Injustice Under Law: Perpetuating And Criminalizing Poverty Through The Courts

Judge Lisa Foster

Document Type
Article

Abstract
Money matters in the justice system. If you can afford to purchase your freedom pretrial, if you can afford to immediately pay fines and fees for minor traffic offenses and municipal code violations, if you can afford to hire an attorney, your experience of the justice system both procedurally and substantively will be qualitatively different than the experience of someone who is poor. More disturbingly, through a variety of policies and practices—some of them blatantly unconstitutional—our courts are perpetuating and criminalizing poverty. And when we talk about poverty in the United States, we are still talking about race, ethnicity, and national origin.

The majority of poor people in the United States are people of color. Although a substantial plurality are white, 24% of African-Americans and 21% of Hispanics live in poverty. Yet, African-Americans comprise just 12% of the total population, and Hispanics comprise just 18%. The impact of what we have done and continue to do daily in courtrooms throughout the United States is to trap people—including disproportionately people of color—in poverty.

In this essay, I will describe how the justice system enforces poverty employing three examples: bail, fines and fees, and access to counsel in civil cases. These are by no means the only ways in which the justice system quite literally imprisons people in poverty, but they are widespread and particularly pernicious. I will also provide a legal framework for analyzing these practices and a brief gloss on their history. I will conclude hopefully with a discussion of successful reform efforts and a way forward.

Recommended Citation

SHARE
Facebook | Twitter | LinkedIn | Email

Criminal law regulates sexuality in numerous different ways. These include but are not limited to: Criminalisation or decriminalisation of particular sexual behaviours. Granting or restricting autonomy, privacy and capacity of individuals to make decisions about sexual lives and behaviours. Protections relating to equality and non-discrimination. Different states have different approaches to the way in which sexuality is regulated in law. This means that while it is helpful to consider different legal approaches and create alliances across jurisdictions, it is important to keep in mind the varied operation of law in relation to sexuality.