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Chained in Debt: The Unending Struggle of Marginalized Lives in the Grip of Local Courts and Governments

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Chained in Debt: The Unending Struggle of Marginalized Lives in the Grip of

Local Courts and Governments

Abstract: *This paper conducts a comprehensive exploration of the re-emergence of debtors' prisons within the contemporary American justice system, with a particular emphasis on their unjust ramifications for marginalized individuals. Tracing the historical evolution of societal perspectives on debt, the paper acknowledges the prohibition of debtors' prisons in 1833. A pivotal focus is the 1983 Bearden v. Georgia court decision, which introduced ambiguity in determining "indigent" or "willful" status within the context of criminal justice debt. This ambiguity has, at times, been exploited by local judges, leading to the incarceration and entrapment of extremely impoverished individuals in a self-perpetuating cycle of despair. The paper argues for precise legal standards to forestall debt-related incarceration and highlights how the persistent lack of clarity perpetuates a cycle of debt and imprisonment. It scrutinizes the complicity of laws and exposes the political feasibility of exploiting those with the least political power, as evidenced in the attitudes of lawmakers advocating for a user-funded system. The examination extends to cases where debt is transferred to third-party entities imposing exorbitant fees, disproportionately affecting economically disadvantaged individuals. Drawing on various sources, including scholarly articles and legal documents, the research integrates visual aids such as charts and tables derived from studies, reports, and articles. Central to the paper is the exploration of how the resurgence of debtors' prisons, coupled with unclear legal definitions, disproportionately impacts impoverished individuals, impeding their ability to settle criminal justice debt and perpetuating a cycle of debt and imprisonment. The research aims to shed light on these challenges and proposes reforms that champion a fair and just criminal justice system accessible to everyone.*

Keywords: LFOs, Indigent, Willful, Intersectionality, Broken window policing, responsabilization, nondischargeability.

Introduction:

In the heart of Orange County, California, Maria Rivera found herself facing a daunting financial labyrinth as she navigated the juvenile legal system. Raising two boys as a single parent, Maria's life took an unexpected turn when her youngest son became entangled with the state's juvenile legal system in 2008. What followed was not only a period of detention for her son but a cascade of bills that would reshape Maria's life. For every day her son spent in detention, the county levied charges against Maria, demanding \$23.90, and an additional \$2200 for the court-appointed lawyer. The cumulative amount, exceeding \$16,000, became an overwhelming burden for Maria, already struggling with unemployment. While California law ostensibly allowed counties to impose fees on parents for various juvenile legal expenses, it also mandated consideration of the family's financial capacity. Despite Maria's inability to pay, the state's "ability to pay" provisions placed the burden on families to prove their financial hardship before a financial evaluation officer. Who was tasked with determining whether the family could pay the fines?

In a desperate attempt to meet the county's demands, Maria sold her house, contributing more than \$9500 to the county. However, this did not satisfy the judgment, prompting the county to obtain a court order for almost \$10,000, exceeding the initially billed amount by over \$3000. Once a court orders juvenile fees, this debt transforms into a perpetual civil judgment enforceable against the parent or guardian. To make things worse, failure to repay leads counties to involve the state's Franchise Tax Board,

intercepting tax refunds and garnishing wages, meaning that the counties can take your tax refund and even take money from your work paychecks. In a bid for financial relief, Maria sought refuge in Chapter 7 bankruptcy. Yet, the resolution she sought remained elusive, as Orange County persisted in its pursuit of the unpaid fees. Despite the bankruptcy court initially discharging her fee debt, the county's determination led to the reinstatement of the debt on the grounds of non-dischargeability under Chapter 7 (Salbin 2020, 2- 4).

Maria's story is emblematic of a broader issue, shedding light on the complex entanglement of families, debt, and the legal system, and the lasting consequences that unfold when the pursuit of justice intertwines with financial hardship. Her story makes one wonder why experiencing poverty does not automatically warrant relief from financially exploitative legal practices. However, a quote by Paul Butler a professor at Georgetown Law resonates in this context: "Poor people lose, most of the time because in American criminal justice, poor people are losers" (MehChu 2021, 1479). This paper explores the ramifications of debt-related incarceration that extend well beyond individual struggles, shedding light on profound systemic issues ingrained within the American legal framework.

Embarking on an exploration of Legal Financial Obligations (LFOs), debt, and the legal system, this paper spotlights their impact on vulnerable populations. Firstly, we delve into history, tracing the evolution of debt-related perceptions and legal frameworks. This unveils the historical roots of contemporary challenges, particularly the resurgence of debtors' prisons. Transitioning to contemporary dilemmas, I shine a light

on the intricate process of generating municipal revenue in the neoliberal era – LFOs and extraction. In this section, I expose the methods of extraction, revealing how the system disproportionately targets the racialized poor, perpetuating economic disparities. Navigating these complexities leads to the critical juncture where I detail the legal blind spots. At this point, the paper meticulously dissects the law's complicity in predatory practices, revealing its failure to protect vulnerable populations, especially those ensnared in a cycle of debt and imprisonment. The journey concludes with contemplation on potential reforms and policy changes. The aim is to advocate for a justice system that embodies equity and compassion. Ultimately this paper seeks to contribute to the ongoing dialogue on criminal justice reform, aspiring to reshape the system in alignment with principles of fairness and justice for all.

LFOs and Extraction: generating municipal revenue in the neoliberal era.

In the 1980s, a notable shift occurred as state and local governments substantially augmented fines and fees levied on individuals convicted across various legal infractions, from traffic violations to felonies, aiming to bolster revenue streams. Concurrently, federal funding to local governments witnessed a drastic reduction, plummeting from 22 percent to a mere 6 percent of city budgets. This period also saw a significant expansion of the criminal legal system, fueled by alterations in sentencing laws and policies. The ensuing surge in arrests, prosecutions, and incarcerations prompted a remarkable escalation in state spending on corrections, skyrocketing from \$6.7 billion in 1985 to an astonishing \$56.6 billion in 2019 (Jeffrey 2023). This subsequently lead to their reliance on Legal Financial Obligations. LFOs and their

extractive function present a critical facet within the criminal justice system, extending far beyond their immediate legal implications. As highlighted by Scholar and Vera Institute researcher Rafael (2023), the consequences of failing to meet financial obligations snowball into a significant financial burden for individuals. Unpaid fines, fees, and accumulating interest on restitution, intended for victims of personal or property damage, can rapidly escalate, accumulating into substantial amounts often totaling thousands of dollars (Rafael 2023, 3).

This extractive nature stands in stark contrast to the primary responsibilities of the legal system. While the legal system is designed to prioritize public safety and justice, the reliance on fines and fees to generate revenue introduces a significant conflict of interest. Refer to Figure 1 to observe that, according to data from the Census Bureau's Annual Survey of State and Local Government Finances, the year 2020 witnessed local governments in the United States collectively amassing nearly \$9 billion in fines and fees. Notably, New York, California, and Texas accounted for well over a third of this total, each collecting billions in fines and fees (Nastasi 2023). **Figure 1**

State ▲	Per Capita	Total
Alabama	\$14.28	\$71,750,000
Alaska	\$15.00	\$11,003,000
Arizona	\$20.34	\$145,471,000
Arkansas	\$31.22	\$94,021,000
California	\$31.87	\$1,260,017,000
Colorado	\$20.16	\$116,389,000
Connecticut	\$2.00	\$7,216,000
Delaware	\$13.40	\$13,268,000
Florida	\$19.29	\$415,538,000
Georgia	\$35.16	\$376,662,000
Hawaii	\$3.49	\$5,086,000
Idaho	\$9.07	\$16,689,000
Illinois	\$50.07	\$641,571,000
Indiana	\$17.95	\$121,795,000
Iowa	\$13.41	\$42,785,000
Kansas	\$26.17	\$76,891,000
Kentucky	\$2.50	\$11,247,000
Louisiana	\$31.49	\$146,680,000
Maine	\$2.89	\$3,944,000
Maryland	\$20.94	\$129,376,000
Massachusetts	\$15.63	\$109,879,000
Michigan	\$17.00	\$171,325,000
Minnesota	\$7.89	\$45,041,000
Mississippi	\$24.93	\$73,813,000
Missouri	\$19.41	\$119,443,000
Montana	\$15.28	\$16,570,000
Nebraska	\$2.02	\$3,972,000
Nevada	\$21.11	\$65,545,000
New Hampshire	\$2.94	\$4,048,000
New Jersey	\$28.63	\$265,914,000

New Mexico	\$4.31	\$9,132,000
New York	\$69.60	\$1,406,051,000
North Carolina	\$7.12	\$74,345,000
North Dakota	\$12.13	\$9,453,000
Ohio	\$28.25	\$333,392,000
Oklahoma	\$21.29	\$84,301,000
Oregon	\$19.78	\$83,796,000
Pennsylvania	\$15.56	\$202,344,000
Rhode Island	\$9.61	\$10,547,000
South Carolina	\$24.46	\$125,194,000
South Dakota	\$12.53	\$11,111,000
Tennessee	\$23.12	\$159,810,000
Texas	\$40.37	\$1,176,607,000
United States	\$27.00	\$8,948,454,000
Utah	\$18.34	\$60,002,000
Vermont	\$4.69	\$3,014,000
Virginia	\$11.50	\$99,286,000
Washington	\$30.47	\$234,751,000
West Virginia	\$12.45	\$22,338,000
Wisconsin	\$14.04	\$82,719,000
Wyoming	\$33.43	\$19,282,000

Source: Reason Foundation

This substantial dependence on monetary penalties raises concerns about the misalignment of incentives within police departments and court systems, potentially diverting their focus toward revenue generation rather than fulfilling their fundamental roles of serving the public. The financial pressures generated by this reliance risk compromising the legitimacy of the criminal justice system, challenging its ability to uphold public safety and justice effectively. The concerns are highlighted even more by the Council of Economic Advisers, which points out that monetary penalties frequently place a disproportionate burden on individuals with limited resources, compelling those formerly incarcerated and financially disadvantaged to navigate challenging choices between settling court debt and meeting essential expenses. In spite of their economic hardships, a considerable number of people in this predicament frequently land in correctional facilities, as courts employ sneaky strategies to circumvent Bearden's decision (Lollar 2020, 432).

According to Lollar (2020), courts utilize diverse tactics to ensure collection, occasionally neglecting to apprise defendants of their entitlement to a hearing regarding their capacity to settle unresolved criminal justice debts. Certain courts implement a "fines or time" verdict, coercing defendants to decide between prompt payment or incarceration. Alternatively, some integrate the payment of criminal legal debts into plea bargains, framing non-payment as a breach of the agreement. These tactics highlight the challenges within the current legal landscape and emphasize the need for a comprehensive reevaluation of the extractive function of LFOs (Lollar 2020, 432 - 433). In the complex dance between fiscal challenges and legal operations, the financial strain

on state-funded trial courts prompts local governments and courts, like those in the state of Washington, to adopt "self-funding" measures such as fines and fees, a strategy intricately entwined with the broader national trend that saw 48 states increase civil and criminal fees since 2010 (Adamson 2020, 318).

The impact of this funding model for example, is starkly evident in the experience of individuals in Washington's criminal justice system. Nearly every person convicted in a Washington court grapples with the heavy burden of court debt, with as many as 90 percent meeting the indigency standard, indicating limited or no ability to repay their court debt (Rafael, 2023, 3). A study by the Vera Institute of Justice further highlighted the persisting challenges, revealing that even four years after LFOs are assessed, a meager portion of the total amount owed is ever paid (See **Figure 2**). In Courts of Limited Jurisdiction (CLJs), where the average assessment is \$695, individuals, on average, pay only about 44 percent of the total assessment amount after four years. In superior courts, with an average assessment of \$1,302, the average percentage paid after four years is a mere 8 percent of the total amount assessed (Rafael 2023, 5). This paints a concerning picture of the enduring financial struggles individuals face within Washington's criminal justice system, calling for a critical examination of the consequences of relying on fines and fees for funding. Especially when those most vulnerable are footing the bill.

Figure 2:

Average FY16–17 LFO assessments and payments (within four years) in Washington’s CLJs and superior courts



Vera Institute of Justice

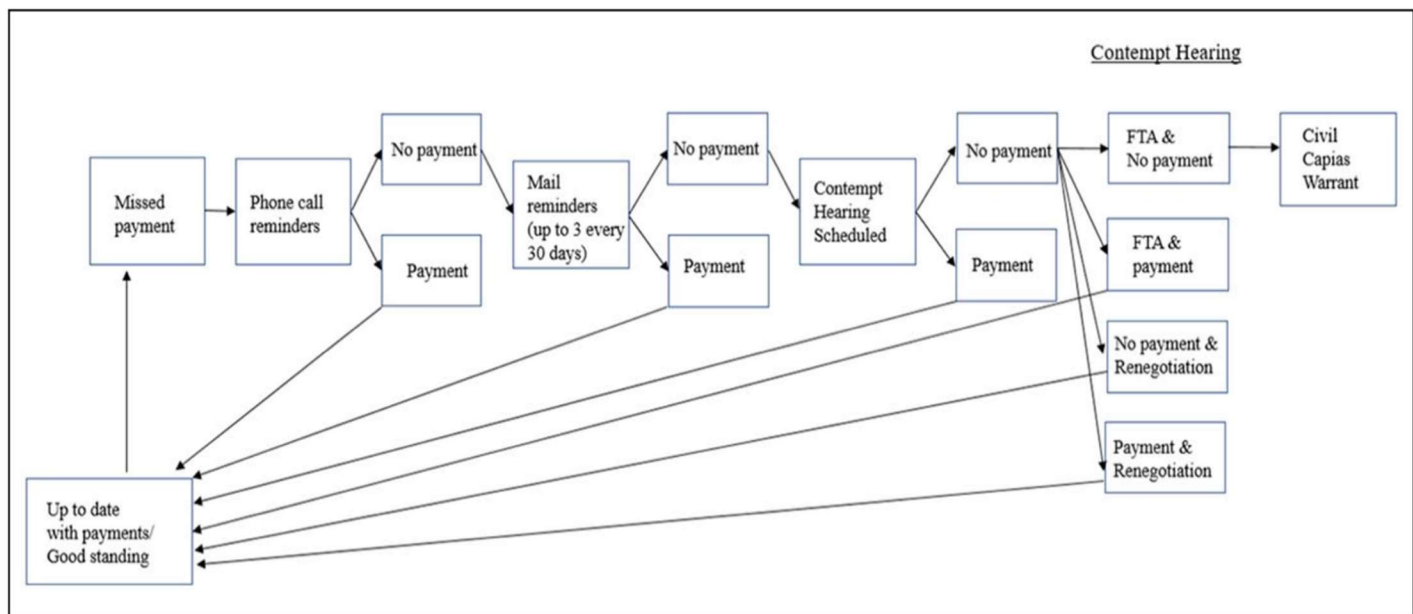
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This raises concerns about the fairness and equity of the financial aspects of the criminal legal system. When a massive portion of those convicted may be burdened with debt, they are unable to manage, potentially leading to long-term financial repercussions. Importantly, the lack of a right to counsel in civil cases leaves indigent defendants vulnerable to potential incarceration for unresolved civil debt, highlighting a critical gap in Constitutional protections for those entangled in the cycle of poverty and debt within the criminal justice system (Hager 2015, 5).

What happens when a payment is not made in most states; and what does the process entail? In simple terms, when someone misses payments, the first step is to receive informal reminders through phone calls from officers. If this does not work, and

the person misses three payments in a row, they get written letters every 30 days explaining the consequences of not paying. These letters are sent to all the known addresses of the person, including where they live or used to live. After three letters and no valid reason for not paying within six months, the person's name is put on a list for "contempt of court." They are personally notified about this change in their status. If they make a payment at this point, the process stops. If not, they go to a contempt hearing where the payment plan is discussed with the judge, and they can make payments in court. If the person does not show up for this hearing or does not contact the officers, further actions are taken (Link, Powell, Hyatt, and Ruthland 2021,134). In most cases, a warrant of arrest is issued.

Figure 3: Note: FTA = Failure to appear (Link et al. 2021, 134).



This type of debt directly involves a form of life discipline and a distinctive type of

subjectivity, that of the person who owes money. In essence, indebtedness, regardless of its widespread occurrence, is not a socially neutral condition. Instead, the imposition and control of debt constitute a realm of power that molds individuals, while simultaneously categorizing and evaluating them based on the ideal of the neoliberal citizen subject (Feola 2020, 881). Being indebted to this criminal legal system is unique as this debt serves as a mode of governance. Unlike conventional debts, it extends beyond financial obligations, impacting individuals and communities by shaping power dynamics, social control, and institutional influence. This distinctive form of debt intertwines with legal and governance systems, creating a complex web of relationships that extends beyond traditional financial obligations, such as regular personal loans.

The iconic neoliberal agent embodies a vision where individuals navigate the social landscape utilizing their personal capacities, resources, and connections. In this paradigm, the agent actively seeks to secure essential support systems, such as health care, retirement pensions, and housing, autonomously, as these aspects have been progressively abandoned by the neoliberal state (Feola 2020, 881). This shift towards individual responsibility in securing basic needs reflects a fundamental tenet of neoliberal ideas—monetizing the citizenry. However, the monetization of essential aspects like health care and housing proves to be a failing of neoliberal ideals for several reasons. Firstly, it exacerbates social inequalities, as those with greater financial means can access better services and living conditions, perpetuating a cycle of disadvantage for economically vulnerable individuals. Secondly, it places an undue burden on individuals to navigate complex and often inaccessible systems, hindering the

realization of equal opportunities. Moreover, when individuals inevitably face challenges in embodying the marketized ideal of self-sufficiency, the neoliberal response is not to address systemic issues but to implement responsabilization measures. This involves subjecting individuals to various behavioral technologies, tests, and sanctions, creating a punitive system that further disadvantages those who are already economically marginalized (Feola 2020, 883). This approach not only intensifies societal disparities but also reinforces a neoliberal governance strategy that places the onus on individuals for systemic shortcomings.

The concept of debt in this context is not merely an economic transaction but functions as a mode of governance. By tying essential support systems to financial capabilities, the neoliberal system leverages debt as a mechanism of control (Feola 2020, 881- 883). It underscores the idea that managing debt extends beyond economic considerations and becomes a dynamic force influencing and directing the lives of those burdened by it. This approach underscores the profound impact that indebtedness has on individuals, shaping not just their financial obligations but also their entire way of life and sense of self. It highlights the failure of neoliberal ideals in providing a fair and just society, as the monetization of essential services leads to systemic inequalities and places an unsustainable burden on individuals, ultimately undermining the core principles of equal opportunity and social justice. As the neoliberal approach to individual responsibility and monetization unfolds, it intertwines with the strategies employed by courts and municipalities to generate revenue, creating a complex web where financial burdens on citizens become entangled with broader systemic practices.

Methods of extraction/targeting the racialized poor

Within the modern American system of law enforcement, legal proceedings, incarceration, and parole, a dual financial dynamic unfolds of both consuming funds and generating revenue (Murch 2016, 105). Methods of extraction targeting the racialized poor are embedded in practices such as asset forfeiture, lucrative public contracts with private service providers, and the direct extraction of funds and unpaid labor from marginalized communities.

This intricate financial interplay extends beyond the straightforward exchange of expenses for revenue within the criminal justice system. Penal debt, as elucidated by Feola (2020), intertwines with administrative fees and monetary penalties imposed for various "quality of life" infractions. These fees are compounded by private entities seeking profit from the indebtedness of those involved in the criminal justice system (Feola 2020, 882). For instance, take the case of Harriet Cleveland from Montgomery, Alabama, whose initial misdemeanor penalty for driving without a license spiraled into a debt of nearly \$5,000 over four years due to monthly supervision fees, interest, and penalties imposed by the private probationary firm Judicial Correction Services. Cleveland's inability to pay ultimately resulted in her incarceration (Feola 2020, 882). Unfortunately, such cases are not isolated; they underscore the widespread and impactful nature of LFOs. These financial burdens, far from being a mere consequence of legal infractions, create enduring structures of contact, documentation, and oversight

that keep those formerly incarcerated under state supervision long after their sentences have been concluded.

The subjects ensnared by these systems must regularly report to state or private authorities subcontracted by the state, documenting their efforts to meet financial obligations. Falling behind in payments exposes them to legal jeopardy, even during incidental contact with law enforcement officials. Feola (2020) critically examines the disproportionate impact of economic status on the duration and severity of legal penalties within the justice system: “This temporal expansion of punishment results in significant, class-based inequalities in the administration of justice. As detailed by Alexes Harris, those with the financial means to discharge their obligations can close their cases, seal their records, and cease routine contact with law enforcement officers. Conversely, individuals lacking the financial capacity to do so remain under state management for extended periods, facing heightened legal scrutiny and accumulating additional interest and fines in the process” (Feola 2020, 884). Ultimately the punishing of individuals through financial sanctions does not have an equal impact on everyone; instead, the poor end up serving extended sentences; and incurring higher payments solely due to their economic status.

This systemic intertwining of financial burdens and legal consequences emphasizes the significant impact of extraction methods specifically directed at the racialized poor within the American criminal justice system (Feola 2020, 884). The intricate web of LFOs stretches beyond immediate financial challenges and delves into profound repercussions, particularly within the realm of credit. The neglect of these obligations

casts a shadow over individuals' credit scores, limiting their access to loans and credit facilities. This hindrance not only disrupts significant purchases but also contributes to enduring financial instability. The far-reaching consequences extend to higher interest rates, affecting employment opportunities, as some employers scrutinize credit history in the hiring process (Selbin, 2020, 413). Additionally, housing prospects are constricted, with landlords often assessing credit scores during rental applications, influencing decisions on security deposits and housing options. This restricted freedom in choosing a residence subsequently impacts individuals' proximity to crime and their interactions with law enforcement; in what legal scholar Devon W. Carbado terms broken window policing (Carbado 2016, 1486).

Broken windows policing is a proactive approach aimed at preventing minor crimes and signs of disorder in a community. It operates on the belief that addressing low-level offenses can prevent more serious criminal problems. This policing strategy, however, results in increased contact between African Americans and law enforcement, as they are more likely to be arrested for minor offenses. The perception of disorder is often racialized, with black individuals and neighborhoods facing a higher likelihood of being targeted for broken windows policing. Economic marginalization in predominantly Black communities further contributes to their vulnerability to this policing strategy, as these areas are seen as disorderly. The revenue-driven aspect of law enforcement, which Carbado terms "predatory policing," exacerbates this by directly targeting vulnerable groups for arrests or citations to generate income for the city or police department and to facilitate promotions and pay increases for specific officers (Carbado 2016, 1486-

1487). The extractive function of LFOs underscores a system that not only penalizes individuals for their legal transgressions perceived or otherwise but also ensnares them in a cycle of debt, making the pursuit of financial stability an increasingly elusive and challenging endeavor. LFOs have become a revenue stream for countless municipalities across the country, shifting the focus of some departments to become revenue-generating entities. "In cases where police departments contribute to municipal finances, they might shift resources from essential tasks like patrolling and investigations to prioritize revenue generation, especially in resource-scarce conditions. This resource reallocation has been observed in fee collection for courts and correctional services. A study by the Brennan Center at New York University on legal debts in the 15 states with the largest prison populations found that an 'excessive reliance on fee revenue undermines the traditional functions of courts and correctional agencies.' When probation and parole officers spend more time on fee collection than on public safety and rehabilitation, it compromises their roles as well (Diller, Bannon, and Nagrecha 2010)" (Goldstein, Sances, and You 2020, 9). This underscores the possible outcomes of police departments contributing to municipal budgets, signaling a change in focus from vital duties such as patrolling and criminal investigations to prioritizing revenue generation, particularly in settings with limited resources.

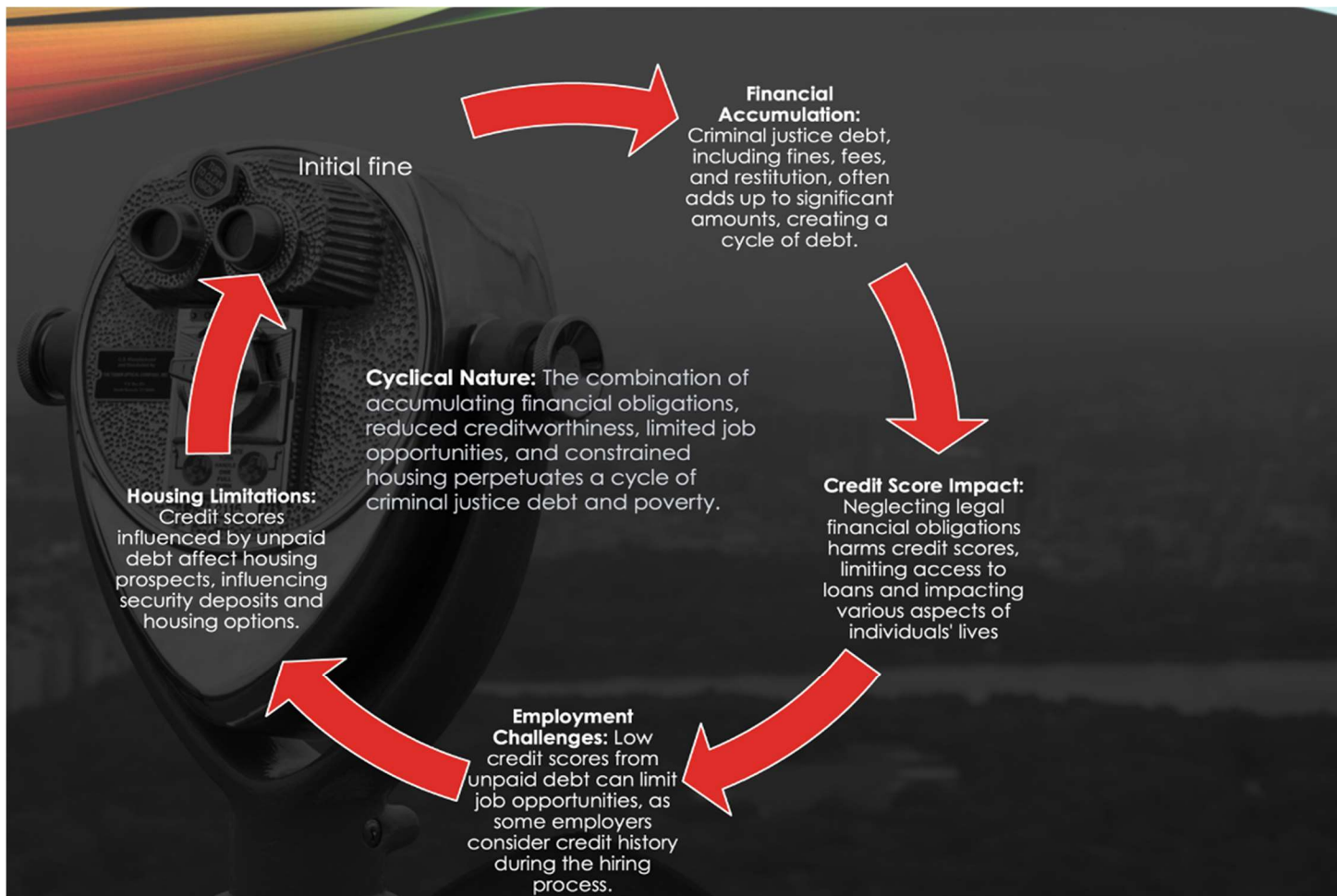
The overreliance on fee revenue, particularly in the context of court and correctional fees, can compromise the primary functions of courts and correctional agencies. Driven by profit motives, private probation companies, often operating under flat-fee contracts with localities, treat individuals on probation as debtors. In these agreements,

probationers must pay a predetermined supervision fee, distinct from any fines levied as part of their punishment. For instance, the standard fee in Georgia amounts to \$35 per month, while fees in Montana can escalate to as high as \$100 per month. This business model, characterized by routine imposition of late fees and additional financial burdens, underscores one judge's critique of probation as a "judicially sanctioned extortion racket" (Graham, and Makowsky 2020, 318). Consequently, the combination of fines, fees, and related expenses can accumulate to significant sums; sometimes reaching thousands of dollars. Compounding this, Washington State allowed for the continuous accrual of a 12 percent annual interest rate until recently on unpaid restitution. Consequently, the debt persists and grows over time, irrespective of individuals' regular efforts to make payments and diminish the owed amount (Rafael 2023, 4). The state's imposition of an annual interest rate, specific to its jurisdiction, further compounds the financial strain on individuals already grappling with the weight of their legal financial obligations (Mughan 2020, 3). The very mention of the state's imposition of an annual interest rate highlights the insidiousness of the compounding financial strain on individuals, underscoring the broader issue of the consequences individuals face when dealing with LFOs.

Figure 4 demonstrates how this vicious cycle of debt is perpetuated by the ongoing accrual of interest, creating a challenging situation for those attempting to navigate the complexities of financial recovery. According to policy analyst Ray Khalfani "Placing unpayable debts on unprotected people with low incomes is much the equivalent of taking blood from a stone" (Khalfani 2021, 8). This encapsulates the profound injustice

embedded in imposing overwhelming financial burdens on vulnerable individuals with limited income. The metaphorical expression, "taking blood from a stone," vividly conveys the near-impossibility and cruelty of extracting resources from those who have very little to give. In the context of LFOs, this quote highlights the disproportionate impact on marginalized communities, especially those with low incomes.

Figure 4:



For instance, Washington's offender-funded criminal justice system disproportionately burdens the poorest, predominantly impacting people of color. Racial disparities persist at all stages, with Black and Latinx individuals facing higher arrest, conviction, and imprisonment rates, emphasizing systemic inequalities. For instance, despite comprising only 4.1% of the state's population, Black people constitute 18.4% of the prison population, illustrating a 6.4 times higher likelihood of incarceration compared to White people (Anderson 2020, 318). Considering these disparities, it can be deduced that Black and Latinx individuals face significant racial and ethnic discrepancies concerning the amount and age of the LFO debt. When viewed per capita, the LFO debt owed by White people amounts to \$210 per 100,000 persons, whereas Latinx individuals owe \$235, and Black people owe \$650. The specific number of Black and Latinx individuals undergoing LFO debt repayments through Debt Collection Agencies (DCAs) is not documented; however, in Washington State, these groups are likely to carry prolonged LFO debt. Notably, around 17% of Black people's LFO obligations and over 10% of Latinx individuals' LFO obligations surpass ten years, in contrast to less than 10% of White people. Considering the educational and employment status of those entering and leaving the criminal justice system, it can be inferred that Black and Latinx individuals with LFO debt are more prone to being currently in or at risk of referral to DCAs, thereby heightening their vulnerability to the ensuing cascade of financial and legal repercussions. (Adamson 2020, 319).

In Washington, individuals confront various charges within the offender-funded criminal justice system. For misdemeanors, fees start at a minimum of \$250, escalating

to \$500 for felonies. This approach aligns with the general pattern noted in various states. For example, in Florida, individuals face fees starting at \$50 for misdemeanors and \$100 for felonies. North Carolina implements charges like \$200 for a court no-show, \$25 for overdue payment of a court fine, and \$20 for initiating an installment payment arrangement. Meanwhile, Illinois grants judges the authority to apply a 15 percent penalty on delayed payments, along with a 30 percent collection fee. Adding to the financial strain, several states mandate defendants to cover a portion of legal service expenses. About 66% of states authorize judges to impose fees on defendants to cover certain expenses related to their legal representation by a public defender. From the defendant's perspective, these fees act as a continuation of the criminal justice penalty. A striking case in Pennsylvania exemplifies the severity of hidden fees, with a defendant accumulating \$2,464—more than three times the initial fine. This included over twenty-six separate fees, ranging from the "Automation Fee" and "Sheriff Costs" to "Postage Fee," "Police Transport," "Drug Fee," "Plea [Bargain Fee]," and "Police Drug Fee," underscoring the potential overwhelming impact, even with smaller dollar amounts, on individuals facing financial hardship (Jain 2018, 1405).

The employment prospects for individuals reentering society after incarceration are widely recognized as challenging. As reported by the National Institute for Justice, within the initial year post-release, as much as 60% of individuals with a history of incarceration experience unemployment (Khalfani 2021, 7). The well-documented evidence emphasizes the post-incarceration challenges individuals face, particularly those with criminal convictions. Securing employment becomes a formidable task with criminal

background checks and the increased use of credit reports by employers. This situation exacerbates hurdles for individuals with outstanding criminal financial obligations, risking disqualification from vital benefits like food stamps, housing assistance, and federal Temporary Assistance to Needy Families (“TANF”) funds. The intertwining challenges of legal financial obligations and criminal convictions weave a complex web of barriers, impacting individuals' financial, physical, and mental well-being (Lollar 2020, 431). The origins of contemporary laws penalizing poverty and capitalizing on the financial vulnerability of debtors can be traced back to the nineteenth-century system of convict leasing. Presently, with subtle modifications, this current practice disproportionately impacts impoverished individuals within the framework of our criminal justice system. (Adamson 2020, 316).The cumulative effect of unemployment and financial strain amplifies the difficulties faced by those reentering society after incarceration, perpetuating cycles of disadvantage and systemic inequality.

Subsequently in the context of unpaid LFOs being passed over to collection agencies, failing to meet these financial obligations can lead the court to hire a collection agency for recovery. The individual is then burdened not only with the unpaid amounts but also with the costs associated with private debt collection. The court can add the expenses of collection services as court costs, and this can persist for up to ten years after the sentencing. Even if supervised by the Department of Corrections, a criminal offender needs approval before the collection process begins. The court must choose a collection agency through a competitive bidding process, considering factors like reputation and access to local databases. It is crucial to note that using a collection

agency does not relinquish the court's control over the money owed, and similar processes may be employed for collecting money owed to the county related to civil judgments. This transition intensifies the financial strain on the debtor, introducing additional fees and expenses associated with private debt collection. Amidst these challenges, when individuals facing economic hardship are burdened with unpayable debts, it exacerbates existing financial struggles, pushing them into a cycle of perpetual hardship. The term "unprotected people" (Feola 2020) highlights the vulnerability of certain groups in society lacking adequate safeguards against oppressive financial practices. This vulnerability is particularly relevant in the criminal justice system, where individuals, often from marginalized communities, find themselves ensnared in a web of fines, fees, and interest rates they cannot reasonably repay.

As individuals grapple with these mounting financial obligations, there is a looming risk of their debt being handed over to private collection agencies. For example, in the state of Washington, should you have outstanding LFOs stemming from a felony or misdemeanor conviction, or other financial responsibilities mandated by Title 13 RCW; the court has the authority to engage a collection agency for debt recovery. This places the burden of covering the expenses linked to these collection services on the debtor, adding to the economic challenges faced by individuals who are already vulnerable. The education and employment status of individuals entering and leaving the criminal justice system contribute to a notable disparity. Consequently, there is a higher likelihood that Black and Latinx individuals with LFO debt are either currently in or are at risk of being referred to private Dept of Collection Agencies (DCA). Hence, these communities face a

higher susceptibility to the twisted sequence of financial and legal repercussions that follow (Adamson 2020, 319). The criminal justice system, specifically the LFO debt repayment mechanism, has consistently targeted communities of color, echoing broader systemic issues within our legal institutions. This longstanding historical continuum, rooted in the legacy of slavery, highlights the enduring impact on marginalized communities. Washington along with other states offender-funded criminal justice system exemplifies this pattern, disproportionately burdening the poorest individuals, primarily affecting people of color.

Legal Blind Spots: Examining the Law's Complicity in Predatory Practices and Its Failure to Protect Vulnerable Populations

In emphasizing the constitutional duty of Justice Courts to administer justice impartially, the New York Justice Court Task Force (2015) asserts “While it is true that Justice Courts can be a source of revenue for their sponsoring localities...Justice Courts are not to be viewed as revenue generating entities for their municipalities... Even if Justice Court activities may affect the locality's fiscal balance, the Court's constitutional obligation is to decide every case fairly and independently for all litigants without regard for the sponsoring locality's potential revenue and costs (New York Justice Court Task Force 2015, p 18)” (Mughan 2020, 3).

In the broader landscape of criminal justice practices, a pressing question arises: Why does the law, designed to safeguard citizens, seemingly fall short in protecting

vulnerable populations from exploitative and predatory practices? The historical narrative of debtors facing potential life sentences for financial struggles was eradicated with the abolition of debtors' imprisonment in 1833 under federal law. However, the repercussions of indigence persisted, revealing systemic challenges and inequalities.

Legal milestones, including Supreme Court decisions such as *Williams v. Illinois* and *Tate v. Short* (1970-1971), aimed to challenge the constitutionality of incarcerating those too poor to repay debts. The pivotal 1983 decision in *Bearden v. Georgia* sought to introduce a critical distinction between genuinely unable debtors and willful non-payers, emphasizing the need for discernment by local judges. Despite these strides, lived experiences, like Maria Rivera and Harriet Cleveland, underscore persistent challenges at the intersection of poverty, debt, and the legal system (Lollar 2020, 429 and Feola 2020, 882). Criminal justice financial obligations, spanning fines, fees, and restitution, create a layered burden, blurring lines between civil and criminal matters. Indigent debtors navigate this complex terrain, where a civil proceeding may lead to criminal ramifications, and criminal involvement can generate additional civil debt, impacting various life spheres. Debtors' imprisonment persists as judges reframe offenses as "failing to appear" or "contempt of court," diverting attention from the inability to pay. The *Bearden* decision, prohibiting incarceration for financial incapacity, lacks precise criteria for discerning "indigent" and "willful," fostering ambiguity (Hager 2015,4). This enables judges to wield subjective judgment, resulting in inconsistent determinations. These judges, tasked with self-funding their court systems, raise concerns about fairness and impartiality, as their budgets rely on capitalizing on the citizenry.

In the 1800s, the establishment of a bankruptcy system coincided with the elimination of debtors' prisons, marking a transition from using imprisonment as the predominant method for enforcing payment of commercial debts. As state authorities shifted their stance on incarceration, leaders at the national level sought to institute a federal bankruptcy system for the discharge of debts. The Bankruptcy Act of 1898, establishing a viable national bankruptcy system, did not expressly restrict the elimination of criminal debt. While it prohibited the forgiveness of debts designated as "penalty or forfeiture" owed to the United States or any territory there within, the Act did not explicitly classify government-related criminal debt as nondischargeable. Consequently, early courts were divided on the dischargeability of penal or criminal debt (Lollar 2020, 429). This historical context intersects with contemporary challenges within the justice system. While some judges evaluate finances through interviews or questionnaires, others employ arbitrary measures, intensifying the potential for inequality. The absence of standardized criteria highlights the urgent need for clearer and more uniform guidelines to prevent the misuse of judicial discretion in debt-related imprisonment. Notably, (LFO) obligations persist as mandatory and non-dischargeable in bankruptcy, exemplified in cases like Maria Rivera's. The intertwining of judicial roles with funding sources raises critical questions about the inherent fairness of the system and its potential impact on the administration of justice.

Simultaneously, financial incentives drive the overuse of probation, affecting more people than incarceration itself. In states like Georgia, probation companies generate substantial revenue, contributing to the privatization of probation services. These

companies operate under "flat fee" contracts, where probationers must pay a fixed supervision fee, distinct from any fines owed as part of their punishment (Jain 2018, 1407). The imposition of fees within the criminal justice system creates a framework that incentivizes localities to operate the system as a business. This operational framework gains value through extracting money, overseeing payments, and imposing extra penalties for non-payment. Yet, this strategy introduces a potential hazard where decisions to make arrests may be swayed by the organization's vested interest in generating revenue, rather than prioritizing public safety. This issue becomes especially evident when the fees directly contribute to funding the criminal legal system. The intentional substitution of "legal" for "justice" underscores a profound truth – the act of monetizing a public good inherently lacks any intentions of achieving justice. For example, in Arizona, a significant portion of criminal court surcharges feed into a "criminal justice enhancement fund." Similarly, Allegan County, Michigan, allocates fees to cover various costs, including the salaries of court employees, heating, telephones, copy machines, and even the expenses of the county employees' fitness gym. According to an Allegan County court administrator, defendants may not perceive themselves as customers, as their presence is not voluntary, but the reality is that they are, in fact, users of the services provided by the court (Jain 2018, 1406).

In the broadest sense, (LFOs) are a staple of what is now termed "offender-funded justice" (Feola 2020, 878). One county supervisor in Riverside, California made his support clear by remarking "If you do the crime, you will serve the time, and now you will also pay the dime" (Feola 2020, 879). Lawmakers' preference for imposing "user"

fees stems from their perception of courts as a revenue source, contrasting with other punitive measures that incur costs for the state. This strategic shift shields lawmakers from political fallout, as the brunt of these new sanctions disproportionately crushes an already marginalized sector of society—those entrapped in what we might conceive of as a criminal justice system spin cycle, wherein economically disadvantaged, and overwhelmingly representing minority communities. The state's withdrawal of financial support from local courts has spurred lawmakers to shift growing system expenditures onto "users" by introducing new or heightened fines and fees. "Consequently, judges in underfunded courts find themselves incentivized to maximize "cost recovery" through the imposition of (LFOs), exacerbating the burdens placed on individuals convicted within the criminal legal system" (Adamson 2020, 318). The intricacies of this complex web of legal and financial entanglements illuminate a glaring blind spot in the law—its complicity in perpetuating predatory practices and its failure to protect the most vulnerable populations.

In times of financial constraint, individuals who breach municipal codes are more frequently seen as a means to enhance operational budgets and improve the creditworthiness of municipalities for financial institutions. As expressed by political scholar Jackie Wang in her book *Carceral Capitalism*, "the collapse of the tax state has created a situation where the livelihoods of local government bodies are increasingly tied to predatory fiscal structures that foster looting" (Wang 2018, 22). Despite facing opposition from certain judges and commentators regarding the loose adherence to Bearden, tangible change continues to be elusive. The ethical justification that once

supported debtors' prisons in the early 1800s appears to have resurfaced, enabling the imprisonment of individuals labeled as "criminal," even when their failure to pay would be pardoned if the debt were of a commercial nature. “Abbye Atkinson, a legal scholar and professor at Berkeley Law, insightfully observes that Congress and the courts have menacingly substituted actual misconduct liability for dishonesty regarding criminal and civil fines, penalties, and forfeitures” (Lollar 2020, 433). Further detailing the complicity of those tasked with making the laws and maintaining them, it becomes evident that the intricate relationship between legislation and its enforcement plays a pivotal role in shaping the contemporary legal landscape. This nuanced examination underscores the interplay between policymakers and legal practitioners, revealing how their decisions impact individuals facing financial challenges. By delving into the complexities of this relationship, we gain insight into the multifaceted factors contributing to the resurgence of punitive measures, such as the incarceration of individuals struggling with debt. The complicity extends beyond the mere existence of laws to encompass their interpretation, enforcement, and the broader societal implications of such legal frameworks. This exploration is crucial for unraveling the layers of influence that contribute to the complex dynamics surrounding debt-related incarceration in the modern era.

Conclusion – what could be done?

In conclusion, the intricate web of legal financial obligations (LFOs) and predatory practices within the criminal justice system necessitates a comprehensive strategy that blends policy reforms, legislative measures, and a commitment to social justice. The following policy recommendations aim to rectify existing imbalances, alleviate undue financial burdens on marginalized communities, and foster a fairer legal landscape:

1. **Means-Testing and Individualized Assessments:** Implementing means-testing and individualized assessments will ensure that financial obligations are proportionate to individuals' abilities to pay, fostering equity within the criminal justice system.
2. **Guidelines for Judicial Discretion:** Clear guidelines for judicial discretion and the elimination of mandatory minimums for LFOs are crucial for a fair and consistent legal approach. This will prevent arbitrary decision-making and promote justice in legal proceedings.
3. **Reconsideration of Nondischargeability in Bankruptcy:** Reconsidering the nondischargeability of LFOs in bankruptcy is essential to offer individuals a viable path to financial recovery post-sentencing. This change can contribute to a more compassionate and rehabilitative justice system.
4. **Public Funding for Courts:** Increased public funding for courts is necessary to reduce reliance on fines and fees as revenue sources. This will alleviate the financial strain on individuals and ensure that justice is served without disproportionately affecting vulnerable populations.

5. **Limitation on Collection Fees:** Placing limitations on collection fees is crucial to prevent the exploitation of individuals through exorbitant fees imposed by debt collection agencies. This will protect the economically vulnerable from further financial hardship.
6. **Community Engagement and Education:** Community engagement and education programs are pivotal in empowering individuals to navigate the legal system, understand their rights, and advocate for themselves. Informed communities are better equipped to address systemic issues.
7. **Data Collection and Analysis:** Ongoing data collection and analysis are essential for monitoring disparities and informing evidence-based policy adjustments. A commitment to transparency and accountability ensures continuous improvement in the justice system.

By advocating for these reforms, we can move toward a criminal justice system that upholds the principles of equality, justice, and protection for all citizens. This comprehensive approach aims to transform the legal landscape, prioritizing rehabilitation, public safety, and social fairness over revenue generation and exploitation. The pursuit of a fair and equitable legal system is fundamental to building a just society. In addition to the proposed policy recommendations, a fundamental shift in the approach to criminal court-related debt is imperative. Rather than reinforcing existing laws, such as the precedent set by *Bearden*, it is crucial for courts and legislators to eliminate the use of incarceration to enforce the nonpayment of criminal court-related debt. Existing mechanisms, such as garnishment of wages and property

seizures, can effectively ensure payment for those with assets who choose not to comply. A key starting point for any assessment of criminal fines, fees, restitution, or bail should be a thorough evaluation of an individual's ability to pay. The American Bar Association's Guidelines on Court Fines and Fees advocate for an "ability-to-pay" hearing before imposing any sanctions for nonpayment.

This determination should be grounded in objective criteria, assessing what someone can afford to pay at the time of the hearing (Mehchu 2020, 1507). Furthermore, a move towards a "day" fine system, as employed in numerous other countries, should be considered. Rather than fixed amounts, this system calculates an individual's financial obligation based on their daily income and multiplies it by a predetermined number of units of punishment, reflecting the nature of the criminal violation. This approach ensures a more proportional and fair system, considering factors such as living expenses, dependents, assets, and overall financial well-being. Ultimately, if someone is genuinely financially unable to make payments, judges should have the discretion to waive fines and fees. Research indicates that "day" fine systems without statutory maximums can increase collection rates, enhance total revenue, and reduce arrest warrants for outstanding debt (Lollar 2020, 434-436).

By embracing progressive approaches, such as the implementation of "day" fine systems without statutory maximums, the justice system can realign with principles of fairness, equity, and social justice. This shift away from punitive measures, especially those disproportionately affecting economically disadvantaged and marginalized

communities, signifies a transformative step towards a more compassionate and just criminal justice system.

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