Criminal Justice, Sentencing and the Reality of the Fine in Thailand

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This thesis is the result of the author's original research. It has been composed by the author and has not been previously submitted for examination which has led to the award of a degree.

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Abstract

Despite criticisms about the imposition of fixed-sum fining and fine-default custody on those who are unable to pay, little has been known about the forces underlying such practices in many countries. This study fills this gap by investigating empirically how the fine operates in Thailand. It identifies factors behind the long-standing wealth-disproportionate and custody-reliant fining practices of Thai courts.

This research finds that Thai judges tend to be indifferent to the unequal and disproportionate impacts of their income-insensitive fining practices. Such indifference is a product of rigid framing which is instigated by formalism, bureaucracy-centric preferences, and a moralising and essentialist worldview. This phenomenon is situational rather than dispositional, and there are at least three layers of contextual pressures responsible: ideological, organisational, and situational.

This thesis argues that the ideology that underpins judicial practices originates from the order-centric Thai-ised conception of the rule of law. Organisationally, the Thai judiciary values and encourages homogeneity at the expense of criticality and constructive dissent. Situationally, Thai judges work under managerial pressures which demand speed and consistency. These three interactive layers of ideology, organisation, and situations co-create the three mechanisms by which judges' rigid framing is entrenched and indifference is sustained. First, the comfort of following organisational conventions makes judges complacent about the perceived authorisation. Moreover, repeatedly seeing submissive defendants from the bench, without observing the backstage production of such portrayals, solidifies the sense of legitimacy. Second, the fragmented and routinised procedure gradually narrows judges' outlook to the extent that efficiency can be equated to equity. Finally, the essentialisation and distancing inherent in the 'rationalised' process inadvertently degrades defendants to an inferior status where overly harsh but administratively convenient treatments seem warranted. Therefore, to initiate fining reform, these extra-legal underpinnings should be seriously addressed to avoid superficial proposals that will lead to implementation failure.

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Transliteration and Referencing

This thesis conforms to the Thai Royal Institute's system for the Romanisation of Thai terms. Exceptions are the words that are widely known in the Roman script under different transliteration systems and the names whose owners have already decided on the English spelling. In such cases, the more well-known or the designated spelling is adopted.

The thesis also follows the Thai custom of referring to people by their first names. In the bibliography, the name of each Thai author, regardless of the language used in the cited materials, is listed with the full first name followed by the surname, and the author's first name is used in the in-text citation. On the other hand, the non-Thai authors are referred to by their surnames and the thesis still adheres to the Western academic convention of having the author's surname preceding the abbreviated first name in the bibliography.

Source materials in the Thai language are listed in a separate bibliography with the phonetic transcription of their original titles and the English translation given in brackets. This different referencing format and the large number of cited works written in Thai explain separating the references list: one for materials in English and the other for those in Thai. All are presented in English alphabetical order.

For brevity, the main texts of the thesis refer to Thai legislation by its English translated title. Appendix A provides the original title of each cited law and statutory instrument both in the transliterated form and in the Thai script for ease of further searching.

Chapter 1: Introduction

> Fines fall very unequally as a burden on those subjected to them. The amount inflicted, though small, may be out of all proportion to the offender's means…There is not one law for the rich and another for the poor...There is the same law for both; but in its effect it favours the rich at the expense of the poor, and that is not to the ultimate advantage of the community.
>
> (Devon, 1912: 177)

1. Research Questions and Objective

This research is a project borne out of my frustration as a trial judge in Thailand who had to cope with the normality of the flat-rated or fixed-sum fine and custody for fine default. As encapsulated in the above epigraph, I have long noticed the propensity for inequality inherent in the wealth-insensitivity of judicial fining practices. My concern aligns with several academic writings advocating for a more wealth-sensitive system (see Itsakul, 2013; Krittaya, 2017; Pechlada, 2013; Pitchayon, 1999; Somyote, 2020; Tawan, 2014; Waraporn, 1997). However, unlike monetary bail which has been subject to a similar kind of criticism and has undergone some efforts of reform (Thanyanuch, 2020), there has been no reform to equalise the fine[1]. Moreover, custody for fine default has remained the de facto default enforcement method despite the option of community service introduced in 2002.

Frustrated with the status quo, I embarked on this PhD with the original intention to study the feasibility of transplanting the wealth-proportionate fine to Thailand, particularly the European/ Scandinavian day fine that bases fine calculation on the offence-based sentencing 'days' and the wealth-based daily value of the fine (Faraldo-Cabana, 2014:

[1] While writing this thesis in early 2022, the Thai Parliament has been considering a proposed legislation (*Phraratchabanyat Wa Duay Kan Prap Pen Phinai Por Sor*) to decriminalise minor offences by substituting non-penal fines (*kha prap pen phinai*) for the original criminal punishments. Modelled after Germany, this bill simply aims for decriminalising non-serious or regulatory offences, while still relying on a fixed-sum fine system (Thamronglak, no date). However, a Member of Parliament from one of the opposition parties has proposed that the bill adopt the wealth-proportionate 'day-fine' system to equalise the fine (Nattapong, 2022). It remains to be seen whether this proposal will be successful and included in the enacted law.

9). It was an attempt to fill the gap of the previous research which, although it recommends the European/ Scandinavian day fine as the remedy to the present practices, lacks evidence about the viability of the day fine in the Thai setting. Nevertheless, it later became clear to me that sufficient comprehension of the existing system is a prerequisite for determining whether the substitution of an imported model is sustainably possible. Feeley (1983) has cautioned decades ago that any effort to reform should be based on a realistic understanding of the current operation in order to avoid theory-reality incompatibility that leads to eventual failure.

So far, most studies on Thai criminal justice have been doctrinal and empirical investigations have been few. The works of McCargo (2020) and Supakit (2016) are the rare exceptions that probe into the extra-legal components of judicial decision-making in Thai criminal cases. However, neither specifically touches on the fine. Likewise, none of the past few inquiries into Thai offenders' experiences (see Napaporn *et al*., 2012; Nathee and Sumonthip, 2001; Saipin, 2000; Sumonthip, 2013) is about the fine. Furthermore, even though I had been serving as a judge for over a decade before commencing this research, my perception and experience were subjective and lacked methodological rigour. Therefore, it turned out that knowledge about how the Thai fine is decided and administered in a real context were still inadequate for informing any reform initiative. Eventually, my aim for this research changed, from looking ahead, to examining the present, particularly about how the fine actually operates in practice.

To fully understand how the system is run, it does not suffice simply to observe from afar. A researcher must rather take a 'consumer perspective' (Feeley, 1983: 123) – gathering the perceptions of those who truly participate in the system. The fine as a criminal sanction involves two key players who have direct experiences of the fine, albeit from the opposite ends, i.e., judges and offenders. Retrieving judges' insights can shed light on the informal norms and assumptions on which judges ground their practices, while canvassing offenders' views can reveal the actually felt impacts of the sanction – which may either contradict or complement judges' suppositions. Moreover, the fact that the existing practices persist despite questions of inequality suggests there may be invisible forces or mechanisms unaffected by and even overpowering the challenges. The strength of such forces hints at the systemic nature which underlies the entire fining

system. Hence, the study of the fine in reality would not be complete without deep inspection of the underlying forces or mechanisms of the fining practices.

As a result, the questions of this research are:

1. How do fines actually operate in Thailand's sentencing system?
2. How are fines perceived by the two key stakeholders of the fining system; i.e., judges and offenders?
3. How are such operations and perceptions sustained in the current fining system?

The objective of this research is to investigate the penal fine as it is sentenced and enforced by Thai courts. Therefore, the scope of this study is limited to the penal fine in ordinary adult courts. It does not extend to fines levied in administrative courts, youth courts, and specialised courts such as the Intellectual Property and International Trade Court. The focus on judicial practices and the impacts experienced by sentenced individuals also excludes from this study the fines that can be legally settled out of court and those inflicted on corporate offenders.

Given the abovementioned aim, I adopted empirical and mainly qualitative methods, whereby two separate legs of fieldwork were conducted in Thailand in autumn 2019 and in late 2020 through to spring 2021, respectively. Data regarding judges' practices and perspectives were primarily collected from three courts of first instance of different sizes, workloads, and locations – during which the triangulation of case file analysis, court observations, and interviews with trial judges was employed. I also interviewed appellate court judges, the judge at the central administrative unit of the Thai judiciary, and designated officials from fine enforcement agencies. Overall, eight judges and thirty-three officials participated in court observation, and twenty-seven judges and three officials participated in the interviews.

As to data from the fine's receiving end, I recruited fifteen defendants accused of fine-eligible offences at one of the three sample courts (Court Two) for observation and a narrative interview. Participation expanded from the pre- to post-sentence stages and this process-based ethnographic inquiry unveils the heavy influence of the pretrial experience on defendants' perception about the fine. Unfortunately, due to the Covid-19 pandemic,

I could not interview fine-default offenders in custody as planned, leaving the defendants recruited at Court Two being the only cohort for the offenders' points of view.

Because of the straddling defendant-offender status of this sole cohort and because most interviewed judges referred to offenders as *chamloei* – defendants in Thai, the terms 'defendant' and 'offender' will be used interchangeably throughout this thesis to signify a fined individual.

To set the scene for this research, in this chapter, I will explain the importance of paying attention to the fine and briefly summarise the historical fluctuation of the fine's role in the Western world. I will then mention the persistent questions about equality, proportionality, and rationality, along with the efforts to uphold these values and their generally ambivalent results across Western jurisdictions. The resistance and real-world obstacles to such reform attempts will be the topic of my consideration about the need to take a socio-legal and empirical approach for this study. After these introductory discussions, I will lay out the remaining structure of this thesis.

2. The Fine as a Criminal Sanction

According to Seagle (1931: 249), 'the fine is a pecuniary penalty paid to a public authority for the violation of a criminal law'. As a sanction, the fine's inherent flexibility permits the indefinite gradation of penal pains from a trifling degree up to 'economic capital punishment' (Morris and Tonry, 1990: 114). Theoretically, the fine can exact retribution or provide deterrence for nontrivial and even severe offences while being economical on the state's budget (Morris and Tonry, 1990: 118). Nevertheless, it is criticised for not having rehabilitative values (see Gillespie, 1981: 201). Additionally, when punishment is viewed as a tool of moral communication, the fine is deemed mostly suitable for crimes of avarice and less so in other types of crimes (Duff, 2001: 147).

This ambivalence about the fine in theory also appears in reality on both sides of the Atlantic. Although the fine has been prevalently used in Western Europe in an array of offences (Gillespie, 1981: 200; Hillsman, 1990: 52–53), its role in the United States has still been limited as a mere add-on to imprisonment and usually set at a tiny amount (Hillsman, 1990: 61–62; Morris and Tonry, 1990: 116–117; O'Malley, 2009: 46). Even back in Europe where the fine is more widely used, it is still considered unfit for certain atrocious crimes like rape (Young, 1987: 54). It has also, perhaps surprisingly, received

little attention from both researchers and practitioners regardless of its commonplace existence (Nicholson, 1994: 1; Shaw, 1989: 30; Young, 1987: 2). Furthermore, the fine's role seems to have waned because of the rise of nonpecuniary community sanctions in the past three decades (Aebi, Delgrande, and Marguet, 2015).

The contrast between the fine's great penal potential and its small-to-moderate use in reality, let alone its under-researched status, has opened an interesting knowledge gap to explore both theoretically and empirically. Especially since the fine's penal importance has fluctuated throughout the history of punishment, studying the fine can be the window onto changing socio-economic and cultural conditions. In Western civilisation, unlike its contemporary indistinctive status, the fine used to be the primary mode of penalty in most criminal conflicts in antiquity and the early Middle Ages (Grebing, 1982: 5–6; Rusche and Kircheimer, 1939: 8). The fine's virtually opposite status in modernity is evidence of society's changed perceptions about money, which resulted from shifting social and cultural environments (O'Malley, 2009).

In ancient and medieval times, to avoid a blood feud that disturbed public order, monetary penalty under various names, such as the Anglo-Saxon wergild or the Scottish assythment, was regularly employed to settle even violent offences such as slaughter and rape (O'Malley, 2009: 10; Simmel, 2004: 355; Young, 1987: 96–98). In the absence of a strong centralised authority, interpersonal violence was treated as a private matter with negotiable criminal justice that culminated in a pecuniary and also compensatory sanction (Rusche and Kircheimer, 1939: 9; Young, 1987: 96; see also King, 1996: 49). By 'making fine', the offender negotiated with the court to settle the conflict via financial payment (Young, 1987: 75). It was not yet felt that such a practice was equivalent to putting a price on human life, which makes it objectionable by a modern standard; the sanctity of human life and dignity was still an unknown concept (O'Malley, 2009: 10; Young, 1987: 99). In a feudal society when social status far outvalued a person's individuality, monetary value on a human life signified the rank of social stature rather than the person's intrinsic worth as a human being (Simmel, 2004: 358). Moreover, in such a non-monetised economy, the scarcity of money equated its meaning to an exceptional value and therefore made it acceptable to represent a human life with a money equivalent (Simmel, 2004: 365).

The emergence of a centralised governing power eroded the private and compensatory elements of a money sanction. As the state monopolised criminal justice administration and collected the fine to its coffers, punishment became a lucrative source of state income (Rusche and Kircheimer, 1939: 10). Furthermore, public sentiments towards crimes shifted from ambivalence to fear and condemnation, especially of the trouble-prone underclass, leading to the rise of corporal punishment in the later Middle Ages (Rusche and Kircheimer, 1939: 14–18). It also resulted in the eventual 'quiet revolution' in post-medieval England of changing from 'making fine' to 'being fined', whereby the fine was no longer the tool for dispute settlement but became an official and non-negotiable sanction (Young, 1987: 106; see also King, 1996: 58).

The growing prevalence and notorious brutality of corporal punishment in the Renaissance responded to the need for harsher sentences and took away the emphasis on fines (Grebing, 1982: 6; Rusche and Kircheimer, 1939: 18–20). However, the support for gory penalties subsided with shifting sensibilities during the Enlightenment towards repugnance for any overt display of violence (King, 1996: 59). This altered attitude coincided with the advent of imprisonment which aimed to punish the mind not the body; thereby, mitigating the cruel appearance of punishment. Imprisonment's disciplinary nature through an institutionalised daily routine was also deemed socially positive since it aligned with the bourgeois values of discipline and docility (Foucault, 1977). The confluence of these factors contributed to the substitution of carceral for corporal punishment, which reigned supreme and still confined the fine to the realm of petty crimes (see Grebing, 1982: 6). By this time, Protestantism and Enlightenment ideas about humanity's incommensurable worth were taking hold (Simmel, 2004: 362; Young, 1987: 108–109). The developing capitalistic economy also saw money become commonplace, and rendered it too 'colourless' to represent the 'innermost and most basic aspects of the person' (Simmel, 2004: 365). As a result, money and the values of personhood have become estranged and it has become morally impossible to put a price on human life or to 'pay' for crimes of violence with only money (Young, 1987: 109).

The strong criticism against the social perils of short-term imprisonment in the late 19th to the early 20th century restored the importance of the fine to replace the use of a short prison sentence (Grebing, 1982: 6–8; Seagle, 1931: 250). This movement led to the extension of the fine's scope in various countries (Grebing, 1982: 10–17). It also initiated

the revamping of the fine's punitiveness and administration to make it a practicable alternative to short-term custody (O'Malley, 2009: 50). Nevertheless, the fine's resurrected role is still alien to the United States and its more widely European use remains restricted to minor offences (Grebing, 1982: 41–42; O'Malley, 2009: 48). Moreover, the past few decades in Europe have witnessed the increase of both community sanctions and prison sentences at the likely expense of the penal fine (Aebi, Delgrande, and Marguet, 2015). This 'net-widening' effect and the trend of rising penal control have further narrowed the fine's already limited role in sanctioning crimes.

The fine's prominent role in sanctioning trivial violations has also been emphasised by the proliferation of the 'regulatory fine' for various technical offences. This modern addition to the criminal law corresponds with the expanding of state interference in diverse aspects of modern life – such as health and safety, noise and nuisances, building and housing, occupation and labour, and environmental protection (O'Malley, 2009: 80). Violation of these regulations is undesirable but not so grave that the state is prepared to put a stop to it (see Rusche and Kircheimer, 1939: 175). Rather than correcting or retributively punishing individuals, 'regulatory' offences are aimed at managing compliance of the masses, for the overall smooth functioning of modern life. The fine here is hence a pure instrument of general deterrence to keep unwanted behaviours at a tolerable frequency (Bottoms, 1983; O'Malley, 2009: 78, 84–85). The lack of stigma and serious moral censure makes the fine appropriate as a back-up sanction. Additionally, the fine's undifferentiated character, i.e., payment can be made by anyone, is consistent with streamlined justice, necessary for the massive caseload resulting from the state's pervasive regulatory regime (O'Malley, 2009: 20–21, 82). The impersonal, unintrusive, and undifferentiated quality of the regulatory fine blurs the distinction between a sanction and a fee or a price, and it can be said that such a fine is indeed a price of violation paid in arrears (O'Malley, 2009: 22). This fine/ fee equivalence leaves an imprint of leniency still inseparably attached to the fine.

In Thailand, like its Western counterpart, the penal fine occupies the lowly rung of petty crimes. Eclipsed by the commonplace of and academic interests in imprisonment, there is a shortage of deep philosophical discussion in Thai literature about its optimal penal aims given the diverse and conflicting objectives of non-custodial sentences. The Thai fine is also under-researched in relation to the implications of changing socio-economic

and cultural environments on its application, as well as how it operates in practice. This thesis focuses on the lattermost topic and leaves the former two to other studies. Moreover, since the research reported in this thesis was motivated by my frustration about the inequality of Thai fine sentencing practices and the apparent disproportionality, it is now time to briefly visit these concepts in the following section.

3. Equality, Proportionality, and Rationality in Theory

Regarding the fine, there are two different notions of equality. One refers to formal equality by which punishment must reflect only the seriousness of the offence. The other is the equality of impact whereby punishment is tailored to the economic conditions of each defendant (Faraldo-Cabana, 2014: 6; Young, 1989: 54; see also Grebing, 1982: 54, 82). The two concepts are always at tension and have been the topics of debate at least since the Enlightenment. In the late 18th century, formal equality was espoused by the majority of penologists who despised the arbitrariness of the wealth-dependent fine in the *ancien regime* that had privileged the rich (Faraldo-Cabana, 2014: 6). By contrast, philosophers in the minority, like Montesquieu and Bentham, vouched for equality of impact by advocating for wealth-based fining. It was not until the late 19th century that their argument gained ground as theorists perceived the real-world disparity of solely offence-centric practices (Faraldo-Cabana, 2014: 6; Grebing, 1982: 54).

Proponents of the impact-based view then and now have refuted the claimed irrelevance of financial situations and the alleged unfairness of the defendant-centric approach by affirming the importance of considering the subjective experience of pain when fixing the sentence (Faraldo-Cabana, 2014: 6–7; see also Ashworth, 1983: 277; Ashworth and Player, 1998). As remarked by Devon (1912: 177) in the opening of this chapter, the formally equal fine falls very unequally on people of different means; the tiny sum to the wealthy may be tremendous to the poor. Thus, Young (1989: 54) succinctly explains the reason for impact-based equality with his question: ‘How can one have a fair legal system if different offenders suffer differently for the same offence or crime?’.

In the same vein, the concept of penal proportionality can pull in both directions: towards the ranking of offence-based severity on a punitive scale on the one hand, and towards the varied degrees of pains felt by defendants on the other. The former can be called formal proportionality, and proportionality of impact or substantive proportionality

for the latter. Similar lines of arguments as in the topic of equality also apply here. Formal proportionality is attractive because it is theoretically straightforward to match the severity of punishment with the seriousness of the offence and circumstances. However, as long as retribution or deterrence are the aims of the fine, it is impossible to attain either objective by overlooking the impact of the sentence. The sanction whose inflicted suffering appears optimal on the ordinal scale but imposes minimal pain on some defendants results in under-punishment or under-deterrence. On the contrary, if it is subjectively felt as too harsh, it exacts over-punishment or over-deterrence. Either scenario is socially undesirable. This logic has long underpinned the argument for the individualisation of proportioning (Grebing, 1982: 53–54, 82). On this account, the fine, if aiming for desert retribution or optimal deterrence, should be individualised according to each defendant's wealth.

The emphasis on equality and proportionality was a part of the Enlightenment thinkers' attempt to rationalise punishment, deemed previously arbitrary, brutal, and considerably ineffective. In the eyes of the 18th-century reformists, a better punishment was the one that could economically deliver a socially positive result. In other words, punishment must be able to prevent future crimes by exacting an optimal degree of coercion and suffering; not too harsh and not too lenient. Under this economic rationality, individualised punishment was requisite, along with the certainty and objectivity of penal administration (Foucault, 1995: 92-99).

This outlook on penal rationality urges a logic-based, impassive, and immoralised performance. It coincides well with the modern consciousness on rationality that demands passionless and professional bureaucracy. As punishment has become bureaucratised, this sense of rationality has been institutionalised in the criminal justice system that aims for attaining 'fair' sentencing and crime prevention via technicality and individualisation (see Garland, 1991: 183). The deontological and instrumental goals form the core of punishment and the traditional penality aims to achieve them. Therefore, this 'old penology', as coined by Feeley and Simon (1992), is rational in a substantive sense of punishment.

However, the mounting pressure for more productivity and other external factors have driven criminal justice systems to superimposing traditional penal aims with the more

easily achievable objectives of speed and efficiency (Bottoms, 1995: 31; Feeley and Simon, 1992). Under this managerial approach, primacy is relocated to efficient system control and the aggregate management of offenders. The importance of efficiency and actuarial treatment reflects the shift from addressing personal guilt and future compliance to confining deviance to tolerable levels. Abstract equity must make way for measurable outputs, namely case turnover rates and speed, as the system's performance indicators. This new orientation overlooks individualisation by systematising standardised and 'dehumanised' routines that cater more to quantifiable measurements. The system is undoubtedly rational judging from the managerial goals. However, the essence of this type of rationality is on the formal or surface aspect of administering the system, not at punishment's substantive heart. Formal rationality is thus the character of this 'new penology' (Feeley and Simon, 1992). Similarly, Ritzer (1998; 2019), employing a different term of 'functional' as opposed to 'substantial', posits that 'functional rationality' is a typical quality of an efficiency-obsessed 'McDonaldised' bureaucracy. He argues further that it is this 'functional rationality' that marginalises 'substantial rationality' to the extent that the 'irrationality of rationality' is common in a McDonaldised organisation (Ritzer, 2019: 167).

In the chapters that follow, especially Chapters 4 and 6, I will unravel this research's findings that Thai judges tend to understand equality and proportionality in a formal sense, and they seem to equate formal rationality to doing justice. I will also describe a routinised and speed-driven 'ritual' of a particular summary criminal proceeding, known as the *wain-chee*, and judges' proclivity for efficiency to illustrate that Thai fining practices conform to the elements of the new penology and the McDonaldised criminal justice. Since this research was borne as a critique of the present formalistic system, for brevity, unless referring to participants' opinions, I will henceforth use the terms equality, proportionality, and rationality in this thesis in their substantive sense.

4. Equality, Proportionality, and Rationality in Practice

As earlier explained in the preceding section, Western penologists started to uphold substantive equality and proportionality in the late 19th century. This new understanding coincided with a rising distaste for short-term imprisonment, including its use for fine-default defendants. The need to provide an alternative prompted the necessity to 'make

the fine work' in both practicability and punitiveness (O'Malley, 2009: 50). The day fine, by which both formal and substantive equality and proportionality are reconciled, was innovated in response to this demand. To substitute imprisonment, the fine must not be trifling (O'Malley, 2009: 43). At the same time, it must be affordable so as to avoid non-payment and imprisonment for fine default. Both requirements are met by calculating the fine in proportion to defendants' financial situation and, as a by-product, the fine's impact is also equalised across defendants (Faraldo-Cabana, 2014: 6).

Although simply requiring that sentencers take defendants' means into account without a structured calculation system like a day fine could arguably deliver similar results, the process of such deliberation is unclear and ambiguity remains as to how both conflicting concepts of equality would be integrated in practice (see Kantorowicz-Reznichenko and Faure, 2021: 2–3). On the other hand, the day fine has been praised for its transparency and ingenuity in reflecting both equality of blameworthiness and equality of penal impacts by two consecutive stages of consideration. The first involves setting the number of sentencing units (called 'days') to be imposed considering the seriousness of the offence and the blameworthiness of the offenders. This stage adheres to formal equality and the objective determination of guilt. The subsequent stage is fixing the quantum of each sentencing unit according to the offenders' economic circumstances. The eventual size of the day fine is the multiplication of both sums and day fines are normally required to be paid all at once (Faraldo-Cabana, 2014: 9; Grebing, 1982: 67–68). This separate and consecutive calculation pattern communicates both the parity of blameworthiness and the assumed parity of the sanction's impact; thus, solving the tension between the two definitions of equality and proportionality.

The day fine was first legislated in Finland in 1921, then in Sweden and Denmark in 1931 and 1939 respectively; hence, the name the 'Scandinavian day fine' (Faraldo-Cabana, 2014: 9). The idea was later adopted by other European countries: Germany and Austria in 1975, Hungary in 1978, France and Portugal in 1983, then Poland, Spain and Switzerland (Albrecht, 2010: 34). While most jurisdictions do not employ the day fine explicitly for decarceration aims (Albrecht, 2010: 35), Germany and Austria legally mandate the substitution of day fines for a short prison sentence (Grebing, 1982: 11). This results in a significant reduction in the use of short-term imprisonment in Germany (Gillespie, 1980: 20).

However, implementation complexities appear to explain the equivocal European reception towards the day fine (see Grebing, 1982: 75). There are still countries that maintain the flat-rated system including the Netherlands, Norway, Italy, and Iceland (Albrecht, 2010: 34–35). England and Wales adopted a similar concept called 'unit fines' in 1992 after a successful pilot in four magistrates' courts. Regrettably, because of 'problem cases' that produced anomalous and perceivably unfair results, the scheme came under fierce attack from both the public and the sentencers, and was aborted after merely seven months. This was despite the fact that such unfairness was caused by divergences from what had worked at the pilot, public misperceptions, and administrative details – not by the core of the unit-fine system (Moxon, 1997).

Across the Atlantic, the United States also piloted the day fine in two jurisdictions in the late 1980s on the Staten Island, New York and in Phoenix, Arizona (Hillsman, 1990). Thereafter, there were four demonstrations in the 1990s in selected counties in Arizona, Connecticut, Iowa, and Oregon. Evaluation concluded that the model was viable as an alternative sanction but challenges resided in the full-blown implementation (Turner and Petersilia, 1996). Nevertheless, the flat-rated system has still reigned, and the fine has remained far inferior to the use of imprisonment (see Morris and Tonry, 1990; O'Malley, 2009: 46–50).

Imprisonment for fine default is another illustration of the fine's disparity because those who cannot pay are forced to sacrifice their liberty due to their poverty. The day fine theoretically can decrease the invocation of this harsh measure because it is imposed at a more affordable level for each offender. Nevertheless, it cannot eradicate defaults and the ensuing problem of credible enforcement. In Germany, despite its success in reducing short-term custody at the front end, imprisonment creeps in via the back end of the system as the usual measure taken against fine defaulters (Albrecht, 2010: 35).

Imprisonment for fine default is also a problem in Great Britain and its offence-based, albeit to some extent means-sensitive, system. England and Wales, as well as Scotland, require that offenders' financial circumstances are taken into account when fixing the fine (Nicholson, 1994: 12; Young, 1989: 53). However, with the absence of calibration instructions and with the dominance of formal equality, sentencers tend to downplay means-based considerations and fail to impose proportionately income-sensitive fines

(Moore, 2003: 19; Young, 1989: 55). This leads to many ‘can’t-pay’ offenders, who often are unemployed and in financial disarray, ending up incarcerated for default (Crow and Simon, 1987; Morris and Gelsthorpe, 1990; Nicholson, 1990; Prison Reform Trust, 1990).

Several measures have thus been employed to mitigate the situation in the UK, starting from a means enquiry to probe for causes of default. Such an enquiry may, in response, lead to a modified payment plan or an order for other collection methods. The available non-custodial options include payment by instalments, attachment of earnings, seizure of assets, money payment supervision orders or ‘fines supervision orders’ as known in Scotland (by which offenders are put under a designated officer’s supervision for successful fine collection), unpaid work or community service, and even remission in whole or in part of the fine (Moore, 2004: 729–732; Nicholson, 1994: 45–49; Shaw, 1989: 33–34). Nevertheless, in Scotland, a means enquiry is irregularly used and the non-attendance rate is high (Nicholson, 1994: 47). In England and Wales, magistrates rarely take advantage of the collection options other than instalments, remission, and imprisonment (Moore, 2004: 732; Shaw, 1989: 36). The rarely employed alternatives appear to be practically flawed, and courts are so inundated with a heavy caseload that they struggle to have the unpaid fine settled as quickly as possible (Moxon, 1983: 39, cited in Shaw, 1989: 39). Furthermore, sentencers are more inclined to believe that default offenders manipulate the system and hence consider them to be ‘won’t-pay’ rather than ‘can’t-pay’ (Moore, 2004: 734). These reasons appear to explain sentencers’ apathy to using non-custodial alternatives to settle the fine and their reliance on imprisonment.

In this regard, Sweden offers an exemplary solution. Besides the income-proportionate day fine, Sweden nearly de facto abolishes imprisonment for fine default by setting very restrictive conditions for its use. A prison sentence for fine default can be imposed only if the prosecutor convinces the court of the offenders’ deceptive evasion of payment, or of the grounds to believe that non-payment would constitute an ‘immunity to sanctioning’. A prison term is imposable merely between fourteen days and three months, and is determined by the severity of default rather than by the quantity of the fine in arrears. The usually imposed sentence is between fourteen days and a month, which is evidence of a Swedish non-punitive policy. This is partly attributed to the primacy of civil enforcement by the tax agency. Proportionality and cost-effectiveness rule even in civil enforcement, because collection can be suspended or cancelled if it appears futile,

administratively costly, or to be causing extreme hardship to defendants (Von Hofer, 2004). This dominance of clemency makes failure to retrieve full collection less serious and liberates fine enforcement from having a heavy reliance on incarceration.

Thailand is not exempted from concerns about the fine's inequality and the problems of imprisonment for fine default. Research on the fine has suggested the adoption of the Scandinavian day fine to address inequality and disproportionality (Itsakul, 2013; Krittaya, 2017; Pechlada, 2013; Pitchayon, 1999; Somyote, 2020; Tawan, 2014; Waraporn, 1997). Regarding fine enforcement, quite a few studies recommend the primacy of civil enforcement and more reliance on non-custodial methods such as instalments and community service (Chestapat, 2003; Kanda, 2014; Pirul, 1989; Sirikan, 2006; Veerapong, Supatra, and Saralnuch, 2008). Others also suggest the establishment of a specific agency for fine enforcement (Korranit, 2013; Sakulrat, 2009; Wassamon, 2009). However, the cited literature is mainly comparative and doctrinal. There is still a huge gap in empirical information about the fine, especially about how judges impose and enforce the fine and about the impacts of the fine as felt by offenders.

5. Inquiry into Fining Practices and Experiences

Different models of the fine, varied successes in various countries in mitigating the fine's inequality, and the problems of fine-default imprisonment reflect diverse extra-legal influences that can be unraveled only by empirical investigation. To understand why certain interventions are prioritised and why others are overlooked in addressing the fine's challenges, we need empirical evidence on how the fine actually operates, including practitioners' perspectives. Furthermore, to know how such an operational choice performs in reality, we must probe into offenders' experiences of the fining system.

Among the slim research on the fine in Western jurisdictions, Cole *et al.* (1988) surveyed the opinions of American judges and found that there was a prevalent subjugation of the fine's role in the criminal justice system. The insignificance of the fine in this context then makes a means-enquiry appear useless, and leads to judges' lack of knowledge about offenders' financial circumstances. Across the Atlantic, Moore (2004: 732, 736) reports English magistrates' unvaried approach to fine enforcement and little attention being paid to fine defaulters' financial circumstances and reasons for default. Such practices may partly be attributed to magistrates' belief in defaulters' manipulative

intention (p. 734). Morris and Gelsthorpe (1990) also conclude that the image of the 'won't-pay' offenders seems to dominate the practices of the English arrears courts and the duty to provide the courts with means information lies with the offenders.

In Scotland, Young (1987; 1989) describes sheriffs'[2] response to the two notions of equality and their ambivalence towards instalments. Sheriffs tend to prioritise formal equality and thus base the quantum of the fine on the offence's severity; however, some of them try to tailor for the impact by adjusting conditions for instalments (Young, 1989: 55, 59–60). Some sheriffs dislike the 'sin now pay later' meaning that is inherent in instalments, although they concede to it out of collection practicality; while others observe the elements of control, discipline, and punishment that are added through giving the offender constant reminders and the persistent bother of having to make regular payments (Young, 1989: 57–59). Because the fine is arguably an 'auto-punishment', i.e., paying the fine is deemed an act of volition, failure to pay it reinforces sheriffs' perception of fine defaulters' recalcitrance. By framing non-payment as a choice, sheriffs then see this as a reason to punish defaulters harshly through imprisonment (Young, 1987: 265, 314).

At the opposite end of the sentencing process, there have been few studies about the lived experiences of the fined offenders. Crow and Simon (1987) pioneered work on the subject in England, followed by Morris and Gelsthorpe's (1990) and Prison Reform Trust's (1990). In Scotland, Nicholson's (1990) and Young's (1999) research defensibly blazed the trail. In continental Europe, Bögelein's (2018) article is a prominent work that explores perceptions of fined offenders in Germany.

These writings have commonality in the key findings. Fined offenders, particularly defaulters, are often unemployed and overburdened with financial troubles both from their confusion and mismanagement and from the need to 'juggle their debts' (Crow and Simon, 1987: 31; Morris and Gelsthorpe, 1990: 843; Nicholson, 1990; Prison Reform Trust, 1990). There are indeed defaulters who wilfully refuse to pay unless coerced by

[2] Sheriffs are judges, appointed from experienced legal professionals, who preside over intermediate criminal and civil cases in Scotland. For more information, see the Judiciary of Scotland's website at: https://www.judiciary.scot/home/judiciary/judicial-office-holders/sheriffs/sheriffs-1 (Accessed: 30 March 2022).

the threat of imprisonment. Nevertheless, the arguably overwhelming majority are those who initially intend to pay but face serious obstacles arising from their financially problematic lives (Crow and Simon, 1987; Nicholson, 1990; Prison Reform Trust, 1990). These mostly jobless, social benefit receiving, and occasionally debt-ridden individuals often encounter the dilemma of either paying the fine and enduring hunger or rough sleeping, or ignoring the fine and risking imprisonment (Morris and Gelsthorpe, 1990: 842–843; Nicholson, 1990: 16; Prison Reform Trust, 1990). The immense stress of having to make such a choice leads some of them to behave like an ostrich; that is ignoring the issue and fatalistically hoping for the best (Crow and Simon, 1987: 31; see Prison Reform Trust, 1990: 27). On the other hand, the onus of accumulated debts makes imprisonment for default appealing to many of these troubled people as the most practical way to get rid of the fine (Bögelein, 2018: 817–818; Moore, 2004: 735; Nicholson, 1990: 27; Young, 1999: 191).

This economically coerced yet conscious choice aligns with sentencers' view of a fine as an auto-punishment, a situation in which offenders activate their own sanction, and with a commonly shared stereotype of offenders as rational choice agents (Young, 1999). The perceived ability of cost-benefit calculation supports sentencers' predominant distrust of offenders' claim of poverty (see Morris and Gelsthorpe, 1990: 842). This often results in offenders' laments about the courts' unwillingness to listen to their plights and the sentencers' readiness to suppose there are simple – but unrealistic – solutions to offenders' economic problems (Morris and Gelsthorpe, 1990: 846–849; Prison Reform Trust, 1990). Resentment ensues, as some offenders reckon they are punished for their destitution and their punishment is disproportionate (see Prison Reform Trust, 1990: 29). The emphasis on the amount in arrears additionally reduces the fine to merely another bill in offenders' financially hectic life and hence erases its penal force (Bögelein, 2018: 813–814, 821).

Research of the kind described in this section has been non-existent in Thailand. Although there are empirical studies both on judges' sentencing practices (Supakit, 2016) and on offenders' lived experiences, as well as their criminal life paths (Napaporn *et al*., 2012; Nathee and Sumonthip, 2001; Saipin, 2000; Sumonthip, 2013), they are not about the fine. This thesis bridges this gap by contributing the investigated 'consumer perspectives' (Feeley, 1983) of the fining practices to the body of knowledge about fines.

Employing various qualitative methods, it reveals results not quite dissimilar to the body of Western literature abovementioned, particularly concerning judges' distrust of defendants. Note that the research does not reveal defaulters' reasons for fine default and outlooks on their experiences because the Covid-19 pandemic precluded data collection from fine defaulters. Nevertheless, the collected data on defendants in this research corroborates Feeley's (1979) groundbreaking thesis that the process is the punishment and that defendants' prevailing self-blaming attitude is explainable by Bourdieu's concept of symbolic violence. Overall, this study finds that judges' indifference to inequality and disproportionality pervades the fining process, from the pre- to post-sentence stages.

6. Structure of the Thesis

The thesis comprises seven chapters, including this one. Chapter 2 provides the background about the Thai criminal justice history with an emphasis on the fine. It gives critical explanations about the organisational structure and culture of the Thai judiciary, which strongly emphasise uniformity and consistency amidst the conditions of insularity and elitism. It also argues that the Thai judiciary practices its own version of the rule of law which prioritises order over rights and liberties. This order-centric ideology seems to align with the constant failure of democracy in the country with more coup d'état and military rules than civilian governments.

Chapter 3 delineates the methodology and the two legs of fieldwork with different methods applied. It offers explanations in defence of the qualitative approach and various methods employed in this thesis. Also discussed are the ethical implications of these research activities.

Chapter 4 reports the findings of the first leg of fieldwork. It describes the typical arraignment-cum-sentencing proceedings, known as the *wain-chee*. It explains judges' perspectives on the role, size, and enforcement of the fine. The findings show the fluid meanings of the fine, the formalistic and moralistic fining practices, the dominance of distrust, and judges' bureaucracy-centric habitus. These four characteristics of the fine reflect strong adherence to legal formality, a moralistic and essentialist worldview, and a preference for bureaucratic efficiency – the three rigid frames that contribute to judges' indifference to the fine's inequality in practice.

Chapter 5 explores defendants' perspectives from the data of the second leg of fieldwork. Their penal experiences, narrated in this chapter, start from the arrest through to fine enforcement, in order to present the continuity of the entire process as experienced by defendants. This chapter shows the other side of reality – of defendants' marginalisation and the punitiveness of the process – which is opposed to judges' perceptions. It also remarks on a peculiar phenomenon of symbolic violence that seems to perpetuate judges' indifference to the outcomes of their orders.

Chapter 6 conceptualises the findings by explaining the concepts of ethical blindness and rigid framing as contributory to judges' indifference. It revisits the three rigid frames intrinsic in judges' fining practices presented in Chapter 4 before explaining the three interactive layers of influences that breed such rigid frames. It argues that the three layers join together in creating and sustaining the mechanisms of judges' indifference.

Chapter 7 summarises key findings and answers the research questions. It discusses the contributions to knowledge made by this thesis and the limitations that leave gaps for future research. The thesis ends with final thoughts on equality, proportionality, and rationality.

Chapter 2: Thailand's Criminal Justice in Socio-Political and Cultural Contexts

Introduction

Because law and its application are a reflection of a particular social order (Moore, 1969: 283), the understanding of Thailand's criminal justice system must begin with a critical perspective of its legal system and history, the structure and culture of the judiciary (who is the key player in the system), and the country's dominant legal ideology. This chapter aims to provide such an analysis through a socio-political and cultural lens. It comprises three sections. Section 1 describes a succinct legal history of Thailand from ancient days through to the present and the shortcomings the system is now facing. The spotlight is particularly directed on the fine as a focal object of this study. Section 2 offers a glimpse into the politically insulated organisation of the Thai judiciary. It explains structural influences on the judiciary's culture allegedly at odds with independent, individualised, and judicious decision-making. Finally, section 3 takes a broader analysis of socio-political and cultural factors most likely to shape the hegemonic ideology of law and justice that perceivably overrides a Western understanding of the rule of law. The localised Thai understanding of the rule of law appears to play a major part in perpetuating the 'irrationality' of the criminal justice system and judges' notable indifference to such a phenomenon.

1. Thailand's History of Criminal Justice, Punishment, and the Fine

1.1 The Pre-Modern Era

Before the modernisation at the turn of the 20th century, the legal system of Thailand (then known as Siam) was significantly predicated on the *Thammasat* – a corpus of ancient Indian law imported through the Mon country in the modern-day Myanmar. Through the Mon interpretation, the original Hindu-laden texts were infused with Buddhist beliefs; thus, making the Thai *Thammasat* saturated with Buddhism (Lingat, 1935: 49).

The *Thammasat* was believed to represent the *dharma*, the universal moral truth and immutable rules of moral behaviour. Under Buddhist influences, it asserted the precept of the King of Righteousness postulating that by virtue of his royal position and righteous

practice the king could have access to this 'truth' and dispense justice accordingly (Engel, 1975: 4–5; Loos, 2006: 34). Theoretically, the king could not make law but merely issue edicts to preserve the *Thammasat.* However, in reality, the authority of royal law-making was traditionally strong and expansive, accounting for a collection of royal decrees (*Ratchasat*) being integrated into the texts of the *Thammasat* (Baker and Pasuk, 2016: 29–31; Engel, 1975: 6–7). Essentially, the king himself was the law and his incontestable power was subject only to the moral constraints of the royal virtues and the belief in the laws of *dharma* (Engel, 1975: 8).

This body of law underwent the major 'cleansing' and recompilation in 1805, under the command of King Rama I (AD 1736–1809) who suspected that the law had been contaminated with aberrations. The final product was the restatement of the *Thammasat* in *Kotmai Tra Sam Duang* [the Three Seals Code] (hereinafter '*KTSD*') which was in use until the legal modernisation about a century later (Baker and Pasuk, 2016: 1–2). Nevertheless, the only four copies of *KTSD* were kept in the royal premises and only officials were entitled to have its excerpts for consultation. Public access via printed publication was prohibited until 1862. This was probably because of the deemed confidentiality of certain legislation (Baker and Pasuk, 2016: 11–12). Others theorise that laypeople were considered unfit to know the law lest they become litigious (Sawang and Atirut, 2019: 156–157).

KTSD authorised the state to monopolise punishment and prohibited personal revenge (Lingat, 1935: 101). Punishments included execution, imprisonment, fines, confiscation of property, the wearing of the cangue collar, being gonged round the town, being sent to cut grass for the royal elephants, and various forms of gory mutilation (Wales, 1934: 193). Corporal punishments were more rampant than imprisonment, probably because the latter was costly and administratively inconvenient (McCargo, 2020: 12). Though rarely used, jails were overcrowded due to usually indeterminate sentences. Since judges had no authority to fix the term of imprisonment, they normally referred the matter to the king who – given his many other responsibilities – did not have the time to prescribe a sentence in every case (Prince Raphi, 1901: 2).

The degree of punishment under *KTSD* depended on the *sakdina* or the status-based hierarchy of both the victim and the offender. The offender from a high social status or

one whose victim had high *sakdina* would be subject to more severe punishment than when the parties involved had a low social standing (Lingat, 1935: 147; Wales, 1934: 193). The status-based rates of sanction were comprehensively enumerated in *the Law on Punishment*[3]. The severity of penalties also varied upon the age of the victim and the seriousness of the inflicted injury.

Note that punishment under *KTSD* was conflated with the idea of tort compensation and it was impossible to differentiate which was which in the imposed sanction (Prince Raphi, 1925: 10–11). Originally corporal punishments were reserved for those committing offences against the king and the government. As for personal injuries, the fine was the basic form of punishment (Prince Raphi, 1925: 8). However, this 'fine' consisted of two equally divided components: *sinmai* or the compensation for the victim, and *phinai* or the fine for the state's coffers (Lingat, 1935: 105, 128, 146). The latter part was seemingly both the fee for the state's service and the punishment on the offender (Lingat, 1935: 105). The former, though paid to the victim, did not reflect the real damages since it was fixed by the rate in *the Law on Punishment*; thereby, making its purpose rather punitive than compensatory (Lingat, 1935: 86, 128–129).

Subsequently, money sanction was considered inadequate for offences purportedly impacting upon public order. Thus, the supplement of corporal punishment was imposed to increase the punitive severity for these types of offences (Lingat, 1935: 106). Furthermore, in two royal judgements about adultery, the king outright substituted physical sanctions for the fines[4].

In terms of enforcement for default, the concept of converting an outstanding fine to a specified term of imprisonment or hours of unpaid work was apparently unknown. The general economy of ancient Siam was self-sufficient and barter-based; thus, making the role of money as the universal currency for exchange very limited (Nidhi, 1984: 100, 122). In such a pre-capitalistic society, the value of money was not equated to a person's free

[3] Compiled in *Prachum Kotmai Pracham Sok* [Annual Compilation of Laws: hereinafter '*PKPS*'] (Sathian *et al.,* 1934–1956): *Vol.1*, pp. 103–139.

[4] *Royal Edict*, paragraph 6 *chunlasakkarat* 1150 (AD 1788) and paragraph 15 *chunlasakkarat* 1155 (AD 1793), in *PKPS: Vol.2*, pp. 67–68, 75–76.

time or labour. Although alternative enforcement existed for a default fine, it was far different from the present-day equivalent.

Paragraph 48 of *the Law on Judges*[5] prescribed a series of corporal measures in the event of fine default. First the offender shall be detained in front of the court for public humiliation under direct sunlight for three days. Then he or she shall be detained in the water for three days before being flogged with a leather rope or a rattan cane. For every 100,000 units of the outstanding fine, three to five strokes were designated. Only after all these ordeals were over shall the offender be released.

Although there was no systematic concept of converting the unpaid fine to certain hours of unpaid work, a crude form of this conversion existed. *The Thirty-Six Laws*, paragraph 34 sub-paragraphs two and three, issued in *chunlasakkarat* 1101 (AD 1739)[6], specified the earmarking of the fine for buying brick-making firewood to build city walls. Defaulting, according to sub-paragraph two, would result in forced labour for completion of the wall construction, while in sub-paragraph three the labour was related to some work with elephants. There seemed to be no relation between the offences and the punishment since both sub-paragraphs involved the violation of a fishing ban and theft, respectively.

Despite these conversion measures, when it appeared that the offender was likely incapable of paying the fine, certain legislation avoided the complications of enforcement by prescribing corporal punishment instead of a fine. Such an incident was possible when the offender had a very low *sakdina* or when the victim's *sakdina* was significantly high. The former case was noticeable in *the Law on Theft in the Vicinity of 200 Metres* which authorised 15 strokes of flogging for those having ten *sakdina* or lower[7]. The latter could be seen in *the Royal Edict* paragraph 16[8], issued in *chunlasakkarat* 1155 (AD 1793), that authorised 50 strokes of flogging and mouth disfigurement on those who had spoken offensively to a person having 400 *sakdina* or over.

[5] *PKPS: Vol.1*, p. 525.

[6] *PKPS: Vol.2*, p. 61.

[7] *PKPS: Vol.2*, pp. 41–42.

[8] *PKPS: Vol.2*, pp. 76–77.

Under *KTSD*, these severe physical inflictions were not restricted to punishment but also to the interrogation of the accused under the presumption of guilt. Notorious methods of torture (known as *charit nakhonban)* were authorised in trial for truth-seeking (Prince Raphi, 1902: 621–627). Moreover, criminal procedures were extremely complicated, cumbersome, fragmented, and rife with bureaucracy (see Engel, 1975: 59–62; Rungsaeng, 1990: 59–61; Sawang and Atirut, 2019: 110–116). The irrationality of the system created extreme confusion, delays, and the danger of arbitrariness and corruption (Engel, 1975: 62). The situation was so dreadful that King Chulalongkorn (King Rama V, AD 1853–1910) likened the justice system to a decayed and sinking merchant ship that urgently needed reconstruction (King Chulalongkorn, 1927). The irrational legal system, defective practices, and the abundance of torture were raised to justify extraterritoriality Western colonial powers negotiated out of Siam. To rid itself of this disgrace, Siam undertook a major reformation of its legal and judicial systems (Loos, 2006: 44; Padoux, 1909: 12–15).

1.2 The Reformative Period

After the signing of the Bowring Treaty with Britain in 1855, Siam opened its border to several other Western nations. With every treaty signed came the extraterritoriality condition (Loos, 2006: 41–43). Initially, this did not pose concerns for Siam since white foreigners were few. However, by the turn of the century extraterritoriality was claimed by a variety of Asian subjects of these European powers who would otherwise have been under Siamese laws. This caused a great predicament for the Siamese government and it attempted renegotiation of the treaties with the West multiple times (Loos, 2006: 43–44; Padoux, 1909: 13).

Siamese elites believed that, for the West to agree with the removal of extraterritoriality, Siam needed to modernise its legal and judicial systems. This led to the major and comprehensive reform spearheaded by King Chulalongkorn in 1892, beginning with the establishment of the Ministry of Justice. Coinciding with his bureaucratisation of the entire state administration, the court system was reorganised, rationalised, and bureaucratised. Eventually, the centralisation of the modern judiciary under the supervision of the Ministry of Justice culminated in 1908 and was completed in 1912 (Engel, 1975: 66–73).

During the transition, King Chulalongkorn hired foreign legal advisers from various countries to aid in the renegotiation of the treaties with the West, the legislation of modern laws, and the assistance to Siamese judges in adjudicating cases when qualified personnel were in acute shortage (Loos, 2006: 47). Meanwhile, King Chulalongkorn's son, Prince Raphi Phatthanasak (AD 1874–1920) who had studied law at Oxford, returned to serve as the Minister of Justice and sat on every commission tasked with the codification of penal and private laws. He also founded Siam's first law school in 1897 and lectured there for more than a decade, producing a number of competent lawyers for the Siamese modern legal system (Loos, 2006: 49, 51; see also Rungsaeng, 1990: 208–218).

Despite different opinions among the ruling elites, Siam finally adopted the Continental approach of codification over the Anglo-Saxon common law system (Rungsaeng, 1990: 266–268). The first codification was the criminal code because it was relatively short and uncomplicated compared to the other codes (Loos, 2006: 65). Before the beginning of this project in 1897, a series of royal edicts were issued to mitigate the problems of the old system. Most noteworthy were: (1) the substitution of imprisonment for flogging in 1895[9], (2) the authorisation of judges to exercise sentencing discretion according to the royal precedents in 1896[10], and (3) the abolition of torture procedure in 1896[11]. Still, the vestiges of harsh punishments, along with outdated and unsystematic legal provisions, were still rampant and necessitated reform in the form of a modern code (Padoux, 1909: 6–10).

The commission for drafting the criminal code was established in 1897 and comprised both Thai and foreign members. The drafting encountered interruptions that prompted the reappointment of the commission members and several redrafts.

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[9] *Proclamation to Replace Flogging by Imprisonment BE (Buddhist Era) 2438 (AD 1895)*, in *PKPS: Vol. 15*, pp. 49–50.

[10] *Proclamation for the Special Commissioners at Provincial Courts to Fix Sentences on Offenders Subject to Royal Punishment BE 2439 (AD 1896)*, in *PKPS: Vol. 15*, pp. 232–233; *Proclamation for Courts of Justice to Fix Sentences on Offenders Subject to Royal Punishment BE 2439 (AD 1896)*, in *PKPS: Vol. 15*, pp. 250–251.

[11] *Abolition of Torture Procedure Act BE 2439 (AD 1896)*, in *PKPS: Vol.15*, pp. 243–247.

Eventually, the commission chaired by the French adviser, George Padoux, finalised the draft that was promulgated as *the Criminal Code of 1908*[12].

As the chair of the codifying commission, Padoux wrote in his introductory note to the Code that the drafters aimed for clear and user-friendly legislation suitable for a country in transition and still lacking in judges with ample knowledge about Western cultures. Therefore, rather than supplanting indigenous doctrines with European laws, the drafters intended to develop what already existed by importing Western ideas that were compatible with the transitional Siam while abolishing obviously antiquated concepts (Padoux, 1909: 16–17). To achieve legal simplicity and clarity, the drafters drew inspiration and examples from an eclectic pool of foreign codes. The list of countries included France, Germany, Hungary, the Netherlands, Italy, Egypt, India, and Japan. Although the codes of Italy and the Netherlands were substantially used as models, the drafters did not commit themselves to any code in particular (Padoux, 1909: 18).

The Criminal Code of 1908 fixed many critical flaws of the ancient laws. It distinguished criminal punishment from civil remedies. Section 17 conspicuously declared that the paid fine belonged to the state and Section 87 entitled the victim of crime to file two separate lawsuits, one for punishment and the other for compensation.

Merely six modes of punishment were authorised in Section 12[13]. Although the death penalty was still permitted, corporal sanctions were no longer imposable. Neither did *sakdina* determine the degree of sentence. The range of sanctions was provided to each offence with a statutory maximum and in certain serious offences also with a mandatory minimum. The 'innovation' of conditional sentence (in a form akin to suspended imprisonment) introduced in Europe some 20 years prior was also present in Sections 41–42 (Masao, 1908: 91).

The fine was offence-based, flat-rated, and deliberately expensive. Inspired by the English concept of effective punishment, the drafters intended for the fine to adequately adversely impact the offender (Padoux, 1909: 23). Nevertheless, its role was observably

[12] Preamble to *the Criminal Code BE 2451 (AD 1908)*, in *PKPS: Vol.22*, pp. 1–8.

[13] Punishments include: (1) death, (2) imprisonment, (3) fine, (4) restriction of mobility, (5) confiscation of property, and (6) security for non-antisocial behaviours.

inferior to imprisonment. Not only was the latter available in nearly every offence, Section 23 also allowed the court to waive the fine despite the required duality with imprisonment.

The concept of imprisonment also prevailed in the enforcement of a default fine. Prior to the 1908 Code, Siam acknowledged fine-default imprisonment in some criminal offences promulgated after having signed several treaties with the West. Many of these provisions involved tax-related violations and a few were about the city cleanliness and order. All shared the same method of imprisonment for fine default, albeit with various money-for-time conversion rates[14].

Subsequently, inspired by the Italian Criminal Code (Padoux, 1909: 23), the system of fines under the 1908 Code was equipped with clearly and systematically delineated enforcement methods. Either property seizure or imprisonment was permissible if the fine remained outstanding after 15 days since the final judgement[15]. However, security could be demanded upon a reasonable suspicion that the offender would evade payment. Failure to post the required security could trigger immediate imprisonment in lieu of a fine[16]. The money-for-time convertibility was institutionalised and a standard conversion rate applied, according to which one baht of the remaining fine was equal to a day in confinement[17]. The duration of this type of imprisonment was limited to not exceeding a year[18]. Community service or unpaid work for outstanding fines was still an unknown concept.

The 1908 Code was in effect for almost 50 years before being replaced by *the Criminal Code of 1956* (hereinafter '*the Criminal Code*'), which remains in use at present. The justifications given for this replacement were the scattering of amendments and certain anachronistic provisions[19]. The new Code removes the restriction of mobility and security

[14] See, e.g., *the Opium Tax Act BE 2413 (AD 1870)*, Clause 11, in *PKPS: Vol.8*, p. 61; *Fifty-Three Laws for Police on Duty Within and Out of the Capital's Perimeter BE 2418 (AD 1875)*, Clauses 42, 43 and 45, in *PKPS: Vol.9*, pp.111–112; *the Domestic Tariff Act BE 2435 (AD 1892)*, Section 87, in *PKPS: Vol.13*, p.234; *the Gambling Tax Act BE 2435 (AD 1892)*, Section 6, in *PKPS: Vol.13*, pp.254–255.

[15] Section 18 paragraph 1.

[16] Section 20.

[17] Section 18 paragraph 2.

[18] ibid.

[19] Endnote to *the Act Promulgating the Criminal Code BE 2499 (AD 1956)*.

for non-antisocial behaviours from the provisions about penalties to those about prevention measures for safety. It also authorises confinement as a mode of punishment, bringing the total number of the authorised sanctions to five[20].

The Criminal Code extends the fine payment period from 15 to 30 days. It also replaces imprisonment with confinement as a measure for fine defaulters and increases the amount of the fine per day in confinement, which in 1956 was five baht per one day[21]. This conversion rate was later amended multiple times to reflect changing socio-economic conditions. The first amendment was in 1975 to increase the rate up to 20 baht and the maximum term of confinement was extended to two years[22]. Subsequent revisions were in 1987 and 2002 when the rate was raised to 70[23] and 200 baht[24] respectively. The 2002 amendment also introduced community service as a new alternative for fine default, albeit with applicability restricted to where the outstanding fine did not exceed 80,000 baht[25]. In 2017, the anachronistically low tariff of *the Criminal Code* was augmented tenfold to mirror the value of money in the new millennium[26]. However, the increment appeared not to be based on solid economic factors such as inflation rates, but rather on the mysteriously grounded decision that equates a year of imprisonment to 20,000 baht in fines (see Thanakrit, 2017). The latest amendment to both the fine-to-custody conversion rate and fine enforcement methods was effective a year before to address problems with the fine[27]. The following sub-section explains these efforts and their defects.

[20] Under the Criminal Code, Section 18, punishments are: (1) death, (2) imprisonment, (3) confinement, (4) fines, and (5) confiscation of property.

[21] *Criminal Code*, Sections 29–30.

[22] *Act Amending the Criminal Code No.3 BE 2518 (AD 1975)*, Section 3.

[23] *Act Amending the Criminal Code No.9 BE 2530 (AD 1987)*, Section 3.

[24] *Act Amending the Criminal Code No.15 BE 2545 (AD 2002)*, Section 6.

[25] *Act Amending the Criminal Code No.15 BE 2545 (AD 2002)*, Section 7 adding Sections 30/1, 30/2, and 30/3 prescribing criteria and procedures of community services for fine default.

[26] *Act Amending the Criminal Code No.26 BE 2560 (AD 2017)*, Section 4.

[27] *Act Amending the Criminal Code No.25 BE 2559 (AD 2016)*, Sections 3–7.

1.3 The Present System of the Fine

The 2016 amendment fixes, in Section 30 of *the Criminal Code*, the conversion rate to 500 baht[28] per day in confinement and limits the confinement of up to two years to only when the outstanding fine is 200,000 baht[29] or above. The revised Section 30/1 also removes the 80,000 baht[30] ceiling from the option of community service. The criteria in Section 56 for suspending sentences, formerly restricted to imprisonment, now are open for the fine. Furthermore, the procedure for civil enforcement for the default fine is more clearly delineated in Sections 29 and 29/1. All these improvements apparently aim at reducing custody of fine-default offenders by shortening the term of confinement and providing judges with other feasible alternatives.

Given the availability of different methods, the sequence of applicable measures is prescribed in Section 29 paragraph 1:

> If any person inflicted with the fine as punishment fails to pay the fine within 30 days as from the day of the sentence is passed, the person's property or enforceable claim shall be forfeited and enforced to collect the fine, or else the person shall be subject to confinement in lieu of the fine. However, if the court has reasonable cause to suspect that the person is likely to evade paying the fine, the court may order that person to give security or may impose an interim confinement in lieu of the fine.

The literal reading of Section 29 gives an understanding that the offender is permitted 30 days period to tender full payment. Either property enforcement or confinement will be activated upon default. Immediate or interim confinement or the providing of security may be ordered only when the court has the reason to suspect the likely evasion of payment.

The term 'evade' connotes wilful default rather than inability to pay. However, in reality there is no differentiation between the 'can't-pay' and the 'won't-pay' offenders. Courts never wait 30 days for payment. Inability to pay the fine by the end of the sentencing day always triggers suspicion of evading payment (Veerapong, Supatra, and Saralnuch,

[28] Roughly equivalent to £12 (conversion from Thai baht to UK pound sterling throughout the thesis was based on an average exchange rate at the time of writing in early 2022).

[29] Roughly equivalent to £4,540.

[30] Roughly equivalent to £1,810.

2008: 104). Although Section 245 of *the Criminal Procedure Code* authorises the execution of punishment only when the sentence is final, the Supreme Court has set a firm precedent that immediate confinement is a provisional measure and permissible upon such a risk-averse suspicion[31]. Therefore, the exception has practically become the rule whereby judges instantaneously detain 'fine-default' offenders. This is mostly attributed to the prevalent distrust that judges have towards offenders as a whole. More will be explained about the chronic lack of trust in the Thai criminal justice system in Chapter 4. For now, note that difficulties of property seizure aggravate this distrust and are often used to justify the preference for a custodial solution.

Prior to the 2016 amendment, *the Criminal Code* was ambiguous regarding the agency in charge of the property enforcement for the outstanding fines. It was debatable whether courts or any bureaus in the executive branch should be responsible for the process. The uncertainty of the issue left this method of enforcement in limbo, with no office taking responsibility and thus no improvements being made to the inherent complications of the procedure (see Veerapong, Supatra, and Saralnuch, 2008: 165–170).

The problem was ameliorated in narcotic cases due to the provision in the narcotic drugs procedure law that specifically assigns the public prosecutor and the Drug Enforcement Administration (DEA) to the task[32]. Following this approach, the 2016 addition of Section 29/1 to *the Criminal Code* designates the prosecutor and the assigned court officer the same responsibility in general cases. Nevertheless, the text is unclear whether this operation is supposed to be cooperative or separate. The practice guidelines

[31] Supreme Court judgements no.3287/2534 (AD 1991), 4897/2550 (AD 2007), and 4899/2550 (AD 2007).

[32] *Narcotic Drugs Procedure Act BE 2550 (AD 2007)*, Section 21. This section has been repealed by *the Narcotic Drugs Procedure Act (No.2) BE 2564 (AD 2021)*, Section 10. *The Narcotic Drugs Code BE 2564 (AD 2021)*, Section 186 reduces the previously leading role of the DEA in fine enforcement against drug offenders to giving assistance to the assigned court officer and the prosecutor assigned for the task under *the Criminal Code*, Section 29/1. Although taking up an auxiliary role, the DEA is likely to still play an integral part in investigating about drug offenders' enforceable properties; thus, still mitigating the problem of fine enforcement faced by court staff.

issued by the Office of the Judiciary in 2018[33] and in 2022[34] merely suggest data sharing but not a joint task force or operation unit. Furthermore, this amendment fails to simplify the process regarding property enforcement. Therefore, the law is still unlikely to change the perception, shared by many judges participating in this study, that courts are unfit and unready to undertake this task. Such a perception explains participating judges' unfavourable view towards property enforcement, which led to the measure being unused in all observed courts in this study.

One way to avoid custodial enforcement is to request for either an extension of the 'due date' or payment by instalment. Upon this motion, judges use their discretion as to whether to grant approval. Most of the time, offenders are required to give security. This used to be an informal practice occasionally adopted by only some courts and some judges before being officially acknowledged in the Office of the Judiciary's practice guidelines both in 2017[35] and 2018[36]. However, this alternative again has been rarely used.

Also still hardly invoked is the suspension of the fine introduced in 2016 in the amended Section 56, according to which the fine can be suspended on similar criteria and conditions as suspended imprisonment. The ambiguity of its purpose has regrettably contributed to its fading into oblivion, despite the recent reiteration by the President of the Supreme Court that this measure exists[37].

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[33] *Practice Guideline and Procedures for Court Officials and Appointed Court Officers in the Execution of the Criminal Code Section 29/1* (Internal Circulation of the Office of the Judiciary No. Sor Yor 024/Wor 95(Por) dated 3 August 2018), hereinafter '*Office of the Judiciary's 2018 Practice Guideline*'.

[34] *Revision of Practice Guideline and Procedures for Court Officials and Appointed Court Officers in the Execution of the Criminal Code Section 29/1* (Internal Circulation of the Office of the Judiciary No. Sor. Yor. 024/Wor 7(Por) dated 13 January 2022), hereinafter '*Office of the Judiciary's 2022 Practice Guideline*'.

[35] *Practice Guideline for the Enforcement of the Fine Under the Act Amending the Criminal Code No. 25, BE 2559 (AD 2016)* (Internal Circulation of the Office of the Judiciary No. Sor Yor 024/Wor 111(Por) dated 14 December 2017), hereinafter '*Office of the Judiciary's 2017 Practice Guideline*'.

[36] *Office of the Judiciary's 2018 Practice Guideline*.

[37] *Recommendation of the President of the Supreme Court on Sentencing Discretion BE 2563 (AD 2020)*, Clause 8.

The other non-custodial enforcement is through community service under Section 30/1. The first two paragraphs of the section (revised in 2016) read:

> In case where the court passes a sentence of a fine, the fined offender who is not a corporate entity and is unable to pay a fine can file a motion with the adjudicating court for community service in lieu of a fine. If it is apparent to the court during adjudication that the fined offender falls under the criteria of community service under this section and the fined offender consents, the court may order that person to perform community service in lieu of a fine.
>
> Relating to a motion pursuant to the first paragraph, after considering the fined offender's financial status, profile, and culpability, if deemed appropriate, the court may order that person to perform community service in lieu of the fine. The service shall be under the supervision of the probation officer, the government official, the government agency, or the consenting organisation operating for public charity or public service purposes.

According to this Section, to benefit from this alternative the offender must request it in writing. The judge will then consider which is more appropriate: approving the request or denying it and putting the offender in confinement. Although not specifically requiring an indigence test, the first paragraph of Section 30/2 implies that financial inability should be one eligibility criterion; this provision includes, as the cause for revocation of a community service order, the disclosure that the fined offender is actually capable of paying the fine at the time of filing the motion. Nevertheless, the ability to pay the fine is neither the sole nor the most significant point in considering whether to grant approval. Rather, the most pivotal factor is arguably the nature and the severity of the offence, because there are certain categories of crimes, particularly the allegedly greed-driven, that the judiciary considers inappropriate for the conversion[38]. This mix of offence- and offender-centric considerations instigates ambiguity regarding the role and the purpose of community service: whether it is merely an alternative enforcement of a default fine or

[38] The 'inappropriate' offences include mass-marketing fraud, money laundering, commercial distribution of narcotic drugs, and statutory offences relating to financial regulations. See *Regulation of the Judiciary on the Number of Hours that Count as One Day of Community Service and Practice Guideline regarding Community Service as the Alternative to the Fine and regarding the Change of Location for Confinement BE 2546 (AD 2003)*, hereinafter '*The Judiciary's 2003 Regulation on Community Service'*, Clause 6 paragraph 4.

rather an alternative sanction in disguise. This obscurity generates conflicting ideas about its implementation. Chapter 4 will elaborate on this confusion.

After community service is approved, the judge will designate the type of work and the number of required service hours as stipulated in the judiciary's regulation[39]. The rate of 500 baht per day still applies in calculating the number of compulsory workdays[40]. In addition, judges are required by the subsequent regulation to ask offenders about their ability to pay the fine, and explain to them about community service as an alternative[41].

Up until autumn 2019 when the first leg of fieldwork for this research took place, community service remained practically unused. Participating judges and court officials attributed such an underuse to offenders not filing a request in the first place. Court observations, however, reveal that there was nearly zero announcement about this option to court users in all observed courts. Neither was this option explained to offenders by judges or court officials despite the judiciary's regulation. Although some judges seemingly assumed that offenders were already aware of their options, the counterhypothesis was probably more accurate; that the failure of offenders to file a request was rather because of their collective lack of awareness about this alternative.

Less than a year later, the judiciary piloted the promotion of community service for fine default at 10 trial courts in Bangkok and other populous provinces in every region. This project, launched around April 2020, coincided with the policy of the then President of the Supreme Court to raise the protection of offenders' fundamental rights and decrease unnecessary use of custody. The succeeding President, who took office in October 2020, adopted the core of this policy and escalated the pilot to nationwide deployment in the latter half of 2020[42].

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[39] *The Judiciary's 2003 Regulation on Community Service*.

[40] *Criminal Code*, Section 30/1 paragraph 5.

[41] *Regulation of the Judiciary on the Number of Hours that Count as One Day of Community Service and Practice Guidelines regarding Community Service as the Alternative to the Fine and regarding the Change of Location for Confinement (No.2) BE 2560 (AD 2017)*, hereinafter '*The Judiciary's 2017 Regulation on Community Service'*, Clause 5.

[42] Interview with Judge X from the Office of the Judiciary, who monitored the progress of the policy regarding community service and other non-custodial measures at the time of this interview (interviewed on 9 February 2021).

Essentially, this policy seeks to increase offenders' awareness of this alternative and to assist in their filing of a request. It also aims to encourage judges to consider approving such requests and to facilitate coordination with the probation service which implements the community service order. Data from the second leg of fieldwork in late 2020 indicate an impressive rise in the use of this alternative[43]. Nevertheless, the data also imply the likelihood that the major causes of its previous underuse are still under-addressed.

It is notable that all these developments mostly target shortcomings on the enforcement side. Although the 2017 revision massively increases the ranges of the fine in *the Criminal Code*, it still leaves intact the income-insensitivity of the fine[44] and its subjugation to imprisonment. Even though variations exist in the forms of a fine per day of violation[45] and a fine whose size depends on the value of the object in question[46], they are in the minority and still not means-based.

The relevance of offenders' wealth in the calibration of the fine has been officially acknowledged for the first time in the Supreme Court President's 2020 recommendation on sentencing discretion[47]. Nonetheless, this document simply advises judges to also consider offenders' financial ability when fixing the fine. It offers no guidance or examples of how to exercise this discretion. Neither does it mention administrative mechanisms that may aid judges in the process. Whether this recommendation will successfully encourage means-based sentencing among judges remains to be seen. For the time being, means-insensitive sentencing dominates and explains the absence of a means enquiry. This long-standing practice continues to support an understanding of equality as purely offence-based regardless of the impacts and proportionality in relation to offenders.

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[43] For more details, see Appendix B.

[44] The recent massive increase in the sentencing ranges and the expensive mandatory minima of several amended criminal provisions (particularly relating to environmental and sexual offences) were often the topic of participating judges' complaints of sentencing disproportionality and their frustration of being powerless to alleviate them.

[45] For example, *the Building Control Act BE 2522 (AD 1979)*, Sections 65–67.

[46] For example, *the Customs Tax Act BE 2560 (AD 2017)*, Sections 205, 210, 242-243 and 246.

[47] *Recommendation of the President of the Supreme Court on Sentencing Discretion BE 2563 (AD 2020)*, Clause 3.

The lack of concern for impact-based proportionality is reflected in the law's ambiguity regarding property enforcement to collect the 'residual fine' – those exceeding the money/time equivalence of the maximum confinement term. Although the law sets the limit of both confinement and community service as an alternative to the fine at two years, it is silent on whether property enforcement for the residual fine can ensue, and whether confinement and property enforcement can occur simultaneously. The Office of the Judiciary issued a guideline in 2018 recommending simultaneous property enforcement regardless of whether the fine can be offset by the maximum term of confinement[48]. This line of interpretation represented the fine-as-debt frame, whereby the fine – subject to the rigid fine-to-custody conversion rate – must be fully collected notwithstanding the already endured pains of confinement or community service.

This legal ambiguity has been partly dispelled by the Supreme Court judgement no.3189/2564 issued in July 2021. This en banc judgement clarifies in one part that the court's decision to enforce the default fine via confinement converts the sanction from the fine to confinement. Hence, after the full term of confinement, the penalty has been fully executed and there is no more fine to collect. Using this reasoning, the Supreme Court sets the precedent that fine defaulters who are already in confinement and later reprieved by a Royal Pardon are no longer liable for the residual fine. This judgement clearly adopts the fine-as-sanction, instead of the fine-as-debt, interpretation. Nevertheless, it still upholds the prior precedent that permits enforcement of the residual fine against those whose confinement term is waived by a Royal Pardon while not yet being confined[49]. This situation can only occur in the combination sentence of fines and imprisonment, whereby days of fine-default confinement run consecutively after the completion of a prison term. This precedent, based on the demarcation between time in imprisonment and fine-default confinement, still overlooks the possibility that the suffered custodial pains may already outweigh the pains of the fine. Therefore, proportionality is still a contestable issue in relation to the 2021 precedent.

[48] *Office of the Judiciary's 2018 Practice Guideline*, Clause 2.1 (pre-revised by *Office of the Judiciary's 2022 Practice Guideline*).

[49] See, e.g., Supreme Court judgements no.8586/2561 (AD 2018), 5305/2560 (AD 2017), 18280/2557 (AD 2014).

In addition, the implication of this judgement is restricted to only cases where fined defendants receive a Royal Pardon. In January 2022, the Office of the Judiciary issued a guideline confirming its original opinion that simultaneous property enforcement can still be implemented and that the residual fine can still be collected, despite the completion of a confinement term[50]. This guideline insists on courts using the fine-as-debt frame in fine enforcement. Its preamble unequivocally reflects this perspective, as it declares that the guideline is 'to prevent the authorities from losing the right to receive the fine imposed in substantial amount' as a result of a Royal Pardon that may be granted in the future. This fine-as-debt frame evidently sets aside concerns for proportionate execution of punishment.

This under-attention to impact-based proportionality also undermines the deterrence potential of the fine by maintaining the superiority of imprisonment. As reported later in this thesis, fines are normally clustered in the low-to-middle level of the punishable range regardless of the offence. Furthermore, judges seem reluctant to levy an expensive fine unless mandated by the law. With this constant impression of negligible severity, standalone fines are mostly restricted to regulatory and minor offences. Beyond this sphere, if invoked and not mandated otherwise, fines always accompany a custodial sentence as the latter's supplement. The relatively insignificant size and being in the shadow of imprisonment apparently subvert the fine's supposed aim, whether it be retribution or deterrence.

The nature of Thai sentencing, as concluded in this study, is essentially symbolic rather than instrumental and more formal than substantive. The inclination to justice in a formal sense accounts for judges' under-attention to penal impacts. Moreover, the dominance of a moralistic ideology appears to impede the tailoring of sentences for impact-based proportionality. Such an ideology is profoundly associated with Thailand's unstable democratisation and its localised version of the rule of law. It is also buttressed by the judicial structure and socialisation whose details will be given in the subsequent section.

[50] *Office of the Judiciary's 2022 Practice Guideline* (issued to revise some clauses in *the Office of the Judiciary's 2018 Practice Guideline*).

2. Thailand's Judiciary in a Critical Perspective

2.1 The Judiciary's Organisational Structure and Culture

Since 1997, there are four systems of courts in Thailand: the Court of Justice, the Administrative Court, the Constitutional Court, and the Military Court. Each has its own domain and is independent of the others. This research only focuses on the Court of Justice (hereinafter 'the judiciary') because of its jurisdiction over general civil and criminal disputes. It is not only the oldest but also the largest court system in Thailand with over 4,700 judges working nationwide. The judiciary's structure enables cases to be adjudicated at three levels: the Courts of First Instance, the Appeal Courts, and the Supreme Court (Dressel and Khemthong, 2020: 166–167).

Judges are career officials recruited through an extremely competitive examination. Law graduates from the age of 25 are eligible to take the examination, provided that they have passed the bar examination and acquired specified professional experiences. There are three types of examination: a general round (*sanam yai*) for general candidates, a small round (*sanam lek*) for those holding an LLM degree, and a tiny round (*sanam chiu*) for those having undertaken a master's degree study, or higher, abroad for two years. The entry via these three different types of examination has been strongly criticised since all successful candidates will be responsible for the same kind of judicial works. Moreover, the success rates for *sanam yai* candidates are much lower than those sitting for *sanam lek* and particularly *sanam chiu*. Since it is far easier to become a judge through *sanam chiu*, it has been a preferred path to judgeship by well-to-do candidates who are financially capable of studying overseas (McCargo, 2020: 33; Supruet, 2012).

The age of 25 is considered by critics as too young to make decisions that have life-changing impacts on others. Furthermore, the qualification of two years in the legal profession or having served clients in at least 10–20 cases is verified quantitatively instead of qualitatively. This creates a loophole through which prospective candidates can satisfy the requirement without actually gaining meaningful experiences. Anecdotes abound about government officials who exploit their service time reading books for the examination instead of dutifully performing their works. Equally widely known is the story of aspiring young lawyers who assist in non-complicated litigation to simply earn credits towards their judicial application. Once the qualification is reached, many judicial hopefuls

also dedicate time to preparing themselves for the examination rather than experiencing law in action by litigating cases. Therefore, the system is heavily criticised for recruiting immature and inexperienced lawyers to do such an important job (Nanchanok, 2016).

The examination is also infamous for its emphasis on Supreme Court precedents; thus, encouraging rote memorisation instead of critical thinking (McCargo, 2020: 33; Sanchai *et al.*, 2003: 43, 140–141, 212). This reflects the learning atmosphere of legal studies in Thailand that concentrates on the analysis of Supreme Court decisions (Supakit, 2016: 135). However, since becoming a judge guarantees a well-respected status and financial security, it has become a sought-after profession – a dream job for many law students (Nanchanok, 2016). Therefore, the technical orientation in Thai law schools' curricula is rather the response to the increasing demand for passing the judicial examination. Such catering to the judiciary's academic influence has contributed to the deficit in critical legal studies and other fundamental subjects namely legal philosophy and the sociology of law (McCargo, 2020: 34). The end product of this kind of legal education is a lawyer well-versed in the 'law in the books' but underprepared for the complexities of the law in action (McCargo, 2020: 36).

The one-year judicial training for successful candidates, now called 'trainee judges', covers both theoretical and practical aspects of the profession. Nevertheless, not only does it provide little room for a critical and broader social analysis of law, it also socialises novice judges into the world of conformity with traditions and seniority (Supakit, 2016: 115–119). Judges learn early the value of adherence to customs and the price of deviation. Conformity guarantees frictionless case processing, whereas departure from the norms may trigger suspicion of misconduct from colleagues and be perceived as trouble-making (Supakit, 2016: 133–134). After becoming full-fledged judges, the priority of conformity is reverberated throughout their career most noticeably by an annual performance evaluation by judges' supervisors, namely chief judges (Supakit, 2016: 124). Although technically independent in their judicial works, judges are still bound in an administrative chain of command in a centralised style of control to ensure uniformity (Supakit, 2016: 235).

The Judicial Commission is the only entity in the judiciary that deals with judges' disciplinary actions. Chaired by the President of the Supreme Court, it comprises six

Supreme Court judges, four appellate court judges, two judges from courts of first instance (McCargo, 2020: 44) and two lay members elected by judges[51]. The composition and voting arrangements result in a disproportionate representation that favours higher courts' domination (ibid.). What happens is senior judges in detached positions getting more say in disciplining junior judges in courts of first instance. An attempt to equalise representative proportion, i.e., four from each court, was unsuccessful. So was an effort to increase parliamentary oversight through more Senate-appointed lay members (Dressel and Khemthong, 2020: 167). Furthermore, disciplinary actions by the Commission are exempted from legal challenges in the Administrative Court[52]. The lack of checks and balances makes the Commission very powerful and feared. Because the scope of misconduct from custom deviation is still ill-defined, and because the Commission hardly ever sanctions conformity, it is much safer for judges to suppress their creativity and follow the dominant norms (Supakit, 2016: 136, Appendix E).

This self-regulatory system not only endorses conformity, it also encourages inertia through seniority-based promotion. For the Thai judiciary, seniority is key to almost everything. The scores in the judicial examination determine the level of judges' hierarchy. This level will stay with them for the rest of their career and will largely dictate their promotion and chances of rotation to their desired courts – also ranked by court seniority (Supakit, 2016: 120–121, 124). The rigid anchoring to seniority hierarchy guarantees judicial independence and minimises controversies regarding promotion. However, the upside of career predictability disincentivises judges in improving their performance. Unless misconduct allegations are involved, judges' annual evaluation is often made superficially and rarely outcompetes seniority in judicial promotion. This makes judges complacent about their current capacity and sense no need to update themselves; thereby, accounting for the allegedly poor performance across court levels (Thanin, 2013: 52–53; see also McCargo, 2020: 48, 100).

Judges' frequent rotation also explains their lack of interest in challenging the established practices that prove problematic, or in proposing better alternatives to

[51] *Constitution of Thailand BE 2560 (AD 2017)*, Section 196.

[52] *Act on Establishment of Administrative Courts and Administrative Court Procedure BE 2543 (AD 1999)*, Section 9.

implement a task (Supakit, 2016: 121). Judges in courts of first instance are entitled to rotate on every first of April after having served in each court for one year, while the maximum tenure at each court is six years[53]. Judges will be assigned to a new court of their choice dependent on the match between their level of seniority and that of the court's. This ranking of courts is both distance- and demand-based. The least senior court is generally the furthest away from the capital city of Bangkok and less desirable courts also tend to be those with loads of complicated cases (Supakit, 2016: 120–121; see McCargo, 2020: 41). This rotation system enables judges to move to the court of preferred location or working atmosphere, and some use this opportunity every year. This short span of work at each court obstructs profound understanding of each court's working culture and thus discourages any actions to remedy administration problems (Supakit, 2016: 120–121). This tendency also occurs to judges in executive positions who, because of their short tenure, are often reluctant to launch initiatives to improve their court's administration (Thanin, 2013: 66).

Moreover, since Thai judges across court levels are constantly overwhelmed with the bulk of trivial cases, they are deprived of opportunities to ponder important legal questions. Ironically and unsurprisingly, many Supreme Court judges are comfortable being chained to routines instead of issuing landmark decisions (McCargo, 2020: 48). Again, the system shows consistency in encouraging passivity and uncreativeness among judges.

Overall, the judiciary is culturally conservative and prefers homogeneity in decision-making to innovation. Judges are recruited and socialised in ways that suppress critical thinking and creativity, and simultaneously encourage unquestioning conformity. Structurally, its human resources system is fraught with flawed incentives that lead to inequality of entry, inertia, and systemic under-performance. Its isolation from political oversights and public scrutiny shields judges from feedback and provides them with few reasons to make structural or fundamental changes. This makes judges complacent in their own bubble, more detached from social realities, and irresponsive to criticisms against the judiciary – particularly those about judicial elitism, insularity, and indifference.

[53] *Regulation of the Judicial Commission on the Appointment, Rotation and Promotion of Judges No.11 BE 2563 (AD 2020).*

2.2 Elitism, Insularity, and Indifference

Judges are among the best-paid civil servants in Thailand who also enjoy generous fringe benefits and nearly absolute professional security (McCargo, 2020: 32). Irrespective of their age, judges are treated with great respect and are placed highly in Thailand's social hierarchy (Supakit, 2016: 237). Such a lofty financial and social status makes judges one of Thailand's elites. Even judges consider themselves 'a special breed of civil servants' who, by virtue of their superior ethical standards, merit this exceptional reverence and status (Supakit, 2016: 244).

Established during the period of royal absolutism, the Thai judiciary still regards seriously the vestigial connection between itself and the monarchy as the source of its legitimacy. Although originated as a post-revolution compromise between the royalists and the revolutionaries, the honorific phrase that judges adjudicate 'in the name of the King' – enshrined in every constitution and invoked in every judgement – are interpreted literally. Moreover, royal images are displayed in every courtroom, high above the bench where judges sit. Judges must also swear a judicial oath and pledge allegiance before the king in order to become fully authorised. This oath-taking ceremony is the rite of passage for new judges and considered the most memorable moment in their judicial career. As a result, Thai judges perceive themselves as royal servants who exercise authority on behalf of the king (McCargo, 2020: 58–61; Supakit, 2016: 74, 117). Since the king is customarily deemed the ultimate source of virtue (see section 3.4 below), judges as his delegates are aglow in his virtuous radius and thus judges' moral superiority is considered inferior only to that of the king's (McCargo, 2020: 31, 62–63).

Because virtue seems to be the principal source of their moral authority, judges are traditionally expected to manifest their propriety through an ascetic, quasi-monastic lifestyle (McCargo, 2020: 32). Nevertheless, judges' appearances of 'goodness' are also composed of other traits, which collectively serve to elevate judges' identity far above that of ordinary people's. According to Kitpatchara (2018: 93), these traits are: (1) *khon di* – A person of virtue, most likely Buddhist-based; (2) *phu di* – A person of good appearance and manners; (3) *phu ru* – A person of intellects and wisdom; and (4) *phu phakdi* – A loyal servant of the monarchy. These traits collectively serve to construct an identity of 'a good judge' which has been repeatedly reproduced both inside and outside

the judiciary. This image of ‘a good judge’ has sustained the idea of judges’ moral supremacy that justifies their exalted status and the legitimacy of their decisions even when they seem to transcend formal legal constraints (p. 105).

In a society imbued with moral politics (more on this in section 3.4) where moral authority is far more important than the law, the demand for democratic accountability is perceived by the judiciary as an impertinent notion (Supakit, 2016: 234, 247). The strong emphasis on virtue-based legitimacy accounts for judges’ steadfast resistance to parliamentary oversight. The proposal to strengthen such oversight in the 2015 draft Constitution was eventually dropped after a heavy defence from the judiciary who perceived it as a threat to judicial independence (Supakit, 2016: 248–249). This rejection of external scrutiny reflects the need to preserve judicial ‘purity’ from ‘dirty’ political interferences. Accordingly, it maintains the judiciary’s self-regulatory system which, because of its closed nature, obstructs judicial accountability to the public. This insularity perpetuates judges’ inward-looking and self-congratulatory perception of their own superiority, while insulating them from opinions that might assist in their improvement (McCargo, 2020: 45, 100–102). Ironically, this ‘purity’ comes at the price of vanity, whereby judges view themselves suitable to exercise review of other powers while adamantly shielding themselves from the same kind of examination (Supakit, 2016: 244).

Vanity in an elite public institution are causes of concern, especially when that institution typically deals with people from the lower rungs of social hierarchy who comprise a large population in the country’s prison. More worryingly is the growing number of judges from an urban middle-class background, who have spent most of their pre-judge life in academic rote-learning (McCargo, 2020: 33, 36). As explained above, the heavily criticised entrance examination prioritises good memory over critical analysis, and favours financially privileged students who can afford to study overseas or remain jobless while preparing for the examination. Coupled with a minimum age of 25, the recruitment system opens a wider door to young lawyers who, although bright and diligent, tend to be largely ill-equipped to understand the complexities of social realities, let alone those of the lower-class life. The social distance from those they judge is widened by the judiciary’s isolated elitism that fuels judges’ confidence in their usually rigid perceptions of the multifaceted world. As a consequence, indifference to inequality and questionable treatments in the criminal justice system pervades and persists.

Thailand's criminal justice system is notorious for its wealth-based inequality and over-inclination to incarceration. The prevalence of monetary bail is the most prominent example. Despite attempts to demonetise bail, offenders are still generally required to post monetary security to get released. The value of security listed in a centralised bail schedule is purely offence-based and therefore discriminates against those of lesser means. This practice brings about needless pretrial custody and the 'necessary evil' of bail bond services. Administrative necessities and fear of non-conformity allegedly lurk behind adherence to this long-standing tradition (Thanyanuch, 2020). Nevertheless, the persistence of such an unfair and problematic routine reflects significant indifference in the judiciary (see Surasak, 2019).

Likewise, regardless of the disturbing prison overpopulation and draconian anti-drugs legislation (replaced by the more nuanced and less punitive law in 2021), judges in the not-so-distant-past obediently imposed harsh sentences on drug offenders pursuant to the confidential in-house 'sentencing guideline' (known as the *yee-tok*) and mechanically aggravated prison situation (Supakit, 2016: 239, Appendix G). Despite the rhetoric of rehabilitation and human rights, judges appear heedless of it in practice. Some even try hard to convince outsiders that these 'Western' concepts are incompatible with the Thai context (McCargo, 2020: 47, 90). Criminal justice personnel are also alleged to be passive in informing offenders about their rights (Surasak, 2019). This inattention to the protection of rights again insinuates indifference to the rights-centric values of the criminal justice system.

Several factors may account for such indifference. The system's massive workload (McCargo, 2020: 41) and its emphasis on managerial efficiency (Surasak, 2019) narrow judges' focus solely onto quantifiable aspects of their routines, namely speed and the number of case disposals. The tradition of uniformity together with hierarchical supervision strongly stifle innovation and dissents. The system-induced inertia also suppresses creativity with habituation to default conditions. Since these 'defaults' facilitate custody and harsh sentences, the system appears to be built on pervasive distrust of and possibly disdain towards offenders (Surasak, 2019; see Supakit, 2016: 254). Such a pejorative attitude can partly be attributed to, and in a sense worsened by, the judiciary's isolated elitism that precludes judges' sympathetic understanding of a subaltern life. The dominant legal method of decontextualising the law for its 'purity'

further impedes judges from seeing law's implications for social (in)justice, particularly to the marginalised population. This detachment from social realities in turn perpetuates judges' indifference towards substandard treatments of offenders who are being 'othered' due to their prevailing underprivileged backgrounds.

Judges are also criticised for indifference to democratic and rule of law principles. Critics often raise the judiciary's constant record of legitimising coups (see section 3.3) up to as recently as in 2020 (see TLHR, 2020). Also infamous are courts' 'draconian' treatments in politically-driven 'security' charges namely the dreadful offences of sedition and lèse-majesté. Such treatments include repeated bail denials and excessively stringent courtroom procedures that impede even confidential lawyer-client conversation (TLHR, 2021), the astronomical 'price' set for bail (Teeranai, 2022), and overbroad interpretation of the criminal law that results in criminal convictions (Head, 2015).

The judiciary's allegedly close affiliation with the military is one explanation for this indifference, considering its active participation in military training courses (Dressel and Khemthong, 2020: 171) and the appointment of some senior judges in positions of power under the military government (Supakit, 2016: 223). Moreover, since the judiciary appears to still under-protect political defendants' rights and liberties even during periods of civilian rule, its indifference towards checking the use of state power cannot be ascribed to fear of the government's retaliation. Besides ties with the military, a shared ideology is another explanation and more likely to be a more significant one. It is likely that the dominant ideology of law and justice, as held by the judiciary and many judges, does not share the central values of rights and liberties as the Western-style rule of law. Understandably, whenever ideas of alien origins travel to a local community, they are typically indigenised or localised – presented in the frames of existing cultural norms and values (Merry, 2006: 39). The rule of law, as well as democracy and human rights, are all Western-originated concepts that were imported to Thailand relatively recently. Like all other imported ideas, they too were localised to the extent that original meanings might have shifted. The Thai version of the rule of law has then laid an ideological foundation that dominates Thai judges' ideas of law and justice. Therefore, it is rather this ideological influence that significantly accounts for the judiciary's consistent overlooking of the rights-based rule of law and indifference to its consequences.

3. Thailand's Localisation of the Rule of Law

In light of criticisms about the Thai judiciary's indifference to social injustice and human rights, there have been at least two theories that offer an ideological explanation. The first one has for decades gained dominance among Thai lawyers, academics, and practitioners. It theorises that legal positivism that has long dominated the Thai legal education and practical tradition is the real culprit (see Pridi, 1996: 306, 309; see also Kittisak, 2010: 70–73; Sawang and Atirut, 2019: 273). The separation of law from justice has allegedly underpinned the heavily technical orientation of Thai legal studies and has accounted for the judiciary's constant ratification of coups and coup decrees.

However, this view has been challenged for being too simplistic. An alternative theory has been posited questioning the judiciary's hegemonic meaning of law and justice. These critical scholars argue that it is more likely the case that judges' interpretation of the oft-cited 'rule of law' is incompatible with the concept's liberal foundations (see Charan, 2020; Thongchai, 2020; Worachet, 2018b: 1:13:19–1:15:00). It is also argued that judges neither understand nor endorse the ideals of democracy and individual rights that are closely associated with the rule of law to begin with. Since the rule of law is in essence a political ideal (Tamanaha, 2004), the anti-democratic orientation of the Thai legal tradition offers a more satisfactory explanation of the judiciary's underperformance with regards to rights and liberties. To understand this argument fully, a critical reading of Thailand's history of legal modernisation is required, starting from the strategic importations of Western knowledge and ideas.

3.1 The Bifurcation of Western Influences

Despite the opposite conventional historiography, Thailand – then known as Siam – at the turn of the 20th century was not different from a semi-colony of the Western colonisers (Jackson, 2010). Although the then sovereignty of the Siamese monarchy was neither replaced nor superimposed by the colonial governments, its absolutism was strongly damaged by extraterritoriality and the necessity to yield to Western demands in many instances. This 'disruption' in the face of Western colonising threats alerted the ruling monarchy to an urgent need for major reforms. This was not only to remedy the colonising crisis but also to magnify its centralised rule over domestic subjects (Jackson, 2004). To

these ends, European civilisation was perceived with both awe and inspiration, and occidental knowledge was eagerly studied for adoption (Thongchai, 2000).

Unlike a truly colonial state where modernisation was directed by Westerners, in Siam the same process was spearheaded by the local sovereign. Therefore, strategic appropriation of the European concepts was necessary to make sure that the introduced changes would enhance, rather than jeopardise, the ruling structures and powers of the monarchy (see Engel, 1975: 17). Simultaneously, the consequences of reform had to appear 'civilised' to Western audiences to increase Siam's negotiating power with the West. The reconciling solution was the bifurcation of Western epistemology, by which the physical sciences were purely imported while the moral concepts were 'localised' or 'Thai-ised' through a culture-laden process of translation (Thongchai, 2010). This selective replication successfully staged a convincing performance of 'civilisation' to foreigners, while safely protecting the core 'Thai' cultural identity from 'alien' ideas (Jackson, 2004). Consequently, despite the façade of Westernisation, the conventional structure of powers remained intact.

The traditional Thai worldview is heavily influenced by the Buddhist metaphysical concept of *karma* – a transcendental force of justice that varies on the individual's wealth of merits and demerits (Mulder, 1996: 105). *Karmic* differentials account for the inequality in the worldly status and wealth, whereby the people of higher status are believed to possess higher virtues and moral wisdom (Streckfuss, 2011: 67–69). The equation of social status to moral worth legitimises social stratification and normalises inequality (Wilson, 1962: 275). In this cosmology, hierarchy is conflated with order and harmony. Not only because inequality is the natural order of the universe, but also because the elites at the top of the hierarchy are deemed the wisest, the most virtuous, and hence the most fit to rule to preserve the order of society.

The emphasis on harmony and order justifies and corroborates the metaphor of society as a family in which each member cooperates for harmonious functioning, despite each having a different role and a different status. (Nidhi, 1995: 43–49) It also underpins the discourse about duties instead of rights. This religiously communitarian and anti-egalitarian principle is a polar opposite to the secular and liberal spirits of modern democracy and human rights. It is no wonder that it has often been said that these

Western ideas are alien and incompatible to Thai society (McCargo, 2020: 90; Thongchai, 2008: 27–28).

In this light, the Thai legal system has been directly impacted by this bifurcation strategy. Notwithstanding the European forms of codification and court procedures, Buddhism-infused beliefs about justice still exert influences via the 'Buddhicisation' of the Western legal philosophies. This is clearly evidenced in the translation of the 'alien' concepts. For example, the Siamese elite's word choice for 'liberty' was *issaraphap* which at the time connoted a sense of social hierarchy, instead of the original meaning of individual freedom (Loos, 2006: 69). Likewise, the prevailing translation of the 'rule of law' is *lak nititham* with *tham* referring to the Buddhist *dharma* (Mérieau, 2018: 292). The Buddhist doctrines of kingship and royal virtues have also been invoked by prominent Thai jurists to interpret constitutionalism to justify the contemporary monarchy's superiority over the law (Mérieau, 2018).

Additionally, Buddhism's centrality on the purity of minds is translated to normative judgements that primarily focus on the intention – the purity of which absolves actors from the dilemma of their action. This is why Thai defamation laws subjugate truth to the discovery of intent (Streckfuss, 2011). Since intention is always inferred from the action, the primacy of intention also perpetuates the priority of performance over the substance to such an extent that the legitimacy of military coups can be established through a proper 'ritual purification'[54] (Streckfuss, 2011: 118–122). Moreover, as shown in Chapter 4, this priority of performance underlies judges' approach to punishment as formally communicative rather than impact-based retributive or utilitarian, and their disregard for measuring the impacts.

3.2 The Perennial 'State of Exception'

In the discourse about public law, 'the state of exception' theoretically encompasses the state's invocation of a national crisis and the suspension of the normal legal order. In the face of immediate danger, the legislative and judicial functions must yield to the magnified executive power; thereby, reducing the ordinary protection of rights and liberties.

[54] The 'ritual' always follows the pattern of the abolition of the constitution, the granting of amnesty, and the promulgation of the new constitution (Streckfuss, 2011: 122).

However, despite any proclaimed temporariness, the state of abnormality is often prolonged, sustained, and eventually normalised. Consequently, the initially specific legislation and practices are generalised and the state of exception becomes the original source of law (Agamben, 2005).

In Thailand, this state of exception has persistently appeared in the forms of a military coup and authoritarianism in a constantly repeated cycle of military rule and elected representatives. Since the 1932 overthrow of absolute monarchy, Thailand has undergone 24 coups and coup-attempts. Statistically, on average a coup is successfully staged approximately every six years (Thamrongsak, 2018: 13). Furthermore, each spell of representative democracy is relatively short – totaling merely roughly 30 years of civilian governments despite the nearly 100 years of democratisation (Chambers, 2013: 69). Therefore, not only are the concepts inherently alien, but the opportunities for ordinary Thais to engage in democracy and its associated doctrines, such as the rule of law, have been very limited. From the historical record, democracy is rather an intermission between military governments, whose exceptional rule is always justified by invoking a national crisis, ranging from communist threats to political instability and government corruption.

Military might notwithstanding, coup legitimation would not be accomplished absent the judiciary's support. Surprisingly, the Thai judiciary has been reliable in legitimising the authority of those in power (Supakit, 2016: 223). The Thai precedent that ratifies the coup and generalises the state of exception has been established by a series of the Supreme Court judgements back in the 1950s and the early 1960s[55] (Streckfuss, 2011: 118–127). The undefined concept of 'peace and order' is referred to or implied in these judgements as either the determinant or the justification of the coup-makers' ruling authority. Abnormal times breed abnormal logic that embraces abnormal outcomes; the more suppressive (hence successful) the coup, the more legitimate the coup is in the court's view. As a result, by faithfully following this precedential framework, the judiciary

[55] Supreme Court judgements no. 1153-54/ 2495 (AD 1952); 45/2496 (AD 1953); 1512-15/ 2497 (AD 1954); 1662/2505 (AD 1962). This precedent has been consistently upheld and the most recent Supreme Court judgement that follows the same pattern of reasoning is the Supreme Court judgement no.3578/2560 (AD 2017).

continues to subjugate the rule of law to the authoritarian rule of military men (Streckfuss, 2011: 121, 126).

A number of theories have been offered to explain the judiciary's submissiveness to military coups. Pragmatism or futility of resistance seems to be judges' self-justification (McCargo, 2020: 92). However, it fails to clarify why the courts still uphold many coup decrees long after the dissolution of the coup body (see TLHR, 2020). Adherence to legal positivism as discussed early in this section is another theory. Nevertheless, it fails to register the contemporary prominence of the natural law tradition and the virtuous appeal of *lak nititham*. Popular demands that favour uncorrupted politics and justice over law were concretised in the *tulakanphiwat* – judicialisation of politics – movement in the late 1990s that has increased judicial oversight of political actions ever since. Still, it has turned out that courts and especially the separate Constitutional Court, have infamous track records of overbroad interpretation, to the detriment of representative democracy and freedom of speech (Khemthong, 2016; Streckfuss, 2011).

The inadequacy of this mainstream explanation has given rise to the critical alternatives, ranging from McCargo's (2005, 2020) 'network monarchy', Chambers and Waitoolkiat's (2016) 'parallel state', and Mérieau's (2016) 'deep state'. Despite the variations, these critical analyses offer the congruent theme of a judicial system being socially and ideologically affiliated with the unofficial royalist network. Actors in this network, in which the military and the palace functionaries are also allegedly involved, coordinate, either deliberately or subliminally, to destabilise popular democracy for the hegemony of royalism. It is this deep connection among the monarchy, the military, and the judiciary that frames the judges' perspective of justice in support of the monarchy-ratified coups and non-democratic regimes. It is this framework that guides judges in extrapolating indeterminate concepts relating to the coup's exceptional rule to the ordinary applications of law. Ambiguous ideas – in the likes of 'peace and order', 'national security', and 'political stability' – that might be justifiable when facing public danger have been influential in the court's function even in 'normal times'. In this sense, Thailand's state of exception has become perennial. As a corollary, the resulting dominance of the above undefined euphemisms still continues to subvert the rule of law and its associated ideals; making Thailand 'the exceptional example of the state of exception' (Streckfuss, 2011: 25).

3.3 The Bureaucratic Polity and the Judiciary

The durability of undemocratic authority in Thailand presents a distinctive path to modernisation and hints at a unique system of polity, a 'bureaucratic polity', as termed by Riggs (1966). It is a system in which all political decision-makings and public resources revolve around the bureaucracy primarily in its interests. It is a political regime where the bureaucracy is the cabinet's effective constituency; thereby, making bureaucratic benefits the government's priority and public services merely the by-products (pp. 323, 348–349).

The bureaucratic background of the 1932 revolution promoters contributed to this reverse role of the bureaucracy – from initially the servant of the monarchy to becoming the client of the new regime. Since the overthrow of absolute monarchy was executed by only a small clique of progressive bureaucrats, in exercising the newly gained authority the promoters heavily depended on the existing bureaucracy. Moreover, being bureaucrats themselves, they still clung to the traditional framework of superior-subordinate relationship in which the former is obliged to look after the latter in exchange for reciprocated respect and obedience. Eventually, the ministry has become the minister's constituency whose interests are avidly protected contrary to the championed ideal of public services (Wilson, 1962: 161). The shortage of a strong extra-bureaucratic institution to whom the bureaucracy is answerable explains the non-alignment of bureaucratic interests with those of the public; hence, the perpetuation of this self-indulgent system (Riggs, 1966: 364, 396). Thailand arguably has been suspended in the incomplete transition from monarchist absolutism to popular democracy; the in-between in which it is stuck is perceived to be bureaucratic polity (see Wilson, 1962: 280–281).

However, with a narrow focus on bureaucratic elites, as a grand theory about Thai politics, bureaucratic polity has lost its explanatory power over time because the roles of extra-bureaucratic actors have been increasingly evident and acknowledged (see Hewison, 1989: 10–13; Ockey, 2004; Prajak and Veerayooth, 2018). Nevertheless, the model's description of the regime's characteristics still resonates in the present-day bureaucracy. Despite the eroded autonomy, the Thai bureaucracy remains powerful in the game of political power (Ockey, 2004: 147). Indeed, in the now weakened and demoralised state (Prajak and Veerayooth, 2018: 288), it is even more seriously lacking in incentives and mechanisms to place a people-centric approach over their own

priorities. A closer inspection reveals how these self-centred characteristics are associated with authoritarian politics and the continual marginalisation of the people's interests.

In a bureaucratic polity model, the bureaucracy is highly centralised but works are highly fragmented, creating a 'senseless rivalry' and overlapping operations among government agencies. The mission of each bureaucratic unit is vying for public resources to build an empire and striving to maintain its legitimacy, while absent genuine interests for integration to implement a shared policy (Riggs, 1966: 347–358). This fragmented centralisation underlies 'departmentalism' which has always been a chronic syndrome of the Thai bureaucracy (Wasan, 2015). This centralising structure is the core of authoritarianism because power can be tightly clustered and managed in a handful of trusted individuals. Since the centre of interests in the authoritarian regime is not the ruled but rather the rulers, dispersive allocation of resources to members of the clique is necessary to subdue factions and sustain unity within the ruling circle. Accidents and other peculiarities in Thai modern history may have shaped the development of departmentalism. Nonetheless, authoritarianism has certainly provided a fertile ground in which it thrives.

Authoritarianism has caused or facilitated another attribute of a bureaucratic polity – a mentality of avoiding difficult decisions and responsibilities. Generally, the exercise of power under its arbitrary rule is not confined to meritocracy and policy-based rationality. Therefore, the bureaucracy becomes a field of politics where favouritism is rampant and securing patronage is the topmost priority. In a polity where power frequently changes hands as in Thailand, bureaucrats must learn to carefully walk the line or risk future retribution. From low- to high-rank functionaries, when the 'rules of the game' are unclear, hard decisions are often passed up along the chain of command to avoid responsibilities if their actions happen to be 'wrong' (Riggs, 1966: 327–344; see also Prajak and Veerayooth, 2018: 289–290).

Likewise, to economise on their limited resources, subordinates may purposefully stay inactive in implementing complicated measures that will neither impact their evaluation nor bring tangible benefits in return. However, to also avoid antagonising their superiors, subordinates can withhold displeasing information or arrange for a performative

measurement of progress (Riggs, 1966: 361–363; Siffin, 1960: 264). In the 'regime of images' (Jackson, 2004) where form overshadows substance and personal relationships outweigh performance, mechanisms for long-term policy-oriented efforts are not the priority and hence are severely lacking (Siffin, 1960: 264; Wasan, 2015: 114). Again, absent public accountability, the system offers no real incentives to remedy these flaws.

The Thai judiciary, although now fully independent from the administrative branch, is deeply embedded in this bureaucratic culture. Historically, until 2000, the modern judiciary operated as a part of the Ministry of Justice with the latter theoretically managing the former's administrative burdens (Judiciary of Thailand, 2018). From its inception in the late 19th century, the modern judiciary nestled in the Thai bureaucratic structure for over a century. Despite a distinctively strong tradition of seniority-based promotion to preclude favouritism, the post-2000 judiciary still displays characteristics of the Thai bureaucracy. The administration is centralised and even judicial discretions are controlled by guidelines and regulations that aim to perpetuate homogeneity (Supakit, 2016: 235). Evaluation of judicial performance is cursory and never taken seriously. Judges performing either judicial or executive tasks lack motivation to improve their knowledge and/or the system. They are more likely to be inert and avoid extra assignments out of indifference, or fear of taking responsibilities for mistakes they might make (Thanin, 2013: 52, 66). Moreover, the Thai criminal justice system is still highly unintegrated and each agency therein, the judiciary included, focuses on solving problems in the confines of its 'empire' instead of earnestly coordinating for long-term and comprehensive policy goals (Kittipong, 2003: 110; Kittisak, 2010: 97).

Typical bureaucratic attributes aside, the judiciary's complete autonomy from other branches of powers has severed all democratic connections with the people. Thus, the judiciary has become fully insulated from and far more out-of-touch with the public's feedback than the normal bureaucracy. Furthermore, originally instituted as the extension of the monarchy's judicial arm (Engel, 1975: 59, 78), long after the 1932 revolution the judiciary still believes in the royal source of their authority and translates the honorific phrase '(judging) in the name of the King' literally (McCargo, 2020: 58–63; Supakit, 2016: 74). The revolution promoters and subsequent rulers so far have not fundamentally restructured the judiciary to make it compatible with democratic ideals (Worachet, 2013: 15). The judiciary, therefore, remains remarkably conservative and unaccountable to any

external institutions, let alone the people. This segregated and unrepresentative structure is intrinsically hostile to the 'alien' individualist concepts of democracy, limited government, and human rights. It facilitates judges in promoting Buddhicised dogmas about justice, to such an extent that the Thai-style 'rule of law' seems completely justified despite criticisms for its incompatibility with the 'international standard'.

3.4 Moral Politics and the Thai-Style Rule by Law

The alienation of Western liberal concepts of democracy, human rights, and the rule of law has been dominant in the worldview of the Thai urban middle class for decades. It is not only the product of the bifurcation strategy as earlier discussed, but also a part of a civic discourse of 'Nation, Religion, Monarchy' – the three 'pillars' of Thai society.

This trinity was originated by King Rama VI (AD 1881–1925) in the 1910s to foster his nationalist campaign. It was reinvigorated by the military junta in the 1960s and 1970s to legitimise its rule and fend off communism (see Baker and Pasuk, 2014: 106, 170–179). The ideology has ever since been reproduced in school textbooks (Nidhi, 1995). Essentially, the concept is highly royalist, moralistic, and anti-democratic. Besides the focal glorification of past monarchs, it justifies hierarchical inequality by emphasising social unity and civic duties while obfuscating rights. It reduces democracy to just a procedure and simplistically moralises about complex socio-political and economic problems (Nidhi, 1995: 43–69).

Pronounced in this idea is the moral superiority of the monarchy grounded in the Buddhist doctrine of *dhammaraja* (the Righteous King). Pure and virtuous from the practice of the *totsapitrajadhamma* (the Ten Kingly Virtues), the king is 'above' politics. His authority is therefore supralegal and morally supreme. Along with this royal deification comes the stereotype of repulsively 'corrupt' politics. Elected politicians are essentialised as egoists and opportunists, as opposed to the benevolent and altruistic monarchy. Influentially circulated by the media and the intelligentsia, these polarised images have formed the common consciousness that subjugates representative democracy to the aristocratic rule by *khon di* (morally superior people). Deriving moral authority from the king, elites in the royal circle – notably the military and the judiciary – are deemed more legitimate rulers than corrupt politicians (Mérieau, 2018; Thongchai: 2008).

This moral politics discourse is particularly pervasive among the Thai urban middle class. The urban bourgeoisie has almost no similarity to, nor connection with, their rural and lower-class fellow countrymen (Baker, 2016: 399). Educated in a moralistic and uncritical tradition with weak sociological foundations (Mulder, 1996: 140–142), most urban bourgeois – particularly the pre-Millennial generations – are uninformed and ignorant of rural realities, and often believe the mainstream depiction of the rural lower-class people as poor, less educated, and morally inferior. Consequently, though a majority population, the rural lower-class choice of government is not trusted and deemed less deserving of governing than the 'virtuous' elites (Baker, 2016: 397–400; Thongchai, 2008: 25–29). This derogatory view of popular participation has culminated in the judicialisation of politics movement, beginning with the 1997 Constitution that authorised judges and court-based technocrats to override political decisions and even remove politicians (Ockey, 2004: 154).

Having an urban middle-class background themselves, most judges tend to already share these same beliefs at the time of recruitment. Judicial socialisation is thus simply to reinforce them and confirm the legitimacy of judges' morally superior authority. Also being insulated in the closed organisation further entrenches this royalist and anti-democratic perception and inflates a self-congratulatory view of their elite status (McCargo, 2020: 36, 100).

With this self-perceived superiority and the moralistic ethos, judges generally consider their role not merely as legal professionals but as the society's moral guardians (McCargo, 2020: 31). Accordingly, the law is understood to be but the tool to preserve *dharma* and the royal hegemony in the name of justice. In this virtue-based framework, harmony and order eclipse the concerns for individual rights. Likewise, non-democratic interventions are justifiable from a moral high ground. It is this non-liberal 'virtuous legalism' (McCargo, 2020: 54) that directs judges' legal interpretation. It clearly underpins judges' constant acquiescence to coups and coup-made laws. It also propels the judiciary's enforcement of indeterminate concepts, such as 'peace and order', and allegedly overly punitive laws, such as lèse-majesté, to the detriment of proportionality and human rights.

Ostensibly, this order-centric legal tradition is incompatible with the rights-based origin of the rule of law. Charan (2020: 200-201, 282-283) and Worachet (2018a: 401–404; 2018b: 1:13:19–1:15:00) rightly conclude that legal positivism is not to blame for this phenomenon. It is rather the socio-political ideology of the Thai conservative elites and the middle class that perpetuates this 'Thai-style rule by law' (Thongchai, 2020), or the self-claimed virtue-based regime in which laws can be selectively applied to preserve morality and order for the elusive cause of justice.

Conclusion

Thailand's criminal justice system underwent major modifications in the early 20th century and the system has been rationalised since. Nevertheless, the Western-inspired modernisation could be said to take effect primarily in forms, while the core values of rights, liberties, and proportionality appear to have limited influences. Likewise, the Thai judiciary has been bureaucratised since the same period. Originally established by and for royal absolutism, the judiciary remains the only branch of sovereignty largely unaffected by the revolutionary turn to constitutional democracy. Embedded in the pre-revolution values, the judiciary appears to share the military's priority of peace and order over individual rights and liberties. In many instances, it could even be asserted that it is not the 'rule of law' that judges are upholding but rather the 'rule by law'.

Ideology aside, the judiciary also embodies an internal structure and a culture that impede the cultivation of creativity and perspicacity on social justice. Its complete seclusion from external oversights also hinders public accountability and adaptation to constructive criticisms. These are ideological and organisational factors that contribute to judges' indifference to inequality, disproportionality, and other questionable aspects of the criminal justice process. On-site conditions under which the process is navigated may be another indispensable factor of indifference. Chapters 4 and 6 respectively will describe the in situ settings of the fining practices and explain interactions between different factors that shape judges' pervasive apathy to inequality, disproportionality, and irrationality in the fining system.

Chapter 3: Methodology

Introduction

This chapter explains the theories and methods applied to data collection and analysis in this research. It explains this study's epistemological underpinning and research strategies in four parts. The first part justifies the adoption of an interpretivist approach and the small scale of in-depth qualitative inquiry. It also clarifies how I managed my positionality between my judge/insider and researcher/ outsider statuses. Part II describes how empirical works with practitioners as participants were designed, developed, and carried out. Part III follows a similar structure in narrating the research with defendants as participants. The chapter concludes in part IV with its details about data transcription and analysis.

Part I: Approach of the Thesis

1. Interpretivism, Qualitative Study, and Problems of Evaluation

The aim of this research is to investigate how fines operate in the Thai criminal sentencing and to unravel the mechanisms that may insulate the current practices from criticisms and proposed changes. To understand how fine-related sentencing operates, my aim is to see how the fine is given meanings by practitioners inside the system. These meanings – especially those pertaining to the fine's purposes and roles in delivering justice – pattern the routines, prioritise particular values, and anchor certain assumptions as default in decision-making. The systemic influences implicate that the perceptions about the fine are collectively created, mediated, and represented. This likely collectiveness of penal sensemaking echoes the sense of culture which, despite its 'notoriously multivalent' definitions (Garland, 2006: 420), primarily revolves around the 'webs of significance' that people have spun (Geertz, 1973: 5). These collectively shared understandings constitute cultural elements inherent in every social institution including sentencing and punishment (Garland, 2006: 425, 433; Melossi, 2001: 407). To study sentencing as a cultural practice is therefore to examine how certain concepts – particularly those involving morality, justice, and legitimacy – are interpreted by members in the community (Hutton, 2014: 4724), and how habits and routines are constructed accordingly (Garland, 2006: 433).

Underlying this semiotic approach is an ontological position of constructionism which asserts that social phenomena and their meanings are constructed and constantly revised by social interactions (Bryman, 2016: 29). As a corollary, the social world must be interpreted from the actor's point of view, referred to as Weber's verstehen approach. This epistemology of interpretivism aims at understanding a complex and multifaceted perceptions of reality instead of proving objective truths (Bryman, 2016: 26–27). The priority of depth, not breadth, and insights-enabling explanation of events and behaviours fits with qualitative inquiry, which produces detailed descriptions rather than representative numerical data generated by quantitative research (Lewis and Ritchie, 2003: 267).

Studies that emphasise rich and rounded accounts usually prefer a small scale and purposefully selected samples. However, the resulting benefit of 'thick description' (Geertz, 1973: 6) comes with questions about evaluation, often in the criteria of reliability and validity. Reliability is generally concerned with the replicability of research findings, and validity with the correctness of the data analysed and the generalisability of the research results (Bryman, 2016: 383–384; Lewis and Ritchie, 2003: 270, 273).

It is difficult and arguably problematic to apply positivistic reliability and validity to measurement of qualitative study. Given the complexity and context-dependence of the inquiry, replication of the original research setting is likely unattainable (Lewis and Ritchie, 2003: 270). The non-positivistic position claims that there is no reliable access to reality; hence, the futility to assess objective validity (Hammersley, 1992: 69). Moreover, qualitative research findings cannot be generalised on a statistical basis because the significance is not on the prevalence of the studied phenomenon but rather on the mappings of its circumstances and causal conditions (Lewis and Ritchie, 2003: 269). Unlike the quantitative counterpart, qualitative research facilitates large conclusions from small but thickly detailed data to conceptualise structures of particular social interactions and thus broaden the known repertoire of cultural role in collective life (Geertz, 1973: 27–28).

Due to the above critiques, diverse authors have proposed solutions for assuring the quality of qualitative endeavour (Bryman, 2016: 384–392). Some suggested triangulation to aid in ensuring the credibility or validity through comparison of data collected from

different sources or by different methods (Lincoln and Guba, 1985: 305–306). The problem of replicability is purportedly solvable by reflexivity – transparently disclosing the process and implications of its surrounding contexts on research conclusions. By this revelation, research readers are capable of imaginatively 'replicating' the study and also checking the adequacy of methods and evidence (Lewis and Ritchie, 2003: 271). Reflexivity in this sense aligns with thick description whereby sufficient information on the inquiry and its contextual environments is provided. Such a thorough explication enables the readers to assess the similarities between the original and other research settings and judge if the results are transferable to other milieus; thereby, answering the question of generalisability (Lincoln and Guba, 1985: 316). Nevertheless, generalisations need to be prudently framed as working hypotheses or modest speculations on the applicability of findings to different contexts, whose validation rests on further empirical study (Seale, 1999: 112).

I decided to take a qualitative path for this study because of its strength in generating deep understandings of the culturally-imbued sentencing. I rejected a purely quantitative direction because of its ineptitude in studying the social construction of meanings. Insufficiency of official statistics about the fine also impeded me from taking a robust mixed-method approach. To administer a representative survey while also conducting an in-depth qualitative investigation to the degree invested in this study would be too strenuous for a small and resource-restricted doctoral project. Although quantitative content analysis was applied in this research, the sample is unrepresentative and was collected for triangulation with other qualitative sources. Therefore, the nature of this inquiry is predominantly qualitative.

The challenges of ascertaining reliability and validity in qualitative study were addressed by reflexivity of my research journey and thick description of data presented in this and subsequent chapters. Triangulation of sources and methods was applied in the first leg of fieldwork with a focus on judges' perspectives on the fine. This first investigation combined information across the three sample courts from case file analysis, focus groups, one-to-one interviews, and non-participant observation of court business. Although the data site of the second leg was just one court, I employed both observation and narrative interview in engaging with defendants as the main source of information for this leg. Rich, extensive, and thickly described accounts of defendants'

penal experiences were provided for inspection of narrative credibility, as well as insightful and empathic comprehension, all suggested to be better evaluative criteria for a narrative study (Lieblich, Tuval-Mashiach, and Zilber, 1998: 171–173).

Furthermore, to ensure as much researcher's objectivity as possible despite my insider/ outsider duality, I primarily adopted the role of an outsider and remained mostly detached from the judiciary. The deliberate estrangement was to contain my pre-research perceptions and activate a non-judgemental position. The following section discusses how I positioned my dual identity in detail.

2. Positioning the Researcher's Dual Identity

Eleven years of experience as a judge before commencing this research and my position of judgeship, albeit on a study leave, clearly made me an insider to the Thai judiciary and the Thai criminal justice system. Despite suspension of my professional role during the leave, I still had privy access to and knowledge of judicial culture, conventions, and people. Simultaneously, undertaking an academic examination of court practices also placed me as an outsider. This dual identity necessitated careful navigation to reap the benefits of both roles while avoiding the risks of getting both too close and too detached.

By being an insider, I enjoyed ease of access to locations and participants, as well as quick earnings of trust and rapport from court staff who viewed me as one of them, with an exception of one panel of judges – more on this in Appendix C. However, without keeping some distance, I would have been too familiarised with the field to see it with a new pair of eyes and failed to make the familiar strange (Ybema and Kamsteeg, 2009: 101–102). To render tacit and taken-for-granted knowledge explicit, I needed to also be estranged (Gobo, 2008: 162). My dual identity therefore required a dual stance on which immersion and detachment coexisted (Ybema and Kamsteeg, 2009: 103, 105).

Striking the optimal calibration was nearly impossible; yet, a critical reflection of managing multiple positionalities is integral to ensuring the robustness of the research (Bachmann, 2011: 364). In this study, I did not focus on my role as an insider, only invoking it for purposes of getting access and recruitment to which convenience and hospitality was an unsurprising response. I placed primacy on my outsider identity in order to maintain my sensitivity to strangeness. To bracket my pre-conceived assumptions, I designed the first leg of fieldwork on preliminary data derived from sources

other than my professional knowledge – literature and content analysis of the sample Supreme Court judgements (more details in Appendix C). Notwithstanding my years of judicial experience, both observation and interview guides directed me to observe and inquire as if I had never been inside the system. I insisted on following the relevant court process from the start to the finish and asked questions to which answers may have been obvious to many judges. I also analysed facts in the sample case files that were not collected for court statistics. This estrangement strategy allowed me to learn about parts of the process and go to parts of courts unfrequented by most judges, including me in the pre-research years. Moreover, unsophisticated questions about various aspects of the fine prompted replies that gave important clues to the key findings. Looking back from the distance, thereby, enabled me to see the previously invisibles and to finally grasp what had eluded my understanding in the past.

I was a total outsider in the second leg of fieldwork with respect to probing defendants' experiences. As a sentencer, I had never taken the opportunity to know their side of the penal process. Nor had I ever observed how things were in the court's holding area, where defendants must be held throughout the arraignment-cum-sentencing procedure, known as the *wain-chee*. In this regard, I had no personal suppositions, aside from those expressed by the interviewed judges which I intended to compare with the defendants' data in this leg.

However, even as a judge on leave, my dual status may thwart participation and candour from intimidated or distrustful defendants who may view me as part of the controlling force over them. Despite such a possibility, I decided to reveal both of my identities to recruited defendants in order to obtain their fully informed consent regarding participation. To my astonishment, my judgeship neither averted their participation nor their meaningful engagement. Participating defendants understood my active academic role and the suspension of my professional life. They also accepted the facts that I could not reciprocate by intervening in their case outcomes. As a result, their participation was completely informed and voluntary. Their interviews were also rich and seemed candid, which provided me with useful insights into their lived experiences.

Part II: Investigating the Fine from Practitioners' Perspectives

3. Research Design and Sampling

Data collection for this research was divided into two non-consecutive legs of fieldwork. The first leg was dedicated to investigating how fines operate from judges' perspectives. The second leg, designed from the first leg's generated data, was aimed at exploring the fine and related experiences from defendants/ offenders' points of view. It also sought to obtain official accounts from other fine enforcement agencies for a more rounded analysis of the fine. The judiciary's policy change in the interim between both legs that promoted community service for the can't-pay offenders necessitated more probes from judges on the topic; hence, additional inquiry with judges in the second leg.

Both legs of fieldwork were conducted in Thailand. The first leg began and completed between mid-September and late October 2019. The second leg commenced in mid-December 2020 amidst a relatively moderate Covid-19 situation. However, the sudden and serious wave of outbreak in April 2021 triggered a soar of infection rates while vaccinations were negligible. This unanticipated turn prevented all plans to interview the last remaining cohort – fine defaulters, including those still in and just released from custody. After weeks of no signs of improvement, the fieldwork had to prematurely end in May 2021 for health and safety reasons. This chapter, in part III, will describe only the methods applied to the group of defendants at the court whose data were collected as intended. For details about the ethically approved plans for the aborted cohort and adjustments made to accommodate the changing situations, see Appendix D.

With an exception of the fine enforcement agencies, data collection of the fine from practitioners' perceptions centred on court practices and judges' opinions. To ensure validity, triangulation of methods was adopted in the first leg of fieldwork – comprising case file analysis, non-participant observation of court process, and interview data from focus groups and one-to-one sessions with judges.

I visited three courts of first instance for data collection. Although the number may seem minimal, three sample courts were sufficient to satisfy the need to diversify data sources and to achieve data saturation. Comparison between courts of different sizes and geographic locations was necessary to observe (in)consistency in light of these factors. Meanwhile, the judiciary's strong homogeneity (Supakit, 2016) implicated the

possibility of repeated data patterns only after a few investigations. Despite the ambivalence of the concept regarding saturation, three to four focus groups are suggested as the minimum before determining whether it is reached (Krueger and Casey, 2009: 21). Indeed, there are studies that report indicative findings from merely four focus groups (see Stobbs, MacKenzie, and Gelb, 2015; Supakit, 2016). Together with the restricted resources of a small PhD project, three sites for multi-method research activities seemed sufficiently justifiable.

Sampling of the courts was purposive. Because the fine is imposable in both felony and misdemeanour offences, courts with jurisdictions over both types of crimes were included for selection. Since the courts would be the sites for interviews with judges, the locations must also be where all stationed judges were recruitable or at least the recruitable were the majority. Supakit (2016: 107–108), reflecting on his own judicial experience and citing Buchanan II (1974), selected participants from judges of five-year experience or over in his research on sentencing discretion. It was believed that the period of five years was ample to acclimatise rookie judges to judicial culture and practices regarding sentencing. Judges participating in this study's pilot interviews concurred with this hypothesis. Therefore, only judges with at least five years of service would be recruited in this study. Because judges of high seniority could outrank their junior peer and obtain a post in a court situated in or adjacent to a big city (Supakit, 2016: 120–121), the closer the court is to the capital or the country's regional hub cities, the likelier that most or all judges thereof have crossed the five-year experience threshold. Considering the above inclusivity criteria and ease of access through my network of contacts, three courts of different sizes and locations in the central region of Thailand were selected as the venues for the first leg. The names and the exact locations were concealed to keep participants' identities confidential. Accordingly, the three courts will be referred herein as Courts One, Two, and Three.

Court One was a big city court with a jurisdiction over bustling residential, commercial, and industrial areas. Court Two was a medium-sized court located in a neighbouring province to a big city but itself had a jurisdiction over mostly agricultural and residential communities. Court Three was a large-sized court in a large yet predominantly rural province. Courts One and Three housed a minimum of 24 judges, the chief judge excluded, in response to their busy business. Court Two, facing a more moderate

caseload, was staffed with 15 judges, excluding the chief judge and senior judges – the latter holding the position of a typically less occupied calendar.

I spent roughly two weeks at each court respectively during the first leg of fieldwork. Despite differences in sizes and jurisdictions, the data indicate the commonalities of all three courts in terms of frequent cases and court practices. Since the second leg's activities required a more intense effort of ethnographic works – more on this in part III – limiting the site of research to only one court was more pragmatic. Because of its 'not atypical' nature (see Feeley, 1992: xxxii) and convenience in travelling, Court Two was chosen as the sole venue for court fieldwork in leg two. As a result, besides Judge X from the Office of the Judiciary, merely judges of Court Two were interviewed for their opinions on the judiciary's promotion of community service instead of fine-default custody, the policy non-existent during the first leg of fieldwork.

The following paragraphs provide further details about the rationales behind the methods used, directions of inquiry, and sampling.

3.1 Case File Analysis

As one of several methods applied for qualitative triangulation, case file analysis was designed to be a mini-quantitative endeavour. The aim was to explore frequent patterns of the fine in the lower-court sentences, to see if they differ from the Supreme Court precedent. Due to insufficient official statistics, sampling and coding data from the case files were requisite. Because generalised results were not intended, sampling was purposive based on the top five most sentenced offences at the courts of first instance according to the 10-year annual judicial statistics from 2008 to 2017. Few other offences frequently observed in the sample of the Supreme Court judgements (see Appendix C) were added in the selection list for better comparison with the Supreme Court samples.

The categories specifically set for sampling were offences related to narcotic drugs, motoring (particularly drink driving), gambling, firearms, immigration, property, environment, and public regulations. Depending on the availability, sample cases for each category were anticipated to not exceed 10, making an approximate total of 80 case files examined per court. Two other important inclusion criteria for sampling were that the cases must be final, and that they had been sentenced by the same cohort of judges still serving at the court at the time of data collection. Since judges were able to rotate courts

on every first of April (Supakit, 2016: 120), to ensure the lattermost criterion was met, cases sentenced before 1 April 2019 were excluded.

Access to case files must be done through court officials. Moreover, the court's case inventory system was too unfamiliar to me. Therefore, cases were sampled by the assigned court official according to the abovementioned selection criteria. Besides unrepresentative size, this 'randomisation' by the court official impeded the findings from being conclusive and generalisable. Nevertheless, the data conformed to the patterns found in court observations and interviews with judges. The method, though unideal, was still useful as a tool for triangulation.

Because of differences in caseload and in decisions of the court officials who sampled on my request, the sample size from each court varied as follows: Court One: 61 cases; Court Two: 65 cases; Court Three: 98 cases – totalling 224 sample case files from all three courts.

Data coded for analysis were as follows: the categories of sentenced offences, whether offenders were natural or juristic persons, the statutorily permitted sanctions, the imposed sanctions, the severity level of the levied fine within the authorised sentencing range, and methods of fine enforcement. Coding and analysis were implemented using IBM SPSS and Microsoft Excel.

3.2 Non-Participant Observation of the Court Process

The objectives of court observation during the first leg were threefold: to observe the general environment of the court's public spaces; to follow a daily arraignment-cum-sentencing process (internally known as the *wain-chee*) from the start to the finish; and to document quantitative data observed in the *wain-chee* hearing. These threefold goals enabled estrangement that would sensitise my observation to details that might have been previously overlooked during my professional years.

Each court's public-facing areas were observed for general atmosphere, particularly interactions between court users and court officials. Attention was paid to the availability of legal information, especially that regarding the fine that were provided to court users through posters, pamphlets, video clips, or oral explanation.

To observe how the fine operates in practice, the entire *wain-chee* process offers an interesting window. The *wain-chee* is the process where defendants appear in the court for the first time after indictment. The purpose of the *wain-chee* is for the judge to arraign defendants, i.e., to explain the prosecuted charge and ask about their plea. A non-guilty plea normally results in adjournment for a pretrial hearing. On the contrary, if a guilty plea is entered and if no truth-seeking trial is legally mandated, the judge will immediately pronounce the sentence in that hearing, activate the post-sentence protocols, and end the *wain-chee* process within a day. Because of the daily influx of indicted cases, each panel of judges is assigned to rotate for the *wain-chee* duty in the course of a day or a week. This on-duty *wain-chee* panel is to permit other judges to focus on their regular trials and adjudication without distraction (Supakit, 2016: 116). The prevalence of criminal prosecutions that conclude in the *wain-chee* and the convenience of a one-day process from indictment to sentencing makes it an ideal opportunity for a small and budget court investigation.

The sequential nature of the *wain-chee* prompted an assumption about accumulated influences of the preceding stages on the fine-related decision-making towards the end of the process. Thereby, the observation of the *wain-chee* commenced from the very start, the filing of the indictment, through to the decision about fine enforcement. During the course of observation, I followed the case files from one stage to the next, from the court officials' counter to the *wain-chee* judges' desks, and from the judges' chamber upstairs to the holding area downstairs where defendants were held throughout the process and the *wain-chee* hearing was done remotely via a live video-link. Points of observation included judges and court officials' activities at each procedural stage, their interactions with defendants, and the general impression of the observed *wain-chee* hearing.

Observation took place at each court in three consecutive days during the court's normal business hours. However, if the officials worked extra hours, which was a normal occurrence, observation continued until they ceased work for the day. Hours spent in observation at each court varied because of this reason. At Court One, the total hours tallied roughly 23. At Courts Two and Three, the numbers were 18 and 20.5, respectively. Since the patterns of practices were consistent on every observation day and across

courts, merely three days of observation at each court and the overall totality of 61.5 hours were considered sufficient to generate understandings of the court's routines.

Because it was the process that I was observing, not any particular individual, I engaged in non-participant observation by which I was a passive witness with neither active interactions nor procedural interferences (see Gobo, 2008: 5). Some questions were raised to judges and court officials under observation but they were meant for explication of the observed practices. This detached position of a researcher allowed me to ask seemingly reasonable questions coming from outsiders but may have sounded naïve to the inside professionals. Following the entire process also enabled me to observe the pre- and post-hearing stages undertaken by court officials and to witness the remote hearing from the court basement holding area, the opportunities both of which I had never taken when I had been active as a judge. Passively observing activities and interactions throughout the *wain-chee* helped me see the strangeness in the previously familiar procedure.

Non-participant observation was reapplied with respect to court officials at Court Two during the second leg's inquiry about defendants' lived experiences. To put it briefly at this point, while defendants were closely shadowed in leg two, the court officials – still not the direct target of observation – were passively observed during their interactions with defendants.

Returning to leg one, in addition to the general observation of the process, quantitative data about the cases presided at the *wain-chee* hearing were systematically documented using a coding strategy. Information coded were genders of defendants, whether they were represented at the hearing, the offences prosecuted, the pleas entered, the sentences imposed, the existence of a means inquiry, and whether explanations about the alternatives to the fine were given. Data were coded manually on field notes during observation. At the end of each observation day, I added data about the methods of fine enforcement employed in each case from each court's daily statistics. The data were then copied to IBM SPSS and Microsoft Excel programmes for analysis. Overall, there were 192 *wain-chee* cases observed, according to which 51 cases were from Court One, 38 cases from Court Two, and 103 cases from Court Three.

3.3 Focus Groups and One-to-One Interviews with Judges: Leg One

Qualitative research interviews, either as focus groups or one-to-one, are capable of generating insights into the interviewees' lived world from their own perspectives. Conducting in a semi-structured mode, the interview follows certain themes of inquiry according to an interview guide but is open for improvised adjustments. The existence of structure prevents this mode of interview from resembling a free-form everyday conversation. On the other hand, the structure's flexibility precludes rigidity common to a closed questionnaire that may forestall data-rich and emic accounts of the studied phenomenon (see Bryman, 2016: 201; Kvale, 2007: 51–52). Due to its thematic nature and adaptability, a semi-structured interview was chosen as the method to explore judges' conceptual understandings on various aspects about the fine.

Because preliminary data (see Appendix C) suggested the domination of organisational norms and conventions over sentencing discretion, the influences of group pressure and culture made a focus group a preferable mode of interview with judges. By allowing participants to exchange and even challenge ideas of others in the group, a focus group facilitates deep thinking about a discussed topic. It is purportedly useful in uncovering latent factors contributing to certain perceptions and behaviours (Krueger and Casey, 2009: 19). Dynamism inherent in group interaction can evoke particular memories and uncover information harder to reach by an individual interview and observation. Collective deliberation can thus reveal unarticulated norms and tacit assumptions which provide powerful interpretive insights to an extent unmatched by other methods (Kamberelis and Dimitriadis, 2008: 396–397). This potential renders a focus group an appropriate technique to unravel cultural underpinnings of the fine-related practices.

A focus group was held at each research-site court at the time convenient to participating judges. However, to allow discussion over issues of interest just emerged from case file analysis and court observation, the session was scheduled after both activities had been partially or fully carried out. Judges were recruited according to the criterion of a five-year minimum judicial experience. The chief judge, whose seniority always surpassed the five-year threshold, was excluded to avoid power differential in the group that may breed discomfort in open discussion. Still, being a veteran judge, a chief judge's opinion was a valuable source of information. Therefore, the chief judges of

Courts One, Two, and Three were each interviewed one-to-one according to the same interview guide used in every focus group.

For the same reason of eligibility, another focus group was held with participants who were appellate court judges. With decades of experiences and the power to review lower courts' sentencing decisions, a focus group of appellate court judges may offer distinctive inputs from higher courts' outlooks. Participants of this fourth group were recruited from the Bangkok-based Central Court of Appeal, the largest and the busiest appellate court in Thailand.

Recruiting and scheduling the session for a focus group was challenging because judges tended to have a busy calendar. This resulted in a small focus group at every court: there were five participants at Court One, three at Court Two, and four at Court Three. In the same vein and due to an additional difficulty in approaching for consent, participants from the Central Court of Appeal were merely three. Although the claimed ideal size for a non-commercial research group ranges between five and eight participants, a smaller group enjoys a better quality of discussion and thus a possibly more reflective opportunity (Krueger and Casey, 2009: 67–68), The number of four focus groups is in the suggested minimum range for data saturation (Krueger and Casey, 2009: 21). Moreover, the totality of 18 participants, interviewed in a focus group and a one-to-one session combined, is consistent with that in common interview studies of 15 ± 10 participants (Kvale, 2007: 44). Also considering the largely coherent views among participants across focus groups and courts, a small group of interviewees is defensible as generating credible and insightful data on Thai judges' perspectives on the fine.

As already mentioned, all focus group and interview sessions followed the same interview guide. The open-ended, and at times counterfactual, questions centred on the three key aspects of the fine: the role, the size, and the enforcement. The aim was to probe judges' perspectives on the fine as a punishment and their current fining practices. The interview guide was pre-piloted via mock group telephone interviews with a few judges, and subsequently piloted in an in-person focus group before the fieldwork officially commenced.

Questions were designed and post-pilot revised to permit a natural conversational flow. However, like in normal conversations, some sessions did not adhere to the planned

sequence as participants jumped back and forth across topics. The flexibility of the semi-structured mode allowed the improvised shuffling of the questions' sequential order to preserve the flow. What followed was an uninterrupted and fully engaged discussion throughout the length of each interview, which lasted on average one and a half hours for a focus group and about an hour for a one-to-one interview. All sessions were in Thai. They were audio-recorded and transcribed verbatim.

3.4 Interviews with Judges: Leg Two

Less than a year after the first leg of fieldwork ended in October 2019, the judiciary of Thailand launched the policy to promote community service to avoid custody for the 'can't-pay' fined offenders. At first, only 10 courts piloted this policy-led promotion before the nationwide roll-out in late 2020. Because the first-leg data reported judges' reluctance to use this alternative, to see if this development stimulated changes in judges' attitudes and practices, additional interviews with judges in the second leg were required. The inquiry this time focused on the pre- and post-policy practices about community service and their feedback on the use of this and other alternatives to custodial enforcement.

Since the second leg was primarily aimed at intensively investigating defendants' lived experiences, to not disrupt the plan and overwhelm the already activity-packed mission, only the *wain-chee* judges at Court Two – the chosen site for this leg's activities – were recruited for a one-to-one interview. Eight judges, about half of the total fully active judges there, participated. Most sessions were conducted in the *wain-chee* chamber while judges were on duty. Each interview lasted about 35 minutes on average.

Furthermore, to understand this policy from the policy-maker's perspective, Judge X from the Office of the Judiciary, who monitored the community service scheme at the time of this leg, was approached for relevant statistics and interview. Interview questions probed for the origin and objectives of the policy, the current progress status and the likely contributory factors, and the plans or prospects to improve fine enforcement mechanisms. The interview lasted about an hour.

All interview sessions were conducted in Thai. They were audio-recorded and transcribed verbatim by me.

3.5 Interviews with Officials from Fine enforcement Agencies

Leg two of fieldwork included two interviews with officials from the related fine enforcement agencies: the Department of Probation who administers fine-default community service, and the Department of Corrections who runs fine-default detention facilities. The purpose was to get a glimpse of how fine enforcement was executed by the auxiliary agencies for a more comprehensive picture. Since the aim was exploratory, accounts and statistics given by the officially designated interviewees were adequate. As a result, I conducted a group interview with two designated probation officers who wished to be anonymous. As to the Department of Corrections, Mr Weerakit Harnpariphan, the then Deputy Director-General, agreed to give interview with no anonymisation. Both interviews lasted approximately an hour. They were in Thai, audio-recorded, and transcribed verbatim.

4. Recruited Participants

At Court One, four judges (two panels) agreed to be observed during their *wain-chee* duty. I observed five court officials along the course of the *wain-chee* process[56]. I recruited five judges for a focus group. Their average judicial experience was 17 years, with Judge D having the longest experience of 22 years and Judge E having the shortest one of 11 years. The chief judge, whom I interviewed separately, had been in judicial service for 25 years.

At Court Two, two judges (one panel) and eight officials including court police officers were observed throughout the *wain-chee*. Three judges participated in a focus group. The average number of years of experience was 16, with Judges F and G similarly having

[56] Court One was the only one among the three observed courts where court police officers were not recruited for observation. The *wain-chee* process that involved them was the *wain-chee* hearings at the basement *wain-chee* courtroom, adjacent to the holding area. However, unlike Courts Two and Three, the remote hearings in Court One's *wain-chee* courtroom were open for public access (see the floor plan in Chapter 4, Figure 4.1(a)). Since court police officers performed their duty in the *wain-chee* hearings in the public space, observing them required no consent for participation. By contrast, the *wain-chee* hearings at Courts Two and Three were closed off to the public. Observing their performance needed to have their consent; hence, their being recruited as participants.

18 years of experiences and Judge H having 12. The chief judge, participating in a separate interview, had served in the judiciary for 20 years.

At Court Three, two *wain-chee* judges (one panel) and nine court officials including court police officers participated in non-participant observation. Four judges participated in a focus group, with an average experience of 17.5 years. Judge I was the most senior and Judge K was the least senior in the group, having 19 and 16 years of experience respectively. The chief judge, who participated in a one-to-one interview, had reached the 21st year of judicial service.

A focus group of appellate court judges was composed of three participants from the Central Court of Appeal, all of whom similarly had 29 years of experience.

In the second leg of fieldwork, eight judges were interviewed at Court Two. The average experience was roughly 15.5 years, with the most and the least senior judges being in service for 20 and 12 years respectively. Eleven court officials including court police officers were passively observed during the shadowing of defendants' *wain-chee* journey. Only one judge from the Office of the Judiciary, Judge X, was interviewed for comments about the community service policy.

Overall, in both legs of fieldwork, participants in court observation and interview comprised 25 male and 10 female judges. There were also 15 male and 18 female officials from all observed courts who agreed to participate in this study.

For details about how I negotiated access and recruited participants, see Appendix C.

5. Ethics

Research with human beings as sources of information requires ethical considerations. Generally, the researcher's ethical duties to participants are thought to have at least four core principles: respect for participants' autonomy, fair treatment, nonmaleficence including beneficence, and fidelity (Farrimond, 2013: 25). The research in the first leg of fieldwork complied with all of these principles. First, participants were provided with details about the research activities and how their data would be managed at recruitment. Explanations were given both in the handed participant information sheet and also orally. For participants at the court, they were informed of their full rights to participate and withdraw at any time; that the chief judge merely approved the access but did not

supervise the research; that this study was independent of the judiciary's oversight; and that their identities would be kept strictly confidential if they so wished. Participants therefore made an informed decision when they each signed the consent form.

Participants who wished to be anonymous were anonymised. There was only one participant who explicitly gave permission to disclose his real name and position: Mr Weerakit Harnpariphan, the then Deputy Director-General of the Department of Correction. To ensure participants' anonymity, all three courts under observation were anonymised. On the other hand, the large number of appellate court judges at the Central Court of Appeal greatly minimised the chance of identifying the three participants who worked there; thus, rendering court anonymity unnecessary.

The identities of participants under observation were immediately anonymised on the field notes. As to interview data, besides written consent before audio-recording, all digital files were accessible only by me. Participants were anonymised instantly at transcription and I was the only one carrying out the task. The audio files were safely deleted at the completion of transcribing, while the consent forms are securely stored and will be destroyed in due course. Hence, this study conformed to data protection requirements, was transparent to participants, and protected their confidentiality. Combining with soliciting voluntary participation, the first leg complied with all four core ethical duties.

Part III: Investigating the Fine from Defendants'[57] Perspectives

6. Narrative Inquiry and Observation

The key objective of the second leg of my fieldwork was to investigate defendants' lived experiences with regards to the fine and its related pre- and post-sentence process. Since the justification of punishment lies with its ethical and instrumental consequences, it is

[57] The term 'defendant' in this thesis generically refers to the fined offender. The term is adopted interchangeably with the term 'offender' when explaining the research design, the findings, and the conceptualisation because of the followings: first, this research probed lived experiences from the pre- to post-sentence stages, from when the accused were called 'defendants' to when they became convicted 'offenders'; and second, participating judges referred to the fined individuals at any stage of the criminal procedure as *chamloei* – Thai for 'defendants'.

vital that a study about punishment also seek to understand it from the perspective of its recipients. Moreover, as the data from the first leg alluded to judges' assumptions towards defendants that seemed to underpin their routines, exploring the fine from defendants' viewpoints would reveal if there is a gap, and how wide, between the two sides' interpretations of a penal phenomenon.

Whether or not there is an objective reality, people's perceptions of their life events are subjective – shaped by their disposition, surroundings, and preceding occurrences in their lives. These interpretations of external reality are woven into stories by which people make sense of their past, construct their identities, and position themselves in the complex social world (Connelly and Clandinin, 2006: 477; Riessman, 2008: 3–10). Through stories, the audience is invited to see the world through the narrator's eyes and understand the latter's subjective experience in a more contextualised manner (Lieblich, Tuval-Mashiach, and Zilber, 1998: 7; Riessman, 2008: 9). Narrative inquiry, 'the study of experience as story' (Connelly and Clandinin, 2006: 477), therefore can generate contextually rich data unobtainable from other research methods that result in full-dimensional insights into participants' inner world (Lieblich, Tuval-Mashiach, and Zilber, 1998: 9).

Because of the past's influence in the construction of a life story, defendants' opinions on their sentence tend to be heavily shaped by their preceding encounters in the criminal justice process. Moving on from one stage to the next, defendants also evaluate their penal experience as one whole continuous episode, instead of compartmentalised in the way that practitioners from various agencies operate (see Johansen, 2021; Tata, 2020: 110, 113–114). For this reason, probing defendants' perceptions about the fine would produce shallow findings if their pre- and post-sentence episodes are discarded. The emphasis on the holistic account of defendants' penal journey directed this study's attention to the whole process they went through, from the arrest to sanction enforcement, rather than targeting the fine and its impacts alone. Narrative inquiry, with its potential to engender a comprehensive account, underpinned a semi-structured interview designed to elicit free-styled narration of defendants' experience back since the arrest through to the aftermath of being fined. Focusing on storytelling, defendants were encouraged to speak freely in their own words. However, as justice and legitimacy were intrinsic in the first leg's findings about judges' routines, defendants were also specifically

probed about their interpretation of the concepts towards the end of the interview, when the issues were not previously discussed. This was to give priority to the uninterrupted flow of the narrative before the specifically thematic questions (Choongh, 2007: 79; Schinkel, 2013: 72).

To supplement defendants' narratives when they were undergoing the *wain-chee* at the court, I observed them from the start through to the end, during which I intermittently conducted narrative interviews. This strategy played to the strengths of ethnographic research that enabled immersion in the studied phenomenon and thus allowed me as the researcher to discern if there was a gap between what was said and unsaid (Gobo, 2008: 5–6). Since it was possible that defendants were either unfamiliar or uncomfortable with the idea of telling their penal stories (Schinkel, 2013: 303), being immersed in the environment and witnessing the event first-hand through observation would help me fill in the picture. Intermittent conversation for interview also had at least threefold benefits. First, it could draw out defendants' spontaneous reaction to the surroundings, which in itself had analytical values distinct from a retrospective narration of the same occurrence. Second, it could mitigate the boredom and anxiety defendants might tolerate while waiting. Finally, it addressed the likely impracticality of recruiting defendants for interview post-process. Observations in the first leg found that released defendants from the *wain-chee* tended to hurry home. Past research reported that it was extremely difficult to contact people after the process with them was over (Choongh, 2007: 78–79). Therefore, combining observation with narrative interview ensured both practicality and thick description, an attribute purportedly required for validity and reliability of a good qualitative study.

Focusing on depth rather than breadth, leg two of my fieldwork recruited merely 15 defendants to participate. Like other ethnographic studies that build on a small sample size, this research compensates for the inability to quantitatively generalise with its deep understandings on defendants' lived experiences – insights that can form hypotheses in subsequent research in other settings. Moreover, due to the prohibition of recording devices in the holding area where defendants were held the entire time, data from both observations of and interviews with defendants were all handwritten on field notes. To ensure as much precision as possible, notes were taken immediately when new data were observed and simultaneously at the time of the interview. Key words and phrases

were documented word-for-word, despite the impossibility of the entire verbatim transcription. Both observation and interview notes were transcribed in a more organised format on the same day after the end of observation.

7. Recruited Participants

Defendants recruited for participation were those coming to court for the *wain-chee* and intending to plead guilty. Since this research inquired about the fine, the recruits comprised merely those with the prospect of being sentenced with either a standalone fine or a fine that accompanies non-custodial sanctions. Defendants who were likely to be imprisoned were excluded, whether or not the fine was added as an auxiliary, for fear that a more severe situation of custody would eclipse their views on the fine.

Data from the first leg of fieldwork indicate that it is possible to predict the likely sentence simply by knowing the indicted offence. The *wain-chee* judges normally impose offence-based sentences based on the *yee-tok*; thus, patterns of sentences for particular offences are visible to observers after a few days of observation. Moreover, court officials at the *wain-chee*, having seen repetitions of sentencing patterns, are most capable of making sentence predictions apart from judges. I relied on both the first leg's observed patterns and *wain-chee* court officials in predicting the likely sentence of each defendant on each court date. In addition, according to the observed pre-*wain-chee* hearing routine, court officials would ask every defendant about their intended plea early on to help the judge prepare the sentence in advance. This casual plea inquiry also enabled the distinguishing of defendants who would plead guilty from those intending to plead not guilty.

Because the inquiry was about the defendants' perceptions regarding the fine, aside from the sentence prediction, offences were irrelevant as the selection criteria. Furthermore, with exceptions of age and gender, a typical indictment rarely includes other demographic details of defendants; thereby, making it impossible to recruit participants based on various demographic variables. While there has been no report on the significance of differing ages in the study of lived experiences in adult courts, gender may raise an issue since different genders may constitute different viewpoints on the same events. However, the first leg reveals a very low number of prosecuted women at the *wain-chee*, roughly merely 12–18 percent of the *wain-chee* defendants observed and

documented in the analysed case files. Only up to six women were expected for recruitment in this part of inquiry. Because of their rare appearance, female defendants were first approached for recruitment when there were multiple eligible individuals on the same day.

Because at the onset of the second leg there were few defendants coming to court and some of them declined to participate, I was able to recruit 15 defendants during eight weeks at Court Two from mid-December 2020 to early February 2021. Because I had reached the maximum duration of access requested from the chief judge and also because of resource constraints, I decided to stop at 15 participants – among them were one woman (Gift, aged 31) and 14 men. The youngest of the cohort was Tei, aged 22, and the oldest was Yot, aged 62. The average age of participants was approximately 34 years old. Eleven of them were prosecuted for narcotic offences involving either cannabis[58] or methamphetamine. Except for Bang whose sentence was imprisonment, all other participants were fined either as a standalone or as an auxiliary to suspended imprisonment. The average length of observation, or the average of each defendant's time in the *wain-chee*, was almost four hours – with the shortest span being one and a half hours and the longest being seven hours. Details about each defendant and their journey are in Appendix E. For more details about how I approached and recruited each defendant for participation, see Appendix C.

8. Ethics

Participating defendants were considered people from a vulnerable group due to vulnerabilities of their position and power differentials between them and the researcher. Researching with defendants as participants therefore incurred several ethical implications, apart from confidentiality and voluntariness. In addition, the second leg took place during the moderate Covid-19 situation in Thailand. Extra measures were taken to prevent Covid-19 health and safety risks. The following subsections explain how each ethical concern was addressed.

[58] Fieldwork was carried out and completed while cannabis was still illegal under the then narcotic drugs law. However, since 9 June 2022, raw cannabis and cannabis extracts that meet specified requirements have been removed from the list of illegal drugs, according to the Proclamation of the Health Ministry of Thailand dated 8 February 2022.

8.1 Confidentiality and Informed Consent

I provided information about the research including the objective, the activity, and my dual identities at the outset. Emphasis was made on my inability to interfere in their cases and the non-involvement of the judiciary in the research. This was to prevent any feelings of being coerced into participating and a false expectation of reciprocation for the benefit of their cases. Participants were informed about their right to withdraw their consent at any time without any negative ramifications. They were also explained how their data would be kept and used – in confidentiality and merely for the purposes of this research.

There was no concern about the confidentiality of audio files, since no audio devices were allowed inside the holding area and all data were handwritten in the form of field notes. To protect their anonymity, participants were invited to create their own pseudonyms and all obliged. Participants' observation and interview data were pseudo-anonymised immediately once on the notes. The consent form, as the only document that can identify each participant, has been kept in a secure place separate from the field notes.

Participants were cautioned against revealing their criminal involvement other than those already known to the authority, lest I may have to fulfil another ethical obligation to report the crime. Other than this caution, they were encouraged to open up as much as they were comfortable. To my surprise, because of my insider status, I was permitted to use one of the office rooms as a venue for interview (see Figure 4.1(b) in Chapter 4, and see Appendix C for how I was offered a private interview setting). The enclosed walls of the 'interview room' ensured confidentiality of conversation that may have partly helped build trust with participants.

8.2 Distress

Reviving memories of pains inflicted by the criminal justice system may bring about emotional distress to participants (Schinkel, 2013: 92). However, like in Schinkel's thesis, participants in this study could contain their emotions and manage the emergence of distress. Even Gift, the sole female participant, who was close to sobbing when recounting her painful nights in the police cell, declined my offer to pause the interview and permitted it to go on. Many participants said it was alright talking to me. Some said it was nice getting things off their chest and some said it was a good way of passing the

time and relieving anxiety. Hence, open-ended questions asked in a flexible manner and with a non-judgemental attitude, as adopted in this research, were capable of creating rich data while sufficiently sensitive to not provoking serious emotional distress.

8.3 Contempt of Court

Probing defendants' thoughts about the criminal justice system including their experiences in courts may risk triggering the contempt of court offence under Section 198 of *the Criminal Code* and Sections 30 and 31 of *the Civil Procedure Code* for 'insulting the court or the judge in the trial or adjudication of the case' and for 'behaving improperly' in the court premise, respectively. This probability of risk was raised to my attention by one of the reform-minded judges whose opinion I had sought about the interview guide with the defendants. To this day, the scope of this offence has still been unclear and there have been incidents where seemingly honest criticisms were found wrongful (Streckfuss, 2011: 292). However, the Thai defamation-based laws appear to establish guilt on the finding of the person's malice in tarnishing the reputation (Streckfuss, 2011: 282). The Supreme Court precedent also seems to suggest that an open statement of untruthful facts or unfounded accusations of the judge's dishonesty or misconduct is intended to smear the court's legitimacy and thus is an act of contempt[59]. Moreover, critiques of court judgements based on academic principles were considered permissible, according to a former Supreme Court judge (Streckfuss, 2011: 292).

Rather than gathering objective facts about the court from defendants, this study aimed merely at investigating their subjective experiences of undergoing the criminal justice process. The questions were not intended to elicit slanderous comments but sincere feelings and opinions about the system for academic analysis. Contribution to knowledge about defendants' lived experiences was anticipated, not the court's disrepute. Hence, it was defensible that neither I nor any participant bore malice against the court's integrity; and that neither I nor the nature of this study encouraged insults to the authorities. Nevertheless, for prudence, I cautioned participants in advance that criticisms against the authority were welcomed as far as they were truthful, honest, and for the advancement of academic knowledge. I also recommended them not to distribute

[59] The Supreme Court judgements no. 5494/2562 (AD 2019) and no. 635/2559 (AD 2016).

their criticising remarks to the public audience or on social media platforms without having received proper advice from a lawyer.

8.4 Covid-19

When the second leg of fieldwork began in mid-December 2020, Covid-19 infection rates in Thailand were still low and within capacities of the nation's health system[60]. The number started to exponentially spike in April 2021 from a big cluster in Bangkok weeks after the research at Court Two had been concluded. During the moderate days of Covid-19 from mid-December 2020 to February 2021, Court Two was still open for normal business albeit with a less busy schedule and less packed courtrooms for social distancing. Preventive measures were adopted inside the courthouse according to a series of the judiciary's directives and guidance, such as temperature screening at the entrance, a face covering requirement, and the prevalence of hand-sanitising dispensers.

Down in the 'interview room' in the holding area, I was careful to stay at least one metre apart from each participant and made sure that our face masks were worn at all times. We sat on the opposite sides of the table with a transparent desk divider standing in-between. Before the session, I cleaned the surfaces of the table and the desk divider with alcohol wipes and offered the participant hand sanitiser gel. I enabled ventilation in the room by opening windows unless sensitive or confidential issues were discussed. Throughout the course of my fieldwork at Court Two, there was no reporting of a Covid-19 case there.

8.5 Exploitation, Neutrality, and Beneficence

Despite my intention not to interfere in each participant's case and their conditions in the holding area, there were two situations that prompted re-evaluation of my position and serious thinking about the fine line between neutrality and exploitation, as well as what it meant for the research to be beneficent. This reflection about the appropriateness of intervention and to what extent was a response to the complex ethical dilemmas in the real world and simultaneously was a challenge to Goffman's (1989: 126) suggestion of a researcher being simply a witness in the field.

[60] See the charts indicating Covid-19 trends in Thailand from February 2020 to the time of writing (January, 2022) at: https://www.worldometers.info/coronavirus/country/thailand/ (Accessed: 14 January 2022).

Researching about people in dire circumstances often raises a pungent question regarding the ethicality of the researcher benefiting from the tragedy of participants while staying idle to ease their sufferings (Bachman, 2011: 366). This question of exploitation arouses the feeling of guilt to several researchers (Dickson-Swift *et al*., 2007: 343). In this study, the first situation that conjured this quandary was the defendants' inability to have lunch inside the holding area while still undergoing the *wain-chee* in the confined space. The second was defendants' struggle to pay the fine amidst the absence of notice about their right to apply for community service. Participants' hunger was a normal scene in the first situation. As to the second, participants' panic when having to scrape up money in a few hours' window to avoid fine-default custody was avoidable only if they were informed of the community service option as announced in the court's information posters. In both scenarios, the observable pains of participants greatly enriched the data. However, was it right to remain indifferent and not interfering to alleviate their plights for the sake of neutrality? Solving the problem such as this is difficult and there may be no correct answers. Nonetheless, ambiguity and complex dilemmas are typical of ethnographic works and it is better to face them than to dodge the questions (Crang and Cook, 2007: 208).

In addition to 'not doing harm', ethical principles include beneficence or giving the benefits of research to participants or people of the same type in the future in reciprocity of participation (Farrimond, 2013: 148–151). Weighing beneficence with neutrality, I believed I could intervene to mitigate the pains of participants while minimally altering the field. Towards the final days of research activities at Court Two, I happened to have a conversation with the chief judge, during which I talked about the rule prohibiting access to lunch for defendants in the holding area. I carefully phrased my message to be casual and understanding of the court's concern for security. In the end, I left it to the chief judge to decide what to do with the information. To my delight, the chief judge devised a secure process by which defendants could have lunch in the holding area and had it operational only a few days after our conversation.

As for defendants who flustered over how to pay the fine, I ushered them to one of the court posters announcing the community service option. This was after I was sure by their frantic reaction to the sentence that they were truly incapable of paying. There were a few such A4-sized posters placed in prominent positions in the holding area; however,

for some reasons, no participants seemed to have noticed them unless told where to look. I let them read the poster and told them to contact court officials for details about the application process. The poster was clearly understandable to reading participants; thereby, sparing me from elaborate legal explanations. On this account, my intervention was negligible; I simply directed participants' attention to court information posters in the area, through which participants learned by themselves about their rights. Participants made up their own mind whether to apply for the option, and contacted court officials if deciding to proceed. In this light, there was no issue of me giving an erroneous, misleading, or useless advice to participants in distress (see Rothman *et al*., 2018: 254).

Part IV: Post-Fieldwork Process

9. Transcription and Analysis

I transcribed interview data from audio files in document files kept in a password-protected computer and the University of Strathclyde's cloud system. Observation notes were rewritten in a more organised manner on the same day of observation. I also noted my reflections on the day's fieldwork on personal diaries to keep tracks of my thoughts. Field notes and diaries were kept safely, accessible only by me. I also translated the transcripts from Thai to English by myself, when necessary for quotation.

While I used IBM SPSS and Microsoft Excel to analyse quantitative data, I manually coded and analysed qualitative data from observations and interviews. The manual analysis was attributed to my inexperience in using analysis software for qualitative data and the manually manageable quantity of data due to a small sample size.

I started off with reading through the transcripts and notes several times to be acquainted with the data. Having done the previous works of transcription and translation by myself expedited this process. I then engaged in a loosely three-staged thematic coding, first with open coding whereby I was open to any thematic possibilities the data suggest. Subsequently, I looked for similar or repeated patterns of concepts and those that resonated with existing theories. The concepts were grouped into themes to be sorted and analysed at a higher abstract level. All the while I wrote memos as suggested by grounded theorists (Charmaz, 2006) to organise and crystallise my ideas. Eventually,

I developed key themes and sub-themes based on the connections between concepts that made analytical sense and had powerful explanatory power.

Defendants' narrative data were especially treated with narrative analysis. Stories, as told and observed, were each read and analysed as a whole, with each event interpreted as a part of the narrative, to see from participants' eyes how they arrived at a particular perspective (Lieblich, Tuval-Mashiach, and Zilber, 1998: 12). Therefore, themes were developed with mindfulness of each participant's narrative sequence to demonstrate the coherent backbone of defendants' criminal justice journey.

Conclusion

This research, intending to understand the fine from stakeholders' points of view, adopted an interpretivist approach. Focusing on the depth of understanding, the small scale of this research was an advantage. Moreover, insights generated by the thickly described data could be generalised to other settings as working hypotheses to be further researched. Because this study investigated the views from the opposing sides of the criminal justice system, different methods and strategies were employed to different cohorts of participants.

Triangulation of methods was applied to the investigation on the judges' side and data were collected in three courts of first instance of different locations and sizes in the first leg of fieldwork in 2019. The judiciary's promotion of community service to avoid fine-default custody, launched after the end of the first leg, prompted additional inquiry with judges regarding this development in the second leg a year later. Interviews with officials from fine enforcement-related agencies, the Department of Probation, and the Department of Corrections, were also conducted for a more rounded picture of fine enforcement.

Defendants' perceptions of the fine and related penal experiences were explored in the second leg using narrative interview and observation. The data were collected and analysed with emphasis on the narrative of defendants' journey in the criminal justice system. The second leg commenced when the Covid-19 situation in Thailand was still moderate in mid-December 2020 and had to end prematurely when the infection rates escalated in April 2021. This unfortunately prevented the interview with defendants in

fine-default custody. However, observations and interviews with defendants at the court provide amply rich accounts of the penal system through the eyes of people actually undergoing it. Chapter 5 illustrates understandings gained from such insightful data, which seem to oppose assumptions held by judges described in Chapter 4. This gap in the perceived realities is both the result of and the contribution to judges' indifference to addressing ethically challenging aspects of their routines. Chapter 6 explains the mechanisms of judges' indifference.

Chapter 4: The Fine from Judges' Points of View

Introduction

This chapter reports the findings about the implementation of the Thai fine and judges' comprehensions of it. The data reported were collected from two legs of fieldwork conducted in Thailand: the first leg between September and October 2019, and the second leg between December 2020 and March 2021. Deploying various methods for triangulation, the first leg examined the practices and perceptions of judges in three sample trial courts with the addition of outlooks from some appellate court judges. Following the judiciary's community service policy in mid-2020, the second leg revisited Court Two for additional scrutiny on judges' application of and feedback on the policy, coinciding with another investigation on defendants' experiences of the *wain-chee*. For a complete overview, it also collected opinions and statistics from the policy-making level of related agencies: the Office of the Judiciary, the Department of Probation, and the Department of Corrections.

This research finds that judges were largely homogenous in their sentencing decision-making, substantiating Supakit's (2016) findings. Despite geographic and temporal differences, judges in sample courts and Court Two judges both pre- and post-community service policy were substantially coherent in their routines and attitudes towards the fine. The judiciary's community service policy did not seem to have yet effected meaningful differences in Court Two's fine enforcement practices. The fining practices across courts were embedded in formalism, moralism, and bureaucratic managerialism. These three components underpinned the observed characteristics of the fine, which were fluid in meanings, formalistic and rife with moral symbolism, expressive of distrust, and efficiency-centred. They also constituted judges' rigid framing by which indifference to the alleged inequality and disproportionality is produced and sustained.

Part I of this chapter describes the general facts about the fine. Section 1 summarises the essential law, briefly recapitulating subsection 1.3 of Chapter 2. Section 2 narrates the typical *wain-chee* process from the court's service counter to behind the closed walls of the holding area.

Part II explains the characteristics of the fine through judges' practices and perceptions. Section 3 portrays the fluid meanings of the fine that can shift from being a penal sanction to a debt and a confusing mix of meanings that leads to ambiguity. Section 4 delineates the fine's emphasis on moral symbolism and formalistic implementation that may raise questions about substantive equality. Section 5 discloses deep distrust of defendants that underpinned participating judges' risk-averse decisions. Finally, section 6 explains the bureaucracy-centric inclinations that made judges in this study remarkably conservative and unenthusiastic to adopt changes.

Part I: The General Facts about the Fine

1. The Fine in the Law

Chapter 2 in subsection 1.3 already explains the laws and regulations relating to the Thai penal fine. To recapitulate the essences of this sanction, the Thai penal fine is codified, offence-based, and largely flat-rated or fixed-sum. The imposable fines in *the Criminal Code* were anachronistically inexpensive until the tenfold increase in the Code's sentencing tariffs in 2017. This revision aligns with other post-2000 criminal statutes – particularly those criminalising environmental, financial, and intellectual property wrongdoings – that authorise exorbitant punishable fines, many of which also mandate a hefty minimum. Despite the obvious desire to impose economic punishment, these fines are still wealth-insensitive. There is still no legal provision nor mechanism that resembles the wealth-proportionate European day fine. Moreover, neither the law nor the sentencing process mandates or accommodates a means enquiry to tailor fine enforcement in accordance with each offender's financial ability.

The literal reading of the law permits offenders a 30-day payment period before deeming in default and it also provides for enforcement against properties. Nevertheless, the Supreme Court has set the precedent that renders this payment period meaningless and authorises confinement to be activated on the sentencing day unless the offender can tender full payment before the court's closing hour. This precedent provides a legal justification for confinement as the default mode of fine enforcement instead of the operationally difficult property enforcement. Likewise, the 30-day payment period thus becomes the 'extended due date' for which the fined offenders must file a request. If

granted, the requirement of monetary security is both advised and justified by the 2018 and 2022 guidelines issued by the Office of the Judiciary[61].

A day in confinement including pretrial custody is mechanically equated to 500 baht of the unpaid fine. The overall period of confinement cannot exceed two years. To avoid confinement, community service has been around as an alternative since 2002 and it invokes the same conversion rate of 500 baht per one workday, along with the identical ceiling of two years. The law is ambiguous whether the residual fine, the amount not offset by the length of either confinement or community service, can still be collected, and whether both confinement and property seizure can be executed simultaneously. The Office of the Judiciary suggests a positive answer to both questions in its guidelines. Framing the fine as a debt, it guides courts to maximise 'collection' capacity regardless of concerns for proportionality.

The law is also ambiguous concerning the role of community service due to its eclectic mix of offence- and offender-based considerations. The arguable primacy of offence-based factors, instead of offenders' financial inability, has conflated community service as an alternative method of fine enforcement with the idea of an alternative sanction. This confusion is still unsolved by the Thai judiciary's 2020 policy to promote its use. In the same vein, suspension of the fine, introduced in 2016, also suffers from the confounding message despite sharing the same criteria as suspended imprisonment. Absent the policy push, the measure's ambiguous objective has probably obscured its existence and contributed to its vast underuse.

2. The Fine in Practice: The *Wain-Chee* Process

In his doctoral thesis, Supakit (2016: 116) describes the *wain-chee* as a special unit for the duty panel of judges to perform all routine judicial functions for only that specific day or the entire week. The purpose of this special unit is to 'allow other judges to conduct trials without distraction from routines'. The responsible routine functions include the issuance of search and arrest warrants, the making of remand and bail decisions, the holding of an arraignment session, and the instant adjudication and sentencing for the defendant who pleads guilty (pp. xxx-xxxi).

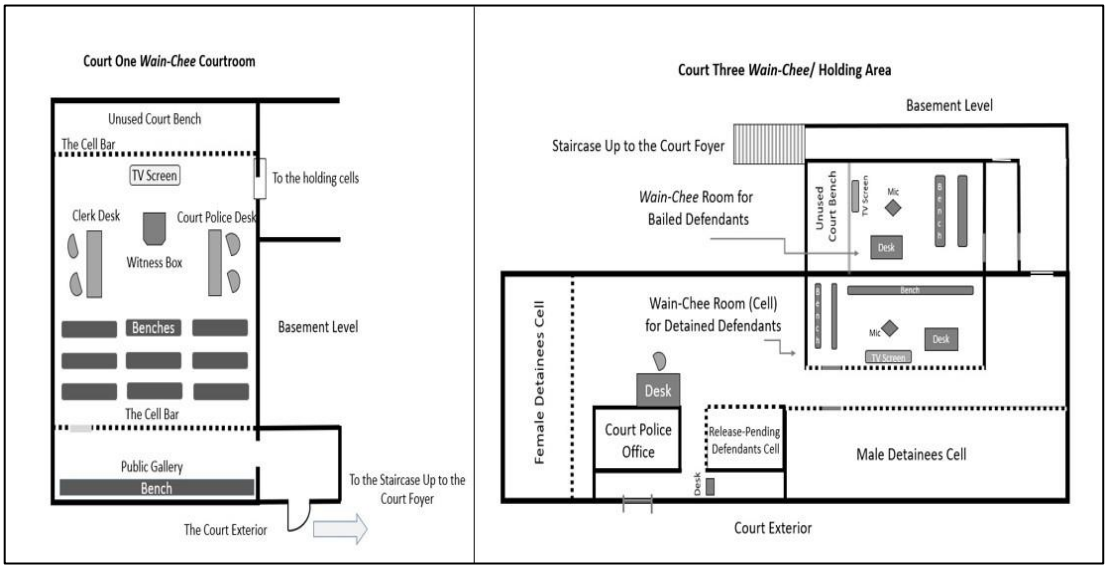
[61] *Office of the Judiciary's 2018 Practice Guideline* and *Office of the Judiciary's 2022 Practice Guideline.*

His description mirrors what happened at all *wain-chee* under observation for this study. In all three sample courts, a duty panel of judges was responsible for the *wain-chee* tasks with a slight variation. At Court One, this duty panel was rotated each day, whereas at Courts Two and Three, the *wain-chee* panel took responsibility for the entire week.

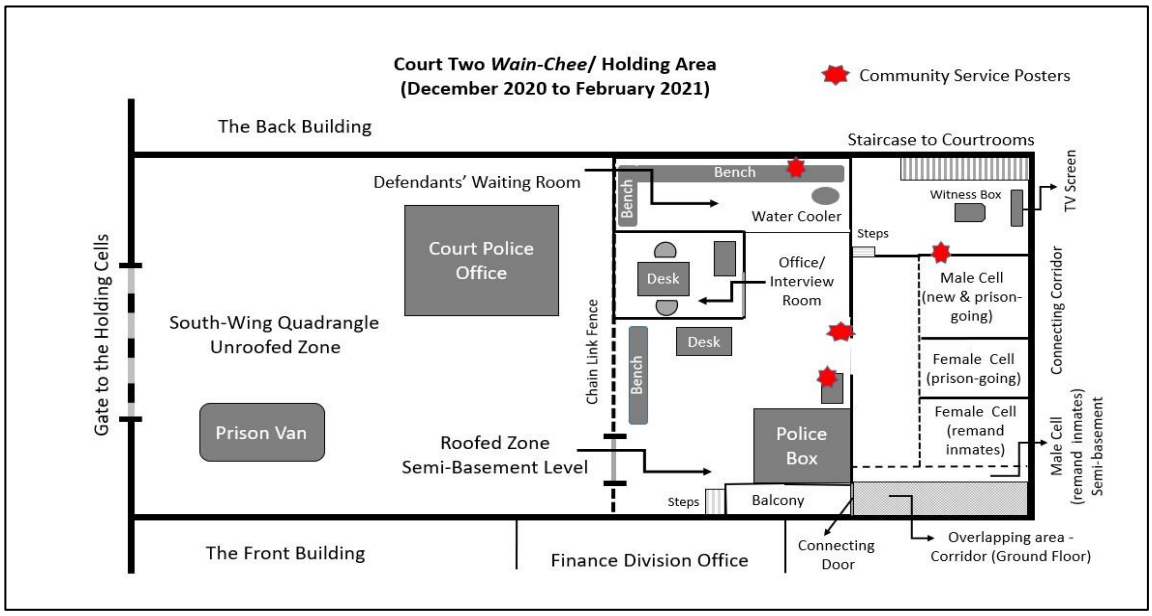
The entire process regarding the arraignment commenced with the filing of indictments by the prosecutors either on that day or the day before. Defendants detained pretrial arrived in a prison van every morning and were taken through to the court cells in the holding area, normally located in the court basement. However, unlike the other two observed courts, due to spatial and architectural constraints, the holding area of Court Two was on the ground floor in the gated semi-basement of the court. At the same time, defendants released on bail reported their arrival at the service counter of the public relations unit. They too would be escorted or told to walk down to the holding area. Therein, they would wait for their hearing in a specific area outside the holding cells, unless deemed by the court police officers to be too risky and dangerous.

Figure 4.1 Floor Plans of the Holding Area of Each Sample Court

(a) Floor Plans of Court One and Court Three's Holding Areas in 2019



(b) Floor Plan of Court Two's Holding Area in Late 2020 to Early 2021



The holding area was a high-security and entry-restricted space. Only defendants and agents of relevant authority or a specially permitted person were allowed entry. No one external to these categories, not even defendants' close relatives, were permitted inside. It was in this high-security enclosure closed to the public eyes that the *wain-chee* hearings in Courts Two and Three took place. At Court One, however, the public could still witness the hearing in the '*wain-chee* courtroom' located in the basement adjacent to the holding area. There, members of the public could sit in the small gallery beyond which was the barred and restricted space open to only defendants and allowed personnel.

On arrival, the court official asked every defendant about their prepared plea. This casual enquiry was done regardless of the presence of a lawyer and most were carried out while defendants still did not appoint any. During this encounter, the court official briefly read aloud the indictment and asked about the plea. In many instances, the court police officers performed this task on behalf of the upstairs officials to remand defendants in the holding cells. The police officers often bluntly asked about the plea without even pronouncing the prosecuted offence. However, no defendants seemed to be concerned about this cursory practice and gave their answers voluntarily. Their answers were noted

and the sentencing forms[62] were prepared for the judges accordingly. Note that these forms would be prepared only with the prospect of a guilty plea. If a non-guilty plea was expected, another form for case adjournment would be presented to the judges instead.

The case files were thereafter presented to the duty judges in the special *wain-chee* chamber. Each judge, often having made agreements with the co-panelist in advance, either selected the cases to sentence at random or let the presenting official decide for them. In this regard, each judge would be presiding in the cases of their 'selection'. He or she then examined the indictments and other documents in the case files, consulted the *yee-tok* – the Court's confidential in-house numerical 'sentencing guideline', and filled out the sentencing forms normally without consulting their co-panelist. When the sentences of most or all cases had been ready, the presiding judge commenced the hearing remotely with the defendants held downstairs via a live video-link.

Through this remote communication, only the presiding judge sat in front of the television screen and a camera in the *wain-chee* chamber. He or she then called the names of the defendants one-by-one. The person whose name was called came forward to stand in the witness box in front of the television screen and a camera. Many of them bowed to the judge on the screen. Legally, the judge is bound to ask whether each defendant wants to be represented by a lawyer before reading aloud the indictment[63]. Nevertheless, in all observed hearings, judges asked this question perfunctorily. Many asked a negative leading question, assuming that defendants would waive their right to legal representation. Some even omitted it entirely. Judging from the outcomes, this tacit assumption was correct because all defendants who pleaded guilty truly ignored this right.

The indictment was read aloud cursorily. One of the observed judges at Court One read it with a voice so low and the speed so fast that it was a real challenge to ascertain the spoken words. At Court Two in 2019, the speaker box was of such poor quality that on a noisy rainy day it was nearly impossible to hear anything the judge had said.

[62] Sentencing forms are patterned sentencing drafts readily available for several frequently prosecuted offences. They normally leave blank the spaces that require the judge's discretion, particularly the modes and severity of sanctions.

[63] *Criminal Procedure Code*, Section 173.

However, when the pivotal moment of plea entry arrived, most defendants seemed to know their 'cue' well and confidently entered the pleas – mostly a guilty plea. Those who remained silent and confused were given the cue by the court police officers standing next to them.

The session for each defendant lasted under a minute. The ones that lasted longer were those few where the judge either decided to probe more before sentencing or encountered the defendant's 'non-cued' questions. To illustrate this atypical exchange, there were many incidents where both of the duty judges at Court Three probed for the reasons behind the defendants' 'unexpected' non-guilty plea. This probe was made while defendants were still unrepresented. If they insisted on their innocence, the presiding judge would then ask about legal representation and adjourn the case to the scheduled date for a pretrial hearing. By contrast, if they replied honestly that they feared imprisonment and begged for mitigation, the judge would explain away their claimed mitigations and emphasise the benefits of a guilty plea. In several cases, such a talk facilitated change to a guilty plea followed by defendants' questions about the prospects of bail and appeal. To such questions, the judge always replied curtly by telling them to consult court officials. However, besides court police officers, neither court officials nor lawyers were stationed in the holding area.

The post-sentence process regarding the fine began with the informal enquiry by court police officers whether the defendants, sentenced to either a standalone fine or the fine with suspended imprisonment, could fulfil payment *on that very day*. Most answered positively. Some already carried sufficient cash with them, while others relied on their family members or friends waiting outside to sort things out. Except for few bailed defendants who came to court alone, usually defendants' accompanying others managed payment on their behalf. Otherwise, court officials would receive cash from the fined defendants directly – either by collecting payment down in the holding area or receiving payment from those escorted upstairs through the service window. Defendants were not allowed out of the holding area unescorted unless the fine was fully paid or an alternative to payment was approved.

If the fine was fully paid, court officials would issue a receipt to be presented to court police officers as the approval of the defendant's release. By contrast, if the fine remained

outstanding and defendants appeared unable to pay it by the court's closing time at 4:30 pm, they would be taken inside the court cell, waiting to be transported to the detention facility by that evening. The detention facility is legally prescribed not to be a prison because its purpose is to execute a more lenient sanction of confinement. However, most facilities were located in the same compound as the local prison, although in a separately designated zone. Only in a few provinces are they truly geographically separated[64].

While defendants were waiting, court officials prepared the writ of confinement on which the judge would sign his or her name. Days of confinement specified therein were calculated using the conversion rate of 500 baht per day in detention. Days of pretrial detention, if any, were also converted to be deducted from the fine/ days of confinement. As earlier presented, many defendants detained pretrial had their fines offset this way and were released afterwards. This was so routine that court police officers never asked those coming in a prison van about their ability to pay the fine, assuming that their fines would naturally be offset. When asked about the absence of this question, one police officer at Court Two gave a reply based on this assumption. Another officer at Court Three commented on the inevitability of confinement as if it had been the only way for the detained defendants to settle the fines.

Remarkably noticeable throughout the process was the lack of a means enquiry and the paucity of information given about the alternatives to the fine. In all three sample courts in 2019, neither the judges nor the court officials – at least those under my observation – made any pre- or post-hearing attempts to enquire of defendants or their accompanying others about the ability to pay. Communication about the available alternatives was silent. So was the absence of written explanations about the alternatives to the fine. In 2019, all announcements about the fine in the holding area were plastic plates describing the fine-to-confinement conversion rate. In all sample courts then, there was only one visible notice about community service in Court Three's public-facing area. Yet, details provided therein were outdated. This dearth of information about alternatives to the fine buttressed the binary of all courts' principal enforcement options, either payment or confinement.

[64] Interview with Mr Weerakit Harnpariphan, then Deputy Director-General of the Department of Corrections (interviewed on 4 March 2021).

The silence on alternatives to the fine was confirmed by the observed *wain-chee* judges and court officials. When asked to comment about this phenomenon, most replied almost unanimously that defendants had already known about the options but decided to discard them. Defendants especially in narcotic cases, according to the given answers, abstained from filing the motion in the first place, knowing the futility of their effort because of the courts' high rejection rates. Judges and officials also assumed that defendants in general consider community service complicated, burdensome, and simply not worth their time. Some even asserted that certain defendants would prefer confinement to all other alternatives.

Nonetheless, there were a few exceptional cases in 2019 where defendants filed a motion for an extension of the 'due date' to 30 days. All of these 'exceptions' were observed exclusively at Court Three both in the sample case files and the *wain-chee* process. Of all 82 fined defendants in the *wain-chee*, there were only two who had filed motions for an extended due date but the judges rejected the motions. Regarding the case files, merely five defendants of all 70 fine-related cases similarly filed for an extended deadline and three were successful. However, two successful defendants later defaulted, leading to rejection of their motions for further extension and to their eventual confinement.

The silent communication about alternatives to the fine continued at Court Two even after the launch of the judiciary's community service policy. From mid-December 2020 to early February 2021 when the second leg of field work took place there, the only noticeable improvement was the multiple presences of information posters about community service in the holding area and at the officials' service windows. Besides these, active communication was still completely absent. Chapter 5 will provide details of this silence and passiveness which impeded defendants from filing a motion. Nevertheless, once community service was approved, the released defendants were told to walk to the adjacent probation office to make arrangements about their community service. Dependent on the queues, the process took about 30 minutes up to an hour, during which the probation officer would interview them and make records about their cases and personal profiles. The nature of work to be assigned had been broadly determined in the court order, and both the officer and each defendant would work out the specifics in this first meeting.

Part II: The Typical Characteristics of the Fine

3. The Fluid Meanings of the Fine

In the criminal justice setting, money has several roles, ranging from bail and injury compensation to a fine. However, in practice, a fine seems to have a different meaning when it is announced from when it is enforced. In the announced sentence, a fine purports to operate as a sanction with a proportionality-led message and gravity. On the other hand, a fine is enforced in full despite defendants' inability to pay, and alternatives to payment are converted by a rigid formula notwithstanding the pains being caused. The fine in the latter sense is not different from a debt to be fully collected by whatever permissible means. Alternatives such as confinement or community service can be simply methods of debt enforcement; thereby, rendering the proportionality of pains caused by enforcement irrelevant. This sharp difference between expression and execution indicates that money in sentencing has fluid and more than one meaning.

3.1 The Fine as a Sanction

When asked to identify the penal purposes of the fine, all judges participating in the interview named deterrence and rejected the purposes of incapacitation and rehabilitation. While a few participants doubted the idea of retribution as the purpose of the fine, many of them either explicitly or implicitly agreed that retribution counts. All participants viewed the fine as a property-based or an economic sanction. Therefore, the deterrent or retributive purpose of the fine is displayed most evidently in property or profit-driven offences where a fine as the deprivation of the offenders' money is capable of making them feel the pain of losing possessions and thus may deter them from future crimes of avarice. As Judge G from Court Two explained:

> I think that a fine is a sanction against the defendants'[65] properties. For example, being deprived of their possessions as a sanction is a retribution for their stealing of others.

[65] Participating judges used the term *chamloei* (Thai for 'defendant') when generically referring to offenders, both in their pre-sentence 'defendant' status and as the convicted offenders. Therefore, the term 'defendant' used in this research's findings and conceptualisation refers to the similarly generic meaning as understood by Thai judges.

> When the sanction is imposed against their possessions, they will be compelled [to lose their wealth]. What would they feel for what they have done?

Judge K from Court Three, initially opining that a fine 'should not fit within the definition of retribution', offered a similar view on the deterrence of the fine:

> If we want to deter defendants, we must enforce on their properties. You crave for and retrieve others' belongings by illegal means. You must lose your hard-earned money and you must lose more…

Interestingly, with deterrence as the dominant purpose, offenders were viewed as rational, calculated, and fully informed of the consequences of crimes. As Judge F from Court Two put it:

> Some defendants are willing to trade their liberty for a certain period if it is worth the profits of the crime. That particular offence might give them more gains than the cost of liberty at one moment in time. Therefore, an expensive fine might induce the decrease in offending.

This cost-benefit analysis mentality is the attribute of the economic rationality that fits well with the economic nature of the fine. Resonating Duff's (2001) argument that a fine is well suited to communicate moral disapproval in greed-driven offences, participants commented that a fine is appropriate when the motive of the offence is economic or based on greed. The fine, being an economic sanction, is able to – in the words of Judge N from the Central Court of Appeal – 'teach them the retaliatory lesson'.

Participants agreed that a fine is a useful measure to avoid custody. It offers a chance for offenders to reintegrate into the community, as opposed to imprisonment that results in social exclusion. However, despite this advantage, the fine is undermined by its severe setback. As most participants commented in an almost immediate fashion, the serious flaw of the fine is its wealth-based under-deterrence. Being the sanction that targets the externality of offenders, i.e., material possessions, the real-world inequality of wealth works to the fine's disadvantage. Participants acknowledged the discrepancies of the fine's impacts on offenders of different means, resulting in various degrees of pains and deterrence. Nevertheless, they often resorted to the binary of the 'rich' and the 'poor' for simplicity of their arguments. The Chief Judge of Court Two (hereinafter 'Chief Judge Two') offered the most vivid and eloquent version of this dichotomy:

> The fine would affect only those having less wealth, living hand-to-mouth. It would affect them just like imprisonment. A 1,000 baht fine might equate to one-month imprisonment in impact. But to the rich, they would just burst into laughter. A 1,000 baht fine would be just a tiny fraction of their wealth. A fine would affect the hand-to-mouth people. You'd better imprison them. They would not pay anyway and rather accede to be jailed…The fine is their super harsh punishment. A 1,000 baht is difficult to earn. How many years do they have to work to earn it? They'd better be in prison… [T]he impact on the repentance or conscience of the defendants also depends on their financial status…[A fine] can deter these hand-to-mouth people. Even a fine as low as 100 or 200 baht fine can terrify them…But the rich will be indifferent.

As a corollary, most participants shared the view that a fine, regardless of the size, would not deter the extremely wealthy. To this group of millionaires and billionaires, a fine would be 'just a fine'. Not only is payment readily doable for them, Judge M from the Central Court of Appeal even commented that a bankrupting fine is no threat to them either because their strong money-earning capacity endows them with high economic resilience.

The latter line of reasoning justifies scepticism towards the potential for an infinitely gradable fine to replace or alternate with suspended imprisonment. The threat of a bankrupting fine is by no means as terrifying as the threat of the 'double sentence' upon reoffending. Despite their opinion that a fine is for deterrence, its deterrent effect is seemingly inadequate. As Judge H from Court Two explained:

> [T]o some people, once the fine is paid and it's done. It's all over with. But if there's a threat of imprisonment, they'll know that reoffending within this couple of years may trigger the addition of a new sentence to the previous one. It may incentivise those who may still see no need to improve themselves. It's like parole. They will be reminded against reoffending and they may actually be reformed…

And Judge L from Court Three corroborated:

> [I]f we…use only the fine, in the future if the defendant reoffends, we won't have any measures or any tools to apply. But if there's imprisonment as we normally impose and suspend it, at least we can definitely cause deterrence. Irrespective of the prospect of reform, we already have a custodial sentence for deterrence. If we use only the fine, there will be no instruments to deal with future reoffending.

However, the concern of the under-deterrence of the fine vanished in ‘petty’ cases or ‘harmless’ violations caused by ‘carelessness’ or ‘selfishness’ in the likes of non-dangerous motoring offences or customs tax avoidance. In addition, on the topic of the optimal sentence for ‘serious’ offences, none of the participants cited deterrence in rejecting the fine and in pinning incarceration (and, in certain offences, death penalty) as their unquestionable sanction. There was one mentioning of incarceration as the incapacitating mechanism but the prevailing reason was the proportionality of the offence and the sanction, mirroring the concept of retributive justice. The focus group interview with the appellate court judges manifestly highlighted this point:

> **Judge M:** Don’t forget that punishment is also the revenge taken on behalf of the victim.
>
> **Judge N:** Of course, it is the primary one. Since the ancient time, it was used to exact revenge. It is the primary purpose, the eye for an eye system.

Participants in each interview session considered murder as a serious offence and many agreed either explicitly or tacitly that robbery and rape are also examples in this category. According to Judge K, the ranking of the severity is ‘common sense’ reflecting the ‘commonly shared’ priorities of human life and body over other interests. Any attacks against the top priorities of human interests are naturally considered serious and thus warrant imprisonment. Although it is unclear about how Judge K and all other participants arranged their ‘common sense’ punitive scale, it is quite evident that an attack against a human body is every participant’s absolute determinant of high severity. Also, the fact that harm is inflicted or likely to be inflicted on another person is a decisive factor for participants in classifying the perpetration ‘serious’. To impose a standalone fine, however expensive, in this category of offence risks jeopardising this retributive purpose and delivering grave injustice to the victim. As Judge N ruminated about the probable impact of a fine in a rape case:

> The victim would be agonising, if after having been raped, her perpetrator only paid the fine. And how are we to accept the fact that the perpetrator is not punished?… If I were the victim, I would hire a gunman to seek my own justice because I could not receive it from the system.

At the other end of the punitive continuum, petty physical harm or trivial victimless offences such as misdemeanour assault, gambling, and parking in a prohibited area are

a few examples where a standalone fine is acceptable in participants' opinion. The data therefore reveal that participating judges regarded a standalone fine as merely matching the lowest level of severity. Everything beyond this level seems to cross a custodial threshold which appears to be very low. In the observation of Judge I from Court Three, offences considered petty and most ordinary crimes are mostly sentenced with suspended imprisonment. This measure was perceived by some participants as the middle ground between the 'too lenient' standalone fine and the 'too harsh' incarceration. And it is this 'middling' intervention that is the significant majority of all sentences in the data.

This common perception of the fine as 'lenient' as opposed to the 'harsh' imprisonment seems to be the real reason behind the limited use of the fine, rather than the discourse of under-deterrence. This explains participants' absence of under-deterrence concerns when replying that a standalone fine is acceptable in the zone of 'lenient' offences. In fact, most rejected the possibility of maximising deterrence through an infinitely wealth-based fine, including the minority who supported the idea of means-based consideration. To paraphrase Chief Judge Two who was one of the said minority, such an endlessly gradable fine, although extremely terrifying, is inappropriate in non-serious circumstances such as motoring offences. This participant further pondered that even if a billion-baht fine were permitted, it might be imposable only in a murder case. This line of reasoning strongly reflects the dominance of proportionality, rather than utility, in the Thai sentencing practices.

Another example of the priority of proportionality over deterrence was several participants' laments about the 'disproportionate' fines in some new legislation, most notably *the Fishery Act BE 2558 (AD 2015)* amended by *the Fishery Act (No.2) BE 2560 (AD 2017)*, and *the Film and Video Act BE 2551 (AD 2008)*. Participants alleged that these recent laws criminalise actions that to them seem petty or culturally acceptable, namely 'fishing at a local pond'[66] in the former statute and 'having a copy of music CD for distribution without a license'[67] in the latter. Additionally, these new offences mandate a

[66] Probably referring to an offence regarding unlicensed fishing activities under Section 125/1 of *the Fishery Act BE 2558 (AD 2015)*.

[67] Sections 54 and 82 of *the Film and Video Act BE 2551 (AD 2008)*.

minimum standalone fine of 10,000 baht[68] in the former, and 100,000 baht[69] in the latter – an amount too expensive for the perceived triviality or the normality of the prosecuted actions. Here, the massiveness of the minimum fine would definitely increase deterrence. Actually, deterrence is explicitly stated as the legislative purpose behind such a prohibitive penalty in *the Fishery Act*. Nevertheless, participants admitted frustration of being compelled to impose such an expensive fine because, in Judge L's words, 'the action doesn't match the severity of the statutory sanction'.

As a consequence, instead of the primacy of deterrence, the fine was rather viewed by participants as a retributive mechanism and its function is to carry the double message of the leniency of the sanction on the one hand and the minimal reprehensibility of the offence on the other. Deterrence may be the by-product but the maximisation of this utility is of no or negligible concern.

In the punitive scale, a fine appears to occupy the lowest rung. If it is invoked beyond this level, its role is merely auxiliary and subjugated to the presence of custody. The Chief Judge of Court One (hereinafter 'Chief Judge One') clearly pinpointed that a fine 'is just the supporting penalty in case we are not going to actually incarcerate the defendants, namely in case of suspended imprisonment'.

What follows from this rationality is the convention where a fine is, according to Chief Judge Two, 'almost 100 percent' added to the sentence of suspended imprisonment. Moreover, a fine is regularly out of the picture where incarceration is to be immediately executed, unless specifically mandated by the law like in narcotic offences. This sentencing tradition 'has been taught for generations' (Judge D from Court One), and 'has always been followed and will continue to be' (Judge I from Court Three). Its de facto authority particularly regarding an added-on fine creates normality to such an extent that, as Judge I noted, 'If we are diverting from it, we must explain the omission of the fine'; and imposing merely suspended imprisonment would appear '[l]ike we sentenced wrongly. Did you forget the fine? Was your intention actually immediate imprisonment? These kinds of questions'.

[68] Roughly equivalent to £230.

[69] Roughly equivalent to £2,270.

The fine's subordinate role to imprisonment is evident in the below Figure 4.2 which shows the prominence of suspended imprisonment and the least use status of a standalone fine in Court Two and Court Three[70]. When probed more closely into the circumstances in which a standalone fine was levied, the similar pattern appears across the three courts. Out of the total 224 sample case files, there are merely seven cases where it is the sole mandatory sanction. In the 131 cases where the law permits the option of either imprisonment *or* the fine, only 27 cases result in a standalone fine as opposed to 104 cases that result in imprisonment, either in its immediate or suspended mode. The offences that appear to warrant a standalone fine are of petty nature in the likes of gambling, acquiring a few *kratom*[71] leaves, acquiring a cap gun or gun bullets without a license, or fly-tipping on the public road. The presence of custody seems to be indispensable in all crimes considered more serious. Likewise, the typical offences that incur a standalone fine in the observed *wain-chee* are gambling and possession of *kratom*, while imprisonment in whatever form dominates the vast majority of *wain-chee* cases. The minimal role of a standalone fine both in quantity and quality can be noticed in Figure 4.3 which displays the dominance of suspended imprisonment in nearly all top frequent offences in all three courts.

[70] The nationwide trend is consistent with the data from the three sample courts. For more details on the statistics and analysis of the ongoing trends of the Thai fine, see Appendix B.

[71] *Kratom* is the name of a tropical plant native to Southeast Asia with mild addictive substances. It was prescribed as one of the illegal narcotic drugs before being decriminalised by *the Narcotic Drugs Act (No.8) BE 2564 (AD 2021)*. This Act was later repealed by *the Narcotic Drugs Code BE 2564 (AD 2021)*; however, the Code still excludes *kratom* from the list of illegal narcotic drugs.

Figure 4.2 Sentences in the Three Sample Courts

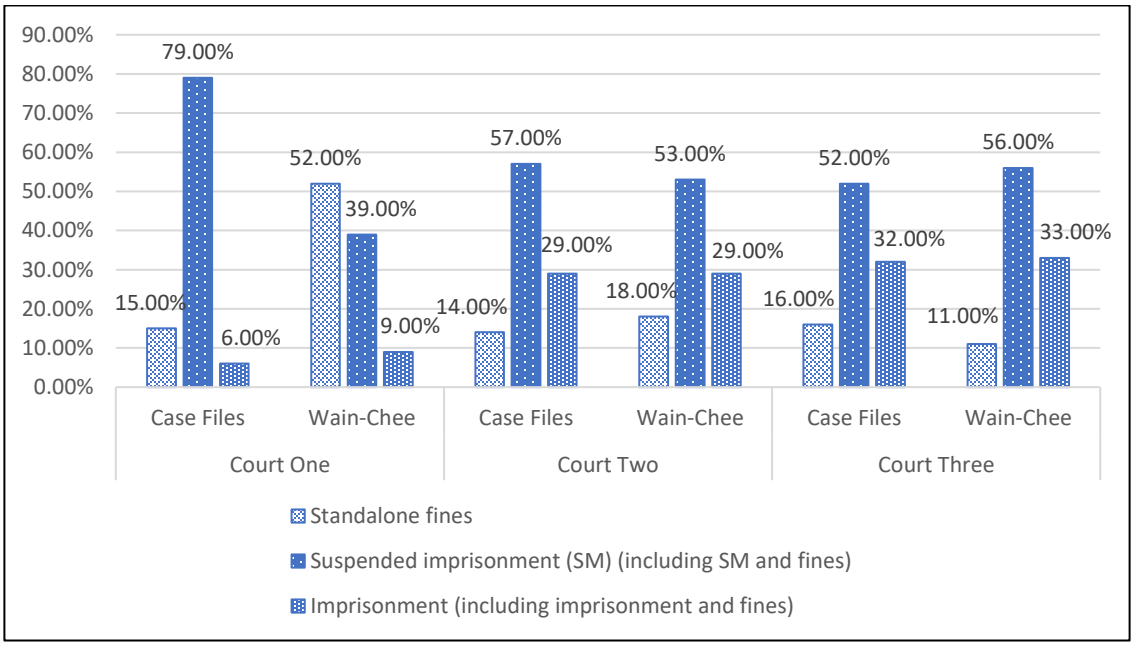


Figure 4.3 Sentences in Most Frequent Offences in the Three Sample Courts

(a) The Case Files **(b) The *Wain-Chee***

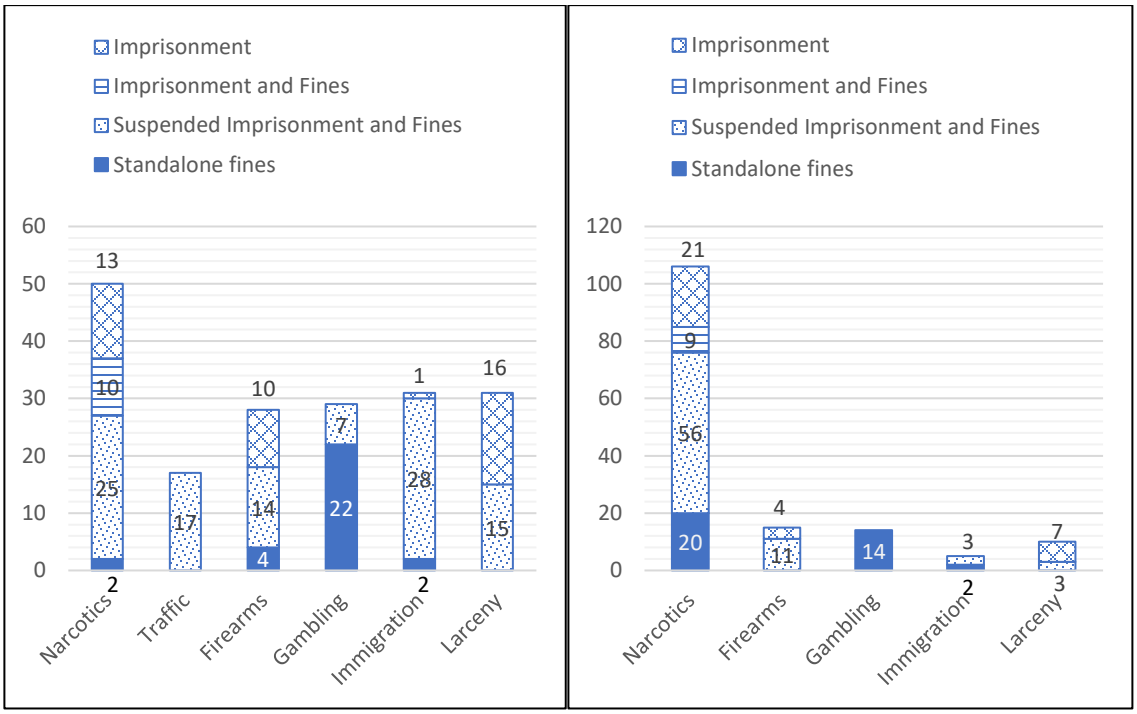


Figure 4.3 reveals the regular pattern of adding a fine to suspended imprisonment in various offences and the rather unique combination of imprisonment and a fine only in narcotic cases. The latter practice is explainable by Section 100/1 of *the Narcotic Drugs Act BE 2522 (AD 1979)* (later substituted by Section 152 of *the Narcotic Drugs Code BE 2564 (AD 2021)*) that removes judicial discretion to waive the mandatory fine when imposing an immediate custodial sentence. The law implies the need for the deterrence effect of the fine through the deprivation of the supposed profits of drug dealing. This interpretation is confirmed by the Supreme Court precedent[72]. However, this mode of composition is relatively unusual because in non-narcotic cases, although the law requires a fine as a co-sanction with imprisonment in certain offences, judges often invoke their discretionary authority in Section 20 of *the Criminal Code*[73] to withhold the fine whenever they impose an immediate term of custody. As Judge D from Court One reasoned, immediate imprisonment is already harsh and, with regards to proportionality, there is no longer necessity for the extra burden of the fine. Therefore, except in narcotic offences, the normal exercise of this discretion allows a mandatory fine to enter the scene only in the case of suspended imprisonment.

On the contrary, where imprisonment is suspended, all participants gave a similar line of justifications for the presence of a fine as 'to exact punishment', to let offenders 'have some tastes of the sentence', and to prevent the appearance of offenders going home unscathed. In this sense, the Damoclean effect of suspended imprisonment is only to generate deterrence but in itself is not regarded as real punishment. Moreover, its unequivocal purpose in the unanimous view of all participants is to 'give an opportunity for reform'. The image of softness intuitively evoked from the benevolent terms of 'a second chance', 'redemption', and 'reform' adds to this common belief that, by merely suspending incarceration, offenders would walk free – unpunished and undeterred. It is thus insufficient to denounce the act and instigate the threat through the looming custody. Some tangible pains or negative consequences must be inflicted or at least seem to have been inflicted. Interestingly, no participants mentioned probation conditions as capable of causing pains. In a seemingly intuitive fashion, they turned to the fine – being another

[72] Supreme Court judgement no.3054/2547 (AD 2004).

[73] Section 20 of *the Criminal Code* stipulates: 'When the law mandates a sentence of both imprisonment and a fine for an offence, the court when deeming appropriate may impose only imprisonment'.

official sanction – to fulfil this task. A fine, therefore, is requisite to signal that offenders still undergo some punishment – a message that is meant to erase the impression of impunity and simultaneously remedy the victims from, to quote Judge O from the Central Court of Appeal, 'the feelings of being hurt'.

Nevertheless, this punishment is still relatively lenient since the fine seldom reaches the higher end of the statutory range, let alone the pre-2017 inexpensive fining ranges permitted in offences appropriate for suspended imprisonment. Coupled with the fact that suspended imprisonment is regarded by judicial participants as non-punishment, this combination of the threat of custody and a fine seems to still be at the rather lower end of the punitive scale. This is supported by participants' similarly citing non-seriousness of the circumstances as their first criterion of invoking this combination. However, since it is generally perceived as custody avoidance, invoking a combination sentence necessitates merit assessment of its beneficiaries. With the rhetorical aim of rehabilitation, participants also gave equal, if not more, weight to the offenders' redeemability. As Judge M explained:

> Incarceration is suspendable but it's up to the defendants, whether they are capable of reform, whether it is appropriate for this defendant…It shows that we have a tendency to look at the defendants, look at them, and see how much opportunity we will give them.

This consideration is an amalgam of pre- and post-offence factors ranging from age, personal backgrounds, criminal histories, motive of offending, to compensation of damages. The lattermost factor in particular is, to many participants, the determinant in cases involving criminal negligence. This fusion between offence- and offender-centric deliberations, with the tendency of the latter overriding the former, makes the combination of suspended imprisonment and a fine theoretically incompatible with the proportionality-based concept of intermediate or community punishment. Participants seemed to be unaware of or unconcerned about the proportionality of the combination itself compared with the severity of the offence. To them, it is already adequate that the sentence lies in the middle ground between the 'too harsh' incarceration and the 'too lenient' standalone fine, notwithstanding the exact location in this 'middling' spectrum. Moreover, the paradoxes of the 'non-serious' circumstances crossing the custodial threshold, and of the 'non-severe' punitive fine being imposed where custody is technically warranted did not seem to strike them as presenting disproportionate possibilities.

This general ignorance about proportionality might be partly explained by the view that this measure is an exception, albeit regularly used. Another possibly better explanation may be the moderate outcome that coincides with the discourses about non-seriousness and rehabilitation. Participants needed not concern themselves with the low and arguably disproportional custodial threshold since the sentence would be suspended anyway. Also, since they did not intend to incarcerate in the first place, to impose a rather low fine as the real penalty was not self-contradictory.

The second explanation may seem to downplay the role of a custodial presence and highlight the potential for substituting it with a standalone fine. Nonetheless, imprisonment in this combination is viewed to have a dual role that a fine cannot deliver. On the one hand, it communicates that moral disapproval of *the offence* is more severe than in cases warranting a standalone fine. It is merely the special facts about the particular defendant that merit this exceptionally lenient treatment. On the other hand, the threat of a double sentence upon reoffending is assumed to effect stronger deterrence than the fine alone. Since participants used the harm to others and the probability of it as the significant custodial factor, their need to have more effective deterrence is comprehensible. Accordingly, it is tolerable or even acceptable to use the 'under-deterrent' fine in harmless offences such as gambling or failure to comply with petty regulations. But where 'harm' – whatever its definition[74] – and the risk of it is identified, it is necessary to issue a solemn caution against repeated acts, and imprisonment is always deemed up to this task.

As 'harm' could be broadly construed, arguably the majority of Thai criminal offences are harm-based. To designate harm as the threshold of incarceration guarantees the dominance of this sanction in the majority of sentenced offences. The prevalence of imprisonment is to such an extent that it is practically the default mode of punishment in the *yee-tok* and, with its authoritative influence, the general sentencing practices. As a

[74] Feinberg (1987: 36) defines harms that deserve criminal law responses as 'setbacks of interests that are wrongs and wrongs that are setbacks to interest'. On the other hand, Lacey (1988: 100) argues that criminal law protects the most fundamental values of the society, implying the damaging of which generates harms that merit criminal sanctions. However, objectively defining which impairment of interests or values counts as criminal wrongs, particularly those wrongs that deserve imprisonment, is difficult. This is because criminal perceptions of harms vary upon time and place, moral and cultural sensibilities, and religious and social norms (Lacey and Zedner, 2012: 165, 169).

corollary, every sentencing discretion started from the dichotomy of 'In' and 'Out' decisions. As Judge L deliberated:

> Well, [the drafters of] the *yee-tok* must have started from considering which types of offences deserve imprisonment before deciding which offences merit suspended imprisonment with a fine and how much to impose…Basically, it's just an in/out decision…If the severity exceeds this line, it's imprisonment. If below, the fine would apply…

Evident in this comment is the priority of imprisonment where it is the default and other sanctions are 'alternatives' or rather 'exceptions' where the default is inapplicable. This is also manifest in Judge L's comment on the custody-avoiding benefit of the fine and the potential of a standalone fine when suspended imprisonment is prohibited:

> Sometimes defendants had already served their times in previous offences but later they committed a petty crime – namely possessing a cap gun, an act ordinary to the rural livelihood. If we incarcerate them in the latter case, the sentence would have to be aggravated and no longer eligible for suspension. However, suppose the law gives an option of the fine, we can select the fine as the only sanction. There's no necessity to incarcerate defendants since the crime is not serious…

Note that although a support of the standalone fine in this example originated from the view that the offence was trivial and tolerable, Judge L was forced to resort to this secondary option because the first choice – suspended imprisonment – was unauthorised. In this sense, the standalone fine is the 'alternative to custody' only when custody is impossible; thereby, affirming the subordinate role of the fine.

Restricting the fine merely to triviality implicates the inappropriateness of money in addressing the encroachment of fundamental values. Because of its market-related connotation and commodifying effect (see Ariely, 2008; Simmel, 2004), the fine conveys a wrong moral note in non-petty offences where the society's basic moral values are at stake (see Young, 1987). Even when the fine is recognised for its instrumentality, its presence must be accompanied by imprisonment so that a strong penal symbolism of the latter will overshadow the monetising effect of the former. Petty offences, by contrast, rarely harm foundational moral norms and thus provoke none or nominal moral disapproval. This virtual absence of moral resentment makes the monetising element of a standalone fine tolerable, particularly considering its administrative cheapness and

convenience (see O'Malley, 2009). Nevertheless, beyond the sacred realm of moral expression, the monetary and capitalistic trait of the fine is fully embraced in the profane territory of execution, as will be presented below.

3.2 The Fine as a Debt

Once imposed, the fine assumes the second meaning of a debt to be collected fully. To participating judges, the fine is to be enforced using the most efficient means. This is regardless of defendants' financial inability and the overall proportionality of the sanction. Because the conventional method of debt collection against debtors' properties is troublesome for the courts, judges turn to confinement as the easiest and the most unfailing mode of enforcement. Setting it as default, judges also prevent collection failure by immediately confining defendants who fail to complete payment by the closing hour of the sentencing day. Acknowledging confinement's incompatibility with the fine's economic punishment and the close similarity between confinement and imprisonment, participants still preferred the certainty of confinement. This conscious choice is obvious in Judge D's admission:

> The thing is the enforcement of the fine in fact should be carried out against the assets. In principle, properties should be seized first…Only when the defendant appears to default can you confine him. However, typically we make confinement our first step, which is wrong. The right process is civil execution first…[However] it's too complicated to proceed with the steps of execution…

The complexity of property enforcement will be further elaborated upon in section 6 (below) regarding bureaucracy-centric habitus. Suffice it to note here that judges willingly err on the side of full 'collection' at the expense of proportionality and penal objective. The rigid fine-to-custody conversion rate (of 500 baht per day in custody) also reflects the irrelevance of proportionality and a moral message. Actually, it is evidence of the monetisation in criminal justice, despite being unwelcomed at the sentencing stage. This equivalence of money to a unit of time is a direct result of capitalism and industrialisation that enable the monetisation of every production capital including time (Pashukanis, 1971: 181; Thompson, 1967). Remarkably, this money-time convertibility remains intact despite numerous revisions of *the Criminal Code* and courts always inflexibly apply this conversion rate. This capitalism-based conversion rate is critiqued by scholars as

inappropriate because the rate is largely based on the legal minimum wage (Veerapong, Supatra, and Saralnuch, 2008: 128). Nevertheless, this criticism is barely audible and no participants seemed to notice the dominant influence of capitalism.

This conversion rate is applied mutatis mutandis in translating the outstanding fine to days of community service. Apparently, money can be equivalent to labour, at least in the eyes of legislators, while some judges may find this concept disturbing. For instance, Judge F expressed disagreement with this conversion:

> [D]oing community service is about taking action or inaction. It won't make defendants feel the pain of losing money or possessions in the way the damaged party must have felt.

Notice the return to the importance of penal purposes and messages. Judge F was not the only participant who seemed to perceive community service not as a mode of fine enforcement but as an alternative sanction. The next immediate subsection (below) will explain more on this sanction-related frame which re-invites concerns for proportionality at the enforcement stage. For now, note that once the conversion is permitted proportionality is out of the picture and the rigid equation between money and labour remains virtually unchallenged.

Recall that the law is ambiguous about the residual fine after the maximum duration of either confinement or community service is exhausted. To judges at Court Two, even after the launching of the community service policy, there was no case yet that prompted serious deliberation about this possibility. Although some of them remarked that after the maximum of two years the remainders should be written off, their replies were offhand – self-admittedly given without careful forethought. Judge X from the Office of the Judiciary, who seemed to have reflected on the topic before, shared the same opinion that all should be over by then. Nevertheless, the preference for full 'collection' and the convention of a strict conversion rate seemed to dominate judges' reasoning, as reflected in guidelines issued by the Office of the Judiciary in 2018[75] and in 2022[76]. Although the obiter dictum in Supreme Court judgement no.3189/2564 (AD 2021) is compatible with Judge X's reasoning, the Office of the Judiciary interpretively limits its scope to merely the scenario

[75] *Office of the Judiciary's 2018 Practice Guideline.*

[76] *Office of the Judiciary's 2022 Practice Guideline.*

where fined defendants already in confinement are reprieved by a Royal Pardon. Moreover, the Supreme Court precedent still leaves intact the proportionality issue of the rigid conversion rate.

Perhaps the most distinctive evidence of this debt-like treatment was the apathy towards, or even an embrace of, fine payment by a third party. Throughout all observations, most fines were paid by people in defendants' close circle. Even the judges and court officials advised defendants to seek help from their relatives to avoid fine-default custody. With the exception of the Chief Judge of Court Three (hereinafter 'Chief Judge Three'), none of the participating judges mentioned this impersonal execution of the fine. This unconcerned acceptance of payment regardless of the payers clearly indicates the civil perception of the fine as a debt, according to which it is irrelevant who bears the burden of payment.

Albeit contrary to the principle of personality of punishment (Faraldo-Cabana, 2017: 55–56), Thai courts' risk-aversion and strong emphasis on full collection invite this civil conceptualisation of a fine. By holding fined defendants in the holding area regardless of their financial inability while demanding immediate complete payment, the courts necessitate financial rescue by a third party. The overriding concern for formal enforcement – that the fine is settled by whatever means – tolerates and even encourages the transfer of penal burdens to others. Although this blurring of the line between civil and criminal liabilities can be found in many other countries, in Western jurisdictions such blurring is deliberate in a 'civil offence' and cases against corporate wrongdoers (O'Malley, 2009: 20). Whereas it was once widely accepted that the fine shared both civil and criminal attributes, contemporary penal ideas in Europe reject the civil treatment of the fine (Faraldo-Cabana, 2017: 56–65). While it could be argued that Thai criminal law prescribes the fine to have a solely criminal quality, Thai courts' practices conspicuously generate the necessity for treating the fine as a civil debt and for welcoming its capitalistic overtone.

This contrast between the subjugation of money in sentencing and the embrace of its capitalistic trait in enforcement echoes Garland's (1991: 191) observation about the duality of morality and rationality in criminal justice. Sentencing in the modern time remains a symbolic process of moral communication. It is a ritual by which crimes are

denounced, moral standards are upheld, and impaired social solidarity is restored. Money and its amorality present an incoherent and probably destructive message in this emotive and non-calculative arena. By contrast, sanction enforcement is a technical and rational facet of criminal justice. A fully enforced sanction is a testament to certainty and impartiality – the components of the rational system. In this paradigm, a rigid conversion formula is welcomed because it enables speedy and consistent settlement without the difficulties of considering proportionality. Payment by a third party, although possibly absolving defendants from suffering the sanction, is acceptable because it facilitates full collection which confirms a broad message regarding certainty of enforcement. In this sense, fine enforcement is not different from debt collection which explains why its capitalistic overtone appears to cause no concerns for Thai judges.

The advantage of this debt-like treatment is that it permits the convenient shifting of enforcement methods due to the irrelevance of penal messages and proportionality. Likewise, it allows the standard conversion formula and the acceptance of payment by a third party. However, the disregard for proportionality is in itself a disadvantage because it welcomes the result-oriented enforcement that targets merely full collection, notwithstanding penal effects inflicted by the means. Therefore, despite the exhaustion of either fine-default confinement or community service, defendants' properties can still be seized and sold to settle the still 'outstanding' fine according to the fine-to-custody conversion rate.

On the other hand, maintaining the frame of the fine being a penal sanction limits the options of enforcement methods. This is out of the considerations about the compatibility with the penal objectives and the overall proportionality of impacts. The upside of this approach is the check against the overharsh use of alternative methods. Not only would the over-reliance on confinement be curbed, this sanction-related frame would prevent the undesirable scenario where offenders are still pursued for payment even after having completely undertaken the alternative measures. Some Thai judges appear to have this sanction-related frame, like the above-quoted Judge F. However, they seem to take it to the different direction which results in the still over-reliance on custody and the ambiguity as to the role of the non-custodial methods of fine enforcement.

3.3 Fine-Default Community Service as an Alternative Sanction

The clear demarcation between the moral and rational territories permits the sanction-related and the debt-like frames to operate separately in each realm with minimal crossover influences. Nevertheless, when it comes to non-custodial fine enforcement like community service, both frames appear to intermingle when judges decide whether to convert a default fine to days of community service.

In the debt-like frame, defendants' inability to pay should be one of the determinants in the conversion decision. However, the majority of participating judges rejected the relevance of defendants' financial inability, reasoning that indigence test is not legally required[77]. Within this majority opinion are also different sub-strands of position: that doing community service is the defendants' right; that offence-based considerations determine the approval of conversion; and a mixture of both strands. Judge P, taking the first position commented:

> I don't consider if they are truly indigent. Because even if they have money, they may still want to do community service. It's their right. [Financial ability] is probably irrelevant.

Corroborating this line of thought was Judge R who, applying the hybrid view, welcomed rich defendants' applications for unpaid works because '[w]orking instead of paying the fine is not fun', and '[r]ather than branding the rich as being stingy…[t]his is the real manifestation of [their] repentance, isn't it?'.

Most participants, nonetheless, adopted the second position of applying the offence-based appropriateness test. This indicates that community service was perceived as if being an alternative sanction, instead of just a mode of enforcement. In this frame, community service is usually considered inadequate to address the greed-driven and 'morally intolerable' crimes, the epitomes of which are drug dealing and drug possession

[77] This rejection of any means-based consideration is inconsistent with the law. Although participants rightly asserted that Section 30/1 of *the Criminal Code* does not use terms signifying indigence, it does require that merely inability to pay the fine could initiate the motion. Still, this concept in itself is ambiguous and Judge X, having been ruminating about this topic for some time, accepted that the law is unclear. Because the scope of 'financial inability' is still indeterminable, it is still arguable either the law is limited to only those in extreme poverty, or expanded to those not in such a dire state but tending to experience financial inconvenience if having to pay the fine.

for sale. Thus, defendants convicted of these offences are deemed inappropriate to settle the fine by community service.

Recall Judge F who expressed concerns over the non-monetary nature of community service. The fear that switching from money to labour would undermine economic punishment by failing to drain off crime proceeds was shared by many, including Judge D who gave a strong remark against using the measure particularly in drug offences:

> When the law intends to punish by deprivation of property, we normally disapprove a motion [for community service] in this sort of offences…It doesn't serve the purpose of punishment. Dealing drugs is for profit and the fine is expensive. So how can they just work instead?

Interestingly, judges who held this line of thinking did not see fine-default custody as jeopardising the economic essence of the fine, although it does not remove the defendants' wealth either. Notice also Judge D's implication that community service is somehow more lenient than making payment. This perception of community service as being lenient and non-economic contradicts the capitalistic standpoint by which money, labour, and time are interchangeable. However, considering the emphasis on the penal message and proportionality, the decision whether to convert the fine to community service retreats to the moral realm where capitalistic rationales seem inapplicable.

The interference of moral judgement in the terrain of enforcement is evidenced in *the Judiciary's 2003 Regulation on Community Service* that advises against approving this option to defendants of certain profit-driven crimes, including the distribution of narcotic drugs. One of the reasons behind this recommendation is the belief that such defendants could afford the fine from their crime proceeds, as Judge U put it:

> [T]hey have money, so they'd better pay. If they don't intend to pay, they deserve to be confined for the outstanding fine. It's their decision, their choice to be confined instead of paying the fine.

Besides the risk of a wilful default, the offences named in the regulation seem to be too seriously condemnable to merit 'lenient' community service. Most particularly reproachable is narcotic offences, against which moral repugnance has long been fuelled by the war-on-drugs public discourse. To a certain number of judges, every involvement with narcotic drugs, however minor it is, appears to be morally unforgiveable because

‘[drugs are] a great danger to the society’, as Judge Q commented, and as Judge S explained in great length:

> Because it’s the policy of drug suppression. Even though the person only possesses drugs, I think it also plays an important part. Minor drug dealers or possessors or whoever, they already know that drugs are harmful. [Community service] shouldn’t be allowed.

Although there may be many judges who exclude petty dealers and drug users from severe moral reproach, antagonism against drug involvement appears to be mainstream. Some participating judges felt disinclined in drug cases to actively inquire about defendants’ financial ability and to inform them about the community service option. This is evident in Judge I’s admission: ‘[I]f it’s a drug case, I will pay no attention and I’m not even willing to ask them questions’. The looming harshness of fine-default custody for these defendants is not worrying either because, quoting Judge I, ‘they are in the borderline where imprisonment is also warranted’.

According to the above logic, the abhorrence of drug offences renders incarceration appropriate both in terms of moral communication and proportionality. Although judges may originally suspend imprisonment in deference to the *yee-tok* or to the ‘giving a second chance’ rhetoric, the perceived custody-worthiness of the crime still welcomes back-door imprisonment in the form of fine-default custody. Being custody-warranting, the severity of community service in drug offences is thus directly compared to fine-default custody, instead of the fine as a monetary sanction. Accordingly, it makes sense to participants to view converting the fine to community service ‘too lenient’ and ‘disproportionate’ in drug crimes and other serious greed-driven offences. This judgement of moral worthiness underlies the still underuse of community service in lieu of the fine in several offences and judges’ indifference towards over-reliance on custody for fine default.

The interference of moral considerations at the enforcement stage does not necessarily cause confusion, so long as the approved enforcement mode aligns with the proportionality and purpose of the nominal sentence. Using the sanction-related frame in this manner guarantees the fairness of the sanction all the way through. However, the problem with participating judges’ application of such a frame in community service decision is that it surreptitiously supplants the fine with imprisonment as the sentence to

be converted. Hence, community service is considered in light of custody instead of the fine. Such complexity naturally stirs dissonance and negative consequences. Not only does it prefer the disproportionality of custodial enforcement from the fine's standpoint, it also permits wealth-based discrimination. By denying community service despite defendants' financial inability, judges confine the can't-pay while letting go those who can pay despite their similarly 'custody-warranting' crimes. This sense of punishment against the custody-worthy defendants, together with the influence of the debt-like frame in enforcement, may additionally instigate the selection of frames to the defendants' disadvantages. In other words, community service may be denied to certain defendants on grounds of penal purposes and proportionality, while the 'debt' must still be collected fully regardless of the total pains already inflicted by the process and the sanction.

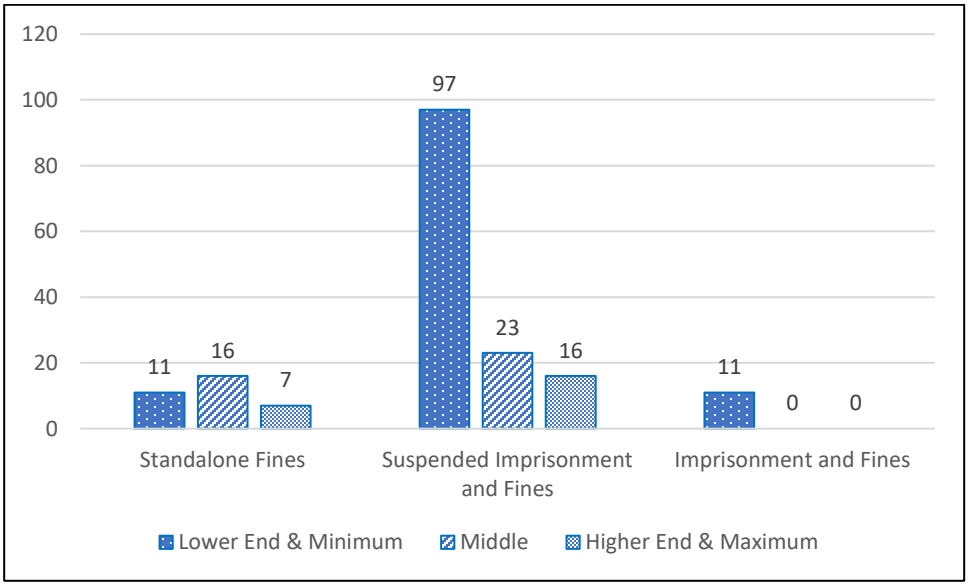
4. Moral Symbolism and Formalism

The fine in practice is distinctive in its role of moral communication and its formality. The fine apparently conveys a condemning message, albeit a lenient one. However, contrary to participating judges' explicit opinions, their routines imply that neither retribution nor deterrence is seriously pursued as the aim of the fine. Judges' lack of interests in individualising the fine for the optimal impact, either retributively or instrumentally, is evidenced in the recurrent flat-rated infliction of relatively low to moderate fines across categories and degrees of offences. Levying the fine at the higher end of the sentencing range is rare and usually occurs when the overall punitive weight of the given range is lenient. Otherwise, variations in the fine's size are restricted to the low-to-intermediate zone. Table 4.1 and Figure 4.4 display this general clustering of the fine to the trivial level in all sample courts.

Table 4.1 Levels of the Fines in the Case Files of the Three Sample Courts

The Size of the Fine	Numerical Frequency	Percentage (Rounded Up)
Minimum	16	9
Lower end	103	57
The middle	39	21
Higher end	0	0
Maximum	23	13
Total	181	100

Figure 4.4 Levels of the Fines Grouped by Sentences from the Case Files of the Three Sample Courts



In both Table 4.1 and Figure 4.4, the statutory range of the fine in any offence is divided into three parts: the low, the middle, and the high. After excluding those with non-fine sentences, of all 181 case files, only a minority of cases feature fines in the middle level and upwards. It is even rarer to see the fine in the upper level up to the statutory maximum. This lower-end clustering seems to predominate most categories of offence in the sample cases. A notable departure of this pattern relates to 29 cases with gambling

offences that end up either with a middling (N = 16) or maximum fine (N = 13). Also observable in Figure 4.4 is the tendency of a standalone fine to go beyond the lower level compared with its combination counterparts. In percentage, the standalone fine in the middling level and upwards constitutes 68% (N = 23 out of 34), in contrast to the 29% (N = 39 out of 136) and zero of the comparable fine in suspended imprisonment and immediate imprisonment respectively.

Moreover, the size of the fine appears to be highly correlated with the amount of the mandatory minimum (if any) and the statutory maximum. Judges seem to restrict the fine to the lower level when the statutory maximum is high and over 100,000 baht[78]. On the contrary, when the statutory maximum is relatively low or moderate, middling and maximum fines are more observable in the data, albeit still outnumbered by those in the lower end. Maximum fines appear in the most frequency (N = 22) where both the mandatory minima and the statutory maxima do not exceed 10,000 baht[79], signifying the minor or moderate severity of the offence. Also note that there are 43 cases in the samples whose statutory maxima are not over 10,000 baht. Among these 43 cases, 29 involve gambling offences and 22 of those result in a standalone fine. Thus, the data suggest the correlation between the triviality of the offence and the fine, particularly in its standalone mode, at the middling level and upward.

Trivial offences aside, participating judges in all interview sessions admitted the normality of the prevailing low-to-intermediate flat-rated fines across most categories of offences. Many acknowledged the dominance of this practice amidst the anachronistically inexpensive ranges in *the Criminal Code*. The imposable ranges of the fines in a vast majority of offences in the Thai *Criminal Code* remained statically low for roughly 60 years since its enactment in 1956. Prior to the major revision in 2017, the imposable fines were predicated upon the standard living costs in Thailand in the 1950s which became tremendously cheap over time. However, some judges openly commented that this trend of moderate fines continued even after the 2017 revision of *the Criminal Code* that increased tenfold every sentencing range therein.

[78] Roughly equivalent to £2,270.

[79] Roughly equivalent to £230.

Considering the long spell of static sentencing ranges and habituation to the relatively inexpensive fine, it is inferable that the fine's size tends to be heavily influenced by the overall weight of the statutory range. If the overall range is considered to be very low, judges may be more inclined to impose the fine up the higher end. However, if the range is viewed as quite heavy, judges seem to usually sentence in the lower level. The offences with quite a moderate range normally include those of minor severity whose triviality merits the leniency of a standalone fine. In turn, the rather low statutory ceiling of these offences enables sentences using the maximum fine without a concern for over-punitiveness. This may explain why gambling – a petty offence in Thailand – can depart from the lowly clustering. Besides this exception, the low fine seems to indiscriminately dominate all other offences.

In all sample case files and observations of the *wain-chee*, the fine is flat-rated with no discernible attempts to do a means investigation before the imposition of the fine. The absence of the means-based tailoring of the fine is confirmed by all participating judges who subscribed to offence-centric sentencing and deferred to the authority of the *yee-tok*. Most of them cited the *yee-tok* as primary and even determinative when setting the size of the fine. Consulting the *yee-tok* has become so ingrained in their practices that judges take it for granted and hardly exercise discretion. This is evident in Chief Judge Two's admission to never having thought about sentencing factors and to just thinking about them when probed during the interview. Likewise, Judge F conceded to adhering to precedents and to never exercising much discretion in this regard. Judge G and H's instantaneously negative reply to the question whether they considered factors about the fine's size also reveals the same habituation best described by the following quotes:

> 'If there's a *yee-tok* reference, in principle, we'll follow it' (Judge D);
>
> 'Judges in principle must deliver sentences according to the *yee-tok*' (Judge F);
>
> 'First of all, we are bound by the *yee-tok*. It's the exercise of discretion by applying none of it' (Judge I).

Nevertheless, participants agreed that the *yee-tok* can be deviated from, 'if the circumstances do not align well with the sentencing standards'. As Chief Judge Three explained:

> The sentences provided for each offence in the *yee-tok* are based on our assumptions that the circumstances are on the moderate scale of severity. If the real situation is harsher, judges will impose a harsher sentence than recommended…

Vice versa, if the case appears to deserve a more lenient treatment than the sentence suggested in the *yee-tok*, judges can also divert from the standard but such a departure must always be backed up by the chief judge's agreement. This is to act as a judge's protective shield against 'a negative suspicion' – potentially regarding corruption – arising from any unconventional practices.

This circumstance-based consideration also rules when there is no *yee-tok* reference or in a hypothetical scenario where the *yee-tok* has no authority over judges' discretion. Participants unanimously considered the gravity of the circumstances, including defendants' motives and their restitution of damages, to be the primary factors in determining the fine. In fact, the majority of participants regarded gravity as the sole factor and were completely against the idea of a wealth-proportionate fine. Their reason is simple and straightforward as illustrated in the following conversation at Court One:

> **Judge A:** …I view that the sanction must be imposed equally on everyone…To mandate that the rich must be heavily fined, while the fine for the poor must be minimal, I think it doesn't sound right.
>
> **Judge D:** It's inapplicable and not just the fine but everything. If we adopt this concept, the sanction would be applied in a double standard, which is not right.
>
> **Judge B:** Everyone must receive an equal treatment.

The emphasis on an equal treatment and rejection of a 'double standard' strongly resounds in the comment of Judge J from Court Three:

> [T]here would seem to be a double standard. I'm rich so I'm subject to this rate. Am I bound to the higher fine? Am I wrong to have been born rich? I don't have any money; I am poor so I will be charged with this [lower] rate instead. It's the same law but with two rates of the fine: one rate for the rich and another for the poor.

To this group of participants, tailoring fines according to defendants' disparate financial abilities seems to be punishing some defendants for their wealth rather than their crimes. This perspective is clearly encapsulated by Judge F's sharp remark: 'Affluence is not a

crime to be considered deserving a more substantial fine'. Agreeing with this normative logic, Judge L added a legal ground to strengthen the case for rejection of a wealth-proportionate fine:

> It appears that our laws centre on the circumstances and the severity of offending in setting the size of the fine, regardless of the defendant's wealth. The legislative intent is therefore more on the wrongdoing than the offender's status of wealth.

On the other hand, participants in the minority faction dissented with the above reason. Chief Judge Two vehemently voiced the following opinion:

> A fine is an economic sanction, right? To impose an economic sanction, the rich should pay a hefty fine and the lesser fine should be adequate for the poor on a similar offence. Just this small amount is already agonising. If you set the same amount, it'll be terrible. The sanction is now unequal, isn't it?

This understanding of inequality of penal impacts is reverberated by the observation of Judge K:

> The value of money is different for different people. To sanction otherwise would exact punishment on people in uneven positions and cause unequal punishment in my mind. Although the amount is equal, the impact of punishment is not the same in reality.

To the comment of a wealth-based fine imposing 'a double standard', Judge K replied with conviction: 'My definition of standard is not numerical…Mine is based on the idea that our financial abilities vary'. This view was also shared by all participants from the Central Court of Appeal as manifest in the following conversation:

> **Judge M:** Everyone is equal under the law doesn't mean…
>
> **Judge N:** Exact equality, it's not about the number.
>
> **Judge M:** That's right. They are all wrongdoers but sentencing is a different matter.

The 'double standard' argument was also instantly rebutted by this group of participants with their distinction between equity and equality, as Judge N succinctly concluded, 'Equity and equality are not the same thing. It's not that equality could render justice'.

To these participants in the minority, their insights into the eventual inequality of a numerically equal fine made them see the relevance of defendants' wealth in setting the size of the penalty. Nevertheless, most of them did not see it as a separate and equally weighted variable alongside the severity of circumstances, as featured in the European day-fine model. On the contrary, they prioritised the circumstances over financial ability. Even those few who considered that both should be of equal importance seemed to view defendants' monetary conditions as one indicator of circumstantial gravity. As demonstrated in the following discussion:

> **Judge O:** But in fact, the circumstances are inseparable from the financial status**.** If we see that the defendant is so well-off that he didn**'**t have to commit such a crime but he did it anyway, this will aggravate the gravity. For instance, you are rich but you still committed frauds.
>
> **Judge M:** You are wealthy. You are rich. Yet, you are still hunting wild animals for fun. This is more serious than hunting by local commoners. The circumstances are more severe.
>
> **Judge O:** Property offences committed by the poor are different from economic crimes by the wealthy. Those already have a rich status but still committed such a massive crime. This is absolutely serious.

This fusion of financial status and the determination of severity is evidenced in real cases raised by participants in the minority to display how they exercised sentencing discretion. Consider the following:

(a) The defendant collected recyclables from garbage bins for a living. One day he mistook a still possessed item for garbage and collected it; thereby, being prosecuted for theft. He pleaded guilty and had spent quite a while in pretrial detention before his arraignment (Chief Judge Two);

(b) The defendant was a taxi driver who had caused bodily injuries because of his dangerous driving. Notwithstanding his chance of escape, the defendant reported the accident and waited on the scene until the police arrived. He gave full cooperation to the authorities, pleaded guilty, and borrowed a large sum of money despite his financial hardship to compensate the victim (Judge M);

(c) The defendant was an elderly lady who had grown one cannabis plant in her backyard. According to the local lifestyle, a cannabis leaf was commonly used to add flavour to local dishes. However, she was prosecuted for manufacturing a cannabis drug, a charge with a possibly heavy sentence[80] (Judge K);

(d) The defendant was a rural commoner who had shot a wild bird in a conservation forest for food. It was most likely that he would have shot any bird large enough to be his meal of the day and that he would not have realised that the species of his prey is classified as endangered. Nevertheless, this defendant was prosecuted for hunting an endangered animal in a conservation forest, a heavy charge with a potentially harsh sentence (Judge N).

Participants insisted that the defendant in each case had been poor and mentioned poverty as one of the reasons why they had imposed a fine at an exceptionally reduced rate. However, it could also be said that all these examples share the same elements of minimal or, arguably in some cases, no blameworthiness. The defendant in example (a) could have been acquitted for lacking the mens rea if he had chosen the more costly, lengthy, and complicated path of defending his innocence. The defendant in example (b) convincingly demonstrated his remorse and tried to the best of his limited ability to repair the harm. The defendants in examples (c) and (d) were more likely to have unknowingly violated the law because of the normality or the acceptability of their actions by community standards. This zero or negligible degree of blameworthiness should have been sufficient in itself to merit an extraordinarily lenient treatment. Destitution simply reinforces this sense of minuscule culpability, especially in example (b), since it highlights the great difficulty the defendant had endured to prove his repentance.

Furthermore, as in examples (c) and (d), the defendants were probably ignorant of the law that criminalised their ordinary livelihoods. This innocent ignorance is a convincing ground of mitigation for indigent defendants in the view of Chief Judge Two who reasoned that deprivation is closely linked to poor education and that:

[80] Since 9 June 2022, actions involving raw cannabis and cannabis extracts under specified requirements have been decriminalised, according to the Proclamation of the Ministry of Health dated 8 February 2022. If this Proclamation had been effective then, this defendant would not have been prosecuted.

> [T]hose who commit a petty offence do it because sometimes they don't know that the act is wrong…So a lack of education may cause this tendency to crimes. Poorly educated people have more risks of offending than the well-educated ones. Let's put it this way…Your act of committing an offence despite your knowledge of the law deserves a harsh sentence. But if you did it out of your ignorance, you still deserve a second chance.

The hardship of poverty was not unbeknownst to all participants and they admitted that judges have sympathy for defendants from deprived backgrounds. They acknowledged that most fined defendants are poor and that confinement for fine default is severe. Some of them justified the repeating practice of a low-to-moderate fine, albeit flat-rated, on the intention to avoid confinement. As Judge H remarked:

> Personally, I can see that there are a large number of low-income people in this country who might not be able to pay a heavy fine. Once they cannot pay the fine, they might be more willing to be confined and save money for their families' spending. They may be more willing to trade their liberty…Deeply and truthfully, I feel sympathetic when imposing an expensive fine, knowing that the defendants may not have money.

Nevertheless, this poverty-based sympathy is restricted to cases of null or nominal objectionability. Where the blame is nefarious, even participants who saw the relevance of defendants' economic status dismissed poverty as the ground for a differentiated fine. This is manifest in the opinion of Chief Judge One:

> [F]irst the circumstances are primary and then this [consideration on the financial conditions]. If the circumstances are severe, despite the defendant's poverty or whatever, he will have to suffer the consequences.

Chief Judge Two echoed this logic when expressing readiness to impose a 100,000 baht fine on the hypothetical defendant who could not even pay a fine of 200 baht, 'if the circumstances are serious'.

On this account, the size of the fine is overwhelmingly determined by the gravity of the circumstances in the minds of most – if not all – participants. To the minority that saw the relevance of financial ability, the defendant's status of wealth is pertinent only in the culpability assessment and it is even placed at the lowest rung of significance. This mediocre weight could hardly influence any decisions and, therefore, there is no urgency for details about this nearly forgettable factor. Even in the extremely rare cases where

the fine is shifted from the going-rate to reflect the defendants' financial conditions, participants could make do with a rough estimate from the case file information and their observation from the encounter in the courtroom. Simple facts like the veneer of social status, the occupation, or the brand of the defendants' cars tend to be sufficient for this purpose. This perceived lack of necessity might explain the seemingly total absence of a means investigation in the Thai criminal procedure. This absence is also noticeable, according to Chief Judge Three, even in a pre-sentence report where all relevant background details of the defendant are supposed to be presented.

This marginalised, or even non-existent, presence of financial information may have made the proposal for a systematic day fine sound alien and even objectionable to most participants. Nearly all of them across all factions of opinions disagreed with its adoption. Those already rejecting the relevance of financial information reverted to their 'double standard' comments and the undue punishment of the rich. When probed about the potential of alleviating suboptimal deterrence, they reasoned that this means-based fine would still over-punish and under-deter. As Judge D ruminated:

> [N]ormal rich people would not commit an offence. This is as I view it. About committing a crime, they would be more self-restrained. I believe they would think of their families. But those having no dependents, they would just go ahead with violations. There's nothing to lose. So, we punish them because of this grave reprehensibility. Should we change to punish them in proportion to their income? They are heavily reprehensible from their serious actions and a weak sense of inhibition. If they just pay the fine according to…to…Well, they would not feel sanctioned right? We punish to deter.

Inherent in this discussion is the assumption that people with well-to-do backgrounds tend to be more morally inhibited than their poorer counterparts due to their stronger social ties. Hence, an expensive fine based on their wealth would still be overly punitive. On the contrary, the small fine proportionate to the poor's limited means would still fail to address the real instigators of crimes while being overly lenient. Supportive of this thought, although on a slightly different ground, is the implicit belief in people's normative compliance and thus the lack of necessity for deterrence-maximising mechanisms. Judge F clearly stated this point:

> Well, I don't think there would be anyone who thinks that I am rich so I could be fined at whatever amount, I don't care. People having this kind of thought are probably in the

> minority. So, it shouldn't go so far as 'I am rich and I am going to drive while ignoring the traffic law. Just fine me. I don't care even if it's as high as a 10,000 baht'. It wouldn't be that extreme. But if the law would discriminate people based on wealth, it should not be right in principle.

Interestingly, most participants in the minority who agreed with the pertinence of means information also objected to the fundamentals of the systematic means-based fine. Apart from Judge K and Chief Judge Three who clearly endorsed the concept, all the rest in the minority were anxious about its mechanical applications. Many asserted that such wealth-based consideration has already been incorporated into the current practices and therefore there is no need for formalisation. Chief Judge Two even analogised the algorithmic nature of the system to justice rendered by artificial intelligence and criticised that such an approach 'would be stripped of the human spirits'. Eventually, their arguments converge on the preference for judges' flexible discretion as opposed to the potential rigidity of the new arrangement.

Unanimous doubts about the practicality and reliability of the day-fine system further cement its perceived infeasibility, at least in the near future, in the eyes of every participant – more on this in the subsequent sections on distrust and bureaucracy-centric habitus. Suffice for now to report that most participants appeared to be more satisfied with the current flat-rated approach as it seems to be 'the least bad' option. Although every one of them admitted that the imposed fines seldom reach the higher end of the sentencing range, let alone the maximum, they provided several justifications for this proclivity for underusing the fine.

The first reason was given by Chief Judge One who deliberated that the clustering of most fines at the intermediate level could be based on the striving to set an explainable standard. This participant believed that setting the fines in the middling range is an easy way to justify the setup standard. This line of reason is congruent with this same participant's earlier reply about the foundational criteria of the *yee-tok*. To Chief Judge One, the recommendations in the *yee-tok* must have originated from the collection of higher courts' sentences. To find the 'standard' amidst piles of sentencing decisions, the median had been chosen. In other words, this line of reason posits that the standard is the middle ground.

The second reason refers to judges' sympathy towards the criminal population, the majority of whom come from deprived backgrounds. This reason presumably lies behind many judges' willingness to reduce the fine for certain indigent defendants, if circumstances permit. It was also the reason given by several participating judges in maintaining the average meagre amount of the fine, asserting that they tried to avoid confinement considering defendants' inability to pay the costly fine.

The third reason was strongly articulated and supported by many participants and it is reasonably coherent with the first reason. According to Judge L, judges are 'trained to prepare for the future' where more aggravated incidents are to be expected. If the maximum is already exhausted in the 'most serious incident' by today's definition, judges will lack suitable options and proportionality will be undermined when more atrocious acts arise in the future. Therefore, to be cautious and prepared for this uncertainty, as Judge O put it, judges 'normally stay in the middle' and leave room for the future. This practice of caution is clear in the admission of Judge N – an appellate court judge – to still leaving room when sentencing the frequently charged offences, despite having decades of judicial experiences .

The fourth reason was alluded to by Chief Judge Three. Although this participant voiced the third reason, this mention-in-passing remark provides another useful insight. The argument of this fourth category is simply that habituation to the relatively low sentencing ranges in the pre-revised *Criminal Code* has estranged judges from the idea of a costly fine. This alienation is aggravated by the *yee-tok* that suppresses the fine only to the moderate level. As Judge G observed, even in a case such as a motorcycle theft – normally deemed a severe act of larceny – the fine recommended in the *yee-tok* still does not reach the higher end and the *yee-tok* of several courts do not recommend a fine at a maximum level. The normal surroundings of modest fines may confine judges' mentality accordingly; thus, resulting in the common intuition expressed in Judge M's reflection: '"We'd better stop at this degree", so the sentiment goes. Too high the fine will be against it'.

This lack of familiarity may partly explain why participating judges overlooked the fine at the higher end in favour of imprisonment. The phenomenon of custody eclipsing the lofty fine is as described by Judge H:

> [I]f the sanction is harsh, incarceration term would be long and a fine would be expensive and we normally won't impose the fine. Because when the offence is serious, we will skip to immediate incarceration.

Judge I also gave a similar opinion, commenting that 'If we are about to reach the high level of the fine, we might as well impose immediate imprisonment'.

This long-standing offence-based sentencing, yet with the low clustering of the fine and the insensitivity to defendants' financial ability, indicates the primacy of formal moral communication. Despite different readings of equality and proportionality, all participants prioritised a formally consistent penal message over the impacts. Indifference to the fine's effects is evident in the majority of participants' opinions because of their insistence on formal equality through the flat-rated treatment. Those in the minority, while understanding the disparity of the wealth-insensitive fine, were adamant in their offence-based approach; thus, similarly overlooking individualised proportionality and instrumental outcomes. It is hardly arguable that participants seriously held either retributive or deterrent goals when concerns for substantially equal and optimal outcomes were seemingly lacking. On the contrary, participants' preference for offence-based sentencing over individualised punishment reflects their tacit consensus in the formally expressive role of the fine.

Coinciding with Garland's (1991: 256) observation that punishment is intrinsically symbolic, the Thai fine is imposed to convey moral disapproval against wrongful conducts – albeit of petty or moderate degree due to the sanction's image of leniency. However, rather than also aiming at attaining just desert or utilitarian consequences, the fine simply serves to ritually restore the collective moral standards and the supposedly impaired social solidarity (see Garland, 1991: 29-34). This purely moral symbolism both explains and sustains the appeal of formal equality and the constant underuse of the fine's deterrent potential.

The primary symbolic purpose also seemingly underlies judges' reluctance to suspend the fine. Although participants opined that it is helpful in relaxing the rigidity of a disproportionate mandatory penalty, only one of them had ever thoughtfully usurped this benefit. According to Judge A, the defendant in one of this participant's sentenced cases built a house in violation of the building control law and faced the daily accumulated fine

amounting to 300,000 baht[81]. However, the said house was in fact a ramshackle shack and the defendant's financial status was poor. After having consulted the chief judge, Judge A suspended the 300,000 baht fine on the reason that '[a] fine is incongruent with the circumstances of the case'.

Flexibility aside, the suspended fine appears to be widely regarded as a non-penalty, regardless of a judge's authority to add probation conditions. To many participants, suspending the fine sends a message of non-punishment which may be appropriate in some cases but not where defendants are viewed as still deserving some form of penalty. As Judge L commented:

> [S]uspension of the fine…I think it's a good tool. But sometimes we want to punish [defendants]. It's just that the fine is truly excessive. If we suspend the fine, they won't be punished. We'll revert to the same question about why we must add a fine when we suspend imprisonment, won't we? So, if the law is flexible and gives us the power to reduce the fine below the minimum under the specified criteria, it would be better than suspending the fine and letting the defendants pay nothing.

This strong concern for a correct penal message perceivably causes confusion over the role of community service as elaborated in subsection 3.3; whether it is just a mode of fine enforcement or it is rather an alternative sanction. The resulting reasoning that disfavours community service in lieu of the fine, because of its 'non-economic' nature and its 'leniency', leaves intact the similarly 'non-economic' fine-default custody and its alleged disproportionality. This use of penal symbolism that cloaks indifference to harsh custodial treatment suggests the underpinning distrust and disparaging views against defendants, to be explained more below.

5. The Dominance of Distrust

The data reveal a pervasive distrust in the system which necessitates the ubiquity of control. Distrust permeates both horizontally and vertically. Horizontally, there seems to be peer distrust of judges who depart from the standard of the *yee-tok* and other conventional norms. Understandable concerns for incoherence aside, participants hinted that deviation is often perceived by fellow judges as a sign of corruption and malpractice.

[81] Roughly equivalent to £6,800.

To avoid being accused of corruption, judges are compelled to conform, as Judge G explained the need to defer to the *yee-tok*:

> To divert from the *yee-tok* might cause problems. It may induce suspicion of corruption or things like that. The suspicion might be false but diverting from the *yee-tok* compels us to provide excuses. That's why judges will have to conform to the pattern, to the standard of the *yee-tok*, despite the authority to use discretion otherwise. But this seeming opportunity [to exercise discretion] turns out to be limited or rather closed, so we have to first defer to the *yee-tok*.

To permit payment of the fine by instalment, conventions require the posting of a bond before defendants can be released. Bondless release is not encouraged for fear of defendants' disappearance and defaulting on the fine. With no form of security, judges may find themselves in an uncomfortable position, as Judge F elaborated:

> If [defendants on the bondless release] flee during this payment-seeking period, there will be questions asked about the non-conventionality of our decision. Traditionally, almost every time, we will issue the yellow writ of confinement upon non-payment. So, if I am the only one to release them and give them time to make payment rather than confining them for three or five days for just a small fine, I might…I might not be able to answer this question about why I didn't do as what other judges must have done.

The cultural pressure for conformity to the conventional standards places little trust in judges' incorruptibility and autonomous discretion. In a country that 'is notorious for corruption'[82], in Judge M's words, keeping clear of such an allegation is the way to preserve the judiciary's legitimacy through its claims of impartiality and virtue. Compliance with organisational norms would protect both judges and the judiciary from attacks of dishonesty, despite hindrance to discretionary autonomy. The over-preservation of the projected virtue creates the culture of fear and distrust where honest and reasonable non-conformity could still instigate doubts of malice.

[82] There is a prevailing belief in Thailand about the corruptibility of politicians and civil servants (Suntaree, 1990). This may be traced back to the conventional Thai value of reciprocation in a patron-client relationship, rampant in a hierarchically social order of Thailand. Oftentimes, this value is exploited in a veiled attempt to amass social capital and power (Persons, 2016). Cronyism is perceived to breed a preference for flexibility and adjustment over honesty and law-abiding. This view supports the accusation of Thai people's nepotistic rule-bending and proneness to corruption (Suntaree, 1990).

Vertically, distrust is more noticeable through judges' placing a priority on physical security. Judges' distrust of defendants is easily inferable from the practice that confines the still unconvicted defendants in the holding area the entire time and compels their presence in the hearing via remote technology. Casual conversations with court staff and court police officers imply the likelihood of defendants' escaping and hence the prevention measure. It seems that physical appearance in a trial courtroom poses great security risks in the typical mass processing of the *wain-chee* caseload. For security reasons, managing the daily bulk of defendants in a single high-security area is understandably safer and more administratively efficient. A live-link encounter is also perceived as a passably acceptable substitute for an in-person public hearing. As a result, the need for security overrides concerns about excessive restriction of pretrial liberty. The supremacy of security over individual liberty is a clear reflection of judges' deep distrust of defendants.

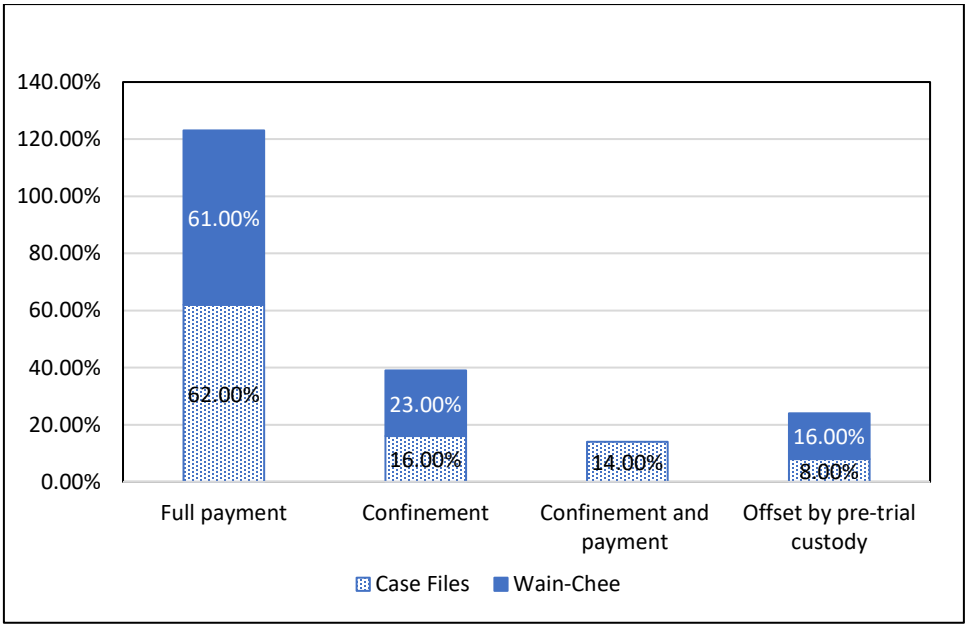
Another discernible indicator of distrust is judges' strong emphasis on absolute certainty of punishment. Activation of confinement upon incomplete payment on the *wain-chee* day is the ultimate guarantee of successful enforcement. At Court One, defendants were even handcuffed immediately post-sentence even though their relatives were hurrying to provide payment upstairs. The practices at Courts Two and Three were not so drastic but failing to complete payment by the court's closing hour triggered the same result of fine-default confinement. This instant presence of custody was apparently driven by the fear of fine default, as seen in Judge E's candid admission:

> If the fine is not paid, enforcement should be enforced against the assets. But in practice, if we wait until then, defendants may disappear into thin air. So, it turns out that they need to be detained first. Restriction of liberty takes priority. The practice is contrary to the law.

Implicit in Judge E's comment is the assumption that defendants can pay the fine but will abstain from making payment if given the chance. This stereotype of 'won't-pay' defendants is shared by many. Recall Judge F's and Judge U's echoing comments, quoted respectively in subsections 3.1 and 3.3 above, that fine default is the defendants' conscious choice because they have money – most likely from the proceeds of crime – but refuse to pay. Such a wilful default therefore justifies enforcement by custody.

The pre-judgement about defendants' positive financial ability is not totally groundless because, statistically, most defendants do pay the fine. Data of all sample courts from the first leg of fieldwork, before the policy promoting community service, indicate that full payment is the most common fine settlement method. The others are confinement, a stint of confinement followed by payment for the rest of the fine, and an offset by the time in pretrial custody. Figure 4.5 compares the frequency of these four settlement routes using the data from the sample case files and the observed *wain-chee*.

Figure 4.5 Methods of Fine Settlement in the Three Sample Courts in 2019



After the launch of the community service policy in 2020, the situation did not seem to significantly change at Court Two where the second leg of fieldwork took place. The below Table 4.2 presents various methods of settling the fine applied to participating defendants, according to which full payment still ranks the first.

Table 4.2 Non-Custodial Fine Settlement Methods Applied to Participating Defendants at Court Two (Between Mid-December 2020 and Early February 2021)

Non-Custodial Fine Settlement Methods	Number of Participants
Full payment	7
Provisional release for payment	1
Payment and community service	2
Community service	1
Offset by pretrial custody	3
Not applicable (imprisonment)	1
Total	15

Presuming the defendants' ability to pay, participating judges in all sample courts in 2019 concurred that defendants prefer making payment to community service which, to them, explains the rarity of the motion for community service. Judges gave multiple reasons for this 'preference', ranging from 'an inexpensive fine that they can afford to pay' (Judge H), the belief that defendants are 'too lazy to do the work' (Judge N), to the view that 'it costs defendants more to do community service…[c]onsidering the cost of transportation and daily expenses…' (Judge I). Judge I also deliberated that community service has become the defendants' strategy to buy time for payment while avoiding custody, explaining that '[n]o one carries on until the end of the service term' because '[w]hen finally they can pay the fine in full, they quit the work'. Despite being silent on defendants' bad motives, intrinsic in this observation is the defendants' rationality and their cost-benefit calculation – the basic elements of system exploitation if not rigorously monitored.

To many participating judges from Court Three in 2019, many defendants indeed exploit the system, judging from their ability to tender full payment after the motion for non-custodial enforcement was rejected. Judge L recounted, '[O]ur experiences have taught us that, despite our rejection [of defendants' motion for instalment payment], they could still come up with payment'. In 2021, Judge T from Court Two recounted having

the same experience with the motion for community service when serving at the other court. To these participants, defendants' sudden capacity of making payment, notwithstanding their claim of destitution when requesting for a non-custodial option, is the evidence of their deception and foreshadows fine default.

At first blush, this conclusion might seem reasonable. However, a veteran finance official of Court Three provided a useful insight drawn from having more proximate encounters with defendants and their relatives. According to this official, financially desperate defendants would strive to avoid custody by whatever means, including resorting to predatory loans. This observation is consistent with the findings of this study's second leg of fieldwork which portray defendants' plights and their frantic struggles against confinement. The reality from defendants' points of view will be the topic of the next chapter. As to judges' perception, their strong suspicion of defendants' 'gaming the system' seemingly lies behind their usual rejection of a motion for a non-custodial mode of enforcement. Having been 'tricked' multiple times, Judge L justified a rare approval of non-custodial alternatives on the untrustworthiness of defendants:

> The reason for our rejection to [the defendants'] requests is because of our past approvals often ended up in non-payment…It's because we used to allow them instalment payment but they defaulted and we had no securities at all…If we approve their motions, they will default…

The image of untrustworthy defendants was confirmed again in 2020, when Judge P released on bail indigent defendants who were fined for having breached the Covid-19 curfew. The release was intended to allow defendants the time to seek money for payment, and to prevent contagion in the overcrowded detention facility. Nonetheless, as this participant put it: 'About 90 percent of these people just go home and that's the end of it'. Post-released defendants, in Judge P's opinion, feel unloaded of their burden and careless about property enforcement because they hardly have any property to seize and sell. The outstanding money is also petty compared to court staff's added workload regarding property enforcement against 'disappearing' defendants. This extra burden aggravates the situation of defendants' reneging on their promise.

Unfortunately, the resulting broken trust gives judges the grounds to adopt cynicism as their guard against – in Chief Judge Three's word – the defendants' 'bluffing'. Judge

A's comment illustrates well this strong sentiment of distrust: 'Some defendants are so shrewd. They have money but just don't pay. When they see the opportunity, they just exploit it. We must be careful'.

Distrust of defendants is also behind most participating judges' rejection of the wealth-proportionate fine. Besides the argument on formal equality, scepticism on the credibility of defendants' wealth assessment is another strong ground of objection. Doubtful participants complained about the inadequacy of fact-check infrastructures. As Judge I explained:

> In practice, there are no clear numerical data in Thailand to be extracted for our means-based considerations. We can't rely on tax databases because people are good at avoiding taxes. It would be difficult to find indicators of richness and poverty and so the implementation would be difficult.

The ability to verify the reported information is utterly crucial in the minds of participants because defendants allegedly have good reasons to lie about their income and cheat the system. Absent this capacity, it would seem that the scheme is devised as if 'to have Thai people evade their liabilities', as Judge H ruminated. Furthermore, there is the possibility of corruption. Recall Judge M's declaration of Thailand as a corruption-infested country. The worry about the opportunity for exploitation is reflected in this participant's full quote: '[T]his country is notorious for corruption. The investigator might collude with the defendant and make up the report about the untruthfully low income'.

Interestingly, the degree of distrust tends to vary upon moral judgements of the offence. Distrust is likely to intensify in certain morally repugnant crimes and circumstances, such as the greed-driven and narcotic offences. The severe moral censure against the offences apparently extends to defendants of such charges with the tacit labelling of their irredeemability and moral unworthiness. These condemnable character traits seem to equate, in participants' minds, to deviousness and a dangerous propensity for exploiting the system. This deepened sense of distrust is resonated in participants' strong conviction that defendants of this type will deliberately default. The consequence is their usual denial of motions for non-custodial options and their unwillingness to explain about these alternatives, as reported in the subsection 3.3. By contrast, where the offences are less serious and less stigmatised, chances are that

judges' distrust may subside to the extent that they may be more willing to be sympathetic and trusting.

Take a customs tax offence as an example. According to Judge L who had previously ordered the alternative measure in one such case, the defendant had smuggled in garlic and fish from neighbouring Myanmar. As a consequence, he was subject to a fine of multifold value of the due import customs tax; thereby, resulting in the fine of up to 100,000 baht[83] – the amount Judge L considered excessive. Admitting the necessity for careful deliberation because of such an expensive fine, Judge L approved payment by instalment with some money to be paid upfront. It is remarkably striking that this undeniably profit-driven act of tax evasion was not considered serious and the perpetrator was not deemed 'shrewd' and 'bluffing'. The considerable amount of an outstanding fine here did not raise concerns for the likely default like in drug-related cases. Interestingly, Judge L explained the disapproval of alternative measures in a drug driving offence on the grounds that its common 15,000 baht[84] fine was in the defendant's payment capacity. This explanation alluded that the 100,000-baht customs fine was beyond the defendant's reach which justified the approval for instalment payment.

In addition to moral reprehensibility, distrust is substantially aggravated by the inadequacy of mechanisms for property enforcement. Distrust and administrative burdens or impracticality often go hand-in-hand in many judges' justifications for their arguably overharsh and discriminatory sentences. Administrative self-centrism, together with morally influenced distrust, present a powerful proclivity for mechanical processing over humanised and individualised approach. Entrenched in the system that marginalises empathy, judges appear to adopt a moralistic and essentialist worldview that rationalises indifference towards their ethically questionable practices.

6. The Bureaucracy-Centric Habitus

Habitus is the term coined by Bourdieu (1977: 78) to signify 'the durably installed generative principle of regulated improvisations [which] produces practices'. It refers to the culturally-derived values, attitudes, and dispositions that prompt an unconscious and

[83] Roughly equivalent to £2,270.

[84] Roughly equivalent to £340.

intuitive response to a particular problem or context. The range of the person's possible reactions, common-sensical as they may seem, is largely and subliminally guided by sociocultural conditions to which that person is exposed (Webb, Schirato, and Danaher, 2002: 36–39). Contingent on the contexts, habitus is 'unthinking and unreflective' but it is 'neither natural nor inevitable' (Hutton, 2006: 162). Therefore, although improvised and strategic, judges' decision-making is patterned by the habitus or the socially construct sets of worldview, values, and preferences (Hutton, 2006: 162–163). In Thai judges' case, the data suggest that their habitus centres on the judiciary's bureaucratic interests and administrative advantages to their and their colleagues' workflow.

Inundated everyday with seemingly incessant caseload, judges are contextually bound to prioritise measurable efficiency over other abstract values. Efficiently processing a massive bulk of cases demands consistency and speed. The *yee-tok* serves both purposes well because, as Chief Judge Three explained, it guides the making of each sentence 'to be coherent with the standard' and it 'speed[s] up [judges'] work' by saving time from case-by-case deliberation. The *yee-tok* is just one strategy, and the cursory and speedy *wain-chee* hearing is another – during which judges are generally passive in performing their task. These strategies explain the absence of a means-enquiry and the silence on alternatives to paying the fine. This passive communication has persisted after the 2017 judicial regulation requiring judges' proactivity[85] and, particularly, even after the 2020 judiciary's policy to promote community service instead of fine-default custody. Judges acknowledged their non-compliance but they defended their practices avidly, arguing the impracticality of the requirements amidst the busy *wain-chee*. Adding extra minutes for such active communication would add an extra workload to the already constrained process. This has been the case since the early days of the said regulation, as Judge I recounted:

> Initially, when this regulation had just come out, we complied with it. But as time went by, with the caseload. Well, at the *wain-chee*, if you see the works at the *wain-chee*, cases flood right in and there's no chance to have this enquiry [about financial inability]…

[85] *The Judiciary's 2017 Regulation on Community Service*.

Other participants similarly recollected the early enthusiastic conformity of the courts and then the plunging interest. Judge D mentioned that the practices (then pre-2020 community service policy) swung back to the state of passivity and indifference:

> Now it depends on the chance. If the defendant is clueless and doesn't bring up the subject, we don't tell him, see? Because it increases the workload…[S]ome courts nowadays, like I said, they are overloaded so they abstain from giving this information; hence, the current low-key status of community service…

The passivity of the court was considered normal; thus, the estrangement of judicial conventions to the idea of active enquiry and communication. According to judge M, interviewed pre-2020 policy, 'Courts are not active in their works. They are passive and consider whatever is presented to them'. Judges perceive they have a duty only up to the point when the sentence is announced and then, as Judge M declared, 'it is no longer our duty' and, as Judge N asserted, '[t]he execution [of sanctions] is for the officials to manage'. Post-2020 community service policy, this perception persisted, particularly evidently in the comment of Judge T, who was strongly opposed to the thought of the court overseeing the enforcement of the fine:

> We only decide on the guilt and the degree of the sentences…[O]ur jobs are separated from the execution of sanctions, normally belonging to the Department of Corrections…It's not that judges have to concern themselves with every issue…

The intrinsic logic of the division of labour between judicial and administrative works backed Judge O's recommendation, given pre-2020 community service policy, that court executives should 'prod relevant officials to do more active works, informing people of their rights'; a proposal coincidentally shared by many post-2020 policy participants. It also underlay some participants' pre-2020 policy mistaken belief that there were information posters on this matter in the holding cell and the public-facing area of the court. It also enabled them to shift this task of detailed communication to the officials. Although explaining the 500-baht conversion rate to the defendants, Judge H in a pre-2020 policy interview admitted to withholding explanation on the alternatives and gave reasons for this practice:

> Partly why I don't explain is because defendants have to file a motion [for the alternative enforcement]…[a]nd there are a lot of details to fill out…A verbal conversation won't do

> because all these details must come in a form of a written document, a motion rather. So, I think that when they cannot pay the fine, the officials downstairs would notify them.

Judge H reiterated the justification that 'an explanation will take a long time', and that '[i]f the defendants need it, they will have to ask…court officials'. Notice the shift of responsibility further to the defendants. This was the stance taken by Judge J, while proclaiming pre 2020-policy that 'it should be [defendants'] business, not the court's, to keep protecting every bit of their rights'. In Judge J's view, the fined defendants should be the ones 'striving for the avoidance of default confinement'. By leaving active engagement to the impacted party, the system would be more effective since the court would be directly notified of the defendants' feasible alternatives by those who know best about 'their own preference about what and how they want to do'. Post-2020 policy, this line of thought remained strong in the mind of Judge T:

> [T]here's no need for us to take care of or protect the offenders. It seems like we are pampering the offenders without taking into account what the victims may think.

Judges, however, may break away from this dominant passivity on an ad hoc basis. In spite of the allegedly overwhelming workload, if they sense that the fine is excessive or the circumstances merit their sympathy, they may break their silence. An elderly defendant charged with dangerous driving that results in physical injuries is, for instance, considered warranting their effort. Judge I openly declared that:

> For some people that I don't want to incarcerate, I will suspend the [prison] sentence and also ask if they can pay the fine…Sometimes I even talk to defendants before reducing the fine.

By contrast, recall judges' passive antagonism against defendants in narcotic offences. Judge I was explicit in the remark, already quoted in subsection 3.3, about the decision to 'pay no attention', and the attitude of 'not even willing to ask them questions'. The hostility against these 'unworthy' lawbreakers and general distrust of defendants appear to underpin judges' embrace of confinement as the default mode of enforcement for fine default, despite their acknowledgement of proportionality challenges. Judge E, although believing that confinement 'is no different from imprisonment', conceded that defendants 'need to be detained first' lest they 'may disappear into thin air'. Likewise,

Judge D whose comment has been quoted at length in subsection 3.2, attributed the primacy of confinement to the complexity of property enforcement.

The complexity referred to herein is the need to investigate and later seize the defendant's properties for a forced sale – the task participants agreed that it imposes substantial burdens on the understaffed courts. Judge L gave a vivid account of the situation:

> Seizing and enforcing on properties…is the problem [because] we lack operating personnel to take the bailiff to the property to be seized**.** Sometimes, some defendants have committed the crime in this area but their homes are elsewhere**.** So, it has become our burden to investigate about their possessions**.** We**'**ve dealt a lot with drug driving cases. Some of those defendants live elsewhere; they just passed by this area. If we impose on them the fine and suppose they live in other provinces, it would be our burden to track their possessions. We don**'**t have enough staff at this court.

Although the 2016 amendment of *the Criminal Code* added Section 29/1 that authorises both the court and the prosecutor's office in performing the task, Judge D explained why this addition still has not made the measure more appealing to judges:

> [I]n practice we seldom do [property enforcement]. Things to understand about coordinating between our organisation and the public prosecution office are that, first, they also perceive themselves to be loaded with works and duties. And property enforcement, honestly speaking, the prosecutors do not want to do it...This is despite the law's clear texts about how to perform the task. It has then evolved into the stance where each court allows interim confinement. But then, even after the lapse of 30 days that the court must issue the writ of property enforcement and send it to the prosecutor, it turns out that no one cares to do it. There's no one to perform the legal steps [pertaining to property enforcement].

To seriously undertake property enforcement is impracticable for the courts. As Judge D continued with the following elaboration:

> Actually, this task is heavy and the workload is immense, judging from the number of sentences we pass each day. Most of *wain-chee* sentences are fines. Think about it. If we have to issue the writ of property enforcement to the prosecutor for each fine sentence whose 30 days [payment period] has lapsed, court staff must be complaining. Just the

> current workload is already too much. If they have to carry this property enforcement burden…This is the reality of court practices.

Because the certainty of punishment is obstructed by such administrative difficulties, judges also often deny a motion for non-custodial alternatives for fear of non-compliance and the subsequent failure to settle the fine by property enforcement. Distrust of defendants and defective enforcement mechanisms are jointly behind judges' ultra risk-aversion. Revisit Judge L's comment in the above section 5 regarding past experiences of defendants defaulting after an approval of instalment payment. Besides distrust, Judge L's equally powerful argument for disapproving non-custodial methods refers to problems of property enforcement that enable defendants to 'walk free' and especially increase court staff's workload:

> [O]ur past approvals [of instalment payment] often ended up in non-payment and hence our recurrent problem of our lack of capacity in property enforcement. Who will be the one to seize and sell their properties for us?…We used to encounter this situation and [defaulting after the motion's approval] would create more work for us, wouldn't it? But if we deny the motion outright, we won't have to be bothered with property enforcement. Otherwise, we will have to carry out property seizure for the outstanding fines. Another task for the matter that should have already ended.

Significant concerns over defective implementation of non-custodial methods re-appear in participants' criticisms of community service to support their underuse of the measure. Participants expressed a lack of confidence in the monitoring capacity of probation officials. Chief Judge One noted, pre-2020 community service policy, that the probation office is 'not quite ready' for the task, judging from the probation officers' often tardy submission of pre-sentence reports. Post-2020 policy, Judge V voiced a worry that too many hours of community service due to an exorbitant fine would load too tremendous a supervisory burden onto probation officers. Unease about the possibly undermanned supervision, Judge V was rather more inclined to refuse to convert the fine to months of community service, as reflected in the following opinion: '[I]t's easy for us to order the measure but those enforcing our order may face difficulties. Isn't it easier to confine defendants for having defaulted?'.

Also, post-2020 community service policy, Judge W expressed doubts about the probation office's competence in sufficiently finding appropriate works to assign to

defendants. Based on personal observations, this participant commented, 'most of the time the works are sweeping the floor, cleaning the drains, or something of this sort'. Following this train of thought, variety deficit regarding available works is the major defect of the probation service's performance. The Department of Probation is well aware of this scepticism and attributes this 'under-performance' rather to most defendants' unqualified characters and unskilled abilities[86]. Having studied the still too few statistics of the pilot courts for the community service promoting policy, Judge X from the Office of the Judiciary seemingly agreed with the Department of Probation's assertion and shared its intention to expand the scope of the 'work list' through agreements with partner organisations. Nevertheless, these endeavours and progresses were perceivably unknown to the participating trial judges.

The shortcomings of non-custodial imperatives and the apparently 'smooth' flow of the flat-rated sentencing routines naturally triggered participants' cynicism against proposals for a means-based system, such as the European day fine. Their experiences with the tiring and complex business of asset investigation for enforcement understandably spawned unanimous doubts on the practicality of the means investigation process to be installed for the day fine. Since this process is pre-sentence and at the heart of the busy and speedy *wain-chee*, it is justifiable for participants to reject the day fine on grounds of undue delay – in addition to the questionable reliability of the means report and the debatable implication for equality. As Chief Judge One pointed out:

> Problems will ensue about the sources of this information regarding the assets of the defendants. This may be time-consuming and may hold up the sentencing process, since now judges have to wait for the information about each defendant's income in order to tailor the fine accordingly.

The functioning of the wealth-insensitive and custody-prone approach facilitates habituation to the status-quo and also inertia for judges to update themselves on the law's developments and policy initiatives. Judge V commented that judges work so 'routinely' and openly admitted to having learnt how to proceed with a community service motion on the spot when forced on duty to consider it:

[86] Interview with two probation officers officially assigned for this study on 17 December 2020.

> Actually, we will know about [the new law and the new policy] when we have to implement them, don't we? Only then will we search for information. There are so many things to know and to remember. Sometimes, I may have read about them but I didn't remember. It's difficult to say.

Other participants interviewed post-community service policy seemed to be similarly unenthusiastic about policy updates. Judge S justified being unable to give confident comments about this policy on having sentenced only the non-diversified bulk of cases. Likewise, Judge U confessed to having little knowledge about it.

The 'novelty' of community service and also of suspension of the fine appeared to put some participants in an uncomfortable position where they had to navigate in unfamiliar and still uncertain terrains. This led to their recommendations in favour of standardisation of discretion and routines which would limit their own discretionary power. To them, clarity and certainty are utmost important because, as Judge R explained, '[n]either the policy nor the recommendation can save the judge's neck [if things go wrong]'. Habituation does not only sustain inertia to changes, it also appears to instigate demands for routinisation of such changes.

Participants' seeming unwillingness to welcome changes is a result of their bureaucracy-centric habitus that claims the inevitability of the existing system and prevents imagination for possible alternatives. This habitus also perpetuates a self-centric worldview that emphasises merely the judiciary's practical preferences and excludes feedback particularly from those directly subject to courts' practices, i.e., defendants. Therefore, under the influence of this contextual force, judges are pragmatic yet tend to be overly conservative and ultra risk-averse. Indifference naturally ensues towards the suboptimal effects of the habituated routines. Any proposed change, absent the robust and continuous push, will be likely languidly received, as Chief Judge Three observed that judges 'will just carry on doing what they normally do'.

Conclusion

The fine in the Thai criminal justice system is found in this study to have a primary purpose of moral communication. However, the fine appears to simply signal the inevitability of punishment following a crime, rather than also affecting instrumental or desert consequences. Formal equality dictates the fine's operation and the influence of legal formalism impedes many judges from grasping the substantive nuances of equality of impact. The fine appears to have multiple and at times ambivalent meanings regarding it being a sanction or being a debt. As a sanction, it is insignificant relative to imprisonment because of its moral 'misfit' in the terrain beyond petty offences. As a debt, capitalistic calculation takes over moral concerns for proportionality. However, these meanings are fluid and both may intermingle when judges decide whether to convert the fine to community service. The dominant moralistic reasoning, particularly regarding highly moralised crimes, forms the stereotype of defendants as untrustworthy. The resulting distrust of defendants make judges reluctant to depart from their wealth-insensitive and custody-prone practices. Being pragmatic and efficiency-centric, judges find alternative measures defective and infested with administrative burdens. Therefore, they are satisfied with the existing fine enforcement routines that guarantee punishment with the least effort, despite criticisms about undesirable penal outcomes.

Prominent in the fining practices described in this chapter is indifference to its apparent disproportionate and discriminatory treatments, and to the marginalisation of defendants. Such indifference is likely the product of the common threads that underpin the above-described fining characteristics; i.e., formalism, bureaucracy-centric preferences, and a moralistic and essentialist worldview. These three underpinning forces arguably and powerfully mould how judges assume and interpret criminal justice events to the extent that judges' cognitive frames become too rigid. As a result, such rigid framing precludes judges from noticing ethical challenges to their endorsed practices; hence, indifference. Chapter 5 will describe the *wain-chee* experiences through the eyes of defendants and reveal how far different they were between the rigid perception of judges' upstairs and the penal sensemaking of defendants held downstairs. Chapter 6 will then provide a detailed analysis of judges' rigid framing and its conditions that contribute to judges' indifference.

Chapter 5: Defendants' Experiences of Fining Practices

Introduction

This chapter aims to illustrate defendants' perceptions of their experiences in the criminal justice system, as opposed to the judges' perspectives provided in the preceding chapter. Because of the small sample size of defendants (N = 15), the views presented here may not represent the majority of defendants undergoing the same criminal justice journey in Thailand. However, they give a preliminary yet valuable picture of a field which is still vastly under-researched. Moreover, the data's contrasting narratives to conventional beliefs in Thailand merit calls for serious reflections and scrutiny of status-quo assumptions and practices.

For a thick description and full understanding of defendants' lived experiences, narrative methods have been utilised both in the collection and presentation of the data. This chapter begins with a composite narrative of a defendant's journey in a *wain-chee* or a daily arraignment-cum-sentencing process for a broad overview. It continues with aspects of downstairs experiences, in comparison to the judges' presuppositions, starting from the marginalisation of defendants, the various pains along the chain of the process, to compliance and the perceptions of legitimacy. It ends with the analysis of defendants' docility and argues that symbolic violence is the likely reason. Because of it, defendants uncritically defer to the system's mistreatments and are unconsciously complicit in their own plights. This complicity induced by symbolic violence projects a powerful illusion of legitimacy that in turn sustains judges' indifference to their practices that cause defendants' unnecessary hardships.

1. Amnat's Story: A Composite Narrative of a Defendant's Journey

In order to understand defendants' lived experiences of the criminal justice system, it is imperative to first follow their entire journey. However, with the richness and diversity of data from 15 defendants in this study, it would be unjust and insufficient to present the demonstration narrative of the journey from just one individual's point of view. Additionally, because variations in narrated experiences recurred in some defendants' accounts, it is possible to group together common variations of many defendants'

narratives. The final product is a composite story that will better encapsulate the overall experiences as lived through and felt by most defendants participating in this research.

Using a composite narrative in qualitative research is not new. Willis (2019) argues for the benefit of a composite account in capturing the essence of participants' rich and complex perspectives in just one representative presentation. A composite story can represent the transcendent 'emotional truths' that go beyond a single character's narrative (Orbach, 1999: 196–197). Moreover, the method is apt to convey the wholeness of experiences for full understandings of the contexts and increased empathy (Wertz *et al*., 2011).

Below is a composite narrative told through the eyes of a fictional character. His story is a combination of common variations of defendants' experiences. Although hybridised, all situations portrayed in the story were real as undergone by one or several defendants. For details about each defendant, see Appendix D.

Amnat's Story

Amnat was a 34-year-old employee of a suburban petrol station. He lived on a daily wage just above the legal minimum with his wife and two young sons. Despite his small income and a family of his own, Amnat kept his financial conditions stable by living with his parents and by doing extra jobs at the petrol station.

The latest extra job undertaken by Amnat was mowing the petrol station's lawn, a heavily taxing work, particularly because he had to do it just after he had finished his night shift. After persevering for a week, Amnat's body started to give up to extreme fatigue. Disappointed by the weak effect of caffeine and energy-boosting drinks, Amnat resorted to methamphetamine pills to help him stay awake for work.

This was not the first time he tried this drug but it was the first time after years of being clean. He first used it when he worked as a construction worker several years ago. He found it very useful in keeping him energised when he had to work day and night. Knowing its debilitating downsides, Amnat maintained his consumption to a moderate degree and managed to stay unaddicted. However, on a fateful day, he was stopped

and searched by a patrolling police officer for being 'suspicious looking'. The officer found five pills Amnat had just bought for work. Consequently, he was arrested for illegal possession of first-class narcotic drugs and then taken to the police station. Amnat spent the first night in the police cell and some 40 nights in a remand prison because his family could not bail him in time. Later, Amnat told them not to post bail, after finding prison life tolerable with help from a fellow inmate who was a long-time acquaintance. More importantly, he learned from other prisoners that if he was held to a maximum period of pretrial custody, his prospective sentence would be 'nothing short of acquittal'. Although he was not eventually acquitted, he was merely subject to probation and a fine which had been fully offset by his time in pretrial detention. In fact, the fine calculable from his time on remand was much higher than the fine imposed on him. Amnat did not think it was unfair that he seemed to have been detained longer than necessary. Actually, his mind did not even register his own sentence because the judge in a remote hearing read it to him so fast and he was too nervous to ask anything. He simply relied on others to tell him what to do and he obediently complied until all was over. Thereafter, he stayed clean until this case.

Like his previous case, this time he was stopped and searched by a patrolling police officer. Six methamphetamine pills were found on him and he was again taken to the police station and put on the same charge as before. He had to spend a night in a police cell; all the while stressed and depressed. Missing his family, he was terribly fearful of going to jail. Seeing the worried faces of his wife and sons who came to visit him, he repented his decision of resorting to drugs and blamed himself for what had happened. Before he slept away his stress, he made up his mind to stay away from drugs for good.

The next morning, he was brought out of the cell to talk to the judge via a video-link. He remembered vaguely the judge asked whether he had committed the crime to which he admitted. After a brief hearing, Amnat asked the officer for permission to use his mobile phone which had been stored away before he went inside the cell. Permission was granted and Amnat dialed his mother's number to check the progress of his bail application at the court. When he hung up, Amnat's cell mate asked to borrow the

phone for the same purpose, explaining he had no credit left for outgoing calls. When the officer gave permission, Amnat obliged.

About an hour later, his mother arrived at the police station and he was bailed this time. Amnat did not know much about the bail process. He only knew that his mother needed to file a motion at the court and deposit some cash and the judge would issue an order. In his case, the deposit was 5,000 baht[87] *which his mother had borrowed from a local usurer at a 10 percent monthly interest rate. He was uncertain whether this money would be refunded so he was helping his mother repay this loan.*

Once he was released, Amnat was disinclined to go out except for going to work. He felt ashamed and wary of being badmouthed because of his arrest. Fortunately, people in his inner circle understood and gave him support. However, throughout approximately two months of waiting for his court date, he was very worried that he might go to prison this time because of his past conviction. Amnat asked around his circle of ex-convict friends and searched the Internet trying to discover his likely sentence. However, answers conflicted and many people shared experiences that did not resemble his case. Therefore, in his mind, there was a worrying 50/50 percent chance that he would be incarcerated. In a preferable case of suspended imprisonment and a fine, the probable sum fell somewhere between 20,000 and 100,000 baht[88] *– either end was impossible for him and he also speculated about being jailed for not paying it. This made Amnat ponder about saving some money for his family in case he had to be 'away'. This plan unfortunately proved infeasible because necessities kept appearing and depleted his tiny earnings. He then tried to shove thoughts about his case aside but to no avail. For the entire week before his court date, Amnat was aching with anxieties about the uncertainty of his fate and the grim probability of being imprisoned. During this ordeal of waiting, Amnat never thought of consulting or hiring a lawyer, viewing it as expensive and unnecessary since he admitted to his crime and was willing to face the music.*

[87] Roughly equivalent to £110.

[88] Roughly equivalent to £450 - £2,270.

On the day booked for his court appearance, Amnat came to court with his mother at about 9 am. He reported himself at the public relations service counter. When asked about his intended plea, he answered 'guilty'. The official directed him to walk to the holding area in the court basement. Amnat followed the court's security guard while his mother would wait out in the public area.

Down to the basement level, Amnat was ushered inside a gated area, told to report himself again to the police officers at the desk and to sit on a bench in a room separate from the cells in which people in a prison uniform were held. No one informed him for what he was waiting, although he recalled from his past experience that he was waiting for the judge. However, like his previous time, no one told him how long the wait would be and what was going on upstairs. Ignorant and having nothing to do, Amnat waited with mixed feelings between anxiety and boredom.

Finally, after having waited for almost two hours, the police officer called him and other people waiting inside the same room to walk over in front of a television screen. The judge appeared on the screen sitting at his office desk without his robe on. Amnat watched nervously as the judge seemed to reprimand a man who answered 'yes' to the question whether he wanted a lawyer even though the man was pleading guilty. After the 'reprimand', the man waived his right to a lawyer, pleaded guilty, listened to his sentence, and retreated as the judge dismissed him.

Then the judge called out Amnat's name and asked if he needed a lawyer. Cautioned by what had just happened and never seeing the point of appointing a legal counsellor, he replied no. The judge read aloud the prosecutor's accusation and Amnat's previous conviction before asking how he would plead. Amnat pleaded guilty and confirmed his criminal record. The judge read the sentence. Applying a 'guilty-plea discount', the judge halved Amnat's prison sentence, suspended it for two years, subjected him to probation conditions, and imposed a halved fine of 14,000 baht[89]. Dazed and nervous, Amnat could not follow the details of his sentence. Nevertheless, he registered that his imprisonment was suspended; that he was put under probation; and that the fine was 14,000 baht. The judge asked whether Amnat had money to pay the fine, to which he

[89] Roughly equivalent to £320.

candidly answered no. The judge told him to ask his relatives to pay on his behalf or else he would be held to offset the fine. The judge then dismissed Amnat, ending the inquiry less than a minute.

Although relieved by not having to serve a prison sentence, Amnat became very anxious about how he could pay his fine. The police officer urged him to phone his relatives. Amnat told the officer that his mobile phone was with his mother and asked if he could go upstairs to speak to her in person. The officer told him that he could not leave the area unless the fine was fully paid. To solve the communication problem, the officer asked the name of Amnat's mother, left, and shortly returned with his mobile phone. Amnat was given time outside the cell to work his way towards paying the fine. Amnat consulted his mother on the phone and they agreed that they would pay part of the fine from the 5,000-baht bail deposit. Nevertheless, the remaining 9,000 baht was still to be paid and no one in his family had this amount of savings. They then thought about borrowing from a local usurer who might charge them up to 20 percent monthly interest rate. Although realising this small-scale usurer might not have the cash ready on that day, Amnat and his mother had no other choice but to try contacting this usurer, with no success so far. Half an hour passed and the police officer asked for situation update. After hearing that there was no prospect of full payment yet, the officer told Amnat that he must now wait in the cell. He would be taken to the detention facility in the evening, unless his fine was fully paid before the court's closing time.

There are two alternate endings to Amnat's story. One is his eventually being held in the detention facility for 'fine default'. The other is his release either because his mother could borrow instant cash and pay the fine; or because Amnat finally realised that he could request for community service instead and was successful with his request. Normally, Amnat would know his community service option if he saw a written announcement about the scheme in the holding area. However, this never happened to any participating defendants at Court Two, not even those in a predicament like Amnat. Although presented in four observable spots (see Figure 4.1(b) in Chapter 4), no participants paid attention to any such A4-sized posters. Nor did they seem to even notice their presences. Without verbal communication about the non-custodial alternative to payment as seen in the story so far, it is highly improbable that Amnat would suddenly

know about it on his own. Therefore, a typical ending for Amnat would be either his release because of timely payment or 'paying' the fine with his liberty.

Nevertheless, participants in this study were in a peculiar situation where I, an 'outsider'/ researcher, followed them along their entire journey. Judging it ethically appropriate to inform them of their right, I showed participants in Amnat's shoes one of the posters, urged them to read it, and answered some of their questions[90]. Because of this intervention, I could observe the unorthodox ending to Amnat's story which continues below.

Amnat's Story (Continued)

Amnat suddenly realised that he could avoid custody by doing community service and decided to take his chance. He told the police officer of his intention and asked how to file a motion. The officer seemed bewildered and insisted on ushering Amnat into the cell regardless. Amnat persisted and showed the officer the court information poster about community service. Finally, the officer told Amnat to phone his mother upstairs to contact the public relations counter and let Amnat wait outside the cell for the time being.

It was noon. Amnat was not allowed to leave for lunch. Nor was outside food or drink permitted inside the area; only water was available in a cooler. Thus, Amnat must put up with his hunger, in addition to his stress and anxiety.

About an hour later, the public relations official brought two forms for Amnat to fill and immediately left. One was a two-paged standard form for a community service motion, and the other was a ten-paged personal record for use in consideration of his motion. The forms comprised multiple-choice questions and occasional blanks to fill in. However, they were written in a formal language and a bureaucratic style which may

[90] There were five participants, out of the total 15, who expressed concerns post-hearing about paying their fines; hence my 'intervention'. Three out of five decided to file for community service and were successful with their motions. The other two abstained, trusting the ability of their friends or relatives in seeking money for payment. Eventually, their fines were timely paid and they were all released. Chapter 3 discusses ethical aspects of this intervention.

prove difficult for the under-educated and the illiterate. Fortunately for Amnat, as a graduate from a local vocational college, he was not totally alien to bureaucratic paperwork and could complete the forms on his own. It took him 20 minutes to finish. He submitted the completed forms to the police officer and waited for the result.

Ten minutes after submission, the police officer came back and rebuked him for not completing the forms. The officer pointed to Amnat one question after another that was still unanswered and left. Amnat took almost 10 minutes to make sure he answered every single question. He submitted the forms again and there was no problem this time.

About two hours later, the police officer brought another document in and told Amnat to undersign. It was also a motion for community service. However, unlike the one he had just submitted with ticked boxes, this motion was written in a prose detailing his sentence, his fine after deducting his bail money and the time in pretrial custody, and his request for community service because of inability to pay. Clearly, it was written by the official on his behalf and Amnat undersigned without posing questions. Nonetheless, the necessity of this motion was unclear to him, since it also confirmed that he could not pay the outstanding fine and requested community service like the preceding forms.

Bored but hopeful, Amnat waited for an hour before the good news arrived. The police officer gave him several documents, told him to report at the adjacent probation office and to hand over the papers he had just received to the probation officer, and let him out.

Amnat walked out from the holding area and followed direction to the nearby probation office. He had spent almost six hours in the court basement. He would spend another half-hour to an hour doing the first interview with the probation officer. He was tired and hungry but he was finally truly relieved to leave the court and all was good.

Amnat's story gives an overview of a defendant's journey in the Thai criminal procedure. We can at least make three observations from the above account. First, the procedure from the start to the finish kept Amnat in the dark and gave merely instructions instead of information that could have helped him well prepared for his court experience. Second, the system was painful from the very beginning, from the recursive use of a locked-up facility to the dearth of accessibility to helpful legal information. Third, Amnat was compliant and never questioned about the justifiability or legitimacy of his being subject to such painful conditions. These three points are key in the data about defendants who participated in this research. The following sections explain each observation point in details.

2. Stupefied and Marginalised Defendants

In contrast to judges' assumptions in the preceding chapter, defendants in this study were all dumbfounded and sidelined by the system. The majority of them were system-illiterate, confusedly compliant, and enduring illiteracy-induced anxiety. Even those who had some knowledge about the process were often taken aback by the unexpected. They admitted the unpredictability of their fate and harboured apprehension. The workings of the entire system were unintelligible to all defendants alike. However, the authorities offered no active aid to clarify the process or manage their expectations and preparations. Also too timid or ignorant to ask for help, defendants were thus usually baffled and clumsily struggling through their ordeals. These under-informed defendants were by no means system-competent to confidently self-navigate within the procedural maze. Neither were they capable of 'gaming the system' as worriedly believed by the judges.

Participating defendants recounted a similar story of being taken to the police station after the arrest, being processed by the officers, and being taken to the police cells without much information conveyed to them. The officers merely told defendants to contact their family members or relatives to bail them out. Nevertheless, even if their loved ones rushed to their rescue not long after the arrest, nearly all defendants spent at least a night in the police cell. The only one that got in and out within a day still spent about 10 to 12 hours behind bars. Processing bail took this long because the police officers always advised defendants' relatives that bail application be filed with the court, despite the police too having the power to grant bail at their stage. This advice was

normally given without explanations and it seemed the only option available to most defendants. Only two defendants were given the reasons behind the advice. Ot (pronounced Odd), aged 34, was explained that the court generally set money bail at a lower rate than the police for his charge, which was uploading obscene materials onto the computer system. On the other hand, 21-year-old Tong was told his bail application was unlikely to be successful at the police station because of his offence involving illegal possession of cannabis[91].

Unaware about how bail applications were processed, defendants relied on information the police officers gave them. Nonetheless, this information was at times inaccurate and outdated. Tong remembered one police officer confidently telling him that the court opened for only half a day on Saturday, implying the low probability of posting bail in time and the greater likelihood of his being sent to a remand prison. However, his father and his aunt were at the court on Saturday afternoon and successfully bailed him out. Tong's bail was made in November 2020, about a year after the judicial regulation concerning the full-day opening of the court for bail consideration on public holidays[92]. Likewise, the officer advised 51-year-old Bang and his son that 10,000–20,000 baht was required to post bail for his methamphetamine possession charge. In fact, merely 5,000-baht cash was deposited for his bail at the court. This rate coincided with the judiciary's yearlong campaign to equalise and demonetise bail, officially starting with the President of the Supreme Court's recommendation on expanding accessibility to bail in 2019[93]. It was also consistent with the new standardised bail schedule recommended by the President of the Supreme Court on 4 December 2020[94], just a few weeks after Bang's bail.

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[91] If Tong had been arrested after 9 June 2022, he would not have been arrested or prosecuted because raw cannabis and cannabis extracts that meet specified requirements have been henceforth removed from the list of illegal drugs, according to the Proclamation of the Health Ministry of Thailand dated 8 February 2022.

[92] *Regulation of the Judiciary on the Opening of Courts and the Consideration of Bail Applications on Public Holidays BE 2562 (AD 2019).*

[93] *Recommendation of the President of the Supreme Court on the Extension of Opportunities to Invoke the Right to Bail BE 2562 (AD 2019).*

[94] *Recommendation of the President of the Supreme Court on the Central Standard of Bail Decisions BE 2563 (AD 2020).*

Certain police officers also seemed to abuse their power and exploit defendants' ignorance. Section 87 of *the Criminal Procedure Code* authorises up to 48 hours of arrestees being held in police custody before the court's remand hearing, after which bail applications could be filed if defendants are remanded in custody. This 48-hour window by no means restricts the police from filing for remand detention before the expiry of their custodial power. In most cases, this hearing and the subsequent bail process could commence within or less than 24 hours. Nevertheless, Yot, a 61-year-old defendant of methamphetamine possession charge, recounted the officer asking for an 'extra fee' of 20,000 baht[95] to expedite the bail process and for him to avoid spending two nights in the cell instead of one. O, 50-year-old and accused of possession of an unregistered air rifle, shared the same experience but the 'fee' was just 3,000 baht[96]. O and his family agreed to pay this 'fee' and finally O was bailed after one night in police custody. On the contrary, Yot was unable to pay the massive fee and, for one reason or another, was held for two nights before his bail.

The tardiness of a remand hearing was criticised by 50-year-old Phon (pronounced Porn) who was also charged with possession of an unregistered air rifle. Phon critically observed that his case was uncomplicated and there were only two arrestees in the police station at the time. He thus concluded that, in telling him to expect two nights in police custody, the police officers appeared to foot-drag as if to signal their bribe-seeking intent. However, an unexpected phone call from his police acquaintance to the officer in charge seemed to expedite the process and led to Phon being granted bail after just one night. This led to much resentment and distrust of the police as emotionally expressed by Phon:

> I believe if I hadn't had an acquaintance in the police force, it would have been complicated. I would have been in trouble and to think this is just a petty case…[I felt like] the officers acted as if to imply a lot of bail money and a very complicated and time-consuming process. It was as if they wanted money. They didn't mention a word about money but we could feel it. I admitted everything but to make bail I must wait for this and that. I was terribly upset. The case was super-ready for bail application. For a moment, I was resigned to spending another night there.

[95] Roughly equivalent to £450.

[96] Roughly equivalent to £70.

The police did not help guide defendants and their prospective bailors about the court's bail process, at least in Tong's case. Unaware of the requirement for the defendant's national identification card, Tong bitterly recounted that his one-eyed father had to drive back from the court just to retrieve Tong's ID card for bail application. He accused the police officer of withholding this simple information and causing unnecessary trouble for his poor father. 'Those who know don't speak', concluded Tong.

Neither did the judge on the screen appeared helpful. Every defendant recalled talking to the judge via a video-link the morning after the arrest. They neither knew nor remembered the purpose of the encounter except that the judge simply asked them to confirm their identity and questioned if they had committed the accused act, to which they all admitted[97]. After hearing the judge say something about prison, Tong asked the judge about his prospect of being bailed and how expensive his bail would be. The judge, in Tong's words, seemed irritated as if he was in a bad mood, repeatedly denied his knowledge, and told Tong to go ask court officials. Tong openly admitted to me that he had felt annoyed by the judge's reaction and answer, especially because he had still been in police custody then and his mobile phone had had no power left to make inquiring calls.

Answering the question by telling defendants to ask someone else is, to defendants' understanding, not different from withholding information. Ot shared his experience of

[97] This is the first remand hearing for the court to consider the police's motion for remand detention, during which the judge must decide whether there are grounds for holding the arrestees in a remand prison for police inquiry purposes. Under Sections 66 and 71 of *the Criminal Procedure Code*, the grounds for remand detention are either: (1) having reasonable evidence of the person having committed a crime that is punishable by over three years of a maximum prison term; or (2) having reasonable evidence of the person having committed a crime, and having reasonable grounds to expect post-release absconding, tampering with evidence, or causing other dangers. Section 87 directs the judge to ask the arrestees if they disagree with the police's motion.

In my observation of all three sample courts in 2019, the arrestees would be taken to the court's holding area where this hearing would take place remotely via a video-link. In the remand session, the *wain-chee* judges simply read from the motion the circumstances of the arrest and the police's alleged necessity for holding them for the benefits of police inquiry. Judges would then ask the arrestees if they disagreed with the 'facts' just read. No one ever disagreed and the judges read their remand order, on account of which the bail process could commence. Because of the Covid-19 precautions, in 2020 this hearing was administered remotely when the arrestees were held at the police station to eliminate contagion risks from coming to court.

seeking the police officer's advice on how to mitigate his prospective sentence and how to negotiate compensation with the complainant. He remembered the officer simply had told him to 'wait for the court date and do as the judge says', to which he interpreted, 'See? They just didn't answer whatever I asked them'. This prompted him to extrapolate that court officials would behave similarly and thus made him abstain from asking them about the prospect of his case. Later after hearing from his mother, who had just paid the fine on his behalf, that she had not been told to show the receipt to the police officer for his release, Ot said to me pessimistically, 'Like I said, officials never tell you anything'.

Since defendants did not file their bail application and were mostly kept in the dark about the process, many admitted to not knowing whether the deposited cash would be refunded. Some even mistook that by depositing cash for bail their fine was already paid. These mistaken defendants were hence falsely relieved that their ordeal was over and that they needed to just self-report and do public service at the court. Such misunderstandings made them under-prepared for their court date, actually scheduled for an arraignment-cum-sentencing. Overall, defendants in this study were more or less under-prepared because of their ignorance of the legal system and because of the difficulty they had in gaining access to timely and useful information.

To bailed defendants who correctly understood the court date's purpose, their topmost concern was the mode and severity of their sentence. All feared imprisonment and welcomed the fine that was within their financial ability. The uncertainty of their sentence thus commonly struck everyone in this group, including the non-first-timers, and they sought some degree of predictability to assuage their anxiety. However, as seen in Tong and Ot's accounts, agents of authority offered no help even when directly asked. Probably too timid or already believing in the futility of their asking, all other defendants never thought of seeking help from officials. Interestingly, neither did they ever consider hiring or consulting a lawyer. Legal representation is not mandatory at this early stage and this may partly explain why police officers never inquired whether defendants needed a lawyer. Nevertheless, even if there had been this inquiry, defendants might have declined anyway, viewing it useless and expensive. In their mind, a lawyer's only function was to help with their defence, if they had a valid one. Since nearly all defendants were caught in the act and all admitted to their crimes, hiring a lawyer would unnecessarily delay the inevitable and waste money.

Absent guidance from both the authorities and private lawyers, defendants resorted to their circle of acquaintances, which normally would comprise kith and kin with past conviction records or those with some knowledge about the law. The other source of information was the Internet, especially online forums where people shared experiences, gave one another advice, or joined a Q&A thread administered by lawyers.

To those unfortunately spending some time in a remand prison before being bailed, they may receive 'useful' advice from fellow inmates. For example, 20-year-old Tei was held in pretrial detention for cannabis possession for six days before his unanticipated bail. Tei learned in the prison that in a petty offence such as his, if he endured until the expiry of the fourth remand or for 48 days, he could avoid prison sentence and it would be as if he was acquitted. This knowledge made him decide to complete his four-remand term. The plan was, however, abruptly ended by a bail posted by an acquaintance. Tei was fortunate that it had turned out this way because his sentence was just a fine of 1,000 baht[98]. Using the conversion rate of 500 baht/ day in custody, his pretrial detention equaled 3,000 baht, already three times exceeding his fine. Had it totaled 48 days, he would have 24 times 'overpaid' his fine. Obviously, Tei was unaware of the likelihood of his sentence and the fine/ custody convertibility rule.

Tei's account shows the unreliability of legal information shared in prison. Ek, aged 38 and accused of methamphetamine possession, commented from his past experience that prison was full of those 'know-it-all' who often falsely predicted other prisoners' case outcomes. Predictions by ex-convicts and laypeople were generally equally unconvincing, as defendants usually found them conflicting and may have based on facts incompatible to theirs. Therefore, most defendants were trapped in the nerve-wracking 50/50 probability between custodial and non-custodial sentences and were finally resigned to fatalism. On the same account, defendants usually received broad estimates of their possible fines from either their non-lawyer advisors or the Internet. If the estimates were within their financial ability, they would prepare the money with some adds-on for caution. However, if the estimates far exceeded their income and savings, tense and

[98] Roughly equivalent to £20.

desperate defendants merely brought with them the petty cash they had and hoped for the best.

This inherent information asymmetry naturally made both unprepared and prepared defendants vulnerable to the 'surprise' of their sentence. Gift, a 31-year-old mother of two under a methamphetamine possession charge, was evidently taken aback after being sentenced with a 15,000-baht[99] fine. She had been unprepared because of her misunderstanding that her case had been over since the time she was bailed. Panicked and pressured to avoid fine-default custody, Gift kept mumbling to herself that she had never thought the fine would be this massive. Similarly, even Bang, who had seemed confident in his anticipation of a non-custodial sentence, was caught off guard by the announced sentence of eight-month imprisonment. 'I'm so confused. I thought it'd definitely be a suspended sentence', conceded Bang in a stress-filled voice.

As seen in Amnat's story, on the court date neither judges nor court officials were active in explaining to defendants about what to expect. Defendants were simply instructed and processed as if they had become an object in the system's assembly line. Once they arrived, they were told to go to the holding area and to wait there without receiving explanations. First timers Ot, Gift, and Tei each confessed to not knowing what they were waiting for. Repeat offenders 29-year-old Witsanu and 25-year-old Jo, both accused of drug possession offences (the former cannabis, the latter methamphetamine), were equally ignorant about the process upstairs and why the wait was so long. The security and grimness of the holding area also alarmed Chin, a 33-year-old male pharmacist who had drunk-driven and caused a non-fatal collision; he asked me if his offence was so different or more serious than others that he should be held behind the fences and walls around him.

After a long and seemingly purposeless wait, defendants were suddenly called to form a line before a television screen. The police officer curtly explained that the judge was going to preside over their cases. Unaided by a lawyer and unknowing about the procedure, defendants were on their own in a hearing that may change their lives. Generally, the encounter went smoothly and swiftly. However, there were times when the

[99] Roughly equivalent to £340.

flow was briefly interrupted by defendants' innocent and honest replies. Consider the following exchange in Tong's hearing:

The judge: *(Calling Tong's name)* Where are you?

Tong: Here I am.

The judge: Come right here. Do you want a lawyer?

Tong is silent. The judge asks again if he wants a lawyer. Tong remains silent. The court police officer standing beside Tong tells him, 'Just answer him'.

The judge: Do you hear me?

Tong: Yes, sir.

The judge: Do you want a lawyer?

Tong: I've come here. I don't know anything.

The judge: *(with a more intense tone and a louder voice)* Do you want a lawyer?

Tong: Yes, I do sir.

The judge: Will you confess to your crime?

Tong: Yes, I will. I'll confess it all.

The judge: Why do you still want a lawyer if you are confessing to your crime?

Tong: I don't know a thing.

The judge: Oh, I just asked…If you want a lawyer, I'll hold the sentence and I'll put you in custody pending trial.

Tong: I see. I don't want any lawyer now. No, I don't want any. I don't know.

The judge: So, do you want a lawyer?

Tong: No.

The judge: *(reads the indictment and asks)* So, you confess?

Tong: Yes, sir.

And another exchange in the arraignment of Yot in his case about methamphetamine possession:

The judge: Come closer to the mic. What's your name?

Yot says his name.

The judge: You had seven methamphetamine pills on you. Is this correct?

Yot: Yes, sir.

The judge: Where did you get them? Were they for your own use?

Yot: A lad just left them to me.

The judge: Who's this lad? Left the pills? Did you use them?

Yot: No, sir.

The judge: *(loudly and reproachfully)* You didn't use drugs. So why did you take the pills? Answer my question first!

Yot: The lad suddenly left them to me saying a bloke upstairs who'd ordered the stuff would come down to collect them.

The judge: So, you took the pills and they were found on you. Do you admit this?

Yot: Yes, I do sir.

The judge reads the sentence without asking Yot about a lawyer.

Noticeable from the first exchange is Tong's bafflement at the judge's question about a lawyer. He admitted post-session that he did not understand why the judge had asked him if he wanted a lawyer. No one had ever mentioned to him about a lawyer before. When Tong first heard about it from the judge, he was disheartened, understanding that involving a lawyer meant his case was somehow serious. Although still nonplussed about the purpose of a lawyer, Tong started to feel having a lawyer might help and blurted he wanted one. He was confused further by the judge's reaction of deciding to put him in custody. He conceded to being perplexed and questioned how many defendants were like him.

Yot, as seen in the second exchange, was as lost as Tong in the hearing. Innocently assuming that the judge wanted to hear the fact from his side, Yot recounted the story that he had told me earlier about how he had acquired the drugs. Not realising that his 'fact' implied a ground for denying that he lacked intent of possessing drugs, Yot was

dumbfounded when the judge reprovingly interrogated him. He lamented, 'The judge asked how I had the pills. I was confessing anyway. I told him a lad had left this thing with me but the judge just kept talking'.

Yot felt that the judge was intimidating, overtalking, and speaking fast. He candidly confessed that he could not catch much of the judge's talking. The only part he could make out was about his fine and suspended imprisonment. Yot was not alone. Ek concurred that the judge had spoken too fast and, together with his nervousness, he could only vaguely remember his sentence. Similarly nervous, first timer 26-year-old Tony merely recalled that, for his crime of methamphetamine possession, he was subject to probation and a fine whose details he did not catch. He had to ask the escorting police officer about the amount of his fine. On the other hand, Gift understood her sentence but was alarmed and unsure about the expensive fine she had just heard. The judge asked if she could pay the imposed fine. Rather than asking the judge to re-announce the sentence, she just mumbled 'yes' in response which was opposite to the truth. Gift explained that she had been too frightened by the fast-talking and intimidating judge to dare ask anything.

In fact, even if Gift had dared ask or tell the judge the truth that she could not pay the fine, the judge may not have alleviated her situation. Although judges are bound to inform the 'can't-pay' defendants of their community service option, none under my observation complied with this rule. The continued exchange between Yot and the judge manifests this non-compliance well:

> *The judge read Yot's sentence which, after a guilty-plea discount, was seven-month imprisonment and a fine of 15,000 baht. His prison term was suspended for two years.*
>
> **The judge:** Don't do it again. Can you pay the fine?
>
> **Yot:** No, sir.
>
> **The judge:** If you can't, you will be confined instead for 500 baht a day. Go tell your relatives to pay the fine for you. If you have questions, ask the police officers. You are dismissed.

Also consider another example in Tei's hearing about his cannabis possession:

> *The judge read the post-discount sentence which was a fine of 1,000 baht.*

The judge: So, it's a 1,000-baht fine. Do you have money?

Tei: No, I don't.

The judge: Contact your relatives to pay the fine. If it's not paid, you'll be held for 500 baht a day. You are dismissed.

The judge in both cases simply explained the conventional binary option: either pay or stay behind bars. Note that the judge did not inform Tei either that his fine had been offset by his pretrial detention, leaving Tei worried for almost an hour about spending his rent savings for the fine before his release.

As for community service, neither did the court police officers in any cases under observation notify defendants of this alternative. In fact, they seemed dazed when defendants declared their intention to try this option. One officer insisted that he must take Ek, who was about to apply for community service, into the cell because Ek had confessed earlier that he was unable to fully pay the fine. Ek could wait for the processing of his application inside, said the officer. Only when he heard that Ek's mother was searching for a loan did he leave Ek in peace. Later, the same officer brought down the application forms for Ek to fill in. He looked confused by the documents, left, and then returned with an instruction that Ek complete the forms and left without offering any assistance.

Like in Amnat's story, the forms were long and formally written. Neither Gift nor Jo, the other two defendants also in Ek's position, was offered help in going through the paperwork. All persevered and tried their best to check the completeness and accuracy of their answers before submission. However, Jo forgot to answer some questions and he was reprimanded by the police officer for having made mistakes.

After submission of the forms was the wait, like all other defendants who could pay the fine. These paying defendants, either paying by themselves or relying on their loved ones, all waited without knowing how long it would take and when they would get out. Therefore, many sought more information by phoning their friends or family members upstairs. However, often, bureaucratic process seemed too complicated to be communicated intelligibly between defendants and their relatives, and I witnessed more

than once the frustration defendants expressed because of this complication. Finally, just like the hearing, defendants would be abruptly notified that they were free to go.

From the start to the finish of their journey, defendants were kept in the dark. They were simply told and instructed, but neither explained nor clarified about their rights and how to navigate oneself in the process. They were scolded for their ignorance, whereas the system encouraged their silence and absence of questions. Theoretically supposed to be in the centre and empowered, in reality defendants were continually marginalised, stupefied, and objectified by the unempathetic process and indifferent agents of authority. The deprivation of their know-ability not only subverted their agency but also instituted great pains from waiting which accounted for pre-sentence punishment all defendants must endure.

3. The Process is the Punishment

The fine was perceived by judges in this study to have retributive and deterrent effects. Despite its limited and auxiliary role, judges viewed it necessary to impose a fine and guarantee its enforcement to teach defendants a 'retaliatory lesson'. Nevertheless, this lesson seemed to be lost in transmission to the receiving end. Not only did some defendants mistake the fine for other expenses such as bail money (Tony and Gift), or injury compensation (Chin), most could not understand the reason behind their fines. Tong in particular was outspoken about his confusion over the fine's purpose. To him, the fine did not seem to inflict pains like imprisonment: 'Like driving without a driver's license and just paying a fine. I'll just pay a fine every day. What's the point of a fine then?'. Tong's scepticism was shared by 22-year-old Cloud who was accused of cannabis possession. Cloud candidly admitted that 'money makes it easy' because if he could afford the fine, he would feel no pains. The fine's purported deterrence was also doubted by Ek who opined that a heavy fine would not deter offenders who could pay. Likewise, Phon and O each made a similar remark on the misfit of a fine in serious offences such as narcotic offences.

Unlike the fine, custody of any kind – pretrial detention or a prison sentence – was terribly dreaded and the penal meaning of its post-sentence mode was never misunderstood. Standing alone, a fine did not instigate fright, despite its unaffordability, unless partnered with custodial enforcement. Accordingly, deprivation of liberty was the

defendants' ultimate fear. However, since defendants in this study could have their fine 'paid' in one way or another, when asked about the grimmest memory of their penal experience, the vast majority referred to their unpleasant nights in pretrial detention. Others mentioned the torment of waiting for the uncertainty and the massive pressure to pay the fine in time.

Noticeably, the shadow of custody still lurked behind the pain of waiting and the pressure to pay. Unable to rule out the probability of imprisonment, defendants anxiously waited for the future that may end up badly for them. In addition, defendants felt immense pressure to pay the fine in order to avoid custody for fine default. Therefore, what constituted great pains for defendants in this research was not the fine itself, but rather pretrial custody and the prospect of it post-sentence. In fact, many defendants revealed of having resolved to forever abandoning the accused act since their stint in the police cell. They came to court already with this resolution regardless of the final sanction. Arguably, defendants had already been deterred and punished by the pre-sentence process. Feeley's (1992) seminal observation that the process is the punishment still rings true in the 21st century Thai criminal justice system.

3.1 The Pains of Pretrial Custody

The process punished from the start with pretrial detention. Once arrested, all defendants regardless of the offences were forced into the police cell and many had to share the cell with other arrestees of other charges. This non-segregation of offence- or severity-based custody frustrated Phon who resented sharing the cell with 'drug addicts'. He complained:

> The cell must be segregated. I wasn't an addict. Why on earth must I share the cell with those junkies? [The police officers'd] better be perceptive. True, we shared the same status of the accused but our charges were different. Shortly later, they arrested another group of junkies. I asked what drugs and how many. The officers replied plenty and the prison sentences [for the new arrestees] would likely be decades. I was terribly upset to be stuck in the cell like that…

Other defendants never minded sharing the cell with unknown 'criminals'. This ambivalence, however, did not make their experience any less unpleasant. All defendants, first-timers and repeat defendants alike, admitted to having suffered in the cell. To begin with, conditions of the cell were very unpleasant. Some defendants

described their cell was dirty but most concurred that the cell was dark, cold, and poorly ventilated. Defendants had to sleep on a cold concrete floor using a bottle of water as pillow because there was no bed.

The conditions in a remand prison were no better. Witsanu and Tei who unfortunately had to spend nights inside gave a similar account of a crowded prison in late 2020 with 10 to 15 prisoners confined in a small cell. Prisoners had to sleep on the floor, making do with their three blankets as the only bedding accessories given in prison, and had to sleep on the side because of the crowdedness. Contrary to a cold police cell, the remand cell was very hot with no incoming breeze and few overused fans. Aggravating the situation was the Covid-19 quarantine rule that restricted newcoming inmates inside their cell for 14 days throughout. No one was allowed out before the end of quarantine unless bailed in the interim. Because of the packed cell and poor hygiene – prisoners had to share spoons when eating meals because spoons were not freely distributed – a remand prison was a highly risky place to contract and spread the disease.

Physical difficulties aside, defendants endured an eclectic mix of negative feelings while in custody. Because a mobile phone was not permitted inside either a police cell or a remand prison, defendants were cut off from their family and friends unless visited in-person. Being isolated in an unfriendly atmosphere, they all felt extremely homesick and worried about never seeing their loved ones again. Accompanying this worry was the fear of doing time in prison. Defendants' ignorance of the bail process and their fear about the prospect of getting bailed intensified their fear and worry. The resulting massive weight of anxiety made even just one night inside, as described by Ot, flow by so slowly and tormentingly.

The trace of trauma was evidently observable in Gift's watery eyes while she was revisiting the moment from her memory. She confessed to crying in the police cell over the fear of not seeing her children, of not being bailed, and of being imprisoned. Likewise, after an agonising night, Chin burst into tears when he saw his mother who came to visit before going to court to bail him. The pains of police custody still haunted Cloud in the early days after his release, causing him dejection and sleepless nights. The time inside a remand prison for Witsanu and Tei also passed by stressfully and gloomily. Besides all the worries about his unpaid debts and his family, Tei was also tortured by his doubt over

his girlfriend's fidelity, thanks to his fellow inmates' gaslighting. Because of his six-day stay in prison, his girlfriend truly left him and he was also fired from his job as a security guard.

Loneliness and boredom from having nothing to do was another source of custodial pains. Being held alone in the police cell for two and a half days, Tong acridly described his time inside as 'fucking horrible'. Having no one to talk to and having nothing to do, Tong was – in his words – 'down' and 'damned lonely'. He had to kill the time by washing the toilet, pulling up the bars, and staring out the window in anticipation of the dusk. He said he had been so bored that he would have swept the entire cell floor if there had been a broom. It was his way to vent out his frustration because he 'couldn't get out' and 'couldn't do anything'.

For Witsanu and Tei in a remand prison, the time inside a quarantine cell revolved around a routine like a loop. Days went by with nothing to do but eating, sleeping, and casual chatting. Remand prisoners in a quarantine cell, according to Tei, were locked in an eat/sleep cycle, unlike those released from quarantine who could walk here and there in the prison. Witsanu was also bored by having to repeat activities. He killed his boredom by daydreaming of doing things he would love to do outside and waiting for someone to bail him out. To Witsanu, the more one was mindful of the time spent in prison, the more slowly it would flow. On the contrary, if one was less mindful of it, time would seem to fly.

Since all defendants had free time to spare while in custody, apart from sleeping they spent the majority of time reflecting on the arrest and the events that had led up to it. The majority of defendants in this study ended up repenting their wrongdoings. While a few others did not feel guilty for their accused offences, some of them still felt sorry for their character flaws that had contributed to the arrest. For instance, Tong admitted he had been in the wrong to have quarrelled with his mother and enraged her to the point that she finally informed the police of cannabis in his possession. Yot, who adamantly denied that methamphetamine pills were not his, resignedly conceded that he was still to blame as he put it:

> I was wrong to have been easy with the lads [who left the pills for customer's collection]. I didn't think much of it…I never thought things would happen to me like this…

This self-blaming was present in the whirlpool of negativities defendants in pretrial custody were bearing. The weight of guilt induced many repenters to become determined to change. Jo and Ek were both very clear in this regard. Repenting his decision of resorting to methamphetamine pills for work, Jo felt guilty to have let his pregnant wife sleep alone while he was locked up and he was sorry to have troubled his parents. Since the very first night in the police cell, Jo made up his mind to quit drugs for good and abstain from overworking to prevent the necessities of taking drugs. In a similar manner, Ek arrived at the same decision the moment he saw his children in tears when they came to visit him. He regretted his wasteful time in the cell and his inability to hug his children. Like Jo, he decided to take rest when exhausted instead of taking up jobs and drugs. Other defendants also resolved to change before the arrival of their court date. The interim trauma from waiting seemed to both aggravate their pains and strengthened their commitment to forever avoiding the criminal justice system.

3.2 Waiting in Anxiety and Uncertainty

Post-bail, defendants waited about two to three months for their scheduled court date. Since most defendants were ignorant about the law and the criminal justice system, they were naturally concerned about the outcome of their case – particularly the probability of a prison sentence. As described above, defendants received no explanations from the authorities; nor did they seek help from lawyers. As a result, they were uninformed and unable to predict their future, despite their desperate need to know. This incurable uncertainty generated frustration and anxiety over the course of the wait. Such a pain was usually invisible because defendants normally concealed it beneath the façade of a normal life post-bail. However, its stranglehold was real and extremely suffocating.

Ot reflected post-sentence that, excluding his time in the police cell, the wait for his court date had caused him more agony than the sentence he received (which was a fine of 40,000 baht[100]). The fear of an unknown fate had incessantly put him under heavy pressure. He said, ‘While waiting, I counted the days. Even when I was working, I was still thinking about it. It was suffocating’. He added, ‘I didn’t know what to expect here. If only I had had some clues, I would have been able to prepare myself’.

[100] Roughly equivalent to £910.

Jo confessed to having been under massive stress and anxiety for the entire week preceding his court date. It was the most painful period to him of all three months in waiting. Throughout, he could not shake his thoughts and fear about an unpredictable sentence and the consequences of his possible imprisonment. Jo explained what made waiting so terrible was not the time passed but rather the uncertainty of the court's decision. Like Ot, he concluded that the ordeal of those seven days was much worse than paying his 14,000-baht fine.

Defendants may cope with stress by putting aside thoughts about their case. M, aged 27, hid his court appointment card away and kept secret from his family the fact that he was accused of cannabis possession. It was his way of not being reminded about the case. M said thinking about his case had stressed him out and so he had wanted to not think and rather find out about his fate right on the court date. Bang also stopped his inquiry about the prospect of his case once he heard that the probable fine for his offence was between 20,000–30,000 baht[101] which demoralised him. Likewise, Ek avoided asking around about his likely sentence as he explained, 'The more I consulted, the more I overthought. The more I asked, the more of a headache I got'.

Notwithstanding the success of these avoidance tactics, the stress and anxiety returned in full swing on the court date. Again, defendants were told to wait in the holding area without much information. They waited in silence while futilely suppressing their apprehension. Chin revealed he could feel his lips and throat dry out of the concern over his impending punishment. Tei replied waiting at the court was the toughest part of his journey because all his bad experiences returned to him in flashback. As an ex-convict, Witsanu admittedly dreaded his sentence. He sighed while saying he may eventually go to prison but, in his words, 'even for just 10 minutes I don't want to be in there'. He also remarked:

> I'm keeping my fingers crossed. I want to go home. I don't want to go inside [a prison]. I can't hope for anything. If I hope, I'll be disappointed. I have to come to terms with it.

Aggravating the situation was the long wait with no explanation. Under my observation, defendants may wait up to three hours before the judge presided over the hearing.

[101] Roughly equivalent to between £450 - £680.

Although in many cases, the hearing commenced within an hour or lesser than two hours, the average start time of the hearing was two hours after defendants had arrived. This unexplained tardiness irritated Tong who had been waiting for almost two and a half hours already. He complained to me about the judge being so late. He wondered whether the judge was unaware that other people also had their businesses to attend to. He understood the court's schedule was based on the court's convenience but, he concluded, the judge should make it all end swiftly.

Tong finally had his hearing just before noon. The good news was that it was just a 1,000-baht fine for him. The bad news, however, was the post-sentence procedure must be carried over to the afternoon because court officials needed his case file for the processing of fine payment. All the while Tong in the holding area could not go out for lunch or buy food to eat inside. This was according to Court Two's security measure at the time to prevent defendants absconding and to reduce the smuggling of illegal items, mostly methamphetamine pills, into the holding area[102]. Tong must then wait for the uncertain finish of his case while putting up with his hunger. This gave him such a terrible impression on the system as he sarcastically commented:

> I don't know how long I'll have to wait. Luckily, I could sleep last night; or else it would have been terrible to me. I thought I came early today. I have been here since 8:30 am. It was useless to have come here that early. It's all the same whether I arrived here early or late. I know the officials' secret though. They still don't do their work at 8 am. Only at 8:30 am do they start their work. Don't they know that other people are in a hurry?

Tong's lunchtime wait was not atypical. It was actually regular for defendants who asked to pay the fine by the deposited bail money or filed for community service. Because

[102] This seemed to vary from court to court. For example, Court Three in 2019 allowed defendants in the holding area to buy lunch from the designated vendor who would come in to take order and deliver the food. On the contrary, Court Two – in both 2019 and 2020 through to early 2021 when both legs of fieldwork were conducted – still held on to this strict security measure. When the second leg was nearly over, I shared my observation about this prohibition to the then chief judge in a casual conversation. Not long after, I observed the changed policy whereby the court marshal would come in near lunchtime and notify that there would be a court-sponsored lunch, provided by the designated vendor on a specified menu, for those who registered interests with him. I was later thanked by Court Two's administrative director for my information because, in paraphrased words, sometimes people working upstairs did not realise the reality downstairs.

the processing of these two requests involved time-consuming bureaucratic paperwork. The former request in particular initiated a series of complicated and long-winded steps that justified the apparent lengthiness of the process. Certain defendants in this study opted to file either request and a few filed both (payment by bail money and 'payment' for the remaining fine by community service). For those who chose not to pay in cash or by cash-equivalent methods, they would normally be released in late afternoon and may stay in the holding area for the entire process between five to seven hours. Nonetheless, no one explained to them yet again the reason behind the long wait and how long they would have to tolerate it. Voiceless and helpless, defendants silently endured. Some took a nap, some asked the officers permission for a smoke, and some played with their mobile phones.

Tong was fortunate that his entire court journey ended in merely four hours. However, he should not have been held that long because his fine had been offset by his pretrial detention. Tong and others like him were made aware of their offset fine at the time of release, not before or in the hearing. Interestingly, instead of criticising the process, defendants in this situation – including the sharp-tongued Tong – all expressed delight of being able to save cash.

'Relieved' was also the common reply of other defendants who could avoid custody in their sentence and/ or fine enforcement. Chin added that he was glad that he could continue with his life. Tony thanked the judge profusely for giving him the opportunity to redeem himself. Most salient of all in terms of happiness was Witsanu and his euphoric expression soon after he heard his non-custodial sentence: 'Whoa, this is superb! As if I'm in heaven. I'm super happy!'. Such reactions and the typical feeling of relieved suggested how suffocating it had been for defendants waiting in ignorance.

3.3 Money as a Ransom

Money has a prominent role in the early and final stages of the process undergone by defendants: first in the form of money bail and later as the fine. In judges' perspectives, money bail, especially pursuant to the centralised bail schedule, is indispensable in that it facilitates speedy, objective, and impartial decision-making – let alone its long-standing tradition (Thanyanuch, 2020). However, the inability to post bail usually lands defendants in pretrial detention. All defendants and their loved ones thus struggle in this race against

time to avoid their being sent to a remand prison. Because defendants are locked up, the burden of finding money and posting bail falls on their relatives. In this sense, money bail shares similarities with hostage-taking situations in which ransom money paid by family members or friends is a prerequisite for liberating a person from captivity.

The fine, despite its limited role, is always imposed when imprisonment is suspended or inactivated. To the judges, a fine must be enforced regardless of defendants' inability to pay. Alternative measures are mechanically converted according to a prescribed formula notwithstanding the overall proportionality. A fine is accordingly treated like a debt to be collected in full by any permissible means. On the other hand, since custody is the de facto default for failure to pay, unprepared defendants in the holding area have to anxiously wait for help from their relatives to timely pay the fine on their behalf. Like bail where detained defendants are unable to post bail by themselves, the sole lifeline to safety from custody is their family members or friends. Also similar is the exchange of money paid by others for defendants' liberty. Therefore, the fine as practiced also shares key attributes of a ransom.

Because of the urgency of bail, defendants and their relatives often resort to emergency loans from acquaintances or local usurers. Those having sufficient cash occasionally have to re-prioritise their spending plan and delay their other necessities. Having to deposit 80,000 baht[103] for bail, Chin's mother borrowed 60,000 baht[104] in cash from Chin's uncle and aunt and covered the rest with Chin's savings. However, Chin's uncle and aunt had to pawn their gold jewelry to obtain 60,000 baht and, thus, Chin had to help them repay the loan. Also short of cash, to bail her out, Gift's father borrowed 5,000-baht cash from the usurer who charged a monthly interest rate of 10 percent and Gift had to help her father repay it. Comparably, Ek may not need a usurer but he had to shuffle his bank-loan cash to post bail and delay his plan of making extra income with this loan. Likewise, Tong's aunt bailed him with her savings for her son's wedding. Although, eventually bail money would be refunded, there was clearly a price to pay for defendants' freedom.

[103] Roughly equivalent to £1,810.

[104] Roughly equivalent to £1,360.

Using money for bail spawns a dubious business of a bail bond service, usually brokered by the police officers. M recalled being advised by one of the officers about a bail bond agent who would bail him out for a fee of 10,000 baht[105]. The officer would contact the agent if M was interested. M declined because a friend agreed to come and help him. However, his bail cost merely 8,000 baht[106], making him suspicious of a lucrative relationship between the officer and the agent. Bang was similarly told about a bail bond service by the officer at the police station and he also declined. Like M, the officer advised that bail would cost around 10,000–20,000 baht, while actually it was merely 5,000 baht. The difference was probably caused by the officers' outdated information on the court's revised bail schedule. Nonetheless, defendants' suspicion about profit-seeking activities are understandable.

According to some defendants, certain abusive police officers exploited their fear of remand custody by swindling from them money or valuable items. As earlier recounted, O and Yot were both told by the officer to pay an 'extra fee' for an 'expedited bail process'. M, on the other hand, told me that he had been cajoled into underselling his amulet bracelet to the officer who had offered to help with his bail application. It was a decision he truly regretted for being gullible.

The same pressure to conjure up money in time to prevent custody returns when defendants are fined but find themselves unable to pay. As explained above, most defendants in this study were incapable of predicting their sentence and the size of their fine, and some were completely ignorant about the purpose of their court appearance. Gift belonged in the latter category. Believing that she came to court just to report herself for community work, Gift was absolutely taken aback by the hefty fine she had to pay and by the fact that she could not leave the holding area even for lunch. Silently sobbing, she wondered aloud if she had already become a prisoner. She also admitted:

> I didn't know. I wasn't prepared. I didn't know a thing before. Now everything is in a rush and the money is huge. There's no time for me to find it. I'm pressured.

[105] Roughly equivalent to £230.

[106] Roughly equivalent to £180.

Also flustered were those who had been underprepared like Jo and Ek. Both thought about offsetting their fines with the deposited bail money. However, the outstanding amount remained beyond their ability to pay. Jo thought about borrowing from a known usurer who would charge him a 20 percent monthly interest rate but he was unable to contact this person. Resigned, Ek confessed that he could not find money within a single day but if given time he would sell his work toolbox for quick cash.

Where the fine is inexpensive, the problem is still complicated if defendants come to court alone. M and Cloud were the only two defendants who arrived at the court unaccompanied. M, especially, informed no one in his family about his case. Each was sentenced similarly with a 1,000-baht fine and each was equally frantic because of the shortage of cash. M had to make several phone calls to his family members to borrow money, asking them to transfer money to his bank account, and admitting his sentence in the process. M was fortunate that the court accepted electronic payment via mobile phone applications. Cloud faced more difficulties because he had no bank account and his mobile phone was out of prepaid credit. Desperately, he asked me to share a Wi-Fi hotspot from my phone so that he could make voice calls over the Internet. He was unable to reach his family but was finally successful in contacting his close friend to come over and pay the fine for him. Cloud went through all these troubles only to find out about an hour later that his fine had already been offset by his days in pretrial custody.

All these accounts repeatedly indicate the indispensability of having a supportive family or friends when caught in the criminal justice system. Access to instant money is also important as the frustration of not knowing about the fine in advance is felt by most defendants. Nevertheless, money in itself is inferior to having someone to make bail or pay the fine on behalf, as Bang lamented, ‘I was in the cell. I wanted to make bail myself but I couldn’t’. Holding defendants helpless and unable to arrange their own release unless ‘paid for’ by their loved ones evokes images of a ransom paid to liberate a person. Even though the criminal justice system does not hold a hostage situation, the pains associated to the bail and fining practices seem to be not essentially different.

3.4 Degradation and Stigma

Elements of degradation and stigma inherent throughout and beyond the system add another dimension to the pains of the process. The system that is replete with symbolism of exclusion represents the underlying attitudes of distrust and disdain towards defendants. The architecture that constantly others and excludes defendants to be behind bars, to be downstairs, and to be just faces on the screen insinuates not only alienation but also degradation. The insinuation may be subtle but understandable in the minds of defendants. For example, the enclosed walls and fences of the holding area made Chin worried if his offence was extra-blameworthy. Likewise, they evoked the status of a prisoner in Gift's mind when she was not allowed to go out even for lunch.

Degradation is also explicitly displayed through verbal expressions of agents of authority, particularly police officers. While most defendants remembered being treated non-disparagingly, Yot recalled an officer at the police station who was impolite and abrasive. This officer, he said, often snarled at detainees in the cell, accusing them of dirtying the cell and being disorderly. Although it was just one officer in Yot's recollection, the disrespectful attitude of this officer seemed to be shared by certain others at other police stations. Being treated rudely by non-commissioned officers who arrested him, Phon harboured much resentment as he rambled:

> I disliked the manner of the officers. They were like uneducated people. There were even rude pronouns in the words they used...It's like when I spoke and I felt being looked down on…The officers had better treat people with respect. Not bullying them just because they broke the law…

Chin also noticed the officers talking to him aggressively, in contrast to their demeanour when interacting with other laypeople. He felt he was being so treated:

> Because it's like I have this stigma. The officers probably viewed me as a criminal. So, their conduct towards me was different from when I was outside [the criminal justice system].

Defendants could still feel the stigma, despite not being disparaged by the officers. Bang confessed to feeling ashamed and worried if other people would discover about his arrest. He was concerned that those who knew about his charge would disrespect him. Ek shared this sentiment. He conceded to abstaining from going outside post-bail for

many reasons, including avoiding meeting other people because ‘those who saw me arrested spread news in the community that I was arrested’. This was corroborated by his day labour being shunned by frequent hirers, as he reasoned:

> They probably thought that I was busted for drugs, which is serious stuff, so they were afraid of me hurting them like what they had seen in the news [about overdosed addicts madly injuring other people].

This stigma was carried over to defendants’ post-punishment life in the form of a criminal record. Young defendants like M and Tong were concerned about their job-seeking prospect after their ordeals with the court were over. Although M said he was relieved by the court’s minimal fine, he admitted to still feeling stressful about having a criminal record, fearing he would be denied jobs because of it. Actually, Tong had had his job applications rejected already because of his name in the police criminal register, although at the time he had not yet been convicted. He reflected on the futility of his education in job search because once his name was on the ‘blacklist’, as he put it, ‘no matter how fancy your educational profile is, it’s useless'. He added, in the face of a ‘blacklist’, an education degree became ‘just a piece of paper with no value’. Tong then concluded in resignation that paying the fine was not a big deal to him but there was nothing he could do when his name was on the ‘blacklist’.

Tong’s conclusion and Chin’s theory reveal the hidden stigmatisation induced by the process. It inspires both architectural and system designs that alienate and suppress defendants’ voices. At the same time, it seems to justify agents of authority in silencing, marginalising, and treating them with disrespect. Interestingly, most defendants perceived it as natural and even justifiable. Chin understood that the officers’ aggressiveness was to ‘force [him] inside the designated area’. Despite his complaining, Cloud ruminated that there must be reasons behind the system’s complications. Such an ambivalent reaction to disparaging and stigmatising treatments was an integral part of defendants’ docility to the criminal justice system, elaborated further below.

4. Legitimacy and Variants of Compliance

Chapter 4 reports judges' prioritisation of consistency, expediency, and certainty of punishment. Inherent in this stance is judges' conviction in the legitimacy of their practices, already representing these values. This efficiency-based preference partly underpins judges' perception of penal justice as composed of formal equality and custody-centric proportionality.

At the opposite end, when directly asked about their definition of justice, every defendant in this study struggled to verbalise this abstract concept and quite a few gave up answering. Inarticulacy notwithstanding, their answers to other relevant questions and the reactions to their sentence imply that defendants also had some ideas about justice, which revolve around retributive punishment, proportionality, equality, and adherence to the law.

Overtly or tacitly defendants agreed that lawbreakers must be punished. Witsanu reflected that justice means punishment for offenders and acquittal for innocents. To Phon, justice means unarbitrary and individualised sentencing with proportionality at the core, the idea also shared by Bang. Implicitly but observably, the notion of equality was present in defendants' estimation of their likely sentence. Chin was inclined to anticipate non-custodial punishment, after learning that it had been imposed in past cases even if their circumstances had far outweighed his. Likewise, Jo admitted that he would feel his imprisonment unfair because, to his knowledge, there had been others who could just pay a fine despite having more quantity of drugs. Finally, some defendants equated justice to adherence to the law. 'I don't know. If that's what's on the law, it's fair. We ought to follow the law', replied Gift on her thought about using money for bail. In the same vein, despite his unfamiliarity with the law and the criminal justice system, Cloud commented that the justice system is just because it is according to the law.

As illustrated in the above paragraph, despite the inability to correctly predict the outcome of their cases, defendants had some preconceived notions about what a 'fair' sentence would look like. The actual punishment that did not differ much from their estimation affirmed their perception of fairness. So did any unexpectedly lenient results. In the latter case, normal responses by defendants were feelings of relief and gratefulness. Elated defendants seemed to forget their prior bad experiences of the

system and adopted the all's well that ends well mentality. Although just scolded by the judge about his reoffending seconds earlier, Witsanu commented post-hearing that the judge talked to him nicely; that the judge taught him and made conversation with him, something he had never experienced before in his previous case. The standalone fine of 2,000 baht, half of which had been offset by his pretrial custody and another half to be paid in cash, caught him by surprise. Previously anticipating a custodial sentence, delighted Witsanu felt hopeful and believed that the judge gave him an opportunity to redeem himself. In a similar fashion, Tony felt thankful to the merciful judge who gave him a second chance despite the custody-worthiness of his offence. He perceived that the judge delivered justice in his case.

By contrast, an unexpected negative sentence may spark frustration of receiving injustice. Fairly confident that he would just pay a fine, Bang was completely caught off guard when the judge immediately imprisoned him. Distraught and confused, Bang said that his sentence was too harsh and unjust. As for Phon, he correctly expected his sentence to be just a 1,000–2,000 baht fine. However, he declared to me pre-sentence that if the fine was to reach several thousands baht, he would fight against this injustice no matter what because 'it must be done'.

Note that although alleging that his sentence was unjust, Bang obediently followed the police officer's instruction to go into the cell. In fact, other defendants who complained about the surprising harshness of their sentences kept their dissatisfaction to themselves and complied with the process. It was also observable that, despite the fences and gates, security measures in the holding area were not tight. The police officers did not pay close attention to defendants. They even allowed defendants, including the to-be-imprisoned Bang, to destress by smoking outside the roofed zone and further away from their close watch (see floor plan in Chapter 4, Figure 4.1(b)). Interestingly, no defendants showed any attempt to resist the authority. Additionally, quite a few blamed themselves for the unpleasantness of their experiences. This manifestation of deference implies the system's legitimacy in the eyes of defendants. Nevertheless, defendants' perceptions of legitimacy seem to have existed in varying degrees. Although similarly resulting in compliance, there could be at least two variants of it dependent on the degree of the perceived legitimacy.

4.1 Deferential Compliance

The first and the more commonly found variant of compliance in this research is of deferential type. Defendants in this category accepted the legitimacy of the authority, uncritically obeyed the system, and internalised all the pains endured throughout the course of their journey. To these defendants, the law and the justice system are alien and taken-for-granted, yet simultaneously venerated and intimidated. Admitting the blameworthiness of their crimes, they perceived the law and the justice system as delivering retributive justice, which many aligned with the transcendental *karmic* retribution. This frame of understanding coincides with what Ewick and Silbey (1998: 47) term 'before the law' form of legal consciousness, whereby the law is seen as hallowed, majestic, and permanent. As a result, people express loyalty and deference to the law and its constructions despite frustration about their own impotence. The vast majority of defendants in this study arguably acquired this mode of consciousness and thus were willingly obedient to the criminal justice system.

As described earlier, all defendants in this group seemed to genuinely admit their guilt and repent their crimes. Although estranged to the law, they agreed that the criminalisation of their acts was justified. Defendants in drug offences subscribed to the dominant discourse of 'drugs are bad' and thus blamed themselves for having succumbed to their foibles. Jo and Ek, although each affirmed the benefit of the controlled use of methamphetamine, admitted its worrying proliferation and regretted their decision to hinge on the drug for overworking. Retrospectively, Ek said he learnt that 'nothing is better involving with it'. M and Witsanu had a similar conclusion that they should not have dealt with cannabis, despite their felt need to relieve their stress with the drug. They realised that drugs were bad and that messing with it would land them in prison.

In the same vein, those accused of other offences were sorry for their wrongdoings and wished to undo the past. Chin reflected the damages from his drink-drive behaviour were extensive and troubling many lives, not just him and the collision victim but also the families of both sides. Guilt-ridden, he made a self-pledge after the accident to never drink drive again. Likewise, although defending himself on impulsive rage over his ex-girlfriend's infidelity, Ot agreed that he should not have resorted to revenge pornography and that he would have undone it if it had been possible.

The Buddhist notion of *karma* – the cosmological force of justice that confirms what goes around comes around – was raised by some defendants to justify all their terrible experiences in the system. Witsanu revisited his tough days as a prisoner in his past conviction. He depicted an overcrowded cell where prisoners 'frequently had a fistfight over a space to sleep' and the need for relatives' deposited money for buying decent food and commodities in prison. 'You were truly done for without relatives…A person with no relatives was like a dog in there', commented Witsanu. However, despite all these accounts, Witsanu concluded:

> It's a consequence of committing an offence. It's *karma* and life in prison is the payment for one's *karma* so that all will be offset. When you commit bad deeds, you have to pay for it.

Fearful of a probable custodial sentence, Chin confessed to having hesitation about coming to court. After a battle with himself, Chin decided to face the music, not only to avoid the likely aggravated sentence due to his disappearance but also because of the inevitability of his *karma*. He explained, 'It's my *karma*. I can't get away from my action no matter what'. This frame of *karmic* justice seemed to underlie his attempt to justify all the unpleasantness of his experiences. The epitome of this endeavour was his self-blaming for his inability to pay the fine in cash and get himself released quickly. Having to instead pay the fine by the deposited bail money, Chin had to wait without knowing any progress for five hours just to be released in half an hour before the court's closing time. On such a tormenting wait, Chin simply said, 'It's wrong of me to not have instant cash ready. It's my fault not to have money now. The fault is on me. I can't manage myself'.

This complete deference to authority was also evident in Gift's thought about her sentence. Although confessing to me about having methamphetamine pills for sale, the first-timer Gift was accused merely of having drugs for personal possession and she seemed genuinely unaware about the legal difference between the two charges. Also, because of her misunderstanding that her case had been over since the time she was bailed, she appeared genuinely panicked and perplexed about the relatively severe fine of 15,000 baht. However, despite her ignorance and immense pressure, she agreed that the sentence was fair because her dealing with methamphetamine was branded bad by the law. Gift reasoned:

> This is the way things are in our country. Wrongdoers must be punished. I admit that I broke the law. It'd be a lame excuse to talk about having a family to look after, since we all know that a good and decent job is available to find.

Moreover, she added that she had no right to complain about the expensiveness of her fine. It was the rule, she said, and if she failed to pay it in time, she would just have to obey the rule and go to prison.

Many defendants echoed Gift's 'it was the rule' justification for the system's usurpation of power. Ek shared the experience of his past case about being held in a remand prison far longer than the money equivalent of his eventual fine; nonetheless, he had no comment about it, saying it was how the system worked. He gave the same answer when asked about what he thought about confinement for fine default. Similarly, Ot had an ambivalent opinion about his massive 80,000-baht bail. Although he thought it was too much, he also viewed money bail as the normal state of things. In a similar manner, after frantically making several phone calls to find a person who would pay a fine on his behalf, Cloud was still more upset with himself for not having enough cash on hand than the difficult payment system. He pondered such a difficulty must have existed for a reason. It is conceivable from these illustrations that, in light of 'it was the rule' line of reasoning, several defendants seemed to unconsciously suppress their criticisms against the process and take whatever it was that occurred to them for granted.

By invoking the justice of *karma* and the authority of law as grounds for deference to the system, defendants apparently framed their 'before the law' consciousness under the influence of the dominating cultural conception of fairness. In her research, Johansen (2021) argues that defendants make sense of their penal experiences according to their internalised 'cultural schemas' – i.e., society's dominant knowledge, beliefs, and practices absorbed as one's own. She also reports that remand prisoners in Denmark similarly anticipated courts' impartiality regarding their cases because they had conformed to Danish values and thus they 'belonged' to the Danish society (p. 8). In the Thai setting, this sense of 'belonging' is inferable from defendants' unequivocal self-blaming for having broken the law and from the spontaneous reiteration of the anti-drug discourse by those charged with drug offences. Such behaviours are indicative of defendants' full endorsement of Thai society's prevailing norms and expressive of their 'non-criminal' identity. By willingly admitting guilt and facing the consequences, defendants signaled

their desire to be reintegrated into the law-abiding society, to which they thought they belonged (see Weisman, 2004: 128; see also Goffman, 1971: 113–118). Therefore, it can be concluded that participants' readily admitted guilt and self-reprimanded because they had internalised society's perception that the law is fair and that punishment is a just aftermath of breaking it, both legally and transcendentally.

When the law is perceived so ideally, it is often the case that dissatisfaction with the legal system is cast at particular individuals or institutions instead of the entire legal establishment (see Johansen, 2021: 13). In this study, there were defendants who vented their criticisms despite their high respect for the law. However, their frustration was directed at the agents of law, not at the criminal justice system itself. To them, the law and the process is still untarnished but the blemishes lie with the people, particularly the 'horrible' police officers. Despite his series of complaints, Phon never hurled his acrimony at the system because his direct target was the police officers who, in his view, underused their discretion but overused their power. He admitted that his unregistered air rifle was capable as a dangerous weapon and that he deserved punishment for breaking the law. Nevertheless, he argued that he lacked malice because his gun was for shooting pest animals to protect his farm, not for harming anyone. Moreover, as he was fully cooperating with the police, they should not have detained him or even arrested him in the first place. Phon continued to fervently accuse the police officers of mistreating him with their rudeness, foot-dragging his case allegedly to seek bribes, and making him share the cell with drug offenders. However, all these criticisms merely led him to the conclusion that only the overpowering and discretion-deficit 'police need to be reformed but the law is already good'.

This resentment towards the officers but not the system was also present in Tei's pre-arrest account. Tei recounted of many times he had been harassed by the local police officers who had threatened to falsely charge him with drug offences unless he paid a bribe, taking advantage of Tei's past association with drug users. These multiple extortions had bled him dry, stressed him out, and pushed him to cannabis use for relaxation which led to the latest arrest and his job loss. Notwithstanding his traumatic encounters with the police, he thought that his ordeal in the current case was fair because he had broken the law and this time the officers were duly performing their duty. He simply wished that the police officers stopped harassing people; nonetheless, overall, he still

blamed himself for resorting to cannabis, as he reflected, ‘Using weed was bad to myself. All this happened because I used it. I put others in trouble and made my parents hate me’.

Apparently, the pervasive consciousness among the deferential defendants is guilt, self-blaming, and belief in the legitimacy of law and the criminal justice system. Consistent with the ‘before the law’ narrative, the law and its system is perceived in the abstract and idealised form uncontaminated by disrespectful implementations (Ewick and Silbey, 1998: 75–77). Although dominant, this is not the only mode of consciousness found among defendants in this study. There is the other variant of compliance with the lesser degree of the perceived legitimacy, by which deference is externally displayed but the motive behind it is resignation for survival.

4.2 Resigned Compliance

As the name suggests, this variant of compliance involves a resigned display of compliance as means of survival in the face of suppressive and unchallengeable power. Defendants in this category either had critical or neutral opinions on the law and the criminal justice system. However, realising their insignificant abilities, they preferred avoidance to resistance against authority. If unfortunately caught up in the criminal justice system’s grip, they chose to obey it and tolerate the experience in order to be free from it as quickly as possible. This form of consciousness is comparable to what Ewick and Silbey (1998: 192) call ‘against the law’ by which the law is seen as the exercise of capricious and dangerous power. Trust in the law and the belief in the legal authority’s legitimacy is thus negligible or null.

From his interview, Tong was apparently critical of and irreverent towards the criminal justice system, not just its agents. Although he and Phon were the only two outspoken critics of authority, unlike Phon, Tong’s criticisms were directed at everything starting from the legitimacy of his charge to the futility of the fine. Speaking about his offence, Tong questioned the rationale behind criminalising cannabis possession. He said he used it to relax and help him ‘escape from this crazy reality’ – mostly involving his frequent altercations with his mother. Cannabis calmed his temperament, made him forgo his mother’s biting reproaches, and thus avoided dramatic shouting matches. He merely smoked cannabis in his own room and took quiet pleasure after the smoke; therefore,

doing no harm to anyone. Plus, he could eat well, sleep well, work well, and even quit drinking alcohol because of it. Topping his argument with foreign examples of cannabis legalisation, he confidently concluded, 'I think it's not illegal. The stuff shouldn't be illegal'. As a consequence, he did not repent his action and candidly admitted that he would use cannabis again to cure his stress and lost appetite.

Tong's intention to avoid the law was clear in his confession that he used to 'clear away' the charge with the police twice many years ago before this case. Both involved cannabis possession: the first time he was innocent but the second time he was not. Still, in both incidents he was successful in negotiating with the police officers and was released with no charge and criminal record. Tong's desire to escape the consequences of being arrested was partly fuelled by his distrust of the police, as he recollected one of his elder friends being wrongfully accused by the police officer to extort a bribe. Tong's distrust was aggravated by the encounter in his present case – according to his narrative – with an opportunist officer who demanded cash for letting him play with his mobile phone and smoke his own cigarettes to pass the time in police custody. Moreover, not only did the officers seem to withhold information, they also seemed to mislead him into expecting the failure of his bail application.

His distrust and resentment extended to the court and its personnel. Tong was confused about the process and the purpose of being down in the basement rather than up in a typical courtroom. However, he insisted to his waiting father that no one could be trusted with the information about his likely sentence, not even court officials. Tong went on with his rant about the judge who had presided at his remote remand hearing and had deflected his questions with an apparently irritated mood. Understanding legal application in terms of pure power whereby the judge is free to fix whatever sentence however harsh, Tong associated court business with losing money, wasting one's future, and wasting time. Blinded about the progress of his case processing, he complained about the court's tardiness as if apathetic to people's temporal necessities. Furthermore, even though relieved by being sentenced to a small fine, he doubted the sentence's purpose and predicted its futility in general deterrence.

The intensity of Tong's criticisms was unmatched in this study. Nevertheless, he complied with the process without hesitation. Never once did he ponder about

disappearing because he knew about its negative consequences. Neither did he consider hiring a lawyer and pleading not guilty because he foresaw the uselessness of such a decision. Although upset by the 'moody' judge at the remand hearing, he did not retort. Likewise, despite all his rants, Tong kept them silent before the agents of authority. His surface docility reflected a strategic adaptation to his powerlessness within a powerful grip of the criminal justice system, rather than a full subscription to the system's legitimacy.

Tong was not the sole defendant in this category but he was obviously the most critical. The least critical but equally noteworthy was Yot. Unlike Tong, Yot agreed with the criminalisation of his charge, possession of methamphetamine, because he believed in the danger of drugs. However, as seen earlier in his exchange with the judge, Yot insisted on his non-ownership and non-use of the seized drugs. The kid who left the drugs in question with him was a regular face he had seen in the neighbourhood and at the time he was sitting out drinking beer in front of his regular drinking place. The kid asked him to hold them temporarily for someone else's collection. Unthinking, Yot obliged, only to be arrested soon after the kid had gone. This moment left him with bitterness and guilt: guilty for his ignorance and bitter from injustice he received, as he lamented:

> I don't know what to say. You could say that I was wrong. It was red-handed. I said the pills were not mine. The officers said, 'How can you say they are not yours? You have them'. I don't blame anyone. [If I am to be imprisoned,] I'll think it's unjust. But the pills were with me. I'll have to yield.

Thoughts of yielding and resignation pervaded nearly all Yot's comments. Although he mentioned he should not have had such an experience, he invoked *karma* to justify his predicament while self-blaming for thoughtlessness. Self-deprecating of his poverty and lack of legal knowledge, Yot was resigned and fatalistic. On conflicting suggestions in the neighbourhood about his likely sentence, Yot said:

> Whatever they said, so be it. I don't have a right to oppose them. They are the big shots. I'm not as smart as they. I have to believe them. I don't know things. Whatever they said, I have to believe it.

One of the predictions of his sentence was a 10,000-baht fine and that non-payment would cost him prison time. Yot was worried because he was unable to pay it: '10,000

baht is absolutely expensive', he sighed. Yot said he simply would have to tolerate custody if that was the case for non-payment. He added that he would not yield if he had money; however, a person in his status had no right to say anything. Similarly, hiring a lawyer was impossible for him because, as he reasoned, 'I don't have money. It's difficult to talk. It's untalkable'.

Nevertheless, Yot was fortunate to have his regular client rescue him from remand custody and also accompany him to court. He secretly hoped that his saviour would help pay the fine and take him out, although he was too ashamed to ask her directly, as he admitted:

> I can't say anything. I'm afraid to put more burden on her. She bailed me before and now has to pay the fine for me…I'm sorry of course to go to jail for not paying a fine. But I think that she probably won't abandon me.

Eventually, the court fined him 15,000 baht and his helper really did assist him despite her own difficulty, a gesture which moved him deeply and made him profoundly grateful. About his fine, Yot said that it was massive for a penniless person like him but he had no choice since it was up to the judge.

Yot's acute sense of helplessness may appear a stark contrast to Tong's outspoken rants. However, their compliance essentially stemmed from the same motive: the desire to get their ordeals over with quickly and minimise the injuries. Consciously or not, Yot's uncritical obedience to the authority was strategically appropriate in light of his subjugated status as opposed to the mighty authority of law. At first blush, Yot's submissiveness and self-blaming appears not different from those in the deferential category. What distinguishes Yot from deferential defendants, nonetheless, is that the deferential view themselves as lawbreakers and see justice in the system's dealings with them, whereas the resigned like Yot self-identify as victims of injustice and blame their fate and poverty for their mishaps. Therefore, Yot's deference was arguably not based on the same high level of the perceived legitimacy as those with deferential compliance.

Conceivably, Yot's resigned consciousness may have shifted from a deferential original. Since people's legal consciousness is fluid and flexible to change as the perceived status of law fluctuates, they may have different consciousnesses dependent on the situations (Ewick and Silbey, 1998: 49–53). Thus, defendants may shift their mode

of compliance as their perception of legitimacy changed. In Yot's case, considering his continued belief in the dangerousness of drugs, he may have revered the criminal justice system for its fairness in punishing drug offenders. Nevertheless, the misfortune of his case had made him feel bitter about injustice and trapped in the law's glutinous web. This may have changed Yot's view of the system from righteousness to mighty power and shifted compliance from normative deference to resignation.

In light of fluid consciousness, the two variants of compliance portray a simplified picture of a more plausibly complex and blurry state of obedience. For example, many deferential defendants in this study, despite their guilt, noticeably deferred to the law not primarily because of its moral authority but rather because 'it is the rule' – reflecting the shared sentiment of powerlessness with their resigned counterparts. Although they internalised the pains by self-blaming, they may have done it as a coping strategy in the face of forceful authority. Therefore, in general, defendants of these two variants were not dissimilar and they more or less shared the essence of 'reluctant conformity' or 'passive acceptance' of the criminal justice system, whereby compliance is driven principally by the sense of obligation instead of moral duty (see Jacobson, Hunter, and Kirby, 2015).

5. Docility and Symbolic Violence

Prominent in the judges' perceptions towards defendants in the preceding chapter is their assumption that defendants are undisciplined, cunning, and playing the system. These negative images make judges conclude that defendants are untrustworthy and deserve disproportionately harsh yet risk-averse treatments in the system. Such a stereotype of tactical defendants capable of manipulating the process for their advantages is comparable to Ewick and Silbey's (1998: 48) third form of legal consciousness, 'with the law', by which the law is regarded as fair game for the maximisation of one's interests. Nevertheless, none of the defendants in this study was sufficiently knowledgeable about the law and its process to strategically game it. Pervasive throughout the data was their illiteracy about the criminal justice system which resulted in their under-preparedness and at times fatalism. Also, as described in the preceding section, compliance with the authority was the reaction of every defendant, including the most critical one. Instead of reducing legal authority to a means or competition arena, all of them either saw it as

hallowed or irresistible power to be obeyed and tolerated, rather than resisted or exploited.

Defendants' submissiveness to the criminal justice system was exemplified by their coming to court despite their fear of future in custody. Every defendant, first-timers and repeaters alike, all came to court, to avoid aggravating their case outcomes. To them, a court appearance was suffocating yet inevitable, as Yot explained:

> The court ordered me to come so I must come. Nobody wants to come to court. But since it's the order, I must obey. It's impossible for me not to come…I was worried about the court's sentence but I must come. If I don't come, that means I'm escaping…I'm making a living here. I never think of moving…I can't go anywhere.

This line of reasoning also appears in some defendants' reflections on their past experiences with community service as a probation condition. Defendants shared the same confusion of not understanding its purpose and admitted their reluctance to comply with the measure. They similarly confessed to feeling bored and thinking it had been a waste of time, and yet they had never missed their work dates because they had wanted the case to be over. The desire for closure underpinned not just their compliance with probation conditions but also their court appearances, past and present.

Furthermore, defendants were remarkably willing to condemn their past deeds. Self-blaming and guilt was commonly found among defendants. Even Tong who did not repent his accused act condemned his quick temper against his corrosive mother, deeming it a trigger of his mother's rage that led her to tip-off the police about cannabis in his possession. Also, Yot who lamented his undeserving ordeal blamed himself for his thoughtless generosity. *Karmic* retribution was explicitly raised by multiple defendants to justify their painful journey, and it was implicitly present in many others' sense-making of their penal experiences. Cloud went as far as adopting the all's well that ends well attitude. To him, the agonising time in pretrial custody was a moment of revelation to his dormant undefeated spirit that, when rekindled, made him determined to changing for the better self. This led to his astonishing conclusion: 'It was good that [the case] happened'.

The extreme degree of internalisation of pains induced by the criminal justice system produces the extreme degree of docility. To these docile defendants, it is fair to respect the rules and suffer the consequences of breaking them. It is irrelevant whether the rules

make sense or proportional or whether the process is intelligible. Neither does it matter the necessities or pressures that precede the violation. It was their character weaknesses that prevented them from following the rules and thus they only had themselves to blame for the ensuing punishment. This consciousness is a complete submissiveness to the authority of law. Defendants' internalisation of society's norms and their desire to be accepted back in the law-abiding community, as discussed earlier in subsection 4.1, may explain this extraordinary self-blaming. However, they still do not illustrate how such internalisation emerged and took shape.

As concluded in Johansen's (2021) research, internalisation of dominant social constructs implies a non-strategic and inadvertent process by which situations are interpreted based on past experiences and previous cultural knowledge. This process is therefore substantially influenced by prevailing cultural frameworks. By being immersed in the same cultural environment for a significant amount of time, it would be difficult not to absorb its patterns of conceptualisation and not to take for granted what most members in the society perceive as true, just, or desirable. Where cultural frames lead to endorsement of deprivation, discrimination, or degradation, particularly by the very person being so treated, it is arguable that symbolic violence is behind such a peculiar phenomenon.

Symbolic violence is the concept developed by Bourdieu (2002: 1–2) which explains 'a gentle violence' of imperceptible domination that not only remains unopposed but also embraced by the dominated. Despite their disadvantages or even sufferings, the dominated take their subordinate status for granted and consider it natural in the order of things. The maltreatments or discriminations against them are largely attributed to their own faults, instead of structural problems. This 'misrecognition' thus explains the dominated's complicity in their own oppression. However, it involves neither coercion nor conscious choice but rather an exercise of the dominating power at a subconscious level. By incessantly reproducing the dominant's discourses, society's institutions – namely families, schools, religious entities, and the state – repeatedly implant into the dominated the commonplace of domination and its hegemonic justifications. As a result, without any physical constraint, the dominated see the world according to the dominant's perspectives and perceive their subjugation as normal and legitimate. Indeed, this lack

of visible coercion is what makes symbolic domination very insidious and powerful for its effects are durable and its operation is hard to break (pp. 34–38).

In the Thai criminal justice system, many cultural and institutional forces underlie symbolic violence that accounts for defendants' blame internalisation. The prevailing discourse about the fairness of law plays an indispensable part. The appearance of objectivity and impartiality in the law normalises the moralisation of certain actions and actors in the legal system. This is most evident in the cases of drug abuse and minor drug possession where the law's condemnation insinuates malice and repulsiveness on the offenders' part. Hence, the blameworthiness of the offences spills over to the personality of defendants.

The air of authority of the criminal justice process also naturalises the incapacitation of the defendants' agency. By trapping them inside a procedural maze, mapless defendants are rendered helpless and system-dependent. The commonly heard refrain about 'the court's mercy' encapsulates this impression of total dependence on the judicial authority.

Institutional forces exert power in inducing self-blaming through hostile environments. Because of architectural influences on behaviour and identity (Hancock and Jewkes, 2011), the prison's ambience of pervasive control provokes in the inmates the feelings of rejection, inferiority, and guilt (Goffman, 1961: 7). Likewise, by being exposed to the constant presence of custody – from the police cell to the court's holding area – and the distancing of the process, defendants are recursively forced to experience exclusion, denigration, and blameworthiness. The stigmatising label, implicit in the marginalising process and unfriendly architectural atmosphere, tends to powerfully affect defendants' self-perception. The more dominating the environment of stigma, the stronger the impact on defendants' self-image, and the more likelihood of their eventual self-deprecation (see Lipsky, 2010: 66–69; see also Plous, 2003: 23–24).

Finally, the cultural concept of *karma* with its overpowering discourse of individual responsibilities aggravates the self-blaming process. By attributing present hardships and sufferings to one's past demerits, it supports the claimed fairness of law and punishment. It also justifies the denigrating procedure which is rife with symbols of stigma. Although, the notion of *karma* is useful as a coping strategy against an unavoidable trauma, its

soothing effect can eclipse a true causal explanation and over-emphasise individuals' failings (see Wilson, 1962: 275). Moreover, inherent in *karmic* justice is the perceived equivalence of social status and moral worth (Streckfuss, 2011: 67). Therefore, by having plummeted to the bottom rung of the social ladder, defendants who have internalised this belief are ready and willing to self-reprimand and uncritically accept the 'deserved' degrading treatments.

The symbolic power of the discourse about the law's fairness and authority, the degrading procedure, and the belief in self-responsible *karma* fuels symbolic violence that leads to defendants' willingly embracing their painful procedural journey. Such an expression of acquiescence not only banalises the degradation but also reinforces the allure of legitimacy of criminal procedural practices. With such reinforcement, judges – having already perceived the system as legitimate – have no reasons to question their routines. Accordingly, their indifference to the system's excessive pains continues.

In the end, the cycle of indifference revolves around the unchallenged legitimacy, judges' faith in their practices, and their negative presuppositions about defendants. This cycle is supported by defendants' docility despite all the hardships and mistreatments inflicted by the system. This appearance of unwavering obedience strengthens the myth of legitimacy and perpetuates the cycle. Hence, defendants' self-blaming docility is a tacit yet integral part of the cycle of symbolic violence and judicial indifference. Regrettably, docility induced from symbolic violence drives defendants' unconscious complicity in their own oppression.

Conclusion

This chapter presents the narratives of defendants which contradict judges' understandings. Contrary to the conventional belief, the sentence is just a part of the continuous pains of the overall process and may even bring closure to defendants' anxiety about the unpredictability of their fate. To defendants, the system punishes them early with pretrial custody, making bail in a hostage-like condition, and waiting nervously for their precarious future. In contrast to the conventional belief that fined defendants negligibly suffer from this petty sanction, when taken as a whole, the hostility and torments the process inflict on defendants are substantial.

Moreover, defendants in this study were largely ignorant and uncritical of the law and the criminal justice system. Instead of playing the process, they obediently followed the authority despite their confusion, difficulties, and resentment. This remarkable degree of compliance was driven by their misrecognition and internalisation of all terrible experiences that befell them. The resulting resignation was their unintentional complicity in the system's infliction of their sufferings. The appearance of unquestioning obedience supports the system's legitimacy claim and thus justifies judges' indifference to the questionable justifiability of their practices.

Chapter 6: The Anatomy of Judicial Indifference

Introduction

Chapter 4 reveals Thai judges' indifference to the substantive inequality and disproportionality of the flat-rated fine and their custody-prone practices. This indifference partly results from their general distrust of defendants who in theory can 'play the system'. However, in Chapter 5, we have already seen that judges' many assumptions about defendants are inaccurate, at least in terms of the defendants in this study. Considering such inaccuracy, it remains a puzzle as to what has made such indifference systemic and seemingly self-perpetuating.

One strand of argument proposes that judges, cognisant of the moral questionability of their practices, employ techniques of neutralisation – such as denial of alternatives or appeal to a higher authority – to deny responsibility (Tombs and Jagger, 2006). Nevertheless, psychological techniques alone are debatably insufficient to suppress a strong feeling of doubt in the practices' legitimacy that would occur because of a clash with judges' benign professional ethics (Tata, 2019: 119–121). Moreover, nearly all judges in this research seemed to sincerely believe in the legitimacy of their practices. Thus, rather than deliberately neutralising their actions or inactions, judges are more likely to be oblivious to their routines' ethical concerns in the first place.

This coincides with the explanation of the 'ethical blindness' theory which posits that under certain situations people may be blind to and even convinced of the moral justifications of their unethical behaviours (Palazzo, Krings, and Hoffrage, 2012: 324). It emphasises the overwhelming power of situational pressures in shaping people's decisions and perceptions of a particular event. According to this theory, the pressures are multi-layered; from the perceptible conditions of the proximate surroundings, to the less visible forces of the organisational culture and the dominant ideology in the more distal layers. These layers are interactive and co-produce the overall situational context in which decision-makers operate. If the context changes, it is possible that perceptions also change (Palazzo, Krings, and Hoffrage, 2012). The emphasis on the contexts of decision-making instead of individual internal coping mechanisms aligns well with the data of this research. Furthermore, the theory's breaking down of situational pressures

into layers of context provides a more insightful framework in understanding how indifference is generated and strongly sustained. This chapter, therefore, will elaborate on the workings of these multi-layered situational influences that affect judges' frames of decisions and result in their unintended indifference.

This chapter begins with the introduction of the concepts of ethical blindness and rigid framing. It then explains the rigid framing adopted by Thai judges in this study. Subsequently, it elaborates on the contextual pressures that interact and produce such rigid framing, from ideological and organisational to situational layers. It ends with depicting special mechanisms at the situational layer that powerfully contribute to rigid framing and indifference.

1. Indifference as Ethical Blindness

1.1 Ethical Blindness and Rigid Framing

Ethical blindness is defined as 'the decision maker's temporary inability to see the ethical dimension of a decision at stake' (Palazzo, Krings, and Hoffrage, 2012: 324). It is a context-dependent and temporary state within which decision-makers unconsciously shift from their ordinary moral standards to a specific set of moral reasoning. Influenced by their environment, decision-makers subliminally develop their frames of understanding to make sense of and facilitate their decision-making. Over time, the frames become too narrow and rigid. Trapped inside the parochial perception of reality, decision-makers are blocked from noticing the deviation from their pre-context moral values and principles. The stronger the context, the more difficult it is for them to escape from this cognitive trap. Eventually, what appears to external observers as unethical and irrational may be completely justifiable and normal in the eyes of inside decision-makers (Palazzo, Krings, and Hoffrage, 2012: 324–326).

This thesis of an overpowering situational forces echoes the seminal psychological research by Asch (1955), Milgram (1974), and Zimbardo (2007). It is additionally supported by Lipsky's (2010: 141) detailed observations on the 'street-level bureaucracy' whose constantly under-resourced conditions and perennially immense workload contribute more to the workers' attitudes than their own backgrounds and socialisation. In the criminal justice setting, Hawkins (2003: 189) also argues that decision-making is set in the milieu where various environmental forces are at play. The congruent theme

from the literature is the highlight of contextual influences in shaping decision-makers' judgements by modulating their frames of references to be context-specific, and at times narrow and rigid.

Frames, as referred herein, are cognitive lenses by which we employ to understand the world. They are developed by a variety of factors, dispositional and situational combined, particularly by situations where social phenomena are cued repeatedly in a specific manner. Through frames, the situation is perceived from a particular angle and thus complex reality is simplified to make it more easily digestible. Functionally, they act as filters of information by selectively letting in some sets of facts while excluding certain others from our perception. Frames, therefore, shape and simultaneously limit how we perceive the reality, making facts beyond the scope of the frames our blind spots (Palazzo, Krings, and Hoffrage, 2012: 325–326; see also Goffman, 1974; Hawkins, 2003: 190–191).

Under the influences of frames, decision-makers are unable to see the plurality of perspectives. The version of the world as presented to them appears complete and conclusive. Furthermore, frames are often resistant and difficult to detect, making it dangerously easy for framed perceptions to become dogmatic. This can be prevented by the ability to change frames and see other outlooks. However, where this ability is lacking, as is usually the case, decision-makers are locked in one angle of the reality and are no longer able to switch to different frames. Thus, emerges the problem of rigid framing which severely impairs decision-makers' sight of the wholeness or complexity of the world. As a result, decision-makers become opinionated and unreceptive towards information different from the one presented in their frames. What follows is too narrow and rigid sensemaking that excludes ethical dimensions from decision-makers' purview and permits ethical blindness to operate (Palazzo, Krings, and Hoffrage, 2012: 326–327).

Rigid framing is the product of an interaction between an individual's pre-context frame and a constellation of contextual pressures. Zooming in, the latter component has three further layers that are interactive with one another, comprising ideology, the organisational context, and the immediate situation. Ideology refers to the overarching norms or values that help establish the rules through their definitions of rightness and wrongness and what is desirable. The organisational context refers to organisational

structures, cultures, or rules under which decision-making must take place. The immediate situation refers to pressures an individual encounters on-the-spot of decision-making. The risk of rigid framing is either low, moderate, or high contingent on the interplay between these layered factors (Palazzo, Krings, and Hoffrage, 2012: 327–330; see also Hawkins, 2003: 195).

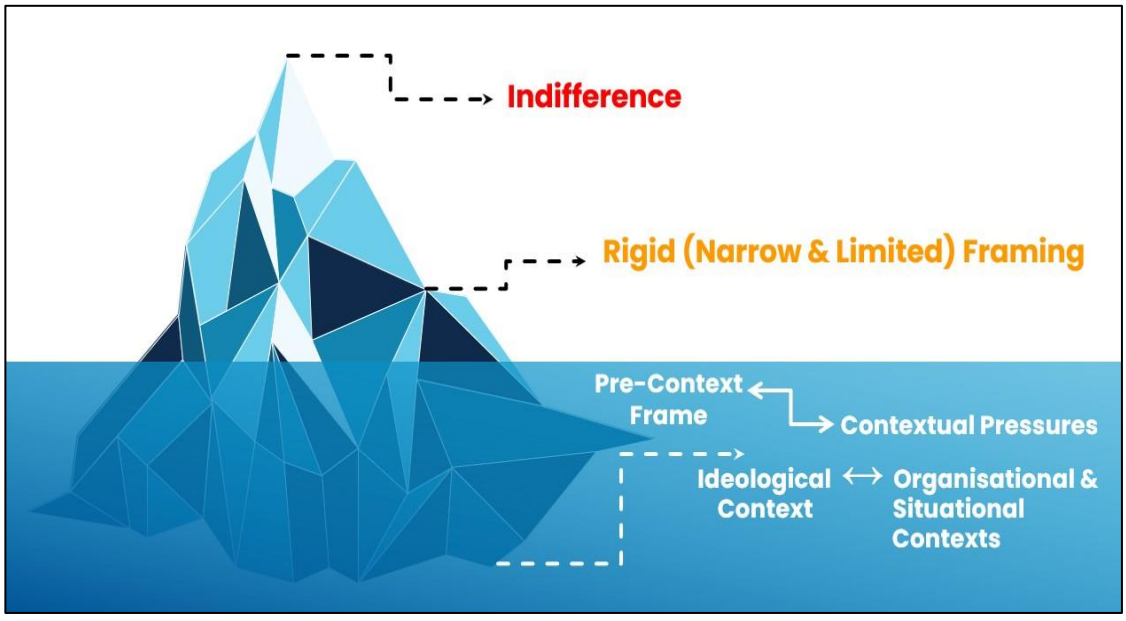
The risk of rigid framing is high if the original frame is in concert with the environmental pressures for merely particular values, and low if the contrary (Palazzo, Krings, and Hoffrage, 2012: 328). For example, in the criminal justice setting, if the judge is trained in legal formalism, his or her sole focus on the technicality of law will be enhanced in a highly bureaucratised judiciary that promotes consistency through centralised standards and guidelines. Dominated by the institutional ideology that prioritises the maintenance of societal order, the judge will see no conflicts in yielding to group pressure and following the routines whose primary aim is to assure certainty and security. By contrast, if the judge is heavily trained in critical legal studies or if the judicial culture is open for dissenting opinions and creative judgements, the risk of rigid framing will be low or moderate.

However, as posited earlier about the dominant power of situations, it is plausible that, notwithstanding the strong pre-context frame that favours critical and creative judgements, under sufficiently powerful situational influences, an individual's original frame may be shifted gradually towards accepting the prevailing group norms. This subliminal process is called ethical fading, whereby small incremental steps of the taken routines increasingly yet invisibly divert from an individual's original moral standards (Palazzo, Krings, and Hoffrage, 2012: 331). Ethical fading operates through repeated actions with elements of moral disengagement which include, among others, moral justification, diffusion of responsibility, and dehumanising the victim (Bandura, 2002). Moral disengagement is embedded in the mechanisms of indifference in this study, to be presented further below. Operating in a systemic level and through recursive actions, an individual working under the influence of ethical fading may not just merely fatigue his or her compassion (see Tombs and Jagger, 2006: 818), but may also unconsciously subdue initial self-reproach, narrow an original frame, and shift the moral baseline. Little by little, the routines are normalised and the individual becomes ethically blind (Palazzo, Krings, and Hoffrage, 2012: 331–332; see also Bandura, 2002: 110).

This process of ethical fading is perceivable in street-level bureaucracy settings. Overworked and tired of the gap between the ideal and the reality, workers reconceive their work and their clients to mentally bridge this gap. Concomitant with this reconception, they develop routines to facilitate their demanding yet under-resourced work. Over time, street-level bureaucrats accept the reality of their work as fixed and equate the status quo to the best outcome possible. With this rigid framing, they genuinely believe to be doing the best they can under discouraging conditions (Lipsky, 2010: 144). With this belief, the workers are ethically blind. In other words, they become indifferent to the moral dubitability and the alleged irrationality of their 'best' practices.

From the above explanation, we might visualise the workings and components of ethical blindness as an iceberg whose summit is the noticeable indifference of a decision-maker in a certain context. Down below but still above the sea level is the existence of rigid framing that leads to indifference. Finally, what lurks beneath the sea level but is utmost significant, is the interaction between a decision-maker's original frame and three layers of contextual pressures from ideology and the organisational context to the immediate situation. Figure 6.1 presents this visualisation.

Figure 6.1 Ethical Blindness Visualised



1.2 Rigid Framing in the Judicial Practices

Chapter 4 delineates key characteristics of the Thai fining practices. As a quick recapitulation, they include the fluid meanings of money, moral symbolism and formalism, the dominance of distrust, and bureaucracy-centric habitus. Commonly underpinning the four key characteristics are the three rigid frames of formalism, bureaucracy-centric preferences, and a moralising and essentialist worldview. Judges appear to unknowingly apply these three frames when going about their day-to-day judging business. The three frames are usually applied together, resulting in the prevailing attitude that overlooks – and at times debases – rights-based considerations and concerns for substantive justice. Such an attitude is described by other critiquing authors as 'extremely legalistic' (McCargo, 2020: 31), conservative and pro-government (Munger, 2015: 304; Vitit, 2004: 341), and failing to adequately protect individual rights and liberties (Dressel, 2018: 272; Thongchai, 2020).

As evidenced in Chapter 4, many judges understand equality in a formal sense and also that formal equality is justice. Hence, they are adamant in solely basing the fine on the offence and the severity of circumstances. The idea of offender-centric sentencing for equality of impact, such as a wealth-based fine, strikes them as irrelevant and even unacceptable. Even judges who seem to understand the disparate outcomes of formal equality still prefer an offence-based consideration for a message of equal reprehensibility. This supremacy of visible equality obfuscates the necessity for equality of punitive effects. Prioritising form over substance, judges disregard the tailoring of sentences to optimise both retributive and deterrent impacts and opt for the formal consistency of like sentences for like offences.

Such persistence in formalism may be significantly attributed to the tradition of legalism that has long dominated Thailand's legal education. Under legalism, law is removed from its socio-political elements and perceived as if pure from any worldly contaminants. Law is thus sacralised and elevated far above politics (McCargo, 2020: 21). We will see further below how the domination of legalism and the proclivity for order shape the contexts in which judges work and finally their frames of justice, formalism being one of them.

Judges also place preferences for bureaucratic efficiency over rights-based goals. To them, efficiency in the forms of speed and consistency are significantly prized and relentlessly pursued, particularly in the face of a consistently massive workload. The daily influx of cases unfortunately calls for a breakneck pace of case disposal so that all interested parties can finish their court business at the end of the day. The urgency of speed overrides careful individualisation and necessitates mechanical routines in the likes of a cursory and performative hearing. Recall Judge I's admission that 'at the *wain-chee*…cases flood right in and there's no chance to have this enquiry [about financial ability]'.

In light of this mass processing, consistency is a convenient proxy for quality of sentences; thus, the usefulness of the in-house and confidential 'sentencing guideline' known as the *yee-tok*. Moreover, security is another dimension of efficiency that justifies holding defendants in the holding area the entire time and letting judges preside over a remote hearing instead of a face-to-face session in a typical courtroom. Certainty of enforcement also adds to efficiency. By having immediate confinement as the default mechanism for failure to pay the fine, the judiciary saves resources from solving the problem of, in Judge E's phrasing, defendants 'disappear[ing] into thin air' and evading payment.

Judges tend to regard the bureaucracy-centric approach as the central pathway to justice. To achieve administrative aims is ostensibly equivalent to upholding the rule of law. Expeditiously disposing of a case is in the best interests of everyone. Routinisation not only enables a speedy process but also ensures the standard and objectivity of decision-making. Risk-averse practices protect public order by sending a clear message of certainty of punishment which sustains deterrence. Furthermore, efficiency is the perceivable evidence of a responsible use of tax money.

Together with the rational perspective of a modern bureaucracy, judges also wear a moralistic and essentialist lens towards defendants. As seen in Chapter 4, judges' primary purpose of sentencing is moral communication. Sentences reflect more of moral blameworthiness than utilitarian calibrations. Several judges extend their judgement about moral worthiness to deciding whether to allow fine-default defendants to do community service instead of confinement. Some even apply this judgement in deciding

whether to explain about non-custodial alternatives to defendants. One of the most common examples of 'unworthy' defendants in the minds of many judges are drug offenders. This is clear in Judge I's admission to 'pay[ing] no attention' if drug offenders end up in fine-default confinement because they 'are in the borderline where imprisonment is also warranted'. Moreover, generally believed to be capable of paying the fine out of the proceeds from drug trades, fine default by drug offenders is often labelled as wilful. Accordingly, confinement is deserved, as Judge U reasoned, 'It's their decision, their choice to be confined instead of paying the fine'. On this account, stigmatised by the hegemonic discourse of drugs being a threat to national security and the likes, defendants in drug offences – however minor the severity – seem to be placed well below other defendants in judges' echelon of moral worth.

Judges are evidently distrustful of defendants. Many judges in this study described defendants with adjectives indicating bad characters and untrustworthiness. Judge A, for example, commented that 'defendants are so shrewd…When they see the opportunity, they just exploit it'. Additionally, allusions to defendants being cunning, calculating, exploitative, irresponsible, and lazy were common refrains. Some also linked poverty and poor education with the propensity to deviance. These portraits are consistent with the prevailing conviction in Thai society that typical Thais are undisciplined and rule-avoiding (see Suntaree, 1990). Enshrouded by these stereotypes, implicit disdain and distrust of defendants are manifested throughout the entire penal process, especially the use of remote hearings and immediate confinement for 'fine default'.

Though lacking in the base-rate statistics for references, judges cling to the popular narratives of defendants 'playing the system' which further affirm their bad impressions of defendants. This readiness to adopt stereotypes can partly be ascribed to judges' legalistic backgrounds (McCargo, 2020: 103), and the compulsory education rife with typically simplistic and moralistic teachings (Mulder, 1996: 153–154). The original uncritical stance is probably enhanced by the judiciary's elitism and insularity which, as explained in Chapter 2, exalt judges' self-perception to be of morally superior status and shield this self-view from external feedback. Insulated in this self-congratulatory image, judges with uncritical outlooks are more prone to adopt essentialist perceptions about defendants' actions and motivations (McCargo, 2020: 103). These views are often accusing and disparaging because defendants are considered in the lowest rung of the

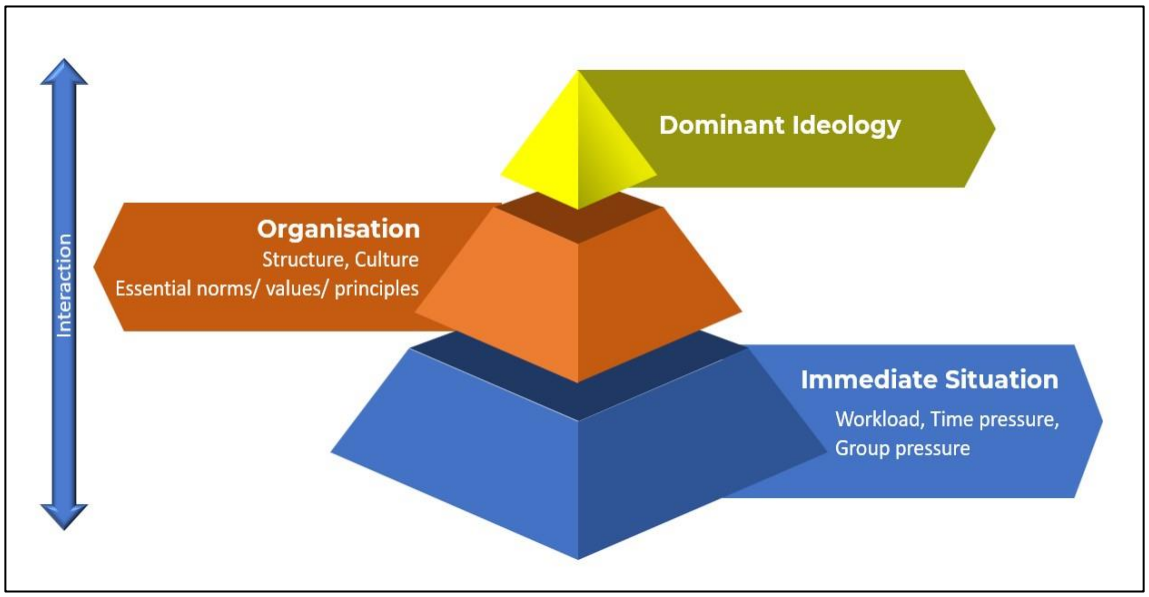
virtue hierarchy due to their 'unvirtuous' conducts (see Streckfuss, 2011: 153–155). Unchallenged by the external counter-narratives, judges' distrust of defendants based on their moralistic and essentialist worldview tends to be persistent and resistant.

The frames of formalism, bureaucracy-centric preferences, and a moralistic and essentialist worldview are all rigid framing by which judges are prevented from seeing the alternative interpretations of justice. Under the influences of these three frames together, judges are made to construe the path to justice as comprising formal equality and bureaucratic efficiency, and also that defendants are generally of unworthy and untrustworthy type. Unsurprisingly, with this understanding, the assembly-line case processing and the distancing between judges and defendants appear natural and preferable. The inherent marginalisation and degradation of defendants are ignored. Proposals to equalise the disparity in the system are perceived in the opposite light as promoting inequality and jeopardising the flow of the process. In short, judges become indifferent or ethically blind by virtue of the rigid three frames regarding justice and defendants' characters.

2. Three Layers of Contextual Factors

As earlier mentioned, rigid framing is the result of an interaction between a judge's original frame and contextual factors which comprise ideology, organisational forces, and pressures from the proximate work environment. These situational drives interactively operate in layers where at the top lies the layer of ideology, which generates far-reaching impacts on basing frames for the organisation's and the individual judge's priority among competing values. Beneath ideology is the layer of the organisational context whose pressures can originate from the structure, the culture, and the system of norms, values, and principles held essential by the organisation; i.e., the Thai judiciary. Down at the bottom is the layer of the immediate situation in which judges find themselves throughout their daily performance. Pressures presented here are the constellations of the exigency of a massive caseload, the race-against-time case processing, and the pressure to conform to peer-approved routines. All three layers simultaneously impact and are impacted by one another. Therefore, if all layers are working in concert, frames produced as a result will be extraordinarily strong and rigid, as is the case for the Thai judiciary. The three layers of contextual pressures can be visualised as presented in Figure 6.2.

Figure 6.2 Layers of Contextual Pressures Visualised



2.1 Ideology: The Priority of Order

Ideology is important because it guides orientation and sets priority when different values or goals compete (Lipsky, 2010: 147). It offers a justification that the preferences and directions chosen are desirable (see Milgram, 1974: 142). The strong ideology presents the reality in a coherent, simplified, and reductive manner, instead of a conflicting, complex, and multifaceted picture. Under its influence, a decision-maker tends to adopt a narrow and incontestable position about the society's end and the preferred paths towards it. Hegemonic ideology hence creates a dogmatic belief system (Palazzo, Krings, and Hoffrage, 2012: 330).

Ideology is translated into prevailing values and social norms which may be later concretised in the forms of rules and associated procedures. Members in the society or the organisation, therefore, are embedded in their ideologically influential surroundings (see Lipsky, 2010: 180). Explicitly or tacitly, each member is socialised and trained to uphold the same values, norms, and patterns of behaviours. The limited and fixed frames of reality shaped by the dominant norms in turn supports the validity of the ideology. In this way, ideology keeps being reproduced and its hegemony sustained.

In the criminal justice setting, ideology certainly comes into play considering the ambiguous meanings of justice and the rule of law. The fluidity of the two concepts is represented in a vast range of scenarios, each of which purportedly falls in their ill-defined scopes. For this reason, the anti-democratic regime that systematically denies human rights but establishes a clear and objective legal system also arguably manifests elements of the rule of law, albeit as its 'thin' version (Tamanaha, 2004: 91–93). Ideology thereby enters the scene to represent the political preferences of the dominant interest groups in selecting the version of justice and the rule of law for public endorsement. In Thailand, the selected version is the one that prioritises order over rights and liberties as called in Chapter 2 the 'Thai-style rule by law'.

Thai society has long been imbued with the Buddhist cosmology that justifies status hierarchies based on one's virtue and accrued *karma*, i.e., past merits and demerits. By equating social status to moral worth, people of higher status are perceived to be more virtuous and morally wiser (Streckfuss, 2011: 67–69). Differences in the wealth of *karma* thus normalises inequality (Wilson, 1962: 275) and the discourse of individual responsibility for one's own happiness and sufferings.

This moralistic perception correlates with the metaphor of a society as a family in which the ruling power lies with the family head while other members have other different duties to do to support the family (Nidhi, 1995: 43–49). Typecast as unwise and undisciplined, ruled members of the society are not different from children in the family who need to be governed and guided by the virtuous elites as the head of the society. The logic strongly supports the pyramidal social structure and paternalistic governance. Fusing with this paternalistic view are the yearning for order, the distrust of people's obedience to their duties, and fear of their overclaiming rights and wreaking havoc. Therefore, the state has the genuine concerns for control and suppression of any threats to the orderly system of social inequality (Mulder, 1996: 167–171).

The ethos that favours order is starkly incompatible with liberal values underpinning the Western-style rule of law and modern democracy (Mulder, 1996: 162, 169). The moral legitimacy of social hierarchies and the emphasis on duties over rights make the ideas of equal participation and fundamental rights, as independent from duties, adhered by liberal democratic regimes sound foreign and even dangerous (McCargo, 2020: 90–91;

Thongchai, 2008: 27–28). Unsurprisingly, the vigour and spirits of such imported concepts have been hitherto Thai-ised by the ingenuity of the ruling elites' bifurcation strategy. While fully welcoming the importations of legal forms and technicalities, the essences of limited government and inalienability of fundamental rights have been 'Buddhicised' to such an extent that law and Buddhism can be seen as one and the same (McCargo, 2020: 76; Mérieau, 2018; Thongchai, 2020).

In this localised version, the law is subjugated to virtue and the ultimate source of authority is rather the superior morality of the monarchy (Dressel, 2018: 276; McCargo, 2020: 31). As a corollary, the government by *khon di* (morally superior people) are deemed ideal (Mérieau, 2018; Thongchai, 2008). More important than the law is justice, particularly in the sense that it coincides with Buddhist righteousness, yields to national security urgencies, and protects the monarchical institution (Thanin, 2011: 17–18, 39). In this virtuous rule paradigm, because of the elevated status, power-holders are trusted and public order is the ultimate goal of the collective. Therefore, the government's ruling power is deemed benign and necessary for keeping the society's peace and stability (Thongchai, 2020).

On the contrary, invocation of fundamental rights and liberties poses a subversive threat to society's hierarchical order. Moreover, any emphasis on moral autonomy and human equality opens the way for the plurality of opinions and values. Naturally what then come with a pluralistic society are dissents and conflicts. Although manageable with tolerance and compromise, such a society is no longer experiencing seamless order and uniformity. The possible deprivation of homogeneity and quietude, normally enjoyed during a top-down rule, is considered as unacceptable and, in certain circumstances, even immoral. The demands for rights and liberties are hence tacitly associated with mayhem, and the demanders are usually perceived to be trouble-makers (see Mulder, 1996: 171). Accordingly, the common legal discourse in Thailand often pairs rights and liberties with duties. It also usually goes with the allegation that liberal activists usually assert rights and liberties while ignoring their responsibilities. In this light, notions of fundamental rights and liberties are not only marginalised but are also regarded with suspicion and even contempt. No wonder public order always prevails in the ranking of values for the administration of justice.

This order-centric ideology subjugates individual autonomy and dignity to the collective order. It takes a pro-authority stance at the price of individual rights and liberties. The centrality of order demands not merely orderliness in the society but also uniformity in legal application. It is a potent force in support of legalism which dominates Thai legal education. Strictly limiting the law to the texts and court precedents removes the messy multi-perspectives of legal philosophy and socio-legal studies. Likewise, formalism provides definite standards by which orderly and consistent justice can be more easily administered. Therefore, judges' norms of obeying the *yee-tok* and their adamant upholding of formal equality clearly resonate with this priority of order.

Equally representative of this ideology is judges' strong emphasis on security, both in physical and symbolic senses, for the concepts of security and order are closely tied. In the fining practices, by keeping defendants in the holding area throughout the *wain-chee*, physical security and the orderly hearing are assured. On the other hand, by prioritising fine-default custody, symbolic security is secured in a sense that no culprits walk free from the system. The message of guaranteed punishment is for general deterrence that aims for compliance with law and order. In both instances, the need to maintain security eclipses concerns for proportionality; thereby, marginalising defendants' dignity. This inferiority of individual rights and liberties is also evident in the mechanical *wain-chee* routine that, while focussing on the smooth and orderly flow of the process, distances and degrades defendants to such an extent that renders judges indifferent towards the system's debatably overharsh ordeals.

2.2 Organisational Contexts: Homogeneity through Fear and Collective Pride

Organisations set up architectural and administrative structures in which workers function. Simultaneously, they develop standards of practice and work culture to which workers adhere. Through these mechanisms, organisations reinforce the dominant ideology and establish a context that powerfully impacts the use of frames (see Hawkins, 2003; 195; Palazzo, Krings, and Hoffrage, 2012: 329).

Damaška (1975) theorises criminal justice organisations to exist in two different modes: the 'hierarchical model' distinct in Continental civil law countries, and the 'coordinate model' prevalent in Anglo-Saxon common law jurisdictions. The key attributes of the civil-law hierarchical model are, as the name suggests, the hierarchical structure

of authority and the centralisation of normative standards. The ultimate goal is to achieve certainty and uniformity in decision-making. As a result, autonomous discretion is discouraged and subject to rigorous review and monitoring. Decision-makers like judges are regarded merely as technical experts who apply the norms, not formulate them. There is virtually no room for creative judgements and other forms of judicial creativity.

The judiciary in this model places great importance in appellate review where both questions of law and of facts can be reconsidered. It also imposes on judges a large number of precise and rigid rules or standards to regulate their conducts and discretions. Every stage of the process must be documented for review by superiors and thus the style of documentation is formalised and bureaucratised. In a highly bureaucratised judiciary, judges are simply civil servants who have to follow internal rules, instead of autonomous decision-makers or rule makers.

Adopting the civil-law tradition, the Thai judiciary shares the essences of the hierarchical model. Appellate review is open for both factual and legal questions, subject to certain limitations[107]. Judges are required to follow a judicial ethical code and institutionalised routines to maintain a flawless appearance of honesty, an ultimate value of judgeship (Supakit, 2016: 245). As moral supremacy is purportedly a major source of the judiciary's legitimacy (McCargo, 2020; Supakit, 2016: 247), an allegation of corruption is to be avoided at all costs. The prevailing distrust of defendants, ranked the lowest in the social echelon of virtue, facilitates judges' heuristics in regarding the off-standard leniency towards defendants as a possible sign of corruption. Therefore, although technically judges can deviate from rules and standards of practices such as the centralised bail schedule and the *yee-tok*, departure to more leniency is discouraged and subject to more scrutiny than the other way around (Supakit, 2016: 208). This cultural norm against leniency departure has filled the vague parts of the explicit rules and has become a tacit standard for judges' compliance.

Judges are subject to annual review of their performance by their supervisors, namely the chief judge (Supakit, 2016: 124). Although mostly this review is perfunctory, a serious allegation of misconduct and corruption, if any, would appear in the review report; thus,

[107] *Criminal Procedure Code*, Division Four: Appeal and *Dika* Appeal.

launching a disciplinary action which only the Judicial Commission has the authority to decide. Nevertheless, the Commission is largely composed of senior judges in the higher courts and its decision is final with no channel for further review. Moreover, the scope of misconduct as different from the innocuous deviation from judicial conventions is still ambiguous, as opposed to the long-standing precedents in favour of routine conformity and non-leniency to defendants (Supakit, 2016: 136, Appendix E). For example, the majority of serious disciplinary actions involve bail decisions whereby bail is 'improperly' granted, while not granting bail to even low-risk defendants is unknown to have incurred disciplinary problems (McCargo, 2020: 46). Such a system design heavily disincentivises reasonable non-conformity. It effectively promotes homogeneity via the ambience of fear. This is reflected in Judge F's description of the inevitable concern about issuing an unusually lenient decision: 'I might not be able to answer this question about why I didn't do as what other judges must have done'. Judge R also candidly conceded that if unthinkable situations (such as defendants' jumping bail or evading punishment) unfortunately occurred after the judge's unorthodox discretion, no abstract policies or recommendations could 'save the judge's neck'.

Through fear, the culture of homogeneity is sustained, albeit with abundance of rules, systems of supervision, and disincentives against deviation. As judges, particularly those of lower seniority, are perceivably unfit to be entrusted with discretionary autonomy, their decisions must be controlled and discretion reined in for the sake of consistency and unified standards. This goal of uniformity naturally dispenses with multiplicity of views, creativity, and constructive dissents. Maintaining uniformity through fear breeds counterproductive silence which silently promotes routines that suppresses individual ingenuity and narrows the frames in the process. Nevertheless, fear is not the only explanation of the Thai judiciary's high degree of homogeneity, collective pride as the effect of elitism and insularity also plays a major part.

As explained in Chapter 2, the elitism and insularity of the Thai judiciary is perpetuated by judges' self-congratulatory perception of superior morality. Being traditionally and ritually adjacent to the monarch, deemed the ultimate source of moral legitimacy, judges consider themselves the delegates of the king's virtuous power (McCargo, 2020). Adorned with this royal allure and the emphatic image of an ascetic lifestyle (pp. 31–32), judges regard themselves as having more legitimacy than 'corrupt' politicians (see

Mérieau, 2018; Thongchai, 2008). Therefore, the judiciary has strongly and successfully opposed external scrutiny and parliamentary oversight (Supakit, 2016: 248–249). This success has preserved the judiciary's self-regulatory system with virtually no democratic accountability; thereby, maintaining its insularity from external criticisms and comments.

Aside from the hierarchical and closely monitoring structure, the judiciary accomplishes solidarity among judges through collective pride of an elite group with moral and professional excellence. Judicial socialisation emphasises judges' special status and the judiciary's venerable mission of justice. Sharing the sense of belonging to such a benign and exalted organisation, judges harmoniously take pride in and give loyalty to the judiciary (see McCargo, 2020: 54–55). Moreover, as critical thinking is not prioritised in the recruitment and training that prefer legalism and rote memorisation (McCargo, 2020: 33; Supakit, 2016: 221), novice judges tend to forego their ability and willingness to make constructive dissents. The probability of judges moving beyond legalism is also limited because of the seniority-based promotion that induces inertia against self-improvement (Thanin, 2013: 52–53). This socialisation for cohesiveness within an insular structure is an essential ingredient of uncritical group loyalty and wilful silencing of dissents for the sake of harmony. These conditions constitute a predominantly court-centric worldview that favours conformity with existing rules and routines, regardless of their alleged impacts.

Like other bureaucracies, defendants are not judges' voluntary clients. Aggravated by cultural degradation, defendants' feedback is considered irrelevant and not sought (see Lipsky, 2010: 57). What may matter for judges is defendants' voluntary obedience as the ultimate evidence of the system's legitimacy. However, as we have seen in Chapter 5, defendants' conformity is by and large reluctant. Their sense of obedience is more or less shaped by their powerless status and the suppression they experience. To a certain extent, it may even be asserted that defendants' compliance is 'managed' by the criminal justice system (see Lipsky, 2010: 57–58). Nevertheless, because judges in the *wain-chee* only meet defendants at the remote hearing, this 'management' lurks under judges' radar and excludes them from knowing about defendants' pre- and post-hearing experiences. Therefore, judges are contextually inhibited from breaking free from group norms that systematically marginalise defendants.

The primacy of efficiency worsens the situation. As a bureaucracy, the judiciary encounters the urge to manage its limited resources against the overwhelming workload as cost-effectively as possible. This is translated to the need to handle cases expeditiously. At the same time, the concern for orderly and standardised justice also calls for consistency. Together, speed and consistency become a mantra for efficiency which over time has overtaken other aspects of justice and become an end in itself, not just a means (Levin, 1975: 90). This same process happens to Thai judges who, as witnessed in Chapter 4 and early in this chapter, profess a preference for bureaucratic efficiency over careful individualisation. This predilection prevents judges from seeing other nuances of justice and the side effects of too much efficiency. However, with the collectively insulated and court-centric worldview, it has become an organisation's primary goal, according to which standards are set and rules are formulated to further entrap judges in the rigid framing regarding justice.

2.3 Situational Contexts: Time Pressure, Group Pressure, and Distancing

The pressure to process tasks rapidly to increase turnover in the face of a massive workload is a street-level bureaucrats' daily constraint. The breakneck speed by which they have to pace their work restricts the use of careful deliberation, while the organisational demand for consistency requires precision. To reconcile these two mandates, routines are developed to simplify complex tasks; thus, enabling both speed and consistency (Lipsky, 2010: 83; Palazzo, Krings, and Hoffrage, 2012: 330). From rationality perspective, because routines accommodate both precision and speed in light of resource limitations, they are deemed desirable (Lipsky, 2010: 140). The focus on precision and speed is the core of modern bureaucracy (Weber, 1948: 214). However, the more rational the bureaucracy becomes, the more likely it is to objectify its clients, substitute technicality for human dimensions, and ignore sufferings that it causes in the process (Bauman, 1989: 155–156). Routines are also prone to institutionalise prejudices because routines both reflect and reinforce dominant perceptions by incorporating them into fixed repeated practices (Lipsky, 2010: 115).

The Thai criminal justice system encounters the same kind of pressures and similarly adopts routines as a solution. The frantic pace observable at the *wain-chee* is the reaction to a large number of cases that, in Judge I's description, 'flood right in'. To accommodate

for limited time, the procedure's 'fats' need trimming, leaving only the essentials: the entering of a plea and the announcement of a sentence. The elaboration of rights and inquiry about details for individualised sentencing is deemed interrupting and dispensable, as Judge H ruminated that 'an explanation will take a long time'.

For a smooth and quick flow, the *wain-chee* routine is strictly choreographed, right from the official's casual plea inquiry to the cursory yet tacitly scripted hearing, in which any 'off-script' performance by the defendant may provoke the judge's irritation. The reliance on the *yee-tok* standard allows judges to omit panel consultation about determining the sentence. Likewise, having confinement as the default mode of fine enforcement saves time for court staff from processing other time-consuming alternatives. Routines thus greatly facilitate judges' speedy performance amidst constant time pressure. However, the focus on speed excludes subtle human elements from the procedural assembly line. The priority of order over individual rights supports the mechanisation of routines. The resulting rigidity serves well the bureaucratic preferences for efficiency while dispensing with the concerns for defendants who have been marginalised throughout the process.

Routines, once institutionalised or adopted prevalently by peers, trigger peer pressure for conformity. Social psychology research finds that people have a natural inclination towards agreement with the majority, notwithstanding the wrongness of their judgement (Asch, 1955). Neurobiologically, non-conformity is linked to the brain circuits that activate the unconscious equation of being difference to being wrong (Sapolsky, 2017: 459–460). This psychological drive for conformity inevitably gives rise to an innate sense of belonging and in-group loyalty (pp. 393–395). The latter instinct equates loyalty to obedience and frames it as a moral obligation so fundamental that it often overrides other sets of moral principles when group loyalty is invoked. Group loyalty is reflected in, and in turn also strengthens, an organisational culture of homogeneity. In addition to this culture of conformity, seeing peers apply routines also immediately instigates a pressure against being different.

As group loyalty tends to override other moral values, peer practice has authority with which a peer member feels compelled to comply. With this sense of obeying the authority, people are found to withdraw their personal responsibility because their actions are

perceived to be not theirs. By deferring to the authority, people are psychologically absolved of accountability and are capable of following orders or authorised routines while morally disengaged from negative consequences of their actions (Milgram, 1974; 133, 145–146; see also Bandura, 2002: 106; Kelman, 1973: 39–45).

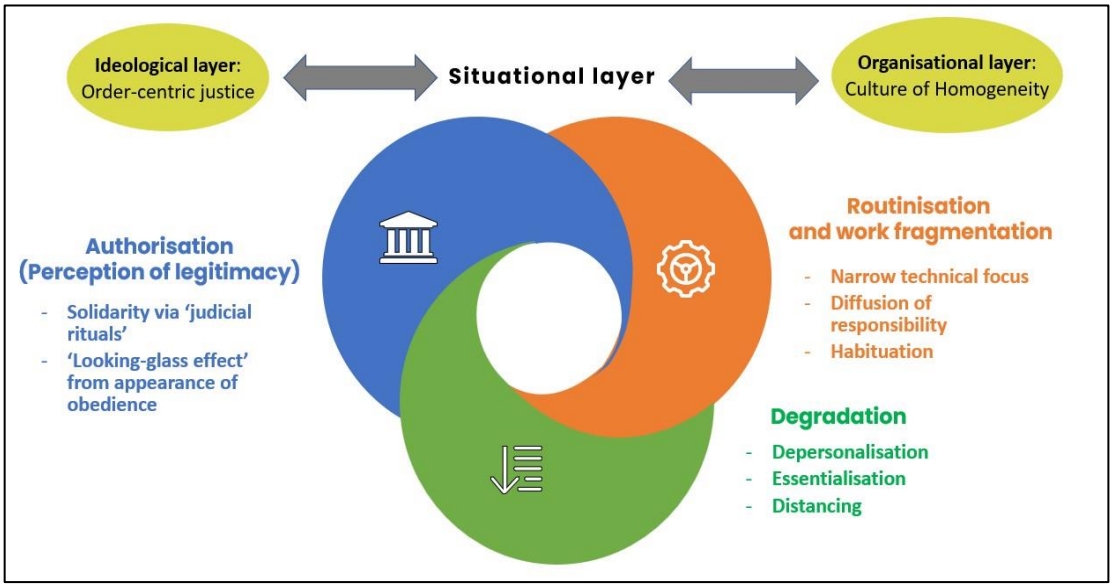
Thai judges' sense of peer conformity is strong because of the judiciary's powerful culture of homogeneity and peers' coherent application of institutionalised practices. Subsection 3.1 (below) will elaborate on the mechanisms that help secure such compliance. For now, recall from Chapter 4 that judges' unison in deferring to the *yee-tok* gives Judge I's confidence in implying that it is acceptable to exercise sentencing discretion 'by applying none of it'. On the reverse side, this tight coherence puts a considerable burden on those considering deviation in justifying the departure and pacifying peers' suspicion of misconduct and corruption. This is evident in Judge F's comment quoted in the preceding subsection. Therefore, contextually, judges are encouraged to conform to peer-approved routines, besides the time pressure of their work.

In addition to the narrow perceptions shaped by the mechanised routines and peer conformity, judges are situationally prevented from retrieving information from the other side of the system. The concerns for security and administrative ease install remote contacts between judges and defendants throughout the process, from the sequential paperwork whereby judges decide at the distant end to the remote hearing via a live video-link. Aggravated by the culturally inferior status of defendants, this physical and psychological distance between judges and defendants impairs and even discourages meaningful communication between the two. Furthermore, defendants in the distance are easy to be depersonalised, stereotyped, and disdained, the process regarding which will be explained in the following subsection 3.3. The resulting perception of unworthiness justifies judges' uninterest in knowing about and their eventual apathy towards defendants' experiences. In fact, to show sympathy or to help mitigate the pains of the process may provoke Judge T's line of opposition that doing so is the act of 'pampering…without taking into account what the victims may think'.

Time and group pressures, as well as distancing are all contextual pressures that affect judges' behaviours and decisions. In the whirlpool of these forces, judges adapt in

response. Under the subliminal influences of the dominant ideology and organisational culture, judges' adaptive responses turn out to incorporate Kelman's (1973) three interrelated mechanisms of moral indifference: authorisation, routinisation, and dehumanisation. According to Kelman, these mechanisms together can generate apathy to violence and atrocity by presenting the action in question with the veneer of legitimacy, by normalising and trivialising it via routines, and by classifying the affected group of people as out-group and inferior. The criminal justice system undoubtedly wields state power to inflict a form of state violence, and on careful inspection, the Thai version embodies the essences of all three mechanisms. It attracts the allure of legitimacy by the carefully staged 'ritual of justice'. The system is routinised in a segmented bureaucracy with fragmentation of tasks. Finally, it systematically depersonalises and degrades defendants. Figure 6.3 below visually illustrates these mechanisms at the situational layer and the following section explains their workings in the Thai criminal justice setting.

Figure 6.3 Situational Mechanisms of Indifference Visualised



3. Situational Mechanisms of Judicial Indifference

3.1 Authorisation through the Ritual of Justice

According to Milgram's (1974) seminal research, so long as a particular action or inaction is considered legitimate or mandated by a legitimate authority, a large number of people

will commit it regardless of the action's moral substance. When people perceive themselves as following authority or pursuing a legitimate course of action, they will position themselves as merely agents and will accept the situational frames designated by the authority. In this agentic state, people view their actions as dictated by the superior force and they unconsciously shift their morality towards in-group loyalty, discipline, and technical competence. Therefore, as agents, they remove their personal moral responsibility to out-group recipients of their actions, leaving only the sense of duty to the authority and members of the same group.

Theoretically, judges are bound to comply with the authority of the law. However, since the law cannot avoid loopholes and must make room for discretion, judges adopt informal standards and practices to fill the gaps (see Baumgartner, 1992). To the extent that their exercise of power perceivably aligns with the rule of law and justifiably serves justice, judges' performance is considered legitimate. Arguably, legitimacy is rather the ultimate authority to which judges refer when justifying their practices.

Judges may satisfy their perception of legitimacy by group conformity. Nevertheless, as legal professionals with high ethical standards, to convince judges of legitimacy, it requires more than seeing peers following the same routines or being fearful of consequences of deviation. Especially for sceptic or critical judges, if the practices' purported legitimacy is challengeable, the discomfort from seeing the conflict between the ideal and the reality would still likely occur and risk triggering burnout or some resistance (see Tata, 2019: 121). Therefore, a mechanism is needed to solidify and amplify the effects of group conformity so as to mitigate this uneasiness. The data in this research indicate that the staging of the 'ritual of justice' can achieve these aims through the ritual's generated 'effervescence' and the 'looking-glass' effect.

In his classic study, Durkheim (1915: 417–418) posits that faiths and rites are the core components of a system of convictions such as a religion. Both are interdependent in that faiths give authority to ritual practices but without the latter the power of the former is feeble. Only by repeated actions can the force of faiths be renewed and strengthened. Seeing oneself regularly adhering to the same system of beliefs fosters one's impression about its rightness. Therefore, actions not only speak but also deepen the ideology that underpins them (see Stephenson, 2015: 87).

Moreover, realising that one's routines are in line with the standards advocated by one's peers not only gives the psychological comfort of being normal but also strongly affirms the conviction of being right. This association between group conformity and righteousness is explainable by human natural propensity to in-group parochialism (see Sapolsky, 2017: 393–397, 459–460). Communal solidarity generates internal loyalty and favouritism, and these both solidify and sacralise the group's collective faiths. This profound sense of collectivity is accomplished by the suppression of one's individuality in the midst of people behaving in a unified manner. Immersed in this group harmony, one usually feels elevated and overjoyed with pride and respect for something greater than oneself. These electrified sentiments of exaltation, veneration, and confidence – 'effervescence' in Durkheim's term – are responsible for the perception of sacredness that instils faith in the group's beliefs and its rituals (Durkheim, 1915: 215–219). The tinge of sanctity and the extremely positive emotions make the moral efficacy *feel* real. This *felt* moral usefulness alone suffices to justify the rituals and their underlying beliefs while dismissing as irrelevant the criticisms about their tangible utility (Durkheim, 1915: 359–361).

Because of its seemingly performative nature, the *wain-chee* process can be considered a ritual. Although daily judicial routines do not involve physically unified movements in a large assembly, the elevated collective sentiments can be attained by maintaining harmony with fellow judges through compliance with conventions. By repeating the quotidian ritual of justice – conventional routines regarding the presiding over of a hearing, the sentencing, and the enforcement of sanctions – judges continuously remind themselves of their membership of the judicial community. Always seeing themselves acting in cohesion with the rest of the group constantly reinvigorates a sense of belonging and collective pride; thus, strengthening camaraderie within the judiciary.

The impression of legitimacy emanating from in-group unity intensifies Thai judges' collective self-perception of righteousness which in turn cements the justifications of their routines. In this sense, the principal audience of the judicial ritual – to use Goffman's dramaturgical framework – are judges themselves, and the publicly inaccessible *wain-chee* hearing presented in Chapters 4 and 5 confirms this point. To sustain this image of legitimacy, it is thereby extremely imperative that judges see their group harmony

maintained by judicial performances that are both coherent and devoid of incompatible cues, namely opposition or expressed doubts of their practices (see Goffman, 1959).

Coherence can be ensured in part by the consistency of legal formalism and cultural norms for rigid conventions. However, the perception of legitimacy is still incomplete without the portrayal of submissive defendants because of the 'looking-glass' effect. The 'looking-glass self' theory posits, and is fairly empirically substantiated, that people's self-perceptions are heavily influenced by the imagined opinions of others towards themselves (Cooley, 1922; Yeung and Martin, 2003). Since obedience is the visible indication of defendants' acceptance of fairness, witnessing this symbolic equivalence of justice may robustly instil and support judges' perception of legitimacy regarding their own routines (see Tata, 2020: 114). Because they are directly and negatively affected by the process, defendants' belief of having received justice from the courts is also essential in the minds of Thai judges (McCargo, 2020: 90). Thus, defendants' voluntary obedience, which implies their acceptance of the system's fairness, is arguably the most coveted evidence of legitimacy in the eyes of the judges (Tata, 2020: 105). Ideally, the appearance of submission must give the impression of a well-informed, rational, free, and independent individual who voluntarily accedes to the process and its consequences (Tata, 2019: 125). Simultaneously, disruptive presentations to be avoided are defendants' outright defiance, passive disinterest, ambivalence, and even confusion (see Tata, 2020: 104–106).

Since judges are the intended audience of this display of obedience, defendants are subject to the implicit staging and invisible scripts that surreptitiously manipulate their behaviours and decisions. As explained in Chapter 5, from the outset, defendants are constantly intimidated by the threats of pretrial and post-sentence custody. Ignorant and unaided, they are forced to wait apprehensively for their uncertain future, only to be more confused when coming to court. Sidelined and silenced, defendants are trapped in the procedural maze, suffocated by the nerve-wracking anxiety, and overwhelmed with the desire to get out. Stuck in the powerless position, acquiescence is the rational response to ensure a quick exit. Also, being subjugated throughout by the authority's marginalisation, defendants are primed to self-perceive as morally inferior. Enhanced by the hegemonic belief in *karmic* consequences, many of them self-regard as deserving of all harsh treatments they have endured. Eventually, the expression of obedience is to be

expected. In the cursory and almost mechanical *wain-chee* hearing, most defendants willingly decline legal aid and unequivocally admit their guilt. This appearance of confidence and voluntary deference is registered in this under-a-minute ritual. However, hidden away from this brief performance are defendants' frustration, confusion, and all preceding conditions that have geared them towards this 'reluctant conformity'. The exclusion of all the unpleasant backstage works creates the illusion of voluntary obedience and acceptance of the system's fairness. This illusion activates the looking-glass effect by which judges are confirmed of the legitimacy of their practices.

Nevertheless, this belief in legitimacy may be ruined if challenged by the conflicting real-world evidence. Thailand's serious lack of criminal justice evaluation research and the lethargy of the judiciary in pursuing such an enquiry, regardless of intentions, resemble the usual professionals' strategy in defending their credibility based solely on the presented skills rather than on actual results (Goffman, 1959: 215). This marginalisation of utilitarian ends shields professionals from criticisms of ineffectiveness and still validates their performance-based self-evaluation. The dearth of data on penal impacts in Thailand protects judges' faith in their practices from possible attacks and still engulfs them in the illusory efficacy from the repetitions of persuasive performance.

On the whole, this strong collective faith from the combination of successful depiction of justice, the judiciary's in-group loyalty, and its self-complacency generate the authority so powerful that it is virtually incontestable by any competing sets of morality (see Durkheim, 1915: 359–361; Kelman, 1973: 44–45). Authority in this light revolves around judges who take the double role of both the performers and the audience of their own performance of power. In this setting, the review of legitimacy is prone to prejudices and criticisms are muffled. Therefore, this cycle of authority is self-perpetuated at the great expense of the marginalised defendants. The end result is remarkable conformity to judicial norms yet arguably not in the best interest of justice.

3.2 Routinisation and Work Fragmentation

As explained earlier, time pressure and preoccupations with efficiency give rise to routines, or to the repetitions of simplified patterns that prove cost-effective in handling the tasks (see Lipsky, 2010: 83). To improve efficiency, 'successful' practices are routinised to reduce uncertainty and time in decision-making, while still guaranteeing

successful outcomes. In a typical modern bureaucracy, accompanying routinisation is the rationality-led division of labour, whereby a particular work is fragmented into numerous tasks to be performed in incremental steps. Bound for productivity in an assembly-line fashion, each task in the sequence is assigned across different units of workers and each worker is supposed to develop specialisation through repetitions. The technical specialty derived via routinisation contributes to the greater speed and accuracy and is indubitably vital to attaining efficiency (Bauman, 1989).

On the downside, such a mechanical and assembly-line administration breeds a fertile environment for indifference to negative consequences. First, it prods every worker in the work sequence to focus on the immediate task at hand, which in fact is merely a portion of the entire work. By devoting time to micromanaging, workers tend to be oblivious to the macro picture of the process. Furthermore, the minor incremental steps often conjure an illusion of triviality that obfuscates the enormity of the end result (Kelman, 1973: 46).

Second, the splitting of tasks in the sequence of performance produces the effect of diffused responsibility. By obscuring the direct link between the individual action and damaging consequences in the 'chain of intermediaries', workers are absolved of self-condemning as the individuals who inflict the harm (Bauman, 1989: 194; Kelman, 1973: 47; Zimbardo, 2007: 311).

Third, the sequencing of tasks for the accomplishment of the organisational goal reinforces the sense of group solidarity and the normativity of the tasks (Kelman, 1973: 47). The intuition of in-group loyalty normalises placing the priority of organisational interests over others; thus, reaffirming the perceived legitimacy of the overall routines (see Sapolsky, 2017: 395).

Fourth, specialisation and its exclusive mode of knowledge promote the superiority of the technical know-how over common sense and moral judgements. Professional knowledge then becomes another source of authority capable of exonerating workers simply by deference to it (Bauman, 1989: 196–198).

Fifth, routinisation creates habituation and a tunnel-vision perspective in favour of the present reality. Intuitively, people are more sensitive to losses than gains, and loss aversion is an autonomic reaction to uncertainty. Enhanced by the system-induced insularity and in-group favouritism, workers in a bureaucratic organisation tend to be

conservative and prefer the certainty of the status quo to the ambiguity of any prospect of change (Kahneman, 2011: 296, 305). As a result, when thinking about changes, workers are often sceptic of alternatives and believe that nothing can outperform their present routines (see Samuelson and Zeckhauser, 1988).

The processing of criminal cases in Thai courts also employs the division of labour on two levels. The first level is the division between judicial tasks and those of auxiliary and administrative counterparts. Judges are solely responsible for judicial performances while court officials take charge of the administrative chores. The second level is the sub-division of tasks in the first level where works are further broken down into portions. The *wain-chee* is an example of this fragmentation in the judicial level whereby the duty judges take care of the daily summary process, remand and bail applications, as well as the issuance of all writs in the criminal proceedings. This enables their colleagues to preside over trials without interruption (Supakit, 2016: 116). On the administrative side, auxiliary works are segmented into units with the clearly assigned remits of duty – namely receiving of indictments and motions, clerking, collecting the fine, and preparing the writ of confinement for fine default.

Courts' two tiers of task splitting are the result of modern bureaucracy and its efficiency-driven goals. They serve to minimise contact of court users with judges outside the courtroom. This self-imposed distancing ensures the image of neutrality. The making of public appearance only in the ritualised setting also fosters judges' elevated status of venerability. Moreover, Thai court's separation between judicial and administrative works reinforces judges' self-perceived role of passive problem-solvers since judges only make decisions on the problems presented along the chain of command. This passive role is clearly evident in common trials where judges remain inactive and leave all litigating and fact-finding issues in the hands of litigants. It is the direct influence of the Anglo-Saxon adversarial system whose tenet of a judicial passive role has dominated Thai criminal justice since the dawn of its modernisation (Kittipong, 2003: 108).

Besides following a tradition, the need for a passive role is further enhanced by the fear of being accused or even suspected of corruption. This chapter has earlier discussed this fear and its implications for sustaining homogeneity. It shall be added here that taking a passive role is a useful strategy for the judiciary in maintaining its portrayal of impartiality

and also of purity. The undisrupted image of incorruptibility affirms judges' putative virtue and their status of authority. This great functional benefit makes judicial passiveness so pervasive in Thai courts. Not only is it reflected in the dynamics of the trial, it is also strongly mirrored in the fragmented bureaucracy which removes judges from active case management and constantly convinces them of the normality of inactivity.

One evident act of passiveness, aided by the fragmented work structure, is judges' delegation to court officials the explanation of important legal information and enquiry about relevant personal details of defendants. As already seen in Chapters 4 and 5, judges refused to give an 'off-script' explanation to defendants even when directly asked. The usual response was telling defendants to contact court officials even though doing so was difficult for defendants. Judges also declined to make an additional enquiry for tailored decision-making, claiming delay and burdens on their case management. However, even if such an enquiry was legally required, gathering information would still be the responsibility of court officials, not theirs. In Judge M's description, '[j]udges are not active in their works; they are passive and consider whatever is presented to them'. This custom of delegation helps judges keep up their speed and their belief in the attainable equality of arms; yet, simultaneously deflecting responsibilities of failing to protect defendants' rights and individualise case results.

Apart from passivity, this routinised and segmented work environment facilitates wealth-insensitive fining, while also inducing judges' indifference toward the practice's legitimacy challenges. The technical emphasis of routinised sentencing narrows judges' concentration on the speed and practicality of the flat-rated fine and default confinement. This micro-focus makes many judges in this study ignore the practices' controversial justifications and the possibility of the better options. Also, detached from witnessing the real outcomes of their decisions, judges are easily satisfied with the perceived justice of the unindividualised and custody-prone routines. On the other hand, judges' proximity with court officials encourages in-group empathy and enables judges to visualise complications to be borne by courts' administrative staffers if switching to a means-based approach. This status-quo preference is evident in Chief Judge Two's surprise when asked about non-custodial fine enforcement methods. This participant admitted to not having thought about them before because confinement had been understood as the only mode of enforcement until the question about the alternatives was raised. Nevertheless,

even after consideration, Chief Judge Two still defended fine-default confinement on the impracticality of other alternatives. Other judges echoed this answer, although they were aware of other options and the possible legal challenges to prioritising confinement as the default mode of fine enforcement.

This reluctance to consider the possibility of the better alternatives is additionally attributed to habituation to routines. Habituation not only aggravates a narrow outlook but also supports the lethargy to change. This is manifest in Court Two judges' unenthusiastic response to the judiciary's policy promoting community service for fine default. Even after the launching of this new initiative, judges still carried on with their pre-policy routines. In the organisation of top-down supervision and highly prized homogeneity, this seeming non-conformity was not an act of defiance but rather of ignorance and inertia. Many judges conceded to barely knowing about the scheme, claiming a lack of direct communication from the policy-making team and even from their chief judge. In the digital age and in the middle of the Covid-19 pandemic, judges were supposed to regularly update themselves from a host of circulations on specific social media platforms. However, electronically circulating official documents failed to attract judges' attention and spread the news. As Judge V confessed, reading fine print on the screen was 'tormenting' and 'there are so many things to know and to remember'. Therefore, this participant – like many other judges – would actively learn about the policy and 'search for information' on the spot when forced by a direct motion to implement it. Absent such an opportunity, judges would rather 'carry on doing what they normally do', as Chief Judge Three observed. This proves that habituation and routinisation are powerful in passively resisting even the organisation's top-down policy, so long as the new policy is yet to acquire acceptance from peer majority or its routine is still to be institutionalised.

3.3 Degradation through Essentialisation and Distancing

Striving for efficiency necessitates the depersonalisation and stereotyping of people under a bureaucracy's management. As Carlen (1976: 37, 92) reports in her research, court staffers as bureaucratic workers intentionally objectify and stereotype defendants to facilitate their work and control over the latter. Lipsky (2010: 105) also concludes that people become clients of a bureaucratic agency by being reduced to mere stereotypes. Such a depersonalising and stereotyping process enables an individual identity to be

obliterated, abstracted, and categorised for ease and speed of mass administration. In other words, people to be processed are ‘essentialised’ into the stereotyped categories where they will be regarded as homogenous and interchangeable (Plous, 2003: 6–11). Essentialisation is a technology of management that ensures economy and consistency of performance. Nevertheless, it is also a powerful tool in the suppression and exclusion of the essentialised people, normally considered as ‘out-group’ (Bauman, 1989: 227–228; Kelman, 1973: 49).

Prejudices against the out-group population are found to be the natural repercussion of Us/Them demarcation. Psychological studies disclose that these group-based biases occur despite arbitrary categorisation and the dual effects of in-group favouritism and out-group degradation are normal. The latter effect in particular engenders a stigmatising stereotype by which ‘Them’ are perceived as immutably inferior (Plous, 2003: 11–16; Sapolsky, 2017: 390–399). This denigrating view not only justifies generally negative discrimination. It also lays the first step towards dehumanisation by which the degraded group of people is cognitively objectified and removed from the essence of humanity. This mental process trivialises the perpetrators’ moral responsibilities to the dehumanised victims and makes the cruelty against the latter morally acceptable. Atrocity against a particular population is impossible without dehumanisation (Bandura, 2002: 109; Bauman, 1989: 189; Zimbardo, 2007: 307). In the same vein, neither are less extreme acts of violence possible without a certain degree of degradation.

Bureaucracy bolsters degradation through its essentialisation technique. The technique begins with differentiating between the bureaucrats ‘Us’ from the clients ‘Them’. The dyadic relationship where the bureaucrats have power over the clients is conducive to the former holding condescending attitudes towards the latter. Afterwards, the clients are depersonalised and remain merely just indistinctive faces, bodies, or names in the abstract categories (Bauman, 1989: 226–227). These abstracted individuals are essentialised by their category’s stereotypes, readying them to be stigmatised and degraded by the bias regarding out-group inferiority (see Plous, 2003).

This process of degradation places an interpersonal distance in the mind of the degraders. When individuals are put in an inferior status, they are mentally removed from the degraders’ peer adjacency and relocated to a distance outwith the degraders’ in-

group circle. This effect is aggravated by physical distance. By placing individuals out of sight (e.g., in the basement of the court building), the immediacy of their individuality is easily put out of mind. Distancing further facilitates essentialisation, stigmatisation, and degradation. Thereby, geographical proximity plays an essential part in either preventing or escalating the degree of degradation (Bauman, 1989: 184).

Neurobiological studies find that proximate contact stimulates the sentiment of inclusivity and empathy. Interpersonal nearness makes visible the humanity of the opposite individual and hence activates the degraders' moral intuition against disparaging acts. On the contrary, this intuition appears to be inactive when the action occurs at the distance. When the degraders are remote, circuits of rationality in the brain operate – enabling the rationalisation of degradation to override moral instincts (Sapolsky, 2017: 490–491). These findings corroborate the social psychology theory that proposes proximity as the source of moral responsibility and distancing as the principal tactic of degradation (Milgram, 1974: 157). In other words, it is more difficult to harm or stay indifferent to the sufferings of others when the pains are immediately visible. Moral self-restraining and self-censure are most powerful in a face-to-face contact. However, the opposite occurs with distancing when the inflicted agony is invisible and inaudible (ibid.; see also Bandura, 2002: 108; Bauman, 1989: 184).

Regrettably, bureaucracy is adept at widening the distance between its agents and clients. Its fragmented nature and sequencing of tasks through the chain of intermediaries increasingly prevent the clients from directly engaging with the agents at the higher end of the chain. Communications at the deep end of bureaucracy tend to be conducted via a written format and in-person contacts are normally dispensed with. Along this hierarchical process, each client's individuality is generally unknown beyond the written statement or in the bureaucracy's databases. In such circumstances, the decision-makers may make an important decision about the clients without ever having a direct contact with them.

Furthermore, even for a work that requires proximate contacts, modern technology provides tools to get around face-to-face necessity. Remote communication technology offers a solution to administrative concerns regarding in-person encounters, such as security risks. However, the cost of this efficient alternative is the reduction of a

humanised interaction to an impersonalised meeting with just ‘a face’ or ‘a body’ on the screen or just ‘the voice’ from the speakerphone. Despite the virtual proximity of contact, the sentiment of distance is arguably present. This propensity for distancing, together with the rational allure of essentialisation, makes modern bureaucracy an ideal machine to promote and sustain systematic degradation of a marginalised group of people (see Bandura, 2002: 109; Bauman, 1989: 18).

The Thai criminal justice system, particularly the *wain-chee* process with its bureaucratised structure, incorporates all essential ingredients of systematic degradation. It is rife with power imbalance and elements of essentialisation and distancing. Labelling the accused with the official term ‘defendant’ is the first step of depersonalisation. The normal chain of intermediaries when processing cases and motions is the distance barrier between defendants and the judges (Bauman, 1989: 194–196). Physically, defendants are distanced throughout the *wain-chee* by being held in the court basement and forced to appear via a live video-link for the hearing. Although this set-up permits communication, the encounter is conducted through the intermediary of a video screen and it is thus still sentimentally detached. This virtual yet remote contact essentially depersonalises defendants by morphing rounded personalities into flattened bodies framed to fit a screen. The full-dimensional experience of a proximate encounter is downgraded to a blandly two-dimensional presentation (Mulcahy, 2011: 177–178). The ritualistic hearing furthers the process of degradation by officially branding defendants with a new identity of abstracted culpable offenders (Garfinkel, 1956; see also, Tata, 2019).

Defendants in the *wain-chee* are also subject to implicit degradation by their physical location in the court basement. According to Pallasmaa (2012: 45), ‘experience of architecture is multi-sensory’ and that ‘architecture strengthens the existential experience, one’s sense of being in the world’. Architecture is thereby a socially contingent form of communication and court architecture not only conveys culturally embedded messages (see Mulcahy, 2011) but is also manipulative of certain reactions (see Carlen, 1976: 21–24). In the Thai traditional worldview, as presented in Chapter 2 and earlier in this chapter, the height of social status is associated with the degree of a person’s virtue (Streckfuss, 2011: 67–69; Wilson, 1962: 275). This perceived correlation of height and moral merits corresponds with the psychological findings that height-related

metaphors affect human perceptions regarding moral characters. In other words, the metaphors of ‘up’ and ‘down’ affect positive and negative judgements respectively (Landau, Meier, and Keefer, 2010). Therefore, court design that locates judges and court officials up in the building, while putting defendants down in the basement throughout the entire *wain-chee* process, reflects the cultural ethos regarding moral hierarchy. It also shapes the understanding of all parties involved in the frame about the ‘virtuous’ bureaucrats upstairs and the ‘despicable’ law-breakers downstairs.

Furthermore, the exclusion of defendants in the high-security holding area surrounded by gates and walls tacitly labels them as dangerous and untrustworthy. The location of exclusion and the metaphorically rich vertical distance are priming cues for judges to typecast defendants as morally inferior and undeserving of judges’ protection. This is evident in Judge T’s declaration: ‘There’s no need for us to take care of or protect the offenders’. This opinion was also shared by Judge J who insisted that ‘it should be [defendants’] business, not the court’s, to keep protecting every bit of their rights’.

By the same token, these symbolic labels are likely to operate on defendants and affect their self-perception (Lipsky, 2010: 66–69; See also Plous, 2003: 29). Recall from Chapter 5 that most defendants in this study regarded themselves as morally condemnable and deserving of undignified treatments. The voluntary admission of guilt and blameworthiness thus reaffirms judges’ stereotypical images of defendants, as evidenced in judges’ choice of negative adjectives when describing the latter. This powerfully stigmatising attitude breeds judges’ distrust of defendants, which results in their predilection for a custodial control over the less severe but practically unreliable alternatives.

Overall, the *wain-chee* judges work in a milieu that strongly and systematically encourages the degradation of defendants. They are removed from the proximity of defendants through the chain of bureaucratic commands and the remote hearing. For the sake of efficiency, they process each defendant in an impersonalised and essentialised manner, while constantly influenced by cultural and architectural cues that insist on the latter’s negative stereotypes. Taken together with the judiciary’s insularity that precludes feedback and judges’ over-confidence in their moral supremacy, the eventual degradation of defendants appears natural and even inevitable.

Conclusion

This chapter investigates the conditions contributing to the indifference of judges in this study to the allegedly disproportional and unequal fine-related routines from penal policies' perspectives. It proposes that such indifference persists because judges are contextually framed to perceive their practices as fair and reasonable. Judges' rigid framing confines their understanding of the world to a particular and inflexible interpretation, leading to their 'ethical blindness' or temporary inability to see ethical challenges to their decisions. Rather than dispositional, this cognitive state is situational and unconscious. Dominated by the potent power of the situation, even judges with the best intention may still be affected and gradually shift their moral standards regarding their daily decisions. Subject to the intricate workings of multiple situational pressures, judges subliminally adopt rigid framing about justice and consequently become indifferent to or ignorant of the undue sufferings caused by their actions, or inactions.

Judges' rigid framing involves the convictions in formalism, bureaucracy-centric preferences, and a moralistic and essentialist worldview. Such adamant adherence is the product of the multi-layered interaction of the judiciary's contextual pressures. Starting from the ideological layer, a critical reading of Thai socio-political history argues that the Thai judiciary has yet to internalise the values centred on individual rights and liberties enshrined by the Western concept of the rule of law. Still imbued with pre-modern preferences for the hierarchical collective, the Thai judiciary regards social order as the ultimate goal of justice; hence, their usually pro-government stance as opposed to supporting the protection of rights and liberties. This order-centric ideology both results in and is enhanced by its extreme legalism that precludes judges from expanding their definition of justice.

The centrality of order influences the judicial culture's strong emphasis on homogeneity. Judges are trained and socialised to uphold the values of coherence and conformity, instead of individuality and creativity. They are reminded to be prideful of and loyal to their venerable organisation. The instilled sense of solidarity and the judiciary's insularity from public comments contribute to the culture where agreements are embraced and dissents are discouraged. Top-down supervision and fear of sanctions

against non-conformity add to the organisational forces in support of unified but narrow-minded standards of legal application.

The focus on maintaining the orderly and coherent practices orientates the Thai judiciary towards bureaucratic efficiency and its capacity of ensuring consistency. Efficiency also prioritises speed which well accommodates the observed frantic reality of massive caseloads. As a result, mechanical routines and work fragmentation are warmly received. However, they arrive with the side effects of a too technical and narrow focus, the diffusion of responsibility, and a habituation which causes a status-quo bias. The sequencing of tasks in the chain of command additionally distances judges from defendants by placing them at the opposing far ends of the chain. This distancing is enhanced mentally by depersonalising defendants into merely abstracted individuals in stereotyped categories. The physical distance is manifested in a remote hearing between judges up in their chamber and defendants down in the basement holding area. This vertical distance and defendants' location of exclusion are abundant with denigrating messages against defendants. In such a milieu, judges at that distance can hardly perceive the human dimensions of defendants under their management, and therefore can hardly resist the cues of degradation. The outcomes of these situational mechanisms are judges' distrust of defendants and their impression of the routines' indispensability.

Besides the perceived instrumentality, judges are situationally convinced of the legitimacy of their practices. This conviction is judges' ultimate moral cushion, to which they refer when self-absolving of responsibilities for any negative repercussions. Such a perception of legitimacy is achievable by following the same routines as their peers. Feeling one's work rhythm in consonance with others consolidates the sense of solidarity, which equates group conformity to righteousness. Moreover, witnessing the obedient and wilfully repenting defendants before one's eyes is the strong evidence of the routines' fairness. Precluded from and ignorant of the backstage works that have moulded such a preferable presentation, judges accept the illusion of legitimacy with no reservations. This strong belief, together with other contextual pressures that interact with one another, form rigid framing by which judges see nothing wrong with their decisions and thus their eventual indifference to whatever occurs afterwards.

Chapter 7: Conclusion

Introduction

Decades ago, Feeley (1983) astutely observed that so many well-intentioned criminal justice reforms failed because of the flawed and unrealistic understandings of how the system actually operates. Rather than relying on the simple yet untested theories, adopting a 'consumer perspective' – i.e., perceptions of those who actually experience the system – would make the reforms more grounded to the reality and more likely to be successful (p.123). This research – originally intended to study the feasibility of transplanting the wealth-proportionate European/ Scandinavian day fine to Thailand – was redirected to investigate how the fine actually operates in the Thai sentencing system, an objective that coincides with Feeley's advice. After all, if Thailand's flat-rated fine is unequal and problematic as I have perceived, its long-standing and virtually unchallenged existence suggests the unseen and systemic forces in support of the practices. To impose a reform on a system whose possibly antagonistic underpinnings are unknown would subvert the programme. This study, therefore, was rerouted for the comprehension of the less visible influences, factors, or mechanisms that perpetuate the current fining practices.

As a result, we have seen in Chapters 4 and 5 the concrete settings in which the fine operates and related viewpoints from both judges and defendants. We have also learnt in Chapter 6 the less visible layers of forces and mechanisms that lie behind the visible fining system. To conclude the thesis, this chapter summarises the findings in answering the research's questions and illustrates the contributions to knowledge. It then reflexively discusses the limitations of the thesis and recommends agendas for future research. Finally, it concludes with normative reflections in favour of substantive equality, proportionality, and rationality. A more comprehensive consideration of the topic is beyond the empirical nature of this research. However, in this ending remark, I will offer my view about why the interpretation of these ideas as adopted in the present court practices is problematic, and why reform is needed with a more substantial and impact-centric understanding of the concepts.

1. The Research's Findings

This thesis began with a simple question: How do fines actually operate in Thailand's sentencing system? It further asked: How are fines perceived by the two key stakeholders of the fining system – judges and defendants? To fully grasp the complex dynamics of the fine, it also raised a deeper and structural question: How are such operations and perceptions sustained in the current fining system?

In answering these questions, empirical data were gathered through various qualitative methods and literature from multiple disciplines was consulted including history, political science, organisation studies, sociology, and social psychology. This thesis finds that the fine operates with judicial indifference, underpinned by the confluence of formalism, moralism, and bureaucratic managerialism. These three components together frame judges' understanding of how criminal justice should be processed, oftentimes in a rigid manner that resists plurality of views and a wider conception of justice. The product of such rigid framing is therefore indifference to the challengeable inequality and disproportionality of the current fining practices.

Formalism, moralism, and bureaucratic managerialism are the themes underlying the four main characteristics of the Thai fining system. The first characteristic regarding the fluidity of the fine's meanings features the alternation between the roles as a morally based sanction and as a debt in a capitalistic society. The two roles are normally separated by the stages in the criminal justice system – the former in sentencing and the latter in enforcement. However, they seem to intermingle at the question of non-custodial enforcement, whereby the morally based view is reinstated post-sentence. This creates ambiguity as to whether a non-custodial measure such as community service is merely an alternative fine enforcement method, or rather an alternative sanction in disguise. Such ambivalence foreshadows where the 'can't-pay' are denied community service because of the measure's 'inadequate' moral message, yet forced into confinement under the rigid fine/ custody conversion rate insensitive to the pains endured.

The predilection for formal equality and sentencing consistency over impact-based proportionality and optimum utility is the second characteristic of how the Thai fine is imposed. Clearly, penal impacts are not the priorities when most fines are clustered at the low-to-intermediate level across categories and severity of offences. Adherence to

formal equality also leads most participating judges to reject the idea of a wealth-proportionate fine, reasoning it as a ‘double standard’ and a prejudice against the wealthy. According to such a view, the fine functions merely as a symbol of moral disapproval, with form and formalism in the centre. Therefore, the priorities are formal equality and consistency of moral messages over individualised penal impacts.

The primacy of consistency of communication also brings about the indispensability of absolute certainty of punishment. Judges are concerned about defendants ‘walking free’ because of the ineffective operation of non-custodial fine enforcement methods. Cumbersome system design and unfamiliarity with non-custodial alternatives cause judicial discomfort and a reluctance to substitute alternative measures in place of the punishment-guaranteed custody. Certainty of punishment aside, routines are administratively convenient. As a busy bureaucracy, managerial ease in the face of enormous caseloads ranks among the top of the court’s values ranking. Such ease or efficiency, as defined by speed and consistency, also issues a good message about timely and unarbitrary justice. Emphasis on managerial advantages promotes the mechanisation of decision-making at the expense of individualised and proportionality-based discretion. As a result, judges are willing to err on the side of the reliable, albeit overharsh, fine-default custody against the ‘can’t-pay’ defendants. Such a preference for bureaucratic efficiency therefore reflects a rather bureaucracy-centric predisposition, which is another key attribute of the Thai fining system.

Judges’ bureaucracy-centric predisposition both contributes to and results from the pervasive distrust of defendants, the final major underpinning of how the Thai fine operates. Judges in general perceive defendants in a pessimistic light. Overtly or tacitly, defendants are typecast as undisciplined, cunning, and capable of exploiting the system. These stereotypes are widely shared, grounded in judges’ typical upper-class lenses and a rational choice hypothesis. It is aggravated by the distancing between judges and defendants throughout the arraignment-cum-sentencing *wain-chee* process, whereby defendants are held in a separate location and compelled to communicate remotely with judges. The mechanical *wain-chee* routine that reduces the humanity of each defendant to offence-based categories provides a fertile ground for stereotypical images of the inferior ‘others’, in whom trust of legal compliance is unworthy. This one-sided perspective explains judges’ indifference to overusing custodial enforcement, rather than

to be ‘fooled’ and let ‘guileful’ defendants escape punishment via non-custodial opportunities.

Nevertheless, Chapter 5 reveals that the reality as experienced by defendants is incongruent to judges’ assumptions. Instead of being sly and scheming, defendants are ignorant of how the system is run and blindly compliant. Being marginalised and suffocated by the process, they are rendered voiceless and powerless to such an extent that the only realistic exit is to endure and comply. In contrast to judges’ fear of defendants’ leaving the court unpunished, the process already punishes them since the outset with pretrial detention and the system’s unintelligibility that leaves defendants in the dark with unappeasable anxiety. Yet, defendants internalise their marginalised status and blame themselves for their ordeals. Pierre Bourdieu’s concept of symbolic violence elucidates this peculiar reaction. It also explains that, by uncritically accepting undignified and unequal treatments, defendants unknowingly support the system’s legitimacy claim and perpetuate judges’ indifference to their arguably undue hardships.

The difference between two perceptions of penal reality signals that judges’ indifference is problematic. However, it persists, at least to judges in this research, because judges are continually confirmed by their observations that there is nothing wrong with their practices. This adamant conviction, resulted from rigid framing, leads to the state of ‘ethical blindness’ or temporary inability to see ethical quagmires of their decisions. This cognitive state is contextually bound and unintentional. Under the weight of multiple situational pressures, gradually judges may shift their pre-context positions regarding how to deliver justice towards adopting rigid framing and thus eventually become indifferent to the consequences of their decisions.

Chapter 6 explains at length that judges’ rigid framing is the product of the judiciary’s interactive and multi-layered contextual pressures. The overarching layer is ideological with its hegemonic conception of law and justice. In Thailand, notwithstanding the linguistic translation of the rule of law, its central values of protecting individual rights and liberties have never been firmly institutionalised. Critical analysis of the Thai socio-political conditions, as discussed in Chapter 2, reveals the hegemonic priority of the orderly society which leads the judiciary to prefer stability and order as the definition of justice. The ideology of order-centric justice downplays human rights discourses and

strongly supports formal justice through extreme legalism and homogeneity in decision-making.

With the primacy of order, the judiciary prizes homogeneity over individuality and creativity. This prioritisation instils the sense of great solidarity and pride in the organisation. Control through internal rules and standardised practices, departure from which may trigger a disciplinary action, adds force to maintaining conformity. Moreover, the self-perceived superiority, induced by judges' elite status, and the structural insularity from public scrutiny nourish collective pride. This strong culture of unity is the organisational layer that further narrows judges' mind to the principles and perceptions that may not hold outside the insulated judiciary.

Judges are additionally influenced to take a narrow and rigid perspective by their immediate situation of decision-making, which is the most proximate layer of contextual forces. At this layer, judges are even more persuaded to have faith in judicial conventions. By going through the same routines as their peers, judges are enabled to feel the ecstatic pride of belonging in the judicial community. This reinvigorated sense of solidarity elevates group loyalty to the top of judges' values ranking. Furthermore, by seeing voluntarily submissive defendants, without knowing or being confronted with the backstage process of creating docility, judges are made convinced of the system's legitimacy; therefore, all the more reason to share conventional views.

The routinisation of the sentencing process facilitates habituation that lulls judges to see the current system as the only possibility of doing justice. The mechanisation of routines restricts judges' ideas of justice to merely quantifiable indicators such as speed and consistency. The fragmentation of tasks for the increase in efficiency even more encourages adopting a micro-focus on just one's own place in the assembly line, instead of a systemwide perspective. This insular view permits only the accounts around judges' working environment but excluding those of defendants who are both physically, socially, and cognitively distant from judges.

Other means of distancing judges from defendants include placing both of them at the opposite far ends of the judicial chain of command and only organising a remote hearing. By removing the proximity to defendants from the process, defendants' humanity is easily reduced to merely abstracted, stereotyped individuals predisposed to being othered and

denigrated. In Thailand, already occupying the lowest rung of the social echelon, defendants' moral stigma is stressed by the symbolic implication of being held the entire time in the court basement. The distance, the symbol of stigma, and judges' restricted, order-based, and routine-centric point of view all conspire to generate distrust and pejorative opinions of defendants. As a result, routines that prove efficient in disposing cases quickly and consistently are continued with judges' indifference to the marginalisation of defendants and the disparate impacts of their decisions.

2. Contributions to Knowledge

The portrayal of the underlying forces that continue Thai judges' fining practices is the outcome of taking a 'consumer perspective' on the system that might need reform. This thesis has revealed not only that the fine operates with judicial indifference, but also how indifference is maintained systemically by multi-layered situational pressures. It is these extra-legal elements that direct the translation of the law-in-book to real practice, and will likely be the major obstacles to reform if unaddressed. By taking a step back to explore the complex reality of the fine before moving on to reform, this research supports the argument that a 'simple theory' behind policy choices is unlikely to be sufficient when faring with the 'hard reality' (Feeley, 1983; Tamasak, 1995).

In this light, this research is distinctive from previous literature that studies the Thai fine from a comparative and doctrinal approach (see Itsakul, 2013; Krittaya, 2017; Pechlada, 2013; Pirul, 1989; Pitchayon, 1999; Somyote, 2020; Tawan, 2014; Waraporn, 1997). It offers original insights into the concrete setting and the less visible dynamics at work around the fine. This study therefore can be read to simulate how the recommendations of the prior doctrinal research may unfold in reality. It can also inform reformers about what extra-legal conditions need addressing to successful implement the fining reform agenda.

The judicial focus of this thesis makes it belong in the still under-researched field of Thai judicial studies. Judicial studies in the sense that the courts as the institution are the object of the study (Somchai, 2016: 85, note 3) are still rare in Thailand. However, its socio-legal inquiry can provide fresh ways of understanding law in practice through the workings of the judiciary. This research, despite its focus on the fine, reveals the sentencing patterns whose driving factors may apply beyond the scope of one sanction.

Empirical findings of this work thus add to the research on Thai sentencing culture, such as Supakit's (2016). Likewise, they supplement McCargo's (2020) observation on how Thai legal decisions are affected by the judiciary's position in a particular socio-political climate.

On a less country-specific note, by attributing the judicial proclivity for overharsh punishment to the power of the situation, this research departs from certain previous literature that mainly accounts for such a phenomenon to judges' characters, perceptions, and coping strategies (see, e.g., Hough, Jacobson, and Millie, 2003; Millie, Tombs, and Hough, 2007; Tombs and Jagger, 2006). Although the ethical blindness concept applied in this study does not exclude the role of individual disposition, it theorises that the contextual pressures outweigh factors from personal traits, and this thesis has found the mechanisms that corroborate this postulation. For this reason, the findings expand beyond Thailand's boundary and contribute to the international socio-legal studies on sentencing, especially the theories about sentencing being a 'social process' and a 'social practice' (see Hutton, 2006; 2014; Tata, 2020).

In a similar vein, the evidence supplied herein of the cultural and structural influences on judges' decision-making not only enriches the international judicial studies but also the broader organisation studies that seek to understand the interplay between the organisation and its people and social relations that ensue. The thesis can be read as a case study of the Thai judicial organisation, whose contexts and resulting social interactions can formulate a hypothesis of like outcomes in other settings given resembling intrinsic conditions.

Furthermore, although there have been studies that touch on the lived experience of Thai offenders, they are all about imprisonment and inmates (see Napaporn *et al*., 2012; Nathee and Sumonthip, 2001; Saipin, 2000; Sumonthip, 2013). To the best of my knowledge, this study is the first attempt in Thailand to investigate the fine from defendants' points of view. It may also be one of the few works in international academia about experiences of being fined (see Bögelein, 2018; Crow and Simon, 1987; Morris and Gelsthorpe, 1990; Nicholson, 1990; Prison Reform Trust, 1990; Young, 1999). Even if the interviews with fine-default individuals in custody had to be cancelled because of Covid-19, data collection at the court was completed during which ethnographic methods

were employed for the thorough following of the defendants' day in court. As a result, this research offers lived experience data between both pre- and post-sentence stages and provides evidence regarding how the criminal justice sequencing affects defendants' opinions about the sanction. Ethnographic research that covers both the pre- and post-sentence journey is rare, let alone those targeting the fined defendants. This study, hence, contributes to the still small pool of knowledge about defendants' perspectives while undergoing the criminal justice process. Methodologically, it also imparts practical information about how data collection was carried out and related ethical considerations.

3. Limitations of this Research and Agenda for Future Research

This research is about criminal fines imposed by the courts on adult offenders. Therefore, it does not cover administrative fines, fines in youth courts, regulatory fines that can be settled out of court, and those levied against corporate offenders. Moreover, it aims to study fines in ordinary courts; thereby, excluding those inflicted by specialised courts such as fines in intellectual property offences. Data reported herein are inapplicable to those settings and they are still the areas that could be better understood with more research.

As typical of a small-scale qualitative study, the sample size of both judges and defendants may be deemed too small to generate representative data. More research with a bigger scale and ambition to reach a generalisable sample is recommended to test if this thesis's findings hold. This study also did not fully investigate the fining operations from the perspectives of officials who administer fine-default custody and community service in lieu of the fine. It merely collected official interview data and statistics from relevant agencies for a preliminary picture. Further investigation from this side of the fine will help complete the understanding of the fining system in Thailand.

Apart from the limits of the sample, defendants who participated in this study were merely those deemed likely to receive non-custodial sentences at the time of recruitment. By the end of each observation, many could pay the fine and some were about to do community service; the latter were not followed through to when they were actually doing the work. Likewise, defendants who were undergoing community service in lieu of the fine were excluded. No participating defendants were sent to fine-default custody and Covid-19 prohibited access to fine defaulters in detention facilities. Therefore,

defendants' data in this study are simply exploratory and could not be firmly extrapolated beyond this research's setting. Considering many differences between defendants' side of the story and judges' understanding of the system, the need for more research about the Thai criminal justice process from defendants' points of view is both significant and urgent. Subsequent studies can fill the gap in this thesis by including the cohorts that were omitted in this research, and by expanding the sample size. This is not to mention that there is still a vast room to fill in lived experience studies in general regarding punishment and the criminal justice system in Thailand.

Many judges in this study cited deterrence as the purpose of the fine. Although, as pointed in Chapter 4, deterrence was not likely their prioritised goal in sentencing, it is worth knowing if the mode and the severity of sanction can deter a crime and to what extent. There seem to be a very few empirical attempts that aim to answer these questions in the Thai context. Thus, studies about deterrence and their broader concept of compliance are very much welcomed to alleviate the research dearth in Thailand. Additionally, in light of this thesis's data about defendants' being marginalised and denigrated by the criminal justice system and some agents of authority, it is interesting to know whether the theory of procedural justice (see, e.g., Tyler, 2006; Tyler and Huo, 2002) can also facilitate more compliance in Thailand, like in other countries. The positive findings would support more research and reform agendas on how to humanise and empathise the present quasi-mechanised system that perpetuates indifference.

Judges' typical reliance on fine-default custody regardless of indigence, for fear of exacting too lenient punishment or sending an inadequate message, represents the problem of having too few sanctions for judges' selection. As seen in Chapter 4, judges often deny requests for a non-custodial alternative of fine enforcement because of the seriousness or the greed-driven nature of the offence in question. Thereby, 'fine-default' defendants are sent to custody and suffer the fate that the original non-custodial sentence (a fine, or a combination of a fine and suspended imprisonment) is supposed to avoid. Judges' disregard for the original non-custodial intention at the fine enforcement stage is the return to the moral-based consideration about the appropriate sanction. Their willingness to circumvent the original non-custodial sentence in imposing fine-default custody in certain offences suggests their preference for a more severe intervention than the fine and community service. However, with too few options at sentencing (either

imprisonment or the fine), judges face the dilemma of imposing either potentially over- or under-punishment. The middle-ground solution of suspended imprisonment with the fine is thus often adopted, albeit with apprehension regarding leniency because of the inactivated custody and the normally moderate fine. This worry resurfaces at the time of fine default. Aggravated by distrust of defendants in 'morally objectionable' crimes, the middle ground seems no longer an appropriate option; hence, the use of back-door incarceration in the name of fine-default confinement.

The above-described dilemma is just another disadvantage of having no intermediate sentencing alternatives. Originally, this thesis aimed to find out how the wealth-proportionate day fine could play this role in the Thai penal system. This question has been left unanswered as the research changed course so as first to understand Thai fining practices. Also, despite previous works that recommend sets of intermediate sentences including day fines in Thailand (see, e.g., Apirat *et al*., 2011; Kundhika, 2012; Narong *et al*., 2006), they are mostly doctrinal and comparative. What is seriously lacking are experimental data in concrete settings, as Feeley (1983) suggests, to test if the real-world results adhere to the theory and how all stakeholders receive and adapt to the new system. More importantly, there seems to be the shortage of adequate philosophical discussion about the appropriate and realistic aims of intermediate punishment, which are diverse and at times conflicting with one another. On this account, there is still a very large hole to fill in this area.

The micro-focus of this research on how the fine operates at courts leaves the door open for a macro-sociological analysis of the fine's trend over the years in comparison with changing socio-economic and political conditions in Thailand. Internationally, the fine has been observed, analysed, and theorised under such a lens in at least the works of Bottoms (1983), O'Malley (2009), and Rusche and Kirchheimer (1939). However, there has been no research, as far as I am aware, that applies the same frame of perspectives in analysing the fine in Thailand. Chapter 2 of this thesis simply gives a description of the fine's historical development in Thailand but does not examine its broader social implications. Inquiries on this or related topics would reveal how this monetary punishment corresponds or even contributes to Thai society's extra-legal conditions at any particular time.

Lastly, in terms of judicial and organisation studies, this research merely describes the Thai judiciary's structure, culture, and values preferences. It does not clarify how the status-quo has come about and how it has overcome other competing possibilities – if any. Although the judiciary has long been immersed in a conservative ideology, it has also been in contact with Western ideas about law and justice and has experienced some progressive reforms in the past. It would be very interesting to see how the Western and progressive discourses – such as those about the rights-based rule of law, individualised sentencing, and public accountability – have fared against their Thai-ised versions, which are conservative and adherent to formal rationality, and how the originals have succumbed to the modified conceptions. In other words, a clearer picture of the judiciary will be illustrated by the investigation of how the conservatised and bureaucratised concepts have claimed dominance, withstood challenging notions, and evolved over time.

4. Final Reflections: Equality, Proportionality, and Rationality

This PhD was sparked by my frustration as a judge at seeing the Thai courts' regular use of the fine that ignores its unequal and disproportionate impacts. As an insider of the judiciary for over a decade, I have been both familiar with and worried about the judiciary's managerial propensity that prioritises efficiency. My concern has intensified from the growing overemphasis on speed and consistency as if they were the most indicative proxies for justice. Nevertheless, for years I understood that my fellow judges were merely held up in this procedural bond to managerialism but that they too perceived the importance of equality and proportionality of impact. For years, I naïvely thought that the legal transplant of a more impact-centric sentencing option would be welcomed by judges. I was wrong and this thesis has already shown how wrong I was.

It is evident in this research that there are at least two conflicting approaches to penal equality and proportionality due to the ambivalence of the concepts. One is that whose definition is based on the penal impact, and the other is that solely focusing on the similarity of decisions under the same preconceived condition, i.e., the severity of offence. A large number of Thai judges seem to take the latter approach as the only way to measure equality and proportionality; thus, making it likely that I and other supporters of the former view are the minority in the judiciary.

In this final section, I do not intend to give a full-blown philosophical argument for the impact-centric approach; to do so would require a separate work dedicated to normative contemplation. However, I would like to flag my opinion that if the criminal justice system is truly concerned with just desert or deterrence, aiming for the equally subjective reception of punishment would better satisfy the said objective than the formalistic approach. Focusing on the impact enables a more careful calibration that seeks to avoid over- and under-punishment, as well as over- and under- deterrence, of wrongdoers who have different sensitivities to pains of punishment, although they have committed the same offence. In this way, offenders of disparate penal subjectivities can be made subject to equal and proportional delivery of desert and deterrence (see Ashworth, 1983: 277; Ashworth and Player, 1998).

Although consistency of penal messages in like cases undeniably requires attention to formal equality, it is still necessary to also be mindful of equality of impact under the premise of respect for human dignity. This premise, as explained in Kantian philosophy, is to treat humanity as a rational being and as an end in itself, never as a means (Kant, 1998: 37–39; Kant, 1956: 90). Accordingly, in criminal justice each defendant must be treated as a moral agent, capable of moral choices based on the rational sense of right and wrong (Von Hirsch, 2009: 116–117; see also Duff, 2009: 127). As a means of communication, punishment expresses the degree of reprobation not just by its announced mode and degree of severity but also by its felt impact. Thus, the same sentence that is lenient to one defendant but is onerous to another could be said to convey more blame to the latter than the former. This incommensurate assignment of blame denies defendants, as rational moral agents, the opportunity to take commensurate responsibility for their action. Forcing some defendants to endure the inevitably unequal and undeserving distribution of blame for the sake of uniform moral communication, in a way, treats them as a means to the expressive end and violates the principle of human dignity.

Although differences in the sanction's effect are difficult to discern in other punitive modes, they are easily observable in the case of the fine where people of various means experience different degrees of the fine's burden. Therefore, at least regarding the fine, to insist on the form not the impact would be vulnerable to the above normative challenges. The fine, imposed on offenders of the same crime, should communicate

equal blame while simultaneously tailoring the impact to be as equally felt as possible. The early 20th century innovation of day fines could theoretically deliver this result. By assigning a day-fine unit, the sanction can allocate blame evenly based on the severity of the offence. At the same time, setting the defendants' financial capacities as a separate multiplier for the fine's total size reflects the individualisation for the sanction's equal impacts. Eventually, equality of form and of impact can be reconciled by this ingenious invention.

Nevertheless, besides objection to the idea of impact-based equality, many judges in this study opposed the day-fine model on the grounds of practicality, at the core of which are concerns for speed, accuracy, and consistency. While these worries are legitimate and even if the current system works effectively for judges, practical concerns should not be excuses for not fixing the ethical flaws in the system. By raising impracticality as the major reason against reform, judges subscribe to formal rationality of the new penology (Feeley and Simon, 1992), or functional rationality of the McDonaldised organisation (Ritzer, 1998; 2019). Under this type of rationality, efficiency, among other things, is put at the heart of the administration and decreases substantive (or substantial) rationality, by which non-quantifiable values like justice can be intelligently considered and evaluated (Ritzer, 1998: 19, 22). It is thus formal rationality that spawns substantive irrationality (Ritzer, 2019: 167), creating the 'irrationality of rationality' typical of the McDonaldisation phenomenon (Ritzer, 2019: 167).

In a McDonaldised environment, the operations are rendered timely, cost-efficient, and uniform via centralised rules, formalised process, standardised practices, and significant control of performances (Bohm, 2006). The Thai judicial practices not only echo this description but also emphasise efficiency to the extent that crime control values are prioritised over those of due process, and mechanical but uniform sentencing over individualised judgements. Since the crime control model believes in the efficiency of convicting and punishing criminals, speed and finality are highly prized and inquiry steps that would slow down the process are to be dispensed with (Packer, 1969: 158–160). The ultimate representation of the crime control model is therefore the McDonaldised assembly-line, by which cases are processed through routinised, almost mechanised, manner and results are mostly measured quantitatively (see ibid.).

Despite its advantages, the McDonaldised criminal justice simplifies complex concepts such as justice, rights, and liberties to rough and quantifiable proxies. It dehumanises all participants including judges, by removing human discretion from most procedural stages; thus, reducing its staff to becoming robot-like (see Ritzer, 2019: 196). Moreover, one of the keys to success of the McDonaldised operation is to manipulate its customers to self-rationalise and self-transform to be sympathetic to and compliant with the system (Ritzer, 1998: 27–28). In the criminal justice context, defendants are the customers and the said manipulation can be achieved via symbolic violence as discussed in Chapter 5. The final product is the 'dummy players' (Carlen, 1976: 81) who uncritically obey the system which marginalises and denigrates them. Inferably, the striving for efficiency is primarily meant to benefit the system itself, not anyone else. On this account, although McDonaldised justice is functionally rational, its self-centric and dehumanising essence debilitates moral reasoning; thereby, making it simultaneously irrational in a substantive sense. As Bauman (1989) wisely cautions, because of the weakened moral rationality, the more functionally rational the society becomes, the more able it is to facilitate violence and injustice with indifference.

Considering the complex and multi-layered causes of judicial indifference and because it underlies the Thai fining practices, the reform to equalise the Thai fine cannot be just by legislating the system of means-proportionate fines. Other efforts to address the structural and cultural contributions to indifference should also be initiated. Although shifts in ideology and organisational culture are extremely difficult, reform could be incremental and initially aiming low. It can start with a proposal of a redesigned procedural flow to let judges be more proximate to defendants so that distrust from distancing can be decreased. This can be done hand-in-hand with initiating a critical discussion about fundamental concepts with conflicting interpretations such as the rule of law, penal purposes, equality, proportionality, and rationality. Thought-provoking and well-argued articles published in the judiciary's internal outlets may stimulate curiosity or spark debates that will lead to a more active philosophical contemplation about what justice really means. At the same time, empirical research that probes into the under-investigated aspects of the justice system should be more commissioned and its results be widely communicated among judges as the evidence-based 'feedback' of their

practices. These examples present what may be possible as the reform's humble beginning.

More ambitious projects to curtail indifference include the incorporation of procedural justice to more 'humanise' the judicial routines, the introduction of intermediate sentences to provide judges with decarceration options, and the undertaking of decriminalisation to alleviate judges' caseload. Although seemingly utopian, they are not realistically unrealisable. To succeed, as Feeley (1983) suggests, each must begin with small expectations and a problem-oriented focus, as well as being grounded in the reality of the concrete settings. For this reason, empirical and experimental research is crucial. Indeed, on a more general note, knowledge produced from rigorous research is utterly vital in fighting indifference on all fronts. Since indifference can be said to be the product of misconceptions and ignorance, it is appropriate to say that evidence-based real-world data are one of the most powerful weapons in this long battle towards substantive fairness.

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Thai Legislation: See Appendix A

Supreme Court Judgements

1153–54/2495 (AD 1952)

45/2496 (AD 1953)

1512–15/2497 (AD 1954)

1662/2502 (AD 1962)

3287/2534 (AD 1991)

3054/2547 (AD2004)

4897/2550 (AD 2007)

4899/2550 (AD 2007)

18280/2557 (AD 2014)

635/2559 (AD 2016)

3578/2560 (AD 2017)

5305/2560 (AD 2017)

8586/2561 (AD 2018)

5494/2562 (AD 2019)

3189/2564 (AD 2021)

Appendix A: Legislation Titles in Thai Phonetic Transcription and Script (In English Alphabetical Order)

Abolition of Torture Procedure Act BE[108] 2439 (AD 1896)

[Phraratchabanyat Yokloek Withi Phicharana Chon Phurai Tam Charit Nakhonban Ror Sor 115 (Por Sor 2439)]

พระราชบัญญัติยกเลิกวิธีพิจารณาโจรผู้ร้ายตามจารีตนครบาล ร.ศ. 115 (พ.ศ. 2439)

Act Amending the Criminal Code No.3 BE 2518 (AD 1975)

[Phraratchabanyat Kae-Khai Phoem Toem Pramuan Kotmai Aya (Chabap Thi 3) Por Sor 2518]

พระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายอาญา (ฉบับที่ 3) พ.ศ. 2518

Act Amending the Criminal Code No.9 BE 2530 (AD 1987)

[Phraratchabanyat Kae-Khai Phoem Toem Pramuan Kotmai Aya (Chabap Thi 9) Por Sor 2530]

พระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายอาญา (ฉบับที่ 9) พ.ศ. 2530

Act Amending the Criminal Code No.15 BE 2545 (AD 2002)

[Phraratchabanyat Kae-Khai Phoem Toem Pramuan Kotmai Aya (Chabap Thi 15) Por Sor 2545]

พระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายอาญา (ฉบับที่ 15) พ.ศ. 2545

Act Amending the Criminal Code No.25 BE 2559 (AD 2016)

[Phraratchabanyat Kae-Khai Phoem Toem Pramuan Kotmai Aya (Chabap Thi 25) Por Sor 2559]

พระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายอาญา (ฉบับที่ 25) พ.ศ. 2559

Act Amending the Criminal Code No.26 BE 2560 (AD 2017)

[Phraratchabanyat Kae-Khai Phoem Toem Pramuan Kotmai Aya (Chabap Thi 26) Por Sor 2560]

พระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายอาญา (ฉบับที่ 26) พ.ศ. 2560

[108] Buddhist Era

Act on Establishment of Administrative Courts and Administrative Court Procedure BE 2543 (AD 1999)

[Phraratchabanyat Chat Tang San Pokkhrong Lae Withi Phicharana Khadi Pokkhrong Por Sor 2542]

พระราชบัญญัติจัดตั้งศาลปกครองและวิธีพิจารณาคดีปกครอง พ.ศ. 2542

Act Promulgating the Criminal Code BE 2499 (AD 1956)

[Phraratchabanyat Hai Chai Pramuan Kotmai Aya Por Sor 2499]

พระราชบัญญัติให้ใช้ประมวลกฎหมายอาญา พ.ศ. 2499

Building Control Act BE 2522 (AD 1979)

[Phraratchabanyat Khuapkhum Akan Por Sor 2522]

พระราชบัญญัติควบคุมอาคาร พ.ศ. 2522

Civil Procedure Code BE 2477 (AD 1934)

[Pramuan Kotmai Withi Phicharana Khwam Phaeng Por Sor 2477]

ประมวลกฎหมายวิธีพิจารณาความแพ่ง พ.ศ. 2477

Constitution of Thailand BE 2560 (AD 2017)

[Ratthathammanun Haeng Ratcha-Anachak Thai Por Sor 2560]

รัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช 2560

Criminal Code BE 2451 (AD 1908)

[Kotmai Laksana Aya Ror Sor 127 (Por Sor 2451)]

กฎหมายลักษณะอาญา ร.ศ. 127 (พ.ศ. 2451)

Criminal Code BE 2499 (AD 1956)

[Pramuan Kotmai Aya Por Sor 2499]

ประมวลกฎหมายอาญา พ.ศ. 2499

Criminal Procedure Code BE 2477 (AD 1934)

[Pramuan Kotmai Withi Phicharana Khwam Aya Por Sor 2477]

ประมวลกฎหมายวิธีพิจารณาความอาญา พ.ศ. 2477

Customs Tax Act BE 2560 (AD 2017)

[Phraratchabanyat Sunlakakon Por Sor 2560]

พระราชบัญญัติศุลกากร พ.ศ. 2560

Domestic Tariff Act BE 2435 (AD 1892)

[Phraratchabanyat Phikat Phasi Phainai Ror Sor 111 (Por Sor 2435)]

พระราชบัญญัติพิกัดภาษีภายใน ร.ศ. 111 (พ.ศ. 2435)

Fifty-Three Laws for Police on Duty Within and Out of the Capital's Perimeter BE 2418 (AD 1875)

[Kotmai Police Hasipsam Kho Sueng Cha Raksa Nathi Nai Phra Nakhon Lae Nok Phra Nakhon Ror Sor 94 (Por Sor 2418)]

กฎหมายโปลิศห้าสิบสามข้อซึ่งจะรักษาน่าที่ในพระนครและนอกพระนคร ร.ศ. 94 (พ.ศ. 2418)

Film and Video Act BE 2551 (AD 2008)

[Phraratchabanyat Phapphayon Lae Widithat Por Sor 2551]

พระราชบัญญัติภาพยนตร์และวีดีทัศน์ พ.ศ. 2551

Fishery Act BE 2558 (AD 2015)

[Phraratchakamnot Kan Pramong Por Sor 2558]

พระราชกำหนดการประมง พ.ศ. 2558

Fishery Act (No.2) BE 2560 (AD 2017)

[Phraratchakamnot Kan Pramong (Chabap Thi 2) Por Sor 2560]

พระราชกำหนดการประมง (ฉบับที่ 2) พ.ศ. 2560

Gambling Tax Act BE 2435 (AD 1892)

[Phraratchabanyat Akon Kan Phanan Ror Sor 111 (Por Sor 2435)]

พระราชบัญญัติอากรการพนัน ร.ศ. 111 (พ.ศ. 2435)

Judiciary's 2003 Regulation on Community Service –

Regulation of the Judiciary on the Number of Hours that Count as One Day of Community Service and Practice Guideline regarding Community Service as the Alternative to the Fine and regarding the Change of Location for Confinement BE 2546 (AD 2003)

[Rabiap Fai Ratchakan Tulakan San Yutitham Wa Duai Kan Kamnot Chamnuan Chuamong Thi Thue Pen Kan Tham Ngan Nhueng Wan Lae Naew Patibat Nai Kan Hai Tham Ngan Borikan Sangkhom Rue Satharanaprayot Thaen Kha Prap Lae Kan Plian Sathan Thi Kakkhang Por Sor 2546]

ระเบียบฝ่ายราชการตุลาการศาลยุติธรรมว่าด้วยการกำหนดจำนวนชั่วโมงที่ถือเป็นการทำงานหนึ่งวัน และแนวปฏิบัติในการให้ทำงานบริการสังคมหรือสาธารณประโยชน์แทนค่าปรับและการเปลี่ยนสถานที่กักขัง พ.ศ. 2546

Judiciary's 2017 Regulation on Community Service –

Regulation of the Judiciary on the Number of Hours that Count as One Day of Community Service and Practice Guideline regarding Community Service as the Alternative to the Fine and regarding the Change of Location for Confinement (No.2) BE 2560 (AD 2017)

[Rabiap Fai Ratchakan Tulakan San Yutitham Wa Duai Kan Kamnot Chamnuan Chuamong Thi Thue Pen Kan Tham Ngan Nhueng Wan Lae Naew Patibat Nai Kan Hai Tham Ngan Borikan Sangkhom Rue Satharanaprayot Thaen Kha Prap Lae Kan Plian Sathan Thi Kakkhang (Chabap Thi 2) Por Sor 2560]

ระเบียบฝ่ายราชการตุลาการศาลยุติธรรมว่าด้วยการกำหนดจำนวนชั่วโมงที่ถือเป็นการทำงานหนึ่งวัน และแนวปฏิบัติในการให้ทำงานบริการสังคมหรือสาธารณประโยชน์แทนค่าปรับและการเปลี่ยนสถานที่กักขัง (ฉบับที่ 2) พ.ศ. 2560

KTSD – Three Seals Code

[Kotmai Tra Sam Duang]

กฎหมายตราสามดวง

Law on Judges

[Phra Aiyakan Laksana Tralakan]

พระอัยการลักษณะตระลาการ

Law on Punishment

[Khrommasak]

กรมศักดิ์

Law on Theft in the Vicinity of 200 Meters

[Kotmai Laksana Chon Ha Sen]

กฎหมายลักษณะโจรห้าเส้น

Narcotic Drugs Act BE 2522 (AD 1979)

[Phraratchabanyat Yaseptit Hai Thot Por Sor 2522]

พระราชบัญญัติยาเสพติดให้โทษ พ.ศ. 2522

Narcotic Drugs Act (No.8) BE 2564 (AD 2021)

[Phraratchabanyat Yaseptit Hai Thot (Chabap Thi 8) Por Sor 2564]

พระราชบัญญัติยาเสพติดให้โทษ (ฉบับที่ 8) พ.ศ. 2564

Narcotic Drugs Code BE 2564 (AD 2021)

[Pramuan Kotmai Yaseptit Por Sor 2564]

ประมวลกฎหมายยาเสพติด พ.ศ. 2564

Narcotic Drugs Procedure Act BE 2550 (AD 2007)

[Phraratchabanyat Withi Phicharana Khadi Yaseptit Por Sor 2550]

พระราชบัญญัติวิธีพิจารณาคดียาเสพติด พ.ศ. 2550

Narcotic Drugs Procedure Act (No.2) BE 2564 (AD 2021)

[Phraratchabanyat Withi Phicharana Khadi Yaseptit (Chabap Thi 2) Por Sor 2564]

พระราชบัญญัติวิธีพิจารณาคดียาเสพติด (ฉบับที่ 2) พ.ศ. 2564

Office of the Judiciary's 2017 Practice Guideline –

Practice Guideline for the Enforcement of the Fine Under the Act Amending the Criminal Code No.25, BE 2559 (AD 2016) [Internal Circulation of the Office of the Judiciary No. Sor Yor 024/Wor 111 (Por) dated 14 December 2017

[Naew Thang Patibat Kan Bangkhap Thot Prap Tam Phraratchabanyat Kae-Khai Phoem Toem Pramuan Kotmai Aya (Chabap Thi 25) Por Sor 2559]

แนวทางปฏิบัติการบังคับโทษปรับตามพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายอาญา (ฉบับที่ 25) พ.ศ. 2559 (หนังสือเวียนสำนักงานศาลยุติธรรมเลขที่ ศย. 024/ ว.111(ป) ลงวันที่ 14 ธันวาคม 2560)

Office of the Judiciary's 2018 Practice Guideline –

Practice Guideline and Procedures for Court Officials and Appointed Court Officers in the Execution of the Criminal Code Section 29/1 [Internal Circulation of the Office of the Judiciary No. Sor Yor 024/Wor 95 (Por) dated 3 August 2018]

[Naew Thang Lae Khanton Kan Patibat Ngan Khong Chao-Nathi San Lae Chao-Pha-Nak-Gnan San Thi Dai Rap Taengtang Nai Kan Damnoenkan Tam Pramuan Kotmai Aya Mattra 29/1]

แนวทางและขั้นตอนการปฏิบัติงานของเจ้าหน้าที่ศาลและเจ้าพนักงานศาลที่ได้รับแต่งตั้งในการดำเนินการตามประมวลกฎหมายอาญา มาตรา 29/1 (หนังสือเวียนสำนักงานศาลยุติธรรมเลขที่ ศย. 024/ ว.95(ป) ลงวันที่ 3 สิงหาคม 2561)

Office of the Judiciary's 2022 Practice Guideline –

Revision of Practice Guideline and Procedures for Court Officials and Appointed Court Officers in the Execution of the Criminal Code Section 29/1 [Internal Circulation of the Office of the Judiciary No. Sor Yor 024/Wor 7 (Por) dated 13 January 2022]

[Prapprung Kae-Khai Naew Thang Lae Khanton Kan Patibat Ngan Khong Chao-Nathi San Lae Chao-Pha-Nak-Gnan San Thi Dai Rap Taengtang Nai Kan Damnoenkan Tam Pramuan Kotmai Aya Mattra 29/1]

ปรับปรุงแก้ไขแนวทางและขั้นตอนการปฏิบัติงานของเจ้าหน้าที่ศาลและเจ้าพนักงานศาลที่ได้รับแต่งตั้งในการดำเนินการตามประมวลกฎหมายอาญา มาตรา 29/1 (หนังสือเวียนสำนักงานศาลยุติธรรมเลขที่ ศย. 024/ ว.7(ป) ลงวันที่ 13 มกราคม 2565)

Opium Tax Act BE 2413 (AD 1870)

[Phraratchabanyat Phasi Fin Ror Sor 89 (Por Sor 2413)]

พระราชบัญญัติภาษีฝิ่น ร.ศ. 89 (พ.ศ. 2413)

PKPS – Annual Compilation of Laws

[Prachum Kotmai Pracham Sok] (Sathian *et al.*, 1934–1956)

ประชุมกฎหมายประจำศก

Proclamation for Courts of Justice to Fix Sentences on Offenders Subject to Royal Punishment BE 2439 (AD 1896)

[Prakat Samrap Sanam Sathit Yutitham Cha Kamnot Thot Phu Phae Khadi Mi Thot Luang Ror Sor 115 (Por Sor 2439)]

ประกาศสำหรับสนามสถิตย์ยุติธรรมจะกำหนดโทษผู้แพ้คดีมีโทษหลวง ร.ศ. 115 (พ.ศ. 2439)

Proclamation for the Special Commissioners at Provincial Courts to Fix Sentences on Offenders subject to Royal Punishment BE 2439 (AD 1896)

[Prakat Samrap Khaluang Phiset Chat Tang San Hua-Mueang Cha Kamnot Thot Phu Phae Khadi Thi Mi Thot Luang Ror Sor 115 (Por Sor 2439)]

ประกาศสำหรับข้าหลวงพิเศษจัดตั้งศาลหัวเมืองจะกำหนดโทษผู้แพ้คดีที่มีโทษหลวง ร.ศ. 115 (พ.ศ. 2439)

Proclamation to Replace Flogging by Imprisonment BE 2438 (AD 1895)

[Prakat Hai Longthot Chamkhang Thaen Thot Thuan Ror Sor 114 (Por Sor 2438)]

ประกาศให้ลงโทษจำขังแทนโทษทวน ร.ศ. 114 (พ.ศ. 2438)

Recommendation of the President of the Supreme Court on Sentencing Discretion BE 2563 (AD 2020)

[Kham Naenam Khong Prathan San Dika Wa Duai Naewthang Kan Chai Thot Aya Por Sor 2563]

คำแนะนำของประธานศาลฎีกาว่าด้วยแนวทางการใช้โทษอาญา พ.ศ. 2563

Recommendation of the President of the Supreme Court on the Central Standard of Bail Decisions BE 2563 (AD 2020)

[Kham Naenam Khong Prathan San Dika Kiaokap Mattrathan Klang Samrap Kan Ploi Chuakhrao Phu Tongha Rue Chamloei Por Sor 2563]

คำแนะนำของประธานศาลฎีกาเกี่ยวกับมาตรฐานกลางสำหรับการปล่อยชั่วคราวผู้ต้องหาหรือจำเลย พ.ศ. 2563

Recommendation of the President of the Supreme Court on the Extension of Opportunities to Invoke the Right to Bail BE 2562 (AD 2019)

[Kham Naenam Khong Prathan San Dika Wa Duai Kan Khayai Okat Nai Kan Khao Thueng Sit Thi Cha Dai Rap Kan Ploi Chuakhrao Por Sor 2562]

คำแนะนำของประธานศาลฎีกาว่าด้วยการขยายโอกาสในการเข้าถึงสิทธิที่จะได้รับการปล่อยชั่วคราว พ.ศ.2562

Regulation of the Judicial Administration Commission on the Compensation and Reimbursement of Travel and Accommodation Expenses to a Summoned Witness in a Criminal Trial BE 2561 (AD 2018)

[Rabiap Khana Kammakan Borihan San Yutitham Wa Duai Kan Chai Kha Phahana Kha Puaikan Lae Kha Chao Thipak Kae Phayan Sueng Ma San Tam Mairiak Nai Khadi Aya Por Sor 2561]

ระเบียบคณะกรรมการบริหารศาลยุติธรรมว่าด้วยการจ่ายค่าพาหนะ ค่าป่วยการ และค่าเช่าที่พักแก่พยานซึ่งมาศาลตามหมายเรียกในคดีอาญา พ.ศ. 2561

Regulation of the Judicial Commission on the Appointment, Rotation, and Promotion of Judges (No.11) BE 2563 (AD 2020)

[Rabiap Khana Kammakan Tulakan San Yutitham Wa Duai Lakkain Kan Taengtang Kan Luean Tamnaeng Kan Yokyai Taengtang Lae Kan Luean Ngoen-Duean Lae Ngoen Pracham Tamnaeng Kharatchakan Tulakan (Chabap Thi 11) Por Sor 2563]

ระเบียบคณะกรรมการตุลาการศาลยุติธรรมว่าด้วยหลักเกณฑ์การแต่งตั้ง การเลื่อนตำแหน่ง การโยกย้ายแต่งตั้ง และการเลื่อนเงินเดือนและเงินประจำตำแหน่งข้าราชการตุลาการ (ฉบับที่ 11) พ.ศ. 2563

Regulation of the Judiciary on the Opening of Courts and the Consideration of Bail Applications on Public Holidays BE 2562 (AD 2019)

[Rabiap Ratchakan Fai Tulakan San Yutitham Wa Duai Kan Poet Tham Kan San Lae Phicharana Kham Rong Kho Ploi Chuakhrao Nai Wan Yut Ratchakan Por Sor 2562]

ระเบียบราชการฝ่ายตุลาการศาลยุติธรรมว่าด้วยการเปิดทำการศาลและพิจารณาคำร้องขอปล่อยชั่วคราวในวันหยุดราชการ พ.ศ. 2562

Royal Edict

[Phraratchabanyat]

พระราชบัญญัติ

Thirty-Six Laws:

[Kot Sam Sip Hok Kho]

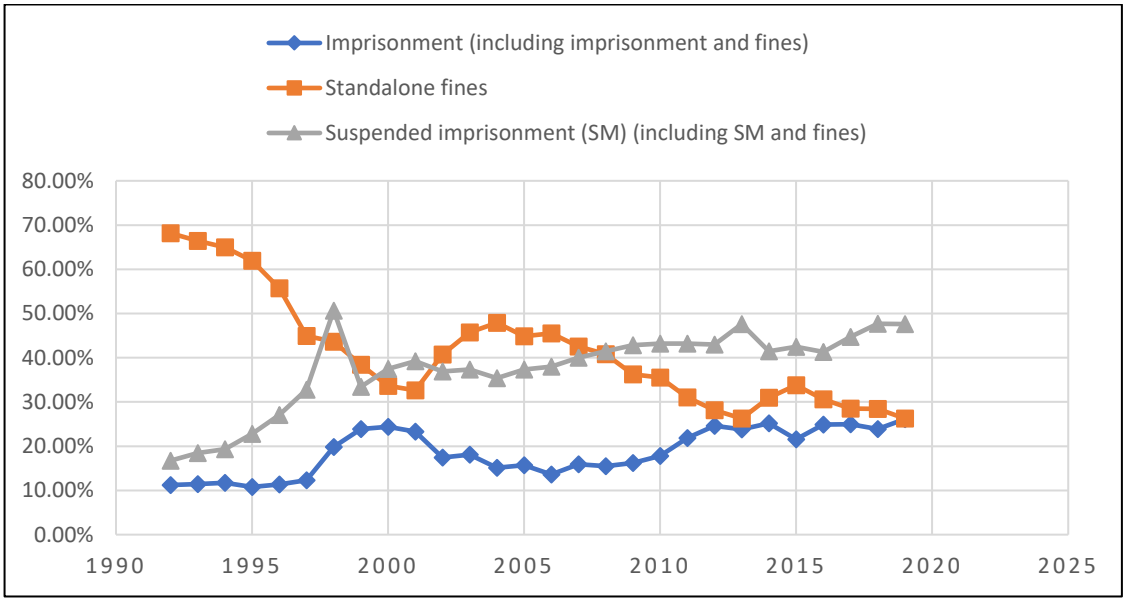
กฎสามสิบหกข้อ

Appendix B: Statistics and Trends of the Fines

The Nationwide Trend of the Fine

The fine as a standalone has always ranked among the top three most imposed penal interventions. However, its more frequently used mode is in a combination with imprisonment, either immediate or suspended. Figure B1 presents the trend of each sentencing mode as far back as 1992, which clearly illustrates the fine's subjugated role to imprisonment.

Figure B1 Sentences in the Thai Trial Courts Between 1992 and 2019

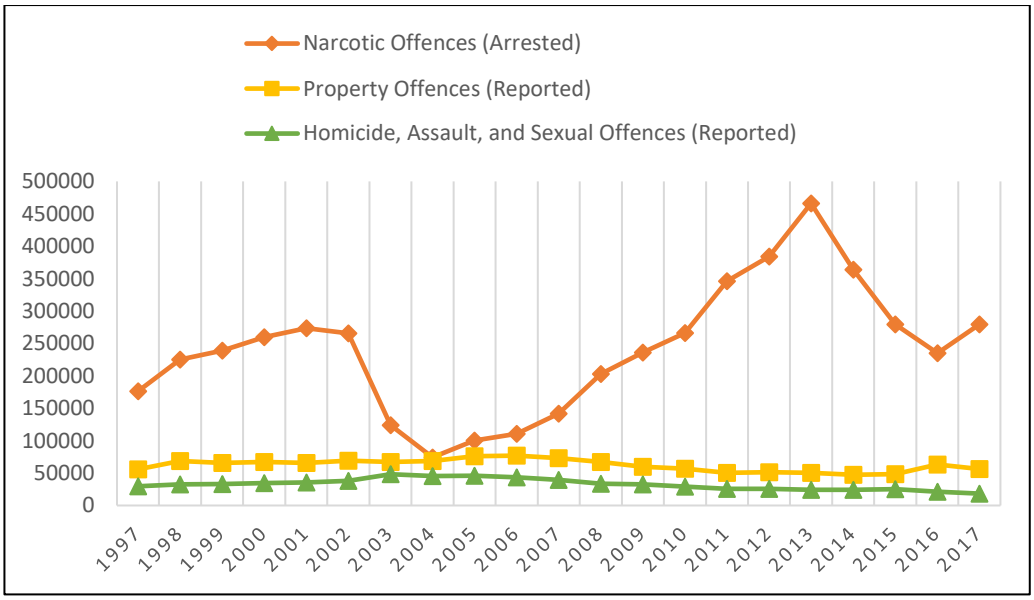


Source: The Judiciary of Thailand's annual statistics reports 1992-2019. Available at: https://oppb.coj.go.th/th/content/category/articles/id/8/cid/2085 (Accessed: 25 March 2021).

The chart presents the plummet of the standalone fine from its high status in the mid-1990s before briefly making its way up in the early 2000s. However, this reverting trend ends in 2004 and the fine gradually descends to the new low a decade later. In the last decade, the standalone fine ranks the second most invoked sanction and never manages to reclaim the top rank as in the previous ones.

Ostensibly, the decline of the fine corresponds to the increase in both immediate and suspended imprisonment, and both types of imprisonment rise in congruence with each other. Also noteworthy is the seeming negative correlation between the trajectory of the fine and the arrests in narcotic offences presented in Figure B2. While the report rates of other offences are relatively static and inconsistent with the use of any sanctions, the standalone fine's downward trend appears to match the rise of narcotic offences and vice versa. Haphazard is unlikely when the two lowest points of the fine in 2001 and 2013 coincide with the highest points of narcotic arrests in the same respective years. Likewise, the plummet of narcotic arrests in 2004 is an inverse of the fine's surge in the same year. Simultaneously, the rise and fall of narcotic arrests correlate positively with those of custody-related sentences. Considering that narcotic offences often incur custodial sanctions as a result of a punitive turn in 1996 (Supakit, 2016: xxiv - xxv), the more use of either mode of imprisonment due to the rise in narcotic arrests may partly explain the fine's falling trajectory.

Figure B2 Offences in Thailand Between 1997 and 2017



Source: The Royal Thai Police, cited by the Office of the National Economic and Social Development Council. Available at: http://social.nesdb.go.th/SocialStat/StatReport_FullScreen.aspx?reportid=1300&template=1R2C&yeartype=M&subcatid=45 (Accessed: 6 May 2019).

The Promotion of Community Service and Related Statistics

Although data collected from the sample courts in this study hint that in general the can't-pay offenders are outnumbered by those who can pay, the number of the former cohort are probably not insignificant. The seeming injustice of detaining people simply because of their indigence has been a well-known topic of academic discussion. In 2017, a group of law students and their professor from Thammasat University initiated a social campaign/ active learning activity titled '*Tong Mai Mi Khrai Tit Khuk Phro Khwam Chon* [No one must be jailed for being poor]'. The objective was to help the 'can't-pay' receive freedom by doing community service while enabling law students to understand legal practices and their consequences in reality. The principal activities engaged by the students were to inform fine-default detainees about the option of community service, help them fill and file the forms, and follow up on the results. Five groups of students scattered among five detention facilities in Thailand's central region. All groups reported obstacles to detainees regarding this option. Common impediments were detainees' unawareness of the measure and the high rate of courts' rejections in narcotic cases, which were one of the most frequent offences among detainees. Courts' inertia to inform defendants about this alternative and to approve it seemed to be the major hindrance (Tappanai, 2019). On 22 April 2020, a new group of students met with delegates of President Salaikate Wattanapan, then President of the Supreme Court, to exchange and propose ideas for reforms. The President reportedly accepted some of the students' proposals in his policy to augment the protection of people's rights and liberties, which included the promotion of the use of community service (*Tong Mai Mi Khrai Tit Khuk Phro Chon*, 2020).

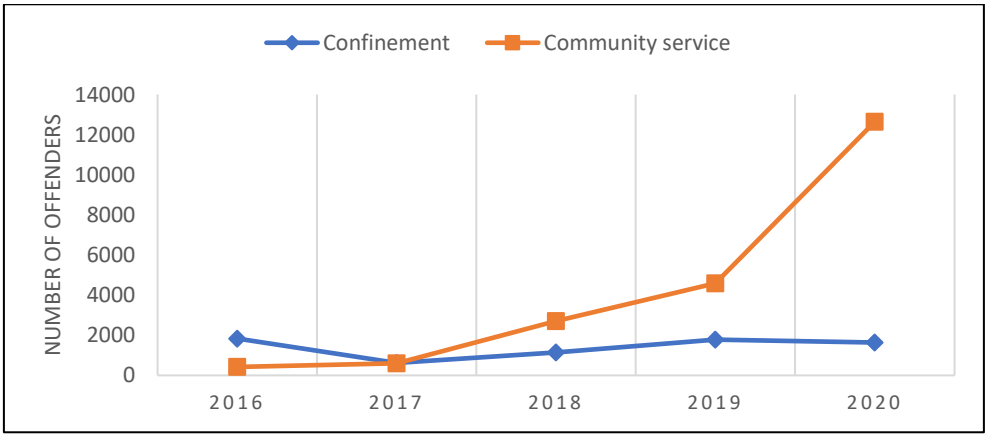
Judge X, who oversaw the promotion and the progress of this policy at the Office of the Judiciary at the time of interview[109], provided another take on the policy's origin. According to the interview and the given documents, community service is an intervention that courts cannot mobilise alone. However, no serious efforts had been undertaken to secure partnership with related agencies. When President Salaikate conceived the umbrella policy regarding the augmented protection of rights and liberties, one of his key strategies was to decrease unnecessary custody at every procedural stage. This played

[109] Interviewed on 9 February 2021.

along well with the concurrent Covid-19 driven necessity to reduce prison overcrowding and sparked the thought of invigorating this virtually defunct measure.

The project started around April 2020 in 10 pilot courts in major cities across country. It was accompanied by practical guidelines to courts and the judiciary's coordination with partnered organisations, including the Department of Probation (DOP). The statistics collected from 1 April to 14 August 2020 were encouraging. Totally, 1,046 community service orders were issued out of all 1,101 motions filed. Because of this apparent success, the initiative was officially rolled out nationwide in November 2020 – under the helm of the succeeding President Methinee Chalothorn. Rough raw data of community service orders from the original 10 pilot courts from September to December 2020 tallied to approximately 1,206. Nonetheless, Judge X candidly admitted that such an escalation was attributed to the judiciary's policy. Without the top-down push, this impressive change would not have happened.

Figure B3 Trends of Alternative Measures to the Fine



Sources: Department of Corrections (Confinement data);

Department of Probation (Community Service data).

Nationwide data from the DOP in Figure B3 clearly present this fascinating increase in 2020. Although the ascent seems to have begun in 2017, the early trend was gradual. The probation officers assigned to give an interview for this research[110] assumed that the

[110] Interviewed on 17 December 2020.

climb since 2017 had been probably due to their more far-reaching public communication. However, the significant contribution from the coincidental students' campaign could not be overlooked. At least Judge A from Court One observed in 2019 that the rise of community service motions in the preceding year had been because of the students' activities. Still, the soar in 2020 was most likely the effect of the clear policy and its active implementation as concluded by Judge X.

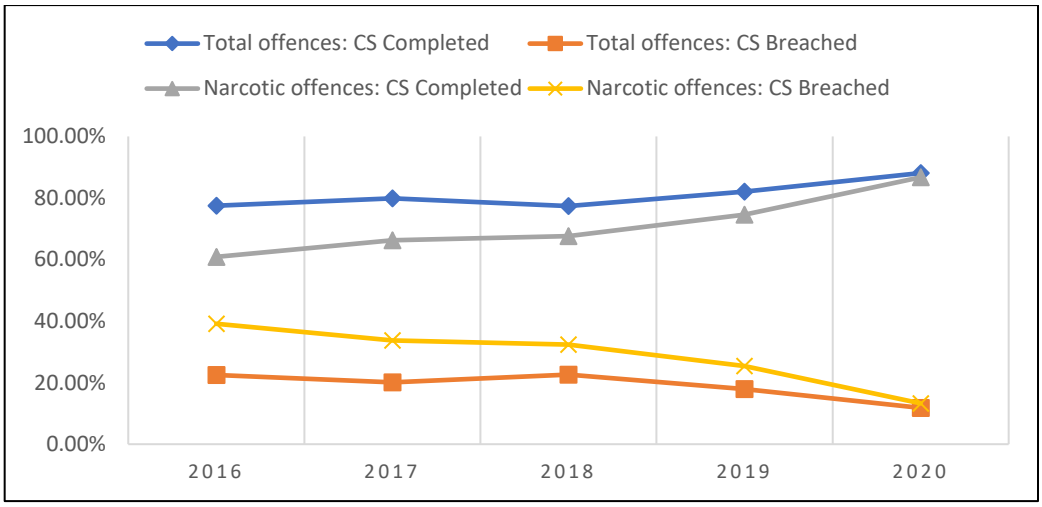
According to the interviewed probation officers, this surge of community service has constituted approximately five percent of the DOP's overall workload – still merely a small addition. What has posed a more challenge to the DOP is to maintain a 'work list' of diverse and meaningful services that will suit each offender's preference and circumstances. In practice, the nature of work to be assigned to each offender is broadly determined in the court order. The probation officer and the offender will work out the specifics in their first meeting, in which the offender will select the work from the work list while the probation officer will check the appropriateness of the work. For example, blood donation is prohibited to narcotic offenders and teaching is banned to convicts of sexual molestation offences. Because most offenders are relatively unskilled labour, most assigned works are often tedious, such as cleaning or sorting documents – although the DOP attempts to expand the list to include more meaningful and educative works such as those relating to natural conservation and training for craftsmanship skills.

Normally, offenders are expected to follow the schedule of the assigned community service through to the end but changes are negotiable. Offenders can also pay the still outstanding fine to early 'liberate' themselves and some indeed resort to subsequent payment. The statistics from the DOP indicate the proportion of this deployed exit as follows: 1.7% (2016), 2.4% (2017), 3.1% (2018), 3.2% (2019), and 1.4% (2020).

In terms of the compliance rates, the DOP statistics in Figure B4 indicate the overall high rates of compliance (approximately 80 percent) over the years and on the rise, signifying the conversing trend for breaches. To the interviewed probation officers, the most likely reasons for non-compliance are too lengthy hours of community service, particularly those converted from an expensive fine, and the conditions of work that obstruct the course of defendants' normal life. However, overall they admitted that the majority do comply and the roughly 10 percent of breaches in 2020 is acceptable. The

trend of compliance is even more impressive for drug offenders, as the falling of breaches (or the rising of compliance) is steeper and more observable. This is quite contrary to participating judges' emphatic concern over breaches of non-custodial enforcement, especially by drug offenders.

Figure B4 Community Service (CS) Compliance Rates (2016-2020)



Source: Department of Probation

Data on Fine-Default Confinement

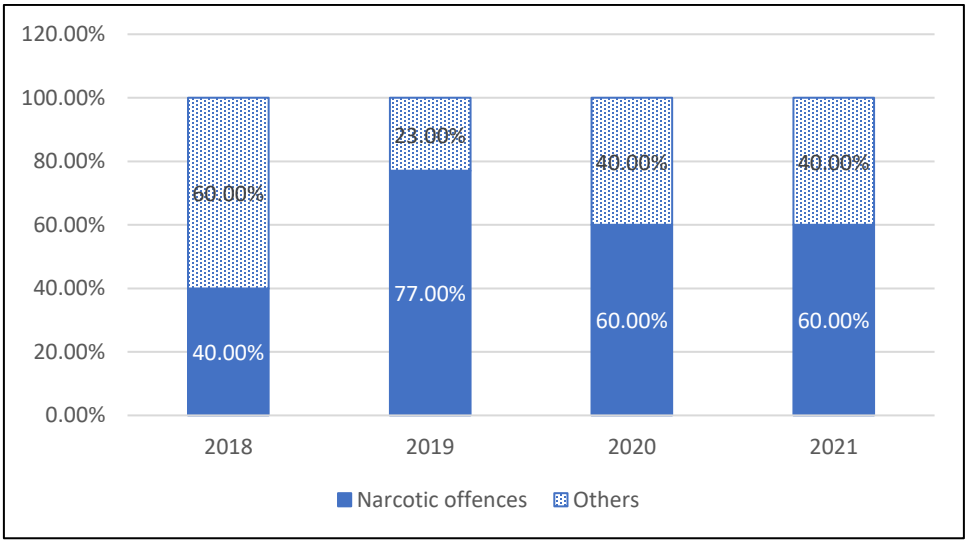
How much community service will reduce fine-default confinement in the long run remains to be seen. So far, the trend of confinement has been relatively static. Mr Weerakit Harnpariphan, Deputy Director-General of the Department of Corrections (DOC) at the time of interview[111], commented that the majority of detainees are citizens of Thailand's neighbouring countries who are fined for their illegal immigration. The immigration law requires that they be repatriated; hence, making them unfit to be released for community service. In 2017, where the number of confinement drops as seen in Figure B3, Mr Weerakit recollected that the government halted arrests of illegal immigrants who had showed up for work permit registration in an attempt to curb immigration problems. The impact was nevertheless short-lived because the number almost doubled the following year and slightly rose afterwards. Since immigration situations probably influence the

[111] Interviewed on 4 March 2021.

confinement trend, its fluctuation is more likely dependent on Thailand's immigration policy and the political economy of its neighbours.

On the other hand, Mr Weerakit admitted that narcotic offenders who are both imprisoned and fined constitute a large proportion of detainees' population. After having served the term of imprisonment, these offenders are relocated to be held further for their typically massive fines, possibly up to the maximum of two years. It is impossible for me to determine which is a larger group, fine-default immigrants or fine-default narcotic detainees, because I could not access the DOC's detailed offence-based statistics of fine-default detainees – if there are any. The DOC, however, collects the separate statistics of narcotic detainees in comparison with detainees convicted of other offences. Although, the term 'detainee' includes those detained for causes other than fine default, non-fine-default detention rarely occurs. Therefore, the statistics in Figure B5 may give a preliminary picture of the proportion between fine-default narcotic detainees and those convicted of other offences.

Figure B5 Narcotic Detainees Compared with Those in Other Offences (Data on 1 March of the Presented Year)



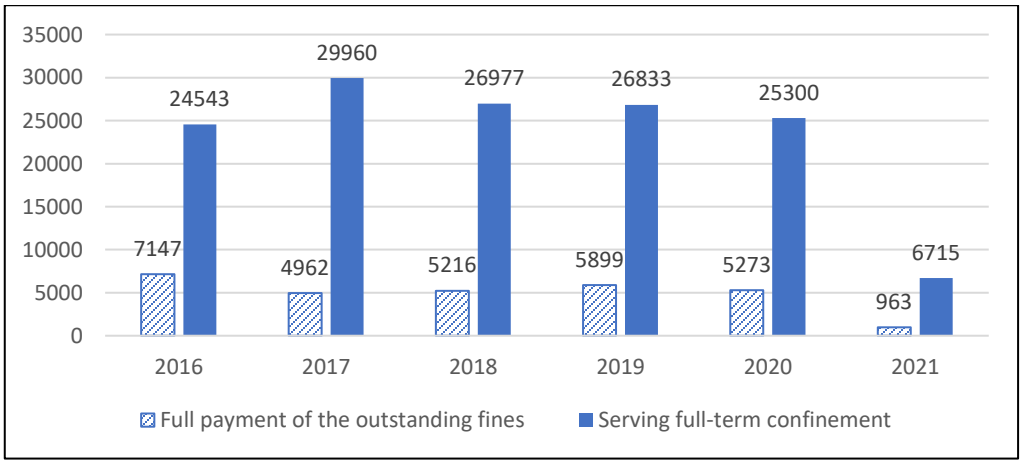
Source: Department of Corrections.

Available at: http://www.correct.go.th/stathomepage/ (Accessed: 4 April 2021).

Notice the averagely greater proportion of narcotic detainees than all the rests. If this chart truly presents the proportion of fine-default detainees, the Thai judiciary's community service policy may still be unable to significantly reduce the rates of fine-default confinement. The mandatory combination of imprisonment and the fine is almost uniquely found in drug dealings and drug trafficking cases. Judges' generally severe condemnation of the crimes and the recommendation against permitting community service in drug offences, as stipulated in *the Judiciary's 2003 Regulation on Community Service*, may still bar a majority of narcotic detainees from this measure.

The highly negative stance against drug offenders has already been explained at length in Chapter 4. It is worth recapitulating here that the oft-cited reasons for rejecting community service in narcotic cases include the belief that these offenders can pay their fines because the crimes were committed for money. Filing for community service is allegedly just a ruse to avoid punishment. Nonetheless, the DOC statistics in Figure B6 indicate the overwhelming majority of detainees released after having served their full term of confinement, as opposed to those who managed to have the rest of their fines paid and early liberate themselves. This is consistent with the observation of Judge W from Court Two that most arrestees in drug offences are petty dealers/ traffickers who may barely pay off their massive sanction.

Figure B6 Detainees Classified by the Causes of Release (Data on 9 March 2021)



Source: Department of Corrections.

Available at: http://www.correct.go.th/stathomepage/ (Accessed: 4 April 2021).

Appendix C: Strategies for Research Design and Recruitment

This appendix elaborates strategies adopted for research design and recruitment. It begins with how I obtained objective preliminary data on which I based the plan for the first leg of fieldwork. Thereafter, I will explain recruitment challenges in both the first and the second legs and how I managed to overcome them.

1. Preliminary Data for Research Design

I derived preliminary information from the literature on Thai criminal justice and the sampled Supreme Court judgements. Although, due to my own judicial experience, I was acquainted with how the fine is imposed and enforced, I attempted to suspend my personal knowledge from the onset of the research and relied on more objective sources. Supakit Yampracha's (2016) doctoral thesis on Thai sentencing culture was a good starting point. The thesis gives an elaborate account on Thai judicial structures and practical conventions. It describes the dominating influence over judges' sentencing discretion of the *yee-tok*, a confidential and in-house sentencing guideline localised by each court. Prioritising uniformity and consistency, the hegemonic judicial culture proliferated preference for the offence-based standards over individualised punishment. Therefore, one needed to examine the *yee-tok* of just a few courts to observe the patterns of fine-related decision-making. However, because of its confidentiality, the alternative route to knowing about the fine in practice was through the Supreme Court judgements. Authorised to review sentencing discretion and traditionally setting the de facto precedents for lower courts to follow (Supakit, 2016: 135), the Supreme Court indirectly established the standardised practices regarding the fine.

To discern precedented sentencing patterns, I consulted the digitised database of Supreme Court judgements in April 2019. I used the broadest set of Thai keywords of *thot* (penal or punishment) and *prap* (the fine) and applied three criteria for case selection: that the judgement was final in adult courts[112]; that the sentenced offence was punishable

[112] Sentencing for juvenile offenders is subject to a different set of regulations and procedures, and deserves to be fully investigated in a separate study.

by the fine; and that statutory provision of the said offence was retrievable online[113]. I then randomised the search result according to the judgement's appearance order in the database, with approximately ninety-two percent confidence interval and five percent margin of error. The eventual sample size comprised 304 judgements from 1959 to 2018. The sample was coded for the categories of sentenced offences, whether offenders were natural or corporate entities, the statutorily permitted sanctions, the imposed sanctions, and the severity level of the levied fine within the authorised sentencing range. Coding and content analysis was implemented using IBM SPSS and Microsoft Excel.

Data analysis revealed the patterns of preference for custody, either immediate or suspended, over the fine. The fine was imposed as a standalone only in trivial offences or where offenders were corporate entities. Otherwise, the fine appeared as a complementary sanction to either mode of imprisonment. The fine was also found to be usually clustered at the lower end of the sentencing range. Moreover, there was no mentioning of neither a means-inquiry nor details about offenders' financial ability in the judgements.

These results rendered a preliminary picture of the trivialised role of the fine and its minimised punitive power. They also implied offence-based sentencing and means-insensitive enforcement. I used this rough sketch to base my investigation of judges' practices and perspectives. The purpose was to see if lower courts adhered to the Supreme Court's convention, and further details as to both the how and why.

Accordingly, the questioning route revolved around the three key aspects of the fine: the role, the size, and the enforcement. It sought to explore judges' perceptions around the concepts of penal purposes, equality, proportionality, and practicality regarding the fine, as well as their opinions on the current fine-related practices. Questions were open-ended, occasionally supplemented by prompts and probes and counterfactual (what-if) questions, to invite deep discussion and deliberation. Interview questions were pre-piloted in two mock group telephone interviews with two and three judges respectively. A

[113] The provision that constituted the offence was necessary to check the range of the imposable fine and see where the actual fine sat in the said range. Since I was in Scotland at the time, I could search for Thai statutory texts only via online digitised databases. The preliminary nature of this part made further investment unwarranted.

pilot focus group was subsequently held in-person with five judges arriving from Thailand for a two-week study visit at the University of Strathclyde in July 2019.

2. Recruitment Challenges and Solutions

2.1 Recruiting Judges and Associated Officials

To get access to Courts One, Two, and Three in the first leg, I approached my known colleague at each court in July 2019 to help coordinate details for getting in with each chief judge. I then posted a letter from one of my supervisors requesting for access along with a summary of planned research activities for the chief judge's official approval. My informant colleague informed me once access had been granted. Approvals from all courts were confirmed in late August 2019 and I booked a flight to Thailand to commence the first leg in the subsequent month.

In October 2020, I again coordinated with the chief judge of Court Two unofficially through my colleague before posting an official request letter for the second leg's activities in December of the same year.

The same strategy was adopted at the same time for the second leg of fieldwork through a network of contact at the Office of the Judiciary, the Department of Probation (DOP), and the Department of Corrections (DOC) for the preparation of a request letter. Interview questions and a request for statistics must be submitted in detail to both the DOP and the DOC for consideration of approval. With much assistance from the DOP informant, the DOP granted permission quickly, enabling the interview to take place early in the second leg. On the contrary, the early absence of a liaison at the DOC resulted in miscommunications that delayed approval for interviews. This indicates the importance of an inside informant in negotiating access to government organisations.

The only departure from this protocol to access was with the cohort of appellate court judges in the first leg. I approached one participant in this cohort through my network of contact to help organising a focus group. With great generosity, this participant agreed to help and successfully convened a focus group at the Central Court of Appeal. This was achieved informally with no request letter to the executives of the Court.

Regarding the on-site investigation at the lower courts, as a judge and an insider of the judiciary, I was welcomed by the chief judge of every observed court and offered

access to the case files and the court's restricted areas, particularly the judges' chamber and the holding area where defendants were held. Court officials greeted me with hospitality and willingly consented to be observed and questioned. Likewise, judges of every court, the majority of whom had not known me before, agreed to participate in this study, whether as interviewees or individuals under observation. This recruitment success was significantly attributed to my informant colleague who introduced me to the judges and helped me coordinate their free time to schedule a focus group. Without such tremendous facilitation, arranging a focus group for busy judges who were still unacquainted with me would have been extremely difficult.

There was one exception to this ease of recruitment, however, which proved the significance of an introduction by a fellow judge. Judges in one *wain-chee* panel at Court One refused to sign a consent form for observation. One judge in particular displayed overt suspicion towards my research activities, repeatedly asking me if I had secured approval from the chief judge. Even after I answered the question and explained the research mission, this judge continued to ignore me and discard the consent form. The judge's more senior co-panellist, although expressed understandings, still similarly refused to sign the form. This compelled me to abandon observation in the *wain-chee* chamber while they were on duty, and it was the only occasion in the first leg when recruitment was rejected. The suspecting judge's unfriendliness towards me was probably and partly due to my approaching without having been formerly introduced by my informant judge at the court. This lack of proper introduction might have rendered my insider status doubtful and my request for participation impertinent. Reflecting on this possibility, I made sure in subsequent recruitments to make my first appearance introduced by my informant colleague or other judges in the studied court.

2.2 Recruiting Defendants

Recruitable defendants were approached at the time they reported themselves at the court's reception counter, usually scheduled in the morning. To avoid giving the impression that I was working for the court, I stood by the counter on the public-facing side and waited until they finished with the reporting and started to walk down to the holding area as instructed. The first defendant who agreed to participate would be shadowed and interviewed along the rest of his or her *wain-chee* journey. Since the *wain-*

chee lasted several hours, even the entire day for some, this limited the number of participants to only one each day. Also, because their entire journey was constrained to the confines of the holding area, I too stayed there and was immersed in the same environment as experienced by each participant throughout.

At recruitment, I introduced myself as a PhD student from a university in the UK, aiming to collect data for her doctoral thesis. Although recruited based on their prospect of being fined, defendants were told that it was their experience in the criminal justice system through to their sentences, which may be the fine or others, that would inform my research. This deliberately loose explanation was to prevent creating the illusion that I could interfere in their cases which may unduly influence consent. For transparency, I also introduced my other identity as a judge, with an emphatic stress on my inert professional role during a study leave and my inability to exert any influences on the outcome of their cases.

Recruited defendants expressed no qualms about participation knowing that I was a judge. They seemed to fully believe that I was then, in a way, an outsider to the criminal justice system. All participating defendants appeared relaxed and trusting enough to share their thoughts and criticisms of the officials with me. One participant in particular, Phon, a 50-year-old male defendant, was eager to participate when I told him that I intended to use this research for system reform, admitting later that he would not have been interested if my intention had been otherwise. Participants also understood well my non-interference position. Chin, a 33-year-old pharmacist indicted for his drink and dangerous driving, immediately withheld his asking for my comments on the police report regarding his case, remembering my non-intervention assertion. Neither did any other participants seek my legal advice or assistance.

This prevalence of trust and understanding was partly attributed to the location of interview that allowed utmost privacy. Originally, I had planned to interview participants while they were waiting in the same waiting area as others where full confidentiality was impossible. Nevertheless, the incident that occurred at the first recruitment resulted in a more welcomed change. On the first day of the second leg at Court Two, there were no defendants reporting at the counter; they were taken in by the police straight from the police station to the court's holding area. The officials told me that at that time of year

there were few criminal indictments filed. Worried about recruiting too few participants in this second leg, I decided to trial recruiting defendants who were already in the holding area. However, unexpectedly, one of the court police officers on duty accompanied me throughout from recruitment to the interview. He even encouraged the defendant to participate and speak up. Knowing that his action was out of concerns for my safety, the fact he later confirmed, I could not reject his good intention outright. What followed was the perceivable influence of his presence and involvement over the recruited defendant. I noticed the defendant's frequent glance at the police officer before answering my questions. His replies also seemed carefully worded with refrains commonly found in the government's slogans. It was as if he was trying to give answers that he thought officials would like to hear. Because of the apparently skewed data, this first inquiry was treated as a pilot interview instead. This attempt, although it failed to produce credible accounts, proved the workability of observation and interview guides. It also proved the undesirability of having officials' present during the investigation. For this reason, after the session was over, I explained to the officer about the necessity for me to have a private conversation with the recruited defendants. This resulted in the officers designating one of their office rooms for my interviews with defendants (see Figure 4.1(b) in Chapter 4) during all my later interview sessions. To interview and observe defendants in the enclosed space with full privacy was beyond my expectation, and this may not have been possible had I not been a judge and therefore recognised as 'one of them', one of the system's insiders.

I also learned from a later recruitment that recruiting defendants after they were down in the holding area was more likely to receive rejection than at the official's counter. One defendant, who went to the holding area before my recruitment, declined participation when I went down to recruit him. My lengthy explanation about the research and the protection of his confidentiality could not change his mind. He insisted that he did not know much because it was his first criminal prosecution. I could not decipher the real reason behind his rejection, but it may have had something to do with my future presence along his entire court day as he asked how long participation would take. Or else, it may have come down to his distrust of me, a stranger appearing in the empty holding area and suddenly asking for his disclosure of an unfavourable episode in his life.

The look of concern and distrust was more observable in the eyes of another rejecting defendant. Although this time recruited at the counter, he flatly declined my request saying that he was busy. I could not know which weighed more between concern and distrust regarding his rejection. However, his concern was understandable considering his charge was also likely to induce unsuspended imprisonment, a sentence actually later imposed on him.

To increase the chance of consent, I changed tactics when approaching defendants. Instead of a plain introduction, I volunteered to escort them down to the holding area while introducing myself and asking for their participation in the interim. To most defendants who were baffled by the criminal justice process, offering this simple navigation was a gesture of help that earned their trust. Additionally, by the time I finished explaining about the research and all things they needed to know, we were already in the interview room. They were still free to deny the request; nevertheless, being already inside a proper interview setting may have given them fewer reasons to decline. After I adopted this recruitment strategy, I no longer received refusals to participate.

Appendix D: Research Design for Interviews with Fine-Default Defendants

The original research design for this thesis aimed at including defendants detained for fine default for the investigation of their perspectives and lived experiences of fine-default custody. However, the Covid-19 outbreak precluded the attempts to interview this cohort both when they were still detained and immediately after they were released. Although both plans were regrettably unimplemented, they had been ethically approved by the ethics committee of the University of Strathclyde and therefore may be helpful for future researchers. Accordingly, this appendix lays out two research designs for interviews with fine-default defendants: one targeting those still in custody, and the other targeting those just released from the detention facility.

1. Plan for Interview with Fine-Default Defendants in Custody

Recruitment and Method

I intended to recruit this cohort for a one-to-one in-depth interview inside the detention centre in which they were confined. The detention centre is the facility specifically built to detain those sentenced for confinement as punishment and also those housed for fine default. For this study, I targeted the detention centre serving the jurisdiction of Court Two because Court Two was where I observed and interviewed defendants still undergoing the pre-sentence process.

Because of Covid-19 precautions, every detention centre in Thailand was closed to visits from outsiders. This prevented in-person interview with detainees while still in confinement, although my request for access had been granted since February 2021 by the Department of Corrections who runs all prisons and detention facilities in Thailand. However, had I been able to carry out the research plan, I would have recruited six to ten participants in fine-default custody as the project was merely exploratory. Drawing analogy from Schinkel's (2013) research that probes long-term prisoners about their experiences, detainees already serving at least half of their time would have been given priority in recruitment. This was to ensure that experiences of detention would be incorporated into their reflections. Gender would have also been another criterion.

Theoretically, it is possible to balance the gender quota because the centre has separate facilities for male and female detainees, and I planned to equally spend time at each. However, control for the balance of this quota still would have been hard because female offenders are typically much fewer than their male counterparts. Given the lowly expected number of participants, I would have anticipated only one to two female detainees in this study.

Defendants confined in the detention centre would have been recruited by the staff of the facility on my behalf on my requested criteria. Practical reasons directed this decision. The detention centre is like the prison in terms of its high security and difficulty in getting access. Outsiders are typically not allowed inside absent the approval of the proposed objective and detailed schedule. Moreover, outsiders are often restricted to a designated area, often a room, for doing interviews. This hinders the direct recruitment of participants. Additionally, the normal duration of detention is relatively short – mostly not exceeding a month[114]. This short duration obstructs researchers from employing means of 'knowing' the detainees well enough for the careful selection of prospective participants. This short detention period also impedes recruiting the same defendants who were previously shadowed at the court because approval for interview may not be obtained in time before their release.

In her attempt to interview prisoners in the Scottish prison, Schinkel (2013) also recounted the futile effort to recruit prisoners through the circulation of information leaflets. In the end she had to yield to having the prison staff recruit participants and schedule the interviews on her behalf. In hindsight, although admitting the limitations, she doubted whether other recruitment methods could have improved the situation (pp. 100–104). Cautioned by this experience and considering this research's own limitations, having the staff recruit participants on my behalf would have been the most practical method of recruitment. To mitigate the possibility of 'coerced' participation as a result of recruitment by the staff, I would have emphasised at the outset of the interview the freedom to give consent and affirmed the confidentiality of their decline to participate.

[114] The interview with Mr Weerakit Harnpariphan, Deputy-Director of the Department of Corrections at the time of interview (4 March 2021) confirms this point.

The interview would have been in a semi-structure manner and would have lasted between half an hour to an hour. Because any digital recording device is prohibited inside the detention facility, I would have manually documented information from all interviews in field notes and transcribed it at the end of each field work day. I would have translated the transcription to English by myself for analysis afterwards.

Ethics

Ethical concerns for participants would have involved the confidentiality and protection of their dignity because of their vulnerable status**.** There would also have been the likelihood of stress and anxiety induced by my activity and interview questions**.** Moreover, the asymmetry of power and status between me as the researcher (and a judge) and participants might have instigated either the contexts of coercion or the impression of case-related reciprocity**.** Therefore, a written consent would have been requisite for the interview to be commenced. In order to ensure an informed consent, I would have provided information at the outset about the purposes and methods of this research, my identity and my inability to intervene in their cases, as well as the non-involvement of the judiciary in this research. I would have encouraged participants to create their own pseudonym while assuring them of the confidentiality of their data and their right to either withhold contribution or withdraw consent. I would have additionally cautioned them not to disclose their unknown criminal or harmful activities; otherwise, I would have been ethically compelled to report the information to the authority. Furthermore, since the interview would have likely been conducted under the watchful eye of the officials, I would have also warned participants about the lack of absolute privacy during the interview.

2. Plan for Interview with Fine-Default Defendants Just Released from Custody

Because of Covid-19 prohibitions from entering detention facilities, I had to find another way to interview this remaining cohort. With the assistance of my liaison at the Thai Ministry of Justice, the gatekeeper at the targeted detention centre agreed to allow the interview to take place right after the detainees had been released each day and thus provided the schedule of release to me in advance. Hence, I revised the method in the previous section and had it approved by the University Ethics Committee. Nevertheless, the sudden and serious wave of infections caused by the Delta variant in April 2021

instigated too concerning a risk of proceeding with the one-to-one interview. Having seen no other possibilities to recruit this cohort, I aborted the plan.

Recruitment and Method

Had circumstances not been intervened to force me to cancel, the interview with the ex-detainees would have occurred on the day of their release either in the public-facing area of the detention centre or in a nearby public space (e.g., a café or a restaurant) at the participants' convenience. Each participant would have been recruited shortly after he or she was released from confinement. The number of participants in this cohort remained similar to the original plan; i.e., about six to ten, due to the study's exploratory nature.

The interview outside the confinement zone would have enabled the voice recording of the interview. Given participants' consent, the interview would have been recorded using a password-protected digital recording device; otherwise, it would have been documented in handwritten field notes before being transcribed and translated to English for analysis solely by me.

The interview would have been in a semi-structure manner with questions probing participants' 'life story' all the way back to their pre-sentence days. Using narrative method, participants would have been encouraged to speak freely in their own words during the interview which would have lasted about one to two hours.

Ethics

The revised plan, had I been able to implement it, would have applied the same ethical strategies as outlined in the above section with one addition: giving compensation to participants at the end of the interview. This extra element was added because I had observed during the fieldwork at Court Two that most defendants, once released, hurried away from the court and would likely reject a request for interview. Therefore, for consenting participants, it was fair and appropriate to recognise the value of their time in a form of compensation in this study (see Ackerman, 1989; Gelinas *et al.*, 2018; Largent and Lynch, 2017; Lynch, 2014). Although compensation would have also served as an incentive for participation, it would have merely been a by-product of a treatment principally rooted in justice. And even if participants may have been motivated to appease me with their replies to reciprocate for this seeming reward, this risk was not atypical in

qualitative research with human interactions already rife with the so-called researcher effect. This risk could have been mitigated by building rapport to gain trust so that participants could have understood that sugarcoating their answers was unnecessary.

In addition, the worries about undue inducement from compensation are largely based on the possibility of participants taking excessive risks in research. Such concerns have been challenged as ungrounded (Emanuel, 2004) and may even lead to lessor protections to participants than labour and employment laws (Lynch, 2014). Since their engagement in this research would have been merely giving an interview in a pseudo-anonymous condition and under confidentiality protections, it would have been implausible that participants would encounter excessive risks or harms from being 'lured' into this research. On the other hand, the delayed enjoyment of their newly received freedom was an undeniable burden that participants would have endured throughout the interview. Thus, fairly compensating participants for their time would have unlikely raised ethical concerns and should rather have been deemed desirable.

Given the complications of measuring participants' opportunity costs while taking part in this study, I would have based compensation on the value of their 'work'; i.e., participation. Since each interview was deemed of equal value to the research, this value-based consideration was advantageous for the standardisation and equality of treatment.

To localise and objectivise this value, the National Research Council of Thailand has issued a proclamation in 2012 on the guidelines and criteria for research grants[115], according to which the compensation to interviewees is advised to not exceeding 100 baht (roughly £2). If the data are in the highly difficult level, this rate can be augmented subject to the reviewer's discretion. A more specific criterion for social science research is found in the proclamation of the Rajamangala University of Technology Thanyaburi (RMUTT) in 2016 on the rates of compensation to research participants[116]. RMUTT

[115] Available at: http://kms.nrct.go.th/kms/sites/default/files/%E0%B9%81%E0%B8%99%E0%B8%A7%E0%B8%97%E0%B8%B2%E0%B8%87%E0%B8%AB%E0%B8%A5%E0%B8%B1%E0%B8%81%E0%B9%80%E0%B8%81%E0%B8%93%E0%B8%91%E0%B9%8C%20%E0%B8%A7%E0%B8%8A.%20%E0%B8%9B%E0%B8%B5%202555.pdf (Accessed: 1 April 2021).

[116] Available at: http://www.mct.rmutt.ac.th/wp-content/uploads/%E0%B8%9B%E0%B8%A3%E0%B8%B0%E0%B8%81%E0%B8%B2%E0%B8%A8%E0%B8%AD%E

permits the compensation to interview respondents in social science research up to 500 baht (roughly £11) per participation. However, this still lacks clear points of considerations.

Considering that participants in this study would have been asked to recount their penal journey, in a sense this task partially resembles a witness testifying before the court about their recollection of a certain event. This civic duty is recompensed at a rate between 300 and 500 baht (roughly £7 and £11), according to *the Regulation of the Judicial Administration Commission on the Compensation and Reimbursement of Travel and Accommodation Expenses to a Summoned Witness in a Criminal Trial BE 2561 (AD 2018)*. Given this somewhat similar nature between research interview and giving court testimony, the court's minimum compensation rate of 300 baht appears to be appropriate for an in-depth life story interview with no sophisticated technical questions. Moreover, since participants in this study would not have incurred any expenses to give an interview, 300 baht appeared to be a satisfactorily justifiable rate for this study's purpose.

For an informed consent, I would have announced the plan to give compensation as a token of appreciation at the time of recruitment. This would have enabled the recruited person full information to consider whether it is worth his or her time and missed opportunities to participate in this study. Note that the 300-baht equivalent compensation is around the mandatory minimum daily wage in the province under Court Two's jurisdiction. It was also probable that by spending time talking to me, participants living on a daily wage may miss the daily recruitment for available one-day jobs which usually takes place in early morning. Given this competitive option of spending their time, it would also have been defensible that this compensation scheme did not unduly induce them into participating in this research.

0%B8%B1%E0%B8%95%E0%B8%A3%E0%B8%B2%E0%B8%95%E0%B8%AD%E0%B8%9A%E0%B9%81%E0%B8%97%E0%B8%99%E0%B9%81%E0%B8%A5%E0%B8%B0%E0%B8%84%E0%B9%88%E0%B8%B2%E0%B8%8A%E0%B8%94%E0%B9%80%E0%B8%8A%E0%B8%A2%E0%B8%AD%E0%B8%B2%E0%B8%AA%E0%B8%B2%E0%B8%AA%E0%B8%A1%E0%B8%B1%E0%B8%84%E0%B8%A3%E0%B8%97%E0%B8%B5%E0%B9%88%E0%B9%80%E0%B8%82%E0%B9%89%E0%B8%B2%E0%B8%A3%E0%B9%88%E0%B8%A7%E0%B8%A1%E0%B9%82%E0%B8%84%E0%B8%A3%E0%B8%87%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A7%E0%B8%B4%E0%B8%88%E0%B8%B1%E0%B8%A2.pdf (Accessed: 1 April 2021).

Appendix E: Details about Participating Defendants

(In Alphabetical Order)

Pseudo-nyms	Gender	Age	Occupa-tion	Past record	Pretrial custody	Bail	Offences	Sentences	Fines paid by	Time in process (approx.)
Bang บัง	Male	51	Electrical contrac-tor	Sale of metham-phetamine (approx. 10 years ago)	1 night	5,000-bht (deposited by son; Bang's money)	Possession of methamphe-tamine (10 pills)	8-month imprisonment	N/A	2 hrs.
Chin ชิน	Male	33	Pharma-cist	Drink driving (approx. 2-4 years ago)	1 night	80,000 bht (deposited by mother; borrowed money + Chin's savings)	Dangerous driving causing non-fatal injury	6-month imprisonment (suspended 2 years) & 20,000-bht fine & 1-year probation (24 hrs community service + 4 times in-person report) + 1-year suspension of driver's license	Paid by bail money	7 hrs.

Pseudonyms	Gender	Age	Occupation	Past record	Pretrial custody	Bail	Offences	Sentences	Fines paid by	Time in process (approx.)
Cloud คลาวด์	Male	22	N/A	N/A	2 nights	5,000 bht (paid by sister's husband)	Possession of cannabis	1,000-bht fine	Offset by pretrial custody	3 hrs.
Ek เอก	Male	38	Worker in mother's tree shop	Possession of methamphetamine (approx. 10 years ago)	1 night	5,000-bht (deposited by mother; bank-loan money originally borrowed for another spending)	Possession of methampheta-mine (6 pills)	6-month imprisonment (suspended 2 years) & 14,000-bht fine & 1-year probation (12 hrs community service + 4 times in-person report)	Paid by bail money + community service	6 hrs.
Gift กิฟต์	Female	31	Daily hire housemaid	N/A	1 night	5,000 bht (deposited by cousin; father borrowed from usurer at 10% monthly	Possession of methampheta-mine (7 pills)	7-month imprisonment (suspended 2 years) & 15,000-bht fine & 1-year probation (12 hrs community	Community service	5.30 hrs.

Pseudo-nyms	Gender	Age	Occupa-tion	Past record	Pretrial custody	Bail	Offences	Sentences	Fines paid by	Time in process (approx.)
						interest rate)		service + 4 times in-person report)		
Jo โจ	Male	25	Petrol Station worker	1. Drug misuse (youth case – approx. 8-9 years ago) 2.Carrying handgun (approx. 5-6 years ago)	1 night	5,000 bht (paid by mother; money likely borrowed)	Possession of methampheta-mine (6 pills)	6-month imprisonment (suspended 2 years) & 14,000-bht fine	Paid by bail money + cash (by mother) + community service	6 hrs.
M เอ็ม	Male	27	N/A	N/A	10-12 hrs.	8,000 bht (paid by a friend)	Possession of cannabis	1,000-bht fine	Himself via QR Code payment (money borrowed from parents)	2 hrs.

Pseudo-nyms	Gender	Age	Occupa-tion	Past record	Pretrial custody	Bail	Offences	Sentences	Fines paid by	Time in process (approx.)
O โอ	Male	50	Traditio-nal dessert maker	Sale of metham-phetamine (approx. 10 years ago)	1 night	10,000-bht (deposited by daughter; money borrowed from O's brother)	Possession of unregistered air rifle	6-month imprisonment (suspended 2 years) & 2,500-bht fine	Paid by wife & daughter (family's savings)	1.30 hrs.
Ot (pro-nounced like Odd) อ็อด	Male	34	Furniture shop assistant	N/A	1 night	80,000 bht (paid by mother)	Uploading obscene materials onto the computer system	4-month imprisonment (suspended 2years) & 40,000-bht fine	Paid in cash by mother	2.30 hrs.
Phon (pro-nounced like Porn) พอน	Male	50	Farmer & Owner of wife's hairdress-er shop	Gambling (approx. 5-6 years ago)	1 night	10,000 bht (deposited by wife; Phon's money)	Possession of unregistered air rifle	6-month imprisonment (suspended 2 years) & 1,000-bht fine & 1-year probation (12 hrs community service + 4 times in-person report)	Paid in cash by wife (Phon's money)	3 hrs.

Pseudo-nyms	Gender	Age	Occupa-tion	Past record	Pretrial custody	Bail	Offences	Sentences	Fines paid by	Time in process (approx.)
Tei เต้	Male	20	Security guard	N/A	6 nights (1 night in police cell, 5 nights in remand prison)	5,000 bht (paid by acquain-tance/ creditor)	Possession of cannabis	1,000-bht fine	Offset by pretrial custody	2.15 hrs.
Tong ต๋อง	Male	21	Student	N/A	2 nights	8,000 bht (paid by aunt)	Possession of cannabis	1,000-bht fine	Offset by pretrial custody	4 hrs.
Tony โทนี่	Male	26	Construc-tion worker	Breach of Covid-19 curfew (approx.10 months ago)	1 night	20,000 bht (deposited by father; mother's savings)	Possession of methampheta-mine (10 pills)	8-month imprisonment (suspended 2 years) & 17,500-bht fine & 1-year probation (12 hrs community service + 4 times in-person report)	Paid by bail money	5.30 hrs.

Pseudonyms	Gender	Age	Occupation	Past record	Pretrial custody	Bail	Offences	Sentences	Fines paid by	Time in process (approx.)
Witsanu วิษณุ	Male	29	Icehouse worker	Possession of methamphetamine (approx.4 years ago)	2 nights (1 night in police cell, 1 night in remand prison)	5,000 bht (paid by uncle)	Possession of cannabis	2,000-bht fine	Half offset by pretrial custody and half paid in cash by uncle	4.30 hrs.
Yot ยศ	Male	62	Repairman	N/A	1 night	5,000-bht (paid by acquaintance/ regular client	Possession of methampheta-mine (6 pills)	7-month imprisonment (suspended 2 years) & 15,000-bht fine	Paid by friend/ regular client	2.30 hrs.

Appendix F: Interview Guides

I. Focus Groups and One-to-One Interview with Judges: Leg One

Introductory Question

1. Please introduce yourself for the record. Your name, your title and how long you have been practicing as a judge.

The Penal Value of the Fine

2. Let me begin with the four basic purposes of punishment: retribution, deterrence, incapacitation, and rehabilitation. What penal purpose(s) do you think fines represent? Why?

3. What are the advantages and disadvantages of fines in pursuing the penal purposes just discussed, in your view?

   Listen for issues relating to severity, equality, and justice. Probe if necessary to clarify meaning: What do you mean by…?

The Comparative Significance and Role of the Fine

4. When the statute gives you a choice of either imprisonment or fines, how do you make your choice of sanctions among imprisonment, a standalone fine, and a combination sentence (suspended imprisonment and a fine)?

   Probes:

   (1) *(In case where compliance with the yee-tok is referred to as the principal reason, probe with these questions)*

   (a) What do you think are the criteria on which the *yee-tok* is based?

   (b) Do you agree with the *yee-tok*'s criteria?

   (c) Suppose you could deviate from *yee-tok*, what would you base your sentencing choice on?

   (2) *(Continue with this question, or begin with this question if the yee-tok is not mentioned.)*

   Given that the severity of offences could be sorted into three degrees – extreme, moderate, and lenient – and the law permits you the choice of either imprisonment or fines or both, which mode of sanctions would you impose?

   (3) *(If suspended imprisonment is mentioned)*

   What is your intention of imposing a suspended imprisonment?

(4) *(If suspended imprisonment and a fine is mentioned)*

What is the purpose of the fine in the combination with suspended imprisonment?

(5) Suppose there were no limitations whatsoever in imposing and enforcing the fine, do you think that a standalone fine would be capable of replacing a combination sentence? Why?

Factors of the Size of the Fine

5. When deciding the amount of the fine, what factors do you consider?

   Listen for the severity of the offence, criminal history, the presence of other sanctions in the combination sentence. Probe if necesary for more clarification (e.g. if there's only one factor mentioned, probe with 'is there anything else?')

6. Please visualise the range of the imposable fine in three blocks – the high, the middle and the low.

   (a) Which block do you think is the typical of the Thai sentencing pattern?

   (b) What do you think causes this pattern?

7. *(If the participants do not mention the offender's financial status)*

   What do you think is the general view of judges on the relevance of the offender's financial status?

   Follow-ups:

   (1) Do you agree with the general view?

   (2) (In case the participants answer it is relevant)

   What do you think is the priority ranking of the financial status, compared to other factors: top, middle, or bottom/ primary or secondary? Why this ranking?

   (3) (a) Have you yourself ever considered taking the financial status of the offender into account when deciding fines?

   (b) Could you describe at least one case where you made such a decision?

   (c) What do you think was the impact of the imposed fine in that case?

8. *(If the participants respond to question 7 that the financial status is of no/little relevance to the determination of the fines)*

An offender's financial status is generally considered irrelevant when determining the amount they are fined, even though different offenders may have very different financial circumstances. What do you think is the reasoning behind this approach?

9. Suppose the laws required judges to take an offender's financial status into account. What would be the advantages and disadvantages of this requirement in your view?

Enforcement of the Fine

10. Moving on to another related topic, what do you think is the general enforcement method for fine defaulters in Thailand?

    Listen for default imprisonment

    Follow-up: What do you think influences the greater use of default imprisonment than other measures: civil execution, unpaid work, instalment payment?

11. (a) As far as you are aware, have there been attempts by judges to inquire into the reason for defaults before deciding on the enforcement measure?

    (b) In your view, what causes (the lack of) these attempts?

12. In your opinion, suppose again that the law required that imprisonment be invoked only against wilful (the 'won't-pay') defaulters. What would be the advantages and disadvantages of this requirement?

Ending Questions

13. Suppose you had the ability to change the law in this area. Would you consider changing the current fining practices and in what way?

14. So far, we have discussed the role of fines that … [*summary of discussion*]. Is this an accurate summary? Have I missed anything?

    Is there anything else you want to say about this topic that I haven't asked you?

    Thank you.

II. Interview with the *Wain-Chee* Judges – Leg Two

1. How frequently do you issue community service order in lieu of outstanding fines, compared to your normal practices before the judiciary's recent policy?

   (If the reply indicates differences in frequency)

   Probe: What might be the causes of this difference in your view?

2. How do you exercise discretion regarding a community service order in the context of a fine?

3. In your opinion, what are the advantages and disadvantages of promoting a community service as an alternative to fine-default imprisonment?

4. If you were the policy maker, what policy would you design about fine enforcement?

   Prompts:

   (a) What are your comments or recommendations about the judiciary's recent community service policy?

   (b) What is your opinion about other methods of fine enforcement?

III. Interview with the Judge of the Office of the Judiciary

1. Please explain the origin and objective of the policy that encourages the use of community service instead of fine-default imprisonment.

2. What is the Office of the Judiciary's view on the aggregate statistics of community service orders issued and compliance rates thereof under this policy?

3. What is the Office of Judiciary's view on the statistics of community service orders issued and compliance rates thereof in the jurisdiction of Central Criminal Court?

4. How has this policy progressed so far?

   Prompt: How has it been received by judges and court officials?

5. What do you think are the factors or causes of this rate of progress?

6. What should be done/ will be done further to improve the progress of the policy and achieve the policy's aim?

   Prompts:

   (a) What have been the obstacles?

   (b) What are the plans to mitigate or remove the obstacles?

   (c) What is the Office of the Judiciary's opinion on the potential of other enforcement methods in curbing unnecessary custody?

IV. Interview with Official(s) of the Department of Probation

1. Please explain the probation officer's standard process after being notified of the community service order in lieu of the fine.

   Prompts:

   (1) How does a probation officer design the work schedule for each defendant?

   (2) Are there any similarities or differences regarding your work between community service in lieu of the fine and ordinary community service order? Please elaborate.

2. How does a probation officer supervise compliance with the community service order?

   Prompt: What are the protocols for a probation officer when non-compliance is detected?

3. How does the Department of Probation perceive the trend of community service order (in lieu of the fine) and compliance rates thereof on a nationwide scale?

4. How does the Department of Probation perceive the trend of community service order (in lieu of the fine) and compliance rates thereof specifically in the jurisdiction of Court Two?

5. What may be the factors that drive compliance/ non-compliance with the community service order in lieu of the fine?

   Prompt: Are there any similarities or differences between defendants undergoing this order and those under ordinary community service order? Please elaborate.

   Probe for clarification whether the answers are based on available data or the respondent's personal opinion.

6. What are the difficulties the Department is facing in administering the court's community service order in lieu of the fine?

7. How has the Department addressed these difficulties?

8. What, if anything, in the system regarding fine enforcement would the Department like to see changed or improved?

V. Interview with the Official(s) of the Department of Corrections

1. Please explain the organisational structure of criminal detention centres in Thailand.

2. Please explain the normal process of admission and after the centres receive the defendants from the court.

   Prompt: Are there any similarities or differences between the practices in the detention centres and the ordinary prisons? Please elaborate.

3. How does the Department of Correction perceive the trend of fine-default detention on a nationwide scale?

4. How does the Department of Correction perceive the trend of fine-default detention specifically in the detention centre serving Court Two?

5. Who are the majority of population detained for fine defaulting and what may be the causes of their defaults?

   Prompt: Are there any similarities or differences between fine-default detainees and other detainees or prisoners? Please elaborate.

   Probe for clarification whether the answers are based on available data or the respondent's personal opinion.

6. What are the difficulties the Department is facing in administering fine-default detention?

7. How has the Department addressed these difficulties?

8. What, if anything, in the system regarding fine enforcement would the Department like to see changed or improved?

VI. Interview with Defendants at the Court

Warm-Up Questions

1. How did you arrive here?
2. Are you here by yourself? Is there anyone coming with you today?

Principal Questions

I am interested in hearing your story about the journey of this case so I can hear what you think about it. In your own words and do take as much time as you'd like…

3. Going back to the day you were arrested and charged, can you tell me what happened on that day and after?

   Follow-Up: How did you feel about what happened?

4. What did you remember most vividly about anything regarding this case since the arrest?

   Follow-Up: How did you feel about it?

5. Who did you rely on or seek help from during those days and what assistance did you receive?

6. How do you feel about this very moment being here and now at the court?

   Follow-Up: What sentence do you expect to have?

The following questions will be asked <u>only after the sentence is announced</u>. Begin enquiry only after participants explicitly confirm their readiness and willingness to answer questions.

7. What do you think was the judge's purpose of imposing this sentence on you?

   Follow-Up: What made you think that?

8. How do you feel about your sentence?

   Follow-Ups:

   (1) Have you been sentenced before? How is this one compared to other sentences?

   (2) How do you think this sentence will impact you and your family?

   (3) How fair do you think your sentence is?

   Probe: How do you define 'fairness'?

9. What, if anything, have you learnt from the overall experience about this case?

Prompts:

(1) How would you describe the entire journey you have undergone from arrest to now in one sentence?

(2) If you could have changed anything about this case – either about yourself or the system, what would you have changed and why?

Listen for and note the following demographic details that can be the variables of the impacts of the fine: Age, Occupation, Dependents, Average income, Financial obligations, Self-perception about his/ her financial status.

If they did not appear in the conversation, directly ask for their reply in each category:

I truly appreciate your openness with me. If you don't mind, I would like to ask questions about your personal information. Please feel free to refrain from answering if you feel uncomfortable to share the information.

Ending and Debriefing Questions

10. Is there anything else that you'd like to say or let me know?

11. How did you feel about talking to me in this way?

I appreciate your willingness to share your experiences with me. I have learnt a lot from you. Thank you for your fruitful participation that will help me considerably in my research.

VII. Interview with Fine-Default (Ex)Detainees (Guide Unused – Interview Cancelled)

Warm-Up Questions

1. How do you feel about having been released today? *(For asking ex-detainees only)*
2. How long were you detained here?
3. What will you do after finishing this interview?

Principal Questions

I am interested in hearing your story about your experiences from your arrest to your confinement so I can hear what you think is important about it. In your own words and do take as much time as you'd like…

4. What were the charges and sentences that made you end up here?

5. Can you take me back to the day of your arrest and what happened after the arrest?

   Probe for the experiences and feelings about:

   - *The time at the police station;*
   - *The bail process;*
   - *Waiting for the day of the participant's court appearance.*

6. Can you tell me about your day in court from your arrival to when the sentence was announced?

7. What happened after the sentence?

   Probe for the causes or decisions that led to the participant's confinement.

8. Can you describe your daily life inside the detention centre?

9. Looking back, what do you think was the judge's purpose of imposing this sentence on you?

   Follow-Up: What made you think that?

10. How did you feel about your sentence?

    Follow-Ups:

    (1) Have you been sentenced before? How was this one compared to other sentences?

    (2) How has this sentence impacted you and your family?

(3) How fair do you think your sentence was?

Probe: How do you define 'fairness'?

11. What, if anything, have you learnt from the overall experience about this case?

Prompts:

(1) How would you describe the entire journey you have undergone from the arrest to now?

(2) If you could have changed anything about this case – either about yourself or the system, what would you have changed and why?

Listen for and note the following demographic details that can be the variables of the impacts of the fine: Age, Occupation, Dependents, Average income, Financial obligations, Self-perception about his/ her financial status.

If they did not appear in the conversation, directly ask for their reply in each category:

I truly appreciate your openness with me. If you don't mind, I would like to ask questions about your personal information. Please feel free to refrain from answering if you feel uncomfortable to share the information.

Ending and Debriefing Questions

12. Is there anything else that you'd like to say or let me know?

13. How did you feel about talking to me in this way?

I appreciate your willingness to share your experiences with me. I have learnt a lot from you. Thank you for your fruitful participation that will help me considerably in my research.

Appendix G: Participant Information Sheets and Consent Forms

I. Participant Information Sheet for Judges in Focus Groups

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study: The role of criminal fines in Thailand: Potential and limitations

Introduction
This research is conducted by Thanyanuch Tantikul, Judge at the Office of the Judiciary, Thailand as part of her doctoral thesis at the Law School, University of Strathclyde, Glasgow UK. The study is fully funded by the University of Strathclyde.

What is the purpose of this research?
This research will investigate how a criminal fine is perceived, imposed and enforced in Thailand. The aim is to study the limitations and the potential role of a fine as an effective sanction.

Do you have to take part?
The method of this enquiry is a focus group interview; a group discussion among judges with the researcher acting as a facilitator. Participation is entirely voluntary and you retain the right to withdraw from the discussion at any time. You also have the right to revoke your consent for using your data before the inclusion of your pseudo-anonymised data in the analysis.

What will you do in the project?
You are requested to take part in a discussion as part of a focus group. The focus group comprises between three to eight judges who are your colleagues at this court. The topics of discussion are how you perceive a fine as a criminal sanction; what factors you consider in determining the size of the fine; and how you decide the method of enforcement of a fine. The researcher will ask questions to generate discussion among you and your colleagues. The session will last approximately two hours and will be held on a date and at a time convenient to all participants, at the arranged meeting room of your court.

Why have you been invited to take part?
The targeted population are judges who have at least 5 years' experience in criminal sentencing and are familiar with sentencing both summary and felony offences. Your seniority and experiences in sentencing criminal cases of both types of offences make you eligible for the study and thus you are invited to participate.

What information is being collected in the project?
Your personal identity will be anonymised and confidential. Pseudonyms of your identity and your court will be used throughout the thesis and in any dissemination of the findings. Your comments in the focus group will be digitally audio-recorded and transcribed word-for-word. The transcription will then be translated into English for analysis and may be quoted verbatim

in the researcher's thesis and subsequent publications. The transcription and translation will be carried out solely by the researcher. Neither you nor your court will be identifiable in the dissemination of this research.

Who will have access to the information?
The raw recordings of focus group discussion will be confidentially stored and accessible only by the researcher. They will be securely destroyed immediately after the successful completion of the researcher's thesis.

Where will the information be stored and how long will it be kept for?
All digitised information will be stored in the University of Strathclyde's secure and password-protected network services, accessible only by the researcher and her supervisors. The physical consent forms and codes of pseudo-anonymisation will be kept separately in a secure facility accessible only by the researcher. Pseudo-anonymised data will be stored in the University of Strathclyde's repository for a minimum of 10 years. All other information regarding participants will be kept confidential by the researcher in a secured facility for at least 5 years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles. A written summary of the findings is available to you upon your request.

Further information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below.

If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to attend, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk
Chief Investigator details:
Dr Rhonda Wheate, Senior Teaching Fellow and PhD Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 4347 Email: r.wheate@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Law School Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Convenor of the Law School Ethics Committee,
University of Strathclyde, Law School
Lord Hope Building, St James Road, Glasgow, UK

Consent Form for Judges in Focus Groups

Name of department:
Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study:
The role of criminal fines in Thailand: Potential and limitations

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request. This includes the following personal data:
    - audio recordings of interviews that identify me;
    - my personal information from transcripts.
- I understand that anonymised data (i.e., data that does not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project.
- I consent to being audio recorded as part of the project.

(PRINT NAME)	
Signature of Participant:	Date:

II. Participant Information Sheet for Judges in Interviews (Leg One)

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study: The role of criminal fines in Thailand: Potential and limitations

Introduction
This research is conducted by Thanyanuch Tantikul, Judge at the Office of the Judiciary, Thailand as part of her doctoral thesis at the Law School, University of Strathclyde, Glasgow UK. The study is fully funded by the University of Strathclyde.

What is the purpose of this research?
This research will investigate how a criminal fine is perceived, imposed and enforced in Thailand. The aim is to study the limitations and the potential role of a fine as an effective sanction.

Do you have to take part?
The method of this enquiry is a semi-structured interview. Participation is entirely voluntary and you retain the right to withdraw from the interview at any time. You also have the right to revoke your consent for using your data before the inclusion of your pseudo-anonymised data in the analysis.

What will you do in the project?
You are requested to be interviewed by the researcher. The topics of discussion are how you perceive a fine as a criminal sanction; what factors you consider in determine the size of the fine; and how you decide the method of enforcement of a fine. The session will last approximately 30 minutes to 1 hour and will be held on a date and at a time convenient to you, at the arranged meeting room of your court.

Why have you been invited to take part?
The targeted population are judges who have at least five years of experience in criminal sentencing and are familiar with sentencing both summary and felony offences. Your seniority of over 10 years as a judge and experiences in sentencing criminal cases of both types of offences make you eligible for the study and thus you are invited to participate.

What information is being collected in the project?
Your personal identity will be anonymised and confidential. Pseudonyms of your identity and your court will be used throughout the thesis and any dissemination of the findings. Your answers to interview questions will be digitally audio-recorded and transcribed word-for-word. The transcription will then be translated into English for analysis and may be quoted verbatim in the researcher's thesis and subsequent publications. The transcription and translation will be carried out solely by the researcher. Neither you nor your court will be identifiable in the dissemination of this research.

Who will have access to the information?
The raw recordings of your interview will be confidentially stored and accessible only by the researcher. They will be securely destroyed immediately after the successful completion of the researcher's thesis.

Where will the information be stored and how long will it be kept for?
All digitised information will be stored in the University of Strathclyde's secure and password-protected network services, accessible only by the researcher and her supervisors. The physical consent forms and codes of pseudo-anonymisation will be kept separately in a secure facility accessible only by the researcher. Pseudo-anonymised data will be stored in the University of Strathclyde's repository for the minimum of 10 years. All other information regarding any participant will be kept confidential by the researcher in a secure facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles. A written summary of the findings is available to you upon your request.

Further Information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below.

If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to take part in, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Dr Rhonda Wheate, Senior Teaching Fellow and PhD Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 4347 Email: r.wheate@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Law School Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Convenor of the Law School Ethics Committee,
University of Strathclyde, Law School
Lord Hope Building, St James Road, Glasgow, UK

Consent Form for Judges in Interviews

Name of department:
Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study:
The role of criminal fines in Thailand: Potential and limitations

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request. This includes the following personal data:
    - audio recordings of interviews that identify me;
    - my personal information from transcripts.
- I understand that anonymised data (i.e., data that do not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project.
- I consent to being audio recorded as part of the project.

(PRINT NAME)	
Signature of Participant:	Date:

III. Participant Information Sheet for Judges/ Court Officers for Non-Participant Observation (Leg One)

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study: The role of criminal fines in Thailand: Potential and limitations

Introduction
This research is conducted by Thanyanuch Tantikul, Judge at the Office of the Judiciary, Thailand as part of her doctoral thesis at the Law School, University of Strathclyde, Glasgow UK. The study is fully funded by the University of Strathclyde.

What is the purpose of this research?
This research will investigate how a criminal fine is perceived, imposed and enforced in Thailand. The aim is to study the limitations and the potential role of a fine as an effective sanction.

Do you have to take part?
The method of this enquiry is non-participant observation. Participation is entirely voluntary. Your Chief Judge has already been notified and has given approval of this recruitment process. However, you are not obliged to participate against your will and you retain the right to withdraw from this research at any time. You also have the right to revoke your consent for using your data before the inclusion of your anonymised data in the analysis.

What will you do in the project?
You are requested to allow the researcher to observe how you perform your work in criminal cases processed into the *wain-chee* hearings. The researcher will observe the *wain-chee* process undertaken by you prior to, during and after the *wain-chee* hearing. The focus of observation will be the use of a criminal fine as a sentence and how its enforcement is carried out. The researcher will not intervene or participate in your work, but simply observe. Some questions may be asked of you about what is observed, to enable you to explain or provide information. You are not obliged to answer these questions but if you do your answers will be documented and may be used in the research. Observation will take place only in the court premises and during your working hours. The overall duration of observation will last about 6 hours per day and will not exceed the maximum of 18 hours or 3 working days.

Why have you been invited to take part?
The targeted population are judges and court officers who have direct responsibility for the processing and sentencing of cases in the *wain-chee* hearing on the dates of observation. Also included are court personnel in charge of the enforcement of the fine imposed on the convicted offender. As you are involved in these processes, you are requested to give permission for the researcher's observation.

What information is being collected in the project?
The information derived from the observation including your answers or comments to the

researcher's questions will be documented in the researcher's field notes. However, your personal identity will be immediately anonymised and confidential. You will be referred to merely as 'Judge' or 'Court Officer', with no identifiable information recorded or used. Pseudonyms will also be assigned to the name of your court to prevent you and the court from being identified. The field notes will be translated into English for analysis, and your answers or comments may be quoted or paraphrased in the researcher's thesis and subsequent publications. The translation will be carried out solely by the researcher. Neither you nor your court will be identifiable in the dissemination of this research.

Who will have access to the information?
The hard-copy field notes will be confidentially stored by and accessible to the researcher. They will also be digitised and uploaded for secure storage in the University of Strathclyde's password-protected network services, also accessible only by the researcher and her supervisors.

Where will the information be stored and how long will it be kept for?
All digitised information will be stored in the University of Strathclyde's secure network services. The field notes and consent forms will be kept separately in a secure facility accessible only by the researcher. Digitised and anonymised data will be stored in the University's repository for the minimum of 10 years. All other information regarding participants will be kept confidential by the researcher in a secure facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles. A written summary of the findings is available to you upon your request.

Further Information
Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below. If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to attend, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 E-mail: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Dr Rhonda Wheate, Senior Teaching Fellow and PhD Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 4347 E-mail: r.wheate@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Law School Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Convenor of the Law School Ethics Committee,
University of Strathclyde, Law School
Lord Hope Building, St James Road, Glasgow, UK

Consent Form for Judges/ Court Officers under Observation

Name of department:
Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study:
The role of criminal fines in Thailand: Potential and limitations

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request. This includes my personal or identifiable information from the field notes.
- I understand that anonymised data (i.e., data that do not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project.

(PRINT NAME)	
Signature of Participant:	Date:

IV. Participant Information Sheet for *Wain-Chee* Judges (Leg Two)

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study: The role of criminal fines in Thailand: Potential and limitations (Additional investigation)

Introduction
This research is conducted by Thanyanuch Tantikul as part of her doctoral thesis at the Law School, University of Strathclyde, UK. The researcher is also a judge of the Thai judiciary. However, she is at present on a four-year study leave to complete her PhD and not currently active in her judicial role. This study is fully funded by the University of Strathclyde in Scotland, UK and is completely independent of the Thai judiciary. It is also an additional investigation of the study under the same title conducted in 2019 at your court.

What is the purpose of this research?
This research will investigate how experiences of the court's criminal process and sentencing, particularly the fine and its enforcement, are perceived by those directly involved. It hopes to inform policy about the impacts of criminal justice.

Do you have to take part?
No. Participation is voluntary and you can refuse to participate. Your Chief Judge has already been notified and has given approval of this recruitment process. However, you are not obliged to participate against your will and you retain the right to withdraw from this research at any time without detriment. Consent to use your given information can also be revoked at any time before the analysis of your data.

What will you do in the project?
You are requested to be interviewed by the researcher. The topics of discussion are the implementation of and your opinions about the judiciary's recent policy to promote the use of community service as an alternative to imprisonment for fine default. The session will last approximately 15-30 minutes and will be held on the date that you are on duty as a *wain-chee* judge in the *wain-chee* chamber or on a date and at a time and place convenient to you.

Why have you been invited to take part?
You have been invited to participate because you are a judge on duty for the *wain-chee* process.

What information is being collected in the project?
Your personal identity will be anonymised and confidential. Pseudonyms of your identity and your court will be used throughout the thesis and any dissemination of the findings. Your answers to interview questions will be digitally audio-recorded and transcribed word-for-word, or recorded in handwritten notes if it is your preferred choice. The transcription will then be translated into English for analysis and may be quoted verbatim in the researcher's thesis and subsequent publications. The transcription and translation will be carried out solely by the researcher. Neither you nor your court will be identifiable in the dissemination of this research.

Who will have access to the information?
The raw audio recordings of your interview will be confidentially stored and accessible only by the researcher. They will be securely destroyed immediately after the successful completion of the researcher's thesis. In case of field notes, they will be confidentially stored by the researcher. The English translation of the notes will be in a digital format securely stored in the University of Strathclyde's password-protected network services. All data will be accessible only by the researcher and her supervisors.

Where will the information be stored and how long will it be kept for?
All digitised information will be stored in the University of Strathclyde's secure and password-protected network services, accessible only by the researcher and her supervisors. The physical consent forms and codes of pseudo-anonymisation will be kept separately in a secure facility accessible only by the researcher. Pseudo-anonymised data will be stored in the University of Strathclyde's repository for the minimum of 10 years. All other information regarding any participant will be kept confidential by the researcher in a secure facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles. A written summary of the findings is available to you upon your request.

Further Information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below. If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to take part in, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Professor Cyrus Tata, PhD First Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 3274 Email: cyrus.tata@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Secretary to the University Ethics Committee Services
University of Strathclyde
50 George Street

Telephone: 0141 548 3707

Research & Knowledge Exchange
Graham Hills Building
Glasgow G1 1QE

Email: ethics@strath.ac.uk

Consent Form for *Wain-Chee* Judges

Name of department:
Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study:
The role of criminal fines in Thailand: Potential and limitations (Additional investigation)

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request. This includes the following personal data:
    - audio recordings of interviews that identify me;
    - my personal information from transcripts.
- I understand that anonymised data (i.e., data that do not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project.
- I consent to being audio recorded as part of the project.

(PRINT NAME)	
Signature of Participant:	Date:

V. Participant Information Sheet for Judge of the Judiciary

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study: The role of criminal fines in Thailand: Potential and limitations (Additional investigation)

Introduction
This research is conducted by Thanyanuch Tantikul as part of her doctoral thesis at the Law School, University of Strathclyde, UK. The researcher is also a judge of the Thai judiciary. However, she is at present on a four-year study leave to complete her PhD and not currently active in her judicial role. This study is fully funded by the University of Strathclyde in Scotland, UK and is completely independent of the Thai judiciary. It is also an additional investigation of the study under the same title conducted in 2019 at selected trial courts in Thailand.

What is the purpose of this research?
This research will investigate how experiences of the court's criminal process and sentencing, particularly the fine and its enforcement, are perceived by those directly involved. It hopes to inform policy about the impacts of criminal justice.

Do you have to take part?
No. Participation is voluntary and you can refuse to participate and you retain the right to withdraw from this research at any time without detriment. Consent to use your given information can also be revoked at any time before the analysis of your data.

What will you do in the project?
You are requested to be interviewed by the researcher. The topics of discussion are the origin, objective, the rate of progress and the obstacles or lessons learnt in the implementation of the judiciary's recent policy to promote community service as an alternative to imprisonment for fine default. The session will last approximately 30 minutes to 1 hour and will be held on a date and at a time and place convenient to you.

Why have you been invited to take part?
You have been invited to participate because you are assigned by your superior as the appropriate person to give this interview.

What information is being collected in the project?
Unless approved otherwise, your personal identity will be anonymised and confidential. Pseudonyms of your identity will be used throughout the thesis and any dissemination of the findings. Your answers to interview questions will be digitally audio-recorded and transcribed word-for-word. The transcription will then be translated into English for analysis and may be quoted verbatim in the researcher's thesis and subsequent publications. The transcription and translation will be carried out solely by the researcher.

Who will have access to the information?
The raw recordings of your interview will be confidentially stored. They will be securely destroyed immediately after the successful completion of the researcher's thesis. The

transcription and the English translation of the recordings will be in a digital format securely stored in the University of Strathclyde's password-protected network services. All data will be accessible only by the researcher and her supervisors.

Where will the information be stored and how long will it be kept for?
All digitised information will be stored in the University of Strathclyde's secure and password-protected network services, accessible only by the researcher and her supervisors. The physical consent forms and codes of pseudo-anonymisation will be kept separately in a secure facility accessible only by the researcher. Pseudo-anonymised data will be stored in the University of Strathclyde's repository for the minimum of 10 years. All other information regarding any participant will be kept confidential by the researcher in a secure facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles. A written summary of the findings is available to you upon your request.

Further Information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below.

If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to take part in, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Professor Cyrus Tata, PhD First Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 3274 Email: cyrus.tata@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Secretary to the University Ethics Committee Services
University of Strathclyde
50 George Street

Telephone: 0141 548 3707

Research & Knowledge Exchange
Graham Hills Building
Glasgow G1 1QE

Email: ethics@strath.ac.uk

Consent Form for Judge of the Office of the Judiciary

Name of department:
Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow UK

Title of the study:
The role of criminal fines in Thailand: Potential and limitations (Additional investigation)

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request. This includes the following personal data:
    - audio recordings of interviews that identify me;
    - my personal information from transcripts.
- I understand that anonymised data (i.e., data that do not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project.
- I consent to being audio recorded as part of the project.

(PRINT NAME)	
Signature of Participant:	Date:

VI. Participant Information Sheet for Court Officials (Leg Two)

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study: Diverse narratives of criminal justice experiences: A case study of the fine

Introduction
This research is conducted by Thanyanuch Tantikul as part of her doctoral thesis at the Law School, University of Strathclyde, UK. The researcher is also a judge of the Thai judiciary. However, she is at present on a four-year study leave to complete her PhD and not currently active in her judicial role. This study is fully funded by the University of Strathclyde in Scotland, UK and is completely independent of the Thai judiciary.

What is the purpose of this research?
This research will investigate how experiences of the court's criminal process and sentencing, particularly the fine and its enforcement, are perceived by those directly involved. It hopes to inform policy about the impacts of criminal justice.

Do you have to take part?
No. Participation is voluntary and you can refuse to participate. You can also withdraw at any time without detriment. Your Chief Judge has already been notified and has given approval of this recruitment process. However, you are not obliged to participate against your will and you retain the right to withdraw from this research at any time. Consent to use your given information can also be revoked at any time before the analysis of your data.

What will you do in the project?
You are requested to allow the researcher to observe how you perform your work relating to the daily *wain-chee* process for the duration not exceeding two months. The focus of observation will be your interaction with defendants. You may also be asked about what is observed to enable you to explain or provide information.

Why have you been invited to take part?
You have been asked to take part as you are officials involved in the Court's *wain-chee* process.

What information is being collected in the project?
Your personal identity and your court will be encoded using pseudonyms which will be used throughout the thesis and in any dissemination of the findings. Observational data will be documented in the field notes which will then be transcribed and translated into English solely by the researcher. The translated data will be analysed and used in the researcher's thesis and subsequent publications.

Who will have access to the information?
The hard-copy field notes will be confidentially stored by the researcher. The English translation of the notes will be in a digital format securely stored in the University of Strathclyde's password-protected network services. All data will be accessible only by the researcher and her supervisors.

Where will the information be stored and how long will it be kept for?
All digitised information will be stored in the University of Strathclyde's secure and password-protected network services, accessible only by the researcher and her supervisors. The physical field notes, consent forms and codes of pseudonyms will be kept separately in a secure facility accessible only by the researcher. Data of participants under pseudonyms will be stored in the University of Strathclyde's repository for a minimum of 10 years. All other information regarding your identity will be kept confidential by the researcher in a secured facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles in hopes of informing criminal justice policy, apart from making a contribution to knowledge. Nevertheless, policy changes cannot be guaranteed. A written summary of the findings is available to you upon your request.

Further Information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below. If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to participate, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Professor Cyrus Tata, PhD First Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 3274 Email: cyrus.tata@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Secretary to the University Ethics Committee Services
University of Strathclyde
50 George Street

Telephone: 0141 548 3707

Research & Knowledge Exchange
Graham Hills Building
Glasgow G1 1QE

Email: ethics@strath.ac.uk

Consent Form for Court Officials

Name of department:
Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study:
Diverse narratives of criminal justice experiences: A case study of the fine

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request.
- I understand that anonymised data (i.e., data that do not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project.

(PRINT NAME)	
Signature of Participant:	Date:

VII. Participant Information Sheet for Officials for Interviews (Department of Probation and Department of Corrections)

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study: Diverse narratives of criminal justice experiences: A case study of the fine

Introduction
This research is conducted by Thanyanuch Tantikul as part of her doctoral thesis at the Law School, University of Strathclyde, UK. The researcher is also a judge of the Thai judiciary. However, she is at present on a four-year study leave to complete her PhD and not currently active in her judicial role. This study is fully funded by the University of Strathclyde in Scotland, UK and is completely independent of the Thai judiciary.

What is the purpose of this research?
This research will investigate how experiences of the court's criminal process and sentencing, particularly the fine and its enforcement, are perceived by those directly involved. It hopes to inform policy about the impacts of criminal justice.

Do you have to take part?
No. Participation is voluntary and you can refuse to participate. You can also withdraw at any time without detriment. Consent to use your given data can also be revoked at any time before the analysis of your data.

What will you do in the project?
You are requested to be interviewed by the researcher. The topics of discussion are the practices undertaken and challenges coped by your Department in administering the enforcement of the fine. The session will last approximately 30 minutes to 1 hour and will be held on a date and at a time and place convenient to you.

Why have you been invited to take part?
You have been asked to take part because you have been identified by your superiors as the proper person to give this interview.

What information is being collected in the project?
Unless explicitly authorised otherwise, your personal identity will be anonymised and confidential. Pseudonyms will be used throughout the thesis and any dissemination of the findings. Your interview will be digitally audio-recorded and transcribed word-for-word. The transcription will be translated into English for analysis and may be quoted verbatim in the researcher's thesis and subsequent publications. The transcription and translation will be carried out solely by the researcher.

Who will have access to the information?
The raw recordings of your interview will be confidentially stored. They will be securely destroyed immediately after the successful completion of the researcher's thesis. The transcription and the English translation of the recordings will be in a digital format securely

stored in the University of Strathclyde's password-protected network services. All data will be accessible only by the researcher and her supervisors.

Where will the information be stored and how long will it be kept for?
All digitised information will be stored in the University of Strathclyde's secure and password-protected network services. The physical consent forms and codes of pseudo-anonymisation will be kept separately in a secure facility. Pseudo-anonymised data will be stored in the University of Strathclyde's repository for the minimum of 10 years. All other information regarding your identity will be kept confidential by the researcher in a secure facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles in hopes of informing criminal justice policy, apart from making a contribution to knowledge. Nevertheless, policy changes cannot be guaranteed. A written summary of the findings is available to you upon your request.

Further Information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below.

If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to take part in, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Professor Cyrus Tata, PhD First Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 3274 Email: cyrus.tata@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Secretary to the University Ethics Committee
University of Strathclyde
50 George Street

Telephone: 0141 548 3707

Research & Knowledge Exchange Services
Graham Hills Building
Glasgow G1 1QE

Email: ethics@strath.ac.uk

Consent Form for Officials for Interviews

Name of department:
Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study: Diverse narratives of criminal justice experiences: A case study of the fine

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request. This includes audio recordings of interviews that identify me.
- I understand that anonymised data (i.e., data that do not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available, except with my explicit authorisation.
- I consent to being a participant in the project.
- I consent to being audio recorded as part of the project.

(PRINT NAME)	
Signature of Participant:	Date:

VIII. Participant Information Sheet for Defendants at the Court

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study: Diverse narratives of criminal justice experiences including being fined

Introduction
This research is conducted by Thanyanuch Tantikul as part of her doctoral thesis at the Law School, University of Strathclyde, UK. The researcher is also a judge of the Thai judiciary. However, she is at present on a four-year study leave to complete her PhD and not currently active in her judicial role. This study is also fully funded by the University of Strathclyde in Scotland, UK and is completely independent of the Thai judiciary. Therefore, the researcher is not in the position to give any specific legal comment/ advice and participation in the research will not affect any legal process regarding your cases.

What is the purpose of this research?
This research will investigate how experiences of the court's criminal process and sentencing (including being fined) are perceived by those directly involved. It hopes to inform policy about the impacts of criminal justice.

Do you have to take part?
No. Participation is voluntary and you can refuse to participate. You can also withdraw at any time without detriment. Consent to use your given data can also be revoked at any time before the analysis of your data.

What will you do in the project?
If you choose to take part, the researcher will follow you through the entire court process of today. During observation, you will be interviewed about your honest views of the criminal justice system as experienced through your penal journey. You will also be asked not to disclose any alleged criminal activity that is not already known to the authorities. You are welcome to express negative feelings about your experiences to the researcher as long as they are truthful, honest and based on good intention including for the advancement of academic knowledge. However, to be cautious, you are advised against criticising the authorities to the public audience or on social media without having received proper advice from a lawyer. Also, you should be aware that full privacy of the interview cannot be guaranteed due to the constraints of the court's holding area.

Why have you been invited to take part?
You have been asked to take part as you have been accused of a criminal offence .The aim is to find out about your views of the criminal justice system in general.

What information is being collected in the project?
Your name will be encoded using a pseudonym which will be used throughout the thesis and in any dissemination of the findings. Your interview and observational data will be documented in the field notes which will then be transcribed and translated into English solely by the researcher. The translated data will be analysed and used in the researcher's thesis and subsequent publications.

Who will have access to the information?
The hard-copy field notes will be confidentially stored by the researcher. The English translation of the notes will be in a digital format securely stored in the University of Strathclyde's password-protected network services. All data will be accessible only by the researcher and her supervisors.

Where will the information be stored and how long will it be kept for?
All digitised information will be stored in the University of Strathclyde's secure and password-protected network services, accessible only by the researcher and her supervisors. The physical field notes, consent forms and codes of pseudonyms will be kept separately in a secure facility accessible only by the researcher. Data of participants under pseudonyms will be stored in the University of Strathclyde's repository for a minimum of 10 years. All other information regarding your identity will be kept confidential by the researcher in a secured facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles in hopes of informing criminal justice policy, apart from making a contribution to knowledge. Nevertheless, policy changes cannot be guaranteed. A written summary of the findings is available to you upon your request.

Further information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below.

If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to participate, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Professor Cyrus Tata, PhD First Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 3274 Email: cyrus.tata@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

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50 George Street

Telephone: 0141 548 3707

Research & Knowledge Exchange
Graham Hills Building
Glasgow G1 1QE

Email: ethics@strath.ac.uk

Consent Form for Defendants at the Court

Name of department:
Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study:
Diverse narratives of criminal justice experiences including being fined

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that I am asked not to disclose or discuss any alleged undetected criminal offending.
- I understand that I am asked to honestly and truthfully share my opinions and accounts of my experiences for the advancement of academic knowledge.
- I understand that participation will not have any impact on ongoing criminal proceedings that I am involved in.
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request.
- I understand that anonymised data (i.e., data that does not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project.

(PRINT NAME)	
Signature of Participant:	Date:

IX. Participant Information Sheet for Fine-Default Detainees (Not Used – Interview Cancelled)

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study: Diverse narratives of criminal justice experiences: A case study of the fine

Introduction
This research is conducted by Thanyanuch Tantikul as part of her doctoral thesis at the Law School, University of Strathclyde, UK. The researcher is also a judge of the Thai judiciary. However, she is at present on a four-year study leave to complete her PhD and not currently active in her judicial role. This study is fully funded by the University of Strathclyde in Scotland, UK and is completely independent of the Thai judiciary. Therefore, the researcher is not in the position to give any specific legal comment/ advice and participation in the research will not affect any legal process regarding your cases.

What is the purpose of this research?
This research will investigate how experiences of the court's criminal process and sentencing, particularly the fine, are perceived by those directly involved. It hopes to inform policy about the impacts of criminal justice.

Do you have to take part?
No. Participation is voluntary and you can refuse to participate. You can also withdraw at any time without detriment. Consent to use your given data can also be revoked at any time before the analysis of your data.

What will you do in the project?
If you choose to take part, you will be interviewed about your opinions of the criminal justice system and how you feel about your sentence and your time in detention. The session will last approximately one to two hours at a time and place arranged by the staff of the detention centre. You will be asked not to disclose any alleged criminal activity that is not already known to the authorities. You are welcome to express negative feelings about your experiences to the researcher as long as they are truthful, honest and based on good intention including for the advancement of academic knowledge. However, to be cautious, you are advised against criticising the authorities to the public audience or on social media without having received proper advice from a lawyer. Also, you should be aware that full privacy of the interview cannot be guaranteed due to the constraints of the interview location.

Why have you been invited to take part?
You have been asked to take part as you have been sentenced with a fine as a result of a criminal offence, defaulted on the fine and sent to a Central Detention Centre. The aim is to find out about your views of the criminal justice system in general.

What information is being collected in the project?
Your name will be encoded using a pseudonym which will be used throughout the thesis and in any dissemination of the findings. Your interview data will be documented in the field notes which will then be transcribed and translated into English solely by the researcher. The

translated data will be analysed and used in the researcher's thesis and subsequent publications.

Who will have access to the information?
The hard-copy field notes will be confidentially stored by and accessible to the researcher. The English translation of the notes will be in a digital format securely stored in the University of Strathclyde's password-protected network services. All data will be accessible only by the researcher and her supervisors.

Where will the information be stored and how long will it be kept for?

All digitised information will be stored in the University of Strathclyde's secure and password-protected network services, accessible only by the researcher and her supervisors. The physical field notes, consent forms and codes of pseudonyms will be kept separately in a secure facility accessible only by the researcher. Data of participants under pseudonyms will be stored in the University of Strathclyde's repository for a minimum of 10 years. All other information regarding your identity will be kept confidential by the researcher in a secured facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles in hopes of informing criminal justice policy, apart from making a contribution to knowledge. Nevertheless, policy changes cannot be guaranteed. A written summary of the findings is available to you upon your request.

Further information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below. If you are willing to participate, you are requested to sign a consent form to confirm your decision. If you do not wish to participate, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Professor Cyrus Tata, PhD First Supervisor
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 141 548 3274 Email: cyrus.tata@strath.ac.uk

This research was granted ethical approval by the University of Strathclyde Ethics Committee.

If you have any questions/concerns, during or after the research, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Secretary to the University Ethics Committee Services
University of Strathclyde
50 George Street
Telephone: 0141 548 3707

Research & Knowledge Exchange
Graham Hills Building
Glasgow G1 1QE
Email: ethics@strath.ac.uk

Consent Form for Fine-Default Detainees

Name of department:

Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study:

Diverse narratives of criminal justice experiences: A case study of the fine

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that I am asked not to disclose or discuss any alleged undetected criminal offending.
- I understand that I am asked to honestly and truthfully share my opinions and accounts of my experiences for the advancement of academic knowledge.
- I understand that participation will not have any impact on ongoing criminal proceedings that I am involved in.
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request.
- I understand that anonymised data (i.e., data that does not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project.

(PRINT NAME)	
Signature of Participant:	Date:

X. Participant Information Sheet for Released Fine-Default Detainees (Not Used – Interview Cancelled)

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study: Diverse narratives of criminal justice experiences: A case study of the fine

Introduction
This research is conducted by Thanyanuch Tantikul as part of her doctoral thesis at the Law School, University of Strathclyde, UK. The researcher is also a judge of the Thai judiciary. However, she is at present on a four-year study leave to complete her PhD and not currently active in her judicial role. This study is fully funded by the University of Strathclyde in Scotland, UK and is completely independent of the Thai judiciary. Therefore, the researcher is not in the position to give any specific legal comment/ advice and participation in the research will not affect any legal process regarding your cases.

What is the purpose of this research?
This research will investigate how experiences of the court's criminal process and sentencing, particularly the fine, are perceived by those directly involved. It hopes to inform policy about the impacts of criminal justice.

Do you have to take part?
No. Participation is voluntary and you can refuse to participate. You can also withdraw at any time without detriment. Consent to use your given data can also be revoked at any time before the analysis of your data.

What will you do in the project?
If you choose to take part, you will be interviewed about your opinions of the criminal justice system and how you feel about your sentence and your time in detention. The session will last approximately one to two hours on the day of your release inside the facility of the detention centre or a public space nearby (e.g., a café or a restaurant) at your convenience. You will be asked not to disclose any alleged criminal activity that is not already known to the authorities. You are welcome to express negative feelings about your experiences to the researcher as long as they are truthful, honest and based on good intention including for the advancement of academic knowledge. However, to be cautious, you are advised against criticising the authorities to the public audience or on social media without having received proper advice from a lawyer. Also, you should be aware that full privacy of the interview may not be guaranteed if the location of the interview is still in the area of the detention centre.

Why have you been invited to take part?
You have been asked to take part as you were sentenced with a fine for a criminal offence, defaulted on the fine and sent to this detention centre. The aim is to find out about your views of the criminal justice system in general.

What information is being collected in the project?
Pseudonyms of your name will be used throughout the thesis and in any dissemination of the findings. Subject to your consent, your interview data will be digitally audio-recorded and transcribed word-for-word; otherwise, it will be taken in handwritten field notes. The

transcription of the interview will be translated into English solely by the researcher. The translated data will be analysed and used in the researcher's thesis and subsequent publications.

Who will have access to the information?
The audio recordings of your interview, or the handwritten field notes (if applicable), will be confidentially stored. The recordings will be securely destroyed immediately after the successful completion of the researcher's thesis. The transcription and the English translation of the interview will be in a digital format securely stored in the University of Strathclyde's password-protected network services. All data will be accessible only by the researcher and her supervisors.

Where will the information be stored and how long will it be kept for?

All digitised information will be stored in the University of Strathclyde's secure and password-protected network services, accessible only by the researcher and her supervisors. The physical field notes (if applicable), consent forms and codes of pseudonyms will be kept separately in a secure facility accessible only by the researcher. Data of participants under pseudonyms will be stored in the University of Strathclyde's repository for a minimum of 10 years. All other information regarding your identity will be kept confidential by the researcher in a secured facility for at least five years.

What happens next?
The results of this study will be published in the researcher's PhD thesis and subsequent articles in hopes of informing criminal justice policy, apart from making a contribution to knowledge. Nevertheless, policy changes cannot be guaranteed. A written summary of the findings is available to you upon your request.

Further information

Thank you for reading this document. Should you need any clarification or explanation regarding this information, please do not hesitate to ask the researcher. Contact information is provided below. If you are willing to participate, you are requested to sign a consent form to confirm your decision. A token of appreciation equivalent to 300 baht will be given to you at the end of this interview in recognition of the time and burdens taken to participate in this study. If you do not wish to participate, thank you for your attention.

Researcher contact details:
Thanyanuch Tantikul, PhD (Law) Student,
University of Strathclyde, Law School, Faculty of Humanities and Social Sciences.
Telephone: +44 073 9863 9714 Email: thanyanuch.tantikul@strath.ac.uk

Chief Investigator details:
Professor Cyrus Tata, PhD First Supervisor
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This research was ethically approval by the University of Strathclyde Ethics Committee. If you have any questions/concerns, during or after the research, or wish to contact an independent

person to whom any questions may be directed or further information may be sought from, please contact:

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Email: ethics@strath.ac.uk

Consent Form for Released Fine-Default Detainees

Name of department: Law School, Faculty of Humanities and Social Sciences, University of Strathclyde, Glasgow, Scotland, UK

Title of the study: Diverse narratives of criminal justice experiences: A case study of the fine

- I confirm that I have read and understood the Participant Information Sheet for the above project and the researcher has answered any queries to my satisfaction.
- I confirm that I have read and understood the Privacy Notice for Participants in Research Projects and understand how my personal information will be used and what will happen to it (i.e., how it will be stored and for how long).
- I understand that I am asked not to disclose or discuss any undetected criminal offending.
- I understand that I am asked to honestly and truthfully share my opinions and accounts of my experiences for the advancement of academic knowledge.
- I understand that participation will not have any impact on ongoing criminal proceedings that I am involved in.
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences.
- I understand that I can request the withdrawal from the study of some personal information and that whenever possible researchers will comply with my request. This includes the following personal data: (a) audio recordings of interviews that identify me; (b) my personal information from transcripts.
- I understand that anonymised data (i.e., data that does not identify me personally) cannot be withdrawn once included in the study.
- I understand that any information recorded in the research will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant and I consent to being audio recorded in the project.

(PRINT NAME)	
Signature of Participant:	Date: