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Sentencing Policy of Criminal Courts in Israel

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SENTENCING POLICY OF CRIMINAL COURTS IN ISRAEL

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I. THE PURPOSE OF THIS INVESTIGATION

The sentence imposed upon an offender is influenced by three complex factors:

1. *The offense and its circumstances.* In relation to this factor there must be considered the specific law declaring a certain act or omission to be an offense; the punishment prescribed for those who commit the offence; the harm that the offence is likely to cause the victim or the public at large; the aggravating or mitigating circumstances of the offence and the actual harm or damage caused by it.

2. *The offender and his background.* The offender's economic means and position, his family, age, social background, physical and mental health, his criminal record or lack of previous convictions are all comprehended under this head.

3. The third factor is the most elusive and indefinite element in any sentencing policy, namely, the *attitude of the trial judge.*

We may now offer the following schematic formula:

Offence, plus Offender, plus Attitude of Judge = Sentence.

The first two factors may be studied without much difficulty because they crop up very frequently in the course of the trial itself and they may be surmised from the charge[1] or information[2], from the circumstances of the commission of the offence as told to the court by eye-witnesses, documentary and circumstantial evidence. The socio-economic background of the offender is sometimes brought to light after conviction and before the passing of sentence when the prosecution, probation officer and the defendant himself submit evidence on the latter's character and personality. The third factor concerning the judicial attitude of the trial judge is the "great unknown" in every act of decision. This factor is obviously the most difficult to foresee, and the possibility of successfully isolating it and stating it is still to be explored. But in this article, by a use of qualitative statistical techniques and a comparison of the attitude of individual judges in sentencing, an attempt has been made to approach the problem from a fresh angle.

[1] Form of indictment in misdemeanours and contraventions.

[2] Form of indictment in felonies.

II. DEFINITION OF SUBJECT MATTER

The raw material for research is constituted of the sentences of the three district courts of Israel (Jerusalem, Tel-Aviv, Haifa) for the year 1956. The judgments considered were confined strictly to convictions, which amounted in 1956 to 1,105. The reasons for choosing the year 1956 were: (1) that the judgments of 1956 were the most recent data available at the time of investigation; and (2) that there was ample statistical proof that the judgments of the district courts for that year were satisfactorily representative and were, therefore, a reliable statistical sample of the Israeli sentencing policy (magistrates courts included) for the years 1952–1956.[3] This research may, therefore, be regarded not only as a study

[3] The medians of the methods of punishment of the district courts for the year 1956, when grouped according to degrees of severity, were strikingly similar to the medians of the grouped methods of punishments of *all* the criminal courts of Israel for the years 1952–1955. The importance of this conclusion is understood only when it is considered that the jurisdiction of the district courts includes the more serious offences (felonies and some of the misdemeanours) while the jusisdiction of the magistrates' courts includes the lesser offences only.

of the sentencing policy of the Israeli district courts for the year 1956 but as a critical evaluation of that policy in the last five years.

III. Classification of Offences and of Punishments

Offences. The conventional classification was adopted:

1. Offences against the person;
2. Offences against property;
3. Offences against public order and administration of justice;
4. Sexual offences;
5. Fraud, embezzlement and forgery;
6. Miscellaneous offences against the Criminal Code Ordinance, 1936.[4]

If an offender was charged, convicted and sentenced for more than one offence, each belonging to a different class, the more serious offence was chosen to represent the rest for the purpose of classification.

We decided to confine our study to offences against the Criminal Code Ordinance of 1936 because the classification of offences against laws other than the Code proved to be impracticable. We excluded murder also, because, according to Israeli law, a man found guilty of murder can be sentenced to life imprisonment only.[5] There is, therefore, no point in studying the Israeli sentencing policy relating to this crime because the judge has no discretionary power with respect to it; all we have here is a rigid method of punishment. And finally juvenile delinquents have been excluded from this study because they are dealt with in special courts and according to a special procedure.

Punishments have been scaled in the following order of severity:

1. Binding over to keep the peace;
2. Probation;
3. Suspended sentence of imprisonment;
4. Suspended sentence of imprisonment and fine;
5. Imprisonment up to one year;
6. Imprisonment from one to three years;
7. Imprisonment from three years upwards.

Fines were not included in the classification because it is practically impossible to ascertain their proper place in a scale of severity of punishments and there would be no justification for stating that imprisonment is always more severe than a fine; for instance, a fine of £1,000 cannot be affirmed less severe than one week's imprisonment. We were satisfied, moreover, that the omission of fines from our scale would not hamper the implementation of the objectives of our research. We could, nevertheless, classify the joint punishment of suspended sentence and fine because in the majority of cases in this group fines did not exceed £100 and very rarely did they exceed £200. The few sentences in which judges inflicted joint sentences other than fines were classified according to the heavier punishment.

IV. The Process of Sentencing

The task of studying the sentencing policy of the Israeli courts would have been extremely difficult, even impossible, had it not been for the grounds stated in their judgment upon which Israeli judges justify the infliction of a particular punishment. The sentencing grounds represent the individual judge's attitude towards punishment; and the Israeli judge thus conveys to the public (and to the court of appeal) his particular reasons for inflicting a certain method of punishment on an individual offender.[6] We must bear in mind, of course, that the sentencing grounds do not reflect the whole of the judge's reasons for inflicting a certain punishment, nor do they represent the inner subjective reasons which are mainly determined by the judge's disposition and his personal outlook on life; moreover, the sentencing grounds are sometimes given very briefly and sometimes not given at all; but then, these grounds are the only express declaration of the judge's decision which is obviously the most important factor in a sentencing policy, so that an intensive study of these sentencing grounds is essential to an understanding of this inquiry.

The most suitable method, for our purposes, seemed to be to classify the sentencing grounds according to the purposes of the punishment which these grounds presumably appear to vindicate.

[4] The official criminal code in Israel which was enacted by the British Mandatory Government in 1936.

[5] Penal Law (Amendment) (abolition of capital punishment for murder, 1954.

[6] There is no legal provision for the mandatory statement of sentencing grounds by the trial judge, but this is the common practice of Israeli criminal courts and the Supreme Court of Israel directed the lower courts that "it is extremely important that judges should state their sentencing ground". *Vide* I Cr. A. 14/49 "*Pesakim*" Judgments of the Supreme Court, *2*, p. 135; II Cr. A. 5/54, Judgment of the Supreme Court, *8*, p. 694.

The main reason for this choice of method was that the sentencing grounds are recorded by the judge in order to justify the culmination of the whole trial, i.e. the imposition of the punishment. In so doing the judge reveals to outside observers why, in his opinion, the offender should be dealt with in a particular way or, to put it differently, the judge declares, by means of the sentencing grounds, the purpose or purposes of the specific punishment or other penal measure which was actually inflicted on the convicted offender. We were well aware, of course, of the considerable amount of artificiality in the isolation of separate and distinct purposes of punishment in a sentencing ground, because the purposes of punishment are, as a rule, interwoven in the process of sentencing taken as a whole; but a certain amount of artificiality is inevitable in this kind of research, and we can only hope that we have been able, in the process of drawing conclusions, to avoid any errors arising from it.

As to the actual classification, we had to classify 1,233 sentencing grounds taken from the judgments of Israeli courts for the year 1956. The number of grounds in each judgment varied from a minimum of one to a maximum of eight, with an average number of 2.5 grounds to a judgment; but as we have already stated a considerable number of judgments were given without declared grounds.

By our first division sentencing grounds were separated into aggravating grounds and mitigating grounds; then we proceeded to classify them into the following six groups according to the purpose or purposes of punishment which they seemed to serve.

(1) SENTENCING GROUNDS WHICH SHOW A RELATIVELY MARKED INCLINATION TOWARD SERVING THE RETRIBUTIVE PURPOSE OF PUNISHMENT

We define retribution here as the infliction of pain and suffering, not as a means to an end, but as an end in itself, for an offence committed in the past. (By stressing the past, we thus exclude any utilitarian element, because retributive punishment in its pure talionic form is not concerned with the future effect of the punishment, either on the offender punished, or on the public at large.)

The "retributive grounds" are subdivided, as we have already pointed out, into aggravating and mitigating grounds. The common denominator of the former is their display of a negative emotional attitude toward the convicted offender—an attitude which is usually accompanied by expressions of righteous indignation with respect to the offence committed; this last characteristic of the grounds in our group was recognized by many as the most obvious symptom of retributive punishment.[7]

Three other retributive qualities were found in this group which complied with our definition of retributive punishment:

(a) They were not concerned with the probable influence of the punishment on the future behaviour of the convicted offender or of potential offenders; their sole concern was with the offence, its surrounding circumstances and other past events which cast a negative emotional light on the offender.

(b) They stressed the moral turpitude of the offender, deduced only from the fact that he committed an offence.

(c) They dealt exclusively with the inherent gravity of the offence.

Another large group of retributive aggravating grounds is characterized by an intense sympathy displayed toward the victim or complainant; this intense sympathy is the outcome of an inner identification with the victim and the suffering caused to him by the offence. This mechanism of identification was recognized as one of the deepest sources of the retributive element in punishment[8]; the court views the offence and its methods of commission (being cruel and unfair, of course) as if through the eyes of the victim; these eyes regard the offender, quite naturally, with loaded negative emotions; the obvious result is that the more complete the court's identification is with the victim's cause, the more intense is its emotional negativity towards the offender and the more severe the retributive punishment.

We now come to discuss the second sub-classification in this group, i.e. the mitigating retributive grounds.

The first impression on being confronted with the expression "mitigating retributive grounds" is

[7] *Vide* P. REIWALD, SOCIETY AND ITS CRIMINALS (1950), p. 247; ALEXANDER AND STAUB, THE CRIMINAL, THE JUDGE AND THE PUBLIC (1931), p. 221; H. CANTOR, CRIME AND SOCIETY (1939), p. 395; VON HENTIG, PUNISHMENT (1937), p. 175; M. RADIN, *Enemies of Society*, 27 JOUR. OF CRIM. L. AND CRIMINOL. (1936), p. 348; W. L. NEUSTATTER, PSYCHOLOGICAL DISORDER AND CRIME (London, 1953), p. 224; PLAYFAIR AND SINGTON, THE OFFENDERS; SOCIETY AND THE ATROCIOUS CRIME (London, 1957), p. 245.

[8] Vide H. WEIHOFEN, THE URGE TO PUNISH (1956), p. 138 *et seq.*; VON HENTIG, *op. cit.*, p. 20.

that of inner contradiction in terms, because retribution is considered to be an outcome of a negative emotion with the ultimate end of a harsh and severe sentence for the offender, but the contradiction is a superficial one and it has more to do with formal expression than with inner meaning. Qualitatively speaking, there is an obvious similarity between the two sub-classes; the only variant is their direction; the mitigating grounds move toward the lower echelons of the scale of severity of punishment, while the aggravating grounds move toward the upper echelons of that scale. The crucial point here is that the difference between these two sub-classes is only directional and not qualitative. While examining the symptoms we may notice that, whereas the aggravating retributive grounds show negative emotion toward the offender, the mitigating grounds display positive emotion; and while the former stress the moral turpitude of the offender in committing the offence, the latter lighten his moral onus; both are dealing with the past offence and its objective gravity and neither is concerned with the probable utilitarian effect of the punishment on the future behaviour of the offender.

The mechanism of identification is present here also but it functions to the advantage of the offender, because the nature of the offence and its surrounding circumstances cause our sympathy to lie with the offender more than with the complainant or victim, or certain conduct of the latter may make it difficult for a sympathetic identification with him and his cause. Moreover, certain factors relating to the personality of the offender such as physical illness, mental stress, extreme poverty, difficult social and economic conditions which in themselves have no direct connexion with the offence committed, may tend to decrease our negative emotional load toward him and to replace it to a certain extent by positive emotion; in other words, we set off the offender's personal suffering and social misery against the amount of retributive punishment which we intend to inflict upon him.

(2) SENTENCING GROUNDS WHICH SHOW A RELATIVELY MARKED INCLINATION TOWARD SERVING THE DETERRENT PURPOSE OF PUNISHMENT

The presumed deterrent effect of punishment is based on the hedonistic assumption that man weighs any given course of action according to the pleasure to be derived or the pain to be suffered by taking it, and decides in favour of whichever course of action is supposed to bring him a maximum of pleasure and a minimum of pain.

The sub-class of aggravating deterrent grounds includes grounds which stress the necessity of deterring the actually convicted offender from committing further offences in the future, serving as so-called "individual prevention", and grounds, also, which stress the presumed deterrent effect of punishment on potential offenders, i.e. "general prevention". In the latter case the increase in the number of a certain type of offence in a given time and place is usually pointed out and the urgent necessity of checking this increase by means of "deterrent punishment"; then it is sometimes stated that the only method of preventing offences of a special type (without regard to their frequency of occurrence) is to punish those who commit them with the utmost severity. The mitigating deterrent grounds point out, on the other hand, that the chances are extremely remote that the offender there and then convicted will commit further offences in the future: there is no need, therefore, to inflict upon him a deterrent punishment (individual prevention). The grounds may point out, also, that certain types of offence are very rare and thus make it clear that a certain case does not call for measures of "general prevention".

(3) SENTENCING GROUNDS WHICH INCORPORATE ELEMENTS OF BOTH RETRIBUTION AND DETERRENCE

In this group, elements of retribution and deterrence are so closely interwoven that the classification of a ground as wholly belonging to one or the other is out of the question. We grouped them, therefore, in a special combined class, namely, grounds which presumably intend to serve jointly the retributive and the deterrent purposes of punishment.

(4) SENTENCING GROUNDS WITH A RELATIVELY MARKED REFORMATIVE INCLINATION

Before analysing the attributes of this group of sentencing grounds we must make clear the concept of the reformative-preventive purpose of punishment which was coined for present convenience. This double purpose, which is really a single one with two aspects, is achieved when, as far as it is possible and expedient, punishment is directed toward the reformation of the offender;

however, where past experience or other factors indicate that the chances of reformation are meagre, preventive measures, i.e. the isolation of the offender from society, should be resorted to. But it must be stressed that prevention as defined and discussed in the present research does not mean merely sheer physical restraint; rather it implies constant care, supervision and suitable confinement that will promote the application of reformative measures, however remote the chances of the offender's reformation, and however hardened or dangerous he may be.

Punishment should be inflicted, therefore, according to the stage of the offender's delinquency. The stages of delinquency may be likened to the spectrum of light, with the reformative stage of delinquency in the ultra-violet and the preventive stage in the infra-red. In the reformative stage the offender's previous convictions are few or none, and his chances of reformation are good. When the stage of delinquency moves along the spectrum toward the red, the waves are more frequent and shorter, until one reaches the scorching infra-red which symbolizes the ultimate preventive stage and the offender's incorrigible recidivism.

To come back to our classification, we distinguish here, also, between aggravating reformative grounds and mitigating ones: the former stress the poor chances of the offender's reformation by pointing out the failure of past reformative and educational measures, or by relying on various data concerning the offender's personality and socio-psychological background, indicating his meagre chances of reformation; the mitigating grounds point out, on the other hand, the offender's fair chances of reformation which are deduced from facts favourable to his character, and other data concerning his background, his personality as a whole, his conduct while committing the offence and during the trial.

(5) SENTENCING GROUNDS OF A RELATIVELY MARKED PREVENTIVE NATURE

The aggravating grounds in this group point out the relative menace of the offender to society and his "preventive stage of delinquency". This is done by asserting his criminal record, previous convictions and other factors concerning his personality and psycho-social background which call for his isolation from society for a relatively long period. The preventive grounds point to the lack of danger symptoms[9] in the character of the convicted offender and that the possibility of his being a menace to society is remote. We must make clear, in this context, the demarcation between mitigating reformative grounds and mitigating preventive ones: the latter point out the non-existence of negative elements, for instance the fact that a certain offender does not have previous convictions, while the former indicate the positive existence of facts and data that give us reason to believe that there is a fair chance of the reformation of a particular offender.

(6) SENTENCING GROUNDS WHICH PARTAKE OF ASPECTS OF THE REFORMATIVE-PREVENTIVE PURPOSE OF PUNISHMENT

This last class includes all grounds in which reformative factors, i.e. the evaluation of an offender's chances to reform, and preventive factors, i.e. the presumption of an offender's danger to society, are tightly interwoven without any reasonable possibility of separation.

V. THE ISRAELI SENTENCING POLICY AS REFLECTED IN THE SENTENCING GROUNDS

Table Ia may help us to study the probable link between sentencing grounds and the severity of punishment. The significance test of the link between the variants of Table Ia proved the existence of a fairly strong correlation (P less than 0.01) between sentencing grounds and the scale of severity of punishments. In order to show that correlation we introduce Table Ib which shows the medians of the numbers of sentencing grounds in Table Ia in relation to the scale of punishments.

Table Ib shows very clearly the strong relationship between the sentencing grounds and the severity of punishment; it can be seen that medians of aggravating grounds are relatively higher and correspond, therefore, to a severer scale of punishments, while mitigating grounds are relatively lower, and corresponding to a lighter scale of punishments. Another conclusion, of no less importance, which may be drawn from Tables Ia and Ib, is that our initial classification of sentencing grounds was a sound one; otherwise we could not have obtained in Table Ib marked and consistent differences between the medians of

[9] Roughly similar to the concept of *l'état dangéreux; vide Le problème de l'état dangéreux* (Paris, 1953).

TABLE Ia

SENTENCING GROUNDS RELATED TO THE SCALE OF SEVERITY OF SENTENCES

Sentences	Grounds												
	Tot.	MRP	ARP	MRD	ARD	MP	AP	MRf	ARf	MD	AD	MRt	ARt
3 yrs up	35	—	6	—	4	—	10	—	3	—	3	1	8
1–3 yrs	150	1	15	1	16	2	48	8	9	—	7	21	22
To 1 yr	340	8	6	3	33	28	34	39	11	—	21	76	81
Susp. Sent. & Fine	371	14	2	5	31	56	12	55	4	5	11	133	43
Susp. Sent.	310	36	7	7	21	41	16	49	3	1	7	113	9
Prob'n	27	4	—	—	4	2	5	9	—	—	—	2	1
Total	1,238	63	36	16	109	129	125	160	30	6	49	346	164

ABBREVIATIONS ABOVE

MRP—Mitigating reformative—preventive
ARP—Aggravating reformative—preventive
MRD—Mitigating retributive—deterrent
ARD—Aggravating retributive—deterrent
MP—Mitigating preventive
AP—Aggravating preventive
MRf—Mitigating reformative
ARf—Aggravating reformative
MD—Mitigating deterrent
AD—Aggravating deterrent
MRt—Mitigating retributive
ARt—Aggravating retributive

TABLE Ib

SENTENCING GROUNDS RELATED TO SEVERITY OF PUNISHMENT

Grounds	Severity of Punish't	Grounds	Severity of Punish't
MRP	22%	MD	40%
ARP	88	AD	66
MRD	34	MRt	47
ARD	56	ARt	68
MP	39	Probation	2.1
AP	80	Susp. S.	25.4
MRf	49	Susp. S. & Fine	30.
ARf	77	Prison to:	
		1 Yr.	27.5
		1–3 Yr.	12.1
		3 Yrs. Up	2.8

aggravating grounds and medians of mitigating grounds.

Some very interesting conclusions may be drawn from studying the medians in Table Ib. The medians of the aggravating grounds, for instance, can be arranged from the highest to the lowest in the following order: (1) reformative-preventive; (2) preventive; (3) reformative; (4) retributive; (5) deterrent; (6) retributive-deterrent. This order justifies us in concluding that, at least where aggravating circumstances are concerned, the Israeli sentencing policy is influenced more by reformative-preventive grounds than by retributive-deterrent ones. Moreover there is a considerable difference in height between the average of the three medians of the reformative, preventive, and reformative-preventive groups and the average of the medians of the retributive, deterrent and retributive-deterrent grounds; this proves that the Israeli sentencing policy, while considering aggravating circumstances, gives more prominence to the former than to the latter.

The order of the medians of the mitigating groups, when arranged according to height, is as follows: (1) reformative-preventive; (2) retributive-deterrent; (3) preventive; (4) deterrent; (5) retributive; (6) reformative. It is almost impossible to detect any real trend in this arrangement because the retributive and deterrent medians and reformative and preventive ones are scattered randomly and more or less succeed one another. The decisive test must therefore be the order of the differences in the heights of the medians of corresponding sub-classes. This test is also decisive from another point of view because it is self-evident that the greater the difference in heights of medians between an aggravating sub-class of grounds and a mitigating one, the greater the influence of the whole class of grounds on the sentencing policy taken as a whole.

The order of the differences between corresponding medians is, therefore, as follows: (1) reformative-preventive; (2) preventive; (3) reformative; (4) retributive; (5) deterrent; (6) retributive-deterrent. The obvious conclusion is that the decisive test indicates the same order of preference

as our first test with the aggravating grounds. We may safely conclude, therefore, that grounds of reformation, prevention and reformation-prevention have a more marked influence on the Israeli sentencing policy taken as a whole than grounds of retribution, deterrence and retribution-deterrence.

The last comparison to be made is quantitative, i. e. the relative amount of grounds in every class; their order arranged from the greatest number to the smallest is as follows: (1) retributive; (2) preventive; (3) reformative; (4) retributive-deterrent; (5) reformative-preventive; (6) deterrent. This comparison is obviously of no great importance, because it shows only frequency of usage and cannot indicate any qualitative influence, whatsoever, on the sentencing policy.

VI. The Attitude of the Trial Judge

In accordance with the formula stated at the outset of this paper,

Offence, plus
Offender, plus } = sentence.
Attitude of judge

The personal attitude of the judge in the present context may epitomize the sentencing behaviour of the Israeli judiciary. It would be pretentious to claim that it was possible to analyse the very complicated factors which determine the sentencing behaviour of judges belonging as it does to the domain of general human behaviour. We do not possess, of course, the appropriate tools to conduct a thorough research into the motives and characteristics of human behaviour; and we do not claim that the present research is a study in human psychology. All we have tried to do is to draw, by means of qualitative statistics, some general conclusions as to the effect of the sentencing behaviour of individual judges on the sentencing policy taken as a whole. In trying to isolate and study the factor of the personality of the judge in the sentencing policy, we adopted two methodological assumptions which were applied in a similar research into the sentencing behaviour of some judges in the United States of America:[10] (1) Criminal cases are not selected by the judges but are sent to them for trial by the registry, altogether randomly and without any system or order built upon special types of offences or offenders (an assumption which is entirely applicable to the practice in Israel); (2) If a sentence is based solely on factors relating to the offence and/or the offender, there should be a similarity (given a sufficient number of cases) between the average or median of the severity of sentences in a given time (which must be of sufficient length) imposed by one judge and the average or median of the severity of sentences imposed by a second judge, and, if it does not prove to be so, the conclusion must be that the difference was not caused by factors concerning the offence or the offender but by the individual differences in the personal sentencing habits and tendencies of these two judges.

[10] Gaudet, Harris and St John, *Individual differences in the Sentencing Tendencies of Judges*, Jour. of Crim. L. and Criminol., 23 (1932–33), pp. 811 *et seq.*

TABLE II

Comparing Severity of Sentences in General with Sentences for Offences vs Person and vs Property, Respectively

Judges	Offences		
	Vs person %	Vs property %	Vs general %
R	49	48	50
S	50	52	49
L	90	55	62
J	46	33	40
D	15	72	30
N	10	59	71
G	46	55	46
A	88	48	62
Others	49	42	44

For studying the sentencing behaviour of Israeli judges eight judges of the district courts were chosen on the following terms:

(1) The three district courts in Israel should be appropriately represented. We chose, therefore, three judges from the district court in Tel-Aviv, three from Haifa and two from Jerusalem.

(2) Since our subject matter consisted in judgments given during one year only, we had to take care that the number of each judge's sentences examined should not be too small. We had to choose, therefore, those judges with a sufficient number of cases.

Table II below gives an exposition of the medians of the methods of punishment of the eight judges included in our sample, according to their severity, and containing also a comparison between the general medians and the medians relating to offences against property and against the person. We confined our comparative analysis to offences against property and the person

because we realized that the number of cases in the other types of offence was too small for safe conclusions. We also included in Table II, for the sake of comparison, the general median and medians of offences against property and offences against the person of the rest of the sentences which were not included in our sample because they did not comply with the terms of choice.

We shall begin the analysis of Table II by comparing the heights of the general medians which represent the severity of sentencing of each individual judge:

(1) The most lenient is Judge D[11] with a general severity median of 30 per cent, whereas the most severe is Judge N with a general severity median of 71 per cent. The difference between the minimum and maximum severity is, therefore, 41 per cent, which is a high figure if we bear in mind that the average severity of sentencing in terms of medians' heights is 50 per cent.[12]

(2) The order of severity may, therefore, be set out as follows:

Judge N	71%
Judge A	68
Judge L	62
Judge R	50 = total median.
Judge S	49
Judge G	46
Judge J	40
Judge D	30
The rest	44

The mean deviation is therefore 10 per cent which is one fifth from the total median.

A totally different picture emerges when we compare the medians of offences against the person:

(1) Here the most lenient judge is N with a severity median of 10 per cent. It is worth while to remember that this same judge was the most severe when his sentencing policy was considered as a whole. The severest judge when sentencing those convicted of offences against the person proved to be Judge L with a severity median of 90 per cent. The difference between minimum and maximum severity in sentencing those guilty of offences against the person is the extraordinary figure of 80 per cent which is more than one and a half times bigger than the total median of severity for the same group (50 per cent).

(2) Here the order of severity is quite different from the order considered above and may be listed as follows:

Judge L	90%
Judge A	87
Judge S	50 = total median.
Judge R	49
Judge G	46
Judge J	45
Judge D	15
The rest	49

The mean deviation here is 25 per cent which is quite high and amounts to almost half the total median. This high mean deviation shows the relatively marked differences in the sentencing policy of individual judges towards those guilty of offences against the person.

Regarding offences against property, the analysis is as follows:

(1) Judge D, who was the most lenient according to the general median of his sentencing severity, is the severest punisher (median 72 per cent) when dealing with those convicted of offences against property; the most lenient towards this type of offender is Judge J (median 33 per cent). The difference here between minimum and maximum severity is, therefore, 39 per cent and the total median is 50 per cent.

(2) The order of severity is as follows:

Judge D	72%
Judge N	59
Judge L	55
Judge G	54
Judge S	52
	50 = total median.
Judge R	48
Judge A	47
Judge J	33
The rest	42

The mean deviation in this group is only 8 per cent.

We are in a position now to draw the following general conclusions from the analysis of the data of Table II:

(1) The sentencing policy of only three judges, namely, R, S and G, tends to be similar in severity to the general average, while the other five show a relatively marked deviation from the general average.

[11] The judges' real names, for obvious reasons, have been suppressed.

[12] The total median, of one set of grouped data is by definition 50 Percent.

TABLE III

ANALYSIS OF THE FREQUENCY (IN PERCENTAGES) OF USAGE OF THE METHODS OF PUNISHMENT IN TABLE Ib

	Maximum %	Minimum %	Difference between Max. & Min. %	General Average %	Mean Deviation %
Suspended sentences of imprisonment	40	10	30	27	8
Suspended sentence + fine	52	4	48	27	14
Total of suspended sentences and suspended sentences + fine	74	38	36	54	13
Imprisonment up to one year	42	15	27	29	7
Imprisonment to more than one year	20	7	13	12	5
All sentences of imprisonment	52	27	25	41	10

(2) This deviation is especially apparent in offences against the person and against property.

(3) In two instances (Judges D and N), we even noticed that a judge whose sentencing policy toward one type of offender was of maximum severity, became the most lenient when dealing with another type of offender.

(4) The marked differences in sentencing policy toward different types of offence enable us to conclude that the sentencing policy of each individual judge is definitely influenced by his personal reaction to a specific type of offence.

(5) The personal attitude of the trial judge and his individual sentencing habits have in fact a marked influence on the severity of punishment. We may even conclude from our analysis that in a great many cases this indefinable element may play a more important role in determining the type and severity of sentence than the nature of the offence and the personality of the offender.

TABLE IV

COMPARISON OF THE RELATIVE FREQUENCY OF THE VARIOUS METHODS OF PUNISHMENT USED BY THE JUDGES IN THE SAMPLE

Judges:	Punish'ts % Susp. Sent and Fine	To 1 Yr.	1-3 Yrs.	3 Yrs. Plus	Bind over	Proba-tion	Susp. Sent.	
R	57	26	7	0	0	6	10	100%
S	34	31	6	0	2	3	24	100
L	11	35	18	0	0	4	32	100
J	35	20	7	0	0	0	38	100
D	4	26	20	0	0	10	40	100
N	16	42	10	0	10	0	22	100
G	43	18	6	7	0	0	26	100
A	29	32	16	3	0	2	18	100
Others	30	22	9	3	0	6	30	100

Binding over to keep the peace and imposition of probation orders have occurred so infrequently that they do not justify the drawing of conclusions therefrom. The small number of probation orders indicates that, in Israel, this disposition is still in its experimental stage, and that the Israeli judiciary has not yet grasped the real importance of probation nor the best ways and means of utilizing it. As for the rest, we analysed the relative frequency of the various methods of punishment used by the judges in our sample by calculating for every method of punishment: (1) the maximum and minimum frequency of usage; (2) the difference between these two; (3) the general average (mean) frequency of usage; (4) the mean deviation.

Table III below shows the results of this analysis.

A comparison of the mean deviations with the general averages in Table III brings out marked differences in the quantitative usage of methods of punishment by the various judges. We may conclude therefore that not only is the severity of punishment largely determined by the personal sentencing habits and general attitude of the trial judge, but the latter also influences strongly the actual choice of methods of punishment.

Our final analysis of the sentencing behaviour of individual judges is made in Table V. This table shows the distribution of grounds of punishment followed by our sample of eight judges distinguishing between offences against property and against the person.

CONCLUSIONS

The analysis of the data in the several tables above justifies us in the following conclusions as to

TABLE V

PERCENTAGE COMPARISON OF SENTENCING GROUNDS DECLARED BY THE EIGHT JUDGES (TABLE II) DISTINGUISHING OFFENCES VS PERSON AND VS PROPERTY*

Judges	Grounds											
	MRP	ARP	MRD	ARD	MP	AP	MRf	ARf	MD	AD	MRt	ARt
R												
General	0.5	0.5	1.5	7	10	10	30	0.5	—	2	30	8
Vs person	—	—	—	4	12	6	30	—	—	2	36	10
Vs prop'ty	—	—	—	12	12	17	34	—	—	1	23	1
S												
General	—	0.5	0.5	3	17	11	15	1	2	3	34	14
Vs person	—	—	—	—	22	9	6	—	—	4	43	16
Vs prop'ty	—	1	1	3	12	17	23	2	—	1	29	11
L												
General	2	4	—	7	12	14	9	4	—	2	24	22
Vs person	—	—	—	—	—	—	—	—	—	—	—	—
Vs prop'ty	5	10	—	—	—	35	10	—	—	—	15	25
J												
General	4	1	3	9	20	7	9	—	—	4	35	6
Vs. person	4	—	4	4	30	—	2	—	—	4	30	22
Vs prop'ty	4	—	—	12	34	4	8	—	—	—	38	—
D												
General	9	3	1	—	10	8	5	1	—	3	25	25
Vs person	5	—	—	5	16	—	16	—	—	—	16	42
Vs prop'ty	15	10	—	10	—	30	—	5	—	5	15	10
N												
General	5	8	2	8	2	6	5	10	—	8	33	13
Vs person	—	—	—	—	—	—	34	—	—	—	33	33
Vs prop'ty	7	14	—	4	—	11	4	21	—	—	28	11
G												
General	10	4	1	18	11	7	4	6	1	4	26	8
Vs person	10	—	—	20	13	5	—	—	5	5	20	10
Vs prop'ty	9	9	3	12	12	9	6	9	—	3	16	12
A												
General	4.5	3	1.5	9	4.5	18	7.5	3	1.5	3	32.5	12
Vs person	—	14	14	—	—	—	—	—	—	—	42	30
Vs prop'ty	3	5	—	—	10	35	7	3	3	3	23	10
The rest												
General	12	4	1	12	7	10	13	2	—	5	22	12
Vs person	2.5	5	2.5	10	5	7.5	15	—	—	10	17	25.5
Vs prop'ty	16	4	—	13	6	12	15	5	—	2	23	4

* ABBREVIATIONS USED IN THIS TABLE:

MRP—Mitigating reformative—preventive
ARP—Aggravating reformative—preventive
MRD—Mitigating retributive—deterrent
ARD—Aggravating retributive—deterrent
MP—Mitigating preventive
AP—Aggravating preventive
MRf—Mitigating reformative
ARf—Aggravating reformative
MD—Mitigating deterrent
AD—Aggravating deterrent
MRt—Mitigating retributive
ARt—Aggravating retributive

the sentencing behaviour of the eight judges included in our sample:

1. *Judge R* shows some moderation in the severity of his sentences; this moderation is discernible in his attitude towards offences against property as well as towards those against the person. He makes extensive use of suspended sentences combined with fines (more than 50 per cent.), while the number of suspended sentences uncombined is relatively small. He fre-

quently rests his decisions upon retributive grounds and seldom upon reformative and preventive ones; the latter trait is even more apparent in sentencing those guilty of offences against the person and offences against property.

2. *Judge S*'s sentences, apart from a slight tendency to be more severe with offenders convicted of offences against property, are generally of a moderate severity. He tends to pass fairly often sentences of imprisonment for one year or less; he makes excessive use of retributive grounds (50 per cent.) but very sparing use of reformative, preventive and reformative-preventive grounds. When he deals with offences against property, there is some decrease in his retributive grounds, accompanied by a corresponding increase in preventive grounds.

3. *Judge L* is markedly severe, and even extremely severe in cases of offences against the person. With L sentences of imprisonment predominate, with a high proportion of imprisonment for terms of one to three years; he makes frequent use of suspended sentences but apparently does not approve of joint sentences, e. g. suspended sentences and fines. He makes considerable use of retributive grounds but shows a special tendency towards aggravating preventive grounds when dealing with offences against property.

4. *Judge J* is extremely lenient in his sentences, with only a slight increase in severity towards those guilty of offences against the person. Of his sentences, 75 per cent. were suspended sentences and suspended sentences combined with fines, a fact which makes his sentencing stand out as unusual even in comparison with some unusual sentencing tendencies of other judges in this sample. J, moreover, very seldom inflicts sentences of imprisonment; he uses a predominance of mitigating retributive grounds especially in dealing with offences against property.

5. *Judge D* is on the whole very lenient in his sentences, except when dealing with offences against property which he treats with extreme severity; he frequently employs suspended sentences. His favourite grounds are retributive ones, but as regards offences against property he prefers preventive grounds. He does not make great use, as a rule, of reformative and reformative-preventive grounds.

6. *Judge N* displays considerable severity towards all types of offence. He generally inflicts sentences of imprisonment, and for the most part refrains from imposing suspended sentences. With him, reformative and preventive grounds predominate, but he can use retributive grounds quite often.

7. *Judge G* shows a consistently moderate severity in his sentences as regards all types of offence. While he does not seem to favour sentences of imprisonment, he may yet inflict now and again a very long term of imprisonment; but generally he prefers suspended sentences combined with fines. He makes most use of reformative and preventive grounds, using retributive grounds relatively seldom.

8. *Judge A* punishes severely those guilty of offences against the person while those guilty of offences against property are sentenced by him lightly. A high proportion of his sentences impose terms of imprisonment, some of them being very lengthy. The number of suspended sentences passed by him is quite small. In A's pronouncements preventive grounds preponderate; this tendency is especially marked in his dealing with offences against property.

Thus it is apparent that there are great variations between one judge and another in their methods of sentencing and their degree of severity; these variations cannot be attributed altogether to the two first factors involving the offender and the offence, but must be mainly due to the third factor, namely the sentencing attitude and disposition of the individual judge himself.

What the penal or social consequences of these variations may be, to what extent these variations are inevitable and to what extent they are remediable are some of the questions which arise out of the conclusions reached in this paper. But important as they are, they remain outside the scope of this inquiry.