Michigan Law Review

Volume 64 | Issue 5

1966

The Equal Protection Clause and Imprisonment of the Indigent For Nonpayment of Fines

Michigan Law Review

The Equal Protection Clause and Imprisonment of the Indigent For Nonpayment of Fines

The practice of imprisonment for failure to pay a fine levied for a criminal violation originated in twelfth-century England;[1] its subsequent unanimous acceptance in the United States is manifested

1. SUTHERLAND & CRESSEY, CRIMINOLOGY 275 (6th ed. 1960). For an extensive discussion of the historical development of the use of fines, see 2 HOLDSWORTH, A HISTORY OF ENGLISH LAW 43-44, 46 (3d ed. 1923); 1 STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 57 (1883).

in the provisions in the statutes of every state[2] and of the federal government[3] authorizing imprisonment for nonpayment of fines. A few states not only commit the defendant to jail for nonpayment of the fine, but impose hard labor as well.[4] Some states, however, have mitigated to a degree the harshness of the practice. For example, Arizona restricts the total period of confinement for the crime and the default of the fine to the maximum sentence authorized for the substantive offense.[5] In addition, the majority of states have statutes which ameliorate the burden upon the indigent[6] by providing for the discharge of "poor" prisoners after some minimum period of incarceration.[7]

The greatly increased use of fines in the twentieth century has made imprisonment for nonpayment a prominent sanction in the administration of our criminal laws.[8] American courts have traditionally taken the position that such imprisonment is not a form of punishment for the substantive crime, but is instead a method of compulsion to secure payment of the fine.[9] At the turn of the century, some courts held that statutes authorizing imprisonment for nonpayment of fines were valid if a fine was the sole sanction imposed for the crime, but invalid when the sentence for the crime

2. *E.g.*, ALASKA STAT. § 12.55.010 (1962): "A judgment that the defendant pay a fine shall also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every $5 of the fine." The variations among the state statutes are usually in the dollar amount to be credited against the fine for each day of confinement. See also ARK. STAT. ANN. § 43-2315 (1964); CAL. PEN. CODE § 1205; FLA. STAT. ANN. § 921.14 (Supp. 1964); LA. REV. STAT. ANN. § 15:529.3 (1951); N.Y. CODE CRIM. PROC. § 718.

3. 18 U.S.C. § 3565 (1964).

4. *E.g.*, ALA. CODE tit. 15, § 341 (1958); UTAH CODE ANN. § 77-36-7 (1953).

5. See ARIZ. REV. STAT. ANN. § 13-1648 (1956).

6. An indigent has been defined as one who is needy and poor, or one who has not sufficient property to furnish a living, or anyone who is able to support him, or to whom he is entitled to look for support. See BLACK, LAW DICTIONARY (4th ed. 1951).

7. *E.g.*, ALASKA STAT. § 12.55.030 (1962); COLO. REV. STAT. ANN. § 39-10-9 (1964); ILL. ANN. STAT. ch. 38, § 180-6 (Smith-Hurd 1964); MO. ANN. STAT. § 551.010 (1953). There is also a corresponding federal statute. Indigent Prisoner's Act, 18 U.S.C. § 3569 (1964).

8. The increased use of fines is attributed to the increased number of "minor" offenses. RUBIN, CRIMINAL CORRECTION 230 (1963). Although there is a lack of statistical data, it has been estimated that fines constitute 75% of all sentences imposed in the United States. *Id.* at 240; SUTHERLAND & CRESSEY, *op. cit. supra* note 1, at 276. Periodic studies of Philadelphia's Reed Street Prison and the Baltimore City Jail between 1940 and 1950 indicated that approximately 60% of all persons imprisoned in those institutions had been committed for nonpayment of fines. *Ibid.*; Note, 101 U. PA. L. REV. 1013-14 (1953). The full magnitude of the problem is best illustrated by the fact that New York City, in 1960 alone, collected a record total of nearly $15 million in fines, and committed over 26,000 people for nonpayment. N.Y.C. MAGISTRATES' COURTS ANN. REP. table 7 at 24-25, table 15 at 31 (1960).

9. See *Ex parte* Vendetti, 6 Alaska 381 (4th Div. 1921); *In re* Sullivan, 3 Cal. App. 193, 84 Pac. 781 (Ct. App. 1906); Mullin v. State, 38 Del. 533, 194 Atl. 578 (Super. Ct. 1937); McKinney v. Hamilton, 282 N.Y. 393, 26 N.E.2d 949 (1940); Foertsch v. Jameson, 48 S.D. 328, 204 N.W. 175 (1925).

included both fine and imprisonment.[10] However, later authority in other states indicates that this position was merely an isolated exception to the general judicial acceptance of such statutes.[11] The courts have consistently upheld the constitutionality of statutes authorizing imprisonment for nonpayment in the face of assertions that the procedure constituted a cruel and unusual punishment[12] or amounted to imprisonment for debt.[13]

The deprivation of freedom resulting from the application of these statutes has been most immediate and severe for the indigent defendant whose poverty precludes payment of any fine imposed upon him. This factor brings into focus the essential question whether the indigent is denied the equal protection of the laws when he is, in effect, automatically incarcerated for nonpayment of his fine, whereas the person of means can purchase his immediate release. Although this issue has not yet been presented to the United States Supreme Court, it has arisen in lower courts[14] because of the Supreme Court's increasing reliance upon the equal protection clause to mitigate the plight of the indigent defendant.[15]

Traditionally, the Supreme Court has adhered to two basic views as to what amounts to a denial of equal protection. The first formed the basis for the decision in *Brown v. Board of Education*,[16] in which the Court held that segregation of white and Negro children in public schools, pursuant to state statutes which permitted or required such segregation, denied the Negroes the equal protection guaranteed by the fourteenth amendment. The statutes were condemned not because they were unfairly administered, but because they were discriminatory on their face.[17]

The second view was formulated by the Court in *Yick Wo v. Hopkins*,[18] in which a Chinese laundryman had been denied a license

10. People v. Brown, 113 Cal. 35, 45 Pac. 181 (1896); People v. Kerr, 15 Cal. App. 273, 114 Pac. 584 (Ct. App. 1911); Reese v. Olsen, 44 Utah 318, 109 Pac. 941 (1914); Roberts v. Howells, 22 Utah 389, 62 Pac. 892 (1900). This position was justified on the ground that the imposition of imprisonment, in addition to a punitive jail sentence for a definite term, exceeded the court's power.

11. See, *e.g.*, Henderson v. United States, 189 A.2d 132 (D.C. Ct. App. 1963); Lee v. State, 103 Ga. App. 161, 118 S.E.2d 599 (1961); People *ex rel.* Crockett v. Redman, 41 Misc. 2d 962, 246 N.Y.S.2d 861 (Sup. Ct. 1964).

12. See, *e.g.*, Foertsch v. Jameson, 48 S.D. 328, 204 N.W. 175 (1925).

13. See, *e.g.*, State v. Kilmer, 31 N.D. 442, 153 N.W. 1089 (1915); *Ex parte* Small, 92 Okla. Crim. 101, 221 P.2d 669 (Crim. Ct. App. 1950); Harlow v. Clow, 110 Ore. 257, 223 Pac. 541 (1924).

14. United States *ex rel.* Privitera v. Kross, 239 F. Supp. 118 (S.D.N.Y. 1965); People v. Collins, 47 Misc. 2d 210, 261 N.Y.S.2d 970 (Orange County Ct. 1965). See generally notes 31-50 *infra* and accompanying text.

15. See notes 21-26 *infra* and accompanying text.

16. 347 U.S. 483 (1954).

17. See also, *e.g.*, Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

18. 118 U.S. 356 (1886).

to operate, although licenses were being granted to non-orientals. In holding this to be an unconstitutional denial of equal protection, the Court stated that even though the statute was fair on its face, the Constitution is violated when the law is "applied and administered by public authority with an evil eye and an unequal hand"[19] so as to discriminate unjustly between persons in similar circumstances.[20]

In 1956 the Court established a new equal protection standard in *Griffin v. Illinois*.[21] Although the scope of this 4-1-4 decision[22] is still uncertain, it is significant as the Court's first broad pronouncement on economic equality in the criminal process.[23] The state of Illinois had conditioned appeal upon the purchase of a trial transcript. Although this requirement applied equally to all defendants, its practical effect was to deny the right of appellate review to those too poor to purchase a transcript. The Court rejected the contention that the state is never required to equalize economic disparities,[24] holding that the state's failure to provide a free transcript to the indigent violated the equal protection clause.[25] In effect, the Court considered the statute unreasonably discriminatory because it led to one result for the wealthy and another for the poor, despite being both fair on its face and indiscriminately administered.[26]

19. *Id.* at 373-74.

20. See also Reynolds v. Sims, 377 U.S. 533, 562 (1964); Hernandez v. Texas, 347 U.S. 475 (1954); Fowler v. Rhode Island, 345 U.S. 67 (1953).

21. 351 U.S. 12 (1956). The *Griffin* case precipitated a storm of controversy. See, *e.g.*, LOCKHART, KAMISAR & CHOPER, CASES ON CONSTITUTIONAL LAW 706-07 (1964); Allen, *Griffin v. Illinois—Antecedents and Aftermath*, 25 U. CHI. L. REV. 151 (1957); Goldberg, *Equality and Governmental Action*, 39 N.Y.U.L. REV. 205 (1964); Qua, *Griffin v. Illinois*, 25 U. CHI. L. REV. 143 (1957); Tucker, *The Supreme Court and the Indigent Defendant*, 37 So. CAL. L. REV. 151 (1964); Willcox & Bloustein, *The Griffin Case—Poverty and the Fourteenth Amendment*, 43 CORNELL L.Q. 1 (1957); Comment, 16 STAN. L. REV. 394 (1964).

22. The principal opinion was written by Mr. Justice Black, and was joined by Mr. Chief Justice Warren and Justices Douglas and Clark. Mr. Justice Frankfurter concurred, while Justices Burton, Minton, Reed and Harlan dissented.

23. See Goldberg, *supra* note 21, at 218.

24. 351 U.S. 12, 28 (1956) (Burton and Minton, JJ., dissenting). Although there is no express language in the majority opinion that deals with this contention, the whole tenor of Mr. Justice Black's and Mr. Justice Frankfurter's arguments inevitably leads to this conclusion. See also Kamisar, *Has the Supreme Court Left the Attorney General Behind?—The Bazelon-Katzenbach Letters on Poverty, Equality and the Administration of Criminal Justice*, 155 N.Y.L.J., Feb. 24, 1966.

25. The holding was given added importance by Mr. Justice Black's broad statement that "in criminal trials a State can no more discriminate on account of poverty than on account of religion, race or color," 351 U.S. at 17, and that "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has," *id.* at 19.

26. The *Griffin* rationale was immediately utilized in several "indigent defendant" cases which extended it to other aspects of appeal. See Burns v. Ohio, 360 U.S. 252 (1959); Smith v. Bennett, 365 U.S. 708 (1961); Lane v. Brown, 372 U.S. 477 (1963). It was also extended to certain situations in which the indigent was without the assistance of counsel on appeal. See Douglas v. California, 372 U.S. 353 (1963). The Court has even

The Court's subsequent decision in *Douglas v. California*,[27] which held that an indigent must not be denied the assistance of counsel on appeal (at least on his first appeal as of right under state law), effectively refutes a narrow interpretation of *Griffin*.[28] The view that *Griffin* considered only the availability of, or access to, appellate review must be modified or abandoned in light of *Douglas*, which made it clear that the evil in both cases—denial on appeal of free counsel or a free transcript—was the same: discrimination against the indigent.[29]

Although the force of the *Griffin-Douglas* rationale was such that one might expect it to be applied to imprisonment for nonpayment of fines,[30] such an extension was rejected by a federal district court in *United States ex rel. Privitera v. Kross*.[31] The indigent defendant, upon receiving a non-maximum sentence of thirty days and an additional sixty days for failure to pay a five hundred dollar fine, sought release from custody upon a federal writ of habeas corpus, contending that the imprisonment for nonpayment was attributable solely to his lack of funds, and therefore violated his right to the equal protection of the laws under the fourteenth amendment. The court found no violation of the equal protection clause, stating that since the prisoner's past criminal record and other relevant factors allowed the judge wide discretion in sentencing, the prisoner was not justified in comparing his situation with that of a wealthy defendant who might avoid such imprisonment by prompt payment of the fine.[32] This analysis would seem to skirt the issue by failing to recognize that imprisonment for nonpayment of fines has always been justified *only* as a coercive device, never as a punishment.[33] The judge's discretion as to the use of defendant's past criminal record is relevant only when the sanction for the substantive crime is being imposed. At that time the record may influence the decision

heard argument on whether an indigent state defendant has a constitutional right to be furnished with the services of an independent psychiatrist, Bush v. Texas, 372 U.S. 586 (1963), but consideration of the constitutional issue was postponed when the state agreed to a retrial.

27. 372 U.S. 353 (1963).

28. See Kamisar & Choper, *The Right to Counsel in Minnesota—Some Field Findings and Legal Policy Observations*, 48 MINN. L. REV. 1, 12 (1963).

29. *Ibid.*

30. See Wildeblood v. United States, 284 F.2d 592, 593 (D.C. Cir. 1960) (Edgerton, J., dissenting). Judge Edgerton strongly objected to imprisonment for nonpayment as being unfairly discriminatory against the poor. Since the defendant in *Wildeblood* was not imprisoned for nonpayment, the majority found it unnecessary to pass on the issue raised by the dissent. In avoiding the issue, however, the majority implicitly approved earlier decisions upholding imprisonment for nonpayment. See also Goldberg, *supra* note 21, at 221-22.

31. 239 F. Supp. 118 (S.D.N.Y. 1965).

32. *Id.* at 120.

33. See note 9 *supra* and accompanying text. See also Henderson v. United States, 189 A.2d 132 (D.C. Ct. App. 1963); Lee v. State, 103 Ga. App. 161, 118 S.E.2d 599 (1961).

whether to impose a fine, imprisonment, or both. However, these considerations have no applicability as a justification for imprisonment for nonpayment once the appropriate sanction is determined. Thus, the *Privitera* court erred in placing imprisonment for nonpayment of a fine on a parity with incarceration for the substantive offense.

The court in *Privitera* noted that the right pursued by the defendant was in fact illusory, since on remand the judge, knowing of the defendant's indigency, could avoid the equal protection problem by simply imposing a proportionately longer term of confinement as punishment for the crime, instead of imposing a fine and then requiring imprisonment for nonpayment.[34] The judge's discretion in this setting is limited, however, by the maximum period of imprisonment prescribed by the statute punishing the substantive offense. The constitutional issue is therefore most directly presented where the maximum term of imprisonment has already been imposed, and the defendant is required to remain incarcerated for an additional period because of his inability to pay the fine.[35]

Precisely the problem just described was presented in *People v. Collins*.[36] Defendant Collins was convicted of third degree assault and received the maximum sentence—one year in jail and a $250 fine. Since he was unable to pay the fine, he was further sentenced to one day in jail for every dollar of the fine unpaid. The defendant appealed, alleging that the additional imprisonment beyond the statutory maximum was unconstitutional as to him because he was unable to pay any fine imposed. The court held that this additional imprisonment discriminated between an indigent and a non-indigent, and therefore violated the equal protection clause.[37] Relying on a rationale similar to that of the *Griffin* decision, the court based its holding on two grounds. The first was that the legislative purpose underlying the statute imposing imprisonment for nonpayment—enforcing payment of the fine—was not being furthered when applied to an indigent. It seems obvious that depriving the accused of his liberty could not possibly have coerced payment of a fine he was incapable of paying, and would necessarily prevent the defendant from earning money with which to pay the fine. Thus, the statute appears to be justifiable only when applied to the defendant who has the funds, but simply refuses to pay; otherwise the defendant is in effect imprisoned for being poor. Second, the court reasoned that the

34. United States *ex rel.* Privitera v. Kross, 239 F. Supp. 118, 121 (S.D.N.Y. 1965).

35. This situation was expressly distinguished by the court in *Privitera* from the facts before it. *Id.* at 121. There may be justification for retaining the "$10 or 10 days" type of penalty, since abolition of this sanction would mean that the offender would go unpunished.

36. 47 Misc. 2d 210, 261 N.Y.S.2d 970 (Orange County Ct. 1965).

37. *Id.* at 213, 261 N.Y.S.2d at 973.

wealthy defendant has an undue advantage in that he is able to limit the duration of his confinement to the maximum period set by statute for the substantive crime, while the indigent, given the same prison term and fine, is incarcerated regardless of his desire to pay. In fact, the indigent may find himself in the anomalous situation of being imprisoned longer for nonpayment of the fine than the maximum statutory period set for the substantive offense.[38] In *Collins*, as in *Griffin*, the consequence of the statute was discrimination between rich and poor, even though it was equally administered and fair on its face.

Although the court in *Collins* found imprisonment of the indigent defendant to be a denial of equal protection, it held that the defendant was nevertheless accountable for the fine, and that the state could take whatever action was otherwise available to collect it.[39] In this the court was clearly correct, since failure to take this position would have enabled the indigent to avoid both the fine and imprisonment for nonpayment, whereas the wealthy defendant must always, upon conviction, suffer one or the other. The result would have been the same discrimination against the wealthy that the court found intolerable when directed against the poor.

An area closely analogous to imprisonment for nonpayment of fines is the imposition of bail as a prerequisite to pretrial release. In each instance, the indigent is denied his freedom because he does not have sufficient funds to pay for it. In concluding that no man should be denied release because of his indigency, Mr. Justice Douglas, sitting as a circuit judge, has advocated release despite nonpayment of bail when other factors indicate that the indigent will comply with the court's orders.[40] The law of bail, like that of imprisonment for nonpayment of fines, has been considered fertile soil for the extension of the *Griffin-Douglas* rationale.[41] However, it would be presumptuous to assume that this doctrine will easily accommodate the inequities in the areas of bail and imprisonment for nonpayment of fines. When the criminal process is viewed in the symmetry of its step-by-step gradations, it is apparent that the *Griffin-Douglas* rationale was concerned specifically with the in-

38. This would have been the situation in *Collins* if the fine had exceeded $365. Although the prisoner in *Privitera* did not receive the maximum sentence for the crime, he spent twice as long in jail for nonpayment of the fine as for the substantive offense (30 days for the crime and 60 days for nonpayment). See generally Davidson, *The Promiscuous Fine*, 8 CRIM. L.Q. 74 (1965) (Canada); 123 J.P. 248 (1959) (London).

39. People v. Collins, 47 Misc. 2d 210, 213, 261 N.Y.S.2d 970, 974 (Orange County Ct. 1965).

40. Bandy v. United States, 82 Sup. Ct. 11 (1961).

41. Butler v. Crumlish, 229 F. Supp. 565, 568 (E.D. Pa. 1964) (dictum). See also Foote, *The Coming Constitutional Crisis in Bail*, 113 U. PA. L. REV. 959, 1125 (1965); Kennedy, *Judicial Administration—Fair and Equal Treatment to All Before the Law*, 28 VITAL SPEECHES 706 (1962); 113 U. PA. L. REV. 774 (1965).

equities in the actual process of determining guilt or innocence—the trial and appeal stage. On the other hand, the imposition of bail occurs prior to the commencement of that stage, and the imprisonment for nonpayment of a fine occurs subsequent to the termination of that stage. In either case, if the indigent is to invoke the aid of *Griffin* and *Douglas*, he must bring about an extension of that doctrine to steps in the criminal process not at present encompassed by it. Such an extension to the problem of imprisonment for nonpayment of fines, however, would seem to be justified in view of the fact that society's interest in the accused now often virtually dissolves after conviction, along with the judicial system's emphasis on procedures for fairness and equality.[42]

Opponents of the Supreme Court decisions extending broad rights to indigent defendants have argued that these decisions frequently place an undue financial burden upon the state.[43] However, such objections are untenable in cases involving imprisonment for nonpayment of fines. In fact, the state may actually benefit financially by not incarcerating those who are unable to pay. The 1960 report of the New York State Commission of Correction estimated the daily per capita cost of imprisonment to be between $3.60 and $7.93.[44] Since in almost every state the fine is discharged after the period of imprisonment for nonpayment, the state not only loses the revenue from the fine, but also incurs the burden of paying for the prisoner's incarceration. On the other hand, insistence on the eventual payment of the fine, without incarceration for nonpayment, relieves the state of the prisoner's upkeep, and allows for the possibility of collecting the fine at some later date, a practical consideration which reinforces the result reached in *Collins*.

In response to a decision like *People v. Collins*, the state legislature must formulate a statutory scheme which enables the indigent to receive the equal treatment to which he is entitled. The most obvious possibility would be to eliminate fines altogether, punishing only by imprisonment. Since a one hundred dollar fine is no deterrent to a man with means, while it is a genuine burden upon the indigent, abolition of the fine might theoretically be an easy method of achieving equality.[45] As a practical matter, however, this

42. See Silving, *Inconsistencies in Present Criminal Procedure*, in ESSAYS ON CRIMINAL PROCEDURE 354-56 (1964).

43. Draper v. Washington, 372 U.S. 487, 509 (1963) (White, J., dissenting); Griffin v. Illinois, 351 U.S. 12, 34 (1956) (Harlan, J., dissenting).

44. STATE COMM'N OF CORRECTION ANN. REP. 66-67 (New York 1960). A figure of $4.56 has been submitted as the daily per capita cost of the Detroit House of Correction. MICH. CORRECTIONS COMM'N REP. (1961).

45. There has been considerable doubt expressed as to the effectiveness of fines as a penal sanction. See generally Barrett, *The Role of Fines in the Administration of Criminal Justice in Massachusetts*, 48 MASS. L.Q. 435 (1963); Davidson, *supra* note 38; Note, 101 U. PA. L. REV. 1013 (1953).

is an untenable solution, for several reasons. First, fines have become an important source of government revenue.[46] Second, there may be instances where neither the offense committed nor the offender's past record justifies imprisonment, but may warrant a fine. Third, the exclusive use of incarceration as a punishment for crime would work an inverse discrimination, since the imprisonment of an employed man of means would nearly always impose a much more severe burden upon him than that imposed upon an unemployed indigent imprisoned for the same offense.

A much more feasible solution is to allow the indigent to pay his fine in installments, through a job either with the state or in private industry.[47] Under such a plan, a standard percentage of the defendant's weekly or monthly income could be directly remitted by his employer to the state.[48] If the defendant "jumped" his fine, he might then be imprisoned for failure to pay.[49] Another solution might be to give the indigent exactly what he was previously denied —the right to elect between paying the fine and going to jail. If he elected to pay the fine, the installment system of payment could be invoked. On the other hand, if the indigent elected jail, as some undoubtedly would, he would do so of his own free choice. However, such an election might be rendered meaningless for the person who is so poor and unemployable that it would not conceivably be possible for him to satisfy the obligation of periodic payments. To meet this problem, the relevant statute might empower the court to assign such a person to the custody of the appropriate welfare and social authorities of the state. This custodial release would not only offer the possibility of enabling the indigent ultimately to satisfy his pecuniary obligation to the state, but would also offer significant opportunities for rehabilitation. Another method which may successfully avoid the "equal protection" attack is the limitation in the Arizona statute[50] which forbids imprisonment in any case beyond the maximum period prescribed for the crime. Although these suggestions do not exhaust the possible solutions, they are indicative

46. N.Y.C. MAGISTRATES' COURTS ANN. REP., *op. cit. supra* note 8; RUBIN, *op. cit. supra* note 8, at 230; Note, 101 U. PA. L. REV. 1013, 1026 (1953).

47. Some states already have provisions allowing such installment payments. CAL. PEN. CODE § 1205; MASS. ANN. LAWS ch. 279, § 1A (1956); PA. STAT. ANN. tit. 19, § 953 (1964); S.C. CODE ANN. § 55-593 (1962); UTAH CODE ANN. § 77-35-17 (1953); WIS. STAT. § 57.04 (Supp. 1965).

48. A similar provision is under consideration in relation to a state automobile insurance fund. If the state is required to pay money out of the central fund, the negligent driver who caused the accident would be allowed to reimburse the fund through installment payments, measured by a percentage of weekly or monthly income. Ann Arbor Conference on Auto Insurance, Sept. 15-16, 1965 (Remarks of Michigan Secretary of State James Hare) (unpublished report in Michigan Law School Library).

49. See N.J. STAT. ANN. § 2A:166-15 (1953).

50. See note 5 *supra* and accompanying text.

of the type of reform that is necessary. Probably the greatest barrier to effective legislative reform in this area is the idea that what is accepted is what is right. Imprisonment for nonpayment has been accepted for so many years that it is considered to be an integral part of our system of criminal justice.

Besides exposing the inequities of imprisonment for nonpayment of fines, the decision in *People v. Collins* potentially endangers the constitutionality of every state statute permitting such confinement in the case of the indigent. It is probable that the doctrine of the case will be applied only in circumstances where the maximum period of confinement for the substantive crime has been imposed; nevertheless, its rationale indicates progress in the effort to make equal justice a reality to all persons regardless of wealth.