

# Penal Populism, Sentencing Councils and Sentencing Policy

Edited by Arie Freiberg and Karen Gelb

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At the outset, I must confess that when I was invited to review this book, my initial reaction was not favourable in that I doubted that anything novel or worthwhile might be contained in the 17 chapters spanning 248 pages which makes up this elegantly designed volume. Indeed, I myself had reviewed two recent titles on the same subject of late<sup>1</sup> and did not think that much could be added to the already voluminous literature which was already available on penal populism which I define briefly as the negative effects of misinformed public outcries for tougher sanctions and political platforms promoting this objective and increasing the degree of misunderstanding respecting actual rates of crimes and risks of victimization.

Having read this book, I may now confess that I was wrong to prejudge this issue as *Penal Populism, Sentencing Councils and Sentencing Policy* analyzes a wealth of timely, thought-provoking and trend-setting studies which are essential to gaining a full understanding of this important issue in contemporary criminology.

Chapter 1, “Penal populism, sentencing councils and sentencing policy”, written by the co-editors, Arie Freiberg and Karen Gelb, offers a splendid example of an opening chapter in a multi-author group of contributions and is particularly successful in identifying and explaining all key concepts. That the co-editors have succeeded in this enterprise is not surprising as the former is Dean of Law at Monash University and has shown himself to be a prolific and influential writer on sentencing while the latter is the Senior Criminologist for the Sentencing Advisory Council of Victoria and an expert on public opinion in sentencing. Accordingly, one would expect a superb text as noted earlier and this expectation is not only met in this instance, but exceeded greatly. Indeed, they introduce the reader to the related spheres of the development of sentencing policy, public opinion and the scope and understanding to be given to the term “public” as influenced by penal populism. Thereafter, they guide and illuminate the path to be taken by the reader to achieving a full understanding of the potentially negative influences brought to bear upon politicians, judges, and other actors charged with developing the law of sentencing as a result of the nefarious influence of penal populism. In short, how the selection of what might otherwise be described as a fit and proper sanction for any wrongdoing may well be undermined by the addition of principles and objectives in sentencing that are unfit, ill-advised or likely counter-productive to the goal being pursued.

In the circumstances, it becomes a daunting task to attempt to summarize and review such a volume and in light of my prior experience in this field, somewhat redundant and possibly of diminished interest to the academy. Accordingly, I have elected to discuss how penal populism may be said to affect my work as a front line sentencer. In point of fact, if the concerns raised by the contributors are not of such a nature as to actually result in distorting the selection of a fit and

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<sup>1</sup> I refer in particular to the concerns raised by Professor John Pratt in *Penal Populism* [New York: Routledge, 2007], reviewed by the writer in *Canadian Journal of Criminology and Criminal Justice* (July 2007) Vol. 49(3), at page 424 and by Professor Julian Roberts and his colleagues in the text, *Penal Populism and Public Opinion: Lessons From Five Countries*, [Oxford University Press: 2003, N.Y., N.Y.], reviewed also by the writer: (December 2003) Vol. 41(3) *Alberta Law Review* pp. 797-799.

proper sanction, as may be generally understood by most observers and commentators, then the resulting criticism are not of contemporary importance or of quotidian interest.

In this light, it is noted that the first direct reference is consigned at page 2, to the effect that the creation of the most recent sentencing councils have “arisen during a fraught period in our history” and that consequently “The judiciary is coming under increasing attack as the public claims a greater voice in the criminal justice system; politicians feel that elections cannot be won without a tough ‘law and order’ stance; yet, paradoxically, crime rates are decreasing.” The first indirect reference is found a page later when the co-editors explain how law reform has traditionally been the province of technical experts and public officials, mediated through the parliamentary political process, but that over the past few decades this dynamic of law reform has evolved and in terms of sentencing, “it appears to have become less technical and [...] more democratic.” It is in this sense that I speak of indirect reference for judges have always perceived their task as being to achieve the protection of the public from harm and thus to attenuate or, more often, to accentuate the pains of punishment as required to that end. In fact, the Courts have always viewed that they were in direct communication with the public at large through the vehicle of the principle of general deterrence. If the prevalence of an offence was perceived to be increasing, for example, so would the Court’s resort to custody or to increasing periods of custody.

More to the point, the passages which follow from the initial chapter discuss the issue of gauging public opinion by judges while explaining somewhat the function of sentencing councils. Firstly, at page 5, reference is made to the effort by Chief Justice Murray Gleeson of the High Court of Australia to address the issue of “out of touch” judges, by means of a speech presented to the Judicial Conference of Australia Colloquium in October 2004. As noted, “It is particularly useful to consider his comments, as opportunities to hear directly from judges themselves on issues of public opinion are rare.”

The Chief Justice begins by accepting that judges are expected to know, and be conspicuously responsive to, community values [...] But he then poses a series of questions that is immediately relevant for our discussion of the role of sentencing councils in the development of sentencing policy:

How should judges keep in touch? Should they employ experts to undertake regular surveys of public opinion? Should they develop techniques for obtaining feedback from lawyers and litigants? And what kind of opinion should be of concern to them? Any opinion, informed or uninformed? What level of knowledge and understanding of a problem qualifies people to have opinions that ought to influence judicial decision-making? Who exactly is it that judges ought to be in touch with? ... Whose values should we know and reflect?

The co-editors then remarked: “Chief Justice Gleeson’s questions reflect the difficult role played by sentencing councils around the world. Regardless of their specific remit, councils that are obliged to consider community views when developing their guidelines or their policy advice are faced with the precise challenges illustrated by the Chief Justice. Overcoming these challenges is a critical function of sentencing councils, especially in the current climate of low public confidence in both the criminal justice system in general and the courts in particular.”

Next, reference is made at page 6 to recent Canadian legislation which was introduced in order to create a sort of 'judicial registry' that will record sentences imposed and allow people to identify 'lenient' judges – those who impose sentences far below the statutory maximum. This form of inducement to be severe is also noted at page 108 touching upon the *Sentencing Reform Act* adopted by Congress which included a provision requiring a report of judges who depart too often from the Guidelines set out by the sentencing commission.

Further, page 13 includes these observations: "Sentencing councils may be seen as 'policy buffers' within the complex and inter-woven relationships that exist among the executive, the judiciary, the public and the media. In an era of penal populism, where the vast majority of the public learns about crime and the criminal justice system from the media, a combination of sensationalist reporting practices and populist political responses to moral panics has resulted in widespread myths and misconceptions about sentencing."

It is suggested that the reader then turn to Chapter 5 by Dr. Kelb, noted briefly subsequently, and to Chapter 11 wherein Professor Freiberg analyzes the Victorian Sentencing Council and the process of incorporation of community views into the sentencing process. Indeed, page 152 explains how the Council will provide information and feedback, especially to the judiciary, on the effectiveness of different sentencing options. Further, the reader should then review Professor Thérèse McCarthy's contribution at Chapter 12, "A perspective on the work of the Victorian Sentencing Advisory Council and its potential to promote respect and equality for women." This contribution includes a fascinating discussion at pages 171-173 as to what might a feminist judge "do with a convicted sex offender." Other valuable references that might be pursued include « Les femmes juges feront-elles véritablement une différence? Réflexions sur leur présence depuis vingt ans à la Cour suprême du Canada », by Marie-Claire Belleau and Rebecca Johnson, (2005), 17 *Can J. of Women and the Law* 27-40 in which the authors ask the notorious question posed by Justice Bertha Wilson "will women judges make a difference?" That ground-breaking article was written by Canada's first female appeal court judge and first female member of the Supreme Court of Canada and is found in (1990) 28 *Osgoode Hall L. J.* 507-522.

Returning now to the main part of the review in which attention is drawn to penal populism, sentencing councils and sentencing policy as it touches the work of the judiciary, the theme of public opinion being distorted by the media and political partisanship, noted earlier, is pursued quite ably by Professor J.V. Roberts in Chapter 2, "Sentencing policy and practice: the evolving role of public opinion", beginning at page 15 wherein we are asked "To what extent should courts consider public opinion when imposing sentence?" In partial response, reference is made to a 1998 study which suggests: "[...] courts should not totally ignore community values; nor, however, should judges of first instance attempt to incorporate public opinion into their sentencing deliberations." Roberts added that in England and Wales "there is no real clarity with respect to the legal relevance of public attitudes. That said, it is clear that sentencers are sensitive, in varying degrees, to the views of the public. This view is supported by the limited number of surveys of the judiciary. In one Canadian study judges acknowledged considering the likely reaction of the public when imposing certain sentences – in this case a community-based penalty in a case of serious violence."

Roberts adds: "[...] On a more general level, Indermaur (1990) reports that a significant majority of a sample of Australian judges expressed the view that public opinion should be a consideration at sentencing."

The analysis then addresses the traditional deference shown to the sentences crafted by trial judges, leading Roberts to opine “The justification for this deference lies in the questionable assumption that sentencers at the trial court level are closer to the community and therefore better able to know what is likely to prove acceptable. The Canadian Supreme Court has recognised this justification for deference on a number of occasions. Most recently (in *R. v. Proulx*) the Court noted that ‘trial judges are closer to their community and know better what would be acceptable to their community’.

In the view of the author, “It is a curious justification for deference to the trial court. In reality, sentencers have no better idea of the true nature of public opinion than you or I – indeed they may be less well placed to know what the public thinks as they are unlikely to have the time or training to review systematic research into public attitudes to sentencing. And, unlike you or me, judges are periodically the object of negative media commentary for the sentences they impose, and this may affect even the most thick-skinned and independent sentencer.”

I cannot gainsay the suggestion that judges are ill trained in terms of locating and reviewing systematic research into public attitudes but I question whether we are less well placed to gauge public attitudes. In this respect, refer to my articles “Sentencing from the Front Lines”, (May 2000), 139 B.C.A.C. 62, 227 W.A.C. 62 and to “Judicial Notice and Sentencing (Case Comment of *R. v. Carter* (1995), 61 B.C.A.C. 161 (C.A.)”, (April 1996), 67 B.C.A.C. 268-274, 111 W.A.C. 268-274. At all events, I am steadfast in the view that trial judges who preside in smaller communities are typically fully knowledgeable of the rehabilitative measures available to those offenders susceptible of being assisted to reform outside of a custodial facility and are acquainted with the personnel who provide these services which often means that we are more likely to take a chance with an individualized sentence as we have a better idea of the likelihood of success.

Having so stated, I do not disagree with Professor Roberts’ views as consigned at page 16: “To summarise, there is a clear tension present in the relationship between community views and the determination of sentence. Courts are expected to impose sentences that are not radically inconsistent with public expectations. On the other hand, public opinion is not a legally recognised factor at sentencing. Judges should not increase the quantum of punishment if they feel that this will gratify the general public.”

Subsequently, Professor Roberts advanced these observations at page 23 on the subject of populist pressures on courts:

Traditionally, judges have seen themselves as being insulated from the force of public opinion; judicial independence entails more than simply independence from the executive branch of government. The increasing ‘media-sation’ of criminal justice has generated greater pressure on courts. The most compelling examples of this come from the United Kingdom, where tabloid campaigns to pressure Courts are commonplace. In the summer of 2006 the *News of the World* began a ‘name and shame’ campaign to identify judges ‘guilty’ of imposing excessively lenient sentences.”

The next contribution of note is found at Chapter 3, “Penal scandal in New Zealand”, written by Professor John Pratt, a Professor of Criminology at Victoria University of Wellington, New Zealand and an influential figure in the scholarship devoted to penal populism. As set out at page 31, one of the goals he pursues is the evaluation of the impact on sentencing by judges of the emerging public clamour and exhortations directed towards severity towards lawbreakers. As is

often expressed throughout this volume, this writer suggests that the public is concerned that judges are “out-of-touch” or “from another planet” in respect of sentencing issues and thus, that our moral authority has been undermined and our legitimacy diminished in like proportion. Refer to page 35 in particular and to page 40 which reports: “For much of the previous decade, scandal about luxurious prisons and out-of-touch judges has fuelled the New Zealand populist momentum. Professor Pratt’s most significant suggestion in this respect is to point to the possibility that scandals at the opposite end of the spectrum, so to speak, notably in regard to the quite adverse consequences being visited upon offenders without any gain in terms of reduced recidivism and increased rehabilitation, may well spur on a movement to arrest certain of the extreme elements of this new punitiveness. In addition, page 42 instructs us that the sentencing council “[...] will restrict disproportionate and inconsistent sentencing while relieving some of the political pressures on judges to pass longer sentences [...]”

Professor David Indermaur, whose work has been cited earlier, penned Chapter 4, “Dealing the public in: challenges for a transparent and accountable sentencing policy” and this chapter is quite valuable in furthering our understanding of the reasons which underlie the growing lack of confidence which has heretofore been reposed in criminal courts, and how best to remedy it with the active participation and support of the public. The solution to reclaiming some of the lost sense of legitimacy must, as set out at page 46, involve “[...] formalising public input into sentencing policy [...] to counter the undifferentiated and idiosyncratic interpretation of public opinion by sentencers [...]” Whether this process will succeed in responding to the belief held by many that “[...] the courts were impervious to public wishes in regard to sentencing”, as noted at page 49, remains speculative but it is undoubted that a far greater institutional voice granted to the public by means of direct and indirect influence on sentencing councils will go far to reducing any suggested lack of legitimacy in sentencing. To this end, the governance of the council in New Zealand is not dominated by the judiciary.

As well, I wish to refer to two views on public participation in the sentencing process as discussed by Professor Indermaur. On the one hand, there is the view espoused by Lord Auld, as reported at page 61, that “the appropriate way to respond to the crisis of confidence is to ensure that the sentencing system operates with the form, shape and precision that it should and then inform, educate or persuade the public that they have the best system possible. On the other, the view advanced by M. Tonry and S. Rex to the effect that “Judges tend to be less dissatisfied with sentencing than other people and often to be wedded to the belief that they have a unique understanding of sentencing issues, and thus will protect practices and values they hold dear will hold out against compromises they see as diminishing the system” Refer to pages 61-62 and to *Reform and Punishment: The Future of Sentencing* [Willan: Cullumpton, 2002] at pages 10-11. If such be the case, then judges and the public at large need to engage in further dialogue and this might ultimately be the most fruitful promise of sentencing councils: to permit a meeting place as a forum for constructive exchanges and an ultimate rapprochement.

Although Dr. Kelb’s far-reaching analysis at Chapter 5 of myths and misconceptions respecting public opinion versus public judgment about sentencing is worthy of far greater commentary than this brief attempt, for present purposes I commend the discussion of studies revealing how often a fully informed lay sentencer will reach conclusions similar to those typically reached by the judiciary, with particular emphasis on an article by S.S. Diamond and L. Stalans, “The Myth of Judicial Leniency in Sentencing”, *Behavioural Sciences & the Law*, 7(1): 73. In the same vein, the brilliant examination by Professor Andrew Ashworth of the English sentencing guidelines is beyond my capacity to summarize without far more flexibility in terms of space, but I do wish to

point to the observation at page 120 that “Interviews with a group of judges generated the suggestion that the guidelines have produced greater severity in sentencing, bringing lenient sentencers up to the norm but not curbing severity in sentencing”, a suggestion which must be examined far more closely by means of sound methodology prior to being given greater weight.

The next contribution to be examined more closely by reason of the focus on penal populism, sentencing councils and sentencing policy from the perspective of the judiciary is that of the Hon. Alan Abadee touching upon the work of the New South Wales Sentencing Council, which is diverse and reflective of the view of many segments of the community. Of particular note are the comments consigned at page 135, citing McHugh J. in *Markarian v. the Queen*:

Public responses to sentencing, although not entitled to influence any particular case, have a legitimate impact on the democratic legislative process. Judges are aware that, if they consistently impose sentences that are too lenient or too severe, they risk undermining public confidence in the administration of justice *and invite legislative interference in the exercise of judicial discretion*. For the sake of criminal justice generally, judges attempt to impose sentences that accord with legitimate community expectations. [Emphasis added]

Thereafter, the learned judge writes:

The Council’s published reports can perhaps be utilised to assist on the matter of legitimate community expectations, standards and values.

Indeed, to the extent that the Council plays a role in enhancing public confidence, the Council has a further role with the courts. As has been said by Sir Anthony Mason, modern courts are more concerned to take account of public confidence as an element of judicial decision-making than the courts were in the past [...] <sup>2</sup> Further, Sir Anthony has also observed, because the courts are concerned with maintaining public confidence in the administration of justice, judges cannot dismiss public opinion as having no relevance in the work of the courts. A difficulty is that in relation to public opinion, as Justice Kirby has observed, a court is not well placed to estimate with precision the impact of any particular legislation on public opinion [...]

Sometimes a judge might be attributing his or her personal values to the community with little empirical justification for a belief that those values are widely shared. The point sought to be made is that in the ascertainment of public opinion on a particular subject-matter falling within the subject of sentencing, the Sentencing Council, with its important spectrum of representation including widely informed community-based representation, has an indirect role in assisting the court by reflecting, among other things, informed public opinion. The same observation may be made in relation to community values as well [...]

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<sup>2</sup> Professor J.V. Roberts has written under the rubric of "Public input into sentencing policy and practice" that there is an increased sensitivity to the views of the public with respect to sentencing. “[...] Forty years ago, public opinion was a subject that attracted little interest from sentencers or scholars in the field of criminal justice.” See page 16 of *Punishing Persistent Offenders Exploring Community and Offender Perspectives* [Oxford University Press: Oxford, 2008].

The next relevant passage to be considered is drawn from “Sentencing reform in New Zealand: a proposal to establish a sentencing council” by Professor Warren Young who enjoys a vast wealth of experience touching upon law reform and criminal matters. In brief, Dr. Young submits that “At the risk of oversimplifying a complex picture, it seems plausible to suggest that one of the primary drivers of the growth in the prison population has been that judicial sentencing patterns have shifted in response to the prevailing political and public mood [...] Quite simply, *sentences have been talked up* [...]” [Emphasis added]

Further, this chapter echoes many views expressed elsewhere that “[...] judges are probably not well placed to consult with the full range of stakeholders that would be required to ensure robust and publicly acceptable guidelines. Refer to page 185.

Finally, I commend the observations found at page 188 to the effect that it is nonsensical to maintain that it is inappropriate for judges to participate on the Sentencing Council because this will require us to take into account social policy considerations. This theme is reprised at page 198 of Chapter 14, “A sentencing council in South Africa” by Dr. Stephan Terblanche.

A detailed and exemplary argument suggesting that much greater pains must be taken by judges to become familiar with social policy evidence is found throughout a recent volume by Professors J. Temkin and B. Krahe, *Sexual Assault and the Justice Gap: A Question of Attitude*, [Hart Publishing: Oxford, 2008], with especial attention being drawn to pages 188-195 on the subject of educating legal professionals. Noteworthy as well is the interesting example of scholarship aimed at encouraging judges to select far more severe sentences in the field of sexual violence. Professor Margaret M. Wright’s text, *Judicial Decision Making in Child Sexual Abuse Cases*, [U.B.C.: Vancouver, 2007] underlines effectively the concerns articulated in many quarters respecting the elements of mitigation adopted by many appellate courts such as preserving an offender’s employment. Although not to be decried as penal populism, as the argumentation is predicated upon a sound analysis of what might be seen as a comparatively weak basis for attenuation in sentencing, it is an attempt to bring about a form of suggested rigour in sentencing leading to harsher sanctions.

Having reviewed a good number of the themes linking the judiciary to the heart of this volume, it will be useful at this stage to observe that a good deal of this text addresses the anticipated argument of many that to seek to counter the so-called phenomenon of penal populism is to launch an unsubstantiated attack of the democratic process in that the legislative arms of government are merely responding to the wishes of the electorate. The farthest that a member of the judiciary ought to go in this vein is to note that it does appear somewhat incongruous that levels of punishment have increased while “[...] in many modern societies all indicators (crimes recorded by the police, victim surveys, and so on) now suggest that crime has been in significant decline from the early 1990s.” Refer to the introductory paragraph of Professor John Pratt’s contribution, “Penal Populism and the Contemporary Role of Punishment” in *The Critical Criminology Companion*, edited by Thalia Anthony and Chris Cunneen, Hawkins Press: Annandale, NSW, 2008, at page 265.

Stated otherwise, if evidence-based programs are to be implemented in the field of corrections, as made plain in a host of recent works notably at pages 15 to 21 of *Youth Justice Ideas, policy, practice* (Second Edition) [Willan Publishing: Cullompton, 2007], by Roger Smith, at pages 157-163 of *Devils and Angels Youth Policy and Crime*, by Julia Fionda [Hart Publishing: Oxford, 2005] and Chapter 16 of *The Mental Health Needs of Young Offenders Forging Paths Toward*

*Reintegration and Rehabilitation*, edited by C.L. Kessler and L.J. Kraus, “Evidence-based treatment for justice-involved youth”, by E. Trupin [Cambridge University Press: Cambridge, 2008], ought not the same view prevail in the legislative field touching upon the choice of sanctions?

At all events, I find myself comfortable in discussing the subject matter of this text even though judges must demonstrate restraint in their extra-judicial writings by reason of the fact that I have challenged whether this penal populist turn has had much of a foothold in Canada and whether any new punitiveness is in fact in evidence in my home country. As I remarked in reviewing *The New Punitiveness: Trends, Theories, Perspectives*, edited by John Pratt, David Brown, Mark Brown, Simon Hallsworth and Wayne Morrison [Willan Publishing, Portland, Oregon, 2005]:

[...] note the contributions of Professors Dawn Moore and Kelly Hannah-Moffat in “The liberal veil: revisiting Canadian penalty”, at pages 85-100. As they observe in the course of their introduction at page 85: “The ‘Canadian model’ of punishment operates under a liberal veil and is increasingly popular and far removed from the kind of punishment described throughout the punitive turn thesis.” Although their objective was not to demonstrate why the incidence of Canadian “punitiveness” in sentencing was markedly restrained in comparison to other jurisdictions [...]

Noteworthy as well are the profound views of Justice Aharon Barak, the President of the Supreme Court of Israel, who writes at page 273 of *The Judge in a Democracy*, [Princeton University Press: Princeton, N.J., 2006] “A judge may not impose his personal views on the society in which he judges. A judge who does so acts outside the bounds of law. Every exercise of judicial discretion must take place *within the values recognized by society*, reflecting its basic perspectives.” The difficulty is that the underlined words suggest that it is a relatively simple matter for a judge to discern the “values recognized by society” but what if the judge is “out of touch”? Better yet, what if the judge is thankfully “out of touch” with a community which is developing a marked degree of intolerance for a racial, linguistic, or religious minority? As Justice Barak observed at pages x-xi of his introduction, “A key historical lesson of the Holocaust is that the people, through their representatives, can destroy democracy and human rights.” (Limitations of space prohibit pursuing Ronald Dworkin’s fascinating recent writings in this sphere, as illustrated by remarks such as “The justices no doubt each had opinions about whether the country would be better off if Bush or Gore became president in early 2001...” in discussing the Florida ballot litigation. Refer to page 100 of *Justice in Robes*, [Belknap Press: Cambridge, Mass, 2006])

To the same effect are the remarks of Sir Edward Woodward in his memoirs *One Brief Interval*, [The Miegunyah Press: Melbourne, 2005] at page 284: “I have always held strongly to the view that judges should not pontificate publicly on social or political issues. Sometimes, in the course of a judgment, it may be necessary to criticise the actions or inaction of a Minister or Department or some other public figure or organisation. But judges should be careful not to make any public statements that might suggest where their sympathies would lie in any case that might come before them.” Thus, it seems the orthodox view proscribes public complaint about the potential influence of penal populism but not judgments assigning enhanced credit for pre-trial detention by reason of the difficult if not trying conditions of detention arising from massive over-crowding resulting from increased severity in sentencing codes flowing from recommendations of sentencing councils...

Consider also the wise injunction of a former High Court of Justice member as reported in a biography entitled *Sir Ninian Stephen A Tribute*, edited by T.L.H. McCormack and C. Saunders [The Miegunyah Press: Melbourne, 2007]: “Courts necessarily reflect community values and beliefs, according greater weight to, and perceiving a closer proximity to a plaintiff in the case of, some subject matters than others.” See page 9. The rub, as it were, is the criticism that judges defend and uphold certain proprietary and economic interests in sentencing more highly than those concerned with bodily well-being in the case of many groups of victims as they are often said to be property-holders and less likely to be recorded as victims of crimes.

In closing, it will be of assistance to point out that judges have all experienced some grave doubts at some point in their career about the wisdom of following the course of “black-letter law” as opposed to venturing down the path of activism in one case or another and have been reminded that one will never know what might have been the outcome had the other path been chosen. In this vein, recall the account of Sir Michael Kerr who refused leave to appeal in the case of a self-represented father who had lost custody of his child. The applicant stated at him for some time, and then left the Court of Appeal, to then immediately murder the child’s mother. Refer to page 284 of his memoirs, *As Far As I Remember*, [Hart Publishing: Oxford, 2006]. What is known beyond any doubt however is that *Penal Populism, Sentencing Councils and Sentencing Policy* has demonstrated fully and fairly that greater public participation in the elaboration of sentencing policy should be embraced and that Sentencing Councils represent one means of achieving this objective, although not the exclusive means, and that the legitimacy of the sentencing exercise, as well as the likelihood of reaching a wise decision, may only be enhanced by a perceived and actual improvement in the collection of secondary information and studies touching upon the genesis and rehabilitation of offending conduct.

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