

GIVING FINE AND SEIZURE SYSTEMS THE BOOT: THE CONSTITUTIONAL CASE FOR INCOME-BASED FINES

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INTRODUCTION

Tyson Timbs, a self-proclaimed heroin junkie, was arrested in late 2013 when he attempted to sell approximately \$250 worth of drugs to an undercover police officer (Alesia, 2018). For the most part, the events following Timbs' arrest adhered to standard procedure: Timbs was charged and pled guilty in an Indiana state court to dealing in a controlled substance and conspiracy to commit theft (*Timbs v. Indiana*, 2019). The trial court sentenced him to one year of home detention, five years of probation, and a court-supervised addiction treatment program, as well as to pay fees and costs totaling \$1,203. However, at the time of arrest, police officers also seized Timbs' Land Rover SUV — a vehicle he had recently purchased with the proceeds of his late father's life insurance policy (Hill, 2020). Despite Timbs' guilty plea and adherence to the terms of his sentence, the State of Indiana refused to return the vehicle. Thus began Timbs' multiyear journey through the court system in an attempt to regain possession of his SUV. Ultimately, the State of Indiana would return the vehicle, and the outcome of Timbs' case would change the constitutional framework for assessing fines in all 50 states.

While *Timbs v. Indiana* stands out as the landmark decision for incorporating the excessive fines clause of the Eighth Amendment as applicable to the states, the circumstances that incited the lawsuit are not unique (Wilson, 2019). When Timbs was arrested, he was addicted to drugs and faced an uphill battle in reaching sobriety and reforming his behavior. Timbs remarked that without a vehicle, he lacked the ability to meet with his parole officer, attend drug treatment, go to work, or rehabilitate from his crimes in any meaningful way — nor did he have the financial means to work around these obstacles (Wilson, 2019). Across America, thousands of people find themselves in similar situations every day: courts often impose astronomically high fines or

seize high-valued property as punishment for low-level drug and traffic related offenses (Spielman, 2020). Since 2011, at least 50,000 automobiles belonging to Chicagoans have been seized and sold as punishment for unpaid parking tickets (Ramos, 2019). Unsurprisingly, a “vast majority” of these “tow-and-sell” vehicles originate in low-income neighborhoods (Ramos, 2019).

By incorporating the Eighth Amendment excessive fines clause as applicable to the states, the *Timbs* decision has, to an extent, clarified an area of constitutional law that was once a point of great contention across America. However, the impact of the decision has not yet been fully appreciated in Illinois municipalities. By calling upon the language of the Magna Carta, the *Timbs* decision suggests an effective method for ensuring Eighth Amendment protections for all: a graduated, proportionate fine system (*Timbs v. Indiana*, 2019). This article argues that municipalities within the State of Illinois — especially the City of Chicago, which has faced significant backlash for its nongraduated fines and frequent property seizures — should adopt a graduated fine system in order to protect the constitutional rights of its residents and better promote their rehabilitation from crime (Spielman, 2019; Schierenbeck, 2018b).

Part I describes the outcome of *Timbs v. Indiana* with emphasis on its reference to the language of the Magna Carta and how such language defines the scope and purpose of the Eighth Amendment. Part II details the nongraduated fine system under which many Illinois municipalities currently operate and explores the issues that such a system has caused for numerous Chicago residents, in particular. Part III asserts that the language within the *Timbs* opinion suggests the use of a graduated fine system. Ultimately, Part III offers a framework for governmental entities to implement a graduated fine system, exploring the potential consequences of such a system and explaining that the application of a graduated fine system across Illinois would better serve the purposes of punishment and effectively protect the constitutional rights guaranteed to all Illinois residents.

TIMBS AND THE INCORPORATION OF THE EXCESSIVE FINES CLAUSE

After initially seizing Timbs’ Land Rover SUV during his arrest, the State of Indiana brought a civil suit demanding the permanent forfeiture of the vehicle (*Timbs v. Indiana*, 2019). The state reasoned that Timbs’ use of the vehicle to transport heroin meant that it should not be returned to him. However, the

Indiana trial court denied the forfeiture demand, noting that the vehicle cost more than \$42,000 — an amount greater than four times the \$10,000 maximum monetary fine allowed for drug convictions in Indiana (*Timbs v. Indiana*, 2019). Such a fine was considered by the court as “grossly disproportionate” to the “gravity of Timbs’ offense” and thereby unconstitutional (*Timbs v. Indiana*, 2019). The Indiana Court of Appeals affirmed the decision; however, the Indiana Supreme Court later reversed. The Indiana Supreme Court asserted that the excessive fines clause within the Eighth Amendment of the U.S. Constitution did not apply to state impositions. Nearly six years after Timbs’ arrest, the U.S. Supreme Court granted certiorari on the issue.

Ultimately, the U.S. Supreme Court held that because the excessive fines clause is both “fundamental to our scheme of ordered liberty” and “deeply rooted in history and tradition,” it must be incorporated as applicable to the states (*Timbs v. Indiana*, 2019). The history of such a clause dates back to 1215 in the language of the Magna Carta, which required that economic sanctions “be proportioned to the wrong” and “not be so large as to deprive [an offender] of his livelihood.” William Blackstone, an English jurist of the 18th century, echoed the same sentiments: “No man shall have a larger amercement imposed upon him than his circumstances or personal estate will bear.” While the imposition of excessive fines has remained an issue, the message of the Magna Carta has persisted across time and societies. Language disavowing excessive fines was included in the English Bill of Rights, the Virginia Declaration of Rights, and, ultimately, the Bill of Rights in the U.S. Constitution.

At its core, the Bill of Rights exists to ensure and protect the deeply rooted fundamental freedoms of American citizens (*Powell v. Alabama*, 1932). The Eighth Amendment states in pertinent part that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted” (U.S. Const. amend. VIII). As such, its ongoing purpose is to track and adhere to “evolving standards of decency that mark the progress of maturing society” (*Graham v. Florida*, 2010; *Roper v. Simmons*, 2005). The careful and fervent protection of human dignity lies at the heart of the Eighth Amendment (*Trop v. Dulles*, 1958). More than 800 years of history support the premise that proportionate, graduated fines are essential to preserving such guaranteed fundamental protections. The *Timbs* decision thereby confirms that excessive fines and seizures are unconstitutional at the state level.

EXISTING NONGRADUATED FINE SYSTEMS

Illinois municipalities primarily operate under a nongraduated fine system, meaning fines are assessed at the same rate for all individuals regardless of income or personal circumstances. Specifically, the City of Chicago has been criticized extensively in recent years for what many consider a predatory imposition of fines and unjustified seizures of personal property from many of Chicago's most vulnerable residents (Ramos, 2019). With *Timbs* incorporating a ban on excessive fines as applicable to the states, Illinois local governments must reevaluate their fine and seizure practices for their constitutionality.

Behind every property seizure and fine in the City of Chicago is the personal story of an affected resident. Sandra Botello, a mother of four, moved to Chicago in 2013 after being evicted from her home in Idaho (Ramos, 2019). Botello, who came to Chicago in search of new opportunities for herself and her family, instead found herself inundated with debt as parking tickets for failure to comply with Chicago's "city sticker" policy began to pile up. When Botello fell behind in paying her tickets, the city seized her car and sold it to a private towing company. Remarkably, none of the sale price applied to her parking ticket debt, leaving her with even greater financial burdens than before.

While existing fine structures exist to maintain order, enforce necessary rules, and punish offenses, such a fine structure often results in excessive penalties that cause a greater impact on the most financially vulnerable populations. While Botello should have faced consequences for failure to comply with the city sticker policy, the punishment imposed on her was excessive given the nature of the offense, as well as her precarious financial situation. In 2017, the city booted more than 67,000 vehicles as punishment for unpaid tickets (Ramos, 2019). In one-third of those cases, the owner of the vehicle could not afford to remove the boot, resulting in the vehicle being seized by the city and towed to an impound lot (Ramos, 2019). Vehicle owners were frequently only given 24 hours to pay the removal fee, which was nearly impossible for residents who were already struggling financially (Ramos, 2019). Many of the towed vehicles were sold, leaving residents with no vehicle and mounting debt to contend with (Ramos, 2019).

A class-action suit filed in February 2020 has challenged the City of Chicago's high rates of booting, towing, and selling vehicles as unconstitutional under the excessive fines clause (Spielman, 2020). One of the named plaintiffs, Joseph Walaski, had his vehicle seized after receiving three parking tickets (Spielman,

2020). Walaski, tight on cash, was forced to choose between paying the tickets or paying the loan on the vehicle itself (Spielman, 2020). He paid the loan, resulting in the city towing his vehicle and selling it only a few weeks later (Spielman, 2020). Now, Walaski owes on the parking tickets, as well as on the loan for a vehicle that he no longer owns (Spielman, 2020). While individuals in such a situation may have alternatives — like taking public transportation or seeking additional sources of income to cover fines and fees — such alternatives are often not feasible nor accessible to the general population, especially those who are already financially struggling. Botello and Walaski are just two examples of the thousands of residents who face fines and personal property seizures causing exponential rates of financial ruin that become increasingly difficult to recover from.

IMPLEMENTING A GRADUATED FINE SYSTEM

OPTIONS

While the *Timbs* decision does not mandate the imposition of a graduated fine system across the states, its Magna Carta-based rationale strongly suggests that such a system would effectively protect the fundamental freedoms constitutionally granted to Illinois residents. However, the incorporation of the excessive fines clause as applicable to the states does not require that states be mandated to engage in specific behaviors, as such a mandate would infringe on the principles of federalism that state constitutions serve to protect (Lousin, 2009). Regardless, Chicago's nongraduated fine system is clearly broken and fails to serve the interests of its residents (Ramos, 2019).

On July 1, 2019, the Illinois General Assembly passed the Illinois Criminal and Traffic Assessment Act (the "Act") as a means of simplifying a "byzantine system that attempts to pass an increased share of the costs of court administration on the parties to court proceedings" (Spesia & Taylor Attorneys at Law, 2019). Commentators argue, however, that the Act fails to fulfill its objectives and continues to leave Chicago residents vulnerable to unfair fines and seizures (Cullen, 2019). The Act prescribes that if a court finds that a fine "would impose an undue burden on the victim, the court may reduce or waive the fine" (Criminal and Traffic Assessment Act, 2019). However, the Act clarifies that "victim" does not mean "defendant," thus eliminating any meaningful fine-reducing impact for residents cited for traffic violations or any other "victimless

crimes.” Despite all of the Act’s attempts to lessen the financial burden on Illinois residents, it does not propose a graduated, income-based fine system.

There are a few alternatives to the current, nongraduated fine system that would preserve Eighth Amendment rights while effectively serving the interests of the City of Chicago. The first is income-based fines (Schierenbeck, 2018a). Countries like Finland and Argentina have functioned under the income-based fine model for more than a century with high levels of success — a model that has potential for success in Chicago and other Illinois municipalities, too (Schierenbeck, 2018a). These countries typically operate under a “day fine” model in which an offender’s fine is calculated based on their daily wage (Schierenbeck, 2018a). Under this model, smaller offenses might cost a fraction of the daily wage, and more serious offenses might consume months of pay. Daily wage-based fines were introduced in Staten Island in the late 1980s and 1990s and resulted in higher rates of paid fines and lower government expenditures associated with arresting and imprisoning those who do not pay (Schierenbeck, 2018a). In Illinois, an income-based fine system would ensure the collection of government revenue without destabilizing and burdening low-income offenders.

Another option for Illinois municipalities, and Chicago in particular, is introducing alternatives to monetary fines like community service. Residents facing charges of driving under the influence may be required to complete community service as an alternative to incarceration, indicating that many Illinois courts are already equipped to order community service as an alternative means of punishment (Circuit Court of Cook County, 2020). The Circuit Court of Cook County currently has a limited community service program in place that has potential for expansion to traffic-related offenses in the coming years — if local governing bodies so choose. Accepting community service in place of monetary fines improves the community, effectively punishes low-income offenders, and prevents recidivism (Beitsch, 2017). Charlottesville, Virginia, has implemented such a system and has done so with great success (Beitsch, 2017). In that city, low-income drug offender Steven Robinson was able to reduce a \$12,000 fine to \$5,000 by completing 1,000 hours of community service. The Charlottesville program reduces an inmate’s debt by \$7.25 — the state’s minimum wage — for each hour of community service completed. Similar to the daily wage program employed in Finland and Argentina, the Charlottesville program assigns value to fines based on the income of an offender.

The Charlottesville program might be especially effective in Chicago because of its potential to save government revenue that would have been spent on hiring people to make improvements to the city. For example, the Channahon and Bartlett park districts, two local government entities in Illinois, accept volunteers who have been court-ordered to complete community service (Channahon Park District, 2020; Bartlett Park District, 2020). The City of Chicago municipal government consists of several departments — like the Chicago Public Library, Chicago Park District, and Chicago Housing Authority — that would benefit from the additional labor of a court-ordered volunteer (City of Chicago, 2021). While the city may often prefer to receive fine payments from offenders to distribute toward expenses as it sees fit, community service provides a valuable resource such that an offender pays a consequence for their offense while still offering a tangible benefit to the community. Ultimately, a graduated fine system could thrive on flexibility, understanding, and cooperation between the offender and the government to achieve the goals of punishment, while protecting the constitutional rights of the offender.

IMPLEMENTATION

The primary concern for government leaders and employees is how to effectively implement a graduated fine system that achieves the goals of reducing offenses and ensuring compliance, the undertaking of which is no easy task. The success of a graduated fine system hinges on the cost-effectiveness of the program, as well as the ease of applying such a system in a uniform manner. The responsibility of implementing the system and setting the appropriate levels of fines likely lies with state government; the Illinois General Assembly has already once attempted to reduce the impact of excessive fines, though with limited success (Criminal and Traffic Assessment Act, 2019). As such, the Illinois General Assembly is likely the entity best equipped to create a general framework for a graduated fine system, either through entirely new legislation or through reform of the Criminal and Traffic Assessment Act, with emphasis on eliminating excessive fines for low-level drug and traffic-related offenses.

The enforcement of a graduated fine system might be best managed by municipalities, however. The home rule provision of the Illinois Constitution provides municipalities with significant power and control over their own self-governance without having to defer to the state legislature (Illinois Const. art. VII, § 6-7). The limits of home rule power have been increased and solidified in recent years, especially with respect to the City of Chicago (see *City of Chicago*

v. StubHub, Inc., 2011). Furthermore, municipalities often impose fines for violations of their unique municipal ordinances — the local government unit of a municipality is likely best equipped to monitor and enforce fine programs for its own local ordinances.

State and local governments should then work in tandem to determine appropriate fines for offenders based on income, the crime at issue, and whether the crime was a first-time or repeated offense. A major criticism against a graduated fine system is that it will not be uniformly applied, thus causing administrative headaches and inconsistencies within the program. Just as other means-based programs — such as programs for food stamps and reduced court fees — employ asset tests, so too could a graduated fine system. Such an evaluation should require documentation and evidence of an offender's income level, thus minimizing the potential fraud associated with offenders who may try to take advantage of the system to receive a reduced fine.

CONSEQUENCES

Before implementing a graduated fine system, local government entities must consider the consequences of doing so, as well as alternative punishment schemes that may mitigate such consequences. At its core, the argument for implementing a graduated fine system revolves around fairness for all through avoidance of excessive penalties. One key consideration is that of equal protection under the 14th Amendment, meaning that all individuals are treated equally under the laws of a jurisdiction (U.S. Const. amend. XIV). As such, critics of the graduated fine system argue that a program in which offenders pay different amounts based on income levels is inherently unfair because of the disparities it creates among offenders.

To address this consequence, local governments may consider an alternative in which all fines are fixed at a certain level, so long as that level is not deemed excessive for the offense, thus fulfilling the goals of the Eighth Amendment's mandate against excessive punishments (U.S. Const. amend. VIII). Under such a system, fines might be capped at a certain amount, ensuring that the fine amount is fair for all, yet not discriminatory to offenders based purely on income level. However, while seemingly uncomplicated in nature, a blanket, fixed-level fine does not adequately protect the rights of individuals nor ensure effective punishment for a crime. In fact, a fixed-level fine may be too great an amount for a community's poorest members. Conversely, a fixed-level fine set at a very low amount may not effectively deter the richest community members

from committing an offense nor allow municipal governments to collect significant revenue as punishment from those who can afford it.

RELATIONSHIP WITH THEORIES OF PUNISHMENT

The ultimate determination regarding a graduated fine system ought to revolve around two primary factors: how well such a system protects individual constitutional rights and how effectively such a system serves the theories of punishment. Punishment in the American criminal justice system is centered around four major theories: incapacitation, deterrence, retribution, and rehabilitation (LeBlanc, 2007). Each of these theories informs and supports punishments administered in the United States. An effective and just punishment ought to connect back to these underlying theories, thereby ensuring that the punishment has societal value and meaning. The *Timbs* decision, as supported by the language of the Magna Carta, suggests that a graduated and proportionate fine system will best serve the theories of punishment.

Typically, courts across America agree that in low-level drug and traffic-related offenses, rehabilitation should take precedence (Day, 2015). Notably, the Illinois General Assembly prompts local governments to engage in prevention, intervention, and rehabilitation programs within the community in cases of substance abuse, citing the severe social and economic losses that drug addiction already cause for individuals (Substance Use Disorder Act, 2019). A graduated fine system — as evidenced through the *Timbs* decision — is vital to effective rehabilitation because it shifts the focus from mere financial survival to recovery and growth (Wilson, 2019). Nongraduated fines disproportionately impact impoverished and disadvantaged individuals, thus stunting their ability to effectively rehabilitate. While a graduated fine system will likely only work with respect to nonviolent, “victimless” crimes, it is a step in the right direction toward decreasing recidivism while still protecting the rights of offenders.

Reflecting on his own experience, Timbs stated that “forfeiture only makes it more challenging for people in [his] position to clean up and remain a contributing member of society” (Wilson, 2019). Nongraduated fines have the same effect when imposed on individuals who simply cannot afford them. Without considering the income and circumstances of low-income offenders, such individuals will become trapped in a “cycle of debt and jail” (Schierenbeck, 2018b). Such debts will likely go unpaid when offenders cannot survive and pay fines at the same time. A reduced, proportionate fine would ensure that

governmental entities would receive some financial compensation rather than none at all.

The current, nongraduated fine system also prevents wealthy offenders from receiving meaningful and effective punishment, which affects the remaining theories of punishment: incapacitation, deterrence, and retribution (Schierenbeck, 2018b). A fixed fine might have devastating consequences for a low-income offender, but for a high-income offender, the same fine might have no meaningful impact, thus creating no real incentive for an offender to reform their behavior in the future (Schierenbeck, 2018b). When high-income individuals experience no meaningful consequences for committing an offense, those individuals are not deterred from committing another offense in the future. Such a disparity in punishment across income levels squanders the goals of the criminal justice system: “to treat like offenders alike, punish the deserving, and encourage respect for the law” (Schierenbeck, 2018b). A graduated fine system — though tempered to ensure offenders take personal responsibility for their actions regardless of life circumstances — would achieve these goals and ultimately uphold the constitutional guarantees of the Eighth Amendment for all.

CONCLUSION

The decision in *Timbs* has ushered in a new wave of constitutional protection as it incorporated the excessive fines clause of the Eighth Amendment as applicable to the states. However, the *Timbs* decision is particularly important because of its reference to the deeply rooted language of the Magna Carta in preserving and protecting fundamental freedoms through fair and proportionate fines. In states like Illinois, the existing nongraduated fine system has proved to be extremely burdensome and debilitating for residents who are already struggling financially (Ramos, 2019). While the *Timbs* decision does not mandate the adoption of a graduated fine system at the state and municipal levels, its rationale strongly suggests that states should consider new systems to ensure constitutional protection for all residents. A graduated fine system in Chicago would effectively fulfill the theories of punishment for offenders of all income levels, as well as give low-income offenders a fighting chance to rehabilitate and contribute to society (Schierenbeck, 2018a). In the end, Tyson Timbs was satisfied in simply having his vehicle returned — but the impact of his case will reach far beyond his individual circumstances, to people of all backgrounds across the country, for years to come.

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