

THREE STRIKES AND YOU'RE OUT

*Exploring Symbol and Substance in American and
British Crime Control Politics*¹

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Criminologists have become increasingly interested in the extent to which, and ways in which, criminal justice and penal policy ideas and innovations travel across national boundaries. A particular focus has been the apparent convergence of some aspects of crime control policy in the United States and the United Kingdom associated with policies such as 'zero tolerance' policing, youth curfews, the 'war on drugs', increased use of incarceration and the privatization of criminal justice agencies. This paper focuses upon the area of sentencing policy and, in particular, the emergence of so-called 'two' and 'three strikes' sentencing policies in the United States and the United Kingdom. The paper outlines the contrasting forms and variable impacts of these sentencing policies in different jurisdictions. In particular, it examines the relationship between symbolic and substantial dimensions of policy in contrasting jurisdictions, the degree to which differences are related to the strategic intentions of politicians and policy makers, and the mediating factors of varying legal and political institutions and cultures. The central argument of the paper is that in the context of the political institutions and cultures of some US states, the relationship between symbol and substance is much closer than is the case in other jurisdictions, not least that of the United Kingdom.

Introduction

In recent years, several writers have highlighted the international spread of penal policies that appear to have origins in the United States (Christie 2000; Garland 2001; Nellis 2000). Such developments have included (among other things) the emergence of a significant transnational commercial corrections industry, the spread of ideas and practices associated with 'zero tolerance' policing, the introduction of youth curfews, the war on drugs and increasing rates of incarceration (see Newburn 2002). This paper focuses upon the particular arena of sentencing policy. Apparently growing similarities between the sentencing approaches of Western countries have led to discussions about the 'globalisation of sentencing policy' (Frase 2001) in which it is suggested that 'common features include not only broadly similar sentencing purposes, procedures, and alternatives but also similar recent trends (e.g. toward increased severity, particularly for violent, sex and drug offenders)' (Frase 2001: 259).² Such observations concur with

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² We recognize that Frase also highlights a number of significant differences that persist between the sentencing systems of Western nations.

an influential body of recent work that highlights transnational social and economic forces underlying policy convergence between different jurisdictions (Garland 2001; Christie 2000; Wacquant 1999). By contrast, other authors have highlighted the continued divergence between the penal policies of different nation states, and related these to persistent differences in national, and sub-national, political institutions, cultures and historical traditions (Jones and Newburn 2002ab; Melossi 2001; Muncie 2004; Stenson and Edwards 2004; Tonry 1999; 2001; 2004ab; Whitman 2003).

This paper attempts to draw upon perspectives from both these influential bodies of work. Overarching studies of policy convergence in criminal justice have been extremely important and have made a significant contribution to our understanding of current trends in penal policy. At the same time, scholars who have provided more focused and detailed policy histories that seek to identify and explain regional and national differences have enhanced our comprehension of the ways in which local political cultures and the activities of key political actors serve to initiate, reshape, mediate or resist policy ideas and innovations that travel across jurisdictional boundaries. This paper certainly does not suggest that authors whose work falls into either of these broad approaches are presenting a picture of ‘total’ convergence on the one hand, or complete national/local autonomy on the other. Indeed, most authors writing in this field clearly recognize the simultaneous existence of elements of convergence and divergence between nations and regions, and accept that policy outcomes arise from a complex interplay between local, national and international forces. In Garland’s words, the different emphases of these distinct approaches reflect the ‘unavoidable tension between broad generalization and the specification of empirical particulars’ (Garland 2001: vi). However, although we would concur with this on one level, we do think that it is possible to develop further the focus upon both similarity and difference between national penal systems, drawing upon the important insights of both the ‘broad generalization’ approaches that Garland refers to, and those which concentrate more upon the ‘empirical particulars’. Inevitably, given the nature of the study on which it is based, this paper leans more towards the latter approach, in that its focus is upon the development of specific policies at particular times and places. However, in exploring the ways in which criminal justice and penal policies formed at given points in time within the context of distinctive sets of political institutions and cultures, it is important to remain mindful of the degree to which broader social and cultural trends underpin and shape (and are shaped by) these developments.

In exploring the nature of convergence and divergence in penal policy in different jurisdictions, this paper examines the introduction of a particularly harsh (or certainly harsh-sounding) form of mandatory sentencing—commonly referred to using the baseball metaphor, ‘three strikes and you’re out’. Appearing initially in the United States in the late 1980s and early 1990s, with a variant introduced in the United Kingdom later in the 1990s, on the surface, this appears a relatively straightforward case not only of increasing punitiveness but also of cross-national convergence.

The current paper has two central objectives. First, we wish to contribute further to a growing body of work on criminal justice and penal policy making. As we have noted elsewhere, most criminologists working in this area to date ‘have focused their empirical research upon the content and impact of penal policy, rather than its origins’ (Jones and Newburn 2005). Paul Rock’s detailed policy analyses provide a conspicuous exception to this tendency (Rock 1990; 1995; 2004), but, in general, criminologists

have left the study of policy making to political scientists. Political scientists, on the other hand, have shown surprisingly little interest in the sphere of criminal justice and policy. The second aim is to explore the degree to which (and the ways in which) national and local political structures/cultures—and the subjective decisions of key political agents working within these—may re-shape, mediate or resist altogether the broader policy ideas that travel within and across jurisdictional boundaries. Whilst much recent work has focused upon structural and cultural forces shaping policy developments, we feel that it is important to consider divergence as well as convergence between national penal systems. Understanding difference is crucial in helping us to understand our own jurisdictions as well as helping to illustrate the nature and sources of resistance to globalizing pressures (Newburn and Sparks 2004). In particular, it is important to examine the degree to which differences in penal policy outcomes can be related to differences in political institutions and processes, and the strategic choices made by political actors within these constraints. In part, this requires a more detailed exploration of what we mean by 'policy' and the processes via which it is formed.

This paper is divided into three sections. The first provides a broad descriptive account of the emergence of two/three strikes sentencing policies in the United States and the United Kingdom, respectively. The second section explores in more detail the similarities and differences between jurisdictions in terms of the particular 'policy levels', ranging from the more substantive manifestations to the symbolic elements of policy. The third section examines the roles of political agents in promoting or opposing these sentencing reforms, and the differing political institutions and cultures within which they operate.

The Development of Two/Three Strikes Sentencing

Mandatory minimum sentencing in the United States

All 50 states and the District of Columbia now have some form of mandatory minimum sentence (Kennedy 2000). Yet, it was not until the late 1980s that the slogan 'three strikes and you're out' entered the sentencing arena. Although most frequently associated with California, the slogan first became attached to the notion of mandatory minimum sentences in debates about crime and sentencing in Washington state (Brinkley 2003). A conservative activist and local television commentator, John Carlson, used it to promote his proposal for a mandatory life sentence without parole for conviction of a third serious crime (Gest 2001). Following the murder of Diane Ballasiotes in 1988 (who was stabbed to death by a convicted rapist on work-release from prison), Carlson and Diana's mother joined forces to campaign for tougher sentencing laws in Washington. Little practical progress was made until 1993, when the powerful National Rifle Association (NRA) provided support for the 'three strikes' campaign in the form of funding and access to its extensive mailing list. Despite significant public opposition from penal reform groups and criminal justice professionals, an overwhelming majority of voters approved Proposition 593 in a state-wide ballot in November 1993.

By this time, the 'three strikes' slogan had spread southwards to California, and once again, a high-profile crime and campaigns led by 'homicide co-victims' (Dubber 2002) were to be central in subsequent policy developments. In June 1992, an 18-year-old student, Kimber Reynolds, was killed during an attempted robbery by Joe Davis, a man with a string of previous convictions for drugs, robbery and car offences. Kimber's

father, Mike Reynolds, began to campaign for tougher sentencing of repeat offenders (Reynolds *et al.* 1996) and in early 1993 persuaded a Republican member of the state legislature to sponsor Assembly Bill 971, the legislative version of what would later become the ‘three strikes’ law (Domanick 2004). When the Bill was voted down at its first hearing in the state legislature, Reynolds decided to by-pass the state legislature and use the voter initiative process. Although the campaign received backing from powerful lobbies such as the Republican Party, the NRA, and the Californian Correctional Peace Officers Association (CCPOA), the initiative was slow to attract the necessary public backing (Reynolds *et al.* 1996; Greenberg 2002). However, in October 1993, 12-year-old Polly Klaas was abducted, sexually assaulted and murdered by a repeat offender who had been released early (for good behaviour) from a prison sentence for kidnapping. The case received national and international media attention, and provided crucial impetus to the campaign for three strikes. Reynolds was able to return to the California legislature and effectively say ‘pass AB 971 or the voters will do it for you’ (Vitiello 1997: 413). Such was the perceived strength of public feeling and the political momentum behind the movement to three strikes, the Bill was passed without change by a huge majority of legislature members. According to Zimring *et al.* (2001) this development was unique in US sentencing reform in that ‘the legislative and initiative processes through which the proposal travelled were almost entirely devoid of expert scrutiny from government specialists or from scholars’ (Zimring *et al.* 2001: 3).

A number of parties—including several members of the Californian state legislature, law enforcement officials and members of Reynolds’ own advisory team—had suggested amendments to the proposed legislation that would target it more specifically upon violent offenders (Vitiello 1997). Reynolds refused to compromise, and even after the Bill was passed into law as it stood, he continued the voter initiative process in order to narrow the future possibilities of legislative amendment or reversal.³ The interplay between the Republican governor seeking re-election, Pete Wilson, and the Democrat-controlled legislature was also key to the eventual emergence of a more extreme version of three strikes sentencing. Wilson’s enthusiastic embracing of the ‘tough on crime’ message was perhaps predictable given his low approval ratings and the poor state of the state economy. Democrat members of the state legislature were unwilling to be portrayed as soft on crime, and responded by considering a range of ‘three strikes’-type proposals, including Reynolds’ version. The Democrat leadership of the legislature announced that they would concur with whatever version Governor Wilson chose.⁴ Governor Wilson, keeping the public promise he had made at the funeral of Polly Klaas in 1993, re-stated his preference for the Reynolds version (Abramsky 2001):

In effect, the executive and legislative branches had swallowed whole the outside-the-beltway version of Three Strikes because they were unwilling to concede the ground on ‘getting tough’ to the other side in the political campaign to come. (Zimring *et al.* 2001: 6)

Between 1993 and 1995, 24 states added ‘three strikes’ legislation to already existing laws that enhanced sentencing for repeat offenders. The ‘three strikes’ movement was

³ Under Californian law, in order to amend or reverse a law passed by voter initiative, support must be given by either a two-thirds vote of the members in each house of the legislature, or the electorate must support an initiative specifically reversing the previous legislation.

⁴ Cross-party support for three strikes continued under Wilson’s successor as Governor, the Democrat Gray Davis, who was replaced by Arnold Schwarzenegger in 2003.

not confined to state jurisdictions, but around the same time also emerged in the federal system. Although, as stated above, mandatory minimum sentences were far from uncommon in the federal system prior to this, the form that the new sentencing provisions took in the mid-1990s closely mirrored what was happening in many states across the United States. The idea was endorsed by President Clinton in his 1994 State of the Union Address (Surette 1996) and eventually incorporated into federal legislation in the Violent Crime Control and Law Enforcement Act 1994 (Windelsham 1998).

Mandatory minimum sentencing in the United Kingdom

In the United Kingdom, in the early 1990s there was a marked move away from the just deserts-influenced Criminal Justice Act 1991, towards increasingly populist punitive policies (Bottoms 1995) together with increasing criticism of the alleged 'leniency' of judges and magistrates. Michael Howard had become Home Secretary in 1993, and at the Conservative Party Conference in the autumn of that year, had signalled a major change from the dominant approaches to penal policy in recent years (broadly aimed—with limited success—at reducing the use of imprisonment) by famously announcing that 'prison works'. Two years later, the Conservative Party Conference was again the setting for Howard's announcement of a major policy initiative, when he signalled his unexpected conversion (Windlesham 2001) to mandatory minimum sentences. During his Conference speech, he promoted two particular reforms. First was increased 'honesty' in sentencing ('no more half-time sentences for full-time crimes') that proposed to abolish automatic early release and increase the actual amount of time served in prison. Secondly, he suggested the introduction of a variant on 'two' and 'three strikes' sentencing (although, importantly, he did not use the slogan). The two strikes bracket (automatic life sentence for a second offence) was appropriate, according to Howard, for serious violent and sexual offenders. He also stated his support for mandatory minimum sentences for burglars and drug dealers, though he specified neither a minimum sentence length nor the number of previous convictions that would be required to trigger such a sentence.

Howard's speech led to an immediate critical response from penal reform groups and also senior judiciary. The Lord Chief Justice, Lord Taylor of Gosforth, issued a press statement on the same day in which he attacked the reasoning behind mandatory minimum sentences. He argued that mandatory minimum sentences 'are inconsistent with doing justice according to the circumstances' (Taylor 1995, quoted in Dunbar and Langdon 1998). This set the scene for an unprecedented public battle between government ministers and senior members of the judiciary over the following months (Windlesham 2001).

The White Paper arising from Howard's conference speech, *Protecting the Public*, was published in March 1996, and proposed (among other things) an automatic life sentence for those convicted of a second serious violent or sexual offence, a minimum seven-year sentence for those convicted on a second occasion of a class A drug dealing offence, and a minimum three-year sentence for a third conviction for domestic burglary (Home Office 1996). Automatic early release for prisoners was to be abolished, with provisions introduced whereby prisoners would have to earn time off their sentences. Interestingly, the White Paper already included what was to become an increasingly important phrase in the subsequent development of legislation. In the

section on automatic life sentences, the White Paper stated: ‘The court should be required to impose an automatic life sentence on offenders convicted for the second time of a serious violent or sexual offence, *unless there are genuinely exceptional circumstances*’ (Home Office 1996, emphasis added). With identical wording, the proposed mandatory sentences for drug dealers and burglars were also qualified in the White Paper.⁵ For violent and sexual offences, and for the drug dealing provisions, it was proposed that convictions before the commencement of the proposed legislation were to be included. By contrast, and primarily because this provision was likely to have the greatest effect on the prison population, the burglary provision was only to apply to convictions following the introduction of the law. The White Paper listed a number of specific offences that would come under the definition of serious violent or sexual crimes. There was also a section that explored the implication for the prison population of these changes. It stated that there would be little immediate impact on the prison population arising from the sexual/violent crime and drug dealing provisions, since such offenders would be likely in any case to receive long jail sentences. However, the burglary provision clearly had bigger resource implications, given the greater volume of such offences, and the White Paper stated that the implementation of such a provision would have to await a prison-building programme in order to provide the necessary prison spaces.

The Crime (Sentences) Bill received its First Reading in the House of Commons in October 1996. A number of key points stand out from its troubled passage through Parliament. First is the equivocal stance taken by the Labour Opposition, who were determined not to open themselves up to accusations of being ‘soft’ on crime with a General Election looming (Windlesham 2001). Effective opposition to the Bill in the Commons was left to the smaller parties (in particular, Liberal Democrat and Plaid Cymru MPs made crucial interventions at the Committee stages, along with some dissenting Tory backbenchers such as former Home Office minister, Peter Lloyd). A second key aspect of the legislative history of two/three strikes was the central role played by the House of Lords, where the Bill came up against considerable opposition, not least from senior Law Lords and several former Conservative Home Secretaries. The House of Lords delivered the only defeat to the Bill and, crucially, introduced amendments that extended the ‘exceptional circumstances’ clause. The amendments would allow judges to have regard to ‘specific circumstances’ relating either to the offence or to the offender, when considering whether it was appropriate not to apply the mandatory life sentence and the minimum custodial sentences. A further condition was added to the minimum custodial sentences: that the court should have regard to any specific circumstances that would render the prescribed sentence ‘unjust in all the circumstances’. This widened the range of issues that judges could take into account when considering ‘exceptional circumstances’, and would allow them to interpret the clause more broadly than had been the intention of the framers of the Bill.

The other key aspect that stands out in the history of the Bill (and what happened to the subsequent legislation) was the crucial issue of its timing. When the General Election was announced on 18 March 1997, all unfinished legislation either had to be completed or abandoned by the end of that week. This announcement had a very

⁵ According to Windlesham (2001), the ‘exceptional circumstances’ clauses had not been part of Michael Howard’s original plans, but the wording had been included at the insistence of Lord McKay.

significant effect on the passage of the Crime (Sentences) Bill, because it meant that there was little time for the Bill to return to the Commons, where it was suspected the Lords amendments would be voted down (with the acquiescence of the Labour Party). Under the threat from Liberal Democrat Peers to keep the Report stage going (and thus prevent the Bill returning to the Commons in time), the Home Secretary negotiated an agreement that if the Bill was returned to the Commons in its amended state, the government would not seek to overturn the amendments to the exceptional circumstances clause. The significance of these changes cannot be underestimated. For example, Ashworth (2001)—perhaps the leading British commentator on sentencing—has argued that the addition of the ‘unjust in all the circumstances’ clause to the drug dealing minimum sentence effectively ‘emasculated’ the government’s intentions.

The Crime (Sentences) Act 1997 was thus passed into law before the General Election, and it introduced three sets of mandatory sentences. It provided for an automatic life sentence for a second serious sexual or violent offence, a minimum seven-year prison sentence for third-time ‘trafficking’ in class A drugs, and a minimum three-year sentence for third-time domestic burglary. The mandatory sentences for sexual and violent crimes, and for drug trafficking, were implemented fairly soon after the 1997 election, though the mandatory sentence for ‘third-time’ burglars was initially left dormant on the statute book (Dunbar and Langdon 1998). Eventually, the measure proved irresistible and, in early 1999, Jack Straw announced plans to implement the final ‘three strikes’ provision in the Act in December 1999.⁶ Given the proportion of all criminal offences accounted for by burglary (23 per cent in 1997) compared with the other offences subject to ‘three strikes’ penalties, the impact on the prison population was felt likely to be much more significant.

The British version of ‘two/three strikes’ was to come under further judicial attack when the Human Rights Act 1998 came into force in October 2000. As noted by Cavadino and Dignan (2002), shortly after the Act came into force, the Court of Appeal under the (then) Lord Chief Justice (Lord Woolf) reinterpreted and further widened the meaning of the ‘exceptional circumstances’ clause in the two strikes penalty for serious violent and sexual offences. The Court ruled that if an offender was not felt to present a significant risk to the public, then this could count as an ‘exceptional circumstance’ that would allow the court not to pass a life sentence. This, according to Cavadino and Dignan, would ‘presumably allow sentencers to avoid passing life sentences in many—possibly most—of these “two strike” cases’ (Cavadino and Dignan 2002: 106).

Symbol and Substance in Sentencing Policy Reform

In previous work, we have attempted to explore the detail of policy changes by distinguishing between different ‘levels’ of policy. In particular, we have explored the symbolic/rhetorical aspects of policy on the one hand, and the more concrete substantive manifestations of policy on the other (Jones and Newburn 2004; 2005). Here, we take

⁶ The announcement was made on 12 January 1999, and the provision came into force on 1 December 1999. The provisions for mandatory sentences for repeat violent offenders and drug traffickers came into force on 1 October 1997. Dunbar and Langdon (1998: 155) argue that the Home Secretary’s reluctance to implement the three strikes burglary provision was not based on any principled objection to the power but ‘was founded simply and solely on the likelihood (or, rather, unlikelihood) of adequate resources being available’. Similarly, its implementation in 1999 was more a matter of image management than principled policy implementation.

a similar approach, beginning with an outline of the most substantive element of the policy of two/three strikes in terms of its *impacts* (i.e. numbers of prisoners sentenced under its provisions). We then consider the level of *policy content and instruments* (the specific legislative forms taken by policy and the particular administrative instruments utilized). Finally, we discuss the *symbolic* element of policy (rhetoric, policy styles, etc.). This allows us to explore in more detail the particular aspects of similarity and difference in policy in different jurisdictions.

Policy impacts

It is important to remind ourselves of the danger of over-simplifying the US experience. As Reitz (2001: 223) points out, ‘there really is no such thing as “US sentencing practice” . . . primary responsibility for criminal justice resides at the state level—and the states have varied greatly in their individual experiences of crime and their governmental responses to it’. Accordingly, though sentencing reforms that broadly conformed to the ‘three strikes’ rubric did rapidly spread in the United States during the mid-1990s, in practice these laws varied significantly both in the precise nature of the legislation—the nature of a ‘strike’, the number needed, and the nature of the mandatory sentence that resulted (Clark *et al.* 1997)—and in terms of the practical impact they have had.

The impact of California’s two and three strikes legislation has been greater than all other state and federal three strikes statutes put together. Data collected by the Justice Policy Institute (Schiraldi *et al.* 2004) on 21 of the states that have passed such legislation show that 14 states have fewer than 100 people incarcerated under three strikes laws and only three—Florida, Georgia and California—have over 400 imprisoned. Indeed, as numerous commentators have observed, and as Schiraldi *et al.* (2004: 4) also note, ‘the exceptional impact is in California’, where it is difficult ‘to overstate how much [it] has been out of step with the other Three Strikes states’ (see Table 1).

In the United Kingdom, the substantive impact of the two/three strikes provisions has been rather limited to date. A number of newspaper articles over the subsequent years highlighted the limited practical impact of the two and three strikes laws, with judges using the existing exceptional circumstances clauses to preserve their discretion in individual cases. By December 2000—a year after its implementation—not a single three strikes sentence had been passed on a convicted burglar—the mandatory minimum widely expected to have the greatest impact (Cavadino and Dignan 2002). However, perhaps this is not surprising given the requirement for relevant previous convictions to have occurred after the implementation of the Act. Nevertheless, the symbolism of this news story was important, and attracted both praise and criticism. Harry Fletcher of the National Association of Probation Officers made a press statement in which he expressed his delight that the courts were exercising their discretion. On the other hand, Julian Lewis, the Conservative MP for New Forest East, urged the Government to amend the legislation in order to curb judicial discretion on this matter, because, in his view, judges were ‘out of touch’ with the public.

The latest figures for convictions under the ‘two’ and ‘three strikes’ provisions tend to support the general predictions that the provisions would have a rather marginal effect in terms of prison populations. Table 2 shows the numbers of sentences given by the courts under the provisions of the Crime (Sentences) Act 1997, later consolidated under the Powers of Criminal Courts (Sentencing) Act 2000.

TABLE 1 *The impact of 'three strikes' in US states*

Number of people incarcerated under three strikes laws by state	
Arkansas	5
California	42,322
Colorado	4
Connecticut	1
Florida	1,628
Georgia	7,631
Indiana	38
Maryland	330
Montana	0
Nevada	304
New Jersey	10
New Mexico	0
North Carolina	22
North Dakota	10
Pennsylvania	50*
South Carolina	14
Tennessee	14
Vermont	16
Virginia	328
Washington	209
Wisconsin	9

*Approximate figures. Source: Schiraldi *et al.* (2004).

TABLE 2 *Persons sentenced under the Powers of the Criminal Courts (Sentencing) Act 2000 (England and Wales)*

	Life for 2nd serious offence (s. 109)	Minimum seven years for 3rd class A drug dealing offence (s. 110)	Minimum three years for 3rd domestic burglary (s. 111)
2000	57	2	0
2001	51	1	6
2002	44	0	2
2003	48	3	13

Source: Home Office (2005).

The table confirms the very small effects to date of the minimum sentences for drug trafficking and burglary, though clearly shows more significant numbers of people being sentenced under the 'two strikes' provision for a second serious violent or sexual offence. However, we cannot know how many of these cases would have attracted a discretionary life sentence in any event. What is clear is that original predictions that the new sentencing provisions may add over 5,000 to the prison population appear, at least at this stage, to have been considerably over-stated (White and Cullen 2000).

Policy content and instruments

An important factor lying behind the differential impact of three strikes across different jurisdictions concerns concrete differences in both the scope of the legislation enacted and the degree of discretion left for sentencers. There is, of course, a broad

level of similarity in the story of three strikes in different places that can be detected here, in that all jurisdictions employed broadly similar policy instruments, i.e. the introduction of legislation aimed at ensuring certain categories of repeat offender would be incarcerated for longer periods than had previously been the case. This was to be achieved via a statutory minimum sentence for certain offences that would curtail judicial discretion to set shorter sentences. However, it is clear that the balance between symbol and substance varied considerably in that ‘three strikes’ models were far more broadly defined in certain US states than in others (Vitiello 1997; Austin *et al.* 2000). Unsurprisingly, as King and Mauer (2001: 3) have noted, the state of California has attracted the most attention ‘because that state stands alone in the breadth of its policy’. As Austin *et al.* (1999: 158) observe, ‘with the noted exception of California, all of the states followed the initial lead of the state of Washington by carefully wording their legislative reforms to ensure that few offenders would be impacted by the law. . . . Only California has tried to expand the “strike zone” so that thousands of offenders could be sentenced under the new law’. When the specific details of policy content are examined in this way, the picture quickly becomes rather complex. This relates in particular to a number of variable features of the policy content including the breadth of the ‘strike zone’, the number of strikes required to trigger the sentence enhancement and the amount of discretion left to sentencers. In the US states that implemented ‘tougher’ versions of two and three strikes, there seems to have been less discretion for sentencers to circumvent the minimum sentences, what counts as a ‘strike’ has been more widely defined and the actual sentence enhancements were more severe than was generally the case in the United States and in England and Wales. The contrast was greatest with the legislation in California, which, as we have noted, was the most extreme form of two and three strikes. This remains the case even if the UK object of comparison is the original conception of the proposed legislation in the White Paper rather than the amended form eventually passed into law. For example, there was no suggestion in the White Paper of sentences as severe as 25 years to life with no parole. Moreover, though a far milder version than that eventually incorporated in legislation, the ‘exceptional circumstances’ clauses already existed in the original White Paper.

It is certainly the case, then, that in some US jurisdictions, the two and three strikes legislation was wider in scope than the laws that subsequently emerged in Britain. However, it is also true that among the 24 US states with some form of ‘two’ or ‘three strikes’ laws during the 1990s, there are a number where the legislation appears to have a *narrower* scope than that in Britain (see, e.g. Connecticut and New Jersey). In terms of another key variable within the three strikes movement—the degree of sentence enhancement available—the United States/United Kingdom comparison appears far more straightforward. In almost all cases, the penalties required by the ‘three strikes’ legislation in US states (and the federal system) were substantively more punitive than those in England and Wales. This is partly because in England and Wales, the judge retained discretion to set the recommended number of years of a life sentence that should be served in custody. This is a considerable contrast to the more draconian sentences passed under US laws.

Symbolic levels

It is clear that in both the United States and the United Kingdom, the move to ‘two’ and ‘three strikes’ sentencing policies had a strong symbolic element. In every case in

which such sentencing reforms were introduced, they were located within a broader 'get tough' law and order political rhetoric. The rhetoric of 'three strikes' swept through much of the United States very swiftly before finding its way into British political discourse. In both the United States and the United Kingdom, it seems that such developments can be related in a broad sense to wider structural and cultural conditions (Garland 2000). In particular, across the various jurisdictions of the United States and the United Kingdom, there was growing public and media concern about crime, an increasing perception that judicial discretion was being exercised to deliver overly lenient sentences and a growing tendency for the media to focus upon particularly high-profile crime stories involving ideal-type victims and 'monstrous offenders' (Kennedy 2000) in order to exacerbate popular pressures on policy makers. However, in most cases, such pressures have brought forth primarily expressive policy responses designed to demonstrate to a fearful electorate that 'something is being done' and in many cases deliberately framed to appear more radical than is in fact the case.

As a US Department of Justice review of 'three strikes' legislation has noted, 'from a national perspective the "three strikes and you're out" movement was largely symbolic' (Austin *et al.* 2000). As we have seen above, in the US federal system and most states other than California, 'three strikes' had a rather limited impact (Clark *et al.* 1997; King and Mauer 2001). According to Zimring *et al.* (2001: ix), most penal laws are deliberately designed to 'bark louder than they bite', and to provide the necessary symbolic 'get tough' message to attract votes, without having major resource implications. It seems that much of the 'three strikes' reform in the United States came under this category, being focused primarily on a small number of violent or dangerous offenders, many of whom may well have received long prison sentences in any case. Furthermore, despite the rapid spread of 'three strikes' rhetoric in the United States, it is important to note that this particular example of populist punitiveness was implemented in slightly under half of all states.

In Britain, it seems reasonable to argue that the symbolic dimensions to two/three strikes were less important, particularly in its original inception. In this regard, it is illustrative that Michael Howard—someone far from unfamiliar with the power of symbolic politics—refrained from deploying the exact terms 'two' or 'three strikes'. In fact, we can find no record of his ever using such terms. For a Home Secretary keen to borrow both ideas and rhetoric from the United States, Michael Howard was remarkably reticent when it came to descriptive terminology for his proposals on mandatory sentencing. However, regarding the 1995 Conference speech in which Howard announced his intentions on mandatory sentencing, the absence of the term 'three strikes' is in many ways quite striking. Although there was no shortage of soundbites and snappy phrases in Howard's description of what was to form the basis of his repeat offender/mandatory minimum sentences proposals, there was no sign of the term 'three strikes and you're out'. Given the context of the time, this absence is interesting. This was a period in British crime-control politics in which politicians were on constant watch for a new soundbite, however vacuous, that would convey their punitive intent and populist credentials. If the term had been road-tested in the United States first, then so much the better. Thus, the 1990s saw the arrival of proposals for curfews, for boot camps, for zero tolerance policing and for a Drugs Tsar. But not 'three strikes and you're out'. In interview, Howard himself claimed that this non-use of US terminology was quite deliberate:

No, I don't think I did [use the term] because 'three strikes and you're out' really as I recall it was to do with life imprisonment wasn't it, and that wasn't at all what we were about In my mind it's associated in America with life imprisonment and that's a completely different thing. (Michael Howard, personal interview)

This suggests that Howard's intentions were focused at least as much upon the operational as they were the symbolic. The symbolic was by no means unimportant—the whole tenor and presentation of his speech were designed to garner headlines and to create an impression of 'cracking down' on crime. However, in relation to sentencing, it appears that Howard's intentions went beyond the expressive; he meant business. He was actively seeking to pass measures that would increase sentence lengths, would reduce parole opportunities and would mandate minimum terms for repeat offenders (in circumstances, unlike most American states, in which such a principle was not already established). This position is consistent with Howard's stated beliefs in the effectiveness of incapacitative sentencing, his willingness to provide the resources to expand the prison estate and his general views about the need to bring sentencing policy under greater political direction.

The relative importance of the symbolic dimension was clearly greater in the approach of the Labour Party towards three strikes. This particularly applies to Labour's decision not to oppose the original Bill (because of fears of the possible electoral consequences of being portrayed as 'soft on crime') and in the subsequent decision of the Labour Home Secretary to implement all provisions of the Act. This attracted strong criticism from legal experts, but all accepted the political symbolism that lay behind it. For example, D. A. Thomas, a leading authority on sentencing, argued that 'it is impossible to find any sound reason for the decision of the Home Secretary to bring the greater part of the Act into force' (Thomas 1998: 83). In Thomas's view, this decision was entirely about symbolism. He suggested that the practical effects of the legislation would be negligible, but that its 'importance is in what it symbolises'. In a similar vein, Ashworth (2001: 85) argued that 'what mattered was how the new laws would look to the public, media and other politicians, not whether they would actually "work" as claimed' (Ashworth 2001: 85). The importance of symbolism in crime policy to New Labour in general, and of particular relevance to this case, was underlined by the leaking of a memo written by Tony Blair to his advisers in July 2000. Blair was concerned about growing public criticism of the government in general and his leadership in particular. The leaked memo reportedly referred to the mandatory minimum sentences introduced by the Crime (Sentences) Act as a tough measure that needed to be highlighted to the public (*The Guardian*, 17 July 2000). The symbolic importance of mandatory minimum sentences to New Labour is perhaps underlined by the fact that one of the few people to actually use the phrase 'three strikes' in Parliament was, in contrast to Howard's reticence, Tony Blair.

The Political Process: Agents and Institutions

This section explores the degree to which the differences outlined above may have been shaped by the strategic choices of political actors, mediated by the constraints of contrasting political institutions and cultures. We focus here on two key aspects of the political process: first, the role of political agency and the degree to which the above

differences reflected the original intentions of supporters of three strikes, and the active resistance of those that opposed it; and secondly, the contrasting political institutions and cultures within which political actors were operating that shaped the opportunities and constraints for their action.

Political agency

In their exploration of the very different consequences wrought by three strikes in California compared with much of the rest of the United States, Zimring *et al.* (2001) focus upon what they suggest is the 'loose coupling' between the symbolic message conveyed in particular legislative campaigns and the operational outcomes of those campaigns. As we have seen, though many states in the United States and the United Kingdom adopted reforms that shared both the nomenclature and the bulk of the symbolism of three strikes, the operational reality of much three strikes legislation has been fewer than 100 persons sentenced a year, compared with the many thousands sentenced under California's three strikes statutes. Traditionally, Zimring *et al.* argue, such loose coupling has allowed the bark of penal legislation to be worse than its bite. Politicians can employ a punitive rhetoric and pass laws that carry the impression of radical change whilst in practice ensuring that costs are minimized and operational impacts somehow mitigated. Recent Californian experience, they say, shows that the reverse can also be true: the loose coupling of the symbolic and operational can be used to increase and magnify practical outcomes in ways unanticipated, or perhaps even unknown, by the public. Whilst potentially highly problematic, this loose coupling, Zimring *et al.* (2001: 228) rightly observe, 'is an inherent feature of the democratic politics of criminal justice'.

It is important to consider the distinction between *intention* and *outcome* in penal policy as one means by which an analysis of the loose coupling of which Zimring *et al.* talk might be guided. Now, such a distinction is potentially implied in Zimring *et al.*'s identification of the symbolic and the operational—or policy *levels*, as we have termed them. Thus, in principle, it is potentially possible to distinguish between symbolic intentions and operational outcomes. However, the implication of Zimring *et al.*'s argument is more complex than this, for it is perfectly plausible that politicians actually embrace particular symbolic intentions simultaneously with different (more limited or more extensive) operational goals. Moreover, we must also not lose sight of the fact that it is not only possible, but quite likely probable, that initial symbolic and operational intentions will differ not only with each other, but more or less markedly from eventual operational outcomes. Rarely is policy in practice a close approximation of policy in its initial political formulation.

In particular, an important question arises as to how far these differences in the design of policy content and instruments relate to the conscious intentions of the policy framers. The historical development of three strikes sentencing in different jurisdictions suggests at least three distinct forms in which three strikes legislation developed in practice. First, and most frequent, is jurisdictions in which two/three strikes legislation was deliberately designed to be primarily symbolic—to have a bark that was worse than its bite. As noted in a major review of two/three strikes in the United States, the legislation in many states 'was not designed to have a significant impact on the criminal justice system' (Austin *et al.* 2000). A key example of this was the US Federal three

strikes legislation. Announced to considerable applause and acclaim by Clinton in his 1994 State of the Union address, the Federal legislation was deliberately designed to be very restricted in its operational outcome. We interviewed a number of Clinton's domestic policy team. Their view was that the political impetus behind three strikes was impossible to resist. In order to get through other elements of their crime policy agenda, it was important to use three strikes but, in practical terms, it was vital also to ensure that it did not have a dramatic impact on Federal sentencing. As one of Clinton's team put it:

['Three strikes'] came from the horrible case of Polly Klaas in California and her father who had, you know, taken on the public debate. . . . [He] came to the White House and argued for the provision. . . . And again, you know, what California did at the time we thought was pretty crazy. I mean it ended in doing I think the wrong thing, which after discussion even with Mark Klaas, he ended up agreeing. . . . And the federal provision was exactly the opposite. It was very, very narrow. I don't remember the number now, but before we embraced it and before he talked about it in his State of the Union, and after he had met with Mark Klaas, Clinton had asked for an analysis of how many people we thought it would affect and, you know, like a lot of things that we did, you know, we could have fought it like the traditional left would had done and gotten clobbered. . . . But we had a lot of good programs that meant a lot to Mayors and communities that we thought it was essential to get done. And what we did was embrace [three strikes] . . . the debate wasn't about whether or not to have it, but in Washington [how] to focus it.

The second form in which three strikes emerged applied to jurisdictions in which the legislation was deliberately framed to have a practical effect equal to or greater than the symbolic message. The consequences of three strikes in California have been different from almost everywhere else because the intentions of those driving the legislation were themselves clearly different from the motives underpinning the spread of three strikes in much of the rest of the United States. As Zimring *et al.* (2001: ix, emphasis added) point out, California was unique in the United States in that its 'three strikes' law 'was *designed* to operate even more broadly than its specialised title would suggest'. Within the United States, it seems fair to argue that in limited cases, especially where the legislation originated with local citizens rather than with government, the operational intention was considerably greater than in the bulk of state government-led imitations.

The third form concerns cases in which the original intentions of the framers of three strikes appears to go beyond the symbolic, but their practical aspirations are confounded to a degree by active political resistance to their proposals. This corresponds closely to what happened in the United Kingdom. Although Home Secretary Michael Howard's original conversion to mandatory minimum sentences surprised his ministerial colleagues (Windlesham 2001), it does seem clear that this went beyond mere symbolism. No doubt, political opportunism was an important element for a government with a small majority in parliament and under pressure from the opposition on crime issues. However, as noted earlier, there is evidence to suggest a genuine belief in such proposals that went beyond making a symbolic appeal. Michael Howard's original intention, it would appear, was to pass legislation that would have significant operational consequences as well as symbolic impact. This is clear from Howard's angry statement in the House of Commons in which he acknowledged the significance of these amendments forced upon his Bill by the House of Lords:

The Lords amendments drive a coach and horses through the provisions of the Bill that deal with burglars and drug dealers. . . . [They] would allow the present pattern of sentencing broadly to continue. (Parliamentary Debates, House of Commons, Column 982, 19 March 1997)

Howard's recollections of this time certainly support the contention that for him, this was much more than mere symbolic politics. According to his account, it was the imminence of the 1997 General Election that resulted in his accepting compromises that effectively undermined his original intentions:

I saw exceptional circumstances as really meaning *exceptional circumstances* and I would have limited them, required the Judge to give reasons and all that sort of stuff. Now, that was made into a bloody great loophole by what Labour did in the run-up to the 1997 election. The answer to one of your questions—would I have done it differently if the election hadn't been imminent—yes, bloody sure I would have done. But I didn't have time. When an election is imminent you have to make a judgement. And in the end I had to choose between allowing the legislation to fall and allowing these changes. (Michael Howard, personal interview)

In the case of the United Kingdom, the loose coupling of the symbolic and the operational was exploited by opponents of mandatory minimum sentencing to mitigate the government's intentions. Crucial in this was the opposition of the judiciary, peers in the House of Lords and backbench members of parliament in the Commons. The means by which impact has been limited is illustrative of some continuing differences between the political and legal cultures of the United States and the United Kingdom. In short, whilst political symbolism has been important in the passage of all three strikes legislation, the operational impact has varied markedly.

Moving beyond the shape that the actual legislation took, another important moderating influence on the impact of two and three strikes legislation—at least in the United Kingdom—has been the actions of sentencers themselves at the implementation stage. The United States–United Kingdom comparison here is illuminating. Although, historically, US judges have opposed restrictions on their discretion, the history of sentencing commissions and guidelines in many US jurisdictions contrasts with the relatively wide level of discretion under which sentencers in England and Wales have operated (Reitz 2001). The Californian legislation in particular was framed so as to reduce as far as possible the discretion of judges to avoid passing mandatory sentences. In Georgia, however, some two years after the implementation of three strikes legislation, there were concerns among state officials that judges and prosecutors failed to enforce the mandatory provisions—some because they didn't know of the existence of the law or simply forgot, others because they felt the sentences were too harsh (Austin *et al.* 2000). However, even in the most extreme case of California, the role of practitioner discretion remained significant. First, although judicial discretion was clearly substantially constrained, an element was restored by the 1996 Californian Supreme Court ruling that allowed judges some discretion to discount previous 'strikes' (see above). Secondly, and more importantly, the legislation did not eliminate discretion, but served to move it to a less visible stage of the criminal justice system. The legislation provided prosecutors with effective discretionary power over sentencing in terms of whether they decided to charge particular offences as felonies or misdemeanours, which determined whether or not they would count as a strike. This extended the role of plea-bargaining within the system. Research has demonstrated that the implementation

of ‘three strikes’ laws varied between different counties in California, and these variations were strongly related to the different policies adopted by county prosecutors (Clarke *et al.* 1997). Nevertheless, as we have seen, the practical impact of three strikes legislation overall was vastly greater in California than in other US jurisdictions, and certainly than that in the United Kingdom. It is in the UK context that judges have been able to draw upon their discretion provided by the amended legislation to further limit the practical impact of the new laws. In particular, judges have tended to interpret the exceptional circumstances clauses quite broadly. This is related to particular features of the political institutions and legal culture of the United Kingdom, as we discuss below. It has combined with the initial moderating forces at the legislative stage to reduce the operational impact of the Crime (Sentences) Act.

Thus, beneath the rubric of three strikes, we have differing intentions and differing outcomes. The UK outcome is partly an illustration of continuing differences in the political and legal cultures in which the legislation was passed, but also of the nature of the political and parliamentary conditions that existed at the time. UK political processes enjoy greater protection from direct voter involvement and from politicized victim lobbying—and also, arguably, a stronger tradition of judicial independence.

Political institutions and cultures

In general terms, broad similarities in the politics of crime and punishment in the United States and the United Kingdom are clearly visible. These include the existence of ideological similarities between the ruling administrations (both between Conservative and Republican administrations, and subsequently between Labour and Democrat administrations). Both countries saw the emergence of more punitive penal policies during the 1980s and 1990s. Both were two-party systems that were experiencing similar developments in the politics of crime. Politicians in both countries responded to growing public concern about crime by attempting to ‘out-tough’ the other in terms of penal policy proposals. However, notwithstanding these important similarities, there are significant differences between the United States and the United Kingdom that were crucial in shaping differences in policy outcomes.

In particular, there are very striking contrasts between the political institutions and cultures of the United States and those of the United Kingdom. As has been widely noted elsewhere, the US political system is more fragmented and open than the relatively centralized systems of Western European countries (Chandler 2000). There are more ‘points of influence’ for interest groups to target key decision makers at federal, state and local levels. This increases the potential influence of large-scale political lobbying in both state and national politics in the United States. Another significant feature of the US system concerns the division between state and federal responsibilities. In addition, the US political system is far more directly ‘democratic’ than that of the United Kingdom in terms of the proportion of public posts subject to direct popular election and the tradition of law-making via voter petition (Freedland 1998). These distinctive features of the politics of crime and punishment in the United States played an extremely important part in the story of three strikes. For example, prosecutors are elected in all states except for Connecticut

and New Jersey, most usually for a four-year term (Cole and Smith 2001). As Koski and McCoy (2002: 1274) note, 'being elected, (and remaining in office once there) is a primary concern for any politician, and prosecutors are politicians'. Another key contrast with the United Kingdom is the fact in the majority of US states, judges have to face re-election, rather than being appointed for life, as in the United Kingdom (Cole and Smith 2001). Thus, it has been noted that 'judges and politicians often appeal to the public demand for more rigorous criminal justice policies in the hope of enhancing their own electoral prospects' (Roberts and Stalans 1998: 31). Though popular sentiment has been an increasingly important influence over UK penal policy in recent years, it remains the case that judicial, governmental and academic elites still provide something of a buffer between public opinion and penal policy making (Downes and Morgan 2002). In the United Kingdom, the stronger tradition of judicial independence was illustrated by previous successful circumvention of executive attempts to structure discretion by courts, via the 'destructive interpretation' of judges (Cavadino and Dignan 2002). The wider judicial interpretation of the 'exceptional circumstances' clause described above is but the most recent of a range of examples of destructive interpretation of sentencing legislation by the courts in Britain.

Another critical difference in political histories of 'three strikes' in the United States and the United Kingdom concerns the very different politics of 'victimhood' in the two countries. Garland (2000) has noted that a key feature of the 'culture of control' that has arisen (in both the United States and the United Kingdom) is the important part played by a 'projected, politicised image of "the victim"' (Garland 2000: 143) in penal politics. This, he argues, is reflected in the naming of particular laws and penal measures after particular high-profile victims. It is striking, however, that there were no Polly Klaas or Megan Kanka figures in the British three strikes story. Recent penal history in the United States is very much one of specific campaigns with symbolic victims at their heart. By and large, this has not been the case in the United Kingdom. The UK three strikes story, it seems, was partly about the general wish to project political toughness (though this was largely accomplished in other ways) and partly about the ongoing battle that the then Conservative government were having with the judiciary. There continued to be deep scepticism about using victims as flagships upon which to base a campaign. The other absolutely central difference is the very differing degrees to which these policies were 'racialized' in the two countries. In the United States, historically, much of the push to mandatory minimum sentences was related to drug control policy and, directly or indirectly therefore, was about race. This was simply not the case in the United Kingdom; had street robbery been the focus of political and public concern behind the drive to three strikes, then this might have been different. Two of the three broad categories of offending that formed the target for the British version of two and three strikes (violence/sexual offences and burglary) are not predominantly the offences of which African-Caribbeans are disproportionately likely to be convicted.

Thus, although there is clear evidence of similarity between the broad policy ideas and rhetoric behind three strikes, both across different jurisdictions in the United States and in the United Kingdom, it seems equally clear that in the practical policy manifestations of these, ideas underwent considerable resistance and re-working in the context of national and local political and legal institutions, and in response to the agency of key political actors working within these constraints.

Concluding Remarks

The story of three strikes sentencing provides an interesting example of simultaneous convergence and divergence in the arena of penal policy making. The emergence of 'three strikes' clearly includes some important 'globalizing' elements that are consistent with the arguments put forward by writers such as Garland (2001) and Christie (2000). Such elements include the broader political and cultural conditions in both the United States and the United Kingdom that made the promotion of punitive policies appear politically attractive. The changed position of the main liberal-left parties on crime was also a crucial part of the story in both countries. Furthermore, links between developments in the United Kingdom and the United States are clearly visible. 'Three strikes' was a policy idea that first emerged in the United States, and later appeared (in a more moderate form) in the United Kingdom. In very broad terms, the policy content on both sides of the Atlantic was similar (in terms of statutory provisions for the enhanced sentencing of repeat offenders) and the policy instruments also displayed broad levels of similarity (the imposition of mandatory sentences to reduce the discretion of judges to lay down lesser terms of imprisonment). However, perhaps surprisingly, given general assumptions about the US roots of such ideas (Cavadino and Dignan 2005), there is rather limited evidence of direct policy transfer from the United States in this area (Jones and Newburn, forthcoming). It appears that the US influence was exerted more indirectly, arising from Michael Howard's broader views about incarceration and crime control. Mr Howard was known for his interest in and connections with conservative US thinking on crime and punishment and had a strong belief in the practical impact of deterrent and incapacitative sentencing. In this sense, the emergence of mandatory minimum sentencing in the United Kingdom contrasts quite markedly with some other areas of policy change in which elements of transfer (of some form) from the United States was far more evident (Jones and Newburn 2005). This perhaps suggests that apparent convergence owed as much to similar shifts in underlying structural conditions and the politics of crime as it did to deliberate emulation of the United States.

However, notwithstanding broad similarities, the three strikes story also contains very significant elements of divergence between different jurisdictions. Even within different states of the United States, 'three strikes' policies were crucially shaped by distinctive legal, political and cultural contexts, and the agency of key political actors. Although it seems that the idea of 'three strikes' did cross the Atlantic, in practice, it was subject to powerful forces of national and sub-national resistance, mediation and reworking within the particular political and legal cultures and institutions of the United Kingdom. In many ways, the Crime (Sentences) Act 1997 was reduced to a largely symbolic gesture rather than a practically significant reform of the sentencing system. The more muted form of the policy that emerged in the United Kingdom is crucially linked to differences in the processes that led to policy change, in particular regarding the distinctive features of the political systems and political cultures of the United States and the United Kingdom. Key here is the greater degree to which criminal justice policy remains buffered from the direct impact of popular sentiment in the United Kingdom when compared with the United States. The tradition of policy making via voter initiative was absolutely central to what happened both in Washington state and subsequently in California. Notwithstanding the noted shift towards populist

punitiveness in the United Kingdom (and the important influence this has had in particular on the stance of the Labour Party), what happened in Washington and California was in stark contrast to UK political traditions. In the three strikes story in the United Kingdom, the important role played by judicial elites in the campaign against key aspects of the proposed legislation and, crucially, the role played by the Second Chamber in helping to introduce vital amendments resulted in a legislative outcome very similar to, say, US Federal three strikes legislation, but as a result of very different processes.

An important point regarding the symbol/substance relationship in the United Kingdom concerns these subsequent developments of the sentencing reforms under New Labour. They demonstrate that the symbolic and substantial need not necessarily be seen as in opposition to each other. The relatively limited practical impact of the two/three strikes legislation in itself, and the largely symbolic commitment of New Labour to its message, should not be taken to imply that the measures were 'all talk and no action'. As Garland (2001: 22) has argued, 'political rhetoric and official representations of crime and criminals have a symbolic significance and a practical efficacy that have real social consequences. Sometimes "talk" is "action"'. Although the actual numbers of prisoners sentenced under the provisions of the Crime (Sentences) Act 1997 were relatively small compared with early predictions, we should not forget that the English and Welsh prison population has been growing significantly over the recent period. This growth has accelerated under New Labour. The reasons behind the growth in the prison population are complex, but experts agree that a key factor has been the increasing punitiveness of the courts. It does seem that sentencers respond to a growing climate of punitiveness, within which the rhetoric of politicians plays an important part. Indeed, it has been convincingly argued that rather than simply responding to punitive popular opinion, politicians actively construct and lead populist punitiveness as part of a deliberate electoral strategy (Beckett 1997). Although Thomas (see above) argued that the British legislation was primarily symbolic, he also argued that such symbolism may have some negative practical effects: first, in contributing to a punitive culture in which there is pressure on sentencers to increase the use of custody; and secondly, in setting a precedent for the introduction of further mandatory minimum sentences.

In sum, the 'three strikes' story highlights the haphazard and contingent nature of penal policy making. In this, it conforms closely to Kingdon's (1995: 206) observation that the public policy process includes 'considerable doses of messiness, accident, fortuitous coupling and dumb luck'. By undertaking detailed case histories of policy change, exploring both policy levels and processes, we can begin to highlight and explain both convergence and divergence in penal policy. This is important for a number of reasons, but two in particular stand out. First, in so far as criminologists aim to better analyse and understand the nature of the world we live in, this approach allows us to develop a more sophisticated comprehension of the processes of penal policy formulation, and one that takes into account the complex interplay between local, regional, national and international influences. Secondly, there remains an important normative element to the criminological enterprise. Criminologists are participants in, as well as observers of, the social world (Zedner 2002). In so far as we have views and concerns about the current direction of penal policy, the recognition that 'politics matters' underlines that this direction is neither inevitable nor irreversible.

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