

**Penal Populism and  
Public Opinion:  
Lessons Form Five  
Countries**

*Julian V. Roberts, et al.*

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## Foreword

I remember an era when the only feature of penal policy that politicians discussed was capital punishment, and even that was forgotten at election time. The increases in crime-rates—real and apparent—after World War II discredited “liberal” strategies and provided right-wing penologists and judges with new ammunition.

It was inevitable that rising rates of crime—or reported crime—would sooner or later thrust law enforcement and sentencing onto political platforms, but nobody foresaw the extent to which by the end of the century law enforcement would become a shuttlecock between parties.

This book, the product of collaboration between authors with experience in at least five jurisdictions, documents the process with an impressive collection of empirical data. Politicians and penal reformers may call the result cynical. In fact, it achieves as much realism as is scientifically possible. The science of interpreting public opinion has become much more sophisticated than it was in the days of simplistic opinion polls. For example, at last it can be said that “It is bad practice to ask people questions when it is clear that the majority lack the information necessary to make a sensible response.”

This book’s main theme is the interplay between politicians and voters, complicated by the oversimplifications and distortions of the news media. Hard cases make bad law, and spectacular cases make knee-jerk policy. The authors see this as a downward spiral that could descend even further. Is it a spiral which can be halted? Chapter 10 outlines expedients that may combat it. Among its suggestions is the creation of a “policy buffer”—an institution without politicians whose task it would be to advise and supply relevant information about penal proposals. None of the authors’ jurisdictions has quite succeeded in imposing a brake of this kind on governments; and civil servants are not as authoritative as they used to be.

In the sixties and seventies, England had an Advisory Council on the Penal Systems, which considered ministers’ ideas and reported publicly on them. Some of its reports initiated sensible reforms, but ministers (and civil servants) became impatient with the time it took and abolished it.

What is clear is that penal populism is a recipe for serious mistakes, and that all the antidotes discussed in this excellent book should be tried. It is not merely opportune, but overdue.

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April 2002*

Nigel Walker



## Preface

Responding to crime represents a perennial challenge to all nations, and the ways in which we respond reveal a great deal about the nature of our societies. Too often history records our responses to this challenge as a failure on both humanitarian and moral grounds. While criminal justice policies vary significantly from country to country, one theme has repeatedly emerged in recent years: All Western nations have witnessed an upsurge in both the rhetoric and practice of severe punishment for offenders; we refer to this as a rise in penal punitiveness. In the 1960s, many criminologists and penologists believed that sentencing was becoming more rational, more research-based, and more humane. The abolitionists had carried the day with respect to capital punishment; community-based sentences were gaining a foothold, and probation services were expanding. This liberal trajectory did not continue; the death penalty returned to America, most countries have adopted mandatory, punitive sentencing policies, and prison populations are on the rise again.

What is responsible for this renewed emphasis on harsh punishment and broader punitive policies? Why have we sought ever harsher ways of responding to offenders? Most important, what role has politics played in influencing penal policies in recent years? What has made severe punishment an attractive political commodity? These are some of the questions which we address in this book.

We are trying to understand an issue which cuts to the heart of a liberal democracy: the punishment of offenders. In particular, we explore one specific response to crime, which we term *penal populism*. A great deal has transpired in the field of criminal justice since the mid-1980s, and public opinion has played a pivotal role in the sentencing reforms that have been proposed or enacted in the five countries included in the present analysis. Although there are significant differences between countries and even between jurisdictions within countries, it is the important and compelling commonalities emerging in many Western countries that have led us to conduct the present inquiry. The major common theme is the policy position examined in this book: penal populism. As will be seen, penal populism is essentially a rather simple political response to a complex social problem.

Although attempts to “play the crime card” in U.S. elections go back to the 1960s (see Finckenauer, 1978), in the 1990s, politicians have more frequently turned to crime in their appeal to the public—particularly in the run-up to elections—by identifying crime problems that can be “fixed” by various sen-

tencing reforms. Violent crime by recidivists; murders committed by juveniles; crimes by prisoners released on parole; many examples spring to mind. For each of these problems, the public is offered punitive (and simplistic) solutions (such as “three strikes” statutes, “adult” sentences for juvenile offenders, and flat-time (no parole) sentencing) that often violate fundamental sentencing principles and create more problems than they solve. For example, some “three strikes” statutes count less serious felonies as a “strike.” This triggers a highly punitive outcome for the offender and violates sentencing principles such as proportionality and restraint in the use of imprisonment that are found in the case law or which have been codified in many jurisdictions.

By the time that research has demonstrated the futility of many of these “solutions” to crime, the parade has moved on, and the election is over; the “reforms,” however, generally remain in place. For example, mandatory minimum sentences have been accumulating for years in four of the five countries included in this survey; seldom are any of these laws repealed. In a similar way, sentence length ranges in sentencing guidelines tend to move upward, becoming ever harsher, never more lenient. Sentencing reform guided by politics and provoked by public pressure proceeds down a one-way street of punitiveness. The irony of course is that this movement toward harsher sentencing has accelerated at a time when crime rates in most jurisdictions have been declining. This suggests one of the theses of the present volume: the drift toward punitiveness is neither exclusively nor primarily instrumental. Penal populism is more plausibly explained as an emotional response to horrific, but rare, crimes that generate intense media attention, and other less-clearly defined influences relating to the culture of punishment (cf. Garland, 1990, 2001).

Whenever most people think of crime, they also think of punishment. There is variance in the punishment preferences of the public in different countries, but punishment is generally a reflex response to offending. Neither of the two growing international movements in criminal justice, one which promotes alternative, nonpunitive or restorative responses to crime (e.g., Braithwaite, 1999; Daly, 2000), the other which emphasizes crime prevention rather than crime control through punishment, have done much to change this reality. This is true in all Western nations. The importance of public opinion is characteristic of all common law jurisdictions. With the advent of polling over the last few decades, community views have come to play an increasingly important role in the evolution of criminal justice policy, particularly in the realm of sentencing.

A principal focus of this book is on the nature of public attitudes to sentencing and the interrelationship between the views of the public and the development of sentencing policy. We explore the degree of congruence between penal policy and the views of the public. In so doing, we draw upon the results of representative opinion surveys, as well as more sophisticated research tools. The former alone cannot provide an adequate portrait of the nature of public opinion. In our experience, public opinion polls with respect to criminal justice issues are frequently constructed to generate a particular response from the

public: they are seen as a means to bolster specific policies rather than as a tool to better understand community views. Politicians often commission surveys the way attorneys question witnesses: safe in the knowledge that the answer will support their position.

Politicians repeatedly cite opinion polls to demonstrate support for their criminal justice policies. In all the areas that we discuss, it is clear that law reform is seldom well-served by the automatic invocation of public views, measured by simplistic opinion surveys. One of the goals of this volume is to encourage politicians, policymakers, and criminal justice professionals to tread carefully when attempting to discern the views of the public. But outside the academic literature, the views of the public are seldom canvassed in a scientific manner. The thoughtless use of surveys can lead to spurious conclusions being drawn about the nature of community views, as we shall illustrate over the course of this book.

We shall show, by reference to systematic research, how public opinion research can easily be manipulated, and how an adequate answer to the question “What does the public think?” cannot be generated by asking the public a simple question such as “Are sentences too harsh, too lenient, or about right?” Regrettably, this is exactly the way that public opinion has been explored in many surveys over the past 20 years. This conclusion is not new; criminal justice researchers working in the area of public opinion have long been aware of the limitations on simplistic surveys as a means of sounding community views. But some politicians cling to the idea that placing a single question on an omnibus survey which poses 40 questions in half as many minutes will actually say something about the public’s views about complex issues relating to sentencing and parole.

## **Scope of the Present Inquiry**

The current volume draws together findings from five jurisdictions: the United States, the United Kingdom, Canada, Australia, and New Zealand. The goal of the book is to uncover trends which are applicable to several countries and to develop a corpus of knowledge with an international foundation. We draw attention to some important variations between countries, particularly when they say something about the legal and political culture of specific jurisdictions. We also try and establish the limits of penal populism: When are populist proposals founded upon false perceptions of the public’s view? When are politicians more punitive than the public to whom they are accountable?

The commonalities in research findings are noteworthy because they represent responses to punishing offenders which transcend national boundaries. This is striking because the magnitude and nature of the crime problem varies considerably across the jurisdictions included in this survey. In addition, the criminal justice systems respond to those problems in diverse ways. The treat-

ment of offenders convicted of murder in different jurisdictions illustrates this variability.

In America, juveniles and mentally challenged offenders convicted of murder risk execution, whereas in Canada, juveniles convicted of murder serve only a few years in prison. Offenders in the United States who are convicted of murder but not executed can be sentenced to spend the rest of their natural lives in prison; life imprisonment without parole is not a sentencing option in most other jurisdictions. In Canada, almost all offenders serving sentences for second degree murder (and sentenced to life imprisonment) will be released after 10 years in prison. In Britain, the average life prisoner spends 14 years in custody before release on parole. Another interesting difference between the countries is the extent to which the views of the public are incorporated into the sentencing and parole processes. Juries in America play an important role in determining whether an offender will be executed or imprisoned for life. In Canada, juries can reduce by up to 10 years the amount of time that an offender convicted of first degree murder must spend in prison before becoming eligible for parole. Juries in Britain have no such powers. Sentencing policy and practice in all jurisdictions is affected—directly or indirectly—by the views of the public; our goal is to generate a better understanding of those views and their effects.

## **Outline of Volume**

Chapter 1 provides a definition of the term “penal populism,” followed by an overview of crime trends and sentencing patterns in the countries included in this survey. While a detailed analysis is unnecessary, it is important for the reader to have some understanding of recent trends. Chapter 2 summarizes research on public knowledge of and attitudes toward crime and punishment. Chapter 3 provides a discussion of sentencing policies across the five countries, including the most egregious example of penal populism which has emerged in all the countries included in our survey: mandatory sentencing. Theoretical perspectives are explored in the next chapter (4), which is followed in chapter 5 by a discussion of the primary source of information for the public: the news media. We shall examine the ways in which the news media have shaped public conceptions of punishment. Chapter 6 explores the limits of penal populism, in which we review research which has addressed public reaction to unjust or excessive punishment. Chapter 7 examines an area of criminal law in which there has been considerable legislative activity in recent years: juvenile justice. Chapter 8 explores an issue that causes great public concern: the criminal justice response to sex offenders. Chapter 9 documents the role of penal populism with respect to drug offenders. In the concluding chapter (10), we address the practical questions that lie at the heart of our inquiry: How should the criminal justice system respond to the forces of penal populism? How can we remove politics from penal policy development? We shall propose some specific mech-

anisms and strategies with which to limit the influence of penal populism, and which may lead to more informed, research-based sentencing policies.

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Although Julian Roberts was primarily responsible for bringing this volume to press, the book is a collective effort to which all the other authors contributed equally. We would like to acknowledge the assistance of the Department of Criminal Justice at Loyola University in Chicago for providing support for research assistants; Alex Berkowitz, Pamela Loose, and Allison Ulmham provided diligent research assistance. The Center for Ethics at Loyola University provided a research fellowship to Loretta Stalans to study jury nullification. We would also like to thank the following individuals whose feedback has influenced the final content of this book: Anthony Doob, Benedikt Fischer, Arie Freiberg, Jane Sprott, Don Weatherburn, and Warren Young. In addition, we express our appreciation to Oxford University Press and to the anonymous reviewers, who evaluated the proposal that gave rise to this book, as well as the final manuscript.

Loretta Stalans dedicates her work on this volume to her daughter, Maggie Stalans Yarnold, her husband, Dr. Paul Yarnold, and Dr. Harry S. Upshaw, mentor.

Finally, we would like to recognize that our primary debt is to the editor of this series, Professor Michael Tonry from the Institute of Criminology at the University of Cambridge, without whose sagacious advice and guidance this volume would have remained unwritten.

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**P e n a l**

POPULISM AND PUBLIC OPINION

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## The Argument

This book addresses and explores the evolution of criminal justice policies, particularly those pertaining to the sentencing of offenders. Our sentencing policies represent the greatest intrusion into the lives of offenders and are therefore worthy of the closest scrutiny. The policy making process is complex and cannot be reduced to categories of “good” and “bad” programs or policies; nor can policymakers and politicians be assigned to categories such as “populists” and “rationalists.” All policies—and the individuals responsible for them—are subject to pressures relating to the reality of electoral politics. It is these pressures, the ways in which they are managed, and their effects that are the subject of this book.

There is no escaping the fact that over the past decade, sentencing has become harsher in most Western nations, particularly the United States. As Tonry notes, “Most U.S. jurisdictions have comprehensively overhauled their sentencing laws and policies, usually to reduce officials’ discretion and make penalties harsher” (2001, p. 517). Some of the harshest policies—such as the “three strikes” laws—bear the clear imprint of populism. Populism is a political response that favors popularity over other policy considerations.

Populist penal policies can arise in a number of ways. In some cases they can be a consequence of an intentional attempt to exploit public anxiety about crime and public resentment toward offenders. In other contexts they have emerged out of a desire by policy makers to respond to public opinion without having undertaken an adequate examination of the true nature of public views. Public expressions of punitiveness are taken at face value. We shall attempt to demonstrate that these (and related) policies have not arisen in response to an escalating crime problem or an increase in public punitiveness. Populist pressures cannot alone explain the shifts in penal policy that we have witnessed in recent years, but they play an important role and represent one of the few forces present, to a greater or lesser degree, in all Western nations.

We shall also demonstrate that in many areas, sentencing (and other penal) policies have been introduced that are more punitive than can be sustained by a reasonable, research-based measure of public opinion. Indeed, we shall provide illustrations in which members of the public actively subvert punitive policies, when they perceive those policies to be unfair or excessively harsh. In

many areas it seems clear that policies have emerged in response to an inaccurate representation of the public response to crime.

But this volume is not an attempt to promote specific policies or to castigate the politicians and policymakers responsible for them. Rather, it is an appeal to those who control our criminal justice systems to exercise restraint with regard to policies that have unintended and disproportionate consequences on certain sectors of society. We see mandatory sentencing as a clear example of such policies. Mandatory sentencing laws affect a far wider range of offenders than is desirable and tend to affect some groups in society more than others.

This volume is also an appeal to the media to place their coverage of specific crimes and sentencing decisions within some context which news consumers may use to arrive at an informed judgment about the case reported. The book is also an attempt to convey to critical decision makers (including policymakers and politicians) a sense of where the public stands on a number of vital areas of criminal policy, including juvenile crime and drug offenders. In these areas we have attempted to build a portrait of public opinion about the issue based on in-depth research rather than simple opinion polls.

Some of these themes have been explored in recent years by other researchers. Our contribution to this literature is twofold. First, we explore the influence of penal populism on an international level, drawing examples from five jurisdictions. Second, at the end, we offer some practical suggestions with respect to containing penal populism and improving the way that criminal policy develops. Our hope is that these proposals may be of general application. We are not, ultimately, trying to divorce punishment policies from the views of the community. By paying greater attention to the consequences of specific policies and making a greater effort to understand what the *informed* public thinks, sentencing policies will be more, not less, in line with the views of the public. The policies will also be more humane, and, we hope, more effective in responding to crime.

## Defining Penal Populism

The term “penal populism” (or variants on it such as “populist punitiveness”; see Bottoms, 1995) has gained considerable currency in recent years. What exactly does it mean? Populism is a value-laden term.<sup>1</sup> Its nuances can be drawn out by contrasting populist policies to ones which are *responsive*, on the one hand, and to those which are merely *popular* on the other. It would be naive to complain about politicians being responsive to public opinion. Such responsiveness is a central feature of representative democracy: the whole point of an electoral system is to ensure that politicians do not stray too far from the wishes of their electorate. In other words, elected politicians are always to an extent mandated; they do not, and should not, have unfettered freedom to interpret the best interests of those whom they represent. Politics is the art of the possible,

and public opinion defines (in part) the limits of possibility. If responsiveness to public opinion is not, of itself undesirable, it would be equally unreasonable to attack a politician for pursuing *popular* policies. Indeed, it would be a cause for some concern if elected political parties failed consistently to have broad-based support for their policies.

Responsiveness and popularity are necessary ingredients of populism, but they are not the key ones. In our view, policies are populist if they are advanced to win votes without much regard for their effects. *Penal populists allow the electoral advantage of a policy to take precedence over its penal effectiveness.* In short, penal populism consists of the pursuit of a set of penal policies to win votes rather than to reduce crime rates or to promote justice. We are not overly concerned with what might be termed “benign” populism: politicians who pursue the right policies (effective crime policies) but for the wrong reasons (to be popular). Our concern is rather with a more malign form of penal populism: the promotion of policies which are electorally attractive, but unfair, ineffective, or at odds with a true reading of public opinion.

It is important, analytically at least, to draw a distinction between the negligent disregard for evidence about effectiveness inherent in penal populism and the sincere and thoughtful belief in effectiveness that underlies some politicians’ advocacy of some harsh policies. Populism is also to be distinguished from a more defensible form of responsiveness to public opinion that is premised on the belief that the pursuit of harsh punishment will promote a greater consensus about the wrongfulness of criminal behavior (cf. Bottoms, 1995, p. 39)—an interesting hypothesis. The central tool of penal populism is imprisonment; we assume the position that while necessary, prison has been overused for decades, and with the rise of mandatory sentencing, matters have become even worse in this regard. This book does not summarize the evidence which leads us to regard the use of mandatory imprisonment as unfair and ineffective. We will make only brief remarks about the disproportionate impact of the heavy use of imprisonment on certain groups.

### Race and Imprisonment

One clear result of the emphasis on imprisonment as a sanction is that racial minorities have been disproportionately affected. The “war on drugs” has contributed greatly to the harsher treatment of Black and Latino men and women in the United States, and the federal and state sentencing guidelines have failed to reduce the racial discrimination in judicial sentencing (Miller, 1996; Spohn, 2000; Tonry, 1995). For example, analysis of sentencing data for drug offenders in federal court found that both Latino and Black drug offenders received more severe sentences, received less benefit for pleading guilty, and received a significantly smaller benefit for assisting the prosecution. This racial disparity remained, even after controlling for the influence of prior criminal history and other relevant variables (Albonetti, 1997). In her review of the research on racial disparity in sentencing, Spohn and Holleran (2000) concluded that discrimi-

nation in sentencing for drug offenders is a product of “the moral panic surrounding drug use and drug-related crime, coupled with stereotypes linking racial minorities to a drug-involved lifestyle” (p. 478).

Racial discrimination, however, does not occur for all crimes and for all minorities. Studies find that minorities are sentenced more harshly than whites (with similar characteristics) if they are young and male, have more serious prior records, or come from a lower socioeconomic class (Spohn & Holleran, 2000). Bonczar and Beck (1997) noted that “at the current levels of incarceration a black male in the United States today has greater than a 1 in 4 chance of going to prison during his lifetime, while a Hispanic male has a 1 in 6 chance and a white male has a 1 in 23 chance of serving time” (p. 6). The injustice of racial disparity is also apparent in other countries. England also incarcerates blacks at a rate six times higher than whites, and incarcerates other minority races at a rate two times higher than whites (Langan & Farrington, 1998). The only large-scale Canadian study to examine racial disparities in sentencing found little evidence of sentencing discrimination against Black offenders, but differences did emerge for drug offenders, who were more likely to be denied bail and imprisoned than whites accused with comparable profiles (see Roberts and Doob, 1997).

### Imprisonment and Crime Control

In addition to the question of fairness, the heavy use of imprisonment is ineffective as a crime control strategy. A considerable body of literature has shown that harsher sentencing results in only modest reductions in crime rates.<sup>2</sup> This is a fundamental point that fails to register with many politicians; the key to lowering crime rates lies not within the hands of judges, as the sentencing process can have only a limited impact on overall crime rates. As one of the world’s leading sentencing scholars notes: “if criminal justice policy expects sentencing to perform a major preventive function, it is looking in the wrong direction” (Ashworth, 2000, p. 25).<sup>3</sup> Finally, it is important to note that an emphasis on imprisonment diverts resources from other crime control policies that may more effectively promote community safety (such as early intervention and other preventive measures). We shall return to the issue of resource allocation later in this volume.

Some people may find our concern about harsher penalties to be misplaced; after all, serious crime requires a rigorous response, and communities have a right to protection from predatory criminal conduct. What we show in this volume, however, is that in the name of greater community protection, harsher penalties affect a wide range of offenders. [Mandatory Sentencing]

In many cases these penalties are unjustified on grounds of dangerousness or desert. There is an additional element lost in the debates about penal policy: when harsher punishment is translated to mean mandatory terms of imprisonment, the sentencing process becomes very inflexible, and this lack of flexibility leads to a lack of justice.

### **Mandatory Sentencing: Catching the Wrong Fish**

When most people think of harsh mandatory sentencing, they may be comforted by the thought that dangerous, violent offenders are taken off the streets and that this results in the prevention of further crimes. The image is misleading; the comfort illusory. The Canadian mandatory penalties for crimes committed with a firearm provide a good illustration of the point. These four-year minimum sentences were introduced to deter and denounce offenders who rob banks and commit other serious crimes with a gun. But an examination of the cases being caught in the new law suggests that many offenders, who do not constitute a danger, end up paying the price.

A good example is the case of Marty

Morrisey, who was convicted of an offense carrying a four-year minimum sentence of imprisonment (criminal negligence causing death). Morrisey, who pleaded guilty to the crime, has no previous convictions. He is a woodsman who has had a drinking problem since he was 14. He stopped drinking for a while, but started again after the break-up of a relationship. One day, when he had been drinking heavily, and had taken some prescription drugs for depression, Marty went into the woods with a friend. At some point, while holding a loaded gun, Marty tried to wake his sleeping friend. He slipped, and the gun discharged, killing the other man.

It is reasonable to ask whether other people, in the same circumstances as Morrisey, are less likely to engage in this criminal conduct now that it carries a mandatory sentence of imprisonment. If it is hard to justify on grounds of deterrence, what about denunciation? Is Canadian society any better for using a mandatory sentence to denounce this kind of conduct?

The populist politician implicit in our definition may look like a cynical monster. In truth, the political environment is far more complicated. A minister of justice under attack from populist opposition parties may feel that there is no option but to “talk tough” in return. At any particular time, the choice may seem a stark one: lose power—and along with it the chance of making improvements to the criminal justice system—or make some small compromise with populism. The difficulty is that the relationship between political leadership and public opinion is a dynamic one: a politician who intends to respond to opinion (consciously or unconsciously) in fact be leading it. A small compromise forms part of a continuous process in which public opinion can be inflamed and then placated. The process can become truly dysfunctional, resulting in increasing expenditure and decreasing effectiveness. Sacrificing the rationality of penal policy in order to achieve other goals in other policy arenas strikes us as a form of populism—a classic example of the ends justifying the means.

By implication, penal populism involves the exploitation of *misinformed* opinion in the pursuit of electoral advantage. Central to our argument is that informed opinion would oppose policies that had limited social utility. Penal populism stands in sharp contrast to penal policies which, on the one hand, are grounded in principles of justice and which, on the other, draw on a corpus of sentencing research. Informed opinion would draw the same conclusions from this evidence base as those responsible for penal policy.

The possibility of misreading public opinion adds a further dimension to penal populism. As we shall demonstrate, many manifestations of penal populism are premised on assessments of public opinion which are oversimplifications or incomplete in some way. No criminal justice system in our experience has adequately conveyed (or, in some countries, even attempted to convey) to the public the reality of crime trends or the facts about criminal justice policy options with respect to offending. Public opinion is therefore often based on misrepresentation and misinformation; the result is that most people subscribe to a number of misperceptions about crime and punishment. Many politicians tend to ignore this reality (if, indeed, they are themselves aware of it all).

Second, the technology for assessing the views of the community may be very flawed. At its worst, this involves generalizing from the letters to politicians to the electorate as a whole. Politicians tend to make a lot of what they hear from their specific constituents, who are seldom representative of the general population. Even when a more systematic approach to sounding the views of the community is taken, opinion can be canvassed in a superficial way. Our view is that penal populism involves the frequent misreading of public opinion with respect to crime and crime control strategies. But we are not advancing an elitist argument that penal matters should be left exclusively in the hands of criminal justice professionals. On the contrary, we argue that it is essential to listen to the views of a *properly informed* public. This consultation must be thorough and involves more than simply a question on a public opinion survey (see Fishkin, 1995; Yankelovich, 1991 for a discussion of different methods of exploring public views).

Thus, attending to the *informed* views of the public is not the cause of the problem. On the contrary, it is essential that politicians should take intelligent stock of opinion. History is replete with legal reforms which failed because they were at odds with community views. It is the fatal combination of misreading public opinion and political opportunism that produces some of the punitive yet ineffective sentencing policies that have emerged in recent years. [Penal Populism: Examples from Five Countries]

To summarize, there are three essential elements to our definition of penal populism. Populist penal policies arise from one or more of the following:

- an excessive concern with the attractiveness of policies to the electorate;
- an intentional or negligent disregard for evidence of the effects of various criminal justice policies;
- a tendency to make simplistic assumptions about the nature of public opinion, based upon inappropriate methods.

Penal populism can therefore be contrasted with a more positive form of responsiveness to public attitudes, in which penal policies are developed that are consistent with (a) a careful reading of *informed* public opinion, (b) the results

### Penal Populism: Examples from Five Countries

- Mandatory sentencing: over the past decade, mandatory minimum sentences of imprisonment have been introduced in four of the five countries included in this survey. "Three Strikes" sentencing provisions that mandate very severe penalties for a third "strike" are the most visible example of mandatory sentencing laws.
- Disenfranchisement: Canada and almost all states prohibit inmates from voting while serving a felony sentence or while on parole. Ten U.S. states prevent ex-offenders who have completed their sentences from voting. Four million Americans (one in 50 adults) have lost the vote as a result of a felony conviction. Well over one million African-American males are disenfranchised, a rate seven times the national average.
- Undermining judicial discretion: the ability of judges to impose just penalties has been undercut in many jurisdictions by legislation which restricts judicial discretion.
- Transfer of juveniles: young offenders accused of a wide range of crimes have been transferred to be tried in adult courts and punished in adult correctional facilities.
- Criminalizing behavior of children: proposals have been advanced and legislation adopted that have lowered the minimum age of criminal responsibility.
- Criminalizing minor forms of anti-social behavior: legislation in several countries has banned "Squeegee kids" and criminalized "nuisance" behavior.
- Shaming and stigmatizing offenders: In some Australian states, young offenders undertaking community service have been obliged to wear distinctive clothing. In the United States, "shaming" penalties have been imposed which result in the public humiliation of offenders. In addition, some U.S. states permit members of the public to access other peoples' criminal records.
- Creation of boot camps: boot camps located in the wilderness and which impose harsh conditions on young offenders have been created in several jurisdictions.
- Educational restrictions: College students in the U.S. must disclose whether they have been convicted of a drug crime; the presence of a drug crime record may mean that they will be denied financial aid to attend college.
- Judicial "accountability": a proposed law in Canada would create a data-base specifically designed to embarrass judges who impose "lenient" sentences. Every time a sentence was imposed a record would be made of the name of the judge, the sentence imposed, and the maximum sentence permitted according to the Criminal Code.
- Increasing maximum penalties: although the statutory maxima are very high in most Western nations, new, higher maxima have been introduced or proposed in several nations.

of systematic criminal justice research, and (c) well-established, consensual principles of sentencing, such as proportionality and restraint with respect to the use of imprisonment.

At this point we present some information on trends with respect to crime and punishment in the five countries examined over the course of this volume. The purpose of presenting this material is to provide some context for the penal policy developments that are discussed in subsequent chapters.

## Recent Crime Trends

While criminal justice policies have varied across our countries, there has been considerable consistency with respect to the trends in official crime statistics. In general, crime rates rose steadily from the 1960s, then more sharply in the 1980s, before peaking in the early 1990s. Since then, crime statistics derived from police reports and from victimization surveys have tended to show stable or declining crime rates.

### United States

Both principal sources of crime statistics in the United States (the Uniform Crime Reports and victimization surveys) reveal that over the past few years crime rates have been declining. In the most recent year for which data are available (1999), crime rates dropped 7% over the previous year. This followed several years of decreases in the crime index.

Data from the National Crime Victimization Survey (NCVS) show that the decline in the crime rate began in 1994. In that year, just over 51 violent crime victimizations per 1,000 population were recorded. This statistic declined steadily over the next few years. In 1999, the violent crime rate was 37% lower than in 1994. Some specific crimes, including the most serious assaults, showed an even more dramatic decline. The number of aggravated assaults decreased by 38% and the number of robberies declined by a similar percentage. The homicide rate dropped from over 10 incidents to 7 incidents. In 1999, the FBI recorded 16,910 homicides, a 7% decline over the previous year. The number of homicides recorded in 1999 was the lowest in 30 years.

The U.S. property crime rate shows a somewhat more variable pattern, having risen and then fallen in the late 1970s and 1980s. However, it too has declined over the past decade. The index of total crime reached a 40-year peak in 1991, when the rate was 5,898 per 100,000 inhabitants.<sup>4</sup> That rate declined 4% over the next year and has declined every year since then. The 1997 rate was 17% lower than the 1991 statistic.

### Canada

Crime rates in Canada peaked in 1991, when the rate of police-reported crime hit 10,342 incidents per 100,000 population (Tremblay, 2000). The overall crime rate in Canada has declined each year since then, to 7,733 incidents per 100,000 population in 1999 (Tremblay, 2000). This represents a 23% decline over the seven years, not a dramatic decline, perhaps, but a clear reversal of the trend to that point. In the seven-year period *ending* in 1991, the crime rate had climbed by 23%. The crime rate recorded in 1999 was the lowest since 1978.

The violent crime rate is, of course, of greater concern to the public than the rate of all criminal incidents (cf. Zimring and Hawkins, 1999; Roberts and Stalans, 1997). In Canada, this category of crime accounts for approximately 10% of all incidents recorded by the police. The trends in violent crime rates

mirror those of the overall crime picture. The peak occurred in 1991 and began to decline the following year. Over the period 1991–1999, violent crime statistics collected by the police declined by 10%. While this is less striking than the decline of total crime, the increase has also been steeper: over the seven-year period ending in 1991, violent crime had increased 55%. Indeed, the official violent crime rate increased by 67% over the decade of the 1980s. The homicide rate in 1999 was the lowest in almost 40 years, following a steady decline since the mid-1970s (Fedorowycz, 2000). Property crime also peaked in 1991 and declined by 26% over the period 1991–1999. In the seven years ending in 1991, property crime rates had increased by 11%.<sup>5</sup>

### United Kingdom

The United Kingdom is served by three separate criminal justice systems, respectively covering England and Wales, Scotland, and Northern Ireland. In the interests of simplicity we present figures only for England and Wales (see Home Office, 2001c). Crime rates rose rapidly in the late 1980s and early 1990s, peaking in 1992 at 5.5 million. This increase represents a rate per 100,000 population of 10,535. Recorded crime fell successively over the following six years. Changes in both counting rules and accounting periods make it hard to provide precise comparisons since then, but there appears to have been a small increase in crime rates. Taking into account changes in counting methods, recorded crime figures have held steady, with a rise in violence offset by a fall in property crime. The 12-month period ending in September 2000 is some 20% lower than the annual figure in 1992. This yields a rate per 100,000 population of 9,784. (It can be estimated that this figure would have been 8,583 per 100,000 according to the previous counting rules.) These trends are broadly confirmed by the British Crime Survey (BCS), a victimization survey broadly comparable to the National Crime Victimization Survey in the United States. The BCS has been conducted since 1981, usually biennially and from 2000 on an annual basis (see Kershaw et al., 2000). The BCS shows that crime rose throughout the 1980s and early 1990s. It suggests that crime peaked in 1994.<sup>6</sup> Between 1995 and 1999, crimes measured by the BCS fell by one-quarter, a little more steeply than the fall in police figures.

### Australia

Crime trends in Australia present a similar picture to other countries. A substantial rise in recorded crime throughout the 1980s continued a trend which began in the 1970s. The trend is observed in both recorded violent and property crimes. The 1990s “slowdown” or plateau observed in other countries is also clearly evident in Australia. According to police figures, most crime rates remained stable from 1993 to the end of the decade. However, robbery and assault continued to rise moderately until 1998 and then leveled off. The trend according to the available comparative figures in Australia’s national victimization surveys was also fairly stable and slightly downward from 1993. Victimization