



## Review Essay

Theoretical Criminology

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Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*, Russell Sage Foundation: New York, 2016; 216 pp: 9780871544612, \$29.95 (pbk)

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As researchers have tried to come to grips with the massive footprint of the criminal justice system in the United States today they have turned their attention from prisons to a wide variety of alternative sanctions and entanglements with the police and the courts. We now have new and important research projects on probation (Phelps, 2013), misdemeanor arrest (Kohler-Hausmann, 2013), warrants (Goffman, 2014), community reentry programs (Miller, 2014), and jail incarceration (Walker, 2016). The general contribution of this work is to show that, accompanying the growth of imprisonment in the United States over the last four decades, the criminal justice system has permeated the lives of the poor and people of color in myriad ways with the result of deepening social inequalities. Social and economic disadvantage was criminalized and inequality was exacerbated as a consequence.

Alexes Harris's new book, *A Pound of Flesh* (2016), makes a valuable contribution to this research program, by studying legal financial obligations—the fines, fees, and financial penalties that are levied on criminal defendants and shadow them long after their sentences are completed. This is the second sustained treatment of the topic that I know of, the first being the US Justice Department's report on the Ferguson Police Department following the shooting by police of Michael Brown in Ferguson, Missouri (US Department of Justice Civil Rights Division, 2015). The topic then, could be no less urgent.

Building on her excellent *American Journal of Sociology* article with Heather Evans and Katherine Beckett (Harris et al., 2010), Harris's book studies legal financial obligations among people with felony convictions in Washington state. The book makes three key arguments. First, that the assessment of fines and fees on defendants has proliferated in US criminal courts in the last few decades. Criminal sentences now routinely include fees for correctional supervision, victim restitution, and administrative charges in addition to the usual terms of incarceration or probation. Second, that fines and fees “create and sustain [economic] inequality in the United States” (p. 14). Average assessments on felony defendants varied between \$600 and \$2500 (in 2004), and average annual collections varied between

\$36 and \$117 across the five Washington counties that Harris studied (p. 91). The financial burden fell on the very poor who were frequently unemployed, homeless, and relied significantly on public assistance. Third, the administration of fines and fees was conducted by government bureaucrats whose discretion was shaped by a culture of desert and accountability (p. 15). Indeed, some of the strongest work of the book is Harris's interviews with county clerks who receive payments and monitor compliance with court-assessed fees.

These are important arguments and the book takes an invaluable first step in opening a new research agenda on the financial burdens imposed by the criminal justice system on what is a very poor population of criminal defendants.

### **What's special about fines and fees?**

Courts impose a wide variety of sanctions on people convicted of crimes. Besides sentences to incarceration, defendants can be released to community supervision which itself often has a long list of accompanying conditions. Judges may mandate drug treatment, behavioral therapies, require employment or impose restraining orders. They can also levy fines and fees, and Harris does a good job of cataloging the long list of financial penalties from supervision fees to DNA tests all of which are subject to 12 percent interest in Washington state.

Implicit in Harris's empirical analysis is a rudimentary theory of fines and fees that distinguish them as an unduly harsh and self-defeating type of sanction. Three characteristics of legal financial obligations make them especially deserving of study and reform efforts: they are enduring, unjust, and delegitimizing.

First, enduring. Although *A Pound of Flesh* stops short of providing a full political economy of legal financial obligations, it is clear that court officials have a strong interest both in the imposition of financial charges and collecting them from defendants. As Harris shows, court clerks often report pressure from victims in recovering restitution orders. The more crime victims pressure the clerks, the more the clerks push defendants to make good on their payments. Even more important, fines and fees have become an important part of the cost recovery and budgeting of courts and correctional agencies. Thus, the Washington clerks will often levy surcharges on restitution payments that take priority over the payments to the victims themselves. The fees themselves often originate in the political process of the state legislatures who are trying to cover the burgeoning costs of criminal justice supervision.

The financial incentive to levy fines was a key theme too in the Ferguson report. There, the Justice Department found that the imperative to generate revenue through fines and fees came to drive the work of the Ferguson Police Department. The Ferguson report called this "revenue-driven policing" (US Department of Justice Civil Rights Division, 2015: 6). The risk of fiscal incentives driving punishment policy is also apparent in the Washington courts that Harris studies.

In short, legal financial obligations have become a key element of the political economy of criminal justice supervision. In a political environment, where conservatives in particular are both in favor of harsh punishment but are reluctant to tax voters, the costs of punishment have been transferred to the punished, who are overwhelmingly poor. In this way, punishment even becomes detached from the criminal justice purpose of retribution.

If retributive sentiment ebbs—as appears to be happening at the current time—fees are retained because that is how criminal justice has come to be funded.

Second, injustice. Harris convincingly shows that fines and fees policy is significantly determined in its implementation on the ground by county clerks. Harris's clerks have wide discretion in monitoring compliance with fee payment schedules and significant de facto control over the risks of incarceration due to noncompliance. Although the clerks are officers of the court they are, well, clerks. Much of their work is administrative in nature, receiving and keeping accounts of payments. Although operating in the judiciary, the clerical function is significantly executive. Except it is not, or at least it should not be, when it comes to meting out punishment.

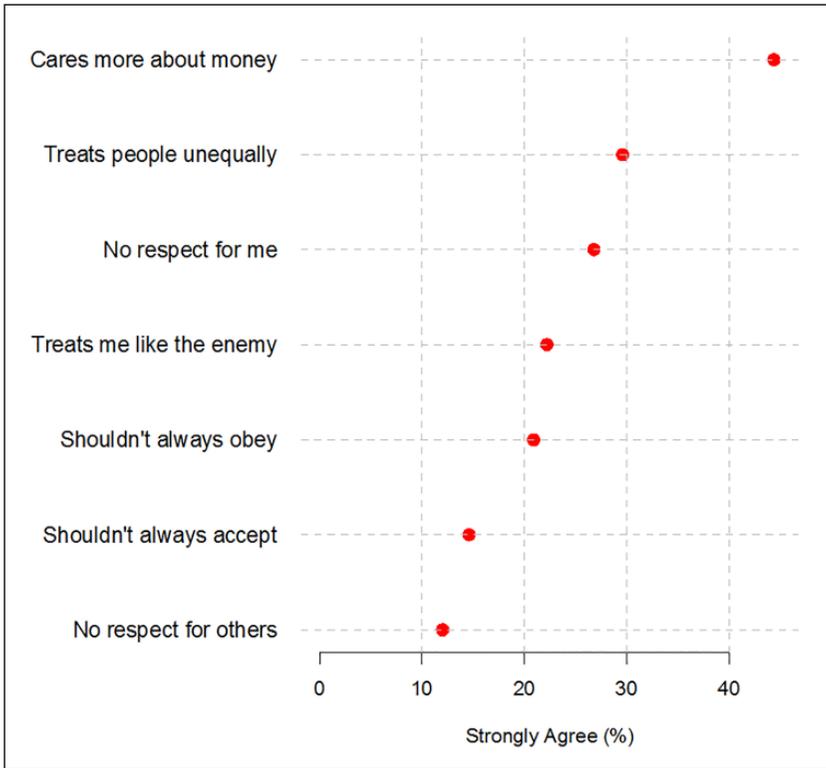
Rather than simply assessing and collecting payments for say postage stamps or drivers' licenses, the clerks are imposing financial punishments on citizens whose limited capacity to pay yields to the clerks' wide discretionary power. The law says that defendants cannot be incarcerated by reason of their indigence. But without a true judicial process, the law is bypassed. As Harris shows, clerks routinely make judgments about a defendant's capacity to pay, their deservingness of leniency, and the rival interests of victims in restitution. Of course, clerks in public offices make decisions like this all the time, in the department of motor vehicles, in welfare offices, in city hall. What is different here, is the county clerks are making decisions about criminal punishment and that is a judicial process that is meant to be determined through an adversarial court process, with rights to representation, and procedural safeguards.

Of course, I do not want to oversell the virtues of judicial process. Harris shows that the Washington judges can also be cavalier about their judgments of indigence, the public defender system is woefully under-resourced, and legal protections for indigent defendants are weak. But the fines and fees system, run by county clerks, is unjust in its nature because the judicial function has been usurped by an administrative one. (Similar observations have been made by Issa Kohler-Hausmann (2013) in her research on plea-bargaining in the misdemeanor courts in New York City.)

Third, de-legitimation. This theme is relatively unexplored in Harris, and she presents some evidence that at least some of her respondents felt their legal financial obligations were justified as punishment for their crimes. However, when policy is cynical (punishment is serving the purpose of cost recovery for the courts) we can predict that those who are subject to the policy will become cynical too.

We saw evidence of this in the Boston Reentry Study (BRS), a longitudinal interview study of released state prisoners in Massachusetts (Western et al., 2015). In the Boston study, we asked respondents a number of questions about their attitudes to the criminal justice system:

- The criminal justice system cares more about making money than reducing crime.
- Most police treat some people better than others.
- Most police do not treat me with respect.
- The police and the courts treat me like the enemy.
- People should not obey the law if it goes against what they think is right.
- I should not always accept the decisions made by legal authorities.
- Most police do not treat people with respect.

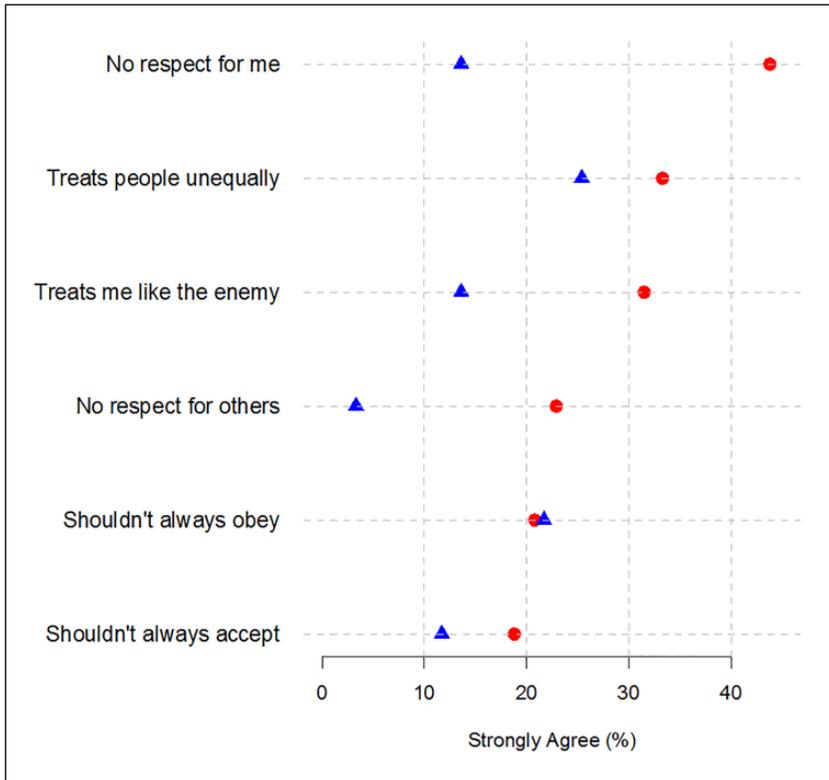


**Figure 1.** Percent of Boston Reentry Study respondents strongly agreeing with attitudes to criminal justice system ( $N = 114$ ).

These questions revealed a high level of cynicism about the criminal justice system, but the intensity of the money-making attitude was striking. Figure 1 shows that when asked whether the police were disrespectful or whether authorities should be obeyed unconditionally, only a quarter of the sample strongly agreed. Just over a quarter strongly agreed that police “treat some people better than others”. Nearly half however, strongly agreed that “the criminal justice system cares more about making money than reducing crime”.

When we split the sample to separate those who strongly believe that the criminal justice system cares more about making money, we can see that legal cynicism is highest in this group (Figure 2). For respondents who believe that the system cares most about making money, 43 percent also feel strongly they are disrespected by the police, compared to just 13 percent who think the system cares more about crime. Of course these relationships are not causal, but they do indicate that suspicions about the economic motives of the just system are a key element of disaffection with police and the courts.

In sum, fines and fees are a distinctive kind of sanction. Efforts to reform them will be resisted even in a liberal political climate. The scope for injustice in their administration



**Figure 2.** Percent of Boston Reentry respondents strongly agreeing with attitudes to criminal justice system for those who strongly agree that the criminal justice system cares only about making money (red circles), and those who do not strongly agree the criminal justice system cares only about making money (blue triangles) ( $N = 114$ ).

is wide because they have been outsourced from judicial decision-makers to clerks. And they contribute distinctively to disaffection and cynicism about the work and purposes of the criminal justice system. These three characteristics together set fines and fees apart as a distinctive part of the justice system. The fines and fees regime in the United States has become particularly corrosive in their effects (going beyond the economic hardship of defendants), and particularly difficult to change.

### The bigger picture

The proliferation of fines and fees, Harris shows, unfolded over decades in which prison populations escalated, and the numbers of people under community corrections supervision also grew significantly. In this context we can understand the story of *A Pound of Flesh* as one piece of the larger trend to the burgeoning criminalization of the USA's poor, and poor people of color in particular.

What do I mean by criminalization? Well, nominally, criminalization is an official process of classification, where certain conduct is designated by authorities as criminal and thus subject to adjudication and punishment.

Criminalization, however, is an absorbing state. Small infractions draw people into the system. A juvenile record leads to close monitoring by police, and ultimately an appearance in adult courts. Outstanding warrants while on parole, leads to arrest, violation, and re-incarceration. Failing to appear in misdemeanor court, leads to warrants, leads to arrest. And, as Harris shows, unpaid fines and fees prolong punishment, exposing people to the ongoing threat of incarceration.

The sociological research shows that criminalization—under the specific institutional conditions that prevail in the United States—thus comes to classify, not conduct, but people. Once you are in the system, it is difficult to escape. And those beginning at the shallow end tend to be drawn toward the deep end.

Without off-ramps in the system, privacy protections, mechanisms for leniency and relief, criminalization is an absorbing process that attaches not to conduct but to people.

This is the fundamental sense in which the criminal justice system has become part of the institutional landscape of US inequality. The criminal justice system adds decisively to the disadvantage of the poor, conferring further stigma and undermining their opportunities.

Read *A Pound of Flesh*. It takes up a very important piece of this story.

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