
JUSTICE AND POLICY DEVELOPMENT

CALIFORNIA'S THREE STRIKES LAW

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Abstract

Crowded modern era communities require laws and rules to maintain order and safety. Naturally, these rules often stem from our beliefs and centuries of traditions in addition to empirical studies to uphold values that our communities praise. As one of these values, justice, is emphasized in the contexts of most religions, for example (Islam, Christianity and Judaism). These beliefs also suggest rehabilitation before punitive measurement. There is no religion that recommends injustice. However, due to some failures, there are occurrences or policies that despite our traditions and beliefs condemn or empirical studies discourage, produce unjust outcomes. Hence, justice is vital for each state and community to prevent the eventual disruption of both of them. In this matter, governments use policy development as a tool to solve problems with justice; nevertheless the process is complex by its nature. Disregarding its complexity may result with policy failure and unjust results. This study aims to find out whether a crime fighting policy that received massive public support but has no empirical background has been a success in crime prevention and in the distribution of justice. For this, it looks into an infamous policy, California's 'Three Strikes and You're Out' law as a case study. Findings so far have shown that especially until the 2012 amendment, the implementation of California's Three Strikes law provided disappointing results. This indicates that, the founding of the law was based more on emotional reactions rather than empirical studies and that the foundation of the policy also disregarded known experiences and traditions/values in crime fighting and upholding justice.

Keywords: policy, California's Three Strikes Law, punishment, justice

1. Introduction

Living together, is the unavoidable reality of the modern era. However, this reality requires rules and regulations to build and maintain justice, peace and prosperity within the communities. Justice is one of the most important pillars of a solid a state. Deficiency in justice may endanger welfare and can lead to the disruption of both the state and the community. Laws and regulations to maintain order and prosperity root from our traditions and/or religious perspectives the

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same beliefs also consider rehabilitation measures be prevailed before punishments. Hence, public policies are generally shaped in consideration of values and traditions that the community upholds. Justice is one of such values and has been also emphasized in the sacred scriptures of most religions such as Islam, Christianity and Judaism.

Islam preaches to its followers to be just and fair at all levels. Islam orders to not diverge from justice even if there is outside pressure or even if it is against friends and relatively close kinships, the rich or the poor (Quran 4:135). Because being fair and just, suggests Quran, is the closest one can get to being righteous (Quran 5:8). It forbids discrimination of race, religion, colour and creed. The Quran commands justice for all, and views this as an inherent right of all human beings. According to the Quran justice is an obligation, and that it is the one of the most basic rights of all human beings, which is why Prophet Mohammed was told to judge with justice (Quran 5:42) [*Justice in Islam*, IslamReligion.com, 2006, <https://www.islamreligion.com/articles/376/justice-in-islam/>]. In addition, Islam recommends the righteous person to forgive if possible and await their reward from the Creator (Allah). Therefore, the famous Islamic scholar, poet, Sufi mystic and theologian Mevlana Celaleddin-i Rumi quotes Islam and its forgiving, rehabilitation perspective as (directly quoted): “Come, come, whoever you are. Wanderer, worshiper, lover of leaving. It doesn’t matter. Ours is not a caravan of despair. Come, even if you have broken your vows a thousand times. Come, yet again, come, come.” [M.C. Rumi, *Rumi Quotes*, <https://www.goodreads.com/quotes/79822-come-come-whoever-you-are-wanderer-worshiper-lover-of-leaving>].

Christianity states through the teachings of Jesus Christ that punishment for crimes should always be aimed at reforming the criminal and never to exact revenge upon the person. Christianity too emphasizes rehabilitation on every occasion and indicates that punishment should always be the latter choice and that everybody should be treated justly. On the other hand, Christianity commands that even if an individual is a recidivist offender they should not be punished unfairly and that they should be treated justly, and not to be judgmental about their attitudes. We can see that Christianity outright states that reform, not revenge, must be the main goal of the punishment. Accordingly: Jesus once was asked by Peter how many times he should forgive his brothers and sisters that do wrong to him? And whether seven times was enough. Then, Jesus replied that he does not say 7 times, but 77 times (Matthew 18.21-22) [BBC, *Crime and punishment*, <https://www.bbc.co.uk/bitesize/guides/zvs3d2p/revision/3>].

Judaism, much like Christianity, also emphasizes justice in all matters. It preaches that human rights of criminals are to be respected at all times even while incarcerated and all possible methods are to be exhausted in order to reform the perpetrator and that perpetrators should be given same level of opportunities as their counterparts to serve a just trial. Judaism also preaches that punishments should be kept fair in comparison to the crime committed as almost every person has the capacity to reform. In summary, we can see that Judaism preaches reform over revenge as well but seeks fairness in punishment if it cannot be avoided [<https://www.bbc.co.uk/bitesize/guides/zhts4wx/revision/3>].

Communities naturally depend on their governments to find solutions for their troubles in relation to matters such as: economical problems, health issues, environmental problems, safety matters, social-security concerns, and education or security and justice topics. For this purpose, this study aims to find out whether a crime fighting policy that received massive public support but has no empirical background has been a success in crime prevention and in the distribution of justice. For this, it looks into an infamous policy, California's 'Three Strikes and You're Out' law as a case study.

Mainly there are two ways to formulate policies: first being the example in which a policy is written down quickly after a pressing development (something that draws high media coverage and/or impacts all of the community members emotionally or otherwise) without necessary groundwork preparations. The second type involves the actual steps of the policy development process itself. The latter type is slower but progresses with solid acts. Having said that, an important notion in this matter is that, successful policies are not coincidental. They require objectivity, scientific evaluation, meticulous wording and the participation of all stake holders.

Simply put, policy development process's initial steps include the definition of the problem; is followed by agenda setting, and weighing alternatives. The main steps include the processes of clear policy formulation, policy implementation and the policy evaluation processes. All these course of actions require the utmost scientific and professional attention to provide dependable results. It is very rare to have a 100% perfect policy at the first instance because one cannot predict 100% of all possible outcomes. Therefore, the second and third phases enable policy makers to experience the unpredicted errors and improve the policy. During these processes actors such as administrators, other government officials, citizens, legislators, politicians, judiciaries, scientists and varying interest groups or stake holders should be involved in the related phases. Any misapplication or exclusion of necessary people in the processes may cause undesired results. Hence, as a tool, policy development remains 'a must' for all governments to unravel the problems of their communities [1].

2. Methodology

The method used to conduct this research is a focused synthesis which can be basically interpreted as comprehensive literature review designed to organize, collate, and summarize the existing literature on a topic. The online sources and academic sources have been screened to find previous studies on California's Three Strikes Law and the basics of policy development. The previous studies have been used to find opposing and supporting ideas on the case study, and have been laid out on the same platform to find out the impacts of California's policy after its implementation through an analysis to answer the research question.

3. Case study

3.1. 'Three Strikes' appearing as a law

Laws that enhance the punishment for recidivist offenders have a long background in Anglo-American history, and they were quite common in the United States during the twentieth century [2]. Unlike other States, California's Three Strikes has been applied more broadly, enthusiastically, and visibly. California's Three Strikes law also covers more crimes than any other state. Recidivism is an important component of the formulation of California's Three Strikes law. Especially crimes against the most vulnerable group in the society, children, accelerated the enactment of the law [3].

In California the law is being applied to any felony, both violent and non-violent in the same way. California is also one of the few States with a 'second strike' law. That means that California also incarcerates people with one prior serious or violent felony conviction with a doubled sentence for any new felony conviction. Consequently, California's Three Strikes law has lengthened the terms of incarceration for thousands more offenders [4]. The unique side of California's Three Strikes law is that the number of Three Strikes cases in California is significantly higher than similar cases in all of the other states and the federal system combined. For example, while California's population is six times that of Washington's, California applies the Three Strikes law thirty-three times more often than Washington [3].

Actually, it was the early 1990s when researchers realized that crime replaced economical problems and became the country's most critical trouble [5]. The first version of the Three Strikes law was enacted in Washington in 1993. The Washington Three Strikes law included only certain serious felonies with a life sentence on the third conviction. In a short period of time, a narrower Three Strikes provision became part of the federal crime legislation in 1994. The main goal was to remove repeat offenders from society for a long time, if not for life [2].

California's 'Three Strikes' was proposed for the first time by Mike Reynolds in June 1992, after the murder of his 18 year old daughter Kimberly who was shot and killed by two repeat felons with long arrest records. Kimberly's father started a ballot initiative called 'Three Strikes and you are out' to subject repeat felons to longer mandatory sentences [2]. In April 1993, Reynolds' idea received a cold reception from the California legislature, which killed his bill in committee. Reynolds believed that the only way to toughen the sentencing was submitting a proposition directly to the people of California. He started his tough battle without any political or financial support to finance a voter awareness campaign [6].

The final incident which led to the swift, though not empirically studied, enactment of the Three Strikes law in California was the Polly Klaas incident. In October 1993, the 12-year old girl was abducted from her home by a twice convicted offender. Also the offender of the Polly Klaas murder had only recently

been paroled from the state prison system. After the conviction of the offender of the Klaas murder, the Republican Governor of California, Pete Wilson, emphasized the importance of the Three Strikes law as a vital piece of crime-fighting legislation. The Three Strikes law was passed by the legislature with Proposition 184 and signed by the Governor on the 7th of March 1994. Neither the Government nor the legislature made an attempt to make any change on the law drafted by Kimberly's father, Mike Reynolds [2].

Interest in Three Strikes grew and by the end of 90s, together with the federal government, 25 states enacted the so called 'Three Strikes' law and similar laws [7]. As of 2018, more states have enacted the three strikes law and currently around 30 states have varying types of three strikes law in the US [A. Folk, *What are Three Stikes Laws?*, <https://www.legalmatch.com/law-library/article/three-strikes-laws-in-different-states.html>].

However, despite the strong public support for the law, a few years after the enactment, people started to have doubts about whether Three Strikes laws were serving the actual expectations. The reason for this was because simple crimes were also being considered as third felonies, which in turn had created a group of people which could be deemed as Three Strikes law victims in California.

3.1.1. Current policy

More specifically, California's Strikes legislation includes both two- and three-strikes provisions. The law require that anyone convicted of a felony with a *single* prior conviction for a 'serious' or 'violent' crime receive a double sentence, with no parole before 80% of that sentence has been served. Among such crimes are rape, aggravated robbery, sexual abuse, murder, kidnapping, and aggravated assault. In 'Third Strike' cases, legislation assigns a person 'out' when he has two earlier convictions for a 'serious' or 'violent' crime and commits another felony it happens that crimes that include firearm violations, burglary of inhabited places and regular robberies are also considered as a third strike. Later on the sentence was enhanced further; it became 25-years-to-life, with no release before 20 years have been served. Offenses that qualify for sentence escalation included also minor property crimes and possession of illegal drugs [8].

Basically, Three Strikes law requires that when a defendant is convicted of a triggering felony (third felony); the law mandates an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence as the greater: (1) three times the term provided as punishment for each current felony conviction, (2) 25 years, or (3) the incarceration time of the underlying conviction together with any applicable extension of term. Three Strikes defendants who are sentenced to indeterminate sentence are ineligible for parole until they have served the whole mandatory minimum term [9]. Some of these crimes were excluded from the crime list in other States. But sometimes attempts and juvenile offenses also counted as strikes, and single episodes that lead to convictions on multiple charges counted as multiple strikes too [8].

Contrary to the previous law, the current law does not allow reduction in sentence by more than 20%. The current law mandates a sentence for any second or third felony conviction. Also, the current law counts crimes committed by a minor at least 16 years of age as strikes, whereas the previous laws did not take into consideration crimes committed by minors. California's highest percentage of Three Strikes law offenders consists of nonviolent crimes. Between April 1994 and March 1996, only 14.5% of two-strike sentences and 25.5% of three-strike sentences were for crimes against the person. Additionally 41.1% of the two-strike sentences and 38.8 % of three-strike sentences were for property crimes. Meanwhile, drug offenses accounted for 31.6% for two-strike sentence and 22% for three-strike sentence legislation. The average sentence length for two-strike offenses is 4.9 years, and 37.4 years for three-strike sentence legislation. The average sentence length for two-strike property offense is 3 years, but violent offenders' sentence ranges from 7 to 77 years. The sentence length increases for a third strike. The average third-strike property offense sentence is between 26 to 36 years, but violent offenders' sentences range from 39 to 85 years [7].

With the intention to restore sentencing discretion, and perhaps to avoid the high costs associated with new prison construction and long term incarcerations, at the beginning of 2000 California has adopted a new sentencing law which count first- and second-time drug offenders being eligible for non-prison treatment programs such as sober-living house, mandatory treatment or training, or boot camps [8].

4. Varying thoughts on Three Strikes law

4.1. Claims on Three Strike's lack of theoretical foundation

There are concerns about Three Strikes' logical structure in achieving the intended goals. It is argued that the law is a penal lacking theory. The law aimed to target rapists, murderers, and child molesters to put them behind bars for longer times. At least, the drafters of the law targeted violent offenders, not mere habitual offenders. Since the law is life sentencing people with any third felony, the law also actually affects untargeted people. Even Marc Klaas, Polly's father was misled during the campaign supporting three strikes. Afterward Marc Klaas withdrew his support for the Three Strikes Law and stated that he blindly supported the law and was told that it was going to put only violent recidivists behind the bars for life time [3].

If various crimes are compared, it reveals that the law seems to produce an inverse result, such as an offender if charged for a violent crime under another law gets less punishment than the offender who committed his third felony- same crime- but is subject to the Three Strikes law sentence. For instance, if someone who is sentenced for a crime may get a middle term of six years of imprisonment, but if the crime was the person's third strike he would be eligible for the Three Strikes sentencing and would receive a 25 years imprisonment [3]. In other

words, the felon could easily argue that an unfair punishment has been dealt for his crime.

Second, the inconsistency between the two and three strikes provisions provides another example of the law's lack of rational punishing theory. The perpetrator would be expected to receive their sentence based on the crimes they commit. But in this case no matter the sort of crime, if the convict falls into the category of the Three Strikes, they are granted similar sentences [3]. Thus, the seriousness of the third crime became irrelevant to the sentence until 2012 amendment. This example demonstrates the inconsistency within the law and the lack of proportionality between the offense committed and the punishment mandated by the law.

Third, Three Strike law contradicts penal theories that are already inscribed in the state's statutory scheme. California's Three Strikes law is no more focused on incarcerating offenders as long as their rehabilitations requires, instead the law now focuses on the offender itself not the crime. For instance, in *People v. Superior Court ('Romero')*, a case that consequently went to the California Supreme Court, the offenders' first two crimes were residential burglary with no crime of violence. Latter the same offender committed his third strike in which he was in possession of 0.13 grams of cocaine base. If he was sentenced solely on his third strike he would be sentenced between 1 to 6 years imprisonment, but Three Strikes considers a punishment of 25 years for the subject convict. Proponents of Three Strikes argue that the law in that case is not punishing only that particular crime but it punishes his life of crime. Eventually, this rationale is the evidence that Three Strikes law punishes the offender not the crime [3].

4.2. U.S. Constitution's 8th amendment and the decision of the Supreme Court

Because of many similar arguments as those stated earlier, some challenges were made upon the unconstitutionality of Three Strikes law in California. Eventually, in March, 2003 U.S. Supreme Court upheld California's 'Three Strikes' with a decision of 5 against 4. It declared that punishing people who have committed a third strike to a longer sentence, even for petty offences, is not a cruel and unusual punishment. *Ewing v. California* case is one of the cases the U.S. Supreme Court examined to conclude its decision. Gary Albert Ewing was sentenced by a lower court to 25 years due to his previous crime records and finally stealing three Callaway golf clubs each worth \$399 from a pro shop [10]. Ewing brought the case to the U.S. Supreme Court, and in his appeal he argued that the sentence violated U.S. Constitution's 8th amendment prohibition against grossly disproportionate or cruel punishment and excessive fines. However, the State concluded that the punishment was justified under California's Three Strikes law [J. Summeril, *Recent Supreme Court decisions will have impact on Corrections*, <https://www.questia.com/magazine/1G1-121937594/recent-supreme-court-decisions-will-have-impact-on>].

5. Arguments on the impacts of California's Three Strikes law

5.1. High incarceration rates and costs

Statistics show that between 1994 and 1996 California incarcerated 26,074 offenders based on 'Three Strikes' law; just after a short time it was enacted. These figures are more than in any other State. It is also estimated that California's incarceration rates cover a bit more than 90% of the whole incarcerations in the same period. During the first 2 years of the Two and Three Strikes legislation, the subject laws deterred approximately 8 murders, 3,952 aggravated assaults, 10,672 robberies, and 384,488 burglaries in California [7]. With such an intensive focus on incarcerations, California Department of Corrections predicted that the law would result in an increase of 80,000 prisoners in 1999 bringing the total prison population to 245,000 [11].

Thus, it is clear that Strike laws have an impact on the increase of prison population in California. The State has the highest growth in prison population. Its' prison population grew from 125,473 in 1994, to 153,783 in June 2003 [4]. Even after the latest amendments (Proposition 36 in 2012), courts seem to exercise incarcerations highly due to Strike laws.

Even after the latest amendments (Proposition 36 in 2012), courts seem to exercise incarcerations highly due to Strike laws. According to the most recent statistics (2017-2018) from California Department of Corrections and Rehabilitation in 2017, 40,875 people were sentenced because of the Three Strikes laws (second and third strikers together) in California. The same number reduced to 40,316 in 2018. However in 2017, people imprisoned because of second and third strikes rate for 26% of the whole imprisoned people (130,263) while the same rate is 26.2% of the whole imprisoned people (127,709) in 2018. Despite the Proposition 36, one can observe the slight increase in incarceration based on strikes. The same results can be found for the 2017 and 2018 third strike cases while the same imprisonment populations are valid for each year. In 2017 the imprisonment rate of third strikers was 5.3% but the same rate increased slightly to 5.4% in 2018. Eventually, contrary to 1994-2003 total custody population, the 2017-2018 total custody figures show decline in imprisonment numbers but Strike cases seem to be lenient towards increase when considering its rate to total prison population, though in small rates. This means that, California still applies the subject laws heavily towards imprisonment despite amendments to the law [R. Diaz, J. Macomber, G.V. Rosa, J. Basco, C. Chambers & A. Lozano, *Offender Data Points: Offender Demographics for the 24-month period ending December 2018*, 2020, https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/201812_DataPoints.pdf].

Concerning the expected costs, some also argue that the policy caused to some tax payer money savings despite it was thought that the law would cause an extra expense of \$4.5 billion to \$6.5 billion per year to the tax payers. Although the actual costs seemed to appear less than the estimates (due to application failure) there were still significant economic impacts according to the officials [4].

From another point of view, the same laws resulted in 17,700 more larcenies from the economical perspective; the deterrence of these crimes saved society approximately \$889 million in the first two years [7].

Within the same context, releasing offenders may seem to be a great way of saving money but by definition; a repeat offender is someone who is in and out of prison on a consistent basis. The costs of re-arrests, repeat of judicial procedures, and the crimes they commit during the period they are outside could cost more than a lifelong imprisonment. California paroles 125,000 inmates every year and approximately 70% end up returning to prison within 18 months. Figures show that between 1985 and 2002 there are 2 million fewer victims and a saving of \$28.5 billion dollars by reduced crime. Eventually, Three Strikes law provides a savings combination of money and lives [M. Reynolds, *Ten years passed and projections and predictions can be replaced with facts-over 2 million fewer crimes, Three Strikes and You're Out Stop Repeat Offenders*, 2002, http://www.threestrikes.org/tenyearstudy_pg2.html].

Regardless of the contradicting perspectives on the costs caused by the laws, policy makers considered implementing programs such as; childhood intervention, home visits and early childcare, parenting training, graduation incentives, and delinquent supervision to reduce the expenses. Estimates show that these programs seem to be more cost-effective than incarceration [4].

5.2. Fewer guilty pleas by defendants

Prosecutors have greatly reduced the potential impact of the Three Strikes law through plea bargaining concessions in second-strike cases and through highly selective prosecution in third-strike cases [2]. Historically, more than 90 percent of all felony cases statewide are disposed of through plea bargaining. This seems to be changing as defendants are refusing to plea bargain and are taking their cases to jury trial, given the much longer prison sentences they face if convicted of a second- or third-strike offense. Available data indicates that only about 14% of all second-strike cases and only about 6% of all third-strike cases have been disposed of through plea bargaining.

As a result of the drop in plea bargaining in many jurisdictions, the number of jury trials significantly increased due to the fact that defendants requested jury trials more frequently when they felt they were persecuted on third strike charges [2].

5.3. Disappointing crime control

An analysis of the FBI Uniform Crime Report (UCR) data found that, similar to most previous analyses, Three Strikes is producing a disappointing crime-control impact. Three Strikes states did not experience real lower crime rates compared to the states that did not adopt strikes laws. Strike states had only slightly better declines in serious crime rates 26.8% vs. 22.3% and slightly greater declines in property crime 25.9% vs. 20.4%. On the other hand Non-strike states

had noticeable declines in violent crime 34.3% vs. 33.0% and greater declines in homicides 43.9% vs. 38.2% [V. Schiraldi, J. Calburn & E. Lotke, *Three strikes and you're out: An examination of the impact of strike laws 10 years after their enactment*, 2004, http://www.justicepolicy.org/uploads/justicepolicy/documents/04-09_rep_threestrikesnatl_ac.pdf.pdf].

U.S. Justice Department's National Institute of Justice compared the crime rates of three Strikes states - California, Washington and Georgia - and three non-Three Strikes States - Texas, Massachusetts and Michigan. The results showed that all six states have similar crime rate trends, and that the adoption of these laws did not yield to a reduction in the expected crime rate. Furthermore, they concluded that, California, which is the only state consistently implementing the Three Strikes law, did not show a considerable drop in crime rates either [4].

Violent crime statistics and strike imprisonments data for the years 1994 to 2009, from the Center on Juvenile and Criminal Justice also supports these findings. The sentencing rate of second and third strike felons per 1000 annual adult felony arrests differed between San Francisco and Kings County at a margin of 13 in San Francisco to 301 in Kings County. Brief analysis shows that the crime rates did not appear to have a significant decrease in counties which enacted the three strikes law more often [M. Males, *Striking Out: California's 'Three Strikes And You're Out' Law Has Not Reduced Violent Crime. A 2011 Update*, 2011, http://www.cjcj.org/uploads/cjcj/documents/Striking_Out_Californias_Three_Strikes_And_Youre_Out_Law_Has_Not_Reduced_Violent_Crime.pdf].

However, counties experienced another important concern associated with the Three Strikes laws. The murder of additional people who could aid to the apprehension of criminals with prior strikes was something that neither the policy makers nor the supporters had foreseen. Apparently, after Three Strikes laws, criminals with earlier crimes records of at least two became more inclined to not leaving witnesses behind and murdered such people to hinder their convictions and avoid the harsh punishment these laws order. Eventually, on a number of occasions a potentially lesser crime seems to have turned into a homicide because of aforementioned risks it bears against the culprits. Therefore, authorities ought to consider whether these laws benefit the community positively or add more threat to the members of the community by motivating criminals of smaller crimes to kill witnesses of their guilt to avoid apprehension and harsh punishments [9].

Studies also found out that Three Strikes laws caused an increase of 10% to 12% in murders. In other words, in the short term, there would be around 0.06% lesser murders as a result of violent crimes if there was not the effect of Three Strikes laws and its potential assumed threat by criminals about the role of witnesses in their apprehension. Also, there is an increase of 23% to 29% in murders in the long run. It means that there were 0.15% additional murders in violent crimes, or there would be around 7% lesser murders if there was not the effect of Three Strikes laws on criminals with two prior strikes who wanted to eliminate all witnesses that could lead officials to them [9].

Briefly stated, on the longer run, there could be a decrease of 17% in homicides if the impact of Three Strikes law was not there. These given figure tell us that on the long run there are 3,300 more murders every year. Therefore, the cost of Three Strikes laws to the community adds up to billions (11) of dollars, if we are to value one life at \$3.2 million dollars. Eventually, there is not much evidence that Three Strikes laws reduce crime rates, saves tax payer money and can compensate for the additional murders, hence no justification for Three Strikes laws [9].

5.4. Three Strikes law and non-violent offenses in California

One of the key policy impacts of Three Strikes law is the incarceration of people for non-violent crimes. As of September 2003: Approximately 57% of third strikers were non-violent offenses. As a result they have been sentenced between 25-years-to-life in prison. Those who were sentenced as third strike for 25-years-to-life sentence due to drug possession (672) were ten times as many third strikers as second-degree murder (62). Moreover, those sentenced with Three Strikes laws were more than offenders committed assault with a deadly weapon (379), and rape (119). The number of persons serving a 25-years-to-life sentence for petty theft under the Three Strikes law was 177 times higher in 2003 than 1994, increasing from 2 in 1994 to 354 in September 2003 [4].

According to 2004 statistics, nearly 7,500 inmates have been sentenced with life sentence under Three Strikes law, nearly 60% of these inmates is incarcerated because of non-violent offences. Just 12 inmates have been sentenced for life time because of man slaughter, or second degree murder. On the other hand, 357 people have been sentenced lifelong for petty theft, 235 for vehicle theft, seventy for forgery and fraud, and 678 for drug possession. Although it was obvious that the law caused unintended life sentencing neither the Democrats in California, nor former Governor Gray Davis were eager to take a political risk and make necessary amendments to the law. Their main argument was that the law caused a decline in crime rates [L. Freedberg, *Reforming three strikes*, 2004, <https://www.thenation.com/article/archive/reforming-three-strikes/>].

5.5. Three Strikes law's unequal impact on African Americans and Latinos

Three Strikes laws have an unequal impact on racial and ethnic communities and different implementations of the law. Research found out that the more low-level the offense the less difference between rates of criminal behaviour between African Americans, Latinos and whites. Concerning the regional and racial differences in the law implementation; San Francisco for instance had only 32 life sentences while Santa Clara County handed out 421 life imprisonments. Regarding ethnical incarcerations for instance, the African American inmates make up 30% of California's whole prison population and Hispanics make up 45% of the whole prison population while whites only make up 7% of California's overall prison population [<http://www.cjcj.org/uploads/cjcj/>]

documents/Striking_Out_Californias_Three_Strikes_And_Youre_Out_Law_Has_Not_Reduced_Violent_Crime.pdf].

Other striking figures are available too. Accordingly, a study found out that the African-American incarceration rate due to Three Strikes law is 12 times more than the Whites under the same law (143 per 100,000 African vs. 12 per 100,000). The Latino incarceration rate due to Three Strikes law was 45% more than the incarceration rates of Whites under the same law (17 per 100,000 Latino residents vs. 12 per 100,000 White residents) [4]. Also an official report revealed that, mixed races made around 7%, Whites made around 21%, African Americans made around 28%, and Hispanics made around 44% of the whole prison population in California, which indicates a clear disproportionate sentencing and focus on minority incarceration [California Department of Corrections and Rehabilitation, 2017, *Offender data points*, https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2019/08/DataPoints_122017.pdf].

5.6. More judicial workloads

California's trial courts have been impacted by the Three Strikes law too. Three Strike law increased judicial workloads: It is estimated that the judicial workload for criminal cases increased by more than 10%. The law increased the number of cases going to trial: According to the Administrative Office of the Courts, there were 21% more felony trials state-wide in 1995-96 than in 1992-93. It shifted resources from civil to criminal cases, and increased administrative workloads [4].

5.7. Disproportionate sentencing

Despite all attempts to avoid, still the largest and probably the most important argument against the Three Strikes laws is the disproportionate relationship between the crimes committed and the sentencing, such as, in the case of wobbler crimes. We can define a wobbler crime as a crime which can be classified and sentenced as either a misdemeanour or a felony. An individual who committed a wobbler before committing their second and third strikes would not have the third strike penalty applied as it could be classified as a misdemeanour. However, a person with two prior strikes who commits a wobbler crime may have the wobbler crime regarded as a felony thus resulting in their third strike and receive a much more serious sentence. The discretion given to the court to weigh the third crime as a misdemeanour or felony is vital for the criminal. The choice may lock him up for life or make him face a much lower sentence [<https://www.legalmatch.com/law-library/article/three-strikes-laws-in-different-states.html>]. Thus, that kind of discretion still remains a judicial option that causes unfortunate and undesired results from a justice system which is not fair dealing.

6. Attempts to reforming Three Strikes law in California

Opponents of the Three Strikes law in California have been trying to change the law for many years. They made proposals to the legislature and also have a record on a failed attempt to place a measure on the 2002 state-wide ballot. California voters had their chance in 2004 to make reforms in their Three Strikes law which they believed has imposed cruel life sentences for thousands of relatively minor offences such as drug possession, shoplifting and forgery. Furthermore, it is asserted that the law represents a human rights violation (8th Amendment) and that most Californian's not only live with but until now have willingly held, and that California's Three Strikes is the harshest among other states with similar laws. Especially the third strike can be anything from a list of 500 felonies, even so called 'wobblers' which actually can be trialled as misdemeanours, can be the reason to have the convicted segregated from society for a very long time. Thus, regardless what the third strike is, a petty theft or a brutal rape receives a mandatory 25 year-to-life sentence without a reform in the law [<https://www.thenation.com/article/archive/reforming-three-strikes/>].

California voters most likely wouldn't have voted for the Three Strikes law in 1993 if the kidnapping and murdering case of 12 year old Polly Klaas had not occurred. Legislation and law enforcement realized that the *ex convict* slipped through the criminal justice system and remained free in the streets, but now it is clear that the subject law has cast far too wide a net [<https://www.thenation.com/article/archive/reforming-three-strikes/>].

The most urgent change was to make amendments to the law so that the life sentence would be triggered only when a violent or serious crime is committed as the third strike. Proposition 66, a voter initiative on the November, 2004 ballot, was going to do that, but unfortunately on the ballot in California on November 2, 2004 - the proposal which aimed to amend California's draconian Three Strikes law, so that judges could no longer use non-violent felony conviction to imprison people for 25 years to life- failed at the referendum by a tiny 2% margin. A multimillion-dollar campaign was kicked off by the 'compassionate conservative Governor' Arnold Schwarzenegger and the Fraternal Order of Police. Just days before the election, they argued that 'If Prop 66 passes; rapists will be back on the streets'. A closer look at the voters revealed that the counties on the coast, where all the big cities are, voted for Prop 66, while rural counties inland voted against it, [S. Knopp, *Why California's prop 66 was defeated*, 2004, http://www.socialistworker.org/2004-2/523/523_04_Prop66.shtml]. Around 53% of the voters voted against Proposition 66.

However, attempts did not end with the Proposition 66. In 2012 the state of California put forth the Proposition 36 for voting on the November 6, 2012 ballot. Proposition 36 would foresee that the Three Strikes laws would be amended to be more just as the community desired. The most significant detail regarding Proposition 36 was that the third strike would need to be a violent or serious crime in order to mandate a 25 to life sentence. Also the Proposition gave way for previously convicted felons to renegotiate their sentences by petitioning at courts.

Individuals who had been prosecuted of crimes such as rape, child molestation, drug trafficking and firearms violations for their first and second strikes would still be sentenced as before due to the severity of their previous crimes even though their third crime was a non-violent one. It also suggested life sentence penalty for those who were convicted due to their third strike that were seen as non-serious, non-violent sex or drug offenses or in the case of during these crimes there was firearm possession. It did have another positive impact as well. Accordingly, Proposition 36 also resulted in an estimated savings of 150 to 200 million USD of taxpayer money within the year it was enacted due to the shortened sentences [Ballotpedia, *California Proposition 36, Changes in the 'Three Strikes' Law*, 2012, [https://ballotpedia.org/California_Proposition_36,_Changes_in_the_%22Three_Strikes_%22_Law_\(2012\)](https://ballotpedia.org/California_Proposition_36,_Changes_in_the_%22Three_Strikes_%22_Law_(2012))].

Hence, Proposition 36 was proposed with the intention to target the crimes being committed, rather than the individuals who committed them. It was a step in the right direction to fix the problems that the Three Strikes laws created. Before the amendments to the three Strikes Laws, many individuals were sentenced to unjust life sentences when their third strike may have been a petty crime.

7. Conclusions

Justice is one of the most important pillars of a solid state. Deficiency in justice may endanger welfare and can lead to the disruption of both the state and the community. The importance of being just has been also emphasized in the sacred Scriptures of some well-known religions such as Islam, Christianity and Judaism. Modern era laws and regulations for order and prosperity are naturally affected from our traditions and/or religious perspectives. Therefore, it can be argued that public policies are generally shaped in consideration of such values, beliefs and traditions that the community upholds during a process of empirical studies for shaping successful policies. Hence, policy development too has principles that need to be followed to avoid unjust outcomes.

California's Three Strikes law was judged upon its cruelty, human rights violations, high costs, high number of incarcerations, causing to the transform of some petty crimes into felonies (culprits murdering witnesses), ethnic discrimination from practitioners, law being focused on the person instead of the crime and that it causes disproportionate punishments.

Repeat offenders unquestionably ought to be sentenced more; no doubt about that, but the judicial system and the punishment must remain fair and just to everyone. By looking into California's Three Strikes case we understand that research also indicates to some other reasons for the high crime rates in the metropolitans. For instance, New York City did not implement Three Strikes laws but experienced similar decrease in crime rates as California had between 1994 and 2002. California implemented these laws in the most penalizing way while mostly ignoring rehabilitation but their crime rates remained close to Washington's. In this situation California's high incarceration rate does not reflect any success. The dropping crime rates could also be the result of the growing

economy and new employment opportunities, and such an external impact on the result of a policy is certainly of importance when evaluating such studies [3]. Also the fact that crime rates in California have started to increase again a few years after the law passed proves that the problem has other causes as well. The increase was visible in other jurisdictions too; the reason was likely the increasing unemployment, demographic shifts with more offenders in their prime crime years, and other factors unrelated to Three Strikes. Eventually, what should be re-considered is that if those factors explain recent crime increases, it is possible that those factors also can explain the previous crime rate declines, so it is not just punitive laws [3].

The formulators of California's Three Strikes law definitely did not take into account other possible reasons for recidivist behaviours and focused only on punitive measures and imprisonment whilst contradicting with empirical studies, the traditions and the notion on being just and focusing more on possible rehabilitation in crime fighting mentioned in the sacred Scriptures of most of the communities. As the analysis of the FBI Uniform Crime Report (UCR) reveals, the Strikes law is producing a disappointing crime-control impact, causing less trust in the justice system, and California's prison population holds more and an increasing number of people because of it. So, the problem escalates.

On the other hand, Three Strikes produced another undesired result in relation to ethnic matters in prison population in California. Earlier provided numbers have shown that there was an unbalanced incarceration of African American and Hispanic people compared to Whites; an obvious case of discrimination which contradicts both with our religious/ethics and modern time laws. Though it is vital and acceptable to support the idea of securing communities, it is not acceptable to target specific ethnicities in relation to Three Strikes laws which might put people behind bars for life. Racial profiling and inequalities in the practice of the law kills the motive of justice and the actual aim of targeting those who actually deserve long term imprisonment. Therefore, practitioners and courts should take measures to avoid disproportionate sentencing and discrimination of people with different ethnics especially when it comes to the Three Strikes law.

Another problem associated with the Three Strikes law was very striking and totally unexpected. After Three Strikes law enactment, criminals with prior strikes murdered people that witnessed their crimes because they could have them apprehended after their third crime (3rd strike). Apparently, after Three Strikes laws, criminals with earlier crime records of at least two became more cautious as to not leaving witnesses behind to prevent their convictions and the very harsh punishment these laws address. Eventually, a potentially lesser crime could easily turn into a homicide because of aforementioned risks it bears against the culprits due to Three Strikes law.

If the policy makers in California did not consider amending their very costly and punitive Criminal Justice Policy in 2012 they would have to deal with opening more prisons for the returning re-offenders in the future. One would expect a clear decline in incarceration rate due to Three Strikes because of the

Proposition 36 amendments but that is obviously not the case yet. Proposition 36 was a good amendment, however, a more detailed analysis that focuses on rehabilitation rather than incarceration would serve better because it is a common understanding that there are many in prison who were not provided the opportunities by the community for a better life, so the whole of the community is at fault in these matters. Hence, it is imperative to note that despite so many years having passed since the enactment; California's Three Strikes policy is likely to be amended again in the future.

The literature also supports the idea that more emphasis is to be given to the family institution. Communities with strong social cohesion are likely to control their members and fulfil their needs that eventually prevent involvement in criminalities. Since family is considered as the smallest element in society, strengthening the family, eventually results with the strengthening of the society. Family is important in regard to that it provides love, shelter and care for their member which prevents their engagement in various crimes. Hence, it looks like an alternative approach that is more efficient, cost effective and suitable to supporting a safer community. The bottom line is that incarceration by itself is not the solution to California's crime problem [12].

Although Three Strikes originally aimed towards severe crimes it seems to have ended up punishing any kind of crime, including misdemeanours, which resulted in life time sentences. Concerning the effectiveness and the efficiency of the policy, the study does not provide solid support for that thought either. The growing number of people in the prisons of California and their costs prove that the policy resulted in high expenses to the tax payers, and the law also led way to more plea-bargaining cases and trials for three strikes, and more incarcerations of minorities instead of cruel murderers, child molesters or other actual felonies. If there had been an empirical side of the policy, if it had a better oversight during the implementation and if it was carefully applied to felonies only (as intended), then it would have more likely been a significant deterrent factor and would not have caused the unnecessary incarcerations of misdemeanours and minorities.

Therefore, this study suggests that, except in unexpected emergency situations, whatever the problem or need prevails, policy makers should remain within the mainframes of policy development phases and include all possible related parties, experts and stakeholders in the processes of policy formulation, policy implementation and policy evaluation. Uphold the values of the community and progress with empirical insight. Otherwise, as in the case of California's Three Strikes law, similarly formulated and implemented policies are likely to create unjust results and cause to loss of more tax-payers money and lives, create lots of extra workload to practitioners and have the community waste valuable time whilst not providing the desired results. In other words, if the proper methods of policy development had been followed, it is likely that as a deterrence policy Three Strikes could both provide crime deterrence, savings in tax payer's money and lives in a better fashion. The Propositions 66 and 36 are the evidence that the Three Strikes policy was formulated in an unorthodox manner and therefore has caused the mentioned problems. It is obvious that just

incarceration will not resolve California's crime problem. This policy, if implemented together with other social and rehabilitation programs, as suggested by scholars and the given example beliefs, could have been more effective than it is now.

The solution in such manners should be first resolving other social problems that urge people to re-offend. Then separate those who can be treated in the variety training programs or boot camps. They should be sent to these camps instead of prison; or keep them until they retire from their offending skills, which could be above the age 50 or 60. Or consider other rehabilitation opportunities such as childhood intervention programs, home visits and early childcare, parent training, graduation incentives, and delinquent supervision programs that also could play a significant role in preventing future offenders. For this reason, as the provided beliefs recommend, if it is going to serve the purpose, one must first refer to all possible alternatives and researchers should first examine these issues and if there is no hope left for rehabilitation then progress to other costly policy developments such as imprisonment, not before.

In conclusion, this study aimed to find out whether a crime fighting policy that received massive public support but has no empirical background has been a success in crime prevention and in the distribution of justice. For this, it looked into California's 'Three Strikes and You're Out' law as a case study.

Now, it is abundantly clear that the founding of the Three Strikes law was based more on emotional reactions rather than empirical studies. The foundation of the policy also disregarded known experiences and valuable traditions/values in crime fighting. Therefore the clashes between the Three Strikes law viewpoint in increasing punishment for repeat offenders and the teachings based on proven traditions and the recommendations made by the earlier mentioned religions to remain just at all times.

The bottom line in this matter is that a scientific background lacking policy is likely to produce dissatisfaction in results and unjust legal verdicts, and cause damage to the community members in a variety of situations. Injustice is also condemned by all religions. None recommends disproportionate punishment, regardless of the crime. They at least suggest equality in punishment or forgiveness if possible to enable reform in the person. Thus, especially any policy that is going to affect the quality of life and the freedom of the society should not be made in haste. Eventually, a policy can be considered successful if it achieved the intended goals and if its results are approved by the community. Based on the findings of this study it can be concluded that Three Strikes did not achieve its goals but rather beside other problems caused much harm, injustice, disproportionate punishments and discrimination and human rights violations and new victims while it did not provide effective crime reduction but merely a dissatisfaction in the community, and thus cannot be deemed as successful.

Nevertheless, the result is no surprise for the reason that its development did not follow the empirical policy development phases, disregarded previous experiences and community values and was passed quickly due to the high sentiment within the society after the murder and regrettable loss of a child.

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