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Court Personalities and Impoverished Parents

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Tonya L. Brito, *Producing Justice in Poor People's Courts: Four Models of State Legal Actors*, 24 **Lewis & Clark L. Rev.** 145 (2020).

Professor Tonya Brito's in-depth examination of the pursuit of child support from poor fathers continues to pay significant dividends that extend well beyond family law. *Producing Justice in Poor People's Courts: Four Models of State Legal Actors* highlights the that differing personalities and approaches can have on impoverished parents involved in child-support-enforcement disputes before the courts. Based on an impressive ethnographic study, Brito's article shows how the actors involved craft stories about impoverished family dynamics as a way to make sense of their own role and complicity in an often unjust system of regulating poor families.

For professors who have written extensively about a particular issue over many years, part of the challenge is situating each new contribution without succumbing to the temptation and comfort of repetition. *Producing Justice in Poor People's Courts* handles this challenge beautifully. Part I briefly introduces the problem of courts seeking enforcement of child support orders against poor noncustodial fathers. Low-income fathers are often subject to child support orders that fail to take into account their ability to pay, with the amount owed based on an assumption of the availability of minimum wage employment for individuals who may face significant employment barriers or even incarceration. The result is that many poor fathers become child support debtors, failing to make payments because of their poverty—not because of an unwillingness to provide such support. As Brito notes, these fathers are “deadbroke parents . . . rather than deadbeat parents.” (P. 153.)

Part I is a necessary starting point for the argument that follows, but it is in Part II, which describes the existing research on child support enforcement against poor fathers, that Brito's writing starts to really shine. Those in the poverty law space are likely to have some familiarity with related scholarly work by Ann Cammett, Daniel Hatcher, Solangel Maldonado, and Brito herself. But whether the reader knows of such work or not, Part II provides an invaluable service: not only reviewing the literature, but connecting these past works in a way that highlights the problematic ways the law reduces deadbroke dads to merely debtors, irrespective of the barriers they face or the other ways they act as fathers. *Producing Justice in Poor People's Courts*, Brito explains, “expands and illuminates this body of literature by empirically examining how child support law is operationalized in poor people's courts, bridging the gap between the law on the books and the law in action.” (P. 161.) Rather than pretending that such literature does not exist (as some scholars are tempted to do in order to make flashy claims about being the first to making a particularly novel argument), or repeating arguments previously made without acknowledging as much (as some senior scholars do in order to continue to publish without putting in additional effort), Brito's review of the literature invites the reader to care about the poor families caught in the system and to trust the study.

The heart of the article can be found in Parts III and IV. The research methodology section is a necessary component and fitting for a study funded by the National Science Foundation, but law professors are likely to skim it. That said, Part III shows the level of care Brito and her study partners put into ensuring the comprehensiveness and depth of their court observations and of their interviews of those involved, including judges, government lawyers pursuing back child support, and lawyers representing defendant fathers. The study involved nearly five years of site visits, which ended only when those visits reached “a point of saturation,” and those visits were supplemented by reviews of the case files. (Pp. 171-72.) Put differently, Part III establishes that the study is based on in-depth qualitative ethnographic work.

Brito's primary argument is that judges and lawyers involved in child support enforcement fit into four archetypes: navigators, bureaucrats, zealots, and reformers. I do not want to spoil the article by fully presenting their characteristics, but all four types share a desire to make sense of and justify their own participation in the criminalization of poor fathers. As Brito highlights, bureaucrats imagine themselves bound by a set of rules that they have no choice but to implement when poor fathers appear in court. Navigators are more troubled by their role and, seeing no good options, respond by kicking the can down the road—issuing continuances and second chances to poor fathers, while still faulting them for not meeting the demands of child support orders. Zealots and reformers approach the challenge of squeezing payments out of poor fathers from opposite corners. Zealots (perhaps my own quibble with the article is Brito's value-laden choice to use this label) celebrate single mothers and are not burdened by doubt when it comes to judging poor fathers who fall behind on child support. Reformers—the study found only two such individuals—seek to change the system from within in a way that is more protective of the liberty interests of fathers who cannot afford to pay child support.

Producing Justice in Poor People's Courts is worth reading not just because it does such a great job identifying and bringing out these archetypes, but also because it highlights the ways parents can experience very different forms of “justice” depending on the type of actors who happen to be involved (quite randomly) in their case. Taking a broader view, the approaches actors take to justify their own roles within the child-support-enforcement system differ, but they all struggle to reconcile their self-image with the injustice involved in trying to wring payments out of people who may not be able to make such payments. The article is both a tour-de-force, connecting lots of prior work with a remarkably in-depth study, and a call for other scholars to invest in qualitative ethnographies of those settings where the law shapes the lives of poor people.

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