

Poverty and Mass Incarceration

Race often takes center stage in discussions of mass incarceration, but poverty also plays a major role in shaping a person's encounter with the criminal justice system. The people most likely to face arrest and go through the courts are poor and marginalized: people who have not completed high school, people with mental illness, people with substance abuse problems or histories.¹⁵⁹ When the system charges them fees and fines, they are the least likely to be able to pay.

This leads to two kinds of injustice. First, it gives rise to a system in which poor people receive harsher treatment than wealthier people who commit identical crimes.¹⁶⁰ Poverty can lead to arrests for unpaid debt, to sitting in jail while those who can pay go free, to plea bargains with unintended consequences, and to crushing loads of debt imposed by the criminal justice system itself.

Second, "This new system of offender-funded law enforcement creates a vicious circle: The poorer the defendants are, the longer it will take them to pay off the fines, fees and charges; the more debt they accumulate, the longer they will remain on probation or in jail; and the

more likely they are to be unemployable and to become recidivists."¹⁶¹

The federal government banned debtors' prisons, where people would be incarcerated if they couldn't pay off a debt, in 1838. Instead, what we now know as bankruptcy law

came into place. Though still technically illegal, as upheld by the Supreme Court in 1983, courts have found ways to circumvent the law. An unpaid debt can result in a civil suit; if the debtor doesn't show up for court, or if the judge decides the person is "willfully" not paying (a loophole left open by the Supreme Court), s/he can be charged with contempt of court and arrested. This process is further complicated by the fact that indigent defendants have a right to counsel in criminal cases, but not in civil ones.

Once arrested, a person who is neither a flight risk nor a danger to society usually has bail set. People of means pay their bail money, which is refunded at the conclusion of their trials. But bail amounts can be set excessively high, and the commercial bail bonds industry, which will pay your bail for a fee, charges exorbitant rates.¹⁶²

Deuteronomy 24:6,10-13

6 A handmill or an upper millstone shall not be taken in pawn, for that would be taking someone's life in pawn.

10 When you make a loan of any sort to your countryman, you must not enter his house to seize his pledge. 11 You must remain outside, while the man to whom you made the loan brings the pledge out to you. 12 If he is a needy man, you shall not go to sleep in his pledge; 13 you must return the pledge to him at sundown, that he may sleep in his cloth and bless you; and it will be to your merit before the Lord your God.

¹⁵⁹ Sociologist Alexes Harris, University of Washington: <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶⁰ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶¹ <http://www.nytimes.com/2014/08/27/opinion/thomas-edsall-the-expanding-world-of-poverty-capitalism.html>

¹⁶² The US and the Philippines are the only two countries in the world where commercial bail bond is legal. http://www.nytimes.com/2008/01/29/us/29bail.html?_r=2&

Poverty also affects people in the mass incarceration system through structurally incentivizing plea-bargains. A public defender, on whom many poor people must rely, usually lacks the time or resources for a lengthy trial. Similarly, a person who needs to be home taking care of family, or working to bring in needed money, can't afford to sit in jail during a trial—and likely can't afford bail either. Pleading guilty and accepting a suspended sentence or probation meets the immediate need of getting the person back to regular life, at the cost of a criminal record. See p. 82 for a discussion of why that can be damning for life.

This brings us to other court-related payments, apart from bail. These fall into three categories: fines, which are intended to be punitive (e.g., traffic fines); restitution, which is paid to the victim of a crime; and fees that fund the operation of the mass incarceration system.

While fines and restitution are as old as the Bible, fees are much newer, and there has been “mission creep” in their use. In 1965, California ordered reimbursements to crime victims. By the 1980s, states started billing criminal defendants to reimburse taxpayers for public expenses.

Michigan, in 1984, passed the first law to charge incarcerated people for some of the costs of their incarceration.¹⁶³

The progression is clearly alarming. And what do these fees include? “Jail book-in fees, bail investigation fees, public defender application fees, drug testing fees, DNA

testing fees, jail per-diem for pretrial detention, court costs, felony surcharges, public defender recoupment fees...”¹⁶⁴ “costs of imprisonment (billed to inmates in 41 states), and of parole and probation (44 states)...”¹⁶⁵ In one Michigan county, Allegan, a man was fined \$1000 in court fees. \$500 were for the public defender, and the other \$500:

...helped pay for the costs of running the county courthouse. Those costs include the salaries of court employees, for heat, telephones, copy machines and even to underwrite the cost of the county employees' fitness gym. “The only reason

*that the court is in operation and doing business at that point in time is because that defendant has come in and is a user of those services,” says Michael Day, the administrator for the Allegan County Circuit Court.*¹⁶⁶

Fines and Restitution in the Bible

When a man steals an ox or a sheep, and slaughters it or sells it, he shall pay five oxen for the ox, and four sheep for the sheep... But if what he stole — whether ox or ass or sheep — is found alive in his possession, he shall pay double. (Ex. 21:37, 22:3)

Tom Barrett was homeless and selling his plasma to a blood bank to supplement the food stamps he received. When he stole a \$2 can of beer, he turned down the public defender, because he couldn't afford the \$50 administrative fee. His 12-month sentence was initially deferred, but probation was expensive. Barrett owed more than \$400 a month, including fees to rent the electronic monitoring device he had to wear. His inability to pay was a violation of probation, and Barrett went to jail.¹⁶⁷

¹⁶³ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶⁴ <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq#.0jjdjMZVX>

¹⁶⁵ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶⁶ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁶⁷ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

And what is the cost of not being able to pay? That's a violation of many people's probation rules, which means more incarceration.

This issue, of course, came to the national stage when the Justice Department released its report on the Ferguson Police Department in March, 2015.¹⁶⁸ The findings from Ferguson, where the city relied on fees and citations for nearly a quarter of its general operating budget¹⁶⁹, may be extreme, but are by no means unusual.

What's driving these fees is the ballooning cost of the mass incarceration system—see p. 50 for a further discussion—combined with a sense (reflected by Mr. Day, above) that it's

fair for criminals to pay for their crimes. Some reforms are underway, as described in a New York Times "Fixes" column in 2015,¹⁷⁰ but what's needed is a larger shift in how we understand the purpose of a court system. Who is really the "user"—the defendant or the society at large?

Facts and Figures

Bail:

- According to a 2015 report by the Vera Institute of Justice, in

New York City in 2013, more than half of people held in jail during their trials were there because they could not afford bail of \$2,500 or less. Most of these were misdemeanor cases.¹⁷¹

- The average bail amount for felony defendants jumped 43% from 1992 to 2009.¹⁷²
- Watch this great, short video on commercial bail bond: <https://www.youtube.com/watch?v=UAyX27tJUkA#t=11>

Rabbi Hayyim David Halevy: The Arrest of Suspects According to Halakhah, and How to Avoid Arresting Those Innocent of Any Crime

We learn from the words of the Riba"sh (14th century Spanish rabbi) that one who is arrested for a crime that is likely to result in capital punishment, or any bodily crime, is not freed on bail until after his judgment is determined. From this we can learn that for all other crimes, for which the punishment is monetary, we let them go until the determination of the sentence.

- Aseh L'kha Rav 3:48. Rabbi Halevy lived from 1924-1998 and served as Chief Sephardic Rabbi of Tel Aviv from 1973 until his death.

The Cost of Fees:

- In Washington State, there's 12% interest on costs in felony cases that accrues from the moment of judgment until all fees are paid off in full. The average amount in felony cases

starts off at \$2,500. If someone paid a typical amount — \$10 a month — and never missed a payment, his debt would keep growing. After four years of faithful payments, the person would now owe \$3,000.¹⁷³

- A homeless person in Westminster, CO was fined \$165 for a traffic violation, which he could not pay. He was eventually arrested for nonpayment and sentenced to ten days in prison, at a cost to taxpayers of about \$70/day, according to the ACLU of Colorado.¹⁷⁴

168 <http://www.washingtonpost.com/news/post-nation/wp/2015/03/04/the-12-key-highlights-from-the-doj-s-scathing-ferguson-report/>
 169 P. 10 of the DOJ report, qtd. In http://www.nytimes.com/interactive/2015/03/04/us/ferguson-police-justice-department-report.html?_r=0
 170 http://opinionator.blogs.nytimes.com/2015/03/27/shutting-modern-debtors-prisons/?_r=0
 171 <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>
 172 <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>
 173 <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>
 174 <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

• On an average day in Benton County, WA, in 2013, one in four people who were in jail for misdemeanor offenses were there because they had failed to pay their court fines and fees.¹⁷⁵

Supporting the System:

• By 1990, Texas reported that fees from offenders made up more than half the budget of the state's probation agencies.¹⁷⁶

• In fiscal 2015, Ferguson, Missouri expected municipal court fines to supply \$3.09 million of the city's projected \$13.26 million budget, or 23.3%.¹⁷⁷ In 2011, fines had accounted for only 12.3%.¹⁷⁸

Unpaid Fees and Fines Are Prevalent:

• In 2011, in Philadelphia alone, courts sent bills on unpaid debts dating back to the 1970s to more than 320,000 people — roughly 1 in 5 city residents. The median debt was around \$4,500.¹⁷⁹

• In New York City in 2014, there were 1.2 million outstanding warrants, many for unpaid court fines and fees.¹⁸⁰

• In 1991, 25% of people incarcerated in prisons said they owed court-imposed costs, restitution, fines and fees. By 2004, the last time the Justice Department did the survey, that number climbed to about 66%. A 2014 study estimates

that 80-85% of returning citizens leave prison with this kind of tab.¹⁸¹

What's Working: BAM! Behavioral Therapy with STYL

In Liberia, it works with unemployed young men whose lives were ravaged by 14 years of civil war. In Chicago, it works with teens at risk of dropping out of school. STYL (Sustainable Transformation of Youth in Liberia) and BAM (Becoming A Man) take people who would otherwise likely be involved in crime and/or drugs and offer them participation in an eight-week group cognitive behavioral therapy program. The curriculum helps them learn strategies for staying cool, making smarter decisions, and planning for the long term—emotional skills that many people with less-disrupted lives learn as young children. The results are astounding. In Liberia, for a cost of less than \$250 per person, violence and other negative behaviors dropped 20-50%. A year after the therapy, as many as half of the participants were living productive lives. Economist Chris Blattman would like to see similar programs rolled out and tried in other places. "Where jobs and jail haven't worked, skills for self control just might."¹⁸²

Sample Partner Organizations:

- ACLU
- Brennan Center for Justice
- Justice Policy Institute
- Pretrial Justice Institute
- Arnold Foundation
- Public Welfare Foundation

For Further Reading

"Charging Inmates Perpetuates Mass Incarceration," by Lauren-Brooke Eisner, Brennan Center for Justice, May 21, 2015. <http://www.brennancenter.org/publication/charging-inmates-perpetuates-mass-incarceration>.

¹⁷⁵ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁷⁶ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁷⁷ P. 10 of the DOJ report, qtd. In http://www.nytimes.com/interactive/2015/03/04/us/ferguson-police-justice-department-report.html?_r=0

¹⁷⁸ <http://www.nytimes.com/2014/08/27/opinion/thomas-edsall-the-expanding-world-of-poverty-capitalism.html>

¹⁷⁹ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁸⁰ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁸¹ <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

¹⁸² <http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/04/15/jobs-and-jail-might-not-keep-young-men-out-of-crime-but-how-about-therapy/>