THE WESTMINSTER TRADITION AND PENAL POLITICS: THE CASE OF THE
IMPRISONMENT FOR PUBLIC PROTECTION SENTENCE

Harry Annison
Centre for Criminology, University of Oxford

Abstract
Explorations of penal politics have tended to operate at the levels of macrosociological analysis or proximate historical reconstruction, a situation exemplified by penologists’ approach to the politics of risk and dangerousness (Pratt 2000, Tonry 2004). In this paper, I discuss the creation, amendment and subsequent abolition of the Imprisonment for Public Protection (IPP) sentence, the most prominent and far-reaching instance of recent sentencing measures targeted at ‘dangerous offenders’ in England and Wales. I argue that an interpretive political analysis, an ‘interpretation of relevant actors’ interpretations’ (Bevir and Rhodes 2003, 2006) of the problems, constraints and compulsions which they faced in relation to the IPP sentence demonstrates the central role which the British Westminster tradition (Rhodes, Wanna and Waller 2009) played in legitimizing the acts of politicians and officials, both for the actors themselves and for ‘interested observers’ (Colebatch 2002). This paper is thus intended as an initial exploration of the extent to which the Westminster tradition, informing views of what constituted legitimate political activity, can serve to operate as a mediating device between extant cultural tendencies, party political contestation and other proximate concerns in the analysis of penal politics.
How does one interpret developments in criminal justice and penal politics? In what ways do particular methodologies influence the substantive outcomes of research into specific issues? These were the types of questions I had in mind when organizing this ‘Interpreting the Politics of Crime and Justice’ panel. In this paper I discuss the methodological framework underpinning my doctoral research: an interpretive political analysis of penal policy. The thesis investigated the creation, contestation and amendment of the ‘dangerous offender’ Imprisonment for Public Protection (IPP) sentence, the ‘IPP story.’ I first set out this methodology and its central components. I then set out how the term the ‘Westminster tradition’ is being defined for the purposes of this paper. I then discuss briefly the nature of the IPP sentence, the reasons it has been of such interest to many criminologists and criminal law scholars, and outline the contours of the IPP story. Having done so, I discuss the important role which the ‘Westminster tradition’ played in the IPP story, as an example of its role in penal politics more generally. In doing so, I begin to consider to what extent the identification of this tradition and its influence on key actors enables us to understand better the interaction between proximate political concerns and contestation (the battles ‘in here’) and broader cultural, social and political trends (the world ‘out there’).

**Interpretive Political Analysis: A brief account**

The research sought to present an empirically-grounded, historical reconstruction of these three key moments in what is termed the ‘IPP story’: the creation of the Imprisonment for Public Protection (IPP) ‘dangerous offender’ sentence during the second term of the New Labour government; the contestation of the sentence by penal reform groups, criminal justice
organizations and within prominent judicial review cases; and the amendment of the IPP sentence during the third term of the New Labour government.¹

Drawing on detailed analysis of available documents and 53 interviews with relevant ministers, officials, judges and others, these moments in penal politics were used as a lens through which to explore the preventive and populist trends noted above, commonly termed the ‘new punitiveness’ (Pratt et al., 2005). The reconstruction explored how relevant terms – risk, justice, the public and so on – were understood, experienced and acted on in this particular political context. The research thus attempted to understand, in relation to this particular case study, the influence of politics – as beliefs; as tradition; as contestation – on the course of such developments. To put it simply, the research constituted an attempt to trace in detail what happened in relation to the IPP story, and by reference to relevant actors’ aims, beliefs and understandings of their context, to explore why the IPP story took that particular form.

In order to do so, I utilized an approach which I termed an interpretive political analysis of penal policy. It was hoped that this would provide a ‘way in’ to investigating the relevant actors’ understandings of their context and reasons for action. In other words, the methodological framework was seen to facilitate the exploration of broad trends such as the ‘rise of risk’ (Beck, 2000; Pratt et al., 2005) and the ‘rise of the public voice’ (Ryan, 2005) in a particular context, thus enabling the drawing of connections with more proximate influences such as the political ideologies (Freeden, 1996; Loader and Sparks, 2004) and political traditions (Rhodes, 2011; Rhodes et al., 2009) relied on by relevant actors.

I drew primarily on the constructive political analysis set out by Hay (2002) and the interpretive political analysis promoted by Bevir and Rhodes (2003; 2006a).² These works

¹ A reader unfamiliar with the IPP sentence may wish to read the initial paragraphs of the section ‘The Imprisonment for Public Protection story: A brief history’ before continuing with the present section.

² These works
view the political world as ‘an inherently intersubjective domain’ (Hay, 2002: 24), with the relationship between structure and agency being dynamic, and contingency being central to political activity. Bevir and Rhodes (2003; 2006a) make clear the central features of such an orientation. Such approaches ‘concentrate on meanings [and] beliefs’; reflect a view that ‘beliefs and practices are constitutive of each other’; and emphasize ‘the contingency of political life’ (Bevir and Rhodes, 2006a: 1-3). The term ‘belief’ is used to ‘remind ourselves that [actors’] understandings are the properties of situated agents’ (2006a: 7).

Bevir and Rhodes conceive of change as arising ‘as situated agents respond to novel ideas or problems. [Change] is a result of people’s ability to adopt beliefs and perform actions through a reasoning that is embedded in the tradition they inherit’ (Bevir and Rhodes, 2006a: 5). And it is ideas which provide ‘the point of mediation between actors and their environment’ (Hay, 2002: 208). Therefore, actors are seen as reflexive, strategic and purposive, but operating within a strategically selective context of which they have imperfect knowledge.

Here, ideas take on two forms. The first is as ‘beliefs’, which for Bevir and Rhodes (2006a) are conceptualized,

---

2 ‘The terms ‘constructivism’ and ‘interpretivism’ are used somewhat interchangeably in this chapter. The term ‘constructivism’ is used here to refer to the work of those such as Kratochwil (1989), Krasner (1984) and promoted by Hay (2002), rather than the anti-realist, post-modern position which it sometimes denotes within sociology.

3 That, as Leftwich (2004: 114) puts it, most of collective human activity ‘is inexplicable outside its collective context (let alone the meaning which actors themselves attribute to it).’

4 For a similar approach to these issues, drawing on the concept of a ‘strategic actor in a strategically selective context’ (Jessop, 1996), see Hay (2002: 128).
Beliefs here are seen as referring to actors’ understandings of concepts such as legitimacy, justice, safety, fairness and so on (which in turn influence their understanding of the context and constraints which they encounter),\(^5\) and also actors’ political ideologies (liberal; social democrat; neo-liberal and so on). Political ideologies are here understood, following Freeden (1996), as a system of:

Political thinking, loose or rigid, deliberate or unintended, through which individuals or groups construct an understanding of the political world they, or those who preoccupy their thoughts, inhabit, and then act on that understanding. (Freeden, 1996: 43)

These beliefs and understandings are clearly likely to interact with and influence one another, informing and further interacting with actors’ understanding of relevant concepts such as risk, the public, and dangerousness. Both Bevir and Rhodes (2003; 2006a) and Freeden’s (1996) definitions conceive of beliefs in a way which allows for them to be connected to the lived reality of relevant actors in particular contexts, thus facilitating the kind of case study research that was envisaged.

A second term introduced by Bevir and Rhodes, constituting the second form of ‘idea’ noted above, is the notion of ‘tradition’. Tradition is used by Bevir and Rhodes to capture ‘the social context in which individuals both exercise their reason and act’ (Bevir and Rhodes, 2006a: 7), reflecting the constructivist recognition that ‘political institutions, practices, routines and conventions appear to exhibit some regularity or structure over time’ (Hay, 2002: 94). Predominantly a ‘first influence on people’ (Bevir and Rhodes, 2006a: 7), traditions are ‘a set of understandings someone receives during socialization’ (Bevir and

\(^5\) On likely central concepts, see Loader and Sparks (Loader and Sparks, 2004: 13).
Rhodes, 2006a: 7). A good, and as we will see very pertinent, example is the Westminster model of British politics (Rhodes et al., 2009). Traditions and beliefs are inter-related terms, with the former constituting combinations of the latter, starting points for actors situated in particular contexts. The Westminster model, on this view, denotes a set of beliefs which can be seen as a tradition into which politicians, civil servants and others are inculcated upon becoming involved with the internal world of British politics (Bevir and Rhodes, 2006a: chapter 8). The crucial point to be grasped is that it is these common understandings which ‘[make] possible common practices and a widely shared sense of legitimacy’ (Taylor, 2004: 23).6

In line with Hay (2002) and other interpretive works, I draw on Jessop’s (1990; 1996) approach to the relationship between structure and agency which conceives of ‘strategic actor[s] within a strategically selective context’ (Hay, 2002: :128; Jessop, 1996). It is argued that by so doing we are able to:

Emphasise the strategic content of action...that agents both internalize perceptions of their context and consciously orient themselves towards that context in choosing between potential courses of action (Hay, 2002: 129).

Therefore, actors are seen as reflexive, strategic and purposive, but operating within a strategically selective context of which they have imperfect knowledge.

The methodological approach I utilized also drew on Hay’s (2002) promotion of two analytical notions of power: context-shaping (i.e. indirect), and conduct shaping (i.e. direct). Power is defined more generally as ‘the ability of actors (whether individual or collective) to “have an effect” upon the context which defines the range of possibilities of others’ (Hay,

6 See also Skowronek’s (1995) suggestion that when considering actors within state institutions, the ‘distinctive criteria of institutional action are official duty and legitimate authority’ and that therefore ‘institutions do not simply constrain or channel the actions of self-interested individuals, they prescribe actions, construct motives, and assert legitimacy’ (Skowronek, 1995: 94).
Drawing connections between the constraints, context, beliefs and traditions discussed above, Jessop (1996; 1990) suggests that:

If power involves an agent’s production of effects that would not otherwise occur, it is essential both to identify the structural constraints and conjectural opportunities confronting those agents and the actions that they performed which, by realizing certain opportunities than others, “made a difference” (Jessop, 1996: 125).

Implicit in the above, and central to political activity, is politics as contestation: the importance of ‘political combat’ (Loader and Sparks, 2004: 16). The historical hermeneutics of Skinner (1988; 2002) is useful here in making sense of the output of political activity (speeches, reports, judgments and so on) in such terms. Skinner argues that, if we are to understand a certain statement or intervention, a ‘speech act’, in context, then we must situate that action of the minister, civil servant, senior judge (and so on), ‘in its linguistic or ideological context’ (Skinner, 1988: 9). He argues that,

Whatever [illocutionary] intentions a writer may have, they must be conventional in the strong sense that they must be recognisable as intentions to uphold some particular position in argument, to contribute to the treatment of some particular topic, and so on.’

(Skinner, 2002: :102)

In other words, we can only begin to understand what a relevant actor may have been trying to convey to their audience by grasping the range of possible ways in which a particular concept (for example, dangerousness, risk, justice), in the discussion of a particular issue, at a particular time, could recognisably have been utilized. This demands, first, an understanding of the relevant norms and issues of that time, the political landscape on which the events under consideration occurred. While this speaks to the ‘background’ against which actions occur, connections with Bevir and Rhodes’ (2006a) notion of ‘tradition’ are equally clear.

7 Whether such a view of power satisfactorily addresses the range of potential power relationships and the ways in which actors might force, compel, constrain or more subtly manipulate others, is a question which may benefit from further consideration.
Having gained a sense of what counted as a legitimate – or indeed illegitimate – intervention into a particular debate, we must then discern the problematic political activity or activities to which the speech-act was a response. Therefore we must pay close attention to context, to the multitude of potentially relevant concerns of the actors involved. To give one example, we might find that to make sense of the senior judiciary’s dealing with reviews of the legality of the IPP, we must take into account the quality of the relationship between the judiciary and government and the ongoing debate over the changing constitutional location of the Parole Board.

Given that my research focussed on particular moments in penal policymaking, I drew on Kingdon’s classic *Agendas, Alternatives and Public Policies* (Kingdon, 1995) to enrich my conception of the processes which are subject to and (re)constituted by the contestation and contingency inherent in the political process. Kingdon (1995: 16-7) conceives of the policy making process as consisting of three ‘streams’. These are termed the ‘problem’ stream, the ‘policy’ stream and the ‘political’ stream. These come together to affect the setting of an agenda and the working up and consideration of alternatives which result in a particular legislative or administrative outcome. He suggests that, ‘speaking rather generally of our three process streams, the agenda is affected more by the problems and political streams, and the alternatives are affected more by the policy stream’ (Kingdon, 1995: 168).

As regards the problem stream, Kingdon (1995: 90) notes that, ‘We put up with all manner of conditions every day...Conditions become defined as problems when we come to believe that we should do something about them.’ We should therefore remain curious as to

---

8 While Kingdon does not identify his work as interpretive or constructivist, his emphasis on contingency, the importance of human interactions and key political ideas means that the work can be read as a particularly straightforward depiction of the key tenets of an interpretive approach to political analysis (Kingdon, 1995: chapter 9).

9 Kingdon (1995: 16-7) defines the agenda as ‘the list of subjects of problems to which government officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time.’
how and why a particular condition came to be seen as a ‘problem’ worthy of attention, at that time and in those terms. Kingdon suggests that problems often come to the attention of decision makers because data reveal a problem to be ‘out there’. However, we are reminded that,

The data do not speak for themselves. Interpretations of the data transform them from statements of conditions to statements of policy problems (1995: 94).

Agendas are not only affected by the problem stream, but also by the political stream. Not only are there particular events – a plane crash, or horrific murder, for example – which may give an issue ‘a little push’ (Kingdon, 1995: 94), but a change of government or the appointment of a particular minister leads to some issues gaining prominence while others are effectively shelved (Kingdon, 1995: 94, 145). In terms of the dynamics at work, Kingdon suggests that,

Independently of the problems and policy streams, the political stream flows along according to its own dynamics and own rules. It is composed of such factors as swings of national mood, election results, changes of administration...and interest group pressure campaigns (Kingdon, 1995: 162).

As regards the policy stream, Kingdon (1995: 16-7) reminds us that agendas and the alternative responses considered are commonly influenced by ‘a process of gradual accumulation of knowledge and perspectives among the specialists in a given policy area, and the generation of policy proposals by such specialists.’ In other words, while it is the minister who makes the authoritative choice as regards policy, the alternatives considered and the form of the eventual policy is generally not just influenced, but often profoundly shaped, by the policy process and the actors – potentially civil servants, practitioners, interest groups, academics, politicians, political advisors and others – involved therein (Page, 2003; Page and Jenkins, 2005).
In a criminological context, some analysts have raised concern at the ‘analytical hiatus between…ideas [of long-term conceptual and technical change] and the detail of policy change (and politicisation) in specific cultural and political environments’ (Sparks, 2000: 39). An interpretive political analysis approach can thus make an important contribution to efforts to address this hiatus. It turns our focus away from, for example, accounting for the effect of the ‘rise of risk’ and the ‘rise of the public voice’ (Pratt et al., 2005; Ryan, 2005) per se, and towards an investigation of how the actors’ beliefs and goals influenced their understanding of, and response to, specific problems (and indeed the construction of such ‘problems’) which relate to these purported broader trends (Loader and Sparks, 2004: 16).

In terms of such an approach facilitating a critical political analysis, research which focuses on ‘meanings that shape actions’ (Bevir and Rhodes, 2003: 17), on developing an ‘interpretation of interpretations’ (Bevir and Rhodes, 2006a: 1), holds within it the potential to open up a space between what actors considered to be inevitable, and the contingency and contradiction which one would expect to uncover. It makes it possible, in other words, for us to see ways in which things could have been, and can be, different.

**The Westminster Tradition**

I will now consider what is meant in speaking of the ‘Westminster tradition’ in the context of the foregoing discussion. Having done so, I will set out in brief the key findings in relation to the IPP story, before returning to consider the role of the Westminster tradition in this story. In doing so, I hope to begin to explore the question of to what extent the Westminster tradition can serve to operate as a mediating device between immediate political contestation

---

10 In a criminological context, it is interesting to note the parallels between the interpretive perspective discussed in this paper and the ‘appreciative’ stance of criminologists (Matza, 1969: chapter 2) – an approach whose popularity has waxed and waned through the intervening years.
and perceived constraints and broader culture and structural trends. This question has two facets, one empirical (‘to what extent was the Westminster tradition influential for relevant actors in a particular case?’) and the other theoretical (‘to what extent does the utilization of the concept of the Westminster tradition facilitate an understanding of developments in penal politics? Does it facilitate the drawing of connections between proximate political activity and broader patterns of social and cultural change?’). While a conclusive answer to these issues cannot be provided in a brief paper, this discussion will serve to explore these issues through the lens of a particular set of moments in contemporary penal politics.

The term the Westminster model ‘often denotes a distinct and stable set of political institutions, that are recognizable and around which there is some agreement’ (Rhodes et al., 2009: 1), although it tends to ‘blur and lack precision’ the more it is unpacked. Indeed, this blurred quality can be seen as ‘one of its enduring strengths and inherent weaknesses’ (Rhodes et al., 2009: 2). This generally agreed understanding of the Westminster model involves a set of beliefs including:

- a unitary state characterised by Parliamentary sovereignty, strong cabinet government, accountability through elections, majority party control of the executive – that is, prime minister, cabinet and the civil service – elaborate conventions of the conduct of Parliamentary business, institutionalised opposition and the rules of debate (Bevir and Rhodes, 2003: 26-27; drawing on Gamble, 1990: 407).

Another important component is the belief in the ‘doctrine of parliamentary supremacy, which takes precedence over popular sovereignty except during elections’ (Verney, 1991: 637, cited in Bevir and Rhodes, 2003: 26). These characteristics are often described as the Westminster ‘model’ or ‘system’; in other words, it is a descriptive term. However, such descriptive statements bring with them normative implications. Viewing the

---

11 In line with Rhodes, Wanna and Weller (Rhodes et al., 2009) and the interpretive political analysis on which they and this present article draws, the phrase ‘Westminster model’ is used to refer to the beliefs and practices of the Westminster tradition. As such, the phrase ‘Westminster tradition’ is used interchangeably.
Westminster tradition as a tradition in the sense intended by Bevir and Rhodes (Bevir and Rhodes, 2006a: , see above) makes these normative implications clear. The role of the Westminster tradition, as understood here, is well expressed in the following quote:

> Although it is commonplace to dismiss the convention of ministerial responsibility as part of the mythology of British government, it still acts as part of the ‘critical morality’ of the constitution – a morality imbued in the psyche of politicians and bureaucrats alike – one that stipulates acceptable modes of behaviour, and provides criteria of assessment of political behaviour at any given time (Judge, 1990: 33, emphasis added).

While the precise nature of these normative implications – the understanding of what constitutes legitimate action under this tradition – will vary by time and place (Rhodes et al., 2009), few would contest Richards and colleagues’ (2008: 488) suggestion that the pervasive Westminster tradition ‘sustains a top-down, closed and elitist system of government’. This is driven, not least, by the centrality of particular notions of individual and collective ministerial responsibility, where the ‘proper’ relationship between ministers and officials is understood to mean that ‘in all decisions...the elected minister should have the last word’ (Parker, 1978: 349-53; cited in Rhodes et al., 2009) and ‘the lines of accountability of the whole administration run from the lowliest official up through the minister to the cabinet, the parliament and ultimately, and only be that circuitous route, to the elector’ (Parker, 1978: 349-53; cited in Rhodes et al., 2009). It will be argued below that in order to reconstruct moments in recent penal political history in a way which takes seriously relevant actors’ understandings of their context, the role of the Westminster tradition must be placed centre-stage.

---

12 See also Rhodes, Wanna and Weller’s (Rhodes et al., 2009: 3) observation that ‘Westminster describes how government might be conceived and organized. It provides a set of beliefs and a shared inheritance that creates expectations, and hands down practices that guide and justify behaviour.’

13 See also Diamond and Richards (2012).
The Imprisonment for Public Protection Story: A brief history

The Imprisonment for Public Protection (IPP) sentence, whether measured in terms of its form or effects, stands as a striking development in recent British sentencing policy. Vastly expanding the scope of indeterminate sentences, over 6,500 IPP sentences had been imposed as of 31 March 2012 (Prison Reform Trust, 2012: 21). This has contributed to a fundamental change in the nature of the prison population, with one in five prisoners now serving indeterminate sentences (Prison Reform Trust, 2012: 21). Widely criticized as over-broad and ill-conceived (Jacobson and Hough, 2010; HM Chief Inspector of Prisons and HM Chief Inspector of Probation, 2010), the IPP sentence has been seen by some writers as reflecting a wider trend towards pre-emption and prevention in the penal sphere (Zedner, 2009; Zedner and Ashworth, 2008), while being viewed by others as demonstrating the pursuit by populist politicians of expressively tough measures to bolster their electoral prospects in an increasingly risk-averse culture (Tonry, 2004). In this way, the IPP story can be viewed as a penological tale for our times, encapsulating many of the most prominent concerns expressed by criminologists in relation to the direction of penal policy and the nature of penal politics.

The IPP sentence constituted the headline provision of a new sentencing regime for ‘dangerous offenders’, introduced by the Criminal Justice Act (CJA) 2003. The legislation provided a framework whereby those deemed to be dangerous by the trial judge would be liable either to imprisonment for life, imprisonment for public protection, or an extended sentence. The sentence is structured thus: if the offender is found to be ‘dangerous’ the trial judge states the minimum term commensurate with the seriousness of the offence (the

---

14 At January 2010, 97 per cent of IPP prisoners were male, while two thirds were aged between 21 and 39 (Jacobson and Hough, 2010: 14). The IPP sentence was abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Relevant provisions were implemented on 3 December 2012.

15 These sentences replaced the automatic life sentence; longer than proportionate sentences for sexual and violent offenders; extended sentences; and to a large extent the discretionary sentence of life imprisonment (Ashworth, 2005).
‘tariff’). After expiry of the tariff, the offender is released, on licence, only if the Parole Board is satisfied that he no longer poses a risk to the public. In summary then, the IPP ‘falls little short of life imprisonment – but it applies to “serious offences” for which life imprisonment is unavailable, and the court does not have to be satisfied that the offence reaches the threshold of seriousness appropriate for a life sentence’ (Ashworth, 2005:212).

From its inception, the systems of rehabilitation and parole required by the IPP sentence were significantly under-resourced (HM Chief Inspector of Prisons and HM Chief Inspector of Probation, 2008), which along with the risk-averse political rhetoric surrounding the sentence contributed to a substantial build-up of IPP prisoners. A ministerial statement that, over time, ‘there would be an additional 900 in the prison population’ as a result of the IPP sentence was widely interpreted as stating that the anticipated total number of IPP prisoners was, at most, 900. However, the numbers of IPP prisoners swiftly increased, rising from 1,079 in June 2006 to 4,461 in June 2008 and 5,828 in January 2010 (Jacobson and Hough, 2010: 12). An increasing number of IPP prisoners were reaching the end of their tariff period but finding themselves unable to demonstrate that they no longer represented a risk to members of the public, and were often unable even to obtain a timely Parole Board hearing in which to argue their case (HM Chief Inspector of Prisons and HM Chief Inspector of Probation, 2008).

---

16 To reflect the policy that determinate-sentenced prisoners were, at that time, released at the half-way point of their sentence, the tariff would be set at half the equivalent determinate sentence length for the offence committed: s82A, Powers of Criminal Court (Sentencing) Act 2000 (Thomas, 2005: 8).
17 The legislation is written using the masculine pronoun. In 2010, 97 per cent of the IPP prison population were male (Jacobson and Hough, 2010: 14).
18 Hilary Benn, Prisons Minister. Hansard HC Standing Committee B col 917 (11 February 2003).
19 These figures were higher, though broadly in line, with the internal estimates produced at the time the sentence was being developed (Home Office Research and Statistics Directorate, 2002).
A series of internal reports (Home Office, 2006; Ministry of Justice, 2007), legal judgments, and reports by the Chief Inspectors of Prison and Probation and penal reform groups (HM Chief Inspector of Prisons and HM Chief Inspector of Probation, 2008; 2010; Howard League for Penal Reform, 2007; Prison Reform Trust, 2007; Sainsbury Centre for Mental Health, 2008) made clear the significantly deleterious effects of the IPP sentence on the prison and parole system and on prisoners’ mental health and wellbeing and that of their families. Many of these reports made clear the organizations’ fundamental principled concerns with such a preventive sentence, in particular one whose net had initially been cast relatively wide (Jacobson and Hough, 2010: chapter 3). The following quotes demonstrate these concerns:

The structure of the sentences is flawed and secondly...the systems surrounding their implementation and operation were not given enough thought or resources. (Justice Committee, 2008a: 21)

[I]nadequate access to appropriate courses has been causing considerable difficulties for prisoners on IPPs...IPP prisoners are becoming increasingly aggravated and desperate to undertake resettlement work compatible with Parole Board release requirements (Howard League for Penal Reform, 2007: 18).

CCJS takes the view that the IPP sentence is flawed and should be withdrawn. The government should at least amend the law so that the use of indefinite sentences is left to courts’ discretion unconstrained by presumptions of dangerousness (Memo
randum submitted by the Centre for Crime and Justice Studies to Justice Committee, 2008b: Ev18).

By 2010, the IPP sentence was widely recognised as a failed policy,20 with then Justice Secretary Ken Clarke describing them as a ‘stain on the system.’21 The IPP sentence was abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, albeit leaving the position of those currently serving IPP sentence unchanged.

---

20 Many had come to such a judgment long before 2010: Howard League for Penal Reform (2007); Prison Reform Trust (2007); Sainsbury Centre for Mental Health (2008); Thomas (2008).

In terms of the key findings of the research, it was found that the creation of the IPP sentence was importantly conditioned by the ‘rise of the public voice’ (Ryan, 2005) and the ‘rise of risk’ (Garland, 2003). As regards the former, the intense media desire, and the perceived public clamour, for action against dangerous repeat offenders (exemplified by the case of the murder of Sarah Payne: Silverman and Wilson, 2002) significantly raised the issue up the policy agenda (Kingdon, 1995). Some of the key political actors (primarily the departmental ministers) desired robust, comprehensive action on this issue in order to address what was perceived as an important gap in existing provisions, while other key political actors’ efforts were focussed upon maximizing the potential electoral advantages of being seen to take decisive action on this high-profile issue.

As regards the ‘rise of risk’, it was argued that the development of the sentence was driven by a central preoccupation by actors with the need to pre-empt future risks, but that those centrally involved – ministers, bill team officials, Parliamentary Counsel and Home Office lawyers – lacked a detailed understanding of the nature, extent and limitations of existing risk assessment and management methods. One senior sentencing official – who, as a sceptical voice resistant to such a sentence was sidelined from the policy-making process – summed up the creation of the sentence well when recalling that:

the policy was driven along one track, and there were the odd glimpses – ‘okay, there will be processes that you can use.’ [It was], “this is what we think we’ll do, you’ll need some system for assessing, oh well there are these various things that you could use.”
I suspect that even had OASys not been there, the policy would have gone right ahead (Home Office official).

22 OASys, the Offender Assessment System, developed from 1999 onwards, was intended for use by probation officers and the prison service, providing,

A structured format for the assessment of risk of harm...[to trigger] other, more specialist assessments in relevant cases...[and to provide] a system for translating the OASys assessment(s) into a supervision or sentence plan. (Robinson, 2003: 119)
An exploration of the contestation of the IPP sentence both in the courts and by actors including penal reform groups, criminal justice organizations and Parliamentarians suggested that each could have been said to have had an identifiable effect on the course of the IPP story. However, in relation to the latter, groups were heavily constrained by the need to maintain a reputation as an ‘acceptable pressure group’ (Ryan, 1978), respecting the (often unspoken) rules of legitimate activity under the Westminster model and the limits of change acceptable to government. As regards the former, it was argued that the way in which the judiciary limited the extent of their findings against the government could be understand by reference to their reluctance to encroach on the policymaking arena, thus breaching the ‘separation of powers’ doctrine, and further their tendency towards an inherent conservatism and a concomitant equation of stability with the public interest.

Finally, the amendment of the IPP sentence – where its legislative scope was limited prospectively (with the plight of existing IPP prisoners addressed by arguably insufficient, and deliberately less visible, administrative measures: Jacobson and Hough, 2010: 9) was argued to demonstrate the ways in which the pressures of an anticipated upcoming election limited the perceived room for manoeuvre of many of the key actors (Lacey, 2008), while the vulnerability of the key actors, the impotent desire of many to foster a meaningful public debate in relation to law and order and the use of prison, equally was made clear.

**Penal Politics and the Westminster Tradition**

In terms of understanding the nature and effects of the beliefs and actions of the key policymakers researched for this study, Barker’s observation that, ‘There is an observable and universal need to justify the possession of government by claiming legitimacy’ (Barker, 2001: 46) was emphatically borne out. Importantly, this was both the case in an outward

---

Such developments were in addition to existing psychological tests and mental health assessments by psychiatric and medical professionals (Peay, 2007; Prins, 1999).
looking sense (for example the felt need to respond to the public desire for increased protection against ‘dangerous offenders’) but also in a more inward looking sense. By ‘inward looking’ I am referring to the shared assumptions of acceptable conduct among political actors and their need to be recognised as acting legitimately by those they routinely interact with (Barker, 2001).  

For example, officials and other close observers were highly critical of the way in which the IPP sentence was constructed: ‘[Home Secretary David Blunkett] had a clear view of what he wanted to do so why ask anyone else, really?’ (Home Office official). The general culture was, as one official put it,

> You have two choices, but option one is to do whatever [senior ministers] want to be done, and so is option two. It was a change of culture – it was less about working towards addressing common problems and more about implementing the wishes of a very small elite.

The majority of those interviewed recognised the systemic and human damage inflicted by the IPP sentence and saw it as a direct result of senior political actors’ failure to engage seriously with the predictions and warnings presented to them. However, there was a clear consensus among officials that, under the Westminster tradition, it was entirely proper for ministers to lead the policy process due to their status as democratically elected politicians. As one official put it, these are questions ‘for ministers. And it’s right constitutionally that that is the case. Because these are political decisions in the end and it’s right that politicians make them’. As another senior official argued, ‘they are democratically elected ministers and officials are not. So they are the ones making the decisions and that’s quite proper’.  

---

23 Bevir and Rhodes (2006b: 686) suggest that ‘there is one characteristic of the Westminster model that is present in every tradition – it is inward looking.’

24 The irony that the IPP provisions were driven in large part by Lord Falconer, an unelected long-term friend of Tony Blair, and the charge of incoherence which this represented to officials’ ‘answers to [the] question about
On the one hand, political scientists have suggested that the Westminster model ‘continues to be defended by the core executive because it acts as a legitimising mythology for the extensive power it conveys’ (Richards and Mathers, 2010: 500). The ‘great man in the arena’\textsuperscript{25} approach which it promotes legitimises a decision by a minister to ‘make the call’ (as one minister interviewed put it) in a particular policy area, even if that decision subsequently comes to seem highly inadvisable, or even outright irresponsible.\textsuperscript{26} On the other hand, the Westminster model can be seen to legitimize officials’ self-conception as what is often pejoratively termed ‘faceless bureaucrats,’ as ministerial servants who bear no responsibility for the policies resulting from their department (Richards and Mathers, 2010: 501). Therefore, on a particularly critical view, we can suggest that the Westminster tradition served to ‘cocoon’ officials from the ‘ontological insecurity’ (Giddens, 1991) actually or potentially encountered when facing the challenge – as posed by the IPP – of maintaining one’s self-image as essentially ‘good’ while constructing a sentence that was recognised by many officials to be flawed, over-broad and insufficiently thought-through. While some resistance by senior officials did occur, for the majority of officials refusing to ‘play one’s role’ entirely in relation to the IPP sentence – refusing to draft the sentence, repeatedly challenging ministers, making concerns public and so on – would have constituted a launching ‘out into something new, knowing that a decision made, or a specific course of action followed, has an irreversible quality, or at least that it will be difficult thereafter to revert to the old paths’; a truly ‘fateful moment’ (Giddens, 1991: 114; Rhodes and Wanna, 2009).

\textsuperscript{25} This phrase refers to the Theodore Roosevelt quote of the same name, which valorises not the cynical critic but the ‘man who is actually in the arena...who strives valiantly’ (quoted in Flinders, 2012: 189).

\textsuperscript{26} As Richards and Mathers (2010) put it, this ‘reflects the traditional Weberian view of politics as a top-down activity, whereby ministers located at the apex of the system effect change by taking the “necessary”, sometimes “unpopular”, usually “tough”, decisions in the interest of the public good.’
As Barker (2001) notes, presentations of self fulfil both an outward-looking function, but also, and crucially, that of ‘the self-knowledge and self-justification of the actor’ (2001: 31); a ‘means of achieving ethical coherence, of matching the account given of a person’s identity to others of their actions’ (2001: 37). For many, a need to ‘quieten’ this at-times-unsettling aspect of the civil servant role was explicitly recognised in the interviews conducted. For others, the question of the moral or ethical probity of the measures they were working on were, apparently, barely considered.27

An exploration of the role of the Westminster tradition thus emphasized first, the way in which this tradition heavily conditioned the way in which particular conditions were interpreted (or not) as problems and appropriate responses understood. Second, this exploration served to demonstrate the extent to which actors are ‘self-limiting’, finding certainty in these ever-shifting traditions which, for the purposes of such (self-)justifications are represented as absolute.

To the extent that any analysis seeks also to identify ways in which things could be different, this self-limiting function of the Westminster tradition is crucial. To an extent, the extant power relations are a function of the position of the political actor, the mechanisms at their disposal and so on. However, a focus on the role of the Westminster tradition (guided by an interpretive outlook) suggests that much of this power is an artefact of relevant actors’ understandings of what they and others can legitimately do, and the constant stream of actions which serve either to respect (and thus shore up) existing dominant understandings of legitimate action, or to challenge such understandings and thus raise the prospect of changes in these understandings and thus the political activity which relies on such shared understandings. The research sought, and was able, to identify various ways in which the

27 On the dangers of obedience in the context of command-oriented organizations, see Kelman and Hamilton (1989).
course of the IPP story could have been different, including the identification of a variety of contingent events and points at which actors could plausibly have chosen to act differently. In this way the research was argued to support a view that the direction of (penal) policy or (penal) politics is not merely on an unchangeable course, fixed by ‘the master patterns of structural change’ (Loader and Sparks, 2004: 16). Rather, it was argued that the research demonstrated Hay’s (Hay, 2002) observation that it is an actor’s belief that their actions are constrained (by the tenets of the Westminster tradition, or the inescapable public clamour for ‘tough’ sentences against dangerous offenders, for example) which works to sustain, nurture and even generate the reality which they perceive to already be in existence (Hay, 2002: 209).

In closing, it should be emphasized that, in terms of the influence of the Westminster tradition, and related beliefs and working practices, there were few indications that the creation and amendment of the IPP sentence was particularly exceptional as an instance of penal policymaking. This was the view of the majority of the officials and ministers interviewed. For example, one official described it as ‘not particularly unique’ in terms of process, with another close observer seeing it as an example of the general legislative process, where:

Someone takes a bite at [the bill] here, and a bite at it there. Because it will go round not just to [the sentencing law] team, it will go round to all the other bits of the Home Office that have an interest and also all the other departments that have an interest. So you could see something that started off being very sensible, actually being chunked away at by lots of different people and tweaked here and tweaked there. And of course ministers would do a bit of tweaking as well. So what starts off as a beautifully crafted piece of legislation, ends up as a bit of a mess (research interview).

We can therefore reasonably anticipate a focus on the role of the Westminster tradition in penal politics – and the way in which understandings of broader ideas and constraints were understood through this lens – to be of broader utility to analysts of penal politics.

28 The term ‘close observer’ is used in this instance to protect the interviewees’ anonymity.
Conclusion

A response to this discussion of the Westminster tradition and its role in penal politics could be that it is simply self-evident: of course understandings of legitimate government activity influence the nature of penal politics and the course of penal policy. However, while several criminologists have taken politics – understood from political economist, historical hermeneutic, symbolic interactionist and other perspectives – seriously (Lacey, 2008; Loader, 2006; Loader and Sparks, 2010; Rock, 2004; Sim, 2009; Windlesham, 1996), we can suggest that at least two factors have served to limit the attention paid to the role of beliefs and traditions in penal policy. First is the welcome and productive development of the field now termed the sociology of punishment, which has prompted and exemplified works which seek to explore the connections between social theory and punishment (Garland and Sparks, 2000; Simon and Sparks, 2012). Particular developments in penal politics and policy thus tend to be explored in relation to broader cultural or structural trends. This can lead to the role of political activity often, though not always (Page, 2011; Simon, 2007), becoming obscured.

A second factor is that traditions such as the Westminster model may have become ‘too familiar’, analysts having developed an ‘excessive proximity’ (Bourdieu, 1984: 1; cited by Loader and Sparks, 2004: 24). On this view, exploration of the role of the Westminster tradition thus requires a prior task: ‘rupturing an initial intimacy with modes of life and thought which remain opaque because they are too familiar’ (Bourdieu, 1984: xi; cited by Loader and Sparks, 2004: 24).

The question of to what extent the Westminster tradition operates as a mediating device between immediate political contestation and perceived constraints and broader culture and structural trends is, as I noted above, twofold, being both empirical (‘to what extent was the Westminster tradition influential for relevant actors in a particular case?’) and
theoretical (‘to what extent does the utilization of the concept of the Westminster tradition facilitate an understanding of developments in penal politics? Does it facilitate the drawing of connections between proximate political activity and broader patterns of social and cultural change?’). These issues would undoubtedly benefit from further analysis and I would welcome any comments.


