



BEYOND THE CARCERAL STATE: TRANSFORMATIVE JUSTICE, PUBLIC PROTECTION, AND THE LIMITS OF PENAL ABOLITION

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<https://doi.org/10.5281/zenodo.21783921>

Abstract: This article critically investigates the theoretical framework and institutional limits of penal abolitionism, focusing on the tension between dismantling the carceral state and ensuring robust public protection. The study evaluates transformative justice models—such as community-based accountability mechanisms, structural violence prevention, and restorative practices—as potential alternatives to traditional penal institutions. By analyzing how abolitionist theory addresses acute risk and violent offenses, the paper examines the legal, ethical, and practical boundaries of a post-carceral society, offering a nuanced perspective on balancing social justice with societal security.

Keywords: Carceral state, transformative justice, penal abolition, public protection, decarceration, restorative justice, violent crime, criminological theory, penal reform.

Annotatsiya: Ushbu maqolada penitensiar abolitsionizm (*penal abolitionism*) nazariyasining institutsional chegaralari va penitensiar davlatni tugatish hamda jamoat xavfsizligini ta'minlash o'rtasidagi ziddiyatlar tanqidiy o'rganiladi. Tadqiqotda an'anaviy qamoqxona tizimiga muqobil sifatidagi transformatsion adolat modellari — jamoatchilik nazorati va javobgarligi mexanizmlari, struktural zo'ravonlikning oldini olish hamda tiklovchi amaliyotlar samaradorligi baholanadi. Abolitsionistik nazariya va amaliyotning yuqori xavfli hamda zo'ravonlik jinoyatlariga munosabati tahlil qilinib, post-penitensiar jamiyatning huquqiy, etik va amaliy cheklavlari yoritib beriladi.

Kalit so'zlar: Penitensiar davlat, transformatsion adolat, qamoqxonalarni tugatish (abolitsionizm), jamoat xavfsizligi, dekarseratsiya, tiklovchi adolat, zo'ravonlik jinoyatlari, kriminologiya nazariyasi.

Аннотация: В данной статье критически исследуются теоретические основы и институциональные пределы тюремного аболиционизма, с акцентом на противоречие между демонтажем пенитенциарного государства и обеспечением надежной защиты общества. В работе оцениваются модели трансформационного правосудия (общинный контроль, предотвращение структурного насилия и восстановительные практики) в качестве альтернативы традиционным тюремным





институтам. Анализируя подход аболиционизма к преступлениям высокого риска, статья определяет правовые, этические и практические границы пост-пенитенциарного общества.

Ключевые слова: Пенитенциарное государство, трансформационное правосудие, тюремный аболиционизм, общественная защита, декарцерация, восстановительное правосудие, насильственная преступность, криминология.

This article critically investigates the theoretical framework, normative principles, and institutional limits of penal abolitionism, focusing on the core structural tension between dismantling the carceral state and guaranteeing robust public protection. Over the past four decades, mass incarceration has evolved into a defining feature of global criminal justice systems, particularly within neoliberal political economies. While abolitionist frameworks critique the prison-industrial complex for perpetuating systemic inequality, race- and class-based oppression, and structural violence, skeptics contend that complete decarceration lacks actionable mechanisms for containing acute risk and managing violent offenders.

This study evaluates transformative justice models—including community-based accountability frameworks, structural violence prevention, and restorative practices—as potential alternatives to traditional penal institutions. By analyzing how abolitionist theory confronts high-risk and violent offenses, the paper examines the legal, ethical, and operational boundaries of a post-carceral society. Ultimately, the paper proposes a hybrid conceptual model that integrates non-carceral community infrastructure with strict legal protections, aiming to reconcile the moral imperative of dismantling systemic carceral violence with the state's obligation to safeguard societal security.

Keywords: Carceral state, transformative justice, penal abolition, public protection, decarceration, restorative justice, violent crime, criminological theory, penal reform, human rights.

1. Introduction: the carceral impasse

The contemporary state is overwhelmingly a *carceral state*. Over the past half-century, criminal justice policy across much of the Western world—and increasingly mirrored in developing legal systems—has undergone a punitive turn. Imprisonment, once conceptualized as a last-resort measure intended for rehabilitation, has morphed into a primary mechanism of social management, economic containment, and political governance (Garland, 2001; Wacquant, 2009). The expansion of the "prison-industrial complex" (Gilmore, 2007) has





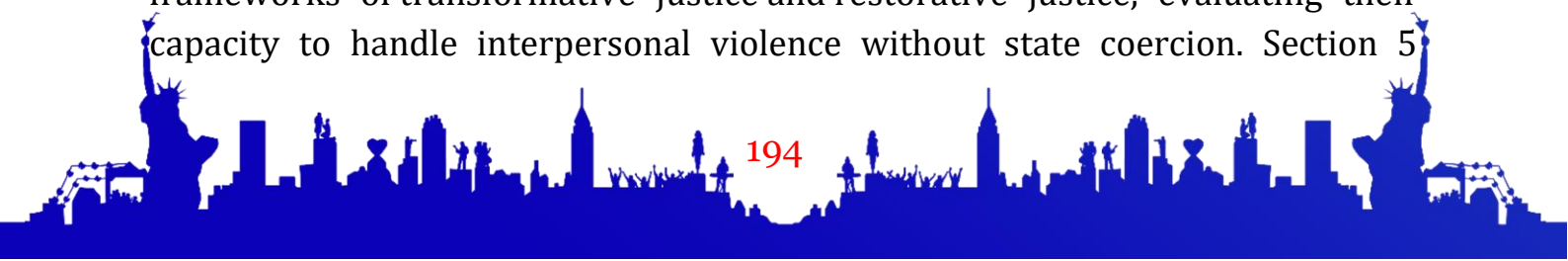
established penal confinement as the default institutional response to a vast spectrum of human behaviors, ranging from severe violent offenses to survival-driven property crimes, substance dependency, and mental health crises.

Despite its ubiquity, the carceral model faces a crisis of legitimacy. Empirical criminology consistently demonstrates that prisons fail to achieve their stated utilitarian objectives: they do not reliably deter crime, they demonstrate notoriously high recidivism rates, and they inflict profound socio-economic harms on marginalized communities (Western, 2018; Gottschalk, 2015). Instead of remedying harm, the carceral apparatus reproduces structural violence, entrenching racial and economic stratifications while consuming vast public resources.

In response to this systemic failure, penal abolitionism has re-emerged not merely as a marginal critique, but as a rigorous jurisprudential and political movement. Grounded in the works of scholars and activists such as Angela Davis (2003), Ruth Wilson Gilmore (2007), and Mariame Kaba (2020), abolitionism posits that the prison system is fundamentally unreformable. Abolitionists argue that "progressive" reforms (such as building cleaner facilities, expanding correctional programming, or adopting electronic monitoring) ultimately expand the scope, budget, and reach of the carceral net—a phenomenon known as *net-widening* (Austin & Krisberg, 1981).

However, as abolitionist discourse moves from theoretical critique toward policy proposal, it confronts a formidable intellectual and political counter-argument: the problem of public protection. Skeptics, including liberal legal scholars, victims' rights advocates, and orthodox criminologists, argue that while decarceration may be desirable for minor offenses, complete prison abolition is an unrealistic and dangerous ideal. This critique centers on the challenge of "the dangerous few"—individuals who commit acute, chronic, or severe violent acts that threaten fundamental human safety (Duff, 2018; Pfeifer, 2021). Skeptics assert that abolitionist literature often relies on idealized visions of community cohesion while glossing over the immediate necessity of physical incapacitation for high-risk actors.

This paper navigates this critical impasse. Section 2 traces the historical and political economy of the carceral state, detailing how punitive governance replaced social welfare. Section 3 articulates the core tenets of penal abolitionism and its critique of traditional penal reform. Section 4 examines the theoretical frameworks of transformative justice and restorative justice, evaluating their capacity to handle interpersonal violence without state coercion. Section 5





confronts the limits of abolitionism, focusing directly on the problem of acute risk, violent crime, and public safety. Section 6 synthesizes these perspectives to propose a normative roadmap for transitioning beyond the carceral state without sacrificing human security.

2. The architecture of the carceral state

2.1 The Political Economy of Mass Incarceration

The emergence of the carceral state cannot be understood in isolation from broad political and economic transformations that began in the late 20th century. As neoliberal policies dismantled post-war welfare states, reduced public expenditure, and deregulated labor markets, states faced growing social insecurity and economic inequality (Wacquant, 2009). In this climate, the penal apparatus was repurposed to manage the social fallout of deindustrialization and poverty.

Loïc Wacquant (2009) describes this shift as the transition from the *social wing* of the state to its *penal wing*. Rather than addressing structural unemployment, residential segregation, and underfunded public health through social policy, the state increasingly deployed the criminal law to police and contain surplus populations. In the United States, this dynamic manifested as the "War on Drugs" and "three-strikes" mandatory minimum sentencing laws, which produced an unprecedented explosion in the incarcerated population—disproportionately impacting Black, Latino, and low-income communities (Alexander, 2010; Western, 2006).

Shift in state governance (1970s–Present)

[Welfare State Model]

[Carceral State Model]

- | | |
|----------------------------|-------------------------------|
| • Social Safety Nets | • Penal Containment |
| • Public Health Funding | • Criminalization of Poverty |
| • Labor Market Protections | • Mandatory Minimum Sentences |
| • Rehabilitative Ideal | • Mass Incarceration |

2.2 The Prison-Industrial Complex and Net-Widening

To understand the durability of mass incarceration, abolitionist theorists developed the concept of the prison-industrial complex (PIC). As defined by Angela Davis (2003) and Ruth Wilson Gilmore (2007), the PIC refers to the overlapping interests of government agencies, private corporations, law enforcement unions, and real estate developers who profit from or rely upon the expansion of the penal state. Under this framework, prisons function not merely





as facilities for punishment, but as economic engines for rural communities and lucrative markets for private prison operators, healthcare contractors, and surveillance technology firms.

Crucially, attempts to humanize or reform the PIC have frequently resulted in its expansion. Criminological literature on *net-widening* reveals that alternative sanctions—such as community service, drug courts, probation, and electronic monitoring—rarely replace prison sentences. Instead, they pull individuals who would have previously received minimal state supervision into the criminal legal system (Austin & Krisberg, 1981; Gottschalk, 2015). When individuals inevitably breach complex technical probation conditions, they are funnelled back into correctional facilities, thereby expanding the overall footprint of state control.

3. Penal abolitionism: theoretical foundations

3.1 Abolition as Analysis and Praxis

Penal abolitionism is frequently misunderstood by skeptics as a simplistic, overnight demand to open prison doors and release all detainees without structural support. In reality, modern abolitionist theory—as articulated by scholars like Gilmore, Davis, and Kaba—is both a *diagnostic critique* and a *constructive social project*. Gilmore succinctly captures this dual nature in her famous axiom: "*Abolition is about presence, not absence. It's about building life-affirming institutions.*" (Gilmore, 2007).

Abolitionist philosophy rests on three foundational propositions:

1. Prisons Are Inherent Sites of Violence: The structural reality of imprisonment requires caging, physical coercion, sensory deprivation, and the systematic stripping of human autonomy. The institution cannot eliminate societal violence because its core operational modality is state-sanctioned violence (Davis, 2003).

2. Crime is a Social Construct: Abolitionists distinguish between *harm* and *crime*. "Crime" is a legal category created by state legislatures, heavily influenced by class and racial power dynamics. Behaviors that cause massive social harm—such as corporate wage theft, environmental pollution, and industrial negligence—are frequently handled via civil fines or regulatory slaps on the wrist. Conversely, behaviors linked to poverty and survival are hyper-criminalized (Husak, 2008; Reiman & Leighton, 2012).

3. Reform Preserves the System: Because prisons are working precisely as intended—to contain marginalized populations—procedural or technological reforms serve to legitimate and entrench carceral power rather than reduce it (McLeod, 2015).





THE ABOLITIONIST TRIAD

1. DE-CARCERATION

Halting prison construction, ending mandatory minimums, and systematically reducing prison populations.

2. DE-CRIMINALIZATION

Repealing laws that criminalize poverty, drug use, sex work, and mental health crises.

3. RE-INVESTMENT

Redirecting penal budgets toward public housing, universal mental healthcare, education, and community infrastructure.

3.2 Non-Reformist Reforms

To navigate the practical reality of living in a carceral state while working toward its ultimate dismantlement, abolitionist theorists introduce the distinction between reformist reforms and non-reformist reforms (Gorz, 1967; McLeod, 2015).

- Reformist Reforms aim to fix an existing system, assuming its fundamental legitimacy. Examples include hiring more police officers to improve community relations, purchasing body-worn cameras, or constructing "modernized, humane" jail facilities. These measures allocate additional state funds to carceral agencies.
- Non-Reformist Reforms are incremental interventions designed to shrink, weaken, and dismantle carceral institutions over time. Examples include passing cap laws on prison populations, repealing mandatory minimums, slashing police department budgets, ending private prison contracts, and decriminalizing drug possession.

4. Transformative and restorative justice

If prisons are to be rendered obsolete, what mechanisms will address interpersonal harm? Abolitionist theory points to Restorative Justice (RJ) and, more comprehensively, Transformative Justice (TJ) as the primary frameworks





for resolving conflict and building accountability without relying on state coercion.

4.1 Restorative Justice: Scope and Limitations

Restorative Justice emerged in the late 20th century as an alternative to the adversarial legal system (Zehr, 2002). Rather than asking *Which law was broken, who broke it, and what punishment is deserved?*, RJ asks: *Who was harmed, what are their needs, and whose obligation is it to meet those needs?*

Through structured processes such as victim-offender mediation, family group conferencing, and peacemaking circles, RJ seeks to:

- Place the victim’s emotional, material, and psychological needs at the center of the process.
- Require the person who caused harm to accept direct, active responsibility rather than passive submission to state punishment.
- Facilitate concrete restitution and reintegration.

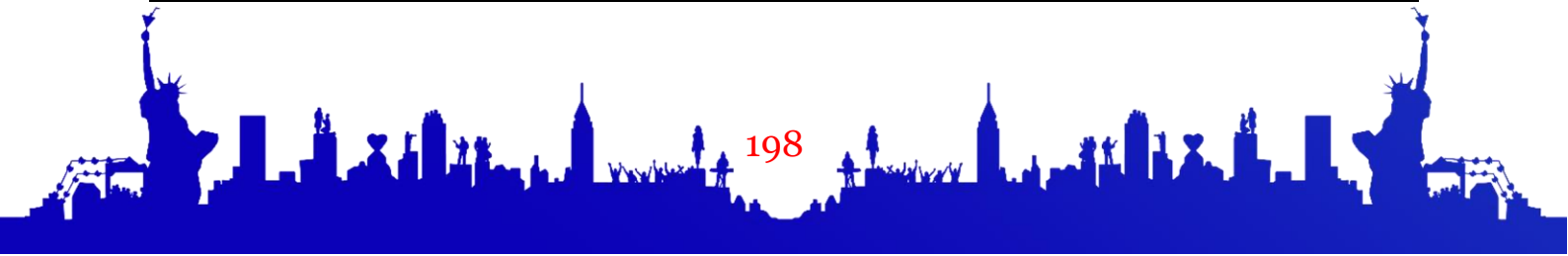
While RJ has demonstrated significant success in diversion programs for juveniles and property offenders, radical abolitionists highlight its limitations. When embedded within the official court system, RJ is often co-opted: it functions as an adjunct to prosecution, where failure to complete a mediation circle results in immediate return to traditional criminal court processing (Daly, 2002).

4.2 Transformative Justice: Addressing Root Causes

To avoid state co-optation, abolitionists favor Transformative Justice (TJ). Developed primarily within marginalized communities, survivor advocacy groups, and grass-roots collectives, TJ seeks to address interpersonal harm without invoking police or the criminal legal system (Generation FIVE, 2007; Kaba, 2020).

The critical distinction between RJ and TJ lies in their analysis of structural conditions:

Feature	Restorative Justice (RJ)	Transformative Justice (TJ)
Primary Focus	Repairing relationships and specific interpersonal harms.	Repairing interpersonal harm <i>while</i> transforming the underlying conditions that enabled it.
State Involvement	Often operates alongside or within criminal courts.	Strictly independent of state law enforcement and carceral institutions.





Feature	Restorative Justice (RJ)	Transformative Justice (TJ)
View of Community	Views community as a neutral resource to facilitate healing.	Recognizes community as potentially complicit in harm; seeks community-wide transformation.
Scope of Remedy	Restitution, apologies, personal accountability plans.	Economic support, structural safety interventions, community education, long-term care networks.

TJ frameworks recognize that harm does not occur in a vacuum; it is shaped by environmental stressors, poverty, trauma, and systemic marginalization. Therefore, an accountability process for sexual assault or domestic violence under a TJ framework requires not only holding the individual offender accountable, but also identifying and altering the peer dynamics, economic dependencies, and social environments that enabled the violence to occur.

5. The critical limits: confronting “the dangerous few”: While transformative justice offers a compelling blueprint for resolving many forms of interpersonal conflict, penal abolitionism faces its most severe conceptual and practical test when confronted with acute, high-risk violence. This section critically examines the arguments raised by legal skeptics, victims' rights scholars, and political theorists regarding the limits of non-carceral frameworks.

5.1 The Argument from Public Safety and Retributivism: Skeptics of abolitionism contend that the theory overestimates community capacity and underestimates the reality of chronic, violent anti-social behavior (Duff, 2018; Pfeifer, 2021). The core critique rests on three distinct arguments:

1.The Incapacitation Imperative: Certain offenses—such as serial homicide, predatory sexual violence, and organized armed violence—demonstrate an immediate threat to the physical survival of others. In such cases, community-based mediation or voluntary transformative accountability circles may prove wholly insufficient to guarantee public protection. Physical containment, skeptics argue, remains a non-negotiable requirement of state duty.

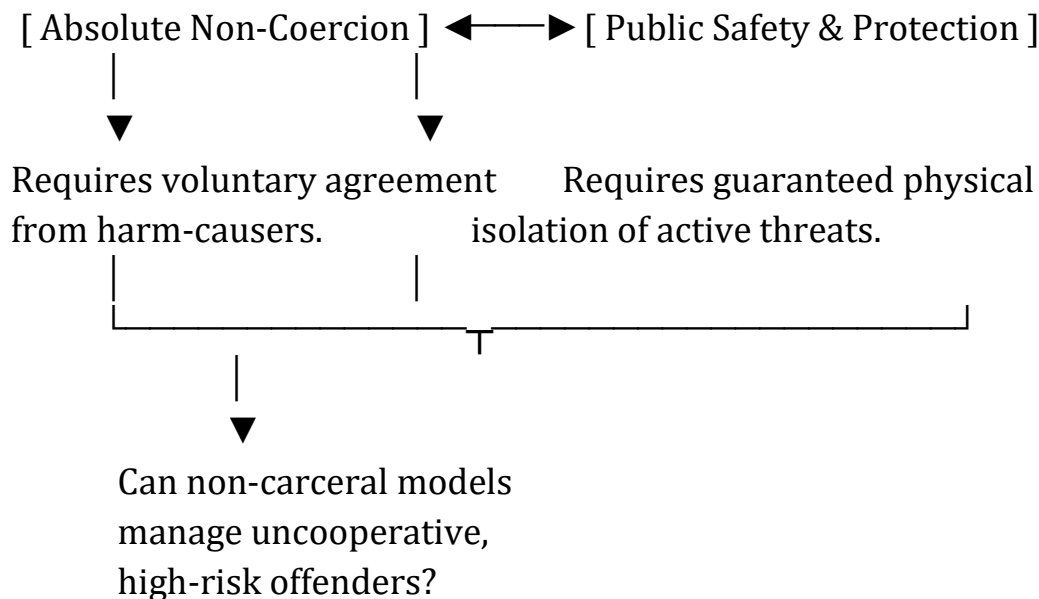
2.The Problem of Voluntary Participation: Transformative justice processes rely heavily on the willingness of the person who caused harm to acknowledge their actions and participate in good faith. If an individual refuses to participate, denies causing harm, or threatens further violence against the victim or community facilitators, non-coercive models collapse. Without a coercive state apparatus to enforce compliance or isolation, victims are left vulnerable to ongoing victimization.





3.The Danger of Vigilantism and Private Retribution: In the absence of a formalized legal process backed by state authority, there is a substantial risk that communities will resort to informal, unregulated forms of punishment. History shows that local "community accountability" outside the rule of law can devolve into mob violence, public shaming, vigilante justice, and the persecution of unpopular or vulnerable sub-groups (Pfeifer, 2021).

The abolitionist paradox



5.2 Moral Desert and Proportionality

From a jurisprudential standpoint, legal philosophers like Antony Duff (2001) argue that legal punishment serves a vital expressive function: it communicates society's moral condemnation of grave wrongs and vindicates the moral standing of victims. Under a purely transformative or restorative framework, the public dimension of justice risks being obscured.

If a severe, violent crime is handled entirely through private or local community circles, society loses a public forum for expressing that certain acts violate the fundamental terms of civic coexistence. Furthermore, without a formalized legal architecture, ensuring *proportionality*—preventing either excessively harsh informal penalties or overly lenient, dismissive outcomes—becomes exceptionally difficult.

6. Toward a hybrid framework: strategic de-carceration and secure non-penal care: To overcome the deadlock between radical abolitionism and punitive carceralism, modern legal philosophy must develop a realistic, phased roadmap. This section outlines a normative framework centered on strategic de-carceration paired with secure, non-penal care facilities for high-risk individuals.





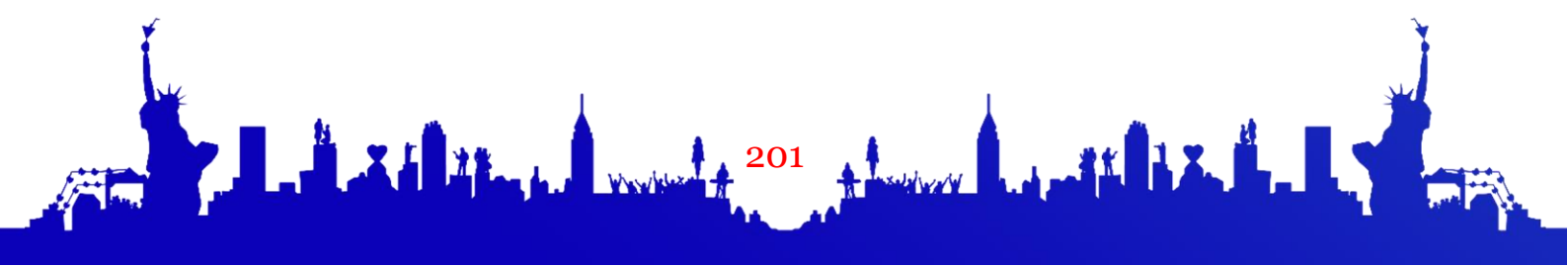
6.1 The Phased Strategy of Decarceration

Abolition must be understood not as a single event, but as a long-term process of institutional transformation. A practical abolitionist framework divides offenses into distinct tiers, systematically dismantling the carceral apparatus from the outside in:

TIERED DE-CARCERATION MODEL	
TIER 1: IMMEDIATE DE-CRIMINALIZATION	
• Drug possession, sex work, public order infractions, poverty crimes. • Mechanism: Immediate release, record expungement, civic diversion.	
TIER 2: PROPERTY AND NON-VIOLENT OFFENSES	
• Theft, fraud, non-violent property damage, corporate infractions. • Mechanism: Mandatory Restorative Justice, civil restitution plans.	
TIER 3: NON-CHRONIC INTERPERSONAL HARM	
• Assault, domestic disputes without acute ongoing lethality risk. • Mechanism: Transformative Justice circles, community safety plans.	
TIER 4: ACUTE, CHRONIC, AND HIGH-RISK VIOLENCE ("THE REMNANT")	
• Serial violence, severe predatory sexual assault, acute lethality. • Mechanism: Secure, non-penal residential care and containment.	

By applying non-carceral solutions to Tiers 1 through 3, society can safely decarcerate 80% to 90% of the current prison population. This massive shift frees up immense public resources that can be directly re-invested into public health, housing, youth development, and community-led safety initiatives.

6.2 Redefining Containment: Secure Non-Penal Care





For Tier 4—the small fraction of individuals who pose an ongoing, acute threat to public physical safety and refuse voluntary community accountability—society requires a non-carceral, non-punitive model of physical containment.

Rather than traditional prisons, this model relies on secure, therapeutic residential care facilities. The conceptual distinction between a prison and a secure care facility is fundamental:

1. **Absence of Retributive Purpose:** Secure care facilities operate without the intention of inflicting pain, discomfort, or moral degradation. Confinement is justified solely on the grounds of harm prevention, analogous to involuntary quarantine during a public health emergency.

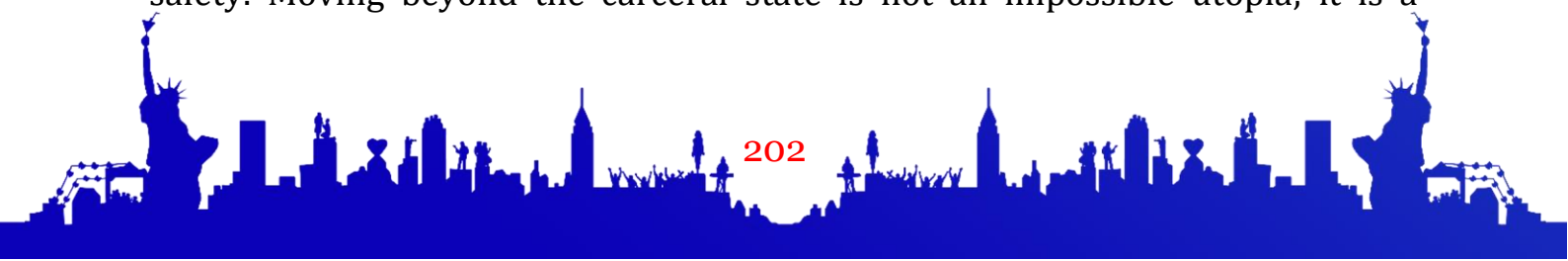
2. **Architectural and Operational Humanization:** Facilities are designed to resemble small-scale residential communities rather than high-security fortresses. Individuals retain bodily autonomy, access to nature, educational opportunities, mental health treatment, and meaningful social interaction.

3. **Rigorous Civil and Judicial Review:** Confinement in a secure care facility must be subject to strict procedural due process. Deprivations of liberty must be re-evaluated at frequent intervals by independent judicial and medical panels, with the legal burden resting entirely on the state to demonstrate that the individual continues to pose an unmanageable physical threat to society.

The carceral state has reached a point of institutional exhaustion. Decades of empirical research confirm that mass incarceration is morally untenable, economically wasteful, and counterproductive to genuine public safety. The penal state reproduces the very violence, trauma, and disenfranchisement it claims to prevent.

Penal abolitionism offers an essential diagnostic critique, correctly identifying that prisons cannot be reformed into instruments of justice. By shifting focus toward transformative justice, society can begin building non-coercive infrastructure capable of addressing structural harm, supporting survivors, and holding individuals accountable without relying on caging.

However, abolitionist theory must remain intellectually honest regarding its operational limits. To maintain credibility and ensure public protection, abolitionism must account for acute, violent risk. By adopting a tiered strategy of decarceration alongside humane, non-punitive, and strictly regulated secure care facilities for the small remnant of high-risk actors, legal systems can bridge the gap between radical abolitionist vision and the immediate obligation of public safety. Moving beyond the carceral state is not an impossible utopia; it is a





pragmatic, moral necessity for the evolution of democratic jurisprudence and global human rights.

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