

# Settler Colonialism and Financial Predation

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In November 2021, the Lac Courte Oreilles Tribe of Anishinaabe (LCO) declined to renew an annual law enforcement agreement that would have funded a part-time sheriff's deputy to enforce local, state, and tribal laws on the reservation.<sup>1</sup> The Tribe cited two core concerns. First, that the county failed to uphold the prior agreement, which required all non-criminal citations on the reservation regardless of the person's tribal status to be referred to Tribal Court. Second, the county had unilaterally revised the new proposal language to limit Tribal Court jurisdiction over non-tribal individuals. As a result, the Sawyer County Sheriff's Office forfeited a nearly \$50,000 state grant, which was funded by the Tribe's casino revenues under the state gaming compact.

When questioned by the Tribal Governing Board, the Sheriff's Office defended its changes by citing constitutional concerns for non-tribal defendants. The LCO attorney noted, however, that the LCO had not only been paying the county for law enforcement services, but nearly all the citation revenues were also going directly to the state as only eight percent of the citations issued on the reservation in 2021 were referred to Tribal Court. Further, many tribal and non-tribal members alike were instead directed to appear in Sawyer County Circuit Court. According to tribal leaders, LCO members represent just 25 percent of the county's population but comprise more than 85 percent of its jail population. As the tribal chairman put it, "Our tribal members have experienced increased recidivism mainly due to the many years of disproportionate incarceration rates that our people have endured. This only adds to the historical trauma that our people have dealt with for decades."<sup>2</sup>

The LCO case is not an outlier. It reveals how routine legal and fiscal mechanisms—such as policing compacts, court jurisdictional disputes, and revenue entitlements—operate to erode tribal authority while redirecting Native resources into state systems.<sup>3</sup> These practices exemplify a broader legal and political order in which criminal-legal institutions are mobilized not only to discipline individuals, but to assert control and extract value from

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<sup>1</sup> Joe Morey, Tribe and County Unable to Reach Agreement on Law Enforcement Assistance Grant, LCO Tribal News, Dec. 1, 2021 (<https://perma.cc/64AE-HSHX>).

<sup>2</sup> Joe Morey, LCO Tribe Begins Process of Retrocession from Public Law 280, Lac Courte Oreilles Tribe (Jan. 12, 2025) (<https://perma.cc/XYQ9-TMA8>).

<sup>3</sup> Brianna Watters et al., Retribution for Tribal Sovereignty: Settler Colonial Policing and Civil Justice Impacts, 26 *Punishment & Soc'y* 693 (2024).

subordinated communities. Across the United States, legal financial obligations (LFOs), or the financial costs associated with criminal legal system involvement, have become the primary mechanism for extracting wealth from system-impacted individuals, particularly the poor and racially marginalized.<sup>4</sup> While scholars have rightly located the rise of LFOs within the frameworks of neoliberal governance<sup>5</sup> and racial capitalism,<sup>6</sup> we argue they must also be understood as enduring tools of settler-colonial financial predation. While often framed as an historic event, settler colonialism is an enduring structure and form of domination in which an invading society seeks to permanently occupy and assert sovereignty over Indigenous lands, often through mechanisms that eliminate, displace, or assimilate Indigenous peoples.<sup>7</sup> Unlike other forms of colonialism that focus on resource extraction for the benefit of the metropole—where Indigenous peoples are often treated as sources of exploitable labor—settler colonialism is oriented toward permanent settlement, positioning Indigenous presence as an obstacle to settler possession and control.

The persistent absence of settler colonialism in accounts of carceral extraction provides an incomplete understanding of the structure, goals, and effects of LFOs. Contemporary criminal justice debt regimes reproduce foundational logics of dispossession that have evolved from the settler colonial repertoire, transferring value from subordinated populations to the state through legal and financial coercion.

In this paper, we extend an invitation to scholars to engage with settler colonialism as an ongoing condition of possibility for racial capitalism penology and a foundational element of the contemporary LFO regime. We argue that criminal justice debt should not be viewed merely as a symptom of neoliberal austerity or as collateral consequence of punitive excess, but as a structural feature of settler governance. We reconceptualize criminal legal debt not as a marker of the punitive turn in U.S. criminal justice policy nor even as the application of recent neoliberal austerity policies to the administration of carceral institutions. Instead, we contend that such forms of state financial extraction must be understood as an integral feature of settler colonialism. In doing so, we shift attention from recent policy frameworks such as neoliberalism toward the deeper and underlying historical trajectories of criminal legal extraction that are rooted in the long-standing pattern of settler-colonial financial predation.

We use “predation” to refer to a form of state-sanctioned extraction that turns structural disadvantage into opportunity for profit and control, often through coercive financial, legal, or territorial means. Predation, understood as a form of structural violence,<sup>8</sup>

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<sup>4</sup> Robert Stewart et al., *Native Americans and Monetary Sanctions*, 8 *RSF: J. Soc. Sci.* 137 (2022).

<sup>5</sup> Joshua Page et al., *A Debt of Care: Commercial Bail and the Gendered Logic of Criminal Justice Predation*, 5 *RSF: J. Soc. Sci.* 150 (2019).

<sup>6</sup> Brittany Friedman, *Carceral Immobility and Financial Capture: A Framework for the Consequences of Racial Capitalism Penology and Monetary Sanctions*, 4 *UCLA Crim. Just. L. Rev.* 177 (2020).

<sup>7</sup> Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 *J. Genocide Rsch.* 387 (1999).

<sup>8</sup> Yves Winter, *Violence and Visibility*, 34 *New Pol. Sci.* 195 (2012).

has long been a tool of settler colonialism, operating through both material and discursive violence to secure territorial control and sustain state sovereignty. Financial takings by the state weaken Indigenous nations by undermining their economic self-sufficiency and limiting their ability to exercise political power. These strategies are not merely about extracting wealth; they function to suppress Indigenous autonomy and obstruct efforts to protect land, resources, and governance. Failing to situate criminal justice debt within this history of settler colonialism risks distorting the function of practices like LFOs, which are not peripheral but central to the ongoing project of dispossession.

### I. LFOs and the Limits of Current Analysis

LFOs, also called “monetary sanctions,” include various financial costs imposed on individuals such as fees, fines, restitution, and penalties by courts and other criminal justice agencies. As the carceral state—and associated carceral budgets—have expanded over recent decades, user fees and other financial charges have become politically appealing mechanisms for policymakers to defray high costs of mass correctional control. LFOs are part of what is now termed “offender-funded justice” wherein those who are arrested or find themselves in contact with the criminal-legal system often face a debt as a condition of their legal entanglement.

Sociolegal scholars have argued that these practices of resource extraction can be explained as part of the “culture of punishment” discourse.<sup>9</sup> Through the culture of punishment frame, theorists tend to locate such LFO debt as part of the “invisible punishments” that plague incarcerated persons long after they have served their time. Indeed, such punishments broadly disqualify formerly incarcerated persons from the standard entitlements of citizenship, including the right to vote, access to public housing and public assistance, and professional licensure.<sup>10</sup> In much of this work, scholars view criminal justice debt primarily through the lens of crime and punishment. Although a considerable amount of scholarship has uncovered significant racial discrepancies in LFOs, much of this work has yet to fully engage with how contemporary financial takings in the criminal justice field disproportionately impact specific racialized and colonized people and places.

However, emerging research has begun to extend the analysis beyond the culture of punishment framing. Scholars have noted that limiting analyses of state financial extraction to the penal field risks obscuring broader historical and structural connections between practices like fines and fees and other forms of targeted economic predation.<sup>11</sup> They point

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<sup>9</sup> For a broad history of this discourse, see David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (2001).

<sup>10</sup> An extensive literature examines the collateral consequences of imprisonment. For some foundational works, see Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (2007); Megan Comfort, *Doing Time Together: Love and Family in the Shadow of Prison* (2008); Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (2006).

<sup>11</sup> See, e.g., Joshua Page et al., *A Debt of Care: Commercial Bail and the Gendered Logic of Criminal Justice Predation*, 5 *RSF: J. Soc. Sci.* 150 (2019); Friedman, *supra* note 6.

to the lack of attention given to similar and related practices of financial extraction within the criminal justice field, such as monetary bail, asset forfeiture, and prison profiteering, all of which arose or expanded in the era of neoliberal financialization.<sup>12</sup> These scholars borrow the concept of predation from the broader analysis of political economy and social domination<sup>13</sup> to examine how the “prevailing terms of social contract can presume predation and be organized around the reproduction and advancement of domination.”<sup>14</sup> For example, Page et al. draw broadly from the historical and theoretical insights of intellectual traditions that challenge liberal-democratic theories of state and society—such as Black Marxist histories of “racial capitalism”—in which the perception of free exchange between equal partners to contract actually allows for exploitation and expropriation. They write:

Expropriation and exploitation operate as foundational features of a liberal order that, though it appears to be rooted in voluntary agreements among equals, is actually organized around hierarchical power relations rooted in class, race, gender, and other axes of social dominance . . . . Predatory modes of dispossession, such theorists argue, have long played a central role in enriching dominant groups and building and funding liberal state and market institutions, underwriting civic hierarchies, and sustaining the social order.<sup>15</sup>

As these authors argue, such an approach encourages scholars to situate the diverse revenue schemes tied to the contemporary criminal legal system within broader histories of dispossession in the United States, linking them to other predatory financial practices, such as payday loans and subprime lending, that turn the structural disadvantage of marginalized communities into profitable revenue streams.<sup>16</sup> This approach signifies an important development in the literature that expands the historical and conceptual focus of LFOs to predation, and at the same time, narrows our attention toward “predatory and contractual governing *practices*.”<sup>17</sup>

Brittany Friedman furthers this approach through an analysis of “racial capitalism penology” and monetary sanctions. Here, Friedman develops the concepts of “carceral immobility” and “financial capture” to examine “racial capitalism penology’s human toll.”<sup>18</sup> These concepts highlight how penal systems restrict the physical mobility of system-involved individuals—through formal, informal, and extralegal means—in ways that generate financial benefits for the state. As the need for financial and symbolic returns increases, so does the urge to immobilize. Fundamentally, however, these concepts are constructed on a historical reading of penal debt as strictly through the Black experience:

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<sup>12</sup> Page et al., *supra* note 11.

<sup>13</sup> See Carole Pateman & Charles Mills, *Contract and Domination* (2007).

<sup>14</sup> Joshua Page & Joe Soss, *Criminal Justice Predation and Neoliberal Governance*, in *Rethinking Neoliberalism* 144 (Sanford F. Schram & Marianna Pavlovskaya eds., 2017); Page et al., *supra* note 11; see also Friedman, *supra* note 6.

<sup>15</sup> Page et al., *supra* note 11, at 152.

<sup>16</sup> *Id.*

<sup>17</sup> Page & Soss, *supra* note 14, at 144.

<sup>18</sup> Friedman, *supra* note 6.

Manifesting first through chattel slavery we see the free trade of bodies to ensure a docile work-force. . . . Upon Emancipation, racial capitalism penology incarnated as neoslavery with the same legal, financial, and family institutions that owned slaves, now using freed Blacks for debt peonage in hard labor camps in order to pay off monetary sanctions accrued from falsely charging them with vagrancy, a tactic to prevent the movement of Black labor. It is these two earlier institutional arrangements that set the stage for racial capitalism penology's contemporary progression as neoliberalism.<sup>19</sup>

Thus, Friedman emphasizes how criminal justice debt functions as a mechanism of economic control by restricting the mobility of Black individuals, binding them geographically and appropriating their labor—positioning these processes as central to the operation of criminal justice debt. However, this analysis does not account for the distinct experience of Indigenous peoples under settler colonialism, wherein predatory mechanisms were historically employed to facilitate land dispossession by forcibly mobilizing Indigenous nations *away* from their lands.<sup>20</sup>

Analyses of the U.S. criminal justice system and criminal justice debt that rely solely on the framework of racial capitalism often focus narrowly on the racialization and domination of Black populations. While this is crucial, such an approach can obscure the distinct experiences of Indigenous peoples, particularly the ways state-sanctioned financial practices—often framed as punishment—have facilitated the dispossession of Indigenous lands. This analytical narrowing also elides a foundational reality: U.S. capitalism and its penal institutions have been built on the colonization and displacement of Indigenous nations. That foundational dispossession creates the structural conditions under which Indigenous people—and other racialized groups—are targeted by state financial takings.<sup>21</sup> Without attending to how both racialized and colonial violence shape racial capitalism, the limitations observed in Friedman's account extend to other influential analyses of criminal justice debt under neoliberalism. The failure to treat settler colonial dispossession as integral to the history of racial capitalism risks mischaracterizing the roots of financial predation as solely racial rather than also territorial and jurisdictional.<sup>22</sup>

Page et al. call for a framework that situates criminal justice debt within broader histories of state financial extraction.<sup>23</sup> We therefore adopt the concept of predation alongside Indigenous critique to trace how financial extraction from Indigenous peoples is part of a much longer history of settler colonial dispossession in the United States. We then connect this historical pattern to contemporary tribal-state relations. Drawing on Indigenous scholarship, we show that financial predation is not merely an economic tool but a political strategy: a sustained method of structural violence that secures settler claims to

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<sup>19</sup> *Id.* at 2.

<sup>20</sup> See Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* 6-15 (2014).

<sup>21</sup> *Id.*; see also Robert Nichols, *The Colonialism of Incarceration*, 17 *Radical Phil. Rev.* 435 (2014).

<sup>22</sup> Siddhant Issar makes a similar argument, although with a focus on theorizations of primitive accumulation. See Siddhant Issar, *Theorising "Racial/Colonial Primitive Accumulation": Settler Colonialism, Slavery, and Racial Capitalism*, 63 *Race & Class* 23 (2021).

<sup>23</sup> Page et al., *supra* note 11.

land, reinforces structural inequality, and conceals the mechanisms of resource seizure. As many Indigenous scholars emphasize, fully understanding these dynamics requires attending to *territoriality* and to the transformation of Indigenous lands into private property under U.S. settler sovereignty.

Reconstructing these historical moments by “reckoning with the ways American capitalism is also constitutively structured by settler colonialism,” as Siddhant Issar describes,<sup>24</sup> offers insight into the social logics and financially predatory mechanisms that pauperized geographically disperse Indigenous nations by displacing their relationship to land in the broader process of settler-colonial and capitalist expansion. In the following section, we endeavor to clarify how the expansion of financial predation—criminal justice debt, pay-day loans, subprime mortgages—is not only a function of racial capitalism but has long been a fundamental mode of settler colonial conquest. In doing so, we hope to further demonstrate how settler-colonial political motivations—not strictly financial need—drive the expansion of financial predation. Although some aspects of the following analysis are specific to the Indigenous nations discussed, these cases reflect a broader, evolving, and unfinished process through which settler society seeks to establish and legitimize itself in a “new world.” In this sense, the examples that follow are illustrative of the financially predatory schemes—and broader projects of predation—used to dispossess Indigenous nations of their homelands.

## II. Dispossession by Financial Predation

In episodes that determined the fundamental character of mortgages and money in America, the colonial economy grew thanks to credit and land acquisition.

K-Sue Park, 2016

Some of the earliest modes of predation used to dispossess Indigenous nations of their lands can be seen through debt creation. By examining the use of mortgages and the practice of foreclosure in colonial America, it becomes clear that debt and Indigenous dispossession were fundamental to the development of settler colonialism and contemporary capitalism.<sup>25</sup> At the heart of these predatory lending practices were disparate understandings of trade, credit, and land. While trade and economic activity between European and Indigenous nations were premised on fundamentally different motivations, meanings, and values, European colonists made use of these differences to create leverage over Indigenous people. For example, although the Indigenous peoples of the Connecticut River Valley did not believe that land could be alienated in the way Europeans did (that is, land is not a commodity that could be “owned,” let alone bought or sold), nor did they appear to have a conception of “credit”—which they seemed to understand as conceptually similar to “gift”—colonists frequently extended “credit” (in the form of goods) to them with land used as collateral that could be and was foreclosed on. The novelty of foreclosure

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<sup>24</sup> Issar, *supra* note 22.

<sup>25</sup> K-Sue Park, *Money, Mortgages, and the Conquest of America*, 41 *Law & Soc. Inquiry* 1006 (2016).

in colonial America was not only accompanied by misconceptions between Indigenous peoples and European colonists, but also by historical accounts and “mythologies that have long justified the material practices of colonization.”<sup>26</sup>

European colonists often encouraged Native peoples to take on debt, and there were numerous ways in which debt could be mobilized toward dispossession. For example, Jean O’Brien has detailed the overwhelming nature of debt among Indians in colonial New England, illustrating how targeted enforcement of the law could be an effective means by which Indians could be prevented from refusing an offer of sale for their lands.<sup>27</sup> Similarly, coercion and debt played central roles in the dispossession of the Narragansett, a case that demonstrates the importance of problematizing the narrative of *choice* in the historical retelling. Using the law as a marker of the increasing pressures facing the Narragansett, scholars have shown how the enactment and enforcement of settler colonial laws targeted Indigenous lifeways and restricted their agency and movement.<sup>28</sup> A few of these early laws included bans on Narragansett hunting, trapping, and being “idle” near settlements.

As these laws increased over time, they became progressively more punitive, and enforcement took on a distinctly financial dimension. In 1659, the Rhode Island colony passed legislation authorizing the enslavement and overseas sale of Indigenous individuals as a means of resolving criminal charges related to unpaid debts.<sup>29</sup> By the following year, colonial tensions over control of the Narragansett intensified. In response to Indigenous resistance and mounting debts, the New England Confederation—representing several colonies including Connecticut and Massachusetts—issued a coercive ultimatum: if the Narragansett failed to deliver 595 fathoms of wampum (decorative shells or beads) “in expiation of their crimes” within four months, Connecticut would use force to seize payment.<sup>30</sup> If they were not able to pay, the Narragansett were “graciously” allowed to mortgage their entire territory to the Confederation.<sup>31</sup> Massachusetts militia captain, Humphrey Atherton, intervened and offered to pay the debt himself in exchange for the mortgage to be transferred to his land company—an early example of trading in Indigenous debt for its foreclosure value. Within six months, the entirety of Narragansett Country had been claimed. Dispossession in colonial New England thus occurred not only through violence and legal punishment, but also through calculated financial strategies that exploited divergent understandings of land, debt, and credit.

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<sup>26</sup> Id. at 1009.

<sup>27</sup> Jean M. O’Brien, *Dispossession by Degrees: Indian Land and Identity in Natick, Massachusetts, 1650-1790*, at 197 (1997).

<sup>28</sup> Michael Murphy, “No Beggars Amongst Them”: Primitive Accumulation, Settler Colonialism, and the Dispossession of Narragansett Indian Land, 42 *Human. & Soc’y* 45 (2018).

<sup>29</sup> Park, *supra* note 25.

<sup>30</sup> Id. at 1028.

<sup>31</sup> Id.

As president of the United States, Thomas Jefferson explicitly endorsed financial predation as a tool of land dispossession. He advocated for trading posts to allow Indigenous leaders to make purchases solely on credit, thereby creating debts so large that the federal government could compel land cessions as repayment. As he put it:

To promote [their] disposition to exchange lands . . . we shall push our trading houses and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cessation of lands.<sup>32</sup>

This strategy of inducing debt to facilitate land loss was not an isolated episode but a recurring feature of U.S. Indian policy. The men who negotiated treaties on behalf of what had recently become the United States—the so-called foot soldiers of federal Indian policy—were often closely tied to the declining fur trade economy. But many became wealthy real estate speculators, bankers, and mining elites by structuring treaties to divert federal payments toward settling Indigenous debts.<sup>33</sup> As Martin Case observed, “treaty after treaty became a bailout of the fading fur trade companies.”<sup>34</sup>

Decades later, in what would become the American Midwest, the American Fur Company raised its prices by 300 percent during the Dakota and Ojibwe hunting season of 1837. Hunters returned unable to pay for the material necessities they required. Though traders anticipated that the fur trade was collapsing after years of over-hunting, they “offered virtually unlimited credit, encouraging indigenous traders to secure whatever their families needed.”<sup>35</sup> As hunters were unable to feed their communities, Dakota and Ojibwe nations obtained food and supplies on credit. By this time, Minnesota statehood was on the horizon and traders foresaw an opportunity to recover these debts through treaties. Obtaining Dakota and Ojibwe lands became the joint effort of the American Fur Company and the U.S. government.

Minnesota tribes became trapped in a debilitating cycle of starvation and debt as the fur trade declined and ultimately collapsed. When trading companies abruptly cut off credit, Ojibwe and Dakota nations were pushed to the treaty table under mounting pressure. During the 1837 Ojibwe treaty negotiations, as government representatives emphasized the region’s fertile land and abundant pine timber, Ojibwe leaders insisted on preserving their right to continue making maple sugar and explicitly excluded deciduous forests from the proposed land cession.<sup>36</sup> When the negotiations were concluded, the Ojibwe were offered a treaty that included annuity payments and \$70,000 earmarked for repaying traders.

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<sup>32</sup> Thomas Jefferson, Letter to William Henry Harrison (Feb. 27, 1803), in Founders Online, Nat’l Archives (<https://perma.cc/PB69-7729>) (originally published in 39 The Papers of Thomas Jefferson, 13 November 1802 to 3 March 1803, at 589-93 (Barbara B. Oberg ed., 2012)).

<sup>33</sup> Martin Case, *The Relentless Business of Treaties: How Indigenous Land Became U.S. Property* 60 (2018).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 59.

<sup>36</sup> *Id.* at 101.

Though the Ojibwe leaders objected, pointing out that traders had long taken fish and timber from the territory without compensation, they ultimately signed the treaty.

In 1851, Dakota leaders met with representatives of the U.S. government and the Minnesota Territory to discuss a massive land cession: nearly all of the Dakota homelands in what is now the state of Minnesota. The Dakota were reluctant to cede this much land in exchange for a 10-mile-wide reservation along the Minnesota River. In response, government negotiators threatened to seize the land without compensation through military force. After meetings ended without an agreement, territorial governor Alexander Ramsey escalated the pressure by withholding food until the Dakota returned to negotiations.<sup>37</sup> When the Dakota finally agreed to a cession in exchange for roughly \$3 million, \$300,000 was earmarked for managing their relocation to the reservation along the Minnesota River. But unbeknownst to the Dakota, traders had arranged a separate deal with the government in which \$240,000 of the total sum was diverted to them to cover supposed debts.<sup>38</sup>

The use of debt arrangements in Indian treaties was widespread and extended well beyond Minnesota. However, the financial predation embedded in these treaties and the dispossession they enabled did not end there. The treaty process routinely generated economic benefits for settler actors at the expense of Indian nations. Annuity payments were often reduced or withheld by the Indian Agents sent to deliver them, and treaties offered virtually no protection when the federal government later authorized land grants on unceded Indigenous territory to build, for example, railroads and state universities.<sup>39</sup>

When the United States formally ended treaty-making with tribes in 1871, federal policy shifted toward assimilation. The General Allotment Act of 1887, also known as the Dawes Severalty Act, sought “to replace the elimination of Natives physically with their assimilation juridically and economically.”<sup>40</sup> Under the act, Indians were expected to assimilate through private land ownership and the adoption of farming. After dividing tribal lands among tribal members, the federal government declared the remaining “surplus” lands available for sale to settlers. The fragmentation and privatization of tribal lands resulted in significant and widespread loss of Indigenous territory, much of it through fraud and tax foreclosures.

As in previous periods, Indigenous nations were not only dispossessed in the immediate aftermath of allotment but also subjected to compounding land loss that continued long afterward. Rose Stremlau’s work on the impacts of the Curtis Act of 1898<sup>41</sup> illustrates

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<sup>37</sup> *Id.* at 150.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 154.

<sup>40</sup> Alyosha Goldstein, *Finance and Foreclosure in the Colonial Present*, 118 *Radical Hist. Rev.* 42 (2014).

<sup>41</sup> The 1898 Curtis Act subjected the Five Tribes (the Cherokee, Choctaw, Chickasaw, Creek, and Seminole nations) to allotment, despite much tribal opposition. See Julie L. Reed, *Serving the Nation: Cherokee Sovereignty and Social Welfare, 1800-1907*, at 253-54 & 261-63 (2016).

how financial predation continued through the complexities of taxing allotted lands.<sup>42</sup> Whereas credit had previously been used to accumulate Indigenous lands through debt, taxation became a new tool for creating debt to achieve similar outcomes. When oversight of Indian lands shifted from the Cherokee nation to the federal government and later then to the state of Oklahoma, state-appointed lawyers and judges took control over the day-to-day management of Cherokee estates. This transition coincided with the federal government's ban on the official Cherokee Nation newspaper, the *Advocate*, which was the primary source of information for Cherokee citizens. Thus, Cherokee citizens were left with limited access to information about taxation protocol.<sup>43</sup> When some Cherokee became delinquent, local settler newspapers were quick to publish the lists of allotted lands slated for sale to cover the debts, accelerating further dispossession.

Today, the creation of debt remains a primary tool of financial predation under settler colonialism and racial capitalism. However, Indigenous nations have also faced a related but distinct form of predation that parallels contemporary LFOs: the appropriation and mismanagement of funds already in their possession. While debt creation imposes new financial burdens, mismanagement redirects existing Indigenous resources into the hands of the U.S. government, its officials, and private corporations. The federal office of Indian services was notoriously corrupt throughout the mid-to-late nineteenth century, exacerbating poverty in Native communities. This manufactured impoverishment provided the rationale to further dismantle reservations through actions such as allotment and termination. Consequently, mismanagement of funds is not only the theft of tribal assets but a structural mechanism that, like penal debt, legitimates continued resource seizure under the guise of failed self-sufficiency.

In 1996, Blackfoot citizen and treasurer, Eloise Cobell, discovered significant discrepancies in the U.S. government's financial (mis)management of Blackfoot nation land via Individual Indian Money (IIM) account holders. This led to one of the most complex and largest financial lawsuits against the United States: *Cobell v. Salazar*.<sup>44</sup> Citing a breach of the ongoing federal trust obligation to Native Nations, the lawsuit requested an accounting of individual American Indian trust assets.<sup>45</sup> At the heart of the *Cobell* case was the issue over "trust land", or title land held in trust and managed by the federal government on behalf of Indigenous nations. Cobell argued that financial proceeds from trust land were being mismanaged and siphoned away from Indigenous nations and their citizens through accounting errors, inappropriate fund diversion, and outright theft.<sup>46</sup> Thus, while Indigenous nations were generating income from their own land, they had also been denied access

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<sup>42</sup> Rose Strelau, *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (2011).

<sup>43</sup> *Id.* at 187.

<sup>44</sup> *Cobell v. Salazar*, 573 F.3d 808 (D.C. Cir. 2009).

<sup>45</sup> Jered T. Davidson, *This Land Is Your Land, This Land Is My Land? Why the Cobell Settlement Will Not Resolve Indian Land Fractionation*, 35 *Am. Indian L. Rev.* 575 (2010).

<sup>46</sup> Donald L. Fixico, *Bureau of Indian Affairs 197* (2012).

to that revenue.<sup>47</sup> The case was settled for \$3.4 billion in 2010 when Congress passed the Claims Resolution Act (CRA),<sup>48</sup> which was only a small fraction of the plaintiffs' estimate of \$137.2 billion in unpaid trust funds between 1887 and 2000.

In a related critique, Alyosha Goldstein identified a form of discursive foreclosure in the *Cobell* case, highlighting how legal institutions work to govern and discipline historical memory. Goldstein argues that jurisprudence often frames—and justifies—histories of dis-possession within broader narratives of national progress and improvement. For example, Democratic supporters of the CRA settlement framed it in terms of managing debt and restoring government accountability, thereby masking deeper structural histories of extraction and erasure.<sup>49</sup> Since the *Cobell* settlement, the U.S. Department of Justice reported that more than 80 similar lawsuits have been filed alleging breach of trust for federal mismanagement of Indigenous financial assets and natural resources.<sup>50</sup>

While many of these tactics of financial predation were enacted by the federal government, contemporary forms increasingly originate from state and local governments. In rural regions where tribal and non-tribal jurisdictions overlap, county and municipal governments, which—unlike the federal government—are not generally charged with formal expectations of responsibility to Indigenous Nations, have long aimed to erode and dismantle tribal sovereignty through financially predatory methods. These often include conflicts over jurisdiction, taxation, and regulation.

For example, the proposed Northeastern Arizona Development Act (NADA) traces back to musician Jesse Valencia, who originally invented “Sitgreaves County” as a Borat-style publicity stunt for his band and film project.<sup>51</sup> What began as satire, however, quickly took on a life of its own. Far-right activists and Republican lawmakers embraced the proposal to carve a new county out of Apache and Navajo Counties, with bills that nearly advanced in the Arizona legislature. Proponents claimed that the new change would ease rural poverty where “income is low, while property tax rates are high.”<sup>52</sup> In practice, however, the proposed boundaries would have excluded the Navajo Nation and its citizens from the new county. Although many Diné residents pay federal income and sales taxes, they do not pay state property taxes because their land is held in federal trust and cannot

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<sup>47</sup> Courtney Lewis, *Economic Sovereignty in Volatile Times: Eastern Band of Cherokee Indians' Strategies Supporting Economic Stability*, 38 *Rsch. Econ. Anthropology* 126 (2018).

<sup>48</sup> Claims Resolution Act of 2010, Pub. L. No. 111-291, 124 Stat. 3064 (2010).

<sup>49</sup> Goldstein, *supra* note 40.

<sup>50</sup> Department of Justice Office of Public Affairs, Interior, Justice Departments Announce \$940 Million Landmark Settlement with Nationwide Class of Tribes and Tribal Entities, Sept. 17, 2015 (<https://perma.cc/7GMJ-BR3P>).

<sup>51</sup> John D'Anna, “Sitgreaves County” Publicity Stunt Nearly Changed Map of Arizona, *Ariz. Republic*, July 24, 2021; John D'Anna, A Fictional County Nearly Led to Real Secession in Eastern Arizona, *Ariz. Republic*, July 25, 2021.

<sup>52</sup> L. Parsons, Changes Being Proposed to Formulate New County, *The Tribune*, Dec. 3, 2018 (<https://perma.cc/J3RH-WJNP>).

be privately owned. Nonetheless, Valencia's satire was successful because it surfaced a common perception among local non-Indigenous residents that Indigenous people were receiving unfair tax benefits. Thus, the NADA became a pretext to frame Navajo citizens as an economic burden and to exclude them from upwardly mobile settler polities. This example further illustrates the entanglements between private property ownership under racial capitalism and the territorial logics of settler colonial dispossession.

Contemporary taxation disputes also highlight broader patterns of fiscal control over Indigenous economic activity, particularly in relation to gaming on trust land. Through legislation such as the Indian Gaming Regulatory Act (IGRA), Congress has asserted the authority to constrain Indigenous economic sovereignty by mandating revenue-sharing arrangements and enabling states to exert legal and economic influence over tribal nations. While gaming has become one of the most recognizable modes of Indigenous economic development, it also illustrates a straightforward case of continued financial predation today, emerging alongside the rise of the penal state and the expansion of legal financial obligation practices.

The roots of the IGRA trace back to the aftermath of the Civil Rights and Red Power movements of the 1960s and 1970s when federal policy briefly shifted toward supporting tribal self-determination. By 1985, approximately 80 tribes were operating gaming enterprises as expressions of their economic and jurisdictional sovereignty.<sup>53</sup> In response, states began issuing court challenges aimed at capturing a share of the profit from Indigenous revenues. While Indigenous nations accrued some early success affirming their economic sovereignty in the court, state pressure ultimately led to the IRGA.

While the IGRA was framed as protecting the ability of Indigenous nations to operate gaming facilities, it imposed significant constraints. It conditioned Indigenous gaming on state-approved compacts, effectively making tribal economic sovereignty contingent on the state. These mandatory compacts allow states to extract a portion of tribal gaming profits, with the only stipulation that they act "in good faith." However, the IGRA does not provide for a remedy for tribes to pursue if they do not.<sup>54</sup> In contrast, non-Indigenous gaming enterprises often receive tax breaks, settlements, and significant political support.<sup>55</sup> The IGRA also limits how tribal gaming revenues may be spent, including capping direct payments to tribal citizens, though similar limitations are not applied to non-Indigenous gaming interests.<sup>56</sup> While many Indigenous nations have worked toward negotiating equitable compact agreements, this model of "compacting" between state and tribal governments has expanded beyond gaming to other areas, such as policing and criminal justice in Indian

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<sup>53</sup> Robert J. Miller, *Reservation "Capitalism": Economic Development in Indian Country* 76 (2012).

<sup>54</sup> Courtney Lewis, *Sovereign Entrepreneurs: Cherokee Small Business Owners and the Making of Economic Sovereignty* (2019).

<sup>55</sup> See, e.g., Andrew Beam, *Candidates Discuss Tax Abatements, Youth Programs*, Record Online, Oct. 16, 2015 (<https://perma.cc/53SW-WQ44>); Russ Buettner, *Trump Casinos' Tax Debt Was \$30 Million. Then Christie Took Office*, N.Y. Times, Aug. 16, 2016 (<https://perma.cc/EZG9-UMMR>).

<sup>56</sup> Indian Gaming Regulatory Act, Pub. L. No. 100-497, 25 U.S.C. §§ 2701-2721 (1988).

Country. These compacts facilitate the transfer of Indigenous wealth to state and local governments under the guise of intergovernmental cooperation, thereby extending the predatory financial logics of settler colonialism into new institutional domains.

Tribal-state policing and deputization agreements—such as the 2021 Cooperative Law Enforcement Agreement between Sawyer County and the Lac Courte Oreilles (LCO) Band of Lake Superior Chippewa<sup>57</sup>—offer a striking example of contemporary settler colonial financial predation. Framed as collaborative solutions to law enforcement challenges, these agreements often obscure how state systems mobilize legal and financial mechanisms to entrench jurisdictional authority over tribal lands while extracting resources from Indigenous nations. The agreement between LCO and Sawyer County exemplifies this process by justifying law enforcement expansion through racialized and criminalizing narratives of Indigenous mobility. In a key passage used to support a grant application, the agreement states:

The number of Tribal Members continues to increase. Members and their families continue to return from metropolitan areas across the country. It is important to note that this has contributed to ongoing alcohol/drug abuse problems on the reservation. The Tribe alone is unable to adequately address these law enforcement concerns.<sup>58</sup>

Here, the return of tribal citizens to their homelands—a practice rooted in Indigenous sovereignty, kinship, and survival—is framed not as a political or cultural resurgence but as a liability. This framing transforms Indigenous mobility into a risk narrative that legitimizes state policing expansion. In doing so, it echoes long-standing settler logics that cast Indigenous presence on the land as disorderly, threatening, or in need of management,<sup>59</sup> and converts the demographic presence of Native people into a rationale for securing public funds under state control.

The financial architecture of the agreement compounds this extractive dynamic. Although the agreement is structured as a “cooperative” program, it is premised on the Sheriff’s Office receiving grant funding—much of which originates in part from the Tribe’s own gaming revenues—while maintaining supervisory control over the deputized officers. Deputies employed through this funding are not integrated into a tribal chain of command; rather, they operate under the sheriff’s authority, enforcing state laws on tribal land while referring only certain non-criminal violations to Tribal Court. As such, the agreement reinscribes settler state jurisdiction over tribal territory while extracting financial value from tribal-state partnerships—what might be understood as a form of *jurisdictional siphoning*.

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<sup>57</sup> U.S. Department of Justice, COPS Program (2021) (<https://perma.cc/2GGE-XEG9>).

<sup>58</sup> *Id.* at 5.

<sup>59</sup> Luana Ross, Settler Colonialism and the Legislating of Criminality, 40 *Am. Indian Culture & Rsch. J.* 1 (2016).

Further, these kinds of policing agreements are often accompanied by claims that Public Law 280 imposes burdens on counties by requiring them to police reservations without corresponding tax revenue from tribal lands.<sup>60</sup> Yet this logic erases the broader political and economic context in which tribal sovereignty is both constrained and commodified. As illustrated in the Sawyer County-LCO agreement, tribal contributions through gaming compacts and cooperative grants are positioned as necessary offsets to perceived county burdens, reinforcing a fiscal relationship that depends on tribal wealth while subjugating tribal governance.

Taken together, such agreements function as a contemporary mechanism of settler colonial financial predation. They convert Indigenous return and presence into administrative problems, entrench state control over tribal law enforcement practices, and capture Indigenous-generated revenues under the guise of cooperation. In this way, they sustain the project of dispossession not only through territorial occupation but through the bureaucratic management of law, funding, and public safety.

### III. Settler Colonial Financial Predation

Conceptualizing LFOs and criminal justice debt more broadly as a recent phenomenon or as simply a product of neoliberalism risks obfuscating the deeper, enduring dimensions of state financial predation. Likewise, analyses that focus exclusively on the criminal legal field or center solely on the Black experience overlook the foundational role of Indigenous dispossession under settler colonialism in producing the structural conditions for such practices.

Much of the scholarship on legal financial obligations and resource extraction within the criminal legal field has yet to fully engage with the entangled—but analytically distinct—histories of racial capitalism and settler colonialism. As a result, this literature often overlooks the distinctive experiences of Indigenous peoples, which are rooted not only in processes of racialization, but in territoriality and the ongoing project of land dispossession. As Indigenous scholar Joanne Barker has argued, the erasure of Indigenous experience is not remedied by mere inclusion—especially when colonization is framed as a historical event rather than a continuing structure.<sup>61</sup>

By tracing a broad arc of historical and geographic cases, we have shown that financial predation is not incidental, but central to the territorial governance of settler colonialism and remains a condition of possibility for racial capitalist penology in the United States. While these practices may appear as economic in form, their underlying function is political: to destabilize Indigenous sovereignty, extract value, and assert settler jurisdiction.

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<sup>60</sup> See, e.g., Cost of Tribal Crime Has Montana County Struggling, *Courthouse News*, Mar. 1, 2017; JoVonne Wagner, CSKT, County Await Legislative Action on Police Reimbursement, *Mont. Free Press*, Apr. 20, 2023 (<https://perma.cc/3SZF-Q4EE>); California Roundtable Dissects Detriments of Public Law 280 to Tribal Public Safety Sovereignty, *Native News Online*, Mar. 28, 2024 (<https://perma.cc/H5UG-AT9M>).

<sup>61</sup> Joanne Barker, *Territory as Analytic: The Dispossession of Lenapehoking and the Subprime Crisis*, 36 *Soc. Text* 24 (2018).

Neoliberal expressions of financial predation have not replaced these logics but have evolved in relation to the historical imperatives of settler colonial governance—particularly territorial control and the consolidation of settler claims to land and resources.

We offer the framework of predation to foreground the continued use of financial predation as a method of settler colonial dispossession and management of territorialized violence. The predation frame reveals how financial extraction operates not only as a material strategy but as a technology of settler colonial *political domination* that has been implemented through various means, supported by the settler state, and carried out across temporally and geographically diverse contexts. Indigenous critique helps to illuminate the way entwining material and discursive practices of settler colonial dispossession—the predation and other means of violence through which it is accomplished—effectively mask the process of procurement and ensure its continuation.

Crucially, these practices are not anomalous or incidental. They reflect a long-standing governmental proficiency in financial predation—expertise honed through centuries of settler colonial dispossession and adapted to shifting political and economic regimes. Local, state, and federal governments have developed and institutionalized extractive techniques that convert structural inequality into settler advantage, reaffirming jurisdictional authority while appearing as routine governance. Rather than emerging solely from neoliberal austerity or racial capitalism, contemporary predation regimes represent the latest articulation of this settler colonial repertoire.