



## SYMPOSIUM ESSAY

## Monetary Sanctions Thwart Access to Justice

Karin D. Martin\*

**Abstract.** The core of the access-to-justice problem is widespread unmet civil legal needs coupled with general disuse of the civil legal system. This Essay posits that monetary sanctions are an important contributing factor to the problem of access to justice. First, monetary sanctions and the unpaid criminal legal debt they produce are engines of “legal hybridity” in people’s lives in a way that impedes access to justice by generating unmet legal needs. They conflate the criminal and civil legal systems in many people’s lives, thereby reducing access to recourse in either system. Second, by subverting the principles of proportionality, specificity, and finality, monetary sanctions structurally deprive people of just solutions and condition them to not expect justice from legal institutions.

*If it was poor people making the laws, these laws wouldn’t be like this. Rich people make these laws and it’s just another way to keep us where they want us.*

—46-year-old man with criminal legal debt<sup>1</sup>

Although there are competing notions of what constitutes the “crisis” in access to justice,<sup>2</sup> widespread disuse of the civil legal system to help solve civil

---

\* Associate Professor, Daniel J. Evans School of Public Policy & Governance, University of Washington; Affiliated Scholar, American Bar Foundation. I am deeply grateful for the insightful feedback from Katie Young, Lauren Sudeall, Jamila Michener, Rebecca Sandefur, Matthew Burnett, Bruce Green, and David Udell. This Essay greatly benefitted from discussion with participants at the A2J Roundtable at the University of South Carolina School of Law, the *Stanford Law Review* Symposium, as well as with the 2021-2022 cohort of Access to Justice Faculty Scholars that was generously funded by the American Bar Foundation and the JPB Foundation. Deep appreciation to the *Stanford Law Review Online* editors for their precise and thoughtful editorial work.

1. Kimberly Spencer-Suarez & Karin D. Martin, Navigating the Monetary Sanctions Maze: Understanding and Confusion Among Criminal Legal Debtors, 37 J. CONTEMP. CRIM. JUST. 4, 13, 20 (2021).

legal problems lies at the core. Regardless of whether the crisis is conceptualized as people having insufficient legal assistance, legal information, or access to civil courts, a through line is the failure of people to make use of the benefits ostensibly available to them through the civil legal system. Here, “access to justice” is conceived of in terms of widespread unmet legal needs with an accompanying paucity of just solutions. Theories about the source of this deficit of just resolutions for people with civil legal problems include lack of legal knowledge and knowhow, underfunded courts, and too few lawyers.<sup>3</sup> Considering the practical and structural aspects of monetary sanctions, explained in detail below, this Essay argues that it is time to include monetary sanctions as a contributing factor to the problem of access to justice.

Monetary sanctions are the fines, fees, surcharges, restitution, or any other financial liability imposed in the criminal legal system. Three factors make it easy to overlook the role of these sanctions in the access-to-justice problem: (1) Monetary sanctions originate in the criminal legal system; (2) Some people can pay them without difficulty; and (3) They are a less severe sanction than incarceration. Nevertheless, the ubiquity of monetary sanctions and the unpaid criminal legal debt they produce are engines of “legal hybridity” in people’s lives in a way that harms access to justice by giving rise to unmet legal needs. Specifically, this legal hybridity amplifies the potential for extraction in both the criminal and civil legal systems and hinders the potential for resolution in each. Further, monetary sanctions are structured in a way that violates key principles of justice, which inhibits the pursuit of just solutions. This Essay thus argues that failing to consider the role of monetary sanctions in the access-to-justice crisis will stymie efforts to solve it.

This Essay proceeds as follows. Part I explores how monetary sanctions conflate the criminal and civil legal systems in many people’s lives, thereby reducing access to recourse in either. The idea of legal hybridity is offered as a way to conceptualize this phenomenon. While both the criminal and civil legal systems ostensibly offer remedies for all manner of problems, legal hybridity highlights how they also both have the capacity to be extractive—of time, of money, of property, and of liberty. Monetary sanctions should be a point of focus because they often tilt the balance toward extraction, rather than toward recourse. Part II discusses how monetary sanctions undermine central tenets of justice: proportionality, finality, and specificity in punishment. By subverting these principles, monetary sanctions structurally deprive people of just

---

2. For a full discussion, see generally Rebecca L. Sandefur & James Teufel, *Assessing America’s Access to Civil Justice Crisis*, 11 U.C. IRVINE L. REV. 753, 755-57 (2021) (discussing various interpretations of the access-to-justice crisis).

3. See *id.* at 754-55; see also Kathryn M. Young, *What the Access to Justice Crisis Means for Legal Education*, 11 U.C. IRVINE L. REV. 811, 850 (2021) (urging that legal education be retooled to include addressing problems via “nonlegal means” as well).

solutions and condition them to not expect justice from legal institutions. Although these principles are typically of concern in the criminal legal setting, the aforementioned legal hybridity underscores the need to consider them more broadly, particularly in the domain of monetary sanctions.

## **I. Monetary Sanctions and Legal Hybridity**

Monetary sanctions contribute to the problem of access to justice by producing unmet legal needs. The concept of legal hybridity helps clarify how they do so. Beckett and Murakawa argue that a “shadow carceral state,” operating outside of criminal law, expands punitive power “through the blending of civil, administrative, and criminal legal authority.”<sup>4</sup> They specifically identify monetary sanctions as an aspect of this expansion, focusing on the use of civil contempt of court to compel payment.<sup>5</sup> In the decade since Beckett and Murakawa’s findings, research has shown that courts use warrants for failure to pay and for failure to appear, along with numerous repeated court appearances, in efforts to collect payment and hold people accountable for their court debt.<sup>6</sup> Beckett and Murakawa’s idea of “legal hybridity,” or the blending of justice aims across the legal system’s civil-criminal divide,<sup>7</sup> is useful for illuminating precisely how monetary sanctions thwart access to justice. The problem with legal hybridity is that the blurring of justice aims across legal system divides creates legal needs while simultaneously obscuring the routes to recourse.

To understand how monetary sanctions fuel legal hybridity, first consider the prevalence of the criminal legal system and related financial debt in people’s lives. Nearly 2 million people, or close to 1 in 100 adults, are incarcerated in the United States, with another roughly 3.9 million, or 1 in 66, on probation or parole.<sup>8</sup> In addition, as of 2018, more than 13 million

---

4. Katherine Beckett & Naomi Murakawa, *Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment*, 16 THEORETICAL CRIMINOLOGY 221, 222-23, 232 (2012).

5. *See id.* at 227-29.

6. *See, e.g.*, Karin D. Martin, Kimberly Spencer-Suarez & Gabriela Kirk, *Pay or Display: Monetary Sanctions and the Performance of Accountability and Procedural Integrity in New York and Illinois Courts*, RUSSELL SAGE FOUND. J. SOC. SCIS., Jan. 2022, at 128, 141-42 (discussing defendants making minimal sporadic payments over long periods of time).

7. *See* Beckett & Murkawa, *supra* note 4, at 231-32.

8. THE PEW CHARITABLE TRS., ONE IN 100: BEHIND BARS IN AMERICA 2008, at 5 (2008), <https://perma.cc/LR8C-DFEN>; DANIELLE KAEBLE, U.S. DEP’T OF JUST., PROBATION AND PAROLE IN THE UNITED STATES, 2020, at 1 (2021), <https://perma.cc/499E-URXB>; Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2023*, PRISON POL’Y INITIATIVE (Mar. 14, 2023), <https://perma.cc/9A7P-743P>.

misdemeanor cases are filed each year.<sup>9</sup> Such widespread contact with the criminal legal system means that nearly *half* of Americans have a family member who is or has been incarcerated, and up to 100 million people have a criminal record.<sup>10</sup>

But even more ubiquitous than these pervasive felony and misdemeanor convictions are the monetary sanctions that ensue from almost any form of contact with the criminal legal system. Monetary sanctions are imposed for every level of offense—from infraction to felony—and originate in courts, community supervision agencies, jails, prisons, law enforcement agencies, as well as accompany participation in mandatory treatment programs.<sup>11</sup> While fines are issued by a judge as part of a sentence for a criminal conviction, fees and surcharges tend to be treated as sources of cost-offsetting or revenue generation.<sup>12</sup> Despite case law prohibiting incarceration for non-payment of monetary sanctions except for “willful” nonpayment,<sup>13</sup> people do indeed spend time in jail connected to their inability to pay what they owe.<sup>14</sup>

---

9. Megan Stevenson & Sandra Mayson, *The Scale of Misdemeanor Justice*, 98 B.U. L. REV. 731, 737 (2018).

10. See Peter K. Enns et al., *What Percentage of Americans Have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey (FamHIS)*, SOCIUS, Jan.-Dec. 2019, at 1, 5 (finding that “45 percent of Americans have . . . had an immediate family member in jail or prison”); THE SENT’G PROJECT, AMERICANS WITH CRIMINAL RECORDS 1 (2014), <https://perma.cc/SSV2-UE4A> (“[B]etween 70 million and 100 million—or as many as one in three Americans—have some type of criminal record.”).

11. Brittany Friedman et al., *What Is Wrong with Monetary Sanctions? Directions for Policy, Practice, and Research*, RUSSELL SAGE FOUND. J. SOC. SCIS., Jan. 2022, at 221, 233.

12. See COUNCIL OF ECON. ADVISERS, FINES, FEES, AND BAIL: PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR 1 (2015), <https://perma.cc/3RZ5-CGVF>; see also Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. POL. 1090, 1090 (2017) (providing evidence that cities commonly use fines and fees as a source of revenue).

13. See *Williams v. Illinois*, 399 U.S. 235, 241 (1970) (“[W]e conclude that an indigent criminal defendant may not be imprisoned in default of payment of a fine beyond the maximum authorized by the statute regulating the substantive offense.”); *Tate v. Short*, 401 U.S. 395, 397-98 (1971) (“[P]etitioner’s imprisonment for nonpayment constitutes . . . unconstitutional discrimination since . . . petitioner was subjected to imprisonment solely because of his indigency.”). But see *Bearden v. Georgia*, 461 U.S. 660, 668 (1983) (“If the probationer has willfully refused to pay the fine or restitution when he has the means to pay, the State is perfectly justified in using imprisonment as a sanction to enforce collection.”).

14. See COUNCIL OF ECON. ADVISERS, *supra* note 12, at 4; Friedman et al., *supra* note 11, at 229, 239 (discussing issuances of arrest warrants for failure to appear at status hearings regarding unpaid fines or fees). People who fear an inability to pay their legal debt sometimes fail to appear at status hearings or report to their probation officers. Judges then frequently issue warrants that lead to jail time. See *id.*; see also Sarah Shannon, *Probation and Monetary Sanctions in Georgia: Evidence from a Multi-Method Study*, 54 GA.

*footnote continued on next page*

The end result of a massive carceral system is a congruously immense system of monetary sanctions. Even though monetary sanctions are imposed in myriad different ways across the country, one common factor is that large numbers of people struggle to pay them.<sup>15</sup> In fact, 6% of American adults report that their families have court-cost or legal-fee debt.<sup>16</sup> Among people who have had an immediate family member in jail or prison, that number rises to 20%.<sup>17</sup> By one estimate, there is at least \$27.6 billion in unpaid monetary sanctions; this is likely a vast underestimate, since only half of states have sufficient data for determining amounts owed.<sup>18</sup> In one national survey, participants reported spending, on average, more than \$13,000 per family for conviction-related expenses such as court-ordered fines, fees, and restitution—not including the costs of court-mandated programs.<sup>19</sup>

Against this backdrop of pervasive criminal legal debt, consider the prevalence of unmet civil legal needs. In a 2017 national survey of approximately 2,000 adults living in households at or below 125% of the Federal Poverty Level, 71% had experienced a civil legal problem in the prior year.<sup>20</sup> A quarter had experienced six or more such problems.<sup>21</sup> Similarly, a 2013 survey of a representative sample of U.S. adults found that two-thirds had experienced one or more civil legal problems in the previous 18 months.<sup>22</sup> On average, people had 2.1 civil legal issues during this period.<sup>23</sup> The most common types of situations people reported involved “problems with employment, money (finances, government benefits, debts), insurance, and housing.”<sup>24</sup>

---

L. REV. 1213, 1231 (2020) (showing that, at least in Georgia, people on probation may “wind up incarcerated” because of failure to appear at payment hearings).

15. See Friedman et al., *supra* note 11, at 222.

16. BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2019, FEATURING SUPPLEMENTAL DATA FROM APRIL 2020, at 9 box 2 (2020), <https://perma.cc/7627-8KQ3>.

17. *Id.*

18. BRIANA HAMMONS, FINES & FEES JUST. CTR., TIP OF THE ICEBERG: HOW MUCH CRIMINAL JUSTICE DEBT DOES THE U.S. REALLY HAVE? 4 (2021), <https://perma.cc/MNT2-UTCG>.

19. SANETA DE VUONO-POWELL, CHRIS SCHWEIDLER, ALICIA WALTERS & AZADEH ZOHRABI, WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES 9, 13 (2015), <https://perma.cc/7X9E-V552>.

20. LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2017), <https://perma.cc/6UUE-HRWD>.

21. *Id.* at 7.

22. REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 3 (2014), <https://perma.cc/4YM5-GXB4>.

23. *Id.*

24. *Id.*

Given that civil justice problems pertain to fundamental issues, like livelihood and shelter, the stakes of not adequately addressing them are commensurately large. Indeed, in the 2013 survey, nearly half of the reported civil justice difficulties caused “a significant negative consequence such as feelings of fear, a loss of income or confidence, damage to physical or mental health, or verbal or physical violence or threats of violence,” with the most common consequence being adverse impacts on health.<sup>25</sup> Similar findings emerge from state-level surveys of legal needs. A 2014 survey of Washington residents, for example, found that 7 in 10 low-income households had at least one civil legal problem each year, with an average of 9.3 such problems per household.<sup>26</sup> More than three-quarters did not receive the legal help they needed.<sup>27</sup> Taken together, the sheer extent to which criminal-legal-system involvement, monetary sanctions and criminal legal debt, and civil legal problems permeate people’s lives suggests that legal hybridity is a fact of life for many people in the United States.

This certainly appears to be the case for those who are impoverished or indigent. For this population in particular, the “cyclical aspects of legal problems” mean that the formal separation between the civil and criminal legal systems makes little difference.<sup>28</sup> What’s more, studies of this population have found that people can be confused about the distinction,<sup>29</sup> and that negative experiences with the criminal legal system can affect decisions to engage with the civil legal system.<sup>30</sup> Many conflate the two systems as a single unjust justice system.<sup>31</sup>

In addition, the nature of people’s civil legal needs illuminates the experience of legal hybridity. According to the World Justice Project’s “Atlas of Legal Needs,” the states with the most recent surveys of legal needs (since 2020)

---

25. *Id.*

26. WASH. STATE SUP. CT., CIV. LEGAL NEEDS STUDY UPDATE COM., CIVIL LEGAL NEEDS STUDY UPDATE 2-3 (2015), <https://perma.cc/A38B-KCVH>.

27. *Id.*

28. See Lauren Sudeall, *Rethinking the Civil-Criminal Distinction*, in TRANSFORMING CRIMINAL JUSTICE: AN EVIDENCE-BASED AGENDA FOR REFORM, 268, 272-73 (Jon B. Gould & Pamela R. Metzger eds., 2022).

29. See Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1289 (2015); see also Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants’ Experiences with Civil Legal Needs*, 52 U.C. DAVIS L. REV. 2105, 2131 (2018) (finding that indigent criminal defendants demonstrated “possible conflation of their legal rights under the civil and criminal systems”).

30. See Greene, *supra* note 29, at 1267.

31. See *id.* In her study of ninety-seven public housing residents in Massachusetts, Greene finds that “[f]or most respondents, the criminal and civil justice systems are one and the same, and injustices they perceive in the criminal justice system translate into their belief that the justice system as a whole is unjust.” *Id.* at 1267, 1283.

are Utah, North Carolina, and New Hampshire.<sup>32</sup> Several points relevant to legal hybridity and the legal needs it engenders stand out in these surveys. Cost was cited by 91.2% of low-income respondents in North Carolina as the most significant barrier to accessing legal services.<sup>33</sup> In Utah, more than two-thirds of the lower-income respondents said they could not afford a lawyer if they needed one.<sup>34</sup> Indeed, in 14,000 eviction cases there, 90% of landlords had lawyers, while only 5% of lower-income tenants did.<sup>35</sup> A survey in New Hampshire found that debt collection was the most frequently reported civil legal problem, with 13% of respondents saying that they had been harassed or sued over their debt.<sup>36</sup> Among respondents with debt collection issues, 43% had issues clearing a criminal record.<sup>37</sup> Although such surveys bring to light the civil legal needs arising from having a criminal record (such as experiencing discrimination or unfair treatment due to a criminal record or needing something removed from a criminal record),<sup>38</sup> they tend not to ask about monetary sanctions or criminal legal debt, nor do they over-sample for people with criminal legal system involvement. Thus, despite the wide scope of legal system involvement outlined above, we have insufficient direct measures of people's simultaneous criminal legal debt and civil legal needs.

Nevertheless, even this set of recent findings on civil legal needs reveals several pathways through which monetary sanctions can manifest legal hybridity in people's lives. First, poverty looms large. By disproportionately imposing debt on an impoverished population, criminal monetary sanctions contribute to cost being a significant barrier to accessing civil legal help.<sup>39</sup> Second, eviction and criminal legal system involvement (which nearly always

---

32. *Atlas of Legal Needs Surveys*, WORLD JUST. PROJECT, <https://perma.cc/3RUP-NXVR> (archived Apr. 27, 2023) (to locate, select "View the live page").

33. N.C. EQUAL ACCESS TO JUST. COMM'N & N.C. EQUAL JUST. ALL., *IN PURSUIT OF JUSTICE: AN ASSESSMENT OF THE CIVIL LEGAL NEEDS OF NORTH CAROLINA* 4 (2021), <https://perma.cc/HB4V-4RL9>.

34. UTAH FOUND., *THE JUSTICE GAP: ADDRESSING THE UNMET LEGAL NEEDS OF LOWER-INCOME UTAHNS* 1 (2020), <https://perma.cc/PZX2-CL7X>.

35. *Id.*

36. N.H. ACCESS TO JUST. COMM'N, *EQUAL ACCESS TO JUSTICE: AN ASSESSMENT OF CIVIL LEGAL NEEDS IN NEW HAMPSHIRE* 5 (2021), <https://perma.cc/7LAU-JGFD>.

37. *Id.* at 6.

38. *See* WASH. STATE SUP. CT., *supra* note 26, at 14 ; N.C. EQUAL ACCESS TO JUST. & N.C. EQUAL JUST. ALL., *supra* note 33, at 11 ; UTAH FOUND., *supra* note 34, at 31.

39. But some research suggests that lack of information, not cost, is the main driver of the gap in access to justice between impoverished and more affluent communities. *See* Kathryn M. Young & Katie R. Billings, *An Intersectional Examination of U.S. Civil Justice Problems*, 2023 UTAH L. REV. 487, 495, 497 (collecting research suggesting that the main reason people experiencing poverty are less likely to file legal claims is because they do not conceptualize their problems as legal, as opposed to cost being the main barrier).

includes monetary sanctions) are experiences that can reinforce each other. Even though very little research has attempted to identify a causal connection between eviction and criminal legal involvement, some evidence indicates a harmful link between the two. For instance, eviction puts low-income mothers at greater *direct* risk of criminal legal contact in subsequent years as well as having an *indirect* impact on future criminal legal system involvement via financial hardship.<sup>40</sup> Third, civil legal action is required to deal with the consequences of a criminal record. Expunging or correcting a record is a civil matter, as is suing for wrongful treatment because of said record. Since 70 to 100 million—or about one in three—people in the United States have a criminal record,<sup>41</sup> the potential need for such action is significant. The relevance of criminal legal debt to being able to afford civil legal help, the connection between eviction and criminal legal system involvement, and the need for civil legal action to deal with a criminal record are three straightforward ways in which people can experience legal hybridity and its attendant capacity to induce unmet legal needs.

A major component of this legal hybridity is monetary sanctions' power to compromise the boundary between the civil and criminal legal systems. Monetary sanctions can bring about this "civil spillover" at or after sentencing. For example, in some jurisdictions, judges impose fines, fees, and/or surcharges and then render the debt a civil judgment.<sup>42</sup> Judges also issue civil judgments as a way to clear unpaid monetary sanctions from criminal dockets once someone fails to pay fully and on time. New York City Criminal Court, for instance, issued more than 103,000 civil judgments for failure to pay court fees in 2017.<sup>43</sup> The benefit of this approach is that people are not subject to further criminal penalty for failing to pay. Given that issuing warrants for failure to appear related to non-payment is common,<sup>44</sup> that benefit can be quite substantial. However, civil judgments are publicly available information.<sup>45</sup> They can therefore damage a person's credit score, impairing their ability to secure credit cards, mortgages, leases, or loans. Worse still, the strongest form of this spillover is when the government pursues a civil case against a person who has

---

40. See Aaron Gottlieb & Jessica W. Moose, *The Effect of Eviction on Maternal Criminal Justice Involvement*, SOCIUS, Jan.-Dec. 2018, at 1, 8-9.

41. THE SENT'G PROJECT, *supra* note 10, at 1.

42. See, e.g., Martin, Spencer-Suarez & Kirk, *supra* note 6, at 137, 141; ALICIA BANNON, MITALI NAGRECHA & REBEKAH DILLER, BRENNAN CTR. FOR JUST., CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 2, 27 (2010).

43. OFF. OF THE N.Y.C. COMPTROLLER SCOTT M. STRINGER, FEES, FINES AND FAIRNESS: HOW MONETARY CHARGES DRIVE INEQUITY IN NEW YORK CITY'S CRIMINAL JUSTICE SYSTEM 5 (2019), <https://perma.cc/9AQG-MAMM>.

44. Friedman et al., *supra* note 11, at 229.

45. BANNON ET AL., *supra* note 42, at 27.



incurred expenses as a result of incarceration, known as “pay-to-stay” policies.<sup>46</sup> In these cases, the legal hybridity of monetary sanctions implicates both liberty and property.

Other forms of civil spillover breach the bounds of people’s civic life in ways that impinge directly or indirectly on their livelihoods. Unpaid monetary sanctions can prompt liens, wage garnishment, and tax rebate interception. Possibly the most ubiquitous and increasingly notorious version of monetary sanctions’ civil spillover is driver’s license suspension. In most states, a person who has unpaid court-ordered debt can have their driver’s license suspended, revoked, or barred from renewal. Because more than three-quarters of people in the United States drive to work, and there are at least 11 million driver’s license suspensions for unpaid court debt,<sup>47</sup> this particular form of civil spillover is quite consequential.

The civil spillover of criminal legal debt from monetary sanctions can also restrict voting rights. In thirty states, a person can be fully or conditionally (e.g., upon missing a payment) disenfranchised due to debt from a felony conviction.<sup>48</sup> Even misdemeanor convictions can lead to disenfranchisement in eight states: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Missouri, and South Carolina.<sup>49</sup>

Legal hybridity clarifies how monetary sanctions blur the boundary between the criminal and civil legal systems. The concept of legal hybridity also highlights how the blurred boundary produces civil legal needs at the same time that it tilts the balance of the legal systems toward extraction, rather than toward recourse. It is in these ways that monetary sanctions contribute to the problem of access to justice.

## **II. Monetary Sanctions, Principles of Justice, and the Pursuit of Just Solutions**

Monetary sanctions also exacerbate the problem of access to justice by stymying just solutions. The deficit of just resolutions describes the outcome of

---

46. April D. Fernandes, Brittany Friedman & Gabriela Kirk, *The “Damaged” State vs. the “Willful” Nonpayer: Pay-to-Stay and the Social Construction of Damage, Harm, and Moral Responsibility in a Rent-Seeking Society*, RUSSELL SAGE FOUND. J. SOC. SCIS., Jan. 2022, at 82, 82-83.

47. Joni Hirsch & Priya S. Jones, *Driver’s License Suspension for Unpaid Fines and Fees: The Movement for Reform*, 54 U. MICH. J.L. REFORM 875, 876, 881 (2021).

48. ALLYSON FREDERICKSEN & LINNEA LASSITER, ALL. FOR A JUST SOC’Y, *DISENFRANCHISED BY DEBT: MILLIONS IMPOVERISHED BY PRISON, BLOCKED FROM VOTING 13-14* (2016), <https://perma.cc/A7AZ-EQ6B>.

49. *Id.* at 11.

people having unmet legal needs. But it can also usefully describe the outcome of people having justice deficits arising from the particular type of criminal legal system contact that monetary sanctions represent. In particular, three key violations of principles of justice inhere in monetary sanctions and criminal legal debt: proportionality, finality, and specificity. Although these values are emphasized in the criminal legal system, they tend not to be the focus of discussion in the civil legal system. Nevertheless, the legal hybridity of current practice suggests the importance of centering these values. The structural aspects of monetary sanctions, such as their origins, their imposition, and their collection, converge to subvert these principles. As a result, monetary sanctions deprive people of just solutions in addition to conditioning them to not expect justice from legal institutions.

#### A. Proportionality

One violation of proportionality is that any form of monetary sanction besides fines or restitution, which are the intentionally punitive or reparative forms of monetary sanctions, *by definition* violates the tenet of proportionality. This is an important shortcoming to consider because proportionality is a long-standing aspect of punishment, despite a track record in the United States of far more frequent and longer sentences than almost all other countries. That the punishment should fit the crime guides everything from the basic categories of offenses (infraction, misdemeanor, felony, etc.) to sentencing guidelines and levels of supervision and incarceration. In the domain of monetary sanctions, however, proportionality tends to be sacrificed both actively in the pursuit of revenue and passively as an artifact of the fractured nature of the criminal legal system. That is, legislators and others create fees and surcharges for the express purpose of trying to increase revenue for agency, local, or state budgets.<sup>50</sup> But the lack of awareness of (or concern for) what other parts of the system are doing to any given individual also allows the total amount of monetary sanctions imposed to become entirely untethered to the severity of the underlying offense.

The enforcement mechanisms for unpaid debt also is another violation of proportionality. In the criminal legal system, severe repercussions include

---

50. See Sances & You, *supra* note 12, at 1090 (discussing using fines as a source of revenue); Karin D. Martin, *Monetary Myopia: An Examination of Institutional Response to Revenue from Monetary Sanctions for Misdemeanors*, 29 CRIM. JUST. POL'Y REV. 630, 631, 633-34 (2018) (discussing legislative decisions related to increasing reliance on monetary sanctions); see also Josh Pacewicz & John N. Robinson III, *Pocketbook Policing: How Race Shapes Municipal Reliance on Punitive Fines and Fees in the Chicago Suburbs*, 19 SOCIO-ECON. REV. 975, 977, 995-996 (2021) (describing how Black-majority suburbs in Chicago, unlike white-majority suburbs, were forced to pursue less-desirable forms of revenue generation that extracted money from their own populations).

probation revocation, extended probation, and warrants for arrest. In the civil legal system, the civil spillover explained above has the potential to touch on many aspects of people's lives—from employment and housing to credit scores and voting rights.<sup>51</sup> These consequences are particularly problematic for people who are already disadvantaged by the stigma and collateral consequences of a criminal record or recent incarceration.<sup>52</sup> Taken together, the enforcement mechanisms and civil spillover of monetary sanctions combine to create punitive outcomes that far exceed what is justified by the level of the precipitating offense.

Finally, monetary sanctions violate proportionality through the myriad functional ways in which this form of debt affects people's lives. Apart from incarceration and formal civil spillover, having unpaid monetary sanctions is measurably penalizing in ways not taken into account at the time of sentencing. The increased financial strain of monetary sanctions can exacerbate housing instability.<sup>53</sup> These sanctions have been shown to be acute and chronic health stressors, taking a significant emotional toll by creating a “palpable sense of fear, frustration, anger, and resignation.”<sup>54</sup> Even when people who owe monetary sanctions express a willingness to pay, they can be confused about the total amount that they owe and experience the resulting

- 
51. See KATHERINE A. BECKETT, ALEXES M. HARRIS & HEATHER EVANS, WASH. STATE SUP. CT., WASH. STATE MINORITY & JUST. COMM'N, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE 12, 38-39 (2008), <https://perma.cc/9U6S-8RNR>; BANNON ET AL., *supra* note 42, at 11; Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 CRIMINOLOGY & PUB. POL'Y 505, 517-18, 521 (2011); ALEXES HARRIS ET AL., UNITED STATES SYSTEMS OF JUSTICE, POVERTY AND THE CONSEQUENCES OF NON-PAYMENT OF MONETARY SANCTIONS: INTERVIEWS FROM CALIFORNIA, GEORGIA, ILLINOIS, MINNESOTA, MISSOURI, TEXAS, NEW YORK, AND WASHINGTON 30-35 (2017), <https://perma.cc/9VNV-SR8E>; FREDERICKSEN & LASSITER, *supra* note 48, at 13-14.
52. See ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR 160-61 (2016) (discussing the difficulty of repaying debt for those with criminal records); Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIO. 1753, 1777, 1780 (2010) (discussing the long-term impact of legal debt); U.S. COMM'N ON C.R., COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES 9-11 (2019), <https://perma.cc/JGG5-MUHH>. For an in-depth analysis of the consequences of a criminal record on future opportunities, see generally Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOCIO. 937 (2003).
53. See Mary Pattillo, Erica Banks, Brian Sargent & Daniel J. Boches, *Monetary Sanctions and Housing Instability*, RUSSELL SAGE FOUND. J. SOC. SCIS., Jan. 2022, at 57, 60-62, 67-70 (discussing how criminal legal debt relates to homeownership, needing to live with family and friends, and housing cost burden).
54. Alexes Harris & Tyler Smith, *Monetary Sanctions as Chronic and Acute Health Stressors: The Emotional Strain of People Who Owe Court Fines and Fees*, RUSSELL SAGE FOUND. J. SOC. SCIS., Jan. 2022, at 36, 37.

debt as exploitative.<sup>55</sup> While the time and cost of resolving unpaid criminal legal system debt alone is onerous,<sup>56</sup> they are disproportionately so for Black, Latinx, and economically disadvantaged people.<sup>57</sup>

A person who experiences these violations of proportionality is arguably also experiencing a justice problem. That monetary sanctions can exact punishment in so many domains of people's lives suggests that these sanctions likely engender a negative view of the legal system, conditioning people to not see the legal system as a source of assistance.

#### B. Finality

"Just solutions" necessitate finality—the idea that legal problems can indeed be resolved, and that legal needs can be adequately addressed. But in the case of criminal monetary sanctions, instead of being sentenced to a sanction with a foreseeable end, so many people cannot pay what they owe that they are effectively sentenced to interminable debt. Even though people who owe monetary sanctions may be enthusiastic to conclusively sever ties with the criminal legal system, many end up trapped in a protracted, yearslong process of making minimal sporadic payments.<sup>58</sup> Continually returning to court to address unpaid monetary sanctions allows people to maintain their liberty and to avoid other punitive enforcement mechanisms. But it should also raise concerns about whether imposing monetary sanctions on those who cannot afford to pay violates the tenet of finality. What justice aims are monetary sanctions achieving if they can never be paid? The imposition of effectively unpayable debt is yet another way that people's experience with monetary sanctions signals legal systems as the origin of, rather than a solution to, justice problems.

#### C. Specificity

Specificity is the final way that monetary sanctions and criminal legal debt lead to a deficit of just solutions. Specificity means that a just sanction punishes a particular person for a particular offense; the principle is articulated in the Geneva Convention,<sup>59</sup> the American Convention of Human Rights,<sup>60</sup>

---

55. See Spencer-Suarez & Martin, *supra* note 1, at 13-15, 16-18.

56. See Martin, Spencer-Suarez & Kirk, *supra* note 6, at 140-43.

57. See Lindsay Bing, Becky Pettit & Ilya Slavinski, *Incomparable Punishments: How Economic Inequality Contributes to the Disparate Impact of Legal Fines and Fees*, RUSSELL SAGE FOUND. J. SOC. SCIS., Jan. 2022, at 118, 126-28.

58. See Martin, Spencer-Suarez & Kirk, *supra* note 6, at 141-42.

59. See Geneva Convention Relative to the Protection of Civilian Persons in the Time of War art. 33, Aug. 12 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 ("No protected person may be  
*footnote continued on next page*

international military manuals,<sup>61</sup> and national legislation around the world.<sup>62</sup> Monetary sanctions are unique among punishments because they can be “served” by someone else. Evidence shows that people’s family members are routinely involved in directly paying criminal justice debt or in providing material support (e.g., housing, transportation, and childcare) to facilitate debtors making their own payments, even if doing so is a financial hardship to the family.<sup>63</sup> In this way, monetary sanctions undermine the principle of specificity, thereby obstructing just resolutions in the lives of many people.

### III. Conclusion

In the end, access to justice is imperiled because people do not avail themselves of the civil legal system, even when the system could help solve their civil legal problems. When we consider what lies at the heart of access to

---

punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”).

60. See American Convention on Human Rights art. 5(3), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (“Punishment shall not be extended to any person other than the criminal.”).
61. See, e.g., *III. Military Manuals: Switzerland*, INT’L HUMANITARIAN L. DATABASES, <https://perma.cc/S463-K6LG> (archived Apr. 23, 2023) (reporting that the Swiss Basic Military Manual states that “[n]o one shall be punished for an act he did not personally commit”); *III. Military Manuals: Spain*, INT’L HUMANITARIAN L. DATABASES, <https://perma.cc/K2AH-AVYD> (archived May 24, 2023) (reporting that the Spanish Law of Armed Combat manual “stresses that ‘any collective punishment for individual acts’ is prohibited”); *III. Military Manuals: Mexico*, INT’L HUMANITARIAN L. DATABASES, <https://perma.cc/GV82-JN WG> (archived May 24, 2023) (reporting that the Mexican Army and Air Force Manual states that “[n]obody can be held responsible for an act he has not committed”); *III. Military Manuals: Colombia*, INT’L HUMANITARIAN L. DATABASES, <https://perma.cc/2ENY-4CCX> (archived May 24, 2023) (reporting that the Colombian Circular on Fundamental Rules of International Humanitarian Law provides that “[n]obody can be considered as responsible for an act he has not committed”).
62. *IV. National Legislation: Burundi*, INT’L HUMANITARIAN L. DATABASES, <https://perma.cc/FU7F-HEMN> (archived May 24, 2023) (reporting that the Burundi penal code’s section on war crimes makes clear that “[c]riminal responsibility is individual: one may only be punished for his or her own acts”); *IV. National Legislation: Kyrgyzstan*, INT’L HUMANITARIAN L. DATABASES, <https://perma.cc/GK82-QNX6> (archived May 24, 2023) (reporting that Kyrgyzstan’s “Criminal Code is based upon the principles of . . . personal criminal responsibility”).
63. See Daniel J. Boches et al., *Monetary Sanctions and Symbiotic Harms*, RUSSELL SAGE FOUND. J. SOC. SCIS., Jan. 2022, at 98, 104-106; MITALI NAGRECHA, MARY FAINSOD KATZENSTEIN & ESTELLE DAVIS, CTR. FOR CMTY. ALTS., FIRST PERSON ACCOUNTS OF CRIMINAL JUSTICE DEBT: WHEN ALL ELSE FAILS, FINING THE FAMILY 19 (2015), <https://perma.cc/8LK9-DMA5>; KARIN MARTIN & KIMBERLY SPENCER-SUAREZ, CRIMINAL JUSTICE DEBT: COSTS & CONSEQUENCES 8 (2017); DE VUONO-POWELL ET AL., *supra* note 19, at 9.

justice, we must consider how people are thinking of both their problems and the system. As Sandefur explains: “[P]eople do not consider law as a solution for their justice problems; they do not think of their problems as being ‘legal,’ even when the legal system could help solve them.”<sup>64</sup>

This Essay offers insight into how monetary sanctions relate to justice problems and perceptions of the legal system. Focusing on the scope of civil legal problems coupled with the extent of criminal legal system contact reveals that legal hybridity is likely more rule than exception.

On a practical level, legal hybridity helps show how monetary sanctions are instrumental in both creating legal needs and simultaneously diminishing recourse in the criminal and civil legal systems. On a structural level, monetary sanctions not only obstruct just solutions but also further signal legal systems as sources of problems, rather than solutions, by violating basic principles of justice: proportionality, finality, and specificity.

Arguably, these sanctions have the capacity to kindle the same legal cynicism, system avoidance, and general distrust of “the law” as do problematic police contact and incarceration. Although people may personally condemn criminality, their experiences with the law—policing in particular—can make them disinclined to trust legal institutions.<sup>65</sup> Along the same lines, people who have had contact with the criminal legal system tend to avoid institutions that keep formal records.<sup>66</sup> The criminal legal contact of friends and family also weighs heavily on people’s perception of the legal system, even as any perceived distinction between the criminal and civil systems remains muted.<sup>67</sup> Monetary sanctions can unnecessarily strain relationships between communities and legal institutions—relationships already fraught because of high-stakes contact with police and incarceration. In other words, monetary sanctions not only actively blur the line between criminal and civil justice in an institutional and administrative sense, but they may even dampen any desire to engage with legal systems at all.

---

64. Rebecca L. Sandefur, *Access to What?*, DÆDALUS, Winter 2019, at 49, 51.

65. Cf. Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 LAW & SOC’Y REV. 777, 800-01 (1998) (rejecting the argument that certain subcultures are more accepting of crime and suggesting instead that “we should not be surprised that those most exposed to the numbing reality of pervasive segregation and economic subjugation become cynical about human nature and legal systems of justice—even as they personally condemn acts of deviance and violence that make life more precarious”).

66. See Sarah Brayne, *Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment*, 79 AM. SOCIO. REV. 367, 368, 383 (2014) (finding support for the hypothesis that those involved in the criminal justice system have less contact with institutions that keep formal records, referred to as “surveilling institutions”).

67. See Greene, *supra* note 29, at 1290.

Fully excavating the role of monetary sanctions and criminal legal debt in the access-to-justice crisis requires not only new analytical frames but also improved data quality and transparency. We need to better understand the scope and nature of people involved in both systems—whether as defendants or plaintiffs. However, that requires both robust qualitative data and the type of complete and accessible administrative court data that too few jurisdictions currently produce. In the meantime, monetary sanctions should be understood as a consequential factor in the access-to-justice problem.