HOUSE OF LORDS

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT IN THE CAUSE

Regina *v.* Secretary of State for the Home Department (Appellant) *ex parte* Smith (FC) (Respondent) and one other action

[2005] UKHL 51

LORD BINGHAM OF CORNHILL

My Lords,

1. The question in this appeal is whether a sentence of detention during Her Majesty's Pleasure imposed before 30 November 2000 on conviction of a child or young person for murder imports a requirement that the minimum term to be served by that person be subject to periodic review, even though the length of that term has in effect been fixed by the Lord Chief Justice of England and Wales. The Court of Appeal (Lord Phillips of Worth Matravers MR, Mantell and Carnwath LJJ), affirming the decision of a Queen's Bench Divisional Court (Kennedy LJ and Mitchell J), held that it does: [2004] EWCA Civ 99, [2004] QB 1341; [2003] EWHC 692 (Admin), [2003] 1 WLR 2176. The Secretary of State challenges that conclusion.

2. On 8 March 1993 the respondent, Maria Smith, and a co-defendant pleaded guilty to murdering an elderly woman on 16 July 1992. At the time of the murder the respondent was aged 17 years 8 months, her co-defendant some six weeks younger. As required by section 53(1) of the Children and Young Persons Act 1933, the judge directed that each defendant be detained during Her Majesty's Pleasure. Under the sentencing regime then in force it was for the Secretary of State, having obtained the advice of the trial judge and the Lord Chief Justice, to fix the minimum (or tariff) term to be served before parole could be granted, that is, the punitive term judged necessary to meet the requirements of retribution and general deterrence. The trial judge drew no distinction between the culpability of the two defendants and rightly regarded the killing as exceptionally brutal. He advised a minimum term of 16 years in each case. The Lord Chief Justice, whilst recognising the horror of the crime, advised that a term of 14 years in

each case would be sufficient. The Secretary of State fixed terms of 15 years.

3. In *R v Secretary of State for the Home Department, Ex p Venables* and *R v Secretary of State for the Home Department, Ex p Thompson* [1998] AC 407 the House held, by a majority, that the Secretary of State was bound to keep under review the minimum term to be served by a person sentenced to detention during Her Majesty's Pleasure, and quashed the terms fixed in the applicants' cases. On 10 November 1997, following that decision, the Secretary of State announced the policy which he would in future adopt after the initial fixing of the minimum or tariff term, to give effect to the judgment (Hansard (HC Debates), written answers, cols 421-422):

> "Officials in my department will receive annual reports on the progress and development of young people sentenced under s 53(1) whose initial tariff has yet to expire. Where there appears to be a case for considering a reduction in tariff, that will be brought to the attention of Ministers.
>
> When half of the initial tariff period has expired, I or a Minister acting on my behalf will consider a report on the prisoner's progress and development, and invite representations on the question of tariff, with a view to determining whether the tariff period originally set is still appropriate. In complex and difficult cases, I shall seek the assistance of my Rt Hon friend the Secretary of State for Health in securing independent professional advice (that is to say, independent of those already charged with the care of the offender) on the young offender's condition and development.
>
> Any request for a review of tariff before it expires will be considered on its merits, whether that request is made by or on behalf of the offender or by one of the agencies or individuals responsible for his or her care.
>
> In considering requests, inviting representations, and in conducting reviews, I will look for evidence of:
>
> > significant alteration in the offender's maturity and outlook since the commission of the offence;
> >
> > risks to the offender's continued development that cannot be sufficiently mitigated or removed in the custodial environment;

> any matter that calls into question the basis of the original decision to set tariff at a particular level (for example about the circumstances of the offence itself or the offender's state of mind at the time);
>
> together with any other matter which appears relevant."

Pursuant to his duty of periodic review the Secretary of State invited and received representations on the minimum term to be served by the respondent and her co-defendant and refixed it at 13 years.

4. In *V v United Kingdom* (1999) 30 EHRR 121 the European Court of Human Rights unanimously held, affirming a decision reached by the Commission with a single dissentient vote, that the procedure adopted to fix the minimum term to be served by the child applicant had violated his rights under article 6 of the Convention. The Court held (in paras 109, 111 and 114 of its judgment) that the fixing of a minimum term was part of the proceedings and amounted to a sentencing exercise; that article 6(1) was therefore applicable; that that article guaranteed a fair hearing by an impartial tribunal independent of the executive; and that the Secretary of State was clearly not independent of the executive.

5. This decision prompted the Secretary of State to revise the procedures adopted to fix the minimum terms of children and young persons sentenced to HMP detention on conviction of murder. He informed the House of Commons of his new policy in that regard on 13 March 2000 (Hansard (HC Debates), cols 22-23):

> "Given that clear Court decision, I am bound to bring forward legislation, which will be in the Criminal Justice and Court Services Bill this Session, to provide for tariffs to be set by the trial judge in open court, in the same way as they are currently set for adults subject to discretionary life sentences, which apply to any offenders apart from those sentenced for murder. The tariff will be appealable either by the offender or by the Attorney-General if he believes it to be unduly lenient. I also plan to ensure that the views of the victims and their relatives are better taken into account. I shall announce our proposals in due course.

> About 250 people, sentenced as juveniles, are currently detained at Her Majesty's pleasure, and fresh cases continue to go through the courts. For new cases, pending the necessary change in the law which I have announced, I shall set any tariffs in line with the recommendation that the Lord Chief Justice makes to me in each case. For existing cases, I propose a fresh review of tariffs in line with the principles in the judgment. I shall be inviting representations from those whose tariffs have not yet expired.
>
> Where no representations are received, the tariff will be set in accordance with the original recommendation made by the Lord Chief Justice in that case. Where acceptance of the Lord Chief Justice's original recommendation would mean that the tariff had now expired, I shall refer those cases to the parole board immediately. Where the original recommendation made by the Lord Chief Justice was higher than the tariff set by Ministers, the tariff would not be increased.
>
> Where existing detainees wish to make representations, they can be made to the present Lord Chief Justice, who will then make a recommendation to me. I will then adopt his recommendation on what the tariff should be."

Thus the Secretary of State proposed a two-pronged response: a legislative scheme to govern new cases, and an informal *ad hoc* procedure to govern the cases of HMP detainees sentenced before the legislation would take effect.

6. Effect was given to the first of these proposals by section 60 of the Criminal Justice and Court Services Act 2000. Three points about that section are noteworthy for present purposes. First, it inserted a new section 82A into the Powers of Criminal Courts (Sentencing) Act 2000. This, in brief and simple summary, requires trial judges, when imposing sentences of HMP detention (otherwise than in exceptional circumstances) to specify the minimum term to be served by the detainee before he or she becomes eligible for release, if recommended by the Parole Board, on parole. Thus the judge (not the Secretary of State) fixes the minimum term and the Parole Board (not the Secretary of State) decides whether it is safe to release the detainee. Secondly, it is provided in section 60(3) that "This section", and thus section 82A, "has effect in relation to sentences passed after the coming into force of this section". Thus neither section applies to sentences passed before that date. Thirdly, section 60 came into effect on 30 November 2000,

the date on which the Criminal Justice and Court Services Act 2000 received the royal assent. Thus 30 November 2000 marks the legislative divide between what may loosely be called old and new sentences of HMP detention. The respondent's sentence, passed well before that date, was an old sentence. Hence it is governed by the informal *ad hoc* procedure already mentioned and not by the new legislative scheme.

7. Pursuant to this new procedure the respondent was given the opportunity to make written representations for consideration by the Lord Chief Justice if she wished to contend that the minimum period set in her case should be reduced below 13 years. She made such representations, as did her co-defendant. Having considered these representations the Lord Chief Justice, sitting in court on 21 November 2001, delivered his written decision. He referred to representations made by the respondent's solicitors on her behalf and said:

> "They referred also to the need for the tariff I set to take into account the removal of the previous practice of continuous monitoring and periodic assessment and to reflect the issues of the detainee's welfare. As to this last point, I should make it clear that I regard it as the responsibility of the Home Secretary to undertake any future monitoring which the law requires."

The Lord Chief Justice found nothing in the papers to indicate grounds for reducing the minimum term to be served by the respondent but added an expression of his hope that the Secretary of State would keep her case under review. He made a reduction of one year in the case of her co-defendant, whose conduct had improved markedly in recent years.

8. Solicitors for the respondent pressed the Secretary of State to review her minimum term again, but on 10 June 2002 the Secretary of State made clear his unwillingness to do so. He contended that the decision of the House in *Ex p Venables* related only to minimum terms set by the executive. In *Practice Statement (Crime: Life Sentences)* [2002] 1 WLR 1789 issued a little earlier, on 31 May 2002, paras 26-27, the Lord Chief Justice had recorded the Secretary of State's stance on this issue, pointing out that "the Home Secretary's view means that apparently exceptional progress by a child while in detention will not influence the date his case is considered by the Parole Board". On

28 June 2002 the respondent applied for judicial review of the Secretary of State's decision. The present appeal arises in those proceedings.

9. As foreshadowed in the foregoing paragraphs, the parties are sharply divided in their understanding of the decision of the majority of the House in *Ex p Venables*. The Secretary of State reads that decision as applicable only where the minimum term of an HMP detainee is set by the executive, and as having no application where (as here) it has been set by a judge. Thus he rejects any duty of continuing review even in an old (pre-30 November 2000) case. The respondent does not accept this reading. She contends that the decision describes and defines the essential nature of a sentence of HMP detention as including a duty of continuing review. Whatever the position of a detainee to whom section 82A applies, on which the respondent makes no concession, her position is unaffected: the new legislation does not apply to her; her minimum term remains subject to continuous review; and the fact that the term was approved by the Lord Chief Justice does not alter that condition.

10. Recognising the central importance of this issue in the proceedings, the Divisional Court and the Court of Appeal analysed the majority opinions of the House in *Ex p Venables* in careful and accurate detail: see [2003] 1 WLR 2176, paras 7-12; [2004] QB 1341, paras 57-73. The parties also advanced detailed submissions in their written submissions and in oral argument. It would be a work of supererogation to repeat the citations which have been relied on. Instead I shall summarise the propositions which, in my judgment, are clearly established by these opinions:

(1) Section 103 of the Children Act 1908 introduced, and section 53(1) substantially re-enacted, provision for detention during His Majesty's Pleasure as a special sentence devised to reflect the reduced responsibility and special needs of those committing murder as children or young persons. It was a sentence which was expressly differentiated from the sentence which the law required to be passed on those committing murder as adults, in that it required account to be taken of the detainee's welfare. See the opinion of Lord Browne-Wilkinson at [1998] AC 407, pp 496 A-E, 498 B-500 B; that of Lord Steyn at pp 518 G-H, 520 H-522 C, 524 D-G; that of Lord Hope of Craighead at pp 529 F-530 E, 532 A-B, 534 E-535 A. That the majority

opinion is to be so understood is confirmed by Lord Lloyd of Berwick, dissenting, at p 513 H.

(2) It has been an important and distinctive feature of the sentence of HMP detention that the detainee should be subject to continuing review so that the detainee may be released if and when it is judged appropriate to do so. See Lord Browne-Wilkinson at pp 499 H-500 F, 502 H-503 A; Lord Steyn at pp 522 H-523 B; Lord Hope at pp 532 A-E, G, 534 E-535 A, 535 B-C.

(3) The Murder (Abolition of Death Penalty) Act 1965, which in effect amended section 53(1), confirmed the existence of that feature and the Criminal Justice Act 1991 did not remove it. See Lord Browne-Wilkinson at pp 500 F-502 F; Lord Steyn at pp 522 C-H, 523 B-524 D; Lord Hope at pp 529 G-532 A, 534 C-E.

(4) While there is or may be no objection in principle to the fixing of a minimum term to be served by an HMP detainee before the grant of parole, such term may only be provisional, since the progress of the detainee in custody, reported through continuing review of the detainee's progress, may call for it to be varied downwards. See Lord Browne-Wilkinson at p 500 E; Lord Steyn at pp 518 F, 520 A-B; Lord Hope at pp 535 F-536 G.

These propositions point towards the correctness of the respondent's submission and the conclusions reached by the courts below. For if (as was held) the sentence of HMP detention under section 53(1) imports a duty of continuing review and the Acts of 1965 and 1991 have not removed that feature, and if (as is clear) section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 does not affect the respondent's sentence because it was imposed before 30 November 2000, the respondent remains subject to a sentence which imports a duty of continuing review and the Secretary of State cannot absolve himself from that duty by indicating that he will not perform it.

11. Mr Pannick QC, for the Secretary of State, advances five main reasons for rejecting this conclusion. First, he takes issue with the proposition that *Ex p Venables* upholds a duty of continuing review not only where, as in that case, the minimum term is set by the Secretary of State but also where, as here, it is set judicially. He points to passages in the majority opinions in which the role of the Secretary of State is treated as significant. But authorities must be read in context. In *Ex p Venables* there was, and at the time could be, no challenge in principle

to the Secretary of State's involvement in the process of setting a minimum term. There was, however, on the facts of the case, a marked contrast between the Secretary of State's approach to that task and that which a judge would have adopted. No doubt that contrast coloured the majority's thinking and reinforced their opinion that protection of the proper interest of the young offender called for continuing review. But their decisive conclusions, summarised in para 10. (1) and (2) above, rested on the inherent nature of the sentence of HMP detention, not on the identity of the authority setting the minimum term if, varying the sentence as originally conceived and enacted, there was to be a minimum term. The majority would have upheld a requirement of continuing review even if the minimum term had been set judicially, because that was an intrinsic feature of the sentence.

12. Secondly, Mr Pannick submits that there is no inherent requirement of continuing review where the detainee is no longer a child or young person. He points out that the respondent was aged 27 when the Lord Chief Justice set her minimum term in November 2001, and informs the House that none of the HMP detainees sentenced before 30 November 2000 and still in custody is now under the age of 18. He points out, correctly, that the welfare principle laid down in section 44 of the 1933 Act, as amended by section 72(4) of and Schedule 6 to the Children and Young Persons Act 1969, applies only to children and young persons. Thus in the respondent's case any duty of continuing review is, in effect, spent. This is not a submission which I can accept. The requirement to impose a sentence of HMP detention is based not on the age of the offender when sentenced but on the age of the offender when the murder was committed, and it reflects the humane principle that an offender deemed by statute to be not fully mature when committing his crime should not be punished as if he were. As he grows into maturity a more reliable judgment may be made, perhaps of what punishment he deserves and certainly of what period of detention will best promote his rehabilitation. It would in many cases subvert the object of this unique sentence if the duty of continuing review were held to terminate when the child or young person comes legally of age.

13. Thirdly, Mr Pannick submits that the House should be slow to reimpose a duty on the Secretary of State to review sentences of HMP detention or refer them back to the court. In *V v United Kingdom*, above, the European Court condemned the Secretary of State's involvement in what it held to be a sentencing exercise. Her Majesty's Government sought to comply with that ruling by promoting and securing enactment of section 82A and by establishing the informal *ad hoc* procedure already described to achieve judicial resolution of

challenges to pre-30 November 2000 sentences of HMP detention. It would be entirely retrograde if the Secretary of State were now to be required to take part again in the process of setting a minimum term. I sympathise entirely with the desire of the Secretary of State to have nothing to do with the setting of a minimum term, whether in connection with the initial imposition of the sentence of HMP detention or subsequently. It should however be observed that the authorities on article 6, whether in Strasbourg or the United Kingdom, have so far considered the application of article 6 only in relation to the initial setting of the minimum term. While it would obviously be wrong for that term to be subsequently increased by executive decision, it does not follow that the same considerations necessarily apply to a reduction, even if pursuant to a review mandated by domestic law. A reduction in the sentence imposed by a court is a well-recognised exercise of executive clemency. If the Secretary of State should prefer the decisions on whether to reduce the minimum sentence to be taken by the judiciary, it is open to him to adopt the same informal procedure for seeking the advice of the Lord Chief Justice as he has done for the purpose of reconsidering the original minimum terms. It would in any case be impracticable for him to expect the judiciary to perform the task of reviewing and monitoring the progress of the detainee in custody. That is a task which only those for whom the Secretary of State is answerable can perform, since only they have physical custody of the detainee and the opportunity to observe and record his progress. This was recognised by Mr Brittan QC as Secretary of State when, in his parliamentary statement of 30 November 1983, he said with reference to dates set for parole reviews (Hansard (HC Debates), written answers, col 507):

> "Moreover, governors will be told to report at once any exceptional development requiring action. These procedures will ensure that I can consider any special circumstances or exceptional progress which might justify changing the review date."

An instruction to similar effect can readily ensure that the Secretary of State is alerted to any exceptional progress made by an HMP detainee such as might warrant reconsideration of the minimum term previously set by the Lord Chief Justice. Such a procedure for reconsideration is not provided for in the informal *ad hoc* scheme established by the Secretary of State, but nor is it excluded, and under the legislation governing pre-30 November 2000 cases such as the respondent's it could not lawfully be excluded.

14. Mr Pannick's fourth submission is defensive in character, directed to meet a point made by the respondent that even under the informal *ad hoc* procedure now adopted in cases such as the respondent's the role of the Lord Chief Justice is only advisory and authority to decide remains with the Secretary of State under section 28(4) of the Crime (Sentences) Act 1997. That, says Mr Pannick, is to mistake form for substance, appearance for reality. I agree. The Secretary of State has publicly bound himself to accept and give effect to the advice of the Lord Chief Justice. He has done so. His good faith is not in doubt. I am content to treat the Lord Chief Justice as making the effective decision. But that has no bearing on the duty of continuing review.

15. Fifthly, Mr Pannick submits that a continuing duty to review the progress of pre-30 November 2000 HMP detainees would be anomalous, since no such duty obtains in the case of HMP detainees covered by section 82A of the Powers of Criminal Courts (Sentencing) Act 2000, nor in the case of those detained under section 53(2) of the 1933 Act or sentenced to long determinate sentences; and it would be anomalous both to impose a duty on the Secretary of State and to impose it in relation to a detainee who has come of age. To my mind, an argument based on anomaly is not initially persuasive. Over the last two decades or so, the law governing the imposition and administration of sentences of life imprisonment and HMP detention has been the subject of many changes. Not infrequently these changes have been made in response to judicial decisions adverse to the Secretary of State, whether made by the domestic courts as in *R v Secretary of State for the Home Department, Ex p Handscomb* (1987) 86 Cr App R 59, *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, *Ex p Venables* [1998] AC 407 and *R (Anderson) v Secretary of State for the Home Department* [2003] 1 AC 837, or by the European Court, as in *Thynne, Wilson and Gunnell v United Kingdom* (1990) 13 EHRR 666, *Hussain v United Kingdom* (1996) 22 EHRR 1 and *V v United Kingdom* (1999) 30 EHRR 121. The legislative response to these adverse decisions has been reactive, piecemeal and particular. In the absence of any comprehensive approach to the issues, anomalies are all but inevitable. But whether an anomalous distinction exists between pre- and post- 30 November 2000 HMP detainees depends on the interpretation of section 82A, an issue not now before the House. It is true that no continuing duty of review applies to other sentences imposed on young offenders, because other sentences do not have the special features of HMP detention: that is anomalous only if it is thought that they should have those features. There is nothing anomalous in according a monitoring role to the Secretary of State, as described above. Nor, in my opinion, is it anomalous to continue to

treat a person who committed a crime as a child or young person differently from one who committed a crime as an adult. In referring to detention during Her Majesty's Pleasure the 1908 and 1933 Acts used a form of words first found in the Criminal Lunatics Act 1800 (39 & 40 Geo III, c 94), a clear indication that those so sentenced were not regarded as fully responsible. A crime committed by a person who is insane or under age does not cease to be such because he later regains his sanity or becomes adult.

16. The respondent's case, as I understood it, envisaged a continuing power in the Secretary of State to reduce the minimum term of a pre- 30 November 2000 HMP detainee even though the term had been set by the Lord Chief Justice. As I have already suggested, such a procedure might well be a legitimate act of executive clemency, violating no domestic statute or Convention principle. But I fully understand the Secretary of State's reluctance to be drawn back into any routine process of adjudication, and that should in my view be respected. A routine process of monitoring the progress of detainees is, however, undertaken by his officials anyway, and it imposes no undue burden on him to require a review which, if the Secretary of State thinks fit, may be on the advice of the Lord Chief Justice if, in the case of any of the 114 pre-30 November 2000 HMP detainees still in custody pending completion of their minimum term, there is clear evidence of exceptional and unforeseen progress such as may reasonably be judged to call for reconsideration of the detainee's minimum term. The decision of the Secretary of State not to seek the advice of the Lord Chief Justice should not be readily susceptible to challenge.

17. I accordingly conclude that the progress of those sentenced to HMP detention before 30 November 2000, whose minimum terms have been set by the Lord Chief Justice and have not expired, should remain subject to continuing review for reconsideration of the minimum term imposed if clear evidence of exceptional and unforeseen progress is reasonably judged to require it. I would dismiss this appeal.

LORD NICHOLLS OF BIRKENHEAD

18. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill. For the reasons he gives, with which I agree, I too would dismiss this appeal.

LORD HOFFMANN

My Lords,

19. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill. For the reasons he gives, with which I agree, I would dismiss this appeal.

LORD HOPE OF CRAIGHEAD

My Lords,

20. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill. I agree with it, and for the reasons that he has given I too would dismiss the appeal.

BARONESS HALE OF RICHMOND

My Lords,

21. For the reasons given by my noble and learned friend, Lord Bingham of Cornhill, I agree that this appeal should be dismissed. He has, of course, said everything that needs to be said. But I should like to add a short footnote, because a recent decision of the United States Supreme Court has given us a powerful account of the reasons why it is right to treat juvenile murderers differently from adults, even where they have been guilty, as Maria Smith was undoubtedly guilty, of a very, very grave crime.

22. Before the Children Act 1908, children convicted of murder were sentenced to death, although by then it had become the practice not to carry out that sentence. The 1908 Act, in section 103, provided that children should no longer be sentenced to death, and that instead they should be sentenced to be detained during His Majesty's pleasure. This sentence was modelled on that imposed upon people who were so

seriously mentally disordered that they fell within the law's definition of insanity. It was thus a clear recognition that a juvenile's responsibility for even the most heinous crime was diminished, although not entirely extinguished.

23. On 1 March 2005, the United States Supreme Court decided, in *Roper v Simmons*, that the Eighth and Fourteenth amendments of the United States Constitution forbad the imposition of the death penalty upon offenders who were under 18 when the offence was committed. In doing so, the majority explained (at pp 15 – 16) three general differences between juveniles and adults:

> "First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.' *Johnson v Texas* 509 US 350, at 367 (1993) . . . It has been noted that 'adolescents are overrepresented statistically in virtually every category of reckless behaviour.' Arnett, Reckless Behaviour in Adolescence: A Developmental Perspective, 12 Developmental Review 339 (1992). . . .
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> The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. . . This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. See Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am Psychologist 1009, 1014 (2003) … ('[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting").
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> The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. See generally E Erikson, Identity: Youth and Crisis (1968)."

24. In the Court's view, the first of these meant that a juvenile's irresponsible conduct was not as morally reprehensible as that of an adult; the second meant that juveniles had a greater claim to be forgiven for failing to escape the negative influences around them; and the third meant that even the most heinous crime was not necessarily evidence of an irretrievable depraved character. Furthermore, at p 19:

> "It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. See Steinberg & Scott 1014-1016."

25. These considerations are relevant to the retributive and deterrent aspects of sentencing, in that they indicate that the great majority of juveniles are less blameworthy and more worthy of forgiveness than adult offenders. But they also show that an important aim, some would think the most important aim, of any sentence imposed should be to promote the process of maturation, the development of a sense of responsibility, and the growth of a healthy adult personality and identity. That is no doubt why the Children and Young Persons Act 1933, in section 44(1), required, and still requires, every court dealing with any juvenile offender to have regard to his or her welfare. It is important to the welfare of any young person that his need to develop into fully functioning, law abiding and responsible member of society is properly met. But that is also important for the community as a whole, for the community will pay the price, either of indefinite detention or of further offending, if it is not done.

26. It makes no difference to the nature of the sentence of detention during Her Majesty's pleasure whether the punishment part of the sentence is set by the Home Secretary or on the advice of a judge. The considerations which led the majority of this House, in *R v Secretary of State for the Home Department, Ex p Venables* [1998] AC 407, to decide that the nature of the sentence required the Home Secretary to keep the punishment part of that sentence under review, apply with exactly the same force where that punishment part has been set by a judge. As the European Court of Human Rights said in *V v United Kingdom* (1999) 30 EHRR 121, at para 110, "Where a juvenile sentenced to detention during Her Majesty's pleasure is not perceived to be dangerous, therefore, the tariff represents the maximum period of detention which he can be required to serve." Whatever may be the position under the Powers of Criminal Courts (Sentencing) Act 2000, as

amended by the Criminal Justice and Court Services Act 2000, nothing has changed the effect of this House's decision in the *Venables* case as far as this respondent is concerned.

27. I would therefore dismiss this appeal.