LEGISLATIVE SENTENCING IN TASMANIA

By STANLEY W. JOHNSTON*

> 'This d——d dog will never kill any more of your turkies, Sally — I caught him again this morning in the very act, and I first gave him a good wallopping, and then had him hanged.'
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> 'That was certainly cruel,' said the lady. 'There could be no occasion to torture the poor animal, and then to put it to death.'
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> 'Zounds and the devil,' replied he. 'Ar'nt you always complaining that you can't rear a young turkey for the dogs? I gave him a hearty wallopping for the offence he had just committed, and I had him hanged as a warning to the others; but you women are never satisfied.' [1]

'It could well be that greater interest in the science of Penology could be taken by the University of Tasmania.' This is one of many conclusions reached in a comprehensive report on *Police Matters in Tasmania* presented on 21 August 1962, by a select committee of the House of Assembly of the Parliament of Tasmania.[2] The writer was invited to give evidence to the committee on the subject of penalties, for five of the committee's seven terms of reference had encompassed the matter of the deterrent adequacy of sentences; and the following is the memorandum of evidence, revised, which was prepared for that purpose.

A closer analysis of sentencing, to increase the efficiency of correction, is being made in many jurisdictions around the world, with the American Law Institute and the American Bar Foundation leading the way with excellent surveys at once extensive and expensive, and with the United Nations Section of Social Defence assuming a wide co-ordinating role. In Australia, however, through want of interstate communication, efforts being expended in a number of places on this and related matters are deployed wastefully.[3] Where our culture and correctional problems are basically homogeneous across the continent, it is desirable that this work should proceed on an Australia-wide basis and be directed towards the drafting of a uniform Australian correction code — a model to which Canberra and the several States might subsequently approximate their laws at will. The valuable lead now being provided by this committee

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1 Savery: *Quintus Servinton*, Jacaranda Paperbound, 111 (as published in Hobart, Tasmania, in 1830).

2 See Report of Select Committee of House of Assembly on Police Matters in Tasmania, para. 152.

3 *E.g.*, in 1961 the Statute Law Revision Committee of the Victorian Parliament presented a report on legislative sentencing; and the Criminology Department at the University of Melbourne has initiated research into both legislative and judicial sentencing.

would fall in richer soil if it led to a longer term liaison between governments and universities on these matters. The effort of liaison would be rewarded by the formation of correctional policies bearing the stamp of a wider authority, a stamp which is often vital to the passage of worthwhile reform legislation in this field. Until a total inquiry into the administration of correction is made, there is a danger that reforms will be unbalanced and short-lived.[4]

Deterrence

The word 'deterrence' is used with a variety of connotations. In the first place, it is used to mean nothing more than publication of the working of the correctional processes, a warning to all of what might happen to them if they offend—a task in public relations. Secondly, it may mean treating one offender more harshly than the circumstances of his offence might otherwise warrant, to make an example of him to others. Or thirdly, it may mean treating an offender harshly in order to deter that same offender from offending again. This has been called special deterrence to distinguish it from the second meaning, general deterrence.

Special deterrence, where it does not involve elimination by death, is a form of correction. Perhaps it is intended to be rehabilitation by fear, or by aversion treatment (conditioning the offender to anticipate an intolerable result whenever he offends). This is undoubtedly effective in some cases. But the treatment is generally so remote from the offence, and there are so many possible exits from the correctional process between offence and treatment, that it is naive to place reliance upon it in express legislation. In any case, the appropriate aversion stimulus cannot possibly be foreshadowed by legislation, and the attempt to do so obstructs correction.

General deterrence, or the treatment of an offender in a certain way for the purpose hopefully of deterring others from like offences, is, again, a matter outside the province of legislation. The utilitarian argument elaborated by Jeremy Bentham in the late eighteenth century was that man's two great drives are the achievement of pleasure and the avoidance of pain; so that, if you threaten a degree of pain just sufficient to outweigh the degree of pleasure the citizen would derive from doing what is forbidden, you should thereby deter him from seeking the forbidden pleasure. That philosophy, product of the age of reason, assumes that we are all motivated in the same ways and that it is possible calmly to balance pleasures and pains with some mathematical precision.

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4 Since this memorandum, probably like the evidence of all the committee's sixty-one witnesses, develops its subject at greater depth than the committee could have hoped to incorporate in its report, it would be tedious to trace throughout the degree of consonance achieved between the memorandum and the report. However, it is perhaps worth noting that this important paragraph was adopted by the committee in its entirety: Report, *op. cit. supra*, n. 2, paras. 156 and 174-176.

However, what may appeal as a preventive to the lawgiver in the satisfied security of his study, when he has neither the chance nor the wish to commit a crime, cannot easily be expected to appeal to the citizen of a different constitutional make-up who *is* faced with both the chance and the desire to commit the crime; indeed it may not appeal even to the lawgiver in different circumstances.

The Freudian approach is that conscience or *super-ego* is an unconscious day-to-day pressure towards conformance with the moral precepts which in our culture have been instilled by parents with the aid of fearful threats and punishments. The fear, like many parental and cultural attitudes, is internalized more or less permanently, and in such a way that compliance is more or less unthinking or prejudiced. Most of this internalization is completed before a child is old enough to be charged with a criminal offence. The severe punishment of, say, a car thief may perhaps operate *at a conscious rational level* to frighten or deter other adults from car theft; and the 'exampling' of one drunk driver may make other persons think twice about driving after having had a few drinks —if they are able to think efficiently at all at that stage. And that is the point: often, crimes like drunk-driving, or crimes of aggression or passion, are committed in the heat of the moment when the reasoning powers are so dulled as to be non-functional and the citizen is thrown back onto his unconscious deterrents alone.

It seems reasonable to surmise some correlation between the magnitude or harshness of a sentence and its deterrent effect. There are, however, certain exceptions to that hypothesis which invalidate it in part, and preclude the adoption of a *characteristically* retributive sentencing system. In the first place, you reach a level of severity at which another principle operates: the principle that you may as well be hanged for a sheep as a lamb. England's wholesale slaughter and transportation of criminals some two centuries ago led to no apparent reduction in the crime rate. Indeed, pickpockets are said to have plied their trade in the shadow of the gallows, even though picking pockets was itself a capital crime. A sentencing system which is unreasonably harsh will place a premium upon the commission of the more serious crimes. The point at which disproportionate severity has this opposite effect varies between individuals and between various social conditions. In today's western culture, improved health, longer life, better social and economic conditions and an increasingly democratic permissiveness in home and school, all tend towards a lowering of the crucial point. Secondly, the immature person who seeks notoriety, or the person in a subculture (perhaps an inner suburban area, or a fundamentalist religious or radical political group) in which much of life consists in tilting at the dominant culture and norms of the community, may look upon the carefully measured threats of the law as a mere challenge against which he is disposed to measure his length. He will deliberately flout the law in order to use the sentence of the court to prove his manhood or establish some other point, reducing the criminal law to a game.

> The outlook of persons living in sub-standard conditions all too often matches their circumstances. They lack foresight, and thus the prospect of punishment does not occur to them, or if they do think of being caught, fear of consequences deters them less than it does the more fortunately placed, because they have less to lose.[5]

Thirdly, out of unresolved guilt feelings or some other pathology, masochists may seek pain, hurt or punishment for themselves at the hands of another. Such persons are actually attracted to the commission of a crime by the prospect of a reputedly painful sanction. Persons bent on a complicated, perhaps sacrificial, form of suicide have chosen to commit capital crimes in order that the State would put them to death. James Hadfield shot at George III for such an insane purpose.[6] Fourthly, as an alcoholic may draw attention to his pitiful plight by a carefully ineffective suicidal gesture, so may some persons, knowing in an inarticulate way that they need help, but ignorant or despairing of socially acceptable means of getting it, feel driven to the commission of a truly and deliberately outrageous crime, the ordinary offence being insufficient for his purpose because it tends to be visited too characteristically with an automatic sentence which ignores the possibility of serious underlying personality defects.

Thus, application of a notion of deterrence based upon a general theory that pain or punishment is unwelcome will in some, even if exceptional, instances operate to achieve the very opposite of what is intended by it. To be thorough, we should as well have to threaten kindness to the masochist, and to the contemptuous offender a sustained course of vocational and personal guidance uprooting him from his subculture. In fact, however, we are not yet able to predict or control the effect which a particular treatment of one person may produce in the future behaviour of another. *The idea of general deterrence therefore cannot be more than a by-product of some other self-sufficient sentencing system.* For it denies the individuality of the offender, sacrificing him like the scapegoat of old[7] for the problematical benefit of the community. Calculating sentence according to the objective nature of the offence, and ignoring altogether the individual merits of the case, in particular the moral or just deserts of the offender, a deterrent sentence can offer no satisfaction to those who believe that it is possible seriously to measure moral guilt.[8] And the deterrent sentence cuts right across the correctional needs of the offender, the civil rights of his victim and the interests of the offender's family.

The counterpart of general deterrence in the correctional field is the royal or government amnesty celebrating the fact or anniversary of an historic event, ordered as a sop to inculcate respect for the Crown or

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5 Barry: 'Morality and Coercive Process' (1962) Sy.L.R. 33. See also Tappan: *Crime, Justice and Correction* (1960), 243-255.

6 *R.* v. *Hadfield* (1800), 27 How. St. Tr. 1282.

7 Leviticus, 16.

8 On the psychopathology of the punisher, see Berg: *Fear, Punishment, Anxiety and the Wolfenden Report* (1959), ch. 2.

government. Such a practice is at least as old as the Roman practice by which the governor released a prisoner at the Jewish Passover.[9] In parts of the British Commonwealth an amnesty of one day in seven was declared for all prisoners upon the coronation of Elizabeth II. The State of Victoria, amongst others, granted a proportionate amnesty to adult prisoners upon the Queen's 1954 Australian visit; Queensland did so on her 1963 visit. Janos Kadar, Premier of Hungary from 1956, has freed ninety-five per cent. of his political prisoners in a series of amnesties since then. Abdul Karim Kassem, then Prime Minister of Irak, granted a fifteen per cent. reduction of the terms of all but political prisoners to mark his discharge from hospital after an unsuccessful assassination bid in October 1959. President de Gaulle of France released some political prisoners, and reduced the sentences of others, on 14 July, Bastille Day, 1962. On 8 January 1962 the small new state of Samoa discharged all its one hundred prisoners, including three lifers, and pardoned also all persons charged but not dealt with for criminal offences, to mark its week-old independence. On 18 April 1962 President Kennedy, as Commander-in-Chief, extended Easter season clemency to two American army privates involved in court-martial proceedings for protesting against his reserve call-up policy. Kennedy also extended specific Thanksgiving Day and pre-Christmas pardons in 1962. Governor Howard Edmondson of Oklahoma released 106 prisoners as a Christmas clemency gesture in 1962. On 16 May 1962 the South Korean Supreme Council gave an amnesty to 4,002 military and 17,968 other prisoners to mark the first anniversary of its successful military *coup d'etat*. Perhaps the latter mass amnesty was more in the nature of happy timing for an otherwise planned release, as possibly was President Soekarno's grant of amnesty to 26,838 criminal prisoners, with the immediate release of 5,761, on 19 August 1959 in commemoration of Independence Day. Such amnesties are unlikely to achieve anything substantial towards their intended purpose, and cut across more personally sensitive correctional programmes.[10]

The retributive infliction by the State of an evil for the making of wrong moral choices may be eschewed as the merely negative side of a too neat calculus of rewards and punishments. Do we provide any matching incentive for remaining on the right side of the law? Yes: every community has some system of rewards for consistently right or lucky choices, probably no less extensive in its ambit than the sentencing of offenders—rewards in the form of royal honours, medals or other public recognition. It is debatable if these have an invariably stimulating effect in the community, or are more than an anti-climactic grant of the symbols of honour and power to those who have already won acclaim and position. They are a graceful custom, but no argument for a system which portends harm both to the offender and through him (by ignoring his correctional needs) to society. If an immoral act, involving

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9 Matthew, 27: 15.

10 See generally Korn and McCorkle: *Criminology and Penology* (1961), 601.

loss of personal integrity, and a criminal act, involving a fall from community grace, each carries its own proper punishment, it is difficult to see whence arises the need to mete out evil for its own sake (unless the need arises from pure fear).

It has been said that the law can act both as a general deterrent and a corrective, by the legislature's threatening a substantial maximum penalty and the court's actually applying a sensitive correctional sanction. Thus in *R.* v. *Ball*[11] Hilbery J. said:

> The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. *The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living.* Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the court has the right and the duty to decide whether to be lenient or severe.

And in *R.* v. *Radich*[12] Fair J., speaking for the New Zealand Court of Appeal, said:

> One of the main purposes of punishment is to protect the public from the commission of such crimes by making it clear to the offender and to *other persons with similar impulses* that, if they yield to them, they will meet with severe punishment. In all civilised countries, in all ages, that has been the main purpose of punishment, and it still continues so. . . . If a court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences.

After paying respect to these general theories, however, the courts almost invariably go ahead to elaborate and act upon quite incompatible principles. For if they were to be effective as a deterrent, sentences would be related exclusively to the objective nature of the offence, to the complete disregard of the offender's age and sanity and of any other personal or mitigating circumstances; and in practice today we do not disregard the personality of the offender to such an extent. Thus in *Ball's* case, Hilbery J. went on to say:[13]

> It is for these reasons, and with these purposes in view, that before passing sentence the court hears evidence of the antecedents and character of every convicted person. It follows that when two persons are convicted together of a crime or series of crimes in which they have been acting in concert, it may be right, and very often is right, to discriminate between the two and to be lenient to the one and not to the other. The background, antecedents and character of the one and his whole bearing in court may indicate a chance of reform if leniency is extended, whereas it may seem that only a harsh lesson is likely to make the other stop in his criminal career. *The argument that a severe sentence on one prisoner must be unjust because his fellow prisoner, who was convicted of the same*

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11 (1952) 35 C.A.R. 164, 165 (italics mine).

12 [1954] N.Z.L.R. 86 (italics mine).

13 (1952) 35 C.A.R. 164, 166 (italics mine).

> *crime, received a light sentence or none at all, has neither validity nor force.* The differentiation in treatment is justified if the court, in considering the public interest, has regard to the differences in the characters and antecedents of the two convicted men and discriminates between them because of those differences.

And Fair J. in *Radich* followed up with:[14]

> On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is *necessarily subsidiary* to the main considerations that determine the appropriate amount of punishment. . . . *Little help is gained by considering other sentences in respect of the same type of offence,* for the whole of the surrounding circumstances and the situation of the offender, and others, have to be taken into account, and these factors vary infinitely. . . . There were two factors to which, perhaps, insufficient weight was given in determining the sentence: first, that it was *an impulsive act* of violence without premeditation or deliberation, and probably committed as a result of sudden anger to which, it appears, the applicant was prone. Secondly, the accused's behaviour and general character were, so far as criminal offences are concerned, good.

Fair J., having said that treating the infinite variety of personal factors is necessarily subsidiary to the main purpose of punishment, which is the deterring of others with similar impulses, forthwith rejects the possibility of guidance from other sentences passed in respect of the same type of offence, and determines the instant sentence in the light of the fact that the offence was an impulsive act.

The danger of such a series of inconsequences is that the final sentence may be a stab in the dark. Moreover, it reduces many statements of both legislature and court to mere bluff. A person capable of understanding the legislature's statements *in terrorem* is also able to distinguish realistically between what the law says and what the law does. The underlying attitude of the two judgments suffers from the defects of the *characteristically* retributive threat. The only question to Hilbery J.'s mind is the narrow inquiry 'whether to be lenient or severe', a question which is not often apposite to the actual correction of the individual offender —a question, however, which appears still to be the main issue in appeals against sentence in Tasmania.[15] As Sir Walter Moberly has said:[16]

> The most ferocious penalties are ineffective so long as prospective criminals believe they have a fair chance of escaping them. . . . If he commits a murder he may not be caught; if caught he may not be convicted; if convicted he may still be reprieved . . . Thus it is *certainty* rather than *severity* of punishment which really deters . . . An increase in the efficiency of the police force does more to prevent murder than the busiest hangman.

Both effective law enforcement and fair law enforcement make the same demand. The proper use of the doctrine of deterrence is confined to providing certainty, ascertainability or proper publicity of the detail of both the law and its working (the first of the three meanings). As it is put in section 1.02 of the American Law Institute's draft Model Penal

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14 [1954] N.Z.L.R. 86, 87 (italics mine).

15 Criminal Code Act 1924, ss. 402 (4), 403.

16 Moberly: 'Capital Punishment' (1953), Christian Newsletter (italics mine).

Code: 'The general purposes of the provisions governing the sentencing and treatment of offenders are . . . to give fair warning of the nature of the sentence that may be imposed on conviction of an offence'.[17] It is the nature of the publicity that is important.

Police

Proper publication means different things for different agencies. For the police, for instance, it means first the establishing and then the publishing of a sound record of detection and prosecution by methods which scrupulously observe the citizen's rights to integrity of person and property. It is important that the police should regard themselves as part of the correctional team cognisant of the ultimate object of releasing an offender in such a condition that he has a wholesome respect both for the law and for himself. A respected police force enjoying the confidence of the public will receive more reports of crime from the public. Paradoxically, therefore, crime rates may be expected to give the appearance of rising as a State's correctional policies and practices improve; but this will not indicate a deterioration in the community's behaviour.

It is inadvisable expressly to seek special protection for police officers which might give an impression that police are a class apart. No legislative deterrents are called for in an attempt to prevent attacks on police while on duty. A person bold enough or foolhardy enough to assault a policeman has ordinarily challenged the whole police force, next to which an act of parliament is insignificant. The minatory surplusage already contained in the penalty provisions for section 114 of the Criminal Code Act 1924 and section 36 of the Police Regulation Act 1898 (concerning assaults on police) is gratuitously offensive: the ordinary law protects police no less than others from assault. The existing provisions against impersonating and bribing police[18], making false reports or declarations,[19] and refusing to assist law enforcement offcers[20] are sufficient, and repetitious, aids to law enforcement (rather than to policemen as such).

Likewise there is no need for legislative definitions of various aggravated forms of assault. Degrees of offence were important when the sentence was proportioned according to the gravity of offence; but Tasmania now has a uniform legislative sanction for all indictable crime, and indeed sentences today are tending rather to be related to the needs of the offender than to the gravity of the offence. There are many such surplus provisions in Tasmanian legislation. For instance, in the Criminal Code Act 1924:

s. 77 (1) Opposing the making of a riot proclamation.
s. 79 (1) Forcible entry.
s. 183 Aggravated assault.[21]
s. 186 (1) Forcible abduction.

17 See too Tappan: *Contemporary Correction* (1951), 421.
18 Police Regulation Act 1898, ss. 34 and 35 respectively.
19 Police Offences Act 1935, s. 44A, and Criminal Code Act 1924, ss. 112, 113.
20 Criminal Code Act 1924, ss. 116-118, and Police Regulation Act 1898, s. 37.
21 And see Police Offences Act 1935, ss. 35 (2), 36.

Courts

Australian courts already enjoy a reputation for impartial and dispassionate fact-finding. It is important that the public should have confidence, not only that persons will not be wrongly convicted, but also that offenders will not be wrongly acquitted. To this end it is desirable that all judges and magistrates, including honorary justices of the peace who try charges of crime, should be trained in criminal law and procedure. It is not important, however, that the gruesome details of criminal trials should be made the morbid preoccupation of the popular press. On the contrary, the identification and disparagement of an accused person by the press is seldom in the public interest and may impede the smooth process of correction. Adult courts might ultimately be subjected to that partial censorship of children's court reports which is contained in section 18 (2) of the Child Welfare Act 1960. Section 18 (2) has a parallel in section 43 of the Children's Court Act 1958 (Vic.), which stops merely the identification of the defendant. Victoria, where all children's courts are closed to the public anyway, has not found it necessary to enact a provision like section 18 (1) of the Tasmanian Act, prohibiting all reports of children's court proceedings.[22]

Some effort might be directed, perhaps through the Australian Journalists Association, towards persuading the popular press to desist from creating alarm at periodic 'crime waves' and anxiety over the perennial 'increase in crime rates'. As the man in the street likes to be able to complain about the weather, so, it seems, does he seek reassurance that the crime rate really is getting out of hand; and a salacious press dutifully offers this foment, to the disregard of the actual figures and the scorn of the potential figures.[23] No responsible correctional authority would say that crime in Tasmania had ever come close to being out of control. In peacetime and prosperity we have more time and resources to concentrate on crime, and rising crime figures may reflect this improvement in social control. But generally a 'crime wave' signifies only a shortage of news.

It is said that accused persons in Australia have the right to trial by jury and the right to trial in open court; but in most cases it is juridically more exact to speak of these procedures as liabilities, for the prisoner does not have the right to refuse them. In those cases in which the accused may opt to have an indictable crime disposed of without a jury, the hearing must be before a magistrate, not a judge. In order to provide an accused person with the chance of privacy, it would be desirable to make these facilities rights in the true sense of the word, as jury trial is in many States of the United States, and as it has been proposed in section 266 of the American Law Institute's draft Code of Criminal

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22 See the Food and Drugs Act 1910, s. 28 (3).

23 See the Report of the Royal Commission on the Press 1949. Cmd. 7700, paras. 487-493; Isaacs: 'The Crime of Crime Reporting' (1961), 7 *Crime and Delinquency*, 312; 'Newspaper and Crime' (1958), 4 N.P.P.A. Jo. 305-355; and Wilson: 'Newspaper Opinion and Crime in Boston' (1938), 29 J. of Crim. Law, Clgy. and Pol. Sci., 202.

Procedure 1930. It is true that many, though not all, potential offenders are quite desperately afraid of adverse publicity; in fact, for most citizens this is a paramount deterrent. But that treatment which makes an offender afraid is not necessarily a sound corrective. The exciting of fear in an offender may give satisfaction to the victim or to an outraged public, but the law should operate to pacify the reaction to crime no less than the criminal act itself. In 1936 in Bali, Margaret Mead 'concluded that the Balinese were a race of schizophrenics living in a society dominated by fear. This fear expressed itself in a ritualistic life whose rigid forms and ceremonies were a sort of guarantee of safety'.[24] It may be difficult to concede, but it is nevertheless possible, that some of the proceedings of the Western court, for which we may have fought great constitutional battles, are similarly now more rigid than necessary, to our detriment.

The romance of the criminal trial usually stops short of the sentence in cases not involving the death penalty. The romance owes its origin to the idea of an implacable hostility between the interests of the prisoner and the demands of the law—an idea no longer generally supported by the facts. A more accurate appreciation of the place the sentence of the court occupies in the total correctional process, together with the moderating influence which a court's familiarity with penology might bring to this culminating point of the trial, could introduce smoother perspectives into trial procedures.

As the sentence of the court becomes more avowedly constructive, as it has in children's courts, the public's fascination with the facts of the case is seen to become as prurient as would be a relishing of the antics of a lunatic today. There is no warrant, however, for such enactments as: 'In making any order in any case the children's court shall *firstly* have regard to the welfare of the child',[25] which is frankly a misconception of the social purpose for which the child is hailed before the court; the provision in section 20 (1) of the Child Welfare Act 1960 for not recording a conviction against a guilty child, which seems both superstitious and calculated to undermine the rule of law; and those restrictions upon children's court sentences, such as the maximum limit of a year's imprisonment, which are based upon the consideration that the sentence of the court, in particular, imprisonment, is necessarily an evil. The exclusion of children under eighteen years from the death sentence,[26] and of children under seventeen years from indeterminate and reformatory sentences,[27] is in like case.

Correction Authorities

A valuable deterrent is public confidence that the last line of defence is able, or at least is resolved to try, to turn out its charges as law-abiding citizens. This confidence will grow as prison authorities

24 Winthrop Sergeant, Profile, *The New Yorker*, Dec. 30, 1961.
25 Children's Court Act 1958 (Vic.), s. 27 (3).
26 Criminal Code Act 1924, s. 389 (2).
27 Criminal Code Act 1924, ss. 392, 393, and the Indeterminate Sentences Act 1921.

demonstrate the individually corrective efficiency of their methods. Prison departments today are spending less money on security and more on the provision of re-educative facilities. The special role of prison is still custody, but prison itself now subserves the same goal that unifies it with probation, parole and other aspects of a fully equipped correction department: the goal is correction. Having satisfied the basic demand for prophylactic detention of the serious criminal, guards and other prison staff try to see that custody and discipline are bent towards the rehabilitation of the individual offender. Sir John Morris, then Chief Justice of Tasmania, reported in 1942, as a royal commissioner inquiring into the Hobart Gaol:[28]

> In framing the discipline of the gaol, due regard must be had, on the one hand, to the necessity to secure such obedience to orders as will make it possible to conduct the institution in the manner best calculated to secure the fulfilment of its aims and on the other to the effect of too strict a discipline or over-regimentation, upon the persons to be reformed. The practice of ordering discipline so as to achieve ease of administration should give way to a method taking more account of the rehabilitation factor since *with discipline as with everything else in the gaol, everything must be directed towards the one end — the improvement of the offender.* It should be borne in mind that the prisoner must be constantly encouraged in the idea of self-respect, and that too embracing a discipline tends to wither the shoots of this somewhat delicate plant. Routine for the sake of routine is merely drudgery, and the hedging of the prisoner's life about with directions and regulations as to what he shall do in almost every conceivable circumstance loads him down with the idea that the assertion of himself requires either the open defiance of the rules or a deceitful sneaking method of overcoming them. These are anti-social habits whose acquisition spells the failure of the prison. It is recommended, therefore, that all needless regulation of the prisoner's conduct be avoided and that careful thought be given to the working out of an essential discipline which, when once put in, will be strictly and impartially enforced at all times.

It is not sensible to apply deterrent or retributive evils to a prisoner whom one expects ultimately to take his place fully as a law-abiding citizen. The attempt to do so is calculated to lead to insanity or further criminality either in the prisoner or his family. The Prisons Regulations 1961 include a number of simply derisory provisions which are self-defeating, *e.g.*—

> 19. No prisoner shall put on his jacket before washing.
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> 24. (1) A prisoner, being in his cell, who requires assistance or has anything to communicate, may knock, ring, or call for an officer on duty, to whom he shall state the reason for his summons.
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> (2) A communication under this regulation shall be strictly confined to the matter in hand.
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> 56. (1) Subject to this regulation, a prisoner may write two letters each month to his relatives or friends.
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> (2) The gaoler may, in special circumstances, allow a prisoner to write letters in addition to the number prescribed by sub-regulation (1) of this regulation.
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> 58. A prisoner who desires to write a letter shall make application for permission so to do to the officer in charge of his division.
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> 70. A prisoner may, subject to these regulations, write a letter and receive a reply in lieu of receiving a visitor.

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28 Barry and Paton: *An Introduction to the Criminal Law in Australia* (1948), 113 (italics mine).

It is possible (but unlikely) that in some cases a flogging will be a useful corrective. Neither the legislature nor the court, however, is in a position to determine the time and conditions of such a treatment. The recommendation would come best from that member of the correction authority who is most closely associated with the progress of the case. If such a recommendation required the approval of a court, yet the initiative would not belong to the court. The present Tasmanian provision:[29]

> In the case of a male person convicted of any crime not punishable with death, in the commission of which such person has inflicted serious personal violence on any person, the sentence may in addition to any other punishment, include an order that the person convicted shall be whipped once, with such number of strokes or lashes, with such instrument, in such manner and at such time not being more than six months after the sentence, as the judge may direct. . . .

is a mere expression of outrage rather than a technique of correction. There is no sound reason to relate the possibility of such treatment exclusively to males detected in crimes of aggression. The majority of the departmental committee on the treatment of young offenders, who reported in 1927, said:[30]

> We deprecate strongly any indiscriminate use of whipping. To the boy who is nervously unstable or mentally unbalanced the whipping may do more harm than good. The mischievous boy, on the other hand, who has often been cuffed at home will make light of the matter and even pose as a hero to his companions. We believe that there are cases in which whipping is the most salutary method of dealing with the offender; but, as so much depends on the character and home circumstances of the boy concerned, whipping should not be ordered by a court without consideration of these factors and especially without some enquiry whether corporal punishment has been applied already, and, if so, with what result. . . . If, as we recommend, whipping is retained, we see no reason why it should be limited to certain offences. Cruelty to animals or wanton acts endangering the lives of others ought not to be excluded; but the character of the individual rather than the nature of the offence must be considered. Nor do we see any adequate grounds for discriminating between boys under fourteen and those between fourteen and seventeen.

The majority recommended that the courts should be given 'a discretion to order a whipping in respect of any serious offence committed by a boy under seventeen', while the minority were 'not satisfied that whipping ordered by a court of law serves a useful purpose'.

The U.N. Standard Minimum Rules for the Treatment of Prisoners 1955 are quite definite:

> 31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

A fortiori, the United Nations must condemn corporal punishment for offences outside prison.

That corporal punishment is widely held to be proper in the rearing of children in the home is not a persuasive argument in favour of its

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29 Criminal Code Act 1924, s. 389 (6).

30 Report of the Departmental Committee on the Treatment of Young Offenders, H.M.S.O. Cmd. 2831.

use by State correctional authorities other than by that therapist who occupies a role of parent-surrogate to the offender and who, it is remotely possible, may need to use it during the stage of therapy known as ambivalent symbiosis. The nineteen members of the unanimous Barry Committee reported in 1960:[31]

> 15. Arguments based on the efficacy of corporal punishment in the home and in schools are also irrelevant. There are essential differences between this type of corporal punishment and corporal punishment as imposed by the courts. Parents (except, of course, those who use violence excessively or indiscriminately) and school-teachers know their boys and how they are likely to react to corporal punishment. The punishment is inflicted soon after the offence in respect of which it is given, and usually by the person who has made the decision to inflict it. The boy will usually have affection, or at least respect, for the person who beats him, and because of their continuing relationship there is abundant opportunity for reconcilation. These conditions are not, and cannot be, fulfilled when that penalty is imposed by the courts, and our conclusion as to judicial corporal punishment has no bearing on the wholly different question of corporal punishment in the home and in schools, which is outside our terms of reference.

'Small-town methods' of correction are appropriate to small towns, not to a State legislature.

A prison term the length of which is fixed by a court as retribution rather than for correction does not offer suitable conditions for sober re-educative programming. Planning for the day of the prisoner's release should obviously begin on the day of his admission, but this appears to be impracticable when, in the absence of a parole system in Tasmania, release is conditioned upon an estimate of something other than fitness to lead a law-abiding life. Correctional programming only makes sense when the date of release is within the discretion of the correction authorities. It is possible that we shall move towards a sentencing system in which the court, having found guilt, merely orders the offender into the custody of the correction authorities, who may then order probation, prison, parole and reimprisonments at their discretion, subject only to the overriding control of the court by the prerogative writ of *habeas corpus*—a position like that which obtains today with the certifiably insane. But this position will not come about until correction departments have, by publicity, won the public's confidence in their discretion.

The Legislature

> The formal responsibility for determining the nature and amount of sentence is shared by the legislative, judicial and executive branches of the government. Within limits set by the legislature, the judge has the authority to fix the sentence. Within limits set by the judge, the parole board can determine how long a person is to be required to serve in an institution. The basic responsibility, to the extent that it chooses to exercise it, rests with the legislature.[32]

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31 'Corporal Punishment', Report of the Advisory Council on the Treatment of Offenders, H.M.S.O. Cmd. 1213. A similar point is made at greater length in para. 24 of the unanimous nine-member Cadogan Committee Report (1938), H.M.S.O. Cmd. 5684, Report of the Departmental Committee on Corporal Punishment.

32 American Bar Foundation: *The Administration of Criminal Justice in the United States* (1958), pilot project report, vol. iii, 749.

That would be a generally acceptable statement of modern legislative sentencing policy, but it is probably still true to say of most existing legislation what Sir Samuel Romilly said in 1811 of Bentham's treatise on punishment: 'Penal legislation hitherto has resembled what the science of physic must have been when physicians did not know the properties and effects of the medicines they administered.'

The best deterrent of all is a simple certain law. Yet legislatures generally have been careless of this primary task in law enforcement. Publication of the law in a manner comprehensible to the persons whom it is intended to bind is not just a laudable ideal. The process of law-making itself is not complete until adequate publication has taken place. Not only natural justice, but effective government, both require a clear and readily accessible rendering of the law.[33] As to sentencing, the legislation should embody dispassionately all the possibilities of treatment without emphasising one treatment more than another. For instance, since legislation sets the pattern for the correctional processing which follows it, it does well to avoid such vague tendentious expressions as 'unnatural crimes' or 'carnal knowledge against the order of nature'.[34]

Too often we fail to see the matter of sentencing as a substantial function *sui generis*. Thus in legislation a penalty is commonly tacked on to the very section elaborating the offence; and this is done in a more or less emotionally involved fashion so that only the apparently deterrent possibilities of the sentence appear next to the offence. This is the practice, for instance, in sections 5-9 of the Police Offences Act 1935, although in those cases a presumably non-retributive commitment to a public charitable institution, for such period as the magistrate thinks fit or until the Attorney-General orders release, is possible under section 72.[35] Since it is not possible to list all the correctional possibilities next to each description of an offence, it is unwise to list any of them at that point.

The extraction of almost all the sentencing matter from the earlier parts of the Criminal Code Act 1924, and their collation in sections 380-398, offers a sound model. Sentencing is conveniently treated also in sections 20-37 of the Child Welfare Act 1960. It would be an advantage to go further and consolidate in the one document all the sentencing provisions of Tasmanian legislation. This would highlight much redundancy, inconsistency and inadequacy.

Broadly speaking, the limits of the possible sentence for an indictable crime in Tasmania are twenty-one years' imprisonment and a fine of any amount, a person sustaining his third conviction on indictment being

33 See Johnston and Bonnici: 'The Legislative Process' (1962) 36 A.L.J. 179.

34 Criminal Code Act 1924, s. 122.

35 In fact, with the current vast improvement in prison conditions, it is no longer meaningful to speak about keeping certain classes of offenders, such as the youthful or the sick, out of prison, while compelling them to treatment in a security institution called by another name. The real value of s. 72 therefore lies in the additional choice of disposition it offers the sentencing court.

liable to an indeterminate reformatory sentence.[36] This unusually wide sentencing provision offers courts and prisons a valuable measure of discretion. However, without curtailing that discretion, it would be desirable for the legislature to offer guidance to the courts as to the principles by which the discretion might be exercised, setting out, for instance, the criteria for selecting and calculating imprisonment, fine, probation or parole. A useful precedent in this matter is contained in sections 1.02, 6, 7 and 305 of the Model Penal Code drafted by the American Law Institute.

Apart from sections 389 and 392 of the Criminal Code Act 1924, the story of Tasmania's legislative sentencing is one of apparent distrust of the courts, for the sentencing discretion left to the courts is so narrow as to be almost non-existent, as is that discretion which the courts are permitted and inclined to grant to correctional authorities. It is unfortunate, for instance, that the death sentence, where it is provided at all, is fixed as a minimum or automatic penalty.[37] The death sentence has been carried out only five times this century in Tasmania,[38] and today there is not a ready facility in the State for a hanging; so that the Code is disparaged as an empty threat by the government itself. It is perhaps unwise today to retain the death penalty at all for any crime which does not threaten the continuity of government. It is a popular misconception that death by murder is in some unidentified way more fearful, more painful or more permanent than other violent deaths; yet most victims of murder have in fact contributed more and more directly to their fate than has the person killed by, say, a motor vehicle. As Ogden Nash put it,

> 'One would be in less danger from the wiles of the stranger
> If one's own kin and kith were more fun to be with.'

If courts had the initial decision on sentence in capital charges, and if in Australia we had a series of sentencing law reports like England's Criminal Appeal Reports, we might hope to derive useful contemporary learning on these matters from the courts. 'In all the years judges have been imposing sentences, they have made little contribution to a science of penology'.[39] But the fault is in part the legislature's for not making proper demands upon the courts where an adequate sentencing discretion is proffered, and for the rest giving such a limited discretion as to make the courts seem no more than ciphers.

It may be the unwarranted fear of crime which is whipped up by the press and other non-responsible agencies that induces the police to distrust the courts and prisons, the legislature to distrust the courts, the courts to distrust prisons and parole agencies, and

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36 The Criminal Code Act 1924, s. 389 (5) and the Acts Interpretation Act 1931, s. 33, provide for prison with hard labour; but, as in most jurisdictions, the Prison Regulations 1961 ignore this vengeful gesture.

37 Criminal Code Act 1924, s. 56 (treason) and s. 158 (murder).

38 Once each in 1913, 1914, 1922, 1932 and 1946.

39 Glueck: *Crime and Justice* (1936), 129.

the whole community to look upon prisons as a necessary place of ultimate execration. This is the frank distrust which leads legislators to fix compulsory minimum sentences in certain cases. Thus, a person who escapes from prison is made to suffer a certain term of imprisonment[40] and to forfeit all his prior prison earnings[41] automatically. The following examples illustrate the typical range of minimum penalties in Tasmanian legislation:

5/- — £2 Electoral Act 1907, s. 122A (11).

£1 — £10 Censorship of Films Act 1947, s. 9 (4).
Friendly Societies Act 1888, s. 31 (*b*).

£1 — £50 Land and Income Taxation Act 1910, ss. 164 (4), 200.

£1 — £100 Education Act 1932, s. 9B (7).

£2 — £50 Factories, Shops and Offices Act 1958, s. 59.
Food and Drugs Act 1910, s. 13 (1) (b).
Foresty Act 1920, s. 48 (1) (a).

£2 — £100 Land and Income Taxation Act 1910, ss. 163, 195.

£2 — £100 or 1 year
Land and Income Taxation Act 1910, s. 192M (5).

£3 — £5 Animals and Birds Protection Regulations 1953, r. 49.

£5 — £20 Factories, Shops and Offices Act 1958, s. 23 (5).
Footwear Act 1918, s. 8 (2).

£5 — £50 Cemeteries Act 1870, s. 5.
Cemeteries Act 1872, s. 6.
Cemeteries Act 1880, s. 1 (1).
Footwear Act 1918, s. 6.
Fruit and Vegetables Act 1953, ss. 5 (1), 8.
Fruit Board Act 1934, ss. 24H (1), 24J.

£5 — £60 + not less than £2/10/- a fish
Inland Fisheries Regulations 1960, r. 20.

£5 — £100 Fruit Board Act 1934, s. 24 (2).

£5 — £100 or 6 months
Fruit Board Act 1934, s. 24 (4).

£10 — £25 Factories, Shops and Offices Act 1958, s. 44.

£10 — £50 Censorship of Films Act 1947, s. 9 (4).
Crown Lands Act 1935, s. 111.
Food and Drugs Act 1910, s. 13 (1) (*a*).
Forestry Act 1920, s. 43.

£10 — £60 + not less than £5 a fish
Inland Fisheries Regulations 1960, r. 20.

£10—£100 Fisheries Act 1959, ss. 21 (1), (2), 23 (2).
Land and Income Taxation Act 1910, s. 170A (3).

£10 or 1 month — £200 and 1 year
Police Offences Act 1935, s. 33 (1).

£20 — £50 Chaff Act 1929, s. 9.

£20—£100 Fisheries Regulations 1962, rr. 28, 44 (6).
Fisheries (Scallop Season) Order 1962, r. 4 (2).

£20—£100 and 6 months
Chaff Act 1929, s. 9.

£20—£200 or 6 months
Land and Income Taxation Act 1910, s. 9 (2).

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40 Criminal Code Act 1924, s. 391 (3).

41 Prisons Regulations 1961, r. 49 (2).

£25—£100 Deceased Persons Estates Duties Act 1931, s. 38 (4).

£50—£150 Fisheries Regulations 1962, r. 28.
Fisheries (Scallop Season) Order 1962, r. 4 (2).

£50—£200 Land and Income Taxation Act 1910, s. 170A (2).

£50—£500 + double tax
Land and Income Taxation Act 1910, s. 198.

£100—£150 Fisheries Regulations 1962, r. 28.
Fisheries (Scallop Season) Order 1962, r. 4 (2).

£100—£300 Dentists Act 1919, s. 20 (1).

£100 or 3 months — £300 or 6 months
Dentists Act 1919, s. 20 (1A) (though the meaning is not clear).

In the Animals and Birds Protection Act 1928 the legislature has required the court to calculate a minimum in respect of each item of game the subject of an offence. Thus:

£25 — £100 per item
Animals and Birds Protection Act 1928, s. 32.

2/6 — £5 per item—with overall maximum of £100
Animals and Birds Protection Order 1962, s. 3 (2).

2/6 — £1 per item
Animals and Birds Protection Regulations 1953, rr. 4 (2), 31 (3), 33 (2), 54 (4), 58 (3).

£1 — £5 per item
Animals and Birds Protection Regulations 1953, r. 3.

£1 — £5 per item (maximum implied by Act, s. 18 (*zc*) (iii))
Animals and Birds Protection Regulations 1953, r. 43 (2).

£3 — £5 per item
Animals and Birds Protection Regulations 1953, rr. 45 (2), 48.

£3 — £100 per item
Animals and Birds Protection Regulations 1953, r. 47 (1).

If the legislature were to elaborate guides for the courts in sentencing, those guides might properly include recommended minima; but they would be standard, not compulsory, minima, there being always the possibility of a let-out in special circumstances. One purpose of setting standard minima would be to do away with the very short term prison sentences which magistrates quite stupidly persist in ordering for habitual drunkards and vagrants. One might propose for indictable crimes a standard minimum prison term of, say, one year. The Child Welfare Act 1960, section 21 (3) provides that the compulsory minimum ordinarily attached to a sentence is not a mandatory part of the sentence to be passed upon a child. The General Law Amendment Act 1962 (South Africa) fixed a minimum term of five years' imprisonment for sabotage: it is comforting to know that, apart from the mandatory death sentence, no Australian legislation is as vicious as that.

Certain provisions for permanent disqualification from office upon conviction amount to a compulsory and possibly harsh minimum sentence. Thus a person convicted on indictment, or sentenced for an offence to prison without the option of a fine, is disqualified from being a member of an ambulance authority.[42] Unlike the position in Italy, where a

42 Ambulance Act 1959, s. 43 (1) (*c*).

prisoner elected to parliament is automatically released, any person in prison under any conviction is incapable of being elected a member of parliament and of voting at a parliamentary election in Tasmania.[43] The seat of a sitting member becomes vacant when he is attainted of treason or convicted of any indictable crime rendering him liable to prison for more than a year, unless he is pardoned.[44] And anyone found guilty of bribery or undue influence, or the attempt, is incapable of being chosen or of sitting as a member of parliament for five years.[45] A person is disqualified from being a member of the Auctioneers and Estate Agents Council if at any time he has been convicted of any crime or of an offence against the Auctioneers and Estate Agents Act 1959, or sentenced to prison without the option of a fine.[46]

The loss of civil rights incidental to conviction could well be optional, as it is, for instance, in:

Auctioneers and Estate Agents Act 1959, s. 40 (2).
Billiard Tables Act 1915, s. 14.
Child Welfare Act 1960, s. 62 (1).
Companies Act 1962, s. 90.
Dairy Produce Act 1932, s. 6A (5) (*d*).
Dentists Act 1919, s. 42.
Police Regulation Act 1898, s. 50B (2).

upon the sustaining of certain classes of conviction. Often the precondition is a conviction of any indictable crime and/or of any non-indictable offence against, or in connection with the subject of, the particular Act. Qualification is sometimes predicated upon 'good character'[47] and possible disqualification upon 'misconduct'.[48] Quite often, in enactments where one might expect such a provision, there is none.[49] There seems to be no reason why there should not be greater uniformity in these provisions. Nor need the deprivation always be permanent, for if the correctional process is to be expected to turn out law-abiding citizens, the possibility of a restoration to full civil rights must be kept open. The Companies Act 1962, section 122, fixes a disqualification for a period of five years from the expiration of sentence.

The failure of the legislature to enact a coherent sentencing policy for offences triable summarily is exemplified by the attached table of prison-fine correlates, in which a cross-section of the 'prison or fine' and the 'prison and fine' correlations in Tasmanian legislation are set out. It will be observed that prison terms of three and six months are matched

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43 Constitution Act 1934, s. 14 (2).

44 *Id.*, s. 34 (*e*).

45 Electoral Act 1907, s. 182.

46 Auctioneers and Estate Agents Act 1959, s. 6 (1) (*c*).

47 *E.g.*, Dentists Act 1919, s. 37.

48 *E.g.*, Adult Education Act 1948, s. 6; Ambulance Act 1959, s. 43 (5); Dentists Act 1919, s. 8; Police Regulation Act 1898, s. 50B (2) and *cf.* s. 49F.

49 Apprentices Regulations 1955, r. 21; Architects Act 1929, s. 6; District Justices Act 1907, s. 15; Drainage Act 1934, s. 14; Fire Brigades Act 1945, s. 6; Forestry Act 1920, s. 9F; Fruit Board Act 1934, s. 7.

with fines of anything from £10 to £500 — a variation in the order of one to fifty. A fine of £10 is matched with a prison term of forty-eight hours in the Child Welfare Act 1960, and with one, two, three and six months in the Police Offences Act 1935—a total variance in the ratio of one to ninety. £50 is matched with anything from one to twelve months; and in the one Act £500 is matched with three, six, twelve and twenty-four months. In the one statute, as in the fine equivalents of seven days' prison in the Education Act 1932 and the fine equivalents of three months' prison in the Police Offences Act 1935, there may be a variance in the ratio of no less than one to ten. There is no discernible policy whereby the words 'or both' are occasionally tacked on with the effect of changing a 'fine or prison' sentence into a 'fine and prison' sentence, as in:

Chaff Act 1929, s. 9.
Child Welfare Act 1960, s. 66.
Companies Act 1962, ss. 47, 51 (3), 117, 122, 234, 257 (4), 374 (8), 375 (2).
Criminal Code Act 1924, s. 389 (3).
Dangerous Drugs Act 1959, ss. 11 (1) (2), (3), 12.
Dentists Act 1919, ss. 13 (3A), 20 (1A).
Entertainments Tax Act 1953, s. 23.
Firearms Act 1932, ss. 11 (1), 12.
Food and Drugs Act 1910, ss. 18, 41.
Homes (Acquisition of Land for Members of the Forces) Act 1946, s. 10 (1).
Influx of Criminals Prevention Act 1909, s. 4.
Police Offences Act 1935, s. 33 (1).

But the addition is sound insofar as it enlarges the discretion of the court.

Apart from the table of prison-fine correlates, one finds instances of the following maximum prison terms for non-indictable offences:

1 month	Debtors Act 1888, s. 5.
2 months	Police Regulation Act 1898, s. 36.
3 months	Conspiracy and Protection of Property Act 1889, s. 2 (5). Friendly Societies Act 1888, s. 22 (i). Indeterminate Sentences Act 1921, s. 16 (5). Inebriates Act 1885, s. 27. Inebriate Hospitals Act 1892, ss. 6, 8, 20. Police Regulation Act 1898, s. 33.
6 months	Child Welfare Act 1960, ss. 53 (4), 67 (1), (6). Debtors Act 1870, s. 3. Electoral Act 1907, s. 153. Police Offences Act 1935, ss. 5 (2), 6 (1), 7 (1), (2), 9, 39, 40 (1).
1 year	Companies Act 1962, s. 304 (4). Electoral Act 1907, ss. 150 (1), (2), (3), 152 (1). Inebriates Act 1885, s. 23. Influx of Criminals Prevention Act 1909, s. 8 — with provision for deportation at the end or a recognizance in the alternative. Police Offences Act 1935, s. 38.
2 years	Companies Act 1962, ss. 64 (10), 300, 301, 302. Police Offences Act 1935, s. 36 (1) — or trial by jury.

And the following are some of the maximum 'fine only' sentences in Tasmanian legislation:

5/-	Police Offences Act 1935, s. 31 (1).
10/-	Electoral Act 1907, s. 31A (2), (3). Police Offences Act 1935, s. 31 (1).

£1
Education Act 1932, s. 12.
Police Offences Act 1935, s. 18 (1).

£2
Conspiracy and Protection of Property Act 1889, s. 3 (3).
Dog Act 1934, s. 16 (1).
Electoral Act 1907, s. 31A (2), (3).
Factories, Shops and Offices Act 1958, s. 22 (4)
Fruit Board Act 1934, s. 14 (5).
Police Offences Act 1935, ss. 14, 15 (1), 16.

£5
Animals and Birds Protection Act 1928, s. 50.
Apiaries Act 1932, s. 8.
Apprentices Act 1942, s. 21 (1).
Cemeteries Act 1865, s. 38.
Coroners Act 1957, s. 49.
Crown Lands Act 1935, ss. 107, 110 (1).
Cruelty to Animals Prevention Act 1925, s. 5 (4).
Dog Act 1934, s. 16 (2).
Drainage Act 1934, s. 32 (2).
Education Act 1932, ss. 7 (5), 9A (2), 48 (1).
Factories, Shops and Offices Act 1958, s. 14 (1).
Fire Brigades Act 1945, s. 46 (6).
Food and Drugs Act 1910, s. 20.
Fruit Board Act 1934, s. 24 (1).
Impounding Act 1930, s. 38.
Police Offences Act 1935, ss. 17 (1), 19A (1), 22, 32(1), (2), 43 (1), 46 (1), 55A (1), 57 (3).
Police Regulation Act 1898, ss. 24, 31 (2), 37.

£10
Animals and Birds Protection Act 1932, s. 33.
Apprentices Act 1942, s. 23 (2).
Apprentices Regulations 1943, rr. 10 (3), 11, 12 (1)
Audit Act 1918, s. 35.
Botanical Gardens By-laws 1959, b. 13.
Cemeteries Act 1872, s. 4.
Companies Act 1962, s. 34.
Companies Regulations 1962, r. 28.
Coroners Act 1957, ss. 40, 47, 51 (2).
Crown Lands Act 1935, ss. 110 (3), 112, 113.
Debtors Act 1888, s. 5.
Defacement of Property Act 1898, s. 6.
Dental Regulations 1938, r. 25.
Dog Act 1934, s. 16 (3).
Drainage Act 1934, ss. 13, 34, 47.
Education Act 1932, s. 9A (1).
Electoral Act 1907, ss. 144 (2), 159 (1).
Factories, Shops and Offices Act 1958, ss. 27 (11), 28, 29, 40, 41 (1).
Flood Sufferers' Relief Act 1944, s. 11 (2).
Food and Drugs Act 1910, ss. 40, 56 (3).
Fruit Board Act 1934, ss. 13 (1), (5), 26A (2).
Fruit Board (Sale and Purchase of Fruit for Processing) Regulations 1961, r. 5 (2).
Fruit (Interstate Trade) Regulations 1950, rr. 16 (5), 18.
Fruit and Vegetables Act 1953, s. 6 (3).
Guest Houses Registration Regulations 1954, r. 15.
Hobart Bridge Regulations 1957, rr. 3, 4, 5, 11.
Hospitals Act 1918, s. 83.
Hydro-Electric Commission By-laws 1961, b. 27 (5).
Hydro-Electric Commission (Electrical Approvals) Regulations 1962, r. 22.
Inflammable Liquids Act 1929, s. 13 (2).
Inspection of Machinery Regulations 1954, r. 91.
Jury Act 1899, s. 59.
Land and Income Taxation Act 1910, s. 201.

Police Offences Act 1935, s. 43 (2), (3).
Police Offences (Contraceptives) Act 1941, s. 6.
Police Regulation Act 1898, ss. 30, 31 (1).

£20

Apprentices Act 1942, ss. 14 (3A), 21 (2), 26 (1).
Auctioneers and Estate Agents Act 1959, s. 24 (1).
Audit Act 1918, s. 40.
Boundary Fences Act 1908, s. 20 (1).
Building Societies Act 1876, s. 28.
Chaff Act 1920, s. 9.
Companies Act 1962, s. 283.
Companies Regulations 1962, rr. 14, 22, 23, 24.
Co-operative Industrial Societies Act 1928, s. 59.
Crown Lands Act 1935, ss. 59 (2), 110 (1).
Defacement of Property Act 1898, s. 9.
Dentists Act 1919, s. 20A.
Dog Act 1934, s. 16 (4).
Evidence Act 1910, ss. 16, 17.
Factories, Shops and Offices Act 1958, s. 56 (7).
Farmers' Debt Adjustment Act 1936, s. 58.
Fire Brigades Act 1945, ss. 59 (2), 62.
Food and Drugs Act 1910, ss. 42, 43.
Forestry Act 1920, s. 59 (2).
Forestry Regulations 1955, rr. 25 (5), 74 (2).
Friendly Societies Act 1888, s. 16 (b).
Guest Houses Registration Act 1937, s. 7 (1).
Hydro-Electric Commission Act 1944, s. 74.
Hydro-Electric Commission By-laws 1961, bb. 28, 29 (1).
Hydro-Electric Commission (Loans) By-laws 1954, b. 34.
Impounding Act 1930, ss. 25 (2), 35, 36, 37.
Inflammable Liquids Regulations 1960, r. 118.
Jury Act 1899, s. 51.
Land and Income Taxation Act 1910, ss. 192C (10), 192M (1), (3).
Police Offences Act 1935, ss. 11, 15 (6), 24A (1), 32 (3), 34 (1), 51, 53, 54.

£25

Child Welfare Act 1960, ss. 7 (6), 43 (3), 47 (7), (8), 55 (4), 57 (7), (8), 58 (1), (2), 59 (1), 60 (3), 62 (3), 64 (3), (4), (5), (6), 74 (1), (2).
Dairy Produce Act 1932, s. 33 (2).
Electoral Act 1907, ss. 157 (1), 158.
Entertainments Tax Act 1960, s. 24 (2).
Factories, Shops and Offices Act 1958, ss. 32 (3), (4), 39 (1), 64 (1).
Fire Brigades Act 1945, ss. 27 (2), 28 (3), 37 (4).
Friendly Societies Act 1888, s. 6 (2).
Inspection of Machinery Act 1960, ss. 16, 17, 25, 29, 32 (3), 48.
Police Offences Act 1935, s. 42 (1).
Police Offences (Contraceptives) Act 1941, s. 6.

£30

Flood Relief Act 1960, s. 21 (2).

£50

Aid to Mining Act 1927, s. 5F (3).
Ambulance Act 1959, s. 11 (2), (3).
Anzac Day Observance Act 1929, s. 3 (1), (2).
Apprentices Act 1942, ss. 13 (1), (2), 14 (4), 15 (4), 19A (1), 25.
Auctioneers and Estate Agents Act 1959, s. 6 (3).
Cash Orders Act 1947, s. 20.
Censorship of Films Act 1947, s. 23 (1).
Child Welfare Act 1960, ss. 25 (2A), 47 (6).
Coal Mining Industry Long Service Leave Act 1950, ss. 83, 92.
Companies Act 1962, s. 379 (2).
Contravention of Statutes Act 1889, s. 2.
Co-operative Industrial Societies Act 1928, s. 57.
Coroners Act 1957, s. 45.
Crown Lands Act 1935, s. 110 (1), (4).

Dairy Produce Act 1932, ss. 6 (1), 8 (2), (3), (5), 27, 29, 31.
Dairy Products Marketing Act 1957, s. 17 (3).
Dangerous Drugs Act 1959, s. 11 (4).
Deceased Persons Estates Duties Act 1931, s. 38 (3).
Drainage Act 1934, s. 16.
Electoral Act 1907, ss. 145 (1A), 146 (5), 154A (1), (2), 154B (1), (2), 156, 159 (4).
Entertainments Tax Act 1953, ss. 21, 22.
Entertainments Tax Regulations 1953, r. 7A (7).
Factories, Shops and Offices Act 1958, ss. 12, 24, 37 (3).
Food and Drugs Act 1910, s. 56 (4).
Footwear Act 1918, ss. 4, 5 (1).
Forestry Act 1920, ss. 36 (2), 41 (1), 45 (1).
Forestry Act 1954, s. 6 (4).
Friendly Societies Act 1888, s. 31 (*a*).
Hail Insurance Act 1957, ss. 10, 11.
Hobart Bridge Regulations 1957, r. 20.
Hospitals Act 1918, s. 72 (3).
Hospitals Act 1918-1960, ss. 65 (1), 67 (2), 70.
Hospitals Regulations 1942, r. 18.
Hydro-Electric Commission Act 1944, ss. 62 (2), 77.
Hydro-Electric Commission (Electrical Approvals) Regulations 1962, rr. 14, 24.
Impounding Act 1930, s. 25 (3).
Inflammable Liquids Act 1929, s. 13 (1).
Inspection of Machinery Act 1960, ss. 11, 24, 26, 27, 34, 39, 42.
Jury Act 1899, s. 65.
Land and Income Taxation Act 1910, ss. 167, 192M (4), 203.
Land Surveyors Act 1909, s. 14.
Police Offences Act 1935, ss. 26 (1), 41, 44A (1), 48.
Police Regulation Act 1898, s. 34.

£60 Fisheries Act 1959, ss. 41 (5), 42 (1), 44 (1), (2), 45.

£80 Inspection of Machinery Act 1960, ss. 28, 30.

£100 Administration and Probate Act 1935, 3rd schedule, cl. 1.
Animals and Birds Protection Act 1928, ss. 20 (1), 47.
Animals and Birds Protection Regulations 1953, r. 65.
Apprentices Act 1942, s. 22.
Auctioneers and Estate Agents Act 1959, ss. 13 (1), (2), 18, 19 (1), (2), 20 (1), 21 (1), 22, 25 (1), 45, 47 (1), 49 (1), (2), (3), 50 (2), 51 (5), 52 (1), (3), 54 (1).
Audit Act 1918, s. 37 (1).
Child Welfare Act 1960, s. 18 (1), (2).
Closer Settlement Act 1957, s. 15 (5).
Companies Act 1962, ss. 7, 9 (1), (5), 10 (1), 66, 74 (4), 104 (3), 141, 181 (8), 205, 260, 284, 301, 323.
Crown Lands Act 1935, s. 35 (1).
Dairy Produce Act 1932, s. 22 (3).
Dairy Products Marketing Act 1957, ss. 12 (6), 13 (4).
Deceased Persons Estates Duties Act 1931, s. 38 (2).
Dentists Act 1919, s. 13 (3A).
Egg Marketing Act 1957, s. 9.
Entertainments Tax Act 1953, ss. 7 (2), 28 (4).
Filled Milk Act 1960, s. 11 (2) (*b*).
Firearms Act 1932, s. 11 (2).
Forestry Act 1920, s. 42.
Forestry Act 1954, s. 5 (5).
Hail Insurance Act 1957, s. 3 (4).
Hobart Bridge Act 1956, s. 8 (1).
Hobart Bridge Act 1958, s. 16 (1).
Inspection of Machinery Act 1960, ss. 14, 23, 33, 35, 36, 38, 40, 49.
Jury Act 1899, s. 66.
Land and Income Taxation Act 1910, ss. 9 (4), 111 (4), 171 (*c*), 192M (2), (6), (7).

£150	Fisheries Act 1959, ss. 24 (1), (2), (3), (4), 46.
£200	Auctioneers and Estate Agents Act 1959, s. 28 (1). Companies Act 1962, s. 125. Cremation Act 1934, s. 5. Crown Lands Act 1935, s. 35 (2). Hire-Purchase Act 1959, s. 49. Police Offences Act 1935, s. 34 (1).
£250	Companies Act 1962, s. 42 (3).
£500	Companies Act 1962, ss. 27 (7), (8), 40 (4), 44 (7), 45 (2), 48 (8), 49, 50, 123 (9), 126 (9), 127, 128, 131, 143, 166, 179 (5), 182, 376. Constitution Act 1934, s. 35 (2). Dairy Products Marketing Act 1957, s. 10 (1). Deceased Persons Estates Duties Act 1931, s. 38 (1). Inflammable Liquids Act 1929, s. 13 (1A).
£1,000	Companies Act 1962, ss. 37, 38 (7), 39 (5), 41 (2).

As the Animals and Birds Protection legislation provides for minimum-maximum penalties for each item involved,[50] so does other legislation provide purely maximum fines for each item:

Censorship of Films Act 1947, s. 24 (£5 per exhibition).
Companies Act 1962, s. 146 (4) (£5 per copy).
Sea Fisheries Regulations 1962, r. 44 (10/- per crayfish, 2/6 per scallop).

Then there is provision for a fine together with a daily or default penalty of an equal amount for a continuing offence, *e.g.*—

£1 a day	Factories, Shops and Offices Act 1958, s. 22 (1).
£2 a day	Impounding Act 1930, s. 11. Land and Income Taxation Act 1910, s. 215 (*d*).
£5 a day	Building Societies Act 1876, s. 41 (1). Conspiracy and Protection of Property Act 1889, s. 3 (3). Co-operative Industrial Societies Act 1928, ss. 11, 15 (3). Factories, Shops and Offices Act 1958, s. 22 (2) Fire Brigades Act 1945, s. 46 (4). Hydro-Electric Commission Act 1944, s. 76. Land and Income Taxation Act 1910, s. 202.
£15 a day	Fisheries Act 1959, s. 41 (1), (3).

Again, the initial fine may be followed by a default penalty of a lesser amount:

£10 + £1 a day	Ladies' Hairdressers and Beauty Culturists Act 1939, ss. 3, 6, 8, 8A.
£10 + £2 a day	Billiard Tables Act 1915, s. 13 (2). Censorship of Films Act 1947, s. 28. Defacement of Property Act 1898, s. 2.
£20 + £2 a day	Guest Houses Registration Act 1937, s. 7 (2). Hydro-Electric Commission (Installation) By-laws 1954, b. 9.
£20 + £5 a day	Hydro-Electric Commission (Firearms) By-laws 1955, b. 6. Police Offences Act 1935, s. 15 (2).
£20 + £10 a day	Companies Act 1962, ss. 149, 153 (4), 164, 380.
£50 + £5 a day	Building Regulations 1950, r. 497. Forestry Act 1920, s. 36 (3). Inspection of Machinery Act 1960, s. 27.

50 *Supra* pp.

£50 + £10 a day	Companies Act 1962, ss. 21 (2), 23 (2), 27 (6), 29 (6), 36, 58, 59, 62 (5), 70 (8), 97, 99, 101, 102, 111, 112, 113 (3), 134, 135, 146 (3), 151, 152, 157, 167 (6), 186 (6), 191, 193, 194, 195, 230, 243 (4), 254, 272 (3), (7), 280, 281, 307 (2), 354 (3), 361, 369 (2), 377, 378, 380.
£50 + £20 a day	Hospitals Act 1918-1960, ss. 66, 70B.
£100 + £10 a day	Companies Act 1962, ss. 65 (5), 107 (4), 148, 158, 159, 160, 183 (4), 240 (6), 259 (4), 271, 272 (8), 353 (4), 380.
£100 + £50 a day	Auctioneers and Estate Agents Act 1959, s. 54 (2). Hospitals Act 1918-1960, s. 59.
£200 + £10 a day	Companies Act 1962, ss. 74 (14), 116 (3), 380.
£200 + £20 a day	Cremation Act 1934, s. 4 (4).
£200 + £50 a day	Auctioneers and Estate Agents Act 1959, ss. 13 (1), 25 (3), 28. Companies Act 1962, ss. 52, 54.
£500 + £10 a day	Companies Act 1962, ss. 40 (6), 126 (3), 234, 380.
£500 + £50 a day	Building Act 1937, s. 37A (4).
£1,000 + £100 a day	Companies Act 1962, s. 343.

The penalty in section 234 of the Companies Act 1962 is expressed as 'five hundred pounds or imprisonment for three months, or both, together with a default penalty'; so a person imprisoned could also be subjected to a daily penalty.

Some of these penalties are so calculated as to resemble licence fees rather than corrective sanctions. Thus too, the penalty for unlawfully administering a deceased person's estate[51] and for late payment of tax[52] is ten per centum of the duty or tax payable.

There is, again, a bewildering variety of provisions for compensation and restitution scattered throughout Tasmanian legislation. Most of them provide that restitution or damages to the victim may be ordered *in addition* to any penalty fixed, *e.g.*—

Apprentices Act 1942, s. 26 (4).
Building Societies Act 1876, s. 28.
Cemeteries Act 1865, s. 38.
Child Welfare Act 1960, s. 68 (2).
Debtors Act 1888, s. 5.
Dog Act 1934, s. 8 (4).
Fisheries Act 1959, s. 23 (2).
Forestry Act 1920, ss. 43, 45 (1), 48 (1) (*a*).
Inebriate Hospitals Act 1892, s. 17.
Inflammable Liquids Act 1929, s. 13 (4) (*b*).
Land and Income Taxation Act 1910, s. 192C (5).
Police Offences Act 1935, ss. 46 (3), 63.
Police Regulation Act 1898, s. 36.

The provision in section 5 of the Debtors Act 1888 and in section 43 (3) of the Police Offences Act 1935, however, is that restitution up to £10 shall be recoverable *as part* of the penalty of £10. Section 68 (2) of the

51 Deceased Persons Estates Duties Act 1931, ss. 8, 38 (5).
52 Entertainments Tax Act 1953, s. 9.

Child Welfare Act 1960 also sets an upper limit to the compensation that may be ordered by the convicting court—in this case £100; and provides that the award, though not a bar to subsequent civil proceedings, is to be taken into account in any such later proceedings. The Police Offences Act 1935, section 63 (3) provides that where an assault charged is not proved, or is found to have been justified or trifling, the court may dismiss the complaint and give the defendant a certificate of dismissal to bar any civil proceedings.

Sometimes it appears that criminal proceedings are preferred in order the more effectively to prosecute a civil claim. This is the position with taxing statutes, such as the Entertainments Tax Act 1953, section 22, which may lead to an order for payment both of penalty and tax due: this is a case in which both debt and fine go into the one fund, consolidated revenue.[53] Sometimes the whole or part of the penalty is allocated to the local authority or private agency administering or enforcing the law in point, *e.g.*:

Cemeteries Act 1870, s. 5
Cemeteries Act 1872, s. 6
Cemeteries Act 1880, s. 1 (1)
—to the cemetery trustees.

Cruelty to Animals Prevention Act 1925, s. 13—to the Royal Society for the Prevention of Cruelty to Animals.

Dog Act 1934, s. 17—to the municipality.

Fisheries Act 1959, s. 69—half to the Sea Fisheries Development Account and half to the Inland Fisheries Commission.

Hydro-Electric Commission Act 1944, ss. 62, 63—to the Hydro-Electric Commission.

Land Surveyors Act 1909, s. 22 (3)—to the Surveyors Board.

Sometimes the penalty goes as a reward to the informant, *e.g.*:

Constitution Act 1934, s. 35 (2).

Dog Act 1934, s. 15.

Friendly Societies Act 1888, s. 31.

The influx of Criminals Prevention Act 1909, s. 12, provides that up to half may go to the informer, and the balance to the Police Provident Fund. By section 50 of the Inspection of Machinery Act 1960, up to half the fine may go to compensate the victim. The Dog Act 1934 provides for payment by a municipal council of a default penalty of £20 a week plus costs to a legitimately complaining ratepayer. The provision in section 182 of the Common Law Procedure Act 1854 for payment by a defaulting tenant of three years' penalty rent to the landlord is perhaps more a reflection of the importance of property in a past age than either a compensation or a reward.

When a felon's property was automatically and altogether forfeit to the Crown, the Crown took its criminal proceedings before the victim was permitted to take his civil proceedings arising out of the same matter, and the law still requires this precedence in respect of serious crimes.

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53 S. 33. Like provisions appear in the Land and Income Taxation Act 1910, ss. 111 (4), 227.

Such forfeiture as still may be ordered is more in the nature of an abatement of nuisance, *e.g.*:

Animals and Birds Protection Act 1928, ss. 30, 31, 34-36.
Censorship of Films Act 1947, s. 23 (2).
Crown Lands Act 1935, ss. 13, 72-76.
Dangerous Drugs Act 1959, s. 18.
Dentists Act 1919, s. 20 (4A).
Firearms Act 1932, s. 14 (3).
Fisheries Act 1959, ss. 57-66A.
Food and Drugs Act 1910, s. 44.
Forestry Act 1920, ss. 53-55.
Hydro-Electric Commission Act 1944, s. 63 (3).
Inflammable Liquids Act 1929, ss. 12 (1), 13 (3).
Influx of Criminals Prevention Act 1909, s. 11.
Police Offences Act 1935, ss. 4 (3), 7 (4), 23, 29 (2), 34A, 40 (2), 69.
Police Offences (Contraceptives) Act 1941, s. 5.

Now that private claims are not automatically excluded, there is something to be said for requiring every interested person to join in the Crown's indictment or information, so that all issues may be resolved at the one hearing, thus avoiding duplication of evidence and other expensive legal process, and at the same time balancing the correctional needs of the offender and the civil claims against him. For the specialization of courts into criminal and civil may do a disservice to the victim, the offender or both. The court hearing a combination of issues would be fulfilling a dual role. There would be no limits upon restitution, such as are contemplated by the Child Welfare Act 1960, section 68 (2), and the Police Offences Act 1935, section 43 (3). Nor would conviction be a condition precedent to satisfaction of the civil claim, as is required currently by sections 405 and 424 of the Criminal Code Act 1924. Because of the lesser burden of proof required in a civil action, it would be possible to order restitution or damages even after an acquittal of the criminal charge, as is contemplated by the Crimes Act 1958, s. 441 (Vic.).

Some small attempt has been made to integrate penalty provisions into general sections covering a division or part of an Act, or the whole Act, or to supply residual provisions for the whole statute book, *e.g.*:

Acts Interpretation Act 1931, ss. 32-38.
Companies Act 1962, ss. 379 (2), 380.
Companies Regulations 1962, r. 28.
Contravention of Statutes Act 1889, s. 2 (which provides a maximum fine of £50 for offences triable summarily for which no other penalty has been fixed, such as, presumably, the offences detailed in the Dangerous Drugs Regulations 1961 and the Food and Drugs Regulations 1941).
Crown Remedies Act 1891.
Dairy Produce Act 1932, s. 33 (2).
Debtors Acts 1870 and 1888.
Egg Marketing Act 1957, s. 9.
Entertainments Tax Act 1953, s. 24 (2).
Forestry Act 1920, s. 48 (1) (a).
Forestry Regulations 1955, r. 74 (2).
Guest Houses Registration Regulations 1954, r. 15.
Hire-Purchase Act 1959, s. 49.
Hobart Bridge Regulations 1957, r. 20.
Hospitals Regulations 1942, r. 18.
Hydro-Electric Commission Act 1944, s. 77.

Hydro-Electric Commission (Electrical Approvals) Regulations 1962, r. 24—the same penalty being set out no less than five times in r. 14.
Hydro-Electric Commission (Installation) By-laws 1954, b. 9.
Hydro-Electric Commission (Loans) By-laws 1954, b. 34.
Impounding Act 1930, s. 38.
Inflammable Liquids Regulations 1960, r. 118.
Inspection of Machinery Regulations 1954, r. 91.
Justices Rules 1961, rr. 46, 47.
Land and Income Taxation Act 1910, s. 201.

By and large, however, the question of sentence has patently been a mere afterthought.

The overwhelming impressions left by this exploratory glance at legislative sentencing are impressions of moralistic pusillanimity and of an endless redundancy of identical and simple sentencing concepts. Thus the words 'If default is made in complying with this section the company, and each officer of the company who is in default, is guilty of an offence against this Act. Penalty: . . .', or words to a like effect, appear eighty or more times in the Companies Act 1962, and up to as many as three times within the one section. One hastens to say that good explanations for the variations can be found in history (*e.g.*, inflation) and subject matter (*e.g.*, likely class of offender). *But it would be desirable to rationalize this sentencing chaos by describing two classes of offence triable summarily*:

(1) *Violations*, with a maximum fine of £50 or double the pecuniary benefit sought to be obtained by the violation;

(2) *Offences*, with a maximum sentence of £500 (or double the pecuniary benefit anticipated from the offence) and/or three months' to two years' prison, probation or parole.

In each case there might be a periodic default penalty or an item penalty of up to ten per centum of the maximum fine. The proposal for increasing the maximum permissible fine to double the illicit pecuniary gain has been made in the draft Model Penal Code, but also has various precedents in existing Tasmanian legislation, *e.g.*:

Coal Mining Industry Long Service Leave Act 1950, s. 10 (1).
Crown Lands Act 1935, ss. 33, 82.
Entertainments Tax Act 1953, ss. 10 (2), 13 (2).
Land and Income Taxation Act 1910, ss. 196, 198.

Then all those instances in which the Governor is empowered to make regulations or orders fixing penalties might be unified into a general power to declare violations. The following are some of the varieties of power afforded the Governor to fix penalties by existing statutes:

£10 + £1 a day	Censorship of Films Act 1947, s. 34 (*e*).
£10 + £2 a day	Acts Interpretation Act 1931, s. 47 (1) (*d*).
£20	Coal Mining Industry Long Service Leave Act 1950, s. 12 (3). Companies Act 1962, s. 384 (1) (*i*). Dentists Act 1919, s. 48 (2).
£20 or £2 a day	Food and Drugs Act 1910, s. 60 (1) (*p*).
£25	Crown Lands Act 1935, s. 127 (1) (*h*).

£25 + £5 a day	Building Act 1960, s. 60 (2).
£30	Flood Relief Act 1960, s. 22.
£50	Cremation Act 1934, s. 6 (i). Entertainments Tax Act 1953, s. 34 (2) (*c*). Footwear Act 1918, s. 16 (*f*). Forestry Act 1920, ss. 59A (2), 60 (2). Fruit and Vegetables Act 1953, s. 12 (2) (*f*). Hobart Bridge Act 1956, s. 10 (2) (*k*). Hobart Bridge Act 1958, s. 18 (2) (*j*). Hospitals Act 1918-1960, s. 70F (2). Hydro-Electric Commission Act 1959, s. 62 (*b*). Inflammable Liquids Act 1929, s. 16 (2).
£50 + £5 a day	Building Act 1960, s. 59 (4).
£100 (by default, item and minimum penalties of £5)	Animals and Birds Protection Act 1928, ss. 18 (1) (*zc*), 18A (1) (*d*).
£150 or £15 per day or per item	Fisheries Act 1959, ss. 9 (1) (*y*), 36 (1) (*p*), 37 (1) (*f*).

The Governor has in fact fixed fines of £10 in the Fruit Board (Sale and Purchase of Fruit for Processing) Regulations 1961, regulation 5 (2), the Fruit (Interstate Trade) Regulations 1950, regulations 16 (5) and 18, and the Guest Houses Registration Regulations 1954, regulation 15; but there is no apparent express authority for his having done so. Private clubs may, of course, fine and otherwise discipline members according to their constitutions, without reference to legislation. But it is possibly desirable that those bodies which acquire statutory recognition should share disciplinary power uniformly with the Governor, or with each other. At present, by section 32 of the Friendly Societies Act 1888, a registered society or branch may make rules imposing penalties up to £10; the Hydro-Electric Commission Act 1944, section 63, empowers the Hydro-Electric Commission, with the approval of the Governor, to make by-laws imposing penalties up to £20 plus £5 a day; and by section 24 (2) of the Land Surveyors Act 1909 the Surveyors Board may make by-laws imposing a penalty up to £20.