The "Damaged" State vs. the "Willful" Nonpayer: Pay-to-Stay and the Social Construction of Damage, Harm, and Moral Responsibility in a Rent-Seeking Society

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States increasingly look to incarcerated individuals as a source of revenue to alleviate the fiscal burden of incarceration, which results in suing prisoners for these costs. Through lawsuit complaints, states claim they have suffered damages and seek reimbursement from incarcerated individuals through pay-to-stay fees. Drawing from an original dataset consisting of 102 civil complaints from Illinois, we examine how the state constructs damage, harm, and willfulness through pay-to-stay lawsuits. We find that the state achieves this beneficial outcome by labeling incarcerated individuals as willful nonpayers *and thereby morally responsible for what it terms damages suffered. Our empirical and theoretical contributions position civil lawsuits as part of imagining incarcerated individuals as fiscally responsible for their incarceration within a rent-seeking society, contextualizing the social linkages between willfulness, legal moralism, and perpetual indebtedness.*

Keywords: monetary sanctions, pay-to-stay, willful nonpayer, labeling, legal moralism, rent-seeking

"We should, I believe, make prisoners pay rent." In 1994, a law clerk penned an op-ed in the *Chicago Tribune*, asserting that the fiscal responsibility of incarceration lay at the feet of the incarcerated individuals in state prisons, and that they should "pay their fair share" (Shacknai 1994). The clerk, Daniel Shacknai, is describing pay-to-stay provisions, which were implemented in the state of Illinois in 1981 through the Prisoner Reimbursement Act,

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mandating that incarcerated individuals pay a per diem rate for room and board. Such proposals have seen renewed nationwide interest with the skyrocketing costs of mass incarceration, forty-nine states having some form of pay-to-stay provision designed to treat incarcerated individuals as clients of correctional services (Aviram 2015; Eisen 2015, 2017; Plunkett 2013). The first modern incarnation of pay-to-stay was passed in 1935 in the state of Michigan, yet the fiscal crisis of the 1980s, strained correctional budgets, and resulting austerity debates over who should pay for the welfare state spurred other states such as Illinois to adopt similar provisions (Kirk, Fernandes, and Friedman 2020). In practice, states mobilize pay-to-stay provisions by selectively suing incarcerated individuals for the costs of incarceration in civil court under the guise of violated contractual agreements. Recent research on Illinois has shown that pay-to-stay provisions are a legal template according to which lawmakers legally craft incarceration as a public commodity with the state as the producer, the imposition and recoupment of pay-to-stay fees justified by positioning incarcerated individuals as free-riding consumers of public goods and services (Friedman, Fernandes, and Kirk 2021). This research reveals how lawmakers adopt consumerism as an institutional logic to foster a producer-consumer relationship between the state and those incarcerated in an effort to legitimately extract assets from within a structurally and physically captive market. However, these extractive practices are made possible by the hybridity of criminal, civil, and administrative legal authority, the resulting annexation of institutions that are traditionally outside the realm of criminal justice, and the framing of pay-to-stay as nonpunitive (Friedman 2021).

In this article, we contribute to the conversation by building on recent research on pay-to-stay and captive consumers to trace the creation and application of social labels endemic to a market-system that depends on perpetual indebtedness, the legal concept of willful nonpayment, and the moral sanctioning of free riders. Specifically, we ask how the state constructs damage, harm, and willfulness through pay-to-stay civil lawsuits. We find that the state labels incarcerated individuals with debt as *willful nonpayers*, meaning that their unpaid financial obligations and the state's decision to sue them signal deliberate deviance and thus an immoral violation of civility warranting civil damages. We draw from 102 state-initiated civil lawsuits against incarcerated individuals to recoup pay-to-stay fees in Illinois to document how incarcerated individuals are characterized as eschewing their moral responsibility to the state, but most important to its citizens, by purportedly refusing to fiscally reimburse the state and the Illinois Department of Corrections (IDOC) for the cost of their incarceration. We argue that the concept of willfulness functions as a social label applied to incarcerated individuals, meaning that "social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act a person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender,'" who is a person perceived as violating moral codes (Becker 1963, 9). We explore how the state of Illinois implicitly evokes and applies the label of the willful nonpayer, particularly through the construction of damage and harm against the state, in bringing pay-to-stay lawsuits against incarcerated individuals for the costs of their incarceration.

The labeling of incarcerated individuals as willful nonpayers in pay-to-stay lawsuits is constituent of broader movements to deem people ensnared within the criminal legal system as undeserving of the use of state resources. Our analysis suggests that the social label of willful nonpayer is applied to populations to legitimize their perpetual indebtedness by linking payment to one's moral responsibility to society. We argue that this linkage is endemic to rent-seeking behaviors that face public scrutiny, such as those demonstrated by the state. As the source of governance and extraction in a rent-seeking society, the state legitimates behaviors that foster costly, one-sided appropriation of wealth by situating them within existing legal mores. Such efforts are an essential step in legally and socially validating these actions to the public, engaging both the legal and

moral justifications for rent payments. To be an austere state or a welfare state is the question—one particularly salient to democratic capitalist economies—when competition over resources and property encourages and reinforces rent-seeking behavior, meaning that "actors seek benefits at little to no cost to themselves" (Kaufman 2004, 552). Accordingly, institutions of justice (law enforcement, courts, and corrections) are but one site of inquiry for researchers seeking to uncover the social labels and moral assertions that undergird a broader state beholden to competing special interests. When applied to the criminal legal system, rent-seeking behavior can be broadly understood as attempts to transfer resources from clients to the state in a competitive fashion no matter the social cost to the populace or the state. We argue that pay-to-stay lawsuits exemplify such practices by activating willfulness as a marker of moral failing, with compensation to the state in the form of rent as moral and fiscal recompense.

LINKING WILLFULNESS TO MORAL RESPONSIBILITY IN A RENT-SEEKING SOCIETY

> willful—A willful act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently.

Pay-to-stay lawsuits are yet another tool in the arsenal of the state to transfer the responsibility for payment to the "users" of correctional systems, and morally justify such provisions by characterizing incarcerated individuals as willful in their withholding of funds to satisfy debts. In the wake of mass incarceration where imprisonment soared and incarceration costs rose dramatically, states faced budget shortfalls that necessitated tapping into alternative forms of revenue (Lynch 2009; Harris, Evans, and Beckett 2010; Harris 2016; Soss, Fording, and Schram 2011; Wacquant 2010; Eisen 2015). The growing literature on monetary sanctions demonstrates that revenue generation became a central aim for law enforcement agencies and court systems as they expanded the universe of court fines, fees, and costs (DOJ 2015; Friedman and Pattillo 2019; Martin 2018; Sobol 2015). Although pay-to-stay provisions existed long before this shift, today's use of these lawsuits exemplifies yet another way the state attempts to alleviate the burden of incarceration costs by shifting the responsibility to the "users" of the system (Kirk, Fernandes, and Friedman 2020; Friedman, Fernandes, and Kirk 2021). We argue that in doing so the state positions the ability to pay and the intentional withholding of funds as an immoral and thus deviant act to make pay-to-stay lawsuits legally and socially solvent. In this article, we explore the literature surrounding the endogenous fiscal and moral culpability of system-linked individuals and how the determination of who epitomizes the willful nonpayer becomes central to the widespread use of pay-to-stay lawsuits in the pursuit of unburdening the state and its citizenry at the expense of the incarcerated.

Pay-to-Stay

Throughout the country, as carceral populations ballooned and federal and state coffers seized under the weight of social service obligations, states such as Illinois, among others, opted to transfer those costs to incarcerated and institutionalized people and their families, releasing the state, ostensibly, from the fiscal burden and casting the incarcerated as undeserving consumers of a vital commodity (Friedman, Fernandes, and Kirk 2021). Who has the right to consume public resources has long been a contentious question, under which people in contact with coercive state agencies are framed by the state as consumers yet denied the protected status consumers traditionally enjoy vis-à-vis consumer affairs bureaus and watch groups. The construction of the willful nonpayer stigmatizes consumption as a public cost, stripping system-constrained people of their most fundamental human rights. Instead, the inverse occurs: the extractive rights of state agencies are protected against willful nonpayers by officials who were, ironically, elected by the public to protect consumers, such as the attorney general. The application of the willful nonpayer label as a way to protect state institutions from their consuming clients thus reveals the legitimation problem endemic to a rent-seeking class interest that is also pub-

lic facing.[1] Consumption is a capitalist right for privileged members of the free public and stigmatized as theft for members of the captive public. A consistent theme throughout the literature cites the conditions of institutions—whether carceral or therapeutic—as exceeding the quality necessary for the residents housed within them. Characterizations of prison accommodations by both legislators and journalists describe them as luxurious or "plush" (Wynn 1983), equating them to "the biggest hotel chain in the state" (Ahmed and Plog 1976) or akin to "country club-style living" (Lynch 2009, 121). Although the characterization of prisons as luxury hotels is patently false, in these conceptions, legislators not only highlight the undeservingness of incarcerated people for any services rendered, but also cast them as central villains in this struggle for state resources. Legislators' stated perceptions of incarcerated people as living comfortably on the state's dime without contributing their fair share, though false, provides the necessary fodder—and taxpayer support—to introduce and pass legislation that would further pay-to-stay style provisions. In her work on the Arizona prison system, Mona Lynch (2009) finds that such characterizations are influential in steering the passage of bills that continually shift the burden to incarcerated people. In these imaginings, the state casts itself as victim of the rising and burdensome costs of incarceration; therefore, it both needs and deserves reimbursement for per diem room and board expenses. Within pay-to-stay provisions, the state is essentially reframing incarceration not as a social institution, serving a widespread function, but instead as a fiscal burden, created and sustained by incarcerated people, who are free riders leeching from the state (Friedman, Fernandes, and Kirk 2021). These characterizations of pay-to-stay as a recoupment mechanism rather than a punitive measure are an essential piece of the state's making its case to taxpayers and to a broader public for suing prisoners for the cost of a state-run service (Friedman 2021).

The free-rider principle becomes part and parcel of how incarcerated people are regarded by the state and its agents, under the dual assumption that they are trying to game the system using state resources while both actively and passively avoiding their responsibility to the state by withholding per diem payments (Friedman, Fernandes, and Kirk 2021). Much of this discourse operates mostly within the legal bureaucracy as a type of self-justifying narrative across legislators, prison officials, and the courts, although penal actors such as sheriffs, law clerks, and lawmakers have gone public with these patterned sentiments in public statements and published op-eds. For example, regarding the implementation of a policy to charge jail inmates for food, housing, utilities, and services provided during their incarceration, Sheriff Jim Pitts of Elko County, Nevada, asserts, "These guys shouldn't have a free ride. . . . Society shouldn't be paying for their wrongs" (*Elko Daily Free Press* 2014). Pitts makes a clear delineation of who is responsible for the incidental costs of incarceration: by virtue of a criminal conviction, incarcerated individuals have opened themselves up to such charges. Such sentiments were echoed in Lynch, who cites an Arizona Republican senator suggesting that the luxury accommodations of prisons should be eliminated because "they are bad people. They were put there [in prison] because they committed crimes" (2009, 121). In answer to Pitts, a defense attorney in Elko offers the counterpoint to the state's position of harm and responsibility: "Feeding and housing them and providing them a proper environment and proper care, that's their [the County's] responsibility once they decide to house them." Here the tension between the state's fiscal culpabil-

1. An anonymous reviewer inquired about how the construction of willfulness is transmitted back to the public. Annual reports by the IDOC and investigative reporting by the *Chicago Tribune* and other media outlets have been integral in communicating to the public about the amount of money owed and collected through pay-to-stay lawsuits. However, in the past fifteen years of annual reports, the IDOC reported only on the amount collected in 2010 and 2011, and then only coupled with other external funding from grants and educational programs. We also suggest the language and logics used in the IDOC reporting aids in internally legitimating pay-to-stay and other similar practices that center on the stigmatization of the incarcerated as the justification for such policies and practices.

ity for the costs of incarceration and its statutory duty to provide the services of care, custody, and rehabilitation is manifest. Regardless, the state's harm and need for reimbursement proceeds reign supreme, disregarding the pains of incarceration and the enduring harms of indebtedness that pay-to-stay provisions create and sustain.

Our contribution reveals how the social construction of damages and harm supports the application of labels that allege nonpayment constitutes immorality. This linkage allows the state to assign the blame and stigma necessary to hold incarcerated individuals fiscally but ultimately morally responsible for the costs of incarceration through civil lawsuits. Blame is assigned for the wrong of nonpayment and stigma is assigned for the willfulness of the act. We argue that this labeling process reveals how the state collapses questions of moral and fiscal responsibility, such that the imposition and recoupment of monetary sanctions evidence the extractive dark side of legal moralism within the confines of a rent-seeking society. Our work focuses on two conceptions of rent—first, in Shacknai's rendering of paying for services rendered through per diem costs, much as one pays their monthly rent expenses. Rent here becomes a tacit and involuntary contractual obligation borne out of the use of services of room and board within prison facilities, which contrasts with how such payments are arranged outside the institution. The second use of rent refers to the actions of the state in rent-seeking to increase revenue without increasing the value or improving the conditions of the resources and services offered in their revenue extraction scheme. In framing itself as victim and labeling the incarcerated as willful nonpayers, the state casts the subjects of the lawsuits as debtors in perpetuity, both to the state and to its citizens. This expansion of punishment through debt payment offers a complex view of how this process operates to free the state while bounding the incarcerated person to the tethers of incarceration. We suggest that legal moralism and resulting labeling processes are useful theoretical tools to understand the proliferation of righteous undertones undergirding what could be understood as rent-seeking, practices scholars have previously described as "stategraft," "predation," and "layaway freedom" (Atuahene and Hodge 2018; Page and Soss 2017; Pattillo and Kirk 2021).

Monetary Sanctions Expansion and Willfulness

The growing empirical interest in monetary sanctions has explored the exploitative nature of fines, fees, and costs associated with criminal justice contact (Page et al. 2019; Harris, Evans, and Beckett 2010; Harris 2016; Conboy 1996; Martin 2018; Goldstein, Sances, and You 2020). Central to the assessment and collection of monetary sanctions is nonpayment, for which penalties range from driver's license suspension and revocation to arrest warrants and incarceration (Salas and Ciolfi 2017; Bannon, Nagrecha, and Diller 2010; Harris 2016; King 2015; Wallace 2019). The related justification lies in the supposition that they can pay but choose not to satisfy their debt to the state. In the language provided by court systems throughout the country, "a 'willful' act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently."[2] The concept of willfulness for nonpayment of courts debts was addressed in *Bearden v. Georgia*, in which the standard for willfulness was a refusal to pay or the failure to make efforts to secure the resources to pay (Harris 2016; Harris et al. 2017).[3] The concept of the willful nonpayer suggests an obstinate debtor who has the means but not the desire to do their part in atoning for their criminal behavior by paying fines and fees. This concept is a central feature of the rhetoric that surrounds a vast array of state services from incarceration and institutionalization to welfare and state-mandated child support payments (Harris 2016; Bonds 2009; Haney 2018; Lara-Millán and Gonzalez Van Cleve 2017; Lara-Millán 2014). Bryan Sykes and his colleagues (2022, this volume) find that the state often engages in a form of

2. New Mexico Second Judicial District Court, "Willful," in *Glossary of Legal Terms*, https://seconddistrictcourt.nmcourts.gov/glossary-of-legal-terms.aspx (accessed August 6, 2021).

3. *Bearden v. Georgia*, 461 U.S. 660 (1983).

"financial double-dealing," ultimately transferring funds provided to citizens through social services back to the courts, claiming it is owed the same resources it at one point provided.

The willful nonpayer is akin to the language used for the "deadbeat dad" in child-support cases or the "welfare queen"—images of individuals living in relative luxury, eschewing their responsibility to their children, to the productive labor force, to civil society (Bonds 2009; Haney 2018; Hancock 2003; Mincy and Sorenson 1998; Cammett 2014). In her work on prison expansion in the rural regions of the northwestern United States, Anne Bonds refers to the "imaginations of the poor'' as part of the framing strategy to obscure the responsibility of the state and mask the role of neoliberal machinations in creating and sustaining existing fiscal crises (2009, 416). These characterizations or imaginations become a central element of concerted efforts to shift blame and the focus away from the state and its responsibility to citizens, incarcerated or not. These imaginations underlie the assessment of deservingness for state services, suggesting those who are connected to the criminal legal system, whether alleged or actual, are indeed unworthy of the use of said services (McCorkel 2004; Lara-Millán and Gonzalez Van Cleve 2017; Lara-Millán 2014; Goldstein, Sances, and You 2020). In essence, such determinations suggest a diminished citizenship that follows perceived or actual criminal justice contact and incarceration, where the services and provisions rendered free to residents of the state become contingent on criminal status (Miller and Alexander 2015; Miller and Stuart 2017; Battle 2018; Lerman and Weaver 2014). Existing scholarship exemplifies such contingencies, showing that access to state resources has declined in line with the shrinking welfare state and concerted austerity measures to stave off fiscal instability (Beckett and Western 2001; Kirk, Fernandes, and Friedman 2020; Atuahene and Hodge 2018; Jain 2017; Page and Soss 2017).

Legal Moralism, Monetary Sanctions, and Mass Incarceration

Linking willful nonpayment to moral responsibility proliferates in the United States because rent-seeking behaviors find refuge in the legal system given its grounding in legal moralism, where elites compete as moral entrepreneurs who regulate right and wrong by creating norms and policing outsiders (Becker 1963). Legal moralism advocates the law as the arbiter of morality, where actions deemed outside the realm of societal norms are subject to the application of deviant labels or criminalization, or both. It is the perceived immorality of an action that exposes a person to possible, but not certain, identification and sanction (Murphy 1966). We suggest that monetary sanctions statutes are laced with codes about what behavior is inherently immoral, particularly within a capitalist economic system in which morality is intimately tied to one's value and the fiscal performance of responsibility.

The concept of willful nonpayment reverberates throughout the criminal and civil legal systems to claim that people with debt cause deliberate damage and harm against the state and its citizens and should be coercively held accountable for these actions. Work on monetary sanctions has pointed to the elastic nature of willfulness as a legal concept, court agents often making individual determinations of the ability to pay (Harris, Evans, and Beckett 2010; Beckett and Harris 2011). Any ability to pay, in the eyes of the court, can be enough to mandate payment and thereby discipline people for nonpayment through consequential extraction schemes such as wage garnishment, civil liens and lawsuits, and credit reporting (Conboy 1996; Friedman and Pattillo 2019; Harris 2016; Harris et al. 2017; Henricks 2019). Karin Martin, Kimberly Spencer-Suarez, and Gabriela Kirk (2022, this volume) find that even when the ability to pay is financially impossible court actors maintain procedural integrity by requiring defendants to perform accountability, mandating appearance in court or community service.

We suggest that in a rent-seeking society timely payment of debt is culturally linked to codes of civic moral responsibility and clientelism, both through law-on-the-books and law-in-action. We assert that institutions of justice are nested within a rent-seeking society and, as a result, the increasing financialization of social institutions has transferred particular social labels and mores regarding nonpayment to the criminal legal system. This is particularly

consequential given that institutions of justice are predisposed to legitimate state-sanctioned violence in the name of punishment, meaning they have the capacity to cause great harm to those perceived by rent-seekers as willfully withholding resources. Pay-to-stay lawsuits present an ideal case in which to explore constructions of willfulness within a rent-seeking society increasingly geared toward extending the reach and pains of punishment beyond the bounds of incarceration.

DATA AND METHODS

This project draws on pay-to-stay lawsuits collected and compiled by the authors from the state of Illinois. We analyze the case files of 102 lawsuits brought against current and former incarcerated people, ranging from 1997 to 2015. These case files include complaints identifying the costs and "damages" the state sustained and outline the state's right to file the lawsuit, an attachment order detailing the incarcerated individual's financial assets, motions from both parties, and court summons of the various parties. These files are a written conversation and negotiation involving the Illinois Department of Corrections, the state, the incarcerated individual, and often the incarcerated individual's financial institutions. Because it was often difficult for the incarcerated individual to be physically present in court hearings, much of the case transpired largely on paper. These documents reveal a great deal about the arguments, logics, and conceptualizations of the law in these cases.

To obtain these case files, we first submitted two Freedom of Information Act requests to the Illinois Attorney General's Office in 2017. The first asked for a list of all cases filed between 1980 and 2016, which garnered a list of 159 case numbers of lawsuits filed under the pay-to-stay statute. It also asked for copies of the complaints filed after 2010, which resulted in thirty-one complaints. We then contacted the clerk in each of the thirty-one county courthouses where these cases were filed, receiving copies of at least one case file from twenty-nine of them. The courts varied widely in their cost for these files and in their capacity to locate and copy these documents. Older files were sometimes lost or damaged, kept on microfilm, or stored off site, in some instances, inaccessible because of the ongoing pandemic. Ultimately, we compiled records for a subset of the cases, collecting complete or mostly complete records for 102 lawsuits. The cases and documents available vary widely. Some cases were dismissed or resolved quickly, resulting in files of only twenty-five pages or fewer, but most cases lasted months to years and contain hundreds of pages of documents. In some instances, the incarcerated individual appealed the case, resulting in additional documentation. This rich dataset allows us to better understand how the state frames incarceration and incarcerated people to provide justification for bringing these lawsuits. Of the 102 complaints, thirty-one were dismissed, eighteen were granted in part, thirty-five were granted in full, and eighteen had outcomes that were unclear because the files were incomplete.

Illinois is an optimal case study for the use of pay-to-stay given its persistent and widespread use of these lawsuits to recoup incarceration costs. Illinois has been cited in a host of local, national, and international media articles for the use of pay-to-stay lawsuits (Walters 2015; Mills and Lighty 2015), its statute and lawsuit language similar to that of the first state, Michigan, to implement pay-to-stay (Kirk, Fernandes, and Friedman 2020). In addition, Illinois recently repealed its pay-to-stay statute,[4] making it a prime case study to understand the dynamics of the creation, increased use, and ultimately, dissolution of pay-to-stay within the state.

Analysis

We analyzed the lawsuits by first reading through them and manually coding observations, patterns, and connections. We then crafted separate analytic and substantive memos on these lawsuits, and convened afterward for an iterative process of comparing, contrasting and identifying themes, divergences, and repeating commonalities. Despite similarities in the initial orders for attachment that detail how the amount of the lawsuit is calcu-

4. Illinois Public Act 101-0235 (2019), https://www.ilga.gov/legislation/publicacts (accessed August 6, 2021).

lated and the state's claim to those funds, variation in how the lawsuits proceed is considerable. The defendants varied in the degree to which they fought back against these lawsuits and in the legal arguments they deployed, the state also varying its responses. In the back and forth of the lawsuits, we were better able to seize on evidence that shows the state implicitly labeling incarcerated people with some level of assets as willful in their nonpayment of incarceration costs, and thereby undeserving of the use of state resources. This analytical process allowed us to delve into concepts of willfulness, perpetual indebtedness, and rent-seeking within the context of pay-to-stay lawsuits.

FINDINGS

The nature of pay-to-stay provisions and the practice of suing prisoners for the costs of incarceration are in line with Shacknai's proposal that incarcerated persons are inherently responsible for the costs of incarceration and therefore should "pay rent" to alleviate the fiscal burden on the state and its noncommitted citizens. Such sentiments are integral to broader rent-seeking efforts that typify modern shifts in policing and the criminal legal system. In the analysis of the lawsuits, we show how the Illinois and the IDOC, in their pursuit of rent, connect indebtedness to a moral imperative to pay through the application of the willful nonpayer label. In the language of the lawsuits, the state and IDOC cast themselves in the role of victim, asserting that they have suffered damages as a result of the soaring costs of felony imprisonment. Incarcerated people with any modicum of assets thus become willful nonpayers, intentionally withholding money from the state and eschewing not only their fiscal debt but their moral debt to the state and society as a whole. The limited recoupment suggests the pursuit of rent seeks to render a moral punishment rather than function as a sure and effective method of fiscal reimbursement. We detail how the verbiage of the lawsuits typifies the state's argument of willfulness through an iterative process of assigning blame, denying harm, and claiming both fiscal and moral damage to the state and its citizenry.

Essential to the concept of the willful nonpayer is the dual identity of incarcerated persons as both debtor and committed person. In the Illinois Unified Code of Corrections, those who are incapacitated by the state are deemed to be responsible for the debt incurred as a result of their incarceration or institutionalization: "Debtor is, within the meaning of the Illinois Unified Code of Corrections, a committed person."[5] In fact, they are responsible both for their incarceration and their subsequent indebtedness: "Alvin Sievert is, due to his own actions, separated temporarily from society and is being given temporary care and maintenance by the State, plaintiff, Department of Corrections."[6] At the heart of the lawsuits, and principally stated in certain versions of the complaints, the incarcerated person is synonymous with the debtor, institutionalization equating the use of public resources, even involuntarily, and owing broader society, but specifically, the Department of Corrections, a debt. This dual identity establishes the incarcerated person as fiscally and morally culpable and subject to the conditions laid out in the pay-to-stay statute.

Ability to Pay

Inherent in the concept of the willful nonpayer is the ability to pay. For the state and IDOC, the ability to pay is narrowly defined as the possession of assets in any form: "Section 3-7-6(d) of the Unified Code of Corrections (730 ILCS 5/3-7-6) provides: 'The Director, or the Director's designee, may, when he or she knows or reasonably believes that a convicted person committed to the Department correctional institutions or facilities, or the estate of that person, has assets which may used to satisfy all or part of a judgment rendered under this Act.'"[7] In terms

5. *IDOC v. Moore* (2015), 2.

6. *IDOC v. Sievert* (2002), 109.

7. *Illinois Department of Corrections v. Hawkins*, No. 110792 (2011), https://caselaw.findlaw.com/il-supreme-court/1571793.html (accessed August 6, 2021).

of these lawsuits, the supposed willfulness is evidenced by the asset and income forms collected by the courts or prison officials as a condition of incarceration and interrogatories sent to banking institutions to assess the nature and amount of any available assets. These forms provide the necessary intelligence to differentiate between those who are unable to pay for the costs of their incarceration—and therefore, not willful—and those who have a modicum of means that could partially reimburse the state and IDOC for the costs incurred.[8] In these cases, willfulness is defined narrowly, as the possession of assets in any form, rather intentionally hiding assets or resisting payment of room and board "debts." To enact the harm of willfulness, the state frames the incarcerated individuals as holding wealth in the form of assets, painting those with any assets as wealthy and therefore justifiably the subject of lawsuits to recoup the costs of incarceration: "The attorney general calls attention to the fact that the legislature was largely motivated by the fact that there is no legal, moral or economic reason why prisoners who are owners of substantial estates or become such while in prison should not be obligated to pay for their keep."[9] In reality, however, the amount of the incarcerated individual's assets identified in the lawsuit is often only a small fraction of the total costs of incarceration as assessed by the state and IDOC (Conboy 1996). Routinely, the amount is between 1 and 6 percent of the total costs cited in the lawsuit, and these funds are often tied to either inmate trust accounts or to checking or savings accounts, which are often the only source of income the incarcerated individual has to sustain their inside and outside obligations.

In fact, individuals subject to these lawsuits are required, under threat of penalty and punishment, to provide financial information to the IDOC. Therefore, the willful withholding of information or assets does not apply. The complex nature of this ability to pay, however, is borne out in the lawsuits with incarcerated defendants suggesting that payment of these costs depends on the exclusion of certain assets from seizure, individual debt obligations, both inside and outside carceral walls, and the capacity to truly understand the nature of the various documents, legal jargon, and the financial power exerted by the state. Of incarcerated defendants who attempt to counter the state's claim, asking for the exclusion or exemption of certain types of assets, the state asserts that having potential exclusions exemplifies an ability to pay.[10]

> The primary purpose of section 3-7-6(a) of the Uniform Code of Correction is to shift, whenever possible, the financial burden of the expenses of incarceration from the general public to the individual inmate able financially to bear either a portion of or all of the statutory obligation. . . the main purpose of the statutes would be defeated by exempting any property. Consequently, the exemption

8. Questions about whether those incarcerated persons with substantial means should be subject to the willful nonpayer label are outstanding. These are beyond the bounds of this article, but our analysis did uncover one case of an incarcerated person who had assets sufficient to cover the entire cost of their incarceration. However, this was an outlier. There is a distinction between those who are indeed wealthy and those who have assets that aid in sustaining them and their families during their incarceration, and while all incarcerated people with assets are painted with a broad brush, such nuances are important to consider when discussing the application and implications of the willful nonpayer label.

9. *IDOC v. Garcia* (2002), 165.

10. Exemption challenges were brought by defendants to protect assets related to personal injury settlements, pension funds, inheritance payouts, inmate trust fund holdings, among others. While some were successful in their challenges, others settled with the state for a portion of their total asset holdings. An anonymous reviewer asked about nonliquid assets and whether those would satisfy judgments. In our analyses of this subset of cases, we did not come across any nonliquid assets (such as cars and houses) that were subject to attachment orders by the state. The state statute, however, does suggest that such assets would be subject to attachment and potential liquidation.

> would benefit the inmate while burdening the public. An action to recover the costs of incarceration is comparable to an action seeking the recovery of the costs of commitment of the mentally ill in State institutions. Both actions focus on an ability to pay. . . . Nevertheless, to assert that property is exempted constitutes an admission of an ability to pay.[11]

This passage underscores the narrow definition of willingness and reiterates the state's position that the incarcerated person has no claim nor use for the assets in dispute. In addition, the state asserts the supremacy of harm, stating that any burden to the incarcerated person as a result of the lawsuit does not supersede the burden placed on the public for the cost of their incarceration. This tension is central to the next step in labeling the willful nonpayer: establishing the costs of incarceration—and the act of incarcerating—as a harm to the state.

Damage to the State

The lawsuits begin with asserting damage to the state from the costs of incarceration: "By reason of the foregoing, the Department has suffered and sustained damages in the Sum of $77,180.11."[12] The state and the IDOC position themselves as victims of the expense of maintaining carceral systems, and satisfying their statutory duty to provide "care, custody, treatment or rehabilitation." In providing such services, the IDOC lays claim to any and all assets amassed by currently and formerly incarcerated persons to alleviate damage done to the state and its citizens. By suing for amounts that far exceed the assets of defendants, the state and the IDOC are attempting to illustrate the monetary damage that incarceration—and the individual defendants—ostensibly cause and therefore lay claim as the rightful beneficiaries of these funds. In the case of the state and the IDOC, the financial need is central to the existence of carceral institutions, positioning the individuals involuntarily housed within as debtors to the state and the act of incarceration as a burden.

According to the state, the damage is then compounded by willful nonpayers, who are deliberately withholding funds from the state and IDOC and failing to meet their financial and moral responsibility to the state and its taxpayers. In the lawsuits, the state accuses defendants of concealing or liquidating assets to avoid satisfying incarceration costs: "The plaintiff would suffer immediate and irreparable loss if the Defendant were serviced with a summons and complaint, without an attachment order, because it is likely that Defendant will attempt to move, transfer, or otherwise divest himself of such money, so as to defeat or avoid the Plaintiff's claim."[13] The state makes clear that they have staked a claim on the assets and asserted the damage if the funds were not rendered to the state. Implicitly, the state is framing incarcerated individuals as willful nonpayers, not only intentionally withholding funds from the state but also doing so in a malicious and covert manner. In another lawsuit, the state asserts willfulness in the spending of available inmate trust fund money: "That the defendant's 'financial inability' is at least partially self-caused. Defendant was served with this summons and complaint on January 10, 2002, at which time he possessed approximately

11. *IDOC v. Garcia* (2002), 150.

12. *IDOC v. Garcia* (2002), 150. The language of damages is referenced in tort law and contract law when referring to the range of economic and noneconomic damages (Merkel 2006). In tort law, damages often refer to noneconomic costs of pain and suffering (Avraham 2006), whereas in contract law, the emphasis is on the costs associated with the violation or breach of contract (Bovbjerg, Sloan, and Blumstein 1988). In using this language, the state appears to be connecting to the spirit of contract law in asserting damage to the state and its citizens arising from a breach of contract between the IDOC and the incarcerated person to satisfy the economic costs of incarceration through payment of per diem incarceration costs. However, the state also seems to be invoking tort law. Although the relief being sought is economic, the impetus behind the lawsuits seems to revolve more around punishment than compensation.

13. *IDOC v. Washington* (2005), 10.

$920 . . . seeing imminent attachments, he simply 'cleaned out' said account to its present low level."[14] Here, the state places the burden of the inability to pay on the defendant, simultaneously suggesting a malicious act in using personal funds before filing the lawsuit. By seemingly eschewing their duty to reimburse, the defendants are failing to alleviate the burden of those deemed by the state and IDOC to be unworthy of these costs: taxpayers.

The state artfully extends the harms and costs of incarceration not only to carceral institutions but also to the citizens as a whole, suggesting that the withholding of payment for the costs of incarceration is harming the public as well: "Since these charges partake of a public charity, (rather than a government purpose), the original cost of which is borne by the public, it is entirely proper and fitting that the patients, their estates and relatives, in so far as they are able, should reimburse the State for so much of the expense of their care as possible, and thereby lessen the burden upon the public."[15] Embedded within a legal moralistic system, such framing is reminiscent of rent-seeking behaviors that seek to commodify public services in periods of austerity as punishment rather than compensation. Thus the state distances incapacitation in the form of incarceration or institutionalization as a public good or government function, yet bemoans the burden placed on taxpayers as a result of the soaring costs of incapacitation. The willful nonpayer is therefore hurting not only the state but also its inhabitants, placing the blame for curtailed social services or crumbling infrastructure or subpar housing on those who, in the mind of the state, refuse to contribute to a collective good. This ostensible refusal is an affront not only to the financial responsibility aim of the pay-to-stay provisions, but also to the moral and personal responsibility functions that seek to "rehabilitate" through recoupment. In establishing themselves as victims of the fiscal burden of incarceration, the state and the IDOC are denying the harm and strain that pay-to-stay provisions and the lawsuits to recoup costs render on incarcerated people.

Willfulness: Denial of Harm

The state and IDOC assert that the goals of pay-to-stay provisions and resulting lawsuits are to reimburse the state, to teach incarcerated persons financial responsibility, and to unburden the public from the costs of incarceration. Maintaining themselves as victims of their own incarceration systems, the state and the IDOC also suggest that the reimbursement functions of the lawsuits and attachment orders are providing a service to the defendants and allowing them to fulfill a moral obligation: "This payment requirement represents an insistence that the prisoner bear an expense that they can meet and would be required to meet in the outside world. The remedy recognizes the moral duty of every person to pay his just liabilities."[16] Such sentiments are in line with rent-seeking efforts by states under austerity controls, harkening back to Shacknai's equating of rent payments and the costs of incarceration, suggesting that these individuals—if not wards of the state—would have to pay for room and board, and therefore should be subject to the same accountability regardless of the statutory duty of the state to provide care and maintenance. It is this responsibility of the state that differs from a private citizen. The state and IDOC assume control over these individuals and are subject to what they term their statutory duty to provide care, custody, treatment and rehabilitation to individuals within their charge. The responsibility, on its face, clearly lands on the state, but yet it frames itself as victim, as suffering damages as a result of this statutory duty, thereby making the pay-to-stay provisions a logical solution when an incarcerated person is found to have even a modicum of assets, to alleviate the burden on the state and ease the tension between the duty to provide and fiscal strain of incarceration costs.

14. *IDOC v. Edwards* (2001), 278. For reference, the lawsuit was seeking damages of $66,844.31. The accounting of the inmate trust fund at the time of filing was $98.01.

15. *IDOC v. Bruner* (2007), 61.

16. *IDOC v. Garcia* (2002), 218.

The nature and outcomes of these lawsuits, however, suggests that another implicit purpose is to punish the individual by garnishing all assets and creating sustained hardships linked with the inability to satisfy obligation both inside and outside prison walls. In defendants' answers to the initial complaints, they detail how the deprivation of funds creates and sustains financial hardships when assets are frozen or garnished: "The Order of Attachment has and continues to cause financial hardship upon the Defendant by leaving the Defendant virtually penniless except for State Pay of $14.40 per month, which must be used to purchase hygiene items on the Inmate Commissary."[17] In addition, these attachment orders can cause difficulties in dealing with existing legal cases and can extend harm beyond the incarcerated individual:

> Any ruling in favor of the plaintiff would cause undue hardship on the Defendant where Defendant is currently incarcerated serving a 20 year sentence at 75% and has no other source of income other than $15.00 state pay monthly. Defendant currently has outstanding legal fees due to this incarceration in the amount excess of $7,500, and legal fees still incurring from his ongoing appeal in the amount excess of $5,000. The freeze placed on Defendant's inmate trust account and account at Busey Bank has placed a strain on Defendant's attorney/client relationship with this attorneys due to lack of payment. Next, Defendant's 18 year old daughter . . . recently graduated from high school in Champaign, Illinois in May of 2015 and will be attending college in the state of Georgia. Defendant will be required to assist with his daughter's college expenses.[18]

The state answers such claims by asserting that they provide all of the necessities incarcerated individuals might need, and therefore, the defendant has no use for the funds being attached and garnished, but it is instead the state that is in desperate need: "Acting in loco parentis, the Department of Corrections provides the prisoner with care and maintenance. No inmate has any reasonably foreseeable current needs."[19] Even when that state acknowledges expenses beyond room and board, it attests that such payments satisfy the state's broader purposes of instilling personal responsibility and money management skills: "Requiring inmates who have the ability to pay for legal photocopying and medical care to pay for those services, regardless of whether their funds are derived from the income from a prison job or from an outside source, furthers the . . . legitimate interest of promoting inmates responsibility and prudent management of money. . . . The payment requirement represents an insistence that the prisoner bear an expense that he can met and would be required to meet in the outside world."[20] Here the state echoes Shacknai's supposition that rent is to be paid by incarcerated people, equating life within an institution to that outside the walls of a prison, suggesting that they are one and the same. Such claims further distance the state and IDOC from their fiscal and care responsibilities of incarceration, contradicting their claim of acting in loco parentis as they eschew their responsibility to those under their care and maintenance.

Denial of Debt

In many of the affidavits, defendants push back on the supposition that their needs of care, treatment, or rehabilitation are satisfied by the IDOC: "Defendant does not agree with allegation number 6, because during the period of January 23, 1998, through November 13, 2001, the Department provided below standards of care, treatment, or rehabilitation at correctional institutions or facilities, within the meaning of the Uniform Code of Corrections."[21]

17. *IDOC v. Bruner* (2007), 46.

18. *IDOC v. Palmer-Smith* (2015), 61.

19. *IDOC v. Sievert* (2002), 102.

20. *IDOC v. Garcia* (2002), 216.

21. *IDOC v. Edwards* (2001), 95.

Defendants are often adamant that they do not use DOC-provided resources but instead provide their own basic essentials: "I have not used any of the following state issued items: soap, washing powder, tooth paste, shaving cream, razors, and shoes."[22] In fact, defendants claim they in fact contribute substantially to their own incarceration through the payment of medical co-pays and the use of commissary to supplement the meager basics that the state provides:

> Defendant relies on and is dependant [*sic*] on his late mother when the Plaintiff fails to or refuses to provide for Defendant. For example: i. Defendant, for one meal, was given to eat, one (1) hot dog, pork and beans (counting 19 beans in all), three (3) teaspoons of applesauce, and water. This is not sufficient for a meal where Defendant must provide additional food to eat, provided by funds from his late mother. ii. Plaintiff does not and will not provide gloves or hats at the time of need and weather. Defendant must do so himself by funds of his late mother.[23]

The defendants make the case they are indeed paying for their incarceration during their sentence, and that the state and IDOC discounts these expenses when assessing the true costs of incarceration: "Exhibit C shows that, through commissary purchases, Defendant provides for a large portion of the cost of his incarceration, thereby offsetting the cost incurred by the Plaintiff."[24] Taking these payments into account suggests incarcerated people are not willful nonpayers, but instead contributing financially to their own subsistence and offsetting costs for the state and IDOC through co-pays and labor that is not acknowledged in the lawsuits. Incarcerated people are instead cast as steadfast in their willfulness, wantonly using state and IDOC resources without regard to cost or fiscal burden to the state. The full scope of the lawsuits suggests, however, the state and the IDOC benefit from the contributions made by incarcerated persons and their largely unpaid labor in service of the institution and the state:

> The court should consider respondent's contribution to his incarceration, including but not limited to: Respondents [*sic*] 1 year employment in the institution printshop to which he was paid $45.00 a month, $2.00 per month taken to offset the cost of his incarceration; respondent must pay a mandatory 25% mark up on all items at the inmate commissary. The 25% markup is used to pay state employee wages, commissary and food service supervisors; respondent's continual purchase of items from the inmate commissary that IDOC is required to provide by statute, see 730 ILCS 5/3-7-2 soap, deodorant, toothpaste, clothing, shoes, underwear, food and etc. that respondent is consistently purchasing from the inmate commissary because of deplorable conditions of the inmate kitchen make it unsafe to eat meals on a daily basis.[25]

In this answer to the initial complaint and attachment order, Spaulding not only points to his own labor as contributing to the state and IDOC coffers, but also to the failures of the state in adequately providing for the needs, survival, and well-being of its charges. The defendant pushes back further, connecting his contributions to state and IDOC expenditures, clearly showing how his labor and his money have been offsetting the costs of his incarceration and providing for the needs of the institution. Another defendant extends this argument, suggesting that the state's claims are baseless given that the state receives ample resources to cover the costs of incarceration: "Plaintiff lacks standing to bring a claim for attachment against Defendant for cost incurred due to his incarceration where the Plaintiff receives federal benefits specifically provided for the care

22. *IDOC v. McCain* (2004), 28.

23. *IDOC v. Washington* (2005), 51.

24. *IDOC v. Palmer-Smith* (2015), 71.

25. *IDOC v. Spaulding* (2015), 82.

and treatment of a committed person from the federal government."[26] In both answers to the state, the incarcerated persons seem to expose the rent-seeking efforts of the lawsuits, suggesting that the state and IDOC are attempting to extract payment in the form of rent for services provided for both by federal revenue and the contributions of those incarcerated.

Further, the state denies that the orders of attachment cause either immediate or long-term harm: "Where necessary and current needs are administered by the facility due to the inmate's incarceration, attachment has no seriously adverse impact. The obligee is already a public charge, not in brutal need."[27] The displacement of harm serves the state's aim of centering the damage to state coffers over the lasting economic damage that incarceration renders. In the analysis of the lawsuits, it is apparent that these funds constitute the whole of the assets of these individuals, who face often insurmountable odds for gainful employment after release. And though the state contends that the defendants have no need for money, the apparent implicit assumption is that these incarcerated individuals will be incarcerated in perpetuity, and the needs for the funds to soften the reentry into society after the completion of their sentence or to pay debts outside of prison are irrelevant: "The Court also finds that the defendant's allegations that he has other pending debts, and would therefore be unable to pay any judgment, are irrelevant to this solely statutory action."[28] In answers to the state's complaints, defendants offer assessments of their needs for the funds being attached and garnished:

> Defendant Melvin Moore will have served 20 yrs [*sic*] in prison when he is released Oct 21, 2015. Melvin Moore is indigent and has little education besides a Certificate in "Custodian Maintaince" [*sic*] which he intends to use to become self employed. Melvin Moore does not have any known employment upon his release Oct 21, 2015. Melvin Moore does not have a house nor a apartment of his own. Melvin Moore does not have any clothes or money for food the basic essentials to survive upon his release Oct 21, 2015. Melvin Moore does not have a car nor any means of transportation. Mr. Moore does not have medical insurance. Yet Mr. Moore suffers from high blood pressure and heart disease. . . . Melvin Moore needs the $13,705.21 that the state is attempting to take away and so much more if Melvin Moore is to have a safe transition to society after serving 20 yrs in prison.[29]

Mr. Moore's statement speaks to the lived reality of formerly incarcerated individuals and pushes back on the supposition that current and formerly incarcerated individuals with assets are high-flying millionaires willfully withholding money from the state. Instead, these individuals have often spent years, if not decades, in prison, hoping these small amounts of inheritance or settlement payments will sustain them through their reentry process. The picture painted by the state of the willful nonpayer is a seemingly false narrative when juxtaposed against the reality most of these individuals are facing during reentry (Kirk and Wakefield 2018). The ability to pay then becomes a complicated determination—it is not simply cash on hand but instead the ability to earn money after release, which is severely curtailed for those with felony convictions, and especially those who have served years in prison. Mr. Moore offered an itemized list of things he needed for a successful reentry, which justifies, on his end, the need for this money that supersedes the state's interest in the money. For Mr. Moore, this inheritance was his lifeline, it was everything. For the state, it was a drop in a very deep bucket that will never sufficiently "repay" Mr. Moore's more than $300,000 debt to the IDOC. The amount they were attempting to take from Mr. Moore ($13,000) was approximately 4 percent of their calculated total for

26. *IDOC v. Palmer-Smith* (2015), 71.

27. *IDOC v. Garcia* (2002), 212.

28. *IDOC v. Edwards* (2001), 292.

29. *IDOC v. Moore* (2015), 23.

room and board over his twenty years in custody, and therefore inconsequential if reimbursement and recoupment is the driver of pay-to-stay provisions. Another defendant suggested that such state efforts inhibit the possibility of successful reentry, thereby upending the state's supposition that it provides rehabilitative services:

> The defendant disagrees with number (10), because Equal Protection of the Laws are outweighed by the costs incurred and is excessive in relation to the prime goal of corrections is that after a convict completes a sentence of incarceration, that convict will become rehabilitated and become a decent citizen. All of society will benefit if that happens but we know that all too often it does not. The rehabilitative task of a convict upon release is often difficult. Placing a substantial financial burden on a convict at that time is counterproductive and I do not think that the legislation involved here is intended to do so.[30]

Another defendant contended that the life insurance payment from his mother's death was vital to his reentry and garnishment was in fact working against the interests of rehabilitation: "Defendant has been using his one time payment to live off of, pay for mothers [*sic*] funeral and prepare himself for release where he may better be able to support himself. Plaintiff, by requesting all of Defendants [*sic*] funds and more, is only denying Defendant the chance to be rehabilitated or productive. Said funds would allow Defendant to rejoin society in a positive way and self sufficient."[31] To counter such claims, the state and IDOC reimagine pay-to-stay payments as essential to the rehabilitative process, thereby justifying the lawsuits and revenue collection as aiding, not hindering, reentry. The displacement of need becomes important to building the case both for the willful nonpayer but also for how the state frames itself in terms of damages suffered, and how the need of the state outstrips those of currently incarcerated individuals. In the conception of the state, this lack of need solidifies the incarcerated individual as a willful nonpayer, for they have no ostensible use for the funds themselves and are therefore intentionally depriving the state of funds the state and IDOC need to maintain a functioning carceral system.

The Perpetual Debtor

The concept of the willful nonpayer suggests a debtor in perpetuity, given that the state suggests in the language of the lawsuits that all assets and funds are subject to attachment and collection: "The assets of the committed person . . . shall include any property, tangible or intangible, real or personal, belonging to or due to a committed or formerly committed person including income or payments to the person from social security, worker's compensation, veteran's compensation, pension benefits, or from any other source whatsoever and any and all assets and property of whatever character held in the name of the person, held for the benefit of the person, or payable or otherwise deliverable to the person."[32]

In essence, these charges are succeeding in making individuals perpetual prisoners in their indebtedness to the state. Wilbur Griswold was assessed $90,450.92 as the total cost of his incarceration.[33] In a rare outcome, a settlement was reached in which Griswold agreed to pay $100 per month for the remainder of the sum. Rough calculations suggest that if paying at the same rate, it would take Griswold more than seventy-five years to satisfy the judgment, making him a debtor to the state in perpetuity, well beyond the span of his natural life.[34] Such ar-

30. *IDOC v. Garcia* (2002), 277.

31. *IDOC v. Washington* (2005), 25.

32. 730 ILCS 5/3-7-6(3).

33. *IDOC v. Griswold* (2001).

34. The final case notes state that Mr. Griswold has missed the last four payments to the state. No other information or follow-up is provided. Yet this outcome speaks to the supposition that such lawsuits and collection

rangements seem not necessarily based on a revenue generation goal, but one of punishment and retribution for bringing costs to bear on the state and its citizens, and furthering the incarcerated person's devolution into civil death (Friedman 2021). Lynn Haney (2018) analyzes both the accumulation of the debts of imprisonment and the imprisonment of debt that surrounds those who are subject to costs post-incarceration. The characterization of fathers who do not—or cannot—pay for their child-support arrears as obstinate dovetails with the attribution of willfulness for the nonpayment of incarceration costs, with the weight of indebtedness becoming its own form of incapacitation and erasure from social existence (Haney 2018; Friedman 2021; Battle 2018; Eisen 2015). Brittany Friedman (2021) suggests that such fiscal obligation is linked to a recurring banishment on the basis of indebtedness to the state, where the state is given the legal right to reach even beyond lived time to collect. Additionally, the initial lawsuit complaint asserts all assets now or in the future are subject to attachment by the state:

> Section 3-7-6(d) of the Unified Code of Corrections (730 ILCS 5/3-7-6) provides: "The Director . . . may, when he or she knows or reasonably believes that a convicted person committed to the Department correctional institutions or facilities, or the estate of that person, has assets which may be used to satisfy all or part of a judgement rendered under this Act . . . authorize the Attorney General to institute proceedings to require the persons, or the estates of the persons, to reimburse the Department for the expenses incurred by their incarceration . . . plus costs and fees, and any and all additional relief of any nature or kind whatsoever as may be proper."[35]

In fact, the state has initiated petitions to revive dormant judgments, allowing them to reopen cases with unsuccessful initial collection efforts, stating recoupment can be sought for decades after release: "Section 3-218 of the Code of Civil Procedure (735 ILCS 5/13-218) provides: 'Judgments in a circuit court may be revised as provided by Section 2-1601 of this Act, within 20 years next after date of such judgment and not after'."[36] Therefore, individuals become not just current debtors to the state and the IDOC, but ongoing, perpetual debtors who are always subject to subsequent lawsuits and other collection procedures. Further, this debt obligation does not end with the incarcerated individual, but extends to their families and children, wrapping them into an omnipresent indebtedness.

Further, the defendants asserted the damage pay-to-stay provisions would render on their potential for a successful reentry: "I pray that you don't take all my money so I'll have money when I'm released on August 24, 2006. I have nothing when I get out of here. I'm trying to get my life back in order."[37] The difficulties formerly incarcerated persons face during the reentry process is compounded by the extension of their debtor status to the state, which thereby prolongs their fiscal precarity (Levingston and Turetsky 2007). The harm the state has rendered is summarily dismissed and replaced by the damages suffered not only by the Department of Corrections and the state budgets, but also by taxpayers themselves. The needs of the state in recouping per diem costs therefore supersede those of the incarcerated person: "The case at bar is similar to Davis since defendant is a prisoner whose care and maintenance has been provided by the Department of Corrections . . . defendant has no need for his social security disability benefits."[38] In denying the

procedures are not based on a revenue model but instead on a punishment model. The amounts assessed will never be collected in full; however, what the state takes to satisfy the small portions of these judgments will likely disadvantage these individuals and their families beyond their time incarcerated.

35. *IDOC v. Edwards* (2001), 2.

36. *IDOC v. Thirston* (2002).

37. *IDOC v. Robbins* (2006), 32.

38. *IDOC v. Sievert* (2002), 102.

incarcerated person's need for funds within the institution, in essence, the state conceives of the defendants as perpetually committed persons, without obligations outside prison walls and continually contained within the confines of a carceral institution.

DISCUSSION

The pay-to-stay provisions and the resulting lawsuits are a commitment by the state to make incarcerated individuals "pay rent" to alleviate the fiscal burden on the state and its citizens. As Shacknai suggests in his 1994 *Chicago Tribune* op-ed, the responsibility for the costs of incarceration lies at the feet of those who receive these services of care, custody, treatment, or rehabilitation and this debt should be rendered to the Illinois Department of Corrections and to the state as a result of damages suffered due to this financial strain. The resulting lawsuits not only cast incarcerated individuals as responsible for these costs, but also maintain that those with any modicum of assets are willful nonpayers, purposefully withholding money from the state and the IDOC to prolong and sustain the burden and damage to the state. In this article, we analyze the lawsuits and the state and defendant's responses to allow for a more complex understanding of this framing of incarcerated persons as willful and how this imagining suggests an abdication of the state's responsibility for the service of incarceration as well as shifting of harm from the incarcerated person to the state. In this way, the state becomes victim, seeking reimbursement for the costs of incarceration while negating the damages of incarceration these individuals must bear both within and outside of carceral institutions. This article sheds light on how the characterization of willfulness is part and parcel of a neoliberal shift in criminal justice contact and incarceration, moving hand in hand with similar rent-seeking provisions and the shift of the fiscal and moral burden from the state to the users to create perpetual debtors.

The criminal legal system in the United States constitutes a set of rent-seeking institutions nested within a legal moralistic framework, pursuing monetary compensation for a public service to enact moral punishment. Pay-to-stay lawsuits are a prime example of such efforts, using willfulness as a signal of moral failure and thereby justification for rent-seeking in the form of per diem incarceration costs. In line with legal moralism, the lawsuits center on the moral imperative of rights and responsibilities, harms, damages, and costs to determine moral and fiscal culpability for the financial burden that incarceration creates. The state and IDOC establish themselves as the victims of soaring incarceration costs, identifying the incarcerated as fiscally responsible given their use of state and IDOC resources. Such a position sidesteps the state and IDOC's statutory duty to provide for the care, custody, treatment and rehabilitation of incarcerated people as a public service (Lara-Millán 2014), foisting the blame for these rising costs on those incapacitated. The use of pay-to-stay lawsuits falls in line with the predatory practices of the state, to extract resources from the users of essential state systems (Friedman 2021; Friedman, Fernandes, and Kirk 2021; Page and Soss 2017; Eisen 2015). Anjuli Verma and Bryan Sykes (2022, this volume) encourage scholars of monetary sanctions to look both at the substance of law and the structure to uncover sources of inequality. Here we look at both the statutes themselves and the legal documents submitted when the statute was enacted. The justification of predatory practices related to pay-to-stay provisions is enshrined first in the state statutes that provide the legislative opportunity and legal justification for states to sue the incarcerated for their imprisonment. The language of the state statutes then becomes evidentiary in the text of the lawsuits constructing financially predatory behavior as "acceptable" and justified given the nature of the services the incarcerated individuals use. Herein lies the connection between services rendered and the state and IDOC suggesting that they have "suffered damages" as a result of incarceration and the outstanding debt owed for the services of "care, custody, treatment or rehabilitation." The reframing of responsibility and the idea of who is being punished becomes a pernicious tool in justifying the letter and intent of the lawsuits while casting the incarcerated individual as the fiscally and morally responsible villain, who is intentionally punishing the

state and its citizens by virtue of withholding payment for incarceration costs. Thus the incarcerated person emerges as the willful nonpayer, withholding funds the state and IDOC have deemed to be their property on the basis of the damages they have suffered.

Willfulness becomes an essential element in this establishment of deservingness, characterizing those who owe the state as grifters rather than those who have a legitimate claim to their funds and assets. The stigmatized intentionality of this imagined characterization places the blame squarely on the incarcerated individuals for their own indebtedness by involuntarily partaking of state services such as incarceration (Friedman and Pattillo 2019). Such sentiments are a mainstay of the growing literature on the shifting fiscal burden from state to system user, wherein the obligation for the debt lies solely with the incarcerated individual, and the state assumes the role of teaching fiscal responsibility through pay-to-stay (Haney 2018; Eisen 2014). Their responsibility is embedded within their criminality, making them undeserving of accessing services without payment (Lara-Millán 2014; Bonds 2009). In her work on monetary sanctions, Alexes Harris finds "determinations of good faith and willfulness are tightly linked to conceptualizations of worthiness and accountability" (2016, 22). Such judgments harken to the historical and contemporary images of the "deadbeat dad" or the "welfare queen," figures cast as unworthy and undeserving of state resources due to their moral and fiscal debt, and their willful disregard for fiscal responsibility (Cammett 2014; Haney 2018; Battle 2018). The lawsuits are linked to similar arguments of deservingness claims of fiscal and moral culpability resulting in the implicit questioning of the financial liability for systems of court processing and incarceration. Inherent in the monetary sanctions system in a rent-seeking society is the presumption that those who traverse the system should be responsible for "doing their part" to contribute to the expenses accrued as a result of processing a criminal case or housing someone in jail or prison. These lawsuits bring such supposition into stark relief, suggesting that incarcerated and formerly incarcerated individuals owe not only a financial debt but also a moral one for the damages rendered to the state and its citizens.

Enacting the label of willful nonpayer necessitates the attribution of harm for the debts rendered as a result of nonpayment. Shacknai's equating of rent and incarceration highlights this concept of the willful nonpayer, suggesting that the incarcerated individual has entered into a fiscal obligation, as one would with a lease for an apartment, but has decided to not satisfy their debt. However, the incarcerated individual has not entered into a lease with the IDOC or the state and is under no contractual duty to pay. The rent concept is instead for the public, to frame the incarcerated individuals with some amount of assets as negligent in the eyes of the state for not keeping up with their financial and moral responsibilities. These individuals are cast as getting something, be that room and board in a prison facility or welfare benefits for their children, for nothing, and thereby taking advantage of the system. If costs are justified not only by state statutes but also by the characterization of the individual as free rider, then the idea that damage has been done to the state seems in line with the consumer logic framework, which presupposes finite resources and a contractual agreement to repay for such services (Friedman, Fernandes, and Kirk 2021). By constructing those who are or have been incarcerated as financially responsible but also avoiding their responsibility to "make good" on their agreement, the agents of the state and the IDOC highlight an intersection between the inherent justifications embedded in the neoliberal consumer logic and the need to instruct criminally involved individuals in a moral manner about personal responsibility.

Pay-to-stay lawsuits exemplify yet another expansion of the shadow carceral system, operating through civil contempt charges, resulting in fiscal and moral indebtedness for the incarcerated and a ceding of duty for the state (Beckett and Murakawa 2012; Friedman 2021). Although the state claims in its lawsuits to be providing necessary services and provisions within carceral institutions, the defendants amass ample evidence to suggest not only that the state and IDOC fail to satisfy their statutory duties to provide for the health and sustenance of incarcerated people but also, in fact, that

those imprisoned are critical to maintaining the fiscal surety of the IDOC through their contributions to their own survival and well-being while incarcerated. In fact, incarcerated people are providing their own care, treatment, and rehabilitation through medical co-pays, commissary purchases, and labor (Lynch 2009; Gilmore 2007). The state and IDOC are therefore not meeting the needs of incarcerated individuals and are not satisfying the terms set out in the lawsuits. Incarcerated defendants question the ability and right of the state and IDOC to bring such charges and lay claim to their assets (see Becker 1963). Therefore, the incarcerated defendants are reversing the moral imperative to cast aspersions on the state and IDOC for failing to properly satisfy their responsibilities to incarcerated populations. In so doing, they question the charging of "rent" for the statutory duties of incarceration that are a public good. Their contributions to their sustenance and well-being suggest they are indeed paying rent to a system that has failed in its duties to provide adequately for those in its charge. Enmeshed in a rent-seeking society under fiscal constraints, the lawsuits exemplify attempts by the state to frame itself as victim not only of the incarcerated but also of federal austerity measures that fail to sufficiently fund incarceration services. These shifts of monetary and moral blame and duty lay the groundwork for framing the incarcerated as willful in failing to right the wrongs and pay the debt of larger government bodies and their active and passive contributions to mass incarceration.

The driving force behind this concept of the willful nonpayer is rooted in a historical rendering of the criminal as both a free agent and morally reprehensible (Harris 2016). The moralistic tone and motivation of neoliberal rhetoric allows for the state and its agents to be indignant toward those extracting state resources, using the consumer logic of punishment to justify the heaping on of increased fines, fees, interest charges (Friedman, Fernandes, and Kirk 2021). Furthermore, the amount of money in these accounts—be they pension accounts or personal injury settlements or inmate trust fund accounts—is often insufficient to cover the outstanding balance stated in the lawsuit. The goal of the state and the IDOC, therefore, seems to be less about recouping costs but more about imposing a moral punishment on previously incarcerated individuals, making certain their contractual and personal responsibilities are enforced. In this way, any money supersedes no money in terms of the overall goals of the lawsuits. The amounts collected are often a small fraction of the total incarceration costs but just as often the entirety of the individual's savings, suggesting that reimbursement is less about the money and more about the message it sends about the culpability, responsibility, and moral duty of incarcerated persons. The lawsuits then become symbolic, less about the money than the act of punishing individuals with a modicum of assets for deigning to use public resources without being subject to payment. Similar to the charging of interest for child support and frequent court hearings and other sanctions for nonpayment of traditional monetary sanctions, the act becomes less about generating revenue and more about imposing punishment for willfulness (Martin, Spencer-Suarez, and Kirk 2022, this volume).

Conceiving of those subject to these lawsuits as willful and then taking action to coerce payment has ramifications for levels of inequality, especially in the process of reentry. A wealth of research underscores the substantial and omnipresent barriers to reentry for those with a felony conviction (Kirk and Wakefield 2018; National Research Council 2014). Barriers to employment, housing, educational attainment, and family well-being hinder the returning individual from establishing the essential markers of stability needed to sustain a successful and lasting reentry (Roberts 2003; Pettit and Western 2004; Western 2006; Comfort 2007). However, the lawsuits appear to target the potential for stability for those who have amassed any assets. Given the substantial collateral consequences that result from felony incarceration, these financial assets may be one of the only sources of economic stability returning prisoners have access to after reentry. By characterizing incarcerated individuals as willful nonpayers, both explicitly in the legislative debates and implicitly within the lawsuits, Illinois and the IDOC are ensuring further disadvantage for these individuals in terms of their re-

entry process by denying them the funds needed to start and sustain their reintegration. Furthermore, shifting the burden from the state and its taxpayers to the incarcerated extends the indebtedness not only to the incarcerated person but also their family and estates, thereby inhibiting stability and resource accumulation for a wider swath of the population (Katzenstein and Waller 2015). Such practices seek to separate the incarcerated as well as those connected to them from the ranks of citizenship and the use of public goods and services. Pay-to-stay laws and practices present another tool that seeks to expand and solidify indebtedness as central to the pains and erasures of incarceration, ensuring ties to the state and the institution will exist in perpetuity and render those with debt civilly dead (Friedman 2021). Such connections extend the reach of punishment, eliminating any possibility of freedom from the strictures that characterize the perpetual incarceration of debt.

In denying the incarcerated persons' need for funds within the institution, in essence, the state conceives of the defendants as perpetually committed persons who do not have obligations outside prison walls and who will be continually contained within the confines of a carceral institution. The displacement of need becomes important to building the case both for the willful nonpayer and for how the state frames itself in terms of damages suffered, and how the need of the state outstrips those of incarcerated individuals. In the conception of the state, this lack of need solidifies the incarcerated individual as a willful nonpayer, for they have no ostensible use for the funds themselves and are therefore intentionally depriving the state of funds needed to maintain a functioning carceral system. The denial of need of incarcerated people for these funds speaks to their master status as perpetual debtor, forever linked to the carceral state, even after release and cessation of parole requirements. The practice of reviving dormant judgments reaffirms the willfulness of the incarcerated while reserving the right to extract assets beyond time and space, thereby expanding indebtedness and willfulness in perpetuity. As Friedman (2021) suggests, the state ultimately views the incarcerated as perpetual prisoners, rendering them civilly dead as a result of indebtedness; thus civil death is linked to permanent monetary subjugation. System-linked debt results in further dispossessing the formerly incarcerated individual, compounding the existing social, political, and economic erasures of a felony criminal record. Indebtedness, whether for the costs of incarceration or child-support arrears, creates a feedback loop of disadvantage that reverberates beyond the bounds of incarceration (Haney 2018). These loops maintain the formerly incarcerated individual as a perpetual debtor and prisoner to the state—no longer a physical manifestation of incarceration but instead one of economic incapacitation, bound in state statute, legal precedent, and a civil system that eliminates the potential for appeal. The individual is imagined as a willful agent, solely responsible not only for events leading up to their incarceration but also for the debt resulting from incapacitation, holding them in perpetuity to the state and its collection procedures as well as to their permanent moral and fiscal indebtedness.

CONCLUSION

In its analysis of pay-to-stay lawsuits through the lens of willfulness, this project offers a nuanced view of the interplay of neoliberal provisions, perceptual imaginations of the incarcerated, and the rent-seeking forces that underlie the unburdening of the state to the detriment of those imprisoned by the state. Framing incarcerated people with assets as willful nonpayers furthers the state's need to distance itself from duties and responsibilities linked with welfare state services while demonizing those who are imprisoned. The labeling of willful nonpayer is yet another degradation of the incarcerated people, prompting the public to see them as a drain on resources rather than deserving of aid and assistance both during and after incarceration. Such sentiments further erode public support for reentry services as well as safe and equitable conditions within carceral facilities, and worsen the existing gap in the conceptions and imaginations of the incarcerated population. Framing the incarcerated as willful suggests that they are not morally deserving of the use of state resources during their involuntary incapacitation, thereby dis-

mantling their rights and protections as true citizens of the state, the public, and the country at large. The erosion of citizenship becomes a central theme not only of labeling the willful nonpayer in pay-to-stay lawsuits, but also of the reverberating costs and debt continually tethering system-linked individuals to levels and patterns of surveillance, confinement, and control on the basis of their indebtedness (Miller and Stuart 2017). Reentry is a racist and individualized concept, wherein societal conditions encourage then punish recidivism as a personal failure. And yet, "the afterlife of mass incarceration" is actually emblematic of a well-traveled road littered with blocked opportunities (Miller 2021). With the deck already stacked, narratives from formerly incarcerated individuals describe the devastating impacts of pay-to-stay debt and how the threat of civil judgments effectively extinguishes what little chance they have of successfully reentering society. As a newly released person with pay-to-stay debt aptly summarized, "there is already so much against you. Every day, every moment is survival . . . I was never the working poor. . . . But I guess being in prison and sleeping on iron prepared me for this" (Friedman 2021, 81). Pay-to-stay creates perpetual indebtedness and yet another shackle to the state, eradicating the possibility of freedom from the pervasive and disastrous impacts of unjust systems.

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