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SEMINAR, B'NAI B'RITH CENTRE, SYDNEY

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Hon Justice MD Kirby CMG
Chairman of the Australian Law Reform Commission

THE PAINFUL AND UNREWARDING TASK

It has been said that sentencing convicted offenders is the most 'painful and unrewarding' task of judicial officers.[1] In 1980, the Australian Law Reform Commission delivered its report to the Federal Attorney-General on the sentencing of Federal offenders.[2] It is a large tome and not exactly bedside reading. But it was the first national consideration of sentencing law and practice every carried out at a Federal level in Australia. It was led by Professor Duncan Chappell. Some of the recommendations made have already passed into law.[3] The most important of these is the injunction on the use of imprisonment of convicted Federal offenders and the planned availability of State alternatives to imprisonment for the disposition of Federal cases. I understand that only the sordid matter of money is holding up the implementation of this proposed facility. Perhaps Mr Landa knows the details.

The new Federal Attorney-General, Senator Gareth Evans, was one of the foundation Commissioners of the Australian Law Reform Commission. He has a keen interest in law reform and the criminal justice system. He has already expressed a desire to me that the sentencing project should be revived and completed. He will shortly secure the appointment of a Commissioner able to see the project to completion. Senator Evans at one stage indicated his intention to proceed with the establishment of a Federal Sentencing Council. Such a Council would have a central function in the proposal offered by the Commission for the future of sentencing. Now, I gather, this Council may be postponed until the Commission's final report. The report deals with:

* a review of past moves for sentencing reform in Australia and overseas:
* a description of the Federal criminal justice system, with its mixed elements of decentralisation and centralisation;
* a consideration of the importance of prosecution decisions as they affect the punishment of Commonwealth offenders;
* a debate about the uniformity of treatment of Federal offenders, wherever they happen to be convicted in Australia;
* a consideration of the use of imprisonment and means for reducing that use;
* a discussion of prison conditions and grievence mechanisms;
* a consideration of the abolition or reform of parole in the case of Federal offenders;
* a discussion of non-custodial sentencing options;
* an outline of the Commission's proposals for improving the guidance available for the judicial discretion in sentencing; and
* finally, discussion of victim compensation and items for the future.

It was a major enterprise. It was facilitated by the National Judicial Survey which was distributed in the course of the reference. Although this procedure was criticised by one State Chief Justice, it was the only viable means by which the Law Reform Commission could reach out to the people actually engaged in the daily task of sentencing. Over 70% of judicial officers in each State and Territory, with the exception of Victoria, responded to the survey. Over 80% of magistrates and Federal Court judges responded. The lower overall response rate from State judges is explained by the low response from Victorian judges.[4]

TAMING LARGE DISCRETIONS

The former Chief Stipendiary Magistrate at Bow Street, Sir Frank Milton, once wrote:

> The advantage of the English system is its elasticity. Over almost the whole of the criminal field, the court can deal with each case on its own merits or demerits. The corresponding disadvantage is that discrepancies are bound to occur, both between the sentences imposed by difference Benches, and between those passed by the same Bench on different offenders; this gives rise to a good deal of ill-informed comment, but also to some real and justifiable anxiety.[5]

This statement captured in a few lines the essential intellectual issue of the sentencing debate. What is it about? What principles should guide it? Is it to punish the offence? Is it to deal with the offender? Or in some curious and ambivalent way, is it to do both and many other things as well?

Nearly 150 years ago, the sentencing law and practice in England underwent a major change. It moved from largely manditory sentences of death (even in property offences) ameliorated sometimes by the exercise of the Royal perogative, to a system of discretionary punishment. Under the new system, imprisonment was to be the principal sanction. Few statutory criteria and no collection of stated principles of punishment were enacted at the time this radical reform occurred to assist judicial officers in exercising their discretion. Indeed, very little was done to help them to select a sanction : ranging from suspended sentences to fines or life imprisonment. The principal purposes of penal punishment with imprisonment were accepted by the judges and other writers of the day to be deterrence and retribution, in the sense of 'just deserts'. Imprisonment was to be carried out in such a way as to reform and reclaim members of 'the criminal class'. It was to do this through moral education and training 'in the habits of industry.[6]

Since this great reform took place, Australian Parliaments, from colonial days have acted, for the most part, to provide even wider sentencing discretions to the judiciary. This has been done by the development of probation, conditional and absolute discharges, intermittent imprisonment and so on. Very rarely have our legislatures taken steps to restrict or guide judicial discretion, whether through the imposition of mandatory minimum punishments or through the provision of criteria to assist the decision-makers. Courts have been left more or less on their own. Of course, they soon began to develop guidelines in the traditional manner of the common law. But the approach of large discretions is still very much at the heart of sentencing law and practice in this country. Inevitably, variation in the exercise of discretion leads to publicity and media and citizen outcry. As Sir Frank Milton said, the outcry is often misguided. But it has lately led judicial officers and criminal justice policy makers to go back to the drawing boards. With increasing urgency, they are asking about the purposes of criminal punishment. Concern about the offence and the offender is leading to a search for a better system to tame the broad discretions. It was that search which was a critical aspect of the Law Reform Commission's enquiry into sentencing of Federal offenders. Because we live in a continental country, and have delegate most sentencing of Federal offenders to State judicial officers, the problem of consistency and evenhandedness is exacerbated by institutional factors and distance. But in the United States, Canada and in other countries, a fundamental review of the criminal justice system is now underway. In part, the intellectual underpinning of the movement for reform is provided by advocates of 'just deserts'.

JUST DESERTS

The most influential of the advocates of 'just deserts' as the basis for sentencing reform have been from Von Hirsch (1976), Derschowitz (1976) and Singer (1978). The positions taken by these three writers is very similar. Each attacks the indeterminate sentence, crafted for the particular offender. Each questions the rehabilitative philosophy upon which, in large part at least, the indeterminate sentence is based. In place of indeterminacy and large judicial discretions, each writer suggests imposition of determinate sentences established on the principles of just deserts.

The essential of just deserts is retribution. The debate is summarised in passage from Von Hirsch quoted in the Law Reform Commission's report:

> Wide discretion in sentencing has been sustained by the traditional assumptions about rehabilitation and predictive restraint. Once these assumptions are abandoned, the basis for such broad discretion crumbles. On our theory, the sentence is not a means of altering the offender's behaviour that has to be essentially suited to his 'needs'; it is a desert penalty based on the seriousness of his past criminal conduct. In order for the principle of commensurate deserts to govern, there must be standards specifying how much offenders receive for different crimes. Were questions of offenders' deserts left mainly to the discretion of individual judges, no consistent scale of penalties would emerge : one judge could treat certain offences as serious and punish accordingly; another judge having a different sent of values could deal with the same infractions as minor ones.[8]

The essence of the just deserts theory is that sentences should be more determinate and that punishment should be proportional to the gravity of the crime. Fairness in sentencing include certainty and proportionality. The sentence should fit the crime. There is no doubt that a significant number of those who urge 'just deserts' are actually asserting that convicted offenders should be punished more severely that at present. Doubtless it is this reason that has lead to the growth of the competing school, urging the principle of 'parsimony' or 'economy' in the use of criminal punishment.[9]

One of America's foremost criminologists, Professor Leslie Wilkins illustrated his conversion to 'just deserts' as the basis for criminal punishment in words written more in sorrow than anger:

> I cannot do other than add my signature ... but I do so without enthusiasm: my difficulty is with the ... solution ... Had it been possible for a different model to apply — economic/rational or even humanitarian/therapeutic — I would have preferred it: but such models have proven even less appropriate. It seems we have rediscovered 'sin', in the absence of a better alternative.[10]

The practical effect of the revival of retribution and punishment and the thesis of 'just deserts' was the passage in the United States, in more than half of the States of that country, of legislation designed severely to limit judicial discretion in sentencing. Such legislation aims to produce more determinate sentences, sometime mandatory sentences. The legislation differs remarkably from place to place and in the extent to which judicial discretion is permitted or limited. But the sudden flowering of legislation of this kind, throughout the United States is a remarkable legislative phenomenon. We are not entirely immune from calls for mandatory punishment in Australia. But we are ambivalent about it. New South Wales has modified the mandatory life sentence for murder. But Victoria last year introduced a law to require mandatory imprisonment of bush fire incendiarists. This law is itself, one assumes, a legislative response of anger to the perceived unacceptable use of judicial discretion in modifying punishment for an admittedly serious crime, by reference to circumstances personal to the offender.

Whilst we wobble about in Australia, sometimes taking the path to determinacy and fixed sentences and sometimes enlarging judicial discretion, the moves in the United States have, until lately, very largely followed the path of 'just deserts'. In 1978, for example, California put into effect presumptive sentencing legislation. The legislation established four categories of offenses. It provided for a presumptive length of confinement for each category. To reflect the change from the most indeterminate criminal code in the United States to a determinate model based on retribution, the new penal mode of California states its proposition most bluntly:

> The purposes of imprisonment for crime is punishment.[11]

Since the implementation of the Code, two major developments have occurred. Both reflect what happens when a legislature of ordinary people get their hands on fixing criminal punishment. First, concerned with continuing crime and dissatisfied with the initial lengths of presumptive sentences, the legislature has revised that the severity of punishment upwards. Secondly, the proportion of individuals convicted and receiving a sentence of imprisonment has risen precipitously.[12]

SENTENCING GUIDELINES

Some of those who had called for a return of punishment and 'just deserts' were clearly of a conservative disposition, with great faith in criminal punishment to redress crime. But others were of a liberal persuasion, seeking to rein in the amplitude of judicial discretion, to reduce the lottery element of criminal punishment and to remove features reflecting the idiosyncracies of particular judicial officers. Reports from the United States suggest that the former camp continue to steel themselves for more and higher punishments. The consequence is that the prisons are overflowing and major programs for prison building in a country, which already has the highest rate of imprisonment in the OECD, are well underway. Shocked, somewhat, with this historical movement, those liberals who proposed the 'deserts' or 'justice' model for sentencing, and disillusioned that it has not lived up to its promises, are looking for something better. In the words of Cullen and Gilbert:

> The message being conveyed that the liberals' call for a 'justice model' promises neither to mitigate the injustices burdening the politically excluded and economically disadvantaged nor to lessen the victimisation of society's captives.

In an attempt to 'have it both ways' we are now seeing a 'second wave' in sentencing reform. It is, I believe, the wave of the future. It seeks to roll back the 150-year-old trust in large judicial discretions. But it seeks to avoid doing so by embracing the mandatory or highly determinate sentences that preceded discretion and that have been introduced in California and other States of the United States. The new movement is one which envisages sentencing guidelines, fixed by an independent body in which the judiciary is heavily represented. The guidelines would introduce greater determinacy whilst at the same time permitting principled inequality. What is involved is grafting onto judicial discretion, and to the informal tariffs that grow up under that system, a much more open and publicly accountable system. It is one that charts punishment by reference to factors relevant to the seriousness of the offence and identified factors relevant to the culpability of the offender. It is a system that preserves judicial discretion by permitting judicial officers to vary the result thus produced. But it requires them to state their reasons for doing so. It then submits any such variation to appeal review. The object is to infuse just a little more science in the painful and unrewarding task of sentencing. It is essentially the proposal put forward by the Australian Law Reform Commission. It is the approach to sentencing reform that has been adopted in a number of overseas jurisdictions, as I shall now describe. United States judges, now subject to sentencing guidelines, are generally favourable to this line of reform.

They admit to having had reservations at the outset. Who would welcome a new system, where the old one is 150-years-old? Who would welcome the reduction of the scope of unreviewable judicial discretion? Who would not be concerned that reduction of discretion might not lead to harsher punishment? These are legitimate fears about the system of guidelines. But against these fears must be weighed the concern of the community, of convicted offenders, of their families and of judicial officers themselves that indeterminacy has bred unacceptable variance. Because most people plead guilty in our criminal courts and because a large respect is paid by appellate courts to discretion in sentencing, the opportunity of correcting idiosyncracies and injustices are limited.

Rather than describing the system proposed by the Law Reform Commission in its report, I want to refer to a recent speech by the Chairman and Executive Director of the Pennsylvania Commission on Sentencing. They outlined Pennsylvania's embrace of sentencing guidelines. They evaluate its success and, whilst continuing to review the results, they pronounce themselves initially satisfied with the mix of determinacy and discretion.

In 1978, the Pennsylvania legislature created the Pennsylvania Commission on Sentencing. It was given the statutory duty to submit to the legislature a set of sentencing guidelines. These guidelines were to take into account the gravity of the current offence, prior felony convictions and a matter of special local concern, the use of deadly weapons. The Crimes Code of Pennsylvania already adopted the principle of parsimony, retribution and rehabilitation. The legislation establishing the Pennsylvania Commission instructed that the guidelines should also consider:

> The nature and circumstances of the offence and the history and characterists of the defendant; and the opportunity of the sentencing court to observe the defendent, including any pre-sentence investigation'.

The task before the Pennsylvania Commission was therefore to draft guidelines which did not reject individualised sentencing but which nonetheless introduced standards that would reduce unwarranted sentencing disparity, redistribute the use of penal sanctions 'such that its primary use is for serious, violent offenders'.13

The guidelines were adopted on mid-1982. As a result a numerically based system of assessing the gravity of the current offence and the prior convictions of the offender was introduced. The offence gravity score ranked offences from one (least serious) to ten (most serious). A number of principles were established to guide judicial officers in this statutory ranking.

The prior record score varied from zero (no applicable prior conviction) to six (multiple serious felonies). For each combination of offence gravity score and prior record score the Commission provided three ranges of sentence. If a judicial officer sentenced in the aggravated or mitigated ranges or departed entirely from the guidelines, the reasons for such a decision have to be provided. These reasons can then form the basis of an appeal, either by the defence or the prosecution. The approach taken by the Pennsylvania Commission recognised two very important facts:

* First, crimes, as defined in legislation, inevitably cover a range of behaviour such that there is much scope for significant variation in the severity of the offence. Thus robbery with serious bodily injury can include cruel and deliberate injury to innocent people and injury occuring only in a spontaneous action to a threat to one's own life.
* Secondly, the Commission recognised that the ten categories represent an oversimplification and it planned to continue its work to evaluate better distinctions.

One function of the Pennsylvania Commission is to monitor the implementation of the guidelines and to revise them as necessary. The first batch of cases, nearly 1500, involving use of the guidelines have now been analysed. The results are encouraging:

* Conformity with the guidelines i.e. sentences within the range, is quite high, 94.3%. It is expected to settle down to about 80-85%.
* Conformity is higher in the less serious offences than for serious crime. Obviously this point has implications for a magistrates court.
* Departures from the guidelines overwhelmingly tend to go below, rather than above, the standard. The reasons given permit the Sentencing Commission to monitor the aggregate wisdom of the Bench.
* Measured against sentencing practices before the implementation of the guidelines, it is interesting to note that there were only 44.8% of sentences passed in 1980 which would have fallen within the guidelines. Above all, there was very great variation from one judicial officer to another. This is now significantly reduced. Furthermore, the offenders, their lawyers, prosecutors and the whole community have the tables available for discussion and for principled, opened argument about severity factors warranting higher or lower punishment.

THE GIST OF THE PROCEEDING

It is often remarked that the English system of criminal justice, which we have inherited in Australia, is most exquisite in the trial process but breaks down at the point of sentencing:

> An English criminal trial, properly conducted, is one of the best products of our law, provided you walk out of court before a sentence is given: if you stay to the end, you may find that it takes far less time and enquiry to settle a man's prospects in life than it has taken to find out whether he took a suitcase out of a parked motorcar.[14]

As was pointed out by Justice Stephen, who developed so many criminal codes for the British Empire:

> The sentence is the gist of the proceeding. It is to the trial what the bullet is to the powder. Unless it is what it ought to be, the counsel, the witnesses, the jury and the summing up, to say nothing of the Sheriff with his coach, javelin men and trumpeters, are a mere brutum fulmen — they might as well have stayed at home, but for the credit of the thing.[15]

If the sentence is the 'gist of the proceedings', we must pay more attention to the process and do more to introduce consistency. But we must achieve this end without turning the process over to the impersonal control of computers or to the harsh, unknowing, unrealism of mandatory punishments fixed by the legislature. The ways of reform are many. They include:

* Increasing the element of determinacy, such as is evidenced by the recent Victorian Bill on arsonists;
* Adjusting statutory maxima to be more in line with average sentences. But this proposal by the British Advisory Council caused a storm;[16]
* Creating separate tribunals of multi-disciplinary experts, if there is such as thing as 'expertise' in punishment;[17]
* Improving the procedures of appellate courts and perhaps by increasing the number of appellate levels for adequate review and improving the statistics and services available to such courts;[18]
* Providing better training for judges and magistrates, though here again such a proposal by Lord Justice Bridge in Britain led to a storm of outrage to judicial protests;[19] or
* Finding a better system of guidelines, not to destroy individualised punishment but to harness judicial discretion in the name of principled rather than idiosyncratic inequality of punishment.

I suggest to you that the last is the most hopeful solution for sentencing reform in Australia. It is not a peculiar idea. The Advisory Council in Britain suggested that it should be kept under close review.[20]

In the Federal Republic of Germany, there has been a recent introduction of legally defined guidelines and a demand for the application of strict rule and the reduction of wide discretions as part of a move towards a process of more rational sentencing.[21] The moves in the United States in Pennsylvania are reflected in many other State jurisdictions. Furthermore, the May 1983 issue of the Third Branch, a bulletin of the Federal Court of the United States, indicates that similar developments are now happening at the Federal level. The Judicial Conference of the United States has adopted draft sentencing reform legislation for transmittal to Congress. The main provisions of the proposals include:

* introduction of determinate sentences;
* provision of sentencing pursuant to guidelines developed by a Judicial Conference Committee; and
* appellate review of a sentence at the request either of the defendant or the Government.

The mechanism proposed by the Judicial Conference for developing sentencing guidelines differs from provisions of a Senate Bill that passed on a previous session of Congress. The Conference envisages that the Committee selected to promolgate and later to monitor, the sentencing guidelines, will be composed of four judges in regular, active service and three members who neither are nor have been Federal or State judges (at least one of whom must be a non-lawyer). Ultimately, each Committee member would serve a once renewable four year term ... The legislation requires that the guidelines take account of both the offender and offence characteristics and that they encompass parole eligibility dates as well as maximum term.[22]

THE PRICE TO BE PAID

In Australia, the Law Reform Commission's interim report on sentencing proposed a similar approach in 1980. Unless the judicial branch of Government can develop sentencing along lines that will be generally acceptable to the community, and to its elected representatives, the community and their representatives will increasingly put their stamp on criminal punishment. As it seems to me, it will be better for us to get our own judicial house in order than to turn criminal punishment over to Parliaments (through unvarying mandatory sentences) or the Executive (through license release, parole release and clemency). If this is the conclusion you reach, you will, like me, also reach the view that reforms to sentencing law and practice in Australia are needed. Those reforms will seek to marry the strengths of the past with a higher degree of science and improved institutions to promote consistency.

The price of the continuance of judicial pre-eminence in criminal punishment in Australia will be the introduction of a little more science into the system. And this means the establishment of a Sentencing Council and the development and publication of detailed sentencing guidelines as recommended by the Australian Law Reform Commission.

I now wish to expand the scope of my discussion. I wish to speak of what happens after a person has served his or her sentence. I wish to recommend that people who have paid their debt to society expect, in time, to have their criminal record expunged. The advent of computerisation makes it urgent to provide for a mechanism whereby people can 'live down' old offences.

The Federal Attorney-General, Senator Evans, has authorised the Australian Law Reform Commission to investigate Federal legislation on removal of old convictions. This will be done in connection with the Law Reform Commission's general inquiry into the punishment of Federal offenders. Senator Evans has announced the appointment of Professor Robert Hayes of the University of New South Wales to lead the Commission's inquiry into this new project.

The inquiry comes only just in time. In the past, your childhood offences could get lost under mountains of paper in the government stores. Sometimes, sensible police officers would exercise discretion. Nowadays the record, in electronic form, will follow the offender to the grave. Computerisation of crime data is proceeding apace. It will have many benefits for society's fight against crime. But we should also pay attention to its problems. People should be able to 'live it down'.

Legislation on rehabilitation of offenders to permit 'expungement' of criminal records was enacted in Britain in 1974. Similar legislation is also in force in the United States and Canada. However, no comprehensive Australian legislation on the subject has yet been enacted. The Queensland Minister of Justice recently announced Cabinet's intention to introduce legislation in Queensland for removal of some old offences after a certain period. Work on the subject has also been done by the Law Reform Commission of Western Australia and the Privacy Committee of New South Wales.

Removal of 'spent' criminal convictions is relevant in a number of connections:

- obtaining visas to visit overseas countries;
- obtaining credit or insurance;
- seeking government and some private sector jobs;

- standing for Parliament or Local Government office;
- preserving reputations in a neighbourhood, after many years of good behaviour;
- being confronted with an old conviction when called as a witness in court many years later.

A number of reasons have been advanced against reforming the law on expungement of criminal convictions. These include:

- the need to provide adequate deterrence against antisocial conduct by the fear of recorded convictions;
- the need to preserve history and not to distort public records as to facts that have actually occurred;
- the need to aid police in criminal investigations, so they can rely on data relevant to the possibility of offenders re-offending;
- the need to provide all relevant data where sensitive jobs or applications had to be considered.

On the other hand there are many reasons of public policy for legislating for 'expungement' of old records;

- to give the individual a motivation to law-abiding conduct after serving the punishment;
- to reflect a compassionate attitude by society to old offences;
- to recognise that people change during their lives and that offences committed many years before may not reflect later social conduct and attitudes;
- to relieve record keepers of the burdens of keeping 'spent' personal information;
- to restrict circulation of personal information now increasingly possible because of computerisation;
- to acknowledge changes in the criminal law, such as repeal of previous crimes, such as vagrancy, drunkenness, homosexual offences etc.

There are problems in dealing with the mechanics of living-it-down legislation. There are various ways of dealing with old convictions including:

- totally removing convictions after a period of years by expunging them completely from the computer's memory;
- restricting the publication of information relating to offences committed years before;
- concealing or sealing the old records so that they are available only under certain defined circumstances;

. provision of a widespread system of 'pardons' on application, as occurs in Canada;
. permitting former offenders to lawfully deny offences in response to form requests.

In the course of the Australian Law Reform Commission's inquiry, the Commission will be examining the extent to which living-it-down legislation should:

. be confined to the use of records in Federal and Territory courts;
. be extended to Federal police and agencies and their convictions, wherever dealt with in Australia, whether in court or otherwise;
. extend the protection further to State courts and officers exercising Federal jurisdiction or otherwise dealing with spent Federal convictions.

One important question is whether a distinction should be drawn between the use of past criminal convictions in criminal investigation by police and the use of old convictions in courts proceedings, many years later, to punish a person with an old conviction.

The need for rehabilitation legislation has special significance for young offenders. Although there is a need for general rehabilitation legislation, the need is particularly acute in the case of young offenders. This was recognised by the recent announcement of legislation in Queensland, which is limited to young offenders. The legislation in Britain and North America is not so limited. But there is a special need in the case of the young. Criminal offence statistics tend to show that young repeat offenders often reach a point in their 'criminal career' when they realise the futility of their conduct and repeat convictions. Such people should be given the olive branch of hope by society. They should know that after a certain period (except perhaps in the case of the most serious offences) the record of their offences will not hang round their necks forever. People should be able to escape their past. Youthful errors and indiscretions and even crimes should not blight a person for the rest of his or her life. This is not just soft-heartedness. It is a simple, practical policy of giving hope to past offenders that they can live it down. If they live a blameless life in society for a defined time, they should not feel haunted forever by an earlier conviction. Such an attitude to punishment and forgiveness is entirely in accord with the Judao-Christian tradition. We should incorporate it in our criminal laws without delay.

FOOTNOTES

1. Lord Kilbrandon.

2. Australian Law Reform Commission, Sentencing of Federal Offenders (ALRC 15), interim, 1980.

3. Crimes Amendment Act 1982 (Cwlth).

4. ALRC 15, 494.

5. F Milton, cited in R Tarling, 'Sentencing Practice in Magistrates Courts' in DA Thomas (ed), University of Cambridge, Institute of Criminology, The Future of Sentencing, Occasional Paper No 8, 1982 (hereafter 'Future').

6. Canadian Sentencing Handbook, 125.

7. See eg Canada, Department of Justice, The Criminal Law in Canadian Society, discussion document, 1982; report of the New Zealand Penal Policy Review Committee (Justice Casey, Chairman) 1981. See [1982] Reform 99.

8. Von Hirsch, Doing Justice, 1976, 66. See ALRC 15, 21.

9. M Tonry and N Morris, Sentencing Reform in America in Glazebrook (ed) Reshaping the Criminal Law, 1978, 434, 445.

10. L Wilkins, 1976, cited in JH Kramer and AJ Scirica 'Pennsylvania's Sentencing Guidelines: Just Desert Versus Individualised Sentences', paper presented to the 1983 Annual Meeting of the Academy of Criminal Justice Sciences, March 1983, mimeo, 1.

11. California Penal Code, s.1170(a)(1). See also R Puglia, 'Determinate Sentencing in California' in Future 33.

12. Kramer and Scirica, 2.

13. Ibid, 3.

14. RM Jackson, The Machinery of Justice in England, (5th ed) 1967 254.

15. Stephen, The Punishment of Convicts cited in L. Blom-Cooper, The Language of the Law, 1965, 64.

16. Great Britain, Advisory Council on the Penal System, Final Report, Sentences of Imprisonment: A Review of Maximum Penalties, HMSO 1978. See AJ Ashworth, Judicial Independence and Sentencing Reform in Future 45.

17. Tarling, 4.

18. M Tonry, More Sentencing Reform in America, [1982] Crim LR 157, 166-7 'American sentencing debates today resemble the sentencing reform ferment in 19-Century England. The problem of unfair and unwarranted disparity is widely recognised as are the needs for the development of standards for sentencing and for some institutional system to review judicial compliance with those standards'.

19. Ashworth, 46.

20. Ibid.

21. B Huber, 'Structure and Changes in Sentencing in West Germany' in Future, 10, 24.

22. Federal Judicial Center, The Third Branch, (Bulletin of the Federal Courts), Vol 15, No 5, May 1983, 1, 4.