

JUSTICE FOR ALL? RE-ENVISIONING CRIMINAL JUSTICE

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YALE LAW SCHOOL'S FACULTY, STUDENTS, AND ALUMNI
WORK TO MAKE AMERICA'S CRIMINAL JUSTICE SYSTEM MORE
EFFECTIVE, INTELLIGENT, AND HUMANE.

IN 2015, BIPARTISAN GROUPS WITHIN BOTH THE U.S. House of Representatives and the Senate introduced bills that aim to reform the American criminal justice system. The proposed legislation is part of a larger national conversation about rethinking decades-old policies and beliefs that have shaped American criminal justice. Lawmakers, practitioners, and scholars are examining sentencing guidelines, over-criminalization, and prison reform. Longstanding intellectual debates about crime prevention and policing are making regular and high-profile appearances on the twenty-four-hour news cycle, driven in part by the events in Ferguson, Missouri and other violent—and video-recorded—confrontations between police and the communities they serve.

Perhaps the most readily cited evidence in support of the need for criminal justice reform is the growth of America's prison population. The United States ranks first among all countries in the world with 2.2 million prisoners, more than half a million more than the second-highest total. Between 1980 and 2010, the U.S. incarceration rate swelled by 230 percent: In 1980 there were 220 prisoners for every 100,000 people, and thirty years later that number was 730 per 100,000. America's incarceration rate for 2014 was 690 per 100,000—nearly five times greater than the world average of 144 per 100,000.*

President Obama, in his weekly address on October 31, 2015, outlined some of his goals for improving America's criminal justice system: "I believe we can disrupt the pipeline from underfunded schools to overcrowded jails. I believe we can address the disparities in the application of criminal justice, from arrest rates to sentencing to incarceration. And I believe we can help those who have served their time and earned a second chance get the support they need to become productive members of society."

As part of the larger national efforts to repair America's criminal justice system, faculty and students at Yale Law School are exploring new pathways to reform by drawing on the Law School's unique mixture of clinical experience, legal analysis, and interdisciplinary research.

* Data from the Bureau of Justice Statistics and the *World Prison Population List* (2015).

Academic scholars, advocates, and practitioners working in the field of criminal justice come together at Yale Law School, where academic research meets the challenges of real-world problems. (below) In March, the Arthur Liman Public Interest Program hosted its nineteenth annual colloquium, “Moving Criminal Justice” (read more on page 51).



CALLED IN FOR QUESTIONING

“Concerns about the dysfunction of the current criminal justice system have been expressed across the political spectrum,” said Arthur Liman Professor of Law Judith Resnik. “In several sectors, the leadership pressing for changes is coming from police, judges, and prison officials who are keenly aware that the practices on which they have relied on in the past need to be revised.”

Yale Law students and faculty are collaborating with leaders in multiple fields, as they improve relationships between communities and law enforcement, combat the carceral state, reform parole and reintegration programs, and ensure equal and fair representation for all.

Standing before a judge in New Haven Superior Court, students from Yale Law School’s Samuel Jacobs Criminal Justice Clinic are representing criminal defendants charged with serious crimes who lack the resources to adequately defend themselves.

In the classroom, they are examining statutes, learning criminal procedure, and analyzing complex data alongside the brightest legal minds in the field.



Resnik

Through the Arthur Liman Public Interest Program and the Justice Collaboratory, students are engaging in reform projects for nearly every phase of the U.S. criminal justice system – from police legitimacy to capital punishment to mass incarceration.

“All of these issues are things that students and faculty write about, work on, testify about,” said Kate Stith, Lafayette S. Foster Professor of Law. “We look at these issues with great seriousness. We try to get empirical data as to what’s happening and why it is happening. We don’t rely on 24/7 headlines or on anybody’s ‘party line.’”

CLINICS IN REAL TIME: FROM POLICE CARS TO PAROLE HEARINGS

“There is no easing into it,” said Clinical Associate Professor Fiona Doherty ’99, explaining the work of the students in Samuel Jacobs Criminal Justice Clinic (CJC). “We throw them in right away.”

Doherty, who was an Assistant Federal Defender in the Southern District of New York prior to teaching at Yale, holds what she calls a “boot camp” for new students just

before the beginning of every semester. This early training allows students to start handling cases at the New Haven criminal courthouse right away. “We are the only clinic in the Law School where every single student is on their feet in court the first full week of the semester,” Doherty said.

Operating through a partnership with the Connecticut public defender’s office, the clinic students handle a variety of cases from misdemeanors to felonies. From the first meeting at lock up to the final hearing in the case, students are out front throughout the process, interviewing clients and witnesses, investigating the scene of the alleged crime, negotiating with prosecutors and the bail commissioner, and facing a judge on their own.

“We are looking for things that the students can really dig into with their incredible energy and devotion to their clients, for cases that will really make a difference,” said Doherty, noting how valuable this experience is for students who want to become lawyers in the criminal justice system. “They are applying what they are learning in real time. I see the trajectory over the course of the semester, and it is an incredible thing.”

“CJC has been the highlight of my law school experience,” said Carly Levenson ’16, a clinic student director. “The clinic allowed me to experience the up-close, day-to-day workings (and failings) of the criminal justice system. I’ve found the work to be challenging and often frustrating, but



also enormously rewarding, never boring, and desperately needed.”

The clinic also works on filing federal clemency petitions seeking relief for defendants who had been given lengthy prison terms for drug offenses that under current law would have been handled much differently.

“There are still thousands of people in federal prisons who are serving sentences that were imposed under outdated policy. We have three clients for whom we are filing federal clemency petitions. They were sentenced to anywhere from twenty years to life,” explained Doherty. “And they were all young when they went in.”

As a result of the clinic’s work, President Obama granted clemency to one of these clients in May 2016. The clinic continues to work on behalf of its other two clients.

In addition, the clinic has a policy team that has been working with the State of Connecticut to examine and recommend reforms to the parole revocation process as part of the “Second Chance Society” agenda initiated by Governor Dannel Malloy. As part of that project, clinic students attended and analyzed every parole revocation hearing in Connecticut last November and made a formal presentation to state officials, including the heads of the Department of Corrections and the Board of Pardons and Paroles.

“The whole idea is to increase protections to help people reintegrate and not just have a punishment metric for



(from left) Fiona Doherty ’99, clinical associate professor of law, with four members of the parole revocation team, Asli Bashir ’17, Rachel Shur ’17, Chris Desir ’18, and Theo Torres ’18

people who violate the conditions of their parole,” said Doherty, who recently published an article on this topic in *Georgetown Law Journal*.

Whether helping a client mitigate charges that have serious life consequences, working to reduce lengthy and outdated sentences, or advocating for important policy changes, the clinic’s work is part of the fundamental dynamics of reforming the criminal justice system.

“Because of the difference that highly effective lawyering makes in outcomes for clients, you can achieve a result that transforms a client’s life, especially given the dramatic consequences of criminal convictions,” explained Doherty.

The clinical programs at Yale Law School also include a prosecution externship, which enables students to assist state or federal prosecutors with their responsibilities during investigations, charging, adjudication, and sentencing. In recent years, students have been placed at the New Haven State’s Attorney’s Office and the U.S. Attorney’s Office for the District of Connecticut.

“It’s very hands-on,” said Professor Stith, who runs the program along with Liam Brennan ’07 and Marc Silverman ’06, who are both Assistant U.S. Attorneys in New Haven. “They do a broad range of work. They do some drafting of complaints and indictments, they get to see witness interviews and proffer sessions, they write and argue motions.”

The class meets weekly to go over the different stages of the criminal justice process, hosting visiting lecturers who represent the full spectrum of the system, from local police officers and FBI agents, to public defenders, to judges and probation officers. The externship also facilitates trips to federal and state prisons and “ridealongs” with law enforcement.

While many of the Law School’s clinics focus on civil litigation, several clinics and student organizations play an important role in introducing students to the state and federal criminal justice systems and affording the students an opportunity to represent individual clients and pursue systemic reforms.

For instance, students in the Capital Punishment Clinic spend two to three weeks each August at the Southern Center for Human Rights in Atlanta or the Equal Justice Initiative in Montgomery, Alabama. There, they meet attorneys, investigators, and mitigation specialists working on capital cases and become a part of a team representing people facing the death penalty.

The Ethics Bureau at Yale works to aid lawyers who are dealing with ethical dilemmas, often filing amicus briefs in appeals of capital and other criminal defense cases and

providing assistance to lawyers for prisoners in developing claims of ineffective assistance of counsel.

Students in the Worker & Immigrant Rights Advocacy Clinic (WIRAC) have represented Latino day-laborers and Latino residents and shopkeepers in federal civil rights suits against local police departments for racial profiling, false arrest, and excessive force claims, winning the largest settlement ever obtained by day-laborers as well as court-ordered policy reforms to separate policing and immigration enforcement. WIRAC students also filed and litigated a state-wide class action suit against the Department of Corrections on behalf of immigrants unlawfully held pursuant to administrative detainer notices; persuaded the state probation agency to end its prior mandatory policy of reporting all potentially deportable probationers to federal immigration authorities; and have represented a state-wide immigrant rights coalition in pursuing legislative reforms to state laws regarding the integration of corrections and immigration functions. And in numerous individual deportation cases, WIRAC students have represented Connecticut residents facing removal as a consequence of a state or federal conviction.

The Veterans Legal Services Clinic (VLSC) has also represented justice-involved veterans in a number of matters and represented a state veterans’ organization in drafting and successfully advocating for enactment of state legislation expanding the eligibility of veterans for pre-trial diversion programs, ensuring veterans charged with low-level offenses can receive treatment rather than jail time.

Governor Malloy signed this legislation into law at a signing ceremony held at the Law School.

In addition to the clinics, student organizations such as the Green Haven Prison Project provide opportunities for students to work with prison populations and address the legal and political issues affecting them.

“There are many other clinics that are not expressly organized around the criminal justice system, but nevertheless, on behalf of immigrants or veterans, for instance, have worked to represent individual clients and to pursue strategic interventions to improve policing, corrections, probation, and other criminal justice agencies in the state,” said Professor Mike Wishnie ’93, Deputy Dean of Experiential Learning at Yale Law School.

Wishnie said the Law School seeks to provide a variety of clinical offerings to ensure students have the tools they need to pursue a variety of different career paths.





Judith Resnik (right), Arthur Liman Professor of Law, moderated the nineteenth annual Liman Public Interest Colloquium, “Moving Criminal Justice,” which considered how reform agendas are formulated, gain currency, and result in changes in laws and practices.

“The clinical program here will continue to strive to meet evolving student interests while serving community needs and providing excellent training for students in a range of subject matter areas,” said Wishnie.

IN THE CLASSROOM: FUNDAMENTALS, THEORY, AND THE REAL WORLD

“Criminal law is taught here in many different ways,” said Professor Stith, who was a federal prosecutor in New York City before she joined the Yale faculty. “There are many flowers blooming at Yale Law School.”

With around a dozen faculty members teaching courses in criminal law or related fields, each professor approaches the coursework using different lenses—from constitutional to sociological to philosophical.

With a few exceptions, Stith said, criminal law courses are taught in a pragmatic fashion, with faculty like Professors Tracey Meares, Jed Rubinfeld, Steven Duke ’61 LLM, and Stith herself looking at how the law works in practice.

“Contrary to what people may assume, we teach criminal law as it really operates,” said Stith. “Once upon a time, the view took hold that Yale Law School was up in the clouds. In the area of criminal law, I’m not sure that has ever been predominantly true. While we do offer criminal law theory courses—and they’re great—most of the people who teach criminal law also teach courses that are very much concerned with the real world. To understand criminal law, you need to know more than Kant and Beccaria and Mill, more than what’s in a criminal code, more than what’s in appellate opinions and

jury instructions. You need to know what is charged and how it is charged, and the terms of settlements and criminal sentences. I tell my students, you have got to know what the courts have said and you’ve got to know what it means on the ground,” said Stith. “I want the judges they clerk for to say, ‘Gee, these Yale students really understand criminal law.’”

Course offerings range from core classes such as substantive criminal law and criminal procedure to advanced courses such as white-collar criminal defense and specialized classes such as Race and the Law. For students, the experience can be transformative in shaping their view of the law and their future aspirations.

“I arrived at Yale with strong convictions about criminal justice but little direct experience, and three years later, I am leaving with those convictions both strengthened and complicated,” said Allan Bradley ’16, who will be working at the Manhattan District Attorney’s Office after graduation. “Yale Law students and faculty have informed my education with both their intellectual horsepower and their extraordinary moral energy. In terms of pure legal training, I couldn’t ask for better, but I think in the long run, it is that moral energy and moral foundation that will prove most valuable as I navigate a career in criminal law.”

In addition to the curriculum, students have the opportunity to work with faculty on empirical research and advocacy projects throughout their time here.

“In three years, I’ve worked with Professors Tracey Meares, Judith Resnik,



James Forman, Fiona Doherty, and Issa Kohler-Hausmann,” said Dwayne Betts ’16. “Each of them have frighteningly sophisticated minds. And they’re committed to the kind of work that leads to substantive changes.”

Allie Frankel ’17 has worked with Professor Stith on a research project exploring whether federal prosecutors are, as directed by the Justice Department, curbing the practice of using prior drug convictions to extend prison terms. “Each course has deepened my understanding of the systemic factors that create and maintain a criminal justice system that disproportionately affects the poor, racial minorities, and other vulnerable groups,” said Frankel. “The opportunity to collaborate with Professor Stith and my fellow students to examine whether the effects of policies set in Washington, D.C., are being felt by defendants on the ground has been profoundly rewarding.”

Associate Professor Issa Kohler-Hausmann ’08, who teaches sociology of law and practices criminal law, said the courses at Yale help students “think critically and philosophically about the principles behind criminal law.” She noted that having this preparation is important so that students are not surprised when they get in the field and see the enormous challenges facing the system right now.

Kohler-Hausmann, who will soon release a book culminating a decade of mixed methodology research studying the operations of misdemeanor justice, said the background students receive here also equips them with the tools needed to take matters into their own hands.

“I have students who work with me on research projects, and I try to teach them how you can pick up an issue that you care about and just start working on it,” said Kohler-Hausmann. “That’s the beauty of being a lawyer.”

A NATIONAL CONVERSATION: PRACTITIONERS AND POLICY MAKERS

Two vibrant centers at the Law School create myriad ways for students to get involved in criminal justice reform work that is having a profound impact across the country.

In total since 1997, The Arthur Liman Public Interest Program has supported the work of 115 Yale Law students and alumni through Liman Fellowships. Liman Fellows spend a year working in the United States on a variety of projects: some of the current Fellows are working to improve the quality of representation for non-citizen criminal defendants, to end the use of solitary confinement on prisoners with physical disabilities, to increase access to education for incarcerated children, and to prevent people and their families from losing public housing because of interactions with the criminal justice system.

The Liman Program also helps to support summer fellowships at Yale College, Barnard College, Brown University, Harvard University, Princeton University, Spelman College, and Stanford University. These summer fellows work in a range of capacities to address problems of inequality and access to justice.

The Liman Program teaches law school classes yearly; the spring 2017 workshop, *Imprisoned*, will focus on the practices, law, and reforms afoot for those in detention.

Every year, the program hosts an annual Public Interest Law Colloquium, bringing together advocates, scholars, and students from across the country. The most recent colloquium in Spring 2016 was titled “Moving Criminal Justice.” The panels looked specifically at whether this is truly a moment for criminal justice reform. Sessions addressed the question of the potential for profound reform, as well as how to shift toward de-incarceration, and the challenges of abolishing capital punishment, life without parole, and solitary confinement—and what “abolition” meant in those contexts. The colloquium’s ending session examined the efforts to make changes, from “inside” and “out.” Next year, the Liman Program will hold its 20th anniversary colloquium, “Public Interest(s),” on April 6–7, 2017.

The Liman Program also organizes the Liman Project, which provides an opportunity for Yale Law students to work together with faculty and colleagues in other areas on research and advocacy around specific issues related to detention and access to justice. A recent example is a groundbreaking report on solitary confinement that was co-authored by the Association of State Correctional Administrators (ASCA) and the Liman Program. That report, *Time-in-Cell: The Liman-ASCA 2014 National Survey of Administrative Segregation in Prison*, was the first to provide current data on the numbers and the conditions in what is colloquially understood as “solitary confinement.”

The report was covered extensively in the media, and the data were relied upon by President Obama when, in January 25, 2016, he published an op-ed in the *Washington Post*; he described the overuse and devastating impact of solitary confinement and called for banning the use of solitary confinement for juvenile offenders and for prisoners who have committed low-level infractions.

In February 2016, the President ordered implementation of changes within the federal system within six months and called on states to change their practices as well.

Some of the federal initiatives also draw on states, such as Colorado, Washington, and North Dakota, which have reformed their systems to limit the use of isolation.

The ASCA-Liman Report also sparked a collection of essays that were published in January 2016 in the *Yale Law Journal Forum* (www.yalelawjournal.org/forum). In addition, in January 2016, the Liman Program submitted comments, based on the data from *Time-in-Cell*, to the American Correctional Association, Standards Committee and Committee on Restrictive Housing.

ASCA and the Liman Program are now working on a follow-up report to learn about the numbers of people in solitary confinement as of the fall of 2015 and to gather the many efforts underway in states around the country seeking to change how people get into solitary and how to get them out.

Betts, who has worked with the Liman Program since his first semester of law school and will continue as a Liman Fellow next year, said projects like this have opened his eyes to how reform really happens.

“I’ve watched Professor Resnik and the other professors involved with Liman work closely with people I wouldn’t expect—from corrections officials to prosecutors,” said Betts. “And I came away from it all imagining that the goal of this work, truly, is to reshape how people across this field see reform.”

Resnik said it is her hope that the Liman Program’s work will help to ensure that the important issue of incarceration in the United States receives the attention it desperately needs.

“It is essential that lawyers, people who are becoming lawyers, those who are interested in the legal system, and people who simply care about justice focus their thoughts, writing, and research on the role that incarceration plays in the U.S. And the question for those of us in law schools is: How can we be most helpful in doing so?”

The Justice Collaboratory provides yet another example of research initiatives leading to constructive changes. Led by Professors Tracey Meares and Tom Tyler, the Collaboratory brings together scholars and researchers of diverse theoretical and methodological orientations at Yale University and elsewhere to work on issues related to institutional reform and policy innovation and advancement. It infuses theory, empirical research, and targeted clinical trials in order to achieve its goal of making the components of criminal justice operation simultaneously more effective, just, and democratic.

One of its major projects has been the National Initiative for Building Community Trust and Justice, which is

designed to implement and test certain strategies to promote trust and confidence in the criminal justice system, focusing on procedural justice, implicit bias, and reconciliation. This team includes experts from John Jay College, the Center for Policing Equity at UCLA, and the Urban Institute.

The Collaboratory’s efforts on this project include working with partners to select six pilot sites and implement procedural justice training programs in each site using a train-the-trainer model. The center has also convened a roundtable of academics at Yale to discuss possibilities for future theoretical and empirical work in each of the three National Initiative “pillars”—procedural justice, implicit bias, and reconciliation; and developing a set of best practice policies for police departments that are grounded in procedural justice theory.

Over the last two semesters, Meares, Tyler, and Megan Quattlebaum ’10, program director of the Justice Collaboratory, have held a workshop titled *Criminal Justice Reform: Theory and Research in Action*. The course is designed to be reflective of the aspirations for the center: collaborative, multi-disciplinary, grounded in theory and research, and engaged with the critical criminal justice policy debates of the day. Each week, students attend a seminar at which guest speakers from practice and academia highlight their work and discuss its implications in the center’s efforts.

“Our overall aim is to help advance new theories, such as procedural justice, that have the potential to transform the criminal justice system,” said Quattlebaum. “And we want to do this in a way that engages our students and others in the Yale community, as well as engaging policy makers and criminal justice practitioners. The hope is to develop theory in service of pragmatic, real-world goals.”

The Collaboratory has also hosted a major conference at the Law School for Yale Law students—*Policing Post-Ferguson*—and has co-sponsored talks and panel discussions. Faculty and affiliated fellows continue to produce publications on ongoing research, and more events are planned for the future.

In recent years, Yale Law students have helped to develop a set of best practice policies for policing agencies that reflect the insights of the academic literature on procedural justice and implicit bias—and travelled to assist with projects on the ground around the country.

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policing and criminal justice in the wake of the events of Ferguson and beyond, an opportunity to engage in both deep academic discussions about the drivers of our current problems and in real world policy reform initiatives,” said Quattlebaum. “We want to involve them in conversations at the law school that are informed by theory and research, and we also want them to have the opportunity to effect real-world change.”

PRESENT TENSE: THE MOMENT AND MOMENTUM

At this critical period in the national reckoning with incarceration and justice, Yale Law School is fostering a thriving environment that provides students with an abundance of ways to engage their interest in criminal law and meaningful avenues to become actors of change.

“Before law school I recognized that the problems with our criminal justice system are complex,” said Betts. “But I’d never considered working with police departments on policy, never considered working with directors of departments of correction on policy. Now I can’t imagine reflective and effective reform occurring without these kinds of partnerships.”

Both for those learning and teaching the subject, there is a sense that this is a moment to feel hopeful and encouraged.

“I am cautiously optimistic that we will see progress because there has been such a broad spectrum of concern about the dysfunction of the current system,” said Resnik.

“There are folks in government and in policing who are working hard to use this opportunity to make real improvements,” added Quattlebaum. “We’re mindful that these moments—in which there is the real possibility of significant reform—are rare and fleeting, and we’re trying to take full advantage.”

“I think there is a genuine moment,” said Kohler-Hausmann. “Not because the mainstream media is interested, but because of the influence of the Black Lives Matter movement, people organizing, and other ground-level activism. There are now people who haven’t had direct contact with the problems of the criminal justice system who are listening and showing an interest in reforming it. Stith noted that she and others at Yale recently helped put on a conference in New Haven that brought together local religious leaders and activists, local and federal law enforcement, and New Haven high school students. “There was tremendous hope and energy throughout the day,” Stith said. The program was made possible through the generosity of the Oscar M. Ruebhausen Fund at the Law School.

But Kohler-Hausmann noted that all of this attention will only be meaningful if everyone stays engaged at every level. **“It’s a movement only if people give it considerable attention,”** said Kohler-Hausmann. “It will only remain a moment if there is social and political organizing at the ground level that keeps the public’s concern focused and holds the political elites responsible to really enact deep reform.” Y

The work of the Justice Collaboratory includes offering innovative courses on policing and police/community relations, including a course in 2013 co-taught by Professor Tracey Meares, Professor Tom Tyler, and New Haven Police Chief Dean Esserman.

