

The Political Economy of Criminal Law

LAW-LW.10178.001

Spring 2025

Professors Rachel Barkow and Sanford Gordon

I. Introduction

The goal of this course is to provide a forum in which Law students and Politics PhD students can deepen their understanding of criminal law through an exploration of the subject that draws simultaneously from legal and social science perspectives. We will place our focus on the question of what, apart from policy objectives, motivates personnel in the criminal justice system, including police, prosecutors, and judges? In pursuing that question, we will consider the question of racial bias, the role of new technology and artificial intelligence, and the prospects for reform.

II. Contact and Meeting Information

Professors

Rachel Barkow

40 Washington Square South, Room 307

Office Hours: Monday, Noon-1pm; 2:30-3:30pm; you can also email for appointments

Phone: (212) 992-8829

Email: rachel.barkow@nyu.edu

Sanford Gordon

19 West 4th Street, Room 329

Office Hours: Wednesday, 9-11am

Phone: (212) 998-3708

E-mail: sanford.gordon@nyu.edu

(Please do not hesitate to e-mail for appointments outside of office hours or just drop by)

Class Meetings

Monday 4:45pm-6:45pm Furman Hall 110

III. Student Responsibilities and Course Grading

Participation: _____ 15%

Participating in the seminar is an essential component of satisfactory completion of the course.

Presentations: _____ 15%

In addition to normal participatory duties, each student will spend several of our meetings providing a public good as “defender” of a particular text or perspective, which will include a 10-15 minute presentation at the beginning of the class.

Thought papers: _____ 20%

Each student will write a paper *no longer than one single-spaced page* each week the student is *not* presenting. Your papers should be uploaded to the corresponding discussion thread on NYU Brightspace by 5pm on the Friday before class so that everyone can read them and we can incorporate their insights into class discussion and presentations. Appropriate subject matter for thought papers will be discussed in class. (Note: there is no thought paper due in Week 1.)

At the end of the semester, we will drop the lowest short paper score. (This has the practical effect of permitting you to miss writing one thought paper.)

Final paper: _____ 50%

For JD Students: A final paper analyzing some aspect of the political economy of criminal law will count for 50% of your grade. This paper will satisfy option B of the Substantial Writing Requirement, and must be at least 15 pages in length. This paper is due by 5pm on Friday, May 9th.

You also have the option to write a longer paper for an additional credit to satisfy option A of the Substantial Writing Requirement. This paper must fulfill the requirements of option A, thus it must be at least 10,000 words (or roughly 30 pages) and contain original analysis and not be merely descriptive. If you are taking this option, please meet with Rachel Barkow during the first two weeks of the course to work out a timeline for the first draft and final due date.

For PhD Students: A final research paper will count for 50% of the grade. Details will be discussed in class. You should be thinking about your paper and discussing the topic with us by the sixth week of class. Note that if your research interest lies primarily in topics covered toward the end of the class, you should be prepared to read ahead. The research paper is due by 5pm on Wednesday, May 14th.

- We are reluctant to set firm rules with respect to length, but your paper should probably be on the order of 20-30 pages.
- If you would like to submit the same paper to fulfill the requirements of this and another course, *you must convene a meeting with Professor Gordon and the other professor to secure our consent and to discuss guidelines and expectations.* Needless to say, the expectations will be higher for such joint submissions.

IV. Weekly Schedule

Week 1. January 27

Introduction and Orientation

We will introduce ourselves and discuss what we hope to get out of the class.

- Kadish, Sanford, Stephen J. Schulhofer, and Rachel Barkow. 2022. *Criminal Law and its Processes: Cases and Materials, 11th edition*, ch. 1.
- Bueno de Mesquita, Ethan. 2016. *Political Economy for Public Policy*. Princeton, NJ: Princeton University Press, chs. 7, 10.
- Stevenson, Megan T. 2023. “Cause, Effect, and the Structure of the Social World.” *Boston Law Review* 103: 2001-2047.

Week 2. February 3

Overarching Themes

- Gordon, Sanford C., and Gregory A. Huber. 2009. “The Political Economy of Prosecution.” *Annual Review of Law and Social Sciences* 5(1): 135-156.
- Harris, Allison P., et. al. 2020. “No Justice, No Peace: Political Science Perspectives on the American Carceral State.” *Journal of Race, Ethnicity, and Politics* 5(3).
- White House Council of Economic Advisors. 2016. “Economic Perspectives on Incarceration and the Criminal Justice System.” Available [here](#).

Week 3. February 10

Prosecutors and their Political Environments

- Boylan, Richard T. 2005. “What do Prosecutors Maximize? Evidence from the Careers of U.S. Attorneys.” *American Law and Economics Review* 7(2): 379-402.
- Bandyopadhyay, Siddhartha, and Bryan C. McCannon. 2014. “The Effect of the Election of Prosecutors on Criminal Trials.” *Public Choice* 161: 141-156.
- Goldstein, Rebecca. “Toplash: Progressive Prosecutors Under Attack from Above.” Forthcoming, *American Criminal Law Review*.
- (Optional) Garro, Haritz, and Allison Stashko. 2023. “Prosecutor Elections and Police Killings.” Typescript, Emory University.

Week 4. February 18 [Note this Tuesday is a Legislative Monday]

Judicial Incentives and Judicial Selection

- (Background/Optional) Skim Gordon, Sanford C. 2024. “Elected vs. Appointed Judges.” In Fowler, Anthony, ed., *Democracy Reform Primer Series*. Chicago, IL: Center for Effective Government. Available [here](#).
- Gordon, Sanford C., and Sidak Yntiso. 2022. “Incentive Effects of Recall Elections: Evidence from Criminal Sentencing in California Courts.” *Journal of Politics* 84(4): 1947-1962.
- Gordon, Sanford C., and Gregory A. Huber. 2009. “The Effect of Electoral Competitiveness on Incumbent Behavior.” *Quarterly Journal of Political Science* 2(2): 107-138.

- Neily, Clark. 2021. “Are a Disproportionate Number of Federal Judges Former Government Advocates?” Cato Institute Report. Available [here](#).

Week 5. February 24

Race, Identity, and Courtroom Outcomes

- Yang, Crystal S. 2015. “Free at Last? Judicial Discretion and Racial Disparities in Federal Sentencing.” *Journal of Legal Studies*, 44(1): 75-111.
- Cohen, Alma, and Crystal S. Yang. 2019. “Judicial Politics and Sentencing Decisions.” *American Economic Journal: Economic Policy* 11(1): 160-191.
- Park, Kyung H. 2017. “Do Judges Have Tastes for Discrimination? Evidence from Criminal Courts.” *Review of Economics and Statistics* 99(5): 810-823.

Week 6. March 3

Algorithmic Bias

- Ludwig, Jens, and Sendhil Mullainathan. 2021. “Fragile Algorithms and Fallible Decision-Makers: Lessons from the Justice System.” *Journal of Economic Perspectives* 35(4): 71-96.
- Stevenson, Megan T., and Jennifer L. Doleac. 2024. “Algorithmic Risk Assessment in the Hands of Humans.” *American Economic Journal: Economic Policy* 16(4): 382-414.
- Penn, Elizabeth Maggie, and John W. Patty. 2024. “Algorithms, Incentives, and Democracy.” Typescript, Emory University.

Week 7. March 10

Regulating Courtroom Discretion

- Barkow, Rachel E., and Kathleen M. O’Neill. 2006. “Delegating Punitive Power: The Political Economy of Sentencing Commission and Guideline Formation.” *Texas Law Review* 84(7): 1973-2022.
- Rehavi, M. Marit, and Sonja B. Starr. 2014. “Racial Disparity in Federal Criminal Sentences.” *Journal of Political Economy* 122(6): 1320-1354.
- Pfaff, John F. 2017. “Prosecutorial Guidelines.” In Luna, Erik, ed., *Reforming Criminal Justice, Volume 3: Pretrial and Trial Processes*. Phoenix, AZ: Academy for Justice, 101-120.

Week 8. March 17

Fiscal Pressures and Punitiveness

- (Background): Skim United States Department of Justice, Civil Rights Division. 2015. “Investigation of the Ferguson Police Department.” Washington, DC: USDOJ.
- Ball, W. David. 2012. “Tough on Crime (on the State’s Dime): How Violent Crime Does Not Drive California Counties’ Incarceration Rates - And Why it Should.” *Georgia State University Law Review* 28(3): 987-1004, 1072-1078
- Ouss, Aurélie. 2020. “Misaligned Incentives and the Scale of Incarceration in the United States.” *Journal of Public Economics* 191: 104285.
- Harris, Allison P., et. al. 2020. “Fiscal Pressures and Discriminatory Policing: Evidence from Traffic Stops in Missouri.” *Journal of Race, Ethnicity, and Politics* 5(3): 450-480.

- Nicholson-Crotty, Sean, et. al. 2020. “Race, Representation, and Assets Forfeiture.” *International Public Management Journal*, 24(1): 47–66.

Week 9. March 24

Spring Break – Class will Not Meet

Week 10. March 31

Policing the Police

- (Background) Skim Ba, Bocar, et. al. 2024. “Political Diversity in U.S. Police Agencies.” Forthcoming, *American Journal of Political Science*.
- Rivera, Roman G., and Bocar Ba. 2023. “The Effect of Police Oversight on Crime and Misconduct Allegations: Evidence from Chicago.” Forthcoming, *Review of Economics and Statistics*
- Campbell, Travis. 2024. “Black Lives Matter’s Effect on Police Lethal Use of Force.” *Journal of Urban Economics* 141: 103587
- Eckhouse, Laure. 2022. “Metrics Management and Bureaucratic Accountability: Evidence from Policing.” *American Journal of Political Science* 66(2): 385-401.

Week 11. April 7

Federalism and Criminal Justice

- Barkow, Rachel E. 2011. “Federalism and Criminal Law: What the Feds Can Learn from the States.” *Michigan L. Rev.* 109(4): 519-580.
- Thompson, Daniel M. “How partisan is local law enforcement? Evidence from Sheriff Cooperation with immigration authorities.” *American Political Science Review* 114.1 (2020): 222-236.
- Trejo, Guillermo, and Sandra Ley. 2016. “Federalism, Drugs, and Violence: Why Intergovernmental Partisan Conflict Stimulated Inter-Cartel Violence in Mexico.” *Política y Gobierno* 23(1): 9-52.

Week 12. April 14

Private Interests and Political Connections

- Dharmapala, Dhammika, et. al. 2022. “Collective Bargaining Rights and Police Misconduct: Evidence from Florida.” *Journal of Law, Economics, and Organization* 38(1): 1-41.
- Hessick, Carissa, et al. 2023. “The Prosecutor Lobby” *Washington & Lee L. Rev.* 80(1): 143-227
- Bourveau, Thomas, et. al. 2021. “Political Connections and White-Collar Crime: Evidence from Insider Trading in France” *Journal of the European Economic Association* 19(5): 2543–2576.

Week 13. April 21

Crime and Electoral Accountability

- Arnold, R. Douglas, and Nicholas Carnes. 2012. "Holding Mayors Accountable: New York's Executives from Koch to Bloomberg." *American Journal of Political Science* 56(4): 949-963.
- Hopkins, Daniel J., and Lindsay M. Pettingill. 2017. "Retrospective Voting in Big-City US Mayoral Elections." *Political Science Research and Methods* 6(4): 697-714.
- Ley, Sandra. 2017. "Electoral Accountability in the Midst of Criminal Violence: Evidence from Mexico." *Latin American Politics and Society* 59(1): 3-27.

Week 14. April 28

Mass Incarceration and its Reform

- Barkow, Rachel. 2019. *Prisoners of Politics: Breaking the Cycle of Mass Incarceration*. Cambridge, MA: Harvard University Press, chapters 9 and 10.
- Enns, Peter. 2016. *Incarceration Nation*. New York, NY: Cambridge University Press, chs. 4-6.