Monica K. Miller · Jeremy A. Blumenthal
Jared Chamberlain *Editors*

Handbook of Community Sentiment

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For my colleagues and friends at the University of Nebraska-Lincoln, past and present, who helped me become who I am today. Without you, this book is not possible

M.M.

Dedicated to my family

J.B.

To Jaclyn, Maelyn, and Callie. I always care what you guys think

J.C.

Acknowledgments

In a way, this book is the result of three "generations" of scholars' shared interest in community sentiment. Jeremy published his article "Who Decides? Privileging Public Sentiment about Justice and the Substantive Law" in 2003. That article, along with Norman Finkel's seminal book "Commonsense Justice: Jurors' Notion of the Law" (2001), sparked Monica's interest in including a section on community sentiment in her graduate course. Eventually, the notion of community sentiment took hold of that course and became a recurring theme. Students were drawn to the notion of if, when, and how the public's sentiment shapes—and is shaped by—the law. As one of Monica's students, Jared learned about community sentiment while taking Monica's graduate course. He went on to design a dissertation which, among other things, measured how social cognitive processes change sentiment toward gay rights. This furthered Monica's interest in community sentiment, and how it can be measured, changed, and interact with justice principles. Soon, the desire for a "one stop" book on community sentiment was born. A few dozen emails later, a book proposal was born.

As editors, we were fortunate enough to secure contributions from many fine scholars who study community sentiment in one form or another—on a variety of topics, using a variety of methodologies. Our thanks go to these chapter authors who made this book a reality. Our hope is that this book will provide an all-encompassing overview of community sentiment research that will help scholars in a variety of fields better understand community sentiment and its relationship with law.

Monica was on sabbatical for a portion of the development of this book and thus would like to thank the University of Nevada, Reno; the College of Liberal Arts; the department of Criminal Justice, the Interdisciplinary Ph.D. Program in Social Psychology; and all of her colleagues, family, and friends who were so supportive along the way.

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Jared would like to thank all of his colleagues at the Arizona School of Professional Psychology for their expertise and encouragement. He is truly grateful for such a collegial work environment. He would also like to thank his wife and daughter—they have been a source of love and support throughout

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The editors would also like to thank Sharon Panulla, Sylvana Ruggirello, and all those at Springer who worked tirelessly to make this vision a reality. We are delighted to be a part of the Springer team.

As with any project of this magnitude, it was a roller coaster ride. Through the twists and turns, the book took shape and was a fun adventure that gave us a good excuse to keep in touch. In all, this was a fun project to work on and an accomplishment that all the editors and chapter authors are proud to have produced. We hope readers have as positive sentiment about this book as we do!

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Part I

An Introduction to Community Sentiment

"There Ought to Be a Law!": Understanding Community Sentiment

1

Monica K. Miller and Jared Chamberlain

"Public sentiment is everything. With public sentiment, nothing can fail; without it nothing can succeed. Consequently he who moulds public sentiment, goes deeper than he who enacts statutes or pronounces decisions. He makes statutes and decisions possible or impossible to be executed."

-President Abraham Lincoln (from Angle, 1991)

Whether it is the results of a national poll, a public demonstration, a Facebook post, or an op-ed article in the newspaper, it is difficult to go through a day and not be exposed to some form of community sentiment. At the very basic level, sentiment is one's attitude toward or opinion about some attitude object, whether it is sentiment toward the president's performance, whether laws should be enacted to restrict guns, or what should be included in school curriculum. Most people have opinions about a wide variety of issues, people, and things in their environment. Although the concept of community sentiment is very broad, this book is an attempt at consolidating knowledge about sentiment into one place. To narrow the focus of the book, we have chosen to focus on community sentiment toward laws and policies that affect children and families. The book first tackles some basic issues in this introduction chapter: What is a community? What is sentiment, how is it measured, and what influences it? Does—and should—sentiment affect laws and policies? After this introductory chapter, several chapters discuss how sentiment is measured and how it can change. Next, the book offers perspectives on how legal actions that conform with sentiment promote positive and negative perceptions of justice. Other chapters discuss how laws that have received positive sentiment can sometimes have negative and unintended outcomes. The book closes with a summary of the common themes and directions for future research in community sentiment.

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Scope of the Book: Laws Affecting Family and Children

Community sentiment, which we define as collective attitudes or opinions of a given population, has long played a role in influencing legal actions (see Sigillo & Sicafuse; Chamberlain & Shelton, Chaps. 2 and 3, this

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volume). The political system was founded on the notion that the general public can influence the legal system: lawmakers represent the people in their jurisdiction, many issues are put to popular vote, and juries made of community members are asked to apply the law to determine criminal guilt and civil liability. Because the public has a voice in the legal system, it is inevitable that people will use that voice to express their sentiment, giving rise to the need to study community sentiment. While most researchers study community sentiment by sampling from the general population (ideally in a random fashion), others study the sentiment of subgroups (e.g., victims). Of particular import is the sentiment of those who enforce the laws or are affected by the law. Law enforcement officers might not enforce a law as strictly if they have negative sentiment toward the law or believe that the law is ineffective (see Brank, Hoetger, Wylie, & Scott, Chap. 7, this volume); individuals who feel they did not receive fair treatment in one part of the legal system might lose faith in the system as a whole. These examples illustrate the importance of community sentiment to shaping the law and society as a whole. As such, a variety of disciplines (e.g., psychology, law, political science, sociology) study community sentiment.

This volume focuses on defining, measuring, and investigating the effects of community sentiment. One can have sentiment about anything—laws, social issues, fashion, education, and vehicles—the list is endless. We have chosen laws and policies as the focus of community sentiment, largely because it is the area of interest of all three editors but also because there has been much scholarship in this area from which to use as a foundation. Sentiment toward laws is a special kind of sentiment—because it affects everyone, because it sometimes affects some groups more than others, and because it can have significant consequences for society. Thus, we chose laws and policies as the secondary focus of the book. However, the principles of sentiment (e.g., how sentiment changes and is influenced) are general principles that could apply to any of a number of objects of sentiment other than laws and policies.

The study of community sentiment is not limited to sentiment about existing law but also encompasses sentiment toward potential laws, laws in other states or countries, or laws that people believe should exist but do not. This book includes laws in each category. Chamberlain and colleagues surveyed gay parents about laws they wish existed; Evans and colleagues (Chap. 5, this volume) focus on employment policies that consider family need when determining income, which is done in other countries, but not the USA; Miller and Thomas measure sentiment about hypothetical laws regulating the behavior of pregnant women, most of which do not exist; Chomos and Miller study sentiment toward Safe Haven laws, which only exist in some states; Chaney studies sentiment toward marriage promotion laws among a sample of participants who *are* affected by these laws and a sample of participants who *are not*; and Barth and Huffmon investigate factors that influence sentiment toward same-sex divorce, which only exists in a few jurisdictions. Measuring sentiment about existing laws can be as important as studying sentiment about potential, past, or proposed laws because it is important to know whether individuals *would* vote for a law if it would be on the ballot or if they think a nonexistent law *should* be adopted. For instance, Kwiatkowski and Miller (Chap. 11, this volume) examine sentiment about laws that regulate social media outlets. Although this proposed law did not pass in Missouri, similar laws might emerge in the future, given that these media outlets can facilitate various forms of abuse (e.g., sexual abuse and bullying). Even though a law is not currently in existence or being enforced, it is still important to study; the benefits of considering community sentiment in lawmaking are discussed below.

This introduction chapter addresses some of the major issues surrounding community sentiment. It begins with the basic question: what is a community?

What Is a Community?

As a whole, community sentiment studies have a broad variety of definitions of "community." Even in this book, chapter authors define

community differently. Often, this depends on the topic of study, the research question, and the legal application.

Sometimes, the community can be worldwide, as is the case in Evans and colleagues' (Chap. 5, this volume). These authors use a secondary data source: a survey called *Social Inequality IV* which is collected by the International Social Survey Programme. This survey contains a representative sample of people from over 30 countries. Such a broad sample is not always necessary or possible, however. For some studies, the community of interest is limited to a much more specific location. For example, Barth and Huffmon chose South Carolina because this state is typically unfriendly to gay rights—the topic of their chapter.

Some community sentiment studies use proxies for the broader population. For instance, Chomos and Miller and Reed and Bornstein (Chaps. 4 and 6, this volume) use students to represent the population more broadly. When students are an accurate and appropriate proxy for the community in general is a topic that has received an increasing amount of attention from researchers in recent years (e.g., Wiener, Krauss, & Lieberman, 2011). This debate is reviewed in Chomos and Miller's (Chap. 6, this volume). Note, however, that students are not always merely a convenience sample. Kwiatkowski and Miller intentionally chose students as a "community" in their study of a law forbidding teachers from contacting minors through social media. This sample was chosen because these participants were recently minors (a group affected by the law being studied) and because they are among the most frequent users of social media.

Sometimes, the community is policymakers, law enforcement officers, or other legal actors that affect whether and how laws are enacted or enforced. Brank and colleagues surveyed law enforcement officers and attorneys about their sentiment toward parental involvement laws that hold parents legally responsible for the actions of their children. Other chapters discuss how legislators often express overwhelmingly positive sentiment toward sex offender laws (Armstrong and colleagues), laws allowing for civil commitment of pregnant drug users (Cook and Walsh), and Silver Alert programs designed to protect and find elders who wander off (Petonito and Muschert). In these chapters, the sentiment of the lawmakers themselves is under investigation.

Sometimes, the community is the people affected by the law. Chaney surveyed both people who are and people who are not targets of marriage promotion programs, which are the government's attempts to encourage low-income African Americans to marry. Chamberlain and colleagues surveyed and interviewed same-sex couples with children to measure their sentiment about their perceived and desired parental rights. Sigillo discusses how children can express sentiment about their living preferences after their parents' divorce.

No matter what the definition of "community," it is rare that the entire community can be sampled (see Chap. 3 for an in-depth discussion of sampling error). Occasionally, the entire list of the entire community is available and thus a random sample could be achieved. However, more commonly, there is not a list of every person in the community, and non-probability sampling techniques are used. Sometimes, convenience sampling is needed because a community is particularly small or difficult to reach. Chamberlain et al. had a particularly hard sample to reach: same-sex parents. Often, snowball sampling or other nonrandom methods are needed just to get a large enough sample. This of course means that the sample of participants may differ in important ways from the larger community they are intended to represent. Another sampling issue is response bias, which occurs when subsections of the population decline to respond or are unreachable. While measures such as repeated requests for participation (Brank et al., Chap. 7, this volume) and random digit dialing (Barth and Huffmon, Chap. 9, this volume) attempt to address the issue of response bias, it is nearly impossible to obtain a 100 % response rate, either because the entire community cannot be reached or participants decline to respond. These sampling issues are discussed in depth by Chamberlain and Shelton (Chap. 3, this volume) and below as one of the criticisms of using community sentiment studies as a basis for lawmaking.

Defining and reaching the "community" is but one complexity of community sentiment

research. A second challenge is defining and measuring sentiment, as discussed next.

What Is Sentiment? How Can It Be Measured?

Just as "community" can be defined in a wide variety of ways, so too can "sentiment." Krippendorff (2005) suggests that the term "public sentiment" is socially constructed. Despite the seemingly simplistic term, it is difficult to define, having 50 or more definitions. Researchers provide definitions of terms and what response options are available. They determine how both qualitative and quantitative data are presented. They determine how and where questions are asked (e.g., privately online or by an interviewer) and whether individuals or groups (recognizing the difficulty of calling a poll of individuals a "public") are studied. In this sense, "community sentiment" is a concept that is constructed by the researchers. With that in mind, this chapter investigates some of the many ways that researchers in this book and beyond have conceptualized the term "sentiment."

Finkel (2001) suggests four ways of measuring public sentiment in the legal domain: legislative enactments, jury decisions, public opinion polls, and mock jury research (see also Chamberlain and Shelton, Chap. 3, this volume). This book takes a somewhat broader approach. Sentiment can be expressed through attitudes (positive or negative evaluations of an object), opinions (beliefs), election results, jury verdicts, legislators' votes, media content, and so on. All of these measure sentiment toward a particular law, policy, or similar construct. By voting for a law, a voter indicates positive sentiment toward that law. By posting a criticism on social media, one indicates negative sentiment. For the purposes of this book, sentiment can be measured in any way that communicates a negative or positive position (attitude, opinion, vote) concerning some law or policy.

Although this book does not cover all the (possibly countless) ways to measure sentiment, it provides many examples. Some chapters study the strength of community sentiment. For instance, Evans and colleagues (Chap. 5, this volume) used a secondary data survey which asked participants if an employee's pay should be based on whether the person has children to support. Reed and Bornstein asked mock jurors to provide a verdict and their perceptions about child sex abusers. Brank and colleagues asked law enforcement officers and attorneys how effective they think parental responsibility laws are, while Chomos and Miller asked participants whether they support a law allowing for legal abandonment of children. Such survey measures are the most basic methods of measuring attitudes, opinions, or, as conceptualized in this book, sentiment.

In addition to attitudes and opinions, there are other methods available to measure sentiment that is specific to laws and policies. Kwiatkowski and Miller asked participants to indicate whether they would *vote* for a law that would forbid teachers from communicating with students on social media. Miller and Thomas asked participants to *assign punishment* to a wrongdoer. Petonito and Muschert and Cook and Walsh both measure sentiment by whether *legislators vote* for a law. Using a mock jury approach, Reed and Bornstein studied how perpetrator qualities (i.e., the relationship they had with the child) impact *juror verdicts and perceptions* in child sexual abuse cases. All of these are ways to measure sentiment.

It is fairly easy for researchers to measure agreement with statements and voting preference. Likert scales asking participants to indicate agreement on a numerical scale and categorical measures asking participants to "vote for" or "vote against" a particular policy or law are fairly easy to collect and assess. However, sentiment is not always measured by using closed-ended questions like scales or categorical responses. In addition to employing closed-ended questions, Chamberlain and colleagues asked open-ended questions that allowed participants to express themselves outside the confines of predetermined response categories or scales.

There is no particular methodology that is used to measure community sentiment. Sentiment studies can be surveys conducted by

professional survey companies or other entities (Evans et al., Chap. 5, this volume), mail surveys (Brank et al., Chap. 7, this volume), phone surveys (Barth and Huffmon, Chap. 9, this volume), online surveys (Chamberlain et al.; Reed and Bornstein; Kwiatkowski and Miller, Chaps. 13, 4, and 11, all in this volume), interviews conducted either in person (Chamberlain et al., Chap. 13, this volume) or by email (Chaney, Chap. 13, this volume), or content analysis of Internet blogs (Sicafuse & Miller, 2014), and countless other methods.

Just as methodologies are diverse, the research questions addressed in community sentiment studies are diverse. Some studies ask a straightforward research question: what percentage of the public is in favor of a policy (Evans et al., Chap. 5, this volume)? Others ask whether there has been a *change* in sentiment. Sentiment can change over time (e.g., sentiment about divorce; Barth and Huffmon, Chap. 9, this volume) and can depend on the context of a situation (e.g., the type of drug a defendant is accused of using can affect the sentence a juror recommends; Miller and Thomas, Chap. 8, this volume). Sentiment also can vary based on the amount of information available. Kwiatkowski and Miller (Chap. 11, this volume) find that receiving information about a law can reduce support for that law. Other researchers might ask about the *bases* of sentiment; for example, Sicafuse and Miller (2014) determined that sentiment about mandatory HPV vaccinations was often based on morality, emotions, and cognitive biases. All these research questions are part of the broad body of "community sentiment" research.

In the absence of properly conducted research, it is difficult to measure community sentiment accurately. Some voices in the public sphere or media sometimes claim to represent the community, but it is often unclear whether the messages actually represent sentiment accurately. For instance, the Occupy movement claimed to represent community when they adopted the slogan "we are the 99 %" and Arab protesters chanted slogans starting with "the people want…" during protests about a variety of social and economic problems. These examples illustrate publicized voices that garnered a lot of attention as they claimed to represent the people.

More narrowly, daily op-ed articles proclaim to represent community sentiment, and countless Facebook timelines communicate the sentiment of one's Facebook friends. Sometimes, the media (traditional and social) create the impression that "everyone" has a particular opinion, simply because those messages are easily available. Without accurate measures used to gauge the opinions of representative samples, it is impossible to know the community's actual sentiment; yet many people likely believe the available (and possibly false) plurality presented by any given media source.

A related issue is that of "loud" (and often powerful) voices in the community having more influence than others. Ideally, all citizens have the same amount of influence on what laws are adopted; however, it would not be surprising if the sentiment of some had more weight than others. Sometimes, money buys influence. Community members who can afford to hire lobbyists and pay for advertisements to try to garner followers might be more influential than those who cannot afford such measures. In 2014, the Supreme Court ruling in *McCutcheon v. Federal Election Commission* lifted limits on the total amount any private person can donate to political candidates in an election year (however, there is still a limit on how much a donor can contribute to any single candidate). Some critics are concerned that this will allow the voices of wealthy community members to be heard more the voices of less wealthy community members (Mears & Cohen, 2014).

These examples illustrate another complexity of community sentiment: how to hear all the voices, not just the loud ones, when measuring sentiment. Chamberlain and Shelton (Chap. 3, this volume) and all the studies in Section II specifically address the issue of measurement in community sentiment studies, though other chapters also illustrate a variety of methods of measuring sentiment, often listing some of the limitations of that particular method. As a whole, the book highlights many of the methods used to conceptualize and measure sentiment.

What Shapes Community Sentiment?

The question of where community sentiment comes from is a complicated one. On one level, sentiment comes from within the individual. A person's personality, preferences, beliefs, emotions, values, and experiences all shape attitudes. For instance, liberal values and conservative values are related to differences in support for a host of legal attitudes ranging from in vitro fertilization (Sigillo, Miller, & Weiser, 2012), to abortion (Lindsey, Sigillo, & Miller, 2013), to drilling for oil, to immigration policies (Druckman, Peterson, & Slothuus, 2013). The person's environment can influence their attitudes as well, including messages sent by parents, friends, educators, and one's community. Classic studies have revealed how education is related to liberal values (although this varies by country; Weil, 1985) and how political values are transmitted from parent to child (Jennings & Niemi, 1968).

But "community sentiment" is also broader than just one individual's attitude—it represents a collective attitude. Thus, what drives an entire community's sentiment is typically a broad, sweeping social movement capable of capturing the attention of a large group of people—especially lawmakers. Social movements can involve protests, rallies, sit-ins, media campaigns, and other efforts designed to bring attention to their issue. Social movements can affect law through dramatic events (e.g., protests) and/or changing community sentiment—both can get the attention of lawmakers (Agnone, 2007).

The media is another significant influence on community sentiment. The media shapes the community's sentiment by sending messages about what is important, right, wrong, or in need of addressing. The Campbell chapter (Chap. 14, this volume) discusses how the media pressures lawmakers and college officials to "do something" about violence on campuses. This pressure is communicated to the community which often adopts these sentiments. This pressure often does result in changes on campuses, but, as the authors point out, these media-driven changes may not ultimately be therapeutic.

In addition to the media, lawmakers are also "agenda setters," meaning that they play an important role in defining what social issues get attention (and indeed it is often difficult to untangle the influence of the media and lawmakers, as noted in Sigillo and Sicafuse, Chap. 2, this volume). What qualifies as an "issue" is socially constructed—that is, society and its leaders decide what is worthy of our attention and what is not, and, by communicating to the public (primarily via the media), they help to construct sociopolitical issues (see Petonito and Muschert, Chap. 18, this volume). After all, it is hard to have a sentiment about an issue that one does not know exists. Sigillo and Sicafuse discuss the case of "Octomom," a single mother of four who was transplanted with 12 embryos through in vitro fertilization and gave birth to eight more children, leading to her alleged reliance on public assistance. Before this event, most Americans likely knew very little about in vitro fertilization procedures, let alone legislation that would regulate its use. But, after being bombarded with news of this story, many Americans developed strong sentiment about the issue. Lawmakers also spoke up about the issue, and new regulations were adopted. This case illustrates how an attitude can be nonexistent, or possibly latent, and then suddenly leap into existence when one is confronted with new information. By framing the issue in a certain manner, the media and lawmakers construct a socially appropriate (normative) response, indicating not only that the public should care, but also what the public attitude *should* be about the issue. The "Octomom" case was presented as an immoral outrage, a theft of public resources, and an irresponsible parental action (rather than as a woman longing to have children). Not surprisingly, this media bent influenced attitudes in that direction.

As the "Octomom" case demonstrates, an extreme event can bring a problem to light, prompting legal action and public outcry. Kingdon (1995) visualizes this process as a "stream" containing countless potential social issues; an extreme event can open a "window" and allow an issue to get attention from policymakers. One example of this occurred in 1996

when Amber Hagerman was abducted from outside her Texas home. After her dead body was discovered, many lamented her loss and wondered if something could have been done. Nearly overnight, the concept of the AMBER Alert system was born. AMBER Alerts provide the community with information about abducted children and the abductor in hopes that a citizen will provide a tip that will lead to the child's safe rescue (see generally Sicafuse & Miller, 2010). Child abduction has been an issue for decades, centuries, or perhaps since the beginning of time, but media attention and the loud voices of Amber Hagerman's parents and supporters made this case special and capable of prompting legal change. The first AMBER Alert system was adopted in 2002, and within 3 years, all 50 states had AMBER Alert systems. In Kingdon's analogy, child abduction was an issue in the policy stream and Amber Hagerman's abduction opened a policy window which prompted policy change.

There are many examples of policy streams and windows in the chapters in this book. One example highlighted in the Miller and Thomas chapter is the "war on drugs" (Chap. 8, this volume). In the 1980s, the media published extreme stories telling of the dangers and victims of illegal drug use. Lawmakers focused on the issue because the "tough on crime" approach that accompanied the war on drugs was popular and would garner votes. While drug use had been a social issue for decades, it suddenly attracted an increase in attention and action during this time. As discussed by Miller and Thomas, the war on drugs fueled the legal debate about drug use during pregnancy. As a result, lawmakers are faced with the question of what to do about the problem of pregnant drug users. Cook and Walsh (Chap. 14, this volume) address many of these legal responses, including civil commitment. The war on drugs also led to a dramatic increase in female incarceration, which led to other legal issues, such as how to deal with "prison mothers" and their children (Miller & Miller, 2014). As this example illustrates, the media and legal actions can shape sentiment, law, and the lives of countless individuals by identifying what issues are important and how they should be addressed.

As these examples illustrate, the media helps open "policy windows" (Kingdon, 1995) through presentation of information. But not all information is created equal—some is much more attractive and motivating than others. One way to attract attention and motivate the public to act is to create or promote a moral panic. The notion of moral panic, widely thought to have been named by Cohen (1972), occurs when society deems a condition, behavior, or person/group of people to be a threat. Zgoba (2004) lists a myriad of panics including child abduction, sex offenders, satanic cults, cyberporn, and school shootings; Reed and Bornstein (Chap. 4, this volume) discuss the moral panic surrounding child sexual abuse. The media—along with legal actors and other community leaders—sensationalizes the threat, raising emotions and a sense that "something should be done." Collective outrage leads to action—socially constructed responses to socially constructed threats. The adoption of the AMBER Alert system and stricter drug policies are reactions to moral panics of child abduction and drug abuse.

One popular conception of moral panic poses that it has five criteria (Goode & Ben-Yehuda, 1994, but see David, Rohloff, Petley, & Hughes, 2011, for other conceptions of moral panic): concern, hostility, consensus, disproportionality, and volatility. The media, legal actors, community members, or a loud group of citizens expresses *concern* and *hostility* over some event or group of individuals that is interpreted as a threat. Largely because there are few voices in opposition (e.g., few people opposed the adoption of AMBER Alerts that would supposedly rescue abducted children), a *consensus* develops among the public that this threat is indeed a problem that needs to be addressed. Because this alarm is largely fueled by emotion (indeed it is a "panic"), the reaction is often *disproportionate* to the actual threat posed. This concern and reaction is sudden and *volatile*. Often, panic arises over social issues that have been around for long periods of time but suddenly attract attention. In the words of Kingdon (1995), an issue in the policy stream gets attention when a policy window opens. Eventually, the panic often subsides (i.e., after a "solution" is

constructed). For instance, Reichert and Richardson (2012) note the rise of the Satanism scare in the 1980s that led to biased legal decisions against those allegedly or admittedly involved in Satanism. Eventually, the media reduced its attention toward Satanism and the legal system became more discerning in their treatment of claims involving Satanism. Sometimes, however, moral panic rises again if something (e.g., an extreme event) catches the media's attention (Zgoba, 2004).

There are countless influences on community sentiment. Some are personal, some are environmental. Some influences are subtle, while other influences are intentional, directed messages meant to influence the community's sentiment and drive legal change. Community sentiment exists about countless legal and policy topics. Whether sentiment actually affects legal decision-making is somewhat of an open question, which is addressed next.

Does Community Sentiment Influence Law?

The question "does community sentiment influence the law?" is somewhat of a difficult question to answer. There are many definitions of "law" and many ways to measure "influence." The research indicates that there are some "yes" answers and some "no" answers, as discussed below.

Community Sentiment Is Sometimes Ignored

Blumenthal's (2003) review of the research revealed important deviations between community sentiment and the law. For example, Robinson and Darley (1995) presented 18 studies which measured whether the sentiment of the community differed from the actual law stated in the Model Penal Code (MPC). Participants were asked their sentiment toward a variety of scenarios that varied in context (e.g., the perpetrator's level of involvement in the crime). Participants largely indicated that a perpetrator who actually completed a robbery should be held responsible. In contrast, participants were less likely to find a perpetrator who only took a "substantial step" toward committing the robbery to be responsible. This perception is in sharp contrast to the MPC, which holds both of these perpetrators equally responsible for the crime. Robinson and Darley illustrate how community sentiment differs from the actual law on a wide variety of legal issues, thus providing an example of how community sentiment can be ignored.

Sometimes, community sentiment is ignored because of other legal considerations. For example, a large proportion of people are in favor of regulating children's access to violent or sexual video games. A 2010 national survey of 1,000 adults by Rasmussen Reports found that 65 % of respondents favored restricting the sale of violent games to children; 25 % disagreed and 9 % were unsure (New Poll Shows, 2010). Another Rasmussen poll finds the public is more evenly split: 44 % favored restrictions, while 45 % were opposed (44 % favor, 2013) and a third finds that 60 % of adults support such regulation (Hatfield, 2007). While the surveys are not all in agreement, there is at least some evidence that many Americans are willing to restrict games. Even so, laws designed to restrict access to such games conflict with the First Amendment rights of video game manufacturers and game players. In *American Amusement Machine Association v. Kendrick* (2001), the city of Indianapolis provided justices with a number of studies that suggested that playing violent video games is associated with antisocial and aggressive behavior, and thus the city should be allowed to ban minors from *playing* such dangerous games. The Court disagreed. Similarly, a California law that banned the *sale or rental* of games that portray certain forms of extreme violence against a human image was struck down by the US Supreme Court in 2011 (*Brown v. Entertainment Merchants Associations*, 2011). The Court in both cases cited First Amendment concerns and doubted the social science research. Community sentiment favoring these laws was not a concern in either case.

As these examples illustrate, community sentiment is often ignored or not considered. As Robinson and Darley demonstrate, sometimes sentiment can conflict with the actual law. In the case of video games, other considerations are weighed more heavily than sentiment. In other situations, sentiment *is* considered, as is discussed next.

Community Sentiment Is Sometimes Influential

Despite the evidence that community sentiment is sometimes ignored or uninfluential in policymaking, there is much evidence to the contrary. Sentiment affects lawmaking in four distinct areas. These include decisions made by lawmakers, presidents, judges, and jurors.

Lawmakers. Two chapters in this volume (Chamberlain and Shelton; Sigillo and Sicafuse, Chaps. 3 and 2) review the literature that addresses the question of whether community sentiment influences lawmaking. Both chapters conclude that there is a strong, positive relationship between community sentiment and both national and state policies. Burstein reviews the substantial body of research and concludes that public opinion has a strong effect on public policy (2003) especially on issues of particular importance to the public (2006). Oldmixon and Calfano (2007) agree that lawmakers consider the sentiment of their constituency when voting—especially the religious and political ideologies of their voters.

President. Similar to legislators, the president is the elected representative of the American people who makes critical legal decisions that affect the entire nation. Thus, it is possible that presidents might listen to the sentiment of the American people who voted them into office. As the head of the executive branch, the president is charged with handling foreign affairs and national security.

Research investigating whether the president listens to community sentiment is somewhat mixed. Canes-Wrone and Shotts (2004) suggest that presidents tend to listen to community sentiment, but not necessarily in a uniform way. Presidents tend to adhere to sentiment more toward the end of a term in which they are seeking reelection or when their approval rating is average (rather than high or low). Further, the president listens to community sentiment more on some issues than others. When the issue is one that is familiar to citizens (e.g., social security, health, or crime), presidents' actions are highly in agreement with the community's sentiment, but when the issue is one that is less familiar to the public (e.g., foreign policy or military spending), presidents' actions are less consistent with community sentiment. In contrast to the Canes et al. findings, other researchers suggest that presidents do not adhere to community sentiment (e.g., Wood & Lee, 2009).

Supreme Court Judges. Because legislators are elected representatives assumed to vote in response to the community's sentiment, it is unsurprising that studies revealed that this is the case. Unlike legislators, Supreme Court justices serve a lifetime appointment and thus might not be as motivated to listen to community sentiment. However, McGuire and Stimson (2004) reviewed four decades of Supreme Court decisions and determined that the Court is very responsive to community sentiment. The authors conclude that even though the justices do not directly answer to the populace (as legislators do), they recognize that if their rulings are to be carried out effectively, they must be in line with community sentiment. Without the support of the community and leaders who carry out the Court's rulings, the ruling will not be strongly followed (for relevant discussions, see Brank et al.; Miller & Thomas; Sigillo, Chaps. 7 and 8, this volume).

Perhaps the area of law that has relied the most on community sentiment is the death penalty. Supreme Court justices in *Furman v. Georgia* (1972) declared the importance of determining "whether there are objective indicators from which a court can conclude that contemporary society considers a severe punishment acceptable" (p. 278). In deciding what is "cruel and unusual punishment," the Court has often relied on com-

munity sentiment. In the death penalty context, this is typically called the "evolving standards of decency" (*Stanford v. Kentucky*, 1989). This standard is not set by the justices but is based on objective measures such as state laws (*Penry v. Lynaugh*, 1989) and verdicts of juries, which should reflect the sentiment of society as a whole (*Thompson v. Oklahoma*, 1988; for a review, see Garlitz, 2006). The *Thompson* justices relied on community sentiment to inform their decision, as they reviewed: (1) state statutes which would reveal how many states allowed the death penalty for defendants who were 15 years old or younger at the time of the crime, (2) jury statistics which would reveal how often juries chose the death penalty for juveniles, and (3) the positions of national and international organizations.

In contrast, the Court in *Stanford v. Kentucky* (1989) adopted a different approach. While determining the appropriateness of measures of evolving standard of decency, the justices (led by Justice Scalia) specifically noted that sentiment measured by public opinion polls, the opinions of interest groups or professional associations, and the views of any international group are irrelevant.[1]

Scalia is not the only justice who has expressed the desire to limit the use of community sentiment. In *Atkins v. Virginia* (2002), Justice Rehnquist (dissenting) stated:

> the work product of legislatures and sentencing jury determinations ought to be the sole indicators by which courts ascertain the contemporary American conceptions of decency for purposes of the Eighth Amendment. They are the only objective indicia of contemporary values firmly supported by our precedents. More importantly, however, they can be reconciled with the undeniable precepts that the democratic branches of government and individual sentencing juries are, by design, better suited than courts to evaluating and giving effect to the complex societal and moral considerations that inform the selection of publicly acceptable criminal punishments. (p. 324)

[1] The American Bar Association, the American Society for Adolescent Psychiatry, Amnesty International, and the International Human Rights Group, among others, had provided amicus briefs.

Essentially, Scalia and Rehnquist agree with the Court in *Gregg v. Georgia* (1976), which stated that legislatures and not judges are given the responsibility to respond to community sentiment (e.g., the will and values of the constituents). From their perspective, international opinions are irrelevant, public opinion polls are often biased, and opinions of those who write briefs are biased by the political stance that draws them together for that cause. If legislators have not deemed polls and opinions of interest groups important enough to use as basis for their lawmaking, the Court should not either.

More recently, the *Roper v. Simmons* (2005) Court reaffirmed the need to assess the evolving standards of decency in order to determine whether the juvenile death penalty is cruel and unusual and thus violates the Eighth Amendment. The justices were split 5-4, but the majority ruled that society's standards of decency had changed since the *Stanford* Court determined (in 1989) that execution of offenders who were at least 16 at the time of the crime did not contradict the community's standard of decency. Because community sentiment is now unsupportive of the death penalty for offenders who were minors at the time of the crime, it was held to be unconstitutional (*Roper v. Simmons*, 2005).

In 2008, the Supreme Court considered the case of *Kennedy v. Louisiana* in which a defendant claimed that it was cruel and unusual punishment to execute a defendant for the rape of a child under 12. At the time, only a handful of states allowed the penalty for such defendants, but the Louisiana Supreme Court determined that this was enough to consider there to be a national consensus supporting the penalty for these offenders. The Supreme Court disagreed, finding that there was not enough of a national consensus. Shortly after the Court's decision, the Court was asked to reconsider their decision because of a factual error. Neither of the parties nor the many brief writers had reported that, in 2006, the Uniform Code of Military Justice had added child rape to their list of crimes punishable by death. The Court declined to reconsider whether this would have changed their decision. Justice Scalia, rarely a supporter of using community sentiment, concurred with the denial of the petition for

rehearing, stating that "the views of the American people on the death penalty for child rape were, to tell the truth, irrelevant to the majority's decision in this case […] and there is no reason to believe that absence of a national consensus would provoke second thoughts" (*Kennedy v. Louisiana*, 2008, p. 1).

In sum, the Supreme Court has provided mixed support for the role of community sentiment in death penalty jurisprudence. Decisions in *Furman*, *Roper*, and *Kennedy* affirm the use of community sentiment to inform decisions, whereas decisions in *Stanford* and *Gregg* deny or minimize such a notion.

Abortion is another area of law in which justices have considered community sentiment. In *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Court discussed how community sentiment about abortion had changed since *Roe v. Wade* (1973). The majority opinion stated that the

> pressure to overturn (*Roe v. Wade*) has grown only more intense. A decision to overrule Roe's essential holding would [be at] the cost of both profound and unnecessary damage to the Court's legitimacy and to the Nation's commitment to the rule of law. (p. 869)

Here the Court explicitly notes that they must adhere to the community sentiment regarding what the "rule of law" should be or risk of losing legitimacy.

Not all justices believe sentiment should influence Supreme Court decisions, however. Consistent with his general view of community sentiment (and its impact on the Supreme Court), Justice Scalia strongly disagreed, stating:

> I am appalled by the Court's suggestion that the decision must be strongly influenced….by the substantial and continuing public opposition the [Roe] decision has generated….the notion that we could decide a case differently from the way we otherwise would have in order to show that we can stand firm against public disapproval is frightening. (p. 998)

Scalia (and other judges) rejects the role of community sentiment in the Court's decision-making, instead favoring a literal interpretation of the Constitution. For traditionalists like Scalia, who read the Constitution literally, there is no right to abortion because the Constitution does not literally grant that right. For such people, the Constitution cannot be interpreted to give rights that are not specifically stated. Thus, there is no place for community sentiment—only the literal words on the Constitution can dictate a decision (but see his opinion in *Stanford v. Kentucky* (1989) discussed above for an exception).

While abortion and the death penalty are the two major areas of law in which community sentiment plays a role vis-à-vis the Supreme Court, there are other instances as well. While some uses of community sentiment are broad and sweeping (e.g., whether the death penalty is constitutional), others are limited, case-specific considerations of sentiment. Sigillo (Chap. 12, this volume) discusses how judges often allow children to have a voice in where they live after their parents' divorce. Thus, sentiment matters in both broad, general ways (Supreme Court decisions) and case-by-case decisions (divorce).

Jurors. Jurors can represent the community, not only because they are by definition members of the community, but because that is their intended role within the legal system. The Constitution provides anyone who is accused of a crime or sued in civil court a jury trial (with some exceptions). In general, this jury is to be drawn from a pool that is representative of one's community (e.g., *Lockhart v. McCree*, 1986).

In some instances, jurors are sometimes specifically instructed to weigh community's perceptions. The clearest example of this is in obscenity cases. The standard for determination of whether material is obscene was set in *Miller v. California* (1973). In these cases, the jury's job is to determine whether the community would deem the material to appeal to prurient interest; depict sexual activity that the legislature has deemed offensive; and lack any artistic, scientific, literary, or political value (see Reed and Bornstein, Chap. 4, this volume). The important element (for the discussion in this chapter) is that the jury has to determine what the *community* feels is obscene—not the jurors themselves. Thus, obscenity cases almost always include experts to testify about results of research

designed to measure the community's sentiment toward sexual material (see generally Summers & Miller, 2009).

Sometimes, jurors make verdicts or sentences that reflect their sentiment rather than the law (Finkel, 2001; Robinson & Darley, 2007). Often, this jury discretion is intentional and (arguably) a positive aspect of the court system. Juries can express their disagreement with laws by "nullifying" the law. Nullification occurs when a jury intentionally treats a known guilty party more leniently than the law would prescribe. This is the jury's way of communicating that they do not agree with the law's prescription and instead want to show mercy. For instance, a man who acts in a way that leads to the death of his terminally ill wife has legally committed homicide. However, a jury may nullify the law and be lenient to the man at trial because he had good intentions of relieving his wife of her misery. It is difficult to know exactly how many cases of nullification occur, but Finkel, Hurabiell, and Hughes (1993) reports that it could happen most frequently in contexts—such as euthanasia—in which the community's sentiment is not aligned with the law (see Reed & Bornstein, Chap. 4, this volume, for more on nullification).

Sometimes, the jury's discretion is inappropriate, however, such as an attractive defendant getting a lighter sentence than an unattractive defendant (Patry, 2008) or a verdict that is heavily influenced by emotions rather than the facts. Horowitz and colleagues (2006) found that jurors who are aware that they can nullify the law are sensitive to biased emotionally charged information. This supports the "chaos" theory which holds that jurors will rely on their emotions and biases rather than the law if they are told they have the power to nullify.

More broadly, jurors do express their personal sentiment through their verdicts (e.g., in civil cases deciding how much an injury is worth; whether a plaintiff is liable). Hans and Vadino (2000) find that many people are skeptical of whiplash injuries and thus could deny the plaintiff's claim of injury or request for damages.

As this section demonstrated, there are many instances in which lawmakers, judges, and jurors rely on community sentiment in their legal decision-making. But there are other instances in which community sentiment does not play a role in lawmaking. This discussion leads to the next—and more subjective—question of whether community sentiment *should* influence the law.

Should Community Sentiment Influence Law?

In this section, we address some of the arguments supporting both the "yes" and the "no" answers to the question "should sentiment influence the law?" As with other questions, the answer is not particularly simple.

No, Community Sentiment Should Not Influence Law

There are a number of reasons we should be hesitant to let community sentiment influence law. Some relate to the quality of the research measuring sentiment and some relate to the abilities and biases of the community. Other reasons relate to the negative outcomes that sometimes result from adoption of popular laws.

Polls Are Poorly Conducted. There are many intricacies involved in creating a useful and accurate poll. These include poor sampling, vague questions, wording and order of questions, and response options.

Poor Sampling. When measuring community sentiment, researchers want to measure the sentiment of a sample that represents the entire population. This is quite difficult to do at times. Sometimes, convenience samples are used (see Chaney Chap. 10 and Chomos and Miller Chap. 6, both in this volume) which necessarily do not represent the population as a whole because they represent only one subsection of one community (for further discussion, see Chomos and Miller, Chap. 6, this volume). Snowball sampling (see Chaney Chap. 10 and Chamberlain and colleagues Chap. 13, both in this volume) creates

homogeneous samples because the participants know each other. Because individual differences are often related to legal attitudes (Chomos and Miller, Chap. 6, this volume), this type of sampling is clearly problematic. Chamberlain and Shelton (Chap. 3, this volume) provide an in-depth discussion of the difficulty of choosing a sample and also discuss the previously mentioned problem of response bias.

Vague Questions. Polling questions are often overly general questions which provide no context or specific stimuli and require the respondent to express sentiment based on a vague concept rather than objective stimuli. If a poll asks respondents, "do you favor prison for pregnant women who use drugs?," the answer will depend on what exemplar the participants bring to mind. Miller and Thomas (Chap. 8, this volume) provide objective stimuli and illustrate that different stimuli produce different responses. For instance, responses were more punitive if the child was harmed or if the drug was cocaine rather than marijuana. Thus, the response to a vague question is likely to depend on the exemplar that first comes to mind.

Salerno et al. (2014) review the research supporting their conclusion that community sentiment toward juvenile sex offender registry laws is generally positive when the question posed is in the abstract; however, sentiment is much more mixed when the question asks about specific, less severe, or consensual sexual activities. Further, when asked abstractly about registry laws, the community supports adult registries and juvenile registries equally—but when given specific cases, they support juvenile registries much less. This is because people tend to imagine extreme cases when asked in the abstract. This leads to more punitive responses. But, when given a more common case (a less severe juvenile sex offense), it reduces respondents' support (i.e., reduces punitiveness). Similarly, responses to the vague question "do you support the death penalty?" often trigger an extreme atypical exemplar and thus high support for the penalty. In contrast, a specific question such as "do you support the death penalty for a defendant who was an accomplice to murder?" is much lower (see, e.g., Finkel, 2001).

The media encourages distorted exemplars. For instance, the media's increased reporting of sensational "stranger" abductions leads to the perception that abductions are increasing. This is problematic because this does not reflect reality. Distorted perceptions of reality are problematic because they lead to positive sentiment toward "solutions" that address the *perceived* problem and not the *actual* problem. In reality, a child is much more likely to be abducted by a family member than a stranger (Griffin & Miller, 2008). Yet, more resources are used (e.g., AMBER Alert) for stranger abduction than familial abduction.

These examples illustrate the importance of using specific questions rather than abstract ones. Vague questions make it impossible to know what image the participant is using when responding. More specific questions can control for this and also measure whether certain conditions (e.g., drug type and baby injury in the Miller and Thomas chapter, Chap. 8, this volume) affect sentiment.

Wording and Order of Questions. As discussed in more detail in Chamberlain and Shelton (Chap. 3, this volume), the way questions are worded can influence responses (Tourangeau, Rips, & Rasinski, 2000). A classic example by Rugg (1941) suggests that a subtle word change in a question can drastically impact responses. One set of respondents was asked, "Do you think the USA should *forbid* public speeches against democracy?," while another was asked, "Do you think the USA should *allow* public speeches against democracy?" (both were yes/no responses). Those who responded to the "forbid" question were less in favor of the regulation (54 %) as compared to those who responded to the "allow" question (75 % favored the regulation). Similarly, Finkel (2001) reports that asking participants about their support for financial "assistance to the poor" results in much more positive sentiment than asking participants about their support for "welfare." Hans and Vadino (2000) note that jurors had different responses to the terms "whiplash" versus "soft tissue injury" versus "connective tissue injury." Specifically, jurors were skeptical of an injury called "whip-

lash," often believing such injuries were faked in order to sue the wrongdoer. A "soft tissue injury" was seen as less severe than a "connective tissue injury." Thus, researchers (and lawyers) should be careful about the terminology chosen in questions because it would likely influence responses.

Just as the wording of a question can affect responses, so too can the order of questions. A body of research has indicated that a person's responses might be affected by the experiences they were immediately exposed to during the study. Priming research posits that cues provided by stimuli or previous questions serve as cues that affect responses. For instance, being primed with Christian words (rather than neutral words) increased participants' covert racial prejudice and negative affect toward African Americans (Johnson, Rowatt, & Labouff, 2012). Similarly, participants primed with a reminder of their political affiliation expressed more extreme political sentiment than those not primed (Ledgerwood & Chaiken, 2007). These examples suggest that responses might be affected by the ordering of questions. Specifically, if participants are asked about their political or religious affiliation (or any number of other primes) before their sentiment about laws or policies, they may respond differently than if they are asked their sentiment before their affiliation.

Response Options. Often, the choices participants are given affect their responses. For instance, 42 % of participants supported mandatory Life Without Parole sentences for certain offenses, but when given an example of a juvenile offender and given six options to choose from, only 5 % chose the Life Without Parole in an adult facility option (Kubiak & Allen, 2008).

Similarly, the verdict options given to jurors in insanity cases affect mock jurors' ultimate verdict: Poulson, Wuensch, and Brondino (1998) investigated whether the addition of a Guilty but Mentally Ill (GBMI) would affect jurors who otherwise would have to choose between a Not Guilty by Reason of Insanity (NGRI) and a Guilty verdict. They found that when the GBMI option was available, there was a reduction of about 66 % guilty verdicts and about 50 % of NGRI verdicts. The authors concluded that the GBMI is seen as a "compromise" verdict that allows jurors to acknowledge the defendant's illness but hold him legally responsible; it also avoids controversial NGRI verdicts.

As this section demonstrated, there are a number of problems with community sentiment polls. Thus, it might be easy to say that lawmakers should not rely on community sentiment simply because measuring it is so difficult; poorly conducted studies could produce erroneous results and lead lawmakers astray. However, this is too strong of a conclusion. The identification of problems is one way to make sure that community sentiment studies can be done well by addressing these problems. Identifying (and relying on) properly constructed studies is the key to building good laws based on properly measured community sentiment. But, even when a poll is conducted correctly, it still might not provide quality information about sentiment because of characteristics of the respondents, as discussed in the next several subsections.

People Are Ignorant of the Law and Its Consequences. Another criticism of using community sentiment as a basis of lawmaking rests on the notion that perhaps lawmakers are better equipped to make decisions than community members.

Many people simply are ignorant about issues related to criminal justice policy (Denno, 2000), including issues such as the death penalty (Haney, 1997), juvenile sex offender laws (Stevenson, Najdowski, & Wiley, 2013), laws prohibiting teacher/student contact on social media (Kwiatkowski & Miller, Chap. 11, this volume), and the insanity defense (Perlin, 1996). To highlight, people are generally ignorant about the insanity defense and its consequences. Some of the often believed myths include: the insanity defense is used often and is highly successful; defendants are able to "fake" insanity; and defendants found Not Guilty by Reason of Insanity are released from the mental institution quickly and spend less time in the mental institution than they would in prison (Perlin, 1996). Similarly, people are unaware that registration laws apply to

juveniles (Stevenson et al., 2013) or that laws have been proposed that restrict teacher/student interaction on social media (Kwiatkowski & Miller, Chap. 11, this volume).

US Supreme Court Justice Thurgood Marshall proposed a two-part hypothesis: first, the public is ignorant about the death penalty, and second, if they were properly informed, they would not be supportive of the death penalty. This has come to be known as the "Marshall hypothesis." Indeed, most people are ignorant about the death penalty and whether it achieves its intended outcomes (Bohm, 1998; Ellsworth & Gross, 1994; Haney, 1997). The second part of the Marshall hypothesis has also found empirical support. In general, receiving information makes individuals less supportive of the death penalty (for a review, see Vidmar & Dittenhoffer, 1981).

Expanding the Marshall hypothesis to another context, Reichert and Miller (2014) find that people are initially quite supportive of laws regulating the behavior of pregnant women but then become significantly less supportive when provided neutral information about such laws. Similarly, Kwiatkowski and Miller (Chap. 11, this volume) found that participants were uninformed and unsupportive of laws forbidding teachers from contacting students on social media, and giving them information made them more supportive of the law.

Reichert and Miller (2014) suggest—and Kwiatkowski and Miller (Chap. 11, this volume) elaborate—that people often base their initial responses on their "first thoughts." These authors suggest that dual-processing theories can explain why these initial reactions change once the person receives information. Lower-level processing is done quickly, using heuristics (such as one's gut feelings or instincts), but receiving information prompts higher-level processing. This leads to attitude change because the person now has the ability to think more deeply because he has received more information.

Fass and colleagues (Chap. 16, this volume) echo this notion. They review research showing that educating people about the effectiveness of rehabilitation leads to less punitive responses to both juvenile criminals and sex offenders. Similarly, people with a deeper understanding of juvenile development tend to have less punitive responses toward juvenile wrongdoers (Trzcinski & Allen, 2012).

Even if education has the potential to create a more informed public, and as a result changes sentiment, that does not mean that the public actually *wants* to be educated. Many people do not care about policy issues or simply do not have the motivation or ability to think in depth about these issues. Sometimes, people resist thinking critically about legal issues because—as the old saying goes—"ignorance is bliss." Griffin and Miller (2008) coined the term "Crime Control Theater" to refer to crime control policies that appear to be a solution to a problem, but for logistical and psychological reasons are not sound or particularly effective responses to the problem. Even so, these policies often garner wide public support because they offer a "solution." People are motivated to want to solve heinous crimes, such as child abduction. As a result, they may use a number of biased cognitive processes that lead them to support policies such as the Amber Alert system (Sicafuse & Miller, 2010), Silver Alert programs (see Petonito & Muschert, Chap. 18, this volume), or drug abuse during pregnancy laws (see Cook and Walsh, Chap. 15, this volume). Unfortunately, these programs are wrought with problems that characterize them as "*Crime Control Theater*"; this concept is discussed more in depth as applied to sex offender laws in Chap. 17, by Armstrong and colleagues, this volume.

People Cannot (or Will Not) Express Their Sentiment or What Influences It. A related issue is that people might not have sentiment about a particular topic, might not be able to access the sentiment, or might not be willing to express it accurately. As noted above, social issues abound, and as a result, most people do not have time, ability, or interest to keep up with all the laws proposed in their state and federal legislatures (Burstein, 2006; Miller, 2004). This notion has existed since the early 1900s (Lippman, 1922). Thus, many people simply might not have a sentiment toward some issues because they do not know enough about the issue.

Further, people are often unable to tap into their own sentiment or communicate it clearly (Blumenthal, 2003). A line of research suggests that individuals are sometimes unaware of their attitudes. Even with introspection, individuals might not be able to identify what or how they think about something or someone (Blumenthal, 2004). Similarly, people are unable to predict how they or others will react to an event in the future. Blumenthal (2004) reviewed the research on affective forecasting and concluded that individuals are unable to accurately predict their own emotions or the emotions of others. In general, people seem to overestimate the strength and duration of emotions they will experience if a negative outcome occurs; they also overestimate the emotional benefits of reaching their goals and underestimate the associated costs (e.g., Ayton, Pott, & Elwakili, 2007; Sheldon, Gunz, Nichols, & Ferguson, 2010).

A related concern is that a participant might be unwilling to express their sentiment. The "normative window of prejudice" suggests that it is not socially appropriate to express some sentiment which might be perceived as prejudice (Crandall, Ferguson, & Bahns, 2013) and thus individuals might suppress this bias. Social scientists have long been concerned with participants' giving "socially acceptable" responses rather than honest responses. Participants are not always being dishonest; they might simply have different *implicit* and *explicit* attitudes. The Implicit Association Test (IAT) has been used to measure how strongly (i.e., quickly) a participant associates "good" and "bad" words with targets such as people of other races, elderly people, people of different religions, and sports teams (see, e.g., Rudman, Greenwald, Mellott, & Schwartz, 1999; Wenger & Brown, 2014). In general, a person's explicit attitude is unrelated to their implicit attitude as measured by the IAT, suggesting that expressed attitudes might not always be accurate.

These bodies of research suggest that people are unable or unwilling to identify or anticipate their sentiment or what might influence it. If so, it might not be a good idea to base laws on community sentiment.

Sentiment Can Be Based on Biases. Another reason sentiment might not be a proper basis for laws is because people experience biases in their thinking which informs their sentiment (see generally Sicafuse & Miller, 2010, for a review of biases related to the AMBER Alert system). For example, social and news media makes some events seem more likely and common, simply because they are more easily recalled from memory; this is called the availability heuristic (see Tversky & Kahneman, 1973). Simply put, the easier an event comes to mind, the more frequent a person will think it is (Siegrist & Gutscher, 2006). People believe that homicide deaths are more common than stomach cancer deaths; this is not true (Slovic, Fischoff, & Lichenstein, 1982). Because the media often reports stories about homicides, individuals are more able to retrieve an example of a homicide than an example of stomach cancer death. This explains the bias in estimating the frequency of deaths to each cause.

People's emotional states also bias sentiment (see Sicafuse & Miller, 2010, for a review). When people are experiencing emotions, they rely on their gut instincts, first thoughts, and generalized metaphors rather than logic and reason. This is called the affect heuristic. Often, our emotions are the first, and sometimes primary, source of information that is used as the basis of sentiment. Sicafuse and Miller (2014) found that many participants based their sentiment toward HPV vaccinations on emotions rather than logic. This would be particularly problematic if these emotions prevent consideration of rational and logical evidence and arguments.

Further, people often are unaware that they have been influenced and thus might not be aware if they are basing sentiment on biases or questionable sources. Moran and Cutler (1991) asked people for their perceptions about defendants in widely publicized trials. They found that the more a person knew about the trial through media, the more the person thought that the defendant was guilty. This suggests that pretrial publicity biases people in an anti-defendant direction. However, there was no relationship between the person's knowledge about the trial and their belief that they can be fair and impar-

tial. Thus, people in this study were largely unaware that they had been biased. Other researchers have replicated this finding that people are unaware they have been influenced. For instance, judges sometimes tell jurors to ignore information that they heard that was later deemed inadmissible. Often, this information affects jurors, although they often deny that they were influenced (e.g., London & Nunez, 2000).

There is reason for concern if people are unaware of their own biases and what influences their beliefs and sentiments. There is the possibility that people are biased by questionable sources of information but because they do not know they were influenced, they are unable to prevent being influenced. Possibly, an uninformed neighbor could be as influential as an informed source (this assumes that a person can even identify the difference in sources).

These examples illustrate one reason why community sentiment might not be the best basis for laws. Biases can affect how money and resources are allocated. For instance, AMBER Alerts are very popular because they allege to address the problem of stranger abduction—a highly emotional issue that garners much attention in the media. However, stranger abductions are very rare compared to other childhood risks such as abduction by a parent or hot dog choking. Thus, money and resources could arguably be better spent addressing the risks posed by parents and hot dogs. But, because of biases in thinking, this does not occur. If sentiment is indeed influenced by these social cognitive biases, then one could argue that sentiment is not a good basis for lawmaking.

Sentiment Can Be Transitory and Unstable. Finkel (2001) differentiates between a reaction and an opinion. This is critical to the study of community sentiment because lawmakers should consider which a particular study measures. A reaction results from a fast, knee-jerk process; it is a position based on a first impression. An opinion results from a slower, more thoughtful process; it is a more deeply held and stable position (Finkel, 2001). Reactions are formed quickly and can change quickly. Kwiatkowski and Miller (Chap. 11, this volume) found that the participants' first reactions to laws regulating Facebook use were very negative but became more positive after they read information about the law. This more developed opinion was significantly more positive (though still not particularly in favor of the law) than the initial reaction.

Reactions can be influenced by someone's mood, past experiences, and emotions; what they just read in the media; or the people around them. But, over time, and with more information and new experiences, emotionally informed reactions can weaken. Immediate reactions are thus unstable and transient. Thus, it is essential that researchers measure stable opinion—not reaction—when measuring sentiment.

Sentiment can be affected by objects in the environment. For instance, participants who were exposed to an American flag indicated they would vote for more conservative political candidates than those who were not exposed to the flag during the experiment—and this effect carried over to actual voting behavior eight months later (Carter, Ferguson, & Hassin, 2011).

Sentiment can also be affected by emotions. The Affect-as-Information concept suggests that affective responses provide people with information about their sentiment. For instance, if a person feels happy in the presence of another person, that affect will lead him to conclude that he has a positive sentiment toward the other person (Clore & Bar-Anan, 2007).

Sentiment can change over time. Barth and Huffmon's chapter (Chap. 9, this volume) discusses how sentiment toward divorce changed over time, specifically how it has become more acceptable over time and how some people have come to see liberal divorce laws as a positive in some cases (e.g., because they allow women to escape violent marriages).

Thus, sentiment can change from moment to moment (e.g., because of mood or things in our environment), from year to year (e.g., as one matures, gains knowledge, or has life experiences). As such, it can be argued that laws should not be based on sentiment because of its transitory nature.

Sentiment Is Often Complex and Sometimes Contradictory. Often, sentiment is complex and

cannot be answered with a simple yes or no. Finkel (2001) uses the example of the insanity defense; while one poll found that most respondents favored reform or abolishing the insanity defense, another study found that many thought insanity defense was justified and necessary. As another example of contradictory sentiment, MacLennan, Kypri, Langley, and Room (2011) found support for stronger legal responses to alcohol-related offenses, yet Fetherston and Lenton (2005) report that the public thought the penalties for marijuana offenders were too severe.

In this volume, Fass (Chap. 16) summarizes the body of research that reveals the mixed sentiment concerning both laws requiring registration for juvenile sex offenders and juveniles' eligibility for the punishment of Life Without the Possibility of Parole. Some of these studies seem to report contradictory sentiment. For example, participants are more supportive of punitive responses for juveniles if they are given examples of serious crimes or crimes committed by older juveniles as compared to examples of less serious crimes or younger juveniles. The authors conclude that this sentiment is very complicated and depends on the context (see also Salerno et al., 2010). Similarly, Thomas and Miller (Chap. 8, this volume) show that sentiment toward drug-using pregnant women also varies based on context (e.g., injury to the fetus).

Such examples illustrate the complex and sometimes contradictory nature of community sentiment. This complexity, along with all the other issues with measuring assessment discussed above, suggests that perhaps sentiment is not the best basis for lawmaking. Another reason relates to the negative outcomes that sometimes result from popular laws.

Negative Outcomes. When a study is properly conducted, and if sentiment is well informed, strong, and relatively simple, one might come to the conclusion that lawmakers should clearly rely on that sentiment. After all, such a sentiment has avoided all the pitfalls listed above. However, there is still reason for caution. Unfortunately, sometimes moral panics and media frenzy cause lawmakers to adopt laws that have unintended negative outcomes. Sicafuse and Miller (2014) discuss how the popular but ineffective "three-strikes" laws were intended to be a solution to growing crime problems, but resulted in prisons becoming overcrowded, mostly with nonviolent criminals.

The chapters by Armstrong and colleagues (Chap. 17, this volume) and Petonito and Muschert (Chap. 18, this volume) analyze legal responses using the framework of Crime Control Theater: laws that have the appearance of addressing social problems but in practice do not work well and can have negative consequences. Sometimes, the public reacts to a perceived threat hastily without fully considering other options or negative outcomes. Often, very popular laws lead to stunted public discourse, including the laws addressing drug use during pregnancy (Cook and Walsh, Chap. 15, this volume), sex offenders (Armstrong and colleagues, Chap. 17, this volume), and laws to help find older adults who have wandered (i.e., Silver Alerts; Petonito and Muschert, Chap. 18, this volume). These are all examples of laws that are often adopted very quickly and without challenge; this occurs frequently for many crime control policies (Proctor, Badzinski, & Johnson, 2002).

Several other chapters in this volume also illustrate how laws informed by community sentiment can lead to outcomes that are not therapeutic. Campbell (Chap. 14, this volume) notes how the panic over campus shootings and the perceived instability of students have led to responses that are not therapeutic. Chomos and Miller (Chap. 6, this volume) note how the Nebraska law intended to provide parents a safe and legal way to abandon their infants went awry when parents dropped off teenagers; the influx of abandoned children threatened to swamp the state's resources and resulted in an emergency meeting of the legislature to implement an age limit on the law. Cook and Walsh (Chap. 15, this volume) discuss how laws targeting drug-using pregnant women might affect women's rights and medical care. Similarly, Petonito and Muschert (Chap. 18, this volume) suggest that Silver Alert policies might lead to the infringement of personal liberties of elderly people. These authors further suggest that the public may become less

responsive to emergency alerts as these alerts become more prevalent.

Armstrong and colleagues and Fass and colleagues both detail the negative and unintended outcomes that registration laws and residency laws have on sex offenders, victims, and the community. For instance, restrictions limit the places that sex offenders can live; as a result, offenders often are restricted from going to school or living in a place near services that would prevent recidivism. Also, victims might be reluctant to report a sex offender who is a relative in fear of bringing attention to their family (Edwards & Hensley, 2001). Unintended outcomes are the focus of Section IV of this volume. These chapters highlight the negative outcomes of several laws and illustrate the need for rational, informed dialogue among lawmakers.

Constitutional and Other Legal Concerns. Another reason to hesitate to use community sentiment in lawmaking concerns the constitutionality of laws. Justice Scalia's concern about using community sentiment is that it might lead legal actors to overlook the constitutionality of issues in favor of community sentiment (*Planned Parenthood v. Casey*, 1992). As noted in the Sicafuse and Sigillo chapter (Chap. 2, this volume), community sentiment is often formed as a result of emotions, biases, or morality. At times, this can conflict with constitutional rights. As they note, segregation was once a popular concept—one that is now considered unconstitutional. Slavery, child labor, and prohibition of women's right to vote are other examples of practices that once received positive sentiment but are now unconstitutional. More recently, there has been much debate over the rights of gays to marry, adopt children, and divorce (see Barth and Huffmon, Chap. 9, this volume of a discussion of the later). Most notably, a 2013 US Supreme Court decision struck down the Defense of Marriage Act that had denied federal benefits (e.g., social security) to gay couples who were legally married in their state. The Court ruled that this inequality was unconstitutional. In states that still deny gays equal rights, sentiment seemingly conflicts with the Court's interpretation of the Constitution.

Blumenthal (2003) discusses these concerns and gives the example of the popularity of "shaming" punishments. In 2013, a judge punished a man by making him wear a sign declaring himself to be an idiot because he threatened police officers. The same judge in 2012 ordered a woman to wear a sign because she drove around a school bus, risking the safety of the children getting on or off the bus (Associated Press, 2013). In Oakland, California, men caught soliciting prostitutes risk having their names posted on billboards (Stryker, 2005). Such public shaming might bring satisfaction to the public or the judge because, by publically announcing that the wrongdoer has violated society's norms, it might meet the "moral reform" theory of punishment (Garvey, 1998). Nevertheless, public humiliation might violate the Eighth Amendment's ban on cruel and unusual punishment because it risks stripping the defendant of his dignity or providing a punishment that might not be proportional to the wrongdoing (see generally Garvey, 1998 but see Kahan, 1996, for an alternate, more positive view of such penalties).

Despite all of these problems with using community sentiment as the basis for lawmaking, there is still good reason to rely on sentiment. Just because there are some problems with polls does not mean lawmakers should ignore sentiment entirely; lawmakers just need to learn *when* to rely on sentiment. Purposeful and careful reliance on sentiment has many benefits, as discussed next.

Yes, Community Sentiment Should Influence Law

Like the quote from President Lincoln at the start of this chapter notes, a law will be much more successful if it reflects the community's sentiment. More broadly, people who perceive the law to be unfair or unrepresentative of their sentiment will develop negative impressions of the legal system and be less likely to obey the law (Huang & Wu, 1994). Decades after President Lincoln proclaimed that community sentiment is essential to successful laws, scholars have studied related

principles and given them names: legitimacy and procedural justice.

A representative democracy is designed to reflect community sentiment. The USA is intended to be a representative democracy that should act as the voice of the people (Fishkin & Luskin, 2005). The people expect this, and if they disagree with laws, they might perceive the legal system to be unfair and as less of a legitimate authority. The most obvious consequence of ignored community sentiment is for legislators and the president. These legal actors are elected "representatives" and thus are supposed to represent their constituents. Ignoring those whom one represents is unlikely to produce a favorable outcome at the next election.

More broadly, when lawmakers adopt laws that agree with community sentiment, there are benefits for society more broadly. Specifically, this would promote a sense of justice and government legitimacy among the public.

Even the Supreme Court has occasionally recognized the importance of community sentiment, as discussed above. The Court in Planned Parenthood of Southeastern *Pennsylvania v. Casey* (1992) noted that a Court that does not listen to community sentiment might lose legitimacy in the eyes of the people. From a scientific perspective, legitimacy is "the psychological property of an authority, institution or social arrangement that leads those connected to it to believe that it is appropriate, proper and just" (Tyler, 2006, p. 375). People respect and obey legitimate authorities because they feel that they should—not because of obligation, reward, or fear of what will happen if they disobey. Governments that rely on this type of authority are generally more successful and cost-effective than those that rely on other types of influence, such as ruling by power and threat. This is particularly important in times of crisis or when resources are scarce, when there is little money to monitor or enforce compliance.

So how does a government come to be seen as legitimate? One way is through adopting fair procedures that reflect community sentiment. While it is impossible to please all the people all the time, it is still necessary for the government to listen to the people it governs. In order to establish legitimacy in the public eye, most decisions—if not all—need to reflect sentiment. A law that takes sentiment into account is seen as more fair and just. If the Supreme Court is seen as being fair, it is seen as more legitimate (Tyler & Rasinski 1991)—just as the court in *Casey* suggested. The concept of fairness develops at a young age. Children who disagree with their parent's "unfair" decision storm off and slam their door. They may pout and even kick the dog in protest. The adult public generally reacts in more sophisticated ways than pouting children, but they do act out: adults write letters to legislators, sign petitions, break the law, and start protests, sit-ins, or even riots.

In his book "Why People Obey the Law," Tyler posits that people obey when they believe they have been treated fairly. Even if they did not "win," they will obey if they believe the process was fair. Much scholarship has concluded, broadly speaking, that when the legal system is deemed fair and legitimate, it promotes obedience with the law (e.g., Huang & Wu, 1994; Tyler, 1990, 2006; see Blumenthal, 2003, for a review). For instance, Tyler's classic work (1990) examined people's perceptions of fairness and legitimacy regarding various parts of the legal system (e.g., police) as well as the system as a whole. In order to determine what influences compliance with the law, Tyler measured such things as perception of threat of sanctions, opinions of peers, and personal morality. While threat of sanction did influence reported compliance with the law, the measures of legitimacy were stronger predictions of compliance.

A few topics in this book illustrate what might happen when unfavorable laws are passed. Chaney's research in Chap. 10 of this volume finds that many participants believed that the government should not try to promote marriage or change people's attitudes toward marriage. Thus, these "marriage promotion" programs may fail. When the program's target population is not receptive to the program's goals, it is not only a waste of money but can negatively affect the perceived legitimacy of the government as a whole. The chapter by Chamberlain and colleagues (Chap. 13, this volume) highlights the contrast between what gay parents think the law should be

and what the law actually is; the chapter by Barth and Huffmon (Chap. 9, this volume) further illustrates the difficulties faced by gays who marry in one state but want to divorce in another state that does not allow it. Such perceived injustices can lead to emotional stress, feelings of unfairness, and loss of perceived legitimacy of the government more generally.

The sentiment of those who enforce the law is also an important consideration. As Brank and colleagues (Chap. 7, this volume) point out, laws not receiving positive sentiment from law enforcement or prosecuting attorneys might not be enforced.

This of course sometimes creates a conundrum for lawmakers. On the one hand, some very popular laws have unintended negative consequences, as discussed above. For those, lawmakers are wise to hesitate and gather as much information as possible before adopting popular laws that might be mere "crime control theater" (see Armstrong and colleagues and Petonito and Muschert, Chaps. 17 and 18, in this volume). On the other hand, refusing to adopt a poplar law can have the negative consequences discussed in this section. As an illustration, it is not hard to imagine the criticism a lawmaker would face for refusal to vote for a popular sex offender law designed to protect future victims. Thus, it is a delicate balancing act to please the community while being cautious about adopting only laws that are likely to be effective (and being willing to discontinue popular but ineffective laws). Educating the people about the ineffectiveness of some popular laws could be beneficial, although as discussed above, biases and unwillingness to be educated would make education ineffective. Sunset clauses are also helpful—these clauses are included in legislation and require an assessment and revote after a certain period of time. This means that ineffective laws are more likely to be eventually removed. By the time the law is up for renewal, the panic might have died down and sentiment might be more based on rational processes than emotions.

The bottom line is that a public that disagrees with and has low respect for the law and lawmakers might eventually act out in the form of disrespect for the law, lawbreaking, or jury nullification. As just discussed, there are a variety of benefits that arise when laws coincide with community sentiment. But the importance of accurate measurement and interpretation cannot be overemphasized. This helps ensure that when lawmakers do rely on sentiment, they are able to gauge it accurately.

Plan for the Book

The book contains six sections, each presenting a unique perspective on community sentiment. The first section contains three chapters that provide a broad introduction to community sentiment. Following this introduction chapter is a chapter which provides a broad overview of how the media and community sentiment shape the law, policy, and legal actions. Using research and selected case studies, Sicafuse and Sigillo demonstrate how community sentiment and media affect legal actions. The third and final chapter in the introduction section offers an introduction to the measurement of community sentiment. Chamberlain and Shelton discuss the main ways in which community sentiment is measured and the complexities of conducting proper community sentiment research.

Section II presents three chapters which build on Chamberlain and Shelton's discussion of the measurement of community sentiment. There are a variety of ways to measure community sentiment that range from public opinion polls to mock jury studies. There are many groups to study as well; researchers have studied the sentiment of students, legal actors, the people a law directly affects, and the general public (among others). This section includes four chapters, each using a different method of measuring community sentiment. After describing in detail a particular method, each chapter gives a brief study as an example of using that method. Each of these four studies investigates a topic related to legal actions that affect children or family (e.g., Safe Haven child abandonment laws, parental responsibility laws). First, Reed and Bornstein use a simulated mock jury approach to examine how the relationship between a child and the accused (e.g., a coach, teacher, or minister) can impact mock jurors' judgments about child sex abuse perpetrators. Evans, Peoples, and Kelley illustrate how secondary data

derived from public opinion polls can be used to gauge sentiment about the extent to which family needs ought to be considered in an employee's pay (Chap. 5, this volume). Chomos and Miller's survey addresses the importance of sampling. Specifically, it reveals how sentiment about Safe Haven laws can be related to individual differences (e.g., religious characteristics and political affiliations) in a student sample. Brank et al. use a mail survey to measure the sentiment of law enforcement officers and prosecutors regarding parental responsibility laws. As a whole, these chapters illustrate the intricacies of measuring community sentiment and demonstrate how these intricacies can play out when measuring legal issues.

Section III discusses the topic of *changing* community sentiment. Sentiment is not a static thing; it can change over time, it can be primed by the environment, and legal actions themselves can change sentiment. Four chapters give specific examples of "changing sentiment studies" which use a variety of methods and samples to study sentiment about a range of topics related to children and family. First, Miller and Thomas investigate how sentiment can change based on context. Using a repeated measures design, they find that sentiment regarding prosecutions of pregnant mothers who use drugs depends on contextual factors such as the type of the drug and severity of the child's injury. Second, Barth and Huffmon demonstrate how sentiment of judges, legislators, and the public about same-sex divorce has changed over time. Third, Chaney uses qualitative interviews to investigate sentiment toward a federal initiative that is designed to change attitudes toward marriage. Such programs are one example of a government program designed to change people's sentiment. Finally, Kwiatkowski and Miller present a pretest/posttest study that illustrates how sentiment can change when individuals learn more about a law. In all, these chapters represent a variety of ways to study how community sentiment changes and can be changed.

Section IV includes three chapters that deal with the intersection of community sentiment and perceptions of justice. Legal actions are often analyzed from justice perspectives such as procedural justice, restorative justice, legitimacy, and therapeutic jurisprudence. While some laws uphold these principles, many fall short. Four chapters assess whether a variety of laws uphold or threaten justice principles and focus on how popular and unpopular laws (i.e., ones that are or are not in line with community sentiment) threaten or promote justice principles. For example, does the administration of law bring about therapeutic or anti-therapeutic outcomes? Does a particular legal procedure promote a sense of procedural justice? This section offers three chapters which discuss legal actions that affect children and families, with a focus on justice principles.

First, Sigillo's analysis concludes that judges can promote positive perceptions of the legal system by allowing children to express their sentiment about their living situation after their parents' divorce. This practice can follow the premises established by therapeutic jurisprudence, procedural justice, and legitimacy. Second, Chamberlain and colleagues investigated same-sex parents' sentiment about their roles and responsibilities, as well as their experiences (as parents) with law and society. Survey and interview results indicate generally that gay parents who are neither biological nor adoptive parents to their partners' children would like to be seen as legal parents. The law, however, does not always recognize them as legal parents, which can have implications for the well-being of the family and perceptions of justice (e.g., perceptions of procedural injustice and governmental illegitimacy). Third, Campbell develops a therapeutic jurisprudence approach to addressing student mental health and campus safety. Therapeutic jurisprudence (TJ) is the notion that the legal system can have therapeutic or anti-therapeutic effects on those it encounters (e.g., Wexler & Winick, 1996). For instance, some drug courts are built on the principles of TJ: legal responses that include drug treatment can help prevent recidivism. TJ complements other approaches (e.g., punishment) while addressing the well-being of the wrongdoer. Campbell discusses how communities and law enforcement express sentiment about campus safety that do not always provide a therapeutic response for students with mental health issues. The chapter addresses a way to balance these diverging factors. In all, the chapters in this section address how sentiment of the community,

those affected by the law, and those who enforce the law can interact with perceptions of justice in both positive and negative ways. As a whole, this section applies justice principles to laws, policies, and procedures that affect children and families.

The focus of Section V is to demonstrate how popular laws sometimes have unintended and negative consequences. Some laws and policies that enjoy positive sentiment from the community or lawmakers can have unintended consequences. This section offers four examples of how popular laws can negatively impact the rights and well-being of children, families, and society. First, Cook and Walsh examine a policy in North Dakota that proposes civil commitment for women who use drugs during pregnancy. Second, Armstrong and colleagues assess sex offender registration laws and their impact on families and offenders. These outcomes may make it difficult to achieve rehabilitation and prevent reoffending. Third, Petonito and Muschert discuss how "Silver Alerts" notify the public of elders who wander away from their care facilities, noting that these well-intentioned laws may have numerous consequences for elders. Fourth, Fass and colleagues discuss a variety of popular punitive responses to juvenile crime that do not account for limitations in the juvenile's psychological abilities. The authors suggest that such offenses would be best addressed with less punitive approaches and rehabilitation. In all, this section provides several examples in which laws informed by community sentiment may have unintended negative consequences, which must be weighed against the benefits of the law. As suggested by therapeutic jurisprudence, research is needed to assess the ultimate effect on well-being of all affected by laws. What is therapeutic might contradict or agree with community sentiment. Juggling the pros and cons of laws—while keeping one's emotions in check—is a difficult task for lawmakers.

Section VI contains the book's final chapter, which highlights common themes across chapters. It concludes that community sentiment is an important aspect of lawmaking, but it is nevertheless difficult to measure properly. Reliance on sentiment by those in the legal and political systems can lead to both positive and negative outcomes. As such, it is important to educate the public and professionals about the relevant legal, developmental, behavioral, and justice issues at stake. Recommendations for future research in community sentiment are offered.

Conclusion

Sentiment is difficult to measure. It can be unstable and complex, and indeed people might have biased sentiment or might not even know what their sentiment is or how to express it. Researchers have a very difficult task in measuring sentiment. It is essential that they ask questions that are not too broad and tap into "opinion" and not "reaction." They must be concerned with priming, response options, and capturing complex sentiment. They must pay attention to sampling and measurement errors. Such complexities make community sentiment research difficult to do. But such research is worthwhile endeavor because it can inform legal decision-makers about what the public wants.

Research has supported the notion that community sentiment *does* impact the law. And, in many circumstances, it *should* impact the law. While drawbacks exist—popular laws based on emotions and biases can have negative unintended consequences, for example—there are many benefits that make it worthwhile. When treated fairly, people obey laws, even those they disagree with. When laws conform to community sentiment, people might perceive the justice system as a "legitimate" authority worthy of obeying.

It is the hope of the editors and authors that this book will become a "go-to" book for anyone wanting to study community sentiment. We hope that it will promote quality community sentiment research that will properly influence legal decisions and promote perceptions of the government's legitimacy.

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The Influence of Media and Community Sentiment on Policy Decision-Making

2

Alexandra E. Sigillo and Lorie L. Sicafuse

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Popular control of public policy is the defining feature of a democracy and has long been cited as a benefit of US citizenship (Erikson, Wright, & McIver, 1993). As the US founding fathers intended, citizens have the right to vote for political candidates who share their sentiments and beliefs. In turn, elected officials are expected to represent their constituents and actively develop and implement policies that cohere with community sentiment. Yet, the trajectory from community sentiment to public policy is not as linear as this core democratic principle implies. The notion that community members have the capacity to develop informed opinions on most policy issues has been challenged since the early nineteenth century (Lippman, 1922), and researchers today often contend that the general public lacks knowledgeable insight to make informed policy decisions (Miller, 1998, 2004). Scholars have argued that the public forms opinions on only the most salient issues during any given time period; even then, the reported opinions are biased by lack of public knowledge or by the nature of the question asked (Finkel, 1995). Others have argued that politicians can effectively manipulate community sentiment to favor their own political agendas, most often by first influencing the media agenda (Jacobs & Shapiro, 2000).

Despite the complications inherent in assessments of relationships between community sentiment and public policy, it is clear that such relationships exist and that the media most likely acts as a moderating or mediating factor in community sentiment-public policy relationships (Lippman, 1922). Technological advancements during the past several decades have heightened the importance of incorporating the media into analyses of the linkages between community sentiment and policy actions (McCombs, 2004).

This chapter reviews relationships among community sentiment, the media, and policy decisions while highlighting the challenges involved in disentangling these relationships. First, it discusses the most commonly observed relationships between these three variables, illustrating the difficulty associated with addressing the issue of causality (e.g., which of the three entities—the policymakers, the media, or the public—affects the others?). Second, this chapter presents two recent "sensationalized" media events as case studies to further illustrate how the media and community sentiment both have potential to influence policy. Third, it reviews empirical evidence supporting the notion that policymakers do indeed incorporate signals

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from both the public and the media into their decision-making. Finally, it summarizes the potential costs and benefits of incorporating community sentiment, whether media driven or not, into policy decisions.

Complex Interactions Among Community Sentiment, Media, and Policy Decisions

Historically, US lawmaking follows a representative democracy in which policymakers listen, but not necessarily adhere, to public sentiment. Lawmakers often incorporate other factors, such as media consumption, into their public policy decisions. When policy decisions focus on injustice toward children and families, community sentiment could be colored by the media's portrayal of the particular injustice. The media are often referred to as "agenda setters" as they determine which issues are newsworthy and increase exposure for the issues they deem important (McCombs, 2004). Furthermore, media framing of these issues influences not only *what* issues the public should consider important but *how* individuals should perceive these issues (Brossard & Nisbet, 2006; McCombs & Reynolds, 2002). These perspectives are then adopted by the general public (McCombs & Reynolds, 2002). Although a Gallup survey indicated that 57 % of Americans have little to no trust in the media's ability to report news fairly and accurately (Morales, 2010), this does not preclude the probability that the public is aware of the media's capacity to shape their perspectives toward given issues.

Media portrayals of injustices toward children and family may have a particularly strong impact on community sentiment. The media's disproportionate focus on these injustices often creates a moral panic among the public (Zgoba, 2004), referring to the public's emotional reaction to an injustice that in turn arouses their need for political responsiveness to prevent such injustices from occurring in the future. Most often, this includes encouraging lawmakers to draft bills and adopt policies to address the injustice. Such legislation is then enacted to appease the public and satisfy constituents.

The relationships among media coverage, community sentiment, and policy decisions, however, are not always so linear in nature. The media often caters to consumers' interests and demands (McCombs, 2004), sensationalizing stories and issues that the public finds most engaging. Thus, it is challenging to determine the extent to which the media *influences* community sentiment versus the extent to which it *reflects* community sentiment. This is likely a reciprocal process whereby the media both shapes and represents community sentiment.

Furthermore, lawmakers can and often do influence media focus and content, which subsequently affects community sentiment (Surette, 2007). Through rhetoric, lawmakers attempt to persuade the public to favor their position by arguing that their policies have a higher likelihood of succeeding compared to their opponents' policies. If the issue is contentious, the media is more inclined to set the issue as newsworthy, influencing individuals to think that the issue is important, as well. Overall, policy decisions are shaped by complex interactions among lawmakers, the media, and the public, and the following section discusses two recently sensationalized media stories as case studies depicting these tangled relationships.

Case Studies Exemplifying Complex Relationships

Historically, highly publicized injustices toward children have ignited the public's emotions and fueled their desire for legal action, often leading to the formation of laws intended to prevent such injustices from occurring in the future. For example, AMBER Alert and Megan's law were both created in response to the heinous crimes committed against Amber Hagerman and Megan Kanka, respectively. Although these specific cases are not discussed here (see Chap. 17), the more recent case examples below illustrate the complex relationships among the media, community sentiment, and the law.

Casey Anthony. The murder of 2-year-old Caylee Anthony provides a recent example of the

effect of media and community sentiment on policy decision-making. In June 2008, Caylee disappeared from Orange County, Florida; her mother, Casey Anthony, failed to report her daughter missing and Caylee's remains were later found (Hayes, 2011). In June 2011, Casey Anthony was tried for the murder of her daughter. As agenda setters, the media decided that Anthony's trial was newsworthy and entertaining because an attractive mother was accused of killing her child. As a result, the trial was broadcasted live. The Casey Anthony trial dominated media headlines and the public became fascinated as the prosecution and defense proposed two strikingly dissimilar scenarios regarding Caylee's death. The prosecution alleged that Anthony suffocated her daughter and then disposed of her body, while the defense maintained that Anthony and her father covered up Caylee's accidental drowning (Hayes, 2011). As evidence of her guilt, the prosecution focused on Anthony's party lifestyle and compulsive lying during Caylee's disappearance (Hayes, 2011). The defense explained that her behavior was a coping mechanism to conceal pain, learned at an early age when her father allegedly sexually abused her (Hayes, 2011). The unconventional trial captivated the public's attention such that the public demanded continuous updates and the media willingly provided a disproportionate amount of coverage to their consumers.

The media not only determined that the Casey Anthony trial was newsworthy but also framed trial coverage in such a way as to imply Anthony's guilt. For example, Nancy Grace, a political pundit, referred to Anthony as "Tot Mom" and chastised the mother for her behavior during her daughter's disappearance and failure to report her daughter missing (Rozvar, 2011). Consequently, the public adopted the media's perspectives about Anthony's guilt. When Casey Anthony was acquitted of first-degree murder, aggravated child abuse, and aggravated manslaughter, there was an enormous public outcry. Individuals were shocked that their opinions about the trial outcome were not confirmed and that justice was not served for Caylee, sharing their sentiment across multiple social media sites (Conley, 2011). The defense lawyers, on the other hand, admonished the media for their bias against Anthony and their depiction of her throughout trial (CNN Wire Staff, 2011).

As a result of the media's sensationalization of the Casey Anthony trial and the shock in response to a "not guilty" verdict, a moral panic erupted across the nation. Constituents demanded legislative action for the perceived injustice for Caylee Anthony. Most notably, an Oklahoma woman initiated an online petition which called for a federal law that would make it a felony for a parent or guardian to fail to report a missing child to law enforcement within 24 h. The Change.org campaign went viral, reaching over a million electronic signatures, and spurred states to enact their own versions of "Caylee's Law" (Crowder, 2011). Such enacted policies varied depending on the child's age, length of time to report a child missing or dead, and degree of punishment. New Jersey was the first state to pass Caylee's Law legislation, and other states quickly followed including Florida (the state where Anthony was tried) and, most recently, California and Illinois (Glover, 2012; Wood, 2013). However, some states, such as Iowa, have rejected the proposed legislation, deeming it too vague and even unnecessary (Glover, 2012). This seems to be the case regarding a South Dakota woman who was convicted of failing to report the death of a child who was under her care (Stebner, 2013). Laurie Cournoyer was on a 2-day drug binge and initially unaware when an 11-year-old boy strangled and killed a 2-year-old girl, both of whom were in her care; she reported the death 14 h later (Stebner, 2013). This is the first known case in which Caylee's Law legislation was used in a conviction. South Dakota's "Caylee's Law" represents an arguably well-intended policy but somewhat unnecessary as timely reporting of the death would not have saved the child. Cournoyer reported the girl's death (after she recovered from her inebriated state), just not within the law's allotted 6-h time frame. This demonstrates that such sentiment-driven laws are designed as legislative reactions to constituents' moral panic rather than as preventative measures.

Nadya "Octomom" Suleman. The highly publicized case regarding Nadya Suleman presents

another compelling example of the effects of the media and the public on policy decisions regarding children. Suleman was an unemployed, single mother of six who conceived octuplets using in vitro fertilization (Cohen & Gross, 2009). As a reproductive technology, in vitro fertilization is most often used by infertile women who need medical assistance to conceive. During this procedure, multiple eggs are fertilized in a laboratory; a few of the resulting embryos are transferred into a woman's uterus, while others are frozen and stored for a later use if the initial embryos do not implant. Suleman had 12 extra frozen embryos from a previous successful cycle, but instead of donating or destroying those embryos, she and her fertility physician opted to transfer all 12.

In 2009, Suleman delivered the octuplets via Cesarean section, and the media jumped at the opportunity to recount the events leading to this reproductive miracle. A simple story about the birth of octuplets, however, led to a sensationalization that swept the nation once the media caught wind that Suleman conceived via in vitro fertilization. Dubbed "Octomom" by media outlets (Goldman, 2009), Suleman's story has entertained the general public since January 2009, as it touches on many politically charged issues including scientific advancements in genetic engineering and women's reproductive rights. Specifically, media coverage included three main topics: morality, ethics, and finances.

The media concentrated on the morality of an unemployed single mother using reproductive technology to conceive, noting that Suleman, already a mother of six, elected to transfer multiple embryos rather than keep them frozen or donate them to infertile couples (Goldman, 2009). Furthermore, the media focused on the ethics of transferring multiple embryos and the health of the octuplets (Cohen, 2009; Park, 2009). Transferring more than one embryo increases the likelihood that a woman conceives, but it also increases the likelihood that she will experience a multiple infant pregnancy which poses health risks for both mother and infants (Ombelet, 2007). Federal and state governments do not regulate embryo transfer; instead, the number is decided upon by the physician and patient. Within the fertility medical community, however, the general practice is to only implant two or three embryos during each cycle depending on the woman's age, the number and success of previous cycles, the quality of the embryos, and the availability of extra frozen embryos; these ethical guidelines are established in order to reduce the number of multiple infant pregnancies (The Practice Committee of the American Society for Reproductive Medicine & The Practice Committee Society for Assisted Reproductive Technology, 2009). Despite the risks associated with a multiple infant pregnancy, the octuplets are reportedly healthy as the world's longest surviving set (Tayefe Mohajer, 2011). Finally, the media continuously covered the extent to which Suleman has financially supported her large family. The public was horrified to learn that Suleman has received government assistance, worked as a stripper, and starred in a solo pornographic video as a means to provide for her family (Fisher, 2013).

In reaction to the media's sensationalization, the public became outraged about Octomom and the ethical controversy surrounding her pregnancy. Specifically, they objected to the ease with which multiple embryos were transferred and the physician's blatant disregard of embryo transfer ethics. Since this controversy, Suleman's physician, Dr. Michael Kamrava, had his medical license revoked for failing to heed ethical guidelines, and some states have introduced legislation limiting the number of embryos that can be transferred. A Georgia senator proposed limiting the number of embryos to two for women under the 40 years old and three for women 40 and older; the Missouri legislature considered a similar policy (Cohen & Gross, 2009). These bills were quickly drafted but ultimately defeated in their respective state legislatures. Media sensationalization provided political momentum, but one explanation for the lack of endorsement is that these bills were too controversial, possibly affecting a public that is divided on the issue of women's reproductive rights. Such legislative action, however, does demonstrate the potential influence that both the media and the public can have on policy decision-making regarding children's health and safety.

As the above case studies illustrate, media coverage, community sentiment, and policy decisions are tightly interwoven. As such, it is often difficult to determine whether the media or community sentiment is a stronger predictor of policies, especially those designed to protect the health and well-being of children. To disentangle these relationships, social scientific research has investigated the influence of both media and community sentiment on child and family policy. The next section provides empirical evidence regarding the media, the public, and the lawmakers' roles in setting the policy agenda. It examines both general political issues and specific child protection policies while also examining the strength of relationships between these entities.

Impact of Community Sentiment and the Media on Policy: Empirical Evidence

Lawmakers in a democratic society are *supposed* to consider community sentiment and incorporate these sentiments into their decision-making; the degree to which lawmakers *actually* do this has been debated by political scholars for decades (Manza & Cook, 2002). Though most agree that the "policy agenda" typically reflects the "public agenda," research also has illuminated instances in which policy decisions did not adhere to community sentiment (e.g., see Jacobs & Shapiro, 2000; Monroe, 1998; Page & Shapiro, 1983). In this era of technological advancement, researchers are focusing on the role of the media in shaping both community sentiment and policy (McCombs, 2004). The case studies presented earlier describe such relationships, but these narratives are subjective.

This section briefly reviews empirical evidence regarding the extent to which lawmakers are influenced by community sentiment (the "public agenda") and by media coverage of particular issues (the "media agenda"). Most of this research has been conducted in the political science realm and has yielded conflicting results. In addition, empirical examinations of the relationships among community sentiment, the media, and policymaking have been criticized for failing to incorporate the potential influence of external variables and for relying on correlational analyses instead of illuminating causal relationships. Though more empirical research is needed, it is proposed that both community sentiment and media coverage may have a particularly strong impact on policies involving children and families.

Relationships Between Community Sentiment and Public Policy

Numerous studies have examined linkages between community sentiment and policymaking at state and national levels (see Burstein, 2003; Jacobs & Shapiro, 2000; Jones & Baumgartner, 2005; Manza & Cook, 2002, for reviews). Such research typically involves assessment of correlations between public opinion on multiple issues and policy indicators relative to those issues, such as topics of congressional speeches, legislative votes, or enacted policies, which are enacted across substantial time. For instance, most researchers have used various public opinion poll responses to explore the impact of community sentiment on numerous "policy output" measures (Page & Shapiro, 1983) and actual legislative outcomes (Monroe, 1998). Some researchers have measured the impact of a more generalized "public mood" on multiple policy indicators (Erickson, MacKuen, & Stimson, 2002), while others have focused on the relationships between community sentiment regarding a single issue and policy action (e.g., Burstein, 1998; Jacobs, 1993).

Because this body of research examines so many different issues and variables operationalized as proxies for community sentiment and policy decisions, it is difficult to predict precisely how and when public opinion actually influences policy *outcomes*. Some researchers have found that the relationship between community sentiment and public policy has become weaker with time (though the relationship remains significant; see Jacobs & Shapiro, 2000; Monroe, 1998).

Some have found that public opinion predicts policy decisions a little more than half of the time (Page & Shapiro, 1983), whereas others have found a much stronger relationship (i.e., correlation of .91 between public opinion and policy; Erikson et al., 1993).

Despite these differences, research findings generally indicate a substantial relationship between public sentiment and the subsequent decisions of policymakers. Burstein's (2003) meta-analysis reviewing the relationships between public opinion and public policy at both national and state levels revealed that such correlations were positive and statistically significant in approximately 75 % of the studies. Effect sizes, when measured, were reported to be "substantial," though Burstein (2003) failed to define that term. Individual studies (some included in Burstein's analysis) reveal the same trend; more often than not, lawmakers' policy decisions adhere to community sentiment (e.g., Erikson et al., 1993; Page & Shapiro, 1983; Weaver, 2000). Although the strength of the relationship between specific community sentiment and policy actions varies among studies, there are no easily identifiable trends *across* studies regarding the types of policies (e.g., social, defense, international issues) that are particularly likely to reflect community sentiment.

It should be noted that the vast majority of literature explores issues that are highly salient on both public and policy agendas. This focus on the most salient issues is a primary criticism among those who believe that strong relationships between public opinion and public policy are overestimated (Burstein, 2006). These scholars argue that average community members do not have the time, motivation, and capacity to make an informed opinion about the multiple policy issues lawmakers continuously introduce and vote on (Burstein, 1998, 2006; Lippman, 1922). Consequently, these researchers suggest that public opinion affects policymaking on only rare occasions, ones during which public attention to an issue is especially high. This contention is warranted considering that approximately 10,000 bills and resolutions are considered in a typical US congressional session (Govtrack.us, 2013). It is highly unlikely that average community members have formed opinions on more than a handful of these proposals. Further, busy lawmakers do not have time to gauge and consider community sentiment pertaining to all of their decisions.

Research investigating the relationship between community sentiment and policy has been subject to numerous other criticisms. Primarily, many of these studies examine *correspondence* between public opinion and public policy, but make no efforts to establish a temporal relationship (i.e., establishing that public opinion preceded policy; see Burstein, 2003; Manza & Cook, 2002). Other researchers have attempted to address this issue by accounting for temporal influence and investigating the relationship between public opinion assessed 2 or more years prior to activities related to public policy implementation (e.g., Monroe, 1998; Page & Shapiro, 1983). Such analyses, however, do not establish that public opinion definitively impacts policy decisions. Numerous researchers have found that policymakers can set the public agenda and influence community sentiment via press releases, the media, or other campaign activities (see McCombs, 2004, for a review). Thus, it is difficult to determine whether seemingly "independent" community sentiment impacted policymaking or whether policymakers exerted some influence on community sentiment, which became consistent with policy agenda (Jacobs & Shapiro, 2000; McCombs, 2004). Further, many studies of the potential impact of community sentiment on policy decisions fail to consider factors that mediate or moderate this relationship. The next section reviews the literature examining the media as an additional and often primary factor in influencing policy decisions.

Relationship Between the Media and Public Policy

A large body of research reveals a strong relationship between the media agenda and the public agenda (see McCombs, 2004, for an extensive review). There is some debate about the proximal cause of this influence. Traditionally, it was assumed that media outlets, as profitable

enterprises, were motivated to cover issues deemed important by the public, and several studies provide evidence in which the public agenda appears to influence the media agenda (see Uscinski, 2009, for a review). Other research demonstrates that the media agenda is typically a precursor to public sentiment (see McCombs, 2004; Surette, 2007).

Taken together, the relevant literature implicates the media as the primary source, shaping public opinion in most cases (see McCombs, 2004). Experimental studies show that controlled media exposure significantly influences participants' perceptions of issue salience and importance (Althaus & Tewksbury, 2002; Wang, 2000), as well as their support for punitive approaches to violent crime (Gilliam & Iyengar, 2000). However, there are exceptions to every rule. For example, Uscinski (2009) found that the media influenced public opinion on issues such as national defense and crime control, which were related to regularly publicized "spectacular" events. Conversely, community sentiment appeared to influence media coverage on more "benign" topics not readily associated with a current sensational event, such as energy and the environment. Further highlighting the importance of considering external variables, Chiang and Knight (2011) found that newspaper endorsements predicted presidential candidate preferences in the 2000 and 2004 elections but only under certain circumstances. Specifically, public opinion was only influenced by endorsements that confirmed their initial candidate preference (thus strengthening their opinion) or by "unexpected" endorsements (i.e., "liberal" publications endorsing a conservative candidate or vice versa; Chiang & Knight, 2011).

Regardless of whether the media influences community sentiment or vice versa, lawmakers are increasingly relying on media sources to help them gauge and prioritize community sentiment (Jones & Baumgartner, 2005). Politicians often attempt to set the media agenda, anticipating that public sentiment will be influenced by the media in a way that supports their preferred policy agendas. Studies indicate that such efforts are successful in particular circumstances (e.g., during the initial phases of the presidential primaries), but it is more common for the media agenda to shape the policy agenda (McCombs, 2004).

As with research focused on community sentiment and public policy, studies considering the media in these relationships tend to examine multiple variables over substantial periods of time. Most of these studies utilize time-series statistical techniques to establish the origin of influence of agendas, especially during elections. For example, national analyses of 1992 and 2000 US presidential campaigns reveal that both media and public agendas significantly influenced the presidential candidate's agendas (McCombs, 2004), and the media agendas of three local newspapers effectively set the candidates' issue agendas in the 1994 Texas gubernatorial election (Evatt & Bell, 2001). Researchers have also investigated the effect of both public and media agendas on the presidential agenda. Examining nightly news broadcasts and "Public Papers of the President" content from 1984 to 1994, Edwards and Wood (1999) found that media coverage influenced presidential agendas on foreign policy issues and that the president and the media influenced one another's agendas on education issues.

Conducting similar analyses, Gozenbach (1996) found that public sentiment concerning drugs influenced media coverage, which in turn shaped the presidential agenda on drug control policy from 1984 to 1991. Other research examining these relationships over a longer time period (1969–2004) revealed a reverse pattern: the content of presidential speeches (operationalized as the presidential agenda) influenced media coverage, which in turn influenced public opinion (Hill, Oliver, & Marion, 2012). These conflicting results could be attributable to differences in time span and methodology across the two studies. Hill et al. (2012) argue that their statistical methods were more robust than those employed by Gozenbach (1996). In addition, Hill et al. (2012) used only one indicator of public opinion in their analyses, whereas Gozenbach (1996) used several.

Researchers have also explored the relationships among public opinion, media coverage, and

policy decisions across a variety of policy issues during legislative hearings (Tan & Weaver, 2007, 2009). Results from such studies revealed the same general pattern across both state and national levels: all three variables of interest (i.e., the public, media, and policy agendas) were significantly correlated. However, the strongest correlations were between the media and policy agendas, whereas the weakest were between the public and policy agendas. It should be noted that although several highly salient issues were investigated, only some policy decisions (e.g., those pertaining to defense, international affairs) were impacted by the media (Tan & Weaver, 2007). Yet, this research does suggest that policymakers pay particular attention to media coverage on salient issues and perhaps even consider media coverage as a proxy for community sentiment in some cases.

Overall, research regarding the relationships among community sentiment, the media, and policy actions indicates that all three are often significantly related to one another. Clarifying the magnitude and direction of these relationships is challenging for several reasons. Though researchers can incorporate *some* of the external variables that can further influence public, media, and policy agendas (e.g., specific events, lobbyists, social influences; see Burstein, 2003; Uscinski, 2009), it is not possible to account for *all* possible external influences. Moreover, using different methods to explore similar research questions could yield conflicting results, and relationships among community sentiment, the media, and policy may change depending on the issue at hand.

Though the literature indicates that policymakers do often adhere to the sentiments of their constituents, it also suggests that the media is largely responsible for shaping community sentiment. More recent studies suggest a stronger relationship between media and policy agendas than between public and policy agendas (e.g., Jacobs & Shapiro, 2000; McCombs, 2004; Tan & Weaver, 2007, 2009), consistent with the assertion that policymakers primarily consult the media to gauge public opinion (Jones & Baumgartner, 2005). Less empirical focus has been placed on the particular circumstances under which policymakers might be most influenced by community sentiment and the media. This topic will be explored further in the following section, which discusses agenda setting specific to policy regarding children and families.

Child and Family Policies: Abundant Speculation, Little Empirical Evidence

As the above review demonstrates, few studies have empirically examined the linkages among community sentiment, the media, and more *specific* policy actions. Several scholars have used narrative-based arguments supporting media and public influence on policies intended to prevent rare and horrific crimes against children. For instance, Zgoba (2004) describes how sensationalized news stories of child abduction and murder incited a "moral panic" among the public, leading to the nationwide implementation of the AMBER Alert crime control system. Jones (1999) and Filler (2001) discuss how increased media focus on child sexual assault, in particular the case of Megan Kanka and her activist parents, facilitated federal legislation for sex offender registration and notification laws (see Chap. 17). Such lines of reasoning are intuitive and logical; however, they would be bolstered by empirical evidence of specific public and media contributions to policy decisions in this arena.

Researchers have attempted to empirically link media coverage of child abduction to statewide adoption of the AMBER Alert system by conducting a content analysis of child abduction articles published in the *New York Times* between 2002 and 2003 (Muschert, Young-Spillers, & Carr, 2006). Over half of the articles analyzed focused on the sensationalized Elizabeth Smart abduction, and the vast majority reported on rare "stereotypical" abductions (i.e., children taken by a stranger rather than a family member). In these articles, any discussion of policy solutions to the stranger-child abduction problem focused exclusively on AMBER Alert. Social scientific research analysis, however, revealed

that the rare incidence of child-stranger abduction did not justify a significant policy initiative such as AMBER Alert. Thus, it was concluded that the media, rather than social scientific evidence, were primarily responsible for the spike in statewide adoption of AMBER Alert during 2002 and 2003. The researchers recognized the likelihood of multidirectional relationships in this process, such as the probability that the media impacted community sentiment, which in turn motivated lawmakers to implement AMBER Alert, or the possibility that lawmakers directly relied on media cues when considering this legislation (Muschert et al., 2006).

Limited research also has been conducted regarding the effects of media coverage on child welfare policy. Douglas (2009) examined the relationships between media coverage of child maltreatment fatalities in the USA and subsequent adoption of legislation intended to prevent such events. She found that media coverage significantly predicted subsequent preventative legislation (allowing for a 1-year time lag between media coverage and legislation). This research expanded upon a prior study which found that media coverage significantly predicted child welfare legislation, but not preventative legislation specifically (Gainsborough, 2007).

Results from these studies do not clarify the direction and magnitude of the relationships among the public, the media, and child policy actions, but they do provide a foundation for understanding these relationships and encouraging further investigations. For example, future studies could use experimental methods to assess the impact of media exposure on support for specific policies pertaining to children and families. In addition, researchers in this arena could broaden their investigations to include all three variables of interest: public opinion, media coverage, and policy actions. Ultimately, additional studies employing a variety of methods would complement one another to enhance the understanding of how community sentiment and the media impact child and family policy.

Despite the lack of empirical evidence, sociological theory suggests that policies focusing on the well-being of children could be particularly susceptible to community sentiment and media influence. Manza and Cook (2002) propose a "contingent" view of the impact of public opinion on public policy, outlining the criteria optimizing political adherence to community sentiment. First, these researchers argue that the impact of community sentiment and media on public policy should increase with issue salience, a contention strongly supported by the extant literature (e.g., see Jones & Baumgartner, 2005; McCombs, 2004; Tan & Weaver, 2007). Second, they note that the distribution of public attitudes regarding a policy initiative (i.e., strong consistent "unimodal" attitudes vs. split, contentious "bimodal" attitudes) can impact policymakers' incorporation of public sentiment, in addition to other concerns such as the cost and feasibility of a proposed policy and lobbyist or interest group influences. Third, they note the importance of Kingdon's (1995) "window of opportunity" in facilitating policy implementation. For example, "windows of opportunity" for political action often arise during sensationalized media coverage of injustices toward children, such as when Elizabeth Smart's father made emotional pleas to legislators to adopt AMBER Alert, which were then widely broadcast by mainstream media outlets (Hulse, 2003). Many highly publicized child protection policies appear to meet these criteria. Issues related to child abduction, sexual assault, or murder are definitely on the public radar, either as a result or a cause of media coverage. Support for such policies is often widespread and unchallenged across the USA (Proctor, Badzinski, & Johnson, 2002; Sicafuse & Miller, 2012).

Much more empirical research is needed to disentangle the relationships among community sentiment, the media, and policy decisions intended to promote the well-being of children and families. Scholarly discourse and case studies do support the notion of a strong influence of both community sentiment and the media on child and family policy. Yet, policies consistent with community sentiment might not always yield expected outcomes. The next section reviews the potential costs and benefits of political adherence to community sentiment.

Should Community Sentiment Direct Legislation?

As the above empirical evidence demonstrates, policymakers often use community sentiment when designing legislation, especially when the issue is salient and highly publicized by the media. This prompts the question, *should* community sentiment direct legislation? Historically, politicians are inclined to rely on community sentiment when making policy decisions concerning injustice toward children (e.g., Megan's Law, AMBER Alert). Policy decisions that are consistent with community sentiment increase the public's perceptions of a legitimate government, strengthening their respect of and compliance with the law (Tyler, 2006). However, not all community-driven policies appease the general public, particularly when constituents are split in their attitudes toward contentious issues (e.g., women's reproductive rights). Most often, such policies are defeated before they can ever be implemented (see Suleman case study as described above). Policy issues that involve a divided public highlight the fact that community sentiment is malleable (Finkel, 1995; see also Chap. 3), changing alongside society's values. As such, lawmakers should monitor and assess community sentiment (at least for salient issues) to ensure that their policy decisions reflect public opinion.

Incorporating community sentiment into policy decisions could enhance positive perceptions of government but may also lead to negative social and legal consequences. The majority of citizens generally lack knowledge to make informed decisions about public policy issues (Denno, 2000; Miller, 1998, 2004). Consequently, community sentiment is often based on emotions and morals (Blumenthal, 2003; Haidt, 2003) rather than facts. Morally and emotionally charged reactions often elicit illogical patterns of thought in interpreting information and forming opinions (Epstein, Lipson, Holstein, & Huh, 1992). These "cognitive biases" can lead to judgment errors (Kunda, 1999) which may further influence community sentiment.

Historically, numerous popular laws predicated on emotions, morality, and cognitive biases have violated individual rights and undermined well-being. For example, Caldas and Bankston (2008) note that most citizens in the southern USA supported the historic Supreme Court decision to legalize racial discrimination in *Plessy v. Ferguson* (1896). More recently, some legal scholars have argued that laws prohibiting same-sex marriage infringe upon the fundamental right to marry; however, such policies often reflect community sentiment (Tribe & Matz, 2012). Support for antigay marriage policies often emerges from emotions and morals, but it can also be based on cognitive biases. For example, it is commonly argued that permitting same-sex marriage will undermine the overall well-being of children in these families. Yet, decades of research in this area have yielded no reliable findings that children raised by same-sex parents experience any negative consequences as a result of their parents' sexuality (see Perrin & Siegel, 2013). Thus, lawmakers should consider not only the prevalence and direction of community sentiment but also the underpinnings of community sentiment. For instance, a recent content analysis of blogs regarding mandatory HPV vaccination revealed that most bloggers opposed mandatory vaccination legislation. However, arguments advanced by opponents were significantly more likely to be based on cognitive biases, whereas arguments advanced by proponents were significantly more likely to be based on documented research findings and facts (Sicafuse & Miller, 2014).

Well-intended policies such as AMBER Alert and Megan's Law were implemented in response to public concerns over child sexual assault, abduction, and murder that were fueled by the media (Zgoba, 2004). Understandably, these policies likely stemmed from morally and emotionally based reactions to the heinous crimes, as well as cognitive biases (e.g., inflated perceptions of stranger-abduction risk; Sicafuse & Miller, 2010). Yet, research suggests that these policies are likely ineffective and may yield unintended negative consequences (Chap. 17; Griffin, Miller, Hoppe, Rebideaux, & Hammack,

2007; Levenson, Brannon, Fortney, & Baker, 2007; Zgoba, Witt, Dalessandro, & Veysey, 2008). It is likely that Caylee's Law and embryo transfer policies will exhibit similar outcomes. For example, Caylee's Law critics contend that such legislation will increase missing child caseloads for law enforcement, interfere with legitimate missing child investigations, allow prosecutors to charge parents who fail to notify law enforcement about their child's whereabouts or accidental death, and not prevent a child's disappearance or death (Balko, 2011; Szalavitz, 2011). Furthermore, states that attempt to adopt fertility-limiting legislation in response to the Octomom case might produce negative consequences, such as reducing the likelihood of conception (especially for infertile individuals; Bergh, 2005; Ombelet, 2007), decreasing possibilities for extra embryos (i.e., medical donation, embryo adoption; Clark, 2009), and limiting women's reproductive choice (e.g., to conceive when not married; Daar, 2008). Community-driven policies, such as these, are often adopted in response to single, isolated cases that are not likely to be replicated, but in the hope to prevent the occurrence of future cases. However, as these outcomes suggest, such legislative reaction may have greater unintended consequences than any supposed benefits.

It should be further noted that community sentiment cannot be *readily* applied to all cases of perceived injustice, including those involving children and families. For instance, existing laws may prohibit legal action against perpetrators deemed worthy of prosecution by the public (Kerr, 2010). This is evident in the recent fatality involving Trayvon Martin, an unarmed juvenile who was shot to death by George Zimmerman, a neighborhood watch member (Rudolf, 2012). The Florida community demanded Zimmerman's arrest, but police officials declined to charge him with murder for many weeks believing that Zimmerman had complied with the state's "Stand Your Ground" law, a self-defense law that allows individuals to use deadly force when they feel threatened by an attacker (Rudolf, 2012). Ultimately, community sentiment outweighed the existing law and influenced the police to publicly charge Zimmerman for the perceived injustice. He was later acquitted, however, as the jury sided with the police rather than the public.

Child protection policies designed in response to community sentiment and media coverage are often hastily enacted and implemented in the hope to prevent future crimes against children. These well-intended policies, however, can yield unintended negative consequences, consequences that are often greater than any proposed benefits. So, should community sentiment direct legislation? The short answer is no. Policies intended to promote the well-being of children and families should be enacted when the public's emotions have neutralized and when they have the knowledge to make informed decisions. When sentiment is unbiased and less emotional, then it can guide policymaking; this can increase the public's confidence in lawmakers who will be seen as legitimate authorities relying on their constituents' sentiment.

Conclusion

In representative democracies like the USA, policymakers often listen, but do not necessarily adhere, to the sentiments of their constituents. Lawmakers are most inclined to incorporate community sentiment into their policy decision-making when issues are salient. Sensationalized case studies and social scientific research confirm that community sentiment does influence policy decisions. Moreover, anecdotal and empirical evidence demonstrate that the media and lawmakers shape policy decisions. Often, the relationships among the media, the public, and the policymakers are entangled; for example, the media might influence or reflect community sentiment or lawmakers might set the media agenda to win constituent favor. Empirical research indicates that all three variables are significantly related to one another, and strong support exists regarding the influence of both community sentiment and the media on child and family policy. Future studies should traverse several topics (e.g., child endangerment, neglect, and welfare) and employ a variety of methods

(i.e., correlational, experimental) to enhance understanding of community sentiment and media exposure on policies intended to promote the well-being of children and families.

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Methods and Measures Used in Gauging Community Sentiment

3

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The central tenet of democratic societies is that individual citizens play an integral role in shaping governmental and legal actions. As a leading advocate for democratic ideals, the USA is a country that encourages its citizens to participate in a variety of legal and governmental decisions. Building on Chap. 2, this chapter briefly establishes the connection between community sentiment and the law. Community sentiment is related to and likely does impact the law, though there are many complexities to establishing this connection. Because there is a relationship between community sentiment and the law, it is important to understand the dominant paradigms used to measure community sentiment. Thus, this chapter will summarize a variety of approaches, highlighting the advantages and disadvantages of each. More general concerns related to sampling and question construction will then be discussed, as these potentially relate to multiple paradigms. It is important that the tools used to measure sentiment are valid and that the samples drawn are representative of a community to the extent that it is possible. Further, it is important to closely examine the question order, wording, and response options to ensure that the questions asked accurately represent the construct measured. In sum, this chapter will highlight some of the complexities of accurately capturing community sentiment and provide a thorough review of the methodological concerns (e.g., sampling and question construction) relevant to gauging community sentiment.

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Community Sentiment and the Law

The legal and social structure of the USA allows citizens to participate in a variety of legal and governmental decisions. Individuals are given the power to vote for the political candidates who best represent their political, social, and economic values. In addition, citizens are often given the opportunity to vote on legal issues through referenda. The basic concept of the jury system is that democratic ideals should extend not only to general political and policy issues but also to questions of justice in individual cases. Citizens picked to serve on juries make factual and legal judgments that have important consequences for those parties involved and, in some cases, the law in general. Finally, judges and policymakers sometimes consider the attitudes and opinions of citizens when making judgments about social, legal, and political issues. In sum, there are several ways in which community sentiment (i.e., individuals' opinions) *can* impact the democratic process.

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There is substantial anecdotal and empirical evidence to suggest community sentiment *does* impact law. The usage of community sentiment in determining "evolving standards of decency," for example, has a long legal precedent, and the Supreme Court has considered public opinion to be relevant to constitutionality issues in several cases over the past century. For instance, in *Weems* v *USA* (1910; as cited in Finkel, 1995) the Supreme Court explicitly cited public opinion as a source for determining the appropriate punishment for a man who had been convicted of falsifying records. The Constitution itself implicates the use of community sentiment with the Eighth Amendment, which bars the infliction of "cruel and unusual" punishments (U.S. Const. Amend. VIII). As Justice Brennan explained in *Furman* v. *Georgia* (1972), one of the principles utilized in deciding whether a punishment is cruel and unusual is "whether there are objective indicators from which a court can conclude that contemporary society considers a severe punishment unacceptable" (p. 278). More recently, in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey* (1992), the Supreme Court noted that community sentiment can play a role in the law, though Justice Rehnquist was sharply critical of this notion in his dissent. In his book, *Commonsense Justice*, Finkel (1995) provides a historical and constitutional basis for using community sentiment in the law, arguing that judges and legislators should continue to look to public opinion to guide decisions.

Available evidence suggests that judges and legislators do decide issues based on community sentiment. Research conducted by Marshall (1989) suggests that judges, whether expressly or not, consider community sentiment, as the majority of Supreme Court decisions (60 %) in the analysis were in line with public opinion. The author also found that most justices (individually) were likely to side with public opinion on an issue and that Supreme Court decisions based on public opinion endured longer. These results suggest that community sentiment may impact Supreme Court decisions, but they do not address the impact the Court might have on public opinion. Research conducted by Stoutenborough, Haider-Markel, and Allen (2006) suggests that the Supreme Court can impact public opinion in certain circumstances. In examining how the Supreme Court impacted public opinions in its decisions regarding gay rights (e.g., *Bowers* v. *Hardwick*, 1986; *Lawrence* v. *Texas*, 2003), the authors found that in order for the decision to impact public opinion, it must have large policy implications. Indeed, in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey* (1992), the Supreme Court itself spent considerable time analyzing how its earlier decision in *Roe* v. *Wade* (1973) had impacted public sentiment on both sides of the abortion issue. Thus, the connection between community sentiment and law may be bidirectional (see discussion in Chap. 2).

Trial and appellate judges are elected in most states and, especially in criminal cases, often make decisions based on a their perception of a "tough-on-crime" sentiment in the electorate (Guthrie, 2007; Uphoff, 2007). That perception is also fueled by advertising in judicial elections, especially on television, which has surged dramatically in the last 15 years (Shepherd, 2013). Much of the negative advertising is designed to portray judicial candidates to voters as soft on crime and thus panders to the community's fear of crime (Weiss, 2006). Indeed, one recent study (Berdejo & Yuchtman, 2013) found that judges tend to increase the severity of their sentences as they near their next election. And although recent studies and exonerations have cast doubt on the validity of many forms of scientific evidence, most trial and appellate judges continue to admit most forensic evidence offered by the prosecution based on a "systemic pro-prosecution bias" (Shelton, 2012).

Evidence also indicates that legislators look to the ideological makeup of their constituency when making policy decisions (see Chap. 2 for a review). For instance, Oldmixon and Calfano (2007) specifically examined the connection between community sentiment and gay rights policymaking. Results suggested that legislators are responsive to the political and religious ideologies of their constituency. For instance, Democratic partisanship at the district level was associated with higher levels of legislative

support for GLBT issues, presumably because legislators were receptive to the progressive ideals of the community. Conversely, district level Conservative Protestantism and Catholicism partisanship were negatively associated with policies granting rights to GLBT individuals, suggesting that legislators were responsive to the conservative ideals of their constituency (Oldmixon & Calfano, 2007).

The use of community sentiment in lawmaking is deeply rooted in the US government, implicated by the constitution and perpetuated by acting lawmakers and judges (see Finkel, 1995). The connection between community sentiment and the law is complex and difficult to pinpoint, but empirical evidence suggests that community sentiment at least partially impacts legal decisions. The next section will examine the methods used to measure community sentiment.

Gauging Community Sentiment

According to Finkel (1993, 1995), there are four methods of capturing community sentiment: legislative enactments, jury decision data, public opinion polls, and mock jury research. Finkel (1995) outlines the advantages and disadvantages of each approach. The unique advantages and disadvantages of each will be explored below.

Legislative Enactments

The Court has often relied on existing laws and policies to determine community sentiment. For instance, in *Stanford* v. *Kentucky* (1989), Justice Scalia used state laws to gauge whether or not capital punishment for juveniles was considered cruel and unusual by the public (Finkel, 1993, 1995). This perspective assumes that law reflects community sentiment because legislators use the opinions of their constituency to enact legislation, but scholars argue that this is only an indirect measure of community sentiment and legislators may not know or care about community sentiment (Finkel, 1995). Given that the public does elect legislators, and the perception that legislators do care about sentiment, this approach does have logical and anecdotal appeal, but it is nonetheless problematic to assume that community sentiment is completely and directly connected to legislative enactments (see e.g., Robinson & Darley, 1995; Stalans & Henry, 1994).

Jury Decisions Data

Policymakers and courts have also relied on aggregate decisions of juries to determine how the community thinks and feels about particular issues. There are numerous publications of individual and aggregated jury verdicts that have been designed for use in policymaking, such as "tort reform" proposals (see e.g., Seagate & Pace, 2004). And there are searchable databases of jury verdicts that are readily available to the legal community (Westlaw, National Association of State Jury Verdict Publishers). This method allows for a direct and externally valid measure of community sentiment.

Finkel (1995) asserted that this "objective index" lacks objectivity for several reasons. First, juries are often not representative due to exclusions based on voir dire processes and death qualification. Second, causal relationships cannot be drawn due to a lack of control (over confounding variables) and the fact that different cases are aggregated. Finally, the jury decisions approach does not always allow for a complete comparison because the denominator (i.e., the total number of cases brought) is often difficult to determine. For instance, legislators and judges can compare the number of adolescent death penalty verdicts with the number of adult death penalty verdicts, but it may be difficult to compare the number of adolescent death penalty verdicts with the total number of capital cases that prosecutors brought to trial because these statistics are difficult to find (Finkel, 1995).

Public Opinion Polls

Another way of determining community sentiment is by public opinion polls. When conducted with representative samples, polls can

provide politicians and scholars with a standard way of assessing sentiment. The strength of this approach is that it provides a direct measure of the sentiment within a given community. For this reason, one might argue that this approach offers the most pure and objective measure of sentiment. However, there are several caveats that may prohibit researchers from using this approach effectively. Researchers may not have the time and resources to poll representative samples and thus the results may not accurately represent the population. Polls may also lose objectivity to the extent that they pick up transient and ignorant sentiment (Finkel, 1993, 1995). That is, polls may not be accurate because they are measuring sentiment that is specific to a time or place (i.e., transient sentiment) or because they are polling individuals who are not informed about the particular issue in question or who are unable to accurately "tap" into their own sentiment (Blumenthal, 2003). Further, the manner in which the question is worded can dramatically influence poll responses (see Tourangeau, Rips, & Rasinski, 2000). Although these threats to the accuracy of poll results are well understood and accounted for by reputable polling agencies, it is important to remember that the science of survey research is complex and often requires considerable time, resources, and knowledge.

Mock Jury Studies

Similar to public opinion polls, mock jury research allows for a more objective assessment of community sentiment. Jury research solves the "denominator problem" and allows researchers to control (to the greatest extent possible) and manipulate contextual variability (i.e., sentiment caused by transient forces; see Finkel, 1995). Researchers using the mock jury paradigm have attempted to better understand transient and ignorant sentiment by isolating the effects of contextual variables (e.g., where a crime takes place, information about the death penalty, severity of injury). Within this paradigm, researchers often manipulate variables (e.g., qualities of the defendant, case facts), while controlling for extraneous variables via random assignment to different conditions; this allows for causal relationships to be drawn.

One variation within this perspective is the ninth justice paradigm, which asks jurors to imagine they are the ninth (and deciding) Supreme Court justice in a case that is evenly divided (see Finkel & Duff, 1991). Jury nullification research, another approach within the mock jury paradigm, is designed to determine what factors (e.g., nature of the testimony and type of jury instructions) impact mock jurors' decisions to nullify (i.e., ignore or invalidate) existing laws (see Finkel, Hurabiell, & Hughes, 1993; Horowitz, Kerr, Park, & Gockel, 2006; Wiener, Habert, & Shkodriani, 1991). Other mock jury studies (e.g., Bohm, Clark, & Aveni, 1991; Sarat & Vidmar, 1976) have tested the Marshall hypothesis, which was devised by Justice Thurgood Marshall and suggests that the public is ignorant about, and would generally not favor, the death penalty if they were fully informed about the topic. A large amount of research (e.g., Kahneman, Schkade, & Sunstein, 1998) has also focused on mock jurors' judgments (awards) in the more common civil trial (see generally, Green & Bornstein, 2003; Vidmar, 1995).

The major problem with mock jury studies is that they often do not produce externally valid results. In many cases, mock jurors do not deliberate in groups and case facts and trial details may only approximate those which actual jurors experience (Finkel, 1995); however this is not always an issue (Bornstein, 1999). Further, this paradigm is generally reliant on undergraduate samples for data, which produces results that do not necessarily generalize to the community from which actual jurors are drawn (Blumenthal, 2003; see Chaps. 4, 6, and 8, for in-depth discussions and examples of using student proxies). Because the sample of undergraduate college students may not be representative of actual jurors, there might be significant differences in sentiment (Garberg & Libkuman, 2009; Reichert, Miller, Bornstein, & Shelton, 2011). To better approximate the jury-eligible population, some mock jury studies have used actual summoned jurors, as when Shelton and colleagues used

summoned jurors to gauge community sentiment regarding the so-called CSI effect (Shelton, Kim, & Barak, 2006, 2010). Summoned jurors present a more representative sample but such a pool of community members is not generally available to most researchers because many courts are reluctant to grant access to jurors.

Determining the most appropriate measure (in terms of gauging community sentiment) is largely dependent on research goals and values. A researcher who wants to examine causal relationships between variables might favor the mock jury approach, while a researcher interested in more externally valid results might favor analyzing secondary data (e.g., jury decisions data or legislative enactments). Practical issues are also important to consider, given the often immense time and resources associated with surveying a representative sample. For this reason, researchers often have no choice but to rely on available samples or extant data to conduct community sentiment research. With practical constraints in mind, the next section will explore some of the larger considerations in gauging community sentiment.

Considerations in Measuring Community Sentiment

Not fully explored above were two of the larger methodological problems facing community sentiment researchers: sampling and measurement error. This section introduces these issues and provides recommendations for researchers to address them.

Sampling Error

Measuring the sentiment of every person in a community is often impractical, given the logistical and monetary costs associated with gathering responses. Sampling methods allow researchers to (theoretically) obtain an accurate picture of the sentiment of an entire population (community), by surveying a smaller subset of the population (the sample). Sampling error refers to differences between the sample and the population. Framed in terms of community sentiment, this is the difference between the sentiment of the sample and sentiment of the overall population. The larger the difference between the sample and the population, the larger the sampling error. Although sampling error is unknown to the researcher, the goal is to reduce this error by using probability sampling techniques. Probability sampling techniques help to reduce sampling error by allowing researchers to survey a random—and thus theoretically representative—subset of a given population. In order to implement probability sampling techniques, a researcher must have access to (or create) an entire list of every person (or case) within a population—this is referred to as the *sampling frame* (Henry, 1990; Lavrakas, 1993; Mangione, 1995). Using the sampling frame, several different probability sampling techniques can be implemented (e.g., simple random sampling, systematic random sampling, stratified random sampling, and cluster sampling), all of which are designed to obtain random, representative samples with minimal sampling error (see e.g., Diamond, 2011, Henry, 1990; Tourangeau et al., 2000). Chapter 7 outlines a cluster sampling technique in which the sampling frame was comprised of small, medium, or large communities (clusters) which theoretically included all communities (i.e., the population). Once that list was complete, the researchers randomly selected one community to survey—in this case they sent the surveys to police chiefs and prosecuting attorneys from the chosen communities.

Nonprobability sampling techniques are used when a researcher does not have access to a sampling frame of the population. The end result of using nonprobability sampling methods is an increase in sampling error; without a sampling frame it is impossible to randomly sample and thus ensure that those who are sampled represent the larger population (see Henry, 1990; Lavrakas, 1993; Mangione, 1995). Although less desirable than probability techniques, the use of nonprobability techniques is far more common because it is often not feasible to obtain or

construct a sampling frame. For example, in attempting to gauge sentiment about abortion rights in the State of New York, a list of the entire population (New York residents) would likely be difficult to obtain. Populations of interest may also be unknown (e.g., gay parents; see Chap. 13) or in flux (e.g., city officials; see Chap. 7), which would make it impossible to obtain a sampling frame. Commonly used nonprobability techniques include convenience, quota, and snowball sampling (see Henry, 1990; Lavrakas, 1993; Mangione, 1995). For instance, Chap. 13 relied on both convenience (using participants who were easily accessible) and snowball (asking participants to tell others in the population about the study) sampling techniques.

Both probability and nonprobability sampling techniques are susceptible to nonresponse error, which occurs when a subset of the population does not respond to a survey (see Lavrakas, 1993; Mangione, 1995). Given that surveys seldom yield a 100 % response rate, nonresponding can contribute to sampling error, and typically the lower the response rate, the larger the sampling error, though a low response rate does not necessarily lead to unrepresentative samples. Researchers should be particularly concerned if the nonresponse appears to occur in a systematic fashion (e.g., a lower response rate from a subset of the population), because this signals that the sample is not representative of the population. Thus, if those who respond to a survey are different from those who do not respond on a key dimension (e.g., gender, race, political affiliation), then this should raise concerns about nonresponse (and thus sampling) error (see Lavrakas, 1993; Mangione, 1995).

Minimizing Sampling Error

Researchers can take steps to minimize sampling error. The first and most obvious is to use probability sampling techniques whenever possible. It is often impossible to construct a sampling frame for unknown and fluctuating populations and these are often populations of interest. Nonetheless, those conducting mock jury research or public opinion polls should use probability sampling methods whenever possible. Although impractical for a researcher conducting a mock jury study with the average undergraduate sample, this may be feasible when studying the sentiment of "contained" populations (e.g., those at an institution). For instance, if a researcher has defined the population of interest (community) as graduate students at a particular university, probability techniques (e.g., simple random sampling) could be used, assuming a sampling frame could be obtained.

Researchers might also choose to use stratified random sampling, in which relevant strata (often demographic factors such as gender or race) are chosen to guarantee that a certain number within a subpopulation will be selected. This approach is particularly useful when the sample drawn is relatively small and thus may not capture the different strata within the population.

When there are evident "groupings" within a population, cluster sampling can be used to save researchers time and money and avoid some of the logistical concerns of creating an exhaustive sampling frame. For instance, a researcher interested in the sentiment of practicing American Baptists about abortion rights might identify and survey selected congregations across the USA. When using cluster sampling techniques, the population is divided into the exhaustive list of clusters (e.g., all identified Baptist churches); this list serves as the sampling frame and simple random sampling techniques are used to select clusters from the population. Once the sampled clusters are selected, researchers can survey (or select) all cases within the cluster or use simple random sampling techniques to survey a subset of the cluster (see Henry, 1990). Thus, when using cluster sampling, a researcher does not need an extensive list of all cases in the population, but only needs a list of all clusters within a population.

Whenever possible, researchers collecting secondary or archival data (e.g., legislative enactments and jury decisions data) should avoid sampling techniques altogether by including all cases in the population. This is feasible when a dataset with the desired variables is already available to the researcher (see Chap. 5). However,

if the research involves extensive coding of cases or decisions, probability sampling may be a useful tool to save time and resources. Similar to the mock jury and public opinion approaches, researchers collecting secondary or archival data may use stratified random sampling to ensure that strata in the population are represented in the sample and cluster sampling to reduce time and money investments. It is important to note that probability sampling techniques for secondary or archival data sources require a complete list of all cases within the population (the sampling frame). Ensuring the use of probability techniques for these types of data therefore relies on the data being available to the researcher and effective and extensive search techniques. As discussed above, one of the problems with the jury decision data approach is the jury outcomes are difficult or impossible to locate—in these cases probability sampling techniques are untenable. Legislative enactments may likewise be difficult to locate, though these are likely better documented and easier to locate than jury decisions data. Relevant and varied search tools (e.g., FindLaw, LexisNexis, Westlaw, and Google Scholar) and accurate search terms are keys to obtaining all cases in a population of cases.

Given that complete sampling frames can be impractical or impossible to obtain for the average researcher, nonprobability sampling techniques are often used in the mock jury and public opinion paradigms. Convenience sampling techniques—arguably the most common nonprobability approach—allow for efficient data collection; the primary concern is typically gaining enough participants for statistical power, while sampling error is often overlooked or not highlighted. With the practical constraints to measuring community sentiment in mind, researchers measuring sentiment via public opinion and/or mock jury paradigms can attempt to better approximate probability techniques by recruiting more diverse samples. For instance, in their research on the sentiment of same-sex parents, Chamberlain, Miller, and Rivera (Chap. 13) actively recruited male parents in order to provide a more diverse picture of the sentiment of this population. In the same vein, researchers can use quota samples to ensure that those in the sample have similar characteristics (e.g., age, gender, and race) as those in the population. This is analogous to stratified random sampling but is different (and less desirable) in that participants in a particular category are not *randomly* sampled—they are surveyed until the quota is filled. For instance, a survey designed to measure the sentiment of 100 early career psychologists might have a quota of 74 females and 26 males, in order to mirror recent statistics about this population (see Willyard, 2011). Although the nonprobability techniques described above are more error prone than probability techniques, they are a potential improvement to the ubiquitous convenience sample and may help to more accurately gauge community sentiment.

Researchers using the jury decisions and legislative enactments paradigms may also use nonprobability sampling techniques, as secondary and archival data sources often suffer from missing or difficult to find data. When dealing with jury decisions data and, to a lesser extent, legislative enactments, there may be some ambiguity about whether or not one has obtained a complete list of all the cases in a population. In many instances, the distinction between probability and nonprobability techniques may be somewhat blurred and difficult to determine, but it is important that clear and appropriate methodological steps are followed and detailed in the research so that readers can make determinations about the representativeness of the sample. As with all sampling approaches, it is important to clearly define parameters of the population of interest before sampling occurs.

There are also several ways to reduce sampling error stemming from nonresponse bias, which are only relevant for the public opinion and mock jury paradigms. First, researchers can take steps to minimize nonresponse on the front end of the research by employing tools that promote responding. Strategies designed to increase response rates include: making introductory contact prior to the survey and reminder contact after the survey has been sent out, ensuring that all materials are appealing and professional, using multiple methods to contact respondents (e.g., phone, email, mail), making the survey as

brief as possible, providing participants with updates about their progress (i.e., "you are 50 % done"), and being mindful of question clarity and appropriate response options (see generally Dillman & Tarnai, 1988; Lavrakas, 1993; Mangione, 1995). For instance, in their mail survey of law enforcement officials, Brank and colleagues (Chap. 7) included two layers of follow-up mailings and they included postage-paid return envelopes to facilitate responding. Incentives (monetary or otherwise) can also provide motivation to complete a survey, but it is crucial that the incentive matches the population surveyed. A sample of undergraduate students may generally be motivated by monetary incentives, while a group of judges may be seduced by their scholarly interest in the research. The mode of data collection can also impact rates of responding, as online surveys have tended to show lower rates of response as compared to other modes (Manfreda, Bosnjak, Berzelak, Haas, & Vehovar, 2008).

Nonresponse bias can also be assessed and potentially minimized after data have been collected. Respondents can be compared to nonrespondents to determine if there are significant differences between the two groups on basic demographic dimensions. For instance, a researcher might find higher rates of nonresponse among males as compared to females, indicating that the sample is not representative of the population. In this case, researchers might choose to weight the existing responses of men more heavily to compensate for the nonresponse (see Henry, 1990; Lavrakas, 1993). These types of analyses and weighting procedures are only possible if demographic data are available to the researcher. Though these analyses do not eliminate nonresponse error, they can be used to inform the researcher about differences between those who responded and those who did not, providing a rough estimate of the sampling error. In addition to assessing nonresponse patterns, researchers can also use various techniques to deal with missing data (i.e., nonresponse on individual items). Missing responses on an inventory or scale may be imputed (estimated) with various techniques, ranging from the basic (computing average from extant data) to more advanced (conducting regression analyses to predict values; see Gelman & Hill, 2007; Little & Rubin, 1987). It should be noted that these techniques are still prone to error but may be favored when there are adequate extant data to make imputations (Gelman & Hill, 2007; Little & Rubin, 1987).

Measurement Error

The other general problem in accurately gauging community sentiment through polls or surveys is related to measurement issues. Measurement error refers to the (unknown) difference between what a question is designed to measure and what it actually does measure. Construct validity—the degree to which a question or item measures the construct it is intended to measure—is the overarching concern in reducing measurement error. The wording, complexity, order, and length of questions and response options should be explored in order to improve construct validity and reduce measurement error (see Diamond, 2011; Mangione, 1995; Tourangeau et al., 2000). For instance, research (e.g., Brank, Hays, & Weisz, 2006) suggests that asking general questions (e.g., "Do you support Parental Involvement Laws"), as compared to specific questions ("Do you think parents should be blamed and punished for crimes their children commit"), will lead to different types of responses (see discussions in Chaps. 8 and 16). It is also important to consider individual differences of respondents, such as age, culture, and gender, as these factors may impact interpretations and responses (see also Chap. 6). The construction of questions and response options is the primary concern in addressing measurement error, but the context in which questions are asked can also contribute to measurement error.

The mode of response (e.g., telephone, online, written or oral, in person, individual or group) is an important measurement concern because it can impact the way individuals respond (see Diamond, 2011; Tourangeau et al., 2000). For instance, respondents may be less willing to answer sensitive questions

(e.g., about racial attitudes) in a group as compared to an individual setting. Researchers should also consider the possibility that they are measuring transient and/or ignorant sentiment (Finkel, 1993, 1995). That is, questions may not be accurate because they are measuring sentiment that is specific to a time or place (i.e., transient sentiment; see Chap. 9) or because they are polling individuals who are not informed about the particular issue in question (Bohm et al., 1991; Cochran, Sanders, & Chamlin, 2006; Kwiatkowski & Miller, 2014).

Minimizing Measurement Error

The science of constructing questions is complex, but some basic tips include constructing questions that are brief and clear and have mutually exclusive and exhaustive response options (see Mangione, 1995). Further, researchers should avoid loaded (e.g., "How much do you support the death penalty for juveniles?") and double-barreled questions (e.g., "Do you support gay marriage and adoption rights?") and be aware that question order (e.g., placing sensitive questions at the beginning of the survey) can adversely impact measurement accuracy, not to mention response rates (see Lavrakas, 1993; Mangione, 1995). Because words may carry different meanings and connotations for different individuals, it is also important that researchers understand how questions are interpreted. When possible, preliminary (pilot) studies testing the comprehension and interpretation of questions with the population of interest can be conducted to assist in constructing valid measures (Diamond, 2011; Mangione, 1995). Reliability (consistency) of measures—a necessary prerequisite for the larger concern of validity—can also be assessed in various forms (e.g., test-retest and split half), and validity checks (e.g., predictive, convergent, and discriminate validity) can provide estimates of measurement error (see Viswanathan, 2005). Although time-consuming and costly, pilot studies and analyses of reliability and validity of measures are key in understanding and reducing measurement error.

Measurement error can also stem from the mode of response. In-person and telephone surveys are generally more costly and time-consuming than Internet-based surveys, but they tend to yield better quality data (i.e., fewer missing data), leading to a reduction in sampling error (Schonlau, Fricker, & Elliot, 2002). More modern modes (i.e., Internet surveys) of data collection have become increasingly popular in recent years, as these offer cost-effective ways of collecting and processing data. In a world with ever-advancing technology, it is important to understand cultural shifts in the usage of various devices (e.g., decreased use of land lines and increased use of cell phones and computers) as these impact both sampling and measurement error. For instance, evidence suggests that Internet-based surveys elicit more honest responses in comparison to other methods, such as face-to-face interviews (Schonlau et al., 2002). Thus, using Internet-based surveys (as compared to telephone or in person surveys) as the mode of data collection might translate into less measurement error because participants are more honest, but more sampling error due to greater nonresponse and missing data. A lack of economic resources, paired with the expectation of publishing in academia, will likely translate into a greater reliance on more efficient (Internet) modes of data collection in the future. With these practical concerns in mind, it is important that researchers understand how this mode can impact measurement and sampling error.

Subtle contextual cues and primes can also impact measurement. As discussed above, question order and wording and mode of response are contextual factors that can lead to measurement error. Priming studies further support the notion that context matters. For instance, in studying individuals' reactions to mothers who use drugs while pregnant, Miller and Thomas (2014) show that slight changes in the type of drug use and severity of injury to a child (which prime various cognitive and emotional responses) can impact respondents' judgments and attitudes. Indeed, many research studies in the field of social psychology use primes to investigate various phenomena. Subtle

reminders of inevitable outcomes (e.g., mortality; see e.g., Burke, Martens, & Faucher, 2010; Greenberg et al., 1990), pervasive symbols (e.g., the American flag; see Kemmelmeier & David, 2008), and value systems (e.g., egalitarianism; see Katz & Hass, 1988) have all been shown to influence responding. In short, these studies demonstrate that even subtle primes can affect responding and lead to measurement error, and thus it is important for researchers to be mindful of and attempt to anticipate various contextual factors.

Conclusion

There are several avenues (e.g., voting, juries) through which community sentiment can influence the legal system, and evidence suggests that it does in fact play a role in shaping the legal landscape. Given this connection, it is important that researchers, lawmakers, and judges are aware (or reminded) of the strengths and weaknesses of the various paradigms used to gauge community sentiment. This chapter highlights some of the complexities associated with measuring community sentiment and provides basic recommendations to help minimize sampling and measurement error. Regardless of the paradigm used, it is important that those researchers conducting community sentiment research are reminded of, and attempt to account for, various sources of error discussed herein.

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Part II

Measuring Community Sentiment

Using Mock Jury Studies to Measure Community Sentiment Toward Child Sexual Abusers

4

Krystia Reed and Brian H. Bornstein

Under the Constitution, criminal defendants are guaranteed the right of a trial by a jury of their peers (US Const. Amend. 6). This constitutional right puts juries in the position of making decisions about applying the law to a particular case. Jurors are supposed to overcome any biases that they have and apply the "black-letter law" to the facts of the case; however, psychological research on jury decision making indicates that jurors are often unable to do so and rather apply "commonsense justice" (Finkel, 1995). Commonsense justice, according to Finkel (1995), is what ordinary people think the law should be. Thus, in many instances, jurors may be influenced by psychological factors as well as community sentiment when rendering a verdict in a case. This chapter will investigate mock jurors' perceptions of child sexual abuse (CSA) perpetrators based on the perpetrator's relationship with the child, while also discussing the benefits and challenges of using experimental and survey jury research to measure community sentiment.

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Community Sentiment

As other chapters in the present volume describe, community sentiment is often defined as the public's opinion on a topic. In the American legal system, jurors serve as the ultimate reflection of community sentiment. Researching juror decisions in trial simulation experiments and surveys is one way of assessing community sentiment in a way that is legally relevant.

Community Sentiment and Juries

Community sentiment can influence the jury in one of two ways. First, juries can be encouraged to use community sentiment under the law. Alternatively, jurors may intentionally or unintentionally consider community sentiment even without being explicitly required to do so.

Required Consideration of Community Sentiment. There are a limited number of circumstances in which juries are instructed to consider community sentiment when rendering decisions. One such area of law is obscenity law. Under obscenity law, jurors are supposed to determine whether the material in question offends contemporary community standards (*Miller v. California*, 1973). Understanding community sentiment and how jurors perceive community sentiment is important in these cases because it should be a deciding factor in the jury's analysis of the case.

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In these cases, community sentiment essentially *is* the law.

Permitted Consideration of Community Sentiment. In most cases, juries are not instructed to apply community sentiment when making a decision (Finkel, 1995). In these cases, jurors are supposed to examine the facts of the case and apply the law objectively. However, decades of psycholegal research indicate that jurors are not very good at objectively applying the law and often extralegal factors, such as demographic characteristics of the defendant or the juror, influence juror perceptions and verdicts (see, e.g., Devine, 2012).

For example, the chapters by Miller and Chamberlain (Chap. 1), Armstrong and colleagues (Chap. 17), and Sigillo and Sicafuse (Chap. 2) discuss how the media reflect (and in some cases drive) community sentiment. One way that the media influence community sentiment toward a particular case is through pretrial publicity (PTP). Research on PTP indicates that it usually espouses negative sentiment toward the defendant (Imrich, Mullin, & Linz, 1995). Exposure to PTP also increases the likelihood that the jury will convict the defendant (Devine, 2012; Spano, Groscup, & Penrod, 2011; Steblay, Besirevic, Fulero, & Jimenez-Lorente, 1999). Consequently, when attorneys are concerned that PTP is going to result in negative sentiment toward their clients, they may request a change of venue or a delay to mitigate the effects of PTP (Kovera & Borgida, 2010; Spano et al., 2011). The concern with PTP is one indication that jurors may improperly use community sentiment when reaching a decision.

Although the law deems it undesirable in most cases for jurors to consider community sentiment in their decisions, juries legally have the right to ignore, or "nullify," the law. Jury nullification occurs when juries deliberately render a decision that is inconsistent with the law but that they consider more fair or appropriate (Hamm, Bornstein, & Perkins, 2013; Horowitz, Kerr, & Niedermeier, 2001). Although nullification could involve the conviction of someone the jury believes is legally innocent, in most cases nullifiers acquit someone who should, under the law, be guilty. Thus, in order to be considered nullification, jurors must have the intent not to apply the law to the particular case; simply failing to convict under the standard of reasonable doubt is not sufficient (e.g., King, 1998; Leipold, 1996; Marder, 1999; Scheflin, 1972; Simson, 1976; Van Dyke, 1970).

Scholars in the legal community disagree about whether nullification should be permitted. On the one side, proponents argue that the basis of having a jury system is to have jurors serve as the conscience of the community, who can nullify the law when convicting a legally guilty individual would offend the community conscience (*United States v. Spock*, 1969; see also Scheflin, 1972). Alternatively, opponents argue that the legislature should represent community sentiment, and the jury has the duty of enforcing the laws enacted by the larger community (Hamm et al., 2013). Ultimately, the Supreme Court has upheld the jury's right to nullify the law (*Sparf & Hansen v. United States*, 1865); however, there is no requirement to inform juries about this capacity, and courts generally refrain from doing so (Hamm et al., 2013). Thus, jurors may deliberately use community sentiment in making decisions that contradict the law, but the court usually does not inform them that they have this capability.

Estimates of the frequency of jury nullification are hard to come by, but it is almost certainly quite rare (Hamm et al., 2013). It is most likely to come up for offenses where the law is rapidly evolving, such as euthanasia or battered woman syndrome, or for offenses that touch on large social movements, such as civil rights, the military draft, or drug legalization. For more "established" offenses, such as child sexual abuse, it is less likely to be an issue. Nonetheless, community sentiment could still influence jurors' decisions. Certain illegal behaviors, both civil and criminal, are capable of triggering jurors' moral outrage, and that outrage can color jury decision making (e.g., Kahneman, Schkade, & Sunstein, 1998; Vidmar, 1997).

Juror Sentiment Toward CSA. One legal problem that is potentially subject to strong community sentiment is child sexual abuse (CSA). CSA is a

serious problem in society (Bottoms, Golding, Stevenson, Wiley, & Yozwiak, 2007; Myers, 2008; Vieth, 2005) with over three million reports of CSA each year, one million of which are substantiated (Bottoms et al., 2007). Additionally, CSA is a topic that has garnered attention from the media. In 1992, the media focused on reports of CSA by priests, with over 400 priests being accused of sexually assaulting children, primarily young boys, between 1982 and 1992 (Berry, 1992). Between 2001 and 2005, over 2,500 teachers nationwide lost their credentials for sexually assaulting their students (Irvine & Tanner, 2007). Pennsylvania currently is attempting to pass legislation to address this problem, which they have declared is "almost an epidemic" (Hughes, 2014). And in 2011 and 2012, newspapers were filled with stories of Pennsylvania State University football coach, Jerry Sandusky, who was found guilty of sexually assaulting ten underage boys (upheld on appeal; see *Pennsylvania v. Sandusky*, 2013; see also, Ganim, 2011).

Beyond being a societal concern, CSA is also a major legal concern. CSA constitutes the majority of sexual assault cases in the legal system (Snyder, 2000). Because CSA cases are so prevalent in the legal system, they consume quite a bit of time and resources. For example, CSA cases constitute 10 % of child maltreatment cases (Bottoms et al., 2007) and the majority of cases in which children testify (Goodman, Quas, Bulkley, & Shapiro, 1999).

Given that CSA is a legal concern that elicits strong negative feelings from the community (as evidenced by the outrage portrayed in media), it is important to understand how juries make decisions in CSA cases. Although jurors are supposed to make decisions based only on the facts of the case, CSA cases often lack physical evidence, forcing jurors to base their decisions primarily on the testimony of the alleged victims (Bottoms et al., 2007; Myers, 1998; *Pennsylvania v. Ritchie*, 1987; Whitcomb, Shapiro, & Stellwagen, 1985). Although legal evidence is usually the most influential factor in jurors' decisions (Devine, Clayton, Dunford, Seying, & Pryce, 2001), jurors in CSA cases are particularly prone to being influenced by extralegal factors that are not technically relevant to the legal decision (Bottoms et al., 2007).

Demographic characteristics, such as race, ethnicity, and age of the trial participants (jurors, victim, and defendant), influence decisions in CSA cases (see Bottoms et al., 2007, for a review). One of the most studied characteristics is gender of the people involved. Juror gender is a complicated factor which works differently in various studies (see, e.g., Schutte & Hosch, 1997, for a review); however, on average female jurors are more likely than male jurors to favor the prosecution (Allen & Nightingale, 1997; Bottoms, 1993; Isquith, Levine, & Scheiner, 1993; Kovera, Levy, Borgida, & Penrod, 1994; Orcutt et al., 2001). Although the underlying mechanism is also complicated, women perceive CSA as more serious and react more negatively (e.g., Finlayson & Koocher, 1991; Kovera, Borgida, Gresham, Swim, & Gray, 1993). On the other hand, gender of the victim does not usually influence verdict (Bottoms & Goodman, 1994; Crowley, O'Callaghan, & Ball, 1994; Isquith et al., 1993; Myers, Redlich, Goodman, Prizmich, & Imwinkelried, 1999). Although relatively little research has investigated the influence of perpetrator gender, likely under the assumption that women rarely perpetrate CSA (Bolton, Morris, & MacEachron, 1989; Bottoms et al., 2007; Finkelhor, Hotaling, Lewis, & Smith, 1990), male defendants are perceived more negatively than female defendants (Finkelhor & Redfield, 1984; O'Donohue, Smith, & Schewe, 1998; Smith, Foromouth, & Morris, 1997). Gender of the defendant interacts with gender of the victim such that same-gender sexual abuse is perceived more negatively than opposite-gender abuse (Bornstein & Muller, 2001; Dollar, Perry, Foromouth, & Holt, 2004; Drugge, 1992; Maynard & Wiederman, 1997).

In addition to demographic characteristics, characteristics of the abuse influence juror decisions. For example, if the child delays reporting it (due to repression or not), the child's testimony is perceived as less credible than if the child reports abuse immediately (Golding, Sego, Sanchez, & Hasemann, 1995; Golding, Sanchez, & Sego, 1997). The way the abuse is disclosed

also influences decisions, such that full disclosure is perceived as more believable than partial disclosure which is followed by full disclosure (Yozwiak, Golding, & Marsil, 2004).

The relationship between the perpetrator and the victim is another characteristic of the abuse that influences jurors' decisions (Bornstein, Kaplan, & Perry, 2007). Bornstein and colleagues (2007) found that jurors rated the abuse significantly more negatively when the perpetrator was the child's parent than when the perpetrator was the child's babysitter. This finding is consistent with the literature which indicates that the impact of CSA increases as the relationship between the perpetrator and the child becomes more intimate (Kendall-Tackett, Williams, & Finkelhor, 1993). However, very little research has manipulated the relationship between the perpetrator and the child (Bottoms et al., 2007), so it is not clear how perceptions of other perpetrator–victim relationships influence juror decisions.

Conducting Jury Research

As jurors are laypeople who, by definition, represent the community in judging their peers, they are an ideal vehicle for assessing community sentiment. By measuring which factors do and do not influence jury decisions, one can make inferences about how community members view certain offenses. For example, if mock jurors are more likely to convict a defendant accused of same-sex CSA than opposite-sex CSA even though the facts (apart from the parties' gender) are the same (see Bornstein & Muller, 2001), then one might reasonably suppose that the community views same-sex CSA more harshly.

There are several techniques, some used more commonly than others, for conducting research on juries (see, e.g., Bornstein, in press). The most common methods are direct observation of jury deliberations, which, with very rare exceptions, is impermissible; case studies and/or posttrial interviews with jurors; archival analyses of (usually large) datasets of jury verdicts; experimental simulations, or mock juror/jury studies; and field studies, in which judges randomly assign juries to one of multiple experimental conditions. Importantly, all of these methods except for simulations use real jurors reaching real verdicts. Jury simulations, on the other hand, employ mock jurors who are role-playing and making hypothetical decisions without actual consequences.

The pros and cons of jury simulations have been debated extensively elsewhere (e.g., Diamond, 1997; Wiener, Krauss, & Lieberman, 2011). Although experimental simulations have significant drawbacks—most notably, they often lack "verisimilitude," using nonrepresentative mock jurors and relatively impoverished materials, thereby raising important issues of external and ecological validity—they also offer a number of advantages (Bornstein, in press). For example, they allow for a high degree of experimental control, which confers high internal validity and permits causal inferences; they have both scientific and practical implications; and they can address both the processes involved in jury decision making (i.e., *how* jurors make the decisions) and the outcomes of jury decision making (i.e., *what* decisions they make). Community sentiment is relevant to both kinds of judgments: It can influence how jurors make decisions, as if, for example, sentiment leads them to ignore legally admissible evidence and make decisions based on prejudice (Vidmar, 1997), and, of course, it can affect the ultimate decisions themselves, as in the case of jury nullification.

Although jury simulations are, in some respects, relatively cheap and easy to run—mock trials are usually considerably shorter than real trials, and researchers often have easy access to a large pool of undergraduate research participants—they present challenges as well. Apart from designing studies that advance scientific theory or important policy questions, and ideally both, the research needs to make sense both legally and psychologically. And as with any psychological research, the measures need to be reliable, valid, and sensitive. When using legal judgments like verdicts or widely used psychological measures like attribution of

responsibility, reliability is rarely an issue. However, as noted above, validity concerns bedevil even the most carefully designed jury experiments. In addition, sensitivity can require careful attention. It would be impossible to determine the effect of a variable like child–perpetrator relationship, for instance, if the simulated trial were so one-sided that nearly all of the mock jurors either convicted or acquitted the defendant.

To address this sensitivity concern, much jury simulation research proceeds in stages. Before recruiting participants to adopt the role of jurors, the trial stimuli need to be developed and pilot tested. In many cases, this involves honing the case facts over successive iterations until the trial is fairly balanced and yields an approximately even split of verdicts. In other cases, as in the studies described below, it involves asking nonlegal questions about components of a legal case. For example, we asked participants about their perception of an incident of CSA, which was not presented in the context of a trial, such as how traumatic the event was and whether the adult took advantage of his relationship with the child. Such questions are not legal judgments, per se, but they are an indication of sentiments toward the case, and those sentiments might reasonably underlie participants' decisions in a legal case arising from the incident.

The Current Research

The goal of the current research was to understand how parties involved in an alleged CSA incident are perceived based on the relationship between the perpetrator and the child. As described above, a number of incident characteristics influence perceptions of CSA, including the relationship between the parties (Bornstein et al., 2007; Bottoms et al., 2007; Read, Connolly, & Welsh, 2006). College students' perceptions of CSA perpetrators were assessed in the current two studies. The initial survey study was intended to assess sentiment toward child sexual abusers based on the relationship between the perpetrator and the child. The survey study measured college students' perceptions of a general description of child sexual abuse and variations that described twelve different perpetrator–child relationships. The second study was an experimental mock juror study that expanded on the first to determine how sentiment toward child sexual abusers is reflected in juror decisions. The mock juror study provided participants with more detailed information in the form of a trial transcript about one of three different perpetrator–child relationships (described in more detail below).

Study 1: Survey of CSA Perceptions for Different Perpetrator–Child Relationships

The survey study asked participants to rate a generic description of CSA on 13 questions (e.g., truthfulness of the story, effect of the event on the child, perceptions of the alleged perpetrator, and responsibility for the event). Participants were then given a series of six variations of the perpetrator–child relationship which came from a larger set of 12 relationships (father, mother's boyfriend, basketball coach, teacher, priest, minister, rabbi, neighbor, store owner, stranger, therapist, and doctor). We hypothesized that perpetrators who had a more intimate relationship with the child (e.g., father, mother's boyfriend) would be perceived more negatively than perpetrators with a more distant relationship (e.g., stranger, store owner). We also hypothesized that perpetrators who were involved in religious professions (i.e., minister, priest, and rabbi) would be rated more negatively than nonreligious perpetrators.

Method. Participants in the survey study were 109 undergraduates (65 % female, *M* age = 19.26, 82.7 % White) who received class credit for their participation. All participants first read a generic description of a CSA incident involving inappropriate touching of a young boy by an adult male. The generic vignette read as follows:

> Matthew's grades have declined lately and he has been acting withdrawn. This is different from his usual behavior. Matthew is 13 years old. He finally

> confessed to his mother the details of an incident that occurred with an adult male a few weeks prior. Although Matthew did not tell his mother who the adult was, Matthew described to his mother that he was alone with the adult when the adult put his hand on Matthew's shoulder. The adult started to rub Matthew's back and said he was happy Matthew was there. Then the adult undid Matthew's pants and began rubbing his penis through his underwear for what seemed to be about 10 min. After he stopped, he told Matthew not to tell anyone about what happened.

After reading the generic vignette, participants rated the description on 13 nine-point Likert-type scales. The 13 questions assessed the amount of trauma experienced by the child, the severity of the perpetrator's actions, the believability of the child's description, the likelihood of the event occurring generally, the likelihood the child would report the event, the degree to which the adult violated the child's trust, the degree to which the adult should protect the well-being of a child, the extent to which the adult took advantage of his relationship with the child, the reprehensibility of the adult's actions, the likelihood the incident constitutes sexual abuse, the severity of any punishment, and the responsibility of the child.

After rating the generic description, participants rated six more vignettes, which were identical to the generic vignette but contained additional information about the perpetrator, on the same 13 questions. Specifically, they varied in terms of the relationship of the child to the alleged perpetrator. Participants were randomly assigned to receive one of two sets of descriptions, the order of which was also random. The perpetrator–child relationships were paired between sets so that the two sets were similar and neither set was excessively redundant. The first set of descriptions included the boy's father, teacher, minister, neighbor, doctor, or stranger; the second set of descriptions included the mother's boyfriend, basketball coach, priest, rabbi, therapist, or a store owner. Participants then provided demographic information and were debriefed.

Results. Nine of the thirteen questions loaded on a single "seriousness" factor which had decent reliability, $\alpha = .75$. This included questions regarding trauma of the event, severity, believability of the child, violation of trust, duty to protect the child, degree the perpetrator took advantage of the child, reprehensibility of the crime, the likelihood it was CSA, and the degree of punishment. Scores on the nine questions were then averaged to create a "seriousness" score. Table 4.1 provides the mean seriousness ratings for each perpetrator. In the preliminary analyses, participant gender was included as a separate factor; it had no main or interactive effects, so subsequent analyses collapse across gender.

Overall, perceptions of the event were that it was relatively serious: The lowest mean score (for the doctor) was 7.53 out of 9. This shows the overwhelmingly negative sentiment toward CSA (Vidmar, 1997), as the present incident was relatively mild when considered along the full spectrum of abuse (we do not at all mean to imply that the incident was benign, merely that a single

Table 4.1 Study 1: mean ratings of seriousness of the incident by perpetrator–child relationship

	Initial	*M*	SD	Differences
Father	F	8.68	.60	B, C, D, G, M, N, O, R, S, Te, Th
Priest	P	8.57	.44	B, D, G, N, O, R, S, Th
Minister	M	8.53	.44	F, G, N, O, S, Te
Teacher	Te	8.51	.43	G, N, O, S
Coach	C	8.46	.58	D, F, G, O, S, Th
Mother's boyfriend	B	8.44	.60	D, F, O, P, S
Rabbi	R	8.42	.66	D, F, O, P, S
Therapist	Th	8.37	.70	C, D, F, O, P, S
Generic	G	8.31	.57	C, D, F, M, P, S, Te
Neighbor	N	8.28	.99	F, M, P, Te
Store owner	O	8.23	.74	B, C, D, F, M, P, R, Te, Th
Stranger	S	8.09	.72	B, C, F, G, M, P, R, Te, Th
Doctor	D	7.53	1.76	B, C, F, G, M, N, O, P, R, S, Te, Th

Note: The table presents the mean ratings for participants on the combined 9-point Likert-type "seriousness" scale, with higher values indicating greater seriousness. The "Differences" column provides the initials representing the relationships which differ at $p < 0.05$ (e.g., the initial "B" in the "Father" column indicates that the father and the mother's boyfriend were significantly different)

episode of fondling through clothing might be seen as less severe than many other forms of CSA; see, e.g., Bornstein et al., 2007).

Since each participant read only one set of the descriptions (half), a series of ANOVAs and paired samples *t*-tests were conducted to assess whether each combination of relationships differed on the seriousness factor. As expected, perceptions of the incident and the perpetrator depended on the child's relationship to the perpetrator, $F(1, 106) = 2.02$, $p < 0.05$, $R^2 = 0.02$. Consistent with the hypothesis, abuse by the father was rated more serious than all of the other perpetrators except the priest (see Table 4.1). Partially consistent with the hypothesis, abuse by the minister and the priest (religious perpetrators) was rated significantly more serious than abuse by the other perpetrators except the father; however, the rabbi was not (see Table 4.1). There were also significant differences among the religious perpetrators. The incident with the priest was rated as significantly more serious ($M = 8.56$) than the incident with the rabbi ($M = 8.41$), $t(52) = -2.43$, $p < .05$. However, there was no significant difference between minister ($M = 8.53$) and the priest, $F(1, 104) = 1.13$, $p > 0.05$, $R^2 = 0.00$, or rabbi, $F(1, 104) = 0.12$, $p > 0.05$, $R^2 = 0.01$.

Study 2: Mock Juror Judgments in a CSA Trial

The mock juror experiment expanded upon the survey study to determine whether sentiment toward CSA perpetrators based on their relationship to the child influenced jurors' verdicts in a mock trial. This study focused on three perpetrator–child relationships that have been common in the news in the past decade: priest, teacher, and coach. Study 1 showed that abuse by these three figures was seen as roughly equally serious (i.e., they did not differ significantly); nonetheless, because of the particularly highly publicized incidents of abuse by teachers and religious defendants, and community outrage associated with those events, we initially hypothesized that the teacher and the priest would be rated more negatively and receive more guilty verdicts than the coach. However, data collection for study 1 occurred prior to the scandal, and associated news coverage, criminal investigation, and trial, at Pennsylvania State University involving football coach Jerry Sandusky; data collection for study 2 occurred after the incident involving Coach Sandusky. This development suggested the competing hypothesis that if decisions were to follow community sentiment, then the coach would be rated more negatively and receive more guilty verdicts than the priest or the teacher (we will call this the Sandusky hypothesis).

Method. Participants were 86 undergraduates (74 % female, *M* age = 20.7, 77 % White, 15 % history of CSA) who received class credit for participation. Participants were randomly assigned to read a 22-page (6,642 words) trial transcript of a case that involved the inappropriate touching of a 13-year-old boy by a teacher, a priest, or a basketball coach. Details of the incident (e.g., nature of the touching, time, and place of occurrence) were held constant, as was the boy's familiarity with the alleged perpetrator. The transcript included testimony from the child, the child's therapist, the defendant, and a CSA expert. After reading the transcript, participants rendered a verdict (guilty or not guilty). Participants then rated how guilty they thought the defendant was on a 10-point Likert-type scale. Because jurors would rarely, if ever, determine sentencing in a CSA case, participants rated how severe a punishment the defendant should receive within the limits of the law on a 10-point Likert-type scale (ranging from "minimum permitted" to "maximum permitted"). Participants also rated their perceptions of the trial participants on the 13 questions from study 1 plus responsibility of the defendant on 10-point Likert-type scales (ranging from "not at all" to "extremely"). Participants then provided demographic information and were debriefed.

Results. Results were partially consistent with our hypotheses. As in study 1, the nine items were combined to create a "seriousness" scale, $\alpha = .92$. Just as in study 1, despite the intervening Sandusky publicity, there were no differences in

Table 4.2 Study 2: mean ratings of mock juror perceptions based on perpetrator–child relationship

	Coach		Teacher		Priest	
	M	SD	*M*	SD	*M*	SD
Seriousness scale	7.89	2.03	7.42	1.82	7.44	2.13
Likelihood event was CSA	6.57	2.36	5.90	2.02	6.11	1.95
Likelihood of event generally	6.86[a]	1.82	6.00	2.07	5.64[a]	1.91
Likelihood of child reporting	4.68	2.29	4.60	2.21	4.50	1.93
Child's responsibility	3.21[a]	2.63	4.50[a,b]	2.69	2.79[b]	2.08
Defendant's responsibility	8.00	2.78	7.60	2.80	7.57	2.90
Guilt	6.96	3.16	6.17	2.83	5.93	2.71
Degree of punishment	8.25	1.90	8.13	1.22	8.21	1.85

Note: All questions were measured on 10-point Likert-type scales. Within a row, means sharing the same superscript are significantly different from each other at $p<0.05$

ratings as a function of the perpetrator–child relationship in study 2, $F(2, 85)=0.50$, $p>0.05$.

The five items that were not included on the seriousness scale were then analyzed. Results from these five items partially supported the Sandusky hypothesis (see Table 4.2). There were significant differences in ratings of the child's responsibility, $F(2, 83)=3.77$, $p=0.03$, $R^2=0.08$; partially consistent with the Sandusky hypothesis, post hoc comparisons indicated the child was rated as significantly more responsible when the perpetrator was a teacher ($M=4.50$) than when the perpetrator was a coach ($M=3.21$; $p<0.05$) or a priest ($M=2.79$; $p<0.01$). There was also a trend toward significance in ratings of the general likelihood of the event, $F(2, 83)=2.91$, $p=0.06$, $R^2=0.07$; partially consistent with the Sandusky hypothesis, the event was rated as marginally more likely when the perpetrator was a coach ($M=6.86$) than when the perpetrator was a priest ($M=5.64$; $p<0.05$). The teacher ($M=6.00$) did not differ from the coach or the priest (both $ps>0.05$). However, there were no significant differences in ratings of the likelihood it was CSA, $F(2, 85)=0.76$, $p>0.05$, $R^2=0.02$, likelihood the child would report the event, $F(2, 85)=0.05$, $p>0.05$, $R^2=0.00$, or defendant's responsibility, $F(2, 85)=0.20$, $p>0.05$, $R^2=0.01$.

We then conducted a binary logistic regression with perpetrator–child relationship as the independent variable and verdict (guilty or not guilty) as the outcome variable. Contrary to both of our hypotheses, perpetrator–child relationship did not influence verdict (Wald = 0.45, $p=0.50$, OR = 0.83), ratings of guilt ($F(2, 83)=0.98$, $p=0.38$), or the degree of recommended punishment (see Table 4.2). Verdicts were roughly equal for all three perpetrators, with 53.6 % of participants finding the coach guilty, 56.7 % of participants finding the teacher guilty, and 46.4 % of participants finding the priest guilty.

Discussion

The goal of the current research was to examine how perceptions (i.e., sentiment) of CSA perpetrators varies based on the relationship between the child and the perpetrator, and whether those perceptions influence mock juror judgments. We surveyed college students initially using brief vignettes to assess the differences in perceptions of 13 different perpetrator–child relationships. Then, we had college students read a mock trial and render a verdict in a case that varied the (alleged) perpetrator–child relationship.

In CSA cases, jurors are supposed to follow the letter of the law, not commonsense justice (Finkel, 1995). The relationship between the perpetrator and the child is not a factor jurors are supposed to consider when making decisions about CSA cases. However, study 1 and study 2 both demonstrate that the relationship between the perpetrator and the child does influence perceptions of the incident in some circumstances. Moreover, these perceptions likely reflect community sentiment toward different perpetrator–child relationships. Prior to study 1, priests and teachers sexually abusing children had been concerns for the community, which was

demonstrated in participants' ratings of the crimes. However, in between study 1 and study 2, the Sandusky allegations arose, increasing community concern about coaches being potential CSA perpetrators. This change in community sentiment was reflected in the ratings of study 2, since participants rated the coach significantly worse on several elements than the study 1 participants (i.e., prior to Sandusky).

Although community sentiment was likely reflected in ratings of perceptions, it was not enough to result in differences in verdicts or recommended punishment. Thus, while jurors may perceive the perpetrators differently based on their relationship to the child, the types of perpetrator relationship did not impact the ultimate decision. It is not unusual for mock jury studies to find differences on some dependent measures (e.g., perceptions of the parties, credibility judgments) but not others (e.g., verdict; see Neal, Christiansen, Bornstein, & Robicheaux, 2012). One of the benefits of this study was that we were able to control for all other factors and manipulate only the relationship between the perpetrator and the child to isolate this variable. The controlled laboratory experiment allowed us to determine that despite different perceptions of the perpetrators, there was no significant difference in verdicts for the coach, the teacher, or the priest. Consequently, jurors may be able to overcome community sentiment toward these specific perpetrators in favor of applying the law.

Nevertheless, these results must be taken in context. Although the laboratory permitted us to isolate the perpetrator–child relationship, controlled laboratory studies also create challenges for jury researchers. The goal of much jury research, as an applied endeavor, is to understand how jurors make decisions in actual cases. However, it is often difficult for jury researchers to conduct studies that accurately mirror real-life situations. This study is not unique in this respect, and it exemplifies several common jury research challenges.

For example, one potential limitation is that our study used undergraduate students rather than community members. As Chamberlain and Shelton (Chap. 2) and Chomos and Miller (Chap. 6) suggest, one concern with these types of studies is that the sample is not representative of the community. Research has demonstrated that, in some situations, college students reflect different demographic characteristics (Reichert, Miller, Bornstein, & Shelton, 2011) and sentiment (Garberg & Libkuman, 2009) than actual jurors. However, research comparing college students to community members generally shows that there are few differences between the samples in terms of their trial-relevant judgments (Bornstein, 1999). Specifically in regard to CSA cases, undergraduates and community members do not differ substantially (Bottoms et al., 2007; Crowley, O'Callaghan, & Ball, 1994).

The present study, like most mock jury research, faces the larger challenge of ecological validity. The challenge of ecological validity in mock jury research is whether results from the controlled, artificial task can be applied or generalized to the real world and real juries (Finkel, 1995). For example, real juries make decisions that can have extreme, sometimes life or death consequences. In mock jury research, such as this study, participants are not under the same type of pressure to make the "right" decision (Bornstein & McCabe, 2005). This study faces the further problem that it does not involve deliberation. In the real world, six to twelve jurors (*Williams v. Florida*, 1970) deliberate and reach a decision. Research comparing studies that use individual mock jurors to studies that use deliberating mock juries indicates that, in general, mock juries reach comparable, though in some respects better, decisions than individual mock jurors (e.g., Devine, 2012). Thus, it is possible that different results would have been reached if this study used a deliberating jury.

Conclusion

Community sentiment research often focuses on general public opinion, but in the legal system, it is sometimes necessary to investigate the sentiment of specific subsets of the population who make the ultimate decisions. In criminal cases that go to a jury trial, the jury makes the ultimate decision about how to apply the law to

the facts of the case. In some cases, the law requires the jury to take community sentiment into consideration. In most cases the jury is supposed to disregard community sentiment and apply the law objectively; however, even then, juries do have the capability to nullify. In the vast majority of cases, nullification does not occur, but community sentiment still has the potential to influence jury verdicts. The present studies focused on laypeople's and mock jurors' perceptions of CSA perpetrators as a function of the relationship of the perpetrator and the child. Although both studies showed that CSA is *perceived* differently depending on who the alleged perpetrator is, there were no differences in *verdicts* for different perpetrators, at least for the limited set of potential perpetrators under investigation here.

Future research should focus on increasing ecological validity, such as by including deliberation and/or by conducting analogous research using divergent methodologies. Archival analyses of CSA cases yield results that are similar to results of jury simulations in some respects but that differ in some ways as well (Read et al., 2006). Techniques like group deliberation and non-laboratory jury research are beneficial in that, like experimental studies of individual mock jurors, they allow inferences about community sentiment and, insofar as they provide results consistent with other methodologies, improve our understanding of both juror and jury behavior.

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5 Using Secondary Survey Data to Study Community Sentiment: An Example Examining Sentiment Toward Income Based on Family Needs and Income

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Introduction

Community sentiment is critical in shaping the policies that affect families. As established in Chap. 1, community sentiment impacts laws and how they are enforced/applied by legal actors. This, in turn, influences families in multifaceted ways, from regulations affecting students deemed to be dangerous (see Chap. 14) and pregnant drug users (see Chaps. 8 and 15) to laws affecting gay/lesbian families (see Chaps. 10 and 13). There are many different ways in which one can measure community sentiment (see Chap. 3 for a summary). In this chapter, we discuss survey methodology and offer an example of how survey data can be used to gauge community sentiment—in this case, on family financial support—via secondary data analysis.

We begin by introducing survey methodology; we then present the pros and cons of using survey data, especially in secondary data analysis, both in a general sense and specifically in community sentiment research. Next, we provide an example, with step-by-step instructions, of using secondary survey data to study community sentiment concerning if or how family needs should be a factor in deciding how much employees should be paid. We conclude by discussing how our example sheds light on the utility of survey data in community sentiment research.

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Survey Methodology

Surveys are instruments that ask respondents pointed questions designed to gauge community sentiment/public opinion on specific issues. Survey data offer great promise for examining community sentiment at a number of levels. Surveys vary greatly in the size of the community polled, from small groups or municipalities to national and international populations.

One can obtain survey data in two ways: (1) construct, distribute, and collect a survey and (2) find already-collected survey data (secondary data). There are many surveys available to researchers and practitioners, particularly from entities that poll large populations (e.g., Gallup polls and the General Social Survey, or GSS, at the national level; the International Social Survey Program, or ISSP, and the World Values Survey at the international level). But researchers using survey data should be aware of both the pros and cons associated with them.

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Pros

One pro of survey research is that data collected via surveys are often readily quantifiable. Surveys typically ask questions of respondents that literally require numbers for answers (e.g., age, income) or can be easily translated into numbers (e.g., "yes" or "no" answers that can be dummy coded into 1 and 0, respectively, or scales, a la "Likert-type" measures of agreement—strongly disagree, somewhat disagree, neither agree nor disagree, somewhat agree, strongly agree—that can be coded into 1, 2, 3, 4, and 5, respectively). The fact that survey data are readily quantifiable allows for statistical analysis. This, then, is related to the next pro: generalizability.

Assuming a large, representative sample of the population (see Chap. 3 for tips on how to ensure representativeness), statistical findings from the data are safely generalizable. For studies of community sentiment, this represents a major plus on the side of survey research, as other methods (e.g., those involving nonprobability sampling) may approximate community sentiment, but the findings may not be generalizable and the odds of error and/or misrepresentation of sentiment are higher.

Another benefit of survey data is low cost. If a researcher can answer questions of interest with secondary survey data, the cost may be minimal (e.g., a fee paid to access the data) or nil (e.g., in cases in which survey data are publicly available). Even collecting one's own data via surveys can be relatively cheap given that the primary expenses would be limited to the collection of the survey itself. Put differently, expenses common to other types of research (e.g., the cost of creating and/or maintaining a research laboratory for experimental research) would not be applicable. Given the sometimes limited budgets researchers face, low cost can be a significant advantage.

Cons

There are some potential cons to using secondary survey data as well. One of the cons is related to the second "pro" above in that representative samples are not guaranteed, especially when dealing with older data. Although it is true that *if* a survey polls a representative sample of the population, its data are generalizable, this is an important "if." If a survey does *not* poll a representative sample, one must not assume results are generalizable; it renders any findings from the survey suspect (again, see Chap. 5 on how to ensure a representative sample). The most high-profile failures of survey research in history were largely caused by poor sampling—for instance, the (in)famous prediction of a Dewey victory over Truman was likely a result of nonprobability sampling, according to pollster Warren Mitofsky (Lester, 1998). Thankfully, most reputable polling organizations provide safeguards to ensure their samples are representative today. But researchers should do their due diligence and check to make sure any data they use are based on representative samples.

Another potential con of survey data involves question ordering and wording. The ordering and wording of questions can sometimes be important. Studies have shown that in some cases people respond to the same apparent issue differently depending on how questions are asked, especially if there is something they want to tell the researcher: Give them an opportunity or they will find a way to tell it inside another question. For example, if one asks people which religion they were raised in and afterward ask their current religion, about 20 % of those who currently have no affiliation report "no religion." But if current religious affiliation is asked without the prior opportunity to explain the role of religion in one's life, only about 12 % report "no religion" (Evans & Kelley, 2004a).

In a similar vein, different communities can interpret phrases differently, and, thus, it is important to ensure that question wording reflects a given community's potentially unique cultural understandings of issues, as well as their interpretations of words more generally. Focus groups and questionnaire debriefing groups can be helpful in ensuring that the question one wants to ask is the same as the question one actually asks. This is less of an issue in the USA with its high geographic mobility rates and relatively permeable subgroup boundaries than in more compartmentalized societies. When issues and questions need

to be translated into different languages, as when polling different populations within a locality (e.g., Spanish speakers in the USA) or when conducting international surveys, there are well-developed methods, most notably "back-translation," to ensure translation success (Brislin, 1970). Thus, wording is important and can become a con if not done properly, although the problem is not limited to surveys. Again, reputable polling organizations likely do a good job with this, but researchers should be careful to ensure that question wording is not biasing results and/or that things are not "lost in translation."

Another con of survey data is exclusive to secondary data sources. When using secondary data, a researcher is at the mercy of what items are in the dataset. Without input into the questions that were asked in these surveys, research possibilities may be limited. Questions in already-existing surveys may not directly address the topic of interest, leading to the use of indirect measures that may only be moderately relevant. Moreover, existing surveys sometimes provide only single questions/items measuring the concept of interest. Such measurement is much less reliable and hence much less likely to discover genuine relationships than when concepts can be measured by reliable multiple-item scales. Many good surveys have multiple-item scales designed into them: The questions were asked in a pretest and their scale properties analyzed before inclusion in the main survey.

A final con of survey data is related to its quantitative nature. Although quantitative data are great for making general inferences about the relationships between variables, they are not nearly as rich or detailed as qualitative information. Put differently, although quantitative data allow for an excellent general view of something, qualitative information provides a deeper, more detailed narrative that can reveal the nuances of a particular situation (e.g., why someone has a particular opinion).

Pros and Cons Weighed

Although there are clearly a number of potential cons connected to survey data, the pros are substantial. In particular, generalizability is a highly significant pro that tips the scales in favor of survey data. Generalizability is crucial to accurately gauging community sentiment, and survey research, when done properly (polling a large, representative sample), satisfies this condition. As such, survey data are extremely useful in studies of community sentiment.

In the following sections, we demonstrate the utility of survey research in assessing community sentiment by using secondary data from *Social Inequality IV* conducted by the International Social Survey Program (ISSP) in 2009, to examine community sentiment on family financial support in the USA and 30 other countries. Much of it is presented in step-by-step instruction as a guide to researchers on how to go about using secondary survey data.

Research Example: Sentiment on Family Financial Support

Family financial support is a topic that has both legal and academic relevance. In the legal world, many laws and court cases deal directly with who will support individuals—the state or the family (e.g., laws concerning eligibility for means-tested programs such as food stamps and welfare; divorce cases and associated decisions regarding child support, alimony). Everything from family law to the tax code to social services touches on this in some form or another, and this varies greatly from country to country. The United Nations, the World Bank, and many other international institutions concerned with human rights and economic development need to be aware of community sentiment given its inextricable link with the law.

In the academic arena, numerous studies on attitudes toward inequality have shown that opinions vary on what an ideal earnings distribution ought to look like (Austen, 2002; Gijsberts, 2002; Hadler, 2005; Kelley & Evans, 1993; Kluegel, Mason, & Wegener, 1995). Moreover, research shows that certain factors—including family-related variables such as needing to support a family—are deemed important in determining income in some countries (Evans, Kelley, &

Peoples, 2010). Additionally, factors such as socioeconomic status (SES) affect opinions, with low-SES individuals expressing more support than high-SES respondents.

This chapter provides an example of how to do secondary survey data analysis. The example provided focuses on sentiment related to the question: *To what extent do people feel that family needs ought to be considered in pay?* Secondarily, we also ask, "Why do opinions on this issue vary?" These questions move beyond the standard "state versus family" dichotomy and introduce another entity: the employer. This is important because, in practical terms, for example, multinational corporations devising compensation plans and employment contracts will want to understand community sentiment (and related law) on whether an employee's family situation should be taken into consideration in determining wages and salaries.

Data and Measurement[1]

Finding Data

The first challenge in using survey data is to find datasets—and specific questions in those datasets—that measure the sentiment of interest. A typical starting point is to search traditional data warehouses such as the Interuniversity Consortium for Political and Social Research (ICPSR),[2] the Roper Center,[3] or the Zentralarchiv of the University of Cologne,[4] which houses data for the ISSP.

Another option would be to use Google Scholar to search topics of interest to find studies that use secondary data. They will contain appropriate citations/references to the data source. The data can then be downloaded from there (but one should be aware that in some cases the data are not in a particularly useful format).

The above was a successful strategy for this study, leading to a 2010 article on the topic which used data from an internationally recognized group, the ISSP (Evans et al., 2010). That article used data that only go through 2002, but investigation of the ISSP website shows that there is a more recent survey on the same topic. For the present example, we are particularly interested in sentiment from during/after the Great Recession of 2007–2009 to ensure that our data are current, so we used the ISSP's latest related survey, *Social Inequality IV,* which was conducted in 2009 on a representative sample of the populations of more than 30 countries.

The data source must be cited so that another researcher could, if desired, replicate the analysis. Citing the data source also emphasizes that it is credible. Datasets at the Zentralarchiv, ICPSR, or the Roper Center are all assessed for quality before inclusion, so using their data enhances credibility. For the dataset in this example, the citation would be:

International Social Survey Programme (ISSP). (2012). *Social Inequality IV, 2009*. Distributor: GESIS Cologne Germany ZA4850, Version 3.0.0 (2012-12-31), doi:10.4232/1.11506.

Finding Relevant Items/Variables

After selecting a dataset, the next step is to select candidate items—particular questions potentially for one's study. It is important to determine whether or not the questions have "face validity"—in other words, whether their wording is likely in one's judgment and that of other reasonable, unbiased readers to elicit answers that reflect the sentiment of interest. For example, in the ISSP data, question 12c, "In deciding how much people ought to earn, how important should each of these things be, in your opinion… what is needed to support a family?" has face validity for our sentiment of interest. So, also, does the following question: "…whether the person has children to support—how important should that be in deciding pay?"

[1] This section is based on more detailed discussions of data and measurement in Evans and Kelley (2004b) and in Treiman (2009).

[2] http://www.icpsr.umich.edu/icpsrweb/landing.jsp

[3] http://www.ropercenter.uconn.edu/

[4] http://www.issp.org/

Ideally, researchers would have three or more questions that measure the sentiment of central interest to establish *measurement reliability*. The Relativity Revolution of the last century brought us the understanding that no measurement can be perfectly reliable—even atomic clocks need periodic adjustment—but we can strive toward perfectly reliable measurement nonetheless. One way to do this in social science is by representing the attitude we are interested in measuring by more than one item. For this study, two items were available in this dataset related to our sentiment of interest. More might be better, but these same two items (in older data) have been used in an article that has been scrutinized by experts in the field, having passed peer review (Evans et al., 2010). Hence, their measurement properties are of an appropriate standard.

Downloading and Opening the Data

Having chosen candidate variables, the next step is to access the data catalogue.[5]

The dataset—all the variables in the survey for all the respondents in the survey—from this archive is usually available in easy-to-use form in two popular statistical packages, SPSS (the file extension is ".sav") or STATA (the file extension is ".dta"). For this example, we used the STATA version, but exactly the same analysis could be done in SPSS. The data are the same in both datasets; it is only the form in which they are stored that differs.

Preparing Data for Analysis

After downloading the dataset and then opening it in STATA, the first task is to make copies of the variables of interest with new, memorable names. Datasets often come with variable names like "V49" and it is easy to discover later that one has been working with the wrong variable. In this example, we gave both variables a common prefix, "rew" to indicate that these variables have to do with rewards—given distinctive cores to each variable, "fam" and "kids" for which echo the question wording, and given a suffix "x," which indicates that these are the versions of the variables exactly as they came from the data archive. Thus, two new variables, rewfamx and rewkidsx, are copies of their "parent" variables with more logical names.

The next step is to examine the frequency and percentage distributions of these variables. This helps orient the researcher in the dataset and allows one to check that no "stray codes" have crept in (stray codes are values outside the set of values defined for the variable, usually typos/recording errors that need to be removed from the dataset by declaring them to be missing). The STATA command to create a frequency distribution/tabulation is "tab1" followed by the variable names.

For each frequency distribution, STATA provides the name of the variable in the upper left-hand corner and, directly under that, lists the values that represent the answers and the missing data. The frequency distribution is shown in the column labeled "Freq." It shows, for example, that 18,257 respondents/cases said that family needs should be "essential" (the value of "1") in determining pay (see Table 5.1). Moreover, we can see that all the missing data have been given the value 9. There are no stray codes as the valid responses are 1–5 and no other responses are listed. STATA automatically gives us the percentage distribution as well as the frequency distribution. This is handy because it shows how much missing data there is. If a question is hard for respondents to answer—either because it is not expressed clearly or because it involves information many do not wish to share (such as income) or because it is on an obscure topic—there will be many missing cases. A useful benchmark here is that a good survey question that respondents find easy to answer will typically have about 5 % missing data. In the present example, the questions worked really well. Only 3.6 % of respondents did not answer them.

Before the project can make progress, the missing data need to be removed. The tool for this is a "recode" statement that gives the cases that have the value 9 a special new missing data

[5] http://info1.gesis.org/dbksearch19/Docs.asp?no=5400

Table 5.1 STATA output showing frequency distributions for family needs variables/items

```
tab1  rewfamx rewkidsx¶
¶
 rewfamx     |      Freq.     Percent        Cum.¶
-------------+-----------------------------------¶
          1 |     18,257       16.45       16.45¶
          2 |     38,317       34.53       50.98¶
          3 |     31,726       28.59       79.57¶
          4 |     13,282       11.97       91.54¶
          5 |      5,353        4.82       96.36¶
          9 |      4,039        3.64      100.00¶
-------------+-----------------------------------¶
      Total |    110,974      100.00¶
¶
¶
 rewkidsx    |      Freq.     Percent        Cum.¶
-------------+-----------------------------------¶
          1 |     15,971       14.39       14.39¶
          2 |     34,895       31.44       45.84¶
          3 |     30,259       27.27       73.10¶
          4 |     17,631       15.89       88.99¶
          5 |      8,265        7.45       96.44¶
          9 |      3,953        3.56      100.00¶
-------------+-----------------------------------¶
      Total |    110,974      100.00¶
```

Table 5.2 Example of variable with missing data removed (ending with M) compared with original variable

```
tab rewfamx rewfamxM  ,m¶
                                    rewfamxM¶
           ----------------------------------------------------------¶
rewfamx    |         1          2          3          4          5          .  |     Total¶
-----------+----------------------------------------------------------------------+----------¶
         1 |    18,257          0          0          0          0          0  |    18,257 ¶
         2 |         0     38,317          0          0          0          0  |    38,317 ¶
         3 |         0          0     31,726          0          0          0  |    31,726 ¶
         4 |         0          0          0     13,282          0          0  |    13,282 ¶
         5 |         0          0          0          0      5,353          0  |     5,353 ¶
         9 |         0          0          0          0          0      4,039  |     4,039 ¶
-----------+----------------------------------------------------------------------+----------¶
     Total |    18,257     38,317     31,726     13,282      5,353      4,039  |   110,974 ¶
```

code that will remove them from any subsequent analyses. The first part of this command tells STATA to do this recode, and the second part of the statement tells STATA to make new variables where it will store this data. It is bad practice to change the original variable; it is better to make a copy and change that. The new variables will be copies of the originals except that respondents previously coded 9 now have the special missing data code. It is good survey practice to give these new variables related, but distinctive names. In this case we have added a suffix "M" to the variable name to indicate that the missing data have been dealt with (e.g., rewfamxM is the new variable name). Notice that keeping the original name inside the new name helps the researcher keep track of the new variables' history.

After a new variable is created this way, it should always be compared it to its "parent" variable by cross tabulating them. The table should have the frequencies where the codes match up and zeroes elsewhere, as in the example shown in Table 5.2.

Initial, Exploratory Analysis

If these two questions are, in fact, alternative measures of the same sentiment, then we will be able to construct a more reliable measure that

combines them. One begins by cross tabulating the two items: If they are measuring the same thing, then there will be a close correspondence between them. Thus, most of the respondents who say that what it takes to support a family should play an "essential" role in determining pay will also say that whether the person has children should be "essential." In Table 5.3, you can see, for example, that 11,362 people chose "essential" for both family support (rewfamxM) and responsibility for children (rewkidsxM). Notice that this is the largest number in the column labeled 1: This shows that a large majority of the respondents who say that the person's family size should be taken into account in determining pay also say that what it takes to support a family should be taken into account.

The pattern is often even clearer if expressed in percentage terms, as in Table 5.4. For example, 63 % of the respondents who chose "essential" on rewfamxM also chose "essential" on rewkidsxM. The other entries in the *diagonal* of the table are also all over 60 %, indicating a high concentration of cases.

The next step is to examine a stronger measure of the statistical relationship between the two variables: the correlation. Prior methodological research shows that treating "Likert"-type answers as though they were continuous variables measured coarsely at equal intervals is both efficient and robust. More elaborate models of underlying attitude distributions are attractive conceptually, but, in practice, the results for most variables are very close to equal intervals (Kalmijn, Arends, & Veenhoven, 2011; O'Brien & Homer, 1987) and the equal interval scoring appears to be more robust to minor deviations from regression and structural equation model assumptions (O'Brien & Homer, 1987). In theory, correlations can range from −1 for items that are opposites to 0 for items that are unrelated to 1 for items that are essentially identical. In practice, of course, distinct items never reach the extremes. The 0.73 correlation shown for our two items in Table 5.5 is substantial.

In addition to being correlated, items that measure the same sentiment must have similar correlations with other important variables (often referred

Table 5.3 Cross tabulation of family needs variables/items (raw numbers/frequencies

```
table rewfamxM  rewkidsxM ,m¶
```

	rewkidsxM				
rewfamxM	1	2	3	4	5
1	11,362	4,089	1,503	659	434
2	3,547	25,162	6,572	1,961	687
3	740	4,893	19,707	4,805	1,135
4	112	387	1,821	9,492	1,371
5	55	83	236	486	4,441

Table 5.4 Cross-tabulation of family needs variables/items (%)

```
tabulate rewfamxM rewkidsxM, nofreq row¶
```

	rewkidsxM					
rewfamxM	1	2	3	4	5	Total
1	62.96	22.66	8.33	3.65	2.40	100.00
2	9.35	66.34	17.33	5.17	1.81	100.00
3	2.37	15.64	63.00	15.36	3.63	100.00
4	0.85	2.94	13.81	72.00	10.40	100.00
5	1.04	1.57	4.45	9.17	83.78	100.00
Total	14.96	32.74	28.22	16.46	7.63	100.00

Table 5.5 Correlation of family needs variables/items

```
corr rewfamxM rewkidsxM¶
(obs=105740)¶
             | rewfamxM rewkid~M¶
-------------+------------------¶
   rewfamxM |   1.0000¶
  rewkidsxM |   0.7295   1.0000¶
```

Table 5.6 Correlations between family needs variables/items and criterion variables

```
corr rewfamxM rewkidsxM age male ed occ8 lnEarn¶
(obs=60303)¶
             | rewfamxM rewkid~M  ¶
-------------+--------------------¶
   rewfamxM |   1.0000¶
  rewkidsxM |   0.7287   1.0000¶
¶
         age |  -0.0205  -0.0242  ¶
        male |   0.0130   0.0238  ¶
          ed |   0.1557   0.1911  ¶
        occ8 |   0.1467   0.1714  ¶
      lnEarn |   0.1450   0.1523  ¶
```

to as "correlations with criterion variables"). These are often the variables that will be used as predictors later in the project, but they need not be. The researcher should be careful to examine the frequency distributions of the criterion variables and to make sure that missing data are appropriately recoded before running the correlation. We chose gender, age, occupation, and income as they are important demographic variables that often carry consistent and predictable relationships with other factors. In our example, the correlations with criterion variables are shown in Table 5.6.

Whether these correlations are large or small is *not* the issue: Whatever they are, all should be about the same size. Intuitively the idea is consistency: Items that measure the same opinion/topic should be essentially interchangeable, each getting at only slightly different aspects of sentiment on that issue. For example, our item on adjusting pay in light of what is needed to support a family is modestly correlated with education and uncorrelated with gender, so our item on pay reflecting the need to support children should have similar correlations. If not, something is wrong. The results in Table 5.6 illustrate very consistent patterns, thus boosting our confidence that these items are, indeed, tapping the same sentiment.

Preparing Variables for Analysis

Thus far, there is abundant evidence that the analysis is worth pursuing, so it is time to think about how to present materials so that they are readily accessible to an audience. In practice, this means first thinking about the direction of variables. Ask, "Will it be easier to talk/write about something increasing people's support for the legitimacy of incorporating family needs into pay decisions or to write about something increasing opposition?" Usually it is easier to write about something *increasing support*. As such, "essential" should be 5 rather than 1, and so forth. Simple recodes were done to fix this (e.g., 1 to 5, 2 to 4, 3—same, 4 to 2, 5 to 1).

After having decided the best direction for scoring, the next presentational decision is the range on which one wants to show scores. They were collected on a 1–5 range, but audiences are not usually very good at interpreting scores on unfamiliar ranges like that. They are much better at interpreting the data when presented at equal intervals from 0 to 100. The underlying results are mathematically identical and differ only by a linear transformation, but the 0–100 scoring is much more intuitive for most audiences. This

Table 5.7 Correlation between newly scaled variable and criterion variables

```
corr rewfamxV rewkidsxV age male ed occ8 lnEarn¶
(obs=60303)¶
             | rewfamxV rewkid~V  ¶
-------------+--------------------¶
    rewfamxV |   1.0000¶
   rewkidsxV |   0.7287   1.0000¶
¶
         age |   0.0205   0.0242  ¶
        male |  -0.0130  -0.0238  ¶
          ed |  -0.1557  -0.1911  ¶
        occ8 |  -0.1467  -0.1714  ¶
      lnEarn |  -0.1450  -0.1523  ¶
```

again only required simple recoding, where "essential" 5 was recoded to 100, 4 to 75, 3 to 50, 2 to 25, and 1 to 0.

The letter "V" was added to indicate that the variable is the transformed variable (e.g., rewkidsxV). As always, new variables should be cross tabulated against their "parent" variable in order to confirm correct recoding. In the example above, we see that nice, crisp diagonal pattern that means the recode is correct. Just to be on the safe side, we also checked the correlations between the two items that will make up the scale, in this case resfamxV and rewkidsxV, and check the correlations with criterion variables (see Table 5.7).

All of our preliminary analyses suggest that (a) our variables tap the sentiment of interest, and (b) our recodes have been done properly. As such, it is now time to proceed with the main analysis. First, we need to make the scale/variable, which, in this case, simply requires averaging the two variables (on the 0–100 scored scale). Then, we examine some social differences in who approves and who disapproves of weighing family needs in pay decisions.

Analytic Methods

We used frequency distributions, descriptive statistics, and regression analysis (Fox, 1997). The methods used in the measurement section above include correlations and factor analyses. These methods are appropriate for data which are inherently quantitative, albeit crudely measured. The chosen statistical techniques are appropriate, as survey data based on representative national samples—as are these data—allow us to (a) establish good estimates of the distribution of sentiment in the population as a whole and (b) employ regression models to examine the strength of the separate effects of different, potentially conflicting, aspects of social position on attitudes and values.

Results of Descriptive Analysis

A brief discussion of the percentage distributions of the focal variables, in this case the variables representing attitudes about the ideal role of family status in determining pay, helps to orient the reader. Typically, one presents the frequency distributions on the new variables (the ones with the missing data removed), as they are easier to understand. Here, as in many other places, visuals are useful, so presenting the percentage distribution as a graph called a "histogram" can be very helpful to the audience: It provides the same information as the numbers in a table, but audiences understand graphs more quickly and easily.

Global Patterns. Figure 5.1 shows the histogram (and the STATA command to make it) for rewfamxM. One could make a similar histogram for the ideal importance of children in determining pay by substituting "rewkidsxM" for "rewfamxM" in the command and editing the title (the

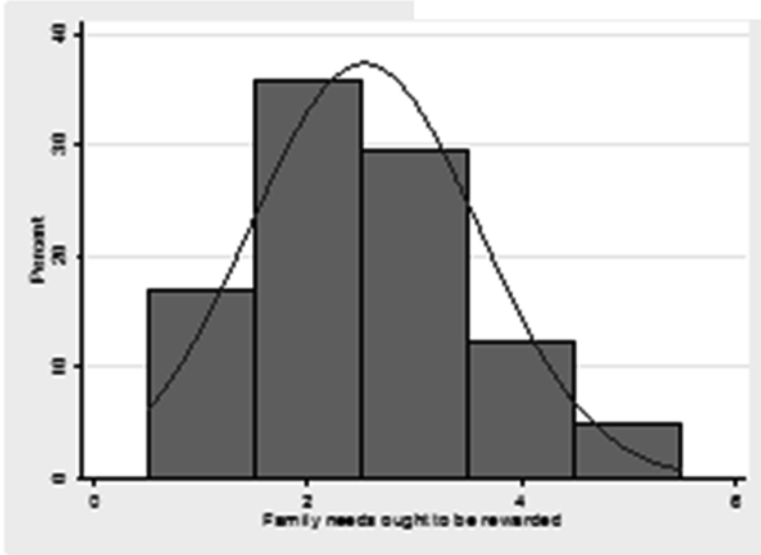

Fig. 5.1 Histogram of the distribution of answers on one of the family needs item

title is in parentheses after the subcommand "xtitle"). Notice that each answer is represented by a vertical bar. The height of the bar shows the percentage of respondents who gave that answer. (This only includes the respondents who answered the question, so it is the percentage of "valid responses.") The histogram shows that the general overall opinion is against weighing family needs heavily in pay determination decisions, but not strongly so. The modal opinion is that family need should be "not very important" in determining pay, but "fairly important" is a close second.

By-Country Patterns. Readers concerned with international law, international policy, and/ or multinational business will also want to see how community sentiment in their countries of interest compares to that in other countries. For this purpose, a useful tool is a bar graph showing the means on community sentiment on our two-item scale showing each respondent's ideal about the role of family responsibilities in determining pay. When there are many countries (or other localities), a horizontal bar chart is often more accessible to the reader. This is portrayed in Fig. 5.2.

As Fig. 5.2 shows, there is a very large range of views among countries. For example, the USA is a moderate country on this question, with a mean score of 58 points out of 100, indicating that the average opinion is somewhat above "fairly important," which would be a score of 50, but well below "very important" which would be a score of 75. Another striking feature of the means is that the citizenry in richer countries would prefer to accord less importance to family responsibilities in pay determination (note that they are clustered at the bottom of the graph) whereas the citizens of poorer countries would prefer to accord more importance to family responsibilities (note that they are clustered toward the top of the graph). One additional interesting pattern is that countries in South America (e.g., Brazil, Argentina, and Chile), Asia (e.g., Philippines), and Europe (e.g., Italy and Spain) where Catholicism is a dominant religion score much higher on the scale than other countries. This may suggest strong influence of Catholicism on community sentiment concerning the importance family needs ought to play in income determination.

These cross-national variations in sentiment have real-world implications. Again, as noted

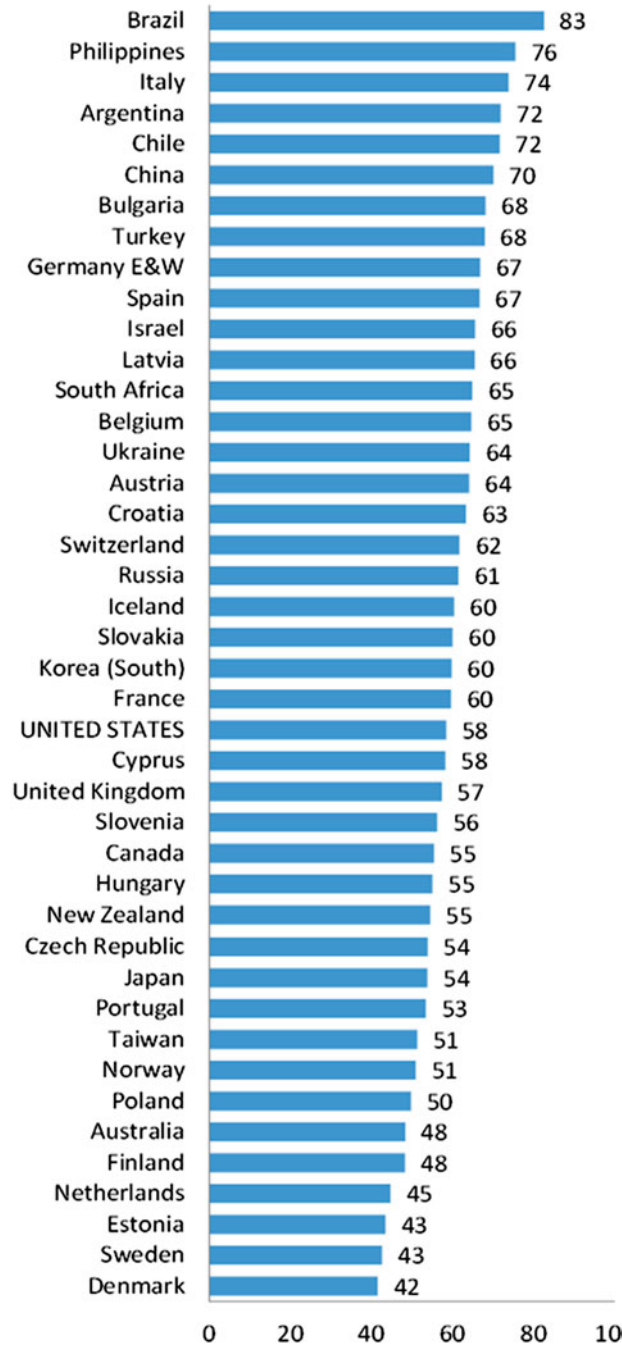

Fig. 5.2 Country averages on family needs scale

earlier, multinational corporations (or anyone doing business abroad) should pay close attention to national opinion on the role of family needs in pay determination. In those countries in which family needs are considered highly important or essential (e.g., Brazil or the Philippines), employers would be best advised to take family needs into consideration in order to match sentiment and lessen the risk of dissatisfaction or grievance. In countries in which family needs are not considered very important (e.g., Denmark or Sweden), just the opposite strategy may be most effective.

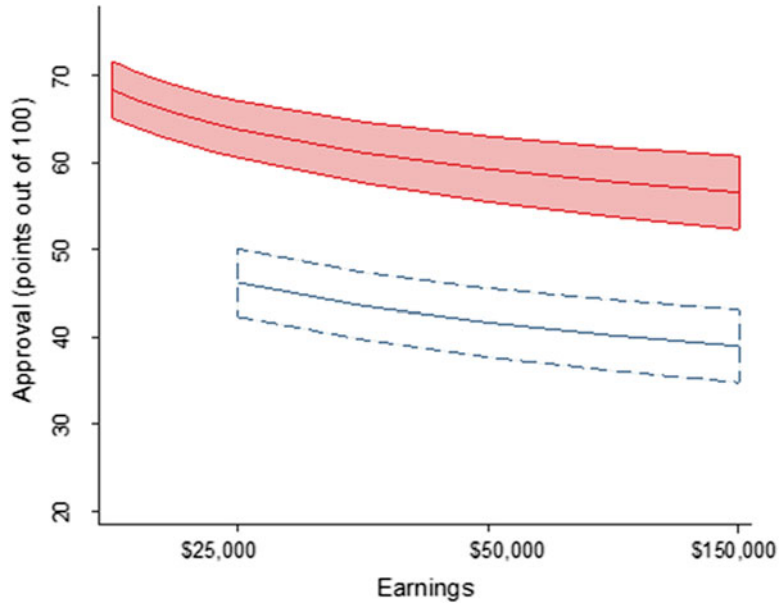

Fig. 5.3 Predicted values and confidence intervals for high school dropouts working in business (*shaded area*) and professionals with graduate degrees (*dashed area*) in the USA

Results of Explanatory Analysis

These differences among countries could come about for many reasons, so it is also important to conduct regression analyses that help discover what lies behind such differences. There are many regression analyses that could be run to better understand the descriptive results above (e.g., regressions within particular countries that seek to explain the degree to which various factors influence sentiment concerning family needs within a given country). For illustration, we will run a regression analysis on the USA, focusing on how differences in education may affect opinions on the importance of family needs in pay decision. Results of our regression models are discussed below.

Regression Results[6]

In our example here, we ran a regression model for the USA (which is country number 840 in the dataset). The STATA syntax to run the regression is:

```
reg famvalues age male ed occ8
  lnEarn if countryx==840, b
```

Because earnings were measured in the natural log (this was a transformation to linearize the relationship), their effects are difficult to interpret in tabular format, so we compute *predicted values*: the mean value that our FAMVALUES scale would have for each possible combination of values of our predictor variables (Allison, 1999). Of course, one cannot be exactly sure what those means would be in the population, so we build *confidence intervals* for them. We can be 95 % confident that the ranges of values enclosed by the confidence intervals include the true mean in the population, assuming that our model is correct.

Figure 5.3 shows the predicted values and their *confidence bands* (confidence intervals arrayed across a set of predicted values). The shaded band toward the top represents high school dropouts working in business; the dotted band toward the bottom represents professionals with advanced degrees. Consider first the high school dropouts. The solid line in the middle of

[6] More details on the regression results and their interpretation are available on the web supplement at www.international-survey.org

the shaded area gives the "predicted values," our best estimate of the value in the population. For high school dropouts working in business, we can see that support for weighing family responsibilities heavily in pay starts out just a bit below 70 points out of 100 for those with low earnings. Among those with just slightly higher earnings, support decreases. It continues to decrease thereafter, but more slowly, ending up a bit below 60 points out of 100.

Across the whole range of earnings, education and occupation matter: High school dropouts working in business are, on average, about 20–25 points out of 100 more favorable toward weighing family responsibilities heavily in pay than are otherwise similar professionals with advanced degrees. Because the confidence bands are distinct, indeed widely separated, it is clear that the differences between the groups are statistically significant across the whole range of earnings. The downward sloping lines show that people in both groups on higher earnings are less favorable toward a strong emphasis on family responsibilities in pay determination.

Here again, one can imagine some real-world consequences, especially for employers, only now the consequences pertain more to specific segments of the population within the USA. Because the results suggest that sentiment can vary on education and income, employers may want to be aware of this. For instance, employers in sectors that employ many people with minimal education might be best advised to consider family needs alongside other factors in pay decisions; employers in sectors with many well-educated professionals may want to avoid consideration of family needs.

Conclusion

In sum, this chapter discusses the pros and cons of secondary survey data—such as those gleaned from the GSS or the WIS—in community sentiment research. Although secondary survey data have some shortcomings (e.g., one can rarely directly influence what questions are asked and, thus, must rely on what questions are already available), there are many positive qualities of secondary survey data (e.g., findings using secondary survey data are often generalizable).

In our sections on data, variables, methods, and results, we have sought to give readers an instructional guidebook, so to speak, on how one can find and analyze secondary survey data. Hopefully readers can use these tools to conduct their own analyses with survey data. After all, when coupled with sound statistical analyses, secondary survey data can provide robust, generalizable information on community sentiment for legal practitioners and academicians.

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6 Understanding How Individual Differences Are Related to Community Sentiment Toward Safe Haven Laws Using a Student Sample

Julianna C. Chomos and Monica K. Miller

Community sentiment can differ dramatically based on individuals' personal characteristics. Thus, many community sentiment studies focus on the relationship between community sentiment and individual differences. For instance, Democrats and Republicans typically differ in their support for various laws such as abortion (e.g., Lindsey, Sigillo, & Miller, 2013). The current chapter provides an example of a study that investigates how individual differences are related to level of support for Safe Haven laws.

Further, as is common in some psychological research (including community sentiment research), students are often used as participants. As such, the chapter will discuss the general body of studies comparing student and nonstudent samples. The general finding of such research (e.g., jury decision-making studies) is that although there can be differences between these two groups depending on the topic being studied, there tend to be only limited differences between student and nonstudent samples. Therefore, in general, student populations are typically adequate proxies for community members. This ultimately could depend on the topic being studied, however, as student status could relate to sentiment on only some topics.

This chapter first provides an in-depth discussion of two common approaches to community sentiment research (and social psychology research more broadly): assessing differences in sentiment based on individual differences and using a student sample. The chapter then offers an example of a study using these methods. Specifically, this study investigated the relationship between students' individual differences and their support for Safe Haven laws (i.e., laws allowing for the legal abandonment of a child).

Assessing Individual Differences in Sentiment

Community sentiment is rarely, if ever, uniform across a population. As such, researchers have often studied what individual characteristics are associated with individuals' attitudes. Many journals (e.g., *Personality and Individual Differences*; *Individual Differences Research*) focus specifically on research exploring individual differences in a variety of areas within psychology, and other journals publish studies of individual differences on topics related to the journal (e.g., religion). Such studies of individual differences include studies of topics related to families and children, similar to some included in this volume (e.g., abortion; Lindsey et al., 2013; in vitro fertilization; Sigillo, Miller, & Weiser, 2012).

A person's ideology, beliefs, and values are closely linked to many individual differences and are sometimes the bases for one's sentiment. For instance, Republicans typically value traditional

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family structure more than Democrats (Arnold & Weisberg, 1996). This may explain why Republicans tend to oppose nontraditional family situations such as gay relationships more than Democrats (Burnett & Salka, 2009). Similarly, personal experiences unique to people with certain individual characteristics (e.g., gender) can affect one's sentiment. For instance, men are less supportive of women having autonomy in abortion decisions (Patel & Johns, 2009), possibly because pregnancy affects women and men differently. A small sample of individual differences that are sometimes related to sentiment about issues affecting family and children include religion, gender, political affiliation, and race.

Religion is related to sentiment concerning many topics concerning family and children, including pregnancy, marriage, divorce, and child raising. Pro-life abortion attitudes were positively related to frequency of prayer/church attendance (Adamczyk & Felson, 2008) and orthodox Christian beliefs (Lindsey et al., 2013; Mavor & Gallois, 2008); in contrast, pro-choice attitudes were related to being on a religious "quest" (e.g., an open-ended search for religious meaning conducted with the knowledge that firm answers are not obtainable; Mavor & Gallois, 2008). Similarly, religious characteristics (i.e., fundamentalism, orthodoxy, devotionalism, and extrinsic religiosity) were related to attitudes toward in vitro fertilization use by nontraditional mothers-to-be (e.g., lesbians, single mothers; Sigillo et al., 2012). In addition to these pregnancy issues, religious beliefs (i.e., orthodoxy, literal interpretism, evangelism) and religious motivations (i.e., extrinsic religiosity) were all negatively related to support for gays and gay rights to marry, adopt, and practice sexual behavior (Miller & Chamberlain, 2013). Conservative Protestant beliefs were positively related to support for corporal punishment (Ellison & Bradshaw, 2009) and more restrictive attitudes toward divorce (Kapinus & Flowers, 2008). This small sample illustrates a few of the many relationships between religious characteristics and sentiment.

Gender is also related to sentiment about topics concerning children and families. Compared to men, women were more approving of the use of in vitro fertilization (Lasker & Murray, 2001) and making divorce harder to acquire (Kapinus & Flowers, 2008). Meanwhile, men were more supportive than women of using formula for feeding infants (Chang, Valliant, & Bomba, 2012) and using physical discipline and critical feedback to correct children's misbehavior (Budd et al., 2012).

Political affiliation is an oft-studied individual difference. Compared to Republicans, Democrats were more supportive of nontraditional mothers-to-be who wanted to use in vitro fertilization and were less supportive of doctors who refused to perform in vitro (Sigillo et al., 2012); D**e**mocrats were also more supportive of the right to abortion (Hess & Rueb, 2005) and less supportive of parental notification provisions requiring minors to get permission before obtaining an abortion (Lindsey et al., 2013). More broadly, political attitudes were related to other family issues. For instance, sociopolitical conservatism was positively related to support for corporal punishment (Ellison & Bradshaw, 2009) and negatively related to attitudes toward gays and lesbians (Hicks & Lee, 2006).

Race is also a frequently studied individual difference in studies investigating sentiment toward topics related to family and children. In an early study, African Americans were less approving of in vitro fertilization than Caucasians (Dunn, Ryan, & O'Brien 1988), but more recent research found that race differences varied depending on the identity of the woman (e.g., lesbian, single woman, a woman with early onset alzheimer's; Sigillo et al., 2012). Race was also related to some attitudes about relationships: African Americans have more negative attitudes toward gays and lesbians than White Americans (Lewis, 2003), and African Americans tend to have more negative attitudes about marriage (see Chap. 10 this volume). As for parenting, African American participants are more supportive of physical discipline than Asians, Hispanics, Caucasians, and mixed ethnicity participants, while Asians were more supportive than Hispanics and Caucasians (Budd et al., 2012).

Considerations When Conducting Studies of Individual Differences in Sentiment

While this is by no means a comprehensive summary of individual differences in sentiment regarding family and children issues, it does illustrate the range of differences and topics that have been studied in community sentiment research. When conducting such research, there are a number of issues that should be considered. First, it is important to study the interactions between multiple individual differences. For instance, southern men were more supportive of corporal punishment than southern women, but no gender differences were found for other regions (Flynn, 1994); thus, gender mattered—but only in one region of the United States.[1]

Other considerations are statistical in nature. For instance, researchers should determine whether two or more individual difference predictor variables are highly correlated; in such cases, multicollinearity will affect the results for those variables (although the predictive power of the full model as a whole is not affected). Because these two variables are redundant, the validity and reliability of results for those variables may be questionable, as results may change substantially with even minor changes in the model or data. Various remedies are available to address multicollinearity issues, although that discussion is beyond the scope of this chapter.

Covariance in individual difference measures is a consideration in some studies that attempt to separate the effects of variables that might vary together. Researchers might also control for certain individual differences in order to see how much variance in attitudes is explained by an individual difference predictor, after controlling for other factors known to relate to the outcome variable (attitude). For instance, Flynn (1994) was interested in whether sentiment regarding corporal punishment varied by region of the United States (e.g., south versus northeast). Regions differ in many ways such as religion and political affiliation—and these differences also predict support for corporal punishment. So, Flynn controlled for sociodemographic differences (e.g., age, education, religion, gender) in order to remove the influence of these variables and isolate region as a predictor. In other examples, Patel and Johns (2009) used religion as a covariate in their study of gender differences in abortion attitudes because religion is also known to relate to abortion attitudes; Ellison and Bradshaw's (2009) study of corporal punishment revealed that sociopolitical conservatism has an effect independent from religious variables.

A third consideration is the number of measures of an individual difference that are taken. For instance, if a researcher wanted to investigate the relationship between "religion" and sentiment, it might be easiest to simply ask for participants' religious affiliation. Affiliation is only one of many measures of religiosity, however. Numerous studies have found that *affiliation* is often not related to sentiment, but religious *characteristics* (e.g., fundamentalism, devotionalism) are related (Ellison & Bradshaw, 2009; Lindsey et al., 2013; Sigillo et al., 2012). Thus, multiple measures of individual differences can offer a more complete and detailed picture of the relationships of interest.

A final consideration is the number of measures of sentiment taken. Multiple measures are often necessary because sentiment can differ depending on the specific stimuli. For example, African Americans were less supportive of *gays in general* but more supportive of some *gay rights* compared to Caucasians (Lewis, 2003). Similarly, participants were more supportive of the use of in vitro fertilization for some types of nontraditional mothers-to-be than others, and various individual differences produced different patterns of support for the multiple categories of women (Sigillo et al., 2012). Chapters 3 and 8 in this volume further discuss the need for multiple measures of sentiment, but will not be discussed here to prevent redundancy.

In sum, the study of individual differences in community sentiment is quite broad and incorporates a wide variety of individual difference

[1] As a side note, such studies are difficult because one has to have a sample large and diverse enough to test interactions. This was a limitation of the current study: the sample is small and comes from only one region. Thus, this study could not test such interactions.

measures and topics. While there are a number of considerations researchers should consider, studying individual differences is an important aspect of the study of community sentiment.

Using Convenience Samples of Students to Study Community Sentiment

This chapter illustrates how some community sentiment studies are conducted using a student sample. As discussed in depth in Chap. 3, two popular methods of measuring sentiment include surveys and mock juror studies. Mock juror studies measure sentiment inasmuch as they measure preference for a penalty (e.g., death penalty or a life in prison, length of a sentence); often they try to manipulate this sentiment by manipulating some independent variable. Surveys more directly measure sentiment through close-ended measures (e.g., Likert-type scales) or open-ended-type measures. Surveys do not often manipulate an independent variable, but sometimes they do (see Chaps. 4, 8, and 9 this volume). Both surveys and mock jury studies frequently use student samples, often freshman and sophomores taking social science classes that require participation. The main concern with using student samples is external validity; specifically the concern is whether students properly represent the population as a whole (see Wiener, Krauss, & Lieberman, 2011). As discussed below, this is more critical in some circumstances than others (e.g., because sentiment about some issues is not different between students and nonstudents). This chapter discusses the use of students and then gives an example of this technique.

While the use of students as a convenience sample has been addressed in many areas of psychology (e.g., Barua, 2012; Wiener et al., 2011), this chapter will focus on the debate within the law-psychology realm, as there has been much discourse in this area in recent years, and because the topics included in this book pertain to law or the legal system more broadly. The sentiment of college students toward criminal justice issues is studied much more now than prior to 1990 (Hensley, Miller, Tewksbury, & Koscheski, 2003). However, researchers have begun to study students' attitudes more in recent years, including attitudes toward topics such as criminal punishment (Farnworth, Longmire, & West, 1998; Lane, 1997; Mackey & Courtright, 2000), juvenile justice policy (Benekos, Merlo, Cook, & Bagley, 2002), policing (Carlan & Byxbe, 2000), death penalty (Payne & Coogle, 1998), electronic monitoring of offenders (Payne & Gainey, 1999), the war on drugs (Farnworth et al., 1998), legal responses toward pregnant drug users (Chaps. 8 and 15, this volume), fear of crime (Dull & Wint, 1997), police use of social media (Spizman & Miller, 2013), laws regulating online teacher-student interactions (Chap. 11, this volume), and restrictions on abortions for minors (Lindsey et al., 2013). This is by no means a comprehensive list, as there are countless other studies.

Many of these studies intentionally sought out a student sample. For example, Lane (1997) measured changes in students' attitudes before and after they attended a corrections class, Farnworth et al. (1998) compared freshman and seniors, and Mackey and Courtright (2000) compared attitudes of criminal justice majors and other majors. Other studies used students as a convenience sample (e.g., Chaps. 4, 8, 11, this volume) or chose students primarily because they are similar in age to those affected by the issues being studied (e.g., Chap. 11, this volume; Lindsey et al., 2013). Often, student and nonstudent samples vary in many personal characteristics, but this does not lead to any differences in verdicts (e.g., Hosch, Culhane, Tubb, & Granillo, 2011).

In addition to the studies listed above, some mock juror decision-making researchers also use convenience samples of students. Most juror decision-making studies use an experimental design and ask students to issue a verdict, assign the defendant a sentence, and/or award a plaintiff damages. Although many students are jury eligible (and some studies only include jury-eligible students), a student sample is not exactly comparable to a typical sample of jurors. Students and nonstudents differ in many ways, some of which could affect the outcome of studies; for instance, they might have different understandings of the law and legal procedure; different attitudes toward crime, police, and deviance; different biases and stereotypes; different life experiences; and so on.

Bornstein (1999) surveyed the literature from the first 20 years of *Law and Human Behavior* and determined that only 6 out of the 26 studies he reviewed reported significant differences between students and nonstudents. Nevertheless, there is concern. A special issue of *Behavioral Sciences and the Law* in 2011 was dedicated to this topic; a brief review of the articles in this issue—and other relevant studies—illustrates the concerns with student samples. The three main concerns associated with using convenience samples of students are that the groups have different characteristics, make different decisions, and use different decision-making processes.

The most basic concern is that university student samples may have different personal characteristics from the community as a whole. Student samples often contain participants that have higher socioeconomic status, are more educated, have better verbal skills, and are less racially diverse (see e.g., Barua, 2012) than the broader community. The samples might differ in many personal characteristics that are related to jury decisions, including: conservatism, authoritarianism, and cognitive capacities (Wiener et al., 2011). This is important because demographic characteristics are often related to sentiment, legal attitudes, and judgments, as discussed in detail above. In addition to different demographics, students and community members might have had different experiences which could affect their judgments or thought processing. For instance, differences between judgments made by students and community members in a hostile sexism case could be partially due to community members' greater experience with workplace interactions and/or sexism in general (Schwartz & Hunt, 2011). Community members were more favorable toward an overweight victim of medical malpractice than were students, perhaps because community members have had personal experience with the difficulty of maintaining a healthy weight (Reichert, Miller, Bornstein, & Shelton, 2011). Particularly of relevance to the current study are the religious experiences and characteristics of students versus nonstudents. University students are experiencing a time of religious exploration and transition; their evolving development allows them to begin to think of religion in new ways (e.g., McNamara Barry, Nelson, Davarya, & Urry, 2010; Stoppa & Lefkowitz, 2010). Thus, college students' religiosity and religious experiences might differ from that of nonstudents. If religion is related to sentiment, then sampling only students might affect the generalizability of the study.

In addition to differing in characteristics, student samples might also differ from the general population in the decisions they make. Farnworth et al. (1998) found that college freshman participants were more punitive than seniors. This could be due to education or maturity. This suggests that freshmen (who are commonly used student participants) have different sentiment from seniors; thus, freshman participants might differ even more from the general population than from seniors. Recent studies have revealed that nonstudent samples gave higher punitive damage awards (Fox, Wingrove, & Pfeifer, 2011), were more punitive toward a homicide defendant (Keller & Wiener, 2011), but were less likely to find the defendant doctor liable in a malpractice trial (Reichert et al., 2011).

Students might also differ from the general population in the *process* they use to form sentiment or make decisions. These processes can involve biases, cognitive processes, and the legal aspects the participant relies on while making a decision. Compared to community samples, students were less likely to exhibit racial bias (Mitchell, Haw, Pfeifer, & Meissner, 2005) and use their biases about rape (Keller & Wiener, 2011) in making juror decisions. Students can be encouraged to overcome their biases through a "bias correction intervention," but community members resist this intervention (McCabe & Krauss, 2011). Further, students' verdicts were related to cognitive processing style (i.e., need for cognition and faith in intuition; McCabe, Krauss, & Lieberman, 2010) and amount of cognitive effort (McCabe & Krauss, 2011), but community members' verdicts were not. Finally, the two groups use expert testimony differently (McCabe & Krauss, 2011) and appropriate damages differently (Fox et al., 2011). Compared to students, nonstudents are more influenced by evidence (Fox et al., 2011)

and react much more to culture-based testimony (Schwartz & Hunt, 2011).

In sum, there are many differences between student and nonstudent samples, some of which can affect decisions and processing. The key is to determine when a student sample is likely to be generalizable and when it is not; this is an area that is currently getting a lot of attention in the literature, as just discussed briefly above (see, e.g., Wiener et al., 2011).

Overcoming Limitations of Student Samples

As discussed in Chap. 3 of this volume, there are ways to overcome the limitations of a convenience sample of students. Researchers' ability to obtain representative samples of the US population (e.g., random digit phone dialing) has improved in recent decades. Most recently, Amazon.com's MTurk system allows anyone with a computer and the internet to participate in online studies for payment. MTurk produces a sample that is significantly more diverse than other samples (Buhrmester, Kwang, & Gosling, 2011). Also, multiple judgment and decision-making studies have found comparable results using MTurk participants and lab participants (see Mason & Suri, 2012). Although sources of participants such as MTurk produce other limitations (e.g., only participants who are internet and computer savvy can participate), they do address some of those discussed above. A good approach is for researchers to begin a line of research using convenience samples of students and follow-up with samples that are more diverse (see also Wiener et al., 2011). Researchers will then be able to determine when participant identity matters and when it does not; later studies can choose samples accordingly. Such strategies will improve the external validity of research studies.

In order to demonstrate how community sentiment research is sometimes conducted with an eye toward finding individual differences in sentiment within a student sample, this chapter now offers an analysis of sentiment regarding Safe Haven laws.

Introduction to Safe Haven Laws

In 2011, a Tennessee mother was charged with killing her twin sons moments after they were born (CNN, 2011). In 2012, a teen mother from Florida admitted to choking her newborn boy to death and hiding his body in a shoebox because she feared her parents' reaction (Cavazini, 2012). More recently, in February of 2013, a prosecutor from Ohio educated the public about Safe Haven laws after an Ohio woman received a life sentence for drowning and strangling her newborn son and then hiding his body in a freezer (Feehan, 2013). This most recent example shows the belief held by some (like the Ohio prosecutor above) that tragic past and future deaths might be avoided if more people are aware of Safe Haven laws.

Safe Haven laws are designed to prevent infanticide by offering parents the option to anonymously relinquish parental rights over their children to authorities (e.g., hospitals, fire stations) without penalty (Dreyer, 2002; Hammond, Miller, & Griffin, 2010). These laws, which were enacted in the late 1990s, differ from state to state and may not be what people typically think of as "laws". For example, some states only allow the parent to legally abandon the child until the child is 3 days old; other states set the time limit at 30 days or have no time limit (Hammond et al., 2010). Individuals may think of a law as some type of restriction or punishment, but Safe Haven laws are not a punishment—they act as a way for individuals who do not want their child to give up their parental rights without fear of punishment or legal consequences. Sanger (2006) argued that the focus of Safe Haven laws is not criminological, but rather they are used to further the politics surrounding the "culture of life."

Although these laws are well intentioned, there is the potential for negative side effects. For example, a law that allows parents to relinquish parental rights to any child under the age of majority (i.e., the age at which a child becomes adult—typically 18 in the United States, but this age varies from state to state), as Nebraska's law did when it was instated in 2008, can overburden the state's child

welfare system. Parents could (as they did in Nebraska) start using the Safe Haven laws to "get rid of" their difficult teenagers as opposed to the law's initial purpose of preventing infanticide. Of the 35 children left at the Nebraska Safe Haven drop-off sites, only 1 was younger than 6 and many were teens with behavioral problems (O'Hanlon, 2013). Once Nebraska lawmakers realized the need for increased behavioral and mental health services for youth and their parents, they passed an overhaul of the state's child welfare system—it is still too soon, however, to gauge the effectiveness of these changes in meeting the needs of the community (O'Hanlon, 2013).

The controversy surrounding Safe Haven laws has led to the examination of the merits, disadvantages, and support of these laws (e.g., Donnelly, 2010; Hammond et al., 2010; Racine, 2005). In 2007, Rutgers Eagleton Polling Institute conducted a poll of 604 adult (i.e., over 18 years old) New Jersey residents to assess public opinions of Safe Haven laws (Safe Haven Awareness Promotion Task Force, 2007). This poll indicated a high level of community support for these laws, with 80 percent of respondents either strongly approving or approving of multiple versions of the law. The poll also collected respondents' demographics, including gender, race, age, education, and income. There were no significant differences between groups (e.g., males/females, whites/non-whites) in terms of support for Safe Haven laws, and support for all groups was generally high (varying between 67 and 89 %). The poll did not, however, investigate religion as a possible influence; the current study seeks to fill that gap and further examine the factors that impact individual's sentiment toward Safe Haven laws.

Examining Individual Differences

There are several aspects of religion and religiosity that can be examined when attempting to study "religion" and its relationship to community sentiment. The current study uses six religious characteristics to further examine some of these relationships. The scales measure participants' (1) amount of religious fundamentalism, (2) amount of religious evangelism, (3) involvement in organized religion, (4) value placed on religion, and (5) literal interpretation of the Bible.

Religious fundamentalism is defined as the belief that there is one set of religious teachings clearly containing fundamental, essential, and inerrant truths about humanity and deity. Fundamentalists believe that this truth is opposed by evil forces, the truth must be followed today according to the essential and unchanging practices of the past, and that believers of these fundamental teachings have a unique relationship with the deity (Altemeyer & Hunsberger, 1992, p. 118). Many researchers have found that fundamentalism is associated with punitiveness (Grasmick, Davenport, Chamlin, & Bursik, 1992; Grasmick, Cochran, Bursik, & Kimpel 1993; Young, 1992).

Evangelism refers to the desire and attempt to convert other individuals to one's faith (Young, 1992). In studies that find relationships between evangelism and punitiveness, those high in evangelism tend to be less punitive than their counterparts (Bornstein & Miller, 2009).

Another fairly consistent finding in the literature is that individuals high in biblical literalism (i.e., believe the Bible is the literal word of God) are more punitive than those who do not (e.g., Young, 1992).

The Fetzer Institute (1999) describes the values scale as an assessment of the extent to which a person's behavior reflects a normative expression of his/her faith or religion as the ultimate value. This is a different concept than just simply valuing religion; it is having religion as the *ultimate* value. The organizational practice scale is an assessment of the extent to which a person is involved with a formal religious institution. These measures have not been linked to punitiveness and thus are exploratory variables in this research.

In addition to the religious measures, participants also provided information on their amount of legal authoritarianism. Legal authoritarians (i.e., those high in legal

authoritarianism) are more likely than nonlegal authoritarians to believe that the rights of the government trump those of the individual (Butler & Moran, 2007).

Overview of Study

The current study measures community sentiment about Safe Haven laws that apply to children of any age, as these may be the most controversial types of Safe Haven laws. In addition, this is the first study, other than the Rutgers poll described above, which investigates relationships between any individual difference characteristics and support for Safe Haven laws. The general research question for this study is: Is there a relationship between support for Safe Haven laws and the participants' gender, race, political affiliation, level of evangelism, level of fundamentalism, involvement in organized religion, value placed on religion, and literal interpretation of the Bible?

Method

Participants and Procedure

Participants ($N=133$) were mostly female (62 %), Democrats (56 %), and White (72 %) and ranged from 18 to 35 years ($M=20.34$; $Mdn=20$). Participants were recruited via the University of Nevada, Reno's subject pool; they completed the survey on surveymonkey.com. Participants completed six scales measuring different aspects of religious beliefs and attitudes. For all scales, higher scores mean higher levels of that characteristic. All scales were created by averaging participant responses. Participants indicated their support for a Safe Haven laws. Finally, basic demographic information was collected from all participants (see Table 6.1).

Measures

A variety of measures assessed authoritarianism, multiple religious beliefs, and demographics.

Legal Attitudes Questionnaire: The Revised Legal Attitudes Questionnaire (RLAQ) is a scale that measures an individual's level of legal authoritarianism (Kravitz, Cutler, & Brock, 1993). The scale included 23 items (e.g., "Defendants in a criminal case should be required to take the witness stand"; $\alpha=0.73$). The Likert-style items were rated from 1 (strongly disagree) to 5 (strongly agree).

Evangelism Scale: Evangelism was assessed with Putney and Middleton's (1961) 6-item measure of fanaticism (a measure of evangelism; Bornstein & Miller, 2009; $\alpha=0.72$). Items (e.g., "I have a duty to help those who are confused about religion") were rated from 1 (strongly disagree) to 5 (strongly agree).

Fundamentalism Scale: Fundamentalism was assessed with Altemeyer and Hunsberger's (2004) Revised 12-Item Fundamentalism Scale ($\alpha=0.86$). The twelve items (e.g., "The basic cause of evil in this world is Satan, who is still constantly and ferociously fighting against God") were rated on a scale of 1 (strongly disagree) to 5 (strongly agree).

Organizational Practice and Values Scales: Both of these scales are subscales from the Fetzer Institute's multidimensional measure of religiosity-spirituality (1999). The Fetzer Organizational Practice scale included two questions, for example, "How often do you attend religious services?" ($\alpha=0.79$). Items were measured on a 9-point Likert scale ranging from 1 (never) to 9 (several times a week). The original Fetzer value scale included three questions examining how much individuals believe religion is central to their life, such as: "My whole approach to life is based on my religion"; items were rated on a scale of 1 (strongly disagree) to 5 (strongly agree). This three-item scale, however, was unreliable for this sample ($\alpha=0.43$). One item that had low correlations with the other two (i.e., the recoded item "Although I believe in my religion, many other things are more important in life") was dropped from the scale for all analyses. The new two-item scale was acceptably reliable ($\alpha=0.72$).

Table 6.1 Summary statistics

Dichotomous variables			
Gender	Male	Female	
	$N=50$ (38 %)	$N=83$ (62 %)	
Race	White	Non-white	
	$N=96$ (72 %)	$N=37$ (28 %)	
Political affiliation	Republican	Democrat	
	$N=59$ (44 %)	$N=74$ (56 %)	
Biblical interpretism	Literalist	Non-literalist	
	$N=28$ (21 %)	$N=105$ (79 %)	
	Mean	Median	SD
Continuous variables			
Safe Haven support	2.40	2.00	1.41
Legal attitudes	3.06	3.00	0.33
Evangelism	2.68	2.83	0.79
Fundamentalism	2.68	2.92	0.76
Organizational practice	3.00	2.50	2.12
Value placed on religion	2.81	3.00	1.07

Total sample $N = 133$

Biblical Interpretism: This measure is a single question ("Do you believe that the Bible is the actual word of God and is to be taken literally, word for word?") answered with a dichotomous yes/no response (Young, 1992).

Demographics: Gender, race, and political affiliation were all self-reported by participants. Gender was dummy coded so that women = 1 and males = 0; race was dummy coded so that white = 1 and all other races = 0; political affiliation was dummy coded so that Democrat = 1 and Republican = 0. Because prior studies have focused on the differences between these two main political groups (i.e., Republicans and Democrats; e.g., Sigillo et al., 2012), the authors decided to compare only these two political categories. Individuals who self-identified as a different political affiliation were not included in the analyses.

Support for Safe Haven Laws: Participants rated on a 1 (no, absolutely not) to 5 (yes, absolutely) scale their support for the following statement: "Would you support a law that would allow a woman to legally abandon a child in a safe place (e.g., a hospital) no matter what the age of the child?"

Results

Overall support for Safe Haven laws was moderate ($M=2.39$; $SD=1.39$). An ordinary least squares (OLS) regression examined which individual differences variables significantly predicted participants' support for Safe Haven laws. Although some scales were correlated (see Table 6.2), the researchers found no multicollinearity. The overall model examining the relationship between the outcome variable (support for Safe Haven laws) and all predictor variables (gender, race, political affiliation, legal attitudes, evangelism, fundamentalism, organizational practice, religious values, and biblical interpretism) was significant ($R^2=0.12$; $F(9,132)=1.93$, $p=0.05$), indicating that individual differences do, in fact, significantly predict support for Safe Haven laws. Specifically, organizational practice ($b=0.19$, $p=0.02$) was a significant predictor of support for Safe Haven laws. Three variables were nearing significance: political affiliation ($b=-0.54$, $p=0.06$), fundamentalism ($b=0.48$, $p=0.07$), and evangelism ($b=-0.43$, $p=0.07$). All other relationships between individual difference predictors and the dependent variable were not significant

Table 6.2 Correlations between variables

	SH	G	R	PA	LA	ME	MF	OP	VPR	BI
Safe Haven support (SH)	1	0.05	−0.09	−0.15*	0.03	0.02	0.17*	0.19*	−0.04	0.06
Gender (G)		1	0.04	0.18*	0.04	−0.23†	−0.18*	−0.14	−0.06	−0.21†
Race (R)			1	−0.29†	0.05	−0.12	−0.13	−0.10	−0.08	−0.09
Political affiliation (PA)				1	−0.24†	−0.20†	−0.31†	−0.17*	−0.29†	−0.13
M. legal attitudes (LA)					1	−0.03	0.16*	0.08	0.20*	−0.01
M. evangelism (ME)						1	0.70†	0.56†	0.53†	0.45†
M. fundamentalism (MF)							1	0.56†	0.58†	0.51†
Organizational practice (OP)								1	0.55†	0.49†
Value placed on religion (VPR)									1	0.29†
Biblical interpretism (BI)										1

*–$p < 0.05$; †–$p < 0.01$

Table 6.3 Summary of ordinary least squares regression model examining the relationship between individual differences on level of support for Safe Haven laws

	b	Standard error	*p*-Value
Gender (0 = men)	0.30	0.26	0.256
Race (0 = other)	−0.40	0.29	0.165
Political affiliation (0 = Republican)	−0.54	0.28	0.056
Mean legal attitudes	−0.24	0.39	0.540
Mean evangelism scale score	−0.43	0.23	0.069
Mean fundamentalism scale score	0.48	0.26	0.065
Organizational practice	0.19	0.08	0.018
Value placed on religion	−0.21	0.15	0.163
Biblical interpretism	−0.23	0.36	0.522

(see Table 6.3). An examination of the interaction effects of the various predictor variables was not possible in the current study due to the sample size. A power analysis was conducted using G-Power, indicating that the sample (and resulting power) allows for the detection of medium and large effects for the main predictor variables, but the inclusion of the interaction terms and thus any significant findings in that model would be highly suspect.

Discussion

The current study provided preliminary evidence of relationships between individual differences and student community sentiment about Safe Haven laws. Findings indicate that the more individuals attend religious services and participate in other religious meetings, the more they support Safe Haven laws. Prior research (e.g., Gorsuch, 1995) has found that regular attendance is related to behavioral conformity. Therefore, individuals who attend such services might be comfortable with power hierarchies (e.g., comfortable with the pastor—or authority figure—telling them what to do). Likewise, these individuals might also favor parents (as authorities) being able to decide whether to relinquish their parental rights (i.e., favor Safe Haven laws). This finding is also consistent with research finding that the more individuals attend religious services and participate in other religious meetings, the more likely they are to support parental involvement clauses for minors' abortion (Lindsey et al., 2013). In both instances, this group of individuals favors parents having control over their children.

Although not statistically significant at a $p < 0.05$ level, the finding that Democrats support Safe Haven laws less than Republicans was nearing significance. This finding is similar to research indicating that Republicans are more supportive of laws requiring parental involvement in minors' abortion, in that Republicans value the ability to have control over and make decisions about their children's lives (Lindsey et al., 2013).

Another finding nearing significance indicates that the more fundamental individuals are, the more they support Safe Haven laws. Previous research has found that religion is a strong predictor of attitudes toward parental involvement, with more religious people holding favorable attitudes toward parental involvement (Mahoney, Pargament, Tarakeshwar, & Swank, 2008). Although this meta-analysis had a wide variety of indicators for what it meant to be "religious," this finding can still be useful in understanding the impact of fundamentalism on support for Safe Haven laws. Individuals high in fundamentalism have a core set of strong and unshakable beliefs; among those beliefs is the view that parents should be involved in their child's life and make decisions regarding that child. In other words, parents high in fundamentalism endorse the right of the parent to determine the fate of his/her child.

A final finding nearing significance indicates that the more evangelical individuals are, the less they support Safe Haven laws. This information appears to conform to what may be the "typical" evangelical belief system that places value on family and God's ability to save people according to His will. Thus, because God provided a child (or children), parents should keep the child and bring the child up in the faith in order to spread God's word and grow the faith. This belief is consistent with not supporting Safe Haven laws. Although these last three results discussed were

not statistically significant, it is still important to explore the possible relationships so that future researchers are aware of the potential interplay.

It is worth noting that the overall rate of support for Safe Haven laws in the current study (22 % either supported or strongly supported the law) was quite a bit lower than that observed in the Rutgers study (i.e., 80 % strongly approving or approving of the law). It is possible that this difference is a result of location, sample, or question wording. The Rutgers poll only asked about support for Safe Haven laws for infants 30 days old or younger, whereas the current study asked about Safe Haven laws for a child of any age. Thus, the difference in attitudes measures might account for differences in findings between the studies.

Another possible explanation for different findings could be that the Rutgers poll was conducted in New Jersey, whereas the current study was conducted in Nevada. There may be differences in support of Safe Haven laws based on the region of the United States in which an individual is asked. For example, there are certain states (e.g., Nebraska) where Safe Haven laws are more widely known about and discussed; this would allow individuals greater opportunity to collect information about and determine their opinion of the laws. Regional differences thus might explain differences between the studies.

A final possible explanation for differences between studies is that the current study employed a student sample, whereas the Rutgers poll sampled community members. This could indicate that students are not good proxies for the community, perhaps because there are important differences between the groups that lead to differing sentiment. For example, it is possible that students have less experience with having children and the stresses/responsibilities associated with that than community members; this might decrease their overall support for such laws. These differences highlight the importance of sampling from the population from which researchers want to generalize. Researchers who are interested in being able to confidently generalize findings to community members of a specific location should sample from those community members and not rely on students.

Conclusion

This chapter had two main goals: to illustrate (1) how community sentiment research can be conducted using a student sample and (2) how sentiment is sometimes related to individual differences. As to the chapter's first goal, the literature review highlighted the importance of identifying whether the research topic is one in which students can be a good proxy for the community. The finding that the current sample is less supportive of Safe Haven laws than the Rutgers sample might indicate that this is one topic in which students are not good proxies for the general community. Only a single study using a single set of attitude measures for both students and community members could fully determine whether this is so.

Whether a student sample is adequate to represent the entire community is largely dependent on the topic at hand. Unfortunately, identification of when students do and do not represent the community is a relatively new endeavor in community sentiment research. Similarly, knowing when a sample from one part of the country can represent the sentiment of the entire country is difficult. Studies can be conducted with this specific goal in mind—if the researcher has the means to garner a broad enough sample. Researchers are wise to use student samples from only one region in the United States in exploratory research, but follow-up with broader samples as resources and new research questions arise.

Sometimes, however, a researcher might intentionally focus only on a particular group—such as college students. Understanding the attitudes of students toward Safe Haven laws might be particularly important to law and policymakers because it is often these younger citizens who have unwanted pregnancies and therefore could benefit from these laws. In such instances, the population of interest is young adults. A sample of college students is arguably a closer proxy to a population of young adults than a population of the community as a whole.

As to the chapter's second goal, the literature review highlighted only a small number of the many individual differences that have been used in past studies. A handful of individual differences were used in the current study, though only one was significantly related to support (and three more neared significance).

Knowing what individual differences (if any) are related to support for a particular law can be useful to law and policymakers, as it can help identify groups (e.g., fundamentalist Christian groups, females) that do and do not support the law. This is important in helping lawmakers know the sentiment of their entire constituency. As noted above (and in more detail in Chaps. 1 and 19), there are many benefits that arise when laws coincide with community sentiment. Also, knowing which groups favor or disfavor a law can assist lawmakers in campaigning for legal changes. Although this has not been done frequently in the past, this information can help policymakers find a base of supporters who can repeat the message and advocate for changes (e.g., through social media and traditional campaigning strategies).

More broadly, this study demonstrates how some laws might not adequately reflect community sentiment of all subsets of the population. It is difficult to "please everyone" with the creation and implementation of laws because community sentiment can vary by many different factors including individual differences and group membership (including student status). This also demonstrates the difficulty in measuring sentiment because researchers and policymakers have to take into account many different characteristics in order to get a full picture of community sentiment.

In sum, community sentiment is complex. Measuring individual differences thought to be related to the topic at hand can help researchers and lawmakers/policymakers better understand community sentiment. Yet, knowing which individual differences to measure can be tricky—though researchers are aided by past sentiment research on similar topics. Further, knowing when a student sample is an adequate representative of the community as a whole can be difficult. Through much research, community sentiment researchers can gain a broader understanding of which differences to study—and what sample to use in doing so.

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7 Using Mail Surveys to Assess Perceptions of Law Enforcement Officers and Prosecuting Attorneys Regarding Parental Involvement Laws

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Law enforcement officers and prosecuting attorneys have wide discretion in choosing whether to arrest and charge individuals with certain crimes, yet both sets of professionals are often neglected as sources of information on support for and effectiveness of laws (Finn & Stalans, 1997). In general, the sentiment of the legal community is viewed as impracticable to assess because it is not as readily available as are student samples or community-assembled panels and is therefore often ignored by researchers. This chapter will present law enforcement officer and prosecutor opinions concerning parents' roles in juvenile crime and parental involvement laws generally while also discussing the benefits (e.g., cost-effectiveness, anonymity) and challenges (e.g., issues with response bias and response rate) of employing mail surveys. Parental involvement laws, described in detail below, impose legal sanctions on parents when their children break the law. Although previous research concerning parental involvement laws has focused on the sentiment of parents (Brank, Greene, & Hochevar, 2011), juveniles (Brank & Lane, 2008), and other members of the general public (Brank & Weisz, 2004), researchers have largely ignored the perceptions of those responsible for enforcing the laws. Such inattention may reflect a belief that scrupulous enforcement is not influenced by personal sentiments, but we believe, and provide examples below, that there are situations in which personal sentiment appears to influence enforcement.

Community Sentiment

The term community sentiment is most commonly associated with the public's opinion on a topic; community members are often surveyed or interviewed about a variety of topics. Other chapters in this volume provide clear examples of this approach by examining community sentiment on safe haven laws (Chap. 6, this volume), drug use during pregnancy (Chap. 8, this volume), and the "Facebook law" (Chap. 11, this volume). Such examinations of community sentiment are important and provide useful information as we consider laws and the reasons people obey them (Tyler, 2006). Additionally, researchers study community sentiment because the collective community members' beliefs can shape the way legal actors behave. The US Supreme Court provided an

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example of public influence on the legal landscape when the Justices ruled against the constitutionality of the juvenile death penalty. The majority opinion in *Roper v. Simmons* (2005) cited a changed "national consensus" (p. 564) as a reason for the Court's decision against the death penalty for defendants who were juveniles when they committed their crimes. The opinion noted that an "evolving standard of decency" (pp. 564–565) was evident from the state legislatures and jury verdicts. Such evidence suggested a changed community sentiment on the topic that is important in Eighth Amendment case analysis.

Other legal actors besides the US Supreme Court are also influenced by public opinion. For example, police officers who perceived more support from their employers were more likely to arrest suspects for driving under the influence (DUI; Armeli, Eisenberger, Fasolo, & Lynch, 1998). Additionally, arrest rates for DUI are high despite the fact that there is no link between increased arrests rates and decreased DUI-related crashes, which is likely related to a perceived support for DUI arrests (Dula, Dwyer, & LeVerne, 2007). Similarly, police officers who personally endorsed stereotypes of domestic violence, including their notions that domestic violence is sometimes justified and that women stay in violent relationships for psychological reasons such as love and lack of self-confidence, were more likely to say they would arrest the *victim* in a vignette depicting domestic violence (Saunders, 1995). In other words, a personal belief by the police officers influenced their predicted arresting behaviors. Prosecuting attorneys may also be affected by extralegal factors; prosecuting attorneys were less likely to negotiate a plea deal as the media coverage of a homicide case increased (Pritchard, 1986).

Public opinion can be at odds with official policy or policy makers. Therefore, it is important to measure not only public opinion but also attitudes and opinions of those with policy making or law enforcement discretion, as these opinions may be quite different from the public's and will greatly affect what policies are enacted and, once in place, enforced. For instance, MacLennan, Kypri, Langley, and Room (2011) found the public wanted more policies implemented to reduce alcohol-related harms, and Fetherston and Lenton's (2005) community sample thought the penalties for minor marijuana offenses were improperly too strict. The public may be focusing on different purposes behind policies, such as reducing harm, than policy makers who may be focusing more on punishing offenders. A third study found that the public and judges do not always agree; after being provided with in-depth case information similar to what a judge would receive, the public provided more severe criminal sentences than did judges (de Keijser, van Koppen, & Elffers, 2007).

Not only can community sentiment shape policy, but the opposite is also true. That is, court opinions and the sentiment of legal actors can shape community members' sentiments and beliefs (Kittel, 1986). Because prosecuting attorneys and law enforcement officials are entrusted with enforcing laws—often with a great deal of discretion—these people's responses to particular laws communicate an important message to the community about the status of specific laws and the values the law represent. The members of the community who have chosen careers that intersect daily with the law provide a unique resource for understanding community sentiment, or the future sentiment, on legally relevant topics. Additionally, as noted in Chap. 3 of this volume, the general public's opinion on matters can be ignorant and possibly transient, especially when people are asked about specialized legal issues. Legal actors can provide a more informed opinion regarding these matters and may even provide a more stable opinion because of protocols and codes of action followed by legal professionals.

Community Sentiment of Legal Actors

Unfortunately, there are a number of core problems related to obtaining representative samples when surveying attorneys and the police. First, there are no easily accessible, complete, and frequently updated contact lists from which

to select random samples. Although some lists and databases do exist online, they provide limited or outdated information because they generally require the professionals to update their own information (e.g., Martindale.com for attorneys). Second, despite general population response rates of around 75 % when a person initially agrees to participate (Rookey, Le, Littlejohn, & Dillman, 2012), legal professional samples generally suffer from lower response rates. Third, the nature of their positions—the very reason for asking the questions—may make these professionals uneasy about responding to surveys containing legally relevant questions. This uneasiness may contribute to the aforementioned low response rates but also may result in missing, incomplete, or even inaccurate responses. This is particularly true for sitting members of the judiciary who are proscribed by professional rules of ethics from speaking about issues that may be adjudicated in their courts.

Previous studies have noted modest response rates when surveying legal professionals. Kittel (1986) describes the "major difficulty" (p. 87) encountered when attempting to survey criminal defense attorneys. Without an organized contact list, Kittel relied on contacting court officials and other members of the legal community who could help him find defense attorneys in their respective communities. This modified snowball sampling provided a sizeable number of attorneys but was clearly not a representative sample of criminal defense attorneys and likely overrepresented those attorneys who were more actively involved in criminal defense or were well known in the legal community. From this list, Kittel randomly selected 1,100 attorneys to receive his mail survey and achieved a 44 % response rate. Similar response rates have been found in more recent research. Luchins, Cooper, Hanrahan, and Heyrman (2006) achieved a 48 % response rate for their mailed survey that was sent to Illinois lawyers assessing attitudes concerning involuntary psychiatric commitment. In a study more closely related to the topic of the current research, Moak and Wallace (2000) conducted a statewide survey of Louisiana lawyers, judges, probation officers, social workers, and volunteer coordinators regarding rehabilitation of juvenile offenders. There was a 41 % combined response rate. Examining specifically defense attorneys, Varela, Boccaccini, Gonzalez, Gharagozloo, and Johnson (2011) achieved only a 14.4 % response rate for Texas defense attorneys.

Despite difficulties in obtaining contact lists and the low response rates, research examining opinions of legal professionals is an important component of fully understanding community sentiment. The current research explores the use of this methodology while complementing previous related research about parental involvement laws. Before we turn to the current research, we will explain and describe parental involvement laws and outline previous community sentiment research that has been conducted on the topic.

Parental Involvement Laws

Parental involvement laws are one form of the more general category of parental responsibility laws—laws designed to hold parents responsible for the actions of their children and, importantly, that are meant to address the juvenile crime problem. These laws are rooted in ancient civilizations and entwined within current conceptions of the family and society (Brank & Scott, 2012). Currently, these laws can be categorized into three main types: civil liability, criminal charges of contributing to the delinquency of a minor, and parental involvement statutes (Brank, Kucera, & Hays, 2005). Although "parental involvement" is also a term used in describing a minor's abortion decision (Rebouche, 2011) and in education achievement (Buchanan, 1998), neither are relevant to the current project. For the purpose of the current chapter, we will examine state statutes and local ordinances that require parents to be involved in some way in the adjudication of their children's delinquency cases (i.e., the parental involvement form) because these laws are considered to be on the shakiest legal ground as a result of their nebulous and far-reaching nature (Brank & Scott, 2012).

Parental involvement laws are triggered when the juvenile commits a delinquent or status offense. Some of these laws require parents to pay for court costs or cost of care while the juvenile is detained (Brank et al., 2005). Other laws require or encourage parents to participate in court hearings. Some go further and require parents to enroll in parenting classes, pay fines, or perform community service (Brank et al., 2005). The reach of these laws is extended further because many also include a contempt of court provision such that parents who do not fulfill the original requirements may receive additional sanctions. Such threats of criminal charges can serve as leverage to encourage parents to participate in parent training and other programs (Burke, 2010). Parents are often left without a legal defense in parental involvement cases because some statutes and ordinances act as a form of strict liability. That is, the parents are responsible because they are parents and not because of any defined behavior (Brank & Scott, 2012). For example, Nebraska Revised Statute §43–290 reads: "to promote parental responsibility… the court may order and decree that the parent shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support, study, and treatment of the juvenile." The Nebraska statute does not include any parental fault requirement before the court can order the parent to pay for the juvenile's care.

General Community Sentiment About Parental Involvement Laws. A national telephone survey found the public generally supports parental involvement laws, with nearly 70 % of the respondents indicating that the parent, in addition to the juvenile, was responsible when the juvenile committed a crime (Brank & Weisz, 2004). However, when asked more specifically about agreement with blaming and punishing parents who have children who commit crimes, respondents were less supportive. Brank, Hays, and Weisz (2006) found even less support when participants were asked to consider a specific parent as compared with parents generally. Similar to other research that compares global versus specific attitudes, participants were significantly more supportive of blaming and holding parents responsible in general than of blaming and holding a specific parent responsible (Brank et al., 2006). See Chaps. 3 and 8, this volume, for further discussion of the transient nature of sentiment.

Moving beyond simple public opinion-type polls, Brank and Lane (2008) examined adjudicated juveniles' attitudes on parental involvement. Generally, these juveniles were also not supportive of these laws, with most saying their parents were not at all responsible for the juvenile's crimes. However, most of these juveniles reported they would have been less likely to commit those crimes had they known their parents would have been punished (Brank & Lane, 2008). In addition, the laws are also not as widely supported by parents of juveniles as compared with nonparents (Brank et al., 2011). In three studies, Brank et al. (2011) compared parents of middle school youth to nonparents and examined the effects of various situational and dispositional factors on public opinions regarding parental responsibility. Respondents in all of the studies attributed most of the responsibility for a crime to the juvenile, but responsibility was increasingly placed on the parents as the age of the described juvenile decreased. In other words, parents of younger juveniles were seen as more responsible for the juveniles' actions than were parents of older juveniles. Case characteristics such as the type of crime committed and even the type of parental action (or inaction) did not consistently affect ratings of parental responsibility. For the nonparent sample, described parental acts of commission (e.g., providing a teen with a weapon) garnered higher parental responsibility ratings for the described teen's delinquent behavior than did parental acts of omission (e.g., leaving a weapon accessible). In contrast, the parent sample had no differences in attributions of responsibility as a function of the described parent's commission or omission manipulation. See Chap. 7 of this volume for a discussion of how individual differences can be related to community sentiment.

The public, juveniles themselves, and parents are not as supportive of these laws as the political pundits and policy makers would argue (Brank et al., 2006; Brank & Lane, 2008; Brank & Weisz,

2004). The perception of law enforcement officers and of prosecuting attorneys is the next logical level of inquiry. Harris (2006) chose to examine the discretionary power of Oregon police chiefs and district attorneys. Harris found that, while one-third of the cities she surveyed had parental involvement ordinances, most of the police chiefs and district attorneys in her sample indicated that citations were rarely issued and that formal prosecutions were uncommon. The topic of parental involvement laws provides an important area of investigation into law enforcement and prosecuting attorney's opinions because, as noted above, there is widespread legislative attention (Brank et al., 2005), varied public opinion support (Brank & Weisz, 2004), but relatively low enforcement (Harris, 2006). In other words, the statutes and ordinances are on the books but not actively enforced. By examining the stakeholders who make decisions about whether laws are pursued (i.e., police officers and prosecuting attorneys), we can infer the potential reasons for the low enforcement. Although Harris's (2006) study was an important step in examining legal actors' opinions, the study was limited to one state and only addressed basic law enforcement procedure and decision to charge questions. The present study provides a deeper and more diverse examination of how police and prosecuting attorneys across a number of states and municipalities view parental involvement laws. See Chaps. 5 and 6, this volume, for in-depth discussion of the importance of sampling to increase generalizability of a study's findings.

The Current Study

We conducted the current research as part of a larger project examining parental involvement law prevalence, enforcement, and respondent interest in future, more in-depth research. For the purposes of this chapter, we describe the opinions of law enforcement officers and prosecutors concerning parents' role in juvenile crime and the function and utility of parental involvement laws in their communities. We had five main research questions. First, what is the status of parental involvement laws in the communities in which we surveyed? Second, how did the respondents view the enforcement and effectiveness of their local parental involvement laws? Third, what are the outcomes when a parental involvement law is imposed? Fourth, how do the respondents view the general status of their community's juvenile crime and the notion of blaming parents for juveniles' crimes? Fifth, what influence do community size and other community characteristics have on the enforcement of these laws?

Method

Participants. We randomly selected a small, medium, and large community from each of the 50 states by starting with the 2000 US Census list of cities within each state. We defined small, medium, and large communities based on the Department of Agriculture's population values for a rural, urbanized cluster, and urbanized area, respectively (USDA.gov). Each selected community had a parental involvement ordinance listed on a centralized municipal code database or on the individual city's website. For each selected community, we obtained the contact information for the police chief and a prosecuting attorney from city websites or state databases. In larger communities, we selected a prosecuting attorney who specialized in juvenile cases. Because of the small sample, we collapsed all prosecuting attorneys into one group.

We mailed 300 surveys and our final sample ($n = 92$) included 67 police chiefs (83 % male; M years at job = 16.55, SD = 9.89) from 39 states and 25 prosecuting attorneys (75 % males; M years at job = 12.63, SD = 8.74) from 22 states. The response rate was 31 %, which is lower than previously attained response rates for attorneys of 44 % (Kittel, 1986) and 48 % (Luchins et al., 2006) but higher than the 14.4 % achieved by Varela et al. (2011).

For each city represented in the final sample, we compiled community-level data from the US Census including city population and median age. Combining responses from both police chiefs and prosecuting attorneys allowed for 18

small communities to be represented (M population = 1,760.06, SD = 690.18), 34 medium communities (M population = 25,671.06, SD = 14,517.78), and 40 large communities (M population = 110,290.23, SD = 194,299.00). Based on post hoc comparisons, the large communities (M = 33.57, SD = 3.03) had a significantly ($p < 0.05$) younger median age population than did the small- (M = 36.76, SD = 8.05) and medium-sized communities (M = 36.22, SD = 4.04; overall $F(2, 89) = 4.12$, $p = 0.02$, $d = 1.11$). The small and medium communities did not have statistically different median age populations ($p > 0.05$).

Materials and procedure. Each prosecuting attorney and police chief was mailed a questionnaire with an addressed, postage-paid, return envelope that included an introductory letter explaining the research. If there was no response within 2 weeks, we followed up with a second mailing that included identical materials. Finally, 3 weeks after the second mailing, we sent postcards reminding the recipients to return their completed questionnaires or to contact us if they needed a replacement set of materials.

Status of laws. At the beginning of each questionnaire, we included a copy of the ordinance(s) for the specific city or town in which the police chief or prosecuting attorney was employed. Therefore, the questionnaires were customized for each community. The various types of ordinances included child curfews, weapons restrictions, and general delinquency. All of the selected ordinances included some form of parental involvement when the juvenile was adjudicated. Immediately following the listing of the laws, the respondents were asked, "Are/Is the above law(s) still in force?" (response options of yes, no, do not know). Next, the respondents were asked whether there were other laws that pertained to parental involvement that were not listed, and the respondents were asked to provide those laws as attachments.

Enforcement and effectiveness. In our effort to understand the enforcement and effectiveness of these laws, the questionnaire included eight questions. The respondents were asked: (a) "In your community during the past 30 days, approximately how many incidents under the parental involvement ordinances have resulted in a charge/citation or equivalent? _____times." Two questions asked respondents to provide ratings: (b) "How often do these parental involvement ordinances get enforced in your community?" (response options from 0 = never to 4 = always), and (c) "In your opinion, how effective are your community's parental involvement ordinances at reducing juvenile crime?" (response options from 0 = not at all to 4 = very effective). Respondents also provided responses to the following five questions: (d) "Does your city keep official statistics on *how often* these laws are enforced?" (yes, no, do not know),"Who (what office) collects this information?"(open ended), (e) "What are the difficulties with enforcing the parental involvement ordinances in your community?"(open ended), (f) "Why do you think they are effective or not effective?" (open ended), (g) "What purpose do you think parental involvement ordinances serve?"(open ended), and (h) "What specific solutions could you offer that may improve the effectiveness of parental involvement ordinance in your community?"(open ended).

Outcomes. The questionnaire also focused on the potential outcomes of an incident with the following two questions: (a) "For those cases that *are given a citation or charged*, what caretaker is most often held responsible under parental involvement ordinance?" (response options: mother, father, grandparent, foster parent, other guardian), and (b) "For those cases that *are prosecuted*, what sanctions are generally given?" (response options: warning, court or other costs, parenting class/other treatment, court appearance, victim restitution, criminal penalty such as citation or imprisonment, community service).

General juvenile crime and parental blaming. The questionnaire asked respondents to answer the following two general questions about juvenile crime and parental blaming: (a) "How much of a problem do you think juvenile crime is in

your community?" (0 = not a problem to 4 = a large problem), and (b) "Parents are to blame when their children commit crimes" (response options: 0 = strongly disagree to 4 = strongly agree).

Results

Because we only received paired responses from police chiefs and prosecuting attorneys from 15 of the sampled communities, we provide descriptive and exploratory results rather than statistical comparisons between the two professional groups. Any comparisons between police chiefs and prosecuting attorneys would not be meaningful because the majority of the sample represents a variety of communities with different laws. Instead, we provide community comparisons by focusing on, among other things, the large communities as compared with the small and medium communities.

Status of Laws

Overall, only 5.43 % ($n = 5$; two prosecuting attorneys and three police chiefs) of the respondents indicated that the law(s) we listed was no longer current and that there were no other parental involvement laws in their communities. We conducted further research in those communities and determined that the laws we listed were still current, which indicated the respondents were likely unaware of the laws' presence. Therefore, these respondents remained in the sample and are included in the results below. Additionally, the respondents indicated whether there were other parental involvement laws that we had not included. Although a few respondents provided citations or copies of such laws, none represented true parental involvement laws but were other forms of parental responsibility laws such as contributing to the delinquency of a minor or civil liability laws. As noted above, those laws are different from the more open-ended parental involvement laws that were the focus for the current research.

Enforcement and Effectiveness

Approximately 49 % of respondents reported there had been no incidents within the past 30 days that had resulted in a charge or citation. Only 21 % of respondents indicated the laws are always enforced in their communities. Importantly, on a scale from 0 to 4 with 0 being "not at all effective," the average response was 1.41 (SD = 0.92). When explaining the laws' low effectiveness ratings, the respondents most frequently cited the inconsistent enforcement of the laws ($n = 13$) and the difficulties in getting the parents involved ($n = 14$).

For approximately half of the respondents, this effectiveness rating was likely based only on anecdotal information because 48 % of respondents indicated their city did not maintain statistics (36 % believed their city did, and 16 % did not know) on the outcomes of juveniles and their parents who had been involved in a parental involvement case. Of those who said their city did keep statistics ($n = 29$), these respondents indicated that the clerk of the court or another court office was tasked with keeping those records, with the rest ($n = 15$) providing the name of another office (e.g., records office, police).

Responses from the open-ended question about the difficulties with enforcing parental involvement ordinances were coded into general categories of popular answers. Approximately one-quarter of the respondents gave a response that focused on the parents (e.g., parents who do not adequately control their children are also irresponsible with completing sanctions). The rest of the responses varied from procedural issues to lack of resources. Statistical comparisons were not viable because of the small sample from various communities; however, it is interesting to note some of the differences between the prosecuting attorneys and police chiefs on issues related to enforcement. Twelve percent of prosecuting attorneys and 16.42 % of police chiefs cited issues with police enforcement as the reason for difficulties in implementing parental involvement laws, for example, "officers too busy working other calls" and "overwhelmed with caseloads, budgets, etc." Conversely, no prosecuting attorneys cited problems with the

judicial system, while 11.94 % of police chiefs did. For example, some police chiefs responded that "court[s] rarely sanctions parents" and "ordinances [are] generally unenforceable under Supreme Court opinions." For this last response, it is unclear what Supreme Court opinion the police chief was referencing, whether there even was such a relevant opinion or whether there was simply a fear that the ordinance was not enforceable.

The remaining open-ended questions concerned respondents' beliefs about the purpose of the laws and potential ways to make them more effective. Nearly 40 % did not provide a response for the question about the purpose of the laws, and many more gave answers that only explained the law itself rather than its intended purpose. The respondents' solutions to making the laws more effective most often underscored changing the focus from punishment to teaching and helping the parents.

Outcomes

Overwhelmingly, mothers were the most common caretaker said to receive a citation; 48 % of respondents reported that mothers were given a citation alone, while 22 % of citations were to both the mother and father. Less than 3 % indicated that the father was the parent who received the sanction. We do not know from the current data whether the larger percentage of mothers receiving citations was due to a higher proportion of single-parent status mothers or whether it reflects law enforcement only citing one parent rather than both. A few respondents (3 %) indicated that the current guardian is the most commonly cited caretaker, and one respondent (1 %) indicated that grandparents are the most common to caretaker to receive a citation. Approximately one-fifth (22 %) of respondents indicated they did not know who most commonly receives the citation. Respondents were also asked to indicate all of the possible sanctions that could be given. The most common sanction was paying court or other costs (52 %), with a warning being the next most likely outcome (41 %). Respondents also identified the following additional sanctions: requiring a court appearance (34 %), parent class/other treatment (27 %), victim restitution (14 %), and criminal penalty (7 %) (respondents could provide more than one answer, so percentages total more than 100 %.)

General Juvenile Crime and Parental Blaming

On a scale from 0 (not a problem) to 4 (a large problem), the respondents rated juvenile delinquency in their community a mid-level problem ($M = 2.73$, $SD = 0.93$). When asked to indicate their agreement on a scale from 0 (completely disagree) to 4 (completely agree) with the statement, "Parents are to blame when children commit crimes," police officers and prosecuting attorneys responded on average with a 2.15 ($SD = 0.93$).

Influence of Community Characteristics

Beyond the basic descriptive information, we were also interested in exploring whether the city size and other characteristics could influence the status, enforcement, or outcomes of the laws. Because our overall sample was small, we combined the respondents from the small- and medium-sized communities into one category.

On average, respondents from the large communities saw juvenile crime as more of a problem ($M = 3.03$, $SD = 0.85$) than did respondents from the small–medium communities ($M = 2.50$, $SD = 0.92$, $t(84) = -2.72$, $p < 0.01$, $r = 0.28$). Respondents from the large communities ($M = 21.85$, $SD = 58.00$) also reported on average more incidents than did the small–medium communities ($M = 2.63$, $SD = 4.39$) that resulted in a charge or citation under the parental involvement ordinance, $t(74) = -2.17$, $p = 0.03$, $r = 0.25$; however, respondents from three large communities reported a fairly high number of incidents (83, 150, and 300). No other statistically significant differences emerged between the respondents from small–medium versus large communities.

Although there were no statistical differences between the small–medium and large communities on the respondents' reports of how often the parental involvement ordinances were enforced, those officials who worked in a municipality that kept enforcement statistics of parental involvement laws reported a greater enforcement frequency ($M = 2.63$, $SD = 1.31$) than did those officials from municipalities that did not maintain statistics ($M = 1.85$, $SD = 1.28$; $t(79) = -2.68$, $p < 0.01$, $r = 0.29$). Furthermore, those officials who reported that their municipalities did keep records of enforcement perceived these laws as more effective ($M = 1.68$, $SD = 0.88$) than did those officials who worked in municipalities that did not keep such records ($M = 1.15$, $SD = 0.93$; $t(74) = -2.50$, $p = 0.015$, $r = 0.28$), although both groups reported relatively low effectiveness ratings.

Discussion

The goal of the current research was to examine opinions from law enforcement officers and prosecutors concerning parents' roles in juvenile crime. Using a mailed questionnaire, we surveyed a law enforcement officer and a prosecuting attorney from a large, medium, and small municipality within each of the 50 states. Each questionnaire included a copy of the ordinance(s) for the specific city or town to personalize the survey. We inquired about implementation difficulties of enforcing the laws, prevalence of citations, prevalence of prosecutions, and respondents' personal sentiments regarding parental involvement.

In general, police chiefs and prosecuting attorneys viewed these laws as not terribly effective, but they tended to place blame on the parents for juvenile delinquency generally and for the difficulties the police and attorneys experience in enforcing parental involvement laws. Although tautological, respondents commonly cited the difficulty of getting parents involved as an explanation for the lack of effectiveness of parental involvement laws. Arguably, this assessment shifts the onus of involvement and the law's effectiveness from the criminal justice system onto the parents themselves. In other words, the respondents seemed to blame the parents for the ineffectiveness of the parental involvement laws rather than assessing the actual laws as the problem. Other scholars have noted that these laws may unfairly disadvantage single mothers (Laskin, 2000), and our data suggest an overrepresentation of mothers receiving citations as compared with fathers. Such a focus on one parent—the one parent who likely lives with and cares for the child—may be neglecting the very root (an absent father) of some juveniles' issues. Arguably, one of the major flaws of these laws is that they do not account for an unavailable parent (Laskin, 2000).

Law enforcement officers and prosecuting attorneys who lived in municipalities that reported their communities kept records of the enforcement of parental involvement laws viewed these laws as being enforced more often and as being more effective than did respondents from municipalities that did not keep records. This could indicate that those officials who do not have access to statistics may underestimate the enforcement of the laws. Alternatively, this could suggest that there is greater enforcement and accountability when the communities are maintaining statistics. In-depth research working with communities would be needed to make such a determination.

Even though the current research suffered from low response rates, police chiefs' and prosecuting attorneys' sentiments concerning parental involvement laws are important to consider because these individuals have discretion in choosing whom to arrest, charge, and prosecute. Although police chiefs, especially in larger cities, may have some distance from directly making arrests and working with parents, compared to a street officer, police chiefs are likely to have a greater depth of experience and perspective on the enforcement of these laws. Previous research has primarily focused on the public's or juvenile offenders' sentiments concerning these laws. As such, the sentiments of the individuals who choose when to enforce the laws have been largely understudied. Similar to

research findings from surveys carried out with the public, the present findings indicate police chiefs and prosecuting attorneys generally view parental involvement laws as not very effective and not frequently enforced. However, those officials who believed that their municipalities keep records of the enforcement of parental involvement laws reported a greater level of enforcement and a perception that these laws are more effective than did those respondents from communities without record keeping. Such a difference in sentiment seemingly because of a community's record keeping could have implications for the ways in which the laws are enforced and the public sentiment regarding that enforcement. For instance, communities that keep records of enforcement of parental responsibility laws may have greater public support for those laws because they have concrete evidence of how those laws are used.

Police chiefs and prosecuting attorneys tended to blame the parents of juvenile delinquents, and over a quarter of both groups identified the parents of juvenile offenders as a difficulty in implementing parental involvement laws. Additionally, a small number of prosecuting attorneys and law enforcement officials tended to blame the other group for difficulties in enforcement. By inquiring further into these individuals' perceptions, we could better understand the effectiveness of parental involvement laws, and this could potentially lead to decisions about whether these laws are appropriate and should be enforced.

A sample of police chiefs and prosecuting attorneys provides a unique perspective, but the current study has a number of limitations. The sample was not representative of all police chiefs and prosecuting attorneys because the initial sample selected was not a random sampling of the entire population. And with the small response rate, we face further response bias issues. One reason for the lack of representativeness in obtaining samples of professionals such as these is the lack of a complete sampling frame; however, related resources are expanding and becoming more prevalent. For instance, avvo.com provides a searchable database of attorneys by state, city, and area of practice because it is intended as a resource for people seeking legal representation; however, prosecuting attorneys are not readily identifiable. Martindale.com provides an analogous searchable database, but anything beyond basic information is dependent on self-inclusion. In addition, a number of these databases are more developed than they were only a few years ago when the current project began. As these resources continue to expand, it may become more viable to systematically sample from these populations. In addition, because we have no in-depth information about those who did not respond, we cannot make meaningful comparisons between those who responded and those who did not.

In the current study, we relied only on mail surveys, but perhaps triangulating our methods would have been more fruitful and produced a higher response rate. Although the mail surveys allowed us to individualize the questionnaires, there could have been ways to similarly individualize through an online questionnaire or a telephone interview. With such extra efforts, our sample could have been more representative, and it may have been possible to examine pairs of prosecuting attorneys and police from the same communities.

With changes in technology, mailed surveys may become a thing of the past. Whereas using Internet-based samples for certain segments of the population may not be fully representative yet, we would expect this to be a viable data collection tool for attorneys because the legal field relies heavily on computer use. Similarly, it is seems likely that the police chiefs would also have ready access to computers. It is hard to know, however, whether these legal professionals would be more or less likely to respond to a mailed versus Internet-based questionnaire. We are unaware of any research that compares these modes of data collection for this specialized sample. Another simple solution to increase responses would be to offer incentives to participate by monetarily compensating the respondents for completing the questionnaires.

Conclusion

General public opinion is usually the central and, often, only focus in considering community sentiment. That approach is often appropriate; however, there are times when it is important to expand beyond the public. In the case of parental involvement laws, examining legal actors' opinions is integral to more fully understanding community sentiment. By focusing on legal actors, we are able to address a problem that plagues all public opinion research on legal issues—the public is not trained on matters of the law. By focusing our attention on police chiefs and prosecuting attorneys, we were able to examine a legally trained subset of the community. Because these legal professionals are directly involved in the enforcement of these laws, these professionals provide a unique and important perspective. This perspective is important because their opinions about these laws likely directly affect whether parental involvement laws are used in the way the lawmakers intended.

Future research should take advantage of technology for both the sample selection and the solicitation of responses. Although mail surveys are useful, specialized samples may require additional modes of communication such as e-mail and telephone. Although our response rates were somewhat weak, the information gleaned provides a new and valuable perspective on community sentiment concerning parental involvement laws.

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Part III

Changing Community Sentiment

8 Understanding Changes in Community Sentiment About Drug Use During Pregnancy Using a Repeated Measures Design

Monica K. Miller and Alane Thomas

Introduction

In July 2014, Mallory Loyola became the first woman to be arrested under Tennessee's newly adopted law that considers it assault to use illegal drugs during pregnancy (Feeney, 2014). Such arrests are not a new phenomenon, nor are they without nationwide controversy. In August, 2012, Utah resident Shea Sheeran's newborn tested positive for cocaine and opiates; she was arrested for child abuse (Metcalf, 2012). Six months later, the New Jersey Supreme Court determined that drug use during pregnancy is not enough to determine that a child has been abused or neglected (New Jersey Division of Youth & Family Services v. A.L., 2013). These seemingly different outcomes highlight the debate over drug use during pregnancy. In response to such cases, most states have enacted one of three legal actions: treating prenatal drug use as a public health problem, addressing the problem as a child protection issue, or dealing with the situation as a criminal issue (Johnstone & Miller, 2008). Critics have argued that some government policies that regulate the actions of pregnant women (e.g., drug testing them or their babies) threaten personal autonomy (Johnstone & Miller, 2008) and violate the Fourth Amendment, which prohibits "unreasonable searches and seizures." Thus, states struggle to adopt solutions that protect the fetus without infringing on a pregnant woman's rights.

An analysis of over 400 such cases revealed that there has been a variety of ways that laws have been used to deprive women of liberties—many by using laws that were not intended to address drug use during pregnancy (Paltrow & Flavin, 2013). These include laws concerning homicide, drug delivery, child endangerment, and feticide. That analysis also revealed that African-American women were more likely to be prosecuted for felonies than Whites; this raises equality issues. Further, there are public health concerns; for instance, there is concern that women will choose to abort rather than risk legal consequences. These actions are generally taken in the name of protecting the unborn fetus, often relying on reasoning used in laws allowing criminal prosecution of crimes against a fetus (Paltrow & Flavin, 2013). For further analysis of such legal actions, see Chap. 15 of this volume as well as a host of law reviews (e.g., Cantor, 2012; Cherry, 2007; Fentiman, 2006, 2009).

Because of the controversies surrounding prosecutions of drug using pregnant women, individuals in the community likely vary in their support for such legal actions. Additionally, an individual can have a complex set of attitudes about drug use during pregnancy. For instance,

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an individual might believe that using an *illegal* drug during pregnancy should be punished, but using a *legal* drug should not be punished (or at least not punished as harshly). The complexity of sentiment makes it difficult to craft laws the public will support. It also highlights the importance of finding appropriate methodology to measure complex sentiment.

The primary purpose of this study was to measure community sentiment toward legal actions that address drug use during pregnancy. Specifically, it determined whether participants' emotional reactions and support for sentences (e.g., prison) are affected by drug type, severity of the baby's injury, and whether the woman quit using drugs during pregnancy. It also examined whether participants believed a doctor should report a woman who had a healthy baby but had used illegal drug use, whether *all* pregnant women should be drug tested, and whether *only* pregnant women suspected of drug use should be tested. Thus, the study was a measure of community sentiment[1]—and how it can vary based on context-specific factors (i.e., the context of the case scenario, including the type of drug, severity of injury, and whether the mother quits using drugs during pregnancy).

The second purpose of this chapter was to demonstrate how community sentiment can be captured using a repeated measures design. Community sentiment toward legal actions and crime can be measured in many ways, for example, by examining jury verdicts, public opinion polls, and—as in the current study—using a repeated measures design. One benefit of repeated measures designs is the ability to test whether sentiment changes based on context. For instance, support for prosecutions of women who use methamphetamine during pregnancy might be stronger than support for prosecutions of those who use cigarettes. The current work provided an example of how a study can measure changes or differences in sentiment based on context (here defined as the type of drug, mother's drug use behavior, and child's outcomes).

Results of this study revealed the general level of support for legal actions against pregnant drug users and which factors (e.g., drug type) affect this support. This was the first step toward designing laws that the community supports. When lawmakers adopt laws that are consistent with community sentiment, the community is more likely to abide by those laws—and laws in general (Tyler, 2006).

Legislative Responses to Drug Use During Pregnancy

In the 1980s and 1990s, the media often focused on the war on drugs, which included drug use during pregnancy (Paltrow, Cohen, & Carey, 2000). As drug use during pregnancy increased (or at least was made more public), states began enacting legislation that punished offenders by imprisoning them and taking away their children (Miller, 2006). As of 2012, 15 states considered drug abuse during pregnancy to be child abuse in their civil child welfare laws (Guttmacher Institute, 2012). The Wisconsin legislature revised its Children's Code to give courts the right to take protective measures for unborn children whose mothers use controlled substances (§ 34-20A-81; Coleman & Miller, 2007). In 2005, Colorado, Nevada, Louisiana, and Arizona added the act of providing drugs to a minor through the umbilical cord to their definition of child abuse (Center for Reproductive Rights, 2005; Coleman & Miller, 2007). In South Carolina, the "homicide by child abuse" law was developed in response to prenatal drug abuse; demonstrating an extreme disregard for human life and resulting in the death of a child under 11 years can result in a homicide prosecution (Coleman & Miller, 2007; S.C. Code Ann. § 16-3-85 (2003)). These legal responses are punitive measures meant to deter women from using drugs while pregnant.

Such actions send the message that drug use during pregnancy will not be tolerated, but critics suggest they instead deter women from obtaining

[1] "Community sentiment" in this chapter will refer to a sample represented by a student sample. See Chaps. 3, 4, 6, and 11, this volume, for more about student samples and Chap. 1 for more about different types of samples in community sentiment research.

prenatal care or drug treatment for fear of legal consequences (Coleman & Miller, 2007; Dailard & Nash, 2000; Paltrow & Flavin, 2013). Because of this risk, some states take a treatment-oriented approach, rather than a punitive approach. Nineteen states have created or funded drug treatment programs for pregnant women and seven states have provided pregnant women priority access to state-funded drug treatment programs (Dailard & Nash, 2000; Johnstone & Miller, 2008). South Dakota adopted a statute, § 16-3-85 (2003), that allows for a woman's "spouse, guardian, relative, physician, administrator of a treatment facility, or any other responsible person" to petition the court to have the woman committed so she can receive treatment (see, e.g., Coleman & Miller, 2007; § 16-3-85 (2003)). Minnesota's statute, the Minnesota Emergency Admission Statute, states that any person who is chemically dependent can be admitted or held for emergency care or treatment in a treatment facility. This includes pregnant women who use drugs (§ 253B.05 (2008); Coleman & Miller, 2007). These programs are designed to provide rehabilitation for the pregnant drug user, protect the fetus, and keep the family intact once the child is born.

Finally, some legal actions require the participation of medical professionals. Healthcare professionals in Iowa, Minnesota, and Virginia are required to test some or all pregnant women and newborns for drug exposure (Dailard & Nash, 2000). While most states do not require testing, medical professionals might suspect the newborn has been exposed to drugs. As of 2012, 19 states and the District of Columbia have procedures in place for medical workers to report expected prenatal drug exposure to police (Child Welfare Information Gateway, 2012; see also, Coleman & Miller, 2007; Dailard & Nash, 2000). This typically involves notifying Child Protective Services (CPS), who then will investigate whether the child fits the description of an abused or neglected child. Twelve states and the District of Columbia include exposure to drug use during pregnancy in their definition of child abuse and neglect (Child Welfare Information Gateway, 2012), while CPS agencies in other states might be able to investigate abuse under more general definitions of abuse and neglect. In addition to this range of *legislative* responses, the *courts* have responded to drug use during pregnancy, as discussed next.

Judicial Responses to Drug Use During Pregnancy

In May, 2008, Tonya Hairston of Columbus, Mississippi, was charged with culpable negligent manslaughter after toxic amounts of cocaine were found in her stillborn baby's bloodstream; she was sentenced to 12 years in prison (Wagner, 2008). In 2010, Penelope Fortescue of Suwannee County Florida was charged with child abuse because she used oxycodone during her pregnancy and her child was allegedly born with drugs in its system (Bennett, 2010). These are but two of the many court cases concerning drug use during pregnancy. Not all convictions have held up on appeal, however. In May of 2007, the Supreme Court of New Mexico rejected the state's attempts to expand child abuse laws to apply to pregnant women who harm their fetuses by using drugs (Szczepanski, 2007). More recently, the Kentucky Supreme Court determined that women cannot be charged for using drugs during pregnancy (*Cochran v. Commonwealth*, 2010).

These cases demonstrate the controversial nature of legal responses to drug use during pregnancy. Prosecutors in these cases took a punitive approach, and the convictions were challenged—sometimes successfully. This could indicate that some of the state laws discussed above are not faring well from a legal perspective. This could be due, in part, to arguments raised by critics and the lawyers in these cases (e.g., that the laws violate women's Constitutional rights to be free from forced medical treatment or discourage prenatal medical treatment; Paltrow & Flavin, 2013). Even so, the above review of legislative responses and case law revealed that there is much support for laws addressing drug use during pregnancy (as gauged by the large number of states that have such laws). Because of the controversy surrounding these laws, it is important to understand community sentiment surrounding this issue, as discussed next.

Community Sentiment About Drug Use During Pregnancy

In general, it is important to understand community sentiment because sentiment often influences whether laws are enacted (Zgoba, 2004). Gaining an understanding of the factors that community members think are important (e.g., drug type) can provide lawmakers with a measure of community sentiment which they can use when they craft laws. This is important because, when laws are incongruent with community sentiment, people might have lowered perceptions of government legitimacy; this can make them less likely to comply with the law (Tyler, 2006). See Chaps. 1, 12, 13, and 14 for further discussion of the relationships between justice principles and community sentiment.

In this study, sentiment was measured in two ways: support for legal responses and emotional reactions. The presumption was that participants' sentiment would be reflected in their agreement that the pregnant woman should face certain legal responses (e.g., prison, drug education). Additionally, a person's emotional response could be considered a measure of sentiment. Rozin, Lowery, Imada, and Haidt (1999) suggest that contempt, anger, and disgust are elicited when a perpetrator has committed a crime; these three emotions trigger "moral outrage" and influence how observers react to the perpetrator. This study investigated the emotions invoked by reading about pregnant drug users, in addition to support for legal responses.

This study used a sample of college students to measure community sentiment. Researchers begun to study students' attitudes more frequently in recent years (e.g., Benekos, Merlo, Cook, & Bagley, 2002; Carlan & Byxbe, 2000; Hensley, Miller, Tewksbury, & Koscheski, 2003; Mackey & Courtright, 2000; Chap. 4 this volume), but this is the first study to investigate attitudes toward drug use during pregnancy. Chapter 6 of this volume discusses the benefits and drawbacks of using a student sample to study community sentiment. This chapter focuses on a different aspect of methodology: using a repeated measures design to measure changes in sentiment of a community sample.

Overview of Study, Research Questions, and Hypotheses

A survey was developed to gauge community sentiment regarding 18 instances of drug use during pregnancy. The study determined whether participants' emotions and support for various sentences vary according to (1) drug type (e.g., cocaine, methamphetamine, alcohol, marijuana), (2) severity of the baby's injury (no vs. low vs. high), and (3) whether the woman quit using drugs during pregnancy. Additionally, it investigated whether participants believed doctors should test pregnant women suspected of drug use and/or all pregnant women and whether a doctor should report a woman if she used illegal drugs while pregnant, even if her baby was born healthy. This was an exploratory study, as community sentiment toward drug use during pregnancy is largely unstudied. Even so, some general (and tentative) predictions were made for each of these research questions.

Effects of Drug Type on Support for Sentences and Emotional Reactions

It was expected that participants would be least supportive of sentences (e.g., prison) and would have the weakest emotional reactions toward cigarette users compared to all other drug users. Participants would be most supportive of sentences and have stronger emotions toward alcohol users than cigarette users because the dangers of alcohol use during pregnancy have been more prevalent in the media. Given that marijuana was illegal in the state where data collection occurred, it was expected to elicit more emotional reactions and sentencing support than cigarettes and alcohol, but less than both cocaine and methamphetamine. Due to the widely known harmful effects

of cocaine and methamphetamine, the fact that they are illegal, and the prominent media placement of stories regarding these drugs, these drugs were expected to elicit the most support for sentences and emotional responses.

Effects of Injury Severity on Support for Sentences and Emotional Reactions

Women who had healthy babies (no injury) were expected to elicit less support for sentences and less extreme emotions as compared to both women who have low birth weight babies (low injury) and women who had stillborn babies (high injury), who were expected to elicit the most support for sentences and the most negative emotional responses. Past research (e.g., Miller, Adya, Chamberlain, & Jehle, 2010) has indicated that as injury severity increases, so do emotions and responses to crime (e.g., reporting the crime to police).

Effects of Quitting Drug Use on Support for Sentences and Emotional Reactions

Participants were expected to be less supportive of sentences and have weaker emotional responses toward women who quit using drugs than toward those who did not. This should occur because quitting demonstrates the woman might have been trying to mitigate damage to the child, and thus she deserves less punishment.

Doctor Reporting Requirements

Participants indicated whether they believed doctors should report women they know used illegal drugs during pregnancy, even if the baby is born healthy; if doctors should be required to test *all* women for drug use; and if doctors should be required to test only women they *suspected* of drug use. Because of lack of previous research, no predictions were made.

Methods

As Chap. 3 in this volume details, community sentiment can be measured in various ways, including by examining jury verdicts, public opinion polls, voting outcomes, surveys, and—as in the current study—using a repeated measures design. The main benefit of repeated measures designs is the ability to test whether an individual's sentiment changes based on context of the situation in the scenario (i.e., drug type, severity type, mother's behavior). For instance, community support for prosecutions of women who use *methamphetamine* during pregnancy might be stronger than support for prosecutions of women who use *cigarettes* during pregnancy. The context (e.g., type of drug) is an important aspect of community sentiment in regard to drug use during pregnancy. When researchers take into account how sentiment changes based on context, they reveal a richer, more accurate measure of community sentiment (see also Chaps. 1, 9, 10, and 11 of this volume for more about changing community sentiment).

Finkel (1995) and Chap. 3 in this volume both discuss how community sentiment can be complex and sometimes seemingly contradictory. For instance, one poll found these three results: 95 % of people favored reforming the law regulating the insanity defense, yet 77 % believed the defense is justified and 64 % said it was necessary (Finkel, 1995). These seemingly contrasting findings indicate that sentiment is complex—while respondents largely thought the defense was necessary and justified, they also believed the law regarding the defense was faulty and in need of reform. Alternately, respondents might have believed that, while the defense was necessary for some defendants, the law allowed too many defendants to use it. The complex nature of beliefs about topics such as the insanity defense requires more than simply asking one question; considering responses to all three of these questions better reveals the complexity and subtleties of sentiment. Failing to ask other relevant and related questions leads to a spurious and incomplete picture of community sentiment because

single or overly general questions fail to take context into account.

Thus, asking multiple related questions can produce a fuller, more accurate measure of community sentiment. As applied to the current topic, asking "do you support punishment of women who use drugs during pregnancy?" might garner different responses than "do you support punishment of women who use *cigarettes* during pregnancy?" which will get different responses than "do you support punishment of women who use methamphetamine, but *quit using drugs* during pregnancy?" The first question is quite vague and overly general; it simply asks for support for punishing pregnant drug users. If that was the only question asked, results would be spurious and shallow. Finkel (1995) and Chap. 3 in this volume discuss various problems with such general, overly simple questions.

First, respondents might have trouble answering questions that are too general and broad. Respondents might want to answer "I am strongly supportive if….but opposed if…" However, a question might only allow the respondent to answer with a number from 1 (strongly oppose) to 5 (strongly support). Chapters 10 and 13 of this volume are examples of how to use interview techniques that allow participants to respond to open-ended questions, which gives them more freedom to respond in greater detail. However, such a method is difficult to quantify and to compare different contexts; if that is the goal, the repeated measures design used in this study is a better choice of methodology.

Second, participants often respond differently to global questions rather than specific questions. Chapter 7, this volume, describes studies in which participants were supportive of holding parents responsible for their children's crimes, but only when asked about parents in general. When asked about a specific parent, participants were less supportive. This indicates that the process of attitude formation and expression is different depending on the stimuli presented.

Third, overly general questions evoke exemplars in the respondent's mind. The particular exemplar that is evoked will influence responses. For instance, if a respondent imagines an exemplar of her sister who smokes cigarettes but cuts back during pregnancy, the respondent will likely be less supportive of punishment than if the exemplar brought up is a woman who was on the news because she is a methamphetamine user who makes no attempt to cut back on drug use during pregnancy. This example illustrates that overly general questions will garner responses based on whatever comes to mind first—which might or might not be what the researcher had in mind. People often choose extreme and atypical exemplars, concerning both topics that arouse emotions and outrage (e.g., death penalty) and those that are more mundane (e.g., burglary; Finkel, 1995). This is largely due to biases in respondents' cognitions (e.g., availability bias and simulation heuristic). For instance, an atypical, sensational case in the media is easily retrieved from memory and is thus used as the basis for respondents' answers—rather than the more typical and less sensational case (which gets no media attention).

To control for what images the respondent is thinking of when responding, it is helpful to give respondents specific scenarios which vary relevant contexts. Then, the researcher can measure differences among responses to the various scenarios to get a fuller, more accurate measure of community sentiment. The current study does this by using a repeated measures design: each participant read 18 scenarios about pregnant drug users. The scenarios varied the context of the drug use (i.e., the drug type, severity of the baby's injury, and whether the mother quit drugs during pregnancy). Analyzing differences in responses to the 18 scenarios revealed more subtleties of sentiment about this issue as compared to a single survey question.

Participants

A total of 124 college student participants (67 % females)[2] at a midsized university completed an

[2] There were very few gender differences in emotions or support for sentences; thus, no gender differences are reported and all analyses include both men and women.

online survey for course credit. Respondents included 30 criminal justice students, 34 public health students, and 59 students who had other majors.[3] The mean age was 18.2 (Mdn = 19) and 80 % were White and 13 % were Hispanic.

Measures and Procedures

Participants read 18 scenarios. Each described a pregnant woman who used one of five drugs (marijuana, cocaine, cigarettes, alcohol, or methamphetamine) and described one of three levels of injury to the baby (healthy, low birth weight, stillborn). In addition to these 15 scenarios, three additional scenarios (which varied injury severity) also stated that she quit methamphetamine use when she was 5 months pregnant.[4] Scenarios were approximately 20–50 words long and used a similar format to these examples:

Pregnant woman A is addicted to alcohol. She continues its use throughout her pregnancy. The baby is born healthy ("alcohol, no injury" condition).

Pregnant woman E is addicted to methamphetamine. She uses through the first 5 months of her pregnancy, then quits the drug. The baby is stillborn, which the doctor attributes to the earlier methamphetamine usage ("quits methamphetamine, high severity" condition).

Participants read the scenarios and, for each scenario, indicated how much they felt disgust, anger, and contempt, using a five-point scale from "none or very little" to "a great deal." Participants then indicated their level of agreement that the woman should receive each of the following punishments or treatments (the "support" measures): rehabilitation (committed to a rehabilitation hospital), prison time, drug education (programs like Alcoholics Anonymous), place child in foster care, or no punishment. Each of these items was rated on a five-point scale from "strongly disagree" to "strongly agree." The survey ended with three "yes" or "no" questions which asked if participants believed that doctors should (1) report a woman who used drugs, even if her baby was born healthy, (2) be required to test *all* pregnant women for drug use, and (3) be required to test only those pregnant women suspected of drug use.

Results

In general, support for legal actions against drug using pregnant women was quite strong. As displayed in Table 8.1, means for nearly all variables averaged over the scale's midpoint of 3 (especially in the low and high injury conditions). Some means were over 4—indicating very strong and uniform support for these legal actions. Similarly, the means for "no punishment" were consistently very low, indicating that most participants thought the woman should receive some sort of punishment. Emotional responses were also quite strong, often averaging above the scale's midpoint.

Effects of Injury Severity and Drug Type

A series of eight two-way repeated measures ANOVAs were conducted, one for each of the eight dependent variables. Injury severity and drug type were the independent variables.

Disgust. The main effect for drug type was significant, $F\,(4,107) = 21.91$, $p < .001$, $\eta_p^2 = .17$. The means, from highest to lowest, were methamphetamine, alcohol, cocaine, cigarettes, and marijuana. The means for cocaine and alcohol did not differ, nor did marijuana and cigarettes; others differed significantly. The main effect for injury was significant, $F\,(2,109) = 43.72$, $p < .001$, $\eta_p^2 = .28$, with means increasing as injury severity

[3] One participant did not indicate major. There were very few differences in emotions or support for sentences among the various college majors; thus, no differences are reported and all analyses contain students from all majors.

[4] For the "quitting drugs" analyses, only three scenarios were used: (1) methamphetamine/no injury, (2) methamphetamine/low injury, and (3) methamphetamine/high injury. While this does limit generalizability to other drugs, we chose this to reduce the number of scenarios presented to participants.

Table 8.1 Effects of drug type on emotions and support for sentences (presented by injury severity level and drug type)

	Drug type				
	Marijuana	Cigarettes	Alcohol	Cocaine	Methamphetamine
Disgust					
No	3.42	3.56	3.93	3.93	4.24
Low	3.63	3.91	4.20	4.04	4.37
High	4.14	4.22	4.33	4.37	4.53
Anger					
No	2.99	3.36	3.77	3.72	4.08
Low	3.38	3.76	4.04	3.91	4.25
High	3.92	4.02	4.19	4.19	4.41
Contempt					
No	2.62	2.76	3.03	3.03	3.19
Low	2.75	2.99	3.13	3.15	3.32
High	3.14	3.17	3.20	3.27	3.43
Rehabilitation					
No	3.90	3.38	4.10	4.37	4.49
Low	3.97	3.53	4.19	4.42	4.42
High	4.16	3.67	4.25	4.50	4.56
Prison					
No	2.60	2.30	2.72	3.29	3.53
Low	2.81	2.43	3.04	3.53	3.68
High	3.48	3.03	3.50	3.84	4.04
Drug education					
No	4.17	3.64	4.27	4.41	4.50
Low	4.18	3.85	4.33	4.46	4.44
High	4.36	4.03	4.36	4.51	4.58
Foster care					
No	2.84	2.33	3.13	3.51	3.74
Low	3.14	2.45	3.22	3.76	3.84
High	n/a	n/a	n/a	n/a	n/a
No punishment					
No	2.04	2.43	2.21	1.74	1.90
Low	1.86	2.33	2.15	1.72	1.88
High	1.80	2.21	2.05	1.64	1.75

n/a = This value could not be measured since the baby in the scenario was stillborn and could therefore not be placed in foster care; no injury = baby was born healthy; low injury = baby had a low birth weight; high injury = baby was stillborn

increased. The no injury condition differed from the low injury condition marginally ($p = .05$) and from the high injury condition marginally ($p = .065$). Low and high injury conditions differed significantly ($p = .045$).

The interaction was significant, $F(8,103) = 6.70$, $p < .001$, $\eta_p^2 = .06$. The pattern of means indicated that in the no and low injury conditions, the drug type mattered—there was greater variability in means among drug types. However in the high injury condition, drug type mattered little—scores were consistently high across drug types. Looking at the interaction from the other direction, injury severity mattered the most in the marijuana condition (i.e., largest differences between no, low, and high) and the least in methamphetamine condition.

Anger. The main effect for drug type was significant, $F(4,105) = 20.52$, $p < .001$, $\eta_p^2 = .44$. The

means pattern was identical to that just described for the "disgust" variable. All groups differed significantly except cocaine and alcohol. The main effect for injury was significant, F (2,107) = 33.06, $p < .001$, $\eta_p^2 = .38$, with means increasing as severity increased. The no injury condition marginally differed from the low injury ($p = .051$) and high injury ($p = .067$) conditions. The means for the low and high injury conditions differed significantly ($p = .048$). The interaction was significant, F (8,101) = 5.92, $p < .001$, $\eta_p^2 = .32$. The pattern of means was identical to the "disgust" variable.

Contempt. The main effect for drug type was significant, F (4,100) = 6.79, $p < .001$, $\eta_p^2 = .21$. The means, from highest to lowest, were methamphetamine, cocaine, alcohol, cigarettes, and marijuana. The means for cocaine and alcohol conditions did not differ. Marijuana and cigarettes conditions only differed marginally ($p = .06$); all other conditions differed significantly. The main effect for injury was significant, F (2,102) = 15.04, $p < .001$, $\eta_p^2 = .23$, with increasing scores as severity increased. All three conditions' means differed from the others. The interaction was significant, F (8,96) = 2.09, $p = .044$, $\eta_p^2 = .15$. Patterns of means mirrored those for "anger" and "disgust" variables.

Rehabilitation. The main effect for drug type was significant, F (4,108) = 22.63, $p < .001$, $\eta_p^2 = .46$. The means, from highest to lowest, were methamphetamine, cocaine, alcohol, marijuana, and cigarettes. Marijuana and alcohol differed only marginally ($p = .07$). Cocaine and methamphetamine did not differ; other groups differed significantly. The main effect for injury was significant, F (2,110) = 14.60, $p < .001$, $\eta_p^2 = .21$, with means increasing as severity increased. No and low injury conditions only differed marginally ($p = .08$); other groups differed significantly. The interaction was not significant, F (8,104) = 1.56, $p = .148$, $\eta_p^2 = .11$.

Prison. The main effect for drug type was significant, F (4,105) = 34.50, $p < .001$, $\eta_p^2 = .57$. The pattern of means was identical to the pattern for "rehabilitation." Alcohol did not differ from marijuana, but all others differed significantly. The main effect for injury was significant, F (2,107) = 46.14, $p < .001$, $\eta_p^2 = .46$, with means increasing as severity increased. All conditions differed from all others. The interaction was significant F (8,101) = 3.08, $p = .004$, $\eta_p^2 = .20$, but there was no discernible pattern.

Drug education. The main effect for drug type was significant, F (4,108) = 17.27, $p < .001$, $\eta_p^2 = .39$. The pattern of means was identical to the pattern for "rehabilitation" and "prison." Marijuana and alcohol did not differ; cocaine and meth did not differ; all others differed. The main effect for injury was significant, F (2,110) = 14.25, $p < .001$, $\eta_p^2 = .21$, with means increasing as severity increased. All conditions significantly differed from all others. The interaction was significant, F (8,104) = 3.15, $p = .003$, $\eta_p^2 = .20$. The pattern of means indicated that injury severity only mattered in the cigarettes conditions.

Foster care. The "foster care" analysis only contained two injury severity levels, as foster care was inapplicable in the high severity condition because the baby was stillborn. The main effect for drug type was significant, F (4,112) = 45.10, $p < .001$, $\eta_p^2 = .62$. The pattern of means was identical to "rehabilitation," "prison," and "drug education" conditions. All drug conditions differed from all others. The main effect for injury was significant, F (1,115) = 21.68, $p < .001$, $\eta_p^2 = .16$, with the low injury condition having a higher mean than the no injury condition. The interaction was significant, F (4,112) = 2.45, $p = .050$, $\eta_p^2 = .08$. The pattern of means indicated that marijuana and cocaine had bigger differences between injury severity conditions than the other drugs.

No punishment. The main effect for drug type was significant, F (4,104) = 13.06, $p < .001$, $\eta_p^2 = .33$. The means, from lowest to highest, were cocaine, methamphetamine, marijuana, alcohol, and cigarettes. Marijuana and methamphetamine did not differ; all others differed. The main effect for injury was significant, F (2,106) = 6.57, $p < .001$, $\eta_p^2 = .11$, with means significantly decreasing as

severity increased. The interaction was not significant F (8,100) = .49, p = .86, η_p^2 = .04.

Effects of Quitting Drug Use

A series of eight two-way repeated measures ANOVAs were conducted, one for each of the dependent variables. Whether the woman quit using drugs and injury severity were independent variables. For all means, see Table 8.2.

Disgust. The main effect for quitting the drug was significant, F (1,115) = 61.68, p < .001, η_p^2 = .35, with lower means in the "quit drugs" condition than the "did not quit drugs" condition. The main effect for injury was significant, F (2,114) = 24.94, p < .001, η_p^2 = .30, with means increasing significantly as severity increased. The interaction was significant, F (2,114) = 7.51, p = .001, η_p^2 = .12. The pattern of means suggests that quitting matters most in the no injury and least in high injury condition.

Anger. The main effect for quitting the drug was significant, F (1,113) = 53.12, p < .001, η_p^2 = .32, with a lower mean in the quit condition. The main effect for injury was significant, F (2,112) = 25.00, p < .001, η_p^2 = .31, with means increasing significantly as severity increased.

The interaction was significant, F (2,440) = 3.31, p = .04, η_p^2 = .06. The pattern of means was identical to that of the "disgust" condition.

Contempt. The main effect for quitting the drug was significant, F (1,112) = 16.91, p < .001, η_p^2 = .13, with the quit condition having a lower mean. The main effect for injury was significant, F (2,111) = 8.95, p < .001, η_p^2 = .14, with means increasing as severity increases; however, no and low injury severity conditions only marginally differed (p = .065). The interaction was not significant, F (2,111) = .03, p = .97, η_p^2 = .001.

Rehabilitation. The main effect for quitting drugs was significant, F (1,115) = 20.60, p < .001, η_p^2 = .15, with the quit condition having a lower mean. The main effect for injury was significant, F (2,114) = 4.65, p = .011, η_p^2 = .08, with means increasing as injury severity increased, although no and low conditions did not differ. The interaction was significant, F (2,114) = 2.73, p = .069, η_p^2 = .05, but did not have a meaningful pattern.

Table 8.2 Effects of women quitting drugs on emotions and support for sentences (presented by injury severity and quitting drug use)

	Woman quitting drug use	
	Quit	Did not quit
Disgust		
No	3.58	4.25
Low	3.86	4.38
High	4.09	4.50
Anger		
No	3.44	4.08
Low	3.73	4.21
High	3.93	4.37
Contempt		
No	2.87	3.18
Low	3.01	3.29
High	3.12	3.44
Rehabilitation		
No	4.03	4.49
Low	4.18	4.42
High	4.21	4.56
Prison		
No	2.93	3.54
Low	3.25	3.64
High	3.52	4.02
Drug education		
No	4.26	4.48
Low	4.36	4.45
High	4.41	4.57
Foster care		
No	2.91	3.74
Low	3.19	3.83
High	n/a	n/a
No punishment		
No	2.16	1.90
Low	2.05	1.87
High	2.03	1.74

Note: only methamphetamine was used in these scenarios

n/a = This value could not be measured since the baby in the scenario was stillborn and could therefore not be placed in foster care; no injury = baby was born healthy; low injury = baby had a low birth weight; high injury = baby was stillborn

Prison. The main effect for quitting the drug was significant, F (1,114) = 48.53, $p < .001$, $\eta_p^2 = .30$, with the quit condition having a lower mean. The main effect for injury severity was significant, F (2,113) = 27.02, $p < .001$, $\eta_p^2 = .32$, with means increasing significantly as severity increased. The interaction was not significant, F (2,113) = 1.99, $p = .141$, $\eta_p^2 = .03$.

Drug education. The main effect for quitting the drug was significant, F (1,113) = 10.06, $p = .002$, $\eta_p^2 = .08$ with the quit condition having a lower mean. The main effect for injury severity was significant, F (2,112) = 5.80, $p = .004$, $\eta_p^2 = .09$, with means increasing as severity increases, although the no and low severity did not differ significantly. The interaction was significant F (2,112) = 3.71, $p = .028$, $\eta_p^2 = .06$, but had no discernible pattern.

Foster care. The "foster care" analysis only contained no and low injury severity, as the baby in the high severity condition was stillborn. The main effect for quitting was significant, F (1,115) = 95.07, $p < .001$, $\eta_p^2 = .45$, with the quit condition having a lower mean. The main effect for injury was significant, F (1,115) = 11.38, $p = .001$, $\eta_p^2 = .09$, with the no injury severity condition having a lower mean. The interaction was significant, F (1,115) = 3.96, $p = .049$, $\eta_p^2 = .03$. The means suggested that injury severity mattered more when the woman quit than if she did not quit.

No punishment. The main effect for quitting drugs was significant, F (1,113) = 16.45, $p < .001$, $\eta_p^2 = .13$, with a higher mean in the quit condition. The main effect for injury severity was significant, F (2,112) = 3.42, $p = .036$, $\eta_p^2 = .06$, with decreasing means as severity increased, although the no and low conditions did not differ. The interaction was not significant, F (2,112) = .54, $p = .586$, $\eta_p^2 = .01$.

Doctor Reporting Requirements

The final three questions concerned attitudes toward doctors' involvement in drug use during pregnancy cases. Overall, 85.5 % of participants thought doctors should tell police if a woman used illegal drugs, even if the baby was born healthy; 70.2 % supported drug testing for *all* pregnant women; and 77.4 % supported testing *only* for women suspected of drug use.

Discussion

This study investigated community sentiment by gauging whether emotional reactions and support for legal actions that address drug use during pregnancy were affected by: (1) drug type, (2) severity of the baby's injuries, and (3) the woman quitting drug use during pregnancy. The study also investigated whether participants thought doctors should drug test all pregnant women and/or only those suspected of drug use and whether they should report a woman who used illegal drugs, even if her baby was born healthy. The study measured community sentiment and has implications for what laws participants might be willing to support.

The first hypothesis was that illegal drugs (marijuana, cocaine, methamphetamine) would elicit greater emotional responses and more support for sentences than legal drugs (alcohol, cigarettes). Results only partially support this hypothesis. Overall, drug type does affect responses—especially in the no and low severity conditions. All three emotions had the same pattern of means; specifically, methamphetamines, alcohol, and cocaine evoked the most emotion and marijuana and cigarettes evoked the least. All four sentences (e.g., prison, rehabilitation, drug education, foster care) produced the same pattern of means: methamphetamine, cocaine, and alcohol had the highest means while cigarettes and marijuana had the lowest means. It is interesting that cocaine and alcohol evoked the same amount of emotion or only differed marginally. It is also interesting that marijuana and cigarettes evoked similar emotions and sentences. These findings suggest that participants might have a sense of what drugs are more dangerous than others—and this is reflected in their emotions and sentence recommendations. Perhaps this is because

warnings on alcohol containers and in establishments that serve alcohol (including restaurants) have produced greater awareness of the effects of alcohol, whereas the effects of marijuana might not be known and/or disseminated. Perhaps the effects of using alcohol and cocaine are more widely known and talked about (e.g., fetal alcohol syndrome and "crack babies" are common phrases) than effects of other drugs such as marijuana. Further, marijuana might be seen as harmless by many participants, given that the sample was taken from Nevada, where legalizing marijuana (and medical marijuana) was a hot topic at the time of data collection. The knowledge that some states allow (and many people support) the use of marijuana (especially for medical reasons) could have led participants to doubt the dangerousness of marijuana—and thus be less punitive toward a user. Future studies can further investigate this speculation.

Findings also suggest that—contrary to the hypothesis—the legality of the drug did not affect emotions or sentence recommendations very much. Alcohol (a legal drug) produced greater negative emotion and sentence recommendations than marijuana (an illegal drug in the state the study was conducted). In contrast, the question asking whether the woman should receive no punishment produced a different pattern of means than the sentence recommendations (e.g., prison). This pattern did reflect the legal status of the drugs. Specifically, the legal drugs had lower means than the illegal drugs. Perhaps responses are reflective of participants' desire to punish the woman for the drug use itself—separate from punishing her for the harm to the child. This is particularly interesting because participants were the least emotional when the woman used marijuana and most emotional when she used methamphetamine, but participants were just as hesitant to say the woman should receive 'no punishment' whether she used marijuana or methamphetamine. This suggests that emotions do not drive the desire for retribution, since the two drugs had different patterns of means for "no punishment" variable.

Overall, drug type did affect participants' responses, although not always in the way predicted. This general finding suggests that participants might be more supportive of legal actions that consider the type of drug than those that do not.

The second hypothesis was that the higher the injury level, the more negative the emotional responses and the more supportive participants would be of various sentences. This was supported in all eight analyses. This indicates that individuals might be more supportive of legal actions that take injury severity into account than those that do not. Mock jurors take injury severity into account when making civil liability decisions (Greene, Johns, & Bowman, 1999) and damage awards (Feigenson, Park, & Salovey, 1997), indicating that jurors want to punish wrongdoers more if the harm they caused was serious. The same phenomenon could be happening in the current studies, as participants supported punishment more in the high injury severity than the no and low injury severity conditions.

The third hypothesis was that if a woman quit using drugs while pregnant, it would elicit less negative emotions and less support for sentences as compared to a woman who did not quit. This was generally supported. Quitting did not often interact with injury severity, but when it did, quitting mattered less when the injury was severe. Results suggest that the woman's efforts to reduce the harm (i.e., by quitting drug use) are relevant to participants, and thus the community might be supportive of laws that take these efforts into account. Additionally, the community might support laws creating rehabilitative programs for pregnant drug users so that they will have resources to help them quit.

Finally, participants overwhelmingly believed that doctors should report a woman who had used drugs during pregnancy, even if the baby was born healthy. This could represent participants' desire to protect children's welfare more generally (e.g., not wanting a child to be raised by a drug user) or participants' belief in a doctor's responsibility to report crime in general (i.e., drug use). Participants also strongly supported requiring doctors to test *all* pregnant women for drugs, not just those *suspected* of drug use. This

sentiment is interesting because such testing could be considered a violation of Fourth Amendment rights. Findings indicate that there would likely be strong support for a law that requires doctors to drug test pregnant women and report violations to police. Yet these are exactly the type of measures that have been found unconstitutional in some states (*Ferguson v. Charleston*, 2001), illustrating that community sentiment is not always in line with the law. This is an issue addressed more in the conclusion (Chap. 19) of this volume.

Policy Implications

As mentioned earlier, community sentiment can influence whether laws are enacted (Zgoba, 2004). This study showed that participants' sentiment is largely supportive of legal actions toward pregnant drug users, including testing of pregnant women. While community sentiment might support drug testing, this is a difficult choice for legislatures, as it potentially violates women's Constitutional rights, as noted above. The study also reveals that participants are supportive of both punitive and rehabilitative legal responses. In states such as Kentucky, which have case law forbidding punishment of pregnant drug users (*Cochran v. Commonwealth*, 2010), laws are clearly in contrast to community sentiment as measured in this study (assuming of course that the sample in this study has similar sentiment as the community in Kentucky). Other chapters in this volume (e.g., Chaps. 1, 12, 13, 19) discuss the importance of having laws that align with community sentiment.

Even if the state forbids punishment of drug use during pregnancy, there still remains an option of providing treatment; community sentiment (as found in this study) is in favor of this option as well. As a result, policymakers might seek funding for more rehabilitation and drug education services for pregnant drug users. The means indicate a high agreement with rehabilitation and drug education services as well as prison and foster care for offenders. While this may seem contradictory, it could suggest that participants are aware that different legal responses could be more or less appropriate depending on the woman and the context of her circumstances. This also could signify that participants might support laws that used a more comprehensive approach to sentencing, rather than a punishment-only approach. Certainly, these findings illustrate the complexity of community sentiment.

In addition, policymakers might want to create different legal responses for women who use different drugs; for instance, pregnant marijuana users might receive different legal consequences than cocaine or methamphetamine users. Results indicate that community sentiment (as measured by this limited sample) would likely support this. Legal actors (e.g., prosecutors, judges) might also want to consider the severity of injury to the baby when determining what sentence the woman should receive, as sentiment is in favor of such considerations. Finally, the community would likely also support allowing the woman to use the fact that she quit using drugs during pregnancy as a mitigating factor to reduce her sentence.

Results demonstrated that generalized "blanket laws" might not effectively address community sentiment because they do not take contextual factors into account. This study shows that the context (e.g., type of drug, severity of injury, whether the woman quits) affects support for legal actions, and thus an overly general law that is insensitive to contextual factors could be met with community dissatisfaction. Thus, an implication of the findings here is that policymakers should avoid overly broad laws that treat all drugs and all situations (e.g., injury, woman quitting) the same.

In sum, this study revealed details of the sentiment regarding legal actions addressing drug use during pregnancy. Of course, community sentiment is not the only factor policymakers should consider. Other factors such as medical and social science research also should be considered when deciding on appropriate legal responses to drug use during pregnancy. For instance, there is concern that pregnant drug users will forego prenatal care if they fear being prosecuted. Some medical evidence suggests that lack of prenatal care can harm a developing fetus more than exposure to

drugs and that prenatal care can reduce the ill effects of prenatal exposure to drugs (for review, see Coleman & Miller, 2007). Studies such as those can inform lawmakers about the behavioral and medical consequences of laws.

Implications for Community Sentiment Research

In general, results suggest that the community is supportive of legal actions directed at pregnant drug users; even so, community sentiment varied as a result of the manipulated variables (e.g., type of drug). This has implications for the measurement of community sentiment. Specifically, results illustrate that asking different questions will result in different answers. As revealed in this chapter, asking "do you support prison sentences for women who use *marijuana* during pregnancy?" will get different responses from asking "do you support prison sentences for women who use *methamphetamine* during pregnancy?" Thus, researchers studying community sentiment should be cautious of content and wording of questions, as responses might not generalize to other contexts and might actually misrepresent community sentiment. Whenever possible, researchers should ask multiple, specific questions, as this study did. This helps provide respondents with context and avoids many of the cognitive biases discussed above and in Chaps. 1, 3, and 19 of this volume. This will help avoid spurious, shallow, and inaccurate measures of community sentiment. Repeated measures designs can be a good method to use to assess community sentiment about complex issues.

Limitations and Future Directions

A limitation of this study includes using a predominately (67 %) female, student sample from one state, which could affect external validity. Inasmuch as sentiment sometimes varies as a function of the demographics of the community member (e.g., age, education, gender, state of residence; but see Chap. 7, this volume, which does not find demographic differences but details how to measure individual differences in community sentiment), this study might not reflect the sentiment of the population in general. It should also be noted that some order effects could have occurred because all participants read the scenarios in the same order. The later responses could have been affected because the participants had read the previous scenarios. For instance, a participant might become more and more punitive with each consecutive scenario—a "residual/carry over" punitiveness effect of having read previous scenarios. Priming also could occur; a participant might think "I should be more punitive toward this methamphetamine user than I was toward the cigarette user in the last scenario." This would indicate that responses to each scenario are not independent. Research should expand on the current findings by including a broader nationwide sample and by using other methods, such as a between-groups experiment, a survey using random-digit-dialing, or a within-groups design with counterbalancing of scenarios. Nevertheless, the study has implications for community sentiment researchers and policymakers considering laws designed to protect the well-being of children before and at birth.

Conclusions

The purpose of this research was to see whether factors like drug type, injury level, and quitting drug use during pregnancy were related to participants' emotional responses and support for sentences. Results indicated that participants were highly supportive of both rehabilitation (e.g., treatment and drug education) and punishments (e.g., prison, putting the child in foster care). This indicates that, in addition to punitive responses, policymakers should consider rehabilitative and drug education services when creating laws to deal with drug use during pregnancy. Participants also supported drug testing, not only for those suspected of drug use but for *all* pregnant women.

Generally, the manipulated factors (i.e., drug type, injury severity, quitting drug use) influenced participants' emotions and support for sentences.

Results indicate what laws the community might support. As discussed previously, when laws are out of line with community sentiment, people might be less likely to abide by those laws (Tyler, 2006). Policymakers can listen to community sentiment and strive to pass laws the community agrees with; in most instances,[5] this gives people confidence in the legal system, encourages individuals to obey the laws, and ensures that the legal system continues to promote order.

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[5] See Chaps. 1 and 19 of this volume for reasons why policymakers might not want to follow community sentiment.

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Sentiment Toward Same-Sex Divorce

9

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While scholarly and media attention in recent years has focused on the battle for marriage equality in the United States, the legal recognition of same-sex marriage in a number of states and the District of Columbia also means that divorces among some same-sex couples have begun to occur. To date, little attention has been paid to the legal and political dynamics that will shape such divorces, particularly as couples cross state lines into locales that lack a legal recognition of same-sex marriages. Sentiment toward same-sex marriage and divorce plays an important role in shaping the law. This multifaceted chapter will attempt to fill that void by examining community sentiment toward same-sex divorce by various actors in the United States: judges, lawmakers, and rank-and-file citizens.

First, we examine statistics on divorce rates in states where same-sex marriages have occurred and in the handful of states that recognize marriages carried out in other states and nations with an eye to the frequency of same-sex divorces as compared to heterosexual divorces. After this snapshot of the patterns of divorce, we then turn our attention to a legal analysis of same-sex divorce with a focus on how judges' sentiment toward same-sex divorces parallel and diverge from divorce involving heterosexual couples, and we identify patterns that exist across the country. Within this analysis, we also examine the constraints placed on these judges by the language of state Defense of Marriage Acts (both statutory and constitutional) that are emblematic of legislators' sentiment on the topic of same-sex divorce. Finally, in the bulk of this paper, we analyze the politics of divorce for same-sex couples by using unique public opinion data from a decidedly non-marriage equality state (South Carolina). This allows us to see how attitudes on same-sex divorce vary from the patterns known regarding same-sex marriage with a particular focus on whether reframing the issue of divorce as being fundamentally about states' recognition of legal actions in another state (i.e., honoring the "Full Faith and Credit" Clause of the US Constitution) rather than being an issue of gay rights can alter attitudes on the subject. We find, interestingly, that community sentiment toward divorce among same-sex couples—at least in the non-marriage equality state examined—is driven by their attitudes toward same-sex marriage and appears to be impervious from being primed.

All aspects of family law involving same-sex couples will continue to quickly evolve in the coming years (see Chap. 13, this volume), but this chapter—a rare scholarly examination of same-sex divorce—attempts to provide a foundation for what we know in the earliest years of

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America's experience with same-sex partnership recognition. What is clear is that the sentiment of various political and legal actors is crucial to that story both in the present and in the future.

Patterns of Same-Sex Divorce

Have same-sex couples tended to divorce at higher or lower rates than their heterosexual peers? Have they stayed married longer or shorter periods of time than similarly situated heterosexual couples? These straightforward questions are surprisingly difficult ones to answer because of several factors. First, according to US Census analysis, the median length of a marriage that ends in divorce in the United States is 8 years (Kreider & Ellis, 2011). The longest-married same-sex couples in the United States have been married just over a decade with most legally married for a much shorter period of time. Thus, the relatively short legal marriages of same-sex couples in the United States means that we would expect that the *number* of divorces each year would be lower than average. We would also expect that the *length* of marriage before divorce to be lower for same-sex couples. Second, newly married same-sex couples tend to be older and tend to have been in lengthier relationships before marriage; both factors would reduce the likelihood of divorce (Badgett & Herman, 2011). Third, as will be discussed more fully later in the chapter, same-sex couples that marry in marriage equality states but reside in states that do not recognize same-sex marriages face legal hurdles to the dissolution of their legal relationships not faced by heterosexual couples who can gain divorces relatively easily. Finally, not all states track marriage dissolutions in a manner that allows comparison of same-sex and heterosexual couples' divorce rates across the entire population.

With those important caveats in mind, the Williams Institute has done some initial analysis of divorce patterns in a handful of states, recognizing that their data lacks the controls necessary for a true comparison of same-sex and heterosexual divorce (Badgett & Herman, 2011). Their analysis found that while heterosexual couples end their legal partnerships at a rate of 2 % per year, dissolution rates for same-sex couples appear—at the present—to be just about half that rate (1.1 % across states examined). However, it will only be after a generation of same-sex marriages when we can accurately gauge the dynamics of same-sex marriages and fully answer the questions at the beginning of this section. What is true—and will remain true for the foreseeable future—is that legally those same-sex couples who wish to dissolve their marriages face a different, but quickly evolving, legal landscape.[1]

Because same-sex marriage and divorce is an area of public policy in which change has been so quick, gauging patterns of change is challenging. However, in examining the sentiment on the subject among key political and legal actors, it is possible to ascertain if divorce is seen as wholly linked to marriage or a separate legal construct in which change can occur without alterations in undergirding marriage law in a given state. We do find limited support in the analysis of judicial actions below for the hypothesis that state judges, who have traditionally driven this aspect of family law, do see some relevant difference between divorce and marriage. However, importantly, in our analysis of mass attitudes, which has been so fundamentally important to shaping American state-level policy toward same-sex relationships through their votes, that pattern is not found.

The Legalities of Same-Sex Divorce

In examining judges' sentiment toward same-sex divorce, it is crucial to discuss the legal aspects of same-sex divorce in the broader historical context of divorce in the United States. Indeed, the story of divorce in America is the story of sentiment change among the nation's judges, who are crucial actors in shaping divorce law. Same-sex divorce is a possible next stage in the evolution of divorce law.

[1] For a recent journalistic account of the personal and legal aspects of same-sex divorce, see Green (2013).

Both law and social custom shunned divorce throughout most of the nation's history, although it was allowed in limited cases in the colonies of the North and these legal structures remained in the United States after Independence (Furstenberg, 1994). Although little in the way of reliable data regarding marriage dissolution was maintained, before the American Civil War, divorce was exceptionally rare; informal separations and desertions did occur more regularly (Furstenberg, 1994). Only about 5 % of marriages ended in divorce in the years just after the Civil War (Preston & McDonald, 1979).

Divorce rates began to rise in the second half of the nineteenth century as the country became more mobile and more industrialized and as perceptions of marriage as a "duty" tied to child rearing began to fade. Instead, expectations that marriages would provide partners ongoing "fulfillment" began to rise. In the words of marriage and divorce historian, Kristin Celello (2009), marriage also began to be perceived as something one had to "work" at if they were to succeed. With this view came an increase in "marriage counseling," a European technique employed to save rocky marriages. Societal conversations about the purpose of marriage (and the appropriateness of divorce when marriages had failed to "work") were both reflected in and promoted by pop culture portrayals of divorce such as in the 1930 film *The Divorcee*. Even before then, key figures in the women's rights movement had called for liberalization of divorce laws as crucial to making women equals by allowing them to escape unhealthy marriages (Stanton, 1871).

Despite the growing acceptance that divorce was appropriate when marriages had failed, legal divorce remained difficult to achieve in that one party had to provide proof of "fault" by the other party. State law, which fully governed this aspect of family law (in 1859, the Supreme Court had "disclaim[ed]" jurisdiction for federal courts), articulated the appropriate grounds for divorce in a given state. Appropriate grounds ranged dramatically from the populous New York (which saw only adultery as grounds for divorce) and South Carolina (with an outright constitutional ban on divorce) to states like New Mexico (which in the 1930s broadened its divorce laws by adding simple incompatibility to the list of appropriate grounds; Estin, 2007, p. 419).[2]

This diversity of state laws intersected with enhanced mobility to create increasing rates of "Reno divorces" in which a person temporarily migrates to another state to establish residency and gain a divorce (Nevada, the so-called "divorce capital," had reduced its residency requirement to gain a divorce down to 6 weeks by 1931, making it easier to obtain a divorce there than in almost any other state).[3] Unsurprisingly, such dynamics also created federalism crises related to divorce that were ultimately addressed by the US Supreme Court. In 1906, a Supreme Court ruling had declared that a state that was the original "matrimonial domicile" of a party (and where the spouse remained) could refuse to recognize his divorce granted by another state if the party seeking divorce had not provided evidence for the proper grounds for divorce in the state of "matrimonial domicile."[4] The decision in *Haddock* was much criticized as being too dismissive of the Constitution's Full Faith and Credit Clause, which says that states must respect the "public acts, records, and judicial proceedings of every other state," but it partly undermined (but certainly did not stop) migratory divorces.

This decision was overturned in a 1942 case involving two North Carolina residents married to other spouses who had traveled to Nevada, obtained divorces, and married one another before returning to their home states. They were immediately charged with bigamous cohabitation, as North Carolina refused to recognize the ex parte divorces (i.e., divorces where only one party is residing). In *Williams* v. *North Carolina* (1942), the US Supreme Court vacated the convictions saying that the Full Faith and Credit

[2] Barber v. Barber, 62 U.S. 582 (1859).

[3] The dynamics around the law's origins can be found in Nevada Press Association, "From 1931: Divorce, Gambling Get Nevada Governor's Signature," http://www.rgj.com/story/life/2014/04/01/divorce-gambling-get-governors-signature/7135497/

[4] Haddock v. Haddock, 201 U.S. 562 (1906).

Clause required states to recognize divorces acquired in a state where one party had gained state residency.[5] In 1948, the Supreme Court went further, saying that couples desiring to divorce to evade the laws of their home state could legally obtain a divorce in a state with less restrictive laws. In rejecting the home state of Massachusetts' interest in stopping the Florida divorce, the Supreme Court majority in *Sherrer* v. *Sherrer* articulated an individual right to divorce that suddenly made divorce a reliable option in divorce-friendly states like Nevada or Florida (Estin, 2007).[6] Such decisions by the nation's highest court marked a significant shift in judicial sentiment toward divorce.

Because those wishing to divorce faced either the expense of temporarily relocating to another state or the reality of committing perjury to lie about the grounds for a divorce (in what was often a scripted divorce proceeding), societal pressure rose for reform in divorce law. This reshaped the sentiment of the actors who determined the shape of divorce law. Modern women's rights activists were particularly interested in divorce reform to aid women who lacked the resources to gain the legal assistance often necessary to extricate oneself from an unsatisfying (or worse) marriage. No matter these obstacles, by 1964, 36 % of marriages in the United States ended in divorce (Furstenberg, 1994).

While other states were arguably ahead of California in terms of adopting more liberal divorce laws, in September 1969, Governor Ronald Reagan signed legislation making his state the first truly "no-fault" divorce state in the country and began a revolution in divorce laws across the country (Vlosky & Monroe, 2002). Over the next decade and a half, every state except one (New York) adopted "no-fault" divorce. With these changes in law came dramatic jumps in divorce rates in the 1970s although that pattern flattened in the 1980s and has shifted slightly downward since then. In response to these increases in divorce, there was a small burst of interest within states for the development of optional "covenant marriages" which, in addition to other requirements like premarital counseling, would limit the grounds for divorce; three states passed legislation creating such options in the late 1990s while others considered such legislation. While New York had significantly loosened its divorce laws in 1966, it became the last state to embrace "no-fault" divorce in 2010, with both the Roman Catholic Church and the National Organization for Women objecting to that decision based on the experiences from other states ("Is New York Ready for No-Fault Divorce?," 2010).

Legally recognized same-sex partnerships, including marriages that began in Massachusetts in 2003, arrived into an America where divorce had been normalized by changed legal structures and changing community sentiment. By then, as one analyst put it, divorce was generally seen as a "social necessity": "Imagine our social landscape if divorce was not there to soak up the enmity divorces present, if all financial resolutions left by broken marriages ended up being settled in favor of the stronger or the wealthier or the faster or the trickier partner" (Cantor, 2006, p. 139).

Interestingly, however, same-sex marriage advocates hesitated to employ "social necessity" as an argument for marriage equality. In a rare, recent scholarly treatment of same-sex divorce, Andersen (2009, p. 282) argues that, despite its legal importance, "access to the courts to determine the rights and responsibilities of each spouse after a relationship's dissolution," or, "[i]n a word, divorce," has been deemed inappropriate for public discourse by marriage equality advocates. That is because emphasizing divorce emphasizes marital failure, a problem for a group wanting to highlight the more happy qualities of marital benefits. Thus, while focusing on divorce's benefits might make sense legally, it

[5] North Carolina immediately took the cases back to trial and challenged whether the two divorcees had actually gained residency in Nevada; the jury considered the evidence, deemed the tourists as nonresidents of Nevada, and reaffirmed the bigamy conviction. When the case returned to the Court in 1945 in *Williams II*, swing justices on the Court upheld the convictions saying that the couple was properly divorced in the eyes of Nevada but that they had taken a risk that North Carolina would not recognize the divorce based on the lingering questions regarding whether they had become residents of Nevada during their short stay at a motor lodge.

[6] Sherrer v. Sherrer 334 U.S. 343 (1948).

makes less sense as a frame for viewing the fight for marriage equality (particularly for a social group for whom some see relationship instability as a defining characteristic).

Despite this avoidance of the issue by marriage equality advocates, the need for divorce has been addressed more frequently in family law in recent years as same-sex couples who have legally married need to dissolve their relationship in a state where they are residing that does not recognize same-sex marriages. While various book-length works have examined the road toward marriage equality in the courts (see Mezey, 2007, 2009, and Pierceson, 2013, in particular), issues of divorce have been given limited coverage in such works.

Things are simple in states that allow same-sex marriages or which recognize same-sex marriages validly created in other states. This minority of states now allows divorces for same-sex couples to be treated as those for heterosexual couples. On the other end of the continuum, in relatively rare instances, the laws of given states explicitly note that state courts should not recognize marriages from another state even for the purposes of divorce (Holzer, 2011).[7] This is true in Georgia's 2004 state constitutional amendment regarding marriage ("The courts of this state shall have no jurisdiction to grant a divorce or separate maintenance with respect to any such relationship or otherwise to consider or rule on any of the parties' respective rights arising as a result of or in connection with such relationship") and in Ohio's Defense of Marriage statute from the same year ("Any public act, record, or judicial proceeding of any other state, country, or other jurisdiction outside this state that extends the specific benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state").[8]

In between these two extremes are Defense of Marriage statutes and constitutional amendments that lack any specific language regarding divorce or dissolution of marriages performed in other states and countries. As such, they have provided judges a good deal of discretion on how to handle the recognition of same-sex marriages for the purposes of making them null and void. Many of the states have no state court decisions regarding the issue. According to a 2011 analysis, however, a number of others have (Holzer, 2011). In general, they have bent toward not recognizing the same-sex partnerships for the purposes of dissolution. This was true even in Rhode Island in 2007 (when it was already a state allowing civil unions between same-sex couples on its way to establishing same-sex marriage in 2013). There, the state Supreme Court said that a lower court could not handle the divorce of a Rhode Island same-sex couple legally married in Massachusetts because the state's Family Court was clearly limited to only hearing cases involving legal marriages in Rhode Island; the same-sex marriage was outside those boundaries.[9]

Most interesting, however, a series of state courts have allowed same-sex divorces to proceed in their states even when the state laws are clear in barring same-sex marriages (at least at that point in time).[10] There is no clear geographical pattern, though there is some relationship between a state being on its way to becoming a marriage equality state and having its courts deviate from the norm of refusing same-sex divorces. For example, in Maryland, the state Court of Appeals allowed the divorce of a same-

[7] Section 2 of the 1996 federal Defense of Marriage Act provides that "No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship." This section of the law remained in effect even after the landmark *Windsor* v. *United States* decision in 2013.

[8] Later in 2004, the voters of Ohio also passed a separate DOMA constitutional amendment (James Dao, "Same-Sex Marriage Issue Key to Some G.O.P. Races," *New York Times*, 4 November 2004).

[9] Chambers v. Ormiston, 935 A. 2d 956 (2007).

[10] In addition to the Maryland case discussed below, these states include Delaware, Minnesota, New Jersey, New Mexico, and Washington (Holzer, 2011).

sex couple legally married in California to proceed despite the state's Defense of Marriage Act (DOMA). This occurred just months before marriage equality came to Maryland through vote of the people in 2012. Saying that the "treatment given [same-sex] relationships by the Maryland Legislature (until recently) may be characterized as a case of multiple personality disorder," the Court found that recognition of the marriage for the purposes of divorce was not "repugnant" to the "public policy" of the state.[11] Stating that "[t]he bar in meeting the 'repugnancy' standard is set intentionally very high" and "prohibits generally conduct that injures or tends to injure the public good," the Court found that recognition of a California same-sex marriage failed to meet that "very high" bar.[12]

However, examples of recognizing marriages for the purposes of divorce occur even in states with no real likelihood of becoming marriage equality locales anytime soon. In *Christiansen* v. *Christiansen* (2011), the Supreme Court of Wyoming found that the divorce proceedings of two residents of Wyoming who were legally married in Canada could proceed despite the state's Defense of Marriage statute.[13] The Court emphasized both the breadth of the district court's powers in Wyoming as well as the "limited purpose of entertaining a divorce proceeding" in arguing that the action would not "lessen the law or policy of Wyoming against the allowing of same-sex marriages."[14] In its brief opinion, the Court went on to say, "Specifically, Paula and Victoria are not seeking to live in Wyoming as a married couple. They are not seeking to enforce any right incident to the status of being married. In fact, it is quite the opposite. They are seeking to dissolve a legal relationship entered into under the laws of Canada."[15]

At present, the Texas Supreme Court is grappling with the same issue in two cases that represent division in the lower courts of that state. In a Dallas case of a couple married in Massachusetts, a district court ruled that it did have jurisdiction to consider the case and also rejected the state's attempt to intervene in the case. However, in 2010, a Texas Court of Appeals overturned the district court and found that the lower court lacked jurisdiction to deal with the case because of its origins in a same-sex marriage, which was contrary to the public policy of Texas.[16] In an Austin case about the same time, however, a district court judge granted the divorce of an Austin couple married in Massachusetts before relocating to Texas. A Texas Court of Appeals rejected the state's attempt to intervene in that case.[17] In the state Supreme Court oral arguments in the combined cases in November 2013, the state's deputy attorney general argued, "There is no way to grant a divorce without recognizing a marriage" (Fikac, 2013).[18] On the other hand, a lawyer for the couples seeking the divorce, following the logic of the Wyoming Supreme Court in treating marriage and divorce as separate legal constructs, argued, "Marriage and divorce are opposites of each other" (Ibid.).

There are several patterns related to community sentiment across the policymakers and judges that have grappled with same-sex divorce in non-marriage equality states. First, in both DOMAs and so-called superDOMAs, lawmakers have tended to not isolate divorce as a separate aspect of marital law, making it unclear if lawmakers (and, in cases when constitutional amendments have been placed before voters through a petition process, people play the role of lawmakers themselves) see divorce as inherently linked to marriage or a legal practice that operates in a separate dimension. Second, the absence of clarity in the law has left it up to judges to interpret whether same-sex divorces are allowed or not in

[11] Port v. Cowan, 46 Md. 435 (2012).

[12] Port v. Cowan, p. 14.

[13] Christiansen v. Christiansen 253 P. 3d 153 Supreme Court of Wyoming (2011).

[14] Christiansen v. Christiansen, p. 4.

[15] Ibid.

[16] In the Matter of the Marriage of J.B. and H.B., 326 S.W. 3d 654 (2010).

[17] State of Texas v. Angelique Naylor and Sabina Daly (2013).

[18] http://www.mysanantonio.com/news/local/article/Texas-court-is-cautious-on-allowing-gay-divorce-4956376.php

the state. While judges have generally chosen not to grant same-sex divorces, there are deviations from that norm, particularly in states where marriage law is in flux, suggesting that some judges do see the issues of marriage separately (or, in some cases, as "opposites").

The Mass Public's Sentiment Toward Same-Sex Divorce

In the closing portion of this chapter, we move to the mass public level to investigate community sentiment in a state where same-sex marriage is not permitted. Specifically, we assess whether people view same-sex marriage and same-sex divorce as being inherently linked or as quite different legal constructs. We examined this possible divergence between public attitudes about marriage and divorce in two ways. First, analyzing unique survey data, we determined whether the political, social, and demographic variables that drive attitudes toward same-sex marriage and same-sex divorce are the same or different in the state of South Carolina. We hypothesized that they will differ as a sign of the marriage and divorce operating as separate, yet related, attitudinal phenomena, as judicial opinions from states such as Wyoming have expressed. Second, we employed a priming experiment grounded in the same survey data to see if framing the marriage debate as a "full faith and credit" issue activates an increased support for the recognition of same-sex divorce no matter one's underlying attitudes about marriage (see also Chaps. 8 and 11 for discussion of how sentiment can change based on receipt of information). This would gauge the possibility for creating sentiment change through enhancement of the public's consciousness that the legal system of its state is part of a broader national structure.

The December 2012 Winthrop Poll interviewed 929 adults living in South Carolina.[19] South Carolina is a decidedly non-marriage equality state where voters affirmed that marriage was between one man and one woman in supporting a constitutional amendment by a 78–22 % margin in 2006. Thus, examining South Carolinians on the issue presents a perfect test case on this topic. The survey was carried out from November 25 to December 2, 2012.[20] After weights (for sex, age, and race according to the known population of residents of South Carolina age 18 and older) were applied, results which use all respondents have a margin of error of approximately ±3.5 % at the 95 % confidence level. To ensure no adult in the state was systematically excluded from the sample, the survey used (1) random digit dialing (RDD) and (2) wireless phone number sampling since both RDD and wireless samples are crucial.[21]

These data were unique because in addition to a question regarding attitudes toward altering South Carolina policy toward same-sex marriage, there was also a question regarding sentiment toward same-sex divorce.[22] Specifically, the survey asked: "Regardless of your attitudes

[19] The Winthrop Poll is produced by the Social and Behavioral Research Lab at Winthrop University in Rock Hill, SC. The Winthrop Poll is paid for by Winthrop University with additional support from the West Forum on Politics and Policy at Winthrop University.

[20] Phone calls were made during weekday evenings, all day Saturday, and Sunday afternoon and evening. Weekday daytime calls are generally not made to avoid oversampling those who are more likely to be at home during the day (e.g., retirees, stay-at-home moms, etc.). Conducting weekend calls is important to avoid systematically excluding certain populations (such as those who may work second or third shift during the week).

[21] Both the RDD sample and the wireless sample were purchased from Survey Sampling International (SSI). Phone numbers selected for the survey were redialed five or more times in an attempt to reach a respondent. Once a household was reached, we also employed procedures to randomize within households for RDD sample. Additionally, the wireless sample was screened for wireless-only status since individuals who have a cell phone and a landline already have an established probability of appearing in the RDD. Computerized autodialers were not used in order to ensure the survey of wireless phones complied with the Telephone Consumers Protection Act and all FCC rules regarding contacting wireless telephones.

[22] The authors appreciate the assistance of Marvin Overby in the design of the survey. The baseline marriage question was: "Currently nine states and the District of Columbia permit same-sex marriages. Do you think South Carolina *should* or *should not* recognize the legality of such unions performed in other states?"

toward same-sex marriage, do you think South Carolina should or should not permit gay couples who were married in other states to have their divorce decided under the rules of South Carolina law?"[23]

We first compare whether the variables that shape attitudes toward marriage policy differ from those that shape opinions about permitting judges to consider divorces of same-sex couples. The survey included questions tapping into the key variables that previous research, including our own, has shown to be vital in explaining attitudes about same-sex marriage (see, e.g., Barth, Overby, & Huffmon, 2009; Barth & Parry, 2009; Lewis, 2005; see Chaps. 5 and 6, this volume, for more on studying individual differences in sentiment). These included:

- Gender (with men expected to be more opposed to same-sex marriage)
- Marital status (with married South Carolinians more opposed to same-sex marriage)
- Education (with less educated South Carolinians expected to be more opposed to same-sex marriage)
- Race (with African-Americans more likely to be opposed to same-sex marriage, although as this survey was carried out following President Obama's statement expressing support for marriage equality, we would not be surprised if that pattern from older surveys was not replicated)
- Age (with older citizens more opposed to same-sex marriage)
- Political ideology (with more conservative voters more firmly opposed to same-sex marriage)
- And religious evangelicalism (with those self-identifying as evangelical being more opposed to same-sex marriage)

Finally, our past research has indicated that interpersonal contact with gays and lesbians can be important in reshaping community sentiment through lessening antipathy for same-sex marriage. In the measure of interpersonal contact included in this survey, a focus is on the number of "close friends or family members" who are gay and lesbian as a gauge of the breadth of respondents' interpersonal contact with gays and lesbians (Barth et al., 2009). The exact questions employed for each of these variables, as well as information about the coding of the responses, are shown in an appendix.

Table 9.1 shows the results of an ordinal regression analysis with opposition to same-sex marriage as the dependent variable. All but two variables—gender and race—were statistically significant in the model and all that are significant performed as expected. Gender comes close to achieving significance at the .05 level, with women less opposed to marriage equality.

We next turn to an analysis of support/opposition to same-sex divorce. As Table 9.2 shows, in conflict with our hypothesis that different demographic and political variables would drive attitudes on this different dependent variable, the variables perform *remarkably* similarly in the marriage and divorce models. There are only two meaningful differences between the two models. First, gender, barely nonsignificant in the marriage model, does achieve significance at the .01 level in the divorce model. This suggests that women are more sensitive to providing access to divorce than are men. This is not surprising, considering the history of divorce being viewed as a way for women to escape a bad marriage, as noted earlier. The other change is that marital status slips slightly in its explanatory power in the divorce model, becoming nonsignificant.

Together, these two models suggest that—at least in terms of the political, social, and demographic factors that drive them—same-sex marriage and same-sex divorce operate almost identically in terms of community sentiment. Although not a direct test of whether divorce and marriage are seen as "different," our hypothesis that different demographic, political, and social forces will shape attitudes about them is not supported by these data.

[23] After the initial question, for those who provided an initial response, they were then asked, "Do you feel that way very strongly or somewhat strongly?" This created four ordinal responses (very strongly should, somewhat strongly should, somewhat strongly should not, very strongly should not). All other responses were coded as missing.

Table 9.1 Opposition to same-sex marriage in South Carolina (ordered logistic regression)

Variable	Estimate (std. error)	Wald
Gay interpersonal contact	−.456 (.070)***	43.040
Evangelical	1.143 (.156)***	53.384
Ideology	.600 (.070)***	72.853
Marriage status	.435 (.164)**	7.036
Education	−.167 (.052)***	10.154
Age	.012 (.005)*	6.349
Race: White	−.014 (.184)	.006
Sex	−.225 (.155)	2.092
LR x^2	288.298***	
Pseudo R^2	.320	
$N = 748$		

*$p < .05$; **$p < .01$; ***$p < .001$

Table 9.2 Opposition to same-sex divorce in South Carolina (ordered logistic regression)

Variable	Estimate (std. error)	Wald
Gay interpersonal contact	−.347 (.069)***	25.139
Evangelical	.970 (.156)***	38.840
Ideology	.592 (.071)***	69.687
Marriage status	.234 (.164)	2.025
Education	−.133 (.052)*	6.522
Age	.010 (.005)*	3.956
Race: White	−.237 (.186)	1.622
Sex	−.423 (.155)**	7.423
LR x^2	218.048***	
Pseudo R^2	.266	
$N = 748$		

*$p < .05$; **$p < .01$; ***$p < .001$

We think it is also important, however, to ascertain if, through priming, South Carolina residents can be nudged to think about divorce in a manner as certain courts around the nation have. For the priming experiment, respondents were randomly assigned into three groups with one-third asked the baseline question and two other groups of the same size having the baseline marriage question tweaked in one of two ways. One of the two primed groups had the marriage question asked in a manner that emphasized the concept of "full faith and credit": "Currently nine states and the District of Columbia permit same-sex marriages and the US Constitution requires that 'Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.' Do you think South Carolina *should* or *should not* recognize the legality of such unions performed in other states?" According to our hypothesis, enhanced consciousness of the concept of "full faith and credit"—a key force in prior court proceedings regarding divorce as Americans move across state lines—should reduce opposition to the providing of divorces in a non-marriage state.

The other group had the marriage question altered in a way that emphasized the federal definition of marriage as being between one man and one woman (as in place until the summer 2013 *United States* v. *Windsor* Supreme Court decision): "Currently nine states and the District of Columbia permit same-sex marriages, even though the federal Defense of Marriage Act limits marriages to one man and one woman. Do you think South Carolina *should* or *should not* recognize the legality of such unions performed in other states?"[24] Because South Carolina is a state with consistent opposition to same-sex marriage, we anticipate that this frame will have little effect on attitudes about same-sex divorce.

As shown in Table 9.3, neither frame shifted mass sentiment regarding same-sex divorce. While the priming experiment was not particularly heavy-handed, we did anticipate that introduction of the text of the Full Faith and Credit Clause would activate consciousness of South Carolina's being part of a nation where a need for uniformity as citizens moved from state to state would be valued as in the case of same-sex divorce. That was not the case. Perhaps sentiment about same-sex marriage and divorce is not very malleable, or perhaps the argument intended to encourage participants to view rights in terms of the Full Faith and Credit Clause is simply not persuasive enough to change sentiment.

[24] More states now permit same-sex marriage but nine was the correct number at the time of the survey.

Table 9.3 Opposition to same-sex divorce under South Carolina laws (ordered logistic regression)

Variable	Estimate (std. error)	Wald
Full faith and credit frame	−.044 (.184)	.058
DOMA frame	.118 (.187)	.401
Gay interpersonal contact	−.347 (.069)***	25.080
Evangelical	.974 (.156)***	39.082
Ideology	.592 (.071)***	69.679
Marriage status	.231 (.164)	1.976
Education	−.135 (.052)**	6.652
Age	.010 (.050)*	3.975
Race: White	−.238 (.186)	1.635
Sex	−.422 (.156)**	7.336
LR x^2	218.866***	
Pseudo R^2	.267	
$N = 748$		

*$p < .05$; **$p < .01$; ***$p < .001$

Together, these analyses of sentiment about same-sex divorce on the part of South Carolinians suggest that, at least in that venue, attitudes about divorce are tied tightly to those about same-sex marriage. Our evidence from this one state is that sentiment toward same-sex divorce is driven by the same personal factors that drive sentiment toward same-sex marriage. Moreover, the priming experiment included as a component of the survey suggests that attitudes about same-sex divorce are impervious to the key "full faith and credit" priming frame that has mattered in judicial consideration of the topic of divorce—both heterosexual and same sex—across time.

Conclusion

This chapter provides a foundation for those analyses of the politics surrounding same-sex divorce that will come as the concept of same-sex divorce becomes more common on the American political landscape. However, like all analyses of matters linked to the legal recognition of partnerships in the United States, this overview of community sentiment regarding same-sex divorce on the part of judges and the mass public should be seen as provisional. Both laws and sentiment concerning marriage equality are changing with a pace perhaps unmatched for a major aspect of public policy in modern times. This project suggests that, in general, same-sex marriage and divorce will shift in synchronicity with one another. As such, battles over same-sex divorce cases inevitably will make headlines (and, possibly, create important legal precedent) in the years ahead as the United States moves toward uniformity of its treatment of the marriage rights of same-sex couples. While there are important deviations from this norm, in general—both at the mass level and in the judiciary—marriage and divorce (despite being legal opposites) are tied together in the eyes of most at this stage of the short life of the battle for equal treatment for same-sex couples in the eye of the law. As a result, change in community sentiment regarding these two crucial legal institutions will likely come in lockstep in the years ahead.

Appendix. Coding of independent variables

Gay Interpersonal Contact

Do you have any close friends or family members who are gay or lesbian?"

[CALLER: If yes, ask, "About how many? Would you say it is about one or two, about three or four or five or more?"]

No	1
One or two	2
Three or Four	3
Five or more	4
Don't know/ Not Sure	(coded as missing in analysis)
Refused	(coded as missing in analysis)

Evangelical

Would you describe yourself as a "born again" or evangelical Christian, or not?

Yes	1
Any other answer	0

Ideology

Regardless of your political party affiliation, would you describe yourself as Very Liberal, Somewhat Liberal, Exactly in the Middle, Somewhat Conservative, or Very Conservative?

Very liberal	1
Somewhat liberal	2
Exact middle	3
Somewhat conservative	4
Very Conservative	5
Don't know	(coded as missing in analysis)
Refused	(coded as missing in analysis)

Marriage Status

Which of the following best describe your marital status: Currently married, living together with a partner, widowed, divorced, separated, or never married?

Currently married	1
Living together with a partner	0
Widowed	0
Divorced	0
Separated	0
Never married	0
Don't Know / Refused	(coded as missing in analysis)

Education

What is the highest level of education you have completed?

Less than High School	1
High School graduate / GED	2
Some college	3
Two-year tech college grad	4
Four-year college degree	5
Post Graduate	6
Don't Know / Refused	(coded as missing in analysis)

Age

Self-reported age
Refusals coded as missing in analysis

Race: White

What is your race or ethnicity?

Caucasian	1
All others	0

Refusals coded as missing in analysis

Sex

Female	1
Male	0

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Changing the Sentiment of Those the Law Affects: Federal Marriage Promotion Programs

10

Cassandra Chaney

The past several decades have seen an increasing number of couples using cohabitation as an alternative or as a pathway to marriage (Edin & Reed, 2005; Gibson-Davis, Edin, & McLanahan, 2005; Smock & Gupta, 2002; Smock & Manning, 2004), especially among some races. When compared with Whites (62 %) and Hispanics (60 %), Blacks[1] are less likely to marry (41 %), more likely to divorce, and more likely to end their relationship upon initial cohabitation to become a single parent (Brien, Lillard, & Stern, 2006; Dixon, 2009; U.S. Census Bureau, 2010). Only 33 % of Black children lived with two married parents in 2011, compared to 85 % of Asian children, 75 % of White children, and 60 % of Hispanic children (Child Trends, 2011). In an effort to reverse this trend, the African American Healthy Marriage Initiative (AAHMI) was established in 2001 "to promote and strengthen the institution of healthy marriage in the African American community" (http://www.aahmi.net/mission.html). Although the AAHMI has "partnered with national, civic, and community organizations" to encourage marriage, very little attention has been given to community sentiment regarding programs whose primary aims are to encourage marriage. This is important, because although the barriers to marriage and the transition to marriage among Blacks have been identified (Chaney, 2009, 2012; Chaney & Marsh, 2009; Chaney & Monroe, 2011; Hill, 2005), very little scholarly attention has been given to changing community sentiment toward federal marriage promotion programs. Given this paucity in the research, this chapter will *qualitatively* examine whether a sample of African Americans believe the government should try to change people's attitudes to be more "pro-marriage," and if so, how the government should go about these efforts.

In the sections that follow, an overview of the history behind current marriage promotion efforts will be provided. Then, a discussion regarding how low-income individuals view marriage will be offered. After this, the theoretical underpinnings and methodology that were used in this study will be outlined. Following this, the qualitative assessments of Black men and women regarding changing community sentiment regarding marriage will be presented. Finally, the implications of the findings in this study for researchers, practitioners, and policymakers will be discussed.

Marriage Promotion

Given the increasing number of children who were born to poor single mothers, welfare reform debates primarily centered on whether the best strategy to reduce poverty was to raise work

[1] The terms "Black" and "African American" will be used interchangeably in this chapter.

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participation among low-income women or to promote marriage (Lichter & Crowley, 2004). As a way to simultaneously promote the "natural" family (Davis, 2006) and increase father involvement (Cowan, Cowan, Pruett, Pruett, & Wong, 2009; Perry, Harmon, & Leeper, 2012), policymakers established marriage promotion as a component of welfare reform. In 1996, the United States Congress began its imposition of a solution to poverty when it enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The African American Healthy Marriage Initiative (AAHMI) was established in 2001 "to promote and strengthen the institution of healthy marriage in the African American community" (http://www.aahmi.net/mission.html). As a way to bridge increased maternal employment and encourage marriage, in 2005, Congress attempted to strengthen its commitment to marriage as a cure for welfare dependency with proposals such as the Personal Responsibility, Work, and Family Promotion Act of 2005. The purpose of this bill was to "reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes" (S. 105th–109th Congress: Personal Responsibility, Work, and Family Promotion Act of 2005). This bill would provide more than one billion dollars for pro-marriage programs and require each state to explain how its welfare program will encourage marriage for single mothers who receive public aid. Although this bill did not pass, its supporters saw marriage promotion programs as a viable option to move poor individuals into the husband-wife normative heterosexual dyad and make these married couples primarily responsible for the economic well-being of their children (Onwuachi-Willig, 2005). While some critics believe marriage promotion will encourage women in volatile relationships to marry or stay married to their abusers (Catlett & Artis, 2004), an increasing amount of federal monies were spent on this endeavor. The existence of laws promoting marriage among the poor suggests these individuals generally have less-favorable attitudes toward marriage, yet is this assessment accurate?

How Low-Income Individuals View Marriage. While it might appear that couples who choose the non-marriage route to sexual intimacy and family planning have a general disdain for marriage, several empirical studies suggest such assertions do not accurately represent how many low-income couples feel about marriage. In fact, both quantitative and qualitative studies have revealed perceptions of the importance of marriage among unmarried, low-income, single, and cohabiting mothers. Using a nationally representative sample, Lichter, Batson, and Brown (2004) examined marital expectations, desires, and behaviors of single and cohabiting unmarried mothers and revealed the majority of unmarried women, including disadvantaged single and cohabiting mothers, value marriage as a personal goal. Among disadvantaged women, single mothers, and racial minority women, systematic differences point to subgroups with lower marital expectations. However, because marital desires do not easily translate into marriage, the problem lies in identifying and reducing barriers that prevent single women from realizing marital aspirations (Lichter et al., 2004).

Ciabattari (2006) tested the assumption that federal marriage promotion programs should be established for poor women because, as a group, they have different (less-favorable) attitudes toward marriage than other women. Through examining the responses of women from the Fragile Families and Child Wellbeing Study, a nationally representative sample of single mothers in urban areas, this scholar found significant differences in family attitudes between married and unmarried White women, but few differences for women of color. Specifically, unmarried women of color were more traditional in their views toward marriage than unmarried White women. In addition, welfare recipients were similar to non-recipients in gender traditionalism and attitudes toward marriage, and low-income women often expressed the most support for traditional gender roles (Ciabattari, 2006).

Qualitative research has provided additional support for the salience of marriage among low-income women. In their examination of the

reasons why low-income women put motherhood before marriage, Edin and Kefalas (2005) revealed these women so highly revere the institution of marriage that they would rather not "make promises they can't keep" (enter a marriage) than dishonor marriage by divorcing (Edin & Kefalas, 2005). The findings highlighted in the aforementioned studies suggest that, from a public policy perspective, single mothers' attitudes about marriage do not necessarily need to be changed. The first step in addressing the need for marriage promotion programs is understanding whether individuals think the government should attempt to change attitudes toward marriage; if individuals are not receptive to such attempts, they are not likely to be effective.

The Current Study

This qualitative study examines the sentiments of African American men and women regarding federal programs that encourage marriage. There are three reasons why this study is important. For one, there are a disproportionate number of Black children being raised by single parents and these families are the most affected by marriage promotion programs. Specifically, most Black children are born to single parents and the majority of these homes are poor (Dixon, 2009; Hummer & Hamilton, 2010). Currently, while 35 % of Americans between age 24 and 34 have never been married, that percentage increases to 54 % for African Americans in the same age group. Additionally, married couples head 76 % of American families, while African American married couples head only 47.9 % of American families. Similarity, while the overall rate for single parent households in America has increased for all children, it is especially alarming among African Americans. Between 1960 and 1995, the number of African American children living with two married parents dropped from 75 to 33 %. Currently, 69 % of African American births are to single mothers as compared to 33 % nationally (African American Healthy Marriage Initiative, AAHMI, 2013). Consequently, federal marriage promotion efforts have been created to increase marriage and minimize dependency on welfare and poverty.

Second, with few exceptions (Edin & Kefalas, 2005; Edin & Reed, 2005; Gemelli, 2008; Heath, 2012; Jordan-Zachery, 2009), much of the scholarship on federal marriage promotion programs has generally relied on demographic and quantitative data (Ciabattari, 2006; Hawkins & Fellows, 2011; Hsueh et al., 2012; Lichter et al., 2004; Lichter & Crowley, 2004; Lichter & Graefe, 2007; see Chaps. 5, 6, and 9 for more on how individual differences relate to sentiment), or offered theoretical approaches (Johnson, 2012). This study expands on these findings by using qualitative methodologies (see also Chap. 13, this volume for more on qualitative research).

Last, and most important, this study brings to the "federal marriage promotion policy table" many of its "key players," namely educated and non-educated African Americans. In particular, this study will examine the responses of educated Blacks (who are generally aware of the multiple benefits of marriage), several employees of the federal government who oversee the implementation of federal marriage promotion programs, and poor Black cohabiting couples (the individuals for whom these programs were established). This study will fill the current gap in the literature by qualitatively analyzing a wide array of Black men and women's written narratives regarding their sentiments on whether changing community sentiment regarding marriage is possible and should be a government goal.

To accomplish the goals set forth, this study used qualitative methods (Denzin & Lincoln, 1998) to examine the written responses of 24 Black men and women between the ages of 19 and 55, some of whom were targets of marriage promotion programs (e.g., poor, cohabiting families). The participants responded to the questions: Do you believe the government should try to change people's attitudes to be more "pro-marriage"? If so, how and what should be the government's role? These questions are important because they determine what, if any, role the government should have in changing marital attitudes, as well as

pinpoint the ways in which federal marriage promotion efforts can better meet the needs of single, dating, and cohabiting African Americans who are contemplating marriage.

Method

Sample

Twenty-four African Americans (15 women and 9 men) participated in this study. Because I was interested in obtaining diverse sentiments, an opportunistic sample was implemented. In particular, individuals from different age groups, levels of education, incomes, relationship and parental statuses, religious affiliations, and geographical regions were selected. The decision was made to solicit the sentiments of a diverse group of African Americans because regardless of their socioeconomic status, members of this group tend to have lower marital entry and stability rates than Whites and Hispanics (Hill, 2005). In addition, understanding the sentiment of a diverse group of African Americans might better determine how marriage promotion can better meet the needs of African Americans who are in various stages of the life cycle, represent different socioeconomic statuses, as well as their views regarding what, if any, role the government should play in helping couples get and stay married. Thirty participants were recruited through a mass electronic announcement from the author and a program director with the Administration of Children and Families (ACF) and were asked to share their sentiments regarding marriage and marriage promotion programs. The author and the ACF program director sent a mass electronic announcement regarding the goals of the study to a diverse group of African American women and men. Only African American women and men received an invitation to participate in the study. While 30 individuals were invited to participate in the study, 24 individuals actually responded to the invitation and participated in the study. Although the total number of participants was small, an 80 % acceptance rate is rather high. Participants had the option of sending their responses via email, fax, or regular mail (Table 10.1).

The age of participants ranged from 19 to 55 years. The mean age was 37 years. The average amount of education was 15.41 years. Fourteen participants (58 %) were from Louisiana; three participants (12.5 %) were from Texas; three (12.5 %) were from Georgia; two (8.5 %) were from Florida; and two (8.5 %) were from North Carolina. Eight participants (33 %) were cohabiting couples, and both individuals in the relationship completed the survey. Sixteen participants (66 %) were single, never married; four (17 %) were divorced; and four (17 %) were married. The average length of marriage was 31 years. Although 11 participants (46 %) did not have children, 13 (54 %) had at least one child between the ages of 2 and 32 years of age. The average number of children was 2. Eleven participants (46 %) were Baptist; five (21 %) were Christian; four (17 %) were Roman Catholic; one (4 %) was Nondenominational Christian; one (4 %) was Seventh-Day Adventist; one (4 %) was spiritual, and another (4 %) did not claim a religious affiliation.

Six participants (25 %) were graduate students; four (17 %) were professors; three (12.5 %) were employees of the federal government; and three (12.5 %) were undergraduate students. The participants had an annual income in the $10,000–$100,000 range, and a median income of $50,000. Specifically, 14 (58 %) had an income that was less than $10,000; three (13 %) had an annual income that was between $10,000 and $19,999 range; one (4 %) had an income that was between $50,000 and $59,999; one (4 %) had an annual income that was between $70,000 and $79,999; three (13 %) had an income that was between $80,000 and $89,999; and two (8 %) had an annual income that was over $100,000.

The identity of all participants was protected through pseudonyms. No monetary compensation was provided to the participants. The methodology of securing participants via email was chosen because it was a time-efficient way for the author to solicit the sentiments of Black men and women, and allowed participants to privately type their opinions, values, and experiences.

Table 10.1 Demographic characteristics of participants ($N=24$)

	Louisiana	Texas	Georgia	Florida	North Carolina
Age (years)					
19–25	6				
26–33	4		1		
34–41	4	1	1		
42–49		1	1	1	1
50–55		1		1	1
Education					
Mean education					
High school	8				
College student	3				
College degree	6			1	1
Graduate student	1		1		
Advanced degree	1	1	1		
Relationship status					
Single (never married)	15		1		
Divorced	2	1		1	
Married	1	1		1	1
Parental status					
At least one child	8	3	1		1
No children	10			1	
Religious affiliation					
Baptist	6	3		1	1
Christian	3	1	1		
Roman Catholic	4				
Nondenominational Christian	1				
Seventh-Day Adventist					
Spiritual	1			1	
No religion					1
Income					
Less than $10,000	12		1	1	
$10,000–$19,999		1	1	1	
$50,000–$59,999		1			
$70,000–$79,999	1				
$80,000–$89,999	1	1			
$100,000+		1	1		1

Research Design

To identify the themes that emerged from the written interviews, all narrative responses were content analyzed using an open-coding process (Strauss & Corbin, 1990). In keeping with open-coding techniques, no a priori categories were imposed on the narrative data. Instead, themes were identified from the narratives. In order to clearly abstract themes from the written responses, words and phrases were the units of analysis.

Identifying the themes involved three steps. The first step involved the researchers *individually* reading each comment with the purpose of identifying the most salient themes, and examining how the themes presented answered the questions of interest. The second step involved reexamining all responses, tracking emerging themes, assigning words and symbols to each theme, providing defi-

nitions for emerging themes, and examining how the themes presented are specifically related to community sentiment regarding federal marriage promotion programs. The last step involved establishing reliability of the themes. To assess the reliability of the coding system, a list of all codes and their definitions along with the written responses was given to two outsiders who then coded the transcripts based on this predetermined list of codes. The outside coders were selected due to their extensive experience with coding and analyzing narrative data. After a 99 % coding reliability rate was established between the researcher and the outside coders, it was determined that a working coding system had been established. Most important, this time-intensive method was thorough, greatly minimized the likelihood of researcher bias influencing the findings, and ensured that only the most salient themes were identified and highlighted.

Presentation of the Findings

In this section, the narratives provided by the men and women that participated in this study are presented in regard to the question: Do you believe the government should try to change people's attitudes to be more "pro-marriage"? If so, how and what should be the government's role? The three primary themes that emerged from analysis of the written narratives were related to: (1) lack of support for changing community sentiment regarding marriage; (2) support for changing community sentiment regarding marriage; and (3) skepticism regarding changing community sentiment regarding marriage. Furthermore, subthemes revealed divergence in the responses provided by the participants.

Lack of Support for Changing Community Sentiment Regarding Marriage

Fourteen individuals (58 %) did not believe the government should try to change people's attitudes to be more "pro-marriage." Less than favorable attitudes regarding the government's encouraging "pro-marriage" attitudes were associated with the subtheme of governmental infringement on the personal autonomy of individuals to marry if and when they choose, marriage not being a cure for poverty, the promotion of some campaigns as more important than marriage, and families and communities are the main modes by which marital attitudes become more positive. Nevaeh, a single, 21-year-old nursing student with no children used few words to express her disdain for the government creating more "pro-marriage" attitudes: "No. The government should not encourage people to marry." Makayla, a single, 19-year-old junior majoring in Information Systems and Decision Sciences with no children provided support for Nevaeh's comment when she wrote: "I don't feel it's the role of the government to get people to be 'pro-marriage.' Most people are smart enough to know what it [marriage] consists of and make the decision on their own." Ralph, who is 51 years old, divorced, and currently cohabiting, used few words to express his feelings: "There is no way the government can make people get married, so they shouldn't even try!" Towanda, who is 48 years old and has been living with Ralph for eight years, and with whom she has two daughters (ages 5 and 8), shared a view that was very similar to Nevaeh's: "The government can't force people to get married because people will do what they think is best for their life." Another cohabiting couple, who have two children (a 16-year-old son and 13-year-old daughter) and have been cohabiting for 18 years, supported the opinion expressed by their contemporaries in cohabitation. Clarence, who is 46 years old, wrote: "The government can't change how people feel about marriage. The government has no business being involved in marriage at all!" His partner Nellie, who is 49 years old and has two daughters (ages 12 and 14) from a previous relationship said: "The government can't change how people feel about marriage because you either love a person enough to marry them or you don't!"

Xavier, a 42-year-old divorced Associate Professor and father of two children (ages 18 and 10), also respected the personal autonomy of men

and women in regard to marriage. He penned the following: "Not really. People should be allowed to do what they believe is best. However, I am not against marriage." To extend the personal autonomy subtheme outlined by the aforementioned participants, William who was employed by the federal government believed the government should give people the information that is needed to make the best decisions, yet should not try to change attitudes regarding marriage. This 55-year-old Program Manager with the Administration of Children and Families (ACF) who has been married for 31 years and father of twin sons (aged 28) said: "No. I do not believe it's the government's role to change people's attitudes but I do believe government has a role in ensuring proper information is available for people to make wise decisions."

Several men and women believed the government should not change attitudes toward marriage because marriage is not a permanent antidote for poverty. In other words, these participants shared the sentiment that marriage promotion does not address the issue of poverty and that the money spent on these efforts would be better spent elsewhere. To support this view, Nathan, a single, 26-year-old graduate student who does not have children said: "Marriage is not the solution for solving poverty, as persons can be together and still struggle. It should be a choice made mutually made by individuals based in the grounds of moral, values and situational circumstances." Brianna, a single, 35-year-old college graduate and divorcee with no children shared an opinion that was similar to Nathan's: "No I don't think that marriage is a solution to poverty. Financial problems are a leading cause of divorce, perhaps helping those same individuals educate themselves may be better." Tyler, a 29-year-old single male educator with no children said: "Marriage is not a solution to poverty but it can be a solution to crime and other social problems. Having two parents in the household allows more support for the well-being of the child. Child rearing efforts can be shared and thus children would be afforded the opportunity to have a support system from two parents."

Interestingly, some individuals were skeptical regarding the ability of those in government to encourage marriage when their own marriages are less than stable, believed marriage education at a young age to be vital to marital success, and believed that marriage promotion is based on the desire of the people. As evidence of this, Jayla, a single, 30-year-old Assistant Professor with no children said: "I don't think the government should do that. I feel a community and families should work to change people's minds about marriage. I don't believe a government 'pro-marriage' message would be received well when many in government have marriage problems." Jayla's sentiment is particularly noteworthy in that she makes a distinction between "government" and "government officials." Perhaps the resistance that Jayla (and other African Americans) have toward marriage promotion might be based on the government's promotion of an "ideal" marital standard that many within the government are unwilling or unable to achieve. Thus, instead of creating families based on an arbitrary, difficult-to-achieve government standard, Jayla and other African Americans like her might believe that families within communities are in a better position to encourage marriage than "government officials" who might personally have marital problems.

One female saw the government's promotion of marriage to be compatible with early education efforts that promote morals and financial responsibility. Isis, a single, 23-year-old Mass Communication major with no children expressed her thoughts in this way:

> While I do believe marriage is a wonderful thing, it should not be rushed or pressured. Said persons should be emotionally and spiritually ready for said commitment. I firmly believe that the government should have no role in the institution of marriage and promoting persons to be married just for financial security. Instead, early education to young persons on social issues and the consequences of having sex before marriage (and obviously at a young age) should be promoted by the government (with the slant of financial burdens and poverty, morals, etc.).

Contrastingly, one male believed the government's promotion of marriage should be

based on the desires of American citizens. Zion, a single college student with no children majoring in Child and Family Studies said:

> The government should try to act in the interest of the people it is governing. If American citizens are concerned about the state of marriage and want to push a pro-marriage platform then that is ok, and our elected officials should be willing to help with this goal. On the other hand, if groups oppose this pro-marriage platform (and they will), then government officials must also cater to the needs of these citizens as well.

Support for Changing Community Sentiment Regarding Marriage

Seven participants (29 %) believed the government should try to change people's attitudes to be more "pro-marriage." Optimism regarding the government's ability to create more positive attitudes toward marriage was related to subthemes associated with the provision of tangible support for these families; the government providing a meaning of "pro-marriage," stressing the "partnership" that is needed to build a strong marriage and climate in which to rear children; and the government being one of several ways to change societal attitudes toward marriage. Marcus, a 27-year-old male that has been cohabiting with his partner Sylvia for four years wrote: "The government can change how people think about marriage only if they [the government] make it to where married people's lives are a lot better for them and their children." His partner Sylvia, who is 22 years old, and has two children (ages 2 and 4) with Marcus expressed this view:

> The government can do this but the government needs to really know what people need and make it easier for them to get what they need. Everyone that starts out wants a house, a car, and a savings. If the government helped everybody get started in this way, more people would think better of marriage.

Gabrielle, a 44-year-old Administrative Assistant who has been married for 22 years and has two children (ages 18 and 20) shared this view: "I definitely support marriage education programs. Many people get married when they do not know what it takes to have a successful marriage. These programs teach people how to make better, healthier, and wise choices in their relationships." Like Gabrielle, other participants shared the sentiment that the government can help couples make a success of marriage. Trinity, a 55-year-old analyst with the Administration of Children and Families (ACF) who has been married for 34 years and has two children (a 32-year-old son and 30-year-old daughter), was hopeful that the government can create more positive attitudes regarding marriage. She wrote: "I believe these programs give couples the tools to make better life choices." In addition, she further added: "I support marriage education programs. Many people operate in a deficit due to lack of knowledge. These programs provide participants with information to assist them in making healthy choices." Interestingly, one low-income couple had faith in the government's ability to change marital attitudes, and they offered practical suggestions on how the government can bring about this change. Damon, a 32-year-old store clerk wrote, "The government can change people's attitudes about marriage if they offered people good jobs that can take care of their families with good health insurance." Lisa, who is a 30-year-old unemployed homemaker and has been cohabiting with Damon for 5 years (and with whom she has two children, ages 3 and 5), shared this view: "Yeah, I think the government can help people think more positively about marriage but it [government] must make it easier for people to find and keep good jobs, have a good running car, child care, and good insurance."

Skepticism Regarding Changing Community Sentiment Regarding Marriage

Three participants (13 %) believed the government can change community sentiment regarding marriage but offered several caveats related to what the role of government should and should not be. As regards the role of the government in facilitating attitudinal change, one female whose name was Jordan believed it

important to first define what "marriage promotion" entails as well as clearly outline the benefits of marriage for individuals and families. Jordan, a single, 36-year-old International Relational Linguist who does not have children shared her perspective through these words:

> Pro-marriage firstly must be defined so that the target audience fully understands the benefits. Its basis is not money or lack of thereof, but as mentioned before, pure and genuine love for another human being with whom one wishes to spend the rest of his or her life. People will be drawn to the idea of "pro marriage" if they see how it can benefit them, and as humans, we all seek self-interest to an extent. When you have happy parents or adults, then the children feed off the positive vibes as opposed to bitter, unhappy or angry parents who may do more damage to a child's delicate mind and negatively affect how that child sees "a normal relationship." So, yes government can encourage people to get married but it MUST be for the right reasons, as outlined above.

Like Jordan, Imani, a 53-year-old Program Manager with the Administration of Children and Families (ACF) who has been married for 28 years and has three children (ages 22, 24, and 26) also highlighted the partnership aspects of marriage. She shared:

> I believe that the government should assist to change people's attitudes about what marriage is. Still, I am not in favor of the government strong arming citizens about these types of social issues. I believe that becoming more "pro-marriage" will be a byproduct of marriage being presented as a "partnership" that can enhance one's social welfare and children's well-being.

In a slight departure from the sentiments offered by Jordan and Imani, another participant by the name of Alexandra offered the view that the federal government was one of several entities that should encourage both positive marital attitudes and positive marital change. Alexandra, a divorced, 40-year-old professor with no children compared marriage education with obtaining a driver's license. She wrote:

> While I believe the government can and should make people aware of the benefits of marriage, promoting marriage in itself will not make people more "pro-marriage." So, although the government is one agency that can address society's disregard for marriage, or rather marital stability, the government can offer free counseling for individuals that are interested in marriage. This makes sense as most people desire marriage. The state government is involved with the criteria that are required in order for a person to operate a motorized vehicle (have a driver's license), but people can get married without having a basic knowledge of the skill sets that are needed to sustain a marriage? This does not make sense. Every year we receive reports on the number of people that are injured or killed in automobile accidents by people who everyone assumes knows the basics of driving. However, how many lives (adults and children) are damaged when people enter relationships or marriages without the proper tools? As a society, we must place as much emphasis on the basics of relationship building, communication, and marriage as we do on operating a motorized vehicle.

Discussion

In this chapter, I examined the sentiment of a subset of the African American population regarding whether the government should try to change people's attitudes to be more "pro-marriage" as well as the government's role in potentially bringing about this change. To accomplish the goals set forth, I relied on qualitative methods (Strauss & Corbin, 1990) to examine the narratives provided by 24 Black men and women between the ages of 19 and 55; included within this number were individuals who are targets of marriage promotion programs (e.g., poor, cohabiting couples). The sentiment provided by this diverse group of African American men and women provides scholarly insight into attitudes regarding what, if any, role the government should have in promoting marriage.

Currently, there is a void in the literature regarding studies that have qualitatively examined sentiment toward the government's role in promoting marriage among the general public. I did, however, locate one study that examined this phenomenon among African American men. Perry's (2013) recent work revealed that while most Black men believe increasing marriage rates was "a worthwhile goal," (32 out of 33 men

or 97 %) these men held different views regarding how this goal should be achieved. Interestingly, nine men (27 %) did not believe it was the role of the government to promote marriage, and cited the separation of church and state as the primary reason for their view, seven men (21 %) believed it was appropriate for the government to promote marriage. Furthermore, over half of the men (17 out of 33 or 52 %) believed the church and not the government should be more aggressive in bringing about this change. Perhaps the disdain that many African American men have toward the government might be due to negative perceptions regarding policies that are believed to weaken (and not strengthen) Black families. As Perry (2013) noted, "In fact, in the views of these men, it was the government that had a hand in splitting up many African American families via public assistance policies that required that fathers be nonresident as a condition for eligibility" (pp. 193–194). Thus, based on this view of the government, it is possible that African Americans might be more likely than Whites or Hispanics to object to the government's promotion of the "worthwhile goal" of marriage.

While future work is primed to examine the relationship between race and attitudes toward federal marriage promotion efforts, the majority of African Americans represented in this study did not believe the government should attempt to change people's attitudes toward marriage. In the paragraphs that follow, I posit several reasons for these views. First, some Blacks like Nevaeh and Makayla or the cohabiting couples Ralph and Towanda or Clarence and Nellie believed the role of the government is not to promote marriage, and like Xavier, believed that personal autonomy, and not government promotion, should be foundational to marriage (Fineman, Mink, & Smith, 2003; Struening, 2007). Furthermore, Zion believed the role of the government is to consistently "act in the interest of the people it is governing" and "to cater to the needs" of its citizens. Thus, the advancement of a government "pro-marriage platform" should ultimately depend on the support or opposition that these programs receive. Essentially, comments such as these speak to two realities: the high regard that many Blacks have for personal freedom as well as their desire that the government does not impede on their personal life choices.

Second, and related to the first point, was the novel view that although the government cannot change marital attitudes, the government has a responsibility to ensure that people receive "proper information" that will help them "make wise" marital choices. This suggests that once couples receive the information that they need, this will increase their chances of having a successful marriage.

Third, and not surprisingly, several participants, namely Nathan, Brianna, and Tyler recognized that while marriage itself is not a realistic "solution" to solving poverty, strong, stable marriages can help poor families live independently and eradicate many of the social ills (e.g., crime) that make life difficult for these families. Thus, this view underscores the importance of understanding what marriage can and cannot accomplish, particularly as it relates to minimizing poverty. Since marriage cannot in itself eradicate poverty, it is important to understand the types of programs that would encourage poor, low-income families to marry, become financially independent, protect them from many of the social ills associated with abject poverty, and thus increase their chances of making a success of marriage.

Although this socioeconomically diverse group of African American men and women has a high regard for marriage, per their qualitative sentiment, they hold different views regarding whether the government should promote marriage at all or whether the government should rely on individual, dyadic, familial, or communal approaches to promote marriage. While several participants stressed the need for individuals to personally decide if and when they choose to marry, others believed that strengthening the romantic dyad prior to marriage is as essential to marital success as securing an operator's license before driving a car. Contrastingly, other participants shared the sentiment that the government's efforts and resources should focus on what families and communities believe they most need. For some, government support should primarily

protect the natural family and help families to live independently, with little or no government support. For others, this support would provide a stable living wage that would help couples marry and meet the physical needs of their families (e.g., health insurance). Essentially, African American sentiment toward the government's role in regard to marriage promotion might be based on the type of home in which the individual was reared, their current and future marital and parental status, as well as whether they believe the government is the exclusive means or the conduit by which marriage can be promoted.

Fourth, while many believed the government should have little to no responsibility in promoting marriage, one individual (Jayla) puts the onus on "communities and families" in changing people's attitudes regarding marriage. Essentially, African Americans who hold this view might ultimately regard Black families and communities as a stronger and more stable force for positive change than the government. Fifth and somewhat related to the first point was the view that people should abstain from marrying for financial security, that couples should be "emotionally and spiritually ready" for marriage, and that greater emphasis should be placed on "social issues" than marriage. Thus, some Blacks might believe early education that stresses the negative consequences of non-marriage could inherently make marriage more appealing. Once Black children learn about the negative consequences of premarital sex, financial hardship, poverty, and moral decay associated with non-marriage, they might consider marriage as a viable option.

Interestingly, these couples listed many of the same tangible and intangible prerequisites valued by low-income Black, White, and Hispanic mothers (Edin & Kefalas, 2005). The comments provided by these men and women could be due to three realities. First, two low-income, cohabiting couples (Marcus and Sylvia; Damon and Lisa) provided comments related to tangible forms of support (e.g., house, car, stable job, child care, insurance) that they believe would motivate more people to think about marriage and could lead to a "better" life for their families (Chaney & Monroe, 2011; Edin & Kefalas, 2005). Second, once African American couples understand that marriage promotion is not based on financial gain and is solely based on a couple's shared willingness to enter this legal institution, they can then begin to better understand the benefits that marriage could possibly bring. For example, promoting marriage as a conduit for happiness, companionship, and security, for themselves and their children, might cause marriage to take on greater salience in the lives of individuals who might have been adamant against marriage or ambivalent toward it. Last, some believed it is the role of the government to give these couples the tools that they need to make a success of marriage. Although some individuals perceived the government as one entity that can encourage marriage, participants like Alexandra believed the government should offer "free counseling" for individuals that are interested in having a happy marriage. Interestingly, this tangible and intangible form of support ("free counseling" as a conduit to effecting positive attitudes regarding marriage and thus increased marital entry) did not present in previous studies (Edin & Kefalas, 2005; Perry, 2013). Fundamentally, these Blacks might have more favorable attitudes regarding the government and might believe the government should aggressively prevent family problems before they occur instead of dealing with these problems in the legal system once they present.

The three women that were hopeful yet skeptical of the government's ability to change marital attitudes could be based on two foundations. First, as stressed by Jordan and Imani, "marriage promotion" must be clearly defined, people must marry for the right reasons, and the benefits of a marriage "partnership" must be presented in a way that heightens personal interest as well as couple and family well-being. Second, Alexandra's acknowledgement that there are more stipulations to have a driver's license than to enter marriage speaks to the need for government to take preemptive steps to encourage marriage, and simultaneously prevent divorce by giving couples the necessary skills to make a success of marriage *before* they actually marry.

There are two final interesting findings of which I would like to make the reader aware. For one, the four low-income, Black cohabiting couples in this study either believed that the government *should* or *should not* change marital attitudes, and none were skeptical about the government's *ability* to effect such change. Black couples that supported the view that the government could change marital attitudes might generally have more favorable attitudes about the government, particularly since the inauguration of President Barack Obama (a Black president) and the ability of this entity to provide for the varied needs of families. On the other hand, couples that did not support the view that the government could change marital attitudes might regard the government as an intrusive entity that has historically and contemporaneously done more harm than good for Black families.

Another interesting finding was that each of the three employees of the Administration for Children and Families—African American Healthy Marriage Initiative (2013) offered different sentiments regarding the government's ability to create more positive marital attitudes, and three realities could explain these divergent responses. First, it must be noted that all three employees of the ACF (two females and one male) were in their 50s and in long-term, stable marriages. Trinity, the Black female who supported the government's efforts could see a clear connection between the type of "knowledge" she wished she had when she first got married and the types of "knowledge" offered by the government. Alternately, she could personally know couples that are currently benefiting from marriage promotion programs. William, the Black male who did not support the government's efforts, might believe that although couples should receive "proper information" that will benefit them, personal autonomy should always take precedence over government influence. Lastly, skepticism voiced by Iris, the other Black female ACF employee, might have been associated with uncertainty regarding how the government could realistically present marriage in a way that simultaneously heightens "partnership" as well as "social welfare and children's well-being." Therefore, although they were all employed by the federal government, these men and women provided different reasons regarding the government's role in promoting marriage.

Implications and Future Directions for Researchers, Practitioners, and Policymakers

The findings in this study hold promise for researchers, clinicians, and policymakers who are interested in promoting strong couple, parent–child, and family relationships. First, the findings in this study should encourage researchers to further explore how African Americans feel about the government broadly, and marriage promotion efforts, in particular. Such an analysis would shed more light on how much (or how little) African Americans know about marriage promotion efforts, the specific entities African Americans believe can best change marital attitudes, as well as the family and social issues that African Americans believe are just as, or more important, than marriage. In addition, scholars should also examine how educated and non-educated members of other races (e.g., Whites, Hispanics, Asians, and Native Americans) feel about the government's promotion of marriage. Future work in this area could reveal the negative attitude that many Blacks have regarding federal marriage promotion efforts to be similar to those of Whites who generally do not agree with government support of African Americans, as members of the latter group are largely perceived as having less conservative values than members of the general population (Rabinowitz, Sears, Sidanius, & Krosnick, 2009).

Second, findings could motivate practitioners to work closely with the federal government and explore ways to discuss what marriage means to Blacks as well as the type of supports that are needed to make a success of marriage. This recommendation is particularly important because, consistent with the findings of previous studies in which cohabiting couples identified

certain tangibles that are needed prior to marriage, all of the cohabiting couples in this study planned to marry one day (Chaney & Marsh, 2009; Chaney & Monroe, 2011; Edin & Kefalas, 2005).

Last, the findings in this study should encourage policymakers to more closely examine the push–pull that exists between people's desire for marriage, their need for personal autonomy, as well as their need for government support for marriage. Further research in this area would shed light on the various demographic characteristics (e.g., age, sex, education, family structure, religion, and social values) that shape current attitudes regarding marriage as well as the type of supports that African Americans believe are best to create strong marriages and families.

Limitations of the Current Study

This study had several limitations. First, the small sample size makes it difficult to generalize the findings of this study to larger African American populations in the United States and abroad. Second, the study lacks gender diversity. In particular, because only nine participants (38 %) of the participant pool were male, I am unable to translate the findings herein to African American males. Third, as the majority of the participants were from the southern region of the country, and in particular one state, this makes it difficult to generalize the findings in this study to African Americans who reside in other parts of the United States.

Finally, since the goals of marriage education and "pro-marriage" programs are different (Shamblen, Arnold, Mckiernan, Collins, & Strader, 2013; Vaterlaus, Bradford, Skogrand, & Higginbotham, 2012; Wilde & Doherty, 2013), some participants might have been confused about the goals of these programs. Several participants supported parent education programs yet objected to the government's promotion of marriage, because they associated "pro-marriage" as a forced choice. Thus, this suggests that some African Americans need to better understand that the goal of marriage education is to help couples understand the foundations on which stable relationships and marriages are built while the goal of "pro-marriage" programs is to primarily encourage marriage.

Conclusion

Federal marriage promotion efforts were established with the goal of changing community sentiment regarding marriage. As evidenced by the responses provided by these African Americans, the majority do not believe the government should try to change people's attitudes to be more "pro-marriage." However, some were optimistic, while a few were skeptical. Although there are barriers to changing community sentiment regarding marriage, this does not mean that the government should not actively evaluate how marriage promotion efforts are perceived by members of the general public and improve these efforts. It is my hope that these findings remind policymakers that communities are made up of individuals who ultimately want marriage and family stability. Thus, changing community sentiment is possible when African American couples are fully aware of what marriage entails, are equipped with the needed tools to make a success of marriage, and feel the right blend of governmental support and personal autonomy that make marriage a decision not based on force, but rather one of personal choice, entered into willingly by two people who truly want to be married.

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How Attitude Functions, Attitude Change, and Beliefs Affect Community Sentiment Toward the Facebook Law

11

Michael J. Kwiatkowski and Monica K. Miller

As Internet-based social networks became more popular within society, some people (e.g., child abusers or scam artists) began to utilize such networks in ways that violate cultural norms and laws. One example is an adult using Internet-based social networks for inappropriate contact with children, such as sexual solicitation, cyberbullying, or other sex crimes (Mitchell, Finkelhor, Jones, & Wolak, 2010; Phillips, 2004; Ybarra, Mitchell, Wolak, & Finkelhor, 2006). Due to the potential for misuse, some states and organizations (e.g., school districts) support laws that forbid specific populations from utilizing social networks to interact with children. For example, some school districts have restricted teachers from interacting with students under the age of 18 through non-work-based websites, including social network sites such as Facebook and MySpace (Spanierman v. Hughes, 2008). In contrast, some groups actively encourage teachers to utilize the Internet and social networking sites to interact with students, potentially assisting the students in learning (Mazer, Murphy, & Simonds, 2007; Mullen & Tallent-Runnels, 2006; Schwartz, 2009). These positions represent the extremes of attitudes toward this issue.

Attitudes are positive or negative evaluations of an attitude object; they consist of affect, cognition, and behaviors related to that object (Olson & Zanna, 1993). Attitudes serve functions, which are the basis for having a certain attitude (Herek, 1987; Katz, 1960; Shavitt, 1990). For instance, individuals might support a law prohibiting an act that violates their values; this attitude represents the "value" function. Another word for attitudes is sentiment, which specifically reflects one's level of support for of some issue (Finkel, 1995). Understanding the community's sentiment toward a law—and the function the sentiment serves—might suggest how sentiment toward the law can be changed and how the law could be changed so as to remain in line with community sentiment. For example, understanding the community's sentiment toward the regulation of online social networks (e.g., Facebook) might help lawmakers determine how to regulate interactions between adults and minors in a way that will garner community support. One attempt at implementing such a law, colloquially named the "Facebook law," would have prevented teachers from interacting with children under the age of 18 on nonschool-related websites. Community sentiment toward this proposed law is the focus of this chapter.

The purpose of this chapter is threefold: The first purpose is to measure students' knowledge of, beliefs about, and sentiment about the Facebook law. The second purpose of the study is to determine what factors *predict* support for the law, including beliefs about the law and demographics. Similarly, the study's purpose is to determine if the functions the attitude serves are

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related to support for the law, and whether some functions are more strongly related to support than other functions. The third purpose of the study is to test whether receiving new information changes support (community sentiment) for laws regulating online social networks.

The Facebook Law: A Short Retrospective

Legislatures sometimes reference a specific crime or victim when passing a law (often called "memorial legislation;" Griffin & Miller, 2008). One such example is the Amy Hestir Student Protection Act (2011) in Missouri, a law proposed to restrict online interactions between teachers and students outside of any nonboard of education approved website. Colloquially known as the Facebook law, part of the Act is designed to protect minors from sexual abuse and prevent teachers from interacting inappropriately with students while online.

Amy Hestir was sexually abused by a teacher when she was in middle school during the 1980s but did not come forward with this information until 2011 (Roscorla, 2011a; Webley, 2011). After a series of reports in 2011 from the Associated Press about sexual misconduct by teachers in general, Hestir contacted a state representative, then-Rep. Jane Cunningham, and explained that she had been sexually abused by a teacher decades earlier (Roscorla, 2011a). Legislators passed a law that, among other things, prohibited teachers and employees from interacting with students through any non-work-related Internet sites (Amy Hestir Student Protection Act, 2011; Roscorla, 2011a). Later, the Missouri State Teachers Association filed a lawsuit against the state (Roscorla, 2011b). Although the law was struck down by the courts (Lieb, 2011), the issue is still relevant, as other states are passing or considering laws that restrict interactions on social media between some groups of people.

As with all controversial topics, opposing viewpoints have emerged regarding the Facebook law. The viewpoint which supports the law focuses on preventing teachers from interacting inappropriately with students (i.e., sexual misconduct). Because a third of Internet-based sex crimes occur through social networks (Mitchell et al., 2010), there is some merit to the idea that predators (or potential predators) should not be allowed to contact children online. The opposing viewpoint focuses on teachers' privacy and freedom to associate online. Opponents of the law often emphasize that the law completely prevents teachers from interacting with students online. This law also conflicts with the efforts of school districts which encourage teachers to use new and innovative methods to interact with and teach students (Mazer et al., 2007); this includes using social networking sites as a viable method to educate students (Schwartz, 2009). This brief review indicates the sharp contrast in attitudes toward the Facebook law.

Attitudes and Community Sentiment

Attitudes are evaluations of objects or events that are represented in memory and occur with affective, behavioral, and cognitive antecedents and consequences (Olson & Zanna, 1993). Community sentiment is similar, referring to the public's attitudes toward a topic or issue; this sentiment is measured by social science methodology (Blumenthal, 2003; Finkel, 1995, 2001). Both legislatures and the legal community hesitate to utilize social scientific data (of which, one type is data about community sentiment; Tanford, 1990), despite potential for using sentiment to develop better legislation (Blumenthal, 2003).

One reason for such hesitation is because the study of sentiment has notable problems. In a review of the public's perception of legal issues (such as the insanity defense and capital punishment), Finkel (1995) posits several hypotheses related to community sentiment as measured by national polls: (1) Polls are poorly conducted; (2) polls measure transitory, unstable sentiment; (3) the public has complex and potentially contradictory sentiment; (4) sentiment is often grounded in ignorance; (5) the public pays insufficient attention to important details and context as a result of

ignorance; and (6) polls result in distortions of perceptions due to measurement issues. While other chapters in this volume (e.g., Chaps. 1, 3, and 8) focus on many of these issues, this chapter will focus on issues 2, 3, and 4 by using social psychological research concerning attitude functions and attitude change. Attitude change research can explain what factors (here, receiving more information about an issue they are essentially ignorant about) can cause individuals to adjust their attitudes. This addresses both the public's ignorance and the transitory nature of attitudes. Attitude function research could explain why different individuals hold different attitudes toward a legal topic. This furthers the notion that sentiment is complex. Attitude function and change theories are the foundation for this study.

Attitude Functions

The function of an attitude is the basis or reason a person holds the attitude (Herek, 1987; Katz, 1960; Shavitt, 1990). People might have multiple functions for a single attitude (Shavitt & Nelson, 2002). Although some researchers recognize other types of functions (or recognize functions by other names), the four types of attitude functions examined in this study include: ego-defensive, social-expressive, value-expressive, and experiential-schematic (Anderson & Kristiansen, 2001; Katz, 1960). An ego-defensive attitude function serves the purpose of protecting one's beliefs and ideals from attack or disadvantage (e.g., "I don't want the government telling me who I can and cannot interact with on Facebook"; Herek, 1987). A social-expressive attitude function serves the purpose of finding support from one's in-group or social network (e.g., "my friends don't support the Facebook law, so I don't support it either"). A value-expressive attitude function serves the purpose of focusing on the *abstract* reference group or cause underlying the attitude (e.g., "I am against the Facebook law because it violates teachers' rights to privacy, which is a right I value"). An experiential-schematic attitude function serves the purpose of focusing on the *specific* context about a reference group or cause underlying the attitude (e.g., "I know a teacher who uses Facebook, so I am against the law because it violates his privacy"). This study will investigate all four functions.

Attitude Change

Attitude change can be conceptualized as a shift in one's evaluation of the attitude object. This change can be a result of many things, including persuasive messages or (in this study) receiving more information about the attitude object. Specifically, attitude change could relate to the way the information is processed. Dual-processing models (Elaboration Likelihood Model, ELM; Petty & Cacioppo, 1986; and Heuristic-Systematic Model, HSM; Chaiken, Liberman, & Eagly, 1989) suggest that some information or messages are processed at a shallow level while other information or messages are processed at a deeper, more thoughtful level. The depth of processing depends on factors such as the individual's *ability* and *motivation* to process the information (ELM; Bohner, Erb, & Seibler, 2008). For example, people who receive new information before voting for a law might become more able and motivated to think about the law in a deeper more thoughtful manner. In contrast, those who do not have the information might only think at a shallow level, basing their attitudes on the "first thoughts" that come to their mind (Miller & Reichert, 2012). As a result, receiving information could change one's attitudes.

Previous psycho-legal research has found that providing participants with information can change their attitudes—perhaps because people who receive information process at a deeper level than those with no information. Such research has focused on several legal areas, including capital punishment (Finkel, 2001; Lambert & Clarke, 2001, Sarat & Vidmar, 1976), AMBER alerts (Sicafuse & Miller, 2012), and legal regulations for pregnant women (Miller & Reichert, 2012). These studies (although not tests of dual-processing models per se) suggest that initial sentiment can be formed through shallow

levels of processing, but the presentation of new information might prompt deeper levels of processing. The current study investigates whether being provided with information changes participants' attitudes toward the Facebook law.

Students' Perceptions of the Facebook Law

The current study utilizes university students as a "community" and measures students' attitudes toward regulation of online student-teacher interactions (i.e., the Facebook law). Past research has measured students' perceptions and attitudes toward online crimes of cyber-stalking (Alexy, Burgess, Baker, & Smoyak, 2005) and online piracy of music (Taylor, 2004), but this is the first to measure attitudes toward the Facebook law (for a review of usage of Facebook, see Caers et al., 2013; Hew, 2011). As a whole, students typically have difficulty identifying or defining illegal online behaviors (Alexy et al., 2005; Taylor, 2004). This could have implications for the current study, as students' support of the law could be influenced by their difficulty understanding, defining, or simply recognizing behaviors as illegal.

University students are a particularly important community to study because they were recently minors—one group that is particularly affected by the Facebook law. They are also a group that uses social networking a great deal (Boyd & Ellison, 2007; Govani & Pashley, 2005). Chapter 6 of this volume further addresses issues involved with student samples.

Overview of Study

There are three purposes of this study. The first is to determine students' level of support and related constructs (e.g., beliefs about the law, functions their attitudes serve) related to the Facebook law. Several research questions were developed: What is the level of support for the Facebook law? What are the most common attitude functions? What are students' beliefs about the law? In addition to these questions, a hypothesis was formed, predicting that participants would lack knowledge of any law restricting interactions between students and teachers. This based upon research finding that people are generally uninformed about legal issues such as capital punishment (Finkel, 2001; Lambert & Clarke, 2001, Sarat & Vidmar, 1976) and AMBER alerts (Sicafuse & Miller, 2012).

The second purpose is to determine what predicts support for the Facebook law. Specifically, do demographics, beliefs about the law, and attitude functions relate to support?

The third purpose of this study is to test the research question: Does receiving information change participants' support (Finkel, 2001; Lambert & Clarke, 2001; Miller & Reichert, 2012)?

Method

Participants

Participants ($N = 112$) were university students who received course credit. The sample was primarily female (66.4 %) with a mean age of 21.85 years (SD = 5.02). Of the sample, 25.00 % were freshmen, 12.90 % were sophomores, 31.00 % were juniors, and 27.60 % were seniors. Many were criminal justice majors (36.20 %), while 21.60 % were from other social sciences, 17.20 % from education, 6.0 % from other sciences, and 15.50 % from other majors.

Materials

Materials developed for this chapter include: questions to measure support for the law, knowledge of the law, and beliefs about the law. Additionally, attitude functions were assessed by an attitude function inventory which was modified from a preexisting measure (Herek, 1987).

Support for the Law (Sentiment). The support/sentiment measure included five questions measuring support for the law, e.g., "would you vote for a law that holds teachers criminally responsible for contacting students for inappropriate reasons?" Questions were measured on a Likert scale from certainly not vote (1) to certainly vote (5). Participants responded to this measure both

before and after they received information. The questions on the both the pre-information and post-information support questionnaires were analyzed for reliability (Cronbach's alpha = .64 and .69 respectively). The pre-information questions were averaged into a single variable ($M = 2.24$, SD = .68), as were the post-information questions ($M = 2.38$, SD = .77).

Knowledge of the Law. Participants were asked whether they have knowledge of a law that would prevent teachers from interacting with children through online social networking sites. Participants responded "true" if they had knowledge or "false" if they did not.

Beliefs About the Law. Ten questions measured beliefs about the law. Participants read the stem, e.g., "I believe that a law preventing teachers from interacting with students through online social networking sites…," and then rated 10 statements on a Likert scale of strongly disagree (1) to strongly agree (5). Example statements include: protects children from sexual abuse; violates teachers' right to freedom of speech; and does not impact most teachers/students. Questions were based upon the reasons the law was created (Roscorla, 2011a).

A factor analysis indicated that the 10 belief questions could be grouped into three factors. The first factor consisted of five statements relating to preventing inappropriate student-teacher interactions (eigenvalue = 3.60). The second factor consisted of three statements related to protecting teacher's rights (eigenvalue = 1.72). The final factor consisted of two statements that reflected beliefs that the law would not impact most teachers or students (eigenvalue = 1.41). Questions within each factor were average to create a single score for each factor.

Attitude Function Inventory. The attitude function inventory (AFI; Herek, 1987; Katz, 1960) was originally used to measure functions of attitudes toward LGBT people. For this chapter, the scale was modified to measure functions of attitudes toward the Facebook law. The AFI consists of four functions using 10 questions (e.g., an experiential-schematic question: "My opinions about the law are based on whether or not someone I care about may be affected by the law") answered on a nine-point scale, from "not at all true of me" (1) to "very true of me" (9). The four constructed scales reflected the four functions identified by Herek (1987): experiential-schematic (Cronbach's alpha = .84), social-expressive (Cronbach's alpha = .89), ego-defensive (Cronbach's alpha = .56), and value-expressive (Cronbach's alpha = .57). Each scale was averaged into a single score.

Procedure

Participants participated online. They first indicated their sentiment toward a hypothetical law (i.e., willingness to vote for the law) that would be enacted in the state (their "pre-information" responses). After reading information about a potential law,[1] participants completed another identical set of questions (their "post-information" responses). Next, participants completed the AFI (attitude function inventory), responded to questions assessing beliefs related to the law, indicated their knowledge of the law, and completed a demographic questionnaire.

[1] Participants received one of three types of information: in support of, opposing, or a combination of information. Each message was 369–374 words. The positive message indicated how the law would protect children from predators while using online social networks. The negative message indicated how the law would impinge upon teacher's rights and ability to educate students using new technology. The combination message contained information from both supportive and opposing messages. ANOVA revealed no statistical differences between groups in regard to post-information support for the law ($F(2, 98) = .35$, $p < .71$, $\eta^2 = .007$). Further, a manipulation check revealed that participants could not accurately identify whether they had read information that was "supportive of," "neutral," or "opposing" the law. In all, 70 out of 108 participants got the manipulation check question wrong. Responses to this question did not differ by condition, $X^2(108) = 10.25$, $p < .12$. Essentially, manipulation of the supportive/opposing message failed. Twenty-three participants thought the information was in support of the law, 27 thought the information was in opposition to the law, 42 thought the information was neutral, and 16 were unsure. Thus, the message was not seen as clearly positive or negative. All participants were combined into one group because there seemed to be no perceived differences among information groups.

Results

Purpose One: Students' Sentiment and Beliefs About Facebook Law and Related Issues

A set of research questions addressed students' sentiment and related constructs. On the "pre-information" support measure, the mean response indicated that participants as a whole were slightly unsupportive of the law ($M = 2.24$; SD = .68). This low level of support was also present "post-information," ($M = 2.38$; SD = .76). Of the three types of beliefs, the most strongly held belief was protecting teachers' rights ($M = 3.39$, SD = .97). The value-expressive function was the strongest attitude function ($M = 4.94$, SD = 1.41; see Table 11.1 for other descriptives).

The hypothesis that people are generally uninformed about the Facebook law was supported; most participants were unaware of any such law (86.20 %).

Table 11.1 Descriptive statistics of measures

	M	SD
Pre-information support*	2.23[a]	.68
Belief factor 1—protecting student–teachers interactions*	3.22[b]	.82
Belief factor 2—protecting teachers' rights*	3.39[b]	.97
Belief factor 3—does not impact most teachers/students*	3.12[b]	1.06
Post-information support*	2.38[c]	.76
Attitude function—experiential-schematic**	3.76[d]	1.52
Attitude function—social-expressive**	3.19[d]	1.71
Attitude function—ego-defensive**	3.09[d]	1.48
Attitude function—value-expressive**	4.94[d]	1.40

Note: Ns vary because of missing data
[a]$N = 110$
[b]$N = 109$
[c]$N = 107$
[d]$N = 108$
*Scale of 1–5
**Scale of 1–9

Purpose Two: Predictors of Support for the Law

The second purpose of the study was to test whether support for laws can be predicted by demographics, beliefs about the law, and the attitude functions one holds for an attitude.

Demographics. Age, gender, year in the university, and major were used as predictors in regression analyses, with support for the law as the outcome variable. The model was not significant ($R^2 = .05$, $F\ (9, 86) = .50$, $p > .87$).

Beliefs About the Law. Beliefs about the law were also considered as predictors of support for the law. The three factors from the belief measures (the Facebook law protects students from inappropriate interactions, the law affects teachers and teachers' rights, the law does not affect everyone) were tested in a two-step multiple regression model. The first factor, belief that the Facebook law would protect students from inappropriate interactions with teachers, was tested as a predictor variable in the regression in a model by itself because it is the main purpose of the law. The output variable was support for the law. This model accounted for a significant amount of the variance ($R^2 = .09$, $F\ (1, 105) = 10.70$, $p < .01$). The first factor significantly predicted an increase of support (see Table 11.2).

Table 11.2 Multiple regression of attitudes toward the Facebook law on support for the law for students

	Model 1		Model 2	
	b	*se*	*b*	*se*
Protecting student/teacher interactions	.23*	.07	.11	.07
Teachers' rights			−.25*	.06
Does not impact everyone			−.06	.05

Note: $n = 106$
*$p < .01$

In the second step, the second and third belief factors were regressed, along with the first factor, on the outcome variable of support for the law. This model accounted for a significant amount of the variance ($R^2 = .23$, $\Delta R^2 = .14$, $F\ (2, 103) = 9.43$, $p < .01$), resulting in an increase in explanation of the variance. Protecting teachers' rights predicted a decrease in support for the law. The third factor, the belief that the law would not impact most teachers/students, did not significantly predict

Table 11.3 Multiple regression of attitude functions on support for the Facebook law for students

	b	*se*
Experiential-schematic	−.03	.06
Social-expressive	.13*	.02
Ego-defensive	.04	.05
Value-expressive	−.09	.05

Note: $n = 105$
*$p < .05$

support for the law. However, believing that the law would protect teachers and students from inappropriate interactions no longer significantly predicted support for the law (see Table 11.2). The two steps are compared in Table 11.2.

Attitude Functions. A multiple regression was conducted, with the four attitude function scales as predictors of the support for the law as an outcome variable. The model accounted for a significant amount of the variance ($R^2 = .10$, F (4, 105) = 2.99, $p < .05$), and the results are summarized in Table 11.3. Holding a social-expressive function increased support for the law. The ego-defensive, value-expressive, and experiential-schematic functions were not predictors.

Purpose Three: Changes in Sentiment

A research question asked whether receiving information changes participants' support for the law. This hypothesis was assessed with a repeated measures analysis. The within subjects variable was the time of the response, with a comparison between the pre- and post-information support measures. Pre-information support ($M = 2.24$, SD = .68) was significantly less than post-information support ($M = 2.38$, SD = .76; F (1, 105) = 8.32, $p < .01$, $\eta^2 = .07$).

Discussion

This chapter addressed three purposes: The first was to examine students' knowledge, sentiment, and beliefs toward the Facebook law; the second was to examine predictors of support for the law; the third was to test whether the presentation of new information changed support.

As to the first purpose of the study, there was low support for the law overall. Students were not likely to vote for the law, even after being presented with information about the law. This is in line with previous research on Internet regulation, as students did not support restrictions of online piracy (Taylor, 2004); however, students did support measures against cyber-stalking and cyber-harassment (Alexy et al., 2005). This suggests that laws regulating crimes that are more clearly immoral or dangerous to a clear victim (e.g., stalking as compared to piracy) garner more support. It is possible, then, that participants would have had greater support for laws that regulate more clearly dangerous or immoral Facebook interactions (e.g., restricting *sex offenders*' use of Facebook). Future research can more directly address reasons for low support—this is merely one possible explanation for our findings that fits with the past literature.

Additionally, the vast majority of participants was not aware of the law, despite the fact that it was discussed in a legislature only one year before the data was collected. This might be attributable to a lack of national, in-depth media coverage. The law only affected Missouri, and it is possible that even if a similar law had been enacted in the area from where the sample was drawn, the sample might not have been aware of the law. It is possible that students might have been exposed to the law online, as students spend on average about four hours a day online (Ogan, Ozakca, & Groshek, 2008). However, this time is typically spent on using social communication or social networks, and very little time is spent on reading or disseminating the news (Jones, Johnson-Yale, Millermaier, & Perez, 2009). For students, the news might not be a concern, resulting in ignorance of the law.

As for the second purpose (examining predictors of support for the law), demographics such as age, gender, year in the university, and major were not related to support of the law. This may indicate that the low support of the law is shared across all demographic groups, but this tentative conclusion needs to be examined across different

populations. It is interesting that the major of the students was not related to the support of the law. Past research revealed a difference between music and business majors' support of regulation of online piracy (Taylor, 2004), an issue more relevant to music majors than business majors. Thus, one might have expected that our education majors might differ from other majors; but this was not the case. Perhaps education majors (despite being future teachers) did not see the issue as more relevant than did other majors. Possibly, all students saw the Facebook law as equally relevant because they were all minor students recently. Thus, perhaps relevance was tied to being a student—not being a future teacher. We did not measure perceived relevance, but future research could do so to test this notion.

As discussed in depth in Chap. 6, this volume, sentiment often varies based on individual differences—but the key is to find out *which* individual differences matter (and how to measure them). While demographics were unrelated to support, individual differences in *beliefs* about the law were related to *support* of the law (see also Chaps. 5 and 6 this volume for how individual differences affect sentiment). Beliefs the law would protect children from inappropriate interactions were positively related to support for the law. However, this belief only predicted support when it was analyzed alone in the model. With the addition of other beliefs (e.g., beliefs about protecting teaches' rights and beliefs that the law would not affect everyone), the model changed. Supporting teachers' rights predicted decreased support for the law, but believing that the law protects children from inappropriate actions no longer predicted support. This pattern of results highlights the complexity of sentiment. Beliefs about protecting students are important predictors of support, but in this sample, what is even more predictive are beliefs about protecting teachers. Perhaps this finding stems from the knowledge that only a *few students* are at risk (because few students are actually harmed by teachers), but the law would affect *all teachers*—thus, beliefs about teachers' rights are stronger predictors than protecting students. Further study is needed to address this possibility.

Attitude functions also relate to support for the law. Holding a strong social-expressive function was positively related to an increase in support. Specifically, if people were concerned with how their family and friends would view them for holding an attitude (e.g., supporting the law), then they would be more likely to support the law. This suggests it is difficult to publically oppose a law designed to protect children, especially for those who care about what others think.

Regarding the third purpose of the study, we found that participants were more likely to support the law after reading information about the law than before. Previous research on the "Marshall hypothesis" revealed that the presentation of information about capital punishment *reduces* participants' support for capital punishment (Finkel, 2001). Other research by Miller and Reichert (2012) replicated this finding using support for laws regulating women's pregnancy behavior. When participants were presented with information about laws, they supported such laws less. In contrast, findings here are in the opposite direction than predicted by the Marshall hypothesis. Instead of a *decrease* of support, the current study found an *increase* of support for the law after presentation of information. This could be attributed to how individuals initially perceive an object and then how information prompts a change in processing (Evans, 2008).

Social cognitive processes that prompt individuals to *decrease* their support of capital punishment (Finkel, 2001; Lambert & Clarke, 2001), AMBER alerts (Sicafuse & Miller, 2012), and some legal regulation of pregnancy behaviors (Miller & Reichert, 2012) might also prompt individuals to *increase* their support of regulation of online interactions. Specifically, Miller and Reichert (2012) posit that a person's "first thoughts" strongly affect their attitudes. They find that students' first thoughts about laws holding women criminally responsible for their actions (e.g., refusal to have cesarean sections) involve protecting the child. Therefore, participants favor the law that protects the child. But, after participants receive more information or discuss the topic with others, they are less supportive of the law. Perhaps this is because they

received more information, allowing sentiment to be based on more than their "first thoughts."

Similarly, in the current study, participants might have negative "first thoughts" about the law, which led to low support for the law. Perhaps participants' "first thoughts" are about protecting students' and teachers' privacy. It is only after considering more information about the law that support increases. The "first thoughts" processing could represent shallow processing, while the processing that occurs after receiving information could represent deeper processing. Dual-processing theories, such as Elaboration Likelihood Model (ELM; Petty & Cacioppo, 1986) and the Heuristic-Systematic Model (Chaiken et al., 1989), might provide explanations why individuals, when presented with information, change their support for legal regulation. Future studies should test these notions.

Implications for Psychology and the Study of Community Sentiment

Results of the current study have several implications for psychology. In this study, the factor analysis of the attitude function inventory found the same results as Herek (1987). Specifically, the factor analysis produced the same general categories of attitude functions as Herek suggested—but using a new topic (i.e., legal regulation of Internet interactions). Thus, the AFI relates to attitudes about legal regulation as well as attitudes about LGBT populations (i.e., the original purpose of this scale that we adapted for our own use).

The second implication involves changing sentiment through providing information. Depending on the topic, presenting information could change sentiment reflecting a decrease in support (as is often the case in capital punishment; Finkel, 2001) or an increase in the support (as found here). In particular, changes in sentiment may reflect increases in the level of processing. This is speculation, however, as participants were not asked to specifically list their thoughts, nor were any measures of processing taken. Furthermore, "first thoughts" are not necessarily the same type of thoughts as well-developed, better informed thoughts. Thus, researchers studying community sentiment should consider whether they are tapping into initial reactions or real opinions (Finkel, 2001), as well as how the information is processed.

Implications for Criminal Justice, Community Sentiment, and Policy Making

Findings also have implications for criminal justice, specifically in regard to sentiment toward regulation of online interactions. One important finding suggests that participants were ignorant of the regulation. This finding was consistent with work on capital punishment: Individuals are usually uninformed (Finkel, 2001). Thus, educating the general population about serious issues such as capital punishment, regulation of online social networking sites, and other issues should become a priority if legislatures desire to have an informed voting population. This is particularly important if more laws like the Facebook law are proposed in the future. If legislatures do create more "Facebook laws," they will have to contend with a lack of community support. Results here indicate fairly strong negative community sentiment toward the laws. Thus, lawmakers face a challenge of convincing the community to support such laws.

Results also could help policy makers persuade individuals to support or oppose a law. Lawmakers trying to persuade voters to support the law should focus on protecting students while lawmakers trying to persuade voters not to support the law should emphasize the need to protect teachers' rights; these were the only belief factors that related to support. Further, lawmakers seeking support for the law should focus on messages that target the social-expressive function. For example, a legislator could hire an advertisement agency to design a campaign that emphasizes how other people (e.g., family and friends of a potential voter) could disapprove of the voter's lack of support for the law and approve

of the voter's support. Drawing on our results, reminding people of how others might react to their vote could prompt support.

One final legal consideration is the role of 1st amendment rights, specifically dealing with privacy. Typically, US courts are concerned with protecting what has been said and who has said it (see *United States v. Bynum*, 2010; *United States v. Christie*, 2010; and *United States v. Mitra*, 2005, for examples). But, the right to privacy also includes other privacy rights such as employers' right to monitor employee behaviors (e.g., use of company computers or behavior in public forums; see Sanchez Abril, Levin, & Del Riego, 2012 for review). Thus, school districts may have the right to monitor teachers' social media if it is in a public form, without risk of violating their privacy rights. The ever-changing nature of the social media and social networking makes it difficult to determine what is "private" and what is "public"; thus, privacy rights are somewhat a malleable concept that the public might have difficulty identifying. The current study indicates that the community might not support actions taken by school districts if they believe the actions infringe upon teachers' rights to free speech. Thus, lawmakers who are tuned in to community sentiment should be concerned with free speech rights.

Limitations

There are some limitations to this study. First, one limitation related to the sample concerns participants' "first thoughts." Results led to the possible conclusion that "first thoughts" about protecting teachers' rights led to initial opposition to the law and deeper thinking (due to receiving information) led to an increase in support. But, there is a limitation of generalizing the findings to other samples. Different samples might have different "first thoughts" and reactions to the information. For example, parents' first thoughts could be about protecting their children, leading to higher initial support of the law in comparison to the students in this sample. The next step would be to focus on identifying those first thoughts, for students and other samples.

Another limitation is the lack of verisimilitude and consequentiality related to the study task. Specifically, students only *pretended* to vote; this might not reflect *actual* voting behaviors. Bornstein and McCabe (2004) examined this issue in relation to mock juries, to determine how jurors view their roles and whether mock jurors' behaviors are similar to real juror behavior. Bornstein and McCabe (2004) indicate that mock jurors take their tasks seriously, despite lack of real consequences. For this study, the participants, acting as mock voters, likely did too.

The type of law studied in this research (restriction of teachers' use of online social networks) is also a limitation. The Facebook law is unique in that it restricts a population (teachers) that typically does not have inappropriate contact with students. It is possible that sentiment toward the law was negative because the law targeted a group that typically does not commit deviant acts with children. If the law had been directed at sex offenders, support for the law might have been greater. Examining support for various laws would provide an opportunity to determine if group membership (e.g., if a person is a sex offender or teacher) is an important factor in influencing support for the law. As with many community sentiment studies, using multiple measures can provide a more in-depth picture of sentiment (see Chaps. 1, 3, and 8 for more on the use of multiple measures to capture complex sentiment).

Conclusion

The Internet offers students opportunities to interact with peers and other groups; they can interact across the room, across the state, and even across the world. But the benefits of easy communication are not limited to students, and some people (e.g., sex offenders) use the Internet to target this vulnerable population. Various laws have attempted to address this problem, but they are not always supported by the public or lawmakers. It was the intent of this study to investigate (1) the level of support for and knowledge of a law that would restrict teachers

from interacting with students online; (2) how beliefs, attitude functions, and demographics relate to support; and (3) how receiving information about the law relates to support.

A main finding is the overwhelming lack of support for and knowledge about the law, even though it was in the news only 1 year before the data was collected. While demographics did not predict sentiment, participants were *less* likely to support the law if they held stronger beliefs about the need to protect teachers' rights and *more* likely to support the law if they held a social-expressive function for their attitudes. After participants received information on the law, support for the law increased, making the community sentiment toward the topic more positive. It is possible that the students' "first thoughts" about the law were negative (e.g., the law unfairly restricts teachers' rights) and guided their initial attitude. Then, possibly, receiving information prompted deeper, more thoughtful processing and attitude change. Further examination of why support changes in the direction it does and the application of dual-processing theories is recommended. Although much research is needed, the findings here have advanced psychology research and offered future direction for studies relevant to psychologists, policy makers, and researchers studying community sentiment.

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Part IV

Community Sentiment and Perceptions of Justice

Promoting Positive Perceptions of Justice by Listening to Children's Sentiment in Custody Decisions

12

Alexandra E. Sigillo

Promoting Positive Perceptions of Justice by Listening to Children's Sentiment in Custody Decisions

Divorce is a prevalent issue within the structure of American families. In 2009, the United States divorce rate was 3.4 per 1,000 people (Tejada-Vera & Sutton, 2010) with a greater percentage of married couples divorcing in their subsequent marriages compared to their first marriages. Consequently, thousands of children are affected by their parents' decision to file for divorce. Most children of divorced parents are subject to large amounts of stress as they deal with the separation of their parents and the restructuring of their lives (McIntosh, 2003). When a couple goes through a divorce, child custody arrangements are generally resolved through either mediation or litigation (Wallace & Silverberg-Koerner, 2003). In the former, custody decisions are negotiated by the couple and their attorneys outside the courtroom, and often through the aid of a third party called a mediator. In the latter, judges decide who receives physical and legal custody of the children and the amount of contact that each parent has with the children. Although only a small percentage of custody cases are contested in court (Stamps, Kunen, & Rock-Faucheux, 1998), it is important to consider the effects of litigated cases on children, as these children are likely to experience exacerbated stress due to the combination of both at-home (e.g., observing parental conflict) and in-court (e.g., forced to share sentiment) stressors (Weisz, Beal, & Wingrove, 2013). The overall purpose of this chapter is to discuss the sentiment of children involved in contested custody cases and how legal professionals' consideration of children's wishes can promote positive perceptions of justice (see also Chaps. 13 and 14, this volume, for more on the link between sentiment and justice). When children exhibit positive perceptions of justice, they may be more inclined to feel satisfied with custody proceedings and adjust to judges' custodial decisions (Tyler, 2006a, 2006b).

When making custody decisions, judges generally rule on the basis of what is in children's best interests (Wallace & Silverberg-Koerner, 2003). The best interests of the child standard includes many guidelines which consider parents' preferences, children's wishes, the relationship between children and their parents, children's adjustment, and the mental and physical health of both children and parents (Krauss & Sales, 2000). Often, judges limit the amount of children's participation in custody cases, which can affect children's level of satisfaction with and adjustment to custody decisions (Barnett & Wilson, 2004). Furthermore, the inability to share custodial

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wishes can influence children's perceptions of justice, such that children may not perceive judges as fair or legitimate. Therefore, comprehensive training standards for legal professionals should document how to obtain children's wishes.

This chapter will first provide a legal overview of the history of custody standards, the ways in which judges solicit children's preferences, and the factors that limit judges' involvement of children and their disclosed wishes. Next, the chapter will examine the therapeutic benefits that children receive when they participate in custody decisions, and investigate children's perceptions of procedural justice and legitimacy in relation to their involvement in decisions that concern them. Finally, recommendations will address the issues surrounding the procurement of children's wishes in custody decisions. It should be noted that throughout this chapter, children's responses to custody decisions are used as proxies for children's sentiment. An essential component of community sentiment research entails studying the sentiment of those who are affected by legal policies and procedures. As such, this chapter focuses exclusively on children involved in litigated custody cases, the procedures that legal professionals use to include children in custody decision-making, and how these procedures affect children's perceptions of justice and the legal system.

Legal Overview of Child Custody Standards

Child custody standards initially favored parents' interests, but have shifted over the years toward children's interests. During the nineteenth century, the United States was an agriculture-based society. On farms, families worked together as a unit in order to establish an income and provide for themselves. The male of the household presided over all decisions concerning the family and had considerably more rights than his wife and children (e.g., right to own property, vote). In fact, according to the doctrine *parental famillus*, children were considered their father's property (Krauss & Sales, 2000). Thus, when a divorce occurred (usually as a result of the wife's adulterous behavior), children were placed in the custody of their fathers.

During the twentieth century, the United States transitioned into an industrial society. As such, fathers began to earn income through factory work, mothers tended to the children and daily household chores, and children attended school. Because fathers did not depend on their children as a source of labor, they were no longer considered to be their fathers' property. Within custody cases, case law acknowledged this shift by basing custody decisions on the children's rights, needs, and interests rather than the parents' (Krauss & Sales, 2000). It was assumed that children needed love and nurturance during their tender years and that mothers were the most suitable parent to provide for their children's needs (Pruett, Hogan-Bruen, & Jackson, 2000). This standard became known as the tender years doctrine and mothers were usually granted custody of their children unless fathers could prove that the mothers were not suitable to tend to their children's needs (Pruett et al., 2000).

Although the tender years doctrine was increasingly becoming the standard on which to base custody decisions, it was challenged within several states during the 1970s. As a result, these state supreme courts deemed the doctrine unconstitutional on the grounds that it violated the equal protection clause of the Fourteenth Amendment (Pruett et al., 2000). Each court ruled that the tender years doctrine did not provide equal rights for men, as it unfairly favored women as the parent who would retain custody. For these states, new gender-neutral standards had to be established. The primary caretaker doctrine, for example, presumed that whichever parent performed the most caretaking responsibilities should retain custody of the children (Emery, Otto, & O'Donohue, 2005). The psychological parent standard presumed that whichever parent provided the most for the children's mental and emotional needs should retain custody of the children (Krauss & Sales, 2000). These two standards never reached nationwide acceptance, as their underlying concepts exhibited de facto discrimination. That is, on the surface these standards appeared to be gender-neutral, but when put into practice they seemed to prefer the mother as the parent who would retain custody. Because fathers were the ones who financially supported their families by

entering into the workforce, mothers were the ones who stayed home and took care of their children's physical, emotional, and mental needs. The use of the primary caretaker doctrine or the psychological parent rule in custody decisions overwhelmingly favored mothers being awarded custody of their children; thus, these standards fell out of favor (Emery et al., 2005).

To combat the preference for mothers, the 1970 Uniform Marriage and Divorce Act (UMDA) provided a framework for child custody decisions that listed five factors to use when considering what is in the best interest of the child. These factors included the children's custody wishes; the parents' custody preferences; the relationship between the children and their parents, siblings, or any other important family members; children's adjustment to home, school, and community; and the physical and mental health of all involved in the custody dispute (Wallace & Silverberg-Koerner, 2003). In 1974, the American Bar Association approved these factors in the hope that all states would adopt them as the standard for what is in children's best interests (Pruett et al., 2000). A majority of states have adopted these recommended factors; however, they are not the only ones included in each state's best interest standard. The UMDA encourages states to consider additional factors for what is in children's best interests, and some of these include elements of the primary caretaker standard, the psychological parent rule, and parents' moral fitness (Krauss & Sales, 2000). Written as such, the UMDA creates variance among states' "best interest" criteria, allowing judges' flexibility in discerning which factors to consider and use during each individual custody case—flexibility has its advantages and disadvantages, but that discussion is beyond the scope of the chapter.

Judges' Procurement of Children's Custody Wishes

In custody proceedings, judges sometimes elicit children's sentiment through testimony, judicial interviews, or guardians ad litem (GALs). Judges are able to call children to testify in court, but such direct participation (i.e., giving testimony) is rarely used in custody proceedings (Kruk, 2005). The UMDA provides judges the opportunity to obtain children's wishes via judicial interviews (Crosby-Currie, 1996). For states that allow judicial interviews, the interview must be recorded within the judges' chambers (Crosby-Currie, 1996). The UMDA, however, does not specify the way in which interviews should be conducted or recorded (Starnes, 2003). Additionally, the UMDA states that parents' attorneys can be present during interviews (Crosby-Currie, 1996), but whether they are present or absent depends on judges' discretion. Attorneys' presence might affect the amount of information that children disclose within judicial interviews (Crosby-Currie, 1996; Starnes, 2003). For example, if attorneys are permitted to be present, then children could be less inclined to reveal their custody wishes because they know that the attorneys will inform their parents of their preferences. Overall, the majority of judges within the United States have the discretion of whether they want to obtain children's preferences through judicial interviews, and can vary the ways in which they conduct the interviews.

Children's wishes can also be obtained through the representation of GALs. In the United States, agencies that are part of a national organization recruit and train volunteers to act as GALs (Bilson & White, 2005). This organization does not provide agencies with national recruitment and training standards; thus, the qualifications and requirements of GALs vary by state and agency. However, there is one requirement that all GALs must abide by: they are required to protect children's best interests. This obligation, though, can conflict with children's own preferences. That is, although children might express their custody wishes to GALs, these representatives are not obligated to communicate children's preferences to the court. When presenting information regarding what is in children's best interests, GALs can choose not to convey children's sentiment because they believe children's preferences are not in accord with their best interests. Thus, GALs allow for children's sentiment to be heard, but only to the extent that the guardians consider it to be in the children's best interest.

Although children's wishes can be obtained through these three strategies, judges may choose

not to involve children in custody proceedings. Thus, children's preferences might not be heard at all. This appeared to be the case for Virginia and Michigan judges in Crosby-Currie's study (1996). Judges indicated that judicial interviews were more likely than GAL reports and GAL reports were more likely than direct testimony to be used in obtaining children's preferences; however, judges reported that these avenues were not likely to be used in general.

When children's wishes are procured, however, it is important to understand judges' perceptions of the sentiment. Many studies have noted that when judges are asked to rate or write down factors they consider the most important when making child custody decisions, they perceive children's sentiment as an important factor in the decision-making process (Crosby-Currie, 1996; Felner et al., 1985; Wallace & Silverberg-Koerner, 2003). Unfortunately, they may not readily apply such preferences within their custody decision-making. In Felner and colleagues' study (1985), only half of the judges reported that they actually used children's wishes in practice. Thus, although studies suggest that judges perceive children's preferences as an important factor, it does not necessarily indicate that they are consciously employing them in their practice.

Judges report that children's sentiments are an important factor in deciding custody arrangements, but children's involvement is often restricted due to their age. Judges were reportedly more likely obtain children's wishes through direct contact (Felner et al., 1985) or judicial interviews (Crosby-Currie, 1996) for older children compared to younger children. Furthermore, as children become older, judges give more consideration to their wishes (Crosby-Currie, 1996; Wallace & Silverberg-Koerner, 2003). Judges are more inclined to obtain and use older, rather than younger, children's preferences based on the assumption that older children are more developmentally advanced. Judges are likely to perceive that older, rather than younger, children are more knowledgeable and certain of their physical, emotional, and psychological needs and of which parent and corresponding home environment would most adequately provide for those needs. Some researchers, however, argue that children's age should not preclude their participation in custody decision-making. Instead, custody professionals should cultivate and maintain an open, supportive, and trusting relationship within which children of any age feel comfortable to voice their sentiment (Smith, Taylor, & Tapp, 2003).

Overall, judges can obtain custodial preferences through children's testimony, judicial interviews, or GALs. However, the use of these strategies is minimal in litigated custody cases, largely because children's age may preclude judges from adequately obtaining and considering their preferences. Most often, judges will involve older, rather than younger, children by asking them about their custodial wishes.

Outcomes Relative to Children's Participation in Custody Decisions

It is often difficult for judges to decide whether they should involve children in custody proceedings by asking them about their preferences due to potential detrimental outcomes. Most judges perceive children's involvement as harmful because it may cause emotional difficulty (e.g., guilt) or place children in a conflicting position by asking them to choose between their parents (Felner et al., 1985). Many judges will only actively engage children in custody proceedings when they feel that children are at an age at which they can cognitively and emotionally combat any potentially damaging consequences as a result of their involvement. However, children of any age who *want* to be involved in custody decisions should be provided the opportunity as they could receive many beneficial outcomes (Campbell, 2008; Cashmore & Parkinson, 2008; Darlington, 2006). Opposition does exist, however, as some researchers believe that children who are given the opportunity to be heard may be burdened with a sense of responsibility (Emery, 2003), especially if forced or required to participate (Starnes, 2003).

In general, children who *want* to be involved in custody cases covet the opportunity to have their

sentiment heard and considered by the court (Barnett & Wilson, 2004; Cashmore & Parkinson, 2008; Darlington, 2006), even if they are not included in making the final decision (Birnbaum & Saini, 2012; Campbell, 2008). Additionally, those children who *want* to be involved in the decision-making process contend that children of all ages should be able to participate and express their custodial wishes. Children in Campbell (2008) noted that adults and authority figures involved in the decision-making process may assume that the age of children precludes younger ones from knowing what is in their best interests, and consequently, might not ask or consider their wishes. However, the children interviewed asserted that children of all ages should be able to express their custodial decisions. Although children may present inaccurate information or express an unreasonable custodial preference (Starnes, 2003), all children who *want* to share their custodial wishes should be provided the opportunity, regardless of age. Overall, children do not want to be solely responsible for the decisions that concern them, but want to have their sentiment heard and considered during the decision-making process (Birnbaum & Saini, 2012; Campbell, 2008).

Judges who seek children's custody preferences promote principles of therapeutic jurisprudence (see Chap. 14, this volume, for more on therapeutic jurisprudence). Therapeutic jurisprudence is a perspective in which legal rules, procedures, and actors can be used to produce therapeutic or anti-therapeutic outcomes for individuals involved in the legal process (Wexler, 1996). Pertinent to this chapter, therapeutic jurisprudence applies to the role of judges in custody cases and their behavior in the courtroom. Based on research, therapeutic jurisprudence principles suggest that judges, as legal actors, should actively procure children's sentiment for those who *want* to participate in custody cases because it results in therapeutic outcomes for the children. Specifically, children are satisfied with the decision-making process because they feel as though they are listened to (Darlington, 2006), respected and valued (Campbell, 2008), and acknowledged (Cashmore & Parkinson, 2008). Furthermore, research indicates that individuals who are given a voice in the decision-making process are likely to have elevated perceptions of procedural justice (Tyler, Rasinski, & Spodick, 1985). Similarly, it is assumed that children are satisfied when judges seek their custodial sentiment because they are provided some sense of agency and control over how the custodial decisions are made (Kaltenborn, 2005; Szaj, 2002), which likely contributes to their elevated perceptions of procedural justice.

To further understand children's perceptions of justice, it is important to consider legitimacy. This justice principle refers to the perception that authority figures are appropriate governing entities; perceptions that the authority figure is legitimate influence individuals to feel obligated to obey (Tyler, 2006b). The more legitimate authority figures appear, the more likely individuals will feel responsible to accept and comply with their actions and decisions. Authority figures can appear legitimate by making decisions through just procedures. For example, Fagan and Tyler (2005) found that children who perceived that they were treated fairly by legal actors were more likely to view the legal actors as legitimate (although this view declined over time for some children). Furthermore, the study demonstrated that children's perceived legitimacy of the legal actors influenced their compliance with the legal actors' authority (Fagan & Tyler, 2005). These findings confirm that when authority figures are perceived as legitimate, individuals are then more inclined to accept and follow the law and legal outcomes (Tyler, 2006b). It is presumed, then, that children consider judges to exhibit procedural justice when they provide the opportunity for them to express their custodial wishes to the court. Thus, children who have the opportunity to voice their custodial preferences would be more likely to perceive judges as legitimate and, consequently, be more likely to accept their custodial decisions compared to children who are not given the same opportunity to be heard (Tyler, 2006a). What happens, though, when judges allow children to share their custodial preferences, but judges' decisions oppose children's wishes? Children could still regard judges as legitimate because judges acted fairly by obtaining their custodial wishes. In this situation, children are

more likely to attribute judges' "unfair" decisions to external factors rather than the judges' internal characteristics (Tyler, 2006a). Thus, it is important for judges to promote procedural justice in order for children to regard them as legitimate, which hopefully shapes children's acceptance of and compliance with their decisions.

Overall, children are satisfied with the decision-making process when they are allowed to participate and express their custodial sentiment to the court. When judges provide children the opportunity to act as agents in their own decision-making, children often receive therapeutic benefits that help them accept and adjust to final custody decisions. Furthermore, legitimacy and procedural justice provide explanations regarding the relationship between children's involvement in custody decisions and their perceptions of judges and the legal system (see Chaps. 15, 16, 17, 18, this volume, for further discussion of the outcomes of relying on sentiment in legal decisions). Based on these assumptions, the following section provides policy recommendations regarding judges' willingness to obtain and use children's sentiment when making custody decisions.

Recommendations and Future Research

Extant research demonstrates that children benefit from participating in custody decision-making (e.g., Campbell, 2008). Judges who do not obtain children's preferences likely contribute to children's negative perceptions about judges and the legal system (Tyler et al., 1985). The following section provides recommendations regarding: (1) training standards for legal professionals who solicit custodial preferences and (2) legal actors' adherence to an age-neutral principle when obtaining children's wishes. Furthermore, this section presents recommendations about other methods that could be used to promote children's positive perceptions of justice in addition to their actual inclusion in custody proceedings. Finally, this section proposes future research ideas to address whether children have the maturity to share their sentiment and their ability to adapt to the final custodial decision.

Training Standards for Obtaining Sentiment

Judges should provide the opportunity for children to participate in custody decision-making, especially for those children who *want* to express their wishes (Birnbaum, Bala, & Cyr, 2011). When judges seek children's sentiment, they have the option to call children to testify, interview children, or appoint GALs as representatives for children, but none of these avenues are likely to be used in general (Crosby-Currie, 1996). Judicial interviews were implemented as a way for the judicial system to protect children from the harmful effects of testifying in court (e.g., court pressure, story fabrication; Wright, 2002); however, such interviews might have potentially negative consequences as well. Conducting interviews "behind the scenes" does not preclude children from experiencing the burden of choosing between their parents or enduring other negative emotions, such as shame or guilt. Judges can be educated on conducting child interviews via manuals and other resources (e.g., see American Bar Association Child Custody and Adoption Pro Bono Project and American Bar Association Center on Children and the Law, 2008), but they should receive more in-depth, one-on-one training on how to conduct interviews with children (Saywitz, Camparo, & Romanoff, 2010). For example, judges could receive continued instruction on how to ask age-appropriate questions or learn a free-narrative approach for child interviews.

Regarding the appointment of GALs, training volunteer citizens as GALs might not adequately prepare these individuals for all the legal and psychological issues related to family and child custody law. In fact, GALs themselves contend that their training does not provide sufficient means to determine what is in children's best interests (Pitchal, Freundlich, & Kendrick, 2009). As such, uncertainty surrounds the use of GALs

to protect children during custody cases and determine what is in their best interest.

A better approach to procuring children's sentiment would be to appoint both attorneys and advocates for children in custody cases. This tandem model, or dual representation, has been implemented in countries such as England (Bilson & White, 2005), and similar models have been enacted, but not necessarily adopted, in the United States (Atwood, 2008). Specifically, the Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act (the Act; based predominately on the American Bar Association's Standards of Practice for Lawyers Representing Children in Custody Cases) provides for the possibility of two separate lawyers to represent children in custody cases—the child's attorney and the best interests attorney (Atwood, 2008). The child's attorney serves as children's legal representatives to ensure that their rights are protected. Given the power differential within the adult–child relationship, however, children might be unable to relate to their lawyers in the same manner as adults (Appell, 2006). Therefore, in addition to the child's attorney, the best interests attorney serves to represent children's best interests to counteract this potential imbalance. Each lawyer serves children's best interests, but the best interests attorney is able to advocate a best interests position even if it is in direct contrast to the child's expressed custodial wishes; the child's attorney is bound to advocate the child's position (Atwood, 2008).

Interestingly, the court has the discretion to appoint neither, one, or both of these lawyers, and when assigned, the representative(s) must communicate children's wishes to the court if that is what the child wants (Atwood, 2008). It is recommended that each attorney be appointed to children involved in custody cases, but obviously such appointment depends upon parents' ability to pay lawyer fees (although the Act recommends states establish funds to compensate attorneys in cases in which couples cannot afford legal representation; Atwood, 2008). Such dual representation would allow children's best interests to be protected within both legal and welfare contexts, and permit children to participate in proceedings and communicate their custody preferences to the court if they so desire. It should be noted that there is strong opposition against the Act. The American Academy of Matrimonial Lawyers' Standards for Attorneys and Guardians ad Litem in Custody or Visitation Proceedings argues that lawyers appointed to children in custody cases should *only* advocate for the child's expressed sentiment—a child-directed approach (see Guggenheim, 2009). Regardless of the approach used, though, any court-affiliated adult who interacts with children to obtain their custody preferences should have a solid legal and psychological background and receive adequate and ongoing training (Ballard, Rudd, Applegate, & Holtzworth-Munroe, 2013).

Establish Age-Neutral Standards

Previous studies have indicated that the age of children limits judges' willingness to obtain children's sentiment within the decision-making process (Crosby-Currie, 1996; Wallace & Silverberg-Koerner, 2003). Many judges perceive that children's involvement could produce detrimental consequences, but judges should seek children's sentiment for those who *want* to share their custodial preferences. Children who are provided the opportunity to participate in custody decisions often receive therapeutic outcomes (Campbell, 2008; Cashmore & Parkinson, 2008; Darlington, 2006). Furthermore, children are satisfied because they have some sense of agency and control regarding how custody decisions are made (Kaltenborn, 2005; Szaj, 2002), which may increase their perceptions of procedural justice (Tyler et al., 1985) and the legitimacy of judges and the legal system in general (Tyler, 2006a). States' best interest standards do not specify an age qualification or restriction when considering children's wishes; thus, children of all ages should technically have the opportunity to be involved in the decision-making process. It is recommended that states make it explicit within their own best interest standards that judges obtain children's sentiment from those who *want* to express their custodial

preferences to the court, regardless of their age (Birnbaum et al., 2011). If judges choose to incorporate children's wishes into the custody decision, then at that time they should consider the age of the child.

Promoting Positive Perceptions of Justice

Children who are provided the opportunity to voice their custodial preferences to the court are likely to have elevated perceptions of procedural justice (Tyler et al., 1985; but see Appell, 2006 regarding procedural justice limitations when attorneys promote children's voice). It is important, however, to consider other methods that could be used to promote children's positive perceptions of the legal system in addition to their participation in custody proceedings. Most children are not familiar with judicial processes, but during custody disputes they often find themselves in the uncomfortable, foreign environment of the courtroom. Before children enter the courtroom, they should receive education about legal proceedings and their rights in the judicial system (Appell, 2006). In particular, children should be prepared for court by receiving instruction on the titles, roles, and responsibilities of the legal actors whom they might encounter during the legal process. Moreover, children should be informed about the sources that judges use to make decisions (e.g., testimony, best interest standard). All children should receive age-appropriate education and materials about legal proceedings and the judicial system. For example, younger children could be provided with a picture book depicting legal actors and their specific titles, whereas older children could receive handouts with content that corresponds to their appropriate reading level. Increasing such knowledge may allow children to draw more positive and appropriate conclusions about fairness and justice in the legal system, especially when judges' decisions do not coincide with their custodial sentiments.

Future Research

Along with the above recommendations, it is imperative to consider suggestions for future research. Age is the primary factor that inhibits judges' willingness to obtain children's wishes (Crosby-Currie, 1996; Wallace & Silverberg-Koerner, 2003). Therefore, future research should address whether children, at different ages, are developmentally able to cope with the stress that could result from expressing their wishes and the decision outcomes regardless of whether decisions correspond with their sentiment. Individuals in the psychological field should conduct multimethod research to assess children's cognitive, emotional, and psychological levels when placed in a stressful environment like courtrooms. It would be important to determine at which ages children are likely to (1) understand that communicating their sentiment to the court can produce both positive and negative outcomes for themselves and (2) have the ability to cope with the consequences of their actions whether positive or negative. Such research would reveal the age at which children are able to cope with stress and decision outcomes when they do share their wishes with the court. While there is not likely a uniform age at which all children become mature enough, it is certainly possible for psycho-legal professionals to develop an assessment that would measure a child's competency.

Furthermore, social psychologists should investigate the relationship between children's participation in custody decisions and their perceptions of procedural justice to determine whether the relationship affects their views about the legitimacy of judges, the fairness of judges' decisions, and the satisfaction with the legal process. Presumably, court participation increases children's perceptions of the fairness of legal proceedings, which could contribute to children's assessment regarding the fairness of the final custodial decision. However, empirical research should actually test these assumptions in the courtroom setting, either by interviewing or surveying children involved in contested custody cases.

It would be important for researchers to consider children's age, developmental maturity, and legal attitudes as possible covariates as these may influence the relationship. Findings would provide valuable evidence for how children's perceptions of justice, judges, and the legal system contribute to their overall well-being after their involvement in custody decision-making.

Conclusion

The lack of structure surrounding states' best interest standards provides insufficient means for judges to procure and use children's wishes when making custody decisions. If states incorporate some of the above recommendations, then children will have more opportunity to participate in the decisions that concern them, presumably resulting in greater therapeutic benefits. Furthermore, allowing children to share their custodial sentiment may positively enhance their perceptions of procedural justice and the legitimacy of judges and the legal system, making it easier to accept and adjust to final custody decisions. Therefore, implementations of these recommendations will likely increase children's overall well-being for those children who want to participate in litigated custody cases and communicate their custody sentiment.

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13 Same-Sex Parents' Sentiment About Parenthood and the Law: Implications for Therapeutic Outcomes

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The rights of same-sex parents have been highly debated within the legal realm. With the growing number of same-sex unions (see Pawelski et al., 2006; Stark, 2013), the legal system is faced with new challenges, some of which go beyond the issue of same-sex unions. For instance, what parental rights and responsibilities do same-sex parents have after the relationship ends? (see Chap. 9, this volume, for discussion of same-sex divorce). In 2005, the California Supreme Court (in *Elisa B. v. Superior Court*, 2005; *K. M. v. E. G.*, 2005; and *Kristine v. Lisa*, 2005) found that a child's lesbian mother could be a "parent" despite the lack of a biological or adoptive relationship. In contrast, the Massachusetts Supreme Judicial Court (T. F. v. B. L., 2004) found that an implied contract between same-sex partners to raise the child together was unenforceable; thus there were no parental rights and responsibilities. The result in this case is somewhat surprising given that same-sex marriage had become legal in Massachusetts the year prior (in *Goodridge v. Mass. Department of Public Health*, 2003). However, the parties in this case did not have the right to marry when they decided to have children; marriage rights might have translated into parental rights and responsibilities and a different outcome in the case. Most recently, a Florida court in 2012 heard a case in which a woman harvested an egg to be fertilized and her partner received the fertilized egg and gave birth to the child; later the couple separated. The court determined that both women had legal rights and responsibilities as "parents" to the child (T. M. H. v. D. M. T.; see Stutzman, 2011).

While judges have provided mixed support for the rights and responsibilities of same-sex parents, public opinion polls spanning the last 20 years suggest that community sentiment has become increasingly supportive of same-sex parental rights. Two polls taken in 1992 both revealed that only 29 % of respondents believed that gays and lesbians should have the right to adopt children (Yang, 1997). Opinion polls from 1993 to 1994 revealed similar support—in both polls, 28 % of respondents supported same-sex adoption (see Yang, 1997). A poll conducted in 1998 revealed a slight increase in support for same-sex adoption, with 36 % support for same-sex adoption rights. A more recent 2007 poll revealed that 46 % of respondents believed that same-sex couples should be legally permitted to adopt children (see pollingreport.com, 2007). Polls conducted in 2009 and 2012 revealed that 54 % and 61 % (respectively) of the public supported adoption rights for gays and lesbians

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(Newport, 2012), and a recent Pew Poll revealed that 64 % of respondents believed that same-sex couples could be "as good parents as heterosexual couples" (up from 54 % in 2003; Dimock, Doherty, & Kiley, 2013) . In addition to considering general community sentiment on this issue, judges and lawmakers should understand and consider the sentiment of those directly affected. This research serves as an initial step in understanding the sentiment of same-sex parents in the current sociopolitical climate.

Amid mixed judicial and community responses, same-sex parents might be unsure of their legal rights and responsibilities, and this could impact the roles they assume and the bonds they make with their children. The primary purpose of this research was to examine same-sex parents' sentiment about the parental roles they assume: Do parents perceive equal parental responsibilities in raising the child? To what extent do parents bond with their child? How strong are the parent–child relationships? From these and related research questions, this chapter explores same-sex parents' sentiment about their rights and responsibilities in the face of legal and societal ambiguity.

A secondary focus of this research was to examine same-sex parents' sentiment toward and knowledge about the complex and often hostile political and social landscapes and how these have impacted their well-being and parenting. As of 2013, gay marriage was legal in 13 states and the District of Columbia (Massachusetts Trial Court Law & State of Massachusetts, 2013). In these few states, the rights and responsibilities of married/joined parents who decide to jointly adopt or conceive should not be questioned because parental rights can be conferred to both parents. However, in states that do not recognize same-sex unions of any kind, the rights of parents who want to jointly adopt/conceive are tenuous, but uncertainty about rights can be improved by demonstrating parental intent (e.g., through financial and social relationships; see Richmond, 2005) and avenues for establishing legal rights (e.g., second-parent adoptions). In addition to legal difficulties, it is likely that same-sex parents face negative social scrutiny given that gays have long been a socially stigmatized group (see generally Williams & Retter, 2003), though this stigma is likely diminishing as sentiment about this group becomes more positive. Given these legal and social backdrops, this research examined parents' sentiment about the impact of the sociopolitical climate on perceptions about parenthood: How knowledgeable are parents about their rights and responsibilities? How do current laws and social interactions impact perceptions of parenthood? What difficulties do gays and lesbians experience in becoming parents? And what are some of the emotional and physical repercussions of legal and societal reactions to this emerging population? Assuming there is a connection between sentiment and the law (see e.g., Chaps. 1 and 2 in this volume), these findings can begin to inform judges about the rights and responsibilities of same-sex parents. Ultimately, legal reform can protect the well-being of children and parents—and promote positive perceptions of justice and the legal system (see Chaps. 12 and 14 for more on the link between sentiment and justice and Chaps. 15–18 for more on the outcomes of relying on sentiment in legal decision-making). The legal complexities of same-sex parenting will be explored in the next section.

Same-Sex Parenting and the Law

Parenthood for gays and lesbians is somewhat complex as compared to traditional (heterosexual) conceptions of parenthood. Unlike most heterosexual couples, gay and lesbian couples who want to have a child must either adopt, conceive through in vitro (for lesbian couples), or hire a surrogate parent. In any of these cases, the legal rights and responsibilities of the parents can be somewhat ambiguous (see generally, Miller, 2011; Vargas, Miller, & Chamberlain, 2012). Certain jurisdictions (e.g., Wisconsin and Florida) may prevent same-sex couples from jointly adopting a child, thus leading to uncertainty about legal rights and responsibilities. For instance, the Supreme Court of Wisconsin, in *Angel Lace M. v. Terry M.* (1994), determined that state adoption laws prohibited an individual

from adopting her partner's child. The court held that a lesbian parent could not be a husband or wife and thus could not adopt unless the biological parent was willing to give up his rights. A similar case in Florida (*Cox v. Florida Dept. of Health & Rehabilitative Services*, 1995) involved a 1977 Florida statute prohibiting gays and lesbians from adopting children. In the case, the court upheld the statute partly on the grounds that it was in the child's best interest to be raised by a mother and a father. It was not until 2010 that the Florida appellate court held that the ban on gay adoption was unconstitutional.

Same-sex parents who decide to jointly adopt or give birth have a mutual interest in forming close bonds with the child and have agreed to share parental responsibilities. In such cases, it would seem that the law should hold both parents accountable for the child, regardless of any biological connection (e.g., the trio of cases in which the California Supreme Court affirmed parental rights). The legal responsibility of individuals who enter a relationship in which their partner has a child is unclear, however. For example, a gay or lesbian person might act as a nonparental authority figure for a child during a relationship but may not want to be responsible for any emotional or economic support for the child if the relationship ends. If this were the case, the legal system might best serve the child and parent to recognize the rights and responsibilities of only the biological/adoptive parent. On the other hand, the nonbiological parent might assume parental responsibilities and develop strong emotional bonds with their partners' children, similar to a stepparent. In this case, the legal system might best serve the family to recognize the parental rights of the nonbiological parent.

With the legal (e.g., marriage laws) constraints to same-sex parenting in mind, this project examined the sentiment of gays and lesbians in various parental situations in order to gain a deeper understanding of same-sex parents' sentiment about their parental roles and responsibilities. Also of interest were the legal and social difficulties experienced by same-sex parents and the resulting emotional and physical outcomes for parents and children. Determining same-sex parents' sentiment about parenthood and the law can help policymakers shape laws and policies that are therapeutic for this population.

Same-Sex Parents' Sentiment and Therapeutic Jurisprudence

Therapeutic jurisprudence refers to the study of the law's role as a therapeutic agent (Wexler & Winick, 1996; see Chaps. 12 and 14 for more on therapeutic jurisprudence). From this perspective, the law produces certain consequences that vary in therapeutic outcome (Wexler & Winick, 1996). Proponents of therapeutic jurisprudence stress the importance of applying the law in a therapeutic way, as long as essential legal values (e.g., due process, justice) remain intact (Winick, 1997). Furthermore, therapeutic jurisprudence principles recommend that legal actors rely on psychological research to inform decisions (Wexler & Winick, 1991). In short, it is a perspective that places a great amount of worth in legal outcomes that promote psychological and physical well-being (for review, see Sicafuse & Bornstein, 2013).

When considering therapeutic jurisprudence, judges and policymakers should make legal decisions that have positive psychological outcomes for same-sex parents and their children. The results from the studies presented herein reveal sentiment of a sample of same-sex parents, which can be used by judges to make therapeutic decisions. Given the benefits that children gain from the economic and social support of two parents (see Amato & Gilbreth, 1999; Brooks-Gunn & Duncan, 1997; Seltzer, 1994), paired with strong evidence that same-sex parents are as competent and effective as their heterosexual counterparts (e.g., Bailey, Bobrow, Wolfe, & Mikach, 1995; Chan, Raboy, & Patterson, 1998), this outcome seems especially therapeutic for the children involved (see generally Chamberlain, Miller, & Bornstein, 2008). This notion is supported by several national organizations, including the American Academy of Pediatrics (February 2002), the American Psychological Association (July 2004), and the American Bar Association (July of 2010; see Siegel & Perrin, 2013).

Understanding and accounting for the sentiment of same-sex parents are also therapeutic for parents. Parents (regardless of sexual orientation) who lose parental *rights* might experience intense trauma due to the loss of contact with the child (Miller, 2006). Further, enforcing parental *responsibilities* (e.g., child support payments) would also likely benefit both the custodial parent and the child, as finances have been linked to children's achievement (Brooks-Gunn & Duncan, 1997), development (Acock & Kiecolt, 1989), and well-being (Amato & Gilbreth, 1999). On the other hand, forcing responsibilities on a non-biological parent who had no intentions of being a parent could produce animosity that would threaten the well-being of the entire family. Failing to account for same-sex parents' sentiment may also have broad legal implications, as same-sex parents may begin to lose faith in a legal system that does not align with their sentiment and well-being. In a legal environment that has only recently begun to recognize same-sex marriage and parenting rights, it is likely that many gays and lesbians do not see the current laws and policies as legitimate. From a therapeutic jurisprudence perspective, judges and lawmakers should listen to the sentiment of same-sex parents in order to restore legitimacy and faith in the system for this population.

Overview of Studies and Research Questions

The goal of the present exploratory studies was to examine how same-sex parents perceive their parental roles. The results provide a basis for understanding what these roles are as well as how they develop. These studies also assessed the legal difficulties same-sex parents have encountered while attempting to establish parental rights. Ultimately, the results presented herein can better inform judges and policymakers about the roles and responsibilities of same-sex parents. In the first study, participants completed an online survey that gauged parents' perceptions of their roles, their responsibilities, and the legal system. In order to provide a richer understanding of parents' sentiment, in-depth interviews were conducted in Study 2 (see Chap. 10 for more on using qualitative methodology in community sentiment studies). The following general research questions were addressed in both studies: 1: What are parents' perceptions of their roles and responsibilities? 2: What are parents' perceptions of the law? 3: What are parents' perceptions of societal influences on parenthood?

Study 1

Method

In Study 1, participants completed an online survey that gauged sentiment about their roles, responsibilities, and relationships with their children. In addition, several questions were included to examine parents' experiences with the legal system and society.

Participants

The sample consisted of 52 same-sex parents and/or partners[1] of parents (44 females). Participants were recruited through advertisements that were posted on the email lists and online bulletins of several same-sex parenting groups from across the United States. In addition, snowball (i.e., word of mouth) procedures were used to recruit participants in the Reno, NV area. Participants were given $20 to complete the 30–45-min survey. Response rates could not be determined due to the nature of sampling methods used, but response rates from those contacted via email were generally low.

Instruments and Procedure

A link to the online survey (at surveymonkey.com) was sent via email. Participants answered several questions about their parental role and their perceptions of the legal system. The survey included both closed- and open-ended questions (see results for questions and metrics). Closed-ended questions explored participants' ratings of

[1] Because parents could be in more than one category, the total for these three groups was larger than the *N*.

responsibilities, levels of intent, etc., while open-ended questions explored their perceptions of parental responsibility and specific parental duties and activities that parents assume.

Results and Discussion

Various measures addressed the research questions. Descriptive statistics are presented below; parametric tests comparing different parent types (detailed below) were not conducted due to low cell sizes.

Research Question 1: What Are Parents' Perceptions of Their Roles and Responsibilities?

Three different categories of same-sex parents were included in the analyses within the first research question: same-sex parents who have entered a relationship in which their partners have children (i.e., social parent; $n = 6$), same-sex parents who have previously adopted/had a child(ren) without their current partners (i.e., legal parent; $n = 10$), and same-sex parents who have adopted/conceived a child(ren) jointly with their partner (i.e., joint parent; $n = 44$).[2] Analyses are presented by parent type.

Social Parents. Social parents reported how much responsibility they intended to take on for their partner's child (e.g., when they entered the relationship), and how much parental responsibility they actually had for their partner's child, on 9-point scales (1 = none; 5 = moderate amount; 9 = very much). Participants were also asked what proportion of parental activities they assumed on 9-point scales (1 = social parent has all; 5 = equal responsibilities; 9 = legal parent has all) and were asked to indicate their ideal way to relate to their partner's child from a list of 10 choices (e.g., "parent," "teacher," "counselor") that were developed by Fine, Coleman, and Ganong (1998). Finally, social parents were asked to report how much they bonded with their partner's child and how much their partner bonded with her child, both on 9-point scales (1 = not at all; 5 = moderate amount; 9 = very much).

Parental Responsibility. Results indicated that parents intended to take on ($M = 8.83$; SD = 2.04) and actually did take on ($M = 8.67$; SD = .816) a high amount of parental responsibility for their partner's child, though it is possible these similarities are due in part to hindsight errors driven by the desire to be consistent. All social parents also indicated that they took on equal responsibilities with their partner ($M = 5$).

Social parents described a wide spectrum of responsibilities ranging from cooking and cleaning to providing discipline and guidance for their partner's child. Social parents most frequently reported that they were responsible for providing transportation, guidance in school and social relationships, discipline, and providing financial support. Social parents also participated in a wide variety of activities with their partners' children, such as playing games, watching movies, and attending recreation and school events.

Parent–child Relationships. Three participants related to their partner's child like a stepparent, three related like a parent, and one related to his partner's child as his own child. Social parents indicated that they ($M = 8.83$; SD = .41) and their partner ($M = 8.67$; SD = .52) bonded with their partner's child very much. Thus, from social parents' perspectives, social and legal parents seem to bond with the child similarly.

Legal Parents. Legal parents were asked the same questions (detailed above) about parental roles, responsibilities, and relationships.

Parental Responsibility. Legal parents indicated that their partners (the social parent) intended to ($M = 7.25$; SD = 2.49) and actually did ($M = 6.9$; SD = 2.47) assume high amounts of parental responsibility. When asked what proportion of parental activities the social parent assumed

[2] For the purpose of this study, partners were broadly defined as individuals involved in a romantic cohabitating relationship—ranging from long-term dating to gay marriage (or the equivalent).

(using the same scale), most parents ($n=8$) said they took on an equal amount, though the average was just below 5 (meaning equal responsibilities; $M=4.5$; SD = .71).

Legal parents reported in the open-ended question that their partners (i.e., the social parent) assumed financial, disciplinary, and teaching roles for their children. In addition, legal parents reported that social parents participated in school functions, holidays/vacations, games, and sporting activities with their children.

Parent–child Relationships. The majority of legal parents believed that their partner related to their children as a parent ($n=4$) or stepparent ($n=4$). Two parents believed that the ideal way for their partner to relate to their child was as an advisor. Legal parents believed that their partner had a strong bond with their child ($M=7.6$; SD = 1.89), though this was not as strong (nor as consistent across participants) as their own bond ($M=8.7$; SD = .48).

Joint Parents. Joint parents were asked the same questions (detailed above) about parental roles, responsibilities, and relationships.

Parental Responsibility. All joint parents intended to take on at least a moderate level of responsibility ($M=8.64$; SD = .99), and most ($n=37$; 84 %) intended to assume the highest level of responsibility. Joint parents' perceived levels of responsibility were similar ($M=8.59$; SD = 1.11), though one parent indicated a 4 (less than moderate). Joint parents reported assuming nearly equal amounts of responsibilities with their partner ($M=5.09$; SD = .64).

Joint parents most commonly indicated that they were responsible for finances, emotional needs of the child (including discipline), day-to-day cooking and cleaning, physical care, transportation, and teaching. Joint parents also indicated that they shared a variety of parental activities with their children, including sporting and school events, reading, and a variety of games and other activities.

Parent–child Relationships. Just like social and legal parents, joint parents were asked to indicate the ideal way to relate to their child from a list of several choices. Two parents chose as a teacher, two as an advisor, and 39 as a parent. They were then asked to indicate the ideal way for their partner to relate to the child. One answered as a teacher, two answered as a friend, one answered as an advisor, and 39 answered as a parent. Parents also believed that they and their partner had very strong bonds with their child (both Ms = 8.89: both SDs = .387). In sum, most parents considered themselves and their partner to relate to their child as a parent and bonded on very high levels with the children.

Research Question 2: What Are Parents' Perceptions of the Law?

Participants answered several questions related to their sentiment and perceptions of the law. Fifty-one of the 52 parents in the sample answered at least some of these questions.

Knowledge and Impact of the Legal System. Most parents (41 out of 51; 80 %) reported that they understand the laws that regulate same-sex parenting at least moderately well (1 = not well at all; 5 = moderately well; 9 = very well; $M=6.3$; SD = 2.42). Similarly, most (43 out of 51; 84 %) believed that it was not difficult to attain legal information about their parental rights and responsibilities (1 = very difficult; 9 = very easy; $M=6.58$; SD = 2.02). Additionally, 10 parents indicated that uncertainties in the legal system caused physical and/or emotional stress. Specifically, nine parents experienced anxiety, four experienced nervousness, four experienced muscle tension, two experienced sleep disturbances, one experienced anger, and one experienced depression resulting from uncertainties about their legal parental status.

Ten parents (out of 41; 24 %) reported that they had general problems with the legal system recognizing their rights. Six of the 10 encountered physical and emotional symptoms, including anxiety, nervousness, irritability, and sleep disturbances. Of the 10 parents who reported problems with the legal system, one parent reported that state and national governmental policies regarding same-sex marriage and civil unions were the primary problem in blocking

parental rights: "Because the Federal Government does not recognize our relationship, nor can we be certain that other states would recognize our relationship, we needed to go through the time, cost and effort of obtaining a second parent adoption." Other parents cited second-parent adoptions at the state level as a problem in attaining parental rights and a source of legal ambiguity. For instance, one parent wrote: "Although we have a second-parent adoption, it's only marginally legal in this state. We have been unable to get an amended birth certificate because the state vital records office is not friendly to second-parent adoptions."

Desired vs. Actual Rights. Parents of all types from various jurisdictions (with varied laws and avenues for gaining legal rights) were asked if they should have legal rights. Of the six social parents, five believed they should have rights, and one thought they should not. Out of the ten legal parents, seven thought the social parent should have rights, two thought they should not, and one did not know. Not surprisingly, all 44 parents who jointly adopted/conceived believed both they and their partner should have legal rights.

All parents were then asked if they believed they actually had legal rights. Only one of the six social parents thought they did have rights, though it should be noted that reported laws (and rights) were not checked with the actual laws in the particular jurisdiction and thus the accuracy of these beliefs is unknown. Of the legal parents, two (20 %) reported their partner had rights, six reported they did not, and two did not know, indicating a disparity between desired and actual rights. Among those parents who jointly adopted, 40 reported that they had legal rights, two reported they did not, and two did not know. Thirty-nine parents reported their partner had legal rights, four said they did not, and one did not know.

Finally, parents were asked to indicate if they (or their partner) would have legal responsibilities upon separation. Five social parents said they would not be legally liable to pay child support and one parent did not know. Two legal parents indicated the social parent would be liable, and seven said the social parent would not be liable. Thirty-three parents who jointly adopted/conceived reported that they would have legal responsibilities, three said they would not, and seven did not know. Thirty-one said their partner would have responsibilities, three said they would not, and eight did not know.

Research Question 3: What Are Parents' Perceptions of Societal Influences on Parenthood?

Parents answered two questions about society's impact on their perceptions of their parental roles. First, parents were asked if they believed that the societal stigma surrounding gays and lesbians had influenced conceptions of their parental role. Second, parents were asked if they believed the roles and responsibilities of heterosexual parents were different from those of same-sex parents. Parents who responded in the affirmative to either of these questions were prompted to describe their beliefs.

Societal Influences on Parental Roles. Twelve participants (out of 51; 24 %) believed that perceptions of their parental role had been influenced by societal stigma surrounding homosexuality. Of those who believed that societal stigma had impacted their perceptions about parenting, several parents expressed the idea that same-sex parents face greater scrutiny, given commonly shared misconceptions about same-sex parents. As a corollary of this scrutiny, parents expressed that they were held to higher standards than heterosexual parents. For instance, one parent wrote: "I feel as though it is our responsibility to raise perfect children or to have a perfect family because of the negative stereotypes that already exist about lesbians being able to raise 'normal' kids." Another parent expressed higher standards for same-sex parents: "I feel a greater sense of responsibility for proving that we are good parents." Parents also commonly indicated that societal stigmas impacted their parental efficacy. For instance, one parent wrote: "prior to his birth, (there were) certain insecurities about being a worthy parent, the child not liking me, or (the child) being ashamed of me because I am gay." Finally, one parent indicated that they had

modified their behavior in response to social scrutiny: "In my community everyone would look down upon my partner sitting in on a parent teacher conference night, so I don't bring my partner with me for that reason."

Differences. Some parents (11 out of 51; 21 %) believed that the roles and responsibilities were different from those of heterosexual parents. Most frequently, parents explained that their roles were different because they were not divided by traditional gender roles, and thus, both parents assumed more equal roles. For instance, one parent wrote: "(There is) more shared responsibility; each parent does what they do best vs. what society deems as our role." Parents also explained that their children are inherently more aware of a diverse range of familial situations, thus leading to greater acceptance of different races, cultures, and sexual orientations. Indeed, several parents indicated that it is necessary for same-sex parents to educate their children about diverse viewpoints. One parent wrote: "Same-sex parents have a social responsibility within our community to make sure our children are raised tolerant and fully-knowledgeable about other races, genders, (and) sexual identities."

Study 2

Method

In Study 2, researchers conducted in-person and telephone interviews with same-sex parents. Similar to Study 1, questions examined the roles, responsibilities, and extent of parent–child bonding.

Participants

Twenty same-sex parents (15 female) agreed to be interviewed about their roles and responsibilities as parents. Eighteen parents had jointly adopted/conceived children, and two of the parents had assumed some responsibilities for their partners' children (similar to the role of stepparent). Participants were recruited through advertisements that were posted on the email lists and online bulletins of several same-sex parenting groups from across the United States. In addition, snowball (i.e., word of mouth) procedures were used to recruit participants in the Reno, NV area. In order to offset the gender imbalance, researchers attempted to recruit only males as it became clear that the sample was comprised of mostly female parents. Participants were given $40 to complete the 45–90-min interview. Participants who completed Study 1 were asked to participate in Study 2, and thus, there was significant overlap between samples.

Instruments and Procedure

Participants were asked about their parental roles and responsibilities, their legal rights, and their perceptions of societal influences. The questions were designed to be broad, allowing parents to bring up any parenting experiences they felt were relevant. The interviewer allowed the parents to speak at length without interruption and probed for more information as needed.

Results and Discussion

Tape recorded interviews were transcribed and analyzed for common themes expressed by parents. Two researchers (the interviewer/first author who had an M.A. in social psychology and the second author who had a Ph.D. in social psychology) each separately coded the messages for content after each had practiced coding and agreed on the concepts within each theme. Interrater reliability was high (above 85 %) for each of the themes.

Research Question 1: What Are Parents' Perceptions of Their Roles and Responsibilities?

A total of 47 messages were identified as indicators of the roles and responsibilities that same-sex parents assume. The following subthemes emerged from the qualitative analyses.

Equal Parental Roles. Analyses suggest that most parents who jointly adopt/conceive assume equal parental roles. A total of 30 comments from 15 parents indicated that parents who jointly

adopt/conceive generally assume equal (though often different) parental roles and responsibilities. One parent stated:

> We have chosen to do everything 50/50 and not all families do it this way. So we take turns like religiously putting him to bed. We split all of the drop-offs and pick-ups 50/50 and mostly we do this I think, first of all, because we both feel very involved in his life.

Another parent described a similar understanding with his partner regarding parental roles and responsibilities: "We share everything pretty equally…I think we just try to share the duties equally, changing diapers, watching her, feeding her, that kind of thing and I think we still pretty much do that. We're equally responsible." Finally, one parent explained that she and her partner had a basic understanding that parental roles and responsibilities would be equal: "I think we both just assumed that we would have equal parenting roles (and) that we would both make decisions. We actually never really said you are going to do 25 %, I'm going to do 75 % or whatever."

Differences in Parental Roles. Although most parents indicated that they shared equal parental roles and responsibilities, a few believed that they assumed slightly more or less of a parental role than their partner. A total of eight comments from five parents suggested that the roles and responsibilities of some parents were not always equal. Most notably, parents believed that breastfeeding mothers assumed slightly more and different parental responsibilities than mothers who did not breastfeed. For instance, one parent explained that her partner "seemed to be a little more emotionally connected (to the child) because there tends to be a stronger bond with the nursing mom." Another parent expressed similar thoughts about her role as the breastfeeding mother: "(The child) tends to prefer me and I think it's primarily because he has spent a lot of time with me because I am his main source of food." The mother further explained that she did not think it was "realistic for the non-breastfeeding mother to have the same dynamic with the infant." It is likely that a similar gap in parental roles (and subsequently in the bonds that exist between parent and child) exists between mothers and fathers in heterosexual relationships because the mother in these relationships typically provides nurturance for the child.

The Bases of Parental Roles. Several parents also commented on the way in which their parental roles and responsibilities had developed. Nine comments from eight parents revealed that many parents did not subscribe to traditional gender roles. Instead, parents indicated that they assumed roles based on their abilities, personality, preferences, and generally what worked best for the family unit. One parent explained that there was no "gender role thing going on" in determining parental roles. Another parent believed that "stay(ing) within the gender definitions was actually detrimental," explaining that it did not "aid anyone in understanding the parent–child relationship or interactions."

Several parents explained that their roles stemmed from their abilities and availability. For instance, one parent explained: "it's more about who has time, attention, or interest. I'm not interested in laundry and (my partner) has little interest in cooking so we get it done however we get it done and whoever has the ability and the time does it." Parents also commonly explained that they divided roles based on what was best for the family. Thus, decisions about who would assume the role of breadwinner and who would assume the role of caretaker were often decided from a utilitarian approach. For instance, one parent explained that his role as "stay-at-home dad" was based on the financial well-being of the family: "We have to make sure that (my partner) stays in good standing with his company so that we keep his benefits and his health insurance."

Research Question 2: What Are Parents' Perceptions of the Law?

The second goal of this research was to examine the legal experiences of same-sex parents, including their legal difficulties and corresponding emotional and physical outcomes. Of the 17 parents who jointly adopted/conceived, 14 had established legal rights. A total of 49 messages were germane to the legal experiences of same-sex parents.

The following sub-themes emerged from the qualitative analyses.

Difficulties in Becoming a Parent and Establishing Parental Rights. Eighteen comments taken from 13 parents indicated that same-sex parents experience significant amounts of strain in attempting to become parents and subsequently in establishing their legal parental rights. In discussing her experiences with a surrogate mother, one parent stated: "It is totally expensive. We had to pay a lawyer and provide support for the birth mom and more than financial costs. It was also emotional costs because you are…trusting them (the surrogate) to keep their word and be honest." Another parent described the financial burden of having children through a surrogate: "Realistically, we could only afford to do one and even that was kind of tight because you know I had been saving for a while for it, like 10 years."

Parents also commonly described the burden of attempting to establish joint parental rights after the child was adopted or conceived. For instance, one parent expressed her concern about the financial obligation that accompanied establishing rights: "It is difficult to do same sex adoption…right now I am researching (it), I have looked into attorneys (but) costs are pretty high up there so it's not the easiest thing." Other parents expressed more concern about the amount of time and resources that the adoption process required:

> They sent me a pre-adoption application that was accepted and the adoption allocation. Of course there were fees that went with each one of those. And then we started and it took about a year to do it. I mean there was a lot of paperwork that went along with it.

Another parent stated: "What was hard was the time commitment because we spent about a year and a half working on a contract with the known donor and that was actually the most frustrating thing."

Legal Standing and Parents' Physical and Emotional Well-Being. Eleven parents (14 comments) indicated that parents' difficulties with the legal system led to some physical or emotional strain. One parent who did not have legal rights explained:

> I think it does stress me out to think that when my partner travels to work that if something happens what would be my nightmare ahead of me with (our son)? And then I think what kind of nightmare will I go through with the legal system? How much documentation and stuff do I have to get together? How much is it going to cost? I think about all those things. It's stressful.

In discussing her partner's lack of legal rights for their child, one parent stated:

> It is extremely difficult for both of us. I mean, she has a different perspective than I do, but it's terrifying to me to think that she's here on a Friday, he falls out of the stroller, smacks his head on the sidewalk, she takes him to the emergency room, and they won't treat him until I get there. It's terrifying.

The analysis also indicated that parents' lack of legal recognition led to more serious psychological problems. For instance, one parent reported sleep disturbances stemming from the lack of legal rights for her child: "There are times when I have nightmares about him being stolen or killed you know about her not being able to get to him. It's an obvious place of anxiety for me." Another parent believed that her lack of rights had contributed to psychological strain: "I actually have an anxiety disorder…I don't know that it's related necessarily…but certainly it contributes to that. It's very scary and it makes things very hard sometimes."

Changes in the Legal System. Seventeen comments taken from 13 parents suggest that parents believed same-sex marriage (or some sort of civil union) would be instrumental in establishing their parental rights. Some parents believed that legalizing same-sex marriage (or some equivalent) would lead to automatic parental rights of partners. In discussing the changes that she would like to see in the legal system, one parent stated: "Some sort of mass legalization of either civil unions or marriage….some sort of recognition of our relationship first of all and then I think things like parenting will be obvious." Another parent expressed similar thoughts about same-sex marriage: "Well,

I think recognizing the sanctity of adult homosexual relationships in the form of marriage rights is the first step and with those full marriage rights comes the right to parent."

In addition, parents believed that same-sex marriage would lead to better outcomes for their families. Several parents indicated that marriage or union rights would lead to greater financial benefits for their family. One parent stated: "We can't get married either. If you could then I think that you could do benefits that way." Another parent expressed a similar belief about the financial benefits of same-sex marriage: "(Marriage rights would) make my partner feel like she has somewhat of a dual-income and able to take care of a kid we planned." Other comments pertained to the emotional benefits of having legal recognition of same-sex unions. For instance, one parent implied that the lack of rights can be an impediment to a child's well-being: "I don't see why there can't be (same-sex unions)…why do we have to be so hung up on all these other things when really what matters is that this child is protected and nurtured."

Research Question 3: What Are Parents' Perceptions of Societal Influences on Parenthood?

Several themes emerged in the interviews about society's influence on same-sex couples' parenting. Twenty-two comments made by 14 parents suggest that society does influence same-sex parents.

Parenting Not an Option. Seven parents made a statement indicating that perceived social constraints had made them consider parenting to not be an option.

This was expressed by one parent about his partner:

> I think he had done what is typical for a lot of gay and lesbian people of our generation. That is the idea of parenting was completely out of scope of their thinking. It was going to be so hard. It was so socially unacceptable that you don't even consider it.

Another parent expressed a similar line of thought:

> You know when I was younger when I was in my late teens I had always been interested in having a family. You know I was confused about my sexuality, but had hoped that I would be married to a woman and have children and a family and then as I started to get a bit better picture of how things were going to be, I just over time accepted that wasn't going to be a part of my life, but I felt pretty sad about it.

These comments suggest that social constraints impact same-sex couples decisions to become parents.

Assumptions About Parenthood. Six parents made seven comments mentioning instances which occurred in social settings in which they are were assumed to be the parent of their child. One parent expressed how others do not perceive her to be a parent:

> It doesn't occur to people… a women with children is not perceived as a lesbian with children even when there are two moms and they are going "Mommy, Mommy, Mommy" to (my partner) and I am holding on to them. They don't think I'm the kidnapper. They think I am a friend or grandparent or some other person in relation to the children.

One parent made a similar statement about people's reaction to seeing them in public: "They will come up to us and say where's his mom you know that kind of stupid stuff." These statements suggest that same-sex parents are not assumed in social situations to both be parents.

Concern About Children's Treatment. Six comments made by five parents expressed a concern about how their children will be treated. Parents expressed that this concern is a major concern in their lives:

> That is the big worry. I don't care how the parents treat me; I care how the parents treat my kids. They don't have to like us. That's fine as long as they just have to treat our kids with respect.

One parent with a child in elementary school expressed a worry about how parents will behave toward her child as she gets older:

> But when she is 13 and 14…are the parents going to want them to come over here because some people that maybe don't know any gay people or

> they are ignorant; they think that gay people just want to have sex with anybody just because they are the same sex or stuff like that or we would make them gay. That's another one. We would make their kid gay…or that (our child) may be gay.

Another parent mentioned that she had considered steps to prevent the child from experiencing negativity:

> We have talked about having him in private schools that are more open-minded. Hopefully the parents there won't be ignorant. I am very concerned about that. How is he going to handle going to school and when the kids find out he has two moms and his biological father is not in the picture.

These statements suggest that same-sex parents experience great concern over how their children will be treated.

General Discussion

Quantitative and qualitative analyses of same-sex parents' sentiment revealed that parents generally assumed equal though varied parental responsibilities. All types of parents (social, legal, and joint) intended to, and actually did, assume parental roles and responsibilities and expressed deep parent–child bonds. However, some parents did express slight disparities between their partners' roles and the roles that they assumed. This was particularly relevant for females in the sample, as moms who breastfed their children were more likely to bond with the child than the non-breastfeeding mother.

Analyses also suggested that same-sex parents face significant difficulties in the current legal environment. In attempting to become parents and establish parental rights, gays and lesbians encounter considerable challenges in terms of time, money, and resources. Most social parents and legal parents believed that social parents should be given legal rights but also acknowledged that there were often no legal avenues to pursue legal parenthood. This gap reflected responses about legal rights and responsibilities, as both types of parents typically did not believe that the social parent would have rights or responsibilities if they were to separate. Many parents experienced anxiety, stress, and/or sleep disturbances stemming from their inability to establish joint legal status for their children.

Finally, parents shared their sentiment about the role of society on parenthood. Several parents indicated that they felt they were held to higher standards and that their roles and responsibilities were not based as much on strict traditional gender roles, as compared to heterosexual parents. Parents expressed some apprehension about becoming a parent due to societal stigma. Further, once becoming parents, individuals experienced adverse reactions from individuals who conceptualize a family as having two moms or two dads. Parents also expressed concerns about how certain societal influences might negatively affect their children (e.g., through teasing).

Implications for Therapeutic Outcomes

Judges, lawmakers, and the public can use the sentiment and experiences of this sample to make decisions that are therapeutic for same-sex parents and their children. This initial evidence suggests that same-sex parents generally assume very high levels of responsibility and demonstrate strong bonds with their children. Within the legal parameters of their particular jurisdiction, judges can use this information to decide whether parents without formal rights should be given rights and responsibilities to the children they had been raising with their partners (e.g., *K.M. v. E.G.*, 2005). It is worth noting that not all social parents thought that they (or their partner) should have equal rights and responsibilities, and thus, judges should consider (as hopefully all do) the specific context of each case (e.g., indicators of intent). Parents who experience case outcomes (e.g., a judge ordering him to pay child support for his former partner's child) that are consistent with the roles they take on (e.g., a parent who has assumed a great deal of responsibilities) are likely to experience therapeutic outcomes, while those who do not may experience trauma or

distress. Similarly, children in these cases may be adversely impacted if a meaningful parental relationship is severed and the child loses contact and the financial support of the parent.

While judges can determine the rights and responsibilities of same-sex parents who have not established legal rights (e.g., through marriage or a second-parent adoption), lawmakers can help by providing same-sex parents the ability to establish parental rights. For instance, Florida lawmakers recently overturned a same-sex adoption ban which had stood for over 35 years (*Gill & 45 So.3rd 79 (Fla. App*, 2010; see Anderson & Kennedy, 2010)). Lawmakers could also help with the ease of the process by making a legal option readily available for parents who want to establish their legal status as parents. A form could be filed with the state to establish the parent's legal rights, much like a second-parent adoption establishes rights of a parent. This form can act as "intent" to parent, a factor that many judges have considered when deciding whether a social parent has legal status (Miller, 2011). Several of the parents interviewed in this study expressed intent to parent by expending significant amounts of time and money to become equal legal parents. Thus, law and policy makers could help to create more therapeutic processes and outcomes by granting adoption rights and providing resources.

Finally, the sentiment of same-sex parents can be used to inform general community sentiment. First, the general public could gain a better understanding of the roles and responsibilities that same-sex parents assume, which could help to diminish societal stigma and stereotypes surrounding same-sex parents. This might help to accelerate the upward trend in support for gay rights, which could impact the law via proposition or referendum. Further, this research can inform the public about the negative impact societal stigma has on same-sex parents, which could further shape attitudes and behavior. Given that parents appeared to be negatively impacted in some ways by societal conceptions of same-sex parents, changing community sentiment in this regard could be therapeutic for same-sex parents.

Limitations

There are two general limitations worth noting. First, because convenience and snowball sampling methods were used, the results may not be representative of gay parents' experiences in general. For instance, many of the parents were highly educated and had adequate financial resources to raise children. In addition, many participants were recruited from same-sex parenting groups, which might reflect inflated views about parental rights and responsibilities as compared to the average parent. Future research, with larger and more representative samples, is needed in order to better understand same-sex parents' sentiment about their parental roles within the ever-shifting sociopolitical climate. Another broad limitation of this research was the lack of comparison groups (e.g., heterosexual parents who adopt, heterosexual stepparents, and same-sex nonparents) to determine how the sentiment of same-sex parents compared to the sentiment of other parents. Although the focus of this research was to explore the sentiment of same-sex parents specifically, future researchers could explore the sentiment of a broad range of parents.

Conclusion

These studies found that same-sex parents assumed high amounts of parental responsibility, demonstrated strong parent–child bonds, and took on fundamental roles in their children's lives. Many parents reported that they (or their partner) could not establish legal rights, leading to negative physical and emotional outcomes. Understanding this sentiment is a first step toward the adoption of therapeutic legal actions that could alleviate threats to well-being.

Parents commonly indicated that many of the legal troubles facing same-sex parents could be resolved by allowing same-sex marriage or civil unions in the United States. Although this finding is not surprising or groundbreaking, it does support the argument made by Pawelski et al. (2006) that same-sex marriage would strengthen gay and

lesbian families by allowing for rights and protections. Many of the parents' comments contained herein suggest that families headed by gays and lesbians would benefit from such policy changes in terms of financial and emotional well-being. In fact, several participants indicated that changes to national policy (i.e., national marriage rights) would diminish stress.

Recent US Supreme Court decisions have solidified rights for gays and lesbians in the jurisdictions where same-sex marriage is currently legal. In United States v. Windsor (2013), the Court held that the Defense of Marriage Act (DOMA) was unconstitutional, which effectively granted federal benefits and rights to same-sex couples who already have marriage rights (Halloren, 2013). In Hollingsworth v. Perry (2013), the Court ruled that the petitioners (those who supported a ban on same-sex marriage) did not have standing in the case, thus affirming marriage rights in the state of California (now the 13th state with legal same-sex marriage). Though these decisions leave many questions to be answered about the federal rights of same-sex parents in the 37 states that do not currently allow same-sex marriage, they strengthen and clarify the rights of legally married same-sex parents. This recommendation, as well as the others discussed above, highlights potential legal actions that are consistent with the sentiment expressed herein and likely therapeutic for same-sex parents and their children.

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14 Is There a Therapeutic Way to Balance Community Sentiment, Student Mental Health, and Student Safety to Address Campus-Related Violence?

Amy T. Campbell

A growing number of students enter college each year with mental health issues (Gallagher, 2012). A recent survey of campus counseling centers revealed that 73 % of psychological crises among students required immediate responses; of the 39 % presenting with severe psychological problems, 6 % were so severe that the students could not remain in school without extensive psychiatric help (Gallagher, 2012). Developmentally, the transition from adolescence to early adulthood is a time when many mental health problems emerge (English & Park, 2012). The expansion of legal rights for persons with mental illness and the development of better treatments options enable more of these college-age individuals to enroll than in years past (Mowbray et al., 2006). Consequently, college and university campuses sometimes seem like "ground zero" in the debate over how to balance individual liberties of persons with mental illness with public safety. That this debate often occurs under the gaze of media scrutiny only heightens the tension, as such scrutiny may drive—and not simply reflect—the community's perception of risk, dangerousness, and "safety-enhancing" responses. Thusly, incidents of campus-connected violence may be informed less by careful research or individualized attention, but rather may be manipulated to serve expedient, politicized ends.

This chapter addresses the interrelated dynamics among mental health, public safety, media attention, and community sentiment, and specifically, the law's response (and at times effect on) this interplay of issues. For purposes of this discussion, law itself is seen as an intervention that has effects on behaviors, attitudes, perceptions, and outcomes—positive or less so, intended or not (Campbell, 2010). To ground discussion of the law's role within this context, case examples drawing on recent episodes of campus-based or campus-connected "mass killings" are featured, and reference is made to related legal developments. Current legal mechanisms for addressing (often) community-fueled requests for action are compared with a potential alternative framing mechanism—therapeutic jurisprudence ("TJ"; see also chapters 12 and 13 for more on therapeutic jurisprudence and sentiment). TJ "seeks to sensitize legal policy makers to a frequently ignored aspect of … policy analysis—the therapeutic impact of legal rules and procedures" (Wexler & Winick, 1991a, p. 981). Proponents of TJ argue that "[l]egal decisionmaking should consider not only the economic factors, public safety, and the protection of patients' rights;…

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[but also] the therapeutic implications of a rule and its alternatives" (Wexler & Winick, 1991a, p. 982). This chapter contends that use of a therapeutic frame to tease out the therapeutic and anti-therapeutic drivers and consequences of our legal mechanisms offers a potentially more effective response to campus safety concerns and community emotions, while keeping with an evidence-based approach.

Campus-Connected Violence: The Media and the Numbers

The past 10 years have seen campuses become ground zero in the debate over mental illness and risk of violence and if/how policy—whether driven by concerns for public safety or mental health—can mitigate future risk. Four of the most noteworthy cases are discussed below: two cases are campus-based and two have campus connections (see also chapters 1 and 2, this volume, for more on the link between sentiment and media).

Virginia Polytechnic Institute and State University (Virginia Tech)

On April 16, 2007, Seung-Hui Cho, a senior at Virginia Tech, killed 32 individuals and injured 17 before killing himself. Reportedly, there were no "outward signs of his deteriorating mental state" (Virginia Tech Review Panel, 2007, p. 52), but during his time at Virginia Tech, Cho was ordered into temporary detention at a psychiatric facility. However, follow-up outpatient appointments were not required, and Cho "disappeared" again. Much of this history came out when news outlets reported on government investigations and did their own investigative reporting. In fact, Cho himself mailed a package to NBC News the day of the shooting that included images of himself armed—images NBC News decided to air and which arguably impacted public perceptions of the event and Cho (Friedman, 2009; Kluger, 2007; NBC News, 2007; Vargas & Gardner, 2008).

Northern Illinois University (NIU)

With Virginia Tech still fresh in many minds, less than a year later Steven Kazmierczak opened fire in an NIU classroom, killing 5 and wounding 21 before killing himself. Immediate reports indicated that the former NIU undergraduate and graduate student showed no warning signs of a "path [that] diverged into madness" (Heinzman, Smith, & Zorn, 2008; Northern Illinois University, 2010, p. xvi). However, it eventually was reported that he had a history of suicide attempts, multiple psychiatric hospitalizations, and a discharge from the army due to his mental health history (Boudreau & Zamost, 2009). Prior to the shooting, he was on antidepressant, antianxiety, and sleeping medications, but had stopped taking the antidepressant 3 weeks prior to the shooting (Boudreau & Zamost, 2008).

Tucson, Arizona

On January 8, 2011, Jared Lee Loughner, 22, a former Pima Community College student, killed 6 and injured 13 at a Tucson, Arizona, shopping plaza. His erratic behavior while at Pima resulted in him ultimately being suspended 3 months prior to the shooting and being told not to return without mental health certification that he was no longer dangerous (Anglen, 2011; Billeaud, 2011). Said a campus spokesman, "[W]e dealt with it [Loughner's behavior] in a way that protected our students and our employees" (Sulzberger & Gabriel, 2011). Post-tragedy reports featured the shooter's mental health history: depression since 2006 with signs of schizophrenia since 2008 (Anglen, 2011).

Aurora, CO

In another mass shooting, on July 20, 2012, James Holmes, 24, killed 12 individuals and injured 58 at a movie theater. Holmes had been enrolled in a graduate program at a nearby medical campus until the month prior to the shooting

(K-ABC TV, 2012). Media accounts now unearth experience at the University of Colorado Denver-Anschutz Medical Campus ("Medical Campus"), from which he was barred after threatening the psychiatrist he had seen on campus (Fantz, 2012). Most notable were the images of Holmes that hit the airwaves and papers once he showed up in court: a flame-haired young man who seemed visibly "out of it" (Pearson, 2012).

These cases have some commonalities. In all instances, media-driven messages affected by community sentiment, fear, and anger seemingly paint the picture that untreated mental health issues, especially among loners (often pictured looking "crazed"), on college campuses can lead to mass violence (Billeaud, 2011; Boudreau & Zamost, 2009; Dewan & Santora, 2007).

These high-profile incidents have clear impact on campuses. Over half of campus counseling center directors reported that campus tragedies related to students with mental troubles put them "under increasing pressure to share concerns about troubled students who might pose a risk to others even though the threat was not to a specific person" (Gallagher, 2012, p. 7).

State of Community Sentiment

Colleges may respond to these increased numbers via public health approaches to address population-level needs. Unfortunately, these efforts come up against stretched mental health services on campuses and the stigma that continues to pervade community and media depictions of mental illness. The latter is influenced by and influences community sentiment, which together impact language used to describe the numbers, and may frame the policy response. Polling of community beliefs, the overarching "community sentiment" for purposes herein, shows that the public "believes that those experiencing mental health problems pose a threat of violence towards others" (Pescosolido et al., 2000, p. 16 and Figure 4). These beliefs are more pronounced against men, and those with schizophrenia-type diagnoses (Pescosolido et al., 2000, Figure 4), and have increased since the 1950s (Martin, Pescosolido, & Tuch, 2000, p. 219). Given dangerousness data, it is unsurprising that a significant number of this same public prefers maintaining social distance (e.g., not working or living with) from persons with mental disorders (Pescosolido et al., 2000, p. 30 and Table 11; Martin et al., 2000). Social distancing is the act of separating "us" from "them" (i.e., those with mental illness). Distancing is driven in part by the negative labels (e.g., "schizophrenic") and belief of "dangerousness" (Martin et al., 2000, p. 219–220). In sum, there is "little evidence to suggest that the stigma of mental illness has been reduced in contemporary American society" (Pescosolido et al., 2000, p. 31), and in fact, as related to beliefs of dangerousness, seems to have increased (Martin et al., 2000).

It is against this backdrop of lingering suspicion of dangerousness and disinclination for close interaction that tragic cases arise. And so today, rare but heavily covered mass killings seem to fuel public sentiment vis-à-vis violence and the "mentally ill," namely, that there are dangerous (and deadly) individuals lurking among us (on campus or near campus). This may be described in terms of an availability heuristic whereby members of the public estimate the likelihood of events and their consequences by drawing on examples they can recall from the past (Tversky & Kahneman, 1973). Such events, in fact, may be relatively rare, but the preponderance of media attention may influence what is recalled, and thus influence a belief in the likelihood of the event (e.g., risks of violence on campus committed by students with mental health issues) or cause (e.g., "dangerous" persons on campus, i.e., those with untreated mental illness). In this way, the media can affect community sentiment. From this comes the sense that a stronger intervention/detention approach by campuses is needed to keep "us" safe.

Violence and Persons with Mental Illness

Publicity of college campus shootings has led to increased fears among college students—and their families—that they will be victims of vio-

lent crimes on campus (Kaminski, Koons-Witt, Thompson, & Weiss, 2010). Yet, the research evidence does not necessarily support this assumed link between mental illness and violence.

Violence risk factors. A new generation of research emerged in the 1990s, pointing to heightened risk of violence by those with mental illness. However, individuals evidencing the greatest "threat" represent a complex spectrum of dynamic factors—demographic, historical/dispositional, clinical, and environmental/contextual (Otto, 2000; Swanson, Borum, Swartz, & Monahan, 1996). Generally, risk factors assess: what a person "is" (e.g., age, gender, personality), what a person "has" (e.g., major mental disorder, personality disorder, substance abuse disorder), what a person "has done" (e.g., prior crime, prior violence), and what a person has experienced (e.g., pathological family environment, prior exposure to violence) (Monahan, 2006, p. 414–427). Additional studies isolate specific factors of concern among those who feel threat/control-override (i.e., inability to control violent responses to threat delusions) (Swanson et al., 1996), especially when joined by substance abuse problems (Otto, 2000; Swanson et al., 1996) and poor treatment adherence (Swartz et al., 1998). The interaction of stressful environments (including relationships), stressful events, and lack of social support can enhance and compound the risk of violence (Markowitz, 2011).

What the evidence does *not* say is that diagnosis (e.g., schizophrenia) equals danger or that more treatment ensures safety; nor has evidence shown a single pathway to violence or a singular type of violence risk. Rather, the presence of multiple factors implicated in and pathways to violence suggest a need for a range of analyses and targets for prevention/intervention. Further, the dynamic and multifaceted nature of risk factors suggests they represent *probabilities* for violence (not certainty), *relative* risks (not absolutes), and situational influences (not simply dispositional ones; Douglas & Skeem, 2005; Heilbrun, Dvoskin, & Heilbrun, 2009; Otto, 2000). And thus, risk assessment should be seen as a process, not an event, and as targeted prevention (aimed at reduction), not as a prediction or a silver bullet treatment (Otto, 2000; Swanson, 2008; Swartz et al., 1998).

Risk assessment approaches. If humans were simple beings, it would be possible to identify a set of characteristics based on past experience that can be used to segregate those in the population who are considered presenting the most "risk" for some given incident (i.e., violence). This certainly has appeal, as does belief in ability of clinical violence assessments to produce "binary, will-or-will not judgments" (Mossman, 2009, p. 121). Yet, there is a lack of evidence to tie a single profile to the "violent" individual, and attempts to profile can increase harm via bias, stigma, and unfair restrictions on civil liberties (Borum, Cornell, Modzeleski, & Jimerson, 2010; Mossman, 2009; Reddy et al., 2001). Relying on clinical judgment is not without some merit in violence risk assessment, but it is of questionable value in making (vs. informing) decisions (Lidz, Mulvey, & Gardner, 1993). Guides and structured clinical assessment approaches have been developed, but the use of checklists or warning signs have been questioned for their use in prevention of targeted violence (Reddy et al., 2001). Actuarial approaches (i.e., based on statistics) have similarly been questioned for limiting the value of clinical intuition, especially given the lack of consensus around targeted violence markers to plug into equations (Reddy et al., 2001).

In sum, a combination of approaches (e.g., clinical or actuarial) likely holds the most promise for prevention and early identification of those at "risk" (McNiel et al., 2004; Otto, 2000), and a deductive fact-based model focused on those who *pose* threats (vs. more generalized "profile" model) is likely the most appropriate for the sorts of violence contemplated here (Reddy et al., 2001). Yet, reliance on a fact-based model renders it more difficult to create a global law or policy to assess and intervene with individuals posing potential risk. Such globalization is likely over-inclusive, with the attendant risk of impeding on justice claims of incorrectly targeted individuals (explained more below); further, global policy may offer false assurances that it can help campus personnel predict who will be violent.

Applying Violence and Risk Assessment Research to the Campus

The above literature suggests that laws and policies should reflect the complexity of interactions among violence risk, mental status, and campus environments. Law and policy should also avoid oversimplified "profile" approaches or misapplication of automatic checklists. Unfortunately, much of the policy response has been driven by rare, high-profile cases, leading to poorly constructed, ineffective laws with unintended consequences (Reddy et al., 2001). (See also, chapters 15–18 in this volume for further discussion of unintended consequences of laws that often result from high-publicity cases). Certainly, campuses are affected by public perception and community sentiment that demand protective action (Heilbrun et al., 2009). But, ironically, while the public has become a bit more informed as to causes of mental illness, there has been an increase in fear of persons with mental illness—often believed to be dangerous—and increased support for social distancing (Markowitz, 2011, p. 39; Pescosolido et al., 2000, p. 30–31). Media has played a special role in shaping this public response by over-emphasizing mental diagnoses, blaming mental health system gaps for violence, and over-relying on images of "crazed" shooters in pictorial accounts. These portrayals create a sense of "moral panic" within the public (Billeaud, 2011; Borum et al., 2010; Ferguson, 2008).

Incomplete or inaccurate depictions built on a limited, misinterpreted, or misapplied research base construct a metaphor of the "mentally ill" as mass killers (Borum et al., 2010). Politicized use of research can, in turn, support claims of an "epidemic" of violence and need to "quarantine" persons with mental illness (Dodge, 2008). This confluence of political, media, and research factors can also create self-fulfilling prophecies of "crazed" killers running amok, biasing polls to suggest yet more public support of profile-type, and liberty-restricting responses.

Ultimately, campuses are in a bind: They are expected to step into a parental role to take care of students entrusted to them, with liability fears further driving a "protection" focus (Bertram, 2010; Stone, 2008; Stuart, 2012). Campuses are to use evidence-based best practices in outreach to individuals on campuses with mental health issues. However, these practices might not support what the community wants or may be twisted to support political ends. At the same time, they are to foster "open environments" as they provide education. The crux of this bind is thus: How to strike the right balance among this mix of obligations—without being overly reactive or unduly privileging one set of priorities out of unfounded fear?

The Campus Response

So how have campuses responded to violence within their environs? Even before the cases described herein, there emerged an obligation for campus counselors to warn or protect identifiable third parties from becoming victims of violence perpetrated by their patients (*Tarasoff v. Regents of the University of California,* 1976). This duty of protection can also extend beyond a single feared victim to an identifiable "class of persons" (*Lipari v. Sears, Roebuck & Co*, 1980; VandeCreek & Knapp, 2000). Also, during the 1990s, policies relaxed criteria for commitment (e.g., lesser threshold of imminence of risk) and created an outpatient commitment option (Monahan, 2006). Against this backdrop of greater tolerance for liberty restriction for individuals presenting potential risks of violence, the "lessons learned" from Virginia Tech and Northern Illinois (and as reflected in Tucson and Aurora) seemingly suggest that it's best for "our" students if we require "them" to leave campus (and only come back with "certification" that they are no longer dangerous). Ironically, this sort of response may make the target of such response (i.e., the individual perceived to present a threat of violence) feel more isolated and aggrieved. These responses also limit colleges' ability to keep a watchful eye on the target's behaviors (Heilbrun et al., 2009).

Threat Assessment Approach

Perhaps one of the most defining features of campus responses post-Virginia Tech has been the development of a formal threat assessment (TA) approach to risk management. TA is a "strategy for preventing violence through identification … of individuals or groups that pose a threat to harm someone, followed by intervention designed to reduce the risk of violence" (Cornell, 2009, p. 4). This approach involves four central areas: personality traits and behaviors, family dynamics, school dynamics, and social dynamics (Borum et al., 2010; Fox & Savage, 2009). Critically, the TA approach builds on a strong research base that recognizes weaknesses of an individual profile or generalized assessment; rather, it requires particularized assessment with multiple informants covering different contexts (Fox & Savage, 2009; Heilbrun et al., 2009). The use of TA-like approaches has proliferated across campuses (Muskal, 2012). With broadened application, however, the "threat" at issue has often shifted to concern over harm to self (Wolnick, 2007) or nonlethal violence to others (Dunkle, Silverstein, & Warner, 2008). Behavioral contracts or medical withdrawals are often used to address concerns (Delworth, 1989; Dunkle et al., 2008; Eells & Rockland-Miller, 2010).

How Did We Get Here (Today) from There (Post-Virginia Tech)?

In the wake of the Virginia Tech tragedy, then-Governor Tim Kaine appointed a review panel that documented what policymakers saw as "lost opportunities" to intervene with Cho, especially perceived barriers to longer-term mandatory commitments and campus-community communication (Virginia Tech Review Panel, 2007). Recommendations from this report led to legal change, including a reformed civil commitment process that broadened standards for civil commitment, extended emergency custody and temporary detention order periods (Va. Code §37.2-808, 2010; Va. Code § 37.2-809, 2011; Va. Code § 37.2-817.1, 2010), and enhanced campus security including requiring that public colleges and universities create and use TA teams (Va. Code § 23-9.2:10, 2010). Following this, most public and private colleges within Virginia adopted new policies to encourage students to adhere to mental health treatment via voluntary medical withdrawals, mandated outpatient treatment, mandatory engagement in mental health treatment to avoid suspension/expulsion, and TA team monitoring (Monahan, Bonnie, Davis, & Flynn, 2011). Colleges, especially private ones, also adopted involuntary medical leave policies, requiring clinical verification of student treatment adherence for readmission (Monahan, Bonnie, Davis, & Flynn, 2011).

Advances in other states. This development of a TA approach informed changes in other states, e.g., Illinois, which amended existing law to require its campuses to partner with local agencies to plan and practice emergency response (Illinois Campus Security Enhancement Act, 2010). However, law did not guarantee action: Three years post enactment, there was widespread noncompliance in Illinois, in part due to lack of an enforcement mechanism and no clear line of authority for ensuring compliance (Pawlowski & Manetti, 2011). Pima and Aurora utilized TA-like teams or processes to remove Loughner and Holmes, respectively, from campus—with on-campus violence averted (although not necessarily causally linked)—yet, violence itself was not averted. Thus, while TA approaches may hold promise, they are not a magic bullet against violence.

Irrespective of a potentially more evidence-informed and less stigmatizing approach to campus-based violence risk, it proves difficult to counteract media accounts, public sentiment, and politicization of events. Campus policies have taken on a safety frame (i.e., view policy formation and implementation through the perspective of safety when facing (or frightened by the potential of) media attention, and as driven by an often-understandable community sentiment post-violence). Specifically, such campus polices may be informed by a TA team's arsenal of recommendations. And these policies exist within a risk avoidance culture that prioritizes a

"better safe than sorry" response that may more quickly lead to suspension or expulsion decisions, even if more effective violence prevention necessitates an ability to monitor at-risk students who are identifiable and remain at least somewhat "connected."

A Therapeutic Jurisprudence Frame for Campus Response to Violence Risk

The question remains as to how the goals of an evidence-informed, public health-oriented approach to risk assessment can influence policy in a way that achieves meaningful, therapeutic, safety-enhancing, fair, and ethical results. Specifically, lawmakers must determine how to be responsive to community sentiment and its symbolic value while also cognizant of policy's as-implemented reality and potential for harm, including less visible harms of fostering perceived hostile campus environments for those with mental health disorders. Perhaps a different frame for policymaking might help.

Defining Therapeutic Jurisprudence ("TJ")

As a prominent TJ scholar has explained:

> TJ recognizes that the law is a social force with negative and positive emotional consequences for all the people involved. …It seeks to identify those emotional consequences; assess whether they are therapeutic or counter therapeutic; and then ask whether the law can be changed, applied, interpreted, or enforced in ways that can maximize its therapeutic effects. (Daicoff, 1999, p. 813)

TJ's early development relates to themes of this chapter: the effects of deinstitutionalization and public perceptions of dangerousness of persons with mental illness. As more and more mentally ill patients ended up in courtrooms, certain mental health lawyers developed the concept of TJ to respond to the "anti-therapeutic" effects of the legal process on these individuals (Wexler & Winick, 1991a, 1991b). TJ does not imply that therapeutic outcomes are the only—or even predominant—goals or that legal decision makers should act in deference to clinical goals (Wexler & Winick, 1991a). Critically, though, TJ urges that legal actors recognize that there may be the so-called facts upon which they act (e.g., that a person with untreated schizophrenia will likely be violent against others) that lack, and could thus benefit from, empirical support. Moreover, legal actors should also empirically gauge consequences of legal decision making, including therapeutic effects (Wexler & Winick, 1991a, p. 983). Since its formulation, TJ's application has broadened beyond mental health law, to now include a role as frame for evidence-informed policymaking concerning a wide range of legal issues (Campbell, 2010).

Applying TJ

TJ holds promise for revising campus policy development and related state and federal legal action vis-à-vis concerns of safety on college campuses. The first necessary change is that policy itself should be viewed as an intervention (Campbell, 2010). Second, many policies, even those not directly related to health as narrowly conceived, influence individual and community well-being, physically and emotionally. When so viewed, it becomes more apparent how a study of the consequences of policy development and implementation would also include a view of its therapeutic (or not) impacts, with a natural response to enhance well-being through policy, or at the very least, in ethical terms, to "do no harm" (Brookbanks, 2001; Sharpe, 1997).

TJ can be applied as frame for policy in a variety of ways. It could help highlight therapeutic consequences and also help channel the quite natural emotions that drive and/or are driven by certain policy developments (Campbell, 2012; see also chapters 1 and 17 for more on emotions and sentiment). Consider its application to Virginia Tech:

> In this environment [fear and anger], is it any wonder that policies often slant towards the coercive, punitive, or public safety expanding rather than

> slanting towards promotion of individual liberty or mental health? Less considered are the negative consequences of the resulting policies, and whether they best address the emotional needs of the targeted group and the public at large in an evidence-based way. (Campbell, 2012, p. 694)

Using TJ as a frame to build the evidence base. Importantly, applying TJ as frame for campus policy and broader policy development is not purely a normative exercise but an empirical one. That is, it requires pre- and post-review of agreed-to measures or tests of "therapeutic" effects to fully evaluate "success" of laws and policies. These measures might include the sort of campus environments fostered by communities, the willingness of individuals facing challenges to open up (or for their peers to come forward and report when they are worried about their friends), the feelings of respect (or lack thereof) such individuals in crisis perceive in various campus responses, etc. These sorts of evaluative questions and environmental scans pre- and post-policy intervention could be coupled with other concerns that the policies seek to address, such as fostering a sense of safety or enhancing perceived fairness in policy application.

An example to help guide such sort of empirical investigation involves the post-Virginia Tech experience. In addition to passing a series of bills to enhance mental health and campus security systems, Virginia's legislature also commissioned a mental health study with two prongs: legal issues related to campus mental health and clinical access issues facing campus students with mental health issues. The goals for each task force were to "make recommendations for training, institutional policies and practices, and any legislative action that may be needed." (Bonnie et al., 2011, p. 3). Importantly, their approach utilized empirical study and robust multi-stakeholder engagement to evaluate effects of its post-Virginia Tech responses across the state (Bonnie et al., 2011).

TJ and ethical concerns. Moreover, a TJ frame could also be studied for its ethical effects, including effects on confidentiality concerns among those with mental health or substance abuse troubles. Current approaches could be faulted for employing a utilitarian calculus in which public safety trumps confidentiality, with the assumption made that breaches make campuses safer (Mossman, 2009). Indeed, the current culture places a great deal of pressure on campus counseling centers, leading center directors to be more likely to break confidentiality (Gallagher, 2012). This pressure is largely a result of community sentiment.

Whether policy can effectively achieve safety without unnecessarily, unfairly, or harmfully impacting confidentiality can be empirically studied, with adolescent confidentiality studies serving as potential models (Ford, Millstein, Halpern-Felsher, & Irwin, 1997). Potential policies that are in need of evaluation include proposals to require mental health privacy waivers of incoming college students (Fox & Savage, 2009).

Further, there is ethical concern related to the use of less specific or sensitive tools with a specific population, i.e., those with mental illness. Concerns include if thus use results in high false-positive rates (i.e., detain an individual who is in fact not dangerous) or conversely, with high false-negative rates (i.e., not detain an individual who is in fact dangerous and who might benefit from treatment or supports) (Munro & Rumgay, 2000). The trick lies in identifying a threshold, above which risk level designated campus officers may seek to detain. Admittedly, this is made all the more complicated by public pressure and media scrutiny not to let another "dangerous person" slip by (Munro & Rumgay, 2000).

TJ as frame offers some assistance in addressing ethical issues by focusing attention on the psychological effects of policy—that is, the *human* consequences of policy as experienced in therapeutic terms vs. a focus simply on safety driven by community sentiment and/or media. Specifically, when evaluating policy effectiveness, TJ as frame necessitates consideration of factors beyond violence incidence reduction to include inclusiveness of campus environments, say, or fairness of outcome—in real and perceived terms—in application of threat assessment policies.

TJ and justice concerns. Fairness considerations point to a final, critical, area of policy impact assessment: justice implications of threat assessment policies and their kin. Individual liberty concerns arise when policies target certain behaviors—tied to certain mental health diagnoses—for punitive response or when such individuals experience disparate treatment by more "global" policies (e.g., suspensions). Applying a TJ frame can help illuminate psychological impacts on persons with mental health disorders and their families—as well as on those who may have yet to seek help. Beyond traditional liberty-based claims, there also exist other justice-related concerns. Specifically, questions can be raised as to the effects of devoting limited mental health resources to measures to avert "dangerousness" rather than to measures to enhance mental health access for all of the campus (or at least those in need—but not (yet) at the level of dangerousness) (Munro & Rumgay, 2000). Again, TJ may help in policy formation and evaluation by adding to the list of effects of resource allocation polices such policies' effects on psychological well-being, help-seeking behaviors, and perceptions of inclusiveness.

These sorts of justice issues and demands for empirical investigation suggest that TJ, while a question-generating frame, is not divorced from the need for evidence or blind to other considerations of cost trade-offs or values beyond therapeutics, e.g., justice (Campbell, 2010). Rather, it is highly contextual and sensitive to consequences—therapeutic, emotional, or ethical. And while not *the* answer for policy development, "having therapeutic consequences in mind and reflecting on related evidence may be our best hope—where policy is possibly helpful or necessarily implemented [e.g., because politicians and community members demand campus responses]—of enhancing therapeutic outcomes" (Campbell, 2010, p. 291).

Future Steps

From this analysis, several steps emerge as needed. First, as just explained, building an evidence base is critical in the endeavor to revisit campus responses to violence by and upon their students. And the issue is not simply "which laws work, but which laws work best and why" (McNiel et al., 2004, p. 159). Researchers and policymakers should place more emphasis on the study of therapeutic consequences of policy responses—be they institutional, legislative, or administrative—on student behaviors (on campuses or off), as well as their justice impacts (e.g., disparate racial/ethnic effects). Safety enhancement becomes a necessary-but-not-sufficient outcome. Here, community sentiment becomes critical, inasmuch as it involves the perception of safety. Researchers can measure community sentiment not simply pre- and post-tragedy, but more proactively to assess how different sorts of media and policy responses to tragedy (actual or averted) impact perceptions of safety. Critical in this, too, is inclusion of multiple perspectives so that "community" will not remain an amorphous, or "us," concept, but a highly contextual one inclusive of those most intimately affected by potential policy and media responses (e.g., those with serious mental illnesses on campuses). A TJ orientation can help in this process by helping maintain a focus on psychological impacts and other indicia of well-being, beyond depersonalized target goals. Also critical are considerations of how to promote therapeutically effective policies through a media-generated "atmosphere of fear" (Fox & Savage, 2009, p. 1466). For this, it will be critical to have phased-in policies with as much transparency as possible, a greater appreciation of what evidence applies, and an understanding of the limitations for application in certain policy environments (Fox & Savage, 2009).

Second, more attention needs to be paid to potential shortcomings in a system that relies on "watchful waiting" and monitoring when many of our cases may involve the "unbefriended," that is, those who seem to slip by without friends or family supports. Yet it is difficult to monitor such isolated individuals. Monitoring and averting violence becomes even more difficult if these individuals are removed from settings where it is likely easier to accomplish at least some degree of monitoring.

Researchers and policymakers also need to examine more closely policy action "triggers." High-profile cases trigger legal actions, often leading to laws "named" after victims (e.g., "Kendra's Law" (NY Mental Hyg. Law § 9.60, 1999)). The particulars of one situation may not readily translate to policy action, yet a law or policy that is adopted in response to one event is expected to protect a broader class of individuals. There is a natural tendency, and can be great policy power, in seizing the moment to enact meaningful change, but fast action based on traumatic (especially rare) events may improperly apply (or ignore altogether) evidence to support potentially quite anti-therapeutic laws. Chapters 1, 17, and 18 in this volume further explore the issues associated with memorial crime legislation that sometimes results in crime control theater (CCT). CCT-type laws address the need to "do something" to address heinous crimes and appear to solve such crimes, yet have many unintended consequences and are unlikely to be successful. Such policies also risk anti-therapeutic outcomes and violation of TJ principles.

Researchers and policymakers should also be weary of "mission creep." This refers to how a policy's scope may be expanded, intentionally or not (and as influenced by community sentiment of fear). Policies have expanded beyond a focus on individuals whose behaviors indicate (primarily) other-directed violence to individuals with mental health challenges that are more internally directed, e.g., those with suicide risk. An example of this would be TA teams that have morphed into behavioral risk assessment teams, which support greater use of medical withdrawals to "encourage" treatment adherence. Here, a TJ reframing would require asking if these are the most therapeutic approaches and if they enhance student help-seeking behavior. Arguably, such assessments have negative therapeutic consequences; at the very least, policies as experienced should be evaluated for these potential negative consequences.

And third, rather than focus solely on the negative or areas of concern, attention should also be devoted to positive examples. There are some states, e.g., Virginia, that are incorporating evaluation into their policy agenda as a proactive response to past and potential incidents. These are efforts deserving of more analysis. Such policy agendas will broaden the research base from which others can learn policymaking best practices, such as which approaches lessen risks of violence while also balancing rights of individuals with mental health issues to privacy and to a traditional college education. Research can also tease out how contextual factors, such as public opinion, influence different policy approaches, and with what consequences. This will help confront mistaken beliefs versus perceived actual risks (in part addressing the availability heuristic).

Conclusion

In sum, tragedy begets policy response, often in an atmosphere of heightened negative, emotion-fueled community sentiment, media scrutiny, and politicization. In such environments, it is understandably difficult to foster sensitive policy development that balances the urgency of the moment with the need for thoughtful reflection and stakeholder engagement. TJ offers a mechanism to reframe policy action in therapeutic terms, and encourages therapeutic-evidence gathering and use in post-policy implementation evaluation. Recent campus-based or campus-connected tragedies provide a laboratory for investigation of what has worked (or not), as defined by whom, and with what consequences.

Evidence to date does not support simplistic policy responses that place individuals with certain mental health diagnoses in dichotomous "dangerous" or "not dangerous" categories. Campuses should not view the counseling center as a means to avert campus tragedies or see mental health treatment as *the* solution to violence. They should also not allow mental health counselors to be used as disciplinarians or violence risk detectors (Stone, 2008, p. 498–499). And even with data-informed, fully functioning TA teams and great communication networks between campuses and communities, campuses should not claim they are "100 % safe."

This may create a false sense of security and relieve the community of any responsibility in enhancing "safe" communities for those with and without mental disorders (Stone, 2008, p. 498).

Further, there is evidence to support considering how dynamic risk factors interact and rise to the level of "threat," with need for greater attention on protective factors, e.g., public health approaches wherein an enhanced mental health system has as a by-product less overall violence (Mossman, 2009; Stone, 2008). This suggests, in turn, that it may be wise to let clinicians remain squarely grounded in their therapeutic role, with a focus on prevention (vs. prediction) and therapeutic aims for their patients. In so doing they may help avoid role confusion that may deter students (and others) from seeking help if they are struggling with mental health issues for fear of some bright-line safety reporting mechanism. It would also, importantly, necessitate greater discussion of, and transparency about, times when clinicians may have to make reports. Such reports should consider the therapeutic impact on those about whom reports are being made (and not simply safety of potential victims) as guidepost for such reporting protocols.

Implications for the Media and an Emotion-Driven Community

This discussion also obligates more responsible media reporting. This includes the adoption of media infrastructures that support more sensitive and contextual reporting, and less emphasis on idiosyncratic events or hyperbolic headlines and imagery (Brooks, Schiraldi, & Ziedenberg, 2000). This may be difficult in a 24/7 news environment, with greater blurring (especially through the Internet) of who qualifies as "reporter" vs. pundit vs. agitated individual commentator. In this, the community also bears responsibility for how viewing habits influence media, and in turn, policy action. That is, community members should be more thoughtful consumers of the news that each individual, by her actions, helps shape (e.g., if ratings go up for certain inflammatory coverage, that could beget yet more "frenzied" media).

In sum, if we maintain a therapeutic response that is sensitive to the context but not driven by community emotions or politics of the moment, there is hope for creating campus environments that achieve educational goals via, in part, promoting healthy development and fostering a sense of respect and fairness among all within those campuses. There may be no easy solution to avert the next campus-based or campus-affiliated tragedy. Yet, this does not mean that there is no hope for therapeutic policy response that enhances individual and public well-being overall. A more caring policy response is the very least our student bodies can expect.

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Part V

Community Sentiment and the (Sometimes Unintended) Outcomes of Legal Actions

15 Unintended Consequences of Policy Responses to Fetal Alcohol Spectrum Disorders: Civil Commitment and Community Sentiment in North Dakota

Daniel M. Cook and Margaret L. Walsh

In five American states, including North Dakota, pregnant women may be judicially committed, meaning involuntarily confined, to a treatment facility for alcohol abuse. The North Dakota legislature passed its law unanimously in 2003, suggesting strong sentiment in the legislative community. As a policy analysis (Teitelbaum & Wilensky, 2013), this chapter reviews fetal alcohol spectrum disorders (FASD) as a public health concern and examines relevant policy history in North Dakota. Since legislators are leaders and followers of community sentiment, the chapter next describes a search for evidence of community sentiment that could help explain the policy. Lastly, this chapter includes a discussion of the implications of a punitive strategy, introduces the preventive policy options, and discusses potential engagement with community sentiment in North Dakota.

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Public Health Problem: Fetal Alcohol Spectrum Disorders

Alcohol use during pregnancy can lead to fetal alcohol spectrum disorders (FASD) (Brown & Percy, 2007). The umbrella term of FASD was created in 2004 to refer to a continuum of effects that can occur in someone whose mother drank alcohol during pregnancy (National Organization on Fetal Alcohol Syndrome [NOFAS], 2012). These effects include physical, mental, behavioral, and/or learning disabilities. FASD is referred to as a spectrum due to the fact that each person with FASD may have some, or all, of the negative effects found on the spectrum (Brown & Percy, 2007). Moreover, each of these disabilities may be experienced mildly to very severely. The umbrella of FASD includes: fetal alcohol syndrome, alcohol-related birth defects, partial fetal alcohol syndrome, fetal alcohol effects, static encephalopathy (alcohol exposed), neurobehavioral disorder (alcohol exposed), and alcohol-related neurodevelopmental disorders (Brown & Percy, 2007; Maier & West, 2001; Warren & Foudin, 2001). The most severe and complex of all FASD is a diagnosis of fetal alcohol syndrome (FAS) (Astley, 2011; Institute of Medicine, 1996; Warren & Foudin, 2001). FASD is the leading cause of identifiable mental retardation in the United States, although many individuals with FASD are not mentally retarded (Brown & Percy, 2007). FASD is 100 %

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preventable if a woman abstains from alcohol during her entire pregnancy and during breast-feeding (NOFAS, 2012).

Medical experts offer conflicting views concerning the amount of alcohol that is safe to consume during pregnancy. Evidence suggests that binge drinking is more harmful to the fetus than ongoing drinking of a lower quantity (Cranford, McCabe, & Boyd, 2006). Consuming large amounts of alcohol in a short period could be particularly damaging to the developing fetus because the fetal blood alcohol level may become higher than the mother's (Cheng, Kettinger, Uduhiri, & Hurt, 2011). While many scientists agree that there is sufficient evidence to justify warning against excessive consumption of alcohol during pregnancy, many believe that even moderate consumption of alcohol during pregnancy might impact a developing fetus (Chang, 2001; Krulewitch, 2005; Sommers, 2005). The lack of knowledge of what the dose/effect relationship might be poses challenges for governments that choose to make policies that determine how much alcohol consumption is safe during pregnancy (Linda, 1999).

The National Institutes of Health (2012) recommend that women trying to conceive, or who are pregnant, should not drink alcohol. Although there is no conclusive evidence that an occasional drink is harmful to the fetus or to the pregnant woman, a safe level of alcohol intake during pregnancy has not been established (Centers for Disease Control and Prevention [CDC], 2011; Linda, 1999). Moreover, there is neither definitive diagnosis nor a specific test to determine the presence of fetal alcohol exposure contributing to FASD, and many doctors and professionals dispute the amount of alcohol that a pregnant woman can consume during pregnancy before which harm will come to her fetus. Therefore, the National Institute of Alcohol Abuse and Alcoholism (2012) recommends that "there is no safe amount of alcohol during pregnancy" and that all pregnant women should abstain from the use of alcohol during her entire pregnancy.

The exact prevalence of FASD and FAS is difficult to determine from available data, and so reports of the rates differ widely (Warren, Hewitt, & Thomas, 2011). The CDC abstains from publishing prevalence rates because of the methodological challenges. The national rate of FASD may be from 2 % to 5 % of all births, and FAS may be in the range of 2 to 7 per 1,000 (May et al., 2009). In 1996, researchers from the University of North Dakota conducted a prevalence study of fetal alcohol syndrome (FAS) using retrospective review of birth certificates (Burd, Martsolf, & Klug, 1996). They found the prevalence rate for FAS among North Dakota children to be 3.1 per 10,000, with a male–female ratio of 2:1, and for the American Indian population 1 per 276 or 36.2 per 10,000 (Burd et al., 1996). The same research group more recently estimated that in North Dakota 83 children (about 1 %) are born each year with FASD (Burd, 2013).

Prevalence estimates also consider the alcohol consumption of women of childbearing age. Within its FASD information website, the CDC reports the drinking behavior of women 18–44, from the Behavioral Risk Factor Surveillance System data (CDC, 2011). Women who have one drink or more in 30 days are categorized as "any use," and women drinking four or more servings of alcohol on one occasion in the last 30 days are categorized as "binge drinking." The national median rate of women with any use is 51.2 %, and the rate for women who binge drink is 15.2 %. In comparison, North Dakotan women reported 59.2 % using any use of alcohol, while 19.9 % of women reported binge drinking (CDC, 2011). Alcohol consumption by women is likely associated with some prenatal alcohol exposure in the population, because many women have unplanned or mistimed pregnancies. About one half of pregnancies are unintended (Musick, England, Edgington, & Kangas, 2009), meaning that many women might consume alcohol before they even know they are pregnant.

Caring for children with FASD is expensive, and each individual can accrue lifetime costs of nearly $2 million; costs include health care, education, social services, and criminal justice (Gifford et al., 2010; Stade et al., 2009). In North Dakota, the extra yearly cost of health care for

each case of FAS under the age of 21 is $2,342 (Klug & Burd, 2003). Independent of other costs like special education, 20 years of health care for one child with fetal alcohol syndrome in North Dakota was estimated at $491,820 (Klug & Burd, 2003). There are additional potential costs that arise when a child with FASD has a comorbid disorder such as mental retardation or developmental disability.

Policy Background: North Dakota

The policy history of prenatal alcohol control through civil commitment began in 1997, when a pregnant juvenile in Wisconsin who had repeatedly tested positive for cocaine was ordered into custody of the state by a juvenile judge (cf. *ex rel. Angela v. Kruzicki*, 1997). The court of appeals upheld the conviction, but the Wisconsin Supreme Court later reversed the ruling, finding that the state had overstepped their bounds given the current legislation. In 1998, the Wisconsin and South Dakota legislatures both passed legislation that allows the states to involuntarily commit pregnant women who use alcohol or drugs during their pregnancy (Schroedel, 2000). Laws were passed in Oklahoma in 2000, in North Dakota in 2003, and in Minnesota in 2007 (Alcohol Policy Information System [APIS], 2012). See Chap. 8, this volume, for more discussion about legal actions against drug-using pregnant women.

According to the North Dakota Century Code section entitled Child Abuse and Neglect (2013), the following process may take place if a pregnant woman subjects her unborn fetus to prenatal alcohol exposure. The pregnant woman will be placed in protective custody of the state for the protection of the fetus from prenatal exposure to alcohol. The Department of Health and Human Services or its designee may seek grounds for a judicial commitment if the person is mentally ill or chemically dependent, or if there is a reasonable expectation that if the person will likely harm herself, others, or property. The maximum length of a judicial commitment is 90 days, with the possibility of a continuing order of commitment not to exceed 1 year. The location of the commitment is a state hospital or another treatment facility (APIS, 2012; N.Dak Century Code – the public law).

Unlike other states, North Dakota has done very little to inform women of the dangers of drinking alcohol during pregnancy or to prevent FASD. The state does not have a policy or law requiring mandatory point-of-sale warning signs, placed in locations where alcohol may be consumed or purchased, that would alert women to the dangers of drinking alcohol while pregnant (APIS, 2012). Additionally, the state does not have a law for priority treatment for alcohol abuse for pregnant women. North Dakota did not have a policy to deal with alcohol use during pregnancy until the civil commitment statute was passed in 2003.

In 2003, the North Dakota state legislature approved, and Governor Hoeven signed, *Senate Bill 2271* to add alcohol abuse during pregnancy to the existing laws against child abuse and neglect (APIS, 2012). Additionally, alcohol abuse during pregnancy was added to the list of behaviors that can lead to one being civilly committed. The law was also changed so mandatory reporters for child abuse and neglect are also required to report alcohol use during pregnancy; failure to do so can lead to felony charges. The policy of reporting alcohol use during pregnancy is enforced by the North Dakota Department of Human Services (DHS), and DHS is also allowed to appoint others, as they deem appropriate, to enforce the policy.

Community Sentiment and SB 2271

SB 2271 passed both legislative houses unanimously in 2003, winning the state senate 46-0, and the state house 94-0 (North Dakota Legislative North Dakota Legislative Branch, 2013). A unanimous vote count generally indicates lack of controversy, lack of opposition, and/or positive community support. The North Dakota political culture often includes a pro-life perspective on the interpretation of abortion and fetal rights (Schroedel, 2000), meaning the rights

of the pregnant woman may be subordinate to the rights of the developing fetus in many situations. In fact, North Dakota's legislature recently passed, and the governor signed, a measure outlawing abortion after a fetal heartbeat is detectable, at about 6 weeks (Fisk, 2013). The same legislature approved a state constitutional "personhood" amendment that declares that legally protected life begins at fertilization (Bodine, 2013). The proposed amendment will be considered by North Dakota voters in 2014. The state political tradition includes what political scientists call a culture of *moralism*, in which government may regulate or punish individuals who make poor choices (Mead, 2004). Perhaps these contextual political traditions (Stone, 2011) help explain why the state of North Dakota has enacted punitive approaches to solving the social problems associated with FASD.

Policymakers are political system elites that may respond to, or even help lead, community sentiment. For any specific policy question, community sentiment may include preferences expressed by the mass public or may be limited to the relevant community of experts and insiders. Policy change could be attributed to community sentiment via the public agenda for policymaking. The public policy agenda can be examined with such indicators as media attention and testimony submitted to the legislative history (Baumgartner & Jones, 1993). We searched the journalism reports during and after the legislative session in 2003. A Lexis/Nexis Academic database search of the terms "prenatal alcohol and 'North Dakota'" from January 2002 to December 2004 yielded a few hits but no relevant articles. A similar indicates a search term that includes pregnant and pregnancy etc, yielded more hits but again nothing about the civil commitment reform. We therefore conclude the public saw little to no newspaper coverage of the new law being proposed or passed. The implications of this abbreviated discourse will be discussed below.

Quite often the general public is not interested or involved with a specific policy change, while the impetus for the policy is the policy subsystem, which is the group of direct stakeholders and experts that usually participates in the policy process (Sabatier, 1988). We obtained the legislative history for SB 2271, which had testimony from a total of seven individuals across both the senate and assembly (SB, 2271, 2003). Five people testified in support of the bill, zero in opposition, and two gave neutral expertise. The supporters were: the state's attorney representing the Peace Officers Association, the president of the North Dakota Healthcare Association, a social worker with youth clients, the Assistant Attorney General, and a pediatrician who was a hospital group medical director. The neutral testimony was submitted by state agency employees: the director of the mental health and substance abuse division and someone from county social services which is the state designee for responding to reports of abuse. Many of the experts/clinicians explained that the hospitals presently had no avenue for helping clients or patients who were pregnant alcohol abusers and so asked for the legislature to provide this required entry into treatment.

Implementation of SB 2271

The North Dakota policy could possibly discourage alcohol abuse among pregnant women, but that would be difficult to measure. FASD prevalence is difficult to determine precisely, as explained above. North Dakota continues to earn high rankings for risky behaviors such as binge drinking for women aged 18–44 (CDC, 2011). The details of the process by which a woman could be identified and then required to enter treatment may be noteworthy. To start, any individual can contact the DHS and make a report of witnessing a pregnant woman using alcohol, and mandatory reporters for child abuse are required to do so (North Dakota Department of Human Services, 2006). Upon receiving that complaint, a DHS agent will follow up with the pregnant woman. The woman then needs to admit to the DHS agent that she is pregnant before the interview can continue. If the woman insists she is not pregnant, the person who made the report is asked to discuss the issue with the woman or to accompany the DHS agent

on a second meeting. If either the reporting person refuses to accompany the DHS agent, or the woman again refuses to acknowledge her pregnancy, the process is terminated (North Dakota Department of Human Services, 2006).

However, if the woman acknowledges her pregnancy, it then needs to be determined if she knew she was pregnant prior to the drinking episode (North Dakota Department of Human Services, 2006). If she states she was unaware of the pregnancy during the episode but has since quit drinking, then the interview is over. If she knew she was pregnant at the time of the witnessed or reported episode, and she is still drinking, then the DHS will administer the TWEAK (tolerance, worry, eye-opener, amnesia, and (k) cutting instrument for intervention (North Dakota Department of Human Services, 2006). The TWEAK is a five-item standardized instrument that was originally developed to screen for *problem drinking* during pregnancy (Russel et al., 1994). It contains five self-response questions for the categories of tolerance (how many drinks it takes to feel high), worry (concern by others about the pregnant woman's drinking behaviors), eye-opener (using alcohol to help you feel more clear in the morning), amnesia (inability to recall behaviors during drinking), and cutting down (if the pregnant woman thinks she needs to cut back on her drinking).

The first two items are both allotted a possible two points. If it takes three or more drinks to feel high, the pregnant woman receives two points, and if the woman reports that others have expressed concern about her drinking, the pregnant woman receives two points. The other three items are scored so that a "yes" response receives one point and a "no" receives zero points (Russel et al., 1994). The DHS Policy Handbook states that if a woman scores less than two points, the agent is to give the woman some pamphlets and review the benefits of abstaining from alcohol use during pregnancy. However, if the woman scores two points or higher, the DHS agent will show her a list of treatment facilities and refer her for treatment.

If the pregnant woman refuses to voluntarily obtain treatment, the DHS agents may inform her that they can begin the civil commitment process. Involuntary civil commitment requires that a state's attorney or district attorney accept the case and petition the court for the involuntary commitment of the individual engaging in the particular behavior. According to the state's attorney office in Cass County (North Dakota's largest county), a case like this would not usually be presented to a judge unless the woman is thought to be doing major harm to herself (Burdick, P.D., personal communication November 10, 2007).

The 2003 reform was a package of three policy changes (Child Abuse and Neglect, 2013). The civil commitment provisions have been reviewed here. The 2003 law also edited the child abuse and neglect definitions to include alcohol abuse and alcohol exposure, including prenatal drug use, and termination of parental rights is possible. And thirdly, the mandatory reporting requirements were edited. The mandatory reporting section of the law also provides for screening of newborns and postpartum mothers. Alcohol was added to this section as well, so that pediatricians may test newborns for alcohol and other substances without consent of the parents. Postpartum women may be tested with consent, or a tissue or blood sample obtained for another purpose may be screened for evidence.

Negative Consequences: Ethical and Legal Implications of SB 2271

Perhaps the North Dakota legislature of 2003 intended to save the state FASD costs and to protect unborn children from FASD. Or, they may have intended to address the problems brought up through the testimony about providing access to treatment where there was none. Arguably, prevention is not a primary goal, as the policy intervenes with (or even punishes) women who consume alcohol after the episode of drinking (Linder, 2005).

Legal and public health scholars have observed at least six major limitations to laws like these that criminalize alcohol and drug abuse during pregnancy and otherwise regulate pregnancy behavior: (1) they are not preventive and distract from evidence-based prevention (Schroedel & Fiber,

2001), (2) they are contrary to reproductive freedom and autonomy (Coleman & Miller, 2006–2007), (3) they place one gender at heightened risk of punishment (Linder, 2005), (4) they may involve women who are unaware of their pregnancy status (Thomas, Rickert, & Cannon, 2006), (5) they disproportionately impact specific women such as the economically disadvantaged and those of African-American ethnicity (Brosh & Miller, 2008; Paltrow & Flavin, 2013), and (6) they discourage prenatal care as women fear detection of a crime at health care visits (Brosh & Miller, 2008; Coleman & Miller, 2006–2007).

The civil commitment law implies that the legal rights of a fetus are more important than those of the expectant mother, and that she is in criminal peril for consuming a legal product. The science of FASD implicates men as well as women; for example, a man's excessive alcohol consumption months in advance of conception might negatively affect the fetus (Bakhireva et al., 2011). Even so, men are not in legal jeopardy for potentially contributing to FASD. Further, women may be unaware of their own pregnancy status for the first few months of pregnancy, the time in which alcohol consumption poses the most health risks (Linder, 2005). Finally, the ethnic and socioeconomic disparity concern was revealed by a large study of laws nationwide regulating the behavior of pregnant women, which found that poorer women and African-American women were disproportionately arrested under these laws (Paltrow & Flavin, 2013).

Civil commitment provisions may appear effective to the general public, if they notice at all, yet the problem of alcohol use during pregnancy is highly complex. The complexity results in the need for greater analysis of the social problem of alcohol use during pregnancy. Because there are still children being born with FASD in North Dakota, having the civil commitment policy is arguably ineffective and hinders the possibility of starting prevention programs and other policies that would be more effective to reduce this preventable disorder (see Chaps. 16–18, this volume, for more on outcomes or relying on sentiment in policymaking).

Other Policy Options

Although the costs of FASD certainly give the state an interest in creating policy that would address alcohol use during pregnancy, preventative measures often result in better outcomes (Cohen, Chavez, & Chehimi, 2010). According to Linder (2005), successful approaches to reducing FASD need to include early and comprehensive education about the dangers of alcohol consumption during pregnancy. To reduce the number of children born with FASD, prevention is the best option (CDC, 2009). A strategic plan with five goals was outlined by Dr. Ann Streissguth (1997): (1) public education, (2) professional training, (3) public policy, (4) programs and services, and (5) parent and citizen activism (p. 25). These five P's of prevention are used in a comprehensive manner to impact not only women who are pregnant or who may become pregnant, but they also to target the community and society in which these women reside.

Streissguth (1997) loosely defines public education as the act of focused education for the public at large about the dangers of drinking during and even before pregnancy; it can take many forms: posters, lectures, brochures, and media attention. She does not include the sex education programs that occur in public and private schools, but these could be an appropriate venue for teaching about FASD. North Dakota currently teaches an abstinence-only version of sex education, which does not include any information on the effects of consuming alcohol during pregnancy (North Dakota Department of Public Instruction, 2012). The state of North Dakota could benefit from a sex education program that includes FASD information, perhaps reducing the likelihood of children being born with FASD in the future.

Professional training would instruct health care and social service professionals about FASD. Training as a prevention strategy teaches professionals how to discuss with women what effects drinking during pregnancy has on a developing fetus. Professionals should be given concrete suggestions for introducing the topic

of drinking during pregnancy and should be familiarized with ways to help women stop drinking. This segment of prevention should also focus on training doctors (primary care physicians, obstetricians, and gynecologists) to send a unified message to all women of childbearing age that there is no safe amount of alcohol that can be consumed during pregnancy.

In addition to the five P's of prevention (Streissguth, 1997), there are additional alternatives to that of civil commitment that could, and should, be implemented in the state of North Dakota. These include the creation of viable treatment options for women planning to become pregnant and for pregnant women who use and/or abuse alcohol. Priority treatment is defined as a policy in which "various arrangements to increase access to substance abuse treatment by pregnant and postpartum women are created. Such arrangements include state-run treatment services, funding for private providers, and mandates that such women receive a priority for available treatment" (APIS, 2012). To effectively deal with FASD, legislative efforts need to ensure that the public has access to both education and voluntary treatment facilities so that individuals can obtain treatment (Linder, 2005). Funding also needs to be available to care for families of those in treatment so that a mother's choice to enter treatment is not in conflict with supporting her other children (Linder, 2005). This specialized care could ideally be made available close to the populations at greatest risk for prenatal alcohol use.

In North Dakota, where there is "an annual birth cohort of 8,393 there are 83 new FASD cases, 21 recurrent cases, and 5 will recur in families with multiple affected children" (Burd, 2013), it is imperative that preventative efforts need to be undertaken. Especially since "North Dakota identified 3,357 women using alcohol during pregnancy in 2006" (Burd, 2013). Other alternatives are to create policies intended to reduce the use and abuse of alcohol among pregnant women. For example, as mentioned above, North Dakota does not require warning signs at the points of sale, which are a simple educational and preventive policy. Another potentially effective policy to decrease the use of alcohol by pregnant women is through access reduction, for example, by not allowing sales of packaged alcohol in stores on Sundays (APIS 2012) or through taxation of alcohol.

The mandatory screening of newborns and postpartum women is also an interesting direction for policy. The mandatory reporting requirements in North Dakota allow physicians to test newborns for alcohol and other substances without permission of the mother. The mothers themselves may be tested with consent only, but samples obtained for other purposes may be examined for substance use. A recent public health research article argues that required universal meconium analysis screening of newborns would improve public health, particularly in directing mothers to treatment in order to prevent repeated mistakes (Gifford et al., 2010). The segment of women who have more than one FASD child is small but nonetheless one that can be targeted easily. Meanwhile, states have different rules about how preventive screening results can be used for potential criminal proceedings. Six states limit the use of medical test results for criminal prosecution for prenatal alcohol. North Dakota has no such law, and so potentially the screening and toxicology described under mandatory reporting may be linked to a criminal proceeding. This again raises the idea of a criminal justice approach rather than a therapeutic and preventive approach.

These identified alternatives would likely be beneficial. If each of the five P's of prevention were implemented in one form or another, we expect a decrease in the number of children born with FASD. The decrease in children born with FASD would redirect money to other areas of public need. These alternatives would provide the following benefits: reduced judicial system expenses; an education system that would be able to focus its efforts on education, as opposed to dealing with behavioral issues that are common in children with FASD diagnoses; and integration of true prevention methods would alter the normative nature that currently surrounds alcohol consumption during pregnancy.

Another strategy is to target policy and interventions directed toward women with the highest risk.

The experience from North Dakota and the northern plains region has been that American Indian women have much higher incidence of FAS births. Within this population, researchers have tried clinic-based case management (May, P. A., Miller, J. H., Goodhart, K. A., Maestas, O. R., Buckley, D., Trujillo, P. M., et al. 2008), telephone counseling with mailed pamphlets (Hanson, Miller, Winberg, & Elliott, 2013), and a special media campaign (Hanson, Winberg, & Elliott, 2012). Each demonstrated success. These pilot projects are evidence for potential statewide policy that allocates resources to preventive interventions.

Discussion and Conclusion: More Engagement with Community Sentiment?

This policy analysis revealed how community sentiment can lead to laws with negative outcomes. We found only limited public discourse in advance of considering the new policy. The lack of media attention and the sparse legislative history revealed that prenatal alcohol control policy in North Dakota was a "policy network insider" matter that was considered only by the policy subsystem of elites and not by the mass public. The community sentiment involved was narrow and reached consensus early. This may imply that the law was not carefully investigated and that potential negative consequences for certain populations were not considered. This is consistent with the concept of "crime control theater" (CCT) as identified by Griffin and Miller (2008; see also Chaps. 1, 17, and 18, this volume). CCT laws are legal actions that appear to address a crime but are often ineffective and/or have negative outcomes (Griffin & Miller, 2008). When a public policy problem is fairly emotional and difficult to discuss rationally, as many problems involving the well-being of children are, legislatures may rush to enact new provisions. Further, voices of opponents are often stunted, as few are willing to speak out against policies that—on their face—protect children. This means that the policy process may forego careful deliberation of consequences for all the stakeholders and arrive at flawed decisions, perhaps analogous to a "groupthink" situation (Allison & Zelikow, 1999; Janis, 1983).

At the same time, perhaps some politicians fully intend to engage in demagoguery and victim blaming for easy political points, given the history of efforts to control poor people in the United States. In American politics, women with addictions who engage in risky behavior are demonized in the pursuit of votes and power (Piven & Cloward, 1993). In the "moralism" style of politics, proponents of population health sometimes run afoul of personal integrity and the respect for individuals with health challenges and social disadvantage (Morone, 2006). Ideally North Dakota should pursue the CDC model policies for FASD prevention and treatment in order to reduce or eliminate new cases of FASD from their state. Those wishing to mobilize community sentiment might succeed but should tread carefully given the sensitive topic of prenatal drug use.

The legislative history revealed that although this law in North Dakota amended the criminal code and allowed for punitive measures, it also created a new entry into therapeutic assistance for mothers needing help. Legislators must balance plebiscitary functions with stewardship/leadership functions. Legislators of North Dakota may continue to think that the civil commitment policy is useful enough as a deterrent, or at least can stop women from causing additional harm. We suggest that they should add other policies and services that will preventively decrease the number of children being born in North Dakota each year with FASD in the spirit of ensuring proper therapy. In the future, state leaders might wish to mobilize public support in order to help pass additional measures (and to spread the message about alcohol control). Policymakers often deploy at least one of four winning principles when framing messages in American politics: equity (universal benefit), efficiency (cost savings), security, and liberty (Stone, 2011). The alternatives that have been suggested here for North Dakota should consider these domain concepts in order to construct effective new policies and programs.

In this case, stunted public discourse driven by unanimously positive, neutral, or uninformed

sentiment led to a variety of negative outcomes for mothers and society. Prenatal alcohol control improves public health and public budgets and has universal relevance for all women, all parents, all providers, all schools, and all communities. The agreement of mainstream science that there is no safe prenatal exposure to alcohol should encourage political communication. But, the means chosen to reach this end have led to women (especially women of color and low SES) bearing an unequal burden of pregnancy regulation and alcohol control enforcement. Improved policymaking that gathers and considers information comprehensively, from all sectors of society, particularly those who bear the burden of the criminalization, could avoid unforeseen consequences and wasteful policy failure.

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16 Adult Consequences for Juvenile Behavior: Does Sentencing Policy Aimed at Serious Adult Behavior Cast Too Wide a Net?

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Throughout history, society has struggled with defining "normal" juvenile behavior and determining how to treat juveniles under the law. Sentencing policy is often debated in the media and in politics, sometimes leading lawmakers to support "get-tough policies" that are justified on the basis of lawmakers' perceptions of public opinion (Moon, Sundt, Cullen, & Wright, 2000). Community sentiment regarding harsher sentences is often influenced by fear and biased media accounts of sensational, yet rare, juvenile crime (e.g., school shootings or patricide). The media often portrays juvenile crime as random and incomprehensible (Greene & Evelo, 2013), thereby inciting community support for harsher sentencing for juvenile crime, followed by lawmakers' efforts to support the community based on their perception of community sentiment (Moon et al., 2000). Biased media reports often encourage the community to activate the fundamental attribution error (see Jones & Harris, 1967; Ross, 1977), through which members of the community will attribute criminal behavior more to dispositional rather than to situational factors (Ghetti & Redlich, 2001). Even with a dispositional perspective, there is often a lack of attention to the developmental aspects of a youth's conduct (Allen, Trzcinski, & Kubiak, 2012). Through this process, juveniles become trapped in a wide-cast net of laws that were intended to address deviant adult behavior, but also have the unintended consequence of criminalizing juvenile behavior that could be better addressed through rehabilitation and/or education.

Lawmakers often cite public sentiment when making decisions regarding how to address criminal behavior. When the community is uninformed about the nature of crime and characteristics of offenders, their sentiment can lead to negative and unintended consequences. However, when the community is informed about the contexts of certain crimes and offenders, their sentiment is more aligned with policies that have better, more positive outcomes for society. Therefore, it is crucial for lawmakers to accurately perceive community sentiment regarding juvenile offending and the application of adult sentencing policy to juvenile offenders, and it is equally crucial for the community to be informed. In this chapter, we summarize the research regarding public opinion of harsh sentencing options for juvenile offenders. We compare various methods of measuring public opinions regarding life without parole, sex offense charges, and sex offender registration laws as

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applied to juvenile offenders, and we discuss how community sentiment changes when the public is provided context-specific information regarding offenses and offenders, along with education regarding juvenile development. We also discuss unintended consequences of applying life without parole and sex offender laws to juvenile offenders, including criminalizing typical and common adolescent behavior. Finally, we suggest alternative ways to address problematic juvenile behavior that both avoid some of the unintended consequences of the laws and align with informed community sentiment.

Community Sentiment Regarding Juvenile Offenders

Over the years, the community's opinions about the treatment of juvenile offenders have fluctuated between benevolence and punitiveness (Greene & Evelo, 2013). In the 1980s and 1990s, in response to community and lawmakers' fears of increasing violent juvenile crime, some jurisdictions enacted laws that made it easier to transfer juvenile offenders to adult court and to impose life without parole (LWOP) on those juveniles in adult court (Garinger, 2012; Piquero & Steinberg, 2007). During this time, the community supported more punitive approaches to dealing with juvenile offenders, especially those charged with serious offenses (Moon et al., 2000). This was in part due to community fear about the threat of juvenile crime and the assumption that the only alternative to adult punishments for juveniles was no punishment at all, which was clearly not the case (Piquero & Steinberg, 2007; Steinberg & Scott, 2003).

In recent years, community sentiment toward juvenile crime has become less punitive and more nuanced (Greene & Evelo, 2013). However, lawmakers still often believe that the community supports adult punishment of juveniles. This is mostly based on either responses to highly publicized crimes (e.g., school shootings or patricide) or mass opinion polls that ask a few simplistic and vague (e.g., no context provided) questions (Piquero & Steinberg, 2007; see Chaps. 3 and 8 for discussions about the complexities of measuring community sentiment). Generally, people believe that juveniles should be held accountable for their behavior, but they favor policies that recognize juveniles' decreased levels of responsibility and provide opportunities for rehabilitation (Piquero & Steinberg, 2010). This stance is at least partially based on the community's understanding of the ways in which juveniles differ from adults (Greene & Evelo, 2013).

Community sentiment regarding the punishment and treatment of juvenile offenders appears to be dominated by two factors: how well educated the community is about young offenders and what is normal behavior and self-control for youth at various stages of adolescent development (Allen et al., 2012; see Chaps. 8 and 11, this volume, for discussion of how receiving information can change a person's attitudes). Community sentiment toward the treatment of juvenile offenders is driven by perceptions of culpability and what the community thinks constitutes appropriate punishment. Allen et al. (2012) found that the more responsible community participants found youth for their actions, the harsher their judgments were about how the youth should be managed within the juvenile justice system. Numerous studies have shown that more education about and assumed deeper knowledge and understanding of adolescent development lead to differences in how various juvenile behaviors are viewed, whether they are considered deviant, and perceptions of whether adult consequences are appropriate and likely to be effective for juvenile offenders (Geshti, 2012; Tross, 2010; Trzcinski & Allen, 2012). This indicates that educating the community as to juveniles' developmental immaturity increases community sensitivity toward juvenile offenders and reminds the community that rehabilitation remains a potentially successful option for this population.

Community Sentiment Regarding Life Without Parole for Juvenile Offenders

Although it is a growing area of empirical study, little research exists on community sentiment toward the appropriateness of punishments less

severe than the death penalty or LWOP for juvenile offenses and juvenile offenders who were convicted in adult court. The research that has been done suggests that the community does not support imposing the harshest sentences on juvenile offenders (Applegate & Davis, 2006; Greene & Evelo, 2013; Kubiak & Allen, 2008; Vogel & Vogel, 2003). When presented with real-world scenarios, the community considers individual factors and shows a preference for less harsh and more rehabilitative consequences for juvenile crime (Piquero & Steinberg, 2007). The results of recent studies imply that, even when there appears to be community support for harsher sentences, in practice, most adults would not impose the most severe sentences for juvenile offenders. Further, the results suggest that the community recognizes juveniles' decreased criminal culpability (Allen et al., 2012; Greene & Evelo, 2013).

Vogel and Vogel (2003) found that the general public preferred LWOP to the death penalty for juvenile offenders. However, they cautioned that the public might prefer even less punitive alternatives. Applegate and Davis (2006) found that community sentiment did not support broad policies that punish all juveniles who commit murder with severe sentences. Fass (2007) found that young, educated voters preferred life with the possibility of parole to LWOP, and they preferred blended sentencing to LWOP and life with the possibility of parole, respectively. Similarly, Kubiak and Allen (2008) found a substantial difference between people's expressed support for harsh sentences for juveniles and their sentencing decisions. They found that approximately 43 % of people expressed support for a law that dictated mandatory LWOP for certain offenses. However, when given six sentencing options for an adolescent, only 5 % chose LWOP in an adult facility (as compared to 41.1 % who chose incarceration in a juvenile facility until age 18 followed by life with the possibility of parole in an adult facility, 25.4 % who chose incarceration in a juvenile facility followed by 20 years or less in an adult facility, and 13.2 % who chose a juvenile facility until age 21 followed by release).

Most recently, Greene and Evelo (2013) found that, in general, the community does not support LWOP for juvenile offenders. With one exception (murder of a stranger), they found that people endorsed a minimum age for LWOP in the adult range or indicated that LWOP was never appropriate for a juvenile offender who committed a serious crime. These studies demonstrate that, when presented with less harsh sentence options for serious juvenile offenders, people prefer the less harsh options, and their support for harsher sentences decreases.

Community sentiment toward punishment and sentencing are influenced primarily by the tendency to attribute antisocial acts to "criminal dispositions" regardless of the offender's age (Ghetti & Redlich, 2001; Greene & Evelo, 2013). Community sentiment toward the appropriateness of LWOP for juveniles may also be related to its beliefs about the objectives of punishment (Greene & Evelo, 2013). The community is more receptive to transfer laws if members believe that transferring juvenile offenders to adult courts would deter other juveniles (Stalans & Henry, 1994). Likewise, individuals with retributive, incapacitative, and deterrent motives are more likely to endorse LWOP for juveniles than are those with rehabilitative motives (Applegate, Davis, & Cullen, 2009; Greene & Evelo, 2013). Finally, when the community is less educated, more concerned with those victimized, and more concerned about the general issue of public safety, they are more likely to endorse harsher sentences that do not include considerations of differences between adolescents and adults (Tross, 2010).

Most research on sentencing options asks respondents either to reply to vignettes or to general, broad-based questions with little or no situational considerations. Neither methodology puts sentencing options in the context of the potential impact on the general public (see Chap. 8 for discussion of the importance of context in studying community sentiment). Piquero and Steinberg (2007) found that, when informed that rehabilitation was as effective as incarceration, the community was willing to pay 20 % more in additional taxes for rehabilitation than incarceration for serious juvenile offenders. As rehabilitative responses are generally more effective and far less expensive than punitive

responses, this suggests that community support for the former might be even greater than estimated (Piquero & Steinberg, 2007). This may be the case for juvenile offenders who commit a variety of offenses, including nonsexual and sexual offenses.

Community Sentiment Regarding Sex Offender Registration Laws

Sex offender registration laws were first implemented in 1994 through the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (SORNA). As originally written, SORNA applied to adult offenders. In the same year, Megan's Law was also passed, requiring the community be notified if certain sex offenders moved into a neighborhood. In 2006, SORNA was extended to include juvenile sex offenders (Adam Walsh Child Safety & Protection Act, 2006). Further, sex offenders can be required to register for life (see Chap. 17 for more discussion of sex offender laws). As a result of these legislative acts, sex offender registration laws now apply to both adults and juvenile offenders.

The majority of the general public is aware of adult sex offender registration laws (Phillips, 1998). However, many adults and juveniles are unaware that registration laws apply to juveniles (Stevenson, Najdowski, & Wiley, 2013). Support for adult registration laws is based on belief in the effectiveness of the policies, sex offenders' amenability to treatment, the community's feelings of anger and fear in response to the thought of having a sex offender living in their neighborhood, and the utilitarian concerns about protecting society from dangerous sex offenders who offend at high rates (Redlich, 2001; Salerno et al., 2010; see also Salerno et al., 2014).

Despite a lack of evidence that community registration laws decrease sexual offending, research has shown that the community supports sex offender registration and community notification laws as applied to adults (Levenson, Brannon, Fortney, & Baker, 2007; Phillips, 1998; Salerno et al., 2010; Salerno, Najdowski et al., 2010; Tross, 2010). In this case, public support stemming primarily from concern about public safety and a lack of awareness of the effectiveness of treatment programs for sexually offending youth may indirectly perpetuate registration policies that lead to negative and/or unintended consequences for juveniles.

Sex offender registration laws sometimes criminalize behaviors that are common among typically developing juveniles, and the majority of juveniles who engage in these behaviors are not likely to continue offending into adulthood (Geshti, 2012; Moffitt, 1993). In fact, the United States Department of Justice reported that only 20 % of juvenile sex offenders commit forcible rape (Federal Bureau of Investigation, 2013). This suggests that the remainder engage in other "offenses against chastity, common decency, morals, and the like" that warrant an arrest on a sexual offense charge, such as statutory sex (either consensual or nonconsensual), indecent exposure, and incest (Federal Bureau of Investigation, 2011, para. 20). Other offenses that warrant an arrest on a sexual offense charge from the perspective of the law, but perhaps not from the community, include sexting and child pornography involving pictures that the juveniles take of themselves or peers (Bowker & Sullivan, 2010).

Research is divided regarding whether or not the community supports registration for juvenile sex offenders. Tross (2010) found that community members, in contrast to mental health professionals, believed that juvenile sex offender registration was not harmful, that it led to less recidivism, and that notification was not harmful to the offender, his or her family, or the community. This set of findings underscores the value of educating the community about the effectiveness of community-based treatment models. In reality, requiring juvenile sex offenders to register does not influence recidivism rates (see Bastastini, Hunt, Present-Koller, & DeMatteo, 2011; Caldwell & Dickinson, 2009; Caldwell, Ziemke, & Vitacco, 2008; Letourneau & Armstrong, 2008; Letourneau, Bandyopadhyay, Sinha, & Armstrong, 2009). Registered juveniles and those affected by juvenile registration laws experience stigma, depression, shame, and isolation (Human Rights Watch, 2013).

Human Rights Watch (2013) noted that registered youths and their families reported that registered youths have been beaten, shot, and murdered; and they reported being denied opportunities for education, housing, and employment. Some of the dire consequences of youth having to register and the proclivity to reoffend could be circumvented if the community was better informed about effective, evidence-based treatment for offenders. Such information has been shown to affect community sentiment (see Geshti, 2012; Jefferson, 2014; Piquero & Steinberg, 2007; Salerno, Najdowski et al., 2010; Salerno, Stevenson et al., 2010; Stevenson, Najdowski et al., 2013; Tross, 2010; Trzcinski & Allen, 2012) and leads to increased community endorsement for funding for such treatments as an alternative to incarceration (Piquero & Steinberg, 2007).

Some research has shown that the community supports juvenile registration for rape (Kernsmith, Craun, & Foster, 2009; Salerno, Najdowski et al., 2010) and statutory rape (Stevenson, Sorenson, Smith, Sekely, & Dzwairo, 2009), and a subset of the community supports registration for less severe offenses, such as sexual harassment, consensual statutory rape, or sexting. According to the National Campaign to Prevent Teen and Unplanned Pregnancy (2008), it is typical for adolescents to engage in sexting behavior. Further, a recent study by Stevenson, Najdowski and Wiley (2013) indicated that 70 % of teens surveyed admitted to engaging in sexual behavior (i.e., sexting, consensual statutory rape, exposing sexual body parts to other teenagers) that could put them or their partner at risk for sex offender registration. Additionally, Geshti (2012) found that even among mental health professionals, there were disparities as to what could be considered normal developmental sexual conduct (including kissing, masturbating in front of another, mutual sexual engagement between youth with a 4-year age difference).

Regardless of the debate surrounding "normal" adolescent sexual behavior, it is clear that registration-worthy behaviors are common among typically developing juveniles (Eaton et al., 2010). Multiple studies have found that the community does not support sex offender registration for juveniles who engage in a range of normative sexual behaviors, such as consensual sex between minors with a several-year age difference between them, sexting in many cases in which there is no identified victim, consensual masturbation, and mooning (Salerno, Najdowski et al., 2010; Salerno, Stevenson et al., 2010; see also Jefferson, 2014).

Stevenson, Smith, Sekely, and Farnum (2013) found that community support for sex offender registries for youth decreased with increased community education regarding the extent to which juveniles are not likely to understand the consequences of their behavior; the more the community understood about juveniles' limited appreciation of the consequences of their behavior, the less the community supported sex offender registration for juveniles. They credited this to the fact that education provided individuals with the knowledge that juveniles are less likely to understand the implications of their behavior. Stevenson, Smith et al. (2013) identified the need to educate the community about the consequences of juvenile registration and the extent to which recidivism can be reduced by effective treatment (see Chap. 11 for other examples of how amount of knowledge can relate to sentiment).

Much of the research demonstrating community support for registration laws involved asking abstract questions that do not provide context regarding specific individual factors (e.g., age of offender) or situational factors (e.g., details of the crime). When asked abstract questions about sex offenders, most people envision individuals who commit violent crimes, such as rape (Salerno, Najdowski et al., 2010). When they are presented with information about minors engaging in apparently common, less serious conduct meeting legal criteria for sexual offenses, such as sexting, the community does not support severe charges (e.g., child pornography charges) that would subject the juveniles to registration (Jefferson, 2014). This finding is possibly because most people would not necessarily know that such conduct is illegal and would not expect youth to know this. It might also be due to an inherent understanding of the developmental immaturity that leads youth to engage in such

behavior and a sense of injustice in delivering a substantial punishment with long-term consequences for juveniles who engage in such common behaviors. As such, community support for registration increases with the severity of the crime and with the age of the offender (Salerno, Najdowski et al., 2010). It appears that research soliciting community sentiment toward registration laws without specifying the severity of the crime, the age of the offender, or other relevant factors may overestimate community support for registration. When left to its own devices, the community envisions more severe and older offenders, which may trigger a utilitarian-based desire to preserve and protect society (Salerno, Najdowski et al., 2010; see Chap. 8 for further discussion of how context can shape sentiment).

Unintended Consequences of Adult Sentences for Juvenile Offenders

The application of LWOP and sex offender registration laws to juvenile offenders highlights the increasing practice of applying adult sentences to juvenile behaviors. The juvenile behavior that is prosecuted may or may not fall within the scope of lawmakers' intent when drafting the relevant legislation, and the juveniles engaging in these behaviors may not fully understand the nature and consequences of their actions. Especially in the case of mandatory sentencing, laws that apply adult sentences to juvenile offenders may have unintended consequences for the juveniles involved.

The general public is often unaware of the direct and collateral consequences of applying adult sentences to juvenile offenders. Youths who engage in behaviors that make them subject to adult laws may end up transferred to adult court (NCJJ, 2009; OJJDP, 2011), have records and mandatory reportable convictions that can create difficulty getting academic and occupational support (Gowen & Helms, 2011; Nellis, 2011), and be unable to receive the mental health services they need (Austin, Johnson, & Gregoriou, 2000).

Youths who engage in behaviors that render them subject to adult laws may fall under school push-out laws that mandate suspension or expulsion for being charged or convicted for a felony. Also, youths may experience difficulty re-enrolling in school following detention (Nellis, 2011) and may be denied opportunities for financial aid, college entry, and many job opportunities (Gowen & Helms, 2011). Further, they may have difficulty finding employment as a juvenile and as an adult, enrolling in the military, and finding adequate housing options (Gowen & Helms, 2011; Nellis, 2011). Thus, expected community adjustment is impeded and return to antisocial conduct, including substance use and development of or recurrence of existing but treated corollary mental health disorders, is a liability. The potential ramifications for the juvenile offender with a criminal record are seemingly endless and pervasive; these collateral consequences will be aggravated for registered juvenile sex offenders and their families because of the publicity they are required to provide the community (Gowen & Helms, 2011; see also Human Rights Watch, 2013).

There are some specific identifiable consequences for juveniles who are transferred to adult court. When a transfer to adult court occurs, which can be mandatory for certain offenses, juvenile offenders face a system that shifts the focus from rehabilitation to punishment, thereby denying these youth access to the mental health services they need and increasing their risk of recidivism (see Hammond, 2007; National Mental Health Association, 2004 on the prevalence of and risks of not treating mental health disorders in juvenile delinquents). Hammond (2007) found that 70 % of youth in the juvenile justice system suffer from mental health disorders, with one-fifth of those juveniles so severely impaired that they are unable to function effectively. When youth are placed in adult prison facilities, there is little evidence for customized programming, including specialized mental health services such as those services offered in juvenile facilities that emphasize rehabilitation (Austin et al., 2000). Further, research shows that youths are victimized and suffer psychological

distress by having to serve time in adult facilities (Austin et al., 2000; Polachek, 2009). Even if they are eventually granted parole, post-release effects are also severe by virtue of having to report convictions in academic and employment applications (Polachek, 2009; see also Gowen & Helms, 2011; Nellis, 2011).

There are also identifiable consequences for juveniles who receive a sentence of LWOP, which was originally intended to address serious adult behavior. Juveniles who receive life sentences will likely serve longer sentences than their adult counterparts, given they are sentenced at a younger age. Nellis (2013) revealed that the average life sentence for an adult approaches 30 years. Regarding juveniles, a recent national study of federal and state facilities that house juveniles found that 13 % of juveniles serving LWOP sentences have already served over 25 years; one juvenile, at the age of 67 years, had already served a 49-year sentence (Nellis, 2010). The average amount of time these juveniles have served, thus far, is 15 years, and an expected life sentence for a juvenile can last as long as 55 years (Nellis, 2010). This is in profound contrast to the average life sentence of adults.

Finally, there are consequences for youth who are labeled as sex offenders. Sex offender registration laws were also intended to protect society from serious adult offenders. When applied to juveniles, these laws often criminalize normal and common adolescent sexual behavior. Once youth are convicted of sexual offenses, they are subjected to deleterious effects of possessing sex offender labels, being incarcerated, and being subjected to notification and registration requirements. Individuals who are required to register often experience social isolation, struggle to find employment, are less eligible for much-needed social services, experience depression, are the subject of harassment and vigilantism, and sometimes commit suicide (Human Rights Watch, 2007; Levenson & Cotter, 2005; Levenson, D'Amora, & Hern, 2007; Tewksbury, 2005; Tewksbury & Lees, 2006; Zevits & Farkas, 2000).

Although the majority of research has focused on these effects as experienced by adults, the collateral consequences for youth registered as sex offenders and their families appear equally detrimental (Human Rights Watch, 2013). Deleterious effects of having sex offender labels are both internal and external. The need to register, notify, and be branded a sexual offender means that either the youth remains in denial or lives his or her life carrying around the shameful and alienating identification. Individuals in these situations tend to become isolated because of shame, rejection, and alienation, and the very risk factors that led to the behaviors may be reinforced (Human Rights Watch, 2013; Letourneau, Armstrong, Bandyopadhyay, & Sinha, 2012; Stevenson, Smith et al., 2013).

In sum, transfer, LWOP, and sex offender registration policies clearly share negative psychological, physical, and practical collateral consequences, of which the community may be largely unaware. These consequences may be prejudicial, restrictive, and, for some, create lifelong legal, economic, and psychosocial effects (Bastastini et al., 2011; Dicataldo, 2009; Gowen & Helms, 2011; Human Rights Watch, 2013; Rich, 2009; Trivits & Reppucci, 2002). Research suggests that the community may not support such harsh sentences for most juvenile offenders, especially when the community is educated about contextual and situational aspects of the crimes and the offenders (Jefferson, 2014; Piquero & Steinberg, 2007; Salerno, Najdowski et al., 2010; Stevenson, Najdowski et al., 2013; Stevenson, Smith et al., 2013). Lawmakers often cite community sentiment when justifying policies and should therefore be careful to accurately assess community sentiment regarding the application of such harsh sentences to juvenile offenders. Lawmakers should further be prudent to draft legislation so as to limit the scope to the intended classes of offenders and offenses.

Problems and Proposed Solutions

The United States Supreme Court has recognized the differences between youth and adults, yet some laws continue to be applied to offenders who neurologically and developmentally lack the

capacity to think and act like an adult. There is not a clear parallel between community sentiment and policy, and the severity of the offense does not adequately predict community response. The more informed the community is about the offenses, recidivism, and the effects of existing law, the less restrictive the recommendations endorsed by community samples. In response to the most restrictive of sentences, that being LWOP for juveniles, community sentiment has been in favor of the option of parole (see Applegate & Davis, 2006; Fass, 2007; Greene & Evelo, 2013), consistent with the recent Supreme Court decisions limiting the application of LWOP to juvenile offenders (see *Graham v. Florida*, 2010; Miller v. Alabama, 2012).

Research suggests that, when educated about juvenile development and given contextual and situational factors, the community generally supports less restrictive and condemning approaches to issues of life without the possibility of parole and sexual offenses (see Geshti, 2012; Jefferson, 2014; Piquero & Steinberg, 2007; Salerno, Najdowski et al., 2010; Salerno, Stevenson et al., 2010; Stevenson, Najdowski et al., 2013; Stevenson, Smith et al., 2013; Tross, 2010; Trzcinski & Allen, 2012). When asked about sentencing policy without detailed context or situational factors, the general public envisions the most severe and dangerous offenders and the issue of public safety prevails. When lawmakers base policies on uninformed public sentiment, the result can be policies that have negative and/or unintended consequences. Although judges in juvenile courts and commissioners may be able to consider situational factors when faced with youth offenders with serious charges, they are still bound by the laws that regulate possible dispositions within their jurisdictions. Such laws, especially those that dictate mandatory transfer and mandatory sentencing, limit discretion in the courtroom. Therefore, policy makers should consider situational factors, or at least allow for judicial consideration of situational factors, when drafting laws.

If youth should not be held as accountable because they are in biological and psychosocial flux, and research shows that the majority of adolescents do not go on to offend as adults, other solutions must be considered. First, youth and the larger community are not necessarily educated about what conduct is considered unlawful and the possible consequences for these behaviors. Providing education about unlawful conduct could be integrated into curricula students receive on health-related matters. The communities of parents, law enforcement, and others who interact with youth could be educated about the range of behaviors from normative to highly deviant. This could include information about the typical adolescent trajectory for youth offending and the fact that, in 80 % of cases, such offending ceases after adolescence (Farrington, 1993; Moffitt, 1993). It is necessary to educate the community about the effectiveness of evidence-based treatments and the risks of sexual offender notification and registration for youth. The community can be better positioned to consider alternatives when armed with sufficient knowledge about recidivism, treatment effectiveness, and the means to achieve both public safety and rehabilitation for the youth affected.

In order for lawmakers to best represent the interests of and lobby for both public safety and the rights and needs of youth offenders, it is essential that the community and lawmakers have available the most up-to-date research on adolescent development. Such research emphasizes an increasing understanding of the not-yet-fully matured adolescent brain, as well as the large percentage of adolescent offending being confined to the developmental period of adolescence, risk factors in the context of youths' lives, potential for rehabilitation, and both short- and long-term effects of youth being sentenced according to laws developed for and applied to adults.

Second, the application of adult laws and sentencing in adult court presumes adult functioning. Research shows that the community does not necessarily support the application of adult laws and sentencing to juvenile offenders, especially when they are aware of the differences between adult and juvenile functioning (Jefferson, 2014; Piquero & Steinberg, 2007; Salerno,

Najdowski et al., 2010; Stevenson, Smith et al., 2013; Tross, 2010). The equivocal community reactions, although likely a function of significant methodological differences between studies, may also reflect community uncertainty and confusion about what youth need and for what they are truly culpable. Community reactions may also reflect uncertainty as to whether punishment or rehabilitation will better promote public safety, the extent to which youth can be rehabilitated, and through which channels. It is also possible that the public does not have the long-term perspective that is needed to predict how youth will develop and what percent of youth are likely to become long-term offenders.

However, youth are prone to impulsive and risk-taking behavior that parallels their hormonal, brain, and social development (Berk, 2009; Spear, 2000; Steinberg & Cauffman, 1996; Yurgelun-Todd, 2007). It is apparent that the community needs to be educated as to what juvenile behavior is normative, expected, and changeable. The community also needs education regarding the effectiveness of different interventions. Immediate public reactions to heinous juvenile criminal behavior might be understandably severe. However, education regarding juvenile development and evidence-based treatments may trigger community sentiment toward support for policies that promote education and rehabilitation over more punitive responses to criminal behavior. This is especially true when the behavior is within the realm of normal adolescent development but may also be true with regard to certain more serious offenses. For example, Applegate and Davis (2006) found that support for harsh sentences varied as a function of the circumstances of a homicide offense. It is possible that, despite their initial visceral responses to severe crimes, educating the community about juvenile development and evidence-based treatment may decrease support for the harshest sentences for more severe offenses even further.

Aside from reactionary responses, preventative efforts can keep juveniles from engaging in behaviors that subject them to harsh consequences. Slobogin and Fondacaro (2011) cautioned that using a punitive model for youth (rather than a rehabilitative or preventative model) perpetuates myths, reinforcement of youth' destructive behavior patterns, and injustice. They argued for turning to a preventative model that will benefit youth and society equally.

Third, there are serious negative consequences for juvenile offenders who are treated as adults, and these consequences necessarily impact juveniles for longer than adults. In many cases, these consequences prevent the affected juveniles from being able to adequately reintegrate into society and their communities. The very problems the system is attempting to solve may be creating greater ills. As noted above, a preventative model will benefit youth and society equally, as such a model would keep juveniles from engaging in behaviors that subject them to harsh consequences (Slobogin & Fondacaro, 2011). Similarly, Sellers and Arrigo (2009) suggested a community conference model, in which the community conscience is re-engaged and takes a more active role in the restorative practice of guiding youth toward lawful behavior and integration into the community. To the extent that the community does not even know the laws addressing various offenses and the scope of many laws, it would be difficult to engage the community in developing alternative practices for promoting conformity to lawful behavior. Educating the public through community channels at schools, religious institutions, and other community centers and forums might provide an opportunity for more thoughtful and informed considerations of why youth engage in delinquent conduct and how they are most successfully treated according to evidence-based research.

Conclusion

In summary, problems with the current community sentiment research include the fact that much of the research demonstrating community support for harsh sentences and registration laws involved asking abstract questions that do not provide context regarding individual situational factors. It is apparent that

the more informed the community is about youth development and its effects on conduct, normative risk-taking patterns, youth offending and its typical trajectory, and the possibilities for and evidence-based findings about rehabilitation of youth offenders, the less the community experiences fear of victimization, concern for public safety, and dominant punitive attitudes and opinions about sentencing youth by adult standards (see Allen et al., 2012; Geshti, 2012; Redlich, 2001; Salerno, Najdowski et al., 2010; Stevenson, Najdowski et al., 2013; Stevenson, Smith et al., 2013; Tross, 2010; Trzcinski & Allen, 2012). These results are consistent with the evolving standards of decency that have led to the elimination of the death penalty for youth in 2005 in *Roper v. Simmons* (2005), elimination of LWOP for non-homicide cases in *Graham v. Florida* (2010), and elimination of mandatory LWOP for juvenile offenders in Miller v. Alabama (2012).

Although community sentiment is an important factor in making laws, it should be considered with caution. A misinformed public can express sentiment leading to many negative and unintended consequences for juveniles and society as a whole. Community education and reassessment of laws is necessary to prevent such unintended consequences.

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17 An Examination of Sex Offender Registration and Notification Laws: Can Community Sentiment Lead to Ineffective Laws?

Megan M. Armstrong, Monica K. Miller, and Timothy Griffin

Community sentiment about legal issues plays an important but often complex role in the legal system. It is important because legal regulations are created by lawmakers who can rely on community sentiment as a way to gauge what members of the public support. Gauging community sentiment can also lead to confusion, however, as sentiment varies person-to-person, state to state, across generations, and even within a person, depending on the context (see Chap. 8 of this volume). Additionally, as implied in the word "sentiment," legal regulations formed from community sentiment can lead to laws based on emotional reactions instead of empirical evidence. Sex offender notification and registration laws are good examples of laws based on emotionally reactive responses. This chapter examines how sex offender registration and notification laws are an example of *crime control theater* (CCT; Griffin & Miller, 2008; see also Chaps. 15 and 18 for more on CCT). CCT laws are those which give the appearance of addressing a social ill or being tough on crime but in actuality are largely ineffective. The chapter also discusses a theoretical explanation for why CCT laws and policies remain popular with lawmakers and members of the community, even though such laws and policies can often be ineffective or even counterproductive.

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History of Sex Offender Registration and Notification Laws

Sex offender registration and notification laws are the result of three key pieces of legislation. The first, The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, was passed as part of the Federal Violent Crime Control and Law Enforcement Act of 1994 (Levenson, D'Amora, & Hern, 2007). This law required states to implement a registry of sex offender and crimes against children. The second, Megan's Law, added in 1996, required states to establish a public notification system in addition to the registry system (Levenson, D'Amora, et al., 2007). The third, the Sex Offender Registration and Notification Act (SORNA), also known as the Adam Walsh Child Protection and Safety Act, is a federal law passed in 2006 (Forbes, 2011). SORNA mandated the creation of a nationwide online registration and notification system and provided a set of minimum standards for sex offender registration and notification across the United States (Forbes, 2011). It also established a tiered classification system for sex offenders and made non-registration a crime

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punishable by up to 10 years in prison (Yung, 2009). SORNA is unique in that it was applied retroactively, that is, it applied to offenders who committed offenses prior to the passing of the law (Yung, 2009). SORNA also extended the jurisdiction for registration to the District of Columbia and all principal US territories and expanded the amount of information available to the public regarding sex offenders.

Prior to SORNA, the requirements and information made available through sex offender registration and notification programs varied from state to state. Most requirements included public announcements when sex offenders moved to new neighborhoods, public warning signs on offenders' properties, and publication of sex offender identities on the Internet (Salerno et al., 2014). After the passing of SORNA, many of the disparate state requirements were merged into a single set of federal standards. SORNA also increased the amount of information provided on the Internet to include offenders' names, addresses, vehicle descriptions and license plate numbers, physical descriptions, offense convictions, and current photographs (Yung, 2009).

Other restrictions involve where offenders are allowed to live. Laws have been passed by states and jurisdictions within states (e.g., cities or counties), which restrict where registered sex offenders can reside and work (Levenson & D'Amora, 2007). At least 30 states stipulate that registered sex offenders cannot live near schools, day-care centers, parks, or bus stops (Meloy, Miller, & Curtis, 2008). The distance can vary by state and jurisdiction; some require that a registered sex offender maintain a 500-ft distance and others stipulate a 2,500-ft distance.

Empirical research about the effectiveness of sex offender registration and notification laws has mostly revealed that they are largely ineffective (see discussion below). Even so, these laws are strongly favored by lawmakers and the public (Levenson, Brannon, Fortney, & Baker, 2007) because they appear to be tough on crime. This "popular but ineffective" notion is the basic premise of crime control theater.

Crime Control Theater

The crime control theater framework (Griffin & Miller, 2008) has been posited as an explanation for why sensationalized crimes result in "memorial crime control" (a term coined by Surette, 2007) responses such as the AMBER Alert system and the Jacob Wetterling Act. CCT laws and policies give the appearance of addressing a crime or social issue, but without any real empirical evidence, they achieve their goals (Griffin & Miller, 2008; Hammond, Miller, & Griffin, 2010; Sicafuse & Miller, 2010). Examples of such laws are those inspired by Adam Walsh (the 1983 Missing Child Act), Polly Klaas ("three strikes" laws in California and other jurisdictions), Jessica Lunsford (various "Jessica's Law" sex offender prison enhancements), and Laci and Connor Peterson (Unborn Victims of Violence Act). Each of these cases captured the public's attention and resulted in the passing of emotionally driven laws that memorialize the victims of a high-profile crime. These laws, however, are not always effective in reaching their goals of preventing crime, capturing perpetrators, and protecting children. Instead, such laws can produce negative effects (Griffin & Miller, 2008) and divert attention and resources from other deep-seated social problems (Selvog, 2001).

Although there CCT laws are not supported by empirical research regarding their effectiveness, they can still be beneficial because of their symbolic nature. A public opinion survey in Washington State found that 80 % of respondents believed that Megan's Law was important; respondents also reported that they felt safer knowing where convicted sex offenders lived (Phillips, 1998). CCT laws also allow for a symbolic stance against crime and give the appearance that community sentiment is incorporated into policy decisions (Zgoba, 2004). The inclusion of community sentiment can serve an important purpose: it pacifies members of the public who want to see that something is being done to combat crime, even if the something is more symbolic than effective (Griffin & Miller, 2008).

Sex Offender Registration and Notification Laws as Crime Control Theater

The CCT framework is composed of four separate elements (Griffin & Miller, 2008; Hammond et al., 2010). These four elements include a reactionary response to a moral panic, unquestioned acceptance and promotion of new regulations, appeal to mythic narratives, and empirical failure. To the extent that a crime control policy conforms to these criteria, it can be regarded as CCT. Each of these elements is present in sex offender and registration laws.

The first element is a reactionary response to moral panic. A reactionary response to a moral panic involves three parts (Griffin & Miller, 2008): a horrifying crime suggests an inadequacy in current law, which leads to intense public scrutiny and a societal moral panic, and then reactionary legislation is drafted and passed. Each of these elements is clear in sex offender registration and notification laws. A horrible crime (the abduction and murder of Megan Kanka, Jacob Wetterling, and Adam Walsh) led to a moral panic (a media firestorm promotes fear of child abduction, rape, and murder), which then led to reactionary legislation (sex offender registration and notification laws).

The second element of CCT is unquestioned acceptance and promotion of the proposed or new law (Griffin & Miller, 2008). Sex offender laws are quite popular (see generally, Salerno et al., 2014). A 2005 New England poll found that 86 % of respondents favored public sex offender registries, 57 % believed the public has a right to know about child molesters living in a community, and 69 % believed not enough was being done to protect children from predators (News of the World, 2005, as cited in Levenson, Brannon, et al., 2007). Additionally, Phillips (1998) found that more than 60 % of survey respondents agreed that sex offender laws positively change sex offenders' behavior and 80 % believed Megan's Law deters sex offenders. These findings suggest that community sentiment strongly favors sex offender laws.

The speed at which these laws were passed also suggests a large amount of support from lawmakers and the public. Three months after Megan Kanka was murdered, the New Jersey governor signed the first community notification bill (Levenson & D'Amora, 2007). The federal version of Megan's Law was signed into effect just 2 years later (Levenson & D'Amora, 2007). SORNA, although substantially different from most state statutes, was rubber stamped across the United States on the grounds that it was similar to or identical to the prior state statutes (Yung, 2009). The acceptance and promotion of sex offender registration and notification laws is clear.

The third element of CCT is an appeal to mythic narratives. Mythic narratives are most effective when (1) there are innocent victims, (2) there is a clear villain, (3) the solution is easy and seems intuitively effective, and (4) the solution is presumed to aid the victims (Griffin & Miller, 2008); Hammond et al., (2010). In cases of sex offender registration and notification laws, the innocent victims are children, the sex offenders are villains, and the solution is an easily available registry. This registry putatively allows parents to keep their children (potential victims) safe, while acting as a deterrent to those who would victimize children. The availability and accessibility of the registry also allows citizens to feel like they have a personal stake in enforcing the law and guarding their children and community from sexual offenders. Thus, each element of the mythic narrative is present in sex offender registration and notification laws.

Many of the sex offender registration and notification laws also exhibit the fourth element of CCT: empirical failure (Salerno et al., 2014). Part of the reason these laws have not been effective might be because they are based on faulty premises. Policies and laws regarding sex offenders are based on the idea that the majority of offenders re-offend at high rates and are repeatedly arrested for sex crimes (Levenson & D'Amora, 2007). This presumption is not supported by empirical evidence. Approximately 95 % of sexual offenses are committed by first-time offenders (Sandler, Freeman, & Socia,

2008), and the rate of re-offense is typically relatively low (13.7 %) and lower than the general recidivism rate (36.2 %; see meta-analysis by Hanson & Morton-Bourgon, 2005). Further, recidivism rates for sex offenders usually remain relatively stable after the implementation of registration and notification laws (Zgoba, Sager, & Witt, 2003), meaning that induction of sex offender laws did not lower recidivism rates. For instance, Tewksbury, Jennings, and Zgoba (2012) compared similar groups of offenders who were released before and after the New Jersey sex offender registration and notification (SORN) law went into effect. They found that the two groups did not differ in recidivism; SORN status did not predict sexual or general recidivism.

Other studies find similar results. Schram and Milloy (1995) examined rearrest rates of 90 sex offenders matched with 90 offenders released prior to the community notification law and found that there were no significant differences between the groups. Similarly, Adkins, Huff, Stageberg, Prell, and Musel (2000) compared offenders who were required to participate in a registry program with similar offenders who were not subject to the registry and found no significant differences between groups for sexual recidivism rates. A time-series analysis of New York State's sex offender registration and notification law found that average time to a new offense and recidivism was similar for offenders prior to and after implementation of the law (Sandler et al., 2008).

Barnoski (2005), however, found that community notification laws did significantly reduce violent felony and sexual felony recidivism rates. Although this study is optimistic that the law might be effective, most studies find little evidence that implementation of sex offender registries affects sex offender recidivism rates (Sandler et al., 2008; Tewksbury et al., 2012; Vasquez, Maddan, & Walker, 2008).

Similar to the research on *registries*, there is little evidence that residence *restrictions* are effective. Sex offender laws that restrict offenders from living in certain areas (e.g., near schools) are based on the assumption that limiting contact with potential victims can reduce recidivism. A study by the Minnesota Department of Corrections (2003) found no evidence that proximity to a park or school was related to re-offenses. Instead, the only cases of re-offenses related to a park or school occurred *outside* the offender's neighborhood. A similar study investigated the offense patterns of re-offenders and concluded that none of the 224 offenses were related to residency (Duwe, Donnay, & Tewksbury, 2008). Thus, there is some, albeit limited, research suggesting that residence restrictions are ineffective.

As this section has illustrated, sex offender registry, notification, and residency restriction laws fit all the criteria for crime control theater. Thus, the laws are likely ones that have the appearance of being a solution to a problem but are unlikely to be effective. This is particularly problematic because, as discussed next, there are many unintended consequences.

Unintended Consequences of Sex Offender Registries

There have been numerous unintended consequences resulting from sex offender registries, including stigmatization of the offender and family by community members (Tewksbury & Lees, 2006), violence directed at the family of the offender (Levenson & Tewksbury, 2009), creation of a false sense of security in the general public, and an inability for the offender to reintegrate into the neighborhood or receive treatment (Levenson & Cotter, 2005; Zevitz, 2004). Other unintended consequences can arise when sex offender registration and notification laws are used against a population for which they were not originally intended (e.g., teenagers engaging in sexting). Although these consequences might logically follow from such laws, they were never specified *as part of* the law and are, by their very nature, unintended.

Consequences for Offenders

Other unintended consequences are related to the restrictions placed on registered sex offenders. One risk is that offenders will experience stigma and ostracism when neighbors are notified that

they are offenders (Edwards & Hensley, 2001). Being labeled can make it difficult for offenders to develop a social support system, make friends, and find employment. Knowing that one's neighbors are aware of one's offenses can be stressful, especially if the neighbors express displeasure or negative behaviors. Such isolation, rejection, and stigmatism can exacerbate the very emotions that are related to poor decision-making—which in turn can facilitate a relapse (see Edwards & Hensley, 2001 for review). Although it is difficult for many people to have sympathy for the emotional well-being of offenders, their well-being is an essential part of rehabilitation and prevention of recidivism.

Residence restrictions can also negatively affect offenders. These restrictions ban offenders from living in a metropolitan area because there is no way to reside within city limits and still honor the restriction (Levenson & Tewksbury, 2009). Restrictions on where a sex offender can live often result in isolation and limited opportunities, including employment, education, or support services like therapy (Minnesota Department of Corrections, 2003). Further, neighborhoods where sex offenders are allowed to reside are often lower income and characterized by social disorganization (Mustaine, Tewksbury, & Stengel, 2006; Tewksbury & Mustaine, 2008). Social disorganization and isolation can impact the offender in negative ways and can prompt the offender to feel disconnected from his community.

Social disorganization has long been connected with crime. Fox, Lane, and Akers (2010) found that gang members' perceptions of the level of social disorganization in their neighborhoods were significantly related to both offending behavior and crime victimization. Harris, Mennis, Obradovic, Izenman, and Grunwald (2011) found that recidivism rates among juveniles in Philadelphia were concentrated in specific neighborhoods and that juveniles who specialize in a specific offense type (e.g., distributing or selling drugs) were also concentrated in the same neighborhoods. The authors suggest that the spatially dependent specialization (youths from the same place committing the same kind of crime) might be a product both of peer contagion as well as neighborhood dynamics. Neighborhoods with high levels of social disorganization can hinder offenders' recovery, including sex offenders' ability to connect with or feel responsible for the neighborhood due to the lack of interpersonal contact among community members (Mustaine et al., 2006). Offenders in less organized neighborhoods also have a lower chance of finding services they need (e.g., therapy, support groups, or employment) than in more organized neighborhoods.

In addition, offenders struggle with the psychological implications of becoming a "registered sex offender." Both adult and juvenile offenders often feel stressed, isolated, shameful, embarrassed, and hopeless (Conmartin, Kernsmith, & Miles, 2010; Levenson, D'Amora, et al., 2007). These are feelings that put them at risk for recidivism (Letourneau & Miner, 2005).

Isolation from the community, loss of contact with family, lack of support services, and psychological stressors can leave sex offenders in an unstable position. Laws which disrupt stability are highly unlikely to protect the public (Levenson & Tewksbury, 2009), meaning that an offender in an unstable situation might struggle with the restrictions and a perceived lack of support and rehabilitation and instead look for criminal opportunities. Although the research on recidivism rates for registered sex offenders tends to show that they do not re-offend at any greater level than other offenders, such a trend might change if opportunities become more restricted.

As this section suggests, notification and residence restrictions can have some harmful effects for offenders, including ostracism, isolation, lack of services, and disconnect from society (see generally Edwards & Hensley, 2001). These are all factors that can trigger offense behaviors. Thus, well-meaning laws meant to protect society can actually exacerbate the offenses they are intended to mitigate.

Consequences for Families of Offenders

One unintended consequence is the impact sex offender registries have on offenders' family members. Family members of registered sex

offenders report feelings of isolation and fear due to their affiliation with a registered sex offender (Levenson & Tewksbury, 2009). Family members often lose friends and relationships due to the publicized notification. They also hesitate to engage in community activities due to feelings of shame; this increases their feelings of isolation (Edwards & Hensley, 2001; Levenson & Tewksbury, 2009). Family members can sometimes become targets of vigilante justice in lieu of the actual offender; this can include actual or threatened violence against them or their property (Levenson & Tewksbury, 2009). For instance, in 2014, a neo-Nazi couple killed a sex offender and his wife (McLaughlin & Baldacci, 2014). The female killer proclaimed, "I have no regrets. Killing that pedophile was the best day of my life," while the male said, "Not a day goes by that I don't regret the incident that happened, and I know that what I've done is a sin."

In addition, fear of having one's family member exposed as an offender might make victims hesitate to report their victimization (Edwards & Hensley, 2001). Victims might fear that the public will find out that they are victims—or at least find out that their family member is an offender. To avoid that shame, the victim might remain silent. Incest and interfamily sex crimes are underreported, and notification laws might lessen reporting even more. Finally, as discussed above, residence requirements restrict where offenders' families can live (if they want to live with the offender). This requirement can affect employment, education, and social opportunities for the entire family (Edwards & Hensley, 2001).

Consequences for the General Public

Registries also can have negative consequences for the general public. First, they can create a disproportionate sense of fear. Intense media coverage of sex offenders and related laws can lead individuals to think that sex offending is much more common than it is (see discussion of the availability heuristic, below); this can lead people to feel that the world is a very dangerous place. This belief can have a negative effect on public health, as fear of crime is related to decreased health (Jackson, 2009). Parents' sense of fear can be passed on to their children, as a parenting style that involves very close supervision is related to children's heightened sense of fear of crime (DeGroof, 2009; May, Vartanian, & Virgo, 2002). This suggests that if parents become overprotective in attempts to protect their children, children learn that the world is dangerous and others should not be trusted. Such lessons could create generalized anxiety and problems in relationships later in life.

Another, less likely, possibility is that the existence of these registries might actually make people feel overconfident and create a false sense of security. Many high-risk sex offenders have personal information displayed in these registries, including their home and work addresses. Many people can mistakenly believe that registries and the wealth of available information will be enough to deter criminals from future crimes, so they might not take basic precautions (Kernsmith, Comartin, Craun, & Kernsmith, 2009). These two extremes demonstrate that the impact of sex offender registries is not limited to just offenders.

Another cost for the community is the effect on some neighborhoods. Because of registration laws, there are a limited number of neighborhoods where offenders can live. Once a neighborhood becomes known as one with many offenders, there is an increase of safety concerns in that neighborhood and a negative effect on housing and economic stability (e.g., property value; Minnesota Department of Corrections, 2003).

Consequences for Juveniles

There are unique consequences for juveniles who are deemed to be sex offenders (see also Chap. 16, this volume). As Salerno et al. (2014) note, one of the assumptions of sex offender registration and notification laws is that these laws reduce recidivism. This assumption is not supported in the research on adult sex offenders (Sandler et al., 2008; Vasquez et al., 2008; Zgoba et al., 2003) nor in the research on juvenile sex offenders (Letourneau & Armstrong, 2008). In fact, most

juveniles never re-offend, so treating juveniles in the same manner as adult sex offenders is not only illogical but potentially harmful. A juvenile who has to register as a sex offender might find certain opportunities, like college or work, no longer obtainable and therefore might consider crime as the only available opportunity (Letourneau & Miner, 2005). In trying to protect the public and reduce recidivism, the registration law has actually done the opposite.

A Social-Psychological Explanation of Crime Control Theater

The gravity of the unintended consequences associated with sex offender notification and registration laws raises the question of why community sentiment and support for them is so strong. An answer can be seen in the social-psychological theories of cognitive-experiential self-theory (CEST) and cognitive processes such as schemas and heuristics.

Cognitive-Experiential Self-Theory

In developing cognitive-experiential self-theory (CEST), Epstein (1990) posited that people process information through two independent but interactive systems. One is the preconscious "experiential" system and the other is the conscious "rational" system. The experiential system is a pattern-detection and matching system that is automatically activated when an individual responds to an emotionally significant event. In contrast, the rational system is an intentional and logic-based reasoning system. In the rational system, all information and possible alternatives are carefully considered before a course of action is taken, and processing is done with deliberation and awareness. Because of the amount of information and processing required for the rational system, it is slower than the experiential system. Therefore, most initial reactions and feelings are guided by the experiential system.

When activated, the experiential system automatically searches for related feelings, events, or other experiences that the individual has in memory (Epstein, 1990). These previous experiences then influence cognitive processing. If the recalled feelings, events, or experiences are positive, then the individual automatically thinks and acts in ways to reproduce and continue the positive feelings. If the recalled experiences are negative, however, the individual acts to avoid the stimuli because of anticipated negative feelings. This process occurs instantaneously and automatically; often people are unaware that it is even operating.

Activation of the experiential system can be based on any number of emotions or sentiments. Activation can also be based on the schemas and heuristics that people utilize in their decision-making process. In social cognitive theory, schemas and heuristics are, at a basic level, psychological structures which allow people to organize the flow of incoming information (Fiske & Taylor, 1991). Because people are constantly bombarded with new information, they utilize schemas and heuristics to make sense of themselves, others, and social situations.

Schemas

Incoming social information can be represented in cognitive structures called schemas (Howard & Renfrow, 2003). Each schema that a person holds represents a specific piece of information, either abstract or concrete (Howard & Renfrow, 2003). An individual can have person schemas, self-schemas, role schemas, and event schemas, among others. These schemas can overlap with each other, and together they form the representations of how people view their world. For instance, there is a typical role schema that one can use to know what a "mother" or a "police officer" does; this schema helps one make judgments about whether a mother is acting appropriately or whether one should ask help from an officer. The schema might not always be accurate, but it helps organize information and simplify thoughts and decisions.

Heuristics

According to Operario and Fiske (1999), people also tend to be cognitive misers and therefore have limited time and energy to devote to each of their experiences and interactions. Thus, they use mental shortcuts to categorize and organize incoming information. Tversky and Kahneman (1974) refer to the cognitive shortcuts that people take as heuristics. Heuristics simplify complex cognitive processes and allow individuals to use small amounts of information and past experiences to make quick categorizations. These categorizations can be built into schemas and then be utilized by the cognitive miser to make decisions. Tversky and Kahneman (1974) identified several different heuristics that people use, including availability and anchoring and adjusting.

The availability heuristic refers to an individual estimating the frequency of an event based on how easily earlier instances are recalled (Tversky & Kahneman, 1974). The easier an event is to recall, the more frequently people think it occurs. The anchoring and adjustment heuristic is used to reduce ambiguity of a judgment by beginning with a known reference point (i.e., the anchor), then adjusting it based on experience (Tversky & Kahneman, 1974). An individual who has no experience with a specific event might make an estimate as to how often the event occurs and then adjust this estimate after further consideration.

Schemas and Heuristics as CEST Activators

Together, CEST (Epstein, 1990), schemas, and heuristics can help explain why people support CCT laws like sex offender registration and notification. Schemas concerning registered sex offenders are generally not favorable (Zgoba, 2004). Most sex offender cases presented in the media are quite horrific, as media sources often attempt to garner viewership and ratings. As Proctor, Badzinski, and Johnson (2002) noted, many people draw information about Megan's Law from sensational media depictions of the crimes it is alleged to avert. The images of sex offenders in the media are obviously quite negative. Role schemas about sex offenders developed from these media portrayals might then depict all sex offenders as crazed and violent people who target children. Laws designed to punish these offenders are viewed as positive, because they are generally presented in a positive light by legislators and the media.

Sensational media reporting can also give the impression that crime against children occurs much more often than it actually does, because media coverage makes it easy for a person to recall such crimes. This is a good example of the availability heuristic. Further, the amount of media coverage can act as an anchor, helping people know how often crime occurs; if media coverage suddenly increases (e.g., due to a moral panic over a child murder), viewers might adjust their perception of the crime as becoming much more common. This is a good example of the anchoring and adjustment heuristic. Thus, media can activate heuristics that lead people to believe that sex offenses against children are common. Schemas then provide information about what these offenses are like—and how registration can prevent them. The combination of heuristics and schemas can activate the CEST experiential system. Unfortunately, the experiential system relies on emotion, not logic, so people are unable to see the logical flaws (e.g., unintended consequences).

Not only is the experiential system the first to respond to a piece of information, it is also slow to change after attaining new information. It continues working from past experience until it has encountered sufficient information to change or is prompted by the rational system (Epstein, 1990). The slow-changing process of the experiential system can help explain why public support for CCT laws, such as sex offender registration and notification laws, does not change quickly, even if such laws do not actually reduce crime and cause so many far-reaching unintended consequences. Sex offender registration and notification laws let people feel like they are doing something to combat crime.

The ability to log onto an Internet website and act as a community watchdog or community police by checking for registered sex offenders prompts positive affect instead of negative. Thus, the experiential system encourages support of such laws.

The need to feel involved in combating crime is important and, to that end, CCT laws can be an aid to community members. This aid, however, is overshadowed by the plethora of unintended consequences and the use of funds to develop and enforce ineffective (or under-effective) laws. In order to better serve the community, such laws should be recognized as CCT and policies that are better shown empirically to reduce crime should be considered.

Avoiding CCT and Adopting Solutions that Work

There remains one issue that must be addressed: whether the public and policymakers can be convinced that measures such as sex offender registration and notification laws are, at some level, CCT and that this is a problem. Sensational public policy measures such as AMBER Alert, Jessica's Law, and Megan's Law are extremely popular precisely *because* of psychological processes, like heuristics and schemas, which affect how average citizens and busy legislators perceive criminal threats and conceive of plausible-sounding remedies. It is likely that most people who support CCT laws do so because their emotions (i.e., experiential processing) lead them to perceive it as genuine crime control and do not stop to logically (i.e., rational processing) think about possible alternatives.

Furthermore, even if better-informed policymakers are fully aware that sex offender registration and notification laws are largely symbolic, there might be little incentive to draw attention to the laws' shortcomings. Indeed, critics of other theatrical crime control policies have noted that political figures have privately conceded their philosophical opposition to strategies such as "get tough" sentencing laws or the "war on drugs"—even as they publicly support these measures out of perceived political necessity (Currie, 1998). It is often thought of as "political suicide" to oppose popular "get tough" crime policies, because the public will vote these politicians out of office.

Supporting CCT laws out of political necessity would not be an issue if community sentiment toward such laws could be changed. Education can prompt people to be aware of the heuristics and schemas associated with sex offenders and related laws. Education also can help people switch from experiential system processing to rational system processing and decrease the likelihood of an emotional response. This, however, takes much time and repetition, as emotionally driven attitudes (i.e., the experiential system) are slow to change.

Even so, attitudes toward CCT laws are somewhat malleable. The emotive experiential processing system can be overcome if an individual is presented with accurate evidence regarding the limitations of CCT laws (Sicafuse & Miller, 2012). There are several factors which can influence attitude change and many dual-process models, CEST included, suggest that one major factor is the motivation of the individual. Motivation for attitude change can be reliant on any number of variables too numerous to document here, but there are some factors which have been shown to influence attitude change including the quality of the message and the expertise of the source.

Message quality, as "high" or "low," has been linked to attitude change (Johnson, Maio, & Smith-McLallen, 2005). High-quality messages are those with clear and professional language, sound logic, valid reasoning, and a consistent persuasive impact across message topics (Park, Levine, Westerman, Orfgen, & Foregger, 2007). Low-quality messages rely on imprecise language, weak assertions, and opinions (Park et al., 2007). Source expertise is also a factor that can impact attitude change. Messages delivered by experts, those seen as credible and trustworthy sources, are more persuasive and more likely to lead to attitude change than messages delivered by unspecified or unknown sources (Eagly & Chaiken, 1993). Taken together, these two factors

suggest that attitude change is possible when people are given high-quality messages from a credible source (Sicafuse & Miller, 2012). This also suggests that a change in community sentiment toward CCT laws is possible, although such a change might be slow to happen.

Education efforts toward attitude change should be two-pronged in order to incorporate both the experiential and rational systems. Utilizing strong messages from credible experts might aid in attitude change in the rational system but perhaps not in the experiential system. Because the experiential system is emotive, an emotive approach might have to be undertaken. Formation of attitudes based on emotions is more receptive to emotive or affect-based persuasion (Edwards, 1990); therefore, any persuasive messages regarding CCT laws should incorporate both the rational message and one which appeals to emotions. An emotive message could, for example, include a point of view from a family member of a sex offender and show how they have been affected by the law, despite not being the offender. A combination of messages for both the rational and experiential system might aid in the process of attitude change.

Widespread dissemination of the law's limitations in a manner palatable to public discourse is one way in which public sentiment toward CCT laws might be changed. The challenge with such an approach lies within the central message of the law that sex offender notification and registration laws are ineffective. This message needs to be conveyed in a manner that does not imply such offenders need not be held accountable for their crimes, rather that resources currently utilized for registration and notification laws might be better utilized in a manner that would effectively lead to lower crime rates.

One way to educate the public is through the media. As highlighted here, the media plays an important role in creating moral panics and shaping public attitudes. The media can also be used to stop a moral panic and better educate people as to why a policy is not adopted, is not adopted immediately, or is eventually abandoned. While most people might be caught up in the moral panic, some may be able to understand that "doing something right now" is not always better than waiting to make sure that "something" is actually going to be better than doing nothing. One way to encourage this media message might involve the use of incentives, monetary or otherwise, in order to promote the education message. Members of the public should be encouraged, through public service announcements (PSA) on television and in-print media, to learn about laws and related research through credible television, print, and online sources. This could serve an important purpose of encouraging people to become motivated and gain information that could lead to attitude change. Utilizing PSAs is just one method; another method could include utilizing social media outlets in order to disseminate information with a link to a full website with all the information. The effectiveness of PSAs is variable and depends on a number of factors, such as time slot and donations (Randolph & Viswanath, 2004), but there have been successful PSA campaigns for health awareness topics such as smoking cessation and awareness of cancer screenings (Randolph & Viswanath, 2004). An effective PSA campaign would need to include careful framing of the issue, a targeted audience, and, if to attempt attitude change, strong messages (Randolph & Viswanath, 2004).

Along a similar line, educating policymakers about alternatives and empirical research about sex offender registration and notification laws is important. Policymakers are typically not experts in social science or mental health; they cannot be expected to know the intricacies of offender rehabilitation and effective treatment options, how to lower offender recidivism rates, or whether reintegration is related to re-offending and, even if they are aware, understand that such a stance would be highly detrimental to their career. Therefore, researchers need to ensure their research is read and understood by policymakers and connected back with community sentiment. Public policy centers can aid in the dissemination of research findings by sponsoring seminars which provide policymakers with reports containing the body of unbiased

research (Wilcox, Weisz, & Miller, 2005). These seminars could provide a place for experts from around the country to gather and present unbiased research to help policymakers make the best possible decisions. As with all educational efforts, it is essential that the information presented is unbiased and not backed by any particular lobby—an endeavor that is often easier said than done.

The idea that policymakers and members of the public consider alternative laws hinges on the idea that new empirical research is conducted to test the effectiveness of such alternatives. Greater attention needs to be paid to empirical research that demonstrates the effectiveness of different methods for rehabilitating sex offenders, including reintegration into the community and therapy (Levenson & D'Amora, 2007). Increased funding is needed to research effective ways to manage sex offenders, such as providing therapy and community reintegration. Additionally, research on residence restrictions and offender recidivism can reveal if such restrictions do indeed lower recidivism rates or if they interfere with offender reintegration. If reintegration works, and re-offending is not related to location of the offender's residence, then the laws that limit where offenders can live should be reconsidered and perhaps repealed. The importance of research in this area cannot be overstated.

Conclusion

In conclusion, laws that appeal to community sentiment but are ineffective can actually lead to harmful outcomes. Sex offender notification and registration laws are examples of these sorts of laws. Recidivism rates do not change dramatically after implementation of registries (Zgoba et al., 2003), and the unintended consequences of implementing sex offender registries can have a detrimental impact on offenders and their families (Levenson & Tewksbury, 2009) and the general public. These registries are also a result of emotionally charged, high-profile crimes, not empirical evidence, so interpreting the effectiveness of the registries should be done with caution.

As discussed above, there are ways that researchers, policymakers, and members of the public can help prevent and repeal CCT laws. The suggestions offered here are not all-encompassing. They simply provide avenues of investigation that might then lead to more effective legal responses to sex offenses. Through research and education, the unintended consequences and negative impacts of sex offender registration and notification laws can be addressed and perhaps even changed. Although such laws might provide a symbolic stance against crime, perhaps research can provide lawmakers and community members with laws that are empirically shown to prevent crime. These steps are important to avoid the adoption and maintenance of crime control theater laws and policies.

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18 Silver Alert Programs: An Exploration of Community Sentiment Regarding a Policy Solution to Address the Critical Wandering Problem in an Aging Population

Gina Petonito and Glenn W. Muschert

In the USA, demographic forecasting of an aging society, particularly as the baby boomers enter old age, has resulted in renewed attention to the ostensible problem that growing numbers of seniors might cause for society (Gee & Gutman, 2000). Our chapter will focus on community sentiment regarding concern with the ways this population shift will result in a larger number of cases of critical wandering among elders with Alzheimer's disease and related dementias. The community, specifically members of the program and policy-making community, responded with a variety of initiatives that presumably assist in "solving" this problem. These programs, as presented to the larger public via various media outlets, were touted as effective ways of "caring" for elders. We will focus upon one of these programs, Silver Alert, which is a relatively new but rapidly expanding set of programs that rely on integrated efforts to use the media, traffic signs, and law enforcement to inform the public about missing cognitively impaired adults (18 and over) and elders (typically defined as 65 or over). Our approach will link insights from the social constructionist study of social problems to help illuminate the processes by which sentiment arises in a community, centering upon the ways claims-makers employ rhetoric to convince others that a problem exists and that theirs is the solution to that problem.

As a historical context for this chapter, it is important to understand aspects of the discourse and policy development regarding child abductions. Following the 2002 high-profile abduction of Elizabeth Smart, significant public discourse regarding the social problem of child abduction occurred.[1] AMBER Alerts are issued by law enforcement when they receive a report of an abducted or kidnapped child, and within minutes, the child's identity, a description of the abductor and abductor's vehicle, and their last whereabouts are broadcast throughout the relevant geographic district (i.e., city, region, or state) via various media, including TV, radio, highway alert signs, cell phone text messages, social media Internet sites, and other websites.

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[1] By 2005, the US federal government, all 50 States, Washington D.C., many regions, and numerous municipalities instituted AMBER alerts to locate missing children. By 2009, AMBER plans were in place on many tribal lands within the USA and in Puerto Rico, the US Virgin Islands, numerous Canadian provinces, and Mexican border states with the US. AMBER stands for "America's Missing: Broadcast Emergency Response," and the name refers to the famous case of Amber Hagerman who was kidnapped in Texas in 1996. The first AMBER Alert system was created in a local partnership between media and law enforcement in the Dallas-Fort Worth metropolitan area (Office of Justice Programs, 2010).

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Following the saturation of AMBER Alerts across North America, the focus switched to adapting the existing infrastructure from AMBER plans to Silver Alert plans. Silver Alert programs use the infrastructure in place for AMBER plans, and they help disseminate information about a missing elder, including the name, description, photo, vehicle (if any), and where the elder was last seen. These new set of alerts would help locate elders with dementia or other cognitive impairments who may become lost because they walk or drive off and their whereabouts are unknown to their caregivers. A parallel, nationally compelling story, like the Elizabeth Smart case, did not exist for elders. However, local high-profile cases captured people's attention. For example, two residents of the Otterbein Retirement Living Community in Lebanon, Ohio, left for a shopping trip to a JCPenney outlet store, got lost, and were found deceased 6 months later (Update, 2007). Incidents like these drove policy makers to adopt a Silver Alert plan in their state. This report from Ohio Attorney General Mike DeWine noted: "Although local agencies and media outlets have typically worked together in these incidents, there was no coordinated effort or resource center to ensure a widespread alert was issued to garner the public's assistance in the search (Missing Adult Alert, 2013)." Silver Alert programs would provide a more coordinated effort, resulting, presumably, in more favorable outcomes. Silver Alert programs spread rapidly. By the beginning of 2014, there were 42 states that had Silver Alert or associated programs, often piggybacked on existing AMBER Alert systems (Alzheimer's Foundation of America, 2013b).[2]

[2]The listing on the Alzheimer's Foundation of America (2013b) page is current until June 2012. However, in early 2013, California joined the other 41 states in implementing a Silver Alert or Silver Alert-type program. At this writing, the Wisconsin Silver Alert bill is currently awaiting Senate passage, after securing assembly passage in February, 2014 (LaCombe, 2014). There is also a National Silver Alert bill introduced in both House and Senate, the latest version of which is pending as of 2011 (Library of Congress 2011a, 2011b).

Social Constructionism and Community Sentiment

This chapter will examine the community sentiment, discourse, and policy development concerning the problem of missing elders with dementia and other cognitive impairments. Our approach to studying community sentiment is informed by the constructionist approach to social problems (e.g., Kitsuse & Spector, 1977; Loseke, 1999). This approach provides analytic tools to explore the emergence of what Finkel (1995, p. 2) calls "commonsense justice," or "what ordinary people think is just and fair." As Finkel (p. 3) rightly notes, no one, not even Supreme Court Justices who feel they should rule on an independent and objective body of law, exist apart from the community in which they live. Further, no one is immune to the influences of their society and history, not lawmakers, judges, or jurors. Hence, an "objective" interpretation of the law, independent of social and historical processes, is impossible because people, consciously or unconsciously, will be influenced by them. It is these conditions that allow social constructionism to operate.

From its outset, scholars employing the constructionist approach argued that focusing upon the "objective" nature of social problems and their respective "solutions" comprises only a partial inquiry, at best, since both problems and solutions emerge as a result of collective behavior (Blumer, 1971). This approach maintains that social problems are what influential voices in the community claim they are, and solutions to these problems are what the relevant community accepts them to be. People who advance arguments for considering a condition or person as problematic along with their constructed solutions are "claims-makers." Anyone can be a claims-maker: scholars, politicians, judges, reporters, and the public at large, and this chapter will examine claims advanced by all these groups. Claims-hearers or audiences (Loseke, 1999) are members of the community who claims-makers hope to persuade. In other words, claims-makers hope to create a community sentiment that is

sympathetic to their perspectives on that specific social problem. Claims-makers use rhetorical and framing devices to convince the community that their arguments are credible. Called "social problems work" (Miller & Holstein, 1989, 1993), claims-makers *typify* social problems by constructing solution *packages* to ostensible social problems, which include conditions, causes, people, emotion, and moralities (Loseke, 1999).

This approach goes beyond a study of how community members understand and/or evaluate a particular law (Finkel, Hurabiell, & Hughes, 1993), punishment (Finkel, Hughes, Smith, & Hurabiell, 1994), or court decision (Garberg & Libkuman, 2009). Rather, it situates people within discourses out of which they make sense of the world around them—social problems, policies, and laws being just a few of the many issues about which a person can hold a sentiment. The constructionist does not employ experiments or surveys but studies how sentiment emerges out of the putative common sense processes by which people understand their realities (i.e., meaning-making by formation and application of an interpretive world view). Community sentiment is not distinct from law or policies but forms the raw material out of which these laws or policies are constituted. So, while Kalven and Zeisel (1971) distinguish between community and judicial sentiment, due to their differential knowledge bases about the judicial process, the constructionist approach would center on the common processes by which people arrive at their respective world views. Different knowledge bases become "stocks of knowledge" (Berger & Luckmann, 1966) from which all people draw to construct their opinions. The focus is on how people shape sentiment and how that sentiment becomes a discourse that informs future sentiment construction.

Constructing the Silver Alert Solution

Germane to this chapter are the ways that claims-makers typify elders (and more specifically elders with dementia) as "problematic" due to their ostensible propensity to wander and go missing, which Loseke (1993) would define as a "people problem." In this formulation, people problems consist of two types of people: the sympathy-worthy victim and the blameworthy victimizer. In the case of missing persons with dementia, the missing elder is attacked not by a blameworthy person but a blameworthy disease. As claims-makers argue, often implicitly, Alzheimer's disease and related dementias strip the elder's personhood and eclipse their personal agency (Clarke, 2006; Petonito, Muschert, & Bhatta, 2010). So, the claim-makers' audience or community becomes the caregiver, the person they can actually persuade. The caregiver becomes the sympathy-worthy victim of the elder's dementia, the one to whom public policy applies.

Shifting focus to the caregiver's problem makes sense when one examines the discourse of "apocalyptic" or "catastrophic demography" (Gee & Gutman, 2000), whose proponents argue that when older retirees outnumber and burden younger working people, an unsustainable dependency will occur. This will result in an almost certain collapse of systems in place to secure health and other forms of well-being for the elderly (e.g., Medicare and Social Security). With these safety nets destroyed, the "burden" of caring for the aged will fall squarely upon the shoulders of the younger generation of caregivers (Carr et al., 2010). Adding to this discourse, claims-makers construct a "causal story" (Stone, 1989) about how catastrophic demography will result in higher rates of missing persons: the aging of America will result in more people with dementia resulting in more wandering behavior, resulting in a greater "caregiver burden" (Clarke, 2006). Claimants often draw from the Alzheimer's Foundation of America (2013a) that predicts alarming growth of the disease due to the increased number of people over age 65. They project that the total number of people afflicted with Alzheimer's disease will triple by 2050 and that six out of every ten of those suffering from Alzheimer's will wander away from their caregiver. Diskin (2013), citing Alzheimer's Association data, forecasts that over 31,000 people will wander away from their caregiver each year. The sheer volume of elders and their

associated medical problems, such as dementia, would put an undue burden on their younger counterparts, proponents claim. This apocalypse is solidified in the "age wars" discourse manifested as Gen X'ers versus the Boomers (Gullette, 2004, p. 45), in which the Boomers (i.e., those in the older generation) are "sucking up the oxygen" the younger generations need. Within this discourse of a contrived war between young and old, the community is primed to accept a public solution like Silver Alert policies to ease the "burden" on the young.

The positioning of missing adults with cognitive impairment as a specific "people problem" is what drove the development of Silver Alert programs. While missing people in general are located by existing search and rescue teams, claims-makers advance the argument that missing elders with dementia or other cognitive impairments need special treatment and care, following recommendations advanced by Koester and Stooksbury (1992) in their path-breaking study of missing persons with dementia. After an examination of actual search request reports to the Virginia Department of Emergency Services (VDES) from 1987 to 1990, Koester and Stooksbury discovered that 12 % of the missing cases involved persons with dementia. They recommended speedy recoveries of persons with dementia to avoid injury and death, notable since the protocol had heretofore been to have a 24-h waiting period before a person was declared missing (Koester, 1998). Silver Alert answered this "need for speed." By transforming the community into a virtual posse, more "eyes and ears" were on each missing person case (Petonito et al., 2010).

The need for speed was not the only driving sentiment resulting in the adoption of Silver Alert plans. In fact, community sentiment coalesced around this solution to the missing elder problem to the point that some claims-makers call its adoption a "no-brainer" ("AMBER Alert for Seniors," 2008). Further, Silver Alert programs made their way to government agendas, with little, if any, policy debate. For example, the sponsor of the Ohio Silver Alert bill noted that the bill had "no opponents," but enactment only involved some time to pull together support from stakeholders and those who would actually implement the policy (Ohio Program, 2007).

Constructionist theorists posit that a number of factors contribute to the development and advancement of "successful" policy (Loseke, 1999): it is simple to understand, is inexpensive, and focuses upon individual rather than societal solutions.[3] The fact that Silver Alert programs piggyback onto existing AMBER Alert programs helps it fulfill these conditions by enabling it to plug into existing discourse surrounding AMBER Alerts. Public acceptance of AMBER Alerts as an effective solution to the "missing children" problem might allow for a similar acceptance of Silver Alert plans. Hence, Silver Alert programs exemplify what constructionist scholars call "domain expansion" (Best, 1990; Jenness, 1995; Loseke, 1999) in which a problem's definition expands to include new cases or more, broader issues. The positioning of Silver Alert as a different kind of AMBER Alert that piggybacks onto existing AMBER Alert infrastructure makes Silver Alert plans an inexpensive and simple "solution." This makes the policy an easy sell to a potentially frugal public and budget conscious legislators (Petonito et al., 2010). Below, we will discuss how Silver Alert emerged as a policy that received widespread acceptance and promotion.

Although the constructionist analytic stance typically avoids taking a position on the truth of claims (focusing instead on their development, typification, and proliferation), there is a stream of constructionist thought that privileges the existence of an objective condition called "contextual" constructionism (Best, 1989), which is our analytic stance. As contextual constructionists, then, we shift our focus to whether or not Silver Alert programs warrant their popularity with the community. First, we explore whether or not a Silver Alert policy is a type of "control theater,"

[3] While this analysis draws from the social constructionism literature, this notion shares components with the mythic narrative in the crime control theater literature (Griffin & Miller, 2008; Armstrong, Miller, & Griffin, Chap. 17 of this volume). Essentially a mythic narrative contains innocent victims, a clear villain, an intuitively effective solution, and a solution that the community sees as aiding the victims. We will return to this concept below.

or a policy that is popular but may not work as intended. Second, we examine some unintended consequences of the policy.

Defining the Missing Person Problem

As noted above, claims-makers create a causal story stating that the rising number of elders would result in more wandering and missing cases of elders with Alzheimer's disease and other dementias. This rising number of missing elders would result in a heightened burden for caregivers. So, a Silver Alert program that empowers the community to become a virtual search and rescue team would help alleviate those fears. While this claim sounds credible, when one turns to the literature on missing persons, another story emerges. This section offers a review of the literature and reveals two important points. First, missing elders comprise a small proportion of all missing people. Second, missing elders may simply be a subset of missing adults, despite the prevalent "causal story" that links wandering with going missing.

Although most scholarship on missing people has focused upon children (for a review, see Muschert, Young-Spillers, & Carr, 2006), the literature on missing adults has grown in the last decade. Early studies suggest that adults "choose" to go missing for a variety of reasons, such as obtaining insurance claims for death benefits (Gallagher, 1969) or wishing to escape difficult life circumstances, such as unhappy marriages (Brenton, 1978). Subsequent scholarship on missing adults provided demographic and descriptive data. For example, Hirschel and Lab (1988) report that missing adults were more likely to be physically or mentally handicapped, have substance abuse issues, to be unemployed, and to come from a lower socioeconomic status. Payne's (1995) UK study states that adults typically go missing following work or business trips. A definition of a missing person emerged out of this literature, with Payne (1995, p. 335) maintaining that a missing person is one who "appears to have gone missing when they do not fulfill their normal patterns of life and responsibilities because they are absent from where they are expected to be."

The scholarship's focus shifts when the topic is missing elders or persons with dementia or other cognitive disorders. The literature centers on the "problem" of going missing, suggesting, in most instances, that people with cognitive disorders are unintentionally "wandering" away and going missing—what is known as "critical wandering" (Algase, Moore, Vandeweerd, & Gavin-Dreschank, 2007). Unlike the missing adult literature, our survey of this literature has not revealed any studies that suggest that persons with cognitive impairments choose to go missing, or that going missing is not a problem, even though parallel literatures exist on the therapeutic aspects of wandering for some cognitively impaired elders, such as exercise, sensory stimulation, and a way of coping with loneliness or stress (e.g., Lai & Arthur, 2003). Instead, what drives this literature is finding solutions to this facet of the missing person problem. For example, Rowe and Glover (2001) studied missing persons using data collected from the Alzheimer's Association's Safe Return® program, which utilizes ID bracelets worn by persons with dementia and a 24-h hotline for caregivers to report missing elders with dementia. They end their study with proposed strategies for educating caregivers of people with cognitive impairments about the unpredictability of wandering and its attendant dangers.

When one delves deeper in the missing elders and persons with dementia literature, one discovers that pinning down an exact definition of a missing person is tenuous. In the case of the missing person with dementia, the caregiver might consider him or her missing after only 10 min of seeing him or her engaged in their normal life pattern (Bowen, McKenzie, Steis, & Rowe, 2011). In some cases, a critically wandering person may be "found" even though no one reported him or her missing. For example, Bass, Rowe, and Moreno's (2007) study of the Alzheimer's Association's Safe Return® program discovered that twice as many persons with dementia are found than are reported missing due

to the fact that Good Samaritans call Safe Return's number they find on the elder's jewelry prior to caregivers reporting them missing. Findings like these suggest that media reports, such as newspaper articles, of missing elders occur only after informal means to find the missing person fail. Yet, many studies of missing elders or persons with dementia are retrospective studies based upon newspaper data (Hunt, Brown, & Gilman, 2010; Lai et al., 2003; Muschert, Petonito, Bhatta, & Manning, 2009; Rowe & Bennett, 2003; Rowe et al., 2011).

Despite these drawbacks, these retrospective studies suggest that missing elders or persons with cognitive impairments comprise a small proportion of the missing adult cases. As noted above, the Koester and Stooksbury (1992) study discovered that 12 % of missing adult cases in Virginia between 1987 and 1990 involved missing persons with dementia. Later, Koester (1998) found that between June 1996 and December 1997, 87 of 565 incidents (15 %) involved people with dementia. These data, while older and centered on one state, suggest that when compared to the larger populations of missing people, missing people with dementia are relatively rare. However, a prospective study (Bowen et al., 2011) interviewed caregivers and discovered that from their viewpoint, going missing is a more common occurrence than the above data suggest. How many of these cases are actually reported to authorities or how many are resolved through informal means still needs further exploration.[4]

Another emerging literature attempts to tease out the differences between "critical wandering" and going missing (Bowen et al., 2011; Rowe et al., 2011; Rowe, Greenblum, Boltz, & Galvin, 2012; Rowe, Greenblum, & D'Aoust, 2012). As Rowe and Bennett (2003) note: not all people with dementia who wander become lost and not all people with dementia who become lost were wandering. Bowen and colleagues (2011) report that some elders with cognitive impairment slipped out of their caregiver's sight while conducting their daily activities of which their caregivers were aware and approved. Similarly, Rowe, Greenblum, Boltz, et al. (2012) note that half of missing drivers with cognitive impairment were engaging in caregiver-endorsed trips.

The case of Silver Alert programs is an example of an ill-defined problem that has established solutions. Arguably, more academic work needs to be done on the problem of missing people. Specifically, we need a better understanding of the scope and prevalence of the problem of missing persons with dementia, which can only occur when we obtain better definitions regarding what constitutes a missing elder with dementia. Questions to be answered include: How long must a person be "absent where they are expected to be" before a person is deemed "missing?" Is a "missing" person one who was found by caregivers or Good Samaritans or one reported to the authorities? What exactly is "critical wandering" and how does it lead to an elder going missing? Clearly, the definition we currently have, "absent from where they are expected to be," is wanting. Finally, we should distinguish between adults who go missing and "critically wandering" people with dementia. Once we have the answers to these questions, we can develop objectively effective public policy and programs to address this problem.

Until then it is important to assess the origins of the Silver Alert (a moral panic), the characteristics of Silver Alert (fitting the definition of "control theater," described next), and the unintended outcomes of Silver Alert.

Silver Alert Programs as Control Theater

Coined by Griffin and Miller (2008), crime control theater critiqued the emergence of the highly regarded but largely ineffective AMBER Alert policies. Defined as "a public response or set of responses to crime which generate the appearance, but not the fact, of crime control" (p. 160), the concept has been applied to safe haven laws (Hammond, Miller, & Griffin, 2010) and sex

[4] Providing all the details gleaned from this complex literature is beyond this chapter's scope. However, a more complete review of this literature is found in Petonito et al. (2013).

offender laws (see also Chaps. 15 and 17, this volume) and has been extended to critique the popular but questionably effective policy that requires health personnel to obtain influenza vaccinations (Mika & Miller, 2010). Extending these concepts to Silver Alert programming reveals that Silver Alert policies are yet another type of "control theater." Similar to other control theater policies, Silver Alert emerged as a reaction to a moral panic, a socially constructed reaction to a perceived threat. In the case of Silver Alert policy, that moral crisis manifests itself with community concern over the graying population and the concomitant increase in the numbers of seniors who will contract dementia and critically wander and go missing. This increase in wandering will result in a potential public health crisis and an increased burden on caregivers. In addition to its emergence due to a moral panic, Silver Alert exhibits the four elements that are common to policies characterized by control theater: (1) reactionary response to moral panic, (2) unquestioned acceptance and promotion, (3) appeal to mythic narratives, and (4) empirical failure.

Silver Alert and Reactionary Response to Moral Panic

There is much evidence to support the notion that Silver Alert emergence in reaction to a public panic.[5] as Muschert and colleagues noted (2009) about 20 % (29) of 140 newspaper articles reporting missing elders examined between January 1, 2006, and September 30, 2008, discussed policies to manage the missing elder problem. The majority of these articles (15 out of 29) discussed Silver Alert programs. Delving deeper into these data, Petonito et al. (2010) explored how claims-makers rhetorically discussed Silver Alert as "solving" the problem of wandering and missing elders. As noted above, claims-makers employed the rhetorical device of the "horror story" of an elder found deceased and placed this concern alongside a discussion of Silver Alert, promoting the policy as a way of preventing such an event from reoccurring. As noted above, Silver Alert programs were touted as augmenting search and rescue programs by creating electronic posses, enabling more "eyes and ears" working on the rescue effort, and "speeding up" the process (Petonito et al., 2010). Further, claims-makers frequently quote Alzheimer's Association projections of increased numbers of people who will have dementia as America's population ages. For these claimants, the issue of concern is not the actual number of missing elders, (which as the literature suggests, may be a small percentage of missing people overall) but the *potential* number of missing people, resulting in a *projected* problem for which Silver Alert programs would proactively address (Petonito et al., 2010).

Silver Alert and Unquestioned Acceptance and Promotion

One characteristic of control theater is that the policy is accepted wholeheartedly with little substantial debate. In constructionist parlance, this idea is called a "valence issue" (Nelson, 1984) or a "noncontroversial" problem upon which consensus is quickly reached. Similar to claims made about "abducted children" (Gentry, 1988), the "problem" of adults who wander elicits a "strong, uniform emotional response and contains no adversarial quality" (Nelson, 1984, p. 421). Just as no one is "pro-child abuse," no one supports "letting people wander and go missing." Claims-makers employ this valence issue to advance "solutions" to assist critically wandering adults and to solidify community sentiment around that solution. However, even the most agreed upon valence issue needs to come to the attention of public officials so it will find a place on government agendas. So, valence issues occupy a "policy domain" (Burstein, 1991)

[5] While the issue of missing adults with dementia has created a *panic*, it is worthy of note that this does not exactly fit the strict criteria of *moral* panic that has specific criteria that are not met (e.g., a morally corrupt individual actively doing harm to an innocent victim). Instead, the moral element could be conceived as passively doing harm, e.g., "doing nothing" to protect this population. Even if it does not completely fit the traditional definition of moral panic, the panic that has ensued is notable.

subject to claims-making streams (Kingdon, 1984). These include constructing policy and getting it on the government's agenda, but once there, the policy is debated, alternatives are proposed, and a "best" practice emerges. Conceivably, claims-makers could contest how these problems are defined, because these frames shift based upon sponsor activities, media practices, and changing discourses. As control theater, however, Silver Alert emerged as a fully formed "solution" to the problem of missing elders and *ex post facto* justifications emerged (Petonito et al., 2010). In short, community sentiment is unified around the support of a Silver Alert policy by government officials, policy makers, stakeholders, and the community at large.[6]

Silver Alert and Appeal to Mythic Narratives

AMBER Alerts and sex offender laws (see Chap. 17 for discussion about these laws as crime control theater) appeal to the mythic narrative of saving an innocent and vulnerable victim (e.g., a child) from a morally deranged criminal. However, not all control theater policies follow that specific narrative. Similar to laws requiring health care professionals to obtain the influenza vaccine, Silver Alert programs appeal to the mythic narrative of saving a life, although the harm is not caused by a specific criminal. In both examples, caregivers are in a position to "save" an innocent person—from influenza or the dangers of going missing. In the case of influenza vaccines, caregivers have the knowledge and presumed duty to protect healthy individuals from becoming ill. In the case of Silver Alert, the life saved is one whose "personhood" has been stripped by a dreaded disease (Clarke, 2006). In both examples, the policy focus shifts to the caregiver, for it is the caregivers who are most aware of and knowledgeable about the situation's potential danger. Silver Alert, then, appeals to the caregiver since its justification is to create a community effort to augment the caregiver's search attempts and alleviate his or her fears (Petonito et al., 2010). Hence, the appeal is to the mythic narrative of "grandma," who personifies anyone's elder loved one who could go missing. And, the "bad guy" is not a criminal or even the influenza virus but an endless number of unseen but imagined harms that await grandma when she goes missing. The idea of a mythic narrative is embodied in this quote from a proponent of Silver Alert in Arizona: "Just think, these people that go missing are somebody's loved one, someone's mother, brother, father, sister…why can't we put all eyes on them and work to solve the problem?" (Burton, 2014).

Empirical Failure of Silver Alert

Although claims-makers maintain that Silver Alert programs assist in locating lost elders (e.g., see Toone, 2009) and provide fuel for community sentiment that conceives of the program in that way, several state-level Silver Alert programs assist in finding any missing adult (i.e., not just elders with dementia). For example, North Carolina's Silver Alert program's mission is "to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment" (General Assembly of North Carolina, 2007, § 143B-499.8). This broader application makes sense considering that the number of missing people with dementia is a small proportion of the missing adult population, as the above research suggests. Nevertheless, one would assume with this broad a target population that North Carolinian elders with dementia would be widely served. However, Yamashita, Carr, and Brown (2013) found otherwise. They collected data from North Carolina's Silver Alert program, the only state that published a complete record of the 587 alerts initiated between 2008 and 2010. They discovered that activation of a Silver Alert in a county was correlated to its proximity to Raleigh, the state capital. Further, the proportion of African-Americans residing in a county

[6] Even when Silver Alerts meet some resistance, it is often short-lived; see discussion below about the Hawaii Silver Alert program.

increased the rate of Silver Alert activation by a factor of one. They found no correlation to the number of elders in a county or even to the prevalence of poor mental health in a county. Similarly, a study of 158 Silver Alert notifications on missing drivers with dementia in Florida noted that the program was instrumental in locating about 24 % ($n=31$) of the missing people. Within this group, law enforcement found all but three of these cases (Rowe, Greenblum, Boltz, et al., 2012). So, while the direct alerts to law enforcement prove useful, the idea that there is an electronic posse of civilians handily finding lost people may be misleading.

Finally, an open question remains regarding the effectiveness of Silver Alert over other search and rescue operations. While the narrative that Silver Alert will directly assist with recovering elders and cognitively impaired persons, there are no empirical studies that we know of that systematically compare the effectiveness of Silver Alert with traditional search and rescue operations. In fact, one argument for tabling Hawaii's Silver Alert bill was that the Honolulu Police Department reported that they recovered all of the 141 reported cases of missing seniors in the past two years. For them, the present system works (Mendoza, 2011). Nevertheless, the bill has reemerged in early 2014, appealing to the same mythic narratives as all the others: Silver Alert will help alleviate the problems of a growing aging population as reported by the Alzheimer's Association, by quickly, cheaply, and efficiently finding missing elders. This quote from State Senator Sam Slom illustrates: "this practical bill provides safety for our kapuna (elders) and costs the State of Hawaii very little money to implement" (Davidson, 2014).

Certainly, finding any missing person justifies the existence of policy, but in many cases, the programs may be unneeded and could even be ineffective. Caretakers and policy makers benefit in maintaining the appearance that they are unfaltering in their protection of elders at risk of critical wandering. Caregivers could be the losers as a result of the false sense of security Silver Alert might provide. However, there are other unintended deleterious effects of policies characterized by control theater (Hammond et al., 2010), two of which are: the potentially deleterious effect of surveillance creep and a stunted public discourse that precludes any debate and critique.

Unintended Consequences of Silver Alert Policies

Policy scholars understand that any policy, regardless of how well-constructed or thoughtfully implemented, will inevitably contain unintended negative consequences, and policies characterized as control theater often suffer this fate (Armstrong et al., Chap. 16 this volume; Hammond et al., 2010). What interests us is how Silver Alert programs are a type of surveillance (a form of social control) that "creeps" further into our personal lives, or what Marx (1995, 2005) calls surveillance creep, a type of control creep (Innes, 2001). Foucault (1991) conceptualized this proliferation of surveillance practices as the "panopticon" in which social control agents exert a continual visible presence that assures compliance, and in contemporary society, social control agents employ technology to accomplish this surveillance. The proliferation of surveillance is often seen as innocuous in the service of the intangible "greater good" of safeguarding people, but which critics argue manifests itself in the increased control of vulnerable populations (or ones deemed as deserving supervision) such as animals, children, prisoners, the mentally ill, at-risk populations, or the cognitively impaired. The tendency for creep among control measures means that these measures tend to expand over time, extending to increasingly broad segments of the population.

Silver Alert plans are an example of one such expansion, because the Silver Alert program is a surveillance practice that is a direct extension of AMBER Alert systems that are to locate abducted children. In addition, Silver Alert programs are but one of a burgeoning number of gerontechnologies that combines engineering and technology for the benefit of aging people (Fozard, Rietsems, Bouma, & Graafmans, 2000). In many cases, gerontechnologies have been touted as

assisting the "Aging in Place" movement, which means that elders may be served in a more cost-effective manner in their own homes rather than in institutional settings (Eltis, 2005; Kenner, 2008). In the case of finding wandering and missing elders, such surveillance measures are assumed to decrease risk, thereby freeing caregivers from continual watchfulness and enabling the elder remain at home. As a result, "caring for the caregiver" (Adams, 1996) becomes the focus of Silver Alert policies.

Regardless of these positive outcomes, media alerts may unintentionally impede personal liberty in that information such as home addresses, license plate numbers, individual characteristics, and photographs are occasionally made public, as is the case with North Carolina Silver Alert data posted on the web (Yamashita et al., 2013). It is also unknown how many cognitively impaired adults gave (or are even able to give) their consent to this type of monitoring. In the specific case of Alzheimer's disease and related dementias, a discourse exists that presents them as mere recipients (as opposed to co-participants) in their own care, with the individual's personal agency eclipsed by the challenges of a powerful and fearsome disease (Clarke, 2006). Clearly, limiting individual rights for those with cognitive impairments may be necessary due to their inability to protect themselves, but this threshold is poorly understood, because community sentiment regarding the nature of Alzheimer's (and other diseases that may involve dementia symptoms) is more simplistic than the reality of such diseases. Dementia may have many forms, and while it is beyond this chapter's scope to survey them, a key point is that some forms of dementia may be temporary and that an individual's symptoms may vary over time. Similarly, there are different levels of intensity of cognitive impairment. For example, early stages of dementia may last for years and may be mild (Silverstein, Flaherty, & Tobin, 2002). Thus, many functioning and responsible older adults may have minor cognitive impairments which last for years, yet the stereotype of older adults with dementia tends to be one of people who are not responsible for themselves and who are largely confused (Clarke, 2006).

This stereotype fuels much community sentiment regarding the suitability and necessity of Silver Alert programs and other gerontechnologies. Concerns for the elder's safety are privileged over individual autonomy, and the normal individual and legal rights accorded to other adults often seem inapplicable to elders who have even minor cognitive impairment. The rush to "protect" elders with significant cognitive impairment may impinge upon the autonomy of the rights of those older persons with mild dementia symptoms by conflating their situation with those of persons with more severe cognitive impairments. Thus, community sentiment coalescing around the unquestioned implementation of Silver Alert policies and other surveillance gerontechnologies such as in-home cameras or bracelets fitted with transmitter devices, (see Petonito et al., 2013) ignores Kitwood and Bredin's (1992) concern with preserving the personhood of people with dementia and others with cognitive impairment. Further, uncritical acceptance of policies such as Silver Alert overlooks any potential ethical and civil rights implications of such initiatives (Eltis, 2005), whereby otherwise socially responsible elders are subjected to increased monitoring (Kenner, 2008) as a result of surveillance creep dynamics.

Despite these trends, there is evidence of some researchers attending to this concern, asking elders in the early stages of dementia for their input in the development of assistive technologies (see, e.g., Robinson, Brittain, Lindsay, Jackson, & Oliver, 2009). The sentiment of elders with mild dementia or other mild cognitive impairments should contribute to the discourse about and development of policies such as Silver Alert plans. In fact, some scholars mandate that the best practices of person-centered care be in line with sentiment of people with dementia concerning the care and management of their situation (Hughes & Louw, 2002; O'Neill, 2013).

Surveillance creep has another unintended consequence, as well. The public may become saturated with the development of new policies and, therefore, may become increasingly blasé regarding the ability of collective action to solve society's challenges. With the apparent growth of

various alerts for a number of risks (e.g., AMBER Alerts, Silver Alert, terror alert levels, weather alerts, food contamination announcements, product safety recalls, traffic alerts), people can become inundated with warnings to the point that they are unable to decide which warnings are truly meaningful. While there are not yet any research studies directly supporting this idea, some policy makers have expressed this concern. For example, New York Governor Pataki vetoed the first iteration of a state Silver Alert bill in 2003, arguing that too many alerts would weaken the already existing AMBER Alert (Friedman, 2008). While New York ultimately enacted a Silver Alert program, other community members worry that the proliferation of alerts causes the public to see them as "crying wolf" and essentially ignoring all alerts (Diskin, 2013).

Finally, control theater policies are characterized by the community's reluctance to debate the policies' efficacy. Given the fact that control theater policies are so popular, examination of the policy may be construed as critique of those who enact or maintain such policies or as threatening-vested interests that lie on the success of such policies. A potential irony involved in questioning the rationale for and efficacy of policies to safeguard vulnerable populations is that such examination could be perceived as undermining the safeguards themselves. This stunted discourse surrounding any critique of control theater policies may have potential serious consequences if the policy does not work as intended. Given that Silver Alert policies are in place, but have not been studied extensively, evaluation is certainly warranted (Diskin, 2013; Petonito et al., 2013). One unanswered empirical question is whether Silver Alert policies actually augment standard search and rescue techniques. While Koester (1998) did call for the speedy onset of search and rescue efforts, Koester and Stooksbury's (1992) original work advanced other proposals, like searching in drainage ditches or creeks, given that elders with dementia have tendencies to wander in accordance to a path of least resistance. They also noted that elders with dementia were not likely to cry out for assistance or leave many physical clues. Silver Alert may assist in spreading the word about a missing elder more quickly, but we also need to determine whether successful recovery can be attributed to the expertise of search and rescue personnel.

Compounding the issue is the fact that the problem and scope of missing elders with dementia, along with any wandering behaviors, is poorly defined and understood. Given the lack of empirical evidence for the nature, extent, and predicted trends for the problem of critical wandering among elders, one wonders if Silver Alert programs are vitally needed and save communities' substantial resources. Without more empirical study, the question as to whether Silver Alert is effective public policy or is it just another example of control theater remains an open question.

Conclusion

This chapter has explored how a constructionist approach can help illuminate the community sentiment about the implementation of Silver Alert programs which are intended to address the problem of critically wandering and missing adults. We showed how Silver Alert plans became a valence issue upon which there was widespread community agreement. However, a critical examination of the program revealed several potential shortcomings. First, the distinction between missing adults and critically wandering elders is unclear. So, while community sentiment maintains that the program is a "no-brainer" in terms of its usefulness for recovering missing elders with dementia, researchers need to define who a missing person is in order to evaluate Silver Alert effectiveness. Second and relatedly, Silver Alert programs may be a type of control theater that gives the appearance rather than the fact of finding missing elders with dementia. The main question is if Silver Alert plans successfully recover missing and wandering elders more so than traditional techniques already established. Only a comprehensive evaluation of the targets of Silver Alert programs will reveal what (and how much) populations are being served. Finally, even the best-intentioned policies have unintended conse-

quences, and this is true of Silver Alert programs. They may be yet another example of surveillance creep, whereby the caregiver becomes the focus of concern, while the elder is subjected to unwarranted and unwanted scrutiny, stripped of agency and voice. Despite often overwhelming positive sentiment toward Silver Alert programs, it is essential that more research and analysis be conducted that will reveal the effectiveness—and unintended consequences—of such programs.

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Part VI

Concluding Thoughts and Future Directions

Community Sentiment and the Law: Concluding Thoughts and Future Directions

19

Jared Chamberlain

The belief that individuals have little impact on political processes and outcomes seems to be increasingly common in recent years. Indeed, external efficacy in the political system, which taps into the belief that one has a say in government decisions, has sharply declined over the past 50 years in the USA, with the lowest amounts occurring in 1990, 1994, and 2008, (www.electionstudies.org; see Chamberlain, 2013). A recent analysis indicates that these declines have occurred across different political cultures, suggesting a universal shift toward lower external efficacy (Chamberlain, 2013). While it may be easy to identify cases in which one is not heard by governmental officials (e.g., an elected official not voting according to the will of their constituency), there are numerous avenues through which individuals and collectives can impact the political landscape. Serving as a juror is one way in which members of the community can impact legal outcomes in both civil and criminal cases. Individuals can also impact local law and policy voting on referenda, whether they are related to fiscal (e.g., tax increases) or social (e.g., affirmative action) issues. Individuals can also vote for local and national candidates who best represent (and theoretically act on) their interests and values. Empirical (e.g., Oldmixon & Calfano, 2007) and anecdotal (e.g., Supreme Court opinions in *Weems v. U.S.*, 1910 and *Furman v. Georgia,* 1972) evidence suggests that community sentiment *does* impact the law through these various avenues, albeit in sometimes indirect and imperfect ways (see Chaps. 1, 2, and 3, this volume, for discussions). Thus, in spite of dropping confidence in one's ability to impact the legal system, evidence suggests that there are various channels through which community sentiment does impact the law.

This volume covered a broad range of issues that arise in studying the connection between community sentiment and the law, with a focus on emerging legal issues that in some way have implications for children or families. The first section examines the role that the media plays in the complex relationship between sentiment and law, and it provides some of the basic approaches and common pitfalls in measuring community sentiment. Building on this, the next section ("Arguments Against the Use of Community Sentiment") provides some examples of the different approaches to measuring community sentiment. The third section "Arguments for the Use of Community Sentiment" examines the transient nature of community sentiment by looking at how, and under what circumstances, individuals' attitudes change or are supposed to change in response to a law or policy. Section four ("How Will Sentiment Be Interpreted and Applied?") examines how incorporating community senti-

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ment into the law can impact perceptions of justice, while the final section ("Recommendations for Future Research") centers on the sometimes negative consequences of laws and policies that are driven by community sentiment. We return in this concluding chapter to a question that was posed in the opening chapter and naturally follows from many of the chapters in this volume: should community sentiment influence the law? Common themes in this book are highlighted, some which support an argument against, and others which support an argument for, the use of community sentiment in the law. The use of sentiment to inform law is further complicated by the fact that judges and legislators are not always qualified to review and incorporate research about sentiment. This issue is discussed here and preliminary recommendations are made to better incorporate sentiment. Finally, future directions in community sentiment research are explored.

Should Community Sentiment Influence the Law?

The question about whether community sentiment should impact the law is likely to generate mixed opinions, as we have seen play out in the varied opinions of Supreme Court members (see Chap. 1 and below for a detailed discussion). This section will provide an overview of the arguments against and for the use of community sentiment to inform the law. Though this discussion does not provide a definitive answer to the question, it does highlight the complexity of the question. Within this larger frame, common themes in the book are summarized and discussed.

Arguments Against the Use of Community Sentiment

Many of the arguments against using community sentiment in the law center on the error-prone nature of sampling for and measuring community sentiment. Obtaining representative samples and crafting valid questions can be challenging, and the process is further complicated because sentiment can be biased by media and other contextual influences. Even if we can assume that samples are representative and measures valid, there still may be unforeseen and unintended consequences of sentiment-based legal action, possibly due in part to individuals' lack of knowledge about the law or policy.

Samples Are Not Representative (Sampling Error): Sampling a subset of the larger population is almost always a necessity when gauging community sentiment, whether one is attempting to measure sentiment at local, regional, or national levels. Obtaining a sample that is representative of the population can be difficult, particularly with large and/or rare samples (see Chap. 3 for discussion). One of the themes that has emerged in this volume, and is likely true of the larger body of literature, is that many studies rely on various forms of convenience sampling and thus have high sampling error—that is, these samples do not represent the larger population. Chapters 4, 6, 8, and 11 all used undergraduate samples—an approach that is very common but nonetheless yields results that are not likely representative of the larger population (however that may be defined). Chapters 10 and 13 used snowball sampling techniques, a pragmatic approach used with difficult-to-sample populations, but that also can lead to homogenous, unrepresentative samples. It is fair to note that the primary goal of the studies within and outside of this volume may not always be to gain a representative picture of sentiment. For instance, the purpose of Chap. 11 was to examine how information about laws regulating social networking sites can impact attitudes of a specific population affected by such laws (college-aged students), and the central focus of Chap. 13 was to gain a more detailed picture of gay parents' sentiments about law and policy (rather than the sentiment of the general population). But if we cannot extrapolate the findings from these studies to larger populations, then one might argue that the results may not apply to larger segments of the population. In short, there appears to be a discrepancy between ideal (using sampling techniques that generate representative samples) and realistic (using resource effective approaches, such as convenience sampling) approaches to

sampling community sentiment, which results in studies that have a great deal of sampling error.

Responses Are Not Valid Indicators of Sentiment (Measurement Error): The design of survey questions presents many potential sources of measurement error—the discrepancy between what we intend to measure and what we actually measure. But even if a survey is well designed, measurement error may still occur due to any number of "human factors," including cognitive and emotional biases, contextual influences in ones immediate environment, and a lack of knowledge about a legal or policy issue.

Survey Design Can Lead to Measurement Error: Creating a survey to gauge community sentiment is a difficult and complex task and there are several factors that can lead to measurement error (see Chaps. 1 and 3 for a more complete discussion). Vague, leading, and complicated questions can lead to responses that are not valid. In addition, question *order* can impact responses because certain questions may prime values, memories, etc. that can impact future responding. Even if a question is well designed and formatted, it may still be prone to error if the response options do not fit the question asked. The complexity of designing questions and response options is further compounded by the fact that individuals' unique experiences might lead to (1) words connoting different meaning for different individuals and (2) questions reminding individuals of different experiences, values, etc. Thus, researchers must anticipate how a particular sample might respond to the way questions and response options are worded or framed and how question order might prime differently. Social scientists are well equipped to minimize measurement error stemming from survey design; however, creating the "perfect" survey is a difficult (if not impossible) task. In short, the design of a survey requires a great deal of thought and even those surveys that are well designed are susceptible to measurement error.

Biased, Malleable, and Ignorant Sentiment Can Lead to Measurement Error: Outside of the potential survey design errors, there exist many "human factors" that can impact the validity of community sentiment measures. Attitudes (and thus community sentiment) can be impacted by emotional and cognitive biases, many of which are invisible to individuals. This is another recurring theme identified in several chapters. Sigillo and Sicafuse (Chap. 2) highlighted the role of the media in stimulating emotional responses in highly publicized legal cases and issues. Sensational and biased media coverage of the Casey Anthony and "Octomom" cases highlights the instrumental and potentially damaging role of the media in priming emotional responses (e.g., anger and contempt), which can lead to biased responses that do not account for all details in the case. Chomos and Miller (Chap. 6) suggested that individual differences based on political and religious affiliations can impact (and bias) sentiment. The authors found that Democrats and those who place a greater value on religion were less likely to support safe-haven laws, which offer parents a way to relinquish rights to their newborn child without penalty. Armstrong, Miller, and Griffin (Chap. 17) discussed how sentiment about sex offender registration laws may be based on cognitive shortcuts and emotional processing. These chapters highlight the fact that humans see and evaluate the world in a biased fashion, often in search of confirming previously held beliefs. The confirmation bias (see Wason, 1968) suggests that when individuals hold a strong view about a law (e.g., sex offender registration laws), they tend to seek out confirming evidence for the law (e.g., evidence that the law prevents recidivism) and disregard or ignore disconfirming evidence for the law (e.g., evidence that the law does not prevent recidivism). These chapters suggest that humans are susceptible to cognitive and emotional biases that may produce attitudes that are resistant to change thus leading to measurement error.

In spite of cognitive mechanisms that help to maintain attitudes, we have seen in several chapters that other types of attitudes can be susceptible to change, which can also lead to measurement error. Miller and Thomas (Chap. 8) suggested

that attitudes about a law can change depending on the specific details given about a policy. When looking at drug use during pregnancy, the authors found that "harder" drugs elicited more punishment, as did a more severe injury to the baby and the decision to not stop using drugs. Results suggest that specific details about the context (in this case, type of drug used and harm to the baby) further highlight the importance of making questions specific (as discussed in the opening chapter). Barth and Huffmon (Chap. 9) discussed how sentiment toward divorce has changed over time and across groups. Kwiatkowski and Miller (Chap. 11) explored the possibility of sentiment change stemming from more information about a law or policy. The authors found that participants' sentiment about "Facebook Laws" (laws broadly designed to regulate the use of social networking sites) became more positive after relevant information was provided. Finally, Armstrong et al. (Chap. 17) and Fass et al. (Chap. 16) suggested that support for harsh sentencing for juvenile offenders decreases when the public is provided specific details about the context of the crimes along with education about effective treatment for juvenile offenders. Together, these chapters suggest that sentiment can be malleable: both subtle (e.g., changing small details about an offender) and obvious (e.g., providing education or information about a law or policy) contextual cues can lead to changes in sentiment. Further, attitudes change over time, the extent to which is likely moderated by cultural and group connections. For instance, we have seen community sentiment about gay marriage become more positive in recent years, but only among certain segments of the population. If sentiment is responsive to contextual cues, then the stability (and thus accuracy) of measures designed to gauge sentiment should be questioned and the context in which measures occur should be carefully examined.

Both stable and changeable types of sentiment can be supported by uniformed, incomplete, or ignorant sentiment about a law and its consequences. Understanding laws and their potential consequences often requires substantial resources (e.g., time, cognitive effort), leaving many individuals to rely on cognitive shortcuts which can lead to uniformed sentiment (see Blumenthal, 2003 and Introduction chapter). For instance, Kwiatkowski and Miller (Chap. 11) suggested that participants were largely uninformed (and unsupportive) of the so-called Facebook Laws, which generally regulate online behaviors between teachers and students. Consistent with previous research (e.g., Reichert & Miller, 2014; Vidmar & Dittenhoffer,), participants changed their attitudes (became more supportive) of the law after receiving information about the law; however, participants may not always be motivated and/or able to find information about a law or policy. As predicted by the Elaboration Likelihood Model (see, e.g., Petty & Cacioppo, 1981), individuals who are not motivated and/or able to process new information are more likely to rely on simplistic rules and less on the content (i.e., they use the peripheral route to persuasion), and thus they are more susceptible to uninformed sentiment. Conversely, those who are willing and able to process information are more likely to focus on the content of a message (i.e., they use the central route to persuasion), leading to more informed opinions. Thus, lacking the ability and motivation to find and process information about a law or policy, individuals are likely not fully informed about a policy and its potential consequences.

Strongly held attitudes are more difficult to change, in part due to cognitive and emotional biases (discussed above) that prevent new information from impacting attitudes. The confirmation bias is one cognitive mechanism that allows individuals to maintain sentiment that is not based on evidence/information. Those who have strong attitudes about a law (e.g., gun control laws) are motivated to find information to support their views (e.g., gun violence is prevalent in some areas that have gun regulations) while ignoring information that contradicts their view (e.g., gun violence is not prevalent in some areas that have gun regulations). Thus, a person with strong attitudes about an issue can (somewhat ironically) have very little knowledge of the issue or only have one-sided information. Supporting this idea, Sicafuse and Miller (2010) suggest that community sentiment will often remain strong,

even when there is evidence suggesting that polices are faulty and harmful. Motivation to maintain one's deeply held attitudes, which can have both emotional and cognitive roots, might possibly explain the phenomenon of "crime control theater" (CTC; see Griffin & Miller, 2008)—crime control policies that are appealing on the surface (because they present a solution to often emotionally charged issues), yet have very little evidence to support their efficacy. The issue of biased and uniformed sentiment backing crime control policies is discussed in two chapters. Armstrong, Miller, and Griffin (Chap. 17) discussed how sex offender laws can be conceptualized as CCT because they have (1) elicited a strong reaction to moral panic and (2) they lack empirical support. Similarly, Silver Alert policies proposed as a solution to the problem of critical wandering among elderly populations have been supported by community sentiment, but there is very little evidence that these policies are effective in solving the problem (Chap. 18). In both cases, and similar to previous research about other hot-button topics (e.g., the Amber Alert system; see Sicafuse & Miller, 2010), emotional (likely based on fear) and cognitive (scanning for confirming evidence) biases have led to ignorance about the effectiveness of these policies.

There Are Negative Consequences of Using Sentiment: Laws that one might characterize as CCT often have negative consequences (e.g., money loss and stigmatizing groups). But even when individuals have informed and "objective" opinions about the expected effects of a policy, there can still be unintended (negative) consequences for laws based on community sentiment. This is a theme that has emerged in several chapters, providing another argument against the use of community sentiment in the law.

Chomos and Miller (Chap. 6) discussed how safe-haven laws actually resulted in the misuse of the law and a drain on government resources. Campbell (Chap. 14) suggested that policies in response to campus-related violence can be fueled by emotional sentiment that has several negative consequences. For example, the threat assessment response, which essentially assesses students as dangerous or not, may stigmatize mental illness, deter those from seeking services, and provide a false sense of safety about the possibility of campus violence. In Chap. 15, Cook and Walsh explored policy responses to fetal alcohol syndrome that might inadvertently (and negatively) impact women's rights and public health. Fass, Miora, and Vaccarella (Chap. 16) explored some of the possible negative consequences of applying adult-level punishment to juveniles who commit serious offenses. In Chap. 17, Armstrong and colleagues explored some of the consequences of sex offender registration laws, including the possibility of actually increasing recidivism (due to a reduction in available resources) for sex offenders. Finally, Petonito and Muschert (Chap. 18) examined some of the many potential problems with Silver Alert programs, ranging from a loss of personal liberties to more broad concerns related to blind community acceptance of ineffective policies. In each of these cases, law and policy that has gained strong community support can lead to negative outcomes. In some cases, community sentiment may be based on bias and a lack of information, but in other cases, these outcomes may be unforeseen.

Arguments for the Use of Community Sentiment

There are two themes in this book that support the use of community sentiment in law and policymaking. First, the US legal system is based on community involvement and there is a long legal precedent of relying on community sentiment. Second, relying on community sentiment to inform law and policy can be therapeutic for legal actors and the system in general. In addition to these two arguments, some counterarguments to the points made in the previous section will be presented.

There Is a Legal Precedent for Using Sentiment: The USA is based on democratic ideals and, as such, should be influenced by the will of the public. The several mechanisms through which sentiment does impact law (discussed above and in

Chap. 1) support this notion. The connection between sentiment and the law has also been affirmed (though not unanimously) by the Supreme Court (see McGuire & Stimson, 2004). Miller and Chamberlain (Chap. 1) and Chamberlain and Shelton (Chap. 3) highlighted a few Supreme Court cases in which the justices discuss the connection between community sentiment and the law. For instance, in *Weems v. U.S.* (1910; Finkel, 2001), the Supreme Court explicitly cited public opinion as a source for determining the appropriate punishment of a man who had been convicted of falsifying records. Similarly, *Trope v. Dulles* (1958) established that "an amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society" (p. 101). Justice Brennan (in *Furman v. Georgia*) suggested that interpretations of the eighth amendment (cruel and unusual punishment) should be based on what contemporary society deems severe punishment. More recently, in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Supreme Court noted that community sentiment can play a role in the law. It is important to note that Justices Rehnquist and Scalia were strongly against this idea, citing potential infringements on constitutional rights. Reed and Bornstein (Chap. 4) discussed cases in which the use of sentiment in juries was affirmed. *Miller v. California* (1973) established that jurors are supposed to use sentiment as a standard to judge obscene content. Further, a jury's right to nullify (sometimes using sentiment to disregard the law) was upheld by the Supreme Court in *Sparf and Hansen v. United States* (1865). Although these cases are rare, there are instances in which the courts have established jurors' rights to use community sentiment to decide cases.

Using Community Sentiment Is Therapeutic. Another theme in this book is that being heard by judges and lawmakers can be therapeutic for those impacted by laws and policies and for the legitimacy of the law in general. Chapter 12 (Sigillo) examined the possible therapeutic outcomes of using children's sentiment to inform custody decisions. The authors argue that when their sentiment is taken into account, children will have higher satisfaction with, and better adjustment to, custody decisions. Similarly, Chamberlain and colleagues (Chap. 13) suggested that listening to the sentiment of gay parents would lead to more positive and therapeutic outcomes for parents and children. Parents expressed a gap between their desired and actual rights, the results of which were psychologically detrimental. Issues that tend to garner strong community sentiment (e.g., gay parent's adoption rights) are sometimes decided without considering the sentiment of those who are most impacted; however, within a therapeutic jurisprudence framework (see, e.g., Wexler & Winick, 1991, 1996), it makes sense that the parties directly involved should have a say about law and policy directly related to their well-being.

Relying on community sentiment to inform law and policy may not always lead to therapeutic policy responses, however, as Campbell discussed in Chap. 14. In response to campus-related violence, Campbell called for a balanced and complex approach which relies on evidence and considers how responses are therapeutic or anti-therapeutic, rather than relying on simplistic policy decisions that are fueled by community sentiment. "How Will Sentiment Be Interpreted and Applied?" section suggests that relying on the sentiment of those directly impacted by an issue can lead to therapeutic outcomes (as in the case of children having a say about custody decisions) or anti-therapeutic outcomes (as in the case of oversimplified policy responses to campus-related violence). Thus, it is important to consider the specific details of the circumstances, biases of the parties, and possible negative consequences of the law or policy when determining if sentiment of those should be used to inform the law or policy.

The use of community sentiment in law and policymaking also has larger implications for the public's perception of and adherence to the law. If we can assume that individuals expect to have a say in law and policy, then it follows that laws that are out of step with sentiment are likely to be seen as illegitimate (Finkel, 2001). This notion was backed by the Supreme Court (In *Casey*), which acknowledged that courts that ignore community sentiment are likely to lose legitimacy in the pub-

lic eye. This is important because beliefs that the law is unjust or illegitimate may lead to a generalized disrespect for the law (Robinson & Darley, 1995) and decreased compliance with the law (Finkel, 2001; Tyler, 1990, 2006; see Blumenthal, 2003 for review). This could lead to many outcomes that are not therapeutic, such as increased crime and decreased governmental efficiency and efficacy (see discussion in Introduction Chapter).

Several chapters implicitly or explicitly addressed the consequences of laws that are out of sync with community sentiment. Brank and colleagues (Chap. 7) suggested that laws that are not supported by government officials (law enforcement and prosecuting attorneys) might not be enforced because they are not seen as legitimate or effective. Barth and Huffmon (Chap. 9) suggested that gays and lesbians may experience feelings of injustice (not to mention stress) from the inconsistencies in gay marriage and divorce policies across states. In Chap. 10, Chaney suggested that a policy to promote marriage in African-American communities may not be successful because participants in her sample expressed somewhat negative attitudes about the program. Chapter 12 (Sigillo) suggested that children who believe their wishes are accounted for in custody decisions are more likely to see the law as legitimate (and thus are more likely to abide by the law). Similarly, gay and lesbian parents who believe that the system does not recognize their rights will be less likely to participate in the legal process (see Chap. 13). Thus, laws that align with community sentiment are more likely to be therapeutic on a larger level. Even if a law does not conform to one's sentiment, it is important that individuals believe that their sentiment has had an impact of the process of lawmaking (see Tyler, 1990).

The recognition of community sentiment in the law is backed by legal precedent and has potentially therapeutic outcomes for individuals and the system. Yet, gauging community sentiment is no easy task, and there are numerous sampling and measurement issues that can lead to faulty measurements of sentiment. Further, there can be negative consequences of laws guided by sentiment, regardless of whether sentiment is ignorant, biased, and/or uniformed. So what are law and policymakers to do? Should sentiment inform decisions more or less that it already does in the current system? Although elected and appointed officials are presumably more informed about law and policy (as compared to community members), they may nonetheless be influenced by emotional and cognitive biases. If judges/lawmakers and the general community are both susceptible to biases and contextual primes, it would be beneficial—in terms of reducing the impact of malleable and biased attitudes and judgments—for judges and lawmakers to consider community sentiment in their decisions. Furthermore, there is always the potential for negative consequences of law and policy, regardless of whether decisions are fueled by community sentiment. Although there are no clear answers to the questions posed above, this book suggests a well-reasoned approach to law and policymaking; one that balances community sentiment with anticipated consequences and therapeutic outcomes for individuals and the system.

How Will Sentiment Be Interpreted and Applied?

Setting aside the question about the extent to which community sentiment should impact the law, it is also important to discuss how to effectively incorporate sentiment into decisions. Researchers are trained to conduct and interpret research in an unbiased manner. Although there is debate within academia about whether researchers can truly be objective, the scientific process demands that researchers *strive* to be neutral by putting aside (or sometimes acknowledging) biases throughout the research process and when interpreting the research of others. Thus, one could argue that researchers are best suited to interpret and apply the community sentiment research that informs law. Instead, legal researchers disseminate their work in journals and other outlets, with the hope that their works have a legal impact through judges and legislators. Alternatively and less fre-

quently, researchers or research groups (e.g., the American Psychological Association) may submit amicus briefs, which summarize findings of research to inform judges. These channels through which research can inform the law bring up several questions and related issues about how to best inform judges and lawmakers about community sentiment (see Blumenthal, 2003 for a discussion).

First, whose job is it to interpret the research (judges or legislators)? As discussed above, Justice Rehnquist suggests that legislators (and not judges) should be responsible for interpreting and applying community sentiment. Justice Scalia likewise has clearly articulated his position that judges are not tasked with interpreting and applying the sentiment of the people. Other Supreme Court justices do believe that the courts should examine community sentiment (see, e.g., *Casey*). There is also evidence presented in Chaps. 2 and 3 (this volume) that suggests legislators do listen to community sentiment. Both could potentially be charged with this responsibility, but there is likely to be variability in the interpretations of sentiment (both across these two populations and within), which brings up the next question about the processes used to incorporate sentiment into legal decisions.

Second, what processes will be used to ensure that research is consistently incorporated into judges' and lawmakers' decisions? The answer to this question is not easily addressed, but uniform procedures (e.g., requirements for reading up-to-date community sentiment research) would be difficult and costly to implement and regulate. Wide-sweeping legislation that requires the use of community sentiment is unlikely, and thus the extent to which judges and legislators incorporate sentiment is likely to vary considerably. However, standard procedures for reviewing and implementing sentiment research are encouraged, for those who believe that community sentiment has a role in lawmaking.

If we can establish who should evaluate sentiment and how they should evaluate it, the next question that follows is: are judges and/or legislators qualified to interpret and apply community sentiment research? (see Blumenthal, 2003 for a review). Lawmakers and judges, though qualified in the legal realm, may not be trained to interpret research. Most would likely be able to interpret polls that assess sentiment on particular issues (e.g., attitudes about gay marriage), but they may not be able to effectively critique and weigh academic research, which often requires proficiency in statistics and research methods. Merlino, Richardson, and Chamberlain (2008) evaluated the amount of science and research training law schools provide for their students (some of whom do eventually find themselves in legal professions). Results suggested that some law schools are beginning to offer science and research training but that there will be an increased need for lawyers, judges, and lawmakers to better understanding research as it begins to intersect with the law more frequently.

Educating judges and lawmakers about the importance of gauging community sentiment, and how to best evaluate community sentiment research, is one broad way to address the aforementioned questions. First, educating judges and lawmakers about the importance of listening to community sentiment (at least in some cases) might promote the adoption of policies and procedures designed to consistently integrate sentiment into decisions. Second, education can help judges and lawmakers become better consumers of research. There are several potential mechanisms available to accomplish this. Ideally, judges and lawmakers should pursue interdisciplinary education or joint degree programs that include a substantial number of courses in science, research, and statistics. However, because most do have the time or desire to complete multiple graduate degrees, courses focused on research methods and statistics could be better integrated into program curricula, as suggested by Merlino et al. (2008), particularly in degrees that are most common for judges and lawmakers (e.g., law school and political science). Further, judges and lawmakers could be encouraged or required to take continuing education courses related to the scientific process. In addition to directly educating lawmakers and judges, nonpartisan policy research centers might possibly help to educate lawmakers. Family Impact

Seminars have also been used to educate lawmakers as to the likely impacts their laws will have on children and families (Wilcox, Weisz, & Miller, 2005). In light of the content in this book, future seminars could focus on informing lawmakers about using sentiment while balancing justice principles and attempting to predict unintended consequences. Finally, collaborations between judges, lawmakers, and social scientists should be encouraged as a way to bridge the gap between research and law (see discussion in Blumenthal, 2003). There exist some publications (e.g., Court Review) that present research in more clear-cut formats (see discussion in Wingrove & Jarrett, 2014), and more of these could be encouraged to help bridge the gap between disciplines.

Recommendations for Future Research

Future community sentiment research could investigate sentiment in any extant or emerging legal and/or policy issue, but this section will primarily focus on some of the recommended areas proposed in this volume. Several chapters offer directions for future research, some of which focus on the deficiencies in research design and others which focus on better understanding segments of the population and how to better educate the public about policy issues.

Methodological Improvements: Several chapters in this volume highlight the need for representative samples and better measures of sentiment. Many chapters in this volume acknowledged the methodological problems with nonrandom samples, but two chapters specifically recommend using more sophisticated tools to reduce sampling error. Chomos and Miller (Chap. 6) suggested using newer technologies (e.g., MTurk) to increase sample diversity when examining community sentiment about policy issues, and Brank and colleagues (Chap. 7) suggested the use of searchable databases to obtain more systematic, representative samples of government officials. Others chapters suggested that comparison groups would greatly improve our understanding of sentiment. For instance, Chaney (Chap. 10) suggested that surveying non-African-American communities about marriage promotion programs would provide a better understanding of how race impacts attitudes about this policy issue. Similarly, Chamberlain and colleagues (Chap. 13) would have benefitted from sampling heterosexual parents to examine their similarities with and differences from gay and lesbian parents in regard to attitudes and experiences with parenting and the legal system. Other chapters suggested the need for more complex measures. Miller and Thomas (Chap. 8) called for future research to examine other contextual factors that impact sentiment about policies that punish drug use during pregnancy, and Kwiatkowski and Miller (Chap. 11) suggested the need for more complex measures to accurately gauge the intricacies of attitudes about policies regulating social networking. Although applied to the specific topics in each chapter, these methodological recommendations can be applied to most future studies investigating community sentiment.

Understanding the Capabilities and Sentiment of Specific Populations: Another broad area of future research could focus on better understanding the sentiment of specific populations, including how individuals who are most impacted by law and policy think and feel. Sigillo (Chap. 12) suggested conducting future research to assess children's cognitive capabilities, in and out of the stressful courtroom environment. This research could play a role in determining the weight of children's sentiment in custody decisions and could also examine how children respond when their sentiment is ignored to determine if they see the legal system as less legitimate (just like research with adults suggests). On the other end of the lifecycle, Petonito and Muschert (Chap. 17) suggested the need for more research about the cognitive capabilities of elders in early stages of dementia. They suggested that gaining the input of elderly adults about their own capabilities would reduce some of the negative outcomes (e.g., a loss of personal liberties) of CCT-type legislation. Finally, Cooke and Walsh (Chap. 15) recommended factoring in

the sentiment of offenders (i.e., mothers who drink) to best formulate policy strategies to decrease cases of fetal alcohol syndrome in North Dakota.

Public Education About Community Sentiment: Just as legislators and judges would benefit from education, so too would the general public. The issue of ignorant sentiment is one discussed throughout this volume as a threat to the validity of sentiment and is cited as an argument against using sentiment to inform law in this chapter and in the introduction chapter. Several other chapters suggested that the accuracy and legitimacy of community sentiment research would benefit from a more informed public. Fass and colleagues (Chap. 16) suggested that community sentiment about sentencing for juveniles should be informed by research about adolescent development, the potential for rehab, and the effects of youth being sentenced by adult standards. Consistent with the "Marshall Hypothesis," they suggested that more education about juvenile development and treatments would lead to less support for adult sentencing in juvenile offender cases. Armstrong suggested that the public should be aware of empirical support for alternatives to sex offender registries, including reintegration into the community and therapy (see Levenson & D'Amora, 2007). Future researchers could explore demographic (e.g., education and political affiliation) and contextual (e.g., media influences) predictors of knowledge about these and other policy issues, as well as how information about these policies might change attitudes (similar to Kwiatkowski and Miller, Chap. 11). Ultimately this research could help inform strategies to educate the public about the empirical support (or lack thereof) for some policies.

Other chapters (e.g., Chaps. 2 and 15) suggested that the public could be more aware of the impact that the media plays in shaping sentiment. Sigillo and Sicafuse (Chap. 2) cite several examples of the media stirring up and manipulating emotional responses to high-profile cases. These responses are essentially shaped by sensational media coverage and often do not accurately and/or completely portray the facts of the case. Campbell (Chap. 14) suggested that both the public and media play a role in the fear atmospheres (and subsequent hasty policymaking) that are created in the wake of campus-related violence (e.g., mass shootings). One approach to avoiding quick and potentially damaging policy responses stemming from fear atmospheres is to ignore sensational media coverage. If the public becomes more aware of the potential negative consequences of consuming sensational and fear-based media coverage, this may promote more responsible and balanced reporting of the media. More research on these and other topics that explore the connection between media and community sentiment is needed to further inform education strategies for the public, including outlets that disseminate evidence-based messages that are easily digestible and attention grabbing.

Whether it be about the capabilities of a population (e.g., children), the potential negative outcomes of laws (e.g., sex offender registries), or the impact of relying on media outlets (e.g., in the case of school shootings), educating the public about their sentiment and its impact on the law presents several challenges. At the most basic level, large segments of the public may not be motivated to invest cognitive effort into learning about and/or understanding evidence that can impact their opinions. These individuals are likely to ignore any education efforts. Those with strong attitudes about a topic (e.g., those who support harsh sentences for juvenile offenders) may also be resistant to new information that conflicts with their beliefs (e.g., evidence that harsh sentences lead to negative outcomes). Education about the potential negative effects of media consumption may also fall on deaf (or biased) ears, as the public may be unwilling to change deeply ingrained habits. The ubiquitous coverage of violence (e.g., the Sandy Hook school shooting) and tragedy (e.g., any major natural disaster) suggests that individuals are captivated by these topics and the nonstop (and one might argue unnecessary) media attention that follows and thus some viewers may be resistant to changing their habits. In short, individuals are often not motivated to seek new information, they may not be open to their biases in information seeking and consumption, and they may be

unwilling to break habits related to media consumption. Any efforts to educate individuals (e.g., providing simplified research briefs) about their own sentiment, including its antecedents and consequences, should account for the biases and motivations with an understanding that some of these attitudes and behavior will be difficult to change.

Conclusion

The Supreme Court decision in *Schuette v. Coalition to Defend Affirmative Action* (2014) provides a recent example of the role of community sentiment in the law. In a 6 to 2 decision, the Court ruled that a 2006 referendum to prohibit considerations of race in the state's university admissions criteria was constitutional (Barnes, 2014). Writing for the majority, and joined by Justices Roberts and Alito, Justice Kennedy stated: "There is no authority in the Constitution of the United States or in this court's precedent for the judiciary to set aside Michigan laws that commit this policy determination to the voters" (Barnes, 2014, p. 2). In effect, the ruling affirmed the role of community sentiment in shaping local policies in the state of Michigan. From one perspective, this ruling highlights some of the triumphs of using community sentiment to inform the law. Proponents of the policy argue that it will encourage equal treatment for all prospective students which could lead to therapeutic outcomes for minorities and nonminorities alike. Because the voice of the community was affirmed, the decision could also increase the public's personal efficacy in political processes and improve perceptions of the legitimacy of the legal system—outcomes that are beneficial for the legal system in general.

From another perspective, this case highlights many of the problems with community sentiment impacting the law. It is possible that sampling errors occurred, especially if certain segments of the population (e.g., those in the majority) were more heavily recruited to participate in the vote. It is also possible that measurement errors could have occurred from unclear questions, emotional or cognitive biases, contextual cues that primed a certain response (reminders of minority-group threats), or just plain ignorance. Perhaps voters were also not aware of some of the potential negative consequences of this policy, including the potential decline in minority student enrollment that might result from the referendum, similar to what has occurred in other states that have adopted comparable policies (see Colburn, Young, & Yellen, 2008). Thus, relying on sentiment in this case could lead to anti-therapeutic outcomes, given that these policies effectively eliminate efforts to reduce systemic biases (e.g., unfair aptitude tests) that prevent minority students from attending college. As Justice Sotomayor noted in her dissent, the decision to affirm the power of voters could also infringe on the 14th Amendment of the Constitution (establishing equal protection under the law)—this is another argument against the use of community sentiment (discussed in Chap. 1).

This case provides yet another reminder of the powerful role that community sentiment plays in lawmaking, but it also highlights some of the complexities that arise when the public has the power to make legal and policy decisions. It is likely that any decision informed by sentiment will have pros and cons, and this assessment is ultimately subjective as is often reflected in polarized public responses to Supreme Court decisions. Although the tone of this book arguably favors the use of sentiment, there are several caveats and considerations for its use and there are certainly cases where sentiment should not be used to inform law. In short, the seemingly simple idea of a community sentiment influencing the law turns out to be quite complex—this volume is an attempt at capturing that complexity.

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