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Post-Judgment Recovery and its Effectuation on the Contemporary Debtors' Prison: A Treble Analysis on Collections Law in the State of Florida

Andrew E. Weiner
University of Central Florida



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POST-JUDGMENT RECOVERY AND ITS EFFECTUATION ON THE
CONTEMPORARY DEBTORS' PRISON: A TREBLE ANALYSIS ON
COLLECTIONS LAW IN THE STATE OF FLORIDA

by

ANDREW E. WEINER

A thesis submitted in partial fulfillment of the requirements
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ABSTRACT

This thesis will tender a rigorous analysis on the conjunction of the judgment creditors' inherent right for satisfaction of their outstanding monetary judgments and the respective detriments that judgment debtors confront as the party subject to satisfying the outstanding award levied against them. To establish the theory that the civil justice system has "resuscitated" the antebellum debtors' prison and infringed upon principles of civil liberties, this thesis will expound on evidence garnered throughout this study in a three-pronged analysis of economics, history, and a reflection on the American legal systems. Resources will include, but not be limited to: law journals, peer-reviewed materials, dissertations, congressional reports, and court cases.

ACKNOWLEDGEMENTS

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Special thanks to Mr. Raymond J. Rotella, Esq. of Kosto & Rosella, P.A., who has also been a mentor to me in the professional sphere. You stood by me through the rough patches and selflessly gave your time to counsel me in managing my business. Your collective guidance was one of the reasons why I drew interest in this subject matter.

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INTRODUCTION

Filing a lawsuit, regardless of its aim, is to formally “declare war” against another party for the legal right to act, or not to act, in a specific circumstance. The courts have existed for the purpose of determining what party deserves more justice than the other; that signifies that the courts, as a branch of our tripartite government, stand to determine what is best for society. But what if our court system fails to serve our society’s best interests? It is incumbent upon the membership, those who are subjugated by the injustice, to rise up and denounce said injustice because it is one of the many rights conferred to us by the Framers. In the scope of collections law, particularly post-judgment matters, there lurks a form of injustice which allows for individuals to be incarcerated for the nonpayment of debt. Given the wealth of authorities who have addressed the issue ad nauseum, one would believe that a proper solution has been attained—sadly, even to this day, we have not. Here we will discuss, in a three part analysis, why debtor incarceration occurs, where we derived the laws and ideals that allowed it to happen, and the inherent issues with legal systems.

*I. ECONOMIC AILMENTS THAT PROMULGATE THE PERVASIVENESS
OF CIVIL SUITS AND THEIR INEXORABLE EFFECTS ON DEBTORS*

Given that the economy is subservient to the whims and demands of society, during financial turmoil, in the dominion of the civil legal system, litigation, like leavened bread, augments as it is incited by extrinsic facets. The “yeast,” or economic detriments, is the catalyst and agitator for the rise of litigation in contemporary society; it is the logical and licit avenue for alleviating creditors’ financial shortcomings by petitioning the American judicature to mitigate that loss by way of the Final Judgment. Increased civil litigation leads to an increase in monetary judgments to be satisfied by the debtor, therefore a relative proportion of unsatisfied creditors seek to retain collections attorneys to pursue delinquent debtors. For one to adequately grasp the notion that the debtors’ prison has been gradually instilled in the civil legal system, one must be cognizant of the measures creditors would pursue to secure the Satisfaction of Judgment from the judgment debtor.

Judgments, as defined in Marriam-Webster’s Law Dictionary, are “a formal decision or determination on a matter or case by a court.” Monetary judgments are no different, they simply have a particular sum attached to them, for the aim of reinstating financial “wholeness” to the party that faced a particular civil detriment. The monetary judgment is the legally recognized document that provides the prevailing party in a suit a means to pursue the “defeated” party. Given that fact, the judgment is inevitably the most basic building block for the creditor, and it is analogous to an atom in the sense that it alone may symbolize recovery, but standing alone, it is a fairly feeble document, regardless of the grandeur that the public, and practitioners, impute to it. Civil monetary

judgments may be granted by the courts in various types of lawsuits, ranging from tort claims to contractual breaches (these are just two example of a countless number of possibilities). Notwithstanding, regardless of the grounds or circumstances for the filing of the initial complaint, for the judgment to reach the ripe stage of Satisfaction, it requires the aid of many relevant documents, like motions, writs, and forms, which reinforce the legal grounds that allow the creditor to recover the balance represented on the judgment.

These documents are precursors to attaining that most coveted item (Satisfaction), in the realm of post-judgment litigation, and which rest on the grounds that a Final Judgment was awarded to begin with; without it, one may not have the capability to recover the amount “at issue” in the initial complaint of the lawsuit. By awarding the Final Judgment, a party is formally declared as a tortfeasor or wrongdoer by a court, therefore that court recognizes the amount suitable for making the wronged party whole, at the very least, financially. If the creditor satisfied all the legal prerequisites necessary for obtaining the Final Judgment, and has applied the reasonable means (successfully) to recover the sum owed, the Satisfaction of Judgment would likely be in an environment appropriate for its conception; the Satisfaction of Judgment is a required document that is produced by the creditor, for the debtor, which denotes and formally recognizes that the judgment has been fully “paid off,” hence the name *Satisfaction* is no vague misnomer. *See* 701.04(2), Fla. Stat. (2018). Said document is an official record that earmarks the finality of a monetary judgment and effectively ends all litigation relative to the initial claim, though attaining it is typically a taxing endeavor for those with the necessary resolve and resources to grasp that *non plus ultra*.

In the realm of macroeconomics, these money judgments tend to have curious roles when one analyzes their frequency in our society. Certain trends may be found when one analyzes civil lawsuits and their prominence relative to the health of the economy. It is found through this analysis that periods of economic insecurity are one of the indicators that the lawsuits, hence money judgments, tend to flourish from. Further, by this analysis, when the general economic welfare of society diminishes, individuals tend to become more litigious when recessions end. Why? Well, individuals with standing debts are more financially secure post recession, ergo they have the willingness and wherewithal to pursue prior civil wrongdoings relative to the most recent economic insecurity.

These individuals are more disposed to becoming litigious because quite frankly, during the recession, they might not have had the means to pursue their debtors, and just as likely, the zeal appropriate to commence such a straining venture. *See* Bradley D. Riel and Paul T. Meiklejohn, *A Correlation Between the State of the US Economy and Patent Litigation Activity* § 95-97 (2010). The data of this study demonstrates clearly that legal services that are directly related to recession incidents rises after a lengthy period, much after the recovery of the economy. Therefore, particularly in the most recent data leading from the 2000's onward, the presence of recession related legal services is evident at a rate approximately twice as fast than before the 2000's. (It can be reasonably deduced that litigation arises from these legal services, thus the rise of legal services must positively correlate with the rise of civil litigation.) By applying this "evidence" to a more contemporaneous circumstance, the 2008 housing market crash, which led to a recession of unprecedented proportions, one may discover that the surplus of litigation produced from this event relates profoundly with creditor-debtor relations. Judgment recovery is

a product of these relations, and by illuminating the substance (claims) of the judgments that arose from this recession, one may determine that the ramifications of collections law is not a foreign element to this equation.

Based upon the influx of domestic insolvency due to the lax vetting of those qualified for homeownership, lenders were compelled to take adverse action against their borrowers. Those who were subject to loans outside of their financial capacities were patently incapable to recompense their lenders (once loan interests rates conjoined with the principle balances lent), and resulted in lenders filing lawsuits for the recovery of the defaulted loan. That delinquent loan is solidified by method of judicial order, the Final Judgment, which endows that lender the means to recover the judgment within a period of two decades, for most actions. (*See* Richard H.W. Maloy and Cynthia Lynne, *The Life of a Money Judgment in Florida is Limited—For Only Some Purposes*, 79 The Fla. L. J., 20 (2005), further reference and explanation on actions available to the judgment creditor, and those that supersede the allotted period of two decades.) These judgment wielding lenders, in the broad economic context, provide a formidable front against their debtors. They enabled practitioners to recover the deficiencies not recuperated from property foreclosure, and over time, the remaining unabated judgments were likely sold to third parties for a fraction of their face value, simply because the debtor, at that time, was either insolvent or not applicable for procedural *Due Process* because the creditor was unable to properly serve the debtor and establish legal notice for the renewed action.

Assignment of the judgment, or the sale of a judgment, can reinvigorate prior fruitless attempts to recover the debt by a new party that has had nothing to do with the initial matter at contention. Via filing an Assignment of Judgment with the appropriate records keeper of the

county, likely a comptroller's office or official records department, a judgment creditor can transfer a monetary judgment to another party, like the conveyance of a deed to real property by way of selling that property. That *assignee*, i.e., the new judgment creditor, literally takes the place of the original judgment creditor in all future proceedings and is allowed the selfsame legal rights as the original judgment creditor; the assignee superimposes the assignor in all future litigation and becomes the new and legally recognized party in the standing lawsuit. These assignees reinstitute collections methods and continue off of the shortcomings of the prior judgment-holder. Referencing *Sammis v. Wightman*, 31 Fla. 45 (1893) and *Radio South Dade, Inc. v. Marrero*, 572 So.2d 3 (1990), these cases reenforce the unalienable rights of the judgment assignee, that are then recognized as the de facto, first party in a lawsuit. (*Sammis*, although its ruling dates well over a century, its principles still present in contemporary law.) At this time, months, and just as commonly, years have passed since the initial suit has not only been filed, but when the judgment has been initially granted, allowing for legally allowable interest on these monetary judgments to accumulate against the debtors in the interim.

Judgment debtors in this circumstance have likely been unaware of any prospect for re-recovery, especially in the latter possibility when significant delay exists between the recovery efforts of the original creditor and the assignee of the judgment. As lapses in time occur, financial situations are also typically dynamic, so it is in the interest of these assignees to await a particular time to rekindle the judgment and conceive new actions, in the hope that the judgment debtor has greater financial utility than when the initial judgment was awarded, plus the benefit of the aforementioned accrued interest on the judgment. In that occurrence, the debtor, once located and Service of Process satisfied, is thrown into litigation once again. Subject to this debt for twenty

years, joined with a practically indeterminate period of time that allotted for execution actions on the judgment, if the judgment debtor fails to afford himself the luxury of retaining an attorney, to facilitate the remittance of funds owed or to assert possible defenses to the pursuing assignee, they are then jostled to take the most drastic “out” available, bankruptcy (if the bankruptcy court validates that the debtor merits such relief). Those that are not applicable to such financial absolvment may be subject to recovery tactics like garnishments, property seizures, liens, etcetera. However unfortunate these circumstances are, those recovery methods are not the most radical that exist, for the looming fate of incarceration hangs in the balance of those who fail to satiate the dogged drive of collectors.

II. *HISTORICAL NARRATIVE OF THE ANTEBELLUM DEBTORS' PRISON
OF ENGLAND AND THE CONVEYANCE OF COMMON LAW TO THE
CONTEMPORARY AMERICAN CIVIL LEGAL SYSTEM*

To demonstrate how the “contemporary debtors’ prison” has ridden on the coattails of the bygone debtors’ prison, it is pertinent to understand the relevance of historical precedent. As America’s debtor prisons have evolved from English Common Law and its punitive systems of renumeration, it is significant to mention the underpinnings of such a system of disenfranchisement. Imprisonment for debt is not a historical oddity. It is a profound and lengthy tale that was conceived in the Medieval Period, and its recognition in formal English law in the Industrial Age was also the product of purpose driven aims for mitigating civil grievances. Testimonies of what once was denoted a system of “barbarous indulgence,” which became an enabler for unfettering the animalistic capabilities of the human complexion. *See C. Fane, Esq., Observations on the Proposed Abolition of Imprisonment for Debt on Mesne Process; Shewing Its Probable Effects in Disabling Creditors from Forcing Their Debtors into Bankruptcy, Trust-deeds, or Compositions.* London: S. Sweet, Law Bookseller and Publisher pg. 16 (1838). As the English author and philanthropist Dr. Samuel Johnson has aptly put:

“Surely, he whose debtor has perished in prison, although he may acquit himself of deliberate murder, must at least have his mind clouded with discontent, when he considers how much another has suffered from him; when he thinks on the wife bewailing her husband, or the children begging the bread which their father would have earned. If there are any made so obdurate by avarice or cruelty as to revolve these consequences without dread or pity, I must leave them to be awakened by some other power; for I write only to human beings.” Johnson, Idler No. 38 (January 6, 1759).

For those who fortuitously survived their terms of incarceration, they recollected nothing contrary to that; a life in squalor, where the stench of feces and the decay of human flesh loomed through their dark cells wrought of pitted iron and reinforced with muted colored stone. Their treatment within that institution was that equatable to that of feral animals, where their confiners would induce living terror by way of sheer brutality and starvation. Indigent debtors were regarded by these prison wards as indistinguishable from those imprisoned for “true” crimes, and many of these debtors were forced to commingle with these felonious inmates or even housed in single cells alongside them.

During the eighteen and nineteenth centuries, the population of incarcerated debtors was around ten-thousand per annum and their numbers rose to become more than half the total incarcerated population of England. See Stephen Ware, *A 20th Century Debate About Imprisonment for Debt*, 54 Am. J. of Leg. Hist. 351, (July 2014). Social and political attention rose as reformists and philosophers mounted an offensive against this “aberration” by virtue of moral and Christian religious platforms, which appealed to returning decency to an immoral avenue for creditor reconciliation. Promulgating the argument that reinterpreted the stance of debtors’ financial weaknesses as an aspect to pity and not to savagely punish, and that the current state-of-affairs produced the “decadence” of society that agitated the greed from those who benefited from debtors ignoble station, further pushed towards the inescapable recognition that human beings should be treated with due fairness, given the bounds set by their Christian philosophy.

That dogma was directly responsible for the reformists theme that the human *soul* is an item that is *precious*—they reasoned that it was an item of immeasurable value, so that no quantifiable monetary value holds merit to its shackling. On a more secular plane, reformists

further reasoned that incarcerating debtors was just simply poor execution of law and that those incarcerated for debt are the consequence of financial “misfortune” rather than “malfeasance”; under that standing law, both were deemed equally as culpable due to the vague perception of what constituted criminality. Proponents for debtor incarceration reasoned that mishandling the property of others was a form of “notorious conduct,” since one party caused a loss to another, and losing another money implies some sort of wrongdoing. See Gustav Peebles, *Washing Away the Sins of Debt: The Nineteenth-Century Eradication of the Debtors' Prison*, 55 *Comparative Studies in Society and History* 701–724 (2013).

The overarching agenda of the reformists was to construct a system that would enable the courts to determine the kind of culpability debtors faced and to practice it with impartiality. Categorizing acts of fraud from “grievous culpability, the grievous from the mitigated culpability, and this last from perfect innocence” allowed for the dividing line between true criminals and simple debtors to be dissected, so that repugnant abuses to the system, like the filing of fraudulent debt claims against innocent parties and sloppy fact-finding in unjustly expedited trials could be curtailed. See Beccaria, Cesare, *On Crimes and Punishments and other Writings*, Bellamy, R., ed. Cambridge: Cambridge University Press. CrossRef, 90 (1995). Eventually, by the mid-to-late nineteenth century, English law caught-up with popular demands that rightly recognized the injustice so rampantly abhorred by the English citizenry. The Bankruptcy Act of 1869 stood as the true cauterization for the wounds that have bled the literal life and liberty of the populace, stating in section four of its decree that “no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money,” unless “fraudulent” grounds

exist for nonpayment. See WALLACE THODAY, IMPRISONMENT BY JUSTICES FOR NON PAYMENT OF MONEY, 5 (1936).

Contemporaneously, across the Atlantic, a budding nation also grappled with the institutional management of debtors. The taint of debtor imprisonment did not halt at the borders of England, as its colonial progeny embraced it as well. The development of debtors' prison in the United States, which relied upon the selfsame objectives and societal strife as our English counterparts, played an intriguing ideological role in the development of American civil law. Federally abolished in the first third of the nineteenth century, debtor relief came more than three decades earlier than in England. See House Report, *Abolish imprisonment for debt*, 22nd Congress, 1st Session, January 17, 1832. Prior to that enactment, almost all the states failed to legally recognize the civil liberties of the debtor and struggled with determining a humane means for addressing indebtedness. It was by the precedent setting of New York legislators that the first official round of debtor rights were addressed statutorily. The rest of the states followed suit shortly. See New York State Legislature, *An act to abolish imprisonment for debt, and to punish fraudulent debtors*, April 26, 1831.

During the active state of the former debtors' prison, Pennsylvania is a state that particularly comes to the fore when discussing collections laws, being that it was affected most by English law largely because of the scope of its economy. Upon becoming a large mercantile hub at around the time of the pre-revolutionary era, during the late seventeenth century, it was no surprise that its development of creditor-debtor law arose as a response to the demands of a booming economy. Merchants and lenders commonly faced delinquent accounts, in commercial and consumer settings, when serving the needs of their community. In response to these unsatisfied

and disgruntled creditors, Pennsylvania's general assembly enacted statutes to coerce debtors into compliance and to determine terms of incarceration for debt, which later proved to be an inspiration for the other American colonies seeking the redress of civil financial wrongs. Yet, even with these early collections laws during pre-independence, Pennsylvania recognized that it was impractical to perpetually detain debtors since they would foster little to no utility while incarcerated. Therefore, to address the overarching aim of actually recompensing the creditor, Pennsylvania law provided the debtor the opportunity to free himself, so that he may be released unto society under a contract for indentured servitude. (Shaiman, S. Laurence, *The History of Imprisonment for Debt and Insolvency Laws in Pennsylvania as They Evolved from the Common Law*, 4 *The American Journal of Legal History*, 207-212 (1960.)) This act of freeing the debtor, for the sake of debt restitution, could be considered the forerunner of the "purge" in contemporary courts.

The ability to purge oneself, in the context of the civil judicial rules of procedure, is to free oneself of judicial contempt, by legally exonerating the contemnor, the one who acted contumaciously (willfully and wantonly disobedient), from the consequences of one's actions. An Order for Contempt is levied against an individual who fails to abide by the mandates of the court. *See* 38.28, Fla. Stat. (2018). This is based on the redeeming act that the contemnor demonstrates, specifically by taking an apologetic character for one's disobedience and providing rectification of the issue at contention in the contempt order. (*See* Fla. Fam. Law R. Proc. 12.615(e) (2019), which demonstrates a general nature of the ability to purge.) The purge is the figurative key to the aforementioned contemnor's cell, as it is one of the final legal remedies available for those who are subject to a civil contempt charge.

The action of purge is in essence an aside from the order of contempt. The purge is not applicable for those without the antecedent, the actual contempt order, granted by the presiding judge in a trial. Like many of the foundational laws that have been derived from the English, the American legal system also adopted the Contempt of Court from Common Law's procedural rules. That allowed for a sort of fluidity which enabled the flow of the substantive laws to be ingrained within the court system by way of procedural facilitators, hence, procedural and substantive law go hand-in-hand. Procedural law, roughly defined as concerns "the means and method to apply and enforce those duties and rights,"; it is a resultant that is allowed by the myriad of vested rights determined by the "Due Process" clause of the Fifth Amendment, and applied to the states by the Fourteenth Amendment. See *Hall v. State*, 823 So. 2d 757 (Fla. 2002)(definition), U.S. Const. amend. V (Due Processes scope) and U.S. Const. amend. XIV (applicability to the State).

Inversely, substantive law is defined by the Florida Supreme Court as the "part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer." See *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730 (Fla. 1991). Given those definitions, the Order for Contempt lies clearly within the procedural influence of the law. One might question the merits of discussing the relevance of procedural law and its relation to the history of the Contempt of Court Order. It is a tool that has been wielded as a means to obtain a particular aim in the realm of all aspects of law—to induce compliance and mitigate the prospect of disorder. Substantive law does not regulate the system itself, it merely establishes the boundaries of law. The contempt enables the furtherance of law because it exists as a mechanism to provide a means for the application of law within the court system itself, as previously mentioned. It can be

viewed analogous to theory of a particular branch of study (substantive law) and that of the actual practice of that study (procedural law).

*III. THE JUXTAPOSITION OF CONTEMPORARY CIVIL RENUMERATION
AND CRIMINAL PUNISHMENT IN THE AMERICAN LEGAL SYSTEM AND
THEIR DICHOTOMOUS OBJECTIVES*

It is widely recognized within the field of law that the aims of civil and criminal courts are perpendicular to one another. Civil courts overarching aim is the pursuit of financial reconciliation to the party who faced a wrongdoing, to return them to a station as similar as possible prior to the occurrence of the wrongdoing. Criminal courts historically have imposed a retributivist agenda, i.e., the criminal courts seek redress for committed wrongs not by compensation (civil agenda), but by means of institutional retribution, since retribution appeals to the most innate satisfactions of man's character—redemption via the eye-for-an-eye or violence begets violence approach. *See* Bronsteen, J., Buccafusco, C., & Masur, J., *Happiness and Punishment*, 76 *U. Chi. L. Rev.* 1071 (2009). In the context of collections law, the dichotomous agendas of both civil and criminal courts are not clearly defined.

In a civil case, if the wronged party merited a certain amount of justice, the courts would value the harm and quantify it in dollars. In a criminal case, the courts would value the harm by the wrongdoer and quantify justice in respect to a period of time that the wrongdoer must endure incarceration. These are broad generalities, but they are essentially representative of what these systems stand for in our society. So, why is it that if a debtor, in our modern society, fails to satisfy a judgment would face incarceration? Is it not counterintuitive given the basic foundations of what these systems are hinged upon? Of course, a reasonable person would argue that to ensure justice, concessions must be made for an equitable solution. For instance, one might argue that the only

way to coerce disobedient debtors would be through a contempt order, accompanied with the impending possibility of incarceration if they fail to abide by that order. Additionally, one might also propose that without the contempt order, there would exist little inducement for debtors to rectify their debts. At the heart of this issue, why legitimize compromises in civil liberties—the unalienable right to be free from incarceration for debt—for the sake of procedural compliance? One need not compromise in this limited circumstance in post-judgment recovery.

Since the abolishment of the debtors' prisons, American law has plainly stated, via a variety of sources and authorities, that no individual shall be subject to incarceration for debt. (*See above*, Roman numeral number two of this analysis for particular references in history.) Although the procedural mechanism, like the contempt of court, exists to further justice for one party, it is at the ineludable expense of another's liberty. There is no incarceration that is appropriate in the circumstance of collections, regardless of the delay in satisfaction that the creditor might potentially face. Incarceration should be reserved for criminal punishments, for those who are true lawbreakers, not those who are indebted and subject to the contempt of court. In any issue unrelated to the satisfaction of a judgment, arguments could be made for civil incarceration because they do not have the issue of indebtedness and the aspect of imprisonment joined with one another.

Philosophically speaking, one may reason that because the judgment is the official acknowledgment of a debt, any litigation prior to the (final) judgment is simply a matter at issue and any debt existing prior to the judgment is not a legally recognized debt, ergo there can be no legal punishment for failing to satisfy. Therefore, if a contempt charge was issued and pursued, for say failure to produce requested documentation pre-judgment, then civil liberties would not be infringed since the consequences of the contempt are not based on an officially recognized debt,

but rather an avenue for attaining compliance from the party subject to the contempt. On the other hand, if a (final) money judgment is rendered and the contempt is pursued, with the inevitable consequence for incarceration following, the debtor would be imprisoned under a breach of his civil liberties since that is an actual debt, subject to actual legal consequences. A debt without a judgment would be a debt with no legal means for recovery, with exception to contacting the debtor via telephonic or written means—dunning (demand) letters.

Moreover, dissatisfaction for the incarceration for debts has been hotly debated in the areas of family and criminal law. These cases, like those relating to failures in not paying child support monies, or repaying the courts for criminal fines and costs, are separate issues that are related, but not directly within the scope of this analysis. See *Andrews v. Walton*, 428 So. 2d 663 (1983) (incarceration for willful nonpayment of child support) and *Bearden v. Ga.*, 461 U.S. 660 (1983) (criminal court incarceration for failure to pay fine or fee). It can be reasoned that children, when the financial supporter fails to remit monetary support, will face undue hardship; children's wellbeing supersedes any interests relative to the supporter's since solely the children's "best interest" is considered in court's determinations of law. See *Fla. Dep't of Children & Families v. X.X.G.*, 45 So. 3d 79 (Fla. Dist. Ct. App. 2010) (best interest determination wielded throughout all matters that involve a child).

When discussing situations like *Bearden*, one must consider that the debt at issue, i.e., the fines or fees imposed by the courts, are sourced from criminal wrongdoing. Unlike the civil counterpart discussed, the (wanton) criminal wrongdoer is not a party that faced unintended misfortune. They are individuals who breached a tacitly ingrained covenant, by virtue of their membership in their community, to remain free from illicit action. By breaching that implied

covenant, the wrongdoer has degraded the social utility of that community and hence done a wrong to all members, since the conduct of one reflects upon the integrity of many. This criminal also harms that community's economic utility, because the members are forced to pay the costs of the trial.

It is thus not unreasonable to impose a bi-layered approach to punishment in this circumstance—to incarcerate the criminal to mitigate further societal harm and to require restitution for the harm caused to the community. In other words, it is expected, given retributivism's ideals, that if an individual is a purveyor of harm to others, they are required to recompense in every manner available, to make the punishment suitable for the crime. For the civil wrongdoer, when juxtaposed with the previous criminal wrongdoer, punishing the debtor via imprisonment, along the concepts of retributivism, is an excessive punishment that does not fit the harm done to society. Even if a civil claim has criminal underpinnings, like the platitudinal circumstance of the civil trial of Orenthal James Simpson, the criminal courts exist to exert institutional punishment, not the civil legal system—it must be seen as an instance worthy of bifurcating both its criminal and civil natures. *See Goldman v. Simpson*, 72 Cal. Rptr. 3d 729, 731, (Cal. App. 2d Dist. 2008).

Although the incarceration issues of domestic relations and criminal court are related to the focus of “pure” civil incarceration, they are not directly appropriate to the philosophies proposed. These circumstances have contingent elements, children for family law and society for criminal law, that are supreme to the inequities that the wrongdoer faces. In terms of valuation, by way of utilitarian ideals, the collective's wellbeing is placed higher than the wellbeing of the individual.

The civil, post-judgment circumstance discussed varies from the former because it has no truly justifiable basis aside from instilling inequitable harm to the civil unfortunate.

SUMMATION

The lack of repaying debts and its relation to civil imprisonment is a matter of a rather questionable nature. It has been widely accepted that no one individual or entity has a legal obligation to repay their debts, strictly a moral or ethical obligation. But, by allowing pathways to imprisonment, post-judgment, the civil system undermines itself, as the objectives of the criminal courts are melded into the objectives of our civil courts. Unless a circumstance of fraud is found, whether a debtor is insolvent, legally ignorant, or willfully disobedient in post-judgment proceedings, the principles of freedom should be maintained over the desires of the civilly vengeful. Debtors are not criminals, and because they are not criminals, they do not deserve the possibility of imprisonment, as it is an aspect reserved to those who are contraveners of the law.

Imprisonment is not the only means for inducement. There exists many avenues for creditors to obtain the records (or a debtor's compliance) by more passive and humane methodologies, like requesting the production of evidence from alternative sources, invoking bankruptcy or using one of the varied execution actions available rather than strictly pursuing the debtor to exhaustion. Levying imprisonment in civil post-judgment proceedings is not only against the plainly written laws of our country, but it is a feeble and primitive method to resolve an issue that has been reformed and debated to exhaustion within a timespan of over three centuries. As a modern society, after this plentitude of time and continuously elevated legal philosophies are still incapable of comprehending the fundamental principles that are vested within every one of us, then little hope will exist for change in the realm of collections law. Shall the efforts of our

forefathers be in vain? Shall personal financial gain be placed above the collective's civil liberties?

Shall we further the interpretation of law in favor of those who seek to oppress?

I think not...

SUMMARY OF REFERENCES

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