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CARCERAL IMMOBILITY AND FINANCIAL CAPTURE:

A Framework for the Consequences of Racial Capitalism Penology and Monetary Sanctions

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Introduction

Carceral institutions exemplify the consequential relationship between racial capitalism, penology, and the human experience. The contemporary expansion of monetary sanctions in the United States is a preeminent progression of racial capitalism penology: entrenched under chattel and neoslavery and expanded in the neoliberal era, monetary sanctions permeate every carceral institution. How can we make sense of the intergenerational toll of these consequences? I propose carceral immobility and financial capture as conceptual tools for understanding how racial capitalism penology structures the human

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experience, focusing specifically on the case of monetary sanctions. Jurisdictions are not captured but instead operating by design, meaning they use monetary sanctions to immobilize people into a state of carceral being through the regulation of physical movement and perpetual financial capture. The state needs racial capitalism penology to maintain its socioeconomic foundation and resulting sovereignty. Decentering racial capitalism from monetary sanctions in the United States produces an ahistorical rendition of the practice, preventing scholars from seeing monetary sanctions as foundational to the prison industrial complex.

I. Consequences of Racial Capitalism Penology

Monetary sanctions intertwine every carceral institution and constitute fines, fees, restitution, interest, surcharges, assessments, and other costs accrued through criminal justice contact and sentencing. They are supported through law and practice at all levels of government, with many regimes having state-specific qualities[1] that should be contextualized within larger histories of racism, punishment, and settler colonial capitalism.[2] This Article approaches the latter proposition by using monetary sanctions to illustrate how racial capitalism functions as a penology that elicits a human toll in the form of carceral immobility and financial capture.

Penal logics are cultural norms, values, and practices that define criminality, prescribe the purpose of punishment, and construct coercive modes of action. Such logics undergird everyday life by structuring the administration of carceral institutions. Commonly cited penal logics operating throughout history include remoralization, deterrence, rehabilitation, and incapacitation.[3] Yet, racial capitalism is the dominant penal logic structuring how all other punishment prescriptions are enacted to produce order. Racial capitalism, as it emerged through European colonization and the expansion of the Trans-Atlantic slave trade, thrived throughout all of United States history as the guiding foundation of social institutions,[4] and remains the base of contemporary penology.[5] If we take racial capitalism as the "production of social separateness [or] . . . the disjoining or deactivating of relations between

1. Alexes Harris et al., Monetary Sanctions in the Criminal Justice System 3–4 (2017), http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf [https://perma.cc/K847-XRQ8].
2. Alexes Harris, A Pound of Flesh: Monetary Sanctions as Punishment for the Poor xxii (2016).
3. David Garland, *Sociological Perspectives on Punishment*, 14 Crime & Just. 115, 116–19 (1991).
4. W. E. B. Du Bois, The Place of Negroes in the Crisis of Capitalism in the United States 1–3 (Apr. 1953) (unpublished manuscript) (on file with Special Collections and University Archives, University of Massachusetts Amherst Libraries).
5. Loïc Wacquant, *From Slavery to Mass Incarceration: Rethinking the 'Race Question' in the US*, 13 New Left Rev. 41, 42 (2002).

human beings (and humans and nature) . . . needed for capitalist expropriation,"[6] and then understand this production as operating under the guise of punishment for criminality, we have a conceptual tool in racial capitalism penology. This transformation of criminalized classes into efficient workers creates the bureaucratic regulation of movement as predicated on the social construction of indebtedness. Racial capitalism in turn necessitates the penological functions of law enforcement, courts, jails, prisons, and supervision to formally administer carcerality as the objective.

Racial capitalism penology's conflation of criminality with financial indebtedness commodifies carcerality as a legally enforced public good, where mobility and peace have a price. Manifesting first through chattel slavery we see the free trade of bodies to ensure a docile workforce. Criminalization of Blackness legitimated racial capitalism by simultaneously satisfying other penological functions, such as remoralization and incapacitation, with the goal of creating a social order of racialized civility. Slaves attempting to buy their freedom had to work off their debt in order to prove redemption from criminality and even this promise was a false pretense designed to ensure a coerced cycle of labor. Slave-owners could arbitrarily levy fines against the enslaved in times of economic insecurity or simply to prevent a loss in property should a slave successfully manage to save for their freedom. As such, the abolition of chattel slavery is more accurately described as a market regulation rather than goodwill and moral reformation because slave-owner were indeed paid for their "losses" and freed slaves often had to work off said losses.[7] Upon Emancipation, racial capitalism penology incarnated as neoslavery, with the same legal, financial, and family institutions that owned slaves, now using newly freed Blacks for debt peonage in hard labor camps in order to pay off monetary sanctions accrued from falsely charging them with vagrancy, a tactic to prevent the movement of Black labor.[8] It is these two earlier institutional arrangements that set the stage for racial capitalism penology's contemporary progression as neoliberalism.

Since the 1980s, neoliberalism proliferates as the application of austerity policies to the administration of carceral institutions, effectively streamlining racial capitalism penology's lasting objectives of social separation and the creation of criminalized, cheap labor. Neoliberalism's expansive fiscal trimming has spearheaded a variety of consequences such as the mass replacement of social welfare provisions with funding for rapid penal expansion, high-tech surveillance, and the militarization

6. Jodi Melamed, *Racial Capitalism*, 1 Critical Ethnic Stud. 76, 78 (2015).
7. Caitlin C. Rosenthal, *To Remake the World: Slavery, Racial Capitalism, and Justice: Abolition as Market Regulation*, Boston Review (Feb. 20, 2018), http://bostonreview.net/forum/remake-world-slavery-racial-capitalism-and-justice/caitlin-c-rosenthal-abolition-market [http://perma.cc/2V8R-SXEA].
8. Douglas A. Blackmon, Slavery By Another Name: The Re-Enslavement of Black People in America From the Civil War to World War II 4 (2008).

of law enforcement. Solidifying the neoliberal turn, is the expansion of tried and true commodification policies in the form of monetary sanctions as growing inmate populations and exploding law enforcement budgets challenge jurisdictions to explore ways to both satisfy and culturally legitimate their growing fiscal needs. "Capital pushes toward the commodification, securitization, instrumentalization, and alienation of everything—even lives, if our laws allow it to do so."[9] Financialization dominates rather than decarceration because carcerality is seen as a function of individual wrongdoing rather than a process of systemic, intergenerational injustice. Indebtedness signals a willful refusal to both physically and materially pay back the austere state, justifying the use of carceral tools such as extended surveillance and incarceration as punishment[10] for the indentured classes.[11] Racial capitalism penology consequently incentivizes contemporary predatory state behavior and disguises it as benign commodification in the face of austerity, rather than a longstanding economy of dispossession simply fine-tuning itself alongside contemporary politics.[12]

Racial capitalism penology as neoliberalism is also readily visible in the predation practices of commercial bail and the privatization of legal debt collection,[13] private contracts for the provision of basic human necessities within jails, prisons, and asylums,[14] and the predatory invasion of the pharmacology industry as service provider to carceral institutions.[15] Progression and resulting dispossession is *necessary* when the penal logic is based on consumption and criminalization, leading to carceral immobility and financial capture as *necessary* consequences.

II. Carceral Immobility and Financial Capture

Carcerality exists on a continuum given a primary state function is to identify, capture, and render offenders immobile in order to efficiently create productive carceral subjects. Racial capitalism penology has a simultaneous permanence and fluidity in everyday American life that

9. Rosenthal, *supra* note 7.
10. Brittany Friedman & Mary Pattillo, *Statutory Inequality: The Logics of Monetary Sanctions in State Law,* 5 RSF J. Soc. Sci. 173, 175 (2019).
11. Joshua Page & Joe Soss, *Criminal Justice Predation and Neoliberal Governance*, *in* Rethinking Neoliberalism 141, 142 (Sanford A. Schram & Marianna Pavlovskaya, eds., 2017).
12. Jodi A. Byrd et al., *Predatory Value: Economies of Dispossession and Disturbed Relationalities*, 36 Social Text 1, 2 (2018).
13. Joshua Page et al., *A Debt of Care: Commercial Bail and the Gendered Logic of Criminal Justice Predation*, 5 RSF J. Soc. Sci. 150, 156 (2019); Adrienne Roberts, *Doing Borrowed Time: The State, the Law and the Coercive Governance of 'Undeserving' Debtors*, 40 Critical Soc. 669, 679 (2014).
14. Steven Jackson, *Mapping the Prison Telephone Industry*, *in* Prison Profiteers 237 (Tara Herivel & Paul Wright, eds., 2007).
15. Anthony Ryan Hatch, Silent Cells: The Secret Drugging of Captive America 43–70 (2019).

flows well beyond the prison walls.[16] I argue racial capitalism penology's human toll should be understood as phenomena of carceral immobility and subjectivity in the form of financial capture.

In a sociolegal context, I refer to carceral immobility as the formal, informal, and extralegal regulation of physical movement through the use of carceral institutions to dictate how and when human beings *cannot* transverse across space, fostering feelings of both physical and cognitive containment. Carceral immobility is most visible as the dominant purpose of imprisonment, detention, and deportation, but it is also achieved through extended surveillance such as probation, parole, community supervision, and electronic monitoring. Penal logics determine which practices guide carceral subjects' immobility. Whether their immobile status is fostered through the guise of deterrence, rehabilitation, or incapacitation, racial capitalism functions as the base penal logic applied in tandem within a particular historical iteration: chattel slavery, neoslavery, or neoliberalism. For example, though community service is seen as a modern rehabilitative practice, in the neoliberal era, people pay for community service programs and face heightened forms of immobility such as jail time for failure to pay such monetary sanctions. Once in jail, people are often charged again for 'services' such as commissary or telephone calls in addition to a daily room and board rate. Similarly, probation and electronic monitoring are for sale, often at a monthly rate, and failure to pay is a jailable offense. Racial capitalism penology renders everything a commodity and across all historical eras, immobility is a product that carceral institutions can sell to their captives without the privilege of consent.

Geographers in particular have long been concerned with the effect of the carceral state on movement and space, whether through the transfer of goods or people, contributing heavily to an interdisciplinary body of work known as mobilities research.[17] Within this field, carceral *mo*bility is largely understood as coercive and disciplined movement that occurs within and about carceral spaces. Carceral mobility successfully debunks "the illusion of carceral space as fixed space" by arguing mobility is not absent from carceral institutions but simply different than mobility beyond such spaces.[18] The goal is to attend to the movement and agency that occurs within socially and materially constructed borders and trouble the mobility/immobility dichotomy.[19]

Yet, if we examine the impact of the carceral state on movement in a sociolegal sense, we see that the state's objective is to legally and

16. Michel Foucault, Discipline and Punish: The Birth of the Prison 297 (1975).
17. James Faulconbridge & Allison Hui, *Traces of a Mobile Field: Ten Years of Mobilities Research*, 11 Mobilities 1, 1–2 (2016).
18. Kimberley Peters & Jennifer Turner, *Carceral Mobilities: A Manifesto for Mobilities, An Agenda for Carceral Studies*, *in* Carceral Mobilities: Interrogating Movement in Incarceration 1, 2 (Jennifer Turner & Kimberley Peters, eds., 2017).
19. *Id.* at 2–3.

extralegally affix *im*mobility upon classified offenders to create productive carceral subjects. Yes, the state achieves this at times through actively moving people, but the state's main goal is to *prevent* movement and *inscribe both physical and symbolic containment* onto the offender's physical and cognitive essence, forcing the offender to embody carcerality.[20] Restricting movement delivers financial incentives to the carceral state by slowing down extractive revenue sources. People ensnared within carceral institutions experience this process as one of immobility, whether it be through physical movement, cognitive strain, poverty traps, or a lack of financial choice—punishment seeks to constrain movement in all forms and is understood as such by both criminal justice decisionmakers and those considered offenders. Therefore, it is more appropriate and theoretically useful for sociolegal scholars to focus on carceral immobility as a phenomenon of punishment because it allows us to see the human tolls that occur by systems' design, while still theoretically integrating the complex tension between agency and structures of state extraction.

Racial capitalism penology has defining implications for carceral immobility in the form of *financial capture*. Given such penology incentivizes the state to behave in a predatory manner,[21] the urge to immobilize increases alongside the state's need for both financial returns and symbolic returns in the form of degradation and docility. Market-based solutions translate into a steady historical progression of fine-tuning carceral institutions according to the latest high-tech laissez-faire scheme. This approach consistently uses monetary sanctions to hold carceral subjects individually responsible for their own immobility,[22] producing financial capture at the material, symbolic, and embodied level. People come to accept such degradation as natural, unavoidable, and at times, the result of their own individual criminality, which ensures their compliance with the logic.

Racial capitalism penology long ago facilitated this desired outcome. Private interests have continued to significantly structure the state's decisionmaking and create an incentive for extraction from the populace.[23] Because neoliberalism has fostered a rapid progression, the post 1980s state continues to reinvent technologies of force to constrain the decisionmaking of carceral subjects in an effort to force behavior that benefits the financial needs of the state, with expanding monetary sanctions regimes being but one of these technologies.

20. Brittany Friedman & Brooklynn Hitchens, *Theorizing Embodied Carcerality: A Black Feminist Sociology of Punishment*, Black Feminist Sociology: Perspectives and Praxis, at 1, 1–2 (forthcoming 2020).
21. Page & Soss, *supra* note 11, at 142.
22. Friedman & Pattillo, *supra* note 10, at 191–92.
23. *See* Anna Grzymala-Busse, *Beyond Clientelism: Incumbent State Capture and State Formation*, 41 Comp. Pol. Stud. 638, 638 (2008) (discussing liberal democratic theories of state capture; racial capitalism is markedly absent from the discussion).

Research on monetary sanctions and the inability to pay documents numerous examples that could be understood through the lens of carceral immobility and financial capture, such as pay-to-stay provisions,[24] driver's license revocation, wage garnishment, income tax seizure, and parole revocation,[25] to name a few examples. Additional work on monetary sanctions suggests poor, working class, Black, Latinx, and migrant communities[26] are disproportionately immobilized and financially captured as jurisdictions profit immensely.[27] Harris documents that the financial effects of monetary sanctions spread beyond the carceral subject and onto their friends, family and community, meaning extraction is entrenched and networked along a continuum.[28]

Conclusion

To assess and reform a carceral state incentivized to extract requires addressing the many ways that people are rendered immobile and financially captured as a result of monetary sanctions, which means systemic solutions must be paired with a decarceration mission. But how can we facilitate longterm decarceration when racial capitalism built penology as we know it? So long as the contemporary carceral system is overburdened with *offenders*, the incentive to extract from those already immobile and financially captive will remain in place because racial capitalism penology thrives off the myth of individual responsibility to legitimate material and cognitive degradation. Our long-held beliefs about individualism and meritocracy must simultaneously be addressed if legislators are to accept that people should not have to pay back their debt to society in both blood and coin. Promising reforms such as fee waivers and sliding scales are obvious short-term solutions that provide communities with immediate relief. However, systemic change in the form of abolishing user costs all together—fees, surcharges, and assessments—is required and warrants a shift from our societal commitment to racial capitalism penology. Eliminating fines and restitution may pose a major struggle because of their ideological associations and historical connections to Black atonement/white victim restoration, the criminalization of Blackness, the protection of white property, and the restriction of free Black movement. Thus,

24. Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, 15 Loy. J. Pub. Int. L. 319, 323 (2014).
25. Karin D. Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 Ann. Rev. Crim. 471, 475 (2018).
26. Kasey Henricks & Daina Cheyenne Harvey, *Not One But Many: Monetary Punishment and the Fergusons of America*, 32 Soc. F. 930, 940 (2017); Mary Fainsod Katzenstein & Maureen R. Waller, *Taxing the Poor: Incarceration, Poverty Governance, and the Seizure of Family Resources*, 13 Persp. Pol. 638, 639 (2015).
27. April D. Fernandes et al., *Monetary Sanctions: A Review of Revenue Generation, Legal Challenges, and Reform*, 15 Ann. Rev. L. & Soc. Sci. 397, 398 (2019).
28. *See* Harris, *supra* note 2, at 99–123.

focusing advocacy attention on abolishing fee-based monetary sanctions might be the first major step toward providing not only immediate relief for major sectors of the populace, but bringing about largescale deconstruction of the prison industrial complex.[29]

29. The prison industrial complex refers to the entrenched social, economic, and political interests connecting government and industry in the use and expansion of policing, surveillance, and containment as both governance and social service.