

Hope

Author : Wendy Anne Bach

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Amna Akbar, *Toward a Radical Imagination of Law*, 93 **NYU L. Rev.** ___ (forthcoming, 2018), available at [SSRN](#).

[Amna Akbar](#)'s latest article takes sharp aim at the collectively constrained imagination of current legal scholarship and liberal reform agendas focused on the criminal legal system. And rightly so. She demonstrates that, with notable exceptions, we are mired, and almost lost, in our collective belief that the problems of the criminal legal system are problems of bad actors, bad seeds, and badly-implemented laws. She shows us that so many of the solutions we cling to will do nothing to address the systemic violence so prevalent in poor communities of color. She warns that answers do not lie in "investing even-handedness to law or the police...restoring criminal justice to some imaginary constitutional or pre-raced status quo,...[or] increasing resources for community policing." (P. 105.) Instead the goal is transformative: to "[shrink] the space of governance now reserved for policing, surveillance, and mass incarceration; and fundamentally [transform] the relationship among state, market and society." (P. 104.)

Despite this searing and far-reaching indictment of a wide swath of scholarship and advocacy, Akbar forgoes calling for either shame or despair. There is no time for either. Instead, by centering the radical, positive, and, love-inspired visions of the [Movement for Black Lives](#)¹ and foregrounding their vision of "a world in which Black and other communities of color can thrive" (P. 120), Akbar offers hope.

Akbar performs this remarkable feat through a comparison between a central policy platform of the movement, [A Vision for Black Lives: Policy Demands for Black Power, Freedom and Justice](#), and the reports issued by the Obama Administration's Department of Justice (DOJ) on the policing practices in Ferguson, Missouri and Baltimore, Maryland. These DOJ reports were, of course, written in the wake of the police shootings of Michael Brown and Freddy Gray respectively. The Movement for Black Lives too, finds its spark (but not its roots) in these and other contemporary moments of state violence. But, as Akbar easily proves, the two sets of documents differ radically. There is much to praise in the DOJ reports, and Akbar gives them their due. But in the end, what is missing is the central understanding, at the heart of contemporary racial justice movements that "policing, jail and prison [are] the primary mode[s] of governing Black, poor, and other communities of color in the United States." Law here is not a fundamentally just system that has gone astray but is instead the scaffolding upon which this violent system is built. (P. 108.)

This is a searing critique and might lead one to turn away or to despair any possibility of forward movement. But fear not. Akbar's project, like the *Vision*, is not only "deconstructive and critical" but also "reconstructive and visionary." (P. 171.) This is clear throughout, but for the purposes of this jot I want to focus on her discussion of the *Vision*'s calls for abolition and to "invest/divest." The demand to abolish policing and prisons as we know them is central to the *Vision* and the Movement. (P. 154.) But abolitionism today, as in the past (see P. 154 fn 268), seeks fundamentally to build as well as to abolish. And "building" is not a static demand for a far-off future but instead an ongoing practice of "gradual decarceration and positive regulatory substitution." (P. 155.²) So for example, "[m]ovement organizations are 'practicing abolition every day...by creating local projects and initiatives that offer alternative ideas and structures for mediating conflicts and addressing harms without relying on police or prisons.'" (P. 155.³)

And as the *Vision* counsels, we must not only divest but invest. Take police in schools as one small example. While the DOJ reports recommend "better training, evaluation, and policies to improve the school police program," (P. 156) the *Vision* calls simply for the "end to the criminalization of Black Youth." (P. 156.) Under this demand, police are

implicated in violence and have no place in creating an educational environment where Black Youth can thrive. But leaving (or divesting) isn't enough. Funds currently invested in "prisons, police and surveillance," (here police in schools) would be "invested instead [in] restorative services, mental health services, job programs, meaningful healthcare, and education." (P. 155.)

Next a word on economics and power. While the DOJ reports, and much of the scholarship and advocacy efforts Akbar critiques, focus narrowly on policing and criminal legal systems while avoiding any discussion of the interests served by these systems, both Akbar and the *Vision* center these issues. Take for example, the work of one movement group, the [Youth Justice Coalition](#) (YJC) highlighted by Akbar. The advocacy work Akbar highlights focused on gang injunctions. (Pp. 151-52.) YJC's analysis demonstrated that injunctions are targeted not at the communities with the highest rates of gang violence but instead at communities that are "majority white, that border white communities, or that are experiencing an influx of whiter and wealthier residents." (P. 152.) In this frame, the policing tool—gang injunctions—is not actually broken. Instead it is functioning precisely as it is designed to function—in the service of those whose economic and racial interests the system is in fact designed to serve.

Failing to highlight the way that such a strategy promotes the economic interests of those in power "erases how power circulates through and benefits from formal law-making." (P. 110.) Finally, to divest away from carceral structures that do violence and invest in institutions (created through law) that will help communities thrive, communities do not need mere input but instead power and control. Without this, nothing else matters.

As Akbar counsels at the conclusion of her article, it is time to let loose our hold on the law as it exists, stop tweaking around the edges of a fundamentally violent system, and instead "imagine with social movements" the role law can play in creating a radically better world. If that's not a cause for hope, I don't know what is.

1. The Movement for Black Lives is, "a collective of more than 50 organizations representing thousands of Black people from across the country [that] have come together with renewed energy and purpose to articulate a common vision and agenda." Organizational members include, among others, the Black Lives Matter Network. The Movement For Black Lives, [About Us](#).
2. Citing Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 **UCLA L. Rev.** 1156, 1164 (2015).
3. Quoting Mariame Kaba, [Take No Prisoners](#), **Vice** (October 5, 2015).

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