

## **The 22nd Annual Liman Center Colloquium**

### **Economic Injustice: Courts, Law Schools, and Institutionalizing Reforms**

March 28–29, 2019

Yale Law School, 127 Wall Street, New Haven, CT

sponsored by

The Arthur Liman Center for Public Interest Law

UC Berkeley School of Law Policy Advocacy Clinic

The Fines & Fees Justice Center

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The problems of poor people in court came to the fore a half century ago, as individuals and groups claimed a host of new rights—to habitable housing, government benefits, and fair treatment. Courts and legislatures responded in some instances by protecting entitlements for tenants, recipients of federal benefits, and individuals harmed by discrimination. In addition to recognizing rights, courts honed in on the process due and the need to equip individuals when in conflict with the state. As a result, legal mandates insisted that, in some cases, states provide lawyers, waive fees, and give subsidies for transcripts and experts. In addition, Congress created fee-shifting to encourage the pursuit of civil rights claims, and both legislatures and courts shaped class actions and other forms of aggregation to permit cost-sharing among litigants and to provide incentives for lawyers to represent groups.

Over the last three decades, some of these innovations have been cut back through changes in statutes and in judicial interpretation. Moreover, rather than expanding implementation of state-provided assistance for court users, the costs associated with courts have risen. The results are a welter of fees and payback obligations.

“Court debt” comes from many sources, including administrative fees, money bail, punitive fines, victim restitution charges, and fees for transcripts, public defenders, arrests, and incarceration. These economic burdens have greatly increased with the underfunding of core public institutions and with over-policing and prosecution in low-income communities of color.

Empirical evidence has documented how debt associated with the legal system puts individuals and families into cycles of poverty and punishment. In addition, for those involved in the criminal system, court-based debt can be a barrier to voting. The challenges of payment fall hardest on low-income, low-wealth people and communities of color—already overrepresented in the criminal system. Empirical evidence likewise shows that atop the demoralization of unending debt, legal financial obligations (LFOs) may net little by way of revenue while consuming state resources that could be dedicated to more generative activities.

During the last decade, scholars, media, bar associations, judicial task forces, institutions such as the National Center for State Courts, and investigations from the U.S. Department of Justice have brought these issues to the fore. Current practices have been the subject of challenges through litigation. Legislation and administrative reform have resulted in significant

changes. Reforms—some proposed and others implemented—include court rulings requiring protections to learn about individuals’ ability to pay, revisions of the price structures by using fines calibrated to earnings (termed “day fines”), and the abolition of fees in some arenas. Yet a wide range of problems – from past debt due to new debts incurred and new fees imposed – remain. Moreover, a host of private providers are marketing technologies to courts and prisons that are often accompanied by claims of the need to impose new charges on users.

This Colloquium focuses on one aspect of the vast terrain of legal debt, the role that both law schools and free-standing projects have played in generating new research and how those innovations could change court-data based collection and legal education and could ameliorate the challenges faced by courts and their users. Law and economics is now a topic familiar in the curriculum. But the economics of court services and the need for public subsidies for litigants—individually or in groups—are not yet institutionalized facets of legal education or routine aspects of court-data collection.

This working Colloquium therefore brings together individuals from different sectors involved with and concerned about the function and the future of courts, the impact of debt on courts’ legitimacy, and legal education. Through brief presentations and discussion among participants, we aim to know more about the kinds of reforms sought. We will probe whether, when, and why to deploy strategies like litigation, legislation, and administrative changes and whether these reforms are successful. Further, we will explore how the charges imposed by courts are affected by retrenchments in doctrinal interpretations of equality and due process, by legislative and judicial efforts to limit class actions and other aggregate processes, and by new information technologies in courts, such as electronic filing and “online” dispute resolution, and by out-sourcing collection and services to private providers. Simply put: How, in this dynamic world, can the legal academy contribute to training generations of lawyers and scholars to shape a more just legal system?

Thursday, March 28, 2019

4:10 to 6:15 pm

### **Interrupting and Reforming Court-Imposed Debt through Individual and Collective Action**

Many current and former Liman Fellows have joined with others in efforts to reform fees, fines, restitution, and money bail. We open our discussion with several Liman Fellows sketching the trajectory of reform going forward. These glimpses of efforts underway provide a backdrop for discussing the relationship between such efforts and the legal academy. Our questions include: Which forms of court-based debt are in focus? What else ought to be debated or challenged? What are the theories of due process and equal protection deployed, which are under siege, and can injunctions against court-imposed debt be sustained? What kinds of lawsuits have and could be shaped, and when should litigation be avoided? Has legal education interacted with these questions, and how have or could law schools contribute?

**Skylar Albertson**, The Bail Project, Liman Fellow 2019

**Chesa Boudin**, Deputy Public Defender, San Francisco Public Defender's Office,  
Liman Fellow 2012

**Olevia Boykin**, Civil Rights Corps, Liman Fellow 2019

**Katie Chamblee-Ryan**, Attorney, Civil Rights Corps, Liman Fellow 2013

**Emily Gerrick**, Senior Staff Attorney, Texas Fair Defense Project, Liman Fellow 2014

**Rachel Shur**, Attorney, Orleans Public Defenders, Liman Fellow 2017-19

**Ivy Wang**, Senior Staff Attorney, Southern Poverty Law Center, Liman Fellow 2013

**Jonas Wang**, Attorney, Civil Rights Corps, Liman Fellow 2016

**Seth Wayne**, Litigator, Institute for Constitutional Advocacy and  
Protection, Georgetown Law School, Liman Fellow 2011

Commentators

**Reva Siegel**, Nicholas deB. Katzenbach Professor of Law, Yale Law School

**Abbe Gluck**, Professor of Law and Faculty Director, Solomon Center for  
Health Law and Policy, Yale Law School

Moderator: **Judith Resnik**, Arthur Liman Professor of Law, Founding Director,  
Liman Center for Public Interest Law

Friday, March 29, 2018

This day-long roundtable builds on the opening discussion  
to bring into focus a series of related questions.

9:00 to 10:30

**What We Know and Need to Know: Data Collection as a Basis for or Obstacle to Reform**

"Evidence-based" policymaking is uncontroversial, yet unevenly used in legal systems. This segment seeks to understand what courts have determined to be the data routinely collected and how those materials do or could include information about the needs of court users. For example, does current court-based research gather information on the fees in place? The waivers obtained? The subsidies provided? What are the ways in which current data collections can illuminate these problems, or build in new data collections? Moreover, as online technologies promise to lower transaction costs, are savings passed on to the users and the courts? And what are the ways in which online technologies permit or inhibit insight into court users' needs? Further, given the outsourcing by courts to private providers, what obligations of disclosure and accountability are built in? What data systems are needed in order to bring about reform, and what kinds of information collection should not become routine or routinely shared across public and private sectors?

**Gipsy Escobar**, Director of Research Innovation, Measures for Justice

**Cynthia Lee**, Senior Court Research Associate, National Center for State Courts

**Jonathan Petkun**, J.D. Candidate, 2019, Yale Law School, and Ph.D. Candidate, MIT

**Erika Rickard**, Senior Officer, Civil Legal System Modernization, Pew Charitable Trusts

**Tanina Rostain**, Professor of Law, Georgetown Law Center

**Margaret Williams**, Senior Research Associate, Federal Judicial Center

Moderator/Commentator:

**Tom Tyler**, Macklin Fleming Professor of Law and Professor of Psychology and  
Founding Director of the Justice Collaboratory, Yale Law School

10:45 to 12:15 p.m.

**Creating New Data: The Impact of Law School Research**

Law schools have become research hubs taking on the problems of court debt. Indeed, the examples on this panel provide only a small subset of the many efforts underway. Through a series of case studies, we reflect on the ways in which research agendas are formulated, their impacts measured, and their effectiveness appraised. By looking at where in legal education the issues of poverty in and of courts emerge, we will explore how legal education is changing, reflect on the structures within law schools producing research, and discuss the sustainability of law school-based work.

**Alicia Bannon**, Deputy Director for Program Management, Brennan Center,  
Liman Fellow 2009

**Kellen Funk**, Associate Professor of Law, Columbia Law School

**Lucas Guttentag**, Professor of the Practice of Law, Stanford Law School; Lecturer in  
Law, Ford Foundation Distinguished Senior Research Scholar in Law, and Robina  
Foundation Senior Visiting Human Rights Fellow, Yale Law School

**Brook Hopkins**, Director, Criminal Justice Policy Program, Harvard Law School

**Caroline Sarnoff**, Executive Director, The Justice Collaboratory, Yale Law School

**Judith A.M. Scully**, Professor of Law, Stetson Law School

**Jeff Selbin**, Clinical Law Professor and Faculty Director, Policy Advocacy Clinic,  
Berkeley Law School; Visiting Senior Fellow, Liman Center, Yale Law School

**Colleen Shanahan**, Associate Clinical Professor of Law, Columbia Law School

**Lauren Sudeall**, Associate Professor of Law and Faculty Director, Center for Access to  
Justice, Georgia State University College of Law

**David Udell**, Executive Director, National Center for Access to Justice,  
Fordham Law School

**Anna VanCleave**, Director, Liman Center, Lecturer in Law and Research Scholar,  
Yale Law School

**Joanna Weiss**, Co-Director, Fines and Fees Justice Center

**Peter Zimroth**, Director, Center on Civil Justice, New York University School of Law

Moderator/Commentator: **Fiona Doherty**, Clinical Professor of Law, Yale Law School

12:30 to 1:45 p.m.

**Luncheon Discussion: The Vantage Points of the Courts**

Efforts are underway to document how people subjected to fees experience the system. This discussion turns to judges' experiences, as they have a unique vantage point from which to understand how courts protect rights, enable or hinder access to justice, and respond to or create debt.

**Jeremy Fogel**, Executive Director, Berkeley Judicial Institute, and former Director  
Federal Judicial Center; Judge, U.S. District Court for the Northern District of  
California (retired)

**Sheryl Gordon McCloud**, Justice, Supreme Court of Washington

**Andrew McDonald**, Associate Justice, Supreme Court of Connecticut

**Mary McQueen**, President, National Center for State Courts

**Holly Thomas**, Judge, Superior Court for the County of Los Angeles, California,  
Liman Fellow 2005

Moderator/Commentator

**Lisa Foster**, Co-Director, Fines and Fees Justice Center; former Director, Access to  
Justice, US Department of Justice; Judge, Superior Court of San Diego,  
California (retired)

2:00 to 3:30 p.m.

### **The Media's Role in Responding to Poverty in Courts: Information and its Impacts**

This session addresses the media's role in shaping public understandings of the interactions between courts and poverty. We will discuss examples of media coverage illuminating how poverty intersects with the court system – for example through stories on the impact of the criminalization of poverty and of punitive fees and fines. We will also explore the ways in which media coverage has helped to point the way to reform. Questions include how access to data can be improved, what kinds of information are important to have, and how the costs of obtaining the information (such as pay walls) can be lowered. How do courts facilitate or limit oversight of court processes and their consequences? What are the tradeoffs and challenges in terms of court-based data and individual privacy? And how have litigators and advocates used media coverage when arguing for reforms?

**Emily Bazelon**, Staff Writer, New York Times Magazine;

Lecturer in Law and Senior Research Scholar, Yale Law School

**Jess Bravin**, Staff Writer, The Wall Street Journal

**Lincoln Caplan**, Truman Capote Visiting Lecturer in Law and Senior Research Scholar,  
Yale Law School

**Josie Duffy Rice**, Senior Reporter, The Appeal

**Sarah Stillman**, Staff Writer, The New Yorker

Commentators

**Brandon Buskey**, Deputy Director for Smart Justice Litigation, ACLU

**Jamelia Morgan**, Associate Professor, University of Connecticut School of Law;  
Senior Liman Fellow Affiliate, Liman Fellow 2016

3:45 to 5:00

### **The Relationship of Funders and the Academy in Institutionalizing Law School Engagement**

Over several generations, legal education has been shaped by funding streams supporting curricular innovations of various kinds and new centers and programs. Surveying the work underway at law schools on court access demonstrates that legal education is once again

refocusing its concerns. This closing discussion reflects on the interaction between funders and law schools and on how the spurt of new work reflects and relates to community-based concerns and to court needs and practices. Which problems and which communities and arenas of reform garner attention? Are the new centers sustained, given that they pose challenges to neo-liberal paradigms confident in market-based solutions? What partnerships among law schools and with other institutions can integrate the problems of courts and their users into analyses of the justice of the legal system?

**Elizabeth Compa**, Principal Associate for Policy, Public Safety Performance Project,  
Pew Charitable Trusts, Liman Fellow 2011

**Timothy Fisher**, Dean, University of Connecticut School of Law, and Co-Chair,  
Task Force to Improve Access to Legal Counsel in Civil Matters

**Jennifer Gerarda Brown**, Dean and Professor of Law, Quinnipiac University  
School of Law

**Heather Gerken**, Dean, Yale Law School, Sol & Lillian Goldman Professor of Law

**Gloria Gong**, Director of Research and Innovation, Government Performance Lab,  
Harvard Kennedy School

**Julie James**, Director of Criminal Justice, Arnold Ventures

**Amy Kapczynski**, Professor of Law, Faculty Co-Director, Global Health Justice  
Partnership, and Faculty Co-Director, Collaboration for Research Integrity  
and Transparency, Yale Law School

**Andrea Marsh**, Clinical Lecturer and Director, Richard & Ginni Mithoff Pro Bono  
Program, University of Texas School of Law, Liman Fellow 2002

**Tracey Meares**, Walton Hale Hamilton Professor of Law and Founding Director,  
Justice Collaboratory, Yale Law School

**McGregor Smyth**, Executive Director, New York Lawyers for the Public Interest,  
Liman Fellow 2003

Moderator/Commentator: **Judith Resnik**, Arthur Liman Professor of Law,  
Yale Law School