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In Defense of Three-Strikes: Analyzing the Impact of California's 1994 Anti-Crime Measures

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Ronald J. Pestritto, Jr.

Background: California's Response to Crime in 1994

Criminal punishment is one of the most important, if not *the* most important, contemporary public policy issues. In states across the nation, as well as in Congress, anti-crime legislation has dominated the agenda. The year, 1994, was a particularly big year for anti-crime legislation; and nowhere was the change more extraordinary than in California. The degree to which California increased its criminal punishment may very well be the greatest of any one state at any particular time.

The stunning 1994 increase in California's mandated criminal punishment comes largely out of three legislative measures: the three-strikes law, the one-strike rape law, and the reform of good-time credits for state prisoners.

Reform of good-time credits

While most attention was paid to the three-strikes and the one-strike laws, the reform of so-called "Good-time" credits (also known as "truth-in-sentencing") was perhaps the most important

1215 15th Street - Sacramento, CA 95814
(916) 445-5437

anti-crime measure of 1994. Of the three primary anti-crime measures, it received by far the least public notice.

The former practice in the State of California and most other states was to allow convicted felons to be released *much earlier* than their sentences provided. State prisoners were routinely rewarded for "good behavior" while in prison. Those prisoners participating in work or educational programs were considered to be on "good behavior." The normal practice was the so-called "day for day good-time" system. Under this system, a prisoner's sentence was reduced by one day for every day of his incarceration that he served with "good behavior." This meant that a rapist, for example, sentenced to an eight-year prison term, would ordinarily be released in four years because of good-time credits. Even those prisoners who had signed up for work or educational programs, but who were not actually participating in them, received a 33 percent reduction in their sentences. This practice, although well known among criminal justice professionals, was deceptive to most citizens. Citizens who believed a dangerous murderer was being sent away for at least twenty-five years would normally have no idea that the prisoner would likely be back on the street in less than thirteen.

It is for this reason that "truth-in-sentencing" is the most important type of reform that was passed in 1994. While the legislature, or the people themselves, may enact longer prison terms, such terms are meaningless unless they bear some relation to the length of time actually served behind bars. Truth-in-sentencing essentially gives teeth to other important anti-crime measures by drastically reducing the disparity between the sentence prescribed by law and the actual time served by violent offenders. Without truth in sentencing, citizens and lawmakers could have no assurance that the tough new penalties enacted in the three-strikes and one-strike laws would actually result in prisoners' serving longer terms.

The "day for day" good-time system grew out of the change in focus from rehabilitation to punishment. When the rehabilitative focus of the prison system during the 1960s and 1970s had proven a failure, the State of California changed its sentencing practices. Under the rehabilitative system, which was based uupon *indeterminate* sentencing, if prisoners could somehow demonstrate to corrections officials that they had been "cured," their release would soon follow. But when this approach was abandoned in 1976 for a system that became focused on actually punishing criminals, many argued that the incentive for good behavior disappeared. Since prisoners could no longer quicken their release date by showing "progress" toward "rehabilitation," some saw the need for other incentives to encourage good behavior. Accordingly, good-time credits became the norm within the state system.

California's new truth in sentencing law is modeled after the practice of the federal system. In contrast to most states, the federal prison system requires that violent offenders serve a minimum of 85 percent of their sentence, regardless of good-time or other credits. In California, the only prisoners whose good-time credits previously were restricted were violent or sexual offenders who had served *two or more prior sentences* for a violent or sexual offense.

California's new law (AB 2716) restricts good-time credits to a maximum of 15 percent of the offender's sentence. This restriction applies to all violent felons, even if the crime in question is their first offense. It is easy to see from the specific crimes that qualify as "violent offenses" why such

offenders should not receive an automatic 50 percent reduction of their sentences. The crimes that come under the good-time restrictions of AB 2716 are:

- Murder; Voluntary manslaughter
- Mayhem and aggravated mayhem
- Kidnapping with intent to commit child molestation in which great bodily injury was inflicted
- Various sex offenses, including rape, forcible sodomy or oral copulation, penetration by a foreign object, lewd or lascivious acts on a child under the age of fourteen, and continuous sexual abuse of a child
- Assault with a caustic chemical
- Exploding a destructive device or explosive with intent to injure or murder, or which results in great bodily injury
- Any other felony resulting in great bodily injury

The truth-in-sentencing law was enacted by the legislature on August 24, 1994 and signed by Governor Pete Wilson on September 21, 1994. It is important to note that the three-strikes law, enacted by the legislature in May of 1994, contains its own truth-in-sentencing provision. The provision limits good-time credits for sentences under three-strikes to 20% of the sentence. This truth-in-sentencing law further reduces that allowance to 15 percent. The one-strike rape law imposes a 15 percent maximum on good-time credits for the specific sexual offenses covered in the law.

One-strike

This measure was the subject of some debate in the 1994 governor's race. It arose out of the belief that, in certain egregious cases concerning sexual offenses, three-strikes was "two too many." Although complex in its breakdown of the various sexual offenses, the law essentially mandates a sentence of fifteen years to life for some forcible sex offenses, and twenty-five years to life for others.

In general, offenders guilty of a felonious forcible sexual assault must be sentenced to a minimum term of *twenty-five years to life*, on the first offense, if the assault included any of the following: a prior felony conviction on a sexual offense; aggravated mayhem; torture; certain categories of kidnapping or burglary.

In general, offenders guilty of felonious forcible sexual assault must be sentenced to a minimum term of *fifteen years to life,* on the first offense, if the assault included any of the following: great bodily injury; a dangerous or deadly weapon; an attack on more than one victim; the tying or binding of the victim; forcing a controlled substance on the victim; certain categories of kidnapping or burglary.

For all sentencing under this law, offenders may not be released on parole or on the basis of good-time credits until they have served at least 85 percent of their sentence. Also, under the "habitual sexual offender" provisions of the law, most offenders convicted under the measure cannot be awarded probation. Furthermore, prior law already prescribed some enhanced prison time for, among other things, repeat offenses; all punishment under this new one-strike law is added *consecutively* to the enhanced terms of prior law. In other words, offenders may not serve the one-strike punishment at the same time as the pre-existing punishment enhancements; instead, they must serve the total of both.

Like the reform of good-time credits, the one-strike law was an essential enhancement of California's criminal statutes. Prior criminal law regarding sexual offenses was quite lenient. Amazingly, most felony sex offenses had been punishable by three, six, or eight years in prison. With good-time credits, this meant that the State of California punished felony sex offenses with terms of one and one-half, three, or four years in prison.

Three-strikes

California's three-strikes law received final passage by the legislature on March 3, 1994, and was signed into law by the governor on March 7, 1994. The same measure was also adopted directly by the voters in the November 1994 elections. The three-strikes law, although best known for its focus on third-time felons, has several elements that significantly increase punishment.

The law provides for punshment of those convicted of any felony according to the following provisions:

- An offender convicted of a felony who has one previous serious or violent felony conviction must be sentenced to twice the normal term.
- An offender convicted of a felony who has two previous serious or violent felony convictions must be sentenced to either three times the normal term, or twenty-five years to life, whichever is greater.
- An offender convicted of a serious or violent felony, who has a previous conviction for any felony, cannot be awarded probation.
- Unlike prior law, similar felony conviction while the offender was sixteen or seventeen years of age may be counted as "strikes."
- All sentences under this measure are to be served *consecutively.* This means that if an offender is convicted of multiple offenses at the same time, the required prison term must be served for *each* separate felony. For example, a burglar with 2 prior serious or violent felonies who is convicted of 5 burglaries must serve 5 consecutive 25 years to life sentences, or 125 years to life.
- As noted above, this law carries its own truth-in-sentencing provision. Offenders

convicted under this measure must serve a minimum of 80 percent of their sentence, regardless of good-time credits. This is superseded by AB 2716, which increases the minimum time served to 85 percent of the sentence for violent felonies.

Although rare, there are other parts of the state criminal code that may require longer prison terms than those provided under the three-strikes law. In certain cases, with regard to sexual offenses, for example, the one-strike law may provide for greater punishment. The three-strikes law stipulates that the *greater* punishment is always to take precedence; in cases where other law provides for longer terms, three-strikes does not apply.

The three-strikes law states that the most severe prison terms are reserved for those who have previously committed "serious" or "violent" felonies. In general, California law defines violent felonies as those that cause injury to the victim or threaten the victim with a deadly weapon (for example, murder and voluntary manslaughter, mayhem, most forcible sexual offenses, and some categories of robbery, assault, and burglary). Serious felonies include all violent felonies, plus others where there is a potential for injury to the victim (for example, arson and the remaining categories of robbery, assault, and burglary).

The Anti-Crime Movement In California

In addition to Californians' increasing and well-founded fear of violent crime, two specific events in 1992 and 1993 provided the spark for California's success with anti-crime measures in 1994. These events deal most directly with the three-strikes legislation, but certainly contributed to the one-strike law and good-time reform, as well as other important measures that were to come later in the year.

While much public attention—even national attention—was aroused by the kidnapping and murder of twelve-year-old Polly Klaas in 1993, the three-strikes movement was actually well under way at that point. In 1992, eighteen-year-old Kimber Reynolds was shot and killed in Fresno by a parolee from California's prison system. The parolee had a long list of convictions for serious offenses. After the murder of his daughter, Mike Reynolds started the three-strikes movement. In early 1993, the Assembly Committee on Public Safety, controlled by liberal Democrats, refused to pass the three-strikes bill that was supported by Reynolds. Undeterred, Reynolds began a campaign to circumvent the legislature and place the measure on the ballot. He proposed as a ballot initiative the three-strikes measure crafted by Assemblymen Bill Jones and Jim Costa. Reynolds gathered signatures using a substantial portion of his own savings.

While the three-strikes initiative campaign was underway, the Polly Klaas kidnapping and murder occurred. This sharpened the attention on the three-strikes movement, particularly because Klaas's killer would not have been on the street had the proposed three-strikes measure been in place. Under an increasingly hot spotlight, the Assembly Public Safety Committee revived the three-strikes measure that it had previously rejected. Three-strikes passed the legislature and was signed into law by Governor Pete Wilson. Shortly to follow were the one-strike law and the good-time reform, along with other anti-crime measures. The three-strikes law also qualified for the November 1994 ballot, and was adopted overwhelmingly. As part of the state constitution, the law can now be

undone only by legislative supermajorities. These measures combined to make 1994 a year of significant change in California's criminal justice system.

Having failed to prevent this change through the legislative and electoral process, opponents of three-strikes have turned to the courts for help. In numerous cases that fall under the new law, defense attorneys have filed a broad range of appeals in an attempt to nullify the law by judicial fiat. While the media have demonstrated an interest in writing about the occasional trial judge who refuses to implement three-strikes, the fact is that the state's judicial system—particularly at the appellate level—is holding firm. As recently as June 1995 an appellate court upheld three-strikes in the face of a variety of frivolous appeals. Perhaps one of the most important decisions was handed down in January 1995, by the Fourth District Court of Appeals. In a major ruling, the court decided that trial judges have no authority to disregard past felonies in order to avoid implementing three-strikes. The court also rejected the argument that the law calls for "cruel and unusual punishment," and did not agree with lawyers' arguments that three-strikes illegally removes authority from judges at sentencing. Indeed, no appellate level court in the state has done anything other than affirm three-strikes sentences.

Critics Take Their Shots at Three-Strikes and Other Anti-Crime Measures

Predictably, California's tough new anti-crime measures have come under attack from many on the left who believed that even the old system was too punitive. Due in part to the well-founded fear of violent crime, however, such arguments have had little effect. But a more serious line of criticism has also developed: some argue that the anti-crime measures are too expensive. Although flawed for reasons that shall be demonstrated, this type of argument merits careful analysis, particularly in the current political climate where budget deficits are under increased scrutiny.

Charles L. Linder, a former president of the Los Angeles County Criminal Bar Association, expresses criticism characteristic of the cost-based argument. Writing recently in the *Los Angeles Times,* Linder claimed that if the state Supreme Court upholds the three-strikes law, "every department of state and county government—except prisons—will become dysfunctional. The state prison system will become a money vortex, swallowing up public health, higher education, schools, libraries and other essential public services." [1]

The RAND Study

Many of the public outcries about the cost of three-strikes are based upon a study by the RAND Corporation. After the legislature passed three-strikes, but prior to its adoption as part of the State Constitution by the voters, RAND published a lengthy study attempting to dissuade the voters from approving the measure. In the study, conducted by Peter W. Greenwood and others, RAND points to its cost estimates of three-strikes implementation as a warning to the voters.

Specifically, RAND predicts that the punishment in three-strikes "will be bought at a cost of an extra $4.5 billion to $6.5 billion per year in current dollars, compared to what would have been spent had the previous law remained in effect." [2] RAND also predicts that the three-strikes law "will double the fraction of the general fund consumed by the Department of Corrections." [3] The study estimates the annual cost of corrections under previous law at $4.5 billion, and the annual cost of the three-strikes law at $10 billion, representing an increase of approximately 122 percent. Earlier this year, RAND titled a research review of the three-strikes law as "Serious Flaws and a Huge Price Tag." In the review, Greenwood attributed the popularity of three-strikes to the public's irrationality, commenting that, "the public embraces 'get tough' laws out of fear, as the solution to violence." [4] Greenwood also offered the following comments for legislators who support three-strikes and similar anti-crime measures:

> "The American people are ill-served by public officials who lack the courage to tell them some plain truth about crime control. Sweeping, harshly punitive laws, like California's 'three-strikes' law and drug enforcement policies that favor long prison terms rather than treatment for users, pick the taxpayer's pocket and do not guarantee safe streets." [5]

RAND's review emphasizes that under three-strikes, any felony may qualify for the third strike. In a section of the review entitled "Steal a Pizza—Get Life," RAND asserts that most offenders who

will be sentenced under three-strikes will have committed "minor" felonies for their third strike. The study implies that, although violent offenders will be effected, the law will "more often than not" apply to those who have committed a minor felony. [6]

Legislative Analyst's Study

The office of the Legislative Analyst has also published a recent study on the impact of three-strikes. The study reports that the law has caused fewer guilty pleas by criminal defendants, leading to a significant increase in jury trials. According to the study, "only about 14 percent of all second-strike cases and only about 6 percent of all third-strike cases have been disposed of through plea-bargaining. In addition, there is some evidence that persons charged with a violent or serious offense for the *first* time (a first strike) are also less likely to plead guilty because a conviction would result in any subsequent offenses being charged under the 'Three-Strikes' law." [7] The Legislative Analyst reports estimates from the Los Angeles County District Attorney that jury trials will increase roughly 144 percent in 1995. [8]

According to the study, three-strikes has led to an increased population in county jails, where more offenders are held awaiting trial. Since those sentenced under three-strikes face stiff punishment, "counties set bail for second-strike offenders at twice the usual bail amount and refuse bail for third-strike offenders." [9] There is also an anticipated rise in the state prison population, although the Legislative Analyst reports that the short-run increase has not been as great as expected. The original Corrections department estimates had been for an increase to 80,000 inmates by the end of the century, 149,000 by 2003, and 274,000 by 2026. [10]

In Defense of Three-Strikes: A Closer Look at the Numbers and the Law [11]

Even the RAND study, which draws critical conclusions with regard to three-strikes, reveals that the law has a staggering effect on serious crime. RAND admits that three-strikes "will *reduce serious felonies committed by adults in California between 22 and 34 percent.*" [12] In other words, RAND attacks the impact of three-strikes while admitting that the law will eliminate a minimum of one-fourth of serious felonies, and may eliminate as much as one-third. According to RAND's own averages, *the bottom line is that the annual number of serious crimes perpetrated against California citizens will be 28 percent lower because of three strikes.* [13]

As significant as RAND's numbers are, it is reasonable to conclude that they understate the crime-reduction effects of three-strikes. This is because RAND assumes that the law will have *no deterrent effect whatsoever.* Citing studies that question the deterrent effect of punishment, RAND argues that it cannot with confidence include deterrence in its calculations. Consequently, the study only measures the crime reduction effect from incapacitation—that is, the amount of crimes prevented because those who would otherwise be committing them are behind bars. Even if we grant that deterrence is difficult to calculate, it is reasonable to conclude that at least some criminals might be less inclined to commit their third strike if they know for certain that it will cost them a minimum of twenty-five years in prison.

Also, while studies of the tobacco industry commonly include estimates of how much lung disease costs society in terms of medical expenses, or studies of handgun crime commonly include estimates of how much shootings cost society in terms of medical expenses, the RAND study made no effort to estimate savings to society from reduced property losses, medical attention, and pain and suffering to victims. [14] Such estimates should be an essential part of the cost-benefit analysis of three-strikes. The end result is that RAND's crime-reduction estimates, as big as they are, are most likely too low.

Trying to demonstrate that the law is too expensive, the RAND study breaks down the crime-reduction effect of additional corrections costs under three-strikes. The study estimates that, for every $5 million extra of corrections funds spent on three-strikes, the law will prevent: 1 murder, 20 rapes, 55 robberies, 120 aggravated assaults, 110 burglaries of a serious nature, 5 arsons, 85 minor burglaries, 160 motor-vehicle thefts, and 250 other thefts, plus other crimes not on the FBI index. [15]

The cost-effectiveness of three-strikes becomes clear from RAND's own numbers. According to their 28 percent reduction figure, three strikes will soon prevent almost 400,000 serious felonies each year from being perpetrated on California's citizens. [16] While RAND's study makes much of the additional $5.5 billion price tag, Claremont McKenna College political scientist Joseph M. Bessette has recently demonstrated that this amounts to roughly fifty cents per person, per day. [17] *For fifty cents per person per day, three strikes will protect Californians from almost 400,000 annual serious felonies.*

Although RAND and other critics of three-strikes like to emphasize that any felony qualifies as a

third strike—even minor felonies like stealing a pizza—they normally do not emphasize that the first two strikes must be for very serious or violent felonies. Accordingly, someone who is an habitual pizza thief (or who habitually commits other non-serious felonies) may steal a pizza every day for his entire life and not come under the purview of the three-strikes law. While RAND and others imply that three-strikes casts a "wide net," where even minor criminals are thrown into prison for life, this is simply untrue. An offender who habitually commits non-serious felonies can never be prosecuted under three-strikes.

Those who do commit non-serious felonies and are prosecuted under three-strikes must have at least two prior convictions for very serious or violent felonies. In other words, all three-strikes cases involve prosecution of those offenders who are proven threats to the community. Clearly, such offenders have not been deterred by their prior periods of incarceration, so incapacitation is the only way of ensuring that they will not continue to perpetrate crimes on Californians.

Even in the case of an offender whose third strike comes from a non-serious felony, the fact remains that such an individual has proven himself capable of serious crimes. By engaging in criminal conduct—after the system has already granted him two second chances—the offender continues to demonstrate a disregard for the criminal law. Simply because a two-strike offender subsequently commits a minor offense does not mean he is not dangerous. Consider the example of Roosevelt McCowan, whose case was described last year in the *Los Angeles Times*. McCowan, a two-strike serious offender, was being prosecuted under three-strikes for stealing eighteen bottles of cologne. While awaiting trial, McCowan was charged with attempting to sodomize his cellmate. [18]

Bringing *Justice* Back into the Criminal Justice System

The arguments up to this point have focused on the *statistical effectiveness* of last year's anti-crime measures. In other words, those debating the issue ask how a particular law will reduce the crime rate; they ask how it will deter future crimes. This type of approach employs a cost-benefit analysis to criminal punishment. Under such an approach, we try to determine if the cost of a particular measure is worthwhile in terms of its benefits to society; in the case of three-strikes, we want to know whether the crime-reduction effect of the law outweighs its costs.

These are very rational questions and represent a very important approach to public policy. Certainly it is critical to know, as the paper has demonstrated, that three-strikes and other measures are cost efficient. But there is another approach to evaluating criminal punishment that is at least equally important, and is often ignored by all sides in the debate. The often-forgotten approach is justice. It requires us to ask if our criminal laws ensure that offenders receive the punishment they *deserve* for the crime(s) they have committed.

While many liberals and conservatives alike have cast the punishment debate entirely in terms of how well the law reduces the crime rate, we must also ask if our punishments are just; we must ask if our punishments are commensurate—or proportionate—to the crimes committed by California's criminals. While liberals have long asserted that crime is beyond the control of the criminal—that society itself is really to blame for crime—the justice approach treats the criminal as a morally autonomous individual. The justice approach reflects our understanding that the law has a moral foundation, and that punishment holds criminals morally responsible for their behavior. Accordingly, a society that believes its laws are based upon moral principles must ensure that its punishments do justice to the moral violation that is at the heart of criminal behavior. In addition to crafting punishments that are *effective*, we must also craft punishments that are *just.*

If one examines three-strikes and California's other anti-crime measures passed last year from the perspective of justice, it becomes clear that they address the lack of justice (or lack of proportionality between crimes and punishments) in our past laws and practices. Not only do three-strikes and the other measures significantly reduce crime in California, but they also make punishments more commensurate with crimes. Anyone who believes that prior law represented inequitable relationship between crimes and punishments need only consider some recent disturbing cases.

In March of 1994 the college town of Claremont, California came face to face with the injustice of the state's prior criminal law. Christopher Evans Hubbart was released from state prison and began a period of supervision in Claremont. Hubbart was convicted in 1972 of raping fourteen young women; he was sentenced to an indeterminate term and was released in 1979. On the same day that Hubbart was released, he raped another young woman. Over the next several years he raped nine more women. He was convicted of these new rapes in 1982 and was sentenced to sixteen years in prison. He was released in 1990, after serving roughly half of his sentence. Shortly after this second release, he abducted a woman. Hubbart was convicted of this crime in 1990 and was sentenced to prison for five years. He was released in January of 1993 and lived in Claremont for six weeks. Upon failing a psychiatric examination in March of 1993, Hubbart was returned to prison for an additional year. His announced release in March of 1994 sparked public protests from Claremont

residents. Hubbart was submitted to a psychiatric evaluation within hours of this release, and was incarcerated for an additional year upon failing it. In sum, Hubbart served six years for raping fourteen women (first conviction), eight years for raping ten more women (second conviction), and he initially served less than three years for kidnapping another woman (third conviction).

The case of Melvin A Carter, who was released by the state the same week that Hubbart was briefly released in 1994, also points to the lack of equity between crimes and punishments under California's prior criminal law. Carter was known as the "college terrace rapist" because he regularly attacked students at Stanford University, U.C. Berkeley, and U.C. Davis. In 1980, Carter was arrested and pleaded "no contest" to twelve rapes and nearly a dozen other counts of assault, burglary, and attempted burglary. When he was sentenced in 1982, *Carter confessed to committing over 100 rapes within the last decade.* In addition, state officials discovered that Carter had served a year in jail in Colorado for assault and assault with intent to rape. Carter was sentenced in 1982 to twenty-five years in prison. Because of California's good-time credits, Carter was released a little over twelve years later. As Bessette has summarized, Carter averaged roughly a year in prison for each of the rapes for which he was formally convicted. If we count his other felonies, Carter served approximately six months per crime. *19*

California received national attention in the 1980s when Lawrence Singleton was released from prison after serving just eight years for abducting, raping, and cutting off the forearms of a fifteen-year-old girl, and leaving her in a ditch by the side of a road.

In particular, if one looks at California's past criminal laws from the perspective of justice, what becomes most clear is their lack of equity for crimes against women. As these examples have shown, the law has treated rape with striking leniency. Not only were sentences cut short by an indefensible system of good-time credits, but the law on California's books prior to 1994's anti-crime measures punished rape with three, six, or eight years in prison. As previously mentioned, this made the actual punishment for rape in the State of California either one and one-half, three, or four years in prison.

Lest anyone believe that the examples mentioned above do not represent the standard practice in California prior to last year's anti-crime measures, the table below reveals the shockingly short amount of time actually served by offenders in California:

Median Time Served for Inmates Leaving California Prisons in 1992

All offenses (50,911)	1 year, 4 months
Violent offenses (11,105)	
Homicide	3 years, 4 months
Rape/Sex offenses	3 years, 1 month
Robbery	1 year, 11 months
Assault	1 year, 10 months
Kidnapping	4 years, 1 month
Property offenses (17,663)	1 year, 2 months
Drug offenses (16,506)	1 year, 1 month
Other (5,637)	1 year, 1 month

Source: "Time served on Prison Sentences: Felons First Released to Parole by Offense, Calendar Year 1992," California Department of Corrections, July 1993.

Considering the data and cases presented above, the need for three-strikes and 1994's other anti-crime measures becomes even more apparent. Not only have such measures proven to be effective crime-control tools, but they also serve the essential purpose of making the state's criminal laws more accurately reflect the equity between crimes and punishments that must lie at the foundation of the system.

The Importance of Just Punishments to Democracy

Many professional politicians and political commentators have derided last year's anti-crime measures, and the three-strikes law in particular, as the result of legislators taking cover from a vengeful public whipped up into a frenzy about crime. In their state of irrationality, these commentators imply, citizens were incapable of making calm, reasonable judgments about the criminal law.

But evidence shows that past punishment practice was itself most *un*reasonable. The correction of the system's lack of justice—both by the citizens directly and by their elected representatives in the legislature—underscores the importance of the democratic process. The evidence shows that the public is entirely capable of using its reason. Past punishment practice in the State of California was, by almost any standard, decidedly unjust. The public demonstrated its ability to understand what is equitable and what is inequitable by engaging in the democratic process to force changes in the flawed system.

Contrary to many of those who now criticize the democratic process that allowed three-strikes and other anti-crime measures to become law last year, the philosopher and Christian moralist C. S. Lewis well understood the close connection between the justice approach and the democratic process. [20] If we consider only questions of deterrence and incapacitation, where punishment must be measured by the extent to which it will prevent future crime, only the "expert" social scientists are qualified to formulate punishment policy. Only the "experts" (like those at RAND) can use sophisticated mathematical models to tell us how much punishment is necessary to prevent crime. If we rely upon rehabilitation, where only the "experts" who have the sufficient medical or psychological training can determine when an offender is "cured," there is also no role for the democratic process.

Only when we formulate our punishments on the basis of what is just and equitable is there a role for the democratic process. In this way, citizens can use their ability to judge the difference between just and unjust legislation to influence the democratic process and effect the proper system of laws. In the case of crime legislation in 1994, California's citizens recognized the outrageous disproportion between crimes and punishments; they participated in the democratic process to effect the appropriate changes.

Last year's anti-crime measures did much to restore the principle of democracy to its rightful place in our state's criminal-justice system. Consider first the case of good-time credits. Judges hand down sentences which are provided by the laws. The laws are passed by the legislature, which is made up of the citizens' democratically elected representatives. When an offender, because of good-time credits, serves a sentence that is much less than that provided for by law, this represents a breach of the citizens' democratic will that lies at the heart of our state's system of government.

When the citizens of California, through their elected representatives in the legislature, decide that a murderer should serve a minimum of twenty-five years in prison, releasing murderers in half that time is an affront to the democratic process. The 1994 truth-in-sentencing law, in addition to the truth-in-sentencing provisions of the other anti-crime measures, goes a long way toward remedying the situation.

Finally, many critics decry the lack of sentencing flexibility that judges may exercise under three-strikes and other measures. This criticism reflects a fundamental failure to understand that the laws are the product of a democratic process. When judges abuse their authority by handing down sentences that deviate from what the citizens have provided for in the law, they too undermine the authority of thoughtful and considerate public opinion. The 1994 three-strikes and other measures attempt to remove the authority from those in the criminal-justice system who have for so many years failed in the pursuit of justice, and return it to is proper owners: the citizens of California.

***Ronald J. Pestritto, Jr.**, serving as a staff member for the Republican Office of Assembly Research, is a Visiting Instructor of Politics at the University of Dallas.*

Endnotes

1. *Los Angeles Times,* May 7, 1995, M1.
2. Peter W. Greenwood, et al., *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law* (Santa Monica: RAND, 1994), xii.
3. Ibid., xiv.
4. "Three Strikes: Serious Flaws and a Huge Price Tag," *RAND Research Review* 19 (Spring 1995): 1.
5. Ibid., 9.
6. Ibid.,1.
7. *The "Three Strikes and You're Out" Law - A Preliminary Assessment,* Legislative Analyst's Office (January 6, 1995), 4.
8. Ibid., 5.
9. Ibid.
10. Ibid., 6.
11. The work of Joseph M. Bessette has been an indispensable resource in writing this section. Especially helpful was his testimony before the Los Angeles county Board of Supervisors on September 27, 1994.
12. Greenwood, Three Strikes and You're Out, xii.
13. Ibid., 18.
14. For a criticism of RAND's study along these lines, see Joseph M. Bessetts, "Crime, Justice, and Punishment," *Jobs & Capital* IV (Windter 1995): 19.
15. Greenwood, Three Strikes and You're, 19.
16. Ibid., 23.
17. Bessette, "Crime, Justice, and Punishment," 19.
18. *Los Angeles Times*, September 1, 1994, A3, A28.
19. Bessette, "Crime, Justice, and Punishment," 20-1.
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