Its Own Stock, 35 Col. L. Rev. 971 (1935). Thus far, no court has recognized such a restriction upon this phase of corporate activity.

Whether stockholders may object to the enforcement, at the option of the favored holders, of repurchase agreements made by the corporation at the time of the original sales is not settled. There are numerous *dicta* that such agreements are void as to stockholders as well as creditors. *Grasselli Chemical Co. v. Aetna Explosive Co., Inc.*, 258 Fed. 66, 68 (D.C. N.Y. 1918); *Murphy Grocery Co. v. Skaggs*, 67 Utah 487, 248 Pac. 127, 130 (1926); *White Mts. Ry. Co. v. Eastman*, 34 N.H. 124, 141 (1856). And it has been held that the breach of a repurchase agreement does not give the stockholder a priority over the other stockholders in the assets of the corporation in the hands of a receiver. *Sarbach v. Kansas Fiscal Agency Co.*, 86 Kan. 734, 122 Pac. 113 (1912); see also *Melvin v. Lamar Ins. Co.*, 80 Ill. 446 (1875). But many courts have ignored the probability of injury to the other stockholders where the corporation was solvent and have enforced the agreements on the theory that the sale or subscription was on condition. *Wis. Lumber Co. v. Greene & Western Tel. Co.*, 127 Iowa 350, 101 N.W. 742 (1904); *Chapman v. Iron Clod Rheostat Co.*, 62 N.J. L. 497, 41 Atl. 690 (1898); *Wolf v. Excelsior Scale Co.*, 270 Pa. 547, 113 Atl. 569 (1921). Even when the repurchases were made for more than the market price these agreements have been enforced, despite the resultant injury to the remaining stockholders. *Furrer v. Neb. Bldg. & Investment Co.*, 111 Neb. 67, 195 N.W. 928 (1923); *Vickrey v. Maier*, 164 Cal. 774, 129 Pac. 276 (1912); *Grace Securities Corp. v. Roberts*, 158 Va. 792, 164 S.E. 700 (1932). In the principal case, however, the court held the repurchase agreements unenforcible without requiring a showing of actual injury to the complaining stockholders, on the theory that the privilege to resell was a violation of that equality of rights which should exist among all the stockholders of a class. Such a result would follow as a matter of course under the rule of ratable purchase. It may be that even though such a rule is not recognized as to all purchases of stock, courts should adopt it as to options to resell and thus set aside all preferential agreements to repurchase made by the corporation when the stock is sold. But such agreements, regardless of whether they are made with a few or all of the stockholders should be discouraged. They are inherently vicious. If the corporation prospers, the option to resell is useless; if it fails, the option may be unenforcible, either because creditors have come in, or as in the principal case, because there are objecting stockholders. Under such circumstances, the promise to repurchase is a snare to the investor. On the other hand, if the option is held enforcible, it must necessarily injure the remaining stockholders by the depletion of the assets of the corporation.

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**Criminal Law—199 Year Sentence as a Denial of Right to Parole—[Illinois].**—Plaintiff in error was convicted of murder and on the verdict of a jury was sentenced to a term of 199 years' imprisonment. On appeal, *held*, affirmed. This sentence was authorized by a statute providing for death or imprisonment for life or a term of years not less than fourteen. Ill. State Bar Stats. 1935, c. 38, § 339. The question of circumvention of the parole statute (Ill. State Bar Stats. 1935, c. 38 § 795), providing for the parole of prisoners after serving one third of a definite sentence or twenty years of a life sentence, is not involved in determining the validity of this sentence. *People v. Pace*, 362 Ill. 224, 198 N.E. 319 (1935).

In reaching this decision, the court subscribed to the majority view that the author-

ity to parole is not judicial. See *People v. Joyce*, 246 Ill. 124, 92 N.E. 607 (1910); *Huggins v. Caldwell*, 223 Ky. 468, 3 S.W. (2d) 1101 (1928); *People v. Warden of City Prison*, 55 Misc. 22, 105 N.Y.S. 551 (1907); *contra*, *People v. Cummings*, 88 Mich. 249, 50 N.W. 310 (1891). A denial of the right to parole by the imposition of a sentence "for the full period of 15 years" has been held inoperative as an encroachment by the judiciary on legislative and executive functions. *Hawkins v. United States*, 14 F. (2d) 596 (C.C.A. 7th 1926). Within statutory limits, the court or jury may in its discretion fix the punishment of an offender at what it deems proportionate punishment. *Maresca v. United States*, 277 Fed. 727 (C.C.A. 2d 1921); *Newman v. United States*, 299 Fed. 128 (C.C.A. 4th 1924); *State v. Jackson*, 30 N.M. 309, 233 Pac. 49 (1925). However, in fixing such proportionate punishment, the court or jury must not be influenced by possible parole deductions and thereby deny the right to parole. *Hawkins v. United States*, 14 F. (2d) 596 (C.C.A. 7th 1926); *Farrel v. People*, 133 Ill. 244, 24 N.E. 423 (1890); *People v. Murphy*, 276 Ill. 304, 114 N.E. 609 (1916). Such a denial takes one of the following forms: (1) the form of the sentence may expressly or impliedly deny parole (*Hawkins v. United States*); or, (2) the court or jury may increase the period which it would otherwise impose to cover the possible deductions by parole. While denial of the right to parole in the first form is readily detectable, denial in the latter form is often difficult to discover. One possible indication of a denial of the right to parole is a sentence of such length that the minimum required for eligibility exceeds the life expectancy of the prisoner. However, a sentence of such length does not conclusively indicate a denial, for a proportionate sentence in a given case may exceed the life expectancy of the prisoner. See *Boyd v. State*, 258 N.W. 330 (Wis. 1935). Likewise, where an offender has committed several offenses and the length of a cumulative sentence precludes parole, the right to parole has not been violated. *Capone v. United States*, 51 F. (2d) 609 (C.C.A. 7th 1931).

The denial of the right to parole is clearly an interference with criminal rehabilitation, as well as an encroachment by the judiciary on legislative and executive functions. Where the existence of a denial is readily detectable, the sentence should be rendered inoperative. Nevertheless, if the discovery of such a denial necessitates the taking of evidence of life expectancies or extended investigation into the motives of a court or jury, the impediment to the administration of criminal law would seem to outweigh the social advantages of criminal reform. It might be argued that it is difficult to recognize a case in which denial of the parole right is discoverable with sufficient ease to warrant judicial action in rendering such a denial void. However, the difficulty of borderline cases may well be justified by the benefits of the parole system. Although the opinion in the principal case suggests that the question of a denial of parole rights may be open for subsequent consideration, it seems clear that since the court upheld this sentence, the defendant must serve the minimum required for parole eligibility. See *Commonwealth v. Ashe*, 182 Atl. 229 (Pa. 1936); *State v. Superior Court*, 30 Ariz. 332, 246 Pac. 1033 (1926). The motive of the jury, the court admits (362 Ill. 225, 198 N.E. 320), must have been to remove the defendant from society permanently, without taking his life. The denial of the right to parole seems clear. While the court admitted that the problem of parole denial is not judicial, it refused to render inoperative an encroachment by the judiciary on a non-judicial function. The jury may have chosen this mode of permanently removing the defendant from society because of an aversion for capital punishment. However, the expression of such an aversion should take the form of a statute rather than a denial of parole in a single case.