

PUBLIC OPINION AND UNDERSTANDING OF SENTENCING JUSTICE SELECT COMMITTEE CONSULTATION RESPONSE

BEYOND INFORMATION: THE FACTORS THAT SHAPE PUBLIC OPINION

The Sentencing Academy report, *Public Knowledge of Sentencing Practice and Trends*, suggests that public attitudes to sentencing are, in part, shaped by a lack of information.¹ The public simply does not know enough about sentencing and, therefore, the continuing insistence by a majority of the public for harsher sentencing² is shaped by the fact that they do not know how harsh it has become.³ The report highlights the evidence that, when the public does know more,⁴ they are more likely to adopt more lenient attitudes.⁵ However, because most people do not receive this type of information about sentencing, they “do not notice uplifts in sentence severity”⁶ and therefore continue to express a desire for harsher sentencing. The “response by politicians of both main parties has been to try to close the ‘legitimacy deficit’...by increasing sentence severity.”⁷

This summary is both accurate but also, we argue, insufficient— public opinion is clearly shaped by a lack of knowledge, *but not shaped by that alone*. We want to highlight the other factors that shape public opinion on sentencing. Understanding these other factors is crucial if we want to improve public awareness of how sentencing works.

The primacy of the individual

Comparative criminology strongly suggests that countries characterised by neo-liberal economies tend to have more punitive criminal justice systems.⁸ Some have hypothesised that the punitive attitudes in those societies are shaped by their “neo-liberal economics (*which*) rests on a concept of a strong individual responsibility and desert.”⁹ In a society which prizes the autonomy of the individual, it is perhaps no surprise that ‘deviant’ behaviour (breaking the rules we have all agreed on, and infringing innocent people’s rights) is seen as deserving of proportionate punishment (the essence of retribution).¹⁰ From this viewpoint, punishment is especially deserved because it both communicates society’s shared values but also to not punish would be to not respect the autonomy of both victims and people who have offended.

It is also likely that a society which values the primacy of the individual is more likely to believe in deterrence— if individuals make rational decisions to commit crime (weighing up their choices before acting), we can deter them from doing so if we make the consequences of their actions unbearably unpleasant/painful.¹¹ There is a clear logic to this view (even though there is little evidence that this is how people commit crime¹² and little evidence that deterrence through sentencing severity has any impact on crime, though some on increasing the likelihood of being caught).¹³

Whatever we may individually make of the merits of these justifications for sentencing severity, what we want to highlight is that they may well be a natural and unavoidable consequences of our society’s emphasis on the primacy of the individual. Many people in such a society have a “set of models that lead them to hold individuals solely responsible for crime.”¹⁴ (It is also likely to make challenges to this orthodoxy seem perverse, even heretical. As Professor Robert Canton has argued “liberal penal reformers... stand accused of endangering society...To question... is an act of disloyalty, a defection from the hostile solidarity formed against offenders.”)¹⁵

The emotions of punishment

It is also important to recognise that public attitudes are not just shaped by their reasoning about sentencing (as in the rational choice model of deterrence), but also by our emotions.¹⁶ Justice, sentencing, punishment

are all phenomena rich with emotional energy. Indeed, some have argued that “The primary task of justice is to manage emotions.”¹⁷ While there are those who explicitly reject any normative role for emotions in shaping our institutions and practices of punishment,¹⁸ human decision making is always an interplay between reason and emotion.

For example, it is arguable that sentencing is, in part, an exercise in symbolising what behaviour we find reprehensible and disgusting. We have seen, for example, over the past few decades growing public disgust over domestic abuse: behaviour that was once dismissed as individuals ‘having a domestic’ (and, indeed, in which husbands were explicitly allowed to use physical violence against wives) is now seen as reprehensible—and therefore the resulting sentencing around it has become harsher. This may be premised on retributive grounds— this is behaviour we now wish to clearly communicate society’s displeasure at.

Fear is another emotion with a clear association with public opinion on sentencing and crime.¹⁹ It is understandable why people fear crime, especially high harm crimes— even those of us unlikely to be a victim of such high harm crimes have an understandable fear of the catastrophic consequences that we would suffer if we did. This explains, in part, why many people are happy to accept a range of costs and intrusions into their lives (such as CCTV surveillance) if it may keep them safe.²⁰ When we extend that insight to sentencing, where increased sentencing is proposed as a way of keeping us all safer, we additionally observe that sentencing very often imposes the costs on ‘others’— it seems intuitive that it is easier to be punitive if the costs of punishment are imposed on people who are not like me (and are unlikely to be imposed on ‘us’).

There is also now research which explores anger about crime. The research suggests that experience of victimisation of acquaintances is more likely to be associated with anger about crime (whereas personal victimisation is more likely to be associated with fear of crime).²¹ Anger has strong associations with revenge and anger is prone to make people over-react: few of us would say we act at our best or wisest when we are angry. However, it is plausible to see our sentencing institutions and practices as a means of channelling and giving civilised expression to public anger— a rules bound, limited and proportionate way for the state to redress for the harm caused to the victim/community.

By highlighting the role of emotions (and we have focused on only three, but there is also clearly a role for others like compassion, grief, and sadness), we only seek to point out that public attitudes are and will be shaped by them. Attempts to understand public opinion and to improve public awareness of how sentencing works which ignores them are unlikely to succeed. Accepting the power of emotions does not mean always bending to them but it does mean recognising the legitimacy of them, and recognising that sentencing policy and practice must try to understand and provide balance to them.

A diverse public

As we have already intimated, speaking of ‘the public’ is clearly a misnomer— there is no one ‘public’ view on any one thing, and the public are a diverse body and different factors influence them differently. There are clearly multiple ways to segment ‘the public’, and there is a rich field of research on the relative punitive attitudes of these segments. For example, research in 2013 in the UK found: “Factors associated with imposing more punitive sentences... were: gender (men were more punitive); socio-economic class (non-professionals were more punitive); education (those without degrees were more punitive); newspaper readership (broadsheet readers were less punitive); and crime perceptions (people believing crime is going up in the UK as a whole were more punitive).”²²

In seeking to understand these differing attitudes, we want to highlight the function that these attitudes may play. Some people who have higher than average fear of crime may have punitive attitudes for instrumental reasons— they want to avoid victimisation. But it is important to also recognise that some people may hold attitudes that serve to express their values and sense of self. Thus, people may hold strongly punitive attitudes towards people who have offended because such attitudes are consistent with their general world-

view (e.g. individuals are always responsible for their actions). Understanding the diversity of ‘the public,’ and the function that their attitudes may play, is a vital part of examining public opinion on sentencing.

HOW TO TALK ABOUT SENTENCING

We think it a relatively uncontroversial view that ‘the public’ ought to have confidence in their justice system and that, as part of that, they should feel that our sentencing framework is responsive to their views. We root this view in the straightforward observation that our criminal justice system needs to be seen as legitimate: when the state uses the coercive force of arrest, when it makes decisions on innocence and guilt, when it imprisons and restricts liberty, its authority to do so ought to be upheld with the consent of the public. If they perceive the criminal justice system as acting unfairly, the public may be less willing to comply with the law. Our sentencing institutions and practices need to show that they balance competing emotions, tensions, principles and attitudes, in order to retain public trust. We offer some thoughts on what could be done to improve public understanding of sentencing.

Understanding the public

As we have outlined, the public is not one thing. While the rise in the severity of sentencing suggests that the majority of the public are punitive, this may well be based on how we ask them, when we ask them and what information we provide when we do so. At this stage, we know enough to know that, in the UK, like most countries, attitudes to crime are different, across social classes, between generations, as well as across other factors. But we simply do not know enough about the various segments of the population, what drives their opinion, what messages they are likely to be more receptive to and how those messages are best delivered to them.

Find the ‘balancers’

There is research which suggests that there are segments of the population who, while valuing punishment, at the same time recognise the value of rehabilitation, and who recognise that society is better if we can avoid future crime.²³ So while people may hold individuals responsible for crime, people can appreciate the contextual causes of crime—“people reason that poverty, or the lack of material resources, can make individuals ‘desperate’ ... people think about how social networks may influence crime... that individuals are strongly influenced by the behaviour of those around them.”²⁴

We think that, as in immigration policy, most people are ‘balancers’ – seeing both pressures and gains.²⁵ Therefore, securing political and public consent in sentencing policy needs arguments that make sense to this broader majority. What we argue for here is that any sentencing policy needs to try and reach that majority and may have to substantially confront those at the more extreme ends— the ‘flog ‘em’ crowd as well as the ‘bleeding heart’ liberals.

Trusted messengers

If there are efforts to improve public understanding and awareness of sentencing, thought needs to be given to who the public trust on matters of crime and justice. There is, for example, substantial evidence to suggest the public do not trust politicians generally.²⁶ There is, in contrast, to evidence that the public have historically trusted the police (and that trust in the police is an important predictor of trust in the wider criminal justice system).²⁷

Similarly, when it comes to providing information to the public about how sentencing currently operates, the voice of those who have been punished are an important, and, at the moment, under-used source of credible messengers. The pains and benefits of punishment are often hidden from public view and the variable impact of our current practices on different individuals is likely to be a rich source of credible information to the

public. It may also start helping break down the ‘them’ and ‘us’ divide between ‘the public’ and the majority of people who have offended— that they are not ‘them,’ they were ‘us’ and should, once their debt is repaid, be ‘us’ again.

Equally, the voice of those who we ask to carry out sentences— prison and probation officers— are more likely to be seen as credible messengers than politicians. Telling these stories of frontline individuals are significant because of their relative ordinariness— exposing the everyday balances we need to strike between punishment and reconciliation.

Procedural fairness

Finally, we should not ignore that public opinion about crime and justice, and therefore sentencing, is likely to be shaped by actual public contact with the criminal justice system, especially policing. Research suggests that contact with the police is an important predictor of both trust in the police and trust in the rest of the criminal justice system.²⁸ Therefore, how police officers treat individuals seems a crucial part of communicating the trustworthiness of the criminal justice system more widely. Research suggest that trust in the fairness of how the police treat people, rather than trust in the effectiveness of the police, is paramount and that that processes are as important as outcomes – that is, people pay particular attention to the presence or absence of fair procedures, and to the quality of treatment received from justice officials.²⁹

This suggests that there is continual need not to just communicate with the public, but to ensure that our justice institutions are seen as fair and experienced as fair by those in contact with them. Strategies to improve the legitimacy of the justice system cannot be simply public relations exercises and media management— that may yield some short-term results, but if gaps appear between appearance and reality, the costs to legitimacy can be very high indeed. This means ensuring that we police in a procedurally fair manner: often this can be put into practice relatively simply, by offering people the chance to ask questions, explaining how processes work and why and explaining how decisions are made before a procedure starts and what is considered. At a more strategic and managerial level, it can be about encouraging procedurally fair training for police officers or it can be investing in effective neighbourhood policing which listens and engages with communities.³⁰ And, beyond the police, it is about how courts, probation and prisons all ensure that how people are treated is recognised as just as important in shaping perceptions as the outcomes they get.

ENDNOTES

- ¹ Sentencing Council (2019) *Public Knowledge of and Confidence in the Criminal Justice System and Sentencing*. London: Sentencing Council.
- ² Roberts et al. (2021). *Public Knowledge of Sentencing Practice and Trends: Research Report*. Sentencing Academy, pii
- ³ Ibid, p1.
- ⁴ See: Singer, L. and Cooper, S. (2008). *Inform, persuade and remind. An evaluation of a project to improve public confidence in the criminal justice system*. London: Ministry of Justice; Cuthbertson, S. (2013) *Analysis of complete 'You be the Judge' Website Experiences*. Analytic Summary. London: Ministry of Justice; Grimmelikhuijsen, S. and van den Bos, K. (2021) 'Specifying the information effect: reference points and procedural justifications affect legal attitudes in four survey experiments'. *Journal of Experimental Criminology*, 17: 321–341.
- ⁵ Salisbury, H. (2004) *Public attitudes to the criminal justice system: the impact of providing information to British Crime Survey respondents*. Home Office Online Report 64/04.
- ⁶ Roberts et al. (2021). *Public Knowledge of Sentencing Practice and Trends: Research Report*. Sentencing Academy, p15
- ⁷ Ibid, p16
- ⁸ See, for example, Cavadino M, Dignan J. *Penal policy and political economy*. *Criminology & Criminal Justice*. 2006; 6(4):435-456.
- ⁹ Canton, R. (2021). *Punishment*. Routledge, p44.
- ¹⁰ Ibid.
- ¹¹ O'Neill et al. (2016) *New Narratives: Changing the Frame on Crime and Justice*. Frameworks Institute.
- ¹² McNeill, F., Farrall, S., Lightowler, C. & Maruna, S. (2012). *How and Why People Stop Offending: Discovering Desistance*. Glasgow: Institute for Research and Innovation in Social Services.; Maruna, S. McNeill, F. Farrall, S. and Lightowler, C. (2012) *Desistance Research and Probation Practice: Knowledge Exchange and Co-Producing Evidence-Based Practice Models*. *Irish Probation Journal*. Volume 9; Weaver, B. and McNeill, F. (2013) *Giving Up Crime: Directions for Policy*. Scottish Consortium for Crime and Criminal Justice.
- ¹³ Daniel S. Nagin, "Deterrence in the Twenty-First Century," in *Crime and Justice: A Review of Research*, vol. 42: *Crime and Justice in America: 1975-2025*, ed. Michael Tonry, Chicago: University of Chicago Press, 2013
- ¹⁴ O'Neill et al. (2016) *New Narratives: Changing the Frame on Crime and Justice*. Frameworks Institute.
- ¹⁵ Canton, R. (2021). *Punishment*. Routledge, p46
- ¹⁶ Ibid.
- ¹⁷ Sherman, Lawrence and Heather Strang (2011) "Empathy for the Devil: The Nature and Nurture of Revenge" In S. Karstedt, Ian Loader and Heather Strang, eds. *Emotions, Crime and Justice*. Oxford: Hart Publishing.
- ¹⁸ Canton R. *Crime, punishment and the moral emotions: Righteous minds and their attitudes towards punishment*. *Punishment & Society*. 2015;17(1):54-72.
- ¹⁹ Research on the fear of crime has found that the fear itself is often linked to other social phenomena, such as economic anxiety, and not levels of crime itself.
- ²⁰ Bowen & Gibbs (2018) *Just Technology*. The Centre for Justice Innovation.
- ²¹ Drakulich, K., Baranauskas, A.J. *Anger versus fear about crime: how common is it, where does it come from, and why does it matter?*. *Crime Law Soc Change* 76, 451–472 (2021).
- ²² Hough et al (2013). *Attitudes to Sentencing and Trust in Justice: Exploring Trends from the Crime Survey for England and Wales*. Ministry of Justice.
- ²³ O'Neill et al. (2016) *New Narratives: Changing the Frame on Crime and Justice*. Frameworks Institute.
- ²⁴ Ibid
- ²⁵ British Future. (2014). *How to Talk About Immigration*.
- ²⁶ Quilter-Pinner and Rachel Statham (2021). *Trust issues: Dealing with distrust in politics*. IPPR.
- ²⁷ Hough et al (2013). *Attitudes to Sentencing and Trust in Justice: Exploring Trends from the Crime Survey for England and Wales*. Ministry of Justice.
- ²⁸ Ibid
- ²⁹ Tyler, T. (2011) 'Trust and legitimacy: policing in the US and Europe', *European Journal of Criminology*, Vol 8 No. 4: 254–266. Tyler, T. and Fagan, J. (2008). *Legitimacy and cooperation: why do people help the police fight crime in their communities?* *Ohio State Journal of Criminal Law*, 6: 231–75. Tyler, T. and Huo, Y. (2002). *Trust in the law: encouraging public cooperation with the police and courts*. New York: Russell Sage Foundation.
- ³⁰ For example, see resources at <https://www.proceduralfairness.org/policing>