Mass and elite attitudes towards the
criminal justice system in South Africa:
How congruent?

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ABSTRACT
Political scientists struggle to understand the attitudinal link between the public and the elite on major policy issues. Using survey data of the World Values Study of 2001 (N=3000) as well as that of an opinion-leader study of 2000 (N=393), this article examines the extent to which the public share the attitudes of the elite towards the functioning of the South African criminal justice system. The results indicate that there is not much congruence between elite and public attitudes. There is also a perception of institutional incapacity regarding the criminal justice system among elites as well as subsections of the public. Furthermore, the results provide us with evidence that can serve as an estimate of the degree to which the public can be expected to understand the policy positions of the elite.

1. Introduction
The general perception is that the South African criminal justice system—with its core components of policing and crime control, courts and correctional services—is in a state of crisis. Not only is the awaiting-trial population at an 'historic high', the efficiency of the prosecution service is in decline, the prisons overcrowded, and a large number of people also feel that the quality of policing is deteriorating.¹

This perception of the criminal justice system has become even more negative over the last two to three years, as reported figures showed a steady rise in crime over this period. Measured on a per capita basis, the largest increases in crime levels since the 1994 elections were recorded between 1998 to 1999 (6.5%) and 1999–2000 (5.2%).²

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¹ See M Schorsch 'The prosecution stage' (1999) 3(3) Nedbank ISS Crime Index 1–3 for a summary of the most important elements that contribute to this pessimistic view of the criminal justice system. See also 'South Africa: The criminal justice system and prosecution service' (1998) Amnesty International

² See 'Criminal justice monitor' (2000) 4(4) Nedbank ISS Crime Index 1–2
Mass and elite attitudes towards the criminal justice system

It should be noted, however, that crime statistics remain controversial and even 'unreliable', by the Minister of Safety and Security's own admission. In August 2000 the police placed a moratorium on the release of police crime statistics. The main reason for this was to put in place a new system on the collection of crime statistics. This moratorium was lifted at the end of May 2001. The moratorium and the subsequent debate on the reliability of crime statistics may well have increased negative perceptions.

Nevertheless, according to numerous surveys many people are of the opinion that crime and violence have become an endemic feature of life in South Africa, with crime being cited most frequently as a reason for emigration. South Africa tops the world list as far as crime statistics on rape and murder are concerned. Moreover, the perpetrators of some serious violent crimes have a less than 2% chance of being caught and punished. For instance, of all the murder cases reported in 1998, 46% were sent to court or to a prosecutor for a decision whether to prosecute (only 25% were prosecuted), for rape this figure was 45% (only 18% prosecuted), for residential housebreaking 13% (only 6% prosecuted) and for robbery with aggravating circumstances 13% (only 4% prosecuted). What is even more disturbing is the very low success rate with prosecutions — for murder it was, for example, only one out of every 6.5 reported murders.

The reduced output of the courts as a consequence of the shortage of experienced public prosecutors impacted negatively on perceptions — in the mid-1980s there was about one prosecutor for every 45 robberies and in 1998 this figure declined to one prosecutor for every 85 reported robberies. During 1999 recorded crime levels rose faster than any other year since 1994.

Prisons are heavily overcrowded. At the beginning of 1999 more than 154 000 persons were detained in prisons with an official capacity of 98 000 — an average occupancy level of 156%. Of these, more than 57 000 were unsentenced. Moreover, the number of unsentenced prisoners has also increased steadily in recent years.

This rise in crime and the negative attitudes towards the criminal justice system could not have been predicted. They occurred against a background...

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5. Mail & Guardian, 1-6 June 2001. It is expected that crime statistics will be more reliable in future because the police have enlisted 72 new data analysts, 600 data typists and trained 1 800 police members in the implementation of the new data-gathering strategy.


6. Schonlau op cit (n 5) 22

of what was perceived as a triumph for 'legal reformism' and 'radical criminology', imbued with strong communitarian ideals' when the new Constitution with its justiciable Bill of Rights replaced the racially based approaches to crime which had been evident since the formation of Union in 1910. However, Van Zyl Smit states that, in spite of these major changes in approach, there was a steady increase in 'popular punitiveness', which jeopardised these reformist and communitarian tendencies. The question was how the government would react to this situation.

In a subsequent analysis Van Zyl Smit suggested that the 'primary response of the government has been to water down the first wave of "constitutionalising" legislation, while at the same time, pushing through the harshest possible new criminal justice legislation it can get away with in constitutional terms'.

This assessment creates an interesting double image of the nexus between the attitudes of opinion-leaders and the general public. First, there is the image of a consensus on civil liberties as epitomised in the Constitution presented by leaders who attempt to shape or alter attitudes. Secondly, there is the image of opinion-leaders who, after failing to persuade the public, appear to be responding to the sentiments of the masses — following instead of leading. However, the latter image may not altogether be fair to those that shape policies on the criminal justice system.

As far as the role of the elite or opinion-leaders in the constitution-making process is concerned, the proposition is advanced that they will lean towards a 'due process' model regarding criminal justice — a desire to

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8 See D van Zyl Smit Criminological ideas and the South African transition (1999) 59 British Journal of Criminology 1 for an analysis of the evolution of criminological ideas in the South African transition. The data for this article were collected in 1997.

9 D van Zyl Smit op cit (n8) 5 See in this regard also P Gastrow and M Shaw 'In search of safety: Police transformation and public responses in South Africa' (2001) Dikwalo 150(1), they describe the changing climate on crime prevention that endangered the constitutional rights of suspects.

10 Elites would include those people who hold authoritative positions in powerful public and private organisations and influential movements, who are therefore able to affect strategic decisions regularly. J Higley Elite Structure and Ideology (1976) 17. J Higley and R Gunther Elites and Democratic Consolidation in Latin America and Southern Europe (1992) 6 also write that elites are the principal decision makers in the largest or most resource-rich political, governmental, economic, military, professional, communications and cultural organisations and movements in society. See also authors such as RD Putnam The Comparative Study of Elites (1976), G Moyer and M Wagstaff Research Methods for Elite Studies (1987) and J Higley and G Moore 'Elite migration in stable democracies: A reconsideration' (1981) 7(1) European Sociological Review for definitions of elites that correspond to a large extent to that of Higley.

11 The terms 'elites' and 'opinion-leaders' will be used interchangeably.

12 J Packer The Limits of the Criminal Sanction (1968) Packer distinguishes between the 'due process model' and a 'crime control model' See also FE Baumann and KM Jensen Issues in Criminal Justice (1989) via for a similar distinction.
avoid all injustice. But this position is under tremendous pressure from a
general public who have been socialised to believe in retributive justice.\textsuperscript{15}

Using survey data describing the views of the mass public and the elite, an
attempt is made in this article to discover who is 'leading the parade' on
attitudes towards a more retributive criminal justice system. The focus of this
article will be on the attitudinal correspondence between the public and the
opinion-leaders — thus, how congruent are their attitudes? In addition,
aspects of the administrative capacity of the criminal justice system will also
be elaborated on. Unfortunately, there are no longitudinal data available to
establish as well as the direction of attitudinal change over the last number of
years.

2. Public opinion: the relationship between the elite and the
public

Since this article deals with both policy and opinion, the role that elites play
in both has to be clarified, because there is a distinction between the role
they play in shaping policy and the role they play in shaping mass opinion.

In previous studies on the role of elites in South Africa, with reference to
the political transition and the public policy-making process, the following
aspects were emphasised:\textsuperscript{14}

\begin{itemize}
  \item elites are, in the words of Weber, the 'switchmen of history' and as such
  are the societal agents through which broader forces such as ethnicity,
  class, religion, etc are filtered to ordinary people;
  \item the most important agents in the transition were the political leaders—an
  important part of the elite; and,
  \item the ability of the elite (or individuals in the elite) to affect decisions,
  attitudes and behaviour is a function of either power or influence.\textsuperscript{15}
\end{itemize}

There is, therefore, no doubt about the important position that elites occupy
in the policy-making process.

\textsuperscript{15} Retributive justice requires that the guilty be punished and they should suffer in proportion to
the suffering they have inflicted (Sarat in Bauman and Jensen op cit (n12) 114) or as it is put
elsewhere in Baumann and Jensen op cit (n12) 81, the criminals must get their 'just deserts'
\textsuperscript{14} See in this regard HJ Korzé \textit{Elites and Democratization} (1992), HJ Korzé and P du Toit \textit{The
\textit{Journal of Conflict Resolution} 1

\textsuperscript{15} Power can be defined as the ability to make offers and threats that are likely to alter the
motivations of persons other than the power wielder (Higley, op cit (n10) 17). Influence, on
the other hand, can be seen as the ability of an individual or group to initiate voluntary
adjustments and change in attitudes, opinions or behaviour of another individual or group by
means of persuasive reasoning or conduct (See DJV Bell \textit{Power, Influences and Authority}
(1974) 4)
In both the problem definition or framing phase and the agenda-setting process of public policy issues opinion-leaders from various sectors of society play a major role in bringing the problem to the attention of policymakers and later also in choosing a solution for the problem. Most of the decisions that opinion-leaders make regarding public policy issues are to a large extent ‘reflecting their values and serving their ends’.\(^{16}\) A number of studies suggest that the elite define the different dimensions of public issues and that they can enhance the salience of some issues as opposed to other.\(^ {17}\)

Elite influence on public opinion is somewhat different. Most of us are dependent on ‘unseen’ and usually ‘unknown others’ for the information about the world that we live in. In 1922 Lippmann wrote, in what is now considered a classic text on public opinion, that

> Each of us lives and works on a small part of the earth’s surface, moves in a small circle, and of these acquaintances knows only a few intimately. Of any public event that has wide effects we see at best only a phase and an aspect. Inevitably our opinions cover a bigger space, a longer reach of time, a greater number of things than we can directly observe. They have, therefore, to be pieced together out of what others have reported and what we can imagine.\(^ {18}\)

Every day these ‘others’ — the elite — who are persons who devote themselves for the most part to some aspect of politics or public affairs, send messages to the public. These are messages that we find in the newspapers, on radio, on television or in personal communications. McGraw confirms this view when she writes: ‘Because “events seldom speak for themselves” … the official rhetoric of those actors who provide interpretations of political events

\(^{16}\) JE Anderson Public Policy Making: An Introduction 2nd (1994) 30 The actual policy-formulation process is a complex and highly diffuse set of procedures with different issue networks and policy communities at work, something which is covered in detail elsewhere. We will also not discuss in detail the different models that help in explaining the policy process. For a discussion on the policy-formulation process see amongst others: M Howlett and M Ramesh Studying Public Policy (1995) 122–35. Two of the best recent descriptions of the policy-making process in South Africa are those by SJ Booyzen and E Erasmus Public Policy-making in South Africa in A Venetor Government and Politics in the New South Africa (1998) and the Centre for Development Enterprise Policy-Making in a New Democracy (1999). For a discussion of the different models of policy-making see Anderson op cit (n16). C Ham and M Hill The Policy Process in the Modern Capitalist State 2nd (1995) and Booyzen and Erasmus op cit (n16).

\(^{17}\) Studies that reported on the connection include JA Krosnick and DR Kinder Altering the foundations of support for the president through priming (1990) 86(1) American Political Science Review and R Herera Understanding the language of politics: A study of elites and masses (1994) 111(2) Political Science Quarterly. Putnam op cit (n10) also gives an overview of an extensive body of literature which suggests that elites are the principal source of major policy ideas.

may do as much, or even more, to influence public opinion than the policies themselves.19

However, although there is no denying the role of the information supplied by the elite in shaping public opinion — the shared opinions of a large number of people — the argument here would be that the elites do not necessarily play a major role in shaping the individual opinions that can change political or policy predispositions in the short term. These predispositions, which are at least in part, a distillation of a person’s ‘lifetime experiences’,20 are the ‘stable, individual-level traits that regulate the acceptance or non-acceptance of the political communication the person receives’.21

Predispositions mediate the public’s responses to elite views, but they are not in the short term determined by elites. In the South African context there was not enough exposure to, for instance, the liberal values embodied in the Constitution to make a major impact on the ‘lifetime experiences’ of the majority of the population.

To summarise: public policy is produced by elites, reflecting their attitudes and values and serving their ends — one of which may be a desire to provide in some way ‘a better life for all’. It is expected that elite messages concerning criminal justice policy issues may not have had a major influence on public attitudes.

3. Strategy of enquiry

The Centre for International and Comparative Politics (CICP), Stellenbosch University, has over the past decade conducted an in-depth analysis of the social, political and economic transformation taking place in South Africa. A longitudinal study on the attitudes and values of the country’s elite formed one of the core elements of this project. Since 1990 five opinion-leader surveys (1990, 1992, 1993, 1995 and 1998) have allowed us to build up an extensive database on South African elite perspectives.22 The sixth of these surveys, the ‘2000 National Opinion-leader Survey’, was completed late in 2000. Data obtained from the 2000 survey will be analysed in this article.

20 The position taken here is based on that of Zaller op cit (n18) 22-8, who refers to the variety of interests, values, and experiences that may greatly affect (the public’s) willingness to accept — or alternatively, their resolve to resist — persuasive influences such as political predispositions.
21 Zaller op cit (n18) 22
22 See, amongst others, the following publications based on these studies: Kotze op cit (n14), Kotze and Du Toit op cit (n14), J Kinghorn and HJ Kotze ‘South African elites and Christian ethics’ (1997) 62 Sceptra. HJ Kotze Elite Perspectives on Policy Issues in South Africa' (2001)
3.1. The Elite Sample

A positional sample — the most widely used approach in elite sampling \(^{25}\) — was used to select respondents for this particular survey. Such a procedure implies that individuals holding the most authoritative positions in influential institutions are approached to participate as respondents in a survey. This project has identified respondents in eight key sectors (see Table 1) — covering the public and private spheres of South African society — to complete a structured questionnaire on some of the most pressing issues facing the nation.

The selection of the elite sectors was based primarily on the following criteria:

- The sector must be regarded as important by experts on the South African scene in terms of the power and influence it has in policy issues (for example, parliament; the civil service; the business sector); and,

- The sector is regarded as important if it fulfils some or other formal representative function (for example, the churches or trade unions).

The market research company, Markinor, was contracted by the CICP to distribute and collect completed questionnaires — the parliamentary and agricultural sectors received their questionnaires by mail. (For the full list of sectors see Table 1.) Due to an initially low response rate among parliamentarians, a second batch of questionnaires was mailed, followed by a third that was distributed by fieldworkers of the CICP. From the original sample of 804, a realised response rate of 48.8% (N=393) was achieved.

Nearly 56% of respondents (N=211) named the ANC as their party of preference — an increase of 10.5% on the 1998 survey (The valid percentage is used here because 16 respondents out of 393 refused to declare their party allegiance.) Since the questionnaire was printed before the launch of the Democratic Alliance (DA), no provision was made for this particular political grouping in the party category. Inferences regarding support for the DA were made by combining support for the Democratic Party (DP), New National Party (NNP) and the Federal Alliance (FA). Combined, the respondents supporting these three parties constitute 31% (N=119) of the sample. Of these, 35 were NNP and three DA supporters.

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\(^{25}\) See Moyser and Wagstaffe op cit (n10) 29–32
Table 1: Elite respondents in the different sectors of society

<table>
<thead>
<tr>
<th>Sector</th>
<th>Composition of Sectors</th>
<th>No. of Respondents</th>
<th>Percentage of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Parliament</td>
<td>Available members of the National Assembly</td>
<td>103</td>
<td>26.2%</td>
</tr>
<tr>
<td>2 Civil Service</td>
<td>The ten most senior officials in each government department</td>
<td>63</td>
<td>16.0%</td>
</tr>
<tr>
<td>3 Business</td>
<td>CEOs and directors from top South African companies</td>
<td>54</td>
<td>13.7%</td>
</tr>
<tr>
<td>4 Media</td>
<td>Managers, editors and senior journalists of the print and electronic media</td>
<td>39</td>
<td>9.9%</td>
</tr>
<tr>
<td>5 Trade Unions</td>
<td>Most senior members of COSATU and its affiliates</td>
<td>42</td>
<td>10.7%</td>
</tr>
<tr>
<td>6 NGOs</td>
<td>Top managers and researchers in the NGO sector</td>
<td>62</td>
<td>15.8%</td>
</tr>
<tr>
<td>7 Churches</td>
<td>Executive members of South Africa’s largest churches</td>
<td>21</td>
<td>5.3%</td>
</tr>
<tr>
<td>8 Agriculture</td>
<td>Executive members of national and regional agricultural unions</td>
<td>9</td>
<td>2.3%</td>
</tr>
<tr>
<td><strong>Total Survey</strong></td>
<td></td>
<td><strong>393</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

It should be noted that, unlike public surveys, elite surveys should not be used to draw conclusions about the attitudes of a whole population. Their value lies in the ability to discern particular trends among the most influential decision-makers in both the public and private sphere. The fact that some parties or racial grouping are over- or under-represented in this sample should therefore not detract from the usefulness of this study.

Concern may, for example, be raised about the fact that ‘only’ 56% of the respondents reported support for the African National Congress (ANC), whilst the party drew nearly two thirds of the vote in the 1999 election. It should, however, be remembered that in sectors like business, the media, agriculture and to some extent the NGO sector, supporters of the Democratic Alliance (DA) still occupy a disproportionate number of influential positions.
Furthermore, it must be mentioned that a relatively low response rate among parliamentarians (under 30%) and to some extent also among the civil service may have detracted from achieving a higher overall response rate and thus also higher support levels being indicated for the ANC.

As far as the elite are concerned, party support will be considered as the most important determinant of attitudes towards policy issues — on a few occasions elite sector and race24 will also be used. Party support will therefore be used as the main independent variable in the analysis.

The use of party support is based on the assumption that the opinion-leaders, connected in one way or another to political parties, guide public policy and public opinion to a large extent along the lines of party policy. This approach finds support in the work of Putnam, who states that '[e]lite beliefs are usually structured by partisan ideological commitment often along the familiar Left-Right continuum ... Knowing where a leader stands on one issues is likely to help us understand and predict his stance even on tangential or as yet undiscussed matters'.25

With regard to the majority of the selected policy issues this article will therefore focus on the attitudes of supporters of the two largest parties, the governing African National Congress (ANC) and the main opposition party, the Democratic Alliance (DA). In the analysis the emphasis will fall on the frequency with which particular characteristics and variables occur in the study.

3.2. The public survey

The set of items on the criminal justice system used in the public survey came from the elite survey that was conducted. The items were included in the World Values Survey that was conducted in March, April and May 2001. The total sample size consisted of 3000 male and female respondents subdivided into the following sub-samples.

- 1303 interviews among black respondents;
- 899 interviews among white respondents;
- 499 interviews among coloured respondents; and,
- 299 interviews among Indian respondents.

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24 Race remains one of the most useful analytical categories. Owing to the legacy of the past, this variable still plays a major role in determining attitudes towards policy issues and can be seen as an intervening variable when it comes to party support. However, the use of terms such as African, white, coloured and Indian does not signify approval of the categorisation of people into racial groups.

25 Putnam op cit (n10) 86-9.
The sample consisted of adults, aged 16 years and older, residing in all nine provinces of South Africa. All Media and Products Survey (AMPS) 2000 figures were used as the basis for the sample design.

For blacks, the sample was drawn using the area probability method. First, the sample was stratified by area and then by suburb. Then the sampling points were determined by a systematic random selection, based on AMPS figures per stratum. Third, a starting point per sample point was selected at random. Squatter camps were included, but respondents living in hostels and mines as well as domestic workers were excluded.

The advantages of the area probability sample are as follows:
- It eliminates interviewer bias in the selection of the sample;
- incidence can be measured;
- no pre-knowledge of the universe is necessary;
- profiles can be established; and
- statistical accuracy of the results can be assessed.

Within a household, all members were listed and the qualifying respondent was determined by means of a random selection grid, which is a modification of the Poliz grid. All efforts were made to interview this person. If this was not possible, even after three calls (including evening and weekend calls), the person was substituted with another respondent of the same gender and age, living in the same street.

For whites, coloureds and Indians the sample was an area quota sample, stratified by race, town and suburb. Sampling points were identified at random. The same procedure as that described above was applied to determine the sampling points. Age, gender and working status quota controls were applied at each sampling point. A total of five interviews were completed at each sampling point. These methodologies ensure that the samples of respondents are representative for the universes from which they are drawn and that the results can be projected onto the universe within a statistical margin of error.

Face-to-face interviews were conducted with respondents who satisfied the selection criteria. Interviewing was conducted during the day as well as in the evenings and during weekends in order to ensure that both working and non-working people, young and old, were given a fair opportunity of being surveyed. All the interviews were conducted by experienced Markinor interviewers, who were of the same ethnic and language group as the respondent. They received a thorough briefing before commencement of fieldwork.

A semi-structured questionnaire was used, which was translated from English into the relevant languages. Each interview was therefore conducted
in the language of the respondent’s choice. Showcards were used in the structured section of the questionnaire.

Markinor conducted a 26% back-check on all completed interviews. Finally, the sample was weighted to the full universe.

4. Findings and discussion

South Africa’s new Constitution was adopted in 1996. This brought to an end the period of transition and initiated a phase of democratic consolidation. The transition is generally regarded as successful. Democratic consolidation to a large extent involves the institutionalisation or legitimisation of the sophisticated institutions at the state’s disposal. Essentially this means that people must have confidence in the way institutions operate. Because of the ANC’s total domination in Parliament, they have been able to transform state institutions at a rapid pace — which means, in line with their ideology, that (among other things) it has become more representative of the population — and transformation will also be enforced on the private sector through legislation.

However, institutions cannot only be redesigned and changed at will to suit the government’s design. Such institutions as the legal system, police and civil service are not insulated from political and social life and confidence in institutions depends heavily upon the ability of the institutions to solve the problems they are designed to address.26 Confidence in institutions therefore depends on the institutions’ performance and effectiveness. These elements are intimately linked with the public’s perceptions of the institutions and will impact directly on their attitudes towards the separate elements of the criminal justice system.

An appraisal of confidence in political institutions predictably brings up a possible connection with legitimacy.27 Although these two concepts are related, they are not identical. Legitimacy, according to Listhaug,28 is narrower and ‘primarily confined to the support for the political system’. A steady decline in confidence or low levels of confidence may thus have the effect that legitimacy is threatened. An important additional element in the

26 For the important role that confidence in institutions plays see O Listhaug and M Wiberg, ‘Confidence in political and private institutions’ in H Königmann and D Fuchs Citizens and the State (1995) 302
27 One of the classic definitions of legitimacy is that of SM Lipset, The Political Man (1951) 4, who defines it as ‘the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society’
28 See O Listhaug, ‘Confidence in institutions: Findings from the Norwegian values study’ (1986) 27(1) Acta Sociologica 111
decline of legitimacy is the loss of trust in institutions and concomitant support for alternatives to existing institutions.\textsuperscript{29} 

A number of writers are of the opinion that it is very difficult to measure legitimacy.\textsuperscript{30} Instead of tackling this difficult task, a different approach is adopted in this article. From Lipset's definition above as well as that of Linz,\textsuperscript{31} the assumption is made that 'confidence' in state institutions, although only one element in legitimacy, albeit an important one, may give an indication of the direction in which legitimacy is moving. Declining confidence is therefore an indicator of potential legitimacy problems. However, this approach is not entirely free of problems, because there is no absolute standard for what should be regarded as a high or a low level of confidence. Instead of unequivocal benchmarks,\textsuperscript{32} comparisons over time, such as are possible in a longitudinal study, may indicate the direction in which confidence levels are moving.

The following three items were used for the 'confidence index' in the three institutions: (1) the legal system; (2) the police; and (3) the civil service. These institutions include all the elements of the criminal justice system. The question to which the respondents had to respond was: 'I am going to name a number of organisations/institutions. For each one, could you tell me how much confidence you have in them: is it a great deal of confidence, quite a lot of confidence, not very much confidence or none at all?' There were 18 institutions altogether.

The index was built up by allocating 4 points for 'a great deal', 3 points for 'quite a lot', 2 points for 'not very much' and 1 point for 'not at all'. Given these three items, points thus ranged from a minimum of 3 to a maximum of 12.\textsuperscript{33}

\textsuperscript{29} See Løthaug and Wiberg op cit (n26) 299
\textsuperscript{31} See Linz op cit (n30) 85
\textsuperscript{32} Løthaug and Wiberg op cit (n26) 298
\textsuperscript{33} A fairly weak inter-correlation was measured. Constructing an index with the three items the Cronbach's Alpha for the elite was 0.5916 and for the public 0.6773
Table 2: Confidence index in legal system, police and civil service

<table>
<thead>
<tr>
<th>Response</th>
<th>Elite</th>
<th>ANC</th>
<th>DA</th>
<th>Public</th>
<th>ANC</th>
<th>DA</th>
<th>IPF</th>
</tr>
</thead>
<tbody>
<tr>
<td>A great deal</td>
<td>4.0</td>
<td>5.4</td>
<td>1.7</td>
<td>24.3</td>
<td>25.9</td>
<td>13.2</td>
<td>56.3</td>
</tr>
<tr>
<td>Quite a lot</td>
<td>24.8</td>
<td>28.4</td>
<td>18.6</td>
<td>39.6</td>
<td>50.0</td>
<td>28.2</td>
<td>5.6</td>
</tr>
<tr>
<td>Not very much</td>
<td>54.7</td>
<td>52.0</td>
<td>59.3</td>
<td>23.4</td>
<td>18.4</td>
<td>31.9</td>
<td>10.3</td>
</tr>
<tr>
<td>None at all</td>
<td>16.5</td>
<td>14.2</td>
<td>20.4</td>
<td>12.7</td>
<td>5.7</td>
<td>26.7</td>
<td>27.8</td>
</tr>
</tbody>
</table>

Elite N = 330; Public N = 3 000

The pattern that emerges from Table 2 tells a disappointing story regarding confidence in key state institutions. But it also explains partially why the elite have become less liberal with regard to the criminal justice system, as suggested by Van Zyl Smit in the introduction. It may be a fear of losing control of the situation that forced them towards a belief that the central purpose of the criminal justice system is to lower the crime rate.

With 'quite a lot' and 'a great deal' of confidence combined, the elite have only 29% confidence in the institutions that form the backbone of the criminal justice system. Moreover, among those from whom one would expect a relatively high level of confidence, namely the ANC supporters, only 34% has confidence and the opposition supporters have a very low 20%. Overall, the level of confidence indicated as 'not much' and 'not at all' for respondents from these two parties was 71%, which in turn implies only 29% who have confidence. On the other hand, the percentage of the public that has confidence is a relatively high 64%, more than double that of the elites. Among the public the ANC supporters have 75% confidence, compared to the 41% of the DA and 62% of the Inkatha Freedom Party (IFP) supporters.

Among the elite the ANC in the parliamentary sector has the highest mean confidence, namely 2.7059 (the range is from 1 to 4) and the lowest mean confidence is that of the ANC supporters in the media at 1.8889. These means for the DA are 2.1000 and 2.0000 respectively — the lower the mean, the lower the confidence. Among the public it is the whites in particular who have a very low level of confidence. While the black mean is 3.001 (std. .8303), the mean for whites is 1.9161 (std. .8078). For the coloureds it is between the white and black mean at 2.5150 (std. 9148) and for the Indians 2.3937 (std. 9904).

54 The standard deviations are 0.7190 and 0.5830 respectively
55 The standard deviations are 0.5803 and 0.8165 respectively
It seems that, according to the elite evaluation, the institutional capacity of the criminal justice system was at a very low level at the end of 2000. On these low levels any further decrease of confidence would certainly endanger its ability to regulate not only the criminal justice system itself, but property rights, enforcement of contracts and control of official acts of corruption would be at risk.  

It cannot be said that the state has remained passive with respect to this weakening of institutional capacity. But it is extremely difficult to introduce an increase in, for example, the budget for the Department of Safety and Security under current economic conditions. The same applies to the other state departments. Furthermore, the state's commitment to transformation has also led to a loss of essential expertise, which jeopardises its administrative capacity.

To gauge the respondents' attitudes towards the criminal justice system in particular, the items in Table 3 were used with the following introduction: 'We would like to know how you feel about the following statements regarding the criminal justice system. Please indicate whether you agree or disagree with the following statements'. The response categories were presented in a Likert-type scale with the following categories: 'strongly agree', 'agree', 'neither agree nor disagree', 'disagree' and 'strongly disagree'.

Table 3: Factor analysis of criminal justice system items

<table>
<thead>
<tr>
<th>Items</th>
<th>Factor 1</th>
<th>Factor 2</th>
<th>Factor 3</th>
<th>Factor 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The crime rate for the country as a whole has decreased since 1994</td>
<td>.879</td>
<td>.819</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. The government has done a good job in fighting crime and lawlessness since 1994</td>
<td>.872</td>
<td>.847</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

56 See Ms Grindle Challenging the state. Crises and innovation in Latin America and Africa (1998) 31–4, for a summary of the dangers of loss of institutional capacity.

57 Note that among the elite only respondents supporting the ANC and DA (N = 330) were included and among the public the full sample was used. The ANC, DA and IFP supporters represent 90.5% of the sample.

58 Analysis with principal component extraction and varimax rotation with items loading at 0.4 and above were included in the analysis.
| 3. The general functioning of the criminal justice system has improved since 1994 | .844 | .815 |
| 4. If suspects remain silent under police questioning, it should count against them in court | .798 | .730 |
| 5. Suspects should have the right to remain silent under police questioning | .701 | .711 |
| 6. The rules in court should be less on the side of the accused | .700 | .675 |
| 7. Stiffer sentences are generally an effective way of preventing crime | .711 | .794 |
| 8. To send more offenders to prison is an effective way of preventing crime | .670 | .756 |
| 9. Prison life is too soft | .613 | .460 |
| 10. It is worse to convict an innocent person than to let a guilty person go free | .828 |
| 11. The police should sometimes be able ‘to bend the rules’ to get a conviction | .537 |
| 12. Magistrate are generally out of touch with what ordinary people think | .791 |
| 13. Judges are generally in touch with what ordinary people think | -.712 |
The expectation was that in a factor analysis a response pattern would emerge in which the items will cluster according to the different components of the criminal justice system — policing and crime control, courts and correctional services. (See Table 3 for the factor loadings the public and elite samples.)

For both samples four factors were isolated. However, four items in the elite survey were not included in the public survey. These were:

- Judges are generally out of touch with what ordinary people think;
- Legislation passed since 1994 has granted police officers greater powers to combat crime; and
- On the whole the criminal justice system is not performing well.

A fifth item, 'The death penalty is the most appropriate sentence for some crimes', was loaded for the elite under factor 1 and for the public under factor 3 and was therefore excluded from the indexes.

From the items in the first factor a multi-item index — Criminal justice system index—was constructed for the elite and the public. When comparing the elite and the public, it is clear that the latter are much more positive towards the overall functioning of the criminal justice system. Compared to the elite (at 19%), nearly double the number (33%) of the public felt positive ('strongly positive' and 'positive' collapsed). However, in both groups of respondents a majority felt negative: 71% among the elite and 53% among the public.

Table 4: Criminal justice system index for elite and public: positive and negative attitudes by party support

<table>
<thead>
<tr>
<th>Attitude</th>
<th>Elite</th>
<th>ANC Elite</th>
<th>DA Elite</th>
<th>Public</th>
<th>ANC</th>
<th>DA</th>
<th>IFP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly positive</td>
<td>1.0</td>
<td>1.9</td>
<td>0.0</td>
<td>9.2</td>
<td>12.5</td>
<td>1.3</td>
<td>2.2</td>
</tr>
<tr>
<td>Positive</td>
<td>18.5</td>
<td>31.6</td>
<td>0.0</td>
<td>23.6</td>
<td>30.2</td>
<td>12.5</td>
<td>8.2</td>
</tr>
<tr>
<td>Neither</td>
<td>9.8</td>
<td>13.9</td>
<td>1.7</td>
<td>14.2</td>
<td>14.0</td>
<td>9.2</td>
<td>25.0</td>
</tr>
<tr>
<td>Negative</td>
<td>39.2</td>
<td>43.1</td>
<td>31.4</td>
<td>30.4</td>
<td>29.7</td>
<td>34.2</td>
<td>28.0</td>
</tr>
<tr>
<td>Strongly negative</td>
<td>31.5</td>
<td>9.6</td>
<td>66.9</td>
<td>22.7</td>
<td>13.6</td>
<td>42.8</td>
<td>36.6</td>
</tr>
</tbody>
</table>

---

59 Elite Alpha = 0.8381 and public Alpha = 0.8780. In building the three-item indexes the allocation for the five categories was as follows 5–5, 6–9, 10–12, and 13–15. For the two-item index it was 2–3, 4–5, 6, 7–8, and 9–10.
Using party support as an independent variable, a clear pattern emerges. It is the supporters of the ANC among the elite and the public who are feeling much more positive, with a third (33%) among the elite and 43% among the public in this category. DA supporters among the public are also more positive than the DA in the elite, with 14% versus none. On average the public is therefore much more positive towards the criminal justice system.

However, the pattern changes when it comes to the rights of suspects. The three items that loaded on the second factor were combined to form an index on the rights of suspects.

Table 5: Suspects’ rights index for the elite and public: positive and negative attitudes by party support

<table>
<thead>
<tr>
<th>Attitude</th>
<th>Elite</th>
<th>ANC Elite</th>
<th>DA Elite</th>
<th>Public</th>
<th>ANC</th>
<th>DA</th>
<th>IFP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly negative</td>
<td>4.6</td>
<td>1.9</td>
<td>9.3</td>
<td>2.0</td>
<td>2.1</td>
<td>1.7</td>
<td>2.0</td>
</tr>
<tr>
<td>Negative</td>
<td>23.3</td>
<td>23.4</td>
<td>23.7</td>
<td>45.5</td>
<td>39.8</td>
<td>55.5</td>
<td>43.5</td>
</tr>
<tr>
<td>Neither</td>
<td>13.1</td>
<td>14.4</td>
<td>11.0</td>
<td>19.7</td>
<td>24.1</td>
<td>12.3</td>
<td>21.1</td>
</tr>
<tr>
<td>Positive</td>
<td>48.3</td>
<td>46.9</td>
<td>50.8</td>
<td>29.1</td>
<td>30.9</td>
<td>28.7</td>
<td>30.3</td>
</tr>
<tr>
<td>Strongly positive</td>
<td>10.4</td>
<td>13.4</td>
<td>5.1</td>
<td>3.1</td>
<td>3.1</td>
<td>1.8</td>
<td>3.1</td>
</tr>
</tbody>
</table>

As far as the way that suspects should be treated by the police and courts is concerned, the elite are substantially more liberal than the public (see Table 5). This confirms the proposition stated in section one. In this case 28% of the elite and nearly half of the public (47%) are what can be described as negatively inclined to ‘due process’.

An interesting pattern emerges when the index is cross-tabulated with party support. The ANC elite (60%) is somewhat more liberal than the DA (56%) when compared on a positive stance on ‘due process’. This pattern is repeated amongst the public, where 34% of ANC supporters are positively inclined towards suspects’ rights and 31% of the DA supporters fall into this category. (Although the details have not been included in Table 5, it is interesting to note that among the public IFP supporters mirror the pattern of the ANC, with 33% who are positively inclined).

The three items in the third factor deal with what can be described as a retributive orientation. Included here is an evaluation of the prison system as an element of the criminal justice system.

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40 The reliability for the elite was Alpha = 0.6548 and for the public Alpha = 0.6780
Table 6: Retributive index for elite and public: retributive versus anti-retributive

<table>
<thead>
<tr>
<th>Attitude</th>
<th>Elite</th>
<th>ANC Elite</th>
<th>DA Elite</th>
<th>Public</th>
<th>ANC</th>
<th>DA</th>
<th>IFP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly</td>
<td>8.8</td>
<td>7.1</td>
<td>12.0</td>
<td>10.8</td>
<td>8.7</td>
<td>20.6</td>
<td>2.0</td>
</tr>
<tr>
<td>retributive</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retributive</td>
<td>47.3</td>
<td>46.2</td>
<td>50.4</td>
<td>27.6</td>
<td>29.1</td>
<td>25.3</td>
<td>34.9</td>
</tr>
<tr>
<td>Neither</td>
<td>13.3</td>
<td>14.3</td>
<td>12.0</td>
<td>17.8</td>
<td>15.7</td>
<td>18.3</td>
<td>38.1</td>
</tr>
<tr>
<td>Anti-retributive</td>
<td>25.8</td>
<td>26.7</td>
<td>24.8</td>
<td>32.6</td>
<td>36.7</td>
<td>19.3</td>
<td>23.8</td>
</tr>
<tr>
<td>Strongly</td>
<td>3.9</td>
<td>5.7</td>
<td>0.9</td>
<td>11.2</td>
<td>9.9</td>
<td>16.5</td>
<td>1.2</td>
</tr>
<tr>
<td>anti-retributive</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Surprisingly, the elite (56%) are much more inclined towards retribution than the public (38%) is (see Table 6). There is a relatively large margin of difference between the respondents who support the ANC (53%) and the DA (62%), but in both cases the majority of the respondents fall into the retributive justice category.

Significantly, only about a third of the public are inclined towards retribution. In this case there is a large gap between ANC supporters (38%) who are inclined towards retributive justice against 56% of the DA who indicate this orientation.

With regard to retributive justice, however, it should be mentioned that the reverse pattern is evident when it comes to the death penalty. To the statement 'The death penalty is the most appropriate sentence for some crimes' 40% of the elite agree ('strongly agree' and 'agree' combined), whereas for the public the figure is 66%. The percentages among the public for the three largest parties are as follows: ANC — 60%; DA — 87%; and IFP — 56%. For the elite the spread is as follows: ANC — 27% and the DA — 63%.

To summarise the findings on the dyadic congruence or correspondence between the attitudes of the elite and the public, elite attitudes differ from those of the public in important ways. The major differences are:

- The elite have far less confidence in the structures that form the core of the criminal justice system — the police, legal system and civil service — than the public do;

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41 In both indexes the reported Alphas are low, despite the face validity that these items have in a retributive index. For the elite Alpha = 0.5281 and for the public Alpha = 0.5797
• The elite are more negatively inclined towards the criminal justice system than the public are;
• The elite are more inclined towards retributive justice than the public are;
• The elite are more supportive of 'due process' than the public are.

What does this pattern tell us about the initial propositions? First, there is a more fractured pattern than was expected. The elite are more supportive of 'due process' than the public — which is what was initially proposed — but what was not expected was their more retributive attitude, with the exception of their views on the death penalty, towards those who have been found guilty.

Secondly, what was not expected was that the elite would have so much less confidence than the public in the state structures — police, legal system and civil service — encompassing the criminal justice system. Moreover, as the designers and controllers of the criminal justice system, their negativity regarding progress made since 1994 came as a surprise.

Thirdly, that it is worth noting that although there are relatively large differences between the elite and the public on policy issues; similar differences on important policy issues were also found in some other countries.42

Fourthly, it is interesting to note that supporters of the DA among the elite and the public were on all accounts more negative and conservative than supporters of the ANC. Maybe this is an illustration of the way that predispositions can slow down the messages coming from the elite.

Finally, due to the fractured attitudinal pattern it is difficult to establish who is leading the parade on attitudes towards the criminal justice system.

5. Concluding Remarks

This article has shown that there is not much congruence between elite and public attitudes towards the criminal justice system. What should be of major concern to legal reformists, however, is not the methodological point regarding congruence, but rather the perception of institutional incapacity among elites as well as subsections of the public which became evident in this analysis.

One important indicator of the strength of institutional capacity in the eyes of the elites and the public is their attitudes towards the enforcement of law and order as evaluated in this article. One of the most important aspects of

42 See S Holmberg Political representation in Sweden (1989) 12(1) Scandinavian Political Studies, CH Backstrom Congress and the public How representative is the one of the other? (1977) 5(2) American Politics Quarterly.
state administration has to do with perceptions its stability and predictability. A climate of stability and predictability gives individuals and groups the confidence to make decisions based on long-term expectations of the state's capacity for regulating economic and political relations.

Sustainable democracy in South Africa depends to a large extent on the capacity of the state to deliver public goods, in this case stability through the enforcement of law and order. An effective bureaucracy requires not only high levels of training and talent, but also productivity and salaries to compete with the private sector. Furthermore, it appears that the effectiveness of the civil servants in the criminal justice system in particular has been further jeopardised by the rapid pace of affirmative action and the implementation of a cadre policy where loyalty to the party counts more than management capabilities. Although this may form an essential element in South Africa's racial transformation process, it is true that the rapid implementation of these strategies may have jeopardised capacity and therefore delivery. In the end the consequence of this was a perceived weakening of the state.

From some of the attitudinal patterns discussed here it is evident that the respondents perceived significant loss of capacity in important state agencies such as the police, courts and civil service, which may result in — or have already resulted in — a weakened state. The strength of the state is of vital importance, because a strong state is able to enforce its rules of social control on organisations such as warlords, drug barons, multinational corporations, ethnically based interest groups, etc. wishing to impose their own rules. In weak states there are thus typically high levels of crime, civil disobedience, 'no-go' areas, etc. Competing organisations impose their own networks and civil servants are drawn into networks of corruption. The police are challenged and violence becomes an increasingly prevalent feature. This scenario contains all the elements that the government is trying to bring under control at present.

The sustainability of economic growth will also be severely tested under weak state conditions. Moreover, the possibility exists that wealthy and skilled people would rather 'exit' a weak South Africa, to use Albert Hirschman's well-known model, than stay and 'voice' their concerns or become 'loyal' to the government.

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43 See JS Migdal Strong Societies and Weak States State-Society Relations and State Capabilities in the Third World (1988) for a discussion of the features of 'weak' and 'strong' states

44 AJ Hirschman Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations and States (1974)