



and rendered all emancipated Blacks as possible fugitives of the law regardless of whether they had proper documentation or not. To borrow a Tina Campt quote from *Another Life is Possible: Black Fugitivity and Enclosed Places* by Damien M. Sojoyner: “the concept of fugitivity highlights the tension between the acts or flights of escape and creative practices of refusal, nimble and strategic practices that undermine the category of the dominant.” Fugitivity is the tendency or quality of Blackness to flee, subvert, or evade the reaches of capture and breach the thresholds of state containment.

Fugitivity, this defining struggle of Blackness to perpetually escape and refuse the terms of enclosure and domination imposed by colonialism and white supremacist capitalism, finds in the law its most concrete analogy. To be a fugitive in the most basic sense was to engage in an act of flight from the law. But these acts of flight were not just singular moments of resistance but also features inherent to Blackness. Fugitivity is useful for our analysis here because it provides a theoretical framework for examining both the ways in which Black illegal forms emerge (as acts of flight) and the means by which Blackness is, in turn, is perpetually criminalized by the state (illegality as an ontological feature of Blackness).

Black criminalization under the state is the enduring legacy of slave law and its afterlives (to channel Saidya Hartman). Sometime during the history of enslavement, this refusal that marked the fugitivity of Black life and survival in the hold became collapsed into the racialization of Black people and was read by the state as a disposition toward criminality. This was in line with earlier antiblack formulations that justified slavery by utilizing biblical references to argue the morally corrupt nature of African people. The formation of slave patrols and use of the white citizenry to police the boundaries of Black containment were crystalized around the emerging notion of Black criminality in the white imagination and anchored by the emerging technologies of the state. The fact that the very origins of law enforcement in the Americas came from the slave patrols drives home the point that the law only ever needed to be enforced when it came to the question of Black people. Blackness becomes criminal precisely at this point, where its refusal is read as an ontological malady, and where the securance of white property interests compel the use of organized law enforcement. Containment again becomes the principal occupation of the state, the law codifies this containment, and the police carry out its enforcement.

Where Fugitive Slave Law regulated emancipated Black life as perpetually outside of the law and subject to recapture, Jim Crow and later mass incarceration repackaged the same legal precedent while revising its application. Of course, the most relevant of these developments in the U.S. is the constitutionality of slavery

