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“I Treat Everyone with Respect”: Debt Collection Attorneys as Agents of Institutionalized
Racism in a Color-blind America

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“I Treat Everyone with Respect”: Debt Collection Attorneys as Agents of Institutionalized Racism in a Color-blind America

How do debt collection attorneys understand their work in light of increased regulation of the industry and its historic structural racism? Drawing on over sixty hours of observation in two small claims courts, analysis of three months of cases, and semi-structured interviews with eight debt collection attorneys, I argue that attorneys reinforce the institutionalized racism of debt collection through their use of color-blind racism. Attorneys understand the state of the debt collection industry as inevitable, denying inconsistencies in their practice that privilege white defendants. Additionally, attorneys view themselves as helping rather than exploiting debtors, in contrast to frequent aggressive action without regard to its consequences for defendants' lives. Attorneys who act with greater flexibility demonstrate the potential for lawyers to challenge the institutional racism of debt collection. However, the historic and contemporary stigma associated with debt collection in addition to the lack of professional prestige available to these attorneys gives significance to color-blindness not only as an explanatory device but, also, as a stigma management strategy. The necessity of stigma management in addition to the lack of professional stability and autonomy for many debt collection attorneys complicates the potential for future change.

Key words: institutionalized racism, debt collection, color-blind racism

“I Treat Everyone with Respect”: Debt Collection Attorneys as Agents of Institutionalized Racism in a Color-blind America

“If I pay it all off in the next twenty-one days, it won’t go on my credit score?” The middle-aged African-American woman, Roberta¹, looked concerned and paused as she spoke with the conciliation court referee. After taking a moment to think, she continued stating “Okay, I’ll ask my children for the money.” A payday loan company was suing Roberta for a debt of around \$560 plus \$75 in court costs, a total of \$635 dollars. Of the fifty debt collection cases on the calendar for that day, Roberta was one of seven defendants who appeared in court. Although she had worked out a payment arrangement with a representative of the company, the financial institution still pursued, and won, a judgment against her.

Roberta’s experience has become increasingly common in the United States, particularly for people of color. Between 1980 and 2009 American’s overall consumer debt tripled (Harvey 2010), rising from \$356 billion dollars in 1980 to \$876 billion dollars in 2006 (Garcia 2007). Households were forced to rely on credit in the face of rising costs of living without subsequent increases in earnings. This increased borrowing also followed deregulation in the credit industry, which eliminated interest rate and fee limits for credit-granters, enabling unprecedented access to credit (Garcia 2007).

The all-but-inevitable increase in delinquencies resulted in a substantial expansion of the debt collection industry. Companies that specialize in collecting debt—buying debt from an original creditor, often for pennies on the dollar, and then working to recoup the original amount owed—saw tremendous expansion and profit growth. Encore Capital Group, for example,

¹ All names have been changed to protect anonymity.

benefited from a twofold increase in revenue between 2007 and 2013, from \$366 million to \$773 million (Halpern 2014).

While household indebtedness has decreased overall since the Great Recession (Brown, Haughwout, Lee, and van der Klaauw 2013) debt burdens have not diminished equally for all Americans. White low and middle-income families' debt has decreased by 29% compared to just 17% for black Americans. Although Latino families have seen a 33% decrease in debt, along with black families, their access to credit is less satisfactory (Traub and Ruetschlin 2012: 19). Additionally, both black and Latino families experience greater numbers of denials or retractions of credit and higher interest rates (Traub and Ruetschlin 2012: 12, 8). The difficult relationship between the credit industry and communities of color contributes to disproportionate contact with the debt collection industry, particularly for African-Americans, who are both called by debt collectors and enter into settlement agreements with creditors more often than other groups (Traub and Ruetschlin 2012: 19).

Debt collection is not an isolated process but, rather, deeply connected to economic, social, and political structures. The racial gap in debt after the Great Recession follows long-standing inequities in wealth, the credit market, and the professions, that constitute a racist social structure supportive of debt collection practices that contribute to ongoing inequality. Despite the entrenched and institutionalized nature of race within the debt industry, legalized debt collection serves as an important site of investigation given the informality of the small claims courts in which collection cases are heard. The contingent nature of interactions between attorneys and defendants provides potential for privileged actors, attorneys wielding advanced degrees, occupational prestige, and whiteness, to either deconstitute or reinforce the structural racism of

debt collection. While these lawyers work within a racist institution, their privilege and agency give their interactions with debtors transformative potential.

Forwarding the critique of Obasogie Osagie, previous work examining racial inequality in law, such as critical race theory, has focused on macro structures without parallel attention to micro processes of interaction and individual experience (Osagie 2015). Work that has examined how inequality is structured through litigation has focused on rights claims initiated by disempowered plaintiffs (Berrey, Hoffman, and Nielsen 2012; Best, Edelman, Krieger, and Eliason 2011). Although additional scholarly attention to how court cases in informal legal settings—in particular conciliation courts—contribute to inequality has addressed how low-income individuals are entangled in litigation through compulsory processes it has not engaged with the racial implications of this entrapment (Moulton 1969). To this end, this study contributes to ongoing empirical work regarding the institutionalized nature of race with particular emphasis on legal actors whose behavior and understanding have the potential to entrench or resist the structural racism of debt collection given the undeterminedness of small claims procedures.

DEBT COLLECTION AS SHIELDED INSTITUTIONAL RACISM

In addressing the institutional racism of debt collection, I forward Bonilla-Silva's definition of a racist social structure as “the totality of the social relations and practices that reinforce white privilege” (Bonilla-Silva 2010: 9) Although in this definition Bonilla-Silva emphasizes how society structures whiteness, a racist social structure implicates economic, political, social, and ideological practices that place all individuals in socially structured racial categories that influence their life chances (Bonilla-Silva 1997).

Debt collection is a racially structured institution as it lies at the intersection of historical and social processes that have disadvantaged Americans of color while systematically benefitting whites. It is the conjunction of these two forces that provides the substantial reinforcement of white privilege essential to institutionalized racism.

The vulnerability of Americans of color to higher debt burdens and greater contact with the debt collection industry (Traub and Ruetschlin 2012) arises from two separate but related sets of forces. The first are those that impact individuals' wealth and income, and thus their reliance on credit. With proportionately lower income and fewer resources, a person's greater reliance on credit can place them at an increased risk of debt accumulation opening the potential for future contact with the debt collection industry.

In fact, the racial wealth gap has only increased since the Great Recession. In 2013, according to the Pew Research Center, the median net worth of white households was thirteen times greater than of black households and ten times greater than of Latino households, an increase from about eight and ten times greater, respectively, prior to the economic crisis (Kochhar and Fry 2014). Wealth, which measures individuals net worth minus their debts owed, is implicated in debt collection not only because it captures debt but, also, because of its close relation to economic stability. Wealth protects people from economic turmoil and lack of wealth in turbulent economic times, such as the Great Recession, can force individuals to pay for items with credit potentially ensnaring them in cyclical debt.

Wealth inequality is rooted in historical patterns in addition to ongoing structural inequality. The United States was built on the subjugation of black slaves, written into the constitution as property rather than humans, and, since that time, law, policy, and individuals have reproduced socioeconomic standards that maintain the subordination of African-Americans

(Feagin 2000). Sociologist Joe Feagin terms this social reproduction but, in my own use, I want to emphasize the materialist nature of this reproduced privilege. In considering wealth, historically-rooted inequality is evident in the exclusion of African-Americans from the housing and education benefits of the GI Bill of 1944, a law that built the middle class as we know it (Liu et al. 2006; Newfield 2008). In addition to historical forces, ongoing structural inequality reinforces and reproduces the wealth gap. For example, in 2015, the unemployment rate was 9.6% for blacks and 6.6% for Latinos compared to 5% for white people (Bureau of Labor Statistics). This inequity is linked to the labor market itself as well as other related institutions, and is, in part, sustained through ongoing discrimination (Pager, Bonikowski, and Western 2009).

The racial structure of debt collection, specifically, follows from differential access to credit in addition to wealth inequality. Academic evidence suggests, for instance, that blacks and Hispanics experience higher rejection rates and less favorable terms when securing mortgages, controlling for credit history and higher interest rates on both car loans and mortgages (Pager and Shepherd 2008; Chiteji 2010). Although the vast majority of research into discrimination in the credit market focuses on mortgages, other studies suggest that people of color experience more difficulty in securing access to consumer credit as well, such as Hawley and Fujii's study (1991) that demonstrated that, controlling for credit history, nonwhite individuals experience more unsuccessful credit searches. Contributing to racialized access to credit are conceptions that people of color, particularly African-Americans, are riskier borrowers (Chiteji 2010).

Institutionalized racism involves not only the systematic disadvantaging of people of color but, also, processes that formalize and perpetuate the advantage of white Americans such as those that have excluded people of color from the legal profession. In 2010 white attorneys

comprised 88% percent of the professional body compared with 5% and 4% black and Hispanic lawyers, respectively (ABA 2016). In comparison, the national population is 77.1% white and 13.3% and 17.6% black and Hispanic, respectively (US Census 2016). Although there is not county-level data available that would allow comparison based on the more diverse local populations in the communities studied, there is national data that shows that as wage and status of a legal position decrease, the proportion of minority workers increases. In legal positions that do not require a law degree Blacks and Hispanics each form about 10% of the working population (Bureau of Labor Statistics 2016).

The whiteness of the legal profession has not arisen organically. As John Sutton writes, “the legal profession has been much more effective at excluding people of color,” than women or white-assimilating immigrants (2001: 245). Prior to 1943 the ABA did not allow African-Americans to become members and, although the proportion of people of color in the legal profession has risen since that time, rising educational standards and the closing of part-time and un-ABA-approved law schools have continued to limit people of color’s entry into the profession (Sutton 2001: 246).

Given the integrity of the processes that create the structure of legal debt collection, those that privilege whites and disadvantage people of color, legal actors reinforce rather than transform the institutionalized racism of legal debt collection through their application of color-blind racism. Color-blind racism, as defined by Eduardo Bonilla-Silva (2010), refers to the attribution of racialized phenomenon to non-racial causes such as concluding residential segregation follows from individual choice rather than structural forces. Bonilla-Silva identifies four frames of colorblind racism: abstract liberalism, naturalization, cultural racism, and minimization of racism. While debt collection reflects historical structural racism it is not

popularly understood as a racialized industry. Thus, the first two aspects of colorblind racism—abstract liberalism and naturalization—are most applicable as their use is not entirely dependent on acknowledging and re-attributing existing racism. Rather, individuals can deploy abstract liberalism and and naturalization to further obscure racist structures. Abstract liberalism refers to the abstract use of ideas of both political liberalism, or equal opportunity, and economic liberalism, or individual choice, to explain racist social structures. Using naturalization, individuals explain racist phenomena as “just the way things are,” denying historical and structural forces (Bonilla-Silva 2010: 28).

Debt collection attorneys rely on color-blind logic to not only explain but, also, justify their behavior. Debt collection is an historically stigmatized profession, a classic example of moral dirty work (Ashforth and Kreiner 1999). Furthermore, at this historical moment, debt collection attorneys are working at the apex of two processes that have augmented the potential stigma of the profession by increasing the perceived exploitiveness of the debt collection industry, particularly as a system of institutionalized racism. The first is heightened attention on the financial industry generally, and debt collection specifically, following the Great Recession. This is evidenced both in popular press and policy shifts, such as the creation of the Consumer Financial Protection Bureau in 2011 and the overhaul of the Fair Debt Collection Practices Act in 2010. The second is increased public awareness of ongoing racial inequality evident in, for example, the creation and media coverage of the social movement Black Lives Matter. Thus, both longstanding and contemporary attention to debt collection and racial inequality have increased the stigma associated with legal debt collection.

As attorneys perform the dirty work of debt collection they become polluted by stigma, as defined by Goffman (1968), in a process of stigma-transfer (Ashforth and Kreiner 1999). In

turn, debt collection attorneys engage in stigma management techniques in an attempt to evade responsibility for the stigmatizing behavior and reduce its offensiveness (Meisenbach 2010; Benoit 1995). For debt collection attorneys these stigma management techniques use the logic of color-blind racism thereby shielding lawyers from accountability for participation in structurally-racist activities.

METHODS

This study draws on over sixty hours of observation, eight semi-structured interviews in two case sites and analysis of three months of one county's case records. I observed small claims courts in two metropolitan districts, both in the largest cities in their respective states. I attended around thirty debt collection calendars, approximately fifteen in each city, which each included between twenty and fifty debt collection cases. Site visits lasted for approximately two hours and involved the observation of courtroom proceedings and, when possible, negotiations between debt collection attorneys and defendants. Through these observations I identified key attorneys and approached them to request interviews. Many of these attorneys offered me brief remarks but declined formal interviews. After securing one interview I engaged in snowball-sampling, requesting connections with colleagues and acquaintances. Around 75%, or six, of my interviews followed from these connections. Of these, four interviews were secured through engagement with a debt collection professional organization. Although these debt collection attorneys might differ from others due to, for instance, higher self-conscious image management as a result of engaging in professional development, I feel comfortable drawing conclusions about debt collection more generally from this sample because the views expressed by attorneys engaged with the professional organization did not differ substantially from those not involved. In

addition, given a high level of consistency between case procedures and outcomes in all cases observed, I feel confident that the behavior of interviewees was consistent with that of other attorneys.

In interviews I asked broad, open-ended questions about how attorneys make case decisions and understand their work. I did not ask questions about the racial structure of debt collection or race more generally for several reasons. Most significantly, I did not initially structure this project as addressing race; rather, my findings suggested I prioritize this aspect over other features of legal debt collection. Rather than a limitation, the lack of explicit emphasis on race gave me greater access to attorneys who were, in line with professional norms, defensive and reticent. Along with my identity as a young, white woman who shared interview subjects' racial identity, but not their level of education and experience, the lack of explicit emphasis on race encouraged attorneys to speak at length and in an explanatory fashion. Additionally, the emergence of race as a theme in my observation without parallel emphasis in my questions created a conflict between courtroom reality and attorneys' perceptions, an incongruence that invited explanation.

While this study was conducted in two phases in two different cities, the analysis draws on these examples simultaneously instead of treating the two cities as comparative cases. Although the data is not completely parallel—in one city I rely more on archival analysis while in the other I collected more interview data—the findings show striking similarities. Additionally, I conducted similar observations in each location, allowing triangulation of data despite differences. Examining race as a structural phenomenon requires the prioritization of trends in place of nuances. At the end of a six-month period of data collection I am surprised by the similarities rather than the differences across these two cities. In understanding debt

collection as a field in which systemic racism and constructions of whiteness operate, I am particularly surprised because these cities differ tremendously in terms of the sizes of their populations, their racial diversity, and their racial histories. In examining these two locations at once I emphasize the significance of debt collection's institutional racism and the pervasive use of color-blind racist ideology explain attorneys' actions and shield them from responsibility.

COLOR-BLIND RACISM AS STIGMA MANAGEMENT

After the Great Recession, the Dodd-Frank Act subjected the debt collection industry to significantly increased oversight with the creation of the Consumer Financial Protection Bureau (CFPB) and the overhaul and expansion of the Fair Debt Collection Practices Act, the FDCPA (Consumer Financial Protection Bureau; Federal Trade Committee 2010). Many of the attorneys I interviewed indicated that these legal changes have significantly changed the debt collection industry and, indeed, my observations reflected the caution and constraint under which lawyers now work: attorneys would often ask referees or judges if they would like to see paperwork before they were asked to provide it, attorneys began conversations with debtors by providing the disclaimer that they are acting as debt collectors and any communication between the attorney and the debtor is an attempt to collect that debt, and emphasized their roles as debt collectors when defendants sought legal advice. In interviews, attorneys expressed awareness of this concern. Some attorneys understood new regulation as positive, such as Susan, a lawyer with fifteen years of experience, who stated:

I think [the industry] has changed and I think it's change for the better. I think the new regulations are better. When there weren't any regulations it was easier to just

throw all the debt out there and just collect it the best you can with no documents, no statements, just a number on a spreadsheet.

However, many attorneys addressed the potential stigma associated with increased regulation by not only suggesting that the debt collection industry has responded positively to changes but, also, by questioning the legitimacy of new policies entirely. Several attorneys expressed skepticism of the legitimacy of cases brought against their firm under the strengthened FDCPA, stating that they had never been taken to court on a claim and any complaints brought against them by the CFPB were dismissed immediately. Furthermore, rather than understanding increased scrutiny of their actions as deserved, attorneys presented themselves as victims of policy change. Even attorneys, like Susan, who acknowledged that some things had changed for the better framed their profession as the target of newly exploitative practices. Susan alluded to “boutique firms [that] have popped up that their whole business model is to go after debt collection attorneys for minute problems.”

In a legal environment increasingly hostile to their profession, debt collection attorneys blame debtors for increased aggression. One attorney stated that “the FDCPA has become a sword rather than a shield for debtors,” and another lawyer attributed all claims against them to debtors that were angry at them for simply doing their job and attempting debt collection. Thus, in response to a potentially stigmatizing increase in regulation and oversight debt collection attorneys both suggest that the industry has reformed in the ensuing seven years and that any changes were unnecessary and have unfairly persecuted lawyers. Attorneys’ responses to shifts in the debt collection industry, in particular the emphasis they place on their victimization, stand in sharp contrast to debt collection’s ongoing structural inequality, revealing the disconnect

between lawyers' self-perceptions and the reality of their participation in a racially structured industry.

Debt Collection as Institutionalized Racism

The site of legal debt collection, the conciliation courtroom, is racialized in both demographic and symbolic ways. I sat in on about five hundred debt collection cases throughout my observation of court calendars. I noted that attorneys represented clients on multiple cases per calendar and there was often continuity across days, with the same lawyers present in court during multiple site visits. Additionally, defendants were not present for most collection cases, I estimate that debtors appeared in court for around twenty percent of all cases. Taking these factors into consideration, I observed around one hundred distinct debt collection attorneys and one hundred defendants. Throughout observation, I identified one debt collection attorney who was a person of color and around ten defendants who were white. Thus, in observation the racial structure of debt collection was evident as about 99% of all attorneys observed appeared white while the defendants with whom they interacted were 90% people of color.

However, the construction of the courtroom as a white space extends beyond demographics as the historically constituted racist social structure of legal debt collection is sustained through ongoing social processes and interactions. Examining how the courtroom is mapped in racist physical and social terms, what Ruth Frankenberg (1993) calls racial social geography, illuminates how it is not just the bodies present but, also, the ensuing social interactions and their implicit meanings that racialize space, as the following anecdote indicates.

“Oh what an interesting name, how exotic, I wonder how you say it?” the small claims referee wondered aloud, all the while squinting to focus on her computer screen which displayed

a list of the cases for the day. At this point in the court calendar the “contested” cases (how court referees and attorneys referred to all cases with a defendant present) were finished and the remainder of the cases were without defendant. The referee, an older white woman, sat on the bench surrounded by four other white woman, the court clerk, the attorney for the plaintiff, her paralegal, and myself. The referee continued, asking out-loud, “I wonder where it is from?” I wondered at the sincerity of this question as my personal history includes spending a year working in a predominantly African-American school and a summer spent serving as a camp counselor for black youth and I immediately read this names as belonging to a black woman. Although the defendant was not there, and I could not verify my assumption, the referee’s response to this name is significant, in particular, as this was not an isolated incident. Referees routinely questioned black and foreign-sounding names, wondering aloud when defendants were not present or asking defendants to pronounce their name for them, without parallel curiosity about white-coded names. Names are an important aspect of identity as they form an essential part of our public identity and inform our interactions with institutions such as law and education. In exoticizing names of only some individuals, predominantly people of color, the small claims court referee demonstrated the social whiteness of the court space.

The reading of defendants’ names provided an opportunity for white actors to not only construct the courtroom as a white space but, also, made visible the operation of white privilege for legal actors. The referee began to read one African-American woman’s name. However after she, presumably, began to mispronounce it the woman repeated the name herself as she approached the front of the courtroom. In response to this correction the referee laughed and said “you don’t even want to know what my maiden name was, people were always confused by it.” In drawing a parallel between this defendant’s experience and her own, the referee erased

important structural differences in their positions. While the referee's name may have confused individuals, it likely did not lead to discrimination, as research shows black or Latino-coded names do for people of color (Bertrand and Mullaitan 2004).

The racial geography of spoken interaction includes not only names but also, language. This was particularly evident in the larger of the two cities that I studied as its greater racial and ethnic diversity beget larger numbers of non-English, and particularly, Spanish, speakers interacting with the court system. To accommodate the large number of Spanish-speaking individuals the court system employs several translators who appear as needed. Despite this accommodation the demand for translators is often greater than their availability, leading to wait times and disruptions in court speed and efficiency. Attorneys and judges would often express frustration while waiting, asking the court clerk where the translator was and verifying that the clerk had called for them. On one occasion an attorney, hoping to find a makeshift translator, asked me if I spoke Spanish. In addition to verbally expressing frustration and bewilderment, judges and attorneys would also continue to speak English to non-English speakers. In these continued attempts at communication white legal actors would increase the volume and decrease the speed of their speech. Although this is, perhaps, a natural reaction to a language barrier and universal across situations, it is also symbolic in a racialized space. In continuing to speak to non-English speakers in slower, simpler English, white legal actors signal that Spanish-speaking people of color are simply incompetent rather than differently fluent.

It is not only peripheral courtroom encounters that privilege and normalize whiteness but, also, one of the most potentially influential interactions in the process of legal debt collection. In pre-hearing negotiation debt collection attorneys representing financial institutions and debt collection companies attempt to reach a settlement agreement with debtors. These encounters are

important, in particular, because they are a time of flexibility during which debtors have the opportunity to negotiate their debt. In a 2014 episode of the National Public Radio show “This American Life” author Jake Halpern and host Ira Glass identify the “magic words” of debt collection as “show me the paper” (Glass and Halpern 2014). In my observation, the pivotal phrase was, instead, “make me a deal.” Although I observed around twenty negotiations between debt collection attorneys and debtors, either as a bystander in the courtroom hallway or an invited guest in a private room, I only observed debtors successfully lowering the total amount of debt on two occasions. Both of these defendants were white women.

Debt collection attorneys represent financial institutions and, although all the attorneys I spoke to indicated that they were happy to “work something out” with defendants, they will not initiate decreasing the amount of debt included in the claim of their lawsuit. Therefore, if individuals seek to negotiate the terms of their debt they must initiate a bartering exchange. It is not inconsequential that the two individuals I observed engaging in negotiation were both white. Business negotiations are a racialized process and studies show that people of color have less success in these types of interactions when, for instance, renting a car (Ayres 1991). Having the ability to navigate these conversations reflects a form of cultural capital (Bourdieu 1993) particularly when compared to conversations between debtors of color and debt collection attorneys.

In these conversations defendants did not ask directly for decreases in the claim amount, or the dollar amount sought by attorneys in the court case. Rather, debtors attempted to explain their financial situation to attorneys as a narrative. In settlement conversations many defendants of color explained the situations that prompted their indebtedness such as medical emergencies, unexpected pregnancies or sudden job loss. In response, attorneys either offered no formal

response, instead communicating regret or apologies and then continuing with their settlement conversation for a consistent debt amount, or asked defendants to engage in the formal hardship process of the lending institution. This echoes work by O'Barr and Conley (1985) on narrative and litigant satisfaction versus legal inadequacy by suggesting that litigants' desire to narrate their experiences extends beyond the formal boundaries of the hearing and decreases their ability to both create a legally substantive argument for the referee and engage in informal pre-hearing negotiation.

The debt collection courtroom reflects how institutionalized racism creates not only disparate social processes but also racist social geography, embedding white privilege in both the physical and social qualities of the space. This racist social structure is particularly important in debt collection because of its consistency. Analysis of three months of cases in one of the sites revealed that in 89.5% of debt collection cases the defendant, the debtor, does not appear. In addition, about 81.5% of cases end in judgments against the debtor. The consistency between cases, which also reflects observational data, gives great significance to how attorneys understand their work. If attorneys are able to identify the inequalities inherent in debt collection both systemically and in their own work perhaps they could take advantage of existing flexibility to resist outcomes that disproportionately impact people of color.

Everyone Has a Sob Story: Legitimacy and Normativity

Why do we collect debt? Debt collection attorneys suggest that debt collection is central to the functioning of society. One attorney, Bill, has worked in the collections industry for forty years. He considers himself an industry leader, "a big fish in a small pond." When he considered,

without prompting, the importance of his work he emphasized the historical significance of credit:

If you go back and read Charlotte Brontë, or *Little Women*, or all that they all talk about reputation. What they're really talking about is the reputation of that person for paying bills so this idea of credit, collection, is centuries, millennia old. You know, our economy is credit based and if we went back to the old days of cash millions of people would be out of work and we would be destitute as a nation.

Accordingly, due to the importance of credit to the nation, attorneys emphasized that individuals have to pay their bills in order to keep credit available and argue that if there were not "enforcement mechanisms" that no one would pay their debts. All of the attorneys whom I interviewed expressed viewpoints similar to Mark's: "It's my opinion that if you owe money, you have to pay that money."

Debt collection lawyers' allusion to the importance of credit to society and an uncontextualized norm of paying back debt naturalizes the procedures of debt collection by suggesting that the way things are currently is the way things have always been and the way they must be. This naturalization denies inconsistencies within attorneys' practices. Although there is great similarity in case processes, attorneys do make exceptions. In addition to negotiations in which debt obligations are reduced, interview subjects also recalled instances in which they did not pursue judgment against a debtor. Susan told this story:

One time I had a nun come into court. In full habit in court. She had a gambling problem, I am not doing that. There is no way, this is not happening. I am not suing this nun. This case is now dismissed. And I guess there is that freedom, there are so many cases that you can let one go, you know, the weak of the herd.

Another attorney, Lucy, explained that after the great recession she was more willing to work with defendants because "you know they can't pay because it's the recession." Following the stabilization of the economy, she is less inclined to settle with defendants. As she states "now I

see that this individual has just taken out a lot of loans.” What these two perspectives share is the whiteness of the debtors in question. Considering that 59% of American Catholics are white, it is likely that the nun in question was a white woman (Lipka 2015). In addition, all Americans debt burdens were greater during the Great Recession and, thus, Lucy’s allusion to greater personal flexibility during this time period suggests she was more willing to work with people when debt collection was less a form of institutionalized racism and more a taken-for-granted factor of the economy.

Instead of viewing debtors’ personal stories about their inability to pay as reasonable, several attorneys framed these admissions as “excuses.” Matt phrased it this way: “everyone has a sob story and, I’ll say this, I hope that they are true.” Susan went so far as to say that she did not want to hear what people had to say. However, as attorneys’ own anecdotes suggest, this skepticism is not universally applied. Instead, it disproportionately impacts people of color, standing in contrast to lawyers’ willingness to compromise and work something out with white debtors. If we understand part of debt collection attorneys’ work as stigma-management, the disconnect between lawyers prioritization of the way things have to be and the reality that exceptions are made reflects efforts by attorneys to distance themselves from responsibility for their work. Attorneys’ understandings of the larger place of debt collection in society cannot incorporate incongruent personal experiences, as this would illuminate their own responsibility for the exploitation inherent in debt collection.

I Respect Everyone: Attorneys as White Saviors

Even if lawyers were to acknowledge that the status of modern debt collection is not inevitable, debt collection attorneys could justify their work as part of a liberal project, drawing

on color-blind racism's frame of abstract liberalism. Several of the attorneys I interviewed understood their work as helpful to individuals in debt. Bill put it this way:

I'm helping people...do you know how people feel when they can settle it and get it off their minds and they can move on with their life, their debts hang over them and hang over their necks like an albatross and I am in a position where I can help with that

One debt collection firm even formalized this viewpoint in their workplace policies, placing signs on the walls of their call centers, in which staff members attempt contact with defendants, that read "Most Firms= Us vs. Them, Our Firm=You and I Together Against This Debt." Debt collection lawyers conceptualizing their work as helpful to individuals in debt, together with the racialized nature of debt collection, invokes the "white savior" phenomenon. This concept, used by film analysts, refers to processes in which a white person enters a space in which people of color live and struggle through the social order. Through a process of relationship building the white person transforms these individuals, allowing them, finally, to succeed in life (Hughey 2014; Vera and Gordon 2002). The white savior is a civilizing narrative in which individuals that do not embody American liberalist ideals, of hard work and success, are made able to fulfill these expectations through the intervention of a white person. The debt collection process provides for a similar opportunity as individuals who have transgressed societal norms, such as paying off debts or fulfilling obligations, are pulled into interactions with white attorneys which can serve as points of transformation or maintenance depending on if the debtor and the attorney "work together" to enter a judgment against the debtor and "resolve" the matter.

Furthermore, attorneys understand themselves as exceptionally able to assist defendants. Susan explained that "It's not the most glamorous profession but I comfort myself thinking that if I was in this situation it could be me on the other side and at least I treat people with dignity

and respect.” While I did not ask specific questions about how attorneys understood their participation in debt collection, each person that I interviewed focused on their own behavior framing it in similar terms of respect, professionalism, and understanding debtor’s dignity. This reframe emphasizes how naturalizing debt collection and engaging with defendants as a white, liberal, savior, privileges the debt collector’s experience over that of the defendants with whom they work. Attorneys are able to obscure the racial nature of debt collection because the focus is not on who the debtors are but on who attorneys are: white knights both helping the country as a whole by pursuing debt and assisting the poor through their kindness and professionalism. Attorneys reject the deceptiveness that classifies debt collection as dirty work and, instead, accept understandings of their work as helpful, reducing the offensiveness of their role in collection and de-stigmatizing their professional identity.

Framing debt collection in these terms denies the flexibility of attorneys’ actions and precludes the possibility that debt collection is institutionalized racism. Furthermore, attorneys’ reliance on naturalization and abstract liberalism as explanations for their professional practices de-emphasizes attorney’s aggressive actions against debtors which are most clear in instances when lawyers seek judgment against debtors regardless of their material circumstances, in direct contrast to market-based rationality.

If You Can’t Pay It Let Me Get a Judgment Against You

The attorney, who looked like what older professionals call a “baby lawyer,” fresh out of law school, stepped in front of the judge and said, “we are entering an agreed order for a judgment against her. She’s working as a part-time babysitter and is not making enough money for us to collect on her so we are just going to enter the judgment today.” This courtroom scene,

while not uncommon, is confusing. Why do attorneys seek judgments against individuals who do not have the money to either enter into a payment agreement or qualify for wage or bank garnishment in post-judgment proceedings?

In response to this uncertainty attorneys regularly invoked the “lottery” explanation. In this trope, an attorney seeks a judgment from an individual who is unable to pay the debt and does not make enough money or own sufficient assets to permit garnishment. The attorney is unable to collect the debt at this time but seeks a judgment, just in case. Ten, fifteen, or twenty years pass (in both cities in which I conducted my study judgments are valid for up to twenty years) and the defendant wins the lottery. The client, thankful that they obtained a judgment, asks the attorney to attempt collection action against the debtor once again.

This justification highlights the illogical nature of pursuing judgments against individuals that cannot pay. A person’s chance of winning the lottery are extremely small and, beyond that, the reality of economic mobility is largely mythic in the United States, particularly for people of color (Bowles, Gintis, Osborne Groves 2005). Attorneys’ rationality cannot be attributed to market-based logic alone and calls for considering, as Lauren Edelman suggested, how this rationality is specific to these actors, white debt collection attorneys and debtors of color, as well as these situations (Edelman 2004). The rationality implicit in debt collection attorneys’ actions with defendants is an extension of their valuation of liberal ideals as an embodiment of colorblind racism.

Joseph Conti’s (2008) work, which addresses how litigation and judgments can follow from communicative as well as market-based rationality, clarifies how attorneys’ insistence on judgments can serve as normative domination against poor, people of color., once again, extends the concept of the white savior, a judgment becomes not just an opportunity for a financial

company to regain losses but, also, is transformed into an opportunity for white attorneys to both delineate the requirements of liberalist ideals and punish their transgressors.

What is emphasized in attorneys' narratives, as well as their actions in court, is admission of guilt. As Matt put it "I always tell defendants: if you owe the money and you can't pay it, just admit you owe the money and I'll get a judgment against you; if you owe the money, let me get a judgment. I can't enforce it." In this interaction attorneys are asking for individuals to submit to their understanding of the case. Admitting owing the money is an acknowledgement that the creditor has both the correct interpretation of the incident, that you are the individual that owes the money, and is taking the correct action, filing a lawsuit against you and seeking a legal judgment. Securing judgments against an individual, even if they cannot pay it, becomes a way for attorneys and their clients to receive legal victory and maintain normative concepts surrounding credit, responding to the concern Bill expressed: "if we didn't have enforcement mechanisms who would pay their bills? If your neighbors didn't have to pay for their house why would you be a schlump and pay for your house?" However, these communicative goals, centered on abstract liberalism, deny the way that these legal outcomes impact individuals' lives.

Is This Going to Affect My Credit Score: Judgments and Ripple Effects

"Will this affect my credit score?" the defendant, a middle-aged African-American woman, asked the referee, insistently. The concern was evident in her voice and, indeed, she had asked other defendants this same question and wondered aloud prior to her hearing. In response, the referee replied immediately and succinctly, without looking up from the papers in front of him, "I don't know, you'd have to ask the credit rating agencies." Anxiety over how debt-related

judgments would impact their credit score was something many defendants expressed, whether directly to the judge, during casual conversation before the court calendar began, or to the debt collection attorney as they tried to reach settlement. Although occasionally these questions were met with helpful comments, such as information about how to submit a satisfaction of judgment to credit rating agencies, more often they were answered with silence or avoidance of the concern all together.

However, judgments have the potential to significantly influence individuals' lives. Civil judgments are incorporated into credit rating agencies' rating models (Avery, Calem, and Canner 2004). Credit ratings, in turn, influence individuals' interactions with many institutions. Individuals are asked to provide their credit scores in banking negotiations, such as when applying for a credit card or a loan, but also in a number of other, diverse situations such as when applying for a job or renting an apartment. Considering that Americans of color already experience discrimination in the job, housing, and banking markets, reduced credit scores from debt-related judgments compound existing institutional inequality (Pager and Shepherd 2008). That the powerful individuals in the court environment, the debt collection attorneys and the referees or judges, are not able or willing to provide information to debtors about this system speaks to both their privilege, in not having to see or worry about credit ratings, but also suggests that debt negotiations are potentially sites of manipulation and abuse for debtors if they do not have access to the information necessary to make decisions in their cases.

Here, I turn to William Sewell's (1992) emphasis on the social and collective nature of structure. Although debt collection reflects deeply entrenched, historical patterns of inequality, attorneys have the opportunity to transform these structures in their professional lives. As I have noted, debt collection attorneys' professional practices do differ despite high levels of

consistency in how cases are handled and these differences matter. While the inconsistencies in practice can and do benefit white defendants exclusively attorneys' flexibility can also benefit all defendants, disproportionately people of color. For instance, in one of the case sites attorneys cannot continue cases but must, instead, dismiss them or seek judgment. In a continuance, the case moves forward to another court date without a final decision on that day. In response to this situational constraint most attorneys seek judgments against debtors even if the two parties have reached a payment agreement in which the defendant commits to pay the debt off in several small payments. Thus, even when defendants are making efforts to work with attorneys they are subject to judgments which damage their credit score.

During the course of observation, I witnessed two attorneys who did not follow this practice. Instead, they dismissed the case without prejudice when they have reached a payment agreement. This means that the attorney has leave to file the case again, should the payment agreement fall through, but that, in the meantime, debtors are able to work towards paying off the debt without the additional burden of a civil judgment decreasing their access to resources such as housing and credit. Under Sewell's theory of structure, this shows that some attorneys are using a different set of schema in the same context, viewing judgments not as inevitable or communicative but, instead, a last resort.

Are more attorneys likely to transform their business practices? Sewell emphasizes how the social nature of structure is not just individualistic but, also, collective (Sewell 1992: 21). Agency in structure involves not only individual decisions but, also, group coordination: a sharing of ideas that provides the remobilization of resources and collective power. The continued inequality perpetuated by legal debt collection stems not only from its connection to

historical inequality but also to attorney's denial and obscuration of debt collection's racial nature through the application of color-blind racism.

CONCLUSIONS

How could racial progress manifest in legal debt collection? Could all attorneys approach cases in ways that enhanced flexibility and minimized collateral consequences for defendants, such as attorneys that delay seeking judgment? Understanding debt collection attorneys use of color-blind racism's frames as, in part, a response to consciousness of a stigmatized professional identity is only part of the puzzle. Debt collection attorneys' professional identities are stigmatized not only because they engage in the dirty work of collection but, also, because of their place in the legal profession as a whole.

Law has long awarded attorneys a high level of occupational prestige. However, as more individuals graduate law school than the industry can absorb, and as changes in the nature of legal work have increased efficiency and, thus decreased the demand for highly skilled legal work, law has become an increasingly stratified profession with income inequality that reflects differences in prestige among attorneys (Abbott 1988; Leahey and Hunter 2012). Leahey and Hunter (2012) created a model for understanding intra-professional prestige inequity that analyzes prestige inequity along specialty area, client type, professional purity, and professional power. Particularly interesting to consider in connection with debt collection law is the dimension of professional purity. Professional purity refers to "pure tasks that require not simply diagnosis and treatment but also inference" involving tasks that are closely related to the use of abstract, legal knowledge rather than administrative duties (Abbott 1988, Leahey and Hunter 2012). Debt collection attorneys, in their participation in "routine" small claims lawsuits engage

in professionally impure work that decreases their occupational prestige and, subsequently, their income and authority.

The attorneys whom I observed that were able to make flexible case decisions differed from the average debt collection lawyer in several significant ways. They tended to have more senior positions in law firms after longer careers providing them security and autonomy that associates or freelancing attorneys lacked. As attorneys with less professional power often work on commission, their revenue is directly related to the amount of money they recoup from debtors through payment agreements and judgments which could greatly limit their flexibility in any one case. Unlike high status legal work, interviewees repeatedly emphasized that they entered debt collection in response to constraint and lack of alternatives in an over-flooded labor market. Some attorneys that represent financial institutions are not even employees of the hired firm and are compensated poorly to make court appearances.

In this way, the responsibility for the racial inequality that is reinforced through legal debt collection lies beyond individual attorneys who are, themselves, subject to structural forces that have constrained their choices. Financial institutions have out-sourced their dirty work and, in the process, taken advantage of historical trends that left many attorneys scrambling to remain in the legal profession. Calling attorneys into conversations about holding financial and legal institutions responsible for fairly compensating work and creating court structures that provide the time and resources to inform defendants could provide a path forward. As it stands, debt collection attorneys must interact with poor people of color who are neither represented nor knowledgeable of the legal system while meeting the demands of their clients. Additionally, it is integral to call on industry leaders, like several of the lawyers I interviewed, to widen the conversation, advocate for their peers without equivalent professional authority, and lead

collective actions to express their agency as decision-makers in the courtroom in ways that enhance flexibility and understanding for defendants. Honoring the agency of debt collection attorneys signifies not only holding them accountable for the ways their behaviors and understandings reinforce inequality but, also, examining ways in which external constraints have conditioned their actions. It is particularly important to look for tangible ways forward as poor people of color do not seek but are entrapped by the legal debt collection process.

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