

A very special relationship?

Recent years have brought enthusiasm for the idea of US to UK policy transfer. **Tim Newburn and Trevor Jones** measure just how much has actually been imported.

Zero tolerance policing, ‘three strikes and you’re out’ sentencing, curfews, a drugs tsar, boot camps, community courts, sex offender notification, electronic tagging – there seems to have been no end in recent times to the willingness of British politicians to seek the importation of Americanised criminal justice policies. But how much impact have such ideas really had? To our mind, the answer in most cases is rather less than you might think. Nevertheless, this ‘special relationship’ has had some important consequences, perhaps most visibly in the politics of crime.

In the last few years, in a large research study, we’ve been examining what has come to be known as ‘policy transfer’, and have looked specifically at the relationship between criminal justice policies on the two sides of the Atlantic. Our focus was on three areas in the main: privatisation of punishment; three strikes and mandatory sentencing; and so-called ‘zero tolerance policing’. The basis of the study involved the examination of a huge array of documentary and other published sources, together with a large number of interviews with politicians, policy makers, pressure groups and others involved in the penal process (Jones and Newburn 2007).

in 1981. In addition, British chief constables retain a high degree of autonomy in policymaking, at least in comparison with their more politically-controlled US counterparts, and this allowed senior UK police officers to resist some policies favoured by populist politicians. The consequence was that for all the zero tolerance rhetoric that abounded in the 1990s, much of it deployed by politicians, its substantive impact on policing policy and practice was slight.

Now, there is one important caveat here. Although in the specific area of policing there is little obvious evidence of influence of policy transfer, the broken windows philosophy that influenced Giuliani and Bratton has had a lasting impact here, most obviously by morphing into what eventually became New Labour’s ‘antisocial behaviour agenda’. A relatively straightforward reading of Wilson and Kelling’s (1982) argument eventually underpinned the introduction of a variety of measures – curfews, ASBOs, Parenting Orders, changes to tenancy rules and eviction regulations, and most recently the ‘Respect Agenda’ – all aimed at tackling disorderliness and ‘sub-criminal’ conduct.

One of the most bizarre sightings on the British penal landscape in the past decade must surely be the American

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Zero tolerance policing provides a good example of many of the limits to policy transfer between the US and Britain in the 1990s. The idea of zero tolerance policing arose from the so-called ‘New York miracle’ – record drops in crime in the Big Apple which came to be associated with Rudy Giuliani’s tenure as mayor and, more particularly, with the strategies adopted by the NYPD under Giuliani’s first appointment as commissioner: Bill Bratton. Influenced by Wilson and Kelling’s ‘broken windows’ thesis, the NYPD used a range of tactics to crack down on fare dodging, graffiti, public drunkenness, public drug dealing and a host of other sources of insecurity and disorderliness. Although the reasons for the crime decline continue to be debated (Zimring 2007), Giuliani and Bratton were clear about what was the principal cause. As Bratton later put it, “Crime is down in New York City – blame the police” (Bratton 1997).

This very simple message has been travelling the world ever since. It appeared to have a profound impact on British politicians. Transatlantic flights in the mid-1990s regularly carried British officials to New York to witness the building blocks of the ‘miracle’ first hand. Most returned converted. Jack Straw, Tony Blair, Ann Widdecombe, Sir John Stevens all came back as firm proselytisers on behalf of zero tolerance. And yet, in practice, British policing has in general remained remarkably untouched by NYPD-style tactics. Why? Well, the answer we think lies in ‘local’ political and cultural conditions. The Scarmanite consensus that emerged during the 1980s (Reiner 1991) meant that most senior police officers in the UK were exceedingly wary of anything that smacked of the ‘swamp’ operation that had such disastrous effects in Brixton

baseball term ‘three strikes and you’re out’. Adopted in the US to describe a particular type of mandatory sentencing – seen in its most extreme form in California – the *Crime (Sentences) Act 1997* introduced by Michael Howard and implemented under New Labour incorporated three sets of ‘three strikes’ provisions. Interestingly, there appears to have been little direct American influence on this development. In interview, Michael Howard said that he had been much persuaded by the advocacy of imprisonment as a general crime reduction tool (via incapacitation and deterrence) by US figures such as Charles Murray and J.Q. Wilson. Beyond that, however, there appeared to be little evidence of any direct lesson-drawing, and there is no record of Michael Howard ever having publicly used the phrase ‘three strikes and you’re out’ (in marked contrast to Tony Blair).

Moreover, political contingency also played its part in making the British legislation very different from its American counterpart. The particular circumstances in which the *Crime (Sentences) Bill* was introduced – just before a general election was called – left it vulnerable to delay. Resistance in the House of Lords led to the government having to accept a number of amendments, one of which effectively emasculated Howard’s intentions by inserting an escape clause. Furthermore, the strong tradition of judicial independence in the UK meant that in practice, many judges found ways to circumvent even the muted form of ‘two’ and ‘three strikes’ sentencing. For all the talk of ‘three strikes’ therefore, what we have in Britain bears very little resemblance to mandatory minimums in America, particularly as enacted in California.

The area in which something akin to policy transfer is most



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Seductive symbols, but does US penal policy fly in Britain?

observable concerns the development of electronic tagging and, in particular, private prisons. There were concerted efforts by US corporations to sell their ideas in the UK. British politicians, and especially the Home Affairs Committee, were much persuaded by visits they made to privately-run American prisons, and some of the most influential transatlantic think tanks – notably the Adam Smith Institute in London and its partners in the US – lobbied consistently for a greater role for the market in the provision of punishment. When private prisons eventually opened in Britain, the major American corrections corporations were at the forefront of many developments. A similar set of processes were visible in the rise up the agenda of electronic tagging.

Even here, however, one must be careful not to overstate the extent of these processes. Lesson-drawing was undoubtedly important, but the changes were also part of a more general shift towards the commodification of crime control in Western societies. The UK was at the forefront of many of the neoliberal reforms in public policy, and was undoubtedly fertile ground for the germination and flourishing of ideas concerning the marketisation of corrections. The emulation that did take place in this field was shaped by local political and cultural circumstances, meaning that the privatized corrections that have emerged in Britain, unlike those in America, are largely located within systems of governance that are driven by government. Thus, commercially contracted prisons in the UK have been integrated within the overall prison estate and have had an on-site Home Office monitor. Crucially, hitherto they have been subjected to inspection and monitoring by Her Majesty's Inspector of Prisons and the Prisons Ombudsman, though the advent of NOMS may begin to diminish some of these differences between the private prison sectors in America and Britain. Time will tell.

As far as policy transfer is concerned, therefore, it is much more visible at the level of rhetoric and symbolism than at the level of more concrete policy manifestations. Politicians across the spectrum have been seduced by US-style symbols and rhetoric. However, attempts at more substantive policy transfer have been restricted by the nature of the political institutions and structures within which policies are formulated, and by political agency. Policy-making is almost inevitably prey to contingency, happenstance and unintended consequences. This is perhaps the major reason why we should be sceptical of some of the more deterministic globalisation theories.

At the outset we said that for all the evidence of the limits of policy transfer, the 'special relationship' with America nonetheless appears to have had a significant impact on our penal landscape. To understand this we have to go back to the 1988 US Presidential election in which Michael Dukakis lost what at one stage looked an unassailable lead to George H. Bush. That Dukakis did so was largely a consequence of the successful way in which the Bush campaign was able to portray him as an old-fashioned liberal, and Dukakis' inability or unwillingness to counter such charges. A significant part of the Bush campaign – using the infamous Willie Horton adverts – focused on Dukakis' liberal stance on crime. The devastating defeat for the Dukakis Democrats led to much political soul-searching and, in due course, to the emergence of Clinton's 'New Democrats'. Clinton's centrism included a very different penal politics, including support for the death penalty and a vast investment in policing. When President, he later rather astutely observed that he could "be nicked on a lot, but no one can say I'm soft on crime".

What the New Democrats did for Clinton, Blair and his

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community policing (Barry Loveday) can their record on balance be extolled.

Ultimately, it is on punishment rather than crime that Labour has at best failed to consolidate and, at worst, actively undermined their own best policies and practice. Prisons have just about coped with the remorseless increase in numbers, but at the expense of programmes that cry out for better resourcing (John Podmore). Women offenders have been under-protected and over-controlled under Labour, their numbers in custody at an all-time peak (Loraine Gelsthorpe). Most of all, youth justice has been prevented from building on the promise of the new Youth Justice Board and the youth offending teams by tough sentencing overwhelming the welfare principle (Rob Allen). Even so humane and vigorous a reforming Head of the Board as Professor Rod Morgan could do little to sustain progress in the teeth of the fastest growing and highest youth custody rates in western Europe. It would be a bitter capstone to New Labour's ten year watch over criminal justice if, following his resignation, his successor was to represent penal populism rather than informed and civilised policy and practice. ■

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advisers were convinced would work for them also. In policy terms Blair, Mandelson, Gould and the rest saw how Clinton had sought to recapture the so-called 'middle ground' and to jettison various 'liberal' hostages to fortune (Downes and Morgan, 1997) and applied the lessons in the creation of 'New Labour'. Early on after his appointment as Shadow Home Secretary, Blair visited Washington DC to talk to Democratic Party advisers. Within three days of his return he first aired his famous mantra, "tough on crime, tough on the causes of crime". Now matter how hard he later tried, Michael Howard was never able to 'out-tough' his opponent. British penal

those individuals judged, through their choices, to lack self-control, rather than to those who exploit such vulnerabilities. That this stance can be associated with a party of the 'Left', or even 'Centre' of politics, demonstrates how much things have changed since 1997. ■

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politics has been locked in this punitive embrace ever since. ■

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2. It is imperative that the VCS is understood and supported as being the means by which services are transformed, and not as the repository of already-failing and discredited solutions.
3. The VCS has a fundamental role to play in promoting diversity and social inclusion and this needs investment – especially by those who are most affected by crime, for example BME communities and families.
4. Community education and public awareness about the reality of offending, social exclusion, and positive community solutions to crime remain at the heart of VCS activity - and should be supported by government actions and funding.
5. It needs to be understood that the role of the government is not to instruct the VCS or local communities about what to do, but to trust and facilitate the process by which local solutions can resolve the most pressing community problems. ■

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