The Unintended Sentence of Criminal Justice Debt

I. Introduction
Fifty years after the launch of Vera’s first demonstration project, the Manhattan Bail Project, Vera continues to identify problems and propose solutions in order to improve the systems people rely on for justice. The present economic crisis has spurred jurisdictions throughout the United States to find creative ways to increase revenue and hold offenders accountable for their crimes. One way that jurisdictions have sought to achieve these goals is by shifting the cost of prosecutions, convictions, and supervision onto offenders. Increases in both the number and amount of court fees, fines, and surcharges have become standard practice in courthouses throughout the nation.1 A recent report from the Brennan Center for Justice studied the criminal justice debt practices of fifteen states and found that each attached mandatory fees and fines at conviction, and all but one assessed fees and fines regardless of offenders’ ability to pay.2 This report and several others have shown that imposing criminal justice debt can interfere with reentry and rehabilitation.3 It is therefore cause for concern that not one of the states surveyed had a process in place to measure the impact of criminal justice debts and collections practices on individuals.4 Because of the dearth of research and measurement in this area, these and other jurisdictions may be unaware that their efforts to increase revenue and hold offenders accountable for the cost of their crimes, although well intentioned, are partially undermining the larger efforts of their criminal justice systems.

In response to this identified problem, Vera is exploring a potential demonstration project that would help jurisdictions generate revenue and hold offenders accountable for their crimes without the unintended negative justice outcomes. If approved, the project would offer individuals credit toward legal financial obligations in exchange for participation in programs that address criminogenic needs. In the tradition of the Manhattan Bail Project, Vera hopes this innovation could eliminate a practice that unintentionally but unfairly burdens indigent individuals involved in the criminal justice system. If effective, it could model a way to hold offenders accountable, improve public safety, and give taxpayers a better return on their public-safety investment.

This article describes Vera’s current process for developing new demonstration projects—which is remarkably consistent with the original method that Vera cofounders Herb Sturz and Louis Schweitzer used in 1961—and then discusses the Fines and Fees Initiative.

II. Demonstration Projects
Since its inception, Vera has used research, rigorous data analysis, and expertise to identify gaps and inefficiencies in the justice system and then develop projects that demonstrate innovative solutions. The first step in any demonstration project is identifying a problem. Vera staff often learn of needs in the course of their work, as well as through their diverse personal and professional experiences. In other instances, external practitioners, government officials, and even system-involved individuals have approached Vera with a problem and requested assistance in developing a solution. In exploring the issue, Vera conducts comprehensive research and data analysis to understand the cause and scope of the need and to locate evidence of best practices in the area.

Next, Vera designs an approach that will serve both the government and the individuals involved in the system. Solutions must be innovative, pioneering a new practice rather than creating incremental change; they must advance justice for a significant number of people and have the potential for impact beyond the local setting; and, critically, a government agency must be willing to work with Vera to develop the innovation.

Once a project is designed and initial funding secured, Vera implements the demonstration project with a government partner or partners. An essential component is testing and evaluation. Systematic analysis occurs at every stage in order to reveal the reasons for operational success or failure. This feedback helps staff improve performance, as well as aids others who may wish to build on Vera’s work. If an initial process evaluation indicates successful delivery of services to the target population, Vera then evaluates the impact the project may be having on different success indicators, such as recidivism, employment, education, or other outcomes.6

By definition, a demonstration project has a finite life span, but if the project proves to be successful, Vera works...
to institutionalize the services in the justice system, ideally on a larger scale. A project may be merged into another organization or a government agency, or it may become its own independent nonprofit organization.

III. The Fines and Fees Initiative

The Fines and Fees Initiative is in the first stage of the demonstration project process: A need has been identified, and we are now researching whether it meets Vera’s criteria. A review of the literature and interviews with stakeholders confirm that legal financial obligations impose burdens on individuals that can have repercussions across the justice system and the community.

The idea behind this initiative came from a pilot program in Boston called the Clapham Set, developed by Robert “Bobby” Constantino, who is now a senior program associate at Vera’s Center on Sentencing and Corrections. In collaboration with judges in the Roxbury Division of the Boston Municipal Court in Suffolk County, Massachusetts, the Clapham Set offered young men with felony convictions the opportunity to earn credit toward their criminal justice debt by participating in counseling, substance abuse treatment, and workforce development programs. Although small (serving only twenty-six men), the program enjoyed anecdotal success. Vera hopes the Clapham Set might serve as a model that could be scaled up and rigorously evaluated.

A. The Consequences of Criminal Justice Debt

National experts and researchers are taking notice of the growing number of court fees, fines, and surcharges imposed on individuals involved in the criminal justice system; among others, these include public defender fees, mandatory surcharges for a conviction, room-and-board incarceration fees, parole and probation supervision fees, and DNA sample kit fees. Jurisdictions rely on such penalties to hold individuals accountable for their crimes and generate revenue in the face of increasingly tighter budgets. However, a growing body of evidence now suggests that criminal justice debt leads to serious unintended consequences across the justice system and the community.

1. Effect on the Individual

Financial penalties often turn into unmanageable debts that interfere with reentry and rehabilitation because of the financial and emotional strain on economically unstable individuals, as well as the criminal and civil consequences of failure to pay.

Debt places a heavy burden on those involved in the criminal justice system. Although individual criminal penalties may be small, they can quickly add up to hundreds or even thousands of dollars. Although these fines and fees help fund many aspects of the criminal justice system, they are levied on a population that is, for the most part, unable to pay: Approximately 80 percent to 90 percent of those charged with a crime qualify for indigent defense, 15 percent to 27 percent of prisoners anticipate going to a homeless shelter upon release, and up to 60 percent are unemployed one year after release. Even if former inmates find employment, their prior incarceration keeps them in the lowest earning brackets and reduces males’ annual earnings by approximately 40 percent. However, courts generally do not waive criminal justice debts for indigence or adjust them according to income. Some jurisdictions are bound by statutes and court rules, whereas others have discretion but do not exercise it. As a result, criminal justice debt is competing for extremely scarce resources against offenders’ other pressing financial obligations, such as rent, food, and child support.

This debt may also take an emotional and psychological toll on offenders. Because cases usually remain open until outstanding debts are paid, probation and parole supervision terms are often extended. As a result, the threat of rearrest or reincarceration for a technical violation of probation or parole is ever present, and criminal justice debt continues to pile up. With limited ability to find employment and make payments, the pressure on an offender to pay the debt or remain in the system may lead to heightened feelings of frustration and futility.

Failure to pay these debts often has criminal consequences that inhibit successful reentry. Many jurisdictions allow people to be arrested for failure to pay or for not appearing at debt-related hearings. Although the Supreme Court has held that courts cannot imprison debtors for their inability pay, courts often impose jail time by finding technical violations of probation and parole. Furthermore, although some jurisdictions credit these jail stays against fines and fees, other states charge additional penalties for rearrest and reincarceration, adding to the existing debt.

Courts may also condition eligibility for parole on the payment of debt, with the result that individuals who cannot pay end up staying in prison for longer periods of time. Or, as noted, courts may extend probation or parole terms until payment is complete, increasing the likelihood that individuals will be reincarcerated for technical violations of their supervision. In both cases, fees continue to accumulate as individuals remain in the system.

In addition to criminal consequences, failure to pay debt may also result in civil repercussions that increase offenders’ financial strain and interfere with their ability to re-create ties within the community. Under federal law, for instance, people who violate their probation or parole may become ineligible for federal benefits, such as Temporary Assistance to Needy Families, food stamps, Supplemental Security Income, low-income housing, and housing assistance. In addition, many jurisdictions suspend driver’s licenses for missed payments, creating a hardship for people who must drive to work, court hearings, court-mandated treatment sessions, or to visit family. Moreover, driving with a suspended license often brings severe financial penalties, further extending the cycle of court debt.

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Some jurisdictions convert debt into civil judgments that can be enforced through wage garnishment and liens against personal property.24 Civil judgments can damage credit scores, making it difficult to obtain loans or mortgages or be approved for public or rental housing.25 Low credit scores also interfere with employment, because employers increasingly run credit checks to screen for so-called bad character.26

Many jurisdictions also seek to enforce debt through interest or late fees or via private collection companies, so that low-income individuals end up owing more than people who are able to pay up front. These additional costs can be quite large. One state, for instance, charges a flat late payment fee of $100,27 and some private collection companies impose a surcharge of 40 percent of the amount of debt to be collected.28

2. Effect on the Community The evidence suggests that financial penalties may undermine public safety, as well. Knowing that probation and parole officers will attempt to collect the debts, many probationers and parolees skip appointments and abscond from supervision rather than face the consequences of being unable to pay.29 Less contact with supervised individuals means less opportunity to ensure that they are complying with their supervision terms, such as substance abuse testing and treatment, mental health counseling, and noncontact with other convicted individuals.

In other cases, the fees and fines serve as a disincentive to find legitimate work. Those with high debt may seek employment in the underground economy to avoid garnishment of their wages,30 and many will commit new crimes to pay their financial obligations, further victimizing their communities.31

3. Effect on the System Although jurisdictions rely on court fees and fines to fund parts of their criminal justice systems, there is no evidence that collecting such costs results in a net financial gain.32 These penalties are primarily levied on individuals whom the court has deemed indigent and thus often go unpaid, and collection practices are expensive, both in terms of resources and personnel. States have not systematically tracked data on penalties imposed or on collection efforts, but anecdotal evidence suggests that the cost of enforcement outweighs revenue.

For example, one county arrested a homeless construction worker for failing to pay $498 in fines and fees from a marijuana possession conviction. He spent five months in jail, costing the county more than $3,000.33 In another state, people eligible for parole are sometimes kept in prison for months for failure to pay as little as $60, despite the fact that holding someone in prison costs $100 a day.34

In addition to uncertain financial gains, fees and fines can threaten the independence and efficiency of the judicial system. Having judges and parole or probation officers act as collection agents, especially in jurisdictions where the funds go directly into the respective agency’s budget, interferes with their ability to be impartial adjudicators or officers dedicated to public safety, rehabilitation, and reentry. Judges have reported being pressured by colleagues to collect the penalties or receive fewer operating funds.35 Probation and parole officers who focus on collection efforts do so at the expense of other priorities, such as working to change an offender’s behavior.

B. Project Design

Like Sturz and Schweitzer fifty years ago, Vera recognizes the pressing need for innovative change to address counterproductive practices. Given the impact of criminal justice debt on individuals’ financial stability, as well as on public safety and the criminal justice system, the Fines and Fees Initiative hopes to engage government agencies, community nonprofits, and affected individuals in a collaborative project designed to enhance employability and other rehabilitative outcomes. If the project is approved and funded, Vera intends to partner with organizations that have established workforce development and treatment programs in order to devise and implement a solution that offers individuals an opportunity to earn credit toward outstanding fines and fees in exchange for participating in training and services that will address criminogenic needs and increase their chances of success.

Through participation in these programs, individuals would still be held accountable for their crimes. In addition, by offering an alternative to those who truly cannot pay, the project would increase the efficiency of justice systems by focusing collection resources only on individuals from whom they are likely to see financial returns. Thus, the goals of accountability and revenue generation would be sustained while enhancing reentry and rehabilitative outcomes.

IV. Conclusion

Although advocacy is an important tool for institutional reform, actually demonstrating an evidence-based alternative, as Sturz and Schweitzer did fifty years ago, can usher in change more effectively. In addition, demonstration projects allow government agencies to partner in the design and implementation of the solution, giving them input in and ownership of the final product.

With this goal in mind, Vera’s Fines and Fees Initiative hopes to develop an evidence-based approach to legal financial obligations that would allow jurisdictions to continue to generate revenue and hold offenders accountable for the cost of their crimes while also eliminating the unintended consequences that impede successful reentry.

Notes

1 See Alicia Bannon et al., Criminal Justice Debt: A Barrier to Reentry 1 (Brennan Center for Justice, 2010); Alan Rosenthal & Marcha Weissman, Sentencing for Dollars: The Financial Consequences of a Criminal Conviction 13 (Justice Strategies, 2007).

2 Bannon et al., supra note 1.
3 BANNON ET AL., supra note 1, at 13-31; ROSENTHAL & WEISSMAN, supra note 1, at 16-25; AMERICAN CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA’S NEW DEBTORS’ PRISONS 6-10 (2010); RACHEL L. MCLEAN & MICHAEL D. THOMPSON, REFERING DEBTS 1 (Bureau of Justice Assistance and the Council of State Governments, 2007).

4 BANNON ET AL., supra note 1, at 10.

5 As of July 2011, Vera has three active demonstration projects and fourteen spin-off organizations (independent nonprofit organizations that have been created from successful demonstration projects). The current demonstration projects include Adolescent Portable Therapy, which provides consistent drug treatment for young people as they move through multiple justice agencies; the Guardianship Project, which provides high-quality, low-cost guardianship services for people who are no longer able to care for themselves and have no family or friends able to do so; and Common Justice, which facilitates a dialogue between violent offenders and their victims to develop a constructive response to the crime as an alternative to incarceration. Vera Institute of Justice, Planning and Demonstration Projects, http://www.vera.org/content/planning-demonstration-projects.


7 ROSENTHAL & WEISSMAN, supra note 1, at 13.

8 BANNON ET AL., supra note 1, at 1.

9 Id. at 4.


11 See AMERICAN CIVIL LIBERTIES UNION, supra note 3.

12 In New York, for instance, judges do not have the discretion to waive mandatory surcharges for conviction, crime victim assistance fees, sex offender registration fees, or DNA data-bank fees (NY CPL § 420.35(2)).

13 BANNON ET AL., supra note 1, at 13.

14 Alexes Harris et al., Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States, 115 AM. J. SOC. 1784 (2010); BANNON ET AL., supra note 1, at 25; AMERICAN CIVIL LIBERTIES UNION, supra note 3, at 6.

15 See AMERICAN CIVIL LIBERTIES UNION, supra note 3, at 43; REBEKAH DILLER, THE HIDDEN COSTS OF FLORIDA’S CRIMINAL JUSTICE FEES 15 (Brennan Center for Justice, 2010).


17 BANNON ET AL., supra note 1, at 25.

18 See Harris et al., supra note 14, at 1784; AMERICAN CIVIL LIBERTIES UNION, supra note 3, at 43.

19 BANNON ET AL., supra note 1, at 22.

20 Id. at 28; Monica Lewandowski, Barred from Bankruptcy: Recently Incarcerated Debtors in and Outside Bankruptcy, 34 NYU REV. L. & SOC. CHANGES 221 (2010).

21 DILLER, supra note 15, at 2; BANNON ET AL., supra note 1, at 24.

22 See, e.g., NY CPL 420.10(6).

23 AMERICAN CIVIL LIBERTIES UNION, supra note 3, at 6; BANNON ET AL., supra note 1, at 27.


25 BANNON ET AL., supra note 1, at 17.

26 DILLER, supra note 15, at 21.

27 Harris et al., supra note 14, at 1782.

28 Id. at 1781.

29 Id. at 1785.

30 ROSENTHAL & WEISSMAN, supra note 1, at 2; DILLER, supra note 15, at 9.

31 AMERICAN CIVIL LIBERTIES UNION, supra note 3, at 6.

32 BANNON ET AL., supra note 1, at 22.

33 AMERICAN CIVIL LIBERTIES UNION, supra note 3, at 6.