

Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing

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Executive Summary

As part of its mandate to gauge public opinion, the Council initiated a year-long project to ascertain and analyse the current state of knowledge about public opinion on sentencing on both a national and international level. This project is designed to examine and critically evaluate both the substantive issues in the area (what we know about public opinion on sentencing) and the methodological issues in this field (how we measure public opinion on sentencing). The ultimate goal of the project is the creation of a suite of methodological tools that can be used to gauge public opinion on the wide range of issues that form the work of the Council.

This paper presents the findings of this project. In particular, analyses of both the substantive and methodological issues in the field are presented, with discussion of the way to progress the capacity of the Council to gauge public opinion on sentencing in Victoria.

There have traditionally been several approaches to the measurement of public opinion on crime and justice issues. The primary methods are: media polls, representative surveys, focus groups and deliberative polls. Each of these methods has its advantages and disadvantages. The approach chosen for any particular study depends on the aim of the research, the issues to be addressed and the proposed use of the findings.

Most of the research in this field has been conducted in the United States, the United Kingdom and Canada. Despite this variation in countries, and despite the use of various methodological approaches, the research on public opinion on crime and justice has reached a number of consistent conclusions:

- *In the abstract, the public thinks that sentences are too lenient*
- *In the abstract, people tend to think about violent and repeat offenders when reporting that sentencing is too lenient*
- *People have very little accurate knowledge of crime and the criminal justice system*
- *The mass media is the primary source of information on crime and justice issues*
- *When people are given more information, their levels of punitiveness drop dramatically*
- *People with previous experiences of crime victimisation are no more punitive than the general community*
- *People with high levels of fear of crime are more likely to be punitive*
- *Despite apparent punitiveness, the public favours increasing the use of alternatives to imprisonment*

- *Despite apparent punitiveness, the public believes that the most effective way to control crime is via programs such as education and parental support, rather than via criminal justice interventions*
- *Despite apparent punitiveness, public sentencing preferences are actually very similar to those expressed by the judiciary or actually used by the courts*
- *Despite apparent punitiveness, the public favours rehabilitation over punishment as the primary purpose of sentencing for young offenders, first-time offenders and property offenders*
- *Despite apparent punitiveness, public support for imprisonment declines when the offender makes restorative gestures*

While there is now a considerable body of research around the world in relation to public opinion on sentencing, there is much work that remains to be done to understand public opinion in Victoria.

We need to understand the nature of informed public opinion in Victoria in terms of both general perceptions and in relation to specific sentencing options for specific offences. We need a combination of large-scale representative surveys with well-considered questions (using both the more simple question and the more complex crime vignette) combined with the qualitative aspects of the deliberative focus group that can provide a richness of detail on specific issues. By triangulating our methodology, we should be able to create a more complete and nuanced picture of the complexities of public opinion on sentencing in Victoria.

Coming to public judgment is hard, time-consuming work – people cannot achieve informed public judgment unassisted. It requires partnerships between experts and the public that provide for dialogue and debate about current knowledge in the field and about the likely consequences of potential reform.

The Sentencing Advisory Council continues to apply lessons learned from the existing research to the development and refinement of its methodologies. By employing a sound and defensible approach to the collection of both expert advice and broader opinion, the Council is incorporating the public into its work, thereby facilitating informed community input – public judgment – into the development of sentencing policy.

Introduction

The Sentencing Advisory Council

The Sentencing Advisory Council ('the Council') is an independent statutory body that was established in 2004 under amendments to the Sentencing Act 1991. The Council was formed to implement a key recommendation arising out of a review of aspects of sentencing in Victoria by Professor Arie Freiberg in 2002 entitled Pathways to Justice. This report recognised the need for a body that would allow properly informed public opinion to be taken into account in the sentencing process and would facilitate the dissemination of up-to-date and accurate sentencing data to assist judges in their role and to promote consistency in sentencing outcomes. The Council provides advice, education and information to the community, the judiciary and the government on sentencing issues.

The statutory functions of the Council are:

- a) to state in writing to the Court of Appeal its views in relation to the giving, or review, of a guideline judgment;
- b) to provide statistical information on sentencing, including information on current sentencing practices, to members of the judiciary and other interested persons;
- c) to conduct research, and disseminate information to members of the judiciary and other interested persons, on sentencing matters;
- d) to gauge public opinion on sentencing matters;
- e) to consult, on sentencing matters, with government departments and other interested persons and bodies as well as the general public; and
- f) to advise the Attorney-General on sentencing matters.

The Public Opinion project

As part of its mandate to gauge public opinion, the Council initiated a year-long project to ascertain and analyse the current state of knowledge about public opinion on sentencing on both a national and international level. This project is designed to examine and critically evaluate both the substantive issues in the area (what we know about public opinion on sentencing) and the methodological issues in this field (how we measure public opinion on sentencing). The ultimate goal of the project is the creation of a suite of methodological tools that can be used to gauge public opinion on the wide range of issues that form the work of the Council.

This paper presents the findings of this project. In particular, analyses of both the substantive and methodological issues in the field are presented, with discussion of the way to progress the capacity of the Council to gauge public opinion on sentencing in Victoria.

The Role of the Public

The rise of the public

While the first poll measuring public opinion on crime and justice issues was conducted at the start of the Twentieth Century, it was not until the 1960s that the modern influence of the public began in earnest.

The 1960s saw the rise of the victims' movement and the development of the victim as a third party (along with the offender and the state) in the criminal justice process. In the ensuing three decades this movement became more coherent and organised, leading to the institutionalisation of victims' views in the criminal justice system via formal mechanisms such as victim impact statements and victim representation on parole boards (Freiberg, 2003).

At the same time, both the public and policy-makers were becoming disenchanted with the seemingly unsuccessful rehabilitation framework adopted in government interventions. As crime rates continued to rise during the 1960s, 1970s and 1980s, this rehabilitative paradigm gave way to a 'law and order' political rhetoric. As sentencing became a key platform in this discourse, the views of the public on sentencing became increasingly salient. This has occurred to such an extent that western societies now seem to have added a fourth party to the criminal justice process – the public. Borrowing a term from Pratt (2002), Arie Freiberg suggests that there are now 'four pillars, or axes of justice: the state, the offender, the victim and the public' (Freiberg, 2003, p.9). That is, the government now often privileges public opinion about the desirability of ever harsher sentences over scientific evidence about the efficacy (or lack thereof) of these measures in reducing and preventing crime.

The importance given by governments to the voice of the public is evidenced by the recent institutionalisation of public participation in the criminal justice system via formal mechanisms such as public representation on parole boards. The most obvious mechanism for public representation is the development of bodies such as the Sentencing Advisory Council and its counterparts in other Australian states and around the world. In the United Kingdom the Sentencing Advisory Panel and the Sentencing Guidelines Council both have community members and a mandate to incorporate public opinion in their advice. The Scottish Sentencing Commission, and similar commissions at both a state and federal level in the United States, are also formal mechanisms for incorporating public opinion into the criminal justice process. With this institutionalisation, the public has been transformed from an observer to a participant in the criminal justice system (Freiberg, 2003).

In order to ascertain public views on sentencing, over the past forty years there has been a dramatic increase in the use of public opinion polling both by the press and by political leaders along all parts of the political spectrum. Public opinion – a concern with rising crime rates and dissatisfaction with sentencing – has been used by Western governments over the past two decades as a justification of a hard-line approach and ‘tough-on-crime’ political rhetoric (Casey, 2005).

Penal populism and the development of sentencing policy

Most Western governments now routinely conduct public opinion polls about attitudes to important issues in criminal justice. Recent surveys measuring levels of public confidence in the criminal justice system have found that public trust and confidence are at critically low levels around the world (Roberts and Hough, 2005, p.xii). Such findings have led to attempts to promote public confidence and to ensure that the system – in particular the court component – does not lose touch with the community that it serves. In Australia one manifestation of this concern has been a focus for court administrators on ways to improve the relationship between the courts and their various publics (see, for example, Parker, 1998).

To some degree, this heightened sensitivity to the views of the public reflects an element of penal populism. Anthony Bottoms recently coined the phrase ‘populist punitiveness’ to describe ‘the notion of politicians tapping into, and using for their own purposes, what they believe to be the public’s generally punitive stance’ (Bottoms, 1995, p.40). Policies are populist if they are used for winning votes without regard for their effectiveness in reducing crime or promoting justice – allowing the electoral advantage of a policy to take precedence over its penal effectiveness (Roberts *et al.*, 2003, p.5).

The central tool of penal populism is imprisonment. Penal populism provides a framework within which to understand increasing imprisonment rates around the world as well as the proliferation of punitive sentencing policies. Justification for policies such as three-strikes legislation, mandatory minimum sentences and sex offender notification laws is found in this framework of penal populism, which describes a punitive public fed up with crime and with the perceived leniency of the criminal justice system.

David Garland (2001) argues that the dominant voice of crime and justice policy is no longer that of the expert but has instead shifted to the public. He claims that we are in the midst of a ‘punitive turn’, which is responsible for promoting:

Harsher sentencing and increased use of imprisonment, ‘three strikes’, and mandatory minimum sentencing laws; ‘truth in sentencing’ and parole release restrictions; ‘no frills’ prison laws and ‘austere prisons’; retribution in juveniles court and the imprisonment of children; the revival of chain gangs and corporal punishment; boot camps and supermax prisons; the multiplication of capital offences and executions; community notification laws and pedophile registers; zero tolerance policies and Anti-Social Behavior Orders. There is now a long list of measures that appear to signify a punitive turn in contemporary penalty (Garland, 2001, p.142: cited in Matthews, 2005, p.176).

John Pratt (2002) continues this theme, claiming that a new axis of penal power has emerged 'in which the indifference of the general public is increasingly giving way to intolerance and demands for still greater manifestations of repressive punishment' as well as more 'ostentatious and emotive' forms of punishment (Pratt, 2002, p.182).

The social outcomes of penal populism may be seen most clearly in the United States. As a result of the proliferation of punitive sentencing policies, imprisonment rates in the United States are by far the highest in the world, at more than 700 per 100,000 people. Punitive incarceration practices have had a broad range of collateral effects on particular segments of American society: 1 of every 14 African-American children has a parent behind bars; a black male born today has a 1 in 3 chance of spending at least a year in prison at some point in his life; and 1 in 8 black men aged 25-29 is incarcerated on any given day (Mauer, 2004).

Belief in a punitive public is driven primarily by the results of decades of opinion polls that show that the public believes the criminal justice system, and courts in particular, to be overly lenient. But while governments and the mass media continue to place high credence in the basic opinion poll question of whether sentencing is 'too harsh, about right or too lenient' as a way to justify calls for punitive penal policy, academic researchers have repeatedly shown that public opinion on crime and justice issues, and on sentencing in particular, is far more nuanced and complex than such surveys show.

Measurement of Public Opinion

How is public opinion measured?

There have been several approaches to the measurement of public opinion on crime and justice issues. The primary methods are:

1. media polls;
2. representative surveys;
3. focus groups; and
4. deliberative polls.

Each of these methods has its advantages and disadvantages. The approach chosen for any particular study depends on the aim of the research, the issues to be addressed and the proposed use of the findings.

Media polls

The most basic way to measure public opinion is the viewer or reader poll. This type of poll asks a single directed question about a specific issue (for example, 'Should suspended sentences be abolished?'). As this is designed to capture a snapshot of current public opinion on an issue, no further explanatory or classificatory questions are asked.

While this method allows for a potentially very large sample to be accessed quickly, easily and cheaply, there are severe limitations to the generalisability of the findings due to the self-selected nature of the sample. There is no opportunity for follow-up questions that might help explain respondents' answers to the primary question. As there is no collection of further information about the respondents, the sample has unmeasured demographic characteristics and so bears an unknown relationship to the broader community. The polling organisation has no control over individuals or agencies that might provide multiple responses, thereby allowing those with a vested interest in the outcome of the poll to have undue influence on the results.

Media polls tend to be linked with the presentation of a specific controversial news item. Through this linking, the media are creating a contextual priming of respondents such that reported attitudes may represent momentary responses rather than enduring and transferable beliefs (Casey, 2005). Given these limitations, researchers tend to avoid this approach in favour of more robust survey methods.

Representative surveys

The representative survey has been the most common method of measuring public opinion over the past forty years. Using representative samples of the public, researchers have asked a range of questions to ascertain public opinion on a wide variety of criminal justice issues, including many issues in the area of sentencing policy.

The representative survey has the potential to be a powerful tool for gauging public opinion on a wide variety of issues. A sufficiently large sample, spread across categories of demographic characteristics (such as gender, age, education and income), can accurately represent the broader population from which the sample was drawn. This allows the findings of the research to be generalised to the broader community, making the representative survey a far more useful policy tool than the media poll.

Respondent interviewing takes place either over the telephone or in face-to-face interviews. Respondents are chosen using various methods to ensure random selection. Telephone interviewing allows the researcher to access people from across the country, as the proportion of households without a telephone is very small (although the increasing use of mobile lines instead of land lines in some countries is starting to create concerns for the representativeness of such surveys). Interviewing respondents in person is often more resource intensive and can require more time and money, but it allows researchers to build a rapport with respondents and thus to ask detailed questions about sensitive issues such as experiences of crime victimisation.

While representative surveys have great potential for gathering detailed information from respondents, each additional question on a survey adds to the time and costs involved. In order to reduce costs, surveys often try to maximise the amount of information they can gather from a minimal number of questions. As a result, not all surveys are equally meaningful – a single abstract question cannot provide as much information to the researcher as a detailed set of questions when attempting to explain complex and emotive issues such as sentencing.

Flanagan (1996) suggests that public opinion surveys are limited because: (1) attitudes are dynamic while most surveys are cross-sectional; (2) surveys often ask about very specific attitudes from which it is impossible to generalise; and (3) public opinion is rarely if ever monolithic even when surveys make it appear so. He suggests instead that public opinion is often created and reified in the process of collecting and reporting the results of public opinion polls (cited in Maruna and King, 2004, p.89).

Some of the most important limitations of opinion surveys relate not to issues of sampling or accuracy but rather to conceptual concerns. Critics of the survey method suggest that it is ill-equipped to measure people's complex, nuanced and shifting perceptions and opinions, instead providing at best a partial glimpse and at worst a distortion of public perceptions.

Yankelovich (1991: cited in Green, 2006, p.132) distinguishes between shallow, unconsidered public opinion and reflective, informed public judgment – ‘the state of highly developed public opinion that exists once people have engaged an issue, considered it from all sides, understood the choices it leads to, and accepted the full consequences of the choices they make’. He suggests that top-of-the-head responses to simple polling questions represent mass public opinion, as opposed to informed public judgment. While public opinion tends to be volatile and have little internal consistency with other views and beliefs held by the respondent, public judgment is characterised by firmness of opinion (changing little over time) and by the degree of consistency between this view and others held by the respondent.

As Roberts and Doob note, ‘Interpreting opinion polls to mean that the public is greatly dissatisfied with the severity of current sentencing practice is, in Shakespeare’s words, to take “false shadows for true substances”’ (*Titus Andronicus*, III, 2, 80: cited in Roberts and Doob, 1989, p.515).

Public opinion surveys are limited by the assumption that there is a singular homogeneous public whose opinions can be recorded; they cannot capture the views of the many publics that must be taken into account in policy development. The use of close-ended questions, where the responses are predetermined by the researchers, presumes that the researchers already know the range of opinions they are attempting to measure. In this way public opinion surveys can become an instrument for shaping rather than measuring public opinion.

Another problem resides in the very idea of ‘opinion’. Few surveys can determine whether the so-called opinions measured reflect enduring attitudes, firmly held beliefs, top-of-the-mind views, judgment based on experience and knowledge, or simply an answer created on the spot in order to fill out the questionnaire.

Opinion surveys are most useful when they provide information on various publics; are at least to some extent open-ended; track people’s opinions over time; link people’s opinions on specific issues to their general views of the world; and link people’s opinions to their level of knowledge and understanding of the issues.

Despite the reservations of critics, representative surveys have been used extensively to measure public opinion on crime and justice, with researchers attempting to create a balance between the costs of running a large-scale survey and the potential benefits of collecting a rich and detailed dataset.

A third methodological approach tips the scales in favour of gathering extensive and detailed information from respondents.

Focus groups

In order to gather detailed, in-depth information from respondents, a few researchers have made use of the focus group approach. This methodology involves gathering small groups of participants to discuss a particular issue. Discussion is usually led in order to ensure that all aspects of the issue to be examined are actually addressed, but the structure of the discussion tends to be open and to follow lines of thought as they arise. Respondents' opinions are expressed in open-ended form, without the need for respondents to classify their opinions into pre-existing response categories.

The primary advantage of the focus group is that it is able to elicit far more detailed, thoughtful and insightful responses from participants than the traditional survey method. During the course of the focus group itself participants are able to discuss their views, clarify their responses and ask the researchers for explanations of difficult concepts. The great richness of the qualitative data gathered from focus groups is a useful source of information that is not available from large-scale quantitative surveys. They are particularly useful when assessing opinions on a specific issue of a particular group of people, such as victims' representatives, judges or offenders.

Unfortunately, the qualitative nature of focus group research means that it is difficult to generalise results to the broader community. Very small samples are used due to the difficulty of gathering discussion groups, and the open-ended nature of the questions means that it is difficult to replicate the findings. The costs involved with speaking at length with these small groups (sessions often last around 90 minutes) mean that this approach is impractical for those wishing to assess broad community opinions on an issue. But while external validity is a concern with this method (the extent to which findings can be generalised to the broader population), it is a valuable adjunct to the large-scale representative surveys.

In order to improve the generalisability of results from focus groups, while at the same time maintaining the richness of data that they provide, a fourth method has evolved that is a hybrid of the qualitative focus group and the quantitative representative survey.

Deliberative polls

Representative surveys are limited by the lack of detailed and nuanced information that can be elicited from respondents. They usually provide respondents with a pre-determined set of responses into which their own responses must necessarily be categorised. This might limit the opportunity for respondents to express views other than those which the researcher assumes the respondent holds.

To achieve a greater depth of insight into public opinion, a handful of researchers have attempted a much more ambitious methodological approach – the deliberative poll.

Deliberative polls are based on the conclusion, from much previous research in the field, that the general public has very little knowledge about crime and justice issues. According to this premise, people can only have an *informed* opinion if they are first given information about the issues to be studied. It is anchored to the notion of public deliberation – the open and informed dialogue between equals critical to the generation of durable and informed preferences – and goes further towards achieving the ideal of public judgment than any other approach.

The deliberative poll provides a clearer picture of informed public opinion that is less susceptible to distortion and selective interpretation by opening up the traditional, expert-to-public communicative channels to two-way traffic (Green, 2006, p.132). Deliberative polls use a pre-test – post-test approach: they measure people’s opinions before they are provided with information on the subject, then provide detailed information, then measure their opinions again afterward. This methodology both facilitates and measures informed public opinion. It is generally used for measuring opinion on specific issues such as public attitudes to community based penalties.

Deliberative polls combine elements of the focus group with the advantages of the representative survey. A random sample of the public is surveyed about their attitudes via a representative survey. Following this, a sub-sample of several hundred respondents from the original sample is brought together for an extended session (a weekend or a day) of small group discussion and deliberation on crime and justice issues with academics, criminal justice professionals, offenders and victims. In these small group sessions the researchers use a more open-ended question structure to elicit a more complete and nuanced view of public opinion. Participants then complete the questionnaire a second time; the difference in responses then reflects the difference between mass public opinion and informed public judgment.

This approach has the advantage of being able to elicit detailed, extensive information from respondents about their informed opinion. Respondents have the opportunity to discuss the issues with other respondents and with the researchers, allowing them to deliberate and form a considered opinion. It has been suggested that changes in respondents’ opinions over the course of the focus group can be enduring, making this approach a useful tool for educating the public about crime and justice facts.

Although deliberative polls have the potential for collecting extremely rich data, very few have been conducted. The resources involved in such an approach – the cost and time involved in gathering experts to participate in discussion sessions with respondents – has made the deliberative poll prohibitive for widespread use. As they necessarily focus on a detailed examination of a particular issue, deliberative polls are also limited in the scope of issues that can be covered in a single study. This limits the breadth of information that can be collected for researchers who want to understand correlates of opinion.

Despite such limitations, the deliberative poll approach has been seen by some as ‘a corrective to the flawed but powerful surrogates that now stand in for the public will’ (Green, 2006, p.150).

Each of these methodological approaches has its own set of advantages and disadvantages. Roberts and Stalans (1997) suggest that a comprehensive picture of public knowledge can only be obtained by a multi-method approach: representative opinion polls can be used to set the approximate bounds on public attitudes while focus groups are needed to evaluate the depth of a particular opinion. Together these various methodological approaches have been part of a large body of knowledge around the world about public opinion on crime and justice.

What do we Know About Public Opinion Internationally?

Most of the research in this field has been conducted in the United States, the United Kingdom and Canada. Despite this variation in countries, and despite the use of the various methodological approaches discussed above, the research on public opinion on crime and justice has reached a number of consistent conclusions.

In the abstract, the public thinks that sentences are too lenient

Roberts and Hough note that 'one of the leitmotifs of public attitudes to criminal justice is the desire for a harsher response to crime' (Roberts and Hough, 2005, p.13). This perception has persisted despite substantial variation in actual crime rates and reform to the criminal justice system itself.

When representative surveys first came into widespread use, the most common way of measuring public opinion on sentencing was to use the general question of whether sentences are 'too harsh, about right or too lenient'. This question, in some variant or another, has been used in opinion polls across the world for the last forty years.

Responses to this question have been remarkably consistent both over time (from the 1970s to current research) and across countries (from North America and Australia to the United Kingdom and Europe): over the past three decades about 70%-80% of respondents in these countries reported that sentences are too lenient, with slightly lower rates in Canada in recent years (60%-70%) and slightly higher rates in the United States (up to 85%) (Roberts *et al.*, 2003, pp.27-29). When asked about juvenile offenders, slightly higher proportions of respondents felt that sentences are too lenient: ranging from 71% in a 2003 Office of National Statistics Omnibus Survey in the United Kingdom (Roberts and Hough, 2005) to 88% of respondents in a 1997 Canadian survey (Doob *et al.*, 1998).

These findings have important implications for public trust and confidence in the criminal justice system. Confidence arises out of positive attitudes; if people believe that sentences are overly lenient they will have little confidence in the courts, regardless of the reality of sentencing practice.

On the basis of these survey findings alone, politicians, policy-makers and the media have concluded that the public is substantially punitive and would therefore support increasingly punitive penal policies.

In more recent years, however, this conclusion has been called into question. In particular, researchers have hypothesised that the finding of a highly punitive public is merely a methodological artefact – a result of the way in which public opinion has been measured.

Since the 1980s researchers have attempted to go beyond the single question poll to include further questions in representative surveys that can clarify and further explain the apparent harshness of public attitudes. In this way the research has attempted to address the methodological limitations of using a single abstract question to measure complex and nuanced public attitudes.

In the abstract, people tend to think about violent and repeat offenders when reporting that sentencing is too lenient

A simple yet highly effective way of explaining public punitiveness has been the inclusion of a second question in representative surveys that asks people about the kind of offender they were thinking about when answering the question about perceived leniency of sentencing. Doob and Roberts (1983) developed this approach, which has provided valuable insight into the stereotypical offender: most people (57%) report that they had been thinking about a violent or repeat offender when stating that sentences are too lenient (Doob and Roberts, 1983). These same results have been found when asking respondents about juvenile offenders (Sprott, 1996).

Violent crimes account for only a very small proportion (no more than about 10% in the United States, the United Kingdom, Canada and Australia) of all crimes recorded by police (Roberts and Stalans, 1997). Repeat offenders also only account for a small proportion of all offenders. Despite these facts, the public thinks of violent recidivists when claiming that sentences are too lenient.

Doob and Roberts (1983) conducted a series of studies examining public opinion on crime and justice. One of these (Study 12) involved a representative nationwide survey in Canada and found that 80% of respondents felt that sentences were not severe enough. 74% of respondents greatly overestimated the proportion of crimes involving violence; 34% greatly overestimated the proportion of property offenders who would be reconvicted in 5 years; and 45% greatly overestimated the proportion of violent offenders who would be reconvicted in 5 years (Doob and Roberts, 1983, pp.12-13).

After giving their views on sentences as a whole, respondents were asked what kind of offender they were thinking of when they answered the question. Responses showed that 38% thought of violent offenders and 16% of repeat offenders. Only 4% were thinking of first offenders and 3% of property offenders (Doob and Roberts, 1983, p.15). This is vastly different from the kinds of offenders that typically come before the courts.

The authors also found that respondents who think that sentences are too lenient are most likely to be thinking of violent offenders: 45% of these respondents think of violent offenders compared with 21% of those who feel that sentences are about right or too harsh; 18% who believe that sentences are too lenient think of repeat offenders compared with 10% of those who report that sentences are about right or too harsh (Doob and Roberts, 1983, p.17).

Roberts and Stalans (1997) suggest that it is important to clarify this distinction. One way to achieve this is to ask the question twice – once for violent offenders, and once for non-violent offenders. A survey of Canadian residents found that 80% think sentences are too lenient for the former but less than half do for the latter (Angus Reid, 1984: cited in Roberts and Stalans, 1997, p.208).

People have very little accurate knowledge of crime and the criminal justice system

Misunderstanding of the facts is not restricted to the prevalence of violent offenders in the criminal justice system. Indeed, research has shown that public misperceptions are rife in relation to every stage of the criminal justice system.

Looking at large-scale surveys of public opinion about crime and punishment in the United States, United Kingdom, Canada, Australia and New Zealand, Roberts et al (2003) conclude that the public has very little accurate knowledge about the criminal justice system. Of particular relevance to attitudes to sentencing are findings that show that people have extensive misperceptions about the nature and extent of crime, about court outcomes and about the use of imprisonment and parole. Consistent results from many of the studies in this field (see, for example, Hough and Roberts, 2004; Mattinson and Mirrlees-Black, 2000; Hough and Roberts, 1998; Doob and Roberts, 1988; Roberts and Stalans, 1997; Spratt, 1996; Indermaur, 1987) show that people tend to:

- perceive crime to be constantly increasing, particularly crimes of violence;
- over-estimate the proportion of recorded crime that involves violence;
- over-estimate the proportion of juvenile crime that involves violence;
- over-estimate the proportion of crime for which juveniles are responsible;
- over-estimate the number of homicides committed;
- over-estimate the percentage of offenders who re-offend;
- under-estimate the severity of maximum penalties;
- under-estimate the severity of sentencing practices (e.g., the incarceration rate);
- have little accurate knowledge of statutory sentencing;
- have little accurate knowledge of the juvenile justice system;
- know little about sentencing alternatives and focus instead on imprisonment;
- under-estimate the severity of sentencing practices for specific offences;
- under-estimate the severity of prison life;
- over-estimate the percentage of offenders released on parole;
- over-estimate the proportion of prison terms served in the community on parole;

- over-estimate the percentage of parolees who will re-offend while on parole; and
- over-estimate the proportion of young offenders who will be reconvicted of a criminal offence.

It is clear that the public lacks accurate information about crime and criminal justice system practices. Despite this lack of knowledge, people nonetheless have strongly held and confident opinions about crime and justice issues. In fact, representative surveys have shown that it is those who have the lowest levels of knowledge who also hold the most punitive views. For example, Doob and Roberts (1983) found that those who think that sentences are too lenient are more likely to think that crime overall is violent and to underestimate the proportion of offenders convicted of robbery and assault who are sent to prison (Doob and Roberts, 1983, pp.49-51).

Using the 1996 British Crime Survey, Hough and Roberts (1999) explored the extent to which public dissatisfaction with sentencing could be traced to inaccurate perceptions of the severity of sentencing patterns. Using multivariate analysis, they found that a number of aspects of public misperception were significantly associated with a belief that sentences were too lenient (Hough and Roberts, 1999, p.18):

- Changes in national crime rate (those saying there was 'a lot more' crime were most likely to think sentences were too soft).
- Changes in use of imprisonment (those saying prison use was 'the same/down' were most likely to think sentences were too soft).
- Estimated number of convicted muggers sent to prison (under-estimators were most likely to think sentences were too soft).
- The proportion of recorded crime involving violence (over-estimators were most likely to think sentences were too soft).
- Estimated number of convicted burglars who were sent to prison (under-estimators were most likely to think sentences were too soft).
- Estimates of the clear-up rate (under-estimators were most likely to think sentences were too soft).

In addition, one-quarter of respondents thought that lenient sentencing was the most important cause of rising crime rates, while almost half (48%) thought it was a major cause (Hough and Roberts, 1999, p.21). This belief in a direct relationship between the severity of the system and crime rates leads many individuals to blame judges for failing to control crime, despite significant evidence that the factors affecting crime rates lie largely outside the reach of sentencers (Roberts and Hough, 2005, p.48).

Hough and Roberts conclude that their work provides strong evidence that dissatisfaction with perceived sentencing practice is due at least in part to public misperception and misinformation. But these misperceptions are neither random nor unrelated; they reflect a systematic and cohesive view of crime and criminal justice.

It is evident from the research that this lack of knowledge about crime and the criminal justice system is a significant factor in perpetuating public misperceptions and misunderstanding.

The mass media is the primary source of information on crime and justice issues

Most people do not have direct access to first-hand information about the criminal justice system, either through personal experience or from the experience of family and friends. Instead, people tend to learn about crime and the criminal justice system through the mass media, in particular via newspapers. Given the ubiquity and popularity of the mass media (tabloid newspapers in particular), they play an integral role in the construction of both public opinion and the public 'reality' of crime.

Newspaper portrayals of crime stories do not provide a complete and accurate picture of the issue. Papers report selectively, choosing stories, and aspects of stories, with the aim of entertaining more than informing. They tend to focus on unusual, dramatic and violent crime stories, in the process painting a picture of crime for the community that overestimates the prevalence of crime in general and of violent crime in particular. Thus public concerns about crime typically reflect crime as depicted in the media, rather than trends in the actual crime rate (Roberts *et al.*, 2003, p.78).

The news media also provide little systematic information about the sentencing process or its underlying principles. This phenomenon is not new to researchers: over 100 years ago, the jurist Stephen noted that 'Newspaper reports are necessarily much condensed, and they generally omit many points which weigh with the judge in determining what sentence to pass' (Stephen, 1883, p.90: cited in Roberts and Stalans, 1997, p.216).

Sprott (1996) suggested that there is even less information available in the media about youth court dispositions and the sentencing process for youths than there is for adults. As a consequence, the public receives almost no information about the juvenile justice system and about young offenders. Despite this, a survey of Toronto residents demonstrated that most people believed that youth court dispositions are too lenient.

As people are overly influenced by single-case information, people falsely generalize that leniency characterises the entire sentencing process. The media tend to focus particularly on violent crime, which provides a disproportionate emphasis on this type of crime relative to its prevalence in the community. People then perceive this type of event as typical, which affects both their knowledge of the facts about crime as well as their general levels of fear of crime. Both of these in turn have been shown to influence perceptions of leniency in sentencing.

A 1986 Canadian Sentencing Commission survey found that 95% of people derive their information about sentencing from the news media. A study by Graber (1980) found that 25% of all crime stories were on murder, although this crime constituted less than 1% of all reported crimes (cited in Roberts and Doob, 1990). While only a small proportion of all sentences imposed by the courts involve imprisonment, a 1988 Canadian Sentencing Commission found that 70% of media reports focused on this sentencing outcome.

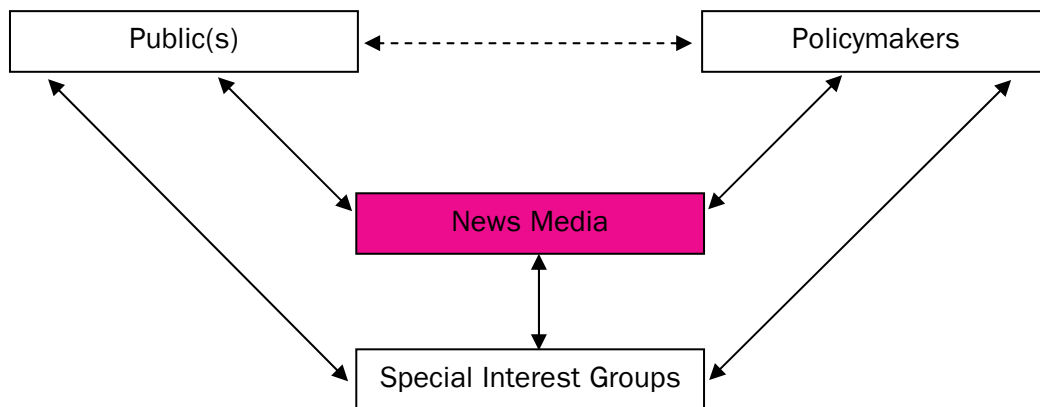
Media reporting plays a critical role in the development of public opinion on sentencing, as it presents an inaccurate and incomplete picture of sentencing practice, thus contributing significantly to a misinformed public. The media do not do this in a conscious way, but, according to Indermaur (2000) it is the combination of media reporting practices with populist politics that results in these misperceptions.

Indermaur suggests that:

The continuing disparity between the media-constructed reality of crime and justice and the non-media reality of crime and justice results in the public receiving an unnecessarily distorted image that supports only one anti-crime policy approach, an expanded and enhanced punitive criminal justice system – an approach lacking evidence of success (Indermaur, 2000, p.3).

Kenamer (1992) proposed that the role of the media is to locate itself as a central pivot between the three primary forces in the development of public policy: policymakers, special interest groups and the public (cited in Roberts *et al.*, 2003, pp.86-87). The model below, adapted from Kenamer, illustrates the central role of the media.

Figure 1: A model for understanding the role of public opinion in political decision making



According to this model, the media act both to filter their particular version of public opinion for consumption by the government, and to feed back to the public what the opinion of the majority is seen to be. The media thus become critical to policy-makers as both an audience of policy and as a source of public opinion.

Different media provide significantly different views of the world. Broadsheet papers tend to focus on government, quoting experts, elites and interest group representatives. Tabloids focus instead on crime victims and their families, offering dramatic and personal testimonials as counterpoint to the more professionalised discourse of the broadsheets. Green (2006) suggests that, in this way, complex public policy debates are ‘mediatized’ in increasingly constricted and emotive terms (Green, 2006, p.141).

Lovegrove (1998) summarises the role of the media, and the tabloid press in particular, as a ‘sin of commission; whether through wilfulness or incompetence, its achievement has been to fan emotion, quash reason and present false impressions’ (Lovegrove, 1998, p.293).

When people are given more information, their levels of punitiveness drop dramatically

There is substantial evidence that the public's lack of knowledge about crime and justice is related to the high levels of punitiveness reported as a response to a general, abstract question about sentencing. Based upon the conclusion that increasing the provision of information will decrease levels of punitiveness, many researchers have moved from traditional survey questions to those which provide much more information to people before asking for a response. The crime vignette approach in a representative survey is a way in which to provide more information about the offence, the offender and the impact on the victim. This approach uses brief case studies to achieve two goals:

- to provide a more accurate picture of public opinion based on an *informed* public; and
- to determine the effect of information provision on respondents' perceptions of sentencing.

By providing the opportunity to ascertain a more informed public opinion, crime vignettes address one of the disadvantages of the traditional survey question – that such questions cannot adequately uncover the nuances of public opinion on the complex issues of crime and justice.

There have been several informative studies that have used crime vignettes (either fictional or based on actual cases) to achieve the aforementioned goals. In their groundbreaking work, Doob and Roberts (1983) conducted a series of 13 studies for the Canadian Department of Justice in order to determine the effect of providing more information on respondents' attitudes.

In a small study of 116 randomly selected respondents (one of a large series of studies), Doob and Roberts contrasted the response given to brief descriptions of unusual sentences (only offence and sentence information) to those given to more complete descriptions of the same cases (including a case summary). Respondents were initially asked a general question about their perceptions of court sentencing practice. In the abstract, over 90% of the total group reported that in general the courts are too lenient.

Respondents were then randomly assigned to one of two groups, one to receive a brief description of a manslaughter case (akin to the type of information provided in media accounts) and one to receive a more detailed description with information on incident and offender characteristics.

Most of the respondents provided with a short description of the case felt that the sentence was too lenient (80%), while only 7% felt the sentence was about right. For those given a longer description of the case, 15% felt that the sentence was too lenient and 30% felt that the sentence was about right. It is interesting to note that fully 45% of this group described the sentence as too harsh (Doob and Roberts, 1983, p.6).

To extend this analysis, the authors then turned to comparisons of newspaper accounts with court based records of sentencing hearings to determine if judgments about a case differ based on the different account given. Studies 6, 8 and 9 compared ratings of sentences described in newspapers with those that provided more detail, such as court transcripts. Newspaper accounts led to feelings that sentences are too lenient; when given more complete information, people are more content with decisions made by trial judges.

For Study 6 three accounts of the same event were given to 149 visitors to the Ontario Science Centre – two accounts from newspapers and one court transcript of the reasons for sentencing. Comparing average ratings of the response (from ‘much too harsh’ (rated a 1) through to ‘much too lenient’ (rated a 5), the authors found that respondents who read the transcript were significantly more likely to think that the judge had weighed things properly and that the sentence was about right (Doob and Roberts, 1983, p.25).

In Study 8 five accounts of a particular case – four from newspapers and one court transcript – were given to 147 people in public places in Toronto. Respondents who read the transcript were significantly less likely to think the sentence inappropriate – in this case, that the sentence was too harsh (Doob and Roberts, 1983, p.28).

Study 9 involved a comparison of extensive and detailed coverage of a particular case in the newspaper with a detailed summary of court transcripts. 115 visitors to the Ontario Science Centre were asked to evaluate the sentence. The two versions clearly had dramatically different effects: 63% of the media respondents felt the sentence was too lenient, compared with 19% of the transcript respondents (Doob and Roberts, 1983, p.31). In fact, 52% of those reading the transcript felt the sentence was too harsh.

In combination, these studies show that sentences described in the media are perceived by most people as being too lenient, while those described in detail in court transcripts are mostly seen as appropriate. Doob and Roberts conclude that, were the public to form opinions from court-based information instead of through the lens of the mass media, there would be fewer instances of calls for harsher sentences. Caution should thus be exercised in responding to calls for harsher penalties as a fully informed public could well be quite content with the current level of severity of penalties.

People with previous experiences of crime victimisation are no more punitive than the general community

It might be expected that people who have been victims of crime would have more punitive attitudes toward sentencing than those without such experiences. However, several studies in different countries show that this is not the case.

In the 1996 British Crime Survey, respondents were asked to impose a sentence for a crime vignette with some details about the offender, the offence and the victim. When comparing results of victims with those of non-victims, Hough and Roberts (1999) found that 55% of the victims favoured imprisonment for this specific case, while 53% of non-victims favoured this option. To test this further, victims of the same offence as in the case study – burglary – were compared to non-victims, and again the results proved that there is no difference between the groups in levels of punitiveness, with 53% of both groups favouring imprisonment (Hough and Roberts, 1999, p.21).

In the United States, a 2001 survey of 1,056 adults found that crime victims were actually more supportive of a balanced approach than were non-victims: 60% of victims felt that prevention/rehabilitation should be the primary goal of criminal justice, compared to 52% of non-victims; 31% of victims believed that punishment/enforcement should be the primary goal compared to 41% of non-victims. Fully 73% of victims felt that the best way to reduce crime would be through rehabilitation while only 21% advocated long sentences. In comparison, 64% of non-

victims believed that rehabilitation could offer the best hope of reducing crime, while 31% favoured longer sentences (Hart, 2002, p.19).

A 2005-2006 survey of 982 adult victims of crime in the United Kingdom also challenges the notion that victims usually advocate more severe penalties such as imprisonment. In response to questions about the most effective ways in which to prevent non-violent crimes such as shoplifting, car theft and vandalism, 62% felt that imprisonment would not stop re-offending, while 54% favoured making offenders work in the community as a way to stop them from returning to crime. Over 80% of respondents felt that more constructive activities for youth or better supervision of youth by parents would be effective in reducing crime in the long run. The study concluded that victims of crime wanted effective prevention rather than retribution, and that victims were more concerned with addressing the root causes of crime than with attaining vengeance and punishment for its own sake (ICM Research, 2006).

People with high levels of fear of crime are more likely to be punitive

Media portrayals of crime as increasingly violent and prevalent may have an indirect effect on public perceptions of sentencing by increasing public fear of crime. Fear of crime has been shown to be related to perceptions of sentencing, with those reporting higher fear also being more likely to hold punitive attitudes.

The 1993 General Social Survey in Canada assessed the effect of people's prior victimisations and fear (measured by feelings of safety walking alone at night and at home alone at night) on crime and attitudes to criminal justice. A total of 10,385 respondents aged 15 and over were sampled randomly and interviewed via telephone.

Of those who reported no fear, 71% felt that sentences were too lenient. Of those with highest levels of fear, 91% felt this way (Sprott and Doob, 1997, p.281). As fear increased, the proportion of people thinking sentences are too lenient also increased. This result held for both victims and non-victims.

Despite apparent punitiveness, the public favours increasing the use of alternatives to imprisonment

A number of studies have examined community attitudes to specific sentencing options. The focus of these studies has been on issues of imprisonment, including mandatory sentencing and parole, although some studies have looked at attitudes to alternatives to imprisonment such as community based orders, electronic house arrest and conditional sentences of imprisonment.

Attitudes to imprisonment

Rethinking Crime & Punishment (RCP) was set up in 2001 in response to widespread concern about the United Kingdom's growing reliance on imprisonment. A key reason for this has been the perceived pressure of public opinion, as politicians, judges and magistrates have responded to a supposed climate of opinion that demands an increasingly harsh response to crime. The specific aims of RCP have been to increase public knowledge and improve public debate about prison and alternatives.

Work funded by the RCP program has found that although public attitudes can be complex, contradictory and dependent upon question wording, people are generally much less punitive than is often thought.

Research conducted by Strathclyde University found that 53% of respondents surveyed believe that offenders come out of prison worse than they go in. When asked how to deal with prison overcrowding, building more prisons is the least popular option with the support of only a quarter of respondents. This reflects the finding that only 8% think that the best way to reduce crime is to sentence more offenders to prison (Allen, 2002, p.6). Instead, more than half suggested that drug treatment centres and education of young offenders are more appropriate than imprisonment, and that tougher community punishments should be developed to allow offenders to pay back something to the community.

Rob Allen concludes from the RCP research that there is something of a 'comedy of errors' in which policy and practice are not based on a proper understanding of public opinion, and public opinion is not based on a proper understanding of policy and practice (Allen, 2002, p.6). RCP's work has confirmed the low visibility amongst the public of community sentences, with a particular lack of knowledge about contexts in which they are successful. This causes many people to be unsupportive of such alternatives to imprisonment, even though they know that prisons do not work.

A study of public attitudes toward sentencing and alternatives to imprisonment was commissioned by the Justice 1 Committee of the Scottish Parliament (2002). The study involved a nationally representative survey of 700 adults to provide baseline information, as well as a series of focus group discussions to avoid over-simplification of complex issues.

The researchers found that there is a widespread perception that prison is 'too soft' on offenders, and that many people have doubts about the effectiveness of prison in preventing re-offending. In particular, there is widespread concern about the appropriateness of prison for less serious and drug-related offenders, as the lack of services and ready availability of drugs in prison are seen as exacerbating the problem rather than addressing it.

The study also found that many people believe that prison is overly expensive and that savings should be made either by reducing inmate facilities or by making greater use of community-based penalties. Although people tend to be sceptical about the way that community service orders currently operate, there is nonetheless substantial support for the underlying principles of this sentencing option, particularly if such a penalty is implemented in a way that is visible, that makes a connection between the punishment and the community in which the crime was committed and that can be properly resourced and enforced.

It has been suggested that studies on attitudes to imprisonment might be tapping top-of-the-head reactions, rather than enduring and well-considered beliefs. Hough and Roberts (1999) used British Crime Survey data to show that people's attitudes to imprisonment change depending on the way in which sentencing options are presented to them.

In the 1996 British Crime Survey, respondents were given a description of a real case and were asked to impose one or more sentences for a 23 year-old male repeat offender convicted of the burglary of an elderly man's house. Half the sample was given a menu of options from which to choose, while the other half was asked to give unprompted responses. This allowed testing of the hypothesis that there would be less support for imprisonment when respondents were made aware of alternative options.

While a majority of respondents in both groups favoured imprisonment, the figure was significantly higher for those without the menu of options (67%) than for those given information on other sentencing options available (54%). Respondents with the sentencing menu were more likely to favour non-custodial options such as suspended sentences, community service, compensation and probation (Hough and Roberts, 1999, p.20).

Attitudes to mandatory sentencing

Mandatory sentencing laws represent the most visible manifestation of the global move toward punitive criminal justice policies in recent years. The main justification for this has been supposed public demand for more severe sentencing. It is based on the assumption that the public is strongly supportive of these laws; politicians do not, however, cite scientifically valid surveys to support this view.

Roberts (2003) reviewed the international findings from surveys of public opinion on mandatory sentencing. His findings suggest that the public is deeply divided about this issue, with greater support for proportional sentencing than for utilitarian goals such as deterrence or incapacitation.

People have little knowledge about mandatory sentencing, the offences that attract this response and the actual minimum and maximum penalties that apply. They are also unaware of the extent to which mandatory sentencing laws affect large numbers of offenders convicted of non-violent offences, particularly drug crimes.

The 1995 National Opinion Survey on Crime and Justice in the United States asked respondents whether mandatory sentences were a good idea or whether judges should be able to decide the sentence. While 55% favoured mandatory sentencing, 38% preferred to maintain judicial discretion. By 2001, these results had reversed: 45% preferred judicial discretion and 38% believed mandatory sentences were a good idea (Hart, 2002, p.5).

In a study that specifically examined public attitudes to 'three-strikes' laws, Applegate, Cullen, Turner, and Sundt (1996) asked a random sample of Ohio residents whether they supported or opposed implementing such a law in their state. In response to a single question with no context provided, 88% expressed support for the proposal. But when asked to impose sentences for a number of case studies, the percentage endorsing the 'three-strikes' sentence dropped to only 17% (cited in Roberts, 2003, p.493).

A more recent national survey of 2,000 adults in the United States found even lower levels of support for mandatory sentencing. Respondents were first asked a general question: 'In recent years, some states have required that certain crimes, including non-violent crimes, carry a mandatory minimum prison sentence regardless of the circumstances of the crime. Do you support or oppose the idea of mandatory prison sentences for non-violent crime?' (Belden,

Russonello & Stewart, 2001, p.5). In response to this question, 61% were opposed to mandatory prison terms while 35% supported them.

A second question presented respondents with arguments for and against mandatory sentencing. Once again, 61% of the sample opposed mandatory sentencing by choosing the 'mandatory minimums are not fair' response (Belden, Russonello & Stewart, 2001). In a third question, respondents were provided with an example applying a mandatory sentence and were asked whether they supported mandatory sentencing after hearing how it applied to a particular case. With this specific illustration of how mandatory sentencing actually works, 72% opposed mandatory sentencing.

Clearly there is less support for mandatory prison terms in the United States than is suggested by the proliferation of such laws.

Attitudes to conditional imprisonment

Very few studies have been conducted on public attitudes to conditional sentences of imprisonment. A Canadian study by Marinos and Doob (1999) examined public opinion of this sentencing option soon after it was introduced in 1997. By measuring public response early in the process, public perceptions were unlikely to be contaminated by inflammatory statements made by detractors of the sentence in the mass media.

Presenting 500 residents of Ontario with crime vignettes and asking for sentencing preferences, many respondents expressed support for conditional sentences of imprisonment even for certain violent offences: 40% favoured this sentence over imprisonment for sexual assault, 44% for break and enter and 71% for assault causing bodily harm (Marinos and Doob, 1999, p.34).

Little is known about public attitudes to conditional sentences of imprisonment in other countries.

Attitudes to plea bargaining

In a 1975 working paper the Law Reform Commission of Canada strongly condemned the practice of plea bargaining, based on the (unsubstantiated) premise that plea bargaining is not supported by the public. In order to test the empirical validity of this assumption, the Commission conducted a survey of the Canadian public on this issue in 1988.

About 200 respondents were given 5 different scenarios depicting a criminal case that ended in a guilty plea to one charge and the withdrawal of another charge. The scenarios differed in the way in which the case was resolved: no bargain; standard bargain; bargain (explanation given); bargain (judge present); and bargain (judge involved).

When asked a single abstract question about plea bargaining, 68% of respondents disapproved of the practice (Cohen and Doob, 1990, p.96). Views of plea bargaining and of sentencing were related: those who disapproved were more likely to think that sentences were too lenient. Overall, 69% of respondents thought that sentences were too lenient, while 55% of those who approved of plea bargaining felt this way.

According to Cohen and Doob, plea bargaining is seen as a mechanism by which people receive lower levels of punishment than they deserve, thereby reducing public confidence in the criminal

justice system. Where explanations are given in open court or in the presence of the judge, the public believes that the process is more acceptable.

Attitudes to community penalties

Research in the field of public opinion has consistently found that the public generally does not know much about crime or the criminal justice system. This is especially the case with non-custodial sentences. Most studies show that, despite this lack of knowledge, people tend to support community penalties as long as they are used for non-violent rather than violent offenders.

The University of Cambridge Public Opinion Project was designed to incorporate both in-depth interviewing and survey methodology. In 2003 a postal survey was sent to 3,600 randomly selected households, with 941 people responding. About one-third of these supported greater use of community penalties, another third supported more widespread use of imprisonment, and the remaining third were undecided in the middle (Maruna and King, 2004, p.96). When given a specific scenario to assess, 31% agreed that probation or a community sentence would be appropriate instead of a prison term for a person found guilty of burglary for a second time.

These findings are consistent with those found in research from other countries. The 1999 General Social Survey in Canada measured people's attitude toward sentencing using hypothetical crime-scenario questions. Each respondent was given one of four scenarios that varied according to offender characteristics (adult versus young offender and first-time versus repeat offender) and offence characteristics (minor assault versus break and enter). Respondents were asked to choose between imprisonment or no imprisonment; those choosing imprisonment were then asked a follow-up question of whether they would accept an alternative penalty of one year probation and 200 hours of community work.

Prison was favoured more often for an adult convicted of a repeat break and enter (68%) than for a juvenile (44%), and more often for a repeat adult offender convicted of assault (63%) than for a first-time offender (28%). But when asked about a community-based alternative to imprisonment, at least one-third of respondents who initially favoured imprisonment felt that a non-custodial alternative was acceptable (Tufts, 2000, p.9). Community sanctions were preferred for first-time offenders and for young repeat offenders, but imprisonment was the favoured penalty for repeat adult offenders.

Acceptance of community penalties is even greater for juvenile offenders. The April 2003 Office of National Statistics Omnibus Survey was the first representative, national survey of public attitudes towards youth crime and the youth justice system in the United Kingdom. The survey asked 1,692 people about their knowledge of the youth justice system and their confidence in youth justice. Respondents knew very little about the juvenile justice system and had very little confidence in it, with many people supporting restorative or rehabilitative approaches to young offenders in place of imprisonment. For example, just over half the sample (52%) said that a community penalty with reparation was an acceptable sentence for a violent 16-year-old robber with three previous convictions (Hough and Roberts, 2004, p.1).

Indermaur and Hough (2002) argue that anyone who wants to improve public debate about crime needs to be attuned to the emotional dimension: 'the real battle is not over facts or details but over morals and emotions' (Indermaur and Hough, 2002, p.210). Freiberg (2001) describes this

as the difference between effective and affective justice: in the context of community penalties, rational appeals about the cost of imprisonment and the growing number of prisoners will have only limited impact as public attitudes are driven largely by emotive concerns.

Attitudes to electronic house arrest

Since its first use in the 1980s, electronic house arrest has developed into one of the most popular community corrections sanctions in the United States. As a sentencing option, electronic house arrest helps to alleviate the fiscal problems that have resulted from 'get tough' policies that have led to an ever increasing prison population, while at the same time providing significant supervision of offenders. Electronic house arrest also has some rehabilitative potential because it allows offenders to maintain positive ties to the community.

Little is known about public attitudes to electronic house arrest. In an attempt to measure community opinion, Elrod and Brown (1996) surveyed New York residents about their perceptions of this option when used with 'minor' (defined as stealing or damaging property valued at less than \$1,000, driving under the influence of alcohol, and technical probation violations) and 'serious' (defined as stealing or damaging property valued at \$1,000 or more, personal crimes requiring medical attention, selling illegal drugs, and criminal probation violations involving stealing or damaging property worth more than \$1,000, or committing a personal crime requiring medical attention) offenders. In June 1993, 1,000 surveys were mailed to randomly selected residences and 70 (7%) were returned undelivered. Of the remaining 930 surveys, 529 were returned for a response rate of 56.9%.

Respondents who believed that crime cannot be reduced by incarcerating more offenders tended to support the use of electronic house arrest for minor offenders. They also believe that this sentence should seek to punish and rehabilitate offenders and to reduce the costs of incarceration.

Respondents who believed that incarceration leads to recidivism tended to support the use of electronic house arrest for serious offenders. These people were more likely to be non-White and over 50 years of age and also believed that this sentencing option should seek to rehabilitate offenders.

Elrod and Brown conclude that there is substantial public support in some communities for social control strategies such as electronic house arrest that reduce correctional costs and decrease the likelihood of recidivism.

Despite apparent punitiveness, the public believes that the most effective way to control crime is via programs such as education and parental support, rather than via criminal justice interventions

Evidence of the often contradictory nature of public opinion on sentencing can be found in the literature showing that people favour non-imprisonment mechanisms, even when they have reported that they perceive sentences to be overly lenient. This result has been found in surveys asking two types of question: those that ask respondents about the most effective way to reduce crime and those that offer respondents a choice between building more prisons and increasing the use of alternatives to prison as possible options for reducing prison over-crowding.

The Canadian Sentencing Commission commissioned a survey in 1986 that asked respondents about the most effective way of controlling crime. While 28% of respondents felt that sentences should be made harsher, fully 43% suggested that reducing unemployment would be most effective. A further 14% favoured increasing the use of alternatives to incarceration and 11% suggested increasing the number of social programs. Respondents were then asked a follow-up question asking them to choose between spending money on building more prisons or on developing alternatives to incarceration. While 23% favoured the prison approach, fully 70% chose alternatives to imprisonment (Roberts and Doob, 1989, p.504).

A more recent Canadian survey examined people's attitudes to sentencing for adults and juveniles separately. Respondents were asked about the most effective way to control crime. Half were asked about controlling youth crime, while the others were asked about controlling adult crime. Fewer than a third of respondents thought that making sentences harsher was the best way to control adult crime, and fewer than a quarter of respondents thought that this was the best way to reduce youth crime. Incapacitation is seen as being more important for adult offenders than for youth, for whom expressions of community disapproval and rehabilitation are seen as being more important (Doob, Sprott, Marinos, and Varma 1998).

A 2001 survey of 1,056 adults in the United States found that Americans clearly preferred prevention as the best strategy for dealing with crime. More respondents felt that prevention in the form of education and youth programs was the most effective way to control crime (37%), while 20% preferred punishment in the form of longer sentences and more prisons. Enforcement (more police officers) was considered the best approach by 19% of respondents, while prison rehabilitation and education programs were favoured by 17% of respondents (Hart, 2002, p.3).

This same study also found that 65% of adults surveyed favoured dealing with the root causes of crime while only 32% preferred the punitive approach in the form of strict sentencing (Hart, 2002, p.1). Respondents reported that they strongly favoured rehabilitation and re-entry programs over incapacitation as the best method of ensuring public safety: 66% felt that the best way to reduce crime was to rehabilitate offenders while only 28% felt that keeping criminals off the street through long prison sentences would be more effective (Hart, 2002, p.4). The authors of this report concluded that conventional wisdom about public punitiveness misjudges the mood of the voters, who now see the 'lock-'em-up' strategy as having failed.

The most recent study to examine public opinion about crime control strategies asked victims of crime about the effectiveness of various methods for reducing re-offending. The survey of 982 victims in the United Kingdom, conducted on behalf of the Smart Justice and Victim Support agencies, found that 61% of respondents believed that prison does not reduce re-offending. Rather, 80% of respondents believed that better supervision of young people by parents is effective in reducing crime in the long run while 83% felt that more constructive activities for young people would be effective in reducing crime (ICM, 2006).

Representatives of the sponsoring agencies concluded from this research that victims do not want retribution and vengeance but instead want constructive and effective methods to tackle the root causes of offending and thus prevent further offending (*The Guardian*, January 16, 2006).

Despite apparent punitiveness, public sentencing preferences are actually very similar to those expressed by the judiciary or actually used by the courts

To test the hypothesis that the public is more punitive than judges, Roberts and Doob (1989) looked at a 1986 representative survey conducted by Gallup for the Canadian Sentencing Commission. The survey asked respondents what proportion of offenders should be incarcerated for various crimes. These preferences were then compared to the proportion of convictions for this offence that actually resulted in custody in the Canadian courts. No significant difference was found between the two groups – average incarceration rates across ten offences (both violent and property offences) were 66% for the public and 67% for the courts (Roberts and Doob, 1989, p.510).

A similar approach was adopted by Diamond and Stalans in their 1989 comparison of lay and judicial responses to case study vignettes in Illinois, in which respondents were asked to impose sentences on the same four moderately severe cases in which prison was a possible, but not inevitable sentencing outcome. A total of 325 respondents participated in the research: 116 state judges who participated as part of seminars on sentencing; 154 jurors who reported for jury duty but who were not needed by the court that day; and 55 university students who participated for course credit in introductory psychology.

Respondents were presented with detailed information about each of the four cases, including a presentence report (including information on the nature of the offence and on the offender's background) and a video of the sentencing hearing. Respondents were told the range of possible sentencing options legally available for that case and then completed a questionnaire indicating sentencing preferences. The non-judicial respondents were also told that offenders sentenced to prison would typically serve about half of their prison terms.

Diamond and Stalans found that there was no evidence in any of the four cases that judicial sentences were more lenient than the sentences of the lay respondents. Judges' sentences in this study were as severe or more severe than those of lay respondents. They conclude that the perception that judges are more lenient than the public is simply a myth.

In a similar study conducted in England, Diamond (1990) took advantage of the existence of English law that allows both professional and lay magistrates to judge and sentence offenders. Diamond saw this as a natural experiment that allowed a test of the claim that members of the public favour more severe sentences than those currently given by professionals.

Three methods of data collection were used in this study. First, 52 London magistrates, 36 lay magistrates and 16 stipendiary magistrates were interviewed about attitudes towards crime and asking respondents to impose a sentence in six simulated cases (offences included shoplifting, indecent assault, burglary and assault occasioning actual bodily harm). Second, observations of bail and sentencing decisions were made in court for 1,984 defendants (910 before the lay magistrates, 1,074 before 10 stipendiary magistrates). Third, archival data were collected on 505 consecutive cases of theft and 350 of burglary.

Diamond found that, while lay magistrates were more lenient in their sentencing, they tended to hear cases that were less serious. In order to determine if this apparent difference in severity was actually due to differences in case characteristics, a stepwise multiple regression was performed. This analysis included a number of traditional predictors of sentence severity (including offence

severity, number of counts, whether it was a driving offence, previous experience in custody, time since last sentence, additional charges, whether it was a spontaneous offence, number of other offences, age of offender, and occupation of offender). When these predictors were all controlled in the analysis, magistrate type was still a significant predictor, indicating that the sentences of the professionals were still slightly more severe (Diamond, 1990, pp.205-6).

Diamond concludes that the contrast with the picture of the punitive public portrayed in polls is particularly impressive as lay magistrates tend to be older and more conservative than the general public, characteristics generally associated with greater punitiveness.

Despite apparent punitiveness, the public favours rehabilitation over punishment as the primary purpose of sentencing for young offenders, first-time offenders and property offenders

Some of the early surveys of public attitudes about juvenile crime and sentencing examined people's perceptions of the aims of sentencing. A 1988 survey of 1,109 Californian adults found that 68% believed that juvenile courts should be oriented toward treatment and rehabilitation rather than punishment (Schwartz, Guo and Kerbs, 1992, p.243). Similar results were found in a national survey in the US three years later: 73% of respondents reported that the primary purpose of the juvenile court should be treatment and rehabilitation while only 12% believed that it should be punishment (Schwartz, Guo and Kerbs, 1992, p.249). A 1993 survey of 1,261 Canadians in the province of Alberta also found similar results: 64% of respondents believed rehabilitating youth to be more important than making the offender pay for the crime (Hartnagel and Baron, 1995, p.52).

More recent surveys have found similar results. The Scottish Justice 1 Committee (2002) examined public attitudes toward sentencing and alternatives to punishment. The study involved interviews with 700 people, nine focus groups with 8-10 people each and a civic participation event at which 86 participants were asked to complete short sentencing exercises before attending a day-long seminar with presentations by experts on aspects of crime and punishment.

Survey respondents were asked to consider the case of John, an 18 year-old first-time offender charged with theft by breaking into a house. Specifically, respondents were asked to impose a sentence and to identify what they hoped the sentence would achieve. A list of possible effects of sentencing was provided, with respondents indicating how important each should be in sentencing the offender.

Respondents were more interested in pursuing rehabilitative or reparative goals than in incapacitation or simple retribution. A full 92% of respondents felt that 'changing John's attitudes and behaviours so he is less likely to commit more crime' was an extremely or very important goal of sentencing in this case. 'Showing that the public disapproves of John's crime' was felt to be extremely or very important by 78% of respondents, while 'making amends to the victim for the harm done' was considered extremely or very important by 76% of people. Incapacitation and retribution were the least popular aims of sentencing for this scenario (Justice 1 Committee, 2002, p.26). The report concludes that public views on sentencing are more complicated than they appear. While people share the judiciary's support for the full range of goals of sentencing, approaches that offer constructive and positive outcomes are favoured (Hutton, 2005, p.248).

Despite apparent punitiveness, public support for imprisonment declines when the offender makes restorative gestures

Restorative justice reforms have been implemented in many Western nations. Restorative sentencing reforms attempt to promote reconciliation between the offender and the victim by encouraging the offender to apologize and, if possible, to make reparation.

Only a few studies have examined public attitudes to restorative justice. Hough and Roberts (2005) examined the effect of restorative gestures on public attitudes toward imprisonment for young offenders. In particular, they explored the impact that restorative gestures may have upon public responses to sentencing young offenders. In their experimental test of this issue, respondents were provided with one of three scenarios. In the first, a brief description was given of a 17 year-old breaking into a home and stealing property worth five hundred pounds. In the second, respondents were also given a description of the offender's current circumstances and his previous contact with the criminal justice system. In the third scenario, additional information was given about restorative steps that the offender had taken, including expressing remorse, writing a letter of apology and promising to pay reparation to the victims over the coming months.

The steps taken towards reparation clearly had a powerful effect upon public sentencing preferences. In the first version of the scenario, 33% of respondents favoured detention followed by community supervision while 29% preferred community supervision alone. When given information about the offender's circumstances, 21% favoured detention while 43% preferred community supervision. When restorative steps were included in the third scenario, support for imprisonment dropped to just 13% while fully 48% favoured community supervision (Roberts and Hough, 2005, p.222).

The authors conclude that the effect of these restorative gestures was all the more striking considering how mild the gestures were: 'a small (but important) gesture of good faith nevertheless had an important impact upon public sentencing preferences' (Roberts and Hough, 2005, p.222).

These results are similar to those found in an earlier study that examined the effect of restorative gestures on public attitudes toward imprisonment for adult, repeat offenders. Pranis and Umbreit (1992) asked respondents to choose between two sentences for an adult recidivist burglar who had broken into a home and had stolen \$1,200 worth of property. The first choice was a sentence of four months' probation plus four months' imprisonment. The second was four months' probation plus repayment of the \$1,200. Three times as many respondents preferred the reparative option over incarceration – the punitive alternative had little appeal when contrasted against the compensatory alternative. This is especially interesting as the scenario involved a serious offence by a repeat offender (Pranis and Umbreit, 1992: cited in Roberts and Hough, 2005, p.139).

What do we Know About Public Opinion in Australia?

Despite (or perhaps because of) the proliferation of research in countries similar to Australia, there has been little work done in this country to ascertain informed public opinion on sentencing. Over the past twenty years there have been but a handful of studies conducted on this issue.

Public perceptions of sentencing in Perth

The most extensive Australian studies have been conducted by Dr David Indermaur from the University of Western Australia. In his 1987 study of public perceptions of sentencing in Perth, Indermaur measured the effect of case information on public opinion by comparing the penalty respondents chose as most appropriate. Respondents selected one of 11 sentencing options presented to them on a penalty scale, ranging from a caution to the death penalty.

Indermaur's study involved conducting 554 interviews. In 288 of them, respondents were given information only on the offence, while the others were given more details about the case. The survey consisted of four sections, whose order was varied systematically in order to overcome order effects:

1. general questions on respondents' perceptions and attitudes to measure the accuracy of perceptions of crime (including questions on the proportion of crimes in Western Australia involving violence; whether the murder rate had increased or decreased or stayed the same; the proportion of parolees successfully completing their parole period (this was designed to assess perceptions of recidivism, as true recidivism data were not available); and the proportion of adults convicted of serious violent crimes who were sent to prison);
2. sentence allocation (to compare sentencing preferences of respondents given information only about the offence with those of respondents given more detailed case information);
3. supplementary questions on other sentencing options (including questions about minimum, maximum and average sentences preferred in order to accommodate extreme cases and so that the 'bottom line' of each group could be compared); and
4. respondent demographic details.

Indermaur found that 73% of the sample substantially overestimated the proportion of crimes involving violence (believing the figure to be 40%-100% instead of the actual 8%). 79% believed that murder had increased over the past ten years, whereas it had actually decreased or remained stable. 36% slightly underestimated the proportion of people completing parole (believing that 45%-65% of parolees completed their parole) and 31% greatly underestimated this (<45%), while the actual figure is 73%. 55% of respondents accurately estimated the proportion of violent offenders sent to prison (70%), while 26% slightly underestimated this and 17% greatly underestimated it, believing that fewer than 45% of violent offenders actually went to prison (Indermaur, 1987, p.170). Respondents who correctly estimated lower levels of violence tended to favour less severe sentences, while those who favoured less severe sentences tended not to be thinking of violent crime. Respondents who reported greater fear of crime also favoured harsher penalties.

People's perception of sentencing was consistent with the results from other studies: 76% of the sample felt that sentences are not severe enough, with 19% believing they are about right and 5% saying too severe. A follow-up question revealed that 70% of the sample was thinking of a violent crime when responding about their perceptions of sentencing. When asked about the most important purpose of sentencing, the most frequent response was retribution (28%), followed closely by deterrence (also 28%), rehabilitation (23%) and incapacitation (22%).

The results of this study support those of Doob and Roberts (1983) that public perception of crime is dominated by images of violence, which in turn strongly influences people's general attitude to punishment. But when the response is given in the context of a specific case, it becomes more realistic and tempered.

Indermaur concluded that the public, while concerned about violent crime, is nonetheless open to non-imprisonment options for non-violent offenders.

In a later study (1990), Indermaur continued his earlier work by comparing public perceptions of crime seriousness and sentencing with those of judges and with actual court practice. The sampling procedure replicated that used in the 1987 study, and a total of 410 community members were interviewed, along with a small sample of 17 judges and magistrates. As with the earlier study, the order of questions was changed to overcome effects of order of presentation.

The public acknowledges the multiple factors that judges must consider when determining which sentence to impose on a given offender. Respondents in this survey considered that the most important factors that should be considered are the seriousness of the offence (42%) and the harm done to the victim (24%). The next most frequently cited factors were likelihood of repeat offending (12%) and prior record (10%). For the judicial sample, the most frequently cited factor was seriousness of offence (82%), followed by harm to victim (6%), although harm done was considered as the central and most important component of seriousness for this sample (Indermaur, 1990, p.35).

Sentencing is a complex task that requires consideration not only of multiple characteristics of the offence, the offender and the impact of the offence, but also consideration of various purposes of sentencing. Despite the stereotype of a highly punitive public, research has shown that people are cognizant of the need to balance various sentencing purposes and to tailor these purposes to the specific characteristics of the individual case.

For violent crimes, community respondents in this study felt that the most important purposes of sentencing were incapacitation (37%), deterrence (24%) and retribution (23%). The judicial survey found that judges see the purposes of sentencing serious violent offenders as deterrence (41%), incapacitation (24%) and retribution (18%).

For property offences, community respondents in this study felt that the most important purposes of sentencing were individual deterrence (49%) and rehabilitation (24%). Judges, however, felt that the most important purposes were rehabilitation (71%) and deterrence (24%) (Indermaur, 1990, p.49). It is possible that those with first-hand experience of the criminal justice system know that the deterrent effect of short sentences, which are often imposed for property offences, is very limited.

About half (53%) of the community respondents felt that there should be no time off from prison for good behaviour or early release on parole, while the judiciary was more accepting of the idea. This is possibly explained by the finding from more recent research (for example, *Rethinking Crime and Punishment*) that the public thinks of prison as being overly easy on offenders, and that people believe that a large proportion of offenders are released early. On the other hand, judges are likely more aware of the typically harsh environment within prisons, and are thus more open to ways in which to remove offenders from this destructive and often criminogenic environment as quickly as possible.

Other findings of this study were also broadly consistent with previous research from other countries. Although the main source of information about court practice for most of this sample (97%) was the media, there was no significant relationship between the source of information and respondents' punitiveness. When asked whether prison overcrowding should be overcome by building more prisons or by sentencing more offenders to alternatives such as probation, restitution, community service orders and fines, 45% of the sample favoured alternatives, while 34% suggested more prisons and 18% suggested both (Indermaur, 1990, p.40).

While 57% of the public believed that public opinion should be considered in all, most or some cases, fully 81% of sentencers believed this (Indermaur, 1990, p.50). This is a particularly interesting finding, as many people believe that judges are 'out of touch' with public perceptions and that they do not make efforts to consider current public views on crime and justice.

Chief Justice Murray Gleeson addressed this issue in a speech to the Judicial Conference of Australia Colloquium in October 2004. It is particularly useful to consider his comments, as opportunities to hear directly from the judges themselves on issues of public opinion are rare.

The Chief Justice begins by accepting that judges are expected to know, and be conspicuously responsive to, community values. But he then poses a series of questions that is immediately relevant for this discussion:

How should judges keep in touch? Should they employ experts to undertake regular surveys of public opinion? Should they develop techniques for obtaining feedback from lawyers or litigants? And what kind of opinion should be of concern to them? Any opinion, informed or uninformed? What level of knowledge and understanding of a problem qualifies people to have opinions that ought to influence judicial decision-making? Who exactly is it that judges ought to be in touch with? ...Whose values should we know and reflect? (Gleeson, 2004, p.1)

He notes that the primary complaint about judges that leads to the charge of being out of touch is a complaint about overly lenient sentencing of offenders. This suggests that judges as a group take crime less seriously than does the general public, revealing a systemic failure to understand, or a determination to ignore, community attitudes to crime and punishment.

A solution, according to the Chief Justice, is to provide more information to people about what sentencing judges are doing, and why they are doing it, thus reducing the likelihood that people will perceive a gulf between their expectations of the criminal justice system and the reality. The best way of doing this is suggested to be via the jury system. The reaction of jurors to sentences imposed on offenders is likely both to influence public opinion and to provide a useful source of information to courts about public opinion. A survey of the reactions of jurors to sentences imposed in cases that they have heard could provide valuable and heretofore uncollected information. Such a study could provide a useful test of whether there is some systemic failure of the criminal justice process to meet the *informed* expectations of the public.

While Indermaur's studies provide valuable insight into public perceptions of sentencing in Perth, there are few sources of information on public opinion that are drawn from a national sample of Australians. The main ones are the Australian Institute of Criminology's work in the late 1980s, the International Crime Victimization Survey and the Australian Survey of Social Attitudes.

How the public sees sentencing: an Australian survey

The Australian Institute of Criminology surveyed a representative, multi-stage probability sample of 2,555 Australians aged 14 years and over. Respondents were asked to rank the seriousness of 13 crimes and, for each, to act as a judge in allocating their preferred punishment. Respondents were given a list of the available forms of punishment, including 'no penalty' and capital punishment (even though this has not been available in any Australian jurisdiction since 1984). They were asked to specify both the form and the severity of the sentence (amount of fine, length of imprisonment). Walker, Collins and Wilson (1987) report the findings of this research.

The average response was broadly in line with typical courts decisions including a tendency to punish violent offenders with prison and property offenders with non-custodial penalties, especially fines (Walker, Collins and Wilson, 1987, p.3). This is evidenced in the most commonly selected sentence for each of the 13 crimes:

- Stabbing to death – life imprisonment (selected by 53% of respondents)
- Heroin trafficking – imprisonment (42%)
- Fatal industrial pollution – fine (57%)
- Injury from industrial negligence – fine (66%)
- Armed robbery – imprisonment (85%)
- Child bashing – imprisonment (49%)
- Wife bashing – imprisonment (40%)
- Medicare fraud – fine (60%)
- Income tax evasion – fine (61%)
- Break and enter – imprisonment (60%)

- Male homosexuality – no penalty (72%)
- Shoplifting (\$5) – warning (51%)

However, there are some offences for which public opinion was clearly divergent from typical court decisions. For murder, 29% of respondents selected the death penalty, 53% selected life imprisonment and 17% selected some other term of imprisonment (Walker, Collins and Wilson, 1987, p.2). By contrast, courts imposed life imprisonment in 76% of cases and other imprisonment in 24%. The large proportion of respondents who nominated the death penalty is indicative of a punitive public.

The other area of divergence is for white-collar crimes, with respondents preferring more punitive sentences than courts typically imposed for pollution and negligent employers and for other white-collar crimes. For the two corporate offences, factory pollution and employer negligence causing severe injury, the most common sentence suggested was a fine of at least \$50 000, but one in three demanded prison sentences where a person died from pollution (Walker, Collins and Wilson, 1987, p.3).

Levels of punitiveness were greater among the less educated, males, lower income groups and the elderly, although age differences were inconsistent. Rural residents tended to be more punitive than city dwellers.

Significant numbers of Australians were willing to accept non-custodial alternatives to imprisonment: fines, probation and community service orders. The authors conclude that, despite media headlines suggesting the opposite, punitiveness is not a characteristic of Australians, and that people acknowledge the complexity of the sentencing process and are quite sophisticated in their attitudes.

As with the Australian Institute of Criminology study, most researchers have typically explored public opinion within, rather than across countries. But the International Crime Victimization Survey, conducted every few years, allows researchers to compare victimisation experiences and respondent attitudes across dozens of Western and non-Western countries around the world.

The International Crime Victimization Survey

The International Crime Victimization Survey is an international project that surveys respondents from about 60 countries every few years about their experiences of victimisation and their attitudes to crime and justice issues. Surveys have been conducted in 1989, 1992, 1996, 2000 and the most recent cycle was in 2004. Australian respondents have been included in all but the 1996 survey. The Australian component of the survey is managed by the Australian Institute of Criminology.

In the 2000 cycle, respondents were asked to sentence a 21 year-old male recidivist burglar, and were given a menu of sentencing options in order to determine the 'most appropriate' sentence: fine, prison, community service, suspended sentence or another sentence. People nominating imprisonment were also asked for how long the offender should be incarcerated.

Australia had a low proportion of respondents favouring imprisonment for this crime vignette (37%). This compared with 26% in New Zealand, 45% in Canada and 56% in the United States. Those who did choose imprisonment nominated a penalty of 15 months (compared with 5 months for the overall sample). 35% favoured community service (compared with 20% in the United States, 32% in Canada and 51% in New Zealand), 8% opted for a fine (with respondents in the other countries rating 9%-10%) and 10% for a suspended sentence (with the others rating 1%-3%). The researchers conclude that Australian levels of punitiveness are thus somewhere around the middle overall (Mayhew and Van Kesteren, 2002, p.87).

Results for these same questions in the 2004 survey show some interesting changes in Australian community attitudes in the intervening years.

As in the 2000 cycle, respondents in 2004 were asked to sentence a 21 year-old male recidivist burglar. In this cycle an expanded menu of sentencing options was provided, with corporal/capital punishment and treatment/rehabilitation being added to the existing list of possible options for respondents to choose. The 2004 cycle asked these questions of just over seven thousand respondents.

In 2004, 47% of respondents favoured a community service order for the hypothetical offender, with 33% preferring imprisonment. Compared with results for the previous cycle, community attitudes seem to have become somewhat less punitive: in 2000, 35% favoured community service and 37% preferred imprisonment. There was no change in results for suspended sentences, but the proportion favouring fines dropped from 8% to 5%. Less than 1% of respondents favoured corporal/capital punishment or treatment/rehabilitation.

Community attitudes seem to have become less punitive with respect to length of imprisonment terms as well: for those who chose imprisonment as their preferred sentence, fully 75% imposed a sentence of one year or less (8% imposed a one month sentence, 31% nominated a term of 2-6 months, 20% chose 6-12 months and 16% preferred a one year term). This is shorter than the 15 month term preferred by respondents in the 2000 cycle of the survey.

The Australian Survey of Social Attitudes

In analysing the most recent study of public attitudes in Australia, Indermaur and Roberts (2005) explored Australian perceptions of crime and criminal justice from questions in the *Australian Survey of Social Attitudes 2003* (AuSSA). This survey asked 4,123 respondents if they believed that crime had increased or decreased or stayed the same over the last two years in order to test the accuracy of public knowledge about crime trends. The results are consistent with previous research both in Australia and overseas: more than two thirds of all survey respondents (70%) believed that crime had increased over the past two years with more than a third overall (39%) responding that it had increased 'a lot'. In Victoria, where 1,065 people were surveyed, 26% felt that crime had increased a lot; 29% felt it had increased a little; 29% felt it had stayed the same; and 11% felt it had decreased to some degree. The proportion of Victorian respondents who felt that crime had increased was smaller than in any other state (Indermaur and Roberts, 2005, p.143).

Looking at actual crime trends from 2001 to 2003, it is apparent that the majority of Australians hold inaccurate perceptions of crime in their communities. For six of the nine major categories of criminal offences (homicide and related offences, kidnapping/abduction, robbery, unlawful entry with intent, motor vehicle theft and other theft), police-recorded rates of crime in Australia dropped between 2001 and 2003. Overall, only 5% of all Australian respondents reported correctly that crime had decreased, with respondents in Victoria being slightly more knowledgeable (with 11% reporting accurately) (Indermaur and Roberts, 2005, p.143). Across the whole Australian sample, more accurate perceptions were held by men, younger respondents, and the more highly educated (Indermaur and Roberts, 2005, p.146).

Public perceptions of crime and the criminal justice system are based not on the *reality* of crime but on the *reporting* of crime. But it is difficult and complex to untangle the direction of causality in the relationship between media reporting and perceptions. While the media may provide negative stories, individuals are likely to seek out stories that accord with their pre-existing beliefs. It is thus likely that the two exist in a dynamic, synergistic relationship (Indermaur and Roberts, 2005, p.148).

Looking at public perceptions of the courts, Indermaur and Roberts (2005) found that 46% of respondents had 'not very much' confidence in the courts and legal system, while 24% had 'no' confidence. Stiffer sentences were advocated by 70% of all respondents, with almost half (47%) agreeing that the death penalty should be the punishment for murder and a large majority (81%) believing that crimes committed by big business often go unpunished (Indermaur and Roberts, 2005, pp.152-153). Most respondents (63%) felt that judges should reflect public opinion in their sentencing decisions.

The questions on perceptions of sentencing and the death penalty have been included in the Australian Survey of Social Attitudes on ten occasions over the past two decades. Responses to these questions over time reveal an interesting picture: the proportion of Australians who agree with stiffer sentences has decreased from a high reached in 1987. This slight shift has occurred despite continuing political rhetoric and media focus on law and order. Indermaur and Roberts suggest that the public might have reached 'saturation' point with constant media attention to crime and sentencing, becoming somewhat de-sensitised to media images and even cynical about the frequent inflammatory tone of political debate (Indermaur and Roberts, 2005, p.156).

While this survey included over one thousand respondents from Victoria, the focus of the research was not specifically on this state. In addition, only three questions were asked about public attitudes to sentencing. Thus while the survey allows for comparisons with other states, it does not allow an in-depth analysis of the finer aspects of Victorian attitudes toward sentencing.

What do we Know About Public Opinion in Victoria?

There is a real dearth of information about public opinion on sentencing specifically in Victoria, with only a single study looking closely at the Victorian community in any detail. This study was part of a review of sentencing initiated in 1996, and included an extensive public consultation process using both submissions and a focus group methodology.

The Victorian Community Council Against Violence

As part of a 1996 review of the *Sentencing Act 1991*, the Victorian Community Council Against Violence (VCCAV) was asked to provide mechanisms for members of the public to express their views about sentencing and the nature of sentences imposed in Victoria. The VCCAV developed Terms of Reference to which the public could respond.

The Terms of Reference for the report were (Victorian Community Council Against Violence, 1997, p.ii):

The VCCAV will enquire into, consider and report on community knowledge and views in relation to sentencing within the context of the criminal justice system.

The VCCAV will give particular consideration to:

- identifying the community's level of knowledge of sentencing;
- how the community gains its knowledge of sentencing;
- identifying the community's perceptions of the purpose of sentencing;
- identifying the expectations, concerns and suggestions from the community in relation to sentencing.

The VCCAV determined that public opinion would be more useful if a level of accurate information was provided prior to the consultation process. An Information Paper was developed that contained information on current sentencing practices, and it included a set of questions to guide submissions.

One thousand screening questionnaires were distributed inviting people to participate in the research. About 230 were returned and from these, focus group participants were selected on the basis of gender, age, education level and previous contact with the criminal justice system. Sixteen groups were convened, with fourteen based on age and gender homogeneity. Two groups were selected on the basis of gender and experience as victims of sexual/physical assault. Focus groups were also held within prisons and with victims' groups.

The 90 minute focus groups each involved four sections. The first was a general discussion of the purposes of sentencing and sentencing options, designed to ascertain participants' level of knowledge of these. The second involved participants ranking the relative seriousness of 12 offences by considering the worst case scenario for each. Following this the actual rankings (in terms of maximum penalties) were discussed. Section 3 was a case study exercise using a hypothetical armed robbery case to ascertain what participants believed to be aggravating and mitigating factors, and to impose a sentence and identify the main purpose they believed this would achieve for the offender. Section 4 involved a general discussion of how participants gained their knowledge of sentencing and how satisfied they were with current sentencing practice in Victoria.

In the report of the consultations, 'most' refers to 80-99% of participants; 'many' refers to 60-79%; 'several' refers to 30-59%; and 'few' refers to less than 30% of participants.

Community knowledge of sentencing

The vast majority of people making submissions felt that sentencing information in Victoria was either unavailable or was extremely difficult to access (VCCA, 1997, p.10). Many acknowledged that their knowledge of sentencing was thus limited to very general information, primarily based on media reporting. Those who used the media as their main source of information acknowledged that the picture the media provide is not necessarily an accurate one. Indeed, some participants noted that the media's emphasis on sensationalism and controversial or violent cases can lead to a distorted view of risk of crime victimisation and the level of crime in the community, thus raising community levels of fear (VCCA, 1997, p.14).

Perceptions of the purposes of sentencing

Participants who emphasised punishment as the primary purpose of sentencing were more likely to be unhappy with the current system and sentencing practice (VCCA, 1997, p.24). In submissions, many people appreciated that rehabilitation must be accompanied by social condemnation of the offending behaviour via a severe penalty. But a view was also expressed by many, particularly those who argued for tougher sentences, that rehabilitation is either not possible or has not worked. This was especially the view for sexual offenders (VCCA, 1997, p.28).

All focus group participants had some knowledge of the aims of sentencing, with rehabilitation, punishment and deterrence being the most often mentioned, followed by protection of the community. For more serious crimes and repeat offenders, the most important purposes of sentencing were deterrence, community protection and punishment. Only in extremely violent offences should punishment and protection be the only purposes of sentencing; for others, these are secondary and most meaningful if coupled with rehabilitation (VCCA, 1997, p.32 and p.69).

Rehabilitation was specified in two different forms: primarily, for offence related behaviours such as drug problems and sex offences (although participants were sceptical about the effectiveness of this). The other form was the provision of training and skills which was seen as a more effective form of rehabilitation.

Rehabilitation was considered to be more important for young offenders, first time offenders and less serious offenders as a way to prevent recidivism and to allow offenders to restructure their lives. But there was general agreement in the focus groups that rehabilitation is not very effective (VCCA, 1997, p.69).

Perceptions of the adequacy of sentences

Many people who made submissions suggested that maximum penalties are, for the most part, appropriate, but that the actual sentences imposed are not long enough. This was particularly the case for child and adult sexual assault and in domestic violence cases (VCCA, 1997, p.39). It was suggested that, as current penalties imposed by the courts tend to reflect community views of the seriousness of crimes, crimes such as sexual assault and domestic violence are not considered to be serious crimes in the community.

Perceptions of specific sentencing orders

Opinions on imprisonment expressed in submissions tended to be divergent and to focus either on the imprisonment rate for various offences or on the nature of the prison experience.

A number of people felt that the proportion of offenders receiving a sentence of imprisonment was too small, especially in the case of serious crimes such as murder and sexual assault. Others suggested that life in prison was too easy, with too many facilities, and therefore was more expensive than it should be.

On the other hand, other submissions suggested that imprisonment should be used very selectively as the social and economic costs are so high. They also suggested that more opportunity should be provided to offenders to access treatment programs to prevent violence and assist in preparing for work (VCCA, 1997, pp.44-45).

Focus group participants saw imprisonment as the most useful sentence for achieving the goals of punishment and community protection. Participants felt that imprisonment should be a sentence of last resort, most appropriate for serious violent offenders and for those with prior convictions who were beyond rehabilitation. Several people felt that it might even have a detrimental effect, with offenders leaving prison with greater knowledge about committing crimes than when they first entered (VCCA, 1997, p.70).

Many of the focus group participants knew about suspended sentences but few understood how this order works, seeing it as a soft option. Most were aware of Community Based Orders but thought they consisted only of community work, not treatment and counselling. They were seen as appropriate for rehabilitation, as long as any work offered was relevant and meaningful to the offender. In their submissions, many people expressed concerns with these orders due to poor supervision and high breach rates (VCCA, 1997, p.48).

Aggravating and mitigating factors

A number of those who made submissions suggested that mitigating factors unduly affect the leniency of a sentence. In particular, it was felt that the offender's character should not be held as a mitigating factor. When mitigating factors are given too much weight in a case, the offender seems to be given more rights than does the victim (VCCAV, 1997, p.50).

Focus group participants considered a case study and nominated the factors they thought should be aggravating or mitigating. Aggravating factors were prior convictions and significant victim impact. Mitigating factors were offender age (young), home life (disrupted), employment history (unemployed but actively looking) and early guilty plea (VCCAV, 1997, p.74).

When imposing a sentence for the case study, the most frequently imposed penalty was an Intensive Corrections Order. Men were slightly more likely than women to impose imprisonment while those who had been victims of crime were far more likely to impose imprisonment than those who had had no contact with the criminal justice system.

Sentence discounts

A number of people who made submissions were concerned that offenders receive lenient sentences when they have pleaded guilty to a lesser charge or to a smaller number of charges than may have been warranted. Concerns about plea negotiation focus on: how it happens; who is involved; the basis for negotiation; and the lack of information provided to victims (VCCAV, 1997, p.52). In particular, several people held an expectation that offenders will be tried for the offences they had committed, but they noted that this is often not the case (VCCAV, 1997, p.53).

Concerns were also expressed by both focus group participants and in submissions about concurrent sentences in that they effectively offer a discount to offenders (VCCAV, 1997, p.55).

The VCCAV concluded that, while clear generalisations cannot be made from the consultations due to the range of responses received, the community has high expectations about sentencing that are frequently not being achieved in current practice.

What don't we know about public opinion in Victoria?

There is a substantial gap in knowledge about public opinion on sentencing in Victoria, with only two studies providing some insight into the perceptions of the Victorian public. While the Australian Survey of Social Attitudes made some very good inroads into this process using a representative survey, with only just over 1,000 respondents in Victoria the generalisability of the survey is not optimal. The work of the Victorian Community Council Against Violence is now somewhat dated and also includes very limited representation of the community at large.

There is clearly a need for updated and detailed information on public opinion on sentencing in Victoria that is conducted using sound and valid methodologies to access the Victorian community specifically.

What do we need to know about public opinion in Victoria?

In an ideal world, we would have information on the Victorian community's perceptions of every type of sentencing order that is used by the courts, and its use for a variety of offence types. For example, what level of knowledge exists about parole? Do people support the use of non-custodial sentences for first-time sex offenders? What is the public view of the main purpose of sentencing for convicted drug traffickers? There are many, many issues about which we have little or no evidence; while this vacuum exists there is the danger that policy will be created based on an assumption of a punitive public. But as a large body of research now shows, this assumption is at best over-stated and at worst simply wrong.

We need to understand the nature of informed public opinion in Victoria in terms of both general perceptions and in relation to specific sentencing options for specific offences. We need a combination of large-scale representative surveys with well-considered questions (using both the more simple question and the more complex crime vignette) combined with the qualitative aspects of the deliberative focus group that will provide a richness of detail on specific issues. By triangulating our methodology, we should be able to create a more complete and nuanced picture of the complexities of public opinion on sentencing in Victoria.

The Approach of the Sentencing Advisory Council

Roberts and Hough (2005) conclude their analysis of public attitudes to criminal justice by stating that:

A true reading of public opinion can be obtained only by an interactive methodology that permits the researcher to provide the respondent with factual information relevant to the opinion being explored...As greater political weight is attached to public opinion, it becomes correspondingly important to measure public attitudes carefully and to the best professional standards (Roberts and Hough, 2005, p.160).

The Council believes that there is no 'silver bullet' to the methodological issues raised in the research literature on this topic. Rather, a suite of methodologies is required that allows the research questions to determine the most appropriate method by which to gather the community's opinions. Thus there should be a different methodological model used for different research questions.

The Council's approach to seeking input on its work differentiates between the expert advice afforded by a targeted consultation process and the more general opinion that may be gathered via traditional survey and focus group techniques.

Seeking expert advice

For many of its projects, the Council believes it is appropriate and desirable to garner the advice of people who are acknowledged experts in the field under investigation. In particular, legal professionals, judges and magistrates, and victim support workers are able to provide the Council with detailed and nuanced insight into the issues surrounding particular topics. Consultations with such groups are conducted in the form of roundtable discussions (akin to focus group discussions), bilateral meetings (akin to personal interviews) or via written submissions in response to specific discussion questions (akin to a written version of a personal interview).

- **Roundtable / focus group discussions** – The Council has employed this method most extensively in its work on suspended sentences. Using this approach, separate discussions are organised for people whose expertise provides a particular perspective on the issues at hand. For example, the Council has convened roundtables for legal professionals; for victims’ advocates; for mental health support workers; for youth support workers; and for those working with drug- and alcohol-addicted offenders. This approach has been invaluable, as it has allowed the Council to gather expert advice and opinion on its work from a range of perspectives. It will continue to be a critical part of the Council’s consultation strategy in future projects.
- **Bilateral meetings / personal interviews** – The Council has employed this approach in a number of its projects. It is of particular use when there are specific individuals who are acknowledged experts in a field, or when material of a more sensitive nature is to be discussed. For example, the Council’s work examining the advantages and disadvantages of a sentence indication scheme for Victoria involved the use of both an expert Advisory Group to identify the broader issues for discussion, as well as individual meetings with acknowledged experts in the field. This approach has allowed the Council access to the detailed, nuanced advice of key individuals in a field; it will continue as a cornerstone of the Council’s consultation strategy.
- **Submissions / responses to discussion questions** – For its suspended sentences project, the Council released to the general public a discussion paper with specific questions for consultation. This approach is useful in reaching a wide audience of potential respondents and it allows people with an interest in the issues to participate in the consultation process. By providing a discussion paper from which people may form their opinions, the Council is facilitating the development of *informed* public opinion. This approach will continue to be employed in appropriate Council projects in the future.

The Council’s approach to seeking expert advice has been employed successfully in a number of projects to date. For future work, the Council plans to continue to refine its strategy to ensure that appropriate groups and individuals have sufficient opportunities to participate in the consultation process.

The Council is currently developing its consultation strategy for a specific part of the community that is particularly affected by sentencing laws and practices: offender populations. For some projects, such as the Council’s investigation of the possible use and form of a sentence indication scheme in Victoria, the opinions of offenders are critical in understanding the practical implications, advantages and disadvantages of reform.

In order to consult with offenders, the Council is working closely with the Victorian Association for the Care and Resettlement of Offenders (VACRO) to develop a suite of methodologies for gauging the opinions of offenders. The approach involves working closely with VACRO staff to conduct surveys, focus groups and personal interviews with both people in prison and those who are in the community. This approach will give the Council an inside view of the impact of the criminal justice system on Victorian offenders.

Gauging public opinion

While the Council's methodological approaches to seeking expert advice are now well defined, its approach to gauging public opinion more broadly is still under development. Pilot testing has begun on a modified deliberative poll methodology, and further development of the strategy as a whole continues.

For some projects, the Council seeks to gather broader input from the community at large. Qualitative focus groups allow the Council to delve more deeply into the complexities of people's opinions on particular issues. Quantitative survey data provide the Council with information about both general sentencing issues and more specific questions under investigation. In combination, the two create a modified deliberative poll.

This combined qualitative and quantitative approach to gauging public opinion has been pilot tested in the suspended sentences project. For this work, the Council held a series of community forums in both Melbourne and regional Victoria. Newspaper advertisements were placed to invite community members to attend an information and discussion session on suspended sentences and to give their opinions on the use of these sentences in Victoria. After a presentation and discussion of some of the advantages and disadvantages of suspended sentences, participants were surveyed about their opinions. This kind of session provides the Council with a measure of *informed* public opinion by giving people some factual foundation upon which to build their opinions. This approach will continue to be a major part of the Council's consultation strategy.

A deliberative poll methodology has also been applied in the context of the Council's 'You Be The Judge' seminar series. Participants are asked to complete a survey before the seminar begins. The session then provides participants with information about sentencing practices and policy in order to illustrate the difficulties that sentencers face in arriving at an appropriate sentence. Finally, participants once again complete the same survey.

This kind of deliberative poll, with participants being surveyed both before and after being offered some information about sentencing, allows the Council to compare pre-seminar opinions on sentencing with post-seminar opinions. The difference in responses between these two surveys may be seen as reflecting the difference between mass public opinion and informed public judgment.

The Council plans to develop further this deliberative poll methodology for use in future 'You Be The Judge' seminars. The methodology can also be adapted for use when examining specific issues, such as the advantages and disadvantages of a sentence indication scheme. The Council also hopes to develop, test and implement a large-scale, representative survey on sentencing issues for use with the general community, as well as surveys that focus on specific topics of interest that arise during the course of its project work.

Conclusion

While there is now a considerable body of research around the world in relation to public opinion on sentencing, there is clearly much work that remains to be done to understand informed public opinion in Victoria. But coming to public judgment, as David Green suggests, is hard, time-consuming work – people cannot achieve informed public judgment unassisted. It requires partnerships between experts and the public that provide for dialogue and debate about current knowledge in the field and about the likely consequences of potential reform.

The Sentencing Advisory Council continues to apply lessons learned from the existing research to the development and refinement of its methodologies. By employing a sound and defensible approach to the collection of both expert advice and broader opinion, the Council is incorporating the public into its work, thereby facilitating informed community input – public judgment – into the development of sentencing policy.

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