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Few aspects of the criminal legal system vividly illustrate the two-tiered nature and extent of punitive excess of the United States as does the practice of monetary sanctions. This punishment schema, also called legal financial obligations (LFOs), requires financial payments, from most people who make contact with the criminal legal system. In addition to fines associated with specific offenses, people are charged for their court processing, for DNA testing, for required post-sentencing rehabilitative programs (such as drug and alcohol assessment and treatment), and even in some instances for the costs of incarceration itself. To apply Travis and Western's notion of punitive excess (2021); this system of monetary sanctions highlights the relationship between the state and citizen in this country, particularly when the citizen is poor or racialized, as one of control, marginalization, and perpetual punishment.

In most states, all monetary sanctions must be paid in full before a person is released from court supervision. In many states, people are unable to vote until all costs are paid. They must remain in constant communication with court officials about their living and financial arrangements. Not only are monetary sanctions frequently appended to jail or prison time, so are costs associated with probation and other court mandated requirements, such as electronic home monitoring. A recent report relying on attainable data from just 25 states approximates that in total \$27.6 billion is owed in monetary sanctions (Hammons 2021).

Since the 1980s, paralleling the massive growth in convictions and incarceration, state and local jurisdictions expanded the types of fees and fines demanded of people convicted of traffic violations, juvenile offenses, misdemeanors, and felonies (Harris 2016). At the same time, the cost to local jurisdictions of the expanding conviction and incarceration rate accelerated as well. As a result, policymakers turned to the very people convicted to pay for the costs of their own processing and punishments. For example, Washington State has a mandatory victim penalty assessment that must be charged for each misdemeanor (\$250) and felony (\$500) conviction, even if there is no direct victim of the crime in question (Harris et al 2010).

In some states, judges have actually been granted discretion to assess criminal defendants for the cost of a public defender — in other words, an individual who cannot afford to pay a lawyer is expected to pay for the lawyer that the state is constitutionally required to provide. Furthermore, many jurisdictions charge per night fees for jail or prison stays. For those too poor to pay, interest, per payment fees, and nonpayment penalties become penal debt that hangs like a cloud over their families' lives.

Many states also allow cities and counties to engage in contracts with private collection companies, and when debt is transferred to these agencies, additional collection fees are assessed — as much as 50 percent of the principal owed. These public-private debt collection arrangements affect the individuals' credit scores, limit their employment opportunities, and inhibit their ability to access housing, education, and transportation. The price of services such as telephone calls, electronic communication, video visitation, and health care include kickbacks from the private companies to local jurisdictions — the price the collection agencies pay to win exclusive contracts.

RESEARCH

In researching monetary sanctions for my book I gathered as much data as possible to better understand this system (Harris 2016). I reanalyzed prior interviews conducted with colleagues (see Harris et al. 2010 and 2011), conducted a set of five case studies of people who owed legal financial obligations, conducted court ethnographies in five counties, interviewed judges, prosecutors, defense attorneys and court clerks in Washington State, and analyzed a sample of individual level court automated data from the Washington State Administrative Office of the Courts (AOC).

Elaborating on the unequal racial and class contours of LFOs, *A Pound of Flesh* (Harris 2016) was the first book-length study to highlight the pernicious and permanent consequences for those who are saddled with criminal legal debt. My book describes a punishment continuum, whereby counties across Washington State unevenly interpreted and applied laws regarding LFOs. Infused by decision-makers' own values of personal responsibility, accountability, and redemption, and depending on the county where one was sentenced and monitored, individuals carrying legal debt faced punishments of varying intensity and duration.

Since publishing my book in 2016, I have also completed serving as the principal investigator on a five-year project that replicated and expanded my prior work. The Multi-State Study of Monetary Sanctions (funded by *Arnold Ventures*) was in partnership with seven researchers at universities in California, Georgia, Illinois, Missouri, Minnesota, New York and Texas (Shannon 2020). With our research assistants, we conducted 519 interviews and surveys with people who owed monetary sanctions, 447 interviews and surveys with people who worked in the court system (judges, prosecutors, defense attorneys, clerks, and probation officers). We also conducted over 1,900 hours of courtroom ethnography to document firsthand how LFOs are sentenced, discussed, and monitored in real time. Furthermore, we attempted to gather individual level court automated data within these states for statistical analyses. Below I outline main themes that have emerged thus far from both my book project and the Multi-State Study, as well as other research that has been conducted by scholars across the U.S..

FINDINGS: PAINFUL CONSEQUENCES

When people are unable to pay penal debt, they become entangled with the criminal legal system — already stressed by daily financial choices they must make regarding food, health, and childcare — they incur additional legal consequences. In many states, people lose their right to drive; then, if apprehended while driving with a suspended license (even to the job that might enable them to pay their debt), they face renewed incarceration and further financial sanctions.

I. Tethered to the Criminal Legal System

Consequences accelerate, tethering people to the criminal legal system: not only are people who are behind in their payments sent regular court summonses, but in some instances even those making their monthly payments must regularly report to the court about their employment and living arrangements. This requires many to miss work and to find childcare and transportation (particularly if their driver's licenses are suspended) just to attend court hearings. When people have been summoned to court but failed to receive notice or chose not to attend out of fear of incarceration, bench warrants are issued for their arrest (Modjadidi 2019).

It is important to note that monetary sanctions are frequently imposed in addition to incarcerative time – so on their sentencing day people may get several days to months to years of jail or prison time, and *in addition* receive thousands of dollars in fines, fees, court costs and restitution. As a result, even when people have served their incarceration and probation time, they remain under the control of the criminal legal system. Many people – those who are unemployed, unhoused, suffer from mental health problems and chemical addiction disorders – become tethered to the criminal legal system for the rest of their lives because of this debt.

II. Individual, Family, and Community Consequences

Monetary sanctions affect not just adults who encounter the criminal legal system – but also minors, people’s children and families, and their communities. Much of these consequences are disproportionately borne by people of color and people who are poor.

Children and Monetary Sanctions

In the juvenile realm, from emergent research we know that nearly every state imposes costs on children – many of whom cannot legally work or enter into contracts, and at the same time are required to attend school. Recent reports have found that these costs include billing parents or guardians for “child support” fees related to detention in youth jail and youth authority. Families are also charged administrative costs for court processing and appearances. In addition, youth are subject to fines, other fees, and restitution (Uppal 2020; Feierman 2016). We have found in my recent five-year study that much of this debt is carried by youth into adulthood – and people face criminal legal contact and punishment related to these unpaid juvenile fines and fees.

Other research, using data from a large cohort of adolescent court-involved youth, found that significantly greater percentages of non-white youth still owed fines, fees and/or restitution in general upon case closing relative to their white youth counterparts. The study also found that this penal debt significantly increased the odds of a youth recidivating (Piquero and Jennings 2016).

Some jurisdictions have begun to end fees imposed on youth. In 2018, California abolished all administrative fees imposed in juvenile delinquency cases. Other jurisdictions, such as Orleans Parish in Louisiana and the states of Nevada, New Jersey and Maryland all limited or abolished juvenile civil fines and court costs, as well as limited fiscal charges to parents and guardians. The Los Angeles County Board of Supervisors went one-step further in 2018, and stopped collecting on unpaid juvenile penal debt, which discharged over \$89 million in debt.

Not only are youth directly charged for costs related to juvenile court involvement, but children and other family members also shoulder the burden of parental penal debt (deVuono-Powell et al. 2016; Katzenstein and Waller 2015). Research illustrates how people who owe court costs make difficult decisions to trade off needed items, food and medical care for their children in order to meet their monthly court payments (Harris 2016). Parents face difficult decisions when owing penal debt.

Community Debt

In a paper currently under peer-review, my colleagues and I use longitudinal data from the Washington State Administrative Office of the Courts (AOC), and the American Community Survey (ACS) to examine the debt burden carried at the neighborhood level. We find monetary

sanctions are more burdensome in high-poverty and non-white neighborhoods, and that per capita rates of LFOs sentenced are associated with increased future poverty rates across all neighborhoods, with an especially large association among Black neighborhoods (O’Neill, Kennedy and Harris, under review). That is, poor communities, and communities that are non-white carry more penal debt than non-impooverished or white communities do. Furthermore, this debt is statistically associated with increases in future poverty – especially for Black neighborhoods. It appears that penal debt makes poor communities even poorer.

Racial disparities

Arrests, convictions and punishments are disproportionately borne by communities with higher rates of poverty and BIPOC (Black, Indigenous and People of Color) residents (Gaston 2018; Lanfear, Beach, & Thomas 2018; Roberts 2004). BIPOC, particularly Black people, are more likely to experience police contact, arrest, incarceration, and supervision than are White people (Barnes et al. 2015; Lundman & Kaufman, 2003; Phelps 2017). Monetary sanctions are also differentially distributed along racial and ethnic lines, and Black and Latino defendants receive harsher financial penalties at sentencing than do White defendants (Harris, Evans, & Beckett 2011; Ruback 2004), and reason to believe post-sentencing LFO outcomes differ by race and ethnicity due to pervasive racial and economic inequalities. Research has also shown that the LFOs that accrue from criminal traffic cases can be especially sticky, leading to new cases of driving on a suspended license, and even incarceration, especially for Black drivers (Edwards and Harris 2020).

III. Policing, Fines, Fees, Arrests and Warrants

An additional legal consequence related to monetary sanctions is the over policing that plagues so many communities of color. Because local governments have come to rely so heavily on revenue generated from fines and fees, traffic citations have become a tool for profit making. This “pocketbook policing” (Pacewicz & Robinson 2020) encourages police to use their authority and discretion to make “pretextual” traffic stops — judgement calls that often involve such things as a faulty taillights, expired license tabs, or an air freshener improperly suspended from the rearview mirror. The racially disparate impact of monetary sanctions intensifies the aggressive policing of Black and Latinx neighborhoods because these racial groups typically find it more difficult to pay (Harris et al. 2011; Henrichson et al. 2017; Henricks and Harvey 2017; Piquero and Jennings 2017; Sances and You 2017; U.S. Commission on Civil Rights 2017). The criminal legal monitoring and collection of fines, fees, and other costs extends and deepens the punishment of non-payers and individuals reentering society, and warps and delegitimizes the very legal institutions that legislate and implement these practices (Harris et al. 2010; 2011; Harris 2016; Pattillo and Kirk 2021).

Moreover, when police use their discretion to decide whom they are going to pull over, they pull over Black drivers disproportionately more often than white drivers. Black drivers are consequently searched one and a half to two 2 times more often than are white drivers (Pierson, Simoiu, & Overgoor, 2020). Costly citations for fines and fees fall most heavily on those least able to pay them. These fines and fees lead to perpetual state surveillance, wealth extraction, and the social control of people who are poor and racially marginalized. I have come to refer to this hyper surveillance and social control by the criminal legal system as a predatory practice (Harris 2020).

IV. Two-Tiered System of “Justice”

The system of monetary sanctions reinforces the United States’ two-tiered system of “justice”: one for people with financial means and one for people without. Within a society riven by so much inequality, a system of punishment based on economic resources can never be fair or just. This “coerced financialization” perfectly and purposefully places the freedom of poor and racially marginalized people on a perpetual layaway plan (Pattillo and Kirk 2021). It’s a system so fully embedded in our criminal legal system that the American Rescue Plan Act, passed by Congress in March 2021 to alleviate the financial pains of the Covid-19 pandemic, allowed private collectors and courts to seize the \$1,400 stimulus grants from people burdened with unpaid penal debt, either public or private.

POLICY IMPLICATIONS

Set within the context of the criminal legal system, this system of punishment is nuanced, but it is not complicated. Policy implications are clear. In fact, recognizing this system as a purposeful mechanism designed by both policy and statute allows us to clearly see that it can be dismantled. State and local policymakers and court leadership should establish this set of guiding principles and practices.

- (1) Statutes must be revised to discontinue monetary sanctions associated with felony convictions. There is no reason that someone sentenced to incarceration should also receive financial penalties, much less be charged daily room and board fees. Fines and fees charged to people who are sentenced to live behind bars, without access to employment and a living wage, are *prima facie* excessive.
- (2) Monetary sanctions are also excessive when imposed on children, the unemployed, the unhoused, or those suffering from mental health or chemical addiction disorders. Burdening people who are unable — and who may never be able — to pay fiscal debts is a cruel punishment. Ability to pay hearings must be mandated at the outset of sentencing of all court imposed fines, fees, surcharges, and restitution.
- (3) Fiscal penalties attached to lower-level offenses that do not call for incarceration, such as traffic violations or misdemeanors, must be calibrated to individuals’ abilities to pay the total sum within, say, two years. Countries around the world rely on day fine systems that calculate a score based on both the severity of the offense and the daily wage of the convicted individual.
- (4) State and local jurisdictions must discontinue the practice of suspending driver’s licenses related for nonpayment of any court fine and fee and cease issuing warrants related to nonpayment.
- (5) State and local jurisdictions, along with law enforcement agencies, must review and revise practices related to pretextual traffic stops. Less than one month after the police killing of Daunte Wright in Brooklyn Center, Minnesota, the mayor and city council enacted an ordinance to create a new Department of Community Safety and Violence Prevention. Among other things, this restructuring of police duties transferred the responsibility of traffic enforcement to an unarmed civilian unit.

- (6) States must require all jurisdictions to report (without names attached, to protect individual privacy) all monetary sentences and fees, regularly and systematically, to a state-monitored database. Such data should include amounts collected, amounts waived, means of levy (fine, fee, surcharge, restitution, etc.), and any additional charges imposed related to nonpayment, such as late fees, interest, and collection fees.
- (7) The federal government should use its power to attach conditions to grants related to state law enforcement and justice practices. Such conditions should mandate states to:
- Require current ability to pay hearings prior to assessment of fines and fees
 - Desist from imposing fees on minors and their families for court processing and relieve all existing outstanding juvenile debt
 - Discontinue suspending driver's licenses related to non-payment of court imposed fines and fees and reinstate all prior licenses that have been suspended related to non-payment
 - Prohibit courts from issuing warrants related to non-payment of court fines and fees
 - Impose caps on the amounts of revenue local and state jurisdictions can generate via fines and fees
 - Annually report by jurisdiction (e.g., county, city, township, etc.) the amounts of fines and fees sentenced, owed, and related surcharges, interest and payment fees owed and collected

The evidence is clear: The American system of monetary sanctions is a purposeful punishment, which results in extracting wealth from individuals, their families, and communities — a pound of flesh that many just do not have left to give. It is a system that valorizes those “deserving” of redemption (people with financial means) and stigmatizes those deemed not deserving of redemption (people living in poverty). Impoverished citizens who are sentenced to monetary sanctions clearly understand their relationship to the state — they are forever indebted, forever subjected to court and police surveillance, control, and punishment. We have alternative punishment and rehabilitative options; we just need the will to make these changes.

Thank you for your consideration of my remarks.

Sincerely,



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V. REFERENCES

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