REVISITING MARGARET THATCHER'S LAW AND ORDER AGENDA:

THE SLOW-BURNING FUSE OF PUNITIVENESS

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Abstract

In recent years, criminologists have devoted growing attention to the extent to which 'punitiveness' is emerging as a central feature of many criminal justice systems. In gauging punitiveness, these studies typically rely either on attitudinal data derived from surveys which measure individual support for punitive sentences or on the size of the prison population. We take a different approach, exploring the aims, content and outcomes of various Acts of Parliament passed between 1982 and 1998 in England and Wales. Our argument is that whilst a trend towards punitiveness is detectable, this was, in the case of England and Wales, attributable to wider discourses stemming from the New Right of the 1980s. This in turn promoted a new conception of how best to tackle rising crime. We show that whilst the year 1993 stands out as a key point in the growing trajectory of punitiveness in England and Wales, the ideas and rhetoric around 'toughness' in the criminal justice system can be traced back much further than this. Our article brings these matters to the attention of political scientists and demonstrates how historical institutionalist thinking can guide and inform interdisciplinary work at the interface between political science and criminology.

Key words:punitiveness; Thatcherism; Criminal Justice Acts; historical institutionalism; 1980s.

It is over forty years since Margaret Thatcher was elected leader of the Conservative Party, and around 35 years since she became Prime Minister of the UK. By rights, her period of office ought to be confined to that 'thing' constructed as 'the past'. For, as her death in April 2013 demonstrated, her status as a key figure in contemporary British history is assured. Recent contributions attest to the importance which her governments have for us today (Jackson and Saunders, 2012, Vinen, 2009). This article contributes to that literature through an examination of her governments' criminal justice policies, specifically, the degree to which these were punitive and set Britain on the path to a punitive paradigm in criminal justice (which remains in place today. The topic of 'law and order' was one on which Thatcher accumulated much political capital, but was a topic which she actually devoted little of her own attention to. Whilst in office, a number of commentators asserted that the criminal justice Acts her government had passed would lead to increased levels of punitiveness for various social groups (Norrie and Adelman, 1989, Terrill, 1989, Wiles, 1988). And a number of more recent commentators have argued that 1980s criminal justice legislation was more punitive (Faulkner, 2014:89, Cavadino and Dignan, 2007:6). However there are deficiencies with those literatures. Herein we pose a number of research questions aimed at exploring more systematically the degree to which the key Criminal Justice Acts of the 1980s were indeed punitive. The research questions we pose are: i) *to what degree do the Criminal Justice Acts passed by the Thatcher governments show an increase in levels of punitiveness towards the treatment of wrongdoers?;*ii)*if there was a change, was this a 'slow' gradual movement, or is a structural break identifiable (and if the latter, when did this occur)?;* and, iii)*what might account for the patterns we detect?*

In answering these questions, we explore, not just those Criminal Justice Acts passed between 1979 and 1990, but extend our analytical reach to include those Acts up to 1998 (by which time the Labour Party, led by Tony Blair, were in office) in order to examine whether changes in punitiveness survived not just a change of leader (from Thatcher to Major, in 1990) but also a change of government (from the Conservatives to Labour, in 1997). In order to make sense of the lasting legacy of her governments' criminal justice legislation for England and Wales, we draw upon ideas associated with the literature on historical institutionalism (Pierson, 2004 and Thelen and Steinmo, 1992).

To date, there have been relatively few attempts to explore the extent to which the Criminal Justice Acts passed by Thatcher's governments can be said to have increased levels of punitiveness. As noted above, some assessments were undertaken in the late-1980s. Yet there are various limitations with these contributions. For example, Wiles (1988) deals exclusively with the 1986 Public Order Act (particularly in the context of industrial disputes), whilst Terrill (1989) relies on just four Acts, and Norrie and Adelman focus on policing policies, rather than legal instruments (1989). We therefore undertake analyses of key Acts passed between 1982 and 1998 in order to allow us to make an assessment of the degree to which the criminal justice system was moving in a more punitive direction, and one which was in line with what might be termed a 'Thatcherite instinct' (Riddle, 1991).Unlike previous efforts to assess Thatcherism's impact on criminal law in England and Wales, we:

- Focus on Acts of Parliament, since these structure the legal environment in an enduring fashion;
- Focus on a large number of Acts (in order to assess trends in punitiveness);
- Consider those Acts which emerged after 1990, and;
- Consider the degree to which the Acts passed by Thatcher's governments were motivated by ideological positions which subsequent governments followed.

Our analyses are based on the published commentaries of key individuals involved in the processes of drafting, implementing and evaluating these Acts. Our focus is on the intentions and outcomes of the Acts (since the implementation of an Act may produce different outcomes to those anticipated). From a theoretical perspective this period is of particular interest as it confounds highly conserved theoretical expectations in the existing literature. From a pluralist or elite theoretical perspective, the election of an administration committed to toughness on crime should be sufficient to ensure a punitive paradigm shift, but that is not what we see (Marsh and Rhodes, 1992). The alternative historical institutionalist perspective is ostensibly much better at accounting for stability in the face of apparent ideational or ideological radicalism (such that Thatcher clearly exhibited on law and order). However, none of the classic factors that it identifies to explain the gap between

rhetoric and implementation apply here. Historical institutionalists typically anticipate path dependence and incremental evolution of policy rather than radical change (Mahoney and Thelen, 2009, Pierson, 1994, 2004, Thelen, 2004,Thelen and Streeck, 2005). They do so because of the institutionally entrenched character of existing policy paradigms and the institutional challenge, complexity and cost of change. But that does not apply here; the costs, both institutional and substantive (in terms of additional prison space, and so forth) of a Thatcherite punitive revolution in criminal justice, though they should not be underestimated, did not credibly pose a serious impediment to the implementation of a dispositional punitiveness. The rest of this article is constructed as follows. Firstly, we review the work of the key commentators on the role of Thatcherite thinking with regards to criminal justice legislation, namely Terrill, Wiles and Norrie and Adelman. Following this we outline the eleven Acts passeed between 1982 and 1998 which we have explored. We conclude our article with a synoptic overview and an assessment of the implications of the analysis for our understanding both of Thatcherism and trends in criminal justice legislation in Britain. We begin, however, with a discussion of Thatcher's time in office and of her pronouncements on the subject of 'law and order'. Our argument is that whilst Thatcherite rhetoric on law and order was punitive, the criminal justice legislation of the 1980s owed much to an earlier, more liberal stances. The much more punitive and 'Thatcherite' criminal justice legislation only emerged in the years after she had left office.

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MARGARET THATCHER'S PERIOD IN OFFICE AND HER STATEMENTS ON 'LAW AND ORDER'

Margaret Thatcher was elected Prime Minister of the UK in May 1979. Her platform had been one of controlling inflation, limiting the influence of trade unions, cutting income tax, upholding the rule of law, the 'liberation' of families from an 'unhealthy' dependence on the state (notably with regards to buying their own homes) and strengthening Britain's defences (Conservative Party, 1979). During the 11 years she was in office, her governments' policy and legislative agendas changed and developed. Initially there was a focus on housing and industrial relations. In anticipation of the loss of the 1983 general election, the manifesto was 'de-radicalised' leaving some to refer to the second administration as the 'lost opportunity' (Evan, 1999:74, Holmes, 1985:154-155). ~~term of office' (t~~There were, however,

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some notable Acts, such as the 1986 Social Security Act, following the 1984 Fowler Review, and several key state-owned utilities were privatised and there was the year-long miners' strike). Following re-election in 1987, education and health were focal points for activity along with further privatisation of state-owned utilities. Thatcher resigned as Conservative Party leader (and hence Prime Minister) in November 1990.

But what of the criminal justice system? Certainly Thatcher talked tough on crime, implying that a more punitive approach would be taken.[1] In her final broadcast during the 1979 election, she referred to citizens needing to feel 'safe in the streets' (Riddell, 1985:193). Prior to that, she had claimed that the country wanted ''less tax and more law and order'' (Savage, 1990:89) and in March 1988 expressed the opinion that social workers were to blame for the recent rises in crime as they ''created a fog of excuses in which the muggers and burglars operate'' (Riddell, 1989:171). She also stated that she would never "economise on law and order" (Savage, 1990:91), and was in favour of capital punishment (Thatcher, 1993:307). Such sentiments can be interpreted as a wish to see obedience to and respect of the law, and the desire for a criminal justice system which did not embrace penal welfarism, favoured crime control models of policing and which tended towards harsher penalties. However many commentators have pointed to the fact that she rarely intervened in matters relating to criminal law or its administration (Faulkner, 2014:68, Hurd, 2003:349-372). In what respects, then, have others argued that there was a clearly defined 'Thatcher effect' in criminal justice?

REVIEWING PREVIOUS EFFORTS TO ANALYSE THE 'THATCHER EFFECT' IN 1980s AND 1990s CRIMINAL JUSTICE ACTS

[1] It is important to remember that the Thatcher administrations were punitive towards other groups too, such as immigrants, the unemployed and welfare recipients (Hayes, 1994).

> "In the early 1980s, the Conservative government [...] injected a heavy dose of [punitiveness] into penal policy. This meant being deliberately harsher in punishing offenders" (Cavadino and Dignan, 2007:6).

Cavadino and Dignan's portrayal of the early Thatcher governments as 'heavily' punitive is a common refrain amongst academic commentators. Of the previous attempts to explore the existence of a 'Thatcher effect' in criminal justice legislation, Terrill's is closest to our own. Terrill (1989) explores four Acts; the British Nationality Act, the Criminal Attempts Act (both 1981), the 1984 Police and Criminal Evidence Act and 1986's Public Order Act. Terrill saw the British Nationality Act as an attempt to make it harder for immigrants to enter the UK (and as such, he says, was aimed at reducing the pool of young black males who would enter the criminal justice system). He may well be right in his analysis; however it is hard to locate this Act as part of a legislative agenda focused on criminal justice as pursued by the Thatcher administrations. The main link to criminal justice appeared to be the fact that the Act would be enforced by the police (and that this would hamper community relations). There is little evidence provided that this came to pass in the years since the Act came into force. The second Act which Terrill examined was the Criminal Attempts Act. This Act abolished the notion of 'loitering with intent' from the 1824 Vagrancy Act, which had been used to arrest young black males under the 'sus' laws (under the suspicion that these people were planning to commit offences). However, Terrill argued that the Act actually gave the police more discretion over such matters, and that this, it is implied, although not demonstrated, would increase the arrests of young black men. Again, no evidence is provided by Terrill to support this position. The third Act which Terrill examined was the Police and Criminal Evidence Act. Again, this was reviewed in terms of the policing of black people and the discretion of police officers in terms of their rights to stop and search individuals (1989:448). Little evidence is provided as to the actual effects of the Act. Finally Terrill reviewed the Public Order Act. This is cast as increasing the discretion of the police, but, as Terrill notes "it is too early to tell what impact the Act will have on an actual public order incident" (1989:452).

Norrie and Adelman's review (1989) is similarly weakened by a focus on what *might* happen without the evidence of what *actually* happened. Whilst they refer to the Police and Criminal Evidence and the Public Order Acts (p115), the bulk of their focus is on the policies adopted with regards to policing, and hence does not develop very much analysis of the legal instruments. Wiles' review (1988) focuses on the Public Order Act, particularly in the context of industrial disputes, and is unable to present any firm conclusions as to the effects of the Act on crime or policing.

The degree to which the Thatcher governments were able to produce the changes they wanted (and that their rhetoric committed them to) has been the subject of much debate within political science. Foremost amongst this body of work is Marsh and Rhodes' *Implementing Thatcherite Policies* (1992). As they note in their introductory chapter, the contemporary literature on Thatcher was deficient in a number of ways. It largely focused on the first term, and tended to overstate her effect. To this one could add that the policy changes initiated in the early-1980s might not produce substantive outcomes in terms of the redistribution of goods or access to services for some considerable time. In effect, the insights afforded by a consideration of the *longue durée* were necessarily absent.

The existing literature in this field is therefore limited in that it:

- Was written before the full impact of the Acts could be assessed;
- Did not deal with the criminal justice Acts after the mid-1980s, and hence misses a large portion of Thatcher's period in office, and all of her successors' periods in office;
- Dealt with a small number of Acts (and hence was very selective);
- Did not consider the degree to which the Acts passed were motivated by ideological approaches that were adopted by subsequent governments.

Our aim is to remedy this, and in so doing to explore not just whether England and Wales saw a trend towards punitiveness during the 1980s and 1990s, but also to what extent,

when and why this might have been the case. Let us now turn to a consideration of the Acts chosen for analysis.

THATCHER'S CRIMINAL JUSTICE LEGISLATIVE PROGRAMME: A REVIEW

We selected eleven criminal justice Acts passed between 1982 and 1998 in order to assess the degree to which these evidence a trend towards a more punitive stance. In selecting the Acts, we concentrated on those which were 'key' with respect to establishing new approaches to sentencing or levels of proof, or ways in which 'ordinary' members of the public or defendants were treated by the criminal justice system, rather than just 'tidying up' the legal system. Additionally, the Acts addressed the nature and length of the sentences which could be given, or on the ways in which the criminal process could unfold. We therefore have focused on the following:

- The Criminal Justice Act, 1982
- The Police and Criminal Evidence Act, 1984 (hereafter PACE)
- The Prosecution of Offences Act, 1985
- The Drug Trafficking Offences Act, 1986
- The Criminal Justice Act, 1988
- The Criminal Justice Act, 1991
- The Criminal Justice Act, 1993
- The Criminal Justice and Public Order Act, 1994
- The Criminal Procedure and Investigations Act, 1996
- The Crime (Sentences) Act, 1997
- The Crime and Disorder Act, 1998

Faulkner (2014:68) also selects many of these same Acts in his list of "legislative landmarks". The Acts which we have selected cover a period of some 16 years (if one takes only the years of their enactment) and cover the period from Thatcher's premiership through to the start of Tony Blair's.

Operationalising Punitiveness

As Hamilton's recent review (2014) notes, empirical studies on punitiveness have either focused on collecting social attitudinal data towards sentences (measured at the individual level using surveys) or have sought to catalogue 'state punitiveness' (levels of imprisonment, length of terms of imprisonment etc.). Our own research falls into the second of these two approaches, in that we are interested in the Acts which shaped the sorts of sentences which were available, and which regulated various branches of the criminal justice system. We follow Hamilton in using a range of indicators to measure punitiveness. These include (but are not limited to): the use of mandatory sentences; support for increased police powers and resources; increase in post-prison release and community disposal controls; reductions in the control of police activities; increases in the possible length of prison terms; and, limits to the decision making of the judiciary and parole boards. In addition, we also incorporate into our thinking the statements made by politicians and the general support for the rehabilitative ideal.

The Criminal Justice Act, 1982

This Act illustrates the changing nature of penological fashions (Dunbar and Langdon, 1998:74). Borstals, whilst popular in the inter-war years, by the 1980s had become a victim of the movement against rehabilitation-based sentencing and were abolished by the Act (Dunbar and Langdon, 1998:74). Borstals were to be replaced by youth custody which had stronger post-custodial supervision (Burney, 1985:1). A paper written by Willie Whitelaw and David Howells in 1978 and the 1980 White Paper, "Young Offenders", preceding the Act, highlighted the concern over the numbers of juvenile offenders (those under 21years old) in custody (Smith, 2003:8-9). Whitelaw, as Home Secretary, wanted to avoid custodial sentencing for this group (unless absolutely necessary) by broadening and strengthening existing non-custodial provisions (Smith, 2003:8-9).[2] He therefore initiated a 'get tough' rhetorical stance in his statements to the House of Commons (Cavadino and Dignan,

[2] It could be argued that budgetary considerations mandated this position. However Thatcher famously argued against "economising on law and order".

2007:372) and referred to the idea of a ‘short, sharp, shock’ for young offenders, but did not pursue the idea with any vigour (Windlesham, 1993:158-160). As such, the White Paper included proposals for the reintroduction of a limited number of detention centres with tougher regimes (Newburn, 2003:197) encouraging sentencers to hand out to those who would previously have received a prison sentence, a non-custodial but still punitive sentence. In this way, the Government tried to encourage the uptake of alternatives to custody (Ball, 2004).

The stated aim of the Act was to restructure sentencing and penal institutions for young offenders (Dunbar and Langdon, 1998:74). The Government believed that shorter sentences in detention centres would reduce the number of juveniles held in custody, and requested that sentencers impose a custodial sentence only if other alternatives were deemed totally inappropriate (Newburn, 2003:197). The Act also sought to move away from a "treatment" approach and towards the idea that responsibility was to be borne by individual offenders and their parents. Smith claims that the Act resulted in a shift away from the rehabilitative ideal towards an emphasis on retributive sentencing, deterrence and “just deserts” (Smith, 2003:8-9). The Act introduced Day Centres which included a provision that allowed courts to add requirements to probation orders (Newburn, 2003:138) and introduced other controlling powers such as the Night Restriction Order and the Charge and Control condition under a care order which enabled magistrates to indicate when a child should be removed from his/her home by the local authority (Burney, 1985:4). Both these orders were seen as “heightening the punitive aspects of intervention” (Smith, 2003:8).

Though fears existed that the Act would increase the incarceration rate of young people, the number of juveniles sentenced to custody for indictable offences fell from 7,700 in 1981 to 4,000 in 1987 (Blackmore, 1989:165-166). This was due, in part, to the introduction of statutory criteria to be met before Courts could pass custodial sentences (Blackmore, 1989:165-166). Yet, within this general reduction there were anomalies. By following the guidelines of the Act (requiring courts to only impose custodial sentences if certain criteria were satisfied), some courts were imposing lengthy sentences of youth custody, rather than short, overtly punitive, detention centre orders, in order to ensure that offenders had the benefit of training (Ball, 2004). The Act also removed the penalty of imprisonment for

begging or soliciting for prostitution (Faulkner, 2014:89), and allowed some groups of prisoners to be released up to six months early (Cavadino and Dignan, 2007:372).

The Police and Criminal Evidence Act, 1984

The roots of PACE go back to the early 1970s, when the 11th report of the Criminal Law Revision Committee was introduced in 1972 (Zander, 2013:2). The Report was condemned as a result of one recommendation it made; that adverse inferences could be drawn from a suspect's silence (Zander, 2013:2). Consequently, the Home Office concluded that it was impossible to implement even the uncontroversial recommendations of a report which was so widely regarded as flawed (Zander, 2013:2). In 1977 the Labour Government announced that it was to set up a Royal Commission on Criminal Procedure (The Philips Commission) "whose terms of reference were to consider the investigation of offences in the light of police powers and duties as well as the rights and duties of suspects" (Zander, 2013:ix-x). The Commission, considering advice gathered from twelve research studies, proposed that any new law governing the powers of the police should meet the standards of fairness, openness and workability as well as advocating a simplification of police powers of arrest and detention together with a new code of conduct "to ensure and safeguard the rights of individuals detained or questioned by police" (Morgan, 1990:103). Virtually all recommendations made in the report by the Philips Commission were met with support from the police and were fairly well received by the legal professional bodies (Zander, 2013:ix-x).

Supporters of the Act claimed that previously the law governing police powers for the investigation of crime was unclear and antiquated (Morgan 1990:104). Indeed, since the Act was passed, the conditions of detention and interrogation have been much more strictly and rigidly controlled and documented. An Officer independent of the investigation is assigned as the Custody Officer and acts to maintain the rights of detainees, regulating the conduct of the police officers in charge of the investigation of the case (Zander, 2013:111), although research suggests that only rarely do Custody Officers fail to authorise detention

(Sander and Young, 2006:84, McConville et al, 1994:55). However, several groups regarded PACE as a serious threat to civil liberties (Maguire, 1988). The Greater London Council Police Committee viewed the Act as "enshrining in the law the disturbing and growing trend of policing by coercion", but it also called the introduction of custody records "an innovation to be welcomed" (Maguire, 1988:20). Baldwin expressed grave doubts about the Act's ability to "clarify the law, rationalise police procedures or effect a balance between the interests of the citizen and the police investigation", although later concluded that the "wider availability of duty solicitors, the increasing use of legal advice by detainees and the introduction of new recording procedures can be expected to have some legitimising effect" (Maguire, 1988:20).

In theory, the changes made by PACE in terms of contemporaneous note-taking during interviews has prevented officers from taking the opportunity to manipulate suspects into admission of the alleged offences (Morgan, 1990:113), although concerns remain that such activities have just shifted to 'informal' interviews (Sanders et al, 2010). Furthermore, Custody Officers ought not to allow visits to take place for the purpose of assessing possible strengths and weaknesses to one line of questioning as opposed to another (Morgan, 1990:113), although research suggests that some do (McConville and Morrell, 1983). In addition, the recording of interviews ought to safeguard both suspects and police officers in that 'off the record' confessions are reduced, if not completely eliminated (Maguire, 1988, Skinns, 2011:123-124). All suspects were to be read their rights, but as some note, this could be done in such a way as to confuse arrestees (Sanders et al, 1989:59, Skinns, 2011:9). PACE established guidelines with respect to the length of interrogations. Suspects are also entitled to written notices specifying the charge(s) against them, and which reminded them that they are not obliged to say anything which may incriminate themselves (Morgan, 1990:107). As such, the Act upholds the rights and freedoms of detained persons and ensures that their rights are brought to the Custody Officer's attention (Morgan, 1990:109-110). The procedures introduced by PACE were aimed to regulate custody and reduce abuse within the station, although evidence on the number of deaths in custody raises questions over this (Sanders et al, 2010:223-228). After PACE was enforced, the number of cases in which solicitors attended police stations to offer legal advice to suspects more than doubled

(Maguire, 1988), despite the police using various techniques to dissuade the use of solicitors (Sanders et al, 1989). Certainly, more recent research has suggested a modest increase in the uptake of legal advice following PACE (Skinns, 2011: 112). Dixon, reflecting on PACE in 2008, noted that whilst it extended police powers, it also clarified and delimited them (Dixon, 2008: 29), arguing that whilst Custody Officers were not perfect, the custodial systems were better with them than without them (2008: 32). Whilst there were criticisms levelled against PACE in the early 1980s, it is now considered an important step towards protecting the rights of arrestees.

The Prosecution of Offences Act, 1985

This Act established the Crown Prosecution Service (CPS) for England and Wales. Prior to the creation of the CPS, police forces had been responsible for bringing cases to court. The Act also made provision for costs in criminal cases, imposed time limits in relation to preliminary stages of criminal proceedings (Newburn, 2003:35), and was an attempt to reduce the numbers of remand prisoners (Cavadino and Dignan, 2007:95). The Act came about following growing disquiet about the role of the police in investigating and prosecuting offences (Windlesham, 1993:126). Questions were raised about the production and presentation of evidence, the nature and functions of inquiries, and suspects' rights in the police station (McBarnet, 1978: 455). Section 16 of the Act gave courts the power to award a successful defendant or appellant their costs out of Central Funds and section 20 provided for regulations to set down scales and rates for any costs ordered to be paid out of Central Funds. As a result of the Act, the prosecutor could take into consideration issues such as the effect of silence, and bad character. The creation of the CPS was seen by Lord Philips to be the establishment of an essential balance of the powers given to the police in PACE (Kirk, 2008).

The Drug Trafficking Offences Act, 1986

The main aim of the Act was to introduce new mandatory Crown Court sentences for drug trafficking offences. Some argued that the Act shifted the balance of proof onto traffickers

(Garlick, 1990), and marked the beginning of the Government's campaign "to deprive criminals of the fruits of their crime, culminating in the Criminal Justice Act 1993" (Hancock, 1994). It had its origins in a police operation; the defendants were charged in 1977 and sentenced to long terms of imprisonment (Garlick, 1990). However, these convictions highlighted the shortcomings of the forfeiture provisions then in force, since there was no law which equated the laundering of the proceeds of crime as an offence. Accordingly, the Act introduced a confiscation regime for proceeds of drug trafficking. This injected an element of 'mandatoriness' in terms of the confiscation of proceeds, and in effect created heavier penalties, in that the High Court was able to make charging orders and restraint orders in anticipation of a confiscation order which would be discharged if no such order was made. Furthermore, the Act permitted longer terms of imprisonment in default of payment of a confiscation order than were possible in the case of fines. The Act also shifted the burden of proof (in that assets were assumed to be derived from drug trafficking) which led to concerns about basic principles of justice (Collison, 1995:76).

The Criminal Justice Act, 1988

This Act reclassified taking a motor vehicle, driving whilst disqualified and common assault as summary offences, reducing the numbers of people being sent to the Crown Courts (Sanders et al, 2010:546), and facilitated "the conviction of alleged child abusers by allowing evidence to be given through a television link by a witness under the age of fourteen in cases involving assault, abuse, or sexual misconduct" (Boland, 1988). It limited the use of witnesses below the age of fourteen in certain committal hearings for persons accused of committing assault, abuse or sexual misconduct (Boland, 1988). The Act removed the requirement that unsworn evidence given by children was corroborated and that sworn evidence given by children be accompanied by a warning if not corroborated. The Act also increased the maximum term of imprisonment from two to ten years for cruelty to children and young persons (Boland, 1988). The Act established that it was an offence to be in possession of an indecent photograph of a child (Boland, 1988), and placed the Criminal Injuries Compensation Scheme on a statutory basis. The Act also extended the confiscation

regime introduced by the 1986 Drug Trafficking Offences Act (Feldman, 1989), and made hearsay evidence admissible in some cases (Birch, 1989).

However, the Act will be remembered for its stance on imprisonment. It established three criteria to help decide whether an individual qualified for a custodial sentence (Thomas, 1989). Meeting one of these criteria was enough to trigger imprisonment: a) if the offender "has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them", b) when "only a custodial sentence would be adequate to protect the public from serious harm from him/her", and, c) when "the offence of which he/she has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified" (Thomas, 1989). The Act made custody a last resort for the most serious and dangerous young offenders (Pickford and Dugmore, 2012:56). However, it was also the case that certain offences under the Act saw increases in maximum penalties (Thomas, 1989).The maximum imprisonment for carrying an offensive weapon doubled to six months and the minimum disqualification for causing death by reckless driving doubled to two years (Gold, 1988). Sections 35 and 36 of the Act allowed for 'unduly lenient' sentences to be appealed (Cooper, 2008). With regards to victims, the Act also allowed courts to order that the proceeds of the sale of property which has been the subject of a deprivation order to be transferred to the victim of the offence (Thomas, 1989).

The Criminal Justice Act, 1991

By the time that the 1991 Act had been passed, Thatcher had left office (to be replaced by John Major). The Act aimed to introduce a coherent framework within which discretion could operate (Koffman, 2006). Prior to the Act, sentencers were at great liberty to choose between various philosophies underlying their sentences which led to claims that sentencing decisions lacked consistency (Koffman, 2006). The thinking behind the Act had been developed over many years (Windlesham, 1993:412-414), and it was seen as the 'high watermark' of informed, liberal sentencing policy (Cavadino and Dignan, 2007:55). Although several attempts had been made to reduce imprisonment, these had not produced the

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desired outcome. The Court of Appeal had attempted to provide clearer guidance with respect to the appropriate levels of sentence for particular crimes along with general guidance regarding which types of offences warranted incarceration (Koffman, 2006). There was, however, little to ensure that the guidelines were adhered to (Koffman, 2006). The Carlisle Committee advised that changes would have to be made by sentencers to avoid an increase in the prison population. The Act was preceded by a White Paper which proclaimed that imprisonment was in many cases "an expensive way of making bad people worse" (Koffman, 2006, and echoing the sentiments in Whitelaw and Howell's 1978 paper), before arguing that "more offenders should be punished in the community" and that "a new approach is needed if the use of custody is to be reduced" (Ashworth, 1992). One key argument made was that an offender should not necessarily move 'up' the penal ladder but that the sentence should be based on the seriousness of the offence (Koffman, 2006).

The approach to sentencing which was adopted was predicated on the idea that custodial sentences should only be made when no other sentence would suffice (Koffman, 2006). The Act created new court orders; the combination order gave courts the power to sentence an offender to probation supervision and community service simultaneously, whilst the curfew order required offenders to be at a specific place at a specific time (Newburn, 2003:147-148). The intention of introducing these orders was to demonstrate that alternatives to custodial sentencing were sufficiently punitive (Newburn, 2003:147). The Act brought about a total reform of the early release rules; 'short-term' prisoners could now be paroled after serving half their sentences (as opposed to one third). 'Long-term' prisoners could be eligible for release half-way through their sentence if the Parole Board recommended it, but had to be released by the Secretary for State after having served two-thirds of their sentences. These changes offered a pragmatic solution to courts' over-reliance on imprisonment (Koffman, 2006). The system of unit fines created by the Act resulted in better rates of fine payment (Wasik and Taylor, 1991:4). Suspended sentences were also introduced (Cavadino and Dignan, 1992); these were less punitive in practice as courts could only impose them if immediate custody would have been justified and if the suspension of the sentence could "be justified by the exceptional circumstances of the case" (Newburn,

2003:171). The Act reduced by about 7,000 those in prison and introduced a system for monitoring biases in anti-discrimination activities (Cavadino and Dignan, 2007:115).

The Criminal Justice Act, 1993

The background to this Act was the increasing interest taken by political parties in the views of the public (Rutherford, 1996). Public concern at crime levels was starting to rise sharply (Farrall and Jennings, 2012: 474), and the policies which emerged reflected both these concerns and the wider Thatcherite authoritarian stance (Rutherford, 1996). Against this background, the Act provided tougher penalties for young offenders, thus blunting the spirit of the 1991 Act (Rutherford, 1996), elements of which the judiciary had opposed. At this point, the government started to shift its stance on imprisonment and abandoned attempts to limit the use of custody (Rutherford, 1996).

Famously, the Act removed unit fines (Gibson et al, 1994:95), replacing these with a new scheme of means-related fines thus ensuring that offenders were able to pay the fines they had incurred (Gibson et al, 1994:95). It also reversed the rule against taking previous convictions or responses into account regarding the seriousness of the current offence, offending on bail became a mandatory seriousness factor and there were increases in certain penalties (Gibson et al, 1994:37, Turner, 2007). The Act not only raised the maximum penalty for an offence, it also increased the starting points for sentencing proportionately (Turner, 2007). The principle behind sentencing remained, with the seriousness of the offence being the ultimate factor in determining the sentence (Edwards, 1994:20). The Act however changed the extent to which reference could be made to previous convictions, stating that failure to respond to a previous sentence should be taken into account (Edwards, 1994:20). Being on bail at the time of the offence became an aggravating factor at sentencing (Cavadino and Gibson, 1993:12-13). The Act appeared to increase those in custody. During 1985-93 the number of people held on remand remained between 9,500-10,600 (Rutherford, 1996); 1994 saw a rise of over 13% (this number fell back slightly in 1995, only to pick up again in 1996, (Rutherford, 1996)). A 10% decline in

cases brought to court occurred between 1990-95, yet the total number of immediate custodial sentences more than doubled from 20,600 to 44,800 (Rutherford, 1996). Ultimately, although the increase in the number of prisoners serving long sentences was lowered by the 1991 Act, there was an underlying pattern of growth which remained strong, as can be seen by the 15% increase between 1993 and 1995 (Rutherford, 1996).

The Criminal Justice and Public Order Act, 1994

Michael Howard (Home Secretary 1993-1997) rejected the orthodox Home Office philosophy that there was little that could be done to halt rising crime levels and instead wanted to ensure that criminals would be held to account for their actions and punished accordingly (Wasik and Taylor, 1995:1-6). Howard had picked up on public concern over crime and unveiled his approach during the Conservative Party conference in October 1993, where he announced a '27-point plan to crack down on crime' (Wasik and Taylor, 1995). The aim of the Act was to introduce provisions to amend or extend the criminal law and powers for preventing crime and enforcing the law. Overall, the provisions were designed to increase the powers of the courts with respect to imposing custodial sentences on young offenders (Wasik and Taylor, 1995). The Act increased the stop and search powers of the police, reduced the rights of safeguard of suspects and allowed juries to infer guilt from a suspect's silence after arrest, so that adverse inferences could be drawn (Sanders et al 2010:19). The Act also gave the police the power to order trespassers off land, and toughened squatting laws (Ashworth, 1995) as well as prohibiting the bailing of those charged with murder, attempted murder, manslaughter, rape or attempted rape to anyone previously convicted of such an offence (Ashworth, 1995). The Act also extended police powers to detain young people after charge by lowering the age at which they could be held from 15 to 12 (Ashworth, 1995), by allowing offenders aged 10-14 to be given long-term detention for grave crimes, and by increasing the maximum term for which those aged 15-18 could be detained in a young offender institution from one to two years (Ashworth, 1995). The Act increased the maximum penalties available for offences relating to fisheries, the misuse of drugs, firearms, and poaching (Ashworth, 1995), and allowed courts to impose a custodial or a community sentence without obtaining a pre-sentence report (Ashworth,

1995). The Act also reduced the prosecution's duty to disclose its case to the defence whilst introducing a duty on the defences to disclose its 'case' (Sanders et al 2010: 581). The Act also encouraged guilty pleas by restating a long-standing common law principle of giving lighter sentences to those who pleaded guilty (Sanders et al 2010: 440).

The Criminal Procedure and Investigations Act, 1996

The aim of this Act was two-fold: to reverse the drift of the common law favouring ever greater prosecution disclosure, and to force the defendant to engage in pre-trial processes (through advance disclosure of its case). The Act came about as a result of the then recent history of miscarriages against justice (which often came about from serial non-disclosures). The Act was also the Government's response to a number of proposals which were laid out in the Report of the Royal Commission on Criminal Justice (Leng and Taylor, 1996).

The Crime (Sentences) Act, 1997

The Act (which was passed just before Labour won the 1997 general election) outlined mandatory minimum sentences for serious offences (such as residential burglary and drug trafficking). As such, when an offender has been convicted for a class A drug trafficking offence, is aged eighteen or over, and has been convicted on at least two separate occasions of a similar offence, then the court is required to pass a sentence of at least seven years (Thomas, 1997). This created a "precedent for the introduction of mandatory minimum sentences for just about any kind of crime" (Thomas, 1998). The Act also introduced automatic life sentences. Under the Act, when life sentences are imposed, so too are fixed minimum terms, reflecting the seriousness of the offence. This ensured that the Parole Board could not release the prisoner prior to the fixed minimum term. The Act also removed consent requirements in relation to probation orders, community service orders, combination orders (unless these were made in relation to psychiatric treatment or for the treatment of drug or alcohol dependency). The offence of indecency with a child was given an increased maximum sentence of imprisonment of up to ten years (the same tariff as that

Comment [PK7]: Was this introduced by Labour? Make clear

for indecent assault). The power to order detention of a child or young person under Children and Young Persons Act 1933, was expanded to include indecent assault on a male.

The Crime and Disorder Act, 1998

The Crime and Disorder Act 1998 established the Youth Justice Board for England and Wales and sought to improve the effectiveness of the Youth Justice System in preventing, deterring and punishing youth crime as well as proposing orders to prevent reoffending through an interventionist welfare approach.It contained provisions such as the reparation order and a revised supervision order which underlined the Government's support for restorative justice principles (Fionda, 1999). The Act will always be remembered for introducing anti-social behaviour orders (ASBOs), which aimed to "provide a more flexible means of dealing with persistent anti-social behaviour but without recourse to criminal sanctions" (Jones and Sager, 2001) and for abolishing the doctrine of *doliincapax*, whereby those aged 10-12 could only be prosecuted if the CPS could prove that they knew the difference between right and wrong (Cavadino and Dignan, 2007:326-327). ASBOs were introduced against the background of political concern with nuisance neighbours, street thugs and juvenile delinquency (Jones and Sager, 2001). However breaching an ASBO could lead to the possibility of imprisonment (up to five years). The Act created a range of racially-aggravated offences which made existing offences (such as criminal damage and assault) more serious, whereby these become subject to higher maximum penalties because of racial aggravation. Extending the philosophy initiated by the Criminal Justice and Public Order Act (1994), the Crime and Disorder Act allowed a court to draw inferences from the failure of a juvenile to give evidence or answer questions at trial. The Act blurred the boundaries between civil and criminal law in that civil court standards could be used in the criminal courts (Sanders et al, 2010:5). The Act also increased courts' powers with regards to post-release supervision. Offenders were required to "undergo a longer period of post-release supervision, when a court decide to impose a custodial sentence on a person who has committed either a sexual or violent offence ... and where it is considered that the period for which the offender would otherwise be subject to post-release supervision would

be too short for the purpose of preventing the offender from committing further offences and for securing his rehabilitation" (Padfield, 1998).

~~CONCLUSION~~ MAKING SENSE OF THE THATCHERITE LEGACY FOR THE CRIMINAL JUSTICE SYSTEM

How best, then, to make sense of the ~~key criminal justice Acts passed by the~~ Thatcherite legacy for the criminal justice system in England and Wales ~~governments~~? Whilst Thatcher's period of office came to an end in 1990, it is instructive to view her intellectual project as one which transcends her time a PM. ~~Figure~~ Table One provides a synoptic overview. It summarises key aspects of each of the Acts explored above and indicates whether or not it might be seen to exhibit some of the important aspects of punitiveness. Table One contains two sorts of measures – the first (in the upper portion of the table) lists various non-punitive measures (in an attempt to gauge the passing of the former paradigm, Matthews, 2005: 185), and the second (in the lower portion) lists punitive measures.

Comment [PK8]: I think this section is too long for a conclusion. Needs to be renamed 'Explaining Thatcher's Law & Order…' or such like

Comment [PK9]: It seems odd to ask the question in this way as the last 6 Acts examined have all been post-Thatcher. Perhaps the focus here is more on the 'legacy' of the Thatcher govts rather than the Thatcher govts per se?

The first finding to note is that the non-punitive measures ceased abruptly in 1991. Allowing for the passage of time between drafting and enactment, one *could,* on the basis of this evidence, read the Thatcher governments as representing the 'last hurrah' for liberal criminal justice policy based firmly on a belief in the rehabilitative ideal. This would be a rose-tinted view, however, since 1982-1988 also saw increases in post-prison release and community controls, increases in some sentence lengths, changes to the burden of proof and other measures which could reasonably be read as increasing punitiveness. Certainly, however, the period from 1993 until 1998 saw dramatic increases in punitive measures, such as repeated attempts to increase sentence lengths, extend mandatory sentences and changes to the disclosure of a defendant's case (which would have tipped the balance in favour of the prosecution).

Table One about here

~~A~~ Looking at Table One, a number of trends can be detected. For example, whilst the 1982 Act did not bring about a wholesale recasting of the criminal justice system along radically more punitive lines, it was part of a wider 'toughening' of the rhetoric around crime, the causes of crime and how offenders ought to be punished. Nevertheless, one can see (in the creation of the Night Restriction Order and the Charge and Control conditions) the beginning of a more punitive approach. What was key, was the developing rhetoric devoted to the notion of 'toughening' the criminal justice system's response to wrong-doing. As such, though 1993 represented a structural break, it was not a completely 'clean' break, in that some of what emerged from that point drew heavily on past ideas.

Our identification of the development of these trends owes much to historical and constructivist institutionalisms. Key is identifying and describing how trends (or 'path dependencies') are produced, shaped and maintained (Thelen and Steinmo, 1992, Pierson, 2004). Hall defines an institution as "the formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the polity and economy" (Hall, 1986:19). For Sanders (2006:42), historical institutionalists are mainly interested in how institutions are constructed, maintained and adapted over time. Levi defines a path dependency as meaning:

> "that once a country has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice, perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other … the branch on which a climber begins is the one she tends to follow." (Levi, 1997: 28).

Pierson (2004:20) adds that path dependence refers to a dynamic process which involves a positive feedback and which generates a series of further outcomes depending on the sequence in which these events and processes occur. As such, once a path has been selected and embarked upon, decisions, events and processes tend to reinforce this path, making the change to an alternative path harder with each step. Over time the paths not taken become harder and harder to navigate back towards and the chosen path becomes more dominant.

More recently another body of institutionalist thinking has emerged out of a critique of historical institutionalism. Going under the name of constructivist institutionalism, this perspective argues that historical institutionalism overlooks the role which *ideas* play in shaping political outcomes (Ross, 2011, Hay, 2011). The basic observation is that historical institutionalism is too 'sticky' in that it cannot easily allow for individual agency (Bell, 2011). Constructivist institutionalism focuses on the ways in which ideas, rather than actors, can change or mould institutions and processes. Pierson argues that "institutional arrangements in politics are typically hard to change" (Pierson, 2000:490) and that "actors find the dead weight of previous institutional choices seriously limits their room to manoeuvre" (Pierson, 2000:493), suggesting that agency is seriously hampered. Indeed, and as Hay notes, within the auspices of historical institutionalism, change is seen as the outcome of path dependent processes or from shocks from outwith (Hay, 2011:66). This overlooks what Hay refers to as 'path-shaping' (as opposed to path-dependent) possibilities (2011:66). Hay's critique of much current historical institutionalism stresses that whilst it continues to focus on path dependencies, it will remain unable to fully account for institutional changes. By bringing a focus on ideas into play, constructivist institutionalism forces us to grapple with the concept of *ideational* path-dependence (as well as *institutional* path-dependence, 2011:68-69). As Blyth suggests, "institutional change only makes sense by reference to the ideas that inform agents' responses to moments of uncertainty and change" (2002: 251). Through these lenses, ideas become codified and start to serve as the cognitive filters through which actors are able to conceive of their interests (Hay, 2011:69). Similarly, Blyth argues that "ideas give substance to interests and determine the form and content of new institutions" (2002:15). As such, constructivist institutionalism allows one to develop explanations which include

novel developments, and counterbalances historical institutionalism's tendency to focus on institutional inertia (Hay, 2011:69). In this way, actors are viewed as being active in that they make decisions, have interests, goals and aims.

Such perspectives, in combination, can usefully illuminate our analyses. In particular they help us to explain the emergence and continuation until the early 1990s of what we term 'communicative dissonance' (the gulf between rhetorical radicalism and substantive policy) in criminal justice policy. The Thatcher governments were ideationally punitive from the first election of Thatcher in 1979. But, between 1979 and at least 1990 that rhetorical radicalism was not wholly reflected in substantive policy commitments. This is not difficult to explain from a constructivist institutionalist perspective. First, ideational radicalism invariably precedes policy and institutional radicalism (Hay 2002, 2015). Second, and more specifically, throughout this period, the Conservatives' 'punitive electoral advantage' went unchallenged. It was really only with the 'modernisation' of the Labour Party and the toughening of Labour's law and order credentials ~~during this period~~from 1992 that this lead started to be eroded. By that time the Conservatives were well on the way to becoming substantively tough on crime to match their rhetoric. Prior to this, the Thatcher governments' priorities were elsewhere. They had, in short, more important priorities which, they perceived (almost certainly correctly), were much more closely bound up with their future electoral fortunes – in economic policy and welfare reform in particular.[3] Thus i~~t~~t was only after they had attended to other policy fields that they turned to resolve law and order, and by that time, with crime rates rising and a much more concerted challenge from the opposition, they had much more electoral need to do so.

Comment [PK10]: Roughly when was this?
SF We have dealt with this in a new footnote.

So, in sum, what might account for this 'communicative dissonance'? In short, we suggest, there are a range of institutional and political impediments to radicalism in this policy domain which are not well anticipated in the existing institutionalist political science literature. Amongst these we would draw particular attention to: (i) the substantial opinion poll lead that the Conservatives enjoyed on this issue when they were elected and the

[3] For example, the economy was a key focus of the Thatcher government for much of the first term of office. Housing was also focused on between 1980 and 1986, whilst the social security system was radicalised between 1984 and 1988. See Hay and Farrall (2011).

absence of a credible challenge to its 'punitive advantage' before Blair became Shadow Home Secretary in 1992; (ii) the phasing of policy radicalism in other policy domains (which meant that the Thatcher governments could not act radically in all, or even many, policy fields at once and had to phase their radicalism) (Farrall and Hay, 2014); (iii) the absence, at least in the early-1980s, of dramatic upward trends in crime rates which might draw attention to the 'communicative dissonance' of the Thatcher administration; (iv) the need for Thatcher to place within her first few Cabinets leading figures of the left of the Conservative party ('wets') and to give them important portfolios in order to keep her party together in the absence of a more thoroughgoing internal Thatcherite revolution; and (v) a certain tendency, whilst the Conservatives' 'punitive advantage' in the opinion polls persisted, not to further politicise law and order policy by advancing contentious measures which would be likely to have a modest substantive effect in the short- to medium-term.

The first path we find relates to the desire to limit the use of imprisonment (P1 in Table One). This is evident in most of the Acts passed before 1993, and harks back to the belief that imprisonment was an undesirable outcome in all but the most severe of cases. This desire was a cornerstone of not just Home Office philosophy, but also of some sections of Conservative Party philosophy, and represents an idea which was firmly rooted in sentencing policies until 1993. The Acts passed, especially those in 1982 and 1991, appeared to have the effect of reducing imprisonment, albeit perhaps not to the degree desired. In defending the desire to limit imprisonment, successive Acts attempted to make community sentences appear tougher in the eyes of the public. This reflected the rise in knowledge about both the operation of the criminal justice system (via recorded crime rates) and, more importantly throughout the 1980s, the public's experiences of and concerns about crime (via the British Crime Survey, initiated in 1982). This new form of knowledge highlighted increasing levels of fear of crime. Given that the Conservative Party 'owned' the topic of crime in the 1980s and that obedience to 'law and order' was a key plank of the neo-conservative instinct (Hayes, 1994, Hay, 1996),[4] it made sense for some degree of rhetorical

[4] Matthews (2005:187) asks why 'neo-liberal' governments like Thatcher's would care about locking up minor offenders. The answer, we contend, is that such governments were not simply neo-liberal; they were also neo-conservative, and it is from this strand of New Right thinking that the moral authoritarianism associated with punitiveness emerges.

'toughness' to be used to mask the Home Office's wider objective of reducing imprisonment.

The second path we identify (P2) relates to the right to silence, which was significantly reduced after 1993. In part, this was connected to the increasingly tough rhetoric, but also it was an attempt to undo some of the rights gained from PACE and the curtailing of some police powers associated with that Act. The third and fourth paths we identify (P3 and P4) relate to increases in sentence lengths and the use of mandatory sentences. These had their origins in the Drug Trafficking Offences Act of 1986, and, as an idea about how to tackle crime, were extended in various Acts, most commonly those after 1993. The Crime (Sentences) Act 1997 is considered to have created a more punitive system in that it introduced maxima and minima sentences for certain offences and their subsequent repetition (Robson, 2010). In general, the policies introduced by the Conservative government between 1992 and 1997 were characterised as appealing to increasingly populist attitudes to retribution and deterrence (Edwards, 2010). Another, again related, trend was increased youth imprisonment (P5) – something which the likes of Whitelaw opposed in the early 1980s (despite his rhetoric on this matter). Finally, our sixth path (P6) relates to changes to the duty of disclosure – which has shifted from the prosecution needing to disclose its case to the defence towards the defence needing to reciprocate (again, this could be seen as making conviction more likely).

We see the 1980s as a critical juncture for the ideas which later were to shape criminal justice policy in England and Wales. Subsequent to this, and especially after 1993, ideas about how to tackle crime were placed on particular ideological pathways which have become difficult to change since. Although not formally an element of the work on historical institutionalism, both Thelen and Steinmo (1992) argue that work on punctuated equilibrium could operate alongside historical institutionalism (Bulmer 2009:308). The theory of punctuated equilibrium in public policy suggests that long-run stability in policy-making is subject to occasional seismic shifts when existing institutions and issue definitions breakdown and pressure for change accumulates to the point where it cannot be ignored

(Krasner, 1984, Baumgartner and Jones, 1993). As Zehavi describes it such, "at some point the growing inadequacy of [a particular] policy [is] sufficient enough to merit media and public attention, and policy makers, due to public criticism, would react – perhaps even overreact – with a major reform that would shift the policy point of equilibrium" (2012:736).

The 1980s saw a number of previously unremarkable Home Office policy goals (such as reducing imprisonment) run head-long into dramatic rises in crime which made some of these vulnerable to being challenged with the ideological framework developed as part of Thatcherism. The idea that prison was an expensive way of making offenders worse initially survived as the ideological and policy attention was on the economy, industrial relations, housing and social security. As popular concern about crime was first charted and then recognised to be rising quite dramatically, the result of a new institution ('the crime survey'), the stance on imprisonment started to come under pressure. In order to divert people away from prison, community disposals needed to be made to sound sufficiently tough, and in so doing, toughness was promoted. When the idea of reducing imprisonment came to be questioned (by Howard), the discourse of 'tough' responses to crime had been established and went unquestioned and unchallenged by the opposition party (who started to engage in their own rhetoric of toughness). Consequently, it was possible to imagine criminal justice policy as becoming narrowly punitive (Newburn, 2007). Howard's appointment as Home Secretary was therefore a 'critical nomination' (Robinson, 2013); an outsider at the Home Office, he had not been indoctrinated into the Home Office's approach to crime ('it will always rise') or imprisonment ('it ought to be used sparingly'). For the first time, the Home Office was led by an avowedly Thatcherite Home Secretary. Prior to this, the post had been held for long periods by paternalists or non-Thatcherites (such as Whitelaw, Hurd, or Clarke) or by Thatcherites only briefly (Waddington). After that point, with crime a political issue on which the Labour Party were developing their portfolio, the post was held by a series of Home Secretaries who sought to extend the general tenor of the approach adopted by Howard.

Sanders and colleagues (2010:19) argue that in the period since 1997, the "Labour government … has dismantled suspects' rights and increased police powers at an even greater rate" (than the Acts of 1994, 1996 and 1997). Bell (2013) provides a good summary of these developments; the prison population rose by 58% between 1995 and 2012, due in part to lengthening prison sentences and the use of indeterminate sentences brought in by the 2003 Criminal Justice Act (in 1999 the average length of a custodial sentence was 11.5mths, rising to 13.7 by 2009). Further mandatory minimum sentences were created by the 2003 Act and the Legal Aid, Sentencing and Punishment of Offenders Act (in 2012). Additional contributory factors include the limitation of parole for many and the trend towards recalling or breaching those who do not comply with parole requirements or community sentences (Bell, 2013:63). Most recently, in 2013, Section 44 of the Crime and Courts Act "require[s] courts to include a punitive requirement in every community order".Such is the accumulating power of discourses around punitiveness.

CONCLUSION

Our argument has been that whilst Thatcherite rhetoric on law and order was punitive, the criminal justice legislation of the 1980s did not completely reflect these sentiments. Ideational change took time to become embedded in the philosophy of those who designed and managed the strategic direction of the criminal justice system. As such, there is no clear paradigm break, but rather an incremental -'drift' towards growing punitiveness in which, to be sure, a series of small points of inflection can be identified. In sum, the much more punitive and 'Thatcherite' criminal justice legislation only emerged in the years after she had left office (during which there was much more intense inter-party competition over the issue). The Acts on which we have focused, in effect, established and then reinforced path dependent processes with regards to the criminal justice system. Some Acts strengthened earlier provisions (such as those aimed at limiting imprisonment prior to 1993). Other Acts extended a philosophy introduced with regards to one crime type to different crime types (such as the introduction of mandatory sentences in 1986 which was later extended by the 1993 and 1997 Acts). Additionally, some Acts incrementally reinforced an ideal (such as the questioning and amendment of the principle of the right to silence). None of the path

Comment [PK11]: I would suggest we make this the 'conclusion'. In that vein, perhaps needs one or two sentences at the start of the paragraph to sum up the overall argument(s)

dependent processes which we have identified owe much to *organisational* change, but owe rather more to changes at the *ideational* level. Hence it is the recognition that rises in crime were starting to cause anxiety amongst the populace, which drove the political interest in crime. As such, it was the ideas which were promoted by first Thatcherism generally (embracing, amongst other things, a punitive attitude towards wrong-doing), then secondly by the likes of Whitelaw and the Home Office (who aimed at diverting people away from imprisonment by making non-custodial sentences sound 'tough'), which were adopted by Howard in order to promote his own stance on sentencing and crime control. This reading suggests that the punitive sentences of the recent era are the outcome of several developments: Attempts to pander to the wider discourse established by Thatcher; the real rises in crime (in part a consequence of Thatcherite policies in other social policy arena, Farrall and Jennings, 2012); a growing recognition of popular anxieties about crime; the later arrival of a Thatcherite-minded minister at the Home Office in the form of Howard, and lastly the adoption of this discourse by subsequent Labour Home Secretaries.

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