CHAPTER 3

“Three-Strikes” Law

Abstract

During the 1990s, nineteen states in the United States adopted law that mandated a lengthy prison sentence for a person who is convicted of a felony when that person has been convicted of a felony at least once before and the latest as well as the earlier convictions entailed specified types of conduct. Such law—popularly labeled “three-strikes” law—differed from habitual-offender legislation, which many states already possessed, in terms of whether trial-court judges were allowed discretion in imposing the law-designated and -augmented sentence for the latest conviction. Habitual-offender legislation permitted such discretion; “three-strikes” law did not. The instant chapter is based on the macrosociological framework of Chapter 1 and thus rests on the proposition that, in jurisdictions having a complex social structure and democratic government, concepts and doctrines of law on society-important activities are generated by society-level conditions and evolve in response to society-level changes. In such a framework, concepts and doctrines of law are the work of large-scale forces, not particular individuals. This framework was tested in the instant chapter by ascertaining the ability of a set of state-level conditions to predict which states had adopted, and which states had not adopted, “three-strikes” law. Applying logistic regression to data on the independent variables for 1960 and 1990, the odds that “three-strikes” law was present in a state were found to be unaffected by state rates of violent crime or state rates of property crime. However, the odds varied with three state attributes—culture (measured by geographic region), social disorder (measured by the percentage of all women age 30–34 who were unmarried due to divorce), and societal rationality (measured by the percentage of the population age 25+ that was college-educated). Specifically, the odds that “three-strikes” law had been adopted were elevated among states in the South and in the West, were lower among states in which social disorder was more widespread, and were higher among states having a greater degree of societal rationality.

1 Crime and Law in Society

In the United States, crime has been a major public concern since at least the middle of the twentieth century. A measure of this concern is found in the results of a series of national sample surveys in which U.S. adults have been
asked whether they are “afraid to walk alone at night” in an area located near where they reside; from the 1960s onward, the belief that crime is a proximate threat has characterized approximately one-third to one-half of all adults.\footnote{Mark Warr, \textit{Public Opinion on Crime and Punishment} 59 \textit{Pub. Opinion Q} 296, 297, 304 (1995); Lydia Saad, Gallup, Inc., Nearly 4 in 10 Americans Still Fear Walking Alone at Night (Nov. 5, 2010) (on file with author), \textit{available at} \url{http://www.gallup.com/poll/144272/Nearly-Americans-Fear-Walking-Alone-Night.aspx} (last visited May 1, 2015).}

Because a sizeable fraction of adults has perceived crime as a personal threat and the fraction has been relatively stable over time, the perception is likely to have had important consequences for social life and for the aspects of social life to which the resources of the nation are committed. Indicators of the reaction to the fear of crime include (i) the large size of the U.S. work force that is devoted to controlling crime and criminals\footnote{In 2007, the number of individuals employed in the criminal-justice sector in the United States was 2.45 million, having approximately doubled since 1982. \textit{Tracey Kyckelhahn, U.S. Dep’t of Justice, Justice Expenditures and Employment, FY 1982–2007—Statistical Tables}} and (ii) the considerable number of studies that have been undertaken in an attempt to understand the causes and consequences of crime.\footnote{The quantity of this scholarship is reflected in \textit{Criminal Justice Abstracts}, which covers crime-pertinent materials published in the United States and elsewhere, and contains bibliographic entries that presently number in excess of 475,000. \textit{Ebsco Publishing, Criminal Justice Abstracts}}, which covers crime-pertinent materials published in the United States and elsewhere, and contains bibliographic entries that presently number in excess of 475,000. \textit{Ebsco Publishing, Criminal Justice Abstracts}}, \textit{available at} \url{http://www.ebscohost.com/academic/criminal-justice-abstracts} (last visited May 1, 2015).

Not surprisingly, a vast body of U.S. law exists with regard to crime, the apprehension of its perpetrators, and the rights of persons who are suspected of being, or who have been charged with being, perpetrators of crime.\footnote{The online law library Lexis, for instance, has a web page exclusively for materials on the subject of “criminal law.”}

As scholars who have studied law are aware, many if not most doctrines of law do not remain the same over time, and doctrines of law pertaining to crime are no exception. Indeed, law on crime underwent substantial change in the United States during the twentieth century.\footnote{An illustration of a law-delineated era in the United States is the enactment by Congress of statutes that are concerned with discrimination involving certain demographic attributes,}