



# How Governments and Corporations Profit from the Criminal Justice System

May 2017 podcast episode transcript

Featuring [Joe Soss](#),

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Chancellor Hello and thanks for joining us for Episode 54 of the Poverty Research and Policy Podcast from the Institute for Research on Poverty at the University of Wisconsin-Madison. I'm Dave Chancellor.

This is our May 2017 episode, and we're featuring Joe Soss, who's an IRP affiliate at the University of Minnesota's Humphrey School of Public Affairs where he's the Cowles Chair for the Study of Public Service. He visited IRP this past November and gave a talk called "Preying on the Poor: How We Made Criminal Justice Profitable and Remade American Citizenship" that was based on a book project that he's co-authoring with Josh Page. Afterwards, we spoke via Skype from his office at the Humphrey School. Dr. Soss began by explaining his research against the backdrop of the events that unfolded in Ferguson, Missouri, noting how those events brought attention to governments' reliance on funds generated through the criminal justice system to operate.

Soss For many of us, that was really the place where we started paying attention to this story. After the police killing of Michael Brown, the Department of Justice went in and did an extensive report, an investigation and report on what had been happening in Ferguson, and one of the things that they concluded was essentially that the City of Ferguson had been running what they called a predatory system of government in which essentially the city had set out to extract revenues from the local community, the sort of low-income community of color there. And the way they were doing that they were using fines and fees and various uses of the courts and the police and the jails to draw people into the criminal justice system and then to extract revenues from them through the payment of fines, fees, and interest on fines. And this source of funding, this source of revenue was making up one fifth of the total budget revenue for the city at the time of the report and it had reached the scale that, on average, households in Ferguson had three arrest warrants out for each of them. And it was quite targeted. About 90 percent of the people who were receiving these fines and fees were African American and the payments were sort of rising over time. The city was doing this quite intentionally. They were actually giving the police targets, the Department of Justice discovered, and then they were monitoring whether the police and the courts were generating the amount of revenues over time.

Chancellor While this process resulted in revenues for the City of Ferguson, Soss notes that it also resulted in significant consequences for those subject to it.

Soss And the result of this was that even people who sort of got pulled in with fairly minor small tickets, small fines, not wearing a seatbelt, parking in the wrong place could find themselves being called into court then with more fees added, more fines, and they would find themselves in a situation where they owed more than they could afford to pay and it would begin to get out of control with interest and over time they would find that they were in what was called a perpetual debt trap of perpetual payments to the city that in many cases could actually land them in jail. Even though today debtors' prison is unconstitutional in the United States and barred by federal law, what happened to people was that they essentially got called to

Soss, continued court so many times that eventually they would miss one. They would miss a mandatory summons either because they didn't receive it or they couldn't get someone to take care of their kids or they didn't have the money to pay so they didn't think they should go anyway. And then once they did that, they had a warrant for their arrest. Not technically for owing the money, but because they hadn't shown up for a court date. And so, in a sense, debtors' prisons had reemerged.

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Chancellor Spurred by the Ferguson story, Soss and his co-author decided to delve further into the practice of generating revenues from those involved in the criminal justice system to cover general operating expenses.

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Soss As we began to dig into this we discovered — and we're not the first or only to dig into this, there are a number of wonderful scholars out there with good work, Alexes Harris's *Pound of Flesh* book is a particularly excellent investigation of fines and fees through courts. But what we know is that in America today about 10 million people that owe a total of about 50 billion dollars of criminal justice debt and make nearly 40 billion dollars in payments on that debt each year. And if you look across the United States, you see that in places like Chicago and New York and Philadelphia, the big cities, but maybe even more so in the moderate-sized cities like Ferguson and the smaller places where they've had much stronger budgetary pressures on them and fewer resources out there to meet those pressures. A number of things have been sort of on the rise altogether at once. One is the use of fines and fees. Cities have sort of, municipalities have imposed more fines, they've raised their fines, and they've put in systems where, as they've gotten involved with the courts, whenever you get a ticket, fees are added one on top of the other, and that sort of system has really emerged since the early 1990s, with the big onset in the 1990s, and then again around the time of Great Recession after 2007. So today states may even charge defendants extra fees if they're going to get a jury trial, or if they're going to have a public defender. These are rights, still, but the person has to take on debt to exercise those rights. And when people go to prison, they find that they are charged various kinds of "pay to stay" fees. They actually are paying, taking on debt, for their stay in the prison. They are also being charged for their phone calls. They are being charged for visits over video technologies. And then in addition to those kinds of fees, there's this whole system of civil asset forfeiture which also rose over the same period of time. And this is a procedure, civil asset forfeiture, which emerged out of the war on drugs and grew in the 1990s. And it allows authorities to seize assets of any individual if they believe that the assets may have been connected to a criminal activity. And all that's needed here, really, is suspicion. Unlike the individual, the thing, the cash, the goods, whatever it is, that's placed under the suspicion, does not really have any rights to due process or anything else. So the burden of proof once these assets are seized is actually on the owner, to show that the assets don't have a criminal history. In the United States, these sorts of civil asset forfeitures increase sharply in the mid-2000s all over the country, and then again in 2008, there were actually more than a billion dollars in 2013 alone. And between 2001 and 2013, \$2.1 billion in assets were actually seized from people who were not even charged with a crime. So across these different types of arenas, what we're seeing is over the last 25 years, in a way that's really widespread across the United States, a growing reliance on a use of the criminal justice system to extract revenues from below.

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Chancellor Soss says that while these practices tend to target particular groups of people and communities, especially the poor and people of color, the consequences of this extend well beyond the individuals that are actually subject to the fines, fees, and forfeitures.

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Soss One of the things we have to realize is that it's not just the people who are sort of criminal defendants who wind up being the targets of this. Certainly many people who end up being targeted for fines and fees and the rest are never convicted of anything. But even beyond those people, there's a question of who actually winds up bearing the costs of these things. And from all that we can tell from the existing research, it's here that a gender analysis becomes really important for getting the story right. Men of color of course, are disproportionately targeted by the criminal justice system for arrests and prosecutions and imprisonment. But it's disproportionately women and especially women of color who actually shoulder the financial burdens. Actually about one in four women in the United States have a family member in prison and that number rises to 44 percent among black women. And so if you look at who's actually covering the costs for incarcerated populations for example, the family members who are covering those costs, 83 percent of them are estimated to be women. When people go into the bail system, it's the women who cosign those

Soss, continued bail contracts, who wind up on the hook for the debts. And it's women who pay, often, the fines and fees and prison charges while men are in prison. And what you find is that those people then are pushed into debt themselves. And although they haven't been directly targeted with a fine or fee, among families that try to maintain contact with a prison inmate, an estimated 1 in 3 actually goes into debt and those people are trying to pay off those debts in ways that keep them from paying for food and utilities and rent. And, in many cases, this can lead to things like eviction. And so, in a way, this is something that these burdens sort of transfer onto women and in many cases, women and children and families, and in many cases these burdens tend to function as a really important obstacle to dealing with poverty in any sort of effective way. They prevent asset building from occurring in any sort of way and sort of in effect they do the opposite. They drain communities of the assets they hold and they trap people in these sorts of perpetual debt relationships that prevent them from accumulating assets that could help them exit poverty.

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Chancellor Soss says that, in addition to the social and economic consequences, there other broad consequences of a system of government that relies on the criminal justice system to generate revenues.

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Soss There are also political consequences, there are civic consequences. You can think of this in kind of a two-sided way. On one side, these sort of practices, which we call predatory criminal justice practices, operate in a way that's kind of repressive. They take away things like they take away the individual's freedoms. They take away their rights. They obviously take away their resources and in that sense they contribute to the marginalization and exclusion and disempowerment of communities that are already quite marginal to American political life in terms of the power they hold and the influence. For example in some states it's even the case that absent anything else, just simply owing these criminal justice debts can be a grounds for disenfranchisement from voting. In the State of Alabama, for example, local clerks are charged with — hold the authority, the discretion to decide on which kinds of criminal justice involvements constitute “moral turpitude”, and in some places, they consider owing these debts to be a kind of moral turpitude that justifies taking away the franchise, not allowing people to vote.

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Chancellor In thinking about these extractive criminal justice practices as described by Soss, he says that there's a bigger story here about the pressures placed on local budgets that occurred independent of the criminal justice system.

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Soss I think it's here that Josh Page, my coauthor, and I, take a little different position than some of the other works, which we think are quite good, in this area. Which is that rather than seeing this as something that is simply about what happened to the criminal justice system, we see what's happened here as a response to something much broader. The broader changes in the political economy. If you go back and look at the timing of when this happened and where it happened and how it happened, what you find is that I think the beginning of the story for us is that a variety of decisions were made which really in a sense began to make the fiscal situations, the budgetary situations, of municipalities untenable. On one side, there was this long period of policy devolution in which a variety of services and programs and various obligations of government were handed down from federal governments to state governments which then passed them down to local government. And local governments became really responsible for a much broader array of costs, expensive obligations, oftentimes even when people called in in many complaining about it, unfunded mandates. They had to come up with the money to to do this. At the same time, municipalities were prevented increasingly from raising their own revenues to meet these obligations. States passed various laws and rules that made it impossible for localities to raise their taxes and raise revenues without getting statewide approval or they simply put bans in place against raising local property taxes. All sorts of things like that, and so municipalities more and more found that they were in a position in which they had a kind of structural mismatch in an ongoing way between the obligations they had and the funds they had available.

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Chancellor Soss says that, because of this, municipalities began to look for other ways to meet their fiscal needs — and that the timing of this coincided with what Soss calls a remaking of criminal justice and policing in America.

Soss And if you look back through the war on crime, the war on drugs, broken windows policing, what you find is, from the 1970s on, we built this massive sprawling apparatus of criminal justice in this country and by the 1990s, which is really the point of onset for a lot of this contemporary criminal justice predation, by the 1990s, you the growing fiscal pressures I was talking about intersecting with a set of changes in criminal justice that were well underway and in fact accelerating. You had this large, growing system of policing, adjudication, and incarceration, and the 1990s was a particularly intense decade of moral panic over underclass pathologies, where you had powerful sort of rhetoric surrounding the idea of social disorder and crime and personal irresponsibility, calls to get tough on bad behaviors including criminal behaviors. And these political pressures to get tough on crime, combined with the fact that in many cases localities had limited control over sentencing and probation and parole. That made it very difficult for municipalities to do in the area of criminal justice what they were doing in the area of social services. And social services, right, the fiscal pressures led to cutbacks. They needed to save money, these were expensive programs, and there was an era of sort of austerity, cutting back programs, but the tough on crime politics made it very hard to cut back policing, to cut back incarceration. But here's the thing: what happened was that the same pressures right that stood in the way of criminal justice rollbacks actually offered a basis for a different response to fiscal pressures. Actually converting criminal justice systems into revenue sources. And so we saw in one city after another was that in the name of getting tough on crime, officials created new violations and added new fines and raised fine levels in the name of protecting taxpayers from having to cover the costs of criminals, in a sense being fleeced by criminals in that way. They piled up all sorts of fees to make the criminals pay the costs. And in the name of public safety, they expanded the scope and size of financial bail obligations. And, of course, as I've already mentioned, to promote the war on drugs and pursue it, they aggressively developed and pursued civil asset forfeiture procedures. So all of these actions, really, what we call a predatory system of criminal justice activities, in a way, to the actors who created it seemed like good governmental decision-making. It appeared to many as a win-win. Or you might say a meeting of virtue and necessity. To those actors, they were getting tougher on criminals, they were pursuing public safety more vigorously and they were actually meeting the community's fiscal needs all in one swoop. In some sense, to them at least it appeared to make sense at the time.

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Chancellor Professor Soss says that within poverty studies, there hasn't been enough attention to these kinds of extractive forces, especially those coming from people and groups in power, when it comes to understanding poverty.

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Soss At the center of the field, there's always been this question of why, particularly for those of us that study the United States as a part of poverty, why in an affluent society are so many people poor? And I think in terms of that core question, we've said a lot of important things about neighborhood dynamics and about the accumulation of human capital and individual differences in various ways. And we study why programs that aim to draw people out of poverty fall short of their goals in various ways whether it's through funding or implementation or design problems or whatever it might be. All of this is really important and we should continue to do all that of course, but if you've participated in this community for a while, and if you keep up with these literatures, it's striking to me in light of the story that I've just told from our project, how little we've talked about the fact that many people are poor in the United States precisely because there are more powerful groups out there who work creatively and actively and continually to enrich themselves in ways that deprive people of assets and leave them in poverty. And I think that the fact that we talk about the characteristics and decisions and behaviors of poor people in poor communities so much and say so little about how powerful groups work to draw resources out of those communities, whether it's payday lenders or the kinds of predatory criminal justice practices I'm talking about, or subprime mortgages and auto loans, credit card contracts, all these things. The fact that we focus mainly on poor people's behaviors and choices and community characteristics and only look to more powerful groups and elites when we're talking about policies they designed to try to alleviate poverty and don't pay attention to those more powerful groups activities and institutions and institutions of government and institutions like private prison corporations and all the rest, I think in some ways that is to our shame and is a detriment to our field. I think that going forward part of what message we hope to send with this book is that is that we really need to take much more seriously the analysis of how poverty intersects with inequality and power and practices of governance.

Chancellor Many thanks to Joe Soss for sharing this work with us.

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