

COURSE SYLLABUS

EXP-0074-F

Rethinking Justice:

Alternatives to the Traditional Court and Corrections System

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Class Time: Mondays, 6:00-8:30PM

Office Hours: I will be available for 30 minutes after each class, and will make additional office hours by appointment.

NOTE: This is a working syllabus, and is subject to change.

COURSE DESCRIPTION

How do our ideals of justice compare with the reality of U.S. criminal and juvenile justice systems? Can the justice system look different? Do we want it to?

Through this course, students will be introduced to the philosophical and historical backgrounds of alternative systems of justice, including restorative justice programs, community corrections, and therapeutic or problem-solving courts. We will examine assumptions about crime and justice, and discuss social views on punishment, freedom, and legal rights in the criminal justice setting.

Students will also begin to explore ways of effective policy-making through analyzing outcome effectiveness of different programs, and will gain firsthand knowledge of traditional and alternative justice settings in the Boston metro area.

This course is designed for students of any and all backgrounds. No matter your level of experience with the law, policy, or the justice system, your perspective is valuable to class discussion.

ASSIGNMENTS AND GRADING

Assignment breakdown

Attendance and participation: 15%

Presentation and classroom discussion: 15%

Reaction paper 1 – competing notions of justice: 15%

Reaction paper 2 – field observations: 30%

Analytical paper: 25%

Attendance and participation

Active engagement is key to earning full credit for participation, including small group activities and in-class reflection. Attendance is a top priority, and absences will affect your participation grade as

well as your ability to complete other assignments. To fully participate, you will have to complete the reading assignments before each class.

Presentation

Each student will be responsible for one presentation throughout the course. There are several different presentation options available, which we will discuss in the first class.

Reaction Papers

Students will write two 5-page reaction papers over the course of the semester:

1. Competing notions of justice: Looking at the readings for weeks 1-4, how do the written notions of justice, crime, and punishment compare with your own views and assumptions?
2. Fieldwork: Each student will be expected to spend 1 hour observing some element of a court proceeding. Several options will be available throughout the semester in different courts and at different times. You are encouraged to observe in pairs or small groups. (If fieldwork presents undue hardship, alternatives may be requested in the first two weeks of the semester.)

Field observation options include:

- District Court clerk's office
- Arraignment session
- Juvenile court
- Jury duty
- Self-help center
- Mediation
- Restorative justice circle
- Drug court
- Homeless court
- Housing court
- Probation

Analytical Paper

The final assignment of the semester will be a 5-8 page analysis of a specific justice initiative of your choosing. Students will incorporate the readings from throughout the semester in their analysis, and will look specifically at the issues of social control, civil liberties, proactive judging, and processes vs. outcomes.

READINGS

Readings will be distributed electronically, via Trunk. Some readings may also be handed out during class.

CLASS SCHEDULE

PART I: INTRODUCTION TO THE SYSTEM

SEPT. 8: THE JUDICIAL BRANCH: THE ROLE OF THE COURT IN SOCIETY

In the first week, we will examine the structures and function of judiciary as one of three branches of government; the role of the court; and the types of cases that we will encounter in our exploration of the criminal, juvenile, and civil systems, using examples from current events. We will look specifically at the roles of the police, attorneys, judge, jury, and probation as portrayed in movies.

Reading (in class): U.S. Constitution, Article III

Videos (viewed in class):

- “A Time To Kill” (clips)
- TBD

Students will sign up for presenter slots for future weeks. Each student will present once.

SEPT. 15: CRIME & PUNISHMENT

We will briefly review the historical development of the criminal justice system, and the changes in how and why we punish those who violate the law. We will read a case about a shipwrecked crew that resorted to cannibalism to discuss the morality of criminal acts and the role that the court must play in making these decisions.

Readings:

- Packer, Herbert. “Two models of the criminal process”
- Foucault, Michel. *Discipline & Punish*. Ch.
- James Q. Wilson and George Kelling. “Broken Windows: The Police and Neighborhood Safety.” *Atlantic Monthly* (March 1982).
- *The Queen v. Dudley and Stephens*

Video (viewed in class):

- “Stanford Prison Experiment” (clips)

PART II: RESTORATIVE JUSTICE

SEPT. 22: RESTORATIVE JUSTICE: HISTORY AND CRITIQUE

We begin to explore alternatives to the criminal justice system through formal interventions intended to change the behavior of those convicted of crimes from a rehabilitative or restorative approach, rather than retributive or deterrence-based. We start with a survey of the development of restorative justice as an alternative to the American criminal justice system, as well as its core critiques. Student presenters will lead a debate about the merits of restorative justice in different settings, including drunk driving, graffiti, and violent crimes.

Readings:

- Zehr, H. *Changing Lenses—A New Focus for Crime and Justice* (1990): Introduction.
- Levrant S, Cullen F, Fulton B, and Wozniak J. “Reconsidering Restorative Justice: The corruption of benevolence revisited.” *Crime and Delinquency* 45(1): 3-27 (1999).
- Morris, A. Allison Morris “Critiquing the Critics: A brief response to the critics of restorative justice.” *British Journal of Criminology* 42(3): 596-615 (2002).

Video (viewed in class):

“Restorative Justice is the LAW” (clips)

SEPT. 29: MODELS OF RESTORATIVE JUSTICE

Student presenters will explain specific restorative justice programs that currently exist as alternatives to traditional conviction and sentencing. As a class, we will discuss and systematically analyze the strengths and drawbacks of different programs.

Readings:

- Karp, D. and Walther, L. “Community Reparative Boards in Vermont.” *Restorative Community Justice* (Bazemore & Schiff, eds.).
- Restorative Circles—A Reentry Planning Process for Hawaii Inmates Restorative circles
- Zion, J. and Yazzie, R. “Navajo Peacemaking: Original dispute resolution and a life way.” *Global Perspectives*, Chapter 8.
- Sherman, L. and Strang, H. “Chapter 2: A Tale of 3 RJ Conferences.” *Restorative Justice: The Evidence* (2007).

OCT. 6: RESTORATIVE JUSTICE AND PRISON

We examine the demographic profile of prisoners and the effects of the dramatic increase in incarceration in the United States, and explore restorative justice methods that take place after sentencing, in the prison system.

Readings:

- Umbreit, M., Vos, B., Coates, R., and Brown, K. "Chapter 3: Texas Case Studies." *Facing Violence: The Path of Restorative Justice & Dialog* (2003): pp. 45-65.
- Christianson, S. "A Land of Prisoners and Keepers." *With Liberty For Some: 500 Years of Imprisonment in America*, (Northeastern University Press; Boston, 1998): pp. 39-67.
- James, J. "Introduction: Democracy and Captivity." *The New Abolitionists: Neo-slave Narratives and Contemporary Prison Writings*, State University of New York Press: Albany, 2005): pages xxi-xxv.
- Bissonette, J. *When the Prisoners Ran Walpole: A True Story in the Movement for Prison Abolition* (South End Press: Cambridge, 2008).

Video (viewed in class):

Beyond Conviction, by Rachel Libert, Tied to the Tracks Films, Inc.

OCT. 13: Columbus Day (University Holiday)

PART III: CHILDREN AND THE JUSTICE SYSTEM

OCT. 20: JUVENILE JUSTICE

Building upon our expertise in the adult system, we examine the juvenile justice system and all its components including the police, schools, juvenile courts and juvenile sanctions. Led by student presenters, we will discuss the benefits and drawbacks of various programs and policies aimed at reducing juvenile delinquency, and trying juveniles as adults. We will debate the *Gault* decision, and think critically about the institution of the juvenile justice system.

Readings:

- *In re Gault*, 387 U.S. 1 (1967)
- Platt, A.M. *The Child Savers: The Invention of Delinquency* (1969): pp. 137-175.
- Richard Mendel, Two Decades of JDAI: From Demonstration Project to National Standard (2009)

Videos (viewed in class):

- Professor Francine Sherman, Testimony before Congress on Meeting the Needs of Girls in the Juvenile Justice System (Mar. 11, 2010), (<http://www.youtube.com/watch?v=-vP6GRSC8Yc>)
- Reforming Juvenile Justice in Pennsylvania video (<http://youtu.be/8IW472uvzIo>)
- Out of Control: South Dakota Juvenile Prison video, <http://cclp.org/documents/SD.mp4>

OCT. 27: RESTORATIVE JUVENILE JUSTICE

Is rehabilitation more easily applicable in the juvenile setting? We will explore school-based and court-based restorative justice programs for children.

Students will break out into groups to participate in a role-play based on the real-world model of Concord Restorative Circle, a volunteer, non-profit organization in Concord, Massachusetts: This is a juvenile delinquency, first-time offender case. A teenager was caught for low-monetary-value shoplifting and admits his guilt. Both he and the store owner have chosen to try a restorative circle to come up with a process of resolving the matter, while the juvenile court process is put on hold.

Readings:

- Advancement Project. *Test, Punish, and Push Out: How “Zero Tolerance” and High-Stakes Testing Funnel Youth Into the School-to-Prison Pipeline* (2010).
- Lilles, H. “Circle Sentencing: Part of the Restorative Continuum.” *Restorative Justice for Juveniles* (Morris & Maxwell, eds.)
- Vareham, S. “Seeing things differently: Restorative justice and school discipline.” *Education and the Law* 17(3): 87-104 (2005).
- Karp, D. and Breslin, B. “Restorative Justice in School Communities.” *Youth Society* 33(2): 249-272 (2001).

PART IV: PROBLEM-SOLVING COURTS

NOV. 3: THERAPEUTIC COURT MODELS

In response to docket pressure and frustration with traditional criminal justice approaches, “problem-solving courts” have emerged in recent years. Without necessarily rejecting notions of individual responsibility, such courts treat crime as a symptom of complex social ills, and attempt to address these ills as such. Offenders are typically sentenced to treatment or some other alternative disposition rather than to imprisonment. In some instances, problem-solving courts have specialized jurisdictions, as for drug addiction, mental health, spousal abuse, or juvenile justice. In this class, we will analyze two Massachusetts courts in particular: Homeless Court and Drug Court.

Readings:

- Chandler, R., Fletcher, B., and Volkow, N. “Treating drug abuse and addiction in the criminal justice system: Improving public health and safety” (2009).
- Feuer, A. “Out of Jail, Into Temptation: A Day in a Life.” *N.Y. Times* (Feb. 28, 2002) at B7.
- Shavelson, L. *Hooked* (2001): pp. 221-259.
- Massachusetts Access to Justice Commission Report: Homeless Court (2013).

Questions for discussion:

- Are drug courts an appropriate model for the justice system?
- Should courts be concerned with whether people have jobs, GED’s, stable housing?

- How different is drug court from traditional courts? How does the role of the judge, the lawyers and the litigants change in the drug court model?
- What is the potential for abuse of judicial discretion? Does a non-adversarial system serve the best interests of defendants? Is the legislature or the executive branch better suited to address social ills like addiction?

NOV. 10: BUT DOES IT WORK? OUTCOMES AND EVIDENCE-BASED COURT PRACTICES IN THERAPEUTIC COURTS

We will discuss the effects of the therapeutic system on outcomes for individuals and society. Issues include kinds of cases, outcomes, measurement problems, reactions, and organizational forms.

Questions for discussion:

- To what extent does “therapeutic justice,” as practiced by problem-solving courts actually work? How should success be measured?
- In what respects, if any, are problem-solving courts novel institutions?
- What risks do problem-solving courts pose to civil liberties? How, if at all, can civil liberties be respected within problem-solving courts?
- Can the relative informality and easing of traditional legal rules and protocols adversely affect the fairness of the proceedings?
- What is the impact of eliminating the adversarial system on litigants and the criminal justice system?
- Should courts be in the business of behavior modification?

Readings:

- Marlowe, D.B. and Kirby, K. “Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.” *National Drug Court Institute Review*. Vol. II, pp. 1-31 (1999).
- Goldkamp, J.S. “The Drug Court Response: Issues and Implications for Justice Change.” *Albany Law Review* 63:923 (2000).

Audio homework:

- *This American Life*. “Very Tough Love” (Public Radio International, 2012).
<http://www.thisamericanlife.org/blog/2012/03/very-tough-love-update-%E2%80%93-lindsey-dills>

NOV. 17: BEYOND THE CRIMINAL CONTEXT: COMMUNITY JUSTICE CENTERS

In addition to the therapeutic court model, problem-solving courts attempt to cut across jurisdictional barriers by combining various services under one roof, as in so-called community justice centers.

Questions for Discussion:

- What is the source of legitimacy for a problem-solving court, especially given the fact that problem-solving courts typically operate in communities with relatively few resources and with clienteles that are disproportionately members of disadvantaged minority groups?
- How do the roles of attorneys and judges in problem-solving courts differ from traditional conceptions of lawyers' roles?
- More broadly, as problem-solving courts continue to proliferate, will they call for a rethinking of the role of courts in our system of government, and if so, along what lines?

Readings:

- Berman, G. Feinblatt, J. *Good Courts*: pp. 59-76.
- Thompson, A.C. "Courting Disorder: Some Thoughts on Community Courts." *Washington University Journal of Law & Policy* 10:63-99 (2002).

PART V: THE JUSTICE SYSTEM REVISTED

NOV. 24: LIVED EXPERIENCES

Students who visited courts will present their observations and how they matched up with previous understandings, the readings, and the intentions of the system. With those experiences in mind, students will debate: What is the single most important way to enhance access to justice for all?

Video (viewed in class):

- "White House Forum on Increasing Access to Justice"

Readings:

- Bolitho J, Bruce, J and Mason G (eds). *Restorative Justice: Adults and Emerging Practice* (2012) (excerpt).
- Hazel, G., Beinart, S. Finch, S., Krorvessis, C., and Smith, P. "Strategies for Resolving Justiciable Problems," "Outcomes," and "Fulfilling Objectives?" *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart Publishing 1999): pp. 65-103, 145-214.

DEC. 1: COMPARING SYSTEMS

We will return to the *Dudley & Stephens* cannibalism case, and two additional scenarios generated by the students. In each of these three scenarios, we will develop a matrix of the historical and philosophical underpinnings of the criminal, juvenile, therapeutic, and restorative systems, and discuss the different outcomes that each system would generate.

Readings:

- Tyler, T.R. and Belliveau, M.A.. "Tradeoffs in Justice Principles: Definitions of

Fairness.” *Conflict, Cooperation and Justice: Essays Inspired by the Work of Morton Deutsch*. (Bunker & Rubin, eds., 1999): pp. 291-314.

- Specific pilot court program (*student's choice*)

DEC. 8: MODEL COURTS

As a culmination of our learnings to date, students will critically analyze pilot court initiatives and discuss the meaning of justice in the context of the court system. In breakout groups, students will compare analyses of court programs, and report back to the class about therapeutic, problem-solving, and restorative justice court models.

Homework Assignment:

Working in teams or independently, use the matrix developed in Class 12 to analyze one court program.