A Pound of Flesh: The US legal system's war against the poor

Nancy Hanover
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A Pound of Flesh: Monetary Sanctions as Punishment for the Poor, *Alexes Harris, Russell Sage, 2016*

Many poor persons have been taken and imprisoned a long time, for very small sums of money, to the utter ruin of their families, and without any real benefit to the creditors; and forasmuch as it will be a very great hardship and charge upon a poor prisoner, confined for a small debt—Laws of the Commonwealth of Pennsylvania, 1729-1730

Throughout the United States there exists today a shockingly punitive system of financial control that targets those falling afoul of the criminal justice system, overwhelmingly affecting the poor.

Largely hidden from polite society, legal financial obligations (LFOs)—fees, fines and sanctions—can be imposed for almost any encounter on the wrong side of the law. They may be costly burdens for those who have financial resources, but for the very poor they routinely cause devastation, homelessness and even loss of their freedom.

LFOs are the subject of the 2016 book, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* by Alexes Harris. The Shakespearean metaphor for a draconian, if not life-threatening, legal penalty is appropriately applied.

Harris, a Washington State University sociology professor, combines on-the-ground research, interviews and case studies in the northwestern state of Washington with national statistical analyses on LFOs. She concludes that this brutal underbelly of the legal system constitutes "a class-based punishment scheme" imposed by the "criminal justice system [to] create and sustain inequality."

While referencing the disproportionate effect of this practice upon minorities and "marginalized" populations, Harris provides examples across all racial groups. The issue of class predominates throughout her analysis.

A Pound of Flesh paints a revealing picture of how LFOs penalize the poorest in society, including children. Harris shows how the most vulnerable can often be made to pay for a system that criminalizes them.

Among her most important findings, the author shows the erosion of democratic rights in the day-to-day functioning of the court system. Lack of money often means an utter lack of rights. There is no "fair or equal" in the setting, monitoring and supervision of LFOs. Harris graphically reveals how decades of law-and-order policies embraced by Democrats and Republicans at many levels of government have created a class-based system of justice and obliterated the possibility of a second chance for many Americans.

Why would individuals be sentenced to debt?

It is almost unknown in America, except for those unlucky enough to already be in the "system," that the majority of people convicted of misdemeanors or felonies are billed for fees or fines. In fact, in most jurisdictions these fees and fines are levied in addition to community service, probation or incarceration.

Defendants are now charged for a long list of government services that once were free, including the constitutional right to legal representation. While *Gideon v. Wainwright* (1963) established a defendant's right to counsel in a criminal trial, the Supreme Court failed to identify a source of income to pay for that attorney. As a result, burdening indigent defendants with the cost of representation has been repeatedly ruled legal.

Defendants in at least 43 states and the District of Columbia can be billed for a public defender, according to a NPR's yearlong investigation "Guilty and Charged," which dovetails with Harris's research.

However, the cost of a lawyer is just the beginning of the Kafkaesque series of possible fines, fees and sanctions. Defendants are forced to pay for every conceivable aspect of the correctional system: booking fees, drug and alcohol tests, witness fees, a fee for asking for a jury trial (double for a full 12-person jury in the state of Washington), court services and filing fees.

Even those found innocent are forced to pay LFOs. Some jurisdictions charge an accused person the full cost of housing in jail while they await trial. The sheriff in Polk County, Iowa charges all defendants a onetime fee of $75 for pretrial detention. In Louisiana, even if defendants are found not guilty, they must come up with $100 to have their arrest removed from their record.

If they are sent to jail, defendants often are forced to pay restitution to the victim, per diem costs ("pay to stay") or a la carte fees for food, medical care, toilet paper, etc. As they complete their sentence, new fees can be imposed for GPS monitoring, privatized probation, interest and collection charges. In at least 44 states, offenders can be billed for probation and parole supervision. In the state of Washington, there is a whopping 12 percent interest charge on felony cases that accrues from the moment of judgment until all fees are paid in full. In Pennsylvania there are 2,629 types of monetary sanctions.

Most defendants are unable to start payments while they are in jail or prison, so that when they emerge, they face an extremely precarious financial situation, alongside the often insurmountable difficulty of finding a moderately good job with a conviction on one's record. A missed payment is considered a parole violation and a warrant will be issued by most US states, leading to garnishment of any income and, in many cases, re-imprisonment of the debtor.

The well-established process of imprisoning individuals for nonpayment of LFOs is commonly referred to as "auto-jail" or "pay and sit." Defendants pay a certain amount toward their delinquent accounts or go to jail in exchange for a daily credit toward monetary sanctions. Often defendants will waive representation at such hearings because that will only increase their overall debt. Clerks will set a certain number of days and determine the "credit."

The stories related by Harris are wrenching. Individuals who struggle

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mightily to come up with sums beyond their reach are told by the court to "collect bottles" or get loans from relatives. The author relates that difficulties like homelessness or stage-four cancer are often not taken into account by clerks and judges who demand either money or "auto-jail."

Never-ending debt

As a result of the steady rise in the use of monetary sanctions, Harris explains, indigent defendants "who comprise the vast majority of criminal defendants in the United States, remain under criminal justice supervision, paying per-payment and collection costs and interest on the initial sentence *for the remainder of their lives*" (emphasis added). The challenge of paying off one's LFOs is truly Sisyphean, as fees and costs are steadily rising. Forty-eight of 50 states have hiked costs since 2010.

"Our twenty-first-century criminal justice system stains people's lives forever," Harris writes. "The permanent stain results not just from a criminal conviction and the related societal stigma but also from the financial debt, constant surveillance, and related punishment incurred by monetary sanctions." Many people make mistakes, the author editorializes, but "the poor alone can never atone."

These penalties are not just financial. Debtors cannot regain rights lost upon conviction, including the right to vote, carry a weapon, serve on juries or run for office until their account is paid in full. Furthermore, debtors may not have their records sealed, receive pardons or request deferred prosecutions—options better-off defendants utilize widely.

Here it can be noted that "pay to stay" programs are not all created equal, as Harris puts it. In Beverly Hills, California those violators who can prepay $110 a day can serve their sentences in a "safe, clean and secure environment of the Beverly Hills Police Department's Jail facility."

But, of course, those finding themselves in the clutches of the criminal justice system are overwhelmingly not of the select "Beverly Hills" type, but are poor. Harris's study indicates that between 30 and 36 percent of inmates were unemployed prior to their arrest. Of those working, 26 percent had part-time jobs and one-quarter reported monthly earnings of $600 or less, which placed them in the category of "deep poverty."

Harris sympathetically relates the overwhelming financial burdens of those she interviewed, of varying ages and races.

Reuben, 24, had lived in six different correctional facilities in the states of Washington, Colorado and Minnesota since he was 12. When he was 16, the juvenile courts "declined" jurisdiction and he was sentenced in the adult system for assault, robbery and possession of stolen property. Harris met Reuben in a work release program at a community college. He was both attending school and working, but anxious because he could see no way to pay off the $6,000 in LFOs he had accumulated.

Vilma, 34, a victim of domestic abuse, had shot the father of her son. She was working in a two-year construction apprenticeship program and making regular payments on her legal debt. But the LFO, initially $33,000, had mushroomed 13 years later to an overwhelming $72,000.

One interviewee explained the vicious circle to the author, "I understand you have to pay your way, and the court has to pay its way, and they got to collect off somebody. But it seems to me like the way our criminal justice system works, you know, there's too many people making money out of corrections, and the corrections isn't correcting anything. It's more creating people who are unable to get jobs, who are unable to deal in society in ways that are, um, conforming, conform to the normal standards. So they work outside the block, and those kinds of things that they do, which are illegal, it just kind of compounds it."

The Clinton counterrevolution

Monetary sanctions have a long history in the US. They were first enacted in Michigan in 1846 when counties began to charge inmates for medical care. But their scope and nature dramatically changed in the 1990s under Democratic President Bill Clinton. In a series of right-wing attacks on social and democratic rights, Clinton authorized the "three strikes" omnibus crime bill in 1994, expanded death penalty statues, and ended "welfare as we know it" in 1996. Byproducts of his law-and-order campaign were the doubling of the US prison population, the growth of the for-profit prison industry and the proliferation of LFOs.

The right-wing nostrum of "personal responsibility" was used by courts and politicians across the US to enact a vast expansion of punitive fees—sometimes to increase the salaries of judges or sometimes simply to increase local revenues. By 2004, more than 50 percent of state correctional systems had instituted "pay-to-stay" fees charging inmates for their incarceration.

Today, after 40 years of expanding conviction and incarceration rates, 2.25 million Americans are in jail or prison and 7.1 million under criminal justice supervision. Harris correctly emphasizes the dramatic growth of the prison population as a corollary of growing social inequality.

"Estimates suggest that in 1976 1.17 million US adults had received a felony conviction in their lifetime; in 1996 the number had grown by 285 percent, to 3.34 million, and in 2010 the number of adults living with a felony conviction had increased by 500 percent, to 5.85 million." These numbers, she concludes, show one out of every 40 adults has been convicted of a felony. Among African-American adults—disproportionally affected by poverty—one out of 13 has experienced a felony conviction.

Over 2.6 million minor children (one in 28) now have a parent in jail or prison. For black children, it is one out of four. The experience is so prevalent that even "Sesame Street," the popular children's TV program, has created a character that has a father in prison.

Meanwhile between 1986 and 2013, states have increased their spending on the corrections system by more than double their increase on K-12 education. Per inmate costs nationally were $31,286 in 2010. By contrast, per-pupil spending on education averaged $21,608 throughout the US.

Monetary sanctions have also become an overt fund-raising technique in impoverished communities. Polk County, Iowa raised $718,728 in just one year from its "pay and stay" jail fees. But the most notorious example came to light after protests over the police murder of Michael Brown in Ferguson, Missouri in 2014.

An independent investigation found that the small suburban enclave west of St. Louis had generated $2.2 million in municipal fines in 2012 alone, amounting to $272 per household. To force the payment of these fines, the city had issued 24,500 warrants in one year, averaging 1.6 warrants per adult. Similar police practices were also uncovered in Baltimore in the aftermath of protests over the police killing of Freddie Gray in 2015.

Inability to pay among juveniles

As horrifying as the ongoing criminalization of the poor is, it is even more heartbreaking to chronicle its effects on children.

Harris's work has been complemented by a series of additional studies, including the above-mentioned NPR report and *Debtors' Prison For Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, a 2016 study sponsored by the Juvenile Law Center.

The Juvenile Law Center report demonstrates how the inability to pay

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can push young people deep into the juvenile justice system, prevent the use of diversion programs and rehabilitation options, prevent expungement of a juvenile record or force parents to be held in contempt, incarcerated or have their driver's licenses suspended.

Tragically, youth who would otherwise remain at home with their families may be incarcerated because they can't afford fees, the study shows. And these are not small numbers of children and families being affected. One million youth appear in juvenile court each year and in almost every case, face the fines and fees.

The Juvenile Law Center report states that in Arkansas, Kansas, Michigan, Montana, Oregon, Texas and Washington statutes permit at least seven different categories of costs to be imposed on youth or their families. The total fees to families for juvenile involvement in Alameda County, California average $2,000, including those for investigations, GPS monitoring, placement and public defenders.

In her work, Harris cites the case of a minor, NST, who was convicted at age 14 of residential burglary and malicious mischief. She fought with another youth over an iPod and threw a rock through a window. NST was assessed $2,630.40 in legal financial obligations, including restitution. She and her mother paid the minimum $10 per month. However, because the entire obligation was not paid when she turned 18, her deferred disposition was revoked and the charges will remain on her record for life.

A Pound of Flesh correctly points to the vast recent expansion of legal monetary sanctions during a period of virtually unprecedented social polarization. Unfortunately, the near-ubiquitous prevalence of identity politics in academia has had its effect on Harris's work. The weakest part of the book is her concluding claim that the system of monetary sanctions amounts to a "natural extension" of "prior systems of social control," including Jim Crow racial segregation and the post-Civil War Black Codes. This ahistorical racialized approach discounts the complexities of class exploitation in order to shoehorn the findings into a popular academic postmodernist framework.

Despite its weaknesses the compelling strength of the book—its detailed exposure of the reactionary and brutal legal and financial policies directed against the poor—takes center stage. Harris's failure to address the political origins and trajectory of these class war policies—as part of a more thoroughgoing social counterrevolution aimed against all the gains of the working class—does not prevent the critical reader from learning a great deal about the state of American society from her work.

A Pound of Flesh provides a sober look at the terrible social cost paid by millions of Americans for the persistence of capitalism and its ever-more repressive state apparatus. It is an eye-opener, and well worth reading.

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