RESEARCH ARTICLE

On cash and conviction

Monetary sanctions as misguided policy

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Mass incarceration creates significant social and public safety challenges. With nearly three quarters of a million people returning from jail or prison to civil society each year, researchers and policy makers increasingly emphasize the need to facilitate the reintegration and stabilization of the criminally convicted (Clear, 2007; Council of State Governments, 2005; Petersilia, 2003; Solomon, Osborne, LoBuglio, Mellow, and Mukamel, 2008; Travis, 2005; Urban Institute, 2006). Yet growing recognition of the importance of reentry coexists with myriad penal policies and practices that frustrate that goal. In this article, we argue that the discretionary imposition of substantial and nongraduated legal financial obligations (LFOs) as supplements to other criminal penalties is one such practice.

LFOs include fees (cost assessments, surcharges, and interest), fines, and restitution orders that are imposed by courts and other criminal justice agencies on persons accused of crimes. Unlike European day fines, fees and fines in the United States are imposed largely at judges' discretion; they also supplement rather than replace other criminal sanctions (Bannon Nagrecha and Diller, 2010; Beckett, Harris, and Evans, 2008; Harris, Evans, and Beckett, 2010). Moreover, in the United States, the assessment of fees and fines is not scaled to defendants' income or employment status (Bannon et al., 2010).[1] We argue here that the widespread assessment of substantial and nongraduated fees and fines is incompatible with

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1. In some states, however, court representatives do consider defendants' financial circumstances in determining their payment plans. In Pennsylvania, an effort is underway to structure the initial imposition of economic sanctions based on offenders' ability to pay (see Guideline Sentence Recommendations: Economic Sanctions, Act 2007–37 (2008)).

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policy efforts to enhance reintegration, lacks a convincing penological rationale, and raises numerous concerns about justice and fairness. Moreover, reliance on this revenue stream to fund key government operations is inefficient and creates undesirable conflicts of interest for judges and other criminal justice actors.

Our analysis and policy recommendations pertain to both fees and fines, but not to restitution. Fees are intended mainly to recoup criminal justice costs and may not be statutorily defined as penalties. By contrast, fines are intended as criminal penalties. Nonetheless, we treat both fees and fines as monetary sanctions, for several reasons. First, some fees *are* legally defined as penalties. In Washington State, for example, the mandatory $500 crime victim compensation fee is defined in the relevant statute as a "penalty assessment."[2] More generally, the imposition of LFOs (including fees) by Washington State judges is part of criminal "judgment and sentencing," and the legislative intent proffered for the assessment of LFOs does not differentiate between fees and fines.[3] In addition, the fees and fines imposed in a particular case generate a single LFO; the debt that results from their imposition is collected through identical methods. It therefore matters little to a legal debtor whether his or her financial obligation stems from a fee or a fine; the effects are indistinguishable. Fees are de facto penalties, even if they are not defined as such under statute.

Although restitution might also be conceptualized as a monetary sanction, we do not include it in our analysis or recommendations. Restitution differs from fees and fines in important ways. Restitution is imposed only in cases in which specific and direct crime victims have incurred financial losses; restitution payments are allocated to these particular people (or to those who have provided services to them). By contrast, fees and fines are routinely assessed in cases in which no direct victims exist or in which victims did not incur financial losses. Moreover, the revenues generated through the imposition of fees and fines are used to fund government operations and programs, a practice that raises particular concerns that we address toward the end of the article. For these reasons, our analysis focuses on fees and fines but not on restitution.

Proponents of correctional and court fees argue that offenders—not taxpayers—should pay for the cost of punishing their misdeeds (see Parent, 1990). The idea that offenders should foot the bill for criminal justice expenditures is a moral and political claim, one that likely has broad appeal. Nonetheless, this claim is in tension with at least two other

2. See Penalty Assessments (Revised Code of Washington 7.68.035, 1989).

3. The Washington State legislature identified the purpose of the legislation authorizing the imposition of LFOs as follows: "The purpose of this act is to create a system that (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." See Penalty Assessments, Revised Code of Washington 7.68.035, 1989.

important principles. First, public criminal law systems rest on the premise that crime is mainly a wrong against the state; violations of criminal law are thought to be significant enough to warrant the state's usurpation of the dispute resolution process (Pennington, 1993). In such systems, the criminal law process wrests conflicts from private parties and renders them the responsibility of government. Compelling defendants to reimburse the state for its criminal justice expenditures is in tension with this principle. Moreover, unlike users of other services for which fees are assessed, penal targets are compelled to partake of these services; they cannot use fewer of them or look for an alternative provider of them (Parent, 1990). It can be argued that if the state compels penal targets to use (often expensive and ineffective) state "services," then the government is obligated to pay for them. Indeed, this fiscal obligation is an important check on government power.

Competing moral and political arguments regarding the appropriateness of assessing fees to recoup criminal justice expenditures thus exist. Even if it were universally accepted, the idea that offenders should pay for their adjudication, punishment and rehabilitation must be balanced against several policy and practical considerations, as well as against ethical issues concerning justice and fairness. This article examines these issues.

In the first section, we briefly describe trends in the use of fees and fines in the United States. The evidence shows that monetary sanctions increasingly supplement other criminal penalties and typically create long-term legal debts that are substantial relative to expected earnings. Legal debt is especially injurious; unlike consumer debt, it is not subject to relief through bankruptcy proceedings or offset by the value of goods or services. Possession of this debt, in turn, reduces access to housing, credit, educational loans, and employment. It also has unique indirect effects, including, potentially, the loss of driver's licenses and federal benefits as well as arrest and incarceration. Collectively, then, the data suggest that the widespread imposition of substantial fees and fines creates enduring and consequential debt, one that is clearly at odds with the goal of reintegration. In the next section, we argue that the imposition of monetary sanctions is misguided and counterproductive absent meaningful consideration of defendants' ability to pay and as a supplement to severe confinement sentences. This claim is based on numerous considerations, including the absence of a persuasive penological rationale for this practice, concerns regarding justice and fairness, and problems associated with state dependence on this revenue source. We conclude that the imposition of nongraduated and supplementary monetary sanctions must cease. We begin with a brief overview of the use of monetary sanctions in the United States.

Part I. Monetary Sanctions in the U.S. Criminal Justice System

Historical Background

Monetary sanctions have long been a component of criminal sentencing. In many European countries, restitution was the primary form of punishment for centuries (Mullaney, 1988); fines also were ubiquitous (O'Malley, 2009). In the United States and its colonial territories, monetary sanctions became commonplace with the arrival of European settlers (Merry, 2000; Miethe and Lu, 2005). In the northern states, financial penalties were imposed mainly in minor criminal cases; serious crimes were thought to warrant physical punishments such as flogging (Miethe and Lu, 2005: 88). In some cases, however, fines were coupled with corporal penalties, and those who could not afford to pay their fines were subjected to additional physical penalties and penal servitude (Miethe and Lu, 2005: 90).

Monetary sanctions also were commonplace in the South, where their imposition was the foundation of the convict lease system that existed from emancipation through the 1940s (Adamson, 1983; Blackmon, 2008; Oshinsky, 1997; Perkinson, 2008). Charged with fees and fines several times their annual earnings, many southern prisoners were leased by justice officials to corporations who paid their legal debt in exchange for inmates' labor in coal and steel mines as well as on railroads, quarries, and farm plantations (Adamson, 1983; Blackmon, 2008; Oshinsky, 1997; Perkinson, 2008). Fees and fines collected from convict labor, in turn, were used to pay judges' and sheriffs' salaries (Blackmon, 2008). Monetary sanctions were thus integral to systems of criminal justice, debt bondage, penal servitude, and racial domination in the southern United States for decades.

Monetary Sanctions in the Contemporary United States

Although monetary sanctions are not new, legislatures have authorized many new fees and fines in recent years, and criminal justice agencies increasingly impose them. This trend coincides with the rapid expansion of the penal apparatus that began in the late 1970s, and was facilitated by developments in case law. In 1974, 11 years after *Gideon v. Wainwright* (1963),[4] the court upheld an Oregon statute allowing courts to assess poor people a fee for the legal representation that is provided to them by the state because of their indigence (*Fuller v. Oregon*, 1974).[5] The number of statutorily authorized financial penalties has grown dramatically since that time. A recent Brennan Center study of the rules regarding the imposition of fees in the 15 U.S. states with the largest prison populations found that such "user fees" were common and that the number and size of authorized fees have increased over time (Bannon et al., 2010; see also Butterfield, 2004; California Performance Review, n.d.; Levingston, 2008; Liptak, 2006; McLean and Thompson, 2007; Mullaney, 1988; Rosenthal and Weissman, 2007).[6] In Washington State, for example, up to 24 different fines and fees may now be imposed on felony defendants for a single conviction. Similarly,

4. In this decision, the U.S. Supreme Court unanimously ruled that state courts are required under the Sixth Amendment to provide defense counsel to criminal defendants who cannot afford their own attorneys.

5. For a discussion of this ruling and practice, see Anderson (2009). Proponents justify assessing indigent defendants a fee for the cost of their legal representation by arguing that indigent clients might pay in the future. However, in many locales, fees are assessed at the time representation is provided; future ability to pay is not examined systematically (Bannon et al., 2010).

6. These states include California, Texas, Florida, New York, Georgia, Ohio, Pennsylvania, Michigan, Illinois, Arizona, North Carolina, Louisiana, Virginia, Alabama, and Missouri.

in New York State, judges now might impose up to 19 statutorily authorized fees (Rosenthal and Weissman, 2007).

It is not just the courts that have been authorized to impose monetary sanctions; a broad range of criminal justice agencies now are permitted to levy such fees. Felons and misdemeanants are often charged by state Departments of Correction (DOC) and the private companies that house and supervise them for the cost of their imprisonment, supervision, and court-mandated tests (Levingston, 2008; Liptak, 2008; Perry, 2008). Indeed, DOC fees are allowed in all 15 states included in the Brennan Center study (Bannon et al., 2010). Jail fees, also increasingly are permitted and, to the extent that they are imposed, supplement the fees and fines imposed by the courts (Levingston, 2008).

Moreover, unpaid legal obligations are typically subject to interest, surcharges, and/or collection fees. The assessment of interest and late fees is authorized in 13 of the 15 states included in the Brennan Center study; 9 states also allow collection fees, often payable to private collection agencies (Bannon et al., 2010). The rate of interest applied to financial obligations varies but is generally substantial. For example, financial obligations assessed by Washington State criminal courts are subject to an interest rate of 12%.[7] The state of Michigan charges a 20% "late fee" on payments made after 56 days. In some states, private collection agencies assess up to 40% of the unpaid debt in collection fees. In Arizona, surcharges add 84% to debtors' underlying fees and fines (Bannon et al., 2010).

In most jurisdictions, correctional agencies are responsible for the collection of legal debt from persons under criminal justice supervision. When this is the case, probation and parole officers sometimes sanction nonpaying debtors by extending or revoking supervision (Weisburd, Einat, and Kowalski, 2008). Responsibility for the collection of legal debt often is transferred to county clerks or private collection agencies once offenders have completed their confinement and supervision sentences. These agencies employ a broad range of civil and criminal tactics in an attempt to recoup financial penalties, including the issuance of arrest warrants, wage garnishment, and tax rebate interception. In some cases, arrest results in incarceration (American Civil Liberties Union, 2010; Bannon et al., 2010; Harris et al., 2010), a subject we discuss in greater detail in the second part of this article.

Comparison with European Day Fines

Across the United States, the number of authorized financial penalties has proliferated. Some U.S. scholars, impressed by European approaches to criminal sentencing, advocate the use of fines as an intermediate sanction (see Bureau of Justice Assistance, 1996; Hillsman and Greene, 1992; Tonry and Lynch, 1996; Tonry, 1998) and thus might be interpreted

7. In Washington State, LFOs ordered in criminal proceedings are subject to the greater of two interest rates—12% or four points above the 26-week Treasury Bill rate. For at least the past 10 years, the greater of these two has been 12% (Revising the Interest Rate on Legal Financial Obligations, Washington State Senate Bill Report 2SHB 1359, 2006).

as supporting this trend. Yet monetary sanctions in U.S. state and federal courts bear little resemblance to the "day fines" that are imposed in Sweden, Germany, and other European countries, for two reasons. First, in Europe, fines serve as an alternative rather than as a supplement to incarceration (Bureau of Justice Assistance, 1996; Hillsman and Greene, 1992; O'Malley, 2009; Tonry and Lynch, 1996; Tonry, 1998). Second, day fines are based on the idea that financial penalties should correspond to the seriousness of the offense and should have a similar impact on people with different incomes (Bureau of Justice Assistance, 1996; Hillsman and Greene, 1992). To achieve these ends, day fines are determined by only the following factors: offense seriousness and offenders' current daily income (hence the term "day fine"). The imposition of day fines by European judges is thus highly structured and is determined *only* by offense seriousness and offenders' actual (rather than by hypothetical or possible) earnings.

By contrast, the imposition of fees and fines in the United States is highly discretionary and may therefore be shaped by factors other than offense seriousness (Harris, Evans, and Beckett, 2011). Although fine and fee *amounts* often are specified statutorily, judges have significant discretion in determining *whether* to impose many of them. Under Washington State law, for example, two monetary sanctions are mandatory, but judges possess significant discretion in determining whether to impose the other 22.[8] This discretion explains why defendants with similar criminal histories who are convicted of the same crime can incur different LFOs. In Washington State, for example, one first-time offender sentenced for assault in the second degree during the first 2 months of 2004 was assessed $500 in fees and fines. In a different county, another first-time offender convicted of the same charge during the same time period was assessed $2,370 in fees and fines (Beckett et al., 2008: Table 4). Similarly, one first-time defendant convicted of delivery of methamphetamine was assessed $610 in fees and fines; another was assessed $6,710 (Beckett et al., 2008: Table 4). Clearly, the judges in these cases exercised meaningful discretion in determining whether to impose numerous fees and fines. In Washington State, this discretion is significantly influenced by both legal and extralegal factors, including ethnicity (Harris et al., 2011). Moreover, drug offenders receive significantly greater fees and fines than violent offenders (Harris et al., 2011), a pattern that is inconsistent with the idea that financial penalties should correspond to offense seriousness. This discretion—and the impact of extralegal factors on its expression—raise important questions about justice and fairness which we address later in this article.

Moreover, unlike in European countries where day fines are used, most states do not require that judges tether decisions regarding the assessment of fees and fines of defendants' earnings or employment status (Bannon et al., 2010). As indicated, fee and fine amounts generally are specified in statute and thus are not graduated to reflect defendants' ability

8. Under Washington State law, some fees and fines can only be assessed in some kinds of cases, but judges may or may not assess those fees or fines in eligible cases. See Beckett et al. (2008).

to pay. Nor are judges required under statute to assess defendants' employment status or income when deciding whether to impose discretionary fees and fines (American Civil Liberties Union, 2010; Bannon et al., 2010; Harris et al., 2010).[9] Moreover, 13 of 15 states included in the Brennan Center study require judges to impose at least one mandatory fee that *cannot* be waived as a result of indigence. Even where judges are authorized to waive fees based on defendant indigence, they often do not (Bannon et al., 2010); where they exist, the requirements for securing a waiver often are too onerous to be meaningful.[10]

In short, the largely discretionary imposition of nongraduated and supplementary fees and fines in the United States bears little resemblance to the structured use of day fines in some European countries. Below, we show that the imposition of these fees and fines as a supplement to incarceration is now common in U.S. state and federal courts.

The Prevalence and Magnitude of Monetary Sanctions in the Contemporary United States

Although scholars have long recognized the centrality of fines in U.S. misdemeanor courts (see, e.g., Gordon and Glaser, 1991; Tonry and Lynch, 1996), the imposition of monetary sanctions in felony cases is comparatively understudied (but see Ruback and Bergstrom, 2006; Ruback, Hoskins, Cares, and Feldmeyer, 2006; Ruback, Shaffer, and Logue, 2004). Yet financial penalties now are imposed on most people convicted of felonies in the United States (Harris et al., 2010). Across the United States, two thirds (66%) of felons sentenced to prison, and more than 80% of other felons and misdemeanants, were assessed fees and fines by the courts in 2004 (Harris et al., 2010). These figures do not include any fees assessed to these defendants by other criminal justice agencies (such as jails, departments of correction, and offices of assigned council) and thus understate the frequency with which monetary sanctions are imposed in the United States. Because monetary sanctions now are assessed in most cases, and because the number of people convicted of criminal offenses in the United States has reached a record high, we can infer that the number of people who possess legal debt is significant and rapidly increasing. Indeed, the figures reported

9. In some jurisdictions, authorities responsible for setting monthly payment plans do consider defendants' financial circumstances. As illustrated in our discussion of the incarceration of legal debtors, however, the statutory framework places no limit on the percent of defendants' income that can be required as monthly payments, nor does it preclude the courts from requiring that indigent debtors who have been deemed unemployable by the state pay substantial portions of their welfare and social security income toward their legal debt.

10. For example, Washington State does allow for the waiver of interest on LFOs. However, the interest on restitution only can be waived if the principal on any restitution ordered has been paid in full. Furthermore, "the offender must show that he or she has personally made a good faith effort to pay, that the interest accrual is causing a significant hardship, and that he or she will be unable to pay the principal and interest in full and that reduction or waiver of the interest will likely enable the offender to pay the full principal and remaining interest there on" (Interest on Judgments, Revised Code of Washington 10.82.090(2) (2009). Few indigent debtors can establish these conditions, particularly because they do not have legal representation in these proceedings.

above suggest that more than 1 million people sentenced as felons in 2004 alone received monetary sanctions from the courts. Millions more are convicted of misdemeanor crimes each year (Buruchowitz, Brink, and Dimino, 2009).

It thus appears that tens of millions of U.S. residents have been assessed financial penalties by the courts and other criminal justice agencies. Our analysis of Washington State Superior Court data sheds light on the magnitude of the monetary sanctions imposed in felony cases and shows how legal debt accumulates in the lives of people with criminal histories (Harris et al., 2010).[11] In 2004, the mean fee and fine assessment for a single felony conviction was $2,450, the median was $1,347, and the maximum was $11,960. Yet these figures, striking as they are, do not include other sources of legal debt or show how legal debt accumulates over the life course of persons with criminal histories. Toward the latter goal, we calculated the total value of the fees and fines imposed by juvenile, district, and superior courts over the life course of 500 (randomly selected) defendants in our sample. The results indicate that, by 2008, these 500 legal debtors had been assessed an average of $11,471 by the courts. Although these results show how court debt accumulates as a result of repeat convictions, they do not include interest or any fees assessed by jails, clerks, private collection agencies, or offices of public defense/assigned counsel, and therefore still underestimate the true magnitude of legal debt held by Washington State felons.

Our findings also indicate that legal debt is substantial relative to the expected earnings of people with criminal histories. Criminal defendants are overwhelmingly poor (Pew Charitable Trusts, 2010); between 80% and 90% of those charged with criminal offenses qualify for indigent defense (Brennan Center for Justice, 2008). Nearly 65% of those incarcerated in the United States lack a high-school diploma (Western, 2006). Incarceration deepens poverty by reducing employment and earnings and by impeding economic mobility (Pew Charitable Trusts, 2010; Western, 2006). Western's (2006) research indicated that formerly incarcerated White men earned an annual average of $11,140, Hispanic men earned $10,432, and Black men earned $8,012.[12]

It is, then, an overwhelmingly poor and disadvantaged population that is assessed LFOs (Pettit and Western 2004). As a result, legal debt is typically large relative to expected earnings. Comparing Western's estimate of expected earnings with median legal debt indicates that formerly incarcerated White, Hispanic, and Black men owed 60%, 36%, and 50%, respectively, of their annual incomes in legal debt (see Harris et al., 2010: Table 7). Not surprisingly, efforts to collect legal debt are not highly successful (see also Weisburd, Einat, and Kowalski, 2008). As of 2008, the legal debtors in our subsample owed

11. This study analyzed the dollar value of the monetary sanctions imposed by Washington State Superior Courts for all felony cases sentenced in the first 2 months of 2004. LFOs included fees and fines but not restitution as restitution is driven by specific case-level factors for which we have no information.

12. Western's results have been converted to 2008 dollars to facilitate comparison with LFO data.

77% of their court debt. It thus seems that legal debt is sustained over time for a clear majority of those who receive monetary sanctions.

The magnitude of the fees and fines assessed, low repayment rates, and the accrual of interest help to explain why legal debt is typically long term. Even if formerly incarcerated male debtors manage to pay $100 a month—10–15% of their expected monthly earnings—toward a typical Washington State legal debt, they nonetheless will owe substantial legal debt 10 years later, even when assuming no additional monetary sanctions are imposed. Similarly, debtors who consistently pay $50 a month toward a typical LFO still will possess legal debt after 30 years (Harris et al., 2010). Because our data omit some potential sources of legal debt, these results almost certainly underestimate the magnitude and longevity of a typical Washington State legal obligation.

In summary, our Washington State study indicates that legal debt tends to be long term because of the low earning power of the criminally sanctioned, the magnitude of the sanctions imposed, and the accrual of interest. Notably, Washington State's 12% interest rate does not seem to be high by comparative standards. Monetary sanctions imposed by the criminal justice system thus constitute an additional, substantial, and often long-term financial liability for people living with a criminal conviction. Although additional research from other states is needed, it seems that the monetary sanctions imposed in Washington State are similar to those assessed in other states (see Bannon et al., 2010; McLean and Thompson, 2007; Rosenthal and Weissman, 2007).

The Consequences of Legal Debt

Interviews with 50 legal debtors living in four Washington State counties suggest that legal debt reproduces poverty and impedes reintegration in at least four ways (Harris et al., 2010). First, if debtors make payments, legal debt substantially reduces household income and compels people living on tight budgets to choose between food, medicine, rent, and child support. Even "small" payments of, for example, $50 a month can consume a significant share of defendants' monthly income. This financial effect is distinct from, and compounds, the diminished employment and earnings that result from felony conviction and incarceration (see Pager, 2003, 2005, 2007; Pew Charitable Trust, 2010; Western, 2006; Western and Beckett, 1999; Western and Pettit, 2005). Indeed, this loss of income is not reflected in studies of felon's earnings.

Second, whether or not legal debtors make regular payments, monetary sanctions often create long-term debt, which in turn has several adverse effects. This is an important point. Advocates of monetary sanctions might argue that because recoupment rates generally are low, monetary sanctions largely are inconsequential. Yet legal debt itself is damaging despite whether payments are made. Like other types of debt, legal debt reduces access to housing, credit, and employment; it also limits possibilities for improving one's educational or occupational situation (Bannon et al., 2010; Harris et al., 2010). But legal debt is an especially injurious type of financial obligation; unlike consumer debt, it is not offset by the acquisition of goods or property and might trigger an arrest warrant, arrest, and/or incarceration. In some locales, legal debtors also are denied drivers' licenses, which in turn reduces employment prospects (Bannon et al., 2010; Pawasarat, 2000, 2005). Possession of legal debt thus constitutes a significant barrier to reintegration.

Third, because the wages of the convicted (and their spouses) are subject to garnishment, legal debt creates a disincentive to find work. In our interviews, several interviewees indicated that finding employment was not "worth it" because their earnings would be so diminished by garnishment. Several clerks also reported that employers generally dislike hiring those whose wages are garnished because of the cumbersome bureaucratic processes this entails. Although additional research is needed to assess the magnitude of this effect, it is notable that Holzer, Offner, and Sorensen (2005) found that the increased imposition of child support orders, which also often lead to garnishment, significantly reduces a father's employment (see also Holzer, 2009).

Fourth, unpaid legal debt—and the threat of criminal justice sanction it engenders—encourage some to "go on the run" (Goffman, 2009), which in turn leads to destabilization. The issuance of an arrest warrant sometimes leads to the termination of federal benefits, as people with warrants stemming from (any) violation of a felony sentence are considered "fleeing felons" and are thus ineligible for federal benefits, including Temporary Assistance for Needy Families, Social Security Insurance, public or federally assisted housing, and food stamps (Szymendera, 2005).[13] Warrants for nonpayment also lead not infrequently to arrest and incarceration (American Civil Liberties Union, 2010; Bannon et al., 2010; Harris et al., 2010).

Summary

LFOs are supplementary penalties that now frequently accompany other criminal sanctions across the country. Although fee and fine amounts are typically determined by legislatures, judges possess significant discretion in determining whether to impose many of them. In the United States, fee and fine assessments are not based on offenders' ability to pay, and these penalties supplement rather than replace other punishments, especially confinement. As a result of their widespread imposition (and the rapid expansion of the penal system), millions of mainly poor residents of the United States now possess legal debt. Even if legal debtors make regular payments toward their LFO, legal debt tends to grow over time because it is subject to interest and surcharges and often is substantial relative to expected earnings.

13. The Social Security Administration's Office of Inspector General matches "wanted persons files provided by the participating law enforcement agency against SSA's computer files of individuals receiving Title XVI payments, Title II benefits and/or serving as representative payees" to ensure that benefits are stopped in such cases (see ssa.gov:80/oig/investigations/fugitivefelon/fugitivefelon.htm). Although none of our interviewees told us that the issuance of a warrant for their arrest had triggered the cessation of their benefits, at the time of the interviews, we were unaware that this was possible and did not ask directly about it. However, defense attorneys with whom we spoke reported that they were aware of this occurring with some regularity.

Finally, legal debt has a variety of adverse and destabilizing consequences for those who possess it, including the threat of arrest and incarceration.

Part II. The Argument for Abolition

In what follows, we argue that the disadvantages of the widespread and discretionary imposition of substantial and supplementary financial penalties outweigh any benefits associated with this practice. Our analysis pertains only to the imposition of fees and fines in the contemporary United States and does not extend to European-style imposition of day fines. Indeed, we agree that the structured use of graduated day fines as an alternative to incarceration offers many advantages (see Bureau of Justice Assistance, 1996; Hillsman and Greene, 1992; Tonry and Lynch, 1996; Tonry, 1998). Our critique focuses instead on the discretionary imposition of fees and fines without regard for defendants' ability to pay and as a supplement to other criminal penalties.

Our argument is based on three broad considerations. First, this set of practices lacks a convincing penological rationale and impedes reintegration. Second, it violates standards of justice and fairness in myriad ways. Finally, dependence on this revenue stream to subsidize the cost of fundamental government operations may not represent a net financial gain for the state and, more importantly, creates undesirable conflicts of interest for judges and other criminal justice actors. We begin with the first of these points.

The Absence of a Penological Rationale

In our view, no convincing penological rationale exists for the discretionary imposition of non-income-based and supplementary monetary sanctions. At least in theory, penal policies are aimed at incapacitation, rehabilitation, deterrence, and retribution (Wilson, 1994). We have little reason to believe that monetary sanctions accomplish any of these goals.

By definition, monetary sanctions do not prevent crime by incapacitating offenders. Theoretically, monetary sanctions might be rehabilitative if their repeal was offered as a reward for participation in rehabilitative programs or prosocial outcomes. Yet erasure of legal debt generally is not offered as a reward for good behavior. Nor do we have reason to believe that monetary sanctions provide an effective deterrent. For a penalty to deter wrongdoing effectively, its consequences must be known to potential offenders as they contemplate their options; swiftness and certainty are key (Robinson and Darley, 2004). But the assessment of monetary sanctions is characterized by neither swiftness nor certainty. As previously noted, tremendous variation occurs in the imposition of LFOs across cases and counties.). In Washington State, nonlegal factors explain much of this variation (Harris et al., 2010). The discretionary, varied, and arguably arbitrary assessment of LFOs as a supplement to confinement means that the imposition and magnitude of monetary sanctions is neither swift nor certain and, therefore, is unlikely to have a deterrent effect.

Finally, we are not persuaded that financial penalties even enhance the retributive qualities of criminal punishment in the United States. The imposition of legal debt, as a supplement to confinement and other criminal penalties, is severe. At first glance, this might imply that monetary sanctions help to achieve retribution. Yet the idea of proportionality is central to retribution; in its absence, punishment approaches vengeance (Posner, 1980; von Hirsch, 1976). Because monetary penalties in the United States are supplements to penalties that already are comparatively severe, directly and adversely impact the partners as well as children of the criminally convicted (points we illustrate shortly), and typically remain in effect long after all other elements of criminal sentences are completed, the imposition of substantial and supplementary monetary penalties is disproportionate to the offense and, hence, approaches vengeance rather than retribution.

It is thus difficult to proffer a convincing penological rationale for the discretionary assessment of substantial and supplementary fees and fines. Moreover, the available evidence suggests that legal debt has counterproductive effects and impedes reintegration. In particular, our research indicates that legal debt has many adverse and destabilizing consequences for those who possess it and, therefore, limits ex-offenders' already constrained capacity to "reenter" society (see also Bannon et al., 2010; McLean and Thompson, 2007). As noted, we found that legal debt made it more difficult for our respondents to support their families, secure housing, obtain credit, pay for professional licenses, and enroll in higher education. Many also were unable or unwilling to make regular payments toward their legal debt and, hence, had warrants issued for their arrest; some were incarcerated as a result of their nonpayment. As we will discuss subsequently, this occurs with some regularity in jurisdictions across the country. Reduced income, unstable housing, constrained employment prospects, arrest, and short-term jail stays often result from legal debt and are important barriers to reintegration (McLean and Thompson, 2007).

In short, the imposition of nongraduated financial obligations that carry particularly onerous consequences lacks a sound penological rationale and exacerbates the many challenges associated with reintegration.[14] Subsequently, we will contend that the imposition and collection of monetary sanctions also violates important norms regarding justice and fairness.

Concerns about Justice and Fairness

Penal Severity. The widespread but discretionary imposition of substantial, supplementary, and nongraduated monetary penalties in the United States raises several concerns regarding fairness and justice. The first relates to the intensity of criminal punishment.

14. Many consequences that flow from legal debt—including lost income, enhanced housing instability, ongoing entanglement with criminal justice institutions, and additional barriers to legal employment—are predictors of recidivism (Chiricos, Barrick, Bales, and Bontrager., 2007; Council of State Governments, 2005; New York State Bar Association, 2006; Urban Institute, 2006). Thus, although the hypothesis that legal debt is criminogenic, to our knowledge, has not been tested directly, the available evidence indicates that the imposition and collection of LFOs contributes to the creation of circumstances that are known to increase recidivism.

In the United States, monetary sanctions supplement criminal penalties that already are harsh by comparative standards. The most obvious indicator of U.S. sentencing severity is its retention of the death penalty (Garland, 2010). The imposition of life without the possibility of parole sentences by U.S. judges also differentiates the United States from many industrialized countries (Appleton and Grøver, 2007). More generally, drug, property, and violent offenders in the United States are more likely to be incarcerated than their European counterparts and, when are, generally receive longer confinement sentences (Tonry and Frase, 2001; Whitman, 2003). The imposition of comparatively lengthy confinement sentences on persons convicted of nonviolent drug offenses in the United States is particularly striking. Ironically, our study of Washington State court data indicates that drug offenders receive significantly greater fees and fines than violent or other nondrug offenders (Harris et al., 2011). Supplementing already severe confinement sentences with significant financial penalties renders U.S. penalties unduly harsh, especially for nonviolent drug offenders.

Class Bias. The imposition of monetary sanctions absent consideration of defendants' income is inherently class biased, as these sanctions pose a disproportionate challenge to, and burden on, the poor. Indeed, recognition of the class-biased nature of nongraduated financial penalties is a primary rationale for the use of day fines in many countries (Hillsman and Greene, 1992). As noted, European day fines are intended to have the same impact on defendants with differing incomes. To accomplish this, fines are scaled to offenders' daily earnings. By definition, monetary sanctions that are not adjusted by income have a disproportionate impact on the poor.

Moreover, in the United States, monetary sanctions limit poor people's capacity to regain their civil rights. In many states, felons cannot restore their civil rights until their LFOs are paid in their entirety (Manza and Uggen, 2006). Indeed, this is the case in 6 of the 15 largest U.S. states recently surveyed (Bannon et al., 2010). This issue was recently litigated in Washington State, where the American Civil Liberties Union challenged a law that barred people with felony convictions and outstanding LFOs from obtaining their civil rights, including the vote. In *Madison v. Washington* (2006), the Washington State Supreme Court ruled that the plaintiffs had not established class bias because no evidence that poor defendants were assessed greater sanctions than nonpoor defendants was provided.[15] In our view, this ruling is predicated on an overly narrow definition of discrimination—one that limits it to purposeful and conscious actions intended to discriminate—and excludes practices that have foreseeable discriminatory effects.[16] In doing so, this ruling

15. In 2009, the Washington State Legislature approved HB 1517, which grants the "provisional" right to vote to persons who have met all other conditions of their felony sentence except full payment of their LFOs. However, this vote can be revoked by the sentencing court if it finds the person missed three or more monthly payments in a 12-month period.

16. For a discussion of this general issue, see Murakawa and Beckett (2010).

ignores the substantive issue at hand, namely, the disproportionate impact of nongraduated monetary sanctions on the poor. The imposition of nongraduated monetary sanctions, and the requirement that all legal debts be paid before defendants' civil rights can be restored, disproportionately impacts the poor. They are, therefore, inherently class-biased practices.

Discretion and Disparities. The fact that judges possess significant discretion in determining whether to impose many fees and fines also raises concerns about justice and fairness. This discretion means that nonlegal differences might influence sentencing outcomes. Indeed, our analysis of such outcomes in Washington State indicates that many extralegal factors significantly impact the imposition of monetary sanctions. For example, the ethnicity of the sanctioned, the type of offense of which they are convicted, and the demographic context in which they are sentenced all influence the allocation of monetary penalties. We also found that the assessment of LFOs varies by jurisdiction. That is, even among cases involving identical charges and defendants with similar offense histories, significant county-level variation persists in the assessment of fees and fines (Beckett et al., 2008; Harris et al., 2011). In short, because assessment of these sanctions is highly discretionary, it is especially vulnerable to ethnic and other disparities; the evidence from Washington State shows that extralegal factors play a significant role in the imposition of monetary sanctions.

Ironically, statutory authorization of many of these discretionary sanctions coincided with efforts to minimize racial and other disparities in confinement sentence outcomes. For example, state legislatures in Washington, Minnesota, Pennsylvania, and Oregon authorized new and largely discretionary monetary sanctions even as they as moved to structure judicial decision making regarding confinement sentencing.[17] Although the enactment of sentencing guidelines did reduce the impact of nonlegal variables on confinement sentencing outcomes (Moore and Miethe, 1986; Nagel and Schulhofer, 1992),[18] defendants' race and ethnicity as well as other extralegal factors sometimes influence confinement sentencing outcomes even where guidelines have been adopted (Albonetti, 1997; Bontrager, Bales, and Chiricos, 2005; Engen, Gainey, Crutchfield, and Weis, 2003; Johnson, 2005, 2006; Kramer and Steffensmeier, 1993; Steffensmeier and Demuth, 2000; Spohn and Holleran, 2000; Ulmer and Kramer, 1996). For example, judges are more likely to depart from sentencing guidelines in an upward direction when the defendant is African American or Latino (and when s/he opted for a trial); judges also are less likely to select the lower incarceration length identified in the guidelines when the defendant is Black or Latino (Engen and Gainey, 2000; Engen et al., 2003; Johnson, 2005; Johnson, Ulmer, and Kramer, 2008; Steffensmeier and Demuth, 2001).

17. See Guideline Sentence Recommendations: Economic Sanctions. Act 2007–37 [SB 116, PN1323], 204 Pennsylvania Code chapter 303, section 14 (2008); Minimum Fines for All Criminal Offenders, Laws of Minnesota Ch 601.101 (2004).

18. For negative findings, see Koons-Witt (2002).

In short, sentencing guidelines reduced but did not eliminate, racial and ethnic disparities in confinement sentencing outcomes. This suggests that the adoption of sentencing guidelines also might reduce but would not eliminate, racial, ethnic, and other disparities in the imposition of monetary sanctions. In some cases, such disparities might be justified as an undesirable but inevitable consequence of a valid and necessary penal practice. However, given all the other problems associated with the nongraduated use of monetary sanctions as a supplement to comparatively severe confinement sentences, it is difficult to make the case that their use is, in fact, a valid and necessary penal practice.

Impact on Families. As noted, our research suggests that the imposition of monetary sanctions typically creates long-term legal debt, which often has adverse consequences for those who possess it. The point we wish to emphasize here is that these effects are not limited to the criminally convicted. In Washington State, for example, county clerks are authorized to garnish up to 25% of the earnings of the debtor *or his/her spouse* and to seize jointly held bank assets, home equity, and tax refunds (Beckett et al., 2008; see also Lawrence-Turner, 2009). Thus, it seems that spouses pay financially for the misdeeds of others not only through the lost income, travel costs, and phone bills associated with confinement (see Braman, 2002; Comfort, 2007), but also through the collection of monetary sanctions from family income. Moreover, in our interviews, respondents regularly told us that they had to choose between financially supporting their children and making payments toward their legal debt. Although some of these accounts might be self-serving, it is true that by reducing household income, legal debt affects family members, including children. Uggen, Manza, and Thompson (2006: 283) estimated that 16 million felons were living in the United States as of 2004. Most felons are parents.[19] The imposition of LFOs on millions of poor parents thus reduces the resources potentially available to millions of poor children long after their parent has completed her or his confinement sentence.

The Incarceration of Debtors. The arrest and confinement of nonpaying legal debtors also raise important concerns about justice and fairness. "Debtor's prisons" now are typically perceived as barbaric and uncivilized responses to poverty. Nonetheless, the incarceration of debtors continues to occur with some regularity. Roughly one fourth of those we interviewed for our Washington State study reported that an arrest warrant had been issued as a result of their failure to pay; most of these people reported that they were subsequently incarcerated for nonpayment (Harris et al., 2010). This finding does not seem to reflect the particularities of the counties or state from which we drew our respondents. For example, approximately 15% of those serving time in a Washington State county from which our interview respondents were *not* drawn are behind bars as a result of their failure to make regular payments toward their legal debt (Lawrence-Turner, 2009). Similarly, in Rhode

19. Roughly 70% of male state prison inmates aged 33–40 years are fathers (Western, 2006: 137); approximately the same proportion of female prisoners are mothers of young children (Greenfield and Snell, 1999).

Island, "incarcerations [sic] for court debt currently comprise 17 percent of all pre-trial commitments in the state" (Rhode Island Family Life Center, 2007: 16). And two recently released reports indicate that legal debtors are regularly incarcerated in states across the country (American Civil Liberties Union, 2010; Bannon et al., 2010; see also Kelleher, 2010; *New York Times*, 2009; Schwartz, 2009).

In some cases, incarceration is triggered by the issuance of bench warrants. Nonpayment of legal debt also seems to account for a nontrivial portion of probation and parole violations nationally. In 1991, 12% of the probation violations among probationers sent to state prison for technical violations involved failure to pay monetary sanctions (Cohen, 1995: 3; see also McLean and Thompson, 2007). In 1995, 34.1% of adult felony probationers had a disciplinary hearing as a result of failure to pay; 29.1% of all disciplinary hearings resulted in incarceration (Bonczar, 1997: Tables 12 and 13). It thus seems that nonpayment of monetary sanctions leads to a significant number of warrants, arrests, probation revocations, jail stays, and prison admissions in locales across the country.

That debtors are incarcerated with some regularity in the United States is surprising given case law on the subject. In recent decades, the U.S. Supreme Court issued a series of rulings that banned or restricted the imprisonment of legal debtors. In 1970, the court ruled in *Williams v. Illinois* that the extension of an incarceration sentence as a result of a defendant's failure to pay court costs violates equal protection under the 14th Amendment. In *Tate v. Short* (1971), the court similarly ruled that indigent defendants could not be incarcerated solely for their inability to pay their legal debt. In *Bearden v. Georgia* (1983), the court modified this stance somewhat, ruling that criminal courts must determine whether defendants made a bona fide effort to pay their legal debts; only if the defendant "willfully" refused to pay could she or he be incarcerated. Thus, in theory, indigent people cannot be incarcerated for not making payments toward their legal debt, and courts must investigate the extent to which individuals have the ability to make payments.[20] Several states also have statutes that forbid the incarceration of poor people who cannot pay their legal debt (for a discussion of these laws, see American Civil Liberties Union, 2010).

Yet legal debtors continue to be arrested and incarcerated as a result of nonpayment with some regularity. Authorities have circumvented the constraint proffered in *Bearden v Georgia* (1983) in several ways. First, debtors might spend time in jail pending an "ability to pay" or violation hearing (Bannon et al., 2010). In addition, debtors are frequently arrested and incarcerated not for nonpayment, but rather for (civil) contempt of court stemming from failure to comply with a court order to pay (American Civil Liberties Union, 2010; Bannon et al., 2010). By construing nonpayment as contempt of court, some judges have circumvented the obligation to assess whether a defendants' nonpayment is

20. The Washington State Supreme Court recently reiterated the obligation of courts to assess defendants' ability to pay prior to incarceration (see State of Washington v. Nason, 2010).

"willful." Similarly, failure to respond to a summons issued in response to nonpayment is a violation of a court order (failure to appear) that might trigger incarceration.

Finally, in some cases, a correctional officer or judge does consider evidence regarding whether a debtors' nonpayment is "willful." Yet it seems that "willful" is a highly elastic concept, one that fails to create a meaningful barrier to the incarceration of indigent debtors. For example, one community corrections officer told us that in his view, "all nonpayment is willful" because felons "can always go out and get a day job." Judges sometimes accept this reasoning. During a recently observed violation hearing, for example, a judge asked an unemployed man (who we call Bob) with a severe back injury why he had not been making his court-mandated $60 monthly payments. According to Bob's public defender, Bob's only source of income was his state-funded General Assistance Unemployable check. People receiving this monthly payment of approximately $370 are deemed unemployable by the State of Washington. At the time of this hearing, Bob was living in a halfway house that charged 75% of his income for rent, leaving him approximately $90 a month for all other living expenses. Nonetheless, the judge only reduced his monthly payments from $60 to $50, and informed Bob that if he did not make these payments regularly he would be incarcerated.

The ruling in Bob's case does not seem to be extraordinary; our observations and interviews indicate that many debtors are required to make LFO payments from their government assistance checks. In other states as well, nonpayment by indigent, disabled, and homeless individuals has been deemed "willful" by the courts (American Civil Liberties Union, 2010; Bannon et al., 2010). Indeed, in some cases, homeless parents have been incarcerated for nonpayment of their children's legal fees (American Civil Liberties Union, 2010). Where courts are authorized to reduce or eliminate debt postsentencing, the available evidence suggests that this reduction rarely occurs (Bannon et al., 2010). Moreover, in some locales, debtors do not have access to legal representation in these "ability to pay" proceedings (Bannon et al., 2010). In short, courts have determined that nonpayment by indigent and unemployable defendants can be construed as "willful," a determination that renders the incarceration of said debtors legal. In this manner, some courts have circumnavigated the constraint on the incarceration of debtors that *Bearden v. Georgia* (1983) ostensibly provides.

In some jurisdictions, debtors are presented with the "option" of paying off their debt by going to jail. In Washington State, this is called the "pay or stay" option and is authorized by state statute.[21] In some cases, debtors who choose this "option" are subsequently assessed fees for the days they spent in jail to reduce their legal debt (American Civil Liberties Union, 2010; Beckett et al., 2008).[22]

21. Offenders Responsibility for Legal Financial Obligations, Revised Code of Washington 9.94A.760 (1989); see also American Civil Liberties Union, 2010.

22. This practice is permitted under Washington State law. RCW 10.82.030 (Commitment for failure to pay fine and costs, 2010) specifies that, if a person is solely incarcerated for nonpayment, then a financial

In short, it is commonly believed that indigent debtors are no longer incarcerated in the United States. This is not the case. Legal debt created by monetary sanctions cannot be eradicated through bankruptcy proceedings. And although Supreme Court rulings offer, in theory, some protection against the incarceration of debtors who fail to pay legal debt because they are indigent, an apparently increasing number of courts and correctional agencies are circumnavigating this constraint, either by treating failure to pay as contempt of court or by invoking an extremely inclusive definition of "willful" nonpayment. Indeed, the definition of "willful" nonpayment that is emerging in case law is as broad as the legal definition of discrimination is narrow. Although today's debtors are not confined in separate "debtor's prisons," they are nonetheless incarcerated because they are too poor to pay their LFOs.

Legal Representation. Finally, the assessment of fees for the cost of public defense counsel raises important concerns about fairness and justice. As noted, defendants do not always have legal representation in ability-to-pay proceedings. Similarly, some lack legal representation when payment plans are negotiated even under highly questionable circumstances.[23] More generally, the Supreme Court has determined that defendants across the country can be assessed a fee for the cost of the legal representation that is provided for them by the state after a showing of indigence (Anderson, 2009).[24] This assessment occurs at the time their legal counsel is provided and thus does not result from a change in defendants' financial circumstances. In some Washington State counties, some defendants are assessed this fee twice—once by the courts and once again by the Office of Assigned Counsel/Public Defense (Beckett et al., 2008). Moreover, evidence suggests that the assessment of fees for legal representation leads many indigent defendants to forego legal representation.[25] Charging poor defendants—once or twice—for the cost of the legal representation provided to them as a result of their indigence absent evidence that their financial circumstances changed

credit is applied toward one's LFO. However, some jails assess their own fees to cover the costs of booking, confinement, and services. Thus, a person might reduce court or DOC debt by serving time in jail but increase his or her financial obligation to the jail at the same time.

23. In some Washington State counties, for example, people who are booked for nonpayment have been visited in jail by county clerks, who requested that defendants sign payment plans. According to our interviewees, defendants were told that, if they did not sign the form, they would serve up to 120 days in jail and that, if they violated the payment plan at any time, they would serve time in jail automatically under the counties' "autojail" program. According to our interviewees, these signature requests were made in the absence of legal representation. In subsequent interviews, respondents indicate that the "autojail" policy has not been practiced since the Washington State Supreme Court issued its 2010 ruling in *State of Washington v. Nason* (2010).

24. See *Fuller v. State of Oregon* (1974).

25. According to a recent report by the Brennan Center, "defender fees often discourage individuals from exercising their constitutional right to an attorney—leading to wrongful convictions, over-incarceration, and significant burdens on the operation of courts. In Michigan, for example, the National Legal Aid and Defender Association found that the threat of paying the full cost of assigned counsel resulted in misdemeanor defendants systematically waiving their right to counsel—at a rate of 95 percent in one county, according to a judge's estimate" (Bannon et al., 2010: 12).

strikes us as a significant perversion of the logic underlying *Gideon v. Wainwright* (1963) and undermines, in practice, the right of indigent defendants to enjoy legal representation in criminal matters.

Summary. The widespread imposition and collection of substantial and supplementary monetary sanctions in the United States raises several important concerns about fairness and justice. In particular, nongraduated monetary penalties supplement already severe confinement sentences, present a disproportionate burden on the poor, and are, at least in Washington State, influenced by various extralegal factors, including ethnicity. They also directly and adversely affect family members, lead with some frequency to the arrest and incarceration of debtors, and raise important questions about the meaning and legacy of *Gideon v. Wainwright* (1963). These problems are compounded by the absence of a clear penological rationale for the assessment of nongraduated, supplementary monetary sanctions, as well as by evidence that legal debt impedes reintegration. In the next section, we suggest that generating revenues for government operations in this manner also is inefficient and creates undesirable conflicts of interest for judges and other court actors.

Private Funding for Public Justice Systems: Problems and Unresolved Questions

Fiscal Concerns. The operation of the criminal justice system is, of course, enormously expensive—increasingly so. These fiscal pressures undoubtedly explain why many governments are authorizing the imposition of additional fees and fines. Some states and localities do collect substantial revenues from the criminally convicted. In Washington State, for example, county governments collected $30.4 million in fee, fine, and restitution payments in 2009 (Washington Association of County Officials, 2009: Figure 1). Thus, at first glance, it seems that significant funds are being recouped to offset the fiscal costs associated with crime and the operation of the criminal justice system.

However, tremendous variation persists in the fiscal fruitfulness of this practice; in many cases, total LFO collections contribute modestly to criminal justice budgets (Beckett et al., 2008; Parent, 1990). Moreover, a comprehensive assessment of the fiscal benefit to the state of imposing fees and fines must consider both the direct and indirect costs associated with the collection of LFOs. We are unaware of any such assessment, and it is unclear that the results of this mathematical exercise would, if the necessary data were available, show that the imposition and collection of LFOs is a net financial gain (Bannon et al., 2010).

We use data from Washington State to illustrate the problem. In 2003–2004, Washington State spent $3 million on direct LFO collection costs, such as the cost of mailing monthly LFO statements and the employment of additional county clerks who work solely or primarily on LFO collection. Counties spent another $12.8 million to support collection efforts.[26] Direct state and county expenditures for revenue collection

26. For example, King County has seven full-time employees who work specifically on the collection of LFOs. Some counties also have specific LFO dockets for the management of LFO nonpayment.

totaled $16 million; these efforts generated $21.6 million in public revenues (Washington Association of County Officials, 2006) for a net gain to the state of less than $6 million. Yet this calculation does not include the myriad indirect costs that also should be included in a comprehensive assessment of the LFO enterprise. These indirect costs include the court and law enforcement expenses associated with identifying and processing individuals for nonpayment, the cost of jailing those who fail to make regular payments, and so forth. Although these indirect costs are difficult to quantify, they are nonetheless significant (see also Bannon et al., 2010). In short, claims about the fiscal benefits of monetary sanctions must be treated as aspirational rather than as empirical, and should be weighed against the practical and policy considerations previously described.

Court Conflicts. Even if revenues from fees and fines are greater than the expenditures devoted to their collection, dependence on this private funding source for criminal justice operations compromises the integrity of courts and creates conflicts of interest for judges and others. As the authors of the aforementioned Brennan Center report explained:

> *[W]hen courts are over-dependent on fees, such reliance can interfere with the judiciary's independent constitutional role, divert courts' attention away from their essential functions, and, in its most extreme form, threaten the impartiality of judges and other court personnel with institutional, pecuniary incentives.* (Bannon et al., 2010: 30)

Indeed, the idea that judges are responsible for sentencing and for the assessment of fees and fines that subsidize court operations is a significant conflict of interest. For these reasons, the National Center for State Courts concluded that the concept of self-supporting courts "is not consistent with judicial ethics or the demands of due process" (Tobin, 1996: 50). The American Bar Association also recommends that courts have "a predictable general funding stream that is not tied to fee generation" (American Bar Foundation, Commission on State Court Funding, 2004). We concur.

Conclusion

The use of financial penalties in the United States bears virtually no resemblance to the use of day fines in Europe and elsewhere. In the United States, the imposition of fees and fines is highly discretionary, yet untethered to defendants' income or employment status. Moreover, in the United States, monetary penalties are substantial and consequential supplements to other, comparatively severe criminal penalties. We have argued that the imposition of discretionary and nongraduated monetary sanctions should be abolished, for several reasons. First, no convincing penological rationale exists for this practice, and it conflicts with another increasingly important policy objective—reintegration. Indeed, the available evidence indicates that the widespread imposition of a particularly injurious form of debt on millions of poor people already burdened with a criminal conviction impedes their efforts to stabilize their lives and rejoin society. In addition, the processes by which these sanctions are imposed raise numerous concerns about fairness and justice. Among these is the disturbing fact that, *Bearden vs. Georgia* (1983) notwithstanding, the incarceration of debtors without consideration of their ability to pay continues to occur with some regularity in states and localities across the country. Finally, dependence on this revenue source for the operation of criminal justice agencies is of uncertain fiscal benefit to the state and creates undesirable conflicts of interest for criminal justice actors, particularly judges.

More broadly, we note a significant disconnect between criminological understandings of the lives and prospects of people with criminal histories and the expectation that defendants will make substantial and regular monthly payments toward their legal debt. People with criminal histories suffer not only from extreme poverty but often also from mental illness, drug and alcohol addiction, and disability (Anderson and Bondi, 1998; Denzin, 1987; Giordano, Cernkovich, and Rudolph, 2002; Giordano, Schroeder, and Cernkovich, 2007; Laub and Sampson, 2003; Maruna, 2001; Maruna and Immarigeon, 2004; McCorkel, 1998; Paik, 2006; Petersilia, 2003). Many also experience structural constraints such as being undereducated, unemployed, and under- or nonbanked (Anderson and Bondi, 1998; Denzin, 1987; Giordano, Cernkovich, and Rudolph, 2002; Giordano, Schroeder, and Cernkovich, 2007; Laub and Sampson, 2003; Maruna, 2001; Maruna and Immarigeon, 2004; McCorkel, 1998; Paik, 2006; Petersilia, 2003). Many lack stable housing. Many come from, and return to, communities characterized by high levels of crime and instability (Clear, 2007; Fagan, West, and Holland, 2003). Many experience significant mental and physical health challenges (Massoglia, 2008; Massoglia and Schnittker, 2009). And all felons suffer the debilitating consequences that flow from felony conviction (Pager, 2005, 2007; Western, 2006).

In short, the criminological literature strongly suggests that the criminally convicted face multiple obstacles, including extreme poverty, to establishing stable and productive lives. The construction of a policy and funding system based on the expectation that these same individuals will earn a steady and reasonable income, secure stable housing, open and maintain checking accounts, financially support their children, keep track of often unclear and inconsistent communication about their legal debt, and make regular monthly payments toward it strikes us as highly dubious. Although criminal wrongdoers should pay their debt to society, they should not be asked to pay again and again, or in a way that dooms them to a perpetual state of poverty and instability.

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