

Criminal justice as racialized resource extraction

Joshua Page and Joe Soss

TAKEAWAYS

Criminal justice institutions have become sites for an intricate web of extractive financial practices in recent decades, where powerful actors work to extract resources from vulnerable communities.

Predatory law enforcement and punishment schemes (1) are based on a subordinated group's oppression and marginalization and (2) leverage group vulnerabilities and needs to pursue projects of expropriation, extreme exploitation, and/or dispossession.

We see criminal justice predation as an unacceptable injustice, unnecessary for public safety or democratic rule of law.

Grassroots organizations, policymakers, and broad-based coalitions are making progress in disrupting or ending predatory practices in state and local jurisdictions nationwide.



Institute for
Research on
Poverty

UNIVERSITY OF WISCONSIN-MADISON

irp.wisc.edu

Criminal justice practices in the United States are routinely used to strip resources from poor communities and turn them into revenue for governments and corporations. Since the 1980s, such practices have increasingly become a source of financial hardship in race-class subjugated (RCS) communities.¹ Yet such practices have received limited attention in mainstream poverty studies, where leading explanations continue to focus on topics like low levels of human capital, lack of access to good jobs, personal or cultural deficiencies, and the inadequacies of anti-poverty programs.²

Against this backdrop, the study of criminal justice predation serves as a reminder that in an affluent society, people endure poverty, in part, because powerful actors work to extract resources from vulnerable communities.³ U.S. American criminal legal institutions mirror (and operate in tandem with) predatory lenders and other businesses working to turn social disadvantages into profits. Law and law enforcement have become, in this guise, tools for stripping assets and imposing debts. Projects that criminalize and punish the poor lead a second life as a source of revenues that subsidize dominant groups and institutions.

Law enforcement and punishment have long been entwined with predatory projects in the United States. Policing and patrol operations sustained chattel slavery and Native dispossession in ways that helped to underwrite the political economy of the early Republic. Prison labor exploitation has been an abiding theme in American penal history, pursued in various forms by controlling public and private interests (e.g., chain gangs, convict-leasing agreements, prison industries).

In a recent paper published in the journal *Science*,⁴ we employ the concept of *predation* to connect such historical practices to the present. The term “predatory,” however, does not serve as a label for particular group of actors or their motives. It refers to social relations and practices that (1) are based on a subordinated group’s oppression and marginalization and (2) leverage the group’s vulnerabilities and needs to pursue projects of expropriation, extreme exploitation, and/or dispossession.

The concept of predation draws diverse criminal legal practices into a common frame of analysis that begins with dominant-subordinate relations and focuses on questions of power and wealth. In the past, predatory criminal justice projects in the

Predatory law enforcement and punishment schemes are court-sanctioned social relations and practices that:

- Are based on a subordinated group's oppression and marginalization and
- Leverage group vulnerabilities and needs to pursue projects of expropriation, exploitation, and/or dispossession.

Predatory practices have shifted from labor to finance in recent decades; these include charging fees, creating debts, and pursuing collections, often from the most heavily policed communities.

United States focused mostly on labor exploitation. Over the past four decades, however, predation schemes have shifted from labor to finance. Throughout U.S. American criminal legal institutions, procedures and practices have been redesigned to charge fees, create debts, and pursue collections disproportionately from the most heavily policed and punished communities.⁵

The study of criminal justice predation serves as a reminder that in an affluent society, people endure poverty, in part, because powerful actors work to extract resources from vulnerable communities.

For people in RCS communities, criminal legal involvement has become a common barrier to securing stable housing, decent jobs, education, and social welfare supports; such exclusions represent just one side of a larger inequality-generating dynamic. Through a process that scholars such as Keeanga-Yamahtta Taylor theorize as “predatory inclusion,”⁶ these practices create needs and vulnerabilities that more advantaged actors can leverage to generate revenue. (The unbanked, for example, become ripe targets for usury by payday lenders.) In the criminal justice context, practices that divide and exclude—for example, through criminalization, imprisonment, and the policing of social and residential boundaries—work to produce and position targets for resource extraction.

These pursuits of revenue have not driven the rise of mass policing and punishment in the United States over the past half century. In most respects, the relationship ran in the opposite direction: As policing, judicial, and penal operations grew, they created new opportunities and tools for extractive practices, rising costs that pushed officials to search for new revenue streams, and attractive openings for private investment that drew numerous corporations into the criminal legal field.

Today, revenues generated by criminal legal practices help to fund public services, pay for middle-class jobs in businesses and governments, and reduce the tax obligations of relatively advantaged citizens. They also contribute to corporate profits, CEO salaries, and the wealth accumulated by Wall Street banks, private equity firms, and investors. Criminal justice predation, in this sense, affects life conditions not only in RCS communities but throughout the political economy as a whole.

In 2015, the U.S. Department of Justice (DOJ) investigated the policing and court systems of Ferguson, Missouri, after police there killed an unarmed Black man, Michael Brown.⁷ The DOJ found that city officials counted on revenues from fines and fees, budgeted for increases, and used them to finance a range of municipal services and projects. These fine-and-fee revenues became the second-largest income stream for the city and were used to pay for a new fire hall (\$8 million), renovations of the police station (\$3.7 million), an 8% raise for all municipal employees, and a variety of public services.⁸

Chicago provides another example. Several independent investigations have found that Chicago authorities largely target people from race-class subjugated communities for fines and fees—including dramatic disparities for costly citations imposed on pedestrians, bicyclists, or drivers (who also disproportionately have their cars impounded). In 2016, Chicago brought in \$264 million in revenue—7% of the city’s operating budget—from transportation-related charges alone.

Philando Castile was sitting in his car when he was killed by a police officer in Minnesota. In the 14 years prior, Castile had been stopped by law enforcement nearly 50 times, resulting in 82 citations for minor infractions that totaled more than \$7,000.* At a memorial for her son held in 2020, Valerie Castile said, “I told my son once before he had got murdered, ‘These people ain’t even looking at you like a man, they looking at you as revenue... Because every time they stop you, they are going to give you a ticket, they are going to tow your car, so that ain’t nothing but money.’”**

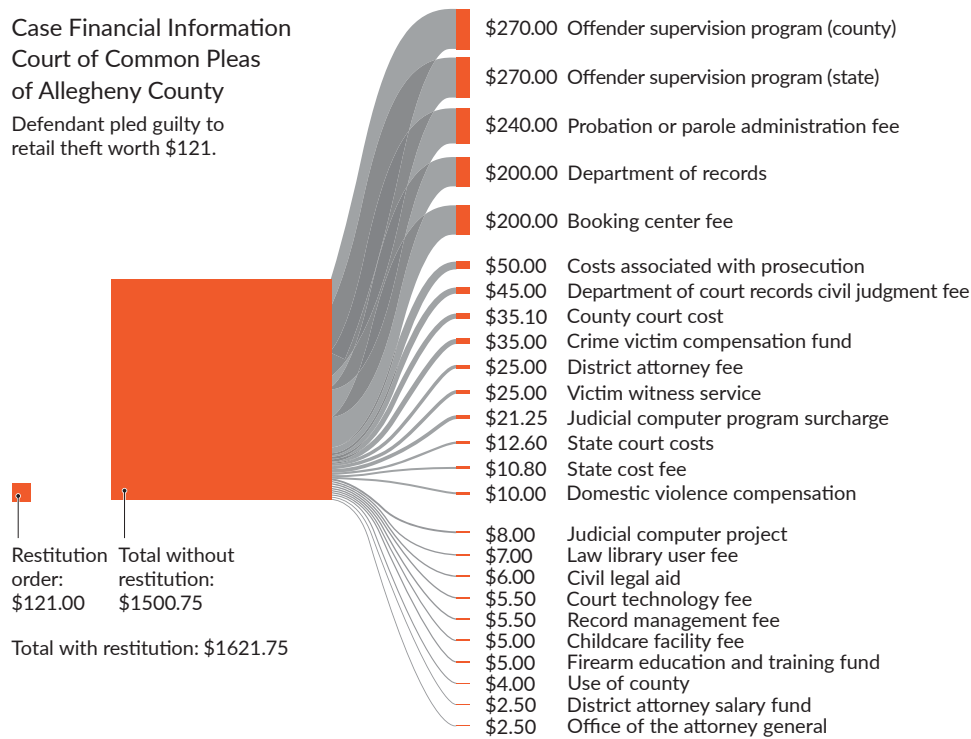
*B. Stahl, (2016, July 17) Philando Castile was caught up in a cycle of traffic stops, fines, *Minneapolis Star-Tribune*. <https://www.startribune.com/castile-lived-in-a-cycle-of-traffic-stops-fines/387046341/>

***News on Purpose, Remembrance of Philando Castile Rally*, Facebook video, 6 July 2020. <https://www.facebook.com/newsonpurpose/videos/remembrance-of-philando-castile-rally/3031165067002164/>

Forfeiture serves a further tool of legal resource extraction from heavily policed communities. Money and property can be seized based solely on an allegation of being related to a crime. The value of seized assets is immense: Between 2000 and 2019, state and federal governments confiscated at least \$68.8 billion.⁹ In 2014, for the first time, the national sum of forfeited assets exceeded the total value of reported burglaries in the United States: More than \$5 billion in assets were deposited by the Treasury and Justice Departments compared to an FBI estimate of \$3.5 billion in burglary losses.¹⁰

The web of financial practices tied to arrest, detention, trial, and incarceration is often invisible to people who have no direct involvement with criminal legal institutions. For system-involved individuals and their family members, friends, and communities, however, such practices operate as a substantial resource drain, exacerbating precarious living conditions and social and economic hardships. The case of one individual in Allegheny County, PA, illustrates how a defendant may be obligated to pay much more than the amount of the basic judgement to settle their case (see Figure 1). In this case, the individual pled guilty to theft of retail goods worth \$121 and was sentenced to pay \$121 in restitution plus an additional \$1500.75 in fees, mostly unrelated to the crime.

Figure 1. Revenue production has become a key responsibility of criminal courts.



Source: Stark, A. B. & Walsh, G. (2020). Clearing a path to a new beginning: A guide to discharging criminal justice debt in bankruptcy. Report. National Consumer Law Center. <https://www.nclc.org/resources/clearing-the-path-to-a-new-beginning/>

Throughout the United States, carceral facilities depend on unpaid or underpaid labor by imprisoned individuals for their daily operations. In some places, people sentenced to prisons and community supervision programs also provide labor for for-profit companies—and receive wages far below prevailing market rates. Such arrangements are profitable not

only for businesses but also for the government agencies that charge for access to a captive labor pool. Similar arrangements—predatory public-private partnerships—organize a host of prison operations, from telecom services to healthcare, commissary sales, and beyond.

Jail and prison populations in the United States are disproportionately made up of men and people of color who have very few resources. The financial burdens associated with incarceration, however, tend to fall most heavily on women from RCS communities. These women often pay the costs of bail in order to sustain a family for their children or so that a son, partner, or nephew can continue to work and fulfill other social obligations. By cosigning for bail or taking out a high-interest loan (e.g., to secure release or obtain legal counsel), such women frequently put themselves in financial jeopardy.

The web of financial practices tied to arrest, detention, trial, and incarceration is often invisible to people who have no direct involvement with criminal legal institutions.

Women in the community also tend to pay the high costs of phone calls, visits, and care packages needed to stay connected with incarcerated individuals—and provide the most reliable source of funds for imprisoned people to buy items from the commissary, pay for medical care, and so on. For spouses and other partners, these responsibilities can mean working more hours (if possible), draining any savings they may have, and juggling the costs of housing, feeding, and caring for a family while also providing for their incarcerated loved one. [For more on symbiotic harms, see Boches et al., in this issue.]

When imprisoned people return to the community, they often carry significant debts created by fees, fines, and restitution orders—including charges for their own custody and supervision; these debts become the basis for continued surveillance and control, aggressive collections efforts, and mandatory appearances in courts and public agencies. Such conditions often intersect with and compound challenges arising from lack of access to stable housing, sufficient income, and/or reliable transportation. Amid these sources of instability and stress, says scholar Alexes Harris, people released with criminal legal debts become “perpetual subjects of the criminal justice system who at any time can be called to answer for their nonpayment and may even be incarcerated.”¹¹ Other repercussions for nonpayment can include driver’s license suspension, loss of eligibility for public programs, revocation of parole or probation, and loss of voting rights.

The stressors affecting both those involved with the criminal justice and carceral systems and their kin also impact their larger communities. When households in an extended family or community are burdened with the ongoing costs of incarceration and supervision, vital mutual-aid networks are at risk of disruption. Fraying relationships between couples can affect parental relations with their children and potentially expose young people to volatile situations. And communities with a significant number of residents who may not have the right to vote—or don’t believe that they do—can be underrepresented in local and state elections.

“[Legal debt] is overwhelming, [it] causes anxiety. I go to therapy because you are always scared they will be knocking at your door. I have started using [drugs] because of the anxiety.”

Cook, F. (2014). The burden of criminal justice debt in Alabama. University of Alabama Birmingham. https://www.prisonpolicy.org/scans/uabtasc/the_burden_of_criminal_justice_debt_in_alabama-part_1_main_report.pdf

In our upcoming book, we argue that criminal justice predation is an unacceptable injustice, unnecessary for public safety or democratic rule of law [see Page and Soss *Research to Watch*, in this issue]. Efforts to end predation can include a range of criminal justice reforms and abolition agendas.¹² Grassroots organizations, policymakers, and broad-based coalitions are making impressive gains in state and local jurisdictions nationwide. San Francisco offers a leading example. In 2020, advocates moved the Board of Supervisors to unanimously pass the “People Over Profits” ordinance, making San Francisco the first U.S. county to “permanently stop generating revenue from incarcerated people and their families through phone calls, commissary markups, or other services.”¹³ (Earlier, the county had stopped charging fees to people in jails or on community supervision.) Notably, the measure identified its target broadly as revenue generation pursued by public and private actors at the expense of incarcerated people and their families—as opposed to isolating particular modes of predation (e.g., phone call charges) or focusing on a narrower subset of the relevant actors (e.g., corporations).

Credit for this encompassing approach largely belongs to a collaboration between the San Francisco Jail Justice Coalition—a mix of advocacy groups that includes several with strong contingents of presently or formerly incarcerated people (e.g., All of Us or None of Us, Berkeley Underground Scholars, and Young Women’s Freedom Center)¹⁴—and The Financial Justice Project (FJP), a unique governmental entity housed in San Francisco’s Office of the Treasurer and Tax Collector. As best we know, the FJP is the only government body in the country specifically dedicated to investigating and reporting predatory practices and connecting grassroots community organizations to the halls of government. It is both a government office and an active member of advocacy and activist coalitions in California.

Across the United States, campaigns organized by community activists and bottom-up advocacy networks (e.g., Free to Drive, Debt Free Justice, Care First Coalition, the Participatory Defense Network, #ConnectFamiliesNow, and Abolish Slavery National Network) have won impressive state and local victories. In a growing number of regional jurisdictions, new limits are being imposed on specific modes of predation (e.g., exorbitant phone charges, bail profiteering) and their harmful consequences (e.g., driver’s license suspensions). In such campaigns, small community groups often receive support from larger justice-advocacy organizations (e.g., the ACLU, Color of Change, Worth Rises, NAACP, and Vera Institute of Justice), foundations (e.g., Arnold Ventures) and research entities (e.g., the Justice Collaboratory at Yale and The Brennan Center for Justice). Such collaborations will likely play a critical role in the future, building national infrastructures to connect, inform, and assist state and local campaigns.

Over roughly the past four decades, U.S. American criminal justice institutions have become sites for an intricate web of extractive financial practices that now far exceeds the scale of these institutions’ predatory labor practices. Laws and policies designed to combat these forms of predation can make significant contributions to reducing poverty and inequality—and will be essential for building a more just and democratic society. ■

Joshua Page is Beverly and Richard Fink Professor of Sociology and Law at the University of Minnesota.

Joe Soss is Cowles Chair for the Study of Public Service at the University of Minnesota.

¹²On RCS communities, see Soss, J. & Weaver, V. (2017). Police are our government: Politics, political science, and the policing of race-class subjugated communities. *Annual Review of Political Science*, 20(1), 565–591. <https://www.annualreviews.org/doi/abs/10.1146/annurev-polisci-060415-093825>

¹³Cancian, M. & Danziger, S. (2009). *Changing Poverty, Changing Policies*. New York: Russell Sage Foundation; Brady, D. (2019). Theories of the Causes of Poverty, *Annual Review of Sociology*, 45(1), 155–175. <https://www.annualreviews.org/doi/abs/10.1146/annurev-soc-073018-022550>

³For related arguments in the context of predatory housing and eviction practices, see Desmond, M. (2017). *Evicted: Poverty and Profit in the American City*. New York: BDWY, Broadway Books.; Taylor, K-Y. (2019). *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*. Chapel Hill: University of North Carolina Press.

⁴Page, J., & Soss, J. (2021). The predatory dimensions of criminal justice. *Science*, 374(6565), 291–294. <https://doi.org/10.1126/science.abj7782>

⁵Soss, J. & Weaver, V. (2017, May). Police are our Government: Politics, political science, and the policing of race-class subjugated communities. *Annual Review of Political Science*, 20, 565–591. <https://doi.org/10.1146/annurev-polisci-060415-093825>

⁶Taylor, K-Y. (2019). *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*. Chapel Hill: University of North Carolina Press.

⁷Shaw, T. M. (2015). *The Ferguson Report: Department of Justice Investigation of the Ferguson Police Department*. The New Press. <https://thenewpress.com/books/ferguson-report>

⁸Henricks, K., & Harvey, D. C. (2017, December). Not one but many: Monetary punishment and the Fergusons of America. *Sociological Forum*, 32, 930–951. <https://doi.org/10.1111/socf.12360>

⁹Knepper, L., McDonald, J., Sanchez, K., & Pohl, E. S. (2020). *Policing for profit: The abuse of civil asset forfeiture* (3rd edition). Institute for Justice. <https://ij.org/report/policing-for-profit-3/>

¹⁰Ingraham, C. (2015, November 23). Law enforcement took more stuff from people than burglars did last year. *Washington Post*. <https://www.washingtonpost.com/news/wonk/wp/2015/11/23/cops-took-more-stuff-from-people-than-burglars-did-last-year/>

¹¹Harris, A. (2016). *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. New York: Russell Sage Foundation.

¹²For a range of abolitionist perspectives, see Davis, A. Y. (2003). *Are Prisons Obsolete?* New York: Seven Stories Press; Vitale, A. S. (2017). *The End of Policing*. Brooklyn, NY: Verso Books; Abolition Collective (2018). *Abolishing Carceral Society*. Brooklyn, NY: Common Notions; Roberts, D. E. (2019, Nov. 8). Abolition Constitutionalism. *Harvard Law Review*, 133(1), 1–122; Cullors, P. (2019, April 10). Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability. *Harvard Law Review*, 132, 1684–1728.

¹³San Francisco Office of the Mayor. (2020, August 10). *San Francisco announces all phone calls from county jails are now free*. Press release. <https://sfmayor.org/article/san-francisco-announces-all-phone-calls-county-jails-are-now-free>

¹⁴The Financial Justice Project. (2020, June 3). *San Francisco introduces people over profits ordinance*. Press release. <https://sfgov.org/financialjustice/whats-new/san-francisco-introduces-people-over-profits-ordinance>

Research to Watch

Court Fines and Fees as Predatory Governance

Our book in progress, *Preying on the Poor: Criminal Justice as Revenue Racket*, details the origins, operations, and consequences of the myriad criminal justice practices that extract resources from communities positioned in the lower reaches of the American social order. We explain how and why such revenue-centered practices have grown so dramatically since the early 1990s, resulting in a system of government and market actors innovating revenue streams through fine-centered policing, court fees, bail systems, prison and community supervision charges, civil asset forfeiture, and more. These and related practices have a long pre-history in earlier uses of predatory governance to advance American state- and nation-building, order the political economy, and manage race, class, and gender inequalities. Connecting this history to the present, we explain *why* current predation has taken specific forms, *how* these practices function within the broader political economy of racial capitalism, and *what* they reveal about the shifting relationships between citizenship and governance. Finally, we analyze the politics of criminal justice predation, concentrating on the contentious forms of resistance that arise from targeted communities, and the dynamics of political struggle that emerge and take different forms across varied political institutions. We ask what can be learned from studying this politics that might be useful for taking action. How can we best challenge these practices and abolish their injustices?

Submitted by:

Joshua Page, Beverly and Richard Fink Professor of Sociology and Law at the University of Minnesota
Joe Soss, Cowles Chair for the Study of Public Service at the University of Minnesota