

# Chapter 12

## Fines in the Japanese Criminal Justice System

### 1. Punishments in the Japanese Criminal Justice System

The Japanese Penal Code<sup>1)</sup> provides for six principal punishments and one additional punishment. The following are the principal punishments, in order of severity from most severe to least severe (§10 (1) Penal Code):

- (a) the death penalty (*Shikei*) (§11 Penal Code);
- (b) imprisonment with labor (*Chōeki*) (§12 Penal Code);
- (c) imprisonment without labor (*Kinko*) (§13 Penal Code);
- (d) fines (*Bakkin*) (§15 Penal Code);
- (e) petty imprisonment without labor (*Kōryu*) (§16 Penal Code);
- (f) petty monetary punishment (*Karyō; Togaryō*) (§17 Penal Code).

The following is an additional punishment:

- (g) confiscation (*Bosshū*) (§19 Penal Code).

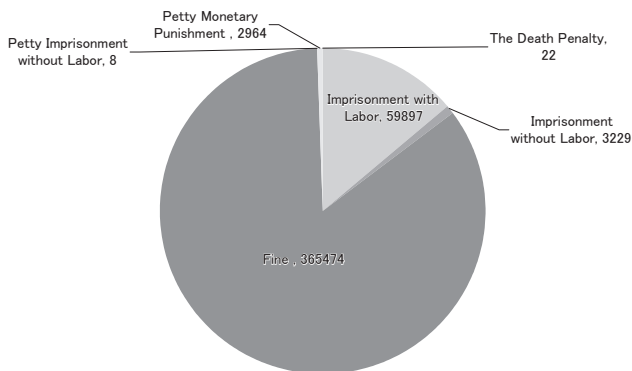
In 2011, the death penalty, imprisonment with labor, imprisonment without labor, fines, petty imprisonment without labor, and petty monetary punishment of 22; 59,897; 3,229; 365,474; 8; and 2,964 persons, respectively, became final and binding (See Graph 1).

In Japan, the death penalty is still carried out. Hanging at a penal institution (§11 (1) Penal Code), which, in practice, is a detention house (*Kōchisho*), is the accepted method of execution.

Imprisonments with labor are frequently inflicted in Japan. These sentences are usually between one month and twenty years (§12 (1) Penal Code). However, in aggravated cases, for example, accumulative crimes, the term may be extended to thirty years (§14 (2) Penal Code). When a defendant is sentenced to imprisonment with labor for a period of not more than three years, a court may order a suspension of execution of the sentence, which is suspended for a minimum period of one year, and a

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1) 1907 No. 45.



**Graph 1: The Sentencing in 2011**  
Source: Prosecution Annual Statistics

maximum period of five years from the day on which the sentence becomes final and binding (§25 (1) Penal Code). In practice, courts often utilize these kinds of suspensions.

Imprisonments without labor are seldom imposed in Japan. The imprisonments are between one month and twenty years, just as with imprisonments with labor (§13 (1) Penal Code). In the aggravated cases, here, as well, the term may be extended to thirty years (§14 (2) Penal Code), and the regulation regarding suspension of execution of the sentence with imprisonments without labor is equal to imprisonments with labor. Imprisonments without labor are usually imposed with suspensions of execution of the sentence. Those who are sentenced to imprisonments without labor may work if they would like (§93 Act Concerning Penal Detention Facilities and Treatment of Inmates etc.<sup>2)</sup>).

Fines are the most frequently inflicted punishments in Japan. In principle, fines are not supposed to be less than 10,000 yen. When an offender is unable to pay in full, he shall be sent to a work house (*Rōekijō*) (§18 Penal Code).

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2) 2005 No. 50.

Petty imprisonments without labor and petty monetary punishments are also seldom inflicted in Japan. Petty imprisonments without labor are between one and twenty nine days. Petty monetary punishments range between 1,000 and 9,999 yen.

Courts may not exclusively order confiscations because they are an additional punishment. In practice, courts often order confiscations in addition to imprisonment with labor.

Under Japanese law, probation is not a punishment. Probation may be additionally imposed with suspension of execution of the sentence (§25/2 Penal Code).

Further, Japanese law does not regulate restitution, compensation, and reparation as criminal sanctions.

The Road Traffic Act<sup>3)</sup> provides for traffic infringement fees (Kōtsū-Hansokukin) (§§125-130/2 Road Traffic Act) in lieu of fines. However, traffic infringement fees are not punishments, but administrative dispositions.

Japanese law has not introduced community service orders as a form of punishment. The 2011 Penal Code reform bill intended to add community service as a condition of probation with suspension of execution of the sentence (§25/2 Penal Code).

## 2. History and the Status Quo of Fines in Japan

Fines are often considered one of the oldest forms of punishment in some countries. However, fines are a much more recent occurrence in Japan, having been adopted for the first time in the former Japanese Penal Code of 1880<sup>4)</sup>.

Japanese law has been greatly influenced by Chinese law. Although

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3) 1960 No. 105.

4) 1880 No. 36. This Code was not an act passed by the Parliament, but an ordinance by the former Cabinet (*Dajōkan*), established in 1868. There was no Parliament in Japan until 1890.

Chinese law did not introduce fines into law until the nineteenth century, it did allow for compensation to victims. Therefore, both the first ordinance concerning crimes and punishments in 1871 (*Shinritu-Kōryō*) and the second ordinance in 1873 (*Kaitei-Ritsurei*) during the Meiji era, which was considered to be the beginning of modern Japanese society, did not include fines as a form of punishment.

The former Penal Code of 1880, which was modeled after the French Penal Code, imposed fines as punishments against misdemeanors. The 1907 Penal Code, modeled after the German Penal Code, did not distinguish between felonies and misdemeanors. However, fines were primarily reserved for less serious crimes, and courts did not often impose fines before the end of the World War II in 1945.

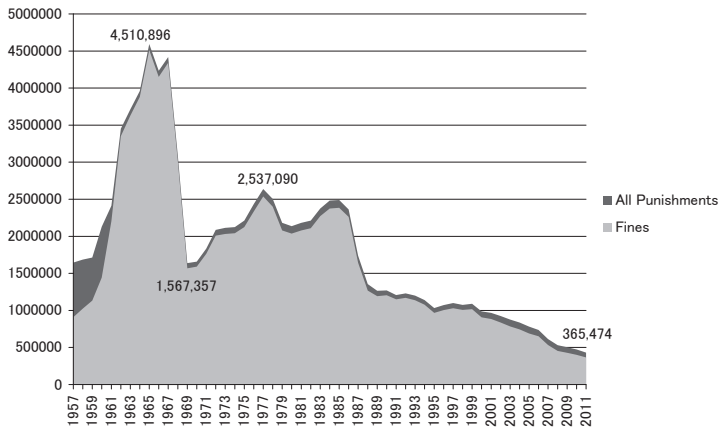
After the end of the World War II, fines had increased at an accelerated rate due to the augmentation of traffic offenses. Since then, fines have been the most frequently inflicted punishment in Japan (See Graph 2). In 1965, the fines of 4,510,896 persons became final and binding. Most of the offenses were committed in violation of the Road Traffic Act.

Offenses against the Road Traffic Act resulted in a heavy workload for police, public prosecutor's office, and courts. In practice, almost fines were not imposed in ordinary procedures, but in summary proceedings instead (§§461-470 Criminal Procedure Act<sup>5)</sup>). Nevertheless, the load was still too heavy. In addition, the relevant authority was apprehensive regarding the fact that since most Japanese people ended up with criminal records due to fines, it became somewhat commonplace; thus, in the process, fines seemed to lose their power of deterrence.

Therefore, in 1967, the legislators reformed the Road Traffic Act and introduced "traffic infringement fees" in lieu of fines. The fees are not punishments, but administrative dispositions imposed by police officers. Due to the introduction of the fees, the number of fines rapidly decreased to 1,567,357 in 1969. However, the number of fines increased again after 1969, with the fines of 2,537,090 persons becoming final and binding in

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5) 1948 No. 131.



**Graph 2: Fines in the Period 1957–2011**

\*Including ordinary first instance and summary proceeding

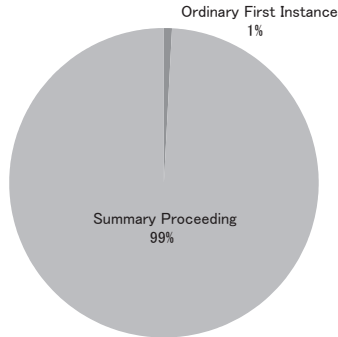
Source: Prosecution Annual Statistics

1977.

In 1987, public prosecutor’s office decided not to charge persons for causing injury through negligence in driving (former §211 Penal Code<sup>6)</sup>) if the injury of the victim is expected to heal in under two weeks. As a result, fines for causing injury through negligence in driving have decreased. In 2011, the fines of 365,474 persons became final and binding. Nevertheless, fines still remain the most frequently inflicted punishment in Japan (See Graph 2).

As mentioned above, all fines are not imposed in ordinary procedures, but in summary proceedings instead. In 2011, courts, via summary proceedings, sentenced 370,724 persons to pay fines, while 2,740 persons were sentenced to pay fines in ordinary procedures (See Graph 3).

6) The Penal Code had categorized causing death or injury through negligence in driving into causing deaths or injuries through negligence in the pursuit of social activities (former §211 Penal Code) before the reform in the Code in 2001 (2001 No. 138).



**Graph 3: Procedure of Fines in 2011**

Source: Judiciary Annual Statistics

A 1999 accident in which an intoxicated truck driver killed two children on the expressway triggered the court to impose the largest fine to date at that point in time. Japanese people paid close attention to the harm caused by drunk driving; in 2001, legislators reformed the Road Traffic Act<sup>7)</sup> in order to increase the statutory penalty on drunk driving to up to 500,000 yen (former §§65 (1), 117/2 No.1 Road Traffic Act) and up to 300,000 yen (former §§65 (1), 117/2/2 No. 1 Road Traffic Act). As a result, the amount of fines has increased since 2001. From 2001 to 2007, courts frequently handed out sentences to pay fines of 500,000 or 300,000 yen for the offense of drunk driving. In 2007, in an attempt to curtail drunk driving, legislators again reformed the Road Traffic Act<sup>8)</sup> to increase the statutory penalty for drunk driving up to 1,000,000 yen (§§65 (1), 117/2 No.1 Road Traffic Act) and up to 500,000 yen (§§65 (1), 117/2/2 No. 1 Road Traffic Act). Since 2007, courts have frequently imposed these higher fines.

According to the 2011 statistics regarding Road Traffic Act offenses and offenses related to the Act Concerning Preparing for Parking for

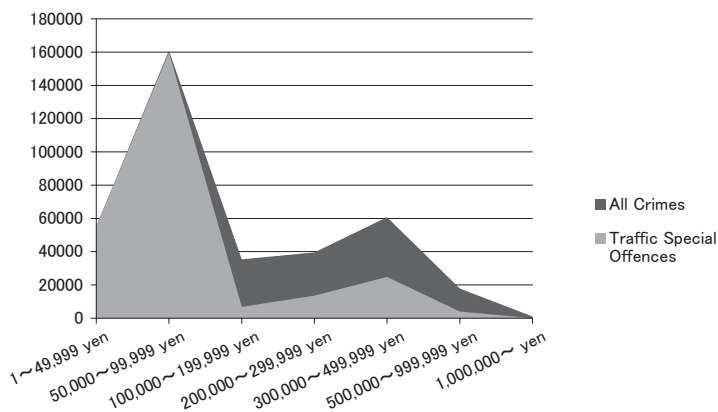
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7) 2001 No. 51.

8) 2007 No. 90.

Automobiles etc.<sup>9)</sup>, fines imposed on 28; 3,985; 24,845; 13,590; 6,811; 159,680; and 54,984 persons, respectively, were fined minimally 1,000,000 yen; between 500,000 yen and 1,000,000 yen; not less than 300,000 yen but less than 500,000 yen; not less than 200,000 yen but less than 300,000 yen; not less than 100,000 yen but less than 200,000 yen; not less than 50,000 yen but less than 100,000 yen; and less than 50,000 yen, respectively. The statistics concerning all crimes in 2011 show that the fines of 1,003; 17,829; 60,766; 39,564; 35,386; 160,859; and 55,232 persons were fined the abovementioned yen amounts. According to the 2011 statistics, there were two peaks (See Graph 4). One consists of fines between 50,000 and 100,000 yen mainly imposed for relatively small traffic offenses, for example, speeding (§§22, 118 (1) No. 1, (2) Road Traffic Act). The other peak includes fines between 300,000 and 500,000 yen, almost all of which were imposed against drunk drivers.

By the way, Japanese tax law provides that courts may impose fines consisting of the amount equal to the tax evasion. In practice, courts



**Graph 4: The Amount of Fines in 2011**

\*Including ordinary first instance and summary proceeding

Source: Judiciary Annual Statistics

9) 1962 No. 145.

occasionally impose fines of a few hundred million yen against tax evaders (for example, §§238 (2), (4), 239 (2), (4), 240 (2) the Income Tax Act<sup>10)</sup>, §68 (2), (4) the Accessions Tax Act<sup>11)</sup>).

Such high fines have resulted in an increase of work house admittances in lieu of payment.

Until 2006, the Penal Code included only one punishment, which was imprisonment with labor, against thieves, including shoplifters (former §235 Penal Code). In other words, the Penal Code did not provide for fines for thefts. Approximately 100 years ago, legislators acted under the assumption that thieves were unable to pay fines because they were so poor that they were forced to steal and would certainly not be able to afford a fine. Therefore, if a public prosecutor charged a shoplifter with theft, and a court found him guilty, the court could only sentence the offender to imprisonment with labor with or without suspension of the execution of his sentence. However, sentencing a shoplifter to imprisonment with labor, even with suspension of the execution of sentence, was believed to be too severe, so the shoplifter was usually not prosecuted.

The 2006 Penal Code reform<sup>12)</sup> changed this by allowing for courts to impose fines on thieves. The legislators enacted an act that made it possible to impose fines against people, who had been arrested two or three times for theft, particularly shoplifters, but had never been prosecuted. According to the 2011 statistics, fines were imposed against 8,521 who had committed acts of theft.

Even with fines being imposed on a variety of offenses, the majority of the fines are still imposed in relation to traffic offenses (See Graph 5). The fines of 265,103 and 55,442 persons were imposed for violations of the Road Traffic Act and the Act Concerning Preparing for Parking for Automobiles etc., and causing death or injury through negligence in driving (§211 (2) Penal Code), respectively.

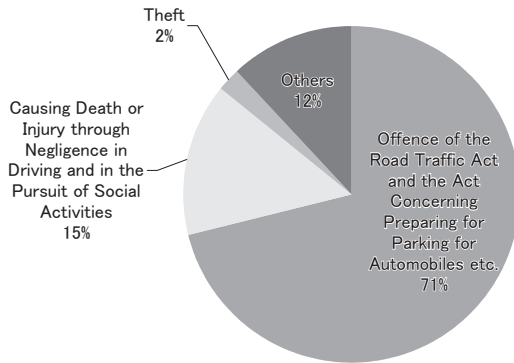
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10) 1965 No. 33.

11) 1950 No. 73.

12) 2006 No. 36.





**Graph 5: Fines in 2011**

\*Including ordinary first instance and summary proceeding

Source: Judiciary Annual Statistics

Even so, the total number of imposed fines has decreased, while the amount has increased. We should pay attention to such a change.

### 3. The Nature of Fines<sup>13)</sup>

Fines are not considered as civil compensation for damages against the state, but as punishments instead. In Japan, most scholars have asserted that since the late nineteenth century, the nature of fines has been a pure punishment. Therefore, even if a non-paying offender dies, the successor is not required to pay the fine on behalf of the deceased. However, the Criminal Procedure Act provides for two exceptions. The first stipulates that the authority may execute on the inherited property, insofar as the fine was imposed against the offense of acts or regulations on taxation or other public impositions or on monopolies (§491 Criminal Procedure Act). The second stipulates that the authority may require the consolidated corporate body, in lieu of the corporate body dissolved in the consolidation body, to

13) Detail: See, Chapter 7 in this book (in Japanese).

pay the fine (§492 Criminal Procedure Act).

However, these exceptions are not appropriate for the nature of punishment. In addition, the Act concerning the Punishment of Executives of the Corporate Body<sup>14)</sup> states that an executive of a corporate body who abuses the consolidation with the aim of escaping payment of a fine may be punished. Therefore, I believe that these provisions should be repealed.

#### 4. The Purpose of Fines<sup>15)</sup>

There is no provision that defines the purpose of fines in Japanese law. Some scholars insist that the purpose of fines is reformation. However, in practice, unlike imprisonment with or without labor, there is no opportunity to treat those who are sentenced to pay fines. It is difficult to reform offenders when their punishment is to pay fines. Additionally, non-paying offenders cannot be reformed in light of this purpose. Naturally, not all offenders are arrested and punished.

Some scholars assert that the purpose of fines is deterrence. They believe that the higher fine amounts will show the offender that the cost is greater than the benefit. However, higher amount of fines may not be appropriate for substantive due process, because such fines are out of proportion with the crimes. In addition, poor offenders who are unable to pay in full do not recognize that the cost of fines is greater than the benefit. Naturally, not all offenders are arrested and punished.

Other scholars maintain that the purpose of fines is retribution. They believe that the amount of the fine reflects the liability of the offender. However, fines against those who are unable pay in full do not lead to full retribution. In addition, not all offenders are arrested and punished.

As previously discussed, most scholars assert that the purpose of fines is reformation, deterrence, or retribution. These purposes are premised on the offenders paying in full. In other words, the discussion concerning the

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14) 1915 No. 18. This act comprises a single section.

15) Detail: See, Chapter 7 in this book (in Japanese).

purpose of fines is focused on the purpose of the payment. However, it is to be expected that not all offenders can pay in full, which renders the reasons behind the issuing of fines obsolete.

Therefore, I believe that the discussion regarding the purpose of fines should not focus on payment, but on sentencing. In sentencing, courts express the amount of the gravity of the offense and the liability of the offender. In other words, the amount of the fine reflects the gravity of the offense and the liability of the offender. Expressing this gravity and liability through the amount of money is much clearer than a punishment of a length of time, for example, years, months, or days. Therefore, I believe that the Japanese Penal Code should regulate the fine as a punishment for the purpose of expressing the harm caused against the community and the state. When the fine expresses the amount of the harm caused by the offense, the offender acknowledges the results of his criminal act. In addition, other people, including crime victims, believe that the state has acknowledged the harm.

## 5. The Sentencing Method of Fines<sup>16)</sup>

Courts in Japan inflict fines as a lump sum. Most scholars have argued that the Japanese Penal Code should adopt the day-fines system as the sentencing method.

In this system, courts take into consideration “the number of days” and “the amount of the daily fines.” The gravity of the crimes decides the number of days, while the amount of daily fines is decided mainly according to the income of the defendant.

Japanese legislators have considered whether Japanese law should adopt the day-fines system. In 1961, Japanese legislators attempted to introduce the day-fines system for the first time. They attempted to adopt this system in the Preparatory Draft of Reformed Penal Code (*Kaisei-Keihō-Junbi-Sōan*), but it was ultimately left out (See §49 Preparatory Draft of

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16) Detail: See, Chapter 8 in this book (in Japanese).

Reformed Penal Code<sup>17)</sup>). From 1964 to 1974, some legislators attempted to introduce this system in the Draft of Reformed Penal Code (*Kaisei-Keihō-Sōan*) again; however it was ultimately left out again. The public prosecutors opposed adoption of this system on the grounds that it would create the difficult task of proving the defendant's income. In 1990, the legislators considered whether the day-fines system should be adopted again. Once again, the public prosecutors opposed to adopt this system on the same grounds. As a result, Japanese law has never introduced the day-fines system.

It is often argued that in this system the amount of daily fines is difficult for courts to assess. In addition, two problems must be pointed out. First, it is more difficult for people to understand the gravity of the crime by deciding the number of days than by expressing punishment in terms of a total amount of money. Second, it is difficult for courts to assess the defendant's property in determining the amount of daily fines. Therefore, I do not believe that Japanese law should adopt the day-fines system. However, this does not mean that imposing lump sum fines is the best system for Japan. I propose a third system. In this system, courts would only take into account the gravity of the offense, just as one would do using the sentencing method of the day-fines system, and then decide the fine in a total amount, as is done in the US under the federal restitution orders<sup>18)</sup>. As mentioned above, the amount of the fine expresses the

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17) Repealed.

18) 18 U. S. C. §§3663, 3663A, 3664. In America, the federal Victim and Witness Protect Act (VWPA; P. L. 97-291, *96 Stat.* 1248) in 1982 made the restitution order a criminal sanction with the purpose of reparation to the crime victims. However, many poor offenders could not pay restitution to crime victims. In 1996, another federal act, the Mandatory Victim Restitution Act (MVRA; P. L. 104-132, *110 Stat.* 1227), regulated mandatory full restitution for many types of crimes. MVRA requires full restitution, but in fact poor offenders pay very little restitution according to the court-ordered payment plans. MVRA changed the purposes of restitution orders to include not only reparation, but also reformation. When the court imposes a restitution order on the defendant, the defendant acknowledges the

amount of harm against the community and the state. Those who have sufficient money to pay the amount of the fine must pay in full. If the offender claims that he is unable to pay in full, the court will decide on a payment or installment plan similar to the method of the restitution orders in US federal law. For example, the court sentences an offender to pay a fine of 1,000,000 yen and the offender has 400,000 yen and earns net 30,000 yen per month. He must pay 400,000 yen at once, and the court will establish a payment or installment plan in which, for example, he must pay 30,000 yen every month for 20 months.

## **6. The Amendment to the Amount of Fines in the Case of Inflation and Deflation<sup>19)</sup>**

If prices have inflated or deflated after an offender was sentenced to a fine, it is only fair that the amount to be paid should be amended by the courts or authorities. For example, a 1,000,000-yen fine handed out during sentencing must be transformed into a 1,030,000-yen fine against 3 percent inflation, and into a 980,000-yen fine against 2 percent deflation. Therefore, I believe that Japanese law should introduce the system that uses, for example, the Consumer Price Index (CPI) to amend the amount of fines according to inflation or deflation.

## **7. Collecting and Executing Fines<sup>20)</sup>**

Japanese law provides that the execution of sentences, including fines, should be directed by a public prosecutor (§472 (1) Criminal Procedure Act). Fines must be executed by order of the public prosecutor (§490 (1) first sentence Criminal Procedure Act). Such an order has the same effect

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amount of the harm that he caused and can undertake the process of reformation.

See, Chapters 2 and 11 in this book (in Japanese).

19) Detail: See, Chapter 9 in this book (in Japanese).

20) Detail: See, Chapter 6 in this book (in Japanese).

as a title of obligation (§490 (1) second sentence Criminal Procedure Act); therefore, a fine is executed without a new judgment. The execution of fines is implemented in accordance with the Civil Execution Act<sup>21)</sup> and any other acts concerning compulsory enforcement (§490 (2) Criminal Procedure Act). In practice, the public prosecutor's assistant officers usually execute fines.

As mentioned above, most offenders who are required to pay fines are not sentenced in the ordinary procedure, but in the summary proceedings. Courts usually order defendants to pay fines provisionally, particularly in the summary proceedings. As a result, most defendants pay fines on a provisional basis as soon as the court imposes a sentence to pay fines; thus, fines are seldom executed in civil execution or compulsory enforcement.

Under the Japanese Penal Code, when an offender does not pay an imposed fine, authorities have only one option. The Penal Code stipulates that a delinquent offender is sent to a work house (*Rōekijō*) located in prison in lieu of payment of the fine (§18 Penal Code). However, authorities cannot send juveniles to a work house (§54 Juvenile Act<sup>22)</sup>).

In some countries, courts determine the term of detention in lieu of payment of the fine when an offender becomes delinquent. On the contrary, Japanese courts must rule on the term of detention in a work house in the case of default of the full payment in advance (§18 (4) Penal Code). In practice, courts determine the amount of conversion per day, usually 5,000 yen per day. In principle, Japanese law provides that the term of the detention in a work house shall be between one day and two years. (§18 (1) Penal Code). When fines are imposed cumulatively, the term of detention must not exceed three years (§18 (3) first sentence Penal Code). The Japanese Supreme Court held that sending an offender to a work house is not imprisonment with labor, but is considered to be “a

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21) 1979 No. 4.

22) 1948 No. 168.

special executing method for fines<sup>23)</sup>". However, Japanese law states that authorities treat a person sent to a work house and a person serving an imprisonment with labor term similarly (§288 Act Concerning Penal Detention Facilities and Treatment of Inmates etc.).

It must be noted that the number of people sent to work houses has increased over the last two decades. I believe that there are two reasons for this increase. One reason can be attributed to the deep recession in Japan, while the other is due to the higher fines imposed on drunk-driving offenders. However, most offenders sent to work houses are frequently released after they have been confined for a few days because the members of their family, particularly parents, pay in full on behalf of the offenders.

Some scholars maintain that sending offenders to work houses is unconstitutional in light of equal protection of the laws (Art. 14 Japanese Constitution). On the contrary, the Supreme Court has held that sending offenders to work houses is, indeed, constitutional<sup>24)</sup>. However, even though this has been deemed to be constitutional, it should be still avoided. Since the main purpose of fines is to express the harm caused by the offender, I believe that sending non-paying offenders to work houses must be limited to only two types of offenders: (1) an offender who plans to escape from paying the fine by hiding his assets although he has sufficient money to pay in full; and (2) an offender with few assets who does not work despite his capability to earn income.

In other countries, criminal law usually provides for various methods for collecting and executing fines. However, as mentioned above, in Japan, the authorities have only one option in the Penal Code when an imposed fine is unpaid by an offender. There is not even any provision for installment or deferment of paying fines, although authorities admit installments and deferments do occur in practice (§§16 first sentence, 17 (1) main clause Regulation Concerning the Disposition of Collecting

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23) Supreme Court, June 7, 1950, 4 (6) *Supreme Court Criminal Reporter (Keishū)* 956.

24) Supreme Court, June 7, 1950.

Business<sup>25</sup>). Above all, installments tend to be used to interrupt the prescription of the fine<sup>26</sup>).

I believe that Japanese law should adopt various collecting and executing methods to help non-paying offenders pay fines, similar to the fashion of other countries' law. For example, New Zealand authorities can lock tires of the car owned by a non-paying offender<sup>27</sup>). This method likely ensures that the unpaid offender pays the fine when he has sufficient money to do so.

## 8. Traffic Infringement Fees<sup>28</sup>)

In Japan, traffic infringement fees are imposed on minor traffic offenders (*Kōtsū-Hansokukin*) (§§125-130/2 Road Traffic Act). These fees are not punishments, but administrative dispositions. As mentioned above, the fees were introduced in 1967 to decrease imposing fines. A police officer will give minor offenders of the Road Traffic Act (§§126, 127, 128 (1) Road Traffic Act) a paper requiring payment of a traffic infringement fee within ten days. The paper is blue, so it has been dubbed “the blue ticket.”

Minor offenses of the Road Traffic Act are required to pay these fees (§125, Table 2 Road Traffic Act), and include low- or middle-class speeding (§§22, 118 (1) No. 1, (2) Road Traffic Act); using a mobile phone while driving (§§71 No. 5/5, 119 (1) No. 9/3, (2) Road Traffic Act); missing a halt sign (§§43, 119 (1) No. 2, (2) Road Traffic Act); violating one-way traffic (§§8 (1), 119 (1) No. 1/2, (2) Road Traffic Act); going through a red light (§§7, 119 (1) No. 1/2, (2) Road Traffic Act); and parking illegally (§§44, 45, 119/2 (1) No. 1, (2), 119/3 (1) No. 1, (2) Road

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25) Ministry of Justice of Criminal Affairs Bureau General Affairs Section Official Directive of 1996 No. 196.

26) The period of prescription for fines is three years (§32 No. 6 Penal Code).

27) s. 94 (3) of Summary Proceedings Act 1957 (1957 No 87) (NZ).

28) Detail: See, Chapter 5 in this book (in Japanese).



Traffic Act); among others. According to the 2010 National Police Agency statistics, 7,577,519 cases were required to pay these fees in 2010. If the offender pays the police the fee within ten days, the police officer cannot refer the case to the public prosecutor (see §128 (2) Road Traffic Act). On the contrary, if the offender refuses to pay the fee, the public prosecutor may charge him with an offense of the Road Traffic Act in the court. The court may not sentence an offender to pay the traffic infringement fee, but to pay a fine instead.

As mentioned above, the relevant authorities were apprehensive when traffic infringement fees were introduced, as they felt that fines could lose their power of deterrence. To my regret, most Japanese people recognize traffic infringement fees as a kind of fine. In addition, the amount of a traffic infringement fee is much lower than that of a fine imposed in the same case. For example, a court may hand out a sentence to pay a fine of 100,000 yen against an illegal parking offender, while a police officer may require a fee of only 25,000 yen. Therefore, over 99 percent of offenders required to pay the fees pay them. Unfortunately, some drivers consider offenses of the Road Traffic Act to be less serious. However, speeding, using a mobile phone while driving, and the other violations listed above can cause serious accidents. The small fee amount leads to misunderstanding regarding the gravity of a particular offense, which is one of the major concerns regarding traffic infringement fees.

Some scholars maintain that traffic infringement fees may be unconstitutional. For example, when the person required to pay the fee wishes to claim his innocence, he must do so in court after the prosecution. If he is found guilty, he must pay a higher amount of the fine than that of the fee. In addition, this person would have a criminal record of the fine. Therefore, this system frequently leads people to reluctantly pay fees, even if they feel they have done nothing wrong. Thus, some scholars have pointed out that traffic infringement fees deprive the person required to pay the fee of the opportunity to claim his innocence, thereby resulting in these kinds of fees being unconstitutional in light of due process and the right of access to the courts (Art. 31, 32 Japanese Constitution).

Because traffic infringement fees are claimed to be both unconstitutional and ineffective, I propose abolishing the fees in Japan. The offenses against the Road Traffic Act, which could cause serious accidents, should be handled in court using fines. In sentencing, an offender can, and should, acknowledge the dangerousness of their driving (see chapter 4).

## 9. Fines against Corporate Bodies

Traditionally, the Japanese Penal Code has not regulated the liability of a corporate body, but only of a natural person. Some scholars have pointed that a corporate body is not a natural person, and thus, it has no criminal capability and no criminal liability. However, most scholars have argued that a corporate body also has criminal capability and criminal liability because a corporate body plays important role in Japanese society.

Most Japanese Acts provide for penalties against both natural persons and corporate bodies against criminal acts of natural persons who belong to a corporate body. Until 1991, Japanese law had provided that the maximum amount for the fines of any statutory penalties against a corporate body is same as that against a natural person. Even though corporate bodies sometimes include large enterprises, the amount of their fines was low, for example, 500,000 yen.

In 1991, the monetary punishments committee of the legislative council concluded that the maximum amount of fines of any statutory penalties against a corporate body may be different from that against a natural person. The 1992 reform of Securities Exchange Act<sup>29)</sup> increased the statutory penalty against a corporate body up to three hundred million yen (former §207 (1) No. 1 Securities Exchange Act). Today, the Financial Instruments and Exchange Act<sup>30)</sup>, which is the former Securities Exchange Act, provides for a maximum amount of seven hundred million yen (§§197, 207 (1) No. 1 the Financial Instruments and Exchange Act).

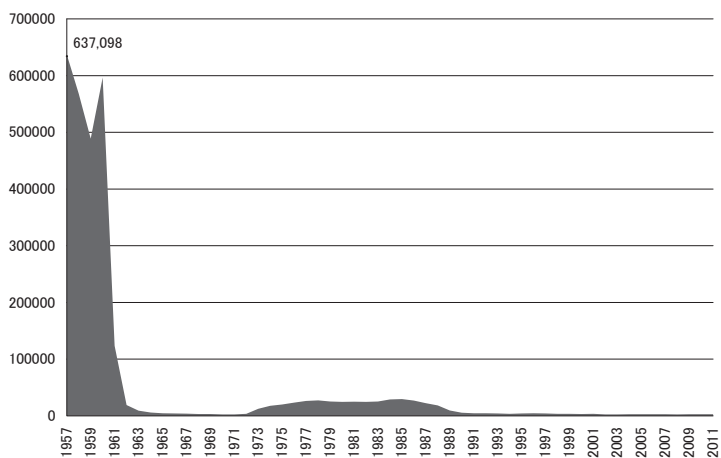
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29) 1948 No. 25.

30) The name of this act was changed in 2006 (2006 No. 65).

## 10. Consolidation of Both Fines and Petty Monetary Punishments

Petty monetary punishment was adopted in the former Penal Code of 1880. It had been used against minor offenses, particularly offenses against order and discipline in community, for example, the offense of the Ordinance of Minor Punishment to keep Order and Discipline<sup>31)</sup>. Until 1947, petty monetary punishments had not been frequently imposed by courts, but by police officers in the Ordinance of Summary Imposition of Punishments against Minor Offenses<sup>32)</sup>. Since 1948, petty monetary punishments have often been imposed against the offenses of the Minor Offence Act<sup>33)</sup> and the Road Traffic Act. The petty monetary punishments of 637,098 persons became final and binding in 1957 (See Graph 6). Most



**Graph 6: Petty Monetary Punishments in the period 1957–2011**

\*Including ordinary first instance and summary proceeding

Source: Prosecution Annual Statistics

31) Ordinance of Home Office of 1908 No. 16 (repealed).

32) Ordinance of the former Cabinet of 1886 No. 31 (repealed).

33) 1948 No. 39.

of the offenses were also against the Road Traffic Act. Because the amount of petty monetary punishments has become too low, the number of petty monetary punishments had decreased over the last 50 years to 2,964 in 2011.

Some scholars have argued that petty monetary punishments should be consolidated into fines because there has been a heavy decrease in court-ordered petty monetary punishments. On the other hand, most scholars have pointed out that there are a few differences, including the history, between petty monetary punishments and fines; therefore, both punishments should not be consolidated. For example, courts may not order suspension of execution of the sentence with petty monetary punishments, while they may order it with fines (§25 (1) Penal Code). Imposing a petty monetary punishment does not lead to discretionary revocation of suspension of execution of the sentence, while imposing a fine may lead to it (§26/2 No. 1 Penal Code). Similarly, imposing a petty monetary punishment does not lead to discretionary revocation of the parole, while imposing a fine may lead to it (§29 (1) No. 1 Penal Code). In addition, the prescription period for petty monetary punishments is one year, while that for fines is three years (§32 No. 6, 7 Penal Code). Therefore, it is maintained that Japanese law should not consolidate petty monetary punishments and fines.

However, these differences are not much. Therefore, I believe that Japanese Penal Code should consolidate petty monetary punishments into fines.

## 11. Conclusion

In Japan, as mentioned above, fines are the most frequently inflicted punishments, and are virtually limited to traffic offenses. Japanese law has not yet adopted the day-fines system as a sentencing method; courts usually decide the monetary amount regardless of the financial situation of a particular defendant. Therefore, fines in Japan are different from that in other countries, and thus, I believe that Japanese fines have been “Galápagosized”. Japanese legislators should reform the purpose and the

sentencing method of fines in order to enable courts to utilize fines for wider variety of crimes and offenders.



# Chapter 13

## Summary

### *A Study of Monetary Criminal Sanctions: Fines and Restitution Orders*

#### 1. Fines in Japanese Criminal Justice (Chapter 1)

The Japanese Penal Code regulates the death penalty (*Shikei*), imprisonment with labor (*Chōeki*), imprisonment without labor (*Kinko*), fines (*Bakkin*), petty imprisonment without labor (*Kōryū*), petty monetary punishment (*Karyō; Togaryō*) as principal punishments, and confiscation (*Bosshū*) as an additional punishment.

Fines have been the most frequently inflicted punishments in Japan. The fines of 4,510,896 persons became final and binding in 1965. Most of the offenses were against the Road Traffic Act. Due to the introduction of “traffic infringement fees (*Kōtsū-Hansokukin*)” in the Road Traffic Act in 1967, the number of fines has decreased. The fines of 365,474 people became final and binding in 2011. Nevertheless, fines are the most inflicted punishments in Japan.

Thanks to reform in the Penal Code in 2006, courts may sentence fines for thefts. However, the inflicted fines are still mainly for offenses against the Road Traffic Act and causing deaths or bodily injuries through negligence in driving.

Fines have been getting higher since 2001. For example, courts often sentence fines of 500,000 yen against drunk-driving offenders. When some poor offenders can't pay fines, they are sent to the work house (*Rōekijō*) located in prisons in lieu of payment of fines.

However, all people who receive a fine are not necessarily poor in Japan. Some people have enough money to pay fines. The supposition that “offenders are poor” is not necessarily correct, at least in Japan.

I think that courts can come to impose fines for more types of crimes and offenders if Japan reforms the purpose and the sentencing method of

finer.

Therefore this book mainly focuses on the purpose and sentencing method of fines in addition to restitution orders, costs/fees, confiscations, and traffic infringement fees.

## **2. Restitution Order as a Criminal Sanction (Chapter 2)**

### (1) Restitution Order as a Criminal Sanction in U. S. Federal Law

Although restitutions and reparations to the victims are one of the oldest sanctions against the causing of harm, which includes deaths, injuries, and destruction of property, the Japanese Penal Code does not include restitution order as a punishment.

In many countries scholars have argued that restitution to the crime victims should be of higher priority than payment of fines and should become the punishment. However, the purposes in inflicting restitutions and reparations were various: reformation, deterrence, retribution, reparation, etc. The purposes of reformation, deterrence, and retribution are offender-oriented while that of reparation is victim-oriented.

In America the federal Victim and Witness Protect Act (VWPA) in 1982 made the restitution order a criminal sanction with the purpose of reparation to the crime victims. But many poor offenders could not pay restitution to crime victims. In 1996 another federal act, the Mandatory Victim Restitution Act (MVRA) regulated mandatory full restitution for many types of crimes. MVRA requires full restitution, but in fact poor offenders pay little restitution according to the court-ordered payment plans. MVRA changed the purposes of restitution orders to include not only reparation, but also reformation. When the court imposes a restitution order on the defendant, the defendant acknowledges the amount of the harm which he caused and can undertake the process of reformation.

I think that the Japanese Penal Code should regulate the restitution order as a punishment for the purpose of expressing the harm caused by the offenses. When a restitution order expresses the amount of the harm caused by the offenses, the offender acknowledges the impact of his



criminal act. In addition, crime victims and others believe the state has acknowledged their harm.

## (2) Compensation Order as a Civil Remedy in Japan

In 2007 a compensation order was introduced in Japan not as a criminal sanction, but as a civil remedy.

The legislators explained that restitution orders as a criminal sanction did not necessarily require full reparation due to offenders' adverse economic conditions. In addition, they pointed out that crime victims were not involved in the procedure for deciding the restitution to them.

However, restitution orders in U. S. federal law require full restitution. In addition, in New Zealand, reparations as a criminal sanction involve crime victims in the process. Therefore I guess that the Japanese legislators did not understand the U. S. federal restitution orders and New Zealand's reparations as a criminal sanction enough.

Compensation orders as a civil remedy and restitution orders as a criminal sanction are not exclusive of each other. Therefore I think that the Japanese Penal Code should adopt restitution orders as criminal sanctions as another option that is helpful of crime victims.

## **3. The Costs/Fees Payment Orders as a Criminal Sanction (Chapter 3)**

The Japanese Criminal Procedure Act provides that the court may order the defendant to pay only the cost of the trial.

On the contrary, in most American jurisdictions, statutes require perpetrators to pay the costs or fees incurred from law enforcements through the criminal justice system, including, for example, investigation costs, probation costs, treatment costs in correctional settings, etc.

Undoubtedly, the reason for collecting costs or fees incurred in the administration of criminal justice is fiscal.

However, it should be pointed out that another purpose of collecting costs or fees is to express the costs or fees caused by the perpetrators' acts.

As I argued in chapter 2, here, too, expressing the amount of the costs or fees makes offenders acknowledge the harm against community caused by his criminal acts, and can encourage the offender to reform himself. In addition, people are satisfied that justice has been served by requiring offenders to pay costs or fees.

Therefore I think that an offender must pay the costs or fees incurred after his prosecution in Japan. I propose that Japanese law should regulate “the costs/fees payment order” as a criminal sanction.

#### **4. The Purpose of Confiscations (Chapter 4)**

Most scholars have argued that confiscations have two characteristics. One is removing the dangerous object from the community, as in the case of illegal drugs. Another is depriving the offenders of the profits they made, such as profits made on the sale of illegal drugs. These characteristics are equal purposes of confiscation.

I think that there is one more purpose: removing the object related to the act prohibited by the criminal law. For example, the knife the offender used for self-defense is not dangerous by its nature, but we want to remove it from the community on the grounds that it relates to the criminal case.

#### **5. Traffic Infringement fees (Chapter 5)**

In Japan, traffic infringement fees are imposed on minor traffic offenders. These fees are not punishments but administrative dispositions.

A minor offender of the Road Traffic Act can be required to pay the traffic infringement fee by a police officer. If the offender refuses to pay the fees, the prosecutor can charge him with an offense of the Road Traffic Act in the courts.

The amount of the traffic infringement fees is much lower than that of the fines in the same case in Japan, while the amount of the infringement fees is higher than that of the fine in the same case in New Zealand.

Because it is argued that there are both unconstitutional and practical

problems in traffic infringement fees, I propose abolishing these fees in Japan.

## **6. Collecting and Executing Fines in New Zealand (Chapter 6)**

When an imposed fine is unpaid by an offender in Japan, the authorities have only one option. The Japanese Penal Code regulates that a delinquent offender is sent to the work house located in prison in lieu of payment of the fine.

In contrast, New Zealand law prepares various methods for collecting and executing fines.

For example, New Zealand authorities can lock with chains tires of the car owned by a nonpaying offender. This method ensures that the unpaid offender pays the fine when he has enough money to do so.

I think that Japanese law should adopt various collecting and executing methods to help unpaid offenders to pay fines after the fashion of New Zealand law.

## **7. The Purpose of Fines (Chapter 7)**

Fines are not civil compensations to damages against the state, but punishments in nature. Therefore even if a nonpaying offender died, the successor must not be required to pay the fine on behalf of the deceased. In light of the nature of punishment, especially substantive due process, when imposing fines, courts must take into account the defendants' means for the payment of fines, especially their income and property.

The discussion concerning the purpose of fines has focused on the purpose of the payment. In other words, most scholars have claimed that these purposes are reformation, deterrence, or retribution.

These purposes are premised on what the offenders pay in full. However, it is to be expected that not all offenders can pay in full. What the offender does not pay in full cannot then achieve these purposes.

Therefore I think that Japan should impose not in “the number of days” but in the amount of money. The amount of the fine reflects the gravity of the offense. Expressing this gravity through the amount of money is clearer than a punishment of a length of time, for example, years, months, or days. As I offered in chapter 2 and 3, here, too, I think that the Japanese Penal Code should regulate the fine as a punishment for the purpose of expressing the harm against the community and the state. When the fine expresses the amount of the harm caused by offenses, the offender acknowledges the results of his criminal act. In addition, other people including crime victims believe the state has acknowledged the harm.

As a result, the purposes of restitution orders, costs/fees payment orders, confiscations, and fines are to express the harm against crime victims (see chapter 2), to recover the costs/fees incurred in law enforcements (see chapter 3), to remove the dangerousness in the object from the community, to deprive the offenders of the profits he made, and to remove the object used in a way prohibited by the criminal law (see chapter 4), and to express the harm against the community and the state (see chapter 7), respectively.

## **8. The Sentencing Method of Fines (Chapter 8)**

Courts in Japan inflict fines as a total amount of money. Most scholars have argued that the Japanese Penal Code should adopt the day-fines system as the sentencing method.

In the day-fines system, courts sentence to both “the number of days” and “the amount of the daily fines.” The gravity of the crimes leads to “the number of days.” “The amount of the daily fines” is decided mainly according to the income of the defendant. It is often argued that in this system, “the amount of the daily fines” is difficult for courts to assess. In addition, two problems must be pointed out. In the first place, it is more difficult for people to understand the gravity of the crime by deciding “the number of days” than by expressing punishment in a total amount of money. In the second place, it is difficult for courts to assess the

defendant's property in determining "the amount of daily fines." Therefore I do not think that Japanese law should adopt the day-fines system.

Further, I do not claim that imposing fines as simply a total amount of money is the best system in Japan. I propose a third way:

I propose that the court only takes account of the gravity of the offense after the fashion of the sentencing method of the day-fines system and decides the fine in a total amount of money after the fashion of the U. S. federal restitution orders. The amount of the fine expresses the harm against the community and the state. Those who have enough money to pay the amount of the fine must pay in full. If the offender claims that he can not pay in full, the court decides a payment or installment plan similar to the sentencing method of the restitution orders in U. S. federal law. For example, the court sentences an offender to pay 1,000,000-yen fine, and the offender has 400,000 yen and earns net 30,000 yen per month. He must pay 400,000 yen at once and the court will establish a payment or installment plan in which, for example, he must pay 30,000 yen every month for 20 months.

## **9. The Amendment to the Amount of Fines in the Case of Inflation and Deflation (Chapter 9)**

If prices have inflated or deflated after an offender was sentenced a fine, the amount that should be paid by him should be amended by the courts or authorities in light of justice. For example, a 1,000,000-yen fine when sentencing must be transformed into a 1,030,000-yen fine against three percent inflation, and into a 980,000-yen fine against two percent deflation.

Therefore I think that Japanese law should introduce the system that uses, for example, the Consumer Price Index to amend the amount of fines according to inflation or deflation.

## 10. Fines against Thefts and the Sanctions against the Nonpaying Offender (Chapter 10)

### (1) Fines against Thefts

In Japan, the Penal Code includes only one punishment, that of imprisonment with labor, against thieves, including shoplifters. The legislators assumed that all thieves could not pay fines due to their poorness. Therefore if a prosecutor charged a shoplifter with theft, and a court found him guilty, the court had to sentence the offender to imprisonment with labor with or without suspension of the execution of his sentence. In this case, a court did not have the option of imposing a fine. It was thought that sentencing a shoplifter to imprisonment with labor, even with suspension of the execution of sentence, was too severe, so the shoplifter was usually not prosecuted.

In 2006, thanks to reform of the Penal Code, courts became able to impose fines on thieves. The legislators prepared fines against those who had been arrested two or three times against thefts, especially shoplifters, and had never prosecuted against them.

I think that this reform was appropriate because courts obtained another sentencing option for shoplifters. In addition, this reform also furthered the fines' purpose of expressing the harms.

### (2) The Sanctions against the Nonpaying Offender

Because I think that the main purpose of fines is to express the harm caused by the offender, I propose that confinements or sending nonpaying offenders to the work houses must be limited to only two types of offender.

One is the offender who plans to escape from paying the fine by hiding his assets although he has enough money to pay in full. Another is the offender with few assets who does not work despite his capability to earn income.

## **11. The Clean Slate for Criminal Records Concerning Fines (Chapter 11)**

Because almost all fines in Japan are restricted to traffic offenses, people are quite indifferent to whether a perpetrator has been fined in the past.

On the contrary, fines in New Zealand are not limited to traffic cases, but appear in the sentencing of many types of crimes including thefts, embezzlements, bodily injuries, sexual assaults, etc., so it is more noteworthy when someone has a record of imposing fines in the past. When getting a job, contracting to carry insurance, or renting an apartment, people are usually asked whether they have a record of imposing fines or not. Those who have such criminal records are put at a disadvantage in their daily lives.

In light of balancing the crime and the punishment, New Zealand introduced the clean slate system in 2004. This system focuses mainly on the offenders sentenced to fines. In principal, the offender acquires a clean slate if he has had no criminal record for seven years after the court-imposed fine.

I think that Japanese law should follow New Zealand's lead and adopt the clean slate system concerning the sentencing of fines.

## **12. Fines in the Japanese Criminal Justice System (Chapter 12)**

In Japan, fines are the most frequently inflicted punishments, and are virtually limited to traffic offenses. Japanese law has not yet adopted the day-fines system as a sentencing method; courts usually decide the monetary amount regardless of the financial situation of a particular defendant. Therefore, fines in Japan are different from that in other countries, and thus, I believe that Japanese fines have been “Galápagosized”. Japanese legislators should reform the purpose and the sentencing method of fines in order to enable courts to utilize fines for wider variety of crimes and offenders.