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Elizabeth Stanley
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Human Rights and Incarceration

Critical Explorations

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Editor
Elizabeth Stanley
Institute of Criminology
Victoria University of Wellington
Wellington, New Zealand

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Contents

1	**Human Rights and Incarceration** *Elizabeth Stanley*	1
2	**Children Deprived of Their Liberty on 'Welfare' Grounds: A Critical Perspective** *Deena Haydon*	25
3	**Rights of Persons with Disability Not to Be Criminalised** *Eileen Baldry*	53
4	**Challenging Māori Imprisonment and Human Rights Ritualism** *Elizabeth Stanley and Riki Mihaere*	79
5	**Immigration Detention and the Limits of Human Rights** *Michael Grewcock*	103

6 Haunted by the Presence of Death: Prisons, Abolitionism and the Right to Life 129
David Scott

7 Human Rights for 'Hard Cases': Alternatives to Imprisonment for Serious Offending by Children and Youth 153
Nessa Lynch

8 Entrenching Women's Imprisonment: An Anti-carceral Critique of Rights Based Advocacy and Reform 181
Bree Carlton and Emma K. Russell

9 From Conflict to 'Peace': The Persistent Impact of Human Rights Violations in Northern Ireland's Prisons 207
Phil Scraton

10 Reconceptualising Custody: Rights, Responsibilities and 'Imagined Communities' 233
Margaret S. Malloch

11 'Stone Walls Do Not a Prison Make': Bare Life and the Carceral Archipelago in Colonial and Postcolonial Societies 257
Harry Blagg and Thalia Anthony

12 Indigenous Rights, Poetry and Decarceration 285
Tracey McIntosh

Index 303

Notes on Contributors

Thalia Anthony is an Associate Professor at the Faculty of Law, University of Technology Sydney. She has a high profile in contributing to research in Indigenous criminal justice issues, particularly through the critical lens of colonisation and Indigenous self-determination. Her research methodologies are underpinned by fieldwork in Indigenous communities and partnerships with Indigenous legal organisations in Australia and overseas.

Eileen Baldry is Deputy Vice Chancellor Inclusion and Diversity and Professor of Criminology, UNSW Sydney. She has taught social policy, social development and criminology over the past 30 years. She is a critical criminologist and her research focuses on social justice including mental health and cognitive disability in criminal justice systems, criminalised women, and Indigenous Australian women and youth. She was awarded the NSW Justice Medal and was recently named as one of Australia's 100 influential women.

Harry Blagg is a Professor of Criminology at the Faculty of Law, University of Western Australia. Harry has a national and international reputation as a leading criminologist specialising in Indigenous people and

criminal justice, young people and crime, family violence, crime prevention, diversionary strategies, policing and restorative justice. He has an extensive fieldwork background in remote communities in Australia.

Bree Carlton is a Senior Lecturer in Criminology, School of Humanities and Social Sciences, Deakin University. Her politics and commitment to transforming structural injustice drives her research focus on documenting and resisting institutionally generated experiences of discrimination, harm and violence. Recent publications appear in the *Australian and New Zealand Journal of Criminology* and *Punishment and Society*. Her and E. K. Russell's forthcoming book is titled *Resisting Carceral Violence: Women's Imprisonment and the Politics of Abolition* (Palgrave Macmillan).

Michael Grewcock teaches criminal law and criminology at the Faculty of Law, UNSW Sydney. His main areas of research are border policing and State Crime. He is a member of the Editorial Board of the *State Crime* journal.

Deena Haydon is an independent researcher in Northern Ireland. Linking research, theory, policy and practice her main interests are childhood, family support, youth justice, and children's rights. Deena's publications include a co-authored book, journal articles, book chapters, reports, resources for children and practitioners, as well as submissions to the UN Committee on the Rights of the Child. She has presented to academic and public audiences in the UK, Europe, the US, Australia and New Zealand.

Nessa Lynch is a Senior Lecturer at the Faculty of Law, Victoria University of Wellington, where she teaches and researches in the areas of youth justice, criminal law and sentencing.

Margaret S. Malloch is Associate Professor in Criminology at the University of Stirling, and Associate Director with the Scottish Centre for Crime and Justice Research. Her work is focused on challenging the ongoing and international tendency to prioritise criminal justice solutions to the detriment of justice more broadly.

Tracey McIntosh (Ngāi Tūhoe) is a Professor of Indigenous Studies at the University of Auckland. Her research focuses on the incarceration of Indigenous peoples, inequality, poverty and justice. She is

engaged in community work and served as co-director of Ngā Pae o te Māramatanga, NZ's Māori Centre of Research Excellence.

Riki Mihaere (Ngāti Kahungunu) engaged 'A kaupapa Māori analysis of the use of Māori cultural identity in the prison system' for his Ph.D. thesis at Victoria University of Wellington (VUW). From 2016–2017, he was a Post-Doctoral Fellow on a Rutherford Discovery Fellowship project at the Institute of Criminology, VUW.

Emma K. Russell is a Lecturer in Crime, Justice and Legal Studies at La Trobe University, Australia. Her research explores how social movements challenge, critique and shape systems and spaces of policing and punishment. She has a keen interest in activist histories and queer, feminist and abolitionist politics. Her recent publications appear in the journals *Crime Media Culture*, *Critical Criminology* and *Australian Feminist Law Journal*. With Bree Carlton, she is co-author of *Resisting Carceral Violence* (Palgrave Macmillan).

David Scott works at the Open University, UK. He has been directly involved in abolitionist and social justice activism for more than twenty years. He is the author of several books including the trilogy *Emancipatory Politics and Praxis* (EG Press, 2016), *Against Imprisonment* (Waterside Press, 2018) and *The Estranged Other* (Waterside Press, forthcoming 2019).

Phil Scraton is Professor Emeritus in the School of Law, Queen's University Belfast. His research includes controversial deaths and the state (Hillsborough Independent Panel) and the politics of incarceration (NI Human Rights Commission). Recent books include: *Power, Conflict and Criminalisation*; *The Violence of Incarceration*; *The Incarceration of Women; Hillsborough: The Truth*; and, *Women's Imprisonment and the Case for Abolition*.

Elizabeth Stanley is a Reader and Rutherford Discovery Fellow at the Institute of Criminology, Victoria University of Wellington. Her research focuses on state crimes, human rights, detention and social justice. Her publications include *Torture, Truth and Justice*; *State Crime and Resistance* (with Jude McCulloch); and *The Road to Hell: State Violence against Children in Post War NZ*.

List of Tables

Table 7.1	Sentencing powers for youth convicted of homicide across a selection of jurisdictions	155
Table 7.2	Children and young persons convicted of murder in New Zealand 2002–2015 ordered by sentence length ($N = 18$)	157

1

Human Rights and Incarceration

Elizabeth Stanley

Introduction

We live in a carceral age. In Anglophone societies, many groups—offenders, 'non-citizens', people with disabilities, those with mental health problems, children 'in care', and others—are locked up. At the same time, carceral responses can only be regarded as demonstrating "the power of the imaginary to create acquiescence in the absurd" (Carlen 2008: 10). Incarceration never alleviates the harms that it purports to deal with or prevent. Prisons, for example, have no substantive bearing on crime rates, while immigration detention does not stem the conflicts or pressures from which migrants flow. The use of carceral institutions also makes social problems worse. The list is long but, among other outcomes, incarceration: routinises cultures of offending, violence and substance use; developmentally-damages children and

E. Stanley (✉)
Institute of Criminology, Victoria University of Wellington, Wellington, New Zealand
e-mail: elizabeth.stanley@vuw.ac.nz

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young people; preserves racialised power relations and bias; sustains gendered forms of regulation and violence; and leads to stigma, discrimination and poverty. These impacts are not individualised. They reach across generations, so much so that incarceration and its effects are normalised in some communities. In short, carceral sites indicate and perpetuate violations of human rights for vast numbers of people.

In many respects, human rights could be regarded as a 'failed project' for those incarcerated in neo-liberal states. As this chapter shows, their human rights are continually eroded by state power relations, criminalisation practices, legal processing and administrative agendas. In response, we might ask: are rights still worth prioritising in relation to incarceration? And, if so, how might we envision or strengthen them? These questions are the foundation for this book.

This introduction considers some of the legal frameworks through which human rights are established, debated and monitored. It sets out the landscape of protective 'carrots' and 'sticks' that may encourage or shame states into human rights conscious activity. And, it reflects upon the necessity of reaching beyond legal and institutional responses, towards new forms of justice. After all, the values of human rights deepen the chance of better lives. They herald opportunities for freedom, dignity, respect, peace, equity, compassion and shared humanity. And, in doing so, they present vital tools to the social problems of 'crime', harms and incarceration.

Human Rights Frameworks

Human rights have long guided the operation of prisons, justice residences, and other places of detention. Some detention-related rights—such as habeas corpus—are centuries old, and have formed the basis of our liberal democracies. However, from the mid-twentieth century in particular, the United Nations has progressed laws, rules and principles to underpin the fair treatment and dignity of all detainees, and they have established a parallel network of mechanisms for oversight and accountability. In some parts of the world, states are now bound by regional laws and bodies (such as the European Convention on Human

Rights and its corresponding Court). The Council of Europe, for example, has established that prison conditions should resemble those in the community with greater efforts being made to decriminalise and develop alternative responses to crime (Scharff-Smith 2016). Many states retain domestic human rights laws that codify civil and political rights. Protections for incarcerated people are promised across the world.

It is not within the scope of this introduction to chart the array of relevant laws or norms. However, UN instruments—like the *International Covenant on Civil and Political Rights* or the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*—set the ground for rights relating to incarceration. They establish that all those deprived of liberty shall be humanely treated, with respect for their inherent dignity. They spell out rights to privacy, family life, freedom of expression, liberty and security of the person, among other rights, that all incarcerated people should enjoy. They prohibit all torture, establishing that states should never return or extradite someone (non-refoulement) when there are grounds to believe they will be tortured on arrival. The *Basic Principles for the Treatment of Prisoners* assert that all prisoners should retain "the human rights and fundamental freedoms" set out in all UN Covenants and Protocols, "except for the limitations that are demonstrably necessitated by the fact of incarceration" (Principle 5).

Further directions are found in the UN's *Standard Minimum Rules for the Treatment of Prisoners*. The most recent 2015 Rules (aka the *Nelson Mandela Rules*) attend to the sharp end of imprisonment—such as prohibiting solitary confinement (defined as lock downs of 22 hours or more a day without meaningful human contact), painful restraints, or excessive 'discipline and order'. They provide practical guidelines on food, accommodation, clothing, and so on. However they also emphasise the need for authorities to be attentive to how imprisonment, in and of itself, produces violations. For example, Rules establish the need for prisoners to receive equitable health care, including care related to mental health problems that can be "brought on by the fact of imprisonment" (Rule 30(c)). Prisons should not "aggravate the suffering inherent in" situations of liberty deprivation (Rule 3).

Alongside these instruments lie a raft of UN Conventions and Declarations that prohibit harmful practices towards groups including Indigenous people, women, children, and persons with disabilities. As detailed in subsequent chapters, many provide explicit instructions to prevent discrimination, criminalisation and incarceration. They dovetail with the UN's guiding *International Covenant on Economic, Social and Cultural Rights* (ICESCR) that asserts "the ideal of free human beings enjoying freedom from fear and want" (Preamble). This instrument establishes numerous rights for all, including: to self-determination, to education, to work, to join a union and to strike, to receive fair wages for a decent living, to enjoy safe and healthy working conditions, and to receive social security. Everyone has rights to "adequate food, clothing and housing, and to the continuous improvement of living conditions" (Article 11) and to enjoy "the highest attainable standard of physical and mental health" (Article 12).

Signatory states to these international laws participate in regular oversight reporting on their rights progress. Alongside Universal Periodic Reviews from the UN Human Rights Council (UNHRC), all conventions are overseen by specific UN Committees that monitor, ensure compliance and promote preventative actions. On a cyclical basis, UN Committees visit states, engage with civil society groups, hear complaints, receive and produce reports on progress, and make recommendations for remedies and prevention. The UN has also established 'National Preventive Mechanisms' (NPMs) as part of the *Optional Protocol to the Convention Against Torture*. This means that independent NPMs now have a complementary mandate to make regular visits to places of detention, including unannounced visits. NPMs subsequently recommend improvements and measures to prevent ill-treatment, publish reports, and exchange information with their international counterparts. All of these Committees have a role in exposing the gaps between stated laws or policies and actual practice, and they regularly provide a litany of abusive treatments and harmful conditions across carceral sites.

Reporting mechanisms reflect ritualism but, in bringing increased scrutiny to rights-eroding practices, they shame states and mobilise communities by educating and agitating on human rights concerns. They lead civil society groups and activists to take an increased interest

in monitoring standards and to create "new lines of accountability" that "promote the bottom-up development of a human rights culture" (Weber et al. 2014: 46). Committees may also be empowered to undertake inquiries of systemic violations of human rights, and to demand changes on those terms. And, it is clear that changes in one country create ripple effects across other jurisdictions (Barbaret 2014).

The judiciary may also act as a protective force of accountability (Naylor 2016) and, at certain junctures, has substantive impacts. For example, mass-imprisonment in the USA has been directly challenged by court decisions. In *Brown v Plata* [2011], judges found that state prisons were so overcrowded that they constituted "cruel and inhuman" conditions. And, in the face of extreme mental health and medical problems for prisoners, they upheld a "systemwide population-reduction order" (Simon 2014: 134). This provoked deep changes: not least a drop in the Californian prison population, "from its 2006 peak of 173,000 to 130,000" in 2014 (Schlanger 2016: 65). Court decisions also led to improved conditions of confinement for those with a range of medical or mental health needs, including those relating to disabilities. These emerged from a particular "eco-system"—the tenacity of empathetic lawyers, a hospitable bench and the development of "humanitarian anxiety" (ibid.; Simon 2014: 150). For Simon (ibid.: 137), such decisions represent a new "dignity cascade" in which "society recognizes that it has profoundly violated human dignity and in response expands its very understanding of what humanity includes and requires of the law". It also reminds us that—even in the most strident of carceral states—the administration of law offers useful scope for protections. Nonetheless, as the next section demonstrates, there are many factors that erode rights for those targeted for incarceration.

Incarceration and the Erosion of Rights

Incarceration always sustains harm—the denial of movement and the separation of individuals from their families and loved ones[1] challenge two of the most crucial aspects of human experience: to have freedom, and to be connected in close relationships. For some groups, like

children, incarceration damages human development and personality, regardless of the quality of conditions, staff relationships or treatments on offer.

Yet, beyond these deprivations, incarcerated people regularly find that their access to established human rights is deeply challenged. Prisoners, for example, know that their access to multiple rights including rights to vote, to receive equivalent health care, to have a family life, to benefit from education, to work or to have personal safety are all deeply compromised. This section considers why this occurs in relation to issues of state legitimacy, criminalisation, managerialism and the law.

Legitimacy

Modern states have always relied upon violence, or its threat, to regulate economic, political, legal and socio-cultural life (Green and Ward 2004). And, given that states claim "the *monopoly of the legitimate use of physical force*" (Weber 1970: 77), they assert "an entitlement to do things which if anyone else did them would constitute violence and extortion" (Green and Ward 2004: 2–3). The act of incarceration—a violence in and of itself—is made legitimate under state governance. However, beyond the simple process of removing freedom of movement, states regularly engage with violations against incarcerated people as a means to assert state power (Stanley 2017a). For example, the egregious Australian abuses of 'non-citizens' held in offshore processing centres or the British refusal to allow prisoners to vote have been bolstered by state arguments of border protection, state sovereignty and the reassertion of government controls against 'interfering' outsiders.

Building legitimacy must, however, be carefully managed by states and powerful others. We frequently view human rights as vital for developing countries, whose deviance might be rehabilitated through well-meaning human rights monitoring and training (Jefferson 2005).[2] But, at home, human rights are usually minimised or silenced in education, media or politics (Boyle and Stanley 2017). Those who campaign for rights can also be quickly vilified and sometimes severely punished—for example, the *Australian Border Force Act 2015* enables the two-year imprisonment of "entrusted persons" who speak out about

gross human rights violations in immigration detention centres. Such threats demonstrate that violence, by state agencies or their contractors, requires careful policing to retain popular legitimacy.

At the same time, Anglophone states are also well attuned to the merits of demonstrating allegiance to human rights. State legitimacy is simultaneously dependent upon human rights attainment or, at the very least, the marketing of human rights consciousness. States will often manage human right discourses to their own advantage: demonstrating "moral virtue" at certain times (McCulloch and Scraton 2009: 6), such as during interactions with UN agencies. There are therefore contradictory approaches in operation as states seek legitimacy by simultaneously asserting human rights engagement while providing the material, discursive and institutional conditions under which rights are violated. Under these circumstances, it pays to be attentive to inconsistencies in rhetoric, policy and practice, and to understand that any attempt to embed rights must confront and negotiate state politics.

Criminalisation

Criminalisation is crucial to perspectives on who 'should' be incarcerated or who 'deserves' violation. Anglophone countries have long histories of criminalisation on the grounds of invisibility or distancing—colonising and colonial states were built through the discursive and practical control of difference. Indigenous people have been killed, brutalised, assimilated and incorporated as a result, but colonial legacies remain through the ongoing mass incarceration of Indigenous peoples, black populations, and other minority groups. Representational distancing progresses further, such that incarceration is directed to welfare 'bludgers', to people with mental health 'disorders', to drug 'addicts', to the 'illegals' that arrive at borders, or to those deemed 'dangerous' on other grounds. Human rights protections are often dismissed by states in a bid to control, deter or punish 'them'—in the emphasis on threats, we lose sight of human plight (Simon 2014).

Criminalisation processes are often guided by highly politicised narratives of risk or securitisation that eclipse human rights values and

commitments. These concepts are opaque, ever-changing, but very powerful in that they are used to legitimise violations without any real need for evidence of effectiveness or necessity. Many liberal democratic states are now dominated by an assumption that "we will somehow undermine our collective safety and security and the very foundations for social order" if we recognise rights (Drake 2012: 149). This has become so entrenched that violations, and the dismissal of fundamental legal rights or punishment principles, are increasingly normalised. The use of mandatory detention or civil detention, adult punishments imposed on children, 'three strikes' legislation or 'supermax' conditions are all invoked to neutralise threats (Simon 2014). Moreover, given the opacity of real or imagined threats, violations are also pre-emptively directed, on the grounds that some individuals may engage in criminality or 'risky' behaviour at some point (Stanley 2017b). Under these conditions, universal rights are replaced by a notion that human rights may only be accorded to those deserving (largely mythical) law-abiding citizens—not just now, but also in the imagined future (Genders and Player 2014; McCulloch and Wilson 2016).[3]

Criminalisation processes are also self-perpetuating—criminalisation sustains incarceration but the use of incarceration also reinforces criminalisation. To be incarcerated becomes a signifier of risk, so much so that in current managerialist and multi-agency working contexts, those who have experienced incarceration can be perpetually labelled as risky. Under these circumstances, any violations are also articulated as an individual's problem for being 'dangerous', 'threatening' or different in the first place. These redesignations have significant individual effects but they also reassert carceral legitimacy.

Managerialism

Under current conditions, the publicity of violations also brings risks to carceral institutions (Whitty 2011). Appearing to be human rights-compliant remains crucial to institutional "legitimacy, authority, and international reputation" (Hannah-Moffat 2012: 256). Yet, in an era in which managerialist frames dominate, many institutions prioritise tick-box compliance, producing significant gaps between human

rights discourse and actual practice. For example, consider the 'right to life'. In a bid to prevent prisoner deaths, many facilities have introduced long lock-downs in barren cells, anti-rip gowns, continual observation through CCTV, waist restraints, and tie-down beds for those deemed 'at risk' of suicide. Such conditions and treatments, undertaken to ensure 'the right to life', are widely condemned for increasing fear, depression and despair among those already suffering great distress (Moore and Scraton 2013; Harris and Stanley 2017).

These examples remind us that while agencies adhere to the language of human rights in their brochures, training manuals, policy and guidelines, the translation of human rights into practice is, at best, "ambiguous and open to negotiation" (Aas and Gundhus 2015: 4). Compliance is a relatively elastic condition. And, under a managerialist logic—where, for example, deaths in custody are a key performance indicator (KPI) while prisoner despair is not—human rights can be successfully audited out (Carlen 2008).[4] This performance approach produces "paper accountability… rather than ethical accountability to professional standards" (Hannah-Moffat 2012: 256). It ensures that rights are restricted and co-opted in ways to provide "a new cloak of legitimacy for existing penal practices" (Scott 2013: 238; Carlen 2010).

Law

The law may further provide carceral legitimacy. While, as noted above, the law may facilitate protection to incarcerated people, this often does not happen. Part of the problem, here, relates to the inability of law to challenge the structural, institutional or socio-cultural conditions in which violations occur. The causal or cumulative effects of colonisation, criminalisation or inequalities go unaddressed by individualised legal processes. Some areas of international human rights law also need significant redevelopment to make them fit for contemporary purpose. For example, the *Convention Relating to the Status of Refugees* allows states to determine their own responses to individual claimants, and has no guide for responses to mass displacements. Correspondingly, many states have developed a network of dehumanising carceral sites for those arriving at their borders (Grewcock 2016).

Beyond this, securing human rights through legal cases is not easy (Easton 2013; van Zyl Smit and Snacken 2011). Within Anglophone countries, statutory organisations that monitor detention facilities do not have adequate resources or power to identify problems or compel change. Legal aid funding is limited, it is hard to gather evidence, and successful cases (that rely on professionals with significant legal expertise) can take years (Parkes 2007). Given that rights laws are also commonly viewed as "charters for villains, career criminals, and terrorists" (Easton 2013: 487), most countries have instituted measures to reduce opportunities for prisoners or other detainees to seek redress—by blocking available remedies, removing entitlements to legal costs, barring compensation, or even stopping claimants from taking complaints altogether. Even if a case gets to court, the rights of incarcerated people are regularly read down as judges defer to state arguments that violations are necessary for reasons of security, order, safety or crime prevention (Drake 2012). While, even in successful cases, judicial judgments have limited trickle down effects. Courts subsequently indicate "considerable tolerance" for systemic problems in detention, such that inadequate treatments, poor facilities and physical harms go unchallenged (Scott 2013: 246).

In summary, human rights for incarcerated people are established and downgraded in highly politicised environments. In Anglophone states, where penal punitiveness has captured political imaginations, rights are quickly silenced, minimised, devalued or dismissed by official authorities. These distorted versions of rights allow states to build power, redraw sovereign boundaries, and reassert who 'belongs' and who does not. Despite the development of laws and regulations, state institutions (and contractors) have become increasingly adept at managing human rights.

Human Rights and Social Justice

There is, clearly, a chasm between human rights laws or values and the experiences of those incarcerated (or those being propelled into detention). Part of the problem is that, over the last quarter-century, mainstream human rights have consolidated at the same time as neo-liberal economic structures that have exacerbated social injustice. Violations of

economic, social and cultural rights—including insecure working conditions, growing health inequalities, educational deficits, or the denial of welfare protections—are commonplace across Anglophone states and they have dramatically influenced the growth of punishment systems (Beckett and Western 2001; Bell 2013; De Giorgi 2013; Wacquant 2009). Such injustices are, of course, not new. In (neo)colonial societies, the dispossession of land, combined with discriminatory laws and controls, racism, punitive welfarism, socio-cultural identity loss, and economic marginalisation have propelled Indigenous people into courts and carceral institutions (Anthony 2013; Cunneen and Tauri 2017; McIntosh 2011). They are joined by other disadvantaged groups. In these circumstances, prisons, youth justice residences and immigration detention facilities are dramatic indicators of state failures to provide rights for multiple populations.

Sustaining all of this is a dominant human rights approach that concentrates almost exclusively upon 'civil and political rights' while ignoring the 'social, economic or cultural' (or other) rights that are regularly violated through the normal inequitable workings of colonial, patriarchal and market-led state systems (Stanley 2007). In reality, these sets of human rights are interlinked, and they each give rise to binding obligations.[5] The current unpicking of mainstream rights ('civil and political rights') from social justice ('economic, social and cultural rights') does not make sense in an international rights framework. The disconnection of these Covenants demonstrate Anglophone statehood and political interests rather than any codified hierarchy of rights.

There are ramifications to all of this. First, the carceral 'industry' mirrors social injustice. More people are imprisoned, and an increasing number of agencies are granted the power to incarcerate—seen, for example, in the rise of immigration-based detention centres (Stanley 2017b). Expanding the use of incarceration ensures that disadvantage is maintained, normalised and extended. This is a circular relationship, as increased spending on carceral sites (as well as community supervisions, testing regimes, electronic monitoring and so on) ensures tighter purse-strings on social spending that would alleviate economic, social and cultural violations that give rise to so much incarceration in the first

place. Meanwhile, incarceration amplifies violations, extending and creating new relationships of colonisation, patriarchy, adultism and other structural inequalities (McCulloch and Scraton 2009).

Second, some individuals and groups become carceral subjects. That is, while we often reflect upon incarceration as an isolated event (a period of time, in a specific carceral space), some populations are continuously targeted for incarceration across life-times and generations, in ways that can only be regarded as self-sustaining. Some people spend years ricocheting through the system—from care residences to youth justice residences to prisons to mental health institutions, and so on. Their incarceration is often deemed to be the consequence of 'bad' individual choices, rather than social problems. Yet, those enmeshed in this transcarceration, and the "liminal spaces between prison and 'community'" (Cunneen et al. 2013: 183), endure multiple disadvantages and victimisations. Their criminalisation is developed through insecure human rights in the community.

Third, under such conditions, incarceration is often marketed as an opportunity to meet needs—allowing individuals to take a break from poverty, drug use or violence. Incarceration is even recast as a time for 'therapy', enabling people to reconnect with their culture, or to undertake beneficial programmes. Incarceration can be "reinvented as an *appropriate* response" to a whole host of structural, social and institutional failings towards people (Cunneen et al. 2013: 109). In these circumstances, apparently progressive rights-based reforms may even "become part of the problem" (Malloch 2013: 37).[6] While it is enticing to accept 'rehabilitation services', 'community custody', 'gender responsive approaches' or 'indigenous units' as human-rights conscious changes, critical examinations remind us that they entrench systems of punishment, lead to repressive conditions, and remove our attention from the structural and socio-cultural shifts necessary to challenge social justice (Cohen 1988). Apparently progressive reforms can consolidate carceral systems (Blagg 2008; Brown and Schept 2017; Gottschalk 2013) and "cement" the use of criminal justice (over social justice) responses to those who are "deemed as high risk" or "high need" (Cunneen et al. 2013: 191). They provide the illusion of change (Hannah-Moffat 2012).

The task, for many of us, is to identify and pursue the culturally "transformative work that [is] required to meaningfully alter" carceral dynamics (McLeod 2015: 1207). It requires multiple initiatives. It demands cultural reforms in carceral institutions, such that institutions are led by relational rights cultures that are empathetic, supportive, kind and that foster equal standing (Genders and Player 2014). It requires that governments act on their rights obligations, to ensure incarcerated people have everything they need to flourish (including education, employment, healthcare, counselling, access to family or social life, and leisure opportunities). It needs human rights to become more than "a metric and something to react against" (Piacentini and Katz 2017: 9). But, it also necessitates the advancement of true alternatives to detention. This includes social policies to lessen the criminogenic elements of institutions and societies, and to seriously limit the use of incarceration. It entails abolitionist strategies that galvanise structural and socio-cultural change through the attainment of human rights, including anti-discrimination initiatives, quality education or accessible health care within communities (Brown and Schept 2017; Davis 2003). The ability of populations to access social, economic and cultural rights (together with their group rights) would have profound effects on the broader forces of crime, migration and deviancy that sustain carceral states.

These processes require positive imaginations to reconstruct social-cultural, political and economic arrangements (McLeod 2015) in ways that displace the inequitable power relations that propel certain populations into the criminal justice system and that undermine the standing of incarceration. They invariably require us to advance new institutions and social projects, and to progress "communities of warmth" that empower and protect people through political arrangements that emphasise welfare, environmental and personal health, education, housing, cultural celebrations, gender safety, and human spirit (Sim 2008: 155). Within colonial contexts, these developments have to be further "aligned with Indigenous struggles for freedom, self-determination, and social justice" (Baldry et al. 2015: 183). It means that states would need to move away from "governing through crime" (Simon 2006) in favour of governing through rights.[7]

This Collection

Building upon the above debates—as well as previous criminological work (such as Brown and Wilkie 2002; Drenkhahn et al. 2016; Jefferson and Gaborit 2015; Naylor et al. 2015; Weber et al. 2014, 2017)—the following chapters develop our thinking on the connections between human rights and incarceration across carceral sites in Australia, New Zealand and the UK. In relation to case-study material focused on groups that are disproportionately affected through incarceration—including Indigenous populations, children, women, those with disabilities, and 'non-citizens'—contributors spell out the ways in which carceral conditions, treatments and practices persistently violate human rights laws and norms.

Importantly, this book does not just consider how and why human rights are eroded but what might be done in response. Contributors consider how individuals and groups have engaged and demanded rights, often in the most difficult situations. They chart the community activism, media engagement, legal changes and international campaigning that have propelled progressive shifts for those incarcerated, and they establish useful frameworks to continue these strategies. Beyond this, contributors reflect on how our human rights thinking and approaches can move beyond carceral options and logics. In short, they spell out some of the decarceral and abolitionist strategies that are necessary to invigorate humanity-enriched, socially just responses to the problems of crime and harms.

Chapter 2, by Deena Haydon, examines children held in secure accommodation on welfare grounds. Drawing on research with 21 children in a Northern Irish secure care centre, she meticulously records how childrens' 'best interests' are regularly dismissed in favour of pragmatic criminalisation, risk management and institutional expediencies that breach rights standards. Haydon highlights the real potential of legal and policy standards to advance childrens' rights in secure care, but she prioritises a critical agenda that emphasises socially just measures to prevent criminalisation and incarceration for children in the first place.

Haydon's approach of contextualising international and national legal standards in a structural and institutional context is continued by

Eileen Baldry, in Chapter 3. Baldry examines the work of the UN Committee on the Rights of Persons with Disabilities [UNCRPD] in Australia and, in doing so, highlights the potential of international interventions to place obligations on states to pursue systemic changes. She shows how, under neoliberalism, diversionary and therapeutic measures have done little to stop large numbers of people with mental or cognitive disability from being funnelled through the criminal justice system. In response, Baldry prioritises a disability social justice framework to improve services and treatments while embedding equitable arrangements to ensure those with disabilities can enjoy access to and enjoyment of rights, including the right not to be criminalised.

The potential of UN engagements is a focus for Elizabeth Stanley and Riki Mihaere, in Chapter 4. They examine the nature and impact of UN interventions to the (neo)colonial criminalisation and 'over-representation' of Māori in New Zealand prisons. Using extensive documentary analysis and interview data, they unpick how the NZ state engages in pervasive ritualism to deflect scrutiny and secure state legitimacy through performative reporting to UN agencies. Despite this, UN engagement remains a necessary tool for Māori to develop evidence, contest state-led myths, consolidate Indigenous networks and affirm Indigenous rights. Any justice for Māori must, they note, prioritise rights in ways that propel self-determination and challenge the normalisation of the prison.

In Chapter 5, Michael Grewcock exposes the endemic violations by the Australian state against 'non-citizens'. Charting the extensive violence, degradations and harms from offshore processing and indefinite mandatory detention policies, he shows how border controls are constituted in law as legitimate expressions of sovereign interest. He details how the Australian state employs human rights laws to justify violations against adult and child refugees. Such actions have faced long-standing resistance from international and national bodies, activists, academics and civil society. Grewcock illustrates the value of this resistance to develop networks of solidarity, mobilise demands, and build an ethos of humanity beyond borders.

The potential of civil society resistance is further developed by David Scott, in Chapter 6. Scott addresses the deaths that permeate the prison

experience in England and Wales. Arguing that the right to life is extinguished through forms of civil, social and corporeal death, he shows how penal abolitionists contest the 'spirit of death' through the strategies of speaking, naming and making something happen. Among other outcomes, activism by prisoners, family members and advocates can expose the nature of violence, provide collective remembrance, re-establish humanity, and sometimes guide political, media and public debates. In conjunction with official reports from Inspectors, Ombudsman and others, they build an *agora* in which the right to life is prioritised.

In Chapter 7, Nessa Lynch reflects upon the opportunities that still exist to change criminalisation and incarceration practices through legal and policy action. With a focus on the youth justice system in New Zealand, she shows how and why 'serious' young offenders continue to be sentenced to long sentences of imprisonment, administered through adult correctional systems. These responses are at distinct odds with international and national rights standards towards children. Lynch envisions a human rights model (encompassing seven key principles) that would allow age-appropriate accountability through national youth justice systems for all young offenders.

The opportunities to develop new rights-reflecting practices is the focus of Bree Carlton and Emma Russell's Chapter 8. Working from archival and documentary research, alongside interviews and focus groups, they explore the early 1980s campaigns to improve conditions for female prisoners in Victoria, Australia. They show how reform projects exposed women's carceral experiences of violence, discrimination and degradation in ways that, while radical at the time, brought short-term gains. Carlton and Russell highlight how these projects provided the rationales and justifications for the expansion of imprisonment for women, and failed to shift many long-standing violations in the prison estate. The problem, they note, is that activists focused on reform, not abolition.

The problems that ensue from failing to prioritise abolition are further considered by Phil Scraton in Chapter 9. He draws upon the changing dynamics of imprisonment (against wide-scale violations during 'the Troubles'), to show how reform-based approaches have failed to challenge egregious breaches of international and national human rights in Northern Irish prisons. Compelling reports from human rights