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Critical Pathways to Disability Decarceration: Reading Liat Ben-Moshe and Linda Steele

Sheila Wildeman*

Abstract

I consider how Liat Ben-Moshe's *Decarcerating Disability* and Linda Steele's *Disability, Criminal Justice and Law: Reconsidering Court Diversion* contribute to emerging conversations between critical disability studies and anti-carceral studies, and between disability deinstitutionalization and prison abolitionism. I ask: what if any role might law, or specifically rights-based litigation, play in resisting carceral state strategies and redirecting material and conceptual resources toward supports for diverse forms of flourishing? I centre my remarks on the special relevance of Ben-Moshe's and Steele's books to social movement activism in Atlantic Canada and critical reappraisal of Canada's solitary confinement litigation.

I am grateful for the chance to reflect with others on Liat Ben-Moshe's *Decarcerating Disability* and Linda Steele's *Disability, Criminal Justice and Law: Reconsidering Court Diversion*.¹ I am writing from K'jipuktuk – Halifax, Nova Scotia – in Mi'kma'ki, the unceded territory of the Mi'kmaw.

These important books succeed, in mutually reinforcing ways, in placing disability deinstitutionalization and disability justice into productive conversation with prison

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¹ Liat Ben-Moshe, *Decarcerating Disability: Deinstitutionalization and Prison Abolition* (Minneapolis: University of Minnesota Press, 2020); Linda Steele, *Disability, Criminal Justice and Law: Reconsidering Court Diversion* (London: Routledge, 2020).

abolitionism and anti-carceral studies. They show how these distinct movements and theoretical traditions have been too narrowly confined and suggest how much can be achieved once we break down the silos dividing them, how much readier we will be to resist the interlocking oppressions constituting the carceral state.

I am a law professor. My research has focused on psychiatric detention and forced medication,² and prison law.³ I am also co-chair of East Coast Prison Justice Society,⁴ which engages in jail monitoring⁵ and advocacy around policing accountability / defunding and strengthening community supports.⁶ When COVID-19 struck, we and other organizations collaborated to help bring about the release of over 40% of those in Nova Scotia's jails.⁷ Today the numbers are back to pre-pandemic levels and institution-wide lockdowns are more frequent and prolonged than before.⁸ Conditions in disability institutions have likewise hit new lows.⁹ Yet again and again the critiques and praxis proper to prison abolitionism and

² See Rusi Stanev & Sheila Wildeman, "Freedom: A Work in Progress" in Eilionoir Flynn et al, eds, *Global Perspectives on Legal Capacity Reform* (Oxford: Routledge, 2019); Sheila Wildeman, "Consent to Psychiatric Treatment: From Insight (into Illness) to Incite (a Riot)" in Colleen Flood & Jennifer Chandler, eds, *Law and Mind: Mental Health Law and Policy in Canada* (Toronto: LexisNexis, 2016); Sheila Wildeman, "Protecting Rights and Building Capacities: Challenges to Global Mental Health Policy in Light of the Convention on the Rights of Persons with Disabilities" (2013) 41(1) JLME 48; Sheila Wildeman, "Agonizing Identity in Mental Health Law and Policy (Part II): A Political Taxonomy of Psychiatric Subjectification" (2016) 39(1) *Dalhousie Law Journal* 147.

³ "Habeas Corpus Unbound" in Colleen M Flood & Paul Daly, eds, *Administrative Law in Context*, 4e (Toronto: Emond Publishing, 2021); Sheila Wildeman, "Disabling Solitary: An Anti-Carceral Critique of Canada's Solitary Confinement Litigation" in Claire Spivakovsky, Linda Steele & Penelope Weller, eds, *The Legacies of Institutionalisation: Disability, Law and Policy in the 'Deinstitutionalised' Community* (Oxford: Hart Publishing, 2020).

⁴ <https://www.eastcoastprisonjustice.ca/>.

⁵ See Hanna Garson with Sheila Wildeman & Harry Critchley, *Conditions of Confinement in Men's Provincial Jails in Nova Scotia: ECPJS Visiting Committee Annual Report 2021-22* (Halifax: East Coast Prison Justice Society, 2021) at <https://www.eastcoastprisonjustice.ca/conditions-of-confinement-report.html>; our 2021-22 Annual Report is soon to be released and will be accessible on the ecjps website. Conditions of detention in Nova Scotia jails designated for women are subject to comparable civil society monitoring led by the Elizabeth Fry Society (Mainland Nova Scotia) <https://www.efrymns.ca/>.

⁶ Tari Adjadi, Harry Critchley, El Jones & Julia Rodgers, *Defunding the Police: Defining the Way Forward for HRM* (Halifax: Board of Police Commissioners Subcommittee to Define Defunding Police, 2022).

⁷ El Jones, "Clearing out the jails," *Halifax Examiner* (March 24, 2020)

<https://www.halifaxexaminer.ca/uncategorized/clearing-out-the-jails/>; Haley Ryan, "Nova Scotia jail population almost cut in half under COVID-19 measures" *CBC News* (April 22, 2020) <https://www.cbc.ca/news/canada/nova-scotia/jail-population-cut-in-half-new-covid-19-measures-1.5541732>.

⁸ Sheila Wildeman & Harry Critchley with Hanna Garson, Laura Beach and Margaret Anne McHugh, *Conditions of Confinement in Men's Units of Provincial Jails in Nova Scotia* (Halifax: East Coast Prison Justice Society, 2022).

⁹ Ruby Dhand, Anita Szigeti, Maya Kotob, Michael Kennedy & Rebecca Ye, "Litigating in the Time of Coronavirus: Mental Health Tribunals' Response to COVID-19" (2020) 37(1) *Windsor Yearbook of Access to Justice* 132. Available at SSRN: <https://ssrn.com/abstract=3749772>; Tess Sheldon, Karen Spector & Sheila

disability deinstitutionalization pull apart. Ben-Moshe's and Steele's books urge us to deepen and coordinate our engagement with two axes: disability institutionalization and criminal law-based incarceration.

Both books expose under-examined continuities among discourses and institutions of punishment (prisons, jails) and putative care (psychiatric hospitals, nursing homes, group homes). They show that anti-carceralism requires disability justice and that disability justice means reckoning with the forces of colonialism and racial capitalism, as well as ableism, at the foundations of the carceral state. Those who reside in *Mi'kma'ki*, or the region known as Atlantic Canada, have been harshly reminded of just what is at stake in these conversations in recent years. In May 2020, Regis Korchinski-Paquet, an Indigenous-Ukrainian-Black woman with roots in African Nova Scotia, fell from a Toronto balcony to her death during a police "wellness check".¹⁰ The following month, in New Brunswick, another "wellness check" ended in the police shooting death of Chantel Moore, an Indigenous woman.¹¹ A week later, again in New Brunswick, Rodney Levi, a member of the Metepenagiag Mi'kmaq Nation, was killed during a police "wellness check".¹²

These deaths mark the urgency of bridging anti-colonialist, critical race and critical disability analyses – an urgency felt and expressed in the streets. Ben-Moshe's and Steele's books have arrived at a time of rising resistance and activism, a time when prison abolitionism and disability deinstitutionalization are respectively attaining unprecedented prominence. In Canada, the past fifteen years have been marked by increased public attention to and legal advocacy on prison conditions, particularly solitary confinement, and spontaneous and

Wildeman, "Viruses feed on exclusion: Psychiatric detention and the need for preventative deinstitutionalization," *Ricochet* (April 12, 2020) <https://ricochet.media/en/3038/viruses-feed-on-exclusion-psychiatric-detention-and-the-need-for-preventative-deinstitutionalization>; Sheila Wildeman, "COVID-19 and disability institutions: Time to act is now" *Halifax Herald* (April 14, 2020) <https://www.saltwire.com/nova-scotia/opinion/sheila-wildeman-covid-19-and-disability-institutions-time-to-act-is-now-437259/>.

¹⁰ M. Maillard, "Regis Korchinski-Paquet (1990-2020)" *BlackPast.org* (March 28, 2021) <https://www.blackpast.org/global-african-history/people-global-african-history/regis-korchinski-paquet-1990-2020/>.

¹¹ Bobbi-Jean MacKinnon, "Chantel Moore inquest shows 'urgent need' for inquiry into systemic racism, say chiefs" *CBC News* (May 20, 2022) <https://www.cbc.ca/news/canada/new-brunswick/chantel-moore-inquest-wolastogey-chiefs-systemic-racism-inquiry-indigenous-1.6459930>.

¹² Shane Magee, "Rodney Levi's death a homicide, jury decides" *CBC News* (October 8, 2021) <https://www.cbc.ca/news/canada/new-brunswick/rodney-levi-inquest-jury-ruling-1.6204506>.

organized resistance to the violence of policing, incarceration and solitary confinement falling disproportionately on Indigenous and Black persons and persons with psychosocial disabilities. At the same time, here in Nova Scotia, a long history of struggle on deinstitutionalization has recently been re-energized through a human rights lawsuit which has established that continued institutionalization of people labeled with intellectual and developmental disabilities constitutes systemic discrimination.¹³

Synergies between deinstitutionalization and prison abolitionism are slowly entering public consciousness in the Atlantic region, for instance through the work of abolitionist poet and activist Dr. El Jones.¹⁴ Jones, who is a member of East Coast Prison Justice Society and a longtime leader in abolitionist prison justice advocacy, recently convened public consultations and a report on defunding police,¹⁵ carrying forward a tradition of anti-racist, anti-colonialist and anti-capitalist Black feminist radicalism on the east coast. Key subcommittee members of the Defund report work included local deinstitutionalization leader Jen Powley.¹⁶ Meanwhile, Vicky Levack has also been carefully linking her public resistance to 10 years of nursing home institutionalization¹⁷ to other forms of incarceration and the criminalization of homelessness.¹⁸ The question then is not whether anti-carceral deinstitutionalization and prison abolitionism can be brought into conversation, but rather how these emerging conversations can best be leveraged to a common set of ends.

Which brings me back to these books. Among the dynamics called out are tendencies of both prison abolitionism and liberal-legalism to uncritically accept a medical model of

¹³ *Disability Rights Coalition v. Nova Scotia (Attorney General)*, 2021 NSCA 70; Vernon Ramesar, "Appeal Court rules N.S. discriminated against 3 adults with disabilities" *CBC News* (October 6, 2021) <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-court-upholds-finding-systemic-discrimination-people-with-disabilities-1.6201752>.

¹⁴ See notes 6 & 7, above, and El Jones, *Abolitionist Intimacies* (Halifax: Fernwood Press, 2022).

¹⁵ See note 6, above.

¹⁶ Jen Powley, *Making a Home: Assisted Living in the Community for Young Disabled People* (Halifax: Fernwood, forthcoming May 2023); Jen Powley, "We need more people with disabilities in politics – and represented in policy" *CBC News* (Aug 14, 2021) <https://www.cbc.ca/news/canada/nova-scotia/disability-in-politics-1.6139870>.

¹⁷ "N.S. gov't appeal in disabled rights case shows 'they don't view us as people,' advocate says" *CBC Radio: The Current* (Dec 13, 2021) <https://www.cbc.ca/radio/thecurrent/the-current-for-dec-13-2021-1.6280751/n-s-gov-t-appeal-in-disabled-rights-case-shows-they-don-t-view-us-as-people-advocate-says-1.6280752>.

¹⁸ Jen Taplin, "Halifax homeless advocates push back against encampment plan" *Halifax Herald* (May 2, 2022) <https://www.saltwire.com/atlantic-canada/news/halifax-homeless-advocates-push-back-against-encampment-plan-100724634/>.

disability, leading to a retrenchment of carceral “care”, and tendencies of disability rights advocacy to assert belonging and advance inclusion in ways reproductive of the dominant (carceral) order.

Decarcerating Disability [DD] builds on previous work establishing Ben-Moshe as a unique voice in critical disability theory and anti-carceral studies.¹⁹ The book explores strategies of deinstitutionalization and prison abolitionism in the US as interconnected expressions of a shared anti-carceral project. In particular, it deconstructs the logic of mass incarceration through a focus on “race-ability”: “the ways race and disability, and racism, sanism, and ableism [constitute] intersecting oppressions.” (DD 5). These complex intersections are exposed and challenged in Ben-Moshe’s book in part through careful assemblage of “a genealogy of the largest decarceration movement in U.S. history: deinstitutionalization” – i.e., the exodus of persons labeled with psychiatric disabilities and/or intellectual and developmental disabilities from large congregate facilities from the 1960s on (DD 2). Ben-Moshe demonstrates how this mass release implicated diverse social, legal and economic determinants, including shifts in and clashes among multiple forms of knowledge/power. At the same time, her account centres the histories and subjugated knowledges of prison abolitionist as well as self-advocate and mad movements and the allied scholarship of anti-psychiatry. It also points out tensions among a more assimilationist variant of disability deinstitutionalization (coding disability as white, middle class and heteronormative) and a more radically intersectional variant wherein disability (and/or debility, as advanced by Jasbir Puar)²⁰ is denied the legal legitimation of disability rights.

A centrepiece of the book is chapter 4’s reprise of Ben-Moshe’s article, “Why Prisons are Not the New Asylums.”²¹ Here she contests the popular view that deinstitutionalization was a failure because it abandoned people to the streets where they became vulnerable to criminal law-based incarceration – a story that tends to be punctuated with renewed

¹⁹ A list of Ben-Moshe’s prior publications, beyond the groundbreaking collection, Liat Ben-Moshe, Chris Chapman & Allison C. Carey, eds, *Disability Incarcerated: Imprisonment and Disability in the United States and Canada* (New York: Palgrave MacMillan, 2014)), may be accessed at <https://www.liatbenmoshe.com/copy-of-publications>.

²⁰ Jasbir K. Puar, *The Right to Maim: Debility, Capacity, Disability* (Durham and London: Duke UP, 2017).

²¹ Liat Ben-Moshe, “Why Prisons are not the New Asylums” (2017) 19(3) *Punishment and Society* 272.

support for coercive forms of institutionalized “care”. Ben-Moshe warns that representing deinstitutionalization as failure is not only inconsistent with evidence that former residents of institutions often thrived post-release, it also misses the key insight that it was not deinstitutionalization as such but rather the rise of neoliberal policies of privatization and social abandonment – together with punishing logics of race-ability – that failed. Or, to put it another way, neoliberalism in fact succeeded in its objective, which was to hollow out social supports that would strengthen relationships of care while further entrenching the dominance of the for-profit “carceral-industrial complex,” not only prisons but “a growing private industry of nursing homes, boarding homes, for-profit psychiatric hospitals, and group homes” (DD 12).

There is much more besides to *Decarcerating Disability*. Of particular interest to lawyers and legal scholars is Chapter 7, “Decarcerating Through the Courts”. It offers a retrospective of U.S. deinstitutionalization and prison litigation, bringing together seldom-compared lines of case law to foster reflection on successes as well as cautionary tales. The cautionary tales turn in part on distinctions between litigating for reforms and litigating for abolition, and reminders of how legal wins have often been followed by new, slightly remodeled carceral forms. In these tellings, Ben-Moshe emphasizes the perils of litigation which ignores the interaction of disability injustice with other interlocking injustices -- a topic I return to below.

Steele’s *Disability, Criminal Justice and Law* [DCJL] exposes further, previously under-explored and under-theorized connections between disability institutionalization and incarceration based in criminalization. It concentrates on court diversion – an ostensibly humane, supportive alternative to crime-based incarceration. Through a meticulously-supported reading against the grain, the book offers the most sustained and substantiated account in the socio-legal literature of how this reformist-rehabilitative institutional form reproduces carceral-oppressive harm. This is accomplished through engagement with social theory, with regimes of court diversion in multiple jurisdictions, and with fictionalized case studies drawn from the “People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System in New South Wales” dataset as well as court diversion judicial

decisions from that state. The various sources arrayed are elucidated through a formidable yet uncommonly accessible critical-theoretical apparatus.

Steele's book employs this dense weave of material to deepen the "net-widening" critique – the thesis that court diversion expands the reach of state coercion. It does so specifically by establishing, in careful detail, how diversion imbricates ableism into state projects of colonial and racial domination. On Steele's account, court diversion reifies and operationalizes a medicalized conception of disability, which in turn translates structural oppression and interlocking injustices into individualized risks and deficits. This process of neoliberal translation disproportionately harms the criminalized disabled – those structurally vulnerable to colonial, racist, heteropatriarchal power. The book further establishes diversion as but one aspect of a project foundational to the wider legal system: "legitimizing the white, fit, settler subject and nation" (DCJL 75) while functioning "to pathologise and dehumanise Indigenous and First Nations people," "legitimate genocide," and obstruct "collective self-determination and nation-building" (DCJL 9). Building on Puar's exploration of debilitation, the book argues that diversion is not only about extending coercion into the lives of those diverted but also legitimating carceral confinement of those who do not qualify for diversion (DCJL 92-96).

A striking aspect of *Disability, Criminal Justice and Law* is its extension of its critique to international human rights and specifically disability rights law. Through close readings of case law and commentary, Steele argues that "the CRPD and its jurisprudence focus overly on discrimination purely along lines of disability," stopping "short of broader engagement with interlocking dynamics and forces of oppression" or with prison abolitionism (DCJL 21). A question opened for further exploration is whether CRPD advocacy can possibly be reanimated to be more responsive to the interactive injustices of both criminal law-based incarceration and disability institutionalization.

With this I come to my central question: What if any role might law, or specifically rights-based litigation, play in resisting carceral state strategies and redirecting material and conceptual resources toward supports for diverse forms of flourishing?

We might consider this question in light of recent litigation challenging solitary confinement in Canada's federal prisons.²² (Subsequent litigation has targeted provincial jails.²³) Over 30% of federal prisoners – and nearly 50% of those incarcerated in prisons designated for women – are Indigenous, despite Indigenous people composing about 5% of the wider population.²⁴ Canada's prison populations are also reflective of other interlocking oppressions, including on grounds of race, disability, gender, sexual identity and poverty. Following decades of struggle, litigation in Canada achieved a modicum of success in establishing that solitary confinement for 15 days or more,²⁵ or for any period where a person has a serious mental health condition,²⁶ violates human rights including the right to be free of cruel and unusual treatment. Legal remedies have included a cap on the duration of solitary, rights to independent review, and monetary damages.²⁷ In the federal prison context, the government's response has been a complex bureaucratic system ("Structured Intervention Units") marked by ample discretion, intensive mental health screening and a vast correctional-medical apparatus of overseers – a regime where solitary confinement persists and is mainly used on Indigenous prisoners.²⁸

I argue elsewhere²⁹ that this litigation fell prey to an error these two books unmask: adopting a medicalized model of disability in the effort to substantiate and disrupt carceral violence, while invisibilizing social-structural determinants (including gendered colonial capitalism). As Ben-Moshe points out (DD 15-18), grounding critique of solitary confinement in an unsophisticated model of mental illness risks re-introducing carceral logics, reducing

²² For a retrospective on these appeals and the decision of the federal government not to proceed beyond two provincial appellate courts, see Public Safety Canada, "Appeals to the Supreme Court of Canada on Administrative Segregation" (April 27, 2020) <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200730/019/index-en.aspx>.

²³ See, e.g., Madeleine Cummings, "Alberta court certifies class action lawsuit on solitary confinement" *CBC News* (July 20, 2022) <https://www.cbc.ca/news/canada/edmonton/alberta-court-certifies-class-action-lawsuit-solitary-confinement-1.6526449>.

²⁴ Office of the Correctional Investigator, "Indigenous People in federal custody surpasses 30%" (January 2020); "Proportion of indigenous women in federal custody nears 50%" (December 2021).

²⁵ *Canadian Civil Liberties Association v Canada (Attorney General)*, 2019 ONCA 243.

²⁶ *Francis v Ontario*, 2021 ONCA 197.

²⁷ See, e.g., *Brazeau v. Canada (Attorney General)*, 2020 ONCA 184.

²⁸ The Structured Intervention Unit Implementation Advisory Panel, *Preliminary Observations of the Operation of Correctional Service of Canada's Structured Intervention Units* (October 2021) <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap/index-en.aspx>.

²⁹ "Disabling Solitary," above, note 3.

intersectional oppression to clinically mediated problems and remedies. Litigation constructing the harms of solitary as harms to mental health has, I suggest, produced at least three unintentionally carceral consequences: 1) increased focus on mental health screening, reinforcing popular conceptions of criminalization as individual pathology while justifying more intense restrictions on those identified as high risk/needs;³⁰ 2) consequent legitimization of putatively therapeutic institutional spaces marked by unparalleled deprivations and surveillance;³¹ and 3) what may be termed the problem of the remainder, whereby (again following Puar on debilitation) those not deemed too mad for solitary are by implication fit for it.

Is it possible to frame legal strategies to better support anti-carceral remedies,³² for instance by doing more to surface intersectional injustice? Might attention to how disability discrimination interacts with racist and other dimensions of carceral violence produce novel, transformative remedies? These questions assume new relevance as Canada's solitary confinement litigation moves from prisons to forensic and civil psychiatric settings.³³ Is it possible to frame the harms of solitary in these and other settings in ways that avoid provoking formalist-procedural fixes or renewed investment in putatively therapeutic yet simultaneously more secure carceral sites – including sites intimately situated in one's own body (as in the case of chemical incarceration³⁴)?

In closing, I turn to the remedial pathways contemplated by the authors. Both books are written from a place of hope – the hope that the carceral logics shoring up capitalist,

³⁰ See note 28, above, and Brigitte Pellerin, "Assessing safety risk the right way" CBA National (Sept 27, 2022) <https://www.nationalmagazine.ca/en-ca/articles/cba-influence/submissions/2022/assessing-safety-risk-the-right-way>.

³¹ Correctional Service of Canada, Commissioners' Directive 843 "Interventions to Preserve Life and Prevent Serious Bodily Harm" <https://www.csc-scc.gc.ca/acts-and-regulations/843-cd-eng.shtml>

³² Debra Parkes, "Solitary Confinement, Prisoner Litigation, and the Possibility of a Prison Abolitionist Lawyering Ethic" (2017) 32(2) CJLS 165.

³³ See, e.g., Rochon Genova LLP, "Waypoint Solitary Confinement Class Action" at <https://www.rochongenova.com/current-class-action-cases/waypoint-solitary-confinement-class-action/>; Sheila Wildeman, "Opinion: The other solitary: psychiatric segregation needs to end, too" *Globe and Mail* (Jan 31, 2018) <https://www.theglobeandmail.com/opinion/the-other-solitary-abusing-mental-health-based-confinement/article37806269/>.

³⁴ Erick Fabris, *Tranquil Prisons: Chemical Incarceration Under Community Treatment Orders* (Toronto: UT Press, 2011).

colonialist and ableist power may be radically subverted, not just superficially reformed or diverted. Yet rather than giving readers (including lawyers) specific instructions, the authors offer general observations aimed at generating new ways of thinking, working and being together.

Decarcerating Disability positions law as a site of contradiction and unpredictability – its meaning and effects contingent on ever-shifting factors defying the calculus of strategists. Acknowledging that no litigation win has been a straightforward success, Ben-Moshe asks: what counts as success? (DD 241). Her response is squarely in the anti-carceral tradition. First, closing institutions is insufficient. What is required is “an epistemic shift . . . breaking down the rationality and legitimacy of confinement as a practice” (DD 236). This is developed through her idea of *dis-epistemologies* – the deconstruction and reassembly of ideas already in play (including legal precedents) in an environment never fully or hegemonically determined. Still, the work of transforming carceral logics is proposed to be reconcilable with pragmatic action. This includes using law and political advocacy to save lives and create conditions in which incarcerated and institutionalized people may build solidarity around common causes.

Disability, Criminal Justice and Law similarly affirms that critical lawyering and pedagogy may contribute to prison abolition and disability deinstitutionalization. Yet Steele’s book is dedicated to showing how criminal and human rights law is steeped in oppressive concepts functioning to legitimate injustice. This suggests the enormity of the challenge of using law to promote transformative change. It also speaks to the responsibility of lawyers to work in solidarity with people incarcerated across different institutional contexts to expose the contradictions between a liberal-legal ethos of rationalized deprivation of liberty and/or medico-legal ethos of institutionalized care and the real-world violence of these carceral logics.

Steele’s book proposes a set of strategies through which lawyers and non-lawyers may “contest, rather than reify, interlocking dynamics and forces of oppression that shape the conditions in which criminalised disabled people are situated” (DCJL 22). This means using legal institutions to disrupt law’s complicity in settler colonialism and ableist and racist

injustice, and bringing disability as a legal and social category into more direct relationship with projects of Indigenous self-determination and racial justice. Among the initiatives proposed are “community-led support, safety and accountability systems, remedying violence and harm, critical disability approaches to legal pedagogy, creative engagement with law reform, strategic engagement with human rights, and jurisprudences of disability tracing endurance and evolution in law of degeneracy and the institution” (DCJL 22).

The hope is that such initiatives may learn from past successes and failures in the ongoing movements for disability deinstitutionalization and prison abolitionism. The very least that lawyers and other advocates can do is avoid reproducing the uncritically medicalized model of disability afflicting some articulations of prison abolitionism, and the uncritically liberal-legal model of crime and punishment bolstering disability deservingness (or rather undeservingness of incarceration) in some deinstitutionalization campaigns. Perhaps then we may advance the strategies both authors call for, decarcerating diversion and re-centring substantive, transformative equality in order to advance the mutually-implicated emancipatory projects of prison abolition and deinstitutionalization.