

中英量刑问题

比 较 研 究

中国政法大学刑事法律研究中心 主编
英国大使馆文化教育处

中国政法大学出版社

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出版说明

中国政法大学刑事法律研究中心在英国驻华大使馆文化教育处的支持和资助下,于1999年至2000年开展判刑问题的项目研究。该项目由最高人民法院沈德咏副院长和中国政法大学刑事法律研究中心主任陈光中教授共同主持,其中包括沈德咏副院长于2000年3月率代表团对英国刑罚体系和量刑制度的考察、项目组成员对国内判刑问题的调查,以及在此基础上,于2000年11月13日和14日,在北京召开中英量刑问题研讨会。本书是该项研究成果的总汇集。

我们将最高人民法院沈德咏副院长和英国驻华大使馆大使高德年爵士在开幕式上的致辞,刊登于本书之前。

本书第一部分是中、英双方法学教授、法官和专家在此次研讨会上的论文。

本书第二部分是中方两个代表团对英国量刑和非职业法官制度的考察报告,两个调研组对我国云南省和上海市判刑和陪审问题的调查报告,以及中国政法大学法律系与北京市朝阳区人民检察院对朝阳区人民检察院1999年度公诉案件量刑统计与分析。

上述活动得到英国驻华大使馆文化教育处的大力支持和资助,特在此致以衷心的感谢!

中国政法大学刑事法律研究中心

2000年12月20日

Editor's Notes

The Center for Criminal Law and Justice at China University of Political Science and Law has conducted, with support of the Cultural Education Section of the British Embassy in China, researches on sentencing since the year of 1999. This program is jointly organized by the Vice – president of the Supreme People's Court, Shen Deyong and Professor Chen Guangzhong, Director of this Center. The actions of this program include a study tour, led by Vice – president Shen Deyong, to the UK on the British criminal punishments and sentencing system in March 2000 and surveys on sentencing issues in China. Based on the outputs of the study tour and surveys, the Sino – British Conference on Sentencing was held in Beijing on 13 – 14, November 2000. This book is the collections of the achievements of the program.

The Opening Address of Vice – President Shen Deyong and HMA's Speech at the opening ceremony of the Sino – British Conference on Sentencing are put on the front part of this book.

The First Part of this book contains the presentations of professors, judges and experts attending the conference.

The Second Part consists the mission reports of two delegations visiting the UK on British sentencing and lay judge system; surveys on sentencing and people's assessors' issues in Yunnan Province and Shanghai City; the statistics and analysis of the sentencing of the publicly prosecuted cases in Chaoyang District Procuratorate of Beijing City in the year of 1999.

The Center would like to express sincere thanks to the Cultural Educa-

tion Section of the British Embassy in Beijing for its great support.

The Center for Criminal Law and Justice
at China University of Political Science and Law
2000/12/20



中英量刑大会主席台。英国驻华大使高德年爵士（左三），最高人民法院沈德咏副院长（右三），中国政法大学刑事法律研究中心主任陈光中教授（右二），布鲁克大法官（左二），吉尔大法官（左一），北京市高级人民法院副院长王明（右一）。

中英量刑问题研讨会开幕词

中华人民共和国最高人民法院副院长 沈德咏

各位来宾、女士们、先生们：

我很荣幸受邀参加由中国政法大学刑事法律研究中心和英国大使馆文化教育处共同组织的“中英量刑问题研讨会”，在此，我对远道而来的英国代表团的专家们和与会的各位代表表示热烈的欢迎，并祝贺此次研讨会顺利召开。

众所周知，量刑是刑事审判活动的基本环节之一，量刑适当是检验刑事审判工作质量的重要标准。值此新世纪来临之际，中英法律界专家在此聚集一堂，围绕量刑问题进行交流 and 探讨，总结过去，展望未来，既具有现实性，又具有前瞻性，既具有理论研究价值，又具有司法实践意义，可以说是中英法学界和司法界友好合作的一次盛会。

中国改革开放以来，如同经济快速发展一样，在民主和法制建设上也取得了举世瞩目的成就。与此同时，量刑在整个刑事审判活动的不断改革和进步中也日益向更公正、更合理、更有效的方向发展。当然，我们也应看到我们的工作仍有需要改进和完善的地方。因此，不断推进刑事审判的改革工作，保证量刑活动依法公正进行，仍是我们面临的一项重要任务。

英国是一个具有悠久法制传统的国家，在刑事审判和量刑方面

有着丰富的理论和实践经验。其中许多先进的做法对中国都有重要的借鉴意义。我们希望通过这次会议，能使双方对彼此的刑事审判制度和方式有进一步的了解，并对共同感兴趣的量刑问题进行深入的探讨和研究。

最后，我预祝本次研讨会取得圆满成功！

2000年11月13日

Opening Address at Sino – British Conference on Sentencing

By Mr. Sheng Deyong, Vice President of the Supreme
People's Court of the People's Republic of China
(November 13, 2000)

Distinguished Guests, Ladies and Gentlemen,

It is a great honor for me to be invited to attend the Sino – British Conference on Sentencing, which is jointly organized by the Center for Criminal Law and Justice at China University of Political Science and Law and the Cultural and Education Section of the British Embassy in Beijing. Here, I would like to extend my warm welcome to British experts coming afar and all delegates attending this seminar, and my sincere congratulations on the smooth convening of this seminar.

As is known to everybody, sentencing is a basic procedure of criminal trial, and a proper sentencing is an important standard examining the quality of criminal trial. Thus, it is both timely and far – sighted, both of theoretical values and of practical significance for Chinese and British law experts together here at the dawn of a new century, to exchange and explore issues concerning sentencing, to sum up the past and to look into the future.

Since it began to implement the policy of reform and opening up to the

outside world in 1978, China has made world acknowledged achievements in its democracy and legal construction just like its rapid economic development. Meanwhile, with the constant reform and progress of the criminal trial, sentencing has been developing towards a more just, reasonable and effective direction. But we ought to recognize that there is still plenty of room to improve in our work. Thus, it is still an important task faced by us to constantly push forward the reforming process of criminal trial so as to ensure that sentencing can proceed in a justifiable manner in accordance with law.

As a country with a long history of jurisdiction, the United Kingdom enjoys rich theoretical and practical experiences in the area of criminal trial and sentencing. It is our hope that, through this seminar, the two sides will have a further understanding of each other's criminal trial system and methods by having an in - depth exploration and study of the sentencing issues of common interest.

Finally, I would like to wish a complete success of the seminar.

(Translated by Liu Xiang wen)

大使阁下在中英量刑会议开幕式上的讲话

高德年爵士

(2000年11月13日)

副院长先生、各位著名的来宾、女士们、先生们：

我很荣幸地应邀在今天这个中英量刑问题研讨会的开幕式上致辞。我很高兴地见到各位济济一堂，首先，我想对我们这次活动的合作伙伴——中国政法大学表示感谢。

英国大使馆文化教育处已同一些中国机构之间进行了一段时期的合作，其目的在于帮助中国的司法改革，而该领域的改革就我们看来是中国整个改革开放进程中最重要也是最基本的因素。今天的会议是我们同中国政法大学两年来合作的结晶。就量刑问题予以合作的起源可以追溯到1998年英国法律周，当时提出了几个有关量刑的问题。有些问题在其后的法律周研讨会以及1999年9月的刑事审判程序研讨会上进行了探讨。此后，英国大使馆文化教育处与中国政法大学就进一步探讨那些被认为与中国的法律改革密切相关的问题制定了这一为期两年的合作项目。

在这个项目的合作期间，中、英双方的法律专家们已就如下重要问题达成了一致意见，即如何减少量刑中的不一致，法官的量刑自由度及法律的解释和法院的监督，并且还讨论了例如死刑这样的

敏感问题。去年，由沈德咏先生带队的中国代表团访问了英国，对英国的制度作了更为详细的调查，并与英国同行进行了进一步的、深入的探讨。

今天的会议将为各位提供一次机会，以对上述访问期间确定的与中国密切相关的领域进行充分的讨论。我相信这种长期的持续不断的合作是非常有价值的，而且也是对双方都有益的。

我想利用这个机会介绍一下从英国来的这三位发言人。

布鲁克大法官是英格兰和威尔士上诉法院的法官，他现任法律委员会主席，是英格兰关于 IT 责任的高等法官，还是牛津大学社会学研究中心顾问委员会成员之一。他曾服务于伦敦大学高等法学研究所委员会达 6 年之久，自 1997 年起他担任犯罪与审判研究中心委员会主席，该中心位于伦敦皇家学院。布鲁克大法官将谈论英格兰和威尔士的量刑改革与刑事诉讼程序。

基尔大法官是苏格兰季审法院和高等法院（苏格兰最高民事和刑事法院）的法官。他还是苏格兰法律委员会的主席，该委员会是一个依法设立的旨在促进苏格兰法律改革的组织。他曾在爱丁堡大学教授法理学，并因在英格兰和苏格兰作为律师开业获得很高声誉。基尔大法官自 1996 年起任苏格兰法律委员会主席，在他任职期间，他参与了几项对苏格兰和整个英联邦都有重要影响的主要法律改革。基尔法官将谈论有关刑罚轻缓化及监禁刑的替代措施问题。

尼古拉·裴多菲尔德夫人是剑桥大学菲茨威廉姆学院院长，同时她还是该院犯罪学研究所的特别研究员和讲师。作为一名犯罪学专家，她在量刑方面有丰富的知识并对监狱研究有特别兴趣。她已经撰写并出版了大量刑法与审判方面的著作，并且接受政府的委托正在从事有关研究。今天她将谈论关于量刑公正的问题。

在此，我要感谢中国政法大学刑事法律研究中心，是他们的合作使本次会议成为可能。我还要感谢沈德咏先生及最高人民法院对该项目持续不断的兴趣与支持。我还要感谢来自中、英双方的发言

人。

最后，我预祝本次会议和你们所从事的重要工作都取得圆满成功。(完)

HMA's Speech at the Opening Ceremony of the Sino – British Conference on Sentencing

13 November 2000

Vice – Minister, Distinguished Guests, Ladies and Gentlemen:

It's my pleasure to have been invited to speak at the opening of today's Sino – British Conference on Sentencing. I am delighted to see you all here today, and I would first like to thank the China University of Political Science and Law, our partners in this event.

The Cultural and Education Section of the British Embassy has for some time now been working in partnership with a range of Chinese organisations with the aim of providing support to China's legal reform programme, which we believe is the single most important and fundamental element in the whole Chinese reform and opening process. Today's conference is the culmination of two years of cooperation with China University of Political Science and Law. The origins of this collaboration to work on Sentencing can be traced back to British Law Week in 1998, when several issues about sentencing were raised. Some of these were taken up at the subsequent Law Week Follow – up Workshops and Criminal Court Procedure Seminars in September 1999. After that, the Cultural and Education Section of the British Embassy

and China University of Political Science and Law established this two year project to explore further those areas considered to be of particular relevance to China's developments in legal reform.

During this project Chinese and British legal professionals have looked together at such crucial issues as how to reduce inconsistencies in sentencing, judges' latitude of sentencing and interpretation of the law, supervision of the courts and have also discussed such sensitive issues as the death penalty. Last year, a Chinese delegation headed by Mr Shen Deyong visited Britain to undertake a more detailed investigation of the British Systems and to hold further, in - depth discussion with their British counterparts.

Today's conference will provide an opportunity to discuss more extensively, some of the areas identified during that visit as of particular interest to the Chinese side. I believe such long - term and sustained co-operation is extremely valuable, and beneficial to both sides.

I would like to take this opportunity to introduce the three speakers from the UK:

Lord Justice Brooke is an appeal court judge in England and Wales. He has served as chairman of the Law Commission and is the senior judge with IT responsibilities in England and a member of the Advisory Council for the Centre for Socio - Legal Studies at Oxford University. He served on the Board of the Institute of Advanced Legal Studies at London University for six years, and since 1997 he has been Chairman of the Council of the Centre for Crime and Justice Studies, based at King's College London. Lord Justice Brooke will talk about the reform of Sentencing and Criminal Proceedings in England and Wales.

Lord Gill is a judge of the Court of Session and of the High Court in Scotland (Scotland's supreme civil and criminal courts). He is also chairman of the Scottish Law Commission, the body constituted by statute to promote law reform in Scotland. He has taught jurisprudence at the University

of Edinburgh and has the distinction of having practised law in both England and Scotland. Lord Gill has been Chairman of the Scottish Law Commission since 1996 and in the course of his work with the commission has been involved in several major law reform projects affecting both Scotland and the United Kingdom. Lord Gill will talk about mitigation and alternatives to custody.

Nicola Padfield is President of Fitzwilliam College, Cambridge University, where she is a Fellow and Lecturer at the Institute of Criminology. An expert on criminology, she has an extensive knowledge of sentencing and a particular interest in Prison Studies. She has written and published extensively on Criminal Law and Justice, as well as having been commissioned to undertake research by the government. Today, she will be talking about Fairness of Sentencing.

I would like to express my appreciation to the Centre for Criminal Law and Criminal Justice of China University of Political Science and Law for their collaboration to make this conference possible, Mr Shen Deyong and the Supreme People's Court for their continued interest and support and the speakers from both China and Britain.

Finally, I would like to wish every success to this conference and to the important work in which you are all engaged.

End