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# CRIMINOLOGY

## THE EFFECT OF CRIME SEVERITY ON PERCEPTIONS OF FAIR PUNISHMENT: A CALIFORNIA CASE STUDY\*

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### I. INTRODUCTION

As outlined by McFatter,<sup>1</sup> the sanctions applied by the criminal law have three major purposes: general deterrence, rehabilitation, and retribution. For most of this century, rehabilitation was regarded as the most enlightened purpose of punishment, and this belief was institutionalized as the indeterminate sentence. The convicted criminal was not to be released until staff within the prison system concluded that he or she had responded to therapeutic treatment and was no longer a danger to society.<sup>2</sup>

California law provided for indeterminate sentencing from 1917 to 1977 that was later superseded by a "Determinate Sentencing Law" (DSL) based on a retributive rather than a rehabilitative model of criminal justice. There were several reasons for this change.<sup>3</sup>

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<sup>1</sup> McFatter, *Sentencing Strategies and Justice: Effects of Punishment Philosophy on Sentencing Decisions*, 36 J. PERS. & SOC. PSYCHOLOGY 1490, 1490-1500 (1978).

<sup>2</sup> Albanese, *Concern About Variation in Criminal Sentences: A Cyclical History of Reform*, 75 J. CRIM. L. & CRIMINOLOGY 260, 269 (1984).

<sup>3</sup> See generally J. CASPER, D. BREVETON & D. NEAL, *THE IMPLEMENTATION OF THE CALIFORNIA SENTENCING LAW (1982)* (discussing impact of DSL following its superseding of California's sentencing laws).

First, research had not produced much evidence that criminals were rehabilitated by prison, even when the prisons required inmates to participate in highly sophisticated treatment programs.<sup>4</sup> Second, there was no reliable method of predicting whether someone would constitute a danger to society after his release. Third, there were wide variations in the terms served by inmates who had committed similar offenses. Fourth, the system encouraged inmates to “fake” rehabilitation and curry favor with prison authorities who, if they chose, could threaten a disliked inmate with denial of parole on the grounds that he had not been sufficiently rehabilitated. Fifth, uncertainties over the timing of release and frustration with the seeming arbitrariness of rehabilitation decisions were contributing to tensions and violence within the prisons. These problems were noted nationwide, but the states that moved the fastest to correct them by establishing determinate sentencing systems were California, Minnesota, Oregon, and Pennsylvania.<sup>5</sup>

The document, *Doing Justice*, by Andrew Von Hirsch, pioneered the shift away from rehabilitation and toward retribution in sentencing.<sup>6</sup> In this and subsequent writings, Von Hirsch argues for “blameworthiness of criminal conduct as the proper determinant of the severity of punishments.”<sup>7</sup> Fundamental to Von Hirsch’s “just deserts” model are the propositions that crime seriousness and punishment severity can be scaled and that people want to achieve a proportional fit between these two dimensions.<sup>8</sup> Past research has verified that crimes can be meaningfully scaled for their relative seriousness and that diverse groups—including judges, police officers, incarcerated criminals, college students, and the general public—show high agreement in their scaling of crimes.<sup>9</sup> The scaling of pen-

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<sup>4</sup> Martinson, *What Works? Questions and Answers About Prison Reform*, 35 PUB. INTEREST 22, 22-38 (1974).

<sup>5</sup> See Determinate and Indeterminate Law Comparisons Study: Feasibility of Adapting Law to a Sentencing Commission Guidelines Approach, Report to the California Legislature Joint Committee on Rules (1980)(available from Arthur D. Little, Inc., One Maritime Plaza, San Francisco, CA); A. Lipson & M. Peterson, California Justice Under Determinate Sentencing: A Review and Agenda for Research 1, 1-2 (June 1980)(report of the Rand Corporation, Santa Monica, CA).

<sup>6</sup> A. VON HIRSCH, *DOING JUSTICE* (1976).

<sup>7</sup> Von Hirsch, *Desert and White Collar Criminality: A Response to Dr. Braithwaite*, 73 J. CRIM. L. & CRIMINOLOGY 1164, 1164-75 (1982); See A. VON HIRSCH, *supra* note 6, at 47; Von Hirsch, *Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and Their Rationale*, 74 J. CRIM. L. & CRIMINOLOGY 209, 212 (1983)[hereinafter Von Hirsch, *Commensurability and Crime Prevention*].

<sup>8</sup> See A. Von Hirsch, *supra* note 6, at 78-79; Von Hirsch, *Commensurability and Crime Prevention supra* note 7, at 211.

<sup>9</sup> T. SELLIN & M. WOLFGANG, *THE MEASUREMENT OF DELINQUENCY* 236-58 (1964); Figlio, *The Seriousness of Offenses: An Evaluation by Offenders and Nonoffenders*, 66 J. CRIM. L.

alties has also turned up strong evidence of consensus,<sup>10</sup> with some slightly contradictory data appearing in one study.<sup>11</sup> Severity of recommended penalties has consistently been found to be highly correlated with perceived degree of crime seriousness.<sup>12</sup> Direct tests of preferred strategies for sentencing criminals convicted of hypothetical crimes have found strong support for the just deserts model among judges, college students, and the general public.<sup>13</sup>

The stated goals of the DSL are very similar to those of the just deserts model described by Von Hirsch:<sup>14</sup> setting sentences by a predetermined schedule according to the severity of the crime, telling the criminal at the time of sentencing the maximum duration of his term, and reducing disparities in sentencing for similar crimes. For each major category of crime, judges are provided with a range of three sentences and are required to pick the middle term unless the longer or the shorter term seems more appropriate due to aggravating or mitigating circumstances, respectively.<sup>15</sup> Deviations from the middle term must be explained in writing by the judge.<sup>16</sup> The sentence must be augmented by a scheduled amount if the prosecuting attorney alleges and proves "enhancements," such as prior convictions, possession and use of a deadly weapon, and infliction of great bodily harm.<sup>17</sup> If a criminal is convicted of more than one crime, in most cases the judge may, at his/her discretion, decide whether the criminal's terms will be served consecutively or concur-

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& CRIMINOLOGY 189, 199 (1975); Hamilton & Rotkin, *The Capital Punishment Debate: Public Perceptions of Crime and Punishment*, 9 J. APPLIED SOC. PSYCHOLOGY 350, 350-76 (1979); Pontell, Granite, Keenan & Geis, *Seriousness of Crimes: A Survey of the Nation's Chiefs of Police*, 13 J. CRIM. JUST. 1, 1-13 (1985); Rossi, Waite, Bose, & Berk, *The Seriousness of Crimes: Normative Structure and Individual Differences*, 39 AM. SOC. REV. 224, 231-37 (1974).

<sup>10</sup> Hamilton & Rotkin, *supra* note 9, at 353-75; Mieth, *Types of Consensus in Public Evaluations of Crime: An Illustration of Strategies for Measuring "Consensus"*, 75 J. CRIM. L. & CRIMINOLOGY 459, 459-73 (1984); Thomas, Cage, & Foster, *Public Opinion on Criminal Law and Legal Sanctions: An Examination of Two Conceptual Models*, 67 J. CRIM. L. & CRIMINOLOGY 110, 116 (1976).

<sup>11</sup> Sebba, *Some Explorations in the Scaling of Penalties*, 15 J. RES. CRIME & DELINQ. 247, 256-62 (1978).

<sup>12</sup> J. HOGARTH, *SENTENCING AS A HUMAN PROCESS* 322-56 (1971); McFatter, *supra* note 1, at 1496-97; Thomas, Cage, & Foster, *supra* note 10, at 110-11.

<sup>13</sup> Hamilton & Rytina, *Social Consensus on Norms of Justice: Should the Punishment Fit the Crime?*, 85 AM. J. SOC. 1117, 1138-41 (1980); McFatter, *Purposes of Punishment: Effects of Utilities of Criminal Sanctions on Perceived Appropriateness*, 67 J. APPLIED PSYCHOLOGY 255, 255-67 (1982).

<sup>14</sup> A. VON HIRSCH, *supra* note 6, at 66-106; Von Hirsch, *Commensurability and Crime Prevention* *supra* note 7, at 212.

<sup>15</sup> CALIFORNIA PENAL CODE (West 1984)[hereinafter PENAL CODE].

<sup>16</sup> *Id.* at § 1170 (b).

<sup>17</sup> *Id.* at §§ 667.5, 667.6, 1170.1, 12022, 12022.1, 12022.3, 12022.5, 12022.6, 12022.7, 12022.8 are illustrative.

rently.<sup>18</sup> For the less serious crimes, the judge retains the option of sentencing the criminal to probation with or without a term in the county jail as a condition of probation.<sup>19</sup> This probation option, the enhancements which the prosecutor may or may not choose to charge and prove, and the possibility of a civil commitment for some offenses such as drug offenses, have all introduced considerable variability into a system originally intended to minimize such variations. It does appear, however, that sentencing variability is minimized under the DSL more than it was under the indeterminate system the DSL replaced.<sup>20</sup>

Since a just deserts model requires that the punishment fit the crime, we need, as Rossi and Henry have pointed out, "research on the relationship between perceived seriousness and the appropriate punishment types and levels that correspond to levels of seriousness."<sup>21</sup> Similarly, Lipson and Peterson have called for investigations of "just punishment" and "sentence equity."<sup>22</sup> Of special interest is whether different demographic and political groupings generally agree in their perception of fair punishments. If they do, and if the penalties prescribed by the DSL were made to conform to community standards, these data would anchor the sanctions of the DSL firmly in the value system of the community from which the law ultimately derives its authority. Both the promise and the possible problems inherent in such an approach toward framing the criminal law were pointed out by McAnany:

The fear of many reformers is that given the opportunity, the local community would exercise a grim retributivism against the unwelcome stranger, the deviant, the rejected in society. This may be so in an unguided system of whim. But there is evidence that community values need to be engaged in order to invest the system with the legitimacy it needs to enforce the morality of the criminal law. . . . [W]e do not have an adequate mechanism to draw upon this source [community values] for our standards. How such a future system might look is hard to predict, but the awareness is clearly present and the element of public participation, whether by way of comment on rules, or by direct participation in the resolving of disputes, has been placed on the table for discussion and experimentation. Community standards should not be sold short as a way of forging just standards for the practice of

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<sup>18</sup> *Id.* at § 669.

<sup>19</sup> *Id.* at § 1203.

<sup>20</sup> See Casper, Brereton & Neal, *supra* note 3, at 135; Lipson & Peterson, *supra* note 5, at 35.

<sup>21</sup> Rossi & Henry, *Seriousness: A Measure for All Purposes?*, in HANDBOOK OF CRIMINAL JUSTICE EVALUATION 489, 499 (M. Klein & K. Teilman eds. 1980).

<sup>22</sup> Lipson & Peterson, *supra* note 5, at 56-64.

criminal justice.<sup>23</sup>

Fears of a grim retributivism are by no means unfounded, since surveys of public opinion from 1965 through 1982 have shown a steadily increasing proportion of citizens who endorse the view that courts have not dealt "harshly enough" with criminals (exceeding eighty-five percent in 1982).<sup>24</sup> Moreover, the degree of consensus within the community regarding what punishments are appropriate for various crimes may have been exaggerated in some studies. Miethe, for example, reanalyzed the data gathered by Rossi, Waite, Bose, and Berke which showed high correlations between blacks and whites in their perceptions of the seriousness of a wide range of crimes.<sup>25</sup> Blacks and whites did show strong agreement in their assessment of the seriousness of violent and victimless crimes ( $r = .93$ ), but weaker agreement in their perception of property offenses ( $r = .67$ ).<sup>26</sup> Other demographic variables such as age and education also significantly affected judgments of crime seriousness.<sup>27</sup> Clearly, if there are large intergroup differences in perceptions of fairness, there may be no cohesive "community standard" on which to base a just deserts model.

Admittedly, though there are problems inherent in any effort to base the criminal law on community standards of fair punishment, problems are also created by the sentencing systems currently in practice. Today, the penalties stipulated by California's DSL are the product of a complex interaction between the state legislature, which writes and amends the Penal Code, and a sentencing commission, which proposes guidelines to the legislature and strives for uniformity in the sentences actually handed down for a particular category of crime. Both political and practical considerations influence this process.<sup>28</sup> In the early 1980s, the DSL sentences for many crimes were increased, perhaps because of a perceived public demand for harsher treatment of criminals. The possibility remains, however, that the legislature may have exaggerated the wishes of the public and become overly punitive in its revisions of the Penal Code. In any event, the longer terms contributed to severe overcrowding in the state's prisons, which led in 1984 to an upward revision in the

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<sup>23</sup> McAnany, *Justice in Search of Fairness*, in JUSTICE AS FAIRNESS 45-46 (D. Fogel & J. Hudson eds. 1981).

<sup>24</sup> Flanagan, McGarrell & Brown, *Public Perceptions of the Criminal Courts: The Role of Demographic and Related Attitudinal Variables*, 22 J. RES. CRIME & DELINQ. 66, 66-67 (1985).

<sup>25</sup> Miethe, *supra* note 10, at 459; Rossi, Waite, Bose & Berk, *supra* note 9, at 235.

<sup>26</sup> Miethe, *supra* note 10, at 465.

<sup>27</sup> *Id.* at 468.

<sup>28</sup> See Moulds, *Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System*, 31 W. POL. Q. 416 (1978).

amount of time that inmates could earn for good behavior as a means of reducing their sentences.

Accurate survey data on community standards could, therefore, be a useful source of information for legislators deliberating changes in the Penal Code. At a more philosophical level, one might also note that a universal feature of human societies is the evolution of rule systems which regulate individual behavior through the application of rewards and punishments.<sup>29</sup> Criminals themselves, to some lesser or greater extent, must have internalized the values of the community from which they came. Consequently, basing DSL sanctions on community standards should, as McAnany suggested, increase the perceived legitimacy and fairness of the criminal law, even among those who have violated it.

The present paper reports the results of a statewide survey of California residents in which subjects were asked to recommend fair punishments for six crimes, ranging from a petty theft to a homicide. Subjects also supplied standard demographic information and described their political party affiliations and ideological beliefs. The survey permitted us to assess both overall perceptions of fair punishments and intergroup consensus on fair punishments within the state of California. We believe that some of the conclusions reached may be applicable to other states as well.

## II. METHODS

### SUBJECTS

The subjects were 753 residents of northern and southern California who were at least eighteen years of age and whose telephone numbers were drawn in accordance with a probability design that gives all homes having telephones in all areas of the state a proportionate chance to be included. This method of selecting subjects was intended to provide a sample representative of the total population of civilian adult Californians having telephones in their homes. Details of the selection procedure may be obtained from the Field Research Corporation.<sup>30</sup>

### PROCEDURE

The survey was conducted during the period of June 14-22, 1983 by trained telephone interviewers working under the supervision of the Field Research Corporation's full time supervisors in its

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<sup>29</sup> Samuel, *Social Exchange*, in *SOCIAL PSYCHOLOGY* 318 (D. Perlman & P. Cozby eds. 1983).

<sup>30</sup> The Field Institute, 234 Front Street, San Francisco, CA 94111.

northern and southern California offices. The survey, named the California Poll, covered several areas of public opinion in addition to the one described in this report.

Subjects were asked to supply certain biographical information, including age, race, sex, occupation, education, religious preference, marital status, number of persons in the household, and whether they owned or rented their homes. In addition, subjects were asked their political party affiliation, their political ideology (i.e., conservative vs. liberal), and whether they had voted in the November 1980 and 1982 general elections. Also recorded was the geographical region in which each interview was conducted. The categories used to code each of the foregoing items of information will be described in the Results section.

To introduce the portion of the survey that pertains to the present paper, the interviewer said:

I am going to read you a brief description of six types of crimes and I would like you to tell me what you think is a fair sentence for the criminal involved. Assume that in each case the offender was male and that this is his first known offense.

The six crime descriptions were then read in the following sequence:

- A man has taken \$10,000 worth of property after breaking into and entering a building.
- A man hot wired and drove off in an automobile which was later recovered undamaged.
- A man with a knife forced a female to submit to sexual intercourse. No other physical injury was inflicted.
- A man has taken \$20 worth of property. He did not break into or enter a building.
- A man with a knife attacked and injured a victim who had no weapon. The victim died from the injury.
- A man with a knife threatened to hurt a victim unless the victim gave him money. The man took \$20 and left without hurting the victim.

Following each crime description the subject was asked whether he or she thought this man should be fined, released on probation, or put in prison. If prison was recommended, the subject was asked how long the term should be, using the following categories: less than one year, one to five years, six to ten years, more than ten years, or imprisonment for life without the possibility of parole. Some subjects (ranging in number from twenty-one to fifty-three, depending on the crime) recommended a punishment different from a fine, probation, or prison sentence. Other subjects (ranging in number from eight to fifteen) said they had no opinion regarding what punishment would be appropriate for a given crime. The re-



sponses of the latter two groups were not numerically scorable, so they were omitted from the data analysis, as will be noted in the Results section.

### III. RESULTS

Presentation of the results will begin with a comparison of the punishment recommendations of our subject sample and the sentences specified in the California Penal Code. We will then compare the punishment recommendations made by subjects from different demographic groups while concurrently examining the demographic composition of our sample. Finally, we will consider the effect of political ideology on punishment recommendations.

#### RECOMMENDED PUNISHMENTS AND CALIFORNIA LAW

The punishments recommended by our subject sample were numerically coded in order of increasing severity: fine = 1, probation = 2, less than one year in prison = 3, one to five years in prison = 4, six to ten years in prison = 5, more than ten years in prison = 6, life in prison without possibility of parole = 7. Average punishments were then computed for each of the six crimes. These averages are shown in Table 1 along with the number of subjects giving a scorable response.

The column headed "Recommended Sentence—Complete Cases Only" refers to data from which incomplete cases have been deleted. An incomplete case occurs whenever a subject either did not recommend a sentence or recommended a sentence other than a fine, probation, or imprisonment for *any* of the six crimes. It was necessary to delete such cases due to the constraints placed on the data analysis by the repeated measures analysis of variance program in the Bio Medical Data Package. Deletion of incomplete cases reduced the effective sample size to 573 subjects. Even so, Table 1 illustrates that mean scores for the larger sample were nearly identical to those for the sample of complete cases. Consequently, it does not appear that the requirement that cases be complete caused the sample to be any less representative of the population of adult Californians at whom the survey was aimed.

When translated back into the category labels corresponding to numerical scores, the sentences recommended by the survey sample appear remarkably similar to the California Penal Code. For armed robbery and rape the sample may even be *less* punitive than existing law, though the range of years corresponding to category 4 (one to five years) and category 5 (six to ten years) makes it difficult to be

**TABLE 1**  
**AVERAGE SENTENCE RECOMMENDED FOR EACH OF SIX CRIMES AND**  
**THE SENTENCE SPECIFIED IN THE CALIFORNIA PENAL CODE**

CRIME	RECOMMENDED SENTENCE (N=)	RECOMMENDED SENTENCE (COMPLETE CASES ONLY) <sup>a</sup>	VERBAL DESCRIPTION	SENTENCE UNDER CALIFORNIA PENAL CODE
\$20 theft	1.66 (694)	1.62	fine/ probation	up to six months and/or \$1,000 fine <sup>b</sup>
Auto theft	2.41 (691)	2.39	probation/ less than 1 yr.	2 years <sup>c</sup>
\$1,000 theft	3.36 (686)	3.32	less than 1 yr./1-5 yrs.	2 years <sup>d</sup>
Robbery (weapon used)	3.62 (724)	3.54	less than 1 yr./1-5 yrs.	4 years <sup>e</sup>
Rape (weapon used)	4.88 (712)	4.86	6-10 yrs.	9 years <sup>f</sup>
Homicide (weapon used)	6.08 (724)	6.13	more than 10 yrs.	16 years to life <sup>g</sup>

<sup>a</sup>N = 573 for each crime. See the text for an explanation of "complete cases". Overall F = 1544.70, 5/2855 *df*, *p* < .0001.

<sup>b</sup>Cal. Penal Code § 490 (West 1984).

<sup>c</sup>The middle term for auto theft is two years. *Id.* at §§ 18, 487, 489.

<sup>d</sup>The middle term for grand theft is two years. *Id.* at §§ 18, 489.

<sup>e</sup>The middle term for robbery is three years. *Id.* at § 213. There is a one year enhancement for use of a deadly or dangerous weapon. *Id.* at § 12022 (b).

<sup>f</sup>The middle term for rape is six years. *Id.* at § 264. There is a three year enhancement for use of a deadly weapon in the commission of this crime. *Id.* at § 12022.3.

<sup>g</sup>The term for 2nd degree homicide is 15 years to life. *Id.* at § 190. There is a one year enhancement for use of a deadly weapon in the commission of this crime. *Id.* at § 12022 (b).

sure. It is clear, however, that the sentences specified for these crimes in the Penal Code (four and nine years, respectively) are at the extremes of the categories selected by most of our subjects.<sup>31</sup>

For homicide, our sample may again be less punitive than existing law, our subjects recommending more than ten years while the punishment for second degree murder with the use of a deadly or dangerous weapon is stipulated as sixteen years to life in the

<sup>31</sup> The middle term for rape is six years but there is a three year enhancement for weapon use. CAL. PENAL CODE §§ 264, 12022.3. An additional five year enhancement for great bodily injury makes rape one of the most severely punished crimes under California law surpassed only by murder in the first or second degree. *Id.* at § 190. The middle term for robbery is three years and there is a three year enhancement for the use of a deadly weapon. *Id.* at §§ 213, 12022 (b).

DSL.<sup>32</sup> There is some ambiguity here, however, since if the crime is considered to be voluntary manslaughter the punishment designated by the Penal Code is only seven years. (i.e., a six year base sentence plus a one year enhancement for weapon use).<sup>33</sup>

Table 1 illustrates that there is a quantum leap in the punitiveness of the recommended sentence when the victim of the crime has been physically harmed (i.e., in the case of rape or homicide). For petty theft and auto theft, a majority of our subjects recommended the non-incarcerative options of a fine or probation (ninety-two percent and sixty-one percent, respectively). On the other hand, for rape and homicide, very few subjects recommended non-incarcerative punishment (three percent and one percent, respectively). For the \$1,000 theft and the armed robbery, those subjects recommending a non-incarcerative sentence numbered twenty-eight percent and twenty-three percent, respectively.

#### RECOMMENDED PUNISHMENTS BY DEMOGRAPHIC GROUPINGS

The procedure used to search for significant differences in punishment recommendations between different demographic groups was to treat the demographic grouping (income levels, for example) as an independent variable and the six crimes as a repeated measures variable in a two way analysis of variance with repeated measures on the second variable.<sup>34</sup> We found significant effects for the demographic groupings of age, race, sex, marital status, education, occupation, and income. No significant effects were found for religious preference, number of persons in the household, whether the home was owned or rented, or geographical region of the state.

The significant effects all took the form of an interaction between a particular demographic variable and the six crimes on the repeated measures variable. Because such interactions may arise from complex and essentially uninterpretable fluctuations in the punishment recommended for a given crime by different demographic groups, we then placed each demographic variable for which a significant interaction was observed into a multivariate analysis of variance. The univariate F ratios for each of the six crimes considered separately were then examined to see which, if any, of the six showed a significant effect of the demographic variable in question. We then examined specific differences between demo-

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<sup>32</sup> *Id.* at §§ 190, 12022 (b).

<sup>33</sup> *Id.* at §§ 193, 12022 (b).

<sup>34</sup> See Jennrich, Sampson & Frane, *Analysis of Variance and Covariance Including Repeated Measures*, in BMDP STATISTICAL SOFTWARE 359 (W. Dixon ed. 1983).

graphic groups in terms of their punishment recommendations for this particular crime.

Interestingly, armed robbery emerged as the only crime for which recommended punishments differed consistently between demographic groups. The results are shown in Table 2. We will discuss each demographic variable in sequence, paying particular attention to the statistical findings that pertain to Table 2.

**TABLE 2**  
**MEAN PUNISHMENT RECOMMENDED FOR ARMED ROBBERY BY**  
**SUBJECTS IN VARIOUS DEMOGRAPHIC GROUPS**

AGE		ETHNICITY		MARITAL STATUS	
19-29 yrs.	3.62 <sup>a</sup>	Hispanic	3.57 <sup>a</sup>	Married	3.63 <sup>a</sup>
30-39 yrs.	3.60 <sup>a</sup>	White	3.63 <sup>a</sup>	Sep/Divorced	3.11 <sup>ab</sup>
40-49 yrs.	3.87 <sup>a</sup>	Black	3.11 <sup>b</sup>	Widowed	2.76 <sup>b</sup>
50-59 yrs.	3.49 <sup>a</sup>	Asian	2.76 <sup>b</sup>	Never Married	3.29 <sup>ab</sup>
60+	3.09 <sup>b</sup>				
INCOME		OCCUPATION		EDUCATION	
under \$10,000	3.14 <sup>a</sup>	Laborer	3.42 <sup>ab</sup>	8th or less	2.33 <sup>a</sup>
\$10-20,000	3.37 <sup>ab</sup>	Semi-Skilled	3.23 <sup>a</sup>	some high school	3.35 <sup>ab</sup>
\$20-30,000	3.61 <sup>ab</sup>	Service	3.91 <sup>b</sup>	graduated high school	3.45 <sup>ab</sup>
\$30-40,000	3.59 <sup>ab</sup>	Clerical	3.25 <sup>ab</sup>	trade school	3.50 <sup>ab</sup>
over \$40,000	3.81 <sup>b</sup>	Skilled	3.42 <sup>ab</sup>	1-2 yrs. college	3.60 <sup>ab</sup>
		Sales	3.82 <sup>ab</sup>	3-4 yrs. college	3.49 <sup>ab</sup>
		Managerial	3.57 <sup>ab</sup>	college graduate	3.59 <sup>ab</sup>
		Professional	3.85 <sup>b</sup>	5-6 yrs. college	3.50 <sup>ab</sup>
				M.A. degree	3.91 <sup>ab</sup>
				Graduate work	4.00 <sup>b</sup>

*Note:* The superscripts a and b refer to the results of a statistical test. Within each column, means not having a common superscript differ significantly by Duncan's Multiple Range Test ( $p < .05$ ).

### *Age*

The average age of our subjects was 45.8 years, but the modal age category was thirty to thirty-nine years. The age categories used in the data analysis were eighteen to twenty-nine, thirty to thirty-nine, forty to forty-nine, fifty to fifty-nine, and sixty and older. The two way repeated measures analysis of variance yielded a significant interaction between the age and crime variables ( $F = 2.08, 20/2835$

*df*,  $p < .01$ ). The terminology used to refer to this type of interaction will hereinafter follow the form of "\_\_\_\_ X Crime"; in this case we have an Age X Crime interaction. A multivariate analysis of variance (MANOVA) revealed that age had a significant effect only on armed robbery, as shown in Table 2 (univariate  $F = 4.53$ , 4/567 *df*,  $p < .001$ ). A one way analysis of variance of the punishments recommended just for this crime turned up a significant quadratic trend which suggested that the most punitive subjects were the forty to forty-nine year olds ( $F = 10.51$ ,  $p < .001$ ). Specific comparisons between means by Duncan's multiple range test, however, indicated only that the sixty and older age group was less punitive than any of the others ( $p < .05$ ).

#### *Race*

Nearly all subjects could be grouped into one of four ethnic categories: Hispanic (9.4%), White (78.5%), Black (8.3%) and Asian (3.7%). There was a significant Race X Crime interaction ( $F = 2.11$ , 15/2800 *df*,  $p < .01$ ). A MANOVA revealed that race had a significant effect only on armed robbery, as shown in Table 2 (univariate  $F = 4.63$ , 3/569 *df*,  $p < .01$ ). Specific comparisons suggested that Hispanic and White subjects were significantly more punitive than Black and Asian subjects ( $p < .05$ ).

#### *Sex*

The sample was fairly evenly divided between males (46%) and females (54%). A Sex X Crime interaction suggested that men and women differed in their recommended punishments for some of the crimes ( $F = 2.77$ , 5/2855 *df*,  $p < .02$ ). A MANOVA showed that females were more punitive than males for the \$1,000 theft ( $M = 3.44$  vs. 3.18, respectively, univariate  $F = 5.84$ , 1/571 *df*,  $p < .02$ ) and for homicide ( $M = 6.25$  vs. 6.00, respectively, univariate  $F = 8.49$ , 1/571 *df*,  $p < .01$ ). For the other crimes there was no significant sex difference in recommended punishments.

#### *Marital Status*

The sample was predominantly married (86%), but some subjects were separated or divorced (9%), widowed (4%) or never married (1%). There was a Marital Status X Crime interaction in the punishment recommendations ( $F = 1.92$ , 15/2870 *df*,  $p < .02$ ). A MANOVA indicated that marital status affected punitiveness only for the crime of armed robbery, as can be seen in Table 2 (univariate  $F = 2.28$ , 3/567 *df*,  $p < .08$ ). Married persons were the most punitive

and widowed persons the least; no other specific comparisons were significant.

### *Religion*

As mentioned earlier, punishment recommendations were unaffected by religious preference. The percentages of subjects in various religious categories were as follows: Protestant (44%), Catholic (25%), Jewish (4%), Other (10%), No Religious Preference (17%).

### *Income*

Subjects were grouped into five income categories: under \$10,000 per year (13%), \$10,000-20,000 per year (23%), \$20,000-30,000 per year (24%), \$30,000-40,000 per year (13%), and over \$40,000 per year (28%). There was a significant Income X Crime interaction in recommendations for punishment ( $F = 2.14$ , 20/2720 *df*,  $p < .01$ ). A MANOVA revealed that punitiveness was significantly affected by income level only for the crime of armed robbery, as shown in Table 2 (univariate  $F = 3.74$ , 4/544 *df*,  $p < .01$ ). A significant linear trend component indicated that punitiveness for armed robbery increased directly with income ( $F = 14.17$ ,  $p < .001$ ), and specific comparisons verified that subjects of the highest income level were significantly more punitive than those at the lowest ( $p < .05$ ).

### *Occupation*

Subjects were grouped into eight occupational categories: laborer (4%), semi-skilled (8%), service (7%), clerical (10%), skilled (13%), sales (9%), managerial (17%), and professional (32%). There was a significant Occupation X Crime interaction in recommendations for punishment ( $F = 1.55$ , 35/2270 *df*,  $p < .05$ ). A MANOVA revealed that the punishments recommended for two crimes were significantly affected by subjects' occupation: armed robbery (univariate  $F = 2.20$ , 7/444 *df*,  $p < .05$ ) and petty theft (univariate  $F = 2.23$ , 7/444 *df*,  $p < .05$ ). Considering first the statistics for armed robbery, shown in Table 2, specific comparisons indicated that the semi-skilled ( $M = 3.23$ ) were significantly ( $p < .05$ ) less punitive than the professionals ( $M = 3.85$ ). Other groups generally fell in between, though service workers were the most punitive of all ( $M = 3.91$ ). As for petty theft, laborers were the least punitive ( $M = 1.37$ ), and professional people among the most punitive ( $M = 1.75$ ), though clerical workers were the most punitive of

all for this particular crime ( $M = 1.91$ ). Overall, one could say that people in higher status occupations recommended longer sentences than those in lower status occupations, but the picture is far from clear cut. The incongruities in the occupational data probably stem from the fact that subjects placed themselves into categories offered by an interviewer who made no effort to cross question them. Clearly, thirty percent of the sample could not have been "professional" people in a strict demographic use of the term, but many in our sample found this to be an attractive label to apply to themselves. The data for income and education offer a more reliable and consistent picture of the effects of socio-economic status on punishment recommendations.

### *Education*

Ten levels were used to group subjects by years of schooling completed: eighth grade or less (2%), some high school (5%), high school graduate (26%), trade school (2%), one to two years of college (23%), three to four years of college (12%), college graduate (15%), five to six years of college (6%), M.A. degree (6%), graduate work (3%). There was a significant Education X Crime interaction in recommendations for punishment ( $F = 1.47$ , 45/2810 *df*,  $p < .05$ ). A MANOVA could find only marginally significant evidence that recommendations for two crimes were affected by subjects' education. The first, as usual, was armed robbery, as shown in Table 2 (univariate  $F = 1.51$ , 9/562 *df*,  $p < .15$ ). Although higher than usual variability limited the significance of this main effect, a Duncan's multiple range test showed that people with an eighth grade education or less were much less punitive than those who had completed graduate work ( $p < .05$ ). Also, a linear trend component suggested that as education increased there was a corresponding increase in punitiveness ( $F = 13.14$ ,  $p < .001$ ). The other crime the MANOVA revealed contributed to the Education X Crime interaction was rape ( $F = 1.73$ , 9/562 *df*,  $p < .08$ ). Here, too, the least punitive were subjects with an eighth grade education or less ( $M = 4.00$ ), and the most punitive were those who had completed graduate work ( $M = 5.95$ ), with the other groups generally showing an increase in punitiveness with increasing education, though in this case the linear trend was less consistent ( $F = 2.79$ ,  $p < .10$ ).

### *Geographical region*

Subjects were clustered into ten geographical groupings, the largest being Los Angeles/Orange County (36%) and the San Francisco Bay Area (27%). Punishment recommendations were not

found to be significantly influenced by the geographical location of the subjects, even when a broader urban-rural dichotomy was used to categorize subjects.

#### *Recommended Punishments by Political Ideology*

Subjects were asked their political party affiliation, and the responses were as follows: Republican (30%), Democrat (43%), Independent (24%), No Preference (3%), Other (1%). Party affiliation was not found to have a significant effect on punishment recommendations.

A question which asked subjects to classify themselves as conservative (30%), liberal (20%), middle of the road (27%), or don't know/no opinion (22%) provided an alternative test of the possible effect of political ideology on punitiveness. Once again, political beliefs were not found to have a significant effect on punishment recommendations.

#### IV. DISCUSSION

The principal conclusion of this survey is that there is widespread agreement among various demographic and political groupings in the general population concerning what constitutes fair punishment for crimes. The many biographical variables we considered did not, on the whole, have much impact on the punishment recommendations shown in Table 1. In this respect, our findings are compatible with data gathered in "The National Survey of Crime Severity" conducted by Marvin Wolfgang and associates at the University of Pennsylvania under the auspices of the Bureau of Justice Statistics.<sup>35</sup> In a nationwide sample of 60,000 adults, subjects were asked to evaluate the seriousness of 204 hypothetical crimes.<sup>36</sup> The crime descriptions were similar to those used in our research. While the emphasis of Wolfgang's study focused on perceived severity of offense, rather than on sentencing recommendations, their overall conclusion was much the same as our own: "people tend to agree about the severity of specific offenses."<sup>37</sup> A few demographic variables were found to influence the severity ratings. For example, whites tended to regard all offenses as more severe than did other racial groups, and older respondents perceived thefts as more severe than did their younger counterparts. Serious injury offenses

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<sup>35</sup> M. Wolfgang, R. Figlio, P. Tracy & S. Singer, *The National Survey of Crime Severity*, Bureau of Justice Statistics Document NCJ-96017 (1985).

<sup>36</sup> *Id.* at vi.

<sup>37</sup> *Id.* at vi, 77.



were perceived to be less severe by lower income, occupation, and education groups. Persons who had been victims of crime regarded offenses generally as more severe than did non-victims. Men and women did not differ significantly in their perceptions. The inter-group differences which did exist were not large, however, and did little to disturb the overall evidence for agreement in perceptions of crime severity.

Since our survey participants were residents of California, it is particularly noteworthy that their punishment recommendations were not very different from the penalties specified in the California Penal Code. It seems, therefore, that at least within California, the legislative determination of sanctions reflects to a remarkable degree the community's standards. To the extent that our findings could be replicated in other states, our conclusions may be generalized to them as well.

To the degree that our survey participants recommended sentences that deviated from the Penal Code, it appears in Table 1 that they did so in a less punitive direction. For the crime of auto theft, our subjects recommended something between probation and less than one year imprisonment while the Penal Code stipulates a two year sentence; for rape, they recommended a six to ten year sentence while the Penal Code specifies nine years for rape in which a weapon was used. It is difficult to be *certain* that our sample was more lenient than the Penal Code in the absence of a more finely tuned scale of recommended punishments. Ideally, subjects would have been informed of all the possible non-incarcerative sentencing options such as fines, straight probation, community service, restitution, home furlough, work furlough, probation and jail, etc. and would have been allowed to specify any of these or, if they preferred incarceration, any number of years imprisonment. Ideally, the interviewer would also have taken the time to explain what is meant by a life sentence under California law and the special circumstances under which a sentence of life without possibility of parole or death may be imposed. To incorporate all these refinements would, however, have required a much more elaborate and time consuming survey strategy than is customary for the California Poll. Consequently, a more precise assessment of community standards of fair punishment must be the focus of a future project.

Meanwhile, if it is true, as our data seem to suggest, that community standards are less punitive than existing law, this should allay the worst fears of those who perceive the public as unreasonably harsh in its desire for retribution against offenders. This differential could have important implications for the criminal justice system.

For example, overcrowding in jails and prisons might be reduced if the legislature would follow what appears to be public preferences on sanctions. Additionally, the public would likely support and perceive as fair a close paralleling of community standards and legislative action. To use community standards (in McAnany's terms) on a regular and ongoing basis, legislatures should include, together with their input from sentencing commissions and other expert sources, the results of survey data such as those provided in this study. Some authors have gone so far as to suggest that an empirically derived offense severity scale could and should be the basis for determining statutory criminal penalties.<sup>38</sup> These efforts to ascertain community values would enhance the ability of legislatures to gain the public legitimacy essential to the democratic process.

Though the practical problems facing a community standards approach should not be underestimated, one observation offering particular encouragement to such an effort is the widespread agreement among demographic and political groups on what constitutes fair punishment for crimes. Group differences in punishment recommendations found in our research took the form of complex statistical interactions rather than clear cut main effects and were manifested primarily in sentences applied to just one crime: armed robbery. Group differences in the punishment recommended for this crime are shown in Table 2, and the findings seem readily interpretable. The most punitive subjects were forty to forty-nine years of age, white, married, upper income professionals who had completed at least an M.A. degree. In other words, the most punitive subjects were those who might plausibly have perceived themselves as the most tempting targets for an armed robber.

Ironically, statistics gathered by the Department of Justice indicate that the most frequent victims of robbery are black rather than white, sixteen to twenty-four years of age rather than thirty-five to forty-nine years of age, and in the lowest income brackets rather than the highest.<sup>39</sup> Even so, it is unlikely that public perceptions of threat are based on a cool and rational calculation of the odds of victimization. In our sample, the wealthiest people were the most punitive in the sentences they recommended for armed robbery. We hypothesize that these "solid citizens" were more punitive than their less advantaged counterparts because they felt psychologically more threatened by this type of crime. In any event, the differences

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<sup>38</sup> See, e.g., Nevares-Muniz, *The Eighth Amendment Revisited: A Model of Weighted Punishments*, 75 J. CRIM. L. & CRIMINOLOGY 272, 289 (1984).

<sup>39</sup> P. Langan & C. Innes, *The Risk of Violent Crime*, Bureau of Justice Statistics Special Report (1985).

we observed in the punishment recommended for armed robbery between the socio-economically advantaged and the deprived were on the order of a "4" versus a "3" on our numerical index. This corresponds to the difference between a prison term of one to five years versus less than one year, respectively, which means that practically everyone said armed robbers must spend some time in jail.

One surprising finding in Table 2 was the relatively mild punishment recommended for armed robbery by subjects over sixty years of age. Although crime statistics do indicate that the likelihood of being robbed decreases with age, past surveys have found that fear of crime *increases* with age.<sup>40</sup> Colloquially, too, senior citizens are described as disproportionately threatened by street crime. Our finding that the oldest respondents were the most lenient toward armed robbers seems, therefore, to be somewhat anomalous. It would be interesting to see if this phenomenon is replicated in future research.

It is intriguing that armed robbery was the only crime for which any reliable degree of intergroup disagreement emerged. Armed robbery is widely regarded as a "swing" crime which may be perceived as either violent or nonviolent. It is violent in the sense that a threat of physical harm is made but non-violent in the sense that no harm may be inflicted if the victim turns over the property that is demanded. As is apparent in Table 1, the public is far more punitive in response to violent crimes like rape or homicide than in response to non-violent crimes like theft. Armed robbery may be the crime which shows intergroup differences in punitiveness because groups differ in their perception of whether or not it is violent.

This report is only a preliminary investigation of the degree of public consensus on what constitutes fair punishment for crimes. Nonetheless, the results do appear to demonstrate that it would be feasible to pursue the possibility of linking the sanctions of the criminal law to community standards of fair punishment.

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<sup>40</sup> Toseland, *Fear of Crime: Who Is Most Vulnerable?*, 10 J. CRIM. JUST. 199, 203 (1982).