

## **Institutional mechanisms for incorporating the public**

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### **Sentencing policy**

The development of sentencing policy has become problematic over the past 30 years or so in most western democracies. There are a number of different but related aspects to this. There is a perception that the public has steadily diminishing confidence in judges as sentencers: survey evidence from a number of jurisdictions suggests that the public sees judges as out of touch with community sentiments and their sentencing as overly lenient. Over the same period, prison populations in these same jurisdictions have risen steadily. In the United States this has sometimes been deliberately engineered by politicians through legislation and the manipulation of sentencing guidelines, but in other jurisdictions, for example in the United Kingdom, sentencing appears to have become more punitive because judges, exercising their discretion, have sent more people to prison for longer. Anthony Bottoms (1995) has coined the phrase “populist punitiveness” to characterise this transformation, whereby law and order is at the top of the political agenda and political parties feel obliged to “talk tough” for electoral purposes.

There is, however, another side to this story. Research using techniques such as focus groups and deliberative polling shows that the public is not as punitive as survey data suggest. When people are given a case to deal with, are provided with background information about criminal justice and are allowed to engage in dialogue with each other, they are less punitive, more constructive and more rational in their approach to sentencing (Hutton, 2005). Under the conditions of a deliberative poll – with accurate information, open debate and expert facilitation – it appears to be possible to stimulate rational debate about penal policy amongst the public.

The trouble is that it is not possible to reproduce these conditions at a national level. At this level, debate takes place through the mass media; the volume of information available is overwhelming and perplexing, and political representatives have to try to win our votes. Indermaur and Hough (2002) have made a number of suggestions as to how we can try to change public attitudes, largely through the provision and dissemination of information about sentencing and punishment, as a way of improving public knowledge and understanding. These are worthy aims, but the issue is not just about changing attitudes or providing better information; it is about the wider problem of the growing disenchantment with democratic politics.

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## Notes

- 1 For details of the sentencing commission work in Belgium, see van zyl Smit (2004). For a discussion in English of the development of sentencing guidance in the Netherlands, largely through the prosecution service, see Terblanche (2003).
- 2 The recent cases of Blakeley and Booker in the United States have challenged the legality of sentencing guidelines. For a recent overview of this, see Berman (2005).
- 3 Cavadino and Dignan (2006) characterise the same jurisdictions as “neo-liberal” in their typology. They argue that neo-liberal states are more punitive and provide some tentative explanations for this. They acknowledge that their analysis shares much in common with that of Downes and Hansen (2006) and Beckett and Western (2001).

## References

- Abadee, AR (2006). *The Role of Sentencing Advisory Councils*. Paper presented to the National Judicial College of Australia’s National Sentencing Conference, Canberra.
- Anderson, S, Ingram, D and Hutton, H (2002). *Public attitudes towards sentencing and alternatives to imprisonment*. Scottish Parliament Paper 488 session 1 2002. Edinburgh: HMSO. <[http://www.scottish.parliament.uk/official\\_report/cttee/just1-02/j1r02-pats-01.htm](http://www.scottish.parliament.uk/official_report/cttee/just1-02/j1r02-pats-01.htm)>.
- Ashworth, A (2005). *Sentencing and Criminal Justice*. 4th ed, Cambridge: Cambridge University Press.
- Barkow, RE (2005). Administering Crime. *UCLA Law Review*: 52.
- Barkow, RE and O’Neill, KM (2006). Delegating Punitive Power: The Political Economy of Sentencing Commission and Guideline Formation. *Texas Law Review*. 84(7): 1973.
- Bazemore, G (2000). Community Justice and a vision of collective efficacy; the case of restorative conferencing. In J Horney (ed), *Policies, Processes and decisions of the Criminal Justice System 3*: 225 Washington, DC: National Institute of Justice.
- Beckett, K and Western, B (2001). Governing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy. *Punishment and Society* 3: 43.
- Berman, D (2005). *Reconceptualising Sentencing*. University of Chicago Legal Forum, <<http://ssrn.com/abstract=801206>>.
- Bevir, M (2005). *New Labour: A Critique*. London: Routledge.
- Bottoms, A (1995). The Philosophy and Politics of Punishment and Sentencing. In C Clarkson and R Morgan (eds), *The Politics of Sentencing Reform*. Oxford: Clarendon Press.
- Braithwaite, J (2002). *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.
- Cavadino, M and Dignan, J (2006). Penal Policy and Political Economy. *Criminology and Criminal Justice* 6(4): 435.
- Chanenson, SL (2005). Guidance from Above and Beyond. *Stanford Law Review*: 58.
- Crawford, A (1999). *The Local Governance of Crime: Appeals to Community and Partnerships*. Oxford: Oxford University Press.
- Downes, D and Hansen, K (2006). Welfare and Punishment in Comparative Context. In S Armstrong and L McAra (eds), *Perspectives on Punishment: The Contours of Control*. Oxford: Oxford University Press.
- Durkheim, E (1933). *The Division of Labour in Society*. London: MacMillan.
- Frase, RS (2005) Sentencing Guidelines: Diversity, Consensus and Unresolved Policy Issues. *Columbia Law Review* 105: 1190.
- Garland, D (2001) *The Culture of Control*. Oxford: Oxford University Press.
- Green, D (2006) Public Opinion Versus Public Judgment about Crime: Correcting the Comedy of Errors. *British Journal of Criminology* 46(1): 131.
- Home Office (2006). *Making Sentencing Clearer*, <[www.noms.homeoffice.gov.uk/news-publications-events/publications/consultations/Making\\_sentencing\\_clearer\\_consul](http://www.noms.homeoffice.gov.uk/news-publications-events/publications/consultations/Making_sentencing_clearer_consul)>.
- Hutchinson, S (2006). Countering Catastrophic Criminology: Reform, punishment and the modern liberal compromise. *Punishment and Society* 8(4): 443.

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- Hutton, N (2005). Beyond Populist Punitiveness. *Punishment & Society* 7(3): 243.
- Hutton, N (2006). Sentencing as a Social Practice. In S Armstrong and L McAra (eds), *Perspectives on Punishment: The Contours of Control*. Oxford: Oxford University Press.
- Indermaur D and Hough, M (2002). Strategies for Changing Public Attitudes to Punishment. In JV Roberts and M Hough (eds), *Changing Attitudes to Punishment. Public Opinion, Crime and Justice* Cullompton: Willan.
- Matthews, R (2005). The Myth of Punitiveness. *Theoretical Criminology* 9(2): 175.
- Matthews, R and Pitts, J (eds) (2001). *Crime, Disorder and Community Safety: A New Agenda?* Routledge.
- Pettit, P (2002). Is Criminal Justice Politically Feasible? *Buffalo Law Review* 5: 427.
- Reitz, KR (1998). Modelling Discretion in American Sentencing Systems. *Law and Policy* 20: 389.
- Roberts, JV and Hough, M (eds) (2002). *Changing Attitudes to Punishment: Public Opinion, Crime and Justice*. Cullompton: Willan.
- Roberts, JV and Hough, M (2005). *Understanding Public Attitudes to Criminal Justice*. UK: Open University Press.
- Rosenbaum, DP (1994). *The Challenge of Community Policing: Testing the Promises*. Thousand Oaks CA: Sage Publications.
- South African Law Commission (2000). *Report on a New Sentencing Framework*. Pretoria, South Africa.
- Stoker, G (2006). *Why Politics Matters: Making Democracy Work*. Basingstoke: Palgrave MacMillan.
- Terblanche, SS (2003). Sentencing Guidelines for South Africa; Lessons from Elsewhere. *South African Law Journal* 120: 858.
- Tonry, M (2003). Evidence, Elections and Ideology in the Making of Criminal Justice Policy. In M Tonry (ed), *Confronting Crime: Crime Control Policy under New Labour*. Cullompton: Willan.
- Van zyl Smit, D (2004). De Blik van een buitenstaander op de voorstellen tot hervorming van de straftoemeting in België. *Fatik* 101: 5.