NOTES

FINES AND FINING — AN EVALUATION

Modern concern with the ancient problem of the adequacy of prison facilities, plus doubt of the rehabilitative and deterrent effects of even model penal institutions, dictates a reevaluation of alternative sanctions. Chief among them historically have been conditional liberty and the fine. The former has been the object of constant criticism and study; the latter has received little consideration in the English-speaking world. The primary purpose of this Note is to focus attention upon the fine in order to make a preliminary judgment as to whether it can be used rationally as a sanction or whether it is only the makeshift of criminal penalties, as has been charged.

THE FINE AUTHORIZED

Present statutory authorizations of the fine as a sanction for major offenses may be divided into two general classes: as alternatives to imprisonment and as additions to imprisonment. Typical of the former group are the Pennsylvania provisions, which allow the court to impose a fine as the sole penalty for almost all serious crimes except murder in the first degree. Typical of the latter group are the California provisions, which impose fixed or indeterminate sentences of imprisonment for almost all serious crimes but also allow the imposition of fines up to $500 for misdemeanors and $5,000 for felonies. Statutes of some jurisdictions, such as New York, rarely provide for fines in serious offenses even as additional punishments. Federal provisions are similar to the Pennsylvania type, except that they do not permit substitution of fine for imprisonment in as many serious offenses.

1. See 5 ATT’Y GEN. SURVEY RELEASE PROCEDURES 35 (1940).
3. See, e.g., listings in KUHLMAN, GUIDE TO MATERIAL ON CRIME AND CRIMINAL JUSTICE §§12180-12519 (1929); and in TAFT, CRIMINOLOGY 601 (1950).
4. It has been suggested that the continent has been preoccupied with the fine because courts there have little discretion in sentencing. Seagle, Fines in 6 ENCYC. SOC. SCI. 249, 250 (1937).
6. For example: murder in the second degree may be punished, in the discretion of the court, solely by a fine varying in amount from one cent to $10,000, even though the maximum penalty is $10,000 and twenty years. PA. STAT. ANN. tit. 18, § 4701 (Purdon 1945). Also punishable solely by fine are id. § 4201; rape, id. § 4721; arson, id. § 4905; burglary, id. § 4901; and one species of kidnapping, id. § 4725. See MACNEILLE AND KESSLER, PENALTIES FOR CRIMES IN PENNSYLVANIA (3d ed. 1952).
7. See CAL. PEN. CODE (Deering 1949).
8. Id. § 672.
9. See N.Y. PEN. LAW.
10. Among the crimes against the United States which may be punished by fine alone are arson, 18 U.S.C. § 81 (1946); certain forms of espionage, id. § 791 et seq.;
As would be expected, statutory authorizations of the fine as a penalty for less serious felonies and for misdemeanors are even more comprehensive, especially in those jurisdictions in which the fine either cannot be imposed for major offenses or else can be imposed only as an additional punishment. Thus, there may be a penalty of fine alone for infractions ranging in gravity from involuntary manslaughter, petit larceny, and adultery through mailing lottery tickets or intoxicating liquor to selling unmanufactured, adulterated horse manure. However, it is relatively infrequent for the fine to be the sole permissible penalty for violation of a state law. Pennsylvania, in keeping with its statutory policy of allowing great discretion to the sentencing judge in choosing between fines and prison terms, generally provides imprisonment and/or fine for minor offenses. Both New York and California have similar provisions. In addition, fines are commonly authorized as penalties for violation of ordinances, the municipality being granted by the state the power to fine and/or imprison. It is apparent from the foregoing sketch that fines may be imposed frequently, if the court desires, not only for minor offenses but also as sole or additional penalties for major felonies.

The Fine Actual

Although it has been estimated that fines constitute 75% of all sentences, there are no comprehensive statistical compilations to buttress the estimate. Despite repeated emphasis on the need for national criminal statistics, no centralized information on the subject is available. The last comprehensive report on fines was published by the Bureau of the Census in 1910. Judicial Criminal Statistics for 1936 show that fines without imprisonment constituted 21.1% of all sentences in thirty states and 5.8% of all sentences for fifteen major offenses in the same area. Variations in the use of the fine as the sole penalty for the identical offense in different jurisdictions were as follows: liquor laws, 0.7%—50.2%; driving while

12. N.Y. PEN. LAW §§ 1299, 1937.
13. CAL. PEN. CODE § 269a (Deering 1949); N.Y. PEN. LAW § 102.
15. Id. § 1716.
17. N.Y. PEN. LAW § 1937; CAL. PEN. CODE § 19 (Deering 1949).
18. See, e.g., PA. STAT. ANN. tit. 53, § 3451 (Purdon 1931). Some courts have held that a pecuniary penalty imposed for violation of a municipal ordinance technically is not a fine. See, e.g., State v. Hamley, 137 Wis. 458, 119 N.W. 114 (1909).
21. PRISONERS AND JUVENILE DELINQUENTS IN THE UNITED STATES (1910).
intoxicated, 6.5%—74.2%; disorderly conduct and vagrancy, 4.0%—57.3%; gambling, 36.9%—95.2%. Unfortunately, the age of these reports limits their value severely.

The most helpful recent figures on use of fines are those published in the *Annual Report of the Director of the Administrative Office of the United States Courts*. Like the surveys aforementioned, this publication contains no information concerning the fine as a punishment in addition to imprisonment. The following figures are, however, pertinent:

<table>
<thead>
<tr>
<th>Offense</th>
<th>Percent of Those Convicted and Sentenced Who Were Punished Solely by Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antitrust violations</td>
<td>92.7</td>
</tr>
<tr>
<td>Fair Labor Standards Act</td>
<td>92.4</td>
</tr>
<tr>
<td>Motor Carrier Act</td>
<td>91.7</td>
</tr>
<tr>
<td>Migratory bird laws</td>
<td>91.2</td>
</tr>
<tr>
<td>Food and Drug Act</td>
<td>84.8</td>
</tr>
<tr>
<td>OPA-OHE price and rent control</td>
<td>62.5</td>
</tr>
<tr>
<td>Lottery</td>
<td>25.0</td>
</tr>
<tr>
<td>Fraud</td>
<td>12.4</td>
</tr>
<tr>
<td>Indian liquor laws</td>
<td>10.1</td>
</tr>
<tr>
<td>Assault</td>
<td>10.0</td>
</tr>
<tr>
<td>Liquor, Internal Revenue</td>
<td>7.2</td>
</tr>
<tr>
<td>Theft</td>
<td>4.0</td>
</tr>
<tr>
<td>Perjury</td>
<td>3.3</td>
</tr>
<tr>
<td>Extortion</td>
<td>3.0</td>
</tr>
<tr>
<td>Embezzlement</td>
<td>2.6</td>
</tr>
<tr>
<td>Nationality laws</td>
<td>2.4</td>
</tr>
<tr>
<td>White slave traffic</td>
<td>1.9</td>
</tr>
<tr>
<td>Forgery</td>
<td>0.9</td>
</tr>
<tr>
<td>Counterfeiting</td>
<td>0.6</td>
</tr>
<tr>
<td>Narcotics, total</td>
<td>0.5</td>
</tr>
<tr>
<td>Immigration laws</td>
<td>0.4</td>
</tr>
<tr>
<td>Juvenile delinquency</td>
<td>0.3</td>
</tr>
<tr>
<td>Transportation of stolen property</td>
<td>0.2</td>
</tr>
<tr>
<td>Transportation of stolen motor vehicles</td>
<td>0.1</td>
</tr>
</tbody>
</table>
| Percent of Those Convicted and Sentenced for All Offenses Who Were Punished Solely by Fine | 9.0  

23. *Id.* at 82. This survey has been discontinued. A survey of fines in the counties of several states is available in *Judicial Criminal Statistics, Ohio, Minnesota, and the District of Columbia* (1938).

24. Rep. Director Admin. Office United States Cts. 178, 179 (1950). Percentages (to the first decimal) deduced from figures therein. Where the total number convicted is small, the representativity of the percentile figure is, of course, quite questionable.

25. Juvenile delinquents are excluded; other sentences, some of which are not set forth in the above abstract, are included.
It should be noted that: (1) In those types of offenses for which fines are used more than infrequently, they are used to very great extent. (2) In many of those areas in which they are used most frequently, most defendants probably are corporations. (3) Several of the offenses for which fines are most often used are "white collar" crimes. (4) Fines are used repeatedly for violation of the lottery statutes, and rarely for juvenile delinquents.

Just as fines are more frequently authorized for minor offenses than for major ones, they are more frequently used for the former than for the latter. Of 1,069,929 defendants found guilty of summary offenses and misdemeanors in magistrates' courts in New York City in 1950, 994,036 or 92.9% were sentenced to fine only. Fines were often used in the following offenses: disorderly conduct, 26.3%; peddling and loitering, 54.2%; violation of sanitary laws, 96.1%; traffic offenses, 97.7%; gambling, 73.7%. Fines were rarely used for vagrancy and prostitution and not at all for drug addiction. The Court of Special Sessions in the same city imposed a fine as sole punishment in 47.5% of the general misdemeanor cases. Almost half of these convictions were for gambling misdemeanors, 87.2% of those sentences being fine alone. 24.9% of shoplifting sentences were fine alone, as were 5.7% of sentences for possession of habit-forming drugs (in contrast to the absence of sentences to fine alone in drug addiction cases in the magistrates' courts).

There are few statistics showing how often fines are imposed in addition to imprisonment. Of the previously mentioned 1,069,929 convictions in New York City magistrates' courts, only 523 resulted in fine plus imprisonment, 333 of these being imposed for violations of traffic laws. Since most of these convictions were disposed of by sentence to fine alone, this figure is of very little aid in determining the extent to which fines are used when a sentence to imprisonment is also imposed. A survey of true bills returned in the January term, 1950, in which convictions were obtained before the Court of Quarter Sessions in Philadelphia indicates that of

26. Directors, officers, and agents of corporations may be imprisoned for violation of the antitrust laws by the corporation if they authorize, order or do any of the acts constituting the violation. 38 Stat. 736 (1914), 15 U.S.C. § 24 (1946). All offenses listed in the abstract can be punished by imprisonment except violations of the Motor Carrier Act.


28. The idea of punishment (by fine or any other type of sentence) is viewed as inconsistent with juvenile court procedure. Teeters and Reinemann, Challenge of Delinquency 331 (1950).


880 dispositions, 231 were sentenced to fine. Of this number, ten were to fine and imprisonment, these ten being almost completely in liquor and lottery cases. However, the representativity of these figures is necessarily limited since they cover only one month of bills. In 1910, 19.7% of all sentences to prison in the United States included an additional penalty of fine. Nothing has been found to indicate whether that ratio still prevails.

Pennsylvania figures are particularly interesting because of the comprehensive statutory authorization of fines in that jurisdiction. In 1949, 26.1% of total sentences were to fine only; 32.4% were to imprisonment. Sentences to fine only for some of the more serious offenses were as follows: manslaughter, 8.3%; larceny (excluding auto theft), 6.8%; embezzlement and fraud, 14.8%; rape, 5.3%; sex offenses (excluding rape and commercialized vice), 24.1%; gambling, 69.5%; abortion, 23.8%; arson, 23%.

It is probable that the ratio of fine only to total sentences for a specific offense varies considerably, at least for some crimes, from judge to judge. A ten year study made in New Jersey shows a range of 0.2% for one judge to 1.5% for another in crimes involving property, of 0.0% to 1.3% in crimes involving property and violence, of 0.0% to 9.8% in sex crimes, of 13.3% to 46.7% for liquor law violations. The existence of such variations, the extent of authorized and actual use of the fine, and the importance of the nature of the sentence to the individual defendant as well as to society demand that the factors determining whether and when the fine is to be used should be delineated.

The Fine Potential

A. The Aims of the Criminal Law

The character of the sentence should depend upon the purposes to be fulfilled through its imposition. It is necessary, therefore, to make at least a cursory examination of the fine in relation to the ends of retribution,

33. Five more sentences were to fine and imprisonment, but sentence was suspended. The total number of fines includes payments to the use of the county. Such payments technically are not fines; they were authorized in connection with probation, Pa. Stat. Ann. tit. 19, § 1051 (Purdon 1930), to avoid a holding that if a defendant were fined and placed on probation he could not subsequently be sentenced further for violating the terms of his probation. Commonwealth v. Ciccone, 84 Pa. Super. 224 (1924). See Commonwealth ex rel. Paige v. Smith, 130 Pa. Super. 536, 539, 198 Atl. 812, 814 (1938). The total number of fines does not include the frequent sentences to imprisonment plus a fine of one cent and costs. No reason for the imposition of these one cent fines has been found.

34. Percentages deduced from Prisoners and Juvenile Delinquents in the United States 41 (1910).

35. Percentages deduced from Statistical Rep. Dep't Welfare 63 (1950). Imprisonment figure excludes suspended sentences and includes commitments to homes for juvenile delinquents.

36. Ibid.

37. Gaudet, Sentencing Behavior of the Judge in Encyc. Criminology 449, 455 (1949). That these variations occur is demonstrated also by the survey of thirty states mentioned in the text at note 22.
deterrence, rehabilitation and incapacitation. If retribution alone is considered, the problem of when to employ the fine will be narrowly delimited; for all that will have to be ascertained is whether the punishment fits the crime. Thus, it may be thought peculiarly appropriate that a fine be imposed when greed is a motivation. For example, in Britain during World War II, illegal dealings in currency were punishable by a fine the size of which depended upon the amount of currency involved in the offense.

It is difficult to assign any great deterrent power to a fine imposed in addition to imprisonment: if imprisonment is insufficient to deter, it is doubtful whether the addition of a fine will restrain the potential offender (except possibly when the term is extremely short and the fine extremely large, greed being the chief motive for the crime); if imprisonment is sufficient to deter, a fine is not required.

However, the imposition of a fine as the sole penalty probably has some deterrent effect, especially when avarice is a motive. It is impossible to make an accurate measurement of the deterrent value of the fine since only the number of persons who have not been dissuaded can be ascertained. This difficulty is merely one aspect of the general problem of determining the efficacy of all criminal sanctions: the alleged efficacy usually is not susceptible to conclusive proof. Rising rates of crime may warrant an inference that present penalties are proving ineffective; on the other hand, the fact that large segments of the populace continue to refrain from illegal conduct may justify tempering that conclusion. Certainly the lack of evidence does not permit more concerted criticism, with regard to deterrence, of the fine than of any other penalty. Furthermore, it is important to recognize that no sanction can deter when the cause of the crime is such that the offender has had no choice between willing and not willing the offense. In this situation, again, no more can be expected, deterrence-wise, from the fine than from other sanctions.

The deterrent power of the fine as the sole penalty for an offense will depend upon a multiplicity of factors, among which are:

(a). What the law is attempting to deter. According to Bentham's "hedonistic calculus," the potential offender will be dissuaded from action whenever the pleasure of the offense is offset by the pain of punishment. Although this theory is quite vulnerable to attack, it seems certain that


40. Of course, the validity of the deterrence theory has been repeatedly questioned. See, e.g., Lukas, Crime Prevention in Contemporary Correction 387 (Tappan ed. 1951). For an espousal of the theory, see Michael and Wechsler, Criminal Law and Administration 4-17 (1940). For an excellent discussion, see Andenaes, General Prevention—Illusion or Reality?, 43 J. Crim. L. & Criminology 176 (1952).


42. Tappan, Objectives and Methods in Correction in Contemporary Correction 7 (Tappan ed. 1951). Compare Bentham's theory with Andenaes' description of Feurbach's "psychological coercion." Andenaes, supra note 40 at 179.
deterrence is more likely to occur when there is a wide disparity between the expected punishment and the expected pleasure (the former being the greater) than when the two are more nearly equal. For example, it has been stated that in Philadelphia many sex offenders are fined not primarily with the hope of preventing the offense, but with the hope of deterring solicitation and commission of the prohibited acts in public places. It is claimed that the policy has produced successful results.\(^4\) Here, it might be argued that the penalty is sufficient to effect a substitution of public by a private place (a perhaps minimal diminution of pleasure) although it would be insufficient to prevent the offense itself.

(b). The amount of the fine. It is necessary that legislatures periodically raise the statutory maximum to account for dollar depreciation and general income rises since the enactment of the statute. Such action is, unfortunately, rarely taken. For example, in Pennsylvania some fines are still expressed in terms of British pounds.\(^4\) Furthermore, to avoid the appearance and effect of licensing in crimes such as gambling and to achieve greater deterrent effect in all crimes, fines if used for recidivists should be successively increased for each offense.\(^4\) Many judges practice this policy regularly, and such gradations are sometimes specifically required by statute.\(^4\) Whatever the practice, it is essential that the fine be sufficiently large to have more than nuisance value to the offender. Thus the size of defendant's income is pertinent: a five dollar fine for jay-walking is more likely to dissuade the mendicant than the millionaire.

(c). Collection. Actual collection of the fine is necessary in order to ensure certainty of punishment, which, of course, increases deterrence. Statistics reveal that the cities of New York and Philadelphia have been alert to this necessity. Of $730,775 in fines imposed by the Court of Special Sessions of New York City in 1950, $656,015 were collected.\(^4\) The spot check of the Philadelphia Quarter Sessions Court, mentioned previously,\(^4\) disclosed that $25,003 was collected out of $28,463 levied. Federal figures, however, have been less favorable.\(^4\) Moreover, not only must the fine be paid, it must, for greatest effect, be paid by the offender himself; for, unlike most criminal penalties, the fine enables the defendant to transfer punishment to another.\(^5\)

44. See, e.g., PA. STAT. tit. 47, § 665 (Purdon 1952). See also Fines and the Changing Value of Money, 72 SOL. J. 734 (1928) and The Adequacy of Fines, 96 JUST. P. 399 (1932).
45. See note 5 supra.
46. See, e.g., PA. STAT. ANN. tit. 76, § 248 (Purdon 1939).
47. REP. CT. SPECIAL SESSIONS CITY OF NEW YORK 28 (1950).
48. See text at note 32 supra.
49. $2,114,119.12 collected out of $6,626,433.11 imposed. REP. ATT'Y GEN. 86 (1941).
50. HALL, op. cit. supra note 27, at 321.
It seems that the fine produces no rehabilitation unless that term be defined to include expiation and/or intimidation (i.e., the use of a penalty to deter the offender from repeating his offense, rather than to deter others from committing it). A probation officer has suggested that there are many persons who, possibly because of a Mammonish philosophy, must expiate themselves through financial loss. Thus, a robber who had spent fifteen months in prison felt that he had not completely atoned for taking $7.60 until he had made 76 trips to his parole office at ten cents car-fare a trip.51

With regard to intimidation, it may be that mercenary offenders, penalized in the pocketbook (where the pain is greatest), will be influenced not to repeat because they simply cannot afford it. To some extent at least, such intimidative effects can be measured by determining the number of persons sentenced to fine who do not recidivate. Thus, the same probation officer speaks encouragingly of fines used in connection with probation:

"It was only in 1945 that we persuaded our judges to experiment with the idea of installment fines in selected cases. Prior to 1945 our rate for recidivism had been well over 10 per cent. Since 1945 the rate has fallen away down to 5 per cent at the moment. The singular fact is that in fine cases the rate for recidivism is zero—believe it or not. There were other factors, of course, besides the fines which have contributed to the good showing in these cases. Nevertheless, you couldn't convince us that the fines haven't helped." 52

On the other hand, an early survey (made in Springfield, Illinois, in 1914) has minimized the intimidative effects of the fine.53 It is noteworthy that there apparently was no coördination of the fine and probation in the cases which were examined in the Illinois study.54

Of course, such surveys cannot produce conclusive results since offenders may refrain from repetition for a variety of reasons. Furthermore, their later offenses may go undetected. Nevertheless, if it appears that when fines are used for certain offenses repetitions are infrequent, there will be good reason for extending use of the fine in those areas and experimenting with it in others.

As incapacitation is commonly identified with physical confinement, it is not attainable through fining.55

The following conclusions may now be stated: (1) If retribution is accepted as a valid aim of criminal law, the fine may be used to achieve it.

52. Letter, dated 6 March 1953, to the U. OF PA. L. REV.
54. See text at note 120 infra for discussion of coördination of the fine with probation.
55. MICHAEL AND WECHSLER, op. cit. supra note 40, at 4.
The fine probably has deterrent effect, difficult of measurement, if properly applied in certain areas only. (3) The fine may have intimidative effects which are more capable of discernment. Although these conclusions may furnish some guidance in determining whether or not a fine shall be imposed in a specific instance, other factors must be adduced if a more rational justification for the use of fines is to be achieved.

B. Relation to Prison and Commitment for Nonpayment

A recognized reason for the imposition of the fine as the sole penalty for an offense is the desire to avoid imprisoning the offender. So conceived, the fine is largely a negative measure. For example: it is often used for first offenders, with whom the court, believing repetition to be unlikely, may be lenient; for sex offenders, whom prison authorities do not want; for corporation officials, guilty of "white collar" crimes; and, for gamblers and other offenders whose acts are not regarded by community mores as sufficiently evil to merit prison sentence, despite the contrary pronouncement of the legislature.

However, in practice the imposition of a fine frequently results in incarceration, the very end it was designed to avoid; for most jurisdictions, either by mandatory or discretionary provisions, authorize commitment for failure to pay the fine. Thus, after a legislative or judicial decision that a defendant shall not be sent to prison, he is committed for nonpayment, even though imprisonment for debt has been abolished in most jurisdictions. An alleviating factor is that, ordinarily, statutes authorize the release of the prisoner after a specified time (usually 20 to 30 days) if he takes the pauper's oath. The confinement is justified not as a punishment but as a means of coercing payment. However, there can be no doubt that, especially under the common type of statute regulating length of commitment by the amount of the fine, the incarceration is punitive rather than coercive: if defendant is unable to pay, deprivation of liberty cannot force him to pay. The penal nature of the confinement is par-

56. See, e.g., N.C. GEN. STAT. c. 6, § 65 (Supp. 1951).
57. See, e.g., IOWA CODE c. 789, § 17 (1950).
58. It can be argued that there is no decision that defendant shall not be sent to prison, but merely a decision that he shall not be sent if he pays his fine. It is suggested, however, that (barring the case where defendant can well afford to pay a fine but refuses to do so) whether or not a man merits or requires imprisonment is a question which should be determined on grounds other than his wealth.
59. See, e.g., PA. STAT. ANN. tit. 12, § 257 (Purdon 1953).
60. See, e.g., N.C. GEN. STAT. c. 23, §§ 23-25 (1944).
61. See, e.g., United States v. Ridgewood Garment Co., 44 F. Supp. 435 (E.D. N.Y. 1942). In the Philadelphia survey mentioned in the text at note 32, a case was found in which defendant was sentenced to imprisonment and fine. The court suspended the prison sentence, placed defendant on six months probation, and then immediately committed him for nonpayment of the fine! This was an improper use of the commitment as the punishment itself and/or an action totally inconsistent with the previous decision that defendant should not be imprisoned.
62. See, e.g., IOWA CODE c. 789, § 17 (1950).
63. WINES, PUNISHMENT AND REFORMATION 216 (1910).
particularly evident when the offense is one for which the court may not imprison the offenders (for example, most misdemeanors) and when the prisoner is required to work out the fine during his commitment. Thus, in many instances, the fine favors the solvent offender in a very real way.

In addition to its discriminatory aspects, confinement for nonpayment of a fine subjects the defendant to all the evils of short-term imprisonment:

1. Even if it is assumed that prison can be reformative, the time limit makes rehabilitative measures impossible.
2. The institutions in which the term is served are frequently ill-equipped, crowded and unsanitary.
3. In being committed for nonpayment, many defendants incur the social stigma of prison for the first time.
4. Because most commitments are to county prisons, in which there is little or no segregation of prisoners, defendants may be contaminated by association with more experienced criminals.
5. The absence of defendants may affect the economic status and the morale of their families.
6. The danger of recidivism may be increased by the difficulties defendants will undergo when seeking to readjust themselves upon discharge.

There are no recent nationwide figures on commitments for nonpayment of fine. The 1910 census showed that 56.5% of the total number of prisoners and juvenile delinquents committed during that year were committed for failing to pay fines. Of the total number of persons in prison on January 1, 1910, 9% had been confined for nonpayment of fines. While it is impossible to tell whether these ratios are still representative, it is noteworthy that of 4,140 commitments after sentence to Reed Street Prison, Philadelphia, from June 1, 1949, to May 31, 1950, 2,480 or 59.9% were for nonpayment of fines. During that same period, the daily per capita cost of imprisonment was $1.79. Thus, by committing for nonpayment, the county not only lost the fines which it might have collected, but also had to bear the expense of boarding the defaulters. There are several means by which this result can be at least partially avoided.

1. *Instalment Payments.*—The first of these means is payment of fines in instalments, a procedure recommended by the Seventh International

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64. See, e.g., OKLA. STAT. ANN. tit. 11, § 672 (1936); tit. 39, § 533 (1937); tit. 57, § 20 (1950).
65. See PROCEEDINGS OF THE INTERNATIONAL PENAL AND PENITENTIARY COMMISSION 86 (1946) and BARNEST AND TEETERS, NEW HORIZONS IN CRIMINOLOGY 464 (2d ed. 1951). The Penal Commission was dissolved on October 1, 1951, since its functions were being duplicated by a division of the United Nations Organization.
66. PRISONERS AND JUVENILE DELINQUENTS IN THE UNITED STATES 41 (1910). The difference between the two figures is accounted for by the relatively brief duration of commitments for nonpayment.
67. REP. PHILADELPHIA COUNTY PRISON 79 (1949).
68. Id. at 8.
69. Since the total man-days spent in prison by this class of offenders is not given, the actual expense cannot be computed. It has been pointed out that this is probably the only instance in which a debtor goes to board at his creditor's house if he is unable to pay his debt. ROBINSON, JAILS 64 (1944).
Penal and Penitentiary Congress.\textsuperscript{70} At least ten states \textsuperscript{71} make express provision for payment in installments, such payments also being permitted in the Federal Courts.\textsuperscript{72} In still other jurisdictions, such as New York,\textsuperscript{73} there are general provisions permitting the court to regulate time and manner of payment, under which payment in installments is permissible.\textsuperscript{74} A large degree of success has resulted from the use of this scheme: in Sweden, commitments for nonpayment fell from 13,358 in 1932 to 286 in 1946;\textsuperscript{75} in Britain, from an average of 83,187 for 1909-1913 to 2,667 in 1946.\textsuperscript{76} Thus, total commitments for nonpayment in the entire nation of Great Britain in that year were only a few more than those to Reed Street Prison, Philadelphia, alone, in 1949.\textsuperscript{77} In West Virginia, a judge has found that, even in the midst of the depression, only 5\% of those allowed to pay by installment had to be committed, and has maintained that with adequate probation facilities even better results could be achieved.\textsuperscript{78}

The advantages of this system are several: (1) avoidance of the evils of short-term imprisonment; (2) actual collection of more fines, thus increasing the retributive and deterrent effects of the penalty and adding to revenues; (3) decrease of mounting prison maintenance expenses;\textsuperscript{79} (4) probable decrease in cost of aid given prisoners' families by welfare departments. Administrative expenses of the installment plan should be offset by these savings; even if not, financial considerations must not be paramount when it is possible to keep men out of prison.\textsuperscript{80} To reduce commitments to a minimum, it should not be lawful to confine a defendant

\begin{itemize}
\item[70.] 1 Actes (Budapest) 64 (1905). See Teeters, Deliberations of the International Penal and Penitentiary Congress 118 (1949).
\item[72.] 18 U.S.C. § 3651 (1946). In the federal courts and in Michigan, South Carolina, Utah, Wisconsin, and Wyoming, the pertinent statute specifically authorizes use of the installment plan in connection with probation.
\item[73.] N.Y. Crim. Code § 483.
\item[74.] See People ex rel. Decker v. Page, 125 N.Y. Misc. 538, 540, 211 N.Y. Supp. 401, 403 (Sup. Ct. 1925) (decided under the predecessor of statute in note 73 supra).
\item[75.] Sellin, Recent Penal Legislation in Sweden 14 (1947). The drop was due both to the installment plan and to the fact that no defendant is committed unless he willfully refuses to pay or cannot do so because of his own negligence.
\item[76.] Cordes, Fines and Their Enforcement in 2 J. Crim. Sci. 46 (Radzinowicz and Turner ed. 1950). Part of these decreases is probably due to the fact, previously mentioned, that statutory maxima tend to remain constant despite dollar depreciation and income increases. Instalment payments were authorized in Britain in 1879, but little use was made of them until 1914. Id. at 47.
\item[77.] See text at note 67 supra.
\item[79.] For the fiscal year 1950, per capita cost of imprisonment in federal institutions was $1,144.27. Rep. Director Admin. Office United States Cts. 64 (1950).
\item[80.] Pearse, Prisons and Reformatories 413 (1872) (transactions, in English, of the First International Penal and Penitentiary Congress).
\end{itemize}
if he defaults in his instalments unless the court specifically so states when passing sentence. In the event of default, defendant should not be committed immediately but should be permitted to appear and show cause why he should not be confined. In addition, the sentencing court should have power to remit the fine. Complete abolition of the power to commit is not desirable since the judiciary must be left a means of coercing those who wilfully refuse to pay. For this reason, the power has been retained in the American Law Institute's Youth Correction Authority Act.

2. "Day-fines."—Another means of eliminating commitment for non-payment of a fine is initially fixing one which defendant can afford to pay. Excessive fines have been prohibited by the English Bill of Rights, the Eighth Amendment to the Constitution of the United States, and most state constitutions. There appear to be no additional limitations on the desires of the legislature. Imposition of a fine according to defendant's wealth was practiced as early as the thirteenth century and was later advocated by Montesquieu, Bentham and Lombroso. At the Sixth International Penal and Penitentiary Congress, Brussels, 1900, du Moucheau, Procurator of France, pointed out that when a laborer is fined the equivalent of three days' wages, equity and efficiency of sentence require that a wealthy man be fined three days' income for the same offense. Legislation embodying this theory has been enacted in Finland (1921), Cuba

81. See, e.g., CAL. PEN. CODE §1205 (Deering Supp. 1951).
82. Ibid. It is frequently the practice in Philadelphia to issue at the time of sentence a bench warrant which is executed without hearing if default occurs. See PA. STAT. ANN. tit. 19, § 956 (Furdon 1930).
83. See, e.g., N.Y. JUD. LAW §798. Although the Supreme Court of Pennsylvania has indicated that the courts do not have the power to remit a fine, Commonwealth ex rel. Banks v. Cain, 345 Pa. 581, 589, 28 A.2d 897, 902 (1942), there is considerable difference of opinion as to whether (and when) they may do so. The survey mentioned in the text at note 32 revealed that some Philadelphia judges have remitted fines in whole or in part.
84. YOUTH CORRECTION AUTHORITY ACT §15 (1940).
85. See, e.g., PA. CONST. Art. I, § 13. Section 20 of the Magna Carta of 1215 prohibits only excessive amercements. For the distinction between amercements and fines and for an exhaustive historical survey of the fine, see Fox, CONTEMPT OF COURT 118 et seq. (1927).
86. In England, the amount of an amercement was fixed by the offender's neighbors with regard to his wealth. The House of Lords fixed the amercement of a Duke at £10, that of an Earl at £5. Fox, op. cit. supra note 85, at 126-7.
87. 1 MONTESEQUIU, SPIRIT OF LAWS 100 (3d ed. 1762).
88. BENTHAM, THEORY OF LEGISLATION 353 (Ogden ed. 1931).
89. LOMBROSO, CRIME: ITS CAUSES AND REMEDIES 389 (1911).
90. 1 ACTES (BRUXELLES) 98 (1900). See BARNES AND TEETERS, NEW HORIZONS IN CRIMINOLOGY 824 (2d ed. 1951).

A fine is imposed in the form of a fine per diem. The least fine is a one-day-fine; the highest is 300 per diem fines, unless the fines are combined.

In imposing a fine the Court shall after free deliberation determine, according to the average daily income which the person to be fined has or could have at that time, and taking into consideration his financial status, his obligation to support his family
Similar provisions were included in the Mexican Code of 1929, but are no longer in force. As enacted, the theory is two-fold: a fine is expressed in units, whose number varies between the minimum and maximum numbers prescribed for the offense. In this manner, distinctions in punishment according to the nature of the offense are preserved. The monetary value of the unit, upon which a minimum and maximum are also set, is determined by considering the wealth of the defendant, his daily income, his productive capacity, and the number of his dependents. In this manner, distinctions in punishment according to the economic status of the offender are achieved. In Sweden, the number of "day-fines" authorized for an offense is from one to 120; the amount of each unit or "day-fine" may vary from five to 300 crowns. At the present rate of exchange, therefore, fines may range in amount from $0.97 to $6,984.00. For identical offenses, each meriting the greatest number of units, the fine can vary according to defendant's fortune from $116.40 to $6,984.00 as well as other facts that might have an effect on his ability to pay, what sum of money shall be considered as his per diem fine.

"In the place of fines of fixed sums of money . . . fines per diem shall be imposed, however, not exceeding the sum mentioned in the first paragraph, and a fine not exceeding 10 markkas shall be considered as a fine per diem. If the fine exceeds this, one per diem fine for each full ten markkas shall be added to the punishment." Translation by the Embassy of Finland. See Arvelo, *Om Dagsbotssystemet i Finland*, 16 NORDISK TIDSSKRIFT FOR STRAFFRET 12 (1928).

92. Cuba: *Código de Defensa Social* art. 59, §§ A-E (1938). "A. The personal fine will consist in the payment, by the guilty party, of the quantity of money which shall be determined by the sentence, which shall be not less, in any case, than 50 centavos, nor more than 20,000 pesos. B. The personal fines shall be formed by daily quotas which shall be determined by the Tribunal within the limits which are fixed in each case, keeping in mind the fortune of the culprit, his ability for work, his productive capacity, his obligations as a private citizen and the other circumstances which control his ability to pay, without, whenever possible, prejudice to his own indispensable expenditures and those of the persons for whom he is civilly responsible. C. In the case where the culprit lacks goods or income or may not be working or gaining any salary at the time of judgment, the quota will be determined taking into account the salary or daily wage that he may eventually earn. D. When the culprit never shall have earned a wage or salary and shall lack income or goods, the quota shall be determined by the mean amount which, according to his class and personal social position, the workers earn who live in the locality where the crime was committed. E. In no case shall the daily quota be less than $0.50 nor greater than $20.00" Translation by the Department of Romance Languages, University of Pennsylvania.

93. Sweden: Law of June 30, 1948, [1949] *SVERIGES RIKES LAG, STAFF-LAG* Rap. 2, §8. "Fines are imposed as day fines. The number of day fines is determined by the character of the crime and shall be no less than one and no more than one hundred and twenty, where there are no circumstances as provided in Chapter 4, section 28. The day fine is fixed at an amount of money from one crown up to three hundred crowns, as is proved to be reasonable with respect to the income, wealth, responsibility of support, and general economic situation of the defendant. If the crime is insignificant the amount of the day fine may be adjusted accordingly. The smallest fine shall be five crowns." Translation by Mr. Theodore Sellin.

94. "The unit of the fine is the daily profit. The entire fine shall express itself by a multiple of this unit; but at no time shall exceed one hundred days." [from art. 83] "The daily profit is understood, through the effects of this Code, as being the quantity which an individual obtains each day through salaries, wages, rents, interests, emoluments or otherwise." [from art. 84] Quoted in 2 *Tejera y Garcia, Comentarios al Código de Defensa Social* 297 (1945). Translation by the Department of Romance Languages, University of Pennsylvania.

95. The Swedish crown was worth $0.194 on March 4, 1953.
Of course, practical difficulties will be encountered in determining the offender's ability to pay. Information on his economic status may be included in the pre-sentence report if one is used. His earnings can be checked through his employer. Although present federal income tax regulations on publicity of returns are stringent,\(^9\) they can be altered to permit inspection by the courts. If the offender wishes to avoid the maximum fine, he can be required to submit a copy of his return and to file an affidavit completely describing his assets, a conscious misstatement making him guilty of perjury.

Advantages of the "day-fine" system are numerous: (1) Fines are imposed more equitably. (2) Since they are levied according to wealth, there is a greater probability of actual payment and, thus, of increased revenues. (3) Whatever deterrent effects fines have will be augmented, especially in regard to the wealthy but also for all persons, because of the increased certainty of collection. (4) Although some or all of these standards (wealth, income, productive capacity and dependents) are consciously or unconsciously applied at the present time by many judges on a "hunch" basis, this type of statute specifies them concretely and forces all courts to take cognizance of them. Flexibility of sentence is retained and even expanded by allowing both the gravity of the offense and the particular status of the offender to be considered. Failing the establishment of this plan, present maxima should be raised to permit under the existing system, in the discretion of the court, greater differentiations according to wealth in the amount of the fine.\(^9\)

C. Secondary Ends

Employment of the fine to avoid imprisonment seems proper when incapacitation is not required to protect the community; the practices of instalment payments and imposition of fines according to ability to pay are efficacious means to that end. However, nothing has been educed thus far to support a preference of the fine over other non-incapacitating sanctions. It is pertinent, therefore, to examine what are usually considered as secondary ends of the fine: revenue, compensation of victims, and inducement to law enforcement or crime solution. These ends are similar in that they all contemplate imposition of the fine in order to dispose of the proceeds in a particular manner.

1. Revenue.—That fines do produce considerable revenues is demonstrated by the amount of dollars collected annually in different jurisdictions.\(^9\) It is frequently claimed that the revenue function is particularly in

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\(^9\) It has been proposed that maximum fines be readjusted so that offenses punishable by the same number of years will also be punishable by the same amount of fine. Rep. Crimes Survey Com. Law Ass'n Phila. 47 (1926).

\(^9\) See text at notes 47 and 48 supra.
evidence in smaller counties, especially as a substitute for higher taxation. It has been suggested, however, that the state has no right to reimburse itself for the expenses of administration of criminal law, since that administration is a social necessity. This suggestion seems especially valid when the state is enriched at the expense of victims whom it has failed to protect.

2. Reward and Inducement.—It was long the custom in England to apportion the proceeds of the fine between the state and an informer to aid in discovering and apprehending offenders. The practice has been followed to a limited extent in this country, usually with regard to minor offenses only. There have been, however, societal objections to rewarding informers: for example, the reward may induce false witnesses to conspire against the innocent. In addition, this division of proceeds is sometimes used to ensure law enforcement: for example, by promise of one-half of the amount realized, private citizens are induced to sue to collect a fine to which a public official's failure to enforce the law has made him subject.

3. Compensation.—The practice that has been most frequently suggested and infrequently used is the creation of a fund from the proceeds of fines to indemnify the victims of crime. Such a fund existed in the Kingdom of the Two Sicilies and in the Duchy of Tuscany. A similar plan, originally proposed by Edward Livingston for Louisiana and by Macaulay for the Indian Penal Code, contemplates payment of the fine directly to the victim rather than into a fund. The merits of the fund theory were debated extensively at the Sixth International Penal and Penitentiary Congress in 1900, but there has been little discussion of it since that time.

100. 2 ACTES (BRUXELLES) 5 (1900). For a report of the conclusions of this Congress, see H.R. Doc. No. 374, 57th Cong., 2d Sess. (1903).
101. TARDÉ, PENAL PHILOSOPHY 493 (1912).
102. 3 BL. COMM. *161-*162.
103. See, e.g., CAL. PEN. CODE § 590a (Deering 1949) (destroying highway guideposts); PA. STAT. ANN. tit. 18, § 1951 (leaving mail coach horses unattended), § 1952 (obstruction of highway by wagoner), § 3222 (miscellaneous offenses) (Purdon 1945); VA. CODE tit. 19, § 334 (1950) (clerk of court failing to report fines collected); VT. REV. STAT. § 7829 (1947) (selling low-ignition illuminating oil). See also 53 STAT. 440 (1939), 26 U.S.C. § 3716(b) (1940), which, somewhat analogously, awards one-half of any civil penalty recovered to the informer when there has been a wilful failure to report income from illegally produced petroleum.
104. For a criticism of this objection, see BENTHAM, RATIONALE OF REWARD 100 et seq. (1825).
105. See, e.g., N.C. GEN. STAT. c. 14, § 293 (1943).
106. 2 ACTES (BRUXELLES) 91 (1900). This information was presented in Garofalo's report; an English translation may be found in GAROFALO, CRIMINOLOGY 419, 434 (1914).
107. 2 ACTES (BRUXELLES) 22 (1900). This information was presented in Prof. Simeon Baldwin's report. For an English translation, see SEN. DOC. No. 158, 55th Cong., 3d Sess. (1899).
108. 7 MACAULAY, MISCELL. WORKS 237 (no date).
109. 1 ACTES (BRUXELLES) 91-127 (1900); 2 id. at 1-153. See also BARNES AND TETERS, NEW HORIZONS IN CRIMINOLOGY 822 (2d ed. 1951).
The theory is based upon the premises that crime wrongs the state by violating the peace, and the victim by violating his person and/or property; that the former necessitates punishment and the latter reparation; that these two elements need not be distinct, even though they are separated in the United States because of the different degrees of proof required.\textsuperscript{110} Should the total proceeds be inadequate to cover all proved claims,\textsuperscript{111} a proportional allocation among claimants would be made.\textsuperscript{112} However, one view would allow this distribution only after a fixed sum was deducted for the state's expenses.\textsuperscript{113} Ferri would go so far as to make the state an insurer against the injuries he claims it is obligated to prevent: it would pay the victim an immediate satisfaction and then reimburse itself at the offender's expense, thus bearing the risk of his insolvency.\textsuperscript{114} Under any of these plans the offender could deduct from any civil judgment secured against him by the victim the amount which plaintiff secured from the fund.\textsuperscript{115} Disposition of the proceeds to victims would be made not only when the fine is the sole penalty but also when defendant is sentenced to prison, 'every such sentence to carry with it a fine.'\textsuperscript{116}

Whether the state should provide complete insurance for victims of crime is a question beyond the scope of this Note. Livingston's plan of paying the fine to the victim has obtained limited legislative approval in this country: for example, in New York the entire fine paid by one held guilty of criminal contempt is to be paid to the aggrieved party;\textsuperscript{117} in Massachusetts half of the fine for one species of arson is to be paid to the victim.\textsuperscript{118} In many of these instances, unfortunately, the maximum fine is too low to admit of substantial reparation. On the other hand, the fund theory apparently has not received modern approval. However, this theory seems more equitable than payment of the fine directly to the victim, for reparation would not then be contingent upon whether the victim was fortunate enough to be injured by a solvent offender.

The obvious danger of any compensation theory is that courts, desiring to aid the injured, will impose large fines which offenders cannot pay. Thus, under the present system of committing for nonpayment, imprisonment will result. This danger can be averted, however, if emphasis is placed on the primary consideration of imposing a fine which defendant can pay. When he cannot, and there is no reasonable certainty that he will be able to in the near future, no fine should be imposed. Properly

\textsuperscript{110} 1 Ac\textit{\`e}s (Bruxelles) 9 (1900).
\textsuperscript{111} Evidence that the proceeds would be grossly inadequate was introduced. \textit{Id.} at 92.
\textsuperscript{112} 2 Ac\textit{\`e}s (Bruxelles) 91 (1900).
\textsuperscript{113} \textit{Id.} at 15.
\textsuperscript{114} \textit{Ferri, Criminal Sociology} 513 (1917).
\textsuperscript{115} Under Livingston's plan, note 107 \textit{supra}, it is probable that deduction from the judgment of the amount of the fine also would be allowed.
\textsuperscript{116} 2 Ac\textit{\`e}s (Bruxelles) 78 (1900).
\textsuperscript{117} N.Y. Jud. Law \S 773.
\textsuperscript{118} Mass. Ann. Laws c. 266, \S 9 (1933).
directed, compensation supplies a reasonable basis for preferring the fine
to other non-incapacitating sanctions if proceeds are sufficient to make more
than token reparation to the victim. Although current costs of crime
are astronomical, present proceeds are substantial\(^{119}\) and should increase
if the instalment plan is generally used and if the fine is levied according
to the offender’s ability to pay. Whether these proceeds will be sufficient
to justify continued existence of the fund should become apparent when
the experiment is attempted.

D. The Fine as a Supplement

It should be emphasized that the fine need not be preferred to the
exclusion of all other sanctions. For example, every sentence to im-
prisonment should carry an additional sentence of a fine (if defendant can
afford to pay it) even though the offense may have caused no financial
damage. Such a procedure will require, of course, statutory amendments
in many jurisdictions. These payments will reimburse the fund for grants
to the victims of insolvent offenders.

It is particularly important that the fine be coördinated with probation
wherever the latter is needed and the former is possible; for, as previously
stated, the few statistics available have demonstrated the efficacy of this
practice in selected cases.\(^{120}\) It has been asserted that criminals whose
dominant characteristic is an “opportunist acquisitiveness” comprehend a
pecuniary penalty more readily than any other; and that “pseudo-alcoholics”
and playboys will be less likely to repeat when fines deprive them of the
wherewithal to pursue their pleasures.\(^{121}\) Therefore, when such men are
adjudged deserving of probation, fines may be particularly helpful in effect-
ing reformation. Certain it is, however, that insensitive, repetitive empha-
sis on the necessity of payment may in some instances disturb that “deli-
cate case work relationship of confidence, sympathy and understanding,”
which, it is claimed, probation work attempts to establish.\(^{122}\) For that
reason alone, it is essential that the probation departments be vested with
the power of supervising payments by their charges, for these departments
are most competent to judge whether a fine continues to be beneficial in a
given instance. Where it does not, the probation officer should be author-
ized to recommend remission to the court. If this officer has no such
supervisory duties, he may suddenly discover that an otherwise rehabili-
tated probationer has been committed for nonpayment of his fine. There
have been vociferous objections to making collection agents out of pro-
bation officers.\(^{123}\) If these objections are primarily to the administrative

\(^{119}\) See text at notes 47 and 48 supra.

\(^{120}\) See text at note 52 supra; and see discussion in Cohen, The Integration of
Restitution in the Probation Services, 34 J. CRIM. L. & CRIMINOLOGY 315 (1943-44).

\(^{121}\) Letter quoted in DRESSLER, op. cit. supra note 51, at 94.

\(^{122}\) Cohen, Twilight Zones in Probation, 37 J. CRIM. L. & CRIMINOLOGY 288, 291
(1946-47).

\(^{123}\) Cohen, supra note 122 and YOUNG, SOCIAL TREATMENT IN PROBATION AND
DELINQUENCY 225 (2d ed. 1952).