



Criminalization of Private Debt in the Thai Legal System: Human Rights Challenges in a Modern Global Legal Framework

Passakorn Yeenang

Faculty of Law, Chiang Mai University, Thailand

Abstract

This article examines the criminalization of private debt in the Thai legal system, focusing on how civil obligations are transformed into criminal liabilities through legal mechanisms. It analyzes two key areas: fraud-related prosecutions and offenses under the 1991 Cheque Offenses Act. The study excludes debts involving financial institutions and instead explores how private creditors invoke criminal law to punish debtors in everyday transactions. Drawing on theories from Lazzarato and Althusser, the article argues that this punitive approach reflects enduring ideological structures that moralize debt and reinforce class-based inequality. Despite the modernity of legal institutions, the use of criminal sanctions against debtors perpetuates outdated norms incompatible with contemporary human rights standards. The article calls for reform to align debt enforcement with principles of proportionality and social justice.

Keywords: Criminalization, Debt, Human Rights

1. Introduction

Under the tide of neoliberal economic systems, money has evolved beyond its traditional role as a medium of exchange to become an object of value in itself. Contemporary economic relationships are no longer limited to the pursuit of profit through commodity exchange or the exchange of labor for wages. Instead, they increasingly manifest in the accumulation of capital for lending purposes and the extraction of rents in the form of loan interest. This dynamic is deeply intertwined with the phenomenon of indebtedness, which has emerged as a survival strategy for individuals navigating underperforming and inaccessible state welfare systems.

For individuals lacking productive resources within the capitalist economy, borrowing money often becomes an essential means of survival and a necessary step toward overcoming structural economic and social barriers. Debt frequently serves as a catalyst for social mobility, enabling individuals to improve their socioeconomic status (Sousa, 2018, p. 980). For instance, rural farmers may incur debt to finance their children's university education, aiming to move beyond their current socioeconomic positions. Borrowing thus carries multiple meanings,

including utilizing future income to address present needs or manage unforeseen financial emergencies (Rutherford, 2020, p. 42).

However, due to various factors disproportionately affecting vulnerable groups, debt obligations can rapidly surpass their repayment capacities. Consequently, many borrowers from these vulnerable groups find themselves trapped in chronic indebtedness, burdened by unsustainable financial commitments, ultimately leading to default (Douglas 2016, pp. 50–54). This inability to repay debts exposes them to severe legal and economic repercussions, raising critical concerns regarding fairness, equity, and the structural conditions perpetuating cycles of indebtedness within contemporary capitalist systems (Douglas, 2016, p. 54).

The significance of this issue lies in the criminalization of individual debt, a shift that redefines private indebtedness not merely as a civil or commercial matter but as a moral and legal transgression. Traditionally, Thai civil law has emphasized the freedom of contract, the origins and extinguishment of obligations, and mechanisms for enforcing repayment. However, under the modern Thai legal system, debt relations have increasingly been subjected to criminal sanctions, transforming economic default into a potential criminal liability. This legal trajectory embeds debt repayment within a moral framework, compelling debtors to adopt an ethic of guilt and relentless labor to fulfill their contractual obligations.

Significantly, the use of criminal law to enforce debt repayment—resulting in the imprisonment of debtors who fail to meet their contractual obligations—inevitably raises human rights concerns. Article 11 of the International Covenant on Civil and Political Rights (ICCPR) (United Nations, 1966) explicitly prohibits imprisonment “merely on the ground of inability to fulfill a contractual obligation.” This international norm underscores the incompatibility of punitive measures against debtors with fundamental human rights principles, highlighting the urgent need to re-examine the Thai legal approach in light of global human rights standards.

Given these concerns, this article seeks to explore how debt enforcement practices—whether arising from formal legal obligations or informal lending arrangements—subject debtors to coercive situations that violate the Principle of Proportionality (Dachak, 2021, p. 685). These foundational principles of international human rights law require that any state interference with individual liberty must be strictly necessary to achieve a legitimate aim and proportionate in relation to that aim. However, during debt collection processes, debtors are often compelled into states of submission and face punitive measures that are neither necessary nor proportionate to the objective of debt repayment. This raises critical concerns about potential human rights violations.

At the same time, this study seeks to illuminate the role of the state and the legal system, operating under the guise of justice, in perpetuating practices that lead to the imprisonment of individuals solely for their inability to repay debts. Such practices call into question the compatibility of Thailand’s approach to debt enforcement with international human rights standards, particularly as enshrined in the International Covenant on Civil and Political Rights (ICCPR), Article 11.

This article is structured to first develop a conceptual understanding of the criminalization of private debt. It then establishes the analytical framework that guides the examination of punitive measures against debtors, drawing upon Louis Althusser’s theory of law as ideological state apparatuses, alongside Maurizio Lazzarato’s notion of the “morality of debt.” (Wortham, 2013, p. 15; Nietzsche, 2008, p. 58) These theoretical perspectives provide critical tools for interrogating how legal systems, particularly those of the Thai state, embed moral imperatives and coercive practices into debt enforcement.

Subsequently, the article turns to a detailed analysis of the legal mechanisms deployed by the Thai state that allow for the penalization of non-paying debtors as criminals. This section investigates statutory provisions and judicial practices that contribute to the transformation of civil debt obligations into criminal liabilities. The discussion situates these practices within broader debates about the Principle of Proportionality in international human rights law, highlighting their incompatibility with Article 11 of the International Covenant on Civil and Political Rights (ICCPR), which prohibits imprisonment for failure to fulfill contractual obligations.

The article concludes with a synthesis of key findings and advances policy recommendations aimed at reforming debt enforcement, emphasizing the need to shift away from punitive criminal sanctions toward approaches aligned with human rights and socio-economic justice.

2. Methodology, Case Selection, and Limitations

Consistent with the scope defined above, this article employs a qualitative, interpretive methodology that combines doctrinal legal analysis with critical socio-legal inquiry. It examines how private creditors invoke criminal law in everyday debt disputes to transform civil non-payment into criminal liability, exposing debtors to punitive measures and procedural pressures.

The analysis approaches legal texts as both technical rules and social practices. It reads statutory provisions, prosecutorial pathways, and judicial reasoning through three complementary lenses: criminalization of private debt as a mode of governance; law as ideological and repressive state apparatuses that discipline subjects through the threat of arrest, bail, detention, and stigma; and morality of debt, which helps explain how repayment is framed as a moral obligation under contemporary capitalism and neoliberal rationalities. The aim is not to measure the frequency of prosecutions, but to clarify the mechanisms through which legal meaning and coercive leverage are produced in private creditor-debtor relations.

Case selection followed purposive sampling. The study draws on illustrative first-instance criminal judgments arising from transactions between individuals or private entities, where the complainant is a private creditor and the dispute originates in ordinary financial relations (for example, personal loans or hire-purchase arrangements). The selected cases cluster in two categories that are emblematic of punitive debt enforcement: (1) fraud-related offenses, especially prosecutions premised on allegations of deception or intentional non-repayment; and (2) cheque-related offenses, particularly cases prosecuted under the Act on Offenses Relating to the Use of Cheques B.E. 2534 (1991). These cases were chosen because they reveal recurring doctrinal moves, such as inferring intent at the time of contracting from post-default conduct, and using criminal process to secure repayment or settlement.

Several limitations should be acknowledged. First, the cases discussed are not statistically representative of all private debt disputes in Thailand; they are used as analytically rich examples to illuminate patterns of legal reasoning and institutional practice. Second, access to full judgments and case files is uneven, which constrains the ability to map variation across jurisdictions or over time. Third, the study is based on documentary sources and does not include interviews with debtors, creditors, investigators, prosecutors, or judges; the account therefore centers on the legal texts and the institutional pathways they disclose. Finally, the analysis is theory-driven: it interprets the materials through the author's frameworks on criminalization of private debt, law as ideological state apparatuses, and morality of debt. This choice sharpens the critique of punitive enforcement, but it also means the article prioritizes explanatory interpretation over comprehensive empirical coverage.

3. The Criminalization of Private Debt

The criminalization of private debt refers to legal mechanisms through which civil financial obligations—ordinarily enforced through contractual remedies—are reframed as matters of criminal liability (Gergen, 2024, pp. 5–6). This shift enables creditors to mobilize the coercive power of the state to compel repayment, sometimes culminating in imprisonment or the threat of it. While legal systems traditionally reserve criminal sanctions for culpable conduct involving fraud or deceit, that doctrinal boundary has blurred in many jurisdictions, including Thailand. Laws targeting bad cheques and procedural tools such as contempt powers can open pathways for creditors to pursue debtors through criminal processes (Mujuzi, 2024, p. 249; Narielwala & Wahidi, 2020). The result is a persistent tension with principles of fairness, proportionality, and international human rights standards.

Historically, this phenomenon has deep roots. Debt enforcement in many legal systems once relied on debtors' prisons, especially in 18th–19th century Europe and North America (Balakrishnan, 2022, p. 4; Monea, 2022, pp. 10–11). Incarceration often occurred under harsh conditions and disproportionately harmed the poor, who lacked the bargaining power or legal options available to wealthier debtors (Graeber, 2011, pp. 338–345). Because imprisonment undermined a debtor's capacity to earn and repay, critics also condemned it as economically counterproductive.

By the nineteenth century, most Western systems formally abolished imprisonment for debt. England ended debtors' prisons through the Debtors Act 1869, and the United States moved toward federal and state reforms earlier in the century (ACLU, 2018, pp. 8–10). These reforms reflected an emerging consensus that default—absent fraudulent intent—should not attract criminal penalties, and that bankruptcy should provide an orderly framework for resolution. International human rights law later codified this principle: ICCPR Article 11 prohibits imprisonment “merely on the ground of inability to fulfill a contractual obligation.”

A similar civil–criminal entanglement is visible in Thai legal history. Before codification reforms and the enactment of the Civil Procedure Code under King Rama V (Chulalongkorn), debt enforcement could extend beyond property to the debtor's person. During the reign of King Rama IV (Mongkut), creditors could petition for measures affecting the debtor's body in cases involving loan obligations or debts secured by formal instruments (Langkat, 2010, pp. 260–264). Such practices resonated with punitive techniques found in traditional metropolitan customs, where corporal restraint and forced labor were common responses to wrongdoing, reinforcing a moralized view of indebtedness (Langkat, 2010, p. 264). Later reforms under King Rama V—shaped in part by Western legal influence—sought to disentangle civil debt from penal measures, aligning with a modernizing vision of justice and economic order.

Yet the core problem persists in contemporary settings. Modern debt-collection regimes can still leverage court processes in ways that produce punitive outcomes. The ACLU documents how civil debt systems may generate arrest warrants and detention for failures to appear in debt-related proceedings, frequently affecting economically vulnerable individuals who receive inadequate notice or lack meaningful access to counsel (ACLU, 2018, pp. 5–6). Related scholarship argues that the threat or initiation of criminal processes can function as a coercive tactic to extract payments—often from low-income groups least able to resist creditor pressure (Johnson, 2017, pp. 255–259). Even where reforms exist, protections often benefit those with greater resources, leaving poorer debtors more exposed to intimidation and unequal outcomes (Sobol, 2016).

Taken together, these accounts show how legal systems—despite formal commitments to rights and due process—may still enable the state's coercive power to operate within private financial

disputes. At the same time, much of the existing literature emphasizes procedural defects and socio-economic impacts without fully interrogating the ideological conditions that normalize punitive debt enforcement. This gap underscores the value of a theoretical framework that treats law not only as coercion but also as moralization—an inquiry well-served by Althusser’s concept of the ideological state apparatus and Lazzarato’s account of debt morality.

4. Law as Ideological State Apparatuses

Louis Althusser’s neo-Marxist framework provides critical insights into how state institutions—including legal systems—reproduce socio-economic relations within capitalist societies. In *On the Reproduction of Capitalism*, Althusser argues that the survival of capitalism requires not only the production of goods but also the reproduction of the conditions of production, including the social relations that enable exploitation and surplus value extraction. He identifies two primary mechanisms for this reproduction: the Repressive State Apparatuses (RSAs) and the Ideological State Apparatuses (Althusser, 2014, 75–76).

RSAs—such as the police, military, and judiciary—function through coercion, enforcing compliance with the capitalist order by threat or actual use of violence. However, Althusser contends that RSAs alone are insufficient for the long-term stability of capitalism. Coercion is expensive, unstable, and prone to resistance. To sustain domination, the ruling class relies heavily on ISAs, which work ideologically to shape individuals’ consciousness and behaviors (Althusser, 2014, 85). ISAs include institutions like education, religion, family, and notably, the legal system itself. These institutions inculcate individuals with values and beliefs that align with the interests of the dominant classes, leading them to internalize their roles within the capitalist structure and to consent—often unconsciously—to their subjugation (Althusser, 2014, 104 - 107).

The legal system occupies a unique position in Althusser’s schema because it serves as both an RSA and an ISA. As an RSA, law has the capacity to enforce compliance through courts, police action, and imprisonment. But as an ISA, law also functions ideologically: it presents itself as a neutral arbiter of rights and obligations while in reality embedding capitalist norms into the social fabric (Althusser, 2014, 112). This ideological role is crucial because it persuades individuals to view legal obligations—like debt repayment—not as arbitrary impositions but as moral duties essential to social order. Through what Althusser terms “interpellation,” law hails individuals as “legal subjects” and positions them as free and equal bearers of rights and obligations, while obscuring the structural inequalities of capitalist society (Althusser, 2014, 118 - 120).

By conditioning subjects to accept the sanctity of property and contracts, the legal system naturalizes unequal economic relations. Non-payment of debt is framed not simply as a breach of contract but as a moral failure, a betrayal of the debtor’s social role as a responsible agent. This internalization of debt morality reduces the need for overt coercion because debtors willingly discipline themselves to meet obligations—even under conditions of exploitation and structural disadvantage (Althusser, 2014, 124 - 126).

In Thailand, this dynamic is evident in the legal treatment of private debt. For decades, provisions such as those under the Offenses Related to the Issuance of Cheques Act B.E. 2534 (1991) have allowed creditors to invoke criminal penalties—including imprisonment—against debtors for “bounced cheques”. Althusser’s framework helps to explain why such punitive measures were widely accepted: they were justified under an ideology that equates financial default with dishonesty and irresponsibility. This ideological framing obscures the reality that many defaults arise not from moral failings but from systemic inequalities such as lack of access to resources, unstable incomes, and absence of effective social safety nets.

This convergence of repression and ideology provides the backdrop for understanding the morality of debt as articulated by Maurizio Lazzarato. Lazzarato extends Althusser's insights to argue that neoliberal capitalism has turned indebtedness itself into a moral condition, where repayment is seen not only as a legal duty but as an existential marker of personal worth and social belonging.

5. Morality of Debt

Building on Althusser's conception of law as an ideological state apparatus, this section examines how debt is transformed under neoliberal capitalism from a contractual obligation into a moral condition. Lazzarato (2012) argues that law does not merely enforce repayment through coercion; it also produces a subjectivity in which debtors experience repayment as a moral duty tied to dignity, social worth, and identity (pp. 29–34). In this configuration, debtors become not only legally obligated but ethically bound, sustaining creditor dominance even without constant direct repression.

In *The Making of the Indebted Man*, Lazzarato (2012) shows how neoliberalism universalizes the creditor–debtor relation as a foundational social relationship (pp. 31–32). Debt acquires moral significance by disciplining individuals through future-oriented obligations: people are induced to treat themselves as “entrepreneurs of the self,” whose value is measured by their ability to honor debts. Default is therefore framed less as economic failure and more as moral defect—irresponsibility, dishonesty, or even criminality.

This moralization aligns with Althusser's account of interpellation: the legal order “hails” individuals as responsible debtors who must perform repayment as part of their identity as legal subjects (Althusser, 2014, pp. 118–120). The ideological force of this process lies in its capacity to obscure structural conditions—precarious work, weak social protection, and unequal access to credit—that often shape default. Responsibility is individualized, and indebtedness is recast as a personal failing rather than a predictable outcome of inequality.

Mahmud's “Debt and Discipline” extends this insight by treating debt as a disciplinary technology of neoliberal governance (Mahmud, 2012, p. 471). Drawing on governmentality, Mahmud argues that debt produces “self-governing subjects” who internalize market rationalities and regulate their conduct in line with creditor interests. Debt thus operates on two connected levels: (1) institutional enforcement—court orders, wage attachment, and in some settings criminal sanctions—and (2) ideological normalization, where repayment is framed as moral responsibility and default as stigma. Together, these dynamics cultivate “self-disciplining debtors” who prioritize repayment not only out of fear of legal reprisal but to preserve a self-image of ethical citizenship (Mahmud, 2012, p. 480).

Empirical work by Polletta and Tufail (2014) illustrates how debt morality functions even when formal enforcement is weak: many debtors still treat repayment as a moral obligation reinforced by cultural narratives of self-reliance and by stigma attached to default (pp. 5–6). Importantly, their findings show that repayment is often understood as reciprocity within a relationship rather than mere compliance with a contract. When creditors are perceived as fair, debtors feel morally compelled to repay; when creditors are perceived as exploitative, resistance or renegotiation may appear morally defensible (Polletta & Tufail, 2014, pp. 10–12).

Taken together, these perspectives explain why debt enforcement so readily becomes punitive. Moral internalization reduces the need for overt coercion; yet when self-discipline breaks down, the state's repressive capacities—arrest warrants, cheque-related prosecutions, and fraud allegations that reframe default as deceit—become available to restore compliance. This fusion

of ideology and coercion helps stabilize hierarchical relations of power and wealth by legitimizing punitive intervention against economically vulnerable debtors.

6. The Criminalization of Private Debt in Thai Legal System

Under a rights-based framework, the enforcement of debt obligations must proceed through lawful and proportionate mechanisms. Creditors are not entitled to pursue repayment through arbitrary or coercive means. Instead, they must operate within the bounds of the law—initiating civil lawsuits, obtaining enforceable court judgments, and executing such judgments through prescribed enforcement procedures. The use of violence, threats, harassment, or reputational harm against debtors constitutes unlawful debt collection and violates the basic principles of human dignity and legal due process. Furthermore, the imprisonment of individuals solely for failure to repay contractual debts has been widely condemned as a violation of human rights, particularly under Article 11 of the International Covenant on Civil and Political Rights (ICCPR).

Yet despite these normative protections, debt enforcement practices in Thailand reveal how the legal system permits the partial criminalization of private debt. Two principal legal avenues—(1) the criminal prosecution of debtors under fraud provisions and (2) the use of the Offenses Related to the Issuance of Cheques Act B.E. 2534 (1991)—enable creditors to invoke the criminal justice system as a tool of private debt recovery. In both cases, the underlying conduct involves failure to fulfill a contractual obligation, but the legal framing allows for penal sanctions under the guise of deceit or misconduct. These mechanisms raise significant concerns regarding proportionality, fairness, and compliance with Thailand’s human rights obligations.

The following sections examine these two legal pathways in detail:

- First, the use of fraud-related criminal provisions, where courts often interpret default as presumptive evidence of dishonest intent;
- Second, the criminalization of bounced cheques, where debt default becomes the basis for arrest and imprisonment, notwithstanding international legal prohibitions.

6.1 Fraud-related Offenses

Together, these mechanisms reflect a broader trend in which the moralization of debt under neoliberal capitalism intersects with the coercive power of the criminal law, resulting in the systemic discipline of economically vulnerable debtors. (Althusser, 1971; Lazzarato, 2012).

In basic legal principle, a breach of contractual obligations—such as failing to repay a debt, deliver goods, or fulfill agreed-upon terms—constitutes a civil matter to be addressed through civil litigation. Creditors who suffer harm from such breaches are typically expected to pursue remedies via the civil court system, seeking enforcement of the contract or compensation for losses. However, in practice, many creditors prefer to pursue criminal fraud charges against debtors in order to leverage the coercive power of the state and access stronger enforcement mechanisms. (Lazzarato, 2012).

Under Thai law, in order to sustain a criminal fraud charge under Section 341 of the Criminal Code, the prosecution must establish that the debtor acted dishonestly through deception—i.e., by asserting a falsehood or concealing a material fact that should have been disclosed—and that such deception induced the victim to transfer property or to make (or alter) a rights-related document (Criminal Code (1956); Wachanasawat, 2012; Liksitwattanakun, 2024). Thai criminal-law textbooks on property offenses likewise emphasize that what separates civil non-performance from criminal fraud is not simply non-payment, but deception that *causally induces* the victim to part with property or legal rights at the point of entering the transaction

(Wachanasawat, 2012; Liksitwattanakun, 2024). Importantly, these doctrinal accounts also explain that “false statements” in fraud analysis ordinarily relate to verifiable past or present facts; a promise about future performance, standing alone, is generally not treated as “falsity” unless the surrounding circumstances support an inference that the promisor lacked any genuine intent to perform at the time of inducement—so that the “future promise” functions as a vehicle for present deception (Liksitwattanakun, 2024; Minakanit, 2016; Wachanasawat, 2012). In other words, what conceptually separates civil non-performance from criminal fraud is not simply non-payment, but the existence of deceptive, dishonest intent at (or prior to) the moment the creditor parted with property or legal rights (Liksitwattanakun, 2024; Minakanit, 2016; Wachanasawat, 2012).

Courts therefore rely heavily on circumstantial evidence, or “acts as indicators of intent,” to infer whether the debtor entered the agreement with no intention to perform. This reasoning corresponds to the Thai doctrinal maxim that *conduct serves as an indicator of intent (kamm pen khreuang chi chetana)*, allowing courts to infer intent from the totality of surrounding circumstances rather than direct confession (Saeng-uthai, 1980, p. 504). For instance, in Supreme Court of Thailand (1993), the defendant had promised to repay a debt on behalf of another individual during a police inquiry. The court held that, because the plaintiff did not prove that the defendant had the intent to deceive at the time of the promise, the statement did not constitute fraudulent misrepresentation (Supreme Court, Judgment No. 1229/2536).

By contrast, in Criminal Court Case No. A7481/2562, the court convicted the defendant of both making a false statement to a public official under Section 137 and fraud under Section 341. The case involved a loan of 1.2 million baht, allegedly intended for purchasing land and a house. Although no written loan agreement existed, the plaintiff retained the original land-use certificate as a guarantee. The defendant failed to repay the loan and later applied for a replacement certificate, claiming the original was lost, and used the new certificate to register a sale with another party. The court found that the defendant’s actions—including misleading public officials and evading repayment—demonstrated an original intent to defraud. Despite the plaintiff’s informal handling of the loan, the court gave significant weight to the plaintiff’s testimony and the defendant’s suspicious conduct, especially since the parties had been close acquaintances for over 30 years.

Interestingly, the court did not examine whether the plaintiff’s laxity in drafting formal agreements contributed to the legal dispute, nor did it consider systemic factors, such as lack of access to formal credit, that may have led to the informal transaction. Instead, the focus remained on the debtor’s post-contract conduct as evidence of initial fraudulent intent.

A similar dynamic appears in Criminal Case No. A716/2562 from Thung Song Provincial Court (2019), which involved a hire-purchase agreement for a motorcycle. The defendant obtained the vehicle but failed to make further payments and later transferred it to another individual. The plaintiff alleged that the debtor never intended to fulfill the contract. The defendant pleaded guilty, and the court found her liable for fraud, sentencing her to one year in prison and a 10,000-baht fine, with the sentence suspended for one year under probation.

This pattern of reasoning raises a distinct criminal-law concern grounded in the presumption of innocence and the prosecution’s burden of proof. Thailand’s Constitution provides that a suspect or defendant in a criminal case shall be presumed innocent and, before a final judgment, shall not be treated as a convict (Constitution of the Kingdom of Thailand B.E. 2560 (2017), Section 29, which provides (in substance) that in criminal cases a suspect/defendant is presumed innocent and, before a final judgment, must not be treated as a convicted person.). Internationally, ICCPR Article 14(2) (“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”) similarly protects the

right to be presumed innocent until proved guilty according to law. As interpreted in human-rights-based fair trial standards, this principle entails that the burden of proving guilt rests on the prosecution and the accused must receive the benefit of reasonable doubt.

When courts infer “intent to defraud at the outset” primarily from post-contract behavior—such as non-payment, evasiveness, subsequent transfers of property, or later dishonesty—a distinct evidentiary risk emerges: uncertainty about the debtor’s original state of mind may be resolved not through proof beyond reasonable doubt, but through suspicion derived from subsequent conduct. (UN Human Rights Committee, *General Comment No. 32* (CCPR/C/GC/32), para. 30 (Presumption of innocence): explains that the presumption of innocence imposes the burden of proof on the prosecution, requires that guilt be proved beyond reasonable doubt, and ensures that the accused has the benefit of doubt.) In private debt disputes, post-breach behavior is often inherently ambiguous. A debtor may fail to repay because of financial collapse, family crisis, coercive creditor pressure, or relational breakdown; a debtor may also act opportunistically or even unlawfully after default for reasons that do not necessarily establish that deception existed at the moment of contracting. Because intention “at inception” cannot be directly observed, the doctrinal question is whether the surrounding facts form a sufficiently tight chain of inference to exclude reasonable alternative explanations. If they do not, treating later conduct as conclusive evidence of original intent risks collapsing the civil–criminal boundary and, in practical effect, shifting pressure onto the accused to “prove innocence” (for example, by proving inability to pay, good faith, or changed circumstances) rather than requiring the prosecution to prove deception and dishonest intent at the relevant time. This concern aligns with fair-trial standards emphasizing that doubts must benefit the accused and that the burden of proof must remain on the prosecution (Barberà, Messegué and Jabardo v. Spain, 1988; Human Rights Committee, 2007).

Doctrinally, a more rights-consistent approach is to treat post-contract conduct as probative of *ex ante* intent only where it is credibly connected to an identifiable deceptive act at the point of inducing the transaction (false statements about present facts, concealment of facts under a duty to disclose, forged documents, coordinated patterns of similar deception), and where the timing and structure of conduct suggest a coherent scheme rather than a post hoc response to default. Otherwise, reliance on post-breach indicators risks converting “failure to perform” into “proof of fraud,” contrary to the presumption of innocence and the requirement that criminal liability be established on a rigorous evidentiary foundation.

These cases therefore reflect a pattern of legal interpretation in which breaches of civil obligations, particularly non-repayment of debts, are criminalized through the framing of intent to deceive. By constructing the debtor’s post-breach behavior as indicative of prior fraudulent intent, courts facilitate the use of criminal sanctions in what would otherwise be civil disputes. This practice raises significant concerns regarding the criminalization of private debt, especially when examined through the lens of ideological and repressive state apparatuses.

Applying Althusser’s theory, the legal system serves both as a repressive apparatus (through state-backed coercion such as arrest and imprisonment) and an ideological apparatus (through framing repayment as a moral and legal duty). As such, debtors are interpellated as legal subjects whose worth is tied to repayment, with legal enforcement mechanisms reinforcing creditor power. This dual function legitimizes the criminalization of debt default and shifts focus away from the structural and relational causes of indebtedness—such as financial precarity or lack of social protections.

In these judgments, debtors are not only seen as failing to fulfill contractual obligations but are morally constructed as dishonest, deceptive, and deserving of penal punishment. The ideological effect of this framing is to individualize blame and justify punitive legal outcomes,

even in cases where broader systemic factors may play a substantial role in the debtor's inability to repay.

From the perspective of morality of debt, the criminalization of private debt in these cases reflects not merely legal reasoning but a deeper moral judgment imposed upon debtors. Legal action against non-payment is often framed in terms of dishonesty, fraud, or deceit—yet this framing masks the boundary between contractual failure and moral failure. Instead of viewing default as a symptom of economic instability or structural precarity, the debtor is interpellated as a morally deviant subject whose failure to repay signals personal irresponsibility or bad faith. This aligns with Lazzarato's notion of the indebted subject who internalizes repayment as a matter of ethical worth and civic duty.

In both the cited cases—one involving loan default and the other a hire-purchase agreement—the prosecution hinges not only on proving legal elements of fraud but also on narratives that present the debtor's conduct as morally suspect. The court's reasoning, especially in emphasizing the credibility of the creditor's testimony and the supposed disingenuous intent of the debtor, reinforces a moral economy where trust, honesty, and “good behavior” are central. Such judgments exemplify how the state's repressive apparatus works in tandem with ideological constructs of debt morality to justify punitive outcomes—even when the underlying dispute originates from a civil, contractual disagreement.

6.2 Cheque-related Offenses

Another significant legal pathway through which private debt disputes become criminalized in Thailand is the enforcement of the Act on Offenses Arising from the Use of Cheques, B.E. 2534 (1991) (“Cheque Offenses Act”). A cheque is a negotiable instrument used to discharge an obligation without immediate cash payment. In practice, the payment chain typically involves (i) the drawer (issuer), (ii) the payee/holder, (iii) the collecting bank (of the payee), and (iv) the paying bank (of the drawer) (Siriphul & Suthimarkphol, 2018).

Formally, the Cheque Offenses Act was introduced to reinforce confidence that cheques will function as reliable payment instruments—not to convert ordinary contractual default into routine criminal punishment. Consistent with this design, the Act links liability to cheques issued for an existing and legally enforceable debt and defines the offense through enumerated “modes of wrongdoing” (e.g., issuing a cheque while having no funds, issuing in excess of available funds, withdrawing funds to defeat payment, or dishonestly ordering a stop-payment) (Act on Offenses Arising from the Use of Cheques, B.E. 2534 (1991), §§ 4–5). It also provides a termination mechanism: if the issuer pays within the statutory period (or if the underlying debt is extinguished) before final judgment, the case is deemed terminated (Act on Offenses Arising from the Use of Cheques, B.E. 2534 (1991), § 7).

In practice, however, Thai legal scholarship argues that cheque criminalization has frequently operated as a pressure device in private-debt enforcement—expanding penal leverage beyond what is necessary to protect transactional reliability, and generating costs such as short-term imprisonment, case congestion, and rights impacts disproportionate to the underlying civil nature of the dispute (Thonglang, 2020). A central doctrinal and human-rights concern is that criminal liability may be triggered even where the drawer's failure reflects economic distress rather than fraud-like intent, thereby blurring the line between “inability to pay” and “criminal wrongdoing” in day-to-day credit relations (Thonglang, 2020).

An illustrative example is Criminal Court Case No. A117/2562, where the defendant issued a cheque of 51,750 baht to repay an existing, legally enforceable debt for the purchase of pigs. When presented, the cheque was dishonored due to insufficient funds. The court found that the defendant issued the cheque with intent to avoid payment and thus violated Section 4(1)(3) of

the Cheque Offenses Act. The defendant received a sentence of one month imprisonment, reduced by half to 15 days due to a guilty plea, and ordered to run consecutively with prior convictions (Case Nos. 1318/2561 to 1334/2561) (Criminal Court, Case No. A117/2562).

Against this background, legal reform efforts have increasingly framed cheque criminalization as inconsistent with a modern approach to private-debt enforcement. Thailand's parliamentary process has recorded movement toward repeal, including legislative deliberations and committee consideration (Arunphunsap, 2024). More concretely, Thai media reported that on 21 November 2023 the Cabinet approved in principle a Ministry of Justice–proposed draft bill to repeal the Cheque Offenses Act in its entirety (Thairath, 2023).

To situate Thai reform debates within a broader policy trajectory, comparative developments show that jurisdictions concerned about the over-criminalization of cheque disputes have increasingly shifted enforcement toward civil execution mechanisms and administrative banking sanctions, reserving criminal liability for clearly fraudulent conduct. This article uses the United Arab Emirates (UAE) and France as illustrative comparators for two reasons. First, they represent contrasting enforcement architectures—the UAE as a rapidly reforming system that has strengthened execution-oriented pathways (United Arab Emirates Ministry of Justice, 2020), and France as a mature civil-law jurisdiction relying heavily on administrative controls—allowing the analysis to identify reform logics that can travel across institutional contexts (Al Kattan, 2024; Molinéry, 2016). Second, both jurisdictions have well-documented frameworks that reduce reliance on routine criminal prosecution for insufficient-funds cheques, but they do so through different regulatory tools: the UAE emphasizes payment-recovery and enforceability mechanisms embedded in the banking/execution interface, while France emphasizes banking prohibitions and registry-based restrictions to deter recurrence and incentivize regularization (Al Kattan, 2024; Banque de France, 2025).

In the UAE, reforms are widely discussed as shifting the regulatory center of gravity away from treating “insufficient funds” as a default trigger for criminalization and toward structured recovery and execution channels (Al Kattan, 2024). In operational terms, official banking guidance highlights mechanisms such as partial payment where funds exist and the possibility of pursuing the remainder through formal execution routes, thereby prioritizing payment recovery and banking-system discipline over criminal leverage (Central Bank of the UAE, n.d.).

France's approach similarly underscores regulatory mechanisms that diminish the reliance on penal sanctions for bounced cheques. French legal scholarship highlights the prominence of administrative prohibitions (e.g., bans on issuing cheques recorded in centralized registries) and registry-based controls that condition banking privileges on compliance and regularization, rather than immediate recourse to criminal prosecution for insufficient funds (Le Quéau & Salon, 2000; Molinéry, 2016). While criminal penalties may appear in scenarios involving aggravated conduct (e.g., defiance of judicial bans), the dominant enforcement architecture leverages administrative and civil controls to deter misuse and incentivize restitution.

Taken together, these comparative models support a policy direction in which cheque disputes are handled primarily through civil enforcement (execution-ready instruments, streamlined claims, structured repayment) and administrative safeguards (banking restrictions, reporting systems, credit consequences), while criminal law is reserved for fraud-like conduct involving deception, forged instruments, or intentional system abuse—thereby reducing the risk that ordinary economic vulnerability is translated into penal liability (Al Kattan, 2024).

7. Conclusion

This article has examined how the criminalization of private debt in Thailand—particularly through fraud charges and the enforcement of the Cheque Offenses Act—operates not only as a legal technique but also as a wider ideological project that moralizes financial vulnerability. While the legal form appears modern—codified, procedurally structured, and ostensibly neutral—its practical effects often reproduce a punitive hierarchy in which the creditor is positioned as a legitimate economic subject entitled to state coercion, whereas the debtor is framed as morally suspect and disciplinable (Althusser, 1971/2014; Lacey, 2012; Wacquant, 2009).

From a socio-legal perspective, the persistence of debt criminalization can be understood through Althusser's concept of law as an *Ideological State Apparatus (ISA)*: law does not merely regulate transactions, but helps produce subjects whose compliance with economic order is experienced as moral duty rather than structural constraint (Althusser, 1971/2014). In the neoliberal condition, this subject-formation is intensified by the moral economy of debt: indebtedness becomes a mechanism of governance through shame, responsibility, and self-discipline, while punitive legal responses help stabilize the creditor-debtor hierarchy as “common sense” (Lazzarato, 2012; Mahmud, 2012; LeBaron & Roberts, 2012).

Seen in this light, the problem is not only *over-criminalization* in a technical sense, but the normalization of a punitive boundary collapse: civil default is easily narrativized as criminal wrongdoing, and the criminal process becomes an enforcement shortcut that magnifies power asymmetries between private parties. This raises rule-of-law and fair-trial concerns because criminal liability should be established through rigorous proof of *deception at the time of inducement*, and the prosecution's burden must not be displaced—directly or indirectly—onto economically vulnerable defendants

Building on the foregoing analysis, decriminalizing private debt in Thailand should not be framed as “weakening enforcement,” but as re-drawing the civil-criminal boundary so that creditors retain effective remedies without allowing criminal law to operate as a routine debt-collection lever (LeBaron & Roberts, 2012).

First, Thailand should complete the decriminalization of bounced cheques by repealing the Cheque Offenses Act and replacing routine prosecution with execution-oriented civil pathways (e.g., expedited payment orders and streamlined enforcement based on documentary proof), complemented by proportionate administrative banking measures (such as restricted cheque issuance or registry-based controls). Criminal liability should be reserved for genuinely fraudulent or system-abusive conduct (Al Kattan, 2024).

Second, reforms should close the “fraud gateway” in ordinary debt disputes by clarifying that non-payment, inability to pay, or post-contract evasiveness cannot by itself establish deception at inception; rather, the prosecution must prove a specific deceptive act at the time of inducement, causation, and guilt beyond reasonable doubt.

Third, to prevent abusive filings, investigators and prosecutors should apply a mandatory screening protocol for Section 341 complaints arising from contractual relationships—requiring identification of the alleged misrepresentation (typically past/present fact), its timing, and evidentiary support—and divert cases that are essentially default into civil court, with safeguards against repetitive or coercive criminal complaints used primarily to force settlement (LeBaron & Roberts, 2012).

Finally, decriminalization must be paired with civil justice improvements—fast, low-cost claims routes, transparent enforcement costs, installment orders, and accessible rehabilitation

or insolvency options—so that inability to pay is addressed as economic distress rather than penal culpability, consistent with the principle against imprisonment merely for failure to fulfil a contractual obligation

Acknowledgment

This study forms part of the requirements for the Ph.D. Degree Program in Law, Faculty of Law, Chiang Mai University, and was supported by the CMU Presidential Scholarship.

References

- Al Kattan, M. S. (2024). *Bounced cheque as an enforceable instrument: A comparative study between the United Arab Emirates (UAE) and French legislation* (SSRN Working Paper No. 5159907). SSRN. <https://doi.org/10.2139/ssrn.5159907>
- Althusser, L. (2014). *On the reproduction of capitalism: Ideology and ideological state apparatuses* (G. M. Goshgarian, Trans.). Verso.
- Arunphunsap, K. (2024, April 10). *Repeal of the law on offences arising from the use of cheques* [In Thai]. Secretariat of the Senate. <https://www.senate.go.th/view/386/News/Latest/150/TH-TH>
- Balakrishnan, S. (2022). The jailhouse divergence: Why debtors' prisons disappeared in 19th-century Europe and flourished in West Africa. *Punishment & Society*, 24(5), 807–823. <https://doi.org/10.1177/14624745211071719>
- Barberà, Messegue and Jabardo v. Spain, 146 Eur. Ct. H.R. (ser. A) (1988).
- Constitution of the Kingdom of Thailand, B.E. 2560 (2017) (Thailand).
- Criminal Code, B.E. 2499 (1956) (Thailand), Section 341.
- Criminal Court (Thailand). (2019). *Judgment in Criminal Case No. A117/2562* [Unpublished judgment].
- Criminal Court (Thailand). (2019). *Judgment in Criminal Case No. A7481/2562* [Unpublished judgment].
- Dachak, H. (2021). The principle of proportionality of crime and punishment in international documents. *International Journal of Multicultural and Multireligious Understanding*, 8(4), 684–694. <https://doi.org/10.18415/ijmmu.v8i4.2661>
- Douglas, A. X. (2016). *The philosophy of debt*. Routledge.
- Gergen, M. P. (2024). *Contract law's morality and punitive debt enforcement*. SSRN. <https://doi.org/10.2139/ssrn.4976632>
- Graeber, D. (2011). *Debt: The first 5,000 years*. Melville House.
- Human Rights Committee. (2007). *General comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32)*. United Nations. <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/GC32.pdf>
- Johnson, C. (2017). Prosecuting creditors and protecting consumers: Cracking down on creditors that extort via debt-criminalization practices. *Law and Contemporary Problems*, 80(3), 211–261. <https://scholarship.law.duke.edu/lcp/vol80/iss3/9/>
- Langkat, R. (2010). *The history of Thai law* [In Thai]. Thammasat University Press.

- Lazzarato, M. (2012). *The making of the indebted man: An essay on the neoliberal condition* (J. D. Jordan, Trans.). Semiotext(e).
- LeBaron, G., & Roberts, A. (2012). Confining social insecurity: Neoliberalism and the rise of the 21st-century debtors' prison. *Politics & Gender*, 8(1), 25–49. <https://doi.org/10.1017/S1743923X12000062>
- Le Quéau, P., & Salon, D. (2000). Cheque book bans and restrictions [In French]. *Revue d'économie financière*, (58), 97–112. <https://doi.org/10.3406/ecofi.2000.3483>
- Liksitwattanakun, S. (2024). *Explanatory text on property offences under the Criminal Code* (7th ed.) [In Thai]. Winyuchon Publication House.
- Mahmud, T. (2012). Debt and discipline. *American Quarterly*, 64(3), 469–494. <https://doi.org/10.1353/aq.2012.0027>
- Minakanit, T. (2016). *Explanatory criminal law: Offences and petty offences* (12th rev. ed.) [In Thai]. Winyuchon Publication House.
- Monea, N. C. (2022). A constitutional history of debtors' prisons. *Drexel Law Review*, 14(1), 1–67. https://drexel.edu/~media/Files/law/law%20review/v14-1/Monea_1.ashx
- Molinéry, K. (2016). The “blank paper cheque”: A payment instrument contested by case law and legal scholarship [In French]. *Revue Juridique de l'Ouest*, 29(3), 15–21. <https://doi.org/10.3406/juro.2016.4874>
- Mujuzi, J. (2024). Imprisonment or detention for inability to fulfil a contractual obligation or pay a debt(s). *The Italian Law Journal*, 10(1–2), 229–273. <https://theitalianlawjournal.it/data/uploads/10-italj-1-2-2024/229-mujuzi.pdf>
- Narielwala, Z., & Wahidi, Z. S. (2020, June). *Don't fix what isn't broken: The proposed decriminalization of cheque bouncing*. Hariani & Co Newsletter.
- Nietzsche, F. (2008). *On the genealogy of morals* (D. Smith, Trans.). Oxford University Press.
- Polletta, F., & Tufail, Z. (2014). The moral obligations of some debts. *Sociological Forum*, 29(1), 1–28. <https://doi.org/10.1111/socf.12067>
- Rutherford, S. (2020). *The poor and their money* (S. Achavanuntakul, Trans.). Salt Publishing.
- Saeng-uthai, Y. (1980). *Criminal law (Parts 2–3)* [In Thai]. Thammasat University.
- Siriphul, P., & Suthimarkphol, P. (2018). *Legal problems in prescribing criminal penalties: A study of the Act on Offences Arising from the Use of Cheques, B.E. 2534 (1991)* [Master's thesis, Burapha University; in Thai]. Burapha University. <https://buuir.buu.ac.th/xmlui/handle/1234567890/7286>
- Sobol, N. L. (2016). Charging the poor: Criminal justice debt & modern-day debtors' prisons. *Maryland Law Review*, 75(2), 486–540. <https://scholarship.law.tamu.edu/facscholar/727>
- Sousa, M. D. (2018). Debt stigma and social class. *Seattle University Law Review*, 41(3), 965–1002. <https://doi.org/10.2139/ssrn.2966310>
- Supreme Court of Thailand. (1993). *Supreme Court Decision No. 1229/2536* [Unpublished decision].
- Thairath. (2023, November 21). *Cabinet approves draft bill repealing the Cheque Offences Act in full* [In Thai]. <https://www.thairath.co.th/news/politic/2742351>

- Thonglang, A. (2020). Guidelines and measures of criminal punishment according to the offence arising from the use of cheque act B.E. 2534. *Mae Fah Luang University Law Journal*, 3(1), 87–108. <https://doi.org/10.14456/mfulj.2020.3>
- Thung Song Provincial Court (Thailand). (2019). *Judgment in Criminal Case No. A716/2562* [Unpublished judgment].
- United Arab Emirates. Ministry of Justice. (2020). *Federal Decree-Law No. 14 of 2020 concerning the Commercial Transactions Law* (official text).
- United Nations. (1966). *International Covenant on Civil and Political Rights*. United Nations Treaty Series.
- Wachanasawat, K. (2012). *Criminal law: Offences (Vol. 3)* (2nd ed.) [In Thai]. Winyuchon Publication House.
- Wacquant, L. (2009). *Punishing the poor: The neoliberal government of social insecurity*. Duke University Press. <https://doi.org/10.2307/j.ctv11smrv3>
- Wortham, S. M. (2013). Time of debt: On the Nietzschean origins of Lazzarato's indebted man. *Radical Philosophy*, (180), 35–43. <https://www.radicalphilosophy.com/article/time-of-debt-on-nietzschean-origins-of-lazzarato%E2%80%99s-indebted-man>