

Disability Injustice

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1

Resisting the Criminalization of Disability

Crippling Disability Injustice toward Accessible Decarceral Futures

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On June 20, 2020, Ejaz Choudry, a sixty-two-year-old father of four, was killed by Ontario's Peel Regional Police during a mental health "wellness check." A viral video capturing the deadly encounter circulated online showing police kicking in Choudry's apartment door, firing plastic bullets, a stun gun, and a firearm. In the video, Choudry was obscured from view. He was the fifth person to die during an interaction with Canadian police in less than three months: Chantel Moore, D'Andre Campbell, Regis Korchinski-Paquet, and Caleb Tubila Njoko are all Indigenous or people of colour who died during police-led wellness checks between April and June 2020 (Britneff 2020; Cooke 2020; Lamoureux 2020; Nasser 2020).

Wellness checks task police officers with investigating situations where someone's well-being has been identified as "at risk." These checks are often initiated when a concerned family member calls either 911 or, as in Choudry's case, a non-emergency line to seek assistance. Police are dispatched, often even when municipalities have mobile mental health crisis teams. The violence associated with wellness checks is only one aspect of the growing scrutiny of policing in Canada, and yet the high number of deaths related to these checks is symbolic of the broader injustice of criminal-legal responses to disability. Although frequently obscured through discourses of care, benevolence, or safety, criminal justice systems are producers of disability, debility, and death. Given the vast social power of institutions like police and prisons, criminal justice systems also actively work against, and attempt to delegitimize, decarceral forms of care and conflict or crisis resolution.

Recent years have witnessed mass mobilizations across Canada – and internationally – demanding fundamental transformations to carceral and legal systems. Sparked by police killings and led by communities of racialized and disabled peoples, social movements embracing intersectional understandings of oppression have captured the public imagination through demands to defund, disarm, and disband police and to instead radically transform our communities by building decarceral alternatives. This moment of opportunity is welcome, yet it emerges as a product of decades of organized resistance by Black, Indigenous, and people of colour on the frontlines who experience criminalization and in response to long histories of structural violence by criminal justice actors, agencies, and institutions (Diverlus, Hudson, and Ware 2020). This volume offers a number of vantage points that connect histories of disability injustice with other systemic oppressions, with the aim of contributing to the contemporary movements that seek to abolish criminal justice systems and foster different futures for disabled people.

To pursue disability justice within the settler colonial Canadian nation-state requires addressing how ableism and disability oppression have historically functioned and continue to be reproduced through violent and debilitating sites of confinement, practices of containment, and forms of surveillance that criminalize and pathologize disabled populations, especially targeting racialized disabled people labelled with intellectual, developmental, or psychiatric disabilities. Sites of confinement include institutions like residential schools, long-term and congregate care, prisons and jails, group homes, asylums and sanatoriums, and psychiatric facilities. Sites of confinement work alongside practices of containment such as eugenics, sterilization, medicalization, criminalization, imprisonment, and exclusionary citizenship and immigration policies. These containment practices frequently involve surveillance by the police, courts, social workers, and psychiatrists, or through technologies like electronic monitoring systems. Historical and contemporary forms of incarceration and institutionalization have been dangerous and deadly for disabled people, marking a point of convergence for disability justice and abolitionist practices that seek to build accessible decarceral futures.

Disability studies and critical criminology are fields that share important theoretical and methodological overlaps, particularly when it comes

to resisting the social construction and social regulation of “deviant” and criminalized subjects. As scholars have called attention to knowledge practices that associate particular individuals or populations with characterizations of pathology, abnormality, deviance, risk, madness, and danger, both fields critique the ways in which such subjects are governed, controlled, punished, profiled, and excluded by legal and criminal justice institutions. *Disability Injustice: Confronting Criminalization in Canada* bridges the underexplored disciplinary cohesions between critical criminology and disability studies. In doing so, the book illuminates the insidious ways in which ableism, sanism, and social forces that stigmatize and pathologize “misfits” lead to discriminatory practices in the Canadian criminal (in)justice system. Challenging such practices, the book advocates for fostering decarceral communities.

Disability studies scholars have long suggested that those who identify as nondisabled or able-bodied can only do so “momentarily” (Zola 1982, 242) or “temporarily” (Longmore 1985) because, as Kelly Fritsch (2019, 42) points out, “at some point in our lives, we will all experience disability – be that through acquiring a debilitating illness, being involved in a workplace accident, or through the simple fact of aging.” While Statistics Canada (2018) notes that one in five Canadians is disabled, such numbers do not show the many ways in which disability is not a stable category. Disability scholar Shelley Tremain (2017, 22) argues that disability is “a historically contingent network of force relations to which everyone occupies a position.” Being disabled or nondisabled is to be situated within power relations based on socially constructed perceptions and interpretations of a subject’s “bodily structure, appearance, style and pace of motility, mode of communication, emotional expression, mode of food intake, and cognitive character,” all of which have been “produced and understood within a culturally and historically contingent frame and shaped by place of birth, place of residence, gender, education, religion, years lived, and so on” (23).

Characterizing disability as a “contingent network of force relations,” rather than, for example, a natural or medical fact about a presumed abnormal or deviant body, highlights the ways in which our contemporary understanding of disability has emerged as a result of power-knowledge practices, including scientific regimes of truth. Scientific discourses,

Tremain argues, are frequently paired with “practices of segregation and social exclusion to categorize, classify, distribute, and manipulate subjects who are initially drawn from a rather undifferentiated mass of people” (55). It is through such practices that “subjects become objectivized as (for instance) mad or sane, sick or healthy, criminal or law abiding” (55). Contemporary understandings of disability are imbued by ableist regimes of truth sedimented through violent legacies of colonialism, capitalism, eugenics, institutionalization, and incarceration that shape how we perceive ability, intelligence, worth, and normalcy. Disability as a “network of force relations” thus draws our attention to how we are all complicit in reproducing ableist social relations.

One way ableist social relations are reproduced is through the ubiquitous insistence of the inherent superiority of non-disabled life, or as disability studies scholar Alison Kafer (2013, 3) puts it, “the value of a disability-free future is seen as self-evident.” Disability frequently signifies a life of suffering, unhappiness, dependency, poverty, disadvantage, incapacitation, and criminal deviance, marking disabled people as “better off dead, or never born at all” (Fritsch 2015a, 46). This stems in part from how, as Kafer (2013, 89) argues, disability is overwhelmingly “presented as a fact of life requiring determination and courage, not as a system of marking some bodies, ways of thinking, and patterns of movement as deviant and unworthy.” Thus, disability is delimited by the very historical configurations of knowledge/power that depoliticize how it came to be marked as an aberration. For example, as Chris Chapman and A.J. Withers describe (2019, 11), madness is a reclaimed term used by people who have had their experiences pathologized by scientific discourses and practices of psychiatry or who have been “subjected to the regimes of psychiatric intervention.” For mad studies scholars and activists, “the various things that are categorized as abnormal in psychiatry are held to be within the expected range of human experience,” noting that this “is not to suggest that there is not pain associated with any of these experiences, but that suffering is often exacerbated by discourses and practices that render normal human experiences as ‘sickness’ and ‘abnormality’” (11).

Criminological scholars have underlined how particular groups can be represented as biologically or pathologically threatening, often entwined with discriminatory practices based on race, class, gender, sexuality, or

other social locations, and systematically subjected to processes of criminalization (Carrier 2006; Chan and Chunn 2014; Comack 2012). Critical criminology is concerned with the power relations of crime and criminalization that lead to social injustice, while also being mindful of “its own margins and exclusions, continually trying to interrogate silences, omissions, and exclusions from both its research and theoretical approaches and from its politics and policy agendas” (Doyle and Moore 2011, 4). We contend that actively engaging with critical disability studies remains one of these omissions, despite the fact that criminology and disability studies have a shared stake in how scientific study has been – and continues to be – used to create and frame problems, such as the framing of the pathological, the abnormal, the mad, the deviant, and the dangerous. Despite criminology’s frequent reference to disabled bodies, the field as a whole has largely ignored the contributions and insights of critical disability studies scholars. Just as feminist criminology marks the complex and intersectional ways in which women, queer, trans, non-binary, and gender nonconforming people differentially experience criminalization, crime control, and regulation, this volume brings disability studies to critical criminology to offer a “cripping” of Canadian criminal (in)justice. To crip is both to destabilize the monolithic idea that disability is an individualized medical problem to be solved as well as to embrace how the difference of disability disrupts normative practices, policies, and structures in ways that demand social transformation (Fritsch 2013). Thus, to crip Canadian criminal (in)justice is not just to include disability to make carceral and legal systems more accessible to disabled people, but rather to contest how ableism has been constitutive to its institutions, policies, and everyday practices, and to prioritize disability justice as we work to build anti-ableist decarceral communities.

Taken together, the chapters in this book explore how disability has long been central to practices of criminalization and crime control in the Canadian context, while also tracing the contemporary currents of ableist and sanist historical practices. Issues at this intersection continue to gain increasing urgency in Canada and internationally. These include the targeted use of solitary confinement for those with mental or physical disabilities (Kilty and Lehalle 2019; Zinger 2017); the disproportionate application of violent force by police on disabled populations as well as

police discrimination and lack of accountability (Mack 2014; Mukherjee 2018); the dramatic under-representation of disability within jury-selection processes (Bertrand, Jochelson, and Menzie 2017); penal intensification through longer custodial sentences, the creation of new imprisonable offences, and the erosion of legal protections (Kilty and Lehalle 2019); and social insurance and welfare discrimination that leads to criminalization (Weber 2017). Also of great concern are exclusionary immigration policies that discriminate against disabled people (Capurri 2020; El-Lahib 2016; Hanes 2009; Joseph 2019; Malhotra 2016); legislative and Criminal Code amendments that punitively redefine particular minds and bodies as “a significant threat to the safety of the public” (Joseph 2019, 175); mobilizations of risk discourses that aim to regulate and control the sexual relations and reproduction of disabled people, including ongoing practices of sterilization and the criminalization of sex work (Desjardins 2012; Fritsch et al. 2016; Haley 2019); the management of embodied difference through institutionalization (Abbas and Voronka 2014; Burghardt 2018; Chapman and Withers 2019; Kanani 2011; Malacrida 2015; Rossiter and Clarkson 2013; Rossiter and Rinaldi 2019); the transinstitutional interconnection of carceral locales like residential schools, long-term and congregate care institutions, group homes, hospitals, jails and prisons (Ben-Moshe 2020; Chapman and Withers 2019; Stewart and Russell 2001); “chemical incarceration,” carceral surveillance of medication and treatment regimens, and electronic monitoring (Fabris 2011; Story 2019); intersections between race, gender, disability, and forms of pathologization, criminalization, and incarceration (Chapman and Withers 2019; de la Cour 2017; Dyck 2013; Kanani 2011); and the role of lawsuits, financial compensation, and formal apologies in cases of unjust state-sanctioned violence and harm targeting disabled people (Dyck 2013; Rinaldi and Rossiter 2019).

Many of these topics are explored in the pages that follow, with contributors illuminating how engaging both critical criminology and critical disability studies together can better address ongoing violence, carceral approaches, and forms of institutionalization that disproportionately affect disabled people, especially those who are Black, Indigenous, or people of colour. In so doing, the book highlights the ways in which the relations of disability change how we understand, engage with, and challenge criminal (in)justice. In the remainder of this chapter, we provide a historical

backdrop to our contemporary conception of disability as it is entangled with colonialism, eugenics, and citizenship and immigration systems to contextualize the major themes explored in many of the chapters. We then turn to an examination and exploration of the three thematic sections of the book – “Practices and Processes of Criminalization,” “The Criminal (In)Justice System,” and “Reconceptualizing Disability and Reframing Justice.” In this discussion, we draw on both critical disability studies and criminological literatures to show that more accessible decarceral futures in which disabled people thrive become possible through forging deeper connections between work being done in both fields.

Historical Contexts, Frameworks, and Institutions

Our contemporary understanding of disability has emerged historically out of a complex set of oppressive social structures and processes. These include the development of industrial capitalism and a standardization of labour that increasingly excluded disabled people “from paid employment on the grounds that they were unable to keep pace with the new, mechanized, factory-based production system” (Stewart and Russell 2001). This exclusion led to their removal from mainstream life and their segregation “in a variety of institutions, including workhouses, asylums, prisons, colonies, and special schools” (ibid.). Our understanding of disability has further been shaped by the increasing prominence of medicalization; practices of colonialization, imperialism, slavery, and racism, and their relation to white supremacy, eugenics, immigration, and notions of citizenship and the human; the rise of charitable benevolence and specialized sites of confinement and institutionalization; and neoliberal entrepreneurialism and related wide-ranging developments in surveillance, regulation, and control.

In examining these histories, social structures, and processes, critical criminologists and disability studies scholars often draw on the work of Michel Foucault, who traced how a vast carceral network gradually developed as a form of normalizing power, or a power-knowledge regime, linking the punitive and the abnormal. As Foucault (1995, 302) argues, “the prison does not at all represent the unleashing of a different kind of power, but simply an additional degree in the intensity of a mechanism that has continued to operate since the earliest forms of legal punishment.”

The power to punish is made legitimate through carceral practices that form “the delinquent” as “an institutional product” (301), one that is to be treated through penal practices that appear “to be free of all excess and all violence” (302). Some ways in which punitive penal practices are expansively operationalized is through discourses of public health, charitable benevolence, carceral care, and community control (Chapman and Withers 2019; Cohen 1985; Rossiter and Rinaldi 2019; Story 2019).

As a central mechanism for institutionalizing medical discourses to govern national populations, health systems construct bodily hierarchies based on spectrums of healthy-unhealthy, with the view that those deemed unhealthy or less capable pose threats to the health of the broader population. Historically based on principles of “social purity” (McLaren 2014), criminal justice institutions and collaborative systems, such as health, social work, and immigration systems, are bound to the racist historical project of eugenics and enshrined in public policy and Canadian law in ways that reproduce white supremacy and structural ableism, and create the conditions for violence and disability injustice (Chapman and Withers 2019; Joseph 2019; McCallum and Perry 2018).

In 1883, Francis Galton coined the term eugenics to refer to “the study of the agencies under social control that may improve or impair the racial qualities of future generations, either physically or mentally,” asserting that selective breeding “could solve the social ills that beset Britain” (quoted in McLaren 2014, 15). Thus “Galton’s goal was to make eugenics both a science for measuring society’s hereditary make-up and a movement to lobby for progressive politics to ensure better breeding” (19). Support for eugenics in Canada “came from those who believed that an understanding of heredity could improve *public health*” (28, emphasis in original).

As Deborah Park and John Radford (1999, 69) have traced, public policy between the 1850s and 1970s in Canada, England, and the United States was dominated by a search for “a place for mental deficiency,” adopting the spatial exclusion of the mid-Victorian “idiot asylum” as the “ideal ‘solution’ for the ‘treatment’ of ‘mental deficiency.’” One of the largest of these institutions in Canada was established in 1876 in Orillia, Ontario, known as the Huronia Regional Centre, followed by the New Westminster Asylum in 1877 in British Columbia, and the Portage la Prairie “Home for Incurables” in 1890 in Manitoba. Further institutions popped up all

over the country throughout the twentieth century, including in Essondale, British Columbia in 1913; Weyburn, Saskatchewan in 1921; Red Deer, Alberta in 1923; Aurora, Ontario in 1950; Smith Falls, Ontario in 1951; and Deerhome, Alberta in 1958. “Mental deficiency and feeble-mindedness” were linked to disparate categories such as “drunkenness, criminality, pauperism, prostitution and illegitimacy” and were cast in a rhetoric of social costs that included “moral damage” and “national and social unhappiness, degradation and deterioration” (Park and Radford 1999, 78).

In Canadian settler history, the delinquent as an institutional product was formed in part through the discursive entanglements of colonialism, eugenics, racism, notions of the undesirable citizen and medical inadmissibility, and forms of sexual and reproductive regulation and control. As Chris Chapman, Alison C. Carey, and Liat Ben-Moshe (2014, 8) point out, “the history of eugenics, disability, and institutionalization cannot be radically separated from concurrent developments in the ‘scientific’ study of race and sexuality.” In other words,

eugenics was an interlocking of oppression. At times, it centred the construed immorality of sex workers, unwed moms, convicts, and queers; at other times, race; and other times, perceived unintelligence. All of these aspects were considered to apply to all those deemed unfit ... Eugenics conflated immorality and unintelligence, and it often articulated these imagined deficits in racial language. It was centrally about disability. It was just as centrally about race. And class. And so on. (Chapman and Withers 2019, 226)

We find evidence of these aspects of eugenics in the work of public health expert Dr. Helen MacMurchy, who between 1906 and 1934 worked for both the Ontario and federal governments and forwarded the idea that “individual inadequacy” constituted the main threat to public health, advocating for the segregation and institutionalization of the “hopelessly deficient” (McLaren 2014, 31). MacMurchy was convinced that there were far too many “deviants,” noting that “every mental defective is a potential criminal” (quoted in McLaren 2014, 40). Her conviction that “innate biological inequality could never be overcome” (30) and that “feeble-minded” people “were the source of most of society’s woes” (40) garnered support

for the labelling, segregation, and sterilization of those designated “subnormal.”

In 1908, MacMurchy “asserted that 80 per cent of feeble-mindedness could be eliminated within a generation by segregation, but the ultimate weapon in this battle was sterilization of the feeble-minded” (42). As a leading figure in the eugenics movement in Canada, MacMurchy influenced sterilization policies in western Canada. In 1928, Alberta legislated a Eugenics Board to implement the Sexual Sterilization Act, both of which remained in effect until 1972. Over nearly fifty years, the Eugenics Board recommended 4,725 sterilizations, ultimately performing over 2,800 sterilizations on people determined to fit into one of five “deficient” categories, including “psychotic patients; mental defectives ...; neurosyphilitic patients who did not respond to treatment; patients with epilepsy, psychosis, or mental deterioration; and individuals with Huntington’s Chorea disease” (Dyck 2013, 3). Analysis of the archival records from Alberta’s eugenics program demonstrates the racialized and gendered practices of sterilization, which predominately targeted disabled women, teenagers, and young adults, as well as racialized and Indigenous peoples (Dyck 2013; Grekul, Krahn, and Odynak 2004; Malacrida 2015). Mandatory sterilization policies were considered “a form of protection rather than a means of punishment” (Rossiter and Rinaldi 2019, 7).

These eugenic projects are linked to larger national knowledge-power regulatory practices of immigration and citizenship that define Canadian identity (Malacrida 2015). Border controls and immigration penalty, writes Anna Pratt (2005, 10), actively produce “historically specific conceptions of ‘the border,’ national identity, citizenship, and the desirable/undesirable citizen.” The creation and maintenance of the Canadian settler nation-state and its borders are crucial to “material, existential, and ideological practices that organize the contemporary exercise of power” (Sharma 2006, 1). Any examination of the history of the Canadian immigration system immediately reveals its role in systematically excluding disabled people and actively constructing disabled bodies as undesirable citizens, pathologizing disabled bodies in such a way that intersects with discriminatory discourses of race, class, gender, and sexuality (Capurri 2020). As Angus McLaren (2014, 46) notes about the early twentieth-century preoccupation with “racial degeneration,” “there appeared to be two obvious threats: the first was the reproduction

in Canada of the unfit; the second was the immigration *to* Canada of the unfit” (emphasis in original). Indeed, in Canada’s early immigration policy, notions of physical, mental, and moral health were inextricably intertwined. Anti-immigration campaigns led by eugenicists such as MacMurchy successfully ensured that the “feeble-minded, idiots, epileptics, insane, deaf, dumb, blind, infirm, and those afflicted with a loathsome, contagious, or infectious disease” were prohibited from immigrating to Canada (56). Eugenicists did not consider themselves to be racists but, instead, “scientifically informed” (49). By 1914, they advanced a standard line suggesting that “inherited traits could not be attenuated by a changed environment” and attributing “all social problems associated with the immigrant experience to the innate characteristics of the individual” (55).

Linking social problems to the “innate characteristics of the individual” continued to inform Canadian law and social policy throughout the twentieth century. For example, the Immigration Act of 1927 specifically named “physical and mental defects” as connected to criminal and anti-social behaviour. Those deemed mental defectives, the psychopathic inferior, diseased persons, physical defectives, and illiterates were all considered part of “the prohibited class,” along with those labelled prostitutes, pimps, alcoholics, beggars, vagrants, spies, conspirators, people advocating the overthrow of government, and criminals (Hanes 2009).

Following the 1966 White Paper and 1975 Green Paper on Immigration, which made numerous suggestions to reform immigration legislation, the Immigration Act of 1976 altered the “prohibited classes” category to an “inadmissible class” (Hanes 2009). References to physical defectives, mental defectives, idiots, imbeciles, and lunatics were finally removed from official immigration terminology, but disabled people continued to be denied entry to Canada on the basis of “excessive demand” (Hanes 2009). According to the federal government, excessive demand is “a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of 5 consecutive years immediately following the most recent medical examination,” with the 2020 maximum cost threshold set at \$21,204 per year (Government of Canada 2020). While the 1976 Immigration Act did not categorically state that disabled people could not immigrate to Canada, interpretation of the “excessive demand” clause

has made it extremely difficult for disabled people and their families to immigrate because of the ableist fear that disabled immigrants will burden health and social services. Evidence suggests that most disabled people who have been denied permission to enter or remain in Canada have been turned away because of the clause (Capurri 2020). Coupled with other caricatures of disability, the clause reinforces the ubiquitous notion that being disabled is an economic burden on society.

Practices and Processes of Criminalization

What the policies, institutions, and systems built to support eugenics, colonialism, and structural ableism show “is that questions about disabled people’s place in society have almost always been answered with social and spatial exclusion,” leading Jihan Abbas and Jijian Voronka (2014, 122) to conclude that these policies, institutions, and systems are linked to “a wider project of social control and exclusion.” Canada’s legacies of eugenics, institutionalization, medical inadmissibility, and excessive demand thresholds are woven into contemporary governance strategies that reproduce disability as abnormal and undesirable, thus requiring intervention from carceral and coercive institutions.

Kate Rossiter and Jen Rinaldi (2019, 2) document Canada’s long history of “incarcerating populations deemed unruly or in need of management under the guise of care provision,” including “people labelled as having a developmental or intellectual disability, Indigenous peoples, orphans, people coping with psychiatric disability, immigrants and refugees, and the elderly.” As Erika Dyck and Rob Wilson (2014) note, institutionalization became a dominant response to disability and social transgression starting in the eighteenth century, often under the progressive guise of rehabilitation and care, and yet “these facilities were never intended for healing or curing, but instead merely incarcerated people who did not conform to social expectations, whether through transgression of gender, class, religious or other kinds of prescribed roles.” Individuals became institutionalized following recommendations from family, apprehensions by police or state officials, or referrals from doctors and psychiatrists, and, throughout the nineteenth and twentieth centuries, “these institutions also became more specialized and began dividing their populations according to categories of disease, disorder, or disability” (Dyck 2014).

Institutions like psychiatric facilities, residential and boarding schools, group homes, long-term care, and institutions for physically and intellectually disabled people are “designed to provide care for people deemed vulnerable,” and yet “in each of these sites profound ... forms of violence have been inflicted on residents” (Rossiter and Rinaldi 2019, 1–2). For example, Ontario’s longest running institution, the Orillia Asylum for Idiots – later renamed the Huronia Regional Centre – was open from 1876 to 2009 and at its peak in 1968 housed 2,600 residents. Rossiter and Rinaldi (2019) document a range of abuses: the bathrooms had no doors and residents showered naked in large groups; overcrowding was common, with as many as fifty residents sharing one room and sometimes sleeping two to a bed; insufficient clothing was provided, and many residents had to wear the same clothes for a week without laundering; residents were required to perform all the cleaning and maintenance duties for the institution without remuneration; and many residents were put on experimental drugs without consent, were locked in iron-barred “cage-cots,” or placed in straight jackets. As Natalie Spagnuolo and Kory Earle (2017) argue, survivors from Huronia as well as other institutions across Canada

have taught us that institutionalization breeds person-to-person violence. Successful class action lawsuits against provincial facilities have alleged high rates of sexual violence against people with intellectual disabilities; routine degrading treatment, such as group showers; the routine use of physical force, such as electric cattle prods; medical violence, such as forced or coerced sterilizations and teeth extractions (to facilitate “care”), and countless other atrocities.

While institutionalization policies may have shifted from explicitly racist and eugenic language in favour of discourses of charitable benevolence and care, the lived experiences of those within these spaces attests to their degrading carceral and punitive character. As state-centric forms of management, institutionalization strategies were guided in part by welfare state logics that represented a particular citizen-state relationship in which government agencies held some responsibility for their subjects. In terms of disability, these welfare state policies translated problematically into institutionalization models that marked individuals as unable to

integrate, or as unfit for inclusion, in mainstream society. Over the past several decades, a gradual shift away from the model of institutionalization has been accompanied by neoliberal political and economic transformations that characterize contemporary societies of control (Fritsch 2015b; Fritsch 2019). While in some ways the racially explicit overtones may be less blunt than MacMurchy's language of "hopelessly deficient" mentioned above, research in Canadian history, critical disability, and mad studies highlights the continued production of the risky abnormal subject, often racialized, as a central feature of governance in contemporary neoliberal control societies (Ben-Moshe 2020; Chapman and Withers 2019; Daley, Costa, and Beresford 2019; Diverlus, Hudson, and Ware 2020).

Deinstitutionalization movements beginning in the 1960s were successful in closing sites of mass disability incarceration, yet control practices targeting disabled people mirror what criminologists have noted with respect to expanded carceral control (Schept 2015). In moving beyond institutional spaces, strategies to govern disability have become more pronounced in social fields where disability has always been governed, produced, and experienced in relation to the dominant economic system. Often missed in accounts of disability are the ways in which advancements in neoliberalism through the 1970s were entangled with the advent of the disability rights movement in North America. The rise of the independent living movement, policies of deinstitutionalization, and shifts toward community-based care models emerged not only as a result of disability culture and activism and through the development of the disability rights movement, but also alongside shifts in the economy. As Fritsch (2019, 49) tells it:

While disability rights activists pushed for greater inclusion and political recognition, the meaning of disability changed as disabled people began politically organizing and disability rights groups began adopting entrepreneurial approaches to reach their political goals. Rather than disability being associated with notions of lack and pity, disability movements fought for disabled people to be recognized as productive and independent workers, capable of "self-care," and therefore morally autonomous and worthy citizens who can remake "normal" in the image of neoliberalism.

Thus, while disabled people have historically been cast as dependent “useless eaters” (Mostert 2002), neoliberalism recasts disability through its invocation of entrepreneurial “self-care.” In this way, “neoliberalism is more than an economic approach: it penetrates and reshapes the individual body and all aspects of social and psychic life” (Fritsch 2019, 41). For David Mitchell (2014, 5), neoliberalism pushes disabled capacitation strategies such that disabled people become transformed into “normative versions of less threatening differences,” or what Tanya Titchkosky (2003) has called “the abled-disabled.” Neoliberal practices privilege the “upwardly mobile” to “become not only the abled-disabled but also entrepreneurs, employers of attendants, and consumers of therapies, supplements, and enhancements” (Fritsch 2019, 53), thereby drawing attention to how “the space of the disabled body must also be thought of as a space of the contradictions of neoliberalism – it is at once privileged as a site of inclusion, but that inclusion is also the promise of its exclusion” (Sothorn 2007, 146).

Neoliberalism has dramatically altered the subject-state relationship, with particular impacts on the social management of disability (Fritsch 2015b). There is a continued logic of pathology and abnormality consistent with eugenics or institutionalization era approaches to disability and, at the same time, a shift away from normal/abnormal as contemporary governance projects emphasize the enhancement of bodily productivities mediated through entrepreneurial consumerism. The shift toward neoliberalization reproduces widespread conformity, where majoritarian populations enthusiastically adopt responsabilized ethics of social citizenship and capacitated norms.

Though control systems have relied on inclusive regimes of responsabilization, self-care, and entrepreneurialism to great effect, they are supported by exclusive surveillance systems – ones that target failed subjects who are inadequately responsabilized. Unlike the welfare state model of state-subject relation that aimed to incapacitate failed citizens through institutionalization and eugenics, control and surveillance societies have designed layered governance regimes that target failed subjects through multiple stages of intervention (see Heynen and van der Meulen 2019; van der Meulen and Heynen 2016). Operating on a logic of capacitation, these layered regimes strive toward productivity and capacity building through continuously targeting individuals with opportunities to responsabilize. Indeed, over

thirty years ago, Stanley Cohen's (1985) work critiqued criminologists who suggested that deinstitutionalization was a withdrawal in control strategies. Cohen suggested that, on the contrary, the move to deinstitutionalize – particularly for those with neurodivergence or mental health–related contact with criminal justice agencies – results in a dramatic “net widening” in control strategies. Captured in these expanded fields of social control, individuals were seen as failed subjects that needed to rehabilitate themselves and adapt to consumer society. A view toward seeing individuals as failing in their social responsabilization has been paralleled with a proliferation of other control workers, all aiming to ensure that subjects adapt to and accord with the normative principles of work, civility, and entrepreneurial consumerism.

As disability activist Megan Linton (2020b) notes,

deinstitutionalization under neoliberalism has produced mixed results. Governments have viewed deinstitutionalization as an avenue for privatization, transforming the movement's demands for community care into the privatization of personal support workers (PSWs), private group homes, and increasingly privatized long-term care facilities. Transinstitutionalization is the process of reconfinement, or the transferring of persons from residential institutions for those with disabilities to other forms of custodial institutions such as prisons, long-term care facilities, and group homes. Transinstitutionalization is imposed on people as young as 15 years of age, and this policy wrongly places many people in long-term care facilities.

In Ontario during the first decade of this century, “the province looked to the market to create the group home stock necessary to transition some 6,000 adults into ‘community living’” (Linton 2020a). This move largely failed, as there are more than 9,000 adults currently living in Ontario's group homes, and another 10,000 on the waitlist to receive care (ibid.). While waiting, disabled adults are “forced into other forms of custodial care such as long-term placements in psychiatric institutions, inappropriate placements in long-term care facilities, emergency shelters, and prisons” (ibid.). Indeed “5,000 people under the age of 55 are in long-term care in Ontario alone” (Linton 2020b). Across Canada, Spagnuolo and Earle (2017)

have recently noted that “approximately 30,000 adults with intellectual disabilities live in congregate care facilities and group homes,” and “approximately 10,000 adults under 65 with intellectual disabilities are forced to live in hospitals, nursing homes and similarly unsuitable long-term care environments due to a shortage of housing and support options.”

Documenting experiences in Alberta, Erika Dyck (2014) notes that deinstitutionalization also “introduced several new challenges,” including that “moving out of one institution did not necessarily mean that people left institutions all together, as some people were relocated to nursing homes, jails, or quasi-institutional spaces, including boarding houses.” Thus, “while the historical concept of deinstitutionalization usually pertains to the trend beginning in the 1960s to move people into the community from long-stay medical facilities, it does not necessarily mean that they were moved into independent living quarters” (ibid.). Deinstitutionalization was influenced by many factors, including the introduction of psychotropic medications, the dismantling of the welfare state, and continuing campaigns critiquing the living conditions of institutionalized individuals. However, deinstitutionalization has not led to the disappearance of institutionalization; rather, it has shifted the onus “from the state and medical authorities to consumers, patients, and families who needed to navigate the contours of a patchwork of services, supports, and gaps in a modern health system” (ibid.).

Within the domains of public governance agencies, the adoption of responsabilization policies necessitated that in order to be eligible for social or disability assistance individuals engage in capacitation practices. Although the political mantra of neoliberalism is small government, control agencies represent a wide array of publicly funded entities, often joined by a growing army of charitable and community organizations. In some ways, both public and private agencies and services operate on the same logic of capacitation: individuals must productively improve themselves with forms of surveillance implemented to monitor and punish subjects who fail to actively participate in their own capacitation.

In her research on cuts to Ontario’s social assistance programs – namely, Ontario Works and the Ontario Disability Support Program – Krystle Maki (2011, 61) describes the entrenched surveillance structures that target the nearly 500,000 individuals on these programs, searching for what she

characterizes as “neoliberal deviants” – those “who are unable to perform as good, docile ‘market citizens’” (see also Maki 2021). Documenting the extensive bureaucratic surveillance regimes that are now deeply entrenched in neoliberal societies like Canada, Maki shows that these projects are ultimately about reproducing non-disabled and productive subjects or, at the very least, constructing bureaucracies of surveillance and control that continuously force efforts of capacitation.

Control societies have accelerated both the rewards system of capitalism and the interventionist inclusion/exclusion dynamics of capacitation systems. Both are modelled on a subject-state relationship that views individuals as the central authority in their own capacity building, and yet these systems of surveillance and control are not devoid of state violence. While targeted populations may not be immediately and categorically subject to state violence such as that experienced through state-sponsored eugenic and institutionalization regimes, violence remains integrated at every layer of our control society. Growing numbers of professionals and/or case workers are tasked with monitoring and capacitating individuals who are perceived as failed subjects, and sorting potential “deviants” through systematically classed, racialized, gendered, and ableist lenses. Writing about the emergence of these “administrative function(s),” Nikolas Rose (1999, 263) details the extensive commitment to “the administration of the marginalia,” which refers to the increasing layers of control that expand criminal justice practices to govern individuals who fail to properly responsabilize – trends that are highlighted by the contributors in this book’s first section.

Explicating these ideas and more, the chapters that open this volume offer in-depth examinations of how historical and contemporary processes of criminalization and control function to silo, discipline, and regulate. Theresa L. Raymond begins with an exploration of Ontario’s Andrew Mercer Reformatory for Females, which incarcerated over twenty thousand women and girls between 1880 and 1969. Raymond demonstrates that, over the nearly one hundred years that the Mercer was in existence, women with mental health disabilities, along with those who transgressed middle-class sensibilities and normative gender roles, were criminalized and pathologized as “deviant,” “insane,” or “feeble-minded,” and thus in need of rehabilitation through medical and criminal justice intervention at the

Mercer before being transferred to an asylum. Such transgressive activities included prostitution, drunkenness, homelessness, theft, and “incurability.”

The next three chapters in this section take up many of the themes in Raymond’s historical analysis, in particular the disabling effects of repressive laws aimed at criminalizing certain gendered and sexual activities and identities deemed undesirable or problematic. In [Chapter 3](#), Alexander McClelland looks at the more recent history of the criminalization of people living with HIV, specifically considering how fears of contagion were central to the ableist, racist, sexist, and homophobic socio-legal response to this episodic disability from the 1980s to today. McClelland offers a history of the present, examining how criminality has been constructed, in part, through practices of disease control and containment. As criminal laws were increasingly used to target people who allegedly neglected to disclose their HIV status to their sexual partners, forms of activism and resistance proliferated in response, including by affected communities, legal experts, and medical professionals.

McClelland’s examination of counter criminalization efforts sets the stage for Lindsay Blewett’s exploration of the impacts of contemporary anti-prostitution law and policy in [Chapter 4](#). Drawing on primary research with disabled sex workers, as well as her own experiences, Blewett shows that criminal sanctions against purchasing, receiving a material benefit, and advertising sexual services increase sex workers’ vulnerability and create the conditions for disability. These ableist and disabling laws, she argues, pathologize and stigmatize both clients and sex workers, leading her to the conclusion that disability justice should be a central feature of sex worker rights and feminist movements.

The section’s final chapter continues to examine issues related to sex and sexuality, but its focus is on the judicialization of the everyday life of intellectually disabled people in Quebec. The two case studies presented by Guillaume Ouellet, Lisandre Labrecque-Lebeau, Pierre Pariseau-Legault, and Emmanuelle Bernheim, which include excerpts from interviews with people living in a specialized rehabilitation facility, their parents, and support workers as well as prison files from a provincial detention centre, illustrate the exclusionary practices and processes that aim to curtail sexual expressions and behaviours. This chapter effectively demonstrates how

processes of social control within residential facilities can be linked to criminal justice contact for intellectually disabled people.

The Criminal (In)Justice System

Canada's criminal justice system, and the various agencies and institutions that it comprises, is an especially blunt instrument for governing individuals who are assumed objects of capacitation. Criminologists often refer to the three Cs of criminal justice: cops, courts, and corrections – though we would add that other domains of contemporary governance are directly folded into criminal justice practices. These can include, but are not limited to, education and immigration systems, the medical profession, military and intelligence establishments, and an expansive array of private enterprises that run aspects of the justice system or work as suppliers in various contexts. Many of the chapters in this book are focused on the three Cs, yet we caution that the justice system cannot solely be conceptualized as distinct from “shadowed” carceral relations (Beckett and Murakawa 2012) that take part in Canadian crime control and punishment practices.

Few resources exist that provide a broad, quantitative picture of disability and criminalization across the criminal legal system. A key absence in statistical representations stems from a reality that many of the impacts of criminal justice interventions are not formalized or registered by data-collection processes. Arising in part from problematic practices of categorization and formal diagnosis, and compounded by institutional aversion to disability accommodations, statistics on disability in the criminal justice system are scattered. A partial starting point is statistics examining disability-related issues in federal prisons, which are most consistently provided by the watchdog Office of the Correctional Investigator. Recent reports from that office have consistently raised issues of disability injustice while providing statistical insights into criminalization practices in the federal system.

Among these findings, Correctional Investigator Ivan Zinger (2016b, 2020) warns that upwards of 10 to 23 percent of federal prisoners meet the diagnosis criteria for fetal alcohol spectrum disorder, and at least 30 percent are provided psychotropic medications (versus 8 percent of the Canadian population). And while the Correctional Service of Canada (CSC), the

federal government agency responsible for administering penal sentences of two years or more, reports that almost 30 percent of the incarcerated population receives some form of mental health treatment-oriented service or stay in a treatment centre, Zinger's (2018) research suggests that the actual rates are far higher, with almost 80 percent of currently incarcerated women meeting the diagnostic criteria for some form of mental disability. Zinger (2016b, 2017) has also documented how chronic illness, infectious disease, and premature mortality are common among prisoner populations. Given that one-quarter of federal prisoners are now fifty years of age or older, age-related disabilities and accessibility issues have also been foregrounded in recent reports (Zinger 2018; Zinger and Canadian Human Rights Commission 2019).

In addition to noting a broad range of individual disability-related needs, Zinger (2019) has raised alarm bells about an organizational culture within the prison system that produces and/or exacerbates debilitating conditions. Warning of "unprofessional conduct, toxicity, resistance, and other dysfunctions" as well as a "fixat[ion] on compliance to the exclusion and detriment of other objectives, such as the safety, health and well-being of inmates" (33), Zinger details the highly problematic workplace culture at Edmonton Institution, Atlantic Institution, and others. Making consistent calls for alternatives to incarceration, he has exposed that denying access to proper forms of care has been used as a form of punishment, a practice that has also been flagged by United Nations investigations (see Pūras 2018).

While the Office of the Correctional Investigator has attempted to provide statistical representations of the broad extent of disability-related issues in the federal system, significant empirical gaps remain. Recognizing the need for further inquiry, the Standing Senate Committee on Human Rights held a comprehensive review of discriminatory prison practices, with a focus on disability. The committee provided wide-ranging qualitative findings, concluding that "individuals with complex mental health issues, particularly post-traumatic stress, personality or behavioural disorders and intellectual and physical disabilities were not adequately treated before or during their incarceration, or while they were on conditional release" (Canada 2018, 21). Echoing recent publications from the Office of the Correctional Investigator, the committee warned that these systemic

problems disproportionately affect the growing population of federally sentenced persons over the age of fifty, a group that has high rates of mental, chronic, and terminal illness. Evidence presented to the committee illustrates that many older, physically disabled individuals have been “placed in institutions where there were stairs and no working elevators. They had to walk long distances between buildings, in record time, under threat of punishment if they were late. They had to stand outside in the cold for an hour every morning to pick up their lifesaving medication” (28). The committee further noted that medical supplies (e.g., pillows, blankets, braces, and heating pads) for managing chronic conditions are prohibited in some prisons and that there were often “months-long waiting times for routine repairs to be made to wheelchairs” (28). Punitive dietary controls and insufficient dental care were also documented.

In its conclusions, the committee underlined a general lack of data on these fundamental issues of disability justice and called for more information and data collection relating to disabled people, including those who are autistic, have an acquired brain injury, are living with HIV or AIDS, and/or are over the age of fifty. In myriad ways, reports from Zinger and investigations such as those by the Senate committee have shed light on criminalization processes in Canada and have exposed the gross inadequacy of carceral institutions to provide a humane standard of care for individuals with diverse physical and mental health needs.

Consistent evidence of the oppressive and punitive nature of Canada’s criminal injustice system has led to some increased critical scrutiny. In recent years, the federal Liberal government acknowledged the problematic situation and spearheaded a comprehensive review under the leadership of former minister of justice and attorney general Jody Wilson-Raybould (Justice Canada 2018, 2019). Notwithstanding its explicitly reformist agenda, the review identified several long-standing issues, many of which intersect with disability and the criminalization of “vulnerable” peoples. In line with consistent narratives produced by policing and prison authorities, these marginalized populations are discursively represented as dealing with “mental health” and “substance abuse” issues. The review acknowledges the “significant overrepresentation” of neurodivergent individuals and/or people labelled with developmental and intellectual disabilities, as well as those using illicit

substances. Tellingly, lumping mental health with issues of drug use, sometimes under labels like “chronic offenders,” both downplays specific issues of disability while simultaneously advancing a narrative of criminalization resulting from incapable, unproductive, or irresponsible citizens.

Two particular areas that are most relevant in illustrating criminal justice practices targeting disabled individuals are in the perpetual injustices of the remand system and various administration of justice offences. Remand impacts people who are denied bail; most often, these are people who cannot afford the fee and/or fail to present themselves as reliable citizens from the perspective of the court. Indeed, research has pointed to systemic discrimination in bail-review processes on the basis of mental health, class, and race (Deshman and Myers 2014). While legally innocent, individuals who are denied bail are remanded to overcrowded provincial jails until their court date, which can be weeks or even months away. With near-non-existent programming and often without access to family supports and adequate health care – compounded by frequent lockdowns – the remand system, which especially affects disabled people, has been strongly critiqued by advocates and scholars (Deshman and Myers 2014; Doyle and McKendy 2019; Myers 2016). Since 2004–05, the adult remand population has dramatically increased and now exceeds those serving sentences following conviction. For the reporting year 2015–16, remand accounted for 60 percent of Canada’s prisoner population (Correctional Services Program 2017).

A second major area in which disabled people are criminalized is through administration of justice offences (AOJO). These criminal charges result from various forms of non-participation in or non-conformity with criminal justice processes, including contempt charges, failure to appear in court, breach of probation orders, being unlawfully at large, and failure to comply with conditions. According to Justice Canada (2017), the rate of AOJO charges between 2006 and 2016 increased by 26 percent. Demonstrating the incredible scope of criminalization via AOJO, 2015–16 statistics show that “more than one in five (23%) of all cases completed in adult criminal courts included at least one AOJO, and of these, 72% resulted in a guilty verdict” (Justice Canada 2017). Importantly, AOJOs are the most prolific category of criminal offences in Canada. The Ontario Court of

Justice (2019) reports that AOJOs accounted for 30 percent of all registered criminal cases in Ontario in 2019. Statistical analysis across Canadian jurisdictions has shown that two specific AOJO offences – failure to comply with a court order and breach of probation – are among the top five offences reported nationally, representing half the cases brought before adult criminal courts (the other three being driving under the influence, theft, and common assault) (Orsi and April 2013). Notably, correctional research has identified that AOJOs disproportionately target Indigenous peoples, suggesting a direct impact on debates regarding mass incarceration in Canada (ibid.).

While recent attention has focused on the perils of AOJO offences – in particular because of their financial impact on court systems (Koegl and Day 2019) – extensive criminalization via AOJO is not a new problem: it is merely expanding in scope and punitiveness. In his influential text *The Rich Get Richer and the Poor Get Prison*, Jeffrey Reiman (1984, 108) describes how the US justice system systematically “weeds out the wealthy” at every stage, based on their ability to project their value as citizens. Despite the disproportionate harm on society committed by the wealthy, Reiman underlines that wealth enables the evasion of prosecution while poor or lower-income populations appear as failed subjects and experience higher rates of criminalization and incarceration.

Criminologists have long identified AOJOs as highly punitive, often directed against people who are considered difficult or transgressive because of their inability to conform and perform as productive economic subjects (Deshman and Myers 2014; Edelman 2017; Sylvestre et al. 2015). The expanded domain of criminal justice governance thus takes the form of reactionary punishment that almost exclusively targets racialized, poor, and disabled people. Recent trends in Canada suggest that the criminalization of failed subjects has increasingly been accentuated by an underlying change to Canadian cultures of punishment, leading Cheryl M. Webster and Anthony N. Doob (2015) to argue that the primary cause of the increased appetite for punishment comes from a value re-orientation that does not prioritize social responsibility for the care of criminalized individuals. Instead, due to their inability to sufficiently responsabilize, failed subjects are marked as deserving whatever criminalization and punishment they receive. Borrowing from Michael Tonry’s (2012) discussion of US

trends in punitiveness, Webster and Doob (2015, 314) argue that “ambivalence, exclusion, ostracism, denunciation and severity are seemingly the central values being promoted by federal Canadian politicians since 2006.” While Wilson-Raybould’s review acknowledged that “vulnerable people are most affected by the system” (Justice Canada 2018), much of the discussion about criminal justice reform has been – and continues to be – conceptualized as a reform that does not look to undo the expansion of the system but rather to expand the powers of its authorities to intervene against improperly responsabilized or failed subjects.

Unlike criminologists who conceptualize crime as symptomatic of social problems – with the justice system translating social problems into criminal problems via a criminalization process – reforms that cannot purposefully reduce the influence and scope of the system will fail at challenging these very processes of criminalization. At the core of the power to criminalize are the discretionary functions of criminal justice agencies. While managerial efforts have been made to reduce the scope of discretion exercised by justice actors (Hannah-Moffat, Maurutto, and Turnbull 2009), abilities to enact discretionary decision-making remain central to the everyday practices of workers in the three Cs of criminal justice. Canadian law provides agencies of the (in)justice system robust autonomy in the context of performing their duties, resulting in much of the day-to-day practice taking place in opaque, hidden, and often violent environments. In part, the complexity and extensiveness of these localized contexts where decisions are practised make the system more remote and less subject to public scrutiny.

The limited public knowledge or oversight of most criminal justice practices enables its actors to engage vast discretionary powers, with far-reaching implications. Given the extensive power to criminalize that is vested in such discretionary powers, critical criminologists have long insisted that the most important explanatory theories of crime do not – and cannot – account for the mass variation of individual behaviour that has been deemed criminal. Austin Turk (1969, 9), for example, summarized the discretionary power to criminalize, arguing that “criminal status may be ascribed to persons because of real or fancied *attributes*, because of what they *are* rather than what they *do*, and justified by reference to real or imagined or fabricated behavior” (emphasis in original). Debunking such

an attribution of “crime,” Louk Hulsman (1997, 9) contends that “the cultural organization of criminal justice creates ‘fictitious individuals’ and a ‘fictitious’ interaction between them.” Emphasizing that criminalization occurs in conflictual social contexts of racism, poverty, and debilitation, where subjects and authorities are in direct conflict, critical criminologists have shown how the power to criminalize is exercised in order to resolve these social conflicts, especially when subjects are seen as non-compliant, or simply do not, cannot, or will not conform to neoliberal, productive, capacitated subjectivities. As Nils Christie (1977) contends, the power to criminalize is a means of “conflict expropriation,” whereby complex social antagonisms are subsumed by the criminal justice system to enact control through the violence of law. Moreover, when individuals become ensnared in the system, they are subject to scales of discretionary violence, often based on whether criminal justice agents perceive them as threatening, disorderly, or non-compliant.

In white settler colonies like Canada, the power to criminalize is sustained by the continued representation of individuals within the justice system as criminals. Criminality becomes foregrounded, and, in many instances, the discretionary behaviours of criminal justice agents become backgrounded. The social effect of these practices – what Reiman (1984) calls the “Carnival Mirror of criminal justice” – means that criminal legal institutions are able to cast themselves as benevolent, and benefit from having little-to-no democratic controls over their extensive discretionary powers (see also Hannah-Moffat et al. 2009). In relation to urban policing in Toronto, Alok Mukherjee and Tim Harper (2018) have specifically demonstrated how the police union has far more influence on urban policing than city councils or civilian police-oversight bodies (Mukherjee chaired the Toronto Police Services Board for a decade). Describing what they call a state-sanctioned “culling of the inferior other” (86), Mukherjee and Harper document the extent to which police violence has been directed toward neurodivergent and racialized communities. In Ontario, between 2000 and 2017, there were more than forty fatal police shootings of neurodivergent people, many of whom were non-white. CBC’s detailed series *Deadly Force* provides a comprehensive account of police violence, documenting 460 fatal interactions between police and civilians across Canada between 2000 and 2017 (Nicholson and Marcoux 2018). In these deadly

encounters, 70 percent of the people who died were identified as experiencing mental health and/or substance use issues.

Research from the Ontario Human Rights Commission (OHRC) (2014) has suggested that fatal encounters are the end result of violence directed far more extensively toward the disabled community. Documenting the high levels of use-of-force incidents involving tasers, the OHRC underlines the disproportionate number of cases against racialized individuals and those categorized as “emotionally disturbed.” Despite systematically inadequate data collection by police agencies, advocates and activist groups have increasingly centred disability in campaigns to defund, disarm, and disband policing institutions. For example, Campaign Zero, associated with Black Lives Matter in the United States, has been influential in advocating for the reallocation of police funding to agencies outside the legal justice system with an aim of providing more therapeutic, community-driven, and de-escalating interventions. Although critical criminologists and disability studies scholars alike have raised concerns about how those interventions, depending on how they are designed, may simply reproduce dynamics of social control and violence (Chapman and Withers 2019; Ben-Moshe 2020; De Shalit et al. 2022), defunding the police is nonetheless an essential step to reduce state violence and the power of criminalization that disproportionately impacts disabled, racialized, and other non-conforming communities.

Canada has witnessed an extensive expansion of its criminal justice systems over the past two decades, despite a steady decline in crime rates over this same time. Though slight increases were documented in some recent reporting years (2015–18), the overall rate of officially reported crime in Canada has fallen almost 50 percent since 1991 (Moreau 2019). Nevertheless, the country experienced a populist turn starting in 2006 when the federal Conservative Party prioritized a dramatic criminal justice expansion under the banner of “tough on crime” policies (Comack, Fabre, and Burgher 2015; Zinger 2016a). Such federal policies dovetailed with the post-9/11 intensification of policing and security apparatuses, which have been calculated as accounting for an increase in spending of \$92 billion from 2000 to 2011 (MacDonald 2011). Many critical policing scholars have maintained that crime rates, despite what populist politicians or media claim, trend based on complex variables and have limited-to-no

correlation with police strength or “tough on crime” approaches (Bowling, Reiner, and Sheptycki 2019). However, increased social inequality has been shown to have a direct impact on the culture of punishment (Bonnet 2019) and has produced situations where policing is a substitute for social welfare practices, essentially using criminal legal systems to manage and warehouse social problems of poverty, disability, and oppression. Challenging the (in)justice system is critical if we intend to deconstruct the ways in which the power to criminalize is encoded through control logics of capacitated and responsibilized subjects. In contrast to the positivist approaches of explaining forms of criminal causation that continue to circulate in mainstream criminology, critical criminologists have urged a reorientation of the disciplinary gaze to instead interrogate the practices of criminal justice authorities, their discretionary power, and how those powers are shaped by legal, social, and cultural norms.

Picking up and further exploring these critical threads, chapters in the book’s second section focus on the institutions and agencies of Canada’s criminal (in)justice system, looking specifically at how disabled people are disproportionately impacted by, and, at other times, excluded from, its structures. We begin with Alok Mukherjee’s investigation into the ways in which police services interact with people experiencing mental health crises. Contrary to their de-escalation training, police in these instances often deploy excessive use of force, sometimes leading to the death of the person in crisis yet rarely resulting in sanctions or other penalties for the officers involved. In [Chapter 6](#), Mukherjee provides illustrative examples from both high-profile and lesser-known cases to show how the state has, essentially, sanctioned the “lawful” killing of individuals in distress.

Moving through the criminal (in)justice process, Sue-Ann MacDonald, Véronique Fortin, and Stéphanie Houde in [Chapter 7](#) turn the book’s attention to mental health courts in Quebec, elucidating how the penalization of disability is embedded within judicial structures, even when the aim is to accommodate people with mental illness who have been accused of committing minor crimes and divert them away from carceral sentencing. MacDonald, Fortin, and Houde engage in ethnographic research comprising court observations, in-depth interviews, and analysis of case transcripts to demonstrate that therapeutic justice is rarely achieved, despite the best of intentions. Instead, defendants with mental illness are

interpolated as having individual deficits and are not adequately heard, considered, or understood, thereby perpetuating epistemic injustice that negates mad people's agency.

Also focusing on the criminal court system, Richard Jochelson and Michelle Bertrand explore the results of their primary research on public perceptions of jury representativeness. While juries are supposed to be composed of a broad cross-section of society, which would include a range of disabled people and other equity seeking groups, [Chapter 8](#) shows that this does not occur in practice. Rather, disabled people are frequently left out of jury panels. A possible change in social consciousness and an outcry over this lack of equitable inclusion, Jochelson and Bertrand contend, might result in greater efforts to increase disabled people's representation. Findings from their survey, however, reveal significant ableism in relation to perceptions of disabled people's ability to serve in this capacity.

This section closes with Megan Rusciano's examination of the overuse of penal segregation for imprisoned disabled women. Carceral institutions, Rusciano argues, retraumatize and revictimize women who have psychosocial disabilities and trauma histories, inflicting punishment and isolating women in segregation instead of providing much-needed treatment and support. By bringing to the fore a legal analysis of section 12 of the Canadian Charter of Rights and Freedoms, which provides protection from cruel and unusual punishment, Rusciano calls into question the constitutionality of segregation for disabled women. This, in turn, fuels her argument for the abolition of prisons altogether.

Reconceptualizing Disability and Reframing Justice

In response to the ways in which the criminal legal system and associated practices of crime control and regulation have targeted disabled people, the past decade has seen a proliferation of research and activism contesting ableist systems of injustice. This, in part, has spurred anti-ableist abolitionist movements and led to the articulation of theories and practices of disability justice that go beyond reforming policing and carceral systems toward decarceral and accessible practices that centre disabled people as desirable members of our communities. Such positions highlight the ways in which a radical reframing of the issues through the lens of disability justice leads to constructive paths forward. As disability justice and autistic activist Lydia

Brown (2014, 33) writes, “Bit by bit, we are building new ways of doing community ... We have not yet achieved disability justice, but we are working to end the structural violence of ableism.” Disability justice focuses the goal of disability activism not on inclusion in normative ableist social relations but instead on contesting those relations entirely. As Mia Mingus (2011) puts it, “We don’t want to simply join the ranks of the privileged; we want to dismantle those ranks and the systems that maintain them.”

In her article “Changing the Framework: Disability Justice,” Mingus writes, “It is rare that people think about disability as a political experience or as encompassing a community full of rich histories, cultures and legacies.” She points out that people infrequently consider disability as offering something to the world. And so, she suggests, “as organizers, we need to think of access with an understanding of disability justice, moving away from an equality-based model of sameness and ‘we are just like you’ to a model of disability that embraces difference, confronts privilege and challenges what is considered ‘normal’ on every front.” A key point of this approach is that disabled people do not merely seek inclusion through the creation of access and accessibility but rather seek to transform the relations of ableist society writ large. In other words, disability justice is not about the assimilation of disabled people through inclusion in ableist social structures and practices but is instead about the transformation of compulsory social relations of economic productivity, individualized responsabilization, and capacitation. As Liat Ben-Moshe (2020, 31) explains:

It is imperative to connect the analysis of state violence and its resulting population level slow death and targeted debilitation, including by carceral apparatuses and logics, to disability as identity and culture. Disability as a political entity is important because it offers a site of collective resistance to such violence – in the form of deinstitutionalization, anti-psychiatry, and self-advocacy ... I want to affirm the life that’s already here in the form of the knowledge of disabled and mad people, at the same time as calling to end violent debilitation and the conditions that make them viable.

Disability justice practices and discourses emerged primarily from the work of disabled people of colour seeking to build interdependent

“communities of care” (Padam, quoted in Chapman and Withers 2019, 359). Patty Berne and Sins Invalid (2016) highlight the core principles of disability justice work as adopting intersectionality, leadership by the most impacted, an anti-capitalist politic, cross-movement solidarity, and interdependence. In Canada, some of this work is being taken up by, for example, the Disability Justice Network of Ontario (DJNO) in its 2019 “Say Their Names: Humanizing Blackness and Disability” campaign, dedicated to fighting violent encounters between police and Black and disabled communities. DJNO works within disability communities to build “the power, capacity, and skills needed to hold people, communities, and institutions responsible for the spaces they create,” with the goal of building “a just and accessible Ontario, wherein people with disabilities have personal and political agency [and] can thrive and foster community” (Disability Justice Network of Ontario 2018).

Thinking critically about criminalization and institutions of injustice forces a shift in the hegemonic understanding of disability. At the same time, bringing critical disability and disability justice approaches to bear on criminal justice institutions, regulations, and control systems changes our notions of justice. As Viviane Saleh-Hanna (2015) notes, subjugated knowledges are increasingly central to carceral abolitionism, where the experiences and voices of racialized, queer, feminist, anti-colonial, and anti-oppressive movements are privileged. Critical disability studies expands the possibilities of action and change within new abolitionist and critical carceral scholarship, which Michelle Brown and Judah Schept (2017) demonstrate are increasingly informed by movement-generated theories that draw attention to connections between projects of penal abolition and broader demands for social justice. This includes, we argue, supporting a range of struggles against oppressive regimes, institutions, and laws, for example those that prohibit drug possession or that criminalize sex workers and their clients and managers. Other abolitionist works have similarly underlined that abolitionism cannot merely be about the prison itself but must include “the materiality or edifice of the prison industrial complex ... [and] will require the abolition – the dismantling, changing, and building anew – of the normative discourses and vocabularies” (Brown and Schept 2017, 444). Allan Antliff (2004) has demonstrated that the roots of the Canadian carceral abolitionist movement were

grounded not only in the anti-prison solidarity struggles that emerged from radical movements in the 1960s and 1970s, but also anarchist principles that underlined that prison abolition could not be accomplished outside of transformative social change. Like early abolitionism literature in Canada, such as the influential zine *Bulldozer: The Only Vehicle for Prison Reform*, contemporary struggles against the prison industrial complex or school-to-prison pipeline are grounded in an articulation of structural violence and a need for extensive normative transfigurations.

At the root of these transformations are not merely the entrenched structural powers of legal agencies to criminalize and uphold hierarchies of white supremacist ableist normativity but widespread and deeply embedded cultures of punishment. Brown and Schept (2017, 5) argue that among the key contributions of the carceral abolitionist movement is “the interruption of dominant understandings of crime, law, punishment, safety and accountability, and justice, and the generation of alternative vocabularies and analyses from which to begin to work our way out of the carceral state.” In disrupting and destabilizing the “key-words” of contemporary criminalization, social actors have increasingly enacted interventionist models that move away from the entrenched norms of punishment and violence to address harms and violence without mobilizing discourses of “crime” or the requirement for police and criminal courts (Spade 2011; Kaba 2021). While such efforts are challenging, they articulate new modes of addressing harms, conflicts, and crises that aim to transform ableist, racist, classed, homophobic, transphobic, and sexist hierarchies, while simultaneously building support structures such as education, housing, health, employment, and community spaces.

Intersections between disability justice and abolitionist politics will continue to animate campaigns against police and prison violence. Recent mobilizations have continued to call attention to the impunity of criminal justice actors in Canada. Organizations such as the OHRC and the Office of the Correctional Investigator have detailed how prison and police organizations have withheld and falsified information, shielded their members from accountability, and co-opted public criticism through neutralizing reforms. Yet, current public campaigns are generating new momentum for radical social transformation with an emphasis on police

and carceral abolition. Building on the work of Critical Resistance (2020), Mariame Kaba (2014), Robyn Maynard (2017), and others, Harsha Walia (2020) has underlined three core questions that should inform any tactical engagement with reform debates: Do the reforms increase funds to police? Do the reforms reduce the scale of the police mandate? Do the reforms de-link police from ideas of safety? While various groups and actors engage with reform discourses, social movement organizers such as Walia have argued that these core questions can and should guide transformative approaches to building alternatives to criminalization and policing as opposed to reforms that have typically entrenched carceral and criminal legal practices. Echoing concerns that reformism tends to expand existing institutions, Dean Spade (2020) details efforts to build communities of mutual aid in order to better deal with issues of accessibility, harm, and safety. Explaining these efforts as an aspect of broader strategies to dismantle policing and criminalization, Spade writes that mutual aid “works to both meet immediate needs and mobilize people to participate in building an alternative infrastructure for crisis response that is controlled by people with shared commitments to ending racist police violence and medical neglect” (143).

Building alternative infrastructure is a key lesson learned from the deinstitutionalization movement that highlights the difference between simply closing violent institutions and decarceral abolition. As Ben-Moshe (2020, 60) aptly puts it, “Is it abolition if the closure is done solely through neoliberal racist ideology?” Without building accessible decarceral infrastructures that seek to have disability as part of our communities, the carceral logics which presume that “some form of social control of disability and abnormality is necessary” (64) will continue under the guise of other carceral forms of care, including confinement in long-term care or group homes and forced psychiatric interventions.

Contributors to the book’s final section take up some of the tensions of political and legal reforms, abolition, and the importance of disabled perspectives in shaping the meaning of justice. Opening this section is a chapter by River Rossi on reforms to the Criminal Code in 1969, which have long been heralded as a major achievement for queer rights through the decriminalization of homosexuality. Critiquing this claim in [Chapter 10](#), Rossi argues that not only was disability missing from debates and

discussions about the Criminal Code reform, but that in many ways anal sex remained a criminalized activity, as it could legally occur only in a private location between two people over the age of twenty-one and provided that neither person was “feeble-minded,” “insane,” or an “idiot or imbecile.” Thus, the “ideal homosexual citizen” to whom the 1969 reform applied was also a non-disabled citizen. Rossi questions what happens to those who do not or cannot fit within ableist paradigms and reframes what disability justice might look like within queer movements.

Also examining legal reform, but this time related to assisted suicide, Ravi Malhotra looks back at the 1993 killing of Tracy Latimer by her father, tracing how media and popular sentiments about the resulting trial and conviction affected disabled communities at the time as well as today. With the writings of philosopher Cornelius Castoriadis informing his analysis, in [Chapter 11](#) Malhotra presents a nuanced framework for understanding contemporary litigation on assisted dying and death-making, effectively reconceptualizing notions of what constitutes a high-quality life, which are central to debates on this topic. A new social imaginary, Malhotra argues, in particular one that is grounded in the perspectives and contributions of disabled people, is necessary for advancing a disability justice politic.

The last two chapters of the book turn our attention to another facet of disability justice, that which encompasses the theory and operationalization of abolitionism, first in relation to policing and then regarding carceral institutions. In [Chapter 12](#), Abigail Curlew and Jeffrey Monaghan show how violence toward non-normative and non-hegemonic bodies is endemic to police culture and practice. Connecting disability to gendered, raced, classed, and colonial oppressions, Curlew and Monaghan’s intersectional analysis challenges the myth of benevolent policing. The authors advance an abolitionist politic, focusing on the #endpoliceviolence collective of the American Public Health Association, which locates policing as a threat to public health. Systems of community accountability, Curlew and Monaghan argue, can begin to undo the harms caused by policing, and are far more effective at providing safety for and contributing to the well-being of disabled and other marginalized peoples.

In contesting the supposed need for policing, Curlew and Monaghan align closely with Liat Ben-Moshe’s arguments for prison abolition in

Chapter 13. There she advances how disability and mental health have become justifications for carceral expansion, with jails, psychiatric hospitals, supervised residential facilities, and other institutions all part of a system of control of disabled people. In laying out decarceral alternatives to the current prison industrial complex, Ben-Moshe not only provides invaluable tangible suggestions for how penal and institutional abolition can be actualized, but she also presents a counter-hegemonic framework that shifts common conceptualizations about disability as well as dominant carceral narratives and logics.

In ending the book in this way, we offer critical tools for engaging in various resistance strategies for achieving disability justice. Through the collection of important and timely research assembled in this volume, we collectively suggest that engaging both criminology and critical disability studies in relation to one another emboldens the essential work of building accessible decarceral communities where disabled people thrive.

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