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## Repairing Harm from Racial Injustice: An Analysis of the Justice Reinvestment Initiative and the Truth and Reconciliation Commission

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**Repairing Harm from Racial Injustice: An Analysis of the Justice Reinvestment Initiative and the Truth and Reconciliation Commission**

# REPAIRING HARM FROM RACIAL INJUSTICE: AN ANALYSIS OF THE JUSTICE REINVESTMENT INITIATIVE AND THE TRUTH AND RECONCILIATION COMMISSION

ZACHARY NORRIS<sup>†</sup>

## ABSTRACT

Structural racism and racial injustice result in deep, long-standing, and widespread harm to communities, particularly to people of color and low-income people. To address and remedy these harms, countries and institutions have attempted to create processes for intervention and accountability; however, these efforts have often been limited or unsuccessful. This Article examines two specific efforts: the Justice Reinvestment Initiative in the United States and the Truth and Reconciliation Commission in South Africa. By probing the historical circumstances surrounding the creation of each process and their implementation, the Article analyzes why neither effort achieved their stated aims. That analysis reveals that the failure of these two initiatives stems from a lack of community engagement, narrow conceptions of harm and violence, and the dominance of institutional interests. The Article concludes with examples of campaigns and initiatives that have effectively addressed racial and economic injustices, and the factors that played a role in the success of those efforts.

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## INTRODUCTION

Both the Justice Reinvestment Initiative (JRI) in the United States and the Truth and Reconciliation Commission (TRC or the Commission) in South Africa demonstrate how institutional interests can subvert processes aimed at remedying harm from past racial injustice, while also pointing toward what success may require. The goal of this Article is to explore the promises and limitations of two very distinct processes that share similar aims, the JRI (United States, 2002–present) and the Commission (South Africa, 1995–2003). While distinct, the desire to ameliorate the impacts of past racial injustice by investing in communities harmed shaped each process’s creation.<sup>1</sup> Despite praise, neither process succeeded in accomplishing the aims that catalyzed their creation. They failed to do so because (1) neither process effectively engaged community members’ core interests; (2) both processes adopted narrow conceptions of harm and violence; and (3) both processes came to be dominated by the interests of established powerful institutions.

Given ongoing fissures along racial lines in the United States, it befits us to learn from these policies to move towards the development of more successful racial justice and healing processes that could assist in ending structural racism. Justice-oriented policy work could be more successful in accomplishing these aims by investing in communities utilizing a participatory democracy process, challenging fear-based narratives directed toward people of color, and expanding conceptions of violence and peace toward a broader conception of human rights.

This Article will first examine the historical context of racial injustice in South Africa and the United States, identifying commonalities between Apartheid, slavery, and Jim Crow laws. It will build upon that historical analysis by investigating the development of the Commission in South Africa and the JRI in the United States, identifying how both were implemented and the causes for their failures. The Article will offer recommendations for how to challenge the neoliberal consensus and structural inequities by analyzing government efforts to serve the public, people-powered movements to challenge neoliberalism, the impact of narrowly defining

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1. See NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* 194–97, 203, 205–06, 210–12 (2007); see also JAMES AUSTIN ET AL., *ENDING MASS INCARCERATION: CHARTING A NEW JUSTICE REINVESTMENT* 3 (2013), <http://www.justicestrategies.net/sites/default/files/publications/Charting%20a%20New%20Justice%20Reinvestment.pdf>.

safety, and the importance of acknowledging structural violence instead of punishing people of color. It will conclude with examples of campaigns and initiatives that effectively challenge the status quo and racial and economic injustices in South Africa and the United States.

### I. SOUTH AFRICA HISTORICAL CONTEXT: COLONIAL RULE AND APARTHEID

South Africa formed out of the exploitation and marginalization of an indigenous Black majority by a White settler minority.<sup>2</sup> The Dutch East India Company (*Verenigde Oostindische Compagnie* or VOC) initially set up a settlement for sailors to rest in route to the Dutch Caribbean in present-day Cape Town in 1652.<sup>3</sup> Although slavery in the Cape region, the expansion of European territory through colonization, and economic exploitation of Black South Africans occurred for hundreds of years, it was not until the twentieth century that a formalized system of racial segregation and social control occurred in South Africa.<sup>4</sup> The Apartheid Era in South Africa (1948–1994) reflected a continuation of prior discriminatory laws that existed since the beginning of Dutch rule and throughout the period of British colonialism.<sup>5</sup> Similar to the ways Jim Crow discrimination impacted Black people in the United States, Apartheid is best understood as both a political and an economic system of exploitation.<sup>6</sup> It benefitted a small White elite because the Black majority was prevented from owning land and forced to provide labor for less than a living wage.<sup>7</sup> South Africa's transition from de jure segregation to de facto segregation also came about because of decades of organizing, advocacy, and social movements, both inside South Africa and internationally.<sup>8</sup> The end of Apartheid did not occur until 1994 as part of a larger project of national liberation that began years earlier.<sup>9</sup>

Ordinary people in South Africa developed a Freedom Charter through a deeply democratic and participatory process.<sup>10</sup> In 1955, nearly forty years before the end of Apartheid, the African National Congress sent fifty thousand volunteers across the country to collect the “freedom demands” of the people of South Africa.<sup>11</sup> These demands were collected,

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2. See KLEIN, *supra* note 1, at 196.

3. ALAN MOUNTAIN, *THE FIRST PEOPLE OF THE CAPE: A LOOK AT THEIR HISTORY AND THE IMPACT OF COLONIALISM ON THE CAPE'S INDIGENOUS PEOPLE* 47–48 (2003).

4. See *A History of Apartheid in South Africa*, S. AFR. HIST. ONLINE, <http://www.sahistory.org.za/article/history-apartheid-south-africa> (last updated June 17, 2016).

5. See ROGER B. BECK, *THE HISTORY OF SOUTH AFRICA*, 87–110 (2d ed. 2014).

6. See KLEIN, *supra* note 1.

7. See Helena Rigotto, *Apartheid in Statistics*, INFOGR.AM, [https://infoagr.am/apartheid\\_in\\_statistics](https://infoagr.am/apartheid_in_statistics) (last visited Mar. 17, 2017).

8. See LESTER R. KURTZ, *THE ANTI-APARTHEID STRUGGLE IN SOUTH AFRICA (1912–1992)*, at 1–4 (2010), [https://www.nonviolent-conflict.org/wp-content/uploads/2016/02/kurtz\\_south\\_africa.pdf](https://www.nonviolent-conflict.org/wp-content/uploads/2016/02/kurtz_south_africa.pdf).

9. See BECK, *supra* note 5, at 164–67.

10. See KLEIN, *supra* note 1, at 195.

11. *Id.*

voted upon, and enshrined in the Freedom Charter in Kliptown, South Africa, on June 26, 1955.<sup>12</sup> The Freedom Charter was central to the organizing strategy and envisioning of a new South Africa.<sup>13</sup> It reflected a broad economic mandate including (1) “Land to . . . landless people,” (2) “Living wages and shorter hours of work,” (3) “Free and compulsory education,” and (4), perhaps most fundamentally, the decree that the former Apartheid state would redistribute land and resources of the country back to the society as whole.<sup>14</sup> Although written in 1955 during the Cold War Era, the South African Freedom Charter’s best chance for actualization came nearly four decades later as Nelson Mandela became President in 1994.<sup>15</sup>

When the process for a transition to a constitutional democracy in South Africa began, the questions the nation faced included not only which people would be held responsible for human rights violations during the Apartheid era and how, but also the extent to which the mandates set forth in the Freedom Charter would be realized.<sup>16</sup> The ideals contained in the Freedom Charter are socialist in their orientation and reflect a broader conception of human rights.<sup>17</sup> Regrettably, the Freedom Charter’s best chance for actualization materialized at a time when leaders like Margaret Thatcher and Ronald Reagan were solidifying a global neoliberal capitalist consensus.<sup>18</sup>

Perhaps unsurprisingly, when looking at aims that animated the Freedom Charter, the gains it generated have been largely in the sphere of democratic control of the government. While the importance of moving from a colonial regime to a formal, participatory democracy cannot be underestimated, neither should the ongoing inequity and deprivation faced by the vast majority of South Africans today.<sup>19</sup> According to the measure of its Gini coefficient (a measure of income inequality), South Africa remains

12. *Id.*

13. *See id.*

14. *Id.* at 195–97 (“What the Freedom Charter asserted was the baseline consensus in the liberation movement that freedom would not come merely when blacks took control of the state but when the wealth of the land that had been illegitimately confiscated was reclaimed and redistributed to the society as a whole.”).

15. *See id.* at 198, 200.

16. *See id.* at 197–98. South Africa’s transition from Apartheid to a constitutional democracy occurred in the 1990s after the fall of the Berlin Wall, the collapse of the Soviet Union, and after British Prime Minister Margaret Thatcher’s famous remarks: “There Is No Alternative” to capitalism. *TINA: There Is No Alternative*, INVESTOPEDIA, <http://www.investopedia.com/terms/t/tina-thereno-alternative.asp> (last visited Mar. 19, 2017). This historical context is vital to a thorough understanding of the success and failures of South Africa’s political transition and of the Truth and Reconciliation Commission.

17. Hugh MacLean, *Capitalism, Socialism and the Freedom Charter*, 11 S. AFR. LABOUR BULL. 8, 8–14 (1986).

18. *See* BECK, *supra* note 5, at 184, 190; Vijay Prashad, *Remembering Mandela*, VIKALP: PEOPLE’S PERSP. FOR CHANGE (Dec. 20, 2013), <http://www.vikalp.ind.in/2013/12/remembering-mandela-vijay-prashad.html> (“In this context, Mandela’s government had to operate. He did not take power in 1962, when he began his prison term, nor in 2000, when the Latin American breakthrough provided some openings for an alternative. His government took power in the 1990s, the high point of US primacy and of neo-liberal policy making.”).

19. *See* KLEIN, *supra* note 1, at 198.

one of the most unequal nations in the world today.<sup>20</sup> Furthermore, rates of disproportionate police brutality against Black South Africans remain consistent; reports of police brutality in South Africa have soared by 313%.<sup>21</sup> In this way, there are similarities in the gains of both the South African national liberation struggle and the Civil Rights Movement in terms of increased access to legislative and political democratic processes alongside ongoing structural disadvantages, inequality, and criminalization.

## II. U.S. HISTORICAL CONTEXT: SLAVERY AND JIM CROW SEGREGATION

Upon its founding as a settler colonial state, the United States established itself as a slaveholding nation.<sup>22</sup> The subhuman status of Black people was written into American laws, and the economic system of enslavement was maintained through acts of individual and organized violence.<sup>23</sup> Examples of this include the various means used to terrorize enslaved Black people—from lashings to sexual assault, the policing of the Black body is foundational to sociopolitical cultural formation in the United States.<sup>24</sup> Even after the legal abolishment of slavery by the passage of the Thirteenth Amendment post-1865, the separate and unequal status of Black persons and other people of color were still maintained through violent acts, such as the lynching of thousands of Black men, women, and children, from the Civil War until World War II.<sup>25</sup> Unjust laws—such as the Black Codes and written and unwritten Jim Crow segregation—and political disenfranchisement were maintained through legalized and extrajudicial killings, incarceration, and forced labor for a hundred-year period.<sup>26</sup>

The mid-twentieth century Black freedom struggle's deployment of mass civil disobedience through boycotts and protests proved to be critically necessary to undermining some of the most explicit forms of state-

20. STATISTICS S. AFR., REPORT NO. 03-10-06, POVERTY TRENDS IN SOUTH AFRICA: AN EXAMINATION OF ABSOLUTE POVERTY BETWEEN 2006 AND 2011, at 13 (2014), <https://beta2.statssa.gov.za/publications/Report-03-10-06/Report-03-10-06March2014.pdf>.

21. See David Smith, *South Africa Reports of Police Brutality More than Tripled in the Last Decade*, GUARDIAN (Aug. 22, 2013, 11:12 AM), <https://www.theguardian.com/world/2013/aug/22/south-africa-police-brutality-increase>.

22. See EQUAL JUSTICE INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR 3 (2d ed. 2015), <https://eji.org/sites/default/files/lynching-in-america-second-edition-summary.pdf> (“In America, there is a legacy of racial inequality shaped by the enslavement of millions of black people.”).

23. See generally RANDALL ROBINSON, THE DEBT: WHAT AMERICA OWES TO BLACKS 8–9 (2000) (broadly describing the history of Blacks in the United States to make an argument for reparations).

24. See *id.* at 3–4, 7–8, 49–50, 53–54.

25. EQUAL JUSTICE INITIATIVE, *supra* note 22.

26. See *id.* at 9–10 (“By 1890, the term ‘Jim Crow’ was used to describe the ‘subordination and separation of black people in the South, much of it codified and much of it still enforced by custom, habit, and violence.’”).

sanctioned racial discrimination in the United States.<sup>27</sup> The Civil Rights Movement's gains included the passage of the 1965 Voting Rights Act<sup>28</sup> and the end of de jure (according to law) segregation, and segregation through law and policy of public and private facilities.<sup>29</sup> However, what is often described as the Civil Rights Movement was also part of a larger movement for human rights and freedom.<sup>30</sup> For example, the 1963 March on Washington was named the "March on Washington for Jobs and Freedom."<sup>31</sup> Martin Luther King, reflecting on social change following the passage of civil rights statutes, expressed his economic concerns for the future in a speech given just weeks before his assassination on April 4, 1968:

You are going beyond purely civil rights to questions of human rights. That is distinct. . . . Now our struggle is for genuine equality, which means economic equality. For we know, that it isn't enough to integrate lunch counters. What does it profit a man to be able to eat at an integrated lunch counter if he doesn't have enough money to buy a hamburger?<sup>32</sup>

The Civil Rights Movement succeeded in ending de jure segregation, but a long history of racism and oppression continued to manifest in the form of de facto (according to fact) segregation: informal segregation, perpetuated through social norms.<sup>33</sup> After the Post-World War II economic boom began to wane and the country's manufacturing base declined, conservative politicians started to sell the idea that welfare programs actually contributed to crime and poverty, shifting the function of the state from support to control.<sup>34</sup> By the 1970s, the "War on Poverty" had been replaced by the "War on Drugs" and the "War on Crime," planting the seeds of what would become the largest national prison building boom in human history.<sup>35</sup>

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27. See Duke Univ. & The SNCC (Student Nonviolent Coordinating Comm.) Legacy Project, *Stories: The Story of SNCC, ONE PERSON ONE VOTE*, <http://onevotesncc.org/stories/story-sncc> (last visited Mar. 18, 2017) (providing a historical timeline of the Black Freedom Struggle and the non-violent civil disobedience tactics employed heavily by SNCC).

28. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

29. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

30. See THOMAS F. JACKSON, FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER KING, JR., AND THE STRUGGLE FOR ECONOMIC JUSTICE I (2007) (providing analysis about the Civil Rights Movement's call for economic justice and human rights).

31. *March on Washington for Jobs and Freedom*, NAT'L PARK SERV., <https://www.nps.gov/articles/march-on-washington.htm> (last visited Mar. 18, 2017).

32. Martin Luther King, Jr., Address at Bishop Charles Mason Temple to Striking Sanitation Workers in Memphis, Tennessee (Mar. 18, 1968) (transcript available at <http://kingencyclopedia.stanford.edu/primarydocuments/680318-000.pdf>).

33. Cf. RICHARD ROTHSTEIN, MODERN SEGREGATION 1-2, 4-5 (Mar. 6, 2014), <http://www.epi.org/files/2014/MODERN-SEGREGATION.pdf> (researching the contemporary manifestations of education and residential segregation).

34. See MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 45-50, 52 (Cornel West & Michelle Alexander eds., rev. ed. 2012).

35. See *id.* at 39, 45, 47, 49, 55.



While legalized segregation is thankfully a relic of the past, de facto segregation and organized state violence against Black people and other people of color persists.<sup>36</sup> The disproportionate incarceration of Black and Brown people and the murder of Black people every twenty-eight hours by law enforcement or vigilantes serve as stark reminders of this reality.<sup>37</sup> Jim Crow laws and the mass incarceration of Black and Brown people reflect an evolution of slavery toward subtler forms of discrimination rather than a departure from it.<sup>38</sup> Still, there never has been a Truth and Reconciliation process in this country.

### III. SOUTH AFRICA: THE TRUTH AND RECONCILIATION COMMISSION

Anti-Apartheid activists and leaders like Desmond Tutu saw the TRC as a central lever in the shift from an Apartheid state defined by legalized segregation, economic exploitation, and colonialism, toward national healing, democracy, and increased opportunity through transitional justice.<sup>39</sup> In accordance with the Interim South African Constitution, the TRC Act was formulated to (1) elucidate what violence was committed during the Apartheid regime, (2) offer conditional amnesty to perpetrators of abuses, and (3) secure reparations for victims.<sup>40</sup> The Commission has been touted as extremely successful and as a major exemplar for transitional justice processes.<sup>41</sup> It is important, however, when analyzing policy programs such as the TRC to ask questions such as “who is making the assessment?” and “whose interests and values do they represent?”

The TRC focused on reinvesting resources into communities and lessening the impacts of past racism and colonialism.<sup>42</sup> Unfortunately,

36. Cf. *20 Facts About U.S. Inequality That Everyone Should Know*, STAN. CTR. ON POVERTY & INEQ. (2011), <http://inequality.stanford.edu/publications/20-facts-about-us-inequality-everyone-should-know> (highlighting various statistical economic, educational, and penal disproportionalities among minority populations in the United States from the 1980s to the early 2000s).

37. ARLENE EISEN, OPERATION GHETTO STORM: 2012 ANNUAL REPORT ON THE EXTRAJUDICIAL KILLINGS OF 313 BLACK PEOPLE BY POLICE, SECURITY GUARDS AND VIGILANTES 3 (rev. ed. 2014), [http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/new\\_all\\_14\\_11\\_04.pdf](http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/new_all_14_11_04.pdf).

38. See ALEXANDER, *supra* note 34, at 2 (“As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it.”).

39. See Rebecca Saunders, *Lost in Translation: Expressions of Human Suffering, the Language of Human Rights, and the South African Truth and Reconciliation Commission*, 9 SUR - INT’L J. ON HUM. RTS. 51, 51, 55 (2008).

40. Tshepo Madlingozi, *20 Years of TRC – Taking Stock of the South African Truth and Reconciliation Commission 20 Years Later: No Truth, No Reconciliation and No Justice*, KHULUMANI SUPPORT GROUP 7 (Sept. 29, 2015), <http://www.khulumani.net/truth-memory/item/1151-tshepo-madlingozi-20-years-of-trc-taking-stock-of-the-south-african-truth-and-reconciliation-commission-20-years-later-no-truth-no-reconciliation-and-no-justice.html> (providing access to a manuscript written by Tshepo Mdingozi via SlideShare, which was presented at the Third International Colloquium of the Instituto Humanitas at Unisinos in Brazil 2016).

41. *Id.* The author is referencing page one of the manuscript.

42. But cf. Desmond Tutu, *Tutu: “Unfinished Business” of the TRC’s Healing*, MAIL & GUARDIAN (Apr. 25, 2014, 00:00), <http://mg.co.za/article/2014-04-24-unfinished-business-of-the-trc-healing> (outlining the intent of the TRC but then describing the proposed “wealth tax” for the transfer of resources to reinvest in the country as “stillborn”).

global leaders with influence in institutions like the International Monetary Fund (IMF) and the World Bank rendered the TRC less effective partly because the African National Congress (ANC) undertook it in the sociopolitical context of neoliberal capitalism, a context largely contrary to the ANC's immediate agenda.<sup>43</sup> According to Ian Haney López, neoliberalism's basic formula is brutally simple: fear people of color, resent the government, and trust the market.<sup>44</sup> As López describes, the neoliberal consensus pushes toward an understanding that the logic of the market must be held as sacrosanct; we are forced to have faith in the good intent of the market.<sup>45</sup>

There was intense and immediate pressure on South Africa's post-Apartheid leadership to determine the features of the new democracy.<sup>46</sup> The newly-in-power ANC—historically a Black-led, anti-apartheid political organization—was forced to encourage investments from other nations.<sup>47</sup> With millions of formerly disenfranchised people now expecting state support and resources denied to them for decades, the new democracy's policies gravitated toward the hope that an influx of capital would spur a redistribution of wealth and overall economic growth.<sup>48</sup> The failures of Truth and Reconciliation can only be understood in the larger context of South Africa emerging as a new nation in the post-Soviet Union collapse, as leaders like Margaret Thatcher and Ronald Reagan and institutions such as the IMF and the World Bank cemented the global neoliberal capitalism as the only economic pathway to development.<sup>49</sup>

Various attempts to start or even speak about repairing harm and inequity in South Africa were met with a negative response exerted through the political influence of global capital markets and capitalist elites.<sup>50</sup> This also impacted the reception of recommendations made by the Commission, including the decision on whether to pay for reparations and who

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43. KLEIN, *supra* note 1, at 205–06, 216 (“There was a flurry of public investment—more than a hundred thousand homes were built for the poor, and millions were hooked up to water, electricity and phone lines. But, in a familiar story, weighed down by debt and under international pressure to privatize these services, the government soon began raising prices.”).

44. Heather McGhee & Ian Haney López, *We Must Talk About Race to Fix Economic Inequality*, DEMOS (Mar. 12, 2016), <http://www.demos.org/blog/3/12/16/we-must-talk-about-race-fix-economic-inequality>.

45. *See id.*

46. *See* KLEIN, *supra* note 1, at 197, 200, 203, 206, 215.

47. Chris Webb, *Selling South Africa: Poverty, Politics and the 2010 FIFA World Cup*, GLOBAL RES. (Mar. 24, 2010), <http://www.globalresearch.ca/selling-south-africa-poverty-politics-and-the-2010-fifa-world-cup/18303> (“During this period, the pressures of both domestic and foreign capital forced the emergent African National Congress (ANC) government to follow the economic paradigms of the past and encourage foreign investment.”).

48. *See* GILLIAN HART, *RETHINKING THE SOUTH AFRICAN CRISIS: NATIONALISM, POPULISM, HEGEMONY* 6–10 (2014).

49. *See* Prashad, *supra* note 18 (discussing the social and political context of the global economy at the time that the ANC came into power).

50. KLEIN, *supra* note 1, at 207 (“Every time a top party official said something that hinted that the ominous Freedom Charter might still become policy, the market responded with a shock, sending the rand into free fall.”).

would pay for reparations.<sup>51</sup> The Commission recommended the creation of a one-time, one-percent tax on corporate wealth to fund reparations recipients identified through the Commission.<sup>52</sup> The Commission believed that given the way corporations reaped enormous profits under the Apartheid regime, they should bear some responsibility for repairing the harm done to victims.<sup>53</sup> But South African President Thabo Mbeki rejected the proposal “fearing that it would send an antibusiness message to the market.”<sup>54</sup> Neoliberalism leans toward less democratic participation rather than more.<sup>55</sup>

The economic system especially excludes the people who are most impacted by systemic violence. Throughout the transition process, Thabo Mbeki generally framed decisions on the structure of the economy as technocratic and administrative procedural issues rather than as questions fundamental to the realization of the Freedom Charter.<sup>56</sup> Unlike the Freedom Charter, which was developed through an open and participatory process, the economic decisions made by Mbeki happened behind closed doors and without the input of many of the people who risked their lives through anti-Apartheid activism to bring a new South Africa into being.<sup>57</sup> As described by Saunders in the article *Lost in Translation*, the TRC’s focus on “spiritual and symbolic forms of reparation[s] . . . has . . . abetted the ANC’s embrace of neoliberal economics.”<sup>58</sup>

#### IV. UNITED STATES: THE JUSTICE REINVESTMENT INITIATIVE

Though the JRI is a far more modest project than the Commission was, there are notable similarities in terms of its animating creation and also its failures. Susan B. Tucker and Eric Cadora at Open Society Institute originally conceptualized the idea of justice reinvestment as one tool to shift the ongoing dynamic of structural racism and racialized criminalization in the United States today.<sup>59</sup> The concept was created “as a public safety mechanism to downsize prison populations and budgets and re-al-

51. *Id.* at 210–13.

52. *Id.* at 210.

53. *Id.*

54. *Id.* at 211 (“In the end, the government put forward a fraction of what had been requested, taking the money out of its own budget . . .”).

55. See HART, *supra* note 48, at 6 (“‘Neoliberalism’ – understood as a class project and manifestation of global economic forces, as well as a rationality of rule . . .”).

56. See Saunders, *supra* note 39, at 61–62.

57. Ronnie Kasrils, *How the ANC’s Faustian Pact Sold Out South Africa’s Poorest*, GUARDIAN (June 24, 2013, 3:00 PM), <https://www.theguardian.com/commentisfree/2013/jun/24/anc-faustian-pact-mandela-fatal-error> (“An ANC-Communist party leadership eager to assume political office . . . has bequeathed an economy so tied in to the neoliberal global formula and market fundamentalism that there is very little room to alleviate the plight of most of our people.”).

58. Saunders, *supra* note 39, at 63.

59. Susan B. Tucker & Eric Cadora, *Justice Reinvestment*, in 3 IDEAS FOR AN OPEN SOC’Y 2, 2–3 (Nov. 2003), [https://www.opensocietyfoundations.org/sites/default/files/ideas\\_reinvestment.pdf](https://www.opensocietyfoundations.org/sites/default/files/ideas_reinvestment.pdf).

locate savings to leverage other public and private resources for reinvestment in minority communities disproportionately harmed by the system and culture of harsh punishment.”<sup>60</sup>

While justice reinvestment was not defined specifically in historical terms, its authors describe its moral and ethical component in the following manner: due to the historical harm and neglect communities of color and poor communities have faced, it is the duty of policy makers and political officials to initiate socioeconomic investments that serve to empower and retribute marginalized people.<sup>61</sup> Although not created through a democratic process, justice reinvestment reflected popular grassroots campaigns articulated throughout the 1990s and early 2000s calling for investment in communities rather than incarceration.<sup>62</sup> These “Books Not Bars” and “Jobs Not Jails” campaigns found a cogent theoretical articulation in justice reinvestment.<sup>63</sup>

The most popular and widespread attempt to move justice reinvestment from theory into practice has been the JRI.<sup>64</sup> Led by the Council of State Governments and supported by Pew Charitable Trusts,<sup>65</sup> the JRI is moving forward in twenty-seven states<sup>66</sup> and has resulted in the passage of legislation in seventeen states.<sup>67</sup> The function of the JRI includes assistance to states in criminal justice data collecting and analysis, policy identification, and program implementation, with the goal of curbing crime rates and managing crime in a more economical manner.<sup>68</sup> Written by ten researchers, analysts, and advocates dedicated to ending mass incarceration, the article *Ending Mass Incarceration: Charting a New Justice Reinvestment* details some of the failures of the JRI.<sup>69</sup> The authors conclude that the JRI may potentially reinforce mass incarceration as a component of the legal system rather than end it.<sup>70</sup>

60. AUSTIN ET AL., *supra* note 1, at 3.

61. *See id.* at 5.

62. *See* Jakada Imani, *California's Turning Tide on Youth Prisons*, HUFFINGTON POST (May 25, 2011), [http://www.huffingtonpost.com/jakada-imani/californias-turning-tide-\\_b\\_808744.html](http://www.huffingtonpost.com/jakada-imani/californias-turning-tide-_b_808744.html).

63. *See* *Jobs Not Jails in Alameda County*, ELLA BAKER CTR. FOR HUM. RTS., <http://ellabaker-center.org/our-work/jobs-not-jails-in-alameda-county> (last visited Mar. 18, 2017) (showing campaign histories of both “[B]ooks [N]ot [B]ars” and “Jobs Not Jails”).

64. *See* AUSTIN ET AL., *supra* note 1.

65. NANCY LAVIGNE ET AL., URBAN INST., JUSTICE REINVESTMENT INITIATIVE STATE ASSESSMENT REPORT 1–2, 6 (2014), <http://www.urban.org/sites/default/files/publication/22211/412994-Justice-Reinvestment-Initiative-State-Assessment-Report.PDF>.

66. *Justice Reinvestment Initiative*, OFF. JUST. PROGRAMS, <https://www.bja.gov/programs/justicereinvestment/index.html> (last visited Mar. 18, 2017).

67. *Crime & Justice Institute: Justice Reinvestment*, COMMUNITY RESOURCES FOR JUST., <http://www.crj.org/cji/pages/justice-reinvestment> (last visited Mar. 18, 2017).

68. LAVIGNE ET AL., *supra* note 65, at 3–4.

69. *See* AUSTIN ET AL., *supra* note 1.

70. *Id.*

Similar to some of the failures of the Commission, the JRI has not resulted in direct reinvestment in communities.<sup>71</sup> Furthermore, it has not made a significant impact in shifting the punishment economy's architecture.<sup>72</sup> Instead, the JRI has moved resources from corrections spending to other law enforcement agencies.<sup>73</sup> According to López, the general trend in neoliberal economic thought is that the government is to be feared—with the exception of law enforcement for the maintenance of “law and order.”<sup>74</sup> What started as an initiative to move resources into low-income communities of color has resulted instead in the reinvestment of resources into police departments.<sup>75</sup> This is not just because all government beyond law enforcement is viewed with suspicion in the popular imagination, but also because in this imagination the people—especially people of color—are to be feared.<sup>76</sup> The JRI has not engaged ordinary citizens; it has been predominantly driven by elected officials and bureaucrats.<sup>77</sup> Moreover, JRI did not engage the grassroots organizations and constituencies it represents in helping to set the direction of the initiative.<sup>78</sup>

Pew Charitable Trust and the Council of State Governments framed JRI technocratically; it has focused on reducing incarceration rates and recidivism, but not direct reinvestment.<sup>79</sup> The JRI has come to signify any and all justice reforms that are largely focused on decreasing rates, and not the communities most impacted and marginalized by incarceration.<sup>80</sup>

#### V. CHALLENGING THE NEOLIBERAL CONSENSUS: RACIALIZED FEAR VERSUS STRUCTURAL ACCOUNTABILITY

Both JRI and the TRC demonstrate that powerful institutional actors will gravitate toward proposals that serve their own interests, thereby reinforcing the status quo. Shifting away from the status quo and neoliberal consensus requires (1) shifting from overall resentment toward the government to demonstrating the impact of a government that meaningfully

71. *Id.* at 10 (“Increased funding for ‘intensive community supervision’ (i.e., closer control and scrutiny) can result in higher rates of return to prison by widening the net of social control. Even investment in rehabilitation services, such as drug treatment, can backfire if services are inappropriate for the individual or sub-par since relapse (which is common among recovering addicts) can result in revocation to prison.”).

72. *Id.*

73. *Id.* (“For example, JRI in Pennsylvania in 2012 made no attempt to advance a goal of community reinvestment, and instead promoted redirecting the highest proportion of anticipated savings to local law enforcement authorities, even though the state’s overall crime rate had dropped 14 percent.”).

74. See IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* 22, 26 (2014).

75. AUSTIN ET AL., *supra* note 1, at 4.

76. See McGhee & López, *supra* note 44.

77. See AUSTIN ET AL., *supra* note 1, at 4.

78. See *id.* at 8.

79. *Id.* at 7 (“[T]he terms of JRI reform today are expressed in the language of crime control and law enforcement, rehabilitation and treatment, recidivism reduction, and expanded, often tougher, parole and probation supervision.”).

80. *Id.* at 9–10.

serves its people; (2) shifting from the blaming and shaming of people of color to a broader understanding of accountability; and (3) expanding current definitions of violence and moving toward a new vision of safety.

*A. What Are the Impacts of Government When It Is in Service of the Public Good?*

Because government institutional actors can tend toward reinforcing their own interests rather than the interests of those most marginalized, distrust of the government is common in many communities of color and poor communities.<sup>81</sup> It is important, however, to note the ways that government can induce positive change when policy interests reflect and amplify the interest of the community. When government creates clear and simple policies with positive benefits to communities, those programs draw widespread support (e.g., social security).<sup>82</sup>

The following are examples of attempts to restructure the incentives of the justice system using political channels:

- The Brennan Center for Justice has advocated for a “Reverse Mass Incarceration” Act, which would reward states that both decrease crime and incarceration, as states like California, New York, and Mississippi have already done.<sup>83</sup>

- In California, voters passed a mandate that directed the state to move dollars from incarceration toward investment in the state’s education system. Proposition 47, the Safe Neighborhoods and Schools Act, recategorized certain low-level felonies as misdemeanors and redirected the savings from that change into programs to limit dropouts and school truancy, victims’ services, drug abuse, mental health, and other programs to keep people out of the justice system.<sup>84</sup>

- After hundreds of citizens rallied outside of former Governor of New York David Paterson’s office in Albany demanding drug law reform

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81. See SHAYLA C. NUNNALLY, *TRUST IN BLACK AMERICA: RACE, DISCRIMINATION, AND POLITICS* 9–11 (2012) (exploring the long-fraught relationship between Black Americans and the U.S. Government).

82. ELISA A. WALKER, VIRGINIA P. RENO & THOMAS N. BETHELL, *NAT’L ACAD. OF SOC. INS., AMERICANS MAKE HARD CHOICES ON SOCIAL SECURITY: A SURVEY WITH TRADE-OFF ANALYSIS I* (2014), [https://www.nasi.org/sites/default/files/research/Americans\\_Make\\_Hard\\_Choices\\_on\\_Social\\_Security.pdf](https://www.nasi.org/sites/default/files/research/Americans_Make_Hard_Choices_on_Social_Security.pdf) (noting in a survey of over 2,000 U.S. citizens aged twenty-one and over 81% of respondents “say they don’t mind paying for Social Security because they value . . . the security and stability it provides to millions of . . . Americans”).

83. LAUREN-BROOKE EISEN & INIMAI CHETTIAR, *BRENNAN CTR. FOR JUSTICE, THE REVERSE MASS INCARCERATION ACT 1* (2015), [https://www.brennancenter.org/sites/default/files/publications/The\\_Reverse\\_Mass\\_Incarceration\\_Act%20.pdf](https://www.brennancenter.org/sites/default/files/publications/The_Reverse_Mass_Incarceration_Act%20.pdf).

84. Safe Neighborhoods and Schools Act, 2014 Cal. Legis. Serv. Proposition 47 (West).

in 2009,<sup>85</sup> the Rockefeller Drug Laws<sup>86</sup> were overturned and reformed.<sup>87</sup> The 2009 reforms included both the elimination of mandatory minimum sentences for drug offenses and the restoration of a judge's ability to send an individual to a drug treatment program, rather than prison.<sup>88</sup>

It is not by accident that many of the most successful and transformative proposals have been driven by ordinary people, from the reform of the Rockefeller Drug Laws in New York to the passage of Proposition 47 in California.

### *B. Who Is Participating in the Neoliberal Consensus? How Do We Change It?*

Under this most recent era of neoliberalism in the United States and elsewhere, resources and political and economic power have become increasingly concentrated in the hands of the few at the expense of the many. Decisions like *Citizens United v. FEC*<sup>89</sup> and the overturning of the Voting Rights Act<sup>90</sup> are the hallmarks solidifying a new age of corporate control of our democracy. People-led social movements demanding widespread policy and cultural change, such as Black Lives Matter,<sup>91</sup> have been on the rise in the last five years and are pressing for change in the streets and within the halls of power.<sup>92</sup> In the cases of South Africa and the United States, investigating their respective political histories leads to the conclusion that the people must not demobilize, even when their champion is in office. Both Barack Obama and Nelson Mandela were thought to be harbingers of change and, unfortunately, many aspects of structural inequality and discrimination remain in both nations.<sup>93</sup>

85. Jeremy W. Peters, *Albany Reaches Deal to Repeal '70s Drug Laws*, N.Y. TIMES (Mar. 25, 2009), <http://www.nytimes.com/2009/03/26/nyregion/26rockefeller.html>.

86. See Brian Mann, *The Drug Laws That Changed How We Punish*, NPR (Feb. 14, 2013, 3:04 AM), <http://www.npr.org/2013/02/14/171822608/the-drug-laws-that-changed-how-we-punish> (discussing a series of drug statutes introduced by former New York Governor Nelson Rockefeller in 1973 that created harsh sentences for both drug selling and possession, for example, a mandatory 15-to-life sentence for the possession of four ounces of drugs such as cocaine, marijuana, morphine, and heroin).

87. NYCLU: *Historic Reforms of New York's Draconian Drug Sentencing Scheme Imminent*, N.Y. C.L. UNION (Mar. 31, 2009), <https://www.nyclu.org/en/press-releases/nyclu-historic-reforms-new-yorks-draconian-drug-sentencing-scheme-imminent>.

88. *Id.*

89. 558 U.S. 310, 333–34 (2010).

90. *Shelby Cty. v. Holder*, 133 S. Ct. 2612, 2631 (2013).

91. *About the Black Lives Matter Network*, BLACK LIVES MATTER, <http://blacklivesmatter.com/about> (last visited Feb. 8, 2017) (describing Black Lives Matter as a chapter-based national organization and grassroots movement “working for a world where Black lives are no longer systematically and intentionally targeted for demise”).

92. Jelani Cobb, *The Matter of Black Lives*, NEW YORKER (Mar. 14, 2016), <http://www.newyorker.com/magazine/2016/03/14/where-is-black-lives-matter-headed>.

93. See, e.g., KLEIN, *supra* note 1, at 206 (“In 2005, only 4 percent of the companies listed on the [Johannesburg Stock Exchange] were owned or controlled by blacks.”); *On Views of Race and Inequality, Black and Whites Are Worlds Apart*, PEW RES. CTR. (June 27, 2016), <http://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart> (“According to a new Pew Research Center analysis of data from the U.S. Census Bureau, in 2014 the median adjusted income for households headed by blacks was \$43,300, and for whites it was \$71,300.”).

To accomplish change, people must be able to understand the government bureaucracies that shape the world they live in. This will give them the foundational tools to shift the levers of power toward less harm and greater access, ultimately acting as agents in designing new systems that reflect their own interests. In organizing for social justice, changing people's own conceptions of the self has historically been understood as a first critical step in the larger process of social transformation.<sup>94</sup> As people share with one another, they fight the isolation and shame that can come with being a victim of violence inflicted by the state or anyone else. Community spaces and conversations are necessary for effective organizing; by defining themselves for themselves, victims of Apartheid, state violence, or incarceration become active participation in healing themselves and their communities.<sup>95</sup>

### C. *What Is Violence? What Is Safety?*

Narrow understandings of violence (as only tangible harm) and of justice (as between and upon individuals) fail to grapple with the more all-encompassing aspects of institutional violence. Expressing racism is now regarded as interpersonal and individualized; laws have only abolished explicitly racist practices and not the structural violence embedded in factors such as access to physical space, housing policies, and educational quality.<sup>96</sup> Narrow conceptions of justice limit the possibilities and the reach of restorative justice solutions. In our current legal system, only some individuals can get a modicum of justice, and sentencing precedents (e.g., mandatory minimums) limit the power of mitigating circumstances and community input in deciding how justice should be undertaken.<sup>97</sup> On the contrary, however, there are organizations and collectives working outside of the legal system to promote accountability and community decision-making.<sup>98</sup> In addition, narrow conceptions of safety also constrain the potential of policy initiatives. In the case of the JRI, its policy focus on crime rates and recidivism automatically assumes that a decrease in rates will coincide with an increase of safety. Rather than identifying problems in the binary of "crime" and "absence of crime," a more robust conception

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94. See Marshall Ganz, *Public Narrative, Collective Action, and Power*, in THE WORLD BANK, ACCOUNTABILITY THROUGH PUBLIC OPINION: FROM INERTIA TO PUBLIC ACTION 289, 301 (Sina Odugbemi & Taeku Lee eds., 2011).

95. See *id.* at 295.

96. See Jeff Nesbit, *Institutional Racism Is Our Way of Life*, U.S. NEWS (May 6, 2015, 1:16 PM), <http://www.usnews.com/news/blogs/at-the-edge/2015/05/06/institutional-racism-is-our-way-of-life>.

97. *What the Experts Say*, FAMM, <http://famm.org/sentencing-101/what-experts-say/see-more-experts> (last visited Mar. 19, 2017) ("Mandatory minimum sentences have been studied extensively and have been shown to be ineffective in preventing crime. They have been effective in distorting the sentencing process. They discriminate against minorities in their application, and they have been shown to waste the taxpayers' money.")

98. See, e.g., Danielle Sered, *Common Justice*, VERA INST. JUST., <https://www.vera.org/centers/common-justice> (last visited Mar. 19, 2017); *The Harm Free Zone*, SPIRITHOUSE, <http://www.spirithouse-nc.org/collective-sun-ii> (last visited Mar. 19, 2017) (describing programing for community-based accountability and restorative justice practices).



of accountability is needed. First, conceptions of accountability must include captains of industry, corporate entities, and other socioeconomic actors, and second, we must move beyond carceral-minded quantifiers of safety (e.g. decreased recidivism) and into the realm of justice alternatives.

*D. Who Is to Blame? Punishing People of Color Versus Acknowledging Structural Violence*

In order to advance the particular kind of transformative change envisioned by justice reinvestment or the Commission, the issue of who is at fault must be addressed. This should not be a simple question. In fact, the more robust the conception of blame, fault, and accountability, the more likely it is to give rise to a robust conception of human rights.

Slavery existed in the United States and during its colonial history for 246 years.<sup>99</sup> As Randall Robinson describes in *The Debt*, the legacy of slavery has continued through policies such as the Black Codes, Jim Crow Segregation, and the policies that drive mass incarceration.<sup>100</sup> People and institutions actively developed these policies and practices and benefit handsomely from them.<sup>101</sup> Those people and institutions drive home the idea that these policies are the deliberate continuation of slavery, and, therefore, it is entirely possible to assign fault and responsibility. For example, the namesakes of Brown University, Nicholas and Joseph Brown, achieved wealth in part by manufacturing and selling slave ships and investing in the transatlantic slave trade.<sup>102</sup> However, holding institutions accountable when harms are done to marginalized groups such as low-income communities of color remains the exception.

Justice requires asking who is responsible for the harm, no matter how powerful those persons may be, and then developing mechanisms so that all of those persons might make amends. We must develop new forms of accountability to create the conditions for former slaves to have viable opportunity within a nation that held them captive since its founding. Otherwise, changes in legal relationship may occur, but more fundamental changes in terms of social and economic relationships do not.

Instead, we continue to see those most marginalized from political and economic power in continued difficult no-win situations, often mirroring those of formerly enslaved people, of being funneled into the justice system while they seek employment. For example, Shanesha Taylor, a

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99. ROBINSON, *supra* note 23, at 1.

100. *Id.* at 101–02, 210–11, 225.

101. *Id.* at 230.

102. See BROWN UNIV. STEERING COMM. ON SLAVERY & JUSTICE, SLAVERY AND JUSTICE 12–14, 15–17, [http://www.brown.edu/Research/Slavery\\_Justice/documents/SlaveryAndJustice.pdf](http://www.brown.edu/Research/Slavery_Justice/documents/SlaveryAndJustice.pdf) (providing a detailed examination of the relationship between the establishment of Brown University and the transatlantic slave trade).

mother of two, left her children in the car while she went to a job interview.<sup>103</sup> She was sentenced to eighteen months of probation for child neglect.<sup>104</sup> Her sentence might have been longer but for public outcry.<sup>105</sup> This is but one example of a larger trend where poor families of color are more likely to be involved in the justice system and to suffer worsening economic conditions as a result.<sup>106</sup> The findings of *Who Pays: The True Cost of Mass Incarceration on Families* illustrates the experiences of low-income families of color trapped in a punishing economy:

- People impacted by incarceration “are saddled with copious fees, fines, and debt” while suffering through diminished economic opportunities that affect families for generations.<sup>107</sup>

- Women and families bear the brunt of these costs, and yet, they “are the primary resource for housing, employment, and health needs of their formerly incarcerated loved ones, filling the gaps left by . . . [a lack of] reentry services.”<sup>108</sup>

- Incarceration damages families and prevents stability, causing life-long health impacts and perpetuating cycles of trauma and poverty that keep families and communities from thriving.<sup>109</sup>

The Department of Justice Pattern or Practice Investigation of the Ferguson, Missouri, Police Department provides an example of what this punishing economy looks like on the municipal level.<sup>110</sup> According to that report, eighty-eight percent of instances of police use of force were against Black people, and of the 21,000 residents of Ferguson, 16,000 people had outstanding arrest warrants.<sup>111</sup> The report documented evidence that “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs.”<sup>112</sup> As a result, single missed court payments were resulting in jail time, and one woman who once illegally

103. Sarah Jarvis, *Shaneshia Taylor Sentenced to 18 Years Probation*, ARIZ. CENT. (May 15, 2015, 9:16 AM), <http://www.azcentral.com/story/news/local/scottsdale/2015/05/15/shaneshia-taylor-sentenced-friday-abrk/27365949>.

104. *Id.*

105. *Id.*

106. SANETA DE VUONO-POWELL, CHRIS SCHWEIDLER, ALICIA WALTERS & AZADEH ZOHRABI, *WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES* 12–18 (2015), <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

107. *Id.* at 7.

108. *Id.* at 9.

109. *Id.*

110. See U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV., *INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT* 52–54 (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

111. *Id.* at 6, 55, 62.

112. *Id.* at 2.

parked her car ended up paying over \$1,000 in fines and spent six days in jail.<sup>113</sup>

The blame inflicted on poor people of color, who are attempting to make ends meet and survive through these circumstances, must be challenged. People of color are regarded as deserving of punishment to a degree that White Americans often are not. For instance, the “public health concern” response to the present-day New England heroin epidemic—in which users are predominantly White—is drastically different from the harsh punishments served out when heroin users were disproportionately Black.<sup>114</sup>

Societal examples of racialized blame include the “super predator”<sup>115</sup> and “welfare queen”<sup>116</sup> stereotypes, in contrast to recognizing the culpability of institutions and systems. Fearing and criminalizing people of color does not allow for a critical examination of the underlying reasons for the cycles of generational poverty, limited access to social services, and high unemployment in these communities.<sup>117</sup> This must be done both explicitly, through slogans like “Black Lives Matter,” and implicitly, through campaigns like “Books Not Bars” to close the California Youth Authority prisons.<sup>118</sup> From 2003 to 2012, the Ella Baker Center for Human Rights, the Youth Justice Coalition, the W. Haywood Burns Institute, the Center on Juvenile and Criminal Justice, the National Council on Crime and Delinquency, the National Youth Law Center, and the Youth Law Center, among others, worked to reform California’s state-run youth prison system.<sup>119</sup> Prior to this campaign, the perception of youth inside the California Youth Prison system was that they were the “worst of the

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113. Mark Berman & Wesley Lowery, *The 12 Key Highlights from the DOJ’s Scathing Ferguson Report*, WASH. POST (Mar. 4, 2015), <https://www.washingtonpost.com/news/post-nation/wp/2015/03/04/the-12-key-highlights-from-the-doj-s-scathing-ferguson-report>.

114. Andrew Cohen, *How White Users Made Heroin a Public-Health Problem*, ATLANTIC (Aug. 12, 2015), <http://www.theatlantic.com/politics/archive/2015/08/crack-heroin-and-race/401015>.

115. Hillary Clinton, First Lady of the U.S., Address at Keene State College (Jan. 28, 1996) (video of this speech is available at <https://www.c-span.org/video/?c4582435/full-speech-keene-state>).

116. LÓPEZ, *supra* note 74, at 58 (“On the stump, Reagan repeatedly invoked a story of a ‘Chicago welfare queen’ with ‘eighty names, thirty addresses, [and] twelve Social Security cards [who] is collecting veteran’s benefits on four non-existing deceased husbands . . . .’” (alteration in original)).

117. See generally Kristin L. Perkins & Robert J. Sampson, *Compounded Deprivation in the Transition to Adulthood: The Intersection of Racial and Economic Inequality Among Chicagoans, 1995–2013*, 1 RSF: RUSSELL SAGE FOUND. J. SOC. SCI. 35, 35 (2015) (describing a case study of the layered effects of historical inequality on Black communities in Chicago).

118. Books Not Bars was a campaign led by the Ella Baker Center and youth advocates to close the abusive California Youth Authority prisons. See *Books Not Bars Basics*, ELLA BAKER CTR. FOR HUM. RTS., <http://ellabakercenter.org/books-not-bars/books-not-bars-basics> (last visited Mar. 19, 2017) [hereinafter *Basics*].

119. See *id.*; BARRY KRISBERG, REFORMING THE CALIFORNIA DIVISION OF JUVENILE JUSTICE: LESSONS LEARNED 18 (2014), [http://www.cdcr.ca.gov/Reports\\_Research/docs/Reforming\\_the\\_Division\\_of\\_Juvenile\\_Facilities-Final.pdf](http://www.cdcr.ca.gov/Reports_Research/docs/Reforming_the_Division_of_Juvenile_Facilities-Final.pdf).

worst” and that they were the “super predators.”<sup>120</sup> Families were regarded as uncaring or worse.<sup>121</sup> Over an eight-year campaign, youth who were formerly involved in the youth prison system became outspoken advocates against a system with seventy-five percent recidivism rates and over \$100,000 per-year-per-youth price tag. Their mothers and grandmothers were steadfast in their determination to close the youth prison system, and through that process they challenged the conception that they didn’t care about their loved ones.<sup>122</sup> As a result, economic arguments about the need to close youth prisons that once fell on deaf ears were eventually well received.<sup>123</sup> By challenging the dehumanizing depictions of incarcerated youth and their families, this campaign opened the eyes of legislators to the need for and possibility of real reform.<sup>124</sup> Additionally, through documentary films, public education, and earned media, the campaign raised the visibility of rehabilitative programs in other states.<sup>125</sup> The success of these programs demonstrated that there was a better way to treat youth involved in the justice system. By challenging the dehumanization of families and positioning the site of rehabilitation and accountability within families, communities, and local programs rather than remote youth prisons, the campaign succeeded in closing five youth prisons<sup>126</sup> and helping reduce the youth prisons population by over eighty percent.<sup>127</sup> The state saw no increase in youth crime as a result.<sup>128</sup> Organizations and campaigns such as “Close California Youth Prisons” are working to shift the conception of who is to blame to a more institutionalized framework, away from the scapegoating of youth and families.<sup>129</sup>

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120. See Witness, *System Failure: Violence, Abuse and Neglect in the California Youth Authority*, HUB (Apr. 9, 2008), <http://hub.witness.org/en/SystemFailure> (exploring the experience of incarcerated young people in California youth prisons).

121. KRISBERG, *supra* note 120, at 14.

122. See Imani, *supra* note 62.

123. *Id.*

124. BARRY KRISBERG, LINH VUONG, CHRISTOPHER HARTNEY & SUSAN MARCHIONNA, A NEW ERA IN CALIFORNIA JUVENILE JUSTICE: DOWNSIZING THE STATE YOUTH CORRECTIONS SYSTEM 2 (2010), [https://www.law.berkeley.edu/files/bccj/New\\_Era.pdf](https://www.law.berkeley.edu/files/bccj/New_Era.pdf); Yirmeyah Beckles, *At Books Not Bars Event, Family Members and the Formerly Incarcerated Share Their Stories*, OAKLAND N. (Aug. 13, 2012, 4:12 PM), <https://oaklandnorth.net/2012/08/13/at-books-not-bars-event-family-members-and-the-formerly-incarcerated-share-their-stories>.

125. *E.g.*, C. LENORE ANDERSON, DANIEL MACALLAIR & CELINA RAMIREZ, BOOKS NOT BARS & CTR. ON JUVENILE & CRIMINAL JUSTICE, CALIFORNIA YOUTH AUTHORITY WAREHOUSES: FAILING KIDS, FAMILIES & PUBLIC SAFETY 13 (2005).

126. KRISBERG, *supra* note 120, at 2; see also *Basics*, *supra* note 119.

127. KRISBERG, VUONG, HARTNEY & MARCHIONNA, *supra* note 124, at 17; Katy McCarthy, *Ella Baker Has a New Boss; Meet Problem-Solver Zach Norris*, JUV. JUST. INFO. EXCHANGE (Oct. 3, 2013), <http://jjie.org/2013/10/03/ella-baker-has-a-new-boss-meet-problem-solver-zack-norris>; *Basics*, *supra* note 119.

128. KRISBERG, *supra* note 120, at 2–3; KRISBERG, VUONG, HARTNEY & MARCHIONNA, *supra* note 124, at 8.

129. Beckles, *supra* note 124.

## VI. EXAMPLES &amp; CAMPAIGNS WORKING TO CHANGE THE STATUS QUO

Some campaigns have indeed challenged the scapegoating of people of color, sought a broader conception of safety, and engaged people as protagonists.<sup>130</sup> Successful campaigns include the following examples:

- The City of Chicago paid \$5.5 million in restitution to fifty-seven people (almost exclusively Black men) tortured by the Chicago Police Department in the 1970s, 1980s, and early 1990s.<sup>131</sup> The passage of the reparations ordinance came after years of hearings, investigations, and collaborations between entities such as the People's Law Office, Amnesty International USA, and We Charge Genocide.<sup>132</sup>

- The Justice Reinvestment Coalition of Alameda County is a community-driven alliance of organizations working to decrease incarceration and our reliance on policing in Alameda County and advocating for an increase in funding for socioeconomic resources for communities.<sup>133</sup> The Coalition's successful 2015 and 2016 "50% for Jobs Not Jails" campaigns resulted in millions of dollars to support new community services funds instead of continued investment in the sheriff and probation departments.<sup>134</sup> These victories created five community funds—employment, education, case management, pre-trial, and For Us By Us. The For Us By Us fund alone provided \$1 million in funding for organizations staffed, managed, and operated by formerly incarcerated and systems-impacted individuals.<sup>135</sup> Most recently, the coalition also won a "Jobs 4 Freedom" campaign to secure a re-entry hiring program that will provide 1,400 county jobs and offer support to formerly incarcerated individuals.<sup>136</sup>

- Equal Education (EE) is a community organization in South Africa fighting for greater access and improved quality of schools for poor and working class South African communities.<sup>137</sup> Originally organized due to

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130. See, e.g., Saru Jayaraman & Zachary Norris, *What Does It Mean to Be Safe?*, ELLA BAKER CTR., (July 18, 2016), <https://medium.com/@ellabakercenter/what-does-it-mean-to-be-safe-2403bc91d906#.v8sl8o649>.

131. Merrit Kennedy, *Decades Later, Victims of Chicago Police Torture Paid Reparations*, NPR: THE TWO-WAY (Jan. 5, 2016, 3:47 PM), <http://www.npr.org/sections/thetwo-way/2016/01/05/462040444/decades-later-victims-of-chicago-police-torture-paid-reparations>.

132. See CHI. TORTURE JUST. MEMORIALS, <http://chicagotorture.org> (last visited Feb. 10, 2017) (providing a digital archive of information related to the Chicago Police tortures and reparations process).

133. See JUST. REINVESTMENT COALITION OF ALAMEDA COUNTY, <http://www.jrcac.org> (last visited Mar. 19, 2017) (detailing the campaigns and victories of the Justice Reinvestment Coalition).

134. Sam Levin, *Alameda County to Reduce Jail Funding, Prioritize Social Services*, E. BAY EXPRESS (Mar. 24, 2015), <http://www.eastbayexpress.com/SevenDays/archives/2015/03/24/alameda-county-to-reduce-jail-funding-prioritize-social-services>.

135. Darris Young, Ella Baker Ctr. for Human Rights (2016) (unpublished manuscript) (on file with author) (discussing the framework and rationale for the For Us By Us fund).

136. See *Justice Reinvestment Coalition Wins 1,400 Jobs for Formerly Incarcerated People in Alameda County*, ELLA BAKER CTR. FOR HUM. RTS. (June 28, 2016), <http://www.ellabakercenter.org/in-the-news/justice-reinvestment-coalition-wins-1400-jobs-for-formerly-incarcerated-people-in>.

137. See EQUAL EDUC., <https://equaleducation.org.za> (last visited Feb. 10, 2017).

the need of a critical mass of parents, teachers, and students in the Khayelitsha township of Cape Town—and with high school students holding leadership positions in the organization—EE has now gone on to become a nationwide organization.<sup>138</sup> Some of the organization's policy victories include the fixing of over 500 windows of the Luhlaza High School in Khayelitsha in 2008 and halting the closing of over seventeen schools in the Western Cape Province in 2012.<sup>139</sup>

- After an act of police violence in 2015, a coalition of grassroots organizations in Minneapolis mobilized together and created a comprehensive “United Black Agenda” for racial and economic justice.<sup>140</sup> The coalition called for justice-orientated policies such as a summer jobs program for youth of color, fair labor practices, and voting rights restoration, and also explicitly stated that investment in community is necessary to effectively challenge state violence.<sup>141</sup> The coalition is using the agenda to lobby in the state legislature for initiatives that target racial and socioeconomic inequalities in the state of Minnesota;<sup>142</sup> one of the coalition's recent state legislative victories included the passage of a paid sick days bill.<sup>143</sup>

- Restore Oakland, a collaboration between the Ella Baker Center for Human Rights and Restaurants Opportunities Centers United, will provide community-based, restorative economics and justice space in East Oakland.<sup>144</sup> Envisioning community safety and justice in a new way, the hub will include job-training programs, a restaurant that will provide living wage jobs for the community, restorative justice programming, and health care and child care programs.<sup>145</sup>

138. *Id.*

139. *See id.* (providing information on Equal Education's campaigns and leadership structure). Equal Education is “a movement of learners, parents, teachers and community members working for quality and equality in South African education, through analysis and activism.” *Our Movement*, EQUAL EDUC., <https://equaleducation.org.za/our-movement/> (last visited Apr. 18, 2017).

140. *See* Patrick Condon, ‘United Black Legislative Agenda’ Seeks \$75 Million to Create Businesses, STARTRIB. (Apr. 6, 2016, 9:41 PM), <http://www.startribune.com/coalition-seeks-ambitious-legislative-agenda-aimed-at-easing-racial-economic-disparities/374814121>.

141. Memorandum from the United Black Legislative Agenda (n.d.), [https://drive.google.com/file/d/0B2ilek\\_XQNNgbWMyUWdfUEQyMzA/view](https://drive.google.com/file/d/0B2ilek_XQNNgbWMyUWdfUEQyMzA/view).

142. *Id.*

143. Peter Callaghan, *Minneapolis Approves ‘Landmark’ Paid Sick Leave Law*, MINNPOST (May 27, 2016), <https://www.minnpost.com/politics-policy/2016/05/minneapolis-approves-landmark-paid-sick-leave-law>; Peter Callaghan, *Minneapolis Set to Become First City in Minnesota to Require Paid Sick Leave*, MINNPOST (May 6, 2016), <https://www.minnpost.com/politics-policy/2016/05/minneapolis-set-to-become-first-city-minnesota-require-paid-sick-leave>.

144. Luke Tsai, *A Nonprofit Restaurant in East Oakland Will Aim to Prioritize People over Profits*, E. BAY EXPRESS: WHAT THE FORK (Feb. 16, 2016), <http://www.eastbayexpress.com/What-TheFork/archives/2016/02/16/a-nonprofit-restaurant-in-east-oakland-will-aim-to-prioritize-people-over-profits>.

145. *See Restore Oakland*, ELLA BAKER CTR. FOR HUM. RTS., <http://ellabakercenter.org/restore-oakland> (last visited Feb. 10, 2017) (detailing the development of the restorative justice and restorative economics hub in East Oakland).

## CONCLUSION

Examining the JRI in the United States and the Commission in South Africa demonstrates how institutional actors trend toward limiting conceptions of harm, safety, and accountability. These limitations reflect their own conceptions of what governments are charged with doing in the twenty-first century. Marginalized communities continue to suffer the impact of the shortcomings of government systems that trade in racialized fear and shame, rather than accountability and reparations. Those interested in truly advancing racial equity and reducing inequality must continue to pursue strategies that successfully challenge the underlying logic, racialized rhetoric, and assumptions of these punishing systems.

A process of Truth and Reinvestment addresses some of the gaps existing in both the JRI and the Commission. Truth means reckoning with the reality of racial injustice in our country and talking about how we have continuously prioritized and profited from shackles, walls, and jails in communities of color—from slavery, to Jim Crow, to our current criminal justice system. Reinvestment means rejecting these priorities and advancing real, long-term solutions that create opportunity for those who have been most harmed.

Such a process would both allow us to acknowledge and wrestle with the harms that have been systematically wrought on people of color in this country and to channel resources into those communities. Without this initial reckoning, we cannot ensure that reinvestments are truly going to those who have been most impacted by structural racism.

Race-neutral reinvestment policies that do not take into account the targeting of people of color by the criminal justice system could end up replicating the exact circumstances that have brought us to a moment where people of color make up 60% of those imprisoned, Black and Latino people are three times more likely to be searched during a traffic stop than Whites, and more than 70% of students involved in school-related arrests or referred to law enforcement are Black or Latino.

Ordinary people, particularly those who have been harmed by the criminal justice system, must be engaged in the process of Truth and Reinvestment so that people impacted by systems of punishment drive the solutions and creation of alternatives. Community participation will help ensure that reinvestments are directed towards people of color and low-income communities, instead of towards law-enforcement-driven solutions or top down, trickle down approaches. By connecting the truth of our country's past to reinvestment in our future, we can effectively address racial inequities and build a society where we prioritize growth, redemption, and support over punishment.

