

Myths and misconceptions: public opinion versus public judgment about sentencing

Karen Gelb

Introduction

The Victorian Sentencing Advisory Council (Freiberg, this volume; McCarthy, this volume) has, as one of its statutory functions, the gauging of public opinion (*Sentencing Act 2001* (Vic) s 108(1)(d)). In 2005, soon after its establishment and pursuant to this mandate, 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. The project was 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 was 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 Council.

This chapter presents the findings of this project (Gelb, 2006). In particular, analyses of both the substantive and methodological issues in the field are presented, with a discussion of ways to progress the capacity of the Council to gauge public opinion on sentencing in Victoria.

The role of the public in the development of sentencing policy

The rise of the public

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).

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 through 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 (Ashworth,

This is a preview. Not all pages are shown.

about sentencing issues before providing their opinion, the Council is acting as a “policy buffer”, countering the forces of penal populism and challenging prevailing presumptions about a punitive public.

References

- Bottoms, AE (1995). The Philosophy and Politics of Punishment and Sentencing. In C Clark and R Morgan (eds). *The Politics of Sentencing Reform*. Oxford: Clarendon Press.
- Casey, S and Mohr, P (2005). Law-and-Order Politics, Public-Opinion Polls and the Media (Australia). *Psychiatry, Psychology and Law* 12(1): 141.
- Diamond, SS and Stalans, L (1989). The Myth of Judicial Leniency in Sentencing. *Behavioral Sciences & the Law* 7(1): 73.
- Doob, A and Roberts, JV (1983). *Sentencing: An Analysis of the Public's View of Sentencing*. Ottawa: Department of Justice Canada.
- Doob, A, Sprott, J, Marinis, V and Varma, K (1998) *An Exploration of Ontario Centre of Criminology*, University of Toronto.
- Doob, A and Roberts, JV (1988). Public Punitiveness and Public Knowledge of the Facts: Some Canadian Surveys. In N Walker and M Hough (eds) *Public Attitudes to Sentencing: Surveys from Five Countries*. Aldershot, England: Gower.
- Freiberg, A (2003). The Four Pillars of Justice: A Review Essay. *Australian and New Zealand Journal of Criminology* 36(2): 223.
- Gelb, K (2006). *Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing*. Melbourne: Sentencing Advisory Council.
- Green, DA (2006). Public Opinion versus Public Judgment about Crime. *British Journal of Criminology* 46: 131-154.
- Hough, M. and Roberts, J.V. (1998). *Attitudes to Punishment: Findings from the British Crime Survey*. Home Office Research Study No. 179. London: Research and Statistics Directorate, Home Office.
- Hough, M and Roberts, JV (2004). *Confidence in Justice: An International Review*. London: Institute of Criminal Policy Research.
- Indermaur, D (2000). *Voodoo Politics in the Era of the TV Game Show: Public Opinion, the Media and Political Decision Making*. Presentation to the Centre for Criminology at the University of Hong Kong and the Hong Kong Criminology Society.
- Indermaur, D and Roberts, L (2005). Perceptions of Crime and Justice. In S Wilson et al (eds) *Australian Social Attitudes: The First Report*. Sydney: University of New South Wales Press.
- Mattinson, J and Mirrlees-Black, C (2000). *Attitudes to Crime and Criminal Justice: Findings from the 1998 British Crime Survey*. Home Office Research Study No 200. London: Research, Development and Statistics Directorate, Home Office.
- Roberts, JV and Doob, A. (1989). Sentencing and Public Opinion: Taking False Shadows for True Substances. *Osgoode Hall Law Journal* 27(3): 491.
- Roberts, JV and Hough, M (2005a). Sentencing Young Offenders: Public Opinion in England and Wales. *Criminal Justice* 5(3): 211.
- Roberts, JV and Hough, M (2005b). *Understanding Public Attitudes to Criminal Justice*. Berkshire, UK: Open University Press.
- Roberts, JV and Stalans, L (1997). *Public Opinion, Crime and Criminal Justice*. Boulder, CO: Westview Press.
- Roberts, JV, Stalans, LJ, Indermaur, D and Hough, M (2003). *Penal Populism and Public Opinion: Lessons from Five Countries*, Oxford. Oxford University Press.
- Sprott, J (1996). Understanding Public Views of Youth Crime and the Youth Justice System. *Canadian Journal of Criminology* 38(3): 271.
- Victorian Community Council Against Violence (1997). *Community Knowledge and Perceptions of Sentencing in Victoria: A Report on the Findings of the Consultations*. Melbourne: Victorian Community Council Against Violence.
- Walker, J, Collins, M and Wilson, P (1987). How the Public Sees Sentencing: An Australian Survey. *Trends and Issues in Criminal Justice* No 4. Canberra: Australian Institute of Criminology.