



Pro Bono

Fall 2012

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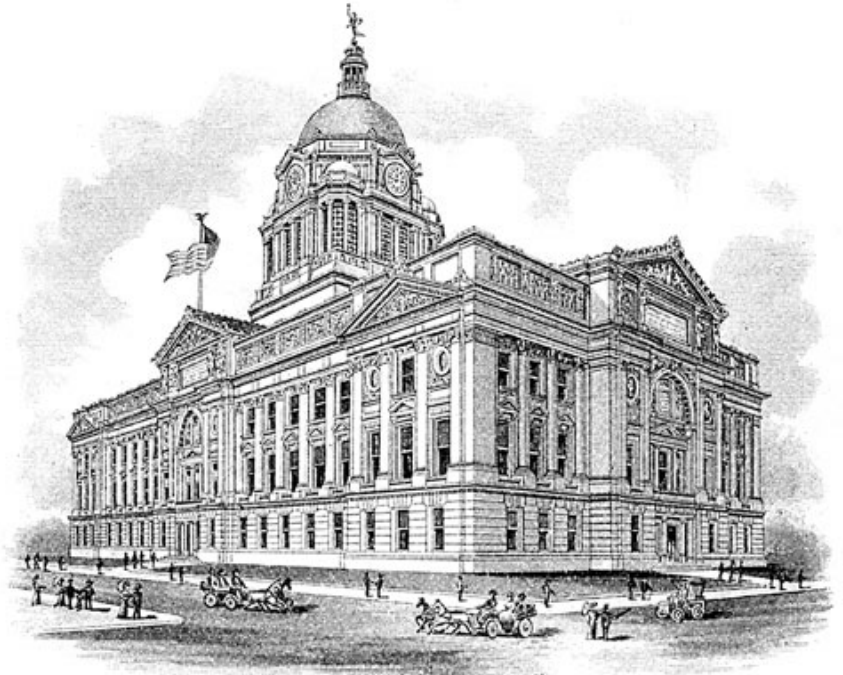
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Notes From the Chair

Greetings from San Francisco, and welcome to all new and returning members of the Law and Society Division of SSSP! I am honored to be assuming the chairship of this division at a time when the work that we do has never been more relevant. As I write this, the United States has just elected to a second term its first African American President, and its first to affirmatively and publicly support the right to same sex marriage; three states became the first in our country to authorize by popular vote this same right to marriage; two authorized for the first time since its prohibition the recreational use of marijuana; and one, Washington, did both! On the same day, the country's most populous state, California, reformed its draconian "Three Strikes" law, and came close to—but failed at-- abolishing the death penalty. The country elected its first openly lesbian Senator, its first Hindu member of Congress, and the most women of color in the history of the U.S. Congress.

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And still, much remains unresolved. The Supreme Court in the present term will most likely wrestle with not only these issues, but once again with the issue of affirmative action. The President and Congress will be faced with consequential decisions on immigration reform, economic revitalization, Middle East policy, and continued conflict between state and federal enforcement of drug laws, as well as ongoing implementation of President Obama's health care reform. California continues to struggle with the U.S. Supreme Court mandate to reduce its prison population, with no clear course in sight beyond the current policy of Realignment; several states' governors refuse to implement the types of healthcare exchanges now called for by the Affordable Care Act; and women's access to reproductive healthcare and choice, while buoyed by President Obama's reelection, continues to hang by a tenuous thread in many states.

As we look toward 2013 and the SSSP meetings in New York City, we should be mindful of the unique challenges and opportunities we face as progressive researchers and scholars committed to social justice, in a time rife with social and legal change. I have often joked, in the context of my own scholarship dealing with the legal status of same sex marriage, how much easier it would be if I could just write about something that *doesn't change*; many a page proof would be saved were it not for ongoing and dramatic developments changing the American legal landscape for LGBT citizens. And yet, how much less interesting and relevant would our task be, as socio-legal scholars, were that the case. The world we live in is not static, nor are its laws; and so our task remains a formidable but important one.

Before closing this note, I would like to take this opportunity to express my gratitude to my predecessor Steve Morewitz, as well as Lloyd Klein for their leadership and guidance in the Division, to Newsletter Editor Kristen Desjarlais deKlerk for her fine work on this newsletter on very short notice, and to Lori Sexton for her fascinating piece on penal consciousness, which will appear in two installments, beginning here and culminating in the spring newsletter. Thanks to all for your participation in the Division and the indispensable contributions you make.

-Kimberly Richman, Chair

LAW AND SOCIETY: LIFETIME ACHIEVEMENT AWARD

Deadline: 1/31/13

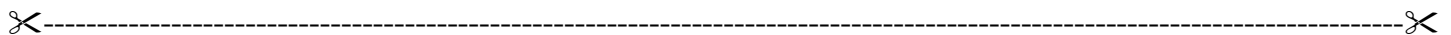
The Law and Society Division announces the 2013 William J. Chambliss Lifetime Achievement Award. The primary purpose of this award is to recognize career-spanning excellence and achievement in the area of law and society. The committee will consider the applicant's strength of publications and overall contribution to the study of law and society. Please send electronic copies of a nomination letter and the individual's CV to: Tim Berard tjberard@alumni.reed.edu. The winner will be announced in Spring 2013, receive a \$100 award, and be recognized at the 2013 annual meeting in New York.

Law and Society Division Lindesmith Graduate Student Paper Competition

Deadline: January 31, 2013



The Law and Society Division announces its 2013 Lindesmith Graduate Student Paper Competition. Papers may be empirical or theoretical, and they may be on any aspect of law and society. To be eligible, a paper must have been written during 2012, and at the time of submission, it may not be published, accepted for publication, or under review for publication. Papers which have been presented at a professional meeting or accepted for presentation at a professional meeting are eligible. Papers must be student-authored; they can be single-authored or co-authored by students, but may not be co-authored by a faculty member or other non-student. Please submit in MS Word. There is a 25-page limit, including all notes, references, and tables. Submissions should use 12-size font, one inch margins, and double spacing throughout. Send papers and a cover letter specifying that the paper is to be considered in the SSSP Law and Society Division Lindesmith Graduate Student Paper Competition to Dr. Lloyd Klein. Submissions should be submitted electronically to: lklein@stfranciscollege.edu. The winner(s) will be announced in Spring 2013, will receive a \$200 stipend, and is eligible to present the paper at the 2013 annual meeting in New York.



Tell a Colleague! Tell a Friend!

Join the Society for the Study of Social Problems and the SSSP Law and Society Division!

Founded in 1951, the SSSP promotes research on and serious examination of problems and social life. The SSSP works to solve these problems and to develop informed social policy. As a member, you will find peers and colleagues working together to develop and apply research which makes a difference. And you will be able to join many of the SSSP Divisions, including The SSSP Law and Society Division, dedicated to the study of all aspects of law and social problems, and publishes the newsletter, Pro Bono! Visit the SSSP website for more information: <http://www.sssp1.org>



The Society for the Study of Social Problems 63rd Annual Meeting August 9-11, 2013 The Westin New York New York City, NY

Law and Society Panels for 2013

- Critical Issues in the American Legal System (Critical Dialogue); Organizers: Jay Borchart (borjay@umich.edu) and Kathy Asbury (asburykathy@comcast.net)
- Law, Policy and Social Justice; Organizer: Kristen Budd (kbudd@isub.edu)
- Sex, Justice and the Law; Organizer: Jay Borchart (borjay@umich.edu)
- Reproductive Rights in the 21st Century (Co-Sponsored Session); Organizer: Kim Richman (krichman@usfca.edu)
- LGBT Families and the Law (Co-Sponsored Session); Organizer: Nancy Mezey (nmezey@monmouth.edu)
- Reimagining Human Rights (Thematic Panel; Co-Sponsored Session); Organizer: Lloyd Klein (lklein@sfc.edu)
- Violence and Law (Co-Sponsored Session); Organizer: Steve Morewitz (morewitz@earthlink.net)
- Author Meets Critic: Life After Death Row by Saundraw Wetervelt and Kim Cook (Co-Sponsored Session); Organizer: Kim Richman (krichman@usfca.edu)

Call for Papers!
Submit By: January 31, 2013

Penal Subjectivities:

Developing a Grounded Theoretical Framework for Penal Consciousness, Part I

By Lori Sexton, University of Missouri – Kansas City

“Punishment is different for everybody.... It isn’t about the thing that’s being done, it’s about how it’s being experienced.”

- Ohio state prisoner, August 2010

Decades of sociological evidence have supported a constructionist view of social problems that attends simultaneously to both putatively objective conditions and people’s subjective reactions to those conditions. Acknowledging that social problems are neither fixed nor innate, this approach has allowed scholars to envision social problems as a process of responding to social conditions rather than as a static description of conditions themselves (Best, 2013; Spector & Kitsuse, 1977). This constructionist or subjectivist approach has been used to explain phenomena as diverse as autism, homophobia, immigration, obesity, technology and witch hysteria. In this piece, I borrow from the constructionist perspective on social problems an emphasis on the subjective assessment of putatively objective conditions in order to uncover the processes by which a particular social phenomenon—punishment—is constructed.

To do so, I lay the foundation for a new, grounded theoretical framework that I call *penal consciousness*—a framework that examines the ways in which prisoners orient to and make meaning of their punishment. The penal consciousness framework draws inspiration from Ewick and Silbey’s (1998) work on legal consciousness that captures the processes by which legality is constructed in everyday life. Penal consciousness approaches penalty in the same way legal consciousness approaches legality: as a phenomenon emerging from and constitutive of the social world. The penal consciousness framework attends to both objective and subjective components of punishment in order to uncover the processes by which penalty is constructed by those who experience it first-hand. By examining the interplay between the objective conditions of punishment and prisoners’ subjective lived experiences of these conditions, penal consciousness moves beyond the purely objective view of punishment on which our criminal justice system is predicated and opens up a space for penalty to be constructed from the ground up. In order to build the penal consciousness framework, I inductively analyzed data from 80 in-depth, qualitative interviews that I conducted with Ohio state prisoners. Data from these interviews reveal the processes by which prisoners engage in the construction of penalty and shed light on the content, form and contours of punishment.

The prisoners that I interviewed for this study relayed an array of experiences with and understandings of penalty, including diverse consideration of what does and does not constitute punishment. Because punishment is examined here as subjective phenomenon based in part on objective conditions, it is important to draw a distinction between these two parts: the objective and the subjective. The objective component, which I call the *punitive referent*, is the object, event or condition being experienced as punishing. A punitive referent in and of itself is not punishment. Punishment is determined by a prisoner’s subjective assessment of why the punitive referent is, in fact, punishing. Thus, the content of an individual’s punishment depends not on the punitive referent itself, but rather lies in the prisoner’s subjective rendering of the punishment.

The basic example of a broken microwave can illustrate not only the relationship between punitive referents and punishment, but also the varying *levels of abstraction* (concrete or symbolic) at which punishment can be experienced. If a prisoner describes a broken microwave as punishment because it results in lukewarm coffee, she experiences this punishment as concrete (a lack of hot coffee). Concrete punishments are relatively circumscribed, hinging on the presence or absence of material things
(Continued on page 6)

If the same broken microwave is punishing because it represents one less daily action that the prisoner can do for herself, however, the punitive nature lies in the symbol rather than the material, rendering the punishment symbolic (loss of autonomy). Symbolic punishments like the loss of autonomy are representative of larger losses or injustices, and are experienced as wide-reaching in both their scope and impact.

This description of a broken microwave as punishment may seem an odd choice for a piece on punishment in prisons, given the mundane nature of the event (after all, microwaves routinely break outside of prison, too) and the relative triviality of appliances in a total institution replete with seemingly more substantial deprivations. During interviews, I initially couldn't help but feel the same way. But prisoner after prisoner recounted in vivid and painstaking detail the significance of a broken microwave. At times the microwave was substituted for a coffee machine or ice maker, but the point remained: even apparently inconsequential things like broken appliances can take on punitive value in prison. It took quite a few interviews—and many discussions of broken microwaves—for me to realize that this small matter spoke to the very essence of what I was attempting to capture: the subjectivity inherent in the lived experience of punishment. It mattered not at all whether I considered a broken microwave a significant source of punishment; it only mattered that prisoners did.

But of course, microwaves are only an illustrative example—not the epitome of punishment in prison. As evidenced by my interviews with prisoners, punishment can take many forms, each of which can be categorized as either concrete or symbolic. The simplicity of this distinction belies the true complexity of punishment, however. Individual punishments are rarely experienced in isolation, and prisoners frequently experience punishments that are both concrete and symbolic. The various punishments that prisoners experience are constantly shifting around them as their circumstances, interactions, and lives more generally change in unpredictable ways. In order to more fully understand the contours of punishment, the penal consciousness framework goes beyond merely cataloging the diverse array of punishments described by prisoners, to assesses the ways in which the experience of punishment varies. Examining punishment along two dimensions—*severity* and *salience*—allows us to understand this variation and makes visible the patterns of punishment that emerge within prison walls.

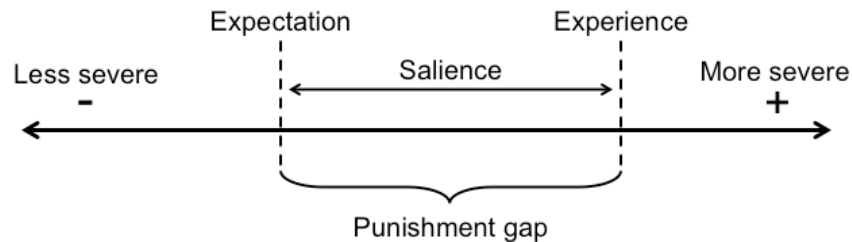
The first dimension of punishment, *severity*, refers to the intensity or magnitude of punishment as it is experienced by prisoners. Severity of punishment is determined largely by the level of abstraction at which punishment is experienced. Punishments that are experienced by prisoners as particularly severe are those that are symbolic of larger losses or injustices. Poor medical treatment and awful food are experienced as far more severe for their symbolism of prison staff's refusal to acknowledge prisoners' humanity. The rigidity of prison life and the occasional instances in which this structure breaks down are far more difficult to bear for the loss of self-determination and autonomy they evoke. Physical distance from family and the prohibitively expensive nature of phone calls from inside prison are experienced as severe because of the emotional distance they create between prisoners and their loved ones. In contrast, punishments that are experienced as solely concrete tend to be assessed as lower in severity. In these instances, prisoners described their disgust at the quality of prison food, the discomfort of an untreated skin rash, and the frustration of not being able to tend to their garden plot as punishment, but not punishment of the most severe variety. In fact, punishments that were described as exclusively concrete—without any accompanying elevation to a symbolic level—are experienced as lowest in severity overall.

The second dimension of punishment implicated in the penal consciousness framework is *salience*. While severity of punishment reveals its intensity, salience is a measure of the prominence of punishment in the minds and lives of prisoners. Although it is intuitive to think that punishments that are higher in severity will necessarily be higher in salience, the relationship between these two dimensions is not quite so straightforward. The data reveal that salience of punishment is related to severity of punishment in a complex way, through a relationship that hinges upon prisoners' expectations of punishment as much as their

(Continued on page 7)

experiences of punishment. More specifically, the salience of punishment is shaped by the distance between the punishment that a prisoner *expects* and the punishment she *experiences*—a distance that I call the punishment gap (see Figure 1).

Figure 1. Punishment Gap



The punishment gap reflects the reality that punishment is not experienced in a vacuum, but rather nestled among a lifetime of experiences and the meanings attached to them. Thus, the expectations that inform the punishment gap can vary widely, from first-hand or vicarious knowledge of what prison is like to expectations of what punishment should or ought to be in an ideal sense. The relationship between the punishment gap and the perceived salience of punishment depends on the directionality of the gap—whether punishment is more or less severe than expected. Prisoners who experience their punishment as more severe than expected have a positive gap, which results in punishment that is high in salience and thus a prominent feature in their lives. When the experience of punishment is less severe than expected, a negative gap exists, resulting in low salience punishment that recedes into the background of prisoners' everyday lives. The size of the gap between expectation and experience is indicative of the degree salience. Larger gaps indicate punishment that is higher in salience, while smaller gaps (or negative gaps) indicate punishment that is lower in salience.

Assessing punishment along these two dimensions—severity and salience—allows us to understand the patterns of punishment that emerge within prison walls and sets the groundwork for a typology of penal consciousness. In the next *Pro Bono* newsletter, I will examine salience and severity in concert in order to more fully explore the contours of the subjective experience of punishment. I will describe how each combination of salience and severity is associated with a distinct narrative of penal consciousness—a story that prisoners tell about the meaning and place of punishment in their lives. By examining punishment as the nexus between the objective and the subjective and locating punishment in prisoners' lives, the penal consciousness framework in its entirety allows us to map variation in the lived experience of punishment and makes visible the processes by which penalty is constructed.

Note: This project was supported by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice (Award No. 2001-IJ-CX-0002) and the National Science Foundation (Award No. SES-1023694). The opinions, findings, and conclusions expressed in this piece are those of the author and do not necessarily reflect those of the Department of Justice or the National Science Foundation.

Sources:

Best, J. (2013). *Social problems* (2nd edition). New York: W. W. Norton & Company.

Ewick, P., & Silbey, S. S. (1998). *The common place of law: Stories from everyday life*. Chicago, IL: University of Chicago Press.

Spector, M., & Kitsuse, J. I. (1977). *Constructing social problems*. New Brunswick, NJ: Transaction Publishers.

Member Publications



- **Berard, Tim.** 2012. "Collective Action, Collective Reaction: Inspecting Bad Apples in Accounts for Organizational Deviance & Discrimination." In *Interaction and Everyday Life: Phenomenological and Ethnomethodological Essays in Honor of George Psathas*, ed. Hisashi Nasu and Frances Waksler. Lanham, MD: Lexington.
- **Morewitz, Stephen J.**, California State University, East Bay, had a solo-author retrospective exhibit, "Dr. Stephen J. Morewitz: a Solo-Author Retrospective," at the California State University, East Bay Library, June 11, 2012 – September 1, 2012. This exhibit showcased eight books and the play, "Steamship Quanza," by the awards-winning author.
- **Morewitz, Stephen J.**, California State University, East Bay, was interviewed by the New York Times for an article on missing persons. Stephen is completing his book, *Missing Persons: New Research and Clinical Perspectives*.



Send submissions for this page for the next newsletter to either Kim Richman (kdrichman@usfca.edu) or Kristen Desjarlais-deKlerk (kdesjarl@ucalgary.ca).

Call for Submissions

Law and Social Science Program,
National Science Foundation Workshop

Climate Change Governance: Law, Risk Management, and Decision Making

Hosted by University of California, Davis

Tahoe Environmental Research Center

Incline Village, Nevada

June 20-21, 2013

There may be no greater risk facing human societies than that posed by climate change. And yet, our understanding of how to collectively best respond is limited, and knowledge is fragmented across disciplinary boundaries. Our workshop will seek to initiate deeper discussion of climate change around the concept of governance by bridging across a diverse group of scholars. Our goal is to share different disciplinary perspectives and to work on common problems. The broader impacts of this workshop will include the creation of an ongoing community of scholars, possibly in the form of a collaborative research network, to carry on dialogue about how to align scholarship across disciplines, levels, and across the academic and policy/practical/public realms.

Given that climate change crosses many conventional boundaries and jurisdictions of law, regulation, and government and challenges the expectations that many hold regarding proper modes of “governance” we have planned the workshop around three themes. The first will consider how to construct and align modes of governance across differing societal levels or “scales” from individual to community, community to region, region to nation, and nations to global institutions. The second theme concerns fragmentation of contemporary “expert knowledge” on climate change, law, regulation, and governance and the associated lack of interaction across disciplines. We will consider how social scientific theory, methods, and empirical research might be brought into a more productive dialogue across disciplinary and scholarly boundaries. Third, we plan to devote attention the problem of social science’s role in addressing and planning for climate change in public and policy settings. This is a problem of practice.

Workshop Format and Submission Process

We are soliciting those scholars interested in participating in a forward-looking conversation reaching across disciplinary boundaries to further our advancing our understanding of governance and climate change. Interested applicants should provide a 300 word abstract describing a related research concept that they are currently developing or considering. These research concept statements should be linked to at least one of the three problem areas: scale, expert knowledge, and theory/practice. Research concept statements must be submitted to the workshop organizers by December 15, 2012.

Organizers

Ryken Grattet, Sociology, UC Davis and the Public Policy Institute of California (rtgrattet@ucdavis.edu)

Debbie Niemeier, Civil and Environmental Engineering, UC Davis (dniemeier@ucdavis.edu)

Thomas Beamish, Sociology, UC Davis (tdbeamish@ucdavis.edu)

URL: <https://sites.google.com/a/ucdavis.edu/climate-change-and-governance-workshop>

Call for Papers

**“Pursuing Diverse Talent in Legal and Professional Services:
Research Within and Across Professions, Organizations, and Societies”**

**Second Annual Conference of the
Research Group on Legal Diversity**

American Bar Foundation

Chicago, May 10-11, 2013

Theme: The 2013 conference will be organized around the theme of *talent*, with a particular interest in how predicting, measuring, developing, promoting, and retaining talent in professional fields intersects with diversity along the lines of race/ethnicity, gender, sexual orientation, disability, and religion. While the core interest of the Research Group is legal diversity, the premise of this conference is that much can be learned by considering these issues within and across different professions, organizations, and societies. Papers from all disciplines and social science methods are welcome.

Submission Process: Interested scholars should submit an abstract by email, no later than Friday, November 30, 2012, to Robert L. Nelson (rnelson@abfn.org). Authors will be notified of their acceptance to the conference by Friday, December 14th. Presentation drafts of conference papers will be due by Monday, April 1, 2013. Final drafts are due July 1, 2013. Travel costs for authors of accepted papers will be provided by the conference.

Publication plans: Conference papers will be submitted as a collection as a symposium issue of a refereed journal, a law review, or an edited book. Authors may submit papers written for the conference to other outlets with the permission of conference organizers, acknowledgement of support, and permission for reprinting. The Research Group is committed to promoting the publication and dissemination of high quality research on diversity and will work with authors to best achieve this goal. Ronit Dinovitzer, Spencer Headworth, Robert Nelson, and David Wilkins will act as Special Editors for the publication of the conference collection.

Conference Format: The conference will consist of public sessions on Friday afternoon that will feature mixed panels of research presentations by scholars and commentary by practitioner-leaders. Saturday sessions, while open to all, will feature research roundtables by members of the Research Group on Legal Diversity and other invited authors.

Questions: Questions about submissions and the conference should be sent to conference organizers through Spencer Headworth (sheadworth@abfn.org) or 312-988-6534.

The Research Group on Legal Diversity is a network of scholars convened by the American Bar Foundation to conduct empirical research on diversity in the legal profession. It is co-directed by Ronit Dinovitzer, Robert Nelson, and David Wilkins. More information on the Research Group may be found by following the link on the American Bar Foundation’s home page, americanbarfoundation.org.