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**EXPLORING PUBLIC OPINION:
THE DISCURSIVE CONSTRUCTIONS OF
CRIME AND PUNISHMENT**

*A thesis presented in partial fulfilment
for the requirements for the degree of
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ABSTRACT

Crime has been positioned as a serious social problem within New Zealand society over the last decade. Continual claims that ordinary citizens are under threat from a growing population of predatory people has become the norm. Such claims call for harsher and more punitive forms of punishment which are evidenced in the increased use of incarceration as a treatment for criminal offenders. The result is that a punitive, get-tough movement has come to dominate the justice system resulting in the overpopulating of the nation's prisons. Frequently cited as the impetus for current penal practices is public opinion which is determined by presenting forced choice questions through surveys, polls and referenda. Present understandings of public opinion are that it is fixed, static and punitively orientated. Yet people's opinions are subjective, contextually arranged and show a great deal of variability and inconsistency when explored discursively.

The present study, developed from within a qualitative and social constructionist framework, explores public opinion in reference to crime and punishment and the punitiveness of current penal practices. Twelve people were engaged in conversation and produced a complex but uncomplicated understanding on this topic. Two broad discourses were identified as emerging from people's talk: punitively orientated discourses of crime and punishment, and alternative non-punitive discourses. Discourses of punitiveness were drawn upon to construct an understanding of crime and punishment that was contextual and conditional. Participants also engaged with alternative discourses to construct a non-punitive point of view that drew on notions of offender rehabilitation, crime prevention and humanitarian ideals in the treatment of criminal offenders.

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Chapter One

Introduction: Setting the Scene

*New Zealand's prison population
has doubled every 10 years since 1996.
Penal reformers and criminologists say
internationally New Zealand is
already a penal curiosity.
(Chamberlain, 2006, p. 73)*

Overview

A punitive get-tough movement towards crime and punishment has emerged in most modern Western societies in recent decades. This movement has, at its core, an emphasis on harsher forms of punishment as the preferred response to crime. In New Zealand society, this equates to the increased use of incarceration as a sanction for people who break the law. Yet punitive practices may not be the most effective solution to crime and may in fact *add* to the problem rather than ameliorate it. The purpose of this introductory chapter is to set the scene for the current project by mapping out the various justifications and rationales that have brought the punitive get-tough movement into contemporary policy and practice. Part of this discussion will focus on the positioning of public opinion as central to the get-tough movement, despite suggestions that the public is favourable to alternative forms of treatment. Highlighting the effects of the get-tough movement is also necessary, particularly the adverse effects at individual and community levels. Wider social concerns that result from mass incarceration are also discussed. Finally, the main aims and broad intentions of the present research are introduced in relation to the literature.

Setting the Scene: The Punitive Get-tough Stance

In recent decades, New Zealand has experienced massive increases in incarceration rates. Though a comparatively small nation, we rank seventh highest in incarceration rates among the OECD nations (155 per 100,000 population), outranking Australia, Canada and the United Kingdom (Statistics New Zealand [SNZ], 2005a). As of October 2005, our prison population stood at 7550, an estimated 150 percent increase over the last decade (The Howard League for Penal Reform [Howard League], 2005)¹. This equates to an overall prison occupancy rate of 99.2 percent (Department of Corrections [DOC], 2005a).

¹ The Howard League for Penal Reform is an independent, non-profit, non-political organisation promoting humane and effective penal reform and rational debate on crime, punishment, rehabilitation and alternatives to prison.

The most commonly employed justification for the get-tough stance is that it is a necessary response to rising crime rates (Roberts, 2003; Roberts, Stalans, Indermaur, & Hough, 2003; Wacquant, 2005). New Zealand's most high profile and active law and order lobby group, the Sensible Sentencing Trust² believe our nation is experiencing a crime epidemic (Sensible Sentencing Trust [SST], 2005a). Their website reports that homicide has increased by four-thousand percent over the last 50 years while violent crime has risen by 108 percent over the last decade (DOC, 2005a). These statistics are claimed to be accurately portraying current crime rates in New Zealand society (SST, 2005b; 2005c). In contrast, evidence from the New Zealand Police (NZP, 2006) and Statistics New Zealand (2001; 2005b) indicate a general *decline* in New Zealand crime rates since the 1990s. The Department of Corrections (DOC, 2005a) also report a five percent reduction in reported crime for the year 2004, which is the lowest recorded crime rate since 1983. Reduced to categories, the three most serious offences – violence, homicide and sexual offences – have fallen steadily since 1996 (NZP, 2006). Despite the contradictory information, New Zealand's prison population has continued to increase (Roberts, 2003). Those incarcerated for the three most serious offences constitute less than a third of the inmate population at any given time (DOC, 2005a).

The Punitive Public

Public opinion is frequently cited as the rationale and driving force behind punitive, get-tough practices (Roberts, 2002; Roberts & Doob, 1990). That is, policy makers implement punitively orientated policies on the assumption that they reflect the will of the public (Cullen, Cullen, & Wozniak, 1988). A wealth of research indicates that the public may be supportive of alternative forms of treatment, yet there are suggestions that segments of the public become influenced and persuaded to believe there is a crime problem (Green, 2006; Maruna & King, 2004; Stalans, 2002). In reviewing the available literature, several factors appear to

² The Sensible Sentencing Trust's vision is to create a patriotic, crime free New Zealand via harsher sentencing practices. They claim to take an apolitical stance, yet their chief crime prevention spokesperson and law and order spokesperson are both former MPs and should be knowledgeable that practices are policy based and cannot be outside a political position.

have an influence on the style and trajectory of public opinion. Firstly, in recent decades crime and punishment has become a “hot-button topic” (Cuellar, McRenyolds, & Wasserman, 2006, p. 197). It has emerged as a mandate for political campaigns, become a popular newsworthy topic, an attractive theme for documentaries, and a domain for victim rights campaigners (Roberts, 2003). Research has also suggested that the domain of crime and punishment once dominated by bureaucrats and criminological experts, has been re-positioned as a public concern and responsibility (Aas, 2005). Lastly, from a New Zealand perspective the 1999 citizen initiated referendum on penal reform, held in conjunction with the general election³, projected the concern of crime and punishment into the public consciousness. The referendum drew attention to a number of perceived deficits in the justice system including leniencies and disparities in sentencing, the lack of victim rights, the overt focus on offender rights and various issues that implied a ‘soft-on-crime’ approach to crime control (Roberts, 2003). The results of the referendum were interpreted as a show of public support for universally punitive practices.

Social Effects of the Punitive Trend

While the prison is a necessary institution in modern day correctional practices, the current mode of mass incarceration does not yield the intended results of crime control and crime reduction. What does eventuate are a number of negative consequences that may undermine certain social justice values, such as social equity and family and social stability (Feather, 2003; Lynch & Sabol, 2004). For example, we are not only incarcerating men and women but also mothers and fathers. Thus, any dependant children are left fatherless, motherless or sometimes both. This may overburden extended family members as they are charged with the emotional and financial responsibility of childcare. In addition, removing fathers or mothers from families is likely to increase the number of single parent families and perhaps increase the numbers dependant on welfare. The statistical evidence demonstrates that for the year 2004, 51 percent of incarcerated individuals had

³ While demands for changes in New Zealand’s corrections system has a long history, the 1999 referendum is the most widely referred to as it is strongly implicated in the latest movement of penal reform.

dependant children under five years of age (DOC, 2004; SNZ, 2005a).

Furthermore, the economic burden may be compounded if the increased costs of prison administration and occupancy is considered; an estimated \$161 per day is required to house an inmate in prison (DOC, 2005a).

The detrimental effects of mass incarceration are perhaps most keenly evident among minority groups. It is widely recognised that minority males are vastly over-represented in prison numbers globally (Walker, 1987). From a New Zealand perspective, Māori youth are six times more likely to be imprisoned than non-Māori youth while Māori in general constitute approximately 50 percent of the total prison population (Brett, 1993; DOC, 2005a; Lawson-Te Aho; 1998). Twenty five percent of all Māori youth suicides are said to occur in prison cells or police custody (Joyce, as cited in Brett, 1993). According to Beautrias (1998) and Lawson-Te Aho (1998) a range of well established risk factors ranging from behavioural problems to substance and alcohol abuse are commonly identified among incarcerated Māori youth. Any period of confinement within a prison environment therefore, may do little to assist these vulnerable members of society including the socially, developmentally or behaviourally disadvantaged. It is argued that since the vast majority of offenders are not rehabilitated, they have not resolved their offending behaviour and are thus ill prepared for re-entry into free society. This does little to reduce crime rates or create safer communities (Western, Lopoo & McLanahan, 2004).

While mass incarceration may deter people from crime for a prescribed length of time, it has repeatedly failed to prevent future offending (Day & Howells, 2002; Hollin, 2002). In fact, statistical evidence indicates that for the year 2003, nearly 30 percent of all released inmates re-offended and were re-imprisoned within 12 months of release from New Zealand's prisons (DOC, 2005a). Nevertheless, the practice of mass incarceration has assumed dominance in the criminal justice domain. While it is acknowledged that a certain number of individuals should be imprisoned for the safety of society, it is also recognised that the get-tough, punitive stance is only one possible method in the treatment of criminal offenders (Hollin, 2001). Offender rehabilitation for example, has been

shown to be more effective in reducing future offending than a prison sentence alone (Cullen & Gilbert, 2003; Hollin, 2002). While the get-tough, punitive stance retains dominance in practice, policy and ideology, there is little scope for effective crime reduction strategies such as offender rehabilitation to be utilised.

Aims of the Research

The broad aim of this research is to identify the discourses of crime and punishment that are drawn upon by people in New Zealand society. In particular, I want to explore the talk of ordinary New Zealand citizens and understand how they draw upon these discourses to construct a particular point of view. To that end, I analysed conversational texts with the aim of identifying discourses that constitute support for punitive get-tough movements, or support for alternative modes of treatment, specifically offender rehabilitation. That is, do people maintain that getting tough with criminal offending is favourable to treating deviant behaviour? Also, how do they construct their position in the debates and under what conditions?

Organisation of the Thesis

This thesis is organised into several distinct but interconnected chapters that attend to the various ways in which understandings of crime and punishment are produced. The first three chapters form the introductory section and seek to understand: the relationship of the get-tough movement in relation to public opinion; how crime and punishment has emerged to be a significant social problem within New Zealand society; how discourses of crime and punishment have emerged within modern society; and finally, how offender rehabilitation and public opinion have been subjugated to an alternative position within the debates.

Chapter four maps the theoretical framework for the research. Social constructionism is argued as a methodological framework that enables an understanding of the underlying assumptions regarding the construction of crime and punishment. It assumes that knowledge is constructed in the interactions between people and that it is contextual. Knowledge therefore is both dependent

upon, and varies according to the social, historical and cultural locations in which it is created which in turn, enable and constrain certain social practices and positions subjects in particular ways. Chapter five outlines the research method, detailing the recruitment of participants, the interview process and the coding of the data according to a discourse analytic method.

The data analysis identifies discourses of crime and punishment that can be broadly understood as punitive discourses or alternative discourses that were engaged in the participants talk and is the focus for chapter six. Finally, chapter seven presents a discussion of the findings and seeks to draw together the various discursive formations to make sense of how complex public opinion may be. The implications of these complex accounts are discussed.

Chapter Two

Constructing Crime as a Problem

We are in the grip of a moral panic about crime on television. Quite when it started, or who was responsible, nobody can be sure, but a classic panic it most definitely is. Like some medieval plague, it springs from every sewer in a spontaneous overflow, reaches fever pitch, then mercifully subsides...

(Hunt, 1997, p. 633)

Overview

From a social constructionist perspective, problems do not simply appear on the social landscape. In most developed societies, issues become problems because they are produced through social and institutional relationships. Oftentimes, problems generate feelings of panic and fear and therefore, capture a significant proportion of public attention. When problems such as crime and punishment become understood as having a personal effect, they become hotly debated amid demands for action and attention. How a problem is framed and expressed therefore, can produce a particular way of understanding that problem. This implies that message givers can be instrumental in the construction of a problem. More so if they occupy positions of authority and power and are understood as having credibility, thus increasing the legitimacy of an issue. Public opinion also plays a role in constructing crime and punishment as a social problem, not only by engaging with the information but also by relaying back a body of information that may serve to confirm that the problem is cause for fear and panic. The interconnection between what is understood to be legitimate knowledge and public opinion primes the social landscape for the emergence of a particular point of view that eventually comes to dominate. As the public and powerful groups engage in a complex network of information sharing, a set of discursive formations emerge which underpin the statements, the rules and the particular perspectives that give meaning to the problem and which provide the building blocks for the social construction of a social problem.

Generating a Panic about Crime

Given that crime has a history as old as humanity itself, one would be inclined to question how in recent years, it has emerged to become a serious social problem. To answer questions such as these, academics explore social phenomenon such as crime for evidence of a moral panic (Goode & Ben-Yehuda, 1994a). If a panic is present there are specific indicators. For example, a society that expresses disproportionate reactions toward some type of social problem is assumed to be experiencing 'panic' (Burns & Crawford, 1999; Goode & Ben-

Yehuda, 1994b; Hunt, 1997). In addition, visible displays of hostility towards specific groups of people are central to a panic. In Cohen's (2002) terms it is a "folk devil" (p. 9) or perceived group of deviants who become the target for such distorted societal reactions. Furthermore, a panic typically generates a particular style of language that emerges as the dominant form of talk for describing both the problem and the group of deviants. This language becomes a self-perpetuating form of knowledge that functions in such a way to fuel public outrage and hostility and position one rationalisation for the problem as prominent over other possible explanations (de Young, 2000).

Several models of understanding moral panics have been proposed, each positing a variation on the emergence of a panic (Goode & Ben-Yehuda, 1994b). For example, proponents of the grassroots model maintain that moral panic is generated from the bottom levels of society. Panic emerges because ordinary citizens are able to translate some fear into widespread anxiety and concern. From this perspective, significant proportions of the public spontaneously take up an issue, thus there is little need for the involvement of other groups (Hunt, 1997). On the other hand, those advocating the interest group model point out that primary claims makers, such as lobby groups and activists, can position an issue as 'problematic' and "construct social problems themselves" (Loseke, 1999, p. 30). Yet grassroots proponents maintain that special interest groups have little control over society and lack the ability to generate mass public interest or concern (Hunt, 1997). Put another way, interest groups are incapable of fabricating a panic where public concern is non-existent. Some claim that the 1999 referendum on law and order is indicative of a publicly instigated moral panic. The assumption is that a 92 percent affirmative response to the referendum is indicative of significant public concern and anxiety (Alexander, 2004; Booker & Watson, 2000; Franks, 2001; SST, 2005d). It is important to note that the referendum has been criticised as generating less than accurate results. For example, Parkinson (2001) questions the ability of referendums to produce rational debate because they represent a limited form of participation. Second, Gendall, Hoek, and Willis (2002) suggest that various propositions were contained in the 1999 referendum question and the public's subsequent interpretation of those propositions varied considerably

because of its complexity and the restriction of a yes or no answer. The question read:

Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences? (Gendall et al., 2002, p. 304)

While voters may have agreed with some aspects there was disagreement on others. This may have affected the results. It is argued that a 92 percent affirmative response says little about the proportion of the population responding. Furthermore, Ungar (2001) reports, “a surge of public opinion often implies that an issue is in the air” (p. 279), but is not necessarily indicative of widespread concern, fear or panic.

According to the relevant research it is more common for a moral panic to originate from the interest group level (Goode & Ben-Yehuda, 1994b). It is argued that where an interest group has instigated panic it “has more serious and long lasting repercussions that might produce...changes...in legal and social policy or even in the way the society conceives itself” (Cohen, 2002, p. 1). There may also be greater chance of success because interest groups are likely to be organised, have a clear and acceptable solution to the problem and portray their actions as beneficial to society in general. According to Roberts (2003), the activities of certain groups – the Sensible Sentencing Trust, the Law and Order Referendum, media and certain political factions – before, during and following the 1999 referendum, suggests several things. Firstly, each group became active and visible in the promotion of crime as a significant social problem to New Zealand citizens. In this manner, it is already assumed there *is* a problem. Secondly, they each promoted a solution to the problem that entailed a ‘get-tough’ stance to criminal offending. Thirdly, the intention was to garner enough public and political attention to bring about change at a policy level (Goode & Ben-Yehuda, 1994b). Lastly, the collective actions of these various groups placed significant pressure on political leaders to reform the penal system and implement policies that enabled

the get-tough stance to be enacted. Thus, in light of this discussion, it may be reasonable to assume a moral panic regarding crime and punishment has emerged in New Zealand society and has been produced by groups other than the general public. This begs the question of how do these various groups persuade and influence public opinion towards a particular point of view.

Influencing Public Opinion: The Power of the Message

Statistical Information

Despite its origins, moral panic does not eventuate in a vacuum. Rather, it is produced and maintained through a complex and diverse network of claim making that has the capacity to influence and persuade. The effects of claim making on public attitudes and opinions has been well investigated within psychological research, particularly the effects of persuasively styled messages (Bagozzi, Gürhan-Canli, & Priester, 2002; Szabo & Pfau, 2002). According to Best (2001), one of the most basic and perhaps easily accessible persuasion tool is quantifiable evidence. On a daily basis, we are bombarded with numerous claims in statistical form that become increasingly difficult to ignore. Perhaps in response to the “risk society” (Ungar, 2001, p. 271) whereby a wealth of social evils and catastrophes assume importance in daily life, claims of this nature provide credibility and authenticity to any given problem. However, Best proposes that “every social problem has a dark figure” (p. 33). This figure eventuates because emergent social problems lack firm, substantiating evidence to indicate the *actual* size of the problem. Nevertheless, when claim makers are held accountable for their claims, there is a tendency to provide a broad estimate of the problem. Such estimates may have little relevance to the real problem because they are typically an exaggerated guess based on a narrow and unbalanced understanding of the problem; Best asserts that “activists often couple big statistics based on broad definitions with compelling examples of the most serious cases” (p. 40).

This type of information is problematic within the public domain. For example, from a heuristic point of view, when people judge the accuracy of a particular body of information they generally engage in probabilistic thinking

which means they are likely to perceive that the bigger the number, the less chance there is of error; bigger numbers equate with accuracy (Nisbett, Kranz, Jepson, & Kunda, 2002). To illustrate this point, the Sensible Sentencing Trust website claims that New Zealand's homicide rate has increased by 4000% over the last 50 years, while violent crime has increased by 108% over a ten year period (SST, 2005d). It is not clear how the SST arrive at these figures as their statistical evidence is not verified, however, such claims require little interpretation and become accepted by the public as accurate (Myers, 2001). Therefore, it is reasonable to assume that quantifiable evidence can have a persuasive effect and the continual and repetitive claims that portray rapidly increasing crime rates help to incite societal panic and foster the belief that there is something to fear.

The Fear of Crime

A growing body of research has focused on the concept of fear of crime (DOC, 2001; Jackson, 2005; Maruna & King, 2004). From a psychological perspective, fear is a strong motivator of attitudinal formation and change and is most amenable to persuasion tactics (Eagly & Chaiken, 1993). In understanding fear of crime from a cognitive perspective, research indicates that continually exposing people to negative information especially regarding emotive topics such as crime, results in the construction of a narrative that also incorporates imagery on how a personal attack against them might proceed (Agans & Shaffer, 1994). In behavioural terms, such a narrative may be expressed by the avoidance of certain activities including going out alone, engaging with strangers and cessation from activities such as jogging or walking (Warr, 1990). Furthermore, the fear of crime is also implicated in the reduction in social cohesion and less sense of community (DOC, 2005b) as well as a growing intolerance for particular groups of people (Tomaino, 1997). Jackson (2005) adds, "[t]he greater the vividness and sense of impact, the greater the potential emotional responses" (p. 11).

Yet fear itself is a nebulous concept and exactly what emotions are involved is less straightforward (Maruna & King, 2004). In terms of fear of crime, feelings and emotions can be diffuse or specific. For example, it may manifest as anxiety

from the potential risk of being victimised, be expressed as worry and concern for the wider community, or encompass anger and outrage over current social conditions (Jackson, 2005). In attempting to conceptualise the fear of crime, Jackson highlights several salient points that are supported by psychological research on fear in general and may account for some of the behavioural and emotional expressions of a moral panic. Firstly, fear is an unconscious, automatic process that involves little analysis (Myers, 2001; 2005). Secondly, it becomes inconsequential whether the threat is real or perceived. If people are fearful, the likelihood that they will perceive themselves to be at the mercy of more powerful, predatory individuals increases. Lastly, people become preoccupied with seeking out negative information and messages that serve to confirm, rather than discount their distorted beliefs (Gass & Seiter, 2003).

However, it is important to note that negative views toward crime or the fear of crime do not necessarily imply a desire for punitive practices. For example, Maruna and King (2004), suggest that the relationship between punitive attitudes and fear of crime is at best, minimal. Lyons and Scheingold (2000) also point out that while there are some links between the design of punitively orientated penal policies and punitive impulses within the public domain, there is little research to suggest a firm link between punitive public attitudes and incarceration trends. That is, there is an apparent lack of public support for the increasing use of imprisonment. While it is not clear whether an inverse relationship exists, i.e. do incarceration trends influence public opinion, the point is that “the image of the citizen as supporting punitive public policies because of fear of crime or grievances against the courts is inaccurate” (Tyler & Boeckmann, 1997, p. 252). Another point to be made is that attempts to establish a firm link between the fear of crime and punitively orientated attitudes has met with more failures than successes (Lyons & Scheingold, 2000). Finally, one might expect the experience of crime, or victimisation to link with increased punitiveness. Yet research conducted by Gaubatz (1995) failed to link punitiveness and victimisation in any meaningful fashion, which raises questions regarding whether any such association may be more intuitive than factual.

Claims-makers and Claims-making

Politicians

From a psychological perspective, *who* is relaying the message is as equally as important as the message itself (Myers, 2001; 2005). Some people and groups are well rehearsed in effectively relaying messages to an audience. Among the most proficient in this task are politicians (Loseke, 1999; Sasson, 2003). In fact politicians by default are skilled and authoritative speakers. They can engage with topics in such a way that they appear to have a unique understanding for society's values and beliefs that in turn, affects how the public perceive the message. In adopting a position of authority on a topic, politicians can increase the credibility and authenticity of both themselves and the problem. Messages of this nature have a strong persuasive effect and are taken to be reliable and believable (Myers, 2001). Furthermore, when the content of the message concerns "personal value, taste, or way of life", the persuasive effect is enhanced, more so if the communicators appear to be 'ordinary' citizens who share the same concerns and anxieties as that of wider society. As West (2000) points out, any respected member of any given community can legitimise and rationalise certain systems and practices. More to the point, if they appear to have a plan for action or a solution to the 'social problem' then they are more likely to capture large segments of public support for a particular cause (Myers, 2005).

Loseke (1999) maintains that politicians and lobby groups can be successful in constructing a climate of panic by amplifying existing concerns such as anxieties or fear of crime. However, where there are claims there are generally counterclaims that also attempt to persuade and influence audiences by promoting an opposing point of view. In such cases, the goal for either message giver is to "capture attention, penetrate and persist in memory" (Szabo & Pfau, 2002, p. 244) in order for ones own message to dominate over another. Persuasion theorists maintain that politicians and claim makers must *inoculate* their audiences to prevent them supporting the opposition (Bohner & Wänke, 2002). Inoculation therefore, is a necessary tactic where there are two or more competing realities. It

is achievable by systematically refuting, often pre-emptively, alternative arguments and problematising the opponent's record, character and position while simultaneously presenting a strong case for one's own position (Gass & Seiter, 2003). Inoculation may be more successful if other interested parties are portraying the same or similar messages.

It is important to note that the survival rate, measured by length in administration, of officials that choose popular courses of action as opposed to the *best* course of action is low (Roberts, 2003). Indeed, certain issues present opportunities for politicians to *increase* their popularity often at the wilful disregard of expert evidence or knowledge. This is a defining characteristic of penal populism in which politics is driven by the pressure to 'do something' to ameliorate the problem (Roberts, 2005c). Thus, no government would willingly sacrifice their popularity by formulating unpopular penal policies (Roberts et al., 2003). Amid such a climate policies may simply be designed and implemented "to win votes rather than reduce crime rates or to promote justice" (Roberts & Hough, 2002 p. 5).

The Media

The media regulate "not only what issues are presented...but also how these are perceived and what importance people should attach to them" (Thakker & Durrant, 2006, p. 28). Most commentators perceive the media as a tool for manipulation of public opinion with the delivery of hype and propaganda (Altheide, 2006; Best, 2001; Roberts & Doob, 1990; Williams & Dickinson, 2006). Despite the negativity of such viewpoints, there are certain benefits to the mass media. In fact, the press and popular media keep the populace informed on a range of social and economic issues that serve public interest, wellbeing or security (Morrison & Svennevig, 2002). In addition, there would be fewer checks, balances and transparency on governments and other institutional practices without any media presence. Bovitz, Duckman, and Lupia (2002) point out that there are as many instances where media *fails* to influence as when it succeeds. Furthermore, it may be that the media is projecting the needs, values and aspirations of the public

to the extent that the media are governed and constrained by the wishes and demands of their public audiences. Bovitz et al. (2002) state:

[N]ews content and public opinion data – no matter how skillfully analyzed – are insufficient to distinguish between the media leading the public and the media anticipating public demands. (p. 129)

Nevertheless, there is an overwhelming body of literature that suggests the media play a central role in influencing and shaping public opinion (Eveland, 2002; Gass & Seiter, 2003; Newhagen, 2002). For example, in much the same way that school shootings captured American media attention, the physical abuse and subsequent death of three-month-old twin boys in early 2007 from a tragic assortment of physical injuries, dominated the New Zealand media for a prolonged period. Due to the extended coverage, people came to think that “babies are being killed left, right and centre” (Gnanalingam, 2006, p. 2). Over-representation of certain topics however, appears to be a normative manner of reporting. A brief review of New Zealand’s major broadsheet newspaper *The Dominion Post* confirms this. In fact, from a total of 41 crime stories printed over a one week period half related to violent or sexual crimes while only two articles featured minor crime (Gnanalingam, 2006). It is suggested that this type of disproportionate focus on serious crime stories portrays crime as being worse than in reality (Roberts & Doob, 1990).

A salient example of the influential effect of the media is highlighted by exploring the ‘stranger danger’ phenomenon and claims that school age children are at increasing risk of sexual assault (DOC, 2005b). In recent years, the concept of stranger danger has emerged as a significant social problem in most Western societies. It is promoted as such through multiple domains, from the internet and news headlines to legislative measures such as community notification on the release of sex offenders designed solely to enhance child safety (Hinds & Daly, 2001). The ‘problem’ has also drawn attention to a range of related issues such as child pornography, sexual harassment, sexual assault and assumptions on what constitutes the typical sex offender profile (McCarthy & Gaunt, 2007). In light of

the media coverage, parents and teachers routinely imbue their children with pre-emptive fear from a growing population of predatory men. Children in response, shy away from strangers while traditions such as walking to school or playing in public spaces unsupervised are discouraged by the wider community (Miles, 2006). In addition, Best (1990) indicates that the 'stranger danger' campaigns of the 1980s and 1990s were instigated by child protection organisations. This provides a salient example of an interest group leading a moral panic. In this instance, the groups incited fear and panic based on urban legends that were unsubstantiated with evidential support. Whether the legend stories were real or assumed is not clear. The point to be made is that they had the capacity to incite widespread public fear and panic that has endured to present day.

Furthermore, increased attention to the design and implementation of child safety campaigns to protect children from 'predatory strangers' is problematic because it detracts attention from genuine risk. For example, it is widely recognised that children are routinely assaulted by known offenders and family members rather than strangers routinely preying on young children (Hinds & Daly, 2001). More to the point, as Miles (2006) points out, while there is a lack of accurate statistics on child abductions, children are more likely to be abused and/or killed by a relative or be killed crossing the road or in a road accident. The stranger danger concept is also confusing to children and results in them becoming unnecessarily afraid of *all* people or the wrong people, increasing their vulnerability in situations where help may be required (McBride, 2005). One might question what the long-term effects of these conditions might be on children both socially and psychologically.

The Public

The discussion thus far has perhaps portrayed the public as passive consumers of crime related information. Yet the public play an important role in the construction of knowledge and reality. It is acknowledged that the public engage with the available information in differing degrees; not all people will react or behave in the same way (Hamilton & Harvey, 2005). Variations of public

opinion have been identified and interpreted and provide some insight into how people *might* engage with the information they are privy to. For example, Green (2006) proposes a weak, shallow and knee-jerk public opinion and a strong, contemplative and informed public judgement; the former being an unconsidered, first response to certain information and the latter being a product of engaging with the issue and understanding it from all points of view. In a similar vein, Indermaur and Hough (2002) understand variations in public opinion as being either rational and knowledge based, or more emotional and dispositional. The point the authors make is that attitudes and opinions that are driven by “fears, frustrations and uncertainties” (p. 201) are likely to be emotive and draw on a different body of information than the rational and knowledge based opinion. For example, those drawing on the readily available public information such as that offered by the media and politicians may well formulate a knee jerk reaction that is weak and emotive. Green (2006) points out that a shallow and unconsidered public opinion is what is typically garnered from opinion polling. On the other hand, those who expand their range of informational sources or are less persuaded by the public information would be more likely to consider an issue from various perspectives and even seek out alternative forms of information that enable them to formulate a strong, considered and rational point of view. The point to be made is that variation in opinion ultimately lead to the construction of a different understanding on any given issue.

A Network of Subject Positions

In the formation of crime of as social problem, Roberts et al. (2003) have depicted the presence of an interactive relationship between the public, the media, politicians and special interest groups (see Figure 1). The significance of this model is in the *network* of subject positions and how they become engaged in an interchange of information. How this information cycles is fundamental to the transformation of a single crime event into a coherent body of knowledge. Moreover, it is within this interactive relationship that the discourses that give *meaning* to the body of knowledge are facilitated.

The model is useful in understanding the *social context* within which a crime problem and a moral panic becomes socially constructed. It may also demonstrate how this context enables one body of knowledge to dominate while subjugating another (Burns & Crawford, 1999).

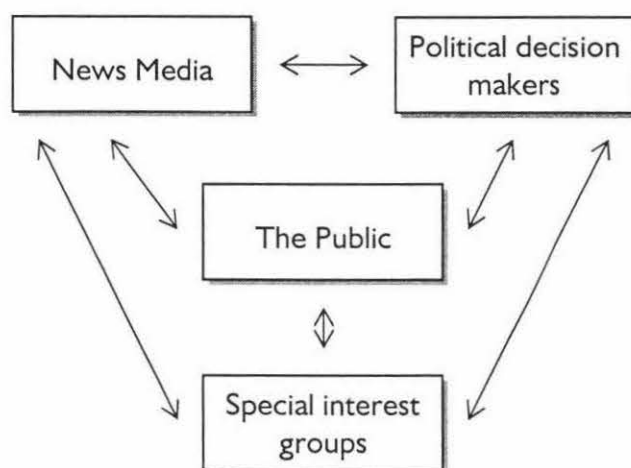


Figure 1. A model showing the interactive relationship between the media, politicians, lobby groups and the general public (Roberts et al., 2003, p. 87).

To illustrate the network in action, this complex cycle of information sharing is spurred by a significant crime event from which emerges claim making. Once a claim is made, the message cycles from one position to another gathering additional information and gaining strength through repetition. For example, the media may seek out and report similar news stories. Lobby groups then use this information to substantiate their claims and pressure politicians to take action. In response, politicians discuss legislative solutions to the problem. The public take a position on the issue which is fed back to the other groups. Because of the momentum of the informational cycle, any existing fear and panic becomes amplified which legitimises the presence of a problem. Although each party functions as a source and an audience, Roberts et al. (2003) position the media as central to the process:

[T]he media are the conduit for expression, for conveying positions and expressing postures. The media then become a central pivot in the dynamic process of policy formulation, reaction and adjustment...[t]hus the media assume an importance to policymakers as both a source and an audience (p. 87).

The Discourses of Crime and Punishment

Crime as a significant social problem is discursively formulated. The formation of discourse however is not limited to the representation of media, politicians and lobby groups. Rather, the network of subject positions engaged in the production and reproduction of information inform the discourses that underpin the construction of a particular perspective on crime and punishment. The discourses conform to certain rules and statements and certain language markers illuminate these rules and function to construct the 'object' of crime as a significant social problem. To this end, there are terms and slogans that occur and recur in the literature that are useful to understanding and identifying the various discursive formations. For example, media and lobby groups frequently utilise slogans such as 'soft-on-crime' (Roberts, 2003), 'hard labour', 'long-term imprisonment' (The Law and Order Referendum, 2002), 'get tough on crime' (The Press, 2000), 'tougher jail terms', 'crack down', 'tougher penalties' (Fletcher, 2003), and 'rocketing crime figures' (Franks, 2001), which have come to represent the normative forms of speaking, thinking and even behaving in regards to the treatment of criminal offenders.

Media images and headlines are particularly powerful discourses and can be successful in constructing a typical offender profile and fostering a moral panic. From Cohen's (2001) point of view, an offender profile is particularly powerful because it represents to the rest of society what is abhorrent, hateful and to be feared. When it becomes a standard by which *all* offenders are judged then it is problematic. Nevertheless, while it is common practice for ubiquitous slogans such as "serious violent offender" (Hogeveen, 2005, p. 73) to be produced in contrast to positions of "victim" and "innocent" (Cook & Powell, 2003, p. 80), a

dichotomous representation of morality becomes constructed; the good versus the bad, moral versus immoral. This separation has certain implications for the treatment of criminal offenders within the moral order of crime and punishment.

From a more discursive point of view, Pratt (2005) indicates that a new penal discourse has emerged that draws on unrestrained, punitive language styled deliberately to stimulate an emotive public response: fear, anger and panic with the effect of supporting a punitive, get-tough response. Hudson (1987) discusses the production of a similar “authoritative alternative discourse” (p. 21), which firmly opposes any ‘soft-on-crime’ option including rehabilitative efforts. These positions subjugate any opposing point of view from entering public discourse. In effect, discourses of offender rehabilitation are ignored. As Aas (2005) argues “[t]he marginalization of traditional criminological expertise is not reserved to political discourse about crime only, but has been described as a trend within penal systems as well” (p. 151). Therefore, information such as personal experiences, common sense notions and anecdotal evidence has assumed prominence (Aas, 2005). The result is that society has become privy to an extremely diluted narrative of crime that limits the public’s access to any in-depth knowledge or information regarding the various issues. This in turn, prevents the emergence of balanced debate and may even affect transparency and accountability in practice (Pratt & Clark, 2005).

The discourses of crime and punishment perhaps have their deepest roots in classical penology (Hudson, 1987). Since classicism is the oldest formalised school of thought in penal criminology and perhaps the most enduring, it underpins a range of justifications and rationales for punitive practices. It also shares certain parallels with the liberalist philosophy that has infiltrated much of Western politics in recent years, shifting focus away from socialist and welfarist values. Both classicism and liberalism give rise to a renewed importance on swift, retributive and proportionate punishment that emphasises the relationship between the crime and the sanction (Garland, 2001). The discourses that emerge therefore are not only punishment focused but are openly opposed to the values and principles associated with a rehabilitative ideal. In this sense, the only correct mode of treatment for criminal offenders is that which prevents and deters them

from engaging in future acts of criminal behaviour and is what becomes emphasised in the dominant discourses of crime and punishment (Hughes, 1998).

The implication of the discourses of crime and punishment and particularly those that are embedded in the punitive, get-tough movement is that they influence how social realities are presented and communicated which affects how and even what we think (Hosman, 2002). What emerges is a climate through which the claims and activities of the media, politicians and lobby groups can enhance the fear of crime (Szabo & Pfau, 2002), augment the perception of a moral panic (Goode & Ben-Yehuda, 1994a), and instil in people an image of what, or more specifically who should be feared, loathed and subjected to harsh punishment.

Summary

The discussion in this chapter has demonstrated that the issue of crime and punishment has broadened in recent years. It has emerged on the social landscape through the interrelated processes of claim making and claim makers. While one group of claim makers may influence the shape and trajectory of the problem and another group may be persuaded and influenced towards a particular viewpoint, together they form a network of subject positions that socially construct crime as a serious social problem. From this vantage point crime does not simply 'exist' rather it has come to mean certain things to certain people. These meanings socially and culturally construct a body of knowledge that becomes the dominant point of view. The formulations of discourses of crime and punishment give meaning to the knowledge and reproduce the set of shared beliefs and practices that inform the treatment of criminal offenders. Yet amid this network of subject positions and dominant version of events there may exist an alternative body of knowledge that challenges the taken for granted assumptions that a punitive response to criminal offending is necessary and acceptable. Thus, the task, in part, for the remainder of this project is to explore the possibility of an alternative form of knowledge and the discourses that might produce it.

Chapter Three

Criminal Justice: The Treatment of Offenders

Preoccupation with the minuses and limitations of treatment programmes has perhaps blinded many...to the important benefits that have been or can be derived from popular belief in the notion that offenders should be saved and not simply punished.

(Cullen & Gilbert, 2003, p. 350)

...a small but growing body of research...demonstrates that political leaders do not have particularly accurate views about the depth and direction of public opinion in this area.

(Roberts & Hough, 2002, p. 8)

Overview

The purpose of this final chapter of the introductory section is to understand the process of subjugation that has positioned offender rehabilitation as an alternative discourse. Both historical and contemporary understandings of crime and punishment have contributed to current practices in the treatment of criminal offenders. In the early 1960s, offender rehabilitation was the dominant ideology within correctional facilities. The various arguments that led to its subsequent demise later that decade arguably overshadowed the possible benefits and successes of offender rehabilitation in reducing rates of recidivism among offenders. Although research continues to demonstrate the efficacy of certain rehabilitative treatment programmes, practices of punishment and incarceration continue to dominate. It is also argued, through the literature, that the public are neither universally supportive of get-tough forms of punishment nor do they favour the prison over rehabilitative or alternative modes of treatment. How the discourses of crime and punishment are positioned as dominant through opinion polls and survey data is also questioned by accounting for the social and cultural contexts within which they are produced. Hence, a space is presented for the use of an interpretative approach. This approach can then seek to understand how public opinion draws on dominant or alternative discourses to address the treatment of criminal behaviour and any subsequent effects.

Offender Rehabilitation

Since the writings of Martinson (1974) academics have attempted to reverse the abandonment of rehabilitation in corrections facilities. This goal has been pursued by actively seeking to answer 'what works' in offender rehabilitation. In attempting such an answer, researchers have been engaged in the evaluation of various treatment programmes as well as developing risk assessment tools that can accurately match programmes with individual offenders in the most appropriate manner. Over three decades later, research indicates that offender rehabilitation can and does have an effect on recidivist behaviour through treatment that reforms criminogenic behaviour patterns (Andrews & Bonta, 2003).

Despite such advances in knowledge about treatment effects, rehabilitation does not feature as part of contemporary mainstream penal practices. Yet during the 1950s and 1960s, rehabilitation was the dominant ideology of justice systems within most Western societies. This was underpinned by the understanding that many criminal offenders were psychologically distressed and could be treated. The ethos of cure was in turn, embedded in the paradigm of positivist criminology which maintained that future criminal behaviour could be *prevented* through rehabilitation. In the spirit of Lombroso (Hughes, 1998), the central assumptions of positivist criminology were that crime was not simply a matter of individual choice or character deficits. Rather, there were determinate causes that could be isolated and studied scientifically. More to the point, it was considered a primary function of the justice system and the prison sentence to rehabilitate and reform the criminal offender so as to reduce criminal offending, reduce social harm through victimisation and assist the offender to reintegrate into society and lead a crime free life (Hughes, 1998).

However, the ideological dominance of the rehabilitative ideal would be short-lived. Confidence began to wane in the late 1960s and early 1970s for a number of reasons. These included the idea that rehabilitation “is inherently evil and ideologically incorrect...[and]...is an attempt to make lower-class persons acceptable to higher-class persons” (Andrews & Bonta, 2003, p. 93). Also, there were criticisms of psychological theories for their narrow focus on individual factors when the roots of crime were clearly embedded in social inequalities. Perhaps most detrimental to the demise of rehabilitation, and certainly the most frequently cited was Martinson’s (1974) review on treatment programmes. Martinson quite firmly concluded that “with few and isolated exceptions, the rehabilitation programmes had no appreciable effect on recidivism” (p. 25). While there were notable flaws and limitations to Martinson’s review, it became widely accepted as evidence that treatment for criminal offending did not work. This provided evidence to those who claimed that “training and treatment had had its day” (Hollin, 2001, p. 8).

It is important to highlight that offender rehabilitation is not a prescription to end crime. There are numerous offenders who simply will not benefit from any form of treatment or intervention (Love, 1999). Nor is it fair to say that rehabilitation is never used within the prison system. To the contrary, programmes specific to sex offenders, violent offenders and drug addicts are commonly utilised (Garland, 2001). Yet, Andrews and Bonta (2003) argue that those who require treatment the most are those that pose the greatest risk in terms of recidivism and re-incarceration. Advances in research have demonstrated that programmes with high treatment integrity, grounded in psychology, administered by appropriately trained professionals and are sufficient in length produce the most positive outcomes with these high risk offenders (Day & Howells, 2002).

Many scholars propose that the political landscape further hastened the demise of rehabilitation (Hughes, 1998; Roberts, 2003; Roberts et al., 2003). This is because the rise of liberalism over recent decades is congruent with criminal justice ideals that are embedded in classical penology. As Moore and Hannah-Moffat (2005) point out, the rise of punitiveness and the corresponding demise of rehabilitation, is “concomitant with the introduction of neo-liberal strategies” (p. 85). The promoting of individual rights and responsibility central to liberalist traditions provides a rationale for criminal justice to emphasise the role of punishment, deterrence and incapacitation. This is because each takes a position that is diametrically opposed to offender rehabilitation and instead, maintains that if people make the conscious choice to engage in crime then it is punishment, not treatment that they *deserve*. Thus, the political philosophy of liberalism *reaffirms* the ideals of classical penology. This constructs a social and political landscape that enables the criminal justice system to both endorse punitive practices and position them as dominant (Brown, 2005). Furthermore, the strategies for crime control and prevention that were pursued within the era of “penal welfarism” (Garland, 2001, p. 3) and which promoted humanitarian interventions, moral education and reformatory training, become ideologically incompatible with the goals of the penal system.

One would be inclined to question where the public are positioned within this rehabilitative debate. A small but growing body of literature indicates consistent public support for rehabilitation. In fact, a review of the available research demonstrates some interesting statistics have emerged across time. For example, in 1969, opinion polls showed a 72 percent support for rehabilitative over punitive sanctions; in 1973, the dominant ideology within political and criminal justice arenas was also strongly rehabilitative in nature (Cuellar et al., 2006). According to Lyons and Scheingold (2000), survey data from 1986 revealed a 48 percent preference for rehabilitation over punishment. More recent examples show that the public agree that rehabilitation should be a primary goal of criminal justice systems (Cullen & Gilbert, 2003; Esmée Fairbairn Foundation, 2000; Stalans, 2002; The Sentencing Project, 2000). According to a Scottish based organisation, *Safeguarding Communities: Reducing Reoffending* (SACRO, 2003), the majority of the public believe the main aim of any prison sentence should be to rehabilitate the offender. In fact, a North American National Opinion Survey on Crime and Justice conducted in 1995 revealed significant support for rehabilitation and treatment; the survey also determined that the degree of public opposition to offender rehabilitation was often exaggerated (The Sentencing Project, 2000). Yet these measures of support for rehabilitation are not reflected in public opinion poll data. The following section questions the assumption that public opinion is produced by the dominant discourses of crime and that public opinion produces these discourses.

The Assumed Punitiveness of Public Opinion

Despite the above research findings, those in decision-making roles accept without question that public opinions are punitive in orientation (Green, 2006). However, there is a growing body of empirical literature that positions the public anywhere from wholly punitive in response to the treatment of criminal offenders to strongly supportive of alternative programmes such as offender rehabilitation. It has also been suggested that public understandings are ‘mushy’ and are susceptible to change depending on what information is available at any given time, the questions that are presented to the public and how the subsequent answers are

interpreted (Green, 2006; Hamilton & Harvey, 2005; Maruna & King, 2004; Roberts & Hough, 2002).

To flesh out variations in the debates, Johnson-Riley and McNickle-Rose (1980) compared the perceptions of so-called 'elite' people – those instrumental in policy design and implementation – with taxpaying members of the public concerning progressive punitive policies. These policies, which focused on vocational training, weekend leave for inmates, community based sentences, community programmes and group therapy, were found to attract a significant degree of support from both groups. Each group was also aware that fewer hardened criminals would be produced by keeping the non-violent offender within their community and therefore, out of prison. In addition, there was agreement that rehabilitation should be a high priority for the criminal justice system. However, when the 'elites' made judgments regarding public opinion there was a marked tendency to *overestimate* punitiveness and *underestimate* the support for alternative modes of treatment. This research demonstrates that 'elites' may well be misinformed about what the public do and do not support. The authors conclude by stating "elites need more empirical evidence of public opinion on which to base their policy making decisions" (Johnson-Riley & McNickle-Rose, 1980, p. 354). This study effectively highlights how a particular representation of public opinion may be problematic at a policy level and result in ineffective policy formation.

Given there are a range of people involved in the criminal justice system, one wonders how the get-tough movement affects the opinions of those in decision-making roles. Judges for example are charged with the responsibility of handing down appropriate sentences on a range of offences and to a diverse sample of offenders. These decisions require professional expertise, an adherence to the legal rules and regulations and the ability to remain impartial and uninfluenced by external factors (Indermaur & Hough, 2002). Bumby and Maddox (1999) investigated the beliefs and opinions of a group of trial judges in reference to the sentencing and treatment of sex offenders. Utilising a questionnaire method and Likert scale ratings, this study addressed factors that were considered influential to the sentencing process. These included negative attributions toward the offender

group, public pressure to impose harsh sanctions and the perceived efficacy of rehabilitative efforts. The study revealed that most judges not only supported rehabilitative efforts and strongly believed that such treatment reduced recidivism, they also acknowledged the failure of the legal system to provide adequate treatment. Yet the findings also revealed that judges misunderstand many offender characteristics including the heterogeneity of sex offenders, the aetiology of offending behaviour and the effect of drugs and alcohol in criminal acts. As a result, over half the judges within the study's sample, experienced increased pressure and scrutiny from society to maintain a conservative approach to sentencing, convictions, parole and release. This results in "reactionary and perhaps ineffectual determinations" (Bumby & Maddox, p. 313). The findings of this study highlight that while sentencing guidelines and legal criteria are generally prescriptive, the perception of a punitive public can be highly influential in decision making domains (Roberts, 2002).

As was discussed in chapter two, the media contribute to the construction of a serious crime problem. Roberts and Doob (1990) provide a particularly salient example of media influence on opinions and the simplicity by which interpretations may develop into the perception of a punitively orientated public opinion. The study garnered stories relating to the sentencing of criminal offenders from a series of Canadian daily newspapers. The intention was to determine how people judged the imposed sentences and whether there was a tendency to perceive sentences as lenient based on the information within the stories. The findings indicated that a significant proportion of people judged the sentences as too lenient and disproportionate to the crime. This suggests not only that judgments are constructed by what a person reads but also indicates the *type* of information that people are willing to base their judgments on. Furthermore, it also suggests that people may react quickly and hastily to the available information. The study however also compared people's reactions to *variations* in information to determine first, if exposure to lengthier and more detailed court transcripts constructed a different judgment than exposure to newspaper articles and second, to replicate their earlier findings. The analysis revealed that people who read the news articles judged the sentence as too lenient while those who reviewed the

court transcripts judged the sentence to be either appropriate or too harsh. The authors conclude that people indeed base their judgments on the information they receive and react in a manner that is construed as punitiveness. Yet when given an opportunity to review additional information they “may not necessarily favour a sentencing policy that is universally more punitive” (Roberts & Doob, 1990, p. 465).

A second study to demonstrate variations in public opinion and highlight a weak versus strong public opinion was conducted by Fuselier, Durham and Wurtele (2002). The authors compared the opinions of lay-people, defined as a group of undergraduate students with the opinions of treatment professionals on the topic of child sex offenders. Their study drew on Likert type items developed from a range of child sex abuser literature. The findings revealed that the students tended to endorse a stereotypical view of child sex offenders and perceived them as predatory men that are well-educated and strangers to their victims. In contrast, the professional group were more likely to consider static factors such as socioeconomic status, educational levels, and marital status when assessing the offender. The difference between these two groups is the depth of knowledge that they hold and the findings suggest that the perceptions of the student group are more likely to resemble that of wider society and reflect a weak version of public opinion. On the other hand, the treatment professionals have a broader knowledge base and are able to consider and understand a wider range of offender characteristics which would be indicative of a strong and more considered public opinion. The value of this research is in highlighting how different knowledge bases and informational sources can influence the construction of a particular offender image. It also indicates how stereotypical characteristics may have permeated the public consciousness to become a basis for the judgment of all criminal offenders.

The final study included in this review differs from previous research because it utilises focus groups as opposed to survey methods. By recruiting three focus groups, separated into ‘suburb residents’, ‘inner city residents’ and ‘affluent residents’, Immerwahr and Johnson (2002) explored similarities and variations in

public opinion with regard to the release of prisoners into society following a prison sentence. While the complexity of their findings cannot be captured here, the study demonstrated several key points. Firstly, participants supported the provision of education and training in order to prepare inmates for release into society. Secondly, people did not spontaneously raise the issue of crime and punishment although it was easily taken up once the issue was raised. Thirdly, people did not express concerns with personal fears of crime. Rather, issues such as education and health care were awarded greater importance. Finally, people acknowledged that inmates face considerable barriers and constraints in the pursuit of a non-criminal lifestyle, including the lack of adequate rehabilitation which is perceived as a failure of the system.

To conclude this review, Stalans (2002) points out that two contrasting images of public opinion emerge from the literature “the public is selectively punitive and selectively merciful depending on the specific conditions” (p. 19). This position is reflected in the Immerwahr and Johnson (2002) research. In fact, there were variations in understandings of the treatment of criminal behaviour that fell into broad categories. For example, there was a desire to rehabilitate offenders which existed alongside the need to punish. There was also a belief that offenders are amenable to change, yet there was little tolerance for those who do not try. In addition, it is recognised ‘going straight’ is a difficult task but again, little tolerance for failure. Finally, there is a belief that offenders should be judged on a case-by-case basis despite there being little confidence in the justice system to make accurate predictions or to provide adequate supervision. The findings of this research clearly indicate that the public’s highest priority is *not* harsher penalties. The reasons for such findings may be due to the focus group methodology rather than some artefact of public opinion. It would seem that engaging with people’s talk in such a manner enabled a complex understanding of public opinion to emerge. It would also seem that affording people the opportunity to reflect on their opinions enables them to contextually situate complex and often contradictory information that is frequently overlooked in more traditional survey type methodologies.

Limitations to the Current Research

Morgan (2002) poses several insightful questions regarding penal reform and public opinion including 'should criminologists be concerned with improving the quality of public debate'? Of particular relevance at a macro level is whether public opinion is "sufficiently consensual, well informed and precise that one can base policies upon them?" (p. 216). This leads on to the question 'do opinion polls have the capacity to capture the diversity, variations and complexities that produce public opinion in order to portray it in a representative manner?' Such questions perhaps assume importance because public opinion has become central to the style and trajectory of penal reform which at present, constitutes punitive, get-tough practices. Yet, what do we know about how the various discourses of crime and punishment function and how they are drawn upon in public opinion? Similarly, how might alternative discourses challenge these dominant discourses?

Given the complexity of these latter questions, it may be that removing or overlooking contextual information in favour of aggregated data means there are certain aspects to public opinion that simply cannot be measured. Questionnaires and Likert type scales typically impose pre-arranged discrete categories onto public opinion in order to measure some narrowly defined construct (Cochran & Chamlin, 2005; Green, 2006). Crime and punishment is however, a complex and complicated domain and as a researcher, one wonders how meaningful responses can be translated from single answer questions. As Hamilton and Harvey (2005) state, "[t]he more complex the issue, the more difficulty...in formulating questions that ensure public opinion is accurately reflected" (p. 28). Nevertheless, this style of questioning and survey type methodologies have been utilised in public opinion research for the past 40 years (Roberts et al., 2003). It would be naïve to assume that the type of response received does not depend heavily on the question asked and the context in which they are asked (Stalans, 2002). It would also be erroneous to assume that contextual and subjective information is not crucial to understanding public opinion. Thus, the salience of aggregated data and its subsequent methodologies is brought into question. I argue that such research has

resulted in an overly simplistic account of public opinion that is problematic to policy direction and development.

Summary

Despite research that supports the efficacy of some rehabilitative programmes in the treatment of some offenders and evidence of support for rehabilitative measures within the general public, practices of punishment and incarceration continue to dominate. A growing body of research has demonstrated the presence of alternative rehabilitative discourses which highlights how members of the general public understand the treatment of criminal offenders. These discourses run counter to the claims of punitive discourses, yet are not represented in traditional public opinion research. I argue that this is due to methodological limitations *excluding* the social and cultural contexts through which public opinion is produced. These exclusions assume a particular importance to current correctional practices because public opinion is cited as responsible for advocating the punitive treatment of criminal offenders. Therefore, the research question becomes ‘how are alternative rehabilitative discourses drawn on in public opinion and how do they challenge the dominant discourses of crime and punishment: also, what kind of criminal subjects do they produce?’ To answer these questions it is necessary to choose a research method that takes language as the focus of study and make visible the discourses drawn upon that enable and constrain participants’ responses to crime and punishment.

Chapter Four

The Research Design and Methodology

*...the unforeseen is part of the world of exploration,
and researchers, if open to what one can learn from
occurrences that deviate from their plans, may use it to
acquire better data and a better understanding
of the people and setting under study.*

(Glesne, 2006, p. 40)

Overview

Design and methodology relate to the rules and discipline of research projects that are prescribed through the epistemology of theories. A well designed research project is necessary for it to produce knowledge that may meaningfully contribute to one's field of expertise. In this sense, it becomes important to specify the theoretical assumptions and particularly those of the research project. The value of this is to underline the worldview that enables the research to progress in a particular direction and take a particular shape. For example, research that seeks to explore opinions and attitudes may be suited to a number of different research approaches. However, some designs are more appropriate than others in as much as they enable the contextual and subjective nature of attitudes and opinions to emerge, and their meanings and variability understood.

While attitudes are a long researched concept in psychology, the discursive position takes the attitude and transforms it from an 'object', expressed through thought and judgments, into an organisation of texts that are varied and imbued with meaning and context. To a discourse analyst, an attitude is a discursive formation that is neither consistent nor coherent but is a product of the functions of the discourse from which it emerges. In this sense, no distinct category of attitude exists that is completely punitive or completely non-punitive. There is however subtle distinctions in language that become crucial to people's understandings of such concepts and which undermines the idea of a fixed and static 'attitude' that somehow resides within people. In addition, there will be no single dimension to people's attitudes because there is no single context or purpose to people's discourse. The attitude then is a construction of discursive variability and may be constituted and formulated in a variety of ways (Potter & Wetherell, 1987).

The Qualitative Paradigm

This study uses a qualitative research paradigm as an approach to social inquiry. A qualitative orientation was chosen for specific reasons. Primarily, some aspects of social life are extremely difficult to quantify. In particular, social conditions that necessitate a consideration of backgrounds, interests and wider

social contexts are best approached from an interpretative framework (Holliday, 2002). The present research falls into such a category. Historically, public opinion research has investigated and reported on *segments* of public opinion. Yet, reducing people's opinions into discrete categories and treating them as if they are stable may yield a less than realistic or wholly accurate account of those opinions. As Berg (2004) indicates, "qualitative procedures provide a means of accessing unquantifiable facts about the actual people researchers observe and talk to" (p. 7). If public opinion is to be the impetus for penal reform and practices it is necessary to explore the gaps in the current representations of public opinion. This may be possible by investigating the issue from an interpretative point of view.

Theoretical Framework: Social Constructionism

Deciding on a particular course for one's research is by no means easy. There exists a range of qualitative methodologies and one may ground their research in a variety of theoretical orientations. Much is governed by the research question and the goal of the research project. A fundamental premise for the present research is that knowledge is socially constructed. That is, what we come to know and how we come to know it is constructed through our interactions with our culture, institutions and social relations (Willig, 1999a, 1999b). This relates to the present research in as much as it is assumed that public knowledge becomes constructed and produced through people's interactions with their specific culture and political ideology and mediated through discourses produced through the media, politicians and lobby groups.

There are two key social constructionist principles that contribute to the shape and design of the present research. The first relates to the nature of knowledge; that is what we know and how we come to know (Parker, 1999b). Social constructionists take a critical stance to what is claimed to be knowledge and maintain that we should be ever suspicious of claims to truth including those of our own (Burr, 1995). This means the social constructionist challenges what is taken for granted as reality because what is believed to constitute knowledge is constructed, enabled and constrained through people engaging with each other,

with institutions and the wider social world (Burr, 1995). This view runs counter to the traditional empirical notion that knowledge is an unbiased observation that can be captured and discovered through objective research. From a constructionist vantage point, such practices leave gaps in the representations of reality, specifically between the objective observations of the world and the individuals subjective representations and interpretations of that world (Parker, 1999a). The nature of reality for social constructionist research is best summed up as something that is unavoidably conditioned by, and contingent upon culture, institutions and social interactions; no meaningful social phenomenon exist without being constructed (Willig, 1999a, 1999b).

The constructionist researcher also acknowledges that we inhabit a particular place in time (Burr, 1995; Parker, 1999a). This means that our sense of our world, which includes our sense of self, is culturally and historically specific to us. Cromby and Nightingale (1999) explain that cultures vary from place to place and over time, thus the things that we could know and how we could know them would also vary. A related point is the acceptance that there is not one single reality or version of truth because there are different knowledges and ways of knowing (Willig, 2001). Therefore, the same phenomenon may be described in different ways depending on the context in which the reality is embedded. For the researcher, this means that different versions of the same phenomena may be found depending on the questions that are asked and how is investigated. Appreciating that there are multiple realities and truths that are constructed and experienced by people in their everyday interactions means we can recognise that one persons understanding of crime and punishment will depend on how they are positioned with a diversity of social practices.

The second key principle is that humans conduct most of their activity through speaking, language and discourse. In fact, language is the most rudimentary form of communication, it is both active and dynamic, constructed and constructive and is inherently a social and cultural practice (Burr, 1995; Phillips & Hardy, 2002). In other words, we socially construct our worlds through language. Burr (1995) makes this clear by pointing out that language provides us

with a way of “structuring our experience of ourselves and the world, and that the concepts we use...are made possible by it” (p. 33). Issues such as crime and violence, punishment practices and even how we understand criminal offenders are constructed and produced through talk and texts. In turn, how we experience these phenomena depends highly on the language that is available to use which enables a particular consciousness or shared meaning to come to life (Schwandt, 2003).

Meanings however, are not static, but are continually in a state of flux and constantly changing (Burr, 1995). This notion is most keenly evident where two realities are competing for the same space. For the current project, the competing knowledge claims in the treatment of criminal offenders are produced through variations in discourses on crime and punishment. This differs slightly to the notion that there are multiple realities and suggests instead that opposing views may compete for dominance and are possible because language is not a system of fixed signs and symbols; rather it is a “site of variability, disagreement and potential conflict” (Burr, 1995, p. 41). Meanings therefore, can be contested, maintained and validated or even transformed and reconstructed. Things could be very different depending on the language in use including the questions being asked. This unique view of language provides the present research with an appropriate strategy to understand how the treatment of criminal offenders in public opinion is discursively resourced and how this is achieved in talk.

Discourse Analysis

Discourse analysis is a widely used methodology in social constructionist research. Yet, there exists an array of discursive strategies that one may utilise, some more or less prescriptive than others. In order to produce a coherent and logical analysis of one’s data, it is prudent to acknowledge that there is no right way of ‘doing’ discourse analysis and a sharp division between methods is unwise (Gavey, 1989). For the purpose of this project, discourse may be understood as the interpretative repertoires that form part of a system of meaning and which provides a space for people to display their knowledge, present arguments or make reference to a desirable state of affairs (Wetherell & Potter, 1988).

Variability and inconsistency within and between accounts is more likely produced through conversations that are unconstrained and whereby any individual is likely to take up multiple and often contradictory positions. Subsequently, it is this type of variability or contradiction that is of particular concern to discourse analysts, both within and across accounts because it offers cues as to the functions of discourse (Wetherell & Potter, 1988). The focus of discourse analysis therefore is on the function of language or what language 'does'. This focus extends beyond traditional psychology's interest on the mere categorisation of words, and instead refers to what people may achieve with language and the idea that language can serve a multiplicity of functions or purposes. Edwards and Potter (1992) explain the general meaning of function as:

A continuum from more 'interpersonal' functions such as explaining, justifying, excusing, blaming and so on, which define the local discursive contexts, to the wider purposes discourse might serve – where for instance, a social analyst might wish to describe an account, very broadly, as having a particular kind of ideological effect in the sense of legitimating the power of one group in a society. (p. 169)

Potter and Wetherell (1995) suggest focusing on three broad areas: the way discourses are constructed, the functions they serve in different contexts and the contradictions that run through them. Such a focus is useful in order to concentrate on both the structure of language and how language is used to construct a particular point of view. This may be achieved by paying "close attention to the fine detail of talk and texts" (Edwards & Potter, 1992, p. 2). Thus, the purpose of discourse analysis is to consider the purposes and consequences of various discursive constructions, in this case, the treatment of criminal offenders. That is, how are meanings constructed? Through which discourses do people make sense of appropriate treatment strategies?

It is important to note that identifying such functions is by no means fixed and this research can produce only one interpretation from a range of possibilities. In this sense, discourse analysts can not 'know' the intentions of the speaker or

fully understand their realities. Therefore, it is wise to avoid making claims to truth which goes against the tenets of the theory that informs this research. Rather, the task is to focus on the *effects* and *influences* of discourses that are available within New Zealand society, and which are drawn upon in order to construct an opinion on crime and punishment.

In order to make sense of the complexity of positions on issues of crime and punishment, it is necessary to identify the construction of such differences, variations and conflicts, some of which serve ideological functions. This also entails paying attention to how they might exclude and/or include what is known, what is said and even who can participate in the construction of a particular point of view. Only then may it be possible to understand *how* discourses function to position crime and punishment as a serious social problem.

Summary

In this chapter I have made explicit the constructionist premises as they relate to the shape and directions of the current project. I have also presented discourse analysis as the methodology by which the data will be interpreted. Social constructionism and discourse analysis therefore enable me to identify the discourses that are drawn upon in participants' talk and how these discourses function to position crime and punishment and the subject positions they constitute.

The Present Study

A key principle for the present study is that public opinion in relation to the treatment of criminal offenders draws on more than one body of knowledge. Firstly, a dominant representation of events exists. It has been constructed through various social relationships and institutions. It is specific to Western culture and its place in history and is readily available through the discourses and language within the public arena. Yet, it is taken for granted that the public draw on the dominant representation to make sense of crime and punishment issues and particularly how criminal offenders are treated within New Zealand society. It is assumed that we

(the public) draw on this dominant version of events in a particular way that helps shape and influence the trajectory and design of penal practices and penal policies and is reproduced through institutional knowledge.

Secondly, an alternate body of knowledge is positioned in a binary relationship with the dominant representation of crime and punishment but which accounts for the contextual – social, cultural and historical – conditions of public discourse. This alternate body of knowledge may indicate support for a more rehabilitative form of treatment for criminal offenders. It is also possible that if people are drawing on the dominant version of events in conversations about crime and punishment, they may do so in conflicting ways.

Based on this framework, the present study has several specific aims. The first is to ameliorate the limitations of previous methodologies by adopting an interpretative approach. From this vantage point, the study is able to identify the various contextual and, often overlooked, subjective and personal opinions of people in general. It questions how participants draw on the discourses of crime and punishment and which alternative discourses are produced in people's talk and under what conditions and circumstances they are expressed. Identifying the presence (or absence) of the possible available discourses therefore, is necessary to question the practices that have been cited as dependent on public calls for harsher sentencing.

Chapter Five

The Research Method

*...as qualitative research proceeds,
it becomes clear that finding what one
can, where one can, is part of the
condition for qualitative research.
(Holliday, 2002, p. 84)*

Overview

The processes and methods by which any piece of research is conducted must necessarily influence the interpretation of the resulting data. A logically and coherently designed project therefore, has several advantages. It enables the researcher to clarify the research goals, helps to map its progress and may even enhance the projects academic credibility. Highlighting the processes and the systematic methods that one takes also makes clear the rules and conditions that enable and constrain the research in specific ways. In particular, detailing how a researcher selects his or her participants and their participation in the research process reminds researchers that *people* are the focus for inquiry within any qualitative project. In addition, making explicit how data is coded into meaningful categories is more than just relaying specific techniques but enables the constitutive power of the method to reflect the values of both the researcher and the research community in general. It is the intent of this fifth chapter to outline the research method that enables the conversational data to become a subject for investigation.

The Research Participants

Criteria for Inclusion

To participate in the study, the participants had to meet certain criteria. Firstly, because the research was grounded in a New Zealand context, participants were required to be New Zealand born, New Zealand citizens, or permanent residents of New Zealand, the latter two for a period of 10 years or more. The overarching rationale was to ensure each participant had some awareness of the 1999 law and order referendum held in conjunction with the general election of that year. Such awareness could be through participation in the election or by engaging with relevant information in the public arena. Secondly, it was important that participants had not been victims of crime because the research was seeking participants drawing on public discourse of crime rather than the discourse drawn on by the experience of being a victim of crime. Finally, it was necessary to recruit people who had not been held in custody for more than 24 hours. It was assumed that the experience of incarceration, as with victimisation, would draw on

discourses of their experience of incarceration rather than public discourses. A participant selection checklist (see Appendix A) was utilised to screen potential participants. These screening questions were asked at the initial telephone contact. All participants met the required criteria for inclusion.

The Recruitment Process

Initial attempts to recruit participants through newspaper advertising yielded a disappointing response rate (see Appendix B). Two people made contact through this recruitment technique; one was recruited to the study, the other did not meet the criteria. Because qualitative research is an iterative process, it is permissible to change the recruitment strategy. More success was gained from convenience and snowball sampling strategies (Ritchie, 2003). Firstly, using the convenience technique, a work colleague emailed the same advert to eleven members of their social group. Seven people expressed an interest in the research by return email to the colleague. Their names, contact phone and email addresses were forwarded to the researcher. All seven were contacted by phone, were suitable for inclusion and were successfully recruited to the study. Secondly, the snowballing technique successfully drew three participants with an interest in the study and their names and contact phone numbers were passed on to the researcher. All three were contacted by phone, met the criteria for inclusion and were subsequently recruited to the study. The final participant was an associate of the researcher and therefore formed part of the convenience sample. In total, 12 people agreed to participate in the study.

The demographics of the sample were predominantly white, European and shared a proficiency in the English language. Age ranged from 26 to 77 years. Employment status included two teachers, an IT technician, a retired chartered accountant, a social worker, an administrator, a boat builder, an account manager, a librarian, a retiree and two home executives. All participants resided in the North Shore and Rodney districts of the greater Auckland area, New Zealand. These districts may be understood as being largely populated, predominantly European and have moderate to low crime rates (SNZ, 2002).

Obtaining Informed Consent

Following the initial contact by telephone, each potential participant was sent information about the research. This consisted of a two-page information sheet detailing the project and participant rights (see Appendix C), a participant consent form for written consent to participate in the research (see Appendix D), and a questionnaire to obtain demographic information (see Appendix E). Also included was a pre-paid, addressed return envelope. Once this information was returned to the researcher, complete with the signed and dated consent form, the participants were contacted by telephone to arrange a suitable time and place for interviewing.

Ethical Concerns

Approval to undertake this research was given by the Massey University Human Ethics Committee on 3 May, 2006; approval number: MUHEC 06/020. Ethical concerns were minimal and the research was not expected to cause any harm to participants. Some concern over the researcher's personal safety was raised. This related to the researcher conducting interviews in the homes of strangers. It was agreed that colleagues, friends or family would be notified of the researcher's whereabouts and a phone call following the interview would suffice. Participants were advised that they would be asked to give their opinions and thoughts in the domain of criminal psychology. They were not told the research focused on crime and punishment. The rationale for withholding this information was considered necessary to avoid cuing the research topic prior to the interview, thus not giving the participant opportunity to consider what they may think, believe or feel regarding various crime and punishment issues. It was important to obtain spontaneous and even instantaneous, uninfluenced responses that mimicked the immediacy of responses obtained through opinion polling.

The Semi-Structured Interview

Overview

The semi-structured interview was chosen for specific reasons. Firstly, it produced an 'open' framework for the research project which enabled a conversational, two-way communication to emerge. Second, rather than a fixed question format, it was considered more effective to have a set of broad or general questions to facilitate the flexibility of the interview and enable the voice of the participants to emerge. It was also assumed that semi-structured interviews would enable the topic to be probed in depth and would also enable people to discuss the issues that were important to them. Thus, the issue of crime and punishment would be discussed as people perceived and experienced it within the context of a conversation.

Pre-interview

Nine of the participants agreed to be interviewed in their own homes and three were interviewed in one of the rooms at Massey University's Psychology Department at the Albany Campus. Each interview involved a one-on-one encounter involving the participant and the researcher. All interviews were conducted in a quiet, uninterrupted environment. Rapport was established by talking about innocuous topics, such as the weather, the décor of the particular location, or the traffic. Once rapport was achieved, the interview process was explained. The participants were informed that the tape recorder would be switched on and placed closest to them in order to capture their voice as clearly as possible. They were advised of their rights to request the recorder to be turned off at any time. They were also advised that there was a question schedule available to guide our conversation and that I would possibly make notes as we talk. At this point in the process I explained that the topic was broadly relating to criminal justice and criminal offending. It was made clear that there would be no 'right' or 'wrong' answer and that I was interested only in what they thought or felt about certain issues. At this stage, any attempt to define, classify or categorise 'criminal offender' or include the word 'treatment' was avoided. Several other points were

clarified before beginning the interview, including issues of confidentiality and anonymity. For the latter purpose, a pseudonym for the purpose of identification in the transcripts was agreed upon. Consent to tape the interview was clarified verbally and participants were reminded of their right to refuse to answer any question or withdraw from the study at any time.

The Interview

The interview began by asking the participants a broad, open-ended question on their thoughts and opinions regarding the ways in which we currently deal with criminal offenders. Where it became difficult for the researcher to make sense of the conversation, the interview schedule was referred to. Prompts such as ‘what do you think’ and ‘what is your opinion on that’ were used to encourage participants to expand on topics of interest and to facilitate contextual and subjective information. The interviews were generally conversational and the participants acted as co-researchers in that they helped shape the conversation by raising various issues with little prompting. Therefore, both the researcher and participant engaged in a process of information sharing that enabled a particular viewpoint to emerge at any given time. The participants often led the conversation, while the researcher directed the flow and topic when necessary. The participants often raised the issues spontaneously making the question schedule redundant.

It was important for the researcher to maintain a balance between authority and subject. Taking the ‘power role’ may have stilted both the conversational nature of the interview and the information sharing process. The interviews ranged in length from approximately 90 to 115 minutes. The interview was concluded when the conversation appeared to reach a point of saturation, that is, once the participants’ responses had come full circle and reached a point of repetitiveness the interview ended.

Post Interview

At the end of each interview the tape recorder was switched off and the participants were thanked for their time and willingness to participate. The

participants extended their appreciation at being given an opportunity to talk freely about this topic. They expressed their surprise at the complexity of the topic, the depth of their own responses and the strength of their opinions; they all remarked on how interesting and thought provoking some of the questions were. These comments assured me that the participants were engaged with the topic and produced talk that was reflective of their position in relation to crime and punishment.

The participants were also briefed on the nature of the research project and how their data would be used. They were informed that the conversations would form the basis for data analysis which entailed exploring their talk for support for rehabilitation and punitive treatment of criminal offenders. The merits of the research were also discussed. It was explained that their data would add to the understanding of crime and punishment in a manner that might not be possible through opinion poll and survey data. The participants were informed that their tape would be transcribed into typed format and that they would receive a copy of this transcript for their review before the analysis process could begin. They were advised they would need to return, by post, the transcript and sign the enclosed release of transcript form (see Appendix G) to me in a timely manner, using the enclosed, stamped, addressed envelope. This process was conducted according to ethical guidelines and requirements and enabled the researcher to utilise the data. The pragmatic reason for the transcript review was to ensure that the contents were representative of the participants' voice and that the context of their responses was not misrepresented or lost in transcription. During this process, participants had the opportunity to expand on, alter or amend their responses if necessary.

The Data and Pre Data Analysis

Interview Transcription

Data collection and transcription occurred simultaneously. Transcribing interview data has been described as demanding and time consuming (Potter, 1997). The task was indeed a long and laborious undertaking and on more than one occasion, it was hampered by poor sound quality of the recorded interviews. This

is an unfortunate ‘side effect’ and a limitation to using small, hand held voice recorders. Consequently, there are portions of the interviews that were in-audible. Since the interviews yielded a great deal of information these indistinct portions were not considered to detract from the depth and context of the material. Certain ‘blanks’ were filled in by the participants during the transcript review process.

The process of transcribing interview data proved a valuable exercise as it facilitated familiarisation with the data and the construction of rudimentary codes for analysis. It also enabled some distance to be gained from the interview in order to reflect on what had been accomplished through the conversational exchange. This is where some of the discursive features were first noticed. Interviews were transcribed verbatim; that is, what was said during the interview was included in the transcripts. This included non-verbal nuances such as pauses, ‘ums’, ‘ahs’ and other utterances that added to the contextual nature of the topic. For example, long pauses were interpreted as a condition of thought on the topic. Answers that did not always come freely were as significant as those that flowed with ease. However, it was necessary to screen out some “paraverbal paraphernalia” (Parker, 1988, p. 191).

The symbols used to indicate conversational specifics – pauses, ums, ahs and so on – were created solely to suit the purpose of the research rather than following any previously formed coding strategies:

Indecipherable script	(?)
Pause.....	[...]
Shortened text.....	(..)
Strong emphasis on a word	*word*
Describing context.....	(word)

Stage One Coding

Coding is a pre-analysis process but it also informs the analysis in as much as it enables the organisation of data into specific categories. In Potter and Edwards’

(1992) view it is a form of data reduction and archiving. Coding can be a cyclical process and the original categories or discursive formations that are identified may be refined throughout the process. Thus, what begins as a process of inclusion is transformed into an exclusionary exercise. It was necessary at this stage to return to earlier chapters for guidance and clarification of the research aims and goals to make sense of the purpose for each category.

Indeed, the first stage of the coding process was more inclusionary than exclusionary. All manner of inconsistent phrases, words, sentences and paragraphs were identified and included, each marked as data to be analysed. Several highlighter pens were utilised for each coding stage. A legend assigning colours to broad discursive categories was devised; orange for punitive; pink for non-punitive discourses. A third colour, yellow, was reserved for discourses that appeared to emerge from the transcripts but were not yet identified or labelled. Some portions of the text were difficult to define or assign to a single category. In such cases, they were categorised as having a multiple meanings and could belong to one or more discursive category.

Stage Two Coding

The second stage of the coding process involved refining and narrowing the broad categories of text that had been identified during stage one and attempting to code these into specific identifiable discourses. At this stage, the third discursive category was understood to represent a variation in people's talk that connected to the two main themes in some manner. To begin the refinement process all instances of the two main categories were read and re-read for repetition and meaning. The development of specific discourses grew out of this process. Three discourses were focused around separate but interconnected discursive repertoires that constructed dominant discourses of crime and punishment. References to these discourses were identified on the transcripts using a simple letter code in the margin i.e. 'GT' for the get-tough discourse. The same process was repeated for all talk that was not part of the crime and punishment discourse. In this case, three separate but interrelated discourses emerged that appeared to form alternative

discourses. These were identified using the same strategy i.e. 'R' for the rehabilitative discourse. Where there were possible overlaps in meaning or where meaning was unclear the paragraph, sentence or word was marked with a * or a ? symbol. The same process was conducted on all twelve transcripts.

Stage Three Coding

The third stage of the coding process was where the data came to life. It was transformed from mere codes, pieces of texts and rudimentary discourses into coherent and logical tools for analysis. Firstly, because of the sheer volume of information there was a need for elimination. Where *all* possible references to a discourse were originally included, it was now necessary to select only responses that were appropriate to the goal of the research. In cases where they did not address the research question, they were labelled 'non-sense talk' and marked as such on the transcript. Each discourse was then assigned a name that represented the function of the discourse. To this end, questions such as 'what does this discourse do' were asked. This enabled the data analysis to proceed in a coherent and legible manner.

The headings for the discourses were transferred to a separate piece of paper. A numerical index for identifying each discourse was devised. For example, the discourse of crime and punishment was numbered 1. The alternate discourses were numbered 2. Each subsequent discourse was numbered accordingly 1.1 or 2.1 and so on. Using this index, each reference to the emerging discourses was marked in corresponding fashion on each of the 12 transcripts. A red pen was used for this purpose and the number was positioned clearly in the right hand margin. The formulation of this numerical code was for the analysis purpose and assisted in the retrieval of information – direct quotes and phrases – from the individual transcripts. The final task was to re-read each transcript in order to fine tune any 'missed' discourse and to clarify that all references to the specific discourses had been included (or excluded). The results of the analyses of the data are reported in chapter six.

Chapter Six

Exploring Public Opinion: The Findings

*Even the design of buildings such as prisons
reveals the social logic that specifies
ways of interpreting persons and
the physical and social
landscapes they occupy.
(Gubrium & Holstein, 2000, p.494)*

Overview

The purpose of this chapter is to explore people's talk concerning crime and punishment. The analysis is an interpretation of the data that enables the researcher to identify and make sense of participants' use of public discourses constituting crime and punishment. Do the participants in this study draw on various discourses of crime and punishment when asked to talk about their understanding of crime and punishment as a social problem? The data analysis is structured as three sections. Part one provides a snapshot of the data and reduces the shape of people's talk into two categories of discourse, punitive and non-punitive. Part two maps the dominant discourses of crime and punishment which are then examined for their function and variability. Part three seeks to identify alternative discourses which account for an understanding of the contestability of public opinion. The research findings are constructions in themselves and are influenced by the discourses that are available to the researcher.

PART ONE: GROUP FINDINGS

A Snapshot of the Data

This snapshot cannot accurately represent any meaningful understanding of the categories of the number of responses to the initial interview question that were coded as punitive or alternative discourses. Figure 2 shows the number of responses by participants that emerged during the initial coding stage and were understood as constituting either punitive or alternative discourses. While this stage of analysis may appear logical and coherent it is included here as a demonstration that such representations do not account for the complexity of participants' understanding of crime and punishment and do not represent a proportion of the total context of the texts produced in the interviews.

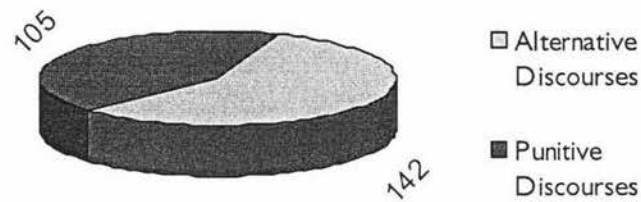


Figure 2. Snapshot of the raw data organised into two main discursive frameworks: punitive discourses and alternative discourses.

Preliminary Inter-subjective Talk

The primary goal of the present research was to question how participants in this study drew on dominant discourses of punishment and how dominant representations of punishment are produced in participants' talk. In seeking to answer this question, how participants responded to the initial research question 'how do you understand the way we deal with criminal offenders' was analysed in as much as it was able to mimic the immediacy of opinion poll data. That is, it enabled the analysis to highlight how participants spontaneously talked about crime and punishment in response to a single question. What emerged from this analysis was that punitive discourses may be understood as support for harsher sentences, and in this sense, participants engaged in punitive discourses of length of incarceration and tougher conditions in prisons.

Helen: I feel the punishments aren't hard enough instead of letting them get off lightly

Gandi: they should throw away the key quite frankly...they should go further than that... they...should be punished, severely punished... if you want to do some medical things upon him I wouldn't be adverse to that either

Mary: we're not strict enough and I think they've got to make our prisons a lot tougher because they're there to serve a punishment

James: do the crime, do the time...there have to be consequences for people's offending

At the same time, other participants questioned the effectiveness of punitive treatment for offenders.

Katie: I think prison is pretty much a band-aid effect

Karen: it's probably quite unproductive, quite cruel in lots of ways and um [...] probably quite ineffective in lots of ways

Jeannette: I don't think prisons do much good to anybody

Joy: I don't think it's a good system, I don't have an answer for what is a good system but um

This variability in responding clearly demonstrates the presence of at least two contradictory discourses. Punitive discourse positions the speakers as supporting the notion that punishment must be *hard* to be effective. On the other hand, the effectiveness of incarceration is contested and speakers are positioned as unsupportive of hard punishment. It may be that those participants who draw on discourses for harsher sentencing have made links between prison and punishment because of its visibility; "imprisonment is the most familiar punishment in the public mind" (Roberts & Hough, 2002, p. 5). Participants who questioned the effectiveness of punitive treatment positioned themselves within alternative discourses that accounted for human rights or broader social issues. For example, Charlotte posits the notion of social context being important to understanding the treatment of criminal behaviour.

Charlotte: I'm more prone to look at the social factors and the bigger picture of those sort of things

Participants in this study did initially draw on punitive discourses, although the effectiveness of these discourses was questioned and alternative discourses were also produced in their initial response. The following sections identify

specific constructions of punitive and alternative discourse and how these discourses produced a particular criminal subject.

PART TWO: DISCOURSES OF CRIME AND PUNISHMENT

References to the discourses of crime and punishment were expected to arise in people's talk. This is because punitive treatment of criminal offenders underpins a seemingly uncontested assumption that public opinion is most favourable toward, and supportive of calls for harsher penalties. The various discursive representations that promote the punitive treatment of criminal offenders position offenders in a particular manner. Such representations suggest there is a separation between us (good citizens/potential victims), and them (criminals) which often justifies the move toward get-tough practices. As a society, we have become accustomed to the rules and practices of our justice system to which end discourses of crime and punishment are taken for granted as correct, legitimate and rational. Such practices influence how we understand issues of crime and justice and also limit or enable the discourses with which we engage. In this analysis, three specific discourses of crime and punishment were identified: punitive, get-tough talk discourse; offender positioning discourse; and sentencing discourse.

Punitive, Get-tough Discourse

The punitive get-tough discourse is specific to punitively orientated responses to the treatment of criminal offenders. It imbues its meaning from the discourses of crime and punishment that centre on the punishments inflicted on those who break the law. It manifests through get-tough initiatives and policies that enable and promote the more frequent use of incarceration. Such moves are positioned as meaningful responses to rising crime rates which are observable and evidenced through rising prison populations. Such practices are discursively constructed using catchphrases such as 'long-term imprisonment' (The Law and Order Referendum, 2002), 'get tough on crime' (The Press, 2000), 'tougher jail terms', 'crack down', 'tougher penalties' (Fletcher, 2003), and 'rocketing crime figures' (Franks, 2001). These discursive resources were expected to be produced

within the talk of participants involved in this study. That is, if people do draw on punitive constructions, they would be drawing on the get-tough discourse and show support for the increased use of imprisonment and a desire for harsher sentencing in the treatment of criminal offenders.

What was evident was that not all participants drew on the punitive get-tough discourse. There was clear support for getting tougher with criminals and crime, which was evident through the language people used. Expressions such as 'tough', 'harsh' and 'severe' were emphasised. Responses were however, contextually placed. Support for get-tough initiatives appeared to relate to certain classes of offenders: persistent repeat offenders and violent offenders. The type of offence formed part of the construction. It is conceptualised that while people are drawing links between prison and punishment, they are doing so based on an image of a serious and violent offender as opposed to offenders in general. These excerpts however, have a second function and that is to demonstrate *why* people think harsher punishment is important.

Mary: they've got to make our prisons a lot tougher...if they like it so much, they'll re-offend and go back again but I think they owe it to society to get in and you know um, not be treated like they're in a first class hotel they've got to be treated like criminals

Gandi: I believe if the thought of punishment, if it's severe enough for some of these crimes it would stop them. Um, I do believe they do it again and again because they are laughing at society

Fred: oh I reckon we're way too lenient on them; yeah we should be way stricter...I think it should be rougher, I mean I think it should be rough as hell, the hardest thing they've ever, ever experienced in the bloody life...three strikes and you're out yeah; I reckon its bloody good

Helen: I don't know if prison is having the desired effect but I think they aren't hard enough on some of these criminal that are [...]

running around out there that have committed violent crimes [...] but if they don't build these prisons they'll have all these people they're going to let go home and commit crime and perhaps beat their wives and partners up

In this particular interpretation, the tougher prison sentence appears to hold the answer to the ills of criminal offending. A central feature here is the problematising of current practices as simply not getting tough enough with criminals. There is an underlying assumption that where an offender has been sentenced to prison because they have broken (often repeatedly) the law, a debt is owed to society. Yet, it is the image of the violent offender that is the focus and who is positioned as being problematic to society. In this particular instance, the discursive construction portrays prison as having a moral function in so far that if the prison fails to mandate punishment then the debt will not be repaid to society. Thus, it is important to ensure that offenders know they are being punished.

In the below excerpts the show of support for get-tough initiatives continues, although this time it is centred on the current practices and is framed in terms of criticism and frustrations.

*Gandi: well it [prison] doesn't work when you hear of underground, under floor heating and ah, televisions and three good meals a day, it doesn't work then, of course it doesn't work because they go into prison, in fact, what did we see the other day? People are robbing so they *can*¹ go to prison down in Rotorua*

Mary: with under floor heating...I think they're making life too easy. I've been in Paremoro...I've done courses there; I've seen the cells they live in with their TVs and computers and everything else

Fred: I delivered veges to Paremoro prison for two years and they were eating better than anyone I knew that was outside

¹ The asterisk (*) denotes emphasis on a word.

Ben: some of them go in there for warmth in the winter shall I say, just being silly, but they get a roof over your head, they get food...so it does indicate that it's softer in prison, I'm not sadistic [...] but I don't think it's as severe as it used to be, they really are soft I think

In making sense of current practices, participants understood the rise in prison populations through lack of punishment within the prison system. In doing so, the participants are clearly demonstrating why we need to get-tougher with criminal offending. They are also blaming the prison system for its lack of focus on punishment and too much focus on offender rights. The idea of privilege therefore, becomes a key argument in the promotion of get-tough practices and is necessary to restore the balance of fairness to society by shifting away from the senseless practices of providing for criminal offenders in a manner that is not considered necessary. This is made clear through language such as 'well if it doesn't work' which suggests that if prison were harsher, then it would work to stop re-offending.

Through this interpretation, prison is imbued with meaning that suggests prison is desirable and participants position (or reposition) it as a place for punishment. It is described in a manner that justifies the removal of anything that is 'making life easy'. This is because the provision of items such as warmth renders the prison less effective which again, provides a rationale for getting tougher with criminal offending. Participants draw on a discourse of tougher conditions in prison based on the assumption that if prisons were harsher then recidivism rates would decline. Furthermore, framed in this way, the prison becomes a valued commodity that is central to the success of the justice system. In drawing on get-tough discourse, participants construct an effective prison system that is a simple, direct and 'no frills' approach to punishment with few opportunities.

Fred: why should you go into prison and be able to learn to study, do a course on [...] do a course in prison, why should, why should they have that opportunity [...] why should they?

Although the opportunities provided to prison inmates came under scrutiny in the participants talk, the conditions in which offenders lived had received significant public attention. At the time of interviewing, media, members of New Zealand's political opposition and lobby groups such as the Sensible Sentencing Trust, were engaged in a debate over the installation of under floor heating in four of New Zealand's new prisons (Power, 2006a). Indeed Farkas (1999) points out that calls for the removal of offender's basic human comforts while in prison, such as televisions, heating, weights, tobacco and air conditioning in order to make prison environments harsh and uncomfortable, are embedded within the get-tough ideology. Consequently, the widespread and frequent coverage of the debates around heating drew attention to what inmates have in their prison cells. Thus, the provision of televisions, computers, radios, education and even cellular phones was criticised amid reports that "96% of homes don't have under-floor heating, so why should prisoners get this luxury at taxpayers' expense?" (Power, 2006b). One might wonder if this issue would have been raised by this study's participants in the absence of such public reports.

A consequence of this discourse is that it constructs a notion of deservingness. Simply, if you break the law you have little claim or right to enjoy the luxuries of life. Media discourse is constructing a view that offenders should be deprived of not only their liberty, but also anything that is considered to provide comfort or stimulation. Through this interpretation, an image of an overfed, over-stimulated and pampered offender is constructed which provides further justification for a get-tough approach in the treatment of criminal offenders. Thus, a recurrent theme in participants' talk is that prison, the harsher the better, is the preferred mode of treatment for criminal offenders. Yet, there is also a second recurrent theme and that is the construction of the serious and violent offender.

Fred: If they get 10 years of sitting in cage for doing a murder, well too bloody right you should be sitting in a cage, that's bloody lucky to what they did a couple of hundred years ago you know, think yourself bloody lucky...oh yeah, no bloody nice stuff to them. They've done their crime they serve the time

Helen: if they want to go around committing crimes and hurting people, um murdering and raping surely about time um, that they adopt a harder attitude because...it hasn't worked you pick up the paper and you read these horrendous crimes

In these examples, each participant draws on a particular 'type' of person that must be punished more severely to match the crime. This interpretation effectively positions the speaker as having the right to desire harsher punishments because society is at risk from serious violent and repeat offenders.

To summarise this discussion, how people draw on the get-tough discourse is shown to be contextual and subjective. For the most part, participants support calls for harsher punishment, but they do so in the context of repeat and violent offenders. Does this suggest that people endorse the get-tough movement? The answer may be indeed they do, but such support is dependant on the crime that is committed and the construction of the criminal subject. That is, those who persistently commit crime, and especially those who perpetrate violent crimes should be punished with a severe prison sentence.

Offender Positioning Discourse

Punitiveness and punitive opinions are not just about punitive get-tough practices in the treatment of criminal offenders. It also incorporates the positioning of certain people as deviant perpetrators of crime which underpins a particular construction of the criminal offender. How we understand criminal offenders also informs how we understand effective treatment. It is suggested that drawing on a particular offender profile or image enables people to distance themselves from acknowledging that many individual and social issues contribute to criminal offending. Because this discourse is concerned with how participants construct the criminal offender, one would expect this form of talk to emerge around two broad functions: to stereotype and categorise criminal offenders and to portray New Zealand society as under threat from a growing population of deviant individuals.

The stereotyping of criminal offenders was minimal in the participants' talk. Those who did draw on such stereotyped language had a clear image of exactly what 'kind' of people were the perpetrators of crime. Three groups of people were positioned in this manner: Māori, Polynesians and youth; Pakeha were not identified as perpetrators of crime. Where Māori were concerned, participants constructed ethnic categories to explain criminal behaviour as if the crime is an outcome of ethnicity. In this way, a deficit model of Māori as not taking responsibility for their behaviour is linked to cycles of violence.

Mary: I say that a lot of it is Māori um and the way we're treating the Māori people, we're treating them with kid gloves and I think they've got to take um more responsibility [...] I mean the police have pussy footed around them, if that was me...I wouldn't have pussy footed around

Gandi: the Māori situation about these twins who were murdered... the kids are brought up and are punished severely and they beat up their wives and they beat up their children and so they carry on doing the same thing... what's happening in the Māori community is no better... the same crimes are being committed, the same drugs are being taken, the same booze is being drunk, um and that's what appears to be happening

Other stereotypes were also engaged to construct particular groups as representing criminal offenders. These discourses enabled participants to draw on get-tough discourses to alleviate the problem of crime by eliminating certain people from New Zealand society; the answer is to 'send them home'.

Fred: if one of them commits a crime their family's gone that's in my eyes... send them all bloody back to Samoa, or Tonga or you know wherever their from...Asians, yeah, yeah everybody, everybody. You commit a, and it has to be, not just stealing a car you know...it has to be of a serious nature, not just a petty theft...you know. Like you do

the time for it but you don't get sent home for it. But if it's a major crime like rape or murder...something you know major

Youth culture was also constructed as potentially criminal. Again, get-tough discourse was evoked through talk of troublemaking youth getting off lightly due to their social context which is understood as an ineffective form of punishment.

Helen: I feel a lot of the kids today are getting into trouble, and if they knocked it on the head in the beginning instead of letting them get off lightly and saying, oh you're from a broken home, or you do this, or you're unhappy, or you've had a rough spin and I feel kids today think 'oh I can get away with it'... if they were caught at an early age the first time they committed something, something wrong I think some of these kids would turn out to be worthwhile citizens

It may be said that the media representations of criminal subjects contribute largely to these constructions. For example, at the time of interviewing, New Zealand society was experiencing enhanced media coverage of two significant crime events. One was the death of the three-month-old Kahui twins, allegedly by a family member, and the second was the assault of women by a male dubbed the 'Pukekohe Rapist'. Members of the same extended Māori family were accused of both crimes. It is suggested that vivid cases resonate in people's consciousness because they are distinctive and memorable. In this case, singular examples of crime by Māori are translated into a generic assumption regarding Māori offending and as a result, this group become overestimated as the perpetrators of crime (Myers, 2005). In addition, programmes such as *Police 10-7* (NZP, 2007) portray a typical image of 'the criminal offender' as being young, male and as Māori or Pacific peoples. Such vivid cases were produced in participants' talk and they drew on media representations of crime to construct serious, violent offenders.

Ben: lot of young children who are in crime and some of it is terrible crime, violent crime, throwing things off um motorways, things like that

Helen: that brute of a kid that murdered the pizza, pizza hut or pizza boy...and this little mongrel decided oh we're going to kill you for some money, and that kid was just a mongrel of a thing

Media representations of crime and punishment produce the criminal subject as deviant and immoral (mongrel) and were drawn upon by participants in this study. It is also suggested that the promotion of stereotyping, the language of moral panics and the fear of crime has a specific function for particular institutions and social groups. For example, the 'general' public may be positioned as having to 'deal with' violent offenders whenever the media see an opportunity to increase revenue, or politicians seek to gain or maintain voters appeal. At the same time, highly publicised profiles of certain criminals via the media and programmes such as *Police 10-7* may create a momentary reaction towards deviance that is akin to a knee jerk reaction. Although such reactions may be short lived and certainly not as enduring as the 'claim making' assumes, it is this 'reaction' that keeps the criminal subject in the public eye due to the cycle of information from one position to another. From this vantage point, offender positioning is not so much part of the public discourse, rather than a site for claim makers to suggest to the public that there is something to fear and encourage them to take up the position of a fearful public.

The participants in the study were also *aware* that 'we' have become engaged in producing an image of the typical offender and are successfully positioning people in a certain manner. Charlotte postulates how a particular discourse becomes constructed by linking criminal behaviour with ethnicity:

Charlotte: it is generally Pacific Island/Māori they pick on...if it's a young man with European middle class family they make a big thing of 'good boy gone bad'...if it was a young Maori guy who might have been a perfectly good lad all his life but slopped off the rails then they just lump him in with all the rest

While offender positioning produced a specific criminal subject, participants did not position themselves as universally fearful, rather specific crimes are contextually specific.

Helen: when I think back to say 30 or 40 years ago, if there was a murder it was a big thing I mean the front page was just covered with this murder because it wasn't very common, now there are two or three murders a week, well what's gone wrong with society that we put up with this [...]

*Jeannette: compared with Invercargill if you showed the number of murders in Auckland it looks like a terrible place but you know, it should be the number of murders *per* population um and then of course they, other things they will talk about is 60 or 70 percent statistics are used very um irresponsibly so we've had a 60 percent increase in something well that could mean it's gone from I don't know, 6 to 10 or something which is not statistically significant*

Karen: I think a lot of people are thinking all those bad people down in Otara who are, going to, you know, if you're not careful will come and get us...the bad males, bad men, are sort of whisked away somewhere (laughs) you know, and supposedly, probably so women and children can sleep easier to know, you know, that's probably one of the common views

Sentencing Discourse

A third discourse of crime and punishment relates to the actual strategies of the get-tough movement, such as ensuring the punishments fit the crime. Talk in relation to punishment is typically dependent on the harm inflicted by the offence. Yet this relationship between harm and punishment has eventuated in the blurring of the boundaries of what constitutes serious crime (Hogeveen, 2005). The result is the increased proportion of non-serious offenders become incarcerated under get-tough principles. How this mode of sentencing manifests discursively is in a style

of language that promotes and legitimises a punitive, yet vengeful response to crime implicating a discourse of just deserts (Pizarro, Stenius, & Pratt, 2006). It was expected that participants would draw on sentencing discourse to frame their talk through notions of condemnation and worthiness to reflect the right to punish in a vindictive manner (Feather, 2003). In addition, this form of punishment would not be to prevent or deter future criminal acts, rather it is simply punishment based on deservingness (Dolinko, 1997).

Such unforgiving and resentful attitudes were difficult to identify in participants talk. Where participants drew on sentencing discourse they demonstrated a sophisticated level of knowledge on sentencing practices and mostly promoted proportionate and fair sentencing practices.

Fred: I think the law's too strict...it should be more curved, it should, you know, it's not a straight line all the time, there's heaps of different things going on so everything should be equally, independently evaluated

Mary: I think a lot of [...] especially for younger people; I almost think the punishment should fit the crime that they have committed

James: if you look at America and some of the sentencing over there I think it's just you know, too extreme um and I think it's a as a result of people just saying it's not working but what else have we, we don't know any better so let's just make it for longer

Jeannette: you've still got a high proportion of criminals who could be given sentences that were more to do with the punishment fitting the crime um which isn't the same as if the crime's the crime they should all be treated equally, you know, I think the punishment fitting the crime is quite a good idea

Based on the above extracts, participants agree that the sentencing process should be less bifurcated and more contemplative. The imposed punishment

should be proportionate to the magnitude of the perceived harm done. While participants addressed the need for sentences to 'fit the crime', there was also an understanding that not all criminal acts should necessarily be punished through incarceration. Participants therefore endorsed other forms of sentencing.

Fred: the problem is that a lot of the prisons are full of people that shouldn't really be there, that the crime doesn't really deserve the punishment

Ben: ideally a person put on probation or something like that, uh is fine but we haven't got the resources for that, because maybe the probation officers are not paid enough to attract them...ideally, I think that um the sentence should be something like that, you will go to this institution, or in the hands of this institution and attend these lectures or whatever it is

Anne: crimes that don't hurt anybody that shouldn't be um, shouldn't be punished by a prison sentence; they should be out there in the community and doing community work

By engaging with this talk, people are positioning the criminal justice system as unfairly focused on uniform punishment. Whether they are implying that such practices are unfair to the offender or unfair to society is less clear. However, the consequences are that the view of the public does not match practice simply because we appear to incarcerate people for seemingly petty crimes that would not attract a prison sentence in many other Western societies (Spier, 2002). Thus, one might question who benefits from this retributive, vengeful discourse. It may be that the regime of prescribed sentencing rules that has emerged may serve a political purpose as far as politicians are seen to be 'doing something' in the face of a rising population of criminal individuals. Ironically, the rising prison populations legitimate this viewpoint. This backward style of thinking and practice however, ignores the possibility that prison populations continue to increase due to a "constant level of punishment resulting in a stable rate of penal confinement" (Wacquant, 2005, p. 3).

Summary

In exploring public opinion, participants engaged with the discourses of crime and punishment that dominate current penal reforms. The kind of talk demonstrated in this section indicates that there is a desire to punish, but not necessarily to punish harder, longer or with the goal of exacting revenge. Participants drew on discourses that enable punitive, get tough practices, although this was only where certain kinds of criminals were produced. Participants did not necessarily support incarceration for all criminal behaviour suggesting that there is variability in understandings of dominant public opinion that calls for harsher penalties.

PART THREE: ALTERNATIVE DISCOURSE

An alternative way of speaking about crime and punishment emerged from participants' talk. The alternative discourses that emerged were largely non-punitive and in their most broadest form, were concerned with looking beyond the act of crime and focusing instead on criminal offenders (Garland, 2001). In this sense, the discourses draw on a recognition that there are a range of social, environmental and individual factors that are implicated in criminal behaviour. This underpins the belief that attending to such factors may ameliorate some forms of criminal behaviour (McLaughlin & Muncie, 2003). This viewpoint also relates to a shift in subject positions from the deviant, immoral criminal subject to understanding the criminal offender as an experiential human subject who occupies a multiplicity of positions that are culturally and socially specific.

Participants engaged in alternative discourses in several different ways. Firstly, a distinct non-punitive repertoire problematised the goals, intents and outcomes of harsh punishments and imprisonment. Related to this was an understanding that media, politicians and lobby group representations are involved in producing potentially incorrect and often irresponsible information that attempts to incite public fear and anxiety. There was also much rhetoric regarding alternative forms of treatment including offender rehabilitation in participant

accounts. Lastly, there was a discourse with a strong preventative emphasis that was embedded within humanitarian ideals. The alternative discourses identified in the data were: non-punitive discourse, rehabilitative discourse and humanitarian discourse.

Non-Punitive Discourse

A noticeable discourse that emerged as an alternative discourse was non-punitive. It encompasses a way of understanding crime and punishment that problematises and refutes the harsher sentencing produced through get-tough discourse. Non-punitive discourse for the purpose of this research, is borrowed from Cook and Powell (2003):

[B]eliefs that punishment is contrary to a “value of life” ethic, prevention and rehabilitation are far preferable to punishment, as taxpayers all citizens participate in the state’s punishment whether we want to or not, a recognition in the inequities of punishment and finally a mandate toward forgiveness. (p. 79)

From this understanding, the non-punitive discourse is able to bring into question current practices, rationales and the social and political institutional arrangements that have produced penal reform, policy and practice. It also enables the identification of institutional practices that are failing in the bid to control crime. For example, the 1999 referendum on penal reform is positioned by one of the participants as ‘duping’ the public towards a specific and predetermined outcome. In drawing on notions of predictability and the bias of questions, participants were able to challenge the underlying assumptions of the referendum and reconcile this disparity for themselves suggesting that the outcome did not reflect public opinion fairly. Charlotte clarifies this point by stating ‘that’s not what we asked’. In doing so, she brings into question the disparity between the understood *intention* of the referendum and the subsequent *interpretation* of the results it produced. This, in turn is understood as incongruent with public opinion on the importance of certain issues. Jeannette reiterates this by referring to the complexity of the questions and the confusion they created. She also draws attention to the predictability of the outcome, suggesting that the questions were

styled to elicit an affirmative response. Karen and Gandi point to the lack of capacity for referenda to generate any meaningful results because they do not account for the complexity of the issues involved.

Jeannette: that referendum that asked people to tick boxes was an appalling referendum because there were about four questions in one and I could see you know what was going to happen. It was absolutely predictable at 92 percent I think but New Zealand in the last 20 years has become a very um, um, punishment orientated society, um and there doesn't seem to have been enough thought from people

Karen: that's the trouble with a referendum, they're so, the questions they ask are so biased

Charlotte: 'but oh, 99.9 percent of the population are concerned because they want this, this, this and this because they voted', but it's like, that's not what we asked and they were capturing a very specific group, I mean people who vote are usually people who have opinions

Gandi: we all like to think we're correct in what we think [...] but I don't think you can go have a referendum because referenda is never detailed enough, you can't ask one question and get one answer 'no'. One question leads to another, to another to another to another. Unless you've exhausted those questions, you can't have what I consider a meaningful referendum

Drawing on non-punitive discourse, the participants were in breach of the very foundations of the get-tough movement. More specifically they were able to demonstrate an ability to engage with the available information in a manner that runs counter to the claims that the referendum produced a representative account of public opinion (Roberts, 2003). Participants also demonstrated an understanding of the get-tough debate and positioned themselves as unrepresented within the debate. A review of the available literature suggests that there was indeed a lack of

public understanding on the referendum questions and significantly less emphasis on issues of sentencing and punishment than was portrayed in subsequent media (Gendall et al., 2002).

Participants in this study positioned themselves as opposing punitive discourses through drawing on discourse that runs counter to imprisonment as a deterrent. When talking specifically about the practices of punishment, participants made clear their understanding that both punishment and harsher punishment cannot reduce recidivism or exact reform on the criminal offender in any meaningful fashion. In fact, prison is failing because it is punishing more rather than less (Kolstad, 1996). The participants also draw on issues of cost to relate the ineffectiveness of incarceration with the economic expenditure on a practice that has no rehabilitative function and is impractical as a crime control or deterrent. Phrases and discursive markers such as ‘what does it achieve’, ‘it doesn’t make any difference’, and ‘as a deterrent it doesn’t work’ clearly locates harsh punishment as a weakness rather than a strength of our justice system and brings into question the allocation of valuable resources by those in positions of power. This is expressed as frustration at those who fail to recognise the lack of deterrent effect of punishing harder; simply if it worked there would be ‘no crime’.

Jeannette: there doesn't seem to have been enough thought from people about [...] what does punishment achieve if anything, how much it costs the taxpayer. I mean people will vote happily saying 'oh yes everybody should stay in prison nobody should get paroled all these people should go to prison' and not once did they ever think of what in fact it would cost them in taxes

Karen: well who focuses on the cost of prison that's huge isn't it [...]? Doesn't it cost fifty thousand or something to keep a person in prison for a year? Punishing harder isn't going to make any difference, it's not going to make those criminals think 'oh, if it's going to be hard maybe I won't do it'; it's not going to have any

deterrent [effect] it's only going to make rehabilitation harder, because they're going to be hardened, more desensitised

Charlotte: prison as a deterrent doesn't work, I mean if it did we'd have no crime because people would be like 'oh no, don't commit crime' but they still commit crime...it's clearly not the be all and end all solution you know

Drawing on the notion of the 'taxpayer' positions 'the public' as central to this issue through an understanding of the contradictory value of incarceration. Participants make clear that the cost/benefits are noticeably on the side of too higher cost for too few benefits to either the offender or wider society. Indeed, scholars note that the high costs associated with harsher punishments is something the public are unwilling to support (Brand & Price, 2000; Workman, 2006). Thus, where distrust and cynicism are expressed, it appears to exist alongside frustration towards the leaders and social institutions that are charged with penal reform.

The participants also engage the media as being responsible, at least in part, for producing public anxiety and fear of crime. In this sense, media representations were understood to produce crime as a serious social problem.

*Charlotte: they do a lot of scaremongering you know like *crime rates are up, oh god lock your children in* that kind of thing. There's certain cases like um the Pukekohe Rapist where they made the whole of Auckland feel less safe*

Mary: well they're all in it for getting people to um you know, listen to them so they're going to hype things up and I think this does a lot to make people think 'this is what's happening'

Jeannette: I actually, I think the media um are to blame a great deal because even if they have, as they do sometimes, quite careful thoughtful reporting, the headlines are just designed to um catch people's attention so they either make people feel frightened or they

um [...] you know or they um kind of make people feel that the country's gone soft you know, I mean young people are dreadful these days aren't they, they're all going to the dogs (chuckles)

James: I think the media has a lot to answer for but again I think of that that combined with just human nature, mm, I think yeah, the media probably does have a fair bit to answer for... obviously it's responsible pretty much solely responsible for what we're being told about these people

Karen: my opinion would be that it [media] gives a very biased view, sensationalist and it somehow makes people feel less safe than we really are

The use of discursive markers such as 'scaremongering' and 'gives a very biased view' illustrate the depth to which the participants are aware that media representations of crime can be persuasive and permeate public consciousness. It may be that the media wield less influence on public opinion than is currently assumed and while they may be successful in telling the public *what* issues to think about, they may have little control over *how* these issues are assimilated and understood. In this sense, media interpretations of events may not reflect public interpretation of those same events. In this study, the participants were able to produce non-partisan views. Andina-Díaz (2007) indicate that while the media are successful in modifying viewers preconceived notions, they are less successful in recruiting non-partisan viewers. On the other hand, those likely to be influenced are the more extreme viewers who hold deep-seated beliefs and values that are congruent with the more punitive point of view. This renders certain people susceptible to persuasion and likely to succumb to the influence of certain messages, especially those that are value laden and foster panic and fear.

Rather than draw on punitive get-tough discourse, the participants in this study questioned the discourse being produced by politicians, the referendum and the Sensible Sentencing Trust. The depth of the participants' mistrust of punitive get-tough discourse is made visible through an understanding that politicians are

engaged in populist politics and treat public opinion as if it is stable and uncontested. Again, there are certain markers in the participants' talk such as 'hysterical public pressure' that imply politicians are making decisions based on uninformed public reaction to crime.

*Joy: I'm sure politicians um do what they think the voters want yeah.
It's certainly the easy out*

*Jeannette: what's happened in recent years has been the government
responding to hysterical public pressure*

*Karen: I wonder if some politicians promote it [prison] because it's
a good way to win votes...that's what politicians do isn't it. 'And then
they'll vote for me because I'm saying 'I'm going to put out more
police' It's the appeal of it [prison], at least we're doing something
too bad if it doesn't work but that's never mind*

It might be fair to say that promoting prison as a first response to crime serves a very clear and explicit political and ideological purpose that is understood as having little to do with public sentiment or demand. Drawing on non-punitive discourse, the participants bring the idea of prison as a first response into question by promoting human rights and welfarism. While welfarism and punitiveness might appear diametrically opposed, neither necessarily excludes punishment. A point of departure is that those who engage an anti-punitive discourse are more likely to "de-centre prison without dismissing it" (Armstrong & McAra, 2006, p. 23).

*Charlotte: when I said I don't think it's a good idea to put
everyone in prison, I meant not everyone in prison should be
there necessarily*

*Anne: I think that a fraction of um dangerous offenders should
be in prison...there are lots of crimes, like, crimes that don't
hurt anybody that shouldn't be punished by a prison sentence*

Returning to the notion of criticism and cynicism, the SST were identified by some of the participants in this study as a target of frustration and distrust. In this way, the sensibility of claims for harsher sentences was brought into question. In the first extract, Anne scrutinises the ethos of the SST because their demands for tougher sentencing are considered irrational and imprudent. This effectively refutes the SST ideology in as much as it is more prudent to re-think how criminal offenders are treated than to reformulate practices that clearly do not work. In this sense, the SST is positioned as having an unreasonable and unsatisfactory role in penal reform. In the second extract, Charlotte positions two key politicians as supportive of SSTs claims and questions their awareness and use of punitive get-tough discourse. Despite questioning the sensibility of harsher sentencing, the participants do not deny there is a crime problem; to the contrary, there is a belief that some offenders warrant prison sentences. Yet discursive markers such as 'look what prison is doing' positions incarceration as creating problems as opposed to solving them. Similarly, statements such as 'it can't be working' again highlights the irony of mass imprisonment amid a continuing crime problem. It seems that as a practice, imprisonment may not only be ineffective but detrimental because many offenders will simply offend again.

Anne: the fact that it was called the Sensible Sentencing Trust, you'd think that sensible would be you know um thinking again about um what we do to criminals but no, the Sensible Sentencing Trust (laughs) is you know, wanting more time in prison rather than less time you know

Charlotte: Don Brash and that Act dude [Rodney Hide] were both clamouring for your blood kind of harsher penalties, harsher penalties, what a guy! What's sensible about that? Maybe just put it across as, 'and look what prison is doing...do you think it's actually solving any problems'

Karen: in the case of the Sensible Sentencing Trust they would say [prisons] are a deterrent a wonderful deterrent... if we are having

this crime wave like they say we are then it can't be working. And look at those wider issues that lead them [offenders] to think that all they could do is go around nicking other people's stuff...unless they're rehabilitated what are they going to do when they get out?

The way this discourse is shaped and used suggests two things. One, participants are able to navigate their way through the available information, including dominant discourses of crime and punishment to construct an alternative version of events that not only counters, but challenges the dominant reality. This clear and explicit challenge is made possible by refuting, countering and criticising the discourses and institutions that are central to penal reform, policy and practices. Second, by framing their talk in such a way, participants are both asserting their position as stakeholders of the penal system in so far that they are both financial sponsors and have an interest in the end product. In this sense, they are making it clear where they are located within the various debates and issues. Furthermore, in critiquing the various institutions and discourses, participants are demonstrating a complex understanding of penal and political systems, state ideology and institutions. This knowledge is perhaps grounded in a broader belief that the values associated with the political bodies of democratic nations, in terms of the power and authority to govern, should treat their electorate with respect to ensure continued trust and support. Charlotte captures this well in the excerpt below and questions the production of a criminal subject that is socially and culturally produced:

Charlotte: I think New Zealand, like America, has this kind of ideal of being an egalitarian society and so that kind of entails that if everyone has a choice and everyone can make it. But not everyone can make it. Not everyone can be successful. What are you thinking? So there's those people that might have had a hard life that have made good but you know, and that's really great but what about the rest of them...therefore people think if people don't make it, it must be some fault of theirs you know that they're lazy they're stupid or they couldn't be bothered

The participants, to make sense of the ways that dominant representations of crime and punishment have become misrepresented to society through various social groups, drew on the non-punitive discourse. Where people are expected to express fears and apprehensions that are analogous with moral panic discourses and show support for the dominant viewpoint, they instead produced counter knowledge to challenge those discourses engaged by groups within society as simply promoting their own agenda. This “ideological hegemony” (Goode & Ben-Yehuda, 1994, p. 160), demonstrates how dominant discourses systematically engineer panic and intentional or not, exploit a particular ideology. The participants were also mindful that current practices are limiting the scope for engaging in a more balanced debate. This is understood as presenting barriers to the pursuit of solutions that may have a positive effect on reducing crime and criminal behaviour.

Rehabilitative Discourse

A second discourse that emerged as an alternative to dominant constructions took into account the rehabilitation of criminal offenders. For the purposes of this study an understanding of rehabilitation has been borrowed from Gaubatz (1995) who argues that rehabilitation depends on “teaching offenders how to become productive citizens...basic education, job skills training, psychological counseling, treatment of substance abuse, or the inculcation of ethical values” (p. 16). Research to date has demonstrated public support for rehabilitation to varying degrees. Opinion polls routinely report that there is wide scale public agreement that rehabilitation should be a goal of correction practice (Applegate, Cullen, & Fischer, 1997; Roberts, 2005a). However, what opinion poll research cannot represent is the complexity of that agreement, nor the contextual and situational factors that contribute to it.

The participants in this study showed support for rehabilitation. In keeping with prior research, participants understood rehabilitation to be a function of the justice system and necessary to the effective treatment of criminal offenders

although it did not necessarily replace incarceration. This is made evident in the texts.

Ben: I think the justice system has one other part; it's not just the sentencing but the rehabilitation

James: but I think the rehabilitation programme should be integral, it shouldn't just be bricks and mortar you know

Jeannette: we should spend much more time looking at alternatives and um there are alternatives in some other countries

Anne: they should have psychiatrists and psychologists and people getting to the bottom of why they did it and then to turn that person around

In a similar manner to the support shown for the get-tough discourse, support for rehabilitation is contingent on the system making provisions for the inclusion of appropriate treatment programmes. It is not to suggest that the prison sentence should be abolished. To the contrary, rehabilitation is an adjunct not a replacement. In this sense, rehabilitative discourse is drawn on to enable rehabilitation to become part of mainstream practices and to render the prison sentence *effective*. Recurrent phrases such as 'should', established this criterion for support because it suggests that participants find it necessary to effect change in criminal behaviour, 'to turn that person around'.

The discourse of rehabilitation was produced as professional intervention enabled through 'psychologists', 'psychiatrists' and based on best practices from 'other countries'. This constructs an image of rehabilitation as being professionally informed and scientifically evidenced, which renders it more likely to be effective in reducing recidivism. It is this latter notion that is of interest in this research. A great deal of attention has been given to the nature and degree of the ill informed public on all aspects of criminal justice (Roberts, 2005a). According to Paulin, Searle, and Knaggs (2003) the New Zealand public has been found to be

“pessimistic about the possibility of rehabilitating offenders” (p. 65) which was said to relate to lack of knowledge and widespread misunderstandings on the goals and functions of the justice system. However, the legitimacy of such claims is questionable because while the participants in this study have shown their support for a rehabilitative ideal they have not necessarily demonstrated any in-depth or complex understanding of the *mechanisms* and *functions* of either the justice system or offender rehabilitation. The point to clarify is that knowledge on correctional practices may not be the most fundamental body of knowledge in the construction of a particular point of view.

The allocation of resources was also implicated in rehabilitative discourse. The participants in this study related economic factors to behavioural change and the treatment that enables that change. This talk has two functions. The first it to is further problematise the use of tax dollars and portray those in charge of allocating resources as thoughtlessly engaged in less desirable choices. The second is to reconstruct how tax dollars may be utilised in a more acceptable and viable manner. Discursive markers and phrases such as ‘that’s huge isn’t it’ highlights the idea that resources are being wasted and the perceived high cost of keeping individuals in prison does not justify its continued use given that rehabilitative outcomes are not part of the sentence. A third function may be to criticise get-tough practices. In this sense, relating punishment practices to poor performance in achieving good outcomes counters the taken for granted assumption that people wish to see offenders subjected to harsher forms of punishment and longer terms of imprisonment.

Jeannette: what does punishment achieve if anything, how much does it cost the taxpayer? I mean people will vote happily saying ‘oh yes, everybody should stay in prison, nobody should get paroled all these people should go to prison’ and not once did they ever think of what it would cost the taxpayer. It’s so much better to change people’s behaviour than to stick them in prison

Karen: well who focuses on the cost of prison, that's huge isn't it? Doesn't it cost 50 thousand to keep a person in person for a year? If we spent that money on them in a different way, wouldn't it be much better?

James: if they're spending half a billion dollars on a new prison then they need to allow another couple of hundred thousand to make sure you have your psychs and who ever else you need to help these people come out the other end better people

The next set of excerpts is centred on problematising the lack of available treatment by emphasising the socially and culturally produced conditions of offenders' lives such as mental illnesses, drug and alcohol dependencies and illiteracy. The participant in this study drew on these conditions to produce a rehabilitative criminal subject positioned within a social relationship formed between mental illnesses and criminal offending but has the rehabilitative ability to change through intervention. This subject is a different criminal subject to the deviant and immoral violent offender constructed through discourses of crime and punishment. For this (re)positioned offender, rehabilitative treatment becomes not only necessary but also obligatory because without it, there will be no possibility for such individuals to experience a crime free future. Offender rehabilitation therefore, is not only preferable to achieving the goal of reduced offending but necessary in order to produce it.

*Katie: a large amount of the offenders have ADD, how the hell are they going to rehabilitate themselves if they're not thinking straight? Psychiatric evaluation *has* to be in prisons, they need to have it, just because they're not a psychiatric establishment doesn't mean the government can't employ those things for their inmates*

Jeannette: helping people get off drugs and off alcohol dependency and that's all part of it isn't it. So um any programme that helps people to change their behaviour should have a high priority I gather that a high number of prisoners can't read or write so I mean, they're

virtually illiterate...that should be a real priority to ensure that everybody acquires literacy skills in prison if nothing else

Karen: how many prisoners would be literate enough and so on to get a degree...you could never sit down and study if you're going through all that stuff and if you're [mentally] ill

James: they need to have work done in there and whether that's mental health, whatever, it's about getting them out the other side so they don't go back in there

It may also be said that the above examples promote social values such as equality and solidarity. This is because we may all suffer similar afflictions which unite us all as analogous to some degree. It gives an account of what might be considered decency in treating people regardless of what they have done. Interpreted in this way may also position the criminal subject as redeemable.

Anne: no body is irredeemable and they should be, you know, made to think even in prison that they're worth something and that they can make a difference in their lives

Thus, the rehabilitative criminal subject may be redeemed through rehabilitative treatments that place social value on promoting and fostering the offender's sense of self-worth and self-respect. In this sense, treatment becomes a moral goal because it is understood as teaching individual accountability to encourage behaviour that is more responsible in the future.

Katie: to develop a sense of self-worth in what they're doing and in the meantime, accepting that what they have done is not right I think that's the best way for people to learn [...]

Anne: feeling useless with low self-esteem and why not, you know, um what have I got to lose and, this sort of attitude and there could be a lot more done

Through the benefits and practice of rehabilitative treatment, the participants have enabled the construction of a redeemable, although psychologically deviant, subject who is capable of becoming a moral citizen. From this vantage point, the existence of a rigid stereotype that serves as a fulcrum for the judgment of all criminal offenders is challenged. At the same time, it dispels the construction of the offender as a free acting, autonomous individual who engages with crime behaviour by choice. To this end, the various human afflictions suffered by the offender produce the circumstances of their offending. Furthermore, there is a strong suggestion of a return, given there was a departure, to the welfarist strategies of humanitarian interventions, moral education and reformatory training which not only counter the more individualist constructions of choice and reason, but actively dispels them to construct an alternative understanding of social responsibility in the treatment of criminal offenders.

However, it was reiterated that some criminal subjects were *not* deserving of rehabilitative treatment. These participants clearly bounded social responsibility for those who are understood as more likely to change their behaviours, yet the violent criminal subject is not worthy. This implies that certain criminal offenders may not be amenable to any rehabilitative efforts, thus whether we should rehabilitate is questioned.

Helen: I think that would be a good idea, but as long as it was a form of rehabilitation that they would take on board and see as helping. I mean people always want to know what's in it for me...but the sort of people who were never ever really going to make any attempt to not hurt people um...society can't sit back and feel too sorry for them because something's got to be done because ok, then you've got the victim on the other hand who doesn't deserve to have a gun pulled on him when he's running a business

Fred: thing is that he has not been rehabilitated, he's been in prison, he knows what prison's like, and he does not want rehabilitate lets

leave him in here 'cause he's going to be no good to anyone outside...someone will get murdered, raped, killed.

There are two contextual arrangements for supporting rehabilitation that are perhaps not mutually exclusive. On the one hand, there are those supporting rehabilitation based on the possibility of reforming the serious violent offender and on the other, those who believe that repeat and less serious offending behaviour reflects disturbed behaviour and can be changed or ameliorated through treatment. A point of agreement is that both viewpoints support rehabilitation although the image of the offender differs and participants drew on rehabilitative discourses and discourses of punishment to produce rehabilitative interventions as meaningful.

A final consideration to the rehabilitative discourse relates to participants responding when asked whether they were supportive of offender rehabilitation as integral to mainstream justice. In this example, the participants drew on notions of human rights discourse. This is not consistent with their positioning of offenders who are undeserving of rehabilitative interventions.

Mary: I think we should always try with everybody; everybody should be given a chance

Fred: everyone should get it everyone, 'cause they gotta adjust back into normal life, so you've got to rehabilitate every single prisoner

Ben: I think every opportunity should be given for them to try and rehabilitate themselves

Charlotte: Yeah definitely, everyone should be given the opportunity, um because some people would definitely want to and they'll feel kind of trapped by their circumstances

Therefore, where participants were asked to position themselves in relation to the inclusion of rehabilitative efforts in our justice system, they produced a criminal subject who has human rights. In doing so they position themselves in a

conflicting relationship: within human rights discourse while at the same time displacing their position in moral discourse.

To conclude this section, discourses of crime and punishment that construct imprisonment as being the only means of treating criminal offenders are challenged through alternative discourses. These discourses are drawn upon to construct rehabilitation as being a viable, alternate understanding in the treatment of criminal offenders that may produce criminal subjects that are both worthy of, and entitled to rehabilitation. The value of this talk is that it demonstrates clearly the contextual and subjective nature of how people understand the complexity of the problem of addressing crime and criminal behaviour. Simply stating 'yes I support rehabilitation' may provide an incomplete point of view. Instead, interpreting participant accounts of talk on crime and punishment has enabled the researcher to identify a rehabilitative discourse that constructs offenders as produced through their social and cultural histories who may be redeemed through rehabilitative treatment as a basic human right to become a moral subject.

Anne: we send them to prison hoping they'll come out as moral citizens and you know, thinking differently about their lives but a lot of them don't have that opportunity to talk about their lives or you know, to learn any good things...so they come out at the end of two years, five years or whatever, with absolutely nothing um done to their own self-esteem, their own self...how can we expect them to have a sudden turn around in their moral and ethical attitude...if they're in such a degrading sort of situation

Humanitarian Discourse

The third discourse to emerge as an alternative to dominant constructions of crime and punishment was concerned with crime prevention. It deals with several interrelated features: the humanising of criminal offenders, measures to prevent criminal offending and contributors to criminal offending. Perhaps the best description of for this discourse is that it shows the compassionate side of public

opinion which underpins the belief that forgiveness and treatment helps to heal (Maruna & King, 2004).

As with most other discourses, it was contextual and conditional. It had at its core a recurrent desire to promote the dignity and self-respect of the offenders who are otherwise demeaned, degraded and stigmatised. According to Coyle (2002), simply because people are imprisoned does not mean they cease being human beings. While incarcerated offenders forfeit their liberty they should not be forced to forfeit their humanity. This is supported by the construction of the rehabilitative discourse that accounts for human rights. In drawing on this discourse the participants in this study were able to understand criminal offending in relation to rehabilitative efforts for change. Important to this discourse was the notion that participants showed considerable concern about the effects of incarceration on offenders, particularly how the experience of being in prison is likely to affect their wellbeing and their future behaviour. This functions to humanise offenders and transform them into potentially ‘suffering’ individuals who are the vulnerable targets within the prison system.

Anne: one of my concerns is that prisoner[s] will be bullied and, and his life be made a misery

Jeannette: one of the things is that people who commit crimes and are in prison have already been dehumanised

As shown in the next set of excerpts, the adverse consequences of imprisonment was a recurrent theme. Here, the discourse becomes specific to the two negative outcomes of mass incarceration: the apparent obligation of the offender to conform to the criminal ethos and ‘learn’ the criminal skill set, and recidivism. By voicing such concerns, people are demonstrating their level of understanding for the problems that may eventuate from institutionalising groups of social deviants in close proximity. Furthermore, mass incarceration becomes a social problem because the formation of ‘hardened criminals’ is a concern to the remainder of society. Statements such as ‘breeding ground’ provide the discursive markers to portray prison in this manner. Indeed, there is much literature to

suggest that prison contributes to future violence by further eroding the offenders' social functioning and contaminating any possible attempt or desire to reform (Pizarro et al., 2006). In addition it is argued that those most vulnerable to the negative influences of prison are members of the least dangerous offender groups and therefore, the least risk to society and perhaps most amenable to rehabilitation (Day & Howells, 2002; Love, 1999).

Charlotte: all they have to talk about is crime and criminals, and they all get together and swap ideas it's like a big criminal conference going on in there, it's like you know how to commit a crime 101

James: you know prisons are a breeding ground for criminals [...] I've certainly heard of people going into prison for a you know, not so much a relatively minor offence but say a um, what do you call it, white collar crime something like that and they can come out hardened criminals

Gandi: there's absolutely no doubt that there's an element there that prison is teaching them how to be better crooks

While the participants drew on a discourse of humanitarianism to understand the effects of incarceration they also drew on the discourse to make sense of the lack of resources that produced the conditions for criminal offending. In this way they positioned criminal offenders as victims of their social position in society.

Katie: a lot of them are highly intelligent but haven't had the right resources to build them into the people they can be

In the examples below, there are several references to lack of resources, including the lack of education and the lack of parental discipline afforded to our youngest members of society. It positions social institutions, the family, the school and other organisations as failing certain individuals by ignoring the diversity of human beings and overlooking certain situational and circumstantial factors that

render some people at greater risk than others. Certain discursive markers such as 'haven't had' and 'not being taught' suggest that such conditions are beyond the individual's control. In this sense, the participants constructed a criminal subject who is produced through social institutions as lacking basic human privileges afforded to, and valued by members of New Zealand society.

*Anne: I think a lot *lots* of people are in prison because of traumas in their childhood and not getting on at school*

Ben: and not all opportunities are available to them, I think it basically comes back to family standards and again there's a breakdown, the parents not forcing them to go to school but the parents taking their education and bringing them up and teaching them life values

Karen: we should have a good look at the education system, it's got a lot to be answering for, it's turning out a lot of kids with a sense of failure which it should not do but it does. Just look at the educational statistics, how low the Māori and Pacific Islanders achieve, who gets into uni...are they getting education, the medical attention they need?

Mary: a lot of young people like discipline and this is a thing that's lacking in society, discipline young people not being taught...give your children all the education that they could possibly need

Participants drew on humanitarian values as material and functional forms of support to understand how criminal behaviour is enabled. Implicit in this understanding is that imbuing children and adolescents with skills, fostering their dignity and self-respect as well as a sense of morality may prevent them from engaging in criminal behaviour. This also extends to current offenders in the hope that a show of compassion may result in them modify their need to offend.

Helen: a bit of kindness and caring from someone will probably swing them around

Indeed, scholars suggest lack of education can have a detrimental effect on people's future choices and lifestyles (Sasson, 1995). Lack of education is understood as a major predictor in future delinquent behaviour. Those who are likely to succumb to delinquency are those with multiple deficits – lack of parental guidance, poverty and familial unemployment (Braithwaite, 1999). This text draws attention to these wider social issues and recognises the downfall of certain social institutions. Those in positions of power become subject to blame and criticism for contributing to the conditions of offending which foster self-loathing and lack of self-esteem rather than seeking solutions to these social problems and the problem of crime. Understanding the social and cultural conditions of the individuals lived experience deflects the blame, but not the responsibility, from the individual offender to the conditions that produced these social and individual deficits and enables a consideration for change.

Katie: if you don't have the smarts to get a higher education then immediately that says you're not good enough for society. It's not their fault, they have a purpose, they're here for a reason and we have to accept them and they need to fit into society but as well needed and well-loved individuals they need to have self worth

The humanitarian discourse was also drawn upon to locate the individual offender as constituted through their environment. In this example, incarceration was understood to provide better conditions for the offender than those possible in their existing social world. The participants evoked notions of shameful social power relations that produced such conditions, positioning society as responsible, in part, for criminal offending.

Joy: if anyone wants to go into prison because it's going to be better living conditions than they've got at home then as a society what is wrong with us? If they think they'll be better off in prison then that's an indictment on us

Anne: they shouldn't be expecting to go to prison and have a better life but what's their life been like outside? If they want to be shut up just for three meals a day, goodness me

The participants in this study also drew on the effects of poverty as a salient social condition contributing to producing offending behaviour. What is clear is that poverty places conditions of inadequate housing as constructing unstable living environments that are understood to be precursors for criminal behaviour.

Jeannette: one of the important things is creating stability in the community that people um can stay in one place and know they can afford to stay in that house and when you get families, who um have been evicted because they can't pay the rent or the rent has gone up or the state house is sold under their noses and they move 10 times 15 times in a year um, I think you have the beginnings of a criminal society because the kids are not getting any stability and stability is a very important thing for children

Anne: it's penalising the poorer in our society really, because the poorer you are, the more likely you are to steal or to you know, trash something or steal a car or something or other

The final set of examples perhaps reiterates how the participants draw on alternative discourses of humanitarianism by drawing parallels between those who offend and those who do not. What emerged in participants' talk was the notion that people are not only good or bad but rather, we are all capable of making a wrong decision. More to the point, there is the suggestion that if we, as a society, could recognise we are all human beings, there may be a greater degree of tolerance and perhaps better attempts at crime control through rehabilitative and humanitarian efforts.

Karen: it's all grey, all shades of the same thing and we all do things that harm other people some times

James: I think there's inherent good and inherent bad in everybody, and I don't you know, it's in many cases I think it's quite easy for that inherent bad to kind of take over a wee bit

Mary: we all do things in life that we perhaps regret afterward. Because everybody's a human being, we all make mistakes and we can all do something wrong at times

It seems that a discourse of humanitarianism enables a more compassionate side to public opinion to emerge which is otherwise shielded by the taken for granted assumptions that the public hold universally punitive opinions about treatments for criminal behaviour. What this discourse suggests then, is that participants were able to draw on a body of knowledge that is counter to punitive discourses constructed through media representations and political discourses. Humanitarian discourse, alongside rehabilitative discourse enabled the participants to also produce a different criminal subject who is worthy of compassionate treatment to prevent ongoing criminal behaviour, providing the social and cultural specificity of their lives is also resourced in a fair and just manner.

Conclusion

The primary goal of this analysis was to determine if participants reproduced dominant get-tough discourse. While the analysis has demonstrated that participants did draw on punitive discourses in their understanding of crime and punishment, it was conditional, and dependent on the construction of the immoral criminal subject. A distinct set of alternative discourses emerged in the analysis that problematised the effectiveness of punitive discourse by drawing on non-punitive discourses and discourses of rehabilitation that were embedded in humanitarian ideals. These discourses produced a distinctly different criminal subject, worthy of treatment that enables change. The chapter that follows discusses the implications of the discourses that emerged in participants' talk in relation to how public opinion has been previously used to support punitive responses to criminal behaviour.

Chapter Seven

Discussion

*...the view that public opinion is a product
of group thinking superior to the thinking of
individuals and effective as kind of super-individual
group will or judgment is a scientifically sterile notion...*
(Allport, 1937, p. 12)

Overview

Embarking on this research has been a process of unfolding the wealth of knowledge and insight gained from engaging people in conversation on the topic of crime and punishment. The findings have represented a contextual and situated body of understanding that is constructed through a number of discursive repertoires. The specific aims of this research were to ameliorate the limitations of previous attempts at understanding public opinion on issues of crime and punishment. To this end, the discussion that follows is concerned with clarifying what the present research has achieved. Engaging people in conversation has produced a complex but uncomplicated understanding on the various issues that arose during the research interviews. The accounts offered by the participants have enabled the topic of crime and punishment to 'come alive' in the sense that is imbued with meaning in a way that has rarely been demonstrated in the literature. The final chapter of this research project is devoted to putting the findings of chapter six into perspective to enable a coherent and meaningful understanding of crime and punishment to emerge.

A Balance to Prior Research

Firstly, as has been argued elsewhere, the way in which traditional research has investigated public opinion is too simplistic and represents public opinion in a fixed and static manner. People become positioned as following the same pattern of thought or holding the same point of view in all manner of situations and across time. Although much of the available research attempts to demonstrate variability in public opinion (Cullen et al., 2000), I argue that no matter how questionnaire or survey material is presented, it will repeatedly fail to extract the nuances of opinions in terms people's contextual understandings; social life is not as simplistic as static measures imply. For example, people may answer yes they support harsher sentencing, yet there may be conditions to their support such as the type of crime, certain offender characteristics, exposure to certain news or other information, and a myriad of other social factors that may influence viewpoints. What is accepted or supported one day may not receive the same support at

another time. Despite such limitations and flaws, polls and surveys continue to be influential and capture the appeal of increasing numbers of researchers. The results of such efforts are the production of statistically valid results that are the *primary* source of information to policy officials on public opinion. In addition, opinion polls and survey questionnaires cause people to make ‘on the spot’ decisions, typically answered yes or no without the contextual information that would accompany more naturalistic discussions.

Previous research indicates that the value laden nature of crime and punishment has the capacity to elicit knee jerk responses that are superficially linked with punitiveness (MacKenzie, 2006; Maruna & King, 2004). The analysis of the present study also reveals that a knee jerk reaction can be garnered by presenting participants with forced choice questions. It appears that when some participants were presented with a question regarding crime and punishment, their responses resemble those collected by polls and surveys: emotive, reactive and one-dimensional. In this sense, people are responding in a manner that produces a version of public opinion that parallels with the weak public opinion discussed in chapter two (Green, 2006). More to the point, it is drawn from fears and frustrations rather than knowledge and rationality (Immerwahr & Johnson, 2002). As suggested, this type of response provides simplistic evidence of a punitively orientated public opinion.

However, during the more contextualised interactions of the interviews conducted for this study, an understanding of the ‘knee jerk reaction’ emerges and relates to *what* information is available to the people and *how* the people engage with that information, underlining a shift away from the static picture of attitude or opinion. This in turn, provides some evidence that certain discourses are available and can be engaged to construct meaning while other discourses cannot. For example, support for get-tough practices may emerge from within an easily accessible network of images, beliefs, emotions, experiences and even stereotypes. If there were a tendency to limit oneself to a particular form or source of information as suggested by Immerwahr and Johnson (2002) and demonstrated by

Roberts and Doob (1990), then the result would be the formation of snap judgments that has little in the way of depth or meaning.

Relating to the present research, media focus on high profile crimes such as that seen with the Kahui twins and the Pukekohe Rapist at the time of interviewing would serve to contextualise the participants' responses toward a particular point of view through specific public representations of crime related information. Indeed, as Hamilton and Harvey (2005) indicate, public reactions to a single crime event can affect people's perceptions toward the remainder of the justice system which results in a preference for harsher punishments.

I argue that a specific public reaction, contextualised by certain, and often singular criminal events emerges. Such momentary reactions to representations of crime confirm the presence of public fear and panic. It is this type of reaction that has come to legitimise the design and implementation of get-tough policies simply because they are seen to reflect public will. Such assumptions of a public desire for universally harsher sentencing are most problematic because those involved in designing and implementing policies may be basing their decisions on *pseudo opinions* or "nonattitudes" (Green, 2005, p. 133). Yet this type of attitude and opinion demonstrates little in the way of any in-depth understanding of the various issues and reflects a kind of *pseudo public participation* that does little justice to the more complex representations of crime and punishment that become available when contextualised and naturalistic talk is analysed. Therefore, it would be irresponsible to imply that the public desire universally harsher sentencing or to suggest that people are supportive of the current trend of mass incarceration.

The value of the present research is in the ability to highlight the contextual responsiveness of public opinions that has been excluded from mainstream research. In doing so, there has been a conscious shift away from forced choice measures in order to provide people with the opportunity and space to discuss issues of crime and punishment. Given this opportunity, the participants of this study elucidated their point of view and raised various issues that appeared important to them and which appear to influence how they understand crime and

punishment within New Zealand society. By discussing topics such as prevention, rehabilitation, media hype and political ignorance, the participants have demonstrated that oftentimes there are contextual factors that influence the construction of content and meaning. For the most part, participants took *control* of these issues in such a way to bring them into the foreground, consider and negotiate a range of possible problems and solutions through drawing on a rich body of information.

Exploring the Discourses of Crime and Punishment

This research has been able to demonstrate that preferences for harsh punishment were not as straightforward as currently assumed. In fact, the analysis suggests that participants imbue the treatment of criminal offenders with contextually rich meaning. Support for the punitive get-tough movement was conditional on certain types of offending which problematises the idea that the public desire universal harsh sentencing. The punitive get-tough discourse highlights the construction of harsh sentencing in the image of the most serious categories of criminal offender: murderers, rapists and habitual, hardened criminals who repeatedly re-offend. In this sense, harsh punishment is believed necessary to reduce the potentiality of future offending by these types of offenders and who present a problem to the safety and security of New Zealand society. The stereotype of the hardened and violent criminal recurs most frequently and justifies a public desire for harsher penalties. This also lends support to the development of punitively styled get-tough policies to ensure that a regime of harsh punishment emerges. In addition, harsh punishment is seen as appropriate to exact retribution on the worst class of criminal offenders. In this sense, the *lack* of harsh punishment represents a failure of the system. Therefore, we must produce harsher sentences to *prevent* people committing heinous criminal acts.

Participants drew on constructions of prisons as lenient in providing items such as heating, televisions, computers and enabling offenders to train and complete educational courses. These constructions represent punitiveness and justify punishment as a way to ensure that offenders do not forget their debt to

society. This allows meaning to be imbued into the practice of imprisonment because imprisonment becomes a mode of treatment in the quest for moral reformation. The analysis reveals that the purposefully designed prison through a no frills approach, is necessary to forcibly encourage offenders to reflect and contemplate the error of their ways. The purpose of the prison sentence therefore, is to inform offenders unequivocally that they have done wrong. However, this meaning was constructed in relation to the stereotype of serious and violent offenders and was not used in relation to all categories of offenders. Participants believe that those who commit serious crimes should certainly not benefit in any manner from a prison sentence.

The analysis indicates that there *is* a crime problem. Again, it is the image of the violent, serious offender that recurs and is positioned as both representing crime and responsible for the crime problem. In constructing this image, the participants are formulating a clear distinction between those who deserve harsher treatment and those who do not. In fact, the non-serious offender was constructed as undeserving of a prison sentence. This highlights the notion that participants were able to negotiate and navigate their way through the available discourses and construct a view of fairness in justice that takes into consideration certain individual and even situational factors. This counters the notion that the public desire uniformly harsh treatment of offenders and instead, portrays a desire to exact justice in proportion to the harm done. Thus, while Hogeveen (2005) suggests that the lines between serious and non-serious offending has become blurred, the participants of this study had clear conceptualisation of where those lines should be drawn. By drawing on the available discourses in such a manner, the participants were able to legitimise the desire for harsher and more punitive measures while placing limits on *how much* punishment they are willing to support and under what conditions they will support it.

Finding Support for Alternatives

The findings indicate alternative discourses were drawn upon and function to position criminal offenders, treatment and the role of prevention as central

concerns to the participants of this study. Contradictory constructions emerged that drew on the discourse of non-punitiveness to criticise and bring into question the very foundations of the get-tough movement. Where traditional research has been able to highlight a non-punitive attitude or opinion, it has largely conceptualised it as being an either/or in as much as people are either punitive or non-punitive. This is partly due to claims that “little is known about the existence let alone the origins of public compassion, forgiveness or empathy in regards to criminal offenders” (Maruna & King, 2004, p. 103). Such a claim may be reasonable given the limitations of survey research and the present research does not seek a solution to these issues. Yet the findings of this study suggest that non-punitiveness is contextual. For example, representations from the media, politicians and lobby groups were drawn upon to argue that getting tough on criminals is not an ideal form of treatment. Rather, there are better ways to ‘do’ justice that are more humane, effective and have the capacity to improve rather than erode an offenders’ character.

The analysis reveals that there is an understanding that media serve to scaremonger and sensationalise. It is this understanding that enable those in powerful roles to be positioned less favourable as they persistently overlook the social factors that contribute to criminal behaviour. This style of system garners the least support among the study’s participants who position themselves as active constructors of knowledge rather than passive consumers of the information made available by these sources. These constructions were dawn upon to imply that the current mode of decision making in penal reform is failing on numerous levels while portraying an image of public sentiment as supportive and agreeable. In this sense, participants refute the idea that all people under all conditions are subject to the persuasive and influential appeal of media, political and lobby groups. Simply, not everyone believes the information cycling in the public arena.

The participants have demonstrated that rehabilitation is a favourable alternative in the treatment of criminal offenders. Support for rehabilitation, as with support for harsher punishment was contextual and conditional. For the most part rehabilitation was positioned as central to the justice system, there is as much

responsibility to treat as there is to punish. The transformation of behaviour was a key understanding in support for rehabilitation and was seen to have the capability to both transform the individual and achieve what harsh punishment cannot: reduce re-offending. Rehabilitation is also seen as necessary to assist offenders to alter and improve their skills, values and attitudes in order to transform themselves into better-adjusted people who are able to lead crime free lives. Without such treatment, there is little scope for a reduction in crime rates or prison populations.

There was also corresponding construction of offender rehabilitation as a domain for highly trained professionals operating from the position of evidence-based practices. This illustrates a complexity of understanding for rehabilitation that has not been demonstrated in previous research. For example, the literature typically points toward support for treatment programmes but fails to indicate who would likely implement such programmes. Thus, the present research has been able to highlight *how* rehabilitation is supported against a backdrop of professionalism and scientific support.

Rehabilitative discourse is drawn upon to refute the practices of the get-tough movement. This is partly attributed to a system that is failing to recognise the detrimental effects of harsher penalties. In addition, participants construct harder, longer or more frequent punishment as failing in a number of areas but most prominently in the ability to encourage offenders to recognise the 'error of their ways'. Rehabilitation becomes the answer to this quandary because it enables the focus to shift to the issues and problems that *contribute* to offending behaviour and resolve them to the benefit of society and offenders. In fact, the participants of this study construe prisons as criminogenic in as much as they *produce* offenders rather than reform them. From this viewpoint, harsher punishments have little economic value. It would also appear that a criminal subject was constructed whom *could* be treated in which case, there was little differentiating between types of offenders and offences. Rather, *all* categories of offenders should be treated. Thus, the analysis reveals that participants demonstrate an understanding for the merits and benefits of treatment in a manner that portrays confidence in offender

rehabilitation and positions it as a preferred method of treatment for criminal offenders.

The analysis also produced substantial talk surrounding preventative and humanitarian discourses. Through this talk, participants demonstrate an understanding of criminal offenders that runs counter to the stereotyping and labelling that occurs elsewhere. For the most part, offenders are positioned as the least fortunate members of society who are deserving of compassion and empathy. By engaging with this talk, the participants showed a more compassionate aspect of public opinion that has *not* been represented in opinion poll data. In fact, the findings suggest that the public may have the capacity to forgive and that the needs of the offender are important because how offenders are treated within the system reverberates to wider society on a number of levels. Harsh punishment therefore, is transformed from being a societal 'right' and a 'duty' to a social 'ill' that can produce as much harm as the actual act of offending. Simply, punishment and harsher punishments cannot not be accepted and utilised in an unproblematic manner because they are problematic and have repeatedly shown that there is little positive effect to be gained. Therefore, there should be increased attention on *preventing* crime which may be achieved by ensuring people are well equipped to function within society as crime free individuals. The analysis also reveals that, through humanitarian talk a notion of human rights in relation to the criminal offender was constructed. This suggested that that no matter what crime a person has committed, society does not have the right to remove their dignity and respect. Rather, we, as a society have a duty to recognise that criminal offenders are human subjects, they should be treated as such and in a manner that is indicative of human kindness and caring. While previous research has uncovered humanitarian ideals in public opinion they have generally been conceptualised as basic political attitudes and are typically conceptualised as left wing, socialist attitudes (Tyler & Weber, 1982). The present research however, has been able to imbue meaning into humanitarian ideals by highlighting *why* such ideals are important.

The participants also positioned the prison system as contributing to a crime problem primarily because it currently fails to rehabilitate. In fact, significant

refutation for the get-tough stance and support for rehabilitation came from within the punitive discourse. For example, the representations of the media, politicians and lobby groups were understood as providing the New Zealand public with an array of information that fostered many negative features such as fear and panic that had little to do with an actual crime problem. This finding suggests that the limited form of public knowledge and awareness that is often cited as preventing a representative account of public opinion may be less important for some people than is currently assumed (SACRO, 2003). For example, it is proposed that the lack of public education on issues of crime and punishment are related to the formation of a shallow, knee jerk opinion. On the other hand, the findings indicate that some participants were able to draw on a wide range of informational sources that are produced within a variety of available discourses to construct an alternative understanding of the punitive get-tough stance. In this sense, the participants are able to construct a more complex and varied opinion than those garnered from public opinion polls.

In sum, it is argued that support for rehabilitation exists and the barriers to its mainstream use are *perceived* rather than *actual* (Maruna & King, 2004). It is further argued that punitive responses are specific to particular constructions of crime and offenders and are not rigidly entrenched toward universal punitive practices. Although the current get-tough climate assumes that the public is resistant to any alternative to imprisonment, there is a significant body of research to suggest the public *favours* rehabilitation across a range of crimes (Applegate et al., 1997; Cullen et al., 1988). Indeed, the findings of this study reiterate these viewpoints.

Limitations of the Research

There are limitations to the present study that must be addressed. Firstly, there are certain limits to the inferences that can be made from people's talk. The resulting assumptions and interpretations may restrict or constrain the research in a number of ways. It must be acknowledged that the discursive analysis of people's talk within this specific place in time is limited to the particular circumstances of

this study and do not comprehensively draw on all available variation in diverse cultural and social backgrounds. The participant sample was predominantly white, European and middle class. It is possible that different interpretations will be garnered from conversing with people from different cultural backgrounds. Indeed, a more comprehensive cultural assessment would include Māori and peoples from ethnic minorities and would recognise their culturally, historically and socially specific viewpoint on the issues of crime and punishment and which are discursively constructed

Related to this is the possibility that the discursive resources available for people to draw upon may differ depending on the social position that people occupy. This then leads to the question of how representative the accounts presented within this research project are. In this regard, it is necessary to assume that in gathering the data, the knowledge that was subsequently produced through the interactive exchange is both useful and meaningful. The analysis therefore, contributes to the understanding of public opinion in so far that it represents the discursive resources available to this group of participants and shared with the researcher. From a constructionist point of view, this entails an awareness that there are multiple realities represented in the research project, despite how homogenous the participants may be in terms of social or ethnic identities. By articulating the logic of the methods and methodology, the present research may have moderated the limitations of the sample through the stability of methods that have grounded the research (Altheide & Johnson, 1994).

It is also prudent to consider that the interpretations of this study may have little utility beyond New Zealand society. This is because there may be significant differences in penal systems between nations and thus differences in how the public understand crime and justice. Given that New Zealand corrections operates within a closed prison system, comparisons with other countries such as Finland where an 'open' prison system is the norm (Lalande, 2000), or The United States of America where mandates for death sentences are available may produce a very different public opinion.

Conclusion

While the participants of this study have drawn upon the discourses of crime and punishment in the construction of a particular point of view, it would be unreasonable to interpret their views as simplistically punitive. To the group of people involved in this study, no single factor or condition underpins support for punitive get-tough practices. Nor is there a one-dimensional show of support for rehabilitation. Rather, the findings reveal that the relationship between get-tough policies and public opinion appears to be weaker than is currently assumed; harshness is not a strongly held public view except in circumstances where the criminal subject is constructed as someone to be feared. Where prior research has conceptualised people's support for punishment, or in the case of support for the prisons as 'mushy' (Cullen et al., 2000; Maruna & King, 2004), the current findings suggest that support for punishment through incarceration is contextually reserved for the most serious categories of offenders. There is, therefore a noticeable *lack* of firm support for mass incarceration.

The value of the present project is that it does not discount support for harsher sentencing nor does it discount the value of prison, rather, it provides balance to the current literature by indicating the conditions that underpin that support. Explaining *why* people support harsh sanctions is arguably more important than pointing out that they do support such treatments. The findings of this study also suggest that on the one hand, the public are portrayed as a "superpublic" (Frase, 2005, p. 26) who are the arbiter of opinions on which to base momentous decisions and who engage in democratic society in an all-inclusive manner. On the other hand, the public's experience perhaps resembles one of disengagement and exclusion from any meaningful deliberation. Ginsberg (1986) portrays the context of public opinion in support of policy decisions:

[s]o long as participation is confined to periodic voting, officials have an opportunity to overlook public sentiment...much of the time...the correlates and extent of popular influence are two entirely different matters (pp. 184, 192).

This of course begs a return to an earlier question “whether public opinion should be the arbiter of sentencing and correctional policies” (Cullen et al., 2000, p. 3). Nevertheless, I argue that if public opinion is to remain central to penal reform, then it is necessary to ensure public opinion is understood through a contextualised methodology that is respectful of the complexity of participants’ understandings. Following this argument, it is necessary to recognise that opinions are neither static nor fixed. In fact, as this research has demonstrated, opinions may have multiple and complex meanings and certainly cannot be taken as any form of truth or knowledge.

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APPENDICES

APPENDIX A: PARTICIPANT CHECKLIST

Exploring Public Opinion: The Discursive Constructions of Crime and Punishment

PARTICIPANT SELECTION CHECK LIST

To be filled out during the initial phone or face-to-face contact and used for selection purposes only

Section One (a)

Is the potential participant...

A NZ citizen or permanent resident	Y	N
If a NZ citizen or permanent resident by immigration, have they resided in this country for more than 10 years	Y	N

Section One (b)

Have they...

Been held in custody for longer than a 24-hour period?	Y	N
Been a victim of crime	Y	N

Participants who answer no in Section one (a) and/or yes in (b) do not qualify. For those who do qualify fill out Participant Information Form. (Note: To be posted)

APPENDIX B: ADVERT

Exploring Public Opinion: The Discursive Constructions of Crime and Punishment

ARE YOU CONCERNED ABOUT CRIME AND PUNISHMENT?

Would you like to have your opinions heard?

A Massey University Master's Thesis student
is seeking research participants for interviewing.

*I would love to hear your voice, your views,
your attitudes and your thoughts.*

Criteria: Any New Zealand citizen or
permanent resident over the age of 26

**Please phone/ text 027 492 8024
phone (09) 414 0800 ext 41222 or
email catblack@clear.net.nz
with your contact details**

Confidentiality assured

APPENDIX C: INFORMATION SHEET

Exploring Public Opinion: The Discursive Constructions of Crime and Punishment

INFORMATION SHEET

The Researcher

My name is Catherine Ashwood. I am a full time student at the Albany Campus of Massey University and am in my final year for my Master's degree in Psychology. I am undertaking this research project for my Master's thesis, which is being supervised by Mei Williams from the School of Psychology at Massey University.

The Research

The research aims to explore the nature of public opinion in the domain of criminal psychology. In particular, I am interested in finding out what ordinary New Zealand citizens have to say, what they think and what they talk about on a wide range of criminal psychology issues.

You are invited to take part in an interview with me, which will take approximately an hour and a half to two hours. During the interview, you will be asked to discuss your opinions and beliefs regarding the above issues in our country. Our conversation will be audiotaped so I may later refer to it and look for common themes among the different participants.

All information received from you during this study will be kept completely confidential. Names and identifying features will be altered to make sure you remain anonymous. We will decide on a fictitious name for you prior to our conversation in order to protect your identity.

After the interview, I will transcribe the data from the audiotape into written form and analyse it. All data will be stored in a secure place and only my supervisor and I will have access to it.

If you decide to participate, I will ask you to sign the enclosed consent form concerning the use of the information, fill out the brief questionnaire so I can get to know you a little and return post these forms to me using the supplied envelope.

You have rights regardless of this consent. You have the right to:

- refuse to answer any question
- withdraw from the study up to one month after the interview

- ask any questions about the research at any time during your participation in the study
- provide information on the understanding that your name or any other identifying details will not be used and that no one other than the researcher and the supervisor will have access to the information and the information will only be used for the purpose of this study and publications arising from this research
- be given access to a summary of the research findings once the project is complete
- ask for the audio tape to be turned off at any time during the interview
- to have access to all your data and to add, delete, discuss or alter any of the information up to one month after the interview

If you are willing to take part in my study, please contact me to discuss any questions or queries you may have and to arrange time for the interview. You may phone, text, email or write to me using the details below.

Thank you
Catherine Ashwood

Contact details

Catherine Ashwood (researcher)
School of Psychology
Massey University
Private Bag 102 904
North Shore Mail Centre
Auckland
Phone: 027 492 8024
Email: catblackalex@hotmail.com

Mei Wah Williams (supervisor)
Address: School of Psychology
Massey University Albany
PO Box 10 2904 North Shore Mail Centre
Phone 4140800 x 41222
Email: M.W.Williams@massey.ac.nz

Committee Approval Statement

This project has been reviewed and approved by the Massey University Human Ethics Committee: Northern, Application 06/020, approved May 3, 2006.

If you have any concerns about the conduct of this research, please contact Professor Kerry Chamberlain, Chair, Massey University Human Ethics Committee: Northern, telephone 09 414 0800 x 41226, email humanethicsnorth@massey.ac.nz.

APPENDIX D: PARTICIPANT CONSENT FORM

Exploring Public Opinion: The Discursive Constructions of Crime and Punishment

PARTICIPANT CONSENT FORM

I have read the Information Sheet and have had the details of the study explained to me. My questions have been answered to my satisfaction, and I understand that I may ask further questions at any time.

- I agree/do not agree to participate in this study under the conditions set out in the Information Sheet.
- I agree/do not agree to the interview being audio taped.
- I wish to receive a summary of the finished project Y/N

Date: _____

Signature: _____

Full Name (printed): _____

Postal Address: _____

APPENDIX E: PARTICIPANT SELECTION CHECK LIST

Exploring Public Opinion: The Discursive Constructions of Crime and Punishment

PARTICIPANT INFORMATION

Dear participant, I would like to get to know you a little and request that you fill in this brief questionnaire to assist me in the recruitment process.

Please Print Clearly

Name: _____

Address: _____

Age: _____

Daytime Phone: _____

Evening Phone: _____

Mobile: _____

Email: _____

Occupation: _____

Please note: All information is contained in this questionnaire will be kept confidential; it will not be shared with any third party and is used solely for the purposes of this project. Should you require any further information regarding the contents of this questionnaire, please contact me on 027 4902 8024.

Thank you and kind regards

Catherine Ashwood

APPENDIX F: QUESTION SCHEDULE

Exploring Public Opinion: The Discursive Constructions of Crime and Punishment

QUESTION SCHEDULE FOR SEMI-STRUCTURED INTERVIEWS

Lead question

1. What do you think about the ways in which we currently deal with criminal offenders?

Questions to guide the topic on the role of punishment

2. Do you think prison has the desired effects?
3. Would your opinions (regarding how we deal with offenders) change if you felt you knew the offender for example if you knew his background, family history, childhood experiences and so on?
4. How do you think we could control crime effectively?
5. Where do you get your information from?

Questions to guide the topic on rehabilitation issues

6. What are your views on rehabilitating offenders?
7. Should rehabilitation be a principle goal in sentencing offenders?
8. Do you believe offenders should be given the opportunity to change their behaviour?
9. Should we direct funding away from prisons and toward rehabilitation programmes instead?
10. How would you know if rehabilitation programmes are having the desired effect (where would you get your information from)?
11. Do you think this is the key to reducing crime?

APPENDIX G: RELEASE OF TRANSCRIPTS FORM

**Exploring Public Opinion: The Discursive Constructions of
Crime and Punishment**

AUTHORITY FOR THE RELEASE OF TAPE TRANSCRIPTS

This form will be held for a period of five (5) years

I confirm that I have had the opportunity to read and amend the transcript of the interview/s conducted with me.

I agree that the edited transcript and extracts from this may be used by the researcher, Catherine Ashwood, in reports and publications arising from the research.

Signature:.....

Date:.....

Full Name (Printed):.....