



No.4

How the public sees sentencing: an Australian survey

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This is the fourth report in the series on Trends and Issues in Crime and Criminal Justice produced by the Research and Statistics Division of the Australian Institute of Criminology and it is the second dealing specifically with the important question of public attitudes to crime and punishment. A report in this series published in October 1986 gave the basic result of a large nationwide survey and indicated the public perception of the relative seriousness of a number of criminal offences.

This report moves to the next logical step and shows the actual sentences or penalties that the community believes should be imposed on persons convicted of those offences. It also shows some difference in the level of punitiveness expressed by identifiable sections of the community.

Our system of justice does not, of course, allow private citizens to punish criminal offenders, but the reliable data on public attitudes included in this report should be of assistance to law makers and judicial officers in their difficult tasks.

David Biles
Acting Director

The Questions Asked

What do you think would be the appropriate sentence to be served by a person convicted of each of the following offences:

1. A person breaks into a home and steals \$1000 worth of household goods.
2. A doctor cheats on claims he makes to a Commonwealth health insurance plan for patient services for an amount of \$5000.
3. A parent beats his child with his fists. The child is hurt and spends a few days in hospital.
4. A person smuggles heroin into the country for resale.
5. Two adult males willingly engage in a homosexual act in private.
6. A factory knowingly gets rid of its poisonous waste in a way that pollutes the city water supply. As a result one person dies.
7. A person cheats on their Commonwealth income tax return and avoids paying \$5000 in taxes.

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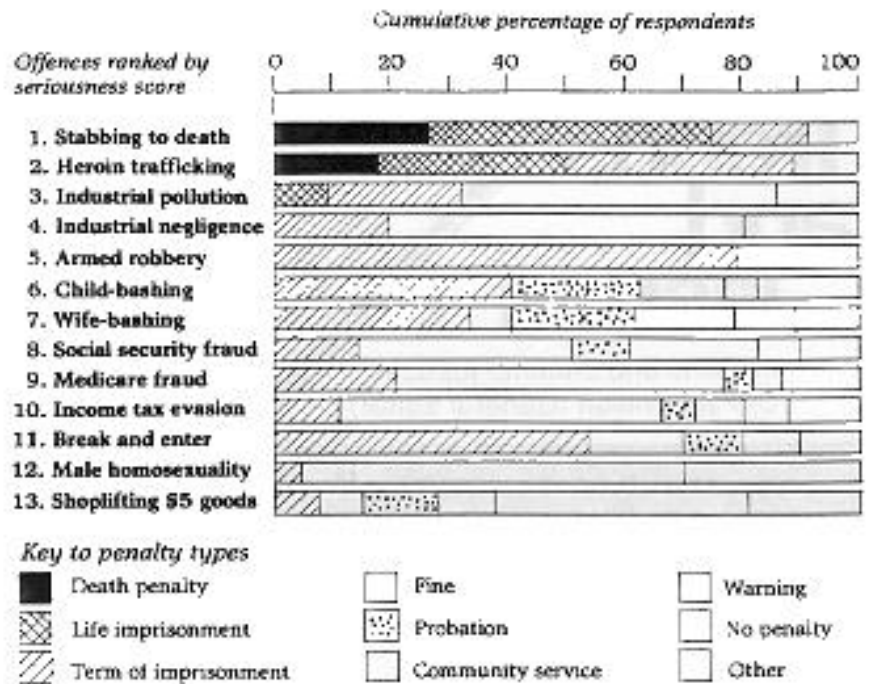
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8. A person steals \$5 worth of goods from a shop.
9. A man beats his wife with his fists. As a result she spends a few days in hospital.
10. A person stabs a victim to death.
11. A person illegally receives social security cheques worth \$1000.
12. A person armed with a gun robs a bank of \$5000 during business hours. No one is physically hurt.
13. A worker had his leg caught in an unguarded piece of machinery because the employer knowingly failed to provide safety measures. As a result the worker lost his leg.

Introduction

One in three Australians believe that business executives whose companies seriously pollute a city water supply should be sent to prison. Doctors who defraud Medicare should, according to our national sample, be fined up to ten times the sum they fraudulently acquire. In addition, community service orders were seen as alternatives to imprisonment for persons convicted of violence in the family as well as those convicted of illegally receiving social security cheques or committing burglary. Petty shoplifters, most of the sample believed, should be given a stern warning by police rather than wasting court or corrective services' time and

Figure 1 Percentage distribution of sentence types preferred by survey respondents for selected offences



resources. These are some of the major findings from the Australian Institute of Criminology's national survey of sentencing.

In Australia the systematic collection of comments and attitudes on crime and punishment is a rare event.¹ Media polls often trivialise and sensationalise public opinion on criminal justice matters and this is very clearly seen directly after a horrendous crime, when views on the death penalty are sought.² So, in order to obtain a more balanced overview of public opinion on crime and punishment, the Institute commissioned a survey in which a

randomly selected cross-section of 2551 members of the Australian public was asked the appropriate sentence for each of the thirteen 'offences' described to them.

As the results presented here clearly show, there is no single public view of sentencing, but many different views. These differences can result from variations in attitudes to the seriousness of crimes, the culpability of offenders or the punitiveness of the sentences (i.e. some individuals rate a crime more seriously than others do while some will differ in their assessment of culpability of an offender); and, even where individuals

Table 1 Most commonly selected sentences options for selected offences

Offence	Preferred sentence options (percentages)								
	No penalty	Warning	Fine	Probation	CSO	Prison	Life	Death	Total
1. Stabbing to death	-	-	-	-	-	17	53	29	100
2. Heroin Trafficking	-	-	-	1	2	42	36	18	100
3. Industrial pollution kills	-	2	57	2	3	28	6	-	100
4. Industrial negligence injury	1	4	66	3	2	22	2	-	100
5. Armed robbery	-	1	5	3	3	85	3	-	100
6. Child bashing	1	8	4	24	13	49	2	-	100
7. Wife bashing	1	12	7	23	17	40	1	-	100
9. Medicare fraud	-	3	60	6	6	24	-	-	100
10. Income tax evasion	3	9	61	7	8	13	-	-	100
11. Break and enter	-	1	17	11	11	60	-	-	100
12. Male homosexuality	72	10	3	4	3	6	-	-	100
13. Shoplifting (\$5)	3	51	11	15	11	8	-	-	100

Table 2 Actual sentencing patterns for selected offences

Offence and statistical category			Preferred sentence options (percentages)						
			Level of court	Warning	Fine	Probation	CSO	Prison	Life
1. Stabbing to death	Murder	Higher courts	-	-	-	-	-	24	76
2. Heroin Trafficking	Drugs import / export	Higher courts	-	-	-	1	2	80	-
3. Industrial pollution	Pollution of waters	Industrial courts	2	57	2	3	-	-	100
4. Industrial negligence	Industrial negligence	Industrial courts	4	66	3	2	-	-	100
5. Armed robbery	Armed robbery	Higher courts	1	5	3	3	80	-	100
6. Child bashing	Assault child	Lower courts	8	4	24	13	6	-	100
7. Wife bashing	Assault ABH	Lower courts	12	7	23	17	12	-	100
8. Social security fraud	Fraud and misappropriate	Higher courts	3	60	6	6	29	-	100
9. Medicare fraud									
10. Income tax fraud									
11. Break and enter	Break, enter and steal	Lower courts	1	17	11	11	-	-	100
12. Male homosexuality	No offence	Lower courts	10	3	4	3	3	-	100
13. Shoplifting (\$5)	Shoplifting								

Note:

National court statistics are not yet available for comparative purposes. With the exception of the two industrial offences, these data are the percentages of persons sentenced in the various statistical categories in New South Wales in 1983.³ The New South Wales sentencing patterns may not exactly represent those in other jurisdictions, but since they constitute almost 40 per cent of court cases in Australia they can be taken as an approximate guide. The corporate offence data were estimated from Braithwaite and Grabosky, which suggests that although 99 per cent of factory pollution or negligence cases result in a warning only, the most serious cases (such as those described here) would almost certainly result in a fine.⁵

agree on seriousness of offence and culpability of offender, some may be more punitive in sentencing than others.

In combination, these three factors lead to wide differences of opinion between different community groups, and we set out below both the ranges of attitudes in the community as a whole, and the differences in attitudes between the various components of the Australian public.

The Results

The average response shows broad agreement with typical court decisions including a tendency to punish violent offenders by way of prison sentences and to punish property offenders with non-custodial penalties, particularly fines (see Figure 1 and Tables 1 and 2). But there were significant areas in which public opinion appears to be at odds with court practice, sometimes being more punitive, sometimes less.

'Life' for murder and heroin trafficking

Life in prison is seen by the majority of the sample as appropriate for persons convicted of stabbing to death or of heroin trafficking. Significantly, only one in four respondents called for

the death penalty for the stabbing and one in six for the drug offender. Table 2 shows that the courts also favour life imprisonment for murder, and it is not unknown for such sentence to be imposed on major drug traffickers. In general, however, 'head' sentences of ten years and above are commonly preferred over the indefinite life sentences for the drug offences, and the effective time to be served may not be much less than if the original sentence were 'life'.⁴

Severe punishments for pollution

Respondents were distinctly more punitive than our current judges in sentencing persons convicted of the two corporate offences, namely, factory pollution and employer negligence causing severe injury to a worker. The most common sentence suggest was a fine of at least \$50 000, but one in three demanded prison sentences where a person died from pollution, and one in five would also sentence the defendant to prison for causing the loss of an employee's leg. We also found that one in twelve respondents specified life imprisonment for the fatal pollution offence which, from other studies conducted by the Institute, is far in excess of any penalty ever handed

down by an Australian court for any pollution offence. An industrial negligence case described in exactly the same terms as in our survey resulted in a fine of \$250 in the Industrial Court of South Australia in 1982, while fines of up to \$10 000 have been imposed for potentially fatal pollution offences.^{5,6}

Prison for armed robbery, domestic violence and burglary

Imprisonment was the almost unanimous choice of respondents for armed robbery, and was also the most common sentence type for domestic violence and burglary. Two to five years gaol were suggested most frequently for armed robbers (25 per cent of respondents), while up to two-year terms were specified for domestic violence and burglary. The less punitive interviewees clearly regarded both prison and financial penalties as inappropriate for domestic violence — since they would often penalise the victim as well as the offender — and about one in three preferred terms of probation or community service orders. The courts appear to agree with this line of reasoning, except in the most serious cases.

In regard to burglary of \$1000 of property, the community generally perceived this as a very minor offence

in terms of seriousness. However, the level of punishment preferred by the respondents was quite high: commensurate, in fact, with offences rated three times as serious. Institute studies show that actual sentences of two years in prison for burglary are generally meted out by the courts only for persistent offenders,⁷ and Table 2 shows that community-based sentences are preferred in two thirds of burglary cases in the lower courts.

Heavy fines for white-collar crime

Although the \$1000 social security offence is regarded as more serious than \$5000 medical or tax frauds, the offender appears to be more leniently treated by the public. Almost two fifths of the sample would give a person who commits a social security fraud a non-custodial sentence, while about the same proportion would hand down a fine, generally within the range \$1000-\$2000. Over one fifth of the sample would allocate a community service order to the offender. In contrast, over half the sample would fine the other fraud offenders, with the most likely ranges being \$5000-\$10 000 in the case of tax fraud, and \$5000-\$50 000 for the doctor.

Warning preferred for petty shoplifters

In the case of a \$5 shoplifting offence, the respondents were mostly in favour of a police warning, with a wide range of other options supported by a small but not insignificant number of respondents. In view of the amount stolen (\$5) the courts would probably agree with the majority of our respondents in this case.

Differing opinions about homosexuality

The consenting adult male homosexuals, whose activities are not illegal in most States of Australia, would be given no penalty by almost 60 per cent of the sample. By contrast, one in twenty would send them to prison.

Socio-Demographic Correlates of Sentencing Preferences

Further analysis was conducted to determine which socio-demographic variables (age, sex, education, voting preference, etc.) were relevant to the determination of an individual's choice of sentence. The major findings were as follows:

The less-educated are more punitive

The variable eliciting the most systematic differences was the respondent's education level. For ten of the thirteen offences, significant trends were evident across educational groups with regard to sentencing preferences. The only offences where education did not appear to influence opinions were shoplifting, breaking and entering, and armed robbery. For all other offences, the trend was for individuals with higher education to advocate much more lenient sentences

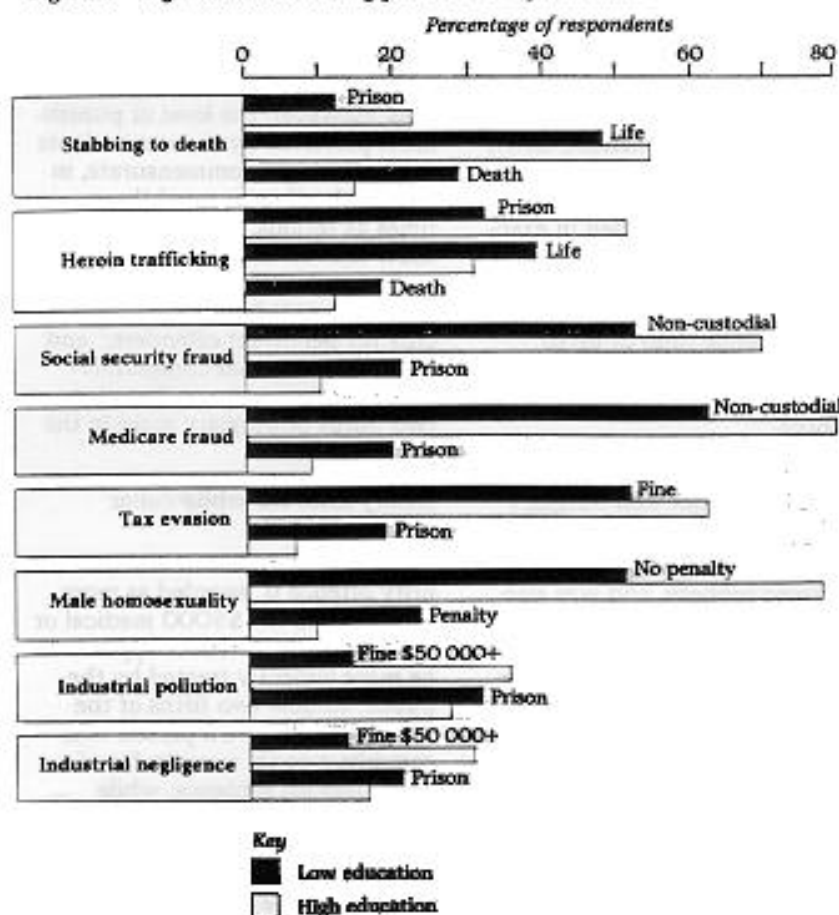
than those with less formal education

The first point to note in Figure 2 is the relative disinclination of the better educated to use the death penalty for stabbing and heroin trafficking.

Of particular interest is the fact that for the offences involving cheating in social security, Medicare or taxation, there was a consistent trend of higher education groups imposing fines, with a slightly lower propensity for imprisonment. For example in the case of tax evasion, 19 per cent of the primary education group advocated imprisonment, but only 6 per cent of the graduates. A similar pattern was evident for factory pollution and employer negligence.

The offence which ranks next to last in seriousness — homosexuality — is the one which shows the greatest division of all between educational groups. The result for the primary education group was that 52 per cent advocated 'no penalty', while 25 per cent advocated imprisonment; of the graduates, however, 79 per cent

Figure 2 Significant sentencing preferences by education



advocated 'no penalty' and only 9 per cent advocated imprisonment.

Males usually more punitive than females

Males are more in favour of the death penalty than females, for both the stabbing and heroin trafficking offences. Males are also more punitive than females for the offences of burglary and male homosexuality. On the other hand, females are slightly more punitive than males for the offences of factory pollution, employer negligence and child beating. Surprisingly, males and females gave similar sentences for husbands guilty of wife beating.

Complex differences between age-groups

Older respondents were more likely to advocate the death penalty for heroin trafficking but no age differences emerged when sentences for the stabbing offence were analysed. The over 60s are the most punitive age group with respect to social security fraud, wife beating, tax evasion and homosexuality. They are also more likely to demand imprisonment for the fraudulent offences and to penalise homosexuals. Teenagers held similar views in relation to wife beating and tax evasion.

Lower income groups more punitive

To some extent, income is positively correlated with education level, and the results confirm that generally the higher one's income the less likely it is for imprisonment to be advocated. A significant difference however, emerges in regard to tax evasion, with the lower income groups more inclined to imprison and less inclined to impose fines that the higher income groups.

Political views

Virtually no differences exists between ALP voters and Liberal voters. National Party voters were more punitive of heroin trafficking and

homosexuality, but were less inclined to advocate prison terms for employer negligence. Democrat voters, while generally not advocating punitive sentences, were *more* inclined to advocate a prison term for employer negligence.

Church influence

Churchgoers were slightly less inclined than non-churchgoers to advocate the death penalty both for stabbing to death and for heroin trafficking. On the other hand, churchgoers were more inclined to impose penalties on homosexuals than were non-churchgoers.

Figure 3 Significant sentencing preferences by sex

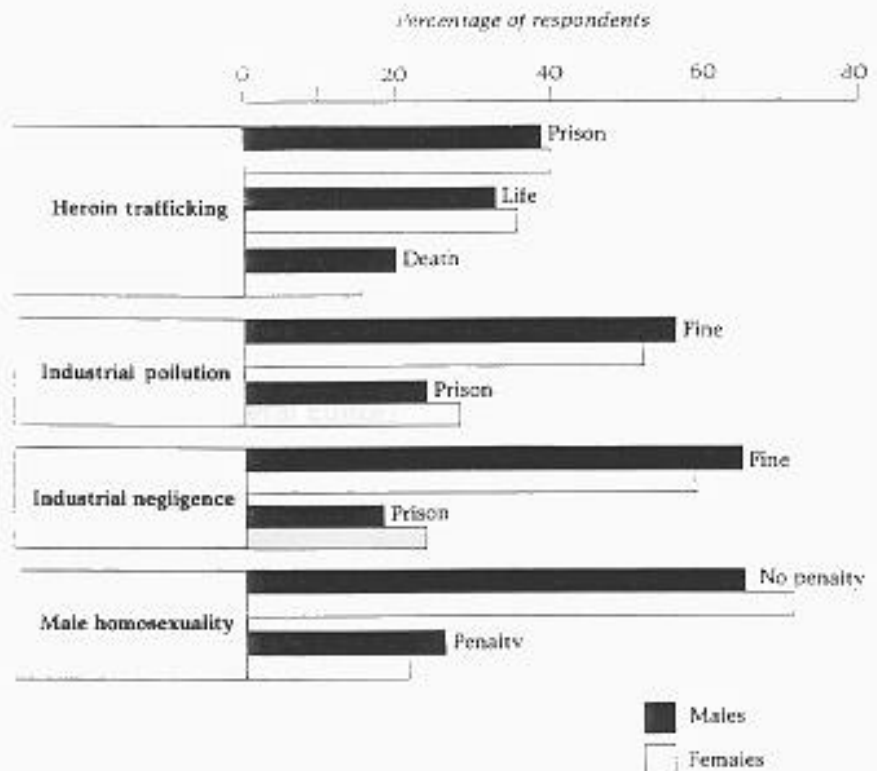
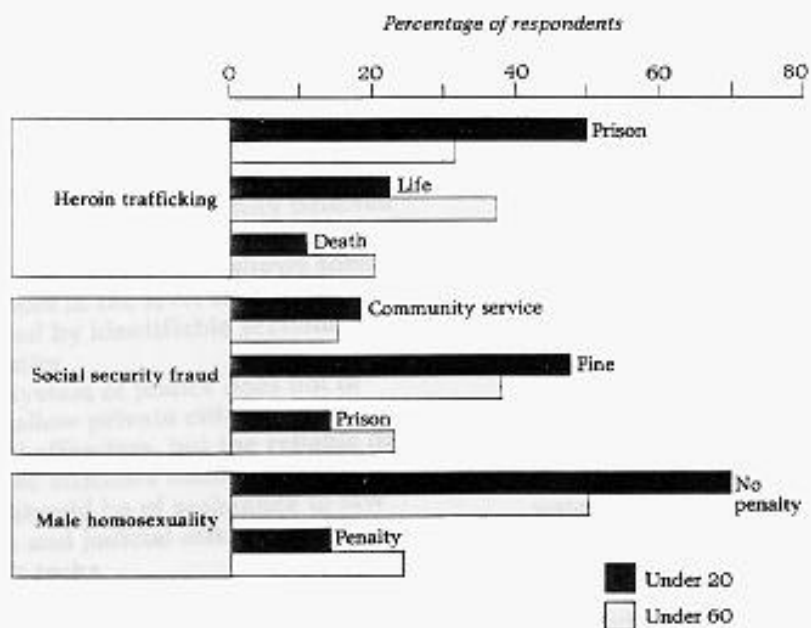


Figure 4 Significant sentencing preferences by age



Geographic variations

Rural residents tend to be more punitive than city dwellers for stabbing, child beating, heroin trafficking, shoplifting and homosexuality.

Summary and Conclusions

What do these results tell us about the public's opinions of our courts' sentencing patterns. It is clear that there is no single set of views regarding punishment which is shared by all sections of the community. The better educated tend to be more lenient than those with lower levels of education. The elderly tend to be more punitive while males tend to be more punitive than females. The better-off tend to be more lenient than the less well-off.

Politically, voters for the two major parties - the ALP and the Liberal Party - do not differ significantly in their views on sentencing. Political campaigns based on "Law and Order" which have as their hallmark punitive sentencing policies will not affect supporters of either party in markedly different ways. But National Party supporters, generally more punitive than their Labor and Liberal colleagues, may be attracted by the rhetoric of punishment.

Punitiveness though, is not a characteristic of Australians. Though media headlines often suggest that Australians are harsh and uncompromising on issues relating to punishment - especially when violent crimes are committed - the data from this survey suggest otherwise. For example, even for the two most serious offences of stabbing to death and heroin importation, only a minority of the sample suggested that the appropriate penalty should be the death penalty.

The diversity of opinions regarding sentencing revealed in our study indicates an unexpected sophistication in public attitudes about crime and punishment. Significant

numbers of Australians are willing to suggest non-custodial alternatives to imprisonment: fines, probation and community service orders. The complexity of the sentencing process, often unrecognised by thunderous editorials in tabloid newspapers, is apparently acknowledged by the public at large.

NOTES

1. See *Trends and Issues in Crime and Criminal Justice No.2*. 'How the Public Sees Crime: An Australian Survey', based on the same McNair Anderson survey as the results presented here.
2. See *Trends and Issues in Crime and Criminal Justice No.3*. - 'Capital Punishment.'
3. New South Wales Bureau of Crime Statistics and Research, *Court Statistics 1983* Appendices III and IV.
4. J. Walker and D. Biles, Reports of the Annual National Prison Census entitled *Australian Prisoners*, Australian Institute of Criminology, Canberra.
5. J.B. Braithwaite and P. Grabosky, *Occupational Health and Safety Enforcement in Australia*, Australian Institute of Criminology, Canberra, 1985.
6. P. Grabosky and J.B. Braithwaite, 'Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies', Oxford University Press and Australian Institute of Criminology, Melbourne, 1986.
7. See I. Potas, 'Sentencing for Break, Enter and Steal in New South Wales', in S.K. Mukherjee and L. Jorgensen (eds), *Burglary: A Social Reality*, Australian Institute of Criminology, Canberra, 1985.



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