REFLECTIONS:
Challenging Monetary Sanctions in the Era of Racial Taxation

Raúl Carrillo

Abstract

Although I have provided direct services and engaged in litigation related to municipal fines & fees in New York City, monetary sanctions are not my area of legal expertise. Bearing that in mind, I am offering these thoughts in my capacity as a scholar of law, race, and money, and more importantly, as an organizer for economic justice. I hope the essay facilitates constructive conversations about the frameworks we use to analyze the political economy of monetary sanctions and mass incarceration. I am grateful to the *UCLA Criminal Justice Law Review* and the organizers of "Progressing Reform of Fees and Fines: Towards A Research and Policy Agenda Conference", hosted at Harvard Law School, for the opportunity to share these reflections.

About the Author

The author is the Board Chair of the Modern Money Network; Director of the National Jobs for All Network; Research Fellow at the Global Institute for Sustainable Prosperity; and formerly Special Counsel to the Enforcement Director at the Consumer Financial Protection Bureau.

Table of Contents

Introduction

Although it may have been a conservative British politician, Margaret Thatcher, who epitomized the cynicism of taxpayer politics by declaring, "there is no such thing as public money, only taxpayer money," appealing to taxpayers as fiscal benefactors is now axiomatic in U.S. politics.[1] Politicians and advocates across the political spectrum are quick to label unfavored spending as a waste of "taxpayer money", rather than "government money" or "public money", despite the myriad ways in which governments fund themselves. Today, scholars and activists are increasingly challenging this dynamic, interrogating both the underlying technical analysis and the tendency of the framework to subvert progressive (to say nothing of radical) political projects.

This reflection adopts the spirit of that challenge in discussing "monetary sanctions"—obligations to local governments or their agencies arising from the carceral system, including criminal fines, court fees, and restitution.[2] Thanks to the tireless work of many practitioners, activists, and scholars, it is now well documented that monetary sanctions unjustly punish the poor and discriminate against people of color and other minorities.[3] As such, illustrating how monetary sanctions are actually inefficient at collecting revenue compared to more traditional taxes can spur local governments to reexamine their oppressive practices, as we have already seen.[4]

However, simply asserting that taxes should fund courts and law enforcement bodies because all "taxpayers" are "served by the justice system" elides the deeper politics at play.[5] Indeed, monetary sanctions are popular precisely because local (white, middle class) taxpayers across the country have rejected that very narrative. More importantly, such assertions tend to lead to appeals keyed to interests ostensibly shared by *all* taxpayers, which are truthfully shared only by *some* taxpayers.

Accordingly, this reflection questions whether it is strategic or even coherent to challenge carceral practices, including monetary sanctions,

1. *See, e.g.*, Mareva Lindo, *Taxes*, Breached Podcast (May 23, 2018), https://www.breachedpodcast.org/breached-podcast/2018/5/22/taxes [https://perma.cc/3ZLP-739N].
2. Also known as legal financial obligations (LFOs), monetary sanctions include criminal fines, court fees, and restitution. Claire Greenberg et al., *The Growing and Broad Nature of Legal Financial Obligations: Evidence from Alabama Court Records*, 48 Conn. L. Rev. 1079, 1081 (2016).
3. *See e.g.* Neil L. Sobol, *Fighting Fines & Fees: Borrowing from Consumer Law to Combat Criminal Justice Debt Abuses*, 88 U. Colo. L. Rev. 841, 879 (2017).
4. Andrew Weber, *Study Prompts 'Deeper Dive' Into Court Debt, Fines Levied On Poor Defendants In Travis County*, Kut (Jan. 14, 2020), https://www.kut.org/post/study-prompts-deeper-dive-court-debt-fines-levied-poor-defendants-travis-county [https://perma.cc/6MT3-HK7Q].
5. Lauren Brooke-Eisen & Matthew Menendez, *The Steep Costs of Criminal Justice Fees and Fines*, Brennan Center for Justice (Nov. 21, 2019), https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines [https://perma.cc/7SXZ-8DVK].

by identifying "taxpayers" as a cohesive political entity and appealing to their pocketbooks.[6] In doing so, it first summarizes insights regarding the racialization of taxpayer politics, then explores an alternative framework for understanding the law and political economy of monetary sanctions, and finally underscores the need to integrate such insights into the national movement against monetary sanctions.

I. Racialized Taxation & Social Control

At the heart of the surveillance of "taxpayer money" and appeals to "taxpayers" as a whole lies a fundamental misconception: a premise that "taxpayers" are solidaristic, cohesive, or at least politically aligned with each other *per se*. This obscures important socioeconomic differences between taxpayers that often matter more than the mere fact that they pay taxes. In particular, critical tax scholars have long noted that due to the politics of race and class, low-income taxpayers, who are disproportionately racial and ethnic minorities[7], are simply not treated as peers by other taxpayers. Rather, they are considered the "undeserving poor", separate from the middle class, and politically unpopular.[8] Most taxpayers of color—and most taxpayers in general—have simply not benefited from the bipartisan barrage of special breaks, loopholes, and deductions and are generally disadvantaged by efforts that claim to protect them.[9] Very little, if any, empirical work suggests that a group as large and unwieldy as "taxpayers" function as an integrated, multiracial political unit. As such, it seems prudent not to treat taxpayers as a monolith that might share opinions about financing a criminal legal system that "serves" individual taxpayers and groups of taxpayers quite differently.

In "Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869–1973," (*Racial Taxation*) Camille Walsh problematizes the use of "taxpayer identity" in arguably the most thorough manner to date. In doing so, Walsh argues that "the claim of 'tax-payer' almost always has a hidden symbolic meaning premised in *whiteness* and has served as a currency of exclusion and inequality . . . " (emphasis added).[10] Although

6. *See, e.g.*, Christian Henrichson, Joshua Rinaldi, & Ruth Delaney, *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*, Vera Institute of Justice (May 2015), http://www.vera.org/publications/the-price-of-jails-measuring-the-taxpayer-cost-of-local-incarceration [https://perma.cc/5X2S-P8VN].
7. Leo P. Martinez, *Latinos and the Internal Revenue Code: A Tax Policy Primer for the New Administration*, 20 Harv. Latinx L. Rev. 101, 108 (2017); Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 Harv. Latino L. Rev. 1, 5 (2006) (noting that undocumented immigrants pay billions each year in excise, property, and payroll taxes, and that hundreds of thousands more file state and federal tax returns).
8. Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 Colum. L. Rev. 790, 810 (2007).
9. Dorothy A. Brown, *The 535 Report: A Pathway to Fundamental Tax Reform*, 40 Pepp. L. Rev. 1155, 1172 (2013).
10. Camille Walsh, Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869–1973 4 (2018).

Walsh supports her claims by revisiting the civil rights struggle for equitable public schooling, her work is plainly just as relevant for scholars, advocates, and activists fighting for rights against the carceral system and its appendages.

In particular, *Racial Taxation* illustrates how taxpayer politics can undermine political and legal struggles for social justice. As readers may recall, cases like *Westminster v. Mendez*[11] and *Brown v. Board of Education* may have formally desegregated public schools in the United States, but they did not establish a more fundamental federal right to education.[12] Walsh argues that this failure stemmed partially from the reluctance of Supreme Court Justices to think about identity and the economics of structural inequality simultaneously.[13] In any case, the question of a fundamental right was not presented to the court until *San Antonio v. Rodriguez*[14] in 1973, when Mexican & Chicano parents and students decided to challenge the constitutionality of property-tax school financing laws in Texas. Walsh argues that in that crucial case, the Court's most important considerations were hidden in shadows; to borrow the words of another Texas policymaker, President Lyndon B. Johnson, they were primarily concerned with the rights of taxpayers vs. "taxeaters".[15] Indeed, the correspondence between the Justices, and other historical records, indicate that the Justices envisioned taxpayers as isolated benefactors of the state, entitled to shares of resources, but not required to share resources.[16] It is not an overstatement to say that the fight for fundamental federal right to education was halted by the "taxpayer citizenship" trope—the idea that taxpayers have greater rights in relation to government than people who do not pay taxes.[17]

Importantly, "taxpayer rights" were not even a legal issue in the case. As Walsh notes, status as a taxpayer is extremely difficult to claim as a legal category. Indeed, since the mid-twentieth century, courts have avoided recognizing taxpayers rights and even taxpayer standing precisely because "taxpayer" is an unwieldy identity, and designation of "taxpayers" as a group is bound to be both overinclusive and underinclusive.[18] And yet, the rhetoric surrounding legal and political struggles for more funding for marginalized communities has always been replete with a defense of "taxpayer rights."

---

11. *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947). For extensive discussion of this case and its role in the fight for education rights, *see generally* Ian Haney-López, *Racism on Trial: The Chicano Fight for Justice* (2003).
12. Ian Haney-López, White by Law: The Legal Construction of Race, 113 (1996).
13. Walsh, *supra* note 10, at 79–80.
14. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).
15. Walsh, *supra* note 10, at 103.
16. *Id*. at 79–80.
17. Beverly Moran, *Setting an Agenda for the Study of Tax and Black Culture*, 21 U. Ark. Little Rock L. Rev. 779, 785 (1999).
18. Walsh, *supra* note 10, at 6.

While it is certainly true that there have been and are instances in which the rallying cry of "taxpayer rights" or "taxpayer money" has led to justice for the marginalized and oppressed, a review of recent American history would suggests registering one's claims to shared resources in the key of a "taxpayer" rather than simply a "citizen", "resident", or simply "human" has not led to democratic outcomes, especially following the period of school integration on which Walsh focuses.[19] Some scholars have even identified the rise of racialized "taxpayer identity" narrative as a fundamental feature of neoliberalism's development:

> The tax revolt in California, and the subsequent national antitax movement, rode forward on the racial codings embedded in the economics and spatial distribution of property ownership. Suburban taxpayer citizens imagined themselves in direct competition with city welfare recipients for government services, a competition covertly conceived as a zero sum battle of white neighborhoods versus black and Latino housing projects.[20]

Similarly, the "Make America Great Again" movement—faux populism that suggested the great majority rely on the wealthy, rather than vice-versa—made astute use of racially coded taxpayer identity. Anyone who followed the 2016 political election knows to whom the laments of taxpayers getting their bang for their buck was speaking.

Walsh herself provides a perfect illustration of this phenomenon in the introduction to her book.[21] During the 2016 election, a map showing *only white voters* began to circulate on white nationalist websites supporting Trump under the headline "What if Only Taxpayers Voted?" After claiming falsely that "90%" of taxpayers are white, the white supremacist Daily Pepe website championed a "poll tax" that would deny people without net-positive contributions to the fisc of their constitutional right to vote. Despite its popularity in certain circles, this was, by no means, an "alt-right" position nor a stance confined to rural Trump-voting counties. In the spirit of comity, many liberals have taken to casting entire "red states" as tax evaders unfit to remain in the union.[22] Wealthy celebrities

19. "Many cases brought by African American activists and families from the late nineteenth and early twentieth centuries highlight the double taxation structures African Americans were subject to in mandatory segregation states, whether what I call separate taxation or 'color-blind' taxation. This claim to taxpayer identity continued in the NAACP cases pressing for equal graduate school education from the 1930s until Brown, and then returned to the court and the political sphere through the rhetoric of segregationists after Brown." Walsh, *supra* note 10, at 5.
20. Lisa Duggan, The Twilight of Equality?: Neoliberalism, Cultural Politics, and the Attack on Democracy 38 (2003).
21. *Id* at 2.
22. *See, e.g.*, Glenn Kessler, *Are red low-tax states subsidizing blue high-tax states through the tax code?*, The Washington Post, (Oct. 6, 2017), https://www.washingtonpost.com/news/fact-checker/wp/2017/10/06/are-red-low-tax-states-subsidizing-blue-high-tax-states-through-the-tax-code [https://perma.cc/5L-FR-7EXB].

have suggested that voting rights should be conditioned on tax contributions, in what is arguably a violation of the Twenty-Fourth Amendment.[23]

The politics of monetary sanctions are not immune to these tropes. Indeed, they are mutually constitutive in various ways. For instance, "fines" are often cleaved from the broader category of nonreciprocal obligations imposed by the states and imbued with social stigma. Suffice it to say that in the United States, "fine payers" do not have the same cultural cache as "taxpayers", no matter how much the fines resemble taxes.

Although people across the political spectrum appear to be troubled by monetary sanctions and the racial wealth extraction they necessarily entail, when it comes to the fiscal politics underlying the problem, different political camps clearly hold differing opinions. On the one hand, many conservatives (and some liberals) have historically argued that law-abiding taxpayers should be forced to pay for the punishment of offenders. Liberals respond to this sort of criticism by reflexively pointing out that most people who are jailed and imprisoned for fines and fees are indeed taxpayers as well as productive members of society and so, they should not pay for their own punishment any more than the collective should—reasoning that circles right back to the original confrontation with conservatives. Some progressives simply argue the practice of misdemeanor-driven incarceration should simply end, but do not suggest any funding source for local governments beyond "taxpayers."

As far as this author can tell, very few, if any groups are pushing back against the idea that taxpayer politics is an effective context within which to have this discussion at all. But I would humbly argue this is necessary if we are to truly challenge an "offender-funded justice" model. According to historian Donna Murch, this user-fee incarceration model originated after the Los Angeles rebellion in 1992—in which law enforcement arrested more than eleven thousand people—stretching the capacity of the world's largest urban jail system.[24] Sentinel, a private company that partners with carceral complexes around the world, proposed that the Los Angeles probation department should require reentering offenders to wear its monitoring system—and pay for it. Above all, Sentinel's model promised savings . . . for taxpayers.

Given the origins of the user-based model, it seems that it will be difficult to confront it without challenging the very premises on which it rests—that certain people who strongly identify as "taxpayers" must be satiated for any real reform to occur. And yet, in today's movements for criminal justice, we see a strong urge to ally with conservative and libertarian forces on precisely these grounds. Above all, there is a bipartisan

23. *See, e.g.*, David A. Graham, *Tom Perkins Has a Fascinating, Radical, Un-American Voting Plan*, The Atlantic, (Feb. 14, 2014), https://www.theatlantic.com/politics/archive/2014/02/tom-perkins-has-a-fascinating-radical-un-american-voting-plan/283846.

24. Donna Murch, *Paying for Punishment: The New Debtors' Prison*, Bos. Rev. (Aug. 1, 2016), https://bostonreview.net/editors-picks-us/donna-murch-paying-punishment.

effort to decarcerate as a cost cutting mechanism meant to appease local governments taxpayers. Murch identifies this as a trap. Not only do such alliances buy into the framework of fiscal austerity used to gut social services, but they invite additional predators into the carceral system.

In the regulatory world, there is something called the Bootlegger-Baptist strategy, so called because the "Baptists" decry public laws in order to make room for "bootleggers" to profit off their amendment.[25] In the context of incarceration and monetary sanctions, actors like the Koch Brothers and Senator Rand Paul (R-KY) decry the imprudence and wastefulness of the carceral system. But they do this precisely because austerity makes room for privatization, for the business activities of Sentinel, CCA, J-Pay, and various forces from the finance, insurance, and real estate sectors. For example, after successfully campaigning for the New Mexico governorship as a champion of civil liberties, future Libertarian presidential candidate Gary Johnson simply transitioned to housing 44 percent of inmates in private facilities in just eight years.[26]

A deeper understanding of the legal design of the monetary system, including monetary sanctions, can assist in crafting an explicitly anti-austerian framework that does not play on the racialized tropes that helped create monetary sanctions in the first place. After all, the fact that municipalities that rely heavily on revenue from fees and fines have a higher than average share of African American and Latino residents is not an accident. For instance, the U.S. Civil Rights Commission notes that the impetus behind imposing surcharges on fines in New York State was precisely to "shift costs of providing services to victims of crime from law abiding taxpayers and toward those who commit crimes."[27] In Illinois, the imposition of fines and fees was seen as one way to "protect taxpayers from over eager local authorities."[28] Across the country, we have seen this pattern repeat itself.

II. Toward a New Law & Political Economy Analysis of Monetary Sanctions

The pattern repeats because no one has changed the rules. Recently, a widespread movement within the social sciences and the legal academy has attempted to recapture a vision of money and thus entire monetary systems, and monetary sanctions, as "an institutionalized social

25. Frank Pasquale, *Bootleggers and Baptists in the Student Loan Debate*, Balkinization, (October 25, 2015), https://balkin.blogspot.com/2015/10/bootleggers-and-baptists-in-student.html.
26. Nick Tabor, *Gary Johnson's Hard-Right Record*, Jacobin Magazine, (Sep. 6, 2016), https://www.jacobinmag.com/2016/09/gary-johnson-libertarian-president-new-mexico-gov ernor-record.
27. U.S. Commission on Civil Rights, Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications 92 (2017).
28. *Id* at 189.

relation"[29] that is fundamentally legal in nature. Until recently, even historians have tended to downplay money's constitutive legal character, despite identifying money itself as a central institution of modern capitalism.[30] Although much of this reformist work has been spurred by adherents to an economic school of thought known scholastically as Neochartalism, and colloquially as Modern Monetary Theory (MMT), much of it is also attributable to legal scholars

who have arrived at similar insights by different routes.[31] Underneath the technical economic debates between these thinkers lies a common premise, an overlapping vision of the role of law in constituting money and finance itself.[32] Fundamentally, these bodies of thought help illuminate financial hierarchies—so we can better dismantle them around the world and weave a monetary analysis in other social justice struggles.

When MMT economist and Bernie Sanders presidential campaign advisor Stephanie Kelton continuously repeat "money doesn't grow on rich people" (or taxpayers), she is referencing a legal argument.[33] Entities that are not sovereign currency issuers do not generate money; They master a system that routes tradeable legal claims on real resources that we collectively produce (i.e. "money") to themselves.[34] Such entities are in a much different position of power than the monetary sovereign. They must use the government's currency to survive[35]—they are "monetary

29. L. Randall Wray, *Alternative Approaches to Money*, 11 Theoretical Inquiries in L. 29, 39 (2010) ("The orthodox story of money's origins is rejected by most serious scholars outside economics as historically inaccurate.").
30. Joseph A. Schumpeter, Hist. of Econ. Analysis 277 (Elizabeth Schumpeter ed., Oxford Univ. Press 1954) ("Monetary analysis introduces the element of money on the very ground floor of our analytic structure and abandons the idea that all essential features of our economic life can be represented by a barter-economy model.").
31. For the views of MMT's fellow travelers are well represented in the "Piercing the Monetary Veil" blog series, hosted by the Law & Political Economy Project, a joint endeavor between Yale Law School and Columbia Law School; available at https://lpeblog.org/category/symposia/piercing-the-monetary-veil. For a deep dive into scholarship concerning monetary design, *see* Christine Desan, *Money as a Legal Institution*, Money in the Western Legal Tradition: Middle Ages to Bretton Woods (David Fox & Wolfgang Ernst eds., 2016); Robert C. Hockett & Saule T. Omarova, *The Finance Franchise*, 102 Cornell L. Rev. 1143 (2017); Morgan Ricks, *Money As Infrastructure*, 2018 Columbia Bus. L. Rev. 757 (2018); Michael McLeay et al., *Money Creation in the Modern Economy*, Bank of Eng. Q. Bull. 14 (2014); Rohan Grey, *Monetary Resilience*, 41 W. New Eng. L. Rev. 505 (2019).
32. Raúl Carrillo & Rohan Grey, *A Memo from MMT's Legal Department*, New Economic Perspectives (July 15, 2017), http://neweconomicperspectives.org/2017/07/memo-mmts-legal-department.html.
33. Zach Carter, *Stephanie Kelton Has the Biggest Idea in Washington*, The Huffington Post (May 21, 2018), https://www.huffpost.com/entry/stephanie-kelton-economy-washington_n_5afee5eae4b0463cdba15121.
34. *See* Katharina Pistor, The Code of Capital, 77–107 (Princeton Univ. 2019).
35. For further elaboration of this point, *see* Raúl Carrillo, *Unemployment Isn't Natural, It's A Creature of Legal Design*, 37 L. & Ineq. 128, 130 (2019).

subjects." On the other hand, monetary sovereigns have the power to not only issue their own currency, but to float their exchange rates, and denominate their debts in their own currency. Most importantly, they have the power to collect taxes, *fines*, and *fees*, in their own currency. Additionally, it should be noted that most monetary sovereigns are political states, but not all political states are monetary sovereigns.[36]

From a critical legal perspective, monetary sovereigns can never run out of money in the same way they can never run out of property. This is by design. Courts have consistently held that the U.S. Constitution specifically grants Congress the power to coin money and to regulate the value thereof;[37] The Supreme Court has affirmed Congress's constitutional power to place as much money *as it wants* in everyday people's hands, through fiat currency, through the emission of notes.[38] Any further decisions as to how money should be distributed by government entities and redeemed from users of the currency in forms of taxes, or fines, or fees, is a 'small-c' constitutional choice. Because the federal government has full control over the architecture of the monetary system and money as a unit, the concept of "taxpayer money" is rendered incoherent, except insofar as it is a term to narrowly label funds submitted to governments by individual taxpayers as such. But the federal government does not need taxpayer funds in order to appropriate money. To the extent it needs to offset spending with revenue, it clearly does so via methods beyond taxation. To a lesser, but significant extent, this is also true of municipal and state governments. It makes just as much sense to call public money "taxpayer money" as it does to call it "bondholder money", "civil-asset-forfeiture-victim money", "suspicious-driver money" or "Black-pedestrian money."

Thus, the taxpayer-money framing is "wrong" from the standpoint of legal and operational analysis. As a simple point of logic, money isn't generated by *users* of the currency, but by the sole *issuer* of the currency. We need a fiscal reorientation in order to recognize this as a premise of policymaking.

As Christine Desan says, monetary design "can bring people together or set them at each other's throats."[39] Creating plasticity around

36. *See, e.g.*, Megan Specia, *The African Currency at the Center of a European Dispute*, N.Y. Times (Jan. 22, 2019), https://www.nytimes.com/2019/01/22/world/africa/africa-cfa-franc-currency.html (Greece, which uses the Euro, has little monetary sovereignty. The European Central Bank ultimately controls money in Greece. Senegal, which uses the CFA Franc, which is controlled by the French Treasury, which is also subordinate to the European Central Bank, also lacks significant monetary sovereignty.).
37. U.S. Const. art. I, § 8, cl. 5.
38. *See* Nathan Tankus, *The Shaky Constitutional Foundations of Antebellum American Money: Bank Charters as Delegations of Power*, Money as a Democratic Medium Conference, Harvard Law School (Jan. 31, 2019), https://www.youtube.com/watch?v=o8k8lLKjL6A.
39. Christine Desan, *The Impact and Malleability of Money Design*, L. and Pol. Econ. (Mar. 25, 2019), https://lpeblog.org/2019/03/25/the-impact-and-malleability-of-money-design.

monetary systems is the key point of her work. She claims that giving away so much monetary design power to banks is a mistake, but we can just as easily say that the monetary relationships between the federal government, states, municipalities, and the courts also set the table for predation. In our federal system, state and local government entities do not have full power to issue currency. California has police power, but it must also adhere to balanced budget provisions and the discretion to issue instruments even bearing resemblance to money is limited by the U.S. Constitution.[40] It has some legal sovereignty, but little monetary sovereignty.

Courts face their own survival constraints—they are confronted with their own balance sheet logic. As even Chief Justice Roberts admitted during the sequestration, courts face particular pressures "because virtually all of their core functions are constitutionally and statutorily required."[41] If they do not get money from the sovereign, they will get it from other monetary subjects. Like banks, courts have certain privileges. Just as a bank can create a debt for you and an asset for someone else, so can a court. The court may hold that asset, that money might go to another government entity or a private corporation. Unlike banks, though, courts can even generate new obligations between you and the state itself. And they can often take advantage of their power to load up their own balance sheets, which they do all over the country, as the Harvard conference made quite clear.

As this conferenced showed, since the financial crisis, we have seen how courts and other municipal bodies have turned to bleeding the poor. There's no accounting for the deep urge to dominate people, especially certain people. In our racial capitalist society, poor folks are in the carceral system partially because cash-strapped entities cannot fund basic operations. Financial crisis begets austerity, which exacerbates the criminalization of poverty.

The poster child of austerian taxpayer identity politics is the same municipal entity that fines and fees reformers are so familiar with: Ferguson, Missouri. The Ferguson Report made it crystal clear that the city relied upon cops as collectors.[42] Even though advocates have taken great pains to show that it's not even clear that some other municipalities are actually making any money this way, the driving logic remains.[43]

It is especially important to keep in mind that places like Ferguson were deeply shaped by sinister applications of "taxpayer citizenship" and "taxpayer identity." As Angela Harris reminds us, the spectrum of "slow

40. Tankus, *supra* note 39.
41. Adam Liptak, *Budget Cuts Imperil Federal Court System*, N.Y. Times (Dec. 31, 2013), https://www.nytimes.com/2014/01/01/us/politics/budget-cuts-imperil-court-system-chief-justice-says.html.
42. U.S. Dep't. of Justice, Civil Rights Div., Investigation of the Ferguson Police Department 4 (2015).
43. ACLU, In for a Penny: The Rise of America's New Debtors' Prison (2010), https://www.aclu.org/sites/default/files/field_document/InForAPenny_web.pdf.

violence"—the "sprawling system of surveillance, punitive discipline, and control that makes the lives of poor people profoundly unfree"—is encoded in the deep law of the land.[44] And the history of "slow violence" is inseparable from the history of racial taxation.[45] The Missouri constitution greatly limits the ability of municipalities to collect tax revenue. In 1980, Representative Mel Hancock—the founder of a group called the Taxpayer Survival Association—amended the state constitution to require any increase of local taxes, licenses, or fees to be approved by a citywide referendum, with very few exceptions.[46] As of April 2015, sales taxes accounted for the largest share of Ferguson's municipal revenues.[47] Next come municipal court fines. Property taxes ranked below telecommunications, natural gas, and electricity usage taxes.

This sort of tax hierarchy suggests that politics attuned to the needs of "taxpayers" created the open-air debtors prison that is Ferguson, Missouri, in the first place. As the work of Harris, Walsh, and others has shown, there exists no monolithic hoard of taxpayers with shared interests.[48] Contrary to conventional wisdom, there appears to be little evidence that taxpayers think of other taxpayers as "equals" within a broader body. To offer a concrete example: it is difficult to imagine that a white small businessman threatened with heightened property taxes intuitively finds solidarity with an unemployed Black immigrant Uber driver drowning in parking tickets and court fees simply because they both pay sales taxes. The identity category of "taxpayer" is necessarily stratified and too expansive to serve as the base of a democratic, accountable political movement.

As of the writing of this essay, Ferguson still burns, in more ways than one. By comparison we do not have the white president's tax returns, despite bipartisan demands since day one. The idea that we will gain further support for incarcerated Black, Latino, Native American folks victimized by wealth extraction by appealing to white man's conception of himself as a taxpayer-citizen seems increasingly far-fetched.

III. Notes on a National Movement

Overall, the broad acceptance of the term "taxpayer money" as objective, reinforces the idea that money is generated by "taxpayers",

44. Angela Harris, *Law and Neoliberalism in Keilee Fant v. City of Ferguson, Missouri—Part II*, L. and Pol. Econ. (May 9, 2018), https://lpeblog.org/2018/05/09/law-and-neoliberalism-in-keilee-fant-v-city-of-ferguson-missouri [https://perma.cc/4D2Z-8QLR].
45. *See, e.g.*, Virginia Eubanks, Automating Inequality, 32–34 (St. Martin's Press 2019) (discussing the California taxpayer revolt and the rise of the "digital poorhouse").
46. *Id.*
47. Walter Johnson, *Ferguson's Fortune 500 Company*, Atlantic, https://www.theatlantic.com/politics/archive/2015/04/fergusons-fortune-500-company/390492 [https://perma.cc/4NF4-9V2Z].
48. Harris, *supra* note 44; Walsh, *supra* note 10.

and inherently, the idea that the state depends on the charity of people who pay more in taxes (or at least face higher marginal rates) in order to spend money on other people. Repeating that the government should be responsible first and foremost to "taxpayers" suggests that we have "shares" in our government, which are keyed to our supposed contributions in revenue. Moreover, the very essence of some pleas to taxpayer interests suggests that if only the social policy being criticized were "revenue-neutral" or somehow more fair to the individual taxpayer, then it would somehow be more just. This sort of thinking corporatizes our idea of government and supports very narrow, shallow visions of citizenship and of humanity.

The fount of money and monetary power is public law, not private markets. It follows that the government's administration of our economy should improve the general welfare, not "taxpayer welfare" more narrowly. As Harris argues, any movement for economic justice must overcome the toxic trope of the "undeserving benefit recipient."[49] Such a victory is inseparable from deconstructing the politics of racial taxation at every angle.

The conventional wisdom around taxpayer identity has the potential to prematurely stratify and divide a national movement against monetary sanctions. Although the prospect of saving funds for taxpayers might theoretically entice conservatives to join the ranks, history suggests the focus on individual tax burdens may very well pollute the entire space.

Ideally, a powerful national movement against fines and fees would intuitively take the fight to the federal level and force the federal government to play a stronger role in providing important services. The very pressure to fund local law enforcement bodies, especially courts, with funds collected from constituents creates perverse incentives that distort the fair administration of justice.[50] When criminal courts become responsible for their own financing, they may prioritize the imposition of significant fee and fine amounts and dedicate substantial staff to collecting these sums.

And yet, if perverse incentives are the concern, shifting the fiscal burden back onto the very people who shucked it seems problematic. Advocates argue in good faith that "all the citizens should pay court expenses out of the general fund." But this confuses the issues: citizens do not pay court expenses in any scenario. Rather, taxpayers (who may or may not be citizens) pay into general coffers, which can then be used for court expenses or not. Thus, if a county courthouse is funded by a general fund, the relevant question becomes whether that general fund is *paid into* equitably. Conflating the collection and spending functions of a local government muddies the debate.

---

49. Angela Harris, *Modern Money and Historical Trauma*, L. and Pol. Econ. (Nov. 9, 2017), https://lpeblog.org/2017/11/09/modern-money-and-historical-trauma [https://perma.cc/662K-LF5D].
50. Brooke-Eisen & Menendez, *supra* note 5, at 6.

Thankfully, many organizations and advocates have already identified the transformative potential of federal fiscal levels. Some have highlighted how the federal grant process can be amended to help local institutions perform minimal law enforcement functions, but reduce reliance on fines and fees.[51] Under the Obama Administration, the Department of Justice offered five small "Price of Justice" grants to local governments in order to incentivize better practices.[52] Although these sorts of initiatives may be narrow in their current ambitions, the fight for additional federal funding for good practices may contain the seeds a system with a more just design—whereby institutional users of the currency do not force individual users of the currency to fit the bill for a criminal legal system that will invariably serve the interest of some currency users but not others.

Conclusion

If the aim of the movement against monetary sanctions is to truly provide broad-based funding of necessary law enforcement apparatus, then the claim should be set against the legal entity with the power of the public purse and thus the broadest funding base: The United States Congress. The fiscal burden needs to be taken off the shoulders of those who now unfairly bear it. But if the problem is not to repeat itself, or manifest in alternative oppressive form, the burden must also be taken off the shoulders of entities that face tight survival constraints. If the aim of appealing to taxpayers to solve social problems is truly public solidarity, then the claim for justice should be levied by the "public", rather than the "taxpayer", against the state itself.

51. Inimai Chettiar et al., Brennan Ctr. for Just., Reforming Funding to Reduce Mass Incarceration (2013), https://www.brennancenter.org/sites/default/files/2019-08/Report_Reforming-Funding-Reducee-Mass-Incarceration.pdf.

52. U.S Commission on Civil Rights, Targeted Fines and Fees Against Communities of Color: Civil Rights and Constitutional Implications (2017), https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf.