

2017

Debt-Based Justice: Systematizing Human Valuation Through the Lens of Criminal Justice

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Recommended Citation

Holmes, Patrick, "Debt-Based Justice: Systematizing Human Valuation Through the Lens of Criminal Justice" (2017). *Senior Projects Spring 2017*. 160.
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Debt-Based Justice: Systematizing Human Valuation Through the Lens of Criminal Justice

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

by
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Annandale-on-Hudson, New York
May 2017

[Acknowledgements and Dedications:]

As a young boy growing up in New Orleans, my experiences with police and the criminal justice system has been plentiful: Few positive and enriching, most dreadful and depressing. For this reason I dedicate this work to the families and communities that share in my experiences and to those individuals seeking to learn and contest the current state of criminal justice systems in the United States.

[Thank You:]

My mentor Mrs. Phyllis Taylor, philanthropist and co-founder of The Patrick F. Taylor Foundation, for believing in the work I do and supporting me in life.

My advisor Randall Wray, Senior Research Scholar at Levy Institute of Economics, for much of the development in this work derives from your strong feedback and research in the subject matter.

My life partner, you kept me happy and comfortable when times got tough.

My family, the Holmes, if I did not have you in my every day thoughts, this work would have been impossible to complete.

My older brother— wage-worker and father of one— my cousin, and my courageous mother and aunt: your experiences with imprisonment sparked an unquenchable fire within me that seeks to contest its fairness.

My friends back home whom fallen victim to the criminal justice system, my work is a reflection of the compassion and love I have for you.

My god-brother Jared, your warm smile shining down on me everyday gave me strength when I felt the most vulnerable; To the Zimmerman family, thanks for accepting me into your home with open arms and providing me with contentment when I needed it most.

Bard College, the knowledge granted by your pedagogical structure has made me a critical thinker and thus willing to question and analyze the historical material development of debt prisoners. The debt I owe the institution is unpayable.

And to my long time friends Carissa and Liz, your insight and support through the process of writing this text kept me motivated and excited about its progress. I'm forever in your debt.

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Abstract:

In the context of this paper distributive justice is examined through the scope of human valuation in criminal and civil justice systems in the United States. Old forms of common law structures in Western societies were based on wergeld-like systems, which functioned as a redistributive framework for moving assets between parties involved in social disputes. Wergeld came to develop an accounting framework of legal payments proportionate to one's level of wealth, which evolved to legal systems that distributed financial obligations from the society to the ruling class (Innes, 1932). Mitchell Innes noticed that the role of the state in imposing such criminal obligations on the general society has shifted to provide a source of revenue to the State inevitably leading to inequality in wealth (class societies emerges). Recently, there have been arguments that the State has exacerbated poverty levels in urban communities by extensively incarcerating a significant portion of the working age population and imposing financial obligations on them post-release: The majority are impoverished blacks. In New Orleans, LA, Orleans Parish Prison (OPP) has led New Orleans to gain the title of being the 'Incarceration Capital' of the world (Vera Institute, 2007). I will argue that such punitive institutions— institutions constructed on the foundation of monetary sanctions— are not restorative or rehabilitative but instead lead to class stratification in which blacks are disproportionately subject to undercaste status. The United States criminal justice systems are retributively biased toward minority people, especially blacks, living in urban communities. Imposition of Legal Financial Obligations (LFOs), monetary sanctions mandated by the federal, state, and local statutes, overwhelmingly exacerbates cycles of poverty amongst the urban black cohort more so than any other race or ethnicity in the United States (Becket, Evans, and Harris, 2010). The findings will be of utility for those seeking to understand how accumulated State debt— in the form of criminal LFOs— exacerbates poverty levels of indigent individuals and their families and communities. One will also get a deep understanding of the role State imposed monetary sanctions have played historically in civil and criminal justice jurisprudence. Furthermore, this paper captures the role of the sovereign State in stratifying classes on the basis of financial capital and race.

Key words: State, slaves, debtor prisons, monetary sanctions, wergild justice, mass incarceration, LFOs, punitive justice, indigency,

Introduction:

Examining the structure of the United State's current penal system forces one to look back at the history of human valuation and thus the origins of money. The concept of money is relevant because according to the 'unit of account' theory advanced by Chartalist economists, commodity money derived from communal justice traditions. Individualized conflicts in ancient Egyptian civilizations conjured up a method in which human value was calculable based on "moveable possessions" or subsistence commodities. For this reason, "communal practices mediating non-identical compensation for injury or death is bound up with the invention of money and its uses in society" (Singh, 2016; pp. 4). Every member of the social order conformed to the oral justice. State-sponsored penal systems economically stratify classes on the basis of race in the modern context, however. How did this come to be? Mitchell Innes, Randall Wray, Phillip Grierson and many other State-money academics concedes that credit and debt relations accentuates the character of the State (authorities) in the creation of money. Resulting from money, which Abba Lerner branded as "a creature of the state", common law structures (usually in the form of commerce taxes and religious debt taxes) in Graeco-Roman republics began to form a rigid two-tiered class structure when debt peonage divided city-states between plebeians and patricians. The involvement of temple administrators in Mesopotamian led to an ensuing bi-leveled civilization (Wray and Semenova, 2015; Henry, 2004). However, the role of slavery in the late European Renaissance era added a new exploitative body to the Western State: Afro-ethnic groups.

Race itself is, in fact, a Western societal construction that was used to justify the enslavement of millions of Africans immediately following the Middle Ages. The uncivilized nature of Shakespeare's novel character Caliban is a historical figure in literature. Caliban

epitomized the African slave narrative in early Western European literature. Robert McColley (1986) understood Prospero's relation to Ariel to resemble that of a master-servant affiliation whereas Caliban— "the vile and wretched"— was bonded to Prospero on the premise of the master-slave dialectic (Ibid; pp. 13). The construction of race, since the high Middle Ages, has played a pivotal role in how Western societies solidified race in its legislative laws as means to divide not just black and white labor but also the two races socially.

People often misconstrue the role slavery, as a State institution, played in maintaining blacks as the underprivileged undercaste: And therefore a highly disposable labor source. The aphorism "last hired first fired" more times than not reference the reality of unemployed blacks today as it did since their ancestors were freed from the chains of slavery. The characteristics of the African slave codes have consistently morphed to meet the socially acceptable ways of governing black bodies through civil justice systems. Since President Abraham Lincoln signed the Emancipation Proclamation in 1863, jails and penitentiaries became the lawful slave institution. The mirror images of slavery roll over into other forms of racially stratifying institutions: The Black Codes during Jim Crow South that forced tens of thousands of freedmen into the punitive convict leasing system. This ultimately spilled-over into how industrial labor markets valued black workers and their productive capacities still to this day.

Recently, there has been considerable public outcry about the state of incarceration in the United States. Specifically, the outcry has been geared towards the massive expansion of the 'Prison Industrial Complex' that began in the 1970s. What is more striking about the expansion of prisons and jails is the fact that, today, nearly 1 in 3 young black men are

expected to spend time in jail or prison; whereas, 1 in 17 white men are statistically expected to spend time in jail or prison (Huffington Post, 2016). One must then ask: What are the implications of these statistics? Why are the statistics relevant and what do they tell us about the socio-economic history of humankind in respects to monetary justice customs?

Chapter I

Human Valuation in Archaic Societies: State Sanctioned Classism and Inequality

My claim is that employing a monetary lens allows us to perceive one crucial link in the chain of permutations of human value in Western thought. Money—both as material technology and attendant conceptual category—offers a determinative scaffolding that is thoroughly engrained in our notions of value and worth.

– Devin Singh, 2016; pp. 3

Theories about the origins of money could and should be traced back to Mesopotamian (4500-1200 B.C.) societies (Innes, 1913; Graeber, 2011; Wray and Semanova, 2015; Seaford, 2004; Hudson, 2004). The origins of money is multifaceted and allows for intriguing arguments spearheaded by two primary questions: 1) What was the monetary function in archaic civilizations? and 2) What was the State's role in conceptualizing money as a socialized commodity, which itself instigated class stratification? The two schools of thought that have guided the debate on the origins of money, Metalists and the Chartalists (Goodhart, 1998), offer concrete insight into the pre-republic lifestyles of Mesopotamian societies, yet they come to very distinct outcomes regarding the conceptual causality of money.

Adam Smith's *Wealth of Nations* (1776) is perhaps the first text in which the concept of money was addressed on the basis of private market evolution, which is the Metalist approach. Further developed by Carl Menger a century later— “the view of Menger (1892) that the ‘market’ itself is the primary concept, and that money must logically emerge from

the market” (Smithin, 1994; pp. 8)— money was thought to emerge from commodity trade markets where the money variable would naturally lower transaction costs in individual trade markets. For example, in open commodity markets, otherwise known as barter systems, individuals traded based on the marketability of available goods, which in itself views commodities as a form of exchange media with varying degrees of marketability in dissimilar markets (Klein and Selgin, 1998; pp. 5-6; also see Menger, 1892). However, this idea is not represented by historical evidence. In fact, linking the origins of money to a hypothetical market exchange originating in barter relationships has not been recognized outside of Classical economic theory (Tcherneva, 2016; pp. 3; also view Ingham, 1996; pp. 516). Historical evidence tells a different story from the hypothetical world of barter relations, one that represents the true complexities of social order in human civilizations beginning with early Mesopotamian cultures.

The focus in this segment of the chapter lies in theories derived from the Chartalist for two reasons: 1) Chartalism acknowledges that the State has played a significant role in devising class societies by way of imposing monetary obligations denominated in its issued ‘unit of account,’ and 2) Debt and credit relations procured in ancient tribes via common law structures (which relied heavily on oral oaths) acted as the conceptual premise for money. Here emerges the idea of human valuation, derived from Mesopotamian oral justice institutions (wergeld-like systems of socialized credit and debt accounting principles), as the impetus for the concept of money.

Money’s initial role as a unit of account and means of payment did not necessarily come from private market activity. Instead, it derived from “wergeld, bride price, religious occasions, etc., and its role in facilitating the fiscal basis of government, meant that

government made the monetary process, e.g., the guarantee through minting of the fineness and at the outset of the weight of the coins, into a pillar of the sovereign state” (Goodhart, 1998; pp. 413; also see Gerloff, 1952; Laum, 1924). Almost all ancient societies studied by anthropologists and sociologists contribute empirical evidence that prehistoric Egyptian societies played a primary role in formulating the concept of money as a universal ‘unit of account.’ More importantly, especially for the purpose of this chapter, wergeld-like laws administered by distributive justice and religious obligations illustrate archaic societies that rely on credit and debt obligations as a basis for human valuation: This itself confirms the Chartalist view that money is “a system of social relations based on power relations and social norms” (Ingham 2000; pp. 19; See Tcherneva, 2016; pp. 3). Therefore, social relations of the commons, illustrated by credit and debt obligations in tribal law, in archaic societies were the motive force for State money. State ‘money things’— colloquially identical to ‘unit of account’— later came to be regarded as the exchange media in merchant markets. Consequently, the State imposed debt obligations on the public were denominated in the State’s legal tender.

Mesopotamia: Development of the Sovereign State Out of Tribal Society

John Henry’s Case on Ancient Egypt

The road from a prehistorically egalitarian human civilization to humanity’s development of hierarchical class societies is grasped at its core in John Henry’s (2004) analysis of ancient Egyptian societies. It is universally accepted by anthropologists that prior to the Naqada I (4000-3500 BCE), tribal societies in Mesopotamia lived a life based on egalitarian subsistence. Hence, there was no true evidence of social stratification, yet. However, by the end of Barbarian culture (4400-4000 BCE), the “first evidence of inequality” was indicated by gravesite gifts, determined not only by the “amount and type of

grave gifts...but graves of the wealthier inhabitants are physically separated from the more numerous resting-places of the majority” (Henry, 2000, 2004; pp. 2: also view Hendricks and Vermeer, 2000). Individuals who received healthy sums of graveyard gifts were among the popular elite in tribes. The sighting of obsidian, an imported volcanic mineral, at gravesites represented a growing culture of elitism, which is interesting as elitism is often defined on an objectified materialistic basis. Graveyard gifts, one could argue, shows, perhaps, the earliest known social stratification within Mesopotamian cultures.

What is more important to consider, however, is the simultaneity of religious expansion and inequality (see Wray and Semenova, 2015; pp. 2). Henry (2004) attests that by Naqada III (3200-3000 BCE), also referred to as Dynasty 0, kingships naturally exhibited class divergence. This is the first trace of a sovereign ruler, a tribal leader that governs the social life of its subjects. The Palmer Stone (c. 2400) acknowledged that the Egyptian god Horus was the source by which kings were given divine rule over the people (Ibid; pp. 3). The “divine right” of the kings granted to them by Gods of Egypt, should be labeled as the governing force entitled to sanctified right: “The king had been chosen and approved by the gods...” (Malek, 2000). Universally, civilizations following Dynasty 0 broadly expanded the acceptance for sovereign rule evolving entirely on the premise of socialized customs and human valuation. The popular notion in the Old Kingdom (2625-2130 BCE) was that Sneferu (2625-2585 BCE) possessed “supernatural power,” and later with Dejedfre (2560-2555 BCE) inscription as “Son of God Re” demonstrate that “...the relationship of the corporal king to the principal deity of the state religion” was vulgarized in all Egyptian tribes alike (Ibid; pp. 4). Here the primitive “religion-State pact” is revealed, which was inseparable and functioned as a mono-sovereign state defined by conviction. Another key point to note is that with the

monopoly on authority, God's kings constructed a sense of human valuation. The Code of Ur (2112-2095 BCE), established under the Sumerian king Ur-Nammu, the first known written code of justice, was founded in fragments in Nippur and translated in 1952 by Assyriologist and expert in Sumerian history Samuel Kramer. In his short list of laws used to govern social life, one sticks out like a sore thumb— if a man committed a kidnapping, he was imprisoned and forced to pay fifteen shekels of silver or its equivalent in moveable possession. The importance of this segment, exclusively for this text, is that there exists the first form of legal financial obligations (LFOs) ever used in criminal and civil justice statutes. The Code of Hammurabi (1792-1750 BCE) came a few centuries later in Babylon adding on to the justice framework formulated by Ur-Nammu. Inscribed on a *diorite stela*— standing stone— in Marduk, over 280 laws were written to explain the social justice method in Hummurabi's Babylon. The twenty-fourth criminal law goes as follows, "If persons are stolen, then shall the community and . . . pay one mina of silver to their relatives" (King, 2008). Paying restitution to victims of crime and to the State is expressed in both Ur-Nammu and Hammurabi's codes. Human valuation, financially compensating people for their 'lives' activity'— human life, human productive activity, and physical human suffering— was defined in the earliest known laws of humankind.

Egyptian kings' form of human valuation did not strictly commence in the realm of commodity calculations (although the use of wergild-like justice, the first sign we have of social credit and debt accounting, functioned on the postulate of valuing human life). Instead, Egyptian Pharaohs dependency on the Nile River for crop irrigation and maintenance of agriculture commodities for socialized quotas (usually for tribute and tithes to Gods and Pharaohs) created a necessity for a skilled labor bureaucracy and an artisan labor

class. Skilled administrators' (bureaucracy) knowledge, and thereby their life, was highly valued by the chiefdom, whereas the artisan farmers and construction workers were fairly dispensable because they possessed the characteristics (skills) of the common man (simple farm skills, handicraft knowledge, physical construction works etc.).

Whatever skills commoners possessed were unique to their perspective tribes. Henry (2004) contributes that it was specialization accompanied by a "growth in the division of labor" that would design a bi-level society, one that separated the kinsman of the chiefdom from the mass commoners. For example, engineer-administrators whom engrossed knowledge on water channeling were generally the administrators of the economy. They were also members of the king's kinship. Most were employed to spread geographically as a method of including distant tribes in the process of social development in Egypt (Ibid; pp. 6-7). These Egyptian sovereign kinships were the start of the evolutionary process of sovereign rule that led to the welcoming of authoritarian dominance over subject masses expanding greatly in Classical Greece and Roman civilizations.

State Institutions in 'Primordial' Societies

The credit and state theories of money preform social analysis of monetary concepts: Money acts as a unit of account that "emphasized [a] numeraire in which credits and debts are measured," a "means of payment," "store of value" which allows one to "store wealth in the form of others' debt", and money is "a creature of the state" (Lerner, 2008: Wray, 1998: Keynes, 1930: view Knapp, 1924). So, Mesopotamian history offers primordial evidence that credit and debt social relations in pre-Graeco-Roman republics served as the foundational pillar on which monetary systems were built. David Graeber (2011) demonstrates that by at least 2700 BCE tribal chiefs were circulating twigs from hazel-wood trees to mark off credit

and debt obligations, whereby the creditor received the “stock” and the debtor would receive the “stub” (Ibid; pp. 48; see Wray, 2015; pp. 6: also see Innes, 1913).

Considerable importance lies within the developmental scaffold of State institutions responsible for tax collection and their quasi-robust scheduling of individuals’ accumulated debts and credits. For tax collection purposes, Mesopotamian collection temples were perhaps the first public institution used by a governing body to assess public debt obligations owed to the chiefdom (Laum, 1924; Hudson, 2004; Henry, 2004).

Mesopotamian temples and palaces [were] the largest economic institutions of their day and the prototype for modern corporations. Their internal flows of food, rations, and raw materials required transfer prices for account-keeping and forward planning purposes... Mesopotamia’s temples and palaces were redistributive institutions. Their internal accounting and transfer prices were not market prices set by private barter exchange, although under normal conditions these public prices [later] tended to provide a model for prices [means of payment] in the economy at large.

– Hudson, 2004; pp. 101

Henry (2004) stated:

Writing exists: clay tags on pots identify them as belonging to a king. A system of what can loosely be considered taxation, related to these tags, is in place. Memphis [was] clearly an administrative center and tombs around the city show strong evidence of different bureaucratic layers with size of tombs and amount and type of grave goods corresponding to rank. Foreign trade is controlled by the crown. There is a class of full-time craftsmen catering to the king and members of the administrative bureaucracy of the state. These artisans not only manufacture exquisite jewelry, statuary, vessels, tools, etc. (employing a level of artistry and decoration that go far beyond any utilitarian requirements), but also are engaged in the architectural advances required by the construction of elaborate tombs and other public buildings, in particular the temples. Lastly, we see the development of a state religion, centered around the king and celebrated through a mortuary cult (Ibid; pp. 3).

The very first writing, as understood by Chartalist theory, comes from wergeld-like traditions of marking private debts and credits records on “clay tablets or wooden tallies” in ancient

Mesopotamian temples and palaces (Wray, 2015, 1998; Peacock, 2003-2004; pp. 207; Henry, 2004; pp. 3). Our way of communicating via writing has come from a tradition of socialized accounting for personalized criminal debts (liabilities owed because of civil disobedience). Criminal tariffs came to be regarded as the principle of common standards for accounting perceived value of objects that the offender was expected to possess or could acquire from his family (Wray, Henry, and Bell, 2004; pp. 58). As a result, the defendant was not the only person penalized for his crime, his family and their possessions were also linked to his punishment (which will be addressed later in the discussion of the role of accumulated debt in creating a servant-slave society). Nonetheless, temples and palaces were originally used to settle personal disputes, through “Wergeld, Cumhal, and Brehon codes,” and to bar indefinite vendettas from plaguing the social order. These institutions were peace mechanisms existing to calculate the value of life and death in order to distribute goods and services as indemnity payments for the sufferer and the losses his family may have endured from the conflict.

Sumerian rulers of southern Mesopotamia pioneered universal tax obligations to finance caravan trade in the river valley (Graeber, 2011). That was the beginning of State-imposed debt onto the public masses, and with it, a broader unequal distribution of wealth and power quickly followed. This conundrum made it crucial to establish a governing body that would evaluate legal debt obligations the populous owed to the “divine ruler”; God’s collection temples themselves reflected law and order in tribal communities. Initially collection temples were used to cancel private debts only. Sumerian temple-men (temple administrators) distributed goods from the sovereign rule to commercial merchants for overseas trading, the sole purpose of which was to provide necessary resources to meet domestic subsistence quotas (Ibid; pp. 64). For that reason, temple administrator-merchant

pacts present conspicuous evidence that a bureaucratic class society was firmly entrenched within its operations. It was largely due to this pact that class stratification further persisted on the premise of consolidated power. Simply put, merchants that specialized in foreign commodity trade were the newfound aristocrats. Their skills in navigating the river allowed for a steady flow of foreign resources, such as wood, stone, and silver, all which were used by the state to levy taxes on the public masses.

Gift exchange, tithe-like obligations, and tributes were social obligations inflicted on the public to redistribute resources to the tribal ruler and his selected administrators (Innes, 1913, 1932; Hudson, 2004; Graeber, 2011; Polanyi, 1944). Social order in Mesopotamia thereby references the divine right tribal kings and his administrators', whom wielded the power of Gods, use of religious context to mold collective obligations in their favor. This early functioning of divinity rule and Gods' justice was the nascent redistributive authoritarian system in which sovereign legal (lawful) obligations were defined.

From Wergeld-Like Justice in Ancient Societies to Sovereignly Imposed Public Obligations

Debt and Credit: A Brief Etymology of Wergeld

A brief etymological analysis of ancient societies will shed light on the ubiquitous nature of wergeld-like systems. Mitchell Innes (1913), an indispensable exponent to the progress of the Credit and State theory of money, expressed that– “From the earliest days of which we have historical records, we are in the presence of law and debt”; universally, “debts and credits are equally familiar to all, and the breaking of the pledge word [tribal oaths of social justice], or the refusal to carry out an obligation is held equally disgraceful” (Ibid; pp. 391; also see Henry, 2004). It was private conflict in archaic tribes that prompted the desire to incorporate a social justice network. The purpose of wergeld justice was to prevent

indefinite blood feuds (Innes, 1913, 1914, 1932; Wray, 1998; note Grierson, 1977, 1979; Goodhart, 1998). Wray (2015) corroborated that Innes defined the origins of money in terms of social justice (wergeld institutions), through his explanation that “the verb ‘to pay’ has the root meaning ‘to appease,’ ‘to pacify’ or ‘satisfy’” (Ibid; pp. 6; view Innes, 1913; pp. 392). This “presence of law debt,” Innes confirmed, is organic to every archaic society of which we have historical data.

Michael Hudson’s *The Archaeology of Money* explains quite extensively the etymology of wergeld. He noted, “the fact that words for debt in nearly all languages are synonymous with ‘sin’ or ‘guilt’ reflect an origin in reparations for personal injury. German *schuld* (debt, sin) bears meaning of both offense and the obligation to make restitution” (Ibid; pp. 102). Modern law has its origins in credit and debt relations configured on calculated schedules of redistributing possessions; wergeld— which *wer* (*Latin roots “vir”*) means ‘man’ and the German word *geld* (*derived from the Gothic word ‘gild’*) identified ‘tax’ (Ibid; pp. 104)— was the social opus in archaic societies. For example, in Old Icelandic tribes the word ‘*gjald*’ meant to “recompense, punishment, and payment” whereas the Old English term ‘*gield*’ equated to “substitute, indemnity, and sacrifice” (Benveniste, 1973; pp. 58). The etymological history of money suggests archaic societies in Greece identified money by the term “*nomisma*” (what we call numismatics in contemporary English) meaning “lawful distribution” (Wray, 2015). The underlining importance of wergeld justice is that human life became calculable. A system of human valuation, implemented by the State, was inextricably linked to the calendric accounting that manifested from wergeld-like justice institutions. The tax structure that followed wergeld’s code of law was the revolutionary aspect of common justice systems because the State was endowed with the natural right to impose legal

obligations on society.

Primitive criminal justice frameworks instituted by wergeld as its legal body was a system that measured private disputes in tribal societies. In fact, according to Einzig (1966) '*geld*' "...implies the settling of scores or revenge" (Ibid; pp. 379). Thus the notion of 'worthpayment' is inseparable from human valuation because in order to account for the victims' losses, defendants had to offer his possessions (whether it is his bride or any person belonging to his family, commodities [could be barley crops, cattle, land, etc.] extracted from his property, or the defendant himself if he could not make the scheduled payment); wergeld comprised the standard compensation method for crimes against individuals.

State Imposed Obligations Unmasked in Mesopotamia

Primitive laws have proven to be instrumental in the establishment of money as a State institution. As stated earlier, wergeld-like debt accounting structures opened the door for a socialized unit of account to be considered by the temple-administrators and divine kings. With the introduction of phyle systems, a continuation of elitist tribal clans, initiated by the 'divine rule' of the king, was composed to cope with the growth and evolution of societies along the Nile River Valley [the king was able to prevent opposition to his sovereign through this new State institution] (Roth, 1991; pp. 213). Central to this new system (phyle) was the establishment of obligations (fines, fees, tithes, and tribute) imposable on the public masses so quite naturally a unit of account accompanied it. Wray (2015) noted that with the transformation of the authority, "wergeld fines paid to victims" came to encompass "fines paid to the authority, and at the same time it created the need for and possibility of creation of the monetary unit" (Ibid; pp. 12).

In-kind obligations were made possible by specialization. Surplus produce in the form

of grains (barley and wheat mostly) was used by the State to inflict obligations on the public. Tcherneva (2016) notes “In Egypt, as in Mesopotamia, money emerged from the necessity of the ruling class to maintain accounts of agricultural crops and accumulated surpluses, but it also served as a means of accounting for payment of levies, foreign tribute, and tribal obligations to the kings and priests” (Ibid; pp. 5). Such a redistributive mechanism created a broad extraction of moveable possessions from the commoners so that “surplus [would] flow from the producing classes to the non-producing minority, privileging the latter at the expense of the former” (Wray, Bell, and Wray 2004; pp. 58). Most times these obligations went to the king in the form of tribute payments, other times “criminal law” served as the purpose of redistributing resources to the king.

The newly derived tax system functioned with a level of sophistication that embodies taxation methodologies in contemporary sovereign states. For example, tax assessors came to regard twigs as a way in which the chief (or any other form of sovereign authority) could impose debt obligations onto the public while also providing the liquidity necessary to meet State imposed debt. Sin-taxes, manslaughter and murder crimes, and sovereign quotas were social debt obligations no person in the tribe was excluded from. Such systems found their place in almost every archaic system examined thus far. Resulting from such systems, tribal “criminal justice” networks came to embody the force by which money became a necessity to account for generalized debt obligations. Wergeld-like institutions are the pinnacle agencies by which the divine chiefs of Mesopotamia could rationalize imposing debt obligations onto the public via universal unit of accounts. However, early taxation standards varied greatly from grain units of accounts to electrum coins, mina, the shekel, and then the pound. The “shekel-weight of silver (240 barley grains)” (Hudson, 2004; pp. 112) was disbursed

throughout Sumerian tribes in which the authorities (not the open market, as suggested by barter theories) assigned utility to metallic currency by linking it to surplus commodities; this was the birth of the liquidity process. In fact, the earliest known unit of account was the *deben* (though there was not a universal commodity or “money thing” that reflected it, it was “virtual” money) an “abstract measure for standardizing weights and prices, much like in the Mesopotamian palaces...wheat, copper, labor etc. [encompassed *debens* as means of payment]” (Tcherneva, 2016: pp. 5; also emphasized in Wray, 1990; Henry, 2004; pp. 11). Such systems of redistribution led to State based stratification that rolled-over into the democratic societies of Greece and Rome.

Civilization in the Graeco-Roman World: The Military-Coinage-Slave Complex

With imperial expansion of Greco-Roman cultures emerges a clear path to understanding the complexities of what Geoffrey Ingham (2004) termed the ‘military-coinage complex.’ However, in accordance with David Graeber, a third element was missing from Ingham’s analysis of the unbounded-ness of military expansion and the derivative metallic currency that followed it: the institution of maritime servitude (pre-modern slavery) (Graeber, 2011; pp. 229). The reason slavery is referred to as an institution here is congruent to Thomas Wiedemann’s (1981) idea that, “Slavery is an institution of the common law of peoples (*ius gentium*) by which a person is put into ownership (*dominium*) of somebody else, contrary to natural order” (Ibid; pp. 15). Sandra Joshel (2010) explains: “‘Institution’ means an organization of roles that include conduct— how people should behave or how they are imagined to behave. It refers, too, to a system of practices and ideas that are socially sanctioned and maintain the continued existence of the institution” (Ibid; pp. 10-11).

Collective institutions governed by bureaucratic structures speak to the development process shown by Graeco-Roman *polis* and *civitas* as civilized States. Inherent to ancient city-states are disenfranchised public masses. Whether it is religious temples or public market places, commoners were bound by public institutions and thereby obligated to their customs.

Slavery was a system that became naturalized with imperial expansions across the Mediterranean seacoast. In the Graeco-Roman civilizations of the Axial Age (800 BCE—600 A.D.), new civilizations had come to replace those of the ancient Mesopotamian order. Slavery became an important identity marker for the “new societies,” civilizations that were defined by the ideas of written codes and civil law and order. The Greek city-states (*polis*) were not unlike the Roman’s *civitas*, “founded upon by territory and property” (Morgan, 1877), in that both represented a broad establishment of democratic principles that reflected an evolved class society from primordial Egyptian and other Mesopotamian civilizations. Many pay homage to Servius Tullius (576-533 BCE) for he altered the political conservatism established under Romulus’ gentile government (*societas*) by incorporating Athenian democracy as its centerpiece.

A Brief Analysis of Graeco-Roman Democratic Ideologies

Democracy, according to Michael Saward (1991), is explained in a multitude of ways. In addition to its most common understanding of “rule by the people,” democratic city-states could also be labeled as an “essentially contestable” political society in which laws are discussed and debated by “the people” for public interest (Ibid; pp. 8-9). Dean Hammer’s (2005) account of the “Plebiscitary Politics in Ancient Greece” emphasizes that Grecian Democracy came by way of a bottom-up progression in that “*demos* defined itself in opposition to tyrants” (Ibid, pp. 107). Hammer provides a perplexing vindication that hostile

relationships existed between tyrants— divine sovereigns and their lineage (bloodline) that inherited the divine titles to rule over commoners— and the subject citizenry (*demos*). As a result, “plebiscitary politics provided a public space, often volatile, in which a vocabulary of democracy could develop” (Ibid; pp. 109). The *Struggle of Orders* in the early Roman Republic (509-264 BCE) was the mechanism by which law and order dialectics manifested. The struggle for social order was an instrumental discourse that formulated Roman style democracy. In fact, Morgan (1877) states that the Licinian legislations in 376 BCE uplifted the plebian class to citizen status in Roman *civitas*.

Prior to Roman democracy, Solon was titled champion of democratic politics and law. His political reform efforts in sixth century BCE Athens led to distribution of political power on a grand scale. Astonishingly enough, he gained broad support from the Athenians by increasing the number of citizens when releasing wartime slaves from their masters and giving them legal protections as citizens, while incorporating a council of about 400 elected officials (Ibid, pp. 122; look into Morgan, 1877: pp. 262; Peacock, 2016).

Plato’s philosophy of law was expressed by Humphreys (1988) as “proposing to use law as a tool for shaping the good society in the *Laws*, is restating the claim of the elite to speak with special authority in matters of law, he is stating it in a way that is typical of democratic societies ...Plato’s conception of law is repressive” (Ibid; 477). In such a society, Plato seems to evoke the idea that elitist philosophers should and would dominate the civil order through moral and religious knowledge. Plato’s *Laws* were too radical to be adopted in the democratic *polis* and *civitas* of the Graeco Roman world, though.

The Greek *polis*, for example, was comprised of *phratry* (consisting of about ten distinct genes) in which each gene involved elected a priest (*curio*) as “chief of fraternity

enacting sacred rites” to represent their interest in the polis (Morgan, 1877; pp. 303-306; see Humphreys, 1988; pp. 466). Furthermore, in 711 BCE the archon (one official ruler) surpassed the *curio* as the elected officialdom for all genes serving ten-year terms initially—democratic reform occurred again in 638 BCE increasing the archon cohort to nine officials: Their terms were constricted to annual election cycles (Ibid; pp. 261). A broad establishment of democratic institutions was emerging in Greece that reflected its evolution to a civil State. The assembly of the people expressed by the term *agora*, the census process of citizens’ registering their property in townships (*demes*), and individual polities acting as the governing body of these townships, speaks to the broad distribution of power enacted by the new society. This is a microscopic look into the development of democracy in Greek polis. However, it is necessary for this text because of the rationalization of “civil laws” and “natural laws” of slavery that manifested within the philosophical framework of Greek city-states.

Money in the Graeco-Roman World

Among the earlier public institutions established were minting institutions. Goodhart (1998) explained that minting coins was always a function of the State, which allowed for coins to be ‘tokenized’ rather than being valued based on the metal content. A key point Goodhart makes, which departs from State monopoly on minting, is the notion that wartime efforts made State’s money less credible because “currencies became of lower quality, more likely to be debased, and less acceptable in commerce” (Ibid; pp. 415). In this case, Orthodox theories on money’s intrinsic worth-value gains clout because the debasement of coinage during war could be the reason money’s intrinsic value, relating to its metallic content, are meaningful. On the other hand, Heterodox economists classified by Chartalist theories, could

attest that States' credibility as sovereign is attacked when at war and thus causes a low demand for its 'money things.' Broken down more intuitively, warring States' metallic currencies are as credible as the State itself. In this sense, a State's military dominance and its annexation over an opposing territory reflect its currency's worth being more credible to that of the conquered nation's. Due to the known fact that imperial expansion provides us with a clear winner and loser after wars, one State generally preserves its right as a sovereign nation while the other becomes the annexed, colonized, or conquered. However, when wars are in progress and there is no prominent military force, international demand and domestic demand for warring States' money logically diminishes until a winner is revealed.

A. Mitchell Innes (1913) gives a metallurgical account of ancient currencies in times of peace to show that there was no true intrinsic value of metallic currencies. In relation to Lydia's electrum coin he states, "While some contains more than 60 per cent of gold, others known to be of the same origin contain more than 60 per cent of silver, and between these extremes, there is every degree of alloy, so that they could not possibly have a fixed intrinsic value" (Ibid). Therefore all money in Greece was tokenized. Roman *As* and other forms of currency it devised were no different; they, too, were tokenized. What differentiated Roman *As*, metallic currency based on the Oscan pound, from the Greek electrum coinage was the stamp-of-value unique to fractional *As*, whereby they were "divided into twelve ounces" and represented a "pound-weight of copper". Innes took heed to the metallurgical accounting of Mommsen who confirmed that Roman *As* were alloyed with lead, making it highly unlikely that the coins truly weighed a pound of copper. Innes assessed that:

The *Asses* which ought to weigh a pound [of copper], vary in fact from 208 grammes to 312 grammes with every shade of weight between these two extremes. The Half-*Asses*, which ought to weigh 136.5 grammes weigh from 94 grammes to

173 grammes; the Third-of-an-As, which ought to weigh 91 grammes, weigh from 66 grammes to 113 grammes, and the Sixth-of-an-As, weigh from 32 grammes to 62 grammes, and so on for the rest (Ibid).

Repressive forms of law were established in what will be referred to here as “ancient slave codes”. The large-scale shift to socialized institutions in Greece and Rome has its roots in monetary institutions that relied on metallic commodities mined by the hands of slaves. A genealogy of metallic currency in Greece and Rome proves to be of great utility in accordance to slavery and State fiscal expansion (Goodhart, 1998; pp. 412; Seaford, 2004). Imperial expansion of the early Graeco-Roman civilizations was due largely to a broad demand for metallic currency (Graeber, 2011; Ingham, 2004; Morris, 1986; Bradley, 1987: pp. 15; see Seaford, 1998; pp. 199-121). Although gold, silver, and bronze became the money of the State, it was not necessarily desired for its intrinsic value, but for its title as means of payment for any imposed duty by the State. Money is an institution (see Keynes’ institutional approach to State money for further elaboration) made necessary for the purpose of paying State debt and the need to find an omnipresent unit of account to calculate the worth of all bartered commodities. With the State monopolizing the minting process of coins, it had the power to tokenize a ‘money thing’ (a commodity) by relating its value to that of livestock, grains, and human life; as noted by Desmond (1962), female slaves whom were skilled in handicrafts could be sold for four ox-units (see Semenova, 2011; pp. 109).

From Ox-Units of Account to Metallic Currency

There is no source that provides a clearer pathway to the historical development of State commodity money (metallic currency mostly— but in Carthage’s Phoenician colony promissory notes were issued as the State’s ‘money thing’) than that of Alla Semenova’s (2011) “Would you Barter with God?”. Semenova begins by examining, perhaps, “the first

unit of value and account” in ancient Greece societies: Ox-units of account. Semenova states, “...by specifying the precise quality, type and quantity of oxen to be sacrificed, ancient Greek religion provided the first instance of a unit value established and guaranteed by the “state” in which the ox-unit (ox-units of account and value are expressed in terms of ‘limbs’ worth’ to divine rulers) was used to value “objects in terms of other objects” (Ibid; pp. 376-377). Ox-units were discussed in Homeric epics in ninth and eighth century BCE as a source of sacrificial tribute to Gods, communal offerings, and feasts. Wergeld-like accounting is found in such institutions because “the ox-unit of value became a unit of account in which various fines and payments were denominated in the earliest laws of the Graeco-Roman world” (Ibid; pp. 378). Unlike wergeld institutions of lawful distribution that depended on “moveable possession” including indebted people and their family, Ingham (1996) notes “killing a king...involved selling into slavery of the murderer’s whole extended family”). Ox-units became the universal unit of account accepted as obligatory payments for tributes to the state (Ibid; pp. 520).

There was a social hierarchy with the establishment of ox-unit of account in that temple-men (priesthood) were in charge of imposing sacrificial repast as a way to pay tribute to the gods, devout ‘divine ruler,’ and his administration. Sacrificial offerings were very much like wergeld accounting in that the rich, the poor and even slaves were by law “civil servants” bounded by the State to participate in the communal (*koinoia*) offerings through the dictum of “equal share”; “The public meal...[coated] the social reality of antagonistic relationships between masters and slaves” (Ibid; pp. 387). Also, citizens were obligated to pay the State these offerings from the surplus possessions (of bulls): Semenova (2011) explains, “not just quantity but quality parts were distributed to the higher ranks”— five

pieces of the bull went to presidents and archons, one piece went to the treasurers of the gods and feast managers, and the “customary portions to the others (plebian class)” (Ibid; pp. 387-388; Wray and Semenova, 2015; pp. 9; view Peacock, 2011, 2013). In the *Book of Leviticus*, Moses’s Israelites sin-offerings could be paid only through sacrificing bulls (ox-units):

If the priest sins, bringing guilt on the people, he must bring to the lord a young bull without defect as a sin offering for the sin he has committed...If the whole Israelite community sins unintentionally...they are guilty...the assembly must bring a young bull as a sin offering and present it before the Tent of Meeting. The elders of the community are to lay their hands on the bull’s head before the Lord, and the bull shall be slaughtered before the Lord.

– [Leviticus: 4: 2-15]

From communal offerings, sacrificial meals and tribute obligations, commodity money rose from the ashes to provide the State with a tangible commodity (metallic currency) to set up a universal system of accounting for debt obligations it imposed first denominated in moveable assets. The etymology of Greek coinage is quite striking because it references the tradition of animate sacrificial offerings. ‘Pecuniary’ has its roots in the Latin word ‘*pecus*’ (noting cattle), ‘fee’ has its origins in Gothic word ‘*fahi*’ translated to mean cattle as well, and ‘capital’ is thought to come from the word ‘*capitale*’ [a term noting head count of cattle] (Semenova, 2011; pp. 378). An interesting aspect of the genealogy of metallic currency is the fact that the first commodity used as money came from the iron spits (*obelos*) that were used to cook bulls’ meat at sacrificial ceremonies: Conveyed in *Etymologicum Magnum obolos* (sixth century B.C. silver coinage) was used broadly as Greece “money” in which the drachma (“a handful of six spits”) quickly followed (Ibid; pp. 390; Wray and Semenova, 2015: also see Seaford, 2004; and Laum, 1924). From these derivative “money things” came the rationalization of universal State money that originated

in Lydia with the electrum coin (Ibid; pp. 377; Bell, Henry, and Wray, 2004: pp. 61; Goodhart, 1998: pp. 415; Innes, 1913; Graeber, 2011: pp. 224). It is with the Lydian electrum coinage that the nature of the military-coin-slave complex will be assessed here in depth because electrum coinage, thought to be in circulation between seventh and sixth century BCE, was the source of State commodity money introduced by Pheidon of Argos.

Money and State Slave Labor

Lydian coins were invented explicitly to pay mercenaries. This might help explain why the Greeks, who supplied most of the mercenaries, so quickly became accustomed to the use of coins, and why the use of coinage spread so quickly across the Hellenic world, so that by 480 BC there were at least one hundred mints operating in different Greek cities (Graeber, 2011; pp. 227).

An international market for metallic currency (gold, silver, and bronze) was made necessary with imperial expansion of the Graeco-Roman cultures across Mediterranean coasts. Greek authorities were the dominant force for commodifying metallic minerals in the archaic city-states (*polis*) due to the fact that it allowed them to expand their superior ‘civil order’ across borders. The civilized people of the *polis* were not considered as disposable bodies for war by the State. Hiring mercenaries from abroad (Athens, Sparta, and even the Persians prior to 547 BCE) to fight in war created a demand for a labor source to mine minerals in order to pay off lump sums of debts owed to mercenaries. In fact, Seaford (1998) noted that early Homeric epics did not have money, yet Homeric tragedies did contain metallic money because “like other institutions of the polis, coinage influences the tragic representation of heroic myth” (Seaford, 1998; pp. 199). Money was a debt-based instrument that became a symbol of tragedy because of the social plight it caused, the naturalization of class stratification, and hostility it projects towards the ‘have-nots.’

The reason such money things (metallic minerals) became popularized, one could attest, is because of credibility of a sovereign State attached to its ‘legal tender’ (for further elaboration see Wray and Semenova, 2015; pp. 5). Gold, silver, and bronze (and later copper) metals were broadly accepted not for their intrinsic (utility) value but rather for the sovereign State’s willingness to accept its minted ‘money thing’ as means of payment for taxes, criminal justice fines and fees, and also goods and services provided by the sovereign authorities. Seaford (1998) argues that money did not originally function as a means of payment, store of value, or a universal unit of account (measure of value)— the only quasi function of metallic money prior to its full-fledged circulation in fifth and sixth century BCE was the unit of account [means of valuing ox-units] (Ibid; pp.199). In a society where one is coerced by the State to meet sovereignly imposed obligations (taxes, tithes, tributes, criminal fines and fees, etc.), it is quite natural that the State’s ‘money thing’ becomes a source of liquidity on domestic trades markets. Thereby emerges a Chartalist theory of State money rerouting to private activities of commodity trade, labor compensations, and paying off debts to not just the State but private individuals that one may have entered into a credit-debt relation with. States’ unit of account becomes the universal unit of account for all and its value lies in the fact that it is accepted internationally and domestically as a means of payment for all commodities including labor and debt. As expressed by Wray and Semenova (2015):

In the chartalist approach, the “state” (or any other public authority able to impose an obligation) imposes a liability in the form of a generalized, social or legal unit of account—a money—used for measuring (or denominating) the obligation. Money is introduced by the state as a unit of account in which debts and other obligations to the state are denominated and have to be repaid. It is from this power to extinguish debts and other obligations to the state that money acquires its value (Ibid; pp. 4).

Innes (1913) defines money by the notion “law of debt” in that the true value of money lies in the fact that it is accepted as debt payments by the State who imposes legal financial obligations publicly; no one is excluded from such payments as shown by the priesthood offering of a bull (as its sin offering) in the *Book of Leviticus*. How was the State able to extract insurmountable quantities of metallic minerals to meet the growing demand of metallic currency in the Graeco-Roman civilizations? Who benefitted most from the newly devised monetary institutions of the State? How did money circulate throughout the domestic economy? These questions are the motivational sources for seeking and elaborating on the nature of the military-coin-slave complex instigated by State money. As noted, Greek and Roman imperial expansion in sixth century BCE has led to slavery being labeled as a civil institution, one that has been embedded in the cultures of early democratic states by way of law (the next chapter will explore the lawful origins of slavery and its institutional design). It is understood from a sociological standpoint that precious metals became the universal equivalent by which all forms of debt, at the private and State level, could be cancelled out.

Aristotle's *Politics* was the original pamphlet for slavery illustrating the lawful indebtedness of domestic slaves and "prisoners of war" to their masters. The very lives of slaves and their inscription as property (animate) of their master signals indefinite indebtedness through coerced services to their masters; the Aristotelian notion of "property with a soul" indicates the naturalizing process of slavery in Athens. State slaves' services as miners were the prime stimulus for expanding the slave population via war, and would allow for a natural growth in the domestic slave population by aid of artificial selection (on slave breeding in Rome see Bradley, 1987; 15). M.I. Finley (1980) provides a startling account of Roman conquest as the means by which land and slaves were conquered:

Its essential role (Roman conquest), however, was in creating the basis for large estates, with all the consequences that followed for Roman society and therefore for the "structure" of Roman slavery. The "conquest theory" thus helps to explain the specific character of the Roman slave society, not its emergence (Ibid; pp. 84-85).

He also provides a scale of Roman slavery:

"On conservative estimates— 60,000 slaves in Athens at the end of the fifth century B.C., 2,000,000 in Italy at the end of the Republic— the comparable percentages are in precisely the same range, about 30 and 35%, respectively" (Ibid; pp. 80).

"In 296 [BCE], during the third Samnite war...Livy records the enslavement of 40,000 captives, a figure which may not be accurate but is also not complete. In 262 [BCE] came the first of a long series of mass enslavement during the Punic wars, 25,000 after the capture of Agrigento" (Ibid; pp. 83)

Sandra Joshel's (2010) *Slavery in the Roman World* gives us an account of the slave population in the Roman Empire by looking at the "First and Second Slave Wars (c. 135-132 and c. 104-101 BCE)" that occurred in Sicily. The First Slave War (135-132 BCE) was an uprising in Enna, Sicily against a "brutal" slave master named Damophilos (delineating by the ancient historian Diodorus Siculus) in slave prisoners— "a force of 400 slaves"— ravaged Enna until the Romans suppressed the rebellion. "Roman estimates of the total

number of slaves involved in the rebellion range from 60,000 to 200,000...Romans finally quelled the rebellion in 132 BCE by recovering Taormina and Enna, two key centers of resistance” (Ibid; pp. 59). The Second Slave War (104-101 BCE) was outlined by Diodorus Siculus. The German tribe *Cimbri* was the source of the uprising in which “...the number of slaves in revolt grew from about 1,000 to 10,000” (Ibid; pp. 62). It is important to put slave population growth into perspective because it extends the dialogue to consider the importance of slave demand in early societies while also allowing imperial conquest to be labeled as a means of not just expanding State borders (land) but the slave population as well. One could advocate that Graeco-Roman expansion was morally expressed in the discourse ‘us’ versus ‘the rest,’ or ‘civil’ versus ‘barbarian,’ in that imperial expansion was just in accordance to didactic expansion (something which will be explored more in-depth when discussing Western philosophical justification for African enslavement).

Imperial expansion was justified by the ‘civil’ versus ‘barbarian’ discourse, which allowed the civilized Graeco-Roman states to domesticate barbarians abroad by showing them the civil way-of-life through enslavement. The most egregious aspect of imperializing barbaric lands is the idea that people inhabiting these lands were property of the civilized whom possessed no citizen rights. The Roman state compelled conquered peoples, its prime labor force, to mine for metallic content used for currency. After wars of imperial expansion in Italy and their annexation of Mediterranean states, the war captives were brought to perform a variety of services. This is why Finley notes that slaves did not form a rigid class in Rome— but “the most miserable being those of workers in mines” (Ibid; pp. 15). Graeber’s (2011) notion of the “military-coinage-slave complex” is instrumental because it constructs an advanced analysis of the inseparable nature of military expansion and State

money (metallic money) along with State dependence on slave labor to supply its money things. Graeber notes, "...it was slavery, though, that made all this possible. As the figures concerning Sidon, Tyre, and Carthage suggest, enormous numbers of people were being enslaved in many of these conflicts, and of course many slaves ended up working in the mines, producing even more gold, silver, and copper" (Ibid; pp. 229). According to "Mining Greece: The Lavrion Project," the most telling city that provides scale to the importance of slave miners is the Athenian city known as Laurium (located in eastern Attica). Athens had nearly 20,000 slaves mining silver and iron ore at Laurium at the request of Themistocles, in which the silver was used to invest in a navy force (proven pivotal in Greece's defeat of Xerxes' Persian invasion around 480 BCE).

Conclusion:

Chartalist debt-based theory respective of monetary origins provides an intriguing model that is necessary to grasp the historical and sociological importance of State-imposed debt as the premise for a class society. As expressed in wergeld-like traditions of redistributive justice, unit of accounts prior to metallic currency's reign (tally sticks, cowry shells, hazel wood etc.) was a process to calculate debt obligations in a robust system of accounting. However, debt payments at the time were based on "moveable possessions" from the defendant to the victim of transgression. Individual lives were calculated on clay tablets in temples, thus, it can be argued that wergeld was a system of human valuation because many transgressions led to the enslavement of poor defendants and their family members until the 'moveable possessions'— whether it be 100 bushels of barley or animate possessions for subsistence— were delivered to the victim. Allowing human life (chattel-

humans) to be collateral ultimately ‘commodified’ people by objectifying defendants’ lives, as one’s life was compatible to moveable possessions.

The debt-based theory of money, especially that of metallic currency, proposes rather intriguing evidence in that State commodity money was originally issued as a debt token to mercenaries fighting on behalf of Greece. The ‘civil’ versus ‘barbarian’ discourse made way for the rationalization of conquering ‘uncivilized States as the natural order of the world. The need to spread dominance across borders in Graeco-Roman societies contributed to the mass enslavement of conquered people. Resulting from this, slavery became institutionalized as a civil convention forming an intimate connection with military dominance and minting practices. The value of slaves was embedded in their services (productive laborers) to the State as miners. They were dispensable souls offering their lives to mine metallic currency for the State. One could also insert that their lives as miners was the mechanism by which imperial States gained international clout because they provided necessary labor to pay off mercenaries used in war and naval fleets built to force imperial rule across Mediterranean borders. Whatever approach one takes is plausible. However, no one could deny the importance of military-coinage-slave complex in conceptualizing a civil society in Greek polis and in Roman *civitas*. The institution of slavery as a civil component of the ancient Graeco-Roman world must be explored to compose a linear progression from old institutions of slavery to the contextualization of chattel humans in the New World.

Chapter 2

From the Legal System of Slavery in Ancient Rome and Greece to Racialized Slavery in the Western World

Freeman and slave, patrician and plebian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed, stood in constant opposition to one another, carried on an uninterrupted, now hidden, now open fight, a fight that each time ended, either in a revolutionary reconstitution of society at large, or in the common ruin of the contending classes.

— Marx, 1848; pp. 204

Georg W.F. Hegel's *Phenomenology of the Mind: Self Consciousness* should not be forgotten, for the impact it had on moral philosophy (which later became regarded as economics) still lives on through Marx's examination of the political economy. More importantly, the segment titled "Independence and Dependence of Self-Consciousness: Lordship and Bondage" has provided substantial service to understanding the reciprocal nature of master-slave and lord-bondsman dialectics. Based on the subjective-objective nature of human consciousness, Hegel paints a clear portrait of power dynamics inherent to master-slave or lord-bondsman relations:

The master is the consciousness that exists *for itself*; but no longer merely the general notion of existence for self. Rather, it is a consciousness existing on its own account which is mediated with itself through an other consciousness, i.e. through an other whose very nature implies that it is bound up with an independent being or with thinghood in general. The master brings himself into relation to both these moments, to a thing as such, the object of desire, and to the consciousness whose essential character is thinghood (Ibid; 1807).

Hegel's reasoning of consciousness and self-consciousness is built on experience and recognition. The master's subjectivity is gained by having a slave recognize his position as superior and thus, there is an automatic labeling of the slave as not possessing subjectivity, he is merely an object (commodity) of the master (this relation is clarified in Marx's (1844) *First Manuscript: 'Alienated Labor'*). By objectifying the slave, there is "duplicity" in which the master and slave gain "the pure conception of recognition" by comprehending and accepting the power dynamics inherent to their pact. The slave's essential character is determined by his status as property of the master. This has historically been the case with all forms bondage relations in civilizations that pre-date Hegel's time, as well as bondage relations that followed his work (i.e., Marx's modern interpretation of the bourgeoisie-worker dialectic).

Historians, sociologists, and anthropologists who study the evolution of slavery have not, at least overtly, delve deeply into the subjective-objective dialogue established by Hegel. It is precisely this dialogue of conscious recognition between master (subject) and slave (object) that established lawful "code-of-conducts" used to identify individuals in servitude and those whom were free in the early slave societies of the ancient Graeco-Roman world. The discourse of slavery in ancient Greek and Rome societies was one that determined, and then solidified, the identity of slaves through the lens of their masters: i.e., a slave's selfhood was understood through his masters' interpretation of the slaves' objectiveness as property, commodity, product etc. It then becomes important to consider the questions: How did customary law determine slaves' identity in Graeco-Roman city-states?; Who controlled slaves and what labor did they perform?; and lastly, what were the effects of subjugating

barbarians to servitude and how did the ‘civil’ versus ‘barbarian’ discourse influence Aristotle’s laws of the ‘natural slave?’

Slavery in the Graeco-Roman Epoch

Customary Slave Laws in Ancient Societies: Slave Identity as Property

M.I. Finley (1980) is broadly acknowledged as an important proponent of the master-slave discourse in archaic slave societies. Finley notes the existence of “...three components of slavery— the slave’s property status, the totality of the power over him, and his kinlessness...” (Ibid, 1980; pp. 77). The nature of slaves in Graeco-Roman societies expressed by Thomas Wiedemann (1981) is based on three key ideas as well: (1) “A human being who by nature does not belong to himself but to another person— such a one is by nature a slave; (2) A human being belongs to another when he is a piece of property as well as being human; (3) A piece of property is a tool which is used to assist some activity, and which has a separate existence of its own” (Ibid; pp. 18, 23). Kostas Vlassopoulos (2011) advocates for Wiedemann’s concepts of the nature of slaves in ancient Greece and Rome almost verbatim when stating:

...the nature of the slave and his essential quality; [a slave is] one who is a human being (anthropos) belonging by nature not to himself but to another as by nature a slave, and a human being belongs to another if, although a human being, he is a piece of property (*ktēma*), and a piece of property is an instrument for action separate from its owner.

– Vlassopoulos, 2011; pp. 115

During Graeco-Roman republicanism there were no words that overtly connoted slaves. Linguistically, all words that determined servile status was somewhat linked to the notion of private property or ownership. Chattel humans being titled “animate property” was

legalized in Caius' *Institutes* in which an "...owner's absolute right of property over his slave led to the inability of slaves to be entitled property rights, thus his property belonged to the household of his master" The idea of belonging to someone else essentially classifies all "slaves (*doulos*) as 'a living piece of property'" (Wiedemann, 1981; pp. 30). Vlassopoulos denotes that the Greeks used a variety of terms to identify slaves, in which "...enslaved individual[s] could be called *doulos*, *andrapodon*, *pais*, *hyperetes*, *soma*, *oiketes*, etc. each time with a different emphasis in mind" (Ibid; pp. 117). However, it was the term *doulos*—connoting chattel humans as property of their masters—that was used as the popular term for slaves in Greece (Ibid: also see Finley, 1980; pp. 69). The Roman term *dominus* or 'dominion' was used to denote individual ownership by which some Roman text, Cicero for an example, illustrated the "slave-mastery" relation (Nyquest, 2008; pp. 359). In opposition to the enslaved population (*douleia*), free men (*eleutheros*) had to solidify their subjectivity through designing a separate system of customary laws for themselves. Broken down, *eleutheros* (free men) were by nature civil beings thereby possessing the free will to determine their path in life. In ancient Graeco-Roman societies, as noted in chapter one, the enslaved population overwhelmingly belonged to wartime captives (who Romans called *ergastulum*).

Since the beginning of chattel human customs (which began with the debt based theory of wergeld) in Mesopotamia, servants have been seen as individuals who were indebted to their masters based on collective justice systems. It is important to establish some boundaries here about what is meant by the term slave. In the most general sense of Graeco-Roman servile laws, chattel wartime captives were humanized commodities or capital instruments for masters. But couldn't debt-bondsman and Sparta's helots also be considered

human property? The answer to this is yes; a person belonging to any of these servile classes could, in the broadest sense of the term, be labeled another's property. Does this make them a slave though? The short answer is no. The reason so is that a slave was often recognized as an alien, a foreigner, an outsider etc. This is the reason that slave populations inclined dramatically in Rome after the Samnite Wars (343-290 BCE).

Mass enslavement in Rome's foreign wars made possible the growth of a large-scale slave system. First, war increased the slave population in Italy and continually fed that population with new captives. Rome's early wars in Italy had resulted in the enslavement of some of the conquered, but the enslavement of large numbers of the conquered apparently began with Rome's wars with the Samnites, a people in south central Italy...The Roman conquest of the Mediterranean in the second century BCE escalated the number of slaves...[For example] in 177 BCE during his campaign in Sardinia, Tiberius Sempronius Gracchus killed or enslaved 80,000 of the island inhabitants.

— Joshel, 2010; pp. 54-55

Another key factor that separates slaves from helots, debt-bondsmen, and serfs is the idea that their freedom depended on the masters' will to free them. In regards to the Messenian helots (thought to be conquered around 8th century BCE with the Messenian Wars), they were essentially "collective bondsmen" working to provide subsistence goods to the greater Spartan citizenry. The early Greek lyric poet, Tyrtaeus, explains that Messenian helots paid tribute to the Spartan authority through their labor as farmers; they provided subsistence goods to the Roman citizenry and in return were allowed to keep the surplus produce for themselves (Apud Pausanias 4-5; it is also discussed in Plutarch's *Life of Lycurgus*). Helots had rights that were not entitled to wartime captives, such as the right to procreate and the right to purchase freedom. Plutarch's *Life of Cleomeles* noted that over 5,000 helots purchased their freedom in third century BCE for about 500 drachmas per person (Ibid; pp. 23). Their indebtedness was paid off and their possession as free people

restored. As for the debt-bondsmen, they were bonded to masters on contractual credit-debt arrangements agreed upon prior to their servitude. Debt-bondsmen original status as freeborn citizens barricaded them from being a ‘natural slave.’ They were indebted to their master because of personal choice, not by legal and natural laws (a topic explored in chapter three).

The institutional nature of slavery was based on conquest and imperial expansion juxtaposed to it being a social institution derived within Graeco-Roman city-states. Barbaric captives were defined as ‘others’— they were nonnative to the civil order and social customs of Greece and Roman city-states. In fact, slaves were called *servi* in Roman societies because commanders sold people they captured. Commanders habitually *servare* (saved) wartime captives as opposed to slaughtering them because of their productive capacities. The sale of a slave as property (*mancipia*) encapsulates his legal status as a debtor to his master. This indebtedness was expressed through slaves’ servile labor, which masters utilized to produce surplus commodities for markets: the motive for slave labor was to maximize his masters’ profits— to produce a surplus in commodities that would allow his master to obtain metallic currency to meet State imposed obligations (tithes, taxes, criminal fines and fees, tribute etc.) and to give more leisure to his master by producing his subsistence. The tradition of wergeld debt-peonage in ancient Egypt was the institutional paragon of a servile society since wergeld is the first custom that subjugated debtors to the whims of creditors. In stating that wergeld systems were the conceptual premise for a servile society, it is meant that power dynamics inherent to primordial debt-peonage was a custom borrowed by Graeco-Roman civil law philosophers to construct the “code of conduct” for the creditor (master) and the debtor (slave). For the purposes of this project, the terms code of conduct and *civil* or

customary law are used interchangeably because the master-slave codes of conduct were deeply rooted in Graeco-Roman laws.

In early Greek and Roman thought, the conventional thought of “ruling and being ruled [were] not only among the things that are inevitable, but also among things that are beneficial, and some creatures are marked out to rule or to be ruled right from the moment they come into existence” (Wiedemann, 1980; pp. 18). This conventional wisdom was possibly derived from Aristotle’s theory on ‘natural slaves.’ Paul Millett (2007) understood Aristotle’s dialectic of master-slave relations to mean: “The person with foresight is naturally (*phusei*) ruler and master; the one that can carry out labour is naturally a slave. In this way, master and slave have the same interest” (Ibid; pp. 181). Even Euripides, the ancient Greek poetic philosopher, believed that barbarians (synonymous to foreigners, outsiders, or uncivilized peoples), by nature, were to be ruled by the civilized Graeco-Roman people. It then becomes paramount to examine Graeco-Roman slaves’ identity, which does not come from the master alone but from his labor and the ‘natural laws’ that defined his servile status. In regards to his master, to say the least, the slave’s indebtedness was absolute; in essence he was converted into ‘thinghood,’ living for the sole purpose of his master’s livelihood.

Notions of “natural slaves” were discussed in gruesome terminologies that often provoked fear in ancient city-states. Tacitus’s *Historie and Ananals* put heavy emphasis of the crude souls of slaves, often times portraying them as outright vicious beings. The most notable case is when he describes the murder of wealthy senator, L. Pedanius Secundus, in 61 C.E. to be committed by a ‘false Nero’ man thought to be his slave (Jones, 1956; pp. 185; Bradley, 1987; pp. 34: For Pedanius Secundus’s slave estimation see Finley, 1980; pp. 80). Tacitus presumed that slaves were innately reckless humans that should be controlled by fear.

He was ‘barbaric,’ ‘uncivilized,’ ‘foreign’ etc., and needed to be enclosed away from citizens of the *polis* until his master civilized him. Slaves only “apprehend logos, but free men fully possess it” so they were slaves by the will of gods’ (Millett, 2007; pp. 184). In this sense, slaves are by divine right objects of masters and socially indebted to them; they were objects of exploitation. In accordance with the Aristotelian notion of a ‘natural slave,’ a slave was simply ‘property with a soul.’ However, in what forms did slave masters exploit their servants? What were slaves’ lives like in old fashion slave societies?

Who controlled slaves and how were they used in ancient slave societies?

In asking, “who controlled slaves?,” one must uncover what customs determined a freeborn citizen, a freedman, and a slave. As previously stated, the slave was a chattel human whom existed for the sole purpose of being exploited by his master. In regards to the free man, he is someone that is acknowledged as an unbounded citizen with free will. The free man is a person recognized by the republic as an individual subject of the State, endowed with rights to reproduce himself— the right to provide subsistence for ones’ self and to enjoy leisure however one deems fit. It is also important to note that the free man was, by nature, entitled to the spoils of the earth, which included ‘natural slaves.’ As for freedmen, we must examine the process by which slaves became freed persons to understand the civil customs that determined the status of freedmen and freedwomen.

Manumission (freeing a slave)

Graeco-Roman historians broadly acknowledge the importance of manumission as an essential civil custom incorporated in the institution of slavery. Bradley (1987) saw manumissions as inherent to slavery because it showed slaves that their indebtedness to their masters was not necessarily infinite (Ibid; pp. 81: Joshel, 2010; pp. 42). Some servile laws

were even defined by the preconceived notion of ‘clean slates’ in which after a set amount of years slaves were automatically released from his objective state. An example of this is expressed in Augustus’ legal reforms in late first century B.C. when he suggested “that at Rome domestic slaves...[be] manumitted at about the age of thirty” (Wiedemann, 1981; pp. 51: primary source Cicero, Philippic 8, 11.32). Manumission was the ‘social rebirth’ for many slaves coming in a variety of forms: a slave could become free upon birthing a child or having dependents, he could also gain freedom from his master to be granted a managerial possession by his patron, and sometimes a slave was freed for the purpose of marrying the master (Ibid; pp. 25). Upon his emancipation, however, there were still legal restrictions that separated the freedman from the freeborn man.

Freedmen had many civil rights. First and foremost manumitted slaves’ legal status as property was expunged, they could legally marry and have socially acknowledged children, they could also own and sell property, and enter into contract agreements (Joshel, 2010; pp. 42). However, the importance lies in the civil customs freed persons were not entitled to and the social treatment they received from the freeborn citizenry. Many freeborn Roman citizens more times than not viewed manumitted slaves as less than a citizen and thus legal barriers were often placed between freedmen and their patrons. By law a freed slave could only sue his patron with magistrate permission, which was rarely allowed. In *Digest* (47.10.7.2) Ulpian emphasizes the commonality of praetors’ inflicting “light beatings” on freedmen. In relation to public law, they were denied the right to officialdom since they did not come from Roman citizenry initially. To keep them in a permanent possession of low class status, “Freedmen and freedwomen could not marry a member of a senatorial family” (Joshel, 2010; pp. 46). Though legally free, manumitted slaves were second-class citizens that exemplified a

dividing line between slaves and freeborn men. When it comes down to comparing and contrasting the freedman's social status in relation to freeborn citizens and in relation to slaves, the lines become somewhat blurred.

Freed slaves presented a new social group to the Roman world. They were individuals that reflected a servile past on the road to Roman citizenry. By way of manumission, freedmen and freedwomen embodied hope for slaves in bondage. They represented a class of people that evolved from mere objects to a quasi-Roman subject with legal rights. This is what separated the freed population from slaves, the principle of property rights. The very act of lawful manumission shows us that early slave-societies were not fixated on the indefinite servitude of conquered slaves. 'Clean slates' expressed in manumission were often granted to slaves as a mechanism for alleviating their natural indebtedness to his civilized authorities.

Historically, grace cycles or 'clean slates' were granted to relieve the socio-economic stigma of indefinite servitude due to debt. It was not uncommon for pre Graeco-Roman kings in Sumeria and Babylonia to announce "public amnesties" (commonly known as "declarations of freedom") that freed debt-peons from servitude. Known as *amargi* (return to mother), all indebted individuals had the ability to return to a subject status. Meaning they were entitled to property rights and therefore detached from the slave label.

The Book of Exodus denoted that the year of Jubilee was a sacred and civil obligation of Israelites to God in which "Given the sacredness of the number seven in ancient Israelite culture, a cycle of 'seven weeks of years,' or forty-nine years, would have indicated a heightened sense of holiness for the jubilee year" (Fancuii, 2014; pp. 5: for further elaboration see Leviticus, 25:8). The purpose of Jubilee, Fancuii notes, is to free individuals in servitude from indebtedness to other humans because "The burden of debt is clearly

understood as contrary to God's will for humankind" (Ibid; pp. 8). There is little empirical evidence that suggests oral laws prior to Greek and Roman slave societies permanently punished someone for debt. Later in civilizations' development in the Middle Ages, Hebrew and Frankish Laws prohibited slaves from being permanently held in their undercaste status while outlawing Jews participation in Christian slave trade (Bradley, 1975; pp. 12). These societies, to say the least, are often understood to be pre-civil societies whom relied more so on social pledges than legal codes of conduct.

As part of the ancient slave codes, manumission must be discussed when talking about Greaco-Roman slavery because it was an extension of slavery as a legal institution. It was a system designed to funnel foreigners, no matter what skin tone one had, into the social order of city-states. Manumission was a lawful system by which slaves mobilized outside of their natural status as "a piece of property". "In juristic terms, he was "transformed from an object to a subject of rights, the most complete metamorphosis one can imagine. He was now a human being unequivocally, in Rome even a citizen"" (Finley, 1980; pp. 97). Manumission was a literal and figurative act of alleviating the debt burden inflicted on wartime slaves, it was a transcending force for conquered slaves.

Slave Labor and Services:

One could argue that the Romans were seeking to reform conquered societies to their way of life through employing their services for the good of Roman culture. This is shown by the notion that Roman slaves, both public and domestic, did not form a rigid labor class. It was common for slaves to be split into two categories: the *familia urbana* (city slaves) and *familia rustica* (country slaves) albeit they generally performed jobs in both settings. The military-coinage-slave complex could arguably qualify as one the most important multiplexes of the Graeco-Roman cultures. The cultural and civil development of ancient civilizations

was in large part due to its slave population. The natural standings of conquered peoples—prisoners of war— in Greek *polis* and Roman *civitas* were concrete: Whether a freed person or a slave in bondage, one was by nature a civil misfit. The presumption that slaves are naturally incapable of comprehending social laws resembled their status as barbarians. It was the ‘divine will’ that some people were naturally predisposed to their position as servile laborers and the way in which their productive capacity was employed was up to the master. It is then reasonable to analyze the usage of slave labor and to toil with the ideal of ancient slave labor forming a division of labor.

As noted by K.R. Bradley’s (1987) *Slaves and Masters in the Roman Empire*— “slaves did not form a rigid class system”, for the jobs of slaves ranged from “agriculture and pastoral farming, industry and commerce, domestic and private service, medicine and education, and military services” (Ibid; pp. 15). It is not until African slavery in the New World that we see slaves forming a rigid class. Some slaves worked under brutal conditions like those mining metallic content in Laurium or those whom were forced by Plautus to work in flourmills in the late third and early second centuries BCE (Joshel, 2010; pp. 120). For military services, some anthropologists acclaim that slaves did not fight in wars because they were a social duty of freeborn men and freedmen. To fight during wars signaled one’s citizenry and thus his status as a property owner. In fact, enlisting in the army was a way in which citizens identified themselves as free men because their motive for registering was based on protectionism: They were protecting their property (including their slaves) from foreign invaders. However, the military-coinage-slave complex has clearly suggested a militaristic role for Graeco-Roman slaves; they were the labor source for extracting the State commodity money used to fund wartime efforts and geographical expansion.

The interest here is in domestic slave labor because it provides a concrete look into the division of slave labor. Jennifer Glancy's (2000) intriguing analysis of the Matthean Parables breaks down domestic slave labor:

...in the parable of the weeds and wheat (13:24-30) are agricultural slaves. In the parables of the wicked tenants (21:33-41) and the wedding banquet (22:1-10), slaves serve as messengers or emissaries. Since the master expects the slaves in the parable of the wicked tenants to return with the rent, it may also be that he entrusts them with handling his funds [as financial assistant]. Although there are no clear indications regarding the work of the unmerciful slave (or the slave he abuses), the magnitude of his debt to his owner suggests that he is deeply involved in household financial affairs (18:23-35). To lesser but still significant degrees the slaves in the parable of the talents (25:14-36) serve as their master's financial agents. Finally, the master in the parable of the overseer (24:45-51) entrusts the enslaved overseer with managing an important part of his property: his other slaves.

– Glancy, 2000; pp. 71

In sum, Glancy notes, “The Matthean representation of the slave as a body to be used and abused serves as a counterevidence to the categorization of master-slave relationships” (Ibid; pp. 74). The counterevidence presents a new subject-object discourse involving the overseer slave and the domestic slaves subject to his beatings. Resulting from this broad distribution of domestic slave labor emerges a new dichotomy that emphasizes a new class of slaves within the broader framework: the managerial slaves. Masters sometimes leased slaves belonging to the industrial labor force (Xenophon noted that in fourth century BCE Nicias leased his slaves for entrepreneurial mining services at 1 obolo a day), while others became tenants of their masters in the sense that they produced commodities to pay rent and pocketed the surplus product (Jones, 1956; pp. 188).

Thus we see that, indeed, slaves in ancient Graeco-Roman cultures did not form a rigid class because their services ranged on a broad spectrum. Some slaves were even compensated for their labor monetarily. Slave institutions from this time period are very distinct from slavery that manifested in the New World. However, similarities still exist. The

fact that slaves were treated as barbaric outsiders naturally incapable of being a “civil servant” was used in the context of New World slavery; therefore, the subject-object relation persisted in the form of the slave being his master’s property. A key difference lies in the fact that slaves of the New World were determined by physique; the color of ones’ skin determined their natural status as a slave. Another change that occurred is along the lines of slave labor, for slaves of the New World formed a rigid class: they were agriculture laborers generally. The evolution from ancient Graeco-Roman servitude to New World race-based slavery starts with the idea that skin tone could be applied to one’s natural indebtedness to God and the “masters of mankind”. What is race-based slavery, though? What are the contextual implications of this newfound institution of slavery? How was it justified? And how was slave labor and services employed in the New World economy?

Slavery in the New World: Race-Based Indebtedness in the Atlantic Slave Trade

Precursor to Trans-Atlantic Slave Trade: Medieval Slave Trade in the Mediterranean Region

As history shows, servile culture has been a part of the socio-economic structure in archaic city-states centuries before the Atlantic slave trade took form. There are vast differences in New World slavery from that of archaic slavery, however. These differences occur as a result of race-based customs and the historical context this new form of slavery sprouted from. Phillip Morgan (2005) traces race-based slavery to that of Muslim and Islamic cultures in the medieval setting. In northern Africa, there has been a history of racial slavery since the seventh century with millions of Africans belonged to the slave class “across the

Sahara desert, Red Sea, and Indian Ocean to North Africa, the Mediterranean, and Persian Gulf” (Ibid; pp. 51).

The slave class did not belong exclusively to people of African descent. Morgan notes that between 1500 and 1800 over a million Western Europeans were enslaved by Muslims. However, racial identity did reflect ones’ slave status relative to the work they performed; “while Muslims enslaved many so-called ‘white’ people, medieval Arabs came to associate the most degrading forms of labor with black slaves. The Arabic word for slave, “*abd*, came to mean a black slave. Many Arab writers had racial contempt for black people...” (Ibid; pp. 52). Later European slave masters borrowed this custom when they allowed the mixed races, mulattos, melungeons, quadroons, etc., to work as domestic slaves while the pure-breed African worked the fields (Pinkett, 1950; pp. 213).

It was the presumption that African slaves were acclimated to the conditions of harvesting sugar crops, which led to Africans being the most highly sought out servile labor source for sugar plantations. Such conditions included laboring in tropical climates, habitats with harsh epidemiological environments many Africans tended to be generally immune to. African slaves were a durable labor source. Investment in the black slave would assure one derived surplus value out of his work because his life expectancy was high in tropical climates where the cash crop (sugar) grew sufficiently. Thus the rise of black slavery in the Western world is largely connected to the Western world’s obsession with sugar plantations as the cash crop of the time. Equally important, Europeans had an infatuation with the black physique and everything that distinguished it from white biological features, all the more reason to disassociate white Europeans from their slaves in the public light.

With the Ottoman Turks' capture of Constantinople in 1453, European merchants increasingly looked toward Africans as a sufficient slave labor source. Muslim and Islamic caravan trade in North Africa provided an institutional design for European racialized slavery. However, racial slavery was not simply based on contrasting identities between Africans and white Europeans. For example, Iberian colonizers enslavement of Atlantic Islanders (Guanche Islanders) later in the fifteenth century was the prelude to European relations with native inhabitants of the New World. According to Price (2015) the "Iberian Peninsula served as a model for the English to emulate. Along with the terms 'Negro,' the English borrowed a conceptual apparatus for understanding people of African descent as subordinate beings, savage, lawless, heathen, dissolute, and subhuman" (Ibid, 78; Morgan, 2005; pp. 53).

The importance lies in the fact that native Islanders and Africans were exploitative labor sources for sugar production; slaves began to form a rigid labor class in Western modes of production. In fact, São Tomé constructed the "universality of slave labor" acting as the "American prototype" for employing slave labor (Morgan, 2005; pp. 53). African slaves provided imperial states such as the Dutch, Portuguese, and British with a vast supply of laborers basically depopulating Senegambia. There was a "wanton destruction of the productive forces, especially the laboring classes" when Europeans commenced the trans-Atlantic slave route. The reason African and native slaves were able to form a static labor class is due to their adaptability to climates under which sugar crops were harvested. They generally overcame tropical diseases (such as malaria) that brought many European bondsmen to their deathbed. In the early 1600s, there was an increase in "input labor power from Africa"— "New World output of sugar in 1600 was around 10,000 tons; by 1660 it

was around 30,000. Sugar prices dropped by half between the 1620s and the 1670s...” (Qiu, 2016; pp. 32). Relative prices dropped in sugar as a result of the productivity of forced slave labor. For example, slave labor in Barbados and other West Indies’ territories were producing sugar as well, so by the time sugar plantations took off in America a global market for the commodity was conditioned to absorb the surplus sugar produced in the South. It could be understood that over-production came by way of omnipresent forced labor practices on all sugar plantations that hosted slaves. With high capital returns in terms of surplus value extracted from fixed slave capital, it could be explained why the price of sugar could generally diminish as overall profit rates incline.

The Construction of Racism in the New World Identity:

In Medieval Europe it was not uncommon to relate people of African descent to the Biblical Ham— in that God cursed Ham and all his descendants, therefore Africans, by way of the Christian God, are natural slaves. In Genesis 9:18-27, Ham “saw his father’s, [Noah], nakedness...When Noah awoke...he said, ‘Cursed be Canaan! The lowest of slaves will he be to his brothers...May Canaan be the slave of Shem...and may Canaan be [Japheth’s] slave’” (see Nyquest, 2008; pp. 361; Morgan, 2005; Lawance and Pilditch, 2008; pp. 72). It was through the name of Christ himself that the Roman Catholic Church justified their investment in the enslavement of millions of Africans. As the biggest stockholders in John Law’s slave trade in Louisiana, “The Catholic Church maintained a position on the Board of Directors of the Company of the Indies...” (Thrasher, 1995; pp. 29).

Analyzing racial slavery in the New World is a convoluted task. There are many directions one could take when it comes to tracing race-based slavery in Western European

traditions. The goal here is not to trace the history of racial slavery but instead to focus on institutions and social relations that determined the identity of African slaves. In the New World:

Slavery—the lawful sale and exploitation of human beings—has been the ultimate example of people and societies at their worst, the worst possible way to benefit from the labor of another. Few can doubt that the owning, breeding, trading, and working of slaves for profit was one of the most repulsive aspects of American economic history, even though prominent scholars had once argued, not too many decades ago, that the institution of slavery was neither profitable nor central to the main currents of American law and society.

– Park, 2013; pp. 34

When seeking the origins of slavery in the New World, it is important to trace the history of Columbus' conquest. Price (2015) notes that “racialized slavery in the Americas began as soon as Columbus navigated down the coast of the Caribbean island” where a “half dozen Caribs” were abducted to serve as private translators (Ibid; 76). Juan Gines Sepulveda, Alvaro Cabeza de Vaca, and Bartolome de las Casa documented the harsh realities experienced by native Islanders undergoing European genocide from the mid-sixteenth through early seventeenth centuries. Cabeza de Vaca's gave an account of his interactions with ‘Amerindians’ on his trials through *Naufragious* (North America). He along with four other crewmembers, out a total of six hundred, survived the *Pánfilo de Narváez* misfortunes when attempting to conquer Native Americans on the Gulf Coast of Florida in 1527 (Voigt, 2009; pp. 57-58). The narratives portrayed in his memoirs jotted in *Relación (1555)*—historically known to be dedicated to Charles V— painted images of ‘Amerindians’ in gruesome fashion. Lisa Voigt's (2009) *Writing Captivity in the Early Modern Atlantic* thought the works of Cabeza de Vaca were edited and revised to “create and enhance his self-

image” by protagonizing himself and developing a hostile dialogue towards Native Indians (Ibid; pp. 62).

Bartolomé de las Casas (1542) took account of the Spaniard’s colonization of Hispaniola illustrating their intentions, respective of their relations to the Native inhabitants, to be somewhat genocidal because they embarked on “a number of three million souls” but in less than half a century the aggregate population of Natives plummeted to about two hundred in total (Wood, 2016; pp. 35). Enslaving native Caribs was also taking form. However, once the African slave population grew to great numbers in the New World, racialized institutions became solidified as part of the New World identity. Race itself is a New World construction in which “white racism and white supremacy” allows for “whiteness itself as a social structure...[constituted] by dehumanizing and dominating other people they define as non-white for that purpose” (Martinot, 2007, 2010; pp. 66).

Applying race to slavery “elicited debasement through physically demanding labor” for the imposed “debasement was thus attributed to the essential nature of the enslaved people, a representation used as a means of justifying their enslavement” (Hayes, 2013; pp. 7). In the New World, Aristotelian notions of a “natural slave” molded itself to strictly rely on race as means to dehumanize and objectify people of African descent. The African lineage was indebted to the Christian God and his followers, so their labor activity was a socialized credit-debt exchange. Their “essential nature” was one of submission, one that reflected their object status as chattel labor. Angela Davis (2003) asserted that in the U.S. “chattel slavery was a system of forced labor that relied on racist ideas and beliefs to justify the relegation of people of African descent to the legal status of property” (Ibid; pp. 25). African slaves’ legal status as property in the New World was a racial construct that spoke to the inherent nature

of slaves as simply a productive tool. Chattel laborers were the primitive capital in the British Colonies. However, no nation prior to Western European Atlantic slave trade benefitted more from the surplus value created by slave labor.

Colonial Slavery Solidified: A Lawful Tradition

Governing the bodies of African slaves created the New World discourse for institutionalizing racialized systems of oppression. The year 1619 is an essential year in American history. It is referenced that in 1619 the first twenty chattel Africans crossed the colonial borders at Jamestown, Virginia (McColley, 1986; Higginbotham, 2013; pp. 46). We do not know much about the status of these slaves as documented by the only witness of this event John Rolfe, but there is consistency in the number of African slaves (twenty) brought to the shores of Virginia. Katherine Hayes notes Nathaniel and Grissell Sylvester settled near New York somewhere between 1652 and 1653 as private venture capitalists. Seeking to exploit the business prospects offered by plantation systems established in Barbados and other Caribbean territories, they became indulged in servile labor customs. Nathaniel Sylvester “assembled a heterogeneous group of laborers— African, Native American, and possibly poor English or Irish” thereby in 1680 his plantation had the “largest holdings of enslaved persons in New York,” a sum total of twenty-three persons (Hayes, 2013; pp. 2). Hayes notes that these individuals performed many tasks both domestically and on the plantations, so they were not homogenized in their labor. Since racialized production in America was not yet instituted, servile labor on the Sylvester Plantation varied widely. As the number of Southern plantations multiplied, however, African slave labor became ascribed to plantations as their forced migration grew rapidly in the late seventeenth century. For example, in Virginia:

By 1648 the white population had risen to 15,000 and the black to 300, still 2 percent. By 1670 there were 38,000 whites but the percentage of blacks had risen to 5 percent, or 2,000. These figures suggest that the proportion of blacks to whites did not rise significantly in the 1630s or 1640s, but began to increase at some point between 1648 and 1660...it seems likely that the number of blacks in Virginia more than doubled in the 1650s, and then doubled again in the 1660s.

– McColley, 1986; pp. 11

The population of African slaves was growing in the colonies to the point that universal laws for slaves had to be constructed. One of the most disheartening features of slavery in Colonial America was the prohibition of miscegenation. Blacks were seen as “oversexed”. To highlight the uncontrollable nature of “oversexed” slaves, Re Davis in 1630 ordered the whipping of a white man, Hugh Davis, for defying God by sleeping with a slave because the slave had no self-control (Craig, 2001). Similarly, in 1691 Virginia enacted a law that banned interracial marriage— the penalty for doing so resulted in permanent exile from the colony. In fact, this law persisted up until the mid-twentieth century constitutional case *Loving v. Virginia* which banned such practices (Wallenstein, 2009; pp. 330-331). A law in 1662 transformed the black female slave into an exploitative sex object for the masters’ pleasures. This law created a matrilineal order of slave descent: “Negro women’s children to serve according to the condition of the mother...” (Hening, 1810). As a result, male slave masters covertly, sometimes rather conspicuously, sexually abused and even impregnated black female slaves for the purpose of reproducing his labor force (Milburn and Conrad, 2016; pp. 148: see Davis, 1981: Conrad and Meyer, 1964). This caused rather harsh relations between female slaves and masters’ wives in general.

Fredrick Douglass gives an account of the inhuman treatment black female slaves had to endure because of white women’s resentment for them. The “wife of Mr. Giles Hick”, he

states, “murdered my wife’s cousin, a young girl between fifteen and sixteen years of age...[because she] did not hear the [baby] crying...[Mrs. Hicks] jumped from her bed, seized an oak stick of wood by the fireplace, and with it broke the girl’s nose and breastbone, and thus ended her life” (see Blight’s second edition of Douglas’ narrative, 2006; pp. 58). There was little acknowledgment of black slaves in the social context as people; they were animate objects masters could derive pleasure from, whether that be in the form of sexual intercourse or physical abuse.

There was no shortage when it came to overseers’ employment of physical abuse. In fact, Robert Fogel and Stanley Engerman (1974) believe there was an “optimum use of force” masters and overseers used to create an efficient method for getting maximum compliance out of slave labor, the goal being to optimize surplus value created by his slave labor. Surplus value of slave labor begins at the point when slaves have produced just enough commodities for sale to pay off his master’s investment in him. However, in the master-slave dialectic, the slave never truly pays off his debt for his livelihood as it depends on his master’s provisioning of subsistence resources. It is recognized that weekly rations of foodstuffs were distributed to field workers whereas one or two outfits were given to them annually. Masters invested in the bare minimum subsistence of his slaves but there was nonetheless a constant stream of capital flowing out of the master’s pocket for the maintenance of his slave labor. For this reason slaves’ indebtedness to his master was indefinite because they were a lifetime investment— profits were accumulated as long as slave masters could increase output above the level needed to cover his investment in slave capital.

Of course the product of slave labor (i.e., sugar and cotton) belonged to the master.

The slave owner also determined the production processes of such commodities and sometimes he failed to capitalize on his investment in slaves because of “rule by fear” traditions in the New World. Masters frequently whipped slaves, sometimes to their lives’ end, which devalued slaves’ worth on markets or led to a loss in owners’ capital. “Because slaves who were badly scarred had a lower market value, some slaveholders developed alternative punishment techniques, such as the use of a cowhide paddle that inflicted considerable pain but left no scars” (Milburn and Conrad, 2016; pp. 146). Fredrick Douglass gave an account of the gruesome force of Colonel Lloyd’s overseer Mr. Gore. A slave, by the name of Demby, was being whipped by Mr. Gore before breaking loose to seek shelter in a deep pond. Soon enough, Mr. Gore “raised his musket to [Demby’s] face...and blood and brains marked the water where he had stood [in the water]” (Blight, 2006; pp. 57). However, because the crime was committed in front of slaves, they could not testify in court on behalf of victims of unlawful acts, so there was no trial. Another gruesome event accounted for in Douglass’ narrative is when Mr. Bondly, the neighbor of Colonel Lloyd, caught an older slave fishing to make up “for deficiency in scanty allowances” and “blew his deadly contents into the poor old man” (Ibid; pp. 58). Instantly, Mr. Bondly endeavored to “pay Colonel Lloyd for his property” as a way of compensating for the loss in slave capital.

Slavery fabricated extreme hostile environments for chattel laborers. Slave parents often beat their kids as preparation for the treatment they would endure from masters and overseers (Milburn and Conrad, 2016; pp. 146). As discussed in the Matthean parables, the slave body was used and abused as a way of coercing optimum production and also social isolation from the citizenry. Quite literally, African slaves’ body, like the slave bodies discussed in Matthean slave parables, was marked by the whip to stress his inhuman nature

and chattel status.

Captured in a *New York Daily Tribune* report on December 20, 1859, a pro-slavery lawyer and activist by the name O'Connor— his first name was not published in the report— gave a rally speech in which he stated:

“[The] Negro...has strength, and he has power to labour; but the Nature which created that power has denied him either the intellect to govern or the willingness to work...And that nature which denied him the will to labour gave him a master to coerce that will...it is not injustice to leave the Negro in the condition in which nature placed him...”

– emphasized in Millett, 2007; pp. 178

African slave ideologues like O'Connor were at the forefront of pro-slavery legislation prior to the American Civil War. The political war between ‘Slave Power’ politicians and the progressive Republicans prompted a “sectional crisis”; eventually, incidences that created what came to be known as Bleeding Kansas marked the start to the violent American Civil War (Gienapp, 1986). Civil War Northern Slave codes varied from colony to colony prior to the American Revolution but there was ubiquity regarding the African slave for they were all treated as animate objects. Slave codes were the legislative tool that stamped African slaves as strictly property without the possession of social rights endowed in freeborn Europeans. Arguably the Three-Fifths Compromise of 1787, a series of Fugitive Slave Laws from 1793-1850, the Missouri Compromise of 1820, the Compromise of 1850, and the Dred Scott Decision 1857 illustrated progressivity in the moral discourse on slavery in America. Such legislations would soon determine the faith of America’s identity as a sovereign nation state (Lowance and Pilditch, 2008; pp. 67).

A slew of slave laws were passed in the 1700s as the slave population continued to grow in the South. In 1740, South Carolina brought forward the Negro Act that severed the

link between slaves and literacy. “Europe and America saw literacy as a sign of cultural and racial superiority— one used to justify the treatment of black slaves as chattel” (Rasmussen, 2010; pp. 202). Literacy laws were sweeping across the colonies as a mechanism that further converged the white American class by alienating blacks from properly speaking and writing in the English language. By 1755, Georgia had enacted its own slave literacy law that also prohibited all slaves from learning English literary skills. In the early nineteenth century, Savannah and Virginia passed ordinances that discouraged slave masters from teaching slaves English. Rasmussen believes that it was the illiteracy of slaves that acted as the “crucial element in the production of racial difference in North America” (Ibid; 203). Fredrick Douglass exemplified the foreseeable threat slave literacy could cause; a threat whites feared most. Douglass’s “desire and determination to learn” came from his second family, the Auld family in Baltimore, Maryland. Mrs. Auld instructed him up until Mr. Auld told her about this “unlawful, as well as unsafe” act; according to Douglass, Mr. Auld stated:

“A nigger should know nothing but to obey his master— to do as he is told to do. Learning would *spoil* the best nigger in the world. Now...if you teach that nigger how to read, there would be no keeping him. It would forever unfit him to be a slave. He would at once become unmanageable, and of no value to his master.”

– Blight, 2006; pp. 63-64

Here the slave is reduced to the ultimate state of a chattel being that possesses no human rights let alone civil rights. African slaves would “spoil” if they learned the ways of the civil subject; subjugating black slaves to forced labor practices in the South was their only purpose and social value. The only semi-human connection slaves had was implied in the Three-Fifths Compromise of 1787.

Slave Labor in America’s Cotton Industry

Sno Tome constructed a system to employ slave labor in a universal way. There was

no true division of labor when it came to how masters utilized their slaves' productive activities. For Karl Marx, African slavery was the prime attribute that advanced the era of capitalism:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signalised the rosy dawn of the era of capitalist production...

— Marx, 1887; pp. 751

Thus African slaves could be considered the first form of “primitive accumulation” or animate accumulation. They were the “treasures” conquered by European imperialists whom transformed the African people as a whole into a form of fixed capital. Converting Africans to chattel beings led to immeasurable depopulation on Africa’s West Coast, especially in Guinea (now Ghana) where some 650,000 Africans were taken into slavery (Thrasher, 1995; pp. 5-6). Primitive slave capital was used as the principle input for the production of cash crops, which at the start of the trans-Atlantic slave trade was sugar. However, once king cotton was discovered, the Southern economy took capitalists modes of production to a new height.

W.E.B. Du Bois’ (1896) *The Suppression of the African Slave Trade to the United States of America, 1638-1870* gives startling statistics relative of slave labor and cotton production in the economic epoch under ‘King Cotton.’ Due to revolutionary technology in the mid-to-late eighteenth century— such as James Watt’s steam-engine (1769), Lewis Paul’s carding-machine (1748), and Eli Whitney’s cotton-gin (1792)— and an adequate slave labor force, “raw cotton rose steadily from 13,000 bales in 1781, to 572,000 in 1820, to 871,000 in 1830, and to 3,366,000 in 1860” (Ibid; pp. 151). More importantly, with the

productive capacity of plantation slaves heightened by technological development, the free black population rose from about one hundred thousand at the start of the nineteenth century growing to nearly a half million free blacks by 1850 (Trotter, 2000; pp. 20). Looking at the dates, it is quite reasonable to suggest that the works of Adam Smith and David Ricardo's capitalist theory are at play, as tied to the scale of cotton production, capital accumulation in slave labor, and regional comparative advantage dynamics that commenced in the early 1800s. Peter Passell and Jeremy Attack (1994) highlight the importance of the protectionist state instigated by Jefferson's embargo on foreign produce from 1807-1815. During this rather short trade blockade, industrialization accelerated to new heights, firmly incorporating capitalist theories into America's social wellbeing. By 1815, "territorial division of labor between the three great sections of the Union—the West, the South, and the East. Each section tended to devote itself more exclusively to the production of those commodities for which it was best able to provide" (Passell and Attack, 1994; pp. 167).

There is also a general understanding that Thomas Jefferson's 1803 Louisiana Purchase was essential to further expand the growing American economy. 'King Cotton' in the South produced a mouth-watering market for slave masters to employ their unfree 'animate' labor supply. In the most literal sense, outlandish beatings and socio-economic dislocation caused by slavery made slaves the physical embodiment of a socially programmed being, a being whose life activity could be coerced by the will of others.

Cotton production increased exponentially between 1820 and 1860 because the slave labor force was numerically sufficient and thus, produced surplus goods at an alarming rate. For example, by 1860 Southern states had "a total of 12,240,300 people; 65.7 percent of these were white, 2.0 percent were free blacks, and 32.3 percent-some 3,950,511 or about 4

million- were slaves. In the cotton states, the extent of slaveholding rose dramatically; South Carolina was 57.2 percent slave, Mississippi 55.2 percent, Alabama 45.1 percent, Florida 43.9 percent, Georgia 43.7 percent, and Louisiana 46.9 percent” (Huston, 1999; pp. 253). However, Du Bois notes that laws of supply and demand were emerging because cotton prices fluctuated dramatically over the four decades between 1820-1860. Alfred Conrad and John Meyer (1964) conducted an empirical analysis of the Southern economy’s capital investment in slaves and cotton from the early-to-mid eighteenth century and found that “the price of slaves fluctuated widely, being subject to the waves of speculation in cotton” (Ibid; pp. 50). African slaves were pseudo-human figures thanks to the gerrymandering techniques James Wilson and Roger Sherman used to ratify the Three-Fifths Compromise in 1787. What matters most for the purpose of this passage lies in the American obsession with slaves as animate forms of capital, as individuals that had no control over distinguishing between the labor-leisure trade-off when producing commodities.

The steady increase in cotton production and its demand on global markets led to an everlasting dependency on slave labor markets for the purpose of extracting maximum surplus value out of slaves. By 1770, slaves represented about 1.5 years of national income (Piketty, 2010; pp. 160). Huston (1999) calculated the accumulated slave capital in the South and the estimation was striking: slave capital equated to some \$3,000,000,000 at the dawn of the Civil War (Ibid). Du Bois (1910) estimated that “property in slaves” was “perhaps two thousand million dollars” or two billion dollars (Ibid; pp. 781). Slaves net capital value was still far more than that of any industry leading up to the Civil War. With the closing of the global slave trade in 1834, domestic slave markets gained an important role in the economics of Southern slavery (Du Bois, 1896: Conrad, 1964). The border and Gulf-states were bound

by great economic interest in surplus value; the border-states actually became the “slave-breeding districts” which gave more clout to slave states fighting to hold on to their unfree labor supply. Many political and social theorists believe that civil disputes between the North and the South were not really based on the morals of American slavery. Rather, they were based on the ‘unfree labor’ versus ‘free labor’ discourse in the early-to-mid industrial epoch of America.

Conclusion:

Early Graeco-Roman chattel slavery is distinct from Western European style slavery based on one pivotal socialized construct: Race. Blackness represented ones’ servile and inferior status to free whites; it represented the natural mark of indebtedness by God (note the story of Noah’s son, Ham). Natural slave laws in the works of Aristotle bore some resemblance to New World slave codes. Precisely written in John Locke’s (1689) *Second Treatise of Government*— “The labour that was mine, removing them out of that common state they were in, hath fixed my property in them” (Ibid; pp. 20). Such an idea can be expanded to ancient Graeco-Roman imperial expansion and the early European conquest for slaves. Whether it is mercenaries hired by the Roman republic or missionaries and navigators employed by Charles II to encroach on the trans-Atlantic slave trade, barbaric conquerors and African slave traders were the States’ labor supply. They labored for the common good Mother Nature offered: the ‘natural slave.’ By removing slaves from their “common state,” just as a worker removes any other natural resource from nature, they were by nature animate property of the imperial State and its subjects. Their nature as slaves paralleled their identity as objects, property, ‘thinghood’ etc. Locke confirms this in defining characteristics of the “perfect Despotic power” granted to the “conquerors” of unruly slaves, for they had “just power” over those that have “unjustly taken up arms against him” (Nyquest, 2008; pp. 375).

The realities of African slaves were not aligned with this presumption although the barbaric slaves in ancient Greece and Roman did conform to this notion. For African slaves that underwent forced migration to the Americas between 1619-1834, their “deformed” physical features predetermined their faith as slaves in the New World.

Many contrasting features are present as well when relating Graeco-Roman prisoners-of-war to the New World’s African slaves. Race is the immediate topic for discourse. Broadly noted by many historians and sociologists studying American slavery, the social construction of racial identities has its essence in Western European states involved in the Atlantic slave trade. Established in ‘the West’ and ‘the Rest’ dialogue, comparing Eurocentric nation states to West African countries, a binary national identity between African slaves and white Europeans was processed. “[The] West’s sense of itself— its identity— was formed not only by internal processes that gradually molded Western European countries into a distinct type of society; rather it was through Europe’s sense of uniqueness from distant land masses that led to a Eurocentric representation of itself in relation to ‘others’” (Hall, 1996; pp. 188).

Otherness alienates or externalizes ‘outsiders’ in the broader social context; it is no wonder African slaves were on the other end of the spectrum when contrasting their identity to that of European descendants in America. The African slave was a source of fixed labor capital that could be accumulated and forced to maintain his masters’ profits. Forced labor indeed controlled the capitalist modes of production prior to the American Civil War, that is, until free wage laborers in the North rallied against Southern oligarchs whom controlled the unfree labor supply. Sectionalism was enforced by slave labor in the South and the oppositional force of free white laborers in Northern districts. Many Southern whites did not

possess a single slave, but the dream of owning slave capital in the future was an illusion created by the economic realities of “big house” plantations. It was the American dream of capital accumulation in slaves that gave poor whites something to fight for. The “Southerners understood that slavery caused the economic prosperity of their region, and that knowledge created an economic bond among all whites” (Huston, 1999; pp. 255). The “Northern free labor ideology” contested that it was the individual’s will and intelligence that leads to the accomplishment of the American Dream. Whereas in the South, the argument was that social mobility depended on “property-acquisition— the “fruits of labor”— was accumulating slaves” (Ibid; pp. 257). The Civil War commenced with the Battle of Fort Sumter in 1861, and lasted until the summer of 1865 when the last Confederate General Stand Watie was captured by Union troops.

The Southern Reconstruction Era (1863-1877) could not be undermined for the social customs and institutions, legislative laws, and capitalist modes of production incorporated during that period of American history are reflected in the contemporary reality. The restoration of “Home Rule” in the South reorganized the ‘white superior complex’ in post-slavery America and as for freedmen, a new chattel system was molded in place of slavery: Convict leasing. Incarceration for contractual debt and breaking Black Codes in the South displaced the white prisoner by isolating such customs to strictly reflect black criminality. Following the Civil War, freedmen became the prime targets for imprisonment and, once again, black bodies were funneled to the very plantations they were freed from with Lincoln’s 1863 Emancipation Proclamation.

Sharecropping, convict leasing, and Jim Crow laws in the South further disconnected freedmen from the American Dream. However, these socialized customs were not separate

from the new peculiar institution (prisons); Jim Crow laws and the sharecropping system fueled the convict leasing movement in the late nineteenth century Southern economy. Is it then reasonable to say prison confinement became a racial institution post-American Civil War? Under what conditions were individuals confined and what were the general experiences of confinement in early prisons and jails? These questions are parallel to the approach taken in the next chapter. In terms of contractual debt practices, prisons and jails were morphed into State institutions to force freedmen back to plantations. However, the rode to this tradition has deep historical significance for debt-peonage as a part of tribal customs (servile labor for criminal debt was encompassed in wergeld justice) before civil law was conceived in Greek and Roman city-states.

Chapter 3

The Evolution of Debt Prisoners

The Development of Monetary Justice Systems: How Did Black Bodies Become Criminalized and Exploited in Jurisprudence Practices?

Southerners disputed the dictates of laissez-faire economics, claiming that slavery did maximize the economic welfare of the community. And, like advocates of the penitentiary, proponents of chattel slavery protested that their institution also performed a crime control function by disabling the crime-prone population of slave states. If freed, this population would produce “numerous banditti” preying on the property of others.

– Adam J. Hirsch, 1992; pp. 83

Systems of punitive confinement have been around since ancient Greece. Daniel D’Amico (2010) establishes an interesting way one could perceive punitive systems in ancient Athens (800-400 B.C.); through the Draconian codes of seventh century BCE followed by Solon’s legislative reforms in sixth century Athens, criminal confinement became a public service (Ibid; pp. 465: Peacock, 2016). What is more interesting about the legislative reformation in early Greek *polis* is the establishment of Athenian *timêtês* (tax collectors and property censors), the Court of Areopagus, and *dicasts* (judges) (Peacock, 2016; pp. 77: Morgan, 1877; pp. 262: Hudson, 2004; pp. 103-104). For the most part, activity of the courts in the ancient city-states revolved around collecting financial obligations in the form of socialized

penalties like taxes and tribute payments. The advancement of the polis life itself cannot be disassociated from the history of publicly enforced monetary sanctions via judicial processes. This itself forces one to take heed of the evolution of debt peonage in light of money as an institution instilled in redistributive justice. As discussed in chapter I, wergeld systems were based on oral customs that integrated individuals' property and capital within the framework of justice. The crucial point to remember about wergeld justice is that it was first constructed as means to impose in-kind payments between individual parties involved in violent conflicts. It was used to rid personal vendettas and familial blood feuds.

Debtors' prisons began with wergeld-like justice systems. Allowing possessions to determine ones' freedom is present in both cases. Take this scenario for an example, it is understood by Mark Peacock (2003-2004) that "a person's wergeld depended on his rank" in that "the king had the highest" and the "slaves had none, but their masters were to be compensated if their slaves were slain or injured" (Ibid; pp. 215). It is understood that the rode to lawful servitude for any chattel person in Medieval Kings' courts was through their inability to pay lawful debts to the harmed party or individuals' inability to pay State taxes and tithes.

The Estate Satire *Canterbury Tales* illustrates the history of socialized justice along the lines of property entitlement and labor demand. Being a Middle English text, relying on glossing for translation purposes was necessary. Geoffrey Chaucer mentions three terms— *swinken* (labor), *ferme* (rent payment), and *love-dayes* (court dates)— that vocalize the realities of Anglo-Saxon justice. With the trilateral structure of his satire, Chaucer's pilgrimage tales are ordered around social relations and institutions between noble knights (*pugware*), people of the church (*orare*), and those in serfdom (*labore*). Knights often hired

the serfs to work (*swinken*) their lands as a way of paying rent debts (*ferme*) to them (knights) and the kingdom. Serfs were a group of property-less individuals valued for their labor productivity therefore socialized laws were determinate: “Sergeants of the Law” maintained the trilateral order by assuring that the property-less remained the objectified undercaste through wergeld justice and socialized State obligations. This outdated sense of criminal and civil law intertwined with ones’ commodity assets is still lingering in the American criminal justice climate today. The difference is the State and its operators of justice are the main beneficiaries of today’s judicial system. They act as the manipulator of justice gearing the system to impoverish the already indigent cohort.

Racialized slavery, one key feature of America’s identity as vividly shown through its constitutional amendments, has continuously relied on repressive laws to contain African Americans in undercaste status. There is a financial attack on indigent black defendants involved with criminal courts, something unprecedented in Anglo-Saxon justice systems. The “theory of social justice” defined by John Rawls (1971) seeks to express justice in terms of ‘fairness.’ In his theory true justice lies in equality in which “all social value [produced by fair justice]...is to everyone’s advantage” so “no inequality is tolerable” unless the lowest income earners in society marginally benefit from it. The American justice institutions function antithetical to a fair and uplifting justice system. Distributive justice produces inequality by disavowing impoverished blacks to mobilize; it perpetuates the cycle of crime, plight, and unemployment for the at-risk communities disproportionately to that of other ethno-racial groups.

Many ponder about the process by which sovereign States in Medieval Europe devised a criminal justice system. There is interest in the links formed between criminal

justice systems and money. This chapter attempts to address monetary justice at its core and to critically examine its broad usage while also making the case and point that legal financial obligations (LFOs) imposed in the United States is historically unique. Its uniqueness comes from the deliberate and disproportionate targeting of justice on the basis of race and poverty. But to understand such complex network of social relations in the limited space at my disposal, Mitchell Innes' (1932) *Martyrdom in Our Times* is a critical text to address. Specifically because the text examines money and justice systems in early Anglo-Saxon societies yet incorporates the history of debt criminality within the analytical framework.

The Make-Up of Criminal Justice Systems in Europe: Mitchell Innes

[The] monetary economy is regulated by some sovereign authority structure...highlights the link between money and legal codes, whether formal or informal, as well as practices of recompense enforced by communal authority structures.

– David Singh, 2016; pp. 7

Distributive justice can be thought of as follows: It is a system that constructs justice on the basis of ones' monetary assets or capital net-worth. It can be said that such justice systems still depend, as they did with the Yurok Natives in northern California dating back to the fourteenth century, on moveable possessions. Adamson Hoebel (1942) corroborated Yurok that Natives were primitive fishers and gathers that had a sense of wealth accumulation; wealth was represented in objects like dentalium shells, woodpecker scalps, and large ceremonial obsidian blades (Ibid; pp. 958). Justice in Klamath River Valley between the 1300s-1775 was attained via “imposition and collection of damages, or by infliction of bodily harm” in which kinsmen to the chiefdom “arraigned the offender or determined the extent of the damages to be assessed...In default, the defendant must become

the plaintiff's debtor-slave" (Ibid; pp. 958). Needless to say, Yurok Natives also had a system of distributive justice to enforce 'Yurok law' in its communistic society progressing to a class society.

With the formality of criminal justice institutions in Anglo-Saxon societies, distributive justice was well defined and calculated in jurisprudence practices. Patrick Wormald (2009) holds that, "pre-Angevin, indeed pre-conquest, development had a far more important place in the history of English law than post-Maitland wisdom allows" (Ibid; pp. 194). By focusing on the twelfth century Latin text *Leges Henrici Primi*, Wormald finds that 'Kings' Courts' operated on the basis of "ruthless control" over the mass population. Criminal justice reform was taking place in Old English justice systems between the ninth and twelfth centuries and it was largely instigated by State imposed financial sanctions. The newly formed criminal justice network for the King— Counts (judges), *Missi* (tax collectors), jurors (property confiscators), and *Eyres* (circuit courts)— became the prime tools of early jurisprudence practices.

Mitchell Innes (1932) gives an extensive history of the traditions of early Anglo-Saxon jurisprudence practices exemplifying parallels between it and late nineteenth century English criminal law procedures. However, for the purpose of a smooth transition, sticking to his account of 'Kings' law' in Merovingian and Carolingian Dynasties is crucial. It is known that from the Carolingian Dynasty onwards that the Church's 'divine law' and Paganism's 'natural law', concurring to theologians' usage of the terms, became interchangeable phrases in written doctrines of law (Bloch, 1975; pp. 11). It was the Kings' need of money during periods of sovereign deficits, usually in periods of war, that led to civil and criminal justice

practices (Ibid; pp. 26). For this reason, it is impossible to not incorporate distributive justice as the foundation of our current judicial practices.

Fines and fees have always been an intricate part of Old English judicial traditions, but it was generally inflicted on the well-to-do class of individuals— not strictly in the form of currency payments, however. Innes mentions that the Frankish law between the fifth and sixth centuries that a rich man was fined 300 oxen for murder— the term ‘murder’ itself was the name of a fine— exemplifies bilateral structure of justice (Ibid; pp. 22, 27). The criminal justice system of early Anglo-Saxon states, like those in American justice systems today, functioned as a two-tiered judicial design. There was a system of justice for the poor and one for the rich. It was no coincidence that the poor worked on the property of kings, rich noblemen, and knights for basic subsistence. They rarely received income for their servile labor, and they did not own any land to derive independent capital wealth from. It was impossible for the poor to ever make the payment of 300 oxen, thus this was a rich man’s punishment for murder. Once currency became a source of meeting legal financial obligations, the two-tiered justice system became much more apparent as poor men began to endure many capital punishments (mostly hangings and floggings), imprisonment for insufficient tax payments, and debt servitude.

There was a “machinery of arresting tax-payers and casting them into prisons” when the poor became prime targets of Kings’ *Missi* or tax assessors. Counts usually assessed one’s asset wealth and appropriated a tax relative to it whereas their job inside circuit courts was to reap in as much revenue as possible because King’s justices strived to procure finances for their sovereign authority and his rich subjects. This ultimately led to an over reliance on fines and fees in courts broadening social dislocation amongst the poor. Quite

strikingly, this practice is still reflected in criminal justice financial schemes clandestinely operating within New Orleans's criminal justice network, as shown later in this chapter.

Property laws were a major reason for such harsh treatment towards indigent serfs. European wars, according to Innes, led to continuous inflation or devaluation of currency to the point that the shilling became the "basis of all taxes". The reason fluctuations in monetary value were forming is very similar to the credibility of the State idea discussed in chapter I. Warring states issue its currency as an IOU to the public as a method of collecting resources to prepare for war. The shilling, as with all money, acts as the intermediary force in which State debt (its IOU to the public) and State imposed obligations (its socialized taxes) are denominated. To create more liquidity is to expand State debt, which tends to inflate the currency. It also assures the State's 'money things' are accessible to people seeking a medium of payment for State imposed debt. This speaks to the importance of having the inflated shilling act as the State's currency.

It is presumed that the property-less serfs— prior to the adoption of the shilling as a unit of account for criminal financial obligation— were not fined for criminal acts: Their masters were. But using the shilling as means of payment for criminal fines and fees led to mass imprisonment of the poor because like the rich they, too, now had to pay criminal obligations. Most wergeld compensations were imposed on capital felonies like murder and manslaughter. Overtime Anglo-Saxon and Germanic laws soon amended "injury, rape, theft, and slander" as just means to inflict wergeld compensations on defendants if they were to be proven guilty in open court. If a person's ear was chopped off, the defendant had to pay 30 shillings; for knocking someone's teeth out, the suspect had to pay "8 shillings per incisor, 16 for a molar" (Peacock, 2003-2004; pp. 215). The poor were imprisoned and punished for

poverty because they generally could not make such payments working as serfs. But the well-to-do class's punishment was strictly in the form of losing possessions with financial or productive utility.

Jewish bankers were a prime entity operating similarly to modern bail bondsmen agencies whom suffered losses from poor men fleeing their debt obligations, but tipstaff and watch-men— early bounty hunters— typically caught fleeing debtors and imprisoned them (Ibid; pp. 31). Harry Berger Jr.'s (2013) text "A Fury in the Words: Love and Embarrassment in Shakespeare's Venice" understood the character Shylock to be the "play's only usurer and moneylender" thus marking debt with contractually imposed interest rates as an early "Jewish practice" (Ibid; pp. 28). It was not uncommon for Jewish bankers to extend interest-bearing loans to prisoners seeking pre-trial release. The "fictitious credit" lent to the poor assured that "creditors are socially powerful usurers and debtors are their weak targets..." (Peebles, 2010; pp. 226). The credit is fictitious in the sense that debtors, particularly debt prisoners, often times are trapped in debt by paying interest. Thus they end up distributing more assets to creditors than the credits they initially received. Gustav Peebles (2010) notes that creditors and debtors are entangled in a power struggle that "would be incomplete if we were to neglect the issuance of interest and usury" (Ibid; pp. 231). Contracted debtors generally seek to transfer future consumption across temporal space by accepting credit from lenders as means to consume expected in the future in the present moment. Creditors that find greater utility in deferring present consumption for future capital gains (this occurs through interest or usury) act as the intermediary force that allows for consumption to be nearly unbounded by temporal constraints. As a result, bail bondsmen are a direct result of these predatory lending schemes. Prisoners generally support their own consumption, but as

indigent people the notion of ‘voluntary’ transfer consumption lacks significance. Debt prisoners depended on lines of credit for their everyday subsistence while incarcerated in early Anglo-Saxon courts.

Here lies the start of indefinite indebtedness initiated by State led judicial practices. Jurors, counts, *Missi*, *Eyres*, and Jewish banks were designed to act as civil and criminal justice frameworks protecting the King’s revenue. The rationale behind Merovingian and Carolingian jurisprudence practices was to construct a system that optimized sovereign revenue by legalizing State imposed debt obligations in the texts *Leges* and *Lavisse*. Not only did the system enable kings to maintain revenue through wergeld justice, it also allowed for-profit entities— Jewish bankers for instance—to formalize a credit system that further trapped impoverished debtors in a vicious cycle of social plight. Documented in “Ancient Jewish History: Banking and Bankers” (2008), by eight century A.D. *Jahbadhiyyi* was the formal term for Jewish merchant bankers that used their wealth to fund economic activity. In fact, it is known that the Jewish families of ancient Jerusalem formulated the first banking system by way of imposing tithes (known as *Ma’aser sheni*): The temples used store tithes can be thought of as, in fact, the first banks (see Heliodorus).

Though the judicial process of today has changed significantly, many practices of the original Kings’ Courts are thriving in contemporary civil and criminal justice procedures. Especially in relation to prisoners of debt, the American judicial entity today like those expounded in Medieval Kings’ Courts documents, plunges the poor into illiquidity by excessively imposing monetary sanctions as extensions of punishment. Such systems justify and exacerbate social dislocation on the basis of law and justice: By punishing the poor for

being poor, the entrapment of social debt for the imprisoned poor is illustrated. Debt entrapment becomes solidified by systems of monetary justice.

The Rise of Prisons and Colonial Debt Bondsmen: The Punishment Institution

The history of debt bondsmen is long and complicated to grasp, so focusing on European servitude in the New World colonies for clarity is relevant here. Usury was important in the development of debt prisoners. Simon Sturtevant (1570-1624) was a legal debtor under the English “surety law”. Not able to maintain a steady line of credit, Sturtevant was imprisoned at the “Kings’ bench for Suertiship and debt” (Sherman, 2009; pp. 242). A series of essays soon were written for punishment reform by debztt prisoners. Thomas Dekker was essential to these reform measures because he, like his fellow reformers Geffray Minshull (jailed for gambling debts) and William Fennor, were consistently funneling through the Kings’ Bench because they were entrapped by debt (Ibid; pp. 253). It was this reason that Christendom in the Far West opposed interest-bearing loans. St. Basil sermon at Cappadocia in 365 A.D. saw “usury...as an attack on Christen charity, on Jesus’s injunction to treat the poor as they would treat the Christ himself, giving without expectation of return...” (Graeber, 2011; pp. 283). Although St. Basil focused on the usage of usury in the early era of Christendom, such negative connotations have done little to deter the State from imposing vicious cycles of debt on to the poor.

With private enclosure movements in late fifteenth to mid seventeenth century England, punishing the poor became institutionalized in English workhouses and early jails and prisons. Karl Polanyi (1944) notes that the enclosure movement was “a revolution of the rich against the poor” by which the property-less poor were transformed into “beggars and thieves” (Ibid; pp. 37). Through employing the serfs as tenant farmers, merchant farmers and “wealthy countrymen” created the first instance of a mass sharecropping system consisting of

poor Europeans as tenants and the well-to-do property owners as the masters of their labor. Pro-enclosure advocates obviously benefitted from property laws so they came to replace the order of Kingdoms by replacing the monarch with constitutional gentries (Ibid; pp. 38). Resulting from private enclosures was the increased reliance on criminal justice proceedings and prison buildings for punishing the property-less classes. Shortly after prisons and jails construction, the poor prisoner was turned into a source of involuntary servile labor.

‘Defense of Society’ is one of the major public works programs Adam Smith (1776) advocated for in *Wealth of Nations*. For Smith the function of public works is to keep free markets and perfect competition engrained as the defining feature of capitalism, relative to ‘Defense of Society’ programs in today’s America— considering criminal and civil justice systems only— quite the opposite is happening. Criminal justice systems prohibit perfect competition between those with capital assets (both financial and physical) and those without it. This disrupts the prospects of utility maximizing behavior and the subsequent capital accumulation of the former class. It validates hypothetical models based on rational behavior and free agency of the ‘economic man’ (*homo-economicus*); there is persistent divergence in America’s social hierarchy and the justice system has played a primary role in it. It is the instructor of the lives of many indigent folk that fight to rid themselves of exorbitant monetary sanctions forced upon them for petty crimes. Crime and poverty made one eligible for forced labor and imprisonment in the early punishment industry in Colonial America.

Servitude v. Punitive Punishment in Colonial America:

Indentured servitude in Colonial America led to radical growth in the white European population. The Virginia Company was directly involved in the transportation of indentured servants to British colonies. Most individuals that entered into servile contracts did so

conditionally usually under terms that he would be manumitted. But many schemes came forward, designing a system to isolate those suffering from the forces of private enclosures. Like the English apprenticeship traditions, vagabonds and vagrant children in the American colonies were sold into servitude until they reached twenty-one years of age (Newman, 2015; pp. 65). On the other hand, “the ill-starred date of 1619” marked the beginning of women trafficking to the New World. Sir Edwin Sandy of the Virginia Company then created a market for marriage in order to populate the New World colonies (Price, 2015; pp. 77). Marriage as a socialized contract represented women’s indefinite status as an indebted wife to the husband she was sold to. The laws of the land were not robust; the lawful process of divorcing their husbands rarely manumitted women sold into marital contracts.

Servile laborers were directly transported to the colonies as State debtors contrasted to the plantations where European convicts, rogues and vagabonds, and political prisoners were sold (Smith, 1947; pp. 20). By 1622, King James I had made it lawful to transport felons to the colonies as a method to mobilize the poor prisoner from the chains of punishment in England. Punitive confinement was ever expanding under King James I included church officials as prospective prison subjects: The “System of the Law” called “to abolish benefit of clergy and replace it with a term in the workhouse at hard labor” (Hirsch, 1992; pp. 17).

Workhouse labor morphed into plantation labor for felons seeking pardon to the colonies and West Indies. Many indentured servants and felons were auctioned next to African slaves as a way to supply a mixed and relatively proportionate demographic. A wide array of marketing systems emerged to force white laborers into the colonies as a method of

maintaining the New World population. For example, for those individuals seeking shelter in the New World that were impoverished:

[M]erchants used to take whatever money the emigrant might have left, put him and his goods and his family aboard ship, and contract to deliver them in America...commonly fourteen days was allowed during which the passenger might try to find the balance which was due to the shipper.... But if the necessary amount could not be found...he was to be sold into indentured servitude by the captain of the ship, for an amount sufficient to satisfy his indebtedness (Smith; pp. 20-21).

This depicts the reality of contractual debt obligations in colonial America. However, prior to the American Revolution the colonies acted as the asylum for criminals exiled from England as well (Barnes, 1921; pp. 37; Hirsch, 1992; Newman, 2015; Hay, 1980; Price, 2015). Abbot Smith (1947) added that the surcharge to transport a convict to the States was on average thirty-one shillings (Ibid; pp. 99). Merchants were charged with this burden for they were directly invested in privatized markets specializing in servile labor transport—African slaves, white indentured Europeans, felon criminals, and the vagrant children forced into apprenticeship. By the early eighteenth century when many convicts started to be transported to the colonies under the 1679 Habeas Corpus Act, the criminal population in the British colonies increased significantly. The act made it illegal to exile members of the citizenry from the British English territory unless a felon wanted to be pardoned under the condition of exiling himself to the British colonies (Smith, 1947; pp. 91). They were property-less, criminals, and undesirables indebted to the law of the land and because of this rehabilitation through the process of laboring was rational. Their ability to labor was their social value and thus the State could not allow those able-bodies to go to waste.

Birth of Penal Institutions:

Harry Barnes (1921) and Adam J. Hirsch (1992) constructed the progression of criminal confinement by connecting it to traditional workhouse facilities. Early English workhouses were filled with impoverished individuals because of the draconian-like vagrancy and anti-idle laws. Under Queen Elizabeth's Vagrancy Act of 1547 and the Statute of Artificers in 1563, vagrants and criminals were confined in workhouses as a method of State sanctioned rehabilitation infused with forced labor. It was an act used to bound vagabonds, debtors, and the unproductive vagrants to masters who could lawfully coerce them to work (Newman, 2015; pp. 65). The "System of the Law" was quickly followed by the colonies. It constructed its own methods of forced labor practices and punitive justice. However, Puritan and Quaker codes of criminal and civil justice were progressive for its time considering capital punishment and public humiliation was the default options of punishing the impoverished vagrants and thieves. The Quakers of West Jersey and Pennsylvania, along with Connecticut's adoption of 'Blue Laws' in 1642 and 1650, and New York's "Dukes of York Laws" in 1665 rationalized punitive reformation in tandem to punishing the poor—they fought to lower the amount of capital punishments by way of enforcing labor rehabilitation in workhouses (Barnes, 1921; pp. 38).

There were two distinct forms of criminal justice institutions in the British colonies: Jails and prisons, where criminal patients awaiting trial, criminal debtors, and religious and political figures were confined; and the workhouse where people were typically housed for rehabilitation through the process of forced labor. The 'Gaol delivery' period insinuated the horrendous sightings of individuals confronted by death or State sanctioned brutality because the verdict for convicted defendants forced through the Gaol system typically resulted in capital punishment (Barnes, 1921; pp. 36: Hay, 1980; pp. 49: Mann, 1994). Both systems

encouraged punitive justice for those members of society deemed idle and unproductive. The revolt of the property owning class against the property-less indigents often times saw idleness as a sin: One punishable by forced labor in workhouses and on plantations or publicized punishment— for example, floggings, hangings, stockings, duck stooling etc. More importantly, “The penitentiary epitomized order...[which] has been explained as a partial expression of problems of capitalist labor supply” (Hay, 1980; pp. 55-56: also view Rusche and Kirchheimer, 1968). Thus punitive institutions functioned methodologically as means of civilizing and ordering the poor according to what law philosophers and litigants saw as social justice.

Enlightenment rationalists focused on social justice in the realm of labor because they thought it irrational to let the productive capacities of the prisoner escape the State. For this reason, rationalists William Eden, John Howard, and Justice William Blackstone devised the English Penitentiary Act of 1779, which fabricated the architecture of penitentiaries we see today. Quickly following, Massachusetts’s 1785 legislative inflicted hard labor for property crimes; New York in the 1780s used incarceration as opposed to corporal punishment for almost all crimes “just days after the Castle Island Act called for hard labor in the existing workhouse” (Hirsch, 1992; pp. 25). New York’s workhouse at the time— Walnut Street workhouse— was converted into an “indoor” punitive facility. With the introduction of New York’s Auburn Prison in 1818, the maximum security became the architectural prototype for derivative public prisons in every colony. Designed with cellblocks, solitary confinement rooms, guards’ watchtowers, and concrete enclosure from the world, prison facilities illustrated a Victorian-like punishment institution.

Legal Debtors in Colonial Prison:

Debtors' prisons were quite unique. In colonial Virginia between 1644 and 1645, an act was coined that allowed for:

[A] provision for poor debtors in execution for corn, tobacco, etc. (then and long the after the principal currency of the colony) might satisfy the demand at the discretion of the county commissioners by some equitable commutation, was, in 1705, matured into an act permitting a debtor, after he had lain three months in prison, to discharge himself by surrendering his whole estate for the payment of the debt.

– F.H. 1927; pp. 4

Debtor prisoners were ubiquitous in all colonies and they typically consisted of individuals like London's own WP who in 1708 was confined to the Old Bailey Prison for having an outstanding debt of £3000. WP owed the Fords this amount in rent payment, which he sold his Warminghurst Place in Sussex to make due on the payments: "He entered prison in 1708 as a martyr to his ungrateful steward's cupidity" (Holar, Hirsch et al., 1987; pp. 569). By the late eighteenth century Massachusetts enacted laws that allowed convicted people of theft, larceny, and other property crimes to be sold to private plantation owners as a method to make restitution payments to the victims and to gain revenue (Hirsch, 1992; pp. 37). At this point there was a market that was developing for convicts prior to convict leasing post-American Civil War. The prolific debtors' prison in New York, New Gaol was constructed in 1757-1758 for the purpose of housing "debtors as well as a few convicted misdemeanants and accused criminals awaiting trial" (Mann, 1994; pp. 183). Escaping the chains of debt was hard considering that most individuals compiled debt on debt in order to be released from punitive chains. As a result, most prisoners of debt like Simon Sturtevant and WP found their way into public jails and prisons working to produce material wealth for the State. This was their way of paying for or laboring off debts. It was with social reformations in the nineteenth

century that the United States sought to abolish debt peonage for white European criminals while accepting it in the case of freedmen.

Southern Reconstruction: Bank Debt and the Development of Black Peonage

Reconstruction (1863-1877) can be labeled as the start of mass incarcerating black bodies for convict leasing purposes. Due to section one of the Thirteenth Amendment which states— “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party had been duly convicted, shall exist within the United States”— a new form of forced servitude was justified (Wolff, 2002; Davis, 2003; Huq, 2001; Jarvis, 2004; pp. 92; Harris, pp. 19; Adamson, 1983; pp. 558; Manos, 2015; pp. 49). The Southern agriculture economy was destroyed in the Civil War along with the lives of many white Confederate soldiers. Shortage of white free labor was offset by the estimated four million freedmen (Du Bois, 1910; pp. 781) in the South prompting a tragic response among Democratic “Redeemers” to restore the status quo of forced labor practices along racial lines.

Rutherford B. Hayes’s call for the restoration of Southern “Home Rule” basically restored freedmen’s position as labor capital upon Union troops departure from Southern soil in 1877 (Massey, 2011; Adamson, 1983). Christopher Adamson thinks it was the “fiscal insolvency” in the post-bellum South that created the means by which Democrats lawfully criminalized blackness when stating, “Redeemers promoted leasing as the ideal policy for handling the black criminal population...the decision to lease convicts to companies in the private sector was adopted during Reconstruction...in the 1870s and 1880s after the Democrats returned to power” (Ibid; pp. 564). Outstanding debt in South Carolina between 1869 and 1874, as evaluated by Du Bois (1910) and other “Negro legislators” belonging to the Freedmen’s Bureau, was “millions of fraudulent bonds charged against the credit of the

State” in which an Act was implemented to “stamp six million bonds, denominated as conversion bonds, “fraudulent”” (Ibid; pp. 793).

Two researchers, Roger Ransom and Richard Sutch (1972), on the banking systems in the post Civil War Southern States confirmed that banking resources in the Southern states had diminished greatly. Banks were not diminutive in the antebellum South. At the start of the Civil War “average capital per bank in the South was reported as \$463,000, compared to a nationwide average of about \$270,000...” (Ibid; pp. 643). Nonetheless, most financial capital disappeared in the South post-Civil War until the creation of the 1863 National Banking Act. Yet financial institutions in the South remained smaller than its antebellum levels. Interestingly enough, they emphasized that illiteracy rates in the South made it quite difficult to introduce the new banking system that depended on large sums of direct deposits. Illiteracy rates had soared once the black population in the South was considered in census reports: Illiteracy rates of blacks ranged from 75 to 80 percent between the 1870s and 1880s (Daniel, 1979; pp. 95). Thus it was much more difficult for the South to financially rebuild without the help of the National Banking Act and merchant creditors in the North. William Brown and Morgan Reynolds (1973) reexamined Ransom and Sutch’s work on financial capital during Southern Reconstruction to find that there was a pretty stable stream of liquidity going into Southern industries.

Unlike Ransom and Sutch (1972), Brown and Reynolds (1973) assert that commercial banks in the South were able to extend adequate credit to small-scale farmers (Ibid; pp. 865). Merchant creditors (or carpetbaggers) in North quickly infiltrated Southern agriculture markets by providing indebted farmers with a line of credit at extremely high interest rates. The North Carolina Department of Labor Statistics, Brown and Reynolds confirms, found

that most farmers in the state were angry about high fertilizer prices, high interest rates, and the subsequent debts that followed credit loans. Soon enough though, the landlord farmer and the merchant creditor merged as one individual with complete control over the black tenants in the South awaiting their ‘forty acres and a mule’.

Thought of as maintaining *laissez faire* capitalism, the Peonage cases *United States v. Reynolds* (1878) and *Baily v. Alabama* (1911) were designed to dismiss privately run “involuntary servitude” as a just practice in Southern Reconstruction while justifying it as a tool of punishment for State criminals (Huq, 2001). Peonage was developed along the lines of race and poverty. Even for those blacks that had large plots of land, financial debt still haunted them. Du Bois (1994) gave an anecdote of a black family, the Burkes, that possessed “a hundred acres, but they were still in debt” (Ibid; pp. 44). This was the reality of blacks manipulated by the sharecropping system in the South: Sharecropping bounded freedmen to Southern farmers in a way very similar to that of master-slave relations in the antebellum epoch. Freed blacks were subject to financial abuse because they were financially illiterate:

black tenant farmers or sharecroppers were tied to white landowners or commercial establishments through usurious debt. The farmer would mortgage his crop in advance to a lender to get the money to buy the seed, farm tools, and equipment, as well as food for subsistence...When the crop was harvested, the lender would seize and sell it and keep what the farmer owed for formerly advanced retailed goods from the proceeds...

– Martinot, 2010; pp. 68

There was more of an advantage in sharecropping because freedmen did not have entitlements to wage contracts. The reason being is that most blacks that could not find contractual labor pursued secure housing and labor by way of entering into sharecropping services. They were forced to purchase provisions, mostly on credit because they had little

wage income, so black peons “were bound in debt from year to year...coerced to work out with they owed” (Daniel, 1979; pp. 89; Adamson, 1983; pp. 559). Florida’s Turpentine Association violated countless peonage laws by forcing laborers, especially the financially illiterate freedmen, “to buy their supplies from the camp commissaries” in which often times black wage-laborers were “enslaved for as many as twenty years” because his “debt at the store exceeded his ability to pay” (Carper, 1976; pp. 89). They could possess property as American citizens but their position as freedmen was confined, for they were indebted to the very plantation owners that they were freed from with their mass manumission in 1863. The reason being is that peonage laws— “a form of involuntary servitude based on alleged debt or indebtedness” (Carper, 1976; pp. 85)— were lawfully ordained in the Northern and Southern states’ justice systems to force the property-less, illiterate, and desperate freedmen and freedwomen back to servile debtors.

Black Codes in the South came to replace Slave Codes as the primary means by which criminal behavior of blacks was determined and punished by the State (Davis, 2003; pp. 31; Harris, 2016; pp. 157). For the most flimsy reasons freedmen were forced into servile status. For instance, the 1865 Florida Black Codes justified locking up freedmen who did not pay “special taxes” like the Freedman’s Pauper Funds (Price, 2015; pp. 84; Carper, 1976; pp. 86). It was not uncommon for apprenticeship-like laws to be advanced in Black Codes. Customary to apprenticeship laws in the United States was the notion that black children under the age of eighteen born to impoverished parents were to be sold into bondage. Adamson (1983) expressed that:

In effect, the Black Codes brought back a form of the hiring-out system that had existed under slavery. Blacks without visible means of support were obliged by law to hire themselves out during the first 10 days of January. Those without labor

contracts or who broke their contracts were prosecuted as vagrants and sentenced to hard labor on local plantations. Blacks in South Carolina had to obtain special licenses for non-agricultural employment. Mississippi prevented freedmen from renting land. Local communities restricted the movement of the ex-slave population by requiring them to obtain travel passes (Ibid; pp. 559).

– [also see Novak, 1978; pp. 1: Stamp, 1965; pp. 80: Jarvis, 2004; pp. 93]

The infamous 1547 English Vagrancy Act was modified by the states, in both the North and South, to incarcerate at hard labor poor freedmen in post-Southern Reconstruction. Black Codes and Peonage laws were articulated and accepted by the North and South for economic reasons in that the ‘unfree labor’ of leased convicts was needed to reconstruct Southern public goods such as public roads, railroads, and public buildings destroyed during the Civil War (Huq, 2001: Carper, 1976: Daniel, 1979: Wright, 1997: Wolff, 2002: Adamson, 1983: Lichtenstein, 1993). They acted to “utilize customs from the past and the freedmen's illiteracy, relying on contracts and northern sympathy with the work ethic, and mouthing laws and threats, southern planters shaped a labor system that preserved the larva of slavery in the evolution of freedom” (Daniel, 1979; pp. 92).

Railroad development was the first ‘big business’ venture in the Americas that relied on a huge labor supply. Railroad industries were growing excessively by the mid 1800s. It is acknowledged that big railroad companies like Pennsylvania Railroad, Massachusetts Western Railroad company, and New York’s Central Railroad had capitalized between \$17 to \$35 million by 1850 growing to over \$140 million in capital net-worth with nearly 8000 shareholders by 1890 (Duboff, 1989; pp. 44). Michael Perelman (2006) found that in 1838 Massachusetts’s Western Railroad had 2,331 shareholders whereas in 1853 Pennsylvania Railroad had over 2,600 with Central Railroad a bit short of that with its 2,445 shareholders

(Ibid; pp. 66). With the growing demand for a cheap labor supply to off-set investment costs in fixed capital and free white labor, “State endorsement of railway bonds went “hand in glove” with state provision of forced labor...[which] made a significant contribution to the rise of coal-iron complex...” (Wright, 1997; pp. 457).

Penitentiary demographics in the South show that criminal justice systems had interest in incarcerating black bodies starting in the 1880s: The commitment— increase revenue and suppress freedmen socio-economically and politically. Before the Civil War there was little need for large penitentiaries in the South, so it was with Reconstruction that Auburn-style prisons manifested to contain the ‘natural’ black criminal. Margaret Cahalan (1979) and Rosemary Gido (1989) understood the rise in incarceration rates after 1880 was largely due to victimless crimes, but they did not delve deeply into the fact that there was a demographic shift in those forced into punitive institutions. Black Codes, convict leasing, Peonage laws, and economic turmoil in the late 1800s molded an atmosphere that depended on unfree labor of black convict chain gangs. Resulting from this fact, the incarceration rate increased from about 29.1 adults per 100,000 in 1850 to 115.2 per 100,000 by 1880 (Cahalan, 1979; pp. 10). In most Southern states convicts leased were upwards of ninety percent blacks (Wright, 1997; pp. 454; Jarvis, 2004; pp. 93). The People’s Advocate, a Negro journal in Atlanta, Georgia gathered data on Georgia’s prison population and noticed that nine-tenths (90%) of the prison population was black in the 1890s. Fredrick Douglass’s (1883) famous quote— “the general deposition in this country to impute crime to color”— still lives on. Since 1900, almost 500,000 new state laws were added to incarcerate individuals for victimless crimes (Cahalan, 1979; pp. 9). With these new laws, legal financial obligations (LFOs) came to represent the new form of monetary justice for minor criminal

acts against private parties and the State. In conclusion, blacks have been the targets of incarceration because of their poverty and race. They have been unduly convicted because their physicality equates to crime, resentment, and indebtedness in the eyes of many criminal justice operators. With the rise of Mass Incarceration commencing in the 1980s, the attack on impoverished blacks was at the forefront of criminal justice proceedings yet again.

Connecting the Lines in the Contemporary Context: Debt Criminality in America

The present economic crisis has spurred jurisdictions throughout the United States to find creative ways to increase revenue and hold offenders accountable for their crimes. One way that jurisdictions have sought to achieve these goals is by shifting the cost of prosecutions, convictions, and supervision onto offenders. Increases in both the number and amount of court fees, fines, and surcharges have become standard practice in courthouses throughout the nation...[many states] attached mandatory fees and fines at conviction...

– Shookhoff, Constantino, and Elkin, 2011; pp. 62

Monetary sanctions have been in tune with Western justice systems as represented by early Anglo-Saxon ‘Kings’ Law’. A common practice of the judicial body was tax collection and distributing justice, which moved monetary resources from the hands of defendants to the State. “*Jus*” was a Middle English word that denoted taxation. The ideal system was to distribute funds for sufficient revenue to be gained to fund Kings’ courts and its operators—*Missi* (Kings’ mobile tax collectors), Counts, jurors, etc. But the entire citizenry in the Middle Age Kings’ Courts was subject to monetary sanctions according to their level of wealth: The “King’s need of money was the origin of our centralised system of justice today, both civil and criminal” (Innes, 1932; pp. 26).

America's more recent history of justice depicts indigent blacks as the prime target for monetary sanctions, however. A case and point: A free black man in late nineteenth century Mississippi was fined \$5 for being a "tramp" later to be assessed for other costs equaling a total of \$9.95 (Harris, 2016; pp. 18). Legal financial obligations (LFOs) are broadly recognized by law scholars examining Mass Incarceration and its effect on creating vicious cycles of debt amongst indigent defendants. Vera Institute of Justice, a non-profit legal entity founded in the 1960s, has been at the forefront of evaluating the role monetary sanctions play in excessively punishing the poor for their inability to pay criminal debt. On March 14, 2016 the U.S. Department of Justice Civil Rights Division convened a "diverse group of stakeholders...to discuss the assessment and enforcement of fines and fees in state and local courts" because it was obvious that "unlawful and harmful practices in certain jurisdictions throughout the country" was at play.

Legal scholars note that such unlawful and harmful practices violate due process and the equal protection clauses defined in the 14th Amendment and section VI of the 1964 Civil Rights Act. The reason has to do with race and the fact that indigent black individuals streamlined into criminal justice systems for minor 'draconian' drug laws are typically labeled willful non-payers of outstanding court debts even though they do not possess means to make LFO payments (Harris, 2016; Alexander, 2010; Kilgore, 2015; Mathilde, Wool, and Henrichson, 2017; Shames, 2011; Bresnick, 1982). There is a lack of assessing defendants' 'ability to pay' when it comes to monetary justice in the United States. Similar to what Mitchell Innes founded in his research on wergeld justice in early English courts, monetary justice poses a two-tiered system in which the indigent defendants are punished for poverty whereas those with means to pay LFOs are alleviated from confinement. How did systems of

monetary justice come into existence and what are its connections to early systems of distributive justice, though?

A Brief Look into Mass Incarceration: The Incarceration Nation

Race and class structures defined United States' penal code since before Southern Reconstruction (1863-1877). By 1970, however, the introduction of Conservative 'colorblind' politics paved way for 'law and order' dialogue to be of considerable public interest (Murakawa and Beckett, 2010; Smith et al., 2011; Alexander, 2010; 48; Kilgore, 2015; Gilmore, 2000). Hardline political rhetoric about crime in the 60s and 70s led to public resentment of the urban black community. Soaring unemployment rates, socio-economic segregation, and a drug epidemic found its way in white suburban communities and urban districts alike (Alexander, 2010). What is more concerning is the fact that "get tough on crime" rhetoric emerged following Civil Rights Movements in the 1960s, a time that the United States was progressing on the grounds of racial equity, hence the term 'Welfare State.' By the 70s, popular opinion amongst American voters was to cut deficit spending on programs that generally aided the poor. Brian Snowden and Howard Vane (1997) correlated the downfall in Keynesianism and New Deal economics to the 'Great Inflation' in the 1970s:

During the early 1970s there was a significant renaissance of the belief that a market economy is capable of achieving macroeconomic stability, providing that the visible hand of government is prevented from conducting misguided discretionary fiscal and monetary policies. In particular the 'Great Inflation' of the 1970s provided increasing credibility and influence to those economists who had warned that Keynesian activism was both over-ambitious and, more importantly, predicated on theories that were fundamentally flawed.

– Snowden and Vane, 1997; pp. 219

Government deficits were seen by Republicans and Neoclassical economists (Milton

Friedman's "counter-revolution" against Orthodox Keynesian expansionary policy) as an economically insufficient way of spending to maintain rising living standards post-1970s Stagflation. General consensus among conservative laissez faire economists was that excessive government transfer payments caused high levels of unemployment and inflation simultaneously in the first place. The Phillip's Curve was ruptured— as high inflation and high unemployment rates troubled the economic climate in the 70s— and sound finance legitimacy restored. In light of the 'Great Inflation,' progressive government programs (Welfare payments, Social Security, and Medicare and Medicaid) were uttered in Republican rhetoric to present the illusion to blue-collar workers that the government was shifting resources to impoverished black communities at the expensive of working class tax receipts (Alexander, 2010; pp. 47).

Michelle Alexander's text *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* constructed a critical analysis on the history of Jim Crow politics and its influence on Mass Incarceration. In regards to penal structures, Angela Davis asked the question: "Are prisons [and jails] racists institutions" (Davis, 2003; pp. 26)? "The Speech"— a term used to reference Ronald Reagan's public campaign against Big Government in the 1960's. He argued that the "evils of communism" and the "threat of centralization" became synonymous to Big Government (Ritter, 1968). In a sense, "The Speech" emphasized a 'tax revolt' against expansionary fiscal policy shown in the robust New Deal economic era (1940s-1970s). The Republican new majority sprouted in the light of the concerned Southern white electorate. What homogenized this new majority was their worry "that poverty was caused not by structural factors related to race and class but rather by culture— particularly black culture...The "social pathologies" of the poor, particularly street crime, illegal drug

use, and delinquency, were redefined by conservatives as having their cause in overly generous relief arrangements. Black “welfare cheats” and their dangerous offspring emerged...” (Alexander, 2010; pp. 45). The covert assumption by quasi-race neutral politicians and their “new silent majority” in the South was that the ‘black soul’ is predisposed to self-crippling behavior (Bobo and Smith, 1998).

Mass Incarceration was a trending process in American history as shown by the works of Margaret Cahalan (1979) and Rosemary Gido (1989). The process was so tolerant that today— America has approximately five percent of the world’s population yet houses twenty-five percent of the world’s incarcerated peoples (Pew Research Center on the States: Behind Bars in America, 2008; pp. 5: Pigeon and Wray, 2000). The mentally ill are not exempt from carceral expansion. A New York Times article released in 1998 cited that 10% of the incarcerated population suffered from the top three severe mental illnesses— schizophrenia, manic depression, or major depression (Pigeon and Wray, 2000; pp. 154). Instead of housing the mentally ill in facilities that fit their every day needs, the State has sought to defund mental health facilities in place of extending funds to punishment institutions that worsen the conditions of mentally impaired persons.

Bruce Western and Becky Pettit (2010) noted that, “From 1980 to 2008, the U.S. incarceration rate climbed from 221 to 762 per 100,000. In the previous five decades, from the 1920s through the mid 1970s, the scale of punishment in America had been stable at around 100 per 100,000” (Ibid; pp. 10). Angela Davis’s (2003) text— “Are Prisons Obsolete?”— found a stark contrast in the sum total of black to white incarcerated people: “A total of 803,400 black inmates— 118,600 more than the total number of white inmates” (Ibid; pp. 20). Gilmore (2015) expanded on Davis’s work finding that “In 2012 incarceration

rates for blacks stood at 2,805 per 100,000” approximately six times higher than whites and three times higher than Hispanics. Federal and State expenditures on prisons and jails also inclined dramatically to fully complete the development of the ‘Incarceration Nation.’ Expenditures went from “\$7 billion in 1980 to \$57 billion in 2000 and have exceeded \$70 billion every year since 2007” (Ibid; pp. 12: Wacquant, 2010; pp. 76). ‘Colorblind’ politicians simultaneously defunded Welfare programs such as Section 8 Housing, TANF, food stamps, and other forms of subsidies to the urban poor while expanding the budgets for crime control agencies that found their way terrorizing the impoverished “hyper-ghettos” neglected by historic racialized institutions (Wacquant, Eick, and Winker, 2011). The urban black cohorts are now criminalized on an unmatched scale. Loïc Wacquant (2010) coined the term “hyper-incarceration” to be more of a fitting colloquial term for the current state of excessive criminal confinement, which the results cannot be exempt from the history of geographical redlining in the States since the 70s:

Mass incarceration is a mischaracterization of what is better termed hyperincarceration. This is not a mere terminological quibble, for the change in wording points to a different depiction of the punitive turn, which leads to a different causal model and thence to different policy prescriptions. Mass incarceration suggests that confinement concerns large swaths of the citizenry (as with the mass media, mass culture, and mass unemployment), implying that the penal net has been flung far and wide across social and physical space... anything but broad and indiscriminate. They have been finely targeted, first by class, second by that disguised brand of ethnicity called race, and third by place. This cumulative targeting has led to the hyperincarceration of one particular category, lower-class African American men trapped in the crumbling ghetto, while leaving the rest of society - including, most remarkably, middle- and upper-class African Americans - practically untouched (Ibid; pp. 78).

Imprisoning Blacks in the Age of Mass Incarceration:

Are prisons racist institutions? One may think so considering punitive institutions have been prone to confine blacks at alarming rates in proportion to their general population in America. ‘War on drugs,’ advocated first by former president Richard Nixon in his 1970

State of the Union Address, is extremely correlated to the incline in caging black bodies in jails and prisons. Since then African Americans moved to “constitute 13 percent of the American population and 14 percent of drug users, they make up 37 percent of Americans arrested for drugs and 56 percent of the people in state prisons for drug offenses” (Brown, 2012; pp. 73: for more primary data see U.S. Congress, 2009). President Ronald Reagan, on the other hand, is titled paragon of the drug war with his 1984 Federal Sentencing Guidelines and his issuance of the Anti-Drug Abuse Act in 1988; it molded a bipartisan in support of tough on crime discourse. The bipartisan was expressed throughout the 1990s especially with Bill Clinton’s presidency. Clinton’s 1994 Omnibus Crime Bill provided states with financial incentives to unfairly detain the urban black cohort for the interception of federal subsidies (Brown, 2010: Alexander, 2010: Gottschalk, 2007). It also defunded education programs in prisons by prohibiting Pell Grants to be granted to patients seeking in-house secondary education.

The State and its criminal justice operators incentivized the incarceration of impoverished blacks. There was no true ‘war on drugs’ because if there were, proportionally, whites would be detained at the same rate as the urban impoverished blacks for drug crimes. The history of racial injustice in this country has allowed for the attack on the urban poor to be acceptable relative to incarceration (Gilmore, 2000): The reason is many blacks believed that there needed to be more policing and crime control in their prospective communities during the years immediately following Civil Rights Movements. Crime rates were growing in the 1970s causing a general acceptance of ‘get tough on crime’ approaches to criminal justice reform in the United States.

Legal codes like the Rockefeller Drug Laws (1973), Aldolphus Belk's Anti-Drug Act (1986), and California's Three Strikes Law (1994) created mandatory minimum guidelines. Both Republicans and Democrats criminalized the urban poor for the realities capitalist modes of production shaped for them. Thence the creation of 100-to-1 ratios came into existence. It was expressed that the poor man's drug— crack cocaine, which is a by-product of powder cocaine— caused more harm to the American society than the rich man's drug (powder cocaine) did (Belk, 2006). By 1983, mandatory minimum sentences were in used in forty-three states. Out of those states that had mandatory minimums, twenty-nine required imprisonment for minor drug offenses (Bloomberg and Lucken, 2010). To punish defendants more, almost all minimum sentences had mandatory LFOs attached to them.

Of considerable importance to laissez faire Conservatives— respective of carceral expansion— was the acceptance of private for-profit prison industries as an impartial extension of criminal justice. The Prison Industry Enhancement Act of 1979, as stimulated by laissez faire capitalists' theories of rational and efficient economic markets, brought back traditions of forced labor practices in prisons as a form of maximizing the efficiency of State property through labor rehabilitation (Busher, 2013). Corrections Corporations of America (1984)— formatted in Texas by prison investors Tom Beasley, John Ferguson, and Don Hutto— and Wackenhut Corrections Corporations benefit directly from Mass Incarceration as profit seeking entities forming pacts with federal and state punitive facilities. The essence of their profit depends on chain gang labor productivity and leasing beds to district jails and state prisons that are overrun with patients.

When speaking of the 'prison-industrial-complex,' these entities are key because they directly reflect the "corporatization of punishment" (Davis, 2003; pp. 37). CCA and

Wackenhut Corrections Corporations not only lease beds to state and federal prisoners as part of their corporate interest, they directly invested in mortgage-backed-securities prior to the 2008 Housing Market Bubble (Mattera, Khan, and Nathan, 2003). Plainly put, since the 1980s CCA and Wackenhut Corrections Corporation— like its colorblind political associates in Congress— deemed the punishment industry as a mechanism for working the poor. Nothing condenses the trade-off between private interest in carceral expansion and the decline in Welfare spending than Angela Davis and Cassandra Shaylor’s (2001) work on “Race, Gender, and The Prison Industrial Complex”:

Globalization of capitalism has precipitated the decline of the welfare state in industrialized countries, such as the U.S. and Britain, and has brought about structural adjustment in the countries of the southern region. As social programs in the U.S. have been drastically curtailed, imprisonment has simultaneously become the most self-evident response to many of the social problems previously addressed by institutions such as Aid to Families with Dependent Children (AFDC). In other words, in the era of the disestablishment of social programs that have historically served poor communities, and at a time when affirmative action programs are being dismantled and resources for education and health are declining, imprisonment functions as the default solution (Ibid; pp. 2).

There is a growing concern about the historical development of racialized punishment in the United States in the nexus of incarceration. It has become obvious in the eyes of the masses that our criminal justice system is unjust and biased. As known from history, imprisonment has always been inflicted on the poor as rational means of social justice. Debt-based justice, too, is expressed in the historical material development of the Incarceration Nation— as it had importance in the evolution of Graeco-Roman social justice customs. Before presenting New Orleans as a case study for debt-based justice in contemporary light, it is logical to begin with a general overview of monetary justice significance in the Mass Incarceration movement.

Modern Day Debt Prisoners: LFOs as Justice

One of the most pressing issues in America's criminal justice framework today is the unfair and unjust attack on urban poor communities through monetary justice. It is a multifaceted way of extending punishment beyond the realm of prison and jail walls. What is the make-up of monetary sanctions in American criminal justice systems? Lets start by defining types of LFOs: 1) Broadly speaking fines are punitive payments in money because they are usually attached to ones' punishment; 2) Fees are itemized payments used to fund criminal justice operations, surcharges are also generally included in fee payments; 3) Lastly, bails are bond payments intended to release less risky defendants from confinement until their arraignment date. Interest rates are typically included in bails bonds since bond credits generally come from private for-profit entities partnering with criminal justice operators (Harris, 2016: Council of Economic Advisers Issue Brief, 2015). Arizona, for example, levies an eighty-three percent surcharge on all its fines. Resulting from this monetary penalty, traffic violators that receive a financial penalty of \$500 end up paying \$915 (Kilgore, 2015; pp. 110). Many state prisons and local jail operations apply user-pay fines, fees, and bonds to express the notion that defendants who use the criminal justice system should directly pay for it. This sort of laissez faire approach to criminal justice has sparked controversy because scheduled payments are usually fixed in statutory law forcing most judges to impose LFOs even though the defendants are indigent and cannot possibly make criminal liability payments. It is a feature that distinguishes wergeld-like justice systems from America's distributive justice framework.

Every state uses some form of LFOs as a manner of deterring crime but most indigent defendants find themselves back on the streets they were scooped from seeking ways to pay monetary sanctions. The level of "indebtedness contributes to the accumulation of

disadvantage in three ways: by reducing family income; by limiting access to opportunities and resources such as housing, credit, transportation, and employment; and by increasing the likelihood of ongoing criminal justice involvement was established” (Harris, Evans, and Beckett, 2010: pp. 1756). The adjudications in *Williams v. Illinois* (1970), *Tate v. Short* (1971), and *Bearden v. Georgia* (1983) that the “willful” nonpayment and the efforts to make LFO payments in state law and in courthouses determine “the status of nonpaying defendants and whether or not they can be sentenced to incarceration” (Harris, 2016; pp. 22). Many state statutes define willful nonpayers to be those that act in contempt of the court by failing to make legal debt payments when they are employed laborers or receive State-issued benefits (Ibid; pp. 120). The problem with this is indigent individuals are forced to give up their means of subsistence provided by the State to pay State imposed obligations thus perpetuating their dependence on federal subsidies. The financial burden caused by ‘punishment continuums’ or LFOs depress State and federal budgets by forcing indigent defendants to pay mandatory sanctions without providing them with necessary rehabilitative tools to mobilize out of legal debt. Over sixty percent of black patients detained report having an annual income of less than \$12,000 (Rabuy and Kopf, 2016), so they depend on Welfare programs for their day-to-day survival. Nonetheless, Bill Clinton’s 1994 Omnibus Crime Bill sought to punish the “welfare queens” and the “super-predators” by taking TANF and Food Stamps away from felons convicted. Increasing the amount of felony crimes by employing most scheduled drugs during the ‘war on drugs’ as just means to issue felony convictions. The war on the poor persists.

Since the 90s, LFOs have found their way plaguing criminal law reform efforts in state and county jails punishing “suspected criminals and tortfeasors to bear the costs of

defending their actions...leads to justice on the basis of ability to pay— to rationed justice, in other words” (Bresnick, 1982; pp. 35). Over twenty-five percent of patients (referring to ‘inmates’ as patients is a method of ridding negative connotations associated with ‘inmates’ degrading subtext) alleged that they received LFOs in 1991; by the early 2000s that number had jumped to over fifty percent (Harris, Evans, and Beckett, 2010; Harris, 2016). Alexes Harris (2016) attributes:

States also levy penalties for financing in the event that defendants cannot pay their monetary sanctions on time and in full. More than half of states have statutes that allow additional costs related to late payments, incomplete payments, or nonpayment. Fees are charged to establish payment plans and make payments for late fees; annual collection fees, surcharges, and interest are also levied. Florida charges 4.75 percent interest on uncollected legal debt, Georgia charges 7 percent, and Washington charges 12 percent. States can find defendants delinquent on their payments and impose additional penalties for nonpayment. Illinois allows judges to assess a 15 percent penalty on unpaid LFOs in addition to a 30 percent collection fee. Arizona charges a \$35 fee and a 19 percent collection fee for delinquent payments on monetary sanctions (Ibid; pp. 42).

Admitted to North Carolina’s criminal laws in the 90s was the attachment of a “general court fee” of \$95.50 and a “facilities fee” of \$30 to every user of the criminal justice system, Louisiana has a \$300 fee that goes into the “judicial expense fund,” and Washington state imposes a \$100 DNA sampling fee even though most individuals involved are impoverished and cannot make due on these mandatory payments (Kilgore, 2015; pp. 110). Alabama assesses a thirty percent collection fee for servicing the process of extracting LFOs from defendants. And, Florida allows the private debt collectors to impose a forty percent surcharge to the underlying debt being assessed (Alexander, 2010; pp. 155). Indefinite debt is a reality for many indigent offenders receiving LFOs. Financial attacks through criminal proceedings generate a continuation of punishing underprivileged peoples. The lack of a day fines and day fees system— which are calculative models that assess and impose monetary

sanctions in comparison to the financial assets withheld upon their court date (Hillsman, 1990; pp. 54)— makes it difficult task for criminal justice reformers to implement a robust system of accounting legal debt corresponding to indigency assessments.

Money is synonymous to justice and has been for quite some time now. It is disturbing how LFOs have inclined to be the most utilized instrument for extracting criminal justice revenue from the pockets of poor defendants. Vera Institute researchers suggest that over eighty percent of individuals whom receive fines and fees— an over whelming majority of LFO revenue is generated via misdemeanor cases and traffic fines— are poor and receive some form of Welfare subsistence from the State (Shookhoff, Constantino, and Elkin, 2011; pp. 63). New Orleans, LA has its significance for it is the *de facto* ‘Incarceration Capital’ of the world which LFOs has its importance in its broad expansion of confinement.

New Orleans’s Debt Prisoners:

In Louisiana’s Rules of Court (2008) it is stated that local courts should “develop, promulgate, and maintain a problem-solution process” that “resolve complaints regarding a lack of access [to justice]”. The call for fair judicial practices was announced post Katrina because the Crescent City, New Orleans, LA, incarcerated its population at nearly five times the national average. In 1980 the city housed just over 2,300 patients in its local jail, Orleans Parish Prison (OPP), progressing to add over 6,300 patients in 2005 (Johnson, Lasine, and Wool, 2007). The Vera team in New Orleans identified that most people housed in OPP were detained there pre-trial because they could not afford bail bonds. In fact, bail bonds typically forced detainees into privately issued credit-debt relations. On average housing patients costs the city about \$106 a day per inmate in tax revenues (Lasine, Henrichson, and Wool, 2017). To cope with the financial burden of maintaining excessive incarceration, OPP and the New

Orleans Municipal Courts shifted its focus to monetary or distributive justice. Recently released, a Vera Institute project titled “Past Due: Examining the Costs and Consequences of Charging Justice in New Orleans” explains debt entrapment using two case studies involving native New Orleanians:

When Veronica was arrested and detained, her mother risked losing her house to raise the \$2,500 to purchase a bail bond and pay associated government fees. It’s money she’ll never get back, but it was the only way to get her daughter out of jail after she had already spent 10 days behind bars. Keith, who is 61, still struggles to pay off thousands of dollars in court costs and restitution as a result of writing a bad check in 2014. He is making monthly payments that at times have deprived his family of basic necessities, including running water, and have strained his marriage almost to the breaking point (Ibid; pp. 1).

Over eighty percent, according to Vera Sources, of those detained in OPP are poor African Americans that cannot afford pre-trial bail (Johnson, Lasine, and Wool, 2007). To further penalize poverty, an extra three percent fee is included on bond premiums to “pass on to government” (Ibid; pp. 6). It becomes relevant to note that over ninety percent of pretrial detainees in OPP are indigent blacks who, spend fifty percent more time in jail prior to their arraignment date than their detained white counterparts (Wool, 2011; pp. 13). An unbiased justice system is fundamental to America’s criminal code as defined in the Sixth Amendment, but a common custom in New Orleans’s jurisprudence practice is geared around forging financial penalties for indigent defendants that depended on public defenders. Relying on the constitutional cases *Gideon v. Wainwright* (1963) and *Argersinger v. Hamlin* (1972), Louisiana’s case *State v. Citizens* (2004) held that the state legislature was to implement a budget forum for its public defenders: The Public Defender Act was created in 2007 with this end goal in mind.

Cain et al v. City of New Orleans et al (2015) was a case that focused on the

unconstitutionality of imposing monetary sanctions on indigent defendants without assessing their poverty. Judges in criminal courts use private collections agencies to accumulate and disperse excess revenues to criminal justice operators: Likewise, collection agents have discretion in imposing financial penalties while also acquiring the right to issue warrants for those who cannot make monthly payments. Cain and other plaintiffs argued that the method and purpose of collecting LFOs in New Orleans was aimed at profits and not justice for “Criminal District Court judges collect 1.8% of each bond, while the Orleans Parish District Attorney’s office, the Orleans Public Defenders’ office, and the Orleans Parish Sheriff each collect 0.4% of each bond” (Ibid; pp. 5). Like Kings’ Courts defined in early traditions of social justice, debt criminality is a social reality for many poor. In context of America’s traditions of distributive justice, its history with racial institutions calls attention to the question asked by Angela Davis— “Are prisons [and jails] racist institutions?” New Orleans’s rich history and culture is tied to its brutal past. With slave harboring, convict leasing, and now Mass Incarceration, the Crescent City mirrors the lifetime entrapment of debt America has imposed disproportionately on indigent blacks.

The need for adequate judicial revenue sources engulfs the punishment continuum. By shipping indigent black males, although black women have been amongst the fastest growing incarcerated cohort in the past decade (Swavola, Riley, and Subramanian, 2016), to prisons and jails for debt, legal debtors pressure themselves to find means of payment for their criminal LFOs. Incarceration for poverty has no temporal or moral boundaries. Punishment reform efforts have historically been in liking of excessively punishing the poor in less *harsher* methods than the preceding standards of distributing justice it supersedes. Money is thus hyper-fetishized by indigent defendants facing LFOs in New Orleans because

it is their means of freedom. Nonetheless, for defendants resorting to financial credit to make obligatory payments— they further trap themselves in a vicious cycle of debt in an attempt to escape criminal LFOs. The problem with this is private credit unions and collections agencies act as an extension of the judicial system. They, too, prey on the financially illiterate indigents by streamlining interest bearing bails bonds as a pseudo-external force to criminal justice systems. Indeed it costs a lot to be a poor man in America; it costs even more to be a poor black defendant undergoing cycles of criminal justice debt.

Concluding Remarks and Sound Approaches to Distributive Justice:

Distributive justice institutions are an overwhelming force in human history. Crime and debt imposed on the poor provokes the consciousness of the masses to recognize the realities formulated by distributive justice frameworks. Vera Institute of Justice project

“Reimagining Prisons”— launched at Pennsylvania’s Eastern State Penitentiary on June 20, 2016— seeks to stipulate prison and jail reform through the notion of restoring patients (I refer to ‘inmates’ as patients methodologically to rid negative connotations associated with ‘inmates’ and to offer a term that is linguistically suitable for people housed in State rehabilitative and restorative facilities). But what are the robust ways to restoration and how could the State direct its current judicial system to fit the needs of poor prisoners? Evidence out there shows strong association between poverty and imprisonment, therefore there is no way to restore and rehabilitate patients without taking heed to economic forces that perpetuate cycles of poverty.

One huge reason that recidivism rates are much higher in the United States than in any other nation has a lot to do with its criminal justice systems operating as hostile entities towards those it confines under terms of rehabilitation. As opposed to rehabilitation and restoration, though, the United States justice departments are retributive shown by the excessive punishment it imposes on the poor. To move from a retributive punishment framework to one of actual rehabilitation and restoration, there is importance in 1) State— federal and local—mandated labor programs for patients, 2) Re-entry programs for rehabilitation in and outside of prison and jail facilities, 3) Family and community service programs offered to neighborhoods suffering from cycles of poverty, imprisonment, and legal debt, and 4) Budget and tax reform at the federal and state level with particular emphasis on downsizing spending on criminal justice operations— court houses, law enforcement agencies, and corrections institutions— in place of financing public education, employment, housing, and consumption in at-risk communities. Hinging on budget and tax reform, distributing jobs and transfer payments to communities in plight generates broad base

‘effective demand’ because these communities spend most of their disposable income on consumer goods. The spending could create an economic hub for it will naturally boost job opportunities, state tax revenues, and the need to create demand deposit accounts. In this sense, at-risk communities would be better off if there was more investment in development projects, public employment, education, and consumption, which means there would be less revenue needed to keep up with corrections facilities and judicial operators.

Randall Wray and Marc-Andre Pigeon (2000) drew parallels between labor in ‘military Keynesianism’—exemplified in the years leading up to and following WWII— and labor practices in the current state of ‘penal Keynesianism’ created by the bill HR 2558. Bill HR 2558 made prison labor an in-house rehabilitative tool. The argument for Wray, Pigeon, and many others, including myself, whom question the economically inefficient nature of criminal justice ultimately attest that ‘Public Service Employment’ (PSE) is a sound step to reforming patients. The federal government is important in the reform movement since it is the sovereign authority that wields the power as the monetary regime: Its major function is to provide state, local, and private non-profits with financial and physical resources to robustly run PSE programs (Ibid; pp. 156). At the criminal justice level, such a system would not work unless re-entry programs operate closely with families and communities to create a strong support system for newly released patients. Stressing secondary education especially, re-entry could add a great deal of social value to at-risk communities by providing skills and knowledge to incarcerated patients that improve their prospective job opportunities post-release.

Through this framework monetary justice could develop as an unbiased and socially just way of deterring crime. Leveling the playing field seems to be the goal, at least

underhandedly, in criminal justice systems. Money is the most sought out means of attaining a “leveled” playing field today. To this degree, monetary justice is counter-conducive in and of itself since it creates a two-tiered judicial framework; a system that unreasonably punishes the poor while giving a ‘slap on the wrist’ to offenders with means of payment. For this reason, status is given to European criminal justice networks that use “day fines and fees” to impose LFOs in a proportionate fashion. Making LFOs proportionate to defendants’ daily income and other forms of financial assets could be beneficial for America’s distributive justice outline (Hillsman, 1990). It all boils down to the questions: What is the necessary and best method, for the State (federal, state, and local governments), of functionally distributing resources to impoverished communities suffering from high unemployment and mass incarceration? And, how could criminal justice systems implement budgetary reform measures that are less reliant on debt prisoners to generate revenue via LFOs?

In essence, this calls for one to rethink money’s utility and its significance as a tool of subsistence for the public masses. The next step is to examine the historical and political forces that have led to the acceptance of the current global capitalist atmosphere. Though it may be a bit disassociated from the general thesis of this text, global capitalism relative to the ‘prison industrial complex’ instigates the ‘race to the bottom’ for wage outlays. In plain sight, businesses that globally outsource to underdeveloped market economies do so for low wageworkers. They are not much different from businesses invested in black prison laborers receiving depressed wages for extended work hours. Monetary justice has a history of punishing the poor by indefinitely housing them in their undercaste status. It seeks to solidify the poor undercaste and the well-to-do classes in their social standings by projecting high social value on the well-to-do cohort in an effort to degrade the indigent cohort. It is no

coincidence giving the racial history of the United States that African Americans more so than not find themselves trapped in their indigency.

Yet, there are many ‘colorblind’ politicians and Conservative voters still today that insist poverty and debt entrapment is a cultural phenomenon blacks cannot seem to mobilize out of. This text disapproves such claims by showing that the racial history in America permits criminal law and justice to behave in a biased manner towards African Americans. It also illustrates the vicious patterns of poverty and debt African Americans have been forced to undergo is a consequence of slavery and State sanctioned monetary justice. Much is to be done if there is to be racial equity and fair justice systems in the United States, but having a pessimistic outlook could only exacerbate the egregious realities caused by racialized institutions. Thinking forward, there should be more discussion about the economics of criminal justice institutions and the role race and poverty play within the discourse if there is seriousness about criminal justice reform in the United States. Even more so, there needs to be general acceptance of African Americans as subject citizens in this country as opposed to their universal recognition as the objectified low wage earner. The black work is so objectified that it is not uncommon, as it was common in the Great Depression, for them to be hired in efforts to bust strikes and wage bargaining movements— hence the famous aphorism ‘last hired, first fired.’ As a result, there is a vast array ways to rethink and then reform the current justice system in America. Race, poverty, and money are key topics for reimagining and reconstructing the criminal justice economics.

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