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## 1NC – SetCol

#### Settler colonialism is the permeating structure of the nation-state which requires the elimination of Indigenous life and land via the occupation of settlers. The appropriation of land turns Natives into ghosts and chattel slaves into excess labor.

Tuck and Yang 12

(Eve Tuck, Unangax, State University of New York at New Paltz K. Wayne Yang University of California, San Diego, Decolonization is not a metaphor, Decolonization: Indigeneity, Education & Society Vol. 1, No. 1, 2012, pp. 1-40, JKS)

Our intention in this descriptive exercise is not be exhaustive, or even inarguable; instead, we wish to emphasize that (a) decolonization will take a different shape in each of these contexts though they can overlap and that (b) neither external nor internal colonialism adequately describe the form of colonialism which operates in the United States or other nation-states in which the colonizer comes to stay. Settler colonialism operates through internal/external colonial modes simultaneously because there is no spatial separation between metropole and colony. For example, in the United States, many Indigenous peoples have been forcibly removed from their homelands onto reservations, indentured, and abducted into state custody, signaling the form of colonization as simultaneously internal (via boarding schools and other biopolitical modes of control) and external (via uranium mining on Indigenous land in the US Southwest and oil extraction on Indigenous land in Alaska) with a frontier (the US military still nicknames all enemy territory “Indian Country”). The horizons of the settler colonial nation-state are total and require a mode of total appropriation of Indigenous life and land, rather than the selective expropriation of profit-producing fragments. Settler colonialism is different from other forms of colonialism in that settlers come with the intention of making a new home on the land, a homemaking that insists on settler sovereignty over all things in their new domain. Thus, relying solely on postcolonial literatures or theories of coloniality that ignore settler colonialism will not help to envision the shape that decolonization must take in settler colonial contexts. Within settler colonialism, the most important concern is land/water/air/subterranean earth (land, for shorthand, in this article.) Land is what is most valuable, contested, required. This is both because the settlers make Indigenous land their new home and source of capital, and also because the disruption of Indigenous relationships to land represents a profound epistemic, ontological, cosmological violence. This violence is not temporally contained in the arrival of the settler but is reasserted each day of occupation. This is why Patrick Wolfe (1999) emphasizes that settler colonialism is a structure and not an event. In the process of settler colonialism, land is remade into property and human relationships to land are restricted to the relationship of the owner to his property. Epistemological, ontological, and cosmological relationships to land are interred, indeed made pre-modern and backward. Made savage. In order for the settlers to make a place their home, they must destroy and disappear the Indigenous peoples that live there. Indigenous peoples are those who have creation stories, not colonization stories, about how we/they came to be in a particular place indeed how we/they came to be a place. Our/their relationships to land comprise our/their epistemologies, ontologies, and cosmologies. For the settlers, Indigenous peoples are in the way and, in the destruction of Indigenous peoples, Indigenous communities, and over time and through law and policy, Indigenous peoples’ claims to land under settler regimes, land is recast as property and as a resource. Indigenous peoples must be erased, must be made into ghosts (Tuck and Ree, forthcoming). At the same time, settler colonialism involves the subjugation and forced labor of chattel slaves, whose bodies and lives become the property, and who are kept landless. Slavery in settler colonial contexts is distinct from other forms of indenture whereby excess labor is extracted from persons. First, chattels are commodities of labor and therefore it is the slave’s person that is the excess. Second, unlike workers who may aspire to own land, the slave’s very presence on the land is already an excess that must be dis-located. Thus, the slave is a desirable commodity but the person underneath is imprisonable, punishable, and murderable. The violence of keeping/killing the chattel slave makes them deathlike monsters in the settler imagination; they are reconfigured/disfigured as the threat, the razor’s edge of safety and terror. The settler, if known by his actions and how he justifies them, sees himself as holding dominion over the earth and its flora and fauna, as the anthropocentric normal, and as more developed, more human, more deserving than other groups or species. The settler is making a new "home" and that home is rooted in a homesteading worldview where the wild land and wild people were made for his benefit. He can only make his identity as a settler by making the land produce, and produce excessively, because "civilization" is defined as production in excess of the "natural" world (i.e. in excess of the sustainable production already present in the Indigenous world). In order for excess production, he needs excess labor, which he cannot provide himself. The chattel slave serves as that excess labor, labor that can never be paid because payment would have to be in the form of property (land). The settler's wealth is land, or a fungible version of it, and so payment for labor is impossible.6 The settler positions himself as both superior and normal; the settler is natural, whereas the Indigenous inhabitant and the chattel slave are unnatural, even supernatural. Settlers are not immigrants. Immigrants are beholden to the Indigenous laws and epistemologies of the lands they migrate to. Settlers become the law, supplanting Indigenous laws and epistemologies. Therefore, settler nations are not immigrant nations (See also A.J. Barker, 2009). Not unique, the United States, as a settler colonial nation-state, also operates as an empire utilizing external forms and internal forms of colonization simultaneous to the settler colonial project. This means, and this is perplexing to some, that dispossessed people are brought onto seized Indigenous land through other colonial projects. Other colonial projects include enslavement, as discussed, but also military recruitment, low-wage and high-wage labor recruitment (such as agricultural workers and overseas-trained engineers), and displacement/migration (such as the coerced immigration from nations torn by U.S. wars or devastated by U.S. economic policy). In this set of settler colonial relations, colonial subjects who are displaced by external colonialism, as well as racialized and minoritized by internal colonialism, still occupy and settle stolen Indigenous land. Settlers are diverse, not just of white European descent, and include people of color, even from other colonial contexts. This tightly wound set of conditions and racialized, globalized relations exponentially complicates what is meant by decolonization, and by solidarity, against settler colonial forces. Decolonization in exploitative colonial situations could involve the seizing of imperial wealth by the postcolonial subject. In settler colonial situations, seizing imperial wealth is inextricably tied to settlement and re-invasion. Likewise, the promise of integration and civil rights is predicated on securing a share of a settler-appropriated wealth (as well as expropriated ‘third-world’ wealth). Decolonization in a settler context is fraught because empire, settlement, and internal colony have no spatial separation. Each of these features of settler colonialism in the US context empire, settlement, and internal colony make it a site of contradictory decolonial desires7. Decolonization as metaphor allows people to equivocate these contradictory decolonial desires because it turns decolonization into an empty signifier to be filled by any track towards liberation. In reality, the tracks walk all over land/people in settler contexts. Though the details are not fixed or agreed upon, in our view, decolonization in the settler colonial context must involve the repatriation of land simultaneous to the recognition of how land and relations to land have always already been differently understood and enacted; that is, all of the land, and not just symbolically. This is precisely why decolonization is necessarily unsettling, especially across lines of solidarity. “Decolonization never takes place unnoticed” (Fanon, 1963, p. 36). Settler colonialism and its decolonization implicates and unsettles everyone.

#### Unions’ self-portrayal as social justice advocates ignores their mistreatment of Indigenous industry—they threaten Indigenous sovereignty and hide behind the courts.

Harvard Law Review 21

Harvard Law Review (law review by an independent student group at Harvard Law School); “Tribal Power, Worker Power: Organizing Unions in the Context of Native Sovereignty”; *Indian Law*, Harvard Law Review; January 11, 2021; <https://harvardlawreview.org/2021/01/tribal-power-worker-power-organizing-unions-in-the-context-of-native-sovereignty/>; EMJ

Since 1990, employees of businesses owned and operated by Native nations have increasingly sought to amplify their voices in the workplace through union representation. Many of these (primarily non-Native) workers have invoked the protections of the National Labor Relations Act (NLRA). The protections of federal labor law have been crucial to building worker power in private-sector enterprises. But to many tribal governments, this invocation of a federal statute is an affront to the inherent sovereignty of Native nations. Labor organizing in tribal enterprises uncovers a seemingly intractable tension between two classes of power-building institutions: unions and tribes. Unionizing workers, often members of non-Native minority groups, feel disenfranchised in their workplaces, while Native governments perceive intervention into their internal affairs as threatening their inherent sovereignty — sovereignty that has been weakened through congressional action and Supreme Court decisions. This tension is especially acute in the ideological context of the modern labor movement, which casts unionism as rooted in values of progressivism and social justice. This Note attempts to ameliorate that tension by advocating a labor movement that builds worker power under the protections of tribal, rather than federal, law. This Note proceeds in four parts. Part I sets out the historical backdrop, while Part II outlines the doctrinal context. A question central to many tribal-labor conflicts is whether general federal regulatory statutes, including the NLRA, apply to Native nations. The Supreme Court has addressed this question only in dictum, and lower courts are divided. Part III argues that, under federal Indian law doctrine, general federal labor statutes do not apply to tribally owned businesses. As several scholars have articulated, interpreting federal labor law as inapplicable to these businesses is consistent with Supreme Court precedent, the text and history of the NLRA, and the nature of tribal enterprise. Part IV examines the implications of this argument. Drawing on examples of existing tribal labor-relations schemes, this Part encourages worker advocates to see organizing in tribal enterprises as an opportunity to amplify workers’ voices while honoring Native sovereignty. In the absence of federal regulation, unions and Native nations may find common ground as institutions dedicated to building power for their members. I. Workers’ power to self-govern through unionization hit an apex in the mid-twentieth century. The original NLRA, promulgated as the Wagner Act in 1935, promoted a goal of building worker power and established a framework for self-governance in the private-sector workplace through collective bargaining. Workers organized under the NLRA and its public-sector corollaries are able to earn more than nonunionized workers, enjoy more benefits and greater stability, and have more control over the conditions of their employment. Since the 1930s, however, union protections have been eroded: changing economic forces weakened traditionally unionized American industries; the Taft-Hartley amendments of 1947 shifted the NLRA’s purpose away from promoting worker power; state statutes and unfavorable court decisions have limited public-sector workers’ ability to bargain collectively; and aggressive employer resistance to organizing has become commonplace, limiting workers’ ability to form new unions. As union membership declined, some unions, especially in the service sector, began explicitly to link the labor movement to broader social justice issues, positioning collective action as an essential tool for building power among marginalized groups. Unions became involved in community organizing and nonlabor social movements. This approach has seen some notable successes, as high-profile collective actions have helped cast unions as drivers of social justice. Unions and Native nations encountered intermittent conflict throughout the twentieth century. During the Depression, pay disparities between Native and non-Native miners contributed to Navajo workers’ crossing picket lines. In the mid-twentieth century, several tribal governments enacted “right-to-work” laws; in response, unions called on the National Labor Relations Board (NLRB) to assert jurisdiction over tribally owned businesses operating in Indian country. The Board declined to do so, and unions continued to organize in tribal enterprises without the protections of federal labor law. An increase in service-sector organizing in the 1990s coincided with the growth of Indian gaming and generated renewed interest in labor organizing in tribally owned enterprises. In 1988, Congress promulgated the Indian Gaming Regulatory Act (IGRA) with a purpose to promote sustainable self-governance by Native nations. IGRA requires states that allow gaming to permit Native nations to develop gaming enterprises, provided the two governments negotiate a compact setting out terms of operation. As states and Native nations negotiated IGRA compacts, labor organizers sought to ensure that gaming jobs would be union jobs. This activism proved a turning point in the broader relationship between organized labor and Native nations. II. Union campaigns in casinos sparked renewed legal battles over control of labor relations in Indian country. Two key inquiries underlie these legal conflicts. First, under what circumstances do general federal regulatory statutes like the NLRA apply to Native nations? Second, in the context of the NLRA specifically, are Native nations “employers” subject to regulation by the Act? 32. The potential application of the NLRA to Native nations raises other questions as well. For example, does the NLRA apply to privately owned businesses operating on tribal land? If so, does the NLRA preempt tribal regulation of those businesses? Cf. NLRB v. Pueblo of San Juan, 276 F.3d 1186, 1189–90 (10th Cir. 2002) (en banc) (considering whether § 8(a)(3) of the NLRA preempted a tribal right-to-work ordinance, which applied to all employment on tribal lands). While the principles discussed here are relevant to these questions, they are outside the scope of this Note, which focuses on labor-management relationships within tribally owned enterprises. This Part begins by describing how courts have approached the former question. It then turns to the latter, examining how the NLRB has come to exert control over tribal enterprises. A. The Applicability of General Federal Laws to Native Nations Whether and under what circumstances general federal statutes apply to Native nations is one of the most contested issues in federal Indian law. At the heart of this question are two competing sources of authority. On the one hand, Professor Felix Cohen’s influential Handbook of Federal Indian Law identifies canons of construction that guide judicial decisions in Indian law. These canons instruct: statutes and legal agreements must be “liberally construed in favor of the Indians”; “all ambiguities are to be resolved in their favor”; and “tribal property rights and sovereignty are preserved unless Congress’s intent to the contrary is clear and unambiguous.” The Supreme Court has regularly invoked these canons. On the other hand, the Supreme Court’s main foray into addressing whether general federal laws regulate Native nations stands to the contrary. In Federal Power Commission v. Tuscarora Indian Nation, the Court stated that “general Acts of Congress apply to Indians as well as to all others in the absence of a clear expression to the contrary.” Because Tuscarora itself concerned a statute that specifically addressed the use of tribal land, its principle of general applicability is widely understood to be dictum. The Supreme Court has never revisited the question. These two nonbinding authorities — the Handbook canons and the Tuscarora dictum — provide the backdrop for adjudicators considering the application of general federal statutes to Native nations. Federal courts have adopted varying approaches to these competing authorities. A plurality has followed an approach outlined by the Ninth Circuit in Donovan v. Coeur d’Alene Tribal Farm, which held that statutory silence regarding Native nations in the Occupational Safety and Health Act (OSHA) presumptively indicated an intent to regulate tribes. This presumption, however, did not apply where: (1) [T]he law touches exclusive rights of self-governance in purely intramural matters; (2) the application of the law to the tribe would abrogate rights guaranteed by Indian treaties; or (3) there is proof by legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservations. In these cases, express statutory language is called for. Coeur d’Alene also held that operating a commercial enterprise was not “purely intramural,” and OSHA regulation of tribal enterprises therefore did not infringe on self-governance. The Second, Sixth, and Eleventh Circuits have since adopted Coeur d’Alene. The Seventh Circuit has adopted a similar but distinct approach under which courts are asked to distinguish governmental and commercial functions of tribal governments, exempting tribal employers from federal regulation only when they “exercis[e] governmental functions that when exercised by . . . other governments are given special consideration.” Two federal circuits have rejected Coeur d’Alene. The Eighth Circuit has stated that Tuscarora “does not apply when the interest . . . affected is a specific right reserved to the Indians” and that a right to self-governance is implied for federally recognized tribes. And in NLRB v. Pueblo of San Juan, the Tenth Circuit invoked the canon that “doubtful expressions of legislative intent must be resolved in favor of the Indians” to place the burden on the NLRB to demonstrate that Congress had intended the NLRA to “strip Indian tribal governments” of the authority to legislate labor relations, ultimately finding that it had not. The result is a fractured circuit split: a plurality of federal courts treat general regulatory laws as presumptively applicable to tribes, subject only to a few narrow exceptions. Others have followed Cohen’s canons to reverse the presumption, requiring evidence that Congress intended the law to apply to Native nations. And one, the Seventh Circuit, applies shifting presumptions depending on whether it views the tribal activity in question as “commercial” or “governmental” in nature. B. Tribal Enterprises as “Employers” Under the NLRA Approaches to the second question — whether Native nations are “employers” under the NLRA — have evolved since the Board first considered the issue in the 1970s. In Fort Apache Timber Co., the NLRB held that, although the NLRA is silent with respect to Native nations, because section 2(2) of the Act explicitly excludes federal and state governments from the Board’s jurisdiction, and because the defendant business was wholly owned by a government — the Fort Apache Tribal Council — the business was a government entity and therefore “implicitly exempt” from regulation. This holding was undisturbed until 1992, when the Board appeared to apply Coeur d’Alene to hold that a tribal enterprise operating off-reservation was an employer subject to NLRB jurisdiction, although on-reservation enterprises remained exempt. In 2004, the Board formally overruled Fort Apache to hold that Native nations are “employers” under section 2(2) of the Act. Since that case, San Manuel Indian Bingo & Casino, the Board has asserted jurisdiction over labor relations in tribal enterprises. San Manuel applied Coeur d’Alene to hold that, because the employer in question — a casino — was commercial in nature, it could “hardly be described as ‘vital’ to the tribes’ ability to govern themselves or as an ‘essential attribute’ of their sovereignty.” The Board therefore held that it was not statutorily precluded from asserting jurisdiction — a holding the D.C. Circuit enforced in an opinion that weighed general federal regulatory interests against the infringement on tribal sovereignty. The San Manuel Board nonetheless held that a “blanket assertion of jurisdiction” over Native nations was inappropriate as a policy matter. It therefore introduced a new rule: when Native nations operate in the “particularized sphere of traditional tribal or governmental functions,” the Board should decline jurisdiction. In a companion case decided the same day, the Board applied this principle to decline jurisdiction over a hospital run by a coalition of Native Alaskan governments. This pair of cases established the Board’s present stance. III. Several scholars have addressed Coeur d’Alene’s shaky foundations and the problems associated with applying federal labor law to tribal enterprises. This Part builds on that scholarship to argue that the NLRA should not regulate labor organizing in tribal enterprises. First, such regulation is inconsistent with Supreme Court jurisprudence since Tuscarora. Second, the text and history of the NLRA do not indicate that Congress intended to regulate tribal enterprises. Third, decisions that distinguish between tribal enterprise and self-government misunderstand the nature of enterprise as a tool of self-government.

#### All reforms that aren’t invested in abolition reproduce settler colonialism and ascribe carcerality as an inevitable part of the social landscape

Thibault 16(Katie Thibault; Graduate in Gender Studies from Queen’s University; The Canadian Carceral State: Violent Colonial Logics of Indigenous Dispossession; April, 2016) – KLab2020-Mahintha

What becomes evident is that we need to consider the ways that reform itself is a form of penal power, rather than transformative of penal power. More specifically, reforms that work within the framework of carceral punishment assume the prison system is a natural or inevitable part of the social landscape and are therefore not invested in dismantling the prison system. The prison can be conceptualized as a modality of power, what Michel Foucault (303) describes as the “great carceral continuum.” Foucault outlines how the communication between the “power of discipline and the power of the law” work together to facilitate the right to punish as normative (Foucault 303). A Foucauldian analysis of the prison is helpful in illuminating how modern society functions through a carceral network: “The carceral texture of society assures both the real capture of the body and its perpetual observation; it is, by its very nature, the apparatus of punishment that conforms most completely to the new economy of power and the instrument for the formation of knowledge that this very economy needs” (Foucault 304). A Foucauldian lens discloses the ways that the prison, as an apparatus, continues to be a technology of modernity that is used to govern social behavior and normalize the various mechanisms of incarceration. 45 Drawing from Foucault’s analysis it is important to consider how technologies of reform and punishment are tied to modalities of governance. Building on Foucault’s conceptual framework, I consider the carceral network as intimately connected to the colonial encounters that secured white supremacy. The prison is a normative apparatus that not only manages racialized bodies but also, because it is a colonial tool facilitates the removal of indigenous women’s bodies from Canadian lands. I therefore employ Andrea Smith’s analysis of the gendered dimensions of colonialism to draw attention to how the increasing rates of indigenous women’s incarceration is part of a colonial project that requires indigenous bodies to be continually disappearing. It becomes abundantly clear that the recommendations that support a model of reform are failing to ameliorate the over-representation of racialized offenders in federal prisons. The history of feminist prison reform demonstrates that CSC will never be able to rectify how indigenous women’s contact with the law is shaped by ongoing colonial practices because the prison, as an apparatus of modernity, is a technology of colonialism deeply connected to the preservation of white supremacy. The question that frames this chapter—what does the prison hide from public knowledge? —is particularly useful because it opens up a way to think about the prison with an interdisciplinary lens, noticing how it is a space underpinned by geographies of dispossession, economic productivity, political agendas (e.g. “tough on crime” discourses), and ongoing colonial violence.

#### Settler colonialism is a constant state of incarceration for Indigeneity. Prison reform assuages anxious settler desires whose existence is founded on the reproduction of Indigeneous bare life both inside and outside the prison. The alt is decolonization, which is mutually exclusive with the aff.

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For Wacquant (2001a, p. 95), hyperincarceration implies not a narrow treatment of “crime and punishment,” but an examination of the broader role of the penal system as an “instrument for managing dispossessed and dishonoured groups.” Wacquant (2001a, pp. 119–121) observes a “symbiotic” relationship between ghetto and prison, with both playing a role in this process of racial management and exclusion. He explains that socioeconomic–racial marginalization has placed African American men in a “carceral continuum” where they are caught in a “never-ending circulus” between prison and the ghetto (Wacquant, 2001a, p. 97, italics within). Similar to Wacqant, we hypothesize a symbiosis between Indigenous incarceration and a network of institutions designed to further the project of Indigenous extinguishment. To understand this process in the settler colonial polity we add two refinements to Wacquant’s thesis. By drawing on settler colonial theory, particularly the work of Patrick Wolfe (2006), and the ideas of Georgio Agamben (1998) and his notions of the “camp,” “bare life,” and “inclusive exclusion,” we argue that hyperincarceration has been employed as a strategy of colonial power designed not just to control Indigenous people but also to perpetuate settler colonial strategies of sovereign extinguishment. While Wacquant (2001b, p. 186) frames solutions in terms of “expand[ing] social and economic rights” of the underprivileged, Indigenous justice advocates point to the need for decolonization of the political system and return of land and sovereignty to Indigenous populations (Alfred & Corntassel, 2005; Jackson, 2017). Like Wacquant’s analysis of the United States, we suggest that the term “hyperincarceration” is more accurate in the Australian context than the notion of “mass incarceration” popularized in the work of David Garland (2001, p. 2), for whom contemporary mass imprisonment reflected a “systematic imprisonment of whole groups of the population.” However, it is the minorities, not the masses, who are most at risk of being caught up in the burgeoning carceral system. In Australia, for example, rates of non-Indigenous imprisonment have remained relatively stable over recent years. Indeed, in youth detention settings non-Indigenous rates have declined in recent years while the number of Indigenous children has steadily increased since the 1970s. As Wacquant (2014, pp. 41–42) writes, “mass incarceration suggests that confinement concerns large swaths of the citizenry,” but in reality the punitive surge was targeted at a specific demographic, that of “lower-class black men trapped in the crumbling ghetto” (italics within). In Australia also, “the masses” have been relatively unaffected by punitive populism. Instead the minority Indigenous population has borne the brunt of “punitive excess” and strategies of “governing through crime” and “governing crime” in Australia (Simon, 2007). Australian trends in hyperincarceration have seen an intensification of controls over Indigenous people, who are being incarcerated in record numbers—at levels of incarceration that would not be tolerated if they impacted so heavily on the white community. Australian punitiveness is directed towards Indigenous people and other outsider groups such as refugees and asylum seekers who cannot lay claim to a place in the national imagined community. In this article we explore the notion of hyperincarceration in Australia. As Cunneen et al. (2013) have suggested, Wacquant’s thesis needs to be rethought to accommodate the unique history of Australian settler colonialism. The “logic of elimination,” as Wolfe (2006) describes, characterizes the settler state’s relation to Indigenous people. Rather than the “crumbling ghetto” that contains the lower classes in the United States, Australian Indigenous experience of “place” is complex and multilayered. We argue that hyperincarceration is not only constituted in the prison but also through the state constricting, through a multiplicity of strategies, Indigenous livelihoods on homelands, the practice of language and culture, and the freedoms of civil society. In broader society, they are “citizens without rights” (Chesterman & Galligan, 1997)—unable to exercise their rights as Indigenous people or assert the rights of non-Indigenous people (Anthony, 2009). The Australian Indigenous experience needs to be viewed in the context of what Agamben (1998, p. 54) calls “inclusive exclusion”—a good term to describe the process of coercive assimilation that saw Indigenous people drawn into a diversity of sites designed to extinguish Aboriginal culture and sovereignty and crush Aboriginal resistance. Following Agamben (1998), we argue that the settler state is incapable of providing anything more than “bare life” to Indigenous people, on either the “inside” or the “outside.” Agamben (1998, p. 42) explains that bare life is created through exclusion from the rule of law and its protections. Exclusion is a necessary feature of the sovereign will to exercise power (1998, p. 13). It removes rights “from all political life” such that: her/his “entire existence is reduced to a bare life stripped of every right by virtue of the fact that anyone can kill [her]/him without committing homicide”; she/he is in “perpetual flight” and yet “in a continuous relationship with the power that banished” her/him because of ongoing exposure “to an unconditioned threat of death.” Her/his life is “caught in the sovereign ban and must reckon with it at every moment, finding the best way to elude or deceive it” (Agamben, 1998, p. 103). Indeed, our pivotal argument is that the “in or out” dichotomy (inside prison or outside civil society with its attendant freedoms and protections) loses explanatory coherence in the settler colonial context. It cannot be taken as given that the experience of being “inside” diverges radically from that of being “outside” for Indigenous prisoners, or that regimes of control are more oppressive on one side of the fence than on the other. In both instantiations, Indigenous people are “stripped of every right” (Agamben, 1998, p. 103). We imagine control in the post-colony as an archipelago of intersecting camps founded on what Sylvester (2006, p. 66) calls “bare life biopolitics.” Hyperincarceration as More than Overrepresentation of Indigenous People To speak of overrepresentation is to infer that the mass imprisonment of Indigenous peoples in Australia, Canada, Aotearoa/New Zealand, and the United States is an aberration, reflecting what one critical high-level Australian Government inquiry referred to as a “broken” justice system (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011). The logic of incarceration establishes hyperincarceration as no abnormality or unintended consequence (Cunneen et al., 2013). The hyperincarceration of Indigenous peoples across settler colonies is the logical extension of several centuries of policies, laws, and practices designed to complete the dispossession of Indigenous people as bearers of Indigenous sovereignty. Canadian Yellowknives Dene scholar Coulthard (2014) describes the settler colonial relationship in terms of “structured dispossession”: characterized by a particular form of domination; that is; it is a relationship where power – in this case, interrelated discursive and nondiscursive facets of economic, gendered, racial and state power – has been structured into a relatively secure or sedimented set of hierarchical social relations that continue to facilitate the dispossession of Indigenous peoples of their lands and self-determining authority. … [It is] structurally committed to maintain … ongoing state access to the land and resources that contradictorily provide the material and spiritual sustenance of Indigenous societies on the one hand, and the foundation of colonial state-formation, settlement, and capitalist development on the other. (2014, pp. 6–7, italics within) Unlike in other colonies that sought merely to economically exploit colonial land and labor, in settler colonies the intention was to eliminate the Indigenous population, including its polity, and replace it with a settler population (Wolfe, 2013a).1 They are social formations driven by a persistent tendency to drive out Indigenous people (Wolfe, 2013a). A settler colonial system, from this perspective, is not “malfunctioning” when it incarcerates Indigenous people at disproportionate rates, but fulfilling the role set out for it under settler colonialism. It is an outcome of deliberate intervention by the settler state. It makes no sense to speak, therefore, of some “normal” or acceptable level of involvement in what Indigenous people view as an alien white settler justice system, which has been imposed from outside, without Indigenous consent, and despite the fact that Indigenous people were already subject, and obedient, to a set of existing laws: their own. The belief that settler justice systems urgently need to be transformed and decolonized, rather than simply reformed, or democratized has become a critical demand of Australian Indigenous and Māori anti-prison advocates (Jackson, 2017; MacIntosh, 2018; O’Brien, 2017). The objectives of the African American prison abolition movement, championed by Angela Davis (2005) since the 1970s, provides a vision but not a holistic strategy for Indigenous justice. As we will suggest, it does not come to terms with the colonial reality that seeps beyond prison walls. Wacquant’s analytic of hyperincarceration also does not come to terms with the status of dispossession for Indigenous people—forced movement off country. He examines the hypercriminalization of African Americans as primarily a product of their “class”—a term he uses as a broad synonym for “poor.” Their ghettoization is the visual embodiment of their poverty and the target of policing (Wacquant, 2014, p. 44). For Indigenous people, while they are poor, they are not impoverished. Connections to country, Indigenous relationality, cultures, and laws persist to create a “binarism” with the settler state (Wolfe, 2013b, p. 267). This is a distinguishing feature of settler colonialism—that invasion produces binarism that is at the heart of settler anxiety and necessitates ongoing settler colonial suppression of Indigenous relationality, based on a distinct ontological life-world (Wolfe, 2013b, p. 270). Implicit in colonial processes of Indigenous dispossession is the problematization and criminalization of Indigenous people. Indigenous people have been rendered outside of the law not only in terms of their rights to their land and sovereignty, but also in relation to breaching the criminal laws of the state. This has resulted in the demonization and confinement of Indigenous people. Ascribing Indigenous people an offender identity and non-Indigenous people a victim identity legitimizes colonization as lawful and just. It enables colonizers to proclaim a civilizing mission in relation to the Indigenous savage, while the colonizer profits from the unlawful takeover of Indigenous land and destruction of Indigenous communities. In British settler colonies, incarceration is not a sui generis form of control associated with the modern penitentiary. Rather, segregation and confinement are well-rehearsed settler colonial techniques for controlling Indigenous bodies and souls. It was a key strategy for the elimination of Indigenous relationality. For Wacquant, by contrast, the hyperincarceration of African Americans is a development that is unique to the neoliberal, post-Keynesian age in the United States (Wacquant, 2001a, p. 117; Wacquant, 2001b). Wacquant’s work (2001a, p. 99) traces four “peculiar institutions” that have been forced on African Americans. They were predicated variously on “labor extraction and social ostracization” and not confinement on the pretense of elimination (Wacquant, 2001a, p. 99, italics within). Our reading of Indigenous hyperincarceration is not intended to imply that prison was or is the only settler colonial device for elimination, but rather that it looms large in historical and contemporary settler colonial management of Indigenous people. The prison was one among a constellation of practices, policies, and regimes imposed on Indigenous people following, or in tandem with, the initial violence of the frontier. Frontier clashes were as devastating for Indigenous societies as they were pivotal for the advancement of the colonial project. Violence and coercion towards Indigenous people, including in penal custody, continue at high rates today, but have also featured in segregationist, protectionist, assimilationist policies governing Aboriginal people since the 19th century. While there are variances among the settler colonies, and key differences were shaped inter alia by place-based responses by Indigenous people (including responses of resistance, resilience, and survival), the colonizers had little imagination and spread the same ideas (and diseases) everywhere they set foot (Dodson, 2010). For Indigenous people, colonial practices of domination and control, including through prisons, were foreign concepts, according to Māori scholar Moana Jackson (2017), and antithetical to Indigenous ways of being, relating, and doing: their ontologies, epistemologies, and axiologies. Where possible, Indigenous people have maintained their connections to their cultural identity and country and refused to partake in the colonial project (Simpson, 2014), including through expressions of Indigenous resurgence (see Alfred & Corntassel, 2005, p. 610). However, the living and breathing anxiety of settler colonialism seeks constantly to control and eliminate Indigenous relationality, including when it is making claims to practices of universality. Colonial Prisons: Historical Landscapes, Not Buildings Patrick Wolfe (2006) argued that colonization is a dynamic structure and process, rather than an event. By extension, colonization is everywhere for Indigenous people and not simply contained in prison walls or ghetto-like overcrowded, dilapidated public housing. Colonial strategies have had a corrosive influence on historical and present-day dispossession, extinguishment, and enforced mobility, and continue to shape government and white community attitudes and practices, including criminal practices (Agozino, 2018). Our concept of hyperincarceration as it applies to Indigenous people in settler colonies extends to segregation in both administrative and penal regimes since early invasion. Although the colonial tentacles reach far and wide, segregation has been a key instrument of state control. Segregation of Indigenous people took root in the early days of colonization and has continued unabated ever since. In the 19th century, this would take on a formal guise. Across the British colonies, Britain unleashed a policy of protectionism, following its endorsement by the 1837 British Parliamentary Select Committee on Aboriginal Tribes. In Australia and Canada, the legislative inception of protectionism imposed a series of protectorates on Indigenous people in which “protectors” had legislative powers to police and manage all aspects of Indigenous lives, including their movement, associations, marriages, clothing, food, income, and work. It sought to instill non-Indigenous values and routines on Indigenous people through forced work and instruction. This was consistent with the colonizing task of civilizing Indigenous people (British Parliamentary Select Committee, 1837). In Australia, protectionism was enacted through what became known as the “Aboriginal Protection Acts” or simply “Aboriginal Acts,” which continued well into the 20th century.2 They placed Aboriginal people in an official state of legal “exceptionalism” where they were rendered outside of the rule of law (Agamben, 1998). A key feature of the Aboriginal Acts was the forced placement of Aboriginal people in confinement, including on government settlements, reserves, church missions, cattle stations (for forced labor), and other institutions. Paul Havemann (2005, p. 59) describes the legal exclusion and segregation of Aboriginal people in the following terms: In the colonies Indigenous people … have been the paradigm non-people, non-citizens, homines sacri. If not, at worst, exterminated with legal impunity, they have been excluded and condemned to placelessness in “zones of exception” such as reserves, mission schools or camps and other forms of segregation under the regime of the sovereign’s draconian “protection” (footnotes excluded). The legal regime also gave protectors the power to remove Aboriginal children from their families and move them into boarding houses or non-Aboriginal families to learn European ways. These children are referred to as the “Stolen Generations” due to its widespread practice (Human Rights and Equal Opportunity Commission, 1997). These practices continue today where Aboriginal children across Australia, Aotearoa/New Zealand, and Canada are disproportionately more likely to be removed from their families, at a rate of ten times that of non-Aboriginal children. They are often placed with non-Aboriginal families or in privately operated residential institutions (Family Matters, 2018). In Canada, Australia, and Aotearoa/New Zealand, Indigenous children constitute at least 50% of children in the child protection system (Ainge Roy, 2018; Wahlquist, 2018). In Canada, the “Indian Act” was amended to introduce protectionist provisions, especially following the decreasing British dependence on the military role of the First Nations in defending colonial interests. From the 1870s, the British sought to define the relationship with Canadian First Nations people in terms of its civilizing role, particularly through its mission to bring British Christianity and agrarian society to First Nations people. The 1876 Indian Act consolidated regulations and codified controls over the lives of First Nations people, including affording powers to Indian agents. The amendments provided mechanisms for the abandonment of traditional First Nations ways and assimilation. It involved the hypersegregation of Aboriginal Canadian children in boarding schools, where they would be made to stop speaking in their language and adopt Christian practices, which lasted until the 1960s (Partida, 2008; Smith, 2009). In Canada, “Indian agents” served as administrative protectors of Aboriginal peoples and have been described as part of the “coercive tutelage” of colonial powers over the First Nations (Satzewich, 1997, p. 227). Their guardian powers affected the lives of all First Nations people in their jurisdictions and was supplemented with significant authority to make sweeping policy decisions, such as determining who was an Indian and managing Indian lands, resources, moneys, provision of agricultural instruction, cultural access, and spirituality. They had powers to recommend that an Indian Chief or councilor be deposed; control Indian movements off reserves; enforce attendance at residential schools; control religious and cultural practices inimical to “civilized” behavior; issue rations; and act as justice of the peace in relation to Indian infractions of the law (Satzewich, 1997, p. 231). The interventions of Indian agents were in fulfilment of the plan of the Department of Indian Affairs, and ultimately the British Crown, to promote “civilization” for First Nations people (Satzewich, 1997, p. 230). Across the British settler colonies, social exclusion through administrative hypersegregation would come to be replaced with a system of penal hyperincarceration by the second half of the 20th century. The forthcoming section traces how this transition from the quasi-welfare segregation on Aboriginal protectionist reserves and settlements dovetailed with the advent of integrationist ideologies. While freed from the clutches of protectionism, many Aboriginal people were released into the perils of modern policing and urban disadvantage in towns and cities. From Administrative to Penal Hyperincarceration Russell Hogg (2001, pp. 357–358) notes that by the late 20th century the policy of assimilation made it no longer necessary, or desirable, for governments to segregate Indigenous people in church missions, government settlements, or cattle stations and homesteads under the explicitly discriminatory legislation of the Aboriginal Protection Acts. Rather, Aboriginal people would be managed through mainstream policies and institutions, albeit with differential impacts that would see their rights restricted. Notable developments in this era, especially from the 1960s, were the sharp increase in Aboriginal child removals by the state (placing them predominantly in institutions or with white families) and penal incarceration of Aboriginal people under ostensibly neutral welfare and criminal law and procedure legislation respectively. Indigenous people who fell outside white norms were at a systemic disadvantage, demonstrating, as Guha (1997) observes, the colonial impulse to exclude the colonized even when imposing an inclusive hegemony. At this juncture it was implicit and institutional bias, pitched against the ontologies and epistemologies of Indigenous peoples, that would result in their overincarceration and constrained freedoms. Street police and welfare authorities were the arbiters of responsibilization in this new order. They did not “simply impose the law, they imposed the law of an alien culture” (Blagg, 2008, p. 131). Public spaces were “worlded” by white power, which saw the inscription of colonizing worldviews, systems, rules, regulations, and practices (Spivak, 1996). The effect was disproportionate control and containment of Indigenous people. In the 1960s and 1970s, Aboriginal people faced arrest and punishment especially for minor offenses, including offensive language, resisting arrest, and assaulting the police (the “trifecta”), disorderly conduct, and failing to follow a police move-on order (Eggleston, 1976, p. 176; O’Shane, 1992, p. 5). Today, Aboriginal people, especially Aboriginal women, are disproportionately punished for summary offenses, including minor traffic and property offenses, breaches of court orders and protection orders, and disorderly conduct (Anthony & Blagg, 2013; MacGillivray & Baldry, 2015). Like protectionism, these new penal strategies were designed to move Indigenous people into various places of confinement: The history of the “protection” of Australia’s Indigenous peoples is patterned with the governmentalities and biopolitics of power – the legislations, the definitions, the surveillance – and continual forms of material violence which have combined to keep Indigenous people’s inside detention – in reserves, on islands, in gaols – and outside – away from the wider/whiter community. (Tedmanson, 2008, p. 149) Although Foucault (1977) described imprisonment as punishing the soul rather than the body (which was the feature of earlier forms of punishment), the imprisonment of Aboriginal people manifested in systemic, and at times unfettered, violence. There is a well-documented history of Aboriginal deaths in police and prison custody, some in brutal circumstances (Allam, Wahlquist, & Evershed, 2018; Royal Commission into Aboriginal Deaths in Custody, 1991). On the streets, police exact violence on Aboriginal people who disobey unofficial curfews and rules around behavior and language (Anthony, 2018, pp. 48–49). Recently in Australia, torture of Aboriginal children in detention centers has been identified as a systemic problem that violates international conventions on the rights of children in custody (Royal Commission into the Detention and Protection of Children in the Northern Territory, 2017). Imprisonment rates of Indigenous people have also accelerated in Canada, Aotearoa/New Zealand, and the United States from the late 20th century, although Australian Indigenous peoples have the unenviable title of being the most incarcerated people in the world today (Anthony, 2017). Indigenous people are “grossly over-represented” in state prisons and police custody (Royal Commission into Aboriginal Deaths in Custody, 1991, [1.3.3]; Blagg, 2008, p. 130). Across all these settler colonies prisons are places of institutional violence. While corporal punishment is not officially sanctioned, ceasing for Indigenous Australians as late as the 1960s (well after its cessation for non-Indigenous Australians in the 1930s), they are innately places of trauma and loss for Indigenous peoples. Through the deprivation of liberty and confinement they are technologies of displacement and colonial subjection. The Colonial Matrix of Power Hyperincarceration of Indigenous people reflects what postcolonial writers Anibal Quijano (2007) and Walter Mignolo (2007, p. 156) call the “colonial matrix of power.” Settler colonialism was less interested in the labor of Indigenous people than it was in their land. All institutions were bent towards fulfilling the manifest destiny of European settler colonization: uprooting native social order and implanting white social order (Wolfe, 2006). Within this matrix, prison was a vital node—whether possessing administrative or penal forms. However, it was by no means an exclusive node. Settler colonialism differs from other brands of colonialism in that it embraces not simply the exploitation but the wholesale appropriation of land, as though it were always/already the property of the European, awaiting “discovery.” Settlement requires the extinguishment of Indigenous rootedness in land, not always the extinguishment of the people themselves: genocide remains one among a range of strategies, including forced assimilation, dispossession, enforced mobility, and concentration in places of confinement. The necessity of violence runs through settler colonization globally. As Dunbar-Ortiz (2014, p. 9) notes in relation to the United States: Settler colonialism, as an institution or system, requires violence or the threat of violence to attain its goals. People do not hand over their land, resources, children, and futures without a fight, and that fight is met with violence. In employing the force necessary to accomplish its expansionist goals, a colonizing regime institutionalizes violence. Settler colonial desire to uproot Indigenous owners and replace them in the soil—transplanting the Global North into the Global South—was legitimized via a particularly rich and thematically nuanced repertoire of self-exculpatory and self-aggrandizing narratives, including biblical-scale themes of redemption and renewal, promised lands flowing with milk and honey, and such like. Such narratives obscured the crimes of land theft and the necessary denial of Indigenous sovereign law. As Lisa Ford (2010) suggests, the eradication of Indigenous law became the “litmus test of settler statehood.” Indigenous people were, paradoxically, both subject to white law and exempted from its protections. Colonialism claimed sovereignty while denying Indigenous peoples citizenship. Employing an Agambean framework, Morgensen (2011, p. 53) notes: “Western law incorporates Indigenous peoples into the settler nation by simultaneously pursuing their elimination.” For this to occur, Indigenous people had to be governed in a state of legal exception. They had to be placed in zones that applied only to them. This resonates with Agamben’s (1998, p. 19) notion of the camp as the zone “outside the normal order” where individuals are diminished to bare life. The zones of exception to the rule of law are not uniformly marked by a religious mission, a penal prison, a boarding school or residential institution for Aboriginal children, a state-administered reserve, or an over-policed long grass, bush camp, or urban block—they were all of these things set aside for Indigenous people. What ties together these dispersed sites is what Diken and Laustsen (2002, p. 291) refer to as the “logic of camp,” as the “zone of indistinction”: “notions of inside and outside … tend to disappear into a zone of indistinction” (see Agamben, 1998, p. 65). The “logic” of the camp has spread outwards into society. For Indigenous people, settler colonization has seen the legal normalization of the state of exception. Don’t Reform, Decolonize The solution to hyperincarceration in settler colonial societies lies in the emancipation of Indigenous people from the clutches of settler camps of bare life. This is a different strategy to what Wacquant (2001b, p. 186) advocates in terms of a retreat from neoliberal society and the extension of social and economic rights to marginalized peoples. It is one that comes to terms with the cycle of Indigenous incarceration, which necessitates decolonizing the justice system, not simply reforming it. This means engaging with the question of Indigenous sovereignty, particularly in the form of demands for the return of land, and the devolution of power to community-owned and place-based Indigenous organizations, self-determining Indigenous affairs and operating according to Indigenous legal principles of healing and reintegration (Behrendt, 2001, 2002; Dodson, 2007, p. 24). Indigenous theorists and activists tend to view decolonization in terms of a long-term process of building new relationships in the liminal spaces between the mainstream and Indigenous worlds where new, hybrid structures can be generated. Beginning the task of decolonization can be accomplished by supporting initiatives such as Indigenous courts where elders sit with judges to find solutions tailored to the needs and histories of local people. This must occur alongside re-narrating histories in the public domain, to expose colonial harms and give voice to struggle and resistance (Corntassel, Chaw-win-is, & T’lakwadzi, 2009). Affording Indigenous knowledge master status and exposing the history of settler colonization, including the role of its numerous camps of bare life, needs to be opened up for exploration, acknowledgment, and reparation. Consistent with reparation is the recognition of preexisting and continuing Indigenous title to land as an important step in healing the suffering created by the colonial matrix of power. Critical Indigenous scholars and activists have called for resurgence involving expressions of Indigenous sovereignty and the reclaiming of land. They criticize reconciliatory gestures, siloed opportunities, and reforms in individual sectors for failing to address structural issues, including state power and authority and the colonial preoccupation with land as an economic resource (Coulthard, 2014, p. 171). Reinstating Indigenous relationships with land is critically connected to Indigenous well-being and the survival of laws and cultures (Sherwood & Edwards, 2006, p. 180). It facilitates the regeneration of “Indigenous nationhood” and the practice of “every day acts of resurgence and personal decolonization” to “envisage life beyond the colonial state” (Corntassel & Scow, 2017, p. 56; also see Corntassel, 2018). The resurgence of Indigenous “spirit and consciousness,” made possible through reclaiming land and sites of power, confronts the colonial tactics of Indigenous elimination (Alfred, 2005, p. 131). It enlivens personal and communal healing that has been denied through an existence of bare life where hyperincarceration has loomed large.

#### Decolonization necessitates abolition—settler colonialism is intimately connected to the prison system.

Sepulveda 20

Charles Sepulveda, Tongva and Acjachemen scholar, assistant professor of ethnic studies @ University of Utah, 7-3-2020, "To Decolonize Indigenous Lands, We Must Also Abolish Police and Prisons," Truthout, <https://truthout.org/articles/to-decolonize-indigenous-lands-we-must-also-abolish-police-and-prisons/> //MLT

The movement to decolonize Indigenous lands is intimately connected to the movement to abolish police and prisons. As the idea of decolonization is discussed among wider circles, we must recognize this interconnectedness, especially in the midst of a resurgent Black Lives Matter movement that calls for the defunding — and, in fact, the dismantling — of police. Both decolonization and abolition are not simply seeking an end result. Instead they are continuous creative processes: an imagining of life beyond prisons and the theft of land. They require creativity and a willingness to move beyond the structures of white supremacy that impact all of our lives on a scale from the local to the global, and occupy the “common-sense” perceptions of the world around us. When statements are made such as, “We can give land back” or “We can exist without prisons,” some people are perplexed, others are scared, and some will defiantly argue that it is not possible. Imagining a world beyond what we know and experience on a daily basis can be extremely difficult. Neither abolition nor decolonization are metaphors. Both movements want what they say — an end to policing and prisons, and an end to land theft and return of the land to Native peoples — and argue that it is fully possible to have an end to the prisons and policing, and to end colonization and therefore, for Native peoples to have their lands back. Both movements are meant to benefit everyone, not just Black people or Indigenous people. White supremacy – a structure of social organization and human dominance — shapes imprisonment, enslavement, capitalism, conquest, genocide and land theft. It is premised on the consumption of one’s life for another. This structure eats at the being of those who are not in the position of authority, and includes consuming the land. Increasingly, people of color are selectively incorporated into positions of authority and are actively shaping white supremacy to be multicultural. The police, for example, are rapidly increasing their ranks to include people of color. Another example is how universities have included Indigenous peoples in writing and performing land acknowledgment statements in lieu of giving land back. This authoritative inclusionary process is similar to the inclusion of people of color into capitalism as workers and business owners. However, this selective inclusion should not be mistaken for an end to Euro-Americans being the historical and ongoing beneficiaries of white supremacy who accumulated wealth and land. Rather, the inclusion of people of color further solidifies white supremacy, positioning it as a structure that can be reformed. As abolitionist scholar and activist Dylan Rodriguez explains, white supremacy is “a flexible and changing apparatus of power.” Abolition and decolonization are actively engaged in creatively imagining an end to white supremacy, rather than fashioning ways to include more people in its institutions.

#### The role of the ballot is to best recognize Indigenous scholarship and resistance—any ethical commitment requires that the aff center discussion in Native scholarship and demands.

Carlson 16

(Elizabeth Carlson, PhD, is an Aamitigoozhi, Wemistigosi, and Wasicu (settler Canadian and American), whose Swedish, Saami, German, Scots-Irish, and English ancestors have settled on lands of the Anishinaabe and Omaha Nations which were unethically obtained by the US government. Elizabeth lives on Treaty 1 territory, the traditional lands of the Anishinaabe, Nehiyawak, Dakota, Nakota, and Red River Metis peoples currently occupied by the city of Winnipeg, the province of Manitoba, (2016): Anti-colonial methodologies and practices for settler colonial studies, Settler Colonial Studies, DOI: 10.1080/2201473X.2016.1241213, JKS)

Arlo Kempf says that ‘where anticolonialism is a tool used to invoke resistance for the colonized, it is a tool used to invoke accountability for the colonizer’.42 Relational accountability should be a cornerstone of settler colonial studies. I believe settler colonial studies and scholars should ethically and overtly place themselves in relationship to the centuries of Indigenous oral, and later academic scholarship that conceptualizes and resists settler colonialism without necessarily using the term: SCT may be revelatory to many settler scholars, but Indigenous people have been speaking for a long time about colonial continuities based on their lived experiences. Some SCTs have sought to connect with these discussions and to foreground Indigenous resistance, survival and agency. Others, however, seem to use SCT as a pathway to explain the colonial encounter without engaging with Indigenous people and experiences – either on the grounds that this structural analysis already conceptually explains Indigenous experience, or because Indigenous resistance is rendered invisible.43 Ethical settler colonial theory (SCT) would recognize the foundational role Indigenous scholarship has in critiques of settler colonialism. It would acknowledge the limitations of settler scholars in articulating settler colonialism without dialogue with Indigenous peoples, and take as its norm making this dialogue evident. In my view, it is critical that we not view settler colonial studies as a new or unique field being established, which would enact a discovery narrative and contribute to Indigenous erasure, but rather take a longer and broader view. Indigenous oral and academic scholars are indeed the originators of this work. This space is not empty. Of course, powerful forces of socialization and discipline impact scholars in the academy. There is much pressure to claim unique space, to establish a name for ourselves, and to make academic discoveries. I am suggesting that settler colonial studies and anti-colonial scholars resist these hegemonic pressures and maintain a higher anti-colonial ethic. As has been argued, ‘the theory itself places ethical demands on us as settlers, including the demand that we actively refuse its potential to re-empower our own academic voices and to marginalize Indigenous resistance’.44 As settler scholars, we can reposition our work relationally and contextually with humility and accountability. We can centre Indigenous resistance, knowledges, and scholarship in our work, and contextualize our work in Indigenous sovereignty. We can view oral Indigenous scholarship as legitimate scholarly sources. We can acknowledge explicitly and often the Indigenous traditions of resistance and scholarship that have taught us and provided the foundations for our work. If our work has no foundation of Indigenous scholarship and mentorship, I believe our contributions to settler colonial studies are even more deeply problematic.

## Fire PIC

#### Text: The 49 United States excluding California ought to recognize an unconditional right for incarcerated workers to strike. California should recognize a right for incarcerated workers, except those in the prison firefighter program, to strike.

#### Firefighter programs decidedly better than prison and solve megafires – saves numerous preventable deaths.

Hahn, 21

[Matthew Hahn, union electrician and meditation teacher who writes about his time in prison and issues related to criminal justice: “Sending us to fight fires was abusive. We preferred it to staying in prison.” Published by Washington Post on 10-15-21. https://www.washingtonpost.com/outlook/prison-firefighter-california-exploit/2021/10/15/3310eccc-2c61-11ec-8ef6-3ca8fe943a92\_story.html]//AD

On the perimeter of the smoldering ruins of Lassen National Forest in Northern California this summer, an orange-clad crew of wildland firefighters worked steadily to contain the Dixie Fire, the largest single wildfire in state history. Using rakes, axes and chain saws, they literally moved the landscape, cleaving burned from unburned to contain the flames. This work was dangerous, and they made just a few dollars per hour, working 24-hour shifts. But it was better than being in prison.I used to be one of the incarcerated people whom California employs to fight wildfires, and I was fortunate. During my nine years in prison for drug-related burglaries, ending in 2012, I never met a fellow prisoner who didn’t want to be in “fire camp,” as the program is known. Some dreamed of going but knew they would never be allowed to live in such a low-security facility. Others, like me, did everything in their capacity to ensure that they got there as soon as humanly possible. For the most part, this meant being savvy and lucky enough to stay out of trouble during the first few years of my incarceration. Though the program is voluntary, some well-meaning people on social media and in activist circles like to compare fire camp to slavery. Every fire season, they draw attention to its resemblance to chain gangs of the past, its low wages and its exploitative nature. Some argue that incarcerated firefighters face insurmountable barriers to careers in that field after parole, though this has started to change in recent years. Others argue that the voluntary nature of fire camp is a ruse, that consent cannot be offered by the coerced. There is some truth to these objections, but they ignore the reality of why people would want to risk life and limb for a state that is caging them: The conditions in California prisons are so terrible that fighting wildfires is a rational choice. It is probably the safest choice as well.I’m from a long line of California ranchers. Now we flee fires all the time. California prisons have, on average, three times the murder rate of the country overall and twice the rate of all American prisons. These figures don’t take into account the sheer number of physical assaults that occur behind prison walls. Prison feels like a dangerous place because it is. Whether it’s individual assaults or large-scale riots, the potential for violence is ever-present. Fire camp represents a reprieve from that risk.Sure, people can die in fire camp as well — at least three convict-firefighters have died working to contain fires in California since 2017 — but the threat doesn’t weigh on the mind like the prospect of being murdered by a fellow prisoner. I will never forget the relief I felt the day I set foot in a fire camp in Los Angeles County, like an enormous burden had been lifted.The experience was at times harrowing, as when my 12-man crew was called to fight the Jesusita Fire, which scorched nearly 9,000 acres and destroyed 80 homes in the Santa Barbara hills back in 2009. I distinctly remember our vehicle rounding an escarpment along the coast when the fire revealed itself, the plume rising and then disappearing into a cloud cover of its own making. Bright orange fingers of flame danced along the top of the mountains. The fire had been moving in the patches of grass and brush between properties, so we zigzagged our way between homes, cutting down bushes, beating away flames and leaving a four-foot-wide dirt track in our wake. I was perpetually out of breath, a combination of exertion and poor air quality. My flame-resistant clothing was soaked with sweat, and I remember seeing steam rise from my pant leg when I got too close to the burning grass. The fire had ignited one home’s deck and was slowly burning its way to the structure. We cut the deck off the house, saving the home. I often fantasize about the owners returning to see it still standing, unaware and probably unconcerned that an incarcerated fire crew had saved it. There was satisfaction in knowing that our work was as valuable as that of any other firefighter working the blaze and that the gratitude expressed toward first responders included us.

#### The program reduces recidivism and violent crime by ingraining first-responder logic.

Lockheart, 20

[Rasheed, former prisoner, 10-1-2020, "Being a Prison Firefighter Taught Me to Save Lives," Marshall Project, https://www.themarshallproject.org/2020/10/01/being-a-prison-firefighter-taught-me-to-save-lives]//AD

There’s a full-fledged firehouse equipped with engines at San Quentin Prison. To work for the department, which serves the facility and over 100 units of mostly employee housing on the grounds, prisoners have to interview with the fire chief and captains and go before a panel composed of the warden and other staff. You have to be a good fit and know how to work in a team. And they only consider people who have a record of good behavior within the last five years—that means few or no disciplinary write-ups or infractions. You cannot have been convicted of arson, sex offenses, murder or attempted escape, and you have to be at the lowest security level.When I applied in 2016, I had five years left in my sentence. Dozens of guys were trying to get into the firehouse, but they only take nine to 12 at a time. I thought I was in great shape—I was on the San Quentin A’s baseball team, and I played football. But I was nowhere close to being in firefighting shape. We had to be able to hike more than a mile with a 75-pound hose on our backs. I didn’t think I was going to make it at first.It wasn’t really the act of firefighting that made me want to join. Initially, I just wanted the job because I would get to sleep in a room by myself, eat good and train dogs. Plus those guys just look cool. Who as a kid didn’t think firefighters were awesome? Joining the department was also an opportunity to escape the politics and culture of prison. I wouldn't be confined to a cell or have COs hanging over my shoulder all the time; I would be treated like a human being. After years of incarceration I was sold. I didn’t expect it, but firefighting would be the most influential thing I’d ever taken part in. Being a member of the department meant being available 24/7 for calls inside and outside the prison. On the outside, we had house fires, medical emergencies, car accidents and grass fires. Inside we responded to cell fires, provided CPR and transported bodies from housing units to the hospital. In my nearly three years on the job, I did CPR almost 50 times. Only four people lived. The sad truth is that San Quentin has an aging population of people either dying of old age or giving up. There were suicides and a fentanyl outbreak. Sometimes we’d get five overdoses in a week. In 2017, almost 20 people died of various causes. I did CPR on every one of them. On one call, a gentleman had fallen off his bunk and hit his head. He went through three rounds of CPR and two with the defibrillator. On the third round of CPR, I felt him gasp for breath and I could feel his heartbeat underneath my hands. I said to my captain, “Holy shit, I think he's breathing!” He lived and was back on the yard two days later. I can't explain what it feels like to have someone come back to life under your hands. There's nothing like it. One thing I noticed early on was the difference between the mentalities of people on death row and those in the general population. When we were doing CPR or taking a dead body off the tier, the men on death row had a look of resignation, like ‘Damn, he made it out.’ There was one guy on death row who committed suicide. He always sticks with me because he had his beard trimmed and his hair lined up. He died perfectly groomed but with a look on his face like, I think this is a mistake. People in the general population avoided watching us carry out dead bodies. If you have a life sentence in California, it doesn’t necessarily mean you’ll be incarcerated forever. If you do all the right things and invest in yourself, there is a possibility that you will make it out. With the chance of release, the men in general population didn’t want to think about their own mortality. At times I did feel survivor's guilt about being at the firehouse living the good life. When I was responding to a call, I didn’t have time to be in an emotional space with it. The guilt would kick in when I came back from a call involving one of my incarcerated peers. These were guys I hung out with and played basketball with. But contrary to popular belief about prison culture being dominated by envy, people loved to see me rising above incarceration. I regularly had guys I didn't even know saying they were proud of me and thanking me for representing them. It was like, That’s one of ours. When I was about to be released, I already knew I couldn’t be a firefighter on the outside because my armed robbery felony would exclude me from getting a license. But in September, Gov. Newsom signed AB 2147, a law that puts me on a path to expunging my record and getting my EMT certification. It’s not a fix-all, but it makes the pathway a little bit easier .Once you're a first responder, you're always a first responder. It never leaves your system. There's not a day that goes by that I don't smell smoke. Once you've lived that life, it's a hard thing to leave behind.

#### Megafires kill biodiversity.

Stevens, 12

[Bonnie, 5-15-2012, "An era of mega fires," Arizona Daily Sun, https://azdailysun.com/news/science/an-era-of-mega-fires/article\_a14f3c7d-7a36-5c12-a48e-75a8ea4e3fff.html]//AD

"Mega fires are huge, landscape-scale fires in excess of 100-thousand acres," said Covington, executive director of the Ecological Restoration Institute (ERI) at Northern Arizona University. "We're seeing this throughout the West, but Arizona is on the leading edge." Covington says mega fires are symptoms of an unhealthy forest caused by a century of actions -- mostly fire suppression, and overgrazing during the late 1800s -- that have changed the structure and function of ponderosa pine and dry mixed conifer forests."We need to stop being surprised by the types of fires we're having," said Summerfelt, wildland fire management officer for the city of Flagstaff. "My first fire was on the North Kaibab and it was considered huge. It was 20 acres. A 20-acre fire now means nothing. So in those three-and-a-half decades in my career, I've been able to watch fire change in size and intensity to levels today that even a decade ago would have been unthinkable. And we're not done breaking records." Covington says Arizona is set up for three more enormous crown fires across the Mogollon Rim that burn through the tops of old growth trees and can ignite spot fires as far as 3 miles ahead of the blaze. "There's the Payson to Winslow corridor, the Sedona to Flagstaff corridor and the Prescott corridor. If we don't get out in front of these and do restoration treatments, it's just going to be a matter of time before we have three more major landscapes burn up." As we approach the 10th anniversary of the Rodeo-Chediski Fire, scientists, firefighters and natural resource managers are examining today's forest conditions and reviewing lessons learned from the state's two largest fires. To compare, both fires were started by people on warm, dry, windy days. "With the Wallow Fire, we knew we were in extreme conditions. We had fuel everywhere and our probability of ignition for any fire that hit the ground was 100 percent. With 62 mph wind gusts, it was blowing so hard it was tough to walk," said Zornes. Former Forest Service ranger and firefighter Jim Paxon, now Arizona Game and Fish Department spokesperson, describes the 468,000-acre Rodeo-Chediski Fire as a plume-dominated fire. "It was pretty much fuels related, fed by the millions of excess trees in our overcrowded forests. It had extremely high energy. When I started fighting fire in the late'60s we didn't have these big columns of plumes that would build up, collapse in an explosion on the ground and create hurricane winds. This didn't happen until the '90s." As a result, 49 percent of the area in the Rodeo-Chediski Fire was considered severely burned. For the 538,000-acre Wallow Fire, that figure is 28 percent. "It could take a couple hundred years for these forests to return back to what they were," said Alpine District Ranger Rick Davalos. "Some of the severely burned area includes older growth trees." ERI researchers say crown fires that kill old growth trees also destroy critical wildlife habitat."The Mexican spotted owl is the biggest concern we have as an endangered species that we're trying to help out," Paxon said. "The Forest Service is under extreme pressure not to do any cutting around the nesting sites. So between the two fires we lost 20 percent of the Mexican spotted owl nests that exist in the world." In addition, heat from the Wallow Fire baked streams and killed aquatic life. Then floods, from monsoon rains after the fire, moved silt into rivers and lakes making matters worse."The problem with these fires is they remove so much of the vegetation they can create hydrophobic soils. The water won't penetrate the soil. It runs across the surface so all that ash and sediment ends up in streams and rivers. In the Wallow Fire it ruined the habitat for the re-introduced Apache trout," Covington said. "So, whether you look at fish or you look at birds or you look at mammals, the impact of these mega fires over the long haul is very negative."

#### Biodiversity loss causes extinction and turns climate change

Phil Torres, Scholar at the Institute for Ethics and Emerging Technologies, 5-20-2016, "Biodiversity Loss: An Existential Risk Comparable to Climate Change," Future of Life Institute, https://futureoflife.org/2016/05/20/biodiversity-loss/

Biodiversity Loss: An Existential Risk Comparable to Climate Change According to the Bulletin of Atomic Scientists, the two greatest existential threats to human civilization stem from climate change and nuclear weapons. Both pose clear and present dangers to the perpetuation of our species, and the increasingly dire climate situation and nuclear arsenal modernizations in the United States and Russia were the most significant reasons why the Bulletin decided to keep the Doomsday Clock set at three minutes before midnight earlier this year. But there is another existential threat that the Bulletin overlooked in its Doomsday Clock announcement: biodiversity loss. This phenomenon is often identified as one of the many consequences of climate change, and this is of course correct. But biodiversity loss is also a contributing factor behind climate change. For example, deforestation in the Amazon rainforest and elsewhere reduces the amount of carbon dioxide removed from the atmosphere by plants, a natural process that mitigates the effects of climate change. So the causal relation between climate change and biodiversity loss is bidirectional.

## Case

### Turn: Strikes racist

#### Racism is institutionalized in the creation of Unions and in turn striking – It creates a Catch 22 and stonewalls Black workers, so they feel the lack of accessibility to unions is their own fault rather than the racist institution.

**Watson 6-14**

(Travis Watson, June 14, 2021, Watson is the chair of the Boston Employment Commission (BEC), he is also a member of the board for YouthBuild Boston and NEI General Contracting’s Workforce Opportunity Resource Center, and he created ADOSconstruction.org which helps to create more inclusive construction unions, ““Union Construction’s Racial Equity and Inclusion Charade (SSIR)”, [https://ssir.org/articles/entry/union\_constructions\_racial\_equity\_and\_inclusion\_charade //](https://ssir.org/articles/entry/union_constructions_racial_equity_and_inclusion_charade%20//) HM)

**Six Practices That Institutionalized Racism in Union Construction** The Catch 22 | White union construction workers often stymie prospective Black workers’ attempts to join a union by trapping them in a Catch-22: requiring the worker to have a job prior to being admitted into a union, but also requiring union membership before getting a construction job. Former United Community Construction Workers activist Omar Cannon recalls **Black workers being told by white union officers** that they “had to be in the union to get a job.” However, the problem, [Cannon explains](https://www.jstor.org/stable/j.ctv941wxz.23?seq=1#metadata_info_tab_contents), is that “you had to get a job to get in the union.” Former Army veteran and construction worker Gilbert Banks has told a [similar story](https://www.google.com/books/edition/Black_Power_at_Work/16RmDwAAQBAJ?hl=en&gbpv=0) about treatment by foremen and unions: “They’d say, ‘Have you got a (union membership) book?’ I’d say, ‘No.’ ‘Well,’ they said, ‘Go get a book and we’ll give you a job.’ And I’d go to the union and ask them for a book. They’d say, ‘Listen, if you get the job, we’ll give you a book.’ There was no way of fighting it.” This no-win situation is not a coincidence. This Catch-22 is a form of structural racism intended to **exclude people not already on the inside**. Stonewalling | Another strategy white union members use to frustrate Black workers into giving up their effort to join a union is intentionally **refusing communication, ignoring, and silencing them**. Stonewalling effectively blocks Black workers from jobs and from unions, even when those workers have superlative skills, training, and experience. For example, former member of the Congress of Racial Equity (CORE) and construction activist [Oliver Leeds recalls](https://www.jstor.org/stable/10.7591/j.ctt7v804) how his work as an Army engineer wasn’t enough to even get considered for work and union acceptance: “I was in the Corps of Engineers. And you know what we do? We worked to win the war. We built anything that could be built: bridges, tunnels, houses, officers’ quarters, Myers quarter, roads, and airstrips. We loaded and unloaded ships. We did anything in the way that involved work, construction work. You know, when I got back to the United States, after the war, I couldn’t get a job in construction, that **there was no union that would let me in**? And there was damn little that I couldn’t do in the way of construction work. They’ll take you and turn you into construction workers in the army, in a segregated army, and then when you get back into civilian life, you can’t get a construction job.” These first two strategies—the Catch 22 and stonewalling—cloak the structural racism operating within unions by displacing the consequence onto the Black person: that they gave up, or that they got frustrated, rather than seeing the mechanisms at work that produced this outcome.

### Turn: Prison labor good

#### Prison labor reduces recidivism – empirics

Reynolds 97

(Morgan O. Reynolds, former director of the Criminal Justice Center at the National Center for Policy Analysis in Dallas, Texas, and a retired professor of economics at Texas A&M University. He served as chief economist for the United States Department of Labor in 2001–2002; (11-17-1997) “The Economic Impact of Prison Labor”; <http://www.ncpathinktank.org/pub/ba245>)//ckd

The Impact of Prison Labor on Recidivism. One of the most important benefits of prisoner work is that it reduces the recidivism rate. A federal Post-Release Employment Project (PREP) study confirms that employed prisoners do better than those who do not work. After release to halfway houses, participants in the PREP study were 24 percent more likely to get a full-time or day labor job than those who had not worked in prison. Those who had worked in prison also earned more than those who had not and were more likely to move on to a better-paying job. Only 6.6 percent of those who worked in prison had their parole revoked or were charged with committing a new crime during their first year of supervised release. [[See the figure.]](http://www.ncpathinktank.org/images/1460.gif) This compares to 10.1 percent of the group who had not worked in prison. These findings hold up over a much longer period. Most participants in a follow-up to the PREP study had been released for at least eight years and some for as long as 12 years. Prison work and training programs seem to have been especially effective in reducing the likelihood of recidivism in the long term.

### Solvency

#### The affirmative’s discourse of prison reform masks a superficial and dangerous attempt to relegitimize the horrors of the prison system.

Karakatsanis 19

Alec Karakatsanis, Ethics, Politics, & Economics BA @ Yale, JD @ Harvard, founder of Equal Justice Under Law and the Civil Rights Corp, 3-28-2019, "The Punishment Bureaucracy: How to Think About “Criminal Justice Reform”," The Yale Law Journal, <https://www.yalelawjournal.org/forum/the-punishment-bureaucracy> //MLT

The emerging “criminal justice reform” consensus is superficial and deceptive. It is superficial because most proposed “reforms” would still leave the United States as the greatest incarcerator in the world. It is deceptive because those who want largely to preserve the current punishment bureaucracy—by making just enough tweaks to protect its perceived legitimacy—must obfuscate the difference between changes that will transform the system and tweaks that will curb only its most grotesque flourishes. Nearly every prominent national politician and the vast majority of state and local officials talking and tweeting about “criminal justice reform” are, with varying levels of awareness and sophistication, furthering this deception. These “reform”-advancing punishment bureaucrats are co-opting a movement toward profound change by convincing the public that the “law enforcement” system as we know it can operate in an objective, effective, and fair way based on “the rule of law.” These punishment bureaucrats are dangerous because, in order to preserve the human caging apparatus that they control, they must disguise at the deepest level its core functions. As a result, they focus public conversation on the margins of the problem without confronting the structural issues at its heart. Theirs is the language that drinks blood. In this Essay, I examine “criminal justice reform” by focusing on the concepts of “law enforcement” and the “rule of law.” Both are invoked as central features of the American criminal system. For many prominent people advocating “reform,” the punishment bureaucracy as we know it is the inevitable result of “law enforcement” responding to people “breaking the law.” To them, the human caging bureaucracy is consistent with, and even required by, the “rule of law.” This world view—that the punishment bureaucracy is an attempt to promote social well-being and human flourishing under a dispassionate system of laws—shapes their ideas about how to “fix” the system.

#### The prison-industrial complex reinscribes the domination of the state—it bolsters its capitalist, racist, and imperialist projects.

Gilbert 08

David Gilbert, founding member of Students for a Democratic Society @ Columbia University, prison reform advocate, 2008, Critical Resistance, <http://criticalresistance.org/wp-content/uploads/2012/06/Critical-Resistance-Abolition-Now-Ten-Years-of-Strategy-and-Struggle-against-the-Prison-Industrial-Complex.pdf> //MLT

The other level was against the community as a whole, under the rubric of "law and order." Whatever the government's level of complicity, the influx of drugs that took off at this time proved very destructive to unity and focus within the Black and Latin@ communities. Then the "War on Drugs" was even more devastating. There is no way this was a well-intentioned mistake. The US had already experienced Prohibition, which showed that outlawing a drug made the price skyrocket and thereby generated lethal violence and other crimes to build and control the trade. This misnamed war was conceived to mobilize the US public behind greatly increased police powers, used to cripple and contain the Black and Latin@ communities, and exploited to expand the state's repressive power with the proliferation of Police SWAT teams, the shredding of the 4th Amendment (against unreasonable search and seizure), and the burgeoning of the imprisoned population. And as we know, an even more intense level of police state measures were imposed in the wake of 9/11/01. Even with political movements setback, the economy still stagnated in the 1970s. To boost profits, capital needed to cut labor costs at home. But a direct attack on wages and benefits at home was dangerous for the rulers, who relied on political support from large sectors of the predominantly white working class to be able to wage the foreign wars so essential to the system. In the post-civil rights US explicitly racist terms had to be avoided, but the drive shaft of internal politics became a railing against criminals, welfare mothers, and immigrants, which for most whites conjure up images of Blacks, Latin@s, and Asians, without being so impolite as to say that outright. To take just one small example of the dishonesty of these campaigns, the "tough on crime" politicians crusaded for cutbacks to both college classes and family visits for prisoners-the very two programs with the best proven success for reducing recidivism. Clearly the demagogs' concern wasn't to reduce crime to protect the good citizens but rather to redirect their frustrations toward those lower on the social ladder.

#### The justice system is deliberately irrational and prejudiced—the only solution is to decouple the concepts of crime and punishment and embrace restorative justice.

Davis 03

Angela Davis, professor @ UC Santa Cruz, member of the Communist Party USA, founding member of [Committees of Correspondence for Democracy and Socialism](https://en.wikipedia.org/wiki/Committees_of_Correspondence_for_Democracy_and_Socialism), co-founder of Critical Resistance, author, Marxist feminist, 8-5-2003, “Are Prisons Obsolete?” Seven Stories Press //MLT

Creating agendas of decarceration and broadly casting the net of alternatives helps us to do the ideological work of pulling apart the conceptual link between crime and punishment. This more nuanced understanding of the social role of the punishment system requires us to give up our usual way of thinking about punishment as an inevitable consequence of crime. We would recognize that "punishment" does not follow from "crime" in the neat and logical sequence offered by discourses that insist on the justice of imprisonment, but rather punishment-primarily through imprisonment (and sometimes death)—is linked to the agendas of politicians, the profit drive of corporations, and media representations of crime. Imprisonment is associated with the racialization of those most likely to be punished. It is associated with their class and, as we have seen, gender structures the punishment system as well. If we insist that abolitionist alternatives trouble these relationships, that they strive to disarticulate crime and punishment, race and punishment, class and punishment, and gender and punishment, then our focus must not rest only on the prison system as an isolated institution but must also be directed at all the social relations that support the permanence of the prison. An attempt to create a new conceptual terrain for imagining alternatives to imprisonment involves the ideological work of questioning why "criminals" have been constituted as a class and, indeed, a class of human beings undeserving of the civil and human rights accorded to others. Radical criminologists have long pointed out that the category "lawbreakers" is far greater than the category of individuals who are deemed criminals since, many point out, almost all of us have broken the law at one time or another. Even President Bill Clinton admitted that he had smoked marijuana at one time, insisting, though, that he did not inhale. However, acknowledged disparities in the intensity of police surveillance-as indicated by the present-day currency of the term "racial profiling" which ought to cover far more territory than "driving while black or brown"—account in part for racial and class-based disparities in arrest and imprisonment rates. Thus, if we are willing to take seriously the consequences of a racist and class-biased justice system, we will reach the conclusion that enormous numbers of people are in prison simply because they are, for example, black, Chicano, Vietnamese, Native American or poor, regardless of their ethnic background. They are sent to prison, not so much because of the crimes they may have indeed committed, but largely because their communities have been criminalized. Thus, programs for decriminalization will not only have to address specific activities that have been criminalized-such as drug use and sex work-but also criminalized populations and communities. It is against the backdrop of these more broadly conceived abolitionist alternatives that it makes sense to take up the question of radical transformations within the existing justice system. Thus, aside from minimizing, through various strategies, the kinds of behaviors that will bring people into contact with the police and justice systems, there is the question of how to treat those who assault the rights and bodies of others. Many organizations and individuals both in the United States and other countries offer alternative modes of making justice. In limited instances, some governments have attempted to implement alternatives that range from conflict resolution to restorative or reparative justice. Such scholars as Herman Bianchi have suggested that crime needs to be defined in terms of tort and, instead of criminal law, should be reparative law. In his words, "[The lawbreaker] is thus no longer an evil-minded man or woman, but simply a debtor, a liable person whose human duty is to take responsibility for his or her acts, and to assume the duty of repair."

#### An abolitionist framework is key to challenge the prison-industrial complex.

Allegra MacLeod, BA @ Scripps College of the Claremont Consortium, JD @ Yale, PhD @ Stanford, immigration and criminal lawyer, professor of political theory @ Stanford, consulting attorney with the Stanford Immigrants’ Rights and Criminal Defense Clinics, 2015, " Prison Abolition and Grounded Justice," Georgetown University Law Center, https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2502&context=facpub

At the level of judicial decision making and legislatively enacted criminal law, related forms of ideological capture confine the courts’ and legislatures’ capacities to address gross injustice in the criminal process. Here too, then, an abolitionist ethic promises an escape, or at least a substantial challenge to, acquiescence in these legal commitments—especially to the primacy of finality of a criminal conviction, what I will call the “fetish of finality.” If we understand law in the powerful and evocative terms proposed by Robert Cover as part of a normative universe or “nomos,” we then appropriately recognize that “law and narrative are inseparably related.” Law, Cover explains, is “constituted by a system of tension between reality and vision,” between law as it is and our aspirations as to what it might become. 265 As Cover writes: “[L]aw is not merely a system of rules to be observed, but a world in which we live.”266 He reveals how the normative and interpretive “commitments—of officials and of others— . . . determine what law means and what law shall be.”267 As judges carry out their interpretive work, they must attempt to resolve these competing normative claims; judges themselves are variously aligned and torn between warring narratives and values as they steer law’s potential for violence or peace.268 An abolitionist ethic resists the circumscription of the nomos of criminal jurisprudence, inviting (even demanding) new perspectives within and against those which judges, legislators, and citizens might make law. More precisely, an abolitionist ethic contributes an unapologetic insistence on the brutal and morally illegitimate violence of criminal punishment—whether imprisonment or incarceration followed by state-inflicted death—to the nomos of constitutional criminal jurisprudence. This ethic throws down a gauntlet to the general jurisprudential comfort with the inevitability and moral unassailability of criminal conviction’s finality and lessens, perhaps, the dread of grinding the wheels of justice to a halt.269 In other words, an abolitionist ethic decenters the primacy of finality and the smooth operation of the criminal process such that it becomes less comfortable to rest at ease with the unimpeded operations of criminal punishment institutions, especially the imposition of imprisonment or a sentence of death.