The Language of Criminal Justice Reform: Reflections on Karakatsanis' *Usual Cruelty*

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INTRODUCTION: NEW POLITICS, NEW NARRATIVES

Until relatively recently, the politics surrounding criminal justice reform were infamous for operating as a "one-way ratchet."[1] For at least a decade immediately before and after the turn of this century, political conversations about criminal justice were dominated by "tough-on-crime" rhetoric that both fed and responded to broad public support for punishment.[2] During this period, Mary Fan explains that it was "much easier to accelerate penal severity and much harder to shift course, even if the lessons of experience counsel[ed] for change."[3] In the book *Prisoners of*

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[1] Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223, 223 n.1, 225 (2007) (collecting descriptions of the criminal justice system as a "one-way ratchet" but noting that the "one-way ratchet" description was an oversimplification that ignored "long and continuing" state decriminalization efforts); Mary D. Fan, *Beyond Budget-Cut Criminal Justice: The Future of Penal Law*, 90 N.C. L. REV. 581, 592 (2012) ("[F]or more than a decade, we have been caught in a one-way ratchet and a rut."); *see* William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 509–10 (2001) (discussing the historical trend of broadening the reach of criminal law in an effort to appear "tough on crime[,]").

[2] RACHEL ELISE BARKOW, PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION 2 (2019) (explaining that this "penal populism" is "an embedded feature of U.S. politics").

[3] Fan, *supra* note 1, at 592.

Politics, Rachel Barkow describes in detail the political and media forces that drove the public's appetite for more punitive criminal justice policies.[4]

In recent years, however, the dominant criminal justice discourse in the United States has changed, and the country "is increasingly described as being in the midst of a cultural sensibility shift around crime and punishment."[5] We seem to be leaving the era of mass incarceration behind, in our rhetoric, at least. Michelle Phelps credits the range of diverse voices ("including prisoners and their advocates, policymakers, researchers, think tanks, and journalists") whose advocacy and "contestation" during our more punitive decades "coalesced" into an increasingly powerful "critique[]" of "the value of a massive carceral system oriented toward retribution and incapacitation."[6]

Bipartisan efforts to shrink jail and prison populations and widespread calls for police reform make clear that criminal justice reform has moved away from its political third-rail status.[7] As New York Times criminal justice editor Shaila Dewan explained after the election in 2020: "[C]riminal justice reform offers something for just about everyone: social justice crusaders who point to yawning racial disparities, fiscal conservatives who decry the extravagant cost of incarceration, libertarians who think the government has criminalized too many aspects of life . . . ."[8] There seems to be a growing consensus that the current system is unsustainable, even if there is no agreement about how to fix it or whether to abandon it.[9]

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[4] BARKOW, *supra* note 2, at 105–12.

[5] Michelle S. Phelps, *Possibilities and Contestation in Twenty-First-Century US Criminal Justice Downsizing*, 12 ANN. REV. L. SOC. SCI. 153, 154 (2016).

[6] *Id.* at 159–61 (explaining that these "struggles" against the status quo "open[ed] up channels of dissent and develop[ed] the policy discourses and proposals that have become popular today.").

[7] *See* Shaila Dewan, *Here's One Issue That Could Actually Break the Partisan Gridlock*, N.Y. TIMES (Nov. 24, 2020), https://perma.cc/M3KL-8CJT ("In an election season in which no one seemed to agree on anything . . . criminal justice reform was the rare issue upon which the two parties seemed to find some common ground."); Ames Grawert & Tim Lau, *How the FIRST STEP Act Became Law – and What Happens Next*, BRENNAN CENTER FOR JUST. (Jan. 4, 2019), https://perma.cc/72FE-2L4G ("The FIRST STEP Act's overwhelming passage demonstrates that the bipartisan movement to reduce mass incarceration remains strong.").

[8] Dewan, *supra* note 7; *see* Jamiles Lartey, *What Biden's Win Means for the Future of Criminal Justice*, MARSHALL PROJECT (Nov. 8, 2020), https://perma.cc/A44H-585F ("Biden has . . . been elected on the most progressive criminal justice platform of any major party candidate in generations.").

[9] *See* JOSEPH R. BIDEN, JR. ET AL., SOLUTIONS: AMERICAN LEADERS SPEAK OUT ON CRIMINAL JUSTICE (Inimai Chettiar & Michael Waldman eds., 2d ed., 2015) [hereinafter SOLUTIONS], https://perma.cc/R6L3-2FWE; THE SENTENCING PROJECT, TO BUILD A BETTER CRIMINAL JUSTICE

Perhaps unsurprisingly, there is also a growing academic critique of this "consensus" narrative. Although there may be agreement that our rates of incarceration are too high or that our policies are counterproductive and inefficient,[10] there are significant differences of opinion about the scale of the problem and the degree to which transformative (or abolitionist) solutions are required.[11] Ben Levin cautions that reformers need to "recognize how tenuous this consensus is and how much it relies upon different frames and different goals."[12]

The shift from general calls for reform to specific policy development reveals fractures and fragility in this bipartisan or multiparty coalition.[13] Calls for criminal justice reform and decarceration are nuanced, merging and blending moral objections to the carceral state, libertarian visions of individual freedom and small government, and fiscal conservatives' economic claims about system inefficiency and waste.[14] The fiscal goals that

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SYSTEM: 25 EXPERTS ENVISION THE NEXT 25 YEARS OF REFORM (Marc Mauer & Kate Epstein eds., 2012), https://perma.cc/5YKC-Y52R; *America's Hidden Common Ground on Race and Police Reform*, PUB. AGENDA (June 29, 2020), https://perma.cc/34XY-EC2V; Megan Brenan, *Fewer Americans Call for Tougher Criminal Justice System*, GALLUP (Nov. 16, 2020), https://perma.cc/73MU-V9RH; Dewan, *supra* note 7.

[10] Fan, *supra* note 1, at 596 ("The fiscal and human consequences are becoming so impossible to ignore that even traditionally fiercely tough-on-crime conservative leaders are calling for a reorientation of the conservative stance."); BARKOW, *supra* note 2, at 5 ("We are wasting billions of dollars on too many practices that achieve the worst of both worlds: they do not protect victims or increase public safety, while at the same time they have catastrophic effects on millions of individuals and entire communities, especially poor people of color.").

[11] PHILIP GOODMAN, JOSHUA PAGE & MICHELLE PHELPS, BREAKING THE PENDULUM: THE LONG STRUGGLE OVER CRIMINAL JUSTICE 130 (2017) ("[C]onsensus around reform is an illusion, even as more and more Americans believe the country incarcerates too many people. . . . [W]hile many celebrate the unique coalitions supporting reform, distance between group members means that coalition efforts are often ideologically incoherent."); Benjamin Levin, *The Consensus Myth in Criminal Justice Reform*, 117 MICH. L. REV. 259, 263–64 (2018).

[12] Levin, *supra* note 11, at 263–64 (identifying the differences that exist between, and within, the mass incarceration reform framework and the overcriminalization reform framework as evidence of the divide within the general consensus).

[13] Phelps, *supra* note 5, at 162 ("[R]eforms today are bounded by the discourses advocates used to challenge the penal buildup, including the focus on cost-benefit analyses, reentry, and recidivism. These collisions are producing fissures that have the potential not only to limit or derail downsizing efforts but to expand the reach of the carceral state.").

[14] Phelps, *supra* note 5, at 163 ("Even as former defenders of punitive policies join efforts for moderate reforms, the diverse composition of these emergent coalitions sharply bounds thinkable reform. Although groups as varied as Koch Industries, the American Civil Liberties Union, and Freedom Works have banded together . . . they are clearly motivated by different underlying ideologies . . . .").

brought many conservatives to criminal justice reform, for example, do not necessarily require a reduced carceral footprint and may, in fact, obscure "the human costs of mass imprisonment."[15] Levin also highlights scholars' tendency to conflate two different critiques—critiques of mass incarceration[16] and critiques of overcriminalization[17]—in the rush to claim that there is political consensus in support of criminal justice reform.[18] He argues that while "the two approaches might be complementary [this] does not mean that they are consistent or congruent[,]" and he urges scholars, reformers, policymakers, and practitioners to be precise in describing the project of criminal justice reform.[19]

Abolitionists, in particular, are critical of "reformists" who they accuse of seeking only marginal policy adjustments.[20] Critics also argue that some

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[15] *See* Phelps, *supra* note 5, at 164 ("The limits of these coalitions can also be seen in the contradictions of the fiscal narrative in driving reforms. . . . The rhetoric of cost-effectiveness was a key piece of critiques of mass incarceration and has gained salience over time. Yet punishment can get cheaper without becoming more moderate. . . . Concerns about the fiscal costs of mass imprisonment also distract from the deeper moral and ethical arguments against the carceral state. . . . Media analyses consistently find that the discourses of reform are dominated by fiscal costs, with little mention of the human costs of mass imprisonment.") (citing HADAR AVIRAM, CHEAP ON CRIME: RECESSION-ERA POLITICS AND THE TRANSFORMATION OF AMERICAN PUNISHMENT (2015); MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS (2015); Michael Tonry, *Making Peace, Not a Desert: Penal Reform Should Be About Values Not Justice Reinvestment*, 10 CRIMINOLOGY & PUB. POL'Y, no. 3, 2011, at 637–49; Katherine Beckett, Anna Reosti & Emily Knaphus, *The End of an Era? Understanding the Contradictions of Criminal Justice Reform*, 664 ANNALS AM. ACAD. POL. & SOC. SCI. 238, 238–59 (2016); The Opportunity Agenda, *An Overview of Public Opinion and Discourse on Criminal Justice Issues*, PRISON LEGAL NEWS (August 2014), https://perma.cc/J8NQ-SQYQ); *see also* Levin, *supra* note 11, at 263–64.

[16] Levin, *supra* note 11, at 262–63 (demonstrating that the mass critique "focuses on the criminal system as a sociocultural phenomenon. The issue is not a miscalibration; . . . criminal law is doing ill by marginalizing populations and exacerbating troubling power dynamics and distributional inequities. Every incarcerated person might have been guilty of the charged offense, but the critique would still hold.").

[17] Levin, *supra* note 11, at 262–63 (explaining that the overcriminalization critique "is rooted in a belief that the criminal law has an important and legitimate function, but that it has exceeded that function. There is an optimal rate of incarceration and an optimal rate of criminalization, but the current criminal system . . . has criminalized too much and incarcerated too many").

[18] Levin, *supra* note 11, at 262–64.

[19] Levin, *supra* note 11, at 264; *see* Jessica M. Eaglin, *Against Neorehabilitation*, 66 SMU L. REV. 189, 201 (2013).

[20] *See, e.g.*, Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. FORUM 90, 101 (2020) ("The non-reformist reform framework is prevalent in abolitionist organizing against the prison industrial complex, and deployed by those who embrace racial

"reform" commitments to surveillance and risk management incorporate and amplify old systemic problems;[21] and that many new reform proposals merely tinker at the margins[22] or apply "smart" new labels to tired retributive or punitive approaches.[23]

In the 2019 collection of essays *Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System*, Alec Karakatsanis explains that "we would need eighty percent reductions in human caging to return to historical U.S. levels and to those of other comparable countries."[24] He and others

justice, anti-capitalism, and socialism more broadly."); Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 114 (2019) ("[A]bolitionist philosophy is defined in contradistinction to reform: reforming prisons is diametrically opposed to abolishing them. Efforts to improve the fairness of carceral systems and to increase their efficiency or legitimacy only strengthen those systems and divert attention from eradicating them."); *Reformist Reforms vs. Abolitionist Steps to End Imprisonment*, CRITICAL RESISTANCE, https://perma.cc/463Z-YBXU (last visited Sept. 26, 2021).

[21] Jessica M. Eaglin, *Technologically Distorted Conceptions of Punishment*, 97 WASH. U. L. REV. 483, 526–29 (2019) (explaining that "actuarial risk tools reify race in the sense that they breathe life into the pervasive stereotype of black criminality, framed in the rhetoric of objective and empirical data"); *see also* Brandon L. Garrett & John Monahan, *Judging Risk*, 108 CALIF. L. REV. 439, 457 (2020) (discussing concerns that the use of risk assessment tools "can result in racial disparities or disparities based on other invidious criteria"); Sandra G. Mayson, *Bias In, Bias Out*, 128 YALE L.J. 2218, 2222 (2019) ("Given that algorithmic crime prediction tends to rely on factors heavily correlated with race, it appears poised to entrench the inexcusable racial disparity so characteristic of our justice system and to dignify the cultural trope of black criminality with the gloss of science.").

[22] BARKOW, *supra* note 2, at 5 (explaining that reform proposals "focused predominantly on the harshest punishments for nonviolent drug and property offenders who do not have much in the way of a criminal record" are not going to "make much of a dent in the overall sweep of incarceration or criminal punishment in the United States"); Phelps, *supra* note 5, at 166 ("It does appear that the United States is in the midst of a moment of carceral reckoning. Yet all signs still point to efforts merely 'tinkering with the machinery' . . . rather than addressing the profound reach and tragic consequences of the penal state.") (quoting Callins v. Collins, 510 U.S. 1141, 1145 (1994) (Blackmun, J., dissenting)).

[23] Cecelia Klingele, *The Promises and Perils of Evidence-Based Corrections*, 91 NOTRE DAME L. REV. 537, 541 (2015) (calling for "a reflection about the limits and potential misuses of popular evidence-based correctional practices" and arguing "practitioners and policymakers [must] monitor the implementation of [these new] evidence-based practices to ensure consistency between the ways they are being used and the purposes they are intended to advance"); Joan Petersilia, *Book Review:* Caught: The Prison State and the Lockdown of American Politics *by Marie Gottschalk*, 19 PUNISHMENT & SOC'Y, no. 5, 2017, at 625, 627 ("[I]n order to move beyond symbolic sound bites to achieve real and lasting progress, we need more nuanced discussions of the challenges [of mass incarceration in the USA] and a thoughtfully planned effort to overcome them."); SOLUTIONS, *supra* note 9.

[24] ALEC KARAKATSANIS, USUAL CRUELTY: THE COMPLICITY OF LAWYERS IN THE CRIMINAL

emphasize that the path forward will also require much broader socioeconomic transformation.[25]

Crafting transformative legislative reforms that significantly reduce prison and jail populations or otherwise limit the reach of the carceral state will require fundamental changes to the way that criminal justice policies are set.[26] In *Usual Cruelty*, Karakatsanis reflects on the state of reform efforts and emphasizes that meaningful reform will require radical changes to the ways that we talk about our "criminal legal system," which he describes as a "punishment bureaucracy."[27] As he explains:

> Whether we can improve and scale these and other transformative [reform] ideas depends on whether we can change the stories that the punishment bureaucracy tells about why it exists and what it does. Only by having an honest conversation about what the punishment bureaucracy is can an informed movement dismantle it. Many human beings have a lot at stake in whether we can.[28]

Karakatsanis wrote these essays at different points during his years (just over a decades-worth, to date) of front-line advocacy as a public defender (in both the federal and state systems) and then as a founder and lead litigator at two civil rights litigation nonprofits.[29] In the book's introduction,

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INJUSTICE SYSTEM 87 (2019).

[25] *Id.*; *see, e.g.*, ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 16 (2003) ("This is the ideological work that the prison performs – it relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism."); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1819–20 (2020) (discussing Ruth Wilson Gilmore's work tracing "California's twentieth-century prison boom to crises in capitalism rather than to rising crime rates"); GOODMAN, *supra* note 11, at 131 ("[S]ocial-movement groups are pushing electoral candidates, lawmakers, and legal professionals to address structural issues that contribute to poverty, crime, victimization, and other 'social problems' rather than simply tweak individual practices and policies (such as equipping cops with body cameras). Many activists insist that struggles to decrease violence and to reform criminal justice will prove ineffective if disconnected from campaigns to reduce racial and class inequality."); Levin, *supra* note 11, at 273 (pointing out that the mass incarceration framework in particular is "less a critique of the criminal system as such than it is a critique of legal, social, economic, and racial injustice that uses the criminal system as an example or point of entry"). *See generally* JACKIE WANG, CARCERAL CAPITALISM (2018).

[26] Rachel Barkow warns that "the existing political process is capable of producing only modest changes." BARKOW, *supra* note 2, at 12.

[27] As just one example, Karakatsanis very deliberately refuses to adopt conventional labels for a system that he views as anything but just. In his book, he refers to our "criminal legal system" or "criminal injustice system" but never to a "criminal justice system." KARAKATSANIS, *supra* note 24.

[28] KARAKATSANIS, *supra* note 24, at 98.

[29] KARAKATSANIS, *supra* note 24, at 1; *Our Team*, CIVIL RIGHTS CORPS, https://perma.cc/BVM7-

Karakatsanis explains that part of what binds together his collection of essays was his long-standing "interest[] in the chasm between how the law is written and how the law is lived."[30] Karakatsanis describes this divide in sharp and unsparing language as:

> [T]he difference between how we advertise the law with beautiful inscriptions on our public monuments or lofty words in judicial opinions taught in law schools, and how we use the law to crush the bodies and minds of poor people and people of color in our streets, our prisons, and our courtrooms.[31]

Looking ahead, a key piece of criminal justice reform efforts will be changing the way that we describe the current system and being strategic about the language that is used to promote reforms. Changes in our criminal justice discourse have not (yet) produced transformational system reforms,[32] but there are signs of progress.[33]

This essay focuses on the language, rhetoric, and framing of criminal justice reform. Part I explores the power of language and framing to shape

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GVPU (click on Alec Karakatsanis) (last visited Sept. 26, 2021); Yael Marans, *Q&A with Alec Karakatsanis, Founder of the Civil Rights Corps*, DAILY PRINCETONIAN (Feb. 28, 2019, 10:40 PM EST), https://perma.cc/WT3L-KC6X.

[30] KARAKATSANIS, *supra* note 24, at 3.

[31] KARAKATSANIS, *supra* note 24, at 3; KARAKATSANIS, *supra* note 24 at 5 (For Karakatsanis, these are not merely linguistic divides, they are also incongruous visual images. He describes many of the country's courtrooms as being nestled in the "grandest buildings" where "society does some of its worst deeds.").

[32] BARKOW, *supra* note 2, at 124 ("[A]lthough there has been some rollback in imprisonment because of a growing number of forces speaking out against mass incarceration, their achievements have been slight and have come nowhere close to tackling the record high levels of incarceration in the United States. Strong political and psychological forces remain decidedly in favor of long sentences and an expansive criminal state—even when doing so is best characterized as pathological.").

[33] See Phelps, *supra* note 5, at 156 (noting that while essays suggest "we should avoid assuming that policy reforms will translate directly into more moderate imprisonment rates," markers of progress include relevant legislation, "new court commitments," parole violation admissions, and carceral population decreases) (citing Katherine Beckett, Emily Knaphus & Anna Reosti, *The End of Mass Incarceration? Mapping the Contradictions of Criminal Justice Policy and Practice*, SSRN: SOC. SCI. RES. NETWORK (Jan. 14, 2016), https://perma.cc/W7DM-9YAX; E. Ann Carson, *Prisoners in 2014*, BUREAU OF JUST. STAT. (Sept. 2015), https://perma.cc/HM8G-S9M9; Susan F. Turner, et al., *A National Picture of Prison Downsizing Strategies*, 10 VICTIMS & OFFENDERS, no. 4, Oct. 2015, at 401, 401–19; E. Ann Carson & Daniela Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*, BUREAU OF JUST. STAT. (Dec. 2013), https://perma.cc/9P3Q-FJCT; Danielle Kaeble, Lauren Glaze, Anastasios Tsoutis & Todd Minton, *Correctional Populations in the United States, 2014*, BUREAU OF JUST. STAT. (Dec. 2015), https://perma.cc/PH7D-VE9D).

policy making in general, and in the criminal justice system, in particular. In Part II, inspired by Karakatsanis' special critique of lawyers' "complicity" in the harms wrought by the criminal system, I consider the special culpability that lawyers bear when policy failures are, at least in part, attributable to inaccurate labels and dishonest descriptions. Finally, this essay concludes with preliminary thoughts about how best to change criminal law conversations going forward, including perspectives from Karakatsanis and other activists and scholars about who ought to dictate the terms of a new criminal justice discourse.

I. The Impacts of Language

The words we use to frame criminal justice reform conversations are important and impactful.[34] Those labels shape how community members, voters, or system actors perceive the way that our system works, the victimization it is supposed to remedy or prevent, and the harms it inflicts. The specific terms used to describe issues and explain policy proposals can also build alliances or expose fragile coalition fault lines.[35] In a 2005 article that outlined how criminal justice reformers could reshape political conversations and influence criminal justice system policymakers, political strategist Peter Loge explained this connection between language and political influence:

> A critical piece in the politics of the policy puzzle is language—how an issue is understood by both the public and political elites determines whether each will act, and, if so, how. . . . These understandings are driven by language, such as what an issue is named, the metaphors used, and the terms employed. The language "frames" an issue, which sets the political and policy route the issue will follow. Well-selected language and frames can significantly increase the chance for success in policy disputes, while poorly chosen words and frames can mean near-certain failure. As such, political language and issue framing is hotly contested ground.[36]

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[34] Eaglin, *supra* note 21 at 534 ("Framing narratives shape, drive, and justify reforms and debate."); *see* Lauryn P. Gouldin, *Reforming Pretrial Decision-Making*, 55 WAKE FOREST L. REV. 857, 890–95; 898–900 (2020) (highlighting the potential for overly broad labels to lead judges to overestimate pretrial risks); *cf.* Al Tompkins, *What Words Should We Use to Describe What Happened in the Capitol?*, POYNTER. (Jan. 8, 2021), https://perma.cc/9MTU-UXVZ (identifying the various terms used to describe the January 6, 2021, attack on the U.S. Capitol).

[35] Peter Loge, *How to Talk Crimey and Influence People: Language and the Politics of Criminal Justice Policy*, 53 DRAKE L. REV. 693, 694 (2005) ("How an issue is perceived determines the range of allies, advocates, opponents, and outcomes in debates around that issue.").

[36] *Id.*

Like political strategists, trial lawyers are particularly focused on these questions of framing. As Ian Gallacher explains, effective trial lawyers frame their clients' narratives to match the evidence that has been presented in a case, but also "to engage and co-opt the jury's cultural narrative."[37] Karakatsanis, as both a trial and policy advocate, seems particularly attuned to this potential for "the language society uses to talk about the punishment system" to create "a different cultural narrative."[38] He explains that "[l]egal decisions are made and legal commentary is written on the level of shared cultural consciousness."[39]

Decades of psychology research, grounded in the work of Amos Tversky and Daniel Kahneman, support these conclusions: the way that choices are

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[37] Ian Gallacher, *Thinking Like Non-Lawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 LEGAL COMM. & RHETORIC 109, 122 (2011) (citing Judith D. Fisher, *Framing Gender: Federal Appellate Judges' Choices About Gender-Neutral Language*, 43 U.S.F. L. REV. 473 (2009) (quoting ERVING GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON ORGANIZATION OF EXPERIENCE* 21 (1974))); *see* Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073 (1989); Gallacher, *supra*, at 119 (noting that there is an increased "interest[ ] in the power of narrative, and especially the role of rhetoric and storytelling in legal communication").

[38] KARAKATSANIS, *supra* note 24, at 10. In a 2019 interview, Karakatsanis noted that some of these efforts to change the narrative did not involve changes in language but in specific actions that worked to rehumanize his clients for judges and juries. Karakatsanis would request that his clients "be unshackled while in court" and also asked "marshals to allow [his] clients' children to come hug them before sentencing." He explained:

> Little acts like these may not be significant in the broader sense, in the sense that they're not taking down capitalism or white supremacy, but they change the way that this mass assembly-line bureaucracy is able to process human beings: It slows it down, it makes everybody a little bit more sensitized to the cruelty that they're about to inflict on a child or on a parent, on a human being.

Alice Speri, *The Criminal Justice System Is Not Broken. It's Doing What It Was Designed to Do*, THE INTERCEPT (Nov. 9, 2019, 10:32 AM), https://perma.cc/WVS4-7PNQ.

[39] KARAKATSANIS, *supra* note 24, at 136. In this way, Karakatsanis taps into existing discussions of what Dan Kahan and others have termed "cultural cognition" theory. Dan M. Kahan & Donald Braman, *Cultural Cognition and Public Policy*, 24 YALE L. & POL'Y REV. 149, 151–52 (2006) ("By 'the cultural cognition of public policy' (or simply 'cultural cognition'), we mean to refer to the psychological disposition of persons to conform their factual beliefs about the instrumental efficacy (or perversity) of law to their cultural evaluations of the activities subject to regulation."); *see* David Jaros, *Flawed Coalitions and the Politics of Crime*, 99 IOWA L. REV. 1473, 1479 n.21 (2014) ("The cultural theory of risk asserts that individuals selectively attend to risks and related facts in a way that reflects and reinforces their 'cultural worldviews,' or preferences about how society should be organized.") (quoting Dan M. Kahan et al., *Who Fears the HPV Vaccine, Who Doesn't, and Why? An Experimental Study of the Mechanisms of Cultural Cognition*, 34 LAW & HUM. BEHAV. 501, 502 (2010)).

framed affects decision-making behavior and changes outcomes.[40] Study after study has demonstrated that individuals' decisions are influenced by the ways that choices are described. People "make decisions based not only on their consequences—as would be predicted by expected utility theory—but also based on how the choices are framed."[41]

Particularly in contexts like criminal justice where communities and policymakers are focused on risk, lawyers should pay special attention to whether the words they use to describe various phenomena cause people to overestimate the relevant risks.[42] There are opportunities to temper potential community overreaction with careful word choice. For example, terms like "felon" that may once have meaningfully signaled the perpetration of serious wrongdoing or crimes, have, as the felony category has bloated beyond recognition, been watered down significantly.[43] As Alice Ristroph explains, however, the term "felon" still suggests serious wrongdoing to listeners, in ways that lead listeners to overestimate a person's culpability for past misconduct or risk of future harm.[44] The same can be said of common references to "flight risk" or to "dangerousness."[45] Scholars have

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[40] Robert Entman, *Framing: Toward Clarification of a Fractured Paradigm*, 43 J. OF COMM., no. 4, 1993, at 51; *see* Jeffrey R. Brown, Arie Kapteyn & Olivia S. Mitchell, *Framing and Claiming: How Information-Framing Affects Expected Social Security Claiming Behavior*, 83 J. RISK & INS., no. 1, 2016, at 139, 140 ("[I]mportant economic decisions can be substantially altered by the way in which information is framed. . . . Kahneman and Tversky (1981) famously reported that presenting a public policy choice in terms of 'lives saved' versus 'lives lost' dramatically shifted the proportion of the respondents who supported a given policy."); Thomas E. Nelson, Zoe M. Oxley & Rosalee A. Clawson, *Toward a Psychology of Framing Effects*, 19 POL. BEHAV., no. 3, 1997, at 221, 235 (defining "framing" as the "process by which a communication source constructs and defines a social or political issue for its audience" and outlining findings from studies supporting the claim that "framing can affect the balance of considerations that individuals weigh when contemplating political issues"). *See also* Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCI., no. 4481, 1981, at 453, 453–58.

[41] Brown, Kapteyn & Mitchell, *supra* note 40, at 140.

[42] Gouldin, *supra* note 34, at 898 (explaining that risk assessment tools that sort defendants into "low, moderate, or high risk" categories can cause people to overestimate the risks posed by those labeled as "moderate-high" or "high").

[43] BARKOW, *supra* note 2, at 31.

[44] Alice Ristroph, *Farewell to the Felonry*, 53 HARV. C.R.-C.L. L. REV. 563, 567–69 (2018) (identifying dual meanings of the word "felon" to include a legal meaning and a social meaning where the latter meaning connotes an "intrinsic wrongfulness" or "character flaw" of the individual).

[45] Lauryn P. Gouldin, *Defining Flight Risk*, 85 U. CHI. L. REV. 677, 678 (2018); Anna Roberts, *Convictions as Guilt*, 88 FORDHAM L. REV. 2501, 2506 n.31 (2020) ("Valuable work has been done, for example, in pointing out that the 'violence' required for something to be classified as a 'violent offense' falls considerably short of mainstream conceptions of 'violence.'") (citing

also written about how terms like "offender" are used in ways that are both inaccurate[46] and counterproductive.[47]

Although Karakatsanis does not analyze these concepts through behavioral economists' visions of framing, he is particularly attuned to the power of language, labeling, and narrative to reshape our cultural awareness and to motivate political engagement. Karakatsanis' renaming and relabeling project has an additional and unmistakable aim: to sharpen the edges of the discourse—to bring the community into direct contact with the dysfunction of the system. He seeks to create empathy in a "powerful," "shape-shifting" bureaucracy that seems immune to it.[48] Karakatsanis explains that his word choices are part of a deliberate strategy to humanize his clients and other defendants for judges, prosecutors, other lawyers, and court personnel whose work inside what Karakatsanis calls the "punishment bureaucracy" may lead them to trade away liberty and dignity for efficiency.[49] In Karakatsanis' view, lawyers must remember that "all abstract policy debates are about real people. We owe it to those people to ensure that their stories are not shortchanged when we make the difficult tradeoffs that governing a society of humans requires."[50]

Karakatsanis' use of the term "human cages" steers attention back to the individuals impacted by the system. It is much harder to avert one's gaze

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Levin, *supra* note 11); *see* Shima Baradaran & Frank L. McIntyre, *Predicting Violence*, 90 TEX L. REV. 497, 548 (2012); Sandra G. Mayson, *Dangerous Defendants*, 127 YALE L.J. 490, 566 (2018).

[46] *See* Roberts, *supra* note 45, 2506–07 (criticizing lawyers' and scholars' stigmatizing overuse of the term "offender" and references to "their 'recidivism,' their redemption, and their rehabilitation" given all the flaws in the system, including, but not limited to overcriminalization); *id*. at 2506 n.31 ("Even as important points are made about the messiness, error, and ambiguity in deciding who is which kind of offender, one can sometimes lose track of similar vulnerabilities in deciding who is an offender in the first place.").

[47] Lynn Branham has written about how using the term "offender" undermines efforts to achieve "systemic and cultural change." Lynn S. Branham, *Eradicating the Label "Offender" from the Lexicon of Restorative Practices and Criminal Justice*, 9 WAKE FOREST L. REV. ONLINE 53, 64 (2019) ("Referring to people in ways that denude them of their humanness makes it difficult, if not impossible, to fuel and foster widespread receptivity to restorative processes that, at their core, are founded on an unflagging commitment to accord respect to every human being.").

[48] KARAKATSANIS, *supra* note 24, at 72.

[49] KARAKATSANIS, *supra* note 24, at 16 ("If the function of the modern punishment system is to preserve racial and economic hierarchy through brutality and control, then its bureaucracy is performing well.").

[50] KARAKATSANIS, *supra* note 24, at 104–05; *see* Phelps, *supra* note 5, at 159–60 (describing writing, documentaries, and other media portrayals of drug users that "implicitly shifted the vision of the drug offender from a social menace worthy of the steepest penalties to 'regular' people suffering from a health disorder").

from the individual person inside the "cage" or from the human whose "body" is being "transfer[red]" by the system.[51] As Karakatsanis explains it:

> [A]t some point lawyers allowed the legal system to view caging a person as more acceptable than other physical and psychological punishments and, then, we allowed those cages to degenerate into places in which people will contract life-threatening illness, endure the torture of solitary confinement, be raped and physically assaulted, be deprived of sunlight and fresh air, and experience a variety of other horrors. We then found it unimportant to incorporate those harms into our lawyerly doctrinal thinking.[52]

Paul Butler's compelling description of the entire criminal justice system as a "chokehold" operates in a similar way.[53] Karakatsanis seems convinced—and his confidence is persuasive—that abandoning false narratives for more honest descriptions will bring people closer to the harms inflicted by the system and force reform.

Of course, as Walter Probert explained, "one great service of words is to allow intellectual manipulation of the absent parts of the world environment."[54] We have developed ways of talking about the criminal justice system that obscure the reality of the system.[55] Political scientist Hannah Arendt was particularly focused on this potential for words to "separate humans from reality."[56] That distance or separation creates space for ignorance, for misrepresentation, and for apathy. While this critique may be levelled at lawyers across the board, it seems particularly apt as applied to those working in what Karakatsanis calls the "punishment

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[51] KARAKATSANIS, *supra* note 24, at 2.

[52] KARAKATSANIS, *supra* note 24, at 148.

[53] PAUL BUTLER, CHOKEHOLD: POLICING BLACK MEN 5–6 (2017) ("The Chokehold is a way of understanding how American inequality is imposed. . . . The Chokehold means that what happens in places like Ferguson, Missouri, and Baltimore, Maryland . . . is not a flaw in the criminal justice system. Ferguson and Baltimore are examples of how the system is supposed to work.").

[54] Walter Probert, *Law and Persuasion: The Language-Behavior of Lawyers*, 108 U. PA. L. REV. 35, 44 (1959).

[55] KARAKATSANIS, supra note 24, at 16–17 ("These punishment bureaucrats are dangerous because, in order to preserve the human caging apparatus that they control, they must disguise at the deepest level its core functions. As a result, they focus public conversation on the margins of the problem without confronting the structural issues at its heart. Theirs is the language that drinks blood.").

[56] HANNAH ARENDT, THE LIFE OF THE MIND 4 (Mary McCarthy ed., 1981) ("Clichés, stock phrases, adherence to conventional, standardized codes of expression and conduct have the socially recognized function of protecting us against reality, that is, against the claim on our thinking attention that all events and facts make by virtue of their existence.").

bureaucracy."[57]

II. Language Failures as Lawyers' Failures

As the subtitle of Karakatsanis' book—"The Complicity of Lawyers in the Criminal Injustice System"—makes clear, he is particularly focused here on the special responsibilities and specific failures of his peers in practice, on the bench, and in classrooms.[58] He lays responsibility for the mismatch between our idealized system descriptions and its grim realities at the feet of fellow lawyers who perpetuate myths about our legal system's commitments to the rule of law "without understanding that policing and prosecution are used as a tool of politics and power to benefit some and to hurt others":

> One of the most insidious notions pervading standard discourse is that people are investigated and punished because they break laws and therefore that, if one breaks the law, one will be investigated and punished. This principle supports a larger idea: our legal system is objective, trying its best to promote well-being, morality, and human flourishing. The myth that an objective "rule of law" determines the outcomes is important to the system's perceived legitimacy and to our acceptance of its authority over us.[59]

Lawyers' failures to investigate, challenge, and correct the defects in conventional rule-of-law narratives are, perhaps, especially surprising because lawyers are trained to be language experts.[60] The study of the law is, in many ways, a study of words and how to parse key passages.[61] Law students learn to home in on key words in statutes, judicial decisions, and

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[57] KARAKATSANIS, *supra* note 24, at 17 ("The common understanding of the 'rule of law' and the widely accepted use of the term 'law enforcement' to describe the process by which those in power accomplish unprecedented human caging are both delusions critical to justifying the punishment bureaucracy. This is why it is important to understand how they distort the truth.").

[58] KARAKATSANIS, *supra* note 24, at 146 ("The failure of lawyers is a tragedy in two parts. First, there has been an intellectual failure of the profession to scrutinize the evidentiary and logical foundations of modern policing and mass human caging. Second, the profession has failed in everyday practice to ensure that the contemporary criminal legal system functions consistently with basic rights and values.").

[59] KARAKATSANIS, *supra* note 24, at 68; *see* KARAKATSANIS, *supra* note 24, at 69 ("The standard 'criminal justice' discourse lulls people into abandoning scrutiny of their assumptions.").

[60] *See* George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 334 (1987).

[61] Brenda Danet, *Language in the Legal Process*, 14 LAW & SOC'Y REV., no. 3, 1980, at 445, 448 ("Words are obviously of paramount importance in the law; in a most basic sense, the law would not exist without language.").

witness interviews. Lawyers use language to guide courtroom testimony, mine discovery for keywords, and spar with adversaries over contract terms. Developing precision about language and word choice is one of the core skills that lawyers acquire during their education and refine throughout their careers.[62] Of course, the fact that lawyers should be good with language does not mean that they always are.[63]

For decades, law scholars have recognized the need to examine the language of law beyond formal legal documents but also in other types of "language behavior" and "law talk."[64] As Brenda Danet explains, the overarching lesson is that "words count and there are 'serious' as well as 'frivolous' uses of language."[65]

Legal commentators have long understood that, because "[law] is the greatest instrument of social control,"[66] the words we use to describe legal systems drive our collective perceptions of the fairness of those systems.[67]

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[62] Lawyers should always be particular about the words that they use, but that does not mean that precision is always the goal. As Gopen explained:

> Lawyers need particularly to be able to write with both precision and anti-precision: for some documents they have to nail down particulars in order to avoid vagueness and ambiguity, while for others they will have to keep the letter free in order to protect the plasticity of the spirit in the advent of unforeseen circumstances.

Gopen, *supra* note 60, at 335.

[63] Robert W. Benson, *The End of Legalese: The Game is Over*, 13 N.Y.U. REV. L. & SOC. CHANGE, no. 3, 1985, at 519, 520 ("Criticizing lawyers' language has been an amusing parlor game for many generations now, but it has done little to get rid of legalese.") (reviewing the long history of critiques of legalese); *see, e.g.*, BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH (2001).

[64] Danet, *supra* note 61, at 448 (agreeing that "'[t]here needs to be greater concern in the law, of all places, with language behavior, not just language, but language behavior'") (quoting Walter Probert) (citation omitted); *see* Probert, *supra* note 54, at 43 ("[I]f we would understand how people, including judges, reach the decisions they do, we must understand the people themselves. . . . [O]ne good way to obtain this understanding was to note the words they used to justify their decisions.") (attributing this insight to Felix Cohen); *see, e.g.*, WALTER PROBERT, LAW, LANGUAGE AND COMMUNICATION (1972).

[65] Danet, *supra* note 61, at 448 (emphasis omitted).

[66] Glanville Williams, *Language and the Law–I*, 61 LAW Q. REV., no. 1, 1945, at 71; *see* Benson, *supra* note 63, at 530 ("Every lawyer's personal experience bears witness to the fact that legalese can be a weapon. Is there a lawyer among us who has not employed the magic of legal language as a psychological device to dominate some lay person?").

[67] Probert, *supra* note 54, at 43 ("One of the most able legal analysts of this generation, Felix Cohen, in effect suggested that if we would understand how people, including judges, reach the decisions they do, we must understand the people themselves. He went on to say in effect that one good way to obtain this understanding was to note the words they used to justify their decisions. Rather than ask a man what he thinks of segregation, give him an actual segregation

Our legal language creates social order, reflects cultural preferences, and legitimizes systems, helping to "maintain[] societal equilibrium."[68] The way we talk about criminal law, criminal procedure, and criminal justice reform has special importance because the words we use are not merely descriptive of existing relationships, they work to create and reshape human relationships.[69] Anna Roberts highlights a prime example of this problem in recent work challenging the ubiquitous and largely unchallenged use of the word "victim" in contexts where defendants are supposed to enjoy the presumption of innocence.[70] As Roberts asks: "What might it be that leads even those who trade in words, definitions, precision, and accuracy, to adopt this word that appears to elide the most central distinction within criminal procedure and criminal law theory, often without acknowledging the issue?"[71]

Criminal law talk guides pivotal decisions, every day, about human liberty. Given the importance of the task and lawyers' special skill with language, we might expect that our descriptions of the criminal justice system would be a model of precision. Instead, the words that judges, lawyers, and legal scholars use to describe the criminal system are a surprisingly poor fit. Karakatsanis outlines the culpability of actors within our criminal legal system for this failure:

> In order for the legal system to unleash police on poor communities and communities of color such that the United States came to imprison black people at a rate six times that of South Africa during the height of apartheid, it was necessary for popular culture and legal culture to develop and nurture serious intellectual pathologies. So deeply have these pathologies captured the legal elite that the wholesale normalization and rationalization of this brutality has become arguably the chief daily

problem to solve and see what he has to say, what kind of persuasive definitions, if you will, he uses."); Danet, *supra* note 61, at 542 ("Not only the legal profession but also the groups represented by it benefit from legal language, which serves to keep weaker groups in their place.") (collecting sources).

[68] Danet, *supra* note 61, at 448–49 (explaining that her project "focus[es] on the relation between language and the two basic functions of law: the ordering of human relations and the restoration of social order when it breaks down" and examines "the ways in which language maintains societal equilibrium, let me hasten to add that I will also be concerned with the ways in which language usage may be *dys*functional for groups or individuals, or for society as a whole" (emphasis in original)).

[69] Danet, *supra* note 61, at 448 (describing "the ability of law to regulate human affairs").

[70] Anna Roberts, *Victims, Right?*, 42 CARDOZO L. REV. 1449 (2021).

[71] *Id.* at 1499.

bureaucratic function of most of us who work in the system.[72]

CONCLUSION: LANGUAGE AND POWER

Usual Cruelty is intended to force a reckoning; to compel the community to confront our immoral, illogical, and counterproductive criminal system. Ultimately, though, Karakatsanis's critique of the indefensible realities of the system is tempered by his optimism about the capacity for change. As he explains, "[h]uman colonies, for all their multitudes of intricacies, seem to have an internal compass of compassion."[73] The landscape of criminal justice reform writing and advocacy beyond *Usual Cruelty* inspires confidence that meaningful change is beginning to happen. These changes are reflected both in more progressive policy discourse and in the new community voices being amplified in reform conversations.

For some writers and activists, the focus is on creating empathy and rehumanizing defendants and their affected families and communities for readers and system actors who have become desensitized.[74] In the bestselling book *Just Mercy*, for example, Bryan Stevenson describes this as a question of "proximity to the condemned and incarcerated":

> This book is about getting closer to mass incarceration and extreme punishment in America. It is about how easily we condemn people in this country and the injustice we create when we allow fear, anger, and distance to shape the way we treat the most vulnerable among us.[75]

This problem of distance from the people affected by legal policies and controversies is not unique to the criminal justice context. Others have expressed concern that the legal academy's emphasis on training law students to think like lawyers—to distill facts from a narrative, to "emphasize[] logic over emotion," to weigh costs and benefits—may make it difficult for young lawyers to connect and "communicate with

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[72] KARAKATSANIS, *supra* note 24, at 147.

[73] KARAKATSANIS, *supra* note 24, at 111.

[74] Marans, *supra* note 29 (Karakatsanis argues that "[h]ow we use language is incredibly important because it's connected to how we think[,]" and, given that the current language used in the "criminal punishment system" is "designed to minimize the humanity of the people they're talking about[,]" reformers must use terminology that "resensitiz[es] the people who work in the legal system and the public at large to the brutality of what [the current system is] doing every single day").

[75] BRYAN STEVENSON, JUST MERCY 12, 14 (One World 2015) ("Proximity to the condemned and incarcerated made the question of each person's humanity more urgent and meaningful, including my own.").

nonlawyers, as they must do much of the time."[76] From Stevenson's perspective, the traditional law school curriculum, particularly in the first year, creates too much distance between students and potential clients. He describes feeling "lost" as a first-year student and then finding his legal calling through client contact in this way: "Proximity to the condemned, to people unfairly judged; that was what guided me back to something that felt like home."[77]

Shortening this distance—through language and experience—seems essential to achieving meaningful change.

Equally important—and getting increasing attention in criminal justice reform debates—are the related questions of who writes the relevant language, and whose narratives dominate the discourse.[78] As Peter Loge explains: "[t]he control over the language of policy is at least as important as—if not more important than—control over the policy itself."[79] The idea that the people who control the language control the policy is not unique to the criminal justice reform context. George Gopen eloquently explained this as a general legal principle decades ago:

> There is a glory, it seems, in the mystery of a language that can be deciphered only by initiates of the secret society; there is a great sense of power and an even greater actuality of power in controlling a language that in turn controls the most pressing

[76] Gallacher, *supra* note 37, at 109, 116–18 (expressing concern that "the empathetic response is systematically trained out of [law students] in a first-year curriculum in which most, if not all, their doctrinal classes share the common attribute of changing the way students think, from intelligent laypeople to 'lawyers'" and explaining that law students "are the product of a training scheme designed to convince them that lawyers think differently from non-lawyers").

[77] STEVENSON, *supra* note 75, at 14.

[78] *See* Joshua Kleinfeld, *Introduction Manifesto of Democratic Criminal Justice*, 111 NW. U. L. REV. 1367, 1397 (2017) ("'Democracy' as we use that term in the movement to democratize criminal justice refers to a form of criminal law and procedure that is responsive to the laity rather than solely to officials and experts; that cares about prudential, equitable, and individualized moral judgment rather than merely formal rule compliance and technical expertise; that is more value rational than instrumentally rational; that submits the law and administration of criminal justice to public deliberation and to the values embedded in the way we live together as a culture, rather than treating it mainly as a tool of social management under the control of our institutional bureaucracies; that is substantially given into the hands of local communities as an instrument of collective self-determination and cultural self-creation; but that channels popular rule into constitutional forms meant to resist domination, disperse power, and permit contestation by a restless and animated citizenry.").

[79] Loge, *supra* note 35, at 696 ("Considered in this light, the important political fights are not just over what ought to happen and why; they also involve the language of that change. If there is no meaningful political reality outside of or apart from language, the most critical political concerns are over how a policy is described.").

> affairs of individuals and communities; and there is a monopolistic safety in being able to manipulate a language which because it was part of the creation of legal problems must be part of their solutions as well.[80]

This question—who controls reform conversations—is also a key theme in Karakatsanis' collection of essays where he cautions that our current system gives "[p]unishment bureaucrats" too much authority to "set the outer bounds of acceptable discussion."[81] Karakatsanis is concerned that some lawyers monopolize reform conversations in ways that ensure that reforms remain marginal and that curb the possibility of transformational reform or abolition.[82]

This critique is gaining traction in the criminal justice reform literature, where scholars are increasingly attentive to this question of who decides what labels, language, and frames are appropriate. Scholars and activists promote more participatory forms of democratic engagement that will give a real voice to community members most affected by oppressive criminal justice policies.[83] Amna Akbar, Sameer Ashar, and Jocelyn Simonson call for

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[80] Gopen, *supra* note 60, at 334.

[81] KARAKATSANIS, *supra* note 24, at 82–83 ("Punishment bureaucrats" claim "minor tweaks as huge changes" and "make it difficult for the public to figure out who or what promises significant change and who or what does not. . . . [B]y touting achievements of little significance, they quell popular energy for dramatically changing the punishment system"); *cf.* Kleinfeld, *supra* note 79, at 1383, 1397 (explaining that his vision of a more democratic criminal justice system stands in stark contrast to the "bureaucratization" of the current system).

[82] KARAKATSANIS, *supra* note 24, at 82 (explaining that limits on the reform dialogue "ensure that more significant changes do not happen."); *see* Eaglin, *supra* note 21, at 535 ("The language of technical accuracy 'disaggregate[s] . . . crime from social and governmental forces' and instead focuses on individual character and responsibility. Even as scholars and policymakers try to write politics into tools, the standard narrative operates to silence them.") (quoting Eric J. Miller, *Drugs, Courts, and the New Penology*, 20 STAN. L. & POL'Y REV. 417, 427 (2009)) (citing Eaglin, *supra* note 19, at 201).

[83] *See* Jocelyn Simonson, *Democratizing Criminal Justice Through Contestation and Resistance*, 111 NW. U. L. REV. 1609, 1615 (2017) (explaining that for meaningful criminal justice reform, we must "open[] new channels of contestation accessible to the groups and communities that are most affected by the state's domination but have the least input into the state's policies and practices"); *id.* at 1621 (emphasizing that community engagement in copwatching, courtwatching and participatory defense practices "use[] the voices of those affected by policies in the aggregate to demonstrate to the larger public the harms of those policies. And each of them puts forth new visions of what our criminal justice system can and should look like."); *see also* Laura I. Appleman, *Local Democracy, Community Adjudication, and Criminal Justice*, 111 NW. U. L. REV. 1413, 1414 (2017) ("Many of our modern woes in the criminal justice system can be traced to the loss of the community voice and decisionmaking ability in adjudicating crime and punishment."); Kleinfeld, *supra* note 79, at 1383 ("Deliberative and participatory democracy

legal scholars seeking transformative system change to redefine their perspective, moving away from traditional studies of social movements from a distance and toward closer partnerships with these movements: "When we write alongside movement ideas, strategies, and horizons, we incrementally transform the discourse in which we participate. The lenses provided by social movements have the capacity to change what we study and how we study it."[84]

In Cincinnati, for example, a recent collaboration between academic researchers, lawyers, and community members is looking to the community to define what "public safety" means.[85] This project provides a model for how impacted communities might reclaim control over the definition of terms at the center of criminal justice debates. Savvy politicians on both sides of the aisle have long recognized the power of appealing to constituents' concerns about "public safety."[86] The Cincinnati project disrupts traditional reliance on government leaders to dictate the meaning of public safety, instead giving the community a voice to determine how well government officials (the community's agents) are responding to community conceptions of safety.[87]

Across the country, old narratives and descriptions are being jettisoned for newer, more honest, more compelling descriptions that are being solicited from new voices. Many scholars, practitioners, and policymakers are, like Karakatsanis, acknowledging that this new language and these new perspectives are required to force and shape transformative system change.[88]

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insist, as their names imply, on the importance of the broader political community's *deliberation* on matters of public concern and *participation* in the activity of government, such that the law, policies, and practices of the state substantially reflect and result from the will, beliefs, and values of the people living within the state." (emphasis in original).

[84] Amna Akbar, Sameer Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 833 (2021); *see* Simonson, *supra* note 84, at 1612 ("Without facilitating critical resistance from below, well-meaning reforms are in danger of reproducing the anti-democratic pathologies that plague our existing criminal justice system.").

[85] *See* Lauren Johnson, Cinnamon Pelly, Ebony Ruhland, Simone Bess, Jacinda K. Dariotis & Janet Moore, *Reclaiming Safety: Participatory Research, Community Perspectives, and Possibilities for Transformation*, 18 STAN. J. C.R. & C.L ___ (forthcoming), https://perma.cc/U4JZ-VNHG.

[86] BARKOW, *supra* note 2, at 106 ("People fear first and foremost for their safety, and crime threatens their sense of security.").

[87] Johnson, et al., *supra* note 86.

[88] *See, e.g.*, Phelps, *supra* note 5, at 154–55 (collecting descriptions of the new era of criminal justice reform, including "penal moderation"; "penal optimism"; or "neorehabilitation"); *see also* Levin, *supra* note 11, at 263–64; Roberts, *supra* note 45, at 2506–07.

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