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## **PUBLIC ATTITUDES, THE MEDIA & THE POLITICS OF SENTENCING REFORM**

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## **Public attitudes, the media and the politics of sentencing reform**

### **Introduction**

This paper looks at the possibilities for sentencing reform in a period dominated by the politicisation of sentencing and a lack of public confidence in the courts. It is argued that new ways of presenting issues for debate can be developed and facilitated by institutions designed to promote rational debate and protect sentencing practice. Such institutions, it is argued, can provide a forum for public, media and political contributions as well as providing relevant information.

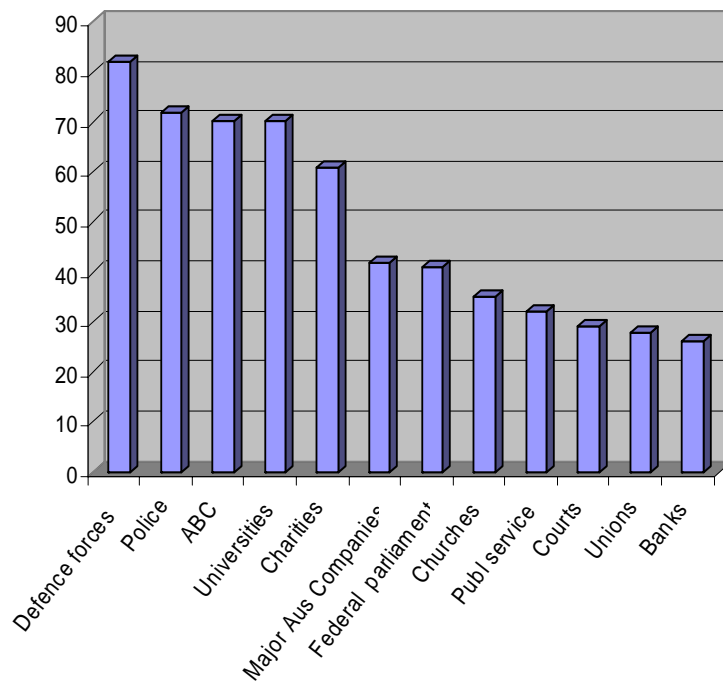
The paper will first give something of the flavour of contemporary politics of sentencing reform and then follow up by considering the nature of public attitude in more depth. This analysis will be situated in the context of contemporary debates. The various interests of political and media actors are then considered to gain a better understanding of the limits and possibilities of sentencing reform. This section also outlines a frame of reference for considering public opinion as well as media and political interests in regard to sentencing reform. The paper concludes with practical suggestions of ways to protect sentencing policy and practice whilst also allowing for well informed and vigorous debate. It is argued that a federal institute of sentencing or similar organisation could provide vital support for sentencing reform through independent information, authoritative advice and the efficient pooling of resources.

### **Contemporary politics of sentencing reform**

The parlous state of sentencing reform is characterized by rifts between practitioners, governments, the media and the 'public'. Many commentators interpret the driving force to be for increased punishment. However, as some have noted, most of the big sentencing reforms of the last decade or so have mainly been for more transparency, accountability and certainty. This is reflected in calls for mandatory sentencing, truth in sentencing, determinate sentencing and similar mechanisms designed to prevent what are perceived to be intolerable exercises in judicial discretion. However, because the discretion wielded invariably is in favour of greater leniency it is possible to view the underlying drive or imperative to be simply for more punishment. It thus remains debatable whether the main problem is a desire for more punishment or a desire for a more accountable and transparent sentencing system.

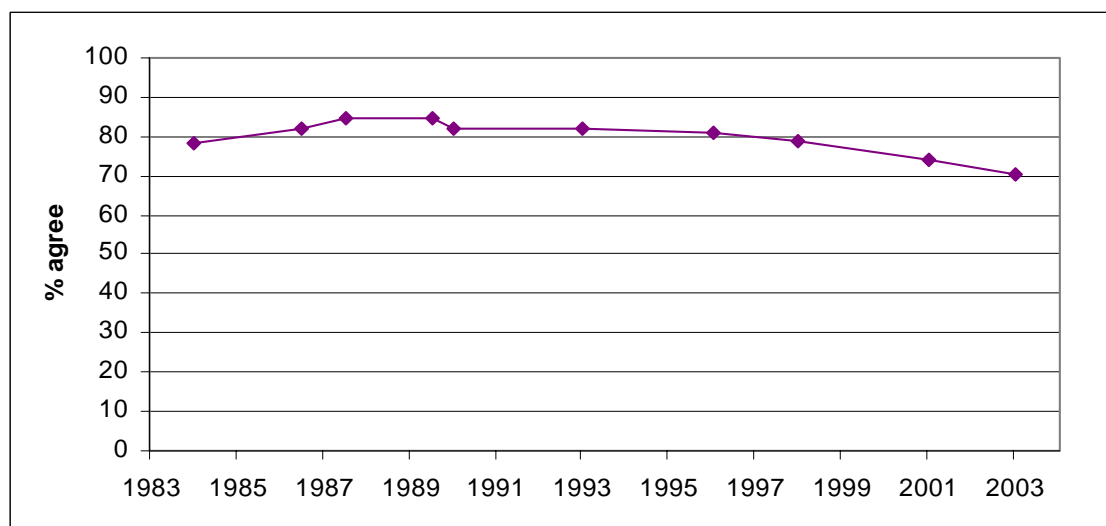
There is little doubt, however, that the courts have been facing a lack of public confidence for some time as revealed by the results of the 2003 Australian Social Science Survey. When asked 'How much confidence do you have in the courts and legal system?' seven out of 10 respondents expressed a lack of confidence. A quarter chose the option 'no confidence at all' and almost half (46%) the slightly kinder option 'not very much'. As shown in Figure 1 the survey also found that the courts fared poorly when compared to other institutions particularly the police but even universities, Australian companies, charities and the Federal Parliament (Bean, 2005). In this figure the percentage of respondents who chose the responses 'a great deal of confidence' or 'quite a lot of confidence' were combined to provide a total proportion of respondents expressing confidence in the particular Australian institution.

**Figure 1: Crisis in public confidence in the courts. Percentage of respondents choosing 'a great deal of confidence' or 'quite a lot of confidence' (adapted from Bean, 2005)**



On the basis of these results there is room for dismay at the level of public dissatisfaction with the courts. In regard to the underlying public demand, an examination of the trends in the public desire for harsher punishment (Figure 2) reveals that the position has not essentially changed over the last 20 years (Indermaur & Roberts, 2005). Indeed, if anything, the public desire for tougher sentencing has moderated slightly, although in general terms remains high. This adds weight to the interpretation that what is at work here is an increase in the level of mistrust of the courts rather than increasing demands for punishment. Unfortunately we do not have the same time series data on the levels of trust as we do for the levels of punitiveness shown in Figure 2.

**Figure 2: Extent of agreement with statement in Australia over last 20 years 'People who break the law should be given stiffer sentences' (from Indermaur & Roberts, 2005)**



It could be that public mistrust of the courts, like the desire for harsher punishment, has become something of a political given providing a constant supply of discontent ready for exploitation. There is certainly political mileage for politicians in creating an image of taking control of an ineffectual, and/or unaccountable judiciary. Such images work because they resonate with the public and/or media. In the campaign for the 1996 state election the Western Australian Premier, Richard Court, pledged to ‘put his foot in the revolving door down at the Children’s Court’. The Canadian Prime Minister elect, Stephen Harper, in the campaign which swept him to office early in 2006 used a similar image: ‘the revolving door of criminal justice of this current government bears significant responsibility for the tide of gun, drug and gang crime plaguing our cities’<sup>1</sup>. Crime in Canada had been on the decline since about 1992, but this only serves to illustrate the power of soundbite politics. The motto of populist hopefuls appears to be borrowed directly from one usually attributed to tabloid journalists: ‘never let facts stand in the way of a good story’.

A more generalized fear of being out maneuvered by the emotion based populists has ensured that political parties on the left, which traditionally have favored progressive sentencing reform, have become neutralized. This is now referred to as the ‘Clinton strategy’ as it was Bill Clinton who overcame the political obstacle of ‘defending criminals’ which saw George Bush (Snr) land a decisive blow on Democrat hopeful Michael Dukakis in the 1990 Presidential campaign over the Willie Horton affair<sup>2</sup>. The Clinton strategy was to ensure he never allowed his Republican opponents to get to the right of him on ‘Law and Order’ issues.

The populist strategy is to gain appeal and credibility through aligning with caricatures of popular opinion as portrayed on the media. In the process the caricatures become ‘real’ because they are reified, and even more educated and critical audiences give them status<sup>3</sup>. By calculating how policies and positions can be packaged and presented for the media the populist is attempting to appeal to voter sentiments of either a negative or positive hue. By linking crime and sentencing with broader issues the solutions can appear more straightforward and thus sentencing policy can represent an opportunity where decisive action can be taken. To understand how this works and how much is lost in the process we need to take a closer look at public attitude.

### **What is public attitude?**

Public attitude is not as simple as it is usually portrayed. The idea that the beliefs or voice of the public can be summarized or portrayed through polls and other devices belies the fact that the responses we get are dependent not only on the question asked

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<sup>1</sup> In a speech in Toronto on 5 January 2006 campaigning before the election see:

<http://www.cbc.ca/story/canadavotes2006/national/2006/01/05/elxn-harper-crime.html>

<sup>2</sup> Willie Horton was a released parolee who went on and raped whilst on parole. Michael Dukakis was Governor of Philadelphia at the time and thus Bush was able to successfully lambaste Dukakis as ‘soft on crime’ and directly linked Horton’s actions with Dukakis’s decision to release him.

<sup>3</sup> See Larossa (1992) for a description of the third person effect which partly explains why media depictions are given weight if the viewer/reader knows they are not truly representative. Media depictions thus influence the decisions of policy makers even when they are known to be inaccurate.

but the wider context of the question, the surrounding public information atmosphere and also other concerns that the member of the public wants to express. In approaching the question of public attitude and sentencing we thus first need to be circumspect about the very construct of public opinion. This is not sophistry but goes to the heart of the politicization of sentencing. Because many people purport to represent public opinion it is wise to look at it more closely to gain some insight into why such claims are so easily made and rarely rested.

The best available evidence suggests that the thing we call ‘public opinion’ is highly variable, quickly changing and largely dependant on the context and question asked. The thoughts and positions adopted by a member of the public in relation to a question are usually pre-primed by certain media and political discussions which sketch out the contours of most debates along the lines of already established socio-political interests. Thus some authors talk about the ‘constructed’ nature of public opinion (Lewis, 2001). Others talk in terms of the ‘manufacture of consent’ (Hermannn and Chomsky, 1988). Various studies have demonstrated how the public change their priorities depending on the type of offence/offender combinations presented<sup>4</sup>. It is particularly important when comparing public attitude on sentencing with court practice to understand that the concept of ‘attitude’ is very different from ‘judgment’. Measures of ‘attitude’ reflect preferences which generally tell us more about an individual’s emotions and values and less about their knowledge or considered thought about a particular topic. Thus attitude, mood or sentiment is an interesting and relevant concern but should not be confused with a considered judgment or preferred action in a particular case or even types of cases in general. When given sufficient information and asked what to do in certain scenarios the public respond in a more sober fashion. Indeed these responses generally begin to approximate the position that could be summarized or derived on the basis of sentencing practice.

Public attitude can be better understood if we begin by examining three key areas of misinformation that shape much expressed public opinion (Indermaur and Hough, 2003). First, there is a tendency to overestimate the prevalence of violent crime and to incorrectly assume that it is increasing. Second, there is the belief that punishment is both necessary for, and effective in, controlling crime. This may be partly explained by the third area of misinformation—most members of the public remain unaware of the possible alternatives to imprisonment which can be demanding on the offender and more effective in preventing re-offending.

Although the depth and breadth of public misinformation or misunderstanding has been documented for decades now, it would be a mistake to assume that the major problem with public attitude was simply a lack of information. Many who have sought to understand the public demand for punishment have concluded it is the emotional, social and symbolic value of punishment that provides the real appeal. These social functions

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<sup>4</sup> A number of authoritative sources provide detail on the picture of public opinion, the media and sentencing practice referred to here. Roberts and Stalans (1998) provide the most detail and complete reference. A more accessible reference is Roberts (1992) or Cullen et al (2000). In regard to the media and political exploitation of public concerns see Roberts et al (2003) or Indermaur and Hough (2003).

of punishment derive largely from an experience within individuals of insecurity manifest in a fear of crime. Psychologically, if such insecurity/fear can be relaxed with an enabling and exuberant affective state such as moral indignation (anger) then something of a cathartic ‘remedy’ is achieved.

Expressions that emphasise punishment are thus often favoured because they involve a release at the emotional level. Indeed the liberation achieved through exalting punishment can be sought because in many other areas where frustrations are built up there are few easy solutions and none that lend themselves to the primal release and expression of outrage. The technical details about alternatives, high rates of recidivism and so on will matter less to most than the release afforded through the expression of wrath. Politicians know this and now talk with some disdain and dismissal of ‘reality based communities’<sup>5</sup> that are concerned with knowledge and reality rather than emotions. Savvy populists understand the *Realpolitik* of emotional management on a national scale. This also is the reason why crime is such an effective target for expressive emotions and politics. It is not necessarily because of a realistic threat of victimisation but rather because crime represents *par excellence* a range of other breakdowns in social institutions and relations through which individuals feel disempowered.

One problem with basing sentencing policy on punitive sentiment is that this move is not likely to sate the appetite for punishment. Despite increasing imprisonment rates in countries like Australia, the UK and USA there has been no accompanying amelioration in the demand for punishment. The majority of the public will continue to desire harsher sentencing regardless of increases in imprisonment. This has now become accepted as a reliable feature of the attitudinal landscape. This is partly because only a very small proportion of the public would be in a position to be aware of the increases in imprisonment and largely because, as discussed earlier, the roots of this attitude are to be found in its symbolic and emotional value.

Because of the power of expressive emotions and symbolic politics some may argue that there is nothing wrong with providing punishment which may be expressive but not based on rational consideration. But this simply puts sentencing in the position of the domestic cat that is kicked as an outlet for frustrations developed elsewhere. It follows that if we are to have a rational or responsible sentencing policy it is fundamental that the expressive value of punishment needs to be named as such so that it is not confused with a considered or accountable policy. Further, unless we accept the notion that crime policy should simply serve as a means for the public venting of frustrations we need to find a way of addressing the conflict between responsible policy making and popular punitiveness. In doing this there are three reasons why we should focus on the actions of political and media decision-makers rather than try to change public attitudes directly. First, public punitiveness is usually misunderstood as monolithic and rigid (see Cullen

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<sup>5</sup> The concept of ‘reality based communities’ comes from recent discussions on political strategy in the US. As reported in an article by Ron Suskind in the New York Times Magazine on October 17, 2004, titled ‘Without a doubt’ an aide to the President is reported as dismissing those largely concerned with studying ‘reality’ rather than political actors who were seen as ‘creating’ reality.

Fisher and Applegate 2000). Second, the evidence on the practicality of direct attempts to change punitiveness is not encouraging (Green, 2005). Third, crime policy is only loosely linked to public opinion in any case (Beckett, 1997; Herbst, 1998).

The belief amongst policy makers in the ‘punitive public’ is well established and acts as a major limitation in the movement of policy away from a heavy emphasis on punishment. A number of authors<sup>6</sup> have pointed out how perceptions of key decision makers about a punitive public can be more restrictive to policy than public attitude itself. Because public attitude can not always be known or fully understood, policy-makers self-censor directions in policy they believe would trigger alarm within their imagined punitive public. There is also evidence that media based politics shapes the nature of public policy<sup>7</sup>. The caricature of a punitive public also comes across in the way the media, especially the tabloid media, depict public opinion as singular, angry and intolerant. Such stereotypes are necessary for simple depictions of conflict which suit various political as well as media interests but remain inaccurate in important ways.

If sentencing policy is to be dominated by the social and political purposes of sentencing it follows that sentencing reform must seek points of engagement that are likely to successfully gain attention and sway debate. In the next section some of the large institutional forces shaping the nature of this debate are outlined.

### **Public opinion, the media and political decision makers**

What can be taken as ‘public opinion’, a measurable quality of public attitude is shaped within a dynamic interplay of political initiative, media discussion and the input of special interest groups. A useful way to understand the nature of these interactive forces is to see them as four sources of information and input (Figure 3).

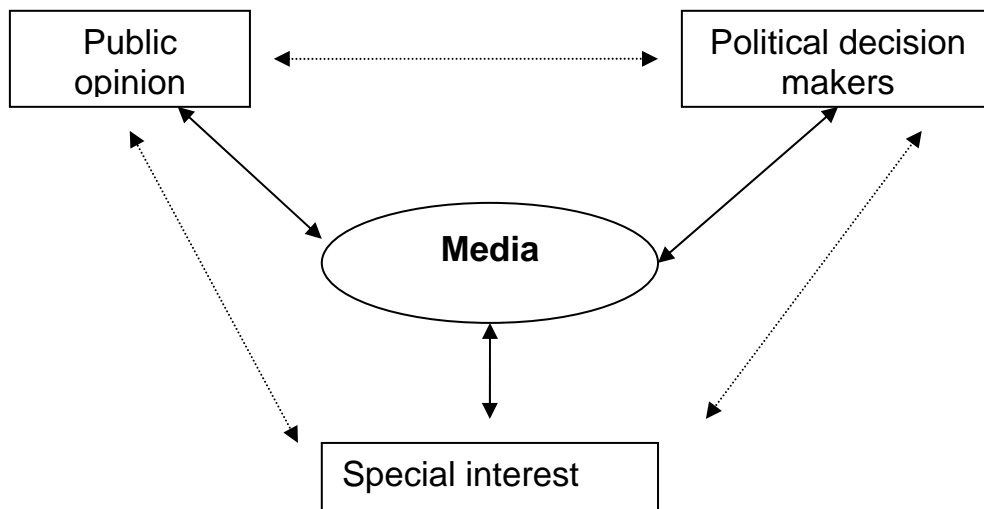
Although public opinion is depicted here as a separate institution it is not an initiator of debate, rather it is referred to or ‘divined’ by the other three sources. Further, the media serves as the key point for the brokerage and reference of the initiatives of political decision makers and special interest groups. The ‘public’ output of these groups depends directly on depiction in the media. Although many people assume the media coverage and political action are driven by public opinion, closer analysis shows that public opinion is just as likely to reflect media depictions which to varying extents depends on initiatives by political and special interest groups (Beckett 1997).

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<sup>6</sup> eg Herbst (1998), Dopplet (1992), Riley and Rose (1980), Gottfredson, Warner and Taylor (1988) Whitehead, Blankenship and Wright (1999).

<sup>7</sup> See Kepplinger (2001) for a documentation and analysis of this process in Germany. However Kepplinger’s analysis could as easily be applied to Australia or other advanced English speaking democracies where penal populism has been on the ascendant for over a decade (Roberts et al 2003).

**Figure 3: A model of the interaction of media, public opinion, special interest groups and political decision makers** (adapted from Kennamer, 1992)



Although the interests of political decision makers in grasping highly symbolic and emotional issues like crime and punishment are now well understood, the interests of the media in this area are sometimes not recognized. The flagrant and emotional claims of the tabloids and talk back radio are fairly transparent but the way debates on punishment can serve the media go beyond this. Table 1 provides an overview of the some of the interests that have been identified to explaining the functions of crime news for the media.

**Table 1: What crime and sentencing can do for the media and political entrepreneur: Interests and imperatives identified in relation to media depictions of crime and punishment**

Interests/imperative	Example of proponent/discussant
Create a sense of law and order	Ericson, Baranek and Chan (1991)
Provide for moral engagement and expression	Katz (1987); Claster (1992)
Present social issues in dramatic relief	Best (1990, 1999); Surette (1994)
Provide a series of unfolding and interlinking breaking stories	Barak (1994); Fishman (1978)
Provide a stage for dynamic conflict between state agencies	Schlesinger et al (1991)
Provide a platform for reinforcing conservative values and commercial interests	Hermann and Chomsky (1988)
Reinforce existing social arrangements and the power of state institutions/sources	Hall et al (1978)

At the level of the news, mass appeal (some would say entertainment) is achieved through engagement at a moral level. It is not surprising, therefore, that sentencing judgements, particularly unusual or lenient sentences provide such good 'copy'. Ultimately it is the potential to capitalize on a well-spring of moral indignation that makes 'public opinion' on sentencing so attractive to both the media and politicians.

There are also distinct political advantages in generating a belief in simple solutions galvanized by strong leadership. This has been described as one of the core characteristics of populism (Taggart, 2000). These opportunities for displays of leadership are plundered by the populist politician in a symbiotic relationship with image based media. In this environment there appear to be few advantages to focusing on 'rational' responses when a focus on the emotional and symbolic offers the prospect of connecting with the 'ordinary Australians'. By depicting the opposing force as 'out of touch' and 'uncaring' further emotional resonance may be achieved.

To add further to the forces governing media and political decision making which militate towards an emotional rather than a rational response on sentencing we need also to observe the growing conversion of these two institutions in the form and substance of their interests. The media imperatives of simplicity, commodification and drama become political imperatives. Because the parameters of policy are increasingly limited by media interests we could say that the media focus 'captures' the political policy domain.

It now seems inescapable that the task of engaging the public is vital not only to ensure the widespread political endorsement of sentencing reform proposals at a political (and media) level but also to protect it from political attack. Based on the foregoing it would appear obvious that the demands of effective sentencing reform are inextricably bound up with the politics and the dominance of the media in public debates. Suggestions aimed to providing for rational sentencing policies must work with the extant forces to promote a reform agenda. In the next section some of the proposals about how to approach this are mentioned before moving on to a suggestion about how to put this on a firm footing within the current Australian environment.

## Suggestions

There are a number of ways to approach the challenges foreshadowed in the previous section. In 2003 Roberts and colleagues borrowed from the title of Morris and Hawkins (1970) book and proposed 'An honest politician's guide to penal populism'<sup>8</sup> containing ten suggestions. These largely concerned strengthening sentencing as an institution and blocking its use as a political football. The question of establishing public confidence in sentencing has become a pressing issue in most western democracies. In the United Kingdom two divergent responses to the question have emerged from the two major reviews of sentencing in that country over the last five years.

In the broad and far reaching blueprint for sentencing reform articulated in his report John Halliday (Home Office, 2001) emphasized at a number of junctures the importance of engaging the public in the planning of justice reforms. This concurs with the thinking espoused at a number of levels by a range of authors that the time is now ripe for a process of public engagement broadly conceptualized as the democratization of sentencing reform (Johnstone, 2000; Greenberg, 2002).

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<sup>8</sup> Morris and Hawkins famous book was titled *An honest politicians guide to crime control*. Given that it is now almost 40 years old the struggle between criminologists and politicians over the issue of rationality in crime policy could now be considered perennial rather than exceptional.

The alternative position is reflected in the position of Justice Auld in his report (2001) which argues that sentencing reform is a process so complex that it must be left to the experts, but once established there is an important task ahead in providing for effective public education about sentencing and sentencing reforms. But, as mentioned already, public education is unlikely to provide an effective or reliable remedy.

Although a number of other authors have pointed to various possibilities with public education (eg Mirrilees-Black, 2002) the analysis outlined in previous sections signals that any gains are likely to be marginal when seen against the wide influence and interests of the media. Education campaigns are unlikely to effect large scale changes of the sort that would affect sentencing policy generally because the relevant political concerns are dominated by tabloid media and largely turn on moral and emotional matters rather than those of information. However, this does not mean that we are doomed to scrabble about with the sham policies passed down from the continuing media/politics game show. Steps can be taken to seriously engage the public. If such efforts are successful they will serve as a protection against the vagaries of media and political exploitations and counterclaims that sentencing is elitist, irrelevant and out of touch.

How then should we engage with the public? In a recent incisive article Green (2005) points to the value of deliberative polls. Although the results of such efforts can be important in neutralizing claims of public desires for punishment and putting on record what a considered judgment of the people would amount to, it is unlikely that this will quell the considerable advantages of using sentencing as a wedge issue.

Mechanisms for engagement need to be informed and sensitive to the opportunities for improving public policy around sentencing and justice more generally. This problem and some possible remedies were articulated carefully by Frieberg (2001). There now appears little doubt the if sentencing practitioners, scholars and those concerned with a meaningful sentencing policy want to keep up with developments they must be prepared to communicate in ways that are relevant to the public, politicians and the media. More generally the way is open for an enlivened process which will democratize sentencing reform. Indeed a number of authors have been focusing on the process of the democratization of justice, being a solution rather than being a problem<sup>9</sup>. The clear and practical engagement of the public is perhaps the best and most satisfactory counter to populist and media exploitation whilst at the same time advancing revolutionizing sentencing reform in a way that goes beyond the more pedestrian tinkering typically engaged in.

Promoting sentencing reform requires a dedicated media strategy as well as an ongoing process of public consultation, which could incorporate the use of deliberative polls. In regard to the media strategy the major shift that is required is a means of communicating salient details to the public. Communications about sentencing do better if they are targeted to a 'market'—in other words tailored to audience concerns.

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<sup>9</sup> See Greenberg (2002); Johnstone (2000); La Free (2002).

Although there are exceptions, current reports on sentencing generally are ineffective as they derive from judges' remarks. The judges' remarks are constructed with a view to correctness and an audience of appeal court judges or more generally for an educated elite. But the politician and the media work with a different audience with interests that focus more directly on justice and crime control. The public are primarily concerned to see justice delivered and crimes prevented and want to be reassured that the sentence passed will play some small part in achieving these goals. What is needed then is not so much technical detail but explanation and elucidation to draw the connection between a presenting case, sentence passed and the goals of sentencing. With the right institutional support sentencing communications can be packaged and presented to illuminate these central concerns. Getting the message and the communication right requires considerable attention to the emotional and symbolic functions of punishment more than the technical.

From the foregoing discussion there is a lot of work required to achieve a concerted, coordinated and effective program for promoting positive sentencing reform. Such a program, strategy or effort has not yet appeared in Australia. Although present state based efforts (notably in Victoria and New South Wales) go some way to providing some elements they remain limited to their particular states and are insufficient to make the required impact. What is proposed, therefore, is a national vehicle for promoting sentencing reform that can complement state efforts and go above and beyond what is already provided.

### **A Federal Institute of Sentencing**

Perhaps the major problem with politics, the media and public debate driving unwanted and counterproductive changes to sentencing is that practitioners who know more about the day to day reality of crime and sentencing have become frozen out of the policy development arena. Much of the despised 'sentencing reform' initiatives from Western Australia throughout the last decade have occurred in an environment of disengagement between the judiciary and policy makers. The degree of disengagement differs between the states as does the ability of Chief Justices to adapt to the political environment and provide leadership. Although a politically attuned and capable Chief Justice can promote and protect good policy he or she needs to have access to relevant and accurate information on public attitude and a sophisticated public relations team. The public needs to be actively engaged in the sentencing reform process and have their concerns and voice recognized. In effect what is needed is one institution that could coordinate or disseminate information on all matters relevant to sentencing in Australia. At present no such institution exists and one is needed.

The proposed Federal Institute of Sentencing (FIS) could examine and provide models of sentencing frameworks that may be used by the States. Readily accessible information on model sentencing frameworks, resources on developing sentencing legislation, evaluations and assessments of sentencing practices elsewhere in the world can be particularly valuable to policy makers. Information on sentencing practice, trends and outcomes in Australia and elsewhere is vital to the task of constructing meaningful information 'packages'. Information on the purported functions of sentencing and what can be reasonably achieved through sentencing provides essential framing material.

Similarly information on the cost effectiveness of sentencing options and alternative policies and practices gives vital guidance to policy makers, politicians and the public alike. A FIS could also provide independent and authoritative assessments of the achievement of sentencing in terms of its normative, distributive and utilitarian aims. Some of the possible functions of the FIS are outlined in Table 2.

**Table 2: The possible functions of a Federal Institute of Sentencing**

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**Public information**

- On possibilities and limits to crime control to be achieved through sentencing
- Sentencing principles and how they are applied
- A cogent explanation of a sentencing system
- Ready availability of information on sentencing at a general and specific level
- An accurate guide to how sentencers sentence
- Explanations and reasons that make a particular sentence comprehensible
- Information of sentencing practice, trends and outcomes
- Information on cost effectiveness of sentencing options
- effective alternative policies and practices
- Information on public attitude
- Website to provide educational packages, teaching resources, FAQs area

**Provide a public forum and public debates**

- Regular accessible debates on matters referred by the States
- Mechanisms for input from all quarters
- Publicised deliberative polls on aspects of sentencing
- Commissioned in-depth inquiries into public judgements and attitudes in regard to sentencing options

**Provide resources for developing sentencing legislation and policy**

- Model sentencing frameworks
  - Evaluations and assessments of sentencing practices elsewhere in the world.
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A fair and meaningful apportionment of responsibilities might look something like the arrangements in place in regard to crime information. Most states have a way of disseminating state based crime information and crime prevention information. However at a national level the Australian Institute of Criminology performs a comprehensive and valued function in bringing together the major issues of crime and crime prevention and promulgating this knowledge in an efficient and productive manner. Why can't the same be achieved for sentencing? Most of the issues are not state specific but actually concern the role of sentencing and alternatives in providing a remedy to the many and varied forms of crime that plague our community. We would be much better served by a centralised approach that could address the real and pressing issues in a way that is stronger, more effective and comprehensive. This requires a national pooling of resources if our efforts are not to be squandered in the dissipation of state and territory allocations.

The Institute would allow a much wider involvement and dissemination of information relevant to sentencing than any of the existing Federal or state based agencies. Although the website developed by the Victorian Sentencing Advisory Council provides a starting point for considering what might be possible for the FIS website, which ultimately should approximate that of the Australian Institute of Criminology in terms of its accessibility, breadth and scope.

Another function of the FIS could be to provide mechanisms for on-going public engagement in establishing preferred sentencing goals and parameters. A concerted public consultation process would be an important development in ensuring a deeper debate about the rationales for sentencing, providing evidence of public engagement with the sentencing reform process. The FIS could also be a repository of a range of skills that could help develop media-ready product in a manner outlined earlier. The FIS would also provide an ideal basis for investigations into proposed sentencing reforms. The FIS could provide an ongoing forum or routine public meetings where sentencing matters can be referred for public debate and consideration allowing for both a deliberative process and subsequently an open public debate. The key results of the closed deliberative process should be summarised so they can be easily digested by a general public/ media/political audience and not be dismissed or politicized. This would allow for public debates to go deeper and be more focused.

The contribution of the FIS would be optimised if it could feed into and from the work already undertaken by Sentencing Councils or Sentencing Information Systems where they have already been established. An ideal model would see the FIS complement and support state based sentencing information systems. The state based systems provide immediate and relevant information at a state level. However many of the general debates about public support and the direction of sentencing policy are relevant and applicable to all states. One could ask, for example why citizens of Western Australia should benefit from the excellent work of the Victorian Sentencing Council. By the same token, many may not see the relevance of referring to the valuable information amassed if it appears to be developed solely for another state.

Another distinct function of the FIS would be to provide comprehensive and authoritative investigations and findings on public attitude into certain sentencing strategies including sentencing in relation to certain types of crime. This will allow sentencing reforms to be properly and comprehensively informed about public attitude and ‘cut off the oxygen’ to the populist who would seek to represent these public interests and views that at present can not properly be known. An example of this has already occurred in the form of the inquiry into the British public’s views of the sentencing of burglars undertaken on behalf of the Sentencing Advisory Council in the UK. The FIS should have a similar ability to design and direct relevant research and also to coordinate and establish a research agenda on public attitudes that can inform policy development.

The establishment of an institution for promoting both sentencing reform and public engagement provides a means of ensuring an ongoing process of collaboration and contribution. In effect this move would institutionalize sentencing reform in a realistic way that is both politically attractive and protective. The reform process would ensure that relevant voices from the public, special interest groups and political decisions makers are heard, considered, debated and eventually incorporated in a meaningful way into a sentencing policy that could serve all states of the Federation.

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