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PUBLIC ATTITUDES TO SENTENCING

Surveys from Five Countries

**Nigel Walker
Mike Hough**

CAMBRIDGE STUDIES IN CRIMINOLOGY

LIX

Public Attitudes to Sentencing

Surveys from Five Countries

Edited by
Nigel Walker
and
Mike Hough

Series Editor: A. E. Bottoms

Gower

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Nigel Walker
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November 1987

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Foreword

A. E. Bottoms

This book places firmly on the criminological agenda a subject which has been developing for some time, but which most criminologists have hitherto regarded as something of a side-issue: namely, the systematic study of public attitudes towards sentencing and punishment. The book's particular strength is that it considers this subject by bringing together empirical studies from five countries — the kind of exercise that criminologists are always advocating, but which they seldom actually attempt. The book does not, however, simply report empirical findings, but attempts to assess their meaning, and their relevance for policy; and in this connection, the editors' distinction between 'tolerance limits' and 'fine tuning' will be perceived as an important one.

It is a particular pleasure for me to be able to welcome the two editors as contributors to the *Cambridge Studies in Criminology*. Nigel Walker was my predecessor in the Wolfson Chair at Cambridge, and his contribution to British criminology, especially in penal studies, has been enormous. One of his most characteristic hallmarks has been his ability to see an old problem in a new light, and thus to make a distinctive and innovative contribution: that hallmark is seen once again in the present volume. Mike Hough has been, over the last decade, one of the more prolific and interesting of the researchers at the Home Office Research and Planning Unit, and his work on (especially) policing and on the British Crime Survey has won him many admirers. I am delighted that these two researchers have pooled their talents, together with their international collaborators, to produce the present volume, which greatly enriches the *Cambridge Studies*.

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I Introduction: developments in methods and perspectives

Nigel Walker and Mike Hough

This book collects together the results of some British, Dutch, Australian and North American studies dealing with public attitudes towards sentencing. Those which we have selected for inclusion are all recent; they all employ the sample survey method; and individually they are of interest either because of their findings or because of the special techniques which they employ.

Several factors have prompted us to bring the nine studies together as a book. Crime is far more visible politically than it was a decade or so ago, and political arguments about the response to crime are increasingly buttressed by appeals to public opinion. But opinion about punishment is so sketchily charted that it is often invoked to justify quite contradictory positions. This alone seems reason enough to collect together a selection of empirical studies.

At the same time, rather more specific developments within penological theory are lending salience to questions about public attitudes towards punishment. The sentencer who is trying — as most do — to strike a balance between ‘individualization’ — the selection of a sentence which will reform, deter or control the offender in question — and ‘tariff’ sentencing cannot altogether disregard public opinion. In theory the severity and proportionality of tariffs are determined by legislatures and judiciaries; but in practice both have an eye on the audience; and in this case, the audience is not the man in the court but the man in the street. Even some preachers of ‘just deserts’ regard the public as the arbiter of what is just; and any departure from what is deserved in the name of ‘individualization’ runs the risk of public criticism. Penological theory and debate have for several years now been in retreat from ideals of rehabilitation and special deterrence: the pendulum in swinging from individualized to tariff sentencing. Whether the principles embedded in sentencers’ practice have changed much is questionable; but there are signs that at a political level, at any rate, greater importance is now being attached to the congruence of opinion and sentencing practice.

Finally, in the course of our own research it became clear that researchers in different countries were ploughing parallel furrows in isolation. Collecting outstanding examples of their work promised to deepen both knowledge of the subject and appreciation of its complexity. We have ordered the chapters of the book according to the dates of the surveys reported in them.

The development of survey research on attitudes to punishment

Interest in the reaction of the public to sentences or sentencing policy is not new, but the last few years have seen a considerable crop of studies. A little history will set this work in context. In 1961 the *Criminal Law Review* devoted a whole issue to articles about public opinion and criminal law. One of them reported the more interesting findings of two surveys; one by Gallup for the *News Chronicle*, the other by the British Broadcasting Corporation (which wanted to assess the effect of a recent programme on crime: Silvey, 1961). The issue is of historical importance not only because of the views expressed but also as evidence that by the end of the 1950s the importance of public opinion on crime and sentencing was beginning to be recognized by lawyers. It had of course been acknowledged long before that by politicians, but only in the context of the very narrow issues on which public attention had from time to time been focused: capital and corporal punishment. Indeed until both were abolished it was difficult to arouse public interest in any other aspect of sentencing policy. It was not until the suspension of the death penalty in 1965 that such matters as the state of the prisons, the merits of parole and the notion of suspending sentences became topics of wide discussion. Non-custodial measures were a non-subject.

The Gallup polls

Any history of public opinion and sentencing, however, must begin with the Gallup polls. Though several organizations are now active in the field, none, in Britain at least, has so regularly, so systematically and for so long sampled the views of the adult population, and it is worth examining Gallup's contribution in a little detail.

The interests of the Gallup organization in Britain were influenced by its contractual relationship with newspapers: first the *News Chronicle* and later the *Daily Telegraph*. The first Gallup polls were conducted in 1937; and in 1938 the introduction of the Criminal Justice Bill prompted the inclusion of questions on flogging (favoured by 50 per cent) and capital punishment (favoured by 55 per cent). This was the beginning of a long tradition. Except for the war years,

when no questions were asked about penal matters,¹ most years' surveys included the occasional question about corporal and/or capital punishment.

Corporal punishment as a court-ordered punishment disappeared from the regular questions in the 1960s; the last question asked about it was put in 1967, and was about corporal punishment by teachers and parents. It was briefly revived in 1982, in a somewhat loaded form: 'What are your views about corporal punishment, that is, birching and flogging? Should we continue to do without the cat, or should we bring it back? [60 per cent bring back] ... And birching? [62 per cent] and caning [69 per cent]?' Questions about the death penalty, however, continued to be included whenever the subject became topical. From 1977 onwards, they became more elaborate, drawing distinctions between murders of different sorts (by terrorists, of police or prison staff). By the 1980s, percentages in favour of capital punishment usually ran in excess of 70 per cent — in contrast to the pre-war figure of 55 per cent. Gallup were the first to include questions about the aims of a capital sentence (in 1948): 45 per cent chose 'to punish', 43 per cent 'to stop others'.

Salience of crime as a social problem

In 1944 a Gallup survey included a question which was to be repeated — though with important changes in wording — at intervals over the next 40 years, and so provides an interesting index of public interest in criminal justice.²

This asked 'which question should be tackled the very first by the government...'; later it became 'the most important problem for the government'; and later still 'the most urgent problem for you and your family (or "the country")'. Problems which were named by at least 1 per cent were tabulated, the rest being relegated to 'Other problems'.

At first, 'housing' (39 per cent) topped the list, with 'employment' not far behind (29 per cent), and social security, cost of living and such problems a very long way behind. 'Law and order' either found no choosers or failed to reach the 1 per cent threshold. From 1973, however, 'law and order' occasionally appeared in the league table, with percentages of 1 or 2. When the question was elaborated to include 'and the next most urgent problem' (in 1976) law and order managed to collect 4 per cent of first or second choices, and the percentage fluctuated around this figure until in 1982 it began to rise, at times reaching 18 per cent. In October 1985 it even attained 27 per cent, which placed it second, although far behind 'unemployment' (the first or second choice of 87 per cent).

Law and order was chosen far more often in a series of questions

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first introduced in 1967, in which respondents were asked to select items from a checklist of 'very serious social problems'. Top of the 1967 list was 'drug-taking' (chosen by 85 per cent), with 'crimes of violence' second (69 per cent) and 'bad housing' third (61 per cent). The use in this question of a checklist contrasts with the series about 'most important problems', where respondents were free to select whatever problems occurred to them; and this probably explains why crime figures so much more in the responses. In common with the first series, however, this question has shown an increase in concern about law and order. By 1972 'crimes of violence' headed the list, and has remained there since, excepting April 1986, when it was temporarily displaced by 'drug-taking', the usual runner-up.

The substantive point to emerge from these questions is that concern about law and order has been on the increase. However, the salience which crime appears to have as a social problem is highly dependent on the form of question. If respondents are offered a list of issues or problems in which 'law and order' or 'crimes of violence' appear, very large percentages will choose them as the most serious; but if asked, without a ready-made list, to name 'the most important' or the 'most urgent' problem not more than one in four or five — and usually much fewer than that — will mention law and order.

Choice of sentence

Capital and corporal punishment apart, the first Gallup question to ask for views about methods for dealing with criminals was put in 1952. 'What method do you think is best for dealing with persons committing crimes of violence: longer term of imprisonment [chosen by 21 per cent], birching [21 per cent], flogging with shorter terms of imprisonment [31 per cent], flogging with longer terms of imprisonment [8 per cent], or some other way [23 per cent]'. In 1956 a question was put about 'the ways we deal with sex offenders' (the Wolfenden Committee was at work; and in the following year respondents were asked for their views on its proposals). In 1960 respondents were asked what should be 'the first concern of the courts in sentencing a criminal':³ 44 per cent chose 'to punish him for what he has done to others', 25 per cent 'punish him to stop others following his example', and 28 per cent 'to do what they can to reclaim him as a good citizen'. In 1981, the respective figures — 37 per cent, 34 per cent and 20 per cent — show that deterrence had become more popular, at the expense of both retribution and rehabilitation. The 1981 questionnaire included an item about the general adequacy of sentences: 'in your opinion, do the courts give

out sentences that are too short or too long to persons convicted of committing crimes?' 64 per cent chose 'too short', 4 per cent 'too long' and 12 per cent 'about right'.

Specialized research

It may be thought remarkable that newspaper reports of Gallup findings in the 1950s did not stimulate academic research workers to probe thoroughly into public beliefs and attitudes on the subject of crime and sentencing. But representative sampling — especially by interviews — is costly. We do not know whether government departments or trusts with funds for research turned down any applications for grants for this purpose. What is certain is that the only published research findings of the 1950s were based on samples which were small, local and drawn from very special groups: for instance Voelcker's interviews with the parents of juveniles who had appeared in court (Voelcker, 1960). Even the first survey commissioned by the Home Office was highly specialized, being concerned with the deterrent effects of teenage males' beliefs about detection and prosecution (Willcock and Stokes, 1968; but based on interviews conducted in the early 1960s). It was followed, however, by a survey of broader scope, commissioned at the request of the ill-fated Royal Commission on the Penal System (Durant *et al.*, 1972), but based on interviews conducted in 1966). Unfortunately the report of the survey was delayed until long after the dissolution of the Royal Commission, was not on sale to the public, and received no publicity until it was the subject of a very short article in the *British Journal of Criminology* by Banks *et al.* (1975). Yet many of its questions were of original and interesting design. It can fairly be said that it was the first survey of the adult public on the subject which did more than merely 'poll' its respondents. Like the Gallup questionnaires it invited respondents to state views and make choices; but it also tried to relate those answers not simply to their age, sex and other demographic variables but also to their experiences and beliefs.

Punitiveness

An aspect of attitudes to sentencing which has received attention from most researchers is 'punitiveness' — indeed this has provided the focus of some surveys. There are several layers of ambiguity to the question whether people are punitive — an ambiguity not usually resolved in the research.

The main layer of the ambiguity lies in the two meanings of 'punitive'.⁴ Colloquially, it means 'severe' or at least 'deliberately inflicting hardship or inconvenience'. In this sense some interpreters