THE CRIMINALIZATION OF INDEBTEDNESS: THE CONTEMPORARY LEGAL IDEOLOGIES OF DEBTORS' PRISONS AND THE RECENT REVIVIFICATION OF PEONAGE

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Perhaps indubitably for many individuals, the notion of a contemporary "debtor's prison" is an entirely unheeded conception. From a historical standpoint, the theory of people being thrown into jail solely on the basis of their inability to comply with monetary obligations has been technically eradicated in the United States for almost 200 years now.[1] I use the term *technically* in the broadest sense conceivable, since many of the prodigious evils of peonage—also referred to as debt slavery or debt servitude—that took place in our nation's early history[2] have been recently uprising again in our modern-day society.[3] The

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[1] Neil L. Sobol, *Charging the Poor: Criminal Justice Debt and Modern-Day Debtors' Prisons*, 75 MD. L. REV. 486, 486 (2016); *Debtors' Prisons*, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/debtors-prisons, (last visited Mar. 10, 2017); *See also* Olivia C. Jerjian, *Jail Fail: How Not Paying Your Fines Could Land You Behind Bars*, AM. CRIM. L. REV. (April 27, 2015), http://www.americancriminallawreview.com/aclr-online/jail-fail-how-not-paying-your-fines-could-land-you-behind-bars/ ("The United States outlawed debtors' prisons in 1833 through federal law when some states began jailing more debtors than criminals.").

[2] *See, e.g.*, Eli Hager, *Debtors' Prisons, Then and Now: FAQ: Congress outlawed them. The Supreme Court ruled them unconstitutional. Yet they live on.*, THE MARSHALL PROJECT (Feb. 24, 2015), https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq ("Imprisonment for indebtedness was commonplace. . . . [F]or those without friends in high places, debtors' imprisonment could turn into a life sentence. In many jurisdictions, debtors were not freed until they acquired outside funds to pay what they owed, or else worked off the debt through years of penal labor. As a result, many languished in prison—and died there—for the crime of their indigence.").

[3] Sobol, *supra* note 1, at 486; *Debtors' Prisons*, *supra* note 1; Devon Douglas-Bowers, *The History of America's Debtors' Prisons: The Shackles Return*, GLOBAL RESEARCH (Nov. 1, 2014), http://www.globalresearch.ca/the-history-of-americas-debtors-prisons-the-shackles-return/5411258 ("Now, those state debtors' prisons are making a comeback and, just like in the past, are having a disproportionate

revolution of contemporary peonage is an extraordinarily unfortunate, and in many cases, as we shall see, life-alternating experience for indigent individuals, who have committed only minor offenses, such as traffic violations and petty misdemeanors, since many of them are finding themselves in an incorrigible predicament simply because they cannot satisfy their financial obligations.[4] This unconstitutional practice is further exacerbated by the fact that the crimes indigents have committed would not have otherwise resulted in imprisonment if they were merely able to pay the courts.[5] In this regard, as is unfortunately a reality for more than 730,000 individuals currently residing in the local jails throughout our nation, people are being forced to endure substantial incarceration sentences just because they are poor.[6]

This Article is intended to address how the revivification of peonage in modern-day society is a problem that is escalating throughout our nation, and arguably, maintains little hope of being curtailed in the immediate future. Part I will discuss the historical development of a debtors' prison in comparison to its contemporary counterpart, as well as provide an analysis concerning the different types of financial obligations that are currently being imposed upon defendants by the courts.[7] Part II will illustrate what features may categorize a person as being "indigent," as well as demonstrate how contemporary peonage has extraordinarily far-reaching effects upon these individuals' families, and not just the defendants themselves.[8] This Part also argues that contemporary peonage actually proliferates illegal

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impact on the poor and working-class.").

4 *See* Sobol, *supra* note 1, at 486; *Debtors' Prisons*, *supra* note 1.

5 *See, e.g.*, Tate v. Short, 401 U.S. 395, 396 (1971) ("[Petitioner] was unable to pay the fines because of his indigency and the Corporation Court, which otherwise has no jurisdiction to impose prison sentences, committed him to the municipal prison"); Bearden v. Georgia, 461 U.S. 660, 661–62 (1983) (trial court revoked probation after failure to make a payment).

6 Aimee Picchi, *In modern-day debtors' prisons, courts team with private sector*, CBS NEWS (Mar. 25, 2015, 10:20 AM), http://www.cbsnews.com/news/the-rise-of-americas-debtor-prisons [hereinafter Picchi,*In modern-day debtors' prisons*]; Sobol, *supra* note 1, at 487.

7 *See* Hager, *supra* note 2. *See, e.g.*, Bill Quigley, *Debtors' prisons may be illegal, but they're alive and well in Louisiana*, THE LENS (Sept. 2, 2015, 6:00 AM), http://thelensnola.org/2015/09/02/debtors-prisons-may-be-illegal-but-theyre-alive-and-well-in-louisiana/; Tamar R. Birckhead, *The New Peonage*, 72 WASH & LEE L. REV. 1595, 1626 (2015).

8 *See* Birckhead, *supra* note 7, at 1628; Picchi, *In modern-day debtors' prisons*, *supra* note 6.

activity throughout our society, by enervating these individuals normal way of living, while significantly affecting the financial and emotional stability of future generations.[9] Part III will deliberate over how the United States Supreme Court has repeatedly held this type of incarceration as being a violation of impoverished peoples Sixth Amendment, Equal Protection, and Due Process rights under the Fourteenth Amendment of the Federal Constitution,[10] as well as provide an introduction regarding the numerous issues that have followed from the renowned 1983 verdict of *Bearden v. Georgia*.[11] This Part will also emphasize the preliminary problems associated with the *Bearden* decision from the time the verdict was concluded, illustrating the holdings important limitations while arguing that the United States Supreme Court has almost undoubtedly accomplished far less than what had been anticipated.[12]

Part IV of this Article will address the presently-existing, undesirable results which have developed after the decision in *Bearden* was reached, as well as demonstrate how lower courts are actually operating in transparent disregard of the Supreme Court's opinion.[13] This Part will also illustrate that our society is currently contending with the issue of lower courts collaborating with for-profit probation companies for the sole purpose of collecting the proceeds imposed upon indigent individuals.[14] Moreover, this Part will exemplify how indigents' Sixth Amendment right to counsel and Due Process rights under the Fourteenth Amendment are being violated at hearings in which defendants are being forced to appear unrepresented—subsequently resulting in *Bearden's* willfulness requirement being consistently overlooked.[15] Part V will commence on a more

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9 Jerjian, *supra* note 1; Birckhead, *supra* note 7, at 1627; Aimee Picchi, *Are America's Jails Used to Punish Poor People?*, CBS NEWS (Feb. 11, 2015, 12:47 PM), http://www.cbsnews.com/news/how-jails-are-warehousing-those-too-poor-to-make-bail [hereinafter Picchi, *Are America's jails used to punish poor people?*].

10 *See* Betts v. Brady, 316 U.S. 455, 461–62 (1942); Griffin v. Illinois, 351 U.S. 12, 20 (1956); Gideon v. Wainwright, 372 U.S. 335, 340–41, 345 (1963); Williams v. Illinois, 399 U.S. 235, 245 (1970); Tate v. Short, 401 U.S. 395, 401 (1971); Argersinger v. Hamlin, 407 U.S. 25, 30, 40 (1972); Bearden v. Georgia, 461 U.S. 660, 661, 674 (1983).

11 *Bearden*, 461 U.S. at 674.

12 *Id.* at 668–69, 674. *See* Sobol, *supra* note 1, at 486.

13 Hager, *supra* note 2; Picchi, *In modern-day debtors' prisons*, *supra* note 6; *Bearden*, 461 U.S. at 674.

14 *See* Picchi, *In modern-day debtors' prisons*, *supra* note 6.

15 *See* State v. Stone, 268 P.3d 226, 235 (Wash. Ct. App. 2012); *Bearden* 461 U.S. at 674.

optimistic note, analyzing the developments that States nationwide are establishing in order to make advances towards eradicating peonage's revivification—surprisingly, with these developments originating from law enforcement authorities themselves.[16] Finally, Part VI will serve as this Article's conclusion.

I. DEFINING "DEBTORS' PRISON'S" AND DISTINGUISHING HISTORICAL PEONAGE FROM ITS CONTEMPORARY COUNTERPART

From a definitional standpoint, a debtors' prison has been characterized as "any prison, jail, or other detention facility in which people are incarcerated for their inability, refusal, or failure to pay debt."[17] From a historical standpoint, the United States formally proscribed debtors' prisons under Federal law in 1833,[18] and in 1983, the Supreme Court orchestrated its decision in the famous case of *Bearden v. Georgia*, opining that courts cannot incarcerate a defendant solely because they are unable to afford their fines.[19] This chronology appears very straightforward and without complications. It would make for a much shorter Article if our criminal justice system had adhered to the Court's 1983 decision, but regrettably, the reality of the matter is that poorer people in our county are currently uprising to proclaim the same message that defendant David Ramirez, for example, stated when he became subjected to incarceration as a result of his inability to pay his court fees—"if I don't pay in full every month, I'll go to jail and I'll lose everything."[20]

Today, there are predominately two different categories of debt which can lead a defendant to face subsequent imprisonment from their inability to pay.[21] The first of these classifications is

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16 Jeffrey A. Gruen, *Unconstitutional Mixing of Religion and the Judiciary: An Analysis of the Fugitive Safe Surrender Program Under Establishment Clause Jurisprudence*, 38 SETON HALL L. REV. 1533, 1533 (2008); Offices of the United States Attorneys, *Fugitive Safe Surrender*, UNITED STATES DEPARTMENT OF JUSTICE (Dec. 9, 2014), http://www.justice.gov/usao/priority-areas/violent-crime-prevention/fugitive-safe-surrender; Heidi Hall, *Churches step in after feds drop Fugitive Safe Surrender*, RELIGION NEWS SERVICE (Sept. 28, 2015), http://www.religionnews.com/2015/09/28/churches-step-feds-drop-fugitive-safe-surrender/.

17 Hager, *supra* note 2.

18 *See, e.g.*, Quigley, *supra* note 7.

19 *Bearden* 461 U.S. at 674.

20 Birckhead, *supra* note 7, at 1602.

21 *Id.* at 1626; *see also* Sobol, *supra* note 1, at 491 ("The sources for

private debt, which encompasses aspects such as loans, medical bills, vehicle payments, and credit card finances which could result in a creditor or debt collector filing a claim against the defendant in civil court.[22] The second category of debt, and what also seems to be the origin of much of the contemporary peonage issues, incorporates what is known as legal financial obligations (LFO's), and includes either monetary fines which are designed to be the punishment for the defendants illegal conduct, restitution which represents the amount needed to reimburse the victim for any damages, or user fees which are intended to generate proceeds for the State itself.[23] Fees classified within this third category are especially damaging to indigent defendants, since courts are able to tack on additional charges at essentially every point in the lawsuit, such as surcharges, administrative fees, jail per diem fees for pretrial incarceration, investigation fees, interest fees and more.[24] This evolving process of attaching supplementary debt is so detrimental to indigent defendants that it is currently being classified as the "offender-funded" system.[25] Furthermore, as this Article will later analyze in Part IV, private, for-profit probation companies are collaborating with courts for the sole purpose of obtaining all of these fines from defendants—implementing their own additional charges on top of indigent's already-escalating payments.[26] These diverse classifications of debt, along with the procedures of tacking on additional fines in user fees and for-profit probation services, demonstrates how peonage has revivified in distinguishable ways from its historical counterpart, but nevertheless, has once again become a major

incarceration based on failure to pay vary and include administrative detention, civil contempt, child support orders, and monetary obligations that the criminal justice system imposes.").

22 Birckhead, *supra* note 7, at 1626.

23 *Id.* at 1627; *see also* Sobol, *supra* note 1, at 491 ("The main categories of LFOs are fines, restitution charges, and fees.").

24 Birckhead, *supra* note 7, at 1627; Sobol, *supra* note 1, at 491–92 ("With increasing incarceration rates and growing budgetary concerns, LFOs have escalated dramatically over the last forty years. Monetary charges now exist at all stages of the criminal justice process, including pre-conviction, sentencing, incarceration, probation, and parole. Fees have expanded to include a wide variety of charges purportedly to reimburse the costs of state and local entities. The fees even cover constitutionally required services such as public defenders.").

25 Sobol, *supra* note 1, at 492.

26 *See* Picchi, *In modern-day debtors' prisons, supra* note 6; Sobol, *supra* note 1, at 492.

impediment throughout our nation.[27]

II. THE PROFILE OF AN "INDIGENT DEFENDANT?" AND HOW CONTEMPORARY PEONAGE HAS FAR-REACHING, DEBILITATING RAMIFICATIONS

For a comprehensive understanding on the notion of contemporary peonage, it is important to be aware of exactly what types of people are being affected by this revivification, and what categorizes an individual as an "indigent defendant." From the outset, it is exceedingly significant to understand that current impoverished people are considerably dissimilar from the traditional, middle or upper-class American citizen.[28] When a typical middle or upper-class person receives a ticket, they will most likely pay it right away and will cease to have any further communication with the court.[29] However, when the traditional indigent individual gets hit with a fine, it could potentially have inordinate consequences on their life for numerous reasons.[30] The average, indigent defendant characteristically will be prodigiously poor, will not have attained a high-school education, will likely fall within some of the lowest literacy percentiles, and will predominately be an individual of minority-status.[31] The culmination of these characteristics illustrates the harsh reality that a single fine imposed by the court holds the potential to completely destroy an underprivileged person's way of life—one way being what a defendant must recover from after undergoing incarceration.[32]

Not only does the concept of contemporary debt servitude essentially make it a crime to be poor, it also is responsible for actually proliferating criminal activity throughout our nation.[33] One detrimental ramification resulting from an indigent defendant being incarcerated for failing to satisfy their financial obligations to the court is that they will ultimately lose their

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[27] Sobol, *supra* note 1, at 493; Jerjian, *supra* note 1; Hager, *supra* note 2; Quigley, *supra* note 7; Birckhead, *supra* note 7, at 1627; Picchi, *Are America's jails used to punish poor people?*, *supra* note 9.

[28] Birckhead, *supra* note 7, at 1628.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *See* Jerjian, *supra* note 1; Birckhead, *supra* note 7, at 1627; Picchi, *Are America's jails used to punish poor people?*, *supra* note 9.

employment because they are spending so much time behind bars.[34] Moreover, when these individuals are finally released from imprisonment, they will have a considerably more difficult time finding a new occupation, while the majority of them will statistically experience an average 11 percent decrease in their hourly earnings as a result of having a record of being previously incarcerated.[35] Since delinquency in satisfying a financial obligation effects credit scores, these people are facing serious challenges in regard to finding housing, and defendants are being detrimentally affected whether their indebtedness originates from the outstanding court fines themselves, or from the mounting other bills in which they have neglected in order to evade incarceration.[36]

Temporary Assistance to Needy Families, as well as low-income housing assistance.[37] Furthermore, if the imprisoned defendant is a parent, their detention can subsequently lead to their children being placed in foster care, sometimes breaking families apart indefinitely.[38] Even in the circumstances where children are not taken away from their families, the experience of having an incarcerated parent can have utterly devastating effects upon the stability of the children's household.[39] Children growing up in families where their parent (or parents) underwent imprisonment have been shown to have a greater probability of developing significant emotional and behavioral issues, along with having a heighten chance of establishing alcohol and substance abuse problems.[40] These children are also statistically more likely to implicate themselves in the juvenile and criminal court systems as well, demonstrating how parental incarceration solely based on inability to pay fines essentially perpetuates crime in the future generations of our society.[41] Even in the

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34 Jerjian, *supra* note 1; Picchi, *Are America's jails used to punish poor people?*, *supra* note 9.

35 Picchi, *Are America's jails used to punish poor people?*, *supra* note 9; *see also* Birckhead, *supra* note 7, at 1603 ("For low-income families, criminal-justice debt can lead to driver's license suspension, bank account or wage garnishment, extended supervision until debts are paid, additional court appearances or warrants related to debt collection and nonpayment, and extra fines and interest for late payment.").

36 Jerjian, *supra* note 1.

37 Birckhead, *supra* note 7, at 1649.

38 Picchi, *Are America's jails used to punish poor people?*, *supra* note 9.

39 Birckhead, *supra* note 7, at 1649–50.

40 *Id.* at 1650.

41 *Id.*

situations where there are no children residing in the household, since contemporary debt servitude has such a debilitating effect upon most indigent person's financial standings, these defendants oftentimes find themselves in a cycle of committing additional, criminal acts,[42] since they now somehow have to afford their living expenses, obtain enough food for themselves, and find a way to survive when all of their money is now going towards paying off their court fees.[43]

Take the lawsuit that was recently filed in Ferguson, Missouri, for instance, by civil rights lawyers on behalf of eleven individual plaintiffs asserting that they were all incarcerated as a result of their inability to pay fines in which they acquired from otherwise trivial offenses.[44] Ferguson, which encompasses a population of approximately 21,000 people, issued roughly 33,000 arrest warrants in 2013—all of which originated from its residents defaulting in satisfying their court-imposed financial obligations.[45] The city has accrued $2.6 million dollars in 2013 alone, predominantly based on court fines and fees originating from minor traffic violations.[46] This revenue represents Ferguson's second greatest origin of income, and approximately 21 percent of the city's aggregate budget.[47] The story of Tonya DeBerry, one of the plaintiffs joined in the Ferguson suit, provides a characteristic demonstration as to how courts have

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[42] *Id.* at 1648 ("For many low-income people . . . criminal-justice debt and its resultant destabilization and stigma can pave a path back to reoffending and, often, to prison.").

[43] *See In For A Penny: The Rise of America's New Debtors' Prisons*, AM. C.L. UNION, Oct. 2010, at 7 [hereinafter ACLU, *Save In For A Penny]*.

[44] Joseph Shapiro, *Civil Rights Attorneys Sue Ferguson Over 'Debtors Prisons*,' NPR (Feb. 8, 2015), http://www.npr.org/sections/codeswitch/2015/02/08/384332798/civil-rights-attorneys-sue-ferguson-over-debtors-prisons [hereinafter Shapiro, *Civil Rights Attorneys Sue Ferguson*]; *see also* Sobol, *supra* note 1, at 487 (quoting Class Action Complaint, Tonya DeBerry et al., v. City of Ferguson, No. 14:15-cv-00253 (E.D. Mo. Feb. 8, 2015), http://equaljusticeunderlaw.org/wp/wp-content/uploads/2015/02/Complaint-Ferguson-Debtors-Prison-FILE-STAMPED.pdf.) ("In February 2015, a class action complaint was filed against the City of Ferguson asserting that the city's jails had become a 'modern debtors' prison scheme' that had 'devastated the City's poor, trapping them for years in a cycle of increased fees, debts, extortion, and cruel jailing's.'").

[45] Shapiro, *Civil Rights Attorneys Sue Ferguson*, *supra* note 44.

[46] *Id.*

[47] Joseph Shapiro, *Ferguson's Plan To Cut Back On Court Fees Could Inspire Change*, NPR (Sept. 10, 2014), http://www.npr.org/2014/09/10/347305791/how-court-fees-became-an-emotional-issue-in-ferguson-mo [hereinafter Shapiro, *Ferguson's Plan To Cut Back On Court Fees*].

drastically departed from the holding determined in *Bearden*, by unambiguously demonstrating that the Supreme Court's 1983 opinion holds essentially no significance in its interpretation and administration of the law.[48]

While driving her 4-year-old grandson in her daughter-in-law's vehicle, DeBerry was pulled over after law enforcement officials observed that her license plates had expired.[49] Upon performing a background check, police discovered that DeBerry had a warrant out for her arrest for failure to pay previous traffic tickets that were issued to her in Ferguson, along with a suspended license which was a result of her unsatisfied financial obligations to the court.[50] She was ultimately restrained, arrested on account of such warrant, and taken to the Ferguson County Jail until her daughter was able to borrow money from a neighbor in order to pay her bond and have her released.[51] While incarcerated, she described the jail as "moldy and dirty," and that "[t]here was blood on the walls where people cut themselves and wiped the blood," proclaiming how she was essentially treated as a hardened criminal, all because of her inability to pay her old traffic tickets.[52]

DeBerry's two children, Herbert and Allison Nelson, are plaintiffs in the Ferguson suit as well, and similar to their mother, they have also personally experienced the unconstitutional practices invoked by the city's preferred method of administrating criminal justice.[53] Herbert has been incarcerated in Ferguson four different times in the last four years, and he consistently proclaims that "[w]e're not criminals. It's just driving. And we're paying these big punishments. It's not fair. It's holding us back. It's like a cycle. Once you put us in trouble for something so petty . . . [it's] just digging a hole and putting us in it."[54] Allison, who currently is ineligible to join the Navy since she has a warrant against her resulting from unpaid traffic tickets, collaborates with her brother's opinion, stating that "[t]his is holding so many of these young black kids back, it's ridiculous. They can't even get a job because they can't even get a

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48 Shapiro, *Civil Rights Attorneys Sue Ferguson*, *supra* note 44; Bearden v. Georgia, 461 U.S. 660, 674 (1983).

49 Shapiro, *Civil Rights Attorneys Sue Ferguson*, *supra* note 44.

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

background check, because they have a warrant for traffic tickets only."[55]

Tonya DeBerry's case is regrettably not a distinctive illustration of most state courts' current treatment of indigent defendants.[56] It has become apparent that the poorer members of our society are consistently being foreseen as a subhuman class of individuals by our own government—where it is acceptable to treat them as enslaved criminals solely because of their indigency.[57] In response to this bewildering notion, this article argues that the ramifications of contemporary peonage may not be fully understood nor brought under the harsh scrutiny it desperately necessitates until the demoralizing stories of the individuals it has affected are brought to the public's attention.[58]

III. THE RENOWNED CASE-LAW REVOLUTIONIZING THE HISTORICAL PERCEPTION ON DEBT SERVITUDE

It is worth taking the time to examine a brief overview of the few but critical Supreme Court cases that have orchestrated on the issue of contemporary peonage. Without a comprehensive understanding of the historical context, it would be difficult, if not impossible, to meritoriously analyze what could be effectuated in order to start combatting this revolution in modern-day debt servitude. Although there are a respectable amount of cases which loosely implicate this article's subject-matter, I will tailor the analysis to address only the ones which have made the most profound impact upon the law. With that concept in mind, I believe a commendable place to initiate our deliberation on the issue of modern-day peonage can be found in the case of *Griffin v. Illinois*.[59]

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55 *Id.*

56 *See, e.g.*, Sobol, *supra* note 1, at 487 ("[A]s illustrated by recent lawsuits and investigations alleging debtors' prisons in Alabama, Colorado, Georgia, Louisiana, Mississippi, New Hampshire, Ohio, Oklahoma, Tennessee, Texas, and Washington, the abuses are not limited to Ferguson, Missouri.").

57 *See, e.g.*, Shapiro, *Civil Rights Attorneys Sue Ferguson*, *supra* note 44.

58 For another substantial example of the severe ramifications resulting from the practice of contemporary peonage in the United States, *see* Maryclaire Dale, *Woman sentenced to 2 days for truancy fines dies in jail; judge says it was his only option*, STARTRIBUNE (June 11, 2014, 5:30 PM), http://www.startribune.com/woman-jailed-over-truancy-fines-found-dead-in-cell/262737551/.

59 Griffin v. Illinois, 351 U.S. 12 (1956).

A. GRIFFIN V. ILLINOIS[60]

An earlier 1956 Supreme Court case that does not explicitly address, but substantively correlates to, contemporary peonage is the case of *Griffin v. Illinois*.[61] The *Griffin* Court undertook the question of whether refusing to grant sufficient appellate review to an indigent person, subsequently from their inability to pay for a stenographic transcript, constituted a violation of that defendant's Equal Protection rights under the Fourteenth Amendment.[62] In vacating the judgment of the Illinois Supreme Court, the *Griffin* Court held that "[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has."[63] Evidently, *Griffin* provides a somewhat earlier demonstration as to how indigent defendants had a significantly greater chance of being incarcerated merely as a result from their impoverishment.[64] Since only the more affluent defendants who could afford to pay for the transcripts would receive the appropriate appellate review, they would be the *only* ones granted the opportunity to potentially overturn any unconstitutional convictions, leaving indigent defendants with no alternative courses of action besides serving their previously-imposed sentences.[65] However, the verdict reached in *Griffin* does illustrate that the Supreme Court has historically recognized the concept that an individual cannot be obliged to submit to a punishment of incarceration simply because of their indigent status.[66]

B. WILLIAMS V. ILLINOIS[67]

The case of *Williams v. Illinois* demonstrates a further elaboration concerning how the Equal Protection Clause of the Fourteenth Amendment is correlated with an indigent person's

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60 *Id.*

61 *Id.* at 19.

62 *Id.* at 13.

63 *Id.* at 19.

64 *Id.*

65 *Id.* at 18–19 ("Statistics show that a substantial proportion of criminal convictions are reversed by state appellate courts. Thus to deny adequate review to the poor means that many of them may lose their life, liberty or property because of unjust convictions which appellate courts would set aside.").

66 *Id.* at 20.

67 Williams v. Ill., 399 U.S. 235 (1970).

subsequent incarceration from being unable to pay their fines.[68] In *Williams*, the Supreme Court undertook the issue of deciding whether a defendant could be imprisoned beyond the enforced statutory maximum on the sole basis of being incapable of sustaining their economic obligations to the Court.[69] The appellant in *Williams* was convicted for petty larceny, and sentenced to a term of one-year incarceration and a five-hundred dollar fine—the maximum penalty imposed by the state statute.[70] Appellant's conviction, permissible by the statutory language, further specified that in the event appellant prevaricated his monetary obligations, he would serve an extended jail sentence in order to "work off" his fine in the amount of $5.00 each day.[71] The appellant in *Williams* was ultimately sentenced to serve 101 days *beyond* the statutory maximum as a result of his inability to pay a fine of $505.00.[72]

Upon petition, the Illinois Supreme Court opined that there is no violation of an indigent person's Equal Protection rights when they are incarcerated for defaulting in their responsibilities of satisfying a monetary obligation.[73] The Supreme Court, after granting certiorari, then illustrated just how extensive the overall problem of debt servitude was by proclaiming that the majority of states, at that time, had implemented statutes which authorized an indefinite duration in which a defendant may be incarcerated as a result of their inability to pay their fines.[74] The Court looked to the holding in *Griffin v. Illinois* when addressing the issue under the Equal Protection Clause of the Fourteenth Amendment, and concluded that the statutory ceiling on incarceration must be equally applied to every defendant, while further opining that maximum sentences cannot be modified

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68 *Id.* at 236.

69 *Id.*

70 *Id.*

71 *Id.* at 236, 249 ("In a judgment imposing a fine, the court may order that upon nonpayment of the fine the offender may be imprisoned. Rate of credit: $ 5 per day. But no person may be imprisoned in this fashion for longer than six months.").

72 *Id.* (emphasis added).

73 *Williams*, 399 U.S. at 238.

74 *Id.* at 239–40. ("At the present time almost all States and the Federal Government have statutes authorizing incarceration under such circumstances. . . . Indeed, in prior cases this Court seems to have tacitly approved incarceration to 'work off' unpaid fines. . . . [T]he greatly increased use of fines as a criminal sanction has made nonpayment a major cause of incarceration in this country.").

based on an individual's financial standing.[75] The *Williams* Court made certain to acknowledge that its decision did not in any way preclude an indigent from being convicted of the statutory ceiling, and it also proclaimed that any other means may be utilized in order to achieve the courts interest in obtaining payment of fines.[76] Although the Court acknowledged the intensified "hardship" its holding could place on the criminal justice system from the inability of courts to incarcerate defendants who have defaulted on their monetary obligations, it nevertheless proclaimed that the burden was greatly overshadowed by the objective in ensuring constitutional impartiality.[77]

C. TATE V. SHORT[78]

As we progress with our endeavor of conceptualizing the Supreme Court's historical view of incarceration as a result of indigence, we turn to the case of *Tate v. Short*.[79] In *Tate*, the petitioner was indebted for approximately $425.00 in traffic violations, and was incapable of satisfying his financial responsibilities to the court because of his impoverished financial status.[80] As a result of his inability to satisfy his monetary obligations, the Corporation Court, which originally maintained no authority to enter incarceration sentences, imposed a judgment on petitioner to serve 85 days in prison, accruing at a rate of $5.00 per day in accordance with the State's statute.[81]

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75 *Id.* at 244.; *see also* Griffin v. Illinois, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").

76 *Williams*, 399 U.S. at 243, 244–45 ("The State is free to choose from among the variety of solutions already proposed and, of course, it may devise new ones.").

77 *Id.* at 245.

78 Tate v. Short, 401 U.S. 395 (1971).

79 *Id.* at 396.

80 *Id.*

81 *Id.* at 397; *see also* TEX. CODE CRIM. PROC. art. 43.09(a) (2009)("When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine or is confined in a jail after conviction of a felony for which a fine is imposed, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the county jail industries program, in the workhouse, or on the county farm, or public improvements and maintenance projects of the county or a political subdivision located in whole or in part in the county, as provided in the succeeding article; or if there be no such county jail industries program, workhouse, farm, or improvements and maintenance projects, he shall be confined in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged

Petitioner's case made it to the Supreme Court, where the origin of his incarceration was overturned based on the Courts examination of its prior holding in *Williams*.[82] In *Tate*, it was concluded that petitioner's imprisonment was solely based on his indigence status, since his judgment was the product of a crime that would otherwise not implicate any prison time in itself, which the Supreme Court conclusively determined was a palpable violation of his Due Process and Equal Protection rights under the Fourteenth Amendment.[83]

What should be underscored about the *Tate* Court is that it implicates the *Williams* analysis in opining that the States are unrestricted from invoking any substitute method in which its objective of procuring payment of its imposed fines can be achieved, but nevertheless, it declines to provide any illustrations as to what would be considered an appropriate alternative.[84] It is worth noting that the *Tate* Court also scrutinizes the unconstitutionally detained prisoner as being a burden on the State when it argues the notion that the government would have to afford the costs of the inmates' lodging and food, leaving one to marvel as to whether the Court may have maintained any undisclosed intentions at the time.[85] What is perhaps most disconcerting, however, is that *Tate* proclaims that its judgment does not "preclud[e] imprisonment as an enforcement method when alternative means are unsuccessful *despite* the defendant's reasonable efforts to satisfy the fines by those means" (emphasis added).[86] Arguably, this holding achieves little when combating future, unconstitutional incarceration for the indigent members of society. Impoverished individuals may still be confronted with the adversities of satiating their monetary obligations imposed by the court (e.g., a payment plan a court may determine to be "reasonable," but nevertheless, will be realistically impossible for the defendant to satisfy), and if they fail to achieve satisfaction under the implemented "alternative methods," they may still be faced with any various term of imprisonment deemed

against him. . . .").

82 *Tate*, 401 U.S. at 397, 398–99; *Williams*, 399 U.S. at 244.

83 *Tate*, 401 U.S. at 398–99.

84 *Id*. at 399, 400 (quoting Williams, 399 U.S. at 244–45) ("It is unnecessary for us to canvass the numerous alternatives to which the State by legislative enactment . . . may resort in order to avoid imprisoning an indigent beyond the statutory maximum for involuntary nonpayment of a fine or court costs.").

85 *See id.* at 399.

86 *Id.* at 401.

appropriate.

D. BEARDEN V. GEORGIA[87]

We now address what many may consider to be the most renowned Supreme Court case with regard to the issue of contemporary peonage.[88] In 1983, the Court in *Bearden v. Georgia* deliberated over the issue of whether the States were prohibited, under the Equal Protection Clause of the Fourteenth Amendment, from rescinding an indigent defendant's probation on the grounds that he had defaulted in satisfying his obligations of paying his fines and restitution.[89] Petitioner in *Bearden* was indicted in 1980 for committing felonies of burglary and theft.[90] In summation of both of his convictions, he received four years' probation, a $500.00 fine, and a $250.00 payment for restitution.[91] Petitioner was later laid off from his job, and he promptly informed his probation officer that he would be late on his next payment, since he was having difficulty finding new employment based on his status as a convicted felon.[92] Instead of assisting petitioner with avenues in which he could otherwise meet his financial obligations, the trial court rescinded his probation and immediately incarcerated him for the remainder of his probationary sentence.[93] Astonishingly, the Georgia Court of Appeals' declination of petitioner's assertion of Equal Protection violation was declined for review by the Georgia Supreme Court.[94] Upon grant of certiorari, the United States Supreme Court, in establishing monumental precedent, analyzed the distinctions and significance between a defendant's willful disregard to make payments, in comparison to a defendant's definite inability to satisfy his monetary obligations to the court.[95]

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87 Bearden v. Georgia, 461 U.S. 660 (1983).

88 *See, e.g.*, Jerjian, *supra* note 1; Hager, *supra* note 2; ACLU, *Save In For A Penny*, *supra* note 43, at 5; Jon Schuppe, *Reformers Seek to Undo Growth of New 'Debtors' Prisons*,' NBC News (Sept. 18, 2015, 10:58AM), http://www.nbcnews.com/news/us-news/reformers-seek-undo-growth-debtors-prisons-n425276; Chris Albin-Lackey, *Profiting from Probation: America's "Offender-Funded" Probation Industry*, Human Rights Watch (Arvind Ganesan et al., 2014).

89 *Bearden*, 461 U.S. at 661.

90 *Id.* at 662.

91 *Id.*

92 *See id.* at 662–63.

93 *Id.* at 663.

94 *Id.*

95 *Id.* at 668.

The Court in *Bearden* implicated the holding that was established in *Williams* by agreeing that "nothing in our decision today precludes imprisonment for willful refusal to pay a fine or court costs,"[96] but ultimately opined that "if the probationer has made all reasonable efforts to pay the fine or restitution, and yet cannot do so *through no fault of his own*, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available."[97] Although the Court in *Bearden* emphasized its affirmation that nothing precludes the States from imposing the statutory maximum on indigents (as was previously determined in earlier Supreme Court cases), *Bearden* invoked the novel requirement that courts must now evaluate all aspects specifically pertaining to the reason why a defendant is unable to satisfy his financial responsibilities.[98] Establishing that preliminary requirement, the Supreme Court in *Bearden* found no evidence which demonstrated that the petitioner had not made a bona fide effort at obtaining employment, and ultimately overturned the judgment rescinding his probation.[99]

After considering what was articulated in the Supreme Court's opinion in *Bearden*, one may be persuaded into formulating the misapprehension that the notion of a contemporary debtors prison has long-since been eradicated.[100] Unfortunately, and to the great consternation of these individuals, there are numerous impediments that have ascended throughout our modern-day society after the holding in *Bearden* was reached, one of which concerns the vague interpretation as to what the Supreme Court defined as being an actual "willful" disregard by a defendant in satisfying his obligation to pay his fines.[101] While the *Bearden* Court ultimately necessitated courts to engage in an assessment as to the reasons why an individual defendant had defaulted on

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96 *Id.* at 668 (quoting Williams v. Illinois, 399 U.S. 235, 242 (1970)).

97 *Id.* at 668–69 (emphasis added).

98 *Id.* at 672.

99 *Id.* at 673, 674 ("The focus of the court's concern, then, was that the petitioner had disobeyed a prior court order to pay the fine, and for that reason must be imprisoned. But this is no more than imprisoning a person solely because he lacks funds to pay the fine, a practice we condemned in *Williams* and *Tate*.").

100 *See id.* at 661–62.

101 *Id.* at 674; *see also* Jerjian, *supra* note 1 ("Another explanation is the vague definition of the 'willful' in *Bearden*. . . . [T]he Court neither specifically defined what 'willful' meant, nor did they give any examples, leaving it open to judges' differing subjective interpretations.").

his payments, it nonetheless failed to provide any actual examples of what the term "willful" fundamentally encompassed.[102] Additionally, and indisputably even more troubling, is the fact that there seems to be a trend in contemporary state courts to function and reach decisions in transparent disregard of *Bearden's* "willfulness" requirement altogether.[103] The conception of our nation's state courts operating in blatant disdain of *Bearden's* holding lies at the forefront of the recent resurrection of debt servitude in our country,[104] and is the next section that this Article is intended to address.

IV. ARISING ISSUES OF CONTEMPORARY PEONAGE FOLLOWING BEARDEN

A. LOWER COURTS CONFIGURATIONS WITH FOR-PROFIT PROBATION COMPANIES:

Most individuals know that the United States already maintains the record for incarcerating the largest amount of people in the world.[105] What these people may not be aware of is that approximately twenty-five percent of the world's inmates reside in America, whereas roughly ninety-five percent of the entire population lives outside the United States.[106] Now turning to the contemporary issues our society is contending with as a result of lower courts failures to adhere to the principles established in *Bearden*, it should be noted that there are approximately 730,000 people in local jails alone who are currently behind bars solely because they are unable to afford their bail.[107] Keep in mind that this figure exclusively represents the number of people who are unable to pay their bail in local jails, and does not even encompass the countless others incarcerated for traffic violations.[108] This extraordinary statistic

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102 *Bearden*, 461 U.S. at 672.

103 *Id.* at 673–74.

104 *Id.*

105 *See, e.g.*, Sobol, *supra* note 1, at 490 ("The issue of incarcerating indigents for failure to pay fines and fees is not limited to Berks County, Pennsylvania, but is a national phenomenon that has apparently accompanied the growth of mass incarceration in the United States.").

106 *Id.*

107 *Bearden*, 461 U.S. at 674; Picchi, *In modern-day debtors' prisons, supra* note 6.

108 *See* Picchi, *In modern-day debtors' prisons*, *supra* note 6.

is substantially correlated with the fact that courts in at least thirteen states are uniting with private, for-profit probation organizations in order to assist them in obtaining revenue from indigent defendants.[109] This Article argues next that these for-profit probation companies are one of the principal reasons as to why our nation is currently experiencing such an accelerating revivification of peonage.

Various probation organizations, such as the Judicial Correction Services, Inc. (JCS), hold themselves out as "a comprehensive solution to recidivism," and an organization known to "decreas[e] jail populations and docket size," whereas in reality they are arguably intensifying the problems involving debt servitude for these indigent defendants in numerous respects.[110] Companies such as the JCS, who work with municipalities, actually tack on extra penalties representing their own fees in addition to the fines that were originally imposed upon defendants by the court—making it that much harder for disadvantaged people to evade incarceration.[111] In fact, it has become a standardized practice for organizations like the JCS to charge defendants a $10.00 start-up fee, along with a surplus of $40.00 every month as a representation of their "work" in collecting people's money.[112] The American Civil Liberties Union (ACLU), has scrutinized these types of organizations by proclaiming that "the relationship between municipalities and for-profit probation companies creates a financial incentive to generate profits at the expense of probationers' rights."[113] The JCS, however, insists that they are an essential aspect to our criminal justice system, arguing that they maintain the responsibility of enforcing defendant's monetary obligations, which subsequently aids the courts in procuring the revenue in

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109 *Id.*

110 Judicial Correction Services, Inc., *Judicial Correction Services*, 2011, http://www.judicialservices.com/; *see also Ending Mondern-Day Debtors' Prisons*, AMERICAN CIVIL LIBERTIES UNION (2017), https://www.aclu.org/feature/ending-modern-day-debtors-prisons ("Debtors' prisons waste taxpayer money and resources by jailing people who may never be able to pay their debts. This imposes direct costs on the government and further destabilizes the lives of poor people struggling to pay their debts and leave the criminal justice system behind.").

111 *See* Picchi, *In modern-day debtors' prisons*, *supra* note 6.

112 *See, e.g.*, Allie Gross, *Company at Center of "Debtors' Prison" Case Accused of Racketeering*, Mother Jones (Mar. 20, 2015, 1:48 PM), http://www.motherjones.com/politics/2015/03/its-been-bad-year-judicial-correction-services.

113 Picchi, *In modern-day debtors' prisons*, *supra* note 6.

which they already hold entitlement.[114]

The proposed objective of for-profit probation companies such as the JCS is significantly misconstrued in its implication with contemporary debtors' prisons in that these organizations make an exceedingly trivial effort in actually assisting defendants in meeting their financial obligations.[115] In the case of Kevin Thompson in the state of Georgia, for example, Mr. Thompson was indebted for $810.00 worth of traffic tickets, and was unable to pay his fines as a result of his lower-standing, financial status.[116] The JCS informed Mr. Thompson that he had 30 days in which to satisfy his financial obligations to the court, rather than attempting to organize any alternative measures that Mr. Thompson could employ his services in for the purposes of repaying his debt.[117] Leaving Mr. Thompson with no substitute avenues, he was forced to endure a sentencing of five days in prison, under the recommendation of the JCS.[118] The ACLU ended up intervening in Mr. Thompson's case and providing him with representation that ultimately led to a momentary settlement of $70,000 in Mr. Thompson's favor, subsequently from his unconstitutional incarceration at the commendation of the JCS.[119]

Robin Sanders faced similar treatment as a result of the workings of the JCS.[120] After Ms. Sanders was pulled over by police, she was arrested and imprisoned for her failure to pay a $730.00 debt.[121] Similarly, Debra Shoemaker Ford of Alabama was forced to spend *seven weeks* in jail, and was never given the opportunity to appear in court over the course of her detention.[122] Ms. Ford was on probation as a result of a traffic ticket she received, and she later learned she was placed in jail for failing to make her monthly payments to the JCS—again—with the probation company invoking no alternative measures whatsoever to serve as a substitute for Ms. Ford's satisfaction of her financial obligations.[123]

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114 *Id.*
115 Hager, *supra* note 2; Picchi, *In modern-day debtors' prisons*, *supra* note 6.
116 Picchi, *In modern-day debtors' prisons*, *supra* note 6.
117 *Id.*
118 *Id.*
119 *Id.*
120 Hager, *supra* note 2.
121 *Id.*
122 *Id.*
123 *Id.*

The case of Roxanne Reynolds gives yet another illustration regarding the realistic underpinnings of the JCS, where the probation organization was discovered to have been routinely threatening disadvantaged citizens in Clanton, Alabama, with imprisonment subsequently from their inability to pay their traffic fines and other citations.[124] In the lawsuit, the Southern Poverty Law Center (SPLC), filed a complaint against the JCS, criticizing the probation organization for violating the Federal Racketeer Influenced and Corrupt Organizations Act (RICO), by attaching its own fees in addition to the fine amounts that were already imposed upon defendants by the court.[125] The SPLC is another association that is stepping up in response to indigent defendants challenging the contemporary problems of peonage.[126] The SPLC recognizes the deteriorating cycle that impoverished people become victims of in the era of modern-day peonage, as well as the underlining objectives of companies such as the JCS, by declaring its mission "to abolish the modern-day debtors' prisons prevalent in the Deep South and stop the use of 'offender-funded' services such as private, so-called 'probation' companies that use the power of the justice system to extort payments from the poor."[127]

Ms. Reynolds was one of the many plaintiffs who became a victim to the relentless threatening by the JCS.[128] Ms. Reynolds proclaimed that the JCS would rescind her probation and imprison her if she continued to default on her monthly, traffic violation payments.[129] Ms. Reynolds suffered from multiple sclerosis which caused her to frequently miss work, and JCS explicitly informed her that her medical disorder was an insufficient justification for failing to satisfy her outstanding fines.[130] Ms. Reynolds was previously forced to undergo five days in jail as a result of her traffic tickets, and it ultimately took her over a year to satisfy her financial obligations to the court, while

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124 *Roxanne Reynolds et al., v. Judicial Corrections Services, Inc., et al.*, SOUTHERN POVERTY LAW CENTER (Mar. 11, 2015), https://www.splcenter.org/seeking-justice/case-docket/roxanne-reynolds-et-al-v-judicial-correction-services-inc-et-al.

125 *Id.*

126 *Economic Justice*, SOUTHERN POVERTY LAW CENTER (2015), https://www.splcenter.org/issues/economic-justice.

127 *Id.*

128 *Roxanne Reynolds et al., v. Judicial Corrections Services, Inc., et al.*, *supra* note 124.

129 *Id.*

130 *Id.*

she routinely was unable to purchase food and consistently failed to pay her medical and living expenses.[131]

These few instances encompass only a significantly trivial percentage of the thousands and thousands of indigent people who are undergoing horrendous treatment at the hands of our criminal justice system and the system's private probation organizations counterparts.[132] The lower courts, along with the for-profit probation companies, are now being harshly scrutinized for neglecting the actualities of these impoverished defendants situations, and are being accused of "'turn[ing] increasingly to the criminal justice system to fund themselves where budgets have been cut.'"[133] Nevertheless, in accordance with the purposes of this Article, it must be noted that even if the complications generated by these corrupt, for-profit probation organizations were entirely eradicated, indigent defendants would still, unfortunately, be forced to contend with additional challenges regarding the revivification of peonage.[134]

B. A JUDGE'S RESPONSIBILITIES WITH REGARD TO INDIGENT'S FEDERAL CONSTITUTIONAL RIGHTS CORROBORATED WITH BEARDEN'S "WILLFULNESS" REQUIREMENT:

A valid point to keep in mind regarding for-profit probation companies such as the JCS is that these organizations are not the entities responsible for ultimately implementing prison sentences on indigent defendants for being unable to satisfy their financial obligations.[135] That determination, as was proclaimed in the Court's opinion in *Bearden*, is left up to the judge, whom inherently retains the potential to create a vast array of

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131 *Id. See* Alice Speri, *Poor Alabamians Sue Private Probation Company Profiting Off Their Debt,* (Mar. 12, 2015), https://news.vice.com/article/poor-alabamians-sue-private-probation-company-profiting-off-their-debt.

132 *See* Hager,*supra* note 2; Picchi, *In modern-day debtors' prisons*, *supra* note 6; *Roxanne Reynolds et al., v. Judicial Corrections Services, Inc.*, et al., *supra* note 123.

133 *See* Gross, *supra* note 112; *See also* ACLU, *Save In For A Penny*, *supra* note 43 ("States and counties, hard-pressed to find revenue to shore up failing budgets, see a ready source of funds in defendants who can be assessed LFOs that must be repaid on pain of imprisonment, and have grown more aggressive in their collection efforts. Courts nationwide have assessed LFOs in ways that clearly reflect their increasing reliance on funding from some of the poorest defendants who appear before them.").

134 Gross, *supra* note 112; Picchi, *In modern-day debtors' prisons*, *supra* note 6.

135 *See* Picchi, *In modern-day debtors' prisons*, *supra* note 6.

complications.[136] It is argued that some judges overseeing cases involving indigent individuals unable to pay their fines are simply not educated on what these defendants' rights actually are, which could help to explain why our nation is currently seeing so many cases in which indigent people's Sixth Amendment right to counsel, in addition to Equal Protection and Due Process rights under the Fourteenth Amendment are being repeatedly violated.[137] State courts are also vastly inconsistent with each other regarding whether a defendant's Sixth Amendment right to counsel should extend to hearings in which the defendant defaulted in satisfying their financial obligations.[138] Some courts orchestrate that the decision should be made by employing a balancing test dependent upon the factual basis of the particular case,[139] while other state courts proclaim that the Sixth Amendment is invoked whenever the defendant is facing possible imprisonment, regardless of whether the case is civil or criminal in nature.[140] Moreover, there are some courts which have opined that an indigent defendant is not entitled to Sixth Amendment protections when the proceeding is a civil, as opposed to a criminal, matter.[141]

This contradiction amongst state courts is additionally problematical when attempting to adhere to *Bearden's* willfulness requirement, since an overzealous judge will most likely avoid engaging in a comprehensive analysis of the indigent's ability to pay when that individual is an unrepresented defendant.[142] This Article argues that if the decision of whether a particular, unrepresented defendant—after an alleged evaluation into all the relevant factors incorporating their financial status—has willfully disregarded payment of their monetary obligations is left entirely up to the judge to decide, indigents will undoubtedly continue to be illegally incarcerated as a result of inaccurate determinations as to their economic capabilities.[143] To some, this

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136 Bearden v. Georgia, 461 U.S. 660, 672 (1983).

137 Douglas-Bowers, *supra* note 3; Birckhead, *supra* note 7, at 1670.

138 Birckhead, *supra* note 7, at 1671.

139 *See, e.g.*, State ex rel. Dep't of Human Servs. v. Rael, 642 P.2d 1099, 1104 (N.M. 1982).

140 *See, e.g.*, State v. Stone, 268 P.3d 226, 235 (Wash. Ct. App. 2012).

141 *See, e.g.*, Andrews v. Walton, 428 So. 2d 663, 666 (Fla. 1983); Adkins v. Adkins, 248 S.E.2d 646, 646–47 (Ga. 1978); In re Calhoun, 350 N.E.2d 665, 666–67 (Ohio 1976).

142 Bearden v. Georgia, 461 U.S. 660, 674 (1983); Birckhead, *supra* note 7, at 1674.

143 For various, but non-exhaustive, examples solidifying this proposition

argument may seem extraordinarily dispositive, but it, unfortunately, can nevertheless be supported by inordinate examples which all point to the notion that these indigents Sixth Amendment rights need to be acknowledged and taken into consideration during court proceedings.[144]

Take the case of *State v. Stone*, for instance, where Stone was sentenced in 2001 to serve 105 days in jail, undergo 12 months of community custody, and pay a $2,860.00 LFO payment, originating from charges of unlawful possession of a controlled substance and second-degree theft.[145] At the time the Washington Department of Corrections transferred its supervision of Stone to the Superior Court Clerk's Office, Stone had accumulated an outstanding balance of $3,179.81, which also encompassed his court fees and accrued interest.[146] Shortly thereafter, and without informing Stone of his right to counsel, the court obliged him to sign an agreement which stated that he was required to make minimum, monthly payments of $25.00, or a warrant would be issued for his arrest.[147] Stone made the required payments for 29 straight months, but ultimately ended up serving 10 days in jail when he missed one payment and court appearance.[148] For the next couple of years, Stone had suffered from numerous arrest warrants and had appeared in court without ever being given the opportunity to be represented by counsel.[149] In one of the hearings in which Stone appeared unrepresented, he proclaimed that he was currently homeless and in poor physical condition because of a shoulder injury that needed surgery, to which the trial court responded by stating, "I

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see, e.g., Jerjian, *supra* note 1; Hager, *supra* note 2; Picchi, *In modern-day debtors' prisons*, *supra* note 6; Picchi, *Are America's jails used to punish poor people?, supra* note 9; Dale, *supra* note 58; Albin-Lackey, *supra* note 88; Tina Rosenberg, *Out of Debtors' Prison, With Law as the Key*, N.Y. TIMES (Mar. 27, 2015), http://opinionator.blogs.nytimes.com/2015/03/27/shutting-modern-debtors-prisons/?_r=0; Sarah Stillman, *Get Out of Jail, Inc.: Does the alternatives-to-incarceration industry profit from injustice?*, THE NEW YORKER (June 23, 2014), http://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc; Ryan J. Reilly, *Mississippi City Sued Over 'Jailhouse Shakedown' That Hurts Poor*, THE HUFFINGTON POST (Oct. 21, 2015, 11:27 AM), http://www.huffingtonpost.com/entry/biloxi-mississippi-lawsuit-poor_562799c8e4b0bce347032090.

144 *See Stone*, 268 P.3d at 235.
145 *Id.* at 227.
146 *Id.* at 228.
147 *Id.*
148 *Id.* at 229.
149 *Id.* at 228, 229.

understand you've had problems, but this is an absolute mandatory obligation you have and the only type of response that can be done is to let you understand how serious it is and that apparently requires jail time."[150]

Although undocumented as to how representation was initiated, in 2009, at another hearing in which a warrant was again issued for Stone's arrest, the trial court finally commenced an investigation analyzing whether Stone's failure to make payments was actually done willfully—at the request of Stone's defense attorney.[151] The examination into whether Stone willfully disregard his financial obligations was conducted after years of Stone appearing in front of the court unrepresented.[152] During the fact-finding appearance, Stone testified that he was homeless, unemployed due to his shoulder injury which left him disabled, that the Department of Social and Health Services had to cover all his medical payments, and that the trivial income he was receiving from the State was spent exclusively on his shelter and food.[153] At the conclusion of Stone's assessment, the trial court ultimately determined that he defaulted on his payments "willfully," and sentenced Stone to 45 more days in jail without taking into consideration his deficient income or exceptionally destitute circumstances.[154]

The Washington Court of Appeals later vacated the judgment against Stone, concluding that the trial court violated his Sixth Amendment and Due Process rights.[155] The court described Stone's lack of counsel at the hearings as an "asymmetry of representation," since "[t]he average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel."[156] The appeals court also determined that Stone's Due Process rights were violated when the trial court concluded that Stone's nonpayment was willful solely based on the notion that he did not contact the court.[157] In summation, the trial court erroneously failed to consider Stone's inability to work from being disabled,

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150 *Id.* at 229.
151 *Id.* at 231.
152 *Id.* at 228, 229.
153 *Id.*
154 *Id.* at 230.
155 *Id.* at 234–35, 237.
156 *Id.* at 236 (quoting Turner v. Rogers, 131 S. Ct. 2507, 2520 (2011)).
157 *Id.* at 237.

his homelessness and significant reliance on federal assistance, and any other facets which illustrated that he did not intentionally or willfully desire to disregard his financial obligations.[158]

The case in *Stone* provides a prime illustration as to how indigent defendants Sixth Amendment right to counsel is implicated with their Due Process protections in regard to contemporary peonage.[159] The "professional legal skill" invoked in the courts Sixth Amendment analysis in *Stone* evidently encompasses the capability to demand an investigation into the willfulness requirement, as was established in the Supreme Court's 1983 determination.[160] In the aforementioned case, the trial court repeatedly failed to provide Stone with an attorney, and the first indication of any willfulness investigation being inquired into was only performed after Stone appeared with defense counsel.[161] Stone's appeal to the Washington Court of Appeals followed, and his judgement was ultimately vacated on a determination that his constitutional rights had been violated.[162]

V. DEVELOPMENTS TOWARDS REFORMATION

In recognition of the disconcerting consequences resulting from the revivification of peonage, this Article will now turn to a more optimistic area by addressing some of the developments States are implementing in order to combat modern-day debt servitude. One principal method of accomplishing this objective can be illustrated by what is known as the Fugitive Safe Surrender Program.[163] The Fugitive Safe Surrender Program is governed by the U.S. Marshals Service, and was implemented in order to combat the brutal treatment faced by many indigents at the hands of law enforcement authorities.[164] The program was originally established in Cleveland, Ohio, and after achieving

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158 *Id.*

159 *See Id.* at 228, 229, 230.

160 Bearden v. Georgia, 461 U.S. 660, 674 (1983); *Stone*, 268 P.3d at 235.

161 *Stone*, 268 P.3d at 230.

162 *Id.* at 235.

163 *See* 42 U.S.C. § 16989 (2015); *see also* Offices of the United States Attorneys, *supra* note 16 ("Fugitive Safe Surrender is a unique, creative, and highly successful, initiative of the U.S. Marshals Service that encourages persons wanted for non-violent felony or misdemeanor crimes to voluntarily surrender to the law in a faith-based or other neutral setting.").

164 *See* Offices of the United States Attorneys, *supra* note 16.

significant success in that region, it expanded until it became utilized nationwide.[165] The Fugitive Safe Surrender Program is also identified by its unique operation of "temporarily transform[ing] a church into a courthouse, so fugitives can turn themselves in, in an atmosphere where they feel more comfortable to do so."[166] New Jersey, for example, has recently implemented the program, enabling nonviolent defendants with arrest warrants to have their casefiles appraised by the judge, and not be forced to endure an existence in which they are constantly evading incarceration.[167] The casefiles reviewed under the program are noteworthy in that they typically do not result in imprisonment, and are resolved in a much more magnanimous fashion.[168] The surrender program in New Jersey ran for four days in 2013, and attracted over 4,000 individuals to come in and adjudicate their cases.[169] While the establishment was not an amnesty program, it did afford people a chance to receive a reduction in their fines, probation as opposed to incarceration—and for many—a second opportunity to live free from the apprehensions of the criminal justice system.[170]

Although the Fugitive Safe Surrender Program has been scrutinized by some under the Establishment Clause of the First Amendment, it nevertheless continues to operate as a respectable place of refuge for countless individuals.[171] United States

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165 *See e.g.*, Gruen, *supra* note 16, at 1534 ("The pilot program in Cleveland, Ohio, produced successful results, as over 800 fugitives surrendered over a four-day period. Based on the pilot program's success, the U.S. Marshals Service revealed its plan to implement the program nationally, and identical bills were introduced into the House and Senate to provide federal funding for this innovative program.").

166 42 U.S.C. § 16989(a)(1) (2015).

167 *See N.J. Offers 'Fugitive Safe Surrender' Program to Those with Outstanding Warrants*, CBS NEW YORK (Nov. 6, 2013, 10:00 PM), http://newyork.cbslocal.com/2013/11/06/n-j-offering-fugitive-safe-surrender-program-to-those-with-outstanding-warrants/ [hereinafter *N.J. Offers 'Fugitive Safe Surrender' Program*].

168 *See Id.*

169 *Id.*

170 *See Id.*

171 *See e.g.*, Gruen, *supra* note 16, at 1534–35 ("While the goal of the program is commendable, it raises serious issues under the Establishment Clause of the First Amendment, which prohibits Congress from making any law that respects an establishment of religion. The program is constitutionally suspect because it does not adhere to the separation of church and state doctrine . . . [The] Fugitive Safe Surrender violates the Establishment Clause under current jurisprudence and the program should be offered in a non-sectarian environment so that its tremendous benefits may be obtained through

Marshall Peter Elliott, the programs official founder, has described the collaboration of churches as "vital to Fugitive Safe Surrender's success," and "a place I find the most peace and security . . . Fugitives don't trust people like me," illustrating the unpretentious support he has in the programs operations.[172] Patronage of the methods employed in the program is also found in the indigent people themselves, with seventy-three percent of indigents proclaiming that "it was important or very important that the surrender location was a church," while less than 1 percent stated that they did not feel comfortable appearing at that type of establishment.[173] Although an exhaustive analysis inquiring into whether the Fugitive Safe Surrender Program violates the Establishment Clause is beyond the scope of this Article, it cannot be sustained that nonreligious defendants are uncomfortable with surrendering themselves simply because the location of the program is a church.[174] For example, an article addressing the intentions that Milwaukee, Wisconsin, has to open a Fugitive Safe Surrender Program in July of 2016 discusses how approximately 50,000 people nationwide have utilized the services of the program since its recent enactment, and how Milwaukee is anticipating on receiving a massive turnout of citizens at its own programs commencement.[175] The significant aspect to comprehend here is that people are not coming to these churches with the objective of endorsing their religions, nor was the program established for the purposes of such.[176] The churches are solely being utilized as an avenue in order to effectively communicate with people and convey the message that they will be safe if they choose to surrender themselves at this

constitutional means."). *But see, e.g.*, Hall, *supra* note 16.

172 Hall, *supra* note 16.

173 *See* Daniel J. Flannery & Jeff M. Kretschmar, *Overview of: "Fugitive Safe Surrender: Program Description, Initial Findings, and Policy Implications*," 11 CRIM. & PUB. POL'Y, 433 (2012); Hall, *supra* note 16.

174 Gruen, *supra* note 16, at 1563 ("Rather than providing fugitives with this opportunity at church, Fugitive Safe Surrender should provide this opportunity at community buildings with little or no religious affiliation and where all religious and irreligious people feel equally comfortable."). *See, e.g.*, Hall, *supra* note 16; *N.J. Offers 'Fugitive Safe Surrender' Program*, *supra* note 167; Flannery and Kretschmar, *supra* note 173, at 433–34; Marge Pitrof, *Plans in Motion for Fugitive Safe Surrender Program in Milwaukee*, NPR NEWS (July 15, 2015), http://wuwm.com/post/plans-motion-fugitive-safe-surrender-program-milwaukee.

175 Pitrof, *supra* note 174.

176 Hall, *supra* note 16.

program.[177]

It is extraordinarily difficult to overlook the vast benefits that the Fugitive Safe Surrender Program has provided to these countless, disadvantaged individuals, and the fact that States throughout the country are adopting the program exemplifies the notion that contemporary peonage is an exceedingly significant problem our society is currently contending with.[178] Although evident that it cannot be defined as an all-encompassing solution to our nation's modern-day debt servitude issues, the Fugitive Safe Surrender Program nevertheless is providing hope to the country's indigent defendants who would otherwise be subject to potential indefinite incarceration, as well as complete destruction in the stability of theirs and their families' lives.[179]

VI. CONCLUSION

Notwithstanding the prevalent concept that modern-day debtors' prisons have been eradicated in our country for almost 200 years,[180] indigent individuals continue to experience incarceration solely on the basis of their indigency.[181] As we have seen, many of the unconstitutionalities associated with historical debt servitude have arisen once again in our contemporary society,[182] and this revivification is responsible for not only proliferating criminal activity,[183] but also for maintaining the

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177 *See N.J. Offers 'Fugitive Safe Surrender' Program*, *supra* note 167 ("Most of these people really want to be productive and this gives them an opportunity for that second chance."); *see also* Hall, *supra* note 16 ("'I came here because I knew I could walk in and not see steel bars everywhere.'"); Pitrof, *supra* note 174 ("'It was a very positive and very emotional experience because I never knew a church and law enforcement community to link up that before.'").

178 *N.J. Offers 'Fugitive Safe Surrender' Program*, *supra* note 167; Gruen, *supra* note 16, at 1533.

179 Jerjian, *supra* note 1; Picchi, *In modern-day debtors' prisons*, *supra* note 6; Birckhead, *supra* note 7, at 1627; Picchi, *Are America's jails used to punish poor people?*, *supra* note 9.

180 *See, e.g.*, Sobol, *supra* note 1, at 486; *Debtors' Prisons*, *supra* note 1; *see also* Jerjian, *supra* note 1 ("The United States outlawed debtors' prisons in 1833 through federal law when some states began jailing more debtors than criminals.").

181 *See* Sobol, *supra* note 1, at 486; *Debtors' Prisons*, *supra* note 1; Douglas-Bowers, *supra* note 3.

182 Sobol, *supra* note 1, at 493; Jerjian, *supra* note 1; Hager, *supra* note 2; Quigley, *supra* note 7; Birckhead, *supra* note 7, at 1627; Picchi, *Are America's jails used to punish poor people?*, *supra* note 9.

183 *See* Jerjian, *supra* note 1; Birckhead, *supra* note 7, at 1627; Picchi, *Are America's jails used to punish poor people?*, *supra* note 9.

potential to destroy the life's of future generations.[184] Furthermore, countless indigent people are now very distrusting of our criminal justice system,[185] and somehow these individuals must find a way to be cooperative with the law enforcement authorities working to alleviate the problem—such as through the establishment of the various Safe Surrender Programs.[186] Now that we have methodically analyzed all the principal aspects pertaining to this devastating issue, it is imperative that we know where to go from here in order to combat the epidemic concern. I believe the first step is full public awareness of the matter, because all too often is a revolution only initiated after people become oriented with the reasons behind why others are suffering. This Article was intended to shed some light on that suffering, and hopefully, provide an authoritative voice for the indigent individuals who may feel like they do not have one.

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184 *See, e.g.*, Birckhead, *supra* note 7, at 1649, 1650.

185 Sobol, *supra* note 1, at 540 ("As a result, the assessment, imposition, and collection of criminal justice debt have created distrust in the system, and indigent defendants and their families have become trapped in what seems like an endless poverty cycle.").

186 *See, e.g.*, Offices of the United States Attorneys, *supra* note 16.