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Fines and Day Fines

ABSTRACT

Fines are often used as criminal penalties in the United States but rarely as the sole sanction for more serious cases or for repeat offenders. In Western Europe, by contrast, fines are the most often imposed sentence for most crimes, including nontrivial ones, and are sometimes by national policy the major alternative to imprisonment. In American courts, fines are used more widely and collected more frequently than has been recognized. However, patterns of use vary widely. The major difficulty American judges face is their inability to set fines that are proportionate to the severity of the offense but also equitable and fair, given differences in criminal offenders' economic circumstances. "Day fines," well developed in Western Europe, are linked to both the offender's daily income and to the gravity of the crime. Day fines have proven effective in helping courts set fine amounts that are both proportionate and just. Some American courts are now adapting day fines to the American context and are beginning to experiment with their use.

Sentencing policy in the United States has changed substantially in the last decade with the introduction of sentencing guidelines, mandatory minimum sentences, and determinate sentencing schemes. Mainstream sentencing theory and legislative activity have shifted from the concepts of individualized justice and rehabilitation toward an emphasis on incapacitation, deterrence, and retribution (or "just deserts"). These changes have contributed to the growing strain on the country's correctional resources. This is at least partly because American policymakers tend to view imprisonment not only as the primary means available for punishment of crime but also as virtually the only means.

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One result has been a policy goal of targeting scarce jail and prison space for those offenders who appear to be most deserving of it. While the movement toward sentencing guidelines and other methods of structuring sentences is beginning to achieve greater consistency in decisions involving imprisonment, policymakers are only now beginning to address the issue of how to structure sentencing decisions among noncustodial alternatives. Attention has focused on sanctions that are relatively new and undeveloped in most jurisdictions: community service, intensive probation, house arrest (with and without electronic monitoring), and restitution. There has also been renewed attention, however, to the criminal fine (Morris 1974, 1987; Carter and Cole 1979; Friedman 1983; Smith 1983–84; Hillsman 1986).

The advantages of the fine as a criminal sanction are well recognized: it is unmistakably punitive and deterrent in its aim; it is sufficiently flexible to reflect the seriousness of the offense and the level of the offender's resources; it can be coupled with other noncustodial sanctions when multiple sentencing goals are sought; it does not further undermine the offender's ties to family and community; it is relatively inexpensive to administer, relying primarily on existing agencies and procedures; and it can be financially self-sustaining and provide revenue for related social purposes such as victim compensation.

Little policy or research attention in the United States has been paid to the criminal fine. The majority of fines imposed by American courts are for traffic offenses and less serious high-volume offenses (Hillsman, Sichel, and Mahoney 1984, pp. 28–47; Cole et al. 1987, pp. 1–8). This is in sharp contrast to the sentencing practices of many Western European countries including England, West Germany, Sweden, and Austria, where fines as sole sanctions are the sentences of choice in most criminal cases, including nontrivial ones, and where the fine is, by national policy, the major alternative to imprisonment (Carter and Cole 1979; Gillespie 1980, 1981; Casale 1981; Hillsman, Sichel, and Mahoney 1984, app. C).

This essay reviews empirical research and writing on the role of criminal fines in American sentencing. The discussion also draws on European experiences that are influencing current efforts in the United States to make the fine a more useful sanction.

The essay is divided into six sections, beginning in Section I with a review of theoretical and practical arguments about the role of fines in American sentencing and the contrasting European perspectives on

these issues. Recent research is then reviewed on the patterns of fine use in American and European courts (Sec. II) and on fine collection and enforcement (Sec. III). The empirical evidence suggests that fines are used more widely and for a broader range of nontrivial offenses in American trial courts than has been recognized and are, in some courts, collected and enforced more successfully and expeditiously than is commonly assumed.

Section IV discusses the day fine, a method of setting variable fine amounts that addresses issues that have troubled American policymakers—how to impose economic sanctions that are punitive but just and how to implement collection strategies that are successful but fair. Day-fine systems in West Germany and Sweden illustrate how these fining systems attempt to reconcile the potentially conflicting principles of proportionality and equity in sentencing by use of a two-stage decision process to set the amount of the fine. First, the number of day-fine units to which the offender is sentenced is determined with regard to the gravity of the offense, but without regard to the means of the offender. The monetary value of the fine unit is then determined, setting it explicitly in relation to what the offender can afford to pay, given his financial means and responsibilities. Thus the degree of punishment resulting from the day fine is in proportion to the seriousness of the offense and should cause an equivalent level of hardship for defendants of differing means; it should also be enforceable without excessive reliance on imprisonment for default. Adapting day fines to the American courts is discussed in Section V. Conclusions are presented in Section VI.

I. The Role of Fines in American Sentencing Practice

"It is not difficult to find reasons for the attractiveness of fines for sentencers. . . . Fines are unequivocally punitive, designed to deter, a significant attraction now that the treatment/rehabilitation ideal has fallen from grace. The meaning of fines is clear. Unlike community service, probation, or even custody, it is doubtful whether sentencers, defendants, victims, and public at large disagree about what a fine represents though . . . different sentencing purposes may result in considerable disagreement as to the appropriate size of a fine in any particular case" (Morgan and Bowles 1981, p. 203).

There appears to be little theoretical disagreement about the purposes, principally deterrence and retribution, served by fine sentences.

Used alone they do not incapacitate, and they are rarely thought to rehabilitate.[1] Questions about the use of fines in criminal cases tend to focus on their appropriateness in relation to other punitive sanctions, particularly incarceration, and on whether they can be set high enough, given differences in offenders' means, to accomplish these aims in a way that is also just.

Model penal codes and sentencing standards in the United States have not favored the use of fines, often rejecting them in strongly negative language: "fines are to be discouraged . . . unless some affirmative reason indicates that a fine is peculiarly appropriate" (National Commission on Reform of Federal Criminal Laws 1971, p. 296).[2] This posture has left American sentencers to rely primarily on imprisonment and probation among traditional options, to struggle with making newer intermediate punishments workable, and to fill the remaining void with "designer" sentences crafted to fit the specific circumstances of individual cases (Greene 1988; von Hirsch 1988).

This is in striking contrast to the role of fines in Western European jurisprudence. Throughout the twentieth century, criminal courts in England, West Germany, Sweden, Austria, and elsewhere in Western Europe have been renewing a long tradition of relying on fines as the basic means of punishment. Beginning with the Greeks, Romans, and ancient Germans, fines were the primary sanction in both civil and common law systems, giving way to imprisonment and probation only in the nineteenth century, primarily in America with its shift to an emphasis on rehabilitation (Rusche and Kirchheimer 1939; Beristani 1976).

The use of the fine in Western Europe as the dominant criminal penalty springs from these criminal justice systems' straightforward commitment to punishing and deterring the offender as the primary objectives of sentencing. Although the fine is viewed as less punitive than imprisonment, concern about the ill effects of custody has been voiced in Europe since the eighteenth century, and the treatment/rehabilitation model of imprisonment never won the following that it

[1] Sentencing theorists occasionally view the fine as rehabilitative, insofar as paying their fines makes offenders aware of their social obligations (Miller 1956; Best and Birzon 1970), but this purpose is more commonly associated with restitution (Forer 1980).

[2] This same perspective is found in the American Law Institute's *Model Penal Code* (1962), the National Council on Crime and Delinquency *Model Sentencing Act* (1977), and the American Bar Association *Standards Relating to Sentencing Alternatives and Procedures* (1978).

enjoyed for a time in the United States.[3] In England, for example, the preference for fining is sometimes explained by assertions that, at the very least, fines are likely to be *less ineffective* in terms of subsequent behavior by offenders who are fined than are other penalties (Harris 1980, p. 10).

Fines are preferred by some because they are considered penologically effective (Morgan and Bowles 1981, p. 204). The principal bases in England for the modest assertions about the fine's deterrent value are data showing that reconviction rates for fined offenders are lower than those for offenders sentenced to probation or short-term imprisonment (McClintock 1963, p. 173; Davies 1970; Softley 1977, pp. 7–9; McCord 1985). Although such data are methodologically weak (groups of offenders sentenced to different penalties are often dissimilar in their social and criminal backgrounds), they have gained credibility because similar results have been obtained from more sophisticated research conducted in West Germany. Controlling for offense and offender characteristics (including prior record), researchers at the Max Planck Institute found that fines are *no less* effective than sentences of short-term incarceration in preventing reconviction among professional petty thieves and also among traffic offenders (who are most representative of the general population), and that fines are considerably *more* effective than either imprisonment or probation in theft, embezzlement, and fraud cases (Albrecht 1980; Albrecht and Johnson 1980).[4]

The data do not support the view that fines are criminogenic, that is, that fined offenders are given incentives to commit additional crimes to pay the fine. Indeed, research on how people pay fines suggests that money is obtained from regular sources of revenue coming into the offender's household (Softley 1973).

Why has the fine not assumed a position of greater importance in the United States? A recent national survey of judges in American trial courts reveals substantial ambivalence and confusion about the fine's role as a criminal sanction (Cole et al. 1987, pp. 16–20). Judges in both

[3] Rehabilitation efforts in these Western European countries have generally focused on sentences to probation that are used much less frequently and more selectively than in the United States. This is consistent with the emphasis on intensive casework in the European probation approach. The probation order in European systems, therefore, may be a less perfunctory exercise in treatment and supervision than it tends to be in the United States.

[4] Multivariate analysis of similar types of data for the Los Angeles Municipal Courts has been completed in the United States showing similar results (Glaser and Gordon 1988).

general and limited jurisdiction courts agreed that, in concept, fines can be used to sanction both the rich and the poor. However, many judges viewed fines as having little impact on the more affluent offender and believed there is no way to enforce fines effectively against the poor.

American skepticism about the value of fine sentences seems to focus on the size of the fine and questions about the fairness of using monetary penalties that flow from this. In American sentencing literature and policy discussion, it is primarily large fines in amounts fixed according to the severity of the crime that are regarded as punitive and, therefore, of deterrent value.[5] If fine amounts are high enough to achieve these aims for any but trivial offenses, however, they tend to be viewed as uncollectable, or difficult and expensive to enforce, or resulting in imprisonment for default for the typical American criminal offender. If fine amounts are sufficiently low for most offenders to pay them, the sentences are considered unfair because they advantage the more affluent offender who is perceived as being able to buy his way out of a more punitive sanction.

By contrast, European discussions of the fine's utility emphasize its variability with respect to size; because the sentence is numerical, the sentencer can adjust its amount, and therefore its punitiveness, not only in relation to the severity of the offense but also to the means of the offender. "The vast majority of indictable offenses are readily characterised in terms of the value of property or damage involved, so that fines and compensation may be readily tailored to fit both the offense and the offender" (Morgan and Bowles 1981, p. 203). In England, West Germany, Sweden, and elsewhere in Western Europe, therefore, the fine is the preeminent sentencing device, regardless of the offender's financial circumstances, precisely because its intrinsic flexibility enables the sentencer to make the amount appropriate for the full array of criminal behaviors for which deterrence or retribution are the primary sentencing aims.

In the next section I review what is known about current American fining practices to see how often fines are now imposed and for what

[5] This is reflected in Congress's efforts to increase fine maxima in the federal system. In 1979, the Senate Committee on the Judiciary in reporting out S 1722 commented that "It is intended by the Committee that the increased fines permitted . . . will help materially to penalize and deter white collar crime" (96–533, p. 975) and that "high fines and weekends in jail could sometimes substitute for a long prison term" (p. 973). Congress raised maximum fine amounts in 1984 to $250,000 for a felony, $25,000 for a misdemeanor, and $1,000 for an infraction (Comprehensive Crime Control Act of 1984).

types of offenses, how judges set fine amounts in courts across the country, and what success courts have collecting fines.

II. Current Patterns of Fine Use

Until quite recently, little was known about the extent to which fines are used as criminal penalties in the United States.[6] Even less was known about how they are collected and enforced or about their real or perceived effectiveness as sanctions. To fill this gap the National Institute of Justice (NIJ) supported four studies of American fining practices between 1980 and 1988 and is currently supporting a demonstration project. Combined with a few previous studies of American courts that contain some evidence about fine use, these studies provide the major source of information on American practices.

Hillsman, Sichel, and Mahoney (1984) report on the first of these NIJ-sponsored studies, which was a broad exploratory examination of American fining practice. The research was based on a telephone survey of court administrators and chief clerks in 126 limited- and general-jurisdiction courts across the United States, site visits to thirty-eight different courts, analysis of case records for a sample of 2,165 convicted defendants in five New York City courts, a review of all state and federal statutes regarding fines, examination of key appellate opinions on the fining of indigents, and a general review of relevant governmental, legal, and social science literature.

Casale and Hillsman (1986) report on the second study, an in-depth examination of fine collection and enforcement practices in four English magistrates' courts (the equivalent of American courts of limited jurisdiction), with emphasis on their relevance to American practice.

Cole et al. (1987) report on the third study; it was a national survey of 1,261 judges in general- and limited-jurisdiction trial courts inquiring about their sentencing practices, their courts' enforcement and collection activities, their attitudes toward the use of fines, and their views about the desirability and feasibility of adapting European day-fine systems to the United States. Finally, Glaser and Gordon (1988) report on the last of these studies, a multivariate analysis of sentencing and

[6] This is particularly troubling given the recent trend for legislatures and judges to advocate the expanded use of other financial penalties. In a National Institute of Corrections study, e.g., Mullaney (1987) found twenty-three types of service fees and five special assessments used in American courts, in addition to fines, court costs, restitution, and reparations. This proliferation of fees and financial penalties exists uneasily alongside American policymakers' deep-seated reservations about the justice of using fines as a primary criminal penalty.

recidivism among municipal court offenders punished by probation, jail, and monetary penalties in various combinations.[7]

A. The Frequency of Fine Sentences

Fines are used very widely as a criminal sanction (quite apart from their use in routine traffic offenses and violations of municipal ordinances) but there is enormous variability among criminal courts in the extent to which they rely on fines (Hillsman, Sichel, and Mahoney 1984, pp. 28 ff.; Cole et al. 1987, pp. 6 ff.).

In limited jurisdiction courts, for example, which handle over 90 percent of the criminal cases in the United States, fines appear to be the predominant sanction. In the 1984 report of the survey of American court administrators, 87 percent of the respondents in limited jurisdiction courts indicated that their judges use fines in all or most cases (Hillsman, Sichel, and Mahoney 1984, pp. 28 ff.). The 1987 survey of judges in lower courts confirmed this level of fine use; respondents indicated that, on average, they use fines in about 86 percent of their cases (Cole et al. 1987, pp. 6–7). Research based on actual case records supports these survey results. In New York City's misdemeanor courts, for example, the fine is the most commonly used penalty, imposed as a sole sanction in 31 percent of the cases (Zamist 1986, p. 64). It is imposed in 61 percent of the cases in New Haven's Court of Common Pleas (Feeley 1979); in 87 percent of the cases in the Columbus, Ohio, Municipal Court (Ryan 1980–81); in 53 percent of Peoria's misdemeanor cases (Gillespie 1982); and in 75–81 percent of the misdemeanor cases in the courts of Austin, Texas, Tacoma, Washington, and Mankato, Minnesota (Ragona and Ryan 1983).

General-jurisdiction trial courts that handle only felony cases use fines much less. In the 1984 court survey, 63 percent of the respondents from these courts reported that fines are used seldom or never. This is consistent with case-record analyses that indicate that fewer than 5 percent of felonies result in fines in New York City's felony courts (Zamist 1986, pp. 115–23) and in the felony courts of Detroit, Baltimore, and Chicago (Eisenstein and Jacob 1977, p. 274). There are other types of general jurisdiction courts, however, that dispose of a wide

[7] The National Institute is currently funding a demonstration project run by the Vera Institute of Justice to adapt the day-fine concept to the Criminal Court of Richmond County (Staten Island, New York) and to implement it in that court (Hillsman and Greene 1987, 1988).

variety of misdemeanor as well as felony cases; these "hybrid" courts use fines more frequently than do felony-only courts. Over half of the 1984 survey respondents from this type of upper-level trial court reported that most of their cases involve fines, and judges from general jurisdiction courts surveyed in 1987 reported using fines in about 42 percent of their cases.

It would appear, therefore, that the less frequent use of fines in American upper courts, particularly felony-only courts, which are the most visible courts and those that have been studied most often (although they handle the fewest criminal cases overall), has encouraged the prevailing belief that fines in the United States are restricted to routine traffic cases and relatively minor criminal offenses (e.g., Carter and Cole 1979; Gillespie 1981). Yet this is clearly not so. Fine use is more widespread and extensive in American sentencing than the conventional wisdom suggests.

B. The Types of Offenses Fined

The 1984 survey of court administrators and clerks suggests, and the 1987 survey of judges confirms, that fines are commonly used in sentencing a wide range of offenses. As table 1 shows, among the 126 limited- and general-jurisdiction courts surveyed, relatively serious motor vehicle crimes (primarily DWI, or driving while intoxicated, and reckless driving) are often dealt with by fines in both upper and lower courts. So also are the variety of criminal behaviors that comprise disorderly conduct and breach-of-the-peace offenses, drug-related offenses (sale and possession), some thefts, and assaults. In each of these categories (except DWI for which almost two-thirds of the courts report using fines), almost a third of all the courts report that fines are commonly used. For other categories of offenses (including criminal trespass, criminal or malicious mischief, shoplifting, bad checks, and prostitution), some courts surveyed use fines frequently, but most did not report doing so.

This variability among courts in their use of fines is as significant as the range of offenses for which fines are currently being imposed across the United States. While some of these differences undoubtedly reflect variation among jurisdictions in the type of criminal behavior falling under similar statutory offense categories, some also reflect different sentencing practices. Certain courts fine offenders; others use alternative sanctions, including incarceration. This diversity suggests that

TABLE 1

Types of Offenses for Which Fines Are Commonly Used, by Type of Court

Type of Offense	Frequency			
	Limited Jurisdiction (N = 74)	General Jurisdiction Felony, Misdemeanor, and Ordinance Violation (N = 28)	General Jurisdiction Felony Only (N = 24)	Total (N = 126)
Driving while intoxicated	54	22	2	78
Reckless driving	30	9	0	39
Violation of fish and game laws and other regulatory ordinances	24	3	0	27
Disturbing the peace/breach of the peace/disorderly conduct	32	8	1*	41
Loitering/soliciting/prostitution	15	4	0	19
Drinking in public/public drunkenness/carrying an open container	14	5	0	19

Criminal trespass	10	2	1	13
Vandalism/criminal mischief/ malicious mischief/ property damage	9	3	3	15
Drug-related offenses (including sale and possession)	23	10	11	44
Weapons (illegal possession, carrying concealed weapon, etc.)	6	2	1	9
Shoplifting	17	3	0	20
Bad checks	14	2	0	16
Other theft	19	9	8	36
Forgery/embezzlement	2	3	2	7
Fraud	1	4	1	6
Assault	29	14	5	48
Burglary/breaking and entering	2	6	6	14
Robbery	0	1	3	4

SOURCE.—Hillsman, Sichel, and Mahoney (1984), p. 41.

* Superior Court, Cobb County; 1% of caseload includes misdemeanors.

there is room for expanding the use of fine sentences in this country, at least in jurisdictions currently not using fines in kinds of cases for which other jurisdictions routinely impose fines.

The 1987 survey of judges also highlights the variability in fine use. As seen in table 2, 89 percent of the lower-court judges questioned about their sentencing choices for hypothetical first offenders would fine at least half the cases of assault (with minor injury to the victim), and 58 percent of the upper-court judges would do so. In residential daytime burglary cases, 46 percent of the lower-court judges report they would fine at least half the time as would 27 percent of the upper-court judges (Cole et al. 1987, p. 44).

In New York City's five misdemeanor courts, case records document this variability within and between courts in the same urban area. Fines are used with some frequency as the exclusive sentence for DWI, reckless driving, gambling, disorderly conduct, loitering, possession and

TABLE 2

Proportion of Judges Who Would Likely Impose a Fine in at Least Half the Cases Involving Selected First Offenses, by Type of Court

	General Jurisdiction		Limited Jurisdiction	
Offense*	%	N†	%	N†
Drug sale (1 ounce cocaine)	53	594	64	121
Fraud (land deal)	41	508	53	98
Burglary (daytime, residence)	27	589	46	134
Embezzlement ($10,000)	39	576	44	89
Assault (minor injury to victim)	58	610	89	501
Auto theft ($5,000 value)	36	600	54	151
Harassment	63	441	92	405
Disorderly conduct	78	444	97	488
Bad check	51	587	85	461
Shoplifting ($80 value)	69	486	91	476
Prostitution	64	375	83	276
Possession of marijuana (1 ounce)	70	573	92	433

SOURCE.—Cole et al. (1987), p. 44.

NOTE.—Question 10 (see Cole et al. 1987): "For each of the offenses below, assume that the individual is an *adult, first-time offender*, employed at a job which pays $160 per week. In general, how likely are you to impose a fine, either alone or with another sanction and what would be the typical amount of the fine?"

* Offenses are arranged in order of severity as ranked by the National Survey of Crime Severity.

† N = no. of judges who indicated that they handle the particular offense.

sale of controlled substances, prostitution, lesser degrees of assault and theft, and criminal trespass (Zamist 1986, pp. 67–77). Many of the cases fined in these New York City courts were not trivial, nor were most of the fined offenders youths or first offenders. For example, 47 percent of the misdemeanor convictions that resulted in a fine-alone sentence in the misdemeanor court located in the Bronx had entered the system on a felony complaint after screening by the district attorney's office, as had 51 percent of the cases in the Brooklyn court and 13 percent in the Manhattan court (Zamist 1986, p. 73). Furthermore, over 80 percent of the city's fined offenders were twenty years or older (p. 77), and fewer than one out of five were first offenders (pp. 77–78).

Although fining is more common in American courts than is generally believed, fine usage has not reached the levels common in Western Europe. Furthermore, the fines imposed by many American courts are often not the exclusive criminal penalty as they frequently are in Europe. In West Germany, for example, 81 percent of all adult criminal cases and 75 percent of all nontraffic criminal offenses are disposed by a fine as the sole penalty; fines are used in a third of all sexual offenses in West Germany and in 73 percent of all crimes of violence against the person (*Strafverfolgungsstatistic 1985*). In Sweden, fines are used in 83 percent of all criminal offenses and 65 percent of all nontraffic criminal offenses, including 40 percent of all offenses against persons (*Kriminalstatistik For Brott Lagforda Personer, 1987*, 1988). In England, 38 percent of persons convicted of indictable offenses (roughly equivalent to American felonies) and 89 percent of persons convicted of summary offenses (excluding traffic offenses) are sentenced to pay a fine as the sole penalty. These include 28 percent of all sexual offenses and 39 percent of all offenses of violence against the person (Home Office 1988).

C. The Forms Fine Sentences Take

Many American fine sentences appear to be composites of fines and other noncustodial sanctions, although statistical data from American courts are particularly sketchy on this issue.[8] In the 1987 judicial sur-

[8] National data on any aspect of sentencing are difficult to construct for the United States, particularly for lower courts. Most computerized court record systems (including offender-based transaction systems) make detailed study of sentencing patterns extremely difficult. They tend to record only the "primary" or "most severe" penalty imposed; thus it is difficult to get an accurate picture of composite sentences, particularly those involving fines that can be imposed as a condition of probation for the purposes of collection. This type of combination occurs even when the fine is the central penalty and the

vey, judges reported lower levels of fine use when asked specifically about fine-only sentences than when asked about fines generally; the proportion declines from about 86 percent of all lower-court sentences resulting in fines to about 36 percent that are fined solely, and the drop is greater for upper courts—from 42 percent to 8 percent (Cole et al. 1987, p. 6). The misdemeanor courts of New York City, therefore, in which fine sentences are typically sole penalties, reflect the practices of some, but by no means all, American lower courts.

Although many American fines are part of a composite sentence, they tend to be combined most often with other financial penalties, for example, with restitution or court costs (Cole et al. 1987, p. 8). Other fines are combined with probation, but it is not always clear whether probation is added to the fine as a collection device (as, e.g., in many Georgia courts; Sichel 1982*a*), or whether probation is the main sentence with the fine added to enhance its punitive content. All these combinations appear to be common in American courts but not in Europe. They are more common in American upper courts, where fine combinations may include a suspended jail or prison term, than in lower courts. Thus while fines are frequently used penalties in the United States, they are rarely by themselves an alternative to short terms of incarceration as fine-alone sentences are in Western Europe.

D. Fine Amounts

The common view in the United States that fines are a relatively weak punishment is related to the notion that only large fines have punitive and deterrent value but that large fines are difficult to impose because they raise issues of fairness. It is not surprising therefore to find that most fines are set at levels well below statutory limits. This is despite the fact that many state legislatures have increased statutory maxima, anticipating judicial need of higher limits in cases of better-off offenders for whom current fine levels would represent inadequate punishment (Hillsman, Sichel, and Mahoney 1984, pp. 52 ff.).

Judges have wide discretion in setting the size of a fine. Most American judges use a relatively limited range of fine amounts, primarily because they are constrained by informal "tariff" (or fixed-fine) systems that guide their decisions as to an appropriate amount. The tariff sys-

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probation sanction is primarily a collection device (Hillsman, Sichel, and Mahoney 1984, p. 35). In such cases, computerized record systems often record only the probation sentence and not the fine (e.g., Glaser and Gordon 1988).

tems typical of American courts are based on informal understandings that the same or similar fine amounts ("going rates") will be imposed on all defendants convicted of a particular offense. In many courts, however, these tariffs are set with an eye to the lowest common economic denominator of offenders coming before the court in order to ensure that the sentences can be enforced. As a result, fixed-fine or tariff systems generally cause fine amounts to cluster near the bottom of the statutorily permissible range. This limits the range of offenses for which judges consider the fine an appropriate sole penalty. Fixed-fine systems, therefore, represent a serious restriction on the broad usefulness of fines for crimes of varying degrees of seriousness and leave sentencing judges with few punitive but enforceable sentencing options besides imprisonment.

This is so in New York City which is not atypical. While judges use fines as sole sanctions in almost a third of all misdemeanor convictions, their informal fine tariffs are set low. The modal fine amount citywide is $50 and the median is $75; even in the city's relatively affluent and most "suburban" community (Staten Island), fine amounts are low, averaging around $100. In imposing such small amounts, however, the judges are also ensuring that the courts' sentencing orders are obeyed: despite poverty, two-thirds of all the fined offenders in New York City (and three-quarters in Staten Island) pay in full, most within three months of sentence (Zamist 1986, pp. 79–103).[9]

Tariff systems also cause problems for courts that routinely set high fine amounts. Higher-fine tariffs either limit the range of offenders who can be fined or make it difficult to enforce fines among relatively poor offenders without resorting to imprisonment for default.

Some high-tariff systems result from informal court traditions that encourage judges to set fine amounts in relation to factors other than the economic circumstances of typical offenders. For example, some Georgia courts are guided by the average costs of local probation services that collect the fines (Sichel 1982*a*). Other high-tariff systems occur

[9] Gillespie (1982) notes that 85 percent of misdemeanor fine sentences in Peoria are under $150; fines in New Haven's Court of Common Pleas rarely exceed $25 (Feeley 1979); and average fine amounts in Columbus are around $100 (Ryan 1980–81). Even assuming inflation has doubled these amounts in the years since these case records were sampled, fine amounts are low. Indeed, in the 1986 survey of judges, they report median fine amounts of between $75 and $150 for less serious offenses in both upper and lower courts (Cole et al. 1986, pp. 11–12). For more serious offenses, especially convictions in upper courts, they report somewhat higher median fine amounts, ranging from $500 to $1,000 for drug sales, fraud, and burglary.

when court traditions or state statutes encourage (or mandate) the imposition of multiple financial penalties without regard to the total amount the offender is being required to pay. This happens because of two recent trends in American sentencing. First, judges are more frequently sentencing offenders to pay monetary restitution, often in amounts unrelated to the offender's ability to pay.[10] Second, state legislatures are requiring courts to impose an ever-broadening array of fees, costs, and reimbursements in fixed amounts on convicted offenders. These amounts are to be paid by all offenders, regardless of the severity of the offense, the sentence imposed by the judge, or the offender's ability to pay.[11]

In many American courts, individual judges struggle with the problems that arise from these systems of fine tariffs and fixed-monetary penalties. Sometimes judges try to modify the going rates for fines and the even more rigidly fixed amounts for other monetary penalties on the basis of the offender's ability to pay (Sichel 1982*a*; Hillsman, Sichel, and Mahoney 1984, p. 64–65, 182). Such modification efforts, however, tend to be on a case-by-case basis and may or may not conform with notions of due process or be demonstrably fair.

E. Disparity and Fairness

The diversity of fining practices in American courts and the related lack of common principles for setting fine amounts reflect American judges' "ambivalence and confusion about fining" (Cole et al. 1987, p. 19).[12] Clearly, however, this confusion does not exclude poor people in

[10] In England, e.g., as a matter of sentencing policy, magistrates often impose substantial fines in cases that would otherwise receive short terms of imprisonment, but they also routinely impose high restitution amounts on top of the fine (Casale and Hillsman 1986, p. 56).

[11] For example, in the Maricopa County Superior Court (Phoenix, Ariz.), virtually all felony offenders not incarcerated are subject to a mandatory probation service fee of $30 per month for a period of three years, or a total of $1,080 if probation is not terminated early. They are also required to pay at least $100 to the Victim Compensation Fund. In addition, state statutes require the court to impose the maximum amount of monetary restitution. As a result, almost half of all felony probationers are ordered by the court to pay restitution, reimbursements (primarily for public defense services), or fine sentences, and sometimes a combination of these, in addition to a probation fee and the victim compensation fund contribution (Hillsman and Greene 1988*a*).

[12] This confusion, according to Cole and Mahoney, can be seen in the very weak linkages between judges' attitudes toward fine sentences and their use of them. "The analysis indicates that there is a small group of judges in both general and limited jurisdiction courts who hold very positive views toward fines and are also heavy users of them in their courts. However, the more dominant pattern among the sample of trial

the United States from being fined; courts across the country are fining offenders who are far from affluent, sometimes in high amounts (Hillsman, Sichel, and Mahoney 1984, pp. 63 ff.; Cole et al. 1987, pp. 28–31). Some poor offenders are fined in lower amounts for misdemeanors such as thefts than are more affluent offenders convicted of misdemeanors such as DWI (Ryan 1980–81; Ragona and Ryan 1983). However, while most middle-class offenders are fined for these offenses, many poor offenders whom judges perceive as unlikely to be able to pay a fine are jailed instead.

Ragona, Rich, and Ryan, for example, found in each of three misdemeanor courts "a pattern of segregation of the economic sanction (fines) from other—seemingly both more and less severe—sanctions (jail and probation). It might initially seem startling to think that courts veer all the way from a jail term to a 'slap on the wrist' (probation) for cases where fines are somehow inappropriate. Yet the underlying rationale seems clear. Where defendants visibly have sufficient resources to pay, they will be fined. Where defendants lack such resources, they will be given probation, sent to jail for a (short) term, or (increasingly in recent years) sentenced to community service restitution" (1981, p. 21). Similarly, Gillespie notes that in felony cases in two Illinois counties "unemployed offenders were more likely to receive a jail sentence than employed offenders" (1982, p. 13). Glaser and Gordon (1988) report from Los Angeles that in misdemeanor convictions, a jail sentence was associated with low income or poor financial status and an unstable or low-status employment record, whereas receiving a financial penalty was associated with a good financial status and higher income. And, in the hypothetical cases judges surveyed by Cole and Mahoney were asked to sentence, a janitor (who had a prior bad check conviction and two larceny convictions) was likely to be imprisoned for the theft of a $40 pair of slacks from a department store; a middle-class accountant (who had one prior DWI conviction), however, was likely to be fined for embezzling $25,000 from his employer (Cole et al. 1987, pp. 9–10).

In summary, while fines are heavily used for a wide variety of cases in American courts, they are rarely used as broadly applicable sanctions in their own right and as alternatives to imprisonment as they are in Western Europe. Furthermore, there is evidence that fines are not

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court judges is one in which usage varies extensively and attitudes do not cluster in either direction or intensity" (1987, pp. 18–19).

uniformly imposed and that jail sentences are sometimes an alternative to fines, at least for the poor.

III. Fine Collection and Enforcement

The efficacy of fines as a criminal penalty rests on the ability of courts to collect them, to do so expeditiously, and to compel payment or impose an alternative sanction if offenders fail to meet their obligations to the court. If judges cannot assume the fines will be collected, and if offenders can assume they need not pay them, the potential of this flexible and relatively inexpensive device to punish and deter is seriously eroded (Hillsman and Mahoney 1988).

Routine, systematic information on American courts' success collecting and enforcing fines, however, is lacking despite the introduction of computerized technology and the increased professionalization of court administration. Responsibility for postsentence fine administration in American courts remains fragmented, split not only among court staff but also among police, probation, prosecutors, marshals, city attorneys, and a variety of other civil agencies (Hillsman 1988). Although most courts keep adequate accounting records of individual fine payments, few have developed systems for aggregating and analyzing these data in order to monitor their own collection and enforcement performance (Hillsman, Sichel, and Mahoney 1984, pp. 91–92).[13]

A. Fine Administration

American court administrators traditionally have taken a narrow view of their responsibilities to execute this sentence. They have tended to focus on fines as court orders they must keep track of and as moneys for which they are accountable. This stance appears to stem from the fact that the heaviest volume of fines in many courts flows from traffic and minor criminal offenses, cases in which court administrators can view offenders' compliance with the sentence more from a revenue than from a law enforcement perspective (Hillsman 1988).

A broader definition of fine administration, however, is gaining ground. As courts seek to make greater use of the full range of inter-

[13] Cole and Mahoney report that many of the judges they surveyed are unfamiliar with their own courts' fine collection and enforcement procedures: "The data reported here, although far from conclusive, certainly reinforce the sense that one reason for the infrequent use of the fine as a primary alternative to incarceration and probation is the judges' lack of knowledge about (and confidence in) the process of collection and enforcement. They are only marginally involved in these processes and receive little feedback on their effectiveness" (1987, p. 28).

mediate sentences—community service, treatment orders of various types, restitution, home confinement, fines—they must confront the problem of how to ensure compliance (Hillsman 1988).[14] Without adequate enforcement, these penalties cannot attain the stature of independent, stand-alone sanctions, especially ones that can substitute for imprisonment (Smith 1983–84). Because agencies outside the court (such as law enforcement) have little organizational stake in these noncustodial cases, courts need to expand their own capacity to monitor and encourage compliance from offenders under sentence in the community and to impose more coercive means when compliance is not forthcoming.

This expanded definition of fine administration, more common in Europe, includes a quasi-correctional function. It encompasses responsibility for the enforcement as well as the collection activities that ensure fined offenders will comply with the sentence in a fair and timely fashion. Unlike newer intermediate sentences, there is already a well-established tradition in the United States that courts are the agent responsible for the collection and enforcement of fines (and other financial orders). Most American state statutes, as well as federal statutes, charge courts with this duty (Hillsman, Sichel, and Mahoney 1984, p. 86; see also Public Law 100–85, the Criminal Fine Improvement Act of 1987). While American courts have not always embraced those duties, the increased professionalization of court administration in the last decade should contribute significantly to courts' capacity to carry out this responsibility effectively.

B. Courts' Fine Collection Performance

Fines are, and have long been, big business for American courts. Of the 126 courts surveyed in 1984, 106 collected aggregate fine revenues of over $110 million in a single year. Municipal courts alone in the United States probably collect well over $700 million annually from fines (Hillsman, Sichel, and Mahoney 1984, pp. 75–79).

The fine collection rates of American courts are highly variable; but many courts are more successful than their own judges believe. New York City's lower courts, for example, collect about 75 percent of the criminal fine dollars imposed citywide within one year of sentence.

[14] Cole and Mahoney report that the judges they interviewed regard the low priority assigned arrest warrants for fine default by law enforcement agencies as the most common system-related problem in fine collection (1987, p. 27).

Nearly two-thirds of the criminal offenders who are fined pay in full, most within three months of sentence (Zamist, 1986, pp. 97–102).

There is no reason to assume the collection performance of New York City's courts is in any way remarkable. Indeed, there are other successful courts. Gillespie reports a collection rate for fined misdemeanants in Peoria of 80 percent (1982, p. 10), and Glaser and Gordon report that two-thirds of the fined misdemeanants in Los Angeles pay in full, and one quarter in part (1988, p. 42).

Courts in Western Europe also have high collection rates even though they serve large, heterogeneous populations and use fines extensively for serious crimes. Albrecht and Johnson report an 80 percent collection rate for the courts of Baden-Württemberg in West Germany (1980), and West German criminal justice officials indicate this result is not unusual (Greene 1987). Rates of between 70 and 80 percent are not uncommon in English magistrates' courts (Softley 1977; Casale 1981). Collection rates for repeat offenders sentenced by English magistrates to fines in lieu of imprisonment are between 55 and 75 percent despite their high amounts and offenders' unemployment and lack of financial resources (Casale and Hillsman 1986).

Fine collection statistics such as these—based on the payment performance of all (or a sample) of individual offenders fined during a specific time period and tracked over a given period (such as one year)—are rarely available because courts fail to analyze their record data adequately. The statistics we have, however, lend credibility to the rougher estimates court administrators provide about their collection performance. Four out of ten court administrators surveyed in 1984, for example, reported that half or more of fined offenders in their courts pay in full on the day of sentence. Three out of ten reported that over 80 percent of those who pay over time do so in full within the period set by the court, and another four out of ten reported full collection on schedule for between 50 and 80 percent (Hillsman, Sichel, and Mahoney 1984, p. 85). The considerable diversity in success rates in similar types of courts, however, suggests that differences in their collection techniques and enforcement strategies are important to explaining the success with which they collect fines.

C. Collection Practices[15]

Although courts are typically given the statutory duty of collecting fines, how they do so is rarely regulated by statute or administrative

[15] Two related, but nonetheless distinct, stages of the postsentence fine administration

rule. Courts have a limited range of methods at their disposal to encourage offenders to meet their financial obligations. Generally these involve techniques designed to set reasonable terms for payment, monitor payments closely, and encourage prompt payment. Many courts fail to use even these simple but effective tools.

1. *Installment Systems.* Setting fine payments in installments is one of the most important dimensions of a court's collection activities. Supreme Court decisions beginning with *Tate v. Short* (401 U.S. 395 [1971]) have established constitutional standards for fine collection. In *Tate*, the Court noted that "the State is not powerless to enforce judgments against those financially unable to pay a fine" but also observed that there were many alternatives to immediate imprisonment and cited with approval the state statutes providing for installment payments.

In the years following *Tate*, many states added statutory provisions authorizing installment payments in order to improve fine collections without raising constitutional issues or the specter of the debtors prison. Most courts appear to offer formal or informal installment plans to all who request time to pay because it is difficult for courts to determine who is legally "indigent" and, therefore, eligible for the special treatment required by Supreme Court decisions.

The major collection issue for courts is not whether to use installments but how to do so fairly and effectively. As Cole and Mahoney report, "installment payment arrangements seem to be widely and indiscriminately used" (1987, p. 23). This is because many courts lack general rules or standards for setting the size and frequency of payments. Even those that have such standards readily acknowledge that these tend to be administrative "rules of thumb," requiring all or most fines to be paid within a set time period, rather than rules developed from empirical analysis of offenders' behavior or from careful review of individual circumstances (Hillsman, Sichel, and Mahoney 1984, p. 90; Casale and Hillsman 1986, p. 82). As a result, courts often relax their payment rules or abandon them, with many fines either excused or written off.

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process should be distinguished. Although the terms "collection" and "enforcement" are typically used interchangeably, they encompass different functions and methods. Some methods courts use to promote fine payment are designed to encourage or assist offenders to make payments voluntarily (e.g., reminder letters, interest charges). Still others are clearly coercive (e.g., arrest warrants, property seizures). Although all these techniques are (or should be) linked in an overall strategy to ensure compliance, methods to elicit payment that are enabling or persuasive should be viewed as part of a court's *collection* process, as distinguished from methods that are coercive and, therefore, are part of its *enforcement* effort.

Research on fine collection suggests that, to be effective, courts should first set fine amounts more closely to offenders' financial circumstances (as well as to their offenses) and then establish payment terms that are as short as possible given these conditions (Casale and Hillsman 1986, pp. 87, 117; Hillsman and Greene 1987, p. 103).

2. *Monitoring Systems.* Virtually all courts recognize that they need to monitor fined offenders' payments in order to ensure they continue to pay, no matter how long the installment period. However, while American courts tend to do a good job keeping track of the money offenders pay, very few live up to the fine collection standard articulated by one experienced U.S. Attorney: "the key to success in collecting money owed the Government rests in prompt accounting and necessary and repeated communication with the debtor" (Sichel 1982*b*, p. 13).

Research on successful courts confirms this observation (as do the debt-collection experiences). When courts notify offenders that payments are due, closely monitor their performance, and swiftly respond to late payments, even sizable fines can be collected successfully from offenders who are not affluent (Softley and Moxon 1982; Casale and Hillsman 1986). Nevertheless, many American courts are only now beginning to introduce even the simplest monitoring systems into their fine-administration activities, and many of these are doing so primarily for traffic offenders in response to the revenue demands of local government authorities (Tait 1988; Wick 1988). Few courts in the United States have established individualized monitoring systems that maximize compliance with criminal fine sentences (see, e.g., East Court as described in Casale and Hillsman 1986, pp. 152–55, and Hillsman and Greene 1987, chap. 6), although the federal system is now moving in this direction (Hillsman 1986, pp. 6–9). While doing so might mean more court personnel, increased fine revenues and reduced reliance on incarceration for fine default are likely to cover the added expense (Millar 1984; Wick 1988).[16]

[16] This point has important implications for the development of an overall criminal justice policy with regard to the use of fines as criminal sanctions. While most economic models for assessing the optimal use of fines in sentencing have generally supported the notion that fines are cost effective as sentences, until recently these models have not taken collection costs or uncollected revenues directly into account. Lewis, however, has done so by applying economic models to England that reflect different sentencing and collection scenarios as applied to theft cases (1988). He concludes that "fines are an economically useful sanction and that reducing or eliminating the use of imprisonment for default, reminder letters, or means inquiries is likely to *increase the amount of theft and the net social cost of crime*" (p. 36, emphasis added).

3. *Interest and Surcharges.* Courts can also build incentives into the collection process to encourage prompt payment. Few have done so; as a result, evidence about the effectiveness of these techniques in court settings is lacking.

Primary among the potential incentives are interest charges on outstanding fine balances and surcharges imposed after a specified period has passed without full fine payment or when extraordinary actions must be taken to collect the fine. In 1984, the U.S. Congress enacted legislation to allow federal courts to impose interest charges to facilitate collection, and some states, such as Washington, have passed laws permitting courts to pass along some collection costs (Wick 1988).

D. Enforcement Practices

The perception that enforcement problems are insurmountable has been a drawback to the use of fines in American courts for some time (Carter and Cole 1979). Once the period for collection of the fine has passed without full payment, the court faces the necessity of compelling payment or imposing an alternative sanction. Almost half the limited-jurisdiction court judges and over 60 percent of the general-jurisdiction court judges surveyed by Cole and Mahoney perceived their courts to have moderate or major problems in the enforcement of fines (1987, p. 22). Research on fine administration suggests, however, that if the relatively simple, inexpensive, and noncoercive fine-*collection* techniques discussed above are implemented effectively, most courts will need to impose the more coercive and costly *enforcement* techniques on relatively few offenders (Softley and Moxon 1982; Casale and Hillsman 1986).

A variety of coercive methods are authorized under state and federal statutes. The most commonly used is imprisonment for default. Some courts will substitute labor for monetary payment. A few also use civil procedures, including wage garnishment and property seizure; experimentation with such techniques is more common in Western Europe (Casale and Hillsman 1986; Greene 1987).

1. *Imprisonment.* All states provide some mechanism by which imprisonment can be used as an enforcement device (Hillsman, Sichel, and Mahoney 1984, pp. 108 ff). Practitioners in American and European courts report that the threat of immediate jailing is very effective in getting fined offenders to pay. This is confirmed by even casual observation; in most courts, the "miracle of the cells"—the dash forward, cash in hand, of family or friends after a judge threatens a

defaulter with imprisonment—is a routine occurrence (Hillsman, Sichel, and Mahoney 1984, p. 113).[17]

It is only when the fine defaulter is without funds that the threat of imprisonment becomes troubling. American judges tend to deal with this problem by asking offenders, often perfunctorily, about the reasons for their default, accepting their plea of poverty and then either extending the time to pay (which only postpones confronting the problem) or remitting the outstanding amount. However, this response is by no means universal. Over half the court administrators surveyed in 1984 reported that their judges commonly jail fine defaulters (Hillsman, Sichel, and Mahoney 1984, p. 116).

The U.S. Supreme Court has provided some, but not much, guidance on this problem (Dawson 1982; Hillsman, Sichel, and Mahoney 1984, pp. 118 ff). In three major decisions over the last two decades, the Court has addressed due process and equal protection issues arising from state courts' efforts to enforce fines by imprisonment for default (*Williams v. Illinois*, 399 U.S. 235 [1970]; *Tate v. Short*, 401 U.S. 395 [1971]; *Bearden v. Georgia*, 461 U.S. 660 [1983]). The thrust of these decisions is, as Justice White wrote in a concurring opinion in *Bearden*, that "poverty does not insulate those who break the law from punishment." However, the Court has imposed limits on the use of imprisonment and set procedural requirements when imprisonment is used.

If the offense does not carry imprisonment as an authorized penalty, for example, the Court has ruled that judges may not imprison for default unless the default is willful. If the offender is indigent, the judge must consider whether the state's interest in punishment and deterrence can be met by some noncustodial sanction before imprisoning. The Court has not ruled, however, on whether an indigent defendant in such a case can be jailed for default if he has tried but been unable to pay the fine. In *Tate* the Court explicitly left this issue open to "await the presentation of a concrete case" (p. 401), an event that is yet to occur.

In cases where the underlying offense does carry the possibility of an imprisonment sentence, judges have more leeway to enforce fines by imprisonment. If the defendant has been given time to pay and has not

[17] The "miracle of the cells" is also confirmed by statistical research that shows a sizable number of defaulting offenders returning to court after receiving notices that a warrant has been issued for their arrest (Zamist 1986, pp. 92–97; Casale and Hillsman 1986). Similar evidence about the effectiveness of the threat (and actual use) of jail can be found in research on the enforcement of child support orders (Chambers 1979).

done so, judges may imprison. Even under these circumstances, however, the Court's ruling in *Bearden* strongly suggests that the sentencing judge should first examine alternative measures before imprisoning. Courts in both the United States and Western Europe have begun to explore alternative enforcement approaches, particularly work programs and civil procedures (Hillsman and Mahoney 1988).

2. *Work Programs.* Work programs or community service are seldom used as a response to fine default in the United States, although the statutes of at least half the states provide a mechanism for doing so (Hillsman, Sichel, and Mahoney 1984, pp. 125 ff.). The English have not used this option because they fear that existing work programs for sentenced offenders will be overwhelmed by fine defaulters (West 1979). This is a reasonable concern largely because English courts set high fine amounts without taking systematic account of offenders' ability to pay (Casale and Hillsman 1986). By contrast, in West Germany, where fines are also designed to be punitive but are set in relation to means as well as offense severity, community service placements for fine defaulters are seldom needed but are used for those on public assistance or who are unemployed (Greene 1987).

Work programs can be expensive fine-enforcement devices, especially if they must be supervised directly by the court or by its paid agent (McDonald 1986, pp. 190–98). Nevertheless, if courts set fine amounts properly and implement collection strategies effectively, the number of fine defaulters in work programs should be kept to a minimum.

3. *Civil Procedures including Property Seizure.* The court's choice of a fine is a policy decision to punish and deter without imprisonment. Because the fine is fundamentally a noncustodial penalty, enforcement through imprisonment should generally be viewed as a failure of the fining process itself. Civil techniques to deprive the offender of his property should be tried in all but exceptional cases before depriving the offender of his liberty. In particular, as has been done successfully in Europe, American courts could develop the capacity to enforce fines through threat of property seizure (Hillsman 1988).

While the image of civil mechanisms may suggest gentle treatment of defaulters, the seizure of financial assets and the seizure and sale of personal property can result in substantial economic deprivation. Nevertheless, there appears to be relatively little use of these procedures in American courts, although most state statutes provide the legal authority to do so. European experience, however, suggests that this

technique should be tried more often in routine criminal cases as well as in serious cases involving criminals with substantial assets (Casale 1981; Casale and Hillsman 1986, pp. 187–211).[18]

European experience indicates that credible threats work: it is rare that goods are actually seized and sold in payment of the fine because, as with all coercive devices, property seizure works primarily by threat. As one civilian bailiff, who serves "distress" warrants (those ordering the seizure of property) for a provincial magistrates' court in England, said: "Everyone has something he doesn't want to lose, even if no one else wants it" (Casale 1981).[19]

E. Characteristics of Successful Courts

Fining must be viewed as a process in which how the fine is imposed is inextricably linked with the success of its collection and enforcement. Setting the amount of the penalty is the key to successful fine sentencing. The amount of the fine relative to the offender's financial resources determines the potential punitive content of the sentence and its deterrent value, but it also strongly influences whether the penalty can be delivered as imposed.

Three sets of conditions characterize courts whose fine outcomes are successful (Hillsman, Sichel, and Mahoney 1984, pp. 101–4, 203–21; Casale and Hillsman 1986, pp. 99–104, 177–86). First, fines are set in relation to offenders' financial circumstances. Only then is the level of punishment appropriate to the severity of the crime meaningful to the offender and enforceable—that is, an amount the offender can be expected to pay, albeit not without incurring some financial hardship.

Second, collection procedures emphasize reasonable payment schedules, close monitoring of offenders' performance, and swift response to nonpayment.

Third, enforcement efforts to compel payment do not start with

[18] Increased emphasis on forfeiture suggests that some American courts are beginning to rely more heavily on civil procedures in at least some types of criminal cases. In addition, recent changes in federal law create a lien on an offender's property at the time a fine is imposed and permit the lien to be enforced by the efficient administrative procedures now used in federal tax cases (Comprehensive Crime Control Act of 1984 and the Fine Enforcement Act of 1984). These statutory provisions permit the federal courts, for the first time, to view the seizure of property, rather than imprisonment, as the appropriate coercive device toward which the fine enforcement process should move.

[19] In contrast to property seizure, European courts, as well as many American courts, are uneasy about the use of wage garnishments for two reasons. First, many believe that they transfer the costs of the fine default to the employer rather than to the court or to the offender; second, many are concerned that some offenders will lose their jobs because employers do not wish to process the wage attachment orders.

threats of imprisonment but are characterized by a steady progression of mounting pressure and increased threat of more coercive responses. These include civil mechanisms to deprive the offender of property and noncustodial punishments if nonwillful default appears likely; imprisonment for default is thus the last resort.

While most empirical research has focused on specific collection and enforcement devices, it is the effectiveness of courts' overall strategies that determines how successful they will be in ensuring compliance with fine sentences.

IV. The European Day Fine: Making Fines a More Useful Criminal Sanction

The experiences of several Western European countries suggest that methods are available—particularly in the form of day-fine systems—to tailor fine amounts simultaneously and with greater precision to variations in offenses and in individual circumstances. While these European countries have somewhat different social structures and welfare policies, all are characterized by an unequal distribution of wealth and a population of criminal offenders heavily drawn from the bottom ranks of that distribution (Townsend 1979; George and Lawson 1980). Thus to make broad use of economic penalties, Western European criminal justice systems have had to develop principles and practices for imposing means-based fines, and their success at doing so has attracted the attention of American judges and legal scholars for some time (Botein and Sturz 1964, p. 215; Morris 1974, pp. 7 ff., and 1987, p. 4; Gillespie 1980, 1981; Friedman 1983; Ryan 1983).

Fines are the primary alternative to imprisonment in England, West Germany, and Sweden. In West Germany, the tendency toward using the fine in lieu of short terms of imprisonment has been growing over the last hundred years (Stenner 1970; Friedman 1983). This trend became more dramatic after the country's 1969 penal code revision that directs West German courts to impose prison sentences under six months "only when special circumstances, present in the act or in the personality of the offender, make the imposition of the sentence indispensable for effecting an impression on the offender or defending the legal order" (quoted in Friedman 1983, pp. 285–86).

The more recent predominance of the fine as an alternative in the English sentencing system is less clearly attributable to a dramatic shift away from imprisonment; however, a similar pattern is discernible in England in relation to more serious offenses (Casale 1981). An analysis

of convictions for offenses of violence against the person between 1938 and 1960 in England and Wales shows a shift from short-term imprisonment to the fine (McClintock 1963, p. 149).

Even in Sweden, where short-term incarceration remains a pillar of the sanctioning system, there is a clear tendency for Swedish courts to see the fine as the more appropriate sentence when the law allows either alternative (Casale 1981). Sweden has recently considered increasing its fine schedules so that fines can compete more effectively with the punitive impact of imprisonment (Greene 1987).

A. The Day-Fine Concept

Day-fine systems provide variable fine amounts that contrast directly with the fixed-fine or "going rate" systems typical of American courts.[20] All types of day fines, so-called because their amount is typically linked to an offender's daily income, have a similar underlying structure. The fundamental idea is to separate the calculation of the fine amount into two components: the first adjusts the amount for the severity of the offense and the second adjusts it for the offender's financial circumstances. While the major purpose of this approach is to give fines a more consistent impact across rich and poor, the approach also structures the sentencing process so that the outcome is more visible as well as more rational. As Friedman points out, "[The West German day-fine method] thereby offered a calculation procedure from which both an offender and a reviewing court could discern the reasons underlying the amount of the fine" (1983, p. 186).

As a practical matter, judges using a day-fine approach first set the sentence at a certain number of fine units (e.g., 20, 50, 150) reflecting the degree of punishment the judge deems appropriate for the gravity of the criminal behavior. Most day-fine systems rely on flexible but written guidelines developed by individual jurisdictions to determine the appropriate number of fine units. Offenders convicted of crimes of equivalent gravity can be assigned the number of fine units that would correspond to a sentence handed down without regard to their financial status.

The second stage is to determine the monetary value of each fine

[20] The idea of variable fining systems is hardly new as Friedman points out (1983, p. 281, n. 4). He calls attention to the fact that in thirteenth-century England, fine amounts were set in relation to the offender's wealth and that Jeremy Bentham advocated the variable fine in his work *The Theory of Legislation* (1931). Casale also notes the idea's long-standing tradition in Germany (1981, p. 21).

unit, basing this decision on the individual's economic circumstances. Jurisdictions using day-fine systems have developed uniform but flexible methods of calculating what is an equitable share of the offender's daily income, typically using information that is routinely available from the police, the court, the probation office, or (most often) the defendant and his or her counsel.

B. The History of Day-Fine Systems

Day-fine systems were initially proposed by Scandinavian criminologists. The first day-fine system was implemented in Finland in 1921, followed by Sweden in 1931, Cuba in 1936, Denmark in 1939, and West Germany and Austria in 1975 (Albrecht and Johnson 1980, p. 6; Casale 1981, p. 21; Friedman 1983, p. 282). The day-fine concept is also found in the penal laws of Peru (1924), Brazil (1969), Costa Rica (1972), and Bolivia (1972) (Beristani 1976, pp. 258–59, cited in Albrecht and Johnson, p. 6).[21]

The day-fine systems in Sweden and West Germany are commonly viewed as the most sophisticated (Austria's is modeled on West Germany's), and they have been the topic of most description and discussion (Thornstedt 1974, 1985; Albrecht 1980; Albrecht and Johnson 1980; Casale 1981; Friedman 1983; Hillsman, Sichel, and Mahoney 1984, app. C). The West German experience is most relevant to American policy both because it is recent and because the German legal system has greater similarity to the American system in relevant ways (e.g., with regard to legal limitations on access to information about offenders' means).

The West German day-fine system was designed as a central part of the country's first major revision of its criminal code since 1871. Its development began with the formation of a commission in 1954, resulted in passage of the first and second Criminal Law Reform Acts of 1969, and was completed when the statutory provisions mandating the day-fine system took effect in 1975 (Friedman 1983, pp. 281–87).

The use of fine sentences, particularly in lieu of short terms of imprisonment, has increased steadily in Germany since the early 1880s

[21] Taking account of an offender's means in determining fine amounts is also of considerable concern in England. The high court, e.g., requires a sentencing court "to consider first what type of sentence is appropriate. If it decides that the appropriate type of sentence is a fine, it is then necessary to consider what would be the appropriate amount of fine having regard to the gravity (or otherwise) of the offense. Finally . . . the court should consider whether or not to modify this amount having regard to the offender's means" (Latham 1980, pp. 85–86).

when the first official statistics became available (Albrecht and Johnson 1980, pp. 6–8). A criminal code revision introduced in 1962 allowed fines to replace short terms of imprisonment and required that they be calculated on a per diem basis (Friedman 1983, p. 284). This provision did not go far enough for some policymakers, however, who wanted all short terms eliminated because, they reasoned, such sentences could not be reconciled with any rehabilitative goal (Friedman 1983, pp. 284–85). The first Criminal Law Reform Act (1969) was a compromise, directing the West German courts to use fines as the primary sanction for crimes traditionally penalized by imprisonment, and to use short terms only when they were deemed indispensable (Friedman 1983, pp. 285–86).

The day-fine provision in the second reform act lays out the general rules for the two independent stages of fine computation to be followed by all German courts but leaves it to each jurisdiction to develop specific guidelines for determining both the exact number of day-fine units to be imposed and the precise method for valuing each unit. Courts have evolved their own guidelines and they vary by region. Observers of the West German system note, however, that in some regions the range of units for offenses gives so much latitude (e.g., ten to fifty units for theft) that it is difficult to talk of "guidelines" in any formal sense (Albrecht 1980).

In setting the number of day-fine units (*Tagessatze*)—which, by statute, can range from five to 360—West German courts must take into account the offender's culpability by examining the offender's motivation and method and the circumstances surrounding the crime. In establishing the value of each day-fine unit—which, by statute, can range from two German marks to 10,000—the courts are instructed to use some fraction of the offender's average net daily income (considering salary, pensions, welfare benefits, interest, and dividends, exclusive of taxes and business expenses for the self-employed), so long as it is not so high as to deprive the offender or his dependents of a minimal standard of living. Finally, the law calls for publication of the number of units and their value for each day-fine set by the court so that the sentence's components are known (Friedman 1983, pp. 287–88).

Sentences to short terms of imprisonment decreased dramatically after 1969 as a result of the first Criminal Law Reform Act and have continued to decline. Prior to this statutory change, over 110,000 prison sentences of less than six months were imposed each year in West Germany (20 percent of all convictions); the number declined after the code revision to just over 10,000 (1.8 percent) in 1976 (Gilles-

pie 1980, pp. 20–21). Despite the correlative increase in fine sentencing, there has been no increase either in the rate of fine defaults or the administrative burden to the courts (Albrecht and Johnson 1980; Friedman 1983, pp. 291 ff.). The major effect of introducing the day fine appears to be an increase in the average fine amount, reflecting just punishment for the more affluent; fines for poorer offenders have remained relatively low (Albrecht and Johnson 1980, p. 10).

In assessing the policy changes that resulted in the West German day-fine system, Albrecht and Johnson (1980) observe that they centered

> on the themes of effective administration and the legitimacy of the legal system. They have tested the capacity of the criminal justice system to administer prison sentences and public willingness to forgo such sentences for relatively minor offenses. The volume of convicted offenders exceeded the capacity of prisons. . . . Political leaders and the general public are aware that the combination of fines and penal orders can be administered with relative ease, quickly, and cheaply, without undue stigmatization. . . . Further, greater resort to fines and probation as alternatives to imprisonment broadens the distinction between minor and "heavy" criminality as a means of taking advantage of the chance for resocializing the offender. [Pp. 7–8]

Albrecht and Johnson conclude that "Ten years after the introduction of the fine on a large scale, our data support the view that the policy has been found politically acceptable, administratively practical, and penologically sound" (p. 13).

C. Contrasts between the Swedish and West German Day-Fine Models

The Swedish and West German day-fine systems are somewhat different in operation and in what they seek to accomplish. The West German system views fines as a replacement or "ransom" for terms of incarceration and they are accordingly designed to be burdensome. Fines as "economic jail" provide a milder measure of economic deprivation in Sweden, although they can be sustained over fairly long periods (Greene 1986).

1. *The Swedish System.* Developed in the early 1920s, Swedish day-fine sentences are based on a fairly narrow range of day-fine units, from one to 120 (180 for multiple offenses), reflecting their primary intended use for less serious offenses than is the case in West Germany. More

recent proposals would raise the day-fine unit scale to 200 units for a single offense and increase the maximum possible day-fine amount. The objectives are to encourage the imposition of day fines in lieu of imprisonment and to create provisions for the use of day fines against corporations involved in economic crimes (Greene 1987, p. 5).

Guidance as to the number of day-fine units appropriate for crimes of varying severity is provided by circulars promulgated by the regional public prosecutor's office for use in routine cases that can be resolved by prosecutor's penal orders (rather than by an appearance in court). These circulars rank offenses by their seriousness and assign a prescribed number or range of day-fine units that increases with the gravity of the offense. Swedish courts generally follow these benchmarks in routine cases and follow "unwritten rules" established by practice in more serious cases (Greene 1987, p. 7). Official statistics indicate that actual sentences in Sweden are distributed as expected from the benchmarks (*Kriminalstatistik For Brott Lagforda Personer, 1987*, 1988). Generally, no allowance is made for prior record in determining the number of day-fine units, and for some crimes (such as petty larceny), the same day fine may be given again and again with the number based entirely on the value of the property taken. For other types of crimes (drunk driving, for example), repeat offenders are unlikely to receive a series of day fines but will move up the sentencing ladder to a suspended custodial sentence (Greene 1987, p. 13).

The Swedish method for handling the second step in the day-fine process—valuing the day-fine units—is daunting in its technical complexity and is possible only because courts have legal access to income and tax records for checking the highly detailed information that is required (Thornstedt 1974, pp. 608 ff.). The method was set forth in a procedural circular issued by the state prosecutor general in 1973. The calculation is based on the individual's gross annual income, from which are subtracted business expenses, maintenance, or living expenses. There is a 20 percent reduction for persons married or living together on a regular basis, but if the other person is employed, 20 percent of the second income is added to the offender's sum. Half the basic child maintenance rate for Sweden is then subtracted for each dependent child. The day-fine value is then calculated by dividing the resulting figure by 1,000 to reduce the unit value to about one-third of the offender's daily income. This adjusted, gross day-fine value is reduced on a graduated basis to make it net of taxes and is then subject to a scale of adjustments for capital wealth and for significant debts.

The Swedish day-fine method reflects a concept of fines as providing

relatively modest economic deprivation over a period of time determined by the gravity of the offense (Greene 1986, p. 9). This approach is continued in the provision in the Swedish system for converting the day fine to jail in the event of default: a sliding scale begins at ten days' imprisonment for five day-fine units but ranges to a maximum of ninety days for 180 units.

About half of all convictions for property offenses in Sweden result in fines as do half of all crimes of violence against the person; this sentencing pattern takes place in a day-fine system in which fines can range overall from about $1.50 to over $17,000. In contrast, three-quarters of all property offenses are fined in West Germany, as are two-thirds of all crimes involving violence against persons; this sentencing pattern occurs in a day-fine system in which fine amounts can range from about $5.00 to over $1.8 million. West Germany, therefore, has chosen a method for determining both the range of day-fine units and the value of each unit that results in stiffer fines than is typical in Sweden (Greene 1986, p. 9).

2. *The West German System.* The West German system provides a more severe scale of punitive impact than does the Swedish system. Although there is no direct correspondence between the number of day-fine units and terms of imprisonment imposed for similar offenses in West Germany, the 360 maximum is logically linked to the idea of a one-year prison term, an exchange that is further underscored by the statutory rule that, in cases of default, one day fine must correspond to one day of imprisonment for nonpayment (Horn 1974, p. 625).

In setting the day-fine value by statute as the net daily income (not discounted for financial responsibilities), the West German system also seems to preserve the day's-wages-for-a-jail-day exchange economy that stems from the original purpose of the reform (Greene 1986, p. 8). However, unlike Sweden (but more like the United States and England), West German courts have no formal access to the offender's income or tax records. Indeed, absolute accuracy in establishing income is not demanded by German law, which recognizes that, in some circumstances, only an approximate measure will be feasible (Friedman 1983, pp. 288–89). The West German experience indicates, therefore, that lack of formal legal recourse to means information is no barrier to the success of a day-fine system.

In practice, West German court officials have some information from the police on employment status, occupation, and living circumstances, which is supplemented by brief oral investigation by the judge. In most cases, the information can be converted, if roughly, into the net daily

income. West German officials report a high degree of confidence that, in most cases, the information obtained from the offender is reliable; only with self-employed professionals and business people do they find a lack of candor and a tendency to underreport. In these cases, the judges have statutory power to assess the offender's income de facto; the judge merely announces the day-fine value based on a "best guess" as to net income. While this outcome is subject to appeal, offenders rarely do so, which suggests to one observer that "these powers are either used with judicious restraint, or tempered by the defendant's cooperation when faced with a 'generous' best guess by the judge" (Greene 1986, p. 15).

3. *Day Fines for America?* When asked about the desirability and feasibility of experimenting with day-fine systems in the United States, over half of a national sample of trial judges said such a system could work in their courts (Mahoney and Thornton 1988). The advantages they saw from such a system are what one would expect: it would be fairer and more equitable.

The disadvantages these judges saw largely concern implementation. They feared, for example, that day fines could be difficult and expensive to administer if means information were not readily available. A potentially more difficult obstacle reported by some of the judges was their perception that a day-fine system, like other methods to structure sentencing decisions, would restrict their discretion. Such reservations, however, are not universal or necessarily lasting, particularly if judges play a central role in the process of establishing the sentencing standards. As Norval Morris has pointed out: "The experience of Minnesota and Washington [sentencing commissions] has been that, while the judges screamed and fought about the introduction of sentencing guidelines, when they got them, they adhered to them, and were pleased with them" (1987, pp. 4–5).

V. Adapting Day Fines to American Courts

In 1986, the Vera Institute of Justice in New York City began to explore possibilities for adapting the day-fine concept to courts in the United States. With planning support from the National Institute of Justice and from the German Marshall Fund of the United States, the Institute initiated the first of two planning efforts in 1986 in conjunction with the Richmond County Criminal Court (Staten Island, New York) and the Richmond County District Attorney's Office. The goal was to design a day-fine system that would replace a fixed-fine system

with a method of setting variable fines, tailored specifically to the court, that would take into account offenders' means and the severity of their offenses. The day-fine system that resulted is an amalgam of the West German and the Swedish models. Judges in the Richmond court began imposing day fines in lieu of fixed fines in August 1988.

The pilot test, funded by the National Institute of Justice and the city of New York, will be completed in 1990. In addition to the use of day fines, the pilot encompasses an enhanced system of fine collection and enforcement and an evaluation to assess the overall results of the pilot (Hillsman and Greene 1987). The pilot project parallels a second effort by the Vera Institute, which is taking place in the Superior Court of Maricopa County (Phoenix, Arizona), to adapt the day-fine concept to American courts. In Phoenix, however, the emphasis is on using the day-fine's two-stage method of tailoring fine amounts to help a court rationalize not only its imposition of fines but also its use of a proliferating number of other mandatory and discretionary financial penalties.

A. Day Fines in Staten Island

The motivation behind the Richmond County Criminal Court's interest in day fines as well as for the support of the county's district attorney was expressed by one of the court's judges: "What is needed in our overall sentencing framework is an opportunity to impose a fine that is meaningfully tailored to the individual, so that the offender understands that crime does not pay, rather it is the criminal who pays" (McBrien 1988, p. 42). Similarly, the assistant district attorney in charge of the Staten Island Criminal Court, Arnold Berliner, said of the day fine: "This can make [the fine] a more viable sanction. One of the functions of criminal fines is to make it hurt a little bit. By having some idea of the economic effect, you have an idea whether it's just a slap on the wrist or for real. The way it is now, fines are basically just imposed 'off the hip.' " (Hurley 1988).[22]

Staten Island's criminal court is a fairly typical limited-jurisdiction

[22] New York statutes provide no legal barrier to introducing a day-fine system for setting fine amounts. There are, however, certain statutory limitations to experimenting with any variable fine system. Primary among these are statutory fine maxima of $1,000 for class A misdemeanors, $500 for class B misdemeanors, and $250 for violations. The second statutory limitation occurs when either fixed-fine amounts or minimum fines are mandated. In New York State, this occurs for several important vehicle and traffic law offenses routinely sentenced by judges in the Staten Island court (including, for example, DWI cases).

court, and its social and economic base makes it similar to many small American cities or moderate-sized suburban communities. Both fines and terms of imprisonment under one year are staples of the court's sentences. Fines are the single most heavily used sanction (imposed in almost half the cases, including many that are charged as felonies after screening by the prosecutor but are reduced to misdemeanors for sentencing), followed by imprisonment (imposed in almost 20 percent of the court's cases). But because the community is characterized by relative affluence, combined with a small but significant poverty population, the issue of fairness in the use of these two sentences is of concern to all.

1. *Components of the Staten Island Day-Fine Sentence.* The guidelines (or "benchmarks") for setting the number of day-fine units in use by the Staten Island court were developed by a planning group that included the judges, prosecutors, and defense lawyers as well as Vera Institute planners (Hillsman and Greene 1987, chaps. 2–4; Hillsman and Greene 1988*b*). Assuming that the West German scale of 360 day-fine units would be sufficient to cover the full range of violation, misdemeanor, and felony offenses in the New York State Penal Law, the planning group selected a partial range of five to 120 units for conviction for violations and misdemeanors in the Staten Island court. This decision brought the overall unit range closer to that of Sweden, which also uses day fines primarily for less serious offenses. A floor of five units was set to avoid trivializing fines imposed for cases at the lowest end of the scale.

To distribute the offenses sentenced in Staten Island across this 115-unit range, the planning group ranked the court's seventy most common misdemeanors and violations according to the relative degree of seriousness reflected by the criminal behaviors typically involved. This resulted in classification of six severity levels ranging from lesser offenses involving breaches of public decorum and community standards of behavior to the more serious victimizing offenses that are often charged as felonies but disposed as misdemeanors. (See table 3 for selections from this classification of penal law offenses).

Finally, each offense was assigned a specific number of day-fine units as the presumptive sentence or benchmark. However, because individual cases present judges and prosecutors with aggravating or mitigating factors not taken into account in establishing the benchmarks, the day-fine unit scales provide an upper and lower range of 15 percent on either side of the benchmark. For example, although it is assumed that judges will take prior record into account in making the initial decision

whether to fine or to impose another type of sentence, a prior conviction (or an aggravating factor) might move the sentence toward the upper bound whereas no prior record (or a mitigating factor) might warrant a lower-bound fine.

Table 4 provides some examples from the full Staten Island day-fine scales. Assault third degree (Penal Law [P.L.] 120.00) is an A misdemeanor carrying a fine maximum of $1,000. However, the real-life behaviors for which offenders are convicted of this offense span a fairly wide range, according to judges, prosecutors, and defense attorneys in Staten Island. As a result, the day-fine benchmark scales distinguish four levels of assaults by the severity of the injury (minor/severe) and by the type of victim involved. Similarly, the day-fine benchmarks for petit larceny (P.L. 155.25), an A misdemeanor, also have levels, in this case reflecting the amount or value of the property taken. While many penal law offenses have only a single presumptive day-fine benchmark, set in its 15 percent plus or minus range (e.g., criminal trespass third degree, a B misdemeanor, is twenty day-fine units, with a range from seventeen to twenty-three), others have several levels to cover the behaviors subsumed under the legal or statutory categories (e.g., menacing, sexual misconduct, criminal mischief, attempted grand larceny, unauthorized use of a vehicle, criminal possession of stolen property).

The procedure for valuing the day-fine unit primarily determines how punitive the day-fine system is. The planning group in the Staten Island court decided to steer a middle course between the West German and Swedish approaches, recognizing that many of the offenses dealt with by the Staten Island court are at the less serious end (as in Sweden) but also wanting the court's day-fine system to provide an opportunity for fines to substitute for short terms of imprisonment in appropriate cases (as in West Germany).

The value of the day-fine unit in Staten Island, therefore, is based on net daily income (as in West Germany). However, this amount is adjusted downward twice, first for the offender's family responsibilities and then by a standard rate (as in Sweden) to bring the overall day-fine levels closer to the Staten Island court's current fixed-fine levels, particularly at the lower end of the severity scale.

The adjustment for dependents is based on practices commonly used in American courts for determining child support payments.[23] The

[23] The net daily income figure is discounted by 15 percent for the offender's self-support, 15 percent for the first dependent (including a spouse), 15 percent for the second dependent, 10 percent for the next two dependents, and five percent for each additional dependent.

TABLE 3

Broad Classification of Penal Law Offenses into Staten Island Day-Fine Benchmark Severity Levels (Partial List)

Severity Level/Penal Law Number		Behavior	Offense and Degree	Day-Fine Units
Level 1 (95–120 Day-Fine Units):				
130.20	AM	Harm persons	Sexual misconduct	90–120 DF
120.00	AM	Harm persons	Assault 3	20–95 DF
Level 2 (65–90 Day-Fine Units):				
260.10	AM	Harm persons	Endangerment of child welfare	20–90 DF
215.50	AM	Obstruction of justice	Criminal contempt 2	75 DF
120.20	AM	Harm persons	Reckless endangerment 2	65 DF
110–155.30	AM	Property	Attempted grand larceny 4	20–65 DF
Level 3 (45–60 Day-Fine Units):				
265.01	AM	Weapons	Possession of weapon 4	35–60 DF
155.25	AM	Property	Petit larceny	5–60 DF
165.40	AM	Property	Possession of stolen property 5	5–60 DF
165.05	AM	Property	Unauthorized use of vehicle	5–60 DF
221.40	AM	Drugs	Sale of Marijuana 4	50 DF
225.05	AM	Misconduct	Promotion of gambling 2	50 DF
220.03	AM	Drugs	Possession of contraband substance 7	35–50 DF
110–120.00	BM	Harm persons	Attempted assault 3	10–45 DF

Level 4 (30–40 Day-Fine Units):					
170.05	AM	Theft	Forgery 3	40	DF
221.15	AM	Drugs	Possession of Marijuana 4	35	DF
110–140.15	BM	Property	Attempted criminal trespass 2	30	DF
245.00	BM	Sex crime	Public lewdness	30	DF
110–155.25	BM	Property	Attempted petit larceny	5–30	DF
110–165.40	BM	Property	Attempted possession of stolen property 5	5–30	DF
Level 5 (15–25 Day-Fine Units):					
240.37A	AM	Sex crime	Loitering/prostitution	25	DF
205.30	AM	Obstruction of justice	Resisting arrest	25	DF
110–221.40	BM	Drugs	Attempted sale of Marijuana 4	25	DF
110–265.01	BM	Weapons	Attempted possession of weapon 4	5–25	DF
110–120.20	BM	Harm persons	Attempted reckless endangerment 2	20	DF
140.10	BM	Property	Criminal trespass 3	20	DF
240.25	VIO	Misconduct	Harassment	15	DF
Level 6 (5–10 Day-Fine Units):					
165.09	AM	Property	Auto stripping 2	10	DF
221.10	BM	Drugs	Possession of Marijuana 5	5	DF
230.00	BM	Sex crime	Prostitution	5	DF
190.05	BM	Theft	Issuing bad check	5	DF
240.36	BM	Misconduct	Loitering 1	5	DF
140.05	VIO	Property	Trespass	5	DF
240.20	VIO	Misconduct	Disorderly conduct	5	DF

SOURCE.—Hillsman and Greene 1987, pp. 43–49.
NOTE.—AM = A-misdemeanor; BM = B-misdemeanor; VIO = violent.

TABLE 4

Two Examples of Staten Island Day-Fine Benchmarks

	Discount Number	Benchmark Number	Premium Number
Harm to person offense:			
120.00 A-misdemeanor assault 3			
(Range of 20–95 day-fine units):			
A. Substantial injury: Stranger to stranger; or, where victim is known to assailant, he/she is weaker, vulnerable	81	95	109
B. Minor injury: Stranger to stranger; or, where victim is known to assailant, he/she is weaker, vulnerable; or altercations involving use of weapon	59	70	81
C. Substantial injury: Altercations among acquaintances; brawls	38	45	52
D. Minor injury: Altercations among acquaintances; brawls	17	20	23
Property offense:			
155.25 A-misdemeanor petit larceny			
(Range of 5–60 day-fine units):			
$1,000 or more	51	60	69
$700–999	42	50	58
$500–699	34	40	46
$300–499	25	30	35
$150–299	17	20	23
$50–149	8	10	12
$1–49	4	5	6

SOURCE.—Hillsman and Greene (1987), app. B.

standard adjustment is a flat one-third for offenders with incomes above the federal poverty line, and one-half for those below it. This second adjustment has two tiers to acknowledge that a single rate would fall more heavily on lower-income offenders whose "fair share" of their net daily income could cause hardship even though it has been adjusted for their family responsibilities.

Table 5 contains portions of the table used by the Staten Island judges to calculate the day-fine unit value for each case; it is as simple and as easily used as a tax table. The judge merely locates the offender's net daily income on the left side of the table, then follows the row

TABLE 5

Dollar Value of One Day-Fine Unit by Net Daily Income and Number of Dependents

Net Daily Income ($)	Number of Dependents (Including Self)							
	1	2	3	4	5	6	7	8
3	1.28	1.05	.83	.68	.53	.45	.37	.30
4	1.70	1.40	1.10	.90	.70	.60	.50	.40
5	2.13	1.75	1.38	1.13	.88	.75	.62	.50
6	2.55	2.10	1.65	1.35	1.05	.90	.75	.60
7	2.98	2.45	1.93	1.58	1.23	1.05	.87	.70
8	3.40	2.80	2.20	1.80	1.40	1.20	1.00	.80
9	3.83	3.15	2.48	2.03	1.58	1.35	1.12	.90
10	4.25	3.50	2.75	2.25	1.75	1.50	1.25	1.00
11	4.68	3.85	3.03	2.47	1.93	1.65	1.37	1.10
12	5.10	4.20	3.30	2.70	2.10	1.80	1.50	1.20
13	5.53	4.55	3.58	2.93	2.28	1.95	1.62	1.30
14	7.85	4.90	3.85	3.15	2.45	2.10	1.75	1.40
15	8.42	5.25	4.13	3.38	2.63	2.25	1.87	1.50
16	8.98	5.60	4.40	3.60	2.80	2.40	2.00	1.60
17	9.54	5.95	4.68	3.83	2.98	2.55	2.12	1.70
18	10.10	6.30	4.95	4.05	3.15	2.70	2.25	1.80
19	10.66	8.78	5.23	4.28	3.33	2.85	2.37	1.90
20	11.22	9.24	5.50	4.50	3.50	3.00	2.50	2.00
46	25.81	21.25	16.70	13.66	10.63	9.11	7.59	4.60
47	26.37	21.71	17.06	13.96	10.86	9.31	7.75	4.70
48	26.93	22.18	17.42	14.26	11.09	9.50	7.92	6.34
49	27.49	22.64	17.79	14.55	11.32	9.70	8.08	6.47
50	28.05	23.10	18.15	14.85	11.55	9.90	8.25	6.60
51	28.61	23.56	18.51	15.15	11.78	10.10	8.41	6.73
52	29.17	24.02	18.88	15.44	12.01	10.30	8.58	6.86
53	29.73	24.49	19.24	15.74	12.24	10.49	8.74	7.00
54	30.29	24.95	19.60	16.04	12.47	10.69	8.91	7.13
55	30.86	25.41	19.97	16.34	12.71	10.89	9.07	7.26
96	53.86	44.35	34.85	28.51	22.18	19.01	15.84	12.67
97	54.42	44.81	35.21	28.81	22.41	19.21	16.00	12.80
98	54.98	45.28	35.57	29.11	22.64	19.40	16.17	12.94
99	55.54	45.74	35.94	29.40	22.87	19.60	16.33	13.07
100	56.10	46.20	36.30	29.70	23.10	19.80	16.50	13.20

across until he reaches the column reflecting the defendant's number of dependents. The figure in that cell is the dollar value of one day-fine unit appropriately discounted.

For example, a Staten Island woman with two children receiving public assistance would have a gross (and net) biweekly income of $270,

or a net daily income of $19 ($270/14). Using table 5, the judge would calculate her day-fine unit value at $5.23, regardless of the crime for which she is being sentenced. A single parent with two children making $25,000 per year, say, as a clerical supervisor, grosses $962 biweekly—a net daily income of $52. Her day-fine unit value, therefore, would be $18.88 (or three and a half times more than the mother on public assistance). A single professional making an annual income of $78,000 would gross $3,000 biweekly (a net daily income of $119 which is above the range included in table 5). Her day-fine unit value would be $68 (which is thirteen times greater than the welfare mother and three and a half times greater than the clerical supervisor).

If each of these defendants were convicted of attempting to leave a local department store without paying for a $600 watch (attempted petit larceny, a twenty day-fine unit offense), their day-fine amounts, using the Staten Island method (numbers rounded), would be as follows: welfare mother, $100 ($5 × 20); clerical supervisor, $380 ($19 × 20); and professional, $1,360 ($68 × 20).

Table 6 presents a series of actual Staten Island defendants and applies the court's day-fine method to determine what the day-fine amounts would be for a series of hypothetical conviction charges that, under current sentencing policies in the court, might receive a short jail sentence. (If a Staten Island judge were to impose these day fines under current statutory caps for fines in New York State, the actual amount of the sentence could not exceed $1,000.)

2. *Collecting the Means Information.* Although some courts in the United States do not have routine methods of securing information on defendants appearing before the bench (Cole et al. 1987, pp. 13–16), others do obtain such information through the police, pretrial services agencies, or probation departments. The experience of European courts suggests that American courts can overcome most of the information obstacles to routine use of day fines.

The Staten Island court is taking this approach. The city's pretrial services agency interviews all arrested defendants in Staten Island prior to arraignment to provide the judge with information (verified when possible) relevant to the setting of release conditions, including money bail; this includes living arrangement, employment status, take-home pay, other sources of income, and dependents. The Staten Island judges, therefore, have the basic elements to value the day fine at the time of sentencing, even if this coincides with the arraignment. A brief

discussion with the defendant and counsel to verify, clarify, or supplement this information when necessary has sufficed for the Staten Island judges to set day-fine amounts without difficulty.

B. Day Fines in Phoenix

The increased use of restitution and service fees, contributions, and reimbursements of many different types makes the imposition of monetary penalties far more complex in many American courts than is typical in Europe. The objective of the planning project to be carried out by the Vera Institute of Justice in conjunction with the Superior Court of Maricopa County is to apply the conceptual and practical framework developed for setting day fines in Staten Island to improving the standards and procedures used in Phoenix to impose and enforce the more complex array of monetary penalties now levied on most of its convicted felons (Hillsman and Greene 1988*a*).

This general-jurisdiction trial court sentences more than 8,500 felony cases annually, nearly one-quarter of which result in a term of imprisonment. Virtually all the rest are placed under the supervision of the court's probation department. These offenders are subject to mandatory probation fees, a contribution to the Victim Compensation Fund, maximum restitution, various reimbursements, and fines.

In setting these amounts, the court is provided with substantial information from its probation department. Despite the completeness of the presentence reports, however, the complexity of the monetary penalties imposed by the court raises issues that have not been fully addressed by this court (or other courts around the country). These include the extent to which severity of the offense should be factored into the amounts recommended by probation officers and set at sentencing; the manner in which indebtedness should be considered (for example, should debtors be sentenced to lower economic penalties, even when their offenses are more serious, than nondebtors convicted of less grave charges?); and how the victim's damages should be assessed.

These issues surface not only at sentencing but also in the day-to-day supervision work of field probation officers who administer the collection and enforcement process. They need more specific indicators of an offender's "ability to pay" so they can determine the appropriateness of applying increasingly coercive strategies to collect money owed the court. They need consistent and just standards that can be applied routinely to collection and enforcement decisions.

TABLE 6

Proposed Day Fines for Actual Richmond Criminal Court Defendants When A-Misdemeanor Conviction Charges Suggest a Possible Jail Sentence

Defendants*	Assault 3d Degree: Assault Resulting in a Minor Injury	Criminal Possession of Stolen Property 5th Degree: Possession of $850 Stolen Property	Criminal Possession of Controlled Substance 7th Degree: Valium	Petit Larceny: $400 Shoplift	Criminal Mischief: $130 Property Damage
Charlotte Ross: Welfare mother with six children; $446 biweekly	70 DFs × $4 unit Value = $280	50 DFs × $4 unit Value = $200	35 DFs × $4 unit Value = $140	30 DFs × $4 unit Value = $120	10 DFs × $4 unit Value = $40
William Gonzalez: Young offender living with his parents; $150 per week take-home pay	70 DFs × $12 unit Value = $840	50 DFs × $12 unit Value = $600	35 DFs × $12 unit Value = $420	30 DFs × $12 unit Value = $360	10 DFs × $12 unit Value = $120
Ramon Velasquez: Employed; supporting a wife and child; $1,200 per month take-home pay	70 DFs × $15 unit Value = $1,050	50 DFs × $15 unit Value = $750	35 DFs × $15 unit Value = $525	30 DFs × $15 unit Value = $450	10 DFs × $15 unit Value = $150
Mark Copeland: Single, employed; $600 per week take-home pay	70 DFs × $48 unit Value = $3,360	50 DFs × $48 unit Value = $2,400	35 DFs × $48 unit Value = $1,680	30 DFs × $48 unit Value = $1,440	10 DFs × $48 unit Value = $480

SOURCE.—Hillsman and Greene (1987), p. 87.

NOTE.—DFs – Day Fines

* Defendants' names are pseudonyms.

Any means-based system of imposing variable monetary penalties should embody two fundamental principles of American jurisprudence. First, the degree of punishment imposed should be proportionate to the gravity of the crime being sanctioned. Second, the economic burden imposed by the court should be measured in relation to the means available to the offender.

Taken together, these principles provide a framework for imposing economic sanctions that encompasses essential justice and basic practicality. This is so whether the system is applied to criminal fines as a sole sanction (as in Staten Island, West Germany, or Sweden), or to the use of multiple monetary penalties as part of a sentencing package that may also include noneconomic penalties (as in Phoenix and England).

Working within Arizona's existing statutory framework, therefore, the project (which is funded by the State Justice Institute and the National Institute of Corrections) will be a collaborative effort to develop sentencing guidelines for the total package of economic sanctions imposed by the superior court. As in Staten Island, the benchmarks developed will provide a graded scale of monetary penalty units encompassing the criminal code offenses commonly handled by the court. Likewise, a simple-to-use valuation format will be devised to value the penalty units by assessing the economic means of individual offenders. The resulting product—a total dollar amount available for sanctioning—can then be used by judges to craft individual sentences that will combine any monetary penalties to be imposed within a framework that is both just and enforceable.

The project's planning group will propose a scheme for apportioning this total dollar amount among the different penalties imposed by judges. For example, by Arizona law, restitution must receive first priority. Because the value of property stolen or damaged, as well as the seriousness of physical injury involved in a given case, would already have been primary elements in determining the number of monetary penalty units imposed, restitution orders should easily fit within this broader framework. However, the relative importance and priority of other monetary penalties would also have to be weighed, and policies devised to distribute the remaining share of the maximum economic-sanction amount among them, as deemed appropriate by the court (or as required by law).

In some individual cases, this may mean that a greater economic burden than has been typical can be properly imposed as a sanction. In

other cases, however, the total amount deemed appropriate for sanctioning a particular offender for a specific offense, as derived from the new day-fine procedures, may be insufficient to cover the statutorily mandated schedule of monetary penalties. While the superior court will need to impose such amounts as the law requires, it will also develop standards for their postsentence modification, based on research designed to explore how these legal rigidities affect the court's ability to enforce economic sanctions.

VI. Conclusion

The development of systematic methods for imposing variable rather than fixed fines in American courts has the potential for expanding the usefulness of the fine as an intermediate penalty, as has occurred in Western Europe, and for rationalizing the imposition of all financial penalties. That many judges from across the country believe that day fines, the most tested form of variable fining, could work in their own courts and are willing to experiment with this approach suggests that the time is ripe for such efforts. In 1973, the Task Force on Courts of the National Advisory Commission on Criminal Justice Standards and Goals found that, "properly employed, the fine is less drastic, far less costly to the public and perhaps more effective than imprisonment or community supervision" (p. 570). This observation went unheeded by the policy community for over a decade, partly because there was insufficient documentation and discussion in the United States of what constitutes the "proper" way to impose and administer fine sentences. This is changing as criminal justice systems seek ways to use imprisonment resources more wisely, to structure sentencing decisions more consistently, and to impose fines more justly whenever they are used.

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