to the efforts of Critical Resistance as an organization that is resolutely confronting—through the work of organizing, solidarity, and struggle in and outside the prison—the ideological and imaginative closure that has been one of the necessary social features attendant to the growth and consolidation of the PIC as a solution to social problems. In my own brief work with Critical Resistance’s publication *The Abolitionist*, some of the recursive questions have been: what kind of work is being done and what kind of work needs to be done in order to understand the sheer capaciousness of the PIC? Sometimes the problems cut across lines that will be familiar for most who have been involved with left struggle—how to pursue reform work with an agenda that is not only revolutionary in general but abolitionist in particular? What reforms might destabilize carceral logics? Which reforms might even throw them into crisis?

Sometimes the shape of these problems feels newer, and its newness is in some ways an effect that different left organizations have found ways to place themselves into struggle with one another, into struggle alongside one another, into struggle in order to hold open possibility for one another in ways that are profoundly productive, even promising. For instance, the January 2013 issue of *The Abolitionist*, themed on mental health struggles in and against the PIC, contains an article from members of the Sylvia Rivera Law Project that reflects, in a complex manner, on efforts by trans prisoners to obtain gender identity diagnoses in order to obtain life-sustaining health care. While acknowledging the potential for such struggles to extend the normalizing reach of the medical wing of the PIC writ large, the authors ultimately conclude that “[f]or incarcerated transgender individuals, GID [Gender Identity Disorder] becomes a powerful tool for disrupting the control of the PIC over their bodies by offering an organizing principle of their experiences and a means of affirmation.”⁵² It’s an important reminder that even the institutions of normativity—which are also, in this case, the institutions of capture—contain the seeds of their own corrosion. An old lesson, perhaps, but one around which we are still learning to collectivize anew.

16. See Isaiah Berlin's liberal critique of Epictetus and St. Augustine in *Four Essays on Liberty* (Oxford University Press, 1969), 135.
17. See Sigmund Freud, *Civilization and Its Discontents* (New York: Norton & Company, 1959), 109. Another indication, of course, is how often totalitarian regimes resort to mass murder; in Iran, for example, tens of thousands of political dissidents and prisoners are known to have been executed, assassinated, or otherwise killed during the 1980s.
18. Emmanuel Levinas, *Totality and Infinity*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969), 237.
19. *Ibid.*
20. *Ibid.*
21. See, for example, Emmanuel Levinas, *Time and the Other* (Pittsburgh: Duquesne University Press, 1987), 52–55 and *Totality and Infinity*, 9, 238.
22. *Ibid.*
23. The “instant,” where Heidegger seeks a heroic purity, the “instant,” the ‘cell-form’ of Levinas’s theory of time, is where, in contrast to Heidegger, he finds the other. For Levinas, we are potentially free, and we are free insofar as we realize this potentiality in every instant. See Levinas, *Time and the Other*, 56, 7. From this point of view, the totalizing system may be recognized as having the goal of reducing one’s “instants” to immediacy, to living in the absolute presence of the totalizing system; thus, one loses or maintains one’s resistance in an “instant,” in each and every instant.
24. Levinas, *Totality and Infinity*, 237.
25. *Ibid.*, 238.
26. *Ibid.*
27. *Ibid.*, 239.
28. *Ibid.*
29. *Ibid.*
30. *Ibid.*
31. Those who would reduce all meaning to the status of a “defense” are, of course, already defeated.
32. Emmanuel Levinas, “The Bad Conscience and the Inexorable,” in *Of God Who Comes To Minds* (Stanford, CA: Stanford University Press, 1998), 174.
33. Emmanuel Levinas, “Notes on Meaning,” in *Of God Comes To Minds* (Stanford, CA: Stanford University Press, 1998), 164.
34. *Ibid.*
35. See Jacob Timerman, *Prisoner Without a Name, Cell Without a Number* (New York: Vantage Books, 1981). In his account of his confinement in a solitary cell in a clandestine army prison in Argentina, Timerman describes the pressures of such conflicting responsibilities and the efforts of the prison

officials to push one into such conflicts: “More than once I was brusquely awakened by someone shouting: ‘Think. Don’t sleep, think.’ But I refused to think. . . . To think meant becoming conscious of what was happening to me, imagining what might be happening to my wife and children; to think meant trying to work out how to relive this situation, how to wedge an opening in my relationship with the jailers” (35). Timerman’s quandary is echoed in other prison memoirs. For instance, “if you don’t think about yourself, don’t you think about your family?” is a familiar question to political prisoners of totalizing systems in general.

36. Levinas, “Notes on Meaning,” 170.

37. M. Raha, *Haghighat Sadeh*, Vol. III (Hanover: The International Organization of Democratic Iranian Women, 1992), 22. My translation from the original in Farsi.

38. However much this engagement within disengagement, this resistance beyond resistance, may necessarily seem an unseemly heroism passing itself off as humility, this obstinacy and stubbornness of the for-the-other is more opposed to such heroism than its usual antonym, cowardice; both heroism and cowardice are artifacts of the will, subject to the mechanics of relative quantities available there. The passivity of the prereflective I, in its responsibility, “does not conserve its assurance in the heroism of the being-for-death [of Heidegger] in which consciousness asserts itself as lucidity and thought thinking *to the very end*” (Levinas, “Notes on Meaning,” 170), nor is it the fortifying of a courage in the face of the abyss of existentialism facing nothingness. While such motivations clearly exist, to reduce resistance to them is to miss the point.

39. Faraj Sarkoobi, “A Letter from Prison,” *Payvand*, February 1, 1997. My translation from the original Farsi.

40. Nasser Mohajer, *The Book of Prison*, Vol. II (Berkeley, CA: Noghteh Books, 1998), 271. My translation from the original in Farsi.

CRITICAL THEORY, QUEER RESISTANCE,
AND THE ENDS OF CAPTURE

Liat Ben-Moshe, Che Gossett, Nick Mitchell, and Eric A. Stanley

1. See Sylvia Rivera, “Queens in Exile,” in *GenderQueer: Voices From Beyond the Sexual Binary*, ed. Joan Nestle, Clare Howell, Riki Wilchins (London: Alyson Books, 2002); Reina Gossett, “An Open Letter for Gender Self-Determination in /at OWS,” *PPS 1* (December 2011): http://www.ppspress.info/documents/PPS_Issue_01_Open_Letters_December_2011.pdf.

2. Gay Liberation Front collectives and ACT UP chapters were surveilled by the FBI and often infiltrated throughout the 1970s and 1980s (see FBI files on the Gay Liberation Front as well as ACT UP for both). See also

Brett C. Stockdill, *Activism Against AIDS: At the Intersections of Sexuality, Race, Gender, and Class* (Boulder, CO: Lynne Rienner Press, 2003). Additionally, David W. Dunlap, “F.B.I. Kept Watch on AIDS Group during Protest Years,” *The New York Times* (May 16, 1995): <http://www.nytimes.com/1995/05/16/nyregion/fbi-kept-watch-on-aids-group-during-protest-years.html>.

3. For more on Ortez Alderson’s activism against racist and transmisogynistic police violence in Chicago and how he organized the Chicago GLF to protest against the murder of a black drag queen the day after he got out of prison for his antiwar activism, see Ferd Eggan, “Dykes and Fags Want Everything: Dreaming with the Gay Liberation Front,” in *That’s Revolting: Queer Strategies for Resisting Assimilation*, ed. Mattilda Bernstein Sycamore (Soft Skull Press: Revised edition, May 2008). For further historiographical material on Alderson’s AIDS activist, antiwar, and queer liberationist involvement see: Deborah Gould, *Moving Politics: Emotion and ACT UP’s Fight Against AIDS* (Chicago: University of Chicago Press, 2009); Liz Highleyman, “Peace Activism and GLBT Rights,” *The Gay & Lesbian Review* (September–October 2004): http://www.glireview.com/issues/11.5/11.5_Highleyman.php; Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2008); Karla Jay, *Out of the Closets: Voices of Gay Liberation* (New York: New York University Press, 1992); and Mark Harrington, *Tactical Biopolitics* (Cambridge, MA: MIT Press, 2008).

4. Hearts on a Wire’s collective report, “This Is a Prison: Glitter Is Not Allowed: Experiences of Trans and Gender Variant People in Pennsylvania’s Prison Systems,” documents penalization of gender nonconformity inside Pennsylvania prisons (e.g., incarcerated trans/gnc people are placed in the hole, max out because of penalization, etc). Pascal Emmer, Adrian Lowe, and R. Barrett Marshall (Hearts on a Wire Collective), “This Is a Prison: Glitter Is Not Allowed: Experiences of Trans and Gender Variant People in Pennsylvania’s Prison Systems” (Philadelphia: Hearts on a Wire Collective, 2011): <http://www.galaei.org/documents/thisisaprisson.pdf>. See also Gabriel Arkes, “Correcting Race and Gender: Prison Regulation of Social Hierarchy through Dress,” *New York University Law Review* 87, no. 4 (2012): 859–959.

5. Eric A. Stanley and Nat Smith, eds., *Captive Genders: Trans Embodiment and the Prison Industrial Complex* (Oakland, CA: AK Press, 2011).

6. See Russell Robinson, “Masculinity as Prison: Sexual Identity, Race, and Incarceration,” *California Law Review* 99 (2011): 1309, in which he talks about the K6G unit. See also Dean Spade’s response, “The Only Way to End Racialized Gender Violence in Prisons Is to End Prisons: A Response to Russell Robinson’s ‘Masculinity as Prison,’” *California Law Review* (Dec. 2012).

7. W. E. B. Du Bois, *The Souls of Black Folk* (Chicago: A. C. McClurg & Co., 1909), 9.

8. Cathy J. Cohen, “Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?” *GLQ* 3 (1997): 437–465, 440.

9. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).

10. H. McBryde Johnson, “The Disability Gulag,” *The New York Times*, November 23, 2003.

11. R. McRuer, *Crip Theory: Cultural Signs of Queerness and Disability* (New York: New York University Press, 2006).

12. *Ibid.*, 31.

13. J. G. Miller, *Last One over the Wall: The Massachusetts Experiment in Closing Reform Schools* (Columbus: Ohio State University Press, 1991).

14. Fay Honey Knopp, “On Radical Feminism and Abolition,” *Peace Review: A Journal of Social Justice* 6, no. 2 (1994): 203–208.

15. See Jacques Derrida, “Force of Law: The ‘Mythic Foundations of Authority,’” in *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Carlson (New York: Routledge, 1992).

16. Lauren Berlant, *Cruel Optimism* (Durham, NC: Duke University Press, 2011): 4.

17. Priya Kandeswamy, “State Austerity and the Racial Politics of Same-Sex Marriage in the US,” *Sexualities* 11, no. 6 (2008): 706–725, 707.

18. Mumia Abu-Jamal, *Jailhouse Lawyers* (San Francisco: City Light Books, 2009).

19. Wendy Brown, *States of Injury* (Princeton, NJ: Princeton University Press, 1995), 134.

20. For more information, see <http://supportcece.wordpress.com>.

21. Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Brooklyn, NY: South End Press, 2001).

22. J. E. Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York: New York University, 2009).

23. Lee Edelman, *No Future: Queer Theory and the Death Drive* (Durham, NC: Duke University Press, 2004).

24. Ruth W. Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2006).

25. Lauren Berlant, “Slow Death (Sovereignty, Obesity, Lateral Agency),” *Critical Inquiry* 33 (2007): 754–780.

26. *Ibid.*, 754; emphasis added.

27. Justin Piché and Mike Larsen, “The Moving Targets of Penal Abolitionism: ICOPA, Past, Present and Future,” *Contemporary Justice Review* 13, no. 4 (2010).

28. Ibid., 399.
29. Gilles Deleuze, "Postscript on the Societies of Control," *October* 59 (Winter 1992): 3–7.
30. Jasbir Puar, "Prognosis Time: Towards a Geopolitics of Affect, Debility and Capacity," *Women and Performance: A Journal of Feminist Theory* 19, no. 2 (2009): 161–172.
31. Here I am thinking about the critiques of multiculturalism and how that would press upon ideas of the biopolitical. For more, see Jared Sexton, *Amalgamation Schemes: Antiblackness and the Critique of Multiracialism* (Minneapolis: University of Minnesota Press, 2008).
32. See *At America's Expense: The Mass Incarceration of the Elderly*, ACLU June 2012: <http://www.aclu.org/criminal-law-reform/report-americas-expense-mass-incarceration-elderly>.
33. "Israel: Amend 'Anti-Infiltration' Law: Measure Denies Asylum Seekers Protections of Refugee Convention," *Human Rights Watch* press release June 10th, 2012: <http://www.hrw.org/news/2012/06/10/israel-amend-anti-infiltration-law>
34. For more, see Yasmin Nair, "How to Make Prisons Disappear: Queer Immigrants, the Shackles of Love, and the Invisibility of the Prison Industrial Complex," in *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, ed. Nat Smith and Eric A. Stanley (Oakland, CA: AK Press, 2011).
35. Adriana Garriga Lopez, "Boricuas ACTing UP in New York and San Juan: Diasporic Puerto Rican HIV/AIDS Activism and Anthropology," *New Proposals: Journal of Marxism and Interdisciplinary Inquiry* 2, no. 2 (2009).
36. Kathambi Kinoti, "Sex Work in Southern Africa: Criminalization Provides Screen for other Rights Violations," *The Association for Women's Rights in Development* 20/02/2009: <http://secure1.awid.org/eng/Issues-and-Analysis/Library/Sex-work-in-Southern-Africa-Criminalization-provides-screen-for-other-rights-violations>.
37. See South African National AIDS Council, *National Strategic Plan on HIV, STIs, and TB, 2012–2016*, Republic of South Africa, <http://www.doh.gov.za/docs/stratdocs/2012/NSPfull.pdf> (accessed January 30, 2013).
38. For a great meditation on Genet, temporality, and punishment, see Michael Hardt, "Genet: In the Language of the Enemy," *Yale French Studies Journal* 91 (1997): 64–79.
39. Antonio Negri, *Insurgencies: Constituent Power and the Modern State* (Minneapolis: University of Minnesota Press, 1999).
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41. For more on pinkwashing, see "Pinkwashing Israel," <http://www.pinkwashingisrael.com/> (accessed February 03, 2013).

42. Erick Fabris, *Tranquil Prisons: Chemical Incarceration under Community Treatment Orders* (Toronto: Toronto University Press, 2011).
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44. Quoted in Julianne Hing, "Who Are Those 'Gangbangers' Obama's So Proud of Deporting?" *Color Lines: News for Action* (October 17, 2012), http://colorlines.com/archives/2012/10/who_are_those_gangbangers_obamas_so_proud_of_deporting.html (accessed January 31, 2013). For an excellent collection of conversations and interventions that connect the politics of deportation to contemporary struggles around immigrant and border justice, see Jenna Loyd, Matt Mitchelson, and Andrew Burrige, eds., *Beyond Walls and Cages: Prisons, Borders, and Global Crisis* (Athens: University of Georgia Press, 2012).
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52. Sylvia Rivera Law Project, "Gender Identity Disorder and the Prison-Industrial Complex: Reflections from the Sylvia Rivera Law Project," *The Abolitionist* 19 (February 2013).