



HARVARD Kennedy School
JOHN F. KENNEDY SCHOOL OF GOVERNMENT

Workshop on Crime and Criminal Justice Reform in Global Context

HKS CCJ-201

HLS 48855A

Spring 2010 (version 1)

Hours: Mondays 4:10 to 6:00 pm

Location: Weil Town Hall, 1st Floor of the Belfer Building at the Kennedy School

Professor Christopher Stone

Spring Term Office Hours: Tuesdays, 9 to 11 am

Assistant: Klara Kadian, 617-496-0831

Teaching Fellow: Mallika Sarkaria

Syllabus

This is an advanced, graduate-level course examining the political ambitions and empirical results of criminal justice reform around the world today. Readings and classroom discussion draw on experience over the last two decades in high-, middle-, and low-income countries.

I have designed the course to engage a variety of students including:

- students interested in crime policy and justice reform in any country
- law students interested in the changing rules of criminal procedure globally, and
- students of international development interested in security sector reform, penal reform, and improving access to justice

There is no specific pre-requisite for the course, but students should have prior course work or professional experience in criminal law, criminal procedure, law enforcement, criminal justice, crime policy, or criminology.

The course explores crime and justice reform with an explicit focus on power. We try to understand the powerlessness (or not) of people living in poverty and surrounded by crime (drawing on contemporary experience in New York and Chicago related by Adrian Nicole LeBlanc and Sudhir Venkatesh, but also on E.P. Thompson's tale of Windsor Forest in the 18th century). We look, too, at the ways that power is exercised through the justice system by governing elites (whether heads of state or officials in development agencies). I take this approach to the subject because I believe undertaking responsible and effective justice reform benefits enormously from careful attention to imbalances of power, abuses of power, the technology of power, and the responsible exercise of power.

A second focus of the course is the relation of theory to practice in the administration of justice. We look at the philosophy of the criminal justice system both through intellectual work (such as Michel Foucault's *Discipline and Punish* and Thomas Carothers's contemporary account of the rule of law) and through the public statements of thoughtful national leaders (from Deng Xiaoping to Barak Obama). As for empirical evidence, the course draws on both quantitative studies (such as Frank Zimring's account of crime reductions in Canada and the U.S.) and qualitative research (such as Antony Albeker's participant observation with the South African police) to understand the actual operations and functions of criminal justice systems.

This is a "workshop" course, meaning that students undertake a fieldwork project in a small group with another student or students. Student teams produce field memos, make a brief presentation of their work to the class, and submit a final research report. In addition, students are expected to draw on their fieldwork during class discussions and in weekly on-line discussions of the course readings. An array of fieldwork opportunities are provided by the Kennedy School's Program in Criminal Justice Policy & Management and described briefly below, but students may also organize their own.

Class Meetings, Web Postings, and Course Grade

The first two class meetings focus on the problem of crime. How do different groups within a society define crime, and how do those various definitions restrict the scope of government efforts to reduce crime and bring criminal offenders to justice? How, if at all, can crime be measured? Is there a true volume of crime in a society, or are there only competing definitions?

What, then, is the role of government in reducing crime and doing justice? What functions within societies do criminal justice institutions play? We address these questions in the third and fourth weeks, looking back at the development of criminal justice institutions in 18th and 19th century England and France—the cradles (if not the birthplaces) respectively of the common and civil law traditions. What does "the rule of law" have to do with crime control? What governmental and non-governmental institutions should we consider included within the criminal justice system? How is that system established, governed, and employed? How do we understand the role of the death penalty and what lessons do we learn from the replacement of capital and physical punishment with imprisonment as the modal criminal penalty in formal justice systems today..

In the fifth through eighth weeks, we examine efforts of the last twenty years at sector-wide criminal justice reform in four countries.

- In England, we examine the legal reform of the entire sector, looking at the combined effect of the Police and Criminal Evidence Act of 1984 and the

- Prosecution of Offenses Act of 1986 both under Prime Minister Thatcher as well as the introduction Anti-Social Behavior Orders, Control Orders, Sentencing Guidelines, the Offender Management Agency, the National Police Improvement Agency, and the Independent Police Complaints Commission all under Prime Minister Blair. Are the ideological differences between Blair and Thatcher reflected in their contributions to the criminal justice of contemporary England and Wales? What does the gradual but comprehensive redesign of the English criminal justice system tell us about the possibilities for reform in less wealthy countries?
- In China, we examine the reduction in the use of the death penalty and the implementation of various features of an adversarial criminal justice system since the adoption of the 1996 code of criminal procedure, including new interrogation practices, plea bargaining, the cross-examination of witnesses at trial, and the recent instruction to balance harshness with leniency in criminal sentencing. What do the Chinese reforms tell us about the meaning of the rule of law in legal systems outside of the common law tradition? What does China teach about the relationship of crime, justice, and economic development?
 - In South Africa, we examine the rise and fall of the Scorpions (the special investigative unit modeled in part on the US FBI) and the evolution of the South African Police Services (SAPS) against the backdrop of the 1994 Constitution with its several specific criminal justice innovations. We look at hopes invested a decade ago in the new National Prosecution Authority and at the problems that led to the forced removal of the first two National Directors of Public Prosecutions. What does the South African experience teach about the implementation of legislative and constitutional reform, and what about the relationship between politics, crime, and the administration of justice in the context of political and economic development?
 - In Chile, we examine the results of the 1996 reforms that created the country's first modern prosecutor and its national public defender, while introducing oral evidence at trials and other trappings of adversarial procedure. We review the ambitious plans for victim assistance and ask how the implementation of the reforms responded to concerns with rising crime as well as with the need for public justice. How did justice reform affect the police—both the investigative police and the *Carabineros*? How did these reforms contribute to the reduction in the use of pretrial detention or the increase in the prison population? Did the reforms affect the level of crime?
 - In the United States, we examine the challenges created by the persistence of severe disparities in the experience of different racial and ethnic groups in the criminal justice system. We look both at issues of racial profiling in policing, and issues of disproportionate minority incarceration, examining various

understandings of these phenomena and assessing various proposals to reduce racial and ethnic disparities across the system.

The final two class meetings are devoted to presentation and discussion of student fieldwork, and its relation to the themes discussed in the class meetings.

Participation in class discussion is central to the course, occurring both in the classroom and on the course website. Students in CCJ-201 are expected to contribute at least one web posting no later than Sunday evening at 4 pm every week throughout the term. Postings during the first three classes are responses to the readings. Postings thereafter should integrate responses to the readings with reflections on the fieldwork. Postings should be a maximum of 250 words and should be written with care. The final grade for this class will be calculated as follows:

Classroom discussion: 20%

Web Postings: 20%

Field Memo: 20%

Class Presentation: 10%

Final Research Report: 30%

The Fieldwork Project

Central to this workshop course is the opportunity to participate in a current project of criminal justice reform. Opportunities are available through the Program in Criminal Justice Policy and Management at the Harvard Kennedy School, but students may also organize their own field work projects. Interested students may begin their fieldwork as early as October 2009, although no additional course credit can be granted for an early start. Those interested in starting before the class meeting should contact the course assistant, Mallika Sarkaria (Mallika_Sarkaria@hks10.harvard.edu). For the Academic Year 2009-2010, the following opportunities are among those available through the Program:

1. **United States.** In May 2009, the Program published its report on a study of how policing in Los Angeles has changed over the last eight years while the Police Department operated under a “consent decree” entered in a federal law suit brought against the city by the US Department of Justice. In 2009-10, the Program may follow-up that study in Los Angeles and San Francisco to see how policing continues to change with changes in leadership in both departments. The Program may also be working with the chair of the senate judiciary committee in the Minnesota State Legislature to better understand the impact of changes in arrest volumes and charging practices on the work of the criminal courts. In addition, the Program is supporting the work of the New York State Task Force on Police-on-Police Shootings, with opportunities for students to examine the

- psychological evidence about how racial stereotypes affect split-second decision making by police officers.
2. China. The Program is working with several Chinese scholars conducting empirical research on issues in Chinese criminal procedure, including the introduction of plea bargaining in Chinese criminal courts, the sentencing of juvenile offenders, the provision of defense counsel to criminal defendants, and more. Students can review results of these pilot projects and work with members of the Chinese research teams.
 3. Sierra Leone. The Program is working with a national, cross-department ministerial group to improve the performance of the formal justice system, mostly in Freetown, the capital. We are beginning by reviewing and analyzing an unusually large volume of survey data on many aspects of the justice system.
 4. Nigeria. The Program is working with the CLEEN Foundation, the Lagos State Attorney General's Office, and the national Solicitor General to devise reliable indicators about the dynamics of the pretrial or awaiting trial population. The aim is to construct indicators that will allow justice officials to begin to manage and reduce the awaiting the numbers of people held in pretrial detention.
 5. Jamaica. The Program is working with officials of the Jamaican Constabulary Force on the development of a citizen scorecard on public safety, as well as with official of the Ministry of Justice on improvements in court administration. The aim of this work is to develop measures that will allow the government to improve those aspects of police performance that appear to have the greatest impact on the overall level of violent crime, while also using those measurements to explain the relationship of police performance to violent crime.
 6. Papua New Guinea. The Program is working with two government ministries in PNG to improve the measurement of the performance of the criminal justice system following several years of reform guided by the Australian Government's development agency, AusAID.
 7. Latin America Cities. The Program is working with local government officials, including mayors and police officials, in several cities in Latin America to devise crime reduction strategies that can attract political support across party and ideological lines in these highly polarized political environments.

Each student will prepare his or her own field memo, describing the research that the students has undertaken up to that point for the course, and reflecting on the experience in whatever form is appropriate in light of the research project itself. These field memos are due on Wednesday, April 14, at 6 pm, and must be submitted electronically through the course web site. These field memos will constitute the required reading for the final two classes. During those final two classes, each research team makes a single presentation to the class, drawing on the material in those memos to inform the research question. Finally, each student team prepares and submits a single research report, drawing on the

fieldwork to reach their own conclusions. These group research reports are due on Friday, May 7. Research reports should be between 15 and 30 pages, and should be written in a style and with the care expected of submissions to professional journals of practice or scholarship.

Reading Assignments and Study Questions

Jan 25 The Problem of Crime

Reading: Adrian Nicole LeBlanc, *Random Family: Love, Drugs, Trouble, and Coming of Age in the Bronx* (2003), pages 3-48

Sudhir Venkatesh, *Gang Leader for a Day* (2008), pages 1-95, 158-175, 228-239

Study Questions:

- (1) What, in your opinion, are the two most serious crime problems depicted in these two sets of readings that government should seek to reduce? Why do you think these the most serious?
- (2) What activity by officials in the criminal justice system (including police and corrections officers) should the criminal justice system be most eager to restrain?
- (3) What institutions (formal and informal) are most effective in these accounts at protecting individuals from crime? How do they do so?

Feb 1 The Problem of Crime (cont'd)

Reading: Frank Zimring, *The Great American Crime Decline* (2006), "The Size and Character of the Crime Decline" and "Which Twin Has the Toni? Some Statistical Lessons from Canada", pp. 3-24 and 107-134.

Anthony Altbecker, "Puzzling Statistics: Is South Africa Really the World's Crime Capital" in *South African Crime Quarterly*, March 2005

Etannibi Alemika and Innocent Chukwuma, *Criminal Victimization, Safety and Policing in Nigeria: 2006*, pages 9-54

Government of India, Ministry of Home Affairs, *Crime in India 2007* (on course website)

Study Questions:

- (1) How do these four readings differ in the way they assume that crime should be measured?
- (2) To what extent are the different techniques of measurement illustrated in these readings related to their different definitions of crime?
- (3) How can we measure differences in levels of crime between countries?

Feb 8 Establishing Safety & Justice: Confronting Crime within the Rule of Law

Reading: E.P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (1975), Introduction, selections from Chapters 1 & 2, Chapters 5 & 6, selection from Chapter 8, Chapter 9, and part iv of Chapter 10. By pages, the required reading consists of: pages 21-40 (line 4); 64 (1st full paragraph) - 80; 142-156; 183 (last 3 lines) - 218, 258-269.

(b) The Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone* (2008), Executive Summary, pages 1-11.

Study Questions:

- (1) In what ways, if any, does the “emergency” prompting passage of the Black Act have echoes in events of the 1990s or the present decade provoking new criminal legislation in one country or another?
- (2) What does Thompson mean when he writes (p. 207) that the increase in capital punishments indicated “a change, not so much in the ‘facts’ of crime as in the *category*—‘crime’—itself, as it was defined by the propertied.”?
- (3) Do you agree with Thompson when he writes that the rule of law is “a cultural achievement of universal significance”? Why does Thompson call it a *cultural* achievement? How is Thompson’s idea of the rule of law different from that of the Commission on the Legal Empowerment of the Poor?

No Class on February 15: University Holiday for Presidents’ Day

Feb 22 Establishing Safety & Justice: The Treatment of Criminal Offenders

Reading: Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Part 1, Chapter 1, “The Body of the Condemned” (portion); Part 2, Chapter 1 “Generalized Punishment” (portion) and Chapter 2 “The Gentle Way in Punishment”; Part 3, Chapter 3 “Panopticism”

*(portion); Part 4, Chapter 2 “Illegalities and Delinquency”
(portion); pages 3-24, 73-89, 104-131, 195-217, 257-277*

Study Questions:

- (1) What does Foucault mean when he argues that the criminal law no longer punishes criminal acts, but “the shadows” behind those acts? What are the shadows?
- (2) What are the critiques of the prison that arise with its beginning? Which of them persist today?
- (3) To what extent does Foucault anticipate the nature of penal reform in the early twenty-first century? Where does he get it wrong?

Feb 23 Individual appointments, 30 minutes each, to discuss papers. Sign up with Klara Kabadian.

Mar 1 Criminal Justice Reform in Context: What Can We Learn from Individual Countries [*This class to be led by Mallika Sarkaria.*]

Reading: To be assigned.

Mar 8 Criminal Justice Reform in England: Rationalism’s Revenge

Reading: Tony Blair, “Our Nation’s Future - Criminal Justice System,” speech delivered on 23 June 2006, Bristol, England, with background papers by Ian Loader, Anthony Bottoms, Peter Neyroud, John Denham, and Julian Roberts, and an earlier opinion piece by Tony Blair from 1988. (on course web site)

UK Home Office, *Public confidence in the Police and their local partners: results from the British Crime Survey year ending September 2008* (on course web site)

Study Questions:

- (1) What are the points of agreement between Blair and the experts whose advice he has sought? What are the principal points of disagreement and how does this group of experts divide on those points?
- (2) How does Blair’s conception of the rule of law differ from EP Thompson’s in last week’s readings? How does his view of the proper way to punish criminality and anti-social behavior compare with Foucault’s account of punishment in modern society?
- (3) Is public confidence an important measure of the

success of a police service? Is it as important as levels of crime? Is the new effort in the UK to measure public confidence produce a credible result?

No Class March 15: University Spring Break

Mar 22 Criminal Justice Reform in China: Ending Dependence on the Death Penalty

Reading: Borge Bakken (ed.) *Crime, Punishment, and Policing in China* (2005), Chapter 6, "Campaign-Style Policing in China and Its Critics," pages 171-188).

Hong Lu and Lening Zhang, "Death penalty in China: The law and the practice" in *Journal of Criminal Justice* 33 (2005) 367– 376.

China Justice News Update and Selected News Articles (on course web site)

Study Questions:

(1) How do the developments in Chinese policing strategies relate to the changing reliance on the death penalty in China?

(2) How do these developments in China follow or diverge from the developments that Foucault asserts took place in Europe and America in the 19th and early 20th centuries?

(3) What realistic options are available for political leaders in China who seek to eliminate the use of the death penalty? On what time scale would this be possible? What other changes in the justice system would this require?

Mar 29 Criminal Justice Reform in South Africa: Police & Prosecution Reform in the Context of Economic and Political Development

Reading: Antony Altbeker, *The Dirty Work of Democracy: A year on the streets with the SAPS* (2005), Chapters 1, 8, and 14; pages 1-9, 128-145, and 226-246.

Selected News Stories regarding the Directorate of Special Operations within the National Prosecuting Authority, also known as "the Scorpions" (on course web site)

Stephan Haggard, Andrew MacIntyre, and Lydia Tiede, "The Rule of Law and Economic Development" in *Annual Review of Political Science*, 2008, 11:1, pages 205-234.

Thomas Carothers, “The Problem of Knowledge” and Laure-Hélène Piron “Time to Learn, Time to Act in Africa,” both in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006), pages 15-28, 275-299.

Study Questions:

- (1) What does Altbecker’s account reveal about the methods that the leadership of the South African police used to transform the police after the end of apartheid?
- (2) What lessons for criminal justice reform do you draw from the demise of the Scorpions? Should the creation of the Scorpions and its separation from the police have been seen as a permanent or a temporary arrangement?
- (3) What is the value of “prosecution-led-investigation” more generally as a strategy for police reform? What are its strengths and weaknesses?

Apr 5 Criminal Justice Reform in Chile: The Convergence of Civil Law and Common Law Traditions

Reading: Excerpts from Chilean President Frei's address to the Congress of Deputies (June 1995) introducing the draft law of criminal procedure (in Spanish with English translation): *Mensaje de S.E. El Presidente de la Republica con el que Inicia un Proyecto de ley que Establece un Nuevo Codigo de Procedimiento Penal*. (On course web site)

Lisa Bhansali and Christina Biebesheimer “Measuring the Impact of Criminal Justice Reform in Latin America” all in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006), pages 299-323.

Todd Foglesong and Antonio Marangunic, “Charting Justice Reform in Chile: A comparison of the old and new systems of criminal procedure” Vera Institute of Justice, December 2004 (on course web site)

Justice Studies Center of the Americas, *Challenges of the Public Prosecutor’s Offices in Latin America* (on course web site)

Study Questions:

- (1) What is President Frei trying to accomplish with his

criminal justice reforms? What is the problem that he is addressing?

(2) How is President Frei's speech different from Prime Minister Blair's? How is it similar?

(3) How is the construction of the Ministerio Publico in Chile expected to drive reform in other parts of the justice system? How is this different from the role of the National Prosecuting Authority in South Africa and the Crown Prosecution Service in England and Wales?

Apr 12 Criminal Justice Reform in the United States: Confronting Racial Disparities

Reading: Barack Obama, Remarks at Howard University Convocation, September 28, 2007.

Selected News Stories on Course Web Site

Study Questions:

(1) What is "racial profiling" and how is the term used by different officials and advocates for their separate purposes?

(2) What are the causes of the racial disparities in imprisonment in the United States, and how are these related to issues of racial profiling?

(3) Which of the proposals to deal with racial disparities in the U.S. criminal justice system, if implemented, are mostly likely to reduce those disparities over the next decade? Which are the least likely?

Apr 19 & 27 Presentation of Class Fieldwork Projects

[Note: These two class meetings may be extended to 7 pm]

Reading: You are expected to read the rough drafts of your classmates as assigned on the course web site. Each student will be expected to read approximately 130-150 pages of papers, as assigned, in each of the two weeks. You must read the drafts carefully and be prepared to engage the authors in discussion of results, presentation, and the persuasiveness of conclusions.