

5 Disablement, prison and historical segregation: 15 years later

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Going back to the origin

Liat: In 2001, Marta Russell and Jean Stewart co-wrote what would become a foundational text on disability, political economy, and imprisonment, titled *Disablement, Prison and Historical Segregation*. It had a profound impact on a variety of audiences, from academics to activists who viewed it as a means of understanding, and charting a path out of, the political/economic segregation and oppression of people with disabilities (and disabled prisoners). I will first review the key tenets of the original piece and discuss its importance, and then Jean and I will examine what developments over the past 15 years have significantly impacted the forces of “disablement, prison and historical segregation.”

We begin with three important definitions. The *materialist* view of history, at the core of the original article, posits that a society’s mode of production (its means of producing the physical necessities of life) fundamentally determines its organization and development. *Disablement*, as used by Stewart and Russell, refers to the exclusion of disabled persons from full participation in society by means of segregation, containment, and repression. *Surplus population* refers to those who, within a capitalist system, are deemed unproductive, including the unemployed and underemployed.

As its title suggests, the original article focused on the triad of disablement, imprisonment (people with disabilities in the prison system), and the segregation of disabled people in a variety of facilities, such as nursing homes. The piece powerfully impacted me and many others because it was the first scholarly account (in a popular venue) to connect these three components, arguing that they are interlocking and inseparable.

As Stewart and Russell painstakingly explore, prisoners exhibit a startlingly high prevalence of disability, not only because people entering prison already have high rates of disability but because the prison/jail environment is itself disabling. The authors point to political economy as the root cause of disability. In the US, socioeconomic class and race are interconnected and are linked with higher rates of imprisonment; and disability is linked with class/poverty. Therefore, it should not surprise us that so many people who end up in jails and prisons have disabilities. In addition, prison functions to support the

accumulation of capital and the social control of surplus populations, within which disabled people and people of color figure prominently. Thus, Stewart and Russell contributed to the burgeoning field of prison-industrial-complex scholarship/activism, a critical analysis of disability as a socioeconomic construct, rather than a medical diagnosis or deficit.

The article links disablement, as a materialist process, with other forms of segregation and incarceration, especially for profit. It argues that the process by which people with disabilities are forged into a surplus population is not merely a by-product of the capitalist system but one of the foundations on which capitalism rests. Stewart and Russell show the ways in which institutionalization not only segregates people with disabilities but creates a variety of industries which profit from this segregation. I call this the *institutional-industrial complex* (Ben-Moshe, 2013), or *Dis. Inc.*, blending “disability incarcerated” and “Disability Incorporated”. “Dis Inc” simultaneously captures the corporatization of disability for profit by carceral institutions (e.g. nursing homes and prisons) and the incorporation of disability into the mainstream by assimilation. This analysis demands a scrutiny of the carceral state within which disabled people live their lives, and a rethinking of solutions from a materialist/disability justice perspective. It suggests that legislative, judicial, or policy changes, or changes in the built environment, will not maintain people with disabilities in their homes or communities even if supports are provided, as long as the capitalist system remains intact (Russell, 1998).

Stewart and Russell link disability to a materialist analysis of imprisonment, and imprisonment to other forms of segregation or incarceration. Incarceration and segregation thus become a continuum (from school to work/sex/recreation to the nursing home/prison/institution) in the lives of disabled people, rather than an exception that can be remediated on a case-by-case basis. Failure to acknowledge this historical reality of continuous segregation of disabled persons dooms us to an insufficient and inaccurate understanding of the lived experience of people with disabilities.

Disablement, imprisonment, and resistance: 2001–2015

Jean and Liat: In the 15 years since publication of the original piece, many changes have occurred in the legislative, economic, activist, and scholarly arenas. We will review some of these developments and the ways in which they have impacted the lives of disabled people who have been, are presently, or perhaps will be incarcerated; we’ll also look at ways to resist such forms of incarceration. In short, we will view the original article through the lens of the present, posing the question: how might the article be different if it were written not in 2001 but today?

The original article discussed the following themes: historical segregation and social control; capitalist accumulation and unemployment; prison labor; commodification through institutionalization; deinstitutionalization and neoliberalism; oppression of disabled prisoners; and finally, ways to resist capitalist

segregation. We loosely follow these themes to expose shifts that have occurred over the last 15 years and offer a new, revised analysis of the current state of incarceration, segregation and disablement.

Jean: Because of space constraints, Marta and I were unable to include in our original article the personal, lived realities and hardships of the prisoners with whom I worked and for whom I advocated, as founder of the Disabled Prisoners' Justice Fund. In belated rectification of this gap, I have interspersed in this chapter two thumbnail prisoner sketches, at junctures where they seem to illuminate relevant points.* In doing so, I hope to give voice to a group not often heard in public discourse: our incarcerated disabled comrades.

* Since I'm no longer in touch with these individuals and thus cannot get permission to tell their stories, I've changed their names.

Disability and oppression behind bars: then and now

One reality remained constant from 2000 to 2015: the incarceration rate in the US has continued its overall ascent. According to the US Bureau of Justice Statistics (BJS), 2,266,800 adults were incarcerated in US federal and state prisons, juvenile facilities, and county jails at year-end 2011—almost 1 percent of US adults. Additionally, 4,814,200 adults were on probation or on parole (BJS, 2013). By comparison, in 2000, when the original article was written, the United States incarcerated 2,071,686 persons (BJS, 2001).

Unfortunately, reliable data on the ratio of those incarcerated who are disabled remains elusive. Some states have begun to mandate the collection of such statistics, mostly as an outcome of class action lawsuits relating to negligent health care or mental health care in prisons. As more class actions are successfully litigated, perhaps a national picture of the disabled inmate population will emerge. Meanwhile, nonprofit advocacy organizations have begun to collect data on specific disabled populations in prison. For example, HEARD (Helping Educate to Advance the Rights of the Deaf), which advocates for the rights of deaf/Deaf¹ individuals caught up in the criminal justice system, tries to collect data on deaf/Deaf inmates.

Several recent news items dramatically update Russell and Stewart's argument regarding the disabling nature of prison. Rakia (2015) reported the following story:

In 2000, the Pennsylvania government broke ground on a new maximum-security men's prison on 237 acres of land in La Belle that it received from Matt Canestrale Contracting, Inc. The plot of land where the new prison would be was shared with MCC's main business, a coal-refuse site with a coal-ash dump and two coal-slurry ponds that served a nearby mine.

(Rakia, 2015)

1 When capitalized, Deaf refers to those who embrace the culture of the Deaf community, the keystone of which is American Sign Language. Small letter deaf simply refers to those with hearing/auditory impairment.

In 2014, a report titled “No Escape” outlined the health issues people were experiencing in the Fayette prison that was built in the town of La Belle, including skin conditions, throat and respiratory illnesses, thyroid issues, and tumors (McDaniel et al., 2014). According to the report, 11 of the 17 prisoners who died at Fayette between 2010 and 2013 passed away from cancer. Spurred by the economic downturn and the decline of the coal industry, capitalists have found a profitable use for these toxic sites by building prisons atop them, with inevitably disabling results.

Additionally, over the past 15 years, epidemics have become both more frequent and more virulent within carceral settings. Valley Fever, for example, has swept through prisons in central California, leaving profound damage in its wake. This highly contagious soil-borne fungus, known to affect over 150,000 people annually, is potentially deadly; for some reason, Black, Latino, and Filipino inmates are especially susceptible. Of inmates in California, 8.6 percent have contracted the disease, for which there is at this point neither cure nor vaccine (Take Two, 2015). Because of the high number of infected inmates and former inmates, and because of the high cost of treatment, the epidemic has the potential to radically transform the economy of the Central Valley. According to a recent television documentary, a one-month supply of fungicide medication costs \$3,500–\$4,000, a cost which must be borne for the rest of one’s life (“Deadly Dust,” 2015). Thus generations of released prisoners who have contracted Valley Fever return to their communities dependent on a medication which few if any of them can afford. One could hardly ask for a clearer (and crueler) example of the interlocking of multinational pharmaceutical corporations, disablement, and the prison industrial complex.

One former inmate who contracted Valley Fever recently filed suit against the state *under a hate crimes law* (the *Bane Act*). Claims brought under the *Bane Act* can be tried in state court, and “qualified immunity” does not apply. This is precedent-setting; until now, prison officials have had the protection of “qualified immunity” in many other lawsuits. The lawsuit charges that by placing this inmate, who is African American, in that particular prison—where Valley Fever was known to be rampant, and black and Hispanic inmates were known to be especially susceptible—prison officials willfully and knowingly exposed him to an epidemic they could have prevented, thus endangering his life.

Jean: As an example of the disabling potential of prison, one prisoner with whom I visited and for whom I advocated, Charlene, had MS. While in prison she was treated to unimaginable abuse by contemptuous officials who were convinced she was faking. On the advice of the prison doctor, who believed he could “flush her out of her act” by denying her services, correctional officers refused to bring meals to her bedside, refused to help her with toileting, denied her basic hygiene supplies like sanitary napkins (thus leaving her lying in a pool of blood when she was menstruating), etc. The prison doctor denied her a specific medication recommended by her personal doctor, on the grounds that it was too expensive. The withholding of this medication caused

her to lose her sight and the use of her legs; when I visited her, she was legally blind and paraplegic. Once she was released from prison and began to take the medication, her vision returned and she was able to walk with the help of crutches.

Prisons cause not only bodily harm but long-term psychiatric damage. The high rate of suicide within American prisons and jails has unfortunately held steady since 2001. Suicide remains the leading cause of jail inmate deaths; the picture is not much different in state prisons. According to BJS (2012), between 2001 and 2010, suicide was among the five leading causes of death in prison in all but two years (BJS, 2012).² Why is the suicide rate so high in carceral spaces? Perhaps the case of Howard Andrews, a California prisoner who requested physician-assisted suicide, might shed light. Andrews requested PAS not because he found life as a quadriplegic unbearable, but because he found life as a quad *in prison* unbearable. Rather than address the issues of abusive treatment and deplorable conditions raised by his case, the judges—citing American foundational texts (John Stuart Mill) extolling the nobility of independence—granted him permission to end his life. Interestingly, by the time of their decision, Andrews had apparently changed his mind and opted for life, but in an ironic, bitter twist of fate, he died anyway, unintentionally, due to prison conditions (a botched catheterization) (Stewart, 1998). Thus, disablement (as opposed to *disability*) and imprisonment converged and intertwined.

Recent research and legislation in the area of sexual assault further illustrate the ways in which disablement functions as a core characteristic of the prison system. The 2003 *Prison Rape Elimination Act* (PREA) discusses the high incidence of rape and sexual assault in prison. The act mentions the overrepresentation of people with disabilities, especially psychiatric disabilities, in the prison system and their vulnerability to sexual abuse. In addition to disabled individuals, LGBTQ and gender-variant people are highly susceptible to sexual assault while incarcerated, especially in men's facilities. But as Beth Ribet points out, prison sexual assault is disabling and has long-term impact on those who experience it. In Ribet's words: "The relationship between disability and prison rape actually entails a tri-part dynamic, as it may be first a precursor to incarceration, then a basis for the sexual assault, and then again the additional or compounded consequence of experiencing rape" (Ribet, 2010: 295). Whether or not correctional institutions, advocacy groups or the judicial system view sexual assault survivors as disabled, and thus entitled to the protections of disability law, is a different matter.

Recently the carceral state reinvented itself with a new form of segregation and containment: the immigration detention center. Fed by a burgeoning tide of

2 When considering inmate suicide statistics, one should bear in mind a tendency on the part of some prison officials to attribute many prisoner deaths to "suicide" which, upon investigation by outside sources, are discovered to be the result of police/correctional officer brutality. The July 2015 suspicious death of Sandra Bland, while still unresolved at the time of writing, raises this question.

xenophobia, these centers are now springing up throughout the nation. Among the detainees held captive in these facilities are thousands of immigrants with mental health differences who, until a federal court ruling in 2013, were expected to represent themselves in immigration proceedings, which they were unable to do (Preston, 2013). Segregated away from family and community supports, held in frequently abusive conditions for sometimes years on end, detainees' mental stability inevitably worsens. Their disabilities range from trauma (as a result of persecution or war in their home countries) to severe depression brought on by the conditions and length of their detention, and from cognitive deficits to mental health challenges.

Jean: Antwan, a black paraplegic Jamaican, was the first prisoner on whose behalf I advocated. I corresponded with him for several years and visited him many times at various upstate New York facilities. He was serving 25 to life, but midway through his sentence, a wave of anti-immigrant hostility began to sweep the country. Politicians decided that non-citizens who have been convicted of a crime should be the first to go, and Antwan was deported to back to his homeland. Ironically, since this was his only way out of prison, he welcomed it; once he arrived in Jamaica, he became a free man.

Unemployment, segregation and legislative/judicial developments

2015 marks the 25th anniversary of the *Americans with Disabilities Act*, a law which was touted as “the civil rights bill for disabled people.” But as disability legal scholar Arlene Kanter (2015) suggests: “the ADA’s limited success in achieving equality for people with disabilities is likely due to the fact that it was never intended to achieve equality; rather, it sought (only) to move people from reliance on government benefits to employment by prohibiting discrimination” (Kanter, 2015: 819). Alas, even this modest proposal has not been achieved, as unemployment figures suggest.

“Ten years after passage of the Americans with Disabilities Act,” Stewart and Russell wrote in 2001, “the unemployment rate of disabled people has barely budged from its chronic 65–71 percent” (Stewart and Russell, 2001: 65). In 2014, according to the US Bureau of Labor Statistics, 17.1 percent of persons with disabilities were employed, compared with 64.6 percent of nondisabled persons (Bureau of Labor Statistics, 2014). If we compare with rates from 1990, the year the ADA was enacted, the picture is even gloomier. In 2013 only 14 percent of working-age Americans with a work-limiting disability were employed, compared with 29 percent in 1990 (Thomson-DeVeaux, 2015).

Given the recent recession and rise in unemployment nationwide, we should perhaps not be surprised by these figures, as marginalized populations are always harder hit by economic downturns. Stewart and Russell explain the ADA’s failings by reminding us that unemployment, underemployment and the forging of disability into a defining characteristic of a surplus population (along with race, gender/sexuality, and nationality/citizenship) are necessary for the maintenance

of capitalism. Under the capitalist mode of production, disability becomes a social class, an administrative category, an abject population, and a commodity for a whole category of professionals.

Why have laws failed to move people with disabilities into employment? Because that is not their function. Litigation and rights discourse appeals to the state to remedy social ills of its own creation. Dean Spade addresses this conundrum: “Various social movements have had to contend with why legal change in the form of rights has not brought the deep transformation they were seeking, why disparities in life chances have increased during a period when we have seen the elimination of formal segregation and the advent of policies prohibiting discrimination on the basis of sex, race and disability” (Spade, 2011: 20). Appealing to the law for protection presupposes that the State is a level playing field from which the upright citizen can seek redress. But Spade reminds us: “since US law has been structured from its inception to create a racialized-gendered distribution of life chances that perpetuates violence, genocide, land theft, and exploitation, we will not resolve those issues solely by appealing to the law” (Spade, 2011: 27). This dismal conclusion is equally true in the arena of institutionalization and incarceration.

As of 2015, people with disabilities are *still* fighting for passage of legislation which would eliminate institutional bias by guaranteeing people with disabilities the necessary supports to live independent, integrated lives in the community. (The Community Integration Act is the current iteration of this struggle.) Thus, the Supreme Court’s *Olmstead* decision—which held that unjustified segregation of persons with disabilities constitutes discrimination, in violation of the ADA—is ignored hundreds of times every day, in every state of the union.

Neoliberal shift, deinstitutionalization, and incarceration

In their original article, Russell and Stewart closely examined the high prevalence of individuals with mental disabilities in prisons and jails, a phenomenon which many activists, scholars and journalists attribute to deinstitutionalization. Such proponents argue that when psychiatric hospitals and institutions for people with intellectual disabilities closed, many former residents landed on the streets and, ultimately, in jails and prisons, often for minor offenses. Thus went the formula: A led to B, B led to C, therefore A caused C. But if we examine closely *why B followed A*, i.e., what economic and sociopolitical factors prevailed from the mid-1950s (when mental institutions began to close) to the 1970s (closure of institutions for people with intellectual disabilities), we discover the fallacy in this syllogism.

What caused people who had formerly resided in institutions to become homeless when those facilities shut down? Stewart and Russell (2001: 69) parse this meticulously: a change in economic policies shrank the US social safety net, leaving no funds for community mental health, affordable housing, food assistance etc. Thus neoliberalism (and its predecessors) gave rise to poverty and homelessness by failing to offer any socioeconomic supports. This does not mean that deinstitutionalization was a bad idea. Recent calls for a “return to the asylum” (to quote the title of a widely-circulated editorial by Sisti et al. in the 2015 Journal

of the American Medical Association), or the reopening of psychiatric facilities to deal with the large number of prisoners with mental disabilities, cannot be justified fiscally, politically, medically, or ethically.

But let's look at the second half of the syllogism, "B→C." Why do so many homeless people end up in jail/prison? Are they simply more prone to crime? Well, yes, if by "crime" one refers to eating, sleeping, sitting, seeking employment, and other life-sustaining activities which have been criminalized by specific social policies. Law enforcement carries out sweeps in urban areas where homeless people live, confiscating personal property, including tents, bedding, clothing, and medications. Panhandling is declared illegal, as is the sharing of food with homeless persons in public spaces. Politicians, heavily influenced by chambers of commerce and business associations, enact "quality of life" ordinances relating to hygiene and public activity—such as sitting or lying on sidewalks.

While it's true that disabled street "beggars" have been criminalized in the US as far back as the mid-nineteenth century (Schweik, 2009), over the years since the publication of "Disablement, Prison, and Historical Segregation," such policies have spread throughout the US, becoming broader in scope and more lethal in severity, even fanning the flames of anti-immigrant sentiment by declaring it illegal for day laborers to seek work from passing motorists. If virtually every life-sustaining activity of a homeless person is outlawed, and neoliberals have shredded social supports, it's not hard to understand why so many homeless individuals land in jail.

How does this relate to disability? The fact is, homelessness disables. The streets, like prisons, are disabling, psychologically as well as physically. The constant noise, diesel fumes, cold/heat, lack of privacy, the anxiety of not knowing where the next meal will come from, fear of attack, fear of being routed or arrested by police—all this combines to destabilize even the strongest of psyches. And the psyches of deinstitutionalized individuals have already been destabilized by the disabling environment of institutions. Life on the streets only exacerbates whatever downward spiral has already been set in motion. Furthermore, due to practices like mandatory minimum sentencing and solitary confinement, even those who did not enter prison with a psychiatric disability will very likely experience one during incarceration (see Ben-Moshe, 2013).

Political economy and disablement: disability and incarceration for profit

To reiterate a central thesis of Stewart's and Russell's original article, disabled bodies/minds are worth more to the Gross Domestic Product in an institutional bed than in their own beds (Stewart and Russell, 2001: 68). This reality has unfortunately not changed since 2001, though the institutional population continues to decline, especially in large state residential facilities. If we specifically look at residential facilities for people with intellectual and developmental disabilities (I/DD), we see that life in an institution carries a heavy price not only in terms of the rights and freedoms of those incarcerated, but in monetary terms as well. In 2013, the (national) average annual amount paid (by state or federal

funds) for institutional care was \$255,692 per person; for care in a group home of six people or less, the average was \$130,685. By contrast, the average annual cost (in 2013) of living at home with the help of paid caregivers was \$26,708 (Braddock et al., 2015). Thus disability continues to generate high profits for the nursing home industry, whether in group “homes” or larger residential settings.

One might reasonably assume that caring for institutionalized people with I/DD would cost more because they have more complex needs; however, if we examine institutional closures, we find that this assumption falls apart. By 2013, 14 states had closed all their large (over 16 people) state institutions for people labeled I/DD (Braddock et al., 2015). The residents of those facilities (including those with very complex needs) were not exiled to another state; on the contrary, officials in those states learned how to assist and support disabled people without reliance on large institutional settings. Some of these closures came about as a result of ideological opposition to the segregation of people with disabilities, and some resulted from pressure to reduce spending (see Ben-Moshe and Meiners, 2014).

To the credit of so many who fought for deinstitutionalization, most people with I/DD no longer reside in institutions. As of 2013, 71 percent resided with a family member. But in terms of political economy, the policy and financial picture has not changed much from the heyday of institutionalization. Since little profit can be generated by investing in homecare performed by a family member, it should not surprise us that less than 0.5 percent of families who support a loved one with an I/DD label actually get paid for their labors (Braddock et al., 2015). The likelihood of strong financial support for family caregivers recedes further when one considers the gendered dynamics of caregiving and the ways in which women’s work in the private sphere remains devalued.

Unfortunately, disabled employers of homecare workers have occasionally found themselves pitted against the organized force of their homecare workers’ unions around issues of institutionalization. Marta Russell recounts one such faceoff (Russell, 2000), describing SEIU’s (Service Employees International Union) strong support for San Francisco’s nearly \$300 million rebuilding of Laguna Honda, the world’s largest nursing home (Russell, 2000). Russell compared the wages paid by Laguna Honda workers at the time (reportedly \$14–15 per hour, with full benefits) with the wages earned by In-Home Supportive Services workers (\$5.75 minimum wage at that time, with no benefits). Despite massive protests, a lawsuit filed by Laguna Honda residents, and the intervention of numerous disability rights organizations, the new 1,200 bed facility was built.

A more recent situation in which disabled employers of homecare workers have found themselves pitted against homecare workers’ unions has been the struggle over the so-called “companionship exemption,” a provision in the *Fair Labor Standards Act* (FLSA) which exempts homecare workers from overtime and minimum wage requirements. In 2013 the US Department of Labor, backed by the Obama administration, extended minimum wage and overtime protections to the nation’s homecare workers, a move for which homecare worker unions had fought long and hard. But disability rights organizations pointed out that disabled and elderly individuals who require homecare—a statistically extremely

low-income group—would be unable to afford the enormous increase in wages; that such a change would reduce the pool of available attendants, would force people with disabilities to cut the hours of longtime attendants, and would ultimately drive disabled people into institutions. People with disabilities (they argued) are, as a group, as economically and socially marginalized as domestic workers, equally at risk of exploitation and abuse, but with the added unique threat of medically unnecessary institutionalization and segregation. As of this writing, the matter is in the courts and is unresolved.

Prison profiteering: prison labor and private prisons

Since publication of Russell's and Stewart's article, activists and scholars have devoted considerable focus to the issue of profiteering private prisons and prison labor. But private prisons house only a small fraction of the prison population (see Gilmore, 2015). By 2010, 8 percent of all prisoners were held in private facilities, and in federal prisons, the figure was 16 percent (Gottschalk, 2015). Although prison privatization is a small minority in federal and state prisons, that is not the case for all carceral spaces. Immigration detention centers provide a huge windfall profit for the corporations that run them, e.g. GEO, which has a longstanding contract with Immigration and Customs Enforcement (ICE). By 2011, nearly half of all immigration detention facilities were private, up from 10 percent the previous decade (Gottschalk, 2015).

In updating Stewart's and Russell's exploration of the disabling nature of prison labor, one might start with the 4,000 California inmates who, as of this writing, are being used to fight the state's unprecedented, climate-change-exacerbated wildfires, at a pay rate of \$1 an hour (Geiling, 2015). "This might be beyond slavery, whatever this is," one firefighting inmate told a BuzzFeed reporter, comparing the foremen to overseers. "They don't have a whip. That's the difference," he said (Lewis, 2014). In addition to the obvious threat posed by fire and chainsaws, this dangerous job involves breathing hazardous particulate matter, which permanently damages the lungs. It is unclear who will pay these inmates' ongoing medical bills after the fires have subsided. In the short run, the state is saving, according to one estimate (Lewis, 2014), one billion dollars a year (regular civilian firefighters make \$9 per hour minimum wage). However, down the road, these inmates' medical costs will be borne by the state.

Prison labor has also been used to clear-cut forests and apply herbicide to the stumps of trees—again, dangerous work involving chainsaws, falling trees, and exposure to pesticides (Day, 1996). One final example of the capitalist state's deployment of prison labor played out in 2010, when BP used prisoners to clean up the Gulf Coast oil spill. A reporter working for *The Nation Magazine* offered the following account:

Prisons and parish jails provide free daily labor to the state and private companies like BP. . . . Work release inmates are required to work for up to 12 hours a day, 6 days a week, sometimes averaging 72 hours per week . . .

performing what may arguably be the most toxic job in America. Although the dangers of mixed oil and dispersant exposure are largely unknown, the chemicals in crude oil can damage every system in the body, as well as cell structures and DNA.

(Young, 2010)

The political economy of decarceration

As we have shown, incarceration of people with disabilities is profitable. But apparently, so is decarceration. One area that has grown significantly in the past 15 years is the expanding market for so-called alternatives to incarceration. If capitalism found a clever way to profit from disabled people by placing them in institutional beds (Stewart and Russell, 2001), in 2015 it has also found a way of turning a profit by releasing disabled people from said beds.

Deinstitutionalization created a need, and later a market, for the placement of disabled people in settings outside the walls of institutions and hospitals. But while activists advocate for supported living at home, considerable money is now spent on placing disabled people in smaller “community” settings. What constitutes “community living” is a highly contested arena (Ben-Moshe, 2011); people with disabilities define the term expansively, to include full participation in all areas of life, including recreation and sexuality. Unfortunately, the so-called “community” housing arrangements that many disabled persons find themselves in are simply smaller versions of the old institutions (such as nursing homes), or they continue the logic of the institution in an ostensibly non-institutional setting (e.g., living with family while being denied basic rights and freedoms).

What has shifted, in the years since Russell and Stewart published the original article, is this: it’s no longer enough to focus on the ways in which the private sector sustains institutionalization and incarceration of disabled folks; we must now apply the same critical lens to deinstitutionalization and decarceration. Rehabilitation programs, day habitation, treatment facilities, and supervised residential settings are all promoted as alternatives to incarceration and institutionalization, though in fact they often represent a back-door expansion of incarceration for profit.

Private corrections companies now diversify their portfolios by expanding into probation, parole, re-entry, and other so-called “community” areas. A report titled “Treatment Industrial Complex” (Isaacs, 2014) details the incarceration industry’s shift into areas such as forensic mental hospitals, halfway homes, house arrest and civil commitment. Civil commitment is a legal process whereby a person designated as mentally ill is court-ordered into treatment in a psychiatric hospital or in the community. Certain criminal offenders can be civilly committed to a secure facility indefinitely, after serving out their full prison sentences. In addition, because of lawsuits alleging negligent health care, correction departments and states have begun contracting out medical care delivery to private companies, thus creating a new commodity for profit: the bodies of sick and disabled prisoners (which, as we have seen, comprise a large segment of the incarcerated population).

As one example, the above-mentioned report cites the GEO group, the second largest private prison company in the US, as a trendsetter in terms of this pivot toward the marketing of so-called alternatives to incarceration. In 2012, GEO created a subsidiary euphemistically called “GEO Care,” which provides mental health services in prison, in addition to operating state psychiatric hospitals with forensic units. The irony of a for-profit company providing mental health services to counter the disabling effects of its own prisons should not be lost here. The report also cites a private company in Connecticut which contracted, in 2013, to create a nursing home specifically for aging and disabled state prisoners. The authors refer to this as “cradle to grave” control services (Isaacs, 2014: 10). GEO calls it “the correctional lifecycle,” including addiction and mental health treatment and electronic monitoring (Gottschalk, 2015). In 2010, GEO acquired Behavioral Interventions Inc, maker of ankle bracelets. Of course, electronic monitoring, house arrest or forced psychotropic drugs comprise alternatives to *prison* without providing a meaningful alternative to *incarceration*.

Beyond the profit-making problematic of what Marta Russell called Handicapitalism, there is also an ideological problem at the heart of these so-called alternatives to incarceration, in that what is touted as treatment and medical help is often no less coercive than other forms of incarceration. What does “treatment” mean in neoliberal times? For instance, the psychiatric survivor movement fiercely challenges and resists the widespread use of psychopharmaceuticals as a “treatment alternative” to incarceration (see Fabris, 2011). Similarly, placing people in psychiatric wards as a “treatment alternative” is equally questionable.

Stopping the capitalist juggernaut/resisting incarceration

Concomitant with the expansion of both incarceration/institutionalization and their “alternatives”, resistance to such expansion has also grown. In particular, prison abolition has gained prominence, calling not only for criminal justice overhaul, but for the eradication of a fundamentally racist and profiteering carceral system. An analysis of the prison industrial complex as an extension of slavery and of the convict lease system (see Lichtenstein, 1996; Davis, 2000) has gained widespread credibility in recent years, due to the popularization of critiques of incarceration which incorporate a racial framework, such as Michelle Alexander’s *The New Jim Crow*. Alexander delineates a social construction of criminality by which men of color are turned into criminals through federal policies (e.g., the war on drugs), although they sell no more drugs and exhibit no more criminal tendencies than other groups. She also discusses the ways in which individuals exiting prisons are accorded second-class status for the rest of their lives, thus becoming an undercaste (Alexander, 2010). The US has enacted Jim Crow, she argues, while maintaining the myth of a colorblind society.

Unfortunately, such powerful and compelling critiques often lack intersectional analysis, ignoring the relationship of ability, gender/sexuality and other factors to the carceral state. Excellent recent works, too numerous to cite here, have showcased the importance of bringing a robust analysis of gender expression to

the incarceration arena.³ The recent widely-publicized case of Chelsea Manning highlights connections between gender, the medical industrial complex, the politics of disablement, and incarceration. Manning, a US army soldier, was convicted in July 2013 of *Espionage Act* violations for sending military documents (classified and unclassified), particularly about the US military involvement in Iraq and Afghanistan, to WikiLeaks, an open-source website publishing intelligence information from anonymous sources. Manning was sentenced to 35 years for revealing so-called sensitive military information. Like many other transgender individuals, Chelsea was forced to accept a diagnosis of “gender dysphoria,” listed in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) as a “psychiatric disorder”, in order to have her sex reassignment surgery and hormones—now categorized as hormone “therapy”—paid for by the army. Without a designation of “therapy” or “disorder,” transgendered people are unable to access surgeries or treatments that are gender-affirming.

Resistance to the capitalist juggernaut has also focused in recent years on police killings of people of color, including transgendered women of color. The years since the 2013 acquittal of George Zimmerman in the shooting death of African-American teen Trayvon Martin have seen the rise of *Black Lives Matter*, a powerful social movement which has sparked activism across the country, profoundly impacting public discourse around issues of incarceration, police militarization, and racism in general. While “Disablement, Prison, and Historical Segregation” unfortunately failed to address racism as a major component of incarceration or disablement, many victims of police violence are disabled, including many people of color. Often the police have been summoned by family members seeking help for their disabled loved one. While public outcry is mounting against the systemic racism that underlies police violence against people of color, less well known is the litany of names of disabled people of color killed or injured by police.⁴

The case of Teresa Sheehan had particular significance in light of its potential to impact certain protections of the Americans with Disabilities Act. Sheehan is a woman in her mid-fifties with a history of psychiatric disability. In 2008, in the midst of a psychotic episode, she brandished a knife and barricaded herself inside her room in the San Francisco group home where she lived. Her caseworker called the police and requested help in dealing with the situation. The city police department maintained a team of officers trained in proven de-escalation techniques designed to assist people in psychiatric crisis. Unfortunately, instead of waiting for back-up from properly trained officers, two police entered Ms. Sheehan’s room with guns drawn and proceeded to shoot her five times.

- 3 These include writings by Angela Davis (*Are Prisons Obsolete?*) and Beth Richie (*Arrested Justice: Black Women, Violence, and America’s Prison Nation*), as well as the collections *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*; and *Captive Genders: Trans Embodiment and the Prison Industrial Complex*; and *Queer (In)Justice: The Criminalization of LGBT People in the United States*.
- 4 Leroy Moore of *Krip Hop Nation* has been documenting recent cases of police brutality against disabled people of color in an effort to create more intersectional accountability and analysis around these issues.

Amazingly, despite being shot in the face, she survived. Eventually she sued San Francisco for violating her ADA rights; the city appealed to the US Supreme Court. In agreeing to hear the case, the High Court addressed the question of whether the ADA applies to encounters with police, thus setting the stage for a possible derailment of crucial ADA protections. Civil rights and disability rights organizations from around the country weighed in, asking the city to withdraw its appeal. Despite widespread public outcry, the case went forward; to the relief of the disability community, the Court left the ADA's protections intact.

While the ADA comes under sharp criticism by Russell and Stewart (in the original article) for its failure to adequately address economic discrimination, a dismantling of the ADA's protections in criminal justice situations would undoubtedly have led to a far greater rate of incarceration, particularly for people with psychiatric disabilities (Emslie and Bale, 2014).

The fact that the ADA failed to protect Teresa Sheehan reinforces our argument regarding the inability of a litigation/rights approach to bring about deeply transformative justice, while underscoring the urgent need for intersectionality between the disability rights movement and the campaign to end police brutality. It also reinscribes our concerns regarding the carceral dimension of group homes. In a facility specifically intended to house people with mental disabilities, psychiatric crisis is surely commonplace. Why, then, was Sheehan's caseworker so ill-equipped to deal with a psychiatric emergency that he felt it appropriate to call the police and risk escalating the situation?

An analysis of incarceration which takes into account race, gender, ability and class informs recent work on what has come to be known as "the School to Prison Pipeline." Across the US, the last decade has seen an explosion in organizing and scholarship surrounding this troubling trend. Disturbingly, the funneling of vulnerable youth toward incarceration starts very early; the practices of "special education" all too frequently ensure carceral futures for youth. Often labeled as emotionally disturbed or intellectually disabled, African-American and Latino males in particular are overrepresented in special education. They are also frequently stigmatized and isolated from the rest of the population in self-contained classes which embrace a behavioral curriculum that reinforces racialized and gendered constructions of compliance and conformity. Our present public education system denies these youth the education they need in order to receive high school diplomas, thus limiting their opportunities upon leaving school. Students with disabilities, as well as those from working class or poor families, immigrants, racial or ethnic minorities, and LGBT students may find it difficult to conform or meet the expectations of a system that devalues them as individuals. Special education thus forges marginal youth into "surplus populations" destined for carceral sites (Adams and Meiners, 2014).

According to the US Department of Education Office for Civil Rights (2014), Students with disabilities (served by IDEA, the Individuals with Disabilities Education Act) are more than twice as likely to receive an out-of-school suspension (13 percent) as nondisabled students (6 percent). In addition, they represent

a quarter of students arrested and referred to law enforcement, though they comprise only 12 percent of the overall student population.

The capitalist juggernaut has been particularly industrious in its approach to the education of Deaf youth. In a burst of neoliberal zeal, state governments across the country have been closing, or attempting to close, Deaf schools, claiming that they're not cost-effective. The state marketed its strategy by singing the praises of "integration," as if placement of a single Deaf child in an all-hearing classroom were somehow the moral equivalent of desegregation in the South.

Resisting such closures has become a rallying cry for the Deaf community, which views these schools as the repositories and transmitters of Deaf language and culture, buttressing Deaf children against the isolation they experience within the larger hearing society and energizing their sense of Deaf pride. The community regards the (hearing) State's closure of Deaf schools in favor of "mainstreaming" as cultural imperialism, whereby a people's language and culture are expunged. They argue that when a Deaf child is forced to sit in a class with a roomful of hearing kids and a hearing teacher, that child is cut off, *segregated* from the world that gives her life meaning (sign language interpreter notwithstanding). One cannot help but think of administrative segregation, as prison officials euphemistically refer to solitary confinement. Adopting similar reasoning, Deaf prisoners have fought for the right to be housed in the same cell-block, instead of being scattered throughout the general population. Thus we circle back to Russell's and Stewart's foundational thesis: segregation = disablement = imprisonment.

We want to emphasize that the point is not, "the Deaf community supports segregation." Our point is that the Deaf community assigns a different meaning to the word. As scholars/activists, we must avoid a one-size-fits-all approach when considering the definition of segregation, always bearing in mind that language and meaning derive from sometimes bitterly painful cultural experience. If we approach disability as an analytic, a way to view the world, we need to rethink what disability, segregation or incarceration mean.

Conclusion

We have attempted herein to update and reactivate the still-timely arguments contained in "Disablement, Prison, and Historical Segregation." The original article argued that segregation in a variety of institutions has been the forced historical reality for disabled persons, and that these institutional settings, taken together, constitute a carceral state. In thus segregating people with disabilities, capitalism enacts *disablement* upon their bodies and minds, transforming them into a profit-generating commodity, an administrative category, and a surplus population, to be exploited and discarded. Prison—in all its iterations, including prison labor—is disabling, and disablement is a core characteristic of the prison system. Without an understanding of the forces of disablement—including nursing homes/group homes and other segregated settings—we cannot analyze and resist systems of incarceration.

In updating the original article, we have shown that over the intervening 15 years since its publication, attempts to improve the lives of disabled persons have had limited success because of their reliance on a legislative/judicial approach which leaves the root cause of the problem—capitalism and its varied impacts relative to race/gender/sexuality/ability—intact. Meanwhile the carceral state has expanded to include not only immigration detention centers but a variety of decarceral settings and initiatives.

In closing, we want to point out that while popular media continue to frame disability as a form of incarceration in itself (“trapped in her body,” etc), in fact the disability community has evolved a thriving culture of resistance, countering not only negative media stereotypes but also incarceration itself, in all its iterations. While we hope that over time, it will expand to take on capitalism itself and adopt an intersectional approach that incorporates ability, race, class, and gender analyses, we admire and embrace this spirited resistance as it presents itself in 2015.

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