

2020

Thinking Broadly: This Volume as a Guide for Abolitionists

Adam Lee

Follow this and additional works at: <https://digitalcommons.osgoode.yorku.ca/jlsp>



Part of the [Law Commons](#)

Citation Information

Lee, Adam. "Thinking Broadly: This Volume as a Guide for Abolitionists." *Journal of Law and Social Policy* 33. (2020): 1-14.

<https://digitalcommons.osgoode.yorku.ca/jlsp/vol33/iss1/1>

This Introduction is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in *Journal of Law and Social Policy* by an authorized editor of Osgoode Digital Commons.

Thinking Broadly: This Volume as a Guide for Abolitionists

ADAM LEE*

On 15 March 2019, the Journal of Law and Social Policy (JLSP) held “Detained: From Supporting Prisoners to Abolishing Prisons,” a day-long symposium on prisoner support and prison abolition. Framed as a space for lawyers, law students, activists, organizers, and community members alike to come together and learn about prisons from one another, the event ran as a series of panels on a wide variety of topics from nine o’clock in the morning until past ten o’clock at night.

A year and a half earlier, a government official gave a guest lecture at Osgoode Hall Law School about prison conditions. After discussing at length the horrors of solitary confinement and other harms created by prisons, a question came from a student: if prisons are sites of rampant human rights abuses, why privilege the existence of prisons at all by attempting to reform them as opposed to abolishing them? The official responded that society needs prisons in order to function. Prisons must be reformed and made more humane for the people inside them, the official concluded, but because society needs prisons, the line is drawn at ending them.

With this response still in our minds, we—as student editors—were unsure how a conversation about abolition would be received. At the same time, the official’s response proved to us that we needed to force a conversation about abolition at Osgoode and in legal education more broadly. We wanted to challenge the default paradigm espoused by many that the problem with prisons is that they execute their function poorly. To the contrary, the argument running through the symposium (and which runs through the articles presented in this volume) is that the carceral state functions exactly as it is intended. The violence in this system cannot be reformed away; it persists because it is designed to be so.

The symposium had been planned primarily by a committee within the JLSP editorial team over the course of several months. In a pivotal moment during our very first meeting as an organizing team the September before, a question was raised: “How big do we want this event to

* Adam Lee is an LLM candidate at Osgoode Hall Law School and a former student editor with the Journal of Law and Social Policy in 2018-19 and 2019-20. Adam would like to thank Krisna Saravanamuttu, Adrian Smith, Janet Mosher, Amar Bhatia, and Caitlin Leach for their feedback and support on this introduction.

The symposium and this volume would not have been possible without the contributions and support of many people and organizations alike. From planning and organizing to setting up placards and distributing programs, the symposium could not have happened without every single member of the 2018-19 JLSP editorial team, each of whom played a crucial role. The editorial team would like to thank our Co-Editors-in-Chief at the time of the symposium, Professors Janet Mosher and Amar Bhatia. Their enthusiastic support was much needed at a time when abolition felt like a controversial topic in law school. None of this would have been possible without their guidance, leadership, and genuine commitments to justice and to their students. Nor would it have been possible without generous funding from the Criminal Law Society at Osgoode, the Institute for Feminist Legal Studies, Osgoode Hall Law School, the Osgoode Hall Law Union, the Nathanson Centre on Transnational Human Rights, Crime, and Security, and the York Centre for Public Law & Policy. We would also like to thank everybody who spoke at the symposium, and particularly those with lived experience of carcerality, for their generosity in sharing their irreplaceable expertise with all of us present. We will carry it forward.

be?” The concept of an event about prisons had been floated in the previous year as a lunchtime panel discussion. But whether we went ahead with a lunchtime panel or decided upon another format begged the question of scope: how much do we want to cover about prisons, and how long would we need to cover it?

As the discussion about our interests in abolition went around the room, the sheer amount of ground that abolition covers became increasingly apparent. Prisons are obviously implicated in abolition, but what about “administrative” forms of detention, like psychiatric detention and immigration detention? What about pre-trial detention, before a judgement has even been rendered? What about state institutions that constitute punishment and imprisonment? And of course, how can we talk about any of these forms of detention without first discussing their root causes: settler-colonialism, capitalism, and border sovereignty among them? When the carceral state—Canada’s reliance upon punishment, incarceration, criminalization, and other functions of carcerality to carry out its state-building projects—is everywhere, how can a conversation about abolition stop short of going everywhere?

Refusing to reduce abolition to any one dimension, what began as a lunchtime panel discussion eventually became the wide-ranging series of interwoven conversations at “Detained.” However, the variety of topics covered in the symposium and in this volume speaks less to our planning and more to the beauty of abolition itself and the centuries of abolitionist work that have preceded us.

Abolition is far from a novel concept. With roots in what Dylan Rodriguez characterizes as “a Black genealogy of revolt and transformative insurgency against racial chattel enslavement and the transatlantic trafficking of captive Africans,”¹ abolition traces its centuries-long history through the Haitian Revolution and the abolition of the transatlantic trade of enslaved persons.² Amna Akbar further clarifies that prison abolition “is the unfinished project of abolishing slavery”; a project that rejects “the moral legitimacy of confining people in cages” and all related forms of punitive, criminal control and surveillance.³ Importantly, prison abolition is by and large the domain of Black feminist activists, organizers, and scholars, from Angela Davis and Ruth Wilson Gilmore to organizations like INCITE! and Critical Resistance.

When understood within these ongoing histories of resistance, abolition comes to light as, fundamentally, praxis. As Gilmore writes, “[a]bolition requires that we change one thing: everything.”⁴ The abolition of systems is not theoretical; rather, it makes change incumbent upon all of us, wherever we find ourselves. Throughout both the symposium and this volume, abolition is considered as an active struggle for a better world: a world free from the settler-colonial, oppressive logics, and institutions of the carceral state.

This introduction explores various dimensions of abolitionist struggle in conversation with the articles that have been published in this volume. This introduction aims to be a further contextualization for abolition, the symposium, and the articles herein.

¹ Dylan Rodriguez, “Abolition as Praxis of Human Being: A Foreword” (2019) 132 *Harv L Rev* 1575 at 1576.

² Herbert Aptheker, “Militant Abolitionism” (1941) 26:4 *Journal of Negro History* 438 at 441-43.

³ Amna A Akbar, “Toward a Radical Imagination of Law” (2018) 93 *NYUL Rev* 405 at 461-62.

⁴ Ruth Wilson Gilmore, *Change Everything: Racial Capitalism and the Case for Abolition* (Chicago: Haymarket Books, forthcoming 2021). See <www.haymarketbooks.org/books/1597-change-everything> [perma.cc/AP2P-JRCT].

I. ABOLISH SETTLER-COLONIALISM: “INTERGENERATIONAL IMPRISONMENT”

As a capitalist, settler-colonial state built upon the conversion of Indigenous land into resource and the genocide of Indigenous peoples and nations, Canada uses carceral institutions as a key part of its ongoing colonial strategy. The North-West Mounted Police, now known as the Royal Canadian Mounted Police, were created to clear Indigenous people from their land as the Canadian state expanded westward by policing their movement and putting them in prisons.⁵ The criminalization of Indigenous people was, and still is, a way for the Canadian state to control and weaken Indigenous communities and sovereign Indigenous nations.⁶

Vicki Chartrand and Robert Nichols both argue that in this sense, the prison system is not a carryover of Canada’s “colonial past” but rather a crucial part of the *ongoing* project of settler-colonialism in present day.⁷ For Chartrand, the rise in Indigenous incarceration following World War II represents a “shift” from one method of settler-colonial eradication of Indigenous Peoples (segregation and assimilation) to another (the prison system).⁸ Nichols further clarifies that this shift was not from a “violent” form of settler-colonialism to a more “docile” form, but that the prison system is itself part of a “shadow system of hard infrastructure” that sustains the state’s agenda of settler-colonial violence against Indigenous people and nations⁹—since Indigenous Peoples represent a fundamental challenge to the sovereignty of the settler state,¹⁰ Indigenous people, cultures, and nations must be destroyed,¹¹ and incarceration is one tool used to achieve that end. Both of these can be true: there can be a “shift” in how settler-colonial violence is enacted upon Indigenous people and nations without a “shift” in degrees of violence.

This is not to say that the anti-Indigenous violence of prisons is necessarily a function of *how many* Indigenous people they contain. Nichols argues that to interpret Indigenous incarceration as a matter of statistics alone strips incarceration from the historical context of state power, colonialism, and settler sovereignty.¹² Nevertheless, inasmuch as numbers can illustrate the sheer magnitude of the carceral state’s anti-Indigenous violence, we can see these policies of settler-colonial control reflected in the presence of Indigenous people in provincial jails and Canadian prisons. Despite Indigenous people making up 5 per cent of the general population,

⁵ Jaskiran K Dhillon, “Indigenous girls and the violence of colonial policing” (2015) 4:2 *Decolonization: Indigeneity, Education & Society* 1 at 8.

⁶ *Ibid.*

⁷ Vicki Chartrand, “Unsettled Times: Indigenous Incarceration and the Links between Colonialism and the Penitentiary in Canada” (2019) 61:3 *Can J Corr* 67 at 79; Robert Nichols, “The Colonialism of Incarceration” (2014) 17:2 *Radical Philosophy Review* 435 at 448.

⁸ Chartrand, *supra* note 7 at 77.

⁹ Nichols, *supra* note 7 at 448.

¹⁰ *Ibid* at 445; Eve Tuck & K Wayne Yang, “Decolonization is Not a Metaphor” (2012) 1:1 *Decolonization: Indigeneity, Education & Society* 1 at 6.

¹¹ Tuck & Yang, *ibid.*

¹² Nichols, *supra* note 7 at 444.

over 30 per cent of federal prisoners are Indigenous, with Indigenous women making up 42 per cent of all women in federal prisons.¹³

The role of the prison in racialized and Indigenous incarceration connects with Angela Davis's characterization of incarceration as "a fate reserved for 'evildoers'":

Because of the persistent power of racism, "criminals" and "evildoers" are, in the collective imagination, fantasized as people of color. The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers.¹⁴

The framing of prisons as repositories for "undesirables" underscores the destruction of Indigenous people and nations under settler-colonialism and the oppression of Black and racialized people as part of Canada's state-building project. Incarceration's role as settler-colonial violence is in one sense to act as a storehouse for those whose existences contradict what Harsha Walia refers to as "the [settler] nation-state's normative heteropatriarchal whiteness."¹⁵ The settler ideal of a society whose hegemonic citizen is white, male, propertied, and "civilized" creates the conditions and justifications for state violence against those who fall outside its ideal: in particular, poor people, Black people, Indigenous people, racialized people, LGBTQ2S+ people, migrants, those with mental illness(es), and people who exist at the intersection of these and other identities. In another sense, the state uses incarceration to specifically destroy Indigeneity through prisons as "an abstract site into which undesirables are deposited," connecting to long-standing colonial tactics of separating Indigenous people from their peoples, lands, and cultures.¹⁶ In her contribution to this volume, "Intergenerational Imprisonment: Resistance and Resilience in Indigenous Communities," Linda Mussell confronts these colonial realities of the carceral state. She traces the histories of state violence against Indigenous people beyond prisons and into the broader genocidal, assimilative settler-colonial project as enacted through residential schools, the child welfare system and the Sixties Scoop, segregated hospitals, and prisons. By drawing out four overlapping themes between these institutions (as Mussell describes: "(1) the removal of people from communities; (2) restriction of freedom and movement, and coercion by those invested with power to do so; (3) both visible

¹³ Canada, Office of the Correctional Investigator, "Indigenous People in Federal Custody surpasses 30%: Correctional Investigator issues Statement and Challenge" (21 January 2020) online: *Office of the Correctional Investigator* <www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx> [perma.cc/HM26-3FWH].

¹⁴ Angela Y Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003) at 16.

¹⁵ Harsha Walia, *Undoing Border Imperialism* (Oakland: AK Press, 2013) at 36.

¹⁶ See: Taiaiake Alfred & Jeff Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialism" (2005) 40:4 *Government and Opposition* 597; Raven Sinclair, "The Indigenous Child Removal System in Canada: An Examination of Legal Decision-making and Racial Bias" (2016) 11:2 *First Peoples Child & Family Review* 8; Shandra Spears, "Strong Spirit, Fractured Identity: An Ojibway Adoptee's Journey to Wholeness" in Martin J Cannon & Lina Sunseri, eds, *Racism, Colonialism, and Indigeneity in Canada* (Toronto: Oxford University Press, 2011) 127; Nico Trocmé et al, "Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System" (2004) 78:4 *Social Science Review* 577; Autumn Varley, "'You Don't Just Get Over What Has Happened to You': Story Sharing, Reconciliation, and Grandma's Journey in the Child Welfare System" (2016) 11:2 *First Peoples Child & Family Review* 69; and see generally the two issues of the special volume, "Re-Imagining Child Welfare Systems in Canada," (2018) 28 *J L & Soc Pol'y*.

and invisible rehabilitation to values determined by those who impose imprisonment; and (4) ongoing resilience and resistance”), Mussell widens the scope of “imprisonment” beyond the criminal justice system and into the entire project of state control over Indigenous people. These forms of imprisonment and the trauma they have inflicted upon Indigenous people echo over time and across generations. All of this provides the context for Mussell’s key claim that “intergenerational imprisonment of Indigenous people should not be viewed as an isolated trend, but rather as an ongoing pattern characterized by historical trauma that is rooted in multiple persisting institutional sites of imprisonment.”

Attempts to address the intergenerational impacts of imprisonment through the criminal justice system have fallen short. Mussell argues that the *Gladue* principles, derived from the landmark *R v Gladue* decision and meant to ameliorate the criminal justice system’s disproportionate punishment of Indigenous people, are deployed inconsistently and fail to positively address the social problems arising from other government policies on Indigenous people. Other attempts, like the Indigenous Justice Program, only serve to reproduce colonial power when control is placed in the hands of the state.

As an alternative, Mussell turns to the calls for transformative change made by the Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission to advocate for Indigenous-led responses to intergenerational imprisonment—ones that centre lived experiences and Indigenous histories. Only through Indigenous control and self-determination can responses to intergenerational imprisonment break from colonialism and achieve transformative change.

Colonialism’s lingering presence within state-given solutions to intergenerational imprisonment suggests that transformative change is necessarily incompatible with settler-colonialism. As the animating force behind intergenerational imprisonment, settler-colonialism is itself the violence that harms Indigenous people across generations. The settler-colonial state’s centring of itself comes with little regard for how deeply the institutions of colonial destruction are embedded within its practices. At the symposium session on Racialized and Indigenous Incarceration, panellist Ricky Atkinson connected his own family history of criminalization with colonialism, while Kyle King spoke of colonialism as ongoing within institutions that, despite what they say, continue to fail Black and Indigenous communities time and time again. Residential school survivor Michael Cheena made explicit that there can be no “reconciliation” without the return of Indigenous control of land. The end of imprisonment—not just prisons, but the entire carceral state—must come with Indigenous control and self-determination, or it will be destined to reproduce colonialism’s violence.

II. THINKING BEYOND PRISONS: “DETAINING THE UNCOOPERATIVE MIGRANT” AND “NO ONE IS DISPOSABLE”

As Mussell shows, criminalization and incarceration are not limited to criminal justice and prisons. Other forms of detention and control are no less invested in keeping “undesirables”

locked away. Two of the sessions at the symposium tackled specific forms of detention beyond prisons: psychiatric detention and immigration detention.

People with mental illnesses are often stereotyped as “lacking control” and as dangers to themselves and others, thus justifying coercive interventions against them, including psychiatric detention.¹⁷ To draw the connection further, in *Mad in America*, Robert Whitaker notes that pathologizing labels are more readily applied to poor people and Black people than to anyone else.¹⁸ At the symposium’s session on psychiatric detention, panellist Geoffrey Reaume compellingly argued that the history of psychiatric detention is not about safety, but about medical experimentation. Shannon Balfour spoke of their own horrific experiences of being held in psychiatric detention, including being forced to take medication without being informed about the side effects, being degraded and given no privacy, and having every aspect of their life controlled by the facility.

Balfour and Mercedes Perez both concluded in their discussions that so-called “voluntary” psychiatric detention comes with the threat of criminalization if refused—not even “voluntary” detention is free from coercion or treated as a non-punitive form of detention. As a final blow to the popular conception of psychiatric detention as a necessary evil at worst and a beneficial program at best, Ameil Joseph presented the history of western scientific racism to show how Black, Indigenous, and racialized people (and particularly women) are pathologized through the lenses of mental illness and thereby constructed as untreatable and unable to be rehabilitated. This racism, Joseph argued, is what justifies and underlies psychiatric detention, not good faith policymaking. For all of these reasons, psychiatric detention belongs in the purview of abolition.

Similar arguments can be made about immigration detention, and indeed these connections were made at the symposium panel on the topic by former detainees Ebrahim Toure, Olu Adetunji, Kimora Adetunji, and refugee lawyer Jared Will. Immigration detention is often deployed against Black and Brown migrants, stereotyped as “suspicious” or “dangerous” without so much as a trial or a criminal accusation,¹⁹ further entrenching what, as noted above, Walia calls the “normative heteropatriarchal whiteness” of Canadian society.²⁰ Canada’s insistence upon immigration detention as a tool of indefinite punishment, despite flouting the state’s own laws and narratives, is examined in this volume by Siena Anstis and Molly Joeck in their contribution, “Detaining the Uncooperative Migrant.”

Anstis and Joeck situate immigration detention within the state’s control over individual migrants as an expression of sovereign power. The authors examine how the perceived “non-

¹⁷ Stephen J Morse, “A Preference for Liberty: The Case against Involuntary Commitment of the Mentally Disordered” (1982) 70 Cal L Rev 54 at 62. See also: Sophie Nunnolley, “Coercive Care in Civil Mental Health Law: An Autonomy Lens” (2015) Comparative Program on Health and Society Working Paper Series, 2014–15, available online: <<https://ssrn.com/abstract=3441312>> [perma.cc/L239-L4MH]; Michael L Perlin, “On ‘Sanism’” (1993) 46 SMU L Rev 373; Robert Whitaker, *Mad in America: Bad Science, Bad Medicine, and the Enduring Mistreatment of the Mentally Ill* (Cambridge: Perseus Publishing, 2002). Of course, people with mental illnesses are also subject to criminal law and penal incarceration for the same reason of being stereotyped as “dangerous” to society at large.

¹⁸ Whitaker, *supra* note 17 at 165.

¹⁹ Sandy Hudson & Nora Loreto, “Episode 21: Canada’s racist border policies” (16 May 2018), online: Sandy & Nora <<https://sandyandnora.com/episode-21-canadas-racist-border-policies/>> [perma.cc/G83W-MG9Z] at 00h:22m:05s.

²⁰ Walia, *supra* note 15 at 36.

cooperation” of immigration detainees is used by the Canadian state to justify the indefinite detention of migrants. Indefinite detention, the authors establish, appears “on its face ... contrary to the *Charter* and Canada’s international legal obligations.”

Through a rigorous analysis of the underlying legislation and a representative sample of various immigration review decisions, the authors argue that in fact, there is no clear legal basis for “non-cooperation” as a justification for continued detention—it does not appear in any legislation and appears to have been altogether bootstrapped by decision-makers. This invention of “non-cooperation,” aside from creating “unprincipled” judgments, allows the state to use the refusal of detainees to participate in their own deportations as justification for punishment despite the insistence by judges that “immigration detention is non-punitive and must be ‘hinged’ to an immigration purpose.” As a possible solution to this problem, the authors advocate for three suggestions for legal reform: 1) establishing a clear legal definition of “non-cooperation”; 2) establishing through legislation that indefinite detention is unlawful regardless of “(non-cooperation”); and 3) setting an express limit on the length of detention.

Anstis and Joeck are careful to connect this discussion on legal doctrine with the experiences of detainees—the problem described in this article is not merely that the state has created “bad law,” but that this “bad law” allows immigration detention to be “used as a disciplinary tool to coerce capitulation by vulnerable non-citizens to the will of the state,” also noting that detention has “lasting and serious consequences” on detainees. Whether the proposed reforms can be understood as abolitionist is an open question, as stronger legal definitions can strengthen the state’s legal legitimacy while also attempting to restrict the scope of its power. Nevertheless, throughout the article, the authors shed light upon the ways in which the system harms detainees, from being subject to degrading comments about their personal behaviour from judges to the immense physical and mental toll of indefinite detention. In doing so, the authors remind us that law, detention, and abolition are fundamentally about the people who are affected by them, at the intersections of criminal punishment and beyond.

The breadth and depth of Canada’s carceral power means that abolition, as a response to carcerality, cannot be construed narrowly. The abolitionist project is not merely concerned with the physical existence of prisons, but with the underlying logic of punishment that justifies the carceral state’s ability (and propensity) to punish, control, target, and criminalize. Indeed, in the opening session of the symposium, Souheil Benslimane cautioned that even our advocacy against prisons can be done in a way that “crystallizes the logic of punishment”—even without prisons, the state can undertake its carceral violence through other means. Prisons are *a* problem, but they are not *the* problem. The panellists in the symposium discussion on remand and bail (Lou Boileau, Jillian Rogin, and Michael Leitold) made this clear in describing how people out on bail, no longer physically in detention, are subject to an variety of surveillance mechanisms that keep people under state control. Even if physical detention changed, the state’s inherently violent ability to target and criminalize people and exercise punitive control over them would remain.

This logic of punishment manifests itself in public spaces as well as in our minds and our interpersonal relationships. In “No One Is Disposable: Towards Feminist Models of Transformation Justice,” Hannah Barrie reflects on her time volunteering with Circles of Support and Accountability (COSA), an organization “based on friendship and accountability that helps

reintegrate [people previously incarcerated for enacting sexual violence] back into communities” as part of a praxis of transformative justice. Barrie begins by unpacking the term “transformative justice,” which often presents itself as an “alternative” to prisons and punishment. She distinguishes transformative justice from both the dominant carceral paradigm (deemed “retributive justice”) and “restorative justice,” another much-discussed alternative. Retributive justice focuses on deeming people deserving of punishment and expelling them from communities. The system chooses who to punish through racism, colonialism, transphobia, homophobia, and ableism. Transformative justice differs by focusing instead on transforming relationships “and the social conditions within which they operate.” Barrie quotes Kai Cheng Thom to say that by placing harm in the context of broader social systems and structures, the goal of transformative justice is “safety for survivors, transformative justice for perpetrators, and real healing for all involved”—or, as COSA’s mandate and the title of this article state, “No One Is Disposable.” This differs in significant ways from “restorative justice,” which is more focused on restoring individual relationships between perpetrators and receivers of harm.

Barrie contextualizes and evaluates COSA as a model of transformative justice, aided by autoethnographic reflections scattered throughout the article. Through principles of healing and community, COSA is able to effect a version of transformative justice with its core members. However, Barrie warns that COSA’s abolitionist potential is (perhaps severely) limited by a number of factors, not least of which is that the organization receives funding from the federal government—in her view, this funding structure renders the organization at least partially co-opted by and beholden to state systems, “including police and prisons.” Drawing comparisons between COSA and another transformative justice organization, Philly Stands Up (PSU), Barrie concludes by proposing ways forward for movements organizing around truly abolitionist transformative justice, oriented against Canada’s settler-colonial carceral systems.

A common response to prison abolition is to question how an abolitionist society would “handle” people who commit violent acts of harm. Barrie’s unpacking of transformative justice, as well as her reflections on how COSA practises it, proves instructive and thought-provoking. To Barrie, COSA’s approach is about “[s]upport that creates a relationship of trust, ensuring that core members want to keep the relationship [between core members and volunteers] intact and sustain it into the future ... COSA regards support as accountability and vice versa.” Through this form of relationship building and trust, COSA is able to transform “cycles of abuse into cycles of healing.” The way that COSA’s limitations (including its heteronormativity, its whiteness, and especially its ties to the police) undermine the principles of transformative justice “cannot be understated,” but nevertheless its lessons are worth exploring for abolitionist praxis in other contexts, and to understand the extent to which our own mindsets privilege carceral logics.

In the symposium’s opening session, Sarah Speight remarked that abolition is not as simple as blinking out the existence of prisons at once—a world without prisons must be built anew, away from the conditions and logics that are used to justify incarceration. The “everything” in Gilmore’s assertion that abolition requires that we change “everything” surely includes our institutions and our systems, but through Barrie’s article we see that it also includes how we think about punishment and the logics of carceral punishment. COSA’s work and Barrie’s reflections on transformative justice encourage us to rethink our common paradigm of criminalization and incarceration as the default responses to harm. They show that another

world, one in which perpetrators of harm are able to heal and grow, is not merely possible, but is already taking shape in groups like COSA, PSU and groups that will build upon their models. Abolition is not a theoretical ideal; it is a praxis that is already happening around us.

III. REFORM AS ABOLITIONIST PRACTICE?: “OUT OF SIGHT, OUT OF MIND,” “THE JAIL ACCOUNTABILITY AND INFORMATION LINE,” AND “LITIGATION IS JUST ONE TOOL”

The notion that violence is built into the very nature of prisons and detention is what motivated us to present a symposium on abolition as opposed to mere reform. Settler-colonialism cannot be reformed away. There is no policy that can end the oppressive roots of prisons while keeping the prison system alive. Following this line of argument, even the most luxurious prison with the kindest guards remains a piece of the state projects of colonial violence. While reforms may or may not address these issues, abolitionists believe that reforming prisons without an abolitionist vision only serves to keep the prison system, and its inherent violence, alive.

The (legal) world often turns to reform as the solution to carceral violence. Prisoners on strike at Folsom Prison in California wrote in their manifesto that prisons are “the fascist concentration camps of modern America,”²¹ and against this backdrop, the Canadian carceral system has the unearned reputation of being reformable simply by virtue of not being the United States—the United States is commonly seen as “uniquely unjust,”²² or as “the benchmark for ... imprisonment.”²³ It helps Canada’s case that it has also implemented reforms throughout the years that afford the state a veneer of benevolence when it comes to prisons. For example, the 2002 Supreme Court decision in *Sauvé v Canada* granted prisoners in Canada the right to vote, whereas prisoner enfranchisement remains a controversial topic in the United States.²⁴ Other reforms like 2019’s Bill C-83 seek to soften the carceral state’s impacts on prisoners. When the harms of incarceration are presented as unintended harms within the system, and not as the fundamental function of carcerality itself, reforms appear to address abolitionist concerns without doing away with prisons.

²¹ “The Folsom Prisoners’ Manifesto of Demands and Anti-Repression Platform” (3 November 1970) online: *San Francisco Bay View* <<https://sfbayview.com/2018/10/folsom-manifesto-for-the-california-statewide-prison-strike-1970/>> [perma.cc/T8AA-GB5U].

²² Jordan House, “Why Canadian Prisoners are Participating in the US Prison Strike” (5 September 2018) online: *Jacobin* <www.jacobinmag.com/2018/09/canada-prison-strike-burnside-jail-incarceration> [perma.cc/LYW4-N3MP].

²³ Jody Chan, Lorraine Cheun & Marsha McLeod, “Everything you were never taught about Canada’s prison systems” (20 July 2017) online: *Intersectional Analyst* <www.intersectionalanalyst.com/intersectional-analyst/2017/7/20/everything-you-were-never-taught-about-canadas-prison-systems> [perma.cc/2LMK-QKZH].

²⁴ See Dana Liebelson, “In Prison, and Fighting to Vote” (6 September 2019) online: *The Atlantic* <www.theatlantic.com/politics/archive/2019/09/when-prisoners-demand-voting-rights/597190/> [perma.cc/Q4G5-BQYK]; Jonah Walters, “Incarcerated People Must Be Heard” (23 March 2020) online: *Jacobin* <www.jacobinmag.com/2020/03/incarceration-felony-voting-rights-criminal-justice> [perma.cc/9HAF-UF3Q]; “Felony Disenfranchisement” (2020) online: *The Sentencing Project* <www.sentencingproject.org/issues/felony-disenfranchisement/> [perma.cc/NE27-WBBG].

While tempting to look at examples like these as proof that Canadian prisons are not worthy of concern and are fixable through reform, abolitionists are less concerned with the *extent* of violence being enacted upon prisoners, but rather that there is any violence at all. If Canadian carcerality is inherently a project of racist, settler-colonial violence, reforms that willfully stop short of ending it can be further investments in violence. Worse, returning to Benslimane's comments on "crystallizing the logic of punishment" and Mussell's conclusion that settler-colonial reforms reproduce colonialism's violence, reform may even preclude abolition by affirming the carceral state's power after modest changes. Having established that abolition is a matter of praxis first and foremost, can reform ever meaningfully serve as abolitionist praxis? This question was an undercurrent throughout the symposium, and especially in the panel on Harm Reduction in Prisons. Panellists Kyle King and Mark Zammit, speaking alongside Emily van der Meulen and Sandra Ka Hon Chu, highlighted the various failures of reformist "harm reduction" policies that still leave prisoners without much-needed resources like drug treatment and healthcare.

These discussions also come to bear in this volume in Lydia Dobson's, "Out of Sight, Out of Mind: Bill C-83, Solitary Confinement, and Mental Health." Dobson examines the use of solitary confinement (referred to in law as "segregation") against prisoners with mental health issues and how Bill C-83 might impact its use. Bill C-83, which amends the *Correctional and Conditional Release Act*, addresses the use of solitary confinement at the federal level and Bill 6, which would amend, once enacted, similar legislation at the provincial level in Ontario, are compared as reforms that address a similar issue at a similar time. Dobson contextualizes solitary confinement's harms through a discussion of the recent suicides of Cleve "Cas" Geddes and Ashley Smith in solitary confinement, as well as by the excessive amount of time that Christina Jahn and Adam Capay endured in solitary confinement (200 consecutive days and four years, respectively). All four of these individuals live(d) with mental health issues, and in the cases of Smith, Jahn, and Capay, their extended time in solitary confinement flouted Canada's international legal obligations vis-à-vis the United Nations' "Mandela Rules," which prohibit solitary confinement exceeding fifteen days, and with respect to prisoners with mental or physical disabilities, prohibit solitary confinement in any circumstance where the prisoner's condition would be exacerbated by such confinement. Bill C-83 and Bill 6 arise from this context.

While Bill 6 (which has passed, but the Conservative Ontario government has not yet put in force) outright prohibits the use of solitary confinement against people with mental health issues, Bill C-83 permits prisoners to be confined in "structured intervention units" for twenty-hours per day, so long as they are given a daily visit from a health care professional. If the professional recommends for health reasons that a prisoner not remain in the structured intervention unit or that conditions of confinement be changed, a multi-layered bureaucratic review process is set in motion. At Dobson points out, "[a]t no point in this process is any action required that would *treat* the harms caused by solitary confinement."

Bill 6 sets hard limits on the length of solitary confinement (fifteen consecutive days; sixty total days in a 365-day period) in accordance with the Mandela Rules and jurisprudence from the Ontario Court of Appeal, while Bill C-83 only requires a review after thirty days in a "structured intervention unit." Government actors have taken the position that Bill C-83

complies with the Mandela Rules because it ends the practice of solitary confinement, but this view relies on an exceedingly formalistic interpretation of the Rules that obscures the harms to prisoners. The Mandela Rules define solitary confinement as confinement for twenty-two hours or more a day without meaningful human contact. While Bill C-83 requires a minimum of four hours outside a cell, only two of these hours need entail opportunities to interact, the other two may be devoid of any “meaningful human contact” as contemplated by the Mandela Rules. In other words, Bill C-83 does not end solitary confinement. Moreover, as Dobson points out, reducing hours outside of a cell to twenty “is not likely to dramatically reduce the negative impacts of solitary confinement on mental health.” Bill C-83 creates “a dangerous precedent in which solitary confinement ‘under another name’ (structured intervention units) is permitted to hold prisoners with mental health issues for otherwise unacceptable periods of time.” Bill 6 is far from perfect, but by comparison, Bill C-83 falls far short. Dobson further advances these critiques in a line-by-line breakdown of Bill C-83 in conversation with other critiques of Bill C-83 made by prison scholars Lisa Kerr and Debra Parkes before concluding that the Bill’s reforms may “undo many years of advocacy by reorganizing the similar conditions under another name and falsely concluding that solitary confinement has been eliminated.”

Dobson’s analysis illustrates a common shortcoming of legal reforms: the propensity of legislators to acknowledge and rename the particulars of the state’s violence without addressing the harm done. As Dobson shows, despite highly publicized cases demonstrating the danger of solitary confinement, Bill C-83 may still allow correctional staff to place people with mental illnesses in solitary confinement for periods exceeding Canada’s international and domestic legal obligations, all under a veneer of benevolence and progress. While Dobson (and Kerr, in her symposium comments during a panel on solitary confinement, speaking alongside Gregory McMaster and Shane Martínez) acknowledges that Bill C-83 might ameliorate certain conditions for prisoners, the legislature’s failure to end solitary confinement while pretending that they have by renaming it has the potential to mask the nature and extent of the harm that prisoners face. This article serves as a cautionary tale about the limits of law reform and how to understand reforms that fall short of abolition.

This is not to say that reforms are, by rule, never useful. In the symposium’s closing session, alongside Chris Harris, organizer Naomi Martey urged us to “walk and talk at the same time” *vis-à-vis* reforms and abolition—when the harms of incarceration are as drastic as they are now, we must find ways of changing the current state of affairs *as* we build toward a world without prisons. It is to say, however, that reforms must be critically assessed on a rubric that goes beyond merely tinkering with the mechanisms of incarceration. As Benslimane and Speight suggested in the symposium’s opening session, one way to think about reform is to ask whether a particular policy puts more power in the hands of the carceral state, or if it makes incarceration more difficult to enact.

Benslimane and Speight, along with Justin Piché and Aaron Doyle, further confront these questions about decarceral reforms in their article for this volume, “The Jail Accountability & Information Line: Early Reflections on Praxis.” Here, the four authors (who were also the four panellists in the symposium session on supporting prisoner activism) write about their time operating the Jail Accountability & Information Line (JAIL), a key organization in Ottawa that takes phone calls from those imprisoned in the Ottawa-Carleton Detention Centre (OCDC) to

connect them with community supports and work with them to address grievances. The authors discuss the work and origins of the JAIL along with the JAIL's guiding philosophies. As the authors explain, the JAIL arose in response to a carceral environment in Ontario forged by austerity policies and heightened policing of the working class. Recognizing the history and importance of jail phone lines as a means of communication and support, the JAIL was founded by members of the Criminalization and Punishment Education Project—namely, the four authors of this article.

The founding of the JAIL came with a robust understanding of abolition that allowed them to rigorously question what, exactly, their prisoner support work could look like in a way that works against the institution of incarceration altogether, and not toward a reformist future of merely more benevolent incarceration. Their answer to the “abolition versus reform” issue “is not whether to engage in prison reform, but how to engage in such work while simultaneously working toward abolition ... we ask ourselves what kind of reforms can be enacted to reduce the harms of incarceration that prisoners experience, while not further consolidating the power to punish and making our task of dismantling cages more difficult.” The authors go on to discuss the lessons they learned in the first year of starting and operating the Line, including lessons about securing space, building the organizing capacity of prisoners and volunteers, and raising funds.

With questions about reform and abolition settled (for the time being), this look at the work of the JAIL is a guide to abolitionist praxis that connects the “outside” with the “inside”—focused not on “helping” prisoners (as the lawyering paradigm often encourages), but instead, as the authors paraphrase Lilla Watson, recognizing that “‘their liberation is bound up’ in our own.” The empowerment of prisoners to fight against the systems which oppress them is a crucial part of the fight for justice everywhere. In this sense, abolition is necessarily bound up in our collective liberation.

The intense strategizing and philosophizing that underlie the Line's praxis were on full display in the summer of 2020, when people imprisoned at OCDC went on multiple hunger strikes to fight against various grievances, including the lack of Personal Protective Equipment in the COVID-19 pandemic as well as the lack of nutrition and options for those on Halal diets.²⁵ The JAIL's utility as an organizing and public relations tool for prisoners during the strikes exemplifies their approach to collective empowerment and liberation as outlined in this article.

Having destabilized law reform as an inherently viable avenue for abolition, what is to be made of the lawyer's role in abolishing the carceral state? In our Voices and Perspectives section, Kristen Lloyd interviews lawyer and organizer Karin Baqi, who was co-counsel for the End Immigration Detention Network (EIDN), who had successfully secured third-party public interest standing in the case of *Brown v Canada* at the Federal Court. The case concerned Alvin Brown, a Jamaican national who arrived in Canada as a small child and attained Permanent

²⁵ See “Statement on the Hunger Strike at the Ottawa-Carleton Detention Centre” (4 June 2020) online: *Tracking the Politics of Criminalization and Punishment in Canada* <<http://tcp-canada.blogspot.com/2020/06/statement-on-hunger-strike-at-ottawa.html>> [perma.cc/4VZM-8HYE]; “Hunger Strike begins at the Ottawa-Carleton Detention Centre” (22 July 2020) online: *Tracking the Politics of Criminalization and Punishment in Canada* <<http://tcp-canada.blogspot.com/2020/07/hunger-strike-begins-at-ottawa-carleton.html>> [perma.cc/9RRA-8GKV]; Krisna Saravanamuttu, “Prisoners hunger strike for better conditions at OCDC” (5 June 2020) online: *Spring* <<https://springmag.ca/prisoners-hunger-strike-for-better-conditions-at-ocdc>> [perma.cc/T558-FH4Z].

Resident status. Years later, having functionally spent his entire life in Canada, he was found criminally inadmissible under Canada's immigration legal regime and ordered deported. In the lead-up to his 2016 deportation, Brown was held in detention by the Canada Border Services Agency for a total of five years. In *Brown v Canada*, he challenged the constitutionality of the legislation that permitted his detention.

Lloyd's interview with Baqi provides insight on the legal arguments that EIDN and Brown advanced, namely that the legislation underlying immigration detention in Canada violates the *Charter*: the lack of a statutory limit to the length of detention (as discussed elsewhere in this volume in "Detaining the Uncooperative Migrant") violates sections 7 and 9; the lack of any statutory basis for the physical conditions and location of detention violates section 7; and the resulting indeterminacy of length, conditions, and location is a violation of section 12. As well, EIDN and Brown argued that the detention review process creates a reverse onus on detainees to argue for their release instead of the state having to justify detention, and since the Minister is not statutorily bound to provide evidence, detainees have no way of knowing the case against them. Ultimately, these arguments were unsuccessful, with the Federal Court ruling that the legislative regime is constitutional when "properly interpreted and applied" and the Federal Court of Appeal further affirming that what Brown and EIDN allege are matters of maladministration as opposed to anything inherent to the regime.

In the latter part of the article, Lloyd examines EIDN's experience in the context of ongoing arguments about the role of litigation in social movements: do legal challenges fundamentally create a reliance upon the state, thus taking power out of the hands of movements? Can litigation be leveraged as a tool for driving public conversations about injustice? Despite the judgment, EIDN understood that the legal victory itself was not the only goal of litigation: their intervention granted them legitimacy in the public sphere, allowing them to further shape public discourse, and generated media attention and thus a platform for detainees and family members. At the same time, litigation is resource-intensive and legal arguments are too narrow to capture the political demands and broader context of movements. Weighing the pros and cons of EIDN's intervention in *Brown*, Lloyd concludes that litigation, for all its virtues and faults, "must necessarily be only one tool, carefully selected and wielded, in an overall strategy for change."

Changing law, as in legislation and jurisprudence, may play a role in the struggle for abolition. However, between the insights shared from JAIL, EIDN, and other organizations and authors in this volume, abolitionist praxis is about centring those affected and empowering us/them to seek liberation from the carceral state and all its related oppressions. The demands of movements, activists, and organizers cannot be made subordinate to the work of lawyers.

IV. CONCLUSION

Many of us who organized the symposium were frustrated with the lack of engagement with prisons and carceral spaces in our legal educations, which came to bear in the symposium's panel discussion on teaching prison law, featuring Lisa Kerr, Shane Martínez, and Justin Piché. The Fall 2020 semester will be Osgoode's first with a course on Prison Law, taught by Martínez, thanks to tireless student organizing by Matthew Campbell-Williams and Barbara Brown. Prior

to this, beyond their inevitable nexuses with constitutional law and administrative law, prisons and other forms of detention are rarely discussed in our classes. Criminal law curricula largely stop at sentencing.

Statistics Canada reported a daily average of 38,786 adult prisoners in Canada, 14,812 more in remand, and 94,904 more in community supervision programs and probation in 2017-18.²⁶ All of these people are subject to state action in some or every aspect of their lives. A lack of awareness about incarceration when it affects hundreds of thousands of people in Canada can only serve to deprive us—not only as lawyers, but as community members too. If abolition and carcerality are about “everything,” an unawareness of carcerality is an unawareness of everything. The lack of engagement with prisons and abolition is the proverbial ever-growing elephant in the lecture hall.

When we held the symposium, we could not have imagined the uprisings that have happened around the world in the summer of 2020 following the police killings of George Floyd, Regis Korchinski-Paquet, Breonna Taylor, Rodney Levi, Chantel Moore, and many other Black and Indigenous people whose lives and deaths never made it into the public eye. The people on the streets demanding justice have pushed the abolition of prisons, police, and the carceral state squarely into the mainstream conversation. These movements have spurred motions to defund police departments and demands to take police officers out of schools. In this political climate, abolition cannot be dismissed as an idealistic pipe dream. No longer can anybody claim to be ignorant of abolition movements, their demands, and their visions. Abolition is calling in a voice that demands answers, *now*.

On behalf of the *Journal of Law and Social Policy* editorial team, we are excited to present this volume in service of creating a new world.

²⁶ Statistics Canada, “Adult and Youth Correctional Statistics in Canada, 2017/2018” (9 May 2019), online: <www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010-eng.htm>.