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COMMENTARY

Toward a politic of welcome: a response to Laura Beth Nielsen's presidential address

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The violence of the law

Laura Beth Nielsen's presidential address is more than an intervention in how we study the law; her remarks resonate with a path toward a more just future. Through relational rights, Nielsen offers a reimagining of law and society scholarship that asks our field to look anew at the role of law in our lives. Nielsen raises questions about what might be gained for the law to "privilege and protect important social relationships" and operate in ways that "value mutual interdependencies?" She seeks to build a legal infrastructure that supports beneficial social relations while unraveling the "unhealthy, divisive relationships that populism, coloniality, racism, and misogyny have produced." This happens by reckoning with the harms caused by our more atomistic individual-rights focused approach, acknowledging instead the texture of social life and finding ways to honor our connectedness. This is an important move in light of the harms that the law has produced. I'm thinking of criminal law in the United States and specifically, the reach of mass incarceration, an institutional form that Nielsen describes as the "antithesis of a relational rights regime."

Guided by a politic of fear, mass incarceration breaks connections, isolates people and produces a hostile social world that the overwhelmingly poor and racialized targets of criminal justice policy are made to navigate. The implementation of criminal law divides people into groups, most notably offenders and everyone else, but their punishment continues for years after their release from custody and extends far beyond the "legal offender," drawing their lovers, parents, siblings, children and friends into a life of social and legal exclusion (see, e.g., Comfort 2007; 2008; Miller 2021; Wakefield and Wildeman 2013; Wildeman and Muller 2012). My work, which is largely ethnographic, examines the day-to-day experiences of people attempting to navigate this legal and policy regime. After following hundreds of people from the moment of their release from jails, prisons and police station lock-up facilities, it has become clear to me that the law compounds misery and exacerbates already existing social inequalities. It is the law that stands in the way of a formerly incarcerated father's bond with

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his children, and it is the law that separates lovers by hundreds of miles for years at a time. It is the law that breaks relations of care. I have seen grandmothers threatened with eviction for letting a grandchild, who was released from prison, sleep on their couch. And I have seen parents who were incarcerated struggle to find a place in their children's lives. Some of this was due to their incarceration, but much of the damage to their relationships happened years after their release. I have seen parents denied the ability to chaperone school field trips or join the PTA. This says nothing of their employment prospects – it is nearly impossible for them to secure or maintain sustainable employment, making them an ongoing financial and emotional burden to their siblings, parents and children whom they turn to in times of need. In this way, the law, and more specifically the legal regime we call mass incarceration, has filtered into our intimacies, changing, for the worse, how millions of people relate to one another. And, it's impact reaches far beyond individuals and their families.

The politics of fear that animates the law strains the connections between people convicted of crimes and the life-giving institutions of a free society. Subsequently, mass incarceration has altered the worlds of work, misrecognizing and hiding the undercounted labor pool that we keep locked out of the job market long after they have done their time (Pettit 2012; Western 2006; Pager 2008. This happens through criminal stigma (see Pager 2008) and the more than 44,000 laws, policies and administrative sanctions that target people with criminal records (National Inventory of the Collateral Consequences of a Criminal Conviction 2023). This includes the 18,000 employment restrictions that bar people with records from whole categories of employment. When you include restrictions on business and occupational licenses, that number jumps to 27,000. Over 4000 restrictions limit political and civic engagement. Coupled with their treatment at the hands of government officials, the accused learn quickly that they have no place in the world and that their voice and presence are unwanted (Burch 2013; Lerman and Weaver 2014; Miller and Alexander 2015; Miller and Stuart 2017; Soss and Weaver 2017). There are nearly 1000 legal restrictions listed under "housing and residency" (National Inventory of the Collateral Consequences of a Criminal Conviction 2023), which renders formerly incarcerated people housing insecure (see also Couloute 2018). Over 1400 restrictions listed under "family and domestic rights" shape everything from child support obligations to whether a potential parent with a criminal record can foster or adopt a child. This is a politic of exclusion, where the law (and not just criminal law) regulates the lives of millions of people, constraining where they may go, with whom they might live and how they spend their time.

Given its targeted nature, the mass in mass incarceration has been theorized as the punishment of social groups (Garland 2001). This is certainly true in the United States, where the lives of poor black men (and increasingly black women, and poor brown and white people too) are made to live in an alternate legal reality that exacerbates already existing inequalities and shortens their life chances (Western 2006; 2018; Patterson 2010; 2013; Miller 2021). This is increasingly true throughout the world. From the policing of "vulnerable areas" in Sweden, labeled first by right-wing commentators but then taken up in the media as "no-go zones" (Åberg 2019), to racial disparities in police stops in the UK, which rival the United States (Dodd 2020), to the disproportionate incarceration of "foreign nationals" throughout Western Europe and of Indigenous people in Canada, Australia, New Zealand, and many other places throughout the

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world, the power of the law is marshaled against the most vulnerable among us. Rather than foster connection, or make right the harms of crime and violence, the law severs people who have caused harm from their social, political and economic ties, providing a distorted sense of groupness for the people we have accused, while ensuring they experience exclusion.

An individual rights-centered scholarly tradition overwhelmingly asks, "how might we better understand behaviors of the vulnerable?" Or, "what does their trouble tell us about their culture?" Perhaps from a position of sympathy we might ask, "what service infrastructure is necessary to alleviate their misery?" Put differenlty, we've asked in varied ways and with increasingly sophisticated methods, "What's wrong with these people?" These aren't the right questions to tackle the problems we face. The law and the way we study it has in fact contributed to these problems.

The targets of criminal law are the most disadvantaged groups in most societies, which include the racialized, the poor, the gender non-conforming, the foreign-born, the mentally ill, the orphaned and the abused. These are people we have learned to ignore when they are not the objects of our fears, which means the texture of their lives remains hidden to most people – this includes academics seeking to understand the "social problems" these groups represent and the political actors we've tasked with governing our lives. This means the mechanisms that produce the problems we seek to address remain hidden to us. As such, the law produces violence, structural and otherwise, in its efforts to contain it. Some kinds of violence are apparent, like the community violence we see so often in the wake of the violence of neglect, and the violence of incarceration or the police violence that circulates in the media. But some violence only reveals itself when we examine the social relations that the accused navigate each day. Herein lies the importance of a relational apprach. It reveals how social relations shape our experiences and trajectories. There is an adage among ethnographers that says it's better to show than to tell, so allow me to share an example from my research.

Law in the production of violence

I met Lorenzo in 2009.[1] I write about our time together elsewhere (Miller 2021), but there is an image I can't shake that is worth revisiting. Zo, as his friends called him, used to be a "stick-up kid," meaning he used to rob drug dealers for a living. Zo had just gotten out of prison and found himself standing on a bus stop at the intersection of 79th Street and Cottage Grove Avenue on Chicago's southside, watching "two dope boys (drug dealers) talking they shit, flashing they little cash." There are some things you need to know about Zo for this story to make sense. First, he was good at his job. I do not need to say that robbing dope dealers is a violent and dangerous trade; the sociologist Randol Contreras (2013) has written the most important book on the matter. His last bit was for attempted murder. I say this to relay that he was accustomed to violence and used to engaging in violent acts. Second, Zo had been incarcerated for most of his life. This started when he was 14 years old. By 18, he was in an adult prison. By the time we met, he had no close friends or family. Some were dead. Some were dead to him. Either way, Zo was alone. Third, he was in debt. Zo owed thousands of dollars in legal fees that he would eventually have to pay, the implications of which have been laid out in the important work of socio-legal scholars (see Fernandes et al. 2019;

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see especially Harris 2016). But this was not the debt he was most concerned with. Zo owed rent.

The house where he resided charged men $400.00 a month. This was not one of the well-funded social service organizations that we read about in the literature on evidence-based treatment for formerly incarcerated people, but one of the more prevalent kinds. The ones that are predatory. These places do not make it into many studies, but they are all too common in the worlds the men I followed traversed.[2] In this facility, men gave up their cash and their food stamp cards in exchange for a rack in some overcrowded room. Tenants' rights do not apply to them, or at least there were no rights these men could access in enough time for them to make a difference. They could be put out on a whim. Zo, and any or all of his 15 bunkmates, could be evicted on the day they failed to make rent. They would get no 5-day notice. And there were many other reasons they could be evicted. Coming home after house curfew could get your put outdoors. I met men who were told to leave because the owner sold the house to a real estate investor. I met others who were kicked out because they got into a disagreement with a staff member. The truth is, any one of hundreds of reasons could have rendered Zo and his bunkmates homeless.

The last thing you need to know is that if Zo were evicted he would have been in violation of his probation. His agent needs an address for him to report to, an address to visit or to raid. Failure to report an address is considered a technical violation, meaning no new crime had been committed. Zo worried a violation could get him sent back to prison. This is far from uncommon. Studies estimate technical violations account for anywhere between 11 and 28 percent of prison admissions each year (Phelps et al. 2023). We do not have national data on jail admissions, but in cities like Detroit where I followed nearly 100 formerly incarcerated people, the practice was so widespread that there was a separate unit for probation violators within city limits. They could be held in custody for up to 90 days without being sent to prison. Officers talked about their incarceration as "laying the offender down." In fear of his pending eviction (where would he get the $400.00 to pay rent?), Zo gathered his things in a black plastic garbage bag and began to walk the neighborhood. This is when he happened upon the two young men.

Zo had faced many problems. He had been arrested and held in juvenile detention and he spent time in prisons across the state. He had been shot at and he shot people. He had friends and family who were killed. Zo had never been homeless. He did not want to go back to prison, the place where he spent so much time, and he did not have a job. No one would hire him. Even if he found work, he would not have made the $400.00 on time. There he was, 28 days into his not-quite freedom. With his rent due on the 30th, he stood on a corner facing the dilemma of his life. What was to be expected?

I'm not saying that people commit crimes solely because they are poor. Crime, and even violent crime, happens for many reasons. Some people harm others because they want to. Recall Jack Katz's (1988) *Seductions of Crime*, which draw people into and reward criminal behaviors ranging from shoplifting and vandalism to torture. In my work, I have encountered dozens of people who enjoyed carrying and using guns (the lyrics to Nas' "I gave you power" is playing in the background of my mind as I round out this essay). Pleasure must be accounted for in our analysis of how we govern and especially in how we approach crime and violent acts. But the fact remains that Zo was in a

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predicament – one produced as much by criminal law as it was by the illegal activity he engaged in a decade before

I've written about the legal infrastructure we've erected in the wake of mass incarceration as part of a "supervised society", where thousands of laws and policies separate us from the people we have learned to fear (Miller 2021). In our hope to mitigate the risk they pose, we exclude them from the political economy and culture. We do this to our detriment. In the name of public safety, we have induced a near-permeant state of precarity for the millions of people we accuse of a crime and the millions more whom we suspect. In doing so, we have made the world more violent and less safe. This is borne by 100 years of criminological research. Housing instability, unemployment, and frayed social ties lead to more crime and violence, not less. Put simply, in Zo's case, and in the case of the nearly 20 million Americans estimated to have a felony record in the United States (Shannon et al. 2017, our approach to law and the ways we control crime are a large part of the crime problem.

Mass incarceration sprouts from a Hobbesian worldview where the chief responsibility of government is the protection of its citizenry from its enemies, be they enemies from without (foreign invaders) or enemies from within (its criminalized residents). This view holds that the state should deploy violence through troops at the border, and through police and the alternate legal reality we have inaugurated for people who have caused harm in our cities, towns and suburbs. This is done in the name of public safety, but these tactics have not made us any more-safe. For example, the literature on sentencing is clear that longer sentences have small to modest effects on crime and that most people simply age out of criminal behavior (Jeremy et al. 2014). Recidivism rates are abysmal, exceeding 80 percent after a decade (Durose et al. 2014). This means that prisons and harsh policing fail to adequetely address crime. And what of the costs? Nearly 2 million people are held in a cage on any given day. One in eight white women and one in two black women has a currently incarcerated loved one (Lee et al. 2015). One in nine children has an incarcerated parent, and those children are subject to a raft of negative mental and behavioral health effects (Wakefield and Wildeman 2013). Put simply, our system of crime control doesn't do much to control crime, but exacerbates the conditions that produce it. What does this mean for Zo, for the millions of people in his predicament, and for the millions more who are connected to them? What does this mean for the other half of the country, whose lives have been shaped by the shadow of mass incarceration whether they or anyone they love has committed a crime? What have we lost in our attempts to shield ourselves from the potential harm of a violent and criminalized other? How might we find our way out?

The way forward

Toward the end of her address, President Nielsen engages the work of Ronald Simpson Bey, an activist and leading national advocate for criminal justice reform. My dear friend Ronald is a brilliant legal mind and a force for good in the world. President Nielsen and I share an appreciation for the man and his work. She notes the part of his story that I cover in my book as an opportunity to think about relational rights in practice. I should say that Ronald tells his own story far better than I can, but for the sake of this essay here are the contours. Ronald was sentenced to 50 years in prison for a crime he did not commit. He served 24 years before winning the case that reversed his

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conviction. He spent three more years in prison because the Department of Corrections and the State of Michigan argued over which court had jurisdiction to release him. About a decade into his sentence, his only son was murdered by a 14-year-old boy. This was devastating. "It was hard to be around me back then," Ronald once told me. He often found himself "in the hole [solitary confinement] for one reason or another." But despite how Ronald felt, the boy was in need. He was to be tried as an adult, meaning he'd likely spend decades in prison. Ronald decided to act. He wrote to the judge and the prosecutor, advocating for the boy to be tried in juvenile court. This would ensure his eventual release, and allow the boy to one day move on with his life.

Ronald is a remarkable man, but I could not understand why he helped the child who caused him so much pain. "I advocated for him because it was the right thing to do," he said. But was this an act of forgiveness? "I did [forgive him] eventually, but forgiveness without works is dead," he told me. Ronald went on, "The boy's suffering wouldn't bring my son back. He deserved a second chance like everyone else." I asked if the boy was special to Ronald, wondering if he was an exceptional person who made a terrible mistake. Did he do public service? Did he find religion? To that Ronald said, "I heard he's doing OK." The boy may have finished high school, or he may have dropped out. He may be in the church choir, or he might become a state senator, or he could go on to work the fry station at the local McDonalds. None of that mattered to Ronald. His advocacy was not based on how he felt about the boy, or about the boy's redemption, or some thought about his exceptionality. For Ronald, the boy deserved a place in the world because he was a human being. He had rights, but not in the ways that we typically think about rights-bearing individuals. For Ronald, the boy had the right to participate in a human community and the right to access the life-giving institutions of a free society, including institutions of advancement and care. He had a right to form and sustain relationships with people who loved him and who were loved by him. And he had a right to participate in the social, economic and political life of his community, if he so chose.

I have come to see Ronald's act as part of a practice of radical hospitality and the embrace of a politics of welcome. From this framework, people have the right to full democratic participation and full social, economic and political inclusion, despite their acts. In President Nielsen's terms, they have the right to be in mutually beneficial relationships with one another, with the institutions that shape their lives and ultimately with their state. These rights are not contingent on their past behavior or even their future potential, but because they are fully human participants in a human community. This is not a risk-based approach that privileges public safety, but an embrace of community and interconnectedness. It requires vulnerability. The person who was extended care may "fail"—meaning they may commit new crimes. And, the people who engage in this form of relationality may not see individual benefits at all. This is not self interested action. I'm not sure that this is altruism, but it is a committment to the well being of others. This framework feels like pie in the sky when told out of context, but decades of research provides evidence of its wisdom for the person who has done harm and for everyone else. The literature is clear. Prosocial relationships, access to employment, stable housing and social support lead to less crime, less violence and the kinds of relationships that make our lives together more enjoyable (Laub and Sampson 2001; McNeill 2006; Weaver 2019).

Returning to Zo, we see relational rights at work in his case too. He did not rob those dope dealers despite wanting (and perhaps feeling as if he needed) to. "I stood on that

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corner and I cried," he said. "I just stood there and I cried." But that is not the end of his story. Zo heard of an organization while he was in prison. They offered housing, job placement and counseling services for men who did time. They provided training in culinary arts and for "green jobs," which promised to prepare men for the new economy. Remembering an opportunity for a different life, Zo left that corner, hopped on a bus and then a train, and rode for an hour and a half before walking another twenty minutes to get to the halfway house he learned about so many months before. When he got there he learned there was a waiting list, but the program manager agreed to let Zo sleep on the couch until a bed opened at the facility. He was eventually admitted to programming and never looked back. The organization hired Zo, first as a ground's keeper. Seeing his potential, he was promoted several times. After 10 years, Zo runs the program, helping men transition home after living violent lives.

We sat in his office a decade removed from the day he almost robbed those men. I asked what kept him out of trouble. He said he needed housing and a job, but he also needed the embrace of a community that trusted him. He said it was the investment from people who believed in his capacity to grow and who held him accountable to that growth that kept him from picking up a gun. Like the boy that Ronald helped, despite his great pain, this organization and the people whom it supported made a place in the world for Zo. In time, he went from being a stranger offered support by an organization (that is, the recipient of charity) to a trusted member of a community with a role to play, challenges to meet and a network of people whose well-being he was invested in and whom he could turn to in times of need. This is radical hospitality and a politic of welcome at work. Drawing from President Nielsen's approach, it's what happens when institutions privilege beneficial relationships. These kinds of efforts have effects that reverberate far beyond the criminal justice system—Zo is a husband and a father and an esteemed member of his community. Ronald is a national advocate for legal change, leading the charge to build a better world. What might our world look like if the state, rather than a patchwork of people and organizations, took inclusion as seriously as Ronald does.

For the last 4 years, I have spent time with young people convicted of violent crimes. I have seen the same pattern over and again. When given the material resources they need, refuge from a hostile world, and a place and a community with whom they might belong, people who have committed harm find ways to thrive. Most don't pick their guns back up. These efforts show us that a politic of welcome and an embrace of hospitality, rather than separation and exclusion, can be an answer to violence and crime. Collective thriving, rather than public safety, could be our goal as a society. To get there, we must ask different questions of the law.

Instead of wondering how one might best reduce risk, Simpson Bey, Zo and President Nielsen ask how the law might support the kinds of relationships that allow for and perhaps foster collective thriving. Ronald, more than anyone I've known, forces us to reckon with what it means to build community and the lengths we might go to do what our ethical commitments require. Following Nielsen's provocation and the examples we have before us, we, as an academic society, might ask similar questions of ourselves. How might the texture of social relationships inform how we approach socio-legal analysis? How might the law facilitate the thriving of dishonored and disregarded communities? What is our role in supporting a vision of relationality and connectedness? How we answer these questions may well shape our profession,

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but beyond that, it has the potential to change how we relate to one another and radically transform how we live together.

Conflicts of interest. There are no conflicts of interest.

Notes

1 The sections that follow draw from field notes I took between 2008 and 2021. Lorenzo was one of the people I followed during this period. I'm using a pseudonym for confidentiality.
2 The social welfare scholar, Robert Fairbanks, gave one of the few accounts. In *How it works: Recovering Citizens in Post Welfare Philadelphia*, Fairbanks (2009) writes about the "recovery house entrepreneurs" who buy run-down homes in the Kensington district to provide services for men struggling with addiction.

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