PAYING ONE'S DUES:
THE FINE AS THE SENTENCE OF THE COURT

by

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ABSTRACT

This thesis is about the fine, an everyday transaction of an involuntary nature, resulting from the finding or deeming of guilt by a criminal court. Existing literature and official statistics are reported to describe the use of the fine in Canada and abroad with particular emphasis on the situation in the Province of British Columbia. The fine is found to be a common disposition for property and motoring offences and even for crimes of violence against persons in most of the countries reviewed with the notable exception of the United States which utilizes the fine for motoring offences but for little else. Based on the available evidence, the fine appears to be steadily increasing in use in Western European countries and in England but this is not strictly the case in British Columbia. The overall proportion of offenders receiving fines decreased recently in B.C. due it seems to the imposition of short term jail sentences rather than the fine for provincial statute offences. This is believed to result from "get tough", law enforcement policies directed at the more serious motoring offenders. Recent data on the use of the fine in the remaining provinces of Canada are not available.

The fine is examined also in terms of its efficiency and effectiveness as a sanction and the extent to which it demonstrates both economy, as a social control technique, and notions of social justice and humaneness. Payment of the fine with little or no enforcement is the norm, due in large part to the practice of fining "good risks", i.e., casual offenders likely able to afford the fine. For the same
reason, the recidivism rate of fined offenders is lower than that for offenders placed on probation or imprisoned. The most pressing problem associated with the fine is the utilization of imprisonment for offenders who default in payment. This practice is not only costly but raises the issue of the social justice of the fine since those imprisoned are more likely to have no means of paying their penalty. For this reason, the day-fine system which calculates the size of the fine according to both the seriousness of the offence and the offender's ability to pay is considered as a scheme which upholds notions of fairness and justice. The fine exercises the least surveillance and consequently control over the behavior, and indirectly the attitudes, of offenders. As a result it is one of the least expensive sanctions to administer, particularly when the practice of imprisoning defaulters is curtailed.

The fine and its administration by the justice system is considered also within the context of the structural mechanisms, functions, and finances of the state. The fine affords a concrete example of the dynamics of the state as it attempts to balance its major, albeit often contradictory, functions of accumulation, legitimation, and coercion.
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The majestic equality of the French law, which forbids both rich and poor from sleeping under the bridges of the Seine. (Anatole France)
A. GENERAL OVERVIEW

The sanctions or sentences which attempt to achieve, through coercive means, general compliance with basic standards of conduct are an essential characteristic of criminal law (Law Reform Commission, 1947b). Intervention by the state and the sentencing of convicted offenders is considered justified on the basis of both the protection of the common good and our sense of justice that demands a wrong be righted. Intervention is limited, however, in order that: 1) innocents are not harmed, 2) sanctions are not degrading, cruel or inhumane, 3) sanctions are proportional to the offence, and 4) similar offences are treated more or less equally (Law Reform Commission, 1947b).

A sanction can be considered an end in itself, i.e., retribution for an offence which expresses the outrage of the rest of the community, and in this sense it is non-utilitarian. Or, a sanction can have utilitarian aims beyond the actual imposition of the sentence, i.e., to protect society through incapacitation or to treat the offender. Although the overriding aim of sentencing from the criminal justice perspective is the control of crime, there are diverse ideas on how best to achieve this.

For many years there has been a general consensus among justice system practitioners and the public at large that the "best" sentencing alternative was that which emphasized rehabilitation and the treatment
of the offender. Due to this longstanding commitment to rehabilitation, sentencing was not considered an issue by the criminal justice system (Blumstein, 1982). Since the mid-1970's, however, this commitment began to weaken and sentencing began to receive renewed attention (Blumstein, 1982; Liaison, 1983).

A number of reasons exist for the rejection of rehabilitation as a primary aim of sentencing. Evaluations of rehabilitative programs continually found such programs were not living up to their aim of successfully "correcting" the behavior and attitudes of offenders (Martinson, 1974). Even if rehabilitative programs had proved effective, other concerns were being voiced that these programs violated basic canons of justice and the freedom of the individual. The extent of control exercised over offenders through the use of indeterminate sentencing and the disparity evident in rehabilitative sentences which were based on the notion of individualized treatment were considered sufficient reasons to warrant re-appraisal of rehabilitation as a sentencing theory (Blumstein, 1982). Beyond these concerns about the theoretical validity of rehabilitation and the effectiveness of such sentencing practices in meeting the ends of the criminal justice system, equally important economic issues served to threaten the continuance of rehabilitative sentencing.

North American economies experienced tremendous expansion in the 1940's and 1950's (Paternoster and Bynum, 1982). This fostered the expectation that under conditions of economic growth and full employment, a conventional life was possible given the necessary
training and skills. Advances in science and positivism complemented this belief with the assumption that the social, economic, and personal environment played determinant roles in an offender's criminal behavior. It followed that by altering the offender's life situation, more socially acceptable attitudes and behavior would result (Alexander and Staub, 1956; Hobhouse, 1951). The effect of this on the correctional system was to make the rehabilitative model economically, scientifically, and morally defensible:

The luxury of abundance produced by an expanding economy allowed a cultivation of rehabilitative philanthropy (Paternoster and Bynum, 1982:8).

There was little vocal resentment from the prospering and employed populace when the rehabilitative goal was implemented to assist offenders. During the subsequent recession, however, the legitimacy of continuing to educate and find employment for offenders diminished in importance when even the law-abiding, unemployed and poor found such opportunities out of their reach.

The economic and political cost of administering rehabilitative sentences became increasingly prohibitive. Evidence of prison congestion and the associated costs of rehabilitation, coupled with its empirical inadequacy and growing resentment among the law-abiding toward the treatment of offenders, made the re-assessment of incarceration for the purpose of rehabilitation and the search for sentencing alternatives imperative (Blumstein, 1982).

Disillusionment with rehabilitation and incarceration served to stimulate both the re-examination of existing, and largely discarded
theories about the aims of sentencing, and the development of innovative approaches to sentencing. Most notable has been the resurgence of interest in deterrence, and retribution or "just deserts", and the development of a sentencing theory based on the principle of reparation (Blumstein, 1982; Thorvaldson, 1978).

Integral to the rehabilitative ethic is the belief that the sentence is humane and just. It is not meant to punish offenders, since they are not to be held responsible for the crimes they commit. Rather, a rehabilitative sentence aims to encourage offenders for their own good, to exhibit law-abiding behavior in the future (Alexander and Staub, 1956; Hobhouse, 1951; Martinson, 1974). Like rehabilitation, reparation is not meant to punish the offender. Its aim is to enable the offender to reconcile with the community by redressing the wrong committed; to make up, to the degree possible, the harm done and in this way it holds the offender morally responsible (Thorvaldson, 1978). Retribution, on the other hand, stresses equal punishment for equal crime regardless of the offender's circumstances. It is believed that criminals are rational and can appreciate the consequences of their crime. The intent, therefore, is to restrict infringements on the freedom of the individual and punish according to the extent of harm done by the offence; to give the offender his or her "just deserts" (Bottoms, 1981; Morgan, 1979). Deterrence also assumes the offender is rational and aims to control crime through the certainty and severity of the sentence which acts as a threat against the offender: if another like crime is committed, a similar or more severe penalty will be imposed. The intent is to induce the individual offender to refrain
from criminal behavior and deter the general public from such behavior
by encouraging the calculated weighing of potential costs and benefits
(Blumstein, 1982; Grasmick and Green, 1980). Incapacitation, as a
separate sentencing theory, simply aims to control or avert crime
through the isolation or elimination of offenders from the general
population (Spitzer, 1977).

The increased interest in revisiting and developing these
sentencing theories extended pragmatically to the specific types of
sentences seen as typifying the theoretical aim of the sentence. The
type of sentence seen to embody deterrence is incarceration or the
threat of it. Incarceration, of course, also can be seen as simply an
incapacitative sentence or as a means to achieve rehabilitation.
Reparation is expressed through the use of community and victim service
orders. Accordingly, a great deal of literature exists on incarceration
and an increasing amount is being generated on victim and community
service. Restitution, narrowly defined as the restoration of the actual
goods or the equivalent to their rightful owner, also has received its
share of renewed attention often within the context of victim assistance
programming and reparative sentencing (Morgan, 1979). One sentence, of
particular interest here, which has received surprisingly little
attention considering its long history as one of the most commonly used
dispositions of the courts, and the recent support in many European
countries to further expand its use, is the fine (Albrecht and Johnson,

The traditional aim of the fine can be said to be deterrence. To
be deterrent, however, the fine must be sufficient in amount to make the
offender aware the crime was not, or is not, worth the price paid. The
intent is to threaten by the fear of future consequences. To the extent that the amount of the fine reflects the gravity of the offence and seeks to cancel the financial advantage of a crime or to impose a financial loss, it is retributive in aim. However, the fine cannot be considered wholly retributive since monetary assessments are not often seen as acceptable sanctions to redress the harm done by violent crime. The origins of the fine lie in restitution, as will be shown more explicitly in Chapter 4. The fine is not incapacititive, except, depending on the size of the fine, in the abstract sense of limiting a person's economic liberty to carry on with illegal behavior. A fine will not rehabilitate or reform if this is defined as the modification of anti-social attitudes since the fixing and administering of the fine is not fitted to the personality of the offender. However, to the extent that reform is considered to include expiation or atonement, the fine may have some rehabilitative effects (Samuels, 1970). Where the offender needs support or control, the fine as an economic sanction is considered a poor substitute for a rehabilitative one. Nevertheless,... in some cases, a fine can serve a limited reformative function by impressing upon a defendant who has acted negligently that he will be held accountable for his actions. If an individual has never before been held personally responsible for what he did, a fine may be all that is needed to deter him from risking criminal liability again (Columbia Law Review, 1971:1284).

It is clear that the fine or indeed any sentence of the court can communicate a mixed message to the offender and the public in general. Despite the fact that the fine can represent any one of a number of sentencing theories of recent interest to researchers and justice system planners alike and despite its avowed numerical importance, limited
attention has been devoted to the fine in comparison with other penalties. There are, however, an abundance of claims in the sentencing literature about the fine's superiority:

In discussions of sentencing alternatives, Justice Department officials [in Canada] pointed out that a fine is the most humane and commonly used disposition (Liaison, 1983:30).

Fines are certainly less awesome than imprisonment; they have not been shown to be any less effective a deterrent than any other disposition; they are clearly the least expensive measure possible (Law Reform Commission, 1974a:29).

Similar types of conclusions about the fine can be found scattered throughout the literature and all, for the most part, appear to be unsubstantiated. It is considered a given that the fine is humane, the cheapest, and by no means the least effective sanction at the same time that it is acknowledged as the least studied (Morgan and Bowles, 1981; Samuels, 1970).

Competing with the claims about the superiority of the fine are criticisms which, though not as pervasive as the accolades, are equally lacking in substantiation. The fine's capacity for unfairness when imposed on the poor, default sentences which burden the prison system and cause social dislocation, and the fear that the fine may be regarded "... as little more than occupational risks, virtually licences to carry on with ... illegal practices, a minor tax upon profits ..." prompt others to discard the fine as a reasonable sentencing alternative in general, or at least inappropriate for some offenders and offence types (Radzinowicz and King, 1979:315). Critics of the fine also claim a fixed fine is inconsistent with notions of equal justice, and that it has insurmountable collection problems. Moreover, there is concern that
the fine, as punishment, can be transferred to third, "innocent" parties. It is speculated further that offenders may commit additional crimes to pay their fines, or use welfare dollars as the source of the fine's payment, which amounts to the transfer of public funds from one account to another (Carter and Cole, 1979; Davidson, 1965; University of Pennsylvania, 1953).

Contradictory perspectives support both the fine's continued utility and disutility. The practice of fining is out-running its theory and description. No comprehensive review or analysis of the fine has been located and this study is prompted, in large part, to remedy this lack of information. The fine is by no means a spectacular or contemporary sentence, but it is a serious oversight to ignore its importance or its alleged superiorities and flaws. As was noted in 1970:

In a materialistic age dominated by property and motoring crime, economic sanctions seem likely to continue to grow in size and importance (Samuels, 1970:272).

This is as true today as when Samuels wrote fifteen years ago. This thesis takes seriously the need to fully describe the fine as a sentence of the court with the expectation that such a description will provide a foundation for further work in this area.

It is arguably a useful exercise in and of itself to draw together in a coherent and systematic way the opinions and facts expressed by others on the fine and to report official, published and unpublished, statistics on its use. This thesis endeavors to go beyond description of the fine, however, to analyse the fine and the sentencing process within its broader socio-economic context. The fine, as a monetary
penalty for wrongdoing, can be understood as an everyday, albeit involuntary, transaction imposed and monitored by one of the many institutions of the state, i.e., the criminal justice system. Theoretical analyses of the functions of the state, therefore, will be presented and related to the descriptive findings on the fine.

1. The Purpose and Organization of The Thesis

While the issue of sentencing has received renewed attention in the last number of years, this is not strictly the case with one type of sentence, namely, the fine. The work available on the fine fails to describe fully its use nor does the literature elaborate on all the factors which enable a comprehensive assessment of the fine. The piecemeal treatment of the fine or for that matter of most of the available sentencing options fails to provide a sound basis for a complete understanding of the sentencing process. Traditional studies of sentencing focus on one or two of the major measures of a sentence's utility, but seldom address or interrelate all the measures.

On the basis of content analyses of sentencing literature, the following measures have been identified as capable of providing an interpretive framework for the review and analysis of any sentence of the court:

1. Use: the frequency of use of the sentence for specific types of offences, and over time; and any enabling legislation provide a preliminary basis for discussion and comparison of sentences.

2. Efficiency: the ease of administering the sentence; in this instance the monitoring and enforcement of fine payment is considered an important indicator of the continued utility of the sentence from the justice system's perspective.
3. Effectiveness: the success of the sanction as measured in terms of recidivism, offender attitudes, and public attitudes is the most common measure of the sentence's utility in criminological literature.

4. Economy and Social Control: the cost to the state of administering the sentence of the court is related to the degree of social control exercised over the offender population and is of equal concern, albeit for different reasons, to justice system administrators and social scientists alike.

5. Social Justice: evidence of sentencing disparity and unequal treatment of offenders can highlight the failure of the justice system to measure up to its claim of justice for all.

No study of any sentence of the court has been located which addresses fully the above five factors. While existing examinations of sentences can be criticized for not examining all the factors which affect the sentence in question, various attempts are made to speak to, if not elaborate on, these issues. Such analyses certainly do not attempt to move beyond these issues to study the role of a sentence within its broader societal context. This thesis does, however, endeavor to situate the fine within its general context as one of many social control techniques administered by one of many state institutions. It is postulated that the study of the fine can enable an understanding of the structures and, often contradictory, functions of the state, at the same time that analyses of the state can assist in understanding the dynamics of the fine.

The problem to which this thesis is addressed is related to the need to gain a better understanding of both the conceptual and descriptive framework of the fine. To this end, the study undertakes:
1. to articulate the theoretical analyses of the state, specifically focussing on the state's accumulation, legitimation, and control functions, its finances, and the role of the bureaucracy,

2. to describe fully the use, efficiency, effectiveness, and economy of the fine and how the fine demonstrates notions of fairness and justice,

3. to examine how the often contradictory functions of the state can enhance an understanding of the practice of fining, and

4. to examine how empirical evidence on the use of the fine can verify or refute assumptions about the state.

To achieve this purpose, the thesis is organized as follows:

Chapter 2 describes the methods employed in obtaining the specific information and literature reported on the fine and the state.

Chapter 3 provides an overview of selected theoretical analyses of the state focussing on the role of state finances, the bureaucracy, and its various functions.

Chapter 4 provides a full description of the origins and use of the fine as documented in the literature and in published and unpublished reports of official statistics in Canada with particular emphasis on the Province of British Columbia (B.C.).

Chapter 5 describes the efficiency of the fine with emphasis on the enforcement of outstanding fines.

Chapter 6 reviews studies on the effectiveness of the fine in terms of measures of recidivism and attitudes.

Chapter 7 examines the economy of the fine and of social control techniques in general. This chapter addresses as well the degree and nature of social control exercised over offenders and the limitations placed on the control of offenders as it relates to issues of economy and legitimacy.

Chapter 8 reports on evidence of the fine's capacity for social justice as measured by disparate sentencing and the treatment of offenders.
Chapter 9 concludes with a summary of the most salient findings of the thesis and the major issues which ensure or impede the continued use of the fine. This chapter will address the implications of the fine for an understanding of the operations and functions of the state and conversely, the implications of analyses of the state and its specific functions for an understanding of the fine.
CHAPTER 2

METHODS

Many sources of information have been drawn upon to define and subsequently complete this thesis. The following describes the methods employed to obtain information and the limitations of the statistical data. This chapter concludes by outlining the types of information and data which are incorporated into each of the subsequent chapters.

A. REVIEW OF THE LITERATURE

Extensive literature searches were conducted to obtain published information on the fine specifically and the sentencing process in general. Quarterly publications of Criminal Justice Abstracts from 1979 through to 1984 were perused manually to identify texts, articles, and government publications in Canada, the United States, England, and other Western European countries for purposes of review. The Current Citation Index also provided leads to written materials. A computer search of literature between 1970 and 1983 conducted by the National Criminal Justice Reference Service using key words such as "fine", "sentencing", and "social control" led to over three hundred references of varying degrees of relevance. These literature searches confirmed both the scarcity of publications which focus on the fine and the recent accumulation of literature related to other aspects of sentencing within the criminal justice system. It was during the review of this literature that the structure of the presentation of the findings into discrete chapters on the use, efficiency, effectiveness, economy and social control, and social justice of the fine was developed.
Literature on the nature and role of the modern state was identified by informed sources who were aware that one of my objectives was to interpret the descriptive information on the fine within a broader socio-economic framework of analysis. No attempt has been made to provide an exhaustive review of the literature on the state. Rather, it was considered appropriate to report on a selected number of publications which raised theoretical issues expected to be relevant to the description of the fine.

B. COMPILATION OF OFFICIAL STATISTICS

1. Statistics Canada

The bureau of Statistics Canada has been a major repository of justice system statistics, on a nation-wide basis, since 1876. From this time, through to 1973, sentencing data generated by criminal justice systems across Canada were submitted as summary statistics to this agency. Subsequently, each province opted out of this reporting procedure with the exception of the provinces of Quebec and B.C. who have submitted statistics for 1979 and 1980 only. Statistics Canada nevertheless remains the only source which has data, albeit dated, to enable comparisons of sentencing patterns and trends across provinces.

A comparison of provincial sentencing trends throughout Canada provides an overview of the extent to which sentencing is consistent across jurisdictions. Disparity, if it exists, may result from differing perceptions of the seriousness of offences and thus the consequences of apprehension and conviction. In other words, the provinces of Canada may differ in their attitudes toward crime and the justice system policies in each jurisdiction may reflect these
differences. The only means available to assess these sentencing patterns is to use Statistics Canada data. Although the most recent data were recorded over ten years ago, it is considered worthwhile to report these data.

Disposition data were collected for an eleven year period, between 1963 and 1973, to enable comparisons of sentencing trends across jurisdictions and over time as presented in Chapter 4. It was not considered necessary to collect and report on data prior to 1963, particularly since it would be difficult to assess the reliability and validity of the reporting procedures over any extended time period.

2. B.C. Court Data

From 1976 onward, the Court Services Branch of the B.C. Ministry of Attorney General has compiled yearly management information statistics detailing the dispositions of offences before the courts, using the following Criminal Code of Canada and provincial statute offence categories:

Assault
Breaking and Entering
Breach of Probation
Drugs
Federal Statutes
Fraud
Failure to Appear
Homicide
Motor Vehicle Offence - Criminal Code
Municipal Bylaw
Offensive Weapons
Other Offence
Other Criminal Code Offence
Possession of Stolen Property
Provincial Statute
Provincial Motor Vehicle
Robbery
Sexual Offence
Social - Other Offence
Theft Offence.
It is possible for an offender to receive more than one sentence upon conviction. The court information system will record, however, only what they consider to be the most serious disposition for each completed case according to the following list of sentences in descending order of seriousness:

- Pentitentiary
- Jail
- Fine
- Probation
- Driving Licence Suspension
- Discharge
- Other.

Any offender receiving a penitentiary or jail sentence may have a fine imposed, or a probation order, or a combination of sentences, but the management information system does not report routinely such hybrid sentences. This results in an under-reporting of the actual usage of sentences imposed by the courts of B.C.

An attempt was made to obtain data to determine the extent of mixed sentencing in B.C. Unfortunately, it was possible to assess this only for one offence grouping, i.e., provincial motor vehicle offences which resulted in jail sentences during 1982. A special computer run completed previously was made available to the author but because of the costs involved, no further data could be obtained. These data are reported in Chapter 4.

The major source of data on B.C. provincial court dispositions were available from 1976 through to 1984. These data enable comparisons in Chapter 4 of the frequency of use of the fine compared with other sentences and over time. It should be recognized, however, that these data are not completely reliable indicators of the actual number of sentences imposed in any given year.
3. **B.C. Corrections Data**

Corrections data were collected on the number of sentenced and default admissions to provincial institutions during the last five fiscal years, 1979/80 to 1983/84. These data are used to examine the extent to which imprisonment of fine defaulters is a valid concern in B.C., thus bringing into question the efficiency, economy, and social justice of fines as discussed in Chapters 5, 7, and 8 respectively. Corrections data on the profile of fine defaulters who were imprisoned during fiscal year 1983/84 are also reported upon in Chapter 5.

**C. OTHER DATA SOURCES**

1. Informal interviews with twelve justice system administrators (i.e., program managers, researchers, and analysts) and administrative judges were undertaken to gather opinions and facts on the fine, its problems, its strengths, and any future policy direction on its use in B.C. Information gathered during these interviews is used throughout the thesis to embellish the discussions on the fine and the role of bureaucrats in the criminal justice system.

2. Data on the total revenue generated in 1982/83 by the imposition of fines and related penalties were collected, using the B.C. "Estimates Book" produced by the Ministry of Finance. These revenue figures, the most recent available, are used in discussions on the economy of the fine.

3. Eight years of personal experience within the justice system of B.C., as a researcher and analyst, has provided the author with a broad understanding of the organization and administration of justice in B.C.
As a member of a committee instructed to assess the costs and options of implementing a provincial statute wherein fines would be the major sanction used, also afforded the author the opportunity to witness first hand the conflict which arises over bureaucratic concerns about available resources and government concerns about the generation of state revenue. This experience will be described and explored within the chapter on the economy of the fine.

D. SUMMARY AND CONCLUSIONS

Analytical and descriptive, published and unpublished literature on the use, efficiency, economy, effectiveness, social justice and social control of the fine are reviewed, as is selected literature on theoretical analyses of the state. Primary and secondary sources of information are reported. Existing official statistics from Statistics Canada and from British Columbia are introduced to document the use of the fine across Canada and in the Province of B.C. The attitudes and opinions of practitioners within the justice system of B.C. are provided to illustrate aspects of the practice of fining and enforcement. This thesis also draws on the personal experience of the author who has been a researcher and policy analyst with the Ministry of Attorney General of B.C. for the past eight years.

Literature collected on the state is reviewed in Chapter 3. Relevant aspects of this information are then re-introduced into the concluding sections of the subsequent chapters which focus in detail on the fine, as well as in the final chapter of the thesis.
Chapters 4 through to 8, contain appropriate references to the literature on the fine and related issues according to the framework identified as systematically addressing all aspects of a sentence of the court. Chapter 4 contains, as well, data on the use of the fine in Canada as reported by Statistics Canada and by the courts of British Columbia. Chapter 5 includes B.C. data on fine defaulters provided by the Corrections Branch of the Ministry of Attorney General.

Considering the sprawling character of the criminal justice system in Canada, the gaps in data and the patchiness of what is available are not surprising. In British Columbia, each component of the justice system aggregates case data differently. A case in the courts can equal one or more offenders and one or more offences while Corrections counts persons in some instances and "bed" days in others (i.e., the number of days an institutional bed is used rather than the number of offenders utilizing the bed). The courts also compile data differently by using a calendar year while Corrections annual data are reported by a fiscal year, running from April 1 to March 31 each year. Beyond these disparate techniques for the reporting of justice system information, the lack of socio-demographic data at the court level particularly creates further problems of what can and cannot be said about the disposition of cases before the courts.

Probably the most striking omission is the lack of data on the dollar value of the fines and the actual number of fines imposed. Although it is possible to obtain a yearly estimate of the total net revenue generated by fines it is not possible to assess the value of
fines for offence groupings or offender types. The court information system in B.C. is being refined, however, to enable all fines imposed to be entered into an accounts receivable computer system. This system, which is expected to be operational by January 1986, will provide, for the first time in B.C., systematic data on the fine. For the present, this thesis contains an exhaustive presentation of the data from B.C. sources that are now available.
CHAPTER 3

A THEORETICAL FRAMEWORK FOR THE REVIEW OF THE FINE

This thesis is predicated on the assumption that understanding the role of the state and its structural mechanisms can provide a foundation for a more complete understanding of the fine. Conversely, relevant concepts found within the literature on the state can be grounded within a description of the fine. In this sense, the "crisis" in sentencing identified in Chapter 1 which occurred once the commitment to rehabilitation foundered, can be placed within the political and fiscal "crisis" of the state in general and the criminal justice system in particular. It is argued that since the state is, among other things, in the "business of punishment", sentencing should be considered within the context of the resources of the state and the function of state legitimacy.

The following provides an analysis of the structure and role of the state as presented in selected literature. This presentation enables general conclusions to be drawn about the socio-economic implications of the fine and it enhances the discussions on the economy, social control, and social justice of the fine.

A. AN OVERVIEW OF ANALYSES OF THE STATE

Many competing perspectives exist on the role of the state, but the two most prevalent are:

1. The "integration-consensus" interpretation which sees the state as a set of institutions that maintains stability in civil society. Law, accordingly, is seen as a body of rules established through consensus (Quinney, 1973).
2. The "conflict-coercion" perspective which interprets the state as a tool of the ruling class used to enforce its will on the rest of society. Law is seen, therefore, as a means to protect the material basis of this class (Quinney, 1973).

The debate between these two perspectives permeates the literature on the sociology of law and the role of the state (Offe, 1972; Turk, 1976). While the conflict theorists accuse the liberals of "false consciousness" and the inability to perceive political and social inequality and the structural dimensions of the distribution of power, the conflict theorists are themselves challenged to identify a class-conscious ruling class and are said to deny the existence of a political system with self-sufficient, structurally independent functions (Offe, 1972:77). Neither analysis has been empirically validated and for the most part both are crudely conceived and provide little insight into any analysis of fining.

The consensus tradition simply fails to account for the reality of conflict and inequality. The shortcomings of the conflict theorists are more complex. Three of the major Marxist perspectives are criticized succinctly by Gold, Lo and Wright (1975b):

... the instrumentalist perspective is simply inadequate as a guide to understanding the state ... it is impossible to see how the complex apparatus of the state can be understood adequately in a model which sees policy outcomes primarily in terms of class conscious manipulations by the ruling class. But the structuralist alternative is also inadequate. For, while it does situate the formation of policy in the context of the functioning of the capitalist

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1 There are in fact a number of variations of both these themes, e.g., the state is a parasitic institution, an epiphenomena of economic relations, a legal sovereign, a set of institutions, a referee in the economic sphere (Jessop, 1977). More specific delineations of Marxist traditions (e.g., Hegelian and structuralist) in the analysis of the state can also be found (see Gold, Lo and Wright, 1975a, 1975b; Jessop, 1980).
system as a whole, it generally does not explain the social mechanisms which actually generate a class policy that is compatible with the needs of the system. Finally, the Hegelian-Marxist perspective is inadequate because it is so highly abstract that it is difficult to use in the analysis of a particular historical situation ... [and] ... the centrality it places on ideology and consciousness often tends to undermine the materialist basis of Marxist theory (pp. 36-37).

Offe (1972), Block (1977), and Balbus (1977) attempt to provide a more coherent theory of the state. Offe (1972) identifies the selective mechanisms of the state which ensure the appearance of consensus and class-neutrality and the means by which groups organize and negotiate their demands for the utilization of state services. He dispenses with the base/superstructure distinction prevalent in Marxist literature and portrays the state as mandated to create and sustain conditions necessary to the accumulation process. The state is functionally related to and dependent upon accumulation. Being dependent on revenues outside its immediate control, and excluded for the most part from direct participation in the process of accumulation, the state instead has a self-interest in promoting conditions conducive to accumulation (Offe and Ronge, 1975).

The state's ability to function on behalf of capital is predicated on its ability to equate the needs of capital with national interest and to secure popular support for measures that maintain the conditions for accumulation (Jessop, 1977). This legitimation function does not imply a need for a fully consensual society since marginal groups can remain at various distances from a commitment to the legitimate order without threatening the stability of that order. Nevertheless, the maintenance of legitimacy is tied closely to the economic stability of the country.
Thus the state is in perpetual need of balancing the interests of individual capital with popular support (Offe and Ronge, 1975).

The state maintains the "commodity form" and the "exchange-relationship of individual economic units". By providing a maximum of exchange opportunities to both labor and capital, the state protects a set of rules and social relationships which represent the common interests of all members of a class society (Offe and Ronge, 1975). These interests are maintained and balanced in a number of ways. For example, the welfare subsidies of the state are a response to "decommodified value" (e.g., the unemployed) which can diminish the basis of future state revenue. Creating conditions under which values can function again as commodities, for instance, by enhancing the marketability of labor power, by opening up new markets for capital and goods, or by regulating the market place are the means by which the state responds to the problem of obsolescence of the commodity form.

The political and administrative means used to stabilize the commodity form and exchange process are often contradictory and can lead to domestic unrest, lessened freedoms, and more taxes and burdens on capital. In the process of maintaining and balancing economic stability, foreign relations, and mass loyalty, the state assigns priority treatment to perceived hazards to the total system depending on the consequences identified, should the need or claim on the state be ignored.

Block's (1977) analysis of the state parallels closely Offe's and Ronge's (1975). Block, too, rejects the narrow view of instrumentalists as misleading and oversimplified. The reality of the state's ability to
implement policies independent of direct capitalist control and in some cases contrary to the interests of the individual capitalist is considered to emerge out of the structural relationships among state managers, capitalists, workers, and other interest groups who all lobby and apply pressure on the state to ensure their interests. Block (1977) contends that the state will respond to capitalist lobby groups, often regardless of the ideological persuasion of the state itself, because the state managers' continued power depends on some reasonable level of economic activity. Business confidence and political stability are essential to investment and in turn place a restraint on the scope of anti-capitalist state policy.

Haas (1979) and Jessop (1977) both consider Offe's tendency to de-emphasize historical analysis a shortcoming of his work. Haas (1979) and Jessop (1980) also feel Offe has an incomplete understanding of the concept of the commodity form which Pashukanis' theory is thought to embellish. The "capital logic" school of thought embraced by Pashukanis, among others, introduced into the analysis of the state concepts such as the circulation of commodities, exchange relations, and use-value/exchange-value (Jessop, 1980). Pashukanis also introduced a correspondence between the commodity form and the legal form where the latter is to mediate and guarantee exchange relations (Jessop, 1980:366).

Pashukanis emphasized the need to pursue legal theory as an historical enquiry and to examine the form as well as the substance of law. What is considered his most important contribution to legal thought is his argument that the legal form is the parallel of the
commodity form (Warrington, 1981). When commodities are produced, they are exchanged, and law is concerned, so the argument goes, both with the process of exchanging commodities between legal subjects who act as the guardians of these commodities and with enabling the commodity form of society to function (Cotterrell, 1979; Warrington, 1981). This theory is based on two premises: a) exchange relations are uncoerced and the relations between subjects and property are the basis of the legal form; and, b) the commodity form of exchange historically precedes the legal system. The economic relation of exchange must be present for legal relations of contract to exist. Pashukanis also believed that the formal equality that the commodity form postulates is only an apparent equality and the "blindness" of the legal form to substantive differences is equivalent to the concealing by the commodity form of the substantive differences in use-value.

Pashukanis' theoretical analysis has been criticized for a number of reasons: 1) the historical priority of the commodity exchange relationship is empirically suspect; 2) the dominance of exchange fails to allow for the importance of the production process; 3) the commodity form is too general a concept; 4) the notion of coercion is absent; 5) the distinction between use-value (i.e., substantive inequalities) and exchange-value (i.e., formal equality) is not clear; and, 6) law has its own specificities not all of which are purely dependent on economics (Warrington, 1981).

Balbus (1977) addresses some of the oversimplifications present in Pashukanis' theory in his discussion of the logic of the commodity form. He distinguishes more clearly between use-value (i.e., unequal
labors which produce commodities) and exchange-value (i.e., whereby qualitatively distinct and incommensurable commodities enter into a formal relationship of equivalence). The commodity of money facilitates the abstract equality evident in the exchange form. Balbus argues, as Pashukanis does, that the logic of the legal form and the logic of the commodity form are one and the same. As with commodities, people as individuals are qualitatively different, but when they enter an exchange relationship they have a formal relationship of equivalence made possible by the law which obscures their true inequality. The legal form makes an abstraction of real men and women parallel to the abstraction that the commodity form makes of real products.

The legal form replaces the multiplicity of needs and interests with abstractions of the will and the rights of the juridical subject.

The formality of legal equality, however, does not prevent it from having substantive consequences which are anything but equal and are in fact repressive (Balbus, 1977:577; author's own emphasis). Moreover, the systematic application of a scale of equality to systematically unequal individuals tends to reinforce these inequalities. Legal equality, therefore, is said to mask class differences and social inequalities. Both Pashukanis and Balbus argue that the legal form is a "bourgeois" form of false consciousness. For that reason, it cannot be the basis for a socialist society. The legal form must be transcended as an abstraction of real human needs; hence, the "withering away of law" is postulated by these authors. This belief is premised on the further belief that the legal form depends on the commodity form and the relations of the market. Thus, with the
disappearance of the market under advanced socialism, so too, the law (Cotterrell, 1979; Warrington, 1981). It is certainly not the purpose here to debate the potential accuracy of these predictions. Instead, it is useful to attempt to delineate the type of law these authors assume will disappear.

The law of exchange of equivalents, of free bargaining and formal equality are characteristics most typical of civil law. Indeed, the heart of law for Pashukanis is the civil law of private obligations and to this extent his work on the commodity form theory has no real place in criminal law (Warrington, 1981). Pashukanis oversimplifies the historical diversity of legal forms and obscures the different kinds of legal persons, statuses and capacities which exist in the legal system, not to mention its flexibilities (Cotterrell, 1979). Balbus (1977), on the other hand, does attempt to extend his analysis into the field of criminal law.

Balbus argues that placing value on the claim of equality before the law as a genuine human value will not serve to de-legitimate the legal order as a whole. A law that results in the rich receiving more lenient treatment than the poor convicted of comparable crimes may de-legitimate the judge or the court, but not the legal order itself since its central criterion is equal treatment irrespective of class. Therefore, those who claim the rich and poor alike should receive the same penalty for the same crime affirm the legitimacy of the legal order. The central tenet of the legal order is called into question only if the objection is grounded on the principle that:
... the rich - given both their greater ability to pay the penalties resulting from conviction and also to avoid the necessity of committing crimes in the first place, should receive more severe penalties than the poor who have committed comparable crimes (Balbus, 1977:578; author's own emphasis).

Balbus concludes that the legitimacy of recognizing social class origins would be asserted if such a principle was supported. He feels, however, that this is unlikely to occur in a society which makes a fetish of law, asserting it owes its existence to law rather than the inverse. This fetishism precludes the ability to evaluate the legal form since it is not possible to evaluate something conceived as independent of society's values and existence. This legal fetishism, the argument goes, is parallel to commodity fetishism. Both the legal and commodity forms are seen to function autonomously from the very people who created them.

Although Balbus goes further than Pashukanis in analysing the law, neither, it is argued, go far enough. Criminal law is indeed predicated on the notion of equivalent relations before the law. All sanctions can also be seen as an exchange of different forms of equivalent value. The Code of Hammurabi (1727 B.C.) was based on the principle of reciprocity which entails reward according to merit or punishment according to the harm done. The exchange could be identical - "an eye for an eye" - or, have the appearance of equivalence - a monetary penalty for a property offence. In this way, the sentencing process in the criminal justice system parallels the legal and commodity forms. It is argued that use-value or qualitatively different products, commodities, and activities are obscured by the process of exchange-value which treats unequal things as equivalent. A similar situation occurs in sentencing
and in the offender's fulfillment of sentence. A critical difference, however, is that the state will impose this exchange on both the offender and the victim, and in many cases the actual victim does not even enter the equation. With the exception of restitution where the victim may receive money, goods, or the equivalent in service, the exchange is between the state representing society as victim and the offender. At the same time that the parties to this process differ, so too does the determination of equivalent values. It is the state represented by the judiciary who determine what the offender will exchange for the harm done independent of any "free" bargaining or negotiating on the part of the offender.

The legal form will, in principle, treat equally, alleged offenders. The substantive differences which exist, nevertheless, may be addressed in a more or less equitable manner either directly in the determination of guilt (i.e., is the alleged offender capable of awareness of the criminal nature of the offence) and, depending on the aims of sentencing, to varying degrees when imposing a sanction. It is not inconceivable that the rich may be treated more harshly than the poor for a comparable crime for the very reasons postulated by Balbus (1977). Balbus appears to be focusing on monetary crimes where the motive is avarice or greed and the penalty would be the fine. In this type of case it may not be atypical for the rich to face a far larger fine than the poor.

Both Pashukanis and Balbus oversimplify the diversity and flexibility of the legal form. Neither author addresses the fact that criminal law rests on the legitimate use of coercion by the state. If
the legal subject is found to deviate from his or her legal obligations of reciprocity, the state can intervene on behalf of society at large to denounce the transgression and impose a sanction to punish or redress the wrong. The fulfillment of the state-imposed sanction is not undertaken freely by the legal subject. This coercive function of the state is discussed in greater detail below.

B. THE CONTROL FUNCTION OF THE STATE

Lack of analysis of surveillance and control as a primary function of the state is a major limitation in various interpretations of the state (Giddens, 1981). Analyses which do focus on control systems often are inadequate, however, due to their tendency to be circular and instrumentalist in reasoning, similar to a major criticism of analyses of the state. Whatever control system is adopted, by definition, fits the needs of the ruling class; or some kind of rationality is attributed to the system independent of people making their own history. Results of these types of analysis too often are known in advance (Bohm, 1982).

O'Connor (1973) extends his analysis of the state to include its coercive function. He sees the state as having a monopoly over the legitimate use of force as exercised by the military and components of the justice system, but O'Connor has little more to say than this. Giddens (1981), on the other hand, provides a more general overview of the social control exercised by the state. First, Giddens (1981) notes that the sanctions available to control agents operate through inducement as well as coercion. As such, they constrain and enable behavior and must be studied in conjunction with the state's role of legitimation. The degree of control the state, through its agents,
exercises is dependent on a number of factors, not the least of which is the subject's compliance with the agent of control. Those incarcerated, for example, may appear utterly powerless, but through hunger strikes or even suicide, Giddens argues, the captive can exercise power. Thus even in the one area over which the state has absolute control, i.e., the legitimate use of coercion, there is what Giddens refers to as a "dialectic of control" as there is in the work-place and the family where the means to coerce or invoke moral obligations is less apparent.

Spitzer (1977) explains the dynamics of the state's role in exercising two forms of control: 1) segregative state controls such as institutions; and, 2) integrative controls which seek to prevent troublesome behavior before it occurs or to "normalize" deviant populations through a process of "decarceration". The costs of segregative controls are typically high and place pressure on the state to find alternative solutions to the control of deviant populations. One obvious solution is the direct release of problem populations back into the community. This approach, Spitzer argues, would focus too much attention on the shortcomings of the state which has invested highly in criminal justice and mental health care with no obvious gains in the quality of life. Rather than highlight its inadequacies and by so doing diminish its legitimacy, intermediate solutions which can still reduce fiscal burdens are sought. Community based supervision through the use of group homes and out-patient care are examples of such solutions. In the case of criminal justice, this essentially is an exchange in the reduction of the severity of punishment for a reduction in costs with, it is hoped, little or no sacrifice of state legitimacy. Social control
becomes more specialized, and in some cases more penetrating and intrusive, but not more coercive in a strictly physical sense (Marx, 1981:238).

Platt and Takagi (1977) argue to the contrary that technocratic solutions to the penal crisis which is prompted in large part by the fiscal crisis lead to more brutal forms of punishment, longer and more severe sentences. They criticize sharply the intellectual "new realists" of law and order for the profound and negative impact they are having on the justice system and the public's perceptions of the "horrors of street crime". Nevertheless, there is no evidence offered that methods of punishment have become harsher.

Paternoster and Bynum (1982) provide a thoughtful analysis of the dual functions of social control and legitimation. They argue, first, that the economic crisis of the 1970's and 1980's has produced problems for the state's continued legitimacy while

... the economic prosperity of the post-war period ... allowed the state to rule with considerable popular consent (Paternoster and Bynum, 1982:8).

The current economic decline threatens this consensus. When the ranks of the unemployed and welfare class expand, a prolonged crisis can produce large scale social and political instability. Two consequences of the economic crisis are the state's need for the maintenance of its legitimacy and its reliance on more coercive measures of social control. Coercion, however, works best when it is legitimated by the majority.
The emerging "justice" model of crime control which emphasizes law and order and "get tough" policies proliferates because it offers an acceptable rationale to the populace. The justice model rests on notions of legal rights, fixed sentences, and reduced discretion, and not simply on harsher punishment. Moreover, there still exists room for individualized sentencing and various other sentencing aims. What this "just deserts" type of model above all is able to do is to re-affirm popular consent.

Rule-breakers are seen as violating norms of reciprocity and the state has an obligation to punish accordingly. The model appeals to both the public's sense of moral outrage against perpetrators of crime and to its sense of fair play, e.g., the formal rules and procedures and equal treatment afforded offenders (Paternoster and Bynum, 1982). Crime is seen as a manifestation of a breakdown in law and order and thus a threat to social stability which can be controlled by a swift and sure response on the part of the state.

For the most part, authors such as Spitzer (1977) and Paternoster and Bynum (1982) limit their analysis of deviance production and control to the poor stealing from the rich and to street crime. Neither addresses the fact that social control agents can reduce control by the non-enforcement of rules or that they can contribute to or even generate rule-breaking behavior by escalation (i.e., enforcing laws more frequently, "getting tough", and creating new laws)(Marx, 1981). As larger sectors of society are defined as problem populations, the implications of over-control become very apparent. The cost of control increases and threatens to diminish state reserves. In consequence, the
legitimacy of the state in intervening into the day-to-day lives of so many is questioned. This would seem to be particularly the case for "crimes" which cross social class boundaries. These are offences such as drinking and driving and other motor vehicle violations of a less serious nature engaged in widely by both the rich and the poor. When the state intervenes in this area it must ensure its societal acceptance. Narrow utilitarian considerations of punishment and crime control in the public policy arena must be balanced against considerations of humaneness and justice and the state's concern for continued popular support (Zedlewski, 1984). Responses to crime and wrongdoing must also be balanced against the state's fiscal ability to finance the response, potentially at the expense of other state services. This aspect of the state's finances is discussed in greater detail in the following section.

C. STATE FINANCES

O'Connor's (1973) theory of state finance enhances the foregoing analyses of the state. One of the keys to understanding the internal dynamics of the state is that state revenue is dependent upon the process of accumulation of capital which it does not directly control; moreover, its function of legitimation ties into its ability to create conditions for accumulation. O'Connor also observed the tendency of state expenditures to grow faster than revenues and he comments on how this leads to a "fiscal crisis" of the state.
State expenditures have at least two general functions: 1) social expenses are incurred to maintain social harmony, to impose sanctions and confer benefits (e.g., welfare, policing costs); and, 2) social capital is either invested to maintain or increase the productivity of labor or to lower the reproduction costs of labor power (e.g., subsidized housing, transportation, education, and health costs) (O'Connor, 1973). Social investment and consumption are indirectly productive for private capital while social expenses are unproductive.

O'Connor goes on to identify the three major ways the state finances its expenditures: taxes, charging for state services, and borrowing from private financial institutions. The fiscal crisis of the state occurs when there is increasing pressures on welfare spending and a problem in financing this spending. It is this situation which leads to the contradictory aspect of the two basic functions of the state. The scale of state expenditures on social services fetters the process of accumulation and growth (Gough, 1979:14). In the end, O'Connor feels the state must sacrifice at least, in part, accumulation and economic growth, or political and social rights.

Friedland, Piven and Alford (1978) also consider the classic symptoms of a fiscal crisis to be the widening disparity between revenues and expenditures in the face of increasing demands for state services. They argue, however, that O'Connor's theory of the state and its fiscal crisis has flaws. They do not believe there is an inherent tendency in the operations of the state that lead it toward fiscal crisis. Rather, they would argue there are variable manifestations of fiscal stress evident throughout history, from nation to nation, and
state bureaucracy to state bureaucracy. The structural arrangements of the state can mediate the dual requirements of economic growth and political integration with varying degrees of success. While O'Connor argues that every state agency is involved in expending social expenses and social capital, Friedland, Piven, and Alford would consider this an overstatement and oversimplification of state expenditures. The separation of state agencies and functions allow some agencies to be less involved, if at all, in maintaining the capitalist mode of production and more involved in providing the social services which legitimate the state. The extent to which state functions are centralized or not determines the means by which they can avoid or diffuse popular disaffection. Fiscal claims on the state also can divert the potential conflict between the demands of capital and the demands of the working population. Thus, the institutional separation of the state and the economy, and the fragmentation of the accumulation and legitimation functions can lead to intense fiscal stress rather than overt political conflict or a fiscal crisis (Friedland, Piven and Alford, 1978) The structure and dynamics of state bureaucracy are discussed further in the following section.

D. **STATE BUREAUCRACY**

As Panitch (1980), Miliband (1983), Block (1977), and others note, the state is not simply the central government in power, but extends to provincial, regional, and municipal levels of government, to the bureaucracy at each level of government, public corporations, central banks, the military, the courts, the judiciary, and the police. Therefore, election to governmental power is not equivalent to the
acquisition of state power (Panitch, 1980:191). Rather, there is a range of powers exercised by the various institutions of the state and the bureaucracy, composed of non-elected officials, has wide-ranging powers and autonomy from the elected officials. For example, cabinet ministers in the federal government of Canada have the power to establish far-ranging economic and social welfare policies, but these powers can be circumscribed or thwarted by the provincial governments. Even within a state bureaucracy, the executive, top civil servants, and military advisors have varying degrees of control and power and will not necessarily agree on policy or procedure (Miliband, 1983). Within any one agent of a provincial bureaucracy - for example, social welfare - the powers exercised by a financial aid worker over the individual applicant for welfare can be relatively autonomous from the control of managers. Similarly, the values held by the civil servants, senior officials, and so on in any one bureaucracy need not be consensual. Marenin (1981) describes this point succinctly in his analysis of the role of police.

Marenin (1981) argues that rhetoric about the police as unquestioning servants of the state misses a substantive point, namely that not all of the actions of the police and the criminal justice system in general are repressive. Some actions of the police demonstrably are exploitive and repressive while other actions are not seen to be against the interests of any one group. Marenin, like others before him, introduces the relative autonomy of the state as a means of understanding, in this case, the concrete role of the police. The role
of the police is more complex than that of a mere instrument of the powerful (Marenin, 1981:2). A variety of functions are performed and interests protected.

The police can resist attempts at external control, they have wide discretionary powers, and it is in the interests of all that they police the community. No group in society has an interest in being victimized by crime or the fear of crime. The police, Marenin (1981) therefore argues, are relatively autonomous and that autonomy can be observed empirically.

Marenin's argument applies to all components of the justice system (e.g., courts, crown counsel, corrections, legislators, and policy makers) as well as to all agencies of the state. No element of the state can be explained solely in terms of its functional relation to the economy. State bureaucrats carry with them

... as they work, a history of learning and socialization, of values, beliefs, and personal ideologies which will affect their individual interpretation ... of their work (Marenin, 1981:23). ¹

E. SUMMARY AND CONCLUSIONS

In summary, the most compelling analysis of the state would embrace the following:

1. state specific interests,
2. interests in maintaining the accumulation process,
3. engineering of consent and legitimacy, and
4. the monopoly over the legitimate use of coercion.

The state and the legal order cannot be denied any autonomy nor can it be claimed to have absolute autonomy. It is for this reason that the

¹ This conclusion is particularly relevant when describing the role of the justice system bureaucracy as it relates to the continued use or expansion of fining in British Columbia, see pp. 134-137.
concept of "relative autonomy" has emerged in the literature. Giddens (1981) is the only author who argues against the use of the term. He feels all autonomy is relative and therefore the latter term is redundant since "... any social processes or institutions that were 'absolutely' autonomous from others by definition would have no connection with them anyway" (p.217).

Most authors agree that the state will implement policy which runs counter to capitalist interests per se since the state must contend with organized labor and other sources of power as well. This supports the prevalent view that the state is enmeshed in the contradictions of capitalism; it is neither a class-neutral agency of social reform, nor a mere functional vehicle of the needs of the capitalist mode of production, nor simply an arena for class struggle. The activities undertaken by the state contain elements of repression and responsiveness to human needs - it is both malevolent and benevolent - and therein lies its contradictory nature (Gough, 1979).

The analyses of the structural mechanisms of the state which enable it to perform its important functions, but which account also for some of its contradictions is relevant generally to the analysis of a specific form of state control, i.e., the sentencing of offenders in general and the use of the fine in particular. The use and effectiveness of the fine in confronting problem populations will be described and may be understood in the context of the demands on the state for order, fiscal restraint, and legitimation.

State resources cannot all be directed toward the administration of the law, including the sentencing process, and away from the other
functions of the state including the accumulation of capital through the
support of the private sector and the provision of other social
services. Decriminalization of behavior or reducing justice system
expenditures would, however, diminish the legitimacy of the state in the
eyes of the law-abiding citizens and particularly the victims of crime.
A feeling of disaffection with the system would occur if offenders were
treated too leniently because of a lack of resources directed toward
this function.

Public disapproval of perceived leniency in sentencing can threaten
the legitimacy of the criminal justice system whereas "toughness in
sentencing provides relative strength in the political process"
(Blumstein, 1982:324). The political costs of raising taxes or
re-assigning resources to pay for the administration of prison sentences
and community-based surveillance of offenders, nevertheless, have to be
weighed against "... the political benefits of toughness" (Blumstein,

Since the state has to punish, maintain its legitimacy through
consensus, and balance the increasing costs of punishing with other
competing demands for its resources, it must assess carefully the
sanctions it employs (Haas, 1979).

Because of its fiscal problems the state must search for
means of economizing control operations without
jeopardizing capitalist expansion (Spitzer, 1977:648).

Sanctions cannot be too expensive nor must they threaten the legitimacy
of the state (either by being too lenient or too severe) or the state's
capacity to maintain its accumulation function. A further practical
concern is that the sanction be acceptable, practicable and easily
operationalized by the bureaucracy responsible for its administration. The role of civil servants, the judiciary, and other state bureaucrats cannot be overlooked as they are the ones who make and implement state policy often independent of political forces. These broad concerns which the state and the justice system must address are relevant to the specific concerns related to fining.

This chapter sought to provide a review of the major functions of the state considered relevant to the subsequent descriptions and discussions on: a) the use of the fine as one of many sanctions employed by the state institution of criminal justice; b) the efficiency of the fine as it is administered by the bureaucracy; c) the effectiveness of the fine as a deterrent sanction and whether it is perceived by the public as appropriate and legitimate; d) the costs and benefits to the state of administering the fine; and, e) the legitimacy of the fine in the content of concerns about social justice.
CHAPTER 4
THE USE OF THE FINE

One purpose of this chapter is to provide descriptive information collected during the literature review on the use of the fine in jurisdictions outside of Canada. These sections describe provisions for the fine and the frequency of its use in England and Western European and Scandinavian countries. The extent of information available on the use of the fine, its enabling legislation, and the amounts of fines imposed varies quite considerably.

A description and discussion of the fine as used in Canadian courts and in particular in British Columbia follows. The presentation of sentencing trends in Canada relies largely on data collected from Statistics Canada documents and the Court Management Information System of B.C. This chapter also reports on available evidence on the increased substitution of the fine for imprisonment. First, however, a brief description of the origin of the fine will place it in historical perspective and offer a better understanding of the current debate on compensation and restitution versus the fine - a subject examined in the final section of this chapter.

A. THE ORIGINS OF THE FINE

One of the earliest alternatives to the blood feuds as a form of social control was the notion of compensation or payment of damages to the offended party (Hobhouse, 1954). Payment of compensation by the offender to the victim was the basis of early English criminal law (Wasik, 1978). The size of payments arrived at took into consideration the seriousness of the injury and the social standing of the parties involved (Wasik, 1978).
Compensation was a means of discouraging violence, keeping the king's peace, and redressing the wrong committed.

The Code of Hammurabi (1727 B.C.) with its principle of *Lex talionis*, or "an eye for an eye", is the earliest surviving example of settlement between individuals (and society) achieved through compensation. Since criminal activities affect society, as well as individuals, it too must be compensated. Eventually society became the only one compensated. (Reynolds and Rock, 1976:137).

With the gradual increase in state power, the state began to claim a share, and eventually, all the compensation based on the rationale that crime is principally an act against society rather than an individual. Private settlements were discouraged for behavior considered an offence against society by making it an offence to conceal a crime and settle it independent of state intervention (Law Reform Commission, 1974a). Payment of this penalty to the community as victim also was seen as a popular way to forestall taxes and finance the Crown (Davidson, 1965). When "fined" the offender was immediately imprisoned to compel "the making of the fine" (Jobson, 1970).

As the law of torts became distinguished from criminal law, the use of the fine as a means of compensation disappeared. By the end of the 12th Century damages as a purely civil remedy became the established principle of compensation (Davidson, 1965). As Vaz and Lodhi (1979) note:

Violation of the criminal law is a criminal act; it is prosecuted by the state through its agents and involves some form of punishment. Violation of the civil law is a civil injury, and is prosecuted by the injured party or his representative. It involves a law suit and some form of compensation. A person who has committed an act of assault may be ordered by
the civil court to pay the victim for damages; he may also be required by the criminal court to pay a fine to the state. In the first instance the fine is not considered punishment; in the second case it is (Vaz and Lodhi, 1979:5).

This distinction between compensation and the fine is being questioned now by those who wish to see the re-introduction of the notion of compensation into criminal law. The debate is in part a result of increased interest in victim assistance and the disdaining of procedures which require the victim to lay a civil law suit to receive compensation. This issue will be discussed in more detail in the final section of this chapter as it relates to the use of the fine.

B. THE USE OF THE FINE IN JURISDICTIONS OUTSIDE CANADA

1. **England**

In England, Magistrates are authorized to impose a maximum of six months in jail or a fine of up to £1000, or both, as well as other sanctions of a more rehabilitative nature (e.g., community service orders, suspended sentences, conditional discharges, and probation). Probation is imposed only if the magistrate believes the expenditure of time and resources is warranted (Carter and Cole, 1979). If the magistrate feels the offender should be more harshly punished, the offender can be committed to Crown Court for sentencing. Ninety-seven percent of the criminal cases are heard in Magistrates Court while Crown Court hears the most serious cases.

The sentencing trend in English Magistrates Courts has been to fine the majority of offenders. Between 1966 and 1978, with the exception of two of the earlier years, fines have been imposed on male offenders, 21
years of age and older, for over 60% of the indictable offences heard in Magistrates Courts (see Table 1) and for over 16% of the cases heard in a higher court (see Table 2). When all cases heard in Magistrates Courts are combined, 74% of the cases resulted in a fine in 1977 (Carter and Cole, 1979).

TABLE 1

Sentences for Indictable Offences in Magistrates' Courts for Males 21 and Over, 1966-1978 (%)\(^1,2\)

| Year    | Discharge | Probation | CSO | Fine  | Suspended | Incarceration | Other\(^3\) | Total (%)
|---------|-----------|-----------|-----|-------|-----------|---------------|------------|----------
| 1966/67 | 8.8       | 8.0       | -   | 61.4  | -         | 16.2          | 5.6        | 100.0    
| 1968/69 | 9.7       | 6.2       | -   | 53.9  | 15.3      | 9.6           | 5.3        | 100.0    
| 1970/72 | 9.9       | 6.1       | -   | 57.7  | 12.5      | 8.9           | 4.9        | 100.0    
| 1973/74 | 10.8      | 6.2       | -   | 63.6  | 8.4       | 6.5           | 4.5        | 100.0    
| 1975/76 | 11.2      | 5.3       | 1.1 | 62.7  | 8.9       | 7.1           | 3.7        | 100.0    
| 1977    | 11.0      | 4.7       | 2.1 | 62.3  | 8.9       | 7.7           | 3.3        | 100.0    
| 1978    | 10.4      | 4.8       | 2.5 | 62.0  | 9.1       | 8.1           | 3.1        | 100.0    

1. This table is a summary of part of Table 1 in Bottoms, 1981:4.

2. The frequency of fines for females charged with indictable offences does not vary much from the table on males over 21 years of age. There is however variation on other sentences; far more females received discharges or probation rather than incarceration compared with their male counterparts.

3. Other includes sent to Crown Court for sentence.

4. Bottoms does not provide the total number of sentences imposed which would enable the calculation of percentages into actual values. This can be considered a serious oversight but need not detract from the purpose of this section of the thesis which is to provide an overview of the general use of the fine in English courts of law.
TABLE 2
Sentences for Males 21 and Over Dealt with in a Higher Court, 1966-1978 (%)\textsuperscript{1,2}

<table>
<thead>
<tr>
<th>Year</th>
<th>Discharge</th>
<th>Probation</th>
<th>CSO</th>
<th>Fine</th>
<th>Suspended Sentence</th>
<th>Incarceration</th>
<th>Other</th>
<th>Total (%)\textsuperscript{3}</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966/67</td>
<td>4.3</td>
<td>13.0</td>
<td>-</td>
<td>19.8</td>
<td>-</td>
<td>61.4</td>
<td>1.5</td>
<td>100.0</td>
</tr>
<tr>
<td>1968/69</td>
<td>3.5</td>
<td>8.6</td>
<td>-</td>
<td>11.6</td>
<td>20.6</td>
<td>54.2</td>
<td>1.5</td>
<td>100.0</td>
</tr>
<tr>
<td>1970/72</td>
<td>3.5</td>
<td>8.7</td>
<td>-</td>
<td>14.5</td>
<td>19.1</td>
<td>52.7</td>
<td>1.5</td>
<td>100.0</td>
</tr>
<tr>
<td>1973/74</td>
<td>3.6</td>
<td>6.1</td>
<td>-</td>
<td>19.9</td>
<td>23.1</td>
<td>45.0</td>
<td>2.3</td>
<td>100.0</td>
</tr>
<tr>
<td>1975/76</td>
<td>4.4</td>
<td>5.3</td>
<td>1.7</td>
<td>17.5</td>
<td>23.5</td>
<td>46.2</td>
<td>2.3</td>
<td>100.0</td>
</tr>
<tr>
<td>1977</td>
<td>4.3</td>
<td>4.5</td>
<td>3.5</td>
<td>16.5</td>
<td>23.1</td>
<td>46.7</td>
<td>1.4</td>
<td>100.0</td>
</tr>
<tr>
<td>1978</td>
<td>4.1</td>
<td>4.1</td>
<td>3.8</td>
<td>16.0</td>
<td>21.9</td>
<td>46.8</td>
<td>1.5</td>
<td>100.0</td>
</tr>
</tbody>
</table>

1. This table is a summary of part of Table 2 in Bottoms, 1981:5.
2. Females 21 and over again received comparable proportions of fines but more discharges and probation orders rather than incarceration compared with their male counterparts.
3. See footnote 4, Table 1.

Table 3 presents the proportion of different types of sentences imposed in English Courts for selected criminal offences. As can be seen, fines are levied even in more serious criminal cases, on average 55% of the time, although robbery and burglary convictions are more frequently dealt with by a prison sentence. The fine is the most common disposition even when age and gender of the offender is taken into consideration. For youths aged 10-17 years, 46% of the cases resulted in a fine in 1977, apparently based on the notion parents will pay and punish the child (Carter and Cole, 1979).

Softley (1978) found in a national survey of 3,240 offenders fined during 1974 that 75.2% of offenders with no previous convictions, and a similar proportion (73%) with one or two prior convictions were fined. Only when an offender had three or more priors did the percentage of those fined decrease to 47.5%. Softley's survey also revealed that fines were imposed more often on employed offenders (75.2%) than
TABLE 3

Sentences Given to Adults In All English Courts for Selected Offence Categories, 1977 (%)\(^1\)

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Fine</th>
<th>Prison</th>
<th>Discharge</th>
<th>Suspended Sentence</th>
<th>Probation</th>
<th>CSO</th>
<th>Other</th>
<th>£30 or Less</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violence Against Person</td>
<td>52.5</td>
<td>13.4</td>
<td>10.5</td>
<td>9.9</td>
<td>3.9</td>
<td>2.1</td>
<td>7.7(^2)</td>
<td>51.0</td>
<td>22,758</td>
</tr>
<tr>
<td>Sex</td>
<td>41.3</td>
<td>23.0</td>
<td>9.5</td>
<td>10.5</td>
<td>12.7</td>
<td>0.6</td>
<td>2.4</td>
<td>39.0</td>
<td>4,653</td>
</tr>
<tr>
<td>Burglary</td>
<td>26.9</td>
<td>30.3</td>
<td>5.6</td>
<td>13.9</td>
<td>10.3</td>
<td>6.5</td>
<td>6.5</td>
<td>67.0</td>
<td>22,544</td>
</tr>
<tr>
<td>Robbery</td>
<td>2.0</td>
<td>78.0</td>
<td>1.0</td>
<td>7.9</td>
<td>3.8</td>
<td>2.2</td>
<td>6.0</td>
<td>11.0</td>
<td>1,279</td>
</tr>
<tr>
<td>Theft</td>
<td>61.4</td>
<td>8.5</td>
<td>11.0</td>
<td>7.8</td>
<td>6.9</td>
<td>2.8</td>
<td>1.6</td>
<td>70.0</td>
<td>130,348</td>
</tr>
<tr>
<td>Fraud</td>
<td>46.4</td>
<td>14.5</td>
<td>12.0</td>
<td>14.8</td>
<td>9.0</td>
<td>2.2</td>
<td>1.1</td>
<td>67.0</td>
<td>16,031</td>
</tr>
<tr>
<td>Criminal Damage</td>
<td>69.0</td>
<td>5.8</td>
<td>13.2</td>
<td>3.8</td>
<td>4.4</td>
<td>1.7</td>
<td>2.6</td>
<td>80.0</td>
<td>19,273</td>
</tr>
<tr>
<td>Other Indictable</td>
<td>50.0</td>
<td>17.2</td>
<td>11.2</td>
<td>10.8</td>
<td>6.1</td>
<td>2.0</td>
<td>2.7</td>
<td>76.0</td>
<td>8,935</td>
</tr>
<tr>
<td>Average</td>
<td>55.0</td>
<td>12.8</td>
<td>10.5</td>
<td>8.7</td>
<td>6.9</td>
<td>3.0</td>
<td>3.1</td>
<td>68.0</td>
<td></td>
</tr>
</tbody>
</table>

1. This table is a summarization of Home Office Crime Statistics from Carter and Cole, 1979, pp. 156-158.

2. Rows may not equal 100% due to rounding.
unemployed offenders (51.5%), while the latter group received significantly more discharges, probation and custodial sentences.

As shown in Table 3 as well, the amount of the fine most often is £30 or less (i.e., on average 68% of the time). Softley (1978) found similar amounts of fines in his examination of 1974 data where 61% of the fines imposed were £20 or less and only 5% exceeded £50. The main factors considered in the amount of the fine were the value of the property stolen or damaged and the income of the offender. Although these amounts are not great, it should be recalled that incomes are lower in England and prices are higher. A fine of £30, equivalent to approximately 60 U.S. dollars, will have a greater impact on the offender in England than it may in the United States or Canada.

The English Criminal Justice Act, 1967 enabled attachment of earnings for the collection of fines and curtailed jailing forthwith on fines. Now "no time to pay" is only allowed if the magistrate: a) feels it is unlikely the offender will remain in the country, b) believes the offender has money but is refusing to pay or, c) imprisons the offender for another offence. Alternative terms of imprisonment upon default can only be fixed at conviction for cases where immediate committal with no time to pay is enabled. Otherwise the offender must be brought before the court for a means inquiry before fixing the alternative.

2. The United States

Only one study was located on the use of the fine in the United States. Gillespie (1980) examined case files on 4,900 defendants sentenced in Superior Court in Washington, D.C. during 1974. Over half of the cases were assault, burglary, larceny, (theft) or weapons
related (Gillespie, 1980). Of the total sentences, 36% were incarceration, 58% were probation orders, suspended sentences, and other dispositions, and only 6% were fines. Dangerous drugs and embezzlement convictions led more often to a fine (i.e., 26% and 14% respectively) but for the most part fines were seldom used (Gillespie, 1980:25).

Gillespie's findings (1980) on the limited use of the fine in the United States is corroborated by Carter and Cole (1979) and Van Den Haag (1975) who reported that with the exception of traffic violations, fines are used sparingly. Newton also noted:

In contrast with the widespread use of fines in many European countries for serious as well as minor offenses, in the United States fines are generally used only for minor offenses...(Newton, 1981:144).

Probation is the more common disposition used in more than 50% of the cases (in contrast to, for example, England which used probation about 7% of the time in 1977).

There are a number of speculations as to why the U.S. uses fines so seldom:

1. Community service orders and restitution are receiving more attention with the latter simply a different form of a monetary penalty (Gillespie, 1980).

2. The U.S. is reluctant to expand the use of fines because of the 1971 Supreme Court ruling that imprisonment of an indigent because of inability to pay a fine is unconstitutional. It should be noted however that England has a similar ruling which has not precluded the use of the fine there (Carter and Cole, 1979:161).

3. Fines are regarded as unjust, ineffective, and "taint justice with materialism" (Van Den Haag, 1975).

3. West Germany

As a result of a major 1969 reform of the German criminal code, fines were to be substituted for offences which previously would have
resulted in prison sentences of six months or less (Gillespie, 1980). In 1968 fines were imposed in 63% of offences while by 1976 this proportion rose to 83%. Many of these offences were minor and traffic offences but whereas prior to the reform one could be imprisoned, after 1969 only in exceptional cases could any offender be jailed for less than six months (Albrecht and Johnson, 1980).

Even more serious crimes against the person resulted in fines 66% of the time and 76% of theft and embezzlement convictions resulted in fines (Gillespie, 1980). However, only 18% of breaking and entering cases and 5% of robbery cases led to fines, the majority receiving jail sentences instead (this response to robbery is similar to English practice).

Since the 1969 reform to the German criminal code, the only other significant event was the introduction of the day-fine in 1975 (Albrecht and Johnson, 1980). The day-fine system will be discussed in the following section on Sweden where the prototype for the day-fine emerged.

4. Sweden

In the Swedish Penal Code, 1965 there are three types of fines provided for: the day fine, which was introduced in 1931, the standardized fine, and the monetary fine. Day fines are the principal sanction for minor drug, traffic, and property offences and their use is said to be continuing to rise sharply (Newton, 1981; Thornstedt, 1975). Monetary or fixed fines of up to 500 kroner (125 U.S. dollars) are used for petty offences such as public drunkenness while standard fines are assessed primarily for tax evasion.
The application of the day fine and the methods for arriving at the amount vary among jurisdictions who use it but the underlying principle is the same:

The fine is determined according to a certain number of "days", depending on the severity of the offense; each "day" is equivalent to a fixed sum of money assessed in accordance with the offender's financial position (Newton, 1981:136).

In Sweden, the amount of days vary from 1 to 120 and the value from 2 to 500 Swedish kroner or approximately .50 to 110 U.S. Dollars (Thornstedt, 1975). The value is calculated roughly by assessing l/1000th of the offender's gross income and reducing or increasing this according to rules and guidelines. The highest sum for a single offence is 60,000 kroner or 15,000 U.S. dollars and for a dual offence it can be as high as 180 days times 500 kroner or 22,500 U.S. dollars. For those with limited incomes (e.g., students and old age pensioners) a fixed fine of 3 kroner or 75 cents is often levied.

Information about an offender's income is obtained by the police before the trial and confirmed in court. Relying on the accused's confirmation of assets and liabilities is considered reasonable because this type of information is public property and can readily be checked in the annual register of income of wage earners or by the tax authorities (Law Reform Commission, 1974a).

As in Germany, the Swedish prosecutor may order a summary fine when the only penalty for the offence is a fine of up to 50 "day" fines for a single offence and 60 for a multiple offence. If the accused agrees with the prosecutor's decision the fine is equivalent to a court-ordered fine (Gillespie, 1980; Thornstedt, 1975).
Approximately 250,000 persons are fined per year in Sweden (Newton, 1981). If the fine is not paid, more time may be given the offender, his or her earnings or property may be attached, or the case is referred back to the prosecutor who can write-off sums up to an equivalent of 25 U.S. dollars or convert the fine into a jail sentence. The latter occurs only if the offender is deemed manifestly neglectful and has the means to pay. This process may induce payment; otherwise the outstanding sum to be paid is converted into a maximum of 90 days in jail (one day in jail for every "day" fine unpaid). Once admitted to jail the offender cannot secure release by paying the fine.

5. **Other Jurisdictions**

Fines are said to be the most common type of punishment in Finland, Denmark and the Netherlands (which all have day fine schemes) and, New Zealand, Australia and Japan (Newton, 1981). Day fines are also prevalent in Austria, Bolivia, Brazil, Costa Rica, Cuba, and Peru (Newton, 1981). The majority of non-indictable offences and indictable offences proceeded with summarily can receive the fine in Finland and Denmark.

In other countries such as Italy, day release and probation type orders are more prevalent now while previously imprisonment was the major sanction for the control of offenders. Probation is also popular in New Zealand, Australia, and Japan.

C. **THE USE OF THE FINE IN CANADA**

1. **Canadian Law on the Fine**

Canadian judges may order fines for summary conviction offences and indictable offences punishable by less than five years imprisonment.
The fine cannot be levied by the judiciary in Canada for indictable offences punishable by more than five years imprisonment except as an additional sentence (Criminal Code, Section 646(1)). This affects approximately two-thirds of all Criminal Code offences (Law Reform Commission, 1974a). Judges may circumvent this provision by sentencing to one day in prison plus the fine and it appears possible to sentence an offender to a probation term plus a fine for offences punishable by more than five years imprisonment. Where a fine is imposed, a term of imprisonment may be specified in default of payment of the fine but no term shall exceed: a) two years, if the term of imprisonment for the offence would be less than five years, or b) five years, if the term of imprisonment that may be imposed for the offence is five or more years (Martin's Criminal Code, 1983, Section 646(3)(a)(b)).

Other sections of the Criminal Code specify procedural rules such that fines may be ordered paid at once or by installments. Provision for time to pay has been available since the 1960s (Jobson, 1970). Therefore only under special circumstances can a judge demand payment forthwith. Judges can ask the defendant if time is needed to pay or the accused can ask for time if the fine is to be paid forthwith. There is special provision that before jailing youths less than 22 years of age

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1 Indictable offences are considered the more serious Criminal Code offences which include murder, robbery, theft, arson, forgery, and narcotic and motor vehicle offences (e.g. impaired driving) for which the accused can be tried upon a formal allegation presented to the court. After a preliminary hearing the accused can elect to be tried by a magistrate in the provincial court or by judge or judge and jury in a higher court. Summary conviction offences, on the other hand, include less serious Criminal Code offences such as gaming, betting, offensive weapons, other federal statute offences, provincial statute offences, and municipal by-law and prohibited parking offences. These offences involve an informal allegation and the accused can be tried at a first hearing or at a future date in provincial court.
for default the court must obtain and consider a report on the youth's means (Criminal Code Section 646(10)).

Corporations may be fined any amount in lieu of imprisonment for indictable offences and on summary conviction not exceeding $1,000 which is double the amount set in the case of individuals.

The Criminal Code does not specify the maximum amount of fines for indictable offences with the exception of a $500 limit on the amount of fines for summary conviction and a $2,000 limit on drinking and driving offences. Canada's "no rule" approach to the question of the amount of a fine leaves the judiciary with wide discretion to impose very small and very large fines although the latter are rare and limited usually to the profit made by the offence. Manuals are available in some jurisdictions to provide guidance for appropriate amounts and provincial statutes may specify amounts. In practice this allows fines to vary in and between courts (Jobson, 1970).2

Fines and penalties are paid to the treasurer of the province in which the fine was imposed except when a fine is imposed in respect of a violation of a revenue law or other similar federal jurisdiction offences or a municipal bylaw such as parking prohibitions. The

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2 Bill C-19 when proclaimed will reform the Criminal Code and specifically the fine as follows:
   a) present restrictions on the use of the fine will be removed,
   b) the maximum fine for summary conviction offences will increase from $500 to $2,000,
   c) the maximum for indictable offences will remain at the discretion of the court,
   d) where the offender has not acknowledged ability to pay, a mandatory means enquiry will determine the amount and terms of payment,
   e) procedures to obtain information on the offender's means are left to the court's discretion,
   f) fines can be discharged by participation in a fine option program approved by the Province, and
   g) imprisonment for default will be limited to those cases where default is without "reasonable excuse".
Criminal Code does allow that where a provincial, municipal, or local authority bears the expense of administering the law under which a fine is imposed the lieutenant governor in council may direct that the proceeds shall be paid to that authority (Section 651(3)). However, fine revenue generated in most provinces as a result of criminal convictions is credited to the provincial government's general revenue rather than to the provincial Ministry that actually administers the sentence.

2. B.C. Law on the Fine

Provincial legislation allows exclusive powers to the provinces to make laws in relation to matters such as the administration of justice including the constitution, maintenance, and organization of provincial, civil and criminal courts. Federal authority, on the other hand, extends to criminal law including procedures in criminal matters and dispositions upon conviction. Provinces can legislate the use of fines, imprisonment, or other penalties for the enforcement of any provincial statute or law made in relation to any matter of exclusive provincial jurisdiction.

In the Offence Act of B.C., section 4 specifies that unless otherwise provided in an enactment a person convicted of an offence is liable to a fine of not more than $2,000 or to imprisonment for not more than 6 months or to both. No legislation exists which specifies the number of days an offender may be imprisoned in default of a fine. The Offence Act also specifies that the judiciary "shall consider the means and ability of the defendant to pay the fine, and, where the justice is of the opinion that the defendant is unable to pay the amount of the fine that the justice would otherwise impose, the justice,
notwithstanding this or any other Act, may impose a fine in a lesser amount he considers appropriate" (Section 78). If a person fails to pay a fine in accordance with an order to pay at once or in installments notwithstanding any other provision of the Offence Act, any other Act, regulation, municipal bylaw or order, "no justice shall, except under the Small Claims Act, order that a person be imprisoned by reason only that he defaults in paying a fine" (Section 72(1)). In other words, fines imposed under provincial statute offences in B.C., with the recent exception of some motoring offences, are proceeded with through civil enforcement should the fine not be paid.

3. The Use of the Fine in Canadian Provinces

Statistics Canada data on sentencing patterns in Canada were collected from 1963 through to 1973. After 1973 all provinces opted out of reporting these data with the exception of B.C. and Quebec both of whom reported data only in 1978 and 1980. Since the purpose here is to assess the comparative frequency of the use of the fine in the provinces of Canada, data from 1963 to 1973 are reported.

Table 4 displays the proportion of indictable offences which received fines, institutionalization, and suspended sentences with and without probation between 1963 and 1973. As can be seen the most frequent disposition was imprisonment followed by the fine and probation. While the use of incarceration decreased over the eleven year period by 11%, the use of the fine increased by a comparable size.
TABLE 4

Sentences for Indictable Offences in Canada, 1963-1973 (%)

<table>
<thead>
<tr>
<th>Year</th>
<th>Suspended Sentence</th>
<th>Suspended Sentence</th>
<th>Fine</th>
<th>Institution</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>With Probation</td>
<td>Without Probation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1963</td>
<td>18.0</td>
<td>11.3</td>
<td>23.5</td>
<td>47.2</td>
<td>42,892</td>
</tr>
<tr>
<td>1964</td>
<td>18.6</td>
<td>11.6</td>
<td>24.1</td>
<td>45.7</td>
<td>42,097</td>
</tr>
<tr>
<td>1965</td>
<td>19.8</td>
<td>10.3</td>
<td>26.4</td>
<td>43.4</td>
<td>41,832</td>
</tr>
<tr>
<td>1966</td>
<td>18.7</td>
<td>12.5</td>
<td>28.0</td>
<td>40.8</td>
<td>45,670</td>
</tr>
<tr>
<td>1967</td>
<td>18.8</td>
<td>12.7</td>
<td>28.0</td>
<td>40.8</td>
<td>45,703</td>
</tr>
<tr>
<td>1968</td>
<td>13.9</td>
<td>15.4</td>
<td>28.1</td>
<td>42.6</td>
<td>38,609</td>
</tr>
<tr>
<td>1969</td>
<td>21.6</td>
<td>10.2</td>
<td>28.5</td>
<td>39.7</td>
<td>38,008</td>
</tr>
<tr>
<td>1970</td>
<td>24.6</td>
<td>7.8</td>
<td>31.6</td>
<td>36.0</td>
<td>45,880</td>
</tr>
<tr>
<td>1971</td>
<td>24.6</td>
<td>7.0</td>
<td>32.7</td>
<td>35.7</td>
<td>47,874</td>
</tr>
<tr>
<td>1972</td>
<td>24.4</td>
<td>7.6</td>
<td>33.2</td>
<td>34.8</td>
<td>45,614</td>
</tr>
<tr>
<td>1973</td>
<td>23.5</td>
<td>5.8</td>
<td>34.3</td>
<td>36.4</td>
<td>39,757</td>
</tr>
</tbody>
</table>

Average 20.3 10.4 28.4 41.0 42,717


To enable comparisons between provinces and over time, Tables 5 and 6 present the proportion of sentences imposed in eight provinces where data were available during 1963 and ten years later during 1973. As can be seen, Saskatchewan and B.C. utilized imprisonment more frequently than any other province in 1963 and both have low proportions of fines imposed. Prince Edward Island (P.E.I.), however, used the fine least frequently. New Brunswick had the highest proportion of fines imposed. In 1973, these differences altered fairly dramatically. B.C. and Nova Scotia increased their use of the fine by 67% and 56% respectively (from 21% to 35% in B.C. and from 25% to 39% in Nova Scotia). Saskatchewan, P.E.I., and Newfoundland decreased their use and the remaining provinces increased the use of the fine somewhat.

There are a number of possible explanations for these disparities in sentencing across jurisdictions and over time. The increased use of
probation as a rehabilitative sentence began to be generally accepted and more frequently used during this time period. Whether this was due to the cost-efficiency of community-based surveillance or to the perception of probation as more humane is unclear. Similarly, the increased use of the fine and the decreased use of imprisonment may also have resulted from economic considerations or the justice systems' perception that the public's demand for harsh sentencing had diminished. Whatever the reasons, it is clear that inconsistent sentencing across Canada, for similar offences, results from provincial authority to respond to crime as each province sees fit. This, in no small way, likely reflects the community's mood of punitiveness or leniency as perceived by the respective justice systems across Canada and over time.

**TABLE 5**

**Distribution of Sentences for Indictable Offences by Selected Provinces, 1963 (%)**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspended</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentence</td>
<td>9</td>
<td>11</td>
<td>19</td>
<td>7</td>
<td>13</td>
<td>13</td>
<td>34</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>Probation</td>
<td>15</td>
<td>11</td>
<td>16</td>
<td>24</td>
<td>16</td>
<td>22</td>
<td>0</td>
<td>20</td>
<td>16</td>
</tr>
<tr>
<td>Fine</td>
<td>21</td>
<td>22</td>
<td>25</td>
<td>24</td>
<td>30</td>
<td>25</td>
<td>16</td>
<td>28</td>
<td>24</td>
</tr>
<tr>
<td>Institution²</td>
<td>55</td>
<td>56</td>
<td>41</td>
<td>45</td>
<td>40</td>
<td>40</td>
<td>50</td>
<td>40</td>
<td>45</td>
</tr>
</tbody>
</table>

**Number of Convictions³**: 5857 1869 2187 14778 1283 1516 64 872 28426

1. The provinces of Alberta and Quebec have been excluded since they record their data differently and did not submit it to Statistics Canada.

2. This category includes provincial jail sentences of less than two years and federal penitentiary sentences of two years or more.

3. This number excludes death sentences meted out in 1963.

TABLE 6

Distribution of Sentences for Indictable Offences by Selected Provinces, 1973 (%)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspended Sentence</td>
<td>5</td>
<td>14</td>
<td>12</td>
<td>5</td>
<td>9</td>
<td>2</td>
<td>9</td>
<td>15</td>
<td>9</td>
</tr>
<tr>
<td>Probation</td>
<td>20</td>
<td>26</td>
<td>22</td>
<td>25</td>
<td>19</td>
<td>24</td>
<td>27</td>
<td>14</td>
<td>22</td>
</tr>
<tr>
<td>Fine</td>
<td>35</td>
<td>15</td>
<td>29</td>
<td>37</td>
<td>33</td>
<td>39</td>
<td>9</td>
<td>26</td>
<td>28</td>
</tr>
<tr>
<td>Institution</td>
<td>40</td>
<td>45</td>
<td>37</td>
<td>33</td>
<td>39</td>
<td>35</td>
<td>54</td>
<td>45</td>
<td>41</td>
</tr>
<tr>
<td>Number of Convictions</td>
<td>8491</td>
<td>2225</td>
<td>2789</td>
<td>23408</td>
<td>993</td>
<td>1891</td>
<td>33</td>
<td>527</td>
<td>40357</td>
</tr>
</tbody>
</table>


4. The Use of the Fine in B.C.

There are two sources of data to examine the use of the fine in B.C.: Statistics Canada data from 1963 to 1973 on indictable and summary offence convictions and B.C. Court Services data from 1976 to 1984. The B.C. Court data are not strictly comparable with the Statistics Canada data since the former do not group by indictable versus summary offences but by offence type.

Table 7 shows the percentage breakdown of the various types of sentences imposed for indictable offence convictions from 1963 to 1973. As can be seen, the use of the fine remained relatively stable from 1963 to 1969 and then increased fairly steadily to constitute 35% of the sentences imposed for indictable offences in 1973. Institutional sentences represented approximately 50% of all sentences up until 1970 when this proportion dropped to around 40%. Probation sentences also
increased in frequency by 1970. It is likely that those types of
offenders who, previous to 1970, received jail sentences began to
receive a fine or a probation order subsequently.

In Table 8 the fine is clearly the most frequent disposition for
summary offence convictions even when provincial statute and municipal
bylaw and parking offences are excluded from the data. The percentage
of fines ranged from 71 to 80% over this eleven year period with little
fluctuation.

<table>
<thead>
<tr>
<th>Year</th>
<th>Suspended Sentence</th>
<th>Probation</th>
<th>Fine</th>
<th>Jail (under 6 mos.)</th>
<th>Jail (6-24 mos.)</th>
<th>Pen.</th>
<th>TOTAL(N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1963</td>
<td>9</td>
<td>15</td>
<td>21</td>
<td>23</td>
<td>23</td>
<td>9^2</td>
<td>5859</td>
</tr>
<tr>
<td>1964</td>
<td>11</td>
<td>18</td>
<td>21</td>
<td>21</td>
<td>22</td>
<td>7</td>
<td>6095</td>
</tr>
<tr>
<td>1965</td>
<td>12</td>
<td>18</td>
<td>23</td>
<td>20</td>
<td>20</td>
<td>7</td>
<td>5869</td>
</tr>
<tr>
<td>1966</td>
<td>14</td>
<td>17</td>
<td>23</td>
<td>21</td>
<td>19</td>
<td>6</td>
<td>6651</td>
</tr>
<tr>
<td>1967</td>
<td>17</td>
<td>16</td>
<td>22</td>
<td>19</td>
<td>19</td>
<td>7</td>
<td>7154</td>
</tr>
<tr>
<td>1968</td>
<td>18</td>
<td>8</td>
<td>23</td>
<td>23</td>
<td>21</td>
<td>7</td>
<td>6463</td>
</tr>
<tr>
<td>1969</td>
<td>14</td>
<td>13</td>
<td>23</td>
<td>27</td>
<td>17</td>
<td>6</td>
<td>7461</td>
</tr>
<tr>
<td>1970</td>
<td>5</td>
<td>25</td>
<td>28</td>
<td>23</td>
<td>15</td>
<td>4</td>
<td>9067</td>
</tr>
<tr>
<td>1971</td>
<td>2</td>
<td>25</td>
<td>30</td>
<td>24</td>
<td>14</td>
<td>5</td>
<td>9243</td>
</tr>
<tr>
<td>1972</td>
<td>3</td>
<td>23</td>
<td>33</td>
<td>22</td>
<td>14</td>
<td>5</td>
<td>9309</td>
</tr>
<tr>
<td>1973</td>
<td>5</td>
<td>21</td>
<td>35</td>
<td>19</td>
<td>15</td>
<td>5</td>
<td>8491</td>
</tr>
</tbody>
</table>

1. These figures are misleading since those serious cases "committed
for trial" in provincial court are heard in higher court where a
large proportion likely lead to a penentiary sentence.

2. Rows may not equal 100% due to rounding.

DATA SOURCE: Statistics of Criminal and Other Offences, 1963-1973,
Statistics Canada.
### TABLE 8


<table>
<thead>
<tr>
<th>Year</th>
<th>Suspended Sentence</th>
<th>Probation</th>
<th>Fine</th>
<th>Jail</th>
<th>Other</th>
<th>TOTAL (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1963</td>
<td>7</td>
<td>3</td>
<td>76</td>
<td>14</td>
<td>0.1²</td>
<td>14024</td>
</tr>
<tr>
<td>1964</td>
<td>9</td>
<td>3</td>
<td>74</td>
<td>14</td>
<td>0.2</td>
<td>14907</td>
</tr>
<tr>
<td>1965</td>
<td>9</td>
<td>4</td>
<td>73</td>
<td>14</td>
<td>0.3</td>
<td>15535</td>
</tr>
<tr>
<td>1966</td>
<td>10</td>
<td>5</td>
<td>71</td>
<td>14</td>
<td>0.4</td>
<td>17934</td>
</tr>
<tr>
<td>1967</td>
<td>8</td>
<td>3</td>
<td>73</td>
<td>15</td>
<td>1.0</td>
<td>18147</td>
</tr>
<tr>
<td>1968</td>
<td>9</td>
<td>3</td>
<td>72</td>
<td>14</td>
<td>2.0</td>
<td>18650</td>
</tr>
<tr>
<td>1969</td>
<td>6</td>
<td>3</td>
<td>72</td>
<td>15</td>
<td>4.0</td>
<td>21398</td>
</tr>
<tr>
<td>1970</td>
<td>6</td>
<td>5</td>
<td>77</td>
<td>11</td>
<td>1.0</td>
<td>26152</td>
</tr>
<tr>
<td>1971</td>
<td>2</td>
<td>5</td>
<td>78</td>
<td>11</td>
<td>4.0</td>
<td>29448</td>
</tr>
<tr>
<td>1972</td>
<td>3</td>
<td>4</td>
<td>77</td>
<td>11</td>
<td>5.0</td>
<td>26408</td>
</tr>
<tr>
<td>1973</td>
<td>no data</td>
<td>7</td>
<td>80</td>
<td>11</td>
<td>2.0</td>
<td>33743</td>
</tr>
</tbody>
</table>

1. This excludes Provincial Statute, Municipal Bylaw and Prohibited Parking Offences.

2. Rows may not equal 100% due to rounding.


Table 9 displays the proportion of sentences imposed in Provincial Criminal Courts from 1976-1984. In light of the trend toward the increased use of the fine in other jurisdictions, it is surprising to note that the proportion of fines has steadily decreased in B.C. by almost 17% from 1976 to 1984. Jail sentences have increased quite substantially, particularly in the last three years. Although the fine is still the most common disposition the decreased use may be a result of increased provincial "get tough", law and order policies prevalent in B.C. Tables 10 and 11 allow comparison of the proportion of sentences imposed by selected Criminal Code offences in 1979 and five years later, in 1983. With the exception of theft cases which were fined 5.6% more frequently in 1983 than 1979 all the offence categories received less
fines in 1983 than 1979. Nevertheless the average proportion of fines imposed varied only minimally with 46.1% of all Criminal Code convictions fined in 1979 and 45.5% in 1983. This consistent response to Criminal Code violations fails to explain the general decrease in the use of fines in provincial courts.

**TABLE 9**

B.C. Provincial Criminal Court Dispositions, 1976-1984 (%)

<table>
<thead>
<tr>
<th>Year</th>
<th>Discharge</th>
<th>Prob.</th>
<th>Fine</th>
<th>Jail</th>
<th>Pen.3</th>
<th>Other4</th>
<th>Total(N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>19761</td>
<td>5.4</td>
<td>8.5</td>
<td>68.8</td>
<td>12.0</td>
<td>0.2</td>
<td>5.25</td>
<td>73,389</td>
</tr>
<tr>
<td>1977</td>
<td>4.4</td>
<td>8.6</td>
<td>68.3</td>
<td>11.0</td>
<td>0.1</td>
<td>7.7</td>
<td>81,564</td>
</tr>
<tr>
<td>19782</td>
<td>4.5</td>
<td>11.2</td>
<td>65.7</td>
<td>12.0</td>
<td>0.1</td>
<td>6.6</td>
<td>39,298</td>
</tr>
<tr>
<td>1979</td>
<td>4.9</td>
<td>9.4</td>
<td>64.3</td>
<td>12.3</td>
<td>0.1</td>
<td>9.1</td>
<td>81,034</td>
</tr>
<tr>
<td>1780</td>
<td>3.7</td>
<td>10.3</td>
<td>63.8</td>
<td>11.6</td>
<td>0.1</td>
<td>10.5</td>
<td>89,818</td>
</tr>
<tr>
<td>1981</td>
<td>3.6</td>
<td>11.0</td>
<td>61.0</td>
<td>11.6</td>
<td>0.1</td>
<td>12.8</td>
<td>99,662</td>
</tr>
<tr>
<td>1982</td>
<td>3.6</td>
<td>11.1</td>
<td>56.3</td>
<td>16.1</td>
<td>0.1</td>
<td>12.9</td>
<td>99,367</td>
</tr>
<tr>
<td>1983</td>
<td>2.8</td>
<td>11.8</td>
<td>53.6</td>
<td>18.0</td>
<td>0.1</td>
<td>13.5</td>
<td>97,336</td>
</tr>
<tr>
<td>1984</td>
<td>2.8</td>
<td>12.1</td>
<td>52.3</td>
<td>18.8</td>
<td>0.1</td>
<td>13.9</td>
<td>91,175</td>
</tr>
</tbody>
</table>

1. Not all provincial courts were reporting to the central system in 1976 (estimated 96% coverage). By 1977 the reporting system was routinized.

2. Data were missing in 1978.

3. The penitentiary count is lower than what it is actually since many cases (2,000-3,000 per year) of a very serious nature elect to be tried in a higher court and outcome data are not available.

4. This category includes suspension of drivers' licenses and convictions of traffic violations "standing as is".

5. Rows may not equal 100% due to rounding.

DATA SOURCE: Court Management Information System, B.C.
### TABLE 10

B.C. Provincial Court Dispositions By Criminal Code Offence, 1979 (%)

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Discharge</th>
<th>Prob.</th>
<th>Fine</th>
<th>Jail</th>
<th>Pen.</th>
<th>Other</th>
<th>Total (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>17.4</td>
<td>22.6</td>
<td>42.0</td>
<td>17.3</td>
<td>0.0</td>
<td>0.7</td>
<td>1,873</td>
</tr>
<tr>
<td>B &amp; E</td>
<td>2.1</td>
<td>33.7</td>
<td>10.3</td>
<td>53.1</td>
<td>0.5</td>
<td>0.2</td>
<td>1,849</td>
</tr>
<tr>
<td>Fraud</td>
<td>9.7</td>
<td>30.8</td>
<td>24.5</td>
<td>35.0</td>
<td>0.1</td>
<td>0.0</td>
<td>2,371</td>
</tr>
<tr>
<td>Homicide</td>
<td>0.0</td>
<td>10.0</td>
<td>20.0</td>
<td>60.0</td>
<td>10.0</td>
<td>0.0</td>
<td>10</td>
</tr>
<tr>
<td>Motor Veh.</td>
<td>0.4</td>
<td>1.5</td>
<td>71.8</td>
<td>25.4</td>
<td>0.01</td>
<td>9.0</td>
<td>10,214</td>
</tr>
<tr>
<td>Poss-SP</td>
<td>10.9</td>
<td>25.9</td>
<td>24.4</td>
<td>38.7</td>
<td>0.2</td>
<td>0.0</td>
<td>1,094</td>
</tr>
<tr>
<td>Robbery</td>
<td>0.5</td>
<td>9.7</td>
<td>9.7</td>
<td>72.8</td>
<td>7.2</td>
<td>0.0</td>
<td>195</td>
</tr>
<tr>
<td>Sex Off.</td>
<td>16.2</td>
<td>28.8</td>
<td>26.6</td>
<td>27.0</td>
<td>0.7</td>
<td>0.7</td>
<td>278</td>
</tr>
<tr>
<td>Theft</td>
<td>20.9</td>
<td>27.7</td>
<td>30.5</td>
<td>20.9</td>
<td>0.01</td>
<td>0.01</td>
<td>6,764</td>
</tr>
<tr>
<td>Off. Weapon</td>
<td>11.3</td>
<td>28.0</td>
<td>34.4</td>
<td>26.1</td>
<td>0.2</td>
<td>0.0</td>
<td>582</td>
</tr>
<tr>
<td>Other C.C.</td>
<td>11.7</td>
<td>21.0</td>
<td>48.3</td>
<td>11.9</td>
<td>0.0</td>
<td>7.1</td>
<td>4,582</td>
</tr>
<tr>
<td>TOTAL</td>
<td>9.4</td>
<td>17.8</td>
<td>46.1</td>
<td>25.1</td>
<td>0.1</td>
<td>1.5</td>
<td>29,812</td>
</tr>
</tbody>
</table>

**DATA SOURCE:** Court Management Information System, B.C.

### TABLE 11

B.C. Provincial Court Dispositions
By Criminal Code Offence, 1983 (%)

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Discharge</th>
<th>Prob.</th>
<th>Fine</th>
<th>Jail</th>
<th>Pen.</th>
<th>Other</th>
<th>Total (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>10.8</td>
<td>30.1</td>
<td>34.8</td>
<td>22.8</td>
<td>0.5</td>
<td>1.0</td>
<td>2,320</td>
</tr>
<tr>
<td>B &amp; E</td>
<td>5.5</td>
<td>33.8</td>
<td>6.4</td>
<td>58.7</td>
<td>0.6</td>
<td>0.0</td>
<td>2,314</td>
</tr>
<tr>
<td>Fraud</td>
<td>4.5</td>
<td>32.0</td>
<td>22.2</td>
<td>41.0</td>
<td>0.3</td>
<td>0.0</td>
<td>2,535</td>
</tr>
<tr>
<td>Homicide</td>
<td>0.0</td>
<td>16.7</td>
<td>50.0</td>
<td>16.7</td>
<td>16.7</td>
<td>0.0</td>
<td>6</td>
</tr>
<tr>
<td>Motor Veh.</td>
<td>0.1</td>
<td>0.4</td>
<td>70.5</td>
<td>29.0</td>
<td>0.0</td>
<td>0.01</td>
<td>17,469</td>
</tr>
<tr>
<td>Poss-SP</td>
<td>7.4</td>
<td>24.5</td>
<td>23.8</td>
<td>43.9</td>
<td>0.5</td>
<td>0.0</td>
<td>1,518</td>
</tr>
<tr>
<td>Robbery</td>
<td>0.0</td>
<td>12.6</td>
<td>4.1</td>
<td>81.5</td>
<td>1.9</td>
<td>0.0</td>
<td>271</td>
</tr>
<tr>
<td>Sex Off.</td>
<td>8.3</td>
<td>34.7</td>
<td>22.4</td>
<td>32.1</td>
<td>0.4</td>
<td>2.2</td>
<td>277</td>
</tr>
<tr>
<td>Theft</td>
<td>11.4</td>
<td>30.2</td>
<td>36.1</td>
<td>22.2</td>
<td>0.03</td>
<td>0.02</td>
<td>10,197</td>
</tr>
<tr>
<td>Off. Weapon</td>
<td>7.8</td>
<td>31.1</td>
<td>30.4</td>
<td>30.4</td>
<td>0.1</td>
<td>0.1</td>
<td>740</td>
</tr>
<tr>
<td>Other C.C.</td>
<td>5.1</td>
<td>18.3</td>
<td>33.1</td>
<td>36.9</td>
<td>0.1</td>
<td>6.5</td>
<td>8,610</td>
</tr>
<tr>
<td>TOTAL</td>
<td>4.7</td>
<td>16.8</td>
<td>45.5</td>
<td>31.7</td>
<td>0.1</td>
<td>1.3</td>
<td>46,257</td>
</tr>
</tbody>
</table>

**DATA SOURCE:** Court Management Information System, B.C.
Tables 12 and 13 display the distribution of Provincial Court dispositions in 1979 and 1983 respectively by major offence groupings: Provincial Statute and Municipal Bylaw offences which include disputed traffic offences, Federal Statute offences, drug offences, and Criminal Code offences. Here we can see that while all categories were fined less in 1983 compared with 1979, with the exception of drug offences, it is provincial statute and municipal bylaw offences which demonstrate the largest decrease in the use of fines from 72% in 1979 to 59% in 1983. This variation is said to result from far more punitive responses to motoring offenders who were jailed, placed on probation or received other dispositions more frequently in 1983.

**TABLE 12**

B.C. Provincial Court Dispositions by Offence Category, 1979 (%)

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Discharge</th>
<th>Probation</th>
<th>Fine</th>
<th>Jail</th>
<th>Peniten.</th>
<th>Other</th>
<th>Total(N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prov/Mun.</td>
<td>0.5</td>
<td>4.7</td>
<td>71.8</td>
<td>0.9</td>
<td>0.0</td>
<td>22.2</td>
<td>31,550</td>
</tr>
<tr>
<td>Federal Stat.</td>
<td>1.9</td>
<td>3.7</td>
<td>89.5</td>
<td>4.9</td>
<td>0.0</td>
<td>0.0</td>
<td>1,982</td>
</tr>
<tr>
<td>Drugs-Federal</td>
<td>17.4</td>
<td>8.5</td>
<td>63.9</td>
<td>10.1</td>
<td>0.1</td>
<td>0.0</td>
<td>5,163</td>
</tr>
<tr>
<td>Criminal Code</td>
<td>9.4</td>
<td>17.8</td>
<td>46.1</td>
<td>25.1</td>
<td>0.1</td>
<td>1.5</td>
<td>29,812</td>
</tr>
</tbody>
</table>

DATA SOURCE: Court Management Information System, B.C.

**TABLE 13**

B.C. Provincial Court Dispositions by Offence Category, 1983 (%)

<table>
<thead>
<tr>
<th>Offence Groupings</th>
<th>Discharge</th>
<th>Probation</th>
<th>Fine</th>
<th>Jail</th>
<th>Peniten.</th>
<th>Other</th>
<th>Total(N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prov/Mun.</td>
<td>0.2</td>
<td>6.6</td>
<td>59.4</td>
<td>4.6</td>
<td>0.0</td>
<td>29.2</td>
<td>43,694</td>
</tr>
<tr>
<td>Federal Statute</td>
<td>3.1</td>
<td>6.3</td>
<td>83.1</td>
<td>7.5</td>
<td>0.0</td>
<td>0.0</td>
<td>1,709</td>
</tr>
<tr>
<td>Drugs-Federal</td>
<td>6.6</td>
<td>12.2</td>
<td>67.2</td>
<td>13.9</td>
<td>0.02</td>
<td>0.0</td>
<td>5,676</td>
</tr>
<tr>
<td>Criminal Code</td>
<td>4.7</td>
<td>16.8</td>
<td>45.5</td>
<td>31.7</td>
<td>0.1</td>
<td>1.3</td>
<td>42,257</td>
</tr>
</tbody>
</table>

DATA SOURCE: Court Management Information System, B.C.
It should be noted that the foregoing does not provide a full picture of the use of the fine in B.C. for reasons related to the methods by which the Courts record information. First, there are a vast number of offenders who are ticketed for traffic violations and no routine system yet exists to monitor the level of this activity nor the payment of these fines. Police records show that for 1984, 325,487 motoring offenders received tickets for traffic violations. Court registries throughout the province receive copies of these tickets and monitor their payment. Offenders have the right to dispute these tickets in provincial court or to voluntarily pay the $35.00 penalty. The vast majority (an estimated 89%) pay the fines and therefore having not appeared before the courts are not "counted" by the Courts management information system. The numbers of parking violators and municipal bylaw violators also are not reported by any management information system and again the vast majority of the 530,335 parking violations and 23,772 municipal bylaw violations in 1984 simply are paid.

A further reason why the Court reported volume of fines imposed is an incomplete picture of the actual number of fines is due to Court Services' technique of entering only the most serious disposition into their management information system in the following order of seriousness: jail, fine, probation, and other. The fine may be a secondary disposition and this information is not generally available. However, a special computer run was undertaken on Provincial Statute, Motor Vehicle Act offences during 1982 which resulted in a jail sentence or hybrid sentence. For those 1,623 offenders who received a jail sentence, it was found that 53.1% (N=862) were jailed only, 38.2%
(N=620) were jailed and also fined, 6.4% (N=104) also received a fine and probation, 0.9% (N=15) were jailed, fined, placed on probation and had their license suspended, and 1.4% (N=22) were given probation as well as a jail sentence. The high proportion of those who were fined as well as incarcerated may be peculiar to this offence category. The most that can be said is the fine is used even more extensively than believed.

(i) The Amount of Fines

No central source of information on the amounts of fines levied in B.C. exists. The only information available is that provincial statute driving offences can result in a $35 fine if the offence is equipment-related (e.g., no brake lights) or if it is a moving violation (e.g., speeding) and the driver is a non-resident of the province or cannot produce a valid drivers' license; otherwise points are assigned for moving violations to the license record and penalties may be assessed when the driver renews insurance. Recent amendments to the Motor Vehicle Act and the Offence Act, once in force will alter the types of offences subject to fines and the fine likely will increase to $75.

An unpublished survey of impaired driving, fine defaulters is the only other source of information on the amounts of fines imposed (British Columbia, 1978). This survey revealed that the amount of the fines for those 34 offenders charged with Section 234 of the Criminal Code (driving while impaired) ranged from $100 to $750 with the average fine equalling $395 and the most frequent $500. Those 33 offenders charged with driving over .08 were fined amounts ranging from $100 to $1,000, the average fine being $441.
D. THE FINE AS AN ALTERNATIVE TO PRISON

Many countries (e.g., Sweden, Finland, Denmark, and West Germany) have begun to consider the use of imprisonment only as a means to protect society from the most serious and dangerous offenders (Newton, 1981). Criminal justice systems in these countries introduced as a goal the reduction of the number of inmates in institutions and the length of their jail sentences. There are a number of plausible reasons why reduced inmate populations is desirable including:

1. the belief that incarceration is inhumane,
2. the realization that incarceration is not an appropriate environment for rehabilitation, and
3. the cost of housing inmates is increasingly prohibitive.

These are the very reasons why Sweden is seeking to reduce its prison population:

In Sweden, short term imprisonment is nowadays considered to be an inappropriate sanction from the social, ethical and economic points of view (Thornstedt, 1975:312).

Achieving the goal of reduction of prison populations requires thought about alternatives to prison. Although contemporary sentencing theories such as reparation, as expressed through community service orders, are emerging to compete for use in place of prison sentences the traditional fine seems more often the preferred alternative. In Sweden, "[l]egislatively, a concerted effort is being made to replace imprisonment with fines ... (Newton, 1981:134).

Imprisonment for careless driving has been abolished in Sweden and the fine substituted, similar legislation is being examined for the offence of drinking and driving (Thörnstedt, 1975).
The use of the fine continues to rise sharply in Sweden while prison admissions dropped 25.5% from 4,700 in 1969 to 3,500 in 1975 (Newton, 1981:135-136). Similarly, Finland stresses the use and effectiveness of fines as a substitute for imprisonment (Newton, 1981:137). In Denmark fines are now used for offences for which jail was previously obligatory (Newton, 1981:137).

This trend away from the use of prisons is not so apparent in Canada or the United States. Prison populations in both countries are either continuing to increase (by 6% in the U.S.) or are remaining stable as in B.C. (Criminal Justice Newsletter, 1984:1). The U.S. is continuing to experience prison overcrowding which ranges from 2-17% in state prisons and 5-31% in federal prisons and some states are releasing prisoners outright from local jails as a result of this congestion (Criminal Justice Newsletter, 1984). Nevertheless, state policy on alternatives to prison is negligible.

In the Netherlands jail sentences are scorned upon so much that most offences will receive a fine while relatively minor offences will be dismissed entirely. A jail sentence is contingent on the availability of bed space since no "double celling" or overcrowding is allowed. "Walking convicts" sentenced to jail await a bed. In 1975, 14,000 such convicts were granted 14 days amnesty. Of the total, 6,000 had sentences of 14 days or less and never had to fulfill their sentences (Newton, 1981). No civil outcry against this amnesty has been recorded.

England has used non-custodial sentences since the late nineteenth century. Fines, probation and conditional discharges have all been used as alternatives to prison. Community service orders were introduced in
the Criminal Justice Act of 1972 (Newton, 1981) and are used also as an alternative to prison. Magistrates in England report they are under pressure from government to prevent overloading the prison and probation services (Carter and Cole, 1979).

In Germany a strong motivating factor to increase the use of fines and substitute them for sentences of less than six months was due to pressure on prison capacity (Albrecht and Johnson, 1980:7). Judges were instructed to use fines in place of short term imprisonment in Germany (Albrecht and Johnson, 1980).

E. IMPEDIMENTS TO THE USE OF THE FINE

The increased role of fines has been ignored for the most part in the U.S and Canada (even though the latter uses the fine quite extensively) due in part at least to the competing interest in restitution and compensation. Interest in restitution and compensation has arisen largely because of increased concern over the previously forgotten victim of crime. The argument is that rather than the victim seeking redress civilly, the state should ensure that the victim is compensated either by the judiciary ordering: a) restitution whereby the offender restores to the victim the goods or money taken, or b) victim compensation whereby the offender compensates the victim in kind for damages. A third alternative is state compensation whereby the victim applies and, if eligible, is paid damages from a state fund.

The continued use of the fine is seen as a threat to court-ordered compensation since the fine diminishes the offender's resources and the possibility of victim compensation (Wasik, 1978). Moreover, it is questioned whether the state has a priority claim (e.g., through a fine)
over the individual victim (e.g., through restitution) (Samuels, 1970). To reconcile the desire for restitution, as an aid to victims, and the extended use of the fine, it has been suggested that the fines collected be placed within a fund for victims.

California began a compensation scheme in 1965 and by 1982, 7,741 victims of violent crimes received 18.3 million dollars (the average settlement equalled $2,400) in one year. The victims' out-of-pocket expenses, missed work, loss of job, job retraining and uninsured medical bills are covered to a maximum of $23,000 per victim (Criminal Justice Newsletter, 1983). Over thirty-five states in the U.S now have some form of victim compensation. Although the policies differ somewhat in terms of what costs and victimizations are eligible for compensation, and how the funds are subsidized (e.g., from state general revenue, surcharges on all offenders, or fines) the main intent so far has been to compensate the victims of violent crimes for financial losses, medical care, and loss of income. Few schemes cover pain and suffering and loss of property. Over 30 million dollars was expended in 1978/79 in 27 of these 35 U.S. states (Vallieres, 1982).

In an effort to reinstate the principle of victim compensation in England, the issuance of orders was consolidated in The Criminal Justice Act of 1972 (Wasik, 1978). The courts' use of compensation orders subsequently revealed a lack of consistent use of them in England. There is no evidence magistrates gave priority to victim compensation over other dispositions such as the fine and imprisonment (Wasik, 1978). The use of compensation orders was seen as problematic when offenders lack resources or are imprisoned and deprived of an income and this may
frustrate the magistrates' use of the orders. Wasik recommends therefore that the source of victim compensation be state compensation boards which eliminates sole dependence on the offender to provide compensation. Offenders ordered to pay compensation would see their funds diverted into a general fund dispensed by these review boards.

B.C. currently also has available state-funded compensation to victims. The Workers Compensation Board administers the Criminal Injury Compensation Fund which is very similar to the schemes in the U.S. Here, however, the government funds the scheme entirely from general revenue.

In Canada while the fine can stand alone as a penalty, restitution or compensation currently is ordered only as part of a probation order. The provisions for restitution or compensation are not used frequently and often are considered only to save the victim the expense of a civil suit to regain stolen property or receive compensation (Law Reform Commission, 1974a). Once Bill C-19 is proclaimed federally (it passed second reading on February 7, 1984) it will have a major impact on the Criminal Code of Canada including its sentencing provisions. Restitution which includes "special" and "punitive" damages for both property damage and bodily injury could then be imposed as a separate sanction. The prescribed maximum for punitive damages is $2,000 for a summary offence and $10,000 for an indictable offence. Special damages could include loss of income arising out of the offence. There is a further provision for restitution to be made in the form of unpaid work for the victim. Failure to pay restitution can result in a garnishment
order, seizure of property or imprisonment for not more than six months for a summary offence or two years for an indictable offence. Once this Bill comes into force it is expected to overcome the reluctance, on the part of the judiciary, to use restitution as part of a probation order since it is seldom used now (Law Reform Commission, 1974a). However, if the real reason for the judiciary's reluctance to use restitution is due to the need to assess claims and incorporate civil procedures into the criminal trial process, as believed by the Law Reform Commission of Canada (1974a), then restitution will continue to be an under-utilized sanction.

There are significant doubts about the legitimacy of compensation schemes and the state's obligation to victims (Davidson, 1965; Von Hirsh, 1983). It is argued that the state makes no legal promise to protect everyone, all the time, from criminal injuries. Rather, it attempts to keep the peace and crime to a minimum (Law Reform Commission, 1974a:18). At most, the state may be under a moral obligation to provide compensation.

Von Hirsh (1983) has argued the institution of the criminal sanction above all stresses condemnation of criminal behaviour. Other values such as compensation or reconciliation are not given precedence. He goes on to contend:

It is unfair, once one has the institution of punishment, to shift in an eclectic fashion between condemnatory and non-condemnatory responses: to compensate when the perpetrator is capable of paying, or mediate when the parties are prepared to talk to each other, and punish when neither compensation nor mediation is feasible (Von Hirsh, 1983:60).
Von Hirsh argues either one has a nonpunitive response for the whole universe of behaviour which criminal sanctions now deal with, or such responses are limited to behaviours which are removed from the field of criminal justice. Nevertheless, he believes, failing to condemn victimizing scarcely seems a morally adequate response to the "wrongs" committed.

A sanction which embodies blame is a general statement of wrongfulness, of moral disapprobation, and usually is seen as punishment. Re-introducing compensation into the arena of criminal law affects the general aims of the system as well as the message it intends to impart to the offender and the community in general. Contrary to what many believe, including the Law Reform Commission of Canada (1974a), it is not "obvious and natural" to incorporate compensation into the criminal justice sentencing process. To do so requires major re-thinking of the distinction which has arisen over the last few centuries between tort or civil law and criminal law. The re-introduction of ancient notions of compensation would require compensation to be considered a coercive measure administered by the state, and unless support can be garnered from the judiciary, which there is no indication it can be, it will remain an un-used sanction (Stenning and Ciano, 1975).

F. SUMMARY AND CONCLUSIONS

As is apparent the amount of information on the use of the fine in various jurisdictions ranges from minimal to fairly extensive. Nevertheless, some comparisons can be made on sentencing patterns within and across countries. It should be noted, first, however that many factors serve to confound comparisons:
1. the types of deviant behavior which are criminalized vary, as do legal definitions. One can, however, fairly safely compare offence types such as theft and robbery which are criminalized similarly in all industrial democracies (Gillespie, 1980), and

2. the existence of prosecutorial screening and plea-bargaining may skew the statistics.

With the exception of the United States, fines are the most common disposition for almost every offence except some crimes of violence in the countries reviewed. Fines are used almost always for traffic offences in all countries, including the United States.

The goal of substituting the fine for imprisonment is evident in some countries and arguably accomplished in Germany and Sweden (Gillespie, 1980; Newton, 1981). The practice of using fines as an alternative to imprisonment appears to have occurred far more frequently in these countries where there is both justice system support and public support for the reduction of rates of imprisonment. One reason for the lack of official policy to substitute fines for imprisonment in Canada and the U.S. may be attributable to the support given to the use of community and victim service orders and compensation as sentencing alternatives and the continued and frequent use of probation. An equally plausible reason is the North American attitude toward offenders and the responsiveness of the state to these attitudes. As noted, when offenders sentenced to jail in Denmark were given amnesty and did not fulfill their sentence, no public outcry about the "leniency" of the state was evident. North American society may not feel the revulsion expressed by citizens of the Netherlands toward imprisonment. If anything, pressure groups in Canada and the U.S. continue to demand
harsher responses to offenders, and the criminal justice system responds
to these demands by imprisoning offenders. Recent statistics from B.C.
demonstrate the increased use of jail sentences for the more minor
provincial statute offenders, most of whom are convicted of motor
vehicle violations. This "get tough" approach is apparent in new
policies being developed in B.C. on spouse assault and child sexual
abuse where the emphasis is on prosecution, incapacitation, and to a
far lesser extent, rehabilitation.

Decarceration and the substitution of fines for prison sentences
may diminish the legitimacy of the state in the eyes of law abiding
High crime rates and the mood of increased punitiveness create pressure
on the state to respond in a heavy-handed manner, or else have the
legitimacy of its control mechanisms questioned. Costs associated with
mounting prison populations, on the other hand, pressure the state to
reduce its fiscal burden by encouraging the use of alternative sentences
(Zedlewski, 1984). These problems are exacerbated when lobby groups
demand that victims receive high priority by the criminal justice
system. The solution to date, in B.C. at least, has been to encourage
community service, victim service, restitution, and compensation as
conceivable alternatives to jail and to increase the use of jail
sentences for motoring offenders. What remains to be seen, however, is
the means by which the justice system of B.C. can continue to finance
the increased costs of incarcerating these offenders in the current
economic climate of fiscal restraint.
The rationale behind the use of the fine and its expansion in some jurisdictions and contraction in others over time, can be understood generally within the context of the state's often contradictory functions of legitimation and accumulation and its attempt to balance the demands placed upon its resources. The following chapter describes the efficiency of the fine. From an administrative point of view the concern is whether bureaucrats find the enforcement of the fine efficient and effective. The fairness and economy of the fine and hence the legitimacy of the state can be called into question should the administration and enforcement of this sanction prove faulty.
CHAPTER 5

THE EFFICIENCY OF THE FINE: ENFORCEMENT ISSUES

The payment of a fine denotes the completion of the sentence and can be considered a measure of the fine's efficiency, and indirectly, its effectiveness. An unpaid fine or any incomplete sentence cannot conceivably achieve its aim. The question of fine enforcement and default is addressed separately due to the importance of this aspect of the sentencing process to the fine (Latham, 1973). The first section of this chapter describes the fine enforcement techniques utilized in various countries and evidence as to their effectiveness. This is followed by a fuller discussion of two major enforcement issues affecting the use of the fine, namely, imprisonment in default, and the utilization of a fine option scheme.

A. ENFORCEMENT METHODS UNDERTAKEN IN SELECTED JURISDICTIONS

1. England

There are no national, centrally collected statistics in England on the percentage of unpaid fines or the extent and effectiveness of enforcement (Carter and Cole, 1979). The letter of reminder, a summons to attend a means hearing where the amount of the fine or the terms of payment may be changed, a writ of committal or attachment of earnings orders all may be implemented to enforce payment. This latter technique was introduced in the Criminal Justice Act, 1967, which restricted imprisonment on default of a fine and endorsed new methods of enforcement (Morgan and Bowles, 1981).

If offenders can prove at the means hearing they have no resources nor have they had the resources to fulfill the sentence, they may not be
committed to prison in default (Latham, 1973). On the other hand, if it was found the defendant did have means, but none at the time of the inquiry, the defendant may be committed to jail. If genuinely unable to have paid the fine, the court has the power of remission or can order a supervisory payment order.

In a sample of 543 male offenders in Birmingham Magistrates Court, Sparks (1973) found that 43 (7.9%) offenders were given no time to pay their fines and 19 (3.5%) were imprisoned directly on other charges. Of the remaining 481 cases given time to pay, 97 (20.2%) had an alternative jail sentence fixed at the time of sentence and the remaining 384 (79.8%) did not. Of the 97 who had an alternative jail sentence, 14 (14.4%) paid, 26 (26.8%) absconded, 10 (10.3%) paid after a warrant of committal was issued and 47 (48.5%) were eventually committed to prison. Of the total group who had fixed jail sentences in the event of default, only 24.7% paid their fine at some stage of the enforcement process.

Of the 384 offenders in Sparks (1973) sample who had no fixed jail alternative, 222 (57.8%) paid their fine with no enforcement taken, 55 (14.3%) absconded, 8 (2.1%) paid after receiving a reminder letter, 23 (6.0%) paid after a show cause summons was issued, 37 (9.6%) paid after a warrant was issued to return to court, 6 (1.6%) paid at or after a means inquiry, 10 (2.6%) paid after a warrant of committal was issued, and 23 (6.0%) were committed to jail. Thus 79.7% of this group of fined offenders paid their fines with or without some form of enforcement short of imprisonment.
Sparks found that the highest rate of committal in default was for breaking and entering and larceny offences. He also found that the more prior offences, the more likely the offender would abscond or be committed to jail. The worst risks, as is evident, were those with a fixed jail sentence alternative. There was no tendency for offenders with larger fines to have higher rates of committal or of absconding. Motoring offenders and those convicted of violent offences had lower failure rates and tended to have fewer prior offences on their records while property offenders and alcohol related offenders had higher failure rates depending on their number of prior convictions.

In Manchester, enforcement officers are employed specifically to execute warrants in the fine default process. Latham (1973) found most fines are paid without the need for any enforcement or for only preliminary enforcement measures such as letters of warning. About 80% of all fines are paid "voluntarily" more or less within the time allowed. At least half of those who receive a final warning pay at that stage with a similar proportion paying once a warrant is issued. Of 7800 warrants executed in Manchester during 1972 for defaulters to attend court, 4800 (61.5%) resulted in forthwith payment. Latham (1973) speculated that the remaining 3000 required to attend court probably either could not or would not pay.

Latham (1973) found in an examination of 243 cases of committal upon default that the process secured payment in all 243 cases either immediately or within two to three days after arrival in prison. In this instance, Latham concluded that committal as an enforcement
Latham also found evidence that efforts are made by court staff in Manchester to assist those who cannot pay at all or in time. Therefore, he argues, firm action in the small number of cases where it is justified is an effective way of ensuring the fine's payment.

Softley (1973) examined the effects of sections of the Criminal Justice Act, 1967 which restricted the use of imprisonment of fine defaulters, endorsed new methods of enforcement by attachment of earnings and assets orders, and raised the maximum fine from 100 to £400 (since then it has been raised to £1000) in Magistrates Courts. By comparing a sample of offenders fined before the Act came into effect (N=1171) with a sample fined afterwards (N=1097), Softley found:

a) that the amounts of fines were very slightly larger than those imposed prior to the Act (48.5% were still fined up to £5 in 1968 compared with 53% in 1967),

b) the prison in default rate was reduced by one-third from 1.0% prior to the Act to 0.7% after the Act, and

c) the full promise of attachment of earnings orders was yet unknown (only 1 of a sample of 1097 offenders was subject to this measure in early 1968).

Beyond this, Softley's study showed that 10.3% of the fines levied in 1967 and 11.3% in 1968 remained unpaid nine months after the sentence was imposed. The highest proportion of offences for which no payment was made was for drunkenness, and the larger the fine the higher the proportion of defaulters. (This finding is contrary to Sparks' (1973) finding of no relationship between the amount of the fine and default rates.)
In both the year prior to the introduction of the Act and the year afterwards, the means warrant was the most frequently used measure of enforcement, followed by reminder letters. Fewer warrants of committal were granted as an enforcement technique in 1968 and there were less warrants of committal upon sentencing in the same year (1.1% versus 3.4% in 1967). Warrants of committal issued at sentence were all for offenders of no fixed abode in 1968, whereas prior to the Act there was a broader range of reasons used for immediate committal. Softley (1973) found no order to the methods used by the courts, some began with a letter of warning and others began with means summonses or warrants. Letters and means warrants were the most successful methods of enforcing full payment in 1968, while means summonses and means warrants were most successful in 1967.

In a later study, Softley (1978) examined once again the effectiveness of enforcement techniques. He found that only 39 (1.5%) of his sample of 2596 offenders were refused time to pay while the remaining 2557 were to pay by installments or in a specified time period. (Carter and Cole (1979) confirmed in a later study that fewer than 2% of all defendants fined are refused time to pay.) Warrants of committal for the group refused time to pay were suspended for 23 of the 39. Sixty-two (2.4%) had an alternative of imprisonment fixed at sentencing, most often due to the offender being of no fixed abode (although not all transients were given such an alternative). The entire sample were due to have completed payment within eighteen months, although the majority (71%) had due dates ranging from seven days to one
month. Seventy-seven per cent had paid their fines within eighteen months. Of those who paid, over half had technically defaulted in payment at some stage. Of the remaining 23%, 14% had not finished their payments and 9% had paid nothing.

Similar to Softley's previous study in 1973, the factors having the highest correlation with non-payment were the number of prior convictions and the sum of the fine. Of those offenders with no prior convictions, 89% completed payment, 77.4% of the offenders with one or two prior convictions paid, and 54.2% of those with three or more convictions paid. In terms of the sum of the fine and payment, 84.6% of those fined up to £25 paid, 79.3% of those with fines of £25 to £50 paid, 67.8% of those fined £50 to £100, and 45.0% of those with fines of over £100 paid. The employment status and income of offenders at the time of conviction was not closely related to the probability of default. This may be due, as Softley (1978) speculates, to the courts anticipating problems of collection for unemployed and low income groups and either not fining them or setting a small sum.

Enforcement action of some kind was taken once or more often against 47.9% of the 2596 offenders. The most frequent measures were reminder letters issued to 34.6% of this group and means warrants served to 64.8% of the sample. A warrant of committal which fixed an alternative jail sentence was granted for 341 or 27.4% of these defaulters, while 194 (15.6%) were issued warrants of committal. The effectiveness of the major enforcement actions taken, in some instances more than once, were as follows:
Slightly less than 5% (119) of the offenders eventually served a jail sentence for the default of their fine.

The offender's compliance with the payment of a fine rests in large part on the decisions and resources of court staff in administering and enforcing payment (Morgan and Bowles, 1981:213). Softley and Moxon (1982) found in a study of 125 fined offenders during 1981 that the key to effective enforcement was the speed of action taken with defaulters. The longer one waited before initiating enforcement action, the more difficult it was to locate the defaulter, let alone enforce payment.

Softley (1973; 1978) and Sparks (1973) found that although offenders on low incomes or unemployed are less likely to be fined or receive only small fines, there is evidence, nevertheless, that default is associated with real financial hardship. Softley (1978) mailed a questionnaire to 83% of his sample of 2596 fined offenders, seven to eight months after their sentence to determine how they had paid their fines. Seventeen per cent (368) of the sample responded. Three-quarters of these respondents said they had paid the fine, wholly or in part, from their current income, while 7% who had made full payment
received the money from someone else. Thirty-five per cent of the non-defaulters versus 8% of the defaulters paid some or all of the fine out of their savings. Seventy-eight per cent of the respondents said they had to reduce spending on certain items in order to pay the fine (e.g., shoes, clothing, food and entertainment) and of this group, 8% mentioned using money which would have paid rent and other bills. Of the defaulters, 78% said they put off payment of the fine to buy, in order of frequency, shoes, clothing, food, housekeeping needs, rent, bills, light, heat, and public transportation. In short, Softley (1978) concludes:

Defaulters were more likely than others to have economised on such items as food, housekeeping, rent and rates, whereas those who had paid on time were more likely to have used savings or economised on entertainment (p.29).

Caution should be exercised, however, when interpreting Softley's findings since his response rate was extremely low.

If offenders are not paying their fines for reasons other than poverty, one would expect payment, by all but a few, once the offender was committed to jail. This hypothesis was verified by Latham (1973) who found that of his entire sample of 243 offenders committed to jail for default all paid their fine either immediately, or within two to three days after admission to jail. Dell (1974) did not, however, find this to be the case in her examination of fine defaulters in 1972. More than 60% of 10,000 imprisoned defaulters served over half of their sentences prior to paying their fines and being released while 38% served all their sentence. Dell found that many of these offenders
had been refused time to pay and were without immediate means to satisfy their sentence.

This type of situation was to be addressed with the enactment of the Criminal Justice Act, 1967 which hindered the jailing of indigent offenders by compelling the courts to give offenders time to pay. Even prior to this Act, in 1914 the British parliament enacted a statute against the automatic imprisonment of fine defaulters and began the practice of payments by installments, time to pay, and consideration of the financial circumstances of the offender (Hickey and Rubin, 1971). Over time the number of people jailed for non-payment of fines decreased from 79,538 in 1913 to 12,497 in 1930 (Hickey and Rubin, 1971:419). Again, in 1935 magistrates were instructed to refrain from imposing prison terms in the event of default unless special circumstances such as the gravity of the offence warranted it. This change made it necessary for the offender to appear before the court a second time, upon default, if the prosecution desired to recommend imprisonment. The intention of these legislative changes and procedural guidelines was to reduce the number of imprisoned fine defaulters. Similarly, the introduction of payment supervision orders in 1952 whereby the offender is placed under the supervision of a probation officer until the fine is paid was to address concerns about the imprisonment of defaulters. Unfortunately all these measures have not eliminated the jailing of fine defaulters and the exceptions still specified, i.e., transients with no fixed abode who may immediately be jailed when fined, are often the very group who require time to pay even though they are seen as the worst risks by the courts.
Softley (1978) and Sparks (1973) both found that the committals to prison for fine default differ dramatically from one area of England to another. The estimated national committal rate for fine defaulters between the years 1950 and 1968 was 5% (Sparks, 1973). Following the introduction of the Criminal Justice Act, 1967 this rate decreased and was estimated at 0.6% during 1973 (Morgan and Bowles, 1981). There is evidence, however, that the rate has risen again to 1.0% or seventeen thousand admissions per year.

Evidence that fine defaulting is a growing problem at all stages of the enforcement process and the desire to substitute the fine for more serious penalties for increasing numbers of offences suggest that the problem of defaulting will continue to grow (Morgan and Bowles, 1981). In an attempt to address this problem the adoption of some variation of the Swedish day-fine was considered in England. This was thought to be a radical proposal which the Home Office felt would present practical problems of obtaining accurate "means" information. Morgan and Bowles (1981) argue that English legislators and policy makers did not do justice to the concept of the day-fine prior to discarding it and focussing on administrative economy as their foremost concern.

2. Scandinavian Countries

In Sweden and other Scandinavian countries, an administrative agency collects fines and is able to extend payments and allow for payment by installments. "Fines which are not paid can be converted to imprisonment" (Thornstedt, 1975:311, author's own emphasis). This
usually amounts to one day in jail for every day-fine not paid. However, a number of conditions must be met prior to such conversions. Evidence must be available that the day-fine has been adapted to the offender's ability to pay and the use of extensions of time and payment in installments has been exhausted. Even after conversion, the jail sentence may be suspended, but should offenders be committed, they are not able to buy their way out of prison (Thornstedt, 1975).

In 1967, 13.8% of 29,000 cases were referred back to the prosecutor for non-payment, of which 100 to 200 (0.3-0.7%) were admitted to prison (Law Reform Commission, 1974a). The ratio of fines to imprisonment is even lower now. Of 250,000 fines imposed in one year in the early 1970's, 130 cases (0.05%) resulted in imprisonment (Thornstedt, 1975). Further, Sweden claims the day-fine led to a 50% reduction in the number of fine defaulters imprisoned (Law Reform Commission, 1974a).

3. The Netherlands

In the Netherlands, time to pay and payment by installments is the normal means by which fines are paid (Steenhuis, 1979). If payment is in arrears a letter of warning is issued and the fine is increased by the equivalent of 10 to 12 U.S. dollars. If the initial letter is ignored, a second notice thirty days later is issued and the amount of the fine is increased by 20% of the original amount. Imprisonment is the last and most coercive measure to force payment with each £6 in default equalling one day in jail to a maximum of six months (Steenhuis, 1979).
4. West Germany

Enforcement procedures in Germany may involve the following steps: 1) a warning letter from the court clerk; 2) a civil court order requesting to seize and sell property; 3) garnishee of wages; and, 4) an order for imprisonment signed by the sentencing judge (Albrecht and Johnson, 1980). When the sentencing judge specifies the value of the fine, the number of days to be served in prison in default is also noted and for this reason a re-appearance of the offender before the court is not necessary. Payment of part of the fine reduces the length of the prison term and full payment means immediate release.

In almost 50% of the cases Albrecht and Johnson (1980) reviewed, the fine was paid in the specified time, a further 16% paid after receiving a letter of warning, 16% more required installment payments which they then completed, 2% were subject to compulsory collection (e.g., garnishee of wages), 11% paid when the order of imprisonment was issued, 4% went to jail, and a remaining 1% had not satisfied their fine five years after it was imposed. In other words, 95% paid one way or another short of being imprisoned.

Albrecht and Johnson (1980) found that court clerks would not press strongly for the payment of the fines. Rather, the clerks responded favorably to pleas for extensions and the authors speculate it is likely that those penalized were ignorant of their rights and incapable of managing this system. The authors go on to suggest that those people
who ultimately experience the harsher forms of enforcement, because of their incapacity to understand the system, are of low social status, unskilled, poor, and uneducated.

In practice, imprisonment of defaulters is rarely used in Germany. Of all admissions to jail, fine defaulters account for between 2.7 to 4.0% (Gillespie, 1980).

5. United States

Two studies show that 47 to 60% of offenders fined serve jail sentences in default in the United States (Columbia Law Review, 1971:1288). It is believed also that 40 to 60% of all offenders in county jails in the U.S. were fine defaulters in 1969 (Hickey and Rubin, 1971). These proportions are extremely high particularly in light of the infrequency of the use of the fine for offences other than motor vehicle violations. A further reason why it is surprising that the number of defaulters jailed is so high is that constitutional challenges have arisen over the legality of incarcerating defaulters (this is discussed in more detail in Chapter 8).

Little information is available about the enforcement of fines in the U.S. with the exception of the frequent use of imprisonment in default. Thirty-five states in the U.S. have "money-time exchange equations" to determine the number of days an offender will spend in jail if the fine is defaulted. This varies extensively, ranging from $1 to $20 per day and has changed very little over time (Reynolds and Rock, 1976).
6. Canada

If an offender fails to pay a fine in the time allotted, the court staff who monitor payments and administer enforcement typically have few options at their disposal. With the exception of B.C., which will be discussed later, no letters reminding the offender of the overdue fine or summonses to attend "show cause" hearings and explain why the fine has not been paid are used. Warrants of arrest and committal are the only options. An offender charged under a section of the Criminal Code of Canada or under most provincial statutes throughout the country will have specified an alternative jail sentence should the fine not be paid. It is also the practice of the courts to order some fines paid immediately and if this is not possible the offender may be jailed at once. As well, Section 646 (9) of the Criminal Code allows the accused to signify in writing that he or she prefers to be committed to jail rather than await the expiration of the time allowed to pay a fine. On such a request, the judge will issue a warrant of committal.

It is recognized that a major problem with the use of the fine in Canada is the legislated default provisions whereby a dollar amount for the fine is specified along with the number of days to be served in jail should the fine not be paid. As a result of this provision it is estimated that "... between one-quarter and one-half of short prison terms are handed out for fine defaults" (Liaison, 1983:30). In Saskatchewan during fiscal year 1970/71, 48.2% of all admissions to provincial jail consisted of defaulters (Law Reform Commission, 1974a:32).
In Halifax, Jobson (1970) found that 92% of the persons fined pay their fines and of the remaining 8%, approximately 25% are never located, 69% pay when the police serve the warrant, and 6% go to jail for fines often less than $50 in value. The Law Reform Commission (1974a) reported on 830 fines imposed for Criminal Code offences in 1971. They found that 76% of the fines were paid in time. Of the 199 offenders who did not pay their fines, 158 (79%) were issued warrants but only 81 (51%) of the warrants were executed. Of those executed, 73 (90%) resulted in payment and the remaining 8 (10%) defaulters were committed to jail. Thus, 118 or 14% of the original 830 offenders avoided enforcement, 85% paid immediately or after some enforcement and one per cent of the sample went to jail.

(i) British Columbia

In 1974, B.C. set a precedent in Canada by amending its Summary Conviction Act to disallow the imprisonment of persons convicted summarily by reason only that an offender had defaulted on a fine. Civil enforcement proceedings including letters of reminder and show cause hearings were to replace warrants of committal. No information is available on the efficiency of these measures in enforcing payment of fines imposed as a result of findings of guilt under provincial statute offences. It was generally believed, however, that the rate of sentenced admissions for fine defaulters which dropped to 21.7% of all admissions in 1976 compared with 31.5% the year prior to the amendment was a direct result of the amendment.
The proportion of fine defaulters within provincial jails continued to decrease from 1976 up until 1980/81 when fine defaulters represented 16.4% of the total admissions to provincial jails. Table 14 which shows the number and percentage of default admissions to sentenced admissions between fiscal years 1979/80 and 1983/84 demonstrates, however, that the proportion of fine defaulters once again increased after 1980/81 for the following two years and then decreased substantially to its lowest level in 1983/84.

**TABLE 14**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Sentenced Admissions</th>
<th>Total Default Admissions (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>79/80</td>
<td>7,032</td>
<td>1,153 (16.4%)</td>
</tr>
<tr>
<td>80/81</td>
<td>6,856</td>
<td>1,124 (16.4%)</td>
</tr>
<tr>
<td>81/82</td>
<td>8,401</td>
<td>1,579 (18.8%)</td>
</tr>
<tr>
<td>82/83</td>
<td>11,702</td>
<td>2,105 (18.0%)</td>
</tr>
<tr>
<td>83/84</td>
<td>12,470</td>
<td>1,616 (13.0%)</td>
</tr>
</tbody>
</table>

If one examines the default admissions separately, the actual number of default admissions rose by 40.5% from 1980/81 to 1981/82 and then again by 33% from 1981/82 to 1982/83 and has almost doubled (82.6%) between 1979/80 and 1982/83. The 23.2% decrease in 1983/84 over the year prior is considered encouraging by justice system administrators concerned about prison congestion and its associated costs in general and the imprisonment of defaulters in particular.

Of the 2,105 people imprisoned in 1982/83 for default, 211 (10%) paid their fines and were subsequently released while in 1983/84, of the 1,616 persons imprisoned, 225 (14%) were released upon payment of their
fines. This can be taken to mean that the remaining 1894 offenders in 1982/83 and the 1391 offenders in 1983/84 were either indigent or willfully refused to pay their fines.

The only other sources of fine enforcement information available in B.C. are unpublished reports of two surveys conducted in 1978 and 1979 of fine defaulters on Vancouver Island. The 1978 survey found that of the 633 sentenced admissions recorded over a five and one-half month period, 130 or 20.5% were fine defaulters. Upon release, 18 (14%) had paid their fine, 3 (2%) were still considered active cases, and 109 (84.0%) were released when their sentence expired. Of the 18 who had paid, 15 had served some time and therefore paid a pro-rated balance, and the remaining 3 paid the entire fine just prior to serving any of their time. These findings parallel closely the provincial proportions of fine defaulters and the percentage who pay their fines to secure release.

The 1978 survey examined in more detail files on 34 jailed defaulters who had been charged with impaired driving. The amount of the fines ranged from $100 to $750 ($\bar{x}$=$395) and the number of days to be served in default varied from 6 to 47 days with the average number equalling 23 days. The dollar value per day served ranged from $3.33 to $50.00 per day ($\bar{x}$=$22.70). The value of the total fines for these offenders was $13,430 and the total number of days to be served in default was 765. Taking into account one-third remission of the jail sentences for good behavior, 535 days would be served by these defaulters. A further sub-sample of 32 of the total files surveyed in
1978 revealed that only one person was ordered to pay forthwith and
and was subsequently imprisoned. Of the 25 offenders who were under 22
years of age or younger and who were to have mandatory means inquiries
prior to imprisonment for default as per Section 646(10) of the Criminal
Code, there was no evidence that such inquiries were conducted although
probation officers indicated they usually are undertaken.

The unpublished 1979 survey of offenders fined between January and
December of 1979 in Victoria, B.C., found that of 1,658 offenders fined,
65% were charged with alcohol related and/or driving offences. Ninety
per cent of the fines were for $500 or less and 90% received 30 days or
less as an alternative jail sentence in the event of default. Of a
smaller sub-sample of 855 fined offenders, 21.4% were found to have paid
their fine immediately prior to departing the court, a further 37.9%
paid more or less on time, 29.2% were still in the process of paying off
the fine, and 6% had defaulted completely.

A profile of fine defaulters in provincial institutions during
1983/84 was made available by the Corrections Branch of B.C. Of the
1,616 defaulters in prison that year, the majority (57.4%) were between
22 and 34 years of age. The remaining defaulters, less than 22 years of
age and 35 or older, were evenly distributed. The vast majority of
these defaulters were male (94.9%). While the majority of offenders
were non-Native (81.7%), Native offenders nevertheless appear to over-
represent the 5% of Native persons believed to reside in the province of
B.C. Only 34.3% of the defaulters had no previous formal contact with
the justice system. The remaining defaulters had either been in jail previously (59.7%) or had been on probation, or some other form of community based supervision.

Fifty-seven per cent of the defaulters were sentenced to between 1 and 14 days in jail, 34% had sentences ranging from 15 to 30 days and the remaining 9% were to serve between 31 and 720 days. Between 1 to 10 actual days were served by 70.3% of the defaulters, 24.3% served 11 to 30 days, and the remaining 9.4% served between 31 and 270 days.

The offences for which the defaulters originally were fined and subsequently committed to jail ranged from breaches of probation and shoplifting to serious sexual and violent offences. The percentage breakdown (which does not equal 100% due to rounding) is as follows:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Percentage (N=1616)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative (includes matters related to Family Relations Act, Maintenance, Customs, etc.)</td>
<td>3.0</td>
</tr>
<tr>
<td>Breach of Probation</td>
<td>2.3</td>
</tr>
<tr>
<td>Drugs</td>
<td>12.0</td>
</tr>
<tr>
<td>Motor Vehicle Related</td>
<td>49.3</td>
</tr>
<tr>
<td>Violent Offences Against Others</td>
<td>5.5</td>
</tr>
<tr>
<td>Property and Theft Offences</td>
<td>18.8</td>
</tr>
<tr>
<td>Public Order</td>
<td>8.9</td>
</tr>
</tbody>
</table>

Close to half the defaulters were convicted of motoring offences. Of this group, almost 90% were drinking and driving related offenders.

The discovery that a large proportion of jailed fine defaulters in British Columbia have been charged with impaired driving is not unusual as this type of offender continues to comprise the majority of jailed defaulters. Since 1974 there has been a "get tough" policy on
drinking and driving in B.C. As a result of this policy, law enforcement has been stepped up and the typical sentence for a first offence is a fairly large fine. Thus it is not surprising that as more offenders are charged with this offence and fined they would eventually make up a large portion of the default admissions to provincial institutions.

B. ENFORCEMENT ISSUES

1. Imprisonment in Default of a Fine

As evident in the preceding discussion, every jurisdiction has some provision for the imprisonment of fine defaulters. It may be used as a last resort in some countries and a routine in others. There are differences in the manner by which judges may specify the number of days to be served if the fine is defaulted. In England, magistrates have the choice of specifying the days at the same time the fine is imposed or later at a default hearing. In Canada and West Germany the days are almost always specified.

With the exception of Sweden and the Netherlands, no countries have clear guidelines on the dollar value of each day served. In fact, in some countries, Canada being no exception, the default time appears to bear no relationship to the value of time when, on average, one day can be served for every three to seventy dollars owed.

Specifying the number of jail days to be served if the fine is defaulted appears to confuse sentencing philosophy with administrative expediency. The fine supposedly is considered the appropriate penalty and the days in default are just one of a number of collection measures
available (Davidson, 1965). In practice, however, the courts are imposing what often amounts to an alternative sentence of imprisonment for the original fine (Hickey and Rubin, 1971).

Continued confusion about the role of imprisonment when a fined offender defaults on payment is exacerbated when some jurisdictions, but not all, allow the offender to buy his or her way out of prison which is in essence treating imprisonment as a collection procedure, while other jurisdictions deem the fine paid at the expiry of the jail term, and yet others, such as Sweden, do not release offenders regardless of whether they have the means to pay once committed to prison. Imprisonment therefore is seen to be both an alternative penalty to be chosen by the offender as in Canada, a collection tool, and an equivalent exchange of fine dollars for jail days (Columbia Law Review, 1971:1290).

A concern, expressed by those who administer fine enforcement, is that without any threat of imprisonment, even people who can afford to pay would not do so. It is postulated that if the threat of imprisonment is removed, the number of defaulters would increase since there is evidence that many only pay once the threat is wielded and the offender is on the way to jail (Justice of the Peace, 1979). The validity and generalizability of this concern is suspect. Information is lacking on why people feel obliged to pay fines or their attitudes toward payment with or without the threat of imprisonment. In B.C., where imprisonment for non-payment of most provincial statute offences is not enabled by legislation, it is estimated conservatively by criminal justice system officials that at least 70% of fines are paid
with no enforcement of any kind required and an additional 20% with enforcement measures undertaken, the remaining unpaid fines are either outstanding or written off. These fines may be fairly small in size (e.g., on average $35), but these findings are suggestive of the distinct possibility that payment of a substantial proportion of the fines imposed will be forthcoming in the absence of the threat of imprisonment. The payment rate will vary, of course, depending in part on the type of offence for which the fine was originally imposed and the type of offender fined.

When fine defaulters are jailed, the argument that fines avoid imprisonment becomes questionable, particularly in jurisdictions where some 12 to 60% of the imprisoned are fine defaulters. Jail becomes an equivalent to the fine when in fact this equation was not intended. Both serve deterrent purposes, but the similarity is to end there. For those who truly cannot pay under any scheme the state's deterrent interest can be upheld by other sanctions (e.g., the suspended sentence, see Bottoms, 1981). Accordingly, it is suggested that trial judges should "... be encouraged to be fair and sensible in their use of fines so that indigents can avoid imprisonment whenever a moneyed individual would be able to do so" (Columbia Law Review, 1971:1308). It is argued further that:

The state has more to gain than to lose if it cannot, or does not, imprison on default of fine. It accomplishes neither deterrence nor any other legitimate penal goal by imprisonment, and gains only the additional expense of maintaining the man in prison, and perhaps the satisfaction of having penalized the man in some way, whether or not it does any good (Hickey and Rubin, 1971:427-428).
As a result of the many problems associated with imprisonment for non-payment of fines, Wilkins (1979) recommends this be replaced by a criminal offence for persistently refusing or neglecting to pay a fine when one has the means to do so. It has also been suggested that the effect of non-payment should be determined only after the fine is in default (Hickey and Rubin, 1971). In this way the sanction is treated like any other sanction, if the fine is not fulfilled, the breach comes before the courts again and a new sentence is imposed. This approach which would prohibit the judiciary from specifying default days has been recommended in Canada as a simple means of reducing the rate of imprisonment for fine defaulters (Law Reform Commission, 1974a). Imprisonment becomes relegated to its proper role in the case of the fine - as the last of a number of enforcement measures invoked if the defendant has the means to pay, but wilfully disobeys the original sanction - the fine. Another suggestion intended to alleviate criticism of the fine when the poor are imprisoned in default is the implementation of a fine option scheme.

2. Fine Options

The fine option program has become of increasing interest to justice system administrators. The option is made available to persons unable or unwilling to pay their fines and may be offered at the post-default/pre- or post-incarceration stage or less often at the pre-default/post-disposition stage. Fine option programs are seen as a means to prevent disruption in the lives of defaulters, alleviate strain on correctional facilities, and generally are seen as a step towards
equal justice. Defaulters are able to perform work for a minimum wage which they receive in the form of cash payments turned over to the courts or a voucher submitted to the court clerk as proof of payment of the fine. Saskatchewan and Alberta, two provinces of Canada, are the only known jurisdictions which have introduced such a scheme.

Alberta implemented a fine option program in 1976 which is offered at the pre- and post-incarceration phase to fine defaulters. These programs were introduced after it was found that 40% of admissions to Alberta institutions were for non-payment of fines ranging from $10 to $3,600 and averaging $172. Sentences in default ranged from two days to two years with an average of 23 days served in default (Alberta Solicitor General, 1977). The options available include paid employment and cash payments of fines; community work and credit vouchers; treatment to assist drug, and alcohol related offenders; or a combination of the three.

In Calgary, Alberta, a fine option program for incarcerated defaulters is offered to those meeting the following eligibility criteria:

1. expressed interest in the program,
2. default time exceeds five days,
3. no outstanding warrants for arrest,
4. no security risk, and

The offenders are given temporary absences from prison and are able to work off their fines at a minimum wage rate doing community service work or at their own job, or a combination of the two.
In a study of 351 defaulters who expressed interest in the Calgary program, 235 (67%) were accepted and 218 (92%) of those accepted successfully completed the program. It was estimated that the cost of administering the program was minimal (although no actual estimate was provided) while it would have cost $85,000 to contain these defaulters in jail. The program generated 4,609 hours of community work and was responsible for $9,490 of fines being paid by offenders (Weber, 1977). These findings are taken as evidence that not only is the fine option program cost-effective but more in keeping with the aim of the fine - to avoid imprisonment of offenders.

The Saskatchewan court system found the incidence of default, at between 1 to 2% of all the fines imposed, negligible (Heath, 1979). The corrections system in this province, on the other hand, were reporting that 50% or more of all their admissions to institutions in some years were comprised of fine defaulters. It was found also that up to 75% of the jailed male defaulters were of Native Indian descent and 98% of the female, fine default population were Native Indians. Moreover, the majority of all defaulters were serving less than 15 days for relatively small fines. This situation was considered unacceptable and it was felt the best way to deal with defaulters unable or unwilling to pay their fines was through a fine option program.

The program began in 1975 and by 1979 had been extended to eight cities, 37 towns, and 44 Indian Reserves. The work performed is to be of actual benefit to the community without competing with unions or existing employees in the community. Credit for community service work
is equivalent to the minimum wage regardless of the skills of the offender or the nature of the work performed. It is estimated that a $50 fine that might carry with it two weeks in jail for non-payment would require about 20 hours of community work at a minimum wage of $2.50 in 1979. Participation in the program is voluntary and it is not used as a vehicle to impose treatment. Community organizations administer the programs and receive a fee-for-service for each placement (Heath, 1979).

The program originally was initiated at the default stage specifically so as not to affect fine revenue. Before a warrant of committal was issued, a form letter advised the offender that he or she was eligible for the program. This was seen as a cumbersome process by the court staff who had to refer defaulters to the agency. Therefore the availability of the fine option is now communicated, at the time of sentence, to all fined offenders given time to pay their fine. (It should be noted that the proportion of fined offenders not given time to pay their fines is quite high in Saskatchewan. In 1978, 34% of the defaulters incarcerated had no time to pay the fine and therefore would not have been eligible for the fine option.)

It is the offender's responsibility to choose the method for settling the fine and they must present the "Notice of Fine" to an agent by the default date. The court is then advised of this and the expected date of completion of the fine option becomes the new default date. This alteration in the administration of the program has not changed the overall profile of participants which includes a small proportion who
could afford to pay but may even have served the jail term if they felt a principle was involved in their refusal to pay (Heath, 1979). There is still some concern over loss of fine revenue although Heath (1979) noted it is not clear whether it is a valid concern. In 1977/78, 11 million dollars in fine revenues was collected while $400,000 or 3.5% of the total revenues were settled by the Fine Option Program and $24,000 worth of fines were written off. Heath also points out that some defaulters are still being jailed and the fine option program is obviously only a partial solution to this problem.

A fine option project was initiated on Vancouver Island, B.C., during 1979 and 1980. There were, however, problems which stymied the support and use of the option, not the least of which was judicial opinion that the program interfered with the sentence of the court and had no basis in legislation. In the proposed amendments to the Criminal Code of Canada (Bill C-19), section 650 of the Code will provide for a fine option alternative which will effectively remove this type of opposition.

C. SUMMARY AND CONCLUSIONS

The majority of offenders will pay their fines either on time, or more or less on time, with the use of civil enforcement procedures which fall short of imprisonment. This is as likely to be due to the judiciary selecting offenders who are the best risks for a fine as due to the efficiency of the fine per se. Vagrancy or drunkenness continue to be the types of offences for which a fine ultimately leads to
imprisonment as does the offender who has a history of prior convictions (Dell, 1974; Law Reform Commission, 1974a; Heath, 1979). At the same time, it is generally known that those alcoholic offenders committed to prison for non-payment of fines present a special social problem that no fine or similar sanction can respond to in the first place (Softley, 1973).

Payment demanded forthwith is still a practice of the courts in many jurisdictions and it is often imposed on the very people with no funds, e.g., transients of no fixed address, who then end up in jail (Softley, 1978; Sparks, 1973). Fine defaulters who eventually are imprisoned can be categorized as follows:

1. the principled defaulter who wilfully refuses to pay on the grounds of conscience,

2. the calculating defaulter who wilfully refuses to pay because deprivation of liberty is preferable to payment of the fine,

3. the negligent defaulter who had the means to pay but is a poor money manager or is as reluctant to pay a fine as to pay taxes or hydro bills, and

4. the indigent defaulter who simply is unable to pay (Justice of the Peace, 1979; Morgan and Bowles, 1981).

It is the last group in particular who, when imprisoned, call into question the efficiency of the fine and the fairness and justice of the system. The legitimacy of the state's control function is at issue when it is seen to be perpetuating "debtors prisons", a concept discarded in civil law as unjust, but not so in criminal law (see Chapter 8).

The costs associated with the enforcement of fines increase as enforcement increases. This becomes a financial problem to the justice system professionals who have limited resources to administer the system. The more vigorous the enforcement, the less cost-efficient the
fine. It is for this reason that outstanding fines will eventually be written off or fine option schemes will be supported. Since the cost of enforcing payment likely will exceed the revenue collected, particularly if offenders are jailed, and since non-enforcement may diminish the credibility of the fine and the system which imposes it, the enforcement of fines clearly is a pressing problem in the administration of criminal justice.

The effectiveness of a sanction can be measured indirectly by whether it was fulfilled. This is particularly the case with a monetary penalty and far less so with custodial and community-based surveillance sentences where sufficient control is exercised over offenders to minimize the rate of escapes and breaches of probation. For the fine, however, the material evidence of its fulfillment in the form of money is a requisite and it is this which presents problems to the indigent and to the justice system. In this sense only a collected fine can be regarded as an effective sanction (Carter and Cole, 1979). Effectiveness is assessed more directly, however, by determining whether the sanction deters offenders and the general public from committing offences either again, or in the first instance. This broader topic of the effectiveness of the fine is addressed in the next chapter.
CHAPTER 6

THE EFFECTIVENESS OF THE FINE

The effectiveness of a penal sanction is usually measured by the following:

1. recidivism: the percentage of offenders who re-offend after they have been apprehended and sentenced for an offence. Indirect measures of recidivism include enhanced self-image, vocational placement, and improved inter-personal relations; the argument being that these types of improvements lead to non-criminal behavior (Martinson, 1974).

2. offender attitudes: like the indirect measures of recidivism, the attitudes held by offenders about the sentence they receive are considered a means of assessing future behavior (Martinson, 1974).

3. public attitudes: the public's perception of the satisfactoriness of a sanction assures acceptance of the justice system's actions. A balancing of demands for law and order with humane and fair sentences is necessary to achieve the community's consensus (Blumstein, 1982).

There are other means to assess the effectiveness of a sanction. The efficiency and economy with which a sanction can be administered are critical measures of the sanction's utility to the bureaucracy and to the government in general. A sentence which is difficult or costly to implement detracts from its potential. This chapter, however, deals only with the effectiveness of the fine in terms of available research literature on recidivism and offenders' attitudes. No published research has been conducted on public attitudes, although a discussion of this measure will be presented utilizing a recent survey's unpublished results on the attitudes of the public toward drinking and driving offences in British Columbia. The preceding chapter was devoted
to the issue of the efficiency of the fine in terms of completion rates and enforcement and the next chapter will examine the economy of the fine as a social control technique.

A. **RECIDIVISM**

Probably the greatest controversy over the effectiveness of the fine compared with other sanctions in reducing or preventing recidivism centered around a Home Office study conducted in England which concluded, on the basis of a controlled, quasi-experiment, that imprisonment was the least effective sanction and fines the most effective in preventing recidivism. Those that supported the conclusions of *The Sentence of the Court* study, completed in the late 1960's, argued that "hard" evidence was provided to warrant the conclusions. Others, such as Bottoms (1973), criticized the methods employed and the claims made about the effectiveness of the fine. Bottoms (1973) argued that caution ought to be exercised in accepting the study's conclusions for the following reasons:

1. Those jailed may be worse risks than those discharged or fined, thus the latter sanctions are more successful because of their better intake. The type of person most likely fined is worth fining, i.e., they have jobs and fixed addresses, while those least likely to be fined are most likely to re-offend.

2. Even though one can control and match subjects to ensure comparable populations are subject to different sanctions, whether the variables matched are appropriate and exhaustive is questionable. The usual factors identified for matching include the age of the offender, the type of current offence, and the number of previous convictions, but there may be more subtle factors which affect recidivism which are not controlled for, e.g., family background, employment history, and gravity of offence.
Bottoms concluded that these criticisms of the fine's effectiveness in terms of recidivism need not imply that the fine cannot be advocated on the basis of other grounds, such as economy and humaneness.

After criticism of The Sentence of the Court's findings that the fine does not prevent recidivism any more or less than other sanctions, later work by Softley (1978) and Albrecht and Johnson (1980) nevertheless has demonstrated that fines may still be more effective than Bottoms (1973) and others believe (Carter and Cole, 1979).

Softley's (1978) analysis of a national sample of 3,240 offenders convicted summarily for burglary, theft, criminal damage, wounding and assault revealed that 34.2% of the sample were reconvicted within two years. Of those discharged, 31.8% were reconvicted, of those placed on probation, 47.2% were reconvicted, and of those who received suspended sentences, 49.5% recidivated.

The lowest reconviction rate was associated with fines - only 29 per cent of the offenders who were fined were reconvicted within 2 years - and the highest reconviction rate (65 per cent) was associated with imprisonment (Softley, 1978:7).

On the face of it this would imply the fine is the most effective deterrent. However, as Softley noted, the question is whether offenders sentenced to different dispositions are otherwise comparable.

Softley was able to assess the relationship of the number of previous convictions and the age of the offender to reconviction rates. He found reconviction to be highly correlated with the number of prior convictions (the percentage of first offenders reconvicted was 17%; 32% for those with one or two prior convictions; and 60% for those with three or more prior convictions). He also found that first offenders and those with one or two prior convictions who were 17 to 20 years of
age were significantly more likely to be reconvicted than those 21 years of age or older. Due to the small sample size, Softley then compared the reconviction rate of those fined versus those who received any other sanction controlling for the effects of prior convictions and age, and concluded that offenders fined, regardless of their age or prior criminal history, had a lower, albeit not statistically significant ($p<0.01$), rate of reconviction than the group sentenced to alternative dispositions, with the exception of fined offenders between 17 and 20 years of age with three or more prior convictions.

It was not possible in Softley's (1978) study to control for other factors, such as the employment status of offenders. Softley noted, however, that in the total sample unemployed offenders were more likely to be reconvicted than employed offenders (41% versus 30%), and suggests that although inconclusive due to the small sample size, reconviction rates were lower even for unemployed offenders who were fined. Softley concluded by cautioning:

However, it is by no means certain whether the apparent superiority of the fine in terms of reconviction is an effect of the fine itself or of unknown factors (Softley, 1978:9).

The fact that unemployed offenders and those with several previous convictions were less likely to be fined in the first place suggests that the judiciary are able to select for fining the better risks.

Albrecht and Johnson (1980) analysed 1972 data on 1,883 cases heard before the courts in Germany to compare the effectiveness of fines, probation, and short term jail sentences over a five year period. They found that the amount of the fine was not influential in determining reconviction rates. Traffic offenders who received day
fines were not superior to short term jail sentences, but no less effective in terms of preventing recidivism. First offenders fined were less likely to re-offend than those jailed. The group of offenders fined for petty property and theft offences had lower reconviction rates than those who received other sanctions when controlling for previous offence and type of offence. The authors concluded that fines were by no means the least effective sanction.

Gillespie (1980) reviewed Albrecht's and Johnson's study of reconviction rates of first offenders who were fined (16%) versus those imprisoned (50%) and concluded it provides some support for fining although only tentative since no further information was gathered on other characteristics of the offenders which may have affected the reconviction rates.

In a three-year, controlled study of traffic offenders in the United States it was found that educational dispositions such as having to attend drivers' school were more effective than the fine in controlling the rate of recidivism (Hickey and Rubin, 1971:424). This finding is not completely surprising and supports the contention that sentences should fit the offence.

In a study of public drunkenness in a skid row district in the United States it was found that the fine was a more effective deterrent than workhouse sentences. This study speculated that the threat of financial loss was more influential than that of incarceration in preventing reconviction. However, similar to the conclusion that drivers' education may be more fitting for some traffic offenders, it is
likewise suggested that fines are an irrelevant sanction for offenders with alcohol problems who instead should be diverted into medical treatment programs (Hickey and Rubin, 1971:424).

Kraus (1974) conducted a five year follow-up of the criminal careers of 65 male juveniles given fines and 65 given probation matching the offenders on age, offence history, and current offence. He found that first offenders on probation had significantly higher rates of recidivism than those fined.

Critelli and Crawford (1980) examined 65 court records in 1977 in a small community in Texas and found that fines were relatively ineffective in controlling subsequent crimes for first offenders compared with other dispositions such as probation, jail or a discharge. However, this finding about the effectiveness of the fine should only have been compared with the outcome of no court ordered sanction (i.e., a discharge) since the small sample size of those who received a jail sentence or a probation order rendered the findings unreliable. Further, there was no means to determine if those who received fines were comparable to those with no disposition. These authors overstate the case against fining, as their research is inadequate.

Studies which compare the rates of recidivism of various sanctions are often flawed methodologically. In some instances the experimental and control or comparison groups are not comparable having been matched on some, but not all of the appropriate characteristics which account for variance. Some studies do not have an adequate follow-up time frame
or sample size, others are more process oriented and as a result do not meet rigorous methodological criteria. Of the available studies, studies which compare recidivism among fines, imprisonment, probation, and suspended sentences, the results are mixed. Some studies report fines are no more effective than other sentences. Other studies report the fine is effective, particularly for the first-time offender.

B. ATTITUDINAL MEASURES

There are two means by which the attitudinal measure of effectiveness can be assessed: 1) the deterrent value of the fine, and 2) the attitudes of fined offenders. It has been argued that the threat of monetary deprivation has limited capacity to deter, depending in part on the nature of the crime. The fine alone may be an effective deterrent when the prime motive for crime is monetary and the fine exceeds the gain. We are nevertheless unable to assess its general deterrent value, i.e., the extent to which a fine prevents the commission of offences. The same is true of imprisonment and indeed of any sanction which aims in part to deter (Davidson, 1965).

As a rule, however, a fine is most efficacious where the offense is minor, the offender is rational, and monetary gain is at best a secondary motive (Columbia Law Review, 1971:1285).

Others argue that the fine can be used more extensively since its message is clear to the general population and to a large component of the offender population with the possible exception of violent, sexual, or drug addicted offenders:
In societies as obsessed with money as modern developed countries, where nine out of every ten crimes are crimes against property, surely the neatest most economical penalty consists in taking money away (Radzinowicz and King, 1979:314).

The argument goes that the fine can be considered to have a good deterrent function for the rational offender who wants to maintain his or her standard of living and not be deprived of income for the consumption of goods (Thornstedt, 1975). Hickey and Rubin (1971) put forth a similar suggestion:

... economic sanctions can have a great effect in a materialistic culture characterized by property crime and traffic offences (Hickey and Rubin, 1971:418).

On the face of it, these arguments have some merit. One's daily experience demonstrates the potent deterrent effect of fines on everyday life. Most people do not park in proscribed places because of the fear of a fine. Similarly, experience in B.C. with regard to recent seatbelt legislation which imposed $25 fines for not wearing a seatbelt, attests to the effectiveness of such sanctions on the motoring habits of the public. Whether or not consensus exists on the need for such legislation, vast numbers of drivers and passengers began to "buckle-up" to avoid apprehension and the fine. It is desirable, but not necessary to require surveys to confirm these facts of daily life. The following describes the limited available literature on the impact of a fine on offenders' attitudes and the attitudes of the public in general.

1. Offender Attitudes

Some critics suggest, since it only takes a few seconds of an offender's time to write a cheque, that the exchange of "money" is hypothetical, i.e., a transfer of numbers from one side of a ledger to
the other and the loss is not directly felt, therefore it does little in the way of punishing or deterring an offender (Critelli and Crawford, 1980:469). Whether this is the general perception held by fined offenders is simply unknown since there is limited information on the attitudes of fined offenders toward their sentence.

As mentioned, Softley (1978) mailed questionnaires to 83% of his sample of 2,596 fined offenders and received back only 368 completed forms. Although this is a very poor response rate some of Softley's results are suggestive. When responding to the question of whether they felt the amounts of the fines they were levied were fair, 59% of the respondents felt they had to pay too much, 38% felt it was fair, 2% thought it was too little, and 2% had no opinion. Two thirds of the returns from defaulters felt the fine, not surprisingly, was too high. These results indicate only that over a half of the respondents were dissatisfied with the amount of the sanction, not necessarily with the fine, and given the small response rate (17%) the findings should be treated with caution.

In a study which examined the attitudes of offenders toward community service orders in England, Thorvaldson (1978) compared these offenders with others who received a fine or a probation sentence. His purpose was to examine the offenders' perceptions toward their sentences in light of the sentence's major theoretical aim, e.g., deterrent or punitive (the fine), rehabilitative (probation), and reparative (community service). Thorvaldson conducted a quasi-experiment on a
sample of males, between 17 and 40 years of age, sentenced for the most part in Magistrates Court. The fined offenders were selected out of those who were fined £25 or more to avoid cases which involved trivial offences. This limitation in the selection of fined offenders undoubtedly biased his sample since it is known that the majority of offenders fined for even more serious cases received fines of under £30 (Softley, 1978), while the average fine in Thorvaldson's sample equalled £68.9 (N=42).

Thorvaldson's results showed, not surprisingly, given his selection criteria, that the fined group was different from the other two on the basis of the types of offences for which they were sentenced and the frequency with which fined offenders were sentenced in Crown Court (where cases of a more serious nature are heard). Nevertheless, he goes on to conclude that the fined subjects ranked lowest overall in terms of their attitudes toward their sentence and

... showed a good deal of resentment and sometimes even cynicism, bitterness or anger in their responses to the sentence (1978:226).

It would appear, that Thorvaldson was predisposed to disfavor the fine in light of his suggestion that fining offenders is "like treading in a mine-field" (1978:136). This perception that somehow fining can lead to an explosive situation among offenders makes little sense in light of the vast numbers of offenders who are fined on a day-to-day basis and who comply by paying their fines.
Thorvaldson also believed fined offenders would be more intimidated than those on probation or fulfilling a community service order and would feel forced to conform to their sentence. It is argued, however, that the payment or non-payment of the fine, since it is independent of supervisory control, would enable fined offenders to exercise more actual autonomy than, for example, probationers, who are more subject to the control exercised by their supervisors (Giddens, 1981). Indeed, Thorvaldson provides evidence of this when he reported that more fined offenders refused to cooperate with the study. Although he suggests this implies negativity on the part of fined offenders toward their sentence, there are alternative explanations which were not explored. The fined offenders were selected from court records with no assistance or mediation by justice system staff during the selection process. On the other hand, the probation sample was selected from current files and the officer approached the offenders to inquire whether they would participate. The community service group appears to have been selected from a list of current files and approached by the author or a supervisor either at the home of the offender, or at the worksite. In both the latter instances, these groups were still under court orders and some degree of surveillance was being exercised over their activities while the fined offenders (who may or may not have fulfilled their sentence) had much more freedom to refuse to cooperate. This can imply less negativity than the ability to chose freely whether to participate or not; the fined offenders were not a captive group of potential respondents.
The most that can be said about the attitudes of fined offenders is that they likely perceive their sentence as a form of punishment and may not have "liked" the punishment imposed. This could mean one of two things: either these offenders would avoid further conduct which would expose them to similar unsavory treatment, or the behavior for which they were punished if not perceived by them as unacceptable, enables them to continue to run into conflict with the law.

2. Public Attitudes

Public attitudes toward sentences of the courts can be assessed from two perspectives: 1) is the sanction an acceptable response to offenders as perceived by the law-abiding, and 2) does the sanction deter the general population from engaging in unlawful behavior?

Knowledge of the severity of penalties is a necessary, but not a sufficient condition for the deterrence of crime and the same can be said for the certainty of apprehension (Williams and Gibbs, 1981). However, a particular punishment does not necessarily have the same meaning to all people. Williams and Gibbs (1981) found that in a sample of respondents in Tucson, Arizona, many residents perceive a $10,000 fine as less severe than one year in jail, while others find it more severe. Grasmick and Green (1980) corroborated this finding and stated there is no reason to believe that individuals assume a penalty is of equal severity - a $100 fine is different to different people for various reasons and people will assess this potential cost against the gains of an illegal act differently. In other words, determining the deterrent value of a fine depends on more than the impact of the fine on
the finances of the potential offender. It is not simply a case of suggesting that a fine may not be a deterrent to those with wealth and a crushing burden to the poor.

The only other source of information available on public attitudes toward the fine comes for an unpublished, randomized opinion poll conducted in February of 1984 on public attitudes toward drinking and driving in B.C. This poll found that 75% of the respondents felt "harsher" penalties should be imposed on drinking drivers. For a first or second offence of drinking and driving, two-thirds of the respondents suggested that the appropriate sentence would be a licence suspension in all but the most serious cases where an accident occurred involving injury or death. Over a third also felt fines were an appropriate sanction in most cases of drinking and driving although this proportion decreased to 25% in cases involving an accident and 10% in cases causing injury or death. Jail terms were not frequently mentioned for first offenders (less than 10%) or second offenders (24%), when in fact current legislation provides for this, but increased to 55% in the case of an injury or death causing accident.

When asked what the amount of a fine should be, the average for a first offence was $850, a second offence was $1,200, and in cases involving injury or death, the fine was suggested to be set at $2,800. These fines are far higher than the average fines (estimated at $400) actually levied on drinking drivers in B.C. although they correspond somewhat to the legislated maximum of $2,000.
The results of this survey indicate that the public is not completely aware of existing penalties for drinking and driving. This is evident when it is suggested "harsher" penalties ought to be imposed and the penalties recommended are in fact less severe than those currently available in existing legislation. There is support for the continued use of the fine except, as suspected, in cases causing injury or death where monetary penalties are not perceived as an appropriate response to crimes of violence. The dollar value of the fine is the one instance where public opinion differs from the practice of the courts. The average fine currently imposed for all drinking and driving offences is less than half what the public suggests it should be set at for first offenders only.

C. SUMMARY AND CONCLUSIONS

The methodological weaknesses of the available studies on the effectiveness of sanctions render inconclusive the evidence on whether the fine is as or more effective then other sanctions in reducing recidivism. In some instances (e.g., drug and alcohol abusers and career criminals) the fine is inappropriate if the aim is to reduce recidivism, but so too are the alternatives. In other cases, reconviction rates of fined offenders are lower than those of offenders who were on probation or in jail, particularly if the offender had no prior convictions.

The success of one sanction over another may simply be the result of better risks receiving sanctions such as the fine. It is for this reason that Bottoms concluded:
It is now well known that in general the penalty which is applied to a particular offender appears to make little or no difference to the subsequent likelihood of reconviction of that offender (Bottoms, 1981:18).

This pessimism may not be entirely founded since there is some evidence that the least intervention (i.e., a fine versus probation or jail) may be more appropriate for offenders not committed to a criminal career and may in fact prevent future offences (Albrecht and Johnson, 1980; Kraus, 1974; Softley, 1978).

Little is known of offenders' attitudes toward the fine. They appear not to think highly of the fine but since the aim of the fine is to punish and deter, this is not necessarily a negative effect. Public attitudes toward the fine are generally unknown as well. Common sense dictates that the likelihood of a fine for minor transgressions such as parking in prohibited places inhibits the vast majority of the public, most of the time. There is also evidence that the fine is perceived by at least one-third of the public in B.C. as an acceptable sanction for more serious offences such as drinking and driving. However, this acceptance appears to be tied to the size of the fine which must be large enough to be seen as a harsh response.

The justice system clearly has an interest in the effectiveness of its sanctions. If it is generally perceived that the "criminal element" is not deterred by the threat of apprehension and punishment the system can be called into question by the law-abiding. This serves to threaten the legitimacy of the state and its ability to perform its control function. The result is pressure from lobby groups to "get tough" and
"crack down" on crime. Whether the fine would be perceived as a "tough" enough measure would then depend not only on its size but the type of crime of concern to the public and, hence, to the system.

The fine may, of course, be superior to existing sentencing alternatives for reasons other than effectiveness or harshness:

Sceptical as I am of the apparent reductivist efficacy of the fine, I would on humanitarian grounds like to see it used more often in place of short sentences of imprisonment (Bottoms, 1973:549).

In a similar vein, the following conclusion about sentencing practices was reached by the Law Reform Commission of Canada:

If effectiveness cannot be demonstrated, then at least justice and fairness should be our goals (Law Reform Commission, 1974b:62).

The topic of the fairness and justice of the fine is addressed further in Chapter 8. First, however, an examination of an additional, equally important, reason why the fine may be considered superior to other sanctions - the economy of the fine - is presented in the following chapter.
A. **SOCIAL CONTROL AND LEGITIMACY**

The most effective social control in any society is self-regulation, derived from cultural traditions and moral values imparted through the family, the community, and the church. With the fragmentation and weakening of these traditional methods of control and assimilation, the state increases its role in the regulation and management of deviant populations and the care of dependents (Cohen, 1979; Spitzer, 1977). These efforts on the part of state institutions to minimize behavior defined as disruptive and costly to society, and to maximize behavior consistent with the value system of society, can be defined as the social control functions of the state.

Black (1976) defines the social control functions which have been transferred from the organs of civil society to the organs of political society as:

... the normative aspect of social life, or the definition of deviant behavior and the response to it, such as prohibitions, accusations, punishment, and compensation (1976:2).

Black goes on to identify the dominant styles of social control exercised by political society:

1. penal social control: the state initiates action against behavior which is prohibited; guilt is assessed and the deviant, as offender, is punished;

2. compensatory social control: the victim initiates action due to behavior which is non-obligatory; debts are assessed and the deviant, as debtor, compensates the victim,
3. therapeutic social control: due to behavior which does not conform to standards of normality, the deviant or others initiate action to assess the deviant's needs, the deviant, as a victim is provided with help, and

4. conciliatory social control: when disharmony occurs disputants initiate action to assess the conflict and reach a resolution.

Black's "penal social control" typology is of most concern here. It is the state as represented by the police and criminal justice system which has a monopoly of the legitimate means of penal social control and coercion in society. Compensatory social control, as defined by Black (1976) is of indirect relevance since it encompasses forms of civil dispute resolution such as compensation to victims of crime.

Only the state has the right to restrict liberty. To retain some level of freedom in society, however, the state's authority to intervene has itself to be limited. In the case of criminal deviance, a limitation is that the system comes into play only after a criminal act that offends against a law occurs. A second limitation is due process (legal procedural rules and practices) which ensures that an individual accused of committing a crime and subject to state-imposed sanctions will be treated without prejudice. The adherence to these limitations to the exercise of power by the state are essential means of ensuring the legitimacy of the state.

Law as exercised by the state must display some independence from gross manipulation and appear just. Law or the legal form as defined by Balbus (1977) and others cannot do this without "... upholding its own logic and criteria of equity; indeed, on occasion, by actually being just" (Thompson, 1975:263, author's own emphasis). As Thompson explains:
If the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class's hegemony (1975:263).

Thus when the state attempts to control undesirable, criminal behavior it must not only ensure public disapproval of the behavior defined as criminal but choose a sanction to be imposed and an agent to enforce it in keeping with what the public would perceive as acceptable responses to such behavior (Polinsky, 1980). What distinguishes civil from criminal law is the conviction of the defendant - the judgment of guilt and the community's condemnation of the behavior. Sanctions must support and supplement this conviction. It is this distinction which Offe (1972) and to a lesser degree, Balbus (1977) overlook in their analyses of the legal form as a parallel of the commodity form. The following section discusses an important, but too often unaddressed aspect of state social control, surveillance and the sanctioning process (Giddens, 1981).

1. Surveillance

The systematic monitoring of a person's whereabouts, activities, and personal data is defined as surveillance and the purpose of surveillance is social control (Piven and Cloward, 1971). Surveillance can be coercive and intrusive and to this extent it can be defined as a form of penal social control. Surveillance can also be subtle. The main intent of surveillance is to monitor compliance with standards of behavior. Thus it occurs in, for example, the work place and
educational settings as much as in and by the justice system through ordinary and extraordinary legal process. Surveillance basically involves two activities "... the collation of information relevant to state control of the conduct of its subject population, and the direct supervision of that conduct" (Giddens, 1981:5).

The degree of surveillance exercised by a jail sentence is both coercive and intrusive. For a certain length of time an offender is wholly under the control of the state. A parole or probation order may be considered less intrusive to the extent that the offender only reports to a supervisor, on a weekly or a monthly basis, those activities that have or have not been undertaken in the absence of actual surveillance. However, probation orders and parole, which disperse social control into the community, often are of longer duration; the conditions (e.g., no alcohol, and restricted hours and movements in geographical locations) typically are difficult to abide by in light of what one "normally" does in society; and, for these reasons, some offenders interviewed in the past have expressed a preference for jail sentences to mandatory supervision in the community.

Considering the degree of control exercised over offenders' movements and to some extent even over their thought processes when they are subject to sanctions such as jail and probation, the fine, especially if paid forthwith, exercises the least control over the offender's behavior and attitudes. Upon payment of the fine, the sanction is satisfied and coercive social control ends. Those given time to pay likely feel subject to the exercise of control, but it is
less over their behavior or attitudes than it is over their monetary state of affairs and how this affects their behavior or attitudes. Thus, for those who can manage to pay on time in the absence of letters of reminder and warnings, the degree of control is limited. However, it is that group of fined offenders who cannot pay the fine who ultimately will experience the equivalent amount of control as those imprisoned at the outset. For those willfully refusing to pay, the relationship between the controller and the controlled is even more apparent (Giddens, 1981). Refusal to pay the fine, as a means of asserting one's power of non-compliance with state authority, and of challenging the efficiency of the control mechanisms, is far more feasible for the fined offender.

2. Legitimacy

Justice system professionals are under pressure from members of the public to establish responses to offenders which are acceptable to a wide variety of interests. Accordingly, one real deterrent to the increased use of fines may be the public's attitude that a lack of surveillance or of rehabilitation is unacceptable. Jobson (1970) argues that the extension of fines rather than a restriction of their use would be appropriate in Canada. However, he recognizes that the community's sense of justice dictates, in no small part, whether the fine will be used or whether it depreciates the seriousness of the offence.

Public opinion is elusive. Nevertheless, policy makers and legislators must be aligned with public opinion. To meet its objectives
the criminal justice system and the law must enjoy public respect and support. There are two aspects to the continuance of the state's legitimacy in terms of penal social control: 1) whether the public condones the sanctions imposed by the system, and 2) the cost of supporting penal social control and the degree to which state expenditure in this area is seen to divert funds from other state subsidized functions such as social welfare and unemployment benefits.

B. THE ECONOMY OF SOCIAL CONTROL

The fiscal aspect of criminal justice policy is as important a consideration from the perspective of government officials as concerns about the effectiveness of crime control and the satisfaction of the public toward the state's capacity to control deviant behavior. Fiscal limitations which are more evident in the 1980's than ever before, have resulted in a re-assessment of the traditional methods of social control exercised by the criminal justice system. The rationale is that "crime control policies should be "cost conscious" - defining social cost in as wide a sense as possible" (Antilla and Tornüüd, 1980:49). Spitzer (1977) goes even further by arguing the state must search for economical control operations which will not jeopardize capital accumulation.

The cost of institutionalization - a standard form of control by segregation - is high, and continuing reliance on this sanction has become prohibitive. Available, less expensive, alternatives are decarceration, the release of offenders to community based facilities, and the increased use of probation. These alternatives can reduce the
fiscal burden without the danger of complete release. Public outcries against government for not protecting society can serve to threaten the legitimacy of the state.

Other non-custodial sentences such as the fine and the suspended sentence exercise the least social control, and would appear to be the least expensive. The fine has the added attraction of being familiar to the general public as a long standing approach to illegal conduct. Most authors who discuss the fine certainly argue the point that the fine is the least costly penal sanction (Gillespie, 1980; Hickey and Rubin, 1971; Kraus, 1974; Radzinowicz and King, 1979). None, however, actually evaluate the costs of a fine in comparison with other sanctions.

1. The Cost of Fining

An hypothetical example of the cost of imprisonment, probation, and a fine for an impaired driving offence illustrates the cost difference. An impaired driver in B.C. may receive on a first offence up to six months in jail or a fine of up to $2,000 and not less than $50 or both. In some cases, a probation order may be imposed which could range from twelve to twenty-four months in duration. It would, however, be unusual for a first offender to receive the maximum jail sentence, fine, or probation order. Based on conversations with justice system personnel it is estimated that the average fine in 1984 would be $500, the jail sentence one month in duration and the probation order, one year in duration. These estimates are used for the sake of comparison of costs.
The criminal justice system costs associated with the detection, apprehension, and court processing of impaired drivers are similar. The costs of administering the various sentences differ. The offender who receives a one month jail sentence with one-third of the time off in remission will serve approximately 20 days at a cost of $77 per day (1983/84 per diem costs which include the cost of facilities, staff and overhead) for a total cost of $1,540. The cost of a one year probation order will vary widely depending on the degree of supervision (e.g., weekly or monthly sessions) and whether additional program attendance is required (e.g., alcohol counselling). It is estimated that at a bare minimum it costs $1.30 per day for each day a probationer is on an officer's caseload for a total cost of $475 per year. The cost of a fine involves court staff time expended in administering the fine's payment. If the fine is paid on time the cost is less than $10. If the fine is not paid on time the continued cost of enforcement measures, up to and including the police serving a warrant of committal and the offender serving, for example, two weeks in jail is estimated at $900 ($130 to process paper and serve the offender with the warrant of committal and $770 or 10 days in jail at $77 per day).

It is clear from the above that the cost of a fine paid in full is far less than the cost of a jail sentence or a probation order. Jail, not surprisingly, is the most costly and may also include other hidden costs such as the support of the offender's family, although this cost may be assumed in advance by the state through social welfare. The cost of probation is one-third the cost of jail if the supervision and
additional programming is limited. The cost of a fine is minimal only if the calculation falls short of imprisonment for default. If it does not, the cost can be almost twice as much as probation and two-thirds the cost of a direct jail sentence of one month.

Due to the high volume of fines and the fact that at least 70% of the offenders will pay their fines without enforcement of any kind, the total cost of administering fines is far less than would be the cost of administering jail or probation sentences for these offences. The only sentence which may be even less costly to administer is the suspended sentence (Bottoms, 1981). Beyond the fact that the fine is an inexpensive sanction, its capacity to generate state revenue distinguishes the fine from all other sanctions.

2. Fine Revenue

In 1977/78, 114.7 million dollars was received in fine revenue throughout Canada (National Task Force, 1978). This sum excludes fines paid directly to the federal or municipal governments. In the same year, in England 35 million pounds in fines were ordered (Carter and Cole, 1979). Morgan and Bowles (1981) argue, as a result of the revenue generating nature of the fine, that there are manifest economic benefits to the fine. It can produce a net profit for the criminal justice system while all other sanctions produce a net cost. They suggest that in England:

The receipt of fines and fees in the current year is expected to exceed the day to day running costs of magistrates courts (Morgan and Bowles, 1981:203-204).
Although fine revenue is attractive to government officials in B.C., it cannot be said to cover or exceed the cost of administering justice in this province.

During 1977/78, the province of B.C. collected $10,376,000 in fines and an additional $319,000 in fines was collected by court staff and paid directly to the municipalities throughout the province. Municipalities throughout the province also collect millions of dollars of fine revenue for parking violations (the City of Vancouver receives three to five million dollars a year in fines). In 1982/83 the sum of money collected by the provincial government is estimated to have increased to $20,000,000. The money generated by these fines and penalties goes, however, into general government revenue rather than directly to the Ministry of Attorney General which administers the provincial justice system and cost-shares provincial policing with the federal government. The process of directing any revenues generated by any of the provincial government's agencies into a general fund rather than as a means to offset the agency's budget is a standard practice in B.C. It is clear also that the value of the fines received would not go far in covering the 314.9 million dollar budget expended in 1982/83 by the justice system in B.C. Nevertheless, instead of burdening the public purse like other sanctions do, the fine does generate some revenue.

It is argued that the levying of fines should not necessarily imply the state's attempt to recoup its costs (Albrecht and Johnson, 1980). Instead, it is suggested that fines are set, not to enrich the treasury,
but to be a deterrent and punishment to the offender (Carter and Cole, 1979:161). Most authors agree:

Before taxation was used extensively, the fine used to be one of the main methods of financing the Crown and the State (Davidson, 1965:90).

Davidson, however, would not want to see this practice resurrected since "... justice ought to be done regardless of the cost to the community" (1965:91). He goes on to express a hope that "... revenue is neither a conscious nor unconscious motive for the imposition of fines" (1965:91). This sentiment is supported by the suggestion that the state has no right to reimburse itself for the expense of administering justice - a social necessity - and this practice is seen as even more deplorable if it serves to enrich the state at the expense of the actual victim of crime (University of Pennsylvania, 1953:1027).

If the structural and legal mechanisms are in place to enable jurisdictions to utilize revenues from fines to offset costs or act as a substitute for higher taxes, no matter how valid the above arguments against such practices, fine revenue will be put to these purposes. Small U.S. counties which control their own budgets find the potential for revenue from fines extremely attractive (University of Pennsylvania, 1953:1027). On the other hand, the structure of Canadian government, the substance of legislation, the administration of general revenue, and the attitudes of the bureaucracy (at least in B.C.) ensure no such obvious attempt to reimburse the cost of the justice system through the practice of fining.
3. The Bureaucracy in British Columbia

It is the bureaucracy's role to develop policies of crime control in British Columbia (B.C.) which bridge political and legal concerns, public opinion, and fiscal responsibility. With few exceptions, however, the individuals or groups of individuals employed by the B.C. government to administer the justice system seldom or never articulate their roles in this manner. There is acknowledgement that justice system practitioners are in the business of punishment and rehabilitation, or the "softer" term, corrections; that crime control and its prevention is the aim of the system, and these functions have to be provided within the constraints of the provincial, fiscal restraint program. Beyond this, it is the exception rather than the rule to find justice system personnel discussing questions about the legitimacy of the state or its role in the accumulation of capital.

During informal interviews and committee meetings on the approach the justice system of B.C. should take in responding to motoring offenders, it became quite apparent that no two representatives on the committee could agree on the basic theoretical aims of the system, let alone the role of the fine and the need for fine revenue. The original intent of the proposed legislation was to "get tough" with motoring offenders by mandatory court appearances, steep fines, and for the worst drivers, jail sentences. By the time the legislation was to be implemented, however, the realities of the government's restraint program necessitated the re-assessment of the legislation. To implement the entire package was deemed far too costly to the justice system, even
though the fine revenue generated could offset these costs. The concerns of the bureaucrats were restricted to their own branch interests (e.g., police, courts or corrections) and the certainty that their respective branches would not be burdened financially with procedures the committee as a whole might endorse. The central financial civil servants, with no field interests, were the only ones concerned in some fashion with fine revenue while planning analysts were aware, whether or not they condoned the principle, of the political concerns of appearing to "get tough" with the motoring offender.

As Marenin (1981) found in his study of police, employees in the justice system in B.C. also adhere to a diversity of political and social values with no shared political agenda amongst them. Political decisions, when they are made in provincial government agencies, are removed for the most part from the decision-making functions of bureaucrats. This is not to say that bureaucrats are unconcerned with the political repercussions of their policies and practices; a great deal of time and effort is spent avoiding public and negative sentiment and by so doing ensuring the system's legitimacy and continuation.

There is certainly no preoccupation amongst justice system bureaucrats with the preservation of capitalism per se. Rather, there is concern by top bureaucrats that they maintain current levels of funding, expand their budgets if possible, and if need be, at the expense of competing components of the justice system. This may be done by recommending expenditures in areas which are politically feasible or where legal or statutory obligations to perform the service are clear.
The institutional separation of the state and the economy in B.C. and the fragmentation of the accumulation and legitimation functions performed by state agents lead to intense fiscal stress, to the incrementalism of budgets, to the lack of assessment and the failure to eliminate obsolete programs, and to such general economic inefficiencies as were described by Friedland, Piven and Alford (1978).

Government agencies in B.C., like the private sector, constantly need to manoeuver for political and bureaucratic allies to survive without the necessity of major cutbacks. The difference between government agencies and the private sector is that the former are excluded for the most part from profitable activity and representatives must vie with one another for funds to support their unprofitable forms of service delivery. The bureaucracy in B.C. is dependent upon the taxes drawn from the incomes or profits generated in the private sector or through public debt to financial institutions and in a small way from revenue sources such as the fine. For the most part, however, no government agency in B.C. is concerned expressly with the source of the funds available for its budgetary purposes.

Financial or treasury board analysts in B.C. may be interested in revenue-generating activities, but the justice system itself has limited interest in this type of activity. There is a perception among bureaucrats in the justice system of B.C. that additional costs associated with new legislation or alternate sentencing practices must be covered by existing budgets, particularly in times of fiscal restraint. Therefore the concern is to somehow balance the intent of
government (e.g., to harshly respond to motoring offenders) with fiscal realities. There is little incentive to increase costs by, for example, 10% which in turn could increase revenue by 50% or more since the "profits" are not returned in whole or in part to the agent which generates the revenue.

Bureaucratic concerns with economic advantage are limited to questions of whether there are easier or more efficient ways to administer the fine. As one government official in B.C. mentioned: "we don't go out and create offenders so we can fine them and thus generate revenue for government". Thus the economic attraction of the fine for the justice system bureaucracy is that it is cost-efficient and its potential lies in the speedy processing of large volumes of offences. It is for this reason that "... collecting the fine becomes the primary problem [when] economic advantages for government ... are emphasized" (Albrecht and Johnson, 1980:5).

C. SUMMARY AND CONCLUSIONS

The fine exercises the least control over offenders who can pay immediately or on time. Jail deprives completely the offender of his or her liberty, while probation, although not a form of total surveillance, is of the longest duration and places the offender in constant threat of committing a technical breach of the order. The fine does deprive the offender of economic liberty and the perception of the severity of this deprivation will vary among the offender population.

As Gillespie (1980) notes, humanitarian motives (i.e., reducing the intensity and duration of control) need not be the primary attraction of the fine:
From an economic perspective, fines offer society a far less costly form of punishment than incarceration. Any evaluation of a greater use of fines in [e.g.,] the United States policy should consider both aspects (p.25).

Kraus (1974) adheres to a similar position when he writes:

From the social point of view [the fine] is the only penal measure which not only does not burden the community but is fiscally advantageous (p.231).

However, both Gillespie (1980) and Kraus (1974) overstate and oversimplify the economic case for the fine when they argue the fine can also take the form of direct compensation (or restitution) to the victim. Gillespie (1980) states:

In an economic sense, fines and restitution are simply different forms of monetary penalties; fines are paid in cash and restitution may be in cash or kind (p.25).

This is a simplistic parallelism of the aims of the fine and compensation and restitution which does not take into account the legal or historical development of these sanctions. It also diminishes the real difference regarding the beneficiaries of these monetary penalties. Gillespie (1980) argues that whether the fine should represent a gain to the state (and all taxpayers) or to the victim of the crime is an ethical, not an economic question. In fact it is both an ethical and an economic question - is the state obligated to insure citizens against its failures to achieve fully the protection of society and should the state divert its fine revenue back to the victims of crime and consequently increase taxes, its debt, or the burden on other sources of revenue. Beyond this, favoring compensation over the fine
is a redirection of the historical development of sentencing patterns and practices and would require major legislative, programming, and procedural changes before it can be seriously considered.

A case can be made for the economy of the fine. Fine revenue, however, will not go far in resolving a state's fiscal problems even though without such revenue other sources would have to be tapped further. The fine cannot be seen simply as a response to economic problems. The fine's continued use rests as well on its ability to satisfy the respective concerns of legislators, judges, the police, bureaucrats and the public at large. While the bureaucracy focuses on the efficiency of the administration of the fine, the judiciary and to a lesser degree the police, and legislators focus on the effectiveness of the sanction as a deterrent. The politicians are concerned, on the other hand, with their continued legitimacy and thus with the public's response to the use of fines.

If the public demands harsher punishment for wrongdoing, the fine, as a punitive sanction, can express this sentiment. This does not mean, however, that the public will condone the use of fines for offences which they consider more serious and warrant even harsher treatment. Attitudes about what constitutes "harshness" in sentencing change over time and vary across jurisdictions and among general and offender populations. It is the task of the political machinery attached to the justice system to assess and respond to changing public opinion.

It is evident that the analyses provided by Panitch (1980), Miliband (1983) and Marenin (1981), reviewed in Chapter 3, can enhance
an understanding of the dynamics of state bureaucracies. Rather than dismiss the diversity of values and roles at play in any one state bureaucracy these authors acknowledge this diversity. Such analyses assist in furthering one's understanding of the role and structure of the justice system in British Columbia. Other theoreticians' analyses of the often contradictory state functions of control, legitimation, and accumulation, and the fragmentation of these functions across state institutions, were found to apply generally to the dynamics of the B.C. system as well.

Concerns over the social justice of the fine have been implied and discussed piecemeal in preceding chapters which examined the issue of fine defaulting and the imprisonment of defaulters. The following chapter addresses the relationship between justice and the fine more directly.
There are three basic and competing conceptions of social justice:

1) justice as the protection of acknowledged rights is a conservative view which sets out to preserve the established distribution of wealth and prestige in a structurally fixed, hierarchical society,

2) justice as the distribution of wealth according to deserts, view deserts as derived from one's own actions, qualities, moral virtues, efforts, and achievements within a society where competition, mobility and individualism prevail,

3) justice as distribution according to need stresses economic equality, altruism, and a cooperative collective community (Miller, 1974).

In many societies, all three conceptions of social justice are practiced. Inheritance and property rights are protected, at the same time that social and economic mobility is feasible, even encouraged, and social welfare and progressive taxation distribute some goods to those in need. The composite meaning of "social justice" obviously refers to many other institutions aside from the criminal justice system (Van Den Haag, 1975).

Formal justice exercised by the state and upheld by the laws of the country entails the equal treatment of those in the same category. External standards and the legal rules of justice adopted emphasize due process and equality before the law. In the sentencing process, the standard is uniformity; similar sentences are distributed to similar
offences and offenders (Law Reform Commission, 1974b:33). In moral terms, these principles are expressed as fairness and humanity. Although Balbus (1977) argued that the legal form tends to obscure the real differences between people by virtue of its "blindness" to inequalities, others argue that the principle of justice does not turn a blind eye to the diversity of cases heard in courts of justice. As Reynolds and Rock (1976) note, justice occurs when equals are treated equally while

... injustice arises when equals are treated unequally and also when unequals are treated equally (p.136).

This concern with justice within the context of fining arises in two instances: 1) when the amount of the fine is fixed and is trivial to the wealthy offender and a burden to the poor offender, and 2) when a fine imposed on the poor leads almost inevitably to default and the imprisonment of the poor.

A. SENTENCING DISPARITY

There is an abundance of case law in the United States on imprisonment in default of a fine. It is argued that if a fine is considered the appropriate sanction for an offence, and a jail term results from an offender's indigent status, the practice of fining is discriminatory.

The constitutional validity of a default sentence for indigent offenders was challenged in the United States under the 14th Amendment (i.e., equal protection under the law). In 1970 the Supreme Court of the United States held that if a sentencing judge knows a defendant cannot pay a fine and therefore is incarcerated to work off the fine
(which results in imprisonment beyond the period authorized for the crime), the sentence is excessive and violates due process of the law (Hickey and Rubin, 1971:426).

The William v. Illinois (1970) case also addressed the practice of incarcerating offenders for failure to pay immediately the full amount of the fine (Columbia Law Review, 1971). It was ruled that denying a fair opportunity to someone too poor to pay a fine immediately was contrary to the legal goal of equal treatment and was economically discriminatory. The decision meant the fine should be made a meaningful sanction for the poor rather than an alternative way to impose incarceration.

A 1971 case, Tate v. Short extended the 1970 ruling by prohibiting default imprisonment of indigents if the fine was the only authorized penalty for the offence because any imprisonment therefore exceeded the maximum. This decision dealt only with equal treatment in the collection and enforcement of fines not whether the fine was a useful sanction for the poor defendant (Columbia Law Review, 1971).

In the state of New York, a county court ruled that even if a jail sentence does not exceed the statutory maximum for the offence it must set aside a commitment of an offender for 150 days for default of a $150 fine since: a) those who have funds would be freed immediately and this flouts the principle of equal treatment under the law, and b) no "150 jail days equals $150" equation exists in law (Hickey and Rubin, 1971).

In 1970 the Supreme Court of California declared it unconstitutional to substitute jail for a fine when the defendant was unable to
pay a fine since this implied a choice where none existed, or, at the least, it was a real choice for the rich and a hollow one for the poor. The ruling went on to declare discrimination on the basis of wealth violated the 14th Amendment (Hickey and Rubin, 1971).

It has been suggested that it is due to the nature of this case law in the United States that the practice of fining has not increased in use (Critelli and Crawford, 1980). Nevertheless, it was found that an estimated 40 to 60% of county court jails in the U.S. are comprised of fine defaulters, which suggests that this discriminatory practice still exists.

Outside of legal circles, it is argued that the availability of legal aid for indigents accused of an offence and the establishment of small claims courts where complainants can plead their own civil cases were both meant to improve the position of the poor in terms of equal access to justice. Less attention, however, has been given to the issues of disparate sentencing as a "back end" problem of the justice system. Not the least of the reasons for a lack of improvements in this area is due to the judiciary's independence. There is evidence that different judges apply different priorities among the objectives of punishment, rehabilitation, deterrence, and the protection of the public (Hogarth, 1971). Judges can be wholly consistent within their own set of objectives but the objectives vary between judges leading to differing sentencing patterns regardless of how much the public or the state bureaucracy might wish for consistency (Hogarth, 1971; Jackson, 1982).
Judicial independence and discretionary practices serve to exacerbate the concern that unless fines are related to the offender's means to pay, the fine can be considered unfair or unjust since it has a differential effect on those who can pay and those who cannot. This concern has been addressed in part at least in Canadian and English legislation which instructs the judiciary to determine the means of offenders prior to imposing a fine (Canadian Criminal Code, Section 646; Radzinowicz and King, 1979:315). The extent to which this occurs will vary among the judiciary since the means inquiries are nevertheless discretionary.

Dell (1974) reported that in a survey of fine defaulters in Birmingham, England it was found that one in seven defaulters had no income at the time they committed the offence for which they were fined. This leads Dell to conclude that no determination of the means of offenders was arrived at prior to the imposition of the fine.

Jobson (1970) found what he took to be evidence of sentencing disparity in Nova Scotia when minimum and maximum fines for assault cases varied from a low of $2 to a high of $500 among six courts as did assault causing bodily harm fines. In an unpublished report of a survey of fine defaulters in British Columbia, the data showed major disparities in the amounts of the fines and the default days specified. One impaired driver with seven known prior convictions was fined $100 or 30 days in jail while another impaired driver with no prior convictions was fined $600 or 45 days in jail. Two offenders, both charged with driving over a blood alcohol count of .08 and both having two prior
convictions were each fined $500 but the days in default for one was seven days and the other sixty-one days. Yet another offender with no prior convictions was fined $600 or 184 days in jail while one with no prior convictions was fined $1,000 or 14 days in default.

One could speculate that the amounts of the fines varied because the judiciary took into consideration the means of the offenders. For example, where small fines were exchanged for larger numbers of days in default, had the offender the means to pay the fine it might have been larger in amount and the dollar value of the jail days closer to the average. Unfortunately there is no information available to judge the accuracy of this speculation.

Concern over the variations in the amount of the fines levied and the number of default days specified remains valid since it is simply not known whether these types of variations are just, i.e., the economic means of the offenders were taken into consideration and there exists some rationale for the conversion of the value of the fine into jail days. As the Law Reform Commission noted

... equality of punishment is not achieved by uniformity in the dollar amount of fines (1974a:33).

The same can be said for the number of days specified to be served in default of a fine. The practice as it now exists has an appearance of injustice and in reality will continue to be unjust and unjustifiable as long as financial hardships imposed on law-breakers mean that the poorer members of society bear the greater burden. This differential effect of like fines on different offenders distinguishes the fine from other
sanctions, and it was due in no small part to this, that a different scheme for achieving this uniformity, the day-fine system, has been established in many countries.

B. THE DAY-FINE

The day-fine system in Sweden, Finland, Denmark, and other jurisdictions is attractive because it addresses concern about the inequity of fining. By calculating the amount of each day fine in proportion to the offender's income and enabling the gravity of the offence to be reflected in the number of "day" fines for which the sum has to be paid, a step is taken toward equal punishment for unequal offenders (Radzinowicz and King, 1979:316). There is a low minimum established and usually levied against students, old age pensioners, and national servicemen. The amount of the day-fine may be abated to ensure that a very wealthy offender does not pay heavily for a minor offence. Recently, however, such petty offences (e.g., parking violations) have been converted into a fixed penalty and therefore the number of abatements are very small (Thornstedt, 1975:311). West Germany also introduced a day-fine system taking into account the offender's income, assets, and maintenance responsibilities, because of similar perceived inequities (Hickey and Rubin, 1971; Gillespie, 1980).

There are, however, some criticisms of the day-fine system. Concern has been expressed that the separate calculation of the seriousness measure of crime from the economic status of the offender is not always observed. Instead, the practice of some judges has been to establish the amount of the fine and then to calculate the number of day-fines and the unit
value (Gillespie, 1980; Thornstedt, 1980). This apparently occurred most often in cases of a minor nature frequently before the courts. In response to this, as mentioned, the Scandinavian countries and Germany recognized that for high volume, minor offences it was wasteful to expend resources on the determination of an offender's net income and these offences would be dealt with by flat, fixed fines.

An additional criticism of the day-fine in Germany was its potential to impose very high fines on offenders (Gillespie, 1980). In practice, however, Gillespie considers that the fines imposed in Germany are, if anything, too low. Only 1% of all day-fines have a unit value of more than 50 DeutschMarks (DM) or 25 U.S. dollars and of this no fine appears to have exceeded 9,000 U.S. dollars. The potential value range is from 2 to 10,000 DM (or 1 to 5,000 U.S. dollars) and the number of days is 5 to 360 for a maximum fine of 1.8 million U.S. 1980 dollars (Gillespie, 1980). Other studies (Albrecht, 1978) have shown increases in the amounts of fines imposed in Germany between 1972 and 1975 and Gillespie (1980) takes this to mean greater equity in the use of fines by having higher income offenders pay larger fines.

Arguments against introducing the day-fine system in Canada effectively halted further discussion in the mid 1970's (Law Reform Commission, 1974a). It was argued that while it was not a complex procedure to arrive at the income, taxes, expenses, and financial liabilities of offenders in countries such as Sweden where income is a matter of public record, in Canada privacy of information extends to income tax returns and any other personal data which might serve to
assess the financial circumstances of an offender. As a result, the calculation of day-fines was seen to be a costly and cumbersome procedure and by basing the calculation on verbal rather than material evidence it would remain inaccurate. However, in Germany, as noted, day-fines were introduced in 1975 without altering legislation to obtain income tax information and no known problems have arisen as a result of relying on the offender's statement and indirect evidence of economic status to determine the day-fine.

C. SUMMARY AND CONCLUSIONS

As has been mentioned, fixing a fine and a jail term to be served in default may be administratively expedient but remains, in practice, unjust. There is no choice for the poor and in fact the two sanctions are not or should not be intended as a choice contrary to Section 646 (9) of the Canadian Criminal Code which in effect allows the offender to waive the time allowed to pay the fine and opt for immediate committal. The jail term, as an enforcement technique, is ineffectual when an offender has no funds and no hope of buying his or her freedom (Jobson, 1970). This leads to the arbitrary imprisonment of a class of persons and is punishment that would not be imposed but for one's economic condition (Jobson, 1970).

People who have the funds to pay a fine will do so rather than go to jail. There is no evidence that "... people ... go to jail out of choice" (Jobson, 1970:644). Even if a jail sentence for the indigent has more utility than disutility and accordingly is chosen because shelter and food has more value than leisure, allowing such a choice places the justice system in disrepute (Reynolds and Rock, 1976).
To achieve the principle of equal justice, the disutility of a given fine must be the same for all. Where there is inequality of income this is unlikely to occur. The marginal utility of time, however, is more evenly distributed and it is for this reason the day-fine as a form of "time-equivalent-money" fine is a more feasible approach to the establishment of equitable justice in the practice of fining. This type of fine also is less susceptible to the distorting effects of the monetary market (Reynolds and Rock, 1976). The real and potential abuse of the system of fixed fining ensures the attractiveness of the day-fine system or its equivalent. Different offenders are punished equally for equal offences. They incur the same disutility for the same offence. This may not go far enough for authors such as Balbus (1977) who argue that to achieve true social justice and to demystify the legal form which is blind to inequivalence, the state should treat the rich more harshly than the poor for committing a comparable crime. Nevertheless, attaining equal disutility for unequals before courts of law moves toward the upholding of existing notions of formal justice.

The result is a fine system which seeks to punish equally offences of similar gravity but at the same time, given the penalty is monetary, to achieve equity across offenders of disparate financial means (Gillespie, 1980:22).

It has been concluded by others and reiterated here that as a result:

... the day-fine system ... was found to satisfy social justice more than any other sanction does ... (Newton, 1981:135).
It is not surprising that the fine is used so extensively, especially in countries which have the day-fine compared with those which do not have such a scheme.

The justice (or injustice) of the fine is related to the more general issue of legitimation. As noted in Chapters 3 and 7, the penal social control function of the state may be called into question if the cost of sanctioning offenders diminishes the resources required for other social services provided by the state or jeopardizes the capital accumulation function. This will threaten the legitimacy of the state. In addition, the state seeks legitimacy through its capacity to uphold notions of fairness and humanity and to appear, just, and on occasion to be just, in its treatment of deviant populations. The justice systems of contemporary democratic states emphasize due process, equality before the law, and equal sentencing for equal offenders to legitimate their operations. When the justice system is obviously at odds with these principles, as it is when fined indigents are treated more harshly than their wealthy counterparts, the legitimacy of the system is threatened.
The purpose of this thesis was to provide a full description of the use of the fine. To this end, a review of the literature and the collection and presentation of official Canadian and B.C. statistics were undertaken. The available literature on the fine addressed in a piecemeal manner the salient features of the fine. Claims as to the fine's superiority as humane, cheap, and effective, and contrary positions which saw the fine as discriminatory with insurmountable collection problems, lacked substance and comprehensiveness. This thesis attempted, therefore, to draw together in as comprehensive and complete a way as possible information and opinions on the fine. To this extent, the thesis was descriptive. In some instances, it confirmed both the superiorities and the inferiorities of the fine but in all instances it attempted to provide a full accounting of the issues. A concerted effort was made, as well, to analyse the fine within its broader context as a control measure imposed by an institution of the state. A conceptual model of the state which encompasses the functions of control, legitimation, and accumulation, provided the opportunity to move beyond a description of the fine as a sentence of the court within the justice system to situate the fine within the institutions of the contemporary state.

The fine was assessed in terms of its efficiency and effectiveness, its economy as a social control measure, and the degree to which it
demonstrates principles of formal justice. This chapter summarizes the most significant findings of this thesis and provides a further analysis of the implications of these findings in terms of the structural mechanisms and functions of the state in society.

A. **CONCLUDING REMARKS ON THE FINE**

1. **The Use of the Fine**

   During the course of this investigation it became readily apparent that there is not a great deal of literature on the fine as a sentence of the court. Often the fine is studied for comparative purposes by authors whose focus is on the use of incarceration or probation. This lack of emphasis on the fine is partly due to the lack of available official, statistical information, and in no small part to the disinterest in studying such a commonplace sanction which generates seemingly little controversy.

   On the basis of available information, the fine was found to be the most common disposition of the courts particularly for minor and motoring offenders but even for more serious offences against property and persons. Fines are most typically used for the violation of laws which proscribe a form of conduct considered to create a risk of harm to others (e.g., speeding in a motor vehicle) and to a lesser, but still substantial degree for offences which cause the immediate infliction of harm (e.g., assault). While there is evidence that the use of the fine is increasing in England and Western European countries and its use as a substitute for short term jail sentences is encouraged, the same
cannot be said for North American countries. Gillespie (1980) summarizes the situation in the United States:

The continuing commitment to incarceration as the primary means of social control in the United States for crime stands in sharp contrast to contemporary penal reform in European countries, where a major focus of penal reform involves reducing the use of incarceration, in large part, by more extensive and innovative use of fines (p.20).

In British Columbia the fine is used extensively; nevertheless, in recent years the use of the fine has decreased somewhat in favor of short jail sentences for provincial statute, minor offenders. It is speculated that this practice results from a "get tough" policy prevalent in the province in response to motoring offenders.

The fine will continue to increase in use as the state continues to regulate the day-to-day behavior of citizens. The addition of minor offences and technical violations to the legal statutes ensures the future of the fine. The continued use of the fine is not, however, completely assured. In large part due to the organization and support of victims of crime in North America, compensation and restitution are being considered as sentencing alternatives in criminal law. If victim redress is emphasized it will be, at least in part, at the expense of fining offenders.

2. **The Efficiency, Effectiveness, and Economy of The Fine**

There are wide variations in the utilization of enforcement measures to demand payment of the fine. England, in particular, has a number of options available including letters of reminder, means
summons and warrants, payment supervision orders, and ultimately imprisonment. In Canada, there are limited measures to enforce payment, i.e., warrants of arrest and committal to jail. In B.C., however, civil procedures are available if the offence is against a provincial statute since these offenders cannot be imprisoned in default.

In all cases, time to pay or payment by installments is possible although the practice of immediate committal if the fine is not paid at the end of the court hearing still occurs in many countries. In effect, this procedure imprisons the poor. For this reason one of the most pressing problems associated with the fine, is the use of imprisonment for defaulters which tends to ensure that the insolvent are penalized more harshly than the solvent and diminishes the claim of the humaneness and inexpensiveness of the fine.

Many jurisdictions (e.g., Canada and West Germany) always specify the number of days to be served in default should the fine not be paid. This cannot be taken as a choice by the offender of one sanction over another. In practice it may be a choice to the rich but no choice to the poor. If imprisonment is to represent an enforcement measure wielded as a last resort and if it is administratively expedient only to specify this measure at the time of sentencing, cancelling the fine once the jail term has been served or pro-rating the value of the fine based on the number of days served prior to buying one's way out of jail is contrary to the meaning of enforcement. It is clear that the use of imprisonment as it relates to fining is confused: is it an enforcement measure, an exchange of equivalence (i.e., jail days for dollars), or a different sentence for the failure to fulfill the original sanction?
It is estimated that up to 70% or more of offenders fined will pay their fines without any enforcement or with minimal enforcement short of the threat of imprisonment. There is also limited evidence that in the absence of the threat of imprisonment the majority of offenders will still pay their fines. This is due in large part to the fining of "good risks", that is, offenders with no or little criminal history and with the means to pay fines, the values of which are fitted to their financial circumstances.

Findings on the effectiveness of the fine in reducing recidivism are mixed. The fine is as effective or more effective than probation or prison for first-time offenders charged with almost any offence for which there is no need for corrective treatment. Since up to 80% of first offenders do not recidivate, it can be argued that fines should be used even more for these offenders (Bottoms, 1981). Alcohol and drug related offenders and some traffic offenders will continue to recommit offences regardless of the sanction imposed, as will career criminals. It is for this reason that more innovative approaches to sentencing such as the use of mandatory drivers' courses and drug therapy are required.

Some evidence is available that offenders may not think highly of the fine. They may not like the punishment it entails. Whether this will deter them from re-offending is not clear nor is it clear that they would prefer other available sanctions. The general public is not adverse to the use of the fine for offences they consider somewhat serious. Although the public's response in British Columbia to the sentencing of impaired drivers tends to be more in keeping with fitting
the sentence to the offence (e.g., licence suspensions), they acknowledge a role for the fine. At the same time, the public has the expectation that where death or injury occurs as a result of the offence of impaired driving, the response should be harsher, even for first time offenders. The judiciary in B.C. at least appear to be responsive to these public attitudes in the sentencing of such offenders to terms of imprisonment.

The practical and economic utility of the fine is the avoidance of prison and supervisory orders. If fining does not lead to imprisonment, it is by far the least expensive measure when compared with probation or jail. As soon as offenders are imprisoned in default, the economy of the fine diminishes. A unique aspect of the fine is that it costs the offender, rather than the state, money. The revenue generating function of the fine, in the millions of dollars in B.C. alone, is attractive to state financiers, but seems to be of limited concern to the actual administrators of justice.

3. Social Control, Social Justice, and The Fine

Penal social control is exercised through: a) the collection and utilization of information on offenders and to this extent all sanctions are comparable, and b) the degree of surveillance and control exercised over the behavior and indirectly the attitudes of offenders. Except for placing limits on the economic liberty of the offender, the fine, if it does not lead to imprisonment in default, exercises the least social control of all sanctions. The use of fines in a sense acknowledges the limitation of what the state can achieve through its formal agencies of
social control. It recognizes that "... the law is not a proper social instrument for solving most of the problems it attempts to solve" (Morgan, 1979:19). Rehabilitative sentences in particular obscured this reasoning and restraint by wielding far greater control over the lives of offenders. The fine, on the other hand, limits the degree of control exercised by the state, ensures that the casual offender does not have the opportunity to intermingle with career criminals, and does not withdraw the offender from his or her livelihood and life situation.

Fines as a form of reciprocity, of paying one's dues to society as a result of wrongdoing on the part of the offender, minimize social loss if the fine represents equal punishment or disutility for equal offences. If punishment is unequal, the loss of social justice is evident and costly in terms of the legitimacy of the system as a whole. Fines are arguably inappropriate where the harm done is well beyond a monetary value, where it can be seen as a license to commit the offence (although any sanction can be considered the price paid for the offence), and where fixed fines are levied independent of the economic position of the offender.

At the base of unequal justice is the unequal distribution of wealth and income. A just system of criminal justice in an unjust society is a contradiction in terms. Nevertheless, for the system to operate it must appear just and indeed at times, be just. For the fine to be just it must take into consideration the unequal distribution of wealth, and fine the poor and the rich equally by imposing differential monetary values on the fine. Equality before the law when determining the innocence or guilt of an offender must extend to equality in the
determination of the sentence imposed on offenders before the courts. To accomplish this the sentencing measures of penal social control must overtake the formal rationality of the criminal law which precludes the consideration of social class when determining guilt and enable the re-emergence of the content and quality, the real differences among men and women, which the legal form in its "blindness" originally abstracts. This is not only possible but currently occurs in jurisdictions using the day-fine system. The practice of imprisoning defaulters, on the other hand, is certain evidence that the justice system remains unjust.

B. **THE THEORETICAL IMPLICATIONS OF THE FINE**

The fine, as an everyday transaction represents one of the many ways in which the justice system responds to wrongdoing in society. In turn, the justice system represents one of the many institutions of the state. The fine can therefore be understood within the broad framework of the structural mechanisms, functions, and finances of the state.

It is argued that theoretical analyses of the state which would limit the role of crime control to the preservation of the existing socio-economic order provide little assistance in understanding the role of the justice system, let alone the role of fining. Such analyses are circular in reasoning; whatever control mechanism employed, by definition fits the needs of the ruling class. Similarly, it is felt that the "integration-consensus" perspective of the state as a set of institutions which maintains stability in civil society oversimplifies the role of the state by failing to account for the reality of conflict and inequality. Authors such as Offe (1972), Block (1977), Balbus (1977), and O'Connor (1973), on the other hand, reject both the narrow instrumentalist view of the state and the consensus tradition and by so
doing provide analyses of the state which arguably can be applied to concrete events in everyday life. These authors, at first glance, may appear to have little to say about the issues surrounding the fine including its efficiency and effectiveness, its continued use, or the competition it faces from sanctions such as compensation, or restitution. It was found, however, that a conceptual model of the state which encompasses the often contradictory functions of accumulation, legitimation, and control is relevant to a general discussion of how and why the state would resort to the use of fines. To be fully useful, however, the means by which the state finances its operations and the role of the bureaucracy in fulfilling the functions of the state must also be understood.

O'Connor's analysis of how the state finances itself, and his distinction between social expenses and social capital assist in understanding the mechanisms by which the state incurs debts and generates revenue. Friedland, Piven, and Alford (1978) acknowledge the variable manifestations of fiscal stress and how the separation of state agencies and functions enable the state to diffuse popular disaffection. Panitch (1980), Miliband (1983), and Block (1977) also recognize the structural diversity and complexity of the state's range of powers and the variability of the bureaucracy. Marenin (1981) carried this understanding further in his analysis of the relative autonomy of the police who bring with them a history of learning, values, and beliefs which affect their individual interpretations of their work. These analyses assist in interpreting findings on the financing of the justice system, the economy of the fine, and the role of the bureaucracy.
None of the analyses were considered to have distinguished adequately among the types of law in society. Balbus and Pashukanis make suggestive comments on the correspondence between the commodity form and the legal form, but this could only be applied very generally to aspects of the criminal justice system. The legal form, like the commodity form, is said to mask class differences and social inequalities. This is a restrictive view of law, operationalized through the concept of due process. When viewed within the context of the sentencing process, however, it was found that differences submerged during the legal process of determining guilt or innocence can and do re-emerge in the sentencing process: the "blindness" of justice is not an all-encompassing concept.

The analyses reviewed, regardless of their shortcomings, in combination, assist in understanding the data and literature reviewed on the use, efficiency, and effectiveness of the fine as a measure of penal social control administered by justice system bureaucrats in confronting problem populations. The demands on the state for order, fiscal restraint, and legitimation provide a general framework for an understanding of the broader interests at play when an event as everyday as a fine is imposed on an offender.

The control function of the state, as administered by the justice system must reconcile its need for legitimacy by balancing the severity of its sentencing practices with the associated costs of implementing such sentences. The system will be in jeopardy if its fairness, costs, or effectiveness are questioned. Indeed, the legitimacy of the state as
a whole can be threatened if it appears to treat organized groups prejudicially, if its costs far exceed its obvious benefits, or if the state simply is not seen as doing its job well. Thus, the general problems the contemporary state must address can be understood in the particular case of fining.

The issue of legitimacy is also related to the justice of fining. When fining leads to the imprisonment of a class of persons, the system can be condemned as unjust, which threatens its legitimacy. Similarly, the public must be receptive to the use of the fine to justify its continuance or expansion. Public support for alternative sentences such as victim-compensation can inspire the justice system to resort to the use of these sanctions rather than the fine. The fact that the fine intends to punish rather than to treat or forgive, coupled with its lengthy and familiar usage, can be taken, however, as limited evidence of the public's acceptance of this type of sentence.

The effectiveness of the fine in preventing recidivism and the ease of administering the fine are associated with the costs of fining which in turn is of concern to state bureaucrats attempting to resolve fiscal problems. Issues of effectiveness also are relevant to the public's perception of how well the state undertakes its control function. Evidence that fining offenders works can serve to diffuse criticisms of the system's shortcomings. Finally, the revenue-generating function of fining can resolve some of the state's fiscal problems. Fine revenue may not be sufficient to completely fund the state's control function but in its absence, other sources of revenue would have to be tapped.
further or the state's debt to financial institutions would have to increase. The fine can, therefore, be understood more fully when situated within these broader concerns.

As a sentence of the court, any sanction including the fine, is one aspect of the state's social control function. This function incurs social expenses which must compete for state financing with other social expenses incurred by the state, as well as with direct and indirect expenditures made by the state to support the process of accumulation. State resources are limited, however, and political decisions must be made as to where to direct state revenues, which demands are to be met and which can be withheld without jeopardizing the legitimacy of the state in the eyes of the business community and the public in general. These decisions result almost always, in times of fiscal restraint, in a balancing of social service expenditures with capital accumulation expenditures which may be perceived as unsatisfactory by the business community or social service interest groups or both.

The control function of the state may receive resources at the expense of social welfare functions and both may face financial restraint at the expense of the accumulation function. The withholding of support to unproductive social services in order to maintain the accumulation of capital, without at the same time sacrificing the state's legitimacy, is far more easily achieved when the structure of the state's functions are fragmented across the bureaucracy, when no one state institution is clearly responsible for the accumulation, legitimization, and control functions. The operations of the justice
system in British Columbia can be explained within this context. The accumulation function appears to be removed, for the most part, from this justice system's concerns, as they relate to fining. The system nevertheless is involved in ensuring its legitimacy, and thus the state's legitimacy in general. At the "front end" of the system legitimacy is ensured by the appearance of equal treatment before the law and by policing the community in an evenhanded manner; and at the "back-end", by sentencing offenders equally for equal wrongdoing and by imposing sentences perceived as appropriate by the public at large.

It has been argued by Blumstein (1982) that "toughness" in sentencing offenders ensures the continuance of the justice system's popular support. What "toughness" entails, however, is not altogether clear. In some countries, capital punishment and dismembering are forms of ultimate "toughness"; in others, a jail sentence of long duration denotes maximum heavy-handedness. Moreover, there is evidence that the public's perception of the severity of sanctions varies within the populace and over time. Simply arguing, therefore, that the public demands harsh sentencing practices and that the judiciary respond accordingly, is an incomplete analysis of the basis upon which the public will favor or disfavor the justice system's response to wrongdoing.

It might be expected that the potential revenue of the fine would encourage its further use by the justice system. This occurs in jurisdictions where fine revenue directly finances the operations of small U.S. counties, but little evidence was found that the revenue-producing nature of the fine was of concern to the bureaucracy which
adminsisters justice in British Columbia. Theorists would argue fine revenue should not be of concern since the task of the justice system is to protect society no matter at what costs. Bureaucrats in B.C., however, express other reasons for not focusing on fine revenue. Issues of the effectiveness and efficiency of the control measures as well as public sentiment toward sentencing practices are of varying degrees of concern to justice system professionals. Beyond this, maintaining current levels of funding is often of primary concern to top level bureaucrats. These factors, combined with the fact that provincial revenue generated by fines goes into a general fund rather than to the agency which generates or collects it, create little incentive to develop sentencing policy specifically to embellish the state's coffers. This is not to imply, however, that the state has no interest in fine revenue or in increasing the volume of fines or the amounts of fines to resolve some of its fiscal problems. Instead, this may demonstrate, in British Columbia at least, how the various components of the justice system do not represent a united front on many of the issues facing the operations and financing of the justice system, let alone the state as a whole. The fiscal concerns of the justice system, in this instance, appear to be seen by its administrators as removed from the fiscal problems of the state as a whole.

C. RECOMMENDATIONS FOR FURTHER RESEARCH

It was believed that by being sensitive to the broader socio-economic context of fining, a more comprehensive understanding of the fine, outside of the narrow confines of penological literature, would
result. To this extent the use, efficiency, economy, and effectiveness of the fine can be understood as not simply of limited technocratic concern to the justice system but as interrelated with broader state concerns about legitimation, accumulation, and control.

It is recognized that a number of theoretical models of the state exist and actual practices vary among contemporary capitalist states. For the purposes at hand, however, it was assumed that the models developed by the authors reviewed in this thesis provided the most relevant conceptualizations of the state. This attempt at linking descriptive data on the fine to a conceptual model of the state, as presented in this thesis, is arguably a useful exercise and one which can be replicated in many studies which seek to fully describe everyday events which involve transactions between the state and its citizens. Other conceptual models of the state which were rejected here could, of course, be employed to link the data related to fining to broader state concerns. It was maintained, however, that such attempts would be of limited value.

It appeared reasonable to tentatively conclude that, within the context of fining, the justice system did not have an obvious role in the accumulation function of the state. Such a conclusion may not have occurred had this thesis focussed on law enforcement policies, or why certain types of offenders or crimes were not being policed and ultimately fined. Instrumentalist conceptions of state activity, therefore, might focus specifically on the possible role of the criminal justice system in relation to the accumulation function of the state by examining, for example, the justice system's response (or lack of response) to corporate and environmental crime.
Penological literature on sentencing theories and the aims of the justice system provide an incomplete framework for the analysis of the fine. Distinguishing among the aims or objectives of sentencing at a theoretical level is far easier than making such distinctions among the actual types of sentences imposed. Regardless of the incapacitative intent of a prison sentence it may be intended also to deter or to rehabilitate or to do all three. Retributive sentences may intend to deter, and to the degree that the reparative sentence takes into consideration the gravity of the offence it too can have a retributive element. This ambiguity of the aims of a sentence is exacerbated further by the judiciary who are under no legal obligation to specify the end or ends sought when imposing a sentence. It is also unlikely that convicted offenders will consistently identify and appreciate the theoretical aims of the sentence imposed; the same can be said for justice system professionals who administer or supervise the completion of the sentence. It is considered more useful, therefore, to examine and describe fully the actual practice entailed in, for example, fining according to the major factors identified as relevant to any sentence of the court (i.e., use, efficiency, effectiveness, economy, and justice) rather than to define and study the sentence strictly on the basis of what is said to be its theoretical intention or objective.

A number of outstanding research questions on the practice of fining remain:

1. The reluctance in Britain, Canada, and the United States to utilize the day-fine is apparently based on the argument of privacy of information and the difficulty of obtaining accurate means information. This reluctance
is puzzling in light of the experience in West Germany where the same obstacles occur but the day-fine nevertheless is used. Further investigation of the reasons for the rejection of the day-fine is encouraged.

2. The relative popularity of the fine in European countries, in contrast to the continued use of incarceration as the preferred method of penal social control in North America, needs to be understood more fully. This may be pursued within the context of an investigation of the source(s) of public attitudes which give apparent support to "get tough" legislation and policies.

3. This thesis examined fining within the criminal justice system. The extensive recourse to the use of fines outside the criminal justice system, e.g., by libraries and social clubs, may be of potential significance.

4. Although it did not appear that fining, as a sentencing strategy, was a deliberate adoption of a form of state-generated revenue in British Columbia, the possibility still exists that the increased use of the fine may signify such an intent. Further study of the fine as a source of state revenue is warranted.


