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SENTENCE PREDICTION AND PENALTIES:
A SOCIOLOGICAL APPROACH

*Donald N. Barrett**

Introduction

The problem of sentencing the criminal offender has plagued man throughout the course of history. Courts have found it to be a lonely and difficult process. At one extreme lies tyranny and at the other failure in protecting society. Between these poles may be found the culturally stylized practices of most of the court systems of the world. The laws of the state are designed to reflect the values of the society and the gradations of these values may roughly be ascertained from the penalties embodied in criminal law.¹ This, however, does not automatically remove from the court the great burden of applying general rules to specific cases in the kind and degree that will most effectively carry out the legislatively expressed values.²

Most encouraging are the many signs of interest in the sentencing problem now developing in the United States. One of the most auspicious of such recent signs is the provision by the 85th Congress of the United States, authorizing the Judicial Conference "in the interest of uniformity in sentencing procedures" to establish institutes and joint councils on sentencing for the purpose of "studying, discussing and formulating objectives, policies, standards and criteria for sentencing those convicted of crimes and offenses in the courts of the United

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1 P. A. Sorokin has executed the classic study of changes in social values over long periods of time by the examination of changes in "law-norms." SOROKIN, 2 *SOCIAL AND CULTURAL DYNAMICS* 523-628 (1937).

2 The lack of principle in the determination of sentences has been remarked upon in a number of studies. See White, *Sentencing and the Treatment of the Criminal*, 11 *SOC. SERVICE REV.* 234-46 (1937). An English jurist, Justice McCardle, has posed the problem rather bluntly as follows: "Anyone can try a case. That is as easy as falling off a log. The difficulty comes in knowing what to do with the man once he has been found guilty," as cited by Judge Robert M. Hill, 2 *NPPA J.* 312 (1956).

States.”³ Such conferences on the subject of sentencing are not new, but recent efforts seem far more cumulative than those of the past. The summer 1959 meeting of fifty-five United States circuit and district judges with scores of authorities representing Congress, the Department of Justice and many other agencies proved an unqualified success as revealed in a self-administered questionnaire study of the participants.⁴ The discretionary functions of the judge were highlighted in regard to the income tax violator, the automobile thief, the fraud, and the use of presentence resources. More conferences are in prospect. The American Law Institute has addressed itself for some years to the problems of sentencing and its reports are based on extensive research and discussion by specialists in many fields.⁵ Congressional activity has not been limited to conferences, as the 1958 federal “split sentence” law indicates.⁶

The desirable convergence of many interested individuals and agencies on the problem of sentencing has had notable expression in a recent judicial comment:

We are in an era of transition in which the court's traditional preoccupation with the criminal offense and its exact expiation is yielding to an enlightened concern for the individual offender. Sentencing is no longer a minor routine aspect of the court process. Judges, legal scholars, bar associations, social scientists and the general public have become vitally concerned with sentencing. Courts are therefore faced with the reality of predicting the effects of the various sentences available to them. In a real sense the modern criminal court judge is involved in predicting criminality. He must therefore have at his disposal all the tools known to the social scientist which can be adapted to the evaluation and treatment of antisocial behavior.⁷

Unfortunately judgments about the role of the social scientist, discussing such vital issues as sentencing have been noted for their extremes. The sociological school of jurisprudence and writers in the sociology of law have been in enduring struggle with the analytical and Natural Law schools. The sociologists involved in this contest of ideologies have all too often been characterized by blatant environmental and biological determinism as well as alienating ipse-disit-ism. As Dean O'Meara of the University of Notre Dame Law School has rather gently, yet perceptively put it, this system of thought:

understands the practical aspect of the law — that legal judgments should be made in terms of their actual effect on the society they are to govern. But, lacking a commitment to a system of ultimate values, they are often unable in their final analysis to say what that effect ought to be.⁸

In view of the great sense of responsibility and social justice among jurists,

3 62 Stat. 902-03 (1958), 28 U.S.C. § 334 (1958).

4 A brief report of this conference may be found in Sharp, *The Pilot Institute on Sentencing*, 18 FED. PROB. 9-11 (1959).

5 Of particular significance in regard to the problem studied is the report: MODEL PENAL CODE (Tent. Draft No. 2, 1954). The extensive provisions for fines in this code suggest that the authors are willing to experiment to achieve effectiveness of sentence alternatives.

6 62 Stat. 842 (1958), 18 U.S.C. § 3651 (1958). See also Hartshorn, *The 1958 "Split-Sentence" Law*, 18 FED. PROB. 9-12 (1959).

7 Campbell, *Developing Systematic Sentence Procedures*, 13 FED. PROB. 4-7 (1954).

8 LAW AT NOTRE DAME (Ave Maria Press 1959).

judges, lawyers and legislators it becomes both understandable and praiseworthy that radical proposals by some social scientists, such as for the abolition of punishment or the jury system, be rejected by them as ill-advised.⁹ It becomes vital to note, however, that the sociological extremists in this country are few in number and diminishing in influence. On the other hand, the majority of the current criminologists-sociologists, although sympathetic to the special insights, training and prerogatives of members of the legal profession, find more personal and scientific advantage in devoting their energies to the etiology of criminal behavior and its treatment rather than to the sociology of law. The reasons for this are clear. Courts and lawyers have had long training and experience in the crucial problems of handling individual cases and thus, quite reasonably, often lack a reciprocal sympathy for the professional social scientist who wishes to understand the general principles of human behavior as it is involved in legal processes. The charges, often implicit rather than explicit, revolve around the assumed impracticality of social science research and the hyper-practicality of the legal mind and activities. Rapprochement of the professions can be found only partly through men trained in both fields.¹⁰ Rather a mutually sympathetic dialogue must be developed and conceptions of the "venal lawyer" and "dreamer-social-scientist" must be dropped from our mental categories.¹¹

In this perspective the social scientist may point out that sentencing is but a particular form of the decision-making process and thus, the number of identifiable points of reference for the decision can be identified. Demanding limits and guide-lines for sentence-decisions are contained in the penal code and this has long been the subject of study by courts of law. In spite of the allegations that criminal laws are passed in the heat of emotional excitement and often in the absence of adequate social and legal research,¹² there is overwhelming evidence that those statutes which remain in the code and which are frequently used by the courts represent the values of the citizens who elect the lawmakers. On this ground the first part of this study addresses itself to the values expressed in the rules defining criminal behavior and especially to the values expressed in the penalties attached. Although an examination of values expressed in penalties may aid the problem of embodying legislative intent in the sentencing process, it becomes equally relevant to ask whether the court's prediction of criminal behavior by sentence is effective. Thus, the second part of this research has selected several categories of offenses within which financial penalties predict the protection of society and change in the offender. The low value so commonly attached to fines as punishment does not seem to be in accord with the propor-

9 For a well-known example of such proposals see BARNES & TEETERS, *NEW HORIZONS IN CRIMINOLOGY* 824 (1954) and *passim*.

10 Paul K. Tappan, Ph.D., J.D. is a classic example of the alternative suggested here, but even in such cases the blend of two fields remains not an easy marriage.

11 The monumental work of Sheldon and Elinor Glueck and the Harvard Law School suggests that more than dialogue can be developed. See GLUECKS, *UNRAVELING JUVENILE DELINQUENCY* (1950).

12 Of particular interest in regard to this and to the general theory in regard to the origins of criminal law: STEINMETZ, 2 *ETHNOLOGISCHE STUDIEN ZUR ERSTEN ENTWICKLUNG DER STROFE* (1894) *passim*; OPPENHEIMER, *THE RATIONALE OF PUNISHMENT* (1913); Fuller, *Morals and the Criminal Law*, 32 *J. CRIM. L., C. & P.S.* 624-30 (1942).

tion of cases in which financial penalties are used as sentences.¹³ Nor has there been very much research involving interviews of offenders and no studies have been found of the impact of fines in crime-specific categories. Much of the law-making and court decisions which provide for fines has been based more on imitation of tradition and other penal systems, personal observation and experience, and logical reasoning, rather than continuing and refined research. This study does not oppose the great value of historical and personal experience, yet it hopes to point out how certain gaps in our understanding of legal and criminal processes can be filled as an aid to sentencing.

I. VALUES EXPRESSED IN PENAL RULES

A. *General*

In the United States our laws are officially developed and decided by representatives elected from a given population of citizens. Such representatives arise from a group of peers and thus the representation may be construed as from equality. Prescinding from the issue as to whether the lawmaker should decide questions the way his electorate wishes or the way he perceives is right and just, one can argue that active citizens will obtain the legislation they desire in a democracy, because recall and frequent elections tend to preserve their ultimate decision-making power within the limits of the Constitution. Enduring penal rules and their penalties, then, can be recognized as effective values of an electorate.¹⁴ In consequence, the argument that we make ourselves criminal by passing penal rules against the behavior we desire to continue¹⁵ (our "schizoid culture" theme) has little merit. Not too long ago it was proposed that a set of experts study the values of the people of the United States and that criminal laws should be changed to conform to the changes in values.¹⁶ This line of reasoning does not, however, account for the dictum of Ovid, *Video meliora, proboque; deteriora sequor*, which is so manifest in us all. Human beings are more than animals; their nobility consists in struggling for higher goals and values than may actually be expressed in their daily behavior. The search for justice and full happiness often does not proceed in an orderly and well-reasoned way, but the closing of avenues in this search would be removing the full quality of being human, the seeking of justice and destiny by reason and faith.

The importance of this principle by which penal rules reflect the accepted values of citizens, regardless of whether those values are idealized or attached to behavior, cannot be exaggerated here, since it colors all that is to follow. Inconsistency among statutes and in sentencing thereby becomes more understandable and consistent with man as we know him in society. The distinction between felony and misdemeanor has been a favorite target of attack on the ground

13 One of the best general analyses of fines now in print is Note, *Fines and Fining — An Evaluation*, 101 U. PA. L. REV. 1013-30 (1953).

14 For a more extensive and catholic rationale of this cardinal point see SOROKIN, *op. cit. supra* note 1.

15 Walter Lippman's thesis here has been adopted by many of the extremist criminologists. See, e.g., BARNES & TEETERS, *op. cit. supra* note 9, at 825.

16 Sellin, *Research Memorandum on Crime in the Depression*, SOC. SCI. RESEARCH COUNCIL, Bull. 27 (1937).

of inconsistency.¹⁷ In this part of the study we may set up for purposes of analysis three sets of offenses, contrasting felonies and misdemeanors. The first set attempts to compare the felony of grand larceny with the misdemeanor of petit larceny. The meaning of the two rules determines the fact of taking something of value from another against his will. The distinction, or "breaking point," between grand and petit larceny consists in the stated value of that which is taken. Consequently the contrast may be considered to be relatively good. The second set of offenses attempts to contrast robbery with battery. The first set remains exclusively in the category of offenses against property. This second set contrasts offenses against the person. The second comparison is less than perfect in so far as robbery necessarily includes the taking of something which is the subject of larceny. For two reasons, however, the contrast may be considered to have point: 1) the value of the object taken in robbery is generally not stated and thus may range from something valued at two dollars to something valued at two million; 2) the variations in punishment, where degrees of robbery are specified, are graded according to the "force, fear or fraud" in the act, rather than the value of what is taken. The third set of offenses includes "driving under the influence" (hereafter indicated by the letters, "DUI" and public intoxication. To the offense of intoxication the DUI category adds the "operation of a vehicle." The combination of the two constitutes this offense and the severity of punishment in contrast with intoxication is clear. Only in a minority of states, however, has DUI become felonious, although when subsequent offenses are considered, the majority of states make it felonious. The comparative gravity of this crime is further suggested by the extensive legislative activity in this regard and also in the carefully graded, increasing penalties with repeated offenses in each state.¹⁸

An initial examination of the statutes in the 51 jurisdictions covered in this study reveals what appears to be tremendously confusing variation. A more penetrating inspection, however, shows not only the richness of variety, which has been the American tradition as well as the despair of jurisprudence and social science, but it also uncovers pattern and significance. There is little doubt that this variety may work to the advantage of offenders in some places and to the disadvantage of others in other places, but the fact remains that the laws of the various states are relatively effective within their own bounds. Arrest data by states generally show less variation than arrest data by rural-urban distribution.¹⁹ The problem of rising crime rates should be focused on handling metropolitan mass living, rather than focused on insisting that all jurisdictions maintain the same definitions of crime and equal gradations of penalties. The latter proposal has even less foundation when we see that estimated crime rates among various cities show marked variation in most categories of offenses. If the law-abiding tendency is greater in some cities, then it is reasonable that their system of pen-

17 Special attention to this problem is given in MacDonald, *The Classification of Crimes*, 19 CORNELL L.Q. 524-63. S. A. Queen found that misdemeanants and felons did not differ in any significant respect. QUEEN, *THE PASSING OF THE COUNTY JAIL* 87-94 (1920).

18 The general elements of these categories of offenses have been drawn from C.J.S., *passim*.

19 The bases for this reasoning and generalization have been developed from research studies of several decades ago. See SOROKIN & ZIMMERMAN, *PRINCIPLES OF RURAL-URBAN SOCIOLOGY*, ch. 16 (1929); RADZINOWICZ, *CRIMINALITY BY SIZE-GROUP OF COMMUNITY* (1946).

alties need not be as great as in cities where criminality is more rampant. The differences in the rules and penalties among the states have real justification. The following data illustrate the grounds for this analysis.

Table 1
Arrest Rates per 100,000 Population, U. S., 1958²⁰

<i>Area*</i>	<i>Population</i>	<i>Robbery</i>	<i>Aggravated Assault</i>	<i>Larceny over \$50</i>
<i>Iowa</i>				
State Total	2,821,833	9.4	6.5	140.1
Des Moines	268,790	35.0	19.3	340.0
Waterloo	126,053	16.7	11.1	147.6
<i>Illinois</i>				
State Total	9,889,307	93.7	53.8	192.7
Chicago	6,471,251	131.7	79.0	237.7
Springfield	140,426	28.5	44.9	163.1
<i>Indiana</i>				
State Total	4,580,739	34.7	28.8	202.8
Indianapolis	672,615	90.2	47.4	312.2
South Bend	239,645	30.5	20.0	228.7
Anderson	122,659	17.9	22.0	130.4
<i>New York</i>				
State Totals	16,229,065	43.2	74.3	355.3
New York	14,404,711	56.1	90.9	411.6
Binghamton	206,405	0.5	3.9	115.3

* The names of cities used above refer to Standard Metropolitan Areas and not to the legally constituted municipality alone; thus they often cross state lines and refer to a population homogeneity not expressed by state definitions.

Great are the numbers of influences on the above data, *e.g.*, police efficiency, the percentage of organized crime, but from these, the best data that we have, we see that states and equally populous standard metropolitan areas have widely divergent arrest (crime) rates. The correlation between population size and crime rates seems generally positive, but the pattern in all offense categories is not uniform by any means.²¹ Assuming that active citizens wish to adjust penalties according to the degree others are inclined to violate the law, we may say that variations in penalties from state to state are reasonable and to be expected. Such differences cannot be simply ascribed to an exaggerated parochialism among the lawmakers in each state.

B. *Variations by Offenses*

If each state were asserted to have the total explanation of its penalty provisions within itself, then, this would be the classic refutation of the influence of history, the principles of cultural diffusion and perhaps the validity of analysis of the United States as a single nation. On the contrary an extensive study of the three sets of offenses described above will reveal that pattern as well as vari-

²⁰ Constructed from F.B.I., UNIFORM CRIME REPORTS (1958).

²¹ This has been recognized by many large research studies. See, *e.g.*, VonHentig, *Der kriminelle Aspekt von Stadt und Land*, 23 MONATSSCHRIFT FÜR KRIMINALPSYCHOLOGIE 435-36 (1952).

ety are found in the nation's penalty systems. The following tables suggest precisely this.

Table 2
Maximum Institutional Penalties, Selected Offenses, U. S., 1958

Penalty	Grand Larceny	Petit Larceny	Robbery	Assault and Battery	Driving under the Influence	Intoxi- cation
1-30 days	0	5	0	5	5	18
31 days-						
3 months	0	4	0	4	3	11
6 months	0	18	0	19	17	9
to 1 year	0	16	0	10	16	4
to 5 years	15	3	2	5	5	0
to 10 years	26	0	12	0	0	0
to 15 years	6	0	10	0	0	0
to 30 years	2	0	10	0	0	0
to life	0	0	15*	0	0	0
death	0	0	2	0	0	0
Totals	49	46	51	43	46	42

N.B. The maxima are for the first offense only in each category. All states and the District of Columbia are included in the table. Totals of each column do not reach the potential 51 in each case because of one or more exclusion, e.g., only fines may be imposed, the code does not have a simple (uncomplicated with any other specifics, e.g., assault with deadly weapon), separate and explicit category of law denoting the penalty and/or offense.

* This number includes 2 statutes providing for "not less than one year," six for "not less than five years" and one for a maximum of 50 years.

Table 3
Maximum Financial Penalties, Selected Offenses, U. S., 1958

Penalty	Grand Larceny	Petit Larceny	Robbery	Assault and Battery	Driving under the Influence	Intoxi- cation
\$5-\$50	0	0	0	3	0	17
51-100	0	19	0	13	8	13
101-200	0	3	0	3	2	3
201-300	1	9	0	4	4	4
301-500	7	11	0	18	21	2
501-1000	7	4	0	6	14	3
over 1000	4	0	2	1*	2**	0
Totals	19	46	2	48	51	42

N.B. The notanda subscribed under Table 2 are applicable to this table.

* This figure represents a provision "not less than \$200."

** This includes one statute with penalty "not less than \$100" and one "not less than \$1000."

On the basis of these tables it becomes possible to rank the six offense categories in a rough order of most serious to least serious: robbery, grand larceny, driving under the influence, assault and battery, petit larceny and public intoxication. According to the values represented in the penalties we may say that offenses against the person do not automatically merit heavier punishment. In-

tegrity of the person connotes a value represented by the rule on assault and battery whose schedule of penalties overlaps with the rule of petit larceny which is designed to protect the value of private property. Yet assault and battery may involve rather serious harm to the person and petit larceny is by definition limited to minor theft. Robbery, it is believed through most of the United States, can be remedied almost exclusively by institutional punishment. Assault and battery, our comparative misdemeanor offense, however, shows very little overlap with robbery. This apparently inconsistent disjunction of the two offenses may be explained in terms of the comparatively numerous statutory degrees or sub-categories of each of the two offenses. Minnesota, for example, provides for a rather extended system of degrees, three for robbery and three for assault. It may be further suggested that robbery has retained its common law high value in contrast with larceny and assaults. Explanation for the resistance of this value to the intrusion of financial alternatives can at this time only be speculated upon. The value represented by the statutes on assault and battery, however, manifests not only the intrusion of financial alternatives, but also an even greater process of minimization than robbery's institutional penalties. Historical analysis may suggest two explanations of this: 1) the rise of financial penalties is associated in this country with the rise of the monetary evaluation of labor and of man, especially in the 19th century; 2) financial alternatives reflect the general mitigation of penalties as cure for judicial acts which became no longer supported by social values and public opinion (thus defined as abuses).²²

Grand larceny defines a type of evil which presumably is motivated in such a way that most lawmakers believe institutional penalties are generally more likely to reverse the process. Petit larceny, however, demands only short institutional terms, if at all, since alternative penalties are given the court more frequently in petit rather than grand larceny. Over 90% of the maxima for grand larceny are five years or more. The maxima for petit larceny show over 90% to be for one year or less. The absence of overlap in penalties might suggest that the "breaking points" between grand and petit larceny are both well defined and generally similar throughout the country. The contrary seems more to be the case, as the following data indicate.

Table 4
Minimum-Value Definitions of Grand Larceny, U. S., 1958

<i>Value</i>	<i>Number of States</i>
\$10-20	8
25-30	5
50-60	15
75-100	18
200-500	4
	—
Totals	50

²² Particularly interesting accounts of these shifts can be found in VONBAR, *A HISTORY OF CONTINENTAL CRIMINAL LAW* (1916); MAYERA, *GESCHICHTE DER STRAFRECHTE* (1896); and SWINDEREN, *ESQUISSE DU DROIT PENAL*. For an argument that the recent mitigation of penalties makes the abolition of the division of larceny into grand and petit a matter of logic and necessity, see HALL, *THEFT LAW AND SOCIETY* (1935).

The apparent inconsistency here can be explained by the above mentioned principle of value variation among the states. The application of this principle may be illustrated as follows: a fifty-dollar watch in a low-income area may be socially valued in higher degree than the same fifty-dollar watch in a high-income area. In a rural area where *money* incomes may be lower, the watch represents more affluence than in a metropolitan area where money incomes may be higher. This issue obviously raises the complex issue of the nature of money, that is, whether it is properly a uniform standard of real value in all areas. There is no question, however, that a person may be very poor according to his community's definition, but he and the group may place great significance on certain kinds of property to which low monetary value is assigned. Cases in point arise in the statutes defining the theft of a mare, steer or dog as grand larceny, regardless of monetary value placed thereon.

Public intoxication has received clear legislative attention, although variety is still characteristic among the states. Four jurisdictions feel compelled to specify that intoxication "even in one's own house" is included in the violations of the statute. A number of other states determine that drunkenness in a private house "not one's own" or "before two or more other persons" comes within the control of the law. At the other end of the specificity scale three states very generally assert that anyone "found intoxicated" has thereby committed an offense. This is comparable to the few states who specify degrees even of petit larceny, whereas Pennsylvania has the simplest statute on larceny, not even explicitly dividing grand and petit larceny.

The pattern of penalties attached to the intoxication rule shows that fines or jail are equivalent penalties. The preference for fines, rather than institutionalization, is also suggested. But the comparatively low punishment reveals the legislative evaluation that this offense is not too serious a violation of community norms or threat to group stability. On the other hand lawmakers may recognize a certain futility of punishment in handling the millions of drunkenness charges each year in the United States.²³ Several states have found it possible to add legislative procedural provision for assignment of those offenders who become recidivists to a hospital or special institution for alcoholics. However, specification of probation with this kind of treatment is comparatively rare. It may be concluded that the states do not wish the criminal courts to become general welfare agencies in such cases, despite the inadequacy of present penal statutes to handle this growing problem.

There is far more legislative detail about "driving under the influence." Especially in the more populous states DUI is generally stated to be a crime which becomes more serious, even felonious, with the second and subsequent convictions. In addition, over one-third of the states elaborate the percentage of alcohol content of the blood which is presumptive or conclusive evidence of intoxication. Additional variations in definitions of the rule are suggested in the following: 1) three states indicate that "attempt" is sufficient for conviction,

²³ This futility does not arise merely from the large numbers of offenders. The very nature and causes of alcoholism are still open questions for research, according to some students. See, e.g., Sutherland, Schroeder, and Tordella, *Personality Traits and the Alcoholic: A Critique of Existing Studies*, 11 Q.J. STUDIES ON ALCOHOL 547-61 (1950).

whereas most require "driving" or "operating"; 2) eight states specify "physical control" as a guiding criterion; 3) three states add that anyone "permitting another" to drive his car (or car in his custody) in such an intoxicated condition shall be deemed guilty of DUI; 4) most states denote "motor vehicle," but twelve states write "any vehicle" and several others expressly include other conveyances, such as animals; 5) three states not only specify public highways and streets, but also add "any place" in the state.

Consistently with the above detail, penalties for DUI show variation and more elaborate value delineation. Compared to other offenses there is more recourse to graduated, alternative and combined punishment in this offense. Only the minority of states, for example, retain license suspension in the penal code or the vehicle code as a purely regulative measure. With each additional conviction the license is generally suspended or revoked for longer periods, *e.g.*, over ten years in one state. Another state attempts to control this crime by impounding the car for a stated number of years. DUI describes a first offense to which more states attach severe financial penalties than any other offense considered here. The importance of the value-violation contained here is revealed by the general inclusion of the "influence of drugs" in the same proposition with alcohol in the statute and the penalties are stated in a single schedule. Table 2 shows that over 70% of the maximum fines for first DUI convictions are over three hundred dollars. Second and additional convictions specify rapidly increasing maxima. A similar pattern becomes clear in the institutional alternatives. With the second and following offenses the requirement of institutional commitment in many states becomes mandatory and the time to be served is long, *e.g.*, a fourth offense in one state must be punished by a ten- to thirty-year prison term at hard labor.²⁴ It becomes clear that the character of DUI does not encourage lawmakers to look on the offense with the futility or minimization values which characterize intoxication. The greater recourse to severe monetary penalties rather than severe institutional penalties in the first offense makes this category more comparable to assault and petit larceny. DUI on the first conviction is penalized more as a misdemeanor or contravention, whereas with second and subsequent offenses it becomes penalized as felony.

C. *Regional Variations*

Variety and pattern of social values expressed in penalties have their counterparts not only among individual states, but also among regions. New England, Mid-Atlantic and Pacific states, for example, have generally higher "breaking points" between grand and petit larceny. The West North Central and South Central states have the lowest breaking points, one with a ten-dollar minimum. Such distinguishing characteristics may be concomitant with the problems of controlling dense populations, although the East North Central is an exception to this interpretation. With the same exception, income levels and the rates of socio-cultural change are equally reasonable correlations with the manifest dif-

²⁴ Haecker, *Criminal Law: Felony Murder: Drunken Driving as a Felony*, 9 OKLA. L. REV. 58 (1956). This comment suggests that the seriousness of DUI arises because of its association with manslaughter. This is corroborated in *Alcohol and Highway Fatalities*, 3 FOR. SCI. 65 (1958).

ferentials. In this context, then, it becomes quite easy to recognize the influence of such factors as urbanization, income and occupational distribution and change on law-norms.²⁵ These influences, however, cannot be considered to be exhaustive or definitive explanations of the differences.

Maximum institutional penalties for the first offense in grand larceny appear to concentrate at the 5- and 10-year levels, but the regions exhibiting these clusterings are quite different. South Central, New England and West North Central show concentration at 5 years. These lower penalties are apparently related to the lower "breaking points" between grand and petit larceny. The converse seems equally true, namely, that the higher the value necessary to make theft grand larceny, the higher the institutional penalty, *e.g.*, the Pacific, Mountain and South Atlantic regions with 10 years or more.

Financial penalties for grand larceny show a reluctance to go beyond the \$1000 maximum. The Mid-Atlantic and East North Central are the only exceptions to this pattern, where penalties may go as high as \$2,000 and \$10,000. In this offense category there is practically no provision for a monetary penalty in the South Central area and very few of the Mountain and Pacific states provide for this alternative. The refusal to use this form of punishment may have historical explanation, but the high value placed on private property in these regions is nonetheless real. The generalization developed above (the higher the definitional minima for grand larceny, the higher the institutional penalties) does not seem to have its parallel in financial penalties. Excluding those states which use fines very little, we see many variations. The East North Central has relatively low definitional minima for felony larceny and high fines. New England has somewhat low minima, but some high fines. This variety may suggest that lawmakers generally question the effectiveness of fines as punishment for felony, even a felony which is presumably motivated by monetary considerations.

For petit larceny the West North Central insists on the lowest statutory limits for penalties (30 days or less), whereas the South Central places the highest institutional penalties (over 1 year). This pattern connotes the complexity of logic in penal values. For example, the South Central area has low "breaking points," low institutional and practically no financial penalties for grand larceny, but contrarily it has high institutional and moderate financial penalties for petit larceny. The Mountain and Pacific regions, however, have high "breaking points" and comparatively high institutional (1 year or more) and financial (\$500 or more) maximum penalties for petit larceny.

The process of dividing crime categories, such as robbery, into many subdivisions reveals the variety and depth of lawmakers' concern with preserving certain values. The gradation of penalties from armed and violent robbery down to relatively uncomplicated robbery portrays all the pressures and designs of a legislature to account for the more common cases arising in their jurisdictions. When a person, however, attempts to estimate the number of possibilities within each general category and its potential cross-classification with other offenses,

²⁵ An empirical study of 87 counties of Minnesota relates similar factors in great detail. See Shaw, *The Relationship between Crime Rates and Certain Population Characteristics in Minnesota Counties*, 40 J. CRIM. L., C. & P.S. 43-49 (1949).

the mind can only arrive at a staggering estimate of possible statutes by the use of factorial numbers. At this point he may look admiringly at such simple rules as Pennsylvania's common law statute on larceny.²⁶ For many cogent reasons, however, it appears that simplicity is not highly valued today. In several states the penal rules and penalties show that it is very important whether one strikes another with a cowhide, club or whip. In any event, a few regions manifest a special penchant to sub-categorize certain offenses. The West North Central states show a special liking for such subdivisions, despite the apparent reluctance to specify high penalties. Many gradations within a narrow range may be assuming too much logic in the efficiency of punishment. Of course, this may reduce the strain of decision on the part of the court, but it also places a correlative burden on prosecutor and police in determining the viability of alternative charges. Yet bringing the most appropriate charge remains one of the most effective ways of guaranteeing the total system in protecting the accused's rights and in protecting the threatened community.²⁷ Certain legislative trends placing greater confidence in the discretionary powers of the court, therefore, arouse questions about the desirability of sub-categorization of criminal offenses. Fewer alternatives are given in robbery cases than in any other classification under consideration. In 96% of the states the financial alternative is absent. The West North Central area makes comparatively low limits to imprisonment standards (under 10 years maximum), whereas the South Atlantic and South Central provide for the highest limits (over 30 years and death). In contrast to their provisions on grand larceny, the Pacific and Mountain states provide for only moderate penalties for robbery.

Public intoxication is penalized with the lowest limits (30 days or under and \$50 or under) in New England and the West North Central. Like other offense categories the Mountain and Pacific states provide for higher jail and fine levels. About one-fourth of all states provide for a financial alternative of \$25 or less and over one-third insist on thirty days or less as the maximum. Such limits seem reasonable for the first offense cases, but few states provide for increasing penalties with second and subsequent offenses. Courts throughout the country know that a provision for a "maximum of five days and/or \$10 is relatively useless for the repeater in this offense. If lawmakers recognize that magistrates' courts are jammed with such cases, then it may seem futile to formulate detailed alternatives, such as probation with the requirement of medical attention. But until the issue is clarified at law and money for special handling is forthcoming, there will apparently be no resolution of the problem. We shall continue to fill the jails, workhouses and farms with the indigent alcoholic and also fill the community with middle and high income alcoholics. The very fact

26 No position is assumed here that simplicity is a virtue without limits. The issue suggested rest on the polarities that simplicity breeds vagueness and complexity breeds confusion. The ease with which men can set up many classifications of offenses is illustrated by the incident that Bentham was confident he could construct a penal code for India while remaining in his own study.

27 The prosecutor as the most important person in the judicial system is elaborated in a number of articles by Baker and DeLong, *The Prosecutor and His Office*, 23 J. CRIM. L., C. & P.S. 926; 24 J. CRIM. L., C. & P.S. 1025; 25 J. CRIM. L., C. & P.S. 358, 884; 26 J. CRIM. L., C. & P.S. 821 (1933-1936).

that they are brought before the court as violators assumes that lawmakers expect the court to be able to do something constructive. Banishment of such cases to jail or workhouse can only be a palliative. Present limits tend to tie the court's hands and make its activities visibly futile, even ridiculous before the community.

Generally the courts can proceed in "driving under the influence" cases with far more dignity and power. This is true even in the South Atlantic, Mountain and East North Central areas which have the lowest institutional penalties (6 months or less). It is more certainly true in New England and Mid-Atlantic states which show the highest institutional maxima (more than 1 year). In fines the East and West North Central have the lowest limits (\$100) and the Pacific, South Atlantic and New England states have the highest (\$1000 or more). The South Atlantic, with low institutional and high financial maxima for DUI, exhibits a reversal of its pattern for grand larceny wherein it used high institutional and low financial penalties.

Making generalizations on the pattern of penalties in the United States has more than the normal hazards of describing the entire nation. With some confidence, however, the following pattern can be perceived amidst the variety of maximum penalties: 1) the Pacific and Mountain states provide for the highest limits in grand larceny, petit larceny, public intoxication and (fines only) DUI; 2) the Mid-Atlantic and New England areas have the highest maxima for assault and battery and (institution only) DUI; 3) the West North Central with New England defines the lowest limits for grand larceny, petit larceny, robbery, assault and battery and public intoxication; 4) East North Central states provide for the lowest penalties for DUI; 5) the South Atlantic and South Central states have enacted the highest limits for robbery; 6) the South Central region exhibits the greatest number of inconsistencies when we try to comprehend social values from penalty provisions, *e.g.*, high institutional and low financial penalties or vice versa.

II. PREDICTIVE SENTENCES IN A CITY COURT

Theoretical problems dealing with crime control have not been as sharply developed in sociology and criminology as have been studies in criminal etiology. Despite the fact that punitive reactions to crime have been characteristic of almost every human group, little research effort has been devoted to the analysis of crime-specific penalties, except, perhaps, for the somewhat one-sided work on the death penalty for first degree murder.²⁸ If there is reason in assuming that different categories of offenses are generally distinct in the criminal's motivation pattern, then research on such broad-scale penalties as imprisonment lacks refinement as a helpful guide for sentencing. Every experienced lawyer and judge realizes that the young first offender, convicted of larceny, would be more benefited from a presentence investigation with a view to probation than would an

²⁸ A thorough piece of research on the effect of the capital punishment threat on law-abiding citizens has yet to be done. This social-psychological kind of study seems required before any grand scientific conclusion can be reached. See HARTUNG, *ON CAPITAL PUNISHMENT* (1951), which like many of the other studies concentrates on the persons who have already been convicted.

older drug addict. The clues to give solidity to sentence-decisions may come not only from experience, but also from research which relates our knowledge of crime causation to penal or treatment sentences. Unfortunately, perhaps, the sociologist-criminologist has so thoroughly imbibed the thought pattern that sentences must be individualized, rather than derived univocally from abstract and impersonal legal provisions, that he tends to forget his own scientific objective of making valid generalizations about apparently individualistic forms of behavior. The lawmaker, the court, the lawyer and the social scientist reason and make decisions on the basis of generalizations of greater or less validity. The greatest help for sentencing, then, can come from research which offers as many valid generalizations as possible, relating causal and remedial influences on behavior. When such generalizations are cross-classified, like the hairs on a gunsight, the court will have useful guides for making more effective sentences.²⁹

The small piece of research reported here makes no pretense at achieving these large objectives. Its prime purpose consists in pointing to problem conceptualization, methods and the types of generalizations which may be both respectful and profitable to the legal profession as well as social science. We have already examined certain legal rules and penalties as representative of social values. Thus, there is a value to be protected in justice, *e.g.*, private property, and there is a social value expressed in the penalty of a law norm. The value expressed in penalty is, in effect, a prediction by the lawmaker that the given limits of punishment will suffice to restrain potential offenders or reform actual offenders (or disable unreformable offenders). The court, in turn, with the aid of the prosecutor, defense lawyer and others, attempts to apply this general prediction of the lawmaker to the specific case in the most reasonable fashion consonant with justice. The court's prediction may be recognized as the more onerous because it is more direct and immediate in its application of justice and in its effect on the human person. But the question remains: how effective and accurate are such sentence-predictions?³⁰

This question of necessity must be delimited in a small research project. Thus the availability of convicted offenders becomes an important criterion. At the same time there must be sufficient variability of offenses and penalties to make comparisons profitable. On these and other criteria the following phrase reveals the research decisions made: *the predictive power of financial penalties for petit larceny and assault offenders in a city court*. It has become characteristic of much of current research to concentrate on those offenses which may seem to be more dramatic or captive of popular attention. Yet it has been estimated that between five and six million petty offenses occur per year in the United States and that these cases consume the greatest amount of time in our courts. The Twelfth International Penal and Penitentiary Congress at The Hague in 1950 spent a considerable portion of its time attempting to resolve

29 For a valuable examination of this process, see Duncan, *Formal Devices for Making Selection Decisions*, 58 AM. J. SOC. 573-84 (1953).

30 There are some inherent limits to the aid scientific analysis can give to the sentencing court. The social scientist can provide a schedule of chances of success, but he cannot provide a standard for the final decision. See Woodward, *A Scientific Attempt to Provide Evidence for a Decision on Change of Venue*, 17 AM. SOC. REV. 447-52 (1952).

the juridical and administrative problems of dealing with the "minor" offender. In order to curtail the overcrowding of houses of correction, workhouses and jails throughout most of Western Europe and America, almost all of the rapporteurs emphasized the use of fines as one of the major substitute methods of handling this type of offender.³¹ The study of the laws of the United States has indicated that fines have been provided for extensively. E. Sutherland has suggested that the fine is by far the most frequent method of reacting punitively to crime, probably amounting to more than 75% of all penalties imposed in criminal cases.³² The Annual Report of the City Magistrates' Courts in New York City for 1958 gives a total of 1,626,728 fines imposed, of which 1,602,738 were actually paid. The Statistical Report of the Honolulu Police Department of the same year shows that almost 90% of those fined for Part I offenses were larceny cases. The Denver Police Department report indicates that there were more larceny cases among Part I offenses than any other single category and that assaults accounted for a significant percentage of Part II crimes. There is little question that the two selected offenses are significant in numbers and also in the use of fines. These offenses also have added meaning for this study in the fact that they are crimes and not purely violations of ordinances, that they contrast a crime against the person with a crime against property, and that both have had considerable attention in the legal and social-historical literature.

A study of the sentences of a city court for the years 1955, 1956 and 1957 revealed the frequency level and monthly variation of the two offenses, as well as the proportion of cases actually fined. These tables showed such a pattern that a monthly sampling ratio of cases could be established for 1958. On this basis 100 numbered cases were selected in advance in the two categories. This sample design was intended to eliminate the conscious and unconscious bias which interviewing in haphazard fashion would probably include.³³ During 1957 an extensive schedule of questions was developed, largely based on the logical and nonlogical insights of important writers in the legal, philosophical, historical and sociological literature. This schedule was pretested in two ways: 1) by discussing it thoroughly with a number of judges and lawyers, and 2) by using it in interviews with a total of 14 offenders toward the end of 1957. A follow-up on seven of these offenders three months later showed remarkably stable response patterns, regardless of the changed wording and placement of certain questions. The case numbers selected in advance in 1957 proved very accurate in predicting the annual and monthly distribution of cases in 1958. Also, approximately 98% of the case numbers so selected were interviewed successfully in 1958.

For all such studies it is important that the limitations be clearly understood. The representativeness of this sample of 200 offenders strictly extends only to the universe of the court in question. There is no reason to suspect that these offenders differ radically from others in other cities of the country, but caution in extending the generalizations is necessary. Also it must be remembered that this

31 See SUMMARY, TWELFTH INTERNATIONAL PENAL AND PENITENTIARY CONGRESS, THE HAGUE (1950).

32 SUTHERLAND & CRESSEY, PRINCIPLES OF CRIMINOLOGY 275-77 (1955).

33 Two general sources on such techniques and methods are PARTEN, SURVEYS, POLLS AND SAMPLES (1950) and COCHRAN, SAMPLING TECHNIQUES (1953).

study does not constitute an analysis of offenders in the two crime categories, but rather of offenders convicted, fined and able to pay the fines.³⁴ During 1958 in this court approximately 18% of the total number of cases in the two categories were unable to pay their fines.

In petit larceny cases included in the study we find that they constituted only fifty-four percent of all cases of this type of offense which came before the court. This attrition rate may be explained as follows: nine percent were dismissed or found not guilty; twenty-two percent received probation; eleven percent were sent to jail or the penal farm; twelve percent failed to pay their fines. After a short period of time from the original sentence the court was able to change its decision in five of the cases receiving probation and in three cases of failure to pay the fine. Thus, fines finally constituted the penalty in fifty-four cases out of the one hundred which were pre-selected. In the assault cases eighteen percent were found not guilty or dismissed; eight percent received probation and eleven percent were institutionalized; since five percent originally seemed to fail in paying their fines, only fifty-eight percent of the cases seemed available for the study. Actually nine percent failed to pay the fine, instead of five percent, and thus only fifty-four percent of the offenders in the pre-selected cases were convicted, fined and paid their fines.

Testing the prediction power of a sentence cannot simply be developed on the basis of whether the individual does or does not become convicted of a crime after the first offense. The difficulty of tracing such individuals, but especially the problems of ascertaining the changed motivations would not have been faced in such a simple research design. Consequently the offenders studied here were all interviewed within two weeks after their court experience and then approximately six months thereafter, in order to determine the stability or changes in behavior, attitudes and motivation. The schedule of questions attempted to strike at the most common arguments in favor of fines and also against the use of fines. Those who argue in favor of fines usually assert one or a combination of the following: 1) they do not interfere with the source of income, the occupation, or the business of the person; 2) they do not interfere with normal family life and other forms of social participation in the community; 3) they do not stigmatize him or endanger his self-respect or initiative, as does imprisonment; 4) they do not impose the corrupting influence of hardened criminals on him, as does institutionalization; 5) they are flexible and can be easily adjusted to the nature of the offense and the character and economic status of the offender; 6) they strike at a strong interest and value in every individual, his economic se-

34 These reservations may appear to be overly conservative, but their necessity is evident, if grandiose and unfounded claims are to be avoided. In contrast to the rule of scientific caution, the person not familiar with social science often finds it convenient to dismiss a refined study because of the honesty of the researcher in admitting limitations.

35 This depreciation of the figures due to non-payment of fines shows a marked difference from the situation not many years ago. The government reported in 1910 that 56.5% of all institutional commitments were for non-payment of fines, BUREAU OF CENSUS, PRISONERS AND JUVENILE DELINQUENTS IN THE UNITED STATES (1910). The Bureau of Census also reported that in 1933 a large proportion of the commitments to jail were for non-payment of fines. In some jurisdictions this ranged as high as 75% of all commitments. BUREAU OF CENSUS, CITY AND COUNTY JAILS (1933), (1935).

curity — consequently they are effective deterrents and reformative influences; 7) they are penalties which are completely revocable in cases where mistakes are made; 8) they are economical to administer. Other favoring arguments have been used, but these do not have applicability here, *e.g.*, fines are one of the few methods of penalizing legal persons such as corporations.³⁶

Those who oppose the use of fines as penalties for crime are inclined to argue along one or more of the following lines: 1) they are in practice adjusted to the offense and disregard the economic status of the person — thus they bear more heavily on the poor; 2) they must often be paid by relatives or friends who thereby carry the burden rather than the offender; 3) they are customarily used to punish habitual offenders, such as alcoholics, prostitutes, addicts, upon whom they exert no reformative influences; 4) usually they are not large enough to offset the economic gain of illegal acts and thus gamblers, prostitutes and bootleggers are inclined to regard fines as part of the normal costs of their work — they may actually increase their business in order to cover the losses incurred by fines; 5) they are easily manipulated by dishonest and politically involved persons, who understand that fines once publicly imposed may be privately remitted. The most important feature of these objections consists in their criticism of abuses of fines rather than of the principle involved. It remains to test the principle as well as the possible abuses which may creep into the system.

Some highlights of the descriptive results of the interviewing will give insight into the character and variations among the offenders. In the group of petit larceny cases we find that the average age is comparatively young — twenty-four years — and they are predominantly white males. The marital distribution shows that out of every ten approximately five were married and living with their wives, two were separated and two were single. There is further evidence that the married and separated categories have experienced grave problems of marital adjustment. This is confirmed by the fact that the majority had also experienced a high degree of job mobility within the unskilled and semi-skilled laboring classes. In an analysis of their average of 3.9 jobs the picture appears rather clearly that instability, dissatisfactions and flight therefrom had been characteristic of their lives. Again a majority found it comparatively easy to talk about their liking for alcoholic drink. At the same time the discussion of their frequent residential moving, an average of 3.7 moves per person, uncovered a rather unrealistic and sentimental attitude-set about their dependents (averaging three per offender). As might be expected, the mean income level of the larceny offenders was quite low, \$1856 per year.³⁷ From the evidence of job mobility, frequent residential moving and low income an explanation was readily available for the fact that most were living from day to day and were not planning ahead for more than a short time. Few realistic hopes for the future could be derived from most

36 One of the clearest summaries of such arguments may be found in CALDWELL, *CRIMINOLOGY* 426-28 (1956).

37 The pattern of thievery has been frequently described in the literature. GLUECKS, *LATER CRIMINAL CAREERS* (1938) described characteristics of property offenders which were strikingly similar to the offenders in this study. In addition, the Gluecks developed a prediction scale to aid in the sentencing process. No one has developed this scale further. None of the Glueck offenders were penalized exclusively by fines.

of the offenders. Most of the discussions about future plans revolved around moving to another city, getting a better job and developing better family and friendship relations. The suggested means to achieve these objectives, however, were highly inadequate and the plans were largely unreal in the light of their present capacities and prospects. In addition, it was found that recidivism was characteristic of the majority of the cases, averaging 3.9 prior arrests per person. The sequence of such arrests suggests a general pattern of growth from minor to more serious offenses, although inadequacy seemed to be the largest barrier to the commission of more serious offenses. This explanation of the truncation of criminal careers should not give the impression that there was no courage or aggressiveness among these men. The inadequacy mentioned here seems to derive from inability to resolve the conflicting pressures of family, job, unrealistic goals and also feelings of being persecuted.³⁸

This description of the petit larceny offenders, although foreshortened, gives sufficient background in order to grasp the more analytic generalizations on the effectiveness of fines. The average fine assessed approximated \$21 and costs, a relatively low degree of punishment if the sentences were designed to influence offenders deeply and lastingly. Fortunately the spread of fines was such that clusterings at "under \$10," "\$10 to \$50," and "over \$50" permit a breakdown to test the comparative effect of different amounts of fines. Using this classification system as a base, we may now make a number of generalizations. 1) For all but the most indigent offenders the fines of "under \$10" were taken cavalierly and approximated what Turnbladh has called the "purchase theory of justice."³⁹ Seventy-eight of the offenders felt that the judge had really tried to understand each case, but thirty-eight felt that he did not get all of the important information. This low personal hostility and reaction to the sentence of the court and its procedure was particularly characteristic of those fined minimally. 2) The effect of the \$10-\$50 fines showed more variation among offenders than any other category. For those who apparently had great family, job and income difficulties this category of fines proved powerful in eliciting hostility toward the court and the general system of justice. It appears that the general life-frustration of the offender was uniformly in these cases carried over to the court experience. Despite the fact that it was admittedly difficult for the court to understand all of the factors in each case and that the court tried to grasp all important details, these offenders felt that the fine was grievously unjust. In the same proportion as the complications of the offenders' lives were less frustrating and more personally rewarding, the antagonism to the fine was less and more agreement was found in evaluating the sentence as just. A low income offender with family and job stability might find the sentence to be harsh and difficult to pay, yet his sympathy with the design of the court was more pronounced. This factor of life-stability seemed to be far more important than the gradation of socio-economic status. Thus, a middle class offender with family and job difficulties would find the sentence

38 No diagnosis of psychopathy is intended here. The criteria used for inadequacy are largely social and cultural, rather than specific and unique personality deviations of the offenders. For the more standard psychiatric approach see Bromberg, *American Achievements in Criminology*, 44 J. CRIM. L., C. & P.S. 166-76 (1953).

39 Turnbladh, *Half Justice*, 2 NPPA J. 305-07 (1956).

more unjust and his hostile aggressiveness was more pronounced. 3) The offenders fined "over \$50" showed some variation also, but the general pattern is clear. The minority of cases felt a certain sense of achievement in being able to pay this high a fine. These men had been able to arrange loans, to borrow from family or friends, or to persuade the officer of the court that they would pay within a short time. Many in this group felt that they had been assessed a high fine in order to assure their inability to pay and thus receive a jail commitment.⁴⁰ When all other factors are controlled, there seems to be little appreciable effect of the fine on this group. Their approach to life seemed to take in only very short periods and thus the problem of paying back the borrowed money never struck them as real, despite their current low income status. The majority of offenders in this fine category, however, showed somewhat mixed reactions to the court experience. Generally the fine was conceived to be just. Detailed questioning further revealed that these offenders visualized rather clearly the implications of the fine in terms of restricting their family and recreational activities. Such offenders along with the "adjusted" men in the second category above approached the question of the impact of the fines upon their personal lives far more perceptively than any other groups. Unfortunately, perhaps, these men were in the minority of all cases studied (less than 20%). But even in these cases the picture was more complicated. Many of them felt victimized and discriminated against insofar as their witnessing of cases in court similar to their own cases showed that others were fined more leniently than they. Their concern included in some cases the consideration that the court appearance and the conviction would influence their jobs. In general, however, it can be asserted that the higher the fine beyond the normal capacity of the offender to pay, the more prominent the fine becomes as punishment in the mind of the offender.⁴¹ The exception to this rule seems to be those offenders who either cannot or will not see or plan much beyond the near future.

In contrast to the petit larceny offenders the assault cases showed some marked differences in background as well as in reactions to the fine itself. From the legally defined maximum for delinquency the age range for the assault cases reaches as high as 64 years. The clusterings of age appear largely in the early twenties and at the older end of the scale (over 50). The distribution between age 30 and 50 reveals a large portion of offenders who are assault-specific recidivists. Apparently they developed a pattern of personal violence earlier in life and continued it beyond young adulthood. Marital troubles seem to be involved in most

40 This process of making the court experience a personal issue constituted a primary factor in larceny and assault, *i.e.*, in extenuating the effect of punishment. The fact that treatment may proceed effectively in a personal relationship, *e.g.*, the juvenile court, does not make it logical that punishment can be administered effectively by the personal involvement of the court.

41 The meaning here suggests that when an offender finds himself unable to pay the fine immediately or directly from his own available resources, then the punitive value of the sentence becomes more present and influential in motivating the offender. No implication should be taken that uniformly high penalties bring proportionate change in the offender. Clearly the fine must be high enough to "hurt," yet low enough to avoid arousing totally hostile reactions. This may be taken as the "golden mean" in sentencing. For a provocative article, see Seagle, *Fines*, 5 ENCYCLOPEDIA SOC. SCI. 249-59 (1937), and VONHENTIG, *PUNISHMENT, ITS ORIGIN, PURPOSES AND PSYCHOLOGY* (1937).

of the cases. Of the sixty-eight married and living with their wives and the twenty-three separated by far the majority admitted having been regularly involved in quarreling and occasionally fighting with their wives. The stated grounds for such antagonism shows a wide distribution, but if the separate explanations are grouped reasonably, the offenders seem to be particularly sensitive about criticism of their financial honesty and capacities and also their control over contacts with members of the opposite sex. Job mobility among these men was very high, averaging four jobs each. The reasons given for such mobility were varied, but inability to establish satisfactory personal relations with employer and employee ranked high. The recourse to intoxication at frequent intervals was also pronounced. Apparently anomalous in the general picture are the relatively low frequency of residential mobility and the variability of income levels. The tendency to make few moves of residence may partly be explained by the fact that forty-one had incomes of \$4000 or above and were largely skilled and white collar workers. If these cases are removed from consideration, we find that mobility of jobs, residence and other elements approximate those of petit larceny. But there were still important differences, *e.g.*, realistic goals in life more characteristic of assault cases, more consistent recidivism within the assault and intoxication categories. There is little evidence that assault cases mature into more serious crimes, as far as could be determined in this study. It might be argued that for maturation from assault to more serious crimes requires association with a stronger criminal group than this community had to offer.

This description of assault offenders now permits some analysis of the scales, probing and ranking questions which deal with the special influence of financial penalties. Unfortunately for purposes of this study, the court found it appropriate to assess somewhat smaller fines in assault cases, averaging only \$17 and costs. Accordingly we can conveniently classify the fines as follows: "under \$10," "\$10 to \$25" and "over \$25."⁴² With this system we find that the number of offenders and their subgroup responses fall easily into clear categorizations. 1) Since the principals involved in the assaults were all present in the courtroom for the trials and since the court was able to handle these cases relatively soon after the actual assaults, emotions ran high. There was little indication that such emotions subsided appreciably even among those cases interviewed a week to ten days after the sentence. The emotions involved in the argument before the court clearly welled over into the offenders' reactions to the fines, but the fine was only a secondary focus of emotional interest. This first generalization, then, refers to the fact that the impact of fines as punishment diminishes or is practically absent when stronger emotions in a different focus are primary. 2) The white collar workers were able to comprehend the court's design in the sentences to fines, but they were largely pessimistic about its influence. The skilled and lower occupational groups were little interested in the purpose of the fines and commented little on its potential effectiveness. Most were pleased that the court did not sentence them to jail or some other institution,

⁴² These divisions may seem rather arbitrary and potential sources of bias in the interpretation. If the reasonable rules are conveniently applied, there is no evidence of bias. See HAGOOD & PRICE, *STATISTICS FOR SOCIOLOGISTS* (1952).

but the amount of the fine appeared to have little meaning. 3) Few seemed concerned that the fine might require a restriction in their normal activities and almost none worried about the impact of the fine on their family. There was some consideration given to the loss of time from their jobs and also concern about the ridicule or shame coming from publicity of the case, but these were not perceived as related to the fine itself. 4) When questions focusing on the justice of the fine were raised, thirty-eight reacted without hesitation that the conviction was unjust and thus the fine was wrong. Among those more willing to accept the justice of the sentence, there was agreement that the fine was "about right." The latter held true regardless of the class of the offender or the amount of the fine. But these same respondents were almost unanimous that a higher fine in the order of \$100 or more would be both hard to pay and probably unjust. This feeling of injustice at a higher fine was retrospective, however, and may be interpreted only in the light of the fact that they had already been assessed a relatively low fine.⁴³

From this analysis an attempt can now be made to answer the original question: are fines, as predictions of the court, effective and accurate? From our knowledge of the complexity of human beings and of their changeableness we should not expect a clear-cut answer. Von Hentig puts it succinctly as follows:

Far from being a difficult problem, punishment would be a mere arithmetical exercise if sensitiveness were always normal and healthy. We know, however, that man's instinct of self-preservation (the unit with which punishment reckons and works) can be disorderly, perky, perverted or gravely ill.⁴⁴

No punishment, or to state the case more generally, no teaching can expect to have a perfect response. The value of alternative penalties, then, can be judged only as matters of degree, rather than joining with one as effective and denying any effect to another kind of punishment. In the above study the six-month follow-up of the offenders attempted to ascertain the possible diminishing effects of the fines as punishment. It is instructive to note that only seventy-eight of the larceny cases and eighty-seven of the assault cases could recall the court appearance without special prompting. One of the most significant facets of the recall process is that most could remember the court appearance and the process of conviction, but at the same time were somewhat vague about the amount of the fine. Upon deeper reflection, however, most could give a good approximation of the amount. The stability of response patterns after six months when compared to those expressed soon after the conviction was nothing short of remarkable. It seemed improbable that the responses were stabilized for such a long period because of the ten to fifteen minutes experienced before the court. In other words the probability of reformation of an assault or larceny case must be established before the conviction in many respects, *e.g.*, by family, job and other factors. This does not mean to derogate the influence of the court experience, but in any event, the fine was not important in most cases after a six

⁴³ Certain authors consider this to be the crux of the problem of making penalties effective. "The educative effect of punishment depends on the recognition of its justice and its justice does not depend on its educative effect," are the words of P. Sen in SEN, FROM PUNISHMENT TO PREVENTION 278 (1932).

⁴⁴ VONHENTIG, *op. cit. supra* note 41, at 2.

months' lapse. In addition it must be noted that less than five in each offense category had committed new offenses during the six months' period. This criterion, however, does not explain a process which can be useful in sentencing.

If the entire complex of factors is taken into consideration, the following generalizations can be made in regard to the prediction power of financial penalties: 1) very small fines have little measureable effect on anyone; 2) fines for larceny are most effective in those cases where the offender shows a moderate degree of family and occupational stability, regardless of social class ranking; 3) no appreciable understanding among larceny offenders was evident in regard to the court's attempt to relate the size of the fine to the value of the property stolen;⁴⁵ 4) there is little evidence that knowledge of the penalty prior to the crime or the conviction was either extensive or effective; 5) varying amounts of fines in the same category of offense, *e.g.*, larceny or assault, create feelings of injustice in offenders and this mitigates the potential penal effect of fines; 6) the more emotionally involved the offender, *e.g.*, assault cases, the less effect fines appear to have; 7) the effect of fines has not been entirely isolated from the effect of the court appearance, the fear of publicity, the fear of family or job difficulties arising from conviction.

Conclusion

In conclusion, it may be said that the fine is not dead. Penal codes and courts throughout the country utilize this penalty almost as much as all other alternatives combined. Still the fine is more commonly evaluated as a penalty which is to be assessed when the offense does not warrant the judgment that the offender's liberty endangers the security or welfare of the community. Fines, like most other penalties, are designed to restore some congruity between personal and social norms of behavior and accordingly they must be focused on the egocentricity and values important to the offender. To be able to render an effective and predictive sentence the court must determine first what those values are and then, what alternatives open to the court will affect them. It has become clear from this study that the pattern of using fines by the court in question was something less than grandly effective among the two hundred offenders. The court in this case found that experimenting with "day fines" which have been used in Scandinavia and with larger fines to be paid in installments was unnecessary and undesirable.⁴⁶ Some of the evidence indicates, however, that larger fines, paid over a longer period of time, and well administered through some probationary service could well encourage reformatory tendencies. Just as the physician does not expect his patient to recover with one dose of medicine, it is reasonable that the court may have to maintain control over offenders for longer periods of time — with the option of imposing punishment in the form of a fine or more probation restrictions intermittently, as can be done wisely and with insight.⁴⁷ Despite the resistance to experimentation and welfare activities on the

⁴⁵ This conclusion flies against the basic theoretical principle of the classical and utilitarian schools of penology as represented by Beccaria and Bentham, namely that a rational calculus of punishments is most probable of success among potential offenders.

⁴⁶ Note, *Fines and Fining — An Evaluation*, 101 U. PA. L. REV. 1013-30 (1953).

⁴⁷ The use of the analogy between penalties and medicine was a cardinal feature of

part of many courts and regardless of the reluctance of lawmakers to provide the courts with sufficient funds to develop adequate programs, the funds and experimentation may be necessary in the long run to solve the problems of sentence prediction, rising crime rates and rising crime costs.