More Myths and Misconceptions

Introduction

In July 2006 the Sentencing Advisory Council released a research paper entitled *Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing* (Gelb, 2006). The paper represented the culmination of a year-long project that was designed to examine and critically evaluate the current state of knowledge about public opinion on sentencing, as well as the methodological issues surrounding how public opinion is measured.

Since the *Myths and Misconceptions* paper was initially released, there have been several new studies that have added to the literature. While none of the studies has reported findings that are at odds with those included in *Myths and Misconceptions*, it is worth reviewing them here in order to present the most recent and updated information possible.

This paper will thus revisit some of the key messages derived from *Myths and Misconceptions* and will update these findings with the most recent research that has been published since the paper’s release in mid-2006.

The Sentencing Advisory Council has also released an associated paper entitled *Measuring Public Opinion about Sentencing* that considers some of the methodological issues that arise when measuring informed public opinion. That paper is available from the Council’s website <www.sentencingcouncil.vic.gov.au>.

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Myths and Misconceptions

The original *Myths and Misconceptions* paper was designed to examine 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 was to inform the creation of a suite of methodological tools that could be used to gauge public opinion on the wide range of issues that form the work of the Victorian Sentencing Advisory Council.

Key findings from the paper were:

- 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

This paper presents a brief review of the research that has been published in this area since the release of the original *Myths and Misconceptions* paper in 2006.

People have little confidence in the courts

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). In particular, research comparing confidence levels across various agencies within the criminal justice system has consistently found that the public has the most confidence in the police and the least in the courts and prisons (Hough and Roberts, 2004, p. 18). When asked why they have little confidence in the courts, people typically cite lenient sentencing.

Public confidence has become a priority for a number of reasons: the criminal justice system relies on public confidence as victims need to be sufficiently confident in order to report crime in the first instance; without the co-operation of complainants, witnesses and jurors, prosecutions would not be effective. Public confidence is necessary for the legitimacy and function of the court. Around the world, government criminal justice departments strive to improve public confidence in the criminal justice system.

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.

The Courts Administration Authority in South Australia developed a strategy in 2000 called Courts Consulting the Community. The strategy involved three themes: better communication with the community about the work and decisions of the courts; better understanding of the needs of people attending court; and improved continuing education for judicial officers and staff (Courts Administration Authority, 2006). Part of the strategy involved a survey of about 1,000 members of the South Australian public about their levels of confidence in the South Australian courts. This survey was repeated in August 2006, allowing for comparisons over time.

The findings from the 2006 survey were largely consistent with results from other studies around the world. About 70 per cent of respondents reported having confidence in the state’s courts (similar to the results in 2000), although the ranking of the courts dropped from fourth to fifth, behind the police (93 per cent having confidence), the medical profession (92 per cent),
the public school system (72 per cent) and the state government (71 per cent). Despite the large proportion of people claiming to have confidence in the courts, only about half of all respondents reported that they know at least a little about the courts. Thus people had an opinion about the courts despite the fact that half do not know much about them (Square Holes, 2006).

Interestingly, the survey also found some strong divisions in the community about the independence of the judiciary. In response to the statement ‘the decisions of judges and magistrates reflect the views of the community’, 41 per cent agreed and 49 per cent disagreed. And in response to the statement ‘judges and magistrates are influenced too much by politicians and media’, 48 per cent of respondents agreed and 42 per cent disagreed (South Australian Courts Administration Authority, 2007, p. 4). Clearly this is a divisive issue.

Measuring public confidence is difficult, as confidence may be operationally defined in several ways. For example, respondents may be asked about trust or about confidence, about one part of the criminal justice system or about the system as a whole. Various studies (for example, MORI, 2003) have found that trust and confidence are highly correlated and indeed may represent variations in the same construct, such that one may be used as a proxy for the other. Some surveys have asked people to rate the performance of the justice system as a whole or of its constituent components to reflect confidence. Such ratings may be more retrospective in nature than confidence ratings, as respondents have to reflect on what they know about the performance of the system. Levels of knowledge may thus influence levels of confidence when using this approach. A third approach has been to compare confidence levels across public institutions, providing a context against which to interpret ratings in justice (Roberts, 2007, p. 158; in Australia, see Roberts and Indermaur, 2007). But there are also difficulties with this approach, as it assumes that the other institutions constitute appropriate controls. This assumption may be flawed, as it may be unreasonable to expect levels of confidence in justice to match those of other institutions such as health care and education, for a variety of reasons, especially the different (and complex) mandate that the justice system has (for a full discussion, see Roberts, 2007, p. 162). Another way of measuring public confidence is through evaluations of the professionals who run the system and comparing these to other professionals.

Consistent with the notion of using as differentiated a question as possible, Sun and Wu (2006) note the importance of analysing data on confidence separately for different demographic groups. They examine the influence of race, gender and recent court experience on perceptions of the court. Using national survey data of about 1,000 people from across the United States, they measure perceptions of the courts along four dimensions: differential treatment; fair procedure and outcome; concern and respect; and overall evaluation. Each dimension is measured via use of a small scale in order to create a more reliable and valid measure of a particular construct than would be available using a single item.

Sun and Wu find that racial minorities are more likely to have negative attitudes towards the courts. While race is a better predictor of perceptions of the courts than gender, the interaction between the two is also important. Perhaps somewhat surprisingly, people who have had some recent personal experience with the courts hold more negative perceptions in terms of fair procedures, outcomes, concern and respect (Sun and Wu, 2006, p. 465).

Benesh (2006) also attempts to explain levels of confidence in the courts and finds that experience with the courts, perceptions of fairness and choices of institutional design all play a role in explaining public support for state courts. Using the 1999 survey conducted by the National Center for State Courts, Benesh finds that people with experience as defendants or plaintiffs are much less supportive than are those without any experience or those with experience as jurors. This finding refines the results of the Sun and Wu study by differentiating people with a high stake but low control in the court system (defendants and plaintiffs) from those with a low stake but high control (jurors) and provides a more nuanced result. Increased confidence is found for people who report that they know more about the courts and those who have more education. Support for the courts increases as perceptions of courts’ and judges’ fairness increase. Finally, in partisan election states where judges are elected rather than appointed, respondents are less likely to have confidence in the courts (Benesh, 2006, pp. 702–4).

Confidence in the courts has immediate relevance to perceptions of sentencing severity. There is a strong relationship between ratings of confidence in the courts and perceptions of severity: people who report that sentences are too lenient have significantly less positive views of sentencers (for example, Hough and Roberts, 1998; Mattinson and Mirrlees-Black, 2000).
In the abstract, people believe sentences are too lenient

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. And across a variety of western countries, between 70 per cent and 80 per cent of respondents have consistently reported that sentences are too lenient.

On the basis of these survey findings alone, politicians, policymakers 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 additional 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.

Roberts, Crutcher and Verbrugge (2007) report on the findings of two surveys conducted in 2005 that explored Canadians’ attitudes towards the severity of sentencing, the purposes of sentencing and mandatory sentences of imprisonment. This research represents the first effort since the Canadian Sentencing Commission’s 1985 survey to explore these issues through a representative survey. The analyses report the findings from two surveys involving more than 3,800 respondents.

Consistent with previous research over the last few decades, 74 per cent of respondents report that sentencing is too lenient, while 23 per cent believe it is about right. This perception of leniency has been held by more than 60 per cent of Canadian respondents since the late 1960s (Roberts, Crutcher and Verbrugge, 2007, p. 85). Perceptions of judicial leniency are related to confidence in the courts: people who perceive sentences to be too lenient are likely to express less confidence in the courts, and vice versa. In this study, the authors find that 79 per cent of respondents rate the justice system as poor or fair (Roberts, Crutcher and Verbrugge, 2007, p. 84). But the authors point out that sentence severity is only one aspect on which courts may be judged; other judicial functions, such as providing a fair trial for the accused, tend to rate much higher.

Johnson (2008) finds that the majority of both Caucasian Americans and African-Americans prefer harsh treatment for criminals. However a substantial racial gap exists, with Caucasian respondents being more likely than African-American respondents to favour punitive sanctions. For example, 79 per cent of Caucasian respondents and 62 per cent of African-American respondents agree that juveniles charged with a violent crime should be tried and sentenced in adult courts. While less than half of African-American respondents feel that current penalties for violent crimes are too light (44 per cent), 67 per cent of Caucasian respondents feel this way. And while 84 per cent of Caucasian respondents favour three-strikes laws, only 66 per cent of African-American respondents do (Johnson, 2008, p. 202).

Johnson suggests that the use of a more nuanced measure of punitiveness, involving the construction of a scale rather than a single question, allows a far more detailed understanding of the different aspects of punitiveness.

People have little accurate knowledge of crime and 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 about sentencing are findings that show that people have extensive misperceptions about the nature and extent of crime and about court outcomes.

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; Sprott, 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 percentage of offenders who re-offend; and
- under-estimate the severity of sentencing practices (for example, the incarceration rate).
In their recent study, Haines and Case (2007) update this research and apply it to understanding public knowledge about youth crime in one particular town in Wales. They note that findings from public opinion surveys about juvenile crime reflect those found in surveys about adult crime: respondents overestimate the proportion of crime committed by young people, incorrectly believe that youth crime is increasing and believe that courts are too lenient in sentencing young offenders (Haines and Case, 2007, p. 339). But while the public is generally found to be punitive in their attitudes toward sentencing, people are also supportive of community-based sentences and rehabilitative measures, especially in the case of young offenders.

The authors suggest that a combination of people underestimating the severity of sentencing and overestimating the severity of offending builds a grossly inaccurate picture that has serious implications for levels of public confidence in the criminal justice system.

Analyses of the survey findings were consistent with previous research around the world:

- people in Swansea, especially older people, incorrectly overestimated an increase in youth crime;
- people, especially females, younger respondents and victims of crime, over-estimated the proportion of youth crimes that are violent or theft-related; and
- people favoured both punitive and constructive sentences for young offenders.

The authors conclude that local public opinion is shaped by national media and political rhetoric, rather than the local realities of youth offending (Haines and Case, 2007, p. 353).

Roberts and Indermaur (2007) analyse data from 4,270 respondents to the 2003 Australian Survey of Social Attitudes, a self-completed mail questionnaire, to examine attitudinal and demographic factors that underlie punitive beliefs in Australia. They suggest that understanding the predictors of attitudes to punishment is important for exploring the possible impact that sentencing and legislative changes can have on public confidence in the criminal justice system.

Given the weak, often contradictory correlational links between demographic factors and punitiveness in the research literature, Roberts and Indermaur suggest that beliefs about crime and fear of crime may be more relevant and therefore more direct predictors of punitiveness.

The authors’ analyses show that 70 per cent of respondents have ‘not very much’ (46 per cent) or ‘no’ (24 per cent) confidence in the courts and the legal system, while 63 per cent feel that judges should reflect public opinion about crimes when sentencing criminals. Seven out of ten believe that those who break the law should be given stiffer sentences while 46 per cent agree that the death penalty should be the punishment for murder (Roberts and Indermaur, 2007, pp. 59–60). In addition, those who believe that judges should reflect public opinion are twice as likely to call for stiffer sentences and the death penalty for murder.

In this study, the authors conduct a hierarchical multiple regression on the three questions that measure punitiveness – questions that ask respondents to agree or disagree about the death penalty for murder; that stiffer sentences should be given and that judges should reflect public opinion. The predictor variables of interest are entered in four separate steps: demographic variables, religion and politics, the main source of news and criminal justice attitudes.

Overall, 35.6 per cent of the variance in punitiveness is explained by the predictor variables. Demographic variables account for 12.8 per cent of the variance – increased punitiveness is associated with being male, older and self-described as working class, while punitiveness decreases with more years of education. Religious and political variables account for an additional 10 per cent of the variance in punitiveness – increased punitiveness is associated with right-wing political orientation and attending religious services at least once a month. Adding the variable of having commercial television as the main source of news adds 2.3 per cent to the variance. Criminal justice attitudes account for an additional 14.5 per cent of the variance in punitiveness – people who know more about crime rates, who have confidence in the courts and who believe that the police are not corrupt are less punitive (Roberts and Indermaur, 2007, p. 61).

The authors conclude that the strongest predictors of punitiveness are criminal justice attitudes, even after the other variables are controlled for. They suggest that there is a strong constellation of beliefs about crime and justice that coalesce and are only partly influenced by demographics. Punitive attitudes are underpinned by inaccurate knowledge and beliefs about crime and the criminal justice system. This indicates a need to educate the public about crime trends and the limits of the criminal justice system in reducing crime, and increasing confidence in the courts. But given that attitudes to crime and punishment are often driven by emotive rather than instrumental concerns, the authors note that public education must address the symbolic and emotional issues that punitiveness reflects (Roberts and Indermaur, 2007, p. 62).
At the November 2006 community conference convened by the South Australian Courts Administration Authority as part of their Courts Consulting the Community work, participants noted that the lack of knowledge about crime and the criminal justice system was especially pronounced around the courts: people do not understand the sentencing system and what is taken into account in sentencing; they do not understand why people do not serve the full length of their penalty; and they do not understand why a convicted person does not receive a maximum penalty (South Australian Courts Administration Authority, 2007, p. 5).

It is evident from the large body of research that has now accumulated that the lack of knowledge about crime and the criminal justice system is a significant factor in perpetuating public misperceptions and misunderstanding. Indeed, Roberts concludes that the answer to low levels of public confidence lies in addressing the gaps in public knowledge of the criminal justice system. Roberts cites a review of the criminal courts in England and Wales, which observed that “[p]ublic confidence is not so much an aim of a good criminal justice system, but a consequence of it” (Auld, 2001, p. 18: cited in Roberts, 2007, p. 176). He notes that the lesson from the United States, where confidence levels are low despite the increasing severity of sentences, is that promoting public confidence should not be used to justify changes to sentencing policy (Roberts, 2002, p. 26).

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

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).

In particular, tabloid newspaper readers tend to be more punitive than broadsheet newspaper readers. Hough and Roberts (2007) note that analyses of British Crime Survey data by the Home Office showed that tabloid readers were both less knowledgeable and more critical of the criminal justice system than were broadsheet readers (Hough and Roberts, 2007, p. 206). But the authors note that tabloid journalism alone cannot be responsible for the gap between the practices of the courts and the public’s perceptions of sentencing. In addition to media influence, people may be responding to messages about crime and social order (either implicit or explicit) that are conveyed in tandem by politicians and the news media. Hough and Roberts implicate politicians and their law-and-order rhetoric as they try to ‘out-tough’ each other.

In a similar vein, Beale (2006) suggests that news media do not simply reflect events in society. The use of violence on television and in the print media is an economic strategy to develop specific types of audiences and to sell these to advertisers. The coverage of violent crime in particular has increased dramatically while the nature of the coverage has shifted toward a distinctly tabloid style (Beale, 2006, p. 422).

The media are able to increase the salience of crime in the public mind in two ways: through agenda-setting and through priming. Agenda-setting refers to the media’s ability to direct the public’s attention to certain issues, while priming describes the media’s ability to affect the criteria by which viewers judge public policies and public officials. When combined, media focus on crime causes the public to perceive crime as a more serious problem than it is in reality (Beale, 2006, p. 442).

Despite the fact that most people report that they are informed about crime and the criminal justice system via the media, most also acknowledge that the media do not portray an accurate picture of reality. For example, in the South Australian Courts Consulting the Community survey in 2006, fully two-thirds of respondents felt that the media do not provide accurate information about court cases (Square Holes, 2006).

When given more information, people become less punitive

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.
In their groundbreaking work, Doob and Roberts (1983) were the first to demonstrate the powerful effect of providing more information on respondents’ attitudes. Of respondents who received a brief description of a manslaughter case (akin to the type of information provided in media accounts), 80 per cent felt that the sentence was too lenient. In comparison, of those who received a more detailed description with information on incident and offender characteristics, only 15 per cent felt that the sentence was too lenient. Doob and Roberts concluded 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.

These findings have been replicated time and again in the decades since, with much research indicating the need for more detailed case vignettes in order to measure informed public opinion more accurately.

In the most recent research, De Keijser et al (2007) extend the work of previous research that has considered the role of increased information on levels of punitiveness among the public. They use both survey and experimental methodologies to integrate samples from the general public and judges working in the criminal courts.

The research consists of three separate but connected studies: study I involves a sample of 180 judges from Dutch criminal courts responding to three detailed and realistic case studies; study II involves a survey of 2,127 members of the Dutch general public that measures the punitiveness of top-of-the-head opinions; and study III involves a sub-sample of 917 respondents from the public survey being asked for their opinions based on the same case studies that the judges had seen, as well as descriptions of the same cases in an abridged format similar to that found in newspaper articles.

When comparing judicial and public sentences in response to specific case studies, De Keijser et al (2007) find that there is still a significant difference between the two groups. For an aggravated assault case, judges’ average sentence is 29.7 months’ imprisonment while the average public sentence is 60.9 months. Similar results are found for simple assault and burglary. The authors suggest that the gap between lay and judicial punitiveness is real, not an artefact of the level of information available (De Keijser et al, 2007, p. 150).

But the results also show that providing people with detailed information on a case has a strong mitigating effect on severity – participants given a complete case study are much less punitive than those whose judgment is based on a typical newspaper report of the same case. Nonetheless, the authors note that, while the effect of additional information on perceptions of leniency is large, it is not enough to bridge the gap that lies between judges and the public.

These findings are somewhat in conflict with other studies (see, for example, Diamond, 1990) and they contrast with the findings from a recent, comprehensive examination of informed public perceptions of sentencing in Victoria.

The aims of Lovegrove’s (2007) study were to assess the validity of the populist view of judicial sentencing as lenient, and to devise a method having the capacity to challenge the beliefs underpinning the populist view of sentencing.

There are three inter-related areas of the literature that are relevant to this study. First, it is well-established that surveys around the world over the last few decades have found that substantial majorities of people feel that sentencing is too lenient. Secondly, people believe that sentencing is too lenient as they consider judges to be out of touch with the community’s opinions – judges appear to be remote or disinterested in what the public thinks. And thirdly, surveys in countries around the world show that people have little confidence in the judiciary and the courts (Lovegrove, 2007, pp. 769–71).

While these populist views of judges and sentencing are held in survey after survey by a majority of respondents, there is now a significant body of research that shows that, when the public is provided more information on a given case (similar to the kind of information available to a judge in court), judicial sentences and public sentences are very similar.

In Lovegrove’s study, actual cases were presented to participants by the four sentencing judges after a preliminary discussion of the principles and purposes of sentencing. The 471 participants were employees at 32 workplaces around Victoria and represented both white-collar and manual occupations and commercial and non-commercial industries (Lovegrove, 2007, p. 774). They were presented with four cases:

- An armed robbery of $1,100 at a small gambling venue, involving minimal violence and an unloaded gun. The 32 year-old offender had an extensive non-violent record and had used the money to support his wife and baby after losing money gambling. He wanted to reform but had poor coping skills and temperament.
- Multiple rapes at knife-point of a young woman in her home at night, by her neighbour. Before the offender left he apologised and asked her for a date. He had a drinking problem and was drunk at the time and was of low intellectual capacity. He had priors for car theft.
Multiple stabbings (intentionally causing serious injury) of two men by a young adult male and the punching of a young woman by his 18 year-old girlfriend. Both had drug and alcohol problems, had been drinking at the time and were aggressive. The male had served time in a youth training centre for a previous stabbing; the female had non-violent priors.

The theft of about one million dollars worth of goods from a company by two employees over an extended period. The male offender, a senior manager, had organised the operation with several co-offenders. He was now in debt and his family was shattered by the events. The woman, although a key player, acted under his direction and did not benefit very greatly from the crime. Her husband left the family due to her offending and she was the sole carer of two chronically sick dependent children.

For each offender, each participant’s sentence was ranked along with the others according to severity and a median sanction was calculated. For the intentionally causing serious injury case the judge’s sentence (3.0 years of non-parole period) fell just below the median sentence imposed by the study participants (3.2 years, plus a treatment program). But for the other three cases, the judge’s sentence was well above the participants’ median sentence (for theft, 3.5 years for the judge and 2.0 years for the participants; for armed robbery, 4.5 years for the judge and 1.9 years for the participants, plus a treatment program; for rape, 6.0 years for the judge and 4.9 years for the participants, plus a treatment program) (Lovegrove, 2007, p. 776). Lovegrove concludes that, contrary to popular perceptions, judges are not more lenient than the community.

In addition, Lovegrove concludes that the community relies on offender factors favouring leniency, not just on offence seriousness. He cites several indirect pieces of evidence for this: participants wanted treatment as well as custody for the offenders with personality problems; participants imposed a suspended sentence on one offender for whom prison would have been an especial hardship; and participants cited factors favouring leniency in their responses (such as excuses, exculpatory factors and rehabilitation). Lovegrove concludes that people are willing to give weight to mitigating factors even when the offending is serious (Lovegrove, 2007, p. 778).

Lovegrove notes that his findings cast doubt on the populist view of sentencing as lenient and the wisdom of increasing the severity of sentences to satisfy what is believed to be a harsher public. There is also an important correctional message, as those who had troubled personalities were given sentences that also included treatment programs. There was thus strong support for rehabilitation programs for those in prison.

People are willing to accept alternatives to imprisonment

The Rethinking Crime & Punishment (RCP) program has funded a body of research that aims to understand the nuances of public opinion on imprisonment and to measure the extent to which alternatives to imprisonment are accepted by the public. This research 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.

Nagin et al (2006) assess public opinion toward juvenile justice policy based on both punitive and non-punitive approaches. They use a contingent evaluation methodology that compares respondents’ willingness to pay for the competing policy alternatives of incarceration and rehabilitation.

The authors suggest that the contingent valuation methodology has three advantages over traditional public opinion polling (Nagin et al, 2006, pp. 630–31):

- Asking respondents how much they are willing to pay for a specific policy is likely to elicit a more accurate estimate of their attitude than merely asking whether they approve or disapprove of the policy, as the question requires respondents to consider the costs associated with the policy as well as the benefits. By revealing the actual cost of the policy, and the cost to the individual taxpayer, a more accurate estimate of public opinion should be gathered.

- A more direct comparison is allowed of public attitudes toward different policies designed to address the same issue. In conventional polling, respondents are seldom given information on the cost or effectiveness of the proposed options. The contingent valuation approach allows the researcher to specify this information for respondents.

- The contingent valuation methodology estimates the economic value of various policies by determining how much people are willing to pay for each of them. This information can then be fed into cost-benefit analyses of policy options, allowing crime policy to be formulated on the basis of assessment of economic costs and benefits.

While the contingent valuation methodology has been used in other policy arenas, it has only recently been applied to the criminal justice context. In their study, Nagin et al (2006) conduct
a telephone survey with just over 1,500 adults in Pennsylvania to ask about their willingness to pay for an additional year of incarceration or for additional rehabilitation services for juvenile offenders. On average, respondents’ willingness to pay for the imprisonment term is valued at almost $81 per household, while the willingness to pay for the rehabilitation services is valued at over $98 per household. Support for rehabilitation is stronger among African-Americans, women and those identifying as liberals (Nagin et al., 2006, p. 637). Respondents are even more willing to pay for an early childhood prevention program ($126 per household).

The authors conclude that the public generally is willing to pay for programs that promise to reduce youth crime and are more willing to support and pay for rehabilitation than for longer periods of incarceration, even for youths charged with serious crimes.

Consistent with the findings from the Nagin et al study, Krisberg and Marchionna (2007) find similar acceptance of alternatives for young offenders.

A national public opinion poll of over 1,000 respondents about American attitudes to the country’s response to youth crime found that striking majorities favour rehabilitative services for young offenders and, despite reporting a lack of confidence in the juvenile justice system, are opposed to prosecuting young offenders in adult courts and sending them to adult prisons.

Only 35 per cent of respondents believe that the juvenile justice system is effective in stopping youth from committing violent crimes, and 37 per cent feel that the system could stop non-violent young offenders. But 89 per cent believe that rehabilitation and treatment could help prevent future crimes. The most effective ways of reducing juvenile crime are reported as increasing education and job skills training for youth already in the justice system (chosen as effective by 75 per cent of respondents) and increasing prevention services for youth before they get into trouble (chosen by 71 per cent of respondents) (Krisberg and Marchionna, 2007, pp. 3–6).

The authors conclude that the harsher penalties and lower age of criminal jurisdiction of the courts that arose during the 1990s, driven by media accounts and political discussions about the rise of the young ‘super-predator’, are not necessarily still supported by the public. Indeed, people believe that prevention and effective services for young people in trouble are the best ways to enhance public safety (Krisberg and Marchionna, 2007, p. 7).

The greater acceptance of alternatives to imprisonment has also been found for other vulnerable offenders. A national face-to-face survey of 1,000 people in Ireland, conducted on behalf of the Irish Penal Reform Trust, aimed to gauge public opinion on a range of issues related to the prison system.

A large majority of survey respondents (91 per cent) felt that mentally ill offenders should be treated in a mental health facility instead of being sent to prison. Similar results were found for offenders with a drug addiction, with 81 per cent reporting that these offenders should be treated in a drug recovery program rather than being sent to prison. Only 30 per cent agreed that increasing the number of people in prison would reduce crime (Irish Penal Reform Trust, 2007, p. 7).

Similar results have been found from studies that examine people’s responses when asked about the main purpose(s) of punishment. Roberts, Crutcher and Verbrugge (2007) examine public support for various sentencing purposes. They note that asking people to identify the single most important purpose fails to capture the true complexity of opinion as people support multiple purposes depending upon the nature of the offence and characteristics of the offender (Roberts, Crutcher and Verbrugge, 2007, p. 86). A better way of tackling this issue is to ask respondents to rate the importance of all sentencing objectives, creating a hierarchy of importance, and then to ask for the single most important factor.

In their study, the highest levels of support are reported for the two restorative sentencing purposes — promoting a sense of responsibility in the offender (84 per cent feeling this is very important) and making offenders repair the harm caused by the offence (66 per cent feeling this objective is very important) (Roberts, Crutcher and Verbrugge, 2007, p. 86). The traditional (and more punitive) purposes of denunciation and incapacitation are far less likely to be rated as very important (39 per cent and 40 per cent respectively).

The single most important sentencing purpose in this study is ‘making offenders acknowledge and take responsibility for the harm they have done’, with 27 per cent of respondents choosing this option. The second most popular sentencing purpose is ‘making offenders repair the harm they have caused to the victim’ (13 per cent), followed by individual deterrence (12 per cent) and rehabilitation (11 per cent). General deterrence, incapacitation and satisfying the victim all garner 9 per cent of respondents’ votes, while 3 per cent cite denunciation as the most important sentencing purpose (Roberts, Crutcher and Verbrugge, 2007, p. 87).
Compared to the findings of the 1985 Canadian Sentencing Commission survey, respondents in this survey reported attitudes that have evolved away from punitive approaches toward a restorative approach to sentencing. In the 1985 survey the most popular sentencing objectives were individual and general deterrence for minor offences and incapacitation for more serious offences. The only restorative option offered in the 1985 survey – restitution to the victim – received only 2 per cent support (Roberts, Crutcher and Verbrugge, 2007, p. 87).

The authors note that the strong support for restorative justice is all the more striking as respondents were not asked to consider specific kinds of offences, so were likely to have been thinking of violent offenders when answering this question. Had the question specified less serious forms of offending, support for restorative sanctions may have been even greater.

When asked a general question about whether mandatory sentences are a good idea or a bad idea, 58 per cent of respondents in this survey support them. When asked if they would still support mandatory sentences even if the evidence showed that they did not reduce the likelihood of re-offending, fully two-thirds of respondents still support such a scheme. The authors suggest that the public is interested in mandatory sentencing more for the purpose of denunciation than for the purpose of deterrence (Roberts, Crutcher and Verbrugge, 2007, p. 92).

When asked if there should be some flexibility for a judge to impose less than the mandatory minimum sentence under special circumstances, three-quarters of respondents agree with the idea. These results indicate strong public support for judicial discretion.

The authors conclude that the findings of the survey reflect a growing public interest in restorative justice, both in Canada and around the world. They suggest that this support should not be ignored by policymakers or politicians (Roberts, Crutcher and Verbrugge, 2007, p. 97). In addition, the strong public support for individualised sentencing within mandatory minimum sentencing regimes indicates that the public appreciates the prospects for injustice that such schemes can engender. Again the authors urge legislators to consider the views of the public that emerge from such systematic research as theirs.

Victims of crime are no more punitive than others

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.

A 2005–06 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 per cent report that imprisonment would not stop re-offending, while 54 per cent favour making offenders work in the community as a way to stop them from returning to crime. Over 80 per cent of respondents believe 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 concludes that victims of crime want effective prevention rather than retribution, and that victims are more concerned with addressing the root causes of crime than with attaining vengeance and punishment for its own sake (ICM Research, 2006).

People who fear 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.

In addition to increasing levels of punitiveness, increased fear of crime may have broader health consequences. Stafford, Chandola and Marmot (2007) examine the association between fear of crime and mental and physical health. They report that fear of crime is associated with poorer mental and physical health and lower quality of life. They suggest that fear of crime may be a barrier to participation in health-promoting physical and social activities (Stafford, Chandola and Marmot, 2007, p. 2081).
Bibliography


