# Taxing the Poor: Incarceration, Poverty Governance, and the Seizure of Family Resources

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In the last decades, the American state has radically enlarged the array of policy instruments utilized in today's governance of the poor. Most recently, through a process of outright "seizure," the state now exacts revenue from low-income families, partners, and friends of those individuals who in very large numbers cycle in and out of the nation's courts, jails, and prisons. In an analysis of legislation, judicial cases, policy regulations, blog, chat-line postings, and survey data, we explore this new form of taxation. In doing so, we endeavor to meet two objectives: The first is to document policies which pressure individuals (mostly men) entangled in the court and prison systems to rely on family members and others (mostly women) who serve as the safety net of last resort. Our second objective is to give voice to an argument not yet well explored in the sizeable incarceration literature: that the government is seizing resources from low-income families to help finance the state's own coffers, including the institutions of the carceral state itself. Until now, no form of poverty governance has been depicted as so baldly drawing on family financial support under the pressure of punishment to extract cash resources from the poor. This practice of seizure constitutes the very inversion of welfare for the poor. Instead of serving as a source of support and protection for poor families, the state saps resources from indigent families of loved ones in the criminal justice system in order to fund the state's project of poverty governance.

> The money seems to come out of the woodwork when you send people to jail," Scott said. "I've had people get in touch with family members for the money before we can even transport them to jail.
>
> —Circuit Court Judge John Scott, November 2007[1]

> You got to be kidding me. Inmates having to pay for rent. Yes, they are punishing the families it just adds another bill on top of everything else we have to pay. My personal opinion is that they sent our loved ones and friends to the prison system let the state pay for it. We pay for taxes. Why can't that money go towards it?
>
> —Ayelet, February 14, 2006[2]

> These guys aren't criminals. They're poor people . . . They're being told, "Call everybody you know, and get some money, because I know you want to go home."
>
> —Thomas Harvey, ArchCity Defenders, St. Louis.[3]

In her recent book, *The Submerged State*, Suzanne Mettler draws attention to the bevy of invisible policies in the United States that constitute a munificent welfare state—at least for the middle class.[4] Tax breaks, retirement programs, mortgage supports, college loans are all part of a policy regime that—functioning below the radar—provides payouts to underwrite the well-being of America's relatively well-off citizenry. For the poorest of the poor, by contrast, an equally imperceptible system has emerged that is the very inversion of the income and asset enhancements that Mettler describes as shoring up middle class families. Located in the interstices of government laws and state-corporate collaboration, this inverted "welfare system" taxes poor families to help fund the state's project of

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poverty governance. This system of seizure levies tariffs on the mother, grandmother, partner, sister, daughter, or friend (mostly women) of the incarcerated poor (mostly men) to subsidize the carceral state.

Government "seizure,"[5] as we illustrate, is a process through which state entities, in collaboration, often, with their corporate partners, act knowingly but in unseen ways to leverage money from families, partners, and friends of the prospectively,[6] currently, or formerly incarcerated poor. In contrast to the welfarist side of the submerged state that buttresses the middle-class, the practice of seizure reveals the predatory face of the submerged state that systematically extracts resources from the poor. We contend here that the practice of government seizure, while constituting a familiar source of financial stress for poor families who regularly interact with courts, prison, and jails, is an as-yet unrecognized development in the governance of the poor. The radical innovation in this most recent means of poverty governance is the outright cash extraction that draws on ties of family dependency within the poorest stratum of American society. While Mettler's description is a tale of welfare for the middle class, the practice of seizure is a tale of predatory capitalism for the poor.

Two examples elucidate the seriousness of this new and rapacious form of poverty governance. In Florida, the Department of Corrections contracts with private vendors to manage commissary sales and other services in the state's prisons. Although ninety percent of prisoners in Florida work, most of the prisoners are unpaid. One study estimates the average hourly wage at \$.02 an hour.[7] Individuals in prison who earn rock-bottom wages must depend on the transfer of money from their families in order to cover basic commissary purchases and a range of other charges, such as medical services or law library charges. Commissary sales and other transactions are managed through Department of Corrections' contracts with vendors awarded to businesses that will pay the highest commission to the State. Commissary sales run by the private Keefe Group in Florida yield annual commissions ("kickbacks" to some) to the state of \$31–32 million a year, a figure that does not include the sizeable returns from telephone charges and other Keefe-managed services.[8] In Florida, these commissions are garnered from family deposits to inmate accounts and directed to the state's General Revenue Fund. To meet any possible objection that these family-funded commissions feed the general treasury, a state bill was proposed in 2015 that would create a "trust fund" intended to redirect a portion of the commission deposited in the state's general revenue fund to support activities on behalf of prisoners themselves, such as education and wellness programs, chapel services, and other activities.[9] Only a fraction of the "taxation" and profits leveraged from the resources of mostly impoverished family members, however, will be used for this purpose.[10]

A second example. In Texas, a Dallas-based company named Securus Technologies has introduced video visitation for the families of inmates, with contracts in 2,600 correctional facilities. Advertised as a boon to families, video visitation presumably allows persons in prison to connect with their families from anywhere on the globe by live video. This "service," however, is financed largely by poor families. Seventy percent of the contracts, according to one report, require that the video visitation replace in-person visitation. Indeed the family member in prison may be only one room away, but the family visitor is often barred by contract from actually making an in-person visit under this new video arrangement. In addition to the often significant financial costs incurred to visit their loved ones in prison, what was once free visitation now costs family members about a dollar per minute to utilize the new video system.[11]

Typically, families are pressured by government policy to provide financial support both during their loved ones' incarceration and in the period following release. In facilities which require the incarcerated to pay fees for medical care or to cover costs of pay-to-stay jails, family members often pick up the expenses. Other so-called "amenities" that are not underwritten by the state, such as phone calls, stamps, coffee, food, or toiletry articles from the canteen, no matter how important they are as relief from the gross deprivation and indignities of prison life, impose additional financial burdens on families of the incarcerated. Post-prison, individuals (often jobless) frequently have large child support arrears or other financial obligations incurred by parole costs, accrued fines, fees, and debts, and a wide range of other charges. Unless families can step in and help to pay or to reduce these financial obligations, formerly incarcerated individuals often face loss of motor vehicle licenses, wage garnishment, or (re)confinement to jail itself.

The prospect and pressures[12] of re-incarceration as penalty for unpaid financial obligations generate intense pressure on families to scrounge however they can for the requisite payment. Facing the state's Damocles sword of punishment, the poor family members of individuals involved in the criminal justice system become their "safety net" of last resort. The extent to which families subsidize the financial obligations of their loved ones has been quantified in only a few studies. In Alabama, a survey conducted in thirteen counties found that slightly over 55 percent of those who owed fines and fees turned to family and friends to help secure money to pay their debts. In two counties, the number was over 70 percent.[13] With little systematic data on the full reach or impact of these practices, the vast majority of subventions remain submerged.

We catalogue here the different instruments on which the state relies in its seizure of family monies in service of the state's carceral objectives or in pursuit of the state's shared economic interests with its corporate partners. We begin in the first section by situating the discussion of seizure in a broader analysis of poverty governance. We then proceed temporally. Section two charts the policies that in the course of incarceration levy a de facto taxation on poor families. Section three analyzes how, post-incarceration, state actions impose taxation on families once their incarcerated family member is released from prison. To analyze the practices of seizure during and after incarceration, we employ legislation and judicial cases, policy regulations, blog and chat-line postings, and survey data. In our conclusion, we return to the implications of seizure for the problems of prison reform and poverty governance.

## Situating the Practice of Seizure

Political science has captured the last decades' shift in the governance of the poor through the use of three idioms: "marketization," "individual responsibility," and "criminalization." These expressions denote both new or expanded cultural and discursive categories as well as actual policy innovations.[14] The concepts depict the shifting configuration between the state and the poor. Even as these concepts have advanced our understanding of many forms of poverty governance, we propose that the practice of seizure, via its *taxation* of the poor, radically repositions the state's governance of the poor.

### *Marketization*

The concept of marketization has permeated political science discussions of poverty governance over the last decades. There is little descriptive dispute over the ascendance of market fundamentalism and the resultant restructuring of welfare. Joe Soss, Richard C. Fording, and Sanford F. Schram's depiction of welfare's reliance on neoliberal principles that have encouraged the utilization of the state "as an instrument for creating market opportunities, absorbing market cost and imposing market discipline" generates little controversy from either left or right.[15] The disagreement is over consequences. For proponents of marketization, the free market promises not only to increase government efficiency but also to counter moral hazard that in the 1960s and 1970s allegedly led an expansive and permissive government to coddle the poor.[16] For critics, marketization subjects the poor to increased insecurity (Jacob Hacker); to the false "naturalization" of both market freedom and state punishment (Bernard Harcourt) and to the stringencies and pressure of profit-margins and cost-savings by private contractors (Soss, Fording, and Schram).[17]

### *Individual Responsibility*

Individual responsibility, particularly in the context of work accountability, has been a second concept widely recognized by political scientists as a core instrument of the last decades' poverty governance. Work requirements have supplanted grant-related welfare transactions as an instrument of welfare regulation. In Michael Lipsky's words, welfare in the Great Society decade was built on "a subvention for living."[18] Soss, Fording, and Schram argue that under the new welfare regime, the historical, if partial, decommodification of labor that provided at least some "reprieve from market pressures" has been undercut by both marketization and discursive expectations of work responsibility.[19] Although there is again no descriptive disagreement about the importance that individual work requirements and accountability now occupy in welfare regulations, there is much contention over its normative significance. Lawrence Mead is one of the most prominent political science voices lauding what he calls "paternalist" welfare reform inducting individuals in new mores of work responsibility.[20] Soss, Fording, and Schram, by contrast, are among a group of critics[21] who, while appreciating the importance of work to "human flourishing,"[22] decry the contemporary convergence of paternalism and marketization which they see as shaping the governance of the poor in increasingly destructive ways. Paternalist discourse, work requirements, and their sanctions infused by "criminal logics and penalty" have reduced earnings and depleted political engagement.[23]

### *Criminalization*

The criminalization of poverty[24] is a third concept invoked in recent political science studies of poverty governance. Criminalization represents a shift from both Frances Fox Piven and Richard Cloward's employment and protest-driven analysis of the *regulation* of the welfare rolls, as well as from Soss, Fording, and Schram's more Foucauldian emphasis on *discipline* and "mentalities of self-rule."[25] The criminalization of poverty stresses an expressly punitive turn ushered in with the birth of mass incarceration.[26] Discussions of criminalization diverge with respect to the relationship of the "punitive" and "welfare" arms of poverty governance. The sociologist, Loïc Wacquant, tracks what he sees as the interconnected decline of welfare as a system of entitlement and the upsurge of incarceration.[27] Others see the relationship of welfare and punishment as more about "transforming" than about "punishing" the poor.[28] Political science discussions have largely sought to document the effect of punishment on the creation of a hierarchical citizenship. Amy E. Lerman and Vesla M. Weaver's *Arrested Citizenship* emphasizes the vastly increased use of criminal penalties (police stops, arrest, adjudication, probation, incarceration, and parole) that divides the citizenry into upstanding and criminalized classes.[29] Contact with a state whose face is largely that of law enforcement, together with outright felony disenfranchisement, disengages a large section of impoverished and racially marginalized groups in the population from the body politic.[30]

***Seizure and Poverty Governance through Taxation***

The practice of seizure, however, rewrites poverty governance using an entirely new script. As our conceptual discussion suggests, analyses of poverty governance have long recognized that the welfare or caretaking role of the state has been diminished by the force of marketization, by the disciplinary mentalities of individual responsibility, and by the criminalization of state policies. Marketization has transformed welfare functions into profit-driven metrics. The expansion of personal responsibility discourse has individualized state functions. The criminalization of poverty has inserted repressive and punitive elements into the state's relationship to the poor. Seizure, however, inverts the welfare-poverty relationship altogether by taxing the poor to further their governance.

Policies that create indebtedness have, to use a Foucauldian term, "swarmed" (or diffused) outwards to envelop the families of the incarcerated poor. A cameo of Orange County, California, and the fiscal accounting of its jail system encapsulate this. In 1999, an Orange County Grand Jury mandated divulgence of the sources and expenditures of the county's jail system, including its inmate welfare fund. In the previous year, it was revealed that 80 percent of the inmate welfare fund came from money drawn principally from the families of those behind bars, such as commissary profits and telephone commissions.[31] Six percent of this $4 million was spent on the welfare of those in jail and another six percent on inmate education, including building costs. The revenue derived from family monies was directed principally towards staff employment (over two million dollars), the sheriff's main budget ($750,000), building expansion and warehouse use ($868,000), and the law library ("rights for a price") expenses ($32,295).[32] This example of the County's profiteering from family resources for the fortification of the carceral state is a commonplace. It also illustrates our central thesis—that financing for important facets of the carceral system draws invisibly on the seizure of assets from the country's most impoverished strata.

Poverty governance through taxation of the poor is being institutionalized, if unobtrusively so, as a common method of generating revenue. For example, a recent Justice Department investigation into the Ferguson Police Department after Michael Brown's death reports that "city, police, and court officials for years have worked in concert to maximize revenue at every stage of the enforcement process."[33] The ballooning of financial charges is driven by multiple pressures: the fiscal burdens of state and local governments and progressively insolvent bureaucracies and court systems;[34] the enhanced technological capacity to identify offenders, track addresses, and enforce collections; the neoliberal conviction that individuals must be held accountable for their poor choices, whatever their circumstances;[35] and the heightened importance of free market capitalism that validates government offloading of state functions to private contractors.[36]

Some might object that payments by prisoners and their families fall into different ethical categories. Victim restitution, it might be argued, is on a different moral plane from levies that may be gouging prisoners and their families for telephone expenses, commissary costs, or medical services.[37] While victim restitution may be of different moral valence from other fines, fees, and monetary expenses, the question remains whether the state should be collecting payment from family members, none of whom have themselves been convicted in a court of law.

The below-the-radar character of seizure returns us to Suzanne Mettler's description of the "submerged welfare state." As one observer has incisively noted, the submerged welfare state "hides the archipelago of benefits for middle-class families" whereas poverty governance through seizure "hides the archipelago of taxes and tariffs on poor families."[38] Economically and socially, the result is the further material and ideological polarization of class and racial groups in the United States, with the middle class and the wealthy reaping additional financial benefits and the poor bearing an additional monetary burden. Politically, a new form of state power—one that reframes the state as pre-modern, exacting rents from provincial subjects—replaces even the pretense of a state premised on the caretaking mission that has long defined modern state welfarism.

## Instruments of Taxation and Revenue during Prison

Donald Braman's vivid ethnographic account of incarceration and family life in Washington, D.C. depicts relatives (mostly female) who incur financial hardship by spending considerable sums supporting a male relative who is doing time. "Arthur," whose life Braman documents, receives annually from his low-income family over $1,100 in money orders, makes $1,400 worth of collect phone calls, and is sent gift packages of over $400. Phone charges from Arthur to his mother constitute fully 20 percent of her income.[39] In this section, we expand on Braman's portrait of family hardship during incarceration by emphasizing that the family monies seized by state policies pay financial debts incurred by someone other than themselves and remunerate not only the prison (and taxpayer) for the cascade of charges that individuals face behind bars, but also state expenditures. These costs of incarceration and state disbursements are not being drawn from the general revenue and spread across all taxpayers. They are being borne, specifically, by the mostly low-income families of prisoners.

The 1985 Federal Bureau of Prisons' Inmate Financial Responsibility Program (IFRP) is intended to direct prisoner wages towards victim restitution and other financial obligations. Ordinary prison workers, however, earn between 12 cents and 40 cents an hour. Those "fortunate" enough to have industry jobs in UNICOR, the 1970s logo for what was once the Federal Prison Industries, Inc. (FPI), earn between twenty-three cents and $1.15.[40] Although patterns differ markedly among states and regions, state prison wages average fifteen cents an hour.[41] This contrasts with some Western European countries, where wages for those in prison are purposefully set at levels that more closely approximate what an individual would earn on the street.[42] According to a 2002 report, state prisoners retain on average only 20 percent of their wages[43] and no less than 50 percent of UNICOR wages are withheld for fines and fees owed to the Inmate Financial Responsibility Program.[44] Even assuming these deductions are diverted towards an individual's financial obligations, such rock-bottom wages cannot go far towards meeting the financial obligations or prison expenses involved.

*Encumbrances.* It is not surprising that individuals behind bars turn to family members for financial support through the deposit of monies to inmate accounts. What is less intuitively obvious is that when family members deposit funds in an inmate's trust or commissary account, in many states, monies are directed to encumbrances, restitution, and other fines and fees. An encumbrance is legal financial obligation often assigned at the time of conviction and owed by the prisoner to an outside public party. Garnishments for encumbrances have likely accelerated as victims' groups and county budget officers become increasingly versed in how fines and fees that are statutorily authorized can be pursued.[45]

Several legislative acts (The Victim and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Comprehensive Crime Control Act of 1984, and the Federal Debt Collection Procedures Act of 1990) oblige law enforcement agencies to collect court-ordered financial obligations. The National Center for Victims of Crimes has compiled a state-by-state breakdown documenting the prioritization level of victim restitution in state statutes governing recovery of money from inmate accounts.[46]

Payments deposited by family or friends in an inmate account can by statutory directive be assessed a certain percentage and that money directed to the prisoner's encumbrances. The amount deducted varies by state. In California, as in many states, 50 percent of all deposits are withheld from the inmate trust account to pay restitution or other financial obligations.[47] In New York State, if there is only one encumbrance, 20 percent of payroll receipts and 50 percent of outside receipts are collected and designated towards the encumbrance. In the event of more than one encumbrance, however, up to 40 percent of weekly earnings *and 100 percent of any outside receipts* (i.e., monies sent by family) is redirected.[48]

In Washington State, the schedule of excise levied on money sent to an inmate trust or commissary account is similarly steep. Legally-mandated deductions taken at the time a family member sends money to an inmate account are allocated to: 1) financial obligations owing in any Washington state superior court; 2) a public safety and education account for the purpose of crime victims' compensation; 3) a department personal inmate savings account; 4) child support owed under a legal support order; and 5) the department to contribute to cost of incarceration.[49] Additionally, after the statutorily-mandated deductions are made, two additional deductions from family and friend deposits to an inmate account can still be allocated to the inmate's Department of Corrections' debt and to the Prison Litigation Reform Act.[50]

For those inmates who are reluctant to turn to family, the option of postponing payment on financial obligations is likely to meet with little sympathy from the courts. One 2013 New York State court case, the *People v. Cympethy Neal,* provides a glimpse into the routine refusal of courts to allow postponement of payments for other encumbrances.[51] At sentencing, Neal received a mandatory surcharge of $300, a DNA fee of $50, and a crime victim assistance fee of $25 ($375 in total). Neal sought to defer payment of the money owed under her sentence since she was only earning $6.00 every two weeks in prison wages. If family or friends were to send her money, she points out, the funds would be deducted up to 100 percent because of her several encumbrances. The deduction of Neal's encumbrance(s) meant that she was left with 20 percent of her wages (e.g., 62 cents per week), which was insufficient to purchase necessary hygiene items from the Commissary and stamps for personal correspondence with her children. The Court held that Neal did not meet the necessary standard which would require her showing that she had suffered hardship "*over and above the ordinary hardship suffered by other indigent inmates.*"[52] "Insofar as she apparently does have some spendable income," the Court continued, "it is up to Ms. Neal to prioritize how she allocates her funds for commissary purchases and if sending personal mail to her children and family is important to her, she is in a position to purchase some stamps." The Court's decision not to grant Neal a postponement of her debts did not in their view (contra Neal's claims), "work an unreasonable hardship on her and her immediate family."[53]

*Pay to stay.* Family financial support is also siphoned off to cover prison costs of various kinds. Increasingly, jails are charging room and board through "pay to stay" programs.

Some estimates suggest that one-third of the country's 3,000 county jails now charge room-and-board costs inevitably paid for by funds deposited by family in an inmate's account.[54] A National Public Radio investigative report found that 41 states allow charges for room and board when someone is sent to jail.[55] In Pennsylvania, Westmoreland County reported collecting $15,000 over a seven week period; and Pike County reported a $5000 per month sum from inmate accounts for room and board and restitution.[56] In Bristol County, Massachusetts, Sherriff Thomas Hodgson reported collecting $720,000 between 2002 and 2004,[57] when the Superior Court ordered the County to cease the practice.[58]

*Telephone contracts.* Telephone charges are also a notorious source of financial pressure on families and are seen by critics as a tariff leveraged on low-income family members to pay prison costs. In almost all states, phone calls must be made collect or are paid for by money deposited by family members in prisoner accounts. Telephone systems are run by Departments of Corrections contracting with phone companies that generally pay the Department a commission (termed kickbacks by the system's detractors). A comprehensive study by *Prison Legal News* calculated the national figure for commissions at 42 percent and documented the often-exorbitant phone rates charged to families and the lack of transparency in the bidding and contracting process.[59] A recent report by the Prison Policy Initiative shows several states receive double that commission. In Baldwin County, Alabama, ICSolutions agreed to pay 84.1 percent of profits back to the county. In order to recoup these commissions, telephone companies often add "hidden' fees tacked on that cannot be detected by the publically-announced telephone "rates."[60] As with Braman's earlier description of "Arthur," families can easily spend between $1,000 and $2,000 a year on collect calls.

JPay, the large private company headquartered in Florida, guarantees by contract a commission of $2.50 to the Florida Department of Corrections for every phone call transaction no matter what the amount. For every deposit made by family or friends to meet a court-ordered payment, JPay owes the Department of Corrections a percentage of the amount.[61] New York State was a target of criticism when the prison system contracted with MCI under an arrangement that returned a 60 percent commission to the Department. Families paid rates that were one-third higher than the normal charges for non-prison collect calls. The Center for Constitutional Rights initiated several class action suits against MCI and the New York Department of Corrections.[62] After the New York Campaign for Telephone Justice (a coalition of New York families and advocacy organizations) lobbied Albany for a change in policy, Governor Eliot Spitzer announced in 2007 that he would end the state's receipt of telephone commissions.[63] Neither New York nor California now requires telephone companies to provide commissions to the state on family-paid calls from prison. By contrast, to take the first three "commission" states alphabetically, Alabama makes $3 million; Arizona cashes in for $4 million, and Connecticut for $2 million—all on family dollars.[64]

*Medical charges.* Co-pay charges to see medical staff or to procure prescription drugs are also common. In Pennsylvania, where prisoners earn between $20–$50 per month in wages, one doctor's visit and one prescription may constitute as much as 50 percent of a prisoner's monthly pay.[65] Following the passage of Texas law HB26, prisoners in Texas who were previously charged a $3 copay to see a doctor are now charged an annual fee of $100 for medical visits, which is taken directly out of their commissary accounts. If funds in this account are insufficient, 50 percent of all deposits into commissary accounts are applied until the $100 fee is paid in full. The Texas Inmate Families Association observes that payments from family members into commissary accounts are underwriting these basic medical provisions.[66] In Oklahoma, family surcharges have been directed to fund prison costs such as the purchase of air conditioners, ice machines, X-ray machines, and medical outpatient trips.[67]

*Other vendors.* A private vendor system, through which many businesses contract with a Department of Corrections, handles such matters as money deposits to inmate accounts, the sale of food in vending machines, and handling package deliveries and gift orders. Vendors compete for contracts and are often selected depending on the level of commission they can offer to the Department of Corrections. In Florida, the Keefe Group's 2013–2016 contract with the state's Department of Corrections states that "the Department will make an award, by Region, to the responsive, responsible bidder submitting the highest percentage commission."[68] Another Keefe contract with Florida Department of Corrections stipulates that Keefe will pay the Department $.20 for each downloaded piece of music, $5.00 for each "Securepak-Family/Friends package" that is sent to a prisoner, $1.00 for each earbud, and $2.00 for each armband.[69] In Ohio, the prison system's commission from private vendors was $140,000 over an 8-month period, a small sum in comparison to the $15 million dollars in commissions that Ohio is reported to receive from the company that provides phone service to the prisons.[70] JPay manages many of the fee-required transactions in Tennessee Corrections including fee collection for parole and probation. JPay, like many vendors, provides services to prisoner families under a profit-sharing contractual arrangement in which the vendor pays a commission to the Departments of Corrections. Pat Taylor (a housekeeper) sent her son Eddie money every other week. Although she used to send a money order through the post office, the deposit system is now managed by JPay, whose reach currently includes money transfers to 70 percent of all U.S. inmates.[71] To send Eddie \$50 through JPay costs his mother \$6.95. Depending on how much Pat Taylor can manage in any given week, the fee can be as high as 35 percent. In other states, JPay's fees can reach 45 percent.[72] The commissions then paid by JPay or other vendors to the state are utilized to support carceral costs or are directed to the general revenues coffers. The rewards to Corrections personnel extend to the frivolous. At the 2012 convention of the American Correctional Association, JPay provided an all-night shuttle for conventioneers to a wine bar party that promised (on paper beer coasters), a "bash, JPay-style: *fuerte* tequila, hand-rolled cigars, a live mariachi band."[73]

Corrections Departments often maintain that the money from commissions is redirected to inmate services—"health care for inmates, bus services for family visitation programs, free inmate postage and expenses at its visitor centers."[74] This is not always the case. In Florida, the net proceeds are directed to the state general revenue fund.[75] In some states, monies raised in large part through family payments are directed to pay for prison law library expenses and access to the courts, casting this not as a civil right guaranteed by the state but as an amenity financed by poor families.[76]

*Shifting the burden to poor families.* The policies enumerated here create an invisible system of revenue and taxation that exploits the ties of family dependency. In addition to challenges against telephone contracts, other practices that shift the burden for the costs of incarceration to poor families are beginning to generate at least some debate among lawmakers and among the families themselves. Even assuming, for example, that the vending commissions are used to pay for prisoner services, the question might well be asked whether families drawn largely from the lowest income sectors of the population are the appropriate revenue base for monies spent on prison programming.[77]

Much of the policy debate occurs at the local community level where sheriffs, budget officers, and the local media are alert to the pressure to identify new sources of revenue albeit at the expense of the everyday financial struggles of low-income families. In Massachusetts, pay-to-stay jail policies catalyzed just such a face-off. One editorial in the Massachusetts *Herald News* weighed in:

> Some argue the fee puts an unfair burden on inmates' families, who often foot the bill. While it is indeed sad and unfair for innocent families to shell out extra money, that's not the county's fault. In most cases, the prisoners themselves have placed a much heavier burden on their families than a minimal charge for incarceration would inflict.[78]

In York County, Pennsylvania, a similar debate flared about drawing on family support. The county treasurer, Barbara Bair, commented: "They'll give more. Those family members will step up and give more because they want Sam to have his haircut or whatever it is."[79] Objecting to the practice, a Lancaster County, Pennsylvania, nonprofit director protested that deductions and fees penalize families, friends, or charitable organization who put money into offender accounts. "We're not supposed to be just focused on revenge and restitution in prison. We're supposed to be focused on correcting them and making sure that when they get out they can be restored into society."[80] In California, local advocacy groups have also spoken out against the cost shift to families. "The burden is on the wrong person," says Julie Falk, executive director of Correct Help in California, an advocacy group for HIV-positive inmates. "It is often women [mother, girlfriend] footing the bill for a lot of things in prison."[81]

In Washington state, too, debate erupted when legislation was introduced that sought to bar the deduction of 20 percent of the money families deposit to inmate accounts for operating costs. One report by *Prisoner Legal News* quotes Josephine Wiggington, who works in a grocery store and on occasion sends \$50 to \$100 to her son in prison. Wigginton calls a 35 percent seizure of these deposits for these operating costs and other deductions a "crime." "This is taking money from my pocket. I pay taxes on this money."[82] Washington State Representative, John Koster, R-Monroe, who introduced a bill to end the garnishment that died in a senate committee, described the practice as double taxation.[83]

The themes of double taxation and family exploitation recur in many of the blog postings where prisoner families confer:[84]

- DON'T WE PAY TAXES!!!! How are our Men Going to Eat and buy stationary. (camsmommy).
- That's not a punishment for the inmates . . . it's a punishment for their families because they end up paying the bill in the end. Nice lesson for the inmate. Hurray! (Schmusi 34).
- U've got to be kiddin me. Tommy makes \$18 a month working in the kitchen . . . . They are not teaching them anything but are only stressing the families out even worse. (Retired-24).
- If we want our loved one to have a cup of coffee or anything else, we will pay the rent or anything else they demand of us and they know it. They have us over a barrel and will continue to punish us, the family, as much as possible. (Susie SC).

## Instruments of Taxation and Revenue after Prison

Other instruments of taxation and revenue operate outside of prison, and are particularly burdensome for families after their loved ones are released. The imposition of child support obligations, fines, fees, and other charges have created a staggering backlogof debt for low-income men.[85] As part of this invisible system of taxation and revenue, the state contracts with private providers and collectors to recoup the costs of public services. This financial burden is then commonly borne by the family members of previously incarcerated individuals at risk for returning to prison if these state-imposed debts and obligations cannot be satisfied in a timely manner.

*Fines, fees, probation, parole costs, and other financial obligations.* Monetary sanctions directed at individuals who have been convicted of felonies have ballooned over the last decades constituting what Mary Katzenstein and Mitali Nagrecha term a "new regime of punishment."[86] Beginning in the late 1970s, as Katherine Beckett and Alexes Harris recount, fines and fees associated with court convictions proliferated in both numbers and types; the amounts of existing fees and fines mushroomed, involving all levels of government. Beckett and Harris mention 24 distinct state- and county-level fines and fees that accompany an individual conviction in Washington State.[87] Alan Rosenthal and Marsha Weissman enumerate 19 statutorily-authorized fees that can attend a felony sentence in New York.[88] California lists 3100 individual "fines, fees, surcharges, penalties, and assessments" to which criminal offenders are subject.[89]

Along with the spread of fines and fees, collection efforts by state governments have accelerated. Publications and educational events meant to instruct state agencies in more effective enforcement have proliferated.[90] The effects of heightened enforcement are evident in the remarkable study of a Philadelphia neighborhood by Alice Goffman who reports that of the 308 men between ages 18 and 30 in the households she enumerated, 144 young men had a warrant issued for their arrest because of outstanding court fines and fees or failure to appear for a court date within the previous three years.[91] In Washington State, 25 percent of those kept in county jail in Benton County were there for unpaid fines and fees.[92] The average amount of fines and fees imposed by the courts for a felony in the state is \$2,540.[93]

Collection from fees imposed for parole and probation has been increasingly shifted to private companies. In many states, probation and parole can be revoked for those who fail to pay outstanding debt. Forty-four states allow individuals to be charged fees for parole or probation supervision.[94] Motor vehicle licenses and other trade licenses can be withdrawn and at the end of the line, the debtor can be incarcerated, in some cases paying down the debt with days of incarceration. Another recent development is the incarceration of individuals for civil, not criminal, debts owed not to the state, but to private parties.[95] As is often the case, the financial burden falls on the family. As one private probation officer in Georgia explains, "I always try and negotiate with the families. Once they know you are serious they come up with some money . . . . They have to see that this person is not getting out unless they pay something."[96]

Debt is also accrued through charges for public defenders. According to a recent NPR investigative report, 43 states allow defendants to be charged an administrative fee for the use of a public defender.[97] Inability to pay these fees leads some to waive their right to attorneys. In Virginia, defendants may be charged as much as \$1,235 per count for some felonies.[98] In a number of states, the right to vote can also be suspended in the face of unpaid criminal debt. No appellate court has rejected franchise exclusion for outstanding debt.[99] In the absence of family financial intervention, the individual faces the serious loss of civil rights.

*Child-support arrears.* Another critical domain in which debts burden poor families both during incarceration but largely post-release is in the area of child-support obligations.[100] About half of state and federal prisoners are parents of minor children and one-quarter have open child-support cases.[101] Low-income men with a history of incarceration are more at risk for accruing child-support debt and face the prospect of returning to prison if these debts cannot be satisfied. In approximately 15–17 states, where going to prison is considered to be "voluntary unemployment" and incarceration is not a basis for adjusting a child-support order, modification is not possible and arrears continue to accumulate during the period of incarceration.[102] But even in those states where modification procedures are in place, efforts to seek court approval must be initiated by the individual prisoner. In no states are child-support orders simply suspended when an individual goes to prison.[103] A study in Massachusetts found that the vast majority of noncustodial parents in prison, jail, and on parole with child-support orders owed arrears to the state and had interest and penalties assessed on these arrears. Obligors owe on average from \$20,000–\$24,000 across all orders in arrears, interest, and penalties. Given the difficulty modifying child-support orders during incarceration, the arrears of parents incarcerated in state prison were almost 200 percent higher when they left prison than when they entered.[104]

When the parent is released from prison, the formidable challenge of beginning to pay back the additional debt commences. If current and past child-support obligations are not repaid by the court-mandated schedule, officials may bring a court case alleging willful failure to pay and threaten the individual with a range of penalties, including incarceration. In South Carolina, where Walter Scott was killed after being stopped by police for a broken headlight, a survey of two counties' jails showed that one of eight inmates are in jail for the non-payment of child support.[105] Non-custodial parents in South Carolina can be held in civil contempt if they are five days late on their payments, and child support continues to accrue when they are incarcerated. The pressure to pay the child-support "purge" amount necessary to avoid the individual's confinement or to secure his or her release is extreme. Scott was apparently in arrears for child support, and had previously been jailed on contempt charges. According to Scott's brother, "He said that's what he would do, he would run, because he's not going to jail for child support."[106]

A large portion of child-support arrears are owed by low-income men to reimburse the state for providing public assistance through TANF or Medicaid, and may include other charges and interest that are added to the order at the state's discretion. For parents with children placed through the foster care system, including juvenile justice placements, the entire costs of state care may be imposed as a child-support obligation. One chat posting describes the crushing cost to families of such debt.[107]

> Both my boys were incarcerated for a time at Oakland County (Michigan) juvenile detention. One for six months and the other for a year (terminated early as I moved to Maine with him). Would you believe the bill for their stay was $15,000?!?!?! (Michigal).

The issue of repaying these legal financial obligations involves broad policy discretion, and there are policy options that can either mitigate or aggravate the often harsh and discriminatory enforcement of punishment for unpaid debt.[108] As Paula Roberts and others have documented, the state practice of charging interest on outstanding child-support arrears significantly influences the amount of debt that may accrue.[109] While some states charge no interest on arrears, others charge double-digit interest on missed or delinquent payments.[110] Other key policy choices concern whether states will charge non-custodial parents for retroactive support, and how far retroactive support will reach back, including whether birthing costs will be charged to obligors. States also have the option of whether to add on the costs of genetic tests, court filing fees, attorney fees, and other legal costs when establishing orders. If retroactive support and other charges are included in the initial child-support order, non-custodial parents may already have overwhelming debt burdens at the time the order is initially established.[111]

Other state policy choices about how to set and modify child-support orders also contribute to the level of child debt owed by low-income obligors. State guidelines that require non-custodial parents to make a minimum child-support payment, even when they are incarcerated, unemployed, underemployed, or have very limited earnings, have been associated with higher debt burdens. Obligors also tend to have significantly higher arrears in states that impute income on the basis of how much they would earn working full time.[112] In addition to facing unrealistic child-support orders, low-income obligors are more likely to accrue arrears in states where they have difficulty modifying child-support orders in response to job loss, incarceration, or other unexpected circumstances.[113]

As outstanding child-support arrears have grown to an astonishing $114.5 billion, some research has begun to dig more deeply into the characteristics of noncustodial parents who owe this debt. In one study of arrears in nine large states, Sorensen and colleagues estimated that 70 percent of all those who owe these outstanding child-support arrears report no earnings or earning of less than $10,000 per year. Given the dismal economic characteristics of obligors, they estimate that only about 40 percent of these arrears are likely to be collected by states in the coming years.[114]

An extended discussion of child-support arrears illustrates how poor families are taxed to collect state-imposed child-support debts and the legal slippage surrounding this issue. There is an absence of systematic data about "who pays" the outstanding obligations for child support when there is either a pending threat of jail or when the individual obligor is seeking to make the purge fee once behind bars in order to be released. A study by the Center of Family Policy and Practice, based on focus groups with African-American men in six cities, finds that low-income men who face the threat of incarceration rely heavily on family, friends, and partners to pay their child-support debts. While fathers claimed this assistance was critical for helping them survive economic hardship and avoid prison, they also believed it jeopardized the financial security of individuals in their social networks.[115]

Our own analysis of data from a national survey of disadvantaged fathers in urban areas (the Fragile Families and Child Wellbeing Study) shows that men who have been incarcerated are much more likely to have child-support debt and to rely heavily on family and friends as a safety net of last resort.[116] In the Fragile Families Survey, approximately three times as many non-resident fathers who had been recently incarcerated had child-support arrears than fathers who had not been incarcerated (30 percent versus 10 percent). The interaction of child support and criminal justice policies may be particularly disadvantageous for these men, since arrears may continue to accrue during incarceration, and lead to re-incarceration if obligors are assumed to be willfully non-compliant.

Although fathers who have been incarcerated perceive that less support would be available from their networks,[117] our analysis also showed that the previously incarcerated depended on these networks much more than other non-resident fathers. About 35 percent of men who had been incarcerated reported borrowing money from family or friends in the last 12 months to pay bills compared to 20 percent of men who had not been incarcerated. Almost twice as many recently incarcerated fathers (20 percent versus 10 percent) moved in with someone in the last year because of financial problems, and these men were much more likely to be living with family and friends. The results from propensity score matching (on age, race, and education) show recently incarcerated fathers to have more child support debt, to have a higher arrears burden, and to report more dependence on family and friends than other non-resident fathers with similar characteristics.[118]

Although this survey did not ask if families pay men's child-support arrears post-release, the blogosphere is rife with anecdotes of relatives attempting to meet this need. One blogger writes:

> I've often made the point that when we jail or threaten to jail child support debtors and they pay money to stay out of jail, this money often is not theirs but instead money they've borrowed from their family and friends. Yet inevitably whatever chest-thumping/publicity-seeking DA who's behind the latest crack-down will tell you, "See? The deadbeats have the money and the threat of jail makes them pay![119]

Individuals would not need to turn to families if the lived realities of enforcement for debt were bound more closely to the legal principle. In theory, the law is clear: Debtors may not legally be incarcerated simply for being too poor to meet their financial obligations. Legally-speaking, debtors' prisons are supposed to be a thing of the past. But debtors who may be poor and appear to be "willfully" resistant (a term open to considerable leeway in interpretation) to paying financial obligation can be—and are with some frequency—subject to incarceration.

There is a similar disjuncture between the clarity of the overall rule and the slippage in interpretation with respect to a family's obligation. In theory, family financial support cannot be legally required as a condition of purging an individual obligor's debt. But the law rarely discourages the obligor from borrowing to meet a pending deadline; and in some cases the law seems in fact to assume such borrowing as a taken-for-granted occurrence. Two court decisions, one from the Tennessee courts and the reigning Supreme Court decision pertinent to debtors' prisons illustrate the assumption that borrowing from family is commonplace and acceptable.

The Tennessee case treats a situation where the plaintiff, Gwen Knox, had borrowed from her family to meet her financial obligation in order to gain her release from jail after being incarcerated for contempt in a child-support case.[120] When Knox was jailed, Knox's mother paid the $1,000 purge money for Knox's release. The appeals court held that the support levied ($1,000) was inappropriate given Knox's income and earnings capacity and reduced the sum to $100. The appeals court went on to say with ringing clarity, that a respondent in a contempt hearing cannot be forced to borrow funds to comply with the court's order. But, the appeals court *then* went on to say that the $900 difference between the initial $1,000 charged and the $100 subsequent award should not be returned to Knox (or her mother) but should be directed towards the outstanding past arrears.[121]

Even the Supreme Court's treatment of incarceration for debt and the concomitant reliance on family and borrowed funds suffers a slippage between theory and reality. In *Bearden v. Georgia,* 461 U.S. 660[122]—the first modern-day holding in the United States that bars debtor's prisons—the Court laid down a principle that appeared to be indisputably clear. Danny Bearden, illiterate and unschooled beyond the ninth grade, had been assessed a fine of $750 in association with a crime of burglary and receiving stolen property. Although his parents paid part of the fine, Bearden, unemployed, fell behind in his payments and was jailed. The Court held that under the Due Process Clause of the Fourteenth Amendment, an individual may only face incarceration for failure to pay fines if it was found *that the failure was willful* or that the individual failed to make *bona fide* efforts to pay. The Court stated:

> If a State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it . . . If the probationer has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment *or borrow money to pay,* the State is justified in using imprisonment as a sanction to enforce collection. But if the probationer has made all reasonable bona fide efforts to pay the fine and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing [exist].[123]

Inserted in the interstices of the decision, then, is language emphasized in the quoted passage that appears to assume that *borrowing* (presumably from family and friends) is an expected part of clearing a financial order or an order of contempt.[124] The expectation of borrowing from family or friends to pay child-support debt is also intimated in passing commentary in court cases.[125] It also appears in some legal codes, such as the family code in Texas, which lists the demonstration of an inability to borrow funds as a defense against contempt allegations.[126] Even by the letter of the law, then, the state is siphoning dollars from mostly low-income families to "make good" on legal violations which they, themselves, did not commit.

## Conclusion: The Lessons of "Seizure"

Over the last several decades, the state has utilized a legion of policy instruments to procure resources from families whose incarcerated or formerly incarcerated relatives or friends are navigating the catacombs of the criminal justice system. Families often pay the court fees and fines assigned at the time of conviction that then follow individuals into prison. With loved ones in prison and in debt, families end up paying the charges on anything from victim restitution to a battery of seemingly obscure court expenses. Families with loved ones in county jail often become the de facto source of pay-to-stay fees. Incarcerated individuals often turn to families for co-pay charges for medical services, commissary purchases, and telephone calls. After prison, the costs of these financial obligations carry over and new costs are imposed for parole and probation that are rarely affordable without family financial intervention. Absent family financial support, the debt-owing individual is subject to a string of punishments—from further interest levies, loss of motor vehicle or other licenses, garnishment to (re)incarceration, itself. Commissions from private vendors or profits from the state-run services, drawing on family payments, are often directed to some form of prison maintenance and even to the state's general revenue funds.

Much research remains to be done. The institutionalization of family seizure as an instrument of poverty governance has occurred in the presence of often little-known legislation, judicial rulings, and private contracts. Seizure's rules and regulations, its enmeshment within the private sector are often dispersed, localized, and vary by state and even by county. The role of federalism and its multi-level accountability is ripe for further discussion. The highly gendered and racialized character and consequences of seizure are also mostly unexamined. The scale of debt and the amount of family subvention needs to be more precisely quantified.

Two larger lessons, however, are already evident. The first concerns prison reform itself. The newly-reached reform collaboration among conservatives ("right on crime") and liberals ("smart on crime") has focused on sentencing and the excesses of the drug war. This overlooks what Marie Gottschalk calls the less visible metastases of the carceral state.[127] Collateral consequences recently explored by Alec Ewald, the proliferation of arrests that Vesla Weaver and Amy Lerman describe, the banishment of the criminalized poor from public spaces documented by Katherine Beckett and Steve Herbert, and new financial instruments explored by Devin Fergus are all part of this metastasis.[128] Seizure, too, is a significant part of the carceral practices that have spread far beyond the confines of the courts and prison walls themselves. This byzantine system of informal and implicit, but legally mandated, financial obligations that result de facto in seizure of family assets operates below the political radar and in the interstices of the many local, state, and national jurisdictions that together constitute the U.S. state. In contrast to the largely middle-class subsidies documented by Mettler, this set of arrangements establishes what might be called the dark side of the submerged state. It is not well known or understood by either citizens or scholars of American politics.

A second lesson, and the one we emphasize, concerns this dark side and the shifting character of the American state in its relationship to poverty governance. Seizure as a new form of poverty governance reinforces what Thomas B. Edsall calls the "expanding world of poverty capitalism" in which the "costs of essential government services are shifted to the poor."[129] Poverty governance, as the practice of seizure reveals, now extends beyond the discursive induction of the poor into work-conducive habits of mind and beyond the confinement of the poor within carceral walls. Seizure now extends poverty governance to the inversion of the welfare state such that the poorest strata of society are taxed in order to contribute to the carceral and, indeed, the general costs of the state, itself. This raises the disturbing question of how, in this time of fiscal stress and growing inequality, the two sides of the welfare state are bound to each other. Is the submerged state that serves the interests of the middle class in some ways financially implicated in and morally dependent on the darker side of the submerged state? Are judgments about "good" and "bad" citizenship mutually interdependent, and to what extent does the caring or beneficent side of the submerged welfare state depend for some of its resources on the processes of seizure that are now increasingly institutionalized within the dark side of the submerged state? Is this, to return to a depiction we used earlier, a system of welfare socialism for the better-off that is dependent on the predation by the state of the poor? This possible—and yet untested—relationship aside, what cannot be denied is the recent radical turn via this system of seizure to the outright taxation of the poor. With the initiation of poverty taxation, the governance of the poor has descended to new depths.

## Notes

1 http://www.bloggernews.net/111673, accessed December 1, 2014.
2 www.prisontalk.com/forums/archive/index.php/t-181208.html, accessed May 7, 2014.
3 Ehrenfreund 2014.
4 Mettler 2011.
5 Miletich 1997.
6 In this article, we do not specifically address those "at risk" for incarceration but many of the policies that shape the experience of the formerly incarcerated apply to those at risk for incarceration as well.
7 Clowan and Reich 2013.
8 Florida Senate 2015, 2. https://www.flsenate.gov/Session/Bill/2015/0540/Analyses/2015s0540.acj.PDF, accessed May 9, 2015. Annual amounts between 2009–2014.
9 Ibid.
10 Ibid. The prisoner fund is limited to under $5 million a year.
11 Markowitz 2015; Prison Policy Initiative 2014; Rabuy and Wagner 2015. Securus is reported to have dropped the no-visitation requirement as of

May 2015. Prison Policy Initiative Press Release May 6, 2015. http://www.prisonpolicy.org/pressreleases.html accessed June 19, 2015. Since 2014, three lawsuits have been filed.

12 The "miracle of the cells"—e.g., the prospect of immediate incarceration—one experimental study argues, produced high compliance with payment of financial obligations; Weisburd, Einat, and Kowalski 2008.

13 Cook 2014.

14 This clearly doesn't exhaust the realms of discussion that might also include school and housing segregation, deportation, disenfranchisement, and other instruments of poverty governance.

15 Soss, Fording, and Schram 2011, 3.

16 Hacker 2008, 51.

17 Hacker 2008; Harcourt 2011; Soss, Fording, and Schram 2011.

18 Lipsky 2010.

19 Soss, Fording, and Schram 2011, 7, 49.

20 Mead. 2012, 1997. This exemplary lesson in welfare governance, Mead argues, should now be reproduced by similar mandatory work policies for poor men; Mead. 2011.

21 King 1999; Collins and Mayer 2010.

22 Soss, Fording, and Schram 2011, 15.

23 Soss, Fording, and Schram 2011, 6; Fording, Schram and Soss 2013. See also Katzenstein 2012.

24 Gustafson 2009.

25 Soss, Fording, and Schram 2011, 297; Piven and Cloward, 1971.

26 Fagan and Davies 2000–2001; Gustafson 2009; Katz 2013; Lerman and Weaver 2014; Natapoff 2011–2012.

27 Wacquant 2001; 2009; Kohler-Hausmann 2010; Downes and Hansen 2006. http://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Welfare_and_Punishment_webversion.pdf.

28 Soss, Fording, and Schram 2011, 297.

29 Lerman and Weaver 2014, 3.

30 Political science studies include Ewald 2002; Ewald and Rottinghaus 2009; Pinaire, Heumann, and Bilotta 2002. On the politics of federalism, see Miller 2008.

31 "Inmate Welfare Fund "Profile" 2000. Family financial support for law libraries has been longstanding. Marc S. Cacho, the law library officer for Orange County Corrections in Orlando, Florida writes, "Correctional administrators have battled for decades on how to uphold an inmate's constitutional right to access the courts while, at the same time, being fiscally efficient in providing access to some type of law library service. Traditionally, the inmate welfare fund has satisfied this expenditure." In recent years, this has been complicated by the privatization of commissary stores; Cacho 2003.

32 Prison law libraries are an important means (albeit no longer a constitutionally-mandated one) for the state to meet what *is* a constitutionally-required right of access to the courts. *Lewis v. Casey* 116 S. Ct 2174 (1966) and *Bounds v. Smith* 430 U. S. 817 (1977).

33 U.S. Department of Justice, Civil Rights Division 2015.

34 Two-thirds of the New Orleans' criminal court operating budget is reputedly covered by fees and fines according to the ACLU report "In for a Penny," 2010, 8. See also "The New Debtors' Prisons," 2013, 32; West 2013.

35 Refer to the table on 'Wide gaps in opinion about why people are poor' in Pew Research Center for People and the Press 2012. About 48 percent of respondents overall see circumstances as responsible for individuals' poverty whereas 38 percent overall see lack of effort as key. Among Republicans, the numbers are 28 percent and 57 percent respectively. http://www.people-press.org/2012/06/04/section-3-values-about-economic-inequality-and-individual-opportunity/.

36 Edsall 2014.

37 Some might argue that seizing funds to pay child-support debt also constitutes a different form of taxation. As described in the section on seizure post-incarceration, however, a large portion of the child-support arrears owed by incarcerated or previously incarcerated parents includes reimbursements for welfare and Medicaid costs, interest, and other charges that have been added to the child-support order at the discretion of the state. These orders may also be set by default, assuming full-time employment, and continue to accrue while a noncustodial parent is incarcerated.

38 Anonymous referee for this article, *Perspectives on Politics*.

39 Braman 2004, 131–134.

40 The Federal Bureau of Prisons' Inmate Financial Responsibility Program 2000.

41 Office of Justice Programs 2004; Cowan and Reich 2013.

42 Kriminal Forsorgen [n.d.]; Larson 2013.

43 http://www.epi.org/publication/webfeatures_snapshots_archive_08212002/.

44 Federal Bureau of Prisons' Inmate Financial Responsibility Program 2000. As the report explains, the "purpose of the IFRP is to encourage federal offenders to voluntarily pay their court-ordered financial obligations while incarcerated in BOP institutions. Through BOP's efforts, over $105 million has been collected since the IFRP's inception. The majority of money collected has gone to crime victims or victims' assistance and support groups."

45 California Department of Corrections and Rehabilitation, Office of Victim and Survivors Rights and Services 2014. The office advises: "Be patient, the collection process takes a long time. Inmates typically make between $0.38 and $1.00 per hour. There are also more inmates incarcerated than there are jobs available. Therefore, some inmates may not have a wage-earning job and are unable to pay restitution, unless the inmate receives money from outside sources, such as family or friends). See also Mahon 2013.

46 National Center for Victims of Crime 2011.

47 http://www.cdcr.ca.gov/Victim_Services/restitution_offender.html.

48 State of New York, Department of Corrections and Community Supervision 2013.

49 Washington State, Department of Corrections n.d.

50 Ibid.

51 http://statecasefiles.justia.com/documents/new-york/other-courts/2013-ny-slip-op-30074-u.pdf?ts=1359044096, *People v Neal* 2013 NY Slip Op 30074(U) January 3, 2013 Sup Ct, Kings County Docket Number: 2484/2009.

52 *People v. Abdus-Samad* 274 AD2d 666,667 (3d Dept 2000) lv denied, 95 NY2d 862 (2000).

53 *People of the State of New York v. Cympethy Neal*. 2013 Indictment No. 2484/2009, 4.

54 "Is It Fair and Legal for Inmates to Foot Their Room and Board?" 2004.

55 Shapiro 2014.

56 Mahon 2013.

57 Ibid.; "Inmates Pay for Jail Stay; Proposal Fails" 2010.

58 Prisoner Legal Services of Massachusetts was assigned the task of identifying former jail residents and their families to whom the money was to be returned. Interview with Jim Pingeon, Litigation Director, Prisoner Legal Services of Massachusetts, February 24, 2014.

59 Dannenberg 2011.

60 Kukurowski, Wagner, and Sakala 2014, 8.

61 Contract #C2763, www.dc.state.fl.us/business/contracts/c2763.pdf, accessed April 8, 2014.

62 One suit, *Byrd v. Goord* was decided in favor of the plaintiffs in 2005; a second, Matter of Walton *v. NYSDOCS* was decided against the plaintiffs in 2009 after several appeals. See http://ccrjustice.org/newsroom/press-releases/federal-judge-rules-constitutionality-kickback-contract-between-new-york-sta and also http://ccrjustice.org/ourcases/current-cases/walton-v-nysdocs, accessed March 3, 2014. See the court's repudiation of the plaintiff's argument that the commission awarded to the Department of Corrections by MCI constitutes a "taking."

63 The state now has low telephone rates and accepts no commission through its telephone contract. A contract announced by Commissioner of Corrections, Brian Fischer, in fall 2010 stipulated that there would be no connection fee for the calls and the per-minute fee would be reduced 64 percent. The cost of a 20 minute call would fall, therefore, from $2.48 to 96 cents; "Commissioner Fischer Lowers Phone Charges" 2010. Reform has occurred at the federal level as well. The organization of families of prisoners, together with coalitions of non-profit prison reform groups, prompted a 2013 Federal Communications Commission ruling that caps the rate on an interim basis. Although this ruling (if it is sustained against legal challenges), will reduce interstate charges, intrastate charges still remain a heavy burden on family resources; Rosen 2013, 2012; Gambos 2013. On the specifics of the FCC decision, see Petro 2013, Mai-Duc 2013, Hill 2012, Sasso 2014.

64 Prison Phone Justice, https://www.prisonphonejustice.org/, accessed May 11, 2015.

65 http://www.philly.com/philly/news/local/20131209_Reform_inmate_health-care_system.html#KAFRvj7xk2HWhD2j.99.

66 http://www.texastribune.org/2012/10/16/tdcj-inmates-paying-100-fee-health-care/.

67 Wagner 2014.

68 http://www.dc.state.fl.us/business/contracts/12-DC-8388-a.pdf, accessed April 8, 2014.

69 www.dc.state.fl.us/business/contracts/c2562. accessed April 8, 2014.

70 Trimble 2014.

71 Wagner 2014, para. 17 (no page number).

72 Ibid.

73 Ibid.

74 Matter of Walton 2009.

75 www.dc.state.fl.us/business/contracts/c2562, accessed April 8, 2014. In 2007–2008, the state's General Revenue Fund took in $30 million as a result of one canteen contract between the Florida Department of Corrections and the Keefe Commissary Network; Reutter 2009.

76 According to Mark S. Cacho, "Traditionally, the inmate welfare fund has satisfied this [the law library expenditure]"; Cacho 2003. In interviews Mary Katzenstein conducted in 2006, it was evident that both Virginia and Arizona relied on inmate trust funds to support their law library; interview with Doctor Lou Cei, Virginia Department of Corrections, September 18, 2006 and with James Hamm, Arizona, MiddleGround Advocacy group, September 14, 2006.

77 In Ohio, the practice of deducting money for prison expenses from family gifts to inmate accounts has been challenged, but to no avail; *State ex rel. Turner v.*

*Eberlin*, 117 Ohio St.3d 381, 2008-Ohio-1117. Pennsylvania courts have also explicitly approved deductions from gifts of money from friends and family; *Danysh v. Department of Corrections*, 845 A.2d 260 (Pa.Comm.2004). In this case, the majority claims that Pennsylvania statute supports the garnishment of gifts; 42 Pa.C.S. § 9728(b)(5). "The Legislature has not provided an exception for gifts placed in an inmate's personal account, and it does not require the Department to account for the source of all funds in an inmate's personal account before making deductions. The personal account of an inmate may be derived from various sources, including wages, gifts, and government benefits. The source of funds is of no moment."

78 "Our View, Debt to Society" 2009.
79 "Central Pa. County Mulls Using Prison Inmate Accounts" 2013.
80 Mahon 2013.
81 "Is It Fair and Legal for Inmates to Foot Their Room and Board?" 2004.
82 Miletich 1997.
83 Ibid.
84 http://www.prisontalk.com/forums/archive/index.php/t-181298.html, accessed May 10, 2014.
85 The population of people with financial obligations is very poor. Seventy percent, for instance, of all those with child support arrears (considerably higher, no doubt, for non-custodial parents in prison) earn anywhere from either next to no money to under $10,000; Congressional Research Service 2012; Sorensen, Sousa, and Schaner 2007.
86 Katzenstein and Nagrecha 2011, Nagrecha and Katzenstein 2015.
87 Beckett and Harris 2011.
88 Rosenthal and Weissman 2007.
89 Harris, Evans, and Beckett 2010, 1759.
90 Bannon, Nagrecha, and Diller 2010. Also, see the National Center for State Courts website with its listing of e-courses and manuals on the effective collections of fines and fees; http://www.ncsc.org/topics/financial/fines-costs-and-fees/resource-guide.aspx, accessed May 10, 2014. On the incentives to collect fines for local governments and private parties, see Roach 2014, Balko 2014.
91 Goffman 2009, 343; 2014.
92 "Poor people . . ." 2014.
93 ACLU and Columbia Legal Services 2014, 3.
94 Shapiro 2014.
95 Lane n.d.
96 Edsall 2014.
97 Shapiro 2014.
98 Johnson 2010.
99 Cammett 2012–2013.
100 Child support and the debate over deadbeat dads is an inestimably contentious issue around which there are vehement feelings and multiple truths. For a simple taste of the compelling arguments on all sides articulated by those who have lived the experience, see "40 users commented in 20 Years in Prison for Failing to Pay Child Support?" http://www.bloggernews.net/111673.
101 Glaze and Maruschak 2008; Center for Law and Social Policy 2011, 2.
102 Meyer and Warren 2011.
103 In Wisconsin, Milwaukee County (together with a few other Wisconsin counties) have taken a proactive approach to identifying non-custodial parents with the goal of suspending their required payments during the period they are in prison. See Noyes, Cancian, and Cuesta 2012.
104 Massachusetts Department of Corrections 2001, Thoennes 2002.
105 Carmon 2015 http://www.msnbc.com/msnbc/how-falling-behind-child-support-can-end-jail.
106 Ibid.
107 http://www.prisontalk.com/forums/archive/index.php/t-181298.html, accessed May 10, 2014.
108 ACLU and Columbia Legal Services 2014.
109 Roberts 2001.
110 Sorensen, Sousa and Schaner (2007) found that the practice of states assessing interest on a routine basis was the primary reason arrears have grown to such a staggering level in the nine large states they studied.
111 Miller and Mincy 2012.
112 Ibid.; Roberts 2001; Sorensen, Sousa and Schaner 2007.
113 Roberts 2001.
114 Congressional Research Service 2012; Sorensen, Sousa, and Schaner 2007.
115 Boggess, Price, and Rodriguez 2014. See also Visher and Courtney 2006; Western, Braga, David and Sirois 2014.
116 Data for the Fragile Families survey were collected in 20 U.S. cities with populations over 200,000, and city weights make the data representative of all births in those cities. In this analysis, we present information about 1,327 non-resident fathers who participated in the 9 Year Survey.
117 Turney, Schnittker, and Wildeman 2012; Naseer and LaVigne 2006.
118 By using propensity score matching to compare each man who was incarcerated with the man who most closely matches his risk of incarceration (using nearest neighbor matching), we calculated the average difference between incarcerated and comparable non-incarcerated men in our sample.
119 Sacks 2007.
120 *State ex. rel. Mickey Phillips v. Gwen Knox*, Court of Appeals of Tennessee at Knoxville, August 30, 2001 session; http://michaelguth.com/knoxii.htm, accessed May 11, 2014.

121 Michael Guth brief in *State ex. rel Mickey Phillips v. Gwen Knox* (2001), brief submitted October 25, 1999; http://michaelguth.com/briefi.htm, accessed May 11, 2014.

122 *Bearden v. Georgia* 461 U.S. 660 1983.

123 Ibid. at 661, emphasis added. As we note later, the Supreme Court defined bona fide efforts to include the endeavor "to seek employment ***or borrow money*** in order to pay the fine or restitution"; 461 U.S. 660 at 668, emphasis added. The most recent decision, *Turner v. Rogers* 387 S. C. 142, 2011, concerned the right to counsel of an indigent obligor who had failed to pay child support (e.g., in a civil proceeding). Spelling out the procedural protections necessary to ensure due process, the majority held that while the Constitution did not require the individual to receive the assistance of an attorney to protect his liberty interest in avoiding incarceration, protections needed to be in place to assist him in proving the non-willfulness of his failure to pay. These included adequate notice of the importance of the ability to pay inquiry, an opportunity to present and refute evidence of an ability to pay, and a court finding of an ability to pay. Evidence of willful nonpayment of debt lies, by this perspective, in an individual's ability to demonstrate involuntary indigence and unintended inaction. The question, then, of family involvement arises in the process of whether courts consider that an individual needs to demonstrate inability to borrow as evidence of involuntary indigence.

124 461 U.S. 660 (1983) at 661.

125 See for instance in an appeal before the Superior Court of Pennsylvania case citing the loan of a family member: "At the September 9, 2011 hearing, both parties agreed that Appellant had received wages under the table for his work as an automobile mechanic and an ice cream truck driver, but no evidence was presented on the amount of money Appellant actually made. **Appellant indicated he could pay $1,000.00 borrowed from family members towards his arrears**; emphasis added. The trial court rejected this offer, stating it was "[t]oo little, too late." N.T., 9/9/11, at 7. The trial court found Appellant to be in contempt and imposed six months incarceration "based on Appellant's dismal payment history despite having some form of employment during the two year period in which he made no payments"; Trial Court Opinion, 1/31/12, at 2. Further, the trial court set the purge amount at $4,244.00, the full amount of arrears due. http://caselaw.findlaw.com/pa-superior-court/1605043.html.

126 Texas Family Code 157.008, http://law.onecle.com/texas/family/157.008.00.html.

127 Gottschalk 2014.

128 Ewald 2011; 2012 Lerman and Weaver 2014; Beckett and Herbert 2010; Fergus forthcoming.

129 Edsall 2014.

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