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## Stripping the Gears of White Supremacy: A Call to Abate Reliance on Court Fines and Fees and Revitalize Local Taxation

*Abstract:* In recent decades, states and municipalities have increasingly relied on court fines and fees to overcome budget shortfalls. Existing literature underscores the varied and adverse impacts of court debt, as well as the disproportionate incidence of such debt on people of color and poor people of all races. Yet, few pieces of scholarship directly link increased imposition of court fines and fees to decreased dependence on traditional progressive taxes. This article aims to fill the gap. Using the Law and Political Economy (LPE) framework, I argue that increased imposition of court debt derives from heightened antitax sentiment and the erosion of the state and local tax bases. In the process, I contend, the tax and court debt systems reflect and exacerbate racial inequality. I conclude by proposing a conceptual framework to abate reliance on court debt, advancing the LPE mission.

*Keywords:* fines, fees, tax, court debt, racial justice

### I. Introduction

The war on poverty has become a war on the poor. The imposition of court fines and fees marks an especially troubling practice. Specifically, the criminal legal system routinely imposes economic sanctions on individual defendants, which generally fall within six categories: (1) restitution, (2) fines, (3) costs, (4) fees, (5) assessments, and (6) asset forfeiture (Appleman 2016, 1488). These payments ostensibly serve to compensate victims for losses, cover administrative costs of the criminal legal process, and further deterrence goals, among other purposes (Appleman 2016; Ruback 2015). As discussed in this article, however, too often individuals cannot pay the economic sanctions that courts impose, leading them to incur debt that is difficult to discharge. In the article, I will refer to this phenomenon as “court debt.”

Though the practice of imposing court debt began in the 1960s, it expanded considerably in the 1980s and remains a pronounced feature of state and local criminal legal systems (Atkinson 2016, 190). Today, states and municipalities rely on court fines and fees to generate revenue and prevent budget

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shortfalls (Eaglin 2015; Harris et al. 2017). As of 2016, “approximately ten million people owe more than fifty billion dollars in debt” under this system (Appleman 2016, 1485).

Recent state and local practices are illustrative. Following the 2008 financial crisis, 47 states and several cities raised both civil and criminal fines and fees (Kim 2018). Combining these with other fines and fees, such as rehabilitation and other program fees, such charges constituted 33% of local probation office budgets statewide in Texas, and in some places covered up to 60% of local office operating costs (Harris et al. 2017). For example, in 2014, the city of Elmira, New York, deployed “prisoner charges” along with fines for driving while intoxicated to generate revenue (*ibid.*, 154). Together, these charges generated about 50% of the agency’s budget (*ibid.*).

Existing literature highlights the disproportionate incidence of court fines and fees on people of color and poor people of all races (Matthews and Curriel 2019; Appleman 2016). Accordingly, scholars commonly criticize court debt’s tendency of trapping poor individuals in cycles of incarceration and poverty (Adamson 2020; Ruback 2015). Indeed, members of the Law and Political Economy (LPE) movement emphasize “penal debt” as one factor that exacerbates existing crises, particularly for people of color and low-income people (Britton-Purdy et al. 2020, 1788). More specifically, penal debt typifies the “racialized . . . inequity and subordination” that the LPE movement addresses (*ibid.*, 1792).

Despite critical assessments of court debt by academics and journalists, given the additional revenue shortages that states and municipalities face as a result of the COVID-19 pandemic—as well as the continued vitality of the antitax movement—governments will continue to face pressure to adopt unconventional funding sources. These include court debt. Yet, few pieces of scholarship explicitly link increased reliance on court debt to decreased dependence on conventional, progressive tax measures. This piece aims to fill the gap. This contribution is especially timely given recent calls to address racial disparities in the *federal* income tax system (Brown 2021). Progressive tax reforms at the state and local level can complement federal interventions (Carrillo 2020; Bearer-Friend et al. forthcoming).

This article, then, contributes to the existing literature by explicitly arguing that increased imposition of court debt is the result of heightened antitax sentiment and the erosion of state and local tax bases—and that both the tax and court debt systems reflect and exacerbate racial inequality. I make three broad conceptual claims. First, by revisiting the history of tax revolts, and underscoring that these movements precipitated increased reliance on court fines and fees, I demonstrate that antitax sentiment reflects racial, not merely economic, anxieties. Second, I observe that court debt is an inferior revenue source as compared to traditional taxes, whether evaluated by traditional tax policy metrics or racial justice principles. Third, drawing from existing tax literature, I argue for several policy and community-based interventions to cease reliance on court debt and revitalize progressive taxes, including property and wealth taxes. The article furthers the LPE movement’s “moral project” by providing a modest set of action items to add to its “positive agenda” (Britton-Purdy et al. 2020, 1832), and provides a conceptual framework for advancing the LPE mission (see *ibid.*, 1824; Harris and Varellas 2020).

The piece proceeds as follows. Part II contextualizes contemporary reliance on court debt by providing background on American antitax movements. Part III argues that court fines and fees constitute inferior sources of revenue. Part IV outlines some suggestions for abating reliance on court debt and revitalizing taxes as primary sources of revenue. To realize such changes, this section also

offers steps that critically engaged law students and practitioners can take to facilitate this transition. Part V briefly concludes.

## II. Tax and Racism: Tax Revolts and Barriers as Symptoms of White Supremacy

### A. *Political Pressures: A Conventional Retelling of the Tax Revolts*

Legislators face significant political hurdles to raising taxes. This is not a new phenomenon. From the Whiskey Rebellion of 1794, sparked by opposition to an excise tax, to twentieth-century movements to repeal the Sixteenth Amendment and with it the income tax, antitax sentiment has long colored American politics (Pilaar 2018; Kornhauser 2002). Scholars point to the Reagan-era tax cuts as a turning point for modern conservatives, who “decided to make a war on taxes the center of their political agenda” moving forward (Block 2009, 72). Tax cuts serve to bolster conservative attacks on forms of social spending that have strong public support, such as Medicare, Social Security, and other social welfare programs (*ibid.*). This messaging and ideology continue to shape contemporary debates.

In recent decades, Grover Norquist has been one of the most visible leaders of the antitax movement in America. Since 1985, under the banner of Americans for Tax Reform (ATR), Norquist and his allies have persuaded lawmakers “to sign a pledge never to raise taxes while in office” (Pilaar 2018, 381). By 2011, close to 1,300 state lawmakers had signed the pledge (*ibid.*). At the federal level, lawmakers’ commitment to the ATR pledge directly contributed to the debt-ceiling standoff in Congress in the summer of 2011 (Fahey 2014, 210-11). Contrary to ATR’s assertions, a number of researchers argue that raising taxes to generate revenue can promote general prosperity (*ibid.*; Tahk 2014, 795). Nevertheless, ATR’s antitax rhetoric shapes both voters’ preferences and policymakers’ behavior (Fahey 2014; Louk and Gamage 2015).

Such rhetoric has also precipitated antitax campaigns in numerous states. Antitax lobbying is prominent in states that rely on direct democracy to pass new taxes (Hoesly 2005). Though leaders of these antitax organizations “raise the banner of the populist,” in reality many are wealthy landowners and business leaders, not members of the working class (*ibid.*, 1207-08). Others who advocate for increased taxes on the wealthy, such as Senator Bernie Sanders, argue that the existence of billionaires is *per se* immoral in our current state of economic inequality (Astor 2019). Setting aside these concerns, affluent support for antitax sentiment is still noteworthy. Specifically, the populist rhetoric deployed by these wealthy men belies the fact that such campaigns are top-down, not grassroots, movements. Indeed, the methods such proponents apply, such as “pa[y]ing signature gatherers and consultants, t[aking] in large donations from national antitax groups, and market[ing] . . . initiatives with simplified messages” to imply community support, rely on privileged, not populist, networks and resources (Hoesly 2005, 1208). Despite their branding, these movements amplify the voices of the elite, not the everyman.

Regardless of their tactics, antitax campaigns have proved remarkably successful. From banning new taxes in Portland, Oregon, to the enactment of Colorado’s “draconian” “Taxpayer’s Bill of Rights,” antitax activists have successfully used direct democracy to constrict governments’ ability to raise taxes (*ibid.*). It is true that, in some cases, courts have invalidated tax limits passed by popular referendum. *Washington Citizens Action of Washington v. State*, 171 P.3d 486 (Washington 2007). But often in those instances, state legislators later found ways to enact antitax workarounds (Washington State

Department of Revenue 2017). The victories achieved by antitax activists through direct democracy, then, further illustrate the efficacy of antitax rhetoric.

State responses to the Great Recession also underscore the prevalence and power of antitax movements. Despite the national reach of the 2008 financial crisis, California, New York, and Illinois *alone* accounted for 81% of all revenue raised through taxes by states between 2010 and 2014 (Pilaar 2018, 382). Though states raised \$33 billion in additional tax receipts, this was “38% lower than the total additional amount—\$54 billion—that they levied after the 1990 recession” (ibid., 383). This is a problem. Studies demonstrate that service demands on state and local governments increase during a recession (Stark 2010, 415). Yet, absent stabilizing measures such as taxes, state and local governments cannot generate sufficient revenue to meet this increased demand. Together, these observations suggest that as measured by historical or theoretical baselines, states failed to raise sufficient revenue through taxes in response to the 2008 financial crisis. Antitax sentiment likely contributed to this widespread failure.

### B. *Reframing the Narrative: Tax Policy as a Tool of White Supremacy*

Existing literature tends to associate taxpayer identity and tax revolts with “fiscal conservative[s] opposed to federal income taxes” (Walsh 2016, 239). But the history of tax revolts also tracks racial anxieties. Historically and contemporarily, many people interpret “taxpayer status” in accordance with stereotypes regarding class and race. Under such stereotyping, the poor and/or the non-white, particularly Black Americans, are viewed as “lesser taxpayers, and therefore, lesser citizens” (ibid., 242). This framing rests on the conceptualization of the collection of tax funds for public services as a transaction. Under this framework, taxpayers are “buying services from the government through tax payments” (ibid.). Thus, common conceptions of the taxpayer reflect both the naturalization of the neoclassical economic market and its racialization in the American context.

History bears out the practical significance of the racialized rhetoric surrounding taxpayers. During the antebellum period, those who owned enslaved people advocated for a uniform tax levied upon all property, concerned with the possibility of “a more progressive structure that taxed slave wealth—and therefore the rich—at higher rates” (O’Brien 2017, 1021). The founding of the Freedmen’s Bureau following the Civil War sparked similar anxieties (Walsh 2016). Segregationists also deployed this rhetoric to defend and maintain racially segregated schools (ibid.). And today, antitax advocates rely on similar arguments to advance policies that disproportionately harm people of color, such as eradication or erosion of property taxes (Henricks and Seamster 2017).

California’s Proposition 13, which capped residential property tax increases, exemplifies this racialized harm. Scholars emphasize that limitations on property taxes “prevent taxes from being raised on the very assets that have long been denied to people of color” (ibid., 172). Consequently, these policies perpetuate a form of economic “hoarding,” enabling whites to accumulate “unearned wealth” (ibid.). Practically, a policy such as Proposition 13 works to deepen the wealth disparity between whites and people of color by enacting greater barriers to homeownership for non-whites, such as by disincentivizing moving, which “has made it harder for people of color to enter the housing market in California” (Toppin 2019). To fund the boon to (largely white) landowners, municipalities must reduce the provision of services for the broader population (ibid.). Yet, despite property taxes operating as effective subsidies for property owners, the public rarely resents such policies. In contrast,

it often regards with suspicion programs perceived as being for the benefit of the poor or nonwhite (Walsh 2016; Metzl 2019). The taxpayer, then, remains classed and raced.

The tax system also remains racist. Racialized conceptions of the taxpayer, whereby whites are presumed to pay taxes, and non-whites—particularly Blacks—are not, implicitly codes “virtually all tax funds to be presumptively white entitlements” (Walsh 2016, 240). Nevertheless, owing to the “intentional opaqueness of the deep structure of tax codes and tax policy,” the racialized and classed tax system “[has] resisted virtually every other social movement transformation of the 20th century” (ibid., 245). Recent scholarship aims to uncover and address the federal tax code’s racism (Brown 2021). Still, it is important to bear in mind that while often presented as racially neutral, race and racism shape both the tax code and the modern antitax movement.

In the aggregate, racial anxieties correlate with calls for lower taxes and spending on public programs. Indeed, studies have found that high rates of racial heterogeneity correlate with more restrictive and punitive rather than inclusive welfare policies (O’Brien 2017). Such a trend is consistent with the tendency of states and localities to enact barriers to taxation during periods of perceived racial justice gains (ibid.). Given this context, some scholars recognize the tax system as an apparatus visiting “slow devastation” to communities of color (Henricks and Seamster 2017, 175). Antitax revolts, then, are not victimless revolutions. Rather, the incidence of such revolts falls disproportionately on people of color and the poor, with white and wealthy individuals unjustifiably reaping the benefits.

### C. *Legal Barriers to Progressive Taxation*

Balanced budget amendments and other tax and expenditure limitations constitute the main legal barriers to raising state taxes (Pilaar 2018). As of 2020, all states except North Dakota and Wyoming had some form of a balanced budget requirement (Tax Policy Center 2020). Such measures coincide with a pervasive anti-tax mentality among state and local legislators (Atkinson 2016). Together, “[t]he anti-debt and anti-tax fiscal structure sharply constrains the ways in which states and localities can raise and spend monies” (Schragger 2012, 860). Consequently, “the states’ balanced-budget constraints make it impossible to hold both tax and spending policies constant as the economy cycles” (Gamage 2010, 753). Indeed, tax and expenditure limitations likely “aggravate revenue volatility” (Pilaar 2018, 371).

States also face restrictions on levying particular *types* of taxes. For example, California’s passage of Proposition 13 in 1978 prompted other states to follow suit, such that “by 1980, thirty-eight states had reduced or stabilized their tax bases through laws similar to Proposition 13” (Louk and Gamage 2015, 204). Scholars point to diminished reliance on the property tax as heightening the instability of state budgets (Shanske 2014). Hence, restrictions on property taxes both reflect antitax bias and exacerbate the precarious condition of state and local budgets.

Supermajority requirements further restrict tax increases. For instance, California’s supermajority requirement for state budgets enables a minority party to veto any budget proposals that include tax increases, provided that “the minority party maintains a united front and controls at least one-third of the votes in at least one of the chambers of the state legislature” (Louk and Gamage 2015, 192). This requirement contributed to the 2008 and 2010–2011 budget standoffs in California (ibid.). California lawmakers eventually passed budgets in both instances. But to do so, they relied on “accounting gimmicks,” which did little to secure the state’s long-term fiscal stability (ibid., 226).

In sum, the features discussed above limit state and local governments' capacity to generate funds. Insufficient funding imperils the provision of essential public goods (ibid.; Pilaar 2018). Yet, demand for such goods has increased, not decreased (Super 2008). Legal limits on taxation push legislators to rely on suboptimal sources of revenue. Moreover, many of these constraints originated as tools for hoarding white wealth and extracting and redistributing the wealth of racial minorities, particularly Black Americans (Leachman et al. 2018). Antitax measures' pernicious financial effects, as well as their dubious origins, counsel against continued reliance on such tax restrictions.

#### *D. Fiscal Constraints Force States into Suboptimal Substitutes for Taxes*

Antitax sentiment produces a vicious circle. By refusing to raise taxes, states and localities allow their long-run tax receipts to stagnate (Super 2008, 348). This translates to diminished capacity to offer public goods. Moreover, cuts to spending provide insufficient relief to budgetary concerns. More specifically, in recent years, demands on public services, such as health care, the criminal legal system, and education, have steadily climbed, and most of these costs stem from substantive, not administrative, elements of these programs (ibid.). To radically shift budgets, then, "states must make radical cuts" (ibid., 396). Hence, even if governments want to cut programming to produce balanced budgets, such an approach is likely inadequate.

Theoretically, balanced budget provisions force state and local governments into "fiscal straightjackets" (Tobin 1996, 193). But in practice, states and localities employ a variety of "narrow, targeted, nontax finance devices" to generate revenue (Ball and Reynolds 2006, 1520). Indeed, a survey of state law cases demonstrated that "state courts have generally ignored, reformulated, or abandoned state law limits on government nontax revenue-raising devices" (ibid.). Thus, while balanced budget amendments often disincentivize legislators from raising taxes, they do not necessarily curb government spending. Instead, balanced budget amendments inspire "use of budgetary gimmicks . . . to circumvent the requirements" (O'Connor 2015, 371). Some of these tactics include interpreting the balanced budget amendment in a way that defies the original intent of the requirement, "manipulat[ing] the calendar to gain the appearance of a more balanced budget," "manipulat[ing] expenses by simply not paying their bills," and "unrealistically inflating projections and revenue assumptions to justify increased expenditures" (ibid., 373).

Another common gimmick is court debt—likely due, in part, to the fact that in most states with tax caps, court fines and fees do not count as taxes (Reynolds 2004). The court debt approach to financing is also consistent with the position of ATR (Americans for Tax Progress 2020). Notably, advocates for criminal justice reform on the political right, including Grover Norquist, support the imposition of user fees in the criminal legal system, especially for alternatives to incarceration such as supervised release. Fiscal conservatives view these methods as superior to traditional criminal legal interventions, provided that "such coercion achieves short-term behavior modification and is less expensive than incarceration" (Takei 2017, 171). Given the context explored above, balanced budget amendments incentivize states and localities to levy court fines and fees to avoid budget shortfalls (Atkinson 2016). But for reasons that will be discussed in the following section, court debt is an inferior source of revenue.

### III. Court Debt as Economically Inefficient Racial Extraction

#### A. *Court Fines and Fees Are an Inferior Source of Funding for Governments*

As discussed above, legislators face significant legal and political barriers to raising taxes. This means that to generate revenue, they often turn to unconventional substitutes such as court debt. But, as assessed by conventional fiscal policy criteria, court fines and fees constitute inferior sources of revenue. Court debt is inefficiently collected, lacks traditional political checks, and is inequitable. Thus, as a substitute for traditional revenue sources, such as taxes, reliance on court debt as a revenue stream is both ideologically and functionally unsound.

##### 1. Court Debt Is Inefficiently Collected

Court fines and fees are ineffective sources of revenue. “[A]lmost every cent spent on fee and fine collection is wasted as compared to collecting tax revenue” (Menendez, et al., 2019, 9). Moreover, increased judicial scrutiny of court fines and fees leads to heightened administrative and accounting costs (Reynolds 2004, 415). Rather than bolstering governments’ financial health, then, court debt can further jeopardize state and local budgets. Setting aside potential penal goals furthered by economic sanctions, on balance, court fines and fees fail to effectively advance the public’s pecuniary interests.

In addition to the costs of collection, court debt produces economic waste in the form of uncollected fines and fees. For example, in 2016, California had \$12.3 billion of uncollected court debt (Kim 2018). Similarly, in Oklahoma, “[n]o more than 33 percent of court debt has ever been collected in a given year” (Harvey 2020). Alabama fares even worse, collecting less than 10 percent of outstanding court debt (*ibid.*). These instances underscore the ineffectiveness of court fines and fees as sources of revenue.

Court debt also produces inefficiency in the form of incarceration costs. Failure to pay can land those who owe court debt in jail (Colgan 2020). The costs of incarcerating those who cannot pay their debts are sometimes as much as 115 percent of the amount collected (Menendez et al. 2019, 5). And jailing individuals for failure to pay generates no revenue, while imposing additional costs of detention on states and municipalities (Menendez et al. 2019, 5). Apart from the enormous human costs of court debt and incarceration, then, court fines and fees exacerbate economic inefficiencies (Appleman 2016). Indeed, researchers at the Brennan Center for Justice found that jurisdictions “spend more than 41 cents of every dollar of revenue they raise from fees and fines on in-court hearings and jail costs alone,” whereas Texas and New Mexico, two of the jurisdictions studied, spend \$0.31 and \$0.95, respectively “for every *hundred dollars* in taxes collected.” (*ibid.*, 9) (emphasis in original). Researchers also found that incarceration costs significantly exceed collection costs (*ibid.*, 9). In other words, court debt is not just a poor revenue source; it often triggers additional government expenditures. Thus, imposing court debt is an ineffective means of balancing state and local budgets.



## 2. Imposition of Court Debt Lacks Traditional Policy Checks and Justifications

Court fines and fees also lack the political checks and policy justifications associated with traditional sources of revenue, such as taxes. Robinson (2017) argues that court penalties do not bear any of the hallmarks of a tax:

They are not (1) predicated upon notions of equity or ability to contribute to government; (2) certain as to time, manner, or payment of the levy should the person cited choose to contest a citation; (3) necessarily amenable to convenient discharge; and (4) subject to budgetary constraints that might otherwise limit overall collections. (Robinson 2017, 945)

In sum, court fines and fees possess “none of the protections against excessive collection that are inherent in a traditionally structured tax” (ibid.). Consequently, court fines and fees are poor substitutes for taxes.

Additionally, court debt lacks salience relative to other policies that generate revenue, such as taxes (Thurston 2020). In this context, salience refers to the extent to which the visibility of a particular policy influences the behavior of people subject to that policy (Gamage and Shanske 2011). Under social contract theory, salience is critical to achieving social justice (Gifford 1977). Tax scholarship has demonstrated that the saliency of taxes affects individual behavior (Hayashi 2014; Perkins 2014). Some scholars argue that low-salience taxes constitute an appropriate means of promoting fiscal progressivity by raising taxes (Schenk 2011). Yet, while tax scholars commonly discuss salience, “[i]t is hard to think of any tax provision that is hidden in the sense of being unknown or about which information is unavailable” (Schenk 2011, 263). Put differently, some taxes lack “prominence, not accessibility” (ibid.). Thus, information about even relatively obscure taxes remains reasonably available to taxpayers.

In contrast, court fines and fees are frequently invisible *and* inaccessible. First, such fines and fees are frequently ancillary to the underlying criminal sentence (Logan and Wright 2014). Second, the costs of court debt are often compounded by collateral costs, such that the true magnitude of fines and fees is unascertained at the time of sentencing (Atkinson 2016). Third, the fact that multiple entities, including private companies, share collection responsibilities further reduces court debt visibility and accountability (Takei 2017; Menendez et al. 2019). This renders information about court fines and fees not just obscure, but effectively unattainable (Ruback 2015). Together, these factors mean that potential defendants cannot internalize the potential court costs when determining whether to engage in a particular offense (Winter 2008; Bierschbach and Bibas 2017). This renders court debt inferior to more visible sources of revenue, such as taxes.

Policymakers are also likely less responsive to those who owe court debt, thereby removing a key political check on the imposition of court fines and fees. First, unlike taxation, where the government’s “power [may be] strictly limited or require[e] additional layers of approval,” a government may directly institute fees (Reynolds 2004, 408). As such, lawmakers can pass new fines and fees without appealing to stakeholders, such as would-be payors. Second, those facing court debt may not be able to vote due to legal barriers, such as felony disenfranchisement (Uggen et al. 2020). As a result, they cannot hold

lawmakers accountable for adverse court debt policy by voting them out of office. Third, the population of people who owe court debt is disproportionately comprised of low-income individuals and members of racial minorities (Atkinson 2016). Historically and contemporarily, these groups have been disenfranchised by the political process (Ross and Smith 2009; Pew Research Center 2018). Consequently, even when those who owe court debt can vote, politicians are unlikely to seriously weigh their concerns.

Finally, people who owe court debt cannot “vote with their feet” if they object to the imposition of court fines and fees (Somin 2020). If voters object to a tax, at least in theory they can move to avoid paying it (Somin 2019; Edwards 2018). Not so with court debt. Instead, debtors are required to pay the court debt they owe, irrespective of future residency. Indeed, courts often closely scrutinize potential moves by those involved in the criminal legal system (Appleman 2016). Furthermore, court debt and attendant collateral consequences, such as driver’s license suspensions, can contribute to the “legal immobility” of people who owe fines and fees (Greene 2019, 782-86). This legal immobility translates to “substantial barriers to interstate mobility, particularly for lower-income Americans” (Schleicher 2017, 84). Hence, as Schleicher (2017) argues, those who owe court debt are geographically, and by extension, politically, “stuck.”

### 3. Reliance on Court Debt as a Revenue Source is Inequitable

Equity also drives decisions regarding revenue generation. In the United States, “[t]axation has always been both about revenue and *equity*—about effectively raising government funds and fairly distributing fiscal burdens” (Mehrotra 2005, 1797) (emphasis added). This emphasis on distributive justice in the tax system parallels the United States Supreme Court’s approach to economic sanctions generally. Indeed, since the early twentieth century, the Court has invalidated economic sanctions that incentivize governments to base decisions “not on fairness, but on either a desire to generate revenue for the government or to satisfy their own pecuniary interests” (Colgan 104, 1185). With respect to court debt, the Court has held that a state may not imprison an indigent person for failure to pay court debt, unless he “willfully refused to pay the fine.” *Bearden v. Georgia*, 461 U.S. 660, 668 (1983). Fairness, not just efficiency, shapes fiscal policy.

The imposition of court fines and fees violates fundamental principles of fairness. As forms of economic sanctions, court fines and fees “automatically invoke factors associated with wealth and poverty, including race, class, education, job skills, and employment” (Ruback 2015, 1784). This inverts the tax system’s ordinary principle of vertical equity, under which “taxpayers who enjoy higher levels of economic well-being should pay appropriately higher taxes” (Duff 2004, 401). Additionally, court debt imposes a host of collateral consequences. Failure to pay court debt can trigger the revocation of occupational, driver’s, and other licenses; property liens; and contempt proceedings, among other adverse outcomes (Patterson 2008, 100; West 2013, 527; Colgan 2020). In turn, these effects interfere with a person’s ability to participate in the labor market, access educational services, and meet her health needs or community commitments (Colgan 2020, 1544). Such constraints “arguably leave little room for an offender’s transformation,” the ostensible goal of criminal sanctions (Murray 2020, 1074). Instead, collateral consequences “hinder the efforts of people with criminal records to move on from their past” (Horn 2019, 320). Consequently, such costs frequently increase recidivism (*ibid.*).

Anecdotes underscore the perversity of the system. For instance, one Alabama woman's unpaid speeding ticket for \$179 resulted in 40 days of incarceration and court fees of "more than \$1,500" (Bronner 2012). Similarly, a resident of Childersburg, Alabama, an area with "no public transportation," served "a total of 24 months in jail" and owed "\$10,000 . . . for traffic and license violations that began a decade ago" (ibid.). Mississippi also employs troubling criminal debt collection practices, as it allows courts to sentence debtors to state restitution centers until they pay off their court debt by working for private employers. (Zatz 2021; Wolfe and Liu 2020). These centers charge individuals "\$330 a month in room and board costs," and fail to provide "any programs to deal with addiction or earn high-school diplomas." (Wolfe and Liu 2020). Those relegated to a restitution center cannot leave until they pay off their debt (ibid.). Yet, Mississippi law does not consider placement in a restitution center a form of incarceration. (Zatz 2021). Rather, if an individual violates a condition of their residence in a restitution center, they can face incarceration in a Mississippi prison or jail. (ibid.).

These examples, then, illustrate that unpaid fines and fees often deprive people of their liberty, and with it, their dignity. In effect, collateral consequences of court debt prevent people from participating as full and equal members of society. Alabama and Mississippi employ especially egregious court fines and fees practices; however, court debt adversely affects individuals across the United States, not merely in a couple of southern states (see Harris 2021; Colgan 2020; Lollar 2020; Appleman 2016). Thus, addressing court debt injustice necessitates a national conversation.

Not all forms of economic sanctions are normatively unjustified. For example, R. Barry Ruback argues that restitution, which provides direct payment to the victim rather than to a state agency, serves legitimate criminal justice goals (Ruback 2015, 1818). And fines properly calibrated to the offender's ability to pay may also serve a valid deterrence function (ibid., 1817). But generally, court fines and fees satisfy neither of these conditions (Colgan 2020). Thus, contemporary reliance on court debt to fill the general coffers of state and local governments is unwarranted.

### *B. Court Fines and Fees Are a Form of Racial Extraction and Redistribution*

Court fines and fees are also morally unjustified, as they effectuate racial injustice through racial extraction and redistribution. Scholars emphasize the prevalence of racial extraction within the tax system generally (Henricks and Seamster 2017). Though not formal taxes, court fines and fees similarly enable those in power, who are disproportionately white and wealthy, "to plunder black resources for their own profit" (ibid., 173). Indeed, scholars repeatedly underscore how private companies hired to oversee elements of the penal and probationary systems "are profiting from the misfortunes of victims and offenders" (Ruback 2015, 1826). These costs are often quite high (Takei 2017; Atkinson 2016). This background, coupled with findings that "race, not arrest rate [or] public safety," correspond with the rate of the imposition of fines, highlights that court debt often serves to divest racial minorities of wealth (Chicago Appleseed and Chicago Council of Lawyers 2020). Thus, under our current system of court fines and fees, racialization and criminalization create the conditions for economic expropriation.

Court debt also constitutes a form of racialized economic redistribution. Practically, alongside more regressive taxes whose incidence fall heavily on people of color and the poor—such as sales taxes and excise taxes on goods that people of color or low-income people disproportionately purchase—court debt serves as a substitute for more traditional, progressive taxes (Henricks and Seamster 2017).

Theoretically, court debt aligns with the redistributive aspects of the racialized tax system. Just as redistribution constructs “a dual tax structure organized along racial lines” (ibid., 174), so does the contemporary system of court fines and fees represent a bifurcated penal system, whereby “fines and fees are disproportionately assessed against people of color and in predominately minority communities” (Atkinson 2016, 202). As such, one may regard court debt as an “expanding, colorful tax practice by another name” (Henricks and Seamster 2017, 175). Court debt effectively constitutes a form of “racialized taxation” (ibid., 171).

In sum, court debt effectuates forms of racialized economic harm. Indeed, some scholars argue that court debt serves as a “neoliberal racial project that serves to redistribute resources from Black families to state governments in a faux-taxation scheme” (Zhen 2019, 179). Additionally, “[f]amilies and communities provide food, housing, utilities, transportation, and other necessities” to the individual who owes court debt (Horn 2019, 320). Given the racial and socioeconomic disparities in the criminal legal system, these burdens disproportionately fall on low-income and minority communities. Under this system, “people of color are being treated more like dollar signs than citizens” (Henricks and Seamster 2017, 175). As a result, court debt perpetuates both racial and economic injustice.

Like taxes, then, court fines and fees act as the “gears and levers of white supremacy” (ibid.). The resultant court debt entrenches existing forms of racial and economic inequality. This phenomenon, and the persistent failure to address it, is consistent with “the constitutional erasure of the structural subordination of the poor [and] people of color” (Britton-Purdy et al. 2020, 1808). Accordingly, divesting from this system and investing in new forms of revenue generation can advance the LPE project: democratization of the economy, and reduction of caste barriers to social and political participation.

#### **IV. Public Policy and Education: Suggestions for Reform**

In response to advocacy against court debt, some state legislatures have begun revisiting and eliminating their court fines and fees (Harris et al. 2017). Other states and localities should follow this trend. Still, more work is needed to transition from reliance on court debt to progressive taxes. To further such work, this Part offers suggestions for reform along three dimensions: policy interventions, movement organizing, and legal education.

##### *A. Policy Interventions: The Push for Progressive Taxation*

In place of the current invidious system of court debt, states and municipalities can invest in traditional revenue sources. Start with taxation. States can broaden their sales tax base by instituting digital sales taxes (Mason and Shanske 2020). This reform can provide states with tens, potentially hundreds, of millions of dollars of additional revenue each year by taxing transactions not captured by the existing federal Internal Revenue Code (IRC) (ibid.). Additionally, states can pass tax laws to capture “money [left] on the table” by the federal government after its recent reform of the IRC through instituting state-level value-added taxes (VATs) (Shanske 2019, 451). As Gamage argues, broad-based taxes constitute “the least harmful method for coping with fiscal volatility” (Gamage 2010, 751). States can also institute wealth taxes modeled after Senator Elizabeth Warren and Representative Pramila Jayapal and Brendan Boyle’s proposal to institute a wealth tax “on household net wealth above \$50 million and at a 2 percent rate and above \$1 billion at a 3 percent rate per year” (York 2021). Finally, states can adapt Dorothy Brown’s proposal for federal income tax reform by “[e]liminating exclusions,

reducing deductions, and returning to a single progressive tax system” in their state tax codes (Brown 2021, 206). Together, these proposals offer more efficient and equitable sources of revenue than court debt.

When reformulating their tax systems, states and municipalities should consider racial equity. Given the racial disparities of the current tax system, policymakers should prioritize policies aimed at building minority wealth and ending subsidies to the white and wealthy (Brown 2021; Steverman 2021). Eliminating many of the barriers to taxation discussed earlier can promote both economic stability and racial justice.

Many barriers to taxation, such as supermajority requirements for tax increases and property tax limits, originated during the Jim Crow and Reconstruction Eras, respectively (Leachman et al. 2018). Similarly, Mississippi introduced the first modern American sales tax in 1932 to produce “a reduction in taxes owed by mostly white property owners and an increase in those owed by Black households that owned little or no property and had little else to tax” (ibid., 2). Conversely, elimination of such barriers can serve as a repudiation of the racist motivations underpinning their initial enactment. Such reforms can include “[e]liminating supermajority requirements to raise revenues” [r]epeal[ing] or reform[ing] rigid, formulaic property tax limits,” “[e]liminating other constitutional restrictions on raising revenue,” and “[s]trengthening state ‘rainy day funds,’” by eliminating caps and aggressive repayment requirements for such funds, among others (ibid., 22-25).

These reforms can also bolster the public coffers. This, in turn, provides the foundation for other economic and racial equity initiatives, such as “provid[ing] more funding to schools serving larger shares of children living in poverty or facing other challenges” (ibid., 21). Such an approach acknowledges and rejects the legacy of white supremacy. In so doing, it enables states and municipalities to pursue policies that further substantive equality, and with it, social justice.

With respect to positive reforms, revitalizing property taxes is particularly promising (Hayashi and Kleiman 2020). But to formulate an efficient and equitable property tax, lawmakers must consider that residences in African American and Latino neighborhoods are consistently over-assessed, while residences in majority white neighborhoods are persistently under-assessed (Harris 2004, 2; Atuahene 2020, 111, 124, 179). This means that residents of minority neighborhoods likely bear a disproportionate tax burden for public goods funded by property taxes (Harris 2004, 2). Such a trend typifies the extractive and redistributive logics of both tax and court debt discussed earlier. To avoid replicating such harmful practices, governments can use assessments based on the actual cash costs (i.e., the purchase prices) of residential parcels of property, rather than market-based assessments (ibid., 5).

These are just a small sample of potential policy responses. Other promising initiatives also deserve serious consideration (see, for example, Hanauer 2020). Yet, no matter the precise tools chosen, legislators must take care to prioritize both economic stability and racial equity when devising policies. Rejection of regressive taxes is key (Leachman et al. 2018). This includes rejection of regressive tax *substitutes*, such as court fines and fees. And alongside such rejection, legislators must take courage and pursue positive policy initiatives, such as progressive taxes (Brown 2021). Such recoding of the tax system provides grounds for racial equality and economic justice. Only then may the United States begin to realize the LPE “ideal of citizen self-rule,” as only then will individuals enjoy the material conditions to ensure equitable access to economic and political power (Britton-Purdy et al. 2020, 1824).

### B. *Movement Organizing: Contemporary Calls to End Court Debt*

Movement organizing is critical to abating and abolishing court fines and fees. In recent years, groups such as the Fines and Fees Research Center and the Financial Justice Project have successfully organized to press state and local legislatures to curb some of their most pernicious court debt practices (Fines and Fees Research Center 2021; Financial Justice Project 2021; PolicyLink 2021). For example, Cities and Counties for Fine and Fee Justice, an initiative led by PolicyLink, the San Francisco Financial Justice Project, and the Fines and Fees Justice Center, provides support for municipal jurisdictions across the country to reduce their reliance on court debt (PolicyLink 2021). The group also provides links to community organizing resources (*ibid.*). Through these supports, the coalition supplies a foundation for a nationwide network of advocates committed to local court debt reform.

Organizing in Ferguson, Missouri is also illustrative. Following the killing of Michael Brown by Missouri police officer Darren Wilson in 2014, the United States Department of Justice (DOJ) investigated policing and court practices in the city. Analyzing the Ferguson Police Department (FPD)'s own data from 2012 to 2014, the DOJ found that "African Americans account for 85% of vehicle stops, 90% of citations, and 93% of arrests made by FPD officers despite comprising only 67% of Ferguson's population" (Department of Justice 2015, 4). Further, the DOJ concluded that Ferguson's practice of imposing fines and fees to "advance the City's financial interests . . . led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements" (*ibid.*, 3).

The DOJ's report corroborated Ferguson residents' long-held misgiving about the city's citation and court debt system. It also provided a basis for activists to successfully advocate for legislative reform. Indeed, in 2015, the Missouri state legislature passed a court reform law that "bans municipalities in St. Louis County [including Ferguson] from generating more than 12.5% of their general revenue from traffic fines and fees," among other reforms to policing and court practices (Erickson 2020). Although the Missouri Supreme Court struck down these provisions in 2016, a Cole County Circuit judge reinstated them in 2020 (*ibid.*). As of October 2021, the Missouri Supreme Court is deliberating whether to affirm reinstatement of the 2015 citation revenue cap on municipalities in St. Louis County (Rivas 2021). Regardless of the outcome, Ferguson provides a potential model for court debt organizing across the country. It also demonstrates the potential for local activists and federal agencies to collaborate and hold state and local officials accountable for imposing exploitative court fines and fees.

Debt Free Justice California's work provides an additional model for state-level court debt reforms. In 2020, the group helped secure passage of California's Families Over Fees Act, which "eliminated 23 [types of] fees and expunged over \$16 billion in debt for primarily Black and brown Californians" (Debt Free Justice California 2021). Additionally, the group secured passage of another bill that "curtail[ed] the Franchise Tax Board's use of predatory collection practices for those saddled with criminal legal debt" by revoking bank levying privileges against those paid below a full-time minimum wage salary (*ibid.*). The group continues to fight court fines and fees by pressing the California legislature to abolish civil assessments and eliminate other types of court fees (*ibid.*). And in their advocacy, the group highlights the connection between the movement to end court debt and broader racial and criminal justice movements. Thus, Debt Free Justice California provides a model for other state-level campaigns.

In sum, existing court debt organizations and movements have already secured important victories. The additional interventions discussed below aim to build on and complement these efforts. Further, the groups above demonstrate the efficacy of organizing at the local- and state-level. Federal intervention is also important (Carrillo 2020).

### C. *Raising Awareness: Revising Legal and Public Education*

Revising legal and public education can augment the movement organizing efforts discussed above. Citing the persistent antitax sentiment discussed earlier, critics of tax base-broadening policies may dismiss such measures as politically infeasible. But such an assessment is overly pessimistic. Revising legal education can provide a foundation for this work. Law students, professors, and attorneys committed to advancing equality can work alongside community organizers to effect needed reforms. Community lawyering provides a useful framework for engaging in such work (Diamond 2015; Elsesser 2013). Community outreach and education can serve as the focus for these efforts. The priorities explored below can serve as a starting point for this advocacy. Many of these suggestions attempt to answer the call of social scientists to “engage at the symbolic level to understand and reframe” economic conditions and systems, including the tax system (Henricks and Seamster 2017, 175). Further, pursuit of such objectives can politicize and denaturalize the “market-mediated inequalities” initiated by court fines and fees in particular, and the tax system more generally (*ibid.*). Thus, this work can advance the LPE mission (see Britton-Purdy et al. 2020).

In pursuing such work, those committed to the LPE movement must prioritize nurturing interracial solidarity. In this context, “solidarity” refers to “radical solidarity” (Bain 2017, 9). Such solidarity “demands the fundamental transformative change of systemic and structural inequities” (*ibid.*). As such, radical solidarity is consonant with the LPE movement’s calls for equality. Practically, research has found that “building group alliances leads to greater empathy and cohesion among group members” (Garden and Leong 2013, 1195). Such solidarity can help build power within disenfranchised communities. Given the tendency of whites to favor more regressive taxes when faced with racial heterogeneity, establishing a broad political coalition can help pass progressive taxes, even absent buy-in from a majority of white community members (O’Brien 2017).

The success of the Industrial Areas Foundation (IAF) is instructive. Through organizing Chicago’s marginalized poor, IAF founder Saul Alinsky mobilized a decentralized network of racially and ideologically diverse members that has since spread across the United States (Wilson 2000, 96). In Texas, for instance, the IAF’s San Antonio Chapter, comprised of “whites, African Americans, Mexican Americans, Catholics, and Protestants,” secured “hundreds of millions of dollars of infrastructural improvements in poor inner-city neighborhoods of San Antonio” (*ibid.*). Through developing shared principles and concentrating on local issues, the IAF encourages interracial solidarity and effective organizing (Wilson 2000). Adapting from this example, as well as from models set by the civil rights, feminist, and labor movements of the twentieth century, lawyers and law students can support effective interracial organizing (Bain 2017; Collins 2000; Garden and Leong 2013). This, in turn, can build the foundation for abolishing court debt and revitalizing state and local tax systems.

Alongside cultivating interracial solidarity, advocates for court debt reform must encourage the reinvigoration of “public identity” (Walsh 2016, 238). This includes emphasizing the efficacy of social

welfare programs. Research indicates that linking tax revenue to government programs people support, such as Social Security or Medicare, greatly diminishes individuals' desire for tax cuts (Fahey 2014, 206). Indeed, scholars cite the "isolation effect" to explain why people "often support the abstract notion of budget cuts, but . . . oppose actual budget cuts once identifiable programs are placed on the chopping block" (Louk and Gamage 2015, 213). Promoting interracial solidarity will increase the cogency of such messaging. It is true that effective messaging will require additional resources (Fahey 2014). But time and energy spent in furtherance of educating the public about the merits of taxation will pay dividends in the future. Thus, those committed to expanding the tax base must prioritize efficiently countering antitax messaging.

Proponents of progressive tax reforms also need to focus on the economic, not just the "public values," benefits of strengthening state and local tax collection (Super 2008, 400). This initiative serves a pragmatic, not an ideological, function. For many Americans, politics boils down to "[t]he economy, stupid" (Boyette 2021). Framing tax base expansion as an economic, as well as a moral, imperative will likely resonate with more voters (McCluskey 2003).

Drawing on the arguments explored above, advocates can demonstrate that antitax measures imperil the economy. Erosion of the tax base through reliance on suboptimal revenue sources, like court debt, leads to fiscal, not just social, harms. This reliance leads to diminished capacity to invest in public institutions, particularly those related to "infrastructure, K-12 education, higher education, and public health" (Pilaar 2018, 354). Consequently, in "failing to invest [in] programs that support social mobility," governments risk exacerbating existing social and *economic* inequities (*ibid.*, 359). Further, the deterioration of these institutions stymies future economic growth (Bivens 2012).

Establishing that tax base expansion propels economic development is critical for turning the tide of public sentiment (Super 2008). Implicitly, those who yearn for robust economic growth and stability must reject economically inefficient policies, like court debt. Rejection of court debt, advocates can claim, is the key to ensuring a prosperous future. Through deploying economic rhetoric, advocates can appeal to a broader swath of the electorate. Public buy-in will enable state and local governments to divest from court debt and other regressive measures, and invest in progressive taxation.

Abatement of court debt, in turn, can further the LPE mission. To realize the "democratic political economy" (Britton-Purdy et al. 2020, 1832), we must start by freeing people from the "new peonage" imposed by court debt (Birckhead 2015, 1607-09). Though not a panacea for all of society's ills, progressive taxation can serve as the key to unlocking and ultimately dismantling the system of court fines and fees—for good.

## V. Conclusion

Taxation is both an economic and social paradigm. As such, equity, not just efficiency, drives tax policy. Yet, as demonstrated above, in ceding to antitax sentiment—a product of racial, not just economic, anxieties—and abandoning traditional forms of taxation in favor of budgetary gimmicks, like court fines and fees, states and localities fail to abide by either principle. Court debt is neither equitable nor efficient. As such, court fines and fees are normatively unjustified sources of revenue. Accordingly, governments should cease to rely on court debt for funding. Instead, state and local governments should transition from imposing court fines and fees to revitalizing their tax systems.



This article maps out a few promising approaches to accomplish this goal. LPE advocates may also press for more dramatic reforms, such as wealth taxes (Clifford 2020).

Ultimately, taxation and public spending concern not what we owe to the government, but what we owe to one another. All people deserve to live a dignified existence. To ensure the just distribution of the material and social goods to which we are all entitled, and which serve as the necessary components for promoting human dignity and flourishing, we must commit to securing equality (Britton-Purdy et al. 2020). Only through achieving social equity can we realize the true “end of government”: justice (Madison 1788, 271).

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