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What the Public Thinks About Sentencing

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There is a relatively long tradition by legal scholars of gauging public perceptions about sentencing in Canada, the UK and the USA, along with limited research in Australia.[1] This research is significant because 'the importance of public attitudes to sentencing lies in their potential to influence the development of policy guiding the criminal justice system'.[2] Public confidence is essential for the effective functioning of justice. While it is the case that politicians and legislators make the laws, and judges and other justice agents (eg, police and prosecutors) apply them, the public has a role to play in guiding the types of punishments meted out. Thus, measuring public opinion is necessary because it is both a reflection of, and a potential influence over, sentencing practices.

A key acknowledgement of this public role was the establishment of the New South Wales Sentencing Council (set up in 2003, with a similar council operating in Victoria). The Council monitors trends in sentencing, investigates specific sentencing issues and disseminates information to the general public. For example, its recent annual report deals with a scheme for standard non-parole sentencing, explores the utility of fines and considers a review of sentences in sexual assault matters.[3] More recently, the Council commissioned a public attitude survey by the Bureau of Crime Statistics and Research (released in October 2008).[4]

While it is important to understand public attitudes to punishment, the research has yielded complex, sometimes conflicting, results. This situation underscores the fact that public opinion is malleable and can change according to who is asked, what they are asked and when such surveys take place. The complexity of results also reflects the variety of research methods and different foci applied in each of the existing studies. Some studies examine sources of justice knowledge, while others focus on specific sentencing regimes such as three strikes legislation.

Ten consistent findings

Despite these complexities, there is a core of relatively consistent findings about public perceptions of sentencing, observed across a range of studies, jurisdictions, countries and over several decades.[5]

1. ***Sentences are too lenient.*** A majority of the public (up to three-quarters of those surveyed) often responds that sentences for convicted offenders are too light and this is associated with having less confidence in our courts.
2. ***Violent and serious offenders/offences predominate.*** Many respondents to public surveys have serious crimes (sexual assault and murder) or serious offenders (violent and repeat) in mind when giving their answers about penalty options.
3. ***Support for alternative non-custodial sentences.*** Members of the public will opt for non-custodial sanctions especially when provided with additional knowledge about alternative sentencing schemes such as restorative justice.
4. ***Support for the aim of rehabilitation.*** Public sentiment favours rehabilitation over punishment as the primary aim of sentencing, particularly for juvenile and first-time offenders.
5. ***Victims of crime are not more punitive.*** Members of the public who have direct experience of crime victimisation do not necessarily hold more punitive views on punishment than the public in general.
6. ***Fear of crime can be associated with more punitive attitudes.*** Respondents to surveys who score highly on their perceptions about fear of crime are more likely to opt for harsher punishments.
7. ***Accurate information can decrease punitive attitudes.*** When presented with appropriate and detailed materials on crime rates and sentencing (ie, having greater levels of criminal justice knowledge), respondents tend to select lighter penalties.
8. ***Overcrowding and cost issues yield support for non-custodial options.*** When presented with realistic information about prisons and their costs, there is a tendency for greater support for non-custodial sanctions such as home detention.
9. ***Lack of knowledge on criminal justice issues.*** Overall the surveys reveal that public knowledge is relatively poor, for example about youth crime and justice or about mandatory sentencing or alternatives to imprisonment.
10. ***Knowledge is gleaned from mass media.*** In providing opinions about sentencing, the public tends to rely on broadcast, print and digital media as the primary sources of information about crime and justice matters.

Thus, in spite of some contradictions, the public opinion studies about sentencing reveal considerable consistency across countries and years. In addition, the studies show that the perceptions are interrelated. That is, when the public learns more about sentencing options they are less likely to only opt for prison sentences. Indeed, studies in both Australia and Canada suggest that when community members are presented with detailed information about criminal cases, the cost-effectiveness of prisons and non-custodial options, and the consequences of mandatory sentences, then punitive attitudes decrease significantly.[6] Most importantly, these studies reveal that the public in general may not be as punitive as policy-makers, the media and politicians tend to suggest.

Nevertheless, there are findings that are complex and confusing as noted above. Some studies demonstrate that attitudes are not intractable and may vary according to time and location. For instance, if there has been a high-profile or particularly brutal crime at the time and place of the survey, then this may act as an immediate influence on the responses. It has also been shown that the way in which the questions are asked will impact on the results and so the different methods used in the studies may contribute to the variability

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in the findings. For example, the use of closed-ended survey questions (with only yes/no type response categories) can sometimes elicit predetermined responses. This can lead to the situation where surveys become an instrument for shaping rather than measuring public opinion, particularly when the response categories do not fit the participants' views.[7]

Another area which contributes to the inconsistency relates to the gathering of data about the respondents' personal characteristics – sex, age, marital status, income, education, and religious or political affiliation. For example, it has generally been found that female, younger and educated individuals are the least punitive. Females tend to be more supportive of rehabilitation than males, and older participants are less in favour of rehabilitation and parole.[8] However, there are many studies that have not been able to match up these background variables (such as age, sex and education) with views about punishment.[9]

Our recent study

We recently conducted a survey about public attitudes to punishment in our local area. The study had two main research questions: whether public perceptions of sentencing had changed in the last twenty years in Australia; and whether older people are more punitive than younger individuals. We recruited 270 volunteers from local environs (such as a university, surf life saving clubs and speakers' clubs) in order to gather responses from a mix of older and younger participants.

Table 1: Selected demographic characteristics

Demographic factors	*%*
Female	58
Male	36
18 to 25 years	50
56 to 71+ years	22
Primary education	2
Secondary education	19
Tertiary education	74

The questionnaire comprised a 30-minute pen and paper anonymous survey that included 35 questions (replicated or updated from previous studies) about offence scenarios, media habits, fear of crime, crime seriousness ratings, experience of crime as offenders or victims, and socio-demographic items. Respondents were asked to select a punishment (from eight options – the death penalty, life in prison, prison term, fine, probation, community work, warning and none) which they felt was the most appropriate for each of twelve offence scenarios (see the discussion questions at the end of the article for a sample of these).

Table 2 summarises details obtained from participants relating to their crime knowledge, fear of crime levels and their media viewing habits. For the television news item statement, 'I watch the local or national news on television', 63% responded 'everyday', followed by 26% 'medium level of viewing' and 12% 'rarely'. Respondents rated their fear of crime levels across three items in the questionnaire. Most respondents (88%) felt very safe in their homes during the day, 75% felt the same at night, whereas only 47% felt this while out alone in their neighbourhood at night. Another item asked respondents to state whether they thought the amount of crime had 'gone down', 'stayed the same' or 'gone up'. One-third of respondents thought it had 'stayed the same' while 53% thought that the level of crime had 'gone up'.

Table 2: Selected behaviours or experiences

Selected response categories	*%*
Watched television news daily	63
Felt safe in home during the day	88
Felt safe out alone at night	47
Thought crime rates had increased	53
Had been a victim of crime	53
Had been convicted of an offence	6

The main part of the survey asked participants to select a punishment for each of the twelve crimes listed. 77% of the sample opted for a term of imprisonment for the offence of spousal assault resulting in hospitalisation and 76% for a child bashing ending in a hospitalisation. For the violent offences, comprising stabbing to death and armed robbery, the respondents supported custodial sanctions (eg, life in prison 63% or prison term 85%).

The offence where a person breaks into a home and steals $2000 worth of household goods (break and enter) showed that 49% of respondents were in favour of a prison term. For the drug offence item about heroin trafficking, there was strong support for custodial sanctions, with 70% favouring imprisonment and a further 17% suggesting life in prison. The non-violent category, where a person steals $10 worth of goods from a shop (shoplifting), yielded results of 37% opting for a warning, followed by 32% who recommended community work.

Table 3: Offence category by most frequently selected penalty option

Offence type	*Most frequent penalty option*
Spouse bashing	77% prison term
Child bashing	76% prison term
Stabbing to death	63% life in prison
Armed robbery	85% prison term
Break and enter	49% prison term
Heroin trafficking	70% prison term
Shoplifting	37% warning
Industrial negligence	51% fine
Fatal industrial pollution	55% prison term
Income tax evasion	63% fine
Medical fraud	48% prison term
Social security fraud	43% fine

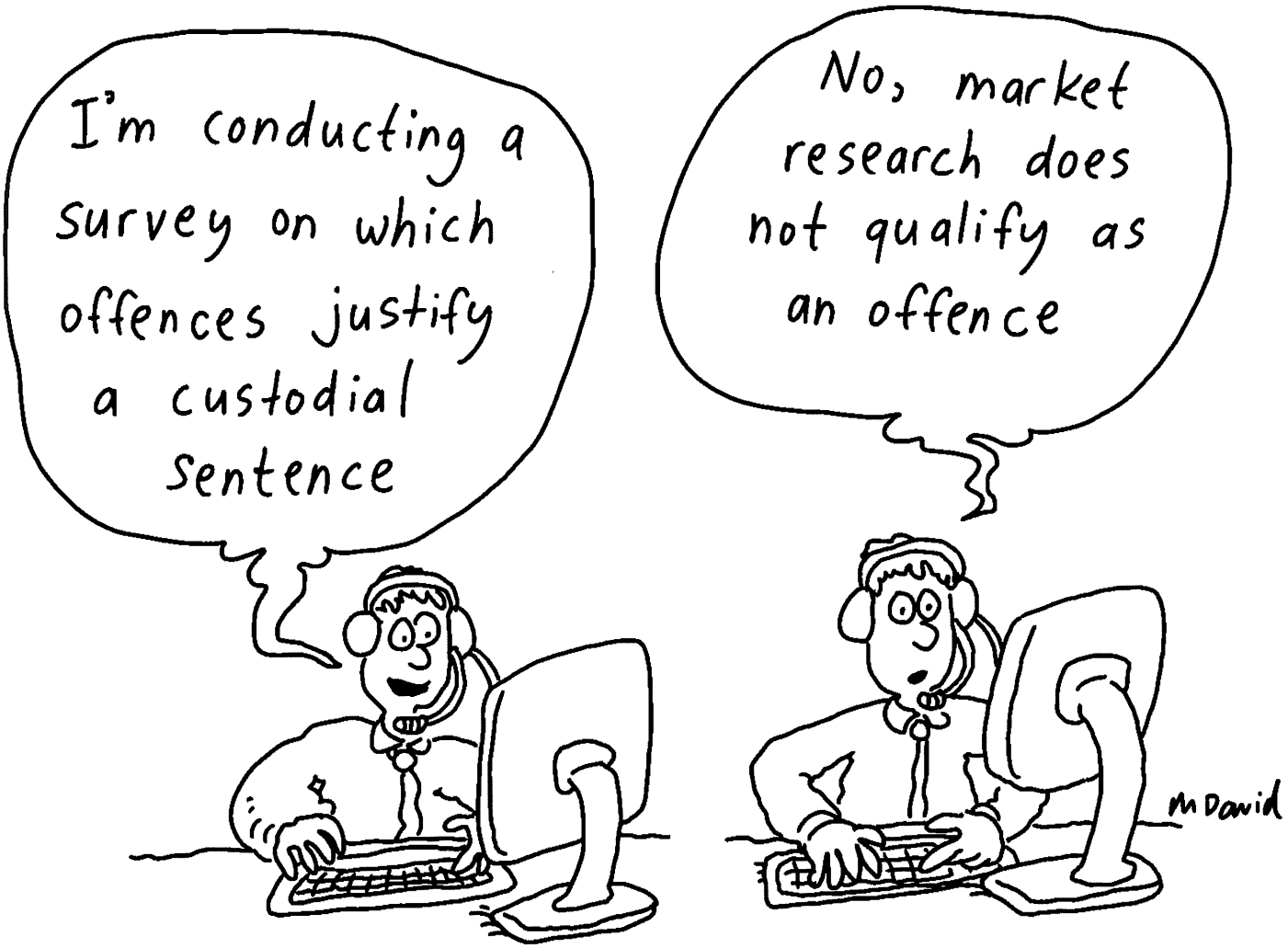
The industrial offences entailing injury from industrial negligence and fatal industrial pollution demonstrated similar results between those two offence types. For the injury from industrial negligence item, 51% of participants selected a fine, followed by 39% suggesting a prison term. For the fatal industrial pollution, there were inverse proportions: 55% of our survey respondents suggested a prison term with 21% opting for a fine. Of note is that the third largest response frequency for the fatal industrial pollution scenario was support for life in prison (18%).

The three white-collar offences – income tax evasion, medical fraud and social security fraud – revealed largely fine and prison term options. For the income tax evasion item (where a person cheats on their Commonwealth income tax return), 63% supported a fine, followed by 21% who opted for a prison term. The medical fraud item (where a doctor cheats on claims made to the Commonwealth health insurance scheme) showed that 48% of respondents selected imprisonment and 36% the fine option. For the other fraud item (where a person illegally receives social security cheques), 43% of our sample chose a fine, followed by 22% each for prison and community service penalties.

A key objective of our survey was to replicate the 1987 Australian study[10] to see whether public opinion had changed over the intervening twenty years. The death penalty option was included in both studies, even though capital punishment has been abolished across all jurisdictions in Australia. A comparison of the two studies revealed that the earlier one showed more support for the death penalty; although capital punishment was selected by some respondents in the present study for break and enter, child bashing, stabbing to death, armed robbery, heroin trafficking, fatal industrial pollution and industrial negligence. In both studies, there was greatest support for the death penalty for the stabbing to death and heroin trafficking items. For the violent offence item (stabbing to death), 18% of participants in the present study, and 29% from the 1987 study, favoured the death penalty; whereas for the drug offence item it was 8% compared to 18%.

Several offence types yielded similar results in both studies, despite the twenty year gap. For example, the armed robbery item showed that 85% of both samples preferred imprisonment as the punishment. Another was the offence involving an injury from industrial negligence, where the fine sanction was preferred by 51% and 66% of the current and previous study participants. For the stabbing to death crime, the frequencies were similar again with 63% in 2007 and 53% in 1987 choosing life in prison. Finally, income tax evasion was another item which demonstrated concordance, with 63% in the present and 61% in the previous study expressing preference for a fine.

Contrasted to the similarities above, the fatal industrial pollution item demonstrated inverse frequencies. Over half the participants in the present study opted for a prison term followed by 21% for the fine sanction. In the earlier study 57% had a preference for the fine penalty, with 28% choosing the prison term sanction as the second most preferred sentence. Both studies had prison term followed by probation sentence as the most preferred penalties for the spouse



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and child bashing offence items. However, for both these domestic assault items, the present study reported 77% and 76% for the prison term sentence, followed by 10% and 9% probation sentences; whereas the previous study revealed 40% and 49% opting for imprisonment, followed by 23% and 24% selecting probation. While the pattern is similar for both studies, the proportions vary significantly.

The second objective of our study was to examine the relationship between age and punitive attitudes. It was anticipated that older respondents would select more severe punishments than younger participants. However, some research has shown that it is those in middle-age who are the most punitive, and other literature suggests that age does not make a difference at all when examining the correlation between age and views on punishment.[11] Our study demonstrated that there was virtually no difference across the eight penalty options and twelve offence categories between younger and older respondents. Overall both groups favoured the prison term penalty option, particularly for violent offences.

Conclusion

The present study has shown that over the last twenty years in Australia, public support for the death penalty has waned considerably and remains almost exclusively for fatal assaults or drug trafficking. It has also demonstrated that the public views crimes of interpersonal violence, not unnaturally, as the most serious offences, with respondents particularly punitive toward physical and sexual assaults. Imprisonment was the most suggested penalty, followed by fines – and thus the preference for custodial over non-custodial punishment continues.

After examining the correlation between age and punitive attitudes, our study suggests that there was virtually no difference across the penalties and offences. All ages favoured fines for non-violent offences including social security fraud, injury from industrial negligence and income tax evasion. Shoplifting was another offence item where participants across all age groups opted for non-custodial sanctions: warning and community service penalties. The only minor differences between the younger and older respondents were for the offences of shoplifting and heroin trafficking.

The present study concurs with most of the ten global consistencies that derive from the national and international literature on public attitudes to sentencing. Respondent background details relating to crime knowledge and fear of crime levels suggest that mass media is the prime source of information on justice issues and thus a lack of accurate knowledge about the operations of the justice system may generate higher fear levels and more punitive attitudes. Our results also demonstrate that there is considerable support for alternative/non-custodial sentences, particularly as respondents are less punitive for non-violent offences and especially because a fine was the second most favoured penalty overall.

Our recent research, although severely limited in many ways, demonstrates that public perceptions on sentencing are complex and ultimately reflect the way in which society labels crime and criminals and that these vary according to socio-economic trends. For example, it is clear that attitudes toward pollution in general have shifted since the original survey was conducted twenty years ago. Public attitudes are also vulnerable to the ways in which surveys are administered, especially because the public is influenced by the social, economic and political mood at the time and place they are conducted. Some studies suggest that socio-demographic characteristics are not the most relevant factors in determining punitiveness and we certainly found here that the impact of age was negligible. Of most relevance in terms of background factors are education levels of respondents and the possession of accurate knowledge on justice issues – these are the strongest predictors for measuring punitive attitudes.

There is no doubt that research on public opinion and sentencing will continue into the future. Indeed, the survey data just released by the NSW Bureau of Crime Statistics and Research reiterates many of the consistent findings discussed here.[12] That survey confirms, for example, that the public believes that sentences are too lenient and that those who are young, well-educated, with higher incomes and with good knowledge of justice processes from informed sources are more likely to have confidence in our criminal justice processes. It is imperative that such research is ongoing because public opinion does have a role to play in the kinds of punishments that are delivered in our justice system and in maintaining trust in those justice processes and agencies.

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8 See Roberts and Indermaur, above n 2; Jones, Weatherburn and McFarlane, above n 4.

9 Above n 7.

10 Walker, Collins and Wilson, above n 1.

11 See Callanan, above n 5.

12 Jones, Weatherburn and McFarlane, above n 4.

Discussion questions:

What penalty would you give (and why) to the following offences which were part of the survey explained in this article?

(a) A person breaks into a home and steals $2000 worth of household goods.

(b) A doctor cheats on claims made to Medicare for patient services for $10,000.

(c) A person armed with a gun robs a bank of $10,000 during business hours; no-one is physically hurt.

(d) A factory knowingly gets rid of poisonous waste in a way that pollutes the city water supply; as a result one person dies.

(e) A person stabs a victim to death.

What proportion of all crimes in NSW do you think involves violence or threats of violence? (See Jones et al 2008 for the correct answer.)

(a) 82%

(b) 55%

(c) 7%

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