

Televised Court Proceedings: The Relationship between the Media, Punitive Public Perceptions and Populist Policy¹

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‘Generally an association can be observed between a shallow or limited perception of crime trends, use of commercial, broadcast or tabloid media and increased punitiveness’.² The Australian mainstream media plays an important role in shaping inaccurate public perceptions of crime. Belief that crime is often violent and indiscriminate causes heightened public anxieties and ‘a greater public mandate for increasingly punitive punishments’.³ The interaction between public perceptions and the political sphere results in swiftly introduced and unsubstantiated populist policies that are unable to ‘deliver the outcomes in terms of public safety that are promised or expected’.⁴ In order to combat the cycle of inaccurate media reporting, unfounded public fear and knee-jerk political reactions, Western Australian Chief Justice Wayne Martin has proposed to televise court proceedings. Advocates of this initiative praise the ability of television to educate the public about the nature and type of crime dealt with by the criminal justice system and the capacity to provide an easily accessible method by

¹ This essay won a Con Marinos Essay Prize at Flinders University in 2010. It has been peer-reviewed.

² Lynne Roberts and David Indermaur, ‘Predicting Punitive Attitudes in Australia’ (2007) 14 *Psychiatry, Psychology and Law* 56, 59.

³ Yvonne Jewkes, *Media and Crime* (2004) 141.

⁴ Lynne Roberts and David Indermaur, ‘Predicting Punitive Attitudes in Australia’ (2007) 14 *Psychiatry, Psychology and Law* 56, 56.

which the community can accurately scrutinise the sentencing process. 'Critics of televised trials propose it is what television does with the trial footage that is potentially so damaging'.⁵ The administrators responsible for presenting televised criminal trials are required to tread a fine line. The presentation must be sufficiently engaging and interesting, while concurrently maintaining a true representation of the proceedings. The aim of this paper is to explain the relationship between the media, public perceptions and the political arena and to evaluate the televising of court proceedings as a potential solution to punitive public attitudes.

With the increase of technology use the Australian public has greater access to crime news, through television and electronically available print-based mediums⁶ and therefore relies on the media to inform them about criminal justice matters. Roberts and Indermaur claim that 'the general public forms their views about crime and punishment through personal experience, political representations and media portrayals of crime and justice'.⁷ However, the majority of the community has had little or no first-hand experience with crime or the criminal justice system⁸ which effectively counts out personal experience. Consequently, Australian studies have revealed that the community's principal supplier of crime information is the mainstream media.⁹ Attempts

⁵ Paul Mason, *Court on Camera: Electronic Broadcast Coverage of the Legal Proceedings* (2001) Picturing Justice: The Online Journal of Law and Popular Culture <<http://www.usfca.edu/pj/camera-mason.htm>> at 10 October 2009.

⁶ Yvonne Jewkes, *Media and Crime* (2004) 144.

⁷ Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 59.

⁸ Paul Mason, *Court on Camera: Electronic Broadcast Coverage of the Legal Proceedings* (2001) Picturing Justice: The Online Journal of Law and Popular Culture <<http://www.usfca.edu/pj/camera-mason.htm>> at 10 October 2009.

⁹ Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 59.

to measure the impact of the media on the public is problematic,¹⁰ and there are differences of opinion in this regard. For example, Mason argues that the public 'rely on media reports and representations of it to supplement their knowledge'.¹¹ In contrast, Jewkes sees the public as a 'passive audiences soaking up media influences in isolation of their lived experience'.¹² However, there is little doubt that 'media use ... is centrally implicated in the routines and practices of everyday life and is inextricably interwoven into people's biographies and the stories they tell about themselves'.¹³

Such heavy reliance on the mainstream media is problematic due to the tendency to selectively distort and manipulate crime news, creating a false picture of crime.¹⁴ The general public naively assumes that 'the news simply reports the "facts" of an event'¹⁵ like 'a mirror reflecting "real life"'.¹⁶ However, Jewkes suggests that the media 'might be more accurately thought of as a prism, subtly bending and distorting the view of the world it projects'.¹⁷ The media is likely to focus on crime stories that are "newsworthy" or economically beneficial. The media misrepresents crime in four predominant ways involving the type of crime, the amount of crime, the context in which crime occurs and the relationship between victim and offender. It has been shown that such distortion significantly impacts the public's

¹⁰ Yvonne Jewkes, *Media and Crime* (2004) 144.

¹¹ Paul Mason, *Court on Camera: Electronic Broadcast Coverage of the Legal Proceedings* (2001) Picturing Justice: The Online Journal of Law and Popular Culture <<http://www.usfca.edu/pj/camera-mason.htm>> at 10 October 2009.

¹² Yvonne Jewkes, *Media and Crime* (2004) 142.

¹³ Yvonne Jewkes, *Captive Audience: Media, Masculinity and Power in Prisons* (2002) as cited in Yvonne Jewkes, *Media and Crime* (2004) 143.

¹⁴ Yvonne Jewkes, *Media and Crime* (2004) 141.

¹⁵ *Ibid* 37.

¹⁶ *Ibid*.

¹⁷ Yvonne Jewkes, *Media and Crime* (2004) 37.

perception of crime. For example, 7 out of 10 survey respondents, in a 2005 study conducted by Indermaur and Roberts, believed that crime in Australia had increased, despite falling crime rates.¹⁸ Significantly, escalating crime rates have 'largely been accepted as a "social fact"'¹⁹ in Australia. The media also manipulates the type of crime that is portrayed with violent and sexual crimes constantly over-reported,²⁰ coupled with a distressing undertone that 'crime is spontaneous, random and indiscriminate'.²¹ The majority of serious crime including murder, rape and sexual assault are committed by people known to the victim and occur more commonly in certain socio-economic groups and geographical locations.²² However, due to the media's representation that crime is 'random, meaningless, unpredictable and ready to strike at any time',²³ members of the public live in great fear that they will be victimised.

This fear of crime, as fuelled by the media, creates a strong sense of punitiveness among the Australian public. Punitiveness can be described as the community's wish to punish and deter offenders of crime. The public calls for a greater police presence and a tougher criminal justice system. They want more convictions, increased rates of imprisonment and longer sentence lengths.²⁴ In order to measure the prevalence of punitive attitudes in Australia

¹⁸ David Indermaur and Lynne Roberts, *Perceptions of Crime and Justice* (2005) as cited in Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 62.

¹⁹ Garland, *The culture of control: Crime and social order in contemporary society* (2001) as cited in Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 59.

²⁰ Yvonne Jewkes, *Media and Crime* (2004) 141.

²¹ *Ibid* 155.

²² Chermak, *Crime in the News Media: A Refined Understanding of How Crimes Become News* (1994) 125 as cited in Yvonne Jewkes, *Media and Crime* (2004) 47.

²³ Yvonne Jewkes, *Media and Crime* (2004) 47.

²⁴ Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 57.

an AuSSA survey was conducted in 2005. Significantly, 73% of respondents indicated that people who break the law should be given stiffer sentences.²⁵ There are many Australian studies that have considered the causes of punitiveness. Some directly recognise the impact of the mainstream media and others focus on indirect links. O'Connell and Whelan examined the relationship between media exposure and punitiveness. They found that 'the news media tends to facilitate a hardening of attitudes to crime and punishment'.²⁶ Hogan, Chiricos and Gertz conducted studies of individual differences in punitiveness and revealed that demographic predictors, political orientation, the salience of crime (as indicated by victimisation and fear of crime) and beliefs about crime are most relevant predictors of punitive attitudes.²⁷ Building on this research, Roberts and Indermaur found that people's knowledge and beliefs of crime underpin punitive attitudes to a greater extent than demographics, political orientation, religious attendance or media use.²⁸ Based on this evidence, media exposure is either directly or indirectly related to punitive attitudes among the community. Such punitive attitudes based on inaccurate public perceptions have the ability to influence public policy.

The media's selective portrayal of crime can be understood in a pragmatic or economic sense. They are in the business of selling newspapers and gaining television ratings.²⁹ However, the media cannot be the only source of blame. Although the media can be said to fuel public fears, politicians are responsible for the 'exploitation of public fears'.³⁰ Punitive policies presented by

²⁵ Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 57.

²⁶ *Ibid* 59.

²⁷ *Ibid* 57.

²⁸ *Ibid* 62.

²⁹ Yvonne Jewkes, *Media and Crime* (2004) 141.

³⁰ Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia'

politicians are popular and win votes.³¹ Jewkes describes the situation in Britain: 'for two decades a version of 'populist punitiveness' has characterised British governments' attitudes to penal policy, a stance which has replicated in the US and in many other countries around the world,'³² including Australia. Jewkes notes that 'there seems to be little opposition from any political party in the UK to proposals to incarcerate even younger children, to introduce curfews, to bring in legislation to prevent large 'unauthorised' gatherings and to introduce new and harsher measures'.³³ These ideas are not limited to the United Kingdom and can be seen in Australia. South Australian Premier, Mike Rann has won votes with his "tough on crime" mantra and carved out a politically viable territory for the Labour party.³⁴ A recent example of Mr Rann's punitive populist policy can be seen in the introduction of the 'world's toughest'³⁵ anti-bikie legislation.³⁶ These new laws make it illegal for bikies to associate with one another. The government has emotively described the laws as 'powerful tools to cut the legs out from under these criminal bikie gangs'.³⁷ However, there is no evidence supporting the success of this approach and a debate flares about the violation of international human rights. As a spokesperson for the Gypsy

(2007) 14 *Psychiatry, Psychology and Law* 56, 56.

³¹ Ibid.

³² Yvonne Jewkes, *Media and Crime* (2004) 58.

³³ Yvonne Jewkes, *Media and Crime* (2004) 59.

³⁴ Michael Jacobs, *Tough talk is rough justice* (2004) The Adelaide Review <http://www.adalidereview.com.au/archives/2004_08/issuesandopinion_story7.shtml> at 12 October 2009.

³⁵ Premier of South Australia, Mike Rann, *SA Set for World's Toughest Anti-Bikie Laws* (2008) The Government of South Australia <<http://www.ministers.sa.gov.au/news.php?id=3097>> at 20 October 2009.

³⁶ *Serious and Organised Crime (Control) Act 2008* (SA).

³⁷ Premier of South Australia, Mike Rann, *SA Set for World's Toughest Anti-Bikie Laws* (2008) The Government of South Australia <<http://www.ministers.sa.gov.au/news.php?id=3097>> at 20 October 2009.

Jokers put it '[t]here is good and bad in all walks of life - even the police, judges, press commit crimes ... [s]hould we impose non-association laws on these associations?'³⁸ Jacobs remembers that 'once upon a time there was a Labour Party which prided itself on its practical sensitivity to international laws and treaties. Now you can't even have the discussion. It is lost in personal abuse and chest-thumping about being tough on crime'.³⁹ How can Australia overcome these knee-jerk, tough on crime political reactions supported by inaccurate and punitive public perceptions? The answer may lie in educating the public and undoing the negative effects of media representations.

Roberts and Indermaur suggest that the association between knowledge of the criminal justice system and punitive attitudes is so strong that in order to alter punitive beliefs the public will need to be educated about crime and the criminal justice system.⁴⁰ Furthermore, studies have indicated that punitiveness decreases with increased education.⁴¹ But how can the public be educated? One idea is to televise criminal proceedings. Western Australia's Chief Justice Wayne Martin advocates this idea in order to bring greater transparency to the states court system.⁴² The notion of crime on television is far from a novel idea. In fact, '[c]rime has been exploited as commercial entertainment since the earliest days

³⁸ Steve Larkin, *Bikie Gangs Unite to Protest South Australia's Anti-Bikie Laws* (2009) News.com.au <<http://www.news.com.au/story/0,,25186217-2,00.html>> at 20 October 2009.

³⁹ Michael Jacobs, *Tough talk is rough justice* (2004) The Adelaide Review <http://www.adelaidereview.com.au/archives/2004_08/issuesandopinion_story7.shtml> at 12 October 2009.

⁴⁰ Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 62.

⁴¹ Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 58.

⁴² Debbie Guest, *Put trials on the web says top judge* (2009) The Australian <<http://www.theaustralian.news.com.au/story/0,25197,25964257-5013404,00.html>> at 12 October 2009.

of cinema and remains the most salient theme in television dramas and reality shows'.⁴³ A multitude of crime entertainment exists, *Law and Order*, *Crime Scene Investigation*, *Judge Judy*, *Boston Legal*, *Real Crimes*, *Rush and Underbelly*, are a few examples. It seems that the Australian public is both fascinated and alarmed by crime.⁴⁴ Public interest in crime news has led to the televising of criminal trials in Australian legal history. The first example was in 1981 when television cameras broadcast live from the first coronial inquiry into the death of Azaria Chamberlain, colloquially known as "the dingo took my baby" case.⁴⁵ More recently, in May 1995, Justice Teague of the Supreme Court became the first judge to approve the televising of a criminal sentence in a Victorian court.⁴⁶ This decision was strongly opposed by lawyers for the defendant and brought issues of media selectivity to the forefront. However, advocates of this approach suggest that the advantages outweigh the disadvantages.

Television has become an important educational tool in our society. Many reality television shows and documentaries propound to be a rich source of information for the public to consume. Justice Teague's decision to allow the televising of court proceedings was based upon this proposition. His decision, along with earlier Australian telecasts, has been 'hailed for permitting the public to gain an appreciation of positive aspects of legal work and judicial administration which would not otherwise have been considered newsworthy'.⁴⁷ In stark contrast with media reporting

⁴³ Yvonne Jewkes, *Media and Crime* (2004) 143.

⁴⁴ *Ibid.*

⁴⁵ Martin Hirst and Roger Patching, *Journalism Ethics: Arguments and Cases* (2007)

Oxford University Press

<http://www.oup.com.au/orc/extra_pages/higher_education/hirst__and__patching/tv_cameras_in_courts> at 14 October 2009.

⁴⁶ *Ibid.*

⁴⁷ Daniel Stepniak, 'Televising Court Proceedings' (1995) 10 *UNSW Law Journal* 488,

of crime news, 'television does not distort proceedings but simply shows them, warts and all.'⁴⁸ Putting cameras in the courtroom allows the public to gain a realistic appreciation of crime dealt with by the courts. This includes the type, frequency and context of criminal behaviour, as well as the relationship between the victim and offender. In this way, televising court proceedings has the 'capacity to restore some balance to public perceptions of judicial matters coloured by the press'⁴⁹ but is it enough to inhibit the formation of punitive attitudes? Green notes that 'ignorance pervades the interplay between crime, politics and public options';⁵⁰ indicating that increased education may have a positive impact on public perception and, thus, punitive attitudes. However, Jewkes insists that 'fear of crime is more likely to be governed by uncertainties than known probabilities'.⁵¹ This view suggests that even if the public are aware that only a small percentage of crime is characterised by violence and that random, indiscriminate attacks are rare; they will nevertheless continue to be fearful of victimisation and their punitive attitudes will remain unchanged. In addition, due to the influences of popular crime shows the public may be more attracted to criminal cases involving violence. Coupled with the overrepresentation of violent crime by the media, this has the potential to increase punitive attitudes among a community who severely overestimates the rate

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⁴⁸ Paul Mason, *Court on Camera: Electronic Broadcast Coverage of the Legal Proceedings* (2001) Picturing Justice: The Online Journal of Law and Popular Culture <<http://www.usfca.edu/pj/camera-mason.htm>> at 10 October 2009.

⁴⁹ Daniel Stepniak, 'Televising Court Proceedings' (1995) 10 *UNSW Law Journal* 488, 491.

⁵⁰ Green, 'Public opinion versus public judgement about crime: Correcting the 'comedy or errors'' (2006) 46 *British Journal of Criminology* 131, 132 as cited in Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 62.

⁵¹ Yvonne Jewkes, *Media and Crime* (2004) 165.

of violent crime. Although these may be the immediate impacts of televising criminal trials, perhaps a long term relationship between the community and the reality of crime would result in exposure to a greater range of cases and impact positively on punitive public perception.

The broadcasting of court proceedings within the community has particular relevance in relation to sentencing. Here the notion of education can be extended to public scrutiny of the administration of justice. The issue of sentencing has enjoyed significant traction in the media, for all the wrong reasons. As Chief Justice Gleeson put it ‘...you don’t get stories about a bridge staying up, it’s not newsworthy if a bridge stays up. But if a bridge falls down, that’s pretty big news’.⁵² Similarly, it is not newsworthy when a sentencing judge takes all matters into account and delivers an appropriate sentence, but when ‘judge hands down ridiculously light decision’ that’s newsworthy.⁵³ There are many positive news stories that the public will never hear, but perhaps even more dangerous, are the reports that provide half the information, because ‘[u]nless the community is informed of the material placed before a sentencing judge, it is not possible to arrive at an informed conclusion’.⁵⁴ Such reporting has led to the criminal justice system being characterised as overly lenient and is the foundation upon which the public voices their support for punitive policies. If administered properly, televised court proceedings will provide the public with an unbiased and comprehensive account of all the information available to the sentencing judge. This would allow the community to make educated decisions about whether or not a

⁵² Sarah Tempest, ‘TV Cameras in Court’ (2007) 1 *Brief* 8, 10.

⁵³ *Ibid.*

⁵⁴ Michael Jacobs, *Tough talk is rough justice* (2004) The Adelaide Review <http://www.adalaidereview.com.au/archives/2004_08/issuesandopinion_story7.shtml> at 12 October 2009.

particular sentence is justified. It is thought that this understanding will help to ease opinions that judges are too lenient and therefore diminish punitive attitudes. The recent case of *R v Galffy*⁵⁵ is a good illustration of how this could work in practice. In this case a three year old boy was told repeatedly by his father not to answer the front door. Nevertheless, when the doorbell rang the boy ran to the door. Infuriated, his father kicked him against a wall with such force that his liver was ruptured. The matter went to trial and the sentencing judge handed down a suspended sentence. The community was outraged upon reading the media headlines 'toddler basher spared jail',⁵⁶ 'dad who split son's liver walks free'⁵⁷ and 'jail urged over violent child attack'.⁵⁸ It is not difficult to envisage the effect that such irresponsible reporting has on public confidence in the judiciary or punitive attitudes towards offenders. However, the media neglected to report the most vital considerations for the sentencing judge. These included the fact that the father was the sole breadwinner and that without this income his wife and son would have to rely on welfare payments. They would not be able to afford the mortgage repayments and would soon become homeless. This was an isolated incident which did not form a pattern of abuse and was unlikely to be repeated. The family was working intensely with Families SA and wanted the father to return home. It was concluded by the sentencing court that it was in the best interests

⁵⁵ [2009] SASC 261.

⁵⁶ Adelaide Now

<<http://search.news.com.au/search?us=ndmadelaidenow&sid=5006301&as=NEWS.HOME&ac=ADV&q=galffy>> at 24 October 2009.

⁵⁷ Adelaide Now

<<http://search.news.com.au/search?us=ndmadelaidenow&sid=5006301&as=NEWS.HOME&ac=ADV&q=galffy>> at 24 October 2009.

⁵⁸ ABC Australia

<<http://abcaustralia.com.au/news/stories/2009/07/20/2630901.htm?site=local>> at 24 October 2009.

of the child for the father not to be imprisoned. In the words of Justice Bleby 'as in all areas of sentencing, no one glove fits all. Sometimes, when all the circumstances are properly considered, the interests of the victim, and ultimately the interests of the community, require a merciful approach.'⁵⁹ The televising of court proceedings would allow public access to the minds of the judiciary. In this way they would gain a realistic appreciation of the sentencing process and rethink their "lock em' up and throw away the key" approach.

In order for televised trials to allow public scrutiny of the sentencing process, the public must be engaged by the screening and have an adequate understand of what is being portrayed. This is a problem because court proceedings are often complex and incomprehensible to the lay observer. In the American context there is debate over whether trial footage should be presented as edited highlights or 'gavel to gavel', meaning 'unabridged airings of court proceedings'.⁶⁰ Stepniak is of the opinion that the public is more likely to understand the nature and relevance of what they are observing if they are 'permitted to witness the most important segments of drawn-out proceedings'.⁶¹ However, Mason points out that this approach is dangerous where the focus of edited highlights is on 'what is most interesting to the audience rather than what is most important to the proceedings'.⁶² Such an approach is likely to misrepresent the facts and lend support to the

⁵⁹ [2009] SASC 261 at [8].

⁶⁰ Paul Mason, *Court on Camera: Electronic Broadcast Coverage of the Legal Proceedings* (2001) Picturing Justice: The Online Journal of Law and Popular Culture <<http://www.usfca.edu/pj/camera-mason.htm>> at 10 October 2009.

⁶¹ Daniel Stepniak, 'Televising Court Proceedings' (1995) 10 *UNSW Law Journal* 488, 491.

⁶² Paul Mason, *Court on Camera: Electronic Broadcast Coverage of the Legal Proceedings* (2001) Picturing Justice: The Online Journal of Law and Popular Culture <<http://www.usfca.edu/pj/camera-mason.htm>> at 10 October 2009.

representation of crime by the media, thus, increasing punitive public attitudes. In 1994, the United States Judicial Conference resolved to end the three year experiment of cameras in six federal courts for precisely this reason.⁶³ Several judges commented that their decision would change if proceedings were broadcast gavel to gavel.⁶⁴ But is this possible? Mason believes that 'television ... is there to entertain' which will 'necessitate converting hours of legal argument and technicality into compulsive viewing'.⁶⁵ Administrators of televised trials must find the right balance between stimulating the interest of the public and maintaining an accurate representation of the proceedings.

'Informed debate about the criminal justice system in Australia is currently hampered by the superficial treatment provided to criminal justice issues by the media, politicians and pollsters'.⁶⁶ In order to move beyond knee-jerk political reactions to increasingly punitive public perceptions, the Australian community needs to be educated first-hand about the criminal justice system and the sentencing process. Televised court proceedings provide an accessible forum through which these aims may be achieved. However, 'the fine line between documentary and drama'⁶⁷ may be impossible to balance.

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⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Lynne Roberts and David Indermaur, 'Predicting Punitive Attitudes in Australia' (2007) 14 *Psychiatry, Psychology and Law* 56, 62.

⁶⁷ Yvonne Jewkes, *Media and Crime* (2004) 155.

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