In 1972, shortly after deciding *Tate*, the U.S. Supreme Court issued its decision in *James v. Strange*, which limited tools other than incarceration that the state can use to collect criminal justice debts. Strange had appointed counsel in a criminal case on the basis of his indigence. After he pled guilty, Kansas imposed $500 in indigent defense recoupment fees, reimbursing the state for a portion of the money the state spent in providing Strange with his right to defense counsel.

Strange was ordered to pay this debt within sixty days, otherwise—according to the Kansas statute—a judgment would be issued against him for that amount, which in turn could be converted into a lien on his real estate and could also lead to garnishment or attachment orders being issued against his wages and other property. The statute also barred Strange from invoking defenses and exemptions to such collection mechanisms that were otherwise provided for Kansas civil judgment debtors, such as state restrictions on the amount subject to wage garnishment, a protection for wage garnishment at times of severe personal or family sickness, and protection from seizure of certain property.

The Court held that efforts to recoup from criminal defendants some of the costs associated with running the criminal justice system—including the cost of providing appointed counsel—are not *automatically* unconstitutional. Nevertheless, the Court struck down the Kansas regime because it embodied “elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law.”

The Court observed that the discriminatory treatment of indigent defendants versus other civil judgment debtors did not satisfy the “rational basis” test. The Court wrote that it was difficult to see why an acquitted defendant should be denied basic exemptions available to other debtors. As for convicted defendants, the Court deemed the consequences of denying exemptions perverse:

> A criminal conviction usually limits employment opportunities. This is especially true where a prison sentence has been served. It is in the interest of society and the State that such a defendant, upon satisfaction of the criminal penalties imposed, be afforded a reasonable opportunity of employment, rehabilitation and return to useful citizenship. There is limited incentive to seek legitimate employment when, after serving a sentence during which interest has accumulated on the indebtedness for legal services, the indigent knows that his wages will be garnished without the benefit of any of the customary exemptions.

While the Court did not set out a test for determining when criminal justice debt collection practices are unconstitutionally discriminatory, it did provide a general principle. While “a State’s claim to reimbursement may take precedence . . . over the claims of private creditors,” and while “enforcement procedures with respect to judgments need not be identical” between civil and public creditors, “[t]his does not mean . . . that a State may impose *unduly harsh or discriminatory terms* merely because the obligation is to the public treasury rather than to a private creditor.”

By contrast, if a state does *not* discriminate against criminal justice debtors as compared to civil debtors, then it is far less likely that a general constitutional challenge to enforcement mechanisms will be successful. *Fuller v. Oregon* presented a challenge to a different indigent-defense recoupment law just two years after the Court decided *James*. Fuller challenged the statute by invoking *James v. Strange*. The Court rejected the comparison, noting that, unlike the statute at issue in *James*, the challenged statute presented no discrimination because it afforded the criminal justice debtor the same collection protections enjoyed by civil judgment debtors and even went farther, affording him “the opportunity to show at any time that recovery of the costs of his legal defense will impose manifest hardship.”

Some cases have questioned the application of *James* and *Fuller* to criminal justice debts other than indigent-defense recoupment debts, such as fines or restitution that may have more of a punitive purpose. However, the irrationality and perverseness, highlighted in *James*, of subjecting criminal justice debtors to harsh collection practices beyond those available in civil debt matters is not limited to indigent defense fees. Harsh collection of any criminal debt can undermine a defendant’s ability to pay the debt or to successfully reenter society following incarceration and can increase rather than offset costs to the state. Several recent cases have pursued claims premised on discriminatory collection of other costs and fines, often asserting claims of discrimination due to the type of debt and against individuals who are indigent.

Even if *James* were to be limited to debts aimed to recoup government expenses, and not to fines imposed for punitive purposes, a broad array of fees beyond indigent defense recoupment fees go toward funding the courts and the justice system. The constitutional logic of *James* and its progeny should apply, for example, to investigator and expert fees, jury fees,
Footnotes

26 [22] See § 11.2.2 [1], supra.


30 [26] Id. 407 U.S. at 135.

31 [27] Id. 407 U.S. at 141 (“state recoupment statutes may betoken legitimate state interests”). See also Fuller v. Oregon 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974) (indicent defense fee recoupment statute did not violate right to counsel in part because of statute’s protections for indigent defendants, including an ability-to-pay standard and the ability to apply for remission).


33 [29] Id. 407 U.S. at 140 (“Equal Protection Clause ‘imposes a requirement of some rationality in the nature of the class singled out’ ” and that “[t]his requirement is lacking where, as in the instant case, the State has subjected indigent defendants to such discriminatory conditions of repayment”).

34 [30] Id. 407 U.S. at 139.

35 [31] Id. 407 U.S. at 138–139 (emphasis added).


37 [33] Id. 417 U.S. at 47 (internal quotation marks omitted).

38 [34] See, e.g., United States v. Cunningham, 866 F. Supp. 2d 1050, 1058 (S.D. Iowa 2012) (holding that James did not apply to criminal restitution, based on the court’s assertion that restitution is “penal in nature”).


41 [37] Martin v. State, 405 S.W.3d 944, 948 (Tex. App. 2013) (“Like the fees of a court-appointed expert or attorney, an appointed investigator is ‘a basic tool’ an indigent defendant can use to present a defense.”).


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