

Abolition Calling

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- Allegra M. McLeod, [Prison Abolition and Grounded Justice](#), 62 U.C.L.A. L. Rev. 1156 (2015).
- Allegra M. McLeod, *Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives*, 8 Harvard Unbound 109 (2013), available at [SSRN](#)

Two recent articles by Professor Allegra M. McLeod, her 2013 essay, *Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives*, and her 2015 article, *Prison Abolition and Grounded Justice*, represent the most significant attention to the idea of prison abolition inside the legal academy for at least generation. The first builds toward the second, a powerful and broad gauge intervention in the current exciting moment of reform in criminal law and justice. Together they constitute some the most exciting new work on criminal justice I have read in sometime.

We stand at what increasingly seems like the most promising change point in decades in the criminal justice era. Academics, long out of the action find themselves facing two risks. If we too exuberantly carry forward the radical critique of criminal justice, at a time when the system seeks legitimacy from researchers, we may miss the opportunity to help build a more "evidence based" system and even contribute to an eventual public backlash in favor of a return to "get tough" punitive policies. The other risk is that we accept premature closure of the era of mass incarceration, embracing too many of presumptions about crime, high incarceration neighborhoods, and law enforcement competence that built and sustained the era of mass incarceration. Professor McLeod's essay and article are, along with the recent book *Captured* by Professor Marie Gottschalk of the University of Pennsylvania, Department of Political Science, the strongest efforts yet to push attention to the latter risk, of defining mass incarceration "down" in ways that will allow it to reshape and reformulate itself (perhaps into a system of mass probation or mass jailing).

The essay and the UCLA article together take on three distinct moves necessary to bring Abolition theory into the criminal law debate (and one of her premises is that just bringing it into the debate can help reshape the horizons of the possible for more realist reformers).

The first section opens with a potent reminder of how violent and dehumanizing our massive criminal justice system is (even without considering executions which are largely unmentioned here). It is not just the degrading carceral state but also the "punitive policing" that keeps it inflated. As shown by the sociologists of the 1950s and 1960s, prisons even before the era of mass incarceration were associated with degrading and damaging treatment, which could not help but build resentment and perverse adaptation in prisoners. The supersizing of prison populations, the normalization of chronic hyper overcrowding, and the accumulation of a disease burdened prison population has made the level of degradation and damage far deeper. The taint of racial discrimination, which has come recently to be strongly associated with mass incarceration thanks in part to Michelle Alexander's *New Jim Crow*, is on McLeod's account far deeper than our war on drugs. The idea, forged in the Jim Crow era, that incarceration could be a political technology for reproducing status inequality pervades the system regardless of which crimes we focus on.

For many, abolition is rejected from the start on the premise that we need some way of dealing with the most dangerous people convicted of the most serious crimes. McLeod notes that abolition need not (and

probably could not) mean an immediate end to all carceral institutions. What she favors appears to be a relentless critical scrutiny on existing forms of incarceration in the goal of displacing as much of it as possible as quickly as possible. Yet even this kind of aspirational abolitionism draws an almost instant rebuke (which I actually got from a colleague I discussed this work with, and who should know better), “what are you going to do with Manson?” This focus on what McLeod and other abolitionists call the “dangerous few” allows the maintenance of the above problems to seem normal and in fact indispensable, unless the objector can prove they have a way to prevent harm from a population that is a tiny fragment of the carceral population and who are themselves subject to life course reductions in criminal risk (even Charlie Manson won’t be killing anyone in his 90s).

The second and perhaps most important productive task of McLeod’s abolition intervention is to highlight the danger of accepting the reforms that seem significant when abolition is off the table, including greater use of probation, greater efforts to combine law enforcement with social services, and more sophisticated use of police in space and time to interrupt crime “hot spots.” Each of these positions are advocated by some of the best criminologists of our time whose books I regularly give to my students interested in dismantling mass incarceration (Mark Kleiman, David Kennedy, Frank Zimring), but I share McLeod’s critique of these as building in a dominance of law enforcement competence and the dangerousness of the criminalized community that locks us into far too shallow a reform trajectory.

The third challenge, one which I find compelling even if its resolution in this piece is only a down payment on more work to come, is that we must begin to address forms of regulation and governance outside of criminal law and justice if we are to truly reduce mass incarceration. McLeod reminds us that criminal law is not premised simply on the moral urgency of holding wrongdoers accountable (notwithstanding the belief of many legal philosophers), but on the often unacknowledged premise that it is a necessary tool of governance in a highly unequal and violent society. Professor McLeod argues that those of use operating in the criminal justice reform space have to actively consider forms of governance that can regulate many of the social problems not cast into the frame of crime and punishment as social control. This section is more of a starter kit of examples than a fully framed theory of regulating the poor beyond crime. It ranges from the technocratic interventions like situational crime prevention and urban design, to the radical communitarian idea of creating “safe harbors” where those threatened by violence of all sorts can achieve safety without police or punishment.

Am I an abolitionist? Even before reading Professor McLeod’s recent article I have found myself struggling with that issue. Abolition as an end point and as a goal is perfectly appropriate. The bridge to abolition is, fealty to the ideal put so well by Justice Kennedy in *Brown v. Plata*, that while prisoners lose their liberty, they do not lose their “essential human dignity.” Punishments, whether the take they form of incarceration, supervision in the community (which as McLeod argues is also quite punitive), or fines and fees (which can reduce people in poverty to the virtual status of slaves) must always respect that human dignity. As the recent Report of the National Research Council, *The Growth of Incarceration in the United States* (2014 Chapter 12) emphasized, just punishments should reflect proportionality between crime and punishment, the principle of no more punishment than necessary (or parsimony), regard for the person’s social citizenship or belonging to the community, even while being punished, and concern for social justice. Our current sentencing system and our prisons and jails are badly failing on all of those accounts. To get there, which is their constitutional obligation under the 8th Amendment, our carceral institutions will have to be reinvented, their populations, down-scaled enormously, and their basic model of coercion and control revisited.

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