

PUBLIC OPINION AND SENTENCING FOR MURDER

*An Empirical Investigation of Public Knowledge and Attitudes in
England and Wales*

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SUMMARY

Background

With the possible exception of genocide, murder is widely regarded, by members of the public as well as by lawyers, as the most serious offence in the criminal calendar, and it continues to attract great public interest. Reflecting their most serious nature, murder cases continue to attract considerable coverage in the media.

The death penalty for murder was wholly abolished by the Murder (Abolition of Death Penalty) Act 1965 after it became apparent that the distinction between capital and non-capital cases was unsatisfactory. Since then, trial judges have been required to impose a life sentence on all persons convicted of murder. It was assumed that anything less than automatic indefinite imprisonment would undermine public confidence in the criminal justice system. This assumption has never been tested, however. One of the principal goals of the current research project was to explore the consequences on public opinion, of abolishing the mandatory life sentence for murder.

The mandatory life sentence effectively consists of two distinct stages. The first is now known as the “minimum term” – formerly referred to as the “tariff” – which is a period of imprisonment that is intended to reflect the seriousness of the murder. In the vast majority of cases this term must be served in full, though it is possible for a prisoner to be released (on licence) before the expiry of the minimum term in very exceptional circumstances. When the minimum term has expired, the offender can be considered for release on licence but this will depend on the perceived risk that s/he poses to the public. In other words, release on licence is not automatic on expiry of the minimum term; a murderer will be detained in prison until s/he no longer poses an unacceptable danger to the public.

One specific aspect of the murder law that has caused recent controversy and public debate relates to what is often called “joint enterprise” murder – i.e. when two people intend that a crime should be committed and one of them is present whilst the other commits murder but makes no attempt to prevent him from so doing. This has risen, for example, in gang killings where one or more members of a gang are present at the scene of a murder which is carried out by another member. Should those who make no attempt to prevent the killing themselves be guilty of murder? There seems to be some uncertainty about how a court would regard their liability: much is likely to depend on what the jury thinks the fellow gang members expected and that in itself will probably be uncertain.

Purpose of Research

The main purpose of the present research program was to test empirically the assumption that the British public is firmly opposed to any alternative to the current sentencing arrangements for murder. Specifically, we explored public opinion towards the sentencing of cases of murder. This represents the first systematic attempt to map put the

contours of public attitudes to this critical issue in criminal justice in this or any other jurisdiction. A secondary aim of the research was to gauge the public's knowledge and understanding of the mandatory life sentence and the way in which it operates in practice. In pursuing these aims we also very briefly took the opportunity to gauge public opinion on "joint enterprise murder".

Methodology

The project employed both quantitative and qualitative approaches to research. There were two stages to this research project. The first was quantitative in nature. The fieldwork took place between 12th and 24th May 2010, and 1,027 face-to-face interviews were conducted. Interviewing took place in 102 sampling points across England and Wales. Each sampling point was a Census Output Area, and these were selected from a list of all Output Areas, stratified by Government Office Region, local authority, urban/rural character and Index of Multiple Deprivation score. The target was for ten interviews to be conducted in each sampling point, with quota controls set for age, and gender interlocked with working status.

The second stage involved qualitative research. One of the principal (and predictable) results of the quantitative survey was that public support for the mandatory sentencing of convicted murderers was highest in what might loosely be called the more serious cases. Thus, the survey organization Plus Four was engaged to convene six focus groups to facilitate further exploration of this phenomenon -- two were held in Leeds, two in Hinckley, and two in Bath.

Findings

A. Summary of Public Knowledge Trends

Respondents were asked a series of questions about murder-related statistics. Responses revealed that many people have very skewed perceptions of the most important murder-related statistics.

For example most people believed (erroneously) that the murder rate had increased in recent years. Only approximately 5% of the sample chose the correct answer, that murder rates had declined. Approximately one third of respondents believed (erroneously) that the number of murders had increased greatly. In fact almost two-thirds of the sample held the view that murder rates had increased over the decade.

By a margin of approximately two to one, however, respondents were more inclined to believe that the murder rate is higher here than in other western nations. Thus almost a third believed that the rate was higher in England and Wales compared to 18% who felt that it was lower.

With respect to sentencing, perceptions are systematically biased towards seeing the system as being more lenient than is in fact the case. Statistics provided to us by the

National Offender Management Service at the Ministry of Justice show that, as at 5 February 2010, between the years of 2000 and 2009, on average, offenders sentenced to a mandatory life sentence spent 16 years in prison before being released on licence. There was a clear tendency for the public to under-estimate the amount of time served in custody: approximately four respondents in ten believed that offenders convicted of murder spent ten years or fewer in prison.

These misperceptions of current trends must be borne in mind when we consider public attitudes to sentencing murder – and it is to those data that we now turn.

B. Summary of Public Attitudes

Fewer than 1 respondent in 5 held the view that sentencing cases of murder was about right

We found no evidence of overwhelming or widespread public support for automatically sending all convicted murderers to life imprisonment.

We found considerable evidence that the public perceive significant variations in the seriousness of different murder scenarios. (We did not have the opportunity to exhaustively determine the extent to which there is any consensus amongst members of the public as to which kinds of murder are more serious than others.)

Predictably, the level of public support for a life sentence increased in what was regarded as the more serious murder scenarios.

The public seem to have only a rather vague understanding of the current arrangements under which convicted murderers are sentenced to life imprisonment. Although there is a general awareness that most offenders are released into the community after serving a term of imprisonment, our research suggests there is either no knowledge of the current process by which offenders are given a minimum term, or positive misunderstanding of this aspect of the sentence.

Our research suggests the public's knowledge and understanding of the arrangements by which convicted murderers are released on licence also varies, but we suspect that it is rare to find someone with an accurate and detailed knowledge.

There seems to be a division of public opinion as to whether those convicted of the more serious murders should or should not be given the possibility of being released on licence after they have served a sufficient term of imprisonment which reflects the gravity of their offence. We did not have the opportunity to assess the extent of support for or against this on a national scale.

We found evidence of a general antipathy towards the inclusion of the adjective "life" in the sentence label.

We found evidence that in relation to the more serious murders those members of the public who favour release at some stage are content for sentencing judges to be given some measure of discretion, but would like that discretion to be limited or controlled, either through legal guidelines or through minimum and maximum periods of imprisonment.

Finally, we explored public reaction to what is known as *joint enterprise murder*. This refers to convictions for murder where two people intend that a crime should be committed and one of them (D) is present whilst the other (P) commits the fatal act and D makes no attempt to stop him. There may be some uncertainty about precisely what D expected P to do and the jury will have to draw what they think is the appropriate inference from the facts. Quite frequently, D argues that he did not expect P would kill anyone. Here the results are crystal clear: the vast majority of both samples rejected a conviction for murder, even having been told that the lesser and included offence of manslaughter carries a less severe sentence. Only approximately one fifth of both samples favoured a murder conviction.

Conclusions

There is cause to doubt the assumption that the overwhelming majority of the public support the current law that *all* convicted murderers should *automatically* be sentenced to life imprisonment. Since the level of public support for the mandatory life sentence was greater in the more serious murder scenarios, we think that more research should be undertaken to determine whether there is a sufficient degree of public consensus that the mandatory sentence should be retained for a narrower and particularly serious group of murders.

The extent of the public's misunderstanding and the inaccuracy of their beliefs about murder and the mandatory life sentence is significant. We think this should be addressed, and we would, for example, urge the Sentencing Council of England and Wales and other agencies which have responsibilities for promoting public awareness of sentencing, to include murder in public legal education initiatives. Greater awareness and better understanding of the State's response to murder is likely to produce greater confidence in the criminal justice system.

REPORT

Introduction

With the possible exception of genocide, murder is widely regarded, by members of the public as well as by lawyers as the most serious offence in the criminal calendar, and it generates great public interest. Reflecting their most serious nature, murder cases continue to attract considerable coverage in the media. Some commentators have argued that murder is a unique crime because (a) unlike any other offence, there can be no reparation of the harm it causes, and (b) reflecting a religious attitude towards homicide, the deliberate taking of a human life is a wrong perpetrated against a “higher being”; unlike other offences, it is not simply a wrong done against another person (see Fletcher, 2000).

In contrast to almost all other crimes - where the law provides a maximum possible punishment for convicted offenders - for a conviction for murder in England and Wales there is no discretion, a life sentence must be imposed. Thus, the way in which society deals with those who commit murder has a special significance, not solely for lawyers and politicians but also for the public in general. At the same time, it is important to note that much concern and reservation has been expressed about the current response of the criminal justice system, and various aspects of the law have come under scrutiny in recent decades.¹ These reviews have recommended reforms to both the way in which the law defines and punishes murder.

Background to the law and sentencing of homicide in England and Wales

Prior to the Homicide Act 1957, all persons convicted of murder in England and Wales were sentenced to death. The 1957 Act introduced a distinction between “capital” and “non-capital” murders, with the consequence that only the former continued to attract the death sentence; non-capital murderers were subject to a mandatory sentence of life imprisonment. The death penalty for murder was wholly abolished by the Murder (Abolition of Death Penalty) Act 1965 after it became apparent that the distinction between capital and non-capital cases was unsatisfactory. Since then, trial judges have been required to impose a life sentence on all persons convicted of murder. It was assumed that anything less than automatic indefinite imprisonment would undermine public confidence in the criminal justice system. Until now this assumption has never been tested, however. One of the principal goals of the current research project was to explore the consequences on public opinion of abolishing the mandatory life sentence for murder.

¹ See, for example, Select Committee of the House of Lords, *Report on Murder and Life Imprisonment*, volumes 1 – 3, HL Paper 78 (1989) London: HMSO; and Committee on the Penalty for Homicide, *Report* (1993) London: Prison Reform Trust.

The mandatory life sentence effectively consists of two distinct stages. The first is now known as the “minimum term” – formerly referred to as the “tariff” – which is a period of imprisonment that is intended to reflect the seriousness of the murder. In the vast majority of cases this term must be served in full, though it is possible for a prisoner to be released (on licence) before the expiry of the minimum term in very exceptional circumstances. When the minimum term has expired, the offender can be considered for release on licence, but whether release occurs will depend on the perceived risk that s/he poses to the public. In other words, release on licence is not automatic on expiry of the minimum term; a murderer will be detained in prison until s/he no longer poses an unacceptable danger to the public.

Until quite recently, the Home Secretary was responsible for setting the minimum term and deciding whether to release a murderer if recommended to do so by the Parole Board. But following rulings in the European Court of Human Rights, these responsibilities were removed from the Home Secretary. In *R (Anderson) –v- Home Secretary*² the Court held that the Home Secretary’s power to fix the minimum term was incompatible with article 6(1) of the European Convention on Human Rights (the right to an independent and impartial tribunal), and in *Stafford –v- UK*³ the Court stated that mandatory lifers are entitled to a review of the legality of their continued imprisonment under article 5(4).

Schedule 21 of Criminal Justice Act 2003

In response to this latter decision in the European Court, the then Home Secretary sought to reassert political influence in these matters. This resulted in section 269 of the Criminal Justice Act 2003 being passed which requires the sentencing court in murder cases to have regard to the principles contained in Schedule 21 to the Act when determining the minimum term. This provision of the Act identifies three starting points: - a whole life (i.e. the murderer must spend the rest of his/her natural life in prison) in exceptionally serious cases, as in the murder of two or more people where each murder involves premeditation, torture of the victim, or sexual or sadistic conduct; the sexual or sadistic murder of children; murder to advance a political, religious, racial or ideological cause; or murder by a previously convicted murderer.

For particularly serious cases the starting point is 30 years – the murder of a police or prison officer in the course of their duty; murder involving a firearm or explosive; murder for gain; murder that is intended to obstruct or interfere with the course of justice; a sexual or sadistic murder; the murder of two or more people; murder aggravated by racial, religious or sexual orientation; or any of the murders which would point to a whole life tariff if committed by a person under 21 years at the time of the offence. Finally, the starting point is 15 years for murders not falling within the other two categories. These provisions are not meant to be definitive or absolutely mandatory – the factors identified should “normally” indicate such a starting point: the judge should have regard to them but need not follow them, but if the court departs from them it must explain the reasons

² [2002] UKHL 4.

³ (2002) 35 EHRR 121.

for so doing.⁴ The sentencing judge is then entitled to take into account other aggravating and mitigating factors⁵ in determining the minimum term, which is announced in court.

Role of the Parole Board of England and Wales

Just before the minimum term expires, prisoners can formally apply to the Parole Board for release on licence. The test for release is whether the Board is “satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined”.⁶ The Board may direct the Secretary of State for Justice to release the prisoner on licence, or it may reject the prisoner’s application. The Secretary of State cannot order release if the Parole Board has not directed him or her to do so. The majority of convicted murderers serve a lengthy period in prison and are then released into the community “on licence”, i.e. under supervision and subject to various constraints. The life licence is indefinite; it remains in force until the licensee dies.⁷ It stipulates that the licensee must comply with certain conditions such as reporting to a supervising probation officer, and having approved accommodation. The licence is revocable in the event that the licensee breaches its terms, and licensees are liable to be recalled to prison. A small minority of offenders convicted of murder remain in prison for the remainder of their natural lives.

Law Commission Proposals

Like most, if not all, jurisdictions, the criminal law of England and Wales recognises a distinction between what are regarded as the more serious homicides – namely murder (which attracts a mandatory life sentence) - and those which are less serious – namely manslaughter (which carries a discretionary life sentence). Murder requires an intent either to kill or to cause serious injury to someone, together with an absence of any recognized mitigating factor (i.e., that the killing was provoked, that the killer’s responsibility for his actions was substantially impaired, or that the killing was in pursuance of a suicide pact). If one of these mitigating factors is present, or if the offender lacked an intent to kill or cause serious injury (but fulfilled certain other criteria which rendered the homicide sufficiently culpable, such as killing through gross negligence or recklessness, or in the course of some other crime), then the appropriate offence of conviction should be manslaughter.

In 2003, the Law Commission of England and Wales was asked by the government to review areas of the homicide law which had attracted criticism and controversy, namely the partial defences of provocation and diminished responsibility (which, if successful, reduce the offence to manslaughter), and the use of excessive force when acting in self-defence (which is no defence at all). After a consultation process the Law Commission concluded that “[t]he present law of murder in England and Wales is a mess. There is both a great need to review the law of murder and every reason to believe that a comprehensive consideration of the offence and the sentencing regime could yield

⁴ *Sullivan* (2005) 1 Cr App R 23.

⁵ For example, there should be a discount for pleading guilty.

⁶ Section 28(6)(b) of the Crime (Sentences) Act 1997.

⁷ Section 31(1) of the Crime (Sentences) Act 1997.

rational and sensible conclusions about a number of issues. These could include the elements which should comprise the substantive offence; what elements, if any, should elevate or reduce the level of culpability; and what should be the appropriate sentencing regime” (Law Commission, 2004, para 2.74). In 2005 the government responded to the Law Commission’s proposals by asking the Law Commission to carry out a wider review of the homicide law, but unfortunately the terms of reference expressly excluded consideration of the mandatory life sentence (Law Commission, 2006, para 1.1).

Over the years, commentators have argued that the current definition of murder is both over-inclusive (for example, by allowing an intent to cause serious harm to suffice and thereby treating lesser cases as murder), and over-exclusive (for example, by insisting that the killer intended death or serious harm, when the label “murder” should apply to some killers who are merely reckless as such injury or homicides which are committed in certain circumstances, such as in the course of other serious offences).⁸ In its review the Law Commission (2006, para 9.5) concluded that an intent to cause serious harm per se is insufficient, and recommended that for the worst types of criminal homicide (which it described as “murder in the first degree”) the killer should either intend to kill or cause serious harm whilst also being aware of a serious risk of causing death.

Following publication of the Law Commission’s report the Ministry of Justice assumed responsibility for the review of the homicide law, and published proposals to amend the partial defences of provocation and diminished responsibility, the crime of infanticide, and the law regarding complicity, many of which were set out in the Coroners and Justice Bill. The Coroners and Justice Act 2009 received royal assent in December 2009 and changes to the substantive homicide law – more particularly, to the partial defences of provocation and diminished responsibility - are due to come into force on 4th October 2010. Again, however, the sentencing arrangements for murder have been excluded from discussion because the assumption continues to be made that there is overwhelming public support for the existing penal law, and that any weakening of the mandatory sentence might be changed would cause a loss of public confidence in the criminal justice system.

Joint enterprise liability in homicide

A further controversial element of the law relates to the liability of people who do not themselves directly commit the offence but give assistance or encouragement to others to do so. This is sometimes generally referred to as “accessorial liability”, and there are specific concerns in relation to homicide when two individuals act in what is often called a “joint criminal enterprise” – i.e. they have a common intent to commit a criminal offence.⁹ In particular, there is uncertainty in the law where D assists or encourages P and P subsequently kills V. Depending on issues such as (1) whether the jury think that P’s act is fundamentally different from that which D envisaged; (2) whether they think D foresaw that P would or might kill whilst intending to kill or cause serious injury; and (3)

⁸ Such arguments are neatly summarized in Ashworth (2009).

⁹ These issues were addressed and proposals for reform were made by the Law Commission in 2007; see *Participating in Crime*, Law Com No 305 (2007) Cm 7084, London; TSO.

the line of legal authority which the court chooses to follow, D may be convicted of murder or manslaughter, or neither.

Purpose of Current Research

The main purpose of the present research programme was to test empirically the assumption that the British public is firmly opposed to any alternative to the current sentencing arrangements for murder. Specifically, we explored public opinion towards the sentencing of cases of murder. This represents the first systematic attempt to map out the contours of public attitudes to this critical issue in criminal justice in this or any other jurisdiction.

A secondary aim of the research was to gauge the public's knowledge and understanding of the mandatory life sentence and the way in which it operates in practice.

Finally, the research sought to test public views on the criminal liability of those who are present when a homicide is committed as part of some sort of joint enterprise but play no active part in the killing.

The project draws upon both quantitative and qualitative approaches to research.

Previous Research on Public Attitudes to Sentencing in Cases of Murder

Prior to this research there had been no detailed survey of national opinion to test the assumption behind the current law that the overwhelming majority of the public believes that a sentence of life imprisonment should automatically follow from a murder conviction. The only previous research of direct relevance in this jurisdiction consisted of two small-scale studies (each involving about 60 respondents) by Mitchell which suggested that only about half the members of the public favour some form of mandatory sentencing of convicted murderers; (Law Commission 2004; 2005). But those previous studies did not explore the issue in any detail; they did not, for example, test views on how the life sentence should be put into practice, such as whether offenders should be granted the possibility of release on licence, or whether any alternative determinate sentences might be preferable. Nor did that earlier work assess the extent to which there was support for some form of mandatory sentencing in relation to the same kinds of murder. There was no attempt to test public support for the full range of murders that the substantive law currently permits. Finally, since they employed small numbers of subjects, the previous studies' findings cannot be generalized to the larger population from which they were drawn. Nevertheless, the results of Mitchell's studies are consistent with the very limited research in other jurisdictions (e.g., Roberts, 2003).

A Methodological Caveat

As will be seen, in this project we employed both qualitative and quantitative research approaches. With respect to the survey which employed a representative sample of the public, we included both general questions and specific cases. Opinion polls can give a misleading perception of the true nature of public views of sentencing, particularly for murder. This comes about through the use of simple questions which provide no concrete information. If people are asked a simplistic question, they tend to respond punitively. Thus Ipsos-MORI in 2007 asked a representative sample of the public in this country the following question: “Which punishment do you prefer for people convicted of murder?”. In response, 34% elected the death penalty, 44% life imprisonment without parole (LWOP), and only 19% chose “a long prison sentence with the chance of parole”.

This finding suggests little public support for alternatives to a mandatory life sentence, or even for the status quo. In the course of this report we shall demonstrate significant public support for definite terms of imprisonment for offenders convicted of murder. This finding emerges when people are asked to impose sentence having been given a specific case to consider. For this reason, in this survey we provided respondents with specific case histories to consider when imposing sentence. This methodology comes much closer to capturing the nature of public opinion, and of course also more closely matches the task facing a sentencing court.

Methodology

There were two related stages to this research project, reflecting the importance we attached to both quantitative and qualitative research perspectives.

Survey

The first element was quantitative in nature. The survey organization GfKNOP, which has considerable experience and expertise in conducting public surveys on matters concerning criminal justice and the penal system, was commissioned to collect the data. The fieldwork took place between 12th and 24th May 2010, and 1,027 face-to-face interviews were conducted. Interviewing took place in 102 sampling points across England and Wales. Each sampling point was a Census Output Area, and these were selected from a list of all Output Areas, stratified by Government Office Region, local authority, urban/rural character and Index of Multiple Deprivation score. The target was for ten interviews to be conducted in each sampling point, with quota controls set for age, and gender interlocked with working status.

Interviewing took place in respondents' homes by means of Computer Aided Personal Interviewing (CAPI), and they took about 30 minutes each to complete. The questionnaire – a copy of which is appended to this report - involved a number of split sample variations in wording, and each respondent was randomly allocated to one of the variants by the CAPI script. The data were analysed using the PC software package SPSS.

A rough guide to the reliability of the data is provided in Table 1 below.

Table 1
Confidence intervals¹⁰ for sample sizes at the 95% level

Sample size	Survey finding		
	10%/90%	30%/70%	50%/50%
250	3.7%	5.7%	6.2%
500	2.6%	4.0%	4.4%
1000	1.9%	2.8%	3.1%

Thus, for example, where the whole sample was being tested on the same question and the survey found that 50% expressed the same response, we could be 95% sure that the true proportion of the public in England and Wales giving the same response would be between 46.9% and 53.1%.

Focus Groups

¹⁰ These confidence intervals assume that the sample is a simple random sample, whereas in fact it is a quota sample. Thus, our estimates may be slightly optimistic.

The second stage involved qualitative research. One of the principal (and predictable) results of the quantitative survey was that public support for the mandatory sentencing of convicted murderers was highest in what might loosely be called the more serious cases. Thus, the survey organization Plus Four was engaged to convene six focus groups to facilitate further exploration of this phenomenon -- two were held in Leeds, two in Hinckley, and two in Bath. Five groups consisted of nine members of the public and the sixth comprised ten people. Participants were screened so as to exclude market researchers, members of the police or armed forces, the legal profession and the media; also excluded were those who had had a family relative or close friend involved in a murder case. The composition of the groups reflected the national population in age, marital status and domestic circumstances, occupation, and socio-economic grouping.

Each group considered the following scenario which had been used in the quantitative survey:-

Jim decided to rob a bank. He bought a shotgun and was prepared to kill anyone who tried to prevent him. He entered the bank, pointed the gun at the cashier and demanded money. When the cashier pushed the alarm bell Jim shot him dead and fled.

Having discussed the sentencing options in that case the groups then considered other relatively serious types of murder (such as the murder of a police officer, the murder of a baby, and the murder of multiple victims).

The other main purpose of the focus groups was not simply to obtain a more detailed picture of the public's knowledge and understanding of the current sentencing arrangements for murder, but in particular to gauge their views about the value and appropriateness of the release of most murderers on life licence at the expiry of the minimum term. The discussions were audio-recorded and each lasted for between 75 and 90 minutes.

Ethics

Each stage of the methodology was reviewed in advance by the ethics committee at Coventry University.

FINDINGS

I. Public Knowledge of Murder Statistics and the Mandatory Life Sentence

Public opinion polls in the field of criminal justice usually pose questions to respondents and measure responses in the absence of any information about the levels of public knowledge about the subject. In our view this is a mistake. For this reason, we decided to measure respondents' awareness of the crime and punishment of murder in this country. We first posed several questions to explore their knowledge of statistical trends.

Public Knowledge of the Murder Rate in England and Wales

Before turning to public perceptions of sentencing in cases of murder, it is important to provide some context. Previous research has revealed that societal beliefs about crime trends affect public perceptions of the sentencing process (see Roberts and Hough, 2005a). People often perceive a relationship between crime rates and sentence severity; many people have an intuitive belief in the power of severe sentences to deter crime. If the public perceives crime rates to be high and/ or rising, they also infer that sentences are too lenient. We therefore included two questions on the survey to explore public knowledge of recent murder trends in England and Wales. Half the sample was asked whether the number of murders in this country had increased greatly, increased somewhat, declined somewhat, declined greatly, or remained stable "over the past decade".

Assessing the accuracy of the public's knowledge of the murder rate is not straightforward. First, the public's perception is quite likely to include manslaughter cases as well as murders. Second, the statistics published by the Home Office¹¹ show that, having apparently reached a peak of 943 in 2002/03, the number of offences officially recorded as homicide (i.e. murder and manslaughter) has since declined.¹² The average for the latest three years of the decade is 707, a decline of about 25%. (Smith and Flatley, 2010, Table 1.01). Murder convictions reached a high of 317 cases in 2004/05 and have also since declined. The average over the latest three years for which reliable data is available (i.e. 2005-2008) is 264 – a decline of almost 17% (Table 1.02). The "correct" answer to the survey question would therefore appear to be "decreased somewhat".

¹¹ These statistics distinguish three different sets of figures, namely (1) offences initially recorded as homicide, (2) offences currently recorded as homicide, and (3) convictions for murder and manslaughter. For a variety of reasons a proportion of the first two groups are ultimately not regarded as murders or manslaughters.

¹² It is worth noting here that homicide is generally believed to be well recorded. In addition, advances in medical science and technology may also have contributed to the decrease.

Public responses to the murder trends question are summarized in Table 2¹³, from which it can be seen that *only approximately 5% of the sample chose the correct answer, namely that murder rates had declined*. Approximately one third of respondents believed (erroneously) that the number of murders had increased greatly. Thus almost two-thirds of the sample held the view that murder rates had increased over the decade. A further third believed that the number of murders had increased “somewhat” (see Table 2). It is worth noting that 10% responded “don’t know”.¹⁴ These trends presumably reflect the intense media coverage of cases of murder.

Table 2
Perceptions of Murder Trends in England and Wales

<i>Over the past decade, the number of murders in this country has..</i>	
Increased greatly	32%
Increased somewhat	32%
Stayed about the same	21%
<i>Declined somewhat (correct answer)</i>	5%
Declined greatly	1%
Don’t know	10%
<i>Total</i>	<i>100%</i>

Notes: N = 520; Question: Over the past decade has the number of murders in this country... ?”

The second question testing levels of knowledge asked respondents to compare the murder rate in this jurisdiction to other western European nations: was it much higher, much lower or about the same? The Home Office report cited above provides homicide rate comparisons for a limited number of other European jurisdictions, and concludes that the homicide rate for England and Wales “is broadly in line with those for other Western European nations” (Smith and Flatley, 2010, p. 9).¹⁵ The correct answer – based on official statistics – is therefore that the murder rate is about the same in this country as other western European countries.

Once again, Table 3 shows that *public knowledge appears to be out of step with actual trends*. By a margin of approximately two to one, however, respondents were more inclined to believe that the murder rate is higher here than in other western nations. Thus almost a third believed that the rate was higher in England and Wales compared to 18%

¹³ For most questions in this survey the percentage of “don’t know” responses was 2% or fewer. For this reason all tables exclude these responses, presenting them only when they account for 3% or more of the sample. Except where noted in the tables, the sample size was 1,027.

¹⁴ Vandiver and Giacompassi (1997) demonstrate that US residents over-estimated the true number of homicides: 15% of their respondents estimated that one million or more murders occurred annually across the U.S.

¹⁵ The rate in England and Wales was 1.43 per 100,000 population. This rate is lower than Finland (2.23); Belgium (2.04); Portugal (1.47); France (1.46) and Ireland (1.45), but higher than Denmark (1.17); Italy (1.13); Spain (1.12); the Netherlands (1.06) and Greece (1.05; see Smith and Flatley, 2010, p. 12).

who felt that it was lower. Public knowledge levels were somewhat higher for this question: a relatively high percentage believed that the murder rate was about the same here as in other western jurisdictions.

Table 3
Perceptions of the murder rate in England and Wales compared to other western European nations

<i>The murder rate is..</i>	
Much higher in this country than in other western European nations	9%
Somewhat higher in this country	22%
<i>About the same in this country (correct answer)</i>	38%
Somewhat lower in this country	16%
Much lower in this country	2%
Don't know	13%
<i>Total</i>	<i>100%</i>

Notes: n = 507; Question: "Is the murder rate in this country much higher, somewhat higher, about the same, somewhat lower or much lower than in other western European nations?"

Knowledge in Focus Groups of the Mandatory Life Sentence

It was clear from the focus group discussions that participants had only a very imprecise idea of what the mandatory life sentence for murder actually means. Predictably, when asked the question, they responded that "life doesn't mean life", and most suggested that murderers are sent to prison for fixed periods before being released - the periods they suggested varied from as little as 10 or 15 years up to 25 or 30 years. It is worth adding here that what was especially notable was the manner in which such comments were made; participants clearly implied that the phrase "life sentence" (or perhaps "life imprisonment") is at best misleading and that some more accurate label should be substituted. One person thought that offenders only actually served *half* the stipulated period before being released on licence.¹⁶

As expected, participants were unsure about who is responsible for determining the minimum term. One person thought that there is a separate hearing specifically for this purpose. Many were generally aware that the Parole Board of England and Wales has an important role in deciding whether a murderer should be released on life licence but had no detailed knowledge of the nature of this role or of the process by which the decision is made. Some participants were aware that licensees are supervised or monitored,¹⁷ although very few had any clear idea of what this actually entails. Several knew that

¹⁶ i.e., that mandatory life-sentence prisoners are treated generally in the same manner as fixed-term prisoners. They seemed to think that the minimum term roughly corresponds to a fixed term sentence whereby prisoners may be released having served half the term, and that life-sentence therefore only differ by being released on licence.

¹⁷ Apart from "supervision" or "monitoring", the other words they used to describe their understanding of the period on licence were "under curfew" and being "tagged".

licensees are released under certain conditions but very few participants were able to suggest what these conditions are likely to include. Two participants thought that the supervision is nominal only – “it doesn’t work in reality”; [the murderers] “are thrown back into society and [then we all] hope for the best”.

Perceptions of Amount of Time Offenders Convicted of Murder Spend in Prison

Research has demonstrated that members of the public in this country and around the world tend to under-estimate the length of time that offenders of all kinds serve in prison. There are at least two causes of this tendency. First, people under-estimate the average length of sentences imposed in court (the “head sentence”). Thus Hough and Roberts (1998) and Mattinson and Mirrlees-Black (2000) demonstrated this using the British Crime Survey: most respondents under-estimated the custody rates for several offences¹⁸ (see also Hough, 1996).¹⁹ Second, many people *over*-estimate the extent to which early release provisions such as parole reduce the proportion of a custodial sentence served in prison. We posed two questions about the issue of time served in prison.

Knowledge of Time Served in Prison

Half the sample was asked to estimate the amount of time that offenders convicted of murder spend in prison in this country, while the other half were asked whether the average time served in prison by convicted murderers was higher or lower here in comparison to other western nations. The responses to these questions are summarized in Tables 4 and 6.

Table 4
Public Estimates of Number of Years Served in Prison by Offenders Convicted of Murder

Number of years offenders convicted of murder spend in prison	
1 to 5 years	3%
6 to 10 years	39%
<i>11 to 20 years (Correct answer)</i>	48%
21 to 30 years	8%
More than 30 years	2%
<i>Total</i>	<i>100%</i>

Notes: n= 532; Question: “How many years do offenders convicted of murder and sentenced to life imprisonment actually spend in prison?”

¹⁸ Most recently, the 2007/08 BCS found that when respondents were asked to estimate the custody rate for rape, fully % under-estimated the true statistic (which is 97%). A similar pattern emerged for burglary.

¹⁹ Roberts and Doob (1983) found the same pattern in public opinion surveys conducted in Canada during the 1980s. For similar trends in the United States, see Florida Department of Corrections (1997).

Statistics provided to us by the National Offender Management Service at the Ministry of Justice show that, as at 5 February 2010, between the years of 2000 and 2009, on average, offenders sentenced to a mandatory life sentence spent almost 15½ years in prison before being released on licence.²⁰ Full details of these statistics are set out in Table 5 below.

Table 5
Average Tariff Lengths in Mandatory Life Sentences as at 5th February 2010

Year of sentence	Average time in prison (in years)
2000	14.32
2001	14.00
2002	13.19
2003	13.68
2004	14.52
2005	16.14
2006	17.54
2007	15.91
2008	17.96
2009	17.54
Totals	15.48

These statistics demonstrate that the amount of time lifers spend in prison has been increasing: the average for the last ten years is almost 15½ years which is obviously higher than the 13 years recorded over the previous decade (see Home Office, 2001). As can be seen in Tables 4 and 5, *there is a clear tendency for the public to under-estimate the amount of time served in custody*: approximately four respondents in ten believed that offenders convicted of murder spent ten years or fewer in prison.²¹

Table 6 documents the ubiquitous public perception that sentencing is more lenient in this country. More than six respondents in ten (61%) believed that persons convicted of murder in this country spend less time in prison than their counterparts elsewhere in the western world.²² Thirteen percent of the sample failed to respond or responded ‘don’t know’. If we consider only those respondents who expressed an opinion on the question,

²⁰ During this period the shortest period that any prisoner serving life for murder spent in prison before release was 6 years while the longest period of detention was 50 years. There were 19 whole life tariffs handed down by the courts over the decade. The statistics were taken from the Public Protection Unit database in the NOMS. We would like to thank Tony Macgregor, ISP Policy Lead at NOMS and Ransford Fiti, Prison and Probation Statistics, for their assistance in providing the statistics.

²¹ Here again it is important to note that the British public is not the only one to misperceive time served in prison trends. A survey conducted in the US found that although the overall time served in prison had increased, 60% of the polled public believed the exact opposite (Justice Centre, 2007).

²² This tendency to assume sentencing is more lenient in the respondent’s own jurisdiction is also found in other countries. In Canada, the custody rate is higher than most other western nations (except the United States). However, when a sample of the public was asked about the use of custody in that country, the most common response was that the custody rate was lower (see Roberts, Nuffield and Hann, 2000).

approximately three-quarters of the sample held the view that the punishment of murder is more lenient here than in other western nations.

Table 6
Perceptions of time served in prison, relative to other western nations

Offenders convicted of murder in England and Wales...	
Spend less time in prison than murderers in other countries	61%
Spend about the same amount of time in prison than murderers in other countries	16%
Spend more time in prison than murderers in other countries	6%
Don't know	17%
<i>Total</i>	<i>100%</i>

Notes: n = 495; Question: "Compared to other western European nations, do you think that offenders convicted of murder spend...."

Public Estimates of Life Licence Recall Statistics

The final knowledge question posed on the survey explored public estimates of life licence recalled to prison. Specifically, respondents were asked to estimate the percentage of life licence prisoners who were recalled to prison following an allegation of fresh offending.²³ As shown in Table 7, the public hold a relatively pessimistic view of re-offending, with the highest proportion of respondents believing that 20% of these prisoners released on parole are recalled for re-offending.

²³ We recognise that prisoners may be recalled for breaches of conditions unrelated to allegations of fresh offending. Indeed, technical breaches account for the majority of recalls. However, the public generally believe that fresh offending is the cause, and we accordingly asked about this issue.

Table 7
Public Estimates of Life Licence Recalls for Further Offending

	<i>% of respondents</i>	<i>Cumulative %</i>
1%	2%	2%
5%	15%	17%
10%	17%	34%
15%	17%	51%
20%	40%	91%
No idea	9%	
<i>Total</i>	<i>100%</i>	<i>100%</i>

Notes: n= 1,012; Question: “What % of offenders convicted of murder and who have been released on licence to live in the community are recalled to prison for committing another offence? Would you say it is closest to....”.

Summary of Knowledge Findings

Public responses to these questions underline the importance of public legal education in this area – a subject to which we shall return later in the report. For the present it is simply worth noting that many people have very skewed perceptions of the most important murder-related statistics. Perceptions are systematically biased towards seeing the system as being more lenient than is in fact the case. These trends must be borne in mind when we consider public attitudes to sentencing murder – and it is to those data that we now turn.

II. Public Attitudes to Sentencing in Cases of Murder

1. Purposes of Sentencing in general

Our exploration of public attitudes to sentencing in cases of murder begins with questions dealing with sentencing purposes. The survey asked respondents to identify the most important purpose of sentencing offenders. They were given a list of potential purposes from which to select a single option. In case the purposes were unfamiliar to respondents, the survey instrument provided a brief definition (see Appendix A). For example, rehabilitation was described as: “Change behaviour and/ or attitudes of an offender to prevent them re-offending (rehabilitation)”.²⁴ After providing a response for sentencing in general, participants were asked to specifically consider offenders convicted of murder. The results are set out in Table 8.

For sentencing offender in general, punishment emerged as the most popular single purpose – supported by 35% of the sample, and followed by rehabilitation which was identified as the single most important purpose by 25% of the sample. Deterrence (general and individual) and incapacitation attracted significantly smaller proportions of respondents -- 18% and 16% respectively. It is rather surprising that such a small percentage of the sample chose “making amends to the victim” as the principal goal of sentencing. This may reflect the structure of the question; many people may see victim compensation as an important goal of sentencing, without necessarily regarding it as the *single* most important purpose.

2. Purposes of Sentencing for Murder

When the respondents were asked to consider sentencing in cases of murder, their sentencing priorities changed.²⁵ Thus support for punishment and incapacitation rose, while support for rehabilitation declined (from one quarter of the sample to one tenth). This shifting of support from rehabilitation to the more punitive purposes of punishment and incapacitation has been found in other surveys in which respondents have been asked to sentence offenders convicted of minor and serious crimes (see Roberts, 1988; Paulin et al., 2003).

²⁴ Some previous surveys have adopted a slightly different approach, in which respondents are asked to rate the importance of all principal sentencing options. Comparison of findings across different questions suggests that it makes little difference to the outcomes (see Roberts and Hough, 2005a).

²⁵ Respondents were warned at the outset of the survey that they would be asked questions about murder. This necessary warning was provided to ensure that anyone who had been directly or indirectly affected by a homicide would be aware of the survey content and could decline participation from the outset. However, by sensitizing people to murder just prior to asking about the purpose of sentencing, it is possible that respondents had murder in mind when they answered the general question, even though it asked about sentencing “all offenders”. This “priming” may well explain why there was not greater differentiation between the patterns of responses when people were asked about sentencing in general and sentencing for murder. Previous research has demonstrated that when the public is asked general questions about sentencing they often have in mind the most serious crimes, usually murder (Indermaur, 1987; Doob and Roberts, 1983).

Even for the most serious crime of murder, fully one tenth of the sample identified rehabilitation as the single most important purpose of sentencing. If respondents had been asked to identify more than a single sentencing purpose, there presumably would have been considerably more support for rehabilitation. This finding underlines the support for rehabilitation among members of the public, and is consistent with public opinion findings in other jurisdictions. This finding is also the first evidence in our survey that the public are not exclusively punitive in their approach to sentencing, even in cases of the most serious crime.

Table 8
Most Important Purpose of Sentencing:
All Offenders and Offenders Convicted of Murder

<i>Most Important Purpose</i>	<i>All Offenders</i>	<i>Offenders Convicted of Murder</i>
Punishment	35%	40%
Rehabilitation	25%	10%
Incapacitation	16%	25%
General Deterrence	11%	11%
Individual Deterrence	7%	4%
To make amends to the victim	4%	4%
To express society's disapproval of crime	2%	4%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Notes: Excludes "don't know" responses; Question: "Looking at this card, what do you think is the most important purpose of sentencing offenders?" And what do you think is the most important purpose of sentencing offenders convicted of murder?"

3. Perceptions of Sentencing Leniency

The most well-documented finding in the field of public opinion and sentencing is that people perceive sentencing to be excessively lenient. This perception exists across jurisdictions, across methodologies, as well as over time (see Roberts and Hough, 2005a for a review). The British Crime Survey has repeatedly demonstrated this public dissatisfaction with the sentencing process. Thus in 2008, three quarters of the polled public in England and Wales expressed the view that sentencing was too lenient (British Crime Survey, 2009).

In our survey we divided the sample at random in to two sub-samples and asked half the respondents about sentencing in general, and the other half specifically about sentencing patterns in cases of murder. Table 9 shows the typical pattern emerging for perceptions of sentencing in general: approximately four-fifths of the sample believed that sentencing

was too lenient, only 16% believed it was “about right”. Fully 40% of the sample held the view that sentencing was much too lenient. There was even greater public criticism of sentencing for murder: 45% of the sample held the view that sentencing was much too lenient for this offence.²⁶ Fewer than 1 respondent in 5 held the view that sentencing cases of murder was about right. This finding is consistent with previous polls: in 2006 79% of the public believed that prison sentences for “serious crimes such as murder” were too short (ICM Research, 2006).

Table 9
Perceptions of Leniency in Sentencing, All Offences and Murder

Sentencing is...		
	<i>All Offences</i>	<i>Murder</i>
Much too lenient	40%	45%
Too lenient	39%	35%
About Right	16%	18%
Too harsh	2%	1%
Much too harsh	1%	<1%
<i>Total</i>	<i>100%</i>	<i>100%</i>

*Notes: split sample, n = 525 for each column; Excludes “don’t know” responses;
Question: Is sentencing (sentencing in cases of murder) in this country...?”*

²⁶ Several members of the focus groups volunteered similar criticisms.

III. Public Reaction to Sentencing in Specific Cases

In the introduction to this report we noted the methodological deficiencies associated with posing general questions to the public. It is clearly important to ask people to consider specific cases rather than general categories. In order to explore public reaction to the mandatory sentence of life imprisonment we therefore gave each respondent three specific homicide cases to consider. The selection and order of the cases was randomly determined. The scenarios were all based on actual cases which had actually resulted in a conviction for murder and the subsequent imposition of a mandatory life sentence.

It is a feature of the homicide law is that although there are different requirements for murder and manslaughter it is quite frequently impossible to know in advance whether a case will result in a conviction for murder or manslaughter. One of the theoretical distinctions between the offences is that if the defendant *felt sure* that his actions would result in a person being killed or seriously injured he may be convicted of murder, whereas if he merely thought that death or serious injury was *probable or possible* – i.e. he was not sure – then he should be convicted of manslaughter. The difference in the defendant’s foresight of the consequences of his action should influence whether he is convicted of murder or manslaughter. But of course it is impossible to look inside the defendant’s mind and know the extent to which he foresaw the consequences: instead, a court or a jury has to consider all the evidence – especially the evidence of what the defendant did, the circumstances in which he acted and what subsequently happened – and make what it thinks is the most accurate inference about the defendant’s foresight. This is clearly not a scientific process in which the jury can be sure that they have drawn the empirically correct inference, and different juries may draw different inferences from the same facts. In cases at what might be called the “upper end” of the seriousness spectrum – i.e. the most serious cases of murder – it is very likely that juries would reach the same verdicts. Similarly, with those at the opposite end of the spectrum. But in the intermediate cases it is quite possible that different juries might draw different inferences about what the defendant foresaw and with what degree of certainty he foresaw. Whether a killer is convicted of murder or manslaughter may be determined by this or by other factors such as whether the jury is persuaded that he was *provoked* to kill or whether he was *sufficiently mentally abnormal*. Moreover, research suggests that whilst the evidence available to the court pointed to, say, murder, the defendant was in fact convicted of manslaughter – perhaps because the jury felt some sympathy towards the defendant.²⁷

The cases were selected to represent a range of seriousness. Previous research by Mitchell²⁸ suggests that the public would regard scenarios 1, 5 and 9, which involve murders in the course of other serious offences (burglary and robbery), as relatively serious. In contrast, scenario 8 might be viewed much less seriously: it is quite likely to be seen as a mercy killing and in practice such cases are often treated as manslaughter, so as to avoid a mandatory life sentence (usually by stretching the partial defence of

²⁷ Mitchell (2007).

²⁸ Mitchell (1998).

diminished responsibility).²⁹ The other scenarios are of a broadly intermediate gravity, and the verdicts in them are likely to depend on whether the court felt that the killer was sufficiently aware of what s/he was doing so that they intended to kill or cause serious injury.

The nine scenarios were:

1. *Frank, aged 18, burgled the home of Alex who was a 64-year old widower. Alex disturbed Frank during the burglary, and Frank hit him several times over the head with a hammer, killing him. Frank said he just reacted without thinking.*
2. *Jess had recently ended her relationship with Mark, but he went to her house to try to persuade her to take him back. When she told him she did not love him anymore, he became upset and stabbed her to death with a kitchen knife.*
3. *Nick and Oliver ran rival minicab businesses. Nick thought that Oliver had sabotaged his radio system preventing him from contacting his drivers. Knowing he had a knife in his pocket, Nick went to Oliver's offices and confronted him about this. They argued and that led to a scuffle, in the course of which Nick fatally stabbed Oliver in the chest.*
4. *One evening Terry accused his partner Peter of having an affair with another man. They argued and Peter, who denied the allegation, called Terry a "bastard". Terry then picked up an ashtray and hit Peter over the head with it, killing him.*
5. *Jim decided to rob a bank. He bought a shotgun and was prepared to kill anyone who tried to prevent him. He entered the bank, pointed the gun at the cashier and demanded money. When the cashier pushed the alarm bell Jim shot him dead and fled.*
6. *Pete and Bert had an argument and Pete punched Bert in the face. Pete then left to walk home. Meanwhile Bert got into his car and set off after Pete. He approached Pete from behind and drove the car straight at Pete, tossing him high into the air. Bert then drove off leaving Pete lying dead on the pavement.*
7. *Gary and Jane had an argument at a party at their house. When Max intervened to try to calm things down, Gary picked up a knife and stabbed him with it.*
8. *Graham was 6 years old and suffered from a series of untreatable extremely serious mental and physical disabilities. His mother Jane testified that she could not bear to see him suffer any more. One day she walked into a side ward in the hospital and disconnected the life-support machinery from Graham.*

²⁹ But as cases such as *Cocker* [1989] Crim LR 740 demonstrate, even though a homicide may be viewed as a compassionate or mercy killing, the defendant is sometimes convicted of murder and the current law permits no alternative to a life sentence.

9. *Brian was 18 years old and he broke into the house of Fred who was 68. Brian was just about to pick up the TV set when Fred confronted him. Fred kept shouting out “Help! Help!” and Brian picked up a cushion and suffocated him with it.*

For each case, respondents were asked to select a sentence from among a range of definite sentences from “up to four years” through to at least 30 years ‘with release at some stage’. They were also given the alternative of imposing imprisonment for natural life, without release at any point.

The proportions of respondents’ preferences for sentencing the murderers in the nine scenarios are set out in Table 10 below. Several important conclusions may be drawn from this table. First, *for all but one scenario at least two-thirds of respondents thought there should be some sort of finality to the murderer’s sentence. In other words, only approximately one-third of respondents believed that a natural life sentence was appropriate.*

Second, *even in what was probably the most serious case (scenario 5³⁰), only just over half the sample favoured the imposition of a natural life or indeterminate sentence.* Moreover, nearly four out of five respondents felt that the mercy killer in scenario 8 (the legal interpretation of which is briefly summarised above) should serve less than ten years in prison – as noted earlier, the average time spent in prison before first release on licence is about 15½ years. It was unsurprising, but nonetheless valuable, to find that the highest level of support for an indeterminate sentence was in what under current sentencing practice would be regarded as the more serious case of murder.

Focus Group Discussions

The quantitative survey showed that just over half of respondents thought that Jim (scenario 5) should receive a life sentence without the possibility of parole. All participants in the focus groups favoured some form of life sentence – the only difference of opinion was whether or not he should ever be considered for release of licence.³¹ Similar responses about the sentence were given for the deliberate killing of a police officer, murder of a child, and the murder of multiple victims. It is worth noting that the majority of participants opposed the idea that killing a police officer who was acting in the course of his duty was in any way “worse” – and therefore merited a longer period in prison – than the murder of any other individual.³² In addition, it was interesting (though

³⁰ The law regards this as a particularly serious murder because although he did not set out with the intent to kill, Jim had considered killing someone and was prepared to do so. He used a dangerous and lethal weapon to kill his victim who was simply doing his job; and the murder was committed in the furtherance of robbery, a serious crime which in itself carries a maximum punishment of life imprisonment.

³¹ Respondents in the quantitative survey were not given the option of sentencing Jim to life imprisonment with the possibility of release on licence. A few respondents in fact favoured the death penalty for Jim.

³² A very few participants were either aware that killing a police officer would be regarded as more serious, because they were protecting the public and thereby putting themselves in positions of danger, or genuinely thought that this is true and that the minimum term should thus be longer. It is worth noting here that

not unsurprising) to find that several participants said that the murder of multiple victims – either through a single act or through a series of separate acts – is significantly more serious than the other “serious” cases they had considered. Nonetheless, they did not feel it was appropriate to moderate their views on the sentences that should be imposed in cases such as Jim’s, or the murder of a police officer or baby.

according to Schedule 21 of the Criminal Justice Act 2003, para 5, murder of a police officer in the course of his duty should indicate a starting point of a 30-year minimum term.

Table 10**Public Preferences for Sentencing Homicide Scenarios**

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6	Scenario 7	Scenario 8	Scenario 9
Up to 9 years in prison	8%	3%	5%	20%	1%	3%	11%	79%	5%
10 to 19 years	22%	24%	31%	39%	10%	28%	36%	9%	22%
20 to 29 years	20%	25%	24%	18%	20%	25%	20%	7%	26%
30 years or more, with release at some stage	17%	20%	16%	8%	18%	13%	14%	2%	15%
Imprisonment for offender's natural life	33%	30%	24%	14%	52%	33%	19%	4%	32%
Total	100%	102%	100%	99%	101%	102%	100%	101%	100%

Notes: Question: "I am going to ask you to imagine you are a judge sentencing people convicted of murder. Please decide which of the sentences on this card is most appropriate." See text for a description of the cases. Percentages rounded.

The Effect of Providing Information on Public Attitudes to Sentencing

A number of public opinion studies conducted in this country and elsewhere have explored the impact of information upon attitudes to sentencing (e.g., Roberts and Hough, 2005a). In a typical study a sample of respondents is divided in two. Both halves are asked to consider the same case or question, but one group is first given some information about the issue or case being sentenced. For example, Hough and Roberts (2005b) asked samples of respondents to sentence a young offender under different levels of information about the case. Results demonstrated that participants who had the most information about the case were also the least punitive in their sentence recommendations. Similarly, Sanders and Roberts (2000) manipulated the amount of information subjects were given about a community penalty. Subjects who were more informed of the nature and consequences of the community penalty were also more supportive imposing the community-based penalty rather than custody.

The typical finding from this international body of literature is clear: when people have more information about the sentencing process, they are less inclined to respond punitively towards offenders. The reason for providing information is not simply to compare informed and uninformed samples of the public; it is also to match the decision-making of the public more closely to the decision-making of the courts – who are aware of issues such as the nature of a life licence. We conducted a modest test of this general hypothesis with respect to sentencing in cases of murder.

1. Impact of Information about the Life Licence

One of the popular misconceptions about prisoners serving life for murder and who are subsequently released from prison on licence is that they are released without condition. In reality, such offenders are subject to conditions and possible recall to prison in the event of non-compliance with conditions. Our hypothesis was therefore that if people were informed about the true nature of life licence conditions, they would be more satisfied with the sentence and less likely to rate the sentence as being too lenient.

All respondents were asked to read and impose sentence in the following case of murder:

Jack's elderly father Charles was very wealthy, but when Jack refused to get a job they had a major argument and Charles cut his son out of his will. Jack did then get a job but continued to claim unemployment benefit. When Charles reported his own son to the local social services department Jack became so angry that he punched his father several times and killed him. He was subsequently convicted of murder. The court imposed a life sentence with a tariff period of 15 years. This meant that the offender would serve 15 years in prison and then be released on licence³³.

³³ For the purposes of this scenario, respondents were asked to assume that Jack would be released on licence, though in practice he would only be released if he did not pose an unacceptable risk to the public.

Do you think that this sentence was: Much too lenient; too lenient; about right; too harsh or much too harsh?

Before sentencing this case, half the sample was provided with a brief description of the meaning of release on licence. This group may be considered the “informed” group, although reading a very brief description of this kind must be regarded as a very modest manipulation, and therefore a weak test of the hypothesis.

As you now know, all offenders convicted of murder are sentenced to imprisonment for life. Most offenders serve a substantial period in custody – on average around 13 to 15 years – before being released on licence to live in the community. Although they are no longer in prison, these offenders will be living on licence for the rest of their natural life. They will have to report to the authorities as and when required to do so, and can be recalled to prison if they violate any of their conditions of release. In this way the criminal justice system is able to monitor the offender’s behaviour in the community.

Table 11 demonstrates the importance of information to public attitudes to sentencing. Even a very mild information manipulation of this kind changed respondents’ attitudes to the sentence. *Knowing just a little more about the life licence conditions significantly decreased the percentage of respondents who held the stereotypical view that the sentence imposed was too lenient* (X(2) (1)= 4.3; p. <.05; see Table 9).³⁴

Table 11
Effect of Information about Life Licence on Perceptions of Sentence Severity

	<i>Information Condition</i>	<i>No Information about Life Licence</i>
The Sentence was..		
Too lenient	42%	48%
About right	47%	42%
Too harsh	10	8
<i>Total</i>	<i>99%</i>	<i>98%</i>

Notes: n= 518 per condition. Question: “Was this sentence... ?” (see text for offence description). Percentages rounded.

³⁴ Although the pattern of findings is consistent – people become more positive towards the sentencing process or rate criminal justice professionals such as prosecutors more positively when provided with information - the differences between the responses of “informed” respondents and those with less information are generally quite modest (e.g., Roberts, 2001). The transitory nature of the experience presumably accounts for this fact.

Focus Group Discussions

Similar findings emerged from the focus group discussions. When initially invited to comment on the fact that most convicted murderers are released on licence at some point, without being given any explanation of the life licence, participants in the focus groups responded rather hesitantly or slowly to identify any value or purpose in it. But after hearing such explanation, many tended to recognize the value it offers to the offenders. A few participants, for example, who had earlier suggested that those offenders (like Jim in scenario 5) who commit the more serious murders should be sent to prison without the possibility of parole, then changed their minds and thought that release on licence might well be appropriate. Other participants who had favoured imposition of life imprisonment without the possibility of release (in these more serious cases) reiterated that the release stage was inappropriate because of the gravity of the offence, and some suggested that either the offenders could never be rehabilitated or reformed, or that those responsible for their supervision could not be relied upon to perform the task successfully.³⁵

2. The Acceptability of Alternative Sanctions: Fixed terms instead of life

When most people are asked to impose a sentence, imprisonment is the sanction which first comes to mind; they seldom stop to consider a range of sentencing options. Researchers in recent years have asked respondents who have decided on a particular sentence whether they would find an alternative sentence acceptable. Sometimes this research involves asking people who have selected prison as the appropriate punishment to consider the acceptability of a high-level community penalty instead (e.g., Roberts et al., 2008; Tufts and Roberts, 2001).

As with some previous questions the sample was divided at random into three conditions and respondents were asked to sentence in one of three cases of murder. After each description the respondent was told the sentence imposed in the case (life imprisonment), but were then asked if they considered a particular alternative sentence acceptable. The proposed alternative involved a definite period of custody after which the offender would be released without conditions. This question therefore explored the limits on public support for a mandatory life sentence – one of the central objectives of our research.

Since the three murders described in the scenarios were of differing levels of seriousness, it was necessary to provide different tariff periods and different alternative sentences.³⁶

³⁵ It was also interesting to find that one participant, who, prior to the focus group, had very little knowledge of what a mandatory life sentence means in practice, on discovering that most murderers are ultimately released on licence, commented “I was happier thinking that these people were locked up 23 hours a day in their cells!”.

³⁶ It is also important to note that we are interested here in the question of whether a fixed term alternative to a mandatory life sentence would prove acceptable to members of the public. The specific value of the alternatives is therefore relatively unimportant. Whether a 20 year fixed term sentence is the ‘appropriate’ alternative to life imprisonment for murder is a separate question which would need a separate discussion. For example, the role of parole or some form of early release would need to be clarified. Presumably if the mandatory life sentence for murder was repealed, some authority – presumably the Sentencing Council of England and Wales – would be tasked with determining what the appropriate determinate sentence should be to replace, for example, a life sentence with a tariff period of 15 years.

However, the point of the exercise in all three conditions was nevertheless the same: to determine whether a fixed sentence of custody would attract any support as an alternative to life imprisonment.

The three case³⁷ descriptions used were the following:

Case 1: Margaret.

Please consider the following case. Margaret and her husband Richard were in financial difficulties. Richard told her he had just spent a lot of money on a new car and she became very angry. They had a furious row and Margaret picked up a very heavy ashtray and hit him over the head with it. Richard died shortly afterwards. Margaret was convicted of murder and sentenced to life imprisonment and required to serve 12 years in prison before being released on licence.

How would you react if instead of imposing the life imprisonment sentence the court imposed a sentence of 20 years custody? After serving all 20 years Margaret would be released from prison without being on licence.

Case 2: Stephen

Please consider the following case. Sue was 12 years old and severely disabled. She had the mental age of a 4-month old baby and suffered frequent fits. She was in frequent pain and faced the prospect of further major surgery with no guarantee of any improvement. Her father Stephen testified that he could not bear to see her suffer any more. One day he decided it was in her best interests that she should die and he overdosed her medication so that she died peacefully. Stephen was convicted of murder and sentenced to life imprisonment and required to serve 8 years in prison before being released on licence.

How would you react if instead of imposing the life imprisonment sentence the court imposed a sentence of 10 years custody? After serving all 10 years Stephen would be released from prison without any further conditions.

Case 3: Sarah

Please consider the following case. Sarah had been looking after her uncle Max for ten years. He suffered severely from dementia, was also bad-tempered and regularly criticised her. One day Sarah decided she couldn't stand it any longer. While her uncle was asleep Sarah smothered him with a pillow, and he died. She was sentenced to life imprisonment and required to serve 10 years in prison before being released on licence.

³⁷ These three scenarios were fictitious but they reflect the kind of variations in seriousness which are found in murder convictions.

How would you react if instead of imposing the life imprisonment sentence the court imposed a sentence of 15 years custody? After serving all 15 years Sarah would be released from prison without being on licence.

After reading about the case, respondents were asked whether the substitute sanction would be acceptable. The specific response options were:

- This would definitely be an acceptable substitute sentence*
- This would possibly be an acceptable substitute sentence*
- This would possibly be an unacceptable substitute sentence*
- This would definitely be an unacceptable substitute sentence*³⁸

Table 12 summarises public responses to the alternative sentences in the three cases. As can be seen, *for all three cases respondents were more likely than not to find the alternative fixed term sentence an acceptable substitute for the life imprisonment sanction.* Thus for the case of Stephen, the father who killed his sick infant daughter, fully 70% found the fixed term sentence “definitely” or “probably” acceptable to the life sentence. Over a third of the participants who considered this case responded that the alternative would definitely be acceptable.

There was less support for the alternative sentences in the other two cases, but for both crimes the public was more likely than not to find the alternative sentence acceptable. These trends clearly demonstrate that *the public in this country are not rigidly wedded to a life sentence for murder.*

Table 12
Public Acceptance of Definite Term Alternative to Life Imprisonment

	Case 1 Margaret: 20 year alternative	Case 2 Stephen: 10 year alternative	Case 3 Sarah: 15 year alternative
This sentence would definitely or probably be acceptable as a substitute sentence	55%	70%	56%
This sentence would definitely or probably <i>not</i> be acceptable as a substitute sentence	45%	30%	44%
<i>Total</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

³⁸ Respondents in all conditions were also allowed to respond “don’t know”.

Notes: n per condition, average = 342; Question: "How would you react if instead of imposing the life imprisonment sentence the court imposed a sentence of 20/ 10/ 15 years custody? After serving all 20/10/15 years the offender would be released from prison without any further conditions." For offence descriptions see text.

Focus Group Discussions

Further evidence in support of our belief that members of the public are not wedded to the idea of a mandatory life sentence comes from three participants in the focus groups who, having been informed of the nature of the supervision that accompanies release on licence, thought that the licence should not necessarily be indefinite. If the offender complies with the conditions in the licence and shows that he has truly been rehabilitated, then the licence should be terminated. One of these three respondents went on to suggest that the length of the licence should be determined by a body of suitably qualified experts.

Judicial Discretion in Sentencing and Focus Group Discussions

Participants in the focus groups expressed a clear preference for some sort of life sentence in the worst cases of murder. When discussing the serious murder scenarios participants were keen that the penal system should ensure that offenders in these cases should not escape their just deserts (i.e. a life sentence). Almost invariably, they supported the idea that judges should be bound to impose a life sentence – though, as stated above, there was divided opinion about the possibility of release on licence. *But those who did recommend the possibility of release were equally anxious that the sentencing judges should have sufficient discretion to enable them to reflect the seriousness of the particular facts of the case in the length of the minimum term.*

No clear conclusions were reached about how this should be achieved, but all participants – including those who supported a sentence of natural life imprisonment – thought that all murders should be grouped or graded in some way according to their relative seriousness. Those who did support the possibility of release on licence suggested that either there should be minimum and maximum tariffs which would be determined by reference to the presence of offence characteristics, or judges should have to adhere to legal guidelines as to the weight to be given to specific characteristics.³⁹ As well as wanting to ensure that offenders were not under-punished, participants also expressed a desire that judicial discretion in determining the tariff should be exercised in a consistent manner.

Very few participants volunteered support for the present system which required the imposition of an indeterminate sentence for serious murders but then gave judges some leeway in determining the length of the minimum term. In addition, there was general approval of the approach taken in the Criminal Justice Act 2003 which identifies starting points based on offence and/or offender characteristics. Although they were not asked to

³⁹ In addition, those who advocated life imprisonment without parole for those convicted of the most serious murders similarly felt that in the lesser cases of murder, offenders should be released after serving a term of imprisonment, and that judges should be given fairly tight guidelines (maxima and minima) within which to determine the length of the custodial term.

comment expressly on the matter, one implication of the general desire for judicial discretion to be controlled is that the public favours some form of legal limitation on the potential impact of the remaining aggravating and mitigating factors (after the starting point has been identified).

Previous studies by Mitchell⁴⁰ had revealed some support for substituting a single judge to preside over murder trials with some form of panel of judges, in order to maximize the likelihood that the appropriate sentence would be imposed (and to avoid the risk that a single judge would “have an off day”). Participants in all focus groups were evenly divided in their views about this, but there was undoubtedly some degree of support for it as a “safer” method of achieving a balance between compelling judges to impose sufficiently tough sentences whilst simultaneously giving them the ability to craft the punishment to reflect particular circumstances of the case. One person thought that a single judge should have the option of consulting other judges before formally passing sentence. A small number of participants expressed opposition to the idea of panels of judges, either on the general ground that all committees or panels struggle to genuinely reach agreement, or simply that it would lead to “chaos”.

3. Public Reaction to Joint Enterprise Murder

The last issue we explore in this report is public reaction to homicides where there are two people with an intent to commit a crime and one makes no attempt to stop the other from committing the lethal act, and may in some way encourage or assist in it. A typical instance of this would involve conflicts between gangs which result in violence. Under the current law, a person can be guilty of murder or manslaughter as an accomplice even though s/he did not physically help cause the victim’s death. Merely being present at the scene may be sufficient to support a conviction for murder provided there is some sort of encouragement or assistance, and an intention to do so. It may be clear that D expects P to be violent, but not at all clear whether D expects P to use the precise nature and extent of violence.

Unfortunately, the law is unclear partly because there are conflicting lines of legal authority. According to one line of authority⁴¹ the court simply has to decide whether D foresaw the possibility of P’s act. If the jury concludes D did not foresee it, D is not guilty of murder or manslaughter. But if they think s/he did, the question is then whether they are sure that D foresaw that P might commit the act with the necessary intent for murder (i.e. intent to kill or cause serious injury). If they are not sure of this, D is guilty only of manslaughter. According to an alternative legal view,⁴² if D did not foresee the possibility of P’s lethal act, D is not guilty of murder or manslaughter provided that the lethal act was “fundamentally different” from what D had envisaged. But if it was not fundamentally different, the fact that it was not foreseen by D is no defence to a murder charge.

⁴⁰ Published in Law Commission (2005), Appendix A.

⁴¹ i.e. the approach adopted in *Van Hoogstraten*, 2 December 2003 (CCC) unreported.

⁴² i.e. the approach adopted in *Powell and Daniels*; *English* [1999] 1 AC 1.

Once again we divided the sample to explore public reaction to two murder scenarios. Both scenarios were based upon actual cases which had given rise to convictions for murder.

Case A.

Jim and Pete, two 16 year old schoolboys, were walking home when they met Steve, also 16. Jim didn't like Steve and they argued. A fight began during which Jim pulled out a knife and stabbed Steve to death. Pete shouted to Jim "Go on mate", but otherwise simply stood and watched, making no attempt to intervene. Jim was subsequently convicted of the murder of Steve. I would like to ask you about Pete who simply stood and watched, making no attempt to intervene.

Do you think he is:

Guilty of murder -- just like Jim because he let Jim kill Steve

Guilty of manslaughter – a less serious offence than murder which carries a lighter sentence

Not guilty of murder or manslaughter.

Case B.

Bob and Mike decided to rob a bank. Bob drove them to the bank and waited outside in the car. Mike went in, waved a gun and demanded that the cashier hand over money. The cashier pressed the alarm bell. Mike shot her dead and ran out of the bank. He jumped into the car and was driven away by Bob. Bob knew that Mike had a loaded gun with him. Mike was subsequently convicted of the murder of the cashier and robbing the bank.

I would like to ask you about Bob who drove the car but who did not enter the bank.

Do you think he is:

Guilty of murder -- just like Mike he participated in the robbery even though he didn't shoot the cashier

Guilty of manslaughter – a less serious offence than murder which carries a lighter sentence

Guilty of robbery but not murder or manslaughter.

In case A although on the face of it Pete only offers general encouragement to Jim by shouting "Go on mate" and that obviously does not *necessarily* imply that Pete was aware that Jim had a knife, Pete made no attempt to prevent (or even minimize) the harm that Jim would do, and it is quite possible that a jury would conclude that Pete anticipated that Jim would or might intentionally kill Steve – or that at the very least Jim would intend serious injury.⁴³ Thus, he too could be convicted of murder – although different juries might draw different conclusions about what Pete foresaw and thus the extent of his liability.

⁴³ This is the kind of anticipation or foresight that the law currently requires for guilt as an aider or abettor of murder.

In case B, Bob’s liability as an accomplice to murder arises because he knows that Mike has gone into the bank with a loaded gun and a court may well conclude that he knew that Mike might deliberately kill or seriously injure someone during the robbery.

How did the public react to this? As Table 13 shows, the results are crystal clear: *the vast majority of both samples rejected a conviction for murder, even having been told that the lesser and included offence of manslaughter carries a less severe sentence.* Only approximately one fifth of both samples favoured a murder conviction. The percentage supporting a manslaughter conviction was higher in the case of the juvenile with a knife (case A, Pete) than the robbery driver (case B, Bob). This may be explained both by the closer proximity of the offender to the person responsible for the murder, and also by virtue of the fact that there was an alternate verdict of robbery possible in the case of Bob.

Table 13
Public Verdicts in Aiding and Abetting Murder Scenarios

<i>Verdict</i>	<i>Case A: Pete</i>	<i>Case B: Bob</i>
Murder	21%	22%
Manslaughter	58%	41%
Not guilty of murder or manslaughter	21%	37%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Notes: n= 517 per condition; Questions: “I would like to ask you about Pete/ Bob.... Is he guilty of murder, guilty of manslaughter or not guilty of murder or manslaughter?” See text for offence descriptions.

Conclusions

This report has systematically explored, for the first time in England and Wales or any other common law jurisdiction, the state of public opinion towards sentencing offenders convicted of murder. A representative sample of the public was asked a series of questions about the murder statistics as well as the sentencing of cases of murder. In addition, public reaction was explored in a series of focus groups. The current response of the criminal justice system to murder was further tested in relation to those cases where public support might be most expected, and views were elicited on what is probably the most controversial aspect of the mandatory life sentence, namely that having served a term of imprisonment most murderers are released on licence and serve the remainder of their sentence in the community.

We are now in a position to have a much better understanding of community views on this controversial criminal justice issue. Let us begin by recapitulating the principal findings.

Summary of Findings

Knowledge

Respondents were asked a series of questions about murder-related statistics. Responses revealed that many people have very skewed perceptions of the most important murder-related statistics. For example, most people believed (erroneously) that the murder rate had increased in recent years. Only approximately 5% of the sample chose the correct answer, namely that murder rates had declined. Approximately one third of respondents believed (erroneously) that the number of murders had increased greatly. In fact, almost two-thirds of the sample held the view that murder rates had increased over the decade.

By a margin of approximately two to one, however, respondents were more inclined to believe that the murder rate is higher here than in other western nations. Thus, almost a third believed that the rate was higher in England and Wales compared to 18% who felt that it was lower.

With respect to sentencing, perceptions are systematically biased towards seeing the system as being more lenient than is in fact the case. Statistics provided to us by the National Offender Management Service at the Ministry of Justice show that, as at 5 February 2010, between the years of 2000 and 2009, on average, offenders sentenced to a mandatory life sentence spent 15½ years in prison before being released on licence. There was a clear tendency for the public to under-estimate the amount of time served in custody: approximately four respondents in ten believed that offenders convicted of murder spent ten years or fewer in prison.

The public seem to have little more than a rather vague understanding of the current arrangements under which convicted murderers are sentenced to life imprisonment. Although there is a general awareness that most offenders are released into the

community after serving a term of imprisonment, our research suggests there is either no knowledge of the current process by which offenders are given a minimum term, or positive misunderstanding of this aspect of the sentence. Our research suggests the public's knowledge and understanding of the arrangements by which convicted murderers are released on licence also varies, but we suspect that it is rare to find someone with an accurate and detailed knowledge.

Attitudes

We found varying degrees of public support for a range of murder cases, but at no stage did we discover evidence of overwhelming or widespread public support for automatically sending all convicted murderers to life imprisonment. The greatest support for the mandatory life sentence – just over half those surveyed – related to what would in law be regarded as the most serious of the scenarios we tested. Predictably, the level of public support for a life sentence increased in what was regarded as the more serious murder scenarios. One implication of this is that the public perceive significant variations in the seriousness of different murder scenarios, and in that respect this survey confirms the findings of previous research.⁴⁴ (We did not have the opportunity to exhaustively determine the extent to which there is any consensus amongst members of the public as to which kinds of murder are more serious than others.)

There seems to be a division of public opinion as to whether those convicted of the more serious murders should or should not be given the possibility of being released on licence after they have served a sufficient term of imprisonment which reflects the gravity of their offence. Some regarded it as simply inappropriate because the crime warranted a natural life sentence; some expressed real doubts that adequate supervision could in fact be given; others saw it as an appropriate opportunity for offenders to show that they had been rehabilitated, and two thought that it need not necessarily last indefinitely. We did not have the opportunity to assess the extent of support for or against this on a national scale.

We found evidence that in relation to the more serious murders those members of the public who favour release at some stage are content for sentencing judges to be given some measure of discretion, but would like that discretion to be limited or controlled, either through legal guidelines or through minimum and maximum periods of imprisonment.

Perhaps not surprisingly, there was a general antipathy towards the inclusion of the adjective “life” in the sentence label.

With respect to *joint enterprise murder* the results are crystal clear: the vast majority of both samples rejected a conviction for murder, even having been told that the lesser and included offence of manslaughter carries a less severe sentence. Only approximately one fifth of both samples favoured a murder conviction.

⁴⁴ See, for example, Mitchell (1998).

Role of Public Opinion

The questions of whether – and how -- public opinion should influence sentencing are complicated ones (for discussion, see Shute, Roberts (2002, 2011)). In our view public opinion should neither determine sentencing policy nor be ignored by Parliamentarians and policy-makers. There is clarity with respect to the issue of the mandatory life sentence for murder, however. Advocates of the mandatory sentence of life imprisonment have long argued that this sentence is important because of the high level of public support which it attracts. We have provided in this report a scientific evaluation of the degree of public support for the mandatory life sentence. It is clear that whatever other arguments⁴⁵ may be advanced for applying a mandatory life sentence to all offenders convicted of murder, regardless of the circumstances of the offence, strong public support is not one of them.

Importance of Public Legal Education

Promoting greater public awareness of current trends regarding the crime and punishment of murder is clearly a priority. Through no fault of their own significant proportions of the population subscribe to inaccurate views of the current sentencing arrangements for murder. Regardless of whether repeal of the mandatory life sentence is the subject of active consideration by Parliament in the future, an effort should be made to correct the misperception that sentencing for murder is more lenient here than other western jurisdictions. As noted in the introduction, the average time served in prison by offenders convicted of murder has increased in recent years. Taking a broader perspective, as a result of Schedule 21 of the Criminal Justice Act 2003, sentences for manslaughter are likely to also have increased. This is because Schedule 21 effectively increased the minimum terms in murder cases and in order to preserve proportionality between offences the sentences for other serious crimes such as manslaughter have to be increased as well.⁴⁶ The public need to have confidence that the most serious of crimes is punished with severity. One of the statutory functions of the Sentencing Council of England and Wales is to promote public awareness of sentencing.⁴⁷ We would urge the Council, and other agencies involved in the sentencing of offenders convicted of murder (such as the Parole Board of England and Wales) to include the offence of murder in public legal education initiatives. Increasing awareness of the State response to murder may well promote greater confidence in sentencing more generally.

⁴⁵ It is often argued that the unique nature of murder justifies the maintenance of a mandatory life sentence for this offence. In reality the line between murder and manslaughter is far from bright, as noted in a recent article by Jeremy (2010).

⁴⁶ A full discussion of the reasoning behind this and the implications of Schedule 21 can be found in Jeremy (2010).

⁴⁷ See section 129 of the Coroners and Justice Act 2009. Further information about the Sentencing Council can be found at www.sentencingcouncil.org.uk.

References

- Ashworth, A. (2009) **Principles of Criminal Law**. Oxford: Oxford University Press.
- Ashworth, A. and Mitchell, B. (2000) **Rethinking English Homicide Law**. Oxford: Oxford University Press.
- Committee on the Penalty for Homicide (1993) **Report**, London: Prison Reform Trust.
- Doob, A. and Roberts, J.V. (1983) **Sentencing: An Analysis of the Public's View**. Ottawa: Department of Justice Canada.
- Doob, A. N., Sprott, J., Marinos, V. and Varma, K. (1998) **An exploration of Ontario residents' views of crime and the criminal justice system**. Toronto: University of Toronto, Center of Criminology.
- Fletcher, G. (2000) **Rethinking Criminal Law**. Oxford: Oxford University Press.
- Florida Department of Corrections (1997) **What the Public Thinks: Results of a Survey of Floridians**. Miami: Florida Department of Corrections.
- Home Office (2001) **Prison Statistics, England and Wales 2000**. London: HMSO.
- Hough, M. (1996) People Talking about Punishment. **The Howard Journal**, 35: 191-214.
- Hough, M. and Roberts, J.V. (1998) **Attitudes to punishment: findings from the British Crime Survey**. Home Office Research Study No. 179. London: Home Office.
- Hough, M. and Roberts, J.V. (1999) Sentencing Trends in Britain: Public Knowledge and Public Opinion. **Punishment and Society. The International Journal of Penology**, 1: 7-22.
- Hough, M. and Roberts, J. (2004) **Youth Crime and Youth Justice: Public Opinion in England and Wales**. Bristol: Policy Press.
- Hough, M., Roberts, J.V., Jacobson, J., Bredee, A. and Moon, N. (2008) **Attitudes to the sentencing of offenders convicted of offences involving death by driving**. London: Sentencing Advisory Panel.
- ICM Research (2006) Prison Sentences. **ICM Omnibus**. Available from ICM or the authors.
- Indermaur, D. (1987) Public Perception of Sentencing in Perth, Western Australia. **Australia and New Zealand Journal of Criminology**, 20: 163-183.

- Ipsos MORI (2007) **Attitudes to the Death Penalty**. Available at:
- Jeremy, D. (2010) Sentencing Policy or Short-term Expediency? **Criminal Law Review**, 8: 593-607.
- Justice Centre. (2007) **Kansas Criminal Justice Public Opinion Survey**. Available at: www.justicecenter.csg.org.
- Law Commission of England and Wales (2004) **Partial Defences to Murder**. Law Commission Report No. 290. London: TSO.
- Law Commission of England and Wales. (2005) **A New Homicide Act for England and Wales? A Consultation Paper**. Consultation Paper No. 177, London: TSO.
- Law Commission of England and Wales (2006) **Murder, Manslaughter and Infanticide**. Law Com No. 304, London: TSO.
- Law Commission of England and Wales (2007) **Participating in Crime**. Law Com No 305, London: TSO.
- Mattinson, J. and Mirlees-Black, C. (2000) **Attitudes to Crime and Criminal Justice: Findings from the 1998 British Crime Survey**. Home Office Research Study No. 200. London: Home Office, Research, Development and Statistics Directorate.
- Mitchell, B. (1998) Public Perceptions of Homicide and Criminal Justice. *British Journal of Criminology*, 38(3): 453-472.
- Mitchell, B. (2007) Distinguishing between Murder and Manslaughter in Practice. *Journal of Criminal Law*, 71(4): 318-341.
- Paulin, J., Searle, W. and Knaggs, T. (2003) **Attitudes to Crime and Punishment: A New Zealand Study**. Wellington: Ministry of Justice.
- Roberts, J.V. (1988) **Public Opinion and Sentencing: Surveys by the Canadian Sentencing Commission**. Research Reports of the Canadian Sentencing Commission. Ottawa: Department of Justice Canada.
- Roberts, J.V. (2001) **Public Evaluations of Criminal Justice Professionals: The Effects of Information on Attitudes**. Manuscript available from author at: Julian.roberts@crim.ox.ac.uk
- Roberts, J.V. (2002) Public Opinion and Sentencing Policy. In: S. Rex and M. Tonry (eds.) **Reform and Punishment: the future of sentencing**. Cullompton: Willan Publishing.

- Roberts, J.V. (2003) Public Opinion and Mandatory Sentences of Imprisonment: A Review of International Findings. **Criminal Justice and Behavior**, 20: 1-26.
- Roberts, J.V. (2011, in press) Community Views of Sentencing: Intuitive and Principled Responses to Offending. In: M. Tonry (ed.) **Punishment Futures. Studies in Penal Theory and Philosophy**. Oxford: Oxford University Press.
- Roberts, J.V. and Doob, A.N. (1990) News Media Influences on Public Views of Sentencing. **Law and Human Behavior**, 14: 451-468.
- Roberts, J.V. and Gebotys, R. (1989) The Purposes of Sentencing: Public Support for Competing Aims. **Behavioural Sciences and the Law**, 7: 387-402.
- Roberts, J.V. and Hough, M. (Eds.) (2002) **Changing Attitudes to Punishment**. Cullompton: Willan Publishing.
- Roberts, J.V. and Hough, M. (2005a) **Understanding Public Attitudes to Criminal Justice**. Maidenhead: Open University Press.
- Roberts, J.V. and Hough, M. (2005b) Sentencing Young Offenders: Public Opinion in England and Wales. **Criminal Justice**, 5: 211-232.
- Roberts, J.V., Hough, M., Jacobson, J., Bredee, A. and Moon, N. (2008) Public attitudes to sentencing offenders convicted of offences involving death by driving. **Criminal Law Review**, July: 525-540.
- Roberts, J.V., Hough, M., Jacobson, J., and Moon, N. (2009) Public Attitudes to Sentencing Purposes and Sentencing Factors: An Empirical Analysis, **Criminal Law Review**, November, 771-782.
- Roberts, J.V., Nuffield, J., and Hann, R. (2000) Parole and the Public: Attitudinal and Behavioural Responses. **Empirical and Applied Criminal Justice Research**, 1: 1-29.
- Roberts, J.V. and Stalans, L. (1997) **Public Opinion, Crime, and Criminal Justice**. Boulder: Westview Press.
- Select Committee of the House of Lords, (1989) **Report on Murder and Life Imprisonment, volumes 1 – 3**, HL Paper 78, London: HMSO.
- Smith, K. and Flatley, J. (eds.) **Homicides, Firearm Offences and Intimate Violence 2008/09**. London: Home Office.
- Tufts, J. and Roberts J.V. (2002) Sentencing Juvenile Offenders: Public Preferences and Judicial Practice. **Criminal Justice Policy Review**, 13: 46-64.

Sanders, T. and Roberts, J.V. (2000) Public Attitudes toward Conditional Sentencing: Results of a National Survey. **Canadian Journal of Behavioural Science**, 32: 199-207.

Vandiver, M. and Giacomassi, D. (1997) One Million and Counting: Students' Estimates of the Annual Number of Homicides in the U.S. **Journal of Criminal Justice Education**, 8: 135-143.

Appendix A: Survey Instrument

PUBLIC OPINION AND SENTENCING FOR MURDER:

We are conducting a survey about the crime of murder and we are keen to avoid upsetting people who are the next of kin or close friend of someone who was unlawfully killed. Could you please tell me whether you would prefer not to answer our questions for this reason. I am going to ask you a series of questions about sentencing offenders. We will begin with some general questions, then I will ask you to imagine that you are a judge and I will ask you to impose sentence in some actual cases.

QA1 SHOWCARD A

Looking at this card what do you think is the MOST important purpose of sentencing offenders?

CODE ONE ONLY

1. Punish an offender
2. Restrict an offender's opportunities to re-offend
3. Change behaviour/attitudes of an offender to prevent them re-offending (rehabilitation)
4. Deter others from committing the same crime (general deterrence)
5. Make amends to the victims for harm done
6. Express society's disapproval
7. Scare the offender so that he/she won't do it again (individual deterrence)
8. Don't know

QA2 SHOWCARD A

And what do you think is the MOST important purpose of sentencing when the offender has been convicted of murder?

CODE ONE ONLY

1. Punish an offender
2. Restrict an offender's opportunities to re-offend
3. Change behaviour/attitudes of an offender to prevent them re-offending (rehabilitation)
4. Deter others from committing the same crime (general deterrence)
5. Make amends to the victims for harm done
6. Express society's disapproval
7. Scare the offender so that he/she won't do it again (individual deterrence)
8. Don't know

Ask 1A or 1B

1A

Q: In your view is sentencing in cases of murder in this country much too lenient, too lenient, about right, too harsh or much too harsh? PROBE AS NECESSARY

Sentencing in cases of murder in this country is generally much too lenient

Sentencing in cases of murder in this country is generally too lenient

Sentencing in cases of murder in this country is about right

Sentencing in cases of murder in this country is generally too harsh

Sentencing in cases of murder in this country is generally much too harsh

1B

Q: In your view is sentencing in this country much too lenient, too lenient, about right, too harsh or much too harsh? PROBE AS NECESSARY

Sentencing in this country is generally much too lenient
Sentencing in this country is generally too lenient
Sentencing in this country is generally about right
Sentencing in this country is generally too harsh
Sentencing in this country is generally much too harsh
Don't know

Ask 2A or 2B

2A.

Over the past decade, has the number of murders in this country READ OUT

Increased greatly
Increased somewhat
Stayed about the same
Declined somewhat
Declined greatly
Don't know

2B.

Do you think the murder rate in this country is higher, lower or about the same as in other western European nations? PROBE AS NECESSARY

The murder rate is much higher in this country
The murder rate is somewhat higher in this country
The murder rate is about the same in this country
The murder rate is somewhat lower in this country
The murder rate is much lower in this country
Don't know

Ask 3A or 3B

3A. Q: All people convicted of murder are sentenced to life imprisonment. Most will eventually be released from prison on licence to be supervised in the community. Compared to other western European nations, do you think offenders convicted of murder in England spend more time in prison than those from other Western nations, about the same length of time in prison or less time in prison?

Offenders convicted of murder in England spend more time in prison than murderers in other countries
Offenders convicted of murder in England spend about the same amount of time in prison as murderers in other countries
Offenders convicted of murder in England spend less time in prison than murderers in other countries
Don't know

3B. Q: All people convicted of murder are sentenced to life imprisonment. Most will eventually be released from prison on licence to be supervised in the community. On average, how many years do offenders convicted of murder and sentenced to life imprisonment actually spend in prison?

4. Q: What percentage of offenders convicted of murder and who have been released on licence to live in the community are recalled to prison for committing another criminal offence? Would you say it is closest to? PROMPT FOR BEST GUESS

1%

5%

10%

15%

Or 20%

No idea

Q. 5

Half sample receive A

5. A. As you now know, all offenders convicted of murder are sentenced to imprisonment for life. Most offenders serve a substantial period in custody – on average around 13 to 15 years – before being released on licence to live in the community. Although they are no longer in prison, these offenders will be living on licence for the rest of their natural life. They must report to the authorities as and when required to do so, and can be recalled to prison if they violate any of their conditions of release. In this way the criminal justice system monitors offenders' behaviour in the community.

Now please consider the following case.

Jack's elderly father Charles was very wealthy, but when Jack refused to get a job they had a major argument and Charles cut his son out of his will. Jack did then get a job but continued to claim unemployment benefit. When Charles reported his own son to the local social services department Jack became so angry that he punched his father several times and killed him. He was subsequently convicted of murder.

The court imposed a life sentence with a tariff period of 15 years. This meant that Jack would serve 15 years in prison and then be released on licence for the rest of his life.

Do you think this sentence was:-

Much too lenient

Too lenient

About right

Too harsh

Much too harsh

Don't know

5.B. Please consider the following case:

Jack's elderly father Charles was very wealthy, but when Jack refused to get a job they had a major argument and Charles cut his son out of his will. Jack did then get a job but continued to claim unemployment benefit. When Charles reported his own son to the local social services department Jack became so angry that he punched his father several times and killed him. He was subsequently convicted of murder.

The court imposed a life sentence with a tariff period of 15 years. This meant that Jack would serve 15 years in prison and then be released on licence for the rest of his life.

Do you think this sentence was:-

Much too lenient

Too lenient

About right

Too harsh

Much too harsh

Don't know

Q.6

For the purposes of this question the overall sample of respondents is divided into three subgroups – A, B and C. Respondents in each subgroup will be asked to read 3 cases.

Each respondent reads 3 cases at random.

Now I am going to ask you to imagine you are a judge sentencing people convicted of murder. Please decide which of the sentences on this card is most appropriate. I would like you to tell me, in each case, how long the offender should spend in prison:

SHOWCARD B

Up to 4 years in prison;

Between 5 and 9 years in prison;

Between 10 and 14 years in prison;

Between 15 and 19 years in prison;

Between 20 and 24 years in prison;

Between 25 and 29 years in prison;

At least 30 years in prison, but released at some time;

Imprisonment for the rest of his/her natural life – that is s/he will never be released.

Subgroup A:-

1. *Frank, aged 18, burgled the home of Alex who was a 64-year old widower. Alex disturbed Frank during the burglary, and Frank hit him several times over the head with a hammer, killing him. Frank said he just reacted without thinking.*
2. *Jess had recently ended her relationship with Mark, but he went to her house to try to persuade her to take him back. When she told him she did not love him anymore, he became upset and stabbed her to death with a kitchen knife.*
3. *Nick and Oliver ran rival minicab businesses. Nick thought that Oliver had sabotaged his radio system preventing him from contacting his drivers. Knowing he had a knife in his pocket, Nick went to Oliver's offices and confronted him about this. They argued and that led to a scuffle, in the course of which Nick fatally stabbed Oliver in the chest.*

Subgroup B:-

4. *One evening Terry accused his partner Peter of having an affair with another man. They argued and Peter, who denied the allegation, called Terry a "bastard". Terry then picked up an ashtray and hit Peter over the head with it, killing him.*
5. *Jim decided to rob a bank. He bought a shotgun and was prepared to kill anyone who tried to prevent him. He entered the bank, pointed the gun at the cashier and demanded money. When the cashier pushed the alarm bell Jim shot him dead and fled.*
6. *Pete and Bert had an argument and Pete punched Bert in the face. Pete then left to walk home. Meanwhile Bert got into his car and set off after Pete. He approached Pete from behind and drove the car straight at Pete, tossing him high into the air. Bert then drove off leaving Pete lying dead on the pavement.*

Subgroup C:-

7. *Gary and Jane had an argument at a party at their house. When Max intervened to try to calm things down, Gary picked up a knife and stabbed him with it.*
8. *Graham was 6 years old and suffered from a series of untreatable extremely serious mental and physical disabilities. His mother Jane testified that she could not bear to see him suffer any more. One day she walked into a side ward in a hospital and disconnected the life-support machinery from Graham.*
9. *Brian was 18 years old and he broke into the house of Fred who was 68. Brian was just about to pick up the TV set when Fred confronted him. Fred kept shouting out "Help! Help!" and Brian picked up a cushion and suffocated him with it.*

Q.7 Ask respondent scenario A, B or C

Consider the following case:

7A. Margaret and her husband Richard were in financial difficulties. Richard told her he had just spent a lot of money on a new car and she became very angry. They had a furious row and Margaret picked up a very heavy ashtray and hit him over the head with it. Richard died shortly afterwards. Margaret was convicted of murder and sentenced to life imprisonment and required to serve 12 years in prison before being released on licence.

How would you react if instead of imposing the life imprisonment sentence the court imposed a sentence of 20 years custody? After serving all 20 years Margaret would be released from prison without being on licence.

SHOWCARD C

This would definitely be an acceptable substitute sentence

This would possibly be an acceptable substitute sentence

This would possibly be an unacceptable substitute sentence

This would definitely be an unacceptable substitute sentence

Don't know

7. B. Sue was 12 years old and severely disabled. She had the mental age of a 4-month old baby and suffered frequent fits. She was in frequent pain and faced the prospect of further major surgery with no guarantee of any improvement. Her father Stephen testified that he could not bear to see her suffer any more. One day he decided it was in her best interests that she should die and he overdosed her medication so that she died peacefully. Stephen was convicted of murder and sentenced to life imprisonment and required to serve 8 years in prison before being released on licence.

How would you react if instead of imposing the life imprisonment sentence the court imposed a sentence of 10 years custody? After serving all 10 years Stephen would be released from prison without any further conditions.

SHOWCARD C

This would definitely be an acceptable substitute sentence

This would possibly be an acceptable substitute sentence

This would possibly be an unacceptable substitute sentence

This would definitely be an unacceptable substitute sentence

Don't know

7C. Sarah had been looking after her uncle Max for ten years. He suffered severely from dementia, was also bad-tempered and regularly criticised her. One day Sarah decided she couldn't stand it any longer. While her uncle was asleep Sarah smothered him with a pillow, and he died. She was sentenced to life imprisonment and required to serve 10 years in prison before being released on licence.

How would you react if instead of imposing the life imprisonment sentence the court imposed a sentence of 15 years custody? After serving all 15 years Sarah would be released from prison without being on licence.

SHOWCARD C

This would definitely be an acceptable substitute sentence

This would possibly be an acceptable substitute sentence

This would possibly be an unacceptable sentence

This would definitely not be an unacceptable sentence

Don't know

Q.8

Ask Respondents 8A or 8B

8A. A. Jim and Pete, two 16 year old schoolboys, were walking home when they met Steve, also 16. Jim didn't like Steve, and they argued. A fight began during which Jim pulled out a knife and stabbed Steve to death. Pete shouted to Jim "Go on mate", but otherwise simply stood and watched, making no attempt to intervene. Jim was subsequently convicted of the murder of Steve.

I would like to ask you about Pete who simply stood and watched, making no attempt to intervene. Do you think he should be:

Guilty of murder -- just like Jim because he let Jim kill Steve

Guilty of manslaughter – a less serious offence than murder which carries a lighter sentence

Not guilty of murder or manslaughter -- since he did not attack Steve.

Don't know

8.B. Bob and Mike decided to rob a bank. Bob drove them to the bank and waited outside in the car. Mike went in, waved a gun and demanded that the cashier hand over money. The cashier pressed the alarm bell. Mike shot her dead and ran out of the bank. He jumped into the car and was driven away by Bob. Bob knew that Mike had a loaded gun with him. Mike was subsequently convicted of the murder of the cashier and robbing the bank.

I would like to ask you about Bob who drove the car but who did not enter the bank. Do you think he should be:

Guilty of murder -- just like Mike he participated in the robbery even though he didn't shoot the cashier

Guilty of manslaughter – a less serious offence than murder which carries a lighter sentence

Guilty of robbery but not murder or manslaughter -- since he did not shoot the cashier.

Don't know