

The predatory dimensions of criminal justice

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Abstract

Over the past 35 years, public and private actors have turned US criminal justice institutions into a vast network of revenue-generating operations. Today, practices such as fines, fees, forfeitures, prison charges, and bail premiums transfer billions of dollars from oppressed communities to governments and corporations. Guided by scholarship on racial capitalism, we argue that to understand how and why criminal justice operates as it does today, one must attend to its predatory dimensions. Analytically and politically, the concept of predation connects diverse forms of criminal legal takings to one another, to the extractive regimes of earlier eras, and to contemporary businesses that financially exploit subjugated communities. Analyses that focus on predatory relations encourage a reconsideration of some dominant understandings in the study of criminal justice today.

In 2016, Minnesota police killed Philando Castile in his car. Over the previous 14 years, officers had stopped Castile 49 times, issuing 82 citations for minor infractions that cost more than \$7000 ([1](#)). At a rally for her deceased son, Valerie Castile spoke plainly:

I told my son once before he had got murdered, “These people ain’t even looking at you like a man, they looking at you as revenue...Because every time they stop you, they are going to give you a ticket, they are going to tow your car, so that ain’t nothing but money.” ([2](#))

Castile’s experiences of roadside injustice are consistent with a long history of racially authoritarian policing in the United States ([3](#)). Yet they also reflect pronounced change. Over the past 35 years, public and private actors have turned criminal justice institutions into a vast network of revenue-generating operations. Today, practices such as fines, fees, forfeiture procedures, prison charges, and bail premiums extract billions of dollars, disproportionately from race-class subjugated (RCS) communities ([4](#)), and deliver them to governments and corporations.

Guided by scholarship on racial capitalism, we argue that to understand how and why criminal justice operates as it does today, one must attend to its predatory dimensions. Indeed, analyses that foreground predation encourage a reconsideration of some dominant understandings in the study of policing and punishment.

Predation and criminal justice

Throughout American history, criminal justice has played a critical role in racialized regimes of resource extraction ([5](#)). Slave patrols enforced chattel slavery, and military-policing operations facilitated Native dispossession. After the Civil War, prison industries flourished in the North, disproportionately extracting labor from ethnic groups deemed racially inferior. In the South, white elites used chain gangs and convict leasing agreements to rebuild the region. Landowners and merchants relied on criminal codes to trap Black southerners in ruthlessly exploitative debt, credit, and labor arrangements.

Predation connects these histories to the present. The concept specifies relations and practices that (i) are based on a subordinated group's oppression and marginalization and (ii) leverage the group's vulnerabilities and needs to pursue projects of expropriation, extreme exploitation, and/or dispossession. The concept of predation draws diverse criminal legal operations into a common frame of analysis that begins with dominant-subordinate relations and centers questions of power and wealth. As we use the term, "predatory" does not refer to individuals or their diverse motives; it refers to a kind of social relation and its associated practices.

Leading accounts of criminal justice and social inequality focus on dynamics of exclusion, emphasizing, for example, how people marked as "felons" encounter barriers to employment, housing, education, and public assistance (6). Such analyses tell half of a larger story. To see the rest, one must analyze a process that scholars such as Taylor theorize as "predatory inclusion" (7). Exclusionary practices create group-specific needs and vulnerabilities that can be exploited for profit. The unbanked, for instance, become ripe targets for payday lenders that offer access to quick money at usurious prices. In this view, deprivations are more than just hardships endured at the bottom of the social order; they also supply the basis for predatory projects that enrich advantaged beneficiaries at the top.

In the criminal justice field, practices that divide and exclude—for example, through criminalization, imprisonment, and the policing of social and residential boundaries—underwrite projects of predatory inclusion. The repressive effects of policing and punishment find their counterpart in practices that produce and position targets for resource takings.

By foregrounding such dynamics, the concept of predation provides distinctive terms for analyzing historical continuity and change. Now as in the past, criminal justice practices facilitate extractive projects that underwrite state development and capital accumulation. Nevertheless, several features distinguish the present era from earlier periods.

The dramatic growth of policing and punishment since the 1970s greatly expanded the scale of predatory operations. At the same time, the center of gravity in criminal legal predation shifted from labor to finance. Indeed, the present era is distinguished less by its "criminalization of poverty" or its racialized use of "justice" for predatory purposes (both of which are long-standing) than by the financialization of criminal justice itself. Consistent with developments that financialized the broader political economy (8), predatory criminal justice practices pivoted toward tools that charge prices, create debts, and pursue collections.

Prison labor exploits the convicted individual at a particular (carceral) site. New methods of financial takings allowed extractive practices to spread throughout criminal legal institutions and turned justice-involved people into entry points for practices that drain resources from larger social networks. Financialization also expanded predation temporally: By imposing debts, legal authorities lay claim to future resources, enhancing their ability to take what poor communities, by definition, lack.

From this perspective, the criminal legal system can be seen as part of a broader class of predatory enterprises, such as payday lenders, subprime mortgage loans, and high-interest credit

card traps. All these operations disproportionately target RCS communities for revenue projects based on steep financial charges, perpetual debt traps, and aggressive collection efforts. Predatory businesses turn to criminal courts to enforce payments (9), while fees imposed by these same courts drive many legal debtors into the arms of predatory lenders (10).

Predation and racial capitalism

Studies of racial capitalism explore the coevolving relationship between liberal capitalism and racial domination, as well as their intersections with other axes of oppression (5). Scholarship in this tradition clarifies how capitalist projects of exploitation and dispossession have structured shifting constructions of race and racial subjugation. Conversely, it illuminates how the relations of inequality that make capital accumulation possible—for example, owner-worker, creditor-debtor, breadwinner-caretaker, enslaver-enslaved, colonizer-dispossessed—have been organized by differences produced through racism, sexism, and other “isms” beyond class (11).

Race and class are long-standing concerns in the study of US policing and punishment. Yet conventional research rarely engages canonical studies of racial capitalism, such as the works of Walter Rodney, Ida B. Wells, Manning Marable, Barbara Fields, Cedric Robinson, and W. E. B. Du Bois (5). Race-and-class-based predation has been a central preoccupation of this literature, with scholars such as Du Bois and Marable emphasizing the historically specific ways that criminal codes and practices have supported racialized modes of capital accumulation.

Against this backdrop, predation offers a generative concept for efforts to understand mass policing and incarceration today. Scholars have long argued that criminal justice institutions serve as tools for controlling subjugated groups that are deemed threatening, disruptive, and unproductive. In the era of mass incarceration, leading accounts frame this social control as a matter of containing and managing “*a surplus population* devoid of market utility” [(12), p. 105]. Such analyses illuminate social control but do not connect it to dynamics of predatory inclusion. Racialized practices of penal control do more than just contain and manage; they turn people who might otherwise be “devoid of market utility” into sources of revenue.

To understand criminal justice predation today, one must clarify how and why it differs from earlier formations. Studies of racial capitalism emphasize how the prevailing terms of race and political economy shift over time, often in ways that change the interface of predation and criminal justice. The political struggles of the Civil Rights era, for example, erected barriers to building predatory schemes on explicitly racial foundations. In subsequent decades, the expansion of policing and punishment produced new revenue needs alongside new capacities for resource extraction. In these same decades, privatization and financialization turned governance itself into a collection of sites for capital investment and profit.

The new modes of predation that emerged on this landscape in the 1980s and ‘90s received little attention in studies that focused on the causes and consequences of mass policing and punishment. In leading accounts, this era of punitive racial politics accelerated bipartisan initiatives that began earlier, in the 1960s and ‘70s (13, 14). Recent research on “monetary sanctions” integrates financial takings into this framework by defining fines and fees as supplemental forms of punishment produced by the same forces that expanded policing and

imprisonment (15). By contrast, we distinguish predation from punishment and treat their relationship as an empirical question.

There should be no confusion: Predatory revenue-seeking did not drive the turn toward mass policing and incarceration. Rather, criminal justice growth served as one of several major developments that, together, enabled the rise of new predatory operations.

In the 1980s, state and local governments faced severe fiscal pressures, stemming from several sources: tax cuts for corporations and the rich, reductions in federal funding supports, costly responsibilities shifted downward from the federal government, and spiraling criminal justice expenditures. Desperate to supplement their budgets, public officials began to reimagine criminal legal operations as revenue generators and levy a host of new financial charges on the “consumers” of policing, adjudication, and punishment.

The path forward was smoothed by a racialized politics of law and order that demanded ever-tougher efforts to make criminals pay. RCS communities, already the most heavily policed and punished, became the social and spatial epicenters for new extractive operations that radiated outward to a larger number of (mostly disadvantaged) Americans (16).

In this same period, criminal justice became a far more attractive site for corporate investors (17). The rapid growth of incarceration left public authorities scrambling to address unconstitutional levels of jail and prison overcrowding. Entrepreneurs developed new business models that, they claimed, would help state agencies overcome their cost and management problems. Corporate interests spent millions on political action to remove barriers to entry and install for-profit operations throughout the field. Increasingly, governments outsourced costly responsibilities and, in many cases, generated revenues through profit-sharing agreements.

Predation in practice

Outside RCS communities, the steady expansion of financial takings drew so little public attention that many Americans were shocked when a 2015 US Department of Justice investigation revealed that police and courts in Ferguson, Missouri, were acting as agents of race-targeted plunder (18). City officials budgeted for “sizeable increases” in fines and fees each year, exhorted police and courts to produce larger cash flows, and closely monitored changes in revenue delivered [(18), p. 2]. Fines and fees (overwhelmingly imposed on Black residents) provided the city’s second largest source of local revenue, creating dedicated funding for a wide range of public services, an \$8 million fire hall, a \$3.7 million renovation to the police station, and an 8% raise for all municipal employees [(19), p. 932].

The beneficiaries of this regime included most residents outside the city’s most policed and punished communities. In this respect, Ferguson was no anomaly. Across the nation, predatory criminal justice revenues subsidize public services, pay for middle-class jobs in businesses and governments, and lessen the tax burdens of advantaged citizens. They fund corporate profits, lavish CEO salaries, and lucrative returns for Wall Street banks and investors. Criminal justice predation, in this sense, shapes life conditions not only in the communities it targets but also among more privileged Americans who are scarcely aware of its existence.

Throughout the United States, police stop and ticket drivers, bicyclists, and pedestrians, most intensively in RCS communities. In 2016, for example, the city of Chicago brought in \$264 million from auto-related charges alone, accounting for about 7% of the city’s \$3.6 billion operating budget (20). Policing also generates substantial revenue through asset forfeiture, a procedure for seizing cash and goods based solely on an allegation of illicit origins. Justified as a method to bring down drug kingpins and terrorists, asset forfeiture is mostly used to pursue large numbers of small takings from poor and working-class people. Between 2000 and 2019, federal and state governments seized assets worth a total of at least \$68.8 billion [(21), p. 5]. Shockingly, and for the first time, the overall value of asset forfeitures in 2014 surpassed total losses from burglaries nationwide (22).

Revenue production has also become a key responsibility of criminal courts. In a landmark study of Washington state, Harris documented the proliferation of court fees and fines since the 1990s (23). Today, most states allow criminal courts to bill indigent defendants for legal representation, and some even charge fees for exercising the right to a jury trial. Courts routinely impose a costly array of “surcharges” on convicted persons, often on top of fines, which have grown steeper and more numerous. Michigan, for example, generates roughly \$290 million from surcharges per year, making up about a quarter of all funding for the state’s trial courts [(24), p. 7]. The costs of court fees for individuals can be staggering. A case from Allegany County, Pennsylvania, provides a striking example: A person who stole retail goods worth \$121 was sentenced to pay \$121 in restitution plus an additional \$1500.75 in fees, mostly unrelated to the crime (see Fig. 1).

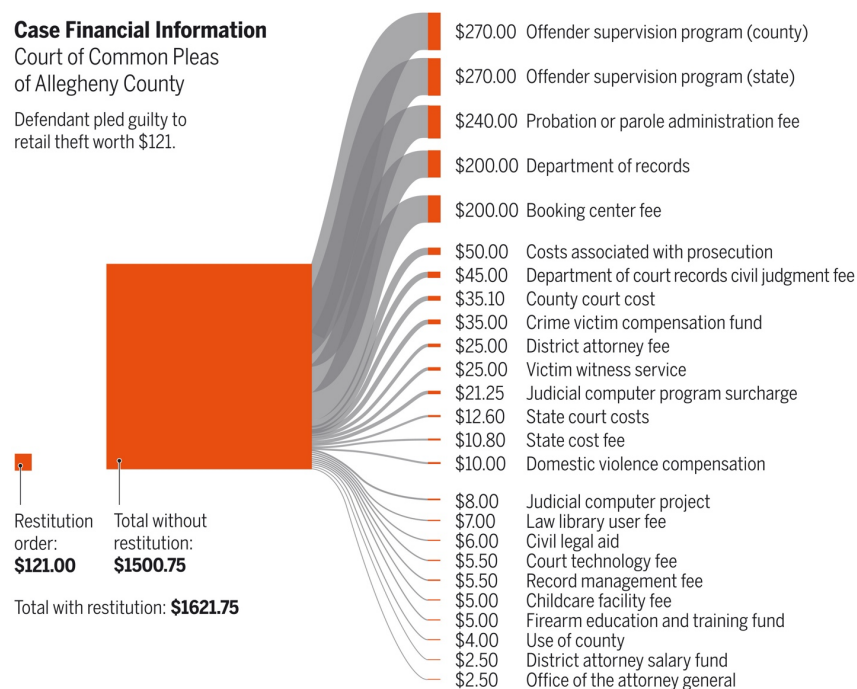


Fig. 1. Revenue production has become a key responsibility of criminal courts. Courts routinely impose “surcharges” on convicted persons, often on top of fines. For example, in Allegheny County, Pennsylvania, a person who pled guilty to theft of retail goods worth \$121 was sentenced to pay \$121 in restitution plus an additional \$1500.75 in fees, mostly unrelated to the crime. Data are from (38).

Courts also funnel defendants into the bail bond industry. Between 1990 and 2009, the frequency and size of monetary bail conditions set by judges in large counties rose substantially (25). Required bail amounts are routinely set beyond the financial reach of defendants. To secure pretrial release, defendants often must turn to bail bond companies and pay nonrefundable premiums (typically 10% of the bail). The full amount of money siphoned from poor communities by the bail industry is unknown because, unlike government agencies, private businesses are not obligated to disclose financial records. In 2012, however, the big insurance companies that underwrite bail contracts secured about \$13.5 billion in bonds (26). Local “mom-and-pop” storefronts are the visible face of commercial bail, but corporate underwriters, owned in many cases by larger conglomerates and private equity firms, reap the lion’s share of profits.

In jails and prisons, the accused and convicted are targeted by a further complex of revenue-generating practices (27). Today, almost every state charges imprisoned people “pay-to-stay fees” for costs such as room and board, medical and dental care, clothing, and toiletries. Governments also generate funds by selling corporations access to incarcerated populations. The companies exploit imprisoned people as a cheap source of labor and as a captive market for overpriced goods and services. In return for granting access, public agencies typically get a slice of the profits.

In this manner, telecom companies such as Securus and Global Tel-Link (GTL) have turned phone calls, video visitation, e-tablets, and other connections to the outside world into a \$1.6 billion industry [(17), p. 73]. Carceral banking companies charge families and friends to deposit funds that imprisoned people need to buy basic necessities from commissaries, make phone calls, pay for medical services, and so forth. JPay, a leader in the field, brings in nearly \$144 million in annual revenue [(27), p. 61]. In recent years, private equity firms have bought out some of the most prominent businesses in the sector (including JPay, Securus, and GTL), delivering the profits from carceral predation to a wider array of investors, including Wall Street banks and public pension funds.

Meanwhile, the corporations that manage private jails, prisons, and immigrant detention facilities, such as CoreCivic and GEO Group, have turned government contracts and extractive carceral practices into a \$5 billion industry [(17), p. 30]. These publicly traded companies serve as investment vehicles for shareholders, as well as the banks that finance them.

Similar developments have transformed community supervision. From 1990 to 2014, the number of states charging people for their own probation and parole rose from 26 to 44 (28). Some states outsource probation supervision to for-profit companies, and most hire businesses to provide technologies and services. As of 2014, every state except Hawaii charged people on supervision for their own electronic monitoring (28).

As police and courts pursue payments on legal debts, they also act as enforcers for debts generated outside the field itself, such as child-support payments that public welfare agencies claim as “reimbursements” and money owed to private landlords, payday lenders, health care providers, credit card companies, and the like. When people fall behind on such payments, judges routinely declare them “willfully delinquent” and require them to serve time in jail (8).

Consequences for communities

By beginning with dominant-subordinate group relations, the concept of predation decenters the policed, accused, or convicted individual. Criminal justice predation operates at the community level, organized by various axes of social inequality. Imprisoned individuals, for example, function as entry points for what Katzenstein and Waller describe as “an invisible system of revenue and taxation that exploits the ties of family dependency” [(29), p. 644].

In RCS communities, such takings operate as a substantial source of wealth depletion and hardship (10). Fearing harsh reprisals for nonpayment, legal debtors and their kin drain what little resources they have. They forgo meals, medical care, and rent payments. They sell their blood and turn to predatory lenders. They set aside life goals and accept low-end jobs on whatever terms they can get. In a study of supervision fees, one probationer explained:

I do without sometimes. I pick and choose what I eat. When I’ve worked in fast food, I’ll take home what we didn’t use... Don’t buy shoes. Don’t buy extra clothes. I need two hearing aids. I’ve been taking the money I have saved up for hearing aids to pay for this [probation]. [(30), p. 2]

The gendered organization of care in the United States combines with the race-and-class targeting of criminal justice to make the financial burdens of predation distinctively heavy for women from RCS communities (31). In ethnographic research conducted as a bail bond agent, one of us (Page) observed women disproportionately paying costly bail premiums and accepting onerous cosigning duties because they felt they had no choice. A Native American woman whose partner was charged with statutory rape, for example, felt forced to bail out her partner “for the kids.” The defendant’s mother was furious with her son but helped arrange his bail because, as she put it, the man was her “baby” [(31), pp. 161–162].

On behalf of loved ones, women (as mothers, wives, girlfriends, daughters, aunts, sisters, or friends) drain their savings, work extra hours, and skip utility, rent, and mortgage payments. A formerly incarcerated person told researchers:

Everything that was put into bailing me out was everything my mother had in savings, and she borrowed some money from my grandparents. She was back to working paycheck to paycheck. Eventually, about a year and a half after being locked up, my mother had to give up the house she loved and move back to an apartment. [(32), p. 14]

Costly financial assistance of this sort can sow frustration and discord in relationships that are vital for personal and social well-being, weakening commitments to mutual aid as well as networks of emotional and material support.

As it deepens poverty and hardship, predation also reconstructs citizenship. Criminal legal authorities engage some Americans as equal citizens, deserving of protection, service, and justice, while mining others for dollars and subjecting them to ongoing, debt-based social control. In so doing, they can teach potent lessons about racial hierarchy, civic standing, law, and the state (3, 33). The meaning and experience of citizenship becomes tethered to an insistent

question: What does it mean to be treated—by one’s own government and in the name of law and justice—as a target of plunder?

Legal debtors become “perpetual subjects of the criminal justice system who at any time can be called to answer for their nonpayment and may even be incarcerated” [(23), p. 73]. Failures to pay can lead to revocations of probation or parole, driver’s license suspensions, exclusions from public programs, and even the stripping of voting rights (16). Legal debtors live in fear of the consequences that might result from an ordinary encounter with law enforcement or a missed court date.

The ongoing threats of life disruption and state violence can be terrifying. As a respondent in one study put it: “[Legal debt] is overwhelming, [it] causes anxiety. I go to therapy because you are always scared they will be knocking at your door. I have started using [drugs] because of the anxiety” [(34), p. 19]. This haunting effect of state power is likely to be especially fraught for Black Americans, who have endured racist and authoritarian state violence for centuries and may reasonably fear that ordinary interactions with police will turn deadly (3).

Political action and social science

Throughout history, people have fought back against predation. Today is no different. The past two decades have produced prison labor strikes, protests led by RCS communities, lobbying campaigns, and other efforts to reform or abolish predatory criminal legal practices. Activists have led divestment campaigns, and public interest lawyers have sued governments and corporations for revenue-driven rights violations.

Across a fragmented field of issue- and jurisdiction-specific campaigns, political action has produced a modest, but growing, collection of victories (35). In several states and localities, phone-justice campaigns have reduced or eliminated jail and prison telecom charges. A small number of states and counties have pared back fines and fees for juveniles and adults. Advocates have pushed some jurisdictions to curb debt-based driver’s license suspensions and jailing practices. Bail reformers have pressured several states and localities into imposing limits on pretrial profiteering. Left and liberal organizations have sometimes found common ground with libertarians in the fight against asset forfeiture, producing successful legal and legislative challenges. Public shaming campaigns have led some large banks to cut ties with for-profit prison corporations.

Scholars have worked closely with many of these efforts, learning from affected communities and activists, producing research to inform advocates and policy-makers, developing plans for alternative institutional arrangements, and using their voices to publicly support policy change. Over the past decade, experts on monetary sanctions have made especially notable contributions to social science and policy reform (15). Research on privatization has illuminated the complex world of prison profiteering, aiding and, in some cases, motivating reform efforts (17, 27). Legal scholars have analyzed the constitutional and statutory bases of government fees and seizures, clarifying how they might effectively be challenged in courts (36).

In this context, the concept of predation offers a unifying frame, capable of integrating disparate streams of scholarship and political action. Analytically and politically, it connects diverse criminal legal practices to one another, to the extractive regimes of earlier eras, and to the exploitative lending and credit businesses that pervade RCS communities today. Throughout, it foregrounds the fundamental questions of social structure prioritized by scholars of racial capitalism. The idea of predatory governance, resonant with connotations of group-based injustice, offers a powerful language for political mobilization and coalition building (37). For social scientists, it provides a generative basis for critical scholarship that connects empirical research to normative inquiry and action-oriented analyses of power and social change.

In the study of criminal legal predation, a number of pressing questions set directions for future research. At present, we lack even rough national estimates of the resources stripped from communities, their effects on poverty and inequality, and their contributions to specific sectors of state development and capital accumulation. Little is known about how organizations (e.g., courts, police agencies, and prisons) adapt their structures, cultures, and routines as they pursue predatory projects. How, if at all, have predatory policies altered the political landscape of criminal justice as they have drawn new interests to the field, created incentives to defend and expand revenue-generating operations, and, at times, mobilized popular resistance? How does pocketbook policing affect the amount and patterning of racialized police violence?

Going forward, scholarship on predation must do far more to ground its pursuit of knowledge in the diverse experiences, perspectives, and priorities of RCS communities. Because predation is a relationship, understandings of it are distorted by analyses that treat dominant groups and institutions as the only effective doers in social life, eclipsing the knowledge and agency of subjugated groups. Close attention to both sides of this relationship is essential for meeting the overarching challenge that confronts us today: to develop a historically specific and actionable understanding of criminal justice predation as a constitutive element of racial capitalism and liberal political economy. A serious reckoning with the predatory dimensions of criminal justice is long overdue—not only for scholars but also for all who hope to build a more just, humane, and democratic society.

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