A COMPARATIVE ANALYSIS OF THE SENTENCING PROCESS IN CASES OF MURDER IN IRELAND, ENGLAND AND WALES

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A INTRODUCTION

The Irish Criminal Justice Act 1990 (the 1990 Act) and the English Murder (Abolition of the Death Penalty) Act 1965 (the 1965 Act) both stipulate that the penalty for committing a murder is mandatory life imprisonment. While it may therefore appear that a similar approach has been adopted by the two jurisdictions, it is submitted that divergences may be noted in the mechanisms employed by each for delivering and implementing the sanction. Consequently, this paper will explore the similarities and differences in the procedures which exist between the Irish and English legal systems, with specific regard to the role played by the various organs of State in determining the length of the murderer's incarceration, the meaning of a 'life' sentence in reality, the manner in which this imprisonment may be abridged by release on a licence, and proposals for reform of the sentence.

B ROLE OF STATE ACTORS IN IMPOSING THE SENTENCE IN IRELAND, ENGLAND AND WALES

1 Ireland

As stated in section 2 of the 1990 Act, the Court is compelled to impose a life sentence upon those convicted of murder. It is not afforded any discretion in the process by the legislature, and may not offer any recommendations in relation to the length of the prisoner's incarceration – as will be discussed in detail below, this is determined at a later juncture by the Minister for Justice, Equality and Law Reform, working in conjunction with the Parole Board.

In order to comprehensively treat the subject of the role of judiciary, executive and legislature in the sentencing process in murder cases in Ireland, it is important to note that the legitimacy of the mandatory sentencing provisions of the 1990 Act was unsuccessfully challenged in the seminal case of *Whelan and Lynch v The Minister for Justice, Equality and Law Reform*.[1] In *Whelan* it was argued that statutorily stipulating a life sentence for murder offended the Constitutional doctrines of proportionality and the separation of powers through its failure to allow courts to take into consideration 'the particular circumstances in which the offence may have been committed'[2] in order to formulate a truly appropriate sentence, and its usurpation of the powers of the judiciary. It was claimed that the latter arose due to the fact that temporary release could eventually be granted to prisoners by the executive, which therefore

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[1] [2010] IESC 34.
[2] ibid.

determined 'in substance'[3] the length of time an individual would remain in jail. It was also argued that a sanction of this nature was repugnant to the ECHR Act 2003 (the 2003 Act), for reasons related to the purported 'sentencing exercise'[4] carried out by the executive.[5]

The Supreme Court rejected these submissions, firstly holding that the 'very nature'[6] of murder rendered the mandatory life sentence a proportionate punishment, and that the 'public law doctrine of proportionality'[7] espoused in *Heaney v Ireland*[8] was inapplicable to the instant case. It then held that the process by which the legislature prescribes a certain sentence for particular crimes must be distinguished from the one in which the judiciary exercises its power to select a penalty in cases where judicial discretion is legislatively mandated. It was stated that in delineating a sentence to be imposed in specific circumstances, the former is not necessarily encroaching upon the independence of the latter.[9] It was then articulated that the executive's power to confer temporary release upon prisoners was not to be regarded as a sentencing exercise, and hence was not incompatible with the 2003 Act.[10]

2 England and Wales

Originally, the English system operated in a similar (if not identical) manner to its Irish counterpart. Under the procedure followed prior to 2003, the trial judge would indicate what the court believed was an acceptable term for the convicted party to serve in prison as part of the first two elements of his or her sentence.[11] This recommendation would be conveyed to the Lord Chief Justice, who would subsequently submit it to the Home Secretary. If the Home Secretary concurred with the suggestion of the court, it would be implemented. If the court's proposal was not viewed with favour however, it could be disregarded and the desire of the executive would prevail.[12] It is therefore apparent that until recently, a parallel existed between England and Ireland by virtue of their mutual circumscription of judicial discretion.

This was fundamentally altered however by the cases of *Stafford v United Kingdom*[13] and *R v Secretary of State for the Home Department, ex parte Anderson*.[14] In the former, the European Court of Human Rights (ECtHR) held that the English system was in contravention of Article 5(1) and 5(4) of the European Convention on Human Rights (ECHR)[15] and that

[3] ibid.
[4] ibid.
[5] ibid.
[6] ibid.
[7] ibid.
[8] [1994] 3 IR 593.
[9] ibid. The case of *Deaton v The Attorney General* [1963] IR 170 was invoked as a determinative precedent. At page 182 of that judgment, O' Dálaigh CJ enunciated that the freedom to exercise judicial discretion in sentencing would only become a live issue if the Irish legislature had elected to specify a 'range of penalties.'
[10] ibid.
[11] A Ashworth *Sentencing and Criminal Justice* (5th edn Cambridge University Press Cambridge 2010) 117 for a detailed description of the different components which make up a 'life sentence' for murder in England.
[12] ibid 117 – 118.
[13] *Stafford v United Kingdom* App no 46295/99 (ECtHR, 28 May 2002).
[14] *R. v Secretary of State for the Home Department, ex p Anderson* [2003] 1 AC 837.
[15] The right to liberty and security is enshrined within Article 5 of the ECHR. Article 5(1) guarantees that nobody shall 'be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.' The provision then lists six instances in which it is acceptable to deny an individual the right to liberty. Article 5(4) states that anybody 'deprived of his liberty by arrest or detention shall be entitled to take

consequently, the Home Secretary should not be allowed to determine the second part of an individual's sentence.[16] Padfield cogently summarised this finding in her explanation that the essence of the *Stafford* judgment was that 'the Home Secretary should not have the power to detain post – tariff lifers against the recommendation of the Parole Board.'[17] The House of Lords furthered the impact of *Stafford* in *Anderson* by holding that the entitlement of the Home Secretary to establish the 'minimum period' to be served by the murderer (the first element of a life sentence) was repugnant to Article 6 of the ECHR[18] because 'he is not an independent and impartial tribunal.'[19] These developments necessitated the passage of the Criminal Justice Act 2003 (the 2003 Act), which transferred the power to stipulate the duration of the first component of the convict's life sentence to the judiciary.[20]

It is therefore clear that the capacity of sentencing judges to determine the minimum length of the guilty individual's incarceration as part his or her life sentence is the crucial distinction between Ireland and England to note when assessing the contribution made by the various organs of state to the sentencing process in cases of murder. It is argued that the English approach of enhancing the role of the judiciary is preferable. The judiciary is unfettered by political considerations, and thus can act as a truly 'independent and impartial' force in delineating a suitable minimum term to be served by the individual.[21] Moreover, it is contended that reconfiguring the Irish sentencing process in cases of murder to mirror the mechanism employed by England would be beneficial as it would contribute greatly towards ensuring Ireland's compliance with international norms regarding the right to a fair trial.[22]

C THE MEANING OF 'LIFE'[23]

proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.'

[16] *Stafford* (n 13) 82-83; 88–90.

[17] N Padfield *Text and Materials on the Criminal Justice Process* (4th edn Oxford University Press Oxford 2008) 505.

[18] Article 6 of the ECHR espouses the right to a fair trial. Article 6(1) stipulates that 'everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.' Article 6(2) provides for the presumption of innocence, while Article 6(3) establishes a series of 'minimum rights' to be afforded to those charged with a criminal offence in order to guarantee due process.

[19] *Anderson* (n 14) 900.

[20] Ashworth (n 11) 117.

[21] *R v Secretary of State for the Home Department, ex p Venables* [1998] AC 407, 436. 'Public clamour' unfairly influenced the length of the tariff set out by the Secretary of State in that case. It is contended that this demonstrates the manner in which political figures may seek to satisfy public desire for retribution to the detriment of a just outcome for the perpetrator.

[22] As acknowledged in *Anderson* (n 14) 888 (Lord Steyn) it was elucidated by the ECtHR in the case of *Stafford* (n 13) that 'the notion of the separation of powers ... has assumed growing importance in the case law of the Court ...'

[23] This heading is derived from T O'Malley, Sentencing Murderers: the Case for Relocating Discretion [1995] 5(1) Irish Criminal Law Journal 31 [hereinafter O'Malley]. In employing this rubric, O'Malley was alluding to the fact that the concept of a 'life sentence' is more nuanced than it may appear, and in fact varies from case to case with regard to how many years convicted individuals will be compelled to spend in prison. He conveyed this reality in his statement that the majority 'of life sentence prisoners are released after serving a certain number of years.' This assertion was supported by the citation of statistics provided by the Minister for Justice in answer to a Dáil question in 1987. The figures offered by the Minister for Justice indicated that all murderers imprisoned at the time had served more than 5 years, however for the majority, their 'life sentence' equated to less than 15 years.

When a life sentence is imposed upon an individual convicted of murder in Ireland, it is technically operational for the remainder of that person's existence. As noted by Murray CJ in *Whelan*, section 2 of the Criminal Justice Act 1960 (as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003) confers the ability upon the Minister for Justice to grant temporary release to the prisoner. The Court in *Whelan* placed great importance however upon the fact that temporary release did not equate to the culmination of the sentence imposed upon the murderer, as the sentence for this crime 'is a sentence which subsists for the entire life of the person convicted of murder.'[24] This aspect of the life sentence for murder in Ireland has also been afforded recognition in academic commentary, being branded 'a Damocles sword hanging over the head of the licensee.'[25] The same approach was adopted within the English system. It was concisely summarised in a document published by the Home Office of that jurisdiction, in which it stated that even if the prospect of release from prison 'on licence' exists, 'the offender will remain subject to the sentence for the rest of his life, and liable to be recalled into to custody after he has been released.'[26]

It is contended that while a parallel may consequently be noted between Ireland and England with regard to the theoretical duration of a life sentence, marked divergence is apparent in the approach employed in the two jurisdictions in determining the period a convicted murderer will actually spend in prison, and the extent to which the circumstances in which they committed the crime will play a role in influencing this.

Extensive analysis of these issues was carried out by the Irish Supreme Court in its judgment in *Whelan*. The contrast between the jurisdictions was implicitly highlighted by the Court in response to an argument made on behalf of the appellants that courts ought to take into account factors particular to individual cases when formulating an appropriate sanction for the commission of a murder.[27] The Court did not regard this contention with favour, stating that murder was 'by its very nature ... considered at the highest level of gravity among all forms of homicide or other crimes against the person, whatever the circumstances.'[28] Consequently, it was not necessary or desirable to establish a precedent in case law or advocate for legislative action authorising the consideration of 'all the circumstances of the offence'[29] before sentencing a person convicted of murder. A 'life sentence' was sort of blanket measure to be imposed by the court of trial upon guilty parties regardless of factual distinctions in different instances of murder. The prospect of temporary release was deemed to be a 'privilege' which may or may not be accorded to the prisoner by the executive following an unspecified period of incarceration for their transgression.[30] Definition of the length of this term may not be placed within the remit of the judiciary.

It is submitted that the English approach is more nuanced in nature. The Murder (Abolition of Death Penalty) Act 1965 divides the life sentence for murder into three components. It initially consists of a minimum term to be served by the prisoner, formulated by the court to 'reflect the relative gravity of the particular offence.'[31] This is followed by a period of detention 'determined by considerations of public protection.'[32] The expiration of this

[24] *Whelan* (n 1).
[25] O'Malley (n 23).
[26] < http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snha-03626.pdf > accessed 3 March 2011 [hereinafter Parliament Briefing Papers].
[27] *Whelan* (n 1).
[28] ibid.
[29] ibid.
[30] Ibid.
[31] Ashworth (n 11) 117.
[32] ibid.

element results in 'release on a licence for life.'[33] The 2003 Act is instrumental in furthering the impact of the 1965 Act with regard to providing a more concrete notion to the convicted individual of what a life sentence will entail than is afforded to murderers in Ireland. Section 269 of the 2003 Act directs the court to have regard to three different 'starting points' set out in Schedule 21 of the Act when calculating the minimum term to be served by the convict.[34] It was suggested that the rationale for the passage of this legislation was in fact to limit judicial discretion by restricting courts to operating in accordance with the conditions stipulated in Schedule 21 by the legislature.[35] This concern was mitigated by subsequent jurisprudence on the subject however, as Chief Justice Lord Woolf stated in *R v Sullivan and others*[36] that while a sentencing judge must take cognisance 'of the principles set out in Schedule 21,'[37] if he can provide a sufficiently compelling reason for departing from them, 'he is not bound to follow them,'[38] thus enhancing judicial discretion in the process.

It is therefore evident that the English method of defining what exactly a life sentence for murder will entail is of a more sophisticated character than that employed by Ireland, and it is submitted that the latter may benefit from assimilating elements of the former into its system. It is vital to note that the mandatory life sentence has frequently been impugned for its perceived failure to provide an appropriately tailored punishment for the varying degrees of culpability which prevail in various circumstances in which murder is committed. This argument was advanced by the Irish Law Reform Commission (LRC) in its 2008 'Report on Homicide: Murder and Involuntary Manslaughter' in which it claimed that 'not all murders are equally heinous. There is considerable moral variability in this category of homicide...'[39] A House of Lords Select Committee also expressed a preference for a sentencing process which would allow courts to reflect the difference between a mercy killing 'done out of motives of compassion,' and 'the most heinous types of homicide.'[40] While the mandatory life sentence technically continues to exist in both jurisdictions notwithstanding these recommendations, it is contended that the English system better facilitates a modicum of proportionality within the broader framework of the penalty. This was emphasised by the UK Parliamentary Under-Secretary of State for Justice Maria Eagle, when she alluded to the 'flexibility' offered by legislation and pursuant case law for defining a life sentence imposed for murder in that jurisdiction.[41]

D RELEASE FROM PRISON

[33] ibid.
[34] The 'starting points' are enshrined within sections 4 – 7 of the Schedule. These sections enumerate different ways in which murder may be committed, and categorise these by gravity (the levels are 'exceptionally high' [punishable by a 'whole life term'], 'particularly high' [punishable by 30 years of incarceration], and homicides which do not fall within either description, but incur a minimum term of 15 or 12 years imprisonment nonetheless). Sections 8 – 11 of the Schedule list a number of 'aggravating' and 'mitigating' factors which may have an impact upon the sentence to be delivered following the selection of an appropriate starting point.
[35] Ashworth (n 11) 118.
[36] *R v Sullivan and others* [2005] 1 Cr App R 3.
[37] ibid 30.
[38] ibid.
[39] Law Reform Commission *Report on Homicide: Murder and Involuntary Manslaughter* (LRC No 87, 2008) para 1.44 [the 2008 Report].
[40] House of Lords Select Committee *Murder and Life Imprisonment* (1988 – 89 HL 78 – 1) 94.
[41] Parliament Briefing Papers (n26) 9.

As alluded to above, the Irish executive was empowered by the 1960 Act to authorise the temporary release of prisoners serving a life sentence for murder. Section 2 of the Act establishes a framework to guide decisions of the executive in this regard, listing the purposes for which the Minister for Justice may exercise their discretion to deploy it and grant the privilege to a prisoner, and elucidating the grounds which may justify this action or render it 'necessary or expedient.' Section 2(2) then enumerates a set of factors to be considered by the executive before 'giving a direction' under section 2(1). The Minister for Justice is assisted in his or her evaluation of whether a prisoner is a suitable candidate for temporary release by the Parole Board, a body established in 2001.[42] The board does not enjoy statutory status, and in theory its function is limited to merely offering recommendations to the Minister for Justice. It is influential in practice however, a reality illustrated by O'Malley when he adduced evidence that in 2007, 90% of the Board's suggestions were acted upon by the executive, while a further 6% were accepted in part.[43]

The English approach necessarily differs somewhat due to the principle espoused in cases such as *Anderson* that prisoners have the right to appear before an 'independent and impartial tribunal' in order to petition for their release from prison on licence. As held in that instance (and in contrast to the Irish Minister for Justice), the Home Secretary may not be considered an 'independent and impartial tribunal.'[44] Decisions regarding the granting of a licence are therefore taken by the Parole Board, which, in contrast to its Irish counterpart, has operated on a statutory basis since the passage of the Criminal Justice and Public Order Act 2004.[45] A specific mechanism for this process is enshrined within Section 275 of the 2003 Act, which provides that following the expiration of the minimum term component of the criminal's life sentence, the Home Secretary must refer the case to the Parole Board. The Board then examines whether it is necessary to continue detaining the individual for the protection of the public. If it is not, the Home Secretary is obliged to release the prisoner on a licence.

It is submitted that if is accepted that the English Parole Board is a genuinely 'independent and impartial tribunal,' it may be desirable for Ireland to confront the possibility of adapting its approach to reflect the English procedure. While the *Whelan* judgment established the improbability of the Minister for Justice acting in an 'arbitrary or capricious manner' when scrutinising applications for temporary release,[46] it did not expressly provide an explanation of how the Minister for Justice may justifiably be considered an independent and impartial entity when it had been determined in the case of *Anderson* that his English counterpart was operating contrary to Article 6 of the ECHR in selecting a suitable release date. It is therefore argued that in order to ensure that Ireland is in compliance with the requirements for due process delineated in provisions such as Article 6 ECHR,[47] it may be expedient for that jurisdiction to consider restricting the function of the Minister for Justice and empowering its Parole Board to assume a similar role to that played by its English equivalent.

E APPROACHES TO REFORM

[42] T O'Malley *The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland* (2008) 8. As stated by O'Malley at 11, the Parole Board was established by the Minister for Justice, Equality and Law Reform.
[43] ibid 11-12.
[44] *Anderson* (n 14) 849; 858.
[45] Padfield (n 17) 464 – 465.
[46] *Whelan* (n 1).
[47] The importance of conforming to the norms espoused in this provision was discussed in S Easton and C Piper *Sentencing and Punishment: the Quest for Justice* (Oxford University Press Oxford 2005) 150.

The question of whether it is desirable or just to retain the mandatory life sentence for murder has been considered at various junctures by the Irish Law Reform Commission (LRC) and the Law Commission for England and Wales (LC).[48] While both articulated that reform is necessary in this area, a slightly different solution was proposed in each jurisdiction. The common factor in both proposals was the focus on altering the nature of the sentence, with little consideration afforded to modifying the role played by State actors in imposing it.

After conducting an analysis of submissions in favour and opposition of the penalty, the LRC recommended in the 2008 Report that it ought to be abolished and replaced with 'a discretionary maximum sentence of life imprisonment.'[49] It appears that this proposal is fated to be cast aside for the foreseeable future however, as many arguments proffered by proponents of abolition were implicitly rejected in the *Whelan* judgment. This impact became evident when the Court discussed matters such as proportionality, as it stated that notwithstanding the varying degrees of moral blameworthiness in different cases,[50] murder is 'the ultimate crime', therefore necessarily warranting a sentence of commensurate gravity.[51] It also provided an endorsement of the notion that a mandatory life sentence for murder may have a deterrent effect upon prospective offenders,[52] a contradiction of the assertion by the LRC that as many murders are not necessarily the result of 'careful, premeditated planning,' the claim that the sentence is a significant disincentive to illegal action is questionable.[53] Finally, the Supreme Court confirmed in *Whelan* that section 2 of the 1990 Act is compatible with section 5 of the European Convention on Human Rights Act 2003,[54] thus rebuffing the Irish Human Rights Commission's contention that 'current Irish law does not comply with (Article 5(4)) of the ECHR.'[55] As the legislature has not expressed an intention to formulate any provisions which may override the *Whelan* verdict, it is therefore reasonable to presume that the imposition of the mandatory life sentence for murder will remain a feature of Irish criminal jurisprudence.

It is submitted that the instinctive 'revulsion' with which society views murder will always represent an obstacle to reform of the sentence in Ireland – the mandatory life sentence has embodied society's abhorrence of homicides of this nature since the abolition of the death penalty in 1990.[56] It is noteworthy that while proceedings in the *Whelan* case were underway, victim's rights groups and opposition politicians called for the introduction of a mandatory 25 year term for murderers.[57] As highlighted by the draconian nature of this proposed penalty, a highly progressive legislature will be required to consider defying society's visceral desire to impose the most serious sanction possible in every case of murder.

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[48] Law Reform Commission 2008 Report (n39); Law Commission, Report on *Murder, Manslaughter and Infanticide* (LRC No 304, 2006) [the 2006 Report].
[49] The 2008 Report (n40) 1.66.
[50] LRC stated at para. 1.45 of the 2008 Report (n 40) that it is unjust to have 'parity of punishment' when there is 'variation…in culpability…' a possibility it recognised at para. 1.44 when it highlighted that while a murder may 'display an appalling level of depravity,' it may also lack this quality and instead 'occur in an emotional context.'
[51] *Whelan* (n 1).
[52] ibid.
[53] The 2008 Report (n 40) 1.61.
[54] *Whelan* (n 1).
[55] The 2008 Report (n 40) 1.53.
[56] ibid 1.29.
[57] <http://www.independent.ie/national-news/courts/murderers-go-to-supreme-court-over-mandatory-life-sentences-2063543.html > (3 March 2011).

The strategy favoured by the Law Commission in the 2006 Report contrasted with that advocated by its Irish equivalent, as it elected not to recommend a total abolition of the mandatory life for murder.[58] Rather, it proposed that the definition of the crime should undergo a structural evolution, through division of it into a 'first degree' and a 'second degree.'[59] It appeared that the LC accepted that perpetrators of the first degree would continue to attract a mandatory life sentence; however it suggested that if the concept of a second degree was introduced into the jurisprudence of that jurisdiction, it should be punishable by 'a maximum period of life imprisonment' instead of the automatic imposition of the conventional sanction for murder.[60]

This recommendation was not acted upon by the Secretary for Justice in the era in which the Report was published, however it is interesting to note that in England and Wales, political and societal support for the mandatory life sentence for murder has been far from unequivocal in recent years. Prominent figures such as the Director of Public Prosecutions Keir Starmer and his predecessor Lord MacDonald have expressed their approval for the tiered system described above.[61] Public opinion on the matter has been the subject of much debate. It has been asserted that 'public opinion is no longer averse to the abolition of the mandatory life sentence,'[62] however research recently conducted demonstrated that a belief subsists among certain members of the populace that sentencing for murder is excessively lenient.[63] It is interesting to note however that that when confronted as part of this research by a set of factual scenarios reflecting the varying degrees of seriousness in different instances of murder, members of the public elected in the majority of cases not to impose a natural life sentence, opting instead for more lenient measures.[64]It is therefore possible that the public may possess a more nuanced outlook on the crime of murder than was previously believed.

Notwithstanding this, Lord Faulkner (who served as Lord Chancellor in the Labour government that rejected the proposals of the LC) elected not to initiate reform. He justified this reluctance by referencing the need to counter societal problems such as gang violence. He argued that it is vital for the government to convey the message to individuals who choose to engage in such activity that their actions will not be tolerated, and will instead face a 'draconian' sanction.[65] More recent developments also indicate that reform is unlikely to occur in the immediate future. Following the release of a report on the matter by the Homicide Review Advisory Group which branded the current system 'unjust and outdated,'[66] Lord Chief Justice Judge called for Members of Parliament to be given a free vote on the

[58] 2006 Report (n 49).
[59]ibid 2.70.
[60]ibid 2.71.
[61] <http://www.guardian.co.uk/law/2010/sep/08/keir-starmer-backs-us-style-murder-charges-change-law> accessed 3 March 2011
[62] <http://www.criminallawandjustice.co.uk/index.php?/News/homicide-review-calls-for-murder-law-reform.html > accessed 3March 2011
[63] B Mitchell and JV Roberts *Sentencing for Murder: Exploring Public Knowledge and Public Opinion in England and Wales* [2011] 52(1) British Journal of Criminology 141 at 151.
[64] ibid152. This research also discussed the importance of 'public legal education.' At 154, the authors highlighted the fact that a 'misperception' is held by some that England and Wales' sentencing regime for murder is more lenient than that of other countries. Increased public education regarding trends in 'the crime and punishment of murder' was consequently advocated. It was contended that regardless of whether this measure could lead to a more liberal sentencing approach, it would alleviate misplaced concerns in relation to leniency.
[65] ibid.
[66] <http://www.bbc.co.uk/news/uk-16044145> accessed 3 March 2011

issue of reform.[67] The Ministry for Justice reaffirmed its stance on maintaining the status quo however, as it commented that '[w]e have no plans to abolish the mandatory life sentence for murder. The most serious crimes deserve the most serious sentences.'[68] It is therefore submitted that a debate on the relative merits of the English and Irish proposals would be premature, as both jurisdictions are similarly disinclined to contemplate alteration of their respective processes for sentencing those convicted of murder.

F CONCLUSION

As illustrated by bodies such as the LRC and the House of Lords Select Committee, the mandatory life sentence for murder may be considered problematic in principle, as it fails to adequately reflect the moral variability between acts such as mercy killings and murders of a significantly more heinous quality. It was demonstrated however that while this argument has been endorsed by actors such as the English Director of Public Prosecutions, it appears unlikely that the sentence will be abolished in either jurisdiction. In that context, contemporary discourse in this area must necessarily focus upon which system better facilitates proportionality and other vital factors such as objectivity and impartiality within the broad framework of the mandatory life sentence. In order to address this question, an analysis was conducted of three prominent features of the sentencing process in cases of murder in both countries. Firstly, the role of the organs of State in each jurisdiction was explored. An examination of the true connotation of a 'life sentence' was then completed. This was followed by an exploration of the manner in which both jurisdictions grant release to murderers deemed suitable candidates for liberation from prison. It was concluded that with regard to securing the three elements enumerated above (proportionality, objectivity and impartiality), the English approach is generally more effective. It is therefore submitted that Ireland may benefit from incorporating elements of the English method into its system. In the apparent absence of political will to enact the recommendation of the LRC that the mandatory life sentence for murder should abolished, and the recent approval of the penalty by the Supreme Court, it is contended that this may be the best way to maximise the prospect of a just process for those convicted of murder in Ireland.

[67] < http://www.guardian.co.uk/law/2011/dec/06/mandatory-life-sentences-murder-unjust-report> accessed 3 March 2011

[68] < http://www.guardian.co.uk/commentisfree/2011/dec/06/kenneth-clarke-murder-law-reform > accessed 3 March 2011