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Sentencing policy and practice: the evolving role of public opinion

Julian V Roberts

It is generally agreed that for law to be regarded as good law, it must ...
in some sense represent the social consensus ... (Silvey, 1961, p 349)

Introduction

This chapter explores the relationship between public opinion and sentencing policy as well as practice. Recent years have witnessed change in the importance ascribed to views of the public in both areas. The chapter begins by evaluating the evidence that public opinion influences sentencing practices or sentencing policies. It then discusses the increased attention currently paid to public views.

Research on public opinion and sentencing

Impact of public opinion on sentencing practice

Individual sentencing decisions

To what extent should courts consider public opinion when imposing sentence? Shute (1998) reviews the caselaw in England and Wales with respect to the relationship that should exist between public opinion and sentencing. He concludes that, with respect to the law of sentencing, courts should not totally ignore community values; nor, however, should judges of first instance attempt to incorporate public opinion into their sentencing deliberations. In this jurisdiction at least, there is no real clarity with respect to the legal relevance of public attitudes. That said, it is clear that sentencers are sensitive, in varying degrees, to the views of the public. This conclusion is supported by the limited number of surveys of the judiciary. In one Canadian study judges acknowledged considering the likely reaction of the public when imposing certain sentences – in this case a community-based penalty in a case of serious violence. Thus Roberts, Doob and Marinos (2000) found that a significant percentage of judicial respondents stated that they considered the likely reaction from the community before imposing a house arrest sanction¹ on an offender convicted of a serious crime of violence.² On a more general level, Indermaur (1990) reports that a significant majority of a sample of Australian judges expressed the view that public opinion should be a consideration at sentencing.

There is some legal justification for judges to consider community views as a legitimate *general* consideration at sentencing. It relates to one of the reasons why

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might be conducted in the US comparing public reaction to appointed versus elected judges. One might predict that the public would regard the sentencing decisions of the latter as more legitimate since they have been elevated to the bench by the community.

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