

Abolitionist (Un)Learning: Reflections on *Decarcerating Disability and Disability, Criminal Justice and Law*

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Abstract

Reading *Decarcerating Disability: Deinstitutionalization and Prison Abolition* by Liat-Ben-Moshe and *Disability, Criminal Justice and Law: Reconsidering Court Diversion* by Linda Steele rocked my world, in the very best way. They pushed me to think in new ways about my research, teaching, and activism and are must-reads for those of us working for abolition in, through, and against law.

I came to prison abolitionism through feminism. I have looked at the massive expansion of women's imprisonment in Canada in recent decades and the way that carceral and colonial logics drive the mass incarceration of Indigenous people, and examined the harms of so-called "gender-responsive" reform efforts (Parkes 2016). My research and teaching examine the possibilities, but also very significantly the limitations, of prisoner rights litigation and other rights-based or legal strategies as part of an abolitionist vision (Parkes 2017).

Decarcerating Disability: Deinstitutionalization and Prison Abolition (Ben-Moshe 2020) and *Disability, Criminal Justice & Law: Reconsidering Court Diversion* (Steele 2020), both of which are deeply feminist, abolitionist and rooted in disability justice and crip theory and activism, challenge me to expand these critiques and pedagogies.

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Liat Ben-Moshe's *Decarcerating Disability: Deinstitutionalization and Prison Abolition* takes a deep dive into deinstitutionalization (particularly in the American context in the latter half of the 20th century) and makes connections between deinstitutionalization in the disability context and incarceration and abolition. The book shows how deinstitutionalization is both a phenomenon and a logic. Mass deinstitutionalization – the feat of getting people out of disability-based carceral spaces – is a thing that happened, a phenomenon to be investigated and understood by those of us who want to free people from prisons and other carceral spaces, to end our reliance on incarceration. *Decarcerating Disability* helps us do that by attending to the ways that abolitionist thinking and organizing, particularly as it manifests in some elements of the deinstitutionalization movement, can (and have) successfully centred the most severe or challenging cases. This logic of deinstitutionalization runs counter to the incrementalism of decarceration efforts focused on the “non non nons” (non-violent, non-serious, non-sexual offences). It unmasks the state violence of incarceration and institutionalization and does not leave it to the state to define what violence means (Ben-Moshe 2020, 124).

This activist history, and the logic that undergirds it, has resonance for how we relate to the “dangerous few” who are so often cited as a challenge to abolitionism and left to the side of advocacy efforts. Ben-Moshe shows how the tactic of starting with the most “challenging” work is a deeply feminist praxis, drawing on bell hooks and the act of shifting the margins to the centre (Ben-Moshe 2020, 125). My current work on the normalization of life sentences and what it means to centre people serving life sentences for murder in our abolitionist movements (Parkes 2021), is indebted to these insights from *Decarcerating Disability* and Ben-Moshe's earlier work.

On deinstitutionalization as both a phenomenon and a logic, Ben-Moshe argues that it is “essential to interrogate deinstitutionalization as a social movement, a logic to counter carceral logics... [D]einstitutionalization is not just something that ‘has happened’ but was a call for an ideological shift in the way we react to difference among us” (Ben-Moshe 2020, 2). *Decarcerating Disability* challenges those of us who are used to calling out carceral logics – including in “progressive” campaigns – to also attend to the deeply ableist and debilitating logics that are embedded in carceral systems and in a lot of advocacy for decarceration and

prisoner rights (see also Wildeman 2020). The disabling nature of incarceration and whose bodies are available for capture must be understood as core features of incarceration and institutionalization (Ben-Moshe 2020, 9). This connection of criminalization to pathologization is fundamental to the perpetration of state violence and incarceration of all kinds.

Linda Steele's *Disability, Criminal Justice & Law: Reconsidering Court Diversion* picks up similar themes, bringing an analysis of debility (Puar 2017) and the bifurcation of disability. For some, disability can be celebrated through rights discourses and access to some individual remedies, with a focus on capacity. However, for others, particularly criminalised disabled people, disability is about deprivation and a process of positioning populations in an ongoing state of precarity through disability — of systematic deprivation and violence. Steele shows how this bifurcation is not accidental. It is a feature, not a bug, of the neoliberal white settler nation-state and she examines law's role in enabling debilitation through seemingly progressive moves such as court diversion. *Disability, Criminal Justice & Law* demonstrates how law is crucial to ensuring that court diversion is viewed as humane and just, while also operating to shore up mainstream carceral responses by being positioned as an "alternative".

Importantly, both books locate their analysis within critiques of settler colonialism. Steele says that one of the ambitions of *Disability, Criminal Justice & Law* is to "forge new sociolegal connections between disability, law and settler colonialism" (Steele 2020, 10). That ambition can be seen throughout the book, particularly in the narrative of Molly, a composite hypothetical Indigenous criminalized disabled woman who is in and out of child welfare, court diversion, prison, and other state carceral institutions throughout her life. Court diversion or disability rights based legal processes do not do any form of justice for her. They do not comprehend or challenge the structural conditions of her life under settler colonial law. Steele challenges the reader to contemplate what a decolonizing, abolitionist, disability justice approach would look like for Molly.

In this vein, while Steele's book presents a compelling critique of disability court diversion, her Chapter 8 is refreshingly forward-looking. It provides ideas and provocations for teaching, activism, and research. Steele sketches out a number of existing transformative, abolitionist strategies that are aimed at dismantling the institutional carceral archipelago (Steele 2020, 209; referencing Foucault 1977) including prison but also other forms of institutionalization, in line with *Decarcerating Disability*.

Chapter 8 of *Disability, Criminal Justice & Law* lists seven distinct strategies but I will touch on just two that I have found particularly generative. In calling for the advancement of a critical disability legal pedagogy, Steele asks, "What should our ethical responsibilities be to those whose injustices we bear witness to, as lawyers, activists and legal scholars; and how can we begin to develop in law students the critical awareness and skills through which to meet these responsibilities?" She describes how negative ontologies of disability are deeply embedded in and through law. They "underpin core legal concepts such as capacity, rationality and reasonableness, and they order legal domains, all of which makes possible and natural differential access to liberal legal citizenship and full humanness" (210). Despite the growth and vibrancy of critical disability studies and crip critical theory in recent years, law schools – even progressive classrooms where critical perspectives are common – have largely missed this turn and its implications for our teaching.

Steele cites Sherene Razack (2015) on the pedagogical practice of inviting students to examine their complicity in ongoing colonialism. At the law school where I teach, we have introduced a mandatory Indigenous-Settler Legal Relations course that has examining such complicity as one of its objectives. However, Steele shows how there is much more work in this vein to do in legal education. She argues compellingly that:

legal teachers need to be aware that because they are, in effect, teaching violence when they teach law without critical reflection on disability... they are representing violence—both against disabled people and through legal ontologies of disability—as rightly lawful and just, and this sustains other dynamics and forces of oppression.
(210)

Disability, Criminal Justice & Law also calls for a strategic, critical engagement with human rights in our deinstitutionalization and abolitionist work. Steele is critical of the way that the United Nations' *Convention on the Rights of People with Disabilities* has been interpreted and mobilized as *anti-disability-specific* but not *anti-carceral*. This is true of essentially all human rights instruments, such as the *Canadian Charter of Rights and Freedoms* and Canada's statutory human rights laws that have grounded many prisoner rights claims. Nevertheless, Steele suggests that human rights strategies and litigation are political tools that can be deployed "where their use can disrupt rather than fold back into biopolitical control" (216, citing Golder 2015). They can be used tactically in ways that challenge rather than reinforce power relations. I have argued that a prison abolitionist lawyering ethic requires asking whether a particular legal argument or remedy reinforces or challenges carceral logics. However, Steele and Ben-Moshe provoke those of us who work with legal strategies to inquire further: does our work challenge or undermine debilitating logics (and colonial logics)?

These inquiries connect back to Ben-Moshe's nuanced analysis of litigation against prisons and institutions and what our movements might learn from these histories. The call is to move beyond "simplistic questions of whether certain lawsuits were successful to more wide-reaching questions about what reform litigation did, cumulatively," to see the politicizing effects as well as how these efforts sometimes ushered in more effective ways to incarcerate (231). As Ben-Moshe argues compellingly, abolition is a *dis-epistemology*, a "letting go of certain ways of knowing in order to gain others, unlearning in order to learn" (283). Both books are full of challenging and rich insights, including much unlearning for abolitionist legal scholars and students.

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