

***REIMAGINING CRIMINOLOGY'S PUBLIC ROLE:***

***AN INQUIRY INTO THE RELATIONSHIP BETWEEN  
CRIMINOLOGICAL EXPERTISE AND THE  
DEMOCRATIC PUBLIC SPHERE***

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## Abstract

This thesis contributes to recent discussions about criminology's public role through an empirical case study analysis of the dominant discourse of 'public confidence in the criminal justice system' in England and Wales. The thesis begins by arguing that the recent literature reflecting on criminology's public role has failed to adequately deal with the tensions created by the plural, value-dependent and contested character of criminological knowledge.

Then, drawing on primary data from newspaper archives, parliamentary debates, research reports, academic books and papers, policy documents and focus group and interview transcripts, the thesis provides a multi-faceted analysis of the public confidence agenda. It argues that the dominant discourse of public confidence takes up a politically prominent 'lay concept' and, without clarifying what it means, discursively constructs it as a 'real' object which is both measurable and caused.

This understanding of confidence reflects contingent historical conditions (including the 'modernist' criminological outlook), and is premised on an (unacknowledged) value-based decision about how to do research on how the public think and feel about the criminal justice system. The public confidence agenda in research and policy is a governmental project encompassing a double-epistemic aspiration: (i) to *be* epistemic (by providing scientific knowledge which shapes policy); and (ii) to promote a particular conception of criminological expertise (as *episteme* - objective, context-independent, scientific knowledge). As such it provides an excellent case study for reflecting on recent discussions of criminology's public role.

The thesis concludes that the starting point for any discussion of criminology's public role in a democratic society should be an explicit acknowledgment of the value-based decisions which are implicit in every criminological project. Such acknowledgment provides a route to a more fruitful method for negotiating the inherent pluralism of the field, and thus to re-evaluating its public role.



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The author was employed as the KTP (Research) Associate for this 3-year programme of work. Publications for, and journal articles based on the KTP research can be accessed from <http://criminaljusticeresearch.ncl.ac.uk/>, and include: Turner, Campbell, Dale and Graham (2006; 2007; 2008a; 2008b; 2008c; 2008d; 2008e; 2009); Campbell (2008); Turner (2008).

The KTP project was established with the twin aims of critiquing existing approaches to the conceptualisation and measurement of confidence and providing strategic and practical insights into how criminal justice organisations should approach the requirement that they increase public confidence in the criminal justice system. The final report for the project (Turner, Campbell, Dale and Graham, 2009), highlighted the failure of existing conceptualisations and measures of public confidence to provide a meaningful way of gauging the extent to which members of the public see the CJS as legitimate and are willing to engage with it.

This thesis develops a line of analysis which is distinct from that pursued during the KTP project, and the argument contained herein is wholly the work of the author. Where project reports or publications, or parts thereof, have been used to develop this thesis they are referenced appropriately within the text.

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# Chapter 1. Introduction

## 1.1 Point of departure

How do, and how *should*, social scientific endeavours in the broad and contested field of criminology relate to the public sphere and the actions of government? These questions are at the core of recent discussions about ‘public criminology’. In this thesis I attempt to propose some answers by drawing on an empirical exploration of the emergence and effects of a body of knowledge on ‘public confidence in the criminal justice system’<sup>1</sup>.

Concentrating on this body of knowledge was, initially, a matter of opportunity: the thesis began its development whilst I was working on a funded research project which sought to contribute to the production of an alternative body of knowledge about public confidence in the criminal justice system in England and Wales<sup>2</sup>. Whilst working on this project, I experienced a growing awareness of the tensions inherent in using social research to understand the way people think and feel in order that such thinking and feeling can be, in effect, manipulated by political and administrative elites. My imagination was captured by the way in which these elites, and the researchers who worked with and for them, conceptualised (and justified) their use of research ‘products’ in the service of measuring the way the public perceived them and their activities.

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<sup>1</sup> I use inverted commas around ‘public confidence in the criminal justice system’ here to indicate that this is a concept which has, as will become clear, become reified as an object for research and policy. In the interests of readability I will not use inverted commas throughout. However, where the phrase public confidence in the criminal justice system is used, it should be taken to mean the reified object.

<sup>2</sup> Henceforth I will refer to this project as simply ‘the project’. For more details about the project see ‘Acknowledgments’ on p. ii above.

I became interested in the assumptions underpinning the idea of public confidence: about where members of the public and criminologists stand in relation to the criminal justice system and how and why non-offending members of the public can and should become the objects of criminological research. I started to consider how 'expert' knowledge generated by professional researchers both in and outside of academia might support and sustain these assumptions. I became convinced that a better understanding of the 'formation and... effects' (Lee, 2007: 1) of the public confidence agenda<sup>3</sup> would yield insights which could be brought to bear on the public criminology debate (see below).

Through my investigations I found that the public confidence research agenda could be understood as both research which aimed to have a public role (by providing advice to policymakers and practitioners) and research which promoted a particular understanding of the appropriate public role of expertise (as the provider of value-free 'facts' which, by implication, *should* structure and inform opinion formation amongst members of the public). This dual role makes the public confidence agenda a particularly interesting case study for thinking about criminology's public role.

But before my thesis started to take this kind of coherent shape I had only a set of rather vaguely linked observations. Firstly, I noted that the concept of public confidence had become increasingly central to criminal justice policy in England and Wales, despite being only rather vaguely defined in the research and policy literature. Secondly, I noted that some criminologists utilised the concept in their own work without explicitly clarifying its definition or meaning. Thirdly, I noted that, from about the mid-1990s onwards, criminologists had become increasingly interested in an apparent shift to a more 'punitive' attitude towards criminals which was frequently attributed to the increasing concern of politicians to be seen to be reflecting the opinions of the public on crime and justice, rather than deferring to the knowledge produced by 'experts'.

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<sup>3</sup> For the sake of brevity, throughout this thesis I use the term public confidence agenda to refer to the sustained and deliberate focus on public confidence as an object of research and policy and the network of linked research and policy developments which have sprung up in response.

From these initial observations sprang a number of questions: Why is a concept as poorly defined as public confidence apparently so central to criminal justice and penal policy? Why are some criminologists engaging with the concept of public confidence (and similar concepts) in a relatively uncritical fashion? What are the linkages between the increasing prominence of the notion of ‘public confidence’ and apparent increases in punitiveness? What does all this mean for criminology, criminal justice and confidence? These questions reflect my desire to understand more about why a situation which I find troubling exists and this thesis is the product of my attempts to address these questions.

## **1.2 Setting the scene**

### ***1.2.1 Public confidence at the heart of criminal justice***

Maintaining and increasing ‘public confidence in the criminal justice system’ has been a stated strategic priority for criminal justice agencies in England and Wales<sup>4</sup> since at least as far back as the early 1980s. The 1984 *Criminal Justice Working Paper* quoted the Home Secretary as saying: ‘No one can afford to disregard the need to sustain full public confidence in our criminal justice system’ (Cited in Home Office, 1984: para 1), whilst the report on the second British Crime Survey (BCS) noted that:

‘Public opinion has over the last five years become more central to the concerns of criminal justice policy. Greater recognition has been given to the principle that the criminal justice system should command public confidence... One obvious consequence...is a greater need for information on public attitudes ... to gauge public confidence’ (Hough and Mayhew, 1985: 43).

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<sup>4</sup> This thesis focuses primarily on England and Wales. Reference is made to research from other jurisdictions on public confidence in aspects of criminal justice where that research has been influential in the English (meaning English and Welsh) context (this is primarily work from North America). The recent English preoccupation with monitoring public confidence in the criminal justice system has only recently been emulated in Scotland and Northern Ireland. The earliest reference to the measurement of public confidence in the criminal justice system made in reports of the Scottish Crime Survey is in the report for 2008/9. In Northern Ireland meanwhile, although reference is made to the Northern Ireland Crime Survey measuring public confidence in 2003/4, the measurements obtained do not feature prominently until the report on the 2006/7 survey. In both Scotland and Northern Ireland the measures of confidence used and types of analysis conducted mirror those used in the British Crime Survey (which only covers England and Wales). As such the public confidence agenda in research and policy, which this thesis takes as its analytical focal point, has been primarily an English affair.

The authors here advocate using data collected through mechanisms like the BCS to monitor public confidence in support of the government's priority of maintaining public confidence. After some delay this vision was finally realized in the 1990s. A suite of questions for measuring public confidence that the criminal justice system is 'fair and effective' were trialled in the 1996 BCS, and subsequently approved to provide performance data in support of the Labour government's regime of 'Public Service Agreements' (PSAs)<sup>5</sup>.

Under the PSA regime, criminal justice agencies were required to work together to increase public confidence as measured by the BCS. In 2003 joint working was further institutionalised with the establishment of the 42 'Local Criminal Justice Boards' (LCJBs) which brought together the most senior representatives from the criminal justice agencies (Police, Crown Prosecution Service (CPS), Magistrates and Crown Courts, Prison Service, Probation Service and Youth Offending Teams) in each of the police force areas in England and Wales<sup>6</sup>.

The PSA relevant to the public confidence agenda was PSA 24, Indicator 2: 'Increase public confidence in the fairness and effectiveness of the CJS'<sup>7</sup>. The confidence target was (until the 2010 general election brought about significant and ongoing reorganization of government departments and performance monitoring<sup>8</sup>) owned by the Office for Criminal Justice Reform (OCJR), the central

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<sup>5</sup> Following the 1998 Comprehensive Spending Review, in an attempt to provide a structure for ensuring that public money was being deployed effectively by evaluating 'performance' against measurable objectives, the government introduced a complex system of performance targets, organized into Public Service Agreements.

<sup>6</sup> There are 43 police force areas in England and Wales but representatives from both City of London Police and the Metropolitan Police sit on the London Criminal Justice Board.

<sup>7</sup> The initial 'headline' confidence measure was based on responses to the question: 'how confident are you that the criminal justice system as a whole is effective at bringing offenders to justice?'. This was subsequently amended to: 'how confident are you that the criminal justice system as a whole is effective?' The available response options were: 'very confident', 'fairly confident', 'not very confident', 'not at all confident'. Very and fairly confident responses were subsequently aggregated to identify the proportion of 'confident' individuals.

<sup>8</sup> The formation of the coalition government has brought considerable change and uncertainty for criminal justice agencies. At the point of writing the previous target regime of PSAs has been scrapped and it is unclear how or if it will be replaced. Nonetheless criminal justice agencies remain concerned about public confidence in the services they provide and the BCS remains one of the main sources of data in this regard.

department responsible for monitoring LCJBs. The OCJR required LCJBs to produce strategies and action plans demonstrating that they were taking positive steps to help meet the target.

In support of their work to improve confidence LCJBs were provided with research-based guidance which had been produced based on analysis of the BCS and other commissioned Home Office studies. Additionally, many LCJBs also carried out their own research into what were commonly referred to as the 'drivers of confidence'. Under the Labour government, then, 'public confidence' moved into a position very much at the heart of the criminal justice system.

### ***1.2.2 Punitiveness, populism and public criminology***

Recent decades have seen criminologists analysing what many regard as perturbing trends in criminal justice policy in Anglophone jurisdictions (see *inter alia* Garland, 1996, 2000, 2001; O'Malley, 1999; Ryan, 1999; Hallsworth, 2000; Rose, 2000; Freiberg, 2001; Roberts, Stalans, Indermaur and Hough, 2003; Grimshaw, 2004; Hutton, 2005; Wacquant, 2009; Loader, 2010). Characterizations and explanations of the current state of the criminal justice landscape are myriad, and often conflicting, but the idea that there has been a punitive shift has gained general acceptance as an analytical focal point for contemporary criminology, despite some prominent notes of dissension (for example see Matthews, 2005).

Most aspects of the increasingly punitive action against offenders are regarded as incompatible with criminological evidence, and thus also irrational. Some criminologists fear that a wholesale cultural shift has deemphasized the importance of the goal of rehabilitating offenders, substituting a 'New Penology' (Feeley and Simon, 1992); a 'post-correction' age (Bauman, 2000: 212); an increase in 'confinement without the aspiration of reformation' (Rose, 2000: 334); or a 'Culture of Control' (Garland, 2001). All of these characterizations of contemporary trends in criminal justice are difficult to reconcile with the traditional aims and content of criminological knowledge.

Whether criminologists and other experts are being marginalized altogether in the criminal justice policymaking process, or whether understandings of expertise are

simply diversifying, is a matter of some debate. However, it is generally accepted that, over the last three decades, as political debates about crime and justice have become more heated, politicians have paid increasing attention to representations of the views of ordinary members of the public. The terms 'populist punitiveness' (Bottoms, 1995) and 'penal populism' (Roberts *et al*, 2003) have been used to describe an apparent tendency for some politicians to cynically seek political advantage in this way.

There is disagreement about whether increasing public influence over the criminal justice arena should be regarded in an entirely negative light. Some criminologists (e.g. Ryan, 1999; 2003) point to the positive democratic aspects of politicians responding to public sentiment, however others have warned that, due to the distorted media coverage of crime and criminal justice, the public are woefully misinformed about the facts of crime and justice (e.g. see Roberts *et al*, 2003). Still others have argued that policymakers are relying on inadequate methods for understanding how the public think and feel about their criminal justice system (e.g. see Green, 2006).

Against this backdrop a body of work has recently emerged which purports to engage with the issue of criminology's public role. This work has been primarily of either North American or British extraction and has, to an extent, piggy-backed on the debates taking place about 'public sociology' (see Burawoy, 2005). Nonetheless the content of the 'public criminology' literature is (for better or worse) distinctively concerned with the public role of *criminology*. In the British context the discussion has recently been much animated by the publication of a book entitled *Public Criminology?* (Loader and Sparks, 2010a).

### ***1.2.3 Public confidence research: a part of the problem or the solution?***

Much of what has been said and written in the literature tracing recent trends in criminal justice policy seems to be lacking in reflexivity about the legitimate role of 'expertise' as opposed to lay 'opinion' in the policy-making process of a democracy (although the recent emergence of work on public criminology, most notably Loader and Sparks (2010a), has gone some way towards starting to address this



deficit). There has been a tendency to understand the problems associated with 'populist punitiveness' as being *external* to the criminological field (the existence and value of which is taken for granted). Often the problem is traced back to a failure by members of the public to understand properly the evidence about 'what works' and by politicians to appreciate that the (implicitly) ignorant public are mistaken.

Understood in this way, the populist punitive turn appears to require a response from criminologists not unlike that which the advocates of the public confidence agenda have offered: a robust method for measuring levels of public confidence and understanding the factors that drive it. In this way the problems faced by the criminological field can simply be brought within the scope of its established methods for solving problems. This may explain why the public confidence agenda has, thus far, received little effective critique, even by those criminologists who appear to be most concerned about recent developments in criminal justice policy.

### **1.3 Thesis overview**

In this thesis I address the gap identified above by presenting a thorough critique of the public confidence agenda. I then use this critique to contribute to the contemporary debate about criminology's public role. The thesis is structured as follows: Chapter Two provides a review of the literature which attempts to describe and explain the characteristics of contemporary criminal justice policy, and to explore the public role of criminology; Chapter Three describes the methods which I have applied to critique the public confidence agenda, and details the theoretical perspective underpinning these methods; Chapter Four provides a chronological overview of the development of public confidence research, followed by a deconstruction of the dominant discourse of public confidence; Chapter Five traces the emergence of the public confidence agenda, identifying its historical conditions of existence and exploring the particular social and political context against which it emerged in its dominant contemporary form; Chapter Six presents an analysis of qualitative data gathered as part of the funded research on public confidence; Chapter Seven applies the analysis of the public confidence agenda to a

discussion of criminology's public role, in order to draw some conclusions about potentially fruitful future directions for this body of work.

## Chapter 2. The public role of criminology: A review of recent debates

'Crime and punishment are topics on which everyone is entitled to have a view, and it is the concentration and diffusion of these views which goes to make up public opinion. ... Although it is vain to expect that penal matters can be wholly divorced from these emotional attitudes, who can deny that the more they are restrained and informed by a body of factual knowledge, the more effective and enlightened our system of criminal justice will be?' (Radzinowicz, 1961: 180)

'I was determined that there should be a long-term plan: a course of action that would lay a path for an enlightened penal policy. In particular I believed that changes should not be based on swings in emotions and opinion, prone as they are to the influence of dramatic events and bizarre cases, but upon reliable information about the phenomenon of crime, its social and personal roots and the effectiveness of the preventive and penal measures available' (Lord Butler, 1974: 1)

### 2.1 Introduction

In recent years, government activity in the area of criminal justice policy has inspired a growing body of scholarship attempting to describe and account for apparent changes to the criminal justice policy 'landscape'<sup>9</sup> (for example see Feeley and Simon, 1992; Bottoms, 1995; Garland, 1996, 2000, 2001; O'Malley, 1999; Ryan, 1999; Hallsworth, 2000; Rose, 2000; Freiberg, 2001; Roberts *et al*, 2003; Grimshaw, 2004; Hutton, 2005; Loader, 2010). Broadly speaking, this

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<sup>9</sup> I borrow the term 'landscape' from David Garland's usage in *The Culture of Control*. Garland suggests that recent changes to criminal justice system policy 'would surprise (and perhaps even shock) a historical observer viewing this landscape from the vantage point of the recent past' (Garland, 2001: 1). It is this idea of the variable terrain of criminal justice which I wish to evoke by borrowing Garland's term. This borrowing of vocabulary should be taken as an indication that, at this stage, I find the topographical metaphor usefully evocative, rather than as an endorsement of Garland's thesis or theoretical perspective. In the interests of expressive parsimony I will therefore use the term 'landscape literature' throughout this thesis to denote that body of work which is concerned with describing and accounting for the nature of criminal justice system policy. Whilst this body of literature is most commonly associated with the discipline of criminology it also represents an enterprise in policy analysis and, more specifically, analysis of policy. That is to say it is concerned with the *content* ('origin, intentions and operation' (Gordon, Lewis and Young, 1993: 7)) and *determinants* ('inputs and transformational processes' (*Ibid*: 6)) of criminal justice policy.

'landscape' literature can be seen as the attempt to identify which approaches to dealing with crime receive political support and become policy, and to understand why this is so. What binds this body of work together is an underlying and often implicit concern with the part which criminologists play, and *should* play, in moulding the criminal justice landscape.

This body of work could be regarded as criminology being '*drawn into* questions of crime control and criminal justice policy' (Loader and Sparks, 2004: 26, my emphasis). The turn of phrase used here implies that these topics might be considered by some (although not, it should be noted, by Loader and Sparks) to be peripheral to the normal business of criminologists; an area of enquiry into which they are mysteriously 'drawn' rather than venturing voluntarily. According to this view, then, the 'landscape literature' would exist at the edges of the criminological discipline, rather than being a central concern.

Yet most criminologists are likely to have at least some interest in the terrain into which their empirical evidence is released, the obstacles which it must navigate if it is to have any kind of influence in 'the real world', and thus to a large extent the landscape literature transcends the internal divisions of the criminological field: its central themes are of interest to criminologists regardless of political hue, theoretical perspective, topic area, or method of choice. Indeed, Young (1996) has argued that, since the 1940s, a gradual 'collapse and confusion of criminology and criminal law' has been occurring, such that it is more apt to refer to a 'crimino-legal complex' which comprises:

'the knowledges, discourses and practices that are deemed to fall under the rubric of criminology, criminal justice and criminal law [and] to convey the sense that "crime" has become (been made?) a potent sign which can be exchanged among criminal justice personnel, criminologists, politicians, journalists, film-makers and, importantly (mythical) ordinary individuals' (Young, 1996: 2)

I concur with Young's description of the crimino-legal complex, and approve of the way it captures the blurring of the boundaries between ostensibly separate endeavours. However the term crimino-legal complex is perhaps a little

cumbersome and for this reason I have retained and used (for good or for ill) the terms criminology, criminal justice policy, penal policy and so forth<sup>10</sup>.

As outlined in the previous chapter, at the current time, the issues which the landscape literature deals with are particularly topical, as criminologists, and indeed social scientists more generally, are increasingly reflecting upon the public significance of their intellectual endeavours. In many ways, then, the landscape literature can be seen as having laid some of the foundations for the recent preoccupation with proposing and describing a 'public criminology'. By identifying some worrying trends in the criminal justice policy arena, and attempting to provide accounts of how and why these trends have emerged, the landscape literature has stimulated criminologists' concerns about the prospects for their field, and has played a part in framing debates about how criminologists should interact with wider publics.

In this chapter I review literature which deals with the public role of criminology. In the first part of the chapter I consider the reasons why this public role has been increasingly subject to attention. I explore what I consider to be the four most salient features of the 'landscape literature': (i) the claim that criminal justice policy has become more punitive; (ii) concern about the changing role of criminological 'experts' in shaping that policy; (iii) the allegedly increasing influence of ordinary members of the public on policy; and (iv) the claim that the public are ignorant of 'the facts' about crime and justice due, at least in part, to the inadequate media coverage of the topic. In the second part of the chapter I deal with the proposed tasks and objectives of a 'public criminology'. I provide a critical overview of the work which has proposed 'public criminology' and the related notion 'newsmaking criminology' and I focus at some length on the recent book *Public Criminology?* (Loader and Sparks, 2010a) which has proposed an alternative

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<sup>10</sup> Whilst policy pertaining to how convicted offenders are dealt with by criminal justice systems is the main focus of much of the discussion here, and is commonly referred to as 'penal policy', I prefer to use the broader term 'criminal justice policy' to describe my focus. This is because referring only to 'penal policy' would exclude some important changes to criminal justice systems, including changes in policing. For this reason I use the phrase 'criminal justice policy' throughout to encompass all aspects of criminal justice system business, whilst the specific term 'penal policy' is used to refer to the sentencing and treatment of convicted offenders.

notion – ‘democratic underlabouring’. I conclude that none of these approaches contain adequate approaches to the issue of plurality and conflict within the criminological knowledge-base.

## **2.2 ‘[S]pitting in the wind’? The challenging terrain of the contemporary criminal justice landscape**

### **2.2.1 *The ‘punitive turn’*<sup>11</sup>**

In recent decades it has often been suggested that criminal justice policy and practice in Anglophone jurisdictions has been becoming more ‘punitive’ (e.g. see *inter alia* Garland, 1996, 2000, 2001; O’Malley, 1999; Ryan, 1999; Hallsworth, 2000; Rose, 2000; Freiberg, 2001; Roberts *et al*, 2003; Grimshaw, 2004; Hutton, 2005; Wacquant, 2009; Loader, 2010). This suggestion is often supported through reference to the growth in prison populations (e.g. see Ryan, 1999; Hallsworth, 2000; Freiberg, 2001; Garland, 2001; Grimshaw, 2004; Hutton, 2005; Wacquant, 2009) which is alleged to have occurred despite the lack of a parallel escalation in the number of offenders convicted and the seriousness of their offences<sup>12</sup>.

Furthermore, an increasing range of community penalties are said to have taken on a ‘more punitive edge’ (Ryan, 1999: 8) and to have expanded the state’s power and influence over the lives of individual offenders (Garland, 1996: 454; Matthews, 2005: 179).

Whether or not the manifest material changes on the criminal justice landscape ought properly to be regarded as indicating that criminal justice systems have become more ‘punitive’ is a matter of dispute. Though the notion of increasing punitiveness may be a thread which unites analyses of the criminal justice landscape most of these analyses also remark upon the diverse and contradictory nature of that landscape (e.g. see O’Malley, 1999: 175-6; Garland, 1996: 445; Young

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<sup>11</sup> Hutton, 2005: 243

<sup>12</sup> In England and Wales, on first inspection, this allegation certainly appears substantiated: according to the British Crime Survey, crime has been falling since 1995, however the average prison population increased by 85% between 1993 and 2009. Ministry of Justice projections for the number of prisoners in 2015 suggest this will be somewhere between 83,400 and 95,800 (Ministry of Justice, 2009).

and Matthews, 2003: 12; Newburn and Reiner, 2007: 324 and Tonry, 2004: 1), arguing that its contours cannot be explained through reference to any single explanation (e.g. see Feeley and Simon, 1992: 449). Of course, criminal justice is not the only area of public policy to be riven with apparent contradictions, and many would argue that this is a constant feature of most policy fields.

Furthermore, it is frequently the case that the rhetorical representation of issues by politicians appears to be at odds with the policies which they ultimately enact (e.g. see Roberts *et al*, 2003). Nonetheless, the common thread running through many of these accounts is the sense that western criminal justice systems have become increasingly 'punitive' in word and deed, although more 'punitive' action against offenders has been punctuated by occasional, and apparently incongruent, 'progressive' moves (e.g. see Ryan, 1999: 11; Rose, 2000: 334).

Whilst acknowledging the diversity within the literature, which in truth does much more than merely argue that criminal justice policy has become more punitive, the idea of increasing punitiveness is the aspect of the literature which has proven most influential, and which has gained acceptance as a key issue of concern for contemporary criminology. However, it has been suggested that different authors may be subsuming related but conceptually distinct shifts in penal policy under the word 'punitive', and associated 'codewords' (Grimshaw, 2004: 2), and that there has been a tendency to treat the concept of punitiveness as relatively unproblematic, to the extent that the descriptor 'punitive' has become accepted shorthand for any 'increase in the range and intensity of formal interventions' (Matthews, 2005: 179). This overuse of the word, Matthews suggests, has led to it being reified as a social fact (Ibid: 192), serving to obscure 'the diverse, uneven and contradictory nature of penal processes' (Ibid: 179).

The descriptor 'punitive' can be used to denote both the *effects* of the actions described and the *intentions*<sup>13</sup>. What is more, one may also distinguish between the

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<sup>13</sup> 'Punitive' is defined in the dictionary as meaning 'inflicting or intended to inflict punishment', and 'to punish' as 'to cause (an offender) to suffer for his or her offence' (Oxford Paperback Dictionary, 1994).

retributive imposition of suffering<sup>14</sup>, intended to produce no result other than the administration of 'deserved' suffering, and the use of suffering, or the threat of suffering, to produce a deterrent effect. Walker and Hough (1988: 6) have argued that we ought to observe the distinction between the 'colloquial' use of the word 'punitive', as causing suffering, and the way in which penologists use it, which is to mean 'endorsing retributive aims'. If we adopt this quite specific understanding of what it means to be 'punitive' then we might be less willing to accept the much broader and vaguer sense in which the notion of punitiveness has been invoked in recent years as we note that the increasingly severe outcomes faced by offenders have not always emerged from more punitive *intentions* towards them.

One alternative explanation which has been offered for the increase in the number of offenders either being held in prison, or subjected to high levels of intervention in and surveillance of their lives is that there is 'a new strategic formulation in the penal field' (Feeley and Simon, 1992: 449). This 'strategic formulation' takes the form of an 'actuarial criminology', applying risk management techniques to criminal justice practice in order to control and manage offenders rather than to punish them. According to this view, the fact that offenders are subject to more intrusive and restrictive controls, which may be experienced as 'punitive', is merely an unintended consequence of a crime control strategy which has 'neither a punitive nor a rehabilitative logic' (O'Malley, 1999: 177)<sup>15</sup>.

Another explanation, proposed by Bauman (2000), is that rising prison populations have been brought about both by the intention to remove offenders to a place where they cannot harm the public (to manage the risk they pose) *and* by the intention to inflict suffering on offenders. Bauman sees these two rationales as closely entwined, and as representing the state's desire to be *seen* to 'do

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<sup>14</sup> I use the idea of 'suffering' here to describe the experience of the offender. At the core of the idea of punitiveness is the notion of suffering.

<sup>15</sup> O'Malley suggests that this approach is underpinned by a number of somewhat controversial claims, including that rehabilitation has been an 'expensive failure' (Cohen, 1985 cited by O'Malley, 1999: 178), that law-abiding citizens deserve protection from offenders (*Ibid*: 178), and, perhaps most controversially, that it is cheaper than leaving prisoners free and offers the public greater protection (Zedlewski, 1985 cited by O'Malley, 1999: 178).



something' which will ensure people's safety (*Ibid*: 214). The increasing use of prison is thus, according to Bauman, deliberately *and punitively* exclusionary, offering to physically deliver on the promise to keep people safe (by removing threatening elements into a place of 'immobilization') and, *simultaneously*, to punish those threatening individuals through the very act of immobilizing them (*Ibid*: 217).

For Bauman, then, it is neither helpful nor necessary to disentangle incapacitative from punitive intentions: the two are so closely associated in the public mind, and in the minds of politicians who wish to be seen to meet public demands, that any attempt to separate them would be merely academic. Similarly, Nils Christie observed in 1981 that Scandinavian research had suggested that attempts to impose indeterminate 'treatment', rather than determinate punishment, on criminals were 'obviously experienced as considerably more painful than old-fashioned pain' (Christie, 1981: 25). This again highlights the difficulty posed by insisting that punitiveness is a matter of intent, rather than outcome.

It seems, then, as several writers have remarked, that the idea of increasing 'punitiveness' or a 'punitive turn' may apply an inappropriately broad brush to the task of painting the outline of recent policy and practice. Certainly the terminology appears rather imprecise in light of more nuanced accounts of change, some of which I have referred to above. Nonetheless, as already noted above, the idea that there has been a 'punitive turn' does appear to have captured the attention of criminologists and other observers of criminal justice policy, and to have been set down as a way-marker for navigating the criminal justice landscape.

### ***2.2.2 Marginalisation or multiplication of experts?***

Criminologists concerned about the increasingly punitive treatment of offenders have tended to ground their resistance to this trend in the claimed ineffectiveness of increasing the severity of sanctions (e.g. see Garland, 1996; Hallsworth, 2000; Rose, 2000; Roberts *et al*, 2003; Young, 2003). The claim that policy has shifted in a punitive (and therefore implicitly ineffective) direction usually rests upon a linked claim that criminologists, as the 'experts' on what is effective in dealing with crime,

have suffered a loss of status in the criminal justice policymaking process (e.g. see Brereton, 1996; Garland, 1996, 2000, 2001; Roberts *et al*, 2003; Young and Matthews, 2003; Young, 2003; Grimshaw, 2004; Tonry, 2004; Loader, 2006, 2010). The argument is that, despite the expansion in the criminological enterprise and the availability of rigorous research, 'key areas of crime and justice policy continue to be developed with little apparent reference to ... research' (Brereton, 1996: 83).

The so-called 'punitive turn' is thus described as 'irrational since it is inconsistent with the results of criminological research' (Roberts *et al*, 2003: 160) and 'driven much more by ideology, exaggerated fears, and political opportunism than by rational analysis of options and reasoned discussion' (Tonry, 1999b: 1789); whilst penal regimes including chain gangs, curfews and boot camps are said to have been instituted in Western criminal justice regimes in opposition to available evidence about their likely effectiveness (Hallsworth, 2000: 155). The perceived loss of status suffered by criminologists is said to be observable in a 'recurring gap between research-based policy advice and the political action which ensues' (Garland, 1996: 462) and '[g]overnment policies [which] fly directly in the face of research evidence, and would seem to almost wilfully ignore expert opinion' (Young, 2003: 36)<sup>16</sup>.

Commentators who bemoan the diminishing effectiveness of criminal justice policies often seem to presuppose the existence of instrumental objectives for

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<sup>16</sup> Before examining this line of argument more closely it is important to note that it is usually acknowledged within the literature that there never was a 'golden age' when evidence from scientifically rigorous criminological research formed the exclusive basis for criminal justice policy. In an often-cited article on this topic, Loader (2006) has argued that the attitude of 'liberal elitism' in penal policy-making (which he suggests existed in England from the post-world war two period up until the 1980s), was not rooted primarily in extensive in-depth social research. Rather policy was formulated by the 'platonian guardians', a small elite of 'politicians, senior administrators, penal reformers and academic criminologists wedded to the belief that government ought to respond to crime...in ways that, above all, seek to preserve "civilised values"' (Loader, 2006: 563). Liberal elitism was less about methodical research into the causes of crime, and more about fostering a body of 'informed opinions' (Ibid: 568).

Even during the era of 'liberal elitism' Ryan (1999: 15) argues that '[p]ractice often belied expert theory' (Ryan, 1999: 15). He recounts how public opinion played an important role in inhibiting reform in relation to the death penalty, suggesting that governments and civil servants were 'wary' of instituting reform which 'ran directly contrary to public opinion' (Ibid: 3). As Matthews (2005) has noted, somewhat sardonically, '[t]ry as they might, elites do not always have things their own way. Now and again the public is determined to intrude' (Matthews, 2005: 3).

penal policy (including crime reduction and offender rehabilitation), and widespread agreement that these objectives are appropriate. According to this instrumentalist understanding of penal policy, criminologists provide knowledge about how policy can best achieve its goals. If the pursuit of instrumental goals, including crime reduction and offender rehabilitation, is the purpose of penal policy then failing to consult the criminological evidence-base may be, as Roberts *et al* (2003) have observed 'irrational'.

A further concern expressed within the literature is that, in some cases, policymakers have either redefined effectiveness, or (worse) have deemphasized effectiveness altogether (Hallsworth, 2000: 155). According to this view, shifts in criminal justice policy may not be merely a matter of criminological evidence being overlooked or ignored, rather they may reflect shifts in policymaker understandings of the nature of 'success' in the criminal justice arena. For example, the intention simultaneously to punish and incapacitate offenders, through incarceration, identified by Bauman (2000: 212) has, he suggests, produced a tendency for the prison (at least in the United States context) to become a 'factory of exclusion' in a 'post-correction' age (Bauman, 2000: 212). This shift has been described by Rose (2000: 334) as an increase in 'confinement without the aspiration of reformation'. However, Tonry and Green (2003) point out that a lack of instrumental (i.e. crime reducing) impact achieved by certain initiatives may not devalue those initiatives if policymakers also see them as important for achieving 'latent goals', such as symbolising to the public that offenders are being punished, or expressing societal abhorrence for certain acts.

Garland (1996: 458) suggests that criminal justice agencies have attempted to manage public expectations by reducing them: 'redefining their aims, and seeking to change the criteria by which failure and success are judged', agencies now seek to be judged against internal referents, rather than against a much broader notion of social purpose. And Feeley and Simon (1992) note that '[b]y emphasizing correctional programs in terms of aggregate control and system management rather than individual success and failure, the new penology lowers one's expectations about the criminal sanction' (Feeley and Simon, 1992: 455). Such

changes might be seen as directly undermining the need for certain kinds of 'expert' criminological knowledge, however they can also be seen as premised upon, and making space, for certain other forms of expertise.

It is worth recalling that data collated by 'experts' informed the claim that 'nothing works', as 'experts' practising scientific monitoring of correctional and treatment approaches to dealing with criminals demonstrated an apparent lack of success in the war on crime (Christie, 1981: 25; Ryan, 1999: 7). Although Martinson's famous 1974 analysis of the impact of correctionalism is far from uncontroversial (e.g. see Matthews, 2009: 357), Garland (1996: 447) has noted that:

'Official reports from the 1960s onwards began to register doubts about the efficacy of criminal justice institutions. ... limitations ... were increasingly exposed - not least by the Home Office's own criminological research - until the whole penal welfare strategy began to unravel in the face of the scientific monitoring which it had done so much to promote' (Garland, 1996: 447)

Additionally, it was advances in statistical methods and risk analysis by another kind of 'expert' which enabled the shift towards the 'New Penology' (Feeley and Simon, 1992: 466), and new ideas about how best to manage public services led to increasing opportunities in the public management field for 'experts' from accounting and management backgrounds (Feeley and Simon, 1992: 455-6; Bottoms, 1995; Garland, 1996; Grimshaw, 2004: 5-6).

Furthermore, it is clear that there are examples of areas of work where criminologists *have* been instrumental in informing the development of responses to crime, for example those approaches which Garland (1996) has named 'adaptive'; the growth in community penalties as an alternative to custody (Bottoms, 1995: 34-6); the expansion of 'community policing' (O'Malley, 1999: 183) and the theory of 'Just Deserts' in sentencing (Bottoms, 1995: 19-21), to name just a few. Meanwhile, New Labour's crime policies were said to have been influenced by individuals holding academic credentials which, whatever one thinks about the content of their researches, could be seen to legitimate their claims to expertise (including Charles Murray, John DiIulio and James Q Wilson) (Young, 2003: 39).

More money was spent on crime reduction research in the 1990s than ever before (Garland and Sparks, 2000: 5), and Tonry and Green (2003: 495) have argued that at local and agency level researchers have been able to exert their influence and that the importance of their role has been recognised through government investment in research. Furthermore, whilst it might be tempting to conclude that this influence only extends to criminologists of a certain theoretical bent, it has also been suggested that several official reports published in the UK in recent times 'could have been drafted by 1980s radical or critical criminologists – and some have' (Matthews, 2005: 190).

Perhaps, then, as Melossi would have it, criminologists have not lost any power: their 'representations of the criminal' still have the power to orient 'the activities of the many social institutions that frame the question of "crime" and "punishment"' (Melossi, 2000: 314). Or, as Tonry and Green (2003: 507) suggest: 'the cumulative effects of numerous studies ... gradually influence emerging conventional wisdom and widely shared understandings, and as a result shape policy'. In other words criminologists may still have the power to shape how criminals are viewed and dealt with. Although criminologists are themselves, in Melossi's account, profoundly influenced by the prevailing economic fortunes of their society (Melossi, 2008: 7-8).

Perhaps the issue, then, is more about a shift in criminology's internal balance of power. Of the current moment, Matthews (2005) has argued:

'The suggestion that there has been a decline in professional experts shaping and implementing penal policy is mistaken. There may be changes in the composition of elites and those who formulate penal policy, but this role remains largely in the hands of professionals and experts ... What is clear is that within a continually expanding criminal justice system we have seen a proliferation of all kinds of experts ... These include not only the established experts such as psychologists, sex therapists, drugs counsellors and educationalists, but specialists who are preoccupied with much wider considerations related to different aspects of lifestyle ... *The fact that many of these experts wear jeans and trainers instead of suits and ties does not make them any less expert or any less influential.*' (Matthews, 2005: 189, *emphasis added*)

Ericson (2003: 32) has suggested that when criminological research is taken up and used by those operating in the practical policy sphere criminologists experience a 'loss of autonomy' which leads them to claim that their research is

unsuccessful at influencing policy. This view, he suggests, is pervasive in contemporary criminological research culture (particularly amongst those criminologists who started their careers during the era of the strong welfare state) and reflects not a complete loss of influence, but rather a shift of policymaker attention onto different forms of criminological knowledge, meaning that certain criminologists are losing ground in a competitive knowledge market place.

It appears, then, that it might be more accurate to refer not to the *marginalisation* of experts, but rather to a change in the types of experts who are influential: a 'multiplication of expertise' (Rose, 2000: 329) in an arena characterized by 'competing discourses' (Freiberg, 2001: 272). To argue then that 'experts' have been side-lined altogether is to ignore extant facts about the ideas which have shaped some recent policy developments, and to neglect the permanently contested nature of what counts as an 'expert'. The status of who is an 'expert' and what counts as 'expertise' is of course contingent and changing. Expert knowledge is not developed in a hermetically sealed realm, but is (as noted by Melossi, see above) responsive to the social, cultural and political environment within which it is developed. Whilst it might be true to argue that evidence derived from certain kinds of activities falling under the label 'criminology' has been de-emphasised by policymakers, it is far from being the case that 'experts', of any kind, no longer influence the policymaking process.

The concern which can be identified from the literature, then, is not that 'experts' *per se* are being excluded, but rather that some criminologists fear that the 'wrong kind' of experts are being included, often for the wrong kinds of reasons, and in the wrong kind of way. For example: Matthews has described risk analysis expertise as 'pseudo-scientific' and as masking 'a thinly veiled moralism and subjectivism, while providing an extremely limited contribution to the enhancement of public safety' (Matthews, 2005: 187); Young (2003: 41) has argued that the American criminological ideas imported to England by New Labour have noticeably been what he refers to as the 'contested' ideas of the right, rather than those of 'liberal criminology', and that they have been 'filtered through the lenses of policy advisers and speech-writers'; whilst Wacquant (2009) has argued that the diffusion of US-

style punitive penal policies around the globe has been achieved through the aggressive tactics of partisan Think Tanks with dubious scholarly credentials and questionable moral commitments. Meanwhile, the (implicitly 'bad') research of the International Crime and Victimization Survey is apparently 'greeted annually with dismay and a general gnashing of teeth by the worldwide criminological community' but is widely reported in the press despite generating results which are 'almost the exact opposite of reality' (Young, 2003: 36). The findings are then (mis)used by the media to suggest that Britain is a violent, out of control society (Young, 2003: 37).

However, it is clear that even though on many occasions respected researchers *are* being commissioned by government, suggesting that their knowledge is sought after and valued and that academics are able to influence policy, it seems that they are rarely (if ever) able to exert influence over the way in which their research is framed. As Tonry and Green (2003: 449) observe:

'the fundamental questions of policy – severity of penalties, choices between repressive and preventive crime and drug control policies, relative law enforcement emphases on street crime and white collar crime, and investment in social programmes aimed at the root causes of crime. On these big questions most elected officials, and probably most citizens, believe they know what needs to be known, and see little reason to defer to any asserted expert knowledge of criminologists.' (Tonry and Green, 2003: 499)

As frustrating as an apparent lack of influence might be for some criminologists they are not peculiar to criminal justice policymaking. The formation of policy is seen in most analyses as taking place against a backdrop of competing interests, values or ideologies, with research findings usually taking a secondary position in most theories of how policy is made (cf. Sebba, 2001: 34). For example, in the case of the relationship between research into victims' needs and the development of victim-oriented policy, Sebba (2001: 36) suggests that '[a]s compared with the role of ideologies and interest-groups, the influence of empirical research upon policy development in this area was clearly marginal'.

Tonry and Green (2003: 486) are blunt: 'Few people outside elementary school imagine that research findings translate directly into policy'. They go on to argue that 'influence is often indirect and partial' (*Ibid*: 489) but that the findings of

'knowledge utilization research' suggest that social scientists in general, and criminologists in particular, may have 'more influence than they realize' (*Ibid*: 502). Drawing on the work of Weiss (1986), they suggest that drastic policy change is most likely to occur in a 'window of opportunity' (Tonry and Green, 2003: 505) created by 'exceptional, high-profile cases' and in the absence of 'boundedness' (that is to say significant organizational, political and cultural limits which restrict decision-makers' room to manoeuvre): 'When windows of opportunity are circumscribed by boundedness in a particular place at a given time, policy prescriptions that fail to take account of that – those that attempt to push social learning beyond its boundaries – will not be taken seriously' (Tonry and Green, 2003: 506).

However, despite the varied notes of dissension to the argument that 'expert' influence on the policymaking process has diminished and that this is to the detriment of the policy enacted, the notion of criminological exclusion from policymaking has joined the idea of the 'punitive turn' as a defining feature of the challenging terrain of the contemporary criminal justice landscape. On the flip side of this sense that experts are having less influence on policy is the belief that ordinary members of the public are having more influence.

### ***2.2.3 'Penal populism' or 'up-grading...the public voice'<sup>17</sup>?***

A frequently cited explanation for the alleged shift in policymaker attention away from 'experts' and research evidence about 'what works', is the increasing attention which is being paid to the perceived desires, expectations and opinions of ordinary members of the public (Garland, 1996, 2000, 2001; Roberts *et al*, 2003; Young and Matthews, 2003; Young, 2003; Grimshaw, 2004; Tonry, 2004; Loader, 2006, 2010). This trend is said to reflect an increase in the extent to which criminal justice has become an arena for political conflict (Downes and Morgan, 1997; Roberts *et al*, 2003; Young, 2003).

In England and Wales, it is generally recognised that a more heated political debate around issues of law and order has emerged over the last four decades. This

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<sup>17</sup> Blumler and Gurevitch, 1996: 129 cited in Ryan, 2003: 15



emergence has been traced through the content of election manifestos and campaigning materials since the Second World War (Downes and Morgan, 1997), analysis of which reveals that the issue of criminal justice did not emerge as an arena of political contest until the 1960s, and only really came to the fore at the 1979 general election<sup>18</sup>. Political competition appeared to be further intensified after 1993, the year which saw both the infamous murder of toddler Jamie Bulger by two ten year old boys, and Michael Howard's assertion that 'prison works' (Downes and Morgan, 1997: 118; Newburn and Reiner, 2007).

Young and Matthews (2003) suggest that the heightened level of political tension around crime and criminal justice issues in the New Labour era has influenced a cohort of politicians with 'a social-democratic impulse heavily patinated with caution, hesitation and conservatism [caused by] the government's pursuit of the central ground of voters' (2003: 22). A leaked memo from Tony Blair in 2000 revealed his concern that his government still needed to be perceived as 'tough' on crime, in order to maintain 'public confidence in the criminal justice system' (Roberts *et al*, 2003: 52-3).

The evidence supporting the claim that criminal justice has increasingly become a key political battleground, and that this development has accelerated since the 1980s, does appear to be sound and is widely accepted. As to why this has happened there does appear to be a consensus that the process was precipitated by a combination of social and political conditions and the political strategising of both a Labour party which came to perceive crime policy as an area in which it could not afford to be seen as weak, and a Conservative party which did not wish to lose its own mantle as *the* party of law and order. Additionally, behind the party political rhetoric on crime and criminal justice there have been changes in the way

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<sup>18</sup> The relatively recent emergence of a heated political contest around crime is well-illustrated by the suggestion made by Paul Rock in 1979, that, at that time, crime was not seen by Home Secretaries and Prime Ministers as an important part of their role, within 'a political environment which ascribes little importance to criminal law-making' (Rock, 1979: 192). Rock's pronouncement that 'British elections are not concerned with crime control problems' (Ibid: 199) may sound absurd now, but it offers significant contemporaneous support to the periodisation of change identified in the retrospective analysis of party manifestos carried out by Downes and Morgan (1997).

in which the delivery of public services is organized and assessed which may have contributed towards an increase in the extent to which policy is influenced by the views (variously captured and articulated) of ordinary members of the public.

Claims that the role of the public in shaping criminal justice policy in many Western jurisdictions has expanded over the last 10 to 15 years are widespread in the literature (e.g. see *inter alia* Bauman, 2000; Roberts *et al*, 2003; Young, 2003; Hutton, 2005; Green, 2006; Pratt, 2007; Newburn and Reiner, 2007; Loader, 2010). However, the nature and significance of this expanded role are conceptualised quite differently by different authors. Politicians have been described as having a range of quite different motives and intentions, including, *inter alia*, exploiting, responding to, engaging with or reflecting the views of the public in their policy pronouncements.

Perhaps the first point to deal with is whether in fact the growing role played by the public is something new to criminal justice policy, or whether the change has been exaggerated. Ryan (2003) suggests that public opinion played a key part in prolonging the struggle over abolition of the death penalty: '[t]his halting process of reform was a direct consequence of the wariness of successive governments (and their civil servants) to legislate for something that ran directly contrary to public opinion' (Ryan, 1999: 3), and that public views were also invoked in repeated attempts to reintroduce corporal punishment (*Ibid*: 4). However these examples do not exactly debunk the notion that the public now have greater influence over policymaking than previously, rather they temper any sense that the public previously had *no* influence whatsoever.

The most common claim in the literature is that the 'intrusion' (Matthews, 2005: 3) by the public has become markedly more pronounced in recent years. The question is, as I have noted above, what form does that intrusion take? For some writers the increasing role played by the public is indicative of a growing sensitivity to public opinion by politicians and sentencers, something which is not necessarily a negative development. For example, Downes and Morgan (1997) have highlighted the positive aspects of the public outcry generated by scandalous incidents, citing the 1982 exposure of how Thames Valley Police dealt with

allegations of rape, and the pressure for change that this outcry generated (1997: 126), and Matthews (2005) has suggested that public opinion played a critical role in 'confronting injustice' (2005: 189)<sup>19</sup>.

Meanwhile Ryan (1999) has argued that, far from being cynically populist, the Labour government from 1997 engaged in a genuine and necessary attempt to reengage the public as 'active citizens', with the objective of 'mobilising consent' (Ryan, 1999: 17). Ryan (2003) makes a distinction between the New Labour approach of 'up-grading...the public voice' (Blumler and Gurevitch, 1996: 129 cited in Ryan, 2003: 133)<sup>20</sup> and the kind of populism which, he suggests, was adopted by the Conservative party in their 'cynical manipulation' of the public during an 'authoritarian moment' (Ryan, 2003: 8; cf. Hall *et al*, 1978; Hall, 1980). The difference between the Conservatives and New Labour on this matter is, he suggests, a matter of 'process' (Ryan, 1999: 11)<sup>21</sup>.

However, despite Ryan's optimism about the Labour government's intentions, positive interpretations of the increasing prominence of the public in the criminal justice arena appear outgunned by more sceptical interpretations. According to the sceptics the public 'intrusion' into issues of crime and criminal justice has inspired (or been inspired by<sup>22</sup>) punitive political rhetoric (Newburn and Reiner, 2007:

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<sup>19</sup> He gives the examples of the Stephen Lawrence and Rodney King cases, which exposed racial discrimination by police forces in the UK and the US respectively.

<sup>20</sup> Ryan concedes that during the 1970s an opportunity did arise to produce a progressive solution to the breakdown of the post-war consensus on penal policy but the opportunity was missed due to the rapid emergence of 'authoritarian populism' (Hall *et al*, 1978 cited by Ryan, 1999), which accompanied the dismantling of the social democratic consensus and the arrival of the political trend known as 'New Right': 'penal strategy was manipulated under the broad rubric of "law and order" politics to secure wider political objectives during a time of economic crisis' (Ryan, 1999: 7). Notably in Ryan's version of events at this point in time it is not a power-to-the-people moment, but a manipulation from above, stretching from the mid-1970s to the late 1980s (Ryan, 1999: 8).

<sup>21</sup> It is not entirely clear on what basis Ryan claims to be able to distinguish the intentions underpinning Labour's responsiveness, from those motivating the Conservative's 'manipulation'. He appears to assume that populism is a kind of opportunistic strategising which politicians resort to only under certain adverse political conditions. Thus, he argues, New Labour's populism, at least in the earlier stages of its power, was not 'simply opportunistic' because Labour did not need to be opportunistic - it had the largest electoral majority of the century (Ryan, 1999: 14).

<sup>22</sup> Exploring explanations for the US's exceptionally high rate of imprisonment Tonry (1999a: 425) has suggested that one plausible explanation is that 'it is not public opinion per se that leads to

334) and leads to expert-produced evidence being disregarded by policymakers (Garland, 1996, 2000, 2001; Hallsworth, 2000; Young, 2003). It is also suggested that the kinds of harsh and exclusionary penal measures and rhetoric subsequently adopted fail to comply with democratic ideals (Lacey, 2008). The key objection to increasing public influence, however, appears to be that it interferes with progress towards utilitarian policy goals, encouraging the construction of new 'irrational' penal regimes in opposition to available evidence (cf. Hallsworth, 2000: 155; Roberts *et al*, 2003: 160).

For those who are the most critical of the increasing role played by the public, what the politicians have been doing is not *responding* to the views of the public, rather they have been *exploiting* them. One of the most widely cited accounts of the factors shaping penal policy is the 1995 paper by Anthony Bottoms, in which he coined the term 'populist punitiveness':

'populist punitiveness' occurs when politicians 'believe that the adoption of a "populist punitive" stance will satisfy a particular electoral constituency ... the term "populist punitiveness" is intended to convey the notion of politicians tapping into, and using for their own purposes, what they believe to be the public's generally punitive stance' (Bottoms, 1995: 39-40)

Roberts *et al* (2003) adapted Bottoms' term and described what they call 'penal populism', a political approach which, unconcerned with the wisdom of slavishly following public preferences, 'involves the exploitation of misinformed opinion in the pursuit of electoral advantage' (Roberts *et al*, 2003: 7). Roberts *et al* (2003) suggest that the emergence of full-blown penal populism in England and Wales can be traced back to Michael Howard's term as Home Secretary, specifically his assertion that 'Prison Works'. It is suggested that this was something of a turning point as Howard, and the conservative party, 'successfully<sup>23</sup> mined a broad seam of public opinion that supported harsher sentencing' (*Ibid*: 46) and '[f]or the

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harsher policies, but politicians' proposals and posturing that lead to changes in public opinion', suggesting that politicians have been leaders rather than followers of public opinion.

<sup>23</sup> The use of the word 'successfully' here seems somewhat misleading. Howard and the conservatives certainly *attempted* to use tough rhetoric on criminal justice to win political advantage, however they still lost the 1997 election by a landslide.

remainder of the Conservative administration, public opinion was as central in the formation of penal policy as it had previously been marginal' (*Ibid*: 47).

This populism, it is argued, continued under New Labour after 1997. Interestingly, they suggest that evidence of New Labour's populism can be seen in their concern with 'public confidence in the criminal justice system' and being seen to be 'tough' on crime (Roberts *et al*, 2003: 52-3). Similarly, Downes and Morgan (1997) suggested that Labour's talking 'tough' on law and order meant that by 1997 their party attracted greater 'public confidence' on this issue than the conservatives (1997: 129). Populism is here specifically linked to attempting to gain the 'confidence' of the public on the issue of law and order, with 'confidence' indicated through opinion poll ratings. It is claimed that Labour boosted their opinion poll ratings on the issue of crime during the 1990s by emphasising their 'tough' criminal justice credentials.

As already noted above, what gets said by politicians can often differ somewhat from the policy which is eventually enacted. However, the literature explores the importance of political rhetoric as well as policy. In a robust assessment of the habits of politicians, Garland (1996) suggests that '[s]ometimes the punitive pronouncements of government ministers are barely considered attempts to express popular feelings of rage and frustration in the wake of particularly disturbing crimes' (Garland, 1996: 460) and that punitive 'law and order' policy announcements 'frequently involve a knowing and cynical manipulation of the symbols of state power and of the emotions of fear and insecurity which give these symbols their potency' (*Ibid*: 460). Pratt (2007: 15-18) argues that populist politicians explicitly place their trust in the public rather than 'experts', and publicly denigrate expert-produced knowledge forms such as statistics where they appear to conflict with commonsense, or 'what we all know'.

There is, then, a clear sense within the literature that shifts in the political rhetoric herald 'a new political consensus under which governments seek to give voice and effect to, rather than temper, the impassioned demands of citizens' (Loader, 2010: 1). Furthermore, the rhetoric may also reflect the dominant ideas about the necessary political action; for example, Bauman suggested that government had

presumed that there was a growing need to discipline certain segments of the population and that this view was shared by public opinion (Bauman, 2000: 212-213), to such an extent that 'the sole publicly displayed concern of [political parties] is to convince the electorate that it will be "tough on crime" and more determined and merciless in pursuing the imprisonment of criminals than its political adversaries have been or are likely to be' (Bauman, 2000: 213).

On first reading, the literature can leave one with the impression that 'political surrender to a punitively inclined public has become commonplace' (Hallsworth, 2000: 150). However upon closer examination it is clear that the processes and motivations implied by the notion of populism require careful delineation. Green (2008: 20-21) has suggested that a distinction should be made between 'populist punitiveness' and 'penal populism' on the basis that Bottoms' populist punitiveness is 'less accusatory' (*Ibid*: 21), than penal populism's implication of 'wilful cynicism' (*Ibid*: 21) on the part of politicians. Green's key objection to these two terms being treated as synonymous is that the severity of the implied criticism of politicians' conduct differs in each account, with severity being a function of the degree of deliberately self-interested ('wilful') manipulation of the public ascribed to politicians when they adopt populist punitive measures.

The account of 'populist punitiveness' outlined by Bottoms, Green suggests, permits politicians to be guilty of mere naivety, whilst penal populism suggests more self-interested intent on the part of elected officials. It is not initially clear that Bottoms' 'populist punitiveness' is, as Green suggests, 'less accusatory' than Roberts *et al*'s 'penal populism': Bottoms' suggestion that politicians are placing 'their own purposes' above some more selfless notion of the public good, would appear to be pretty accusatory. However, the key difference for Green is that Bottoms imputes good faith to the politicians who seek to respond to '*what they believe* to be the public's generally punitive stance' (Bottoms, 1995: 40 quoted by Green, 2008: 20), whereas Roberts *et al* (2003) accuse politicians of deliberately, and apparently without regret, exploiting public 'concern and lack of knowledge' (Roberts *et al*, 2003: 65 quoted by Green, 2008: 20).

A problem with Green's observation of the differences between 'populist punitiveness' and 'penal populism' is that, as I have argued above with reference to Ryan's claims, whilst it would certainly be desirable to be able to distinguish between politicians motivated purely by self-interest and those motivated by a naïve desire to please the public, it is unclear how it is suggested that we should determine politicians' 'true' intent. Furthermore, one might argue (and both Green and Ryan acknowledge this) that we should be able to expect politicians *not* to be naïve, and to be ever vigilant to the possible long-term outcomes of the decisions that they make. In line with this way of thinking ill-considered populism, even naively executed, would be seen to fall below the standards of competence and conduct that (it is implied) politicians should meet. Whatever its merits in terms of conceptual clarity, Green's distinction is not commonly made within the literature, where authors tend to use 'populist punitiveness' and 'penal populism' interchangeably, and liberally.

It is conceivable though that, because of its intuitive appeal for criminologists, the currency of penal populism as an explanation of recent developments may have been over-inflated. Indeed, Matthews (2005) has suggested that the penal populism thesis had come to exercise an unhealthy level of dominance over criminology, to the detriment of more accurate and nuanced explanations of criminal justice and penal policy development. And perhaps this is the biggest problem with the idea of 'penal populism': as an explanation of the state of the contemporary criminal justice landscape it raises as many questions as it provides answers. Whilst it might initially appear to be a straightforward matter of politicians' actions being led more by public opinion than by the views of 'experts' there are many areas of ambiguity.

In a slightly different context, Garland (2001) has noted that 'criminological ideas ... are adopted and ... succeed because they characterize problems and identify solutions in ways that fit with the dominant culture, and the power structure upon which it rests' (Garland, 2001: 26). One cannot ignore the fact that the idea of penal populism has instant intuitive appeal, not only for criminologists who may fear that their influence on policymakers is waning, and that their expertise has been

devalued, but also for other interest groups concerned about changes to the criminal justice landscape (Matthews, 2005: 196). The term 'populism' has an ominous ring for those who consider themselves 'experts' in any field, for it indicates an approach to political decision-making which does not privilege expertise. To accuse politicians of penal populism is, then, also to accuse them of failing to value the type of expertise which is the criminologist's life work; it is also a way of casting politicians' approach to policy formulation in a negative light.

Some accounts of the contemporary criminal justice landscape offer more subtle and carefully drawn accounts of the current situation. Within these accounts populism is just one periodically occurring facet of the relationship between the public, policymakers and experts. In other words populism is clearly delineated as an episodic phenomenon, rather than a constant state. So, for example, Young (2003) argues that, '*at times*' in criminal justice policymaking, 'there is a simple populism at work – a notion of giving the public what they want' (Young, 2003: 36). Ryan (1999: 10), meanwhile, argues that there are dangers in seeing all populist responses as serving 'the same generalised purpose at different historical moments', a tendency which he suggests is present in Garland's work. Although Ryan does not deny that work of this type has generated useful insights, it may, he suggests, also serve to disguise the fact that each episode of populism is different and may serve a very different purpose. Populist responses thus need to be analysed separately to avoid the risk that 'the discourse in which we have become accustomed to decode them is possibly obscuring a more complex agenda...to see them only as opportunistic, manipulative and cynical is arguably questionable, or at best tells us only half of the story' (Ryan, 1999: 10). In a similar vein, Matthews (2005: 189) suggests that the role of populism should not be overstated as the process of policy formation is complex and '[t]he general demands that members of the public may express from time to time are filtered, shaped and moderated before they are translated into penal policy' (Matthews, 2005: 189).

Tonry (1999a: 432-433) prefers Musto's (1987) notion of policies being enacted in cycles which are responsive to material conditions, but on a time-lagged basis, which makes them appear to be out of step with societal needs. In this way harsh



anti-drug laws are not enacted until *after* a change in public sensibilities has already started to noticeably reduce drug use, but these changed sensibilities also mean that there is less resistance towards a harsh turn in sentencing for drug-related offences. So: 'in periods just after crime rates have peaked and begun falling, many more people come to believe that harsh measures are called for and will be effective, even if a few years earlier, their beliefs were very different' (Tonry, 1999a: 433). Furthermore, if new harsher laws are enacted just as crime rates start to fall then it can seem to people that the tougher approach 'worked' (something which Tonry suggests applied in relation to New York's zero tolerance policing, California's three-strikes rule, and truth-in-sentencing legislation across many states).

On the other hand, Roberts *et al* (2003) portray populism as the default position of many politicians, a position which determines how they respond to specific events so that, when a high-profile tragedy occurs, 'populist politicians tend to exploit these incidents by advocating ever harsher responses to crime and raising the possibility that the tragedy could have been prevented, had the government adopted such measures in the first place' (2003: 59-60). They argue that populist penal policies result from one or more of: 'an excessive concern with the attractiveness of policies to the electorate'; 'an intentional or negligent disregard for evidence of the effects of various criminal justice policies'; 'a tendency to make simplistic assumptions about the nature of public opinion, based upon inappropriate methods' (Roberts *et al*, 2003: 8). Crucial to the oft-cited arguments advanced by Roberts *et al* are the findings from empirical studies which suggest that most ordinary members of the public hold inaccurate views on the reality of crime and criminal justice practice, and that this reflects the paucity of information available to them through the media.

#### **2.2.4 The 'misinformed' public and the 'distorting' media**

Research demonstrating that the public generally do not have an 'accurate' notion of either the volume and distribution of crime, or the nature of the state response, has been a staple of the criminological knowledge base since at least the 1980s. Research carried out in the 1960s first assembled empirical data on this issue in

England and Wales (Banks, Maloney and Willock, 1975) and during the 1980s a growing body of research established the idea of the 'misinformed public' as an extant social fact (albeit one which many criminal justice professionals and criminologists had long suspected). Data collected and analysed during this decade was said to have revealed that 'most people overestimate the leniency of the courts' (Hough and Moxon, 1985: 164); that the public had a 'distorted view of the sort of offender filling up our prisons' (Shaw, 1982: 13); and, in the Canadian context, that 'the Canadian public's view of crime in 1982 did not correspond with our best estimate of what crime looks like' (Doob and Roberts, 1984: 272).

More recently, Hough and Roberts (1998: 27) have suggested that 'public dissatisfaction [with the criminal justice system] stems from public ignorance of the system'; Chapman, Mirrlees-Black and Brawn (2002: 9) found that '[k]nowledge of crime trends and current sentencing practice is particularly poor, with only about one in ten people being reasonably well-informed in these areas'; and Roberts *et al* (2003: 23-4) have highlighted data from several countries, including England and Wales, showing that large proportions of the public overestimate the amount of crime and underestimate the severity of sentences passed. Accepting and confirming the idea that the public are ignorant of 'the facts' about crime and justice, Green (2006: 131) suggests that 'public preferences have acquired a level of influence and deference that many might find difficult to justify'. As these illustrative examples suggest, the idea that members of the general public often lack an accurate appreciation of the 'reality' of crime and justice as represented by 'experts' is, then, widely noted and accepted in the literature.

The effect that the media have on people's understanding of the scale and nature of the crime problem, and what should be done about it, has also been much discussed in the literature. It has been argued that crime reporting approaches crime from a very personalized perspective, focusing on the persona of the victim to the detriment of the provision of balanced information about the wider context within which crimes take place, including crime statistics (Pratt, 2007; Roberts *et al*, 2003, Roberts and Hough, 2002; Allen, 2004). It has also been noted that there has been a quantitative increase in the volume of crime stories in the media (Pratt,

2007: 69) and that this has been accompanied by a qualitative shift in the focus of such stories, with an increasing focus on violent and sexual crimes (Pratt, 2007: 69). As a result, the media are held responsible by many criminal justice professionals and commentators for, amongst other things, increasing the fear of crime, distorting people's perceptions of the prevalence of all types of crime (but particularly of violent and sexual crime), and damaging public understandings of sentencing by focusing disproportionately on atypical cases (Pratt, 2007; Roberts et al, 2003; Hough, 2003; Allen, 2004; Roberts and Hough, 2002).

Roberts *et al* (2003: 92) in particular portray the media as highly culpable in encouraging the pursuit of ineffective punitive policy by systematically distorting the reality of crime, playing on and feeding public emotions and promoting a simplistic criminal justice agenda. They refer to its 'dynamic and powerfully conditioning force' which frames 'not only reality to feed late modern anxieties but also tell[s] stories about how to think about the remedies to these anxieties and what political actors are doing or failing to do in "making things better"' (Roberts *et al*, 2003: 73). Green (2008: 217-2) has been similarly scathing, suggesting that the press 'routinely fail to present readers with sufficient contextual information even to begin to formulate informed views'. In this kind of media environment, Downes and Morgan (1997) suggest that politicians can be caught off-balance and 'utterly outpaced by events which explode in such a way that unusual responses are called for by "public opinion" - a phenomenon for which media attention is often taken to be the proxy' (1997: 121).

The media are viewed as culpable in two ways. Firstly, they are charged with failing to provide the public with objective, balanced and complete accounts of criminality (e.g. see Green, 2008; Roberts *et al*, 2003; Downes and Morgan, 1997; Young, 2003; Tonry, 1999). Secondly, it is suggested that they falsely represent themselves as the public's mouthpiece, thus distorting politicians' and policymakers' understandings of the direction of public opinion (see Downes and Morgan, 1997; Roberts *et al*, 2003; Green, 2008). The situation is summarised by Green (2008: 272) as one where 'the government routinely takes into account the convictions of an unrepresentative press that stands as an inaccurate barometer of

the public will and that has failed to provide a forum for the public to process fully the issues it raises in its name’.

Green’s objection to this situation is that it creates an environment which is hostile to the formulation of ‘informed opinion’ amongst members of the public which, in a society where opinion polls on political subjects are ubiquitous and influential, leads to ‘low quality public opinion’ being granted an inappropriate level of deference by politicians (Green, 2008: 270-286). Similarly, Young (2003) has argued that:

‘spokespeople for New Labour will turn to their focus groups and to opinion polls and argue that they merely do what the people want. But is it really surprising, given the direction of political leadership and the prevalent mass media coverage of crime, that public opinion is pushed in a pessimistic and vindictive direction?’ (Young, 2003: 41)

However, it has also been noted that determining just how the media portrayal is assimilated into the public’s points of view is a demanding task, especially when most people are at some point exposed to the same material (Skogan and Maxfield, 1981 cited by Ditton *et al*, 2004: 599). Nonetheless, there does appear to be general acceptance of the proposition that, as a rule, media coverage of crime and criminal justice is not conducive to informed and rational debate of the issues, and does not, on its own, enable the public to gain an accurate sense of how much crime is being committed, how prevalent different types of offences are, who is committing these offences, and what sanctions are imposed upon them.

However, others have proposed that public opinions and preferences on crime and justice have much more deep-seated sources of inspiration. Garland notes that the new law and order policies are reliant on ‘the pre-existence of certain wide-spread social routines and cultural sensibilities’ (Garland, 2000: 347), and that ‘[o]ne might say that we are developing an official criminology that fits our social and cultural configuration - one in which amorality, generalized insecurity and enforced exclusion are coming to prevail over the traditions of welfarism and social citizenship’ (Garland, 1996: 462). He describes the ‘crime complex’ which is characteristic of the culture of high crime societies: a ‘formation’ which exists within ‘attitudes, beliefs and assumptions’ about crime. A key attitude is that ‘the

criminal justice state is viewed as inadequate or ineffective' (*Ibid*: 367). These kinds of attitudes are not easily or quickly dislodged because they have a basis deep within our 'commonsense' in the ways in which we are accustomed to thinking and talking about crime, our 'widespread habits of thought, routines of action, and structures of feeling' (*Ibid*: 369). Such deep-rooted aspects of our being cannot, Garland suggests, be adequately understood as merely the product of punitive discourses peddled by opportunistic politicians or profit-oriented media.

Tonry (2001), meanwhile, suggested that public 'sensibilities' were the key to understanding oscillating penal fashions. He proposed that, although other explanations for the rise in US prison population (e.g. rising crime, a hardening of public attitudes, politicians' opportunistic use of crime issue) may have some plausibility, that 'a deeper explanation is required for why those forces operated so powerfully in our time and not in others' (Tonry, 2001: 168). Tonry suggested that unfair, cruel and repressive punishments are imposed 'because many or most people in an era come to share perceptions and beliefs that justify them, unmindful that their perceptions and beliefs may be wrong and that they themselves in a few years may see them to have been wrong' (Tonry, 2001: 169). This can happen despite the fact that most people at the times in question are capable of understanding principled and practical arguments about the rights and wrongs of different approaches.

Girling, Loader and Sparks (2000: 163) have suggested that there is a 'theoretical deficit' within the research dealing with public responses to crime. They suggest that this deficit 'arises from the way in which this literature views – or, perhaps one should say, disregards – "lay" responses to crime' (*Ibid*: 163). They argue that the literature has tended to view public responses as homogeneously punitive, has failed to consider the background conditions which might contribute to the articulation of demands for order, and has not closely examined the way in which criminal justice agencies themselves may contribute to 'cultural mentalities and sensibilities' (*Ibid*: 163-4).

### **2.2.5 Towards a public criminology**

So far this chapter has described how, in recent years, criminologists have expressed their concerns about four features of the criminal justice landscape: (i) the increasingly 'punitive' character of criminal justice policy, which has been widely interpreted as signalling (ii) policymakers' disregard of evidence produced by criminologists in favour of pursuing popularity amongst the wider public, who are seen as (iii) having a poor level of knowledge and understanding of the 'facts' of crime and justice, a shortcoming, which is seen as at least partially attributable to (iv) the impoverished media discourse on crime and justice.

Recognition of some or all of these four features of the criminal justice 'landscape' has encouraged some criminologists to reflect more explicitly upon the nature and achievements of their field, and to consider why their efforts often appear to have 'amounted to nothing more than spitting in the wind' (Austin, 2003: 557). But to understand the criminal justice landscape in these terms - that is to say as punitive, ineffective, irrational, populist, and be-devilled by public ignorance of the 'truth' about crime and justice born of an impoverished media discourse on the subject - is already to imply a particular sense of what criminology's public role should or could be. We might summarise this role as: (i) informing policy so that irrational, ineffective, punitive policies are not enacted; and (ii) educating the public so that policymakers are able to enact humane and evidence-based policy without fear of public opprobrium. In other words the seeds of the call for 'public criminology' were already sown in the way in which some criminologists conceptualised, interpreted and described the criminal justice landscape over the last 20 or so years.

In fact, all four of the key features of the 'landscape' identified above have featured in arguments about the need for a 'public criminology'. For example: Carrabine, Lee and South (2000) preface their call for a 'public criminology' with the argument that increasingly punitive criminal justice policies should be resisted; Currie (2007), Chancer and McLaughlin (2007) and Feilzer (2009) have all advocated 'public criminology' as a response to the marginalization of criminologists from the criminal justice policymaking process; Carrabine *et al*

(2000), Feilzer (2009) and Uggen and Inderbitzen (2010) have proposed ‘public criminology’ as a solution to inadequate levels of public knowledge about the realities of crime and justice; and Feilzer (2009) and Groombridge (2007) have linked ‘public criminology’ to the improvement of media discourse on crime and justice. In the next part of this chapter I will explore this literature in more depth.

### **2.3 ‘Scholarship versus nonsense’? Recent reflections on ‘public criminology’**

#### **2.3.1 *An American gimmick?***

As outlined above, in recent years, criminologists have become more concerned about their public role for a number of reasons. Research has repeatedly claimed to have revealed that the public are ignorant of basic facts about crime and justice, and that extant public and media discourses of crime focus on the most serious crimes and encourage punitive attitudes towards offenders. Furthermore, trends in criminal justice and penal policy have caused consternation and have been seen by some as indicating that criminologists’ work is not valued by policymakers, who are much more interested in the opinions of the apparently ignorant public. Meanwhile, social scientists generally seem to have been becoming more conscious of, and concerned about, the public reception and political influence of their work<sup>24</sup>.

In light of these developments it is, perhaps, unsurprising that a small criminological sub-field has emerged, under the banner of ‘public criminology’, to discuss the issue of criminology’s public role, and its relationship to the public sphere. Michael Burawoy’s (2005) high profile exposition on ‘public sociology’<sup>25</sup>

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<sup>24</sup> Loader and Sparks (2011) bring a brief discussion of the public understanding of science (PUS) literature to their discussion of public sociology and public criminology. They use this discussion to suggest that the literature on public sociology is ‘rather thin’ (Loader and Sparks, 2011: 56). Their brief excursion into the more established PUS literature is a welcome attempt to bring a sense of perspective to what can sometimes seem a rather insular debate. The focus of this chapter is on recent discussions of *criminology’s* public role, and to this end I have not included a review of the PUS literature here. However, it is clear that this literature has relevance to some of the wider themes of this thesis, and as such I refer to it again in my conclusion.

<sup>25</sup> In 2005, the then President of the American Sociological Association Michael Burawoy proposed a fourfold division of sociological labour. This entailed the established traditions in professional,

inspired a flurry of interest in this idea in the USA, and some of the advocates for 'public criminology' whose work is discussed below are based on the other side of the Atlantic (see Currie, 2007; Uggen and Inderbitzen, 2010). However, the term 'public criminology' seems to have first been used in an English publication which predated Burawoy's address (Carrabine *et al*, 2000), whilst Burawoy's framework, along with aspects of Carrabine *et al* (2000), was used by Cardiff-based criminologist Gordon Hughes (2007) in a chapter entitled 'Futures of Criminology: Going Public?'. These domestic discussions of 'public criminology', along with longstanding concerns amongst English criminologists about punitive trends in criminal justice policy and the apparently impoverished state of public knowledge about crime and criminal justice, indicate that the body of work on public criminology is more than just an American peculiarity<sup>26</sup>.

Nonetheless, the very existence of the idea of 'public criminology' as an extant (if ambiguous) criminological term in this society (England and Wales), at this time, invites investigation. A superficial reading of the 'public criminology' literature

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critical and policy sociology making room for a fourth sociological *modus operandi*: 'public sociology'. Burawoy's typology of sociological work has stimulated fierce debate amongst sociologists and he has been accused, *inter alia* of maintaining the status quo of 'intellectual insularity' and internal disciplinary hierarchies by making 'public sociology' a mere compartment within the larger discipline, thus cementing its 'second class status' (Hays, 2007: 80); and of basing his argument on the inadequate 'straw-man' of a 'hermetically-sealed' sociology bent only on the pursuit of knowledge for knowledge's sake (Smith-Lovin, 2007).

<sup>26</sup> In his incisive review of Loader and Sparks's (2010) recent book *Public Criminology?*, Loïc Wacquant (2011: 441) questions why Loader and Sparks even bring up the matter of 'public criminology'. He suggests that debates in social science around the "public" tag have tended to be an American 'sideshow' and a 'hindrance' to understanding the relationship between criminological knowledge and criminal justice policymaking in the European context. He draws the rather accusatory conclusion that the reason for using the term is likely to be commercial as the recent tendency towards outbreaks of 'public-itis' have made 'public' into a buzzword almost guaranteed to seduce canny academic publishers. We cannot know the accuracy or otherwise of Wacquant's uncharitable 'hunch' about Loader and Sparks's choice of book title (indeed, in a response to Wacquant, Loader and Sparks (2011) diplomatically refuse to be drawn into a refutation), however we can dispute Wacquant's claim that the use of the 'public' tag is a predominantly American phenomenon emerging only since Burawoy's infamous ASA address. It is true, as has been noted by Christie (2011) and Walters (2011) that these debates do appear to be more relevant to the situation of criminology in some societies than others. For example, Christie (2011) notes that in his small society (Norway), whether or not criminologists and other social scientists would participate in public life was not a choice but a necessity and thus to talk of a separate notion of 'public criminology' is to make 'artificial what was experienced as natural' (Christie, 2011: 707). However, the context in England and Wales, as described above, is such that discussion of criminology's public role appears, to many, a very welcome intervention, rather than an American imposition.



suggests that its proponents anticipate (or hope) that through its practise two linked outcomes will emerge: (i) a change in the way that the public thinks and talks about crime and justice, which is often seen as a necessary precursor to (ii) a change in the direction and nature of criminal justice policy. Communicating criminological knowledge (including recommendations for policy) widely, clearly and effectively, and 'engaging' directly with a range of publics, are generally regarded as key tasks in achieving these objectives.

This very brief précis of objectives and tasks makes the idea of 'public criminology' sound profoundly unremarkable and uncontroversial: a benign and well-intentioned attempt to propose various solutions to the challenges which criminologists perceive to be facing the criminological endeavour. However, it is *plausible* that use of the term 'public criminology' is also, at least partly, a strategic move by some criminologists to be seen to be opening up, or at least engaging with, a novel and potentially lucrative area of criminological work, in which case 'public criminology' starts to appear gimmicky, self-interested and contrived. But, even if that were so, the question would still remain: are the ideas underpinning calls for public criminology (and related notions which will be discussed below such as 'newsmaking criminology', and 'democratic underlabouring') adequate as responses to the challenges which criminologists on both sides of the Atlantic currently perceive themselves to be facing?

In this part of the chapter I attempt to answer this question by reviewing the different ways in which the objectives and tasks of 'public criminology' (and related enterprises) have been described, and identifying the key concepts and assumptions upon which it has, in its various guises, been premised. I begin from the observation that the slippery notion of criminological 'truth' occupies a central, yet also ambivalent role within the public criminology discourse.

### ***2.3.2 Fighting for 'truth'***

In his call to criminologists to resist 'marginality', Currie suggests that contemporary conditions represent a serious 'threat to truth'. He argues that 'truth

can easily be overwhelmed in the real world by calculated untruth' (Currie, 2007: 188) and criminologists have to be prepared to 'fight' for 'truth':

'... Truth doesn't thrive unless it is assertively promoted and nurtured ... If we do not want to see our work – and the values that sustain it – slowly but steadily chipped away, or neutered, we will have to fight for it.' (Currie, 2007: 188-9).

Fighting for truth, as Currie describes it, means energetically opposing the interpretations of reality presented by those with 'a certain ideological axe to grind' which are 'probably a lot less honest' than those offered by 'people like us' (Currie, 2007: 183). Public criminology means working on the 'public mind', as Currie suggests that:

'most Americans remain in the dark about much of what is important about crime and justice ... they are easily swayed to support policies we know have failed and will fail again; to buy into beliefs about crime and punishment that criminologists shattered long ago; and to reject most of the strategies that might be both more humane and more effective' (Currie, 2007: 179)

Criminologists, then, are understood as being in possession of a 'truth'<sup>27</sup> which is not being heard by the wider public. In its absence, less 'honest' accounts of reality are encouraging members of the public to support policies which are both ineffective and inhumane. If criminologists want (as Currie clearly does) to alter recent trends in policy, it is not enough to do research which identifies truth, rather truth must also be 'assertively promoted and nurtured' in opposition to 'calculated untruth'. This promotional work, it is suggested, is the task of the public criminologist, who must confront the fact that, as Cullen has observed (2005: 2), 'most criminological research is ignored'.

In a similar vein, Uggen and Inderbitzen (2010) argue that 'public criminology' is a mechanism to 'narrow the yawning gap between public perceptions and the *best available scientific evidence* on issues of public concern' (Uggen and Inderbitzen, 2010: 726, *emphasis added*). They suggest that:

'Public criminologists, armed with *peer-reviewed evidence*, clear points, and plain language, have an important role to play as experts in the realm of crime

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<sup>27</sup> In this chapter I use the word 'truth' in the everyday sense which it is used by Currie (2007), which is to mean accurate representations which correspond to reality. In the next chapter I provide some theoretical reflections on the nature and possibility of this kind of truth.

and justice, giving voice to the *accumulated and emerging knowledge* in the field' (Uggen and Inderbitzen, 2007: 730, *emphasis added*).

Uggen and Inderbitzen, then, refer to criminologists as producing 'evidence' and 'knowledge'. These are somewhat more contingent and less categorical notions than Currie's rather bombastic assertion of 'truth' but, nonetheless, Uggen and Inderbitzen clearly share Currie's view that criminology does have some valuable 'products' to offer in this respect. Public criminology, they argue, should aim to impact on both policy and the wider public 'by building a solid evidentiary base that can be applied to problems that hold public interest' (Uggen and Inderbitzen, 2010: 738). To be effective it 'demands trust in the knowledge that we produce and absorb, trust in the media's ability to convey it, and trust in the public's capacity to grasp its nuances' (Uggen and Inderbitzen, 2010: 734).

This perspective on what it means to do 'public criminology' also appears to be reflected in Feilzer's (2009) 'Experiment in Public Criminology'. The 'experiment' involved the researcher writing a regular newspaper column to communicate '*factual information on crime and justice issues*' (Feilzer, 2009: 475, *emphasis added*), in what she describes as 'an information-based strategy to public education' (*Ibid*: 477).

In a slightly different take on this issue Carrabine *et al* (2000: 206) envisage public criminology as being 'about taking information and evidence, power and action, "back to the people"'. They argue that

'the populism of punitive and exclusionary social policy is largely legitimized by the distorted version of evidence (or its suppression or denial) presented to the public by government and sympathetic media. Popularization of critical evidence about the realities of imprisonment, policing, racism, poverty and the denial of justice is a key goal for *public criminology*.' (*Ibid*: 206, *emphasis added*)

This strategy is seen as a principled response to the deliberate drowning out or sidelining of inconvenient criminological evidence by government, a matter which has attracted the attention of a number of authors in recent years (e.g. see Walters, 2003, 2008; Hope, 2004, 2008; Morgan, 2000).

Hope (2008: 39) uses Mathiesen's (2004) term 'silent silencing' to describe the way in which the Home Office recently drowned out critical voices by amplifying

the findings produced by 'compliant' experts, where both were involved in evaluating New Labour's 'Reducing Burglary Initiative'. Of the same government, Reece Walters wrote: 'This is not a government that openly conveys and debates the truth. It is a government that conceals, manipulates and suppresses truth.' (Walters, 2004: 8-9). The suppression of truth happens in a number of ways, as Walters goes on to explain:

'The Home Office remains silent on all those topics that have the potential to reflect poorly on government. As a result, it is not an institution that represents the British public – it is an organization that exists to protect the reputation of government ... through its biased and skewed research agenda [it] presents the British public with an erroneous and partial view of crime in British society ... In effect, the Home Office both perpetuates and superficially describes media stereotypes of crime and criminality that continue to be used by politicians for grandstanding and electioneering purposes.' (Walters, 2004: 14)

In the face of a variety of 'threats to truth', then, 'public criminology' proposes that criminologists get better at communicating the 'truth', or the 'facts', or 'evidence', 'knowledge', or 'information' on or about 'reality' in order to overcome falsehoods circulating in the public sphere.

This understanding of public criminology is reflected in the conceptual oppositions which appear to define the *modus operandi* of the public criminologist: 'accuracy of information', 'new evidence', 'factual information' and 'complete information' are contrasted with 'false statements', 'shoddy evidence', 'harmful myths', 'scare tactics', 'overblown claims' and 'politically motivated views' (see Carrabine *et al*, 2000; Currie, 2007; Feilzer, 2009 and Uggen and Inderbitzen, 2010). The oppositions deployed here allude to, but do not make explicit, the existence of some agreed upon criteria for determining what counts as 'good' and 'bad' evidence (Carrabine *et al*, 2000: 205) which can then be legitimately deployed to 'debate controversial issues' (Uggen and Inderbitzen, 2010: 743).

This notion of criminologists fighting for 'truth', arming themselves for combat with their 'peer-reviewed evidence', and becoming 'louder, more effective, more consistent and more visible advocates for scholarship versus nonsense in the shaping of social policy' (Currie, 2007: 189) raises a number of quite profound problems: Does such a thing as a criminological truth exist? What counts as a

criminological truth? Who decides? How can truth overcome the obstacles it faces?

### ***2.3.3 Criminology as bad science***

Some have argued that criminology's marginality is the result of the generally poor quality of the evidence it provides, suggesting that 'criminologists have very little "good" science to offer policy makers' (Austin, 2003: 558). Failures identified in the criminological knowledge-base include the decline of 'scientific' methods (Austin, 2003); the failure of programmes of research to be designed around proposing constructive actionable proposals (Brereton, 1996); a lack of definitive knowledge about why crime is committed and what can be done about it (Tonry and Green, 2003: 521); the inappropriateness of methods for demonstrating conclusively 'what works' (a point advanced some time ago by Clarke and Cornish (1980) and made more recently by Wiles (2002) and Sherman (2005)); and criminology's failure to produce positive 'galvanizing' statements of truth, as opposed to negative or highly qualified positive statements (Tonry and Green, 2003).

A key problem which cross-cuts with all of these issues is the sheer diversity of criminological theories, methods and findings which means, as Austin observes in a tone of exasperation, that: 'even today there are so-called "credible" studies that reach diametrically opposite conclusions on whether increasing the nation's prison population by over a million persons in less than three decades has been a good or bad policy' (Austin, 2003: 558). The contradictory nature of research findings can lead to what Weiss (1986 cited in Tonry and Green, 2003: 522) has called 'endarkenment' – the production of confusion rather than enlightenment and the opening up of an opportunity for poor quality research to be accepted as adequate knowledge because it happens to chime with preconceived ideas. Policymakers then 'satisfice' (cf. Simon, 1947) by making the best possible decision in limited circumstances (Weiss, 1986: 220 cited by Tonry and Green, 2003: 522). But when policymakers get into the habit of adopting ineffective measures in order to relieve the political pressures upon them they may 'further undercut public confidence in justice system institutions' and simply create more demand for action (Tonry and

Green, 2003: 522). '[W]eak empirical information' thus leaves criminal justice policymaking at risk of political exploitation, and poor policy.

According to those who press this sceptical perspective on the quality of criminological knowledge the standard of 'truth' on offer in much criminological research is inadequate (perhaps dangerously so) for policymakers' purposes (either because it is not conclusive enough, or because it is not useful enough) and criminology has not produced enough knowledge to allow policymakers to confidently target their efforts in initiatives to address the roots of crime (Tonry and Green, 2003). It has also been suggested that the impact of these shortcomings has been exacerbated by criminology's track record of ideological disputatiousness (Tonry and Green, 2003: 520) and by the tendency of some criminologists to oversell what data they do have, thus further undermining trust in criminological knowledge (Tittle, 2004). The sceptics suggest that in order to have more influence on policy criminologists need to produce research which is more scientific, more relevant and more usable, and that in the meantime they should have more humility about the value of their findings.

The inadequacy of criminological knowledge in England and Wales has been attributed to weaknesses in the funding framework for criminological work whereby increased government funding has reduced the availability of funding from private foundations (Tonry and Green, 2003: 511). This, it is suggested, has shifted the centre of gravity towards problems defined by Home Office administrators, which fit with the short-term, applied interests of government. This leaves 'gaping holes' in the availability of funding for 'social and behavioural science research on crime and criminal justice', making it difficult to get funding for: 'longer-term, more basic, and less partisan' research; any research which investigates subjects not regarded as being of relevance to contemporary policy concerns; and research which uses the kind of 'experimental designs and multi-year follow-ups' which are most likely to produce valid findings from which generalization is appropriate (*Ibid*: 512). Meanwhile, Matthews (2009: 343) argues that, somewhat ironically, the 'administrative criminology' fostered by the

narrowness of the government's sponsored research agenda has produced a body of criminological research which is of very limited policy relevance.

Calls for reforms to the institutional arrangements within which criminologists must operate often seem to boil down to two things in the literature: (i) the need to ensure that institutional arrangements allow criminological knowledge to take its proper position in the policymaking process, for example through the periodically invoked notion of an 'independent research institute' (see Tonry and Green, 2003: 513); and (ii) the need to ensure appropriate levels of investment in research: governments 'should' spend more money on better research, and they 'need' to invest in work to 'distil strong findings from mountains of research and provide authoritative statements of what we know' (see Tonry and Green, 2003: 525).

The need for internal reform in order to improve the quality of the criminological knowledge-base is acknowledged by Currie (2007). He observes that the particular demands of academic careers and the types of activities valued by those who recruit and promote academics have played a part in causing academic criminology to become inward-looking, and to produce work which is often highly abstract, utilises complex techniques, and excludes the non-expert. This is likely to have led to criminology's marginalisation from criminal justice policymaking (Currie, 2007: 179-182).

This notion that a better organized and funded criminological field will be able to produce more definitive criminological truths ('systematic knowledge that is sound, generalizable, and replicable' (Tonry and Green, 2003: 510) and scientifically verifiable through 'experimental designs and multi-year follow-ups' (*Ibid*: 512, see also Sherman, 2005)), chimes harmoniously with the general tenor of the literature which is sceptical about criminology's adequacy and usefulness. The primary concern in this literature is that criminological work is, too often, 'bad science', and that too many criminologists are engaged in ideological disputes and politically partisan projects, producing findings which are contradictory, controversial and out of touch with the needs of policymakers. As a result criminologists are seen by policymakers as having 'axes to grind', rather than as

the producers of 'non-partisan, even-handed scientific research' which Tonry and Green (2003) think they should be. As such they are (deservedly) unable to exert much influence on policy.

An alternative perspective argues that advocates of a more 'scientific' criminology, who denounce what they see as the 'intellectual lawlessness' (Hayward and Young, 2004: 269) of their more critically-inclined colleagues, are themselves responsible for the impoverishment of the criminological knowledge-base. Hayward and Young describe the situation created by the over-representation of a-theoretical quantitative research thus:

'Data that is in fact technically weak ... and, by its very nature, contested, blurred, ambiguous, and unsuited for quantification, is mindlessly churned through personal computers. The journals and the articles become myriad yet their conclusions and pontifications become more and more obscure – lost in a mess of figures, techno-speak and methodological obfuscation.' (Hayward and Young, 2004: 262)

For some critics of quantitatively-inclined 'scientific' criminology the criminological knowledge-base is seen as compromised by the failure to close the gap between research which is theoretically reflexive and research which has 'empirical bite and strategic relevance' (Garland and Sparks, 2000: 4).

#### ***2.3.4 Maintaining a competitive edge in the 'marketplace of ideas'***

In his 2009 Presidential Address to the American Society of Criminology, Todd Clear called for criminal justice policy to become more 'criminologically justifiable' (Clear, 2010: 14), emphasising the need for criminologists to build a strong evidential base grounded in basic research. In his view:

'what we really seek is not merely evidence, in the sense of something that has been proven to be true. Instead, we seek action-relevant evidence—knowledge that is the foundation for criminological action. Much action-relevant criminological knowledge comes from "basic" research. It is basic in the most profound meaning of the term because it tells us about the world of crime and justice in ways that enable us to imagine new and potent strategies for improving justice and public safety.' (Clear, 2010: 14)

However, Clear argued that there is rarely, if ever, total agreement about the nature of evidence, and suggested that 'a certain disarray in the marketplace of ideas' must be tolerated lest any attempt to define what can count as evidence be too narrowly drawn. 'Disarray' is precisely what the advocates of criminology as '



“good” science’ find so objectionable, believing that it undermines the legitimacy of criminologists’ claims to truth, and demands for influence, claims and demands which, it is suggested, are already tenuous given the impoverished state of the criminological knowledge base.

Most proponents of ‘public criminology’ (and perhaps most criminologists) would naturally tend to dispute the sceptical perspective on the quality, reliability and utility of existing criminological knowledge. Indeed, Currie expresses the firm belief that, over successive generations, criminology has amassed ‘a formidable body of evidence that could make a strong case for or against certain kinds of action or intervention’ (Currie, 2007: 177). A positive take on the knowledge base is generally evident in work where reference is made to anything like ‘public criminology’ or to the need to strengthen the influence of criminology on policy. So, for example, Carrabine *et al* (2000) refer to the capacity of criminological evidence to show that punitive measures are ineffective and Feilzer (2009: 482) expresses her belief that public criminology can ‘enable and support evidence-based policy’.

Meanwhile Uggen and Inderbitzen refer to the pedagogical aspect of academic work, arguing that:

‘Public criminologists who take teaching seriously hope that their students enter their chosen professions and indeed the larger responsibilities of citizenship with *a more accurate picture and understanding of the causes of crime and the workings of the criminal justice system*’ (Uggen and Inderbitzen, 2010: 741, *emphasis added*)

Implicitly, then, in all of these accounts (as well as in those accounts which I referenced in the first part of this chapter) criminology has some kind of ‘accurate’ knowledge to offer up to those who care to receive it. Yet throughout the literature there is often a striking silence on the criteria which criminologists must satisfy in order to be able to make claims to have truth or worthwhile evidence in their possession.

The argument that criminology’s influence has been limited because of shortcomings in the evidential base is dismissed by Chancer and McLaughlin (2007: 160) as ‘tending to presume agreed on definitions on what constitutes reliable and usable social science data’. However, this criticism might also be applied to some of

the statements which are made about public criminology being a matter of communicating 'truth', 'knowledge' or 'evidence'. Formulations of public criminology which fail to reflect on what can count as knowledge seem to deemphasise and downplay the diversity of criminological perspectives and the intensely contested nature of the field. The unqualified use of terms such as truth, evidence, reality and knowledge, by the advocates of 'public criminology' may also reflect a strategic reticence about publicly acknowledging the fragility of truth.

Ericson (2003) argues that criminologists are 'part of a system of academic disciplines, professions, and institutions in which they *compete for jurisdiction over problems of crime and security*' (Ericson, 2003: 78, *emphasis added*). Tonry and Green (2003: 519, *emphasis added*) point out that 'policy will be made with or without expert knowledge... *Criminological knowledge must compete* with other forms of information and other pressures for change'. Currie (2007: 188) meanwhile suggests that 'definitions of social reality are always the object of struggle and contest.' The ongoing sense of being in competition with others may mean, as Ericson (1996: 19) has argued, that it is very difficult for criminologists to publicly acknowledge that their work is non-scientific, and that the criminological field is 'highly relative and biased institutionally'. Such an admission may 'antagonise potential institutional audiences and sponsors, and undermine the persuasive force of "academic" and "scientific" accounts' (Ericson, 1996: 19)<sup>28</sup>. Similarly, Smart (1990: 75) argues that sociologists, including criminologists, have struggled with the implications of postmodernist thought because they fear that to say they 'do not know (in the modernist sense)' would simply allow their kind of knowledge to be dismissed, particularly by forces on the right who have always been scathing about the quality and utility of sociological knowledge.

For some criminologists, then, 'truth' is the product which they have to offer, and they must get better at 'conveying the details of criminological knowledge to external audiences' (Carrabine *et al*, 2009: 454). Others argue that researchers will

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<sup>28</sup> Smith-Lovin (2007) makes a similar argument with respect to public sociology, suggesting that, in order to retain resources and legitimacy, the discipline must remain wedded to the generation of knowledge. However, she also acknowledges that sociology is not able to present a united front as it lacks a homogeneous view on the constitution of valid sociological knowledge.

have to be more strategic than this, building bridges with policymakers by becoming more sensitive to the pressures which they face in designing and selecting policy, by writing more accessible reports, and by thinking much more carefully about how their studies might be applied in the 'real world' (Tonry and Green, 2003: 524). This may include inquiring further into why some research is influential at some points and other research is not (*Ibid*: 525). However, for others 'truth' seems like just one kind of device in the criminologist's toolbox. To increase their influence criminologists should seek to 'devise better policy rhetorics and policing initiatives that will more clearly demonstrate their value. ... using figurative language that is more carefully chosen, for example with regard to words and numbers that have greater symbolic power' (Ericson, 2003: 78).

In the highly contested 'marketplace of ideas', then, 'truth' appears to be a sought after commodity, and some criminologists seem to feel that in order to attract potential consumers to make use of its wares the criminological field as a whole should not draw attention its internal 'disarray'. If this argument is correct, this would appear to subordinate any intrinsic value which 'truth' may possess to the value which it has as a strategic rhetorical resource.

There are criminologists who have advocated a strategic approach to influencing public discourses of crime and justice in the direction which they favour, *without* relying on the notion that there are criminological 'facts' or 'truths' which exist somehow above or outside of the general melee of public communication. A noteworthy example of this is Barak's (1988) call for a 'newsmaking criminology': a consciously strategic endeavour which involves building up networks with journalistic sources and understanding the motivations of journalists, who are seen as potential allies for criminologists due to their commitment to 'post-bourgeois values'. Such an approach requires knowledge of media and culture and applying this 'to help shape the "progressive" discourse, language and representation of crime and justice, and ultimately the policies that are adopted and acquiesced to by societies in their "fights" against crime and injustice' (Barak, 2007: 205).

Unlike the more neutral stance implied by those who see 'public criminology' as primarily about educating an ill-informed public, Barak describes 'newsmaking criminology' as 'a "call for action", which asks criminologists to eschew notions of alleged value neutrality and "objectivity"' (Barak, 2007: 193). Rather than merely seeking to disseminate truth or evidence, then, Barak wants criminologists to adopt a radical stance, 'taking sides' and providing an oppositional discourse: 'it is important that, as criminologists, our voices be heard among all the other sounds and images associated with crime and justice, especially if those voices are resonating alternative rather than conventional themes' (Barak, 2007: 201).

A strategic approach is also proposed by Groombridge (2007: 466), whose analysis of media coverage of criminology evokes a contested media discourse in which the already limited space available for academic criminologists to put across their perspectives is occupied by the contributions provided by 'journalists ... politicians and pressure groups' and where more measured or liberal contributions are often swamped by 'ideologically privileged voices', in particular by comment provided by police sources who have come to be seen as 'the experts on law and order' (*Ibid*: 473). Overall, he concluded, 'criminologists don't get to say much' (*Ibid*: 466).

The solution proposed by Groombridge is for criminologists to 'become journalistic', adopting the skills and tools of the journalistic trade, capitalising on the opportunities afforded by new media formats such as blogs and podcasts, and cultivating better relationships with media workers (*Ibid*: 472). This call for criminologists to become more skilled in techniques of mass communication echoes Barak's work on newsmaking criminology produced a decade earlier (see Barak, 1988: 566). However, despite their shared acknowledgment of the need to adopt a strategic approach in order to enable criminological discourses to compete in the media, Barak's approach is clearly more consciously and deliberately partisan than Groombridge's.

Barak directed his work towards criminologists of a 'critical or progressive' persuasion and, although newsmaking criminology does call on criminologists to 'share their *knowledge* with the general public' (Barak, 1988: 566, *emphasis*

*added*), knowledge is not deployed here in the narrow sense to mean ‘facts’ or ‘truth’. Rather the *primary* focus of newsmaking criminology is on using the media to increase the public’s exposure to neglected crime topics and alternative perspectives on existing problems, affecting ‘public attitudes, thoughts, and discourses about crime and justice’ in order to influence the shape of public policy interventions (*Ibid*: 566). This is to be achieved by ‘locating the mass-media portrayals of incidences of “serious” crimes in the context of all illegal and harmful activities’ in order to disrupt the processes through which mass-media communications on crime and justice reinforce bourgeois capitalist hegemony (*Ibid*: 566).

Despite their differences, Barak and Groombridge both resist an understanding of public criminology as purely about ensuring that ‘the facts’ are heard. Instead they envisage criminology’s public role as that of providing discourses which can compete with established ways of representing crime and justice: ‘if criminologists don’t do criminology in public – which means the media now – then the media will do it for them’ (Groombridge, 2007: 473).

At this juncture it seems prudent to look more closely at the work in which the term ‘public criminology’ appears to have made its first appearance: Carrabine *et al* (2000) first proposed the term ‘public criminology’ to describe a form of criminology which would put ‘empowerment’ at the centre of its work.

Empowerment, it was argued:

‘means working for the ordinary public rather than for narrow political interests, and emphasizing social justice and human rights. An empowerment-orientated public criminology prioritizes the interests of the public person/s (individuals/communities) over interest groups that disempower people and cause and create conditions resulting in crime or other social injuries and hazards to health or the environment’ (Carrabine *et al*, 2000: 206)

Carrabine *et al*’s version of public criminology, then, appears to require that criminologists ‘take sides’ with ‘the ordinary public’ by emphasising ‘social justice and human rights’. The work of public criminologists should, Carrabine *et al* (2000: 205) argued, ‘seek to make a difference and bring about change’ and also to ‘break[ ] boundaries and mak[e ] positive connections with other arenas of social action’.

This version of public criminology is orientated towards action and eschews

isolationism. Crime and justice are to be dealt with in relation to wider social contexts and issues.

When, in 2009, Carrabine *et al* reprised and updated the idea of 'public criminology' they quoted Currie (2007) at some length, suggesting that he 'agrees and expands on' their argument (Carrabine *et al*, 2009: 454). In fact, Currie does not explicitly cite their earlier work, and one might also say that rather than *expanding* on the agenda set out in Carrabine *et al* (2000) Currie rather *contracts* the issue by focusing primarily on the defence of criminological 'truth' rather than the defence of the 'values' (which he refers to as sustaining criminologists' work, but refrains from discussing). I will explain what I mean.

In their original article on 'public criminology', Carrabine *et al* (2000) argued that:

'projects of managing poverty are no longer based on political and policy appeals to the public in the name of care and assistance, but are rooted in the discourses of ambivalence and condemnation. Similarly, the penal doctrine of incapacitation is devoid of any moral commitment to restoring the offender to citizenship: it is a strategy of containment and a discourse of denunciation.'  
(Carrabine *et al*, 2000: 204)

In their later work they suggested that 'a public criminology must engage with general ignorance around crime issues, moral indifference and uncivilized intolerance ... the tendency is towards a negative evaluation of [offender's] worth and contribution (or lack of it) to society, and of their low social status'(Carrabine *et al*, 2009: 452-453). They contrast this negative evaluation of some offenders with the way in which corporate offenders are able to 'profit from activities that damage the quality of life of others and from economic crimes that pass losses onto consumers via higher prices, workers losing pensions or jobs, and compromised health and safety programmes leading to accidents and manslaughter deaths of employees' (Carrabine *et al*, 2009: 453).

In these extracts, although they may not explicitly acknowledge it, Carrabine *et al* exhibit forms of criminological interrogation which rely not merely on some objective notion of 'truth' or 'evidence', but also on the authors' own values. There is no objective 'evidence' which tells us that it is correct to think of people living in poverty in terms of 'care and assistance', or to reject a 'negative evaluation of

[offender's] worth', or to explore corporate offending in the same terms as burglary, but the authors would like us to do so. In other words they favour the adoption of certain *values* as a route to new ways of knowing, and indeed to new knowledge, about crime and justice. In this sense the 'public criminology' proposed by Carrabine *et al* (2000; 2009) is also about offering an alternative set of values on which to build a knowledge discourse on crime and justice<sup>29</sup>.

The political values of those advocating some form of 'public criminology' are quite often clear in some aspects of their work. For example Currie (2007: 189) decries the 'neglectful social policies' and 'costly and brutal penal policy' adopted by US governments and Chancer and McLaughlin (2007: 156), argue that public criminologies should place 'explicit value ... on moving policies in more progressive directions' (although they fail to provide a definition of what they would regard as 'progressive'). However, these and other writers repeatedly fight shy of explicitly addressing the role played by values in the knowledge production process, seemingly preferring to fall back on the legitimising veneer of objectivity implied by deploying notions such as 'truth', 'knowledge' and 'evidence' (and all their associated rhetorical kudos). Ultimately, they seem to say, it is not values, but the 'facts' of 'reality' which should win the contest in the marketplace of ideas.

### **2.3.5 *Against 'public criminology'? 'Democratic underlabouring'***

Recently, Loader and Sparks (2010a) have rejected the 'evangelism' of those wanting to 'inform others what public criminology is ... advise them how to be a public criminologist, or – worse still – to tell them they must become one' (*Ibid*: 115). It is important to note that the differences between the various articulations

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<sup>29</sup> Latour (2004) argues that the conceptual border between facts and values is indistinct and porous (*Ibid*: 98-99) to the extent that the attempt to disentangle them implies an 'impossible purification' (*Ibid*: 167). Due to its inadequacies, he suggests, the fact-value distinction has 'paralyzed' debates about the relationship between science and politics (*Ibid*: 108-9). Whilst I am sympathetic to Latour's argument (so far as I am able to understand it), for the purposes of this thesis I will retain and use the familiar distinction between the concept of a 'fact' (a claim about what *is*) and 'values' (beliefs about what *should be*) in all its instability and inadequacy. I have reached this decision because the fact-value distinction is routinely employed, either explicitly or implicitly, within the criminological field, including in discussions about criminology's public role. It therefore seems apt to turn this distinction back on the field, even though cognisant of its inadequacies.

of 'public criminology' and Loader and Sparks's 'democratic underlabouring' are perhaps not as significant as their initial rejection of public criminology's tendency to 'evangelism' appears to suggest. The main areas of tension appear to be around whether criminologists should feel *entitled* to wield influence in the public sphere and whether they should feel *obliged* to engage with it. But, as I will discuss below, despite producing a much more detailed and nuanced account of what criminology's public role has been, might be and should be there is a crucial aspect in which they fall short of transcending the existing offerings from the public criminology advocates.

Loader and Sparks explicitly state that they did not set out to 'try to own or champion something called "public criminology" or to participate in the for-it-or-against-it knockabout that the use of this term tends to encourage' (*Ibid*: 115), rather they were concerned with 'how criminology ... can today best understand and give coherence to its role in public debates and controversies about its subject matter' (*Ibid*: 116). They propose:

'a sensibility or disposition, a way of being in and relating to public life ... criminology's public role is most coherently and convincingly described as that of contributing to a better politics of crime and its regulation – or what we shall call democratic underlabouring' (*Ibid*: 116-117)

Crucially, they wish to avoid appearing 'ill at ease with democracy' (*Ibid*: 118), proposing instead that criminologists must be more 'humble' in the face of democratic politics, as well as being more understanding of the circumstances for political decision making; more accepting of the fact that criminological evidence cannot settle questions of values; and more aware of the 'hard truths' of contemporary politics (*Ibid*: 119).

In particular, they propose that criminologists would be better off making their claims 'in ways that explicitly seek to understand and improve politics rather than replace it with expert-led calculation' (*Ibid*: 122). The fight for 'truth', then, is more appropriately and productively carried out with respect to the rules of 'democracy':

'In a democratic polity, politics (rather than markets, or bureaucratic authority, or the judgement of the wisest, or force of the strongest) is the arena for



deciding between competing resource claims and distributing basic social goods (and bads). It also a space for mediating claims for recognition, for determining who belongs, who “we” are and the terms we set for our coexistence. Politics, in a democracy, is where we reconcile competing values and interests and determine the public good, a means of arriving at – and recursively revising – collective self-understanding of the question “how do we want to live together” (*Ibid*: 122)

Criminologists, then, must accept that in a democracy criminological knowledge should and must compete with other discourses on crime and justice – it does not have any automatic right to guide or influence policy, and it cannot settle questions of values.

Loader and Sparks are far from unique in noting that criminologists must show humility in the face of democracy.<sup>30</sup> It has been argued that criminologists who become particularly frustrated with their apparent lack of influence may have an unrealistically rigid and naïve set of assumptions about how knowledge can and should influence policy (Laub, 2004: 18), as the receptiveness of policymakers to such evidence is constrained by prevailing ‘paradigms’ of punishment, prevailing ideology, and short-term political and bureaucratic considerations (Tonry and Green, 2003). Maybe, then, as Brereton has argued:

‘The best we can hope is to make the system somewhat more informed and reflective than it is at present, and to reduce the probability of governments adopting seriously harmful and/or counter-productive policies in the area of crime and justice’ (Brereton, 1996: 88)

As described by Loader and Sparks, democratic underlabouring tends towards this more modest objective, producing criminological knowledge (in all its diverse forms), whilst being orientated towards supporting a ‘better politics’ of crime and justice. This vision has been criticized for relying on a consensual theory of politics which is out of step with a current reality where democratic principles are subverted and social inequalities are obscured and mystified, whilst the rich and powerful casually and unapologetically break the law, often without fear of coming

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<sup>30</sup> See, for example, Leon Radzinowicz (cited by Hood, 1974: xiv): ‘criminologists must be aware that the specific solution of many legal and penal problems cannot be determined exclusively, or even predominantly by the factual criminological evidence which they can provide’; Tonry and Green (2003): ‘neither politically nor normatively is there any good reason why criminologists’ opinions should count more than anyone else’s’ (Tonry and Green, 2003: 492-493); and Laub (2004: 18): ‘most policy issues are moral questions that cannot be answered by theory or for that matter research’.

under scrutiny (see Currie, 2011: 712; Sim, 2011: 725, also see Wacquant (1999) for a particularly forceful account of how neoliberalism has distorted the politics of penalty).

Other critics have observed that Loader and Sparks fail to provide a clear definition of what they mean by a 'better politics' (see Christie, 2011; Tombs, 2011), leading to a sense that democratic underlabouring (which does indeed appear as a rather comfortable prescription for those currently engaged in the field) means just 'business as usual' (Currie, 2011). It is certainly true that, rather than being a programme for action which requires criminologists to reconsider and reconfigure existing roles and ways of working, 'democratic underlabouring' asks of individual criminologists only three things: that they retain their 'academic "formative intention" ... to produce knowledge' (Loader and Sparks, 2010a: 129)<sup>31</sup>; that where they critique existing arrangements they are also prepared to propose constructive alternatives (*Ibid*: 131); and that they respect and engage with the diversity of approaches to being a criminologist, each of which adds value to the field.

Suggesting that criminology should have 'a generous account of what can count as a criminological claim' (*Ibid*: 130) and that it 'can and should bring to public discussion of its subject matter a scepticism that refuses to treat at face value the categories, assumptions and self-understandings that make up "common sense" about crime and its control' (*Ibid*: 130), Loader and Sparks propose three modes of criminological knowledge production. 'Primary' criminology is described as 'committed...to the generation of knowledge [on] crime causes, patterns and trends, offender motivations and behaviour, the social distribution and impact of victimization, and the effects of programmes that aim to reduce crime and make neighbourhoods or societies safer' (*Ibid*: 125). 'Institutional-critical' criminology is concerned with the social constitution of crime and the selection of crime

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<sup>31</sup> They argue that: 'when criminology intervenes in public life, it needs to do so in ways that remain embedded in academic formative intentions and processes, and retain an overriding interest in the production of knowledge. Once severed from these intentions, and the limits they place on what can be said and done, criminology loses what is legitimate and valuable about its contribution to a better politics' (Loader and Sparks, 2010: 130)

problems, media representations of crime, the functioning of criminal justice organizations, placing crime and penalty in the wider socio-cultural and economic setting. 'Normative' criminology reflects on the meanings of ideas such as justice, proportionality, and due process, and attempts to deal with conflicts in values (*Ibid*: 126-127).

It is emphasised that individual criminologists are not expected to do all three of these, although it is explicitly stated that criminologists doing primary work ought to retain:

'a critical sensibility – the inclination to question the terms in which the social world is conventionally apprehended – ought to be part of what it means to be a criminologist – or any kind of social scientist. Why should those who don't self-identify with critical criminology so easily be exempted from this basic professional obligation?' (*Ibid*: 140-141)<sup>32</sup>

What is of vital importance to Loader and Sparks's argument is the idea that the 'collective organization of the field' (which should accommodate all three genres of criminological activity in a non-hierarchical way) is more important than individual criminologists being well-versed in each of the primary, critical and normative aspects of the field (*Ibid*: 127-128)<sup>33</sup>. But, this rather tolerant and accommodating proposal does not appear to have any way of dealing with the inherent conflict which exists between different modes of criminological knowledge production (Sim, 2011), and fails to offer any suggestions as to how disagreement between diverse criminological knowledges (each, in their own way, seeking to contribute to a 'better politics' of crime) can and should be settled:

'Are we to understand that *all* these academic "criminologies" are capable of contributing to a "better politics of crime and its regulation"? If so, what weight

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<sup>32</sup> This expectation chimes with Ericson's assertion that 'being critical is a core element of professionalism' (Ericson, 2005: 366), and is also reflected in Wacquant's claim that 'reflexivity is not a decorative device, a luxury, or an option ... it is an indispensable ingredient of rigorous investigation and lucid action' (Wacquant, 2011: 439).

<sup>33</sup> This resonates with Bottoms (1987), who wrote that criminologists were: 'privileged to be at the centre of contemporary debates about the basis of the legal and social order at the end of the twentieth century, though any criminologist who is honest must admit his or her inadequacy to face the full implications of those debates, partly because of the patchy state of criminological knowledge, partly because of the poor state of collaboration between criminology and social and political philosophy, and partly because of the impossibility, for any single criminologist, of mastering all the disciplines which rightly require attention if criminological questions are to be adequately confronted' (Bottoms, 1987: 263)

is to be given to each of their contributions? Who will decide what that should be?' (Tombs, 2011: 728)

Loader and Sparks have very little to say about who decides what is to count as adequate knowledge. Responding to reaction to *Public Criminology?*, they have attempted to clarify the sense in which they use the term 'formative intentions', writing that:

'the special contribution that the under-labourer as a social scientist can make to democracy presupposes a commitment to the values of *clarity, coherence, non-contradiction, evidence*, and so on, that define her activities as academic ones. She holds, that is to say, that when sociology, criminology, and other disciplines intervene in public life, they need to do so in ways that remain embedded in academic formative intentions and processes, and retain an overriding interest in the production of knowledge.' (Loader and Sparks, 2010b: 406, *emphasis added*)

Here the first three 'values' listed - clarity, coherence, non-contradiction - are perhaps more accurately understood as *attributes*, which is to say as (hoped for or aspired to) positive features, of academic work. The fourth 'value' – evidence – is, I suggest, more helpfully understood as the *raw material* which criminologists and other social scientists use to produce knowledge. The focused, sustained and systematic assembly of evidence, understood as 'ground for belief; testimony or facts tending to prove or disprove any conclusion' (Oxford English Dictionary), is what most social scientists spend their time doing in order to produce the knowledge which they claim to possess. But the question still remains: who decides which types of raw material should count as admissible evidence in the production of knowledge?

In attempting to be diplomatic rather than didactic<sup>34</sup> Loader and Sparks congratulate the adherents of forms of criminological knowing which are not renowned for their critical reflexivity. The crime science advocate, for example, is praised: 'our field – thanks to your efforts – does know things about what works, what doesn't work and what is promising in crime reduction' (Loader and Sparks, 2010a: 135).

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<sup>34</sup> An effort which, although in some ways laudable, means that Loader and Sparks lean towards what Walters (2011: 734) bluntly describes as 'too much sitting on the fence'.

What appears to be neglected by accounts of ‘public criminology’ and ‘democratic underlabouring’ is consideration of how, when one truth is threatened, it is often another form of truth which threatens it. In this way certain ways of knowing, certain forms of knowledge, and certain knowledge workers can come to dominate, or to crowd out the virtually infinite variety of possible perspectives which can be assumed towards a given topic<sup>35</sup>. Inconvenient truths can be smothered with the truths provided by more ‘compliant’ experts (Hope, 2008); the ‘skewed research agenda’ of the Home Office can produce truths which drown out other truths (Walters, 2004); and two very narrow criminological ‘genres’ - administrative criminology and crime science - can dominate and squeeze out other ways of knowing from the competitive criminological ‘marketplace’ (Walters, 2003: 162; Hughes, 2007: 200).

Yet, in an earlier piece Loader (1998) acknowledged the dangers of certain forms of knowledge coming to dominate. Drawing on Habermas, Loader noted that the ‘actually existing public sphere’ is far from an ideal environment for knowledge and discourse, and is ‘dominated by powerful commercial interests and the unaccountable expert cultures of remote public bureaucracies, both of which share an instrumental rather than a discursive orientation to the social world’ (Loader, 1998: 191). Under these conditions, he argued, a kind of ‘jobbing criminology’ may come to dominate, making it likely that crucial and highly contested issues concerning the maintenance of social order in liberal democratic societies will be ‘reduced to questions of efficient management and administration’ in such a way as to leech vitality from the democratic public sphere (*Ibid*: 199).

Yet, in 2010, by expressing approval of the work of those criminologists who focus on primary work unfettered by critical or normative considerations (which surely are the stuff of reflexivity), Loader and Sparks (2010a) seem to license individual

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<sup>35</sup> In all of the reviews of Loader and Sparks (2010a) which I have encountered in only one has the writer explicitly stated their own position as acceptance that engaging in criminological knowledge production *cannot* provide ‘“scientific” knowledge that might or should privilege whatever contribution I might make to public debates about crime and criminal justice’ (Morgan, 2011: 717). The same author wrote ‘in my reading of the criminological literature, I did not encounter propositions or findings that suggested policies about which there were not several, conflicting, perfectly reasonable viewpoints’ (*Op cit.*)

criminologists to be one-dimensional, relying on a belief that the 'collective organization of the field' will supply the second and third dimensions. They readily admit that they do not explore the circumstances of reception of criminological work. But it is precisely these circumstances which are likely to mean that the end-users, whether they are policymakers, journalists, or indeed members of the public, are likely to receive isolated excerpts of the criminological whole, thus seeing only one face of the criminological polygon. If the face which they see is blue, then it can appear as if the whole thing is blue. The diverse truths which the criminological enterprise is capable of producing are thus effectively obscured.

In response to their critics, Loader and Sparks (2011) have attempted to clarify their argument in a number of ways, including: (i) explicitly defining a 'better politics' as one which embraces a deliberative approach to democracy; (ii) countering the idea that they are committed to a consensus view of politics with the claim that they have rather made 'an argument in favour of argument'; and (iii) refuting the notion that they are naive about the reality of contemporary politics and claiming that *Public Criminology?* was rather an attempt to work out how criminologists might negotiate this political sphere. However, these responses still leave us wondering how it is that *criminologists* might help to support the fashioning of a more deliberative form of democracy in the context of current social and political circumstances; and how more radical and critical knowledges can play any kind of role on an unequal playing field dominated by research which is far more congenial to our elected representatives.

### ***2.3.6 Different kinds of truth: criminological pluralism and the role of values***

Whether or not criminologists will produce certain kinds of knowledge depends upon the choices which they make about what to include and to exclude, and about whether to regard their subjects of inquiry with, for example, compassion and understanding, or fear and disgust. These are in very large part choices based upon values. As noted above, in the earliest call for a 'public criminology', Carrabine *et al* (2000) obliquely referred to the role played by value-based considerations in the construction of criminological knowledge, and they hinted at the way in which the

nature of criminological knowledge can be contingent upon either the discourse within which its objects are located, or upon the conscious contextualization of crimes against a wider backdrop of harmful actions.

The kinds of criminological truth which come to dominate in the public arena may not be (and often are not) false, or 'untrue', according to the rules of method applied in each case. Rather they are one-dimensional: they come at their topic from a certain angle, with a certain set of objectives, informed by certain prior assumptions and *values*. Unfortunately, later incarnations of 'public criminology', as well as Loader and Sparks's notion of 'democratic underlabouring' have tended to neglect the value-laden nature of criminological knowledge and have thus omitted what is surely a crucial element in any debate about criminology's public role.

However, and as noted above, there may be good reasons why criminologists do not wish to become embroiled in a discussion about values: they fear that any such discussion may undermine the legitimacy of criminological knowledge in the eyes of potential consumers, revealing some very deep divisions within the field, divisions which threaten its very existence as a distinctive genre of intellectual inquiry. For one further thing which the proponents of public criminology, and of criminology as 'democratic underlabouring' have in common with each other, and also often with their critics, is an implicit sense that criminology is and *should be* a distinctive field.

Loader and Sparks (2010a) argue in their conclusion that the direction in which criminologists should be travelling is: 'to work in and seek to extend institutional spaces that can engage affected citizens, practitioners, political actors, and researchers in raising, investigating and fashioning solutions to the question of *how we regulate and live comfortably with crime risk*' (Loader and Sparks, 2010: 147). Their vision for democratic underlabouring, then, though enthusiastic about fostering deliberation about what should be done about the risk of crime, appears

to place the concept of crime, and thus the existence of criminology, prior to, or outside the realm of deliberation<sup>36</sup>.

## 2.4 Conclusion

In recent years, criminologists have identified various ways in which the 'truth' which they produce is threatened. Key 'threats to truth' identified include: the tendency of the media coverage of crime to be quantitatively biased towards atypical cases, specifically offences of a violent or sexual nature, where the victim is particularly vulnerable or where a sentence which appears particularly lenient has been passed; the prevalence in media and political discourses of pessimistic and punitive 'cultural scripts' on crime and justice; the side-lining of good criminological research and evidence in the policymaking process; the failure to adequately organize and fund the criminological field such that high quality 'scientific' truths can be produced; the existence of diverse approaches to knowing about crime and justice, some of which are considered less adequate than others; and the deliberate misrepresentation or suppression of specific evidence or facts about crime or criminal justice interventions.

These 'threats to truth' operate in some fundamentally different ways. At the simplest and most brutal end of the spectrum there is the systematic and deliberate burying of evidence already at large, which is inconvenient or embarrassing to some powerful institution, usually the government of the day. There is also the disinclination to fund or otherwise support the initiation of inquiries which are perceived as having the potential to produce knowledge which does not match with the government's own agenda, and which could develop into the types of inconvenient or embarrassing truths which will need to be

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<sup>36</sup> In his review of Loader and Sparks (2010a), Wacquant (2011) is fiercely critical of what he sees as the tendency of criminologists, including Loader and Sparks, to isolate crime from the wider social, political and cultural context within which it is located and thus to 'underestimate the extra-penological significance of crime and the extra-criminological functions of punishment' (Ibid: 447). Arguing that criminal justice is used as a way to 'manage urban marginality, stage political sovereignty and achieve legitimacy in the eyes of citizens' (Ibid: 447), rather than as a way of reducing crime he suggests that an adequate analysis of criminal justice is beyond the traditional domain of criminology. In order to achieve Loader and Sparks's vision of a 'better politics of crime and justice', criminology ought to be dissolved into the 'sociology of penalty' (Ibid: 447).



suppressed. More subtly, the dominance of certain 'cultural scripts', some of which are produced and reproduced by certain kinds of criminological work, can make it difficult to frame, initiate, get funds for, and subsequently communicate the findings of research which reflects ideas or values falling outwith the dominant ideology of the day.

Not all criminologists are equally concerned (or indeed at all concerned) about all of these types of threats to truth. The most commonly voiced concern, as discussed in the first part of this chapter, is the general sense that truth, in the form of 'the facts' about crime and criminality (as produced by criminologists), is not taking its rightful place at the policymaking table. This exclusion of criminological 'experts' is often understood as being caused by the increased influence of the general public on politicians. Public influence is not necessarily regarded as always and everywhere a bad thing. In fact it is widely acknowledged that, in a democracy, experts should not feel entitled to have the final say on the policies adopted. Nonetheless, a number of measures to regulate the manner in which the public are able to influence politicians have been proposed. Proposals include requiring politicians to behave in a more principled fashion by not resorting to crude and manipulative populism, and introducing 'cooling devices' to manage and temper the implicitly dangerous and inappropriate outpourings of raw public emotion. Metaphorically speaking, some criminologists want politicians to be more inclined to 'sit down and count to ten' (Tonry, 1999b: 1791) before deciding how to address problems of crime and justice.

It has also been suggested that criminologists need to do better at communicating their findings to both politicians and the public, in order to educate them about 'the facts' of crime and justice. But here there is a problem which neither the advocates of 'public criminology' nor Loader and Sparks (2010a) with their notion of 'democratic underlabouring' have resolved: the sheer diversity of criminological knowledge. The objective of better communicating the facts about crime and justice rests upon the assumption that criminologists can and do produce truth in an unproblematic, consensual way. Invoking the notion of an unproblematic truth tends to neglect the diversity of the criminological endeavour; and to ignore the

unequal playing field faced by critical and radical strands of criminological knowledge. These must battle to be heard in a political sphere which is far more hospitable to the less challenging fare proffered by administrative criminology and crime science. In particular, what appears to be missing is any resolve to face up to the role played by values in the selection of topics for investigation, concepts to apply, and methods to use.

The recent literature on criminology's public role tends to deal with the inherently value-dependent and contested character of criminological knowledge in one of three ways: (i) it deplors such diversity as being brought about by rogue criminologists who dilute the scientific purity of the subject with their unscientific qualitative or critical approaches; (ii) it downplays or entirely ignores the diversity; or (iii) it acknowledges diversity and then leaves it to one side. However, if criminologists are serious about reflecting on the appropriate public role for their work then they must find some way of broaching the question of values. To rely on the legitimising aura of a value-free criminological truth is unlikely to provide satisfactory technical attire for traversing the challenging terrain faced by contemporary criminologists.

In the rest of this thesis I will attempt to make a novel and useful contribution to these recent discussions about criminology's public role through an empirical case study analysis of the recent research and policy agenda which has been established in England and Wales around the idea of public confidence in the criminal justice system. In the next chapter I elaborate on the methods which I have used to explore 'public confidence in the criminal justice system' as a case study in pursuit of this more ambitious objective. I also explain in more depth the theoretical reflections which have led me to approach this particular topic, and to approach it in this way.

## Chapter 3. Theory and methods of inquiry: 'a certain ethos of investigation'

'I wouldn't want what I have said or written to be seen as laying any claims to totality. I don't try to universalize what I say; conversely, what I don't say isn't meant to be thereby disqualified as being of no importance. My work takes place between unfinished abutments and anticipatory strings of dots. I like to open up a space of research, try it out, and then if it doesn't work, try again somewhere else. ... What I say ought to be taken as "propositions", "game openings" where those who may be interested are invited to join in; they are not meant as dogmatic assertions that have to be taken or left en bloc.'  
(Foucault, 1991a: 73-4).

### 3.1 Introduction

As explained in chapter one, this thesis developed in a close (one might say parasitic) relationship with a funded research project which attempted to contribute to the production of an alternative, but also practically usable, body of knowledge about something called public confidence in the criminal justice system. I commenced work on that project as a novice social researcher, and the experience of working on the project from start to finish (a period of some three years) provided the context against which the ideas for this thesis took shape.

Working as a researcher on an 'applied' project brought me into regular contact with practitioners who expected the research to produce knowledge which they could use to design concrete programmes of action, an expectation I was keen to fulfil. But at the same time I was entertaining grave doubts about the ontological, epistemological, methodological and ethical status of the object at the centre of the project. In order to try to resolve the tension between my two roles – applied social researcher and critical doctoral student – I began to think about what the effects of doing public confidence research might be, as well as the reasons *why* research on public confidence had been commissioned in the first place. My research interest

thus began to lean towards being an exercise in ‘objectify[ing] the act of objectification’ (Bourdieu, 1990: 59).

In this chapter I give an account of how I set about trying to propose some answers to the questions which my dual role provoked: the data which I used, the methods for selecting and analysing that data, and the theoretical perspectives which animated and oriented my work. The main body of this chapter provides a predominantly descriptive account of how I approached data collection and analysis. This is divided into three parts. Firstly I explain how I approached the deconstruction of the dominant discourse of public confidence in the criminal justice system, including how I identified the sources which constituted that discourse and the concepts and procedures which I applied to their analysis. Secondly I discuss the way in which I approached the task of carrying out a Foucauldian-style genealogy of the idea of public confidence in the criminal justice system. Thirdly I describe how I reanalysed a body of interview and focus group data collected as part of the funded research project on which I was employed. Finally, in the concluding section of the chapter, I reflect on the appropriateness of a method which brings these different analytical approaches together, and explore the theoretical and practical implications of adopting this eclectic approach.

### **3.2 Analysing the public confidence discourse**

One of my first tasks whilst working on the funded research project which inspired this thesis was to identify and review existing research on public confidence in the criminal justice system. In the process of doing this review I noticed three things: (i) that the central concept ‘public confidence in the criminal justice system’ was rarely explicitly defined; (ii) that research into public confidence all tended to be conducted according to a similar pattern, and (iii) that the findings of many of the pieces of research seemed rather repetitive and unremarkable<sup>37</sup>. Based on my

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<sup>37</sup> At the time that I did the review I proposed the idea that a dominant discourse of public confidence, prevalent in policy documents, suggested a basic model for confidence research and strategy formation which had shaped the way confidence was researched, and could be summarised as follows: (i) Identify the issues of importance to the public in relation to the CJS (their expectations or what they need to believe or have confidence in); (ii) Understand how opinions are formed on these issues (how they come to know about the CJS in order to be able to

initial review it seemed to me that the parameters of confidence research were set in such a way that identifying the 'drivers' of confidence, in a style akin to market-research, was regarded by many researchers as the basic 'problem' for confidence research. The 'solution' to the problem was to use knowledge of the drivers to correct public perceptions (implicitly constructed as emotional and/or inaccurate) or to alter criminal justice policy in order to meet public expectations<sup>38</sup>. I found these initial observations on the public confidence research agenda troubling and resolved to analyse them in more detail.

### **3.2.1 A governmentality perspective on public confidence**

Foucault proposed the notion of governmentality to describe a new rationality of government whereby '[t]o govern ... it was necessary to know that which was to be governed, and to govern in the light of that knowledge' (Rose, O'Malley and Valverde, 2006: 87). One of Foucault's major preoccupations was 'how men govern (themselves and others) by the production of truth (...the establishment of domains in which the practice of true and false can be made at once ordered and pertinent)' (Foucault, 1981: 9 cited in Smart, 2002: 59). From a governmentality perspective, then, power is understood as exercised and expressed through 'ways of thinking (rationalities) and ways of acting (technologies) as well as ways of subjectifying populations to be governed' (Lee, 2007: 11). Influenced by this Foucauldian perspective, I started to see the public confidence research literature as more than an attempt to uncover some 'truth' about public confidence, and began to regard it as also a 'practice for the conduct of conduct' (Rose *et al*, 2006: 101), that is to say as a governmental project.

Thinking along these lines I started to see that the quest to improve public confidence in the criminal justice system (what we might call the public confidence agenda), and the whole gamut of investigations, recommendations, strategies and

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believe or not believe, that is their evidence); (iii) Apply knowledge of the above to 'correct' opinions (by providing evidence that the CJS is meeting their expectations) (see Turner, 2008).

<sup>38</sup> Hammersley (1995) has identified what he calls the 'Engineering Model' of social research, which sees the end product of research as modifying policy and society and which means that '[t]he parameters of the inquiry process are set narrowly: the aim is to solve the problem, and both the problem and what constitutes a solution are defined by practitioners' (Hammersley, 1995: 126).

tactics that sprang up to serve this cause, collectively constituted what Foucault would term a 'regime of practices'. Which is to say that they can be understood as 'programmes of conduct which have both prescriptive effects regarding what is to be done (effects of "jurisdiction"), and codifying effects regarding what is to be known (effects of "veridiction")' (Foucault, 1991: 75). In Foucauldian thought, regimes of practices are not understood as more or less 'rational', rather 'forms of rationality' are seen as inscribed within 'practices or systems of practices' as "practices" don't exist without a certain regime of rationality' (Foucault, 1991: 79). The analysis of regimes of practices, then, seeks to identify two things: (1) the ensemble of rules and procedures which they contain, and (2) how they set up a 'domain of objects about which it is possible to articulate true or false propositions' (Foucault, 1991: 79).

The first part of the analysis presented in this thesis, then, is an exercise in expanding and deepening my initial review of the public confidence research literature. When working on the funded project the literature on public confidence was treated primarily as a resource: a body of knowledge which was used to orientate a new empirical inquiry<sup>39</sup>. However, for the purposes of researching and writing this thesis I chose to use the literature as data, or more specifically as a 'discourse', the analysis of which I would approach from a Foucauldian governmentality perspective.

### ***3.2.2 Doing a Foucauldian discourse analysis***

The term 'discourse analysis' has been applied to a diverse range of practices across a range of disciplines (Taylor, 2001a: 5; Phillips and Jørgenson, 2002: 1). In fact, Phillips and Jørgenson (2002: 1) observe that since the term 'discourse' came into vogue in the early 1990s a tendency has developed to use it 'indiscriminately', often without an accompanying definition, with the result that '[t]he concept has become vague...there is no clear consensus as to what discourses are or how to analyse them'. However, Taylor (2001a: 5-6) suggests that the range of practices

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<sup>39</sup> This is not to detract from the fact that the funded research project approached the existing body of knowledge critically and, in its final report (see Turner *et al*, 2009), offered an alternative epistemological framework for understanding public confidence.

associated with a discourse analytic methodology are united by a concern with 'language in use'. Although Taylor's simple formulation here implies that discourse is *only* a linguistic phenomenon (whereas some analysts conceptualise discourse as including the extra-linguistic), the notion of 'language in use' is a useful starting point for considering the theoretical context within which discourse analysis is situated.

When doing discourse analysis, 'language is not treated as information about something else but is ... problematized' (Taylor, 2001a: 15). Doing discourse analysis, then, always reflects a sense that it is 'untenable to retain conceptions of language as a merely neutral medium for the transmission of information, values and beliefs about the world "out there"' (Wooffitt, 2001: 326), and also that 'reality can never be reached outside of discourses' (Phillips and Jørgenson, 2002: 21). As such, the discourse analytic approach has frequently been linked (either implicitly or explicitly) to the epistemological position of constructionism (e.g. see Burr, 1995; Potter, 1996; Willig, 1999; Phillips and Jørgenson, 2002), and it has been suggested that discourse analysts *must* accept the basic theoretical premises of that perspective (Phillips and Jørgenson, 2002: 4). However, as both constructionism *and* subjectivism (as defined by Crotty, 1998: 8-9) accept that language itself (as the vehicle through which individuals organise and express their conscious thoughts) is implicated in the constitution of meaningful reality, I would argue that *either* of these epistemological positions might feasibly underpin a discourse analytic approach. Moreover, both constructionism and subjectivism sit in sharp contrast to the position of epistemological objectivism, which sees language as able to unproblematically represent reality, in which case discourse analysis is pointless (Phillips and Jørgenson, 2002: 20).

The idea of *social* constructionism has been taken by some to refer to the idea that it is only *social* objects that are socially constructed. However, Crotty (1998: 55) maintains that it refers to the idea that '*all* meaningful reality, precisely as meaningful reality, is socially constructed'. The word 'social', then, is used to indicate that the work of meaning construction happens in the context of social interactions, which usually take place through the medium of language. A social

constructionist stance, then, accepts the basic premise that 'language is constitutive: it is the site where meanings are created and changed' (Taylor, 2001a: 6).

Social constructionism is not opposed to the ontological position of realism (which holds that a real world exists independently of our understandings of it), rather social constructionists hold that descriptions of reality can never objectively represent reality. Discourse analysis, then, is an approach to research which is centrally concerned with the discursive construction and maintenance of meaningful reality. It rejects objectivism in favour of the relativist epistemological positions of either constructionism or subjectivism (which both recognise that the sense we make of objects is relative to our own subjective positions (Burr, 1995: 6; Crotty, 1998: 64-66))<sup>40</sup>.

Foucault's work has been an important reference point for many discourse analysts (Phillips and Jørgenson, 2002: 12), although the way he used the term discourse in his own writing was varied, and in his later work it was rarely mentioned (O'Farrall, 2005: 78-81). However, O'Farrall suggests that generally Foucault used the term in the sense of 'a "certain way of speaking"' (Foucault, 1977a: 107-8, cited by O'Farrall, 2005: 78), whilst Carrabine (2001: 273-4) suggests that a Foucauldian understanding of discourses would see them as 'variable ways of "speaking of" an issue'. However, Foucault also saw discourses as being more than language (Taylor, 2001b: 317).

Crucially, at the core of Foucault's understanding of discourse is its 'productive' potential, as it constructs the objects of which it speaks. It is not merely that the discourse shapes the way that people think about and understand issues, then, but rather that the discourse produces them as subjects, thus having effects (Carrabine, 2001: 273). The Foucauldian notion of a 'discursive formation' represents the inseparability of ideas and language (Hughes and Sharrock, 2007:

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<sup>40</sup> There are some important caveats to this as regards the knowledge claims made by discourse analysts. There is significant scope for discourse analysts to find themselves in the apparently hypocritical position of denying that reality can be objectively accessed outside of language whilst effectively objectifying language or discourse in their analysis. I will discuss how I deal with this issue in the last part of this chapter.



330). A Foucauldian discourse analysis proceeds from an understanding of discourse as productive, that is to say as capable of constituting its own objects *and* of having power effects as it produces a 'truth'.

To identify the sample for my discourse analysis I compiled a spreadsheet of articles, reports and policy documents which referred directly to either public confidence in the criminal justice system, or public confidence in policing<sup>41</sup>. I then examined the references cited in each of these documents in order to identify any other sources which were referenced by more than one of the pieces on confidence. The criteria I used to select the documents which would be included in my sample was that at least one of the following should apply: (i) the document had been referenced 3 or more times in other documents dealing with public confidence; (ii) the document was produced by authors who had been referenced 3 or more times in other documents dealing with public confidence; or (iii) that, despite not having been referenced 3 or more times, they were clearly positioned within the policy agenda as influential texts (this latter applied mainly to the most recent examples of confidence research and policy documents). These criteria were intended to help me to identify the texts within the discourse which might be considered to be 'programmatically' (Foucault cited in O'Farrall, 2005: 77).

The initial stages in the process of doing a discourse analysis, from whatever theoretical perspective, have many similarities with other forms of qualitative analysis. The analyst must consider the key categories and themes in their data, and the terms used within the discourse, and they will code and recode, consider how meanings and images are used, how associations or contrasts are set up, how different subjects are positioned by the text, consider the repeated use of ideas and representations around particular themes, identify apparent inconsistencies within the discourse, and also look for the silences (Tonkiss, 2004: 378-9). That is to say the analyst will focus on the 'internal relations' (Fairclough, 2003: 37) of the

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<sup>41</sup> I included the literature on public confidence in policing as I very quickly noticed that there were no clear dividing lines in discussions of public confidence between those studies which focused on the police, and those studies focused on the criminal justice system as a whole. The research on those topics used similar methods and approaches, suggesting that both were shaped by similar rationalities.

texts. In my case, then, this was a concern with the details of *how* public confidence was being constructed through the relationships which the texts set up between words, expressions and ideas. However, my analysis also concentrated on identifying which sources referenced which earlier works and how these linked together in referential chains, with each instance of referencing legitimising and solidifying the place of each text within the discourse. I focused on the ‘ “movement of meaning” ... from one event to another, from one text to another’ (Silverstone, 1999 cited by Fairclough, 2003: 30).

To begin my analysis, in the first instance I read and reread the selected documents in chronological order to get a feel for what they were saying, *how* they were saying it and how this changed over time. During this preliminary analysis I identified four categories of interest: *Role* (what role was implicitly or explicitly assigned to the public in influencing policy?); *Significance* (what were seen as the significant public interventions thus far?); *Subjective capacity* (how was the content of the subjective categorized?); *Malleability* (how malleable were the public as subjects implied to be?). I used these four categories to code each of the ‘programmatically’ texts, and to identify extracts for more detailed analysis. This approach was sufficient to enable me to give a descriptive account of the development of the discourse from 1984 to the present day. In the next phase I employed a more detailed analysis of the discourse, drawing on a number of conceptual resources which can be used to facilitate discourse analysis. In the next two sections I outline these.

### **3.2.3 *Subjective, subjectivities, subject***

I have thought very carefully about how to use these three words in such a way as to minimise vagueness and maximise the opportunity for readers to apprehend my meaning. The way I use these words also reflects the theoretical position that underpins my work, something which I believe should be transparent. To this end I now briefly explain my approach.

In colloquial usage to say that something is ‘subjective’ is to say that it is a matter of individual taste or perspective. In this way the word can be used to defend the

existence of apparent differences between individuals in matters of preference or judgment. To say 'well it's all subjective' can signal acceptance of or resignation to difference. However to say that something is 'subjective' is also to say that it is not 'objective', a discursive manoeuvre which can be used to denigrate individual judgments, as in 'that's just your subjective view'. In this latter instance the personal view, opinion, belief, whatever, is implicitly, and unfavourably, contrasted with an objective external reality, that is to say with 'the way things really are'.

The notion of the subjective (and also of subjectivity), then, implies something personal, something interior, something which carries more than a whiff of a suspicion that it is likely to imperfectly reflect the exterior world of objective reality. I use the idea of 'the subjective' to refer to that portion of the individual which is regarded as being internal, as belonging to them alone, and, unless they choose to articulate it, as remaining, if not invisible (for clearly what is interior can always 'leak out'), then inaccessible to other individuals.

I use the word 'subjectivities' to denote the array of concepts which are deployed to categorize the 'content' of the subjective, for example, broadly, emotions, cognitions and connotations and, more specifically, things like happiness, anger, sadness, fear, confidence, beliefs, perceptions, opinions, intentions. Subjectivities, then, are not the *actual* interiority of the individual, they are the concepts we use to describe what is 'inside' them. The way in which we use these concepts and the relationships which we posit between them shape our understandings of ourselves and others.

It is difficult (although perhaps not impossible) to communicate our interiority to others and to ourselves without making use of the shared stock of ideas which we have in common to describe our interiority. Subjectivities, then, obtain their meaning intersubjectively, although some individuals and institutions, for example, those who produce and disseminate knowledge about the content and workings of human interiority (the producers of 'psy knowledges' (Lawler, 2008: 64)), may be particularly influential in this process as concepts "escape" from their specialist enclaves to inform the workings of other types of professionals ... self-help

literature ... And ... are reiterated in the minutiae of daily life ... and inform the relationship of the self to itself' (Lawler, 2008: 64).

Subjectivities thus contribute to forming our identities as we use them as a way of thinking about, and even of being, 'ourselves' and 'constantly act upon ourselves to be a certain type of subject' (Lawler, 2008: 62). I use the word 'subject' then in this sense: to mean what becomes of the individual after what Foucault refers to as a process of 'subjectivation', that is to say the individual who has been 'subject-ed to the rules and norms engendered by a set of knowledges' (Lawler, 2008: 62) and 'formed within the apparatuses of power/knowledge' (Blackman *et al*, 2008: 6). Subjectivities are implicated within the knowledge discourse around individual personhood and, as we use them to understand ourselves, they are thus both the tools of our subjectivation, and the building blocks of subjecthood.

So the subjective is that portion of the individual regarded as internal and personal, subjectivities are the concepts used to categorize the content of that interiority, and the subject is the individual subject-ed to the knowledge discourses available for thinking about their selfhood (including subjectivities). Thus, individuals 'take up subject-positions – specific ways of being – available within discourse, understanding themselves according to a set of criteria provided by the experts whose authority derives from rationality and "reason"' (Lawler, 2008: 62).

These ideas are of relevance to my thesis because I am concerned with the way in which knowledge about a subjectivity called 'confidence' is produced, as well as with the effects of that knowledge. The knowledge discourse around confidence not only contributes to the wider knowledge discourse on subjectivities and personhood, but, in the course of its production, it offers individuals opportunities to give expression to their interiority. Different mechanisms for collecting data on confidence and other types of subjectivities (e.g. opinions) offer different opportunities for individuals to be subject-ed whilst, in making subjectivities into 'categories of enumeration', the research gives them the form of concrete/real 'objects', or Durkheimian 'social facts'. My contention, then, is that confidence research does not uncover the truth about confidence, rather it *makes* that truth.

### **3.2.4 Other conceptual resources**

#### *'Grids of specification'*

Foucault argued that the statements of which discourses are comprised are always about objects: 'things presented to thought ... the occasion or the matter on which thought is exercised' (O'Farrall, 2005: 79). Statements within discursive formations place objects in specific positions in relation to one another in what Foucault called a 'grid of specification' (Hughes and Sharrock, 2007: 331). A Foucauldian discourse analysis seeks to identify the objects presented to thought and the inter-relations implied in their positioning within discourse in order to map the 'grid of specification' at work, and understand 'the systematic ways that phenomena are rendered accessible to us' (Kendall and Whickham, 1999: 28) including any hierarchical relationships implied between the objects which the grid contains. This task was the first step in my in-depth analysis of the public confidence discourse.

#### *'Regimes of truth'*

Foucauldian analysis pays particular attention to the discursive construction of the distinction between what is true, and what is false, that is to say 'regimes of truth': 'the ensemble of rules according to which the true and the false are separated and specific effects of power attached to the true' (Foucault, 2000 [1977]: 132 cited in O'Farrall, 2005: 65). In social research literature the construction of this distinction is usually discussed in terms of the adequacy of the method used to access and represent reality, and the epistemology (way of knowing) upon which it rests. However, from a social constructionist perspective all meaningful reality is socially constructed, thus the activities of social researchers themselves are implicated in the construction of meaningful reality. Taking this perspective towards my data I analysed how discussions of methodological and epistemological adequacy ('regimes of truth') have been used in the public confidence discourse in preference to discussions of ontology (which would focus on how researchers themselves construct meaningful reality), and how this neglect

of their own ontological productivity serves to obscure the value-laden nature of decisions about how (and indeed if) public confidence should be represented.

#### *'Procedures of intervention'*

The Foucauldian notion of 'procedures of intervention' describes the regulation of processes for introducing new statements into a discursive field, something which often happens when statements are translated from one discursive context into another (Hughes and Sharrock, 2007: 331). For example, inquiries into 'what the public think', whether they are via crude single-item opinion polls or sophisticated multi-item questionnaires, transpose 'statements' from one register (e.g. everyday talk about crime and justice) into another (e.g. responses elicited by a questionnaire) and then into another (e.g. reports of stable public beliefs or extant public demands). In this way, '[k]nowledge can only be a violation of the things to be known, and not a perception, a recognition, an identification of or with those things' (Foucault, 2000 [1974]: 9 cited in O'Farrall, 2005: 67). As Rock has argued, established conventions for research into public opinion about crime and justice lead to complex and fluid everyday thought being given 'alien meaning' (Rock, 1979: 163) as it is pressed into the mould of 'organizational instruments which emphasise logicity and lucidity' (Rock, 1979: 166). I use the idea of 'procedures of intervention' to examine the ways in which public confidence discourse appropriates and transforms what the public are saying, and indeed doing, when they take part in public confidence research.

#### *'Reality effects'*

As should by now be clear, I envisage the way in which social research constructs reality as more than simply producing unpredictable consequences through 'the reentry of social scientific discourse into the contexts it analyses [and] the chronic revision of social practices in the light of knowledge about those practices' (Giddens, 1990: 40). This perspective on how research can change reality is not incompatible with an objectivist world view (a view which I have rejected). Instead I propose that research has the potential to produce something which Osborne and Rose (1999) have termed 'reality effects' whereby 'the version of the world that

could be produced under this description...become[s] true' (Osborne and Rose, 1999: 382).

Reality effects emerge when practices of research and representation call upon individuals to behave in certain ways, for example in the case of 'public opinion' research Osborne and Rose have argued that: 'people *learn* to have opinions; they become "opinioned"...people come to "fit" the demands of the research; they become, so to speak, persons that are by nature "researchable" from that perspective' (Osborne and Rose, 1999: 392). It is not, then, merely that people are altered (in unpredictable ways) by their experiences of being the objects of research, and reading about such research carried out on others (which is a somewhat obvious point). It is rather that the research *produces* subjects and objects; it calls upon individuals to constitute themselves as subjects in certain ways, and it fashions them into research objects in the light of their subjectivation.

Social science is at its most 'productive' (in terms of constructing reality and subjectivating individuals) when its concepts, ideas and modes of explanation move beyond the rarefied discourses of the academy and into the more accessible realms of public, political or policy discourse. The productivity of social science is also in evidence when concepts and ideas from these discourses are taken up and used within social scientific work and then re-enter public discourse infused with supplementary meaning by virtue of their status within research. Such is the case for research into the idea of public confidence, which has taken on a prominent position in recent criminal justice policy in England and Wales.

I draw upon the idea of 'reality effects' to examine how the public confidence discourses frequently (albeit often implicitly) categorize and order affectivities, cognitions, conations, and actions (subjectivities or the 'stuff' of the subjective), in such a way as to create the subjects which they purport to represent<sup>42</sup> whilst, at the same time, interpellating individuals in various subject positions in relation to

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<sup>42</sup> I have expanded here Campbell's (2010) notion of 'taxonomies of affect'. I am also thinking of Bourdieu's 'practical taxonomies' which he says guide our perceptions of the social world, offering 'just enough logic for the needs of practical behaviour' (Bourdieu, 1990: 14 cited in Jenkins, 1992: 38).

crime, criminology and the criminal justice system. These features of the discourse indicate that the public confidence research and policy arena is infused with theories of the subject which, even if they are not explicitly acknowledged, play an important part in producing the 'reality' of public confidence (as Lawler notes with respect to 'psy knowledges': 'The knowledges generated by psy are not normally represented as *theories*, open to contestation, but as truths about "human nature"' (Lawler, 2008: 64)).

### **3.2.5 Summary**

In this section I have described how I went about identifying and analysing the dominant discourse of public confidence in the criminal justice system. During the next stage in my analysis I became interested in how it was possible for this dominant discourse to exist in its contemporary form. In the next part of this chapter I describe how I analysed the 'conditions of emergence' for the idea of public confidence in the criminal justice system.

## **3.3 A Foucauldian genealogical analysis of the emergence of the dominant discourse**

### **3.3.1 Archaeology: identifying 'surfaces of emergence'**

'I begin with the assumption that the phenomenon to be explained is a present day phenomenon ... and ... my task is to trace its historical conditions of emergence ... and give account of its formation and development' (Lee, 2007: 9)

In his 2007 book *Inventing Fear of Crime: Criminology and the Politics of Anxiety*, Lee provided a thorough and thought-provoking Foucauldian genealogy of the much-analysed concept of 'fear of crime'. He argued that the will to knowledge, and more specifically the will to 'enumerate' (*Ibid*: 203), had contributed to the production of a concept which had in turn developed 'its own productive capacities and effects' (*Ibid*: 134). He described the process of production thus:

'...contingent factors have informed the entire conceptualisation of the fear of crime as an object that might be rendered intelligible through empirical enquiry. ... Fear of crime became an object of governance not because it was "out there", "waiting to be discovered", but because of a number of accidental or contingent discursive alignments or conditions of emergence' (Lee, 2007: 133)



Lee's account of the emergence of the idea of fear of crime offers many illuminating parallels with the story of how public confidence has become a prominent object for research and policy, but, more importantly for my purposes, his approach to his subject matter provided inspiration for my own inquiry, as it fired my interest in tracing the historical contingencies which allowed the idea of public confidence in the criminal justice system to emerge.

Foucauldian genealogical inquiries proceed from the belief that there is 'no necessity at work in history' (Smart, 2002: 58), and to do genealogy is to seek to understand how an idea (e.g. public confidence) comes to be seen as self-evident and necessary (Smart, 2002: 59). Knowledges are seen as requiring particular material conditions in order to operate, and also as having consequences for that materiality (Kendall and Whickham, 1999: 45). Thus, as Garland has argued with reference to the categorizations utilised within discourses on crime and criminals, these categorizations function as 'effective, truth-producing categories that provide the discursive conditions for real social practices. These categories are themselves a product (and a functioning aspect) of the same cultures and social structures that produce the criminal behaviours and individuals to which they refer' (Garland, 2001: 25).

The investigative *method* applied in genealogy is what Foucault described as 'archaeology' (Kendall and Whickham, 1999: 31-34), a method which entails analysing and describing:

'the domain of existence and functioning of a discursive ... to discover that whole domain of institutions, economic processes, and social relations on which a discursive formation can be articulated ... to uncover ... the particular level in which history can give place to definite types of discourse, which have their own types of historicity, and which are related to a whole set of various historicities' (Foucault, 1977a: 164-5 cited in Smart, 2002: 50)

Archaeology thus aims to uncover the traces of past knowledges and practices which can be identified in contemporary orders of knowledge, and which provide that knowledge with its 'conditions of possibility' (O'Farrall, 2005: 63). Foucault's archaeology, then, pivots on the notion that ideas which commonsense might be inclined to treat as timeless in fact have a historicity, and that our perspective on these ideas is rooted in the time and place from which we view them (Smart, 2002:

58). Indeed, Foucault regarded historical inquiry as the best method for understanding and challenging contemporary regimes of truth (O’Farrall, 2005: 54). His analytical focus eschewed the identification of underlying causes of history and instead aimed at uncovering the material conditions which permit certain objects to be thought, and thus to be known (Kendall and Whickham, 1999: 35).

Archaeology was intended to provide liberating knowledge by offering ‘a model of what has happened that will allow us to free ourselves from what has happened’ (Foucault, 1974: 644 cited in O’Farrall, 2005: 64). Foucault later introduced the idea of ‘genealogy’: a way of applying archaeology to answer present problems by incorporating, along with the historical analysis, an understanding of power: ‘there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations’ (Foucault, 1977a: 27 cited by Smart, 2002: 64). For Foucauldian thought then, truth is shaped and organised by power. Doing a Foucauldian genealogy of public confidence in the criminal justice system, then, means, in the first instance, applying an archaeological method to uncover how the idea of public confidence (in its dominant contemporary form) became thinkable, that is to say how it was able to emerge as an ‘object’ for thought, its ‘conditions of emergence’.

My archaeological inquiry was concerned with how the contemporary notion of public confidence in the criminal justice system became a recognised object of governance (Lee, 2007: 10). I was concerned to identify its ‘surfaces of emergence’, defined by Kendall and Whickham (1999: 6) as ‘places within which objects are designated and acted upon’. In pursuit of this objective I primarily used secondary historical sources as a resource for understanding material conditions, that is to say they were used as a way of getting at what was happening at certain points in history. My approach to these sources could therefore be described as objectivist, as the sources in question were utilised as adequate discursive representations of an extant reality. Such an approach could be seen as inconsistent with the Foucauldian ideas outlined above however, despite recognising the notion of universal truth as a historically contingent category, Foucault still strived to ensure that his analyses were firmly and accurately rooted in concrete material

experiences (O’Farrall, 2005: 86) and this too is my concern in utilising these secondary sources.

It is of course also plausible to analyse secondary sources from a social constructionist perspective, and to consider how they construct the truth they purport to represent, however the productive work done by these accounts is not the concern of this thesis. It would also of course be possible to engage in my own search of the entire historical archive bypassing secondary accounts altogether, however such a project is beyond the practical scope of this project. For good practical reasons, then, I have approached these secondary sources from an objectivist perspective, using them to help me to understand (as best as possible from my vantage point in the present) material conditions at different points in history.

As my concern was with *what* happened, rather than with *why* it happened I did not need to adjudicate between competing explanations as to how historical events came to pass. However, using secondary historical sources in this way still requires that careful consideration be given to their validity, reliability and clarity as historical records. Methods which can be applied to this task are also applicable to any literature review and include triangulation (consulting multiple sources to ensure that their accounts of historical facts are aligned) and close analysis of the arguments presented to ensure that claims are supported by appropriate evidence rather than being unsupported assertions or suppositions. To identify appropriate historical resources for my purposes I used the same procedures as I would use to identify sources for a literature review, consulting the bibliographies of the texts of which I was already aware in this area, searching library catalogues and databases, and spending time in the library getting to know the available literature.

### ***3.3.2 Genealogy: Power/knowledge***

In the first part of my analysis of the emergence of the contemporary discourse of public confidence I explored its historical ‘surfaces of emergence’, relying predominantly on secondary historical sources, and utilising primary sources for illustrative purposes. In the second part of my genealogical analysis I sought to

analyse in detail how, in the past 40 or so years, the idea of public confidence in the criminal justice system has been able to “hook” into normative ideas and common-sense notions’ (Carrabine, 2001: 269) within discourses on crime and criminal justice in England and Wales. I thus treated the public confidence agenda as a discursive formation containing statements (including claims to knowledge) about the object public confidence which could be analysed in order to identify the characteristics of the dominant discourse of public confidence.

Accepting the Foucauldian perspective that there can be no form of knowledge without networks of power (O’Farrall, 2005: 101), and that power is productive, generating ‘particular types of knowledge and cultural order’ (*Ibid*: 100), I was concerned to trace the relationship between knowledge and power in the emergence of the public confidence agenda. Foucault argued that ‘there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations’ (Foucault, 1977a: 27 cited in Smart, 2002: 64). I chose to approach this task through an analysis of the publicly available records of the utterances of politicians and people working in the criminal justice field as reported in media discourses, and in the contents of parliamentary debates, policy documents, commissioned inquiries and research reports. In dealing with this kind of data my concern was not with the factual accuracy of utterances and reports, but with how, when and where the idea of public confidence entered into the discourse.

My approach to the primary sources used for this part of the analysis was social constructionist in perspective, and I regarded the texts as ‘“social facts”’: produced, shared and used in socially organized ways’ (Atkinson and Coffey, 1997: 47 cited by Gidley 2004: 254). I was interested in the material events and conditions against which the idea of public confidence was deployed; and secondly I was concerned to trace the intertextual relationships at work, not just between the newspaper articles, but also between the newspaper articles and other textual genres, including political statements and debates and the content of policy and research documents. My focus then was on how texts related to external social events (Fairclough, 2003: 37). The purpose here was ‘to identify the details and

accidents that accompany beginnings, the small deviations, the errors, the complete reversals, “the false appraisals and faulty calculations” that produced *things*, knowledges, and “truths” that continue to have value in contemporary settings’ (Lee, 2007: 10). The Foucauldian genealogical method is focused, then, on contingencies, *not* causes (Kendall and Whickham, 1999: 6).

To kick start the analytical process I reviewed every newspaper article since 1982 which contained the phrase ‘public confidence in the criminal justice system’. I coded these according to how and why confidence had been invoked in each of these articles (the material events and conditions it referred to), and any links which the article made to other texts (its intertextual relations). After this point, the selection and analysis of further texts was a perambulatory process: as I identified events and texts of interest so I used these to search for other texts, all the time building up a sense of the points at which confidence entered into (or did not enter into) and was transmitted through the discourse. The purpose of this journey through linked events and texts (a journey into the discourse) was to apply the Foucauldian strategy of ‘eventalization’:

‘...making visible a *singularity* at places where there is a temptation to invoke a historical constant, an immediate anthropological trait, or an obviousness which imposes itself uniformly on all. To show that things “weren’t as necessary as all that”;

...

eventalization means rediscovering the connections, encounters, supports, blockages, plays of forces, strategies and so on which at a given moment establish what subsequently counts as being self-evident, universal and necessary.’ (Foucault, 1991a: 73)

This is a key part of any genealogical analysis, an approach to analysis which ‘seeks to identify the details and accidents that accompany beginnings, the small deviations, the errors and complete reversals’ that produce knowledges and ‘truths’, and ultimately the ‘things’ of which discourse purports to ‘speak’ (Lee, 2007). This approach deliberately seeks out discontinuity and anomaly (O’Farrall, 2005: 76).

However, before I got to this part of my analysis there were important choices to be made about which sources should fall into my sample for analysis. In the following sections I give an overview of how this selection was made.

### ***3.3.3 Identifying, accessing and using primary historical sources***

In searching for appropriate primary sources it was necessary to consider the practical constraints upon what was and was not plausible. As the genealogical aspect of the research constituted just one chapter in my three part analysis I decided to rely primarily on digital resources. The advent of large-scale digitization has made newspaper content a more accessible source for historical research as it no longer requires the previously prohibitive major investment of time and resources to trawl through physical archives (Bingham, 2010: 226). Using newspaper content in order to understand the politics, culture and society of an era has become a widely accepted historical technique (*Ibid*: 225) and enables researchers to identify when subjects were first discussed in the press, when a particular term or idea was first invoked and historical variations in its usage. Digital archives make this type of analysis much more feasible over large time periods with high volumes of newspaper print (*Ibid*: 228). However, there are some limitations to utilising digital archives. The easier availability of the archived content of particular titles (for example, The Times) has led some scholars to use this title as if it were ‘representative of “press opinion”’ without justifying this decision (*Ibid*: 229). I have tried to avoid falling into this trap by explicitly triangulating between the different archival resources which I used.

Bingham (2010: 230) further notes that the search engines of digital archives treat historical newspaper content as if it consisted of discrete articles, and argues that there is a danger that by utilising keyword searches to ‘home in’ on the articles containing their search terms researchers will neglect to consider the physical location and presentation of the article, failing to see the newspaper as a whole document. The practical limitations of the digital archive made it difficult to avoid the kind of neglect described by Bingham. This is particularly the case when using the Lexis Nexis archive which contains only the words featured in the articles, and an indication of the page upon which they featured, rather than a scanned image of

the article's place within the page and the paper as a whole. This should therefore be regarded as a potential limitation of my analysis.

Following a preliminary investigation of available, accessible and appropriate archival sources I selected the following digital repositories as useful starting points for my research: the Times Digital Archive; Lexis Nexis Newspaper database; the National Archive (includes House of Commons Parliamentary Papers) and the British Library Digital Newspaper Archive. I started my exploratory analysis with the Times Digital Archive and Lexis Newspaper database. The Times Digital archive covers the full text of the Times Newspaper from 1785 to 1985, containing almost 8 million articles from this time period. Lexis Nexis contains full text coverage of the contents of both local and national British newspapers, although the time span of the coverage varies by publication. The two publications for which Lexis Nexis offers the longest period of coverage are The Times/Sunday Times (from 1<sup>st</sup> July 1985) and the Guardian (from 14<sup>th</sup> July 1984), so initially I limited my searches to these two national broadsheet newspapers as I was interested in gaining the longest possible historical perspective. Later, once I had identified events and dates of interest, I was able to expand my analysis to include content from other newspapers included in the archive.

The British Library Digital Newspaper Archive contains a fascinating range of newspaper and pamphlet content from 1600 to 1900. As at December 2010 the database contained 16,646,238 articles, on 2.2 million pages from 48 different publications. It is important to note that only a small fraction of the Library's physical newspaper collection (1%) have thus far been digitised, however the composition of the database was carefully thought out and designed by a panel of academic advisors, and designed in such a way as to provide researchers with an indication of prevalent media discourses from earlier eras<sup>43</sup>.

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<sup>43</sup> The academic panel made their selection using the following eligibility criteria: to ensure that complete runs of newspapers are scanned; to have the most complete date range covered by the titles selected; to have the greatest UK-wide coverage as possible; to include the specialist area of Chartism (many of which are short runs); to consider the coverage of the title: e.g., the London area; a large urban area (e.g., Birmingham); a larger regional/rural area; to consider the numbers printed

In order to familiarise myself with the primary data for my genealogical analysis I used the quantitative technique of content analysis. Content analysis has the potential to have high validity and reliability via precise sampling as its focus is the objectively observable features of discourse, that is the words and phrases used, and the frequency with which they occur. The procedure of counting the occurrence of key words and phrases minimises the potential for researcher-bias as the object of inquiry is the manifest content of the texts and the procedures used should be replicable by any individual doing the same search in that search engine. By careful, defensible and explicit definition of the population, sample, sampling frame, text selection and search criteria, content analysts can evidence the valid and reliable nature of their findings (Tonkiss, 2004: 368-370). However, clearly quantifying content is limited in terms of the depth of insight which it can offer. It is entirely atheoretical, and can be subject to bias introduced by the way in which article content has been coded. For this reason I used it as a prelude to analysis, rather than as analysis itself, and report my findings here as a justification of my method, rather than in the substantive analysis chapters.

#### ***3.3.4 Quantitative pre-analysis***

Using the search engines of the Times Digital Archive and the Lexis Nexis digital archive of the Guardian and the Times/Sunday Times I carried out a quantitative content analysis in order to gain an initial overview of the prevalence and historical distribution of the term 'public confidence' used in relation to criminal justice matters within the print media. Initially I searched just on the term 'public confidence'. This enabled me to identify whether this term had become more or less prevalent over time so that I could ensure that any variation in the use of 'public confidence' in relation to my other search terms was not attributable to a general increase in the use of the term 'public confidence'.

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- a large circulation; the paper was successful in its time via its sales; to consider the different editions for dailies and weeklies and their importance for article inclusion or exclusion; to consider special content, e.g., the newspaper espoused a certain political viewpoint (radical/conservative); the paper was influential via its editorials. For more information about the database see: [http://find.galegroup.com/bncn/page.do?page=/bncn\\_about.jsp&finalAuth=true](http://find.galegroup.com/bncn/page.do?page=/bncn_about.jsp&finalAuth=true)



As illustrated in Figure 1 (below) I found that the term public confidence occurred much more frequently in the last quarter of the 20<sup>th</sup> century than at any time prior to this. During this time period there was also an increase in the size of the newspaper, which may partially explain this upward trend. Figure 2 (below) however, shows that mentions of ‘public confidence’ in parliamentary debates also showed a definite upwards trend in the last two decades of the 20<sup>th</sup> century, suggesting that at least some of the increase in the newspapers may reflect the increasing political salience of the term.

**Figure 1: Mentions of ‘public confidence’ in the Times and Sunday Times 1905-2004<sup>44</sup>**

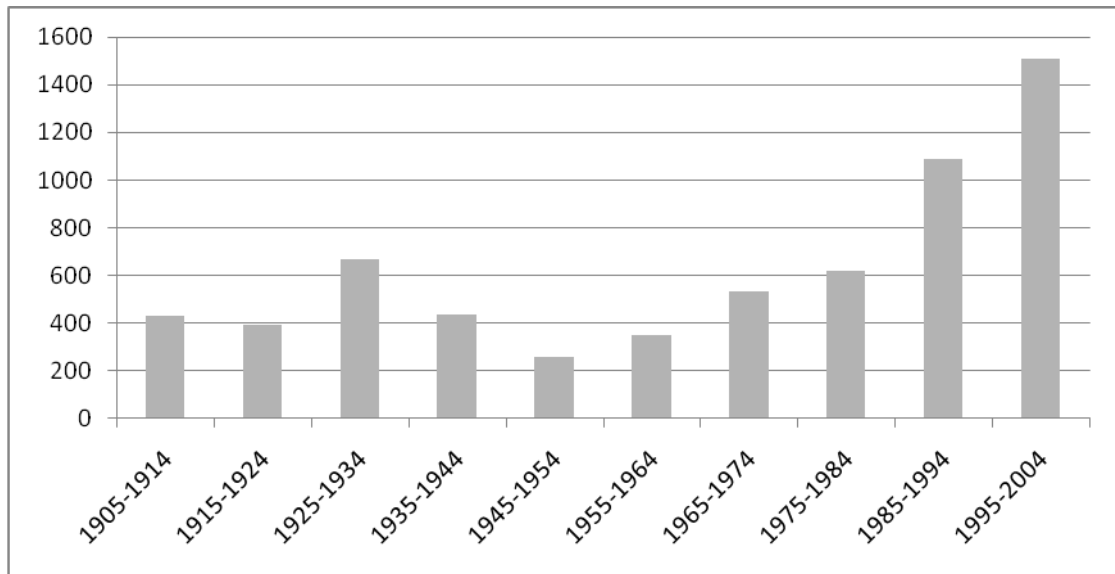
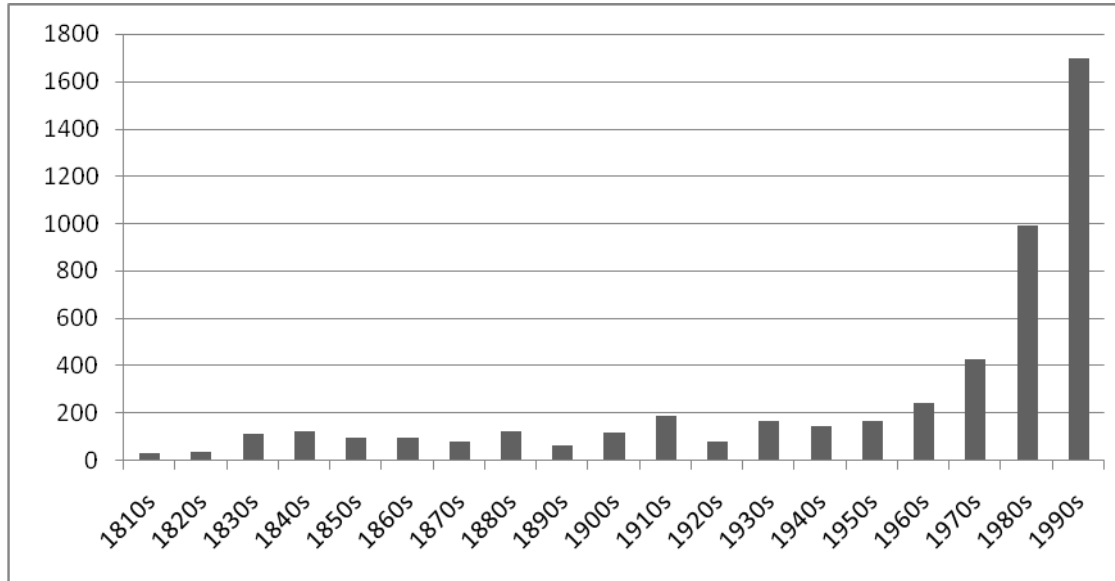


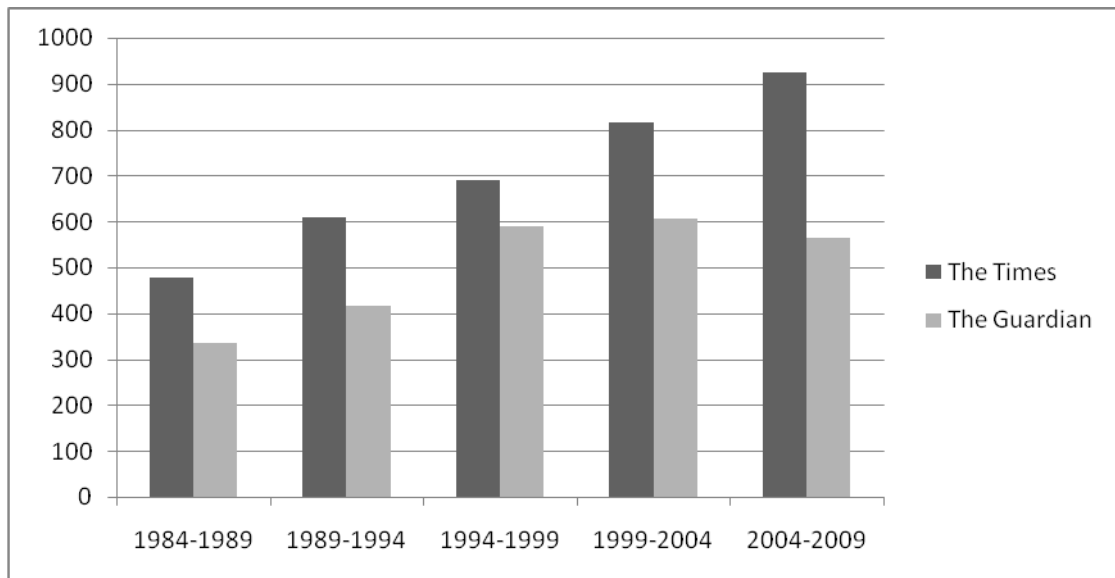
Figure 3 (below) uses Lexis Nexis data for the last quarter of the 20<sup>th</sup> century to show that in both the Times and the Guardian Newspapers there was a generally upward trend in use of the term ‘public confidence’ in each five year period from 1985-2004. This reinforces the impression gained from Figures 1 and 2 that the use of the term ‘public confidence’ was on the increase, although the differences between the figures for the two newspapers remind us of the dangers of seeing the Times as representative of newspapers generally.

<sup>44</sup> Figures up until 1984 obtained through the Times Digital Archive. Figures from 1985 onwards from Lexis Nexis.

**Figure 2: Mentions of 'public confidence' in parliamentary debates 1810-2000**



**Figure 3: Mentions of 'public confidence' in broadsheet newspapers 1984-2009**



Next I searched to see how many times the term 'public confidence' occurred along with either 'police' or 'justice'. Here I encountered a problem: the search engine for the Times archive worked slightly differently to that of Lexis Nexis. This meant that I was unable to directly compare searches on text produced up until the end of 1984 and searches on text produced thereafter. This problem was compounded by the tendency of the Times archive to throw up false positives for the earlier time periods, where 'public confidence' occurred in close proximity to either 'police' or

‘justice’ but in a completely different article or context<sup>45</sup>. Therefore, in order to get a rough idea of trends over time in the use of ‘public confidence’ in relation to issues of justice and policing I searched for all articles using the term ‘public confidence’ where one of the article keywords was either ‘justice’ or ‘police’. This seemed to produce more reliably relevant ‘hits’. The results of this search for each 50 year period from 1785 to 1984 are displayed in Table 1, below.

**Table 1: Frequency of use of ‘public confidence’ in relation to justice/police in the Times 1785-1984**

	1785-1834	1835-1884	1885-1934	1935-1984
<b>Justice</b>	1 (<1%)	3 (<1%)	8 (<1%)	19 (<1%)
<b>Police</b>	0 (0%)	7 (<1%)	21 (1%)	105 (5%)

Percentages displayed correspond to frequency expressed as a percentage of all mentions of ‘public confidence’

These figures suggest that the notion of public confidence in justice had virtually no presence in the content of the Times newspaper prior to 1885, whilst the notion of public confidence in police had a limited presence from the late 19<sup>th</sup> century onwards, and became more frequently used during the 20<sup>th</sup> century. I triangulated these findings by searching the British Library database of British Newspapers 1600-1900. The search on ‘public confidence justice’ (which would identify all articles where these words occurred in close proximity to one another) yielded just 4 hits, whilst a search on ‘public confidence police’ yielded 3 hits, supporting the inference suggested by the Times archive search.

Table 2 (below) displays usage of ‘public confidence’ in the same sentence as the words ‘police’ or ‘justice’ in the Times/Sunday Times and The Guardian newspapers since 1984. These figures were obtained from the Lexis Nexis search engine. As can be seen, both in crude volume terms and in proportion to other uses of the term ‘public confidence’, there was a spike in the use of ‘public confidence’ in the same sentence as ‘justice’ and ‘police’ between 1989 and 1994. Analysing each

<sup>45</sup> For example the search engine identified a long article from Friday 2<sup>nd</sup> February 1821 recounting parliamentary business, where the word ‘justice’, used in relation to the presumption of innocence which should follow a person’s acquittal for an offence, was followed by the use of the term ‘public confidence’ in an entirely separate debate about the reporting of government income.

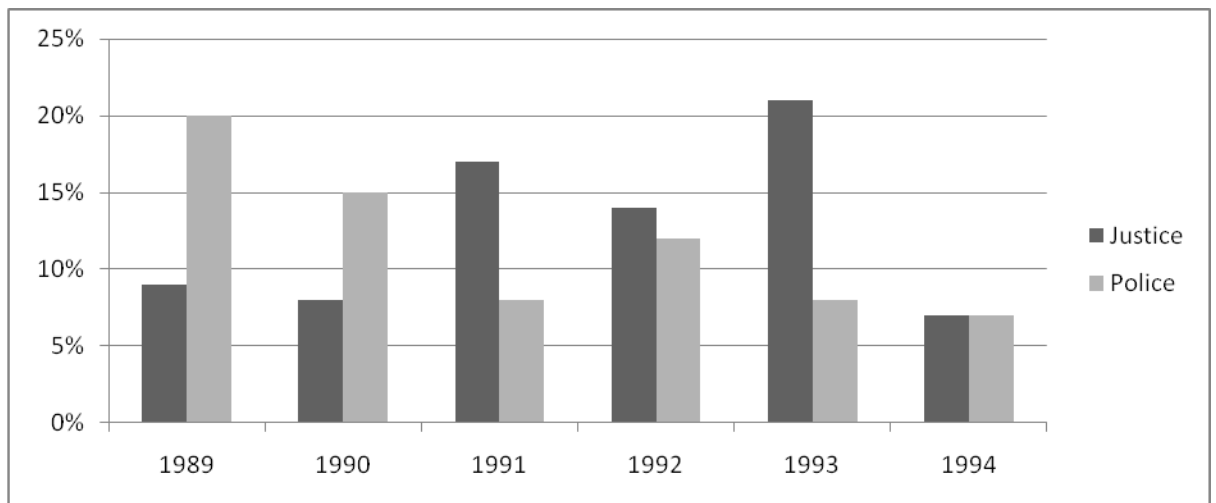
of these years individually I found that during that five year period the prevalence (numerical and proportional) of the term 'public confidence' used in the same sentence as the word police was at its peak in both newspapers in 1989 and 1990, but declined thereafter, whereas the prevalence (numerical and proportional) of the term 'public confidence' used in the same sentence as the word justice was highest between 1991 and 1993. In the Guardian in 1993, 21% of uses of the term 'public confidence' came in the same sentence as the word justice (18 articles in all). See Figure 4 (below) which displays this graphically.

**Table 2: Frequency of occurrence of 'public confidence' in same sentence as justice/police 1984-2009**

		1984-1989	1989-1994	1994-1999	1999-2004	2004-2009
<b>Justice</b>	Times	25 (5%)	64 (10%)	57 (8%)	83 (10%)	102 (11%)
	Guardian	26 (8%)	57 (14%)	37 (6%)	37 (6%)	40 (7%)
<b>Police</b>	Times	22 (5%)	86 (14%)	33 (5%)	46 (6%)	55 (6%)
	Guardian	42 (13%)	55 (13%)	45 (8%)	24 (4%)	42 (7%)

Percentages displayed correspond to frequency expressed as a percentage of all mentions of 'public confidence'

**Figure 4: Percentage of uses of 'public confidence' where justice or police in same sentence (Guardian newspaper 1989-1994)**

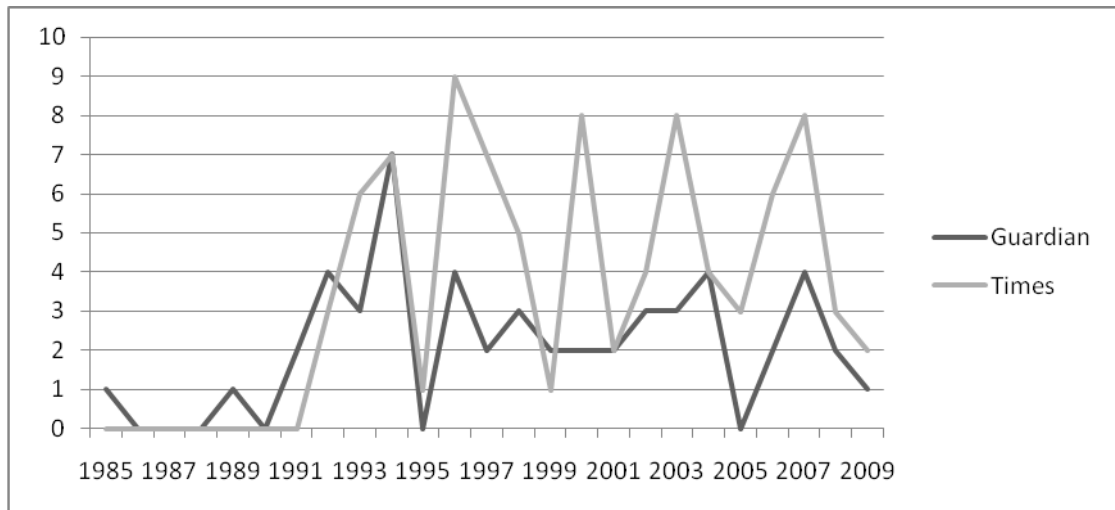


### 3.3.5 Pinpointing entry into the discourse

My interest, of course, lay in the specific idea of 'public confidence in the criminal justice system'. Using the Lexis Nexis database I counted how many articles from the Times/Sunday Times and the Guardian contained the phrase 'public confidence in the criminal justice system' in each year from 1985 to 2009. The

results are displayed in Figure 5 (below). The results indicate that the phrase only came into common usage from 1992 onwards. However it seems that during earlier periods the term 'public confidence in the administration of justice' was preferred, reflecting the fact that the term 'criminal justice system' was not widely used in relation to England and Wales prior to the 1970s<sup>46</sup>.

**Figure 5: Number of uses of phrase 'public confidence in the criminal justice system' in the Guardian and Times newspapers 1984-2009**



A search on the term 'criminal justice system' revealed that, in the British Library database of British Newspapers 1600-1900, the phrase did not occur at all, whilst in the Times newspaper, the term was not used in relation to Britain until 1973. Uses of the term during the 1970s were sparsely distributed and tended to be with reference to the US context (particularly the Watergate affair) or appeared to be prompted by, and often directly quoting from, academic or other research reports, or the words of the researchers themselves. It was not until 1981 that the term 'public confidence' appeared in the same article as the term 'criminal justice

<sup>46</sup> The idea of criminal justice operating as a system, and thus the application of the term 'criminal justice system' began to become more prominent during the 1980s (See Bottoms, 1995: 24). Feeney (1985) has argued that the application of a systems approach to criminal justice from the 1960s onwards 'bore almost immediate fruit' (Ibid: 8) due to the multiple points of interdependence between agencies trying to operate effectively and efficiently. However, writing in the same edited collection, Mair (1985) argued that the term 'system' was misleading implying 'notions of smooth-running, interdependence, feedback and structured interaction' (Ibid: 197) which were unlikely to result from the activities of agencies and professional groups with starkly different working cultures and objectives. Whatever the advantages and disadvantages of the term 'system' used in the criminal justice context it has, apparently at the behest of ministers seeking to exercise tighter control over the performance of public sector work, become the dominant term used to describe the collected and interacting activities of criminal justice agencies.

system’, however here the limitations of the Times archive search engine became clear as, although the two terms were used in the same article, they were not used in close association with each other. In an article the following year however, the two terms were brought together as the Times reported a speech in the House of Commons by the then Home Secretary William Whitelaw.

Using the archive Historical Hansard (1803-2005) I was able to trace the exact emergence and prevalence of the phrase ‘public confidence in the criminal justice system’ in parliamentary debates. I found that the term was not used in parliamentary debate prior to 1981, when Ivan Lawrence MP referred to it in relation to proposals by the Royal Commission on Criminal Procedure (1981) to establish an independent prosecution service. Figure 6 (below) indicates that during the 1990s the term ‘public confidence in the criminal justice system’ came to be preferred to the term ‘public confidence in the administration of justice’ in parliamentary debates.

**Figure 6: 'Public confidence in the administration of justice' vs. 'Public confidence in the criminal justice system'. Number of uses in parliamentary debates 1810-2000.**

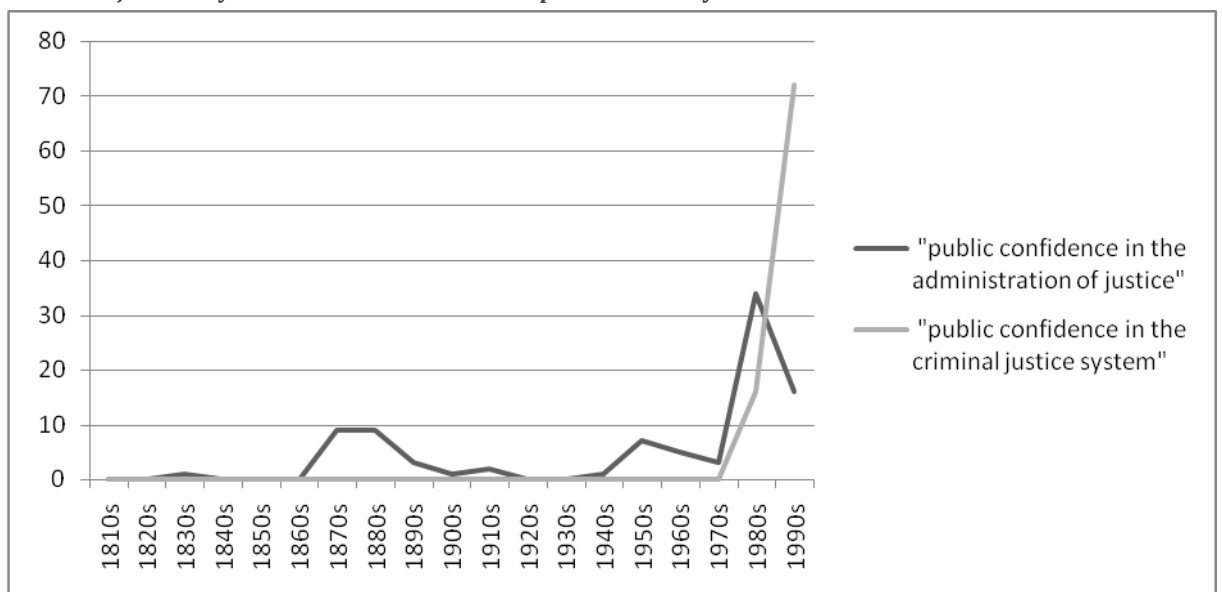
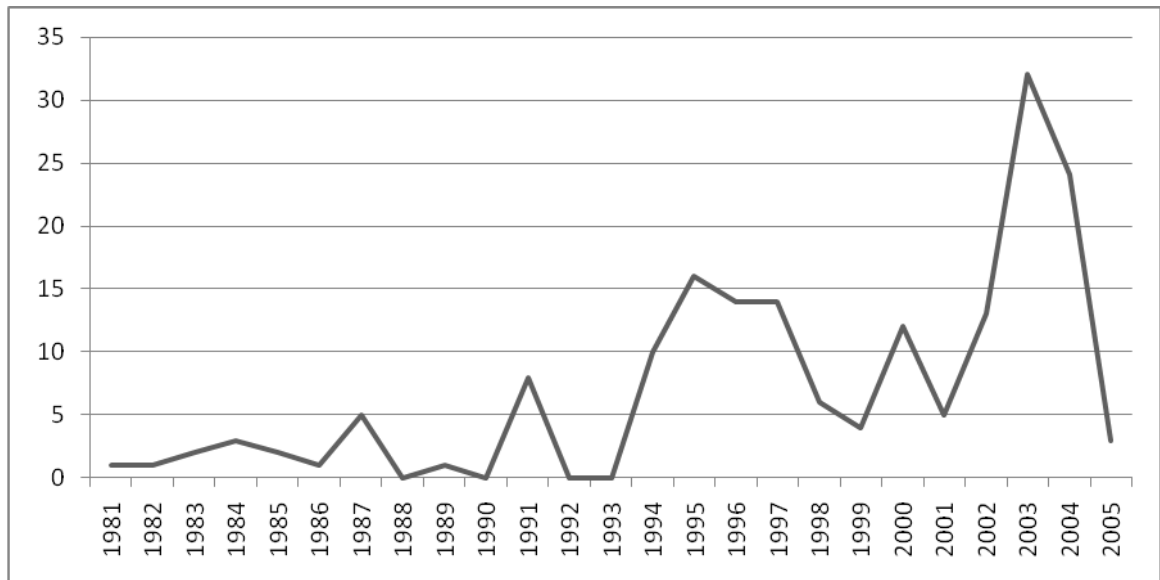


Figure 7 (below) shows the prevalence of the term ‘public confidence in the criminal justice system’ in debates between its emergence in 1981, and 2005 when the archive terminates<sup>47</sup>. As it demonstrates, usage of the term was sparse in the

<sup>47</sup> The search engine for recent and current debates works differently which makes meaningful comparison impossible.

1980s, became much more prevalent in the mid-1990s, and had a significant spike in 2003/2004. Furthermore, the figures showed that the term was used much more frequently within parliamentary debates than it was in the content of the Times and Guardian newspapers.

**Figure 7: Number of uses of the phrase ‘public confidence in the criminal justice system’ in parliamentary debates 1981-2005**



Using various digitised archival sources then, I was able to note that the use of the term ‘public confidence’ in relation to the issue of justice was virtually non-existent in Times newspaper content prior to the early 1980s. I was also able to identify 1981 as the first year in which the phrase ‘public confidence in the criminal justice system’ was used in a parliamentary debate, and 1982 as the first time that a discourse of ‘public confidence’ came together with that of the ‘criminal justice system’ in Times newspaper content. Using Lexis Nexis I was able to identify 1989-1994 as the period during which the use of the term ‘public confidence’ in the same sentence as justice or police became more frequent in newspaper content, and I identified a spike in the use of the term ‘public confidence’ in relation to police in 1989 and 1990, and a spike in the use of the term ‘public confidence’ in relation to justice from 1991-1993. The phrase ‘public confidence in the criminal justice system’ was most prevalent in newspaper content in 1992-1994, 1996-1997, 2000, 2003 and 2007. In parliamentary debates this exact

phrase became more frequent between 1994 and 1997, in 2000 and between 2002 and 2004.

Gaining this quantitative overview of the historical content of the Times and The Guardian newspapers and parliamentary debates enabled me to familiarise myself with the data, to identify the newspaper articles and political debates which would form my sample for more detailed qualitative analysis, and to identify key points in time in the history of 'public confidence in the criminal justice system'.

### **3.3.6 Summary**

In this section I have described the methods which I used to carry out a genealogical analysis of the emergence of the dominant discourse of public confidence in the criminal justice system. In the next section I describe the approach I used to reanalyse interview and focus group data collected as part of a funded research project on public confidence.

## **3.4 Reanalysing interview and focus group data from a funded research project**

The data used for the final part of my analysis was collected as part of a funded research study on public confidence in the criminal justice system. The study employed three phases of empirical data collection: (i) a small-scale series of exploratory interviews and focus groups (September – October, 2007); (ii) a random-sample mail survey (April – June, 2008); (iii) an in-depth qualitative phase based on focus-group and semi-structured interviews (August – September, 2008). In my third analysis chapter I reused the data collected during the third phase of this process. This part of my methods chapter describes the way I used that data and the theoretical stance which I adopted towards it.

The value of using interviews and focus groups in social research, the relative merits of these approaches to qualitative data collection, and the appropriate methods and procedures for *doing* interview/focus group research have been discussed in a vast wealth of methods literature (see for example Bloor *et al*, 2001; Bryman, 1998; Crabtree and Miller, 1999; Denzin and Lincoln, 2005; Mason, 2002;



Morgan, 1997; Silverman, 2001; Strauss and Corbin, 1998). My analysis takes it for granted that interviews and focus groups are relatively uncontroversial and widely used techniques in qualitative research; that it was valid and indeed conventional to use them in the funded project; and that they were conducted in a manner compatible with good research practice. Therefore it is not my purpose in this part of my methods chapter to dwell upon the debates about why, how, and when to use interviews and focus groups, and about the adequacy of the procedures actually adopted in the funded research project (although for the sake of transparency I do describe these). Rather I am concerned to elaborate on how and why I found it useful to re-visit this data for the purposes of developing my PhD thesis, and how in re-visiting the data I approached it from a very different perspective than that adopted during the funded research project. As a prelude to addressing this topic, the section below describes how the data was collected.

#### ***3.4.1 Description of data collection<sup>48</sup>***

Respondents to the mail survey (n=1300) carried out during phase two of the data collection of the project were asked to indicate whether they would be willing to take part in a follow-up qualitative study. In total 420 people (32% of the sample) offered to take part in either an interview or a focus group and a contacts database of those respondents was compiled. The database included information (based on their responses to the mail survey) about respondents' levels of confidence in the criminal justice system, their willingness to engage with the criminal justice system and where they lived. This information was used to enable purposive sampling for phase three to ensure that, as far as possible, a demographically and attitudinally diverse range of participants took part.

During the recruitment phase attempts were made to contact respondents by telephone at different times of the day and on different days of the week, including evenings and weekends. Ninety three (22%) of those who offered to participate were successfully contacted. No incentives were offered to respondents to take

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<sup>48</sup> This section (3.4.1) is closely based on the description of data collection contained in Turner, Campbell, Dale and Graham (2009).

part, however refreshments were offered when they attended venues external to their own homes, and they were able to claim back travel expenses. Eighteen (19%) of those contacted declined to take part. Twenty one (23%) could not attend at a suitable time. Eleven (12%) agreed to take part but did not attend. Forty three (46%) took part in either an interview or focus group.

In total I conducted five focus groups and 14 one-to-one interviews for the project during August and September 2008. Of the 43 participants, 25 were female and 18 were male. The ages of the participants ranged from 27 to 93 years. Four participants were from a black or other minority ethnic background. 18 (42%) of the participants had said in the survey that they were fairly or very confident that the criminal justice system is effective, the remaining 25 (58%) had indicated that they were not very or not at all confident. The proportion of participants in the interviews and focus groups who were fairly or very confident corresponds closely to the proportion of confident individuals found in the population as a whole, through the random sample survey. See Table 3 (below) for details of the participants.

Focus groups were carried out in three different locations: at the University campus, in a community centre in Riverton<sup>49</sup> and at the council chambers in Lightly. Three interviews were carried out at the University, the remaining 11 interviews were carried out at locations which were convenient for the participant, including (where appropriate) participants' own homes, workplaces and convenient cafes. The focus groups each lasted between 60 and 90 minutes, and at each one I was assisted by a co-facilitator who took notes on the discussion and also on non-verbal interaction, and who later transcribed the discussion verbatim, including notes about the non-verbal interactions. The interviews each lasted between 30 and 60 minutes. I transcribed six of these interviews myself, and the

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<sup>49</sup> All names, of places and of people, have been changed in order to safeguard the anonymity of the participants.

remaining eight interviews were transcribed verbatim by an external organisation and checked for accuracy by me<sup>50</sup>.

**Table 3: Focus group and interview participants**

	Alias	Sex	Age	Confident?	Ethnicity
IV1	Fred	M	93		White - British
IV2	Elsie	F	77	✓	White - British
IV3	Harriet	F	63	✓	White - British
IV4	Gavin	M	28		White - British
IV5	Angie	F	43		White - British
IV6	Niall	M	28		White - Irish
IV7	Lorna	F	39	✓	White - British
IV8	June	F	61		White - British
IV9	Brenda	F	64		White - British
IV10	Abida	F	27	✓	Asian - Pakistani
IV11	Vivien	F	68		White - British
IV12	Karen	F	58	✓	White - British
IV13	Margaret	F	72		White - British
IV14	Bert	M	65		White - British
FG1	Hamid	M	31	✓	Asian - Pakistani
	Mavis	F	57	✓	White - British
	Robin	M	60	✓	White - British
	Veronica	F	49	✓	White - British
	Julian	M	56	✓	White - British
FG2	Rosemary	F	56		White - British
	Eric	M	61		White - British
	Malcolm	M	51		White - British
FG3	Ursula	F	54		White - British
	Henry	M	54		White - British
	Pam	F	44		White - British
	Geoff	M	63		White - British
FG4	Sandra	F	42	✓	White - British
	Violet	F	55	✓	White - British
	Lawrence	M	47		White - British
	Ted	M	56		White - British
	Ernest	M	77	✓	White - British
	Jack	M	65	✓	White - British
FG5	Judy	F	57		White - British
	Steve	M	52		White - British
	Bill	M	55		White - British
	Maureen	F	59		White - British
	Sandy	F	46		White - British
	Tara	F	54		White - British
	Andy	M	35	✓	White - British
	Priya	F	50		Asian - Indian
	Anne	F	49	✓	White - British
	Laura	F	45	✓	White - British
	Glenys	F	86	✓	White - British

<sup>50</sup> To satisfy ethical and data security obligations, transcripts of the discussions were stored on a secure password-protected database only accessible to the University-based members of the research team. Transcripts were anonymised for identity and place and participants were identified only by their questionnaire URN and an allocated pseudonym.

At the beginning of every focus group and interview the purpose of the research was explained (including the link to my PhD work) and the source of the funding made explicit. Participants were assured that their confidentiality and anonymity were guaranteed by the research team unless they said something which made the team concerned that someone might be at risk of serious harm. Participants were also advised that their participation was voluntary and that they could withdraw from the discussion at any time. Promotional materials for victim support were made available at each interview and focus group and participants' attention was drawn to these. Participants were asked whether they would like to receive a copy of the final report and a note was made of those who expressed interest in order to share the published findings.

The semi-structured interview and focus group schedules were designed to address four key themes: participants' normative expectations of the CJS (what did they think it should be doing?); the conditions under which participants formed their views of the CJS (what information did they say they used?); the impact of confidence (what did respondents say about their willingness to engage with the criminal justice system in certain scenarios?); whether respondents felt that their views were listened to by the criminal justice system. The interview and focus group schedules were laid out in a grid formation so that themes would not be addressed in a linear fashion but could be addressed at points which seemed appropriate during the discussion. The intention was to allow the conversations to be as free-flowing as possible whilst ensuring that the core themes were addressed<sup>51</sup>.

At the time that I carried out the interviews and focus groups for the funded research project I had only a rather vague sense of how I would use this data in my PhD thesis. However I knew that I was interested in the perspectives which members of the public had on whether or not the criminal justice system listened to their views, and whether they thought it *should* listen to their views, or to the

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<sup>51</sup> See Appendices 1 and 2 for the final versions of the focus group and interview schedules.

views of any other groups. For this reason I included a specific section in the interview and focus group schedules about 'being listened to'.

In the interviews, this section started from the question 'do you think that your views about the CJS are typical?', and included the following prompting questions: 'What gives you that impression? What other points of view are you aware of? Do you think the CJS listens to views like yours? Who does the system listen to? Who should the system listen to? How can the system listen better?' In the focus groups this section started from the question 'Do you think that the criminal justice system listens to views like yours?' and prompting questions were: 'What gives you that impression? Who *does* the system listen to? Who *should* the system listen to? How can the system listen better? Do you think your views are typical? What other points of view are you aware of?' This was the only part of the schedules which was not designed to address public confidence directly. In writing up my analysis I have tried to make it clear when data have emerged 'naturally' in response to questions about public confidence in the criminal justice system, and when they have emerged as a direct consequence of this additional PhD-focused section of the schedule.

#### ***3.4.2 Redefining the data: interview/focus group research as a technique of power***

Interviewing has been described by Hammersley and Atkinson (1983: 188) as 'an interactional format in which the researcher plays a key role through the questions he or she asks, however non-directive the interview is. In interviews the very structure of the interaction forces participants to be aware of the ethnographer as audience. Their conceptions of the nature and purposes of social research, and of the particular research project, may, therefore, act as a strong influence on what they say.' They go on to caution researchers about the possible impact of a 'sophisticated' interviewee who moves more towards giving analysis rather than description of the events or experiences he or she is asked about: 'however interesting or fruitful the theoretical ideas are, the data base has been eroded' (1983: 189), and argue that researchers must be aware of the differences between solicited and unsolicited statements in the evidence, as well as the potential impact

of 'impression management' by participants (Hammersley and Atkinson, 1983: 190). However they stress that despite the need to be vigilant on these issues 'participants' responses to ethnographers may nevertheless may be an important source of information. Data in themselves cannot be valid or invalid; what is at issue are the inferences drawn from them' (Hammersley and Atkinson, 1983: 191).

In reanalysing the data collected from a funded research project I did not simply plan to identify themes which were not spotted, or at least not explored, in the original analysis. Instead I started from a position of redefining the ontological status of the data. Instead of treating what people said in the interviews and focus groups as providing insight into the authentic and pre-existing content of some personal interior life, I interpreted their utterances as indicating their understanding of what can be said in the scenario which has been constructed for them by the researcher.

I saw the interview/focus group as a scenario constructed specifically for research and, although to some extent 'artificial' (in that it is a mechanism constructed to access the 'real'), it is also in itself 'real'. The 'real' status of the interview/focus group scenario is confirmed by the fact that once it is brought into existence it begins to have 'effects' on the participants, the researchers, and ultimately on wider audiences exposed to the research findings which the interview/focus group scenario has helped to produce, and therefore subject to the version of reality which such research helps to construct and maintain. I regard the interview/focus group scenario, that is the scenario in which some people are being 'researched' by being asked to talk about their views on or experiences of a particular subject, as never being *merely* a method for finding things out about those taking part, but also as a technique of power, the 'correct' or 'approved' application of which permits certain knowledge discourses to gain legitimacy as accurate representations of the reality of 'what the public think'.

So, in re-using the data collected in interviews and focus groups for a funded research project I redefine that data as discourse generated by the artificial, but also real, situations constructed by researchers doing empirical research on public confidence in the criminal justice system. I regard the content of that discourse as

providing an indication of how individuals go about accomplishing meaning in the artificial/real interview/focus group scenario. Thus the accomplishment of meaning, and the discursive manoeuvres used by participants to legitimate the views which they express, are regarded as an indication of participants' understanding of the rules of the game as regards being allowed to express a belief or opinion in an interview/focus group scenario.

Bourdieu argued that data collected from in-depth interviews is likely to produce 'official accounts' which are artefacts of the research relationship, and of the objectivist approach to research (see Jenkins, 1992: 53-54). In carrying out analysis for this thesis I take the view that the research *is* the relationship, and that the artefactual is thus also the real. So my perspective was that 'interviews...demonstrate a relationship between position and utterances via which people routinely act and interpret events and relationships' (May, 2001: 141) *when called upon to do so in the researched situation*. Recalling the quotation which I used above: 'Data in themselves cannot be valid or invalid; what is at issue are the inferences drawn from them' (Hammersley and Atkinson, 1983: 191). Interview and focus group data are therefore interpreted in my third analysis chapter as precisely that: 'data', entirely produced by the research and indicating only what people do in the researched situation, not something more 'real' or 'authentic' than that<sup>52</sup>.

### ***3.4.3 Analytical approach***

The purpose of my re-analysis of the data was to consider the kinds of 'official accounts' which the public confidence research scenario encouraged and the way in which statements of opinion were achieved by participants. That is to say I wanted to consider the question 'how did the participants in these interviews and focus groups take part in the research scenarios?', in the light of my assumption

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<sup>52</sup> It is important to note that the interviews and focus groups which I conducted could never exactly replicate the research environments created in other pieces of confidence research, my interviewing technique and my persona will necessarily be different to those present in other pieces of research. So, whilst the general situation - an interview or a discussion with criminal justice as its focus, and the presence of a professional social researcher - is the same, I cannot, and nor do I, claim that one can generalise from my interviews and focus groups to interviews and focus groups more generally.

that the interview/focus group scenario is used to make claims to truth, and that it subjectivates the individual participants to its own logic.

My re-analysis of the discourse generated by the interviews and focus groups commenced from an observation which I made during the initial analysis, carried out for the funded research project. The project analysis had reconfirmed the common theme within the dominant discourse of public confidence that the public have a sense that the criminal justice system should be (but too often is not) 'in touch' with *their* experiences, views and preferences. I started my analysis, then, with a close consideration of *how* this idea of being 'in' or 'out of' 'touch' was achieved, or given meaning, in research participants' utterances.

My approach to the analysis, then, reflected a symbolic interactionist orientation towards the data. Symbolic interactionism holds that shared symbols for communication enable the interaction which constitutes the social world. The self is seen as constituted internally through the experience of externally occurring symbolic interactions. The self thus changes with experience as individuals take on new roles and are exposed to new symbols and meanings. To effectively investigate human action, symbolic interactionists hold that one should study interaction naturalistically. However, as I had repositioned my data as being real, as well as artificial, there was no methodological discrepancy involved in analysing interview/focus group data in this way (see Filmer *et al*, 2004: 38; Crotty, 1998: 72-78).

I approached the analysis by asking myself what kind of (implicitly) intersubjectively shared symbolic resources participants used when invoking the idea that the criminal justice system is in/out of touch. In identifying the symbolic resources used by participants to give their utterances (about being in/out of touch) meaning, I was also interested to make connections between these symbolic resources and social structure. That is to say I regarded the resources as not only resources, but also as indications of the methods used by participants to make sense of their own social reality. I was not merely looking to provide an objectivist description of the symbols utilised, then, rather I was also trying to enable the participants to 'speak', by creating 'theory out of data' (Strauss and Corbin, 1998:



56). My assumption was that there is something important to consider in the fact that participants are achieving meaning *in this way* (rather than that), and I wanted to explore this within the context of what I had already found about the public confidence agenda.

In addition to approaching the data as described above I also became interested in the different ways in which participants did *not* create meaning, or the ways in which they muddled the waters of meaning, and thus failed to provide unambiguous 'data' about their beliefs, preferences and opinions, as well as when they indicated their awareness that for the criminal justice system to be 'in touch' was not straightforward due to the diversity of public views. I mean by this the various expressive tics present in participants' speech - the slips and self-betrayals which indicate uncertainty, the self-conscious rowing back from a previously staunchly expressed position, the subsequent moderating of language used - which make it difficult (if not impossible) for the researcher to really claim to have got at some authentic expression of what the participant thinks, or feels, or wants. As Girling *et al* (2000) observed in their excellent study:

'people's talk about crime (their discourse) is dense and digressive. It slips from topic to topic, changes gear and direction. It talks in stories, instances and anecdotes but then moves to speculations, conjectures, theories. It roams from the present, to the remembered past to possible wished-for or threatening futures. It is heavy with experience and skips between abstractions. It makes sense of troubling and alarming events but also expresses confusion and uncertainty. It effects connections between people but also draws boundaries and distinctions and crystallizes hostilities, suspicions and conflicts. It invokes authority and demands order, yet voices criticism and mistrust of authorities and orders.' (Girling *et al*, 2000: 5-6)

The analysis, then, proceeded from an initial focus on the idea of being in/out of touch, and considered how this idea was given meaning in participants' utterances. An initial reading of the transcripts revealed that the idea was alluded to in reference to two different groupings ('us' and 'them'), and in relation to the different ways of knowing about crime and justice (and different motives for knowing) attributed to these different groups. Subsequent coding sought to explore the themes associated with these ideas, and to extract key illustrative quotes. In relation to the indications of self-doubt, self-contradiction and

awareness of diverse views on crime and justice, again the transcripts were coded for these themes, and key illustrative quotations were identified.

It is important to note that the analysis which has emerged from this process of coding is offered here quite tentatively, as just one of many possible interpretations. In the next and final section of this chapter I address the theoretical perspective on doing research which has informed and disciplined my approach.

### **3.5 Theoretical reflections on an eclectic method**

In this final part of my methods chapter I reflect on the theoretical implications of the practical solutions which I arrived at in the course of doing my research, in an attempt to locate some kind of (retrospective) order in the process. I begin by considering the tension between a social constructionist theoretical perspective, and the progressive political objectives of the critical social researcher. What then follows is an attempt to propose an ethically and practically grounded way of resolving this tension. I return to this reflection in the final chapter of this thesis to tidy up some of the 'loose ends' which I have not been able to resolve here, as well as to identify the aspects of my theoretical reflection which, with hindsight, have turned out to be as much *products* of my research as they are tools used to facilitate the completion of this thesis.

#### ***3.5.1 Social constructionism: 'promise' or 'paralysis'?***

As described above, I began my analysis with a Foucauldian discourse analysis, followed by a genealogy of the public confidence agenda. These analytical approaches rested on the following linked assumptions: (i) reality exists but cannot be known outside of discourse; (ii) discourses are productive of reality. The first of these assumptions is the standard fare of the social constructionist theoretical perspective. The second is what we might call 'hard' social constructionism, and corresponds to what Osborne and Rose (1999) have termed

'reality effects'<sup>53</sup>, and what Foucault saw as discourse's productive power. Epistemologically speaking social constructionism opposes the objectivist assumption that a reality which is 'out there' can ever be accurately known and represented outside of the socially available, inter-subjectively constructed resources for knowing about and representing it. It is a relativist epistemological position.

The charge which may be levelled at research which takes a social constructionist perspective is that it offers only deconstruction, and cannot propose constructive alternatives. Foucault received heavy criticism for this tendency in his work (Burr, 1998: 17). Consider the closing prescription in Lee's thought-provoking Foucauldian genealogy of the concept of fear of crime:

'[a]s researchers we should...always seek to problematise the notion of fear of crime; render it contingent. Likewise we must abandon positivistic notions that fear of crime is a stable object of knowledge that can be attributed specific causality' (Lee, 2007: 204)

Lee's conclusion offers *only* a deconstructive course of action, failing to offer a reconstructive alternative way of thinking. At worst his failure to offer a constructive alternative could be seen as denying the painful reality in the lived experiences of some people of something which can be adequately (if imperfectly) labelled 'fear'.

It is extremely unlikely that issuing such a denial of human suffering was Lee's intention, however as Stan Cohen has so eloquently argued, certain theoretical positions may, albeit unintentionally, 'supplement the inventory of denials available to the powerful' (Cohen, 2001: 280). Fully accepting Lee's concluding position appears to involve, if not rejecting, then at least *failing to deal with* the reality of human experiences of suffering associated with regularly feeling threatened with impending victimisation, or with feeling, even occasionally, intensely vulnerable. Such is the problem which social constructionism poses: in the absence of objective knowledge, how does one act, or indeed legitimately exhort others to act, in pursuit of political goals?

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<sup>53</sup> 'the version of the world that could be produced under this description...become[s] true' (Osborne and Rose, 1999: 382).

'Critical' social research, meanwhile, has been characterized in terms of its political objectives, its methodological approach and its epistemological assumptions. Politically, being critical can mean seeking to challenge and change things, rather than simply understanding them as they are (Crotty, 1998: 113); it can also mean a commitment to a particular kind of 'progressive' political agenda (Fairclough, 2001: 230). Methodologically, a key difference between critical and non-critical research can be seen as the difference 'between a research that reads the situation in terms of interaction and community and a research that reads it in terms of conflict and oppression' (Crotty, 1998: 113). On the epistemological level, critical research has been described as 'concerned with revealing underlying social relations and showing how structural and ideological forms bear on them. Critical social research, then, is interested in substantive issues and wants to show *what is really going on* at a societal level' (Harvey, 1990: 20, *emphasis added*).

The last of these aspects of being 'critical' implies a commitment to identifying objective social realities. This aim appears incompatible with the relativist epistemology of social constructionism for, if descriptions of reality can never be straightforward representations of reality and instead merely indicate how the researcher has made sense of reality (Crotty, 1998: 64), then the researcher can surely never claim to know 'what is really going on'.

Yet, whilst noting this problem, I also know that in many ways the social constructionist perspective on reality is as much a habit as a conscious choice and, in my own experience, I can no more switch it off than I can glance at a page of text in the English language and fail to decipher the clusters of symbols before me as words. That said I was always concerned about where social constructionism might lead me. As Burr has observed, the apparent 'liberatory promise of [social constructionism's] anti-essentialism' (Burr, 1998: 13) brings with it the fear of 'social and personal paralysis' (*Ibid*: 14). Intent on a career in social research, I wondered what was the point in it all if concepts had no meaning and knowledge was simply a product of its social context? There must be some firm ground on which to stand to generate knowledge which could be useful, empowering and socially beneficial. The dilemma for me, then, was not whether or not to be a social

constructionist, but how to reconcile the fact that I was one with my personal political objectives.

Of course, many others have walked this path before me. Edwards, Ashmore and Potter (1995 cited in Burr, 1998: 15) have argued that the way in which many researchers have coped with constructionism is not by making an either/or choice, instead there is a 'continuum of acceptance of social constructionist and relativist ideas', with researchers choosing to get off the 'constructionist wagon' at the point where they fear losing their ability to be critical. But can we really make a decision about epistemological possibilities based on political expediency? Can we really say that this can be known because it is politically important to know it? Surely in such a situation the decision is no longer epistemological?

Others have argued that relativism is a strength: it enables researchers to show that 'things could be different', and indeed places a responsibility upon them to reconstruct that which they have deconstructed in ways which are more conducive to the type of society which they favour (Willig, 1999). However, as the example from Lee (2007) above demonstrates, many authors fight shy of this reconstructive effort for fear of reifying any new construction (Burr, 1998: 25).

In what follows I hope to provide some indication of how my approach to this thesis has attempted to weave together relativism *and* relevance with a view to saying something interesting *and* constructive about my topic. As a starting point I think it is important to clarify that social constructionism is a double-edged sword: on the one side it is a powerful weapon for critiquing discourse, yet the other blade always appears to skewer those who wield it by limiting the epistemological status of the critiques which they produce. I want to start with the strong edge of social constructionism here, before proceeding to consider some ways out of the trap which that strong edge sets.

### ***3.5.2 What must the world be like to make this reality possible?***

As described above, the starting point for my analysis of the public confidence agenda was that empirical research on public confidence does not and cannot merely represent a public response to crime and criminal justice which pre-exists

the research process. Rather, as data is collected, research findings disseminated and guidance for policy and practice produced, the public confidence agenda brings into being not only the types of public responses which it purports to represent, but also the public themselves, both as subjects, and as objects for criminological research. If reality cannot be accessed outside of discourse, then the discursive resources available to us and their 'intersubjectively shared meanings' constitute 'the experiences which comprise social reality', and provide the 'rules, models and indeed versions' according to which people live their lives (Williams, 1998: 20). Social reality can never consist of anything other than social constructions, but these constructions 'take on a reality to those who experience their effects' (Williams, 1998: 19).

The experience of social reality is thus always subject to 'conceptuality' - the concept-dependence of our social structures (Bhaskar, 1986) - and our 'categories of classification' are, therefore, always also 'social structures'. Rather than representing events these categories constrain the way in which events can be represented and, as they are used to represent events, these structures are strengthened, so that '[t]he use of particular ways of talking... both reflects, continuously constitutes and reconstitutes narratives that provide the continuity to reproduce social structures' (Henry and Milanovic, 1994: 113).

Drawing on this attitude towards knowledge-seeking and generation, in this thesis I am concerned with what the 'representationalism' which is implicit in applied research on public confidence *does*: what are the 'reality effects' which it produces? What is important to me, then, is not critiquing public confidence research and policy in terms of whether or not it is based on an 'accurate representation' of the putative phenomenon of public confidence. Rather I am concerned with the *effects* of the pursuit of objective knowledge about public confidence: what is it that different accounts of the 'reality' of public confidence, and how to represent it, do for, and to, us?

Burchell has argued that by using Foucauldian methods to identify 'the historically contingent limits of present thought and action, attention is drawn to what might be called the costs of these limits: what does it cost existence for its truth to be

produced and affirmed in this way' (Burchell, 1996: 33). Through my analysis I started to feel that the public confidence agenda was not without its 'costs to existence' and that we should therefore consider:

'What sort of relationships with ourselves, others and the world does this way of speaking the truth presuppose, make possible and exclude? What other possibilities of existence are necessarily excluded, condemned, constrained?' (Burchell, 1996: 34)

This is the strong critical edge which a 'hard' social constructionism can use to cut through and into the social conditions and events which it analyses. Instead of taking the structure of our language as an objectively given and morally neutral thing, it considers what that language (and the discourses within which it is deployed), makes possible and impossible in different places and at different points in time. That is to say it considers what discourses do to, and for, both the individuals who are subject-ed by them, and the larger social structures within which these individuals exist.

But how can one identify these 'costs to existence'? In my analysis I have drawn upon (although perhaps not entirely in the way he intended) the critical realism of Roy Bhaskar. Bhaskar takes a novel, and useful, approach to considering the possibility of social science. He begins by considering what makes science possible, starting from a position where 'one assumes at the outset the intelligibility of science (or rather of a few generally recognized scientific activities) and asks explicitly what the world must be like for those activities to be possible' (Bhaskar, 1979: 10-11). This is an interesting sort of inverted approach to ontology whereby what exists is whatever makes scientific activity possible, rather than science being deemed possible only if it investigates what exists. In fact, for Bhaskar, scientific activity rightly produces the reality it studies: 'the objects of scientific inquiry are neither empirically given nor even actually determinate chunks of the world. Rather, they are real structures, whose actual presence and appropriate concept *have to be* produced by the experimental and theoretical work of science' (Bhaskar, 1979: 17, *emphasis added*).

Bhaskar's theory suggests that to answer ontological questions (which is to say questions about what kind of things can exist) we should start by asking how

something is brought into being (see Harré, 1998). If we apply this approach to the public confidence agenda, which implicitly assumes that some 'real' thing called public confidence in the criminal justice system can exist and be accurately represented in research, then we would ask ourselves: what must the world be like to make *this* reality possible, to bring *this* reality into being? How is research on public confidence possible? By asking these questions we can concentrate our focus not on the accuracy of any representation (as we assume all representations to be inherently imperfect), but on the ethical implications, the 'costs to existence' of representing (and therefore producing) reality *in this way*.

When Osborne and Rose (1999) describe 'reality effects' their critique does not allude to the presence of creative agents in the process of constructing reality; it is the social sciences rather than social scientists which create phenomena. Their account thus lacks an ethical consideration of the responsibilities incumbent on social scientists who, after all, they argue, have the power to alter the 'subjective attributes of persons themselves: the kinds of persons they take themselves to be and the forms of life which they inhabit and construct' (Osborne and Rose, 1999: 392). They observe that the 'success' of the social sciences at creating phenomena (and thus impacting on humanity) may only be visible with the benefit of hindsight. However, their association of 'success' with creativity betrays no sense that 'success' at altering the human experience, may have deleterious consequences.

Foucauldian thought also sees the production of discourses as 'a subjectless process - ... the rules of the production of statements are not centred on human intervention or action' (Kendall and Wickham, 1999: 43). In conducting my analysis of research on public confidence I have taken a slightly different perspective, assuming that we might reasonably expect social scientists to at least *try* to take responsibility for the effects of their representations. Couched in normative terms my view is that those who make a claim to a particular expertise at representation *ought* to consider the kind of reality they are producing.

So, a social constructionist perspective engages critically with what it means to represent reality in this way or that, and researchers should take responsibility for



the ontological ripples which they create. But what about the trap which is now clearly set and baited for the social constructionist researcher to fall into? If reality cannot be represented, what status do the claims of a social constructionist have? Or, as I put it above: in the absence of objective knowledge, how does one act, or indeed legitimately exhort others to act, in pursuit of political goals?

### ***3.5.3 Critical anti-representationalism: refusing the epistemological bait***

What I want to argue here is that the bait in the trap which has been laid for the social constructionist is the idea of epistemology itself, and the steel teeth which line the jaws of the trap are ‘the discursive conventions of our ways of talking and writing [which] create the ontological illusions that beset our efforts to make sense of the world’ (Harré, 1998: 38). In support of my argument I draw on the work of the philosopher Richard Rorty.

Rorty challenged the aspiration to provide ‘accurate representation’ of the world around us. Drawing on the work of Gadamer he argued that ‘getting the facts right...is merely propaedeutic to finding a new and more interesting way of expressing ourselves, and thus of coping with the world’(Rorty, 1979: 358). Seeking to obtain ‘correspondence’ between reality and representation, between phenomenon and concept, was, in Rorty’s view, worse than irrelevant it was to engage in a ‘self-deceptive effort to eternalize the normal discourse of the day’ (*Ibid*: 11). He argued that ‘[w]e have to see the term “corresponds to the way things are” as an automatic compliment paid to successful normal discourse rather than as a relation to be studied and aspired to throughout the rest of discourse’ (*Ibid*: 372).

Rorty took a pragmatist philosophical stance towards knowledge. Pragmatism has been described as the view that ‘[n]o single set of answers are imposed on us by reality, but there are better and worse answers, more and less rational ones given our aims’ (Cormier, 2006: 113). Following Dewey, Rorty proposed that knowledge is ‘what we are justified in believing ... a social phenomenon rather than a transaction between the “knowing subject” and “reality”’ (Rorty, 1979: 9). Therefore, we should not be concerned with establishing what is objectively ‘true’,

rather we should focus on 'the project of finding new, better, more interesting, more fruitful ways of speaking' (*Ibid*: 360) what he calls, borrowing from Gadamer, 'edification'. The search for objective knowledge, whilst not necessarily *destined* to fail, offers, a 'temptation to self-deception' which may 'hinder the process of edification' (Rorty, 1979: 361)<sup>54</sup>.

Rorty was particularly scathing about the discipline of epistemology which he described as:

'the attempt to see the patterns of justification within normal discourse as *more* than just such patterns. It is the attempt to see them as hooked on to something which demands moral commitment – Reality, Truth, Objectivity, Reason.'  
(Rorty, 1979: 385)

In place of this approach to epistemology Rorty proposed a 'behaviourist' approach which would

'look at the normal scientific discourse of our day bifocally, both as patterns adopted for various historical reasons and as the achievement of objective truth, where "objective truth" is no more and no less than the best idea we currently have about how to explain what is going on' (*Ibid*: 385)

According to this view 'practices of justification' are 'just the facts about what a given society, or profession, or other group, takes to be good ground for assertions of a certain sort' (Rorty, 1979: 385) and these grounds always have alternatives.

The parallels with Foucault should be clear. Whereas Rorty offers a philosophical demolition of epistemology, Foucault has proposed the empirical investigation of its historical conditions of existence, the mechanisms through which it operates and their effects. Foucault's perspective, as Flyvbjerg (2001: 101) writes, was that: '[w]here universals are said to exist, or where people tacitly assume they exist, universals must be questioned'. My contention is that the very existence of the idea of epistemology means that all our carefully observed descriptions of how reality appears to us are implicitly understood as claims to accurate representation. In fact they need be no such thing.

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<sup>54</sup> This aspiration to provide 'edifying knowledge' is echoed in Bauman and May's (2001) description of sociology as 'central to the endeavour of coming to understand ourselves in better ways' (Bauman and May, 2001: 180).

In Rortean terminology, our 'normal discourse' is oriented to notions of 'truth', and 'representation'. It struggles to accommodate the notion that our saying something about something might be anything other than a claim to represent that thing accurately, to speak *the* truth about it. As Harré has observed: 'the discursive conventions of our ways of talking and writing create the ontological illusions that beset our efforts to make sense of the world' (Harré, 1998: 38). In the social sciences these 'discursive conventions' betray the epistemic aspirations which encourage researchers to ally themselves to a narrow scientism<sup>55</sup>.

So what is my point? I was trying to deal with the problem of being a social constructionist and also having critical political aims. The two are often seen as in conflict because social constructionism deconstructs but has no ground to reconstruct and thus induces paralysis. My argument is that paralysis is present only if we allow ourselves to be fixed within a normal discourse which makes an objectivist epistemology the primary condition for having anything useful or constructive or valuable to say. But why should epistemology, which purports to provide a theory of what *can* be known, be the prime consideration?

C. Wright Mills argued that 'by their work all students of man and society assume and imply moral and political decisions' (Mills, 2000 [1959]: 76), and that the applied sociologist working as 'the research technician available for hire' does not escape from the moral and political decisions, but allows these questions to be answered by others. When epistemological adequacy is adjudged to be the most important consideration in the status of what social scientists can say, then what becomes of moral and ethical considerations?

I proposed a solution to this problem above, when I argued that we should take an ethical attitude towards the 'ontological illusions' which we cannot help but perpetuate. We should recognise that our representations are always imperfect, contingent and also always (potentially) productive, and we should ask ourselves: what must the world be like to make *this* reality possible? This approach, a sort of

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<sup>55</sup> 'science's belief in itself: that is the conviction that we can no longer understand science as one form of possible knowledge, but rather must identify knowledge with science' (Habermas, 1987: 4)

critical anti-representationalist response to social constructionism, is both a methodology (which can be applied to the reality constructed in other people's research), and an ethical stance to be applied to oneself. It is also a refusal to take the epistemological 'bait'.

A critical anti-representationalist approach to doing social research makes the *first* thing researchers ask of themselves when they look at the different varieties of criminological and other social research (including their own) not 'how accurate is this representation of reality?' but rather 'what must the world be like to make this reality possible?'. This means, in other words, asking 'what does knowing the world in this way say about and do to the way we relate to our participants, as well as to the public more generally, and the way they relate to themselves, to each other and to the social and political structures which help to shape their daily lives?'. It also means asking 'by reporting these kinds of facts what other facts are omitted or might be obscured?' These questions direct the analytical gaze not towards the accuracy of any representation (as we assume all representations to be inherently imperfect), but rather towards the ethical implications, the 'costs to existence' of representing (and therefore producing) reality *in this way*.

This approach is congruent with proposals advanced by Bent Flyvbjerg (2001)<sup>56</sup>. Flyvbjerg draws on Aristotle's account of the three intellectual virtues: *phronesis* (ethical judgment), *episteme* (scientific knowledge) and *techne* (craft) to argue that many social scientific activities which represent themselves as *episteme*, which is to say as identifying context-independent scientific facts, are more properly

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<sup>56</sup> Flyvbjerg draws on both Foucault and Rorty in outlining his method, and is particularly influenced by Foucault's rejection of both foundationalism and relativism in favour of contextually grounded ethics and the constant challenging of domination. Describing Foucault's method as centred on 'making that which appears invariable variable', Flyvbjerg adds that *phronesis* means deliberating the variable (Flyvbjerg, 2001: 112). The synergy with Rortean pragmatism is also clear. Rorty argues that pragmatists do not debate the accuracy of objective representations; rather they debate the utility of inevitably socially constructed objects. The claims of the pragmatist, then, are 'practical recommendations on what to talk about, suggestions about the terms in which controversy on moral questions is best conducted' (Rorty, 1999: 85). The emphasis within pragmatism on contextually grounded debate about the utility of concepts is clearly paralleled in Flyvbjerg's suggestion that we should deliberate the variable, only Flyvbjerg's concern is not with utility (means) but with values (ends). This variation on pragmatism is also reflected in my own concern for 'costs to existence', which emphasises the importance of applying a reflection on values to the construction of research problems and methods.

understood as either *phronesis* or *techne* (Flyvbjerg, 2001: 60). *Techne* is described as 'Pragmatic, variable, context-dependent. Oriented towards production. Based on practical instrumental rationality governed by a conscious goal' (*Ibid*: 57). It literally means 'craft' or 'art' and, as practised by social scientists, can mean an activity capable of grappling with key 'social, cultural, demographic and administrative problems' (*Ibid*: 62). The activities which constitute social science as *techne* thus can 'play an emancipatory role; or they may act as controlling, repressive, and legitimating' (*Ibid*: 62, *emphasis added*).

Flyvbjerg suggests that social science as *phronesis* will contribute to 'society's practical rationality in elucidating where we are, where we want to go, and what is desirable according to diverse sets of values and interests ... contributing to society's capacity for value-rational deliberation' (Flyvbjerg, 2001: 167). *Phronesis*, then, is about considering one's own relationship to society and analysing and interpreting the role played by values, and by different interests and mechanisms of power, in constructing the social as we know it (*Ibid*: 60). Doing social science as *phronesis* means asking: Where are we going? Is this desirable? Why/why not? Who gains and who loses? By which mechanisms of power? These questions have also shaped my inquiry into both the public confidence agenda and the public criminology debate.

#### **3.5.4 'Do any or all of these things...'**

A critical anti-representationalist approach deliberately injects a normative dimension into social constructionist critique by proposing that social scientists have an ethical responsibility to consider the consequences of their conceptual creativity. In other words reflexivity must extend to a consideration of what different types of factual claims, and the values and assumptions underpinning the investigations which allow these claims to be made, imply about, and may do to, the nature of social reality. *Phronesis* in social science must extend to value-rational deliberation about the production of social scientific knowledge.

In order to critically appraise a particular piece of social scientific inquiry, then, we must consider something more than how well the researcher has applied the rules

of method which she has relied upon to legitimise her knowledge claims (which is just a matter of the researcher's work having internal coherence with respect to accepted ways of knowing within the field or discipline or tradition with which she is aligned: one cannot say just *anything* and expect others to go along with it).

From a critical social constructionist perspective we should also be concerned with whether *in this specific case* the application of *these rules* is acceptable. I don't mean acceptable in the sense that the rules are seen as a scientifically valid way of grasping the truth about reality. Rather this is where we ask the question: 'what must the world be like to make this reality (the reality implied by the rules) possible?' We then consider whether this reality is both ontologically plausible and ethically agreeable. The epistemological question '*can this be known?*' is replaced with the more interpretive question '*what if this is knowable?*'. In light of what we find we can begin to approach the *phronetic* question: '*should this be known?*'

Now this may give rise to the question of what criteria (indeed what rules) we use to interrogate the acceptability of the rules used in each case. Infinite regress and her bedfellow nihilism rear their ugly heads. What needs to be accepted at this point is that we *do* possess some intersubjectively shared resources which are adequate to the task of sensibly and usefully (but never definitively) interrogating the rules by which we and others attempt to know reality. Because these intersubjectively shared resources are, like all representations, also inherently unstable social constructions, we must be prepared to propose our reading of the rules as just that: one possible reading, and to welcome alternative readings and challenges. The important thing is that we have stepped back from the outer layers of knowledge production: the knowledge itself and the rules of method, to ask questions, both metaphysical and ethical, about the conditions of possibility for that knowledge. Taking such a step is *anti-representationalist* (it renders the notion of the possibility of accurate representation permanently unstable and open to critique), and it can also be *critical* (if it approaches that critique from the position of commitment to progressive objectives and bringing about social change). As C. Wright Mills argued, all researchers have their biases:

'Let those who do not care for mine use their rejections of them to make their own as explicit and as acknowledged as I am going to try to make mine!' (Mills, 2000 [1959]: 21)

So what are my own biases? Well, as I admit above, I do assume one thing: that I have in common with my contemporaries an adequate stock of intersubjectively shared resources to offer a sensible and useful representation of some aspects of recent historical events and of our current reality. I should state that this is emphatically *not* merely the point at which I get off the social constructionist bus (see above). It is an ontological conviction about what exists in the world based on my own experience of being in the world. However, I do not claim that these intersubjectively shared resources are objectively *the same as* the things they are used to describe, only that, in many cases, they are *good enough* to facilitate reasonably clear communication. In recognition of the fact that they can never objectively represent the things they are used to describe, in offering my representations I endeavour to make my analytical procedures as transparent as possible, and in my analytical chapters I attempt to keep a clear distinction between describing the visible surfaces of things (the number of articles, the words used, the links made between concepts), and interpreting their meaning (an activity which is much more perilous, being prone to the introduction of one's own values). By maintaining this distinction I intend to leave open to my reader the possibility to visit these things for him or herself in order to adjudge, firstly, the reasonableness of my assumption that adequate representations can be sensibly and usefully made, and, secondly, my interpretations of the meaning of these objects.

In terms of the values which shape my work I can declare an interest, as I stated in my introduction, in the desire to see movement towards 'progressive' political objectives. For me this means moving towards more equal opportunities and outcomes for individuals and the communities of which they are a part, the strengthening of tendencies towards compassion and cooperation between people (as opposed to suspicion and competition), and working towards meeting our material needs in an environmentally sustainable and non-exploitative manner. If anyone would like to take me to task for this bias I suppose they might suggest that

I allow my values to distort the way I represent reality, but as I contend that *all* representations are made possible by rules based on values and underlying assumptions I would gladly accept this accusation. Invoking C. Wright Mills again, I am committed to making my values and biases explicit and I would invite my critics to explore their own values. If, on the other hand, they would like to challenge the worth of my stated values then I would be interested to hear what type of society, that is what *ends*, they themselves would have us pursue.

The critical anti-representationalist approach I have outlined here need not be tied to any particular method, and instead follows Harvey's advice: 'Do any or all of these things as appropriate to advancing the enquiry.' (Harvey, 1990: 210) As I stated in the first part of this chapter, the analysis which provides the backbone for this thesis grew out of seeing the public confidence research agenda not as merely an attempt to gain greater knowledge about a phenomenon already existing 'out there' but as a governmental project for regulating the 'conduct of conduct'. With reference to governmentality studies, Rose *et al* (2006: 101, *emphasis added*) have argued that: '[w]e should not seek to extract a method from the multiple studies of governing, but rather to identify *a certain ethos of investigation*, a way of asking questions, a focus not upon why certain things happened, but how they happened and the difference that has made in relation to what has gone before'.

In this chapter I have reflected on my own 'ethos of investigation' and I have hopefully provided an insight into how I have found it possible to 'say something' about the data which confronted me. There are however, as I indicated at the start of this section, some 'loose ends' which have not been fully resolved here. In the following three chapters I present the findings generated by my eclectic method. These findings, and the discussion of these findings in light of my review of the literature on criminology's public role, provide further food for theoretical thought. And as such I will return to this theme again at the end of this thesis.



## **Chapter 4. Deconstructing public confidence**

### **4.1 Introduction**

In this chapter I present a detailed examination of the dominant discourse of public confidence in the criminal justice system. By a 'discourse' I mean a set of linked ideas and assumptions about public confidence, which are represented and reproduced in the texts reviewed, and which have consequences for the way public confidence is thought about, researched and addressed through policy and practice. This confidence-specific discourse has emerged from a more general body of research which has sought to explore and examine the nature and significance of public attitudes more generally towards crime and criminal justice.

The chapter is divided into two parts. In the first part of the chapter I provide a chronological overview of the development of the knowledge discourse. In the second part of the chapter I deconstruct the dominant discourse focussing on the way it places objects into a hierarchical 'grid of specification', how it disguises judgements based on values as ontologically-mandated, and the 'costs to existence' of the agenda as it constructs and transforms what people say and do through the 'procedures of intervention' applied in order to represent reality. In the final section I draw together the analysis to identify the 'conditions of existence' upon which the dominant discourse of public confidence appears to be premised.

### **4.2 Chronology of a research agenda**

#### ***4.2.1 1970s and 1980s: Methodological scepticism***

Over the last 30 years public opinion about the criminal justice system in England and Wales, particularly opinion about punishment and sentencing, has been the topic of a growing body of research. Research into general attitudes in this area

predated and influenced the development of the more specific public confidence agenda. In the early 1980s, the first British Crime Survey provided a vehicle for researchers in England and Wales to measure attitudes towards the criminal justice system of a substantial sample of members of the public. The approach adopted was reflective of a number of pieces of previous work which sought to compare public perceptions of crime and criminal justice with 'reality'. The adoption of this approach has had important ramifications for the public confidence agenda, however things could have been otherwise.

In the late 1970s a number of presenters at the *Council of Europe Thirteenth Criminological Research Conference: Public Opinion on Crime and Criminal Justice* expressed concern about research purporting to 'capture' public opinion. It was observed that claims made about public opinion were 'frequently ill-founded; badly conducted surveys merely lend these assertions a pseudo-scientific colouring, reinforcing their apparent plausibility, and, in some cases, even help to fabricate the "facts" which they claim to reveal' (Robert, 1979: 45). Warnings were also sounded about the worrying tendency to treat public opinion as a single unified phenomenon rather than as a varied, pluralistic one (Robert, 1979: 55; Schneider, 1979: 121-2) and it was suggested that '[w]e should, as scholars, keep in mind that there is more in public opinion than what the scarcity and simplicity of our present empirical research methods and results can produce' (Schneider, 1979: 122). Meanwhile, the only UK-based criminologist represented amongst the presenters argued that the phenomenon of 'public opinion' was anyway entirely socially constructed through a process whereby complex and fluid everyday thought was pressed into the mould of 'organizational instruments which emphasise logicity and lucidity' (Rock, 1979: 166) giving everyday ideas 'alien meaning' (Ibid: 163).

These warnings about the inherent deficiencies of research on public opinion about crime and criminal justice proved to have less influence on the public confidence agenda than the recommendations made at the same conference by Van Dijk (1979). In the report on the first British Crime Survey (Hough and Mayhew, 1983) Van Dijk's conference paper was referenced, and he also received an

expression of gratitude from the authors in their acknowledgements. Van Dijk's paper suggested that media outlets should be supplied with 'objective information' about crime, including contextual information about the prevalence and 'social correlates' of different types of criminal behaviour, and 'actual victimisation risk'. He argued in favour of governments taking a much more active role in 'publicising the data on the actual crime situation' using the vehicle of crime prevention advertising campaigns (Van Dijk, 1979: 9). Van Dijk's focus, then, was very much on deficiencies in public knowledge about crime and criminal justice which were detrimental to their levels of fear and their attitudes towards the criminal justice system.

In support of his argument, Van Dijk cited findings from a public survey carried out in England in 1966 as part of the aborted Royal Commission on the Penal System<sup>57</sup>. This survey found that most members of the public did not have an accurate appreciation of the relative and total incidence of different types of crime recorded each year and that they had very limited levels of knowledge about court procedures and the experience of prison inmates (Banks *et al*, 1975: 230-235). During the 1980s a growing body of research took up this mode of enquiry and established the paucity of public knowledge about crime and criminal justice as an extant social fact (albeit one which many criminal justice professionals and criminologists had long suspected). Data from the British Crime Survey was said to have revealed that 'most people overestimate the leniency of the courts' (Hough and Moxon, 1985: 164) whilst research carried out for the Prison Reform Trust suggested that members of the public were often ignorant of basic facts about the

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<sup>57</sup> The Royal Commission was appointed by the Prime Minister in April 1964. Its terms of reference stated that its purpose was 'in the light of modern knowledge of crime, and its causes, and of modern penal practice here and abroad, to re-examine the concepts and purposes which should underlie the punishment and treatment of offenders in England and Wales; to report how far they are realised by the penalties and methods of treatment available to the courts, and whether any changes in these, or in the arrangements and responsibility for selecting the sentences to be imposed on particular offenders, are desirable; to review the work of the services and institutions dealing with offenders, and the responsibility for their administration: and to make recommendations'. No report was produced and the Royal Commission was decommissioned in May 1966 upon the appointment by the Home Secretary of a standing Advisory Council on the Penal System. (See <http://discovery.nationalarchives.gov.uk/> for more information)

criminal justice system and had a 'distorted view of the sort of offender filling up our prisons' (Shaw, 1982: 13).

In Canada a similar strand of research was developed (see Doob and Roberts, 1984; 1988 and Roberts and Doob, 1989). This research (emerging apparently independently of the European studies referred to above) concluded that 'the Canadian public's view of crime in 1982 did not correspond with our best estimate of what crime looks like' (Doob and Roberts, 1984: 272) and that 'the view that Canadians have of crime is distorted' (Doob and Roberts: 1988: 116). The conclusions were based on findings that Canadians overestimated both the proportion of crimes that were violent and recidivism rates, believed that the murder rate had increased since the abolition of the death penalty, and that they lacked accurate knowledge about sentencing policy (statutory minimums and maximums) and about the 'actual levels of penalties imposed by the court' (Doob and Roberts: 1988: 115-116)<sup>58</sup>.

Doob and Roberts (1984) also experimented with providing respondents with different levels of information about cases. Some respondents were shown media coverage of the case, whilst others received the information available to the courts. They found that 'the same sentence was evaluated differently according to the actual account that was read' (Doob and Roberts, 1984: 276). It was therefore concluded that:

'public attitudes to sentencing are shaped not by the reality which takes place in courts, but by the news media. ... This suggests that policy makers should not interpret the public's apparent desire for harsher penalties at face value; they should understand this widespread perception of leniency is founded upon incomplete and frequently inaccurate news accounts' (*Ibid*, 1984: 277)

The Canadian research merits mention here because it has, latterly, been influential in the development of the public confidence agenda in England and Wales as one of the key protagonists in the Canadian work, Julian Roberts, went on to collaborate with one of the key confidence researchers in England, Mike Hough. This partnership seems to have been made more likely by the preparation of a

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<sup>58</sup> Although, interestingly, the authors of this study acknowledged that data on 'actual penalties imposed' was extremely difficult to find as good records were not held.

book (*Public Attitudes to Sentencing: Surveys from Five Countries* edited by Hough and Walker (1988)) in which Doob and Roberts reported findings from their Canadian research.

The 1980s were formative years for the public confidence agenda. The more critical and reflexive points raised at the Council of Europe council were largely ignored by the mainstream of researchers who assembled a growing body of data about both public opinions and public knowledge about crime and criminal justice. It is crucial to note that at this stage the perceived inadequacies of public knowledge were regarded by some researchers as undermining the value of measuring general public opinion of the criminal justice system: '[q]uestions designed to find out whether offenders are generally thought to get their just deserts can only be sensibly asked if people hold accurate beliefs about current practice' (Hough and Moxon, 1985: 162). Policymakers were therefore enjoined to treat with care findings from opinion polls which indicated that 'people generally favour a tougher approach' (Hough and Mayhew, 1985: 43).

Critics of general questions suggested that researchers should provide specific hypothetical cases in order to elicit respondents' actual sentencing preferences. This approach would avoid eliciting opinions based on public misperceptions. Adopting this approach, Hough and Moxon (1985) suggested that their analysis of the data from the first British Crime Survey offered 'a corrective to widely held misconceptions about popular attitudes to punishment' (Hough and Moxon, 1985: 171) because it suggested 'that sentencing practice is broadly in step with public opinion' (Hough and Moxon, 1985: 167). They made this claim on the back of their critique of general opinion poll style questions which they described as 'insufficiently precise to answer whether sentencing is in line with public opinion – that is, whether people *would* see court sentences as fair' (Hough and Moxon, 1985: 162, *emphasis added*). They argued that the only way to find out if practice was 'in line' with public opinion was to ask the public to "pass sentence" on a selection of *hypothetical* cases' (Hough and Moxon, 1985: 162, *emphasis added*).

Meanwhile, in Canada, Roberts and Doob (1989) argued that 'interpreting opinion polls to mean that the public are greatly dissatisfied with the severity of current

sentencing practice is, in Shakespeare's words, to take "false shadows for true substances" (Roberts and Doob, 1989: 515). The 'false shadows' referred to are the data gathered via indicators of public opinion which, due to their alleged methodological shortcomings, have 'overstated' the 'public desire for greater punitiveness' (Roberts and Doob, 1989: 515).

However, the 1980s also saw the expression of an alternative perspective on the value of general opinion measures. This was articulated by Walker and Hough in their introduction to their 1988 edited volume of international studies of public attitudes to sentencing. They argued that:

'Specificity is important ... if people's views are to be elicited about the appropriateness of sentences; but this does not entitle us to ignore the results of unspecific questions about sentencing policy. They may be measuring something which specific questions do not: a generalized satisfaction or – more often – dissatisfaction with what respondents vaguely believe to be official sentencing policy' (Walker and Hough, 1988: 8, emphasis added).

This comment suggests that the distinction between the specific and general indicators of opinion is not a matter of them being 'true' and 'false', or more and less methodologically adequate, but rather it is that they capture distinctive, but, crucially, *equally valuable*, phenomena. This view can be seen to justify the continued use of general measures of opinion (such as that used to measure 'public confidence') despite their much discussed methodological limitations.

#### **4.2.2 1990s: Establishing the blueprint**

Research of the kind described above appears to have petered out for a while in the early 1990s, but similar themes rose to prominence once again in England and Wales in the late 1990s. Hough and Roberts (1998) positioned their analysis of the 1996 BCS (which had included a new suite of questions on public attitudes and knowledge) as an opportunity to bring the research from the 1980s up to date. Their report precipitated two subtle but important shifts in the way in which research into public opinion on issues of crime and justice was framed. Firstly it specifically linked public attitudes on sentencing to the 'need to sustain public confidence', thus tying together empirical research and the idea of public confidence in the criminal justice system which, as will be discussed in the next

chapter, had become politically prominent during the 1980s and 1990s. Secondly, it positioned public confidence, public attitudes and public knowledge within a causal schema, setting down a blueprint upon which most subsequent public confidence research was based.

In their report, Hough and Roberts referred directly to the work done in the 1980s which, they said, 'indicated that the public were less punitive than was generally supposed' (*Ibid*: 2). They also repeated the argument that low levels of public knowledge about crime and criminal justice necessitated a sophisticated methodological approach in order to be able to access 'true' preferences:

'...it would be inappropriate for sentencers to respond to public dissatisfaction by toughening up sentencing policy. At least in part, public dissatisfaction stems from public ignorance of the system. In a sentencing climate in which public misperceptions about crime and sentencing are pervasive, *the only safe way of assessing the acceptability of current practice is to elicit people's sentencing preferences for particular categories of crime*, and to compare their preferences to practice.' (*Ibid*: 27, *emphasis added*).

Their analytical approach and conclusions were very similar to the studies from the 1980s. For example, analysing the data from a question which asked about people's sentencing preferences in a case of burglary they found that the responses were generally more lenient than magistrates' guidelines. They also found that respondents tended to think that the case they had been given to 'sentence' was a fairly low-level scenario. They suggested that this latter finding:

'underscores *how useless for policy it is to provide survey findings pitched at a general level*. If the general public overestimates the seriousness of the average burglary, as appears to be the case here, those responsible for sentencing policy can derive little of value from the finding that, on average, people think that 80 per cent of burglars should be locked up' (*Ibid*: 28, *emphasis added*)

However, this aspect of their analysis (which reiterates the cautionary tale found in much 1980s research on public attitudes) is somewhat drowned out by claims which they make very early on in the report:

'The 1996 BCS suggests that there is a crisis of confidence in sentencers which needs tackling with some urgency ... People think that sentencers are out of touch, and that their sentences are too soft.

...

*Correcting public misperceptions* about sentencing trends in this country should promote *greater public confidence* in judges and magistrates. And since the

judiciary occupy such a critical place in the criminal justice system, increasing confidence in the courts should promote confidence in the administration of justice.' (*Ibid: x, emphasis added*)

They go on to state:

'...the public are dissatisfied with sentencing practice, or what they perceive sentencing practice to be. What is responsible for this dissatisfaction? One explanation is that *people simply do not have an accurate perception of the sentencing process*. Recent qualitative work employing focus groups (Hough, 1996) has uncovered systematic ignorance of current sentencing patterns, and has demonstrated that *this is a factor fuelling public dissatisfaction with the courts*.' (*Ibid: 2, emphasis added*)

I have added emphasis to the above quotations in order to identify the two points from this report which have been most influential. Firstly there is the identification of a 'crisis of confidence', and secondly the clear identification of a plausible solution: 'correcting public misperceptions'. The authors not only raise the alarm about the approaching iceberg, they also inflate the life rafts. They provide reassurance to policymakers by offering 'to chart opinion in an authoritative way and to explore the factors which shape this opinion' (*Ibid: 3*). Rather than being a reason for policymakers to treat general measures of dissatisfaction with care, poor public knowledge is repositioned as a *causal factor* in public dissatisfaction with sentencing, and thus with low levels of public confidence in the criminal justice system as a whole.

In their characterization of the problem at hand Hough and Roberts were highly sympathetic to extant causes of frustration for policymakers: the multiple manifestations of public opinion they were exposed to which were of varying reliability and contaminated by the influence of the media, particularly the tabloids. In response to these frustrations Hough and Roberts positioned researchers like themselves as being on hand to offer a solution, claiming that 'these conduits of public opinion can provide a distorted image of public views. *The only truly valid measure of opinion is a representative survey*.' (*Ibid: 1, emphasis added*). However, they cautioned, survey questions must be carefully designed to be 'adequate to capture the complexities of the sentencing process. ... simply asking the public whether they think sentences are too harsh or too lenient is an inadequate and indeed misleading way of measuring public opinion.' (*Ibid: 1*).



Hough and Roberts must have appeared to offer an appealingly logical response to the 'crisis of confidence'. By cross-tabulating 'beliefs about leniency' with 'estimated use of imprisonment' they were able to show that 'people who are dissatisfied with the severity of sentences are also those who are particularly inaccurate' (*Ibid*: 21). This, they claimed, 'suggests that ignorance about current practice is one source of public dissatisfaction with sentencing' (*Ibid*: 21). Furthermore, they found that '[p]eople who thought that crime was steeply on the increase were more likely than others to think that sentences were too lenient' (*Ibid*: 21).

In their conclusion Hough and Roberts argue that it is 'important to educate the public about trends in crime and the proportion of crime that involves violence' (*Ibid*: 43)<sup>59</sup>. This manner of response to 'crisis' was likely to appeal to criminologists and penal experts, as well as civil servants and politicians, concerned with halting the apparent trend towards 'populist punitiveness' (Bottoms, 1995). The techniques which Hough and Roberts proposed should be used for such public education were also likely to have appeared reassuringly compatible with established political practices following Labour's landslide return to power which had been achieved on the back of a ruthless campaign of re-branding and tactically targeted communications. Hough and Roberts proposed exploiting 'the communication techniques of the late twentieth century' to ensure that people were made aware of key facts. This would entail 'identify[ing] key audiences ... and convey[ing] in media appropriate to each audience an accurate portrayal of current sentencing practice.' (*Ibid*: 45).

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<sup>59</sup> In many ways the public confidence issue closely parallels the debates around how to measure and address fear of crime. Traditionally, administrative criminologists and some CJS practitioners saw the 'problem' of fear of crime as a situation where lay people failed to rationalistically process the available data on their probability of becoming a victim (Lupton and Tulloch, 1999: 508). The media were held responsible by many criminal justice professionals and commentators for, amongst other things, increasing the fear of crime, distorting people's perceptions of the prevalence of all types of crime, but particularly of violent and sexual crime, and damaging public understandings of sentencing by focusing disproportionately on atypical cases (Pratt, 2007; Roberts et al, 2003; Hough, 2003; Allen, 2004). There was thus a tendency to see the public expression of an inappropriate level of fear (or confidence) as a 'dysfunction' of the public (Lupton and Tulloch, 1999: 508) stemming from their propensity to hold inaccurate beliefs about the incidence of crime.

Hough and Roberts' report functioned in many ways as the blueprint for the subsequent development of research and policy in the area of public confidence in the criminal justice system. Its enduring contribution has been to cement an understanding amongst policymakers and criminal justice practitioners of confidence as something which is real, measurable, caused by other factors and thus amenable to correction. Although the report did repeat the earlier warnings about the perils of reading too much into general measures of public opinion, this aspect was not picked up and emphasised in subsequent public confidence research.

#### ***4.2.3 2000s: Expansion***

In a clear indication that the understanding of confidence outlined in Hough and Roberts (1998) (as real, measurable and caused by other factors) was accepted within government, the late 1990s saw it adopt the objective of promoting public confidence in the criminal justice system and set quantitative performance targets to be measured through the BCS (see Mattinson and Mirrlees-Black, 2000: 47-48). The adoption of improving public confidence in the criminal justice system as a target against which CJS performance would be judged heralded an expansion in the amount of attention which the specific concept of 'public confidence in the criminal justice system' received from researchers. There was a substantial increase in the volume of available analysis, emanating both from the BCS and from commissioned research studies with confidence as their focus. From 1998 onwards analysis of public confidence in the criminal justice system as a whole became a routine component of the BCS work programme and was conducted very much along the lines of the blueprint set out by Hough and Roberts (1998).

Mattinson and Mirrlees-Black (2000) drew their readers' attention to the fact that Hough and Robert's (1998) report had 'led to increasing awareness of the importance of educating the public about crime and criminal justice' (Mattinson and Mirrlees-Black, 2000: 2), and noted that the Home Office had subsequently engaged in discussions with criminal justice partners about suitable initiatives to achieve this aim. Comparing the figures from the 1998 BCS to those from 1996 Mattinson and Mirrlees-Black suggested that '[t]here was some evidence that *the*

*message of falling crime was getting across to the public*' as the percentage of respondents believing that crime was rising fell from 75% in 1996 to 59% (*Ibid: 3, emphasis added*), nonetheless the public still 'overestimate the crime problem' (*Ibid: 4*).

A new set of questions on perceptions of juvenile offending included in the 1998 BCS identified what Mattinson and Mirrlees-Black referred to as a 'great *disparity* between perceptions and the statistics' most likely caused by '[m]edia portrayals of persistent juvenile offenders and the continuing influence of the James Bulger murder on the public psyche' (*Ibid: 14, emphasis added*). Using logistic regression they confirmed the existence of 'a relationship between low levels of knowledge and negative assessments of juvenile justice ... independently of other factors such as age, sex and victimisation, poor knowledge is predictive of a low opinion of the youth courts. Of greater predictiveness, however, is believing that the police and courts are too lenient in the way they deal with young offenders' (*Ibid: 22*). They also argued that '[t]o target strategies to tackle misperceptions about juvenile crime effectively, it is necessary to identify those with the poorest knowledge' (*Ibid: 15*).

Mattinson and Mirrlees-Black explicitly positioned their analysis and report as 'updating' the work done by Hough and Roberts (1998) and were careful to note the continuity between their work (on knowledge of juvenile offending and justice) and the work undertaken by Hough and Roberts (which focused on adult offending). They said they had identified 'a similar pattern' in terms of the relationship between knowledge and opinion:

'Consistent with Hough and Roberts, those with the poorest levels of knowledge also have the most negative opinions. From this we can only draw the same conclusion as Hough and Roberts – correcting public misperceptions of juvenile crime should promote greater public confidence in juvenile courts' (Mattinson and Mirrlees-Black, 2000: 45).

The emphasis placed on continuity indicates the influence that Hough and Roberts had on subsequent research, as well as the general importance given to developing a continuous, cumulative body of knowledge within the confidence discourse. However this surface appearance of continuity conceals a tendency to mis- or

over-interpret the significance of earlier studies. For example Mattinson and Mirrlees-Black suggested that Hough and Roberts (1998) had argued that ‘there was a public crisis of confidence in the criminal justice system (CJS)’ and that ‘very low opinions of the courts and sentencers ... were undermining public confidence in the criminal justice system’ (Mattinson and Mirrlees-Black, 2000: 47). These statements go beyond the claims made by Hough and Roberts, which were that there was a ‘crisis of confidence in *sentencers*’ and that, due to their centrality within the criminal justice system increasing confidence in the judiciary and the courts ‘*should* promote confidence in the administration of justice’ (Hough and Roberts, 1998: x).

These minor over-interpretations of Hough and Roberts make their conclusions appear significantly more categorical than they probably intended. Through such episodes of subtle mis- or over-interpretation, over time knowledge about public confidence has been discursively constructed as an altogether more concrete and certain affair than was indicated in some of the earlier texts.

That the relationship between knowledge and confidence is *causal* (the central theme from Hough and Roberts (1998)) has underpinned successive analyses of the BCS since 1998, and indeed each successive ‘sweep’ of analysis tends to reference (if not reproduce verbatim) excerpts from previous years, so, for example:

‘Giving people access to accurate information about crime and the criminal justice system is essential to securing confidence in the system. Previous sweeps of the BCS (Hough and Roberts, 1998; Mattinson and Mirrlees-Black, 2000) have shown that ...’ (Mirrlees-Black, 2001: 5)

‘Giving people access to accurate information about crime and the criminal justice system is essential to securing confidence in the system. Previous sweeps of the BCS (Hough and Roberts, 1998; Mattinson and Mirrlees-Black, 2000 and Mirrlees-Black, 2001) have shown that ...’ (Whitehead and Taylor, 2003: 124)

‘There is evidence from previous years of the BCS which suggests that people who are better informed about crime and the criminal justice system tend to rate the system more highly (Mattinson and Mirrlees-Black, 2000 and Mirrlees-Black, 2001).’ (Allen, El Komy, Lovbakke and Roy, 2005: 7)

Furthermore, the key protagonists in the establishment of the public confidence research blueprint (Hough and Roberts) authored, co-authored or edited a number

of academic publications during the early 2000s, which referred readers between their different publications creating the sense of a mutually re-inforcing knowledge-base with considerable intellectual weight behind it (see Roberts and Hough, 2002; Hough, 2003; Roberts *et al*, 2003; Roberts and Hough, 2005a; 2005b and 2005c).

In addition to the analysis of BCS data and the situating of public confidence in relation to a wider academically-rooted oeuvre, further research into public confidence was commissioned and carried out on both a local and a national basis during the mid-2000s. At the national level, in 2003 two different pieces of research were commissioned by the Home Office from commercial research organizations. MORI carried out research in which '[t]he public's attitudes and perceptions of the system and its constituent agencies ... were measured to identify the factors relating to levels of confidence and satisfaction' (Page, Wake and Ames, 2004: 1). The research was published as part of the Home Office's 'Findings' series of papers, and subsequently cited in two Ministry of Justice studies (Smith, 2007 and Singer and Cooper, 2008).

NOP World in partnership with Phillip Gould Associates (PGA)<sup>60</sup> were commissioned to carry out qualitative research to 'uncover what drives confidence in the CJS as a whole, and in its separate agencies and to help the Home Office develop strategies to harness these drivers' (NOP World, 2003). The research has not been externally published by the Home Office, however it has subsequently been cited in one of their own research reports (Rix, Joshua, Maguire and Morton, 2009), suggesting that it had some internal influence. Both of these studies have significant limitations.

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<sup>60</sup> It is interesting to note that Phillip Gould of Phillip Gould Associates, a leading figure in the emergence of New Labour, played a key role in designing communications and marketing strategies for Labour in elections from 1987 through to 2003, and was appointed as a life peer in 2004. His involvement in the NOP World research, as well as the general style of that research, indicate the extent to which the public confidence agenda has, at times, blurred the boundaries between governmental and party political research and policy. This is certainly a matter deserving of more research attention than I am able to give it here.

The MORI study positioned itself as making a further contribution to the body of knowledge on public confidence in the CJS, and this is the context in which it has been subsequently cited. It had a robust data collection mechanism, using a random-sample telephone survey. The analysis managed to be both self-confident: ‘confidence in the system overall ... *would increase*’ (Page *et al*, 2004: 6, *emphasis added*); and yet also vague and obvious: ‘creating a society where people feel safe and dealing effectively with violent crime’ (Page *et al*, 2004: 6). It used a different measure of confidence from that used within the BCS<sup>61</sup>, and approached the matter of public knowledge differently<sup>62</sup>.

Some of the conclusions in the MORI study appear to have been drawn on the basis of rather opaque and questionable analytical manoeuvres. For example, data on confidence and knowledge were aggregated to analyse the relationship between these two variables on an agency by agency basis: the average score which respondents gave to their ‘familiarity’ with each agency, was plotted against the average score which they gave each agency for its ‘effect on crime’. These points were found to make a reasonably clear diagonal line on a graph but no indication of the statistical significance of the relationship was given. It is not clear why the researchers chose to plot aggregated data on this graph, rather than plotting data points for each individual respondent and calculating the correlation coefficient for the relationship between perceived importance and perceived effectiveness of the different functions.

The report also includes a graph which plots the proportion of respondents seeing certain functions of the CJS as ‘absolutely essential’ against the proportion who have confidence that they are being delivered. The authors highlighted five functions of the CJS which, they said, were seen by a majority of respondents as being ‘absolutely essential’ and in which a relatively low proportion of

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<sup>61</sup> The MORI study focused on how confident respondents were ‘about the way that crime is dealt with’ at the local and national level (Page *et al*, 2004: 2).

<sup>62</sup> The study asked respondents how much they felt they knew about the different agencies and then what effect they thought each agency had on crime in their area.

respondents said they had confidence<sup>63</sup>. These points were ringed on the graph to provide visual emphasis of their importance (Page *et al*, 2004: 3). They were also referred to again in the conclusion, which stated that these issues should 'be regarded as public priorities for addressing confidence in the criminal justice system' (Page *et al*, 2004: 6). The basis upon which this prescription is made is tenuous to say the least, as a number of other functions were on the periphery of the seemingly arbitrarily drawn circle on the graph (one of these issues was 'tackling the causes of crime'). Bearing these points in mind the selection of the key issues to be addressed has more than a suspicion of arbitrariness, if not bias.

The NOP World/PGA study used a qualitative approach with a relatively small sample of approximately 50 respondents which was, by their own admission, not representative, and which they regarded as a pilot study (NOP World, 2003: 7). Despite these limitations the final presentation of their findings ran to 108 powerpoint slides and adopted a confident and authoritative tone throughout. Its recommendations included ensuring that legislation put victims before criminals, and 'breaking through media distortion' by communicating to the public that sentences are 'longer, tougher, more consistent' (NOP World, 2003: 107).

During the mid-2000s, in addition to these nationally-commissioned studies, a number of studies were carried out at the local level, usually by or on behalf of Local Criminal Justice Boards seeking support for their efforts to meet the centrally imposed confidence targets (see Addison, 2006; Dodgson, 2006; Dodgson, Dodgson and O'Donnell, 2006; Holme, 2006; Greater Manchester Police, 2005; Beaufort Research, 2004; Devon and Cornwall Police, 2006; Opinion Leader Research, 2005). The influence of local research on the dominant knowledge discourse of confidence appears to have been limited as most of it was reported locally, but not subsequently cited elsewhere. Furthermore, this research has tended to be carried out in a way which replicates the approaches used in the

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<sup>63</sup> These were: creating a society where people feel safe; reducing the level of crime; stopping offenders from committing more crime; dealing effectively with street robbery (including mugging); bringing people who commit crimes to justice.

national-level research, rediscovering on a 'local' basis knowledge about confidence that is already in circulation.

Two features of public confidence research during the early to mid-2000s stand out. Firstly, the analytical focus of many of the studies (for example on 'key audiences') appears to reflect pre-existing beliefs about the most appropriate tactics to 'tackle' the problem of low confidence, namely factual education via targeted marketing<sup>64</sup>. Secondly, the methods used in the studies, particularly the focus on quantitative analysis using cross-tabulation and regression, determine the type of knowledge which can be generated (essentially 'predictive' knowledge which is implicitly causal). Knowledge of this kind can only reinforce an understanding of confidence as a measurable natural phenomenon which is caused by other phenomena.

These features are manifested in broad conformity to an established way of doing confidence research which can be summarised as follows: (1) Identify the issues of importance to the public in relation to the CJS (their expectations or what they need to believe or have confidence in); (2) Understand how opinions are formed on these issues (how they come to know about the CJS in order to be able to believe or not believe, that is their evidence); (3) Apply knowledge of the above to 'correct' opinions (by providing evidence that the CJS is meeting their expectations)<sup>65</sup>. Thus, the parameters<sup>66</sup> of confidence research are set in such a way that identifying the 'drivers' of confidence, in a style similar to market-research, seems to be regarded by many researchers as the basic task of confidence research.

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<sup>64</sup> Perhaps a good example of what Matthews (2009: 343) has called 'policy driven evidence rather than evidence driven policy'

<sup>65</sup> For a more detailed discussion see Turner (2008).

<sup>66</sup> Hammersley (1995) has noted that the dominant model for Western governments' social research, the 'Engineering Model', sees the end product of research as modifying policy and society. He argues that this means that '[t]he parameters of the inquiry process are set narrowly: the aim is to solve the problem, and both the problem and what constitutes a solution are defined by practitioners' (1995: 126).



#### 4.2.4 2000s: Experimentation

The 'problem' for confidence research, then, has been understood by many researchers as that of identifying the 'drivers' of confidence and using that knowledge to correct public perceptions (which are implicitly emotional and/or inaccurate). This model of what confidence research should be about was taken to its logical extreme in several pieces of 'experimental' research commissioned to investigate the relative effectiveness (in terms of increasing confidence) of different techniques for informing the public (Chapman *et al*, 2002; Salisbury, 2004; Singer and Cooper, 2008).

The first such study (Chapman *et al*, 2002) was initiated in response to the concerns which arose as a result of a review of the sentencing framework during 2000/2001. Doubts were expressed about using public opinion to inform the review in light of knowledge about the extent of public 'misperceptions' about crime and justice<sup>67</sup>. In response, an investigation was commissioned to explore whether such misperceptions could be corrected by improving knowledge, and whether improved knowledge would impact upon views. It was felt that such an investigation could also be of value in helping with progress towards the newly imposed target of increasing public confidence in the criminal justice system:

'In theory... improving public knowledge about crime, sentencing and the CJS might be expected to result in more positive attitudes towards the CJS. Improvements in ratings of the system should be achievable where current opinion is based on overly negative beliefs.' (Chapman *et al*, 2002: 2-3)

Chapman *et al* found that '[k]nowledge of crime trends and current sentencing practice is particularly poor, with only about one in ten people being *reasonably well-informed* in these areas' (*Ibid*: 9, *emphasis added*). What constitutes being 'reasonably well-informed' is not explicitly defined, however the approach adopted indicates that, as Chapman *et al* concede, knowledgability boils down to 'recall of

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<sup>67</sup> As discussed above, in the 1970s and 80s many researchers (including *inter alia* Mike Hough and Julian Roberts) expressed the opinion that the lack of public knowledge about crime and justice completely undermined the validity of general measures of opinion. They proposed instead the use of specific sentencing scenarios to elicit public preferences. It is interesting that less than 20 years later the preferred option is to attempt to manipulate general opinion through education, rather than to capture it in a different, and arguably more appropriate, way.

key facts' (*Ibid*: 15) <sup>68</sup>. In their experiment they claim to have been able to improve 'recall of key facts' through the provision of information but, although the confidence of about a third of participants increased, 'there was no clear relationship between improved scores on the knowledge questions and improved levels of confidence' (*Ibid*: 35).

Salisbury (2004) built on the previous body of research and the experimental work carried out by Chapman et al (2002) by providing a booklet to a sample of British Crime Survey respondents and conducting a follow-up interview two weeks later to see if their views had changed. A control group did not receive the booklet but still had a follow-up interview. Salisbury found that having received and at least glanced through the booklet increased the accuracy of people's perception of crime trends, but not of criminal justice practice. However, the research concluded that increases in confidence could not be attributed to the impact of looking at the booklet or to increased awareness about crime and criminal justice<sup>69</sup>.

More recently, Singer and Cooper (2008) sought to update and improve upon these experimental studies by exploring the relative effectiveness of different methods of providing information. Their approach to the design of the informational materials drew on marketing theory and sought to 'inform, persuade and remind' the recipient about key facts. Their research is a peer-reviewed<sup>70</sup> and methodologically complex study which, the authors claim, demonstrates that statistically significant increases in the accuracy of public estimations of crime trends and certain facets of

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<sup>68</sup> The authors contrast public perceptions of key statistics, with the actual figures, generating findings such as '[e]ight in ten respondents thought half or less of adult male burglars were given custodial sentences, although the actual proportion for 1999 was 72 per cent.' (Chapman et al, 2002: 9). In other words to be well-informed appears to mean being able to give accurate estimations of criminal justice statistics.

<sup>69</sup> 'increases in confidence were not restricted to only those who received the booklet [and thus] were not solely attributable to looking at the booklet' (Salisbury, 2004: 11). Furthermore, '[t]here was a significant increase in the proportion feeling that the sentences handed down by the courts are about right (from 15% to 25%) for those who received and looked at the booklet. However, there was also a significant increase (from 20% to 34%) for those who did not receive the booklet' (Salisbury, 2004: 12). Salisbury also found that respondents who thought that taking part in the BCS had made them more aware of crime and criminal justice issues were no more likely than those who did not feel more aware to have increased in confidence (Salisbury, 2004: 12).

<sup>70</sup> The Home Office operates its own peer-reviewing system, the rigour of which has been critiqued by Hope (2008)

criminal justice practice can be achieved, at least in the short-term, through the delivery of a carefully designed information booklet. Crucially Singer and Cooper avoid committing the statistical error of failing to test the statistical significance of the *differences* between control and experimental groups<sup>71</sup>.

The research also indicated that statistically significant increases in confidence (as measured by the general confidence measure from the BCS) can also be achieved in the short-term. However, whilst the findings found statistically significant differences between the control group and the experimental group (those receiving the booklet), it does seem to be somewhat misleading to suggest that ‘a professionally designed booklet delivered through a personalised envelope or personal contact is a *very effective* way of raising public confidence in the CJS’ (*Ibid*: 20, *emphasis added*).

In practice the research found that the proportion of the control group who were confident that the CJS is effective increased 6.7 percentage points between the first and second interview, whilst the proportion of the experimental group who were confident that the CJS is effective increased by 11.4 percentage points. So the percentage point gain of the experimental group over the control was 4.7 percentage points. The difference between the two groups is of sufficient magnitude for us to reject the null hypothesis, but it is hardly overwhelming. Furthermore, the increase in confidence was only statistically significantly different compared to the control group where the booklet was handed to the recipient as opposed to ‘delivered through a personalized envelope’.

The authors also notably fail to emphasize that of those who received the booklet only 40% actually read all or most of it and (unlike in the earlier study by Salisbury (2004)) there was no analysis of whether improvements in knowledge and confidence were seen even in those who received but did not read the booklet. It is

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<sup>71</sup> In both Chapman *et al* (2002) and Salisbury (2004) the researchers compare the impact of an intervention on different groups (control plus various experimental groups) but fail to test the statistical significance of the *differences* between the changes observed in these groups. It is not statistically correct to claim that there is a difference between the groups unless this difference has been tested for significance. Thanks to Ruth Graham for making me aware of this issue (see also Bland, 2000).

therefore unclear whether it was the content of the booklet, or simply the fact of receiving a booklet, which produced the change in knowledge and confidence. It seems, then, that the authors may have been tempted to oversell the import of their findings, perhaps cognisant of the observation by Tonry and Green (2003: 494) that 'qualified claims about modest but discernible sought-after effects, important though they are, seldom support a sense of excitement likely to lead to major new initiatives or changes in policy direction'. Furthermore, although the study aims to provide usable evidence for local practitioners one thing which is entirely missing is any information on the costs associated with the design, production and distribution of the booklet. The reader cannot, therefore, know the cost of producing the relatively modest (and potentially fleeting) percentage increases in knowledge and confidence which the study claims.

As well as referencing and building upon each other and upon the preceding analysis of the BCS, these experimental studies have each been referenced in subsequent research and analysis (see, for example, Whitehead and Taylor, 2003: 124; Allen *et al*, 2005: 7; Duffy, Wake, Burrows and Bremner, 2007). This cross-referencing between studies reinforces the impression of the body of knowledge on public confidence as cumulative and coherent. Furthermore, the implicit acceptance of these quasi-experimental approaches into the corpus underlines that a causal relationship is assumed to exist between accurate knowledge (or 'recall') of 'facts' about crime and criminal justice and public confidence in the criminal justice system (which is, implicitly both real and measurable).

#### **4.2.5 2000s: Politicization**

Confidence research continued towards the end of the 2000s with a further two high-profile reports on public confidence. The first, another report by Ipsos MORI (Duffy *et al*, 2007), was entitled *Closing the Gaps: Crime and Public Perceptions*. It featured a glowing foreword by one of the key figures in establishing the confidence research agenda, Professor Mike Hough: 'This is an important report and Ipsos MORI is to be congratulated for producing it ... I welcome the report's recommendations ... the report is right to emphasise the need for robust measurement and monitoring of perceptions of crime' (Duffy *et al*, 2007).

What is most striking about this report is that it purports to write about a serious social problem, one which it alleges has significant ramifications for ‘citizens’ overall quality of life’ (*Ibid*: 11), but it is clearly aimed at meeting the strategic needs of a *party political* audience, namely the governing Labour party. So the lack of confidence which the British public have in their government’s ability to ‘crack down on crime and violence’ is described as ‘a key issue for the government because there is a strong correlation between trends in ratings of performance on crime and trends in voting intention’ (*Ibid*: 3).

The politically partisan nature of the report need not be an issue, companies like Ipsos MORI are relied on by political parties to help plan their election strategies. However, this report was endorsed by a former Home Office researcher, turned academic, who was a key architect in establishing the public confidence agenda as a matter of national, *not* party political import. It also drew quite heavily on previous research, including research carried out by the Home Office, and explicitly located itself within the context of non-partisan government reviews being carried out by Louise Casey (2008) (see below) and Sir Ronnie Flanagan (2008). In light of this it seems unsurprising that the report, despite its party political orientation, attracted the attention of practitioners within criminal justice agencies as the latest piece of ‘evidence’ about public confidence<sup>72</sup>.

The content of the report reprised the by now familiar refrain about the public being ill-informed about crime and, in particular, failing to recognise that crime had fallen. It also offered hope to politicians and practitioners by offering to ‘unpick[...] *what actually drives* the general public’s views of crime and the government’s handling of it’ (Duffy *et al*, 2007: 11). Arguing that ‘public confidence and reassurance are key outcomes in their own right’ (*Ibid*: 59) the report recommended more and better measurement of public perceptions as a way of improving performance; more independent reviews of criminal justice system performance to produce data that the public would be more likely to trust; and

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<sup>72</sup> I base this claim on my personal experience at meetings and in conversations with individuals working within the criminal justice system, as well as my attendance at conferences of practitioners where personnel from MORI have been presenting their findings.

that the police should publish more, and better targeted, information about local issues and how the criminal justice system and its partners are working to tackle them.

As already noted, and despite its clear party political purposes, the evidence provided by Ipsos MORI received attention within the criminal justice system. It was also referenced in the 2008 report published under the auspices of the Cabinet Office's Crime and Communities Review and led by the high profile (and controversial) civil servant Louise Casey. The Casey Review (or *Engaging Communities in Fighting Crime* to give its official title) began with a typically robust assertion by Casey:

'there is a sense that the public can't be trusted to take a view on their policing and Criminal Justice System. During this review I have tried to redress that balance by putting at its heart the voice of the public ... I would urge policy makers, professionals, lobby groups and law makers to take note of one thing - the public are not daft. They know what's wrong, they know what's right, and they know what they want on crime and justice.' (Casey, 2008: 2-3)

Many of the recommendations made in the Casey Review were subsequently included in the government's Green Paper *Engaging Communities in Criminal Justice*. These included the adoption of a 'single confidence measure' to monitor public assessments of the partnership work between the police and local authorities; the branding of unpaid work carried out by offenders as part of their sentence as 'Community Payback'; the use of orange bibs for offenders undertaking such work; the recruitment and training of a body of volunteer 'Community Crimefighters'; and an increasing emphasis on publicising crime data and sentencing outcomes at the local level.

#### **4.2.6 Overview**

During the 1980s researchers expressed reservations about the value of 'general' measures of public opinion which they saw as generating misleading findings due to poor levels of public knowledge about the 'reality' of crime and criminal justice. However, Walker and Hough (1988) made a case for general measures as providing an indicator of how the public feel about the criminal justice system in 'real life', something which they suggested measures of opinions about what

should happen in specific cases could not provide. This view was reflected in Hough and Roberts (1998), which provided the blueprint for the development of research on public confidence in the criminal justice system and identified a 'crisis of confidence' in sentencing which was *caused by* poor levels of public knowledge about the reality of crime and criminal justice system. They recommended that more effort should be put into communicating with the public to provide them with an accurate appreciation of typical sentencing practice, and suggested that this may help to increase confidence in the criminal justice system as a whole.

The adoption of a government target to improve public confidence in the criminal justice system precipitated a rapid growth in research which tended to follow the blueprint for confidence research set out by Hough and Roberts (1998). The accumulation of research into public confidence, each referencing earlier studies, and repeating similar ideas and findings, gives the impression of continuity and cumulativeness. However, the research has tended to produce repetitive findings and there have been a number of episodes of subtle mis- or over-interpretations which have given the knowledge-base a more concrete appearance than the available evidence appears to warrant. Most recently, Casey (2008) has claimed to be allowing the public a 'voice' within debates about how crime should be dealt with in their community. In the next section of this chapter I provide a more detailed analysis of the characteristics of the knowledge discourse.

### **4.3 Deconstructing the research**

In the chronological overview provided above I have mentioned a number of features of the body of research on public confidence, including: conformity to a certain structure which is oriented to a particular practical solution and produces repetitive research findings; the tendency for successive studies to over or mis-interpret certain findings such that the body of knowledge assumes a more continuous and cumulative appearance than the data support; and the underlying assumption that the phenomenon of confidence is real (that is it exists prior to being elicited by researchers) and that it is measurable and caused by other

factors. In this section I deconstruct the dominant discourse of public confidence established through this body of research.

#### ***4.3.1 A hierarchy of objects***

The statements of which discourses are comprised are always about objects: 'things presented to thought ... the occasion or the matter on which thought is exercised' (O'Farrall, 2005: 79). In this section I argue that statements in the 'public confidence' discourse are predicated upon a number of related objects placed in specific positions in relation to one another: a 'grid of specification' in Foucauldian terminology. Mapping the grid of specification within a discourse enables us to probe 'the systematic ways that phenomena are rendered accessible to us' (Kendall and Whickham, 1999: 28), including any hierarchical relationships implied between the objects which the grid contains.

Identifying objects and their inter-relations is not simply a matter of apprehending the meanings attached to the different words used to make statements and the way these words are explicitly placed in relation to one another. A broad conceptual vocabulary has been used to capture and describe a range of subjectivities with respect to crime and the criminal justice system. Reference is made to thoughts, beliefs and feelings; responses, moods and sentiments; consciousness, perceptions, and views; concerns, complaints and attitudes; opinions, preferences and priorities; desires, wants and demands, to name just a selection. However, the vocabulary of this interiority can be intensely duplicitous, casting a veil of indeterminacy over many statements about what the public 'think', what they 'believe', what they 'feel'.

Ambiguities and discrepancies in the way words are deployed indicate that maintaining clear conceptual boundaries between objects is extremely difficult in everyday speech and writing about the subjective. In many cases variation in the vocabulary used appears to be a stylistic habit, but in some reports the distinction made between the different words used to denote subjectivities is treated as being of explanatory importance, for example Doob and Roberts (1984: 270) state that they:



'will be using the word belief to refer to people's understanding of their environment – in this case, their criminal justice system. A belief about the criminal justice system, then, might refer to a view of what kinds of things were happening in the courts. These might form the basis of an attitude about the activities of the court: whether, for example, the sentences are appropriate'

However, even within such reports and articles, there can be slippage, as words which have at one point been given a specific conceptual meaning (such as 'belief' above) are subsequently deployed in a quite different sense within the same piece of writing. Care needs to be taken, then, when identifying the objects within public confidence discourse not to confuse the objects with the vocabulary used to describe them. Classification is not a matter of terminology, it is implicitly achieved.

The imprecise and unreliable nature of the words used to describe the content of the subjective is demonstrated in public confidence discourse in the interchangeable usage of certain words, for example 'think' and 'believe', which are used to make statements about both facts and about more normative concerns. For example Roberts and Doob (1989: 494) observed a 'very real discrepancy between what people think sentences to be and what, in fact, they are'. The authors use 'think' here to indicate factual belief. However, in an earlier piece, the same authors stated that 'policy makers, politicians, and others who wish to listen carefully to what members of the Canadian public really know and think about the sentencing of criminal offenders will find that the public's view of sentencing is not simple and shallow' (Doob and Roberts, 1988: 132). Here to 'think' is contrasted with to 'know', suggesting that the thinking is of a more normative or affective nature. Ten years later, one of the same authors, now working in a different partnership (Hough and Roberts, 1998) makes this same distinction between knowing and thinking, setting up the contrast between 'knowledge and opinion' and referring to what people 'know and think about sentencing' (Hough and Roberts, 1998: 1).

The word 'belief' is also used to refer to factual judgements, for example: Hough and Mayhew (1985: 43) refer to 'the accuracy of public beliefs about current sentencing practice' (*Ibid*: 43), and Roberts and Hough (1998: 34) observe that: '[t]he British public do want harsher sentences (or at least harsher than they

believe them to be)'. However in other statements the belief referred to is at once factual and normative, for example: 'a substantial portion of Canadians believe that sentences are not severe enough' (Doob and Roberts: 1988: 111) and 'less than 10 per cent of a national sample believed that the police were too tough' (Hindelang, 1974: 106).

The same lack of clarity also appears in statements using the word 'think', for example: 'even with criminals more likely to get jail sentences than 10 years ago, average sentence lengths longer and prisoner numbers at an all-time high, the public think sentencing is still too lenient.' (Casey, 2008: 5). A further concept used as a synonym for thinking/believing is the notion of having a 'view'. Like thoughts and beliefs, views can be factual, as in: 'attempt to convey a more accurate view of sentencing to the public' (Roberts and Doob, 1989: 496)); and more normative, as in: 'the negative view of sentencing attributed to the public' (Roberts and Doob, 1989: 498)

Use of the word 'feel' is perhaps even more ambiguous than think/believe/view as, in addition to indicating factual or normative beliefs, the notion of feeling can also be used to flag up a physical sensation or emotional reaction to something. When used to indicate a factual belief, the 'feeling' in question is a feeling that the facts are X, for example 'respondents were asked whether they felt that "our system of law enforcement works to really discourage people from committing crime"' (Hindelang, 1974: 105).

As with the words think and believe, some statements using the word 'feel' were apparently factual and normative at the same time, whilst other statements more clearly separated views of the facts from normative feelings, for example: 'those who underestimated the severity of the courts [FACTUAL BELIEF] tended in general to feel that court sentences were not tough enough [NORMATIVE BELIEF]' (Hough et al, 1988: 208); 'the public views crime as being more violent than it seems to be [FACTUAL]; sees the justice system as responding too leniently [FACTUAL AND NORMATIVE], and in some instances more leniently than it in fact does; and feels changes should be made in this system[NORMATIVE]' (Doob and Roberts, 1984: 272). Further statements refer to how people 'feel' about or

because of what they know, for example '[t]he public feel let down' (Casey, 2008: 46).

The illustrative examples given above indicate that within the confidence discourse (and its antecedents in more general attitudinal research) there are no stable objects which can be inferred purely from the use of words like 'think', 'believe', 'view' or 'feel'. But, although the conceptual vocabulary is often imprecise, throughout the confidence discourse a clear (albeit mostly implicit) distinction is made between what people think/believe/feel/view/perceive/see to be 'the facts' of reality and what they think/believe/feel about or because of their understanding of those facts.

This distinction is well illustrated in the following statement from Hough and Roberts (1998): '[t]he public are dissatisfied with sentencing practice, or what they perceive sentencing practice to be' (Hough and Roberts, 1998: 2). This statement makes clear distinctions between three categories of object: (i) the reality of crime and criminal justice ('sentencing practice') (ii) public factual beliefs about reality ('what they perceive sentencing practice to be') and (iii) public feelings towards reality ('dissatisfied'). Implicit in this statement (and indeed in many of the other statements included above) is that public beliefs about reality are often not the same as the actual 'facts' of reality.

Within the confidence research literature, and a wider body of criminological work, the media are frequently identified as the source of public ignorance about crime and the criminal justice system, said to provide 'incomplete reports' (Walker and Hough, 1988: 10); and 'a distorted picture of sentencing policy and practice' (Roberts and Doob, 1989: 499) in stories which are 'brief and provide the reader with little information about the case or the relevant sentencing provisions' (Roberts and Doob, 1989: 500) and which fail to place individual crimes in the context of general crime statistics (see Pratt, 2007; Roberts et al, 2003; Roberts and Hough, 2002; Allen, 2004).

Descriptions of the tone and content of media reporting objectify these representations, and contrast them to other representations, for example 'statistics

about falling crime' (Hough and Roberts, 1998: 8); 'data on the actual crime situation' (Van Dijk, 1978: 39); and 'a balanced picture of crime' (Hough and Mayhew, 1983: 35). The types of representations which are deemed to be appropriate if the public are to be 'properly' informed tend to be statistical and/or aggregating or averaging, for example the proportion of crime that is violent, the 'typical' sentences received for certain crimes, or the proportion of offenders sentenced to prison for specific offences.

To the three objects identified above (the reality of crime and criminal justice; public factual beliefs about reality and public feelings towards reality) we can now add representations of the facts of reality. The literature implies that such representations often come between the actual facts and public beliefs about those facts. A key characteristic of the dominant discourse of public confidence, then, is that it implicitly delineates and relies upon four categories of 'object' which are clearly linked in a causal schema. Representations of reality are regarded as more or less satisfactory attempts to reflect reality. Public beliefs about reality are seen as conditioned and informed by public exposure to different representations of reality (and sometimes also by unmediated exposure to reality). Public feelings about the criminal justice system are assumed to be prompted by their beliefs about the reality of that system. Thus, the 'grid of specification' which operates in relation to the 'objects' which feature in public confidence discourse is essentially hierarchical, with the (implicitly monolithic and accessible) reality of crime and criminal justice at the apex.

In summary, within the confidence discourse, it is taken for granted that a 'reality' of crime and criminal justice and a 'reality' of public beliefs and feelings about those beliefs both exist and can be accurately represented. What concerns the researchers and policymakers who make confidence their business is the lack of alignment between 'reality' and beliefs about reality, which, they suggest, can be caused by faulty representations of reality and lead to negative feelings about reality.

### 4.3.2 *Violating the 'things to be known'*

In order to construct the grid of specification described above, researchers have imposed categories and causal schema on the stuff of reality. As described, in the previous chapter, the Foucauldian notion of 'procedures of intervention' describes the regulation of processes for introducing new statements into a discursive field. This often takes place when statements are transposed from one discursive context into another (Hughes and Sharrock, 2007: 331). In this way, '[k]nowledge can only be a violation of the things to be known, and not a perception, a recognition, an identification of or with those things' (Foucault, 1974i: 9 cited in O'Farrall, 2005: 67). In categorising reality in order to represent it, researchers follow the rules and conventions of method which regulate the statements which they may introduce into the 'discursive field' of social research. Their categories and frameworks *intervene* between the 'things to be known' and possible understandings of those things.

Within the public confidence discourse there are two common 'procedures of intervention'. Firstly, most confidence research assumes that it is acceptable to make statements about what people *really* think/feel/believe on the basis of the option they select as their response to a closed question from an interviewer, or on a questionnaire. In many senses this has come to mean that the aspect of reality being examined (for example 'confidence') has come to be defined in an 'operationalist' manner whereby 'measurement itself is used to define the characteristics of what is being measured' (Williams, 1998: 13). Secondly, within such research, where a statistical association exists between the selection of one response option and the selection of another or others, it is conventional to represent this as indicating a real link between real phenomena, something which is often taken to indicate a degree of causality from one variable to another.

These procedures of intervention can be seen at work in the following statement:

'Averaging the estimates of imprisonment rates for the three crimes shows the contrast between respondents who believe sentences are much too lenient and the rest of the sample. Averaged across the offences, respondents who felt sentences are much too lenient believed that 38 per cent of offenders were incarcerated. The average for those who felt sentences were a little too lenient was 42 per cent, and those who thought sentences were about right or too

tough generated an average of 47 per cent. This suggests that ignorance about current practice is one source of public dissatisfaction with sentencing.' (Hough and Roberts, 1998: 21)

Within this statement it is possible to discern a number of 'violations' of the 'things to be known': (i) knowledge about the 'current practice' of the criminal justice system is taken to be adequately represented by 'estimates of imprisonment rates'; (ii) 'public dissatisfaction with sentencing' is understood as feeling that sentences are too lenient, which is defined in operationalist terms as having selected the option 'much too lenient', or 'a little too lenient' (Notice how those who selected the option of saying that sentences are 'too tough' have their selection lumped in with those who selected the option 'about right'. The selection of the option 'too tough' indicates dissatisfaction in a direction which is commonly rendered invisible by the confidence agenda); (iii) the increase in the estimates of the per cent of offenders jailed which is observed as respondents become more satisfied is taken to indicate that 'ignorance about current practice' is a '*source of public dissatisfaction with sentencing*' (*emphasis added*).

A similar order of 'violation' can also be observed in the following statement: 'instrumental worries about personal safety were not, in fact, the driver of public confidence in policing. Feeling that one's local community lacked cohesion, social trust and informal social control was much more important.' (Jackson and Sunshine, 2007: 18). As with the excerpt from Hough and Roberts (1998) above, this statement is made on the basis of an analysis of the statistical associations between variables. In the statement Jackson and Sunshine do not distinguish between their operationalization of the concepts which they are studying (confidence, worries, feelings) and the phenomena (or 'things') themselves. As such they imply an identity between the measures applied and the phenomena studied, encouraging the reader to understand the phenomena called into being by their questionnaire as manifestations of 'real' things, or 'social facts'. In both this and the previous example, the data used provide us with no way of knowing how the relationships inferred from the observed statistical associations would be reflected in what the respondents would have said if asked to explain *in their own words* why they may or may not be confident.

To make this rather obvious point about the inherent limitations of quantitative data is *not* to say that the researchers are not making valid observations on the basis of their data (according to the ‘procedures of intervention’ accepted as conventional within their field as applied to the particular topic area). Rather it is to flag up the not insignificant point that these statements, and the analytical techniques upon which they are premised, are procedures of intervention which serve to transform the observed behaviour of individual members of the public within the research environment into something which is both other than what it actually was (the expression of an on the spot estimation, the choice of a pre-defined response option), and also other than what it might be if the same topics were addressed under different conditions.

Qualitative studies, which might provide a rather different way of understanding public confidence, have proved much less influential than quantitative studies in shaping the dominant discourse of public confidence. Quantitative studies dramatically outnumber qualitative studies of public confidence in the criminal justice system<sup>73</sup>. Where qualitative studies of public confidence *have* been carried out they have tended to explore what respondents understand by terms such as ‘public confidence’ and ‘criminal justice system’, and what they think about when deciding how to answer closed survey questions<sup>74</sup>. In such research it is almost as if the task of defining what is meant by the rather ill-defined concept of ‘public confidence in the criminal justice system’ has been returned to members of the public, as if retrospective cognitive testing is being applied to the research indicators, but then the results are being used in order to ‘increase’ positive

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<sup>73</sup> Qualitative data is used exclusively in only three of the confidence-specific research reports identified (Addison, 2006; Opinion Leader Research, 2005; NOP World, 2003) and is used in combination with quantitative data in two of the reports (Smith, 2007; Beaufort Research, 2004).

<sup>74</sup> For example, Addison (2006: 28) includes a section on ‘understanding and differentiating relevant concepts’, Smith (2007: 14) seeks to find out ‘What factors do people think about when deciding how confident they are in the CJS?’, Opinion Leader Research (2005: 14) attempts ‘to explore how different BME groups would define the term ‘confidence’ and Beaufort Research (2004: 28) asks respondents ‘what they understood by the term ‘Criminal Justice System’.

performance against these indicators, rather than to refine the indicators so that they capture what is intended<sup>75</sup>.

The dominance of quantitative methods in the public confidence research agenda may be due to policymakers favouring 'hard' numerical data over the 'rich' data which is usually generated by semi-structured interviews and focus groups. But I would argue also that researchers themselves should assume some responsibility for determining which methods of research are regarded as acceptable within the public confidence agenda, and which have thus contributed to the dominant discourse of public confidence.

The public confidence research agenda also creates conditions of possibility for a third procedure of intervention to ensue. This procedure of intervention occurs when survey responses come to be understood as 'demands' or 'wants'. In this way responses which are deliberately elicited by researchers through a survey are conflated with members of the public proactively saying something or making demands. For example, Duffy *et al* (2007: 16) refer to the government's willingness to address 'the priorities that come up consistently in research studies' as 'giving people what they say they want'. In a speech to the House of Lords, Baroness Linklater contrasted 'the perception of many politicians and sentencers, largely mediated through the press, that what the public want is an ever tougher prison-based approach' with the findings from a research study carried out by MORI which suggested that 'the public are much less retributive than is often thought to be the case' (HL Debate 8<sup>th</sup> December 2004 col 903-5). In this way research studies like those described above may come to be seen as definitive expressions of what the public 'really' demand or want from their government. The public confidence research agenda thus always has potential 'reality effects'.

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<sup>75</sup> This is suggestive of the tendency identified by Williams (1998: 14) whereby 'research manages to be both operationalist and realist at the same time, asserting both the necessity of practical definition and the reality of the concepts so defined!'



### ***4.3.3 'Capturing' public confidence: ontological necessity or value-judgement?***

As noted above, some researchers have cautioned against reliance on general opinion poll measures which fail to take into account the extent of public ignorance about actual sentencing trends. For example, Roberts and Doob (1989) argued that 'when more sophisticated survey questions are posed, the results indicate both greater leniency towards offenders and greater flexibility in terms of the purposes of sentencing ... the public favour the use of incarceration to no greater degree than the courts currently impose' (Roberts and Doob, 1989: 514-515). Through the use of 'more sophisticated survey questions', then, Roberts and Doob (1989) wish their readers to understand that they have been able to access 'true substances', so far as public opinion on sentencing is concerned, as opposed to the 'false shadows' generated by general opinion measures.

However, Walker and Hough (1988) offered a different perspective. They argued that, despite their shortcomings, general measures of opinion have value as a measure of 'generalized satisfaction':

'If all one is trying to do is measure respondents' cynicism about the sentencing of burglars, a general question... will do service. But if one wants to find out whether opinion and sentencing practice are in step ... respondents must be given a lot more information about the case. ... If a survey is intended to gauge public confidence in sentencing, there is a case for limiting details to the sort of information which ordinary members of the public get from newspapers, radio or television. To give respondents anymore is to put them in a position in which they will not find themselves in real life, where they form their opinions on sentencing. This stricture, however, obviously does not apply when the intention is to assess the "mechanics" of opinion formation, as in experiments of the kind carried out by...'(Walker and Hough, 1988: 220).

They therefore made a distinction between generalised 'cynicism about sentencing'/'public confidence' and opinion on appropriate practice in specific cases, and refer to public 'cynicism'/'confidence' as something which exists in 'real life' and can be 'gauged'. So, as already argued above, their view seeks to defend the retention of general opinion questions, despite them having been described elsewhere as 'insufficiently precise', 'false shadows' and 'useless for policy'.

This view was further developed ten years later by Hough and Roberts (1998) who referred to work done by Roberts and Doob (1989) and argued that:

'Information ... is critical to public attitudes to sentencing. As a general rule, the less information that people have about any specific case, the more likely they are to advocate a punitive response to it. This *experiment* [carried out by Roberts and Doob (1989)] demonstrated that the amount of information about a case is critical in determining public reaction. Unfortunately, most newspaper descriptions of a case provide very little information. As well, the cases chosen for coverage by newspapers tend to be ones that resulted in what appears to be a lenient sentence. Both these trends contribute to encouraging a public perception that the system is very lenient, and that judges are thoroughly out of touch with the views of the community.' (Hough and Roberts, 1998: 2-3)

In this quotation the approach to gauging attitudes taken by Roberts and Doob (1989) is referred to as an 'experiment' which implies something which creates 'unreal' conditions.

Here, then, we are presented with two distinctive phenomena: a general sense of cynicism or confidence in sentencing which pre-exists research, and sentencing preferences which, it is implied, are only activated by the more complex and specific types of survey questions which provide respondents with additional information. So, despite recognising that these two phenomena are simply different (rather than 'true' or 'false' representations of a pre-existing reality) Hough and Roberts still place them in an implicit hierarchy. The more hypothetical forms of opinion elicited through more complex and specific survey questions are considered to be interesting, and valid, but also less 'real': they exist *only* because they have been drawn out of the public in the survey context. They are of use in 'experiments' examining how 'real' opinion is formed but they are implicitly less 'real'.

Another way of looking at this issue is that the responses obtained through the different questioning approaches are both equally artificial, both having been brought into existence by the different questioning techniques. From this perspective, to assign these phenomena the labels of 'true' and 'false' or to say that they are more and less 'real' works to obscure the fact that both of these species of opinion are constructed by the research. The choice between the two is not one of methodological adequacy but of ontological value: it is not what *does* exist and *how* it can be measured that is at stake, but what *can* be brought into existence, whether it *should* be and what we should do about it.

Where the researchers' objective was to identify whether sentencing practice was 'in line' with public opinion, available evidence on public ignorance of the 'reality' of sentencing was used to justify the use of a specific, hypothetical method to access their 'true' opinion. The value judgement in this case goes something like this: we should find out how the public feel about sentencing by providing them with enough information to make an informed decision in a specific case. Where the researchers' objective was to gauge levels of 'generalized satisfaction' towards sentencing the specific, hypothetical method is seen as placing respondents in an artificial situation, and thus as failing to provide an adequate 'gauge' of what they 'really' think. In this case the value judgment is: we should find out how the public feel about sentencing by asking them if they are satisfied with it.

The examples provided thus far have made reasonably clear (although not necessarily explicitly described) distinctions between different types of opinion, either between 'false shadows' and 'true substances', or between 'real' and artificial. However, at other times there is a tendency within the confidence literature to write in such a way as to render the boundaries between the concepts capturing specific and general opinions indistinct. For example, Hough and Moxon (1985) concluded that:

'These findings suggest that policy-makers and courts can treat with a degree of scepticism the claims often made by the media that public opinion demands a tougher line with offenders. The BCS offers no evidence to suggest widespread punitive attitudes amongst the public. If, as the results of the BCS suggest, opinion and practice are broadly in line, there is probably leeway to introduce more lenient or heavier sentences without losing public support.

Support for more lenient sentences, however, would probably only be forthcoming if the public were better informed about current practice. If people believe the courts to be more lenient than they actually are, they may well feel that heavier sentences are called for, and may find proposals for lighter sentences unacceptable. Confidence in the criminal justice system might perhaps be improved if people had a more accurate idea of sentencing levels.'  
(Hough and Moxon, 1985: 171)

In the first paragraph the authors refer to specific measures of opinion which: provide 'no evidence to suggest widespread punitive attitudes'; enable comparison to be made between 'opinion and practice'; and suggest that 'there is probably leeway to introduce more lenient or heavier sentences without losing public support'. They do not define what they mean by 'punitive attitudes', 'opinion' and

'public support'. In the second paragraph the idea of 'support' is referred to in a more general sense, and thus becomes contingent upon the public being 'better informed', because 'proposals for lighter sentences' are unlikely to find favour if 'people believe the courts to be more lenient than they actually are'. At the end of the passage, the concept of confidence is introduced, but without definition: 'Confidence in the criminal justice system might perhaps be improved if people had a more accurate idea of sentencing levels'.

The phrasing of these two paragraphs collapses the methodological and ontological distinctions between general and specific concepts in a most confusing fashion. From being the extant fact of social reality which justified the use of more sophisticated survey questions in order to get at the 'true substance' of what the public think about criminal justice, poor public knowledge about the reality of crime and criminal justice becomes the key factor used to explain an (implicitly 'real') lack of public confidence in the criminal justice system. Instead of: 'x is true therefore we should measure y but not z' (a judgement about the most appropriate questioning technique to meet the research objectives), the discourse shifts to say 'z is true *because of* x' (the judgement here is that we should measure z despite knowing x, and treat x as an explanatory variable).

#### ***4.3.4 'Reality effects': Devaluing the ontological splinters***

Recent years have seen many effective critiques of the adequacy of quantitative survey data as applied to the matter of public opinion (e.g. see Fishkin, 1995; Ackerman and Fishkin, 2004; Price and Neijens, 1997; Shamir and Shamir, 2000). It has been frequently suggested that mass survey data tends 'to collect and disseminate opinions that may be ill-informed "non-attitudes" or "pseudo-opinions" developed outside of any meaningful public debate' (Price and Neijens, 1997: 337). Famously, Pierre Bourdieu wrote that 'Public Opinion Does Not Exist', arguing that the assumptions upon which opinion polls are based (everyone has an opinion, all opinions are equal and there is broad agreement about the questions about opinion which should be asked) are so flawed that public opinion is 'a pure and simple artefact' (Bourdieu, 1979 cited by Wacquant, 2004: 7).

Whilst accepting Bourdieu's critique of the assumptions upon which polls are premised I would argue (with Osborne and Rose (1999)) that something called 'public opinion' (or indeed 'public confidence') does come into existence with the conduct of each poll. Something with productive potential has been and is brought into existence by those who carry out and report such polls based on their implicit acceptance that mass survey data are 'the only workable empirical rendering of public opinion' (Price and Neijens, 1997: 336). By bringing public opinion in this form into existence survey research on general opinion can have 'reality effects'.

Where survey research is promoted as the most legitimate channel for public expressions of confidence or disconfidence this may effectively divert attention from, if not devalue, alternative channels through which the public may express their views. Indeed, Drury (2002: 41) has written of how

'collectives, and crowds in particular, have historically been much maligned. A wealth of linguistic and conceptual resources has developed which has served to discredit and delegitimize the crowd'

Crowds, including participants in mass protests, are routinely dismissed or pathologized, for failing to utilize existing legitimate (and less socially disruptive or inconvenient) mechanisms to communicate their views.

But it is not merely that the confidence research agenda can devalue non-research channels through which the public may give expression to their views. It is also that, in its dominant form, it has actively suppressed or rejected alternative research-based ways of understanding how the public think and feel about crime and the criminal justice system. As discussed above, key texts in confidence research have stated that there is 'a greater need for information on public attitudes ... to gauge public confidence' (Hough and Mayhew, 1985: 43) and that 'the only truly valid measure of opinion is a representative survey.' (Hough and Roberts, 1998: 1). However, it has also been claimed that survey measurements of opinion are 'organizational instruments which emphasise logicity and lucidity' (Rock, 1979: 166) giving everyday ideas 'alien meaning' (Ibid: 163) and that general opinion poll style questions are 'insufficiently precise to answer whether sentencing is in line with public opinion' (Hough and Moxon, 1985: 162).

A number of studies have been carried out over the last 20 years which suggest potentially fruitful alternative methods for engaging with the public in order to explore their views about crime and justice. But these studies have remained very much at the periphery of the public confidence research agenda, apparently crowded out by more conventional survey-based research.

From 1994-1996, three criminologists from Keele University carried out a detailed ethnographic study of 'public concerns about, and responses to, crime' in Macclesfield and its surrounds (see Girling, Loader and Sparks, 2000). The method which they adopted was highly sensitive to the contextual details of time and place, and to the apparently mundane minutiae of public discourses about crime. The researchers did not merely document public 'views' or 'opinions' about crime, rather they explored the symbolic meaning of crime in talk, with reference to particular places, at a particular historical juncture.

In the book which reports their findings the researchers deliberately position their work as seeking to break out of the 'self-imposed theoretical and methodological restrictions' of conventional research on 'fear of crime' (*Ibid*: 1) to provide a 'place sensitive sociology of public sensibilities towards crime' (*Ibid*: 12). They conclude that research which treats 'fear of crime' as a 'separate and discrete object of social enquiry and policy intervention' is an 'exhausted' pursuit (*Ibid*: 170). However, they emphasise that this does not mean that researchers, policymakers and practitioners should not attend to public views, beliefs and feelings. Rather they argue that what is needed is for the 'passions' excited by crime, as well as people's normative beliefs about 'what is to be done', to be deliberated within an effective public sphere (*Ibid*: 177).

Girling *et al* anticipated resistance to their approach from administrators and administrative criminologists (*Ibid*: 3) and, just as they feared, their detailed and nuanced analysis has had only a rather limited impact on the dominant quantitative approach to researching how people think and feel about crime and its control in their locality. Furthermore, where their research *has* been referred to it has been misused to the extent of being absorbed and partially-neutralized. For example, Jackson (2004: 946) argues that Girling *et al* demonstrated 'the benefits

of a fresh approach' to the 'fear of crime'. He goes on to develop a 'fresh approach' through a complex multivariate analysis of some quantitative data on public attitudes (see also Jackson and Sunshine, 2007 and Jackson and Bradford, 2009)<sup>76</sup>. Jackson's analysis is a statistically sophisticated attempt to build upon the points made by Girling *et al*, and offers some interesting findings. But it also completely misses the point of Girling *et al*'s core argument as it relies on (and indeed produces more of) precisely the kind of non-deliberative ways of understanding public views which Girling *et al* reject for their tendency to leave 'the (impassioned) demands of citizens undiscussed and unchallenged' (Girling *et al* (2000: 177).

We gain some insight into why Jackson (2004) has (ab)used the findings from Girling *et al* (2000) if we consider the conclusion he draws from his analysis:

'people are not "fearful" of personally being victimized as often as we think; rather, they are expressing their social concerns through the symbolically dense concept of crime. And *the crime survey can be used to sensitively address these issues, so long as it involves sensible design and analysis, and a coherent and ambitious set of theoretical ideas and guidelines*' (Jackson, 2004: 963, *emphasis added*).

In other words, although Jackson references Girling *et al*, he then adopts the default response to those who would challenge the use of quantitative methods to explore public responses to crime. This response is described by Girling *et al* as that of 'pursu[ing] ever more refined empirical research, carefully introducing more and more definitional distinctions and categories' (Girling *et al*, 2000: 14). The proposals advanced by Girling *et al* in their conclusion seem to have triggered a defensive response in a researcher with a strong commitment to a quantitative approach.

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<sup>76</sup> It is not my intention here to question the methodological rigour or integrity of Jon Jackson's work on fear of crime and public confidence in policing. He has (in collaboration with others) been responsible for some extremely thought-provoking and sophisticated studies and it is to his credit that he references Girling *et al* (2000) where contemporaries working in the same area have failed to do so. I use Jackson's work here however to demonstrate how it is that work which falls outwith the dominant quantitative paradigm for research of this kind can struggle to influence public and political debates, and thus to be accepted on an equal footing with more methodologically conventional studies.

The advantages of deliberative approaches have been explored in more detail by Green (2006; 2008), and have also been championed by Loader (2011) and (as referred to in chapter two above) Loader and Sparks (2010a). Green argues that attempts to educate the public about the facts of crime and criminal justice are of limited utility due to their failure to have an enduring impact on public preferences and opinions (Green, 2006: 131). Loader (2011: 349) describes the educational approach as the 'cognitive deficit model' and suggests that it signally fails to address the intense emotions which issues of crime and punishment can provoke.

As a solution, Loader proposes the 'redirection model' which would seek to 'fashion institutions and institutional practices that mediate between public sensibilities and crime control policy ... bringing the emotionally laced experience and demands of citizens in from the shadows ... opening them up to the scrutiny of public, communicative reason' (*Ibid*: 356). The purpose of the exercise would be 'to strive after policy outcomes that can be said to rest on some defensible, deliberatively produced conception of the common good' (*Ibid*: 357). Green (2006) provides a more detailed account of one method which might be used to achieve Loader's vision for redirection. He explores the background to 'deliberative polling', how it would work and what its benefits would be, contrasting the 'shallow, unconsidered public *opinion*' captured through polls and surveys, with the 'reflective, informed public judgment' which a deliberative poll can produce (*Ibid*: 132). The purpose, he argues, is to 'help produce an informed, more defensibly invoked public will' (*Ibid*: 133).

Loader (2011) and Green (2006; 2008) make convincing arguments in favour of the use of deliberative methods however, in their accounts, deliberative methods appear dangerously exposed to the accusation that the data which they produce is artificial. Loader refers to the findings produced by deliberative approaches as 'deliberately produced' (Loader, 2011: 357) whilst Green argues that the deliberative poll will provide a 'glimpse of a hypothetical public' (Luskin *et al*, 2002: 458 cited by Green, 2006: 133) by attempting to 'model what the public *would* think, had it a better opportunity to consider the questions at issue' (Fishkin, 1995: 162, *emphasis in original*, cited by Green, 2006: 133). He also suggests that



the public cannot 'achieve public judgment unassisted' (Green, 2006: 145). This potential weakness in the argument for deliberative approaches has been attacked by one of the key figures in establishing the public confidence research agenda, Mike Hough.

In 2002, along with Alison Park from the National Centre for Social Research (NatCen), Mike Hough revisited a study from 1994 in which James Fishkin, the pioneer of 'deliberative polling' (see Fishkin, 1995; Fishkin *et al*, 2002; Ackerman and Fishkin, 2004) along with NatCen and Channel 4, invited 297 people to attend a weekend-long deliberative workshop on crime and punishment. Over the course of the weekend they received presentations from practitioners, academics and politicians, and took part in group discussions about the issues raised (Hough and Park, 2002: 167). In contrast to Green (2006: 149), who emphasises the '*democratic utility*' of the deliberative poll, Hough and Park (2002: 165) seek to explore how the deliberative poll can be used to '*change public attitudes*', referring to it as a 'laboratory setting for learning more about public opinion' (*Ibid*: 166).

It is clear, from the outset, that Hough and Park set out to represent deliberative polls as premised on primarily normative, rather than scientific aspirations, and as necessarily producing findings which are artificial, in contrast to the 'real' opinions elicited through polls. They are very quick to point out key criticisms of deliberative polls, including the fact that (unreferenced) 'critics have suggested that whatever the *desirability* of having a well-informed and thoughtful public, deliberative polls are irrelevant as politicians need to take account of the reality of public opinion as it emerges from "snapshot" public opinion polls' (Hough and Park, 2002: 166, *emphasis in original*). They further underline the inferior status of deliberative polling in their conclusion, arguing that although '[t]here is an obvious need to improve on the ways that opinion on complex topics is canvassed' deliberative polls are expensive; potentially biased and do not produce representative results which can be generalized to the wider population (*Ibid*: 181). As such:

'Deliberative polling will never replace the standard, representative poll as a measure of public opinion. However, it may serve as a very useful adjunct and

generate insight into community views that cannot be gleaned from the survey approach which carries so much weight with politicians.' (*Ibid*: 182)

The subtext in this conclusion is that surveys are cheap, free from bias, and produce scientifically accurate findings about 'real' social phenomena. Deliberative polls on the other hand are appropriate only if used in a supporting role. It is suggested that this role can only ever be a supportive role because of the attachment of *politicians* to the consumption of survey data (rather than by the attachment of some researchers to its production).

#### **4.3.5 *Costs to existence***

So far in this part of the chapter I have: identified the hierarchical 'grid of specification' which is implicit in the dominant discourse of public confidence; described the way in which confidence research violates the phenomena which it purports to represent through certain 'procedures of intervention'; argued that the decision about how to do confidence research is *not* mandated by the facts of reality but is rather a disguised value-judgement about how best to do research in this area; and suggested that the dominance of survey research has been at the expense of qualitative and deliberative approaches to understanding what the public think and feel.

This analysis suggests some further questions, including: (i) Why *this* 'grid of specification'? (ii) Why *these* 'procedures of intervention'? (iii) Why has a value-judgement been disguised? I shall leave aside these important questions for the moment (to be addressed in the next chapter) and focus on a fourth question: what are the 'costs to existence' of the public confidence research agenda?

Burchell (1996) has argued that we should look for 'costs to existence' by asking:

'What sort of relationships with ourselves, others and the world does this way of speaking the truth presuppose, make possible and exclude? What other possibilities of existence are necessarily excluded, condemned, constrained?' (Burchell, 1996: 34)

The dominant discourse of public confidence produced and maintained by public confidence research constructs confidence as a real and measurable phenomenon which experts are able to capture, represent and 'know' through the application of

appropriate methods. Based on what they find by using these methods, experts have argued that the public frequently lack confidence in the criminal justice system because they have not adequately grasped the facts of reality, that is to say they have failed to understand reality in the same way as experts. The dominant discourse thus also projects an understanding of the world as one where there is a single, knowable reality of crime and criminal justice which can also be represented by experts using appropriate methods.

This dominant discourse of public confidence posits a profoundly unequal relationship between experts and the lay public as expert ways of knowing about reality are privileged over lay ways of knowing, and are effectively placed beyond debate. Experts are also permitted to appropriate the responses which members of the public make in an artificial context (the research context) and call them real because it is implicit in the public confidence research that such research is a legitimate way of making visible the authentic desires of the individual. One could, of course, argue that the research acts as an enabling mechanism, that it serves a useful social purpose in allowing people's demands to be heard. However, one might also ask 'why this mechanism?'

Survey research of the kind generally used to explore public confidence may enable, but it also clearly circumscribes the manner in which members of the public can make their views heard. Bellah *et al* (2008 [1985]: 305) have observed that the use of quantitative polling to find out what the public think fails to open up a conversation with the participants, and produces summaries of '*private* opinions' which can come to be seen as natural facts. In its current form as a study of private opinions, the dominant strain in public confidence research is always partial and blinkered: it can only 'hear' certain things and not others as it delivers 'facts' in the authorised style. To become visible to, and thus be understood and represented by, the survey, individuals must learn the 'technique' of being the kind of subject which the survey assumes they are. It is not that they must feel or think a certain way, but rather that they must learn to 'say' what they think or feel in a way which is inevitably restricted, and they must submit to have their truncated expressions appropriated and transformed at the researcher's own will, or else risk invisibility.

So members of the public must evaluate or rate, choose or express a preference, estimate and, when they meet the requirements of the method in this way, their subjectivity may be appropriated and transformed – their selections may become ‘demands’, their preferences ‘desires’, their evaluations ‘anger’, their estimations ‘beliefs’. These new subjectivities can then become objects of policy: marketing, education and so on. In this way, as individual citizens are subjected by the requirements of the survey method, they are also transformed from ‘subjects of their own action into objects of intervention’ (Bauman and May, 2001: 169). They are petrified in objectification, so that we can ‘see’ what they ‘really’ think/feel/believe.

The dominant discourse of public confidence found in the public confidence research agenda also appears to both assume and facilitate an understanding of individual members of the public as consumers whose feelings of confidence are real and measurable and *should be* caused by their knowledge of the (expert-produced) facts about crime and justice. Within this discourse, experts are positioned as the gatekeepers to accurate knowledge about crime and the criminal justice system and their ways of knowing, and the representations they produce, are privileged above those of members of the public.

Furthermore, in order for the government to know whether or not the public have confidence in the criminal justice system and what to do about it, they must consult experts who are able to capture the reality of confidence and identify what drives it through quantitative survey data. More nuanced and contingent qualitative data of the type obtained by engaging in conversation with members of the public, letting them describe what they think and feel in their own words, or even fostering their engagement in public deliberation about the issues produces interesting, but ultimately less reliable, and less accurate data.

The existence of this dominant discourse of public confidence thus contributes to the construction and maintenance of a particular social reality, by promoting and nurturing a particular quantitative research agenda to the detriment of qualitative and deliberative methods. However, as described above (see section 4.3.3), this research agenda is premised on the misrepresentation of a value-based decision

about how to know as a decision which has been mandated by the facts of reality. The ontological splinters created by alternative methods for accessing what the public think and feel are thus regarded not as different ways of accessing a multi-faceted truth, but as inferior methods which produce idealistic artefacts.

This misrepresentation allows researchers who argue in favour of qualitative and deliberative approaches to be portrayed as well-meaning but unrealistic, and permits their recommendations to be cast as normative and unscientific. The ontological illusion that real social facts exist independently of the values which shape the character and scope of social inquiry is perpetuated.

These, then, are the 'costs to existence' of the dominant public confidence research agenda: a prioritization of methods over values which severely restricts opportunities for democratic engagement and dialogue between the public and policymakers, and casts the public in the role of passive ill-informed *individual* consumers who are reliant upon the experts both to tell them how to know about crime and justice, and to relay back their real opinions to their elected representatives.

This dominant discourse of public confidence can be critiqued on two levels. At the first or outer layer, there is the 'violation' which occurs through the 'procedure of intervention' which sees such survey data being (explicitly or implicitly) held up as evidence of the true character of a real phenomenon which pre-exists the pollsters' posing of the question of the day. This problem can be critiqued as a failure of method, a technical failing which produces a faulty knowledge-base. At a deeper level one can critique the misrecognition of the order of decision upon which the conventional 'procedure of intervention' is based, by which I mean the tendency to regard and represent the decision as mandated by 'the facts' of reality, rather than as a value-based decision about how to know. This is a problem which is seen as more intractable, more inaccessible, more abstract (or indeed perhaps also as imaginary) however, as I argue in the remainder of this thesis, this misrecognition is of crucial importance to debates about the appropriate public role of criminology in the democratic public sphere.

#### 4.4 Conclusion: from 'costs to existence' to 'conditions of existence'

In this chapter I have argued that research on public confidence in the criminal justice system developed on foundations which were laid during the 1980s. During the 1990s the previously prominent methodological debate about how to access 'true' public opinion on sentencing gave way to a narrower focus on how misperceptions can be addressed so that general ('real') opinion on the criminal justice system will be more favourable. Researchers appeared to reason that, because the public generally had inaccurate perceptions of the crime problem and criminal justice system practice, they were unable to recognise that the system was operating roughly in line with the way they would want it to operate in specific cases.

The problem then became one of addressing poor public knowledge so that the distinction between specific measures of public preferences and general measures of public perceptions would no longer be of relevance, i.e. not only would actual sentencing practice be roughly 'in line' with public preferences, but the public would *know* that this was the case and *as a result* would hold favourable attitudes towards the criminal justice system (i.e. say that they felt confident). In some sense, then, public confidence acted as a conceptual bridge between the specific and the general measures of attitudes and opinions which were debated in the 1980s. Knowledge and confidence were thus always already ontologically and conceptually entwined.

An expanding body of quantitative research into the 'drivers' of public confidence which has emerged since the late 1990s, has, promulgated an understanding of confidence as real, measurable and caused, and has obscured the value judgement (about how public beliefs and feelings *should* be researched) which underpins the construction and reproduction of such a reality. Furthermore it has cast a mould for confidence research according to which researchers already know the kinds of 'things' that they are looking for, and the 'procedures of intervention' which they should apply, and collect, code and interpret data accordingly. The result has been that a great deal of time and resources have been spent recycling the same

findings, to very little practical gain. This agenda has 'costs to existence'. It subjects individual citizens to the logic of its method, and potentially devalues and deflects attention away from other avenues through which the public may 'speak'.

In the next chapter I address some of the questions posed by the deconstruction of the dominant discourse of public confidence: (i) Why *this* 'grid of specification'? (ii) Why *these* 'procedures of intervention'? (iii) Why has a value-judgement been disguised? I argue that in the absence of certain 'conditions of existence' the dominant discourse of public confidence in the criminal justice system would not be 'thinkable', and that the grid of specification, procedures of intervention, and disguising of the value-judgment about how to do confidence research can be traced back to historically contingent events and ideas. I also suggest that the emergence of the contemporary public confidence agenda occurred in the context of conflict between different groups competing for power in the criminal justice and political fields, and that claims to know about public confidence should therefore also be understood as bids for power within those fields.





## Chapter 5. The emergence of the public confidence agenda

'Must not power without public confidence be as precariously held as existence must be without a certainty of means?' ('Query' in The London Chronicle for Tuesday October 16th to Thursday October 18<sup>th</sup> 1764 Vol. XVI Issue. 1221 p. 371)

### 5.1 Introduction

In 1834 Robert Peel was asked to form a government by King William IV. When Peel spoke of his decision to accept the King's invitation he cited the necessity of his government being able to command the confidence of the public in order to be able to govern effectively:

I have not taken [the decision] without deep and anxious consideration as to the probability that my opinions are so far in unison with those of the constituent body of the United Kingdom as to enable me, and those with whom I am about to act, and whose sentiments are in entire concurrence with my own, *to establish such a claim upon public confidence* as shall enable us to conduct with vigour and success the government of this country. (Robert Peel, The Tamworth Manifesto, in Mahon and Cardwell, 1857: 58-67 *emphasis added*)

The British Library database of British Newspapers and Pamphlets from 1600-1911 contains almost 25000 articles, advertisements, letters to the editor and transcribed speeches which deploy the phrase 'public confidence'. With considerable regularity and consistency, the term is used to denote public support, variously manifested, for persons, actions, organisations, or some other category of 'thing', from politicians to race horses, and from stocks and shares to the health benefits of cocoa. For example:

'The loss of public confidence is shown by the serious depreciation of the ordinary stock of the company' (Article on 'Welsh Finance in 1900' in Western Mail (Cardiff, Wales), Monday, December 31, 1900; Issue 9859.)

'Confidence is not won in a day. This truth applies with special force to proprietary medicines. Countless preparations have been placed on the market during the last fifty years that have been tried and found wanting. They could not establish their claims. Their bid for public confidence was made under false pretences of merit. They were without value and they failed! Beecham's Pills have been before the public for over half a century. They have grown in public

favour owing to their merit. Now they have a sale of over 6,000,000 boxes annually.' (From an advertisement for 'Beecham's Pills' in *The Penny Illustrated Paper and Illustrated Times* (London, England), Saturday, March 09, 1907; pg. 159; Issue 2389.)

The idea of 'public confidence', then, has a long historical pedigree in English political and economic discourse. However, until fairly recently, public confidence remained opaque: it was invoked often enough to suggest that everyone understood what it meant but its substance remained elusive. It functioned as a rhetorical token, used to refer to something which was seen as valuable but which could not be directly apprehended, only inferred from the way people behaved: what they bought, how they voted, whether or not they protested, rioted or started a revolution.

In the arena of criminal justice in England and Wales recent years have seen public confidence become much more than a vague rhetorical gesture in the direction of maintaining the support of the public. As the last chapter showed, it has come to be treated as an objectively real and measurable phenomenon around which programmes of research and action can be constructed. It has become possible and routine to talk about public confidence (like the cognate concept 'fear of crime') as 'an objective *thing*; something out there in the social world to be decoded by the researcher and deployed by the policymaker' (Lee, 2007: 15). A public confidence *agenda* can be said to have emerged.

This chapter explores this emergence, starting from the premise that the notion of public confidence in the criminal justice system has no existence except within discourse, and that its constitution is always attributable to a process of historical discursive development rather than a moment of discovery (Smart, 2002: 58; Lee, 2007). Thus, the dominant contemporary form of public confidence is understood as being contingent upon the conditions which have given rise to its production. My contention is that the idea of public confidence in the criminal justice system has some specific 'surfaces of emergence', without which its contemporary form would be, literally, unthinkable. I also argue that particular social and political conditions and events in England and Wales in the second half of the twentieth century combined to enable a discourse of public confidence to "hook" into

normative ideas and common-sense notions' (Carrabine, 2001: 269) within the criminal justice field.

In the first part of the chapter I look back in time to identify the 'surfaces of emergence' for the idea of public confidence as it came to be constituted at the end of the 20<sup>th</sup> century. These are the things which have made the contemporary public confidence agenda thinkable. In the second part of the chapter I explore the recent history of the idea of public confidence in criminal justice through an analysis of media and political discourse. Tracing the shifts in the way the term has been used, I seek to demonstrate the extent to which claims about public confidence have been strategically invoked in order to exert influence within the criminal justice arena. In other words I argue that claims to 'know' about public confidence in the criminal justice system are intimately associated with attempts to exercise power.

## **5.2 Some 'surfaces of emergence' for the idea of public confidence**

The previous chapter identified some key characteristics of the contemporary public confidence agenda. These included the positioning of members of the public as dependent upon experts to understand the reality of crime and justice; the privileging of specialized expert ways of knowing about crime and justice and the acceptance of survey data as the most appropriate way to understand how the public think and feel about these issues. In the first part of this chapter I describe some 'surfaces of emergence' for this way of understanding public confidence.

I suggest that the public confidence agenda is premised on the following 'conditions of existence': (i) the erection of barriers between ordinary members of the public and the operations of the criminal justice system which make it necessary for them to have confidence or believe that it operates in certain ways, rather than witnessing this firsthand; (ii) an understanding of the criminal justice system as legitimately oriented towards the production of effects upon individuals facilitated by the existence of 'experts' who are able to know about and accurately and objectively represent the 'reality' of crime and justice; and (iii) a political climate within which the true feelings and beliefs of members of the public are regarded as important, and able to be accurately captured by social research.

I argue that the 'surfaces of emergence' for these conditions can be discerned in historical changes which have taken place in the way crime is dealt with in England and Wales. Over a period of some four hundred years a system of justice has emerged which can be differentiated from the 'old' penal arrangements in three ways which are of particular significance to the issue of public confidence: (i) Managed by a centralized bureaucracy and delivered by professionals, it largely excluded the lay public from participating in or witnessing the administration of punishment and placed strict limitations on opportunities for the public to participate in other aspects of criminal justice activity; (ii) Explicitly oriented to the effective delivery of instrumental ends it has increasingly come to represent itself as informed by the findings of scientific research and experts of various kinds; (iii) Funded by compulsory tax-payer contributions it operates in a society with universal adult suffrage where public institutions are required to be accountable to the public, and where managerialist regimes with quantitative performance indicators are used to achieve accountability. In this part of the analysis I describe the genesis of these changes and how they have provided 'surfaces of emergence' for the idea of public confidence in the criminal justice system.

### ***5.2.1 The 'most hidden part'<sup>77</sup>: the removal of justice from public view***

Four hundred years ago, except for serious crimes, the administration of justice in England was very local and closely tied in to the communities within which people lived out their day to day lives. Small and stable communities were able to exercise effective 'surveillance' over their members (Bauman, 1987: 42) and for most people offences and disputes were settled by the Court Leet under the Lord of the Manor (Sharpe, 1984: 25). Even when the Manorial courts went into decline, ordinary members of the public were still involved in or able to witness the process of punishment as, until the 19<sup>th</sup> century, the sentences passed regularly involved a significant element of public spectacle (Foucault, 1977b; Beattie, 1986). The pillory and the stocks remained available throughout the eighteenth century

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<sup>77</sup> Foucault, 1977b:9

and often effectively left the fate of the offender in the hands of the crowd. Offenders who roused particular public anger could be treated very roughly, and even killed, whereas those with whom the public felt sympathy may experience little suffering, and instead receive public support, during their period of 'punishment'<sup>78</sup> (Beattie, 1986: 466; Emsley, 1987: 215).

In London, until 1783, 'the execution march from Newgate prison to Tyburn gallows lasted about two hours, to the accoutrement of tolling bells and all the paraphernalia of spectacle and crowd participation along the way' (Pratt, 2002: 16). However, the end of the execution march marked the beginning of 'a trend that involves both restricting the savagery and further confining the spectacle of the execution' (Pratt, 2002: 16)<sup>79</sup>.

In England during the 19th century whipping posts, pillories, stocks and ducking stools all fell into disuse (Pratt, 2002: 15), branding was outlawed (Foucault, 1977b: 10), public executions were discontinued and recourse to the death penalty declined dramatically (Pratt, 2002: 16). Publicly exhibited acts of punishment on the body thus all but disappeared in a change of 'penal style' (Foucault, 1977b: 7). Furthermore, the kind of informal sanctions which local communities had been accustomed to use to punish minor offenders of accepted morals or custom also declined (Pratt, 2002: 16). By the late 19th century ordinary members of the public in England were effectively neither participating in nor witnessing the administration of punishment which became 'the most hidden part of the penal process' (Foucault, 1977b: 9).

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<sup>78</sup> For example, Beattie (1986: 466) suggests that: '[o]n at least one occasion in London following the Hanoverian succession a man convicted of speaking seditious words against George I was rescued by the crowd and released from the pillory', whilst Emsley recounts how in February 1765 John Williams, a bookseller, spent his hour in the pillory being cheered by a crowd who collected some £200 for him (Wardroper, 1973: 48-9 cited in Emsley, 1987: 215)

<sup>79</sup> In part this trend can be seen as having come about as a result of people turning against some of the more brutal punishments which remained on the statute book, in some cases leading juries to acquit rather than have to submit individuals to the tortures available. For example in 1794 the shoemaker Thomas Hardy, a founding member of the London Corresponding Society, was acquitted of high treason, an offence which the jury well knew to be punishable by an execution which would include the criminal being disembowelled and castrated whilst still alive (Thompson, 1991: 21).

Over the same period of time the traditional outlets through which some members of the public might have involved themselves in bringing offenders to justice and determining their sentence were also being closed off or limited. Movements such as the Societies for the Reformation of Manners which sprang up in the late seventeenth century, only to peter out by about 1730 (see Sharpe, 1984) were at odds with the increasingly professionalized and standardized system of justice which started to emerge from the eighteenth century onwards, and which really gathered pace under Robert Peel at the Home Office during the 1820s (Emsley, 1987: 222). The changes progressively reduced and circumscribed opportunities for the public to involve themselves in law enforcement and penal matters, and increasingly posed a challenge to the traditional, paternalistic, aristocratic image of justice based around mercy and discretion, favouring a move towards an 'impersonal justice in which the law was above the suspicion of dependence on any personal discretion' (Emsley, 1987: 222)<sup>80</sup>.

In line with a wider centralizing and rationalizing trend in government the organization and supervision of prisons increasingly became a matter for the state. The opening of Millbank Prison in 1816 was followed by the founding of the prison inspectorate in 1835, and in 1877 the Prison system was centralised under the Home Office establishing an expanding, hierarchically organized and increasingly uniform penal estate (Garland, 1990: 181). At the same time, visits into prison by interested members of the general public came to be viewed as inappropriate and were increasingly curtailed (Pratt, 2002: 55). The role formerly played in inspecting and exposing prison regimes by 'pioneering individuals' and voluntary organizations preaching reform increasingly passed to the state (Pratt, 2002: 123).

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<sup>80</sup> This trend can also be seen in the demise of the practice of 'pleading benefit of clergy' which allowed hundred of offenders each year to escape hanging for minor offences against property in what 'amounted in fact to a pre-sentencing pardoning system' which rested upon the clergyman's willingness to attest to the ability of the illiterate to read, and the judge's willingness to participate in the fiction (Beattie, 1986: 474). This historical anomaly, which resulted in some capital offenders receiving the relatively mild (for the time) punishment of branding to the thumb, was addressed in the mid-seventeenth century by the introduction of pardons conditional on accepting transportation. Once judges had a merciful alternative to execution they were less willing to permit a plea for 'benefit of clergy' (Beattie, 1986: 474-5). Judicial discretion was thus increased by the demise of this practice, but the clergy were no longer involved in any collusion to produce mercy.

Until the end of the eighteenth century prisons were 'located in buildings which were essentially indistinguishable from adjacent houses' (Brodie; Croom and Davies, 1999: 2 cited in Pratt, 2002: 36). During the 19th century prison started to be more frequently used as a penal sanction in its own right, and the enlarged prison facilities were removed to outlying areas of towns and cities and situated behind high walls, physically screening their inhabitants from common view (Pratt, 2002: 41-45). At the same time prisoners themselves were publicly exhibited less often, with moves to transport them between penal facilities in civilian clothing rather than prison dress, then in private railway cars, and later in vans (Pratt, 2002: 57).

Meanwhile, the establishment of the professional police 'signified a move away from a degree of popular control that had existed in some places over parish constables' (Reiner, 2010: 65). This shift continued in the twentieth century as the 1964 Police Act strengthened the Home Office and Chief Constables at the expense of local police authorities, and the shift to the Unit Beat System of patrol and motorised response meant that the relationship between the 'Bobby' and a local community was further loosened (Reiner, 2010: 79).

This brief description of some changes to the organisation of criminal justice which occurred in England and Wales between the 17<sup>th</sup> and 20<sup>th</sup> centuries, provides some examples of the ways in which the public were divested of the channels through which they had been accustomed to be involved in, or at least to physically witness, the processes in place for enforcing laws and punishing wrong doers (cf. Garland, 1990: 185). As the machinery of punishment has been progressively removed from public view, and as responsibility for preventing crime and apprehending offenders has passed to professional police, so the public have no longer been able to 'see for themselves' justice being done. They have now, to a large extent, to rely instead upon the information released from within the bureaucracy, and on official assurances that the appropriate action has been taken to apprehend individuals who commit crime and punish them. This gradual exclusion of the public provides a surface of emergence for the contemporary idea of public confidence by making

it necessary for members of the public to rely on the testimony of others to find out how the criminal justice system operates.

### ***5.2.2 Counting 'rogues and masterless men': the transformation of surveillance***

The need to provide a deterrent to crime has been a justification of the right to punish for centuries, albeit a justification which was, at least until the 19<sup>th</sup> century, used in support of the public exhibition of torture and death (Foucault, 1977b: 93). Beattie (1986: 469) notes that public corporal punishment was supposed 'to discourage [the offender] and others from committing other offenses. And beyond that ... performed the wider function of reaffirming the moral boundaries of the society'. Some would argue that the existence of broader correctional intentions towards the individual offender (as opposed to the use of their bodily suffering as a deterrent example) also has a long history. In the late 15<sup>th</sup> century, Edward VI bequeathed a former palace (Bridewell) to the city of London as 'a workhouse for the poor and idle persons of the city' (Salgãdo, 1977: 189). The palace came to be used as both a hospital and a 'house of correction' for rogues and loose women who were sent there for 'reformatory detention' *after* receiving the punishment proscribed by the court. Reform was to be achieved at Bridewell by putting the inmates to useful work under the supervision of paid craftspeople (Salgãdo, 1977: 190).

The 1572 Poor Law saw a system modelled on Bridewell being adopted around the country, with the aim of ensuring that potentially wayward youths grew up engaged in hard work. The law gave parishes the power to round up obvious vagrants and to punish those resistant to working by whipping them and withholding their food (Salgãdo, 1977: 196-7). Further statutes permitted the imposition of a period in this kind of house of correction *in addition to* the ordinary punishment. With objectives which extended beyond retributive punishment and the deterrence of would-be criminals, Bridewell and related institutions can be, and have been, interpreted as prototypical correctional institutions. Their existence during the 15<sup>th</sup> and 16<sup>th</sup> centuries appears to demonstrate the early prevalence of the idea that 'it might be possible to cure criminal instincts though a



healthy dose of labour discipline' (Sharpe, 1984: 179). However, these apparently 'correctionalist' practices existed in a quite different social context than later practices which aimed specifically to change offenders' behaviour and it may be misleading to suggest that there is a straightforward continuity here.

Bauman's work on the emergence of modern 'experts' suggests an alternative interpretation of Bridewell and the early correctional institutions. In 16<sup>th</sup> century England, social and economic changes were afoot which broke up settled feudal communities and made increasing numbers of men and women 'economically redundant, and consequently socially homeless' (Bauman, 1987: 40). Anonymous, mobile and with no legitimate means of providing for their own survival these homeless individuals were viewed with fear and suspicion but, as they moved from place to place, were effectively invisible to traditional forms of surveillance carried out by the community. This shortfall of surveillance was to be filled by the state, a development which, according to Bauman, transformed the exercise of disciplinary power from something to be done 'matter-of-factly' into something 'visible, a problem to be taken care of, something to be designed for, organized, managed and consciously attended to' (Bauman, 1987: 42).

As the first movement in the process of re-establishing surveillance the state sought to define 'vagabondage', and, in 1531, passed an act of parliament which settled on a definition which made 'the possession of a master or a property ... the conditions of normal non-punishable conduct' (*Ibid*: 43). The solution to the state of vagabondage was thus identified as the restoration of authority over the individual. In 1569 the Privy Council ordered parish constables to carry out a search which identified 13,000 'rogues and masterless men' roaming the country (Salgãdo, 1977: vii). Seen in this light the early houses of correction seem to be less about correcting the *behaviour* of individuals, and more about correcting their *condition*, by putting them to work under a master. The quantification of the problem also reveals the desire of the state to make vagabonds, who, by virtue of their rootlessness, were invisible to effective community surveillance, visible in another way, a theme which found a most clear and brutal expression in the introduction of branding in 1604 (Bauman, 1987: 44).

The vagabondage laws represented an important juncture in the shift from surveillance within the community to surveillance by the state, a shift furthered by the widespread use of 'enforced confinement' (Bauman, 1987: 44) to deal with problematic individuals existing outside of traditional social structures. Bauman (1987: 45) suggests that: '[p]risons, workhouses, poorhouses, hospitals, mental asylums, were all by-products of the same powerful thrust to render the obscure transparent, to design conditions for redeploying the method of control-through-surveillance once the conditions of its traditional deployment proved increasingly ineffective.'

This shift introduced what Bauman (1987: 46) refers to as 'an asymmetry of control', whereby surveillance lost its previous quality of reciprocity: 'the watchers' were now to be permanently distinguished from 'the watched' with surveillance flowing only in one direction. This 'unidirectional' surveillance was to develop, according to Bauman (1987: 47), into the 'objectivization' of individuals in order that they could be categorized and thus subjected to statistical analysis. Furthermore, the conversion to asymmetrical surveillance tended towards the production of an occupational specialism: the 'surveillor' became a dedicated professional and their task more ambitious: 'nothing less than a total reshaping of human behavioural patterns; an imposition of a uniform bodily rhythm upon the variegated inclinations of many individuals; a transformation of a collection of motivated subjects into a category of uniform objects' (Bauman, 1987: 48).

So, early houses of correction were engaged less in *producing* effects (instrumentality) than they were in *being* effects in themselves. However they were part of a regime which played a crucial role in the transformation of surveillance, permitting the development of new forms of expertise. Eventually these forms of expertise would provide knowledge to underpin a criminal justice system which perceived and represented itself as pursuing instrumental objectives, including the transformation of offenders into law-abiding citizens, through the application of 'expert' knowledge. However, that is racing ahead and I wish to return to some other aspects of instrumentality which existed in earlier centuries.

### **5.2.3 *'I was glad to send her to the house of correction since when she hath been much better'*<sup>81</sup>: instrumentality in penalty**

Although it might not yet have had as its objective the transformation of the individual offender, sixteenth and seventeenth century penalty did, as mentioned above, understand and represent itself as acting as a deterrent to criminality. Furthermore, for more serious offences, the courts were able to very effectively incapacitate offenders by passing the death penalty for a wide range of what we might now consider relatively minor offences. In fact, until the eighteenth century, as the vast majority of offenders convicted at the assizes court were guilty of treason or a felony, the only available sentence was death (Beattie, 1986: 450). However, as described above, hundreds of such convicts were able to escape the death sentence by pleading 'benefit of clergy', and receiving 'a mere branding on the thumb' (Beattie, 1986: 451). The lack of choice available to judges in capital cases was, by the second half of the seventeenth century, increasingly being seen as a problem, and attempts were being made to make a wider range of options available (Beattie, 1986: 450).

The formal introduction of penal transportation to the American colonies in 1718 provided judges with an alternative both to execution for capital offences, and to the branding and discharge of convicted felons who pleaded benefit of clergy (Beattie, 1986: 470). Transportation of convicts was already in use before this time, usually as a condition of pardon, and, it has been argued, was carried out in

'the hope and expectation that men who had lost their characters in England might well become productive citizens in a new society, that the harsh discipline of the raw society across the Atlantic would reclaim men from the laziness and the bad habits that it was assumed had gradually led them into crime in the first place. The rehabilitation of offenders was not a major consideration in the seventeenth century, but it was obviously recognized as a secondary advantage of transportation' (Beattie, 1986: 472-3)

This suggests the existence of a desire for offenders to be reformed by their punishment, albeit a desire based on 'hope', at best 'expectation'.

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<sup>81</sup> (Moore, 1899: 33 ('Liverpool in Charles the Second's Time' in William Ferguson Irvine (Ed.) Liverpool) cited by Sharpe, 1984: 180)

Whilst in use, penal transportation was viewed favourably by many as it removed offenders physically to another place for a significant period of time and, if they continued offending after their punishment was at an end, most of them were doing it somewhere else<sup>82</sup>. The instrumental 'effectiveness' of this sanction as regards incapacitation was, then, self-evident. However, transportation was also given a correctionalist spin by the House of Commons Committee on Transportation which, in 1784, suggested that transportation to the American colonies tended to 'reclaim the Objects on which it was inflicted, and to render them good Citizens' (Emsley, 1987: 218).

There was long-standing scepticism about the potential for imprisonment to achieve similar objectives. In 1621 a draft bill presented to parliament expressed concern that prison did not make offenders less likely to cause problems upon their release:

'long imprisonment in common gaoles rendreth such offenders the more obdurate and desperate when they are delivered out of the gaoles, they being then poor, miserable, and friendless, are in a manner exposed to the like mischiefs, they not having means of their owne, nor place of habitation nor likely to gain so much credit from any honest householder to interteyn them'  
(cited in Sharpe, 1984: 182)

It is instructive to recall at this stage the link between economic redundancy, social homelessness and perceived criminality, referred to above, and also to note that transportation to America, and later Australia, was used both as a legally inscribed penal sanction, *and* as a way of disposing of surplus peasant populations (most notoriously from Ireland and the Scottish Highlands). At various stages between the 16<sup>th</sup> and 19<sup>th</sup> centuries (depending on geographic location) vast numbers of peasants found themselves surplus to the requirements of landlords and forcibly dispossessed of both the right of access to common land, and the right to cultivate land suitable for maintaining their subsistence. In becoming thus both 'masterless' and deprived of legitimate ways of obtaining the means of existence, they were

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<sup>82</sup> For example, in 1786 the Lord Mayor and Aldermen of the City of London petitioned the King about the rising tide of crime which they considered to be attributable to the end of transportation meaning that offenders who had served their sentence were now being released in England (at that time transportation to America had been ended due to the war of independence) (Emsley, 1987: 218). The following year the first convicts departed for Botany Bay (Emsley, 1987: 203).

exposed to the risk of severe destitution and starvation, which may have led them into courses of action where they would fall foul of the criminal law. Either way, enforced emigration or penal transportation were available to dispose of them, ostensibly to improve their situation, but certainly furthering the aims of the landed gentry to extract maximum rent from their land, as well as assisting the government in populating its new overseas possessions (see for example Prebble (1969); Hill (1972); Thompson (1980); Hunter (2010)).

However, during the seventeenth century, we begin to see houses of correction, as opposed to 'common gaoles', referred to as able to bring about a change in individuals who would then behave better on the 'outside'. For example, during Charles the Second's seventeenth century reign, a Liverpool man said of the effect on his tenant: 'I was glad to send her to the house of correction since when she hath been much better' (Moore, 1899: 33 cited by Sharpe, 1984: 180). Although, during the eighteenth century Bridewell itself was still disparagingly referred to as 'a nursery for thieves and prostitutes' (Hanway, 1775: 72 cited in Emsley, 1987: 218).

In 1779 Parliament passed the Penitentiary Act providing for the construction of two penitentiaries within which inmates would be uniformed, would engage in hard labour during the day and would be shut in solitary confinement at night. The act specifically stated that these institutions should produce 'habits of Industry' in the prisoners, but also that the regime should be sufficiently harsh as to minimise its appeal to impoverished people (Emsley, 1987: 217-8). The institutions provided for were never built but the Penitentiary Act provides an example of an explicit attempt to produce particular effects on people through punishment: prisoners were to gain particular 'habits' during their sentence but were not to be so well-treated that their situation might appear enviable.

It seems, then, that the desire for penal policy to serve a purpose has long played a part in English penal debates. However, changes have occurred in the way in which 'effectiveness' is conceptualised and in the manner of the identification and justification of practices to produce effects. By the end of the eighteenth century the effect of penal practices *upon the individual offender* was increasingly a matter

for discussion. One reason for this might be that, following the significant reduction in the use of execution during the seventeenth century (Beattie, 1986: 469), and interruptions to the use of transportation during the eighteenth, there were periods when many offenders guilty of felonies were no longer stopped from offending in England by the simple expedients of killing them, or permanently removing them to a far away place.

Meanwhile, intensified anxiety about disorder and criminality amongst the propertied classes in eighteenth century England (developed against the backdrop of the French Revolution and smaller, but perhaps no less frightening, domestic disturbances, as well as more mundane offending such as highway robbery) precipitated a growing sense of the urgent need to 'govern criminal offending' (Lee, 2007: 27). The knowledge that such offenders were simply being imprisoned for a period of time before being released back into contact with the law-abiding population is likely to have concentrated minds on how those individuals might be reclaimed as good citizens.

#### ***5.2.4 'Homo criminalis' and 'the science of the state': the coming of criminology***

Foucault has persuasively demonstrated the important part which the desire to gain a more effective and extensive level of control over citizens played in the construction of eighteenth century arguments for penal reform (Foucault, 1977b: 88). He argued that classical criminological logic served to make punishment 'an art of effects' (Foucault, 1977b: 93), with those arguing for reform concerned that the use of public torture as punishment was not so much *cruel* as that it was *ineffective*.

During the 18<sup>th</sup> century, the individuals we now know as the classical criminologists, inspired by Enlightenment values and informed by a body of knowledge known as 'the science of police', were already working on their development of 'rational' approaches to governing crime and punishment. In the British context, brothers Henry and John Fielding, and, later, Patrick Colquhoun, were busy developing their blueprints for policing and disciplining the lower

classes (Lee, 2007: 28-31). However Pratt (2002: 86-9) has argued that whereas references to criminals in earlier centuries had been infused with loathing and had focused on the need to visit harsh punishment and privations upon their persons and forcibly change their 'habits', by the end of the 19<sup>th</sup> century the language was starting to shift towards a rationalistic objective discourse which began to humanise the figure of the criminal as an individual towards whom the state has responsibilities.

Whether the intentions were humanitarian or repressive, the crucial element of this shift was that justice was no longer a matter of punishing *the offence* but was also something which was targeted at *the offender*. To the 'triangle' of classical criminology - law, crime and punishment - was added the figure of the criminal: 'homo criminalis' (Pasquino, 1991: 237-8). Sentences were now supposed to address this figure, his thoughts, instincts, drives and tendencies, and include measures 'to supervise the individual, neutralize his dangerous state of mind, to alter his criminal tendencies and to continue even when this change has been achieved' (Foucault, 1977b: 18).

That such a shift was able to occur is, according to Foucault (1977b: 18), attributable to the way in which 'scientific' expertise inserted itself into a crack in the legislation and expanded over time to provide a battery of: 'knowledges, techniques [and] "scientific" discourses' upon which judgment must now be based'. Developments in post-revolutionary France are instructive. Legislators found that the tenets of strict classicism were occasionally problematic because some offenders could not understand the charge against them. Thus specialist expert witnesses entered into legal proceedings to attest to the capability of individuals.

This approach brought to the fore the idea that there might be factors which pre-disposed people to commit crimes (Hopkins-Burke, 2009: 24, 31-2). The object of judgement was thus no longer merely the act which had been committed, but also the 'soul' of the perpetrator, creating new possibilities for juridical power:

'by solemnly inscribing offences in the field of objects susceptible of scientific knowledge, they provide the mechanisms of legal punishment with a justifiable

hold not only on offences, but on individuals; not only on what they do, but also on what they are, will be, may be' (Foucault, 1977b: 18).

The 'scientific' discourses of 'experts' thus came to permeate a system of criminal justice which 'functions and justifies itself only by this perpetual reference to something other than itself, by this unceasing reinscription in non-judicial systems' (Foucault, 1977b: 22).

Following the economic transition to capitalism and the relinquishing of notions of sociality rooted in the old feudal order, individuals were no longer required to live their lives in a certain condition (under one master, in one place), but were required to have certain dispositions and take (or refrain from taking) certain actions. Where early correctionalist moves sought to restore individual vagabonds to the lawful condition of having a master (see above), now correctionalism must have another objective: to create the right kinds of people. The increasingly professionalized mechanisms of surveillance identified by Bauman (see above) could thus be put to work to categorize and monitor individuals and to begin to enquire into the workings of their 'soul'.

The new 'scientific' discourse which emerged in the modern era was oriented to these new objectives. Foucault (1991b: 96) argues that:

[t]he theory of the art of government was linked, from the sixteenth century, to the whole development of the administrative apparatuses; it was also connected to a set of analyses and forms of knowledge which began to develop in the late sixteenth century and grew in importance during the seventeenth, and which were essentially to do with knowledge of the state, in all its different elements, dimensions and factors of power, questions which were termed precisely "statistics", meaning the science of the state'.

Whilst numbers had been collected and recorded at early stages in the modern period, Hacking (1991) has argued that during the 19<sup>th</sup> century there occurred both a quantitative and a qualitative shift in the use of numbers. Quantitatively, between 1820 and 1840 he suggests there was a rapid expansion in the publication of numerical information and that an 'avalanche of numbers ... revealed an astonishing regularity' (Hacking, 1991: 187). Qualitatively there were shifts in the understanding, interpretation and use of these numbers: 'where in 1800 chance had been nothing real, at the end of the century it was something "real"



precisely because one had found the form of laws that were to govern chance' (Hacking, 1991: 185).

Statistical calculation was found to be applicable to the practical problems of the day. For example, in the early 19th century, Friendly Societies wishing to provide assurance protection to working people were able to calculate the level at which they should set their premiums, and thus: '[t]here arose a certain style of solving practical problems by the collection of data. Nobody argued for this style; they merely found themselves practising it' (Hacking, 1991: 192).

Under this shift, this taming of chance, the notion of 'expertise' gained a new meaning. In the 16th century, pamphlet writers gave advice on how law-abiding folk could avoid falling prey to 'conycatchers' (thieves and tricksters). Salgãdo (1977: 8) quotes from one such pamphlet which claims to have been 'Done by a Justice of Peace of great authoritie' who had significant experience of examining the 'villains' in question. Clearly implicit in this latter day strap-line there is a claim to expertise, however in this case the claim to expertise is made based on direct practical experience. By the 19th century, rather than needing to have such direct practical experience of the phenomenon in question, experts could now quantify and illuminate phenomena at the level of population by way of mastery and application of the appropriate techniques (Foucault, 1991b: 99). In this way 'hitherto invisible processes and phenomena were made calculable and knowable and new modes of government rendered possible' (Lee, 2007: 38).

By the end of the 19th century scientific criminology and penology had emerged in Europe and North America bringing a 'rationalization' of penal discourse and an orientation towards technical methods for controlling crime. Criminology was 'an expression of the Enlightenment ambition to cure social ills by the application of Reason', and, according to this view, the expert was seen as an essential part of finding solutions to the problem of crime (Garland, 1990: 185).

This change has been internalised in the self-representations of criminal justice professionals: '[i]nstead of being the vehicles of punitive reaction ... these groups tend to represent themselves positively, as technicians of reform, as social work

professionals, or as institutional managers' (Garland, 1990: 182-3). In the twentieth century, after World War Two, penal discourse increasingly focused on the provision of rehabilitation, assistance and therapeutic interventions for the offender, with a basis in psychological/psychiatric expertise (Pratt, 2002: 91-4). Garland suggests that '[i]f we nowadays expect "results" from punishing, it is in large part the doing of these groups and their self-descriptions' (Garland, 1990: 183).

### **5.2.5 '*Justice tempered by understanding*': Modernist criminology in Britain**

In the twentieth century, the decades following the Second World War were decisive in establishing sites of technical criminological expertise which could be used to inform penal practice in England and Wales. In 1944 a report for the Home Office recommended that studies should be made of 'the effectiveness of penal treatment, recidivism, the value of approved school training, the personality of offenders, the criteria used by the police in recording crime, and the efficiency of probation officers' (Lodge, 1974: 14). Following on from this recommendation, the Home Office Research Unit was formed in 1957<sup>83</sup> and the Cambridge Institute of Criminology in 1959.

Looking back on these formative years for English criminology Lord Butler recalls that, as Home Secretary at the time, he was attempting to 'lay a path for an enlightened penal policy' (Butler, 1974: 1). He continued: '[c]rime and its treatment seem to me to be no less suitable as a subject for study and teaching by the universities than a number of other social phenomena; and this is a field in which we particularly need the help and urge of the informed but detached public opinion which the universities are so well able to produce' (Butler, 1974: 4-5). The

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<sup>83</sup> Lodge (1974: 11) has characterized the establishment of the Home Office Research Unit, as a component of the 'inevitable...development in Great Britain of scientific criminological research' which has happened as a result of 'forces that for many years had been building up' (Lodge, 1974: 11). By way of illustration he refers to the establishment in 1931 of the Association for the Scientific Treatment of Criminals (later to become the Institute for the Study and Treatment of Delinquency) following work done by the Medical Research Council (Lodge, 1974: 11), and, in the same decade, correspondence between the penal reform campaigner Margery Fry and the Home Office on the need to start criminological research (Lodge, 1974: 13).

so-called 'founding fathers' of criminology who were establishing themselves in this period cleaved to the belief that the knowledge which they produced would inform improved criminal justice policies (Tonry and Green, 2003: 500).

These changes were contiguous with the prevailing mood in government, with the state's involvement in sponsoring criminological research from the late 1950s onwards appearing to be 'part-and-parcel of the generally more interventionist state' (Reiner, 2010: 147), and with the rehabilitative ideal being in large part a reflection of a high level of optimism about the potential of scientific knowledge to guide positive social change (Tonry and Green, 2003: 507). Furthermore, there appears to have been support both within government and within the legal profession for closer relations between the social sciences and law, in order that empirically-generated social scientific insights might be used to deliver '[j]ustice tempered by understanding' (Ormrod, 1964: 331). The type of 'understanding' referred to here is quite specific: 'understanding' was to be generated through scientific research into the causes of and remedies for criminality. What has been described as an 'emphatically modern' criminological discourse is thus characterized by 'its faith in instrumental reason, its vision of the technocratic state and its commitment to social progress and social engineering' (Garland and Sparks, 2000: 8).

Over a period of about 200 years then (although arguably set in train by conditions which emerged during earlier periods) a new source of authority emerged in relation to criminal justice: '[e]xpertise in the conduct of conduct – authority arising out of a claim to a true and positive knowledge of humans, to neutrality and to efficacy' (Rose, 1993: 284). The most salient effect of this, for my purposes, is its tendency to exclude and devalue other forms of knowledge. As an example of this, in relation to the death penalty, a penal sanction which a majority of the public have persisted in supporting, '[t]he growth of penological evidence ... not only discredited deterrence and retribution arguments, but increasingly emphasised the importance of treatment and rehabilitation' (Pratt, 2002: 29), such that in the 1950s scientific evidence was deployed as a way of bolstering calls for the abolition of the death penalty (Pratt 2002: 28). This move indicated a willingness

to prioritise 'scientific', 'rational' knowledge over public opinion (Pratt, 2002: 32-3), such that 'the state was prepared to exert its own moral authority to govern in this area, and to place the way it punished its subjects above political interests and populist demands' (Pratt, 2002: 32). Penal experts were thus united by the view that '[p]ublic opinion...was something to be wary of, not to be trusted, allowing as it did sentiments of anger and uncontrolled emotion to blind it to more rational thinking' (Pratt, 2002: 32).

Between the 16<sup>th</sup> and 20<sup>th</sup> centuries, then, shifts in understandings of criminal justice, and in ways of knowing about populations, supported the emergence of the notion that the criminal justice system should be oriented to the production of effects within those individuals subject to its discipline. An emerging set of experts began to make claims to be able to accurately and objectively know and represent the reality of crime and justice using modern scientific techniques. The type of knowledge about crime, criminality and justice which could be gained through personal experience was henceforth to be regarded as an adjunct to scientific knowledge, not necessarily without worth, but certainly of less general validity and utility.

### **5.2.6 *'At the mercy of a lawless and furious rabble'? Towards democratic data***

'...every man that is to live under a government ought first by his own consent put himself under that government' (Leveller Colonel Rainsborough cited in Thompson, 1980: 24)

In 1792 the members of the newly-formed London Corresponding Society revived the spirit of the Levellers, agreeing that 'every adult person, in possession of his reason, and not incapacitated by crimes, should have a vote for a Member of Parliament' (Thompson, 1980: 19). The idea of universal suffrage was outrageous to many who feared it would leave them, in the words of the Reverend Christopher Wyvill: 'at the mercy of a lawless and furious rabble' (Wyvill, 1804: 23 cited by Thompson, 1980: 27), or, as Burke preferred, the 'swinish multitude' (Cited in Thompson, 1980: 26). However, gradually the ruling classes were coming to believe, whether on the basis of principle or pragmatism, that governments must command the consent of *all* of the people, and the support of the majority.

The eventual achievement of full adult suffrage contributed to a new set of 'problems of collective judgement and decision making', which, during the 20<sup>th</sup> century, prompted the development of new empirical methods for determining what the public were thinking (Price and Neijens, 1997: 339). Between the first and second world wars empirical sociology sought to establish a place for itself by providing 'application-oriented' research. As part of this movement 'mass phenomena were made sociologically accessible by treating the individual statistically and objectifying him/her in a natural science mode' (Wagner, 2001: 23). This 'reconceptualised society as masses who reacted to a stimulus and developed regular patterns of behaviour' (Wagner, 2001: 23).

This way of thinking was present in the work of the pioneers of the new 'scientific' opinion poll. The pioneers of opinion polling understood their work as helping to increase democratic participation (Price and Neijens, 1997: 336). Indeed, Samuel Stouffer of Harvard University Division of Social Relations, speaking at the first conference on Attitude and Opinion Research in 1949, described polling as an 'instrument of democracy' (cited in Lee, 2007: 50). But the pollsters struggled to accommodate the classical understanding of public opinion as a phenomenon formed and expressed in the context of social interaction. Such a phenomenon was not compatible with their methods of data collection. Instead they began to regard mass survey data as 'the only workable empirical rendering of public opinion' (Price and Neijens, 1997: 336).

The development and expansion of opinion polling offered a new way of knowing about and understanding what individual members of the public thought about different issues of the day, effectively bringing into being the notion of public opinion as we know it today (Osborne and Rose, 1999). Without this new way of knowing, and the increasingly sophisticated statistical techniques which supported it, the contemporary form taken by the idea of public confidence in the criminal justice system is hard to imagine.

### ***5.2.7 'Taking crime seriously': Left Realist Criminology***

The late 1970s saw concern amongst some criminologists that, despite its achievements, radical criminology was too dismissive of the experiences of crime amongst groups particularly prone to vulnerability and disadvantage, including women, ethnic minorities and the working class. Empirically, radical criminological theories were seen as unable to account for intra-class crime patterns which meant that these groups suffered disproportionate levels of victimization, whilst politically they were seen as having little practical support to offer mainstream politicians of the left seeking policies which would be both advantageous and attractive to their core constituency. This combination of empirical and political concerns inspired the left realist movement in criminology.

Underpinning the emergence of left realism was the fresh data provided via the development of a new criminological innovation: the victimization survey.

Victimization surveys first emerged in the US at a time when criminologists there were of a generally social democratic orientation; when it was being recognised that recorded crime figures indicated that a disproportionate burden of crime was borne by the poor and ethnic minority residents of the urban 'ghetto'; and when feminist 'victimology' was determined to raise awareness of the hidden crimes suffered by women (Jones, MacLean and Young, 1986).

The first three such surveys (carried out for the President's Commission in the late 1960s) inspired many subsequent surveys in the US and beyond, as well as the formation of a body to take forwards work on a National Crime Survey (NCS), which commenced in 1972. Despite some identified methodological shortcomings<sup>84</sup> throughout the 1970s the new data on victimization made a 'substantial impact' in academic criminological circles (Sparks, 1981: 5), providing as a matter of routine a 'wealth of data ... on a range of crime-related topics' about

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<sup>84</sup> The National Crime Survey surveys were, according to Sparks (1981: 6) 'designed and implemented with what can only be described as indecent haste ... little more than two years was allowed for pretesting a new (and very expensive) research technique, in order to overcome the problems concerning the "reliability and accuracy" of survey findings which the President's Commission had uncovered. Even the little time that was allowed for pretesting was badly used.' Piloting efforts were 'puny and inept' and answered none of the questions which had been raised by the earlier surveys (Sparks, 1981: 6).

which virtually nothing had been known less than a decade earlier (Sparks, 1981: 24).

Initially, the NCS and other victimization studies were intended mainly as a way of obtaining more accurate estimations of the levels of different types of crime, and how they impacted on different groups (Sparks, 1981: 7). In fulfilling this role they presented data which revealed *inter alia* that most crime is not reported; that incidents of violent victimization are generally extremely rare; that a small number of repeatedly-victimized individuals suffer a high impact from crime; that certain groups have a significantly higher level of risk of victimization than others; and, crucially, that criminal victimization frequently takes place *within* rather than *between* different social classes (Sparks, 1981).

Revelations about the extent of intra-class crime and the scale of working class victimisation proved particularly problematic for radical criminologists who had tended to downplay or ignore these aspects of criminal behaviour (Young, 1988: 171). In response to what they regarded as the empirical 'exposure' of radical criminology's 'flaws', left realist criminologists sought to provide a 'middle way' between establishment criminology and what they termed the 'left idealism' of radical criminology. This middle way would 'take crime seriously', particularly its impact on the lived experiences of working class people, but it would also provide radical analysis and policy alternatives (Young, 1997: 474).

In the first instance, then, the fresh data provided by victimization studies precipitated the development of the left realist approach. Later 'second generation' victimization studies moved on from simply quantifying the extent of victimization by including additional variables intended to gauge respondents' assessments of responses to crime by the police and other criminal justice agencies. The scope of the victimization survey was thus expanded to 'embrace a much greater part of the whole process of criminalization – namely, the pattern of victimization, the impact of crime, the actual police response and the public's notions of appropriate penalties for various offences' (Jones *et al*, 1986: 5).

This extended focus meant that victimization surveys were able to provide the kind of empirical data which was considered crucial by left realists: 'The virtue ... of a crime survey is that it provides us with a more realistic mapping of the impact of crime and policing, and it also reminds us that we should take seriously people's knowledge of crime' (Jones *et al*, 1986: 201). Furthermore, left realists argued that 'being tough on crime must include being tough on the criminal justice system' (Young, 1997: 491). Local victimization surveys were seen as a mechanism through which crime control interventions could be monitored, and agencies held to account via a regular 'audit of people's experiences, anxieties and problems of crime' (Jones *et al*, 1986: 3).

In Britain the early 1980s saw the Islington, Merseyside and Nottinghamshire Crime Surveys, with the last two being directly encouraged and funded by the Home Office (Jones *et al*, 1986: 4). These local surveys were rather different in scope to the national-scale British Crime Survey which was just getting off the ground in the early 1980s. The local studies carried out as part of a left realist data collection exercise focussed on specific urban localities, those containing the highest concentrations of poor and marginalized individuals (White and Haines, 2008: 148-151).

The surveys produced reports which would have made uncomfortable reading for many within the criminal justice system, particularly some senior police officers. For example, the Islington Crime Survey found 'widespread public scepticism about the ability of the police to combat the crimes which are of the greatest public concern' (Jones *et al*, 1986: 203). It also highlighted the fact that a significant proportion of the local population believed that the police acted illegally and unfairly towards certain groups, basing this belief, they said, on their own experience or the experiences of friends. The authors highlighted the potential impacts of such a belief, including reduced cooperation of the public with the police and an increasing likelihood that certain groups may be propelled towards delinquency (*Ibid*: 205). As a result, they recommended that: 'In order to increase information flow it is essential that the police gain the confidence of the public' (*Ibid*: 213).



In their recommendations, the authors referred to the types of police action which would command public support, and they contrasted senior officers' assumptions about 'what the public want' with the 'reality' identified by the survey. Finally, they argued that there was a need to construct effective performance indicators based on community priorities: 'it is paramount that the public gets value for money. For this reason it is necessary to develop a series of performance indicators which are independently audited. With this in mind the regular crime survey is a useful tool into which can be built the relevant indicators' (*Ibid*: 211). The indicators suggested included 'public satisfaction with requests for police assistance'.

### ***5.2.8 What the public 'really' want: Accountability in the managerialist framework***

There is, then, an explicit link here between the preeminent left realist research method and the development of a quantitatively-oriented, perception-focussed managerialist framework within criminal justice. Furthermore, in championing the use of local crime surveys, situating crime in relation to wider harms and social issues, and foregrounding the lived experiences, feelings and perceptions of members of the public, left realism provided a framework which was subsequently developed under the auspices of 'community safety' during the 1980s and 1990s (Squires, 1997).

As Squires (1997: 8) notes: 'the new service culture required new methods of discovering what the public "really wanted"'. Local crime surveys appeared to be one mechanism through which this could be achieved. The left realist insistence that the perspectives of people living with crime matter is also obliquely reflected in the approach to managing community safety which has subsequently been adopted. There is an irony in the way managerialism and community safety have collided: the methods of managerialism, in particular the focus on measurement, may have worked to undermine some of the ethos of community safety. By judging community safety on the basis of public perceptions measured through surveys much community safety work has turned towards 'image management' (*Ibid*: 15) and members of communities have been increasingly understood as consumers of community safety and criminal justice services: 'the real "prize" at stake in the

consumer culture and behind the new managerialist initiatives is the rebuilding of public confidence and the attempted resurrection of “policing by consent” (*Ibid*: 8).

However, the 1980s saw a curtailment of ambition and scope in local crime surveys in England and Wales. The local surveys appear to have suffered the same fate as those in the US, where local victimization surveys tailed off in number after the early 1970s, almost certainly due to the existence of the massive National Crime Survey (Sparks, 1981: 11). The first national-scale British Crime Survey (BCS) was planned and carried out under the supervision of the internal Home Office research unit in the early 1980s.

The first report on the BCS, Home Office Research Study (HORS) 76, published in 1983, explicitly claimed that public reactions to their experiences and expectations of the criminal justice system were of vital importance to how well the system could operate because ‘any democratic system of law needs the consent of those whom it polices’ (Hough and Mayhew, 1983: 28). At this time, Home Office researchers, cognisant of political concern about levels of public support for criminal justice agencies, began to make claims about the need to be able to ‘gauge’ public confidence (as described in the previous chapter).

The British model may have been influenced by developments in the US where, during the 1970s, social researchers started to write about how existing opinion poll data might be used by policymakers to shape their actions around criminal justice issues. The ‘Application of Victimization Survey Results’ project had the explicit aim of using the data from the National Crime Survey, begun in 1972 ‘to examine issues that have particular relevance for applications to the immediate needs of operational criminal justice programs’ (Garofalo, 1977: 3). Those involved with the program made the following claims:

‘little systematic attention has been given to a growing body of public opinion surveys which have potential as barometers of public sentiment...the results of these surveys may be useful in attempts to understand the behaviour of Americans with regard to crime-related topics and the differential responses of segments of American society to aspects of the criminal justice system; further, knowledge of the opinions of Americans on topics related to criminal justice

may illuminate the public's moods and priorities ... and may also foreshadow impending popular pressure for legislative changes' (Hindelang, 1974: 101)

'an understanding of the areas examined ... is important if criminal justice programs are to integrate public opinion into their planning process: sensitivity to public opinion is a key to success for any criminal justice program. Public attitudes about crime, then, constitute an important topic for study in modern criminal justice' (Garofalo, 1977: 13)

These claims appear to have been heeded, and to have reverberated, over the years, and across the Atlantic Ocean.

At the same time as the BCS was getting established, a shift towards Neo-liberal modes of governing was increasing the emphasis placed on the accountability and efficiency of public services (O'Malley, 1999: 180) and service delivery was increasingly being organised along 'New Public Management' lines (Fielding and Innes, 2006: 131; Hood, 1991; Hough, 2003; Young and Matthews, 2003: 2)<sup>85</sup>. Garland (1996) suggests that this new managerial ethos in the criminal justice system has entailed a redefinition of the mission of state agencies in terms of 'serving particular "consumers"... and being responsive to their expressed needs, rather than serving the more abstract, top-down notion of the public good' (Garland, 1996: 456; see also Bottoms, 1995). This shift, along with NPM's insistence on the use of quantitative success indicators in order to measure and manage performance (Hood, 1991: 4-5; Bottoms, 1995), has meant a growth in 'the practice of conducting surveys of the views of consumers and the development of objectives and priorities which seek to respond to these' (Garland, 1996: 456). Hough (2003: 149) argued that the introduction of managerialist logics within the criminal justice system may have had the unintended consequence of reducing confidence in the police and the judiciary, a problem which, he argued, required urgent attention and more resources than were available at the time of writing.

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<sup>85</sup> For example, the 'business-like' principles of the 'New Public Management' (NPM) can be observed at work in the police reforms of the early 1990s (Reiner, 2010), the requirement to seek 'best value' in the provision of criminal justice services contained in The Crime and Disorder Act 1998 (Fielding and Innes, 2006: 132), the introduction of the National Intelligence Model (NIM) for policing, and the pursuit of more stream-lined and efficient services which has led to the reorganization of the court service and the expansion of a 'mixed economy' of providers in the probation and prison services.

Both Left Realist criminology and the change in the management of public services, then, have contributed to the production of an enlarged body of knowledge about public perceptions of the criminal justice system, and have encouraged, if not required, criminal justice practitioners to gauge the adequacy of their services with respect to public perceptions of those services. This transformation in the delivery of criminal justice services has, as noted in Chapter Two and discussed in more detail below, happened in parallel with the intensification of political contest around issues of crime and criminal justice. It is not beyond the bounds of possibility that these trends are mutually reinforcing. Certainly they are both closely related to an apparent desire to increase the extent to which criminal justice policymaking and practice is responsive to the public, something which, as described in Chapter Two, is regarded by criminologists as a key cause of the perceived 'punitive turn'.

The empirical focus on how the experience of victimization impacts on the lives of different groups within society, the insistence on exploring what the general public think, feel and believe about crime and the criminal justice system, and the explicit attempts to bind together victimization research and performance measurement of the criminal justice system all seem to have proved decisive in the construction of the contemporary public confidence agenda.

### **5.2.9 Summary**

This historical excursion has hopefully illustrated the point that, at the same time as the public were increasingly excluded from participating in or witnessing key aspects of criminal justice, a new form of 'expert' knowledge was also emerging which would come to impede the public themselves from being allowed to 'know' the 'true' reality of crime without expert assistance. Technical knowledge and the use of (ostensibly) morally neutral classifications and typologies to fit offenders to regimes came to displace or to disguise any moral element in punishment (Garland, 1990: 187). Whereas in earlier periods attempts to reform offenders were based on 'hope' and 'expectations', by the second part of the twentieth century policy was made based on a belief that the true effectiveness of penal sanctions could now be measured (Hacking, 1991: 187). The use of techniques of

probability fixed the analytical focus on statistical regularity, and excluded non-experts from being able to 'know' what was 'really' going on. As a result ordinary members of the public can no longer 'know' but must instead 'have confidence' that the criminal justice system is effective.

Yet at the same time the views of the public were increasingly sought out and captured by the growing opinion polling industry. Acceptance of the need for government action to be 'in tune' (or at least not too far out of tune) with the sentiments of the people meant that more than ever before organizations were asking the public to give an opinion on criminal justice matters. As those opinions were increasingly communicated to, and used by, politicians and the media so opinion polls came to seem the most natural and legitimate mechanisms for capturing public views. The existence of the opinion polling industry implied that the public *should* be asked for their opinion and that their opinions could be captured. Towards the end of the twentieth century a new movement in criminology - 'left realism' – appropriated and utilised some of the techniques of the polling industry in an attempt to build a body of criminological knowledge which was rooted in ordinary people's experiences of crime. Left realists argued that the criminal justice system should be more accountable to the public, and the synergy between this call for accountability and a growing trend for the use of quantitative performance indicators under the New Public Management, have left a legacy of large-scale quantitative data and research projects providing information on what the public think about crime and criminal justice.

These 'surfaces of emergence' made it possible for the contemporary discourse of public confidence in the criminal justice system to emerge, however they do not explain how it emerged. In the next section I explore the way in which the idea of public confidence became 'hooked into' political and media discourses of crime and justice, incentivising the expansion of knowledge production in this area.

### **5.3 How a discourse of public confidence got its 'hooks' into criminal justice**

In this part of the chapter I suggest that the social and political context from the late 1970s onwards created a discursive opportunity, an opening, for the idea of

public confidence, with all its attendant historical political resonance, to insinuate itself into criminal justice discourse, and to take on a very specific dominant form. This process was neither inevitable, nor the deliberate and conscious choice of the actors who invoked the concept. Rather it was contingent upon the pre-existing resonance of confidence, the 'surfaces of emergence' described above, and upon particular conditions which arose at a particular point in time creating a specific set of potentialities and incentives to which some actors responded.

I argue that the dominant discourse in public confidence research should be understood against the backdrop of these conditions because without them it is unlikely that the research would have emerged in its contemporary form. The conditions described are: (i) police misconduct during the 1950s and 1960s and tense police-community relationships in the 1970s and 1980s; (ii) political debates about how to alleviate over-crowding in prisons taking place against the backdrop of the authoritarian populism of the Thatcher government (which fuelled concern amongst penal modernists about the government's failure to curb increasing punitiveness in rhetoric and policy); (iii) miscarriages of justice exposed during the late 1980s leading to the Royal Commission which shaped penal discourse around the time of the appointment of the new Lord Chief Justice, Lord Taylor, in 1992; (iv) some high profile crime stories which unfolded in the early 1990s against a backdrop of intense political contest between the ailing Conservative government and a resurgent Labour opposition; and (v) the mid-1990s debate about sentencing and minimum tariffs for murderers.

I suggest that these conditions each contributed to public confidence 'hooking in' to discourses of crime and justice, as well as having helped to shape the dominant discourse of public confidence. The point which I want to illustrate here is that the idea of public confidence in the criminal justice system was frequently invoked by groups competing for power and influence within the criminal justice arena, and that the researchers themselves, who responded to the increased opportunity to disseminate knowledge in this area, were not disinterested participants in the struggle for power and influence.

### **5.3.1 A few 'black sheep': police misconduct and public confidence in policing**

The idea of public confidence first began to be regularly invoked in relation to the criminal justice arena with respect to policing. The Home Secretary's Christmas message to police officers in 1928 stressed the need for mutual confidence between the police and the public: '[t]he organization of the police and their relations with the public in this country are such that police work can be carried on with full efficiency only in an atmosphere of mutual confidence' (Quoted in *The Times*, Friday, Dec 07, 1928 pg. 13). The idea that the police must retain the 'confidence' of the public to ensure that they can operate effectively is compatible with the historical usage of the term public confidence which implicitly positions confidence as a prerequisite for the success of the object (be that a product, person, action or organisation) to which confidence attaches. Invoking confidence also reflects and reinforces the orthodox (or 'cop-sided') understanding of British policing as 'policing by consent', a rather ambiguous and idealistic notion which nonetheless forms a continuing part of the professional self-identity of the British police (Reiner, 2010: 44, 69).

As described in chapter three, there was a quantitative increase in media coverage of public confidence in policing from the mid-1950s onwards. This is not surprising, for as Reiner (2010: 78) has observed: 'after 1959 policing became a babble of scandalous revelation, controversy, and competing agendas for reform' threatening the fragile contract between police and public. By the 1950s Reiner suggests that there was majority acceptance of the position and legitimacy of the professionalized police force amongst those members of the public who were not routinely subjected to its coercive attentions (Reiner, 2010: 77). The 1960s saw changes which are regarded as having eaten into the goodwill which the police had built up, including increases in the autonomy of Chief Constables and changes in police tactics which placed increasing emphasis on crime-fighting through 'technology, specialization and managerial professionalism' and shifted more officers into motorised response roles, thus removing them from routine public contact (Reiner, 2010: 79).

Perhaps just as damaging as the extraction of the police from a more community-based way of operating, was the emergence of a series of scandals involving misconduct and criminality perpetrated by police officers. It is in this context that the issue of public confidence in the police first starts to be discussed in the media. In a 1958 letter to the Times, referring to revelations of wrongdoing by the police, the Conservative MP William Shepherd observed that 'Recent events involving police in a number of areas have shaken public confidence' (The Times, Wednesday, Mar 26, 1958, pg. 11). In 1960 the ACPO conference was head-lined thus: 'Police Chiefs In Conference. Vital Need Of Public Confidence', and the coverage suggested that senior police officers saw their service as being under a cloud (The Times, Wednesday, May 25, 1960, pg. 15). Subsequent years yielded a continuing trickle of stories of police abusing their positions for their own personal gain. For example: 'Three PCs sent to Prison. "Public confidence is shaken" court told' was how The Times, reported the imprisonment of three Welsh police officers for a series of offences (Tuesday, Mar 21, 1961, pg. 17). The following year four police officers from Birmingham City Police were jailed for carrying out a string of offences whilst on night shift, raising the 'fear of a loss of public confidence' in the force (The Times Friday, Jun 01, 1962, pg. 6).

The prominence of these occurrences was such that the Royal Commission on Policing<sup>86</sup>, appointed in 1960, and leading to the 1964 Police Act, was explicitly linked to the perceived need to restore public confidence in the police. However, neither the Commission nor the Act appeared to stem the steady flow of cases of police corruption, misconduct and brutality which, if anything, became more prominent amidst the highly charged political atmosphere of the 1970s and 1980s.

From the 1970s onwards, reference to public confidence in the police was most frequently made in the context of a long-running debate about the need for reforms in the way in which complaints against the police were handled. In an early move in this debate, then Home Secretary Robert Carr talked of the need for

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<sup>86</sup> See Royal Commission on the Police (1962)



complaints against the police to be independently reviewed so that the few 'black sheep' could be identified and 'public confidence' in policing restored (The Times, Saturday, Aug 11, 1973; pg. 2). The following year, Lord Scarman's report into the Red Lion Square Disorders of June 15<sup>th</sup> 1974 called for a police complaints procedure which would command 'public confidence' (Scarman, 1975 reported in The Times Friday, Feb 28, 1975; pg. 4). In the 1980s police practice came under increasing scrutiny in relation to a number of urban riots, including the 1981 disturbances in Brixton, upon which Lord Scarman was again requested to comment. He found that the breakdown in the relationship between the police and the community in Brixton, and the community's loss of confidence in the police, had contributed to the riot (Scarman, 1981).

In relation to confidence in the police, then, initially confidence was said to have been undermined by the behaviour of a minority of officers who had abused their position for personal gain. Later the focus shifted to the manner in which the police more generally were discharging their professional duties, as concerns were raised about the policing of urban (particularly ethnic minority) communities, and disturbances within those communities, and also about dubious practices in securing evidence to support a conviction (so-called 'noble-cause corruption' (Punch, 2009: 25)).

In the criminal justice arena, then, the problem of 'public confidence' was initially framed in reference to the relationship between the police and the public. Public confidence was constructed as an essential ingredient in legitimate and effective policing which was threatened, initially by the conduct of a few 'bad apples', and later by failures of police tactics within altered social environments. In this context, the value of confidence was self-evidently instrumental. The enemies of confidence were the reprehensible conduct of untrustworthy individuals, and, later, inappropriate methods of policing which were insufficiently held in check by legal safeguards. However, although the idea of 'public confidence' was initially linked mainly to policing issues, during the early 1980s it came to be attached to a broader range of criminal justice activities.

### ***5.3.2 ‘...vital to maintain public confidence in the criminal justice system’: playing the confidence card***

When the police were under pressure due to revelations about officer corruption, as well as facing questions about their ability to act as any kind of check on rising crime, and when Royal Commissions were deliberating changes in policy and procedure which could have profound implications for policing, neither senior officers, nor the ‘rank and file’ of police officers simply sat back and took the criticism. The Police Federation, representing the rank and file officers, became increasingly politicized during this period (Reiner, 2010: 89-91), and the late 1970s and early 1980s saw several senior police officers publicly hitting back at what they felt were unjustified attacks on the police which, they said, would prove damaging to public confidence. In their public pronouncements and protestations police figures were often attempting to make a case for retaining their independence, resisting in particular any further limitations on chief constables, or any moves to make the procedures for dealing with complaints against the police more transparent and independent.

Perhaps the most important, and certainly the most high-profile, police appointment of the 1970s was Robert Mark’s tenure as Commissioner of the Metropolitan Police. Mark was not afraid to speak out on controversial topics and, in the most high profile policing position in England, his statements usually received significant media coverage. His pronouncements often enraged professionals working in other parts of the criminal justice system. In 1975 he was criticized in the *New Law Journal* as having made statements which were ‘clearly intended to undermine public confidence in the administration of justice’ (*The Times*, Thursday, Aug 21, 1975; pg. 2).

Mark was not alone amongst senior police officers in making controversial and alarming public pronouncements, such as: ‘If we cannot prevent the dreadful increase in crime, or at least contain it, the freedom and way of life we have been accustomed to enjoy for so long will vanish’ (Merseyside Chief Constable Kenneth Oxford quoted in *The Times*, April 26th 1978, p.4) and ‘Crime soaks into society like water into a sponge’ (James Anderton, Chief Constable of Greater Manchester

Police quoted in *The Times*, April 26th 1978, p.4). Whilst remarks like ‘Make thugs sweat in labour camps’ (James Anderton, Chief Constable of Greater Manchester Police quoted in *The Daily Telegraph* June 15th, 1979, p.7) prompted frustrated responses from professionals working directly with offenders. Interventions such as these seem unlikely to have assuaged public anxiety about rising crime, or contribute to a measured debate about penal affairs. In 1976, Christopher Andrews, then general secretary of the British Association of Social Workers accused police officers of making remarks directly intended to undermine confidence in social work professionals (*The Times*, Friday, May 07, 1976; pg. 5).

What we can see in the public exchange of words between senior figures from different parts of the criminal justice apparatus is the way in which public confidence was increasingly invoked as something which was self-evidently necessary, and which ought not to be wilfully damaged. Media coverage of ‘law and order’, crime and criminal justice around the 1979 election also offers some examples of how different organizations were being forced to consider how to gain the support of the public. See for example:

‘Probation officers must reassure and convince the courts and the public that they, no less than the hard-line so-called law and order lobby believed in the rule of law’ (*Daily Telegraph*, May 21<sup>st</sup>, 1979 p.9, reporting a speech by the President of the Association of Probation Officers)

‘We have to face the fact that if the courts and the public are to have confidence in non-custodial disposals, such as supervision for the more serious offenders, then they have to be convinced that community-based schemes offer a real hope for combating delinquency and are not merely an expedient for saving public money’ (Leon Brittain, then Home Secretary quoted in the *Daily Telegraph* Thursday July 12<sup>th</sup> 1979, p.8)

‘Public confidence in the administration of justice was in danger of being impaired unless sentences of the courts were seen to be effective, Mr Roger Rickard, president of the Justices’ Clerks’ Society said yesterday’ (*The Times*, 17<sup>th</sup> May 1979, p. 6).

These extracts illustrate that the idea of public confidence was no longer being invoked exclusively or primarily in relation to policing, but instead was considered to be something which should attach to the criminal justice system as a whole. The persons responsible for invoking the idea of public confidence in this way were politicians and senior practitioners working within the criminal justice system. Their words were subsequently transmitted to wider audiences through the

media, including newspapers carrying direct quotations from the texts of commons debates and from speeches at public events.

The debate about how to alleviate prison overcrowding was a key criminal justice focal point in the early 1980s, and it is in connection with this topic that we see the idea of public confidence being most frequently invoked. The Conservative government were adamant that direct interference on their part to reduce the number of prisoners within the system by changing the criteria for parole eligibility would damage public confidence. Home Secretary William Whitelaw stated that public opinion favoured transparency in sentencing and that the public wanted offenders to serve their full term. If the public perceived that offenders were not doing this then their confidence in the criminal justice system would fall (for example see the Times, Friday, Mar 26, 1982). Crucially, Whitelaw stated that it was the Home Secretary's duty to ensure that the public had confidence in the criminal justice system and, in pursuance of this he cited the need to maintain judicial independence, rejecting the idea that sentencing decisions should take any account of the latest figures on the prison population.

Furthermore, in a 1982 Commons Debate on Law and Order, Whitelaw argued that sentencing (apart from the setting of maximums) should remain the preserve of the politically independent judiciary and magistracy and that this was 'vital to maintain public confidence in the criminal justice system. It would be a bad day if that power were ever to pass to politicians' (HC Debate, Mar 25, 1982, col. 1121). Whitelaw also made this point in a talk to the National Association of Prison Visitors, acknowledging challenging conditions in prisons but rejecting the idea of reducing the prison population at a time of rising crime, as this would 'undermine public confidence in the criminal justice system' (The Times, May 13<sup>th</sup>, 1982, pg.3). This is the first occasion on which the specific phrase public confidence in the criminal justice system appears in the media (although it was first used in the House of Commons by Ivan Lawrence MP in 1981, in a debate about the introduction of the Crown Prosecution Service. HC Debate Nov 20 1981 col. 576).

The following year the new Home Secretary Leon Brittain was reported as having stated that 'public confidence in the criminal justice system required sentences

that reflect “society’s deep abhorrence of violent crime” (The Times, Wednesday, Oct 12, 1983; pg. 1)<sup>87</sup>. The idea that in order to command public confidence sentences must reflect ‘society’s deep abhorrence of violent crime’ was reprised two years subsequently by the Prime Minister Margaret Thatcher at Prime Minister’s question time (reported in the Times, 15<sup>th</sup> March 1985, p.4). In an article in the Guardian later in the same year, the government’s Chief inspector of prisons was quoted as saying that non-violent criminals should be given shorter sentences in order to alleviate prison-overcrowding, adding that this would *not* damage public confidence in the criminal justice system (the Guardian, Oct 25, 1985).

In his 1983 speech, Brittain also directly linked public confidence to the effectiveness of the police and criminal justice system (The Times, Wednesday, Oct 12, 1983; pg. 1). The following year, announcing the establishment of the Crown Prosecution Service, the Home Secretary described it as a development which was an important step to ‘increase public confidence, in the criminal justice system. (Reported in The Times, Saturday, Nov 17, 1984; pg. 4)

In these examples we see how the idea of public confidence started to be utilised by politicians and others in defence of a range of policy positions. Whatever the issue under discussion public confidence could be invoked as the arbiter of what was, and was not, acceptable penal policy. It appeared almost as a trump card to be played as a way of negating the arguments put by those who expressed views which were in opposition to whatever it was that the government was planning to do or not do, or was already doing or not doing.

It is instructive to consider this rhetorical deployment of public confidence within the context of an intensifying political contest which existed at the time around the issues and symbols of law and order. As already described in chapter two above, in England and Wales until the 1970s criminal justice was largely removed from the arena of political contest (e.g. see Garland, 1996; Downes and Morgan, 1997; Ryan, 1999). Many observers have described how since the 1970s the issues of crime

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<sup>87</sup> Although, in an indication of the Conservative government’s bifurcated strategy, Brittain signalled that punitive sentencing for violent criminals required that less serious offenders be kept out of prison where possible.

and criminal justice in general, and penal policy in particular, have been increasingly politicized and subjected to the whims of a so-called 'populist' approach to policymaking (See Hallsworth, 2000; Roberts et al, 2003; Green, 2008; Lacey, 2007). This saw increasing attention paid to the perceived demands of a supposedly punitive public at the expense of 'expert' opinion, with allegedly deleterious impacts on the criminal justice system (See Feeley and Simon, 1992; Christie, 1993; Garland, 1996, 2000, 2001; O'Malley, 1999; Young, 1999; Bauman, 2000; Rose, 2000; Lacey, 2007).

Amongst the conditions said to have contributed to this shift are the widespread experience of anxiety and uncertainty associated with socio-economic crisis, late modern conditions and the experience of crime as a 'normal social fact' (Garland, 1996: 446). The tensions and challenges facing Britain in the 1970s and 1980s included the widespread industrial unrest which produced periodic eruptions of conflict between striking workers and the police; the deadly threat posed by the terrorist activities of the IRA; and the instances of urban disorder which brought communities, particularly communities with large concentrations of individuals from ethnic minority backgrounds, into conflict with the police. The pervasive experience of anxiety has been cited as a contributory factor in amplifying concern about crime and antipathy towards offenders, and thus in prompting increasingly punitive rhetoric and policy in the criminal justice arena (e.g. see Bottoms, 1995; Garland, 1996, 2000, 2001; Bauman, 2000; Melossi, 2000; Freiberg, 2001; Roberts *et al*, 2003; Green, 2006).

Additionally it has been suggested that increasing concern about crime arose at a time when doubts were increasingly being expressed about the efficacy and ethics of existing approaches to dealing with offenders specifically, and with social welfare issues more generally. These concerns were chipping away at the cultural foundations of the previously dominant criminal justice paradigm of penal welfarism and creating despair, where once there had been optimism, about the potential of rehabilitation (Garland, 2001). Growing public awareness that crime was rising steadily, despite the substantial gains made in most people's living standards during the post-war period, indicated that the causes of crime were not

as easily vanquished as might have been hoped. During the 1960s overcrowded prisons prompted both disturbances by prisoners and protests from prison officers, raising the profile of criminal justice issues.

As the use of scientific monitoring of the effectiveness of various criminal justice interventions was coming to fruition, the available evidence was (notoriously) interpreted by some observers as suggesting that 'nothing works'. This succinct conclusion, attributed to Martinson and colleagues (1974) is described by Pratt (2002: 160) as having lifted 'the cloak of therapeutic, scientific expertise on which so much of the penal establishment's prestige and status had been based' to expose 'ineptitude and inefficiency, rather than the expected degree of success'. Although Martinson *et al*'s infamous analysis of the impact of correctionalism is far from uncontroversial (e.g. see Matthews, 2009: 357), Garland (1996: 447) has noted that the research carried out by the Home Office was also raising doubts about the effectiveness of criminal justice institutions. Scientific monitoring thus appeared to be unravelling 'the whole penal welfare strategy'.

The results of criminological research appeared, then, almost as the formal discursive backdrop to a more immediate sense of unfolding crisis during the same period, with some key tensions and difficulties coming to a head in the late 1970s. Ryan has suggested that an opportunity arose during the 1970s to produce a progressive solution to the breakdown of the post-war consensus on penal policy, however this opportunity was missed due to the rapid emergence of 'authoritarian populism' (cf. Hall, 1980) which accompanied the dismantling of the social democratic consensus and the arrival of the political trend known as 'New Right': 'penal strategy was manipulated under the broad rubric of "law and order" politics to secure wider political objectives during a time of economic crisis' (Ryan, 1999: 7). It is against this backdrop that the idea of public confidence, first used in connection with policing, was invoked with respect to a range of criminal justice functions.

### 5.3.3 '*...this sorry chapter in the history of English justice': The Royal Commission on Criminal Justice and Lord Taylor's pledge*

The late 1980s and early 1990s saw the emergence of new revelations about police fabrication of evidence and use of violence to extract confessions, most famously in the cases of the Guildford Four, Birmingham Six and Maguire Seven. These revelations offered new opportunities for the idea of public confidence in the criminal justice system to have a prominent presence in political and media discourse. For example:

'The quashing of the Guildford bombing convictions is not just an ordinary kind of scandal. Public unease goes far beyond the question of possible wrongdoing by the Surrey police. The case has undermined public confidence in the criminal justice system itself.' (The Guardian, Nov 17 1989)

A Royal Commission on Criminal Justice was announced by the Home Secretary Kenneth Baker on the day that the Birmingham Six convictions were quashed (14<sup>th</sup> March 1991). In a speech (subsequently quoted in the Times, the Guardian and the Independent) Baker said:

'The case, together with others which have occurred, raises a number of serious issues which must be a cause of concern to us all. It is of fundamental importance that the arrangements for criminal justice should secure the speedy conviction of the guilty and the acquittal of the innocent. When that is not achieved, public confidence is undermined.' (HC Debates, Mar 14 1991, col. 1109)

Baker was not the only politician to invoke the idea of public confidence, as reported by the Independent:

'A sharp response to the Court of Appeal decision came from Menzies Campbell QC, the Liberal Democrats' legal affairs spokesman, who called for a full judicial inquiry into "this sorry chapter in the history of English justice ... *This grave miscarriage of justice has shaken public confidence in the judicial system and in particular in the role of the Court of Appeal.* The Court of Appeal should have a wider investigative role than it now has in cases where there are serious doubts about the evidence which has been brought before a jury," Mr Campbell said outside the chamber.' (The Independent, Friday Mar151991, *emphasis added*)

In the aftermath of the Birmingham Six verdict a cross-party campaign was launched by MPs to have the Lord Chief Justice, Lord Lane (who had presided over and rejected an earlier appeal by the Six) removed from his post by the Queen. At the time the campaign was unsuccessful as, in the face of considerable media criticism, the legal establishment closed ranks around Lord Lane, and he received



the backing of the Home Secretary and Prime Minister. However, less than a year later he vacated the post, a full year before his age would have meant he was required to retire. Lord Lane was replaced by Lord Taylor who claimed that restoring public confidence in the criminal justice system was his mission in his new role, and who, for the rest of his life, would be cast in this light in subsequent media discourse. For example:

'Lord Justice Taylor, aged 61, takes over as the most senior judge at a time when, as he acknowledges, he has the task, with the rest of the legal profession, of *restoring public confidence in the criminal justice system.*' (The Times, Feb 26, 1992 *emphasis added*)

'SIR Peter Taylor will be sworn in as Lord Chief Justice today with a *pledge to restore public confidence in the criminal justice system* in the wake of a series of miscarriages of justice.' (The Guardian, Apr 27 1992 p.3 *emphasis added*)

'*Peter Taylor was appointed Lord Chief Justice in 1992 to restore public confidence in the criminal justice system, badly dented by a series of high profile miscarriages of justice*' (From Lord Taylor's obituary The Guardian, April 30 1997, *emphasis added*)

During the two years from the announcement of the Royal Commission until it reported, public confidence in the criminal justice system was overwhelmingly referred to in the context of discussions of miscarriages of justice. Senior figures within the criminal justice system used the term in this sense, for example:

'I and my staff are acutely aware of the effect which miscarriages of justice have on the public confidence in the criminal justice system. However, it is my duty to make the right decision, not the expedient one.' (Open letter from Barbara Mills QC the Director of Public Prosecutions, defending her decision not to prosecute any of the police officers involved in the wrongful conviction of Stefan Kiszko. Published in The Guardian May 22 1992; , p. 24)

'The perceived decline of public confidence in the criminal justice system is another issue of concern. Highly publicised cases of miscarriage of justice undermine the improvements that have now been made to the integrity of our evidence gathering process.' (From the annual report by the Metropolitan Police Commissioner Sir Peter Imbert quoted in the Guardian, Jul 30 1992; p.7)

From 1991 until 1993, then, discourses of public confidence in criminal justice focussed on the adequacy of the procedures used to gather evidence and secure convictions and the trust invested in the professionals responsible for ensuring that the procedures were followed. Discourses of public confidence were not, at this time, invoked in relation to issues of prison overcrowding and sentencing.

### ***5.3.4 'In an attempt to rescue the position...': Criminal justice politics get tough***

During the early years of the 1990s, then, the discourse of public confidence in the criminal justice system was almost entirely invoked in relation to the issue of miscarriages of justice, the associated Royal Commission on Criminal Justice, and the appointment of the new Lord Chief Justice, Lord Taylor. However, by July 1993, the month when the Royal Commission's findings were due to be released, the political and social landscape had changed dramatically and the public confidence discourse had shifted. At this time the conservative government appeared increasingly weak in the face of a resurgent Labour party, and events which unfolded in the first half of 1993 only increased the pressure on the government in this regard.

The killing of toddler James Bulger by two 10 year old boys in February 1993 prompted national shock and outrage. The then Shadow Home Secretary, Tony Blair, reacted in a way which raised his own profile and aligned the Labour party with a new slogan: 'tough on crime, tough on the causes of crime'. In the aftermath of the Bulger case, and for the first time since polling began, Labour were regarded by more people than the Conservatives as having the 'best policies for dealing with crime' (ICM/The Guardian Poll, March 1993). The Bulger case is often cited as a watershed moment in debates about crime and justice in England and Wales (see for example Green, 2008). It certainly seems to have coincided with the moment at which Labour over took the Conservatives in the polls on crime and justice issues, and political rhetoric around crime and justice became substantially more hard-line. However there were other events in 1993 which may have been much more significant in reshaping the political landscape, and shifting the discourse on public confidence.

In June 1993 two men from a small village in Norfolk were jailed for five years in relation to events which had occurred on January 12<sup>th</sup> that year. The two men admitted kidnapping and threatening a local youth who they believed to be

responsible for a spate of local burglaries. They were said to have acted when it became apparent that the police and criminal justice system were either unable or unwilling to take action to bring the perpetrators of the crimes to justice. Media coverage of the case throughout June linked it to a more general theme of a criminal justice system struggling to cope due to a combination of inadequate resources and unduly constrictive legislation. Headlines like 'A Village Cheated of Justice' (Daily Mail, June 17<sup>th</sup> 1993) and 'Middle England hits back' (The Sunday Times, 20<sup>th</sup> June 1993) indicate the angle taken by the media, which linked the case into a much broader discourse about a crisis in criminal justice, for example:

'THE five-year jail term handed down to the two Norfolk vigilantes was more than a rogue judge being a bit heavy-handed. It was more even than a tough judicial warning against people taking the law into their own hands. It was a desperate and no doubt instinctive attempt by the judge to hold together a system of justice that has now catastrophically cracked open. Yet it has merely exacerbated the crisis.' (The Observer Jun 20 1993)

In the same month the papers reported the case of a Joseph Elliott who, whilst 'high on drink and drugs', caused criminal damage to his neighbour's car and, when confronted by his neighbour, stabbed and killed him. Elliott was acquitted by the jury on the basis that he had acted in self defence. Conservative MPs and police officers railed against the decision, demanding changes in the law. The headline in the Guardian in July read 'Vigilante's stabbing prompts self-defence study; Conservative MPs demand changes in the law to "restore public confidence in the criminal justice system"'. This was the first occasion on which the phrase 'public confidence in the criminal justice system' was used in a newspaper headline. The article reported that:

'The Home Secretary is to review the way the law of self-defence works following the acquittal of a man who admitted stabbing his neighbour to death. Michael Howard faced demands from Conservative MPs for law changes designed, they said, to restore public confidence in the power of the criminal justice system to convict the guilty as well as acquit the innocent.' (The Guardian, Jul 15, 1993, pg.2)

In this article the idea of public confidence in the criminal justice system has drifted loose of the issue of miscarriages of justice where innocent people have been jailed, and is instead applied to an apparent failure of natural justice, where a

man attempting to protect his property from a dangerous other has been killed, and the law is unable to convict his killer of murder.

So, at a time of increasing political tension, with the two main parties locked in a battle to be seen as *the* party of 'law and order', the idea of public confidence became attached to a new kind of problem with criminal justice. It stopped being invoked in relation to issues of police misconduct and miscarriages of justice and instead it began to be used in relation to the problem of criminals 'getting away with it' and law-abiding members of the public being unable to rely on the criminal justice system to protect them, their property, or their right to protect themselves.

As a result, as the Times legal correspondent Frances Gibb noted at the time, the Royal Commission report would be delivered into a vastly altered political climate from that in which it had begun its work: 'public opinion on law and order, as one government minister put it, has "turned a cartwheel" and concern about the rights of the defendant in the criminal justice process is increasingly eclipsed by calls for tougher action on criminals' (The Times May 18 1993). The day before the Royal Commission was due to release its findings, the Times covered research by the Solicitors Journal which suggested:

'Most people have lost faith in the system of British justice as the best in the world and want an independent tribunal to investigate miscarriages of justice, according to a survey today. The Solicitors Journal survey of 1,000 people in England and Wales found that only 21 per cent agreed that the British system of justice was the best in the world. Some 45 per cent disagreed. There was also a big loss of confidence in the ability of the police to catch criminals compared with a decade ago, the survey showed, with backing for more officers on the streets.' (The Times, Jul 5 1993)

By the time the findings of the Royal Commission on Criminal Justice were published on 6<sup>th</sup> July they appeared hopelessly out of step with the political zeitgeist. On the Sunday following the publication of the findings the Observer carried a substantial article devoted to presenting a police perspective on the recommendations:

'To Britain's busiest murder squad, last week's Royal Commission report on criminal justice was a failure, taking the country closer to the 'doomsday scenario' in which the public, dismayed by the workings of the courts, loses faith in the rule of law. ... "You are getting people returned to the streets who have committed very serious offences, and the criminal law has no sanction

against them. Ultimately, there will be a backlash," says Detective Chief Superintendent Tom Williamson, who runs east London's Area Major Investigation Pool (Amip). The commission, he says, "tinkers round the edges of the adversarial system without recommending genuine, radical reform. Meanwhile, public confidence in the criminal justice system is draining away." (The Observer, Jul 11 1993, p.8)

This article is a striking example of how the changed social and political environment enabled the police to obtain some control of the confidence discourse and redirect its focus away from the potential misconduct of their own organization and onto the workings of the courts.

In August 1993 Tony Blair increased the pressure on the weak conservative government, seizing on polling evidence about the public's lack of 'confidence' in various criminal justice functions. The Home Secretary Michael Howard responded by claiming that Labour were 'soft on crime' (see the Guardian, Aug 31 1993, p.2). In September the papers reported that Michael Howard was holding a 'two day summit on how to restore public confidence in the criminal justice system'. In October the Guardian reported that the government would give law and order 'top billing' at their annual conference:

'the shattered public confidence in the criminal justice system is reflected in the 244 resolutions tabled by constituency parties demanding action. Mr Major is expected to devote a third of his conference speech on Friday to the issue.

...

In an attempt to rescue the position, Mr Howard will ignore the recommendations of the two-year Royal Commission on Criminal Justice' (The Guardian, Oct 2 1993, pg. 1)

In Howard's now infamous speech to the conference he argued: 'Prison works. It ensures that we are protected from murderers, muggers and rapists - and it makes many who are tempted to commit crime think twice ... This may mean that more people will go to prison. I do not flinch from that. We shall no longer judge the success of our system of justice by a fall in our prison population.' Forced to defend his claims against criticisms from the judiciary, the Times reported that Howard accused them of 'misunderstanding his speech ... and declared that putting offenders in prison prevented fresh crime and protected victims. Taking away public confidence in the criminal justice system might be an invitation to the vigilante he said.' (The Times, Oct 18 1993)

The idea of public confidence in the criminal justice system featured prominently in media discourse throughout the rest of 1993 and into 1994 as the term became a favoured reference point in any discussion of criminal justice matters, for example:

'Mr Howard claimed that his "consistent strategy to fight crime" would restore public confidence in the criminal justice system' (The Guardian, May 4 1994 p.2)

'[Michael Howard] is adamant that without the tough action he announced last year, public confidence in the criminal justice system would have collapsed.' (The Times Oct 13 1994)

By this stage journalists had started to invoke public confidence spontaneously themselves, rather than quoting it directly from politicians or criminal justice officials. For example:

'The rate at which police forces caught criminals declined again last year, according to a The Guardian survey of detection rates across England and Wales. ... The findings were described last night by Tony Blair, the shadow home secretary, as devastating and will alarm Home Office ministers and senior police officers battling to restore public confidence in the criminal justice' (The Guardian Jan 31 1994, p.20)

The term public confidence in the criminal justice system, then, proved to be both versatile and mobile. Having been applied to a range of criminal justice issues (including police misconduct, miscarriages of justice, prison over-crowding, sentencing of offenders, attempts to reintroduce the death penalty) it migrated from the terminology of pollsters and the speeches and comments of politicians and criminal justice officials, into debates in the House of Parliament, journalistic turns of phrase, policy documents, and even into the summing up of cases by lawyers and members of the judiciary.

As the 1990s progressed the practice of 'playing the confidence card' (described above) continued to be used. For example, the day after the publication of the Commission's findings, the Bar Council chairman, John Rowe QC said the following:

'It is vital that there is public confidence in the criminal justice system, and we are therefore deeply concerned that one of the Commission's major recommendations is to abolish automatic right of defendants to trial by jury.' (Quoted in the Mail and the Times, July 7, 1993)

As the government appeared to stall on key recommendations from the Royal Commission on Criminal Justice, including establishing a body to review claimed miscarriages of justice, the Chair of the Bar Council once again intervened:

"It is important that the Government does not allow this important recommendation of the Royal Commission to wither on the vine. Public confidence in the criminal justice system will be endangered if this widely supported and important step is further delayed." (Quoted in the Times, Nov 16, 1994)

The Law Society also invoked public confidence in order to express their resistance to proposed abolition of the right to silence:

'The Law Society says that the Government has "failed to recognise the reasons why the Royal Commission on Criminal Justice was set up in 1991" namely lack of public confidence in the criminal justice system. "The main effect of this bill will be an even greater risk of miscarriages without increased convictions of the guilty." A clear majority of the Royal Commission said the right to silence should not be abolished.' (The Times, Jan 11, 1994)

Meanwhile, when the idea of a free vote on the reintroduction of the death penalty was mooted, the Chief Constable of Humberside said capital punishment would 'only add to the lack of public confidence in the criminal justice system. I find capital punishment abhorrent and do not consider it to be a protection for police officers.' (Quoted in The Guardian Feb 21, 1994 p. 4).

However, despite these attempts to use public confidence in order to oppose measures considered to be detrimental to the rights of the accused, the use of the idea of 'public confidence' in a criminal justice context in reference to issues other than the inadequacies of the courts and the idea of offenders 'getting away with it' became increasingly rare in this period. It was in connection with the particular issue of sentencing, as well as with three notorious offenders, that the idea of public confidence in the criminal justice system was most regularly invoked in the latter part of the 1990s.

### ***5.3.5 'A child's screams must not be stifled...': Minimum tariffs for murder***

A direct and explicit connection between the James Bulger case and the public confidence agenda did not emerge until a disagreement arose between the Home Secretary and the Judiciary about the minimum period which his killers should serve in custody before being considered eligible for release. The original tariff, set

by the trial judge in November 1993, was that they should serve a minimum of eight years. In December 1993 the Lord Chief Justice increased this to ten years. In July 1994 the Home Secretary Michael Howard decided that Thompson and Venables should serve a minimum of fifteen years. Howard's decision, according to the Home Office press release, was based on 'the judicial recommendations as well as all other relevant factors including the circumstances of the case, public concern about the case and the need to maintain public confidence in the criminal justice system' (Home Office, 1994 cited by Green, 2008: 2).

The Home Office press release on the matter was quoted verbatim or closely paraphrased across the media at the time, and echoed at every subsequent occasion upon which the matter was discussed. Thus the idea that the Home Secretary must take public confidence in the criminal justice system into account when setting minimum tariffs became a common place refrain at this time. However, the public confidence principle has no basis in legislation; rather it can be traced back to the judgment in a case from the 1980s, referred to by Lord Beaverbrook in a House of Lords debate from 1986:

'The final decision [on parole] rests with the Secretary of State. I can do no better than to quote the words of the noble and learned Lord, Lord Scarman, when giving judgment in the case of Findlay et al which was brought before the House of Lords: "Neither the Parole Board nor the judiciary can be as close or as sensitive to public opinion as a Minister responsible to Parliament and to the electorate. *He has to judge the public acceptability of early release and to determine the policies needed to maintain public confidence in the system of criminal justice.* This must be why Parliament saw as necessary the duality of the parole system: without the advice and recommendation of a body capable of assessing the risk of early release the Secretary of State was not to act; but, having received such advice and recommendation, he was to authorise early release only if he himself was satisfied that it was in the public interest that he should". *It is against that background—above all, the need to pursue a policy in relation to parole which maintains public confidence in the criminal justice system—that my right honourable friend the Home Secretary is following the practice of his predecessor* in exercising his discretion restrictively in cases involving the most serious offences of violence and drug trafficking.' (Lord Beaverbrook, HL Debate, Nov 4, 1986, Col. 1088, *emphasis added*)

Howard's decision to extend the minimum tariff for Thompson and Venables and his subsequent over-ruling in 1996 by the Court of Appeal and House of Lords were early episodes in a long-running debate about who should set minimum



tariffs in cases of murder, and on what basis. The debate was only concluded when the Criminal Justice Act 2003 outlawed politicians' involvement in setting tariffs<sup>88</sup>.

The debate over minimum tariffs and eligibility for consideration for parole also raged around the case of Myra Hindley, and inspired some particularly intemperate media coverage. For example, under the headline 'A child's screams must not be stifled by the do-gooders; The Case for Myra Hindley Never Being Released', Conservative MP David Mellor wrote:

'Any day now the Home Secretary has to announce a decision which, if he gets it wrong, *will strike at the very heart of public confidence in the criminal justice system*. The courts have insisted that every convicted murderer serving a life sentence should be told the minimum term he or she must serve. So Michael Howard is brought face to face with the issue Home Secretaries most dread - whether Britain's most hated woman, Myra Hindley, can ever be released. I hope his answer is No. I shouldn't care to be in his shoes if it isn't.' (The Mail on Sunday, Jul 10 1994 p.28, *emphasis added*)

Media coverage of Hindley's attempt to have her whole life tariff overturned during 1996 featured repeated references to the Home Secretary's responsibility to take account of the need to maintain public confidence in the criminal justice system.

The dispute about minimum tariffs was one aspect of a more general rift between the judiciary and politicians which opened up around the time of the Royal Commission reporting its ill-timed findings. The idea of public confidence in the criminal justice system featured often in the media coverage of some very heated exchanges over the issue of judicial independence and sentencing from the mid-1990s until Labour's 1997 general election victory. For example, when judges, including Lord Justice Taylor, attacked government proposals to introduce mandatory minimum sentences, a Times editorial leapt to the defence of the Home Secretary:

'The first duty of the Home Secretary is to maintain public confidence in the criminal justice system. It is self-evident that public confidence in sentencing policy has been eroded and that Parliament must soon address the problem.' (The Times, Oct 13 1995)

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<sup>88</sup> Interestingly, at the beginning of this long-running dispute between politicians and the judiciary, Lord Woolf stated that, by courting direct conflict with the judiciary, Howard himself had 'undermined public confidence in the criminal justice system' (The Guardian, 31st July 1996).

And, when the Bill to introduce mandatory minimums had its second reading in the House of Lords, the Home Office Minister Baroness Blatch was quoted as saying that it would 'provide protection and reassurance for the public, and thereby help to improve public confidence in the criminal justice system' (The Times, Jan 28, 1997).

The early to mid 1990s have been identified as a watershed period in penal politics in England and Wales. Events taking place during 1993 in particular are seen as pivotal in establishing crime as a core election issue and consolidating a more punitive approach to crime. This is seen in many quarters as having underpinned the unprecedented rise in the prison population which followed.

It is interesting to note the part played by the idea of 'public confidence in the criminal justice system' in providing the discursive backdrop to these fundamentally *political* shifts. During the period from 1993-1997 a particular understanding of public confidence became 'hooked' into criminal justice discourse. The idea of public confidence graduated from its position within the textual genre of political debate into much wider general use, as evidenced by its prominent presence in media discourse and spontaneous use by journalists reporting on criminal justice issues. Crucially, the particular understanding of public confidence which came to dominate at this time was linked mainly to issues of sentencing and punishment, rather than with the earlier concerns about police misconduct and miscarriages of justice. This shift happened as crime and justice (or, perhaps more accurately, 'law and order') became an important political battleground in the build up to the 1997 general election. The increasing determination of the Labour party to compete with the Conservatives on this issue marked a fairly radical departure from the stance which they had taken on the issue in previous decades. This shift can be better understood by considering changes within the criminological field which occurred during the 1980s.

### **5.3.6 Summary**

In this part of the chapter I have argued that a discourse of 'public confidence' was able to hook into the wider criminal justice discourse in the first instance via

reactions to the emerging evidence about police corruption in the 1960s and 1970s. Once the term became established it started to be deployed by competing interest groups in a way which I have termed 'playing the confidence card'. I have provided some examples of how it was used to defend existing policy, to resist change and also to argue for the need for change.

In the late 1980 and early 1990s revelations about police misconduct and miscarriages of justice led to claims that the criminal justice system was facing a crisis of confidence and prompted the appointment of a Royal Commission to address this issue. However, before the commission had reported its findings a number of high profile and highly symbolic criminal justice-related events (including incidents of vigilantism and the murder of James Bulger) had taken place against the backdrop of an intensification of the political rhetoric around crime and justice. At this point the discourse of public confidence was rapidly turned on its head: away from the focus on miscarriages of justice and towards the idea of criminals 'getting away with it'.

#### **5.4 Conclusion: from 'lay concept' to 'fact'?**

This chapter has argued that the contemporary discourse of public confidence in the criminal justice system had specific conditions of existence without which it would not have become thinkable. The contemporary 'problem' of public confidence in the criminal justice system could not exist unless the public had been progressively excluded from a professionalized system for dealing with criminal deviance, and had their accustomed ways of knowing about crime and justice not been increasingly discredited by new groups of 'experts', applying new 'modern' ways of knowing. Under these conditions members of the public no longer have direct personal access to the 'reality' of crime and punishment and thus must instead trust (or have confidence) in the 'expert system' (Giddens, 1990: 22) which assumes the role of accurately describing 'reality'. Thus the idea of public confidence has *always* been about the 'gap' between between 'expert' and 'lay' ways of knowing.

This gap would not matter except that the conventions, and indeed the practicalities, of liberal democratic societies demand that the opinions of members of the public must be seen to count for something when policies are made and enacted for and upon them. In the 20<sup>th</sup> century, mechanisms have been devised to measure those opinions, and these techniques have also allowed researchers (or 'experts') to 'measure' public confidence (or so they claim).

As I described in the previous chapter, at the same time as measuring public confidence researchers 'discovered' that a lack of public confidence in the criminal justice system was often statistically associated with a failure to accurately appraise the 'reality' of crime and justice (as defined by 'experts'). From this they surmised that poor public knowledge was *causally* related to low public confidence. In other words the very features of modern criminal justice which provided necessary surfaces of emergence for the public confidence agenda (the privileging of expert scientific knowledge and the exclusion of the lay public from knowing for themselves) are also reflected in the *findings* generated by confidence research. In this light it now seems quite unremarkable that confidence research has tended to produce repetitive findings about the failure of the public to appreciate the facts of reality in the same way as experts.

This chapter has also described how, during the last quarter of the 20<sup>th</sup> century, the idea of public confidence became hooked into discourses of criminal justice as a result of contingent material events, specifically the struggles between political and professional groupings with opposing interests and values to exert their influence within the criminal justice field. The term public confidence has a pre-existing historical resonance which has made it ripe for appropriation by politicians and criminal justice practitioners concerned to demonstrate their awareness of the need for the agencies, processes and policies of criminal justice to maintain the support of the public. However, as the above analysis has shown, the way in which public confidence has been used within the contested arena of criminal justice discourse, across multiple textual locations, and in relation to a range of different causes and interests, has been tokenistic: the content or

definition of confidence has remained ambiguous. It has remained in the form of what Durkheim defined as a 'lay concept':

'lay concepts are not entirely useless to the scholar; they serve as suggestions and guides. They inform us of the existence, somewhere, of an aggregation of phenomena which, bearing the same name, must, in consequence, probably have certain characteristics in common. Since these concepts have always had some reference to phenomena, they even indicate to us at times, though roughly, where these phenomena are to be found. But, as they have been crudely formed, they quite naturally do not coincide exactly with the scientific concepts, which have been established for a set purpose' (Durkheim, 1938: 37)

In the previous chapter I provided a chronological overview and detailed deconstruction of the body of research on public confidence in the criminal justice system. I argued that this research was premised on an understanding of public confidence as something which is *real*, in the sense that it pre-exists the research carried out upon it, that it is measurable, and that it is *caused* by other factors. Furthermore, it is implicit within the research that the research itself merely accesses a pre-existing phenomenon using value-free and legitimate social scientific methods. Public confidence is treated, then, as a 'fact'

Yet at no point in the mainstream confidence research literature has the 'fact' which is public confidence been clearly defined. Those researchers using the term have failed to undertake the basic work necessary to identify what public confidence as (either a social or a psychological) fact might be. Instead it seems as if the researchers have been seduced into treating a highly topical and evocative lay concept, a politically-charged and amorphous rhetorical token, *as if* it were something real. The error, in Durkheim's words, is this:

'We are so accustomed to use these terms, and they recur so constantly in our conversation, that it seems unnecessary to render their meaning precise. We simply refer to the common notion' (Durkheim, 1938: 37)

Research on public confidence, as referred to above, has tended to confirm that members of the public believe that the criminal justice system is 'out of touch' with their views, and that for this reason they lack confidence in the system. Research has also suggested that the public are ignorant of the facts about crime and the criminal justice system, which is why they believe it to be 'out of touch' and why they lack confidence. However, as described above, this so-called 'finding' from the

confidence research may turn out to have been *built in* to the foundations (or 'surfaces of emergence') for the dominant discourse of public confidence. In the next chapter I re-visit data collected during a project investigating public confidence in the criminal justice system (the project referred to in the Introduction) to explore in more depth the idea that the criminal justice system is 'out of touch'. What does this apparent 'gap' between the people and the criminal justice system mean to members of the public?

## Chapter 6. 'Joe public' and the 'high falutin' lawyers'

### 6.1 Introduction

Qualitative data has most often been assigned a supporting role within the public confidence research agenda (see chapter four above), and (perhaps as a result) has tended to be analysed in a fairly limited fashion. Researchers have focused on the ways in which members of the public understand key concepts (including 'confidence' and 'criminal justice system'), on the factors which inform their decision making when answering survey questions around confidence, and on exploring in more depth the 'drivers' of confidence identified through quantitative analysis (for example dissatisfaction with sentencing).

Much of the analysis is descriptive, summarising what participants have said, rather than attempting to examine in any detail *how* meaning is achieved in their expressions, or to suggest any explanations as to *why* this might be so. It is assumed that statements made by members of the public on the subject of crime, justice and confidence simply *are*, and the role adopted by the researchers is that of organisers and summarisers of such statements into a more easily digestible format. This approach is (perhaps) understandable given that much of the research is (at least partially) aimed at a policymaker/practitioner audience eager to gain access to 'what the public think'. However, it has also led to the production of a repetitive discourse on public confidence, along with a failure to reflect upon the moral and political meaning of doing (funded) confidence research.

The analysis presented in this chapter reuses primary data collected for the project described in the Introduction. The original analysis carried out for the project explicitly set out to approach confidence in a way which departed from established

approaches in the area and, as such, it identified themes which were previously unexplored within the context of public confidence research<sup>89</sup>.

The analysis for the project also reiterated some common themes from the dominant discourse of public confidence, including that the public have a sense that the criminal justice system should be (but too often is not) 'in touch' with their experiences, views and preferences. The analysis in this chapter begins from a close consideration of *how* this idea of being 'in' or 'out of' 'touch' is constructed in research participants' discourse.

In the first two sections of the analysis I argue that the construction of in/out of touch is achieved through the invoking of the notion of an 'us' ('ordinary' people) and a 'them' ('the elite system') and through the (often implicit) attribution to 'them' of an inadequate knowledge base for making decisions about criminal justice policy and practice. This inadequate knowledge is characterised as stemming from a lack of regular proximity between elites and the reality of crime; by their lack of affinity with 'ordinary' people; and by their failure to apply empathy in order to understand the impact of crime on individuals affected by it. These short-comings are compounded by the allegedly self-interested conduct of elites.

In the third section of the analysis I consider some elements of participants' views which appear to be disruptive to the in/out of touch theme. These include participants' levels of doubt about the reliability of their own and other 'ordinary' people's knowledge of and opinions about crime and justice, and the acknowledged diversity of public experiences of and opinions on crime. Given that participants themselves acknowledge that they experience doubt about their own views, and that they are aware that other people hold views which are different from their own, how then can 'they' ('the elites') be expected to become more 'in touch' with 'us' ('Joe public')?

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<sup>89</sup> See Turner *et al* (2009) for more details on how the analysis was conducted and the themes which emerged.



In the conclusion I argue that the view that the criminal justice system is ‘out of touch’ may reflect a perception that unequal social and economic outcomes allow those social groups with the ability to influence criminal justice decision-making to insulate themselves from exposure to crime risk, and create a cultural and spatial separation between them and ‘ordinary’ people which reduces their capacity to understand and empathise with them. Rather than being a case either of an angry public with clearly formed and implicitly valid demands or of an ill-informed public requiring an injection of cold, hard facts; perhaps what qualitative research into public confidence reveals is the political alienation and powerlessness which members of the public feel in relation to a much wider set of issues, and the degree to which this is seen as resulting from the self-serving habits of remote and privileged elites.

## **6.2 Us and them**

The idea of being ‘in touch’ relies on the existence of at least two distinct groups of people between whom some degree of understanding is expected. Throughout the interviews and focus groups, participants often referred (albeit often implicitly) to such groups, and located themselves within groups in relation to others. Most often the group which they placed themselves in is a group which we might very loosely define as ‘ordinary people’, or what one participant called ‘Joe public’ (Harriet, IV3<sup>90</sup>). In opposition to this group participants tended to refer to two other (roughly outlined) groupings: people living outside of the norm (usually meaning offenders) and what we might call ‘the powers that be’: people with some degree of control over criminal justice policy and practice. In the first part of the analysis I consider how respondents identify two key groups: the ‘us’ group - the people with whom they claim some commonality, and the ‘them’ group – the people who they identify as being responsible for criminal justice policy and practice, and as needing to be more ‘in touch’ with ‘us’.

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<sup>90</sup> Interview participants are indicated by the letters ‘IV’ plus a number which indicates the order in which the interviews took place. Focus group participants are indicated by the letters ‘FG’ plus a number which indicates the order in which the focus groups took place. See Chapter Three for demographic information about the participants.

### 6.2.1 *Us: 'it's not just me'*<sup>91</sup>

In the interviews, participants frequently sought to indicate that they identified with the views of 'most' other people. By invoking the views of a wider community of opinion, participants seemed to be seeking to validate their own opinions. For example:

KAREN (IV12): I think our justice system is a fair system and we've got nothing wrong with it. I just think the punishment doesn't sometimes fit the crime. And I think the majority of people now think that, you know.

Here Karen (IV12) expresses an opinion on sentencing *and* on what the majority of people think. By locating her own opinion on sentencing as in line with majority opinion she seems to be reassuring herself (and perhaps also trying to reassure the author) about the validity of holding such a view. Later when I ask her explicitly about whether she thinks her views are 'typical' she replies:

KAREN (IV12): I would think so, yes. I would say that though, wouldn't I? [laughs] Because I'm not that extreme ...

Her laughter, and the somewhat self-effacing remark that 'I would say that though, wouldn't I?' suggest a degree of uncertainty. This suggestion is reinforced by the way she seeks reassurance from being in line with 'the majority' or 'not that extreme'.

Throughout the interviews, the beliefs which participants expressed about the views held by other people seemed to play an important part in their efforts to legitimate their own views, for the benefit of both themselves and for the author. Even where participants were more certain, and more strident, in the expression of their opinions than Karen (IV12), they still often used the views of other people as a sort of rhetorical buttress erected around their own opinions and attitudes, for example:

MARGARET (IV13): Well, I think most people think this way you know, except the ones who do the wrong. And they, you know, they don't care, do they, you know?

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<sup>91</sup> Vivien (IV11)

BERT (IV14): People in my situation, lots of people like me, would just take the attitude “what’s the point in phoning the police they do nothing”.

Some participants also sought to validate their own beliefs about what other people think by sharing with me *how* they became aware of the views of others. For example, very early on in her interview, Angie (IV5) told me that she felt that people’s belief that offenders receive ‘soft’ sentences would deter many people from reporting crime in the first place. She said:

ANGIE (IV5): I feel there’s a lot of people out there who don’t trust the Criminal Justice System to give a fair, um, sentence.

Later in the interview I asked her if she thought ‘a lot of people’ shared her views on sentencing, to which she replied ‘yes, definitely’. I then asked her where she had got this impression.

ANGIE (IV5): Oh, God, just when, if there’s been a big story on the, on the telly, um, and, [pause] just people who are on it, and friends and you.. you chat about it and you discuss it. Um, you know, like, “isn’t that terrible? ... look how, look how long they’ve getting” and “knew that would happen, knew they’d get let off”. I’d tell my friends or family or, um, [pause] round the school, when I take the kids to school, and people... um, at work, yeah, things like that.

Angie (IV5) here identifies her observation of opinions expressed by other people, both on television and in day to day conversations, as the means by which she has formed her own impression of what other people think. Similarly, Lorna (IV7) and Vivien (IV11), when asked if they thought their views were ‘typical’ replied:

LORNA (IV7): I think they are, I think they are reflective. I mean, talking to friends and talking to patients and people like that, I think there is quite, almost a resentment that people who do wrong aren’t being punished, you know. And it’s the people who are the victims that seem to be getting more punishment. And I think that is a general societal view I feel.

VIVIEN (IV11): Yes, uh huh. I mean all the people I come into contact with all say more or less the same. The people around me. I mean, I’ve got two sister-in-laws, we go swimming about four times a week and you get to know all the regulars, and you talk about different things in the sauna or the steam room and that, and yeah, they’re all up in arms about this country lately, about the way things are going.

Other participants told me about conversations with other people without being prompted by a direct question. They then extrapolated from these conversations to conclude that ‘the majority’, or ‘a lot of’ people think or feel the same. An example of this is Brenda (IV9), who told me:

BRENDA (IV9): I was just talking to someone on Sunday morning and he said about the carry on and I said, “well did you phone the police?” “Ah, it’s a waste of time phoning them” he says “I phoned them two year ago when they were on the roof of the house and they never come yet.” You know, I think the majority of people are losing faith with the police and it’s because they don’t see a presence, I think that’s what it is. They don’t actually see the Bobby, walking the road.

Brenda (IV9) here has reported what her neighbour has said and has suggested that his views are likely to be the views of ‘the majority of people’. Furthermore she has diagnosed a reason for the loss of ‘faith in police’: the lack of a visible police presence. This diagnosis fits with her own concern (expressed slightly earlier in the interview) about rarely seeing police in her area and about the closure of a small local police station and the centralization of local policing services in a larger, more distant station. Brenda (IV9) appears to offer this anecdote as supporting evidence, perhaps to persuade me to see her own opinions as pervasive and mundane.

Like Brenda (IV9), many of the participants seemed to be keen to be seen as ‘typical’, and therefore, perhaps one might say, as reliable mouthpieces for wider publics, as Niall (IV6) stated: ‘I’m just like an average member of the public’. In this ‘typical’ guise they sometimes seemed to seek to speak on behalf of others, for example representing the (presumed) attitudes of ‘people in my situation’ (Bert, IV14); or relaying to me what others had told them, for example: ‘I know a lot of people, and a lot of people are saying...’ (Vivien, IV11); ‘in the factory where I work, um, it’s considered that..’ (Gavin, IV4). At its strongest this rhetorical device saw participants speaking on behalf of others, for example: ‘it’s not just me ... .. we don’t know where the country’s going anymore’ (Vivien, IV11, *emphasis added*).

Participants seemed to perceive themselves as justified in speaking on behalf of others because of the voices which they encountered in their day to day lives; the

voices of family members, neighbours, workmates, their 'circle of friends' (Brenda, IV9) or 'the people around me' (Vivien, IV11). For example Bert (IV14) told me:

BERT (IV14): We have a community flat in the block and it[crime]'s the main topic of conversation, people are scared to go out at night. You can just pop in any time and have a coffee and a chat. And the main topic of conversation is how bad it's become.

Sometimes they did not need to have heard the views expressed to know what they would be, if only the question were put. As Niall (IV6) said: 'most of my friends, I'd say if you interviewed them they'd be of the same opinion'. Even when challenged about whether she was aware of any views different from her own Vivien (IV11) seemed unconvinced:

LIZ: Are you aware of any other points of view about what the Criminal Justice System needs to do?

VIVIEN (IV11): Um, not really, no, no. Everybody says, that I talk to, there should be stiffer sentences and the sentences should... they shouldn't get off early, they should do the sentence.

However, having initially used the rather categorical idea of 'everybody says' she subsequently moderated her language slightly such that there was space for people to talk about issues other than sentencing (which became 'the main thing' mentioned), and for a minority to think differently (with only 'most people' rather than 'everybody' thinking the same as her):

VIVIEN (IV11): ... and that's *the main thing that people say* about to me, about that. If they give them ten years, they should do ten years... there should be no easy rides, and that's the way that *most people think* that I talk to. And that's about it really (*emphasis added*)

Vivien (IV11)'s moderated language in this quote hints at her awareness of the potential existence of views which are invisible to her, as, on this occasion, she only speaks on behalf of the people 'that I talk to'. Her awareness of the partiality of the opinions she is exposed to is also revealed when she says: 'when you speak to *people my age* they all feel like that' (*emphasis added*). She acknowledges here that she only really speaks on behalf of a certain age group, although within that age group she seems confident that views are generally pretty homogeneous and in tune with her own.

Abida (IV10) on the other hand seemed to be more open to the possibility that people may hold differing views to those which she normally came into contact with:

ABIDA (IV10): I probably sit and talk to certain people, and they kind of think the same as what I'm thinking. Um, I haven't really come across somebody who thinks a bit differently. I mean there might be people who think there shouldn't be harsher sentences and stuff, but I haven't come across them, no.

Similarly, Elsie (IV2) qualified her statements with the caveat 'I'm just saying that *speaking from me own personal experience*, there are people that I know think similar' (*emphasis added*). In this statement Elsie (IV2) does not make any claims as to how widespread her views might be in the wider population, she merely points out that experience has showed her that she is not alone in her views. Nonetheless she still utilises her knowledge of what others think as a kind of validation of the views she expressed in the interview, albeit in a somewhat more modest fashion than some of the other participants.

A minority of participants appeared, at times, to want to distance themselves from 'Joe public', suggesting that its members did not necessarily hold reliable views about crime and justice. However, most often participants tended to, in some way, seek to indicate their membership of a wider community of opinion. By doing so they may have been doing several things: (i) seeking to legitimate their own opinion to themselves and/or the author; (ii) demonstrating their awareness of the value of consensus; (iii) attempting to represent the views of others. But, put quite simply, for most participants it *mattered* that they were seen as representative or typical of a wider social group, rather than as being 'out on a limb'. They tried to portray themselves as one member of an 'us'.

### **6.2.2 Them: 'the elite system'<sup>92</sup>**

By representing themselves as holding typical views participants indicated the value that they placed on public opinions and consensus in the criminal justice

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<sup>92</sup> Bert (IV14)

arena. Many also delineated a group of people against which other (implicitly) atypical groups might be identified. One such atypical group would be offenders:

FRED (IV1):                   ...people who are going to er operate outside the normal, you know I mean the majority of us get along fine together but there's always the odd one who won't, who wants to take advantage or er ... or who see an easy way you know of making a fast buck sort of thing

This group, operating 'outside the normal', were frequently identified by participants as implicitly separate from the 'ordinary' public of which most of them considered themselves to be members. For example, Elsie (IV2) argued that: 'if they [offenders] are named and people know what they're doing then they [ordinary people] will be able to watch out for them'; whilst Niall (IV6) suggested that exclusion from the rights enjoyed by the non-offending public (and indeed exclusion from the public) should form a part of the punishment which offenders face:

NIALL (IV6):                   ...if you commit a crime and you're proven to be guilty then for me a lot of your human rights should be gone until you're reformed and then you're put back into like say to the community or back into the public

Some participants (albeit less frequently) also said things which hinted at their recognition of the mundanity of crime, and suggested that they recognised that the offender/non-offender divide is not black and white. For example, Fred (IV1) said 'you get the odd [unclear] perfectly normal sort of person and they step over the marks sometimes you know' (Fred (IV1)). Interestingly, in their responses to the survey questionnaire which they completed prior to taking part in their interview or focus group, six of the participants had disclosed that they had been convicted of a motoring offence, whilst two had been convicted of non-motoring offences.

For my purposes this idea of offenders as a separate group is of less interest than the other (implicitly) 'non-ordinary', people identified by participants as being set apart from 'Joe public'. In the views expressed by many of the participants, this broad grouping included the obvious criminal justice system cast list of police officers, lawyers, and the judiciary. For some it also included politicians and individuals which one participant referred to as 'do-gooders' (Angie, IV5). In most of the opinions given by participants this other group was simply a shadowy but

powerful 'they', responsible for making or influencing decisions about how discipline and authority can be wielded, whether that be in the home, in schools, or by the criminal justice system. For example:

MARGARET (IV 13): *They've taken the discipline out of the schools, they've taken the discipline out of the homes, and I think it's all gone wrong from then. (emphasis added)*

Although the existence of this 'they', this other set of people, was a constant thread running through what participants told me, there was not a coherently formulated and shared conception of which individuals this 'they' might consist of, and of why they were able to exert such influence. Indeed participants had different understandings of the discretion available to different individuals. For example, some participants saw judges as being relatively unencumbered in their decision making:

LORNA (IV7): I think one of the problems in this country is that, um, sentences can be very much based upon the judge's opinion. And sometimes there doesn't seem to be any, um, I'm trying to think of the word ... parity in sentence. Sometimes it seems to be quite personal to that judge as to what sentence people receive for certain crimes.

Whilst others saw them as being constrained:

BRENDA (IV9): I know they're restricted, they must have like a list: "oh, aye ... he's done this I can only give him five year". I know their hands are tied.

ANGIE (IV5): I think the Criminal Justice System feels they would get, um, [pause] you know, like, all human rights and everything against them and stuff like this. So I think they're stuck in the middle, actually. I think they'd love to give out tougher sentences, but then I think there's the other side who's saying, well, no, we can't do that, this person has human rights.

LIZ: So you think there's people in the system who would like to, to give those tougher sentences?

ANGIE (IV5): Uh-huh, yeah, I do.

As the quotation above suggests, Angie (IV5) was less willing than some of the other participants to blame the criminal justice hierarchy for the undesirable changes she saw as having taken place. Rather, she referred to the growth of a



litigation culture which had disempowered authority figures from taking a robust common-sense approach to dealing with offenders, or misbehaving young people, and had reduced people's sense of personal responsibility.

- LIZ: How, how do you think that change has come about? Have you any thoughts on that?
- ANGIE (IV5): Well, yes, I do actually. I think it's, um, it's since the police weren't able to give a, a swift clout round the ear-hole when the kids were little. Um, it's since teachers stopped using the cane. Um, it's since there was too many do-gooders out there.
- LIZ: Uh-hmm, okay, and what do you mean by do-gooder?
- ANGIE (IV5): Well, it's, I don't know, it's just that there's so many people, um, who, [pause] anything that you do is wrong. It's, [pause] it's not right for a policeman, uh, to bat a young lad's ears, it's not right for a man to protect his home from a burglar. He gets, he gets done if he hurts the burglar, um, teachers can't throw blackboard rubbers at kids anymore because they'll, they'll get hauled up in court for abuse or whatever. There's just, it ... it's crazy, absolutely crazy. Um, people fall over a curb in the street and they can sue. My mother would have made a fortune off me when I was little if that was the case, because I was never on my feet. And it's just this, just everything's gone absolutely crazy. You know, you cannot smack your kids, um.

In her view, within the criminal justice system, the police are let down by the courts, and in turn the courts' hands are tied by human rights legislation:

- ANGIE (IV5): I think the courts' hands are tied... because of, um, [pause] people who view human rights of the criminal more than human rights of the victims.
- LIZ: Uh-hmm, who are these people?
- ANGIE (IV5): I don't know. I wish I knew. There's, I mean, there's a lot of politicians out there, um, who, uh, you know who I mean... There was ... the one on the side of Myra Hindley, and, tsk, I can't remember his name, [pause] but it was like, why would you want to represent somebody like that, for what she's done? Why on earth would you want to represent somebody like that? Why would you want to fight for that person to get out of prison?
- ...
- ANGIE (IV5): I just do feel their hands are tied sometimes.
- LIZ: Uh-hmm, okay, who do you hold responsible then for tying their hands?

- ANGIE (IV5): I don't know. I just, just... [pause] I don't know, it's just a lot of people out there. Maybe it's the, [pause] the people who don't have any respect for any sort of systems and they're the ones saying, well, no, you shouldn't be putting that person away for that long. [pause] You know.
- LIZ: Okay.
- ANGIE (IV5): Human rights campaigners, I suppose. But I just think the focus on the human rights are on the wrong people.

This quotation from Angie (IV5) reveals the slightly unformed nature of her views. She has a sense that something is not right, but she is slightly tentative about providing an explanation as to why this might be. The prefixing of her statement about the hands of the criminal justice system being tied with the words 'I just do feel' is slightly defensive, suggesting that she is uncertain about the validity of her view. Then, in response to my questions about who is responsible for 'tying the hands' of criminal justice officials, she states 'I don't know' several times. Even when she does attempt to answer the question she begins with 'maybe...' and then, after assigning blame to 'human rights campaigners', she says 'I suppose'.

I point out these details of Angie (IV5)'s expression not in order to undermine her account, but rather to illustrate the difficulty which the participants often experienced in identifying the specific individuals that they held responsible for the undesirable trends which they had identified in society. However, despite these difficulties, many accounts contained a common strand which invoked the notion of what Bert (IV14) referred to as an 'elite system' coming up with 'crazy ideas', and taking 'no notice of what the public have to say'. The defining characteristics of the 'them' group, then, are not the exact professional positions occupied by its members, but rather their perceived ability to shape criminal justice policy and practice and their remoteness from the concerns, values and opinions of the 'ordinary' people.

### **6.3 Knowing about crime and justice**

In the previous section I suggested that participants in the confidence research showed a tendency to talk in terms of 'us' and 'them' when giving their opinions on

the criminal justice system. Most participants sought for their own views to be seen as representing views held by a wider 'us', thus (implicitly) acknowledging the importance of consensus and constructing a loosely defined grouping of the 'ordinary' people. This grouping tended to be seen as distinct from the people able to exert their influence over criminal justice policy and practice, who were frequently constructed as remote from the concerns, values and opinions of the 'ordinary' people. In this section I consider how these groups are further constructed through reference to their capacity to 'know' about, and take steps to address, the 'reality' of crime and justice.

### **6.3.1 Proximity: being 'actually in and around it'<sup>93</sup>**

Most participants suggested that ordinary people had the potential to have a much clearer understanding of crime than some of the professionals working within the criminal justice system (especially sentencers), as it is ordinary people who often must live in close proximity to the reality of crime. Ordinary people were thus referred to as 'the people on the ground' (Judy, FG5) and 'the people who are actually in and around it' (Niall, IV6). As Bert (IV14) argued:

BERT (IV14):                    It's the public that are affected. Lots of people in the block I live in, there's about 200 flats, all elderly, they're all scared to go out at night. I never leave the house after 6 in the evening.

Of all of the participants in the qualitative research, Bert (IV14)'s daily experience appeared to be the most badly affected by crime and anti-social behaviour.

LIZ:                                    Tell me a bit about living in the area you live in 'cause it sounds like that has an effect on your view.

BERT (IV14):                    It is, it's always been a bad area in the Southside, there's a great transient population of students, an enormous amount of students from all over the world, in addition with lots of refugees and would be asylum seekers, from Africa, some from Russia, from Chechnya, they're all having an effect, forming little ghettos. A lot of them are causing a lot of trouble - robberies, pick pockets, prostitutes - it's all happening in Southside. But the main problem is drugs, the only three pubs in the area are all well known drug dealing pubs, and drug using pubs, and the managers say nothing. If you say anything

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<sup>93</sup> Niall (IV6)

you're asked to leave, if you complain about drug users in the gents' toilet you're asked to leave and threatened with a damn good hiding if you don't or if you say anything to anybody. "We know where you live, you'd better keep your mouth shut" that's a comment that people will hear.

LIZ: Is that something that's happened to you?

BERT (IV14): I've been threatened several times, I've had drinks thrown over me because I've walked into one pub in particular, I've gone into the gents toilets for a genuine reason and somebody's there sniffing cocaine or injecting something into their arms and I've looked shocked at them, because to me it always is a shock to see them doing it as as openly, not going into cubicles just doing it openly by the wash basin and its "keep your mouth shut or else", if you say anything to the manager it's "as long as they're not injecting, as long as they're not doing it in the bar, there's not much I can say, if I said it they'd smash the bar up". The drug addicts and the drug dealers are controlling the Southside. The Southside has always been like that, a hotbed of criminals. ... I know several houses in my area where you can buy drugs quite openly.

Bert (IV14) told me that due to the position of his flat he was able to observe goings-on in the streets outside:

BERT (IV14): Where I live is a good vantage point. I look directly out of my window and see two of the pubs. Every night they're fighting and rowdy and glasses being smashed, people fighting in the open, and people rang the police and they do nothing. I see a real battle outside the pub regular on a Friday or Saturday, ring the police "oh we'll be there as quick as we can" by the time they come it's all gone, it's all over, regular, three real hell holes the pubs in that area. They seem to be the centre for the criminality and you can go in any day and buy stolen goods, sometimes over the bar, sometimes the bar managers handle it. You go in and the bar manager's 'oh do you want this do you want that' it's all stolen stuff from ships and burglaries, quite a common thing in the Southside as well.

Bert (IV14)'s 'vantage point' ensures that he is acutely aware of criminal and anti-social behaviour taking place in his area. It is this kind of physical proximity to this behaviour, which some participants suggested was the best way of 'knowing' about crime. Bert (IV14) is, as Niall (IV6) would have it, 'actually in and around it'. By contrast, many of the participants suggested that the individuals who shape

criminal justice policy and practice do not have access to such immediate and compelling knowledge. That is they are not 'in touch with reality'.

Not all individuals working within the criminal justice system were considered to be 'out of touch'. Several participants suggested that front-line staff would be in a better position to know about the reality of crime 'because they deal with more criminals and they know more about people out there.' (Abida (IV10)). It was suggested that those at the top of the criminal justice system needed to listen more to these front-line staff:

BRENDA (IV9): I don't think they listen, perhaps, to the people who are on the, um, on the front, you know, on the front line.

By front-line Brenda (IV9) means police officers, but also teachers and social workers. However, Bert (IV14), who does live 'in and around' crime, seems more sceptical about whether even front-line staff, who are aware of the problems, will actually use their knowledge to improve the situation:

BERT (IV14): The police are aware of that and very little's done about it. They know fine well, they know as well as I do that drugs are being dealt in these pubs, and used, and they do nothing about it at all. Never see them anywhere near.

Lorna (IV7) takes a slightly different view, emphasising the necessary link between the public experience of crime and criminal justice system knowledge:

LORNA (IV7): I just feel that it's important if somebody does commit a crime that you do report it, I mean, you know, in terms of statistics, in terms of supporting the amount of police that you need. If people don't report a crime, that's not going to happen, you know, because they don't know how many crimes are happening if you don't tell them that it's happened, you know. How are they going to get more officers on the beat, um? And again, being able to actually target areas where problems are occurring, if they don't know they're occurring there? How are they going to tackle them, you know?

### 6.3.2 Affinity: *'they're up here and we're down there'*<sup>94</sup>

For some respondents, concerns about the criminal justice system being 'out of touch' were about more than the fact that decision-makers do not have regular close proximity to crime. Karen (IV12) said:

KAREN (IV12): I think sometimes you find some of these judges and that, they're not in touch with reality, you know. They wouldn't know what it's like to live on a rough estate and be hounded because you're on your own or vulnerable, you know.

I interviewed Karen (IV12) at her home and my impression of the physical environment in her area was that it would not constitute what she referred to as 'a rough estate'<sup>95</sup>. Karen (IV12) appeared to implicitly acknowledge this as, in the interview she did not say anything to suggest that the environment of a 'rough estate' is something which she herself had experienced recently or in the past, and she explicitly told me that in her daily life she rarely went to places where she felt she had to think about crime. In other words her own experiences did not include the type of reality with which she thought judges should be 'in touch', yet she still expressed concern that they were not 'in touch' with it. She went on to say:

KAREN (IV12): I still sometimes think that some of the judges are out of touch with reality because they've sort of been, um, you know, educated at public schools, wouldn't know what it was to live on a council estate, you know. And I mean, I can remember once, because, you know Gazza, the footballer? One judge hadn't even heard of him, you know. Well, you think, you know, I'm not saying that you could name, should name all the England players, I'm not saying that, you know, and what's a 4-3-3, you know, team. I'm not saying that. But someone as high profile as that you should have heard of them, really.

Here Karen (IV12) has expanded her implicit definition of what it means to be 'in touch' to include familiarity with shared and taken-for-granted cultural reference points. She also hints at a classed aspect of being 'out of touch': being 'educated at

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<sup>94</sup> Brenda (IV9)

<sup>95</sup> Identifying a 'rough estate' is not, of course, an exact science. The area Karen lived in was surrounded by open countryside on the fringe of an affluent suburban area. Her house was situated within a cul-de-sac of large modern detached and semi-detached houses, most of which had block-paved private driveways, garages and every lawn and garden appeared neatly tended. There were no visible signs of vandalism or neglect to the properties or street furniture.

public schools'. It is not simply that judges do not live 'in and around' *crime*, it is also that they lack a shared cultural experience and knowledge with ordinary people.

Sentencers and other influential figures being unaware of the 'reality' of crime in people's day to day lives, was not, it would seem, the only facet of being 'out of touch' which concerned the research participants. Some were also concerned that these individuals were economically and culturally removed from 'ordinary' people, something which limits their ability to connect with people whose lives are very different from their own.

Lorna (IV7) also suggested that this might be the case:

LORNA (IV7): It goes back to this issue of ivory towers, um. And, you know, how much you actually mix with other social classes. So I suppose if you have people like judges they're going to be mixing with their own social classes; they might live in areas where there isn't a lot of crime, um. And, you know, whether they'll actually understand or be involved with people at other levels is debatable I suppose.

Both Karen (IV12) and Lorna (IV7) assume that judges are drawn from a particular social class, that they will have been privately educated, that they are able to purchase homes which are removed from the daily reality of crime, and that they will mix with people from a similar background to themselves<sup>96</sup>. As a result it is suggested that they may lack the capacity to understand the experiences and opinions of people who are 'at other levels'. As Brenda (IV9) commented:

BRENDA (IV9): I think they're up here and we're down there and I don't think they're in contact with real life.

### **6.3.3 Empathy: 'what would they do if it was their own family?'**<sup>97</sup>

The notion that sentencers and the wider 'powers that be' are 'out of touch' also found expression when some participants suggested that aspects of criminal

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<sup>96</sup> This perception has some basis in fact. A survey by the Sutton Trust found that from a sample of 100 high court judges 78% had attended Oxford or Cambridge University and 70% were privately educated. (Sutton Trust, 2009)

<sup>97</sup> Elsie, IV2

justice policy and practice seem to demonstrate a lack of empathy by key decision makers. For example Elsie (IV2) said:

ELSIE (IV2): I sometimes wonder if these judges or whoever, magistrates or whoever it is dishes out their sentence, I wonder what they would do if it was their own family that was affected. Would they be as lenient? I somehow don't think so. ... [they] should just think about how it would affect them if it happened to them.

In this case it seems to Elsie (IV2) that sentencers fail to 'know' how to sentence appropriately because they have not really empathised with those affected by the crime. Some participants talked about using something which we might call empathy (albeit without using this word) when thinking about crime and criminal justice. In other words empathy was a lens through which they viewed crime and justice and their 'knowledge' about crime, the views, opinions and diffuse thoughts which they shared with me in the interviews, were formed within the context of their empathy. Angie (IV5) told me:

ANGIE (IV5): I put myself in the place of the family who it's been, like, committed to, and I think, oh, you know what, if that had happened to, to one of my kids, or to my husband or, one of my friends, and they'd just got that sentence, it'd be like, you know, [pause] not just that'd be horrible, it'd just [pause]... You know, somebody loses their life and the criminal gets like six years.

Angie (IV5) here calls upon her own situation as a mother, wife and friend in order to try and appreciate the impact of crime for individuals affected. Similarly, for Karen (IV12), her capacity for empathy is rooted in her own life experience:

KAREN (IV12): I think, I think when you get to a certain age you just realise what's important and, you know, you know what a loss is like. And, you know, like you lose your parents and I've lost my husband, and [pause], and then to think that someone like who would, you know, stab my children and take them away, it ruins your whole life, doesn't it, you know?

Elsie (IV2), Angie (IV5) and Karen (IV12) are all referring to cases of quite serious crime, where the victim has been seriously injured or killed. However, Karen (IV12) also reflects upon her father's experience of being a victim of burglary whilst on holiday. Whilst he was not physically threatened by this experience, Karen (IV12) told me that after being burgled her father was deeply upset and was



unwilling to go away and leave his house for any length of time. She felt that the fact that burglary could have this kind of impact on the victim was not necessarily recognised in the sentences which offenders received in such cases. A custodial sentence would she thought:

KAREN (IV12):           ... give the victim, ah, respect, in as much to say well, yes, we acknowledge this has been done to you and this is what we're doing to go to some way to, um, show you that we do care.

In other words it would show that the criminal justice system acknowledges the impact of the crime upon the individual victim. Karen (IV12) had heard of the recently introduced Victim Personal Statement<sup>98</sup>. She expressed her support for this innovation because she felt it made knowledge of the impact of the crime upon the victim available to the court. Her support for the Victim Personal Statement may reflect a sense that the availability of such input to the court may be conducive to producing a more empathetic disposition amongst sentencers, thus increasing their capacity to 'know' about crime.

#### **6.3.4 Motivation: 'in it for the money'<sup>99</sup>**

Three ways of knowing, then, were seen as potentially lacking in key criminal justice decision-makers: knowing through daily spatial proximity to crime; knowing through feeling economic and cultural affinity with the people most affected by crime; and knowing through utilising empathy to think about crime. Participants also mentioned a fourth key issue around the knowledge of elites, which is not so much about *how* they know, but rather about what they do with what they know and *why*. This issue was about the perceived motives of criminal justice decision-makers, something which some participants saw as a corrupting influence because it was seen to render knowledge irrelevant.

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<sup>98</sup> The Victim Personal Statement (also called a Victim Impact Statement) provides victims of crime with the opportunity to describe how their experience has affected them in a statement which can be read in court. Contrary to Karen's hopes, however, official guidance states that the content of the statement should not influence any sentence which is passed. See [http://www.cps.gov.uk/legal/v to z/victim focus scheme/](http://www.cps.gov.uk/legal/v%20to%20z/victim_focus_scheme/)

<sup>99</sup> Fred, IV1

Several participants made reference to legal professionals having an insidious influence on justice by pursuing their own professional and financial interests at the expense of justice:

BERT (IV14): Glib lawyers are the ruination of the justice system I think. Glib lawyers getting inflated fees for getting off obvious criminals ... some of them are just as bad as the criminals, taking vast inflated fees and then getting them off when they know they're guilty.

FRED (IV1): The place is full of lawyers and barristers these days but they're just in it for the money a lot of them.

Participants suggested that lawyers did not care whether or not their client was guilty as long as they got paid. However, it was also suggested that the legal profession as a whole was able to exert more influence over criminal justice than elected politicians and the wider public:

LIZ: Do you think the criminal justice system listens to views like yours?

BERT (IV14): Not at all. Too many high falutin' lawyers and ex-judges and all the rest of their own elite system. They listen to themselves they don't listen to the public I think. They take no notice of what the public have to say or think. They take well politicians obviously they listen to politicians, but they listen to their own fraternity more than they listen to the public. They come up with these crazy ideas ...

...

Very occasionally. An extremely good politician but sadly we don't have a majority of extremely good politicians.

LIZ: And do you think the criminal justice system then listens to the politicians?

BERT (IV14): Yes ... .. the politicians and their own fraternity. They're such a tight knit fraternity the legal profession I think any law making decisions are made amongst themselves, with slight attention to what the politicians say.

...

LIZ: So you've said that the Lawyers they're listening to themselves, their own little fraternity?

BERT (IV14): Their own little clubs, their own little fraternity, interpreting the law in the manner that suits them.

The idea of an 'elite system' which has its own little 'fraternity' again invokes the idea explored above of a separate group, a 'them' who inhabit separate social circles ('clubs') and who are lacking in the capacity to understand the experience of 'ordinary' people. However what Bert (IV14) says here goes further than this, alluding not merely to a lack of capacity, but also to a lack of will to understand, and a preference for preserving privilege and pursuing one's own interests.

The charge of self-interest was also applied by participants to the way in which statistics are used by politicians and criminal justice agencies. For example, Lorna (IV7) said:

LORNA (IV7): At the end of the day you can always change statistics to suit, you know, to say exactly what you want them to say. Um, people move goalposts; you know, the government will move goalposts so that they will actually determine one thing. But if that doesn't suit they can change it, so that it actually meets another criteria [sic]. And that's with any branch of society. So I think statistics themselves, it's too easy to corrupt them. So I wouldn't necessarily believe statistics I don't think.

This scepticism about the neutrality of statistics is also clear in the following focus group exchange:

MALCOLM (FG2): If the Government want you to concentrate on knife crime they will come up with the statistics that says there has been a dramatic erm percentage change in the number of knife crimes that took place. ... The SATs for instance this year being totally, totally corrupt because of a marking problem or a payment problem for marking and so on. So somebody's done something. But what they're saying is there's been a 1% change, an increase in reading abilities of 11 year olds or something like that. 1% - what was that the figure of?

ERIC (FG2): It's just another lie

ROSEMARY (FG2): Ahuh.

MALCOLM (FG2): [Laughing] It's how the information is portrayed to the public.

ERIC (FG2): It's all spin, it's got nothing to do with facts.

ROSEMARY (FG2): It is. It's all spin.

The police, sometimes seen as more trusted than other parts of the criminal justice system, are also under suspicion in this regard:

NIALL (IV6): ... when um when the actual police give their statements about their figures and stuff I sometimes feel they're sort of doctored to cover over the cracks and basically make things look a bit more rosier than what they what they are, you know trying to meet targets and stuff like that where people just want the truth basically.

ROSEMARY (FG2): It's the Chief Constable ... he produces figures to suit himself, he's going to do this, that and the other. It's all just you know like any Chief Constable, he just wants to make himself feel important. Just like the Prime Minister or anybody in authority.

These comments suggest that respondents did not have a great deal of trust in authority figures, be they judges, politicians or chief constables, to pursue the public interest before their own. For example, Mavis (FG1) argued that 'politicians will do anything that it takes to keep the constituent happy'. This statement could be interpreted in a positive sense, as meaning that politicians try their best to serve the people who have elected them. However, the tone and context of Mavis (FG1)'s comment suggest that, in her view, such a stance by politicians is not something to be admired. Keeping constituents 'happy' was also referred to as 'pacifying' them, a word which suggests manipulative rather than benevolent intentions.

Being 'political' appeared to be interpreted by many of the participants as behaving in a self-interested and calculating, rather than a democratic or authentic, manner. Perhaps unsurprisingly then the participants did not seem to see 'politics' as a way in which 'the people on the ground' could have their views heard on crime and justice issues. For example, Anne (FG5) said 'the chief constables are sort of all political now as well ... because of their own ambitions' (Anne, FG5). The dubious motives ascribed to criminal justice elites by the participants were seen as further corrupting their already inadequate ways of knowing about the experiences, concerns, values and experiences of 'us', the 'ordinary' people.

## 6.4 Difficulties with getting 'in touch'

In the two previous sections I have presented what participants said as a relatively harmonious discourse within which people are divided into an 'us' (ordinary people) and a 'them' (the 'powers that be') and short-comings in the knowledge and actions of 'them' are attributed to their lack of proximity to the 'reality' of crime; their economic and cultural distance from 'ordinary' people; their failure to utilise empathy as a way of knowing and the dubious motivations for their actions. But of course the data from the interviews and focus groups also contained some notes which were at odds with this discourse. Participants did not give coherent, unambiguous, non-contradictory accounts of themselves. Nor did they always seem to think that, as 'ordinary' members of the public, they, or others, necessarily had access to a privileged level of knowledge about crime. Furthermore they were aware of both the diversity of public views and the inherent difficulties in accessing such views. In this section I explore these issues and reflect upon what they might mean to the analysis I have presented above.

### 6.4.1 *Doubt: 'I could be right, I could be wrong'*<sup>100</sup>

Participants oscillated between certainty and apparent self-doubt in the expression of their opinions. It would be easy to ignore the indications of self-doubt, and indeed when doing the kind of organising and summarising style of research which I referred to in the Introduction to this chapter, the temptation may well be to do so, and to focus on the use of clear opinion statements. However consider the following view expressed by Harriet (IV3):

HARRIET (IV3):                   ... in those days I'm sure there was far less chance of being molested or assaulted, um, compared with today .. unless it's just that the media.. er.. we have much more access to the media so we'll hear about all the nasty bits much more. I'm sure everything did go on just the same years ago.

In this short extract Harriet (IV3) goes from being 'sure' that one thing is the case, to being 'sure' that the opposite is the case, in the space of 55 words. Her view,

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<sup>100</sup> Karen (IV12)

then, is worked out in the process of speaking. You can almost hear the cogs turning as she pauses, and then says 'unless it's just that the media' and then pauses again, 'er', then she finishes more quickly and with renewed confidence 'we have much more access to the media so we'll hear about all the nasty bits much more', reaching a conclusion which directly contradicts her initial position.

In the above example Harriet (IV3) has talked herself out of her previously expressed opinion, revealing her willingness to revise her own view in the light of more information and also (albeit implicitly) acknowledging the rather contingent and unstable nature of her own expressed views. Whilst many statements made by the participants in the interviews and focus groups did suggest that they, in Louise Casey's recent words 'know what they want on crime and justice' (Casey, 2008: 3), there were also many (perhaps many more) statements which contained indications of the shifting and situated nature of their opinions, their willingness to be persuaded to hold other views, and their sense of some of the shortcomings of their own knowledge about crime.

As Lorna (IV7) says, when referring to the information which is available in the media:

LORNA (IV7): ... you've got to have a little bit of, you know, treat things with a little bit of a pinch of salt occasionally. But it's very difficult to find out what the truth of the matter is, because you don't have access to finding out what the truth is.'

Lorna (IV7)'s sense of the inadequacies of media-communicated information about crime and justice was shared by many of the other participants, for example:

JUNE (IV8): Bearing in mind that all I've got to go on is, er, television, newspapers, documentaries, things like that.

BRENDA (IV9): ... it's only what I read in the papers, and I know you shouldn't believe everything you read but...

KAREN (IV12): I mean I only know from what I read in the paper and the media. And they're going to sort of highlight the sensational.

In these statements the use of the words 'only' and 'all' indicate the participants' sense that there exist some other methods of accessing 'truth', to which they are

not party and which it might be preferable for them to use. One of these is the experience of close daily proximity to crime discussed in the previous section. However, participants also acknowledged that there may be some less immediate but no less valid sources of information which it would be useful to consult. For example, Niall (IV6) said:

NIALL (IV6): I would like to see some stats to see how many reoffend 'cause I've watched programmes and stuff and they seem to, as soon as they get out they're always gonna reoffend, it's just gonna be a matter of time so...

Here Niall (IV6) alludes to a potential tension between what 'seems' to be the case, based on the TV programmes he has watched, and the 'stats' which will, it is implied, reveal the truth of the matter. Karen (IV12) also referred to this tension:

KAREN (IV12): I don't know enough about it. You know, probably all behind the scenes you've probably got good people sort of... But then probably again, [pause] because it's not maybe high profile maybe enough, it's not being funded adequately, I don't know, you know, because all of these resources take money.

LIZ: When you say it's not high profile do you mean, um, ...

KAREN (IV12): Um, you don't know, you don't know really what's going on behind the scenes. You only know what you read in the paper, don't you?

But it was not just their lack of access to reliable information which concerned participants. They also expressed uncertainty about how their own personal perspective might be affecting their views. For example, Abida (IV10) speculated about why she held the view that crime was getting worse:

ABIDA (IV10): ... perhaps when we were younger, I mean maybe we didn't know as much about crime; maybe that's what it is. Um, but we just never used to... Just when we were a bit younger, say, I never used to hear as much crime. Or maybe I wasn't that interested in crime, I don't know. But it is just now maybe I'm interested.

She concludes that it might just be that as she has got older she has become more interested in crime, and thus more aware.

Meanwhile, Karen (IV12) identified going to observe proceedings in court as a possible way for her to get better information about the criminal justice system, but worried that 'I probably won't understand what's going on and probably nine

times out of ten it would be boring because you've got certain procedures.' She went on to express an opinion which she then immediately qualified:

KAREN (IV12): ... sometimes I think an eye for an eye. I don't mean in the form of taking them away but, um, but a life custodial sentence is what is appropriate, and maybe it might stop people. You've got to give it a try, haven't you, because nothing seems to be working at the moment, does it? You know, um, I could be right I could be wrong.

If we chose to ignore key aspects of this statement in order to extract a clear and unambiguous opinion statement we could just say that Karen (IV12) favours a whole life tariff for convicted killers. However what this excerpt also clearly shows is the level of doubt which Karen (IV12) has about the opinion she expresses.

Firstly she indicates that the opinion she expresses is a temporary thing: 'sometimes I think'. Then she makes an implicit rhetorical appeal to her interviewer to validate her own view: 'nothing seems to be working at the moment, does it?' Finally she acknowledges that she 'could be wrong'.

Participants' awareness of the contingent, situated and temporary nature of expressed opinions is also well-illustrated by the following excerpt:

HARRIET (IV3): ... I said in a moment of despair the other day about how in the sort of Arab countries, you know, for people that steal they chop off their fingers. Well [laughs] me friend says "you can't do that!" and I said "well no I know you can't but.." [laughs] but maybe that just highlighted the sort of, er, the extreme feelings I had at the time.

LIZ: Was that any particular thing that had provoked you to say that?

HARRIET (IV3): I can't remember, I can't remember what we were talking about. It probably was something that we'd read in the paper [pause] oh it was to do with a dog [laughs] that's terrible isn't it I think more of animals than I do about people well.. ... I was reading about this guy who had killed his dog with a screwdriver, it was in the paper, we were talking about that, and, I'll not tell you where I would push the screwdriver [laughs]. ... so I was in a heightened state because, I mean, that was.. he'd obviously got mental health problems or something you know, ... I mean I appreciate that but it was absolutely horrendous the suffering of this dog and I do, I do get quite angry when I hear about cruelty to animals. I'm.. probably because I'm an animal lover um ... so maybe my feelings were heightened. And then we just started talking about, you know, the way crime is, sometimes in



this country. And I think I said, “you know they should do what they do in Arabia, chop their hands off”.

LIZ: But you didn’t really mean it?

HARRIET (IV3): No [Laughs] I’m sure I didn’t no no no it was dreadful really but you do say things on the spur of the moment.

Here Harriet (IV3) describes the ephemeral nature of opinions expressed on the basis of strong emotions. Her love of animals and her horror at the cruelty inflicted on a dog by its owner led her to make a statement which had appalled her friend and which she subsequently acknowledged to have been said ‘on the spur of the moment’ based upon her ‘heightened’ emotion.

A small minority of participants also questioned the reliability of other members of ‘Joe public’s’ opinions, occasionally appearing to position themselves outside of this group altogether. For example, Mavis (FG1) argued, in focus group one, that: ‘people definitely think that they are less safe on the streets than in reality’, something which the other participants in that group, after some discussion, appeared to concur with. Whilst in focus group five, Mavis (FG1) bemoaned the insidious influence of the ‘hang em and flog em brigade’. Gavin (IV4), meanwhile, said that he often heard people argue that the criminal justice system should reintroduce severe corporal punishments, something which he argued against:

GAVIN (IV4): Well, I think, you have to work out what is a good and not so good idea. Um, a lot of people would instantly jump to, um, more severe punishments than what is appropriate, go back to the old times and have people whipped and cut people’s hands off, and things like that ... I think that is harsh, it’s extreme. We see that in other countries. And, other countries, yes, they have harsh punishments like that, but they also have less, um, structure.

LIZ: So, I mean, do you come across people who have those harsher views than you?

GAVIN (IV4): Absolutely, you hear them all the time, everywhere, yeah.

LIZ: Okay, is that any particular people who have that view often?

GAVIN (IV4): Um, it tends to be people who have had crimes committed against them, or their families, things like that. Um, or, obviously, the stigma with, um, [pause] sort of where a child or a family are injured, um, things

like that; that tends to make people more aggressive than ... a motoring offence.

LIZ: Mm-hm, okay, and why, why do you not share the views about bringing back those particularly harsh punishments.

GAVIN (IV4): Because, I think, that's, um, times of old, I think, you know, times move on, times change, I think, people are changing. It comes with evolution, it comes with, um, [pause] new times, new ages, new technologies.

#### **6.4.2 Diversity: 'I know a lot of people would disagree'<sup>101</sup>**

Despite their concern that the criminal justice system needed to be more 'in touch' with the views of the public, many of the participants were also cognisant that, in light of the heterogeneous character of public views, this might be difficult to achieve. As noted above, older participants recognised that their views may be typical only of their own age group, thus implicitly acknowledging that younger people may hold different views from their own, as Fred (IV1) said: 'I'm almost 93 you see so you're getting a really old man's views'. Fred (IV1) said he thought his views were typical of 'the older generation', something which he differentiated from 'generations growing up now that know nothing about war'. He suggested that his generation's experiences during the second world war had 'moved' them: 'we were quite prepared to settle down when we came back, all we wanted was a decent home ... we were quite happy to obey the law.'

The impact of life experiences and also upbringing on opinions about crime and justice was also acknowledged by Harriet (IV3), who said:

HARRIET (IV3): Well I suppose I'm from the old school and being brought up to sort of an eye for an eye sort of syndrome right ... I know a lot of people would disagree but it's what I think anyway.

Here Harriet (IV3) explicitly acknowledges that 'a lot of people would disagree', indicating her awareness that views on crime and justice are diverse and affected by a person's personal background.

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<sup>101</sup> Harriet (IV3)

Other participants recognised that people living in different places may have different experiences of the crime problem which might shape their views:

JUNE (IV8): ... if you talk to the people who live down Astonside and Grandbury and hear about their problems, up here we have nothing to complain about

JULIAN (FG1): I mean there are certain spots where it is slightly different but I think in general we are very lucky where we live. It's not like other cities - Astonside, Wroughton, Everfield.

Lorna (IV7) suggested that these different experiences of crime in different areas create difficulties in terms of the fair allocation of resources:

LORNA (IV7): It comes down to budgeting at the end of the day, and what's most appropriate. And I think you're going to police areas where you know there are higher crime populations. But that doesn't really help people who are in the low crime populations who are still experiencing problems, you know. Because they think well, we've moved to a nice area and we're being penalised because we don't get the support because we've moved to a nice area, you know. Whereas if you're in a Council estate and I know that sounds, you know, prejudiced. But if you're in a Council estate where there are a lot of problems, you would expect that you're going to have a higher police presence. Which is obvious, but it's not helping everybody as well, do you see what I mean?

The examples above illustrate that participants sensed that having a criminal justice system which is literally 'in touch' with 'ordinary' people, as in aware of their needs and demands, is always going to be challenging in a society where people have diverse experiences and views. As Fred (IV1) commented:

FRED (IV1): You probably wouldn't agree with a set of laws that I drew up. And so it goes on. It's a very very difficult problem but all you can hope to do is strike a happy medium that satisfies most people.

Fred (IV1) recognised the difficulty of the criminal justice system being 'in touch' with what he referred to as 'the mass majority' which he felt should influence the level of punishment:

FRED (IV1): This mass that I'm talking about they don't write to newspapers, and when they go down to the pub and talk at night and have a drink they'll say "oh that's fixed it" and that's it you see. They'll walk away. It's a very difficult matter to get the opinion of them.

Fred (IV1) feared that instead of the views of this silent 'hard core... the main body of the people' being heard, instead it was 'the wilder outer elements of society... the outer circle' which would be influential. He professed himself uncertain as to how this could be addressed any differently than under the current system of representative democracy. He said:

FRED (IV1):                   How? How can I get it across? I mean my views are well known, the views of my friends are well known, you know. But, er, when we vote I suppose we vote for the candidate which is going to fulfil our views. I cannot see how else you can do it you see. It's no good going round asking individuals and that sort of thing.

...

When do you get the chance to speak to your MP? You don't. You can write to him. You'll probably get a nice civil note back from his secretary, you know.

...

I don't know if public meetings are the answer either...who goes to public meetings?

Although he notes the limited opportunities available to the 'mass majority' to make their views heard, Fred (IV1) seems sceptical as to whether increasing this opportunity through the mechanism of 'public meetings' would actually improve matters in this regard. A similar point was also made by Harriet (IV3) when I asked her if she thought that the criminal justice system listened to views like hers:

HARRIET (IV3):               I don't really know, I don't know, I would hope they do, I would hope they do, um I mean there has, to my knowledge anyway, until I read.. I can't even remember how I got in touch with you, how I got involved there must have been something?

LIZ:                               I sent you a questionnaire

HARRIET (IV3):               Oh was that what it right ... but I can't up to this point in time think of any forum where, apart from screaming and shouting from the rafters when I was working - I used to bawl into the copshop [laughs] and they would say "are you sure you're a social worker?" I'd say "yes, yes - look at this" holding on to a twelve year old's scruff of the neck [laughs] no but no I didn't think there was any such forum to be heard you know with the criminal justice, I mean people, you know, Oh we're wonderful at moaning aren't we I mean sort of [noise to indicate moaning on] [laughs] and not sort of doing anything about it, is this one of the traits of being English? I don't know. But I really haven't really

thought about it, honestly. So that's.. I'm at fault there aren't I?

Here Harriet (IV3) makes a joke about the English being 'wonderful at moaning', nonetheless when I ask her if she would like her views to be listened to she replied:

HARRIET (IV3): Um ... yes yes... um ... whether it would do any good I don't know. I mean it is such a big organisation isn't it? Massive. I mean it is it is good that they're speaking to each other, all these little bits of it um I mean communication's a wonderful thing but yes I think they should be able to hear and if your research is gonna help towards that well that's all to the good.

Again though she seems quite unclear about how this might be achieved, other than by giving her views to me. Elsie (IV2) suggested that views on criminal justice were only likely to be heard if 'there was quite a few of us together'. She did have an idea as to how the system might be made more in touch, suggesting:

ELSIE (IV2): I think there'd have to be some kind of a committee, the word's not committee that I'm thinking of, there'd have to be some kind of a gathering and it would take a lot of doing I think and you'd have to listen to everybody's point of view in this group. If you took more than one group then it would depend on comparing notes with the groups as to how they would if you had enough to er um do something about it then they might listen but after that I can't see.

But as she says 'it would take a lot of doing', and it is hard for her to really imagine how such a committee might translate into influence. When I asked Angie (IV5) who she would ask to make the changes which she had told me she thought were necessary to make the criminal justice system more satisfactory she said:

ANGIE (IV5): Oh, God, [pause] well, it would have to be the Prime Minister, I suppose, wouldn't it? [pause] But how do you get in touch with him? [chuckles] [pause] And then it'd be the politicians.

As noted above, most of the participants did not see the existing political process as a way in which their views could be heard, and many of them expressed a distrust of politicians and the idea of politics. When I asked the participants in focus group five who central government listens to Anne (FG5) suggested, to laughter, that they only listen 'to each other'. Steve (FG5) then suggested that 'they let the media dictate what's important', to which Anne (FG5) added:

ANNE (FG5): Well there's a big thing about knife crime now, but that's actually been ongoing for about 8 or 9 or 10 years, but again because the media have pushed it to the fore, all the chief constables have jumped on the band wagon. I think it is the media as well, they have a knee jerk reaction to whatever is popular at the moment.

The idea of a 'knee-jerk reaction' seemed to resonate with Judy (FG5) who added that when Michael Howard was Home Secretary he had reformed Probation services in a way without 'rhyme or reason' in order to placate the 'hang'em and flog 'em brigade'. She added:

JUDY (FG5): He had his own opinions and his own agenda. Politics shouldn't come into this, they should actually listen to the people on the ground. The people are very unhappy in this country.

Similarly, in focus group three, Ursula (FG3) referred to politicians 'all they're interested in is getting in and having their own self importance but they don't actually do anything for the country'.

In the face of the diversity, and potential unreliability of public perceptions and opinions, as well as the untrustworthy nature of politicians, Gavin (IV4) proposes a different approach entirely:

GAVIN (IV4): I think, it's a case of, um, what works and what doesn't work, what makes more of a deterrent, what makes a course of action? I think, there needs to be a constant look out of, a monitoring of what works and what doesn't work, when things start to break down is it because of the individual, is it because the kind of crime or is it because of the punishment?

The idea that some kind of monitoring of 'what works' should be used to help shape policy was expressed by several other participants, including Karen (IV12):

LIZ: Okay. So, when they're making these changes, um, who should they listen to in determining what they, how they change it?

KAREN (IV12): Well, I think someone who has more of a grasp than I do, obviously... There should be more statistics to say maybe this is an idea, you know. To see, like everyone who has committed a knife crime, you know ... demographically ... Because I think age, the younger you get, I think you tend to be a bit more violent because you've got a bit more, few more hormones raging round. Um, you know, and do that, and the court, and

how long they were sentenced and if they repeat, and you hear on the news that all, they come out, I don't know how many percent repeat, but it, it's quite a high percentage. So obviously, nothing's been done. So, you've got to say well, we've got this, and this is a fact. Now, if we put him in jail for another four years and help him, will he re-offend? Because it will be worth keeping him in there rather than him going in and out like a yo-yo, you know. So, that is, they, they need to look at the statistical data, you know, facts not, not... And, and listen to people as well but I think they should, the facts would speak for themselves because [pause] they're non-negotiable, really

...

And so maybe, I think that's what should do, I think they should look at the statistical ... data and see what's happening

The idea that the doubts and diversity which seem to be inherent aspects of public views on crime and justice should be dealt with by discounting those views in favour of a scientific, factual, statistical monitoring of 'what works' might be music to the ears of some criminologists and criminal justice professionals, however this idea formed only a small aspect of a discourse which was far more concerned about the inadequate ways of knowing and dubious motivations of criminal justice elites. Though they might, at times, recognise the frequently contingent and temporary nature of their own opinions, and though they might find it difficult to imagine a way in which their diversity could be captured and heard, the participants were still eager to give voice to their views, and many expressed their hope that by taking part in the research those voices would be heard.

## **6.5 Conclusion: an alternative reading of public confidence data**

Data from a piece of research carried out under the auspices of the public confidence agenda reveal the extent to which members of the public are cognisant of and value the need for policy to reflect the 'will of the people'. The data also reveal public frustration that this is not the case, and that professional elites who are 'out of touch' with reality are making policy without duly consulting the people. The data suggest that these elites are seen as frequently being culturally, economically and spatially distant from ordinary members of the public, and that both their ways of knowing and their motives are viewed with suspicion.

The remedy which is most frequently proposed for low public confidence is the provision of information and public education, but such an approach ignores apparently extensive public mistrust of their potential 'educators', and their belief that these elites often seek to manipulate them for their own ends. This mistrust appears to stem from public appraisals of the extent to which elites are culturally, economically and spatially removed from 'ordinary' people. The perceived ability of elites to insulate themselves from the impact of crime, and their perceived inability (or unwillingness) to empathise with crime victims, makes their knowledge-base suspect in the eyes of the public. Interestingly, this suspicion appears almost like a mirror to the expert's frustration with what they perceive as inadequate public knowledge about the 'reality' of crime.

The analysis suggests that much of the public's mistrust of criminal justice elites may stem from their perceptions of social and economic divisions, and from a sense of alienation from democratic institutions. Existing research into public confidence may have exacerbated this situation by locating the key to confidence in educating and informing members of the public, thus increasing the extent to which the criminal justice system 'markets' itself, circulating materials which members of the public perceive as manipulative. In effect the dominant discourse of confidence has rendered it a private problem, a matter of individuals holding misconceptions, rather than understanding that it may be a public issue, located in the structural matter of the relationship between elites and 'ordinary' people.

In the next and final chapter of this thesis I bring together this analysis of public discourses on confidence with the analysis of the dominant discourse of the confidence agenda from Chapter Four, and the analysis of the emergence of the public confidence agenda in Chapter Five, and consider them in light of the recent literature dealing with the notion of a public criminology.



## Chapter 7. Conclusion

'no topic in the social sciences is its own automatic justification. Rather it is up to us to establish its relevance and interest – its little contribution to the self-understandings of our time and perhaps to the democratic deliberation of questions that trouble and vex us' (Girling *et al*, 2000: 2)

### 7.1 Starting point: 'A troubling situation'

At the start of this thesis I set out some questions about what I saw as a 'troubling situation'. Why is a concept as poorly defined as public confidence apparently so central to criminal justice and penal policy? Why are some criminologists engaging with the concept of public confidence (and similar concepts) in a relatively uncritical fashion? What are the linkages between the increasing prominence of the notion of 'public confidence' and apparent increases in punitiveness? What does all this mean for criminology, criminal justice and confidence?

In pursuit of answers to these questions I embarked on an investigation of the public confidence 'agenda', exploring the way the idea of 'public confidence in the criminal justice system' had been constructed in discourse, and identifying its conditions of existence as an object for research. I was interested in addressing the questions which Flyvbjerg (2001) has proposed as the basis for *phronetic* social scientific inquiry (see Chapter Three): Where are we going? Is this desirable? Why/why not? Who gains and who loses? By which mechanisms of power?

In the process of conducting this investigation I realised that what really interested me was the more general issue of criminology's role within the democratic public sphere. This topic has attracted increasing attention from academic criminologists in recent years however, upon reviewing the available literature I found that it did not contain a satisfactory way of dealing with the plurality of criminological knowledges and the role played by values in their production (See Chapter Two). My objectives for the thesis thus expanded to include that of identifying more

fruitful ways of thinking about the public role of criminology than were already available. In this context the public confidence research and policy agenda has functioned as an illuminating case study.

In this final chapter of the thesis I use the findings from the public confidence case study to discuss the much wider issue of criminology's public role. I begin by summarising the key findings from my analysis of the public confidence agenda. I then provide some additional analysis by reading my analysis of the public confidence agenda *against* the review of the public criminology literature and its roots in the wider literature mapping the criminal justice landscape. I argue that criminology's wider struggles for recognition and influence can be seen condensed within the public confidence research, and that the public confidence agenda can be seen as having a double epistemic objective: firstly to provide epistemic knowledge about public confidence and secondly to promote a vision of criminology as *episteme*.

I go on to suggest that the epistemic pretensions of the dominant discourse of public confidence can be understood as an attempt to dominate the knowledge arena, using *episteme* as a 'mechanism of power'. In the face of this dominance strategy the ontological splinters generated by alternative (qualitative and deliberative) approaches to understanding how the public think/feel have not been able to mount any effective resistance. This is because they themselves remain wedded to epistemology as a legitimising technique, and thus remain exposed to the claims from the dominant discourse of public confidence that they can only provide unrepresentative, partial or artificial data. By taking the epistemological bait the ontological splinters cannot mount any effective resistance to the dominant discourse. I then argue that the literature dealing with criminology's public role falls into a similar trap by acknowledging criminological pluralism but failing to deal with the tendency of some forms of knowledge to dominate others, and ignoring the role played by values in the production of criminological knowledge.

I then propose a way forwards. I argue that Loader and Sparks's (2010a) notion of democratic underlabouring, which requires an orientation towards service and

humility on the part of criminologists, is a useful starting point. But I suggest that to become *truly* democratic these underlabourers need to do a number of things, including: (i) resist the de-humanizing effect of making episteme a 'higher authority', even if this is for strategic reasons; (ii) accept that all empirical (or primary) criminology is *techne*; (iii) recognise and acknowledge that reality is not a *fait accompli*, facts are expressions of values, and the role of values in the production of facts is and should be accessible to deliberation; (iv) own their values and take responsibility for their ontological wakes; (v) avoid pathological argument by making their knowledge producing activities more accessible to democratic deliberation and dialogue; (vi) be reflexive and theorise.

In the concluding part of the chapter I argue that there is a case for examining whether criminology *should* continue to exist as a separate field of inquiry. I suggest that this discussion should take place as part of a more general debate about the future of the social sciences. It is crucial that discussion about criminology's public role should begin by considering the contribution which criminological knowledge can make to sustaining democratic ideals. Thus perhaps what is needed is a political philosophy of social science in order to prevent social scientific knowledge from superceding the perceived need for political philosophy.

## **7.2 The public confidence agenda and criminology's public role**

### ***7.2.1 Summary of key findings***

In Chapter Two I argued that recent years have seen criminologists expressing concerns about four features of the criminal justice landscape: (i) the increasingly 'punitive' character of criminal justice policy, which has been widely interpreted as signalling (ii) policymakers' disregard of evidence produced by criminologists in favour of pursuing popularity amongst the wider public, who are seen as (iii) having a poor level of knowledge and understanding of the 'facts' of crime and justice, a shortcoming, which is seen as at least partially attributable to (iv) the impoverished media discourse on crime and justice.

Recognition of some or all of these four features of the criminal justice 'landscape' has encouraged some criminologists to reflect more explicitly upon the nature and achievements of their field. But to understand the criminal justice landscape in these terms - that is to say as punitive, ineffective, irrational, populist, and bedevilled by public ignorance of the 'truth' - is already to imply a particular sense of what criminology's public role should or could be. We might summarise this role as: (i) informing policy so that irrational, ineffective, punitive policies are not enacted; and (ii) educating the public so that policymakers are able to enact humane and evidence-based policy without fear of public opprobrium. In other words the foundations of 'public criminology' were already laid down by the way some criminologists conceptualised, interpreted and described the criminal justice landscape.

The burgeoning literature discussing criminology's public role has tended to deal with the inherently plural, value-dependent and contested character of criminological knowledge in one of three ways: (i) deplore it; (ii) downplay or ignore it; or (iii) acknowledge it then set it aside. In Chapter Two I suggested that where the role of values is denied, downplayed or ducked, and where some criminologists are content to produce one-dimensional knowledge, the end-users of criminological research, whether they are policymakers, journalists, or indeed members of the public, are likely to be exposed to only segments of a much larger criminological whole. The diverse truths which the criminological enterprise is capable of producing are thus effectively obscured, the role of values remains invisible, and, on the uneven playing field of a public sphere distorted by vested interests, certain kinds of knowledge come to dominate: a certain 'politics of truth' is secured. I concluded that if criminologists are serious about reflecting on the appropriate public role for their work then they must find some way of broaching the question of values.

In Chapter Four I described and deconstructed an expanding body of research into the 'drivers' of public confidence which has emerged since the late 1990s, influenced by more general attitudinal research from the 1980s. Over time this body of research has constituted a dominant discourse of public confidence in the

criminal justice system as a real and measurable subjective state or attitude which is *caused by* the cognitive state of knowing (or failing to know) the 'facts' about crime and the criminal justice system.

The dominant discourse has also tended to obscure the value judgement (about how public beliefs and feelings *should* be researched) which underpins the construction and reproduction of this understanding of confidence. In line with this dominant discourse, researchers already know the kinds of 'things' that they are looking for, and the 'procedures of intervention' which they should apply, and they collect, code and interpret data accordingly. The result has been a succession of research projects producing similar findings, to very little practical gain. This agenda has 'costs to existence': it subjects individual citizens to the logic of its method, forcing them to engage with that method in order to become 'visible' and potentially devalues and deflects attention away from other avenues through which the public may 'speak'.

In Chapter Five I identified the conditions which provided the discursive surfaces onto which the idea of public confidence in its dominant contemporary form could emerge. These surfaces include: (i) the modernization of approaches to crime and justice (which increased the physical distance between ordinary people and the institutions of justice); (ii) the expansion and development of statistical techniques for accessing 'reality'; (iii) the introduction of universal adult suffrage attended by the development of mechanisms which purported to measure the popularity of different policy; (iv) the Left Realist movement in criminology (which advocated increased attentiveness to the experiences and perceptions of ordinary members of the public through the use of victimization surveys); and (v) the imposition of 'New Public Management' rationales on the public sector, which forced organizations to be increasingly attentive to the satisfaction of their 'customers'.

These developments combined to make public confidence in its dominant contemporary form 'thinkable' and 'doable', however they did not *cause* the contemporary public confidence agenda to emerge. Rather, a discourse of public confidence became 'hooked into' the criminal justice discourse, first via reactions to the emerging evidence about police corruption in the 1960s and 1970s and

subsequently, once the term became established, as a valuable rhetorical token, deployed by groups competing for influence in an increasingly heated political contest around law and order (a practice I termed 'playing the confidence card'). Through its repeated use the term migrated easily between different textual genres (opinion polls, speeches and comments by politicians and senior practitioners, parliamentary debates, journalists' reports, Home Office and academic research) and was moulded to the needs and issues of the day.

In the late 1980 and early 1990s revelations about miscarriages of justice led to claims that the criminal justice system was facing a crisis of confidence and prompted the appointment of a Royal Commission to address this issue. However before the commission had reported its findings a number of high profile and highly symbolic criminal justice-related events (including incidents of vigilantism and the murder of James Bulger) had taken place against the backdrop of an intensification of the political rhetoric around crime and justice. At this point, the discourse of public confidence was rapidly turned on its head, away from the focus on miscarriages of justice and towards the idea of criminals 'getting away with it', and the need for the criminal justice system to 'get tough'. The confidence research which emerged in England and Wales from the late 1990s onwards appears to have accepted the 'lay concept' of public confidence at face value, and has not done the necessary preparatory work to render it accessible as a real 'thing' (either a psychological or a social 'fact').

From the analysis in Chapters Four and Five I concluded that the idea of public confidence has always been about the distance which opened up in the modern era between between 'expert' and 'lay' ways of knowing about crime and justice. Latterly, as newly applied research techniques allowed researchers to 'measure' public confidence (or so they claimed) those same researchers 'discovered' that low confidence was statistically associated with a failure to accurately appraise the 'reality' of crime and justice in the terms defined by the experts. From this they surmised that poor public knowledge was *causally* related to low public confidence. In other words the features of modernity (the privileging of expert scientific knowledge and the exclusion of the lay public from seeing for

themselves) were clearly implicated in the emergence of the dominant discourse of public confidence. In this light it seems quite unremarkable that the findings from mainstream confidence research have tended to produce repetitive findings about poor public knowledge.

In Chapter Six I argued that data from interviews and focus groups with members of the public suggests that much of the public's mistrust of criminal justice elites may stem from their perceptions of social and economic divisions, and from a sense of alienation from democratic institutions. I suggested that the dominant public confidence agenda may have exacerbated this situation by encouraging attempts to educate and inform members of the public about the 'facts' of crime and justice, thus increasing the extent to which the criminal justice system 'markets' itself, circulating materials which members of the public perceive as manipulative. The data suggest that rather than being (as the dominant discourse appears to suggest) a private problem, a matter of individuals holding misconceptions, public confidence may be better understood as a public issue, located in the structural matter of the relationship between elites and 'ordinary' people.

### ***7.2.2 The two-fold epistemic aspirations of public confidence research***

Garland (1990: 187) has noted that as the public were increasingly excluded from the administration of justice by processes of scientific rationalization and bureaucratization that they became more 'susceptible to misinformation':

Sensational headlines, emotive political appeals, or particularly heinous cases may lead to outbreaks of popular emotion which lack the counterweight of extensive knowledge and moral commitment. In such circumstances, the public is still capable of acting upon penal institutions by means of political pressure, and it may do so to bad effect. (*Ibid*: 187)

He further noted that the professionalization of the administration of punishment was not accompanied by sufficient effort to educate the public, thus creating the situation where the liberal, educated, professionals were in a state of perpetual exasperation with the punitive public and its irrational demands (*Ibid*: 187-8).

This thesis has demonstrated how some of these liberal, educated, professionals have translated their exasperation into action in the form of the creation of bodies of knowledge which focus on: providing explanations for the obstacles encountered on the criminal justice landscape; proposing strategies by which criminology can better negotiate these obstacles; producing empirical data on attitudes which can be used to manipulate those attitudes. Whilst these bodies of knowledge may be presented as intellectual enterprises of a rather different character from one another, there are thematic threads (and often overlaps of personnel) which link them together.

Empirical research into public confidence in the criminal justice system, though it may appear crude compared to the landscape literature and reflections upon criminology's public role, nonetheless can be read as a logical outworking of the themes which run through these more scholarly areas of inquiry. A historical study of the emergence of the contemporary public confidence agenda in research suggests that it can be best understood as having been predicated on the conditions of penal and criminological modernity and animated by a desire to preserve these same conditions. In particular, it can be linked to an 'emphatically modern' understanding of the potential of criminology characterized by 'its faith in instrumental reason, its vision of the technocratic state and its commitment to social progress and social engineering' (Garland and Sparks, 2000: 8).

Criminologists wedded to this modernist framework felt particularly aggrieved that the useful scientific knowledge which they knew criminologists could produce was being ignored in favour of a more populist approach. These concerns have apparently structured the very composition of an area of empirical inquiry which presents itself as a value-free exercise in capturing and explaining a pre-existing, real 'thing'. The case study analysis illustrates how the construction of research problems is contingent upon specific historical conditions, and how power struggles can both frame a research agenda and make it appear politically and socially pertinent.

The establishment of a body of research-based knowledge about 'public confidence in the criminal justice system' breathed the oxygen of scientific integrity into what



had previously functioned in political rhetoric as a fairly empty rhetorical token. Henceforth, due to the existence of a growing 'scientific' body of knowledge about the factors contributing to public confidence, it would be more difficult for just anyone to deploy this token. The rhetorical token thus became an object for research and policy as researchers consciously adopted it as such, and began producing a relevant body of knowledge which could then be used to inform political discussion about 'what the public wants' and to prod criminal justice agencies into devising communications strategies to impart relevant facts about crime and justice to the ignorant public.

A crucial and telling moment as criminologists and other researchers set about bringing into existence the dominant body of knowledge which has shaped the object public confidence was the moment at which a value-based decision (about how to do research on what the public think and feel about the criminal justice system) was described as if it were ontologically mandated. The misrecognition of the nature of this decision helped to construct public confidence as a natural phenomenon and a real object for research. It contributed to a holding-apart of the facts about public confidence from the values which had brought the concept, in that particular form, into existence, and failed to acknowledge that its existence was predicated on particular historical and social conditions.

In this omission the public confidence research agenda accepted these conditions as given, that is to say as natural and beyond critique. But, what is of more interest about this moment, is that it testifies to the public role which criminologists had already implicitly assumed, seeing themselves as custodians of 'truth', helping to shape policymaker and practitioner understandings of what criminological knowledge is, where it comes from and how it should be regarded. By breathing scientific integrity into the idea of public confidence, and defining it as real, criminologists and other researchers reduced a question about values to a matter of method: which method was most appropriate to capture and accurately represent the 'real' phenomenon of public confidence.

It seems clear that confidence research is predicated upon 'epistemic' aspirations (see discussion of Flyvbjerg (2001) in Chapter Three): seeking or claiming to

provide 'scientific' knowledge (which is to say knowledge which is objective, universal and context-independent) about public confidence. This epistemic knowledge is constructed as having instrumental value: knowing the truth about what 'drives' public confidence is seen as key to identifying practical confidence-building interventions. The public confidence agenda thus has a further epistemic aspiration: to govern lay epistemologies by bringing public knowledge and ways of knowing into line with those preferred by experts.

As such the public confidence research agenda is both research which aims to have a public role *and* research which promotes a particular understanding of the public role of expertise (as the provider of value-free 'facts' which, by implication, *should* structure and inform opinion formation amongst members of the public). This dual epistemic role makes the public confidence agenda a particularly interesting case study for thinking about criminology's public role because it illustrates how criminologists' own interests (retaining influence and status for expertise) have become intertwined with the development of a substantial body of research knowledge, which masquerades as value-free.

However, data from interview and focus groups discussions with members of the public indicate that shadowy criminal justice elites and 'do-gooders' are seen as culturally, economically and spatially distant from ordinary members of the public, and that both their ways of knowing and their motives are viewed with suspicion. Existing research into public confidence may have exacerbated this situation by locating the key to confidence in educating and informing members of the public and thus increasing the extent to which the criminal justice system 'markets' itself, circulating materials which members of the public perceive as manipulative. In effect the dominant discourse of confidence has rendered it a private problem, a matter of individuals holding misconceptions, rather than understanding that it could also be read as a public issue, located in the structural matter of the relationship between elites and 'ordinary' people.

So, not only does the dominant discourse of public confidence reflect the interests and self-understandings of modernist criminologists, it also appears blind to the public perception of a democratic deficit rooted in the perceived mismatch

between lay and expert epistemological frameworks, and the unequal socio-economic positions which experts enjoy compared to 'ordinary' folk.

### ***7.2.3 Epistemic pretensions as 'mechanism of power'***

As noted in Chapter Two, in a highly contested 'marketplace of ideas', some criminologists seem to feel that in order for them to be able to attract potential consumers to make use of their wares the criminological field as a whole should not draw attention to the diverse and contradictory nature of its stores of knowledge. According to this account, criminologists cleave to their epistemic aspirations because they fear a loss of influence if their scientific image becomes tarnished. This suggests that effects of power are tacitly understood to be achieved through making claims to objective truth.

Power is thus exercised through statements aligned with the 'ontological illusion' of truth as the accurate representation of an objective reality: objective scientific facts are viewed as the currency of legitimacy in a world oriented to the epistemic. Yet clinging to epistemic aspirations for instrumental ends amounts to a tacit acceptance that no single truth exists, and subordinates any intrinsic value which the idea of a criminological 'truth' may possess to the value which it has as a strategic rhetorical resource. Brandishing epistemic credentials thus seems more like a deliberate attempt to dominate the knowledge arena. Seen in this light, the good ship modernist criminology appears to be listing at a rather precarious angle.

Thinking back to the questions which make up the basis for a *phronetic* inquiry (as listed in Chapter Three these are Where are we going? Is this desirable? Why/why not? Who gains and who loses? By which mechanisms of power?) we can suggest that the mechanism of power at work, glueing in place the dominant survey-based approach to eliciting public preferences, opinions and feedback, is the epistemic illusion which implies that there must be one single authentic set of preferences and opinions, and that the purpose of social research is to use the most appropriate method to accurately capture that already existing reality. This illusion, as described above, is reinforced through the misrepresentation of value-

based decisions about how to produce facts as ontologically mandated necessities, a manoeuvre which subordinates values to the requirements of methods.

In the face of the use of epistemic pretensions as a mechanism of power arguments for using deliberative methods to gain a more nuanced and reflective understanding of public preferences on criminal justice have struggled to gain a foothold. Part of the reason for this appears to be that the proponents of deliberative approaches cannot resist the lure of the epistemic in their accounts of why deliberative methods are preferable. Although the deliberative approach offers a more democratically appealing vision of method, and operates with a much fuller account of the potential and appropriate role of subjects as political agents, under this model reality, represented according to authorized techniques, remains at the apex in a hierarchy of objects, and the existence of objective, value-free facts is not challenged. Thus deliberative methods are proposed as a way of capturing opinions which are a truer reflection of what people *really* think, once they are exposed to (expert-authorized) 'facts' and encouraged to engage in 'rational' discussion and reflection. They are also implied to have the potential to increase public confidence (that measurable, malleable phenomenon), because sustained engagement with the true 'facts' through deliberation is 'known' to be a stimulus to confidence.

Additionally, proponents of deliberative methods cannot offer a convincing account as to how these methods will gain legitimacy in the face of the dominance of more traditional survey methods. This failure means that the advocates of deliberative methods will always struggle to make a case for their style of research to be used more widely under actually existing social and political conditions. Why? Because by presenting itself as a novel social scientific *method* which can be practically applied within *existing* social and political conditions it superimposes a discussion of method over the more important discussion about the merits and demerits of the substantial social transformation which would be required for deliberative methods to gain legitimacy and traction (in the face of the dominance of the alternate reality produced by established quantitative methods). Neither the circumstances of production for expert-produced facts nor the basic organization

of society are up for discussion. The model thus places arbitrary limits around what is to be deliberated. Values are thus, once more, subordinated to methods and the dominance of the epistemic illusion is maintained<sup>102</sup>.

The answer to the phronetic question 'Where are we going?', then, appears to be 'nowhere'. The confidence agenda has incentivised the production of a predictable and repetitive knowledge base with little apparent public benefit, and with significant 'costs to existence'. It is clearly not desirable that criminological efforts have been directed in this manner.

In terms of 'Who benefits?', the dominant 'cognitive deficit model' of public confidence research (see Chapter Four) benefits politicians and the compliant experts who have profited through their contribution to the production of a predictable and repetitive knowledge base. The (futile) championing of deliberative methods, meanwhile, provides an outlet for criminologists who are uncomfortable both with the apparently illiberal and punitive turn in recent penal policy *and* with the charge that opposing it is anti-democratic and elitist. Proposing the use of deliberative methods for eliciting public preferences allows them to refute the latter charge whilst simultaneously upholding a more moderate vision of the privilege of expertise. Deliberative measures are, anyway, extremely unlikely to be adopted on a large scale without significant change to the political system. In both cases the loss is to the public who, whilst subject-ed by the dominant cognitive deficit model experience the 'costs to existence' outlined in Chapter Four, and for whom deliberative methods offer scant hope of change.

The situation illustrated through the analysis of the public confidence agenda, then, militates *against* the notion of *phronesis*. Both the dominant cognitive deficit model and the ontological splinter created by deliberative methods tend to reinforce the notion that the facts of crime and justice can be known in a value-free, context-independent manner, with members of the public being implicitly

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<sup>102</sup> This tendency to stick to the epistemic is present in Habermas's own insistence that people generally exhibit a natural tendency towards conversing with a view to consensus, an insistence which he used to provide an empirical grounding for his argument for the adoption of discourse ethics. It is a shame, in my view, that he felt obliged to cast the veil of science over the value-based nature of his proposals.

dependent on expert representations to access that reality. They also imply that the facts about 'what the public think' about crime and justice can similarly be known in a value-free fashion.

The lack of meaningful challenge to the use of epistemic pretensions as a mechanism of power is also, as discussed in Chapter Two, present in existing discussions about the public role of criminology. Proposals for a public criminology, or for criminology as democratic underlabouring, have tended to avoid dealing with the issues of criminological pluralism, and the value-based nature of criminological facts. However, as I argued in Chapter Three, reflexivity in social research should extend to a consideration of what different types of factual claims, and the values and assumptions underpinning the investigations which allow these claims to be made, imply about, and may do to, the nature of social reality. The very methods of social scientific research, then, ought to be subject to critique on the basis of values. In the next part of this chapter I argue that this principle should be at the core of a criminology which embraces democracy. I also propose some principles and procedures through which this can be achieved.

### **7.3 After Episteme: Proposals for a democratic criminology**

In this part of my thesis I use the theoretical and empirical points raised above to sketch out some proposals for a new way of thinking about criminology's public role. But before I get stuck into this I want to address or, perhaps more specifically, to cut off at the pass, the common criticism levelled at any attempt to outline what can appear as a radical departure from extant approaches to a particular topic. This criticism tends to be organised around the usefully ambiguous notion of plausibility, and takes the form of challenging those who critique the way things are to outline 'realistic' alternative arrangements (whatever realistic may be). Stan Cohen (1992: 111) captures the essence of this technique for deflecting critique extremely well:

'When the establishment demands "alternatives" before contemplating any changes, it knows in advance that it can already lay down the framework for the discussion. The conservative aims remain taken for granted ... and only the means are debated. The demand for alternatives, then, has a conserving effect.'

Real oppositional values because of their nature must be long-term and uncertain. So when opponents are presented with the choice of specifying alternatives, they find it difficult to avoid coming close to the prevailing order in what they suggest (reform) or emphasizing completely different values and thereby being defined away as irresponsible or unrealistic.' (Cohen, 1992: 111)

At the risk of being 'defined away', then, I am going to make some suggestions which may, at first, seem unrealistic. These suggestions are intended to sketch out an idea of how criminologists can deal with the plurality of knowledges produced by their field without resorting to misrepresenting value-based decisions as ontologically mandated and invoking the notion of a value-free, objective criminological truth in order to gain strategic advantage and dominate other forms of knowledge.

I should state at the outset that, like Loader and Sparks (2010a), it is not my intention to tell other criminologists what they should or should not do. Rather I want to advance for consideration what I think is a potentially more fruitful way of thinking about criminology's public role, one which addresses the failure within the existing literature in this area to deal adequately with the issue of extant criminological pluralism in the face of the reality of power. I begin by revisiting the proposals advanced by the authors of the book which I consider to have made the most comprehensive and illuminating contribution to the recent debates about criminology's public role: Loader and Sparks' (2010a) *Public Criminology?* In what follows I will outline a way in which the rather skeletal idea of criminology as democratic underlabouring outlined by Loader and Sparks might have more flesh put upon its bones.

### ***7.3.1 Recovering the democratic under-labourer***

The wisdom of using the rather unwieldy term 'democratic underlabouring' has been questioned by some of Loader and Sparks's critics, but I am not particularly interested in the eloquence (or otherwise) of the terminology. Rather I am interested in the stuff of democratic underlabouring. These are the bones upon which I propose to place some flesh. The backbone of democratic underlabouring is composed of two laudable attitudes in any social scientist: service and humility. However, where Loader and Sparks's vision runs into trouble is, as argued in

Chapter Two, in their lack of engagement with the seriously truncated version of democracy which exists under current political realities.

When one considers extant political realities, the question 'labouring under whom?' springs to mind. A key difficulty is that the value-holding, choice-making public, to whom one might assume Loader and Sparks intend that criminologists, who are humble in the face of democracy, should show due deference, is chronically elusive and, for the most part, its members play only a very limited and infrequent role in the political arena. How, then, can the notion of democratic underlabouring be brought to life under these conditions? How can criminologists be humbly at the public's service?

My proposals for a democratic criminology begin from the premise that the first, and most important, sense in which criminologists can become more humble is by avoiding perpetuating the illusion that the facts they produce are objective, value-free, context-independent truths. I will explain.

Zygmunt Bauman has argued that when modernity is prosecuted diligently human behaviour can be instrumentalized to the extent that 'any aim may be pursued with efficiency and vigour, with or without ideological dedication or moral approval on the part of the pursuers' (Bauman, 1989a: 93 cited by Tester, 2004: 124). This can lead to the 'uncoupling of human being from humanity' as bureaucratic procedures create inhuman social relationships and individuals listen not to their consciences, but to 'the higher authority of the superior' Tester (2004: 125). One 'higher authority' which is at the core of modernist criminology is the illusion of the value-free truth, of criminology as epistemic.

When criminologists purport to be practicing social research as *episteme* they subordinate values to method, creating a 'higher authority' and absenting themselves as humans from the activities which they carry out in the service of this authority. They become Gouldner's (1970: 13) 'moral cretins':

'To limit judgment solely to "autonomous" technical criteria is in effect not only to allow but to require men to be moral cretins in their technical roles. It is to make psychopathic behaviour culturally required in the conduct of scientific roles'.



### 7.3.2 *Empirical criminology as Techne*

Empirical criminological knowledge and indeed, as I argued in Chapter Three, *all* empirical social scientific knowledge (which is to say knowledge of the things which are in the world gained through some application of sensory experience of that world), is socially produced. As such, empirical criminological work seems to be best understood, in line with Flyvbjerg's argument (see Chapter Three), as *Techne*: the production of knowledge in pursuit of a particular goal, according to particular rules of practice, with both goal and rules premised upon particular values.

However, as I have outlined above, some criminologists have tended to claim or imply that their work is epistemic, which is to say a universal, context-independent, value-free method for accessing the truth. This epistemic image can be used to enable certain forms of knowledge to dominate others. The misrecognition of a value-based decision as ontologically mandated can also be understood, then, as a misrecognition of *techne* (a 'pragmatic, variable, context-dependent' form of knowledge which can be critiqued on the basis of values) as *episteme* (a 'universal, invariable, context-independent' form of knowledge which is implicitly immune from value-based critique on the basis that it objectively represents what is real). If we accept that this is a mistake, and redefine empirically-oriented criminological work as *techne* then we open up a space in which *phronesis* (a value-rational critique) can operate.

By acknowledging their empirical, evidence gathering role as an exercise in *techne* rather than *episteme*, and by acknowledging the role of values in structuring *techne*, criminologists would open up a space for phronetic value-rational deliberation about their topics and methods. Method would thus be put *in the service* of values and *phronesis* would precede and overlay *techne*. Rather than values being a matter for discussion and debate only *after* the production of facts, when reality can appear as a *fait accompli*, this approach would ensure that the role that values play *prior to* the production of facts is acknowledged and owned.

This distinction is analogous to the difference between what the public understanding of science (PUS) literature calls ‘downstream’ and ‘upstream’ consultation (Wynne, 2006: 72 cited by Loader and Sparks, 2010a: 53). However, I am not suggesting here that there should be actual public deliberation about the content, focus and methods of every criminological investigation (clearly this would quickly become unworkable). Rather I propose that for criminological work to qualify as truly *democratic* underlabouring (in the sense of it being about service and humility) it should openly acknowledge that its content, focus and methods are *suitable for deliberation* on the basis of values, and that there is no single pre-existing reality which dictates what criminological research should be, and what it should do. In other words, acknowledging that empirical criminological work is *techne* not *episteme*, opens up a much larger space within which criminologists can *theoretically* be held democratically accountable for the kinds of truth which they produce (or do not produce).

Perhaps, then, as Matthews has noted of Burawoy’s four-fold division of sociological labour: ‘It is precisely the inability to join up ... different aspects of social enquiry that lies at the heart of the problem’ (Matthews, 2009: 342). When Loader and Sparks (2010a) proposed that criminological knowledge production could be compartmentalized into primary, institutional-critical and normative variants they settled on a line of argument which legitimised approaches to criminology which did *not* join up ‘different aspects of social inquiry’. And when these different approaches are not joined up this leaves the door open for *some* criminologists to deny or hide the values upon which their evidence-gathering and analysis is premised, and to gain advantage in the competitive knowledge marketplace by assuming an epistemic image. In other words if these different modes of criminological knowledge production are understood as being legitimately discrete activities then this creates conditions which are hostile to Loader and Sparks’s call for criminologists to respect and engage with diverse criminological approaches.

### **7.3.3 *Owning our values: ‘a basic professional obligation’***

In contrast to the division of labour proposed by Loader and Sparks (2010a) I have suggested that empirical (or ‘primary’) criminological work should be understood

as *techne*, opening up space for *phronesis* and requiring criminologists to recognise and own the importance of values in constructing their objects and methods of research, and to be willing publicly to defend these values. This entails accepting that facts are never just facts; they are also expressions of values and assumptions about the nature of reality which *should* always be explicit and open to critique, never accepted as given. As criminologists embark upon empirical and theoretical inquiries they either actively make value choices about what to study and how, or they passively accept the choices made by someone else (Mills, 2000 [1959]). Thus *all* criminologists, one way or another, choose a paradigm and, as Pepinsky notes, reason may play only a limited role in this choice: 'reason cannot dictate whether a criminologist chooses to learn within a paradigm of war or a paradigm of peacemaking' (Pepinsky, 1991: 301). The recognition of the role played by values is the very essence of being critical in research, and is, or should be, a 'basic professional obligation' (Loader and Sparks, 2010a: 141) for all social researchers.

The economist E F Schumacher argued of his own discipline that it was 'a "derived" science which accepts instructions from... meta-economics. As the instructions are changed, so changes the content of economics' (Schumacher, 1993 [1973]: 36). He suggested that modern economics has a strong tendency to value means above ends, an attitude which 'destroys man's freedom and power to choose the ends he really favours' (Schumacher, 1993 [1973]: 36). This criticism could equally apply to any of the social sciences: changes in the instructions received from the meta-level (that is to say the level of values and of ends), will inevitably change the content of the discipline, its focus, its methods, its findings. Truth, then, turns out to be a function of the ends which are pursued through *techne*, whether or not these are explicitly acknowledged and debated.

Value choices about how to represent reality, that is to say about what kind of evidence to produce in order to facilitate knowing, have social and political consequences. Bourdieu has written that: '[w]e underestimate the properly political power to change social life by changing the representation of social life' (Bourdieu, 1977 cited by Wacquant, 2004: 3). Such is the potential power of social scientists, including criminologists, which is why, as I also argued in Chapter Three,

they each have an ethical responsibility to consider the potential consequences of the ontological ripples which they create.

Some criminologists appear to wish to escape this responsibility by pleading for (or implicitly assuming) the existence of a single knowable reality which precedes their representations of it, thus rendering their representations accessible to critique *only* on the basis of how accurately they represent that knowable reality, rather than the ethical acceptability of their choice about how to represent reality (which is also a choice about how *not* to represent reality, as well as about which aspect of reality to represent). To avoid taking responsibility for the realities we produce, to deny the role played by values in what we do, is to place the activities which comprise social science outside of the realm of things which can be deliberated. This seems to me to be profoundly anti-democratic.

My argument is not intended to deny the ability of criminologists to produce worthwhile evidence. Rather it is intended to highlight that such evidence should not be mistaken for reality. Social scientists should offer evidence, indeed that is what social scientists do, but no one type of evidence alone is enough, and *all* evidence is premised on value-based decisions. A democratic criminology would acknowledge the ethical responsibilities which this implies. Perhaps, then, in the context of a far from ideal democratic public sphere, the democratic under-labourer must also become the phronetic under-labourer: aware of and comfortable with the values which animate her work, and committed to publicly defending them, whilst using those methods and pursuing those ends which are compatible with those values<sup>103</sup>.

#### ***7.3.4 'Social science as public philosophy': An argument for democratic dialogue***

As I have already argued, it seems quite futile to deplore, denounce, deny or downplay the inherent pluralism of criminological knowledge. But neither is it particularly helpful merely to acknowledge it by accepting that argumentation is

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<sup>103</sup> Such self-awareness would also involve following Melossi's advice (2008: 252) to ask oneself: 'What is the connection between the sociological discourse I am producing about social control and deviance, and the society in which I live today?'

good, making, as Loader and Sparks (2010) do 'an argument in favour of argumentation', or following Barak's (1988) prescription for a 'newsmaking criminology' which simply brings oppositional knowledge discourses into the public sphere. It seems clear from the literature and from the public confidence case study that, when diversity and disagreement are accompanied by dominance achieved through the strategic (albeit often implicit) deployment of the illusion of an objective, value-free truth then argumentation becomes pathological. I am not arguing against argumentation. In the face of knowledge diversity, conflict between knowledges is inevitable. The question is whether we can find more constructive ways of responding to such conflict.

My contention is that, faced with this inevitable conflict, rather than being drawn into debating only the outer layers of research (its findings, the adequacy of its methods, the reasonableness of its epistemological assumptions), criminologists with a responsible and self-reflective attitude towards their public role (which is to say the phronetic under-labourers described above) should want to get at the differences which really matter. That is to say they should want to drill down to the roots of disagreement, to reach (or at least try to reach) agreement about the points of disagreement, to identify the point at which argumentation becomes futile and shrill, where what political philosopher Alasdair Macintyre calls 'conceptual incommensurability' is reached and 'the invocation of one premise against another becomes a matter of pure assertion and counter-assertion' (Macintyre, 1985: 8).

This is not an exercise in interminable navel gazing, it is a responsible, (and, potentially, consensual and collaborative) search for the point at which agreement is no longer possible in order to recognize why agreement is not possible. This approach should facilitate a much clearer recognition of the differences (in values and basic assumptions) between pieces of research, and, crucially, should enable external audiences to understand how and why criminological work is so varied, as well as to adjudicate, on the basis of values, between different approaches to knowing about crime.

Only once the question of values has been considered should we return to the epistemic-style questions about whether the evidence proffered justifies the conclusions drawn by the researchers, whether they have followed the rules of method accepted in their field, whether the reporting of their findings is clear, coherent and non-contradictory. This approach would recognise that where the initial *phronetic* critique has drilled down to a serious and irreconcilable difference about the values upon which the research is premised, internal technical matters of method become somewhat irrelevant, and to engage in sustained debate at this level will merely be 'academic', will likely become 'shrill' (MacIntyre, 1985) and will ultimately detract from what could be a much more powerful critique on the basis of values.

Although Loader and Sparks (2010a) use a quotation right at the beginning of their book which emphasises the importance of 'dialogue' between the experts and the public they do not follow through on this early promise to provide a convincing account of how real democratic dialogue can be nurtured. They leave the question hanging: dialogue about what? The quotation which Loader and Sparks use is from Bellah *et al* (2008 [1985]) whose work, if Loader and Sparks had followed up on their introductory quotation, does provide some clear pointers about the matters upon which social scientists should engage in dialogue with the wider public.

Bellah *et al* (2008 [1985]: 301) argue that all social scientific endeavour, whether or not it acknowledges this, emerges from assumptions about what constitutes 'the good' on an individual and a societal level. These assumptions have deep cultural roots and, crucially they are always open to challenge. Bellah *et al* propose '[s]ocial science as public philosophy', an approach which would 'make the philosophical conversation concerning these matters its own'. Because Loader and Sparks (2010a) do not engage in further discussion of Bellah *et al*'s proposals they neglect to reflect upon the high importance which Bellah *et al* attach to discussions of *values*, or to acknowledge their claim that social research simultaneously employs analysis and moral reasoning (Bellah *et al*, 2008 [1985]: 303). But, as I have outlined above, these issues are crucial if the notion of democratic underlabouring as service and humility, is to be brought to life in a meaningful way.

Flyvbjerg identifies Bellah *et al* (2008 [1985]) as a good example of phronetic research in action. The goal of such research, Flyvbjerg argues, is 'to produce input to the ongoing social dialogue and praxis in a society, rather than to generate ultimate, unequivocally verified knowledge' (Flyvbjerg, 2001: 139). By rejecting the 'higher authority' of *episteme*, owning up to their values, and taking responsibility for their ontological wakes, criminologists will be in a much stronger position to be phronetic in their outlook, and thus to nurture real democratic dialogue about crime and criminal justice and produce the 'better politics' which Loader and Sparks (2010a) seek.

If we return for a moment to the dominant discourse of public confidence and its 'costs to existence' we may have cause to wonder whether this research, couched in epistemic language with the will to dominance which that implies, really has any valuable contribution to make to such a 'better politics'. C. Wright Mills argued that the social scientist should seek

'to combat all those forces which are destroying genuine publics and creating a mass society – or put as a positive goal his aim is to help build and to strengthen self-cultivating publics' (Mills, 2000 [1959]: 186)

However, identifying tendencies in society and social science which ran contrary to Mills's hope, Bellah *et al* argued that the Americans they spoke to during their research lacked a vocabulary and conceptual framework to talk coherently about their involvement in social life and groups, and about social connectedness. They suggested that this lack of vocabulary could itself weaken these bonds. They argued that the problem was reproduced within a sociology which had become utilitarian, individualistic and problem-solving (2008 [1985] cited by Seidman, 2004: 111).

As I argued in Chapter Four, those researchers who treat public confidence in the criminal justice system as a real object which is measurable, malleable, and *caused by* other external and measurable objects, construct subjects as individual consumers of public services, circumscribe their subjective potential and the legitimate avenues for its expression and thus appear to contribute to a damaging 'suppression of ... connectedness' (Lawler, 2008: 149). Meanwhile, in Chapter Five

and above I have suggested that the dominant discourse of public confidence reflects the interests and outlook of modernist criminologists and thus is blind to the possibility that these very things, as well as the apparent socio-economic divides with which they are perceived to correlate, may well be what underpins the public's perception that there is a democratic deficit in the way criminal justice is pursued. By circumscribing opportunities for its subjects to express their views, by remaining blind to the possibility that expert *ways of knowing* may be mistrusted, and by undermining the case for using deliberative methods to understand how the public think and feel about crime and justice, the dominant discourse of public confidence thus simply seems to reproduce the conditions which it favours at the expense of offering a true democratic engagement.

### ***7.3.5 Unleashing the democratic potential of social constructionism***

Holdaway and Rock (1998: 7) have argued that, in the wake of a storm of theorising by a 'fortunate generation' of criminologists, criminological theorising has been in decline, coming to be seen as a private matter involving disputes which, if publicly aired, are unhelpful or unproductive. I fear that the contribution of this thesis may be regarded by some as veering towards the latter but, nonetheless, on the basis of the matters which I have explored, I can come to no other conclusion than that at the current moment *more* theorising (which must include reflection upon the conditions of existence for criminological knowledge) is what is needed.

It should therefore be a matter of concern that, as Holdaway and Rock (1998: 10) also maintain, theory has 'become subterranean in the work of the many criminologists who are simply too pressed, too preoccupied with the empirical, too dependent on funding agencies uninterested in speculation, or too jaded to conduct their theorising publicly and as a main pursuit' (Holdaway and Rock, 1998: 10). Without theorising, I concur with Holdaway and Rock (1998: 181-2) 'criminology fades into an over-evaluated nothingness, speaking the language of managers, with intellectual horizons no more expansive than the next research contract'.



A theory-blind criminology is an anti-democratic *techne* masquerading as *episteme*, operating in blissful denial about the 'costs to existence' of knowing in one way, rather than another, and thus placing the production of knowledge, and the different ends towards which it can be oriented outside of the realms of public deliberation. Under such conditions the dominance of *episteme* operates, there can be no constructive debate about criminology's public role and criminology cannot be considered democratic. Criminologists who are committed to pursuing their work democratically must be prepared to reflect theoretically and thus to do at least some institutional-critical and normative work, in addition to primary empirical work (or *techne*).

Insisting that criminologists theorize in order to drill down to identify the differences in the values and basic assumptions which underpin their work may mean letting certain criminological 'separatists' go their own ways if they will not, or cannot, own their values and basic assumptions. For example, the proper place for the narrow concerns of 'crime science' may well be (as its proponents appear to wish) outside of the criminological stable, where they can be subjected to appropriate critique. Of course 'crime science' is a (deliberately?) provocative name, and official descriptions of the content of this new 'discipline' appear to signal aggressive intentions towards traditionally criminological territory. It is unsurprising, then, that Matthews (2009: 359) has argued that we should deplore 'the proliferation of poorly conceived one-sided criminologies that make little or no contribution to progressive social reforms' (Matthews, 2009: 359).

However, in order to effectively resist crime science it is, I believe, necessary to also challenge Matthews's complete rejection of what he calls 'idealist' social constructionism. This he says:

'assumes that anything can be socially constructed as if by exercise of collective wishful thinking, and that our capabilities and susceptibilities are themselves voluntaristically constructed. From this perspective concepts of oppression, exploitation or abuse are incomprehensible because the damage involved is only seen to exist in the mind of the beholder(s)' (Matthews, 2009: 346).

This belief he takes to be incompatible with critical criminology, which aims to 'assess the practical adequacy or objectivity of different social constructions and

this task assumes a degree of objectivity of the social phenomenon in question' (*Ibid*: 346). He goes on to state that 'recognizing the socially constructed nature of crime does not make it discursively revisable' (*Ibid*: 346).

Matthews's (2009) understanding of what 'idealist' social constructionism entails diverges from my own (as outlined in Chapter Three). For me he constructs a straw man, and misrepresents its capacity to recognise some (usefully) emotive categories of human behaviour 'oppression, exploitation and abuse'. As I argued in Chapter Three, the strong critical edge of social constructionism is that it renders all representations contingent and examines their 'costs to existence'. This does not necessarily have to mean that it does away with them, or denies their inter-subjective significance. The critical anti-representationalism which I outlined in Chapter Three argued instead for an ethical approach to socially constructed objects which would ask 'what must the world be like to make this reality possible?'. Clearly such an approach would be well able to accommodate ideas such as 'oppression, exploitation and abuse' if it saw that there was ethical and practical value in retaining and using them to help structure our ways of knowing.

The important thing, then, is to recognise that, although reality cannot be known outside of discourse and our knowledge of reality is socially constructed through our inter-subjectively shared resources which can themselves have 'reality effects', nonetheless we *can* deliberate (with each other and with the wider public) about the value of different ways of representing, constructing and knowing reality. Indeed, my contention throughout this thesis has been that we *should* subject our ways of knowing to deliberation on the basis of values. Furthermore, perhaps a criminology which is more confident in the values which inform its work will be better placed to challenge crime science's one-dimensional way of knowing and its dismissal of criminology as a failing science<sup>104</sup> and to demonstrate the broader social value of a range of different ways of knowing about crime.

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<sup>104</sup> See for example Clarke, 2004. See also the website of the Jill Dando Institute of Crime Science (<http://www.ucl.ac.uk/jdi/>) which describes its purpose as setting out a 'new scientific approach to crime' which contrasts with traditional approaches to crime by being 'an evidence-based, problem-solving approach that embraces empirical research. Adopting the scientific method, crime scientists

#### 7.4 Breaking eggs?: Can criminology survive in a post-epistemic age?

I started this thesis from the position that dominance must be challenged, as Foucault counselled, by exposing the contingent nature of ideas and their relationships with power. I hope I have outlined a way in which this critique can be usefully extended beyond the accusatory through a consensual use of intersubjectively shared resources to search for the point at which disagreements arise – the point of conceptual incommensurability. This process is not a miracle cure to what some regard as criminology's Achilles' heel: the plurality of its methods, evidence and conclusions. Rather, by attempting to track down and agree on the points upon which they disagree perhaps some criminologists may change their minds and find a way to agree. Still more may continue to disagree, but with a clearer sense of *why* they disagree, having made more explicit the assumptions and values which they hold and which inform the knowledge which they produce so that these can be subject to public scrutiny and criminology can properly consider itself democratic.

It is highly probable that following the approach I have described above may lead to the conclusion that criminology no longer works as a meaningful descriptor for any recognisably distinctive activity. Some may suggest that this point has already been reached, and that the primary function of the word 'criminology' is as a brand name, signposting potential consumers towards a sub-set of knowledge workers who often share little more than an interest in 'crime'. However, although the subtitle for this final section poses the question of whether criminology can survive in the kind of post-epistemic phronetic future this chapter has imagined, I don't think this question is mine to answer.

For I have been conscious whilst writing this thesis that I am writing about a field of which I have never truly felt a part. Although I have presented at criminological conferences and exchanged ideas with people who carry out their academic work under the banner of criminology I have never worked or studied in an institution

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collect data on crime, generate hypotheses about crime patterns and trends, and build testable models to explain observed findings'.

which has a department of criminology, or received any formal instruction in criminological thought. This of course, I have in common with many other individuals whose work deals with issues of crime and its control, but that is not to say that this is a trivial or irrelevant point. It is highly likely to have bearing on my sense that there is 'no necessity' in criminology, a sense which I suspect shines out like a beacon from this text.

My suspicion is that we are, in any case, a long way from a phronetic future, and that the *idea* of criminology, (that is the idea that 'crime' is such a unique, real, and important social phenomenon that it deserves its very own -ology) will retain its power in the context of a future which looks likely to bring increasing economic polarization and social unrest at the societal level, and insecurity and fear for the individuals affected. Perhaps the better question, then, rather than 'can criminology survive?' - an epistemic question which is always unanswerable in the present - is '*should* criminology survive?' - a phronetic question for which many answers are possible, and upon which every criminologist no doubt has his or her own, ultimately value-based, opinion.

In my own view, criminology cannot sensibly debate its future in isolation from debates happening about the future of the social sciences more generally. It is unhelpful for criminologists to become fixated upon the survival of 'criminology', at the expense of the survival of what the best examples of the kind of knowledge produced under its colours can achieve. What seems to be needed is a political philosophy of the social sciences, in order to prevent social scientific knowledge from superseding the perceived need for there to be ongoing dialogue about how we *should* live together, which includes the basis upon which we should make claims to know about each other and about ourselves. What is, I believe, most important is that future discussion about criminology's public role begins from a consideration of the contribution which our value-based processes of criminological knowledge production, in all their manifest forms, are making and can make to the process and integrity of democracy itself.

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## Appendix 1 – Interview Schedule

<p><b>SECTION 1: OBJECTS</b></p> <p><i>Why do we need a criminal justice system?</i></p> <p>Why is that important to you in your day to day life? What should the CJS be doing to achieve those aims? What is it about ---- which you think would help the criminal justice system ----? What do you mean by ----? Do you think the CJS is doing this? Is there anything that you think the CJS is doing well?</p>	<p><b>SECTION 2: CONDITIONS</b></p> <p><i>What sort of information do you use to find out about what the CJS is doing?</i> Why is that convincing? Is there any information about the criminal justice system which you don't use? Why not? How does your own personal experience in your local area and day to day life affect your view of the criminal justice system? Is crime something you think about often?</p>
<p><b>SECTION 3: BEHAVIOUR</b></p> <p><i>How do your views about the criminal justice system affect the way you behave?</i></p> <p>In the survey you were asked whether or not you would contact the police in certain specific scenarios. I would like to go back and talk about some of these scenarios in a bit more detail.</p> <p>Would you call the police in that situation? OK so why might you not call the police? What else might you do? Is that a situation where you think people <i>should</i> be calling the police? Would you like to be able to call the police in that situation?</p>	<p><b>SECTION 4: BEING LISTENED TO</b></p> <p><i>Do you think that your views about the CJS are quite typical?</i></p> <p>What gives you that impression? What other points of view are you aware of? Do you think the CJS listens to views like yours? Who <i>does</i> the system listen to? Who <i>should</i> the system listen to? How can the system listen better?</p>

**Appendix 2 – Focus Group Schedule**

<p><b>SECTION 1: OBJECTS</b></p> <p><i>Why do we need a criminal justice system?</i></p> <p>What should its main aims be? Why are these things important? What should the CJS be doing to achieve those aims? What is it about ---- which you think would help the criminal justice system ----? What do you mean by ----? Do you think the CJS is doing this? Is there anything that you think the CJS is doing well?</p>	<p><b>SECTION 2: CONDITIONS</b></p> <p><i>What sort of information do you use to find out about what the CJS is doing?</i></p> <p>Why is that convincing? Is there any information about the criminal justice system which you receive but don't use? Why not? How does your own personal experience in your local area and day to day life affect your view of the criminal justice system? Is crime something you think about often?</p>
<p><b>SECTION 3: BEHAVIOUR</b> <i>How do your views about the criminal justice system affect the way you behave?</i> In the survey you were asked whether or not you would contact the police in certain specific scenarios. I would like to go back and talk about some of these scenarios in a bit more detail. How many people would definitely call the police in that situation? OK so why might you not call the police? What else might you do? Is that a situation where you think people <i>should</i> be calling the police? Would you like to be able to call the police in that situation?</p>	<p><b>SECTION 4: BEING LISTENED TO</b></p> <p><i>Do you think that the criminal justice system listens to views like yours?</i></p> <p>What gives you that impression? Who <i>does</i> the system listen to? Who <i>should</i> the system listen to? How can the system listen better? Do you think your views are typical? What other points of view are you aware of?</p>