Although a backlog of 'unactioned reports' of law reform committees did develop, it has apparently been reduced, particularly in recent times. Summarising the 'tally', Professor Orr, who was for a time the Secretary for Justice of New Zealand, gives the following table:

Total NZ reports 1967-80	92
No change recommended	21
	—
	71
	—
Number implemented	40
Bills prepared for implementation	9
No action to date	22

Professor Orr agrees that the 'lack of adequate research personnel' is a long-standing complaint about the present part-time committees. So too are the irregular meetings, poor remuneration and limited public consultation. On the other hand, significant achievements have been made. It is plain that Professor Orr is not much in sympathy with the proposal of Professor D.L. Mathieson [1978] NZLJ 442, that a single full-time Commissioner with the status of a High Court judge, with a deputy and a small full-time research staff should be appointed. Nor does he favour the 'emasculation' of the role of the Department of Justice, fearing 'a likely consequence' to be rivalry between the two bodies ... in the promotion of law reform proposals.

> The proposal failed to appreciate that a principal reason for our achievement in law reform has been the close and continuous involvement of the Justice Department in all phases of the law reform process. Any suggestion that the Department has not actively promoted the implementation of Standing Committee reports, where these proved acceptable to government, is in my experience quite unfounded. The record can speak for itself.

Instead of setting up a New Zealand Commission, Professor Orr urges the appointment of a suitably qualified person as head of the Law Reform Division of the Ministry to assume responsibility for developing and co-ordinating the law reform programme of the part-time committees. Establishment of a law reform commission would not, in this view, result in more or better legislation. On the contrary, there is a danger, according to Professor Orr, that the pace of reform would diminish.

prisons, sentencing and crime

> As he went through Cold-Bath Fields he saw a solitary cell
> And the devil was pleased, for it gave him a hint
> For improving his prisons in Hell
>
> S.T. Coleridge, *The Devil's Thoughts*, c.1804

sentencing report. Crime and punishment continue to attract scholarly and popular comment. The release of the ALRC Interim Report, *Sentencing of Federal Offenders* has sparked off a continuing and sometimes heated national debate. The focus of *The Sydney Morning Herald* editorial (16 September 1980) was the unique survey of judges and magistrates throughout Australia engaged in sentencing. The editor's concerns were consistency, parole and victim compensation. The editor of *The Australian* (16 September 1980) picked up alternatives to prison as a chief theme:

> The need for thorough reassessment of legal methods of punishment in modern society has been apparent for some time. The report by the Australian Law Reform Commission underlines the urgency of the need. ... The findings of a survey of judges and magistrates ... clearly indicates the amount of uneasiness in the minds of those charged with administering the law. ... State and Federal Governments should follow through with action on the report and not let it become just another interesting volume of comment and statistics gathering dust in Public Service pigeonholes. The expense of keeping a person in jail — estimated by the Commission at more than $20,000 a year, when social security payments to the families are taken into account — is reason enough for the taxpayer to back government action, but the social aspects are every more important than the financial. It is patently a waste of lives — and of the human spirit — to lock people up. Often, there can be no alternative. But there are many more alternatives than the system at present provides.

Other themes are taken up in Sydney by the editor of *The Sun* (15 September 1980).

> One system is made for a national Sentencing Council made up of judges and other experts and community representatives to give judges sentencing guidelines and to promote greater consistency

> in court-imposed punishments. Widely differing sentences for similar crimes have been a particular source of public bewilderment. The federal parole system is condemned in terms that could equally apply to that of New South Wales.

Another point taken up from the ALRC report was the subject of crime victim compensation. A seminar by the University of Sydney's Institute of Criminology in mid September focused attention on comparative Australian and British money compensation schemes. Whereas in the United Kingdom no ceiling is provided for money compensation, in Australia maximum crime victim compensation recoverable ranges from $5,000 in some States to $10,000 in N.S.W., the highest award possible. Picking up the themes of this seminar, *The Sydney Morning Herald* described the present arrangements for compensating the victims of crime as suffering:

> confusion too great and the inequalities too glaring for the calls for reform in this area to be dismissed lightly.

The need to resort to ex gratia payment when media pressure called attention to unfair compensation provisions was drawn to notice, and a survey of criminal injury compensation claims in Australia, as suggested to the NSW seminar, was urged, to establish 'whether it is really cost or simple inertia that is the cause of a continuing injustice'. Other relevant developments include:

- Announcement of the expansion of the ACT Parole Board from three to five. The Minister for the Capital Territory, R.J. Ellicott, said that this decision was not to be taken as an indication of the government's attitude to the Interim Report of the Law Reform Commission with its criticisms of delays under present federal parole systems.
- Plea bargaining as illustrated in the ALRC report drew media attention. And discretionary law enforcement also drew an editorial comment in the (1980) 4 *Criminal Law Journal* 262:

> The vice of the principle of differential enforcement of criminal law is the effect that it may have on the public confidence in the administration of criminal justice and the suspicion that may arise that certain types of offenders are dealt with with velvet gloves and other more pedestrian offenders are more rigorously prosecuted.

state moves. Quite apart from the ALRC report, other moves in recent weeks deserve note:

- At the WA Magistrates' Conference in September 1980, Professor Richard Harding (Uni. of WA) called on the judicial survey in the ALRC report to show that only 2% of the judiciary and magistracy of Australia believed that the criminal justice system was effective 'as a means of rehabilitation'. Harding urged a realistic approach to rehabilitation but said that this was not inconsistent with 'individualisation' of sentencing. Harsher sentences (and particularly mandatory sentences) created, he said, as many problems as they solved, particularly with pressures on discretion, moves to the executive level, judicial circumvention, jury reaction and plea bargaining.
- In Victoria, the State Attorney-General, Mr. Storey, announced on 21 November 1980, the conclusions of the review of Victoria's crime penalties. Explaining the Penalties and Sentences Bill 1980, Mr. Storey said that its intent was to:
  - provide community service as an alternative to imprisonment;
  - increase fine levels;
  - introduce 'penalty units', a 'pioneering concept' to replace fines fixed in dollar amounts;
  - abolish corporal punishment including whipping, last used in Victoria in 1958 but still on the statute books;
  - equalise reduction of fine penalties secured by confinement to prison.

the prison saga. In several Australian jurisdictions, and beyond, the crisis of the prisons continued to blight the criminal justice scene:

- In South Australia, the Royal Commission into South Australian prisons has been established under the Hon. G.D. Clarkson Q.C., a former Supreme Court judge of Papua New Guinea. The Royal Commission follows claims in the Adelaide media of 'graft, corruption, mismanagement and maltreatment' of prisoners at the Yattala Labour Prison in South Australia. It has five main terms of reference, including the investigation of allegations of graft, corruption and assault. 'There is little doubt', comments *The Advertiser* in Adelaide (27 November 1980) 'that all is not well in this State's prison system. That is virtually acknowledged by the government's decision to respond to the long series of complaints that have been made by appointing various inquiries'. Opening an International Prisoners' Aid Conference, the South Australian Governor, Rev. Keith Seaman, spoke of the differences among prison staff on the philosophy of imprisonment. According to *The Advertiser* 'these are difficult and controversial matters on which prison officers are entitled to expect some clearer guidance'. But one Lecturer in Criminology at the University of Adelaide, Dr. Allan P. Perry, is reported to have claimed that the Commission's terms of reference look only at the symptoms of the problem and not at the 'outdated archaic 19th century' system of prisons as operated in the State. Dr. Perry pointed out that 7 years had passed since the recommendations for reform had been made by the SACLRC under the chairmanship of Justice Roma Mitchell, yet there had been no significant action.

- In the Australian Capital Territory, calls have gone out for the establishment of a local prison to end the 'transportation' by which Capital Territory prisoners are 'exported' into the 'continuing crises of the NSW prison system'. Urging the adoption of a proposal contained in an ALRC discussion paper that 'the Commonwealth should accept its responsibility to provide humane and just condition for imprisonment for the few ACT offenders'. *The Canberra Times* (31 October 1980) asked:

  > Have we forgotten so soon the horrifying report of Mr. Justice Nagle into the workings of the Department of Corrective Services in New South Wales tabled in 1978?

- The disruption of NSW jails goes on, complicated by a prison officers' strike arising from the government's decision to charge certain prison officers with offences, as recommended by the Nagle Royal Commission. Prisoners were locked in their cells for a week and nothing occurred that did credit to the prison services.

Meanwhile, among the judiciary, calls for reform have gone out. Mr. Justice Cantor in the NSW Supreme Court, said that judges should have a discretion of imposing a lesser sentence in cases of murder and should not be fixed with the obligation to impose only penal servitude for life.

> The time may be approaching — if it has not yet arrived — for consideration to be given to restricting the occasion when a mandatory life sentence must be imposed following a conviction for homicide and for widening the circumstances in which the sentencing judge is given discretion to impose some lesser penalty.

The judge's comments were picked up by the editor of *The Sydney Morning Herald* (23 October 1980) who, referring to the celebrated case of Mrs. Violet Roberts, concluded:

> What is wanted is sufficient flexibility in sentencing options to cover the great variety of homicides. This flexibility would allow judges to set stiffer sentences for some manslaughters than some murderers when the facts of the case justify this.

v l r c 'necessity' report. Equally controversial is the ninth report of the Victorian Law Reform Commission (Sir John Minogue). Issued in mid October, the report deals with three difficult and controversial areas of the criminal law, namely the defences of duress,

coercion and a new suggested defence of 'necessity'. The VLRC has recommended:

- that there be a general criminal defence of necessity based upon justification in choosing between two evils;
- that there be a qualified defence available to persons who commit criminal offences under compulsion; and
- that having regard to the scope of the defence of 'compulsion', the statutory defence of coercion should be repealed.

The report drew some editorial comment. In Melbourne *The Herald* (16 October 1980) urged that reforms in this area must be extremely cautious:

> Although many kinds of crimes come within the 'necessity' problem, the horror of killing is the one that comes first to the minds of most people. Such issues as 'mercy killing', for example, are now discussed more often than ever before. It is in such areas that Sir John's opinion, that 'necessity' should be accepted in only the most extreme urgent and rare circumstances, will have most force.

emptying english prisons. When Mr. Justice Nagle spoke of the New South Wales prison system, he called it 'a regime which has now been revealed in all its horror and brutality'. He referred to 'brutal, savage and sometimes sadistic physical violence' and to 'illegal assaults'. Yet the statewide strike by prison officers when the government authorised prosecution of two prison officers by Mr. Justice Nagle, is not a problem confined to Australia. Nor are disputes about judicial sentencing local problems. Both of these have surfaced in Britain in the last quarter as topics of lively comment. As in Australia, prison officers went on strike causing what, in London, *The Times* called the 'emergency in the prisons'. Emergency legislation, the Imprisonment (Temporary Provisions) Act, was rushed through parliament. Its provisions:

- empowered Army personnel to perform certain prison guard duties;
- empowered the Home Secretary (Mr. Whitelaw) to reduce the numbers in prison. Ironically, as *The Times* pointed out, some of the measures in the Bill 'have long been urged by penal reformers'. They include:
  - restrictions on imprisoning fine and maintenance defaulters;
  - reducing the length of sentences;
  - releasing prisoners nearing the end of their term of imprisonment;
  - provisions amounting to 'executive bail' of prisoners remanded or committed for trial in custody.

One provision, however, elicited the Thunderer's wrath, namely the provision empowering magistrates to further remand a prisoner in custody in his absence:

> It is essential that the safeguard of being represented should be incorporated in the emergency bill. How else could a court be apprised of those matters which the accused wishes to bring before it? If he cannot do that, there is no point in calling his name every week only for him to be further remanded in custody.

The Economist also offered some advice, 'how to empty cells' (1 November 1980). In times gone by transportation to Botany Bay was used. Now it was suggested a new approach should be taken. The emergency legislation might lead to:

> permanent steps towards reducing the quite excessive numbers of convicted prisoners behind bars. Most of these prisoners are serving longer sentences than their offences would draw elsewhere.

Citing Howard League figures on convicted prisoners behind bars per 100,000 of the population in late 1979-80, *The Economist* presented the following comparative figures:

Britain	80
W. Germany	67
France	39
Ireland	32
Italy	22
Holland	13

It is instructive to compare these rates with Australian figures which, on average, are closer to Britain than to other West European countries. In WA and NT they are in fact much higher, as shown in the ALRC report, *Sentencing of Federal Offenders* (ALRC 15).

unequal punishment. On inconsistency in judicial sentencing, England has been thrown into uproar by apparent discrepancies in sentences passed in two recent cases. In one case, two sisters had admitted killing their drunken father, who had subjected them to cruelty and horror, each received a prison sentence of three years. In the other case, involving another judge, a motorist with a previous drinking/driving conviction who killed two young sisters during a drunken car race down a country lane, received a prison sentence of three months. The public outcry at the perceived unfairness of these sentences was noisy. *The Times* (19 November 1980) conceded that it was often difficult, without knowing all the background circumstances of the offence and the offender, to pass judgment on the sentence of the court. Furthermore, judges and magistrates vary. But:

> Public support for the system of criminal justice is determined partly by the degree of confidence that people have in the sentencing policies of the courts. The public is prepared to accept variations caused by individual opinions ... but there is a limit beyond which sentences will seem to be perverse. If too many such cases come to the public's notice, confidence in the courts and in the system generally will be seriously eroded. ... Upside down sentencing priorities can bring only discredit on the judiciary.

Strong language from New Printing House Square. But until structural changes are adopted providing assistance and guidelines to the judiciary, discrepancy is almost institutionally guaranteed. An English blow for ALRC 15?

From the Australian Institute of Criminology come two interesting papers. The first, by the Director, Mr. William Clifford, explores alternatives to the criminal court system. It was presented to the Western Australian Conference of Stipendiary Magistrates on 1 October 1980. Mr. Clifford cautions about proposals to circumvent the criminal justice system or to divert offenders. He suggests that we should be exploring alternatives but not as substitutes 'for a fair, impartial and qualified hearing'. He mentioned one London magistrate who sat for an hour before official courts opened to hear applications from anyone with a grievance. Mr. Clifford claimed that he had seen 'more public and individual good done in the pre-court hearings than I have ever seen in the formal hearings'.

Mr. David Biles, the Assistant Director (Research) of the AIC, in an interesting paper, 'Culture and the Use of Imprisonment', explores the widely differential rate of imprisonment in different cultures, a matter explored above. Examining the data of 50 States of America and the Provinces and States of Canada and Australia, Mr. Biles concluded that 'for all three Federations there was no support for the proposition that high imprisonment rates are associated with low crime rates. The consistent pattern was that for both serious and violent crime and for total crime, the correlations with imprisonment rates were all positive but not always statistically significantly so. Conceding that more research was necessary, Mr. Biles concludes that 'there is no evidence to suggest social benefit or increased public safety from the imprisonment of large proportions of offenders'.

criminal types? And now some exotic concluding points:

- A link between aggression and bodily chemistry in psychopaths is claimed to be discovered at the Broadmoor Special Hospital. The scientists involved in the tests suggest that studies on aggressive social behaviour suggest that physical punishment by parents' discipline is 'allied to aggression outside the home'. *New Society,* 1 September 1980.
- A seminar in London studying psychology and the law has been told that witnesses may pick out from identification parades the person who most resembles their idea of 'what the criminal should look like'. Law enforcement authorities were urged to be more aware of the factors which influence memory and identification. *The Times,* 17 November 1980. These are issues under study in the ALRC evidence project (see above p.2).
- The Northern Territory has almost

three times the national murder average in Australia and the second highest incidence of rape after South Australia, according to the Institute of Criminology. But the Institute cautions that the South Australian rape figures could be the highest only because of the assistance being given to victims of rape at special centres. In other States, women might be less ready to report rape. Rape law reform has now been foreshadowed in New South Wales, including a controversial provision relating to rape within marriage.

mental health reform and i y d p

We are all born mad. Some remain so
Samuel Beckett, *Waiting for Godot,* 1952.

a second wave? The prospect of a 'second wave' of mental health law reform was raised by a number of speakers during the past quarter, on the eve of the International Year of the Disabled Person (IYDP).

Opening the 1980 Congress of the Royal Australian & New Zealand College of Psychiatrists in Sydney on 13 October 1980, the Governor-General, Sir Zelman Cowen, cited the College's recent report, *'Discrimination Against the Mentally Ill'.* The report revealed that a 1979 study suggested that one in every four contacts with general practitioners in Australia was for emotional rather than physical illness. The growth in post-war society both of stresses and tensions and of a more organised approach to psychiatry has taken those specialists outside the walls of mental hospitals to practise 'predominantly in the general community and with a substantial influence on a broad spectrum of community activities and with access to many effective treatments'. Among achievements listed by Sir Zelman were improved drug treatment for psychiatric disorders which has 'sharply decreased the numbers of severely ill patients in mental hospitals'. Specifically, Sir Zelman asked whether there were enough psychiatric services available with 'special and relevant understanding and capacities' for racial and ethnic minorities, including Asian migrants and Aboriginals.

A Perth businessman, who was forcibly injected with drugs and given shock treatment at a hospital six years ago, failed in a Supreme Court action against the State of Western Australia. Mr. Justice Jones said that the plaintiff had been sent to hospital by a magistrate for assessment. At the hospital he had been dealt with in accordance with legally permissible treatment. The patient was unrequited. He urged reform of the law, including the requirement that more than one psychiatrist should be needed to diagnose mental illness and to submit a person to compulsory shock treatment, such as he suffered, wrongly as he claimed.

To similar point was a letter to *The Age* (12 September 1980) by the President of the Psychiatrists' Association of Victoria, calling for reform of the Victorian Mental Health Act 1959. Among anomalies listed were:

- inappropriate grouping together of intellectually handicapped and emotionally disturbed patients;
- automatic freezing of the financial affairs of involuntary patients;
- vague and unqualified reference to 'mental illness' as a ground for involuntary admission.

In Britain, a report in *The Times* (27 November 1980) records that a doctor has claimed that mental patients have had portions of their brain removed for research purposes, without their consent.

reform directions. At the end of September 1980, the ALRC Chairman delivered the 20th Barton Pope Lecture in Adelaide for the South Australian Association for Mental Health. Among areas of mental health law needing reform were identified:

- clearer specification for grounds of involuntary commitment to a mental hospital;
- compulsory provision for free repre-