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Acknowledgments

Abstract

This article draws upon insights from democratic and social theory to demonstrate that the findings of traditional opinion surveys exert an unjustified and unhealthy level of dominance in the contemporary political sphere. It reflects upon the plausibility of imagining that the expanded use of deliberative approaches to understanding public opinion might halt and begin to reverse the penal excesses generated by 'penal populism'. It is argued that the findings from studies utilising deliberative methods struggle to have any significant impact on political decision making because proponents show an unwarranted epistemological deference which means that survey-based approaches are able to retain their dominance of political conceptions of the so-called 'reality' of public opinion. This is because deliberative methods are regarded and portrayed as producing findings which are less 'real' than the findings generated by traditional survey-based research. Even the proponents of deliberative methods collude in this portrayal by invoking the notion of the 'hypothetical public', an 'ontological red herring' which distracts from both the socially constructed nature of all representations of public opinion, and the unwarranted power which accrues to and flows from conventional methods.

Key words: deliberative methods; democracy; penal populism; public opinion; criminal justice

Penal populism, deliberative methods and the production of 'public opinion' on crime and punishment

Introduction

Recent decades have seen criminologists analysing what many regard as perturbing trends in criminal justice policy and practice in Anglophone jurisdictions, particularly those policies and practices which seem to underpin a drift towards mass incarceration. 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 turn' (cf. Hutton, 2005: 243) 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 taken against offenders are regarded as incompatible with criminological evidence, and thus also irrational (e.g. see Brereton, 1996; Roberts et al, 2003; Tonry, 2004; Young, 2003; Young and Matthews, 2003). 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.

In England and Wales the Ministry of Justice's analysis of the reasons for the dramatic increase in the prison population between 1993 and 2009 (from 44,246 to over 86,000) has acknowledged that 'tougher sentencing and enforcement outcomes', as a result of new legislation and changes in policy have played a key part. In particular the introduction of mandatory minimum sentences, indeterminate sentences for public production and changes to the way breaches of non-custodial sentences and licencing conditions are dealt with led to increases in the proportion of offenders sentenced to immediate custody, longer average sentence lengths and more recalls to prison (Ministry of Justice, 2013). These changes appear to illustrate the tendency of the UK government to seek to win the support of voters by promising to cast their nets of social control ever wider, and tighten their rhetorical and physical 'grip' on criminal offenders in increasingly punitive ways, regardless of what the evidence tells them about the likely long-term outcome of adopting this approach.

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 (see Matthews, 2005: 189). 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.

Some point to the positive democratic aspects of politicians responding to public sentiment (see Ryan, 1999; 2003), 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, and therefore their opinions should be treated with caution (e.g. see Roberts *et al*, 2003). Research carried out in the 1980s suggested that policymakers were relying on inadequate survey instruments to understand how the public think and feel about the criminal justice system (see Doob and Roberts, 1984; Hough and Moxon, 1984; Roberts and Doob, 1989). More recently it has been suggested that the survey method *per se* is not to be trusted, and that some form of 'deliberative methods' ought to be preferred (e.g. see Dzur (2012); Dzur and Mirchandani (2007); Green (2006, 2008); Loader (2008; 2011)).

The purpose of this article is to reflect upon the plausibility of imagining that the expanded use of deliberative approaches to understanding public opinion might offer some respite from the apparent excesses of 'penal populism'. Despite some compelling arguments and evidence having been advanced which suggest that engagement in deliberative processes may indeed encourage participants to moderate punitive attitudes (which I won't revisit here), I argue that the findings from studies utilising deliberative methods will continue to struggle to have any significant impact on political decision making unless proponents adopt a more assertive approach to their promotion. The primary reason for this, I suggest, is that deliberative methods are regarded and portrayed as producing findings which are less 'real' than the findings generated by traditional survey-based research, a portrayal in which even the proponents of deliberative methods actively collude by invoking the notion of the 'hypothetical public'. This unwarranted epistemological deference means that survey-based approaches are able to retain their dominance of political conceptions of the so-called 'reality' of public opinion and that the 'penal-populism calculus' (see Green, this volume) retains its vice-like grip on the criminal justice landscape.

The article draws upon insights from democratic and social theory to demonstrate that the findings of traditional opinion surveys exert an unjustified and unhealthy level of dominance in the contemporary political sphere. It concludes that this dominance needs to be challenged on moral,

rather than epistemic grounds, and that such a challenge could make space for the greater use of deliberative methods, which may in turn to undermine the incentives which exist for politicians to engage in 'penal populism'.

The 'hypothetical public'

Deliberative methods are said to provide a 'glimpse of a hypothetical public' (Luskin et al, 2002: 458), which is to say they provide a 'glimpse' of the way a public assembled according to normative ideals drawn from deliberative democratic theory behaves. Because such a public is glimpsed only through the consciously applied mechanism of the deliberative method it is noted that deliberation delivers something which is 'deliberately produced' (Loader, 2011: 357), as researchers attempt to 'model what the public *would* think, had it a better opportunity to consider the questions at issue' (Fishkin, 1995: 162, *emphasis added*). Thus, the (trademarked) 'deliberative poll' advocated by Fishkin (2009: 27) is said to meld 'normative theory with an empirical agenda – to use social science to create quasi-experiments that will uncover deliberative public opinion'. The clear message here is that citizens cannot 'achieve public judgment unassisted' (Green, 2006: 145). They require the 'treatment' which the deliberative pollster provides so that 'raw' and 'debilitated' 'actual' opinion can become 'refined' and 'deliberative' 'counterfactual' opinion (Fishkin, 2009). According to these descriptions then, the deliberative poll provides a true representation of a normatively ideal reality which *does not exist outside of the research context*, hence the 'hypothetical public'.

To think and write about deliberative methods in this way is to take as a basic point of reference the idea that there is an already existing and knowable 'actual' reality of public opinion, which is objectively captured using alternative (non-deliberative) methods. The implication is that there are methods through which public opinion 'as it is' can be accurately 'mirrored', as opposed to being 'filtered' through the refining action of deliberation (Fishkin, 2009: 17). This 'mirroring' conception of public opinion is clearly discernible in those research studies which purport to 'measure' or 'gauge' *actually existing public opinion* about criminal justice institutions and their actions. Researchers working on studies cast in this mould are likely to take the view that deliberative polls are an interesting intervention, which might prove to be what Hough and Park (2002: 182) call a 'useful adjunct' to 'the standard representative poll'. However deliberative polls, and other more experimental methods (for example providing survey respondents with specific sentencing scenarios), are deemed useful only in so far as they enable researchers 'to assess the "mechanics" of opinion formation' (Walker and Hough, 1988: 14). The implication from both traditional survey researchers and deliberative pollsters, then, is clear: public opinion ('raw', 'debilitated', 'actual') *exists*, it is *real*, it can be *measured* and its 'mechanics' understood. This encourages us to think about the difference between traditional surveys and deliberative polls as one of science versus

political aspiration, of actual existence versus normative experiment, of real versus unreal, of objective versus subjective.

Yet a whole school of thinking about the ontological and epistemological status of social scientific knowledge refutes the basis for this distinction, arguing that social scientists can *never* provide objective, value-free descriptions of the social world, as they themselves are engaged in living in and constructing the world they seek to describe. According to this view meaningful reality is constructed through human interaction and activity: 'social phenomena are not there to be encountered but are continuously produced by people actively engaged in all sorts of projects' (Harré, 1998: 39). As such, 'public opinion' is a socially constructed category of 'thing' which has been *brought into being* through purposeful human activity, is *sustained by* human activity, and *impacts upon* human understanding and activity. In other words, to quote a democratic theorist, 'the will of the people is not properly regarded as an object to be discovered' (Richardson, 2002: 61). If we accept this view (which I do) then traditional survey-style research and analysis on public opinion, no less than deliberative polls, must create the 'public' whose views it purports to represent. In other words, traditional survey-style research is no less implicated in the production of a 'hypothetical public' than are deliberative polls, and the implicit contrast between 'real' (survey-measured) public opinion and 'unreal' or 'ideal' (deliberatively-produced) public opinion is clearly an ontological red herring.

The idea of the 'hypothetical public' is a red herring because it directs attention away from the manner in which power is amassed, retained and exercised through the dominant survey-based approaches to studying public opinion. To neglect the operation of power in this area is to fail to acknowledge the way in which certain approaches to researching 'public opinion' are all the time enacting and strengthening a particular form of 'democratic' project, and are therefore (albeit unintentionally) stifling attempts to articulate and realize a different kind of democratic vision (such as the vision which animates the arguments put forward by deliberative democrats).

The rise of the opinion poll

There are of course significant differences between different types of 'opinion poll'. 'Self-selecting' newspaper, magazine and website polls of their readers are rightly considered to be less reliable than the representative opinion polls conducted by large polling organizations (which feature frequently in the news media). And few would dispute that the (usually) much more substantial, sophisticated and methodologically robust attitude surveys conducted by academic researchers (sometimes on behalf of or in collaboration with government departments) should generally be regarded as superior to either of these. However there are enough similarities between these types

of poll to suggest that though they may be extremely varied in terms of methodological quality and robustness, what they share in terms of techniques and underlying assumptions, makes it possible to think of them collectively as constituting a particular approach to the matter of 'public opinion'.

Specifically these approaches are all (1) quantitative, emphasising the *aggregation* of individual views; (2) focussed on the *general* (e.g. the criminal justice system, or 'sentencing' or 'the police') rather than the specific (e.g.police or judicial conduct in particular cases); (3) premised on an *individualised* conception of the public as atomised who hold (and are entitled to hold) in isolation from others their own 'personal' opinions or attitudes; and (4) content to permit their participants to express their opinions in the *passive*, non-interactive way which is typical of the survey method. For the sake of simplicity, then, I refer to this approach as the Aggregative General Individual Passive (AGIP) approach to understanding public opinion.

During the 20th century AGIP approaches became the dominant method for understanding 'public opinion', displacing the classical understanding of public opinion as a phenomenon formed and expressed in the context of social interaction. The data produced by surveys were frequently presented as 'the only workable empirical rendering of public opinion' (Price and Neijens, 1997: 336). Early pioneers of 'opinion polling' understood their work as helping to increase democratic participation (Price and Neijens, 1997: 336). Speaking at the first conference on Attitude and Opinion Research in 1949, Samuel Stouffer of Harvard University Division of Social Relations, described polling as an 'instrument of democracy' (cited in Lee, 2007: 50).

The development and expansion of opinion polling and attitude surveys during the 20th century certainly offered governments a new way of knowing about what members of the public thought about different issues of the day, however prominent sociologists including Jurgen Habermas (1989) and C. Wright Mills (2000) have argued that the polls also led to the transformation and political emasculation of the more active, engaged, deliberative 'publics' of the 18th, 19th and early 20th centuries. Active publics were, Mills suggested, reimagined as 'mass men[sic]' as 'abstracted empiricism' in social research brought about the reduction of 'sociological realities to psychological variables' (Mills, 2000: 63) and the attempt to explain social phenomena in terms of individual preferences, beliefs and tendencies (Ibid: 67).

In other words a significant amount of power became attached to a particular way of researching, or as constructionists would have it, producing 'public opinion'. This power can be seen at work in the level of traction which 'public opinion' as produced using AGIP approaches, has within the contemporary political sphere. Traction can be observed both in the keen attention which politicians give to quantitative representations of the level of public support which they have on

particular issues, and in the way in which citizens of democracies now expect to be asked for their own 'opinions' in particular ways.

In fact, the growth in the use of survey-administered instruments to measure or capture public opinion has led to a shift in the subjective orientations of the people whose opinions are to be captured: '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). People develop, in other words, an 'opinionated habitus', a set of dispositions which are compatible with dominant ways of knowing about public opinion (Bourdieu, 1984). The very fact that opinion polling questions are repeatedly asked, and their results repeatedly reported has 'deeper cognitive effects on how people remember, envision, and think about public opinion and the public that has opinions' (Beniger, 1992: 217).

So, whilst no conception of 'public opinion' is 'real' as such (in the sense that it pre-exists the human-made mechanisms through which it is brought into being) some conceptions can, through the traction they gain in the real-world, produce what Osborne and Rose (1999) have called 'reality effects'. As such if we accept the constructionist view that different research approaches to public opinion emerge from different kinds of projects surely the most important question we need to ask ourselves is not 'which project provides objective knowledge of 'real' public opinion?' but rather 'which project imagines and produces public opinion in a manner which is most supportive of democracy?'. For deliberative democrats the answer to the latter question would surely be that deliberative methods are to be preferred to AGIP approaches. Why is it, then, that AGIP approaches have continued to dominate? Why have they been able to gain a level of 'traction' which deliberative approaches have not?

The power of the polls

The results generated by AGIP approaches to public opinion have been able to gain and maintain some traction on the 'real world' of politics for two reasons. Firstly, AGIP approaches are premised upon an objectivist epistemology which is compatible with the dominant conception of social science as *episteme*, or 'scientific knowledge' (see Flyvbjerg, 2001). This epistemic orientation is deeply embedded within what Latour (1993) has described as the 'impossible purification' engrained in the 'modern Constitution': Latour contends that the cultural grouping which he describes as 'the Moderns' have attempted to achieve an 'impossible purification' (Latour, 2004: 167) by distinguishing 'facts' from 'values' and have ascended to a position of cultural dominance because they have succeeded in constructing a version of reality which assumes that the purification is complete. This ensures that our public sphere (at least in the Western world) is

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oriented towards a conception of knowledge as objective, scientific, value-free (see also Habermas's notion of scientism: '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)). AGIP approaches to public opinion, then, produce findings which conform to this 'normal discourse' (cf. Rorty, 1979) and therefore earn the right to be seen as 'knowledge' or 'science'[1].

Secondly, it is also plain that AGIP approaches produce knowledge about publics in a form which is congruent with the existing 'voting-centric' institutions of Western democratic states. Whilst these states have usually also institutionalised important democratic safeguards in the form of constitutions, independent judiciaries, the dispersal of power across different legislative branches and so on, there are good reasons to think that among the general population (and perhaps too amongst some politicians), a crude association between democracy and majoritarianism holds. The AGIP approach of the opinion survey is likely to have a face value appeal for a citizenry oriented to majoritarianism, comprised of individuals who have developed the 'opinionated habitus'.

What is categorically *not* the case, then, is that AGIP approaches have gained traction simply by producing more objective findings or being more 'true' to 'reality'. Rather, traction is gained and maintained through the use of research methods which do not upset the apple cart of culturally dominant assumptions about what can count as knowledge, and about how citizens think and relate to (and *should* think and relate to) the political sphere. In short, AGIP approaches are reassuringly (for some) consonant with, and nurturing towards, the epistemological and political *status quo*. But for democrats this cannot be a valid reason for accepting that such methods should dominate.

Social research becoming part of the bureaucracy

Whether or not social scientists perceive themselves to be producing knowledge for knowledge's sake, or to be intervening in meaningful ways in the society of which they are a part, is irrelevant to the actual status and import which their findings may eventually assume. The production of knowledge about how 'the public' feels and what it thinks and wants can never be something which is entirely removed from the sphere of politics. Such knowledge inevitably stakes some epistemic claim over the 'public will' and thus always has the potential to prompt and shape the conduct of those who purport to act in the name of democracy. What needs to be examined, then, is the extent to which the production of such knowledge, such purportedly democratic data, actually enhances the health of democracy, as opposed to merely masquerading as its faithful servant whilst serving

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[1] For a more detailed examination of how epistemically-oriented social science dominates see Turner, 2013.

the interests of particular groups (which might include the researchers who have staked their careers on this particular form of inquiry).

Where governments themselves (as opposed to political parties) carry out, commission or explicitly attend to research on public opinion (or related phenomena such as public confidence, trust, satisfaction or preferences), then they are in some senses implying that in responding to that research they are not seeking political advantage, but rather they are discharging an administrative responsibility by maintaining oversight of the extent to which the bureaucratic apparatus commands public support and approval. Arguably, then, government-sponsored research on public opinions and preferences which takes place *apart from* the process of democratic debate and vote-casting, itself becomes a component of, or at the very least a significant appendage to, the bureaucratic machinery of government. The experts involved in carrying out the research are granted 'discretionary administrative power' (Richardson, 2002: 3) to represent not only the opinions of the public but also, in some cases, the so-called 'drivers' of those opinions. In other words they have been granted the power to generate the knowledge which underpins the democratically essential 'ongoing relationship' between government and people (*Ibid*: 4-5).

The discretionary 'power' granted to research experts in this regard may appear to end with representation as opposed to decisive action however such an interpretation ignores the 'governmental' potential inherent in all knowledge production projects. Looked at from a governmentality perspective an examination of how truth is produced is essential for understanding how power is exercised and expressed, as governing a population is made possible through different ways of knowing (cf. Foucault, 1991).For example, in the specific area of criminal justice in England and Wales the development of a 'target' for criminal justice agencies to improve 'public confidence' in the criminal justice system as measured by the British Crime Survey (now Crime Survey of England and Wales) linked knowledge to action by blurring the lines between research and performance measurement. As such, attempts to understand the truth about 'public confidence' did not merely generate knowledge, they also functioned as part of a more encompassing 'regime of practices', generating a 'domain of objects about which it is possible to articulate true or false propositions' (Ibid: 79) and delimiting plausible responses to concerns about the relationship between the public and the criminal justice system. Truly, then, under these conditions, knowledge production becomes a part of the government bureaucracy.

Towards a moral justification of the power of knowledge

When social research becomes a part of the government bureaucracy the discretionary power it wields must be fully justified, not arbitrary, or it risks becoming a form of dominance (see

Richardson, 2002). It is important, then, to examine the grounds upon which particular methods for representing public opinion (which is to say bringing it into being) can be justified. I have already argued that AGIP methods cannot rely on assertions of epistemic superiority to justify their position of dominance. The form of 'public opinion' which they produce may have a certain practical appeal in a scientific culture which favours objectivity and a political culture oriented towards a majoritarian conception of democracy, but the products of AGIP surveys of 'public opinion' are no more 'real' than the products of deliberation. The alternative, which I hinted at right at the start of this article, is that we should adjudicate between approaches to researching 'public opinion' by examining how they produce public opinion, and whether they do so in a manner which is supportive of democracy, and the values which sustain it. In other words the power of knowledge, at least in the area of public opinion, must be justified in moral terms.

Yet, as Richardson (2002: 7) notes: 'insofar as we remain hazy about what the ideal of democracy requires of us, we will also remain ill prepared to protect and defend it'. It is beyond the scope of this article to develop a comprehensive account of what democracy is, or should be, and it is not necessary to do so in order to at least illustrate how we might begin to approach the task of providing a moral justification for different ways of knowing about public opinion. We might, for example, turn to democratic theory to propose that, in a democracy, citizens must be prepared to take into account each other's reasons and arguments (see Richardson, 2002); or that they ought to be prepared to engage in dialogue which requires them to defend their preferences in terms of public- rather than self-interest (Dryzek, 2000: 46); or that they ought to engage in processes focused on 'the transformation of private, self-regarding desire into public appeals to justice' (Young, 2000: 51). And we may want to note that sociologists have identified the tendency of AGIP public opinion research to help produce subjects who are 'opinioned' (Osborne and Rose, 1999), 'psychologised' (Mills, 2000), atomised, individualised, consumerised, self-interested, and otherwise shaped by the dispositions of the 'opinionated habitus' (Bourdieu, 1984). None of these things would appear to be supportive of a society in which individuals are well-prepared for engaging with one another in a spirit of openness, setting aside self-interest and pursuing justice. As such, if these are the criteria we have chosen as the yardstick for moral defensibility then we might suggest that AGIP approaches do not serve as an 'instrument of democracy', rather they help to create a reality in which the orientations which support a healthy democracy are actively suppressed.

So how do I bring this back to my original topic of reflecting upon 'the plausibility of imagining that the expanded use of deliberative approaches to understanding public opinion might offer some respite from the apparent excesses of 'penal populism''? The point I have been trying to make is that by challenging the dominance of AGIP measures on the grounds that they produce data which

is equally 'artificial' with the data provided by deliberative polls it may be possible to make space on equal terms for alternative, particularly deliberative, ways of knowing about (or indeed producing) public beliefs, preferences, opinions, feelings and evaluations on matters of crime and criminal justice. Rejecting this epistemic understanding of social science may be a necessary precursor to the opening up (some might say democratising) of the landscape of method in order to build up and extend the influence of more democratically valuable approaches to knowing, which is to say those approaches to knowing which establish and nourish deliberatively-inclined publics, and which are therefore more morally justifiable than those methods (AGIP methods) which undermine the orientations and values which help a deeper form of democracy to flourish.

It is highly likely (although by no means guaranteed) that the greater use of such methods will begin to unravel those forces which have combined to both make possible and incentivise 'penal populism' and underpin the drift towards 'mass incarceration'. They will do this by making much more meaningful demands upon citizens than the mere requirement that they express an instantaneous (and most likely unreflective and socially-conditioned) evaluation or preference. Participation of this kind can help to keep citizens alert to some key aspects of the lived realities of groups with whom they may not otherwise come into contact on a regular basis, operating as a 'circulatory system keeping them alive to social reality' (Dzur, 2012: 54). Deliberative engagements of this kind may be more likely to help to generate discourses which can challenge the malevolent shadow which is cast by the prison when it is regarded as the key institution for ensuring the maintenance of social order and justice.

Perhaps just as importantly, such engagements will offer their participants an opportunity to reflect upon the different ways in which democracy is enacted, and the different ways in which the responsibilities of democratic citizenship can be understood. The real 'value' in deliberative methods, then, is not that they have the capacity to access a deeper, more 'real' or considered 'truth' (they don't, although they will produce a different version of truth), rather it is that they operate with a much fuller account of the potential and appropriate role of subjects as political agents. They therefore offer both a more democratically appealing vision of social scientific method and a more democratically responsible approach to the ontological productivity of social science. It is the latter point which makes it a matter of democratic urgency to move beyond the idea of the 'hypothetical public' and acknowledge how deeply implicated social scientific activity is in the production and maintenance of democratic realities.

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