

FRAMING THE SYSTEM OF MONETARY SANCTIONS AS PREDATORY: Policies, Practices, and Motivations

Alexes Harris

INTRODUCTION

While the laws, policies, and court practices vary, each state in the United States imposes some sort of scheme to sentence those who violate the law to pay justice system fees, fines related to specific offenses, and restitution to directly or indirectly reimburse victims, in addition to a host of costs related to non-full payment. Many states have legislatively established “mandatory” fines or fees, where judges have no discretion with regards to whether or not to sentence people, even people deemed indigent.¹ Over the past twelve years, research has emerged to outline local and state level practices, documenting the varying dimensions of court mechanisms used to assess the costs, monitor repayment and nonpayment, and punish people who do not pay.² This research has examined the consequences of judicially-imposed fines and fees on the lives and families of people who owe the debt, the practices by which local jurisdictions collect the penalties, and the disparate effects of monetary sanctions for youth, communities of

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1. See WA STATE SUPERIOR COURTS: 2018 REFERENCE GUIDE ON LEGAL FINANCIAL OBLIGATIONS (LFOs), WASHINGTON STATE SUPREME COURT MINORITY AND JUSTICE COMMISSION (June 2018) <https://www.courts.wa.gov/content/manuals/Superior%20Court%20LFOs.pdf>.
 2. Alexes Harris, Heather Evans, & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary U.S.*, 115 AM. J. OF SOC. 6, 1755 (2010); IN FOR A PENNY: THE RISE OF AMERICA’S NEW DEBTORS PRISON, ACLU (2010); Alicia Bannon, Rebekah Diller, & Mitali Nagrecha, *Criminal Justice Debt: A Barrier to Re-entry*, BRENNAN CENTER FOR JUSTICE (Oct. 4, 2010); Karin D. Martin, et al., *Monetary Sanctions: Legal Financial Obligations in U.S. Systems of Justice*, 1 ANN. REV. OF CRIMINOLOGY 471 (2018); Brittany Friedman & Mary Pattillo, *Statutory Inequality: The Logics of Monetary Sanctions in State Law*, 5 RUSSELL SAGE FOUNDATION J. OF THE SOC. SCIENCES 1, 174 (2019); Beth Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VANDERBILT L. REV. 1, 55 (2019).

color and people who are poor.³ Research has also begun to raise attention to justice practices related to the imposition of fines and fees, such as the privatization of services and products within justice systems and state revenue generation foci and practices. Theoretically, scholars have begun to develop a theoretical framework of the system of monetary sanctions as one that reproduces social and legal inequality as a process allowing for wealth extraction from poor communities, one that has been described as “predatory.”⁴

Given extensive research on the lived experiences of debtors, the concept of predation was a reoccurring theme during the Harvard 2019 convening, “Progressing Reform of Fees and Fines: Towards A Research and Policy Agenda.” Scholars over and over returned to rhetoric that framed the system of monetary sanctions as a greedy and destructive set of practices, purposefully implemented by state policymakers and reinforced by local justice actors. Thus while the framing of some of the pieces in this Volume of the *Criminal Justice Law Review* does not center on predation, their findings fit within three distinct analytic categories—theory, practices and motivations—to illustrate how the system of monetary sanctions could be viewed as predatory. First, authors detailed the system as predatory with broader *theoretical* framing linking the contemporary financial punishment to other current and past systems of social stratification that perpetuate inequality. These scholars use such terms as “economic extraction” and “bleeding the poor” to contextualize the broader historical and institutional setting. Second, others name the system predatory in light of the ground-level *practices* that seek to extract marginal dollars from people who are often poor, homeless, and unemployed. Third, another set of researchers interrogate the *motivations* of justice actors and policymakers as they relate to the system of monetary sanctions. Authors illustrate a voracious drive by policymakers and practitioners to maintain this system and

3. Alexes Harris, Heather Evans & Katherine Beckett, *Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment*, 76 AM. SOC. REV. 2, 1 (2011); ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS A PUNISHMENT FOR THE POOR (2016); Alex Piquero & Wesley Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE AND JUV. JUST. 3, 1 (2017); Leslie Paik & Chiara Packard, *Impact of Juvenile Justice Fines and Fees on Family Life: Case Study in Dane County, WI*, JUVENILE LAW CENTER (2019).
4. Harris et al., *supra* note 2; Mary Fainsod Katzenstein & Maureen R. Waller, *Taxing the Poor: Incarceration, Poverty Governance, and the Seizure of Family Resources*, 13 PERSPECTIVES ON POL. 3, 638 (2015); April D. Fernandes, et al., *Monetary Sanctions: A Review of Revenue Generation, Legal Challenges, and Reform*, 15 ANN. REV. OF L. AND SOC. SCIENCES 1, 397 (2019); Alexes Harris, Tyler Smith, & Emmi Obara, *Justice “Cost Points:” Examination of Privatization Within Public Systems of Justice*, 18 CRIMINOLOGY & PUB. POL’Y 2, 343 (2019); Joshua Page, Victoria Piehowski, & Joe Soss, *A Debt of Care: Commercial Bail and the Gendered Logic of Criminal Justice Predation*, 5 THE RUSSELL SAGE FOUNDATION J. OF THE SOC. SCIENCES 1, 150 (2019).

generate revenue. In sum, these Articles illustrate, analyze and provide evidence for the ways the system of monetary sanctions can be framed as predatory.

I. Framing the System of Monetary Sanctions

Theoretically, scholars frequently describe the sentencing of monetary sanctions to people regardless of ability to pay as predatory in nature, practice and consequence. **Thurston's** article, *Hidden Fees? The Hidden State Framework and the Reform Prospects for Systems of Monetary Sanctions*, provides a useful overarching framework for understanding both the hidden nature of the system of monetary sanctions and also its predatory practices and motivations. She asks readers to reflect on how monetary sanctions lead to systems of stratification and sorting, the "hidden" nature of these practices, and the role of privatization. The piece takes a deep dive into the policies—both how they are drafted by state legislators and how they are imposed by court actors—where the aim is to collect payments via threats and punishments from people who are unable to pay. These sentencing policies imply that the (financial) sentence is attributable to individual behavior, further hiding their role as essentially part of a broader state financial system, such as property or sales taxes. These monetary sanctions thus serve the aim of extracting revenue from poor and disadvantaged people to manage state institutions. What is even more insidious is that the hiddenness of this system makes it difficult for the broader public and even scholars to recognize it as one crafted, imposed, and monitored by the state, with the effect of perpetuating economic inequality. This article exposes fines and fees sentencing for readers to understand it not as an individual punishment, but a predatory system enacted to generate revenue for the state, effectively perpetuating inequality while doing so.

Carrillo's article, *Reflections: Challenging Monetary Sanctions in an Era of Racial Taxation*, encourages advocates and researchers to consider the framing of "fiscal politics" as they relate to monetary sanctions. He asks readers to rethink the increasingly common use of the term "taxpayer" as related to debtors who face the system of monetary sanctions. In a similar way as Thurston, Carrillo argues that the identity category of "taxpayer" is too varied to represent individual debtors, and has been used by the state to represent a different, more affluent "citizen"—and that its use could in fact be counterproductive to reform. He cites the Ferguson Report, which found that police were imposing citations and convictions in order to generate profit, and that the actions of police and courts produced racially disparate outcomes in the course of their attempts to extract that revenue.⁵ In sum, Carrillo suggests advocates need to "avoid the toxic tropes of 'taxpayer identity,' 'taxpayer money,' and

5. UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015).

“taxpayer citizenship” and instead interrogate the governments that imposed these systems of monetary sanctions that are “bleeding the poor.”

Continuing to ask readers to think broadly about the system of monetary sanctions, in *Carceral Immobility and Financial Capture: A Framework for the Consequences of Neoliberal Penology*, **Friedman** develops the terms “carceral immobility” and “financial capture” as conceptual tools for understanding how neoliberal penology structures the human experience with respect to monetary sanctions. Neoliberal penology is the application of market-based logics to the administration of carceral institutions, such as law enforcement, courts, jails, prisons, and supervision. She uses the term “carceral immobility” to represent the consequences of criminal justice punishment and control. In particular, she highlights how the systems of monetary sanctions limit the mobility of debtors, either physically with incarceration, or financially via debt and resulting penalties for nonpayment, and the cognitively-related stress and strain created by the burden of debt. Friedman suggests these criminal justice practices force people “to embody carcerality.” Again, this framework views the sentencing of fines as fees as a predatory system enacted to control bodies, most of which are disproportionately poor people and people of color.

II. Monetary Sanction Policies and Practices

In addition to helping readers understand where and how the system of monetary sanctions fits within broader structural and social control forces, many of the articles in this Volume outline the practices and policies used to implement financial sentences. In relation to the notion of predation, these practices can be grouped into two categories: those practices that lead to the hypersurveillance of, and punishments inflicted on, the people carrying court debt, and those that allow private profit to accrue to third-party entities which have become embedded in systems of justice across the US.

A. *Hyper Surveillance and Punishments*

An increasing amount of scholarship to date has outlined the criminal justice consequences related to nonpayment of court-imposed monetary sanctions. In a research update to an eight-state study of monetary sanctions, **Shannon** and colleagues, in *The Broad Scope and Variation of Monetary Sanctions: Evidence from Eight States*, find that across multiple types of court actions, noncompliance with court payments can result in expanded costs, such as late payment penalties, interest, and collection fees. In addition, nonpayment can result in additional legal consequences, such as extended court supervision, probation, and incarceration. This summary of research to date highlights the various practices used by court officials to enforce monetary sanctions.

In a specific focus on police practices, **Brett**, in *Reforming Monetary Sanctions, Reducing Police Violence*, explores the “touchpoints

of the problems” related to justice-sanctioned fines and fees by highlighting the role of police officers’ discretion to issue citations, arrest for nonpayment, and pursue criminal charges in courts. She illustrates how police violence—often related to broken windows and for-profit policing—disproportionately occurs in communities of color. The article details the ways in which police actions exert power and control over citizens, framing such events as “inherently violent and predatory.” This article centers predatory practices, motivations, and the incessant criminal justice foci on citations, fines, fees and warrants as a driving aim of policing.

Link and colleagues, in *Monetary Sanctions, Legal and Collateral Consequences, Probation and Parole: Where Do We Go From Here?*, examine probation and parole practices related to financial penalties. This article offers an initial analysis of their study on probation and parole that highlights some practices steeped in the current offender-funded model of criminal justice supervision. The authors point to a tension between traditional punitive penological goals and revenue generation, which has led to more criminal justice entanglement.

The Sebastian and Turetsky and Waller articles ask readers to consider issues that we may not have thought to be linked to monetary sanctions by illustrating important legal, financial, and social linkages. These practices can be viewed as predacious in the sense that they deprive citizens of their fundamental rights solely because of their poverty status. This, in many respects, destroys people’s ability to function as citizens. **Sebastian** and colleagues, ask readers to consider the legal consequence of disenfranchisement as it relates to unpaid monetary sanctions. In *Democracy, if You Can Afford It: How Financial Conditions Are Undermining the Right to Vote*, the authors highlight ways that postconviction unpaid monetary sanctions are linked to voting restrictions, the barriers that unconvicted people face while detained in jail, and the ways that court debt may undermine civic participation more broadly. **Turetsky and Waller**, in *Piling on Debt: The Intersections Between Child Support Arrears and Legal Financial Obligations*, explore the similarities and differences between monetary sanctions imposed by the criminal justice system and the child support system. A key distinction between court-imposed fines and fees and child support is that, legally fines are meant to serve as punishment, whereas child support is intended to address the financial obligation a parent has to their child. However, both sets of costs are similar in that they include fees, interest, and are retained by the State as revenue. Furthermore, these two systems are largely imposed on the same (or substantially similar) populations. The consequences of nonpayment of child support are also similar to the punishments for nonpayment of court fines and fees, such as payroll deductions, incarceration, civil contempt proceedings, and driver’s license suspensions.

B. *Private Profiteering*

An important and growing dimension of the system of monetary sanctions is the partnership between state and local jurisdictions and third-party private companies. This connection mandates punishments that include costs paid to private businesses for services and products. **Katzenstein** and colleagues, in *Alabama is US: Concealed Fees in Jails and Prisons*, explore the concept of “prison retailing” defined by private profiteering related to incarceration and criminal justice processing. The authors use the terms “commercialized (in)justice” and “prison retailing” to illustrate the insidious ways in which court-imposed and other hidden costs are generated as revenue for private corporations. The authors develop the concept of “concealment” to explain “the ways that information is stored out of the ready reach of public scrutiny.” Examples of this hiddenness are irregular audits, ambiguous budgets, and a lack of transparency with respect to private business contracts and revenue amounts. Similar to predatory banking, lending, and pricing, the practices outlined in these articles describe a legal state system that sets up debtors as prey for predatory, revenue-generating private industry.

III. Monetary Sanction Motivations

As this Volume moves beyond analyzing predatory fines and fees policies and practices, authors examine the motivations driving the implementation of systems of monetary sanctions, exploring decisionmakers’ attempts to “draw blood from a stone.” **Modjadidi, Garrett and Brandon Crozier**, in *Undeliverable: Suspended Driver’s Licenses and the Problem of Notice*, discuss their study in which they attempted to mail surveys to 300 people in North Carolina whose driver’s licenses were suspended during 2017–2018 in order to better understand their experiences. The researchers found that nearly one-third of the surveys were returned due to nonexistent or incorrect addresses, indicating that many people with suspended licenses likely never received notices of their court dates or the consequences of nonappearance. The authors accordingly raise the issue of due process: while incorrect addresses maybe a hidden problem related to citing and charging fines and fees, the resulting punishments are clearly motivated by a retributive system of punishment, but one which does not even account for people’s knowledge of their noncompliance. The destructive practice of suspending the driver’s licenses of people who do not know they have violated the law or court orders illustrates court actors’ motivations as centered on generating system revenue without regard to ensuring constitutionalized process or consequence.

While courts might not know or acknowledge that some debtors may be unaware of their violations, **Nichol’s** *Forcing Judges to Criminalize Poverty in North Carolina* argues that lawmakers’ predatory motivations drive the effort to seek and collect court fines and fees. Nichol highlights how fines and fees are used to wage a “war on poor people” in North

Carolina. The article relies on interviews with judges, outlining the ways they feel their discretion is limited by the state's procedure for sentencing monetary sanctions. He notes that less than 5 percent of monetary sanctions are waived in North Carolina, and in one-third of its counties, that the waiver rate is less than two percent, and that in 2011 the state legislature amended the law to apply certain fees automatically upon conviction. The article thus suggests that the legislature has "bullied" judges into imposing more monetary sanctions, in part by requiring judges to justify their decisions to waive fees in cases of hardship or indigency.

The final article in this volume is an insightful, on-the-ground analysis of how the system of monetary sanctions affects the people charged. In *Pay Unto Caesar: Breaches of Justice in the Monetary Sanctions Regime*, **Pattillo and Kirk** analyze interview data with people who have been sanctioned to court debt in Illinois, focusing on the notion of "extortion" and how debtors perceived the courts' intense pressure to recover fines and fees. Respondents described being directly threatened with further punishment by court officials or observing others being threatened and punished in open court. The authors write that "the demands to pay were unrelenting" and that respondents used terms like "greedy, money hungry, a wallet, a cash cow, a money machine, a robber, a paycheck" to describe court officers and their attempts to collect. The authors conclude that an "important insight . . . is the role of penal excess in damaging and humiliating a marginalized population and doing so under the cover of law."

This focus on the "cover of law" brings us back to themes of hiddenness and "penal excess," connoting the predatory nature of the system and illustrating how monetary sanctions' precise role and administration is neither clear to the people sentenced, nor the people citing, sentencing, collecting, and punishing. What *is* clear is that the effect of the system "damages and humiliates" a marginalized population, and that the hidden and predatory nature of this system is clearly brought to light by the impressive work of the authors featured in this volume.

IV. Moving Forward

This collection of articles leave readers with a number of research questions for moving forward. Many of these questions are related to obtaining a better understanding of the financial structure of the system of monetary sanctions and the availability of relevant data. One of the largest open questions is about better insight into the policies and practices that sustain the system of monetary sanctions. How does the financing operate? How much of the revenue generated is retained by local court administrators, how much is used for general state operating funds, and how much supports programs for victims? To date, there is little scholarship uncovering these questions regarding the redistribution of the money generated by financial sanctions. Another area demanding research attention is local jurisdiction and state level data availability.

Do data exist that would allow for such financial investigations? What justice system issues prevent accessing or sharing such data? Grappling with the realities of how the money is disbursed, particularly in relation to victim restitution, would better inform and clarify the overarching stated and implicit aims of the system of monetary sanctions. What, if any, nonpredatory purpose does such an inequality producing system seek to serve?