

Carceral Intent

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Abstract

For decades, scholars across disciplines have examined the stark injustice of American carceralism. Few, however, have examined U.S. incarceration law through the lens of “carceral intent,” a term this Article coins as a taxonomic label for the various intent requirements embedded in the law of incarceration. Fewer scholars have analyzed the role of carceral intent in shaping and maintaining the deep-rooted racism and sweeping harms of America’s prison system. This Article does both. Drawing upon critical race scholarship that examines anti-discrimination doctrine and the concept of “white innocence,” this piece synthesizes the law of “carceral intent” and shows that the law’s contemporary focus on carceral intent in challenges to the scope and conditions of incarceration engrains the U.S. prison system’s profoundly racist and unjust features.

In the wake of the Black Lives Matter-led protests of 2020 and what many deem the largest movement in U.S. history, activists’ and scholars’ calls for a Third Reconstruction have emerged—a collective awakening to the modern entrenchment of structural racism and a recommitment to advancing racial justice and equity. An element of this reimagining requires a reckoning with American carceralism and the ways in which the law’s devotion to carceral intent ignores carceral effect.

Bio

Danielle C. Jefferis is an associate professor at California Western School of Law where she teaches Civil Procedure I and II, Civil Rights Law, Prison Law, and Race and the Law. Professor Jefferis’s research focuses on theories of punishment and the law and policy governing prison and detention. She takes both critical and comparative approaches to her work, looking at carceral systems, practices, and theories around the world. Professor Jefferis has presented her research at Harvard Law School, the University of Texas at Austin, the University of Denver College of Law, Loyola University School of Law, the University of Queensland (upcoming), and the Australian National University (upcoming), among others. She has provided expert commentary on private detention issues for national and international media outlets, including VICE, Mother Jones, and NowThis, and has been solicited as an *amicus curiae* for cases involving prison law and prisoners’ rights around the country.

Keywords

Eighth Amendment, civil rights, prisoners’ rights, prison law, incarceration, critical race theory