

Monday/Wednesday 10:00 A.M. – 11:30 A.M., 1220 Weill Hall

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Office hours Wednesday 1:00-3:00, 4122 Weill Hall

During his first stint as Chief of the New York City Police Department, William Bratton often claimed that the crime rate has the same meaning for a police department as profits have for a business—that the crime rate is the “bottom line” of policing. Bratton intended this claim as a practical statement about how police departments should be managed, and especially about the form that police performance measures ought to take. But like all practical statements about what criminal justice policy and practice should be, it is also a philosophical claim about the goals that should govern society’s response to crime.

In this course we will question the philosophical position that Bratton expressed, exploring the idea that concern about crime itself should and does compete with other priorities. Good criminal justice policy and practice should promote public safety, but it should also (at minimum) express appropriate censure for wrongful actions, and it should respect the ideals of individual liberty and social equity as well. It is this range of goals—not the single goal of crime reduction—that both justifies public efforts to control crime and motivates important policy actors. To make appropriate decisions about criminal justice, policymakers and practitioners need to grapple with what these goals mean and with how they can be accomplished.

In the first part of the course, we will review classic and contemporary readings in philosophy and criminal justice to explore these goals in detail. Why is each goal important? What does it demand? What are its limits in policy and practice? Who are its champions? How is it possible to tell how well a policy advances it? Obviously the answers to all of these questions are contested: “Safety”, “censure”, “liberty”, and “equality” mean different things to different people, and we do not all rank them in the same way (one person’s fair trade of liberty for order may strike another as the first step toward a police state). But by trying to answer questions like these, and by debating the different answers that we arrive at, we will develop a thorough understanding of key interests and values in this field. In the process, we will have developed a framework for evaluating specific crime control proposals. It is in that sense that this course aims to introduce you to one way of thinking about crime.

In the second part of the course, we will use our framework to analyze the three major criminal justice institutions—cops, courts, and corrections—focusing particularly on proposals for reform in each of these areas. In each case, we will review current research and analysis of the implications and impacts of different strategies, aiming to understand

which proposals strike a tolerable balance among the competing aims of the field. The topics we will explore do not cover every institution relevant to crime control, and we can only touch on a few aspects of each institution we do cover. But these sessions will give you experience applying our analytic framework, and they will introduce you to some of the most prominent debates about criminal justice reform today.

Requirements

1. Regular class attendance, participation, and preparation—*i.e.*, do the readings and be ready to talk about them. I may also ask you to prepare summaries of the readings or presentations for the class. (25%)
2. One short policy memo on a topic to be assigned, due October 26. I will hand out the memo topics and requirements the week before it is due. (20%)
3. One term paper (approx. 15 pp.) analyzing a crime control strategy, due October 9. The term paper is flexible, but in general it should focus either on (1) evaluating some particular *proposal* for addressing an important crime-related problem (*i.e.* asking whether that proposal accomplishes what any anti-crime strategy ought to accomplish), or (2) analyzing a crime-related *problem*, and asking what the best response is. The problems and proposals you examine can be as specific or general as you like—anything from the public safety challenges faced by a particular neighborhood, to broad crime policy issues at the national level. We can discuss the paper in more detail in or out of class if you like. (50%)
4. A brief proposal for your term paper (one or two paragraphs is plenty), due October 3. Your proposal should describe the subject you have chosen and how you plan to analyze it, including the kind of research you plan to do to support your analysis. (Usually that will mean a review of relevant academic literature; tell me which fields you expect to investigate and some examples of material that appears relevant. Occasionally you may plan to conduct interviews with criminal justice officials.) (5%)

All of the readings listed are required except where noted. Please do all the required readings before you come to class. There is a fair amount of reading, but the rest of the course workload isn't heavy, so the readings should be manageable. Class discussions won't work if you don't read. Hopefully, you will find the readings interesting!

The readings are available electronically in the course CTools site. The "Resources" section has separate folders that contain the readings for each class session. Because this is a heavily revised course that I have not taught in a while, I may need to update the reading list as the semester goes on. I will alert you ahead of time if I need to make changes to the readings.

If you believe you need an accommodation for a disability, please let me know at your earliest convenience. Some aspects of this course may be modified to facilitate your participation and progress. As soon as you make me aware of your needs, we can work with the Office of Services for Students with Disabilities to help us determine appropriate accommodations. I will treat any information you provide as private and confidential.

September 9 **Introduction**

Optional. Isaiah Berlin. "On the Pursuit of the Ideal," *New York Review of Books*, March 17, pp. 11-17.

September 14 **Crime and Criminal Justice through the Age of Mass Incarceration**

William Stuntz, *The Collapse of American Criminal Justice* (Cambridge: Harvard Univ. Press, 2012), pp. 1-8.

Anne Morrison Piehl and Bert Useem. "Prisons" [excerpt], in eds. James Q. Wilson and Joan Petersilia. *Crime and Public Policy* (Oxford Univ. Press, 2011), pp. 532-43

Franklin Zimring. "The Size and Character of the Crime Decline", in *The Great American Crime Decline* (New York: Oxford Univ. Press, 2007), pp. 3-24.

Background Materials to Browse

Bureau of Justice Statistics. "The Justice System", n.d.

FBI, Crime in the United States, 2012.

Jennifer Truman, Lynn Langton, and Michael Planty, "Criminal Victimization, 2012", BJS Bulletin, October 2013.

PART I: GOALS

1. Safety

September 16 **Incapacitation**

Franklin Zimring and Gordon Hawkins. "Elements of a Theory," ch. 3 in *Incapacitation* (New York: Oxford Univ. Press, 1995), pp. 42-59.

Edwin Zedlewski. "When Have We Punished Enough?" in *Public Administration Review*, vol. 45 (Nov. 1985), pp. 771-779.

John J. DiIulio and Anne Morrison Piehl. "Does Prison Pay? The Stormy National Debate over the Cost-Effectiveness of Imprisonment," *The Brookings Review*, fall 1991, pp. 28-35.

Selective Incapacitation

Bernard Harcourt, *Against Prediction* (Chicago: Univ. Chicago Press, 2007), ch. 1, cases 1, 3

Anna Maria Barry-Jester, Ben Casselman, and Dana Goldstein, “The New Science of Sentencing”, *The Marshall Project*, Aug 4, 2015.

September 21 **Deterrence**

Cesare Beccaria. *Of Crimes and Punishments*, trans. Jane Grigson, (Marsilio Publishers, 1996), sections 15, 19, 20.

David Kennedy. *Deterrence and Crime Prevention*. (London: Routledge, 2008), pp. 1-8, 42-53, 108-129

September 23 **Rehabilitation**

Francis Allen. “The Decline of the Rehabilitative Ideal”, in eds. Andrew von Hirsch and Andrew Ashworth *Principled Sentencing*. (Boston: Northeastern Univ. Press, 1992), pp. 23-30

Jessica Mitford. *Kind and Usual Punishment*. (New York: Knopf, 1973), pp. 95-113, 118-130

Francis Cullen and Paula Smith. “Treatment and Rehabilitation”, in ed. Michael Tonry, *The Oxford Handbook of Crime and Criminal Justice* (New York: Oxford Univ. Press, 2012), pp. 156-174.

September 28 **Prevention**

Ronald V. Clarke. “Introduction” [excerpt], in ed. Ronald V. Clarke, *Situational Crime Prevention: Successful Case Studies*. (Guilderland: Harrow and Heston), pp. 2-33.

Mark Kleiman. “Crime Control without Punishment”, in *When Brute Force Fails* (Princeton: Princeton Univ. Press, 2009), pp. 117-135

2. Censure

September 30 **Just Deserts**

C.S. Lewis. “The Humanitarian Theory of Punishment,” *The Twentieth Century: An Australian Quarterly Review*, vol. 3 (1949), pp. 5-12.

Michael Moore. “The Moral Worth of Retribution”, in eds. Andrew von Hirsch and Andrew Ashworth *Principled Sentencing*. (Northeastern Univ. Press, 1992), pp. 188-94

R.A. Duff. "Punishment, Communication, and Community," (New York: Oxford Univ. Press, 2003), pp 19-30

Andrew von Hirsch. *Doing Justice*. (Northeastern Univ. Press, 1976), pp. 45-51, 66-73

Andrew von Hirsch, "Structure and Rationale: Minnesota's Critical Choices," *The Sentencing Commission and Its Guidelines*. (Northeastern Univ Press, 1987), pp. 84-106

Recommended: Andrew von Hirsch. *Past and Future Crimes*. (Northeastern Univ. Press, 1987), pp, 38-46, 92-101.

3. Liberty

October 5 **Due Process**

Samuel Walker. *Popular Justice* (Oxford Univ. Press, 1998), pp. 180-185.

Wilkinson v. Austin, 544 U.S. 74 (2005)

William Stuntz, *The Collapse of American Criminal Justice* (Cambridge: Harvard Univ. Press, 2011), pp 69-85, 216-230.

October 7 **The Reach of the Criminal Law**

Eric Luna. "The Overcriminalization Phenomenon" [excerpt], 53 *American University Law Review* (2004): 703-727.

William Stuntz, *Collapse of American Criminal Justice* (Cambridge: Harvard Univ. Press, 2011), pp. 257-263.

William Stuntz, "The Pathological Politics of Criminal Law" [excerpt], *Michigan Law Review* vol. 100 (2000), pp. 506-511

John Stuart Mill. *On Liberty* (Hackett, 1978), pp. 9-13, 73-75, 78-82.

Jonathan Caulkins, Angela Hawken, Beau Kilmer, and Mark Kleiman. *Marijuana Legalization*. (Oxford Univ. Press, 2012), ch. 8

Term Paper Proposal Due Oct 9, 5:00 PM

October 12 **Dignity**

James Q. Whitman, *Harsh Justice* (New York: Oxford Univ. Press, 2003), pp. 64-7, 81-92.

Jonathan Simon, *Mass Incarceration on Trial* (New York: The New Press, 2014), pp. 1-10, ch 4, 6

Nora V. Demleitner. "Human Dignity, Crime Prevention, and Mass Incarceration," *Federal Sentencing Reporter*, Vol. 27 (2014) pp. 1-6.

4. Equality

October 14 **Racial Inequality in Criminal Justice** *Memo Assignment Handed Out*

Michelle Alexander. *The New Jim Crow*. (New York: Free Press, 2012), chs. 1, 5

James Forman, Jr. "Racial Critiques of Mass Incarceration", *NYU Law Review* vol. 87 (2012), pp. 21-69.

October 19 **No Class – Fall Break**

PART II: STRATEGIES

1. Punishment

October 21 **Drug Courts**

Denise Gottfredson, Stacy Najaka, and Brook Kearley. "Effectiveness of Drug Treatment Courts: Evidence from a Randomized Trial", *Criminology and Public Policy*, vol. 2 (2003), pp. 171-196.

Morris B. Hoffman. "The Rehabilitative Ideal and the Drug Court Reality", *Federal Sentencing Reporter*, vol. 14, no 3-4 (Jan/Feb 2002), pp. 172-178.

Michael O'Hear. "Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice Symposium" [excerpt], *Stanford Law and Policy Review*, vol. 20 (2009), pp. 477-87.

Reginald Fluellen and Jennifer Trone. "Do Drug Courts Save Jail and Prison Beds?" (Vera Institute of Justice: 2000)

Leon Neyfakh, "The Custom Justice of Problem-Solving Courts", *Boston Globe* March 23, 2014.

October 26 **Term Paper Discussion** *Memo Assignment Due*

October 28 **Community Corrections**

Joan Petersilia. "Community Corrections: Probation, Parole, and Prisoner Reentry", in eds. James Q. Wilson and Joan Petersilia. *Crime and Public Policy* (Oxford Univ. Press, 2011), excerpts.

Andrew von Hirsch. "The Ethics of Community-Based Sanctions", 36 *Crime and Justice* (1990), pp. 162-173.

Mark Kleiman. *When Brute Force Fails*, excerpts (Princeton Univ. Press, 2009), pp. 34-41, 95-99

Mark Kleiman. "Community Corrections as the Front Line in Crime Control", 46 *UCLA Law Review* (August 1999) 1909-25.

Mark A.R. Kleiman, Angela Hawken, and Ross Halperin. "We don't need to keep criminals in prison to punish them," *vox.com*, March 18, 2015

November 2 **Restorative Justice**

John Braithwaite. "The Family Model of the Criminal Process," in *Crime, Shame, and Reintegration* (Cambridge Univ. Press, 1989), pp. 54-65

Howard Zehr and Mark Umbreit. "Victim-Offender Reconciliation", *Federal Probation*, vol. 46 (1982), pp. 63-68

Lawrence Sherman and Heather Strang. *Restorative Justice: The Evidence*. (The Smith Institute, 2007), pp. 12-13, 26-29, 62-4, 68-71, 78-9

Andrew Ashworth. "Responsibilities, rights and restorative justice, 42 *British Journal of Criminology* (2002): 578-595.

November 4 **Fines**

Norval Morris and Michael Tonry. *Between Prison and Probation* (New York: Oxford Univ. Press, 1991), ch. 5

Pat O'Malley. "Politicizing the Case for Fines", *Criminology and Public Policy*, vol. 10 (2011), pp. 547-53

Dan Kahan, "What Do Alternative Sanctions Mean", 63 *University of Chicago Law Review*, pp. 591-653; *read sections I, II.B, III.C; skim the rest*

November 9 **The Death Penalty**

Adam Liptak. 2007. "Does the Death Penalty Save Lives?" *New York Times*, Nov. 18.

Martin O'Malley. "Why I Oppose the Death Penalty", *Washington Post*, Feb 21, 2007.

Hugo Bedau. "An Abolitionist's Survey of the Death Penalty in America Today", in eds. Hugo Bedau and Paul Cassell. *Debating the Death Penalty*. (Oxford Univ. Press, 2005), pp. 15-47

Paul Cassell. "In Defense of the Death Penalty", in eds. Hugo Bedau and Paul Cassell. *Debating the Death Penalty*. (Oxford Univ. Press, 2005), pp. 183-217.

November 11 **Scarlet Letters**

Michelle Alexander, *The New Jim Crow* (New York: Free Press, 2012), pp. 137-164.

Jessica Henry and James Jacobs. "Ban the Box to Promote Ex-Offender Employment", *Criminology and Public Policy*, vol. 6 (2007), pp. 755-762

Richard Freeman, "Incarceration, Criminal Background Checks, and Employment in a Low(er) Crime Society", *Criminology and Public Policy*, vol. 7 (2008), pp. 405-11.

Andrew von Hirsch and Martin Wasik. "Civil Disqualifications Attending Conviction: A Suggested Conceptual Framework", *Cambridge Law Journal*, vol. 56 (1997), pp. 599-626

Reginald Fields. "[Bill easing collateral sanctions for felons in Ohio will soon be law](#)", *Cleveland Plain Dealer*, June 26, 2012

Gary Fields and John Emshwiller. "As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime," *Wall Street Journal*, Aug. 18, 2014

2. **Police**

November 16 **The Police**

Peter Moskos. "911 is a Joke", in *Cop in the Hood*. (Princeton Univ. Press, 2008), pp. 89-110

Herman Goldstein. *Problem-Oriented Policing* (McGraw-Hill, 1990), ch. 4

November 18 **Policing Drugs**

Peter Moskos. “New Jack: Learning to Do Drugs”, in *Cop in the Hood*. (Princeton Univ. Press, 2008), pp. 38-63.

David Kennedy. “Eliminating Overt Drug Markets: The ‘High Point’ Strategy”. *Deterrence and Crime Prevention*. (Routledge, 2008), pp. 142-65.

November 23 **Stop and Frisk**

ACLU of Illinois, *Stop and Frisk in Chicago*, March, 2015

Ray Rivera, Al Baker, and Janet Roberts. “A Few Blocks, 4 Years, 52,000 Police Stops”, *The New York Times*, July 11, 2010, and additional news coverage TBA

David Rudovsky and Lawrence Rosenthal. “The Constitutionality of Stop-and-Frisk in New York City”, 162 *Univ. Pennsylvania Law Review* (2013)

Andrew Gelman, Jeffrey Fagan, and Alex Kissa. “An Analysis of the New York City Police Department's “Stop-and-Frisk” Policy in the Context of Claims of Racial Bias”, *Journal of the American Statistical Association*. Volume 102, Issue 479, 2007

Decio Coviello and Nicola Persico. “An Economic Analysis of Black-White Disparities in NYPD’s Stop and Frisk Program”, January 2013

Center for Constitutional Rights. *Stop and Frisk: The Human Impact* (New York: CCR, 2012), pp. 5-9, 17-22.

Garry McCarthy, “Using Stop and Frisk Powers Responsibly”, pp. 12-21 in Nancy La Vigne, Pamela Lachman, Andrea Matthews, and S. Rebecca Neusteter, eds., *Key Issues in the Police Use of Pedestrian Stops and Searches*. Washington DC: Urban Institute, 2012.

November 25 **Regulating Guns**

Andrew Romano and Pat Wingert. “2,405 Shot Dead Since Tucson”, *Newsweek*, March 15, 2011

Wendy Kaminer. “Gun Shy”, *The American Prospect*, 2002.

T. Markus Funk. "Are Gun Control Laws Discriminatory?" *Might Magazine*, vol. 3 (1994), pp. 59-60.

Philip J. Cook, Anthony A. Braga, and Mark Moore. "Gun Control." In *Crime and Public Policy*, edited by James Q. Wilson and Joan Petersilia. (Oxford Univ. Press, 2011).

District of Columbia v. Heller, 128 S.Ct. 2783 (2008), excerpts.

Anthony Braga, Garen Wintemute, Glenn Pierce, Phillip Cook, and Greg Ridgeway. "Interpreting the empirical evidence on illegal gun market dynamics", 89 *Journal of Urban Health* (2012) 779-793.

November 30 **The Use and Abuse of "Broken Windows"**

James Q. Wilson and George L. Kelling. "Broken Windows: The Police and Neighborhood Safety," in *Atlantic Monthly*, March 1982, pp. 29-38

George Kelling and Catherine Coles. *Fixing Broken Windows* [excerpts] (Touchstone, 1997), pp. 114-131, 138-143.

Bernard Harcourt. "Policing Disorder", *Boston Review* vol 27, no. 2 (Spring 2002).

David Thacher. "Order Maintenance Policing", in ed. Michael Reisig and Robert Kane. *The Oxford Handbook of Police and Policing* (New York: Oxford Univ. Press, 2014), pp. 122-47.

Optional. Debra Livingston . "Police Discretion and the Quality of Life in Public Places" [excerpt], 97 *Columbia Law Rev.* (1997), pp. 591-627

December 2 **Police Accountability**

Simone Weichelbaum, "Policing the Police", *The Marshall Project*, April 23, 2015.

U.S. Department of Justice Civil Rights Division & Office of Justice Programs, Roundtable on State and Local Law Enforcement Police Pattern or Practice Program, "Background Briefing Paper", June 3, 2010.

Samuel Walker and Carol Archbold. *The New World of Police Accountability*. Sage Publications, 2013, excerpts

United States Department of Justice, Civil Rights Division. "Investigation of the Newark Police Department", July 22, 2014, excerpts, pp. 1-4, 7-30, 34-46

U.S. Dept. of Justice. “City of Newark and United States of America Agreement in Principle”, July 2014.

3. *Courts and Beyond*

December 7 **Indigent Defense**

Andrew Cohen, “A New Conservative Approach to Justice: Serve the Poor”, *The Marshall Project*, May 12, 2015.

Amy Bach. *Ordinary Injustice*, (New York: Metropolitan Books, 2009), ch. 1.

Cait Clarke and Christopher Stone. “Bolder Management for Public Defense”, Executive Session on Public Defense, Kennedy School of Government, Harvard University, 2001.

Recommended: American Bar Association Standing Committee on Legal Aid and Indigent Defendant. *Gideon’s Broken Promise*. (American Bar Foundation, 2004), pp. 1-28, 38-49.

December 9 **Pretrial Detention**

Laura Sullivan. “Bail Burden Keeps U.S. Jails Stuffed With Inmates”, “Inmates Who Can't Make Bail Face Stark Options”, and “Bondsman Lobby Targets Pretrial Release Programs”, *National Public Radio*, January 21-22, 2010.

John Goldkamp and E. Rely Vîlcică. “Judicial Discretion and the Unfinished Agenda of Bail Reform”, *Studies in Law, Politics, and Society*, vol. 47 (2009), pp. 115-157

Laura and John Arnold Foundation. “Developing a National Model for Pretrial Risk Assessment”, Nov. 2013; and “Results from the First Six Months of the Public Safety Assessment Court in Kentucky”, July 2014

Recommended: Timothy Schnacke, Michael Jones, and Claire Brooker. *The History of Bail and Pretrial Release*, Pretrial Justice Institute, 2010.

December 14 **Power to the Jury?**

Paul Robinson, Stephen Garvey, and Kimberly Kessler Ferzan (eds).
Criminal Law Conversations (New York: Oxford Univ. Press, 2009), pp.
543-584

Randall Kennedy, *Race, Crime, and the Law* (New York: Vintage, 1997),
pp. 295-310.

Gwen Florio. "Missoula District Court: Jury pool in marijuana case stages
'mutiny'", *The Missoulian*, Dec 19, 2010

Term Paper Due – Dec. 18