

A Look at Day Fines: What has happened over the Years?

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This paper seeks to explore the development of day fines or fines as a single penalty for major offenses in the United States and in European countries. It is descriptive in many ways and reflects the evolution and development of fines. It reflects the authors' interest and intrigue with the use of fines, in a capitalistic society like an America - for major offenses, especially as alternatives to custody, in a country motivated by greed and money. The paper also seeks to compare and contrast European countries with use or lack, therefore, in America. In other words, the paper offers a snapshot as to what is the state of the use of fines, as a singular penalty in both the US and European countries.

Keywords: Sanctions; Sentences; Fines; Restitution

Fines Defined

Often, when we talk about or use the term fines or day fines - we receive blank stares... sometimes "dropped jaws". In its simplest term, the day fine is a monetary fine imposed by the courts, based upon the offender's ability to pay. In many ways, it is way by which we can equal justice, based upon income or one's ability to pay. It involves the calibration of ones income and unit measures or weights assigned to the offense. In other words, an offender may be required to pay one percent of his/her net daily income x's the unit weight assigned to the offense; the more serious the offense, the higher the weight assigned. It is through this equation that some fines are determined.

What is the History?

Finland

From a historical standpoint, the day fine was first established or introduced in Finland in 1921. It was followed by Sweden, Denmark and Norway. With regard to Finland, the penal code establishes guidelines for imposing day fines as a criminal sanction. In Finland, the process is slightly different, for example, 1/60th of the average monthly income is imposed instead of the daily income imposed x's the weight assigned for the offense. If a person does not pay, then two unpaid day fines becomes the equivalent of one day of imprisonment.

Sweden. In Sweden, a review of available data/information/articles reveals that Sweden adopted day fines in 1935. And based upon a recent publication, in Sweden, fines accounted for roughly 70,000 out of the 110,000 sentences in 2012! One unique dimension with regard to the use of fines in Sweden is the role of the police or "popo"; specifically, police manage the collection of day fines and defaults, which may sometimes result in the confiscation of property for nonpayment.

In Germany

With regard to Germany, the use of fines was introduced in 1969 and reconstituted in 1975. The practice is very similar to the use of day fines in Sweden, where the daily income is multiplied by the weight assigned to the offense. In other words, your net daily income and the weight for the offense determine the fine.

In the United Kingdom

With regard to the United Kingdom, the literature reveals that it was introduced in 1991, received positive results, but was abandoned due to negative media coverage, because it was perceived as not being punitive enough.

In Australia

In Australia, we find that the use of the day fine has not been well received; there is a penchant for custodial sanctions and little interest in day fines. The decision to neglect the use of fines has been a costly adventure in this country; we will talk more about Australia, but let's move on to the good old US of A.

In the US

The use of day fines in the United States has a sordid and sorry history; there have been experiments conducted and supported by the VERA Institute of Justice. In Staten Island and Milwaukee, some aspect of the fine was used - both with mixed results. But the experiments were limited to misdemeanor cases and non criminal cases, around 1988.

In 1991, the Bureau of Justice conducted experiments in four different locations.

Again with mixed results, but very limited in the types of offenses. Bottom line: The US has been reluctant to fully implement the use of day fines; the reasons for the reluctance vary. We offer a few explanations now: American judges and perhaps the public do not see fines as punitive. Next, there is the issue of resources for implementation and enforcement of fines. Then there are some sources who point hands at probation officers, saying that they are also reluctant because -they do not want the additional responsibility for collection and fines; they do not want their positions to be commensurate with that of a collection officer. The major theme, we believe is that fines are not viewed as punitive --- also some of this ambivalence is couched in terms of how the fines would negatively impact the poor defendant; we doubt that is the real reason for judicial ambivalence!

Looking even further at the US, there is some evidence of symbolic change, but nothing that is instrumental. A few states, for example, have created statutes related to fines.

In AL (2009)day fines is listed in the continuum of punishments
In Alaska (2009)...certain misdemeanors can be punished via day fines
In OK (2009)... day fines is listed in the continuum of punishments

Despite these innovations, there is no evidence at all that US courts have moved toward use of fines as singular penalty for major offenders; one might argue that instead of thinking smart about criminal sanctions, the American judiciary and its society remains rather punitive and refuses to see the cumulative benefits behind use of day fines for serious offenses in American society.

Mexico and Beyond

Before moving on, we tend to think that the day fine is mostly European and in many ways it is, but we were surprised to discover evidence about the use of day fines in Mexico (up until 1984) and historians also document the use of day fines in Peru (1922), Brazil (in 1969) and El Salvador (in 1974).

A Contemporary Look

In general, it appears that the use of day fines in Europe has been robust - a closer look at the literature also reveals some slippage in Germany, where the use of imprisonment increased during the later part of the 1990s, but fines are still relied upon for major offenses - and Germany has since recovered in many ways. Our content analysis points toward two different countries: Australia and the United States. Both of these countries have a penchant for relying heavily upon imprisonment, believing that being punitive is tantamount to putting offenders behind bars. Similar observations, once more, can be made about the United States.

Michael Tonry argues that US policy is based upon the lack of tolerance, moral panic and anger. In many ways, the imprisonment policy in the US is predicated more upon these variables and less upon the facts, that is, less upon the empirical evidence. Countries that do not rely upon the day fines believe that imprisonment is the Holy Grail; that harsh punishment and long or longer periods of imprisonment reduces recidivism. The point to be made here is that some countries seem beholden to false assumptions about the efficacy of custodial punishment.

Benefits of Day Fines or Fines

The introduction of the day fine system offers a more transparent process, which will in turn increase public confidence in the criminal justice system. Additionally, there is likely to be a reduction in the prison population with concomitant reductions in recidivism and prison costs. Third, the most important goal achieved will be not only that justice and fairness towards both the rich and poor is done, but that it is also seen to be done. The point to be made here is that with day fines, we approach equality, we rely less upon custodial treatment or imprisonment - and we do not incarcerate or detain those who cannot pay, we arrange community service hours for non payment in some instances and reduce the day fines, if the spouse is unemployed. These options are available, when the criminal justice system is not in the business enterprise, as it has become in the United States. Clearly, the greatest advantage of the day fine is its potential to help reduce custodial sentences.

It is ironic that the United States has not embraced the use of the day fine or a fine for that matter for serious offenses. Why is it ironic? Everything that we do in America is predicated upon money and income and or savings? We drive around the city in search of discounted gasoline; we wait for tax-free days to make major purchases, but we are slow to recognize the benefits the day fine and we do not think twice about the costs of imprisonment, relative to the benefits of non custodial sanctions such as fines. As a remedy to concerns about the infrastructure, maybe we need to require access to tax records and or maybe the US can use an already existing structure, bill collectors to obtain the fines that might be imposed upon the offender for major offenses.

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