



# HHS Public Access

Author manuscript

*Sociol Perspect.* Author manuscript; available in PMC 2024 January 26.

Published in final edited form as:

*Sociol Perspect.* 2020 December ; 63(6): 962–977. doi:10.1177/0731121420970588.

## Making Sense of Misdemeanors: Fine Only Offenses in Convivial Court Rooms

Taylor Needham<sup>1</sup>, Abena Subira Mackall<sup>1</sup>, Becky Pettit<sup>1</sup>

<sup>1</sup>The University of Texas at Austin, Austin, TX, USA

### Abstract

This paper investigates how the complexity of and everyday interactions within the criminal legal system sow confusion about the causes and consequences of low-level misdemeanor, or fine only, legal entanglements. Drawing on data from 62 interviews with people assessed legal debt and 240 hours of ethnographic observation in courtrooms, we describe inconsistencies between the design of the criminal legal system and the organization of defendants' lives that undermine the ability of defendants to satisfactorily or summarily resolve their legal cases. We also consider how interpersonal interactions within courts undermine the power of defendants to challenge legal authority, court norms, and established criminal legal processes. These findings illustrate a mismatch between expectations about and experiences with misdemeanor charges that place undue burden on disadvantaged defendants and highlight the scale and impact of fine only misdemeanors as a central inequality generating feature of the contemporary criminal legal system.

### Keywords

crime; law; deviance; inequality; poverty and mobility; organizations; occupations; work

### Introduction

Following two decades of crime declines in the United States and significant and sustained policy attention to criminal justice reform, most Americans are at the lowest risk of victimization in a generation. Texas, among other states, has attracted outsized attention for reform efforts to reduce the number of people held in state prisons and jails, decrease sentence lengths and time served, and offer community-based supervision and non-custodial sanctions. Despite significant rhetoric of criminal justice reform, in 2018 alone jurisdictions across Texas processed over 7 million criminal cases, 92 percent of which were for the least serious category of misdemeanors: fine only Class C misdemeanors. While the sheer volume

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**Corresponding Author:** Becky Pettit, Department of Sociology, The University of Texas at Austin, Austin, TX 78712, USA.  
bpettit@utexas.edu.

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#### Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

This article was published as a part of a special issue on *Monetary Sanctions*. Additional articles included in this issue are by Martin (2020); Kirk, Fernandes, and Friedman (2020); Hyatt, Powell, and Link (2020); Needham, Mackall, and Pettit (2020); Harper, Bardelli, and Barrenger (2020); Mai and Rafael (2020); and Martin and Fowle (2020).

of misdemeanors in Texas is comparatively high given that the state sanctions more people each year through its criminal justice system than live in Wyoming, Vermont, North Dakota, Alaska, South Dakota, Delaware, and Montana combined, contemporary research illustrates that misdemeanor charges and related sanctions increasingly drive contact with the criminal justice system nationwide (e.g., Kohler-Hausmann 2018; Natapoff 2018).

The definition and legal implications of misdemeanors vary across jurisdictions, yet they generally represent a broad class of low-level, non-violent, criminal infractions. Most state statutes dictate that misdemeanors are punishable by fines, community supervision, or other non-custodial sanctions and rarely incur lengthy jail or prison sentences. Texas state law classifies Class C misdemeanors as fine only offenses that are punishable by fines up to US\$500, ineligible for jail time, and afford no provision for a court appointed attorney. Over 80 percent of all Class C misdemeanor cases in Texas involve traffic-related offenses like excessive speed, driving without a license, or expired registration (Office of Court Administration 2018). In most instances, Class C charges in Texas are resolved through payments made by mail, online, or in person (Hecht 2017; Menendez et al. 2019).

However, when defendants either wish to challenge their cases, cannot readily resolve their cases, or do not have the means to pay monetary sanctions, they encounter a complex network of more than 1,000 justices of the peace and municipal courts and are subject to the potential of additional sanctions. In fact, according to a speech in 2017 by the Texas Chief Justice Nathan Hecht, in 16 percent of Class C misdemeanor cases, or, “640,000 cases ... defendants went to jail for minor offenses” in the previous year. Thus, while much scholarly attention has been devoted to the facets of the criminal justice system that involve serious misdemeanor or felony charges that incur jail or prison time, research often overlooks far more common legal entanglements faced by Americans which can have serious consequences for some people.

In this paper, we draw on insights from 62 interviews with criminal defendants and observations in courtrooms in Texas to illuminate the nature of low-level misdemeanor legal entanglements. Our analysis of the routine processing of “fine only” misdemeanor criminal cases highlights the factors that contribute to the escalation of sanctions stemming from seemingly minor infractions, mostly routine traffic tickets. We show that there are consequential inconsistencies between the design and organization of misdemeanor justice and defendants’ everyday lives. In addition to the procedural hassle (Kohler-Hausmann 2018) characteristic of misdemeanor case processing, we find that convivial interactions with court officials and the absence of court appointed lawyers in fine only cases discourage criminal defendants from self-advocacy or contesting legal procedures. Instead, individuals’ direct experiences navigating misdemeanor charges sow legal confusion. And in doing so, the fine only system exacerbates inequality in the consequences of seemingly minor misdemeanor contact between those who can afford to pay off fines or hire legal representation, and those who cannot.

## Background

### Legal Fines and Fees

Declines in the scale of mass incarceration over the past decade have been accompanied by the increased use of new forms of punishment that widen the scope of criminal justice contact and shift supervision from prisons and jails to courtrooms and communities (Brayne 2014; Kohler-Hausmann 2018; Natapoff 2018; Stuart 2018). Data from the Bureau of Justice Statistics show that in 2011, 26.4 million adults reported being pulled over in a traffic stop by police. Approximately half of them received a citation (Langton and Durose 2013). The number of people subject to legal fines and fees has grown dramatically: Estimates suggest that 66 percent of prison inmates have been sentenced to pay some amount of money to the courts or other criminal justice agencies, up from 25 percent in 1991 (Harris, Evans, and Beckett 2010).

While there has been relatively little research examining the significance and meaning of fines and fees for misdemeanor criminal defendants, the studies that have been conducted suggest that fines and fees associated with justice involvement contribute to legal entanglements that uniquely disadvantage certain subgroups of the population on the basis of ability to pay. In fact, the Ferguson Commission Report concluded that legal financial obligations were exploitative and “disproportionately harmed defendants with low incomes” (Ferguson Commission 2015:93).

One factor contributing to limited research in this area is that legal fines and fees, much like other new forms of surveillance and punishment, vary in important ways across and within states (Harris 2016; Harris et al. 2010; Martin et al. 2018). In a review of statutes governing legal fines and fees in eight states, Karin D. Martin and colleagues (2018) show the ubiquity of statutes governing legal fines and fees across states but also draw attention to differences across states in the extent to which the statutes mandate their imposition for felony and misdemeanor cases, opportunities for waivers, and mechanisms of compliance. Legal fines and fees also often fall into the administrative realm and, as Katherine Beckett and Naomi Murakawa (2012) suggest, constitute a “shadow carceral state” obscured in studies of conventional sentencing and sanctioning processes. These differences in law and practice across jurisdictions make it difficult to fully account for, and thus explain, the prevalence and implications of non-custodial sanctions.

### Misdemeanor Court Processing

In the early years of America’s experiment in mass incarceration, Malcolm Feeley drew attention to the stark contrasts between the lower courts and the trial courts. He argued that for people charged with minor offenses, the courtroom experience was in and of itself a unique and repressive form of punishment owing to the chaotic and crowded courthouses and depersonalized court procedures. Moreover, he showed that the firsthand encounters with lower courts played a central role in shaping Americans’ perceptions of the overall criminal justice system (Feeley 1992). Years later, in her book *Misdemeanorland*, Issa Kohler-Hausmann (2018) depicted a similarly overextended misdemeanor court system and further illuminates the punishing features of contemporary misdemeanor courts.

Existing studies provide compelling evidence that court procedures and courtroom dynamics shape criminal legal outcomes (Feeley 1992; Kohler-Hausmann 2018; Van Cleve 2016) and influence perceptions of legitimacy (e.g., Tyler 2003). Work by Kohler-Hausmann (2018) and others have shown that what initially appears to be a minor contact with the criminal legal system can ultimately lead to protracted and extensive legal entanglements. For many, these lengthy entanglements are the result of what Kohler-Hausmann terms procedural hassle, “the collection of burdensome experiences and costs attendant to arrest and case processing” (p. 183) such as, stressful and frequent requests to appear in court, lost work opportunities, and the burdens of securing childcare. As a result, some scholars conclude that the criminal legal system is not well designed to adjudicate low-level misdemeanors, relying instead on administrative or managerial processes (e.g., Kohler-Hausmann 2018; see also Richardson and Goff 2013).

Other work outlines how well articulated courtroom procedures and interpersonal treatment contribute to perceptions of *procedural justice* (Tyler 2003). Key determinants of procedural justice include the quality of decision making and being treated with dignity. Even when the outcome is not preferred, it is critical the process is viewed as fair. According to this argument, if people view the process of the courts as fair, they will be more willing to accept the legitimacy of an outcome. Tom Tyler (2003) writes that “people’s willingness to accept the constraints of the law and legal authorities is strongly linked to their evaluations of the procedural justice of the police and the courts” (p. 284).

### Examining Class C Misdemeanors in Texas

The assessment and enforcement of fine only misdemeanors present an important and timely opportunity to consider the meaning of low-level misdemeanors in the context of contemporary punishment. This is especially pertinent in Texas, given the interconnectedness of the state’s expansive criminal legal system, complex map of jurisdictions, and its roadways. A network of interstate highways, state tollways, and county roads provide vital links between some of the state’s largest cities and the hundreds of small towns that dot the Texas landscape. Interstate 10 (I-10) stretches over 800 miles spanning the state from Houston to El Paso and passing through 25 counties. At the same time, and although they are both in the same county, travel between the small towns of Manor and Bee Caves involves driving on three or more state highways with maximum speeds that range from 55 to 85 mph.

Texas’ elaborate system of roadways is an important backdrop for understanding misdemeanor justice involvement and extended entanglements with the criminal legal system in the state. Most people encounter Texas’ criminal legal system through traffic citations; traffic violations fall in the domain of criminal, not civil, law in Texas and thereby are a primary gateway into the criminal legal system and the courts. Data from 2018 show that 5.6 million, or 77 percent of the 7.3 million criminal case filings in Texas, were for traffic and parking offenses (Office of Court Administration 2018).

Based on existing research on legal fines and fees, misdemeanor courts, and procedural justice, we anticipate several features of defendants’ experiences in Texas’ misdemeanor courts. Similar to Alexis Harris’ (2016) finding that fines and fees are rarely considered

serious sanctions, we expect cases involving Class C misdemeanors will not be conceptualized as serious *despite* data that show fully 16 percent of fine only cases in Texas result in jail time (Hecht 2017). In light of the volume of misdemeanor cases heard in Texas courts, we anticipate that routine processes in Texas misdemeanor courts will not be aligned to the realities of defendant's everyday lives. Specifically, we expect that defendants will experience known procedural hassles stemming from the complex scheduling characteristic of misdemeanor courts (Feeley 1992; Kohler-Hausmann 2018). Our analysis aims to further evidence the concept of procedural hassle, document procedural challenges specific to traffic citations, and examine the role procedural hassle plays in the evolution of a fine only offense into jail time.

Consistent with Tyler (2003) and other legal socialization scholars, we expect that defendants' courtroom experiences will heavily shape their perceptions of court outcomes. We anticipate that, in general, positive interactions with court officials will correspond to the perception that court processes were fair and just and negative interactions with court officials will correspond to the perception that court processes were unfair and unjust. However, our qualitative approach enables further analysis of the interplay between defendants' backgrounds, direct experiences, and legal subjectivities. In addition, we consider how power dynamics and symbolic interactions within courtrooms may influence the imposition and impact of fine only citations.

## Data and Method

To investigate the meaning of misdemeanors, we draw on interviews conducted with 62 people involved in the criminal legal system along with 240 hours of courtroom observation. As part of a larger multi-state study, we identified three key geographic areas in Texas in which to conduct interviews with criminal defendants and observe courtroom processes. Each represents a fairly large metropolitan area although we conducted some interviews and observations in outlying suburban and exurban areas within those larger jurisdictions.

For the interviews, our research team identified potential respondents by reaching out to reentry organizations and posting flyers in high traffic public spaces near criminal courts. We also handed out recruitment cards and engaged potential respondents outside courts and payment centers. These methods led us to interviews primarily with respondents who were currently justice involved for misdemeanor only encounters. Although several of our interviewees had extensive histories with the criminal legal system, 40 percent were currently under supervision or otherwise justice involved for charges that began with a traffic citation or other low-level (Class C) misdemeanor. Out of our 62 interviews, 27 respondents had never been convicted of a criminal offense yet were engaged in the criminal legal system and assessed legal financial obligations for pretrial supervision, deferred disposition, or a plea agreement that otherwise led to a dismissal.

Table 1 summarizes the personal characteristics of the 62 people we interviewed. Our interviewees reflect some of the diversity in people assessed legal fines and fees. Just over one-third of interviewees (36 percent) self-identified as white and 39 percent as black. One-third (33 percent) indicated Hispanic or Latino ethnicity. Our sample was two-thirds

men and almost one-half (49 percent) were under age 30. Although young men of color are overrepresented in our sample relative to the general population, low-level misdemeanors reach into a broad and diverse demographic. Our interviewees were drawn from many different walks of life although they were disproportionately of low income, a reflection of our recruitment strategy on those visibly involved in the criminal legal system.

We followed a standardized interview protocol although the exact ordering and wording of questions varied to allow interviewers to follow up on specific answers and to allow respondents to elaborate on their lived experiences. Interviews began with a brief introduction to the study and questions about what brought the respondent to the interview. General topics included education and employment; housing, living arrangements, and family life; politics, healthcare, and personal characteristics. More specific topics included experiences with the criminal legal system, experiences with legal financial obligations including experiences with payment and/ or the court system, perceptions of implications of having legal debt, and perceptions about system legitimacy. Interviews were audio-recorded, professionally transcribed, and coded using NVivo.

We used a grounded theory approach to identify key topics in the interviews and wrote thematic memos on issues related to (1) geographic and jurisdictional boundaries, (2) bureaucratic complexity, and (3) interpersonal practices in the courtroom. To do this, we began by reading the interviews, identifying preliminary themes associated with codes and supplemented by word searches for key words, and then re-reading the interview transcripts for relevance to each overarching theme. For example, when investigating inconsistent jurisdictional boundaries, we began with the code “Multiple Jurisdictional Entanglement.” This code often included information from respondents about their current or past legal involvement which commonly spanned political boundaries. In many cases, the related discussion revealed significant confusion about the legal system which led us to include additional search terms and codes about legal knowledge. We then sought to understand how the organization of the courts and the legal system governing low-level misdemeanors may have impacted defendants’ knowledge about their legal rights and their exercise of them. Finally, we investigated interpersonal practices in the courtroom by reading through transcripts and then searching for terms commonly used by defendants to characterize particular judges and attorneys. In our analysis, we reflect on what those characterizations symbolize and why these and other characterizations of the personality or mood of the judge are meaningful for judicial outcomes.

To better understand the meaning and impact of misdemeanors, we also draw on data from court observations made in the same three major metropolitan areas where we conducted our interviews. Our research team observed more than 240 hours in Texas courtrooms, with 120 of those hours spent observing municipal courts. For this paper, we draw exclusively from our observations in municipal courts. We typically spent several consecutive days observing courtrooms in one city, revisiting cities and specific courtrooms multiple times over a one-year period. We made an effort to observe as many different courtrooms and judges as possible. We observed at least two hours in a courtroom though made repeated visits to some courtrooms to better understand courtroom dynamics.

All field notes were written without motivation, yet most of the field notes incidentally focus on verbal interactions that occur in the courtroom as well as document patterns of behavior observed in the courtroom. There was no intentional focus on the patterns that were found and discussed in this paper. No specific questions were posed while observing. It was only upon the coding and analysis of our court observations that we began to identify common themes emerging from our field notes. All field notes also document time in half hour increments to get a clear understanding of the pace of the courtroom.

## Findings

**Hassles: Managing the Court and Everyday Life**—The imposition and consequences of traffic citations were dominant themes in nearly all of our interviews and the central concern of courtroom observations in municipal courts. Our interviews highlighted that driving-related issues were a primary source of respondents' involvement in the criminal legal system. Sixty-five percent of respondents reported one or more misdemeanor charge for a traffic-related offense and 35 percent of respondents reported having received citations in more than one jurisdiction.

Marie summed up her experience trying to resolve the consequences of outstanding tickets: "It just basically becomes this vicious cycle in which one thing that you don't do, or get fixed, and then it just ends up affecting other areas." Marie's involvement with the criminal legal system began as a teenager when she received a ticket for speeding and another ticket for expired registration on her vehicle. At the time, Marie was a full-time student and did not have a stable income to pay off the US\$300 in tickets. She did not realize that failing to resolve these Class C misdemeanors would trigger a warrant for her arrest for failing to appear in court. We met her while she was trying to resolve resulting issues in a courtroom more than 600 miles from the jurisdiction where the original tickets were issued. By then, she owed over US\$1,000 to the municipal court, which prohibited her from renewing her driver's license. Marie explained,

Without your license, you can't renew your registration sticker, so now I can't renew my license or my registration sticker. I need to work, I need to have an income, I'm trying to get all this figured out, which is why I moved to a different city to have a better job, to have a better living situation, and then it just all accumulates.

Abelina is currently paying off legal fines and fees that resulted from an initial traffic ticket. During our interview, she recalled,

The first one was from failure to control speed. Then, after that one I had a failure to appear in court. Then, after that it was a failure to wear a seat belt. Then, a failure to appear to court. Then, I had ... Jesus Christ. I can't remember each one.

She joked: "Failure to wear a seat belt to court." A middle-aged mother of two, Abelina's moving violations were all issued in the same neighborhood while driving to work. On one occasion, she was pulled over because she had a headlight out. Abelina explained that at first the officer told her it would just be a warning but after he ran her license and saw that she had a pending ticket, he issued her another. She recounted,

Once he saw that I had prior tickets, he just gave me another, which made it kind of extremely difficult for me to even start a payment plan because now I have like three US\$500 tickets. Mind you, I still have to take care of my kids, I still have to pay on my car note, I still have to do my everyday living on top of now having to pay like US\$1,500 within three days for tickets.

Legal fines and fees are exceptionally difficult to resolve for people, like Abelina, who are working poor. Deferred car repairs, like a broken headlight, can trigger or exacerbate justice involvement. In addition, Abelina is one of many respondents that expressed frustration about how her employment hindered her ability to resolve their outstanding fines and fees and related legal entanglements. Like Abelina, several people we interviewed remarked that they had job obligations that conflicted with their court date, some no longer had access to a vehicle to get to court, and some, like Marie, no longer lived near the jurisdiction where they got their citation. Despite Abelina's fine only offenses all falling within the same jurisdiction, she was issued separate court dates for each one. As a single mother with a full-time job at a hospital, she explained that there was no way she would be able to take off work to attend each of her court dates. She told us that she works during the day Monday through Friday and her hearings were scheduled for weekday mornings. She remarked, "I work all week, and then I'm off weekends ... I would have to choose between going to work, making money to feed my two kids, and being seen at court." Unable to attend court at her appointed time, Abelina was also cited for failure to appear which further compounded her entanglement with the legal system.

Complex courtroom scheduling, rigid bureaucratic processes, and a lack of transparency introduced a host of challenges for defendants trying to reconcile their outstanding criminal sanctions that often began with fine only offenses. For those without a valid license or access to a car and needing to travel long distances to work, school, or the courts, these criminal sanctions were only further compounded. As one of our interviewees, Dennis, described,

I think a lot of times court can be intimidating like I had said, because they keep you out of the loop.

I mean, the systems that they have in place for you to find out information online are kind of dodgy and when they say that you're set for pre-trial, or you're set for even jury trial or anything like that it doesn't necessarily mean that it's occurring on that day or time. So, you could be going months thinking I have this on this day and then you show up, maybe you miss work, you know, you show up and it's not even the day of, you know what I mean? Like, it just gets reset again.

Another respondent, Hunter, complained that he just did not have enough information about the court. He did not feel prepared for his meeting with the prosecutor and was not clear how to manage his moving violation citation. Hunter did not know that challenging his case would require multiple courtroom appearances. He recalled that he was not prepared

for what you're going in there to do. When you get the little citation it just says appear this day and then you know, so yeah no I wasn't prepared at all to go in to talk to her [the prosecutor] or any of that.



Problems resolving these fine only offenses were further compounded by the lack of communication between court staff. John could not renew his driver's license because of an outstanding ticket for which he owed US\$310. After completing 26.5 hours of community service, he went to the payment window at the municipal court, where he was told that he still owed a total of US\$60 for two outstanding US\$35 DPS fines. He continues,

I said "That's included in my community service." I said, "Can I go and talk to the judge and let the judge know that I did community service but [you're] still saying I owe fees? This is all supposed to be included." And then he said, "No, because we just closed the case out and we can't send you back on a closed docket. So, you can't go and talk to the judge." So, in other words, I just have to pay those fees. So, I was told by the judge that the fees were included. Now the fees are not included after the fact ... they didn't explain it to me that way because I asked specific questions because I told her I don't have the ... money to pay the fines.

As a consequence, John was still on the hook for US\$60 and could not get his license reinstated without paying it.

Getting to and from court- or meeting-related obligations were noted as especially difficult challenges for respondents who had lost their licenses, did not have access to a car, or who lived far from the courts. For example, John took three buses each time he went to community service. He tells us to get to community service, he had to hop

on the 44, and then I got on the 85, then I jumped on the 58. On the way back, got on the 58 ... took the 85, and then 85 dropped me off, maybe, nine minutes away and I walked the rest of the way.

This round trip added over an hour, each way, to his community service commitment. But even the best intentions did not always pan out and on one occasion John recalls he "couldn't make it to court because I was injured with no vehicle, and that's what happened. I couldn't make it to court. I had everything set up and I couldn't make it to court."

A well-articulated legal system is necessary for effective and efficient administration of justice (e.g., Tyler 2003). Yet, for many of the people we interviewed, the design and daily operation of the municipal courts—and the criminal legal system more generally—is not well articulated and is also inconsistent with their resources and the demands of their daily lives. Repeat court appearances, long waiting times, and confusion about alternate sanctions cast the courts as inefficient and induce inequalities in punishments depending on one's ability to pay. Setting aside questions about guilt, innocence, or culpability, fine only offense types are readily resolved if and when a defendant has the means to pay. If and when people do not pay or otherwise readily resolve their cases, they endure additional costs and burdens that can be insurmountable for people with few resources or little support.

**Chaos: Courtroom Processes and Legal Confusion**—The complexity of the legal system in Texas makes it hard for defendants to manage the demands associated with even seemingly minor misdemeanor charges. Moreover, interview data revealed a great deal of confusion and frustration among people we interviewed about the law, their rights, and their potential fates. These observations suggest that the high volume, highly decentralized

processing of low-level misdemeanor cases may undermine perceptions of procedural justice (Tyler 2003). For example, Kimberly, a single mother living in a densely populated city, recounted that she was not sure how much she currently owes in court fines and fees. When asked how she could find out what she owed, she replied,

Either I get stopped [while driving] ... or I go online and then they'll see when I wanted to reinstate or renew my license or update my address or whatever. Then it says "You're not eligible. You have to do this, that and the other."

Kimberly suggests that the easiest or most accessible way for her to find out how much she owes to the courts is to get pulled over. Alternatively, if she's prohibited from renewing her driver's license, she anticipates she'll be informed of when and how to resolve any outstanding debts. We asked another defendant, Marie, how she figures her total legal debt. Marie replied that if she goes to "DPS it just shows like you your license is suspended. It's the county itself where you have the traffic tickets that will let you know how much is owed." Each jurisdiction only informs Marie of what she owes to that jurisdiction alone. This decentralization made it difficult for her to give a grand total in the amount of legal debt she owes.

Other interviewees may have had a better sense of what they owe but many were not clear about their legal rights or did not feel empowered to exercise them. Kimberly has been paying fines and surcharges related to her misdemeanor for nearly eight years. Kimberly had lost her job and her home around the time that she got a ticket for driving without insurance. She told us:

I was just trying to maintain and that's why I kind of put [the ticket] off for a while 'cause I was just really struggling. So, from that particular fine, other fines came. Then it just multiplied and multiplied and multiplied.

Kimberly's eight-year entanglement with the criminal legal system stemmed from one misdemeanor traffic citation and she still has over US\$400 in legal debt. At no point did Kimberly ask for a trial. She explains,

I didn't know that I could do that. I just felt like "Hey, I did this or didn't take care of this," so I didn't have that option. 'Cause again I didn't think I had an option other than to just pay it or do whatever they were asking.

In the courtroom, we observed another defendant insisting on his right to a trial and facing a number of obstacles. From the field notes<sup>1</sup>: *The defendant walked to the back of the courtroom into another room where he'll meet with the prosecutor. After a very short couple of minutes ... he returns to the courtroom through the back door and approaches the judge at the bench. He stands a foot or two away from the bench, stiffly at attention, with his hands folded behind his back. The judge asks: "What do you want?" and he says: "I'll go for court."* The judge quickly jumps into legal language asking him if he wants "pre-trial" or to go straight to a trial? It's not clear that he understands but *the defendant says he "wants a trial."* After some idle chatter, both the clerk and the judge presume that the defendant will be found guilty and rattle off his "options" for fulfilling a seemingly imminent sanction.

<sup>1</sup>Material directly from the field notes is in italics.

*The judge chimes in “Like community service.” A discussion ensues and the defendant asks about the possibility of “sit[ting] it out in jail.” The judge suggests that he might want to talk with his attorney (despite no indication that he had an attorney and no expectation that the court would provide one) and then says “you’ll only get credit for US\$50 a day; that’s a lot of time.” As the defendant turns to leave the courtroom, the judge suggested he might suffer from a “mental illness.”*

James, a disabled veteran, owed over US\$1,500 for five tickets he received in one traffic stop. James borrowed a car from a friend to get to an appointment at a nearby hospital. He acknowledged that he had forgotten to bring his driver’s license when he was pulled over, but thought he would catch a break because he still had the hospital bracelet visible on his wrist. He recalled “The officer gave me five tickets. One, no plates, no insurance, no driver’s license, and no sticker even though the car was registered in Mexico.” Now, he says, “I don’t have the US\$1500 to pay ... I just don’t have that.” When asked if he’s tried to get an indigency hearing to get the fees waived, he replied,

[The clerk] told me that if I wanted to do that, I’d have to hire my own private lawyer, which also I don’t have enough money for. I don’t think Legal Aid takes these cases ... I’m pretty sure they don’t take traffic ticket cases. They’d be overwhelmed if they did.

And, even when defendants have ample experience with the criminal legal system or assert legal knowledge, they still may not fully understand how to resolve lingering issues or they may not find it worth the effort required. For example, 24-year-old Recaredo was just 17 years old when his mother was incarcerated, leaving him to be the primary caretaker and provider for his two younger sisters. He dropped out of high school to work full-time and shortly thereafter, following an evening of drinks with friends, Recaredo was charged with a driving while intoxicated (DWI), as well as with evading arrest. Recaredo’s deferred adjudication agreement included probation, any violation of which could result in time in jail. After a few years on probation, Recaredo incurred “a couple of driving with an invalid license tickets.” Recaredo’s probation officer explained to him that his unaddressed Class C misdemeanor charges violated the terms of his conditional release:

yeah, I got to send you back in. Just because that’s what I got to do. I mean you’ve been messing up, you’ve gotten two tickets, like you’re not supposed to have any contact with the law. We’ve got to send you in and get you in front of a judge.

Recaredo complied. He turned himself in and spent a month in jail. However, Recaredo still does not grasp what he owes or to whom, “I don’t fully understand them, I don’t really want to understand it, like I just really want to just pay it off. And kind of just get on with my life.” Moreover, Recaredo expects that in the future his freedom will continue to be contingent on unexplained fines and fees. He shared that for the remainder of his probation sentence, he aims to just pay whatever “they” tell him to, not ask questions, and get out of the system as fast as possible.

Another respondent, Brenda, has been unemployed and on disability for about 5 years after a leg injury. Before that, she worked for a home healthcare company. When we interviewed Brenda, she told us that she was going to arrange a plea for the multiple charges she received

related to the safety of her dog. Having considered other options, Brenda explained that she did not want to pursue a trial:

I have to keep going back and forth, back and forth, back and forth ... I mean, [the courthouse] is far from [where I live], and it is just too much ... I could be doing better things, and my leg also hurts ... so I would rather just get it over with.

Ruth summed up a widespread sentiment of interviewees as they reflected on their experiences with the legal system: “I mean we’re not innocent until proven guilty. We’re guilty until we prove ourselves innocent, and it’s a f—ed up situation.” Likewise, another defendant exemplifies the optimism and cynicism common among those trying to resolve outstanding legal debts:

[I] just wish they were not so underhanded about how they do things ... It’s not clear and I think they take advantage of the fact that most people don’t understand or know how the justice system works and they just ... I don’t know how to say it. But it’s just they take advantage of that. I’m a victim of that, not knowing. And I feel like I’ve paid more extra than I needed to by not knowing or not being aware of what I could do or any of my options were.

**Perceptions of Justice: Conviviality without Court Appointed Attorneys**—Many of the Texas courtrooms we visited are characterized by a kind of “southern hospitality,” or gracious and welcoming atmosphere, that belies uneasy racial and class tensions of the criminal legal system. Some of our ethnographic field notes depict welcoming judges, genial courtroom personnel, and overburdened prosecutors volunteering time to share their insights or consent to interviews after hours. Expecting an adversarial system, we were initially puzzled by these convivial courtrooms. To be sure, they were not all convivial. But, defendants commonly characterized judges and other court personnel as “nice” or “good” or in other similar ways even though there was no obvious evidence that such characterizations were associated with leniency. Such conviviality may constitute sufficiently “respectful treatment” (Tyler 2003) to enable defendants to decouple their perception of the judge from her ruling and thereby legitimate the courts’ ruling. Alternatively, conviviality may signal an effort by judges and other courtroom personnel to minimize courtroom conflict which, in an adversarial system, may discourage criminal defendants from self-advocacy or contesting legal procedures.

In our 62 interviews, 32 defendants made note of the mood of the judge or another courtroom worker in their interviews with us. Of these 32 defendants, 20 of them noted a pleasant interaction with a courtroom worker, often using the term “nice” to describe the judge. It seemed to be a surprise to people when they had pleasant interactions in the court and in an attempt to better understand the dynamics of the interaction, we often probed further. For example, when Brenda characterized the judge overseeing her case as “nice,” she elaborated: “I think he [the judge] was very nice. He would say that we could go to trial or work a payment plan out, and we chose the payment plan. We signed some papers and he was nice.” The interviewer probed further: “What does that mean, he was nice?” She replied, “He wasn’t rude like most judges be.”

Likewise, George, a person we both observed in court and interviewed the following day, recalled, “I mean, the judge we had yesterday, he was nice.” There was, however, nothing particularly notable in the courtroom interactions, or resulting sentence, indicating that the judge was particularly lenient in this case. George had been cited for failing to control his dog and he appeared in court seeking a payment plan to resolve his outstanding fines and fees. With relatively little discussion, the judge agreed and they set up a plan for George to pay, in full, the outstanding financial obligations within a set amount of time.

Our interviews and courtroom observations show that pleasant, or even friendly, interactions between judges, other court personnel, and defendants, while common, discourage defendants from vigorous self-advocacy. In high-volume municipal courts where a defendant can expect less than one minute in front of a judge, courtroom pleasantries take valuable time and undercut the power of defendants to argue on their own behalf in an adversarial system.<sup>2</sup> Defendants are not given sufficient time to ask questions, clarify their situation, or work through an argument. Moreover, in interviews, they expressed fear that any confrontation might risk angering a prosecutor, judge, or other court personnel who holds sway over their fate.

A convivial courtroom makes it difficult for a defendant, unpracticed in the law, to challenge the court. Genial—or by contrast abrasive—courtroom interactions make it difficult for defendants to raise questions about their own guilt, innocence, or ability to pay. Despite defendants routinely discussing their confusion about what was going to happen in court and expectations for how they could resolve their sentences, they were rarely empowered in or by the court to get information they needed, challenge their case, or pursue alternative sanctions. Diffusion tactics reinforce the power of seemingly benevolent judges and other court personnel, commonly leaving defendants disarmed, confused, and hard pressed to assert their legal rights.

This insight was perhaps best articulated by Peyton, a young man who had two different courtroom interactions for low-level offenses. In one instance, Peyton appeared in court for charges related to driving without a license and driving without insurance. He explains in his interview that fines and costs for these two charges were about US\$180 and he was required to pay US\$25 to take a defensive driving course. He also recalled that he saved money to pay off his fines rather than use it to visit his toddler who lived in another Texas city. When we asked about his experience in the courtroom, Peyton recounted, “She [the judge] was nice, she was like ‘Oh! I remember you. Are you ready to pay?’” Peyton did not appear frustrated

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<sup>2</sup>.Systematic analysis of 20 percent of our municipal court field notes suggests that while formal court dockets, or scheduled cases, include 50 to 70 cases, judges manage time in remarkably different ways across courtrooms. The lack of uniformity in the courtroom and the amount of individual discretion that a judge is given makes it difficult to figure out how many fine only cases are processed in an hour, but our best estimate is that judges routinely handle approximately 30 self-represented cases per hour in municipal courts. For example, field notes include observations from one court where a judge decided to dismiss cases and issue warrants failure to appear after delaying a 9:00 a.m. docket by 10 minutes to wait for absent police officers. The field notes recount: *The judge decides they have waited long enough for the missing officers to turn up and begins going down the list rapid fire ... everyone who showed up to see the clerk [has] their charges dismissed and everyone who didn't [show up] gets issued a warrant for failure to appear. “You gotta be here to win” [the judge] jokes as he stamps and signs the papers. A lawyer walks up and gets all his cases dismissed. A long line starts piling up at the clerks’ desk as the judge processes each person in a few seconds. He resets a couple no shows, but doesn’t verbalize why. He calls 25 names total. They’re going too fast to write so I tallied them in the side of my notebook.*

and even remarked, “I actually kind of like saving, like when I got paid I was putting some back.”

In contrast, Peyton’s recollection of his first misdemeanor courtroom experience was much less sanguine. In that case, Peyton recalled appearing in court hoping to settle a speeding ticket but the judge did not offer him any flexibility. He recalled that the judge was giving everyone a pass that day “and she didn’t give me one.” In his words,

The judge was just dismissing everybody tickets, you know it was like simple tickets. She was even dismissing speeding tickets, no seatbelt, running a red light, so she was going tickets like that, and I was wondering like, hey you know, why that judge that I had, why she wasn’t ... why she didn’t dismiss mine like that? I guess she had a b— moment that day, just wanted to be a b—.

Although Peyton faced similar outcomes both times he appeared in court, differences in his interactions with court officials likely contributed to his different characterizations of those experiences and perception of the justness of those outcomes. Peyton recalled feeling empowered when he saved up to pay off the fees and fines assessed by a “nice” judge. Yet, he recalled injustice and confusion after encountering a different, seemingly arbitrary, judge.

As was the case for Peyton, our courtroom observations further evidence that niceness is not a proxy for leniency or preferable outcomes but instead a characterization of the demeanor of a judge or prosecutor. “Nice” was used to characterize amiable people, often same-race or samegender as the defendant, who employed simple social conventions such as saying “hello” or “have a good day.” We also observed judges and other courtroom personnel use good humor or declarations of good humor such as “I’m in a good mood today” as the basis for decisions that defendants experienced as capricious.

However, convivial courtroom environments mask the reality that “fine only” can be a misnomer in some cases that originate from Class C misdemeanor offenses. Defendants were acutely aware that the potential consequences for these minor offenses were not limited to additional fines or fees. James was particularly concerned that his inability to pay might land him in jail. He mused,

I’ll get pulled over and locked up. Then if I get pulled over, this will be a disgrace, even though, like I said, these are minor charges. There’s no moving violation, no speed, no DUI, but depending on the police officer, like I said, it’s up to his discretion whether he takes me to jail or not ... If I get taken to jail ... I’m a single dad ... what happens to my kid? Then it’s just a whole other mess all because they refuse to take a lesser amount. Just greedy Texas.

In Texas, attorney representation is commonplace for serious misdemeanors and felonies and the state is required to provide a court appointed attorney for indigent defendants facing possible jail time. However, in our interviews and observations, attorney representation was rare for fine only misdemeanors and there are *no* state provisions for a court appointed attorney for fine only misdemeanor cases. Fine only misdemeanors are premised on the notion that outstanding issues can be resolved without an attorney. Yet, courtroom dynamics are steeped with the language and interactions customary of the adversarial court

system making them largely inaccessible to defendants. Cameron, a middle-aged man with numerous minor interactions with the criminal legal system, had never been represented by an attorney. He spoke with a mixture of pride and resignation as he reflected on his experiences representing himself in court.

Most people say that you'd be a fool to represent yourself in court and I see why. Because if you're not legally inclined, or you don't have that knowledge, you can get easily duped, and they don't care. You're just a number to them. You're a license plate number, you're a driver's license number, you're a bank account number, that's it, you know what I mean? That's all it pretty much comes down to.

Research by Tyler (2003) and others on procedural justice suggests that one of the key factors contributing to defendants' perceptions of fairness is being treated with respect. Convivial interpersonal interactions may contribute to defendants feeling respected, a possibility that we did not fully explore in our interviews. However, interviews and courtroom observations indicate that conviviality and the absence of court appointed legal counsel made it difficult for defendants to challenge their charges, secure a more lenient sentence or plea, or seek a trial.

## Discussion and Implications

As state governments increasingly seek alternatives to mass incarceration, fines and fees are a common tool used by legal authorities to exact punishment and recoup costs associated with the justice system (Harris 2016). Although most Texans charged with a fine or fee dispose of it within a relatively short time frame (Menendez et al. 2019), each year more than a million people statewide seek the help of the courts for alternative remedies for a fine only citation (Hecht 2017). Drawing on insights from interviews with defendants and observations of courtrooms, we show how the misdemeanor system is perceived to be unresponsive to the needs and realities of real life. Our findings reveal that those who do not—or cannot—satisfactorily or summarily resolve their cases may experience enduring consequences, sometimes even including time in jail. Defendants find the elaborate system of police, courts, and payment centers complex and confusing while court personnel do little to empower defendants to exercise their legal rights and pursue state sanctioned alternatives for monetary sanctions. Defendants' expressions of legal cynicism are coupled with skepticism that the fine only misdemeanor system is primarily concerned with making money and exhibits little regard for justice.

These empirical insights have both theoretical and policy relevance. Theoretically, these findings extend research on legal socialization and cynicism to a fine only misdemeanor organizational framework. Defendant experiences highlighted in this article illustrate how legal socialization (Piquero et al. 2005) processes play out for a largely overlooked justice involved constituency. Much prior research on legal cynicism centers on views about violence, police responsiveness, or police distrust. Our findings suggest that fine only misdemeanors provide another opportunity for the legal system to both establish—or more frequently fail to establish—trust and confidence for a large segment of the population.

Yet, our analysis reveals that the fine only system is neither aligned with nor responsive to the needs of people who are often subject to heightened surveillance and have few resources to resolve outstanding legal debt. An enormous fine only system with few avenues for alternatives and even fewer opportunities for waivers is misplaced in a state with an above average poverty rate (14.9 percent) and comparatively high levels of inequality. Classifying Class C misdemeanors as criminal violations conflates the consequences of poverty with crime. Broken headlights, lapsed registration, or missed insurance payments are easily remedied with adequate financial resources. But, for people without means to readily resolve their cases, the consequences of poverty are compounded by fines, fees, and other costs resulting from criminal citations.

Similar to the ways in which prior work illustrates that police non-responsiveness contributes legal cynicism (Kirk and Papachristos 2011), an important determinant of the legal cynicism that we observed was the non-responsiveness inherent in court proceedings for these “low level” misdemeanors. The fine only system fuels confusion, frustration, and legal cynicism by being unresponsive to the needs and capacities of many of its constituents. The police, courts, and payment centers further criminalize individuals by failing to recognize authentic attempts to comply with the law or behave in prosocial ways (Rios 2011). Notably, most of our respondents were trying to resolve their legal debt. Nonetheless, they were commonly frustrated by and estranged from a legal system that they often found inflexible and extractive (see, for example, Bell 2016).

These results have important immediate and downstream policy implications. There is a great deal of concern that current operating practices in Texas’ fine only misdemeanor system violate the Constitution (Hecht 2017). Unpaid fines and fees trigger a number of additional sanctions, legal entanglements, and hundreds of thousands of people land in jail, each year, as a result of failing to pay a fine only misdemeanor. Our results suggest that there are a number of opportunities to improve policy and practice.

For example, criminal legal agencies including the police, courts, and payment centers should better coordinate outstanding debt, payments, and alternative sanctions. Police should be discouraged from issuing additional tickets when someone is already facing outstanding debt, payment centers should be able to immediately reinstate licenses upon completion of sanctions, and courts should be required to determine ability to pay before issuing a warrant for failure to appear in court. Courts should also be given authority to waive fines and fees in full if a defendant is deemed unable to pay. Furthermore, indigent defendants should be provided with a court appointed attorney even for Class C misdemeanors.

Fine only misdemeanors are an understudied but critically important dimension of the contemporary criminal legal system. Millions of people each year are charged fines and fees for a wide range of alleged infractions from excessive speed to expired vehicle registration. Many are never convicted of a crime, but the system presumes guilt and is premised on the ability to pay. The imposition of fines and fees creates a two-tiered legal system that separates those who have the ability to pay from those who do not, and our research suggests those who do not are punished in unequal and enduring ways. Even small amounts of legal



debt can be insurmountable obstacles for people living on the margins and further undermine trust and confidence in the legal system.

## Acknowledgments

We thank the faculty and graduate student collaborators of the Multi-State Study of Monetary Sanctions for their intellectual contributions to the project. We would also like to thank Ilya Slavinski, Riad Azar, and Lindsay Bing for excellent research assistance and members of the Crime, Law, and Deviance workshop at the University of Texas at Austin for helpful comments and suggestions.

## Funding

The author(s) disclosed receipt of the following financial support for research, authorship, and/or publication of this article: This research was funded by a grant to the University of Washington from the Laura and John Arnold Foundation (Alexes Harris, principal investigator [PI]). This research was also supported by grant, P2CHD042849, Population Research Center, awarded to the Population Research Center at the University of Texas at Austin by the Eunice Kennedy Shriver National Institute of Child Health and Human Development.

## Author Biographies

**Taylor Needham** is a graduate from The University of Texas at Austin with a Bachelor of Arts in Sociology. She spent three years working in the Sociology department as the project manager and research assistant for The Multi-State Study of Monetary Sanctions.

**Abena Subira Mackall** is an assistant professor at the Steve Hicks School of Social Work at the University of Texas at Austin and the director of Pedagogy at the Texas Prison Education Initiative.

**Becky Pettit** is the Barbara Pierce Bush Regents professor of Liberal Arts at the University of Texas at Austin. Her research and teaching interests focus on social inequality, race and ethnicity, and the American criminal legal system. She is the author of *Invisible Men: Mass Incarceration and the Myth of Black Progress*.

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**Table 1.**

## Interview Participant Characteristics.

| <b>Participant Characteristics</b> | <b><i>n</i></b> | <b>%</b> |
|------------------------------------|-----------------|----------|
| Participant race                   |                 |          |
| White                              | 22              | 36       |
| Black                              | 24              | 39       |
| Other                              | 16              | 25       |
| Participant ethnicity              |                 |          |
| Hispanic/Latino                    | 21              | 33       |
| Non-Hispanic/Latino                | 41              | 67       |
| Participant gender identity        |                 |          |
| Male                               | 42              | 68       |
| Female                             | 19              | 31       |
| Other                              | 1               | 2        |
| Participant age                    |                 |          |
| 18–29                              | 31              | 49       |
| 30–39                              | 16              | 26       |
| 40–49                              | 9               | 15       |
| 50–59                              | 5               | 8        |
| 60+                                | 1               | 2        |

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