

Penal System, *Sentences of Imprisonment* 1978 (Lady Serota, Chairman). The report proposed a reduction in maximum prison sentences, cutting maximum penalties for rape, kidnapping, and hijacking from life imprisonment to seven years. If adopted it would bring U.K. penalties more into line with those applicable in the European Communities. The terms of reference to the Council asked the question "How far [present maximum sentences of imprisonment] represent a valid guide to sentencing practice". The Council's recommendations are based on statistical evidence that 90% of sentences imposed by the courts are covered by the new proposed maximum. A let-out for a second tier "exceptional" category was put forward so that "ordinary" and "exceptional" cases would be dealt with differently. The report drew strong comments on both sides. *The Times* (28 June 1978) pronounced:

"This is a bad time for the public's penological tolerance to be tested, especially as the consequences of the proposed reform cannot be assessed with any certainty. . . . Judges understand the existing system well. So, on the whole, does the public."

Back to square one. In Australia, in addition to the A.L.R.C. initiative, things are happening:

- Queensland Minister for Welfare (Mr. John Herbert) announced in June his intention to incorporate community service orders into the *Offenders Probation and Parole Act* 1959 as an alternative to imprisonment. The Minister pointed out that the average annual cost of maintaining a prisoner in a Queensland prison was \$11,000. The average loss of wages by a prisoner was about \$9,000 a year and on top of that a prisoner's wife with two children received \$3,000. This adds up to \$23,000. Compared with that, the cost of supervising a person on probation or parole in Queensland is about \$300 per year. A big difference.
- A special committee has been established in Victoria under the Hon. F. R. Nelson, Q.C., formerly a judge of the Supreme Court. Set up by Attorney-General Haddon Storey, Q.C., in March 1978, the

committee has terms of reference to examine sentencing alternatives "with a view to improvement of administration of the criminal law". It includes among its members Mr. David Biles, Assistant Director of the Australian Institute of Criminology, police, departmental, social welfare and legal members. The committee was established by agreement with the Minister for Social Welfare and the Chief Secretary of Victoria and the A.L.R.C. has already established contact with it.

- In South Australia it is reported that a *Treatment of Offenders Bill*, based on the S.A.C.L.R.C. report, is about to be introduced into Parliament.

The A.L.R.C.'s latest project promises to be an important one. There is little new to be written on the rationale for punishment. It has all been said before. Theories come in cycles. Wells J. of the S.A. Supreme Court reminds us of the practical limits which will always be upon those who pass sentence:

"Courts . . . cannot be all things to all men. In the nature of things they cannot, like ministers of religion, undertake the salvation of souls, or, like the doctor or psychiatrist, work directly to cure an offender's body, or to restore him or her to mental health. They cannot make a person good by judicial order. . . . They cannot wholly undo the harm and suffering caused to the victim of a crime or wholly remove the indignation and resentment of the victim's family and friends. They cannot investigate every aspect of a crime, or of an offender's past and future life with the pertinacity and comprehensiveness of a scientist immersed in an all important experiment, or most offenders would never be dealt with at all—or at least would not be dealt with until a wholly unwarranted time had elapsed."

The Queen v. Kear [1978] 2 *Criminal L.J.* 40-41.

But can we do better?

U.S. Attorney-General Visits L.R.C.s

"I have never been more struck by the good sense and the practical judgment of the Americans than in the manner in which they elude the numberless difficulties resulting from their Federal Constitution."

de Tocqueville, *Democracy in America*, 1835.

On 18 July 1978, the U.S. Attorney-General, Judge Griffin Bell, accompanied by U.S. Am-

bassador Philip Alston, visited the A.L.R.C. and met Commissioners of the A.L.R.C. and N.S.W.L.R.C. Both Judge Bell and Mr. Alston are lawyers from Georgia and close friends of President Carter. The meeting with the Law Reform Commissioners was arranged with the assistance of the Law Council of Australia, which sponsored the Attorney-General's visit to Australia. A number of matters relevant to the current programs of the two Commissions were discussed:

- reform of class action procedures in the U.S.
- lay participation in the discipline of the legal profession
- sentencing reforms
- informal dispute resolution

The Attorney-General explained current thinking on class action reform. The A.L.R.C. has a Reference on Class Actions, now under the charge of Mr. Bruce Debelle, a new Commissioner. An issues paper on the possible introduction of class actions into Australia in federal jurisdiction will be issued shortly. The A.L.R.C. is awaiting the publication of legislation sponsored by Judge Bell before proposing alternatives for Australia. Judge Bell instanced a number of defects and abuses in current class actions in the U.S. Contingency fees are well established and play a great part in the practical operation of class actions. Judge Bell felt there was a place for class actions, subject to proper safeguards. A discussion paper issued by the Office for Improvements in the Administration of Justice has already suggested that the path of reform lies in distinguishing those class actions which are basically mounted to recover compensation and those which represent a punitive or penalty action. The latter may be more appropriate to be taken over by the State than pursued by a private class suit.

The N.S.W. Commissioners with their major project on reform of the legal profession explored the moves towards lay involvement in the administration of the profession in the United States. Various strengths and defects of lay participation were mentioned. Judge Bell said there had been an increase in malpractice suits against the legal profession in the United States. Some States had put limits on the damages that could be recovered.

The Attorney-General said that the most interesting recent development in the United States was towards speedier and more informal settlement of legal disputes. Expensive litigation, exacerbated by wide discovery rules and the delays inherent in court proceedings, had turned attention outside the court process. A number of States were developing informal arbitration proceedings. These had proved most successful where a panel of three lawyers were used. In such cases the finality rate was as high as 95%. Another novel development was of "neighbourhood justice centres" to train lay people as mediators. Judge Bell said that conciliation and mediation would be increasingly demanded because of the costs and delays of formal court proceedings. Reformers should fix their sights on delivering satisfaction and the sense of justice rather than the provision of superb facilities available only to a few and then after protracted and sometimes agonising delay.

As a result of Judge Bell's visit, the A.L.R.C. has made contact with officers in the Administration in Washington and will keep abreast of American Federal innovations, particularly in relation to current work on privacy, class actions and sentencing reform.

Action on Criminal Investigation

"A state is not a mere society, established for the prevention of mutual crime and for the sake of exchange . . . Political society exists for the sake of noble actions, and not mere companionship."

Aristotle, *Politics*, III, ch.9.

The last quarter has seen a continuing debate in Australia and Britain on police powers and their control, in the name of the liberal State.

On 15 July 1978 Australia's Federal Attorney-General, Senator Peter Durack, spoke to the Australian Council of Professions in Canberra. After outlining the innovations in administrative reform mentioned in [1978] *Reform* 30, he made an important announcement on the future of the Criminal Investigation Bill 1977. That Bill based substantially on the A.L.R.C. report *Criminal Investigation* (A.L.R.C. 2, 1975) lapsed in November 1977