

SENTENCING FOR "LIFE" IN NEW SOUTH WALES

[Research in Progress - The Judicial System]

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INTRODUCTION

The years 1989 and 1990 marked significant legislative changes in the sentencing of offenders in New South Wales. Notably the passage of the *Sentencing Act*, 1989 and shortly after the *Crimes (Life Sentences) Amendment Act*, 1989 heralded the then Coalition Government's stated commitment to "truth in sentencing". Although reform of the meaning and effect of "life sentences" had been touted by the Coalition parties prior to their election to office in March, 1988, it was not until the Crimes (Life Sentences) Amendment Bill was tabled before the Parliament that the real proposal was revealed. The new s.19A *Crimes Act*, 1990 created the punishment of penal servitude for the term of an offender's natural life (s.19A(2)) as the maximum sentence for the crime of murder. The imposition of this sentence has the effect of denying to the convicted murderer any prospect of parole and release back into the community, save for the exercise of the prerogative of mercy by the Governor.

After s.19A commenced operation it remained to be seen in what cases the natural life sentence would be imposed, as at the same time the new provision allowed sentencing judges a wide discretion, not previously available, for imposing determinate sentences on persons convicted of murder. There was no initial legislative guidance as to the circumstances in which it would be appropriate to impose a "natural life" sentence. The second reading speech of the Attorney-General contained reference to the "very worst and most serious and heinous examples of this crime" but did not provide a specific prescription that these were the cases, if they could be clearly identified in these general terms, in which a "natural life" sentence should be imposed. There was no detailed legislative criteria as to the particular features of a crime of murder that should lead to the imposition of the maximum sentence. This was a matter then, and one of the utmost significance, left entirely to the discretion of the judiciary.

Although always having a strong interest in sentencing issues in the criminal justice system, the significance of this "reform" did not become particularly apparent to me until my work as an instructing solicitor to the Crown in Supreme Court murder trials resulted in me becoming involved in the case of *R v Malcolm George Baker* (unreported, SCNSW, 6 August, 1993, Newman J). This case received the label, "The Central Coast Massacre". It involved six shooting murders and one attempted murder in the space of about one hour at three locations on the NSW Central Coast in October, 1992. Baker pleaded guilty to the six murder charges and I was present at the bar table in the Supreme Court at Newcastle on 6 August 1993 when Justice Peter Newman uttered the words:

"In relation to each of the crimes of murder ... I sentence the prisoner to
penal servitude for life."

I will never forget the scene in the courtroom, packed to capacity, as all the members of the public gallery rose as one, screaming and shouting their unanimous approval of his Honour's sentence. This had an enormous impact on me as it seemed that the prisoner himself, sitting alone in the caged dock, and the future he faced incarcerated for the term of his natural life, were forgotten in the slipstream of celebration by members of the families of the various victims that followed the sentencing. From some perspectives this behaviour was at least understandable, however, to me it also demonstrated a dark side to human nature and the powerful forces that allowed exacting extreme retribution against one human being to be a source of satisfaction and enjoyment for other human beings.

The genesis of my research can, therefore, be found in my professional association with this case. Also there were another two cases within a relatively short time period where a "natural life" sentence was imposed. These were the cases of *R v Andrew Peter Garforth* (unreported, SCNSW, 9 July, 1993, Newman J) and *R v Maxwell Harold Trotter* (unreported, SCNSW, 10 August 1993, Hunt CJ at CL).

This one month period in the middle of 1993 saw three "natural life" sentences imposed in quick succession, and with intense media coverage of these cases, my interest in the sentencing methodology involved in the imposition of this sentence continued to grow. Further cases in 1994, 1995 and 1996 added fuel to this desire to inquire into the legal matrix behind the imposition of the sentence of penal servitude for life in murder cases.

THE RESEARCH IN PROGRESS

My research thesis in this area was then formulated and I formally commenced post-graduate research under the supervision of Professor Neil Rees at the University of Newcastle in July, 1996. It was decided that the core of my research would be restricted to cases decided between January 1990 and January 1997. In that time there were 11 sentences of penal servitude for life imposed on convicted murderers by judges of the NSW Supreme Court. Since that time there have been a further three such sentences handed out, namely cousins Brendan Fernando and Vester Fernando (unreported, SCNSW, 21 August 1997, Abadee J) and Earl Heatley (unreported, SCNSW, 27 February 1998, McInerney J), which have not been the subject of specific analysis.

Necessarily my research also involves comparative analysis between those eleven who have received "natural life" sentences and the ten people who have received the longest determinate sentences for murder in the same seven year period. The case analyses were always intended to be the focus of the research and specific research questions were formulated with that in mind.

The important research questions are stated to be:-

- Are there essential criteria common to every case attracting the ultimate punishment of penal servitude for life? If so, are judges taking into account all the relevant criteria ?

- Are the legal approaches of the sentencing judges in the cases under direct analysis based on, and adequately reflect sound legal principles of sentencing?
- Why do some murderers deserve "life", and others the certainty of a determinate sentence? Is there a clear dividing line in relation to criteria or relevant considerations that set apart the "top ten" lengthy determinate sentence cases from those attracting the maximum natural life sentence?
- Overall, can a certain methodology for sentencing under s.19A *Crimes Act* be identified and clearly stated for future application?
- In light of specific case analyses, should the life sentence be a sentencing option at all for judges in the "enlightened" society in which we live today?
- If it remains as a sentencing option, should there be a legislative provision or provisions imposing constraints on its use, perhaps including review of the sentence after a determinate period, or should it remain an option for use entirely within the discretion of the individual sentencing judge?

A number of important issues are raised from these questions including the link to the consideration of the "rights" or "legitimate expectations" of the individual competing with the expectations of the community.

Initially I researched the historical changes and reforms to legislation and sentencing policy in relation to the penalty for murder in NSW. The death penalty was effectively abolished in 1955 (the last vestiges disappearing from the statute books in 1985) and the last execution was that of John Kelly in 1939. The mandatory life sentence then operated as the penalty for murder until 1982 when a limited discretion to impose a lesser sentence was provided by the amendment to s.19 *Crimes Act (Crimes (Homicide) Amendment Act, 1982)*. Throughout this period, including the commutations of death sentences to life sentences prior to the abolition of capital punishment, the power under s.463 *Crimes Act* was used by the Governor to release life sentence prisoners on licence. This power was exercised after recommendation by the relevant Government Minister who received advice as to release from a board of appointed representatives, such as the Release on Licence Board.

Interestingly from 1940 until 1974 there were 156 "lifers" released who had served an average of 13 years 7 months in custody before release. The longest period served was one of 30 years 6 months and the shortest 1 year 5 months (Freiberg and Biles, *The Meaning of Life: A Study of Life Sentences in Australia*, Canberra, A.I.C., 1975 at 53-54). The data available for the period shortly before the 1989 legislative reforms to sentencing, namely 29 February 1984 to 14 September 1987, revealed that the average term served by lifers was 11 years 7 months (Potas, *Life Imprisonment in Australia*, No.19 in *Trends and issues in crime and criminal justice*, Canberra, A.I.C., August 1989). Therefore the average term of between 11 and 14 years in prison for a "life" sentence must still be regarded as a significant penalty, noting the arduous nature of imprisonment for most human beings.

Importantly it appears that these average sentences determined by executive decision makers, had two different effects in practice. Firstly the Coalition platform in the run up to the 1988 election with the promise to restore "truth" in sentencing included reference to the fact that life imprisonment would mean at least 20 years in jail.

This promise was part of the Coalition's appeal to popular sentiment in highlighting alleged disparities between sentences imposed and time served in prison by offenders. The "life" sentence meaning an average of 11 to 14 years in prison was chosen to starkly illustrate the disparity between "truth" and reality. The Anita Cobby case was also carefully chosen to show there was a prospect that her killers, who each had received "life" sentences in 1987, could be released after serving that period of time under the existing system.

My research of the whole package of legislative changes to sentencing in this period, including the *Crimes (Life Sentences) Amendment Act, 1989*, revealed that the impetus for the "reforms" was based on a perception that the general community believed, with examples like the "life" sentence, that the existing sentencing laws in the criminal justice system were too lenient in allowing for remissions from sentences imposed by the courts and the comparable "release on licence" for life sentence prisoners. Also it is arguable that part of the impetus behind these significant changes to the law lay in the government's desire to rid itself of the controversial and politically sensitive decision making process for the release on licence of life sentence prisoners. Clearly the experiences of the former ALP government, and particularly those of Mr Rex Jackson, the former Minister for Corrective Services, who administered the ill-fated "early release" scheme were uppermost considerations in the new Coalition government's rhetoric for "truth in sentencing" and the concomitant retributive approach to sentencing which this system entailed. Overall, with these experiences in mind, the hard line approach of the Coalition with its "tough" stand on "law and order" did not encounter any significant opposition in the parliament. The notable exceptions were Ian MacDonald and Elisabeth Kirkby in the Legislative Council who both expressed passionate opposition to the "life sentence" amendment asserting it to be "excessive and inhuman" and destroying the whole concept of rehabilitation.

The second effect of the executive determinations of "life" sentences prior to 1990 was that after the introduction of s.19A *Crimes Act*, sentencing judges came to use the average sentence figures as a guide to establishing a "tariff" for determinate murder sentences. This might be seen as somewhat ironic when compared to the Coalition government's use of those figures and is a point I will expand upon when I move to the research findings from completed case analysis.

The most recent legislative change to the "life sentence" in New South Wales came, however, from the present ALP government after a "bidding war" with the Coalition during the 1995 election campaign and intense media coverage of the respective parties' law and order policies. After intense scrutiny and a report from the Standing Committee on Law and Justice, the *Crimes Amendment (Mandatory Life Sentences) Act, 1996* commenced operation on 30 June 1996. This amendment Act inserted a new s.431B into the *Crimes Act* legislatively prescribing that a natural life sentence be imposed in particular cases of murder (See s.431B(1) *Crimes Act, 1900*)

Part of the wording of this sub-section was taken directly from the decision of Gleeson CJ in the case of *R v Andrew Garforth* (unreported, CCA(NSW), 23 May 1994). The addition of the words "community protection and deterrence" were adapted from the judgment of the High Court in *Veen v R (No 2)* (1987) 164 CLR 465. Arguably then the provision will have little impact on the sentencing practice of the judges responsible for dealing with murder offences and, to date, the provision has not been specifically applied in any case. At present it seems that s.431B is a meaningless mandatory provision because it will always be possible for the sentencing judge to determine that a case does not fall within its ambit. It is, however, difficult to gauge what might be the provision's ultimate effect on sentencing law. The concern is that a government has sought to provide a mandatory sentence of this nature when the result is the person will be imprisoned for the term of their natural life. Clearly there is scope in this provision for legislative amendment including perhaps a stricter prescription for application of the mandatory penalty. This is of particular concern if the "tough" approach to sentencing remains as the political flavour for governments of NSW in the future.

THE CASE ANALYSES

Turning now to the research that has been conducted in relation to particular cases and the tentative findings. Firstly the eleven cases where a natural life sentence was imposed between January 1990 and January 1997 were analysed. In two of these cases the sentenced was reduced after successful appeals. Keith Herring was the first man in NSW to receive a natural life sentence after being convicted in October, 1991 of the drowning murder of his wife. After his appeal against conviction was allowed by the CCA and a re-trial ordered (*R v Keith Herring*, unreported, CCA (NSW), 5 September 1994), Herring was re-tried and found guilty by a jury in the Supreme Court. On 4 December 1995 Badgery-Parker J sentenced Herring to 22 years 3 months penal servitude with a minimum term of 18 years, specifically noting that the case did not fall into the category of worst class of case as his Honour could not be satisfied beyond reasonable doubt that the killing was pre-meditated. Badgery-Parker J was careful to point out that the evidence before him was not precisely the same as that before Slattery AJ, and also picked up on a defence observation that Kirby P in the CCA had "expressed some reservation about the sentence imposed in the first trial." This is the only case since the introduction of s.19A where a re-trial had been held for a person originally sentenced to penal servitude for life. It illustrates the diversity of individual views and philosophies concerning the "natural life" sentence amongst the judges comprising the bench of the Supreme Court of New South Wales. It also serves to illustrate the degree of careful deliberation and assessment of relevant factors or criteria required when determining whether to impose the sentence which is at the apex of the punishment pyramid.

The other case where the "life sentence" was reduced was that of *R v Vusumuzi Twala* (unreported, CCA(NSW), 4 November 1994) where, on appeal, the CCA reduced the life sentence imposed at first instance by Sully J to a total sentence of 20 years with a minimum term of 15 years. This case was again a domestic killing with the accused stabbing his estranged wife to death at lunch time in busy Goulburn Street, Sydney. It is interesting that it was the psychiatric profile of the prisoner in this case that initially

prompted Sully J to determine that a life sentence was appropriate, he being persuaded to the view that Twala would represent a danger to the community if ever released from prison, and it was the prisoner's psychiatric condition that provided evidence for mitigation of sentence for Badgery-Parker J in the leading judgment in the CCA. The significance of psychiatric evidence generally and particularly diagnosis of personality disorders has been identified as assuming substantial importance in a number of cases analysed so far in my research.

The case of *Twala* also provided an important statement of general principle in relation to characterising cases as falling within the category of worst class of case such as to attract the maximum penalty. In this regard, Badgery-Parker J said:-

"...in order to characterise any case as being in the worst case category, it must be possible to point to particular features which are of very great heinousness and it must be possible to postulate the absence of facts mitigating the seriousness of the crime (as distinct from subjective features mitigating the penalty to be imposed) (*R v Twala* at 7).

This point of principle has been referred to in a number of subsequent cases where particular judges have considered whether or not a life sentence was appropriate for a person convicted of murder (eg, *R v Edwin Thomas Street*, unreported CCA (NSW), 17 December, 1996 per McInerney J at 35-36; and *R v Brendan Fernando and Vester Allan Fernando*, unreported SC (NSW), 21 August 1997, Abadee J at 4). It is a statement that provides limited general guidance for judges in the exercise of their important sentencing discretion. It is expressed in rather vague terms and certainly does not venture into providing a specific checklist of essential criteria for imposition of the maximum sentence, perhaps typifying the cautious judicial approach to establishing new principles in sentencing.

Apart from Trotter and Steele who both died in prison after life sentences were imposed upon them, all other life sentence prisoners are still alive and serving out their "natural lives" in prison. Two, Andrew Garforth and Malcolm Baker, have unsuccessfully applied to the High Court for special leave to appeal against their life sentences. It is apparent from the transcripts of these applications that the High Court is reluctant to enter into the sentencing domain perhaps following the experience of the *Veen* cases, and has been insistent that even in the case of "natural life" sentences the jurisdiction of that court will not be enlivened by "mere excessiveness of sentence" but there must be demonstrated "some gross violation of sentencing principles" (*Garforth v The Queen*, unreported, High Court of Australia, Application for special leave to appeal, 7 December 1994 per Dawson J at 7). Presently, Ivan Milat, the notorious "backpacker killer", is waiting to present his application for special leave to the High Court, however his application is based on conviction rather than sentence and is unlikely to provide any opportunity for the High Court to give detailed attention to when it is appropriate to impose a "natural life" sentence.

As a result of a detailed analysis of all the life sentence cases, I came to the conclusion that "essential criteria" for imposition of the life sentence could not be discerned, but certain relevant considerations could be identified providing some limited guide to when the maximum penalty might be imposed in murder cases.

Table 1 illustrates that objectively features such as (i) multiple victims; (ii) extreme cruelty or torture in method of execution; (iii) pre-meditation; (iv) killing after sexual assault or other aggravating features, may place a case of murder in the category of worst class of case. When these features could not be mitigated by subjective considerations such as the youth of the prisoner or good prospects of rehabilitation then the ultimate imposition of a "life sentence" became a realistic prospect. A prior record for violence and a negative psychiatric prognosis were identified as subjective matters that did not allow for mitigation in determination of the ultimate penalty.

A plea of guilty was generally not regarded as of significant weight particularly in cases such as *Baker*, who had six victims with evidence of planning in relation to most of them, and *Garforth*, where the nature of the killing of 9 year old Ebony Simpson was regarded as so heinous that retribution was emphasised as the primary aim of sentencing that prisoner.

It is apparent from these cases, and cases like *Glover* and *Milat*, that the sentencing principles of protection of the community, retribution and general deterrence assumed specific importance in contrast to rehabilitation. It might be argued that applying the relevant principles of sentencing is a somewhat selective process and that sentencing judges tailor their reasoning in this regard to suit the sentence finally imposed, however that contention requires further research on my part and one chapter of my thesis which is yet to be written will focus on analysis of established sentencing principles.

It is interesting to consider also what a "natural life" sentence means for individual prisoners, particularly considering the range of ages of the prisoners who have received such a sentence. This has been done by using the *Australian Life Tables* prepared by the Office of the Australian Government Actuary (*Australian Life Tables 1990-92*, Canberra, Australian Government Publishing Service, 1995). It is significant that Robert Steele when sentenced to penal servitude for life in 1994 had a life expectancy of a further 52.62 years, whereas the oldest prisoner, Daryl Suckling, had a life expectancy of a further 19.09 years when sentenced to penal servitude for life in September, 1996 at 60 years of age. It is questionable whether such a real disparity has been taken into account or even seriously considered by sentencing judges and this was an issue raised in the analysis of determinate sentence cases which was the next phase of my research.

Secondly, I analysed what amounted to the "top ten" determinate sentence murder cases in the period between January 1990 and January 1997. These cases were chosen from over 160 cases decided by the Supreme Court during that time as it was decided that a meaningful comparative analysis with the "natural life" sentence cases could only be done using those cases where the actual length of sentence imposed was closest to a natural life sentence. The particular range of determinate sentences that fall into this "top ten" category are total sentences of between 24 years and 28 years penal servitude plus the case of *R v Paul Richardson* (unreported, SC (NSW), 28

February 1994, Finlay J) where the additional term of penal servitude for life makes it impossible to place a conclusive figure on his sentence, however it must be considered to be a lengthy sentence when Richardson was only 29 years old at the date of sentence.

The longest determinate sentence to date was imposed by Hidden J in *R v George Daniel Mrish* (unreported, SC(NSW), 13 December 1996), that is a total sentence of 28 years penal servitude with a minimum term of 23 years for three murders committed over a two month period. An appeal against conviction and sentence has been lodged by Mrish and it is pending before the CCA. It is interesting that in that relatively recent decision, Hidden J considered several life sentence cases, including two cases where re-determination of an existing life sentence had been refused pursuant to s.13A(8) *Sentencing Act*, 1989, in response to the prosecution submission that the murders by Mrish were placed in the worst class of case and thus the maximum sentence was appropriate. In one way or another Hidden J was able to find features which distinguished the cases that were placed in the category of worst class of case from the essential features of the case at hand:

"In most of these cases the manner of death of the victims was particularly brutal or callous. Three of them (*Baker, Glover and Milat*) involve the killing of six or more people and in two of those (*Glover and Milat*) the offenders were serial killers. Three of them (*Garforth, Trotter and Cribb*) involved the killing of children in most distressing circumstances. In five of them (*Garforth, Trotter, Milat, Cribb and Lawson*) killings were associated with sexual assaults upon the victims. With the exception of *Baker* and possibly *Cribb*, each of the offenders was considered to be a continuing danger to society if released" (*Mrish* at 8).

Also Hidden J asserted that none of the offenders sentenced to natural life made out a good subjective case. These were obviously meant to be points of distinction even though his Honour was careful to remark that he considered the cases "on the basis that they might assist, but should not circumscribe, my determination whether this is a case calling for the maximum sentence"(id). Determination of the appeal is anxiously awaited.

Another interesting aspect that arose during the analysis of the determinate sentence cases was the adherence by sentencing judges to an accepted range of sentences for murders. Arguably this range was built upon the average sentence served by prisoners prior to 1990 when the life sentence was a mandatory indeterminate sentence. In a monograph for the Judicial Commission of NSW, Donnelly, Cumines and Wilczynski (*Sentenced Homicides in New South Wales 1990-1993*, Sydney, June 1995) conclude that a stable tariff has developed under s.19A and that "the typical sentence for murder under s.19A might be described as a minimum term of 12 years and an additional term of six years, making a total sentence of 18 years." (at 76).The cases of

Mrish and *Berger* with total sentences of 28 years must then be regarded as being at the very top of the determinate sentence range for murder sentences. It is immediately apparent that the very top of the range is not always close to what a life sentence may mean to a particular prisoner in real terms. For instance, Andrew Garforth received a life sentence when he was 30 years of age in 1993. His life expectancy at that time was a further 42.18 years and was the subject of specific reference by the sentencing judge, Newman J. Garforth may well live beyond his life expectancy, however with the rigours of prison life he also may not reach his statistical 42 year projection. Also the Fernando cousins who each received a life sentence last August were aged 26 and 27 years respectively with life expectancies of 49 or 50 years, merit consideration in this regard. Whatever the equation it seems that the gulf between a life sentence and a severe determinate sentence can be most significant in terms of years of life and also in terms of the stage of life when one is imprisoned without hope of release.

As a result of the comparative analysis of the "top ten" determinate sentence cases, I prepared a table of "relevant considerations"- Table 2, as I had for the natural life sentence cases in an attempt to answer some of the research questions. One tentative conclusion was that the detailed analysis of the "top ten" determinate sentence murder cases and the possible comparisons with the eleven "natural life" sentences decided in the nominated seven year period since the commencement of s.19A *Crimes Act* raises more questions than answers. Clearly a range of determinate sentences has been developed with tariffs, however there are no firm guidelines or criteria apparent to serve as a means of distinguishing the cases for imposition of what might be described as a severe or salutary determinate sentence as opposed to a natural life sentence. When the reality of a life sentence is realised it is arguable that the punishment hierarchy for murder lacks distinct and meaningful gradation of penalties to the apex penalty of penal servitude for life. As the longest determinate sentence imposed since the 1990 law reform is one of 28 years with a minimum of 23 years, there are compelling arguments that the imposition of natural life sentences generally has not been fair or just. There are particular extreme examples such as *Garforth*, *Steele*, *Cameron* and *Fernando and Fernando* where the offenders have been comparatively young, however even the older offenders could live beyond 23 years in prison and never have the same hope of George Mrish that he will eventually become eligible for release on parole.

Relevant considerations have been identified in the balancing of the objective seriousness, with specific important features being the number of victims, nature of the killing, aggravating circumstances including pre-meditation or killing to conceal commission of another serious crime, against the important subjective considerations. Of these, age appears to be quite important as does the psychiatric or psychological profile of the prisoner even though the material is not always available, and where it is there may be significant divergence of professional opinion.

The analysis has also revealed that the approaches taken by first instance and appellate judges includes recognition of the established legal principles of sentencing and purposes of punishment. The approaches of individual judges, however, show significant divergence in the weight to be given to the various and conflicting principles in a particular case.

These findings disclose a very blurred dividing line between those cases which merit a "natural life" sentence and those which result in the certainty of a determinate sentence. The significant gulf that can exist in reality between such sentences, illustrates the need for reform in the interests of justice and fairness. Arguably these findings provide some justification for the recommendation by the NSW Law Reform Commission in their report on *Sentencing* (Report 79, December 1996) that the judicial discretion under s.19A should include an option to fix a minimum term when a life sentence is imposed. Perhaps the available minimum term should be set at a maximum of 25 or 30 years consistent with the sentencing range established by the judiciary for determinate sentences under s.19A. Alternatively another "indeterminate" sentence option might be considered, namely that a life sentence be imposed at first instance with a condition that the prisoner serve a certain period of time before applying for determination of the life sentence in a procedure similar to that currently available under s.13A *Sentencing Act*, 1989. It is part of my thesis that such reforms might go some way to mitigating the inherent harshness and real injustice of the life sentence in NSW in its present form.

FUTURE RESEARCH

It is intended that other parts of my research will include a consideration and critical analysis of the established principles of sentencing; some relevant pre-1990 case analysis and analysis of some life sentence re-determinations since 1990; some comparative analysis with sentencing legislation in other Australian and common law jurisdictions; and a look to the future of "penal servitude for life" in the NSW sentencing regime. I hope this research can be completed over the next 18 months.

CONCLUSION

The natural life sentence might be described as an "enigma" in the sentencing armoury of the NSW Supreme Court judges. It is a sentence subject to immense uncertainty and has been criticised by academics and by members of the judiciary. It is interesting that in *R v Petroff* (unreported, SC NSW, 12 November 1991), Hunt CJ at CL, who over the following five years imposed natural life sentences on three different prisoners, observed:-

...a (life) sentence deprives a prisoner of any fixed goal to aim for, it robs him of any incentive and it is personally destructive of his morale. The life sentence imposes intolerable burdens upon most prisoners because of their incarceration for an indeterminate period, and the result of that imposition has been increased difficulty in their management by prison authorities." (at 1-2)

Apart from providing an extreme form of retribution, it is doubtful that a sentence of penal servitude for the term of a person's natural life can serve any other useful purpose. If, however, it is to remain as the ultimate punishment, which certainly is preferable to the re-introduction of capital punishment, there must be specific limits placed on its use either by the formulation of clear statutory criteria or by pronouncement at the highest appellate level of the particular cases in which such an extreme form of punishment should be imposed.