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Capitalism & Confinement:
Racialization, Dispossession, and Exploitation in the Carceral Sphere

Senior Project Submitted to
The Division of Social Studies
of Bard College

by

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Annandale-on-Hudson, New York
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Introduction

In April 1972, Michel Foucault visited Attica, one of New York's oldest correctional facilities. Struck by its medieval "*à la* Disneyland" aesthetic, he characterized the prison as a machine for the elimination of those whom it confined, questioning its function and innate mechanism of exclusion. The problem, he said, was "to find out what role capitalist society has its penal system play, what is the aim that is sought, and what effects are produced by all these procedures for punishment and exclusion? What is their place in the economic process, what is their importance in the exercise and the maintenance of power? What is their role in the class struggle?"[1] The sinister scale of the American carceral system demands that we not assume its existence, but instead, like Foucault, conceptualize its place in capitalist society. When conceptualized, the prison unveils itself not as an aberration, rather as an integral component, if not a condition, of the capitalist society.

Over 1.9 million people are currently confined in the country's carceral system, making the United States the largest producer of prisoners in the world.[2] Among these prisoners, Black men are overwhelmingly overrepresented, particularly those living in a state of poverty.[3] To make sense of these dire statistics, activists and scholars often deploy the term "prison industrial complex," referring to the idea that the expansion of prisons is more clearly tied to broader economic and political structures and ideologies than to individual criminal behavior and

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[1] Michel Foucault, and John K. Simon. "Michel Foucault on Attica: An Interview." *Social Justice* 18, no. 3 (45) (1991): 28.
[2] Wendy Sawyer, and Peter Wagner, "Mass Incarceration: The Whole Pie 2024," Last modified March 14, 2024 https://www.prisonpolicy.org/reports/pie2024.html.
[3] Sawyer and Wagner, "Mass Incarceration."

attempts to reduce “crime”.[4] Angela Davis, who forefronted this term in the vernacular, argues that “the emergence of a prison industrial complex means that whatever rehabilitative potential the prison may have previously possessed (as implied by the bizarre persistence of the term ‘corrections’) is negated.”[5] While the dialogue concerning the prison industrial complex brings attention to the oppressive dynamics of the carceral state, it constrains the conceptualization of the prison’s role in capitalist society by only focusing on the modern epoch. The prison existed before its “industrial” expansion, and it never possessed a rehabilitative potential because the crimes that it historically has sought to “correct” are byproducts of the same system that conditions its existence. Understanding the complex relationship between capitalism, the prison, and racial oppression requires tracing their emergence and intertwinement within a broader historical, theoretical, and empirical scope than the conventional framing of the prison solely as a problem of the 20th century and beyond. This project does not assume the crisis of incarceration to be a recent development; instead, it offers a reconceptualization of the prison within a much broader temporal context, revealing the deployment of confinement as a penal practice to be a mechanism that employs and intensifies capitalist devices of domination that today are reflected in the mass incarceration of the racialized poor.

Reconceptualizing the history, the function, and the place of the prison in society requires examining the dominant features of capitalism and how they merge with the carceral state. I particularly focus on two capitalist phenomena, expropriation and exploitation, observing how they remain present throughout the making and consolidation of the carceral sphere. While often interpreted as discrete, the historical, theoretical, and empirical method I employ throughout this

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[4] Angela Y. Davis, and Cassandra Shaylor. “Race, Gender, and the Prison Industrial Complex: California and Beyond.” *Meridians* 2, no. 1 (2001): 2

[5] Davis and Shaylor, “Race, Gender, and the Prison Industrial Complex,” 3.

project illustrates that these features are not respective of each other but rather two different sides of the same coin. Each of the chapters exemplifies one aspect of this multifaceted research method. While history, theory, and the empirical blend throughout my argument, they are mainly subsequently organized.

The historical analysis of this project begins in the wake of the 18th century in England and France, which was marked by both the introduction of incarceration as a form of punishment for crime, and the emergence of capitalism as an economic system. The use of confinement as a penal practice, coinciding with the separation of classes that occurs after wage-labor is established, reveals a codependent relationship between the carceral sphere and capitalism. This relation substantiates my argument for the need of a broader historical scope in understanding the prison, as it shows that the seed of the prison industrial complex had been planted not in the last century, as many scholars argue, but rather when confinement became a byproduct of enclosure, some 400 hundreds of years prior, across the Atlantic, in Europe.

Chapter one begins with a survey of what Marxist theory has coined as "primitive accumulation," a term that refers to the initial process of expropriation in capitalism. This notion rejects the rise of this system as a voluntary and organic process, positioning it as a rather forceful and coercive moment in history that leaves the worker with no other alternative but to witness and succumb to two major transformations: the turning of social means of subsistence and production into capital, and the conversion of the producers into wage-laborers. This process not only reduces the worker into a simple asset, but it also exacerbates a separation of classes that is needed by the bourgeoisie to yield financial returns.[6] What happens then when the worker

[6] Karl Marx, *Capital: A Critique of Political Economy*, trans. Ben Fowkes (V. 1: Penguin Classics. London ; New York, N.Y: Penguin Books in association with New Left Review, 1990), 873-876.

does not align in behavior with the bourgeois's need to extract as much labor-power as possible? When drunkenness, vagabondage, or any sort of idleness gets in the way of making the lower strata of society a valuable asset in the capitalist scheme? Dario Melossi and Massimo Pavarani refer to primitive accumulation in their collection of essays titled *The Prison and The Factory, Origins of the Penitentiary System*, as the moment in which the dispossessed became the mass of the unemployed, posing a threat to the capitalist need for unrestricted exponential growth.[7] The prison emerges as a solution to this problem, becoming a place where value can be extracted from surplus population through a system of imposed labor that aimed at "correcting" anticapitalist behavior. Expropriation and exploitation can be seen working hand in hand in the early stages of the carceral sphere, where poverty is severely criminalized. This chapter illustrates how these features of capitalism operate in tandem with the prison by evaluating the widespread use of workhouses as places where the masses of the unemployed were sent to produce labor, forging a model for the framework of the early penitentiaries in the United States.

While the early stages of the American carceral state sought to confine a "delinquent" body primarily consisting of prostitutes, vagabonds, thieves, beggars, and anyone under the umbrella of pauperism, this is complicated with the dissolution of slavery. Chapter 2 examines how the racial order established through slavery, with mechanisms of dispossession and exploitation deeply ingrained in its anatomy, asserts itself in the carceral sphere, relentlessly confining the same bodies that were once enslaved and consequently, racializing the "delinquent" body. Given that slavery was its own system of confinement, in which expropriation and exploitation operated at full capacity, its termination produced a surplus

[7] Dario Melossi and Massimo Pavarini, *The Prison and the Factory: Origins of the Penitentiary System* (Basingstoke, Hampshire: Palgrave Macmillan, 2019), 28.

population that entered the democratic sphere without any systematic support and with legal and social ascriptions of inferiority. This social differentiation, compounded with ongoing mechanisms of dispossession characteristic of primitive accumulation, interconnect and enter the carceral sphere. Drawing from Barbara Fields' theory on race as an ideology that must be reverified as essential to development of what W.E.B Du Bois calls "racial philosophy," this chapter merges history and theory to establish how the racial philosophy present in the social and legal circuits is materialized and expressed in the rapid expansion of the carceral state. Spanning from the Reconstruction era until the various "wars" on poverty, crime, and drugs that marked the political landscape succeeding the 1970s, the carceral state racializes poverty as a nest for criminality.

The mechanisms of expropriation and exploitation that were so prevalent in the solidification and proliferation of the carceral state are similarly expressed in the contemporary context. Chapter three directly looks at how these two dynamics exist today both inside and outside prison walls, particularly examining how the collateral consequences of incarceration experienced on the "outside" and the sphere of production on the "inside" function in a way that perpetuates a cycle of destitution. Zooming into the dynamics of contemporary penal labor, this chapter reveals that the extraction of labor from a surplus population characteristic of the early penitentiaries, as discussed in chapter one, remains strong and is now racialized. The sphere of production is an expression of the racial order discussed in chapter two, epitomizing the prison as a palpable manifestation of racial capitalism, a term often deployed to reframe capitalism as grounded in the extraction of value from racialized people. Untangling the structure of penal labor demonstrates that it is not only stratified and dynamic, but also organized along racial lines,

with racialized workers typically assigned to the bottom of the labor hierarchy. The labor sphere inside the prison imposes systems of expropriation and exploitation on the racialized worker that perfect the capitalist logic of domination upon its labor-power.

Chapter 1. From the Great Enclosure to the Great Confinement

Although relatively new to the history of penal practice, confinement has been a component of capitalism from its very beginning. The mere idea of private property as something that is private to an individual, a non sharable good that can only be passed along from one proprietor to another through monetary exchange, consigns social actors to specific roles in the capitalist scheme– producer, owner, consumer, buyer, seller, etc. Within this framework, social relations are dictated by the market, and therefore confined within it. Historian and Marxist theorist Ellen Meinskins Wood wrote in her book *The Origin of Capitalism,* that capitalism "can and must constantly accumulate, constantly search out new markets, constantly impose its imperatives on new territories and new spheres of life, on all human beings and the natural environment."[8] Confinement as a new territory, as a new sphere of life, does not begin with the active incarceration of subjects to the prison, but with the emergence and establishment of capitalism itself. It is in the transitional period from a feudalistic mode of production to a capitalist one, that confinement will begin to have a role in social relations.

Confinement as a mode of control is materialized and solidified through the process of enclosure that steered England from the 1400s to the 1600s, "in letters of blood and fire."[9] Enclosure, that being "the expropriation of the agricultural producer, of the peasant, from the soil,"[10] ended the customary use rights to land on which many people depended to survive,[11] permanently changing and redefining the social sphere. Although the history of enclosure in

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[8] Ellen Meiksins Wood, *The Origin of Capitalism: A Longer View,* New ed. (London: Verso, 2002), 71.
[9] Marx, *Capital*, 875.
[10] Marx, 876.
[11] Wood, *The Origin of Capitalism*, 83.

England is one of extensive nature, and one that can not be attributed to a sole institution, considering that it was an evolving phenomenon involving the Crown, the Church, Parliament, and members of the bourgeoisie, it is pivotal and clear in how it imposed a change in social relations.[12] Once the lands that farmers and peasants depended on for their livelihoods became private property, wage-labor centered itself as the new standard means of subsistence. In Chapter 27 of *Capital,* Marx foregrounds the argument that the usurpation and robbery of common lands, and its transformation into modern private property, is just an "idyllic" method of what he calls "primitive accumulation."[13] The divorcing of the means of production from the producers, which allows for capitalist accumulation, forced those in the lower strata of society to strictly engage with wage-labor as a way of securing their survival within this new system. The producers who were once able to work a portion of the lands in accordance with their needs without authoritative interference of an external power or institution, were now confined to a system that depleted their autonomy and guaranteed survival strictly through a wage.

The birth of capitalism as a child of enclosure had many ramifications in the structuring of a hierarchy of classes. The introduction of the wage not only forced people to sell their labor, but it also produced a new class, a group of surplus population that roamed around the chain of agrarian production, but did not find a fixed role in it. A growing number of vagabonds and dispossessed "masterless men" wandered the countryside, posing a threat to the newly imposed social order.[14] Thomas More illustrated this phenomenon in his epochal book *Utopia,* published

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[12] On enclosure, see: Karl Marx, "Expropriation of the Agricultural Population From the Land," In *Capital: A Critique of Political Economy*, trans. Ben Fowkes, V. 1: Penguin Classics. (London ; New York, N.Y: Penguin Books in association with New Left Review, 1990), 877-895.

[13] Marx, 805.

[14] Wood, 83.

in 1516, one of the earliest historical accounts of the surfacing of this new social class. In it, he writes:

> "leave no ground for tillage, they inclose all into pastures…by means therefore or by other, either by hook or crook they must depart away, poor, silly, wretched souls, men, women, husbands, wives, fatherless children, widows, woeful mothers, with their young babes, and their whole household small in substance and much in number… And when they have wandered abroad till that be spent, what can they then else do but steal, and then justly pardy be hanged, or else go about begging."[15]

The dispossession of people's means of subsistence created and transformed social groups into entities without an anchored place in the new social order, inherently forcing them to find mediums of survival, like begging, outside the producer-owner sphere.

In the new capitalist social order, the body of the worker experienced a major transformation in which it became a source of labor-power, therefore transforming life itself into labor-power. Michel Foucault extensively reflects on this transformation in his book *The Punitive Society,* where he argues that after feudalism, "the time of people's existence had to be fitted and subjected to the temporal system of the cycle of production…the problem of capitalist society is not so much to tie individuals down locally, as to capture them in a temporal mesh that ensures that their life is effectively subjected to the time of production and profit."[16] The surplus population that emerged as a result of enclosure escapes Foucault's temporal mesh, in the sense that their existence is idle and therefore not subjected to the time of production and profit. The vagrants who lived on the roads were cut off from a settled life, and single women and children moved from place to place begging for basic livelihood items such as cheese, milk, wool, hemp,

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[15] Utopia Book 1, as seen in Melossi and Pavarini, *The Prison and the Factory: Origins of the Penitentiary System*, 28.

[16] Michel Foucault, *The Punitive Society: Lectures at the College de France 1972-1973*, ed. Bernard E. Harcourt, trans. Graham Burchell (Houndmills, Basingstoke, Hampshire ; New York, NY: Palgrave Macmillan, 2015), 211.

etc.[17] Capitalism, as Foucault proposes, needed to tie individuals down to a specific lifestyle that fit the rhythm of production, and vagrancy laid outside of it. The solution to this problem that posed a threat to a steady exponential growth of capitalist control was found in the workhouse– the place where the pauper class will be confined and thrown into the cycle of production.

Houses of correction and workhouses began to appear throughout Europe in the 1500s, acting as institutions of control and discipline that coerced those confined within them to become useful producers of labor. If the cost of production of labor power is the cost required for maintaining the worker as a worker, and of developing him into a worker, as Marx argues in *Wage Labour and Capital*, then the houses of correction fit like a glove within the capitalist rationale as they correct the outliers of production through imposed labor.[18] The ultimate goal of the correction house is precisely to develop this social group into workers. In England, a series of legal codes outlawing vagrancy and idleness, known as Poor Acts, were enacted as early as 1530, separating the unemployed into two categories: those who were physically or mentally unable to work and therefore allowed to beg (the impotent poor), and those who voluntarily chose not to work and were therefore considered criminals.[19] The latter group was punished and confined in newly established houses of corrections, also known as Bridgewells.[20] While the impotent poor received aid from and depended on the parishes, the rest of the unemployed were forced to work in the Bridgewells to "learn the habits of the industry."[21] Dario Melossi and Massimo Pavarani describe the aim of the institution in their book *The Prison and the Factory, Origins of the*

[17] Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978), 7.
[18] On Marx's theory of the cost of production of labor power, see: Karl Marx and Friedrich Engels, *The Marx-Engels Reader*, ed. Robert C. Tucker, 2d ed. (New York: Norton, 1978), 205.
[19] Melossi and Pavarani, 30.
[20] Melossi and Pavarani, 30.
[21] Ignatieff, *A Just Measure of Pain,* 11.

Penitentiary System as being threefold: "to reform the inmates by means of compulsory labour and discipline; to discourage vagrancy and idleness outside its walls; and… to ensure its own self-sufficiency by means of labor."[22] In the house of correction, the idle was converted into a worker through discipline and was kept alive at their own expense, meaning the cost of their existence was precisely the cost of production. The Poor Act of 1576 allowed for the establishment of a house of correction in each county, beginning a country-wide use of this institution as an apparatus of control aimed at effectively maintaining the order of the capitalist society.[23] In 1601, the series of acts were codified into one legislation, the Elizabethan Poor Law, which remained without significant alteration until 1834.[24] By that time, the workhouse was fully ingrained in the penal sphere as a place for correction.

A similar institution emerged in the first half of the 17th century in the Netherlands, and although the history that led to its establishment differs from that of England, they both share the imposition of labor as a punitive measure within their walls. The Dutch *Rasp-hauis,* like the British house of correction, seeked to transform the confined population into a docile body of producers of labor. As quoted in Melossi and Pavarani's book, the Amsterdam Magistrates proposed the building of the Rasphaus, which was inaugurated in 1596, as a place where "all vagabonds, evildoers, rascals and the like could be imprisoned for their punishment and could be given labour… suitable considering their offenses or misdeeds."[25] Labor was given to those confined as a solution to their identity as criminals, a practice that not only centered labor as a medium to correct criminality, but also determined the body of the criminal as one who refuses

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[22] Melossi and Pavarani, 30.
[23] Ignatieff, 9.
[24] Melossi and Pavarani, 30.
[25] Melossi and Pavarani, 34.

to perform labor. In the Rasphaus, the disciplinary training for capitalist production resembled the manufacturing process that can be normally found within a factory, in the sense that a body of workers produced a good that could later be sold for profit. Work was carried out in cells or in courtyards, and it mainly consisted of pulverizing wood with a blade saw for use in dyeing textiles.[26] Buyers would then purchase the saw dust, creating an economy out of the labor of those who were confined. By placing a product produced within the walls of the workhouse, outside of them in the market economy, the institution of confinement becomes clearer as a necessity not because it locks "dangerous" people away, but because it produces in accordance with the reigning system outside its walls, thus helping maintain it.

Similar to the Rasphuis, the *maison de force* at Ghent was built upon the notion that idleness was the general cause of most crimes. The mechanisms of labor within the workhouse, as Foucault argues in *Discipline and Punish*, provided a universal pedagogy of work for those who had not submitted their bodies to the production of labor.

> "This useful pedagogy would revive for the lazy individual a liking for work, force him back into a system of interests in which labor would be more advantageous than laziness, form around him a small, miniature, simplified, coercive society in which the maxim 'he who wants to live must work', would be clearly revealed."[27]

This "revival" of a liking for work implies that the workhouse not only imposed labor, but it also created a disciplinary system shaped by the notion that an affinity for work is organic to the quality of being human. The pedagogy of the workhouse would correct criminality through the

[26] Melossi and Pavarani, 34.
[27] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd Vintage Books ed. (New York: Vintage Books, 1995), 122.

reconstruction of the *homo economicus.*[28] Laziness and idleness would become irrational behavior within the walls of the house of labor.

The workhouse produced, regardless of where it was placed geographically, a disciplined and inexpensive workforce, rendering the criminalization of poverty as a pillar of capitalist manufacturing. Inside its walls, a minimal use of capital was required considering that its main expense was maintaining those confined alive and strong enough to perform labor. In other words, the cost of production inside the workhouse was the cost of the existence of the body of the confined. Beyond producing a good that could be placed in the market, the aim of house of correction was to produce useful subjects that could be molded to fit any role in the manufacturing process. John Locke makes this the center of his argument in his "Essay on the Poor Law" from 1697, where he proposes a series of amendments to the Elizabethan Poor Laws, reimagining national welfare through a mass-employment policy reform that would rely on the workhouse for its success.[29] His solutions to idleness were directed at those who were physically able, yet unwilling to work, meaning everyone outside the "impotent poor" category. For Locke, anyone able to work was a potential worker, and should therefore have to be transformed into one. Section 38 of his proposed measures stipulates that if any poor person should be found begging outside the allowed hours or out of their respective parishes, "they shall be sent immediately, if they are under 14 years of age, to the working school to be whipped, and, if they are above 14, to the house of correction, to remain there six weeks and so much longer as till the next quarter-sessions after the said six weeks are expired."[30] Not complying with labor became a

[28] Foucault, *Discipline and Punish*, 122.
[29] Lucas G. Pinheiro, "A Factory Afield: Capitalism and Empire in John Locke's Political Economy," *Modern Intellectual History* 19, no. 1 (March 2022): 15. https://doi.org/10.1017/S1479244320000347.
[30] John Locke, "An Essay on the Poor Law (1697)," in *Locke: Political Essays,* ed. Goldie, Mark (Cambridge, 1997), 198.

synonym of criminality in Locke's language, and for adults this would be punished with incarceration. The house of correction would take the shape of a working school in the lives of children as young as 3 years of age. In the same essay, Locke "humbly" proposes each parish to establish working schools for the dependent children, meaning the poor, where they would mainly knit and spin as a way of earning enough money to cover for the costs of their food.[31] Locke's proposal for the integration of children in the chain of production, and the training of them as workers illustrates the concern at the time of producing a disciplined, cheap, and productive workforce.

Almost 100 years later, Jeremy Bentham expands on Locke's idea of the penal workhouse and working schools in his theory of the Panopticon. Bentham saw what he called "penitentiary houses" –a circular building with an inspection tower placed in the center, from where the inspector could have full surveillance over the prisoners' cells, who were not able themselves to see the inspector– as places for safe-custody and labor.[32] The disciplinary aspect of the space would effectively keep working men from all kinds of "mischief," and their "reformation" would be testified in the quantity and value of their work.[33] It made sense that Bentham thought of this system of discipline with productivity in mind, given the circumstances of industrial England at the time. By 1750, the need for larger prisons expanded in industrial England, as the jail system in London began to be overwhelmed with the crush of destitute poor awaiting trial for petty property crime.[34] Bentham's philosophy highlighted the categorization of basic items needed to live as property that had to be earned through a wage, centralizing the

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[31] Locke, "An Essay on the Poor Law," 190.
[32]Jeremy Bentham, *Panopticon Or the Inspection House* (Ireland: T. Payne, 1791), 31.
[33] Bentham, *Panopticon Or the Inspection House,* 49.
[34] Ignatieff, 45.

capitalist need for a disciplined workforce as a means to avoid theft. In the *Panopticon,* he writes:

> "If a man won't work, nothing he has to do, from morning to night, but to eat his bad bread and drink his water, without a soul to speak to. If he will work, his time is occupied, and he has his meat and his beer, or whatever else his earnings may afford him, and not a stroke does he strike but he gets something, which he would not have got otherwise."[35]

For Bentham, obtaining beer, meat, or whatever else not through earnings consolidated through personal labor, would constitute theft of private property, a concern that was solidified during industrial capitalism. From the bourgeois' perspective, the danger presented by the poor during this time was expressed the closer their proximity was to property. Foucault illustrates this phenomenon by conceptualizing property as wealth, particularly as bourgeois wealth which was in a precarious position considering its direct contact with the worker in the docks, warehouses, and ports that began to shape the market. Since the worker quite literally held wealth in the manufacturing process, the wage contract had to be:

> "accompanied by a coercion that is like its validity clause: the worker class must be 'regenerated,' 'moralized'. Thus the transfer of the penitentiary takes place with one social class applying it to another: it is in this class relationship between the bourgeoisie and the proletariat that the condensed and remodeled penitentiary system begins to function; it will be a political instrument of the control and maintenance of relations of production."[36]

For Foucault, the manners of the poor must be reformed and moralized to reduce any potential risks to bourgeois wealth, ultimately shaping the penal system around this existing relationship between the bodies of the poor and wealth. The prison then embodies an apparatus of control over the worker's body, and actively contributes to the production of not only a cycle of poverty, but also the production of a reliable and disciplined workforce.

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[35] Bentham, 67.
[36] Foucault, *The Punitive Society*, 149.

Michel Foucault's meticulous analysis of the carceral state in his book *Discipline and Punish: The Birth of the Prison,* traced the cultural shifts that placed the prison at the center of the production of docile bodies. Foucault establishes a clear correlation between the expansion of industrial capitalism in Europe and the emergence of new forms of illegalities within the social body that became a major point of contention in the development of the penal system.[37] He argues that two illegalities, representing a class opposition, break through the surface and start shaping the legal systems. The lower classes find themselves linked to the illegality of property, or "the violent transfer of ownership", while the bourgeoisie reserved itself to the illegality of rights, denoting the manipulation of gaps in regulations and laws.[38] The stark difference between the two could not be handled by the same legal circuits, ascribing the first to "ordinary courts and punishment," while the latter was dealt with through special legal institutions "applied with transactions, accommodations, reduced fines, etc."[39] This separation of illegalities and their respective prosecutions called for a readjustment of legal punishment at a systematic level, especially considering how said illegalities permeated all realms of the social body. For Foucault, this meant the production of new tactics of punishment and control necessary to maintain a social order. The art of punishment had to be applied homogeneously, which could be attained by reducing "its economic and political cost by increasing its effectiveness and by multiplying its circuits."[40] Constituting a new economy and a new technology of the power to punish were, in Foucault's words, "the essential *raisons d'être* of penal reform in the eighteenth century."[41]

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[37] Foucault, *Discipline and Punish,* 87.
[38] Foucault, 87.
[39] Foucault, 87.
[40] Foucault, 87.
[41] Foucault, 89.

Foucault's web of relations between class opposition, new forms of illegalities, and the expansion of industrial capitalism disclose the production of a disciplined workforce as an integral element of penal reform. If penal reform is a direct result of an economic distinction within the social body, as implied by the separate legal circuits ascribed to each class, the new mechanisms of punishment will inherently produce power relations necessary to maintain the economic imbalances because these imbalances condition the very existence of the penal reform. Hence the need of the penal system to incarcerate those who practice illegality of property, and not those who practice illegality of rights. This separate mechanism of punishment, concerned with maintaining a social order that confines a class to the ranks of producers of labor, is an expression of the integral nature of the carceral sphere to the capitalist society. While Foucault looked at the *raisons d'être* of penal reform in the context of Europe, something very similar started to emerge across the Atlantic.

Confinement Across the Atlantic

Post Revolutionary War America was marked by a period of prison reform that similarly to Europe shifted from harsh bodily punishments and short-term confinement to prolonged sentences of imprisonment.[42] The pillars holding the weight of the newly founded American carceral system were cemented by a capitalist mechanism of "correction" that although differed in application in each penitentiary, shared similar moral and economic principles. Two systems dominated the carceral sphere: Philadelphia's solitary confinement system and the subsequent Auburn silent system.

[42] "19th Century Prison Reform Collection | Cornell University Library Digital Collections." Accessed May 1, 2024. https://digital.library.cornell.edu/collections/prison-reform.

In 1790 Pennsylvania, the Quakers added a "penitentiary house" to one of the country's oldest jails located on Walnut Street in the city of Philadelphia. This area of the Walnut Street Jail was built in the courtyard of the existing structure, a U-shaped building with individual cells that prevented prisoners from communicating with each other. This system of confinement was built according to the Quakers' belief in penitence, which could only be achieved in complete silence and isolation so that the criminal could examine his soul and repent. The production of labor was also considered to be a necessary element to arrive at a state of full penitence, making the penitentiary house a place where behavioral corrections were carried out through imposed labor. Forced solitude, coupled with forced labor was the chosen disciplinary method of America's first penitentiary.

In 1816 New York, an alternative to the Quakers' system emerged with the construction of the Auburn Prison. Like the penitentiary in Philadelphia, the Auburn facility followed a similar model to that of the European workhouse, but unlike the Walnut Street prison, inmates were able to cohabit during meal times, and the production of labor was not carried out in complete isolation, but rather as a collective process. Although the Auburn system did not implement solitary confinement, it did impose a code of complete silence that was severely enforced by the prison guards. The Auburn silent disciplinary method became a model for following prisons in the Union, expanding the penal practice of confinement through compulsory silence and labor.[43]

The rapid expansion of the American carceral system and the distinctive nature of Auburn developed at a time in which incarceration was the most common form of penal

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[43] Alexis Tocqueville and Alexis Beaumont, *On the Penitentiary System of the United States and Its Application in France*, (New York: A. M. Kelley, 1970), 20.

punishment in the West; the prison model had become a shareable good that trespassed geographical borders. The British would be influenced by the Philadelphia model when undergoing prison reform. Similarly, the French government commissioned French philosophers and politicians Gustave de Beaumont and Alexis de Tocqueville to examine the theory and practice of the American penitentiary system to evaluate its effectiveness and possible application in France in the 1830s. Tocqueville and Beaumont's report on the "penal colonies" contains some of the first records of convicts' experiences in the American carceral state, illustrating how deeply ingrained the production of labor was in its expansion. Their observations point at a dynamic in which labor is oftentimes presented to the prisoner, or perceived by him, either as a punishment or a reward. While the production of labor took different forms across prisons, it was present in all, as idleness was considered to be the main crime to be corrected.

In Philadelphia, following the Quakers' ideology, labor was used as a method to arrive at a correction of the criminal's "soul," granting him a form of consolation in his work. The complete isolation of the prisoner in the solitary cells created an environment in which labor appeared to be some form of relief from the harsh conditions of being confined alone. As observed by Beaumont and Tocqueville,

> "It is highly remarkable, that these men, the greater part of whom have been led to crime by indolence and idleness, should be constrained by the torments of solitude, to find in labour their only comfort: by detesting idleness, they accustom themselves to hate the primary cause of their misfortune; and labour, comforting them, makes them love only by means, which when again free, will enable them to gain honestly their livelihood."[44]

The Philadelphia system sought to reform idleness by forcing the prisoner to face nothing but solitude, in other words forcing the idle to be nothing but idle in a confined space. Once that

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[44] Tocqueville and Beaumont, *On the Penitentiary System of the United States and Its Application in France*, 20.

takes place, the ability to work and produce a material good takes the form of relief, consolation, and reward. In their Philadelphia visit, Beaumont and Tocqueville interviewed a 38-year-old convict who had been imprisoned for eight months and who had become a shoemaker in the prison, making six pairs of shoes in a week. "*Question:* Have you accustomed yourself easily to solitude? *Answer:* At first, solitude seemed to me horrid; gradually I accustomed myself to it; but I do not believe that I could live here without labor. Without labor, there is no sleep."[45] A certain degree of comfort was provided by the action of working when faced with complete solitude and confinement, creating almost a system of dependency between the prisoner and his work. This forced affinity to work would then carry over to the prisoner's life outside the penitentiary, eradicating a tendency to engage in idleness or theft. The ultimate goal of the penitentiary seemed to be the arrival at a disciplined state through a forced change in the prisoner's outlook on labor.

On the other hand, labor in the Auburn system had a dual nature of being both a punishment and privilege. The punitive element came across through the silence that was enforced at the time of laboring, which if broken was reprimanded by physical punishment such as whipping, while the consolation aspect took form in the opportunity to be interacting with other human beings in the workshops. Complete solitude in Auburn, unlike Philadelphia, happened mostly at night time when prisoners went back to their cells. As both penitentiaries started to swell with prisoners, threatening their respective disciplinary methods, new facilities went under construction, starting a pattern in carceral expansion where an increase in crime is handled with an increase in prisons. In *Discipline and Punish,* Foucault writes "The prison had

[45] Tocqueville and Beaumont, 192.

always been offered as its own remedy: the reactivation of the penitentiary techniques as the only means of overcoming their perpetual failure; the realization of the corrective project as the only method of overcoming the impossibility of implementing it."[46] The perpetual failure in the case of the first penitentiaries was their inability to eradicate "criminal behavior," and so building more prisons became the appropriate remedy to higher rates of incarceration.

The Sing Sing prison was established in 1828 as a direct response to the problem of overcrowdedness at Auburn. Built by the prisoners themselves, Sing Sing followed the Auburn system and started as a self-sufficient prison that was lucrative for the state.[47] Elam Lynds, the warden at Auburn who implemented the silence system and who led the construction of Sing Sing, discussed the "success" of both places in an interview with Beaumont and Tocquville "If you have once completely curbed the prisoner under the yoke of discipline, you may, without danger employ him in the labour which you think is best. It is in this manner, that the state may make use of the criminals in a thousand ways…"[48] Labor at Sing Sing was no longer masked as an attempt to correct the criminal's soul, it rather served a source of production. Lynds also emphasized that in order to maintain a level of discipline necessary to carry out uninterrupted silence and labor, it was necessary to " watch incessantly the keepers, as well as the prisoners; to be at once inflexible and just."[49] Sing Sing illustrated a level of control similar to that of the Panopticon, all while functioning under a capitalist umbrella that seeked to produce labor at an inexpensive rate. Criminal behavior was to be corrected through panopticism and a capitalist control over the "soul".

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[46] Foucault, 268.
[47] Tocqueville and Beaumont, 79.
[48] Tocqueville and Beaumont, 201.
[49] Tocqueville and Beaumont, 204.

After the Civil War, incarceration rates rapidly increased and the complex disciplinary systems that were implemented in penitentiaries across the Northeast started to deteriorate due to overcrowding.[50] Forced labor, panopticism, and solitude as methods to correct criminal behavior could only be successful under a limited occupancy of the prison premises. Tocqueville observed prior to 1865 that with the end of slavery, a rise in incarceration would most likely take place due to the country's association of Black bodies and criminality,

> "In general, it has been observed, that in those states in which there exists one negro to thirty whites, the prisons contain one negro to four white persons. The states which have many negroes must therefore produce more crimes… experience proves… that in the south the number of criminals increases with that of manumitted persons; thus for the very reason that slavery seems to draw nearer to its ruin, the number of freed persons will increase for a long time in the south, and with it the number of criminals." [51]

Whereas the first penitentiaries in the country concerned themselves with the correction of idleness, as this was considered to be a producer of crime, this changes with the expansion of the carceral state once racialized bodies enter the democratic sphere. The element of race is added to the pool of factors that could only be reformed behind bars.

[50] "19th Century Prison Reform Collection | Cornell University Library Digital Collections." Accessed May 1, 2024. https://digital.library.cornell.edu/collections/prison-reform.

[51] Tocqueville and Beaumont, 62.

Chapter 2. Racialized Dispossession through Confinement

As I established in the previous chapter, enclosure paved the way for confinement in the blurred line between the workhouse and the prison in Europe. While the conjoinment of capitalism and confinement continued across the Atlantic, the racialization process that occurred through slavery added a new dimension to the capitalist modes of dispossession by entwining economic exploitation with racial oppression in the expansion of the carceral sphere. The constant search for new markets, new territories, and new spheres of life that capitalism necessitates to constantly accumulate,[52] was verified in the solidification of a prison system that moved away from correcting 'idle' behavior, and like Tocqueville observed in the wake of the outlawing of slavery, incarcerated Black individuals at a rapid and disproportionate rate.

Capitalism's constant search, which inherently dispossesses in abstract and material forms, is distinct from Marx's theory that values expropriation as "the starting point of the capitalist mode of production, whose goal is to carry it through to completion,"[53] in the sense that it doesn't see it as a demarcated process, rather a continuing one. In his book *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation,* Michael Perelman theorizes on this issue in his critique of classical political economy which seeks to highlight the lacuna in the relevance of the social division of labor in the early stages of capitalist development. Unlike most intellectual discussions of primitive accumulation that, following Marx, treat the concept as a historical process of expropriation, Perelman wants to treat this phenomenon as an "essential theoretical concept in analyzing the ongoing process of

[52] Wood, 7.
[53] Marx, *Capital*, 570-7.

capitalist accumulation."[54] Rather than positioning this process solely as a "point of departure,"[55] Perelman argues that primitive accumulation plays a continuing role in the development of capitalism. He describes the ways in which primitive accumulation disrupted traditional lifeways in feudal Europe as it follows,

> "The first blade served to undermine the ability of people to provide for themselves. The other blade was a system of stern measures required to keep people from finding alternative survival strategies outside the system of wage labor. A host of oftentimes brutal laws designed to undermine whatever resistance people maintained against the demands of wage labor accompanied the dispossession of the peasants' rights, even before capitalism had become a significant economic force."[56]

The mechanisms used to inscribe people into a capitalist mode of production, which Perelman makes note of to expose modern capital accumulation, are mirrored in the context of incarceration as a penal practice, illustrating the "ongoing" nature of primitive accumulation. The blades of the violent process that Perelman lays out were vividly present in the expansion of the carceral state continuum following the end of the American Civil War, at a point in history where capitalism had already been established as a hegemonic economic force. Similarly, Rosa Luxemburg argues in *The Accumulation of Capital: A Contribution to an Economic Explanation of Imperialism*, that the methods used of primitive accumulation do not end when the capitalist mode of production becomes dominant in a specific context.[57]

> "The process of extricating labor-power from primitive social relations and absorbing it into the capitalist wage system is one of the indispensable historical foundations of capitalism. The British cotton industry, which was the first genuinely capitalist branch of production, would have been impossible not only without cotton from the southern states of the American union, but also without the millions of Black Africans who were transported to America in order to provide labor-power for the plantations, and who

[54] Michael Perelman, *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation*, (Durham, N.C: Duke University Press, 2000), 4.
[55] Marx, 873.
[56] Perelman, *The Invention of Capitalism*, 14.
[57] Jackie Wang, *Carceral Capitalism*, (South Pasadena, CA: Semiotext(e), 2018), 107.

> subsequently joined the ranks of the capitalist class of wage laborers as free proletarians after the American Civil War."[58]

In showing how the process of labor-power extraction was dynamic and transatlantic from a start, Luxemburg's argument illustrates how the mechanisms used for primitive accumulation are of a continuing nature. Following this logic, the prison system, like the British cotton industry and the plantation, not only mirrors, but relies on continued forms of violent dispossession. Dispossession inherently implies that primitive accumulation is occurring, since it is a depriving process. In the historical context of this chapter, the carceral sphere takes a turn after the legal dissolution of slavery, developing a capitalist mechanism of confinement that relied on a practice of racialized dispossession, which much like the plantation restricted the major "freedoms" of the democratic sphere: social, financial, bodily, and political.

The prison acts as an apparatus that perpetuates social and economic isolation upon a racialized body, which are features of dispossession. Although capitalist accumulation by dispossession is a well theorized topic, with academics like Perelman taking Marx's theory one step further foregrounding its persistence, the racial character of expropriation– both historically and in its continued form– is a subject that needs further examination to make sense of the functioning of capitalist institutions, such as the prison. The impetus for slavery in the context of the United States has been explained as a purely economic matter, rationalizing the commodification of humans as property in the Western colonies as a need for unfree labor power. Eric Williams puts this argument best in his book *Capitalism and Slavery,* arguing that "He (the planter) would have gone to the moon, if necessary, for labor. Africa was nearer than the moon." [59] While Williams is right, and historians like Barbara Fields have analyzed slavery through a

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[58] As quoted in Jackie Wang's Carceral Capitalism, see: Wang, *Carceral Capitalism*, 110.
[59] Eric Williams, *Capitalism and Slavery*, (University of North Carolina Press, 1994), 7.

similar lens, looking at the origins of the plantation economy as a process that first exploits white indentured labor, then Native American labor, and finally Black labor, I see it as equally necessary to theorize the racial order that develops after this economic reasoning since its ramifications touch upon all aspects of the democratic sphere. W.E.B Du Bois does precisely this in his analysis of the Reconstruction period, proving a purely economic explanation to be insufficient as a means of ascertaining socioracial class antagonism in his theory of the American development of a "racial philosophy" that permeates the social body. This chapter seeks to interpret historical expressions of what Du Bois called racial philosophy as an effort to theorize the racial fabric of capitalism, given that the racial order is intrinsically embedded in the carceral sphere. To understand what Jackie Wang has coined as "carceral capitalism," viewing the carceral sphere not merely as a consequence of capitalism but as a continuum operating alongside and intertwined with the racial dynamics of late capitalism, an analysis of the development of a racial order, or racial philosophy, is imperative.[60] In order to arrive at this analysis, I will apply Fields' theory of racial ideology and social isolation to the period following Jim Crow, in which carceral expansion reached unprecedented proportions.

On Racialized Differentiation

Before establishing the forms of racialized dispossession that enabled the expansion and legitimization of the American carceral project, it is important to note that the framework they follow is one that contains two juxtaposing elements that work in conjunction: *differentiation* and *homogeneity*. As political theorist and poet Jackie Wang notes in her compelling book *Carceral*

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[60] Wang, 85.

Capitalism, there is an academic tension that persists between those who claim that capitalist processes tend to homogenize subjects, and those who hold that capitalism operates through differentiation.[61] In the context of homogeneity, Marx's theory of primitive accumulation stands out as it argues that the foundation and social pillars of the capitalist society bear in the transformation, and homogenizing process, of the social body into the categories of sellers of labor and owners of means of production. In terms of differentiation, Cedric Robinson contests Marx's argument of primitive accumulation being the transformation of feudal exploitation into capitalist exploitation, by introducing the idea of capitalism being an extension of feudalistic structures rather than a negation of them. Within this extension, Robinson finds that the social body had already been differentiated through the notion of race, noting that "the tendency of European civilization through capitalism was thus not to homogenize but to differentiate– to exaggerate regional, subcultural, and dialectical differences into 'racial' ones."[62] For Robisnon, differentiation through the lens of race is equally as pertinent to capitalism as the homogenization of subjects into social classes is for Marx.

If Marx and Robinson's theories are analyzed in unison rather than as mutually exclusive processes, the theory of primitive accumulation is not only made more comprehensive, but also applicable to the carceral sphere as a continual process. As Wang posits, capitalism's dual character of homogenization and differentiation operate simultaneously, in her words "if the *exploitation* axis is characterized by the homogenizing wage relation (insofar as it produces worker-subjects who have nothing to sell but their labor-power), then the axis of *expropriation*

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[61] Wang, 100.
[62] On Marx and primitive accumulation, see: Marx, *Capital,* 875; Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition*, (Chapel Hill: The University of North Carolina Press, 2020), 26.

relies on a logic of differentiation that reproduces racialized (as well as gendered) subjects."[63] In the context of the carceral state, the homogenizing process is not embodied by a wage relation, rather by the classifications of free citizen and prisoner. This separation of "classes," which ascribes the prisoner into the social categories of criminal, delinquent, undeserving, etc., is arrived at through a differentiating process that has historically occurred through the lens of race.

Racial differentiation as a form of social differentiation was solidified in America with the expansion and practice of chattel slavery, laying a foundation of mechanisms that were later transferred to the carceral sphere. If race is looked at through the lens of history, it arises as a social construct in a particular time when a justification was needed to legitimize a system of power that did not align with the democratic ideals of the newly founded republic. In her essay *Slavery, Race, and Ideology in the United States,* Barbara Fields scrupulously examines the societal work performed by the construction of race, concluding that since race is not genetically programmed, racial prejudice, which cannot be genetically programmed either, like race itself, must arise historically.[64] Like an ideology, race, she argues, must be constantly recreated through experience and it is precisely the verification of this construct in social life that allows for it to continue to exist.[65] In the context of colonial America, racial ideology was utilized to explain and legitimize the exploitative economic system of bondage to people "whose terrain was a republic founded on radical doctrines of liberty and natural rights."[66] Slaves of African descent were determined to be racially inferior and the abhorrent abnegation of their freedom justified, after it became economically and politically "practical" for the Southern plantation owners to replace

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[63] Wang, 101.
[64] Barbara J. Fields, "Slavery, Race and Ideology in the United States of America," *New Left Review*, no. I/181 (June 1, 1990): 101.
[65] Fields,"Slavery, Race and Ideology in the United States of America," 113.
[66] Fields, 114.

the labor of the poor white indentured servants with that of slaves for life.[67] Racial ideology, rooted in the need for the construct of a difference between superior and inferior beings, was solidified through the existence of slavery in the social field.

The racial order that was established via chattel slavery was further cemented by a racially divided sphere of production that prevented unity amongst members of the same economic class. The postbellum labor market, particularly that of the South, was characterized by a belief system of racial antagonism in which poor white workers (who increased by the numbers following the economic crisis that derived from the collapse of the plantation system) and emancipated Black workers (who had no systemic or structural support of any kind) competed for the same jobs and lived under similar material conditions, yet found no solidarity with one another due to the idealized conditions of the white working class. Du Bois characterizes the color lines that separated the poor whites from the emancipated poor Black workers as a war between laborers, in which "the white laborer joined the white landholder and capitalist and beat the black laborer into subjection through secret organizations and the rise of a new doctrine of race hatred."[68] This new doctrine of race hatred, to which he also refers to as "racial philosophy,"[69] infiltrated the sphere of labor in a way that prevented the poor white people to identify themselves in the economic struggle of the poor Black individuals who had just legally entered the democratic sphere. Beyond producing prejudice, the ontological distinction between superior and inferior humans, codified as race, created a separation between

[67] Fields, 105.
[68] Du Bois, W. E. B. *Black Reconstruction in America: An Essay toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880*, (Harcourt, Brace and Company, Inc., 1935), 670.
[69] Du Bois, *Black Reconstruction in America,* 22.

those who possessed an idealized “right” to participate in the economy and those whose ascribed category of “inferior” placed them in a precarious position in the social body.

Similar to Du Bois’ argument of a racial class antagonism as a byproduct of slavery, Michael Dawson notes how processes of dispossession, such as slavery, result in racial separation. This separation is “manifested in the division between full humans who possess the right to sell their labor and compete within markets, and those that are disposable, discriminated against, and ultimately either eliminated or superexploited.”[70] The idealization of the white worker as superior, like Dawson argues, was manifested in the period of Reconstruction in the othering of an entire social group outside of humanity and the labor market, and the inclusion of himself in the category of a “rightful” seller of labor. This process of differentiation solidified the racial order not only by ostracizing the Black worker, but by providing the poor white worker with a possibility to think of himself as “free” in doing so, disregarding the poor material conditions and imbalances of power that plagued the postbellum country, specifically the South. Nancy Fraser, another academic examining primitive accumulation as an ongoing process of expropriation, takes Dawson’s theory one step further by examining how capitalism is entangled with racial oppression. She particularly focuses on the relationship between dependent labor, as in the worker with a wage contract, and the political subjugation of “lesser beings,” such as the colonized, chattel slaves, and indentured servants. She writes, “The subjection of those whom capital expropriates is a hidden condition of possibility for the freedom of those whom it exploits.”[71] If Fraser’s words are taken into account, the process of racialization, or of a racial

[70] Michael C.Dawson, “Hidden in Plain Sight: A Note on Legitimation Crises and the Racial Order.” *Critical Historical Studies* 3, no. 1 (March 2016): 147-148.
[71] Nancy Fraser, “Expropriation and Exploitation in Racialized Capitalism: A Reply to Michael Dawson.” *Critical Historical Studies* 3, no. 1 (March 2016): 166.

philosophy, results in the construction of expropriable subjects, offering an idealized freedom for those who are also, like the poor white worker that Du Bois references, being exploited.

Outside the sphere of production, the social hierarchy, manifested through race, that slavery produced was solidified by the almost invisible systemic support that former slaves received upon entering the American polity. In the context of slavery, Barbara Fields describes the process of Africans and Afro-West Indians entering the slave-dependent colonies as "entering the ring alone", implying that compared to their white indentured servant counterparts, who had the legal and structural support of their contracts and their European countries of origin, the Black slaves entered this new space with nothing to rely on.[72] The concept of entering the ring alone is repeated after slavery is abolished, when emancipated slaves sought to integrate themselves in American democracy without any previous structural support that could guide the process. The former slaves did not just enter a racialized public sphere as disadvantaged and unequal, but they were confined to that status through public policy and the law. Du Bois examined the period of Reconstruction in how it unveiled the artifice of American democracy, noting that "the true significance of slavery in the United States to the whole social development of America lays in the ultimate relation of slaves to democracy."[73] As the racial order established during slavery permuted into a racialized class antagonism needed to maintain the capitalist order of the economy, a series of legislations criminalizing the poor Black population erupted across the country. Slavery did not become vestigial, instead the mechanism of racial control and socio-economic custody migrated to the penal and legislative field.

[72] Fields, 104.
[73] Du Bois, 13.

Racial Philosophy and the Expansion of the Carceral State

The development of a criminal justice system that criminalized the formerly enslaved population was particularly salient in the South, where petty offenses correlated to poverty were met with harsh punitive measures. Vagrancy laws adopted throughout the Southern states made it a criminal offense to not work, selectively targeting Black people.[74] Although carceral punishment as a response to vagrancy was not new to the prison system, the racialization of the vagrant added an additional layer that was not as prominent as when slavery was legal. Race-class hierarchies were codified into law with the implementation of the Black Codes, which went as far as codifying activities such as "mischief" and "insulting gestures" as crimes– "crimes" that were vigorously associated with Black people.[75] Du Bois (who faced criminal charges himself later in life)[76] points out how the racial ideology developed during slavery merged with the notion of criminality, noting how racial prejudice, in his words "doctrine of hatred", was solidified by the former slave owners in the South who "accused Black people of theft and crime, characterizing their nature as grotesque and morally tainted."[77] Criminality was becoming not only a function of class, but also of race. The convict-leasing system that rampantly targeted former slaves serves as a prime example of the mechanism by which racialized power asserted itself. As Angela Davis notes in her essay *From the Prison of Slavery to the Slavery of Prison: Frederick Douglass and the Convict Lease System,* the post-Civil War

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[74] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York: New Press, 2020), 35.
[75] Alexander, *The New Jim Crow,* 38.
[76] During the Red Scare of the early 1950s, Du Bois, who was 82 years old at the time, was charged by the US Department of Justice with failing to register as a foreign agent. See: Elliot Mamet, "'This Unfortunate Development': Incarceration and Democracy in W. E. B. Du Bois." *Political Theory* 51, no. 2 (April 2023): 383.
[77] Du Bois, 670.

southern system of convict lease "transferred symbolically significant numbers of black people from the prison of slavery to the slavery of prison. Throughout this transference, ideological and institutional carryovers from slavery began to fortify the equation of blackness and criminality in US society."[78] Ideologically and institutionally speaking, the convict-lease system had no limits in its exploitative character, helping maintain Black people's status as a disenfranchised and involuntary labor force for whites. Prisoners who had failed to financially cover for court costs and fines had to repay their "debts" by being sold as labor to the many industries that the South desperately needed for its reconstruction.[79] Although the leasing of prisoners to private railways, mines, and large plantations for profit was similar to slavery in the sense that it consisted of a system of forced labor, the leased convict held no long-term value to the companies exploiting their labor. This resulted in an increased physical violence against the racialized prisoners, in the words of a Southern planter explaining the "benefits" of convict leasing: "Before the war we owned the Negroes … If a man had a good n***er, he could afford to take care of him; if he was sick, get a doctor. He might even put gold plugs in his teeth. But these convicts, we don't own 'em. One dies, get another."[80] The convict-lease system provided the South with an inexpensive and exploitable pool of labor, deploying carceral punishment as a mechanism to accumulate capital at the brutal expense of Black individuals.

At a national level, the period leading to Jim Crow, and what succeeded it, rebuts the democratic penal theory logic of equality before the law. Carceral punishment was deployed unequally depending on the ascribed status in the social body, contradicting the democratic

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[78]Angela Y. Davis, and Joy James, *The Angela Y. Davis Reader,* (Malden, Mass: Blackwell, 1998), 75.
[79] Alexander, 39.
[80] The Angolite, prison journal November/december 1996, pg. 31. Stated in https://daily.jstor.org/slavery-and-the-modern-day-prison-plantation/

framework that the American justice system was founded upon. According to Cesare Beccaria, the founder of modern penal theory, which had a great deal of influence on the Founding Fathers' democratic ideals, "punishments ought to be the same for the highest as they are for the lowest of citizens".[81] Though the punishments are the same for everyone under the law, the history of the penal system illustrates how those who face carceral punishment are continuously within the "lowest" pool of the citizenry, which in the case of America has race inscribed in it.

Even after the "separate but equal" policies codified in Plessy v. Ferguson ended 1964, the carceral sphere expanded in a way that did not align with the symbolically progressive legislations that characterized the legal end of Jim Crow. In *Origins of Mass Incarceration*, historian Elizabeth Hinton makes a strong empirical case tracing the emergence of punitive laws that paved the way for the mass incarceration crisis of the 1980s and their coalignment to civil rights legislation. Just one year after the passage of the Civil Rights Act, the Johnson administration passed the Law Enforcement Assistance Act, which was followed by a series of federal undercuts of many of the Great Society programs that aimed to fight poverty.[82] The limitation of said programs, which included aid to education, attack on disease, Medicare, urban renewal, beautification, conservation, development of depressed regions, and removal of obstacles to the right to vote, took place while the focus on national punitive measures primarily concerned Black Americans living in urban neighborhoods that had high rates of reported crime. [83] The administrations that followed Johnson's continued diminishing the welfare system,

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[81] As quoted in Elliot Mamet's essay on incarceration and democracy, see: Elliot Mamet, "'This Unfortunate Development': Incarceration and Democracy in W. E. B. Du Bois." *Political Theory* 51, no. 2 (April 2023): 394.
[82] Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2016), 2.
[83] On Great Society programs, see: "Lyndon B. Johnson," whitehouse.gov, December 30, 2014. https://obamawhitehouse.archives.gov/1600/presidents/lyndonbjohnson ; Hinton, *From the War on Poverty to the War on Crime,* 28.

diverging funding to the carceral state: Nixon introduced draconian sentencing reforms, supported the targeted deployment of aggressive local, state, and federal undercover police squads on the streets of American cities, and incentivized prison construction; Ford established urban policies that sought to rapidly process and confine targeted "repeat offenders" in jail for extensive terms; Carter opened up what had previously been a domestic War on Crime to the military by extending surveillance and patrol to the nation's borders.[84] The detrimental effects of this trajectory of policies to the bottom of the socioracial structure were only intensified with Reagan's infamous War on Drugs, which took the issue of mass incarceration to an unprecedented level. The carceral sphere found a way to center itself in the lives of the racialized poor through an increased police presence in poor neighborhoods. By the 1980's, Hinton argues, social service centers that had been established during the War on Poverty were nowhere to be found in some of the most vulnerable and isolated neighborhoods in American cities, and so "residents had no one else to call *but* the police and law enforcement authorities when their children engaged in criminal activity, and when friends and family members robbed them in order to fuel a drug habit."[85] The vast majority of people living in the vulnerable neighborhoods Hinton points at were Black Americans that were forced, through the lack of social services, to rely on the police for social assistance as opposed to social welfare programs.

Even before the War on Drugs, which has been attested as the political moment in which mass incarceration exploded to the numbers that make America the leading producer of prisoners in the world, poverty was not only criminalized, but pathologized as a function of race. The Moynihan Report that was so widely used by policy makers during the War on Crime argued that

[84] Hinton, 4.
[85] Hinton, 9.

black urban families and communities carried high rates of illiteracy, single-parent households, and delinquency due to "cultural deprivation" which caused a "tangle of pathology".[86] The Johnson administration, which started the long stream of policies that criminalized poverty and race, particularly "accepted Moynihan's view of pathology as the root cause of poverty while recognizing poverty as the root cause of crime," demonstrating how the state diverted responsibility from social structural elements to the cultural behaviors and patterns of the poor, making crime endemic to the black community.[87]

The association of criminal behavior to racialized ontological distinctions was further inserted in the social body through the use of a mechanism of differentiation in the language of punitive policies. The War on Drugs and its media campaign developed (gendered) terms that were ascribed to poor Black Americans, furthering the idea of criminality as a function of race. In his presidential run, Reagan would refer to an imagined "welfare queen" and a "human predator" when discussing his proposed policies on welfare and crime, building a racially coded rhetoric that ultimately won him the executive power.[88] The moral panic over drugs that was inserted in the media through Nancy Reagan's famed "Just Say No" PSAs and the popular rise of the D.A.R.E programs, did not just exist in the social sphere, but was harshly codified into law through mandatory sentences for crack cocaine possession and usage. Terms like "crack whores" and "crack babies" were widely used in the discourse regarding the crack "plague" and "epidemic" that according to the state and the media was ravaging poor urban neighborhoods.[89] The fabricated term of inner-city "crack babies" was ascribed to the unborn children of pregnant

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[86] Hinton, 20.
[87] Hinton, 20.
[88] Alexander, 62.
[89] Alexander, 66.

women who, portrayed as incompetent mothers, used crack cocaine. These women also happened to be poor Black women, who, afraid of facing prosecution and jail sentences, were more likely to avoid seeking prenatal or open medical care.[90] The myth of these physically impaired children and their unfit mothers, which has long been discredited by the medical community, serves as a clear example of discursive imagination that performs and reproduces racial ideology which is then entangled to the carceral sphere.

The idea of the "juvenile delinquent" or "juvenile superpredator" that was hyper-exploited in the sociopolitical field in the 1990s is another unambiguous expression of racialized terms that worked in conjunction with the increased confinement of poor black Americans. Constructed by the highly public Princeton Academic John DiIulio, the theory of the juvenile "superpredator" linked moral depravity with blackness, particularly in the poorest sections of society. Similar to Tocqueville's observation some one hundred years prior that the number of criminals would increase in the South with the outlawing of slavery, the base of his argument was rooted in a demographic boom among male black youths, arguing that since there would be an increased number of young boys, the number of violent crimes committed by youths would skyrocket.[91] Or in his words: "On the horizon… are ten of thousands of severely morally impoverished juvenile superpredators."[92] As Jackie Wang points out in her thorough examination of the relationship between biopolitics and the construction of the juvenile delinquent, the changes in juvenile law of the 1990s which blurred the line between juvenile and adult courts

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[90] As early as 1990, the American Medical Association stated: "Pregnant women will be likely to avoid seeking prenatal or open medical care for fear that their physician's knowledge of substance abuse or other potentially harmful behavior could result in a jail sentence rather than proper medical treatment." See: Annaick Miller, "Using the 'War on Drugs' to Arrest Pregnant Women," *Political Research Associates*, September 17, 2015. https://politicalresearch.org/2015/09/17/using-the-war-on-drugs-to-arrest-pregnant-women.
[91] Wang, 201.
[92] Wang, 195.

coincided with a reversal of the public conception of the juvenile: "rather than being viewed as vulnerable, the (racialized) juvenile was constructed as *predatory.*"[93] Although the detrimental association of black male youths and moral deficiency was heightened during this period, it was already present at the time that Elizabeth Hinton argues paved the way for mass incarceration, in the 1960s. Kennedy's "total attack on delinquency" included the establishment of the President's Committee on Juvenile Delinquency and Youth Crime, beginning a series of direct government interventions in urban centers with high concentrations of black citizens.[94] Kennedy's "attack" was turned into a "war" during Johnson's presidency, which, as aforementioned, heavily considered Moynihan's views on African Americans as scientifically and socially accurate. The entanglement of crime, poverty, and racial ideology was explicit in the report, stating "The combined impact of poverty, failure, and isolation among Negro youth has had the predictable outcome in a disastrous delinquency and crime rate."[95] This "predictable outcome," which cannot be considered without the veil of the socioracial hierarchy, deeply penetrated the walls of the penal apparatus, resulting in the mass confinement of young black men. Loïc Wacquant observes how in the 1980s and 1990s the apparatus itself had to be made into a "flexible, muscular, and efficacious instrument for the tracking and confinement of troubled and troublesome persons caught in the cracks of the dualized urban order."[96] The malleability of the carceral system to entrap racialized "troubled" persons, especially juveniles, took the form of a series of punitive measures that lengthened sentences and inserted prisons and jails at the center of poor urban life.

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[93] Wang, 196.
[94] Hinton, 12.
[95] "Chapter IV. The Tangle of Pathology," Department of Labor, Accessed April 30, 2024. https://www.dol.gov/general/aboutdol/history/webid-moynihan/moynchapter4.
[96] Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity*, (Durham and London: Duke University Press, 2009), 65-66.

Of these measures, Determinate Sentencing, Truth in Sentencing, Mandatory Minimums, and Clinton's infamous "Three Strikes and You're Out" extended and escalated the intensity of carceral punishment, directly responding to the discursive expressions linking race, criminality, and poverty.[97]

By the turn of the century, mass incarceration was cemented in the political makeup of America, with well over a million people confined within carceral institutions.[98] The mirriad of "Attacks," "Wars," and firm establishment of "Law and Order" against the "welfare queens," "crack babies," "potentially delinquent," and "superpredators" expanded the racial fabric of the carceral state, that although rooted in differentiation, homogenized the black poor into the undeserving category of criminals. The discursive ramifications of the economy that were so prevalent in the industrial expansion of the prison system act as expressions of what Du Bois had previously called "racial philosophy," and if we consider race to be as Fields proposes, an ideology that is constantly re-created and re-verified through experiences in the social sphere, then the carceral state and its mechanism of mass confinement and dispossession act as a medium for the re-verification of racial philosophy and the racialized socioeconomic order.

Although the story of how incarceration in the racialized capitalist society came to be can be neatly told through the lens of history and the social realm, it would be an unfinished story if the penal workplace is not included in its narrative. Understanding the relationship between capitalism and the carceral sphere requires looking into the penal sphere of production, as it unveils a materialization of the ongoing history of primitive accumulation and its expressions in

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[97] On judicial measures that expanded the carceral state, see: Wacquant, *Punishing the Poor,* 65-67.
[98] "Growth in Mass Incarceration," The Sentencing Project, September 8, 2022. https://www.sentencingproject.org/research/.

the racialized social field. Failing to do so would be an injustice to those whose lives have been, or currently are, tarnished by the monstrous shadow of the prison.

Chapter 3. The Hidden Abode of Carceral Production

Capitalism understood not as an economy, but as a social system of class domination, can never be fully formed as it seeks to continuously expand capital.[99] The ongoing character of capitalism implies that its mechanisms for domination operate in a continuing form as well. Incarceration as a device of capitalism where not only class domination, but a racialized social order is ingrained in its anatomy, has become an integral part of American society. To fully make sense of the relationship between the carceral sphere and capitalism, particularly how this is expressed in the contemporary context, it is essential to delve beyond history and the social realm, zooming into carceral production and its ongoing expropriating and exploitative structures. Only then is a full picture of this system of confinement actualized.

As the theory of ongoing primitive accumulation sets forth, capitalism has an expropriative character that inherently confines people into marginalized positions. Expropriation in the carceral context is expressed in a similar manner, where the history of abstract and material racialized dispossession is continued post-incarceration in what is called 'collateral consequences of conviction'. This array of 'consequences' limit or prohibit formerly incarcerated people from accessing certain rights, benefits, and opportunities in the free citizenry, perpetuating a life sentence of destitution. This form of expropriation, which has a racialized historical background, renders a clear reflection of the interconnectedness of primitive accumulation and the carceral sphere. However, to leave the analysis of the bondage between capitalism and the prison here would fail to show that the aforementioned practices of

[99] Fraser, 165; Wood, 3.

expropriation are intimately tied to exploitation in the penal workplace, which contains in itself an intensified mechanism of racialized labor. The point of production in the prison magnifies codes of capitalism that are manifested on the "outside", in the form of precarious wages, a stratified work sphere, minimal worker protections, etc., yet these factors are compounded with a layer of racialized exploitation that is legitimized both through the deeply ingrained racial order, and the notion that the prison houses criminals who deserve to be punished. The penal sphere of production then becomes a breeding ground for racial capitalism, perpetuating a history of racialized expropriation and materializing a deliberate exploitation of the confined bodies. This chapter seeks to illustrate how expropriation operates in tandem with exploitation in the carceral sphere; their synthesis advancing the idea of domination in capitalist society.

A Life Sentence of Destitution

More than six hundred thousand people are released from prison each year to return to communities throughout the US.[100] Yet, completing a sentence does not equate to a full departure from the carceral sphere. The label of "felon," imprinted in the ex-convict's record, restricts and prevents them from accessing the same socio-financial stability as that which the free citizen is entitled to. Entering the democratic ring alone, the formerly incarcerated person is confronted with a series of punitive measures that materialize a continued form of dispossession. The local, state, and federal jurisdictions, labeled as collateral consequences of conviction, create a complex web of barriers upon re-entry that make it incredibly difficult for people with a criminal record to rebuild their lives. The National Inventory of Collateral Consequences of Conviction (NICCC), defines collateral consequences as "legal and regulatory restrictions that limit or

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[100] Michael Gibson-Light, *Orange-Collar Labor: Work and Inequality in Prison*, (New York: Oxford University Press, 2023), 5.

prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities".[101] The vast majority of the consequences impose lifetime restrictions unless a person is able to expunge their record, receive a pardon, or obtain other relief,[102] playing a major role in the perpetuation of the marginalization of those who are already disproportionately incarcerated. Certainly, all former prisoners face difficult prospects, but the outlook is particularly grim for marginalized individuals who face discrimination based on race, criminal history, and the merging of the two.[103]

The continued form of expropriation the carceral sphere imposes on formerly incarcerated people can be traced through the collateral consequences of conviction, which result in an intensification of poverty that is more prevalent in racialized communities. For instance, housing insecurity, one of the major collateral consequences of conviction, affects racialized communities at a disproportionate level. According to a report by the Prison Policy Initiative, *Nowhere to Go: Homelessness among formerly incarcerated people,* returning individuals are almost ten times more likely to be homeless than the general public. Part of this bleak statistic is rooted in restrictions on access to public housing, which take a higher toll on racialized communities primarily due to the fact that across all public housing residents, forty-five percent of them are Black.[104] Many of these returning citizens were already in an unstable housing

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[101] "Welcome to the NICCC," National Inventory of Collateral Consequences of Criminal Conviction, Accessed May 1, 2024. https://niccc.nationalreentryresourcecenter.org

[102] "After the Sentence, More Consequences: A National Report of Barriers to Work," CSG Justice Center, Accessed May 1, 2024. https://csgjusticecenter.org/publications/after-the-sentence-more-consequences/national-snapshot/

[103] Gibson-Light, *Orange-Collar Labor*, 7.

[104] National Low Income Housing Coalition, "Who Lives in Federally Assisted Housing? Characteristics of Households Assisted by HUD Programs," *National Spotlight*, 4. November 2012. https://nlihc.org/sites/default/files/HousingSpotlight2-2.pdf.

situation prior to conviction– for reference, Black households are four times more likely than white public housing residents to live in high poverty neighborhoods[105] – exacerbating their positionality within the most marginalized communities of the country. Apart from shelter instability, food insecurity is another direct result of conviction that furthers the reproduction of poverty. According to the National Institutes of Health, ninety-one percent of people released from prison reported they experience food insecurity.[106] When faced with limited financial resources to access food, people in the free citizenry are entitled to state assistance in the form of welfare programs like the Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance for Needy Families (TANF) program. Yet, people with convictions, particularly drug related offenses, can be denied access to said programs, furthering a reproduction of poverty among the social sectors who are most affected by the carceral state.[107]

The cycle of poverty is furthered beyond prison walls as accessing and maintaining stable employment becomes exceptionally difficult post-incarceration. Given that the unemployment rate for formerly incarcerated people is nearly five times higher than the unemployment rate for the general United States population, asserting financial protection proves itself to be exceedingly challenging with a criminal record.[108] Entering formal employment relations and receiving appropriate wages is not a guaranteed circumstance upon reentry to the democratic

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[105] National Low Income Housing Coalition, "Who Lives in Federally Assisted Housing? ," 4.
[106] Cynthia A Golembeski, Ans Irfan, and Kimberly R Dong, "Food Insecurity and Collateral Consequences of Punishment amidst the COVID-19 Pandemic," World medical & health policy, December 2020, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7753628/.
[107] "No More Double Punishments Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions," The Center For Law and Social Policy, April 2022 https://www.clasp.org/wp-content/uploads/2022/04/2022Apr_No-More-Double-Punishments.pdf.
[108] On unemployment rates, see: Lucius Couloute and Dan Kopf, "Out of Prison & out of Work," Prison Policy Initiative, accessed April 24, 2024, https://www.prisonpolicy.org/reports/outofwork.html.

sphere, further sinking an already disenfranchised group to an intensified precarious place in capitalist society.[109]

The collateral consequences of incarceration, along with the inherent reproduction of poverty they cause, not only create barriers for formerly incarcerated individuals to become truly "free" members of society but also increase the likelihood of their freedom being revoked once again. Individuals experiencing poverty and its compounded consequences, such as homelessness, hunger, and unemployment, are more likely to reoffend, as poverty is the main indicator of recidivism.[110] The revolving prison door phenomenon persists as one of the most troubling aspects of the carceral system. Of the more than six hundred thousand people who re-enter the free citizenry each year, roughly forty percent do not stay more than three years before they are reincarcerated.[111] If prisons are indeed meant to be correctional facilities, wouldn't it be logical for every aspect of them to aim at preventing individuals from becoming part of this grim statistic? From a purely economic perspective, preventing poverty and its associated risk of recidivism would require a penal production sphere that allows the prisoners from accessing financial security upon release. However, this is inconceivable given the prison labor system that is in place today. The functioning of the sphere of production inside the prison reveals a system of exploitation that does little to prevent the incarcerated person from re-entering society in a state of poverty, rendering prison labor as an essential element for the maintenance of the far reaching power of the carceral sphere.

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[109] Gibson-Light, 7.
[110] "Recidivism and Reentry," Prison Policy Initiative, accessed April 30, 2024. https://www.prisonpolicy.org/research/recidivism_and_reentry/.
[111] "Million Dollar Blocks," Columbia | Center for Spatial Research, accessed April 30, 2024. https://c4sr.columbia.edu/projects/million-dollar-blocks.

The carceral sphere narrows life the moment a person is convicted, creating a surplus population that is subject to destitution either by conscribing them to the ranks of the lumpenproletariat post-incarceration, or by exploiting them in the production of penal labor. Expropriation and exploitation work hand in hand in the carceral project, perpetually confining the bodies of the incarcerated to a system of capitalist devices. Domination asserts itself in this manner, once you've entered carceral walls, it is hard to leave them behind.

Exploitation in the Penal Sphere of Production

There are nearly 800,000 incarcerated workers in the country across federal and state prisons who engage in a production of labor that both maintains the carceral sphere and produces capital.[112] Although they produce maintenance work, goods, and services, similar to any workforce in a factory on the 'outside,' there are certain elements of capitalism that are heightened and intensified in the penal production sphere. Expropriation and exploitation meet in the carceral sphere of production, an intensely racialized space that is stratified and dynamic. It is here where social and economic value is extracted from the racial body of the confined, in other words, it is here where racial capitalism is realized. Before conceptualizing how racial capitalism is attained, I'll provide a brief overview of the structure of penal work.

Following the tradition of the very first American penitentiaries, the production of labor remains the predominant occupation during incarceration. While penal labor operates differently across states, the great majority of prisoners in the country are mandated to work.[113] Once an

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[112] "Captive Labor: Exploitation of Incarcerated Workers | ACLU," *American Civil Liberties Union* (blog), June 15, 2022. https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers.

[113] Bureau of Justice Statistics, "Work Assignments Reported by Prisoners, 2016," Washington, DC: U.S. Department of Justice, Office of Justice Programs, December 2019, accessed May 1, 2024, https://bjs.ojp.gov/library/publications/work-assignments-reported-prisoners-2016.

individual is sentenced, the right to refuse to work is revoked, making the production of labor compulsory in the carceral sphere. As codified in the 13th Amendment of the Constitution, involuntary labor as a punishment for crime is a pillar element of correctional facilities across the country. There is little room for the prisoners to refuse to work, as any actions that promote or directly engage with labor abstinence, both at individual and collective level, are severely punished. For instance, most Administration and Orientation handbooks inmates are provided with upon their arrival to federal penitentiaries explicitly state that any actions such as inciting others to refuse work, participating in work stoppages, having unexcused absences, or disobeying work instructions can result in penalties.[114] Additionally, more than 76 percent of incarcerated workers surveyed by the Bureau of Justice Statistics say that they are required to work or face additional punishment such as solitary confinement, denial of opportunities to reduce their sentence, and loss of family visitation.[115] This production of labor, which is almost impossible to evade, is differentiated into categories, inherently creating a competitive job market inside the prison.

The popular rendition of prison labor as monolithic, featuring images of roadside crews in orange jumpsuits picking up trash or striped-jumpsuit laborers toiling in fields, is not accurate in the contemporary context. While these images still exist, penal work today is far more complex and dynamic. The penal labor sphere is stratified in a way that creates desirable and undesirable jobs, as some are more menial than others, some provide more marketable skills, some are more hazardous, etc. Among the least desirable are the institutional work assignments,

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[114] Bureau of Prisons, "Administrative Office (AO) Handbook," accessed May 1, 2024. https://www.bop.gov/locations/institutions/otv/otv_ao-handbook.pdf?v=1.0.2.
[115] ACLU, "Captive Labor: Exploitation of Incarcerated Workers," accessed May 1, 2024, https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers.

which contribute to the overall maintenance of the correctional facilities, and are the ones to which most of the penal workforce is deployed to.[116] Among the most desirable are the industrial work assignments, in which prisoners manufacture goods and services that are sold or contracted in the private and public market, and are the ones with least worker capacity.[117] Although a dynamic sphere of production is characteristic of capitalism everywhere, the objective norms of productivity crumble inside the prison. The assumption that production is organized based on personal characteristics, such as skill, merit, qualifications, etc., does not apply in the prison — this is also not completely applicable in the outside neoliberal state where work has increasingly become marginalized (but let's assume it is) — as the logic behind the organization of production is very much influenced by the racialization of the workers. The racial philosophy that deeply shaped the expansion of the carceral system in the twentieth century went as far as structuring the hierarchical organization of carceral labor. The synthesis of a racial organization of labor shows that the prison is not quite an exceptional place; it is the backbone of our society.

Although the carceral system homogenizes people into the category of "prisoner", as established in chapter two, the racial order differentiates the social body and, in doing so, justifies the intensified expropriation and exploitation of racialized individuals. To be sure, exploitation in the penal sphere of production is undeniably exerted on all those confined, but it is heightened along the lines of race, ethnicity, and nationality, as these differences influence prisoners' positions in the penal employment system.[118] Rather than entering the prison in the same quality of workers, inmate laborers engage in a work system that leads to unequal

116 ACLU, "Captive Labor Exploitation of Incarcerated Workers." (ACLU and University of Chicago The Law School Global Human Rights Clinic, 2022), 27.
117 ACLU, "Captive Labor," 27.
118 Gibson-Light, 5.

experiences of punishment based on an unequal distribution of labor that is influenced by the racial order. In his book *Orange-Collar Labor,* Michael Gibson-Light, an ethnographer who spent 18 months observing a prison in the U.S. Sun Belt region, argues that job assignments are allocated along racial lines. In his research he shows that the more desirable jobs, which are slightly paid better, such as the call center or the fleet garage where police vehicles are serviced, were more often assigned to white inmates in the prison he observed.[119] He writes, "while blackness remains linked to racialized perceptions of criminality and labor market value, whiteness inversely acted as a "positive credential" disproportionately associated with job applicant desirability."[120] The racialized conception of criminality and devalued labor value he points at is a clear reflection of how the racialized social order of the "outside" makes its way to the "inside". Although Gibson's extensive ethnography focused on one particular prison, the results of his research align with a broader carceral pattern. According to the comprehensive ACLU report "Captive Labor, Exploitation of Incarcerated Workers," Black men have significantly higher odds of being assigned to maintenance and other facility services work than white men.[121] The report also highlights that a lower percentage of Black men are assigned work in prison industries, which as established are typically deemed as the most desirable jobs.[122] This data exemplifies how the stratified carceral structure of work reproduces a racialized organization of production that furthers the capitalist pattern of expropriation and exploitation upon Black individuals.

[119] Gibson-Light, 88-9.
[120] Gibson-Light, 89.
[121] ACLU, 52.
[122] ACLU, 52.

The allocation of racialized workers to lower-tier work assignments exacerbates their financial exploitation, which, although prevalent in all penal jobs, is intensified at the bottom of the work hierarchy. To be certain, exploitation is ubiquitous in all penal labor and it is materialized in the extremely low wages inmate workers receive. Without explicit direction from the Supreme Court or specific guidance from Congress, it remains uncertain whether incarcerated workers can be classified as "employees" under the Fair Labor Standards Act (FLSA), and consequently, whether they are entitled to the protections of the federal minimum wage.[123] On average, inmate workers earn between thirteen cents and fifty-two cents per hour nationwide.[124] To put this in perspective, it would take a resident of a Louisiana prison over two weeks of wages to pay for a 15-minute phone call.[125] Maintenance work, which, as established, is more likely to be assigned to racialized workers, is among the lowest-paid work assignments. This means that poverty is intensified in the carceral sphere when inmates are allocated to the bottom of the stratified labor hierarchy.

Intensified racial exploitation becomes extremely visible in agrarian work assignments, which are another rendition of the dynamic element of the carceral production sphere. These "jobs" provide an exemplary expression of the materialization of racial capitalism in the prison, as they are concentrated in the same geographical areas where compulsory extraction of labor was infringed upon racialized bodies during slavery. Correctional facilities across the South,

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[123] Aggarwal, Tanisha Mink. "Prison Labor and the Fair Labor Standards Act: Resolving the Circuit Split on Whether Incarcerated Workers Are Entitled to the Federal Minimum Wage," *Columbia Journal of Race and Law* 13, no. 1 (August 22, 2023): 893–929. https://doi.org/10.52214/cjrl.v13i1.11912.

[124] ACLU, "Captive Labor: Exploitation of Incarcerated Workers," accessed May 1, 2024, https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers.

[125] Ghandnoosh Nazgol, Luke Trinka, and Celeste Barry, "One in Five: How Mass Incarceration Deepens Inequality and Harms Public Safety," The Sentencing Project, January 16, 2024. https://www.sentencingproject.org/publications/one-in-five-how-mass-incarceration-deepens-inequality-and-harms-public-safety/.

specifically in Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, and Texas, assign prisoners to agricultural work on what are called penal plantations or prison farms.[126] Situated on land that was originally the site of slave plantations, the connection between penal agrarian work and the Black chattel slavery of the South is indisputable. As pointed out by the ACLU report on captive labor, at some of these prisons, incarcerated workers currently cultivate crops identical to those grown by enslaved individuals on the same land less than 160 years ago.[127] The Angola Plantation, named after the African country from which countless slaves were kidnapped, is now part of the expansive 18,000 acres that make up the Louisiana State Penitentiary, the largest maximum-security prison in the country.[128] This prison, which is still colloquially referred to as Angola, allocates most of its captive workers—74 percent of whom are Black—to work in the fields, cultivating crops including cotton, corn, soybeans, and sugarcane for only two cents an hour.[129] The patrolling gaze of the armed correctional officers on horseback is hard to evade, as switching work assignments in this prison is difficult.[130] Angola is a primary example of how capitalist practices of domination, dating back to the days of slavery, are deeply ingrained in the contemporary carceral state. Like the exploitation of the slave was justified under the ontological distinction of race, the exploitation of the penal plantation worker is justified under the intersecting notions of race and criminality.

The carceral employment system, besides being dynamic in terms of a diversified labor sphere, is intertwined with a consumer society that exacerbates the financial exploitation of its

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[126] ACLU, 34.
[127] ACLU, 34.
[128] Andrea C. Armstrong, *Slavery Revisited in Penal Plantation Labor*, 35 SEATTLE U. L. REV. 869 (2012), 870; ACLU, 34.
[129] ACLU, 34.
[130] Armstrong, *Slavery Revisited in Penal Plantation Labor,* 908.

workers. While prisons provide inmates with basic necessities, the scarcity and poor quality of essential goods force those who are confined to consume from the commissary system. In these conditions, the inmate worker is compelled to purchase goods either from the physical commissary store located in all correctional facilities or from private companies' catalogs that profit from selling and delivering items to prisons. Contrary to the idea that the commissary is a luxury because it gives prisoners a taste of the outside society, the carceral consumer behavior is not driven by desire but by necessity. For instance, prisoners nationwide have consistently claimed, through legal actions, questionnaires, and conversations, that they are not provided with sufficient nutritious food to sustain themselves while incarcerated, thus necessitating purchases from the commissary.[131] The rampantly low wages received by inmate workers are mathematically insufficient to cover the expenses of purchasing food, basic hygiene products, and necessary clothing within the prison. Many of these items are priced higher than their exchange value outside the prison. For example, individuals held in Kentucky prisons pay $4.84 for a deodorant stick that costs $1.98 at a local Walmart.[132] The combination of low wages and inflated prices forces prisoners to rely on outside financial support to cover their expenses. According to the ACLU, families who have a member in prison, many of whom are impoverished themselves, allocate approximately $2.9 billion annually towards commissary accounts and phone expenses.[133] This dynamic illustrates how the commissary not only financially expropriates the little money that has been earned in exploitative work conditions, but

[131] ACLU, 73.
[132] Ghandnoosh Nazgol, et. al, "One in Five: How Mass Incarceration Deepens Inequality and Harms Public Safety," The Sentencing Project, January 16, 2024.
https://www.sentencingproject.org/publications/one-in-five-how-mass-incarceration-deepens-inequality-and-harms-public-safety/.
[133] ACLU, 11.

how it also extends the chain of expropriation beyond prison walls, as families and communities of incarcerated individuals passively subsidize the carceral state through engagement with the carceral market.

Apart from the financial expropriation evident in the commissary's sphere of exchange, capital's logic of dispossession is present in abstract form in the devalued 'skills' that are supposedly taught to inmate laborers in the penal sphere of production. While the carceral sphere justifies its exploitative structure of labor as a mechanism that enables prisoners to learn skilled work that will help their transition into the free citizenry, in reality, most work initiatives primarily consist of repetitive and low-skilled tasks, offering little to no valuable training or marketable skills to the participants.[134] This is particularly poignant in the lower-tier work assignments, which, as established, not only maintain the functioning of the prisons but are also primarily assigned based on race, ethnicity, and nationality. Gibson-Light recounts the experience of a prison food factory worker of Mexican nationality whose only monotonous task is to assemble sandwiches for hours a day, "Miming the way they slap together sandwich materials, he laughs, 'Boom, boom. Cheese, no cheese. That's all that it is. That's *all* that changes– is cheese or no cheese."[135] Even in the more desirable work assignments, most of the goods and services that are manufactured are circumscribed to lower categories of work on 'outside' standards. For instance, UNICOR, the federally owned corporation that sells "market-priced services and quality goods made by inmates" to both state and private company buyers, and Corcraft, the NY DOCSS company that uses prison labor to sell products at lower costs to state agencies, both market themselves as programs aimed at preparing incarcerated

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[134] ACLU, 19.
[135] Gibson-Light, 2.

individuals for successful reintegration through "skill development" and provision of "marketable skills."[136] Yet, the products they manufacture, which range from hand sanitizer to cable assemblies for weapons and machinery manufacturing, confine the workers to narrow and specific work spheres upon release.[137] Whether it's picking cotton in a field, making cheese sandwiches, hand sanitizer, license plates, or cable assemblies for guided missiles, the skills used in penal production prioritize keeping the correctional facilities afloat or directly profiting from exploitation, rather than imparting valuable skills that dignify the humanity of the worker or provide actual marketable skills for reentering society. Marx's words in *Wage Labor and Capital* loudly resonate upon looking at how penal labor operates. He writes, "The special skill of the worker becomes worthless. He becomes transformed into a simple, monotonous productive force that does not have to use intense bodily or intellectual faculties."[138] Although I do not intend to claim that all prisoners are estranged from themselves, the simplified labor of the carceral production sphere does, in part, produce a labor force that is not only confined, but also inhibited to be anything more than just a confined labor force.

When Marx looks into the "hidden abode" of production, exposing capitalism's dirty secret hidden behind the sphere of exchange, he finds that accumulation proceeds via exploitation.[139] While capitalism's secret is not so hidden in this day and age, the sphere of production of the prison does unveil how this institution not only contains, but perfects the mechanisms of extraction and exploitation that make capitalism the imposing system that it is. It

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[136] "Corcraft," Corcraft, accessed April 30, 2024. https://corcraft.ny.gov/. ; "About UNICOR," accessed April 30, 2024. https://www.unicor.gov/About.aspx.
[137] "Products and Services," Corcraft, accessed April 30, 2024. https://corcraft.ny.gov/products-and-services. ; "UNICOR Schedule of Products and Services," UNICOR, accessed April 30, 2024. https://www.unicor.gov/ScheduleOfProducts.aspx.
[138] Marx and Engels, *The Marx-Engels Reader*, 214.
[139] Marx, *Capital*, 279.

is in the penal “hidden abode” of production that the capitalist characteristic of imposed destitution is advanced via expropriation and exploitation of the racialized confined.

Conclusion

Confinement defined as a restriction, as a limitation to certain conditions, inherently implies that a system of domination is in play.[140] Confinement as penal punishment is precisely this: a system of domination that exerts and takes power away from the confined. While capitalism does rely on something internal to the prison –confinement– as it circumscribes people into a system of wage-labor, there is nothing inherently capitalist about locking people away in prisons. Incarceration becomes a function of capitalism in the way that the carceral sphere boundlessly practices mechanisms of capitalist domination, which ultimately result in the subjugation of a specific socio-racial class.

The punitive instrument of control that the prison embodies is so entangled with capitalism that one should not be thought of without the other. The prison is so integral to the capitalist society that the current social order cannot be imagined without its walls, an argument that becomes apparent only after tracing the inception of both systems of confinement. This historical tracing shows that the body of the incarcerated has always been comprised of those in the fringes of capitalist society, a body that is quickly racialized after the end of slavery. Reconceptualizing the place of the prison in capitalist society requires looking at the racialization process, especially considering that manumission did not imply fully gained power, as the carceral sphere absorbed the same expropriative and exploitative devices of slavery. The Black poor are dispossessed and exploited to great and calculated lengths under capitalism, with the carceral sphere doing much of this work. As evidenced by the otherwise unthinkable apparatus

[140] Oxford English Dictionary, s.v. "confinement (n.), sense 2.a," March 2024, https://doi.org/10.1093/OED/9653139095.

of slavery, capitalism goes to extreme lengths to sustain exploitable laborers. Therefore, it is not surprising that it would merge with an apparatus that can inexhaustibly provide labor-power. This inexhaustibility is evident as long as the capitalist order is maintained on the "outside," where the poor are criminalized, particularly the racialized poor. In this way, there will always be a surplus population from which social and economic value can be extracted on the "inside."

Capitalism's dream of unmediated exploitation is so explicit in the extraction of labor that occurs inside the prison, that it renders the otherwise vague theory of racial capitalism palpable. The contemporary structure of compulsory penal work intensifies capitalist mechanisms of extraction, imposing control on the worker not just through spatial confinement, but also through a racialized organization of production. Racial capitalism as a theoretical endeavor can significantly benefit from this project's reconceptualization of the carceral sphere, as it provides a clear example of how the dynamics it concerns itself with actually affect people. Studying spaces like the prison, where racial capitalism appears as tangible, has the potential to help visualize how mechanisms of oppression can be expressed elsewhere.

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