

To: Students in Doing Justice, Fall 2007  
FROM: R. B. Taylor  
DATE: 9/17/2007  
RE: 1) Your thoughts about more and less serious crimes;  
2) answers to some of your questions.

*Your thoughts about more and less serious crimes*

A few classes back when you all were considering which of two crimes were more serious, you made many interesting connections. The scenario involving the police officer, the stabbing, and the escaped convict was especially interesting. What came into play were presumptions, based on the status and occupation of the persons involved.

For example, if a high status person had access to the site where the toxic chemicals were illegally stored, then he probably owned it, and thus was more responsible than the garbage truck operator who was less likely to be an owner.

In the case of the police officer and the escaped convict, people were willing to either make a number of positive assumptions about the police officer (he was well trained, he tried every other means before he stabbed the convict), or a number of negative assumptions (he was a police officer who maybe had had prior problems, or perhaps should have been weeded out at training but wasn't), or negative assumptions about the escaped convict (he was violent anyway, he had nothing to lose, he probably was a hardened criminal, and so on).

I would recommend that when you are judging situations like this in "real life" that you try to bring to your awareness some of these connections that you are making.

*Answers to some of your questions from Thursday on Black*

Looking through your questions, I identified several common themes, and below are some answers to those queries. If I did not answer your specific question, please feel free to follow up with either me or Ms. Henderson.

1. Seriousness

A few of you had questions about the seriousness of crime. For example:

Q: "I am confused about the seriousness of crime."

A: There are two important points to remember.

First, Black is adopting a novel approach to gauging the relative seriousness of different crimes.

The "classic" approach focuses just on the amount of harm that occurs, and the intent of the perpetrator. The more harm that occurs, and the more malicious the intent, the more serious the crime.

Black says that in addition to – **not instead of** – these factors, agents of justice also consider the relative statuses of the victim and the perpetrator. More specifically, in situations where there is both a perpetrator and a victim, the relative SES of the two of them will play a role in how seriously justice agencies perceive the crime that took place. That seriousness, in turn, drives the amount of law that is delivered. E.g., "The wealthier a thief is, the less serious is his theft" (Black, p. 25).

2. Downward/upward law and downward/upward crime.

Several of you all had questions about the relationship between the crime and the law delivered. For example:

Q: "How does downward crime have less law and upward crime have more law?"

A: If by how you mean why is it the case, Black tells us this is just a side effect of how society is organized.

If you how you mean how does this get carried out, then you need to look to the acts of the specific actors in various justice agencies. I have posted a handout on the Bb site referencing the case of a University of Pennsylvania professor, Tracy McIntosh, who plied a college graduate with alcohol and pot and perhaps drugs, sexually assaulted her when she was barely conscious, and initially received a sentence that involved no jail time. Read it carefully and then bring questions. The article talks in detail about the process whereby the initial “deal” between the prosecutor’s office and the defendant was reached. This is an example of the “how.”

If the crime is upward (low status perpetrator, high status victim), the law that is delivered will be downward (law, delivered by the state on behalf of the high status victim, goes “down” to the lower status perpetrator).

Black tells us in these situations more law will be delivered than in the reverse case. P. 21: “Downward law is greater than upward law.” The amount of law delivered will generally be greater. Black also tells us (p. 23): “At every stage, in every legal setting, a downward case is stronger than an upward case.”

To get a sense of how things might be reversed, make the University of Pennsylvania professor a woman, make her the victim, and make the assaulter a young (white) male.

Q: “Is it equal in seriousness if a rich person harms a middle class person vs. a middle class person harming a poor person?”

A: No. I tried to show this in the figures shown in class. “Hold the victim’s rank constant, then and law varies inversely with the offender’s rank” (p.25). Higher status perpetrators are likely to be punished less severely.

Q: “Why is downward law greater than upward law?”

A: A flip answer is because this is how society is organized, a side effect of stratification.

A less flip answer would point out the following.

1) Higher status persons have more resources available to them to fight justice agencies. So they are going to be more effective at countering punishments (law) that justice agencies try and deliver. Wealthier people can organize more resistance against potential upward law, thus weakening it. They mobilize more resources (Black: p. 27: in a car accident “a wealthier victim is more likely to hire a lawyer”).

2) If we are talking about specific persons in justice agencies, such as police or judges or even jurors, there is probably some homophily going on, i.e., people with like backgrounds sticking together. Judges, today anyway, have college and law degrees, making them higher status. Police officers have at least a high school education, and in many cities are also required to have some college. Jury lists are drawn not from lists of homeless people, but rather from lists of people who have drivers’ licenses or pay local taxes. In some counties in Pennsylvania they also rely on lists of high school graduates. This makes a higher SES victim more similar on SES (we are NOT talking about race and ethnicity and nativity yet) to many of the justice agents he/she will encounter.<sup>1</sup>

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<sup>1</sup> In the case of the Penn Professor and the sexual assault of the undergraduate, cozy deals also can later blow up, which is what happened in this case. Women’s advocacy groups brought attention to the sentence and focused political attention on it. So the District Attorney’s office, headed by a woman, had to do something. See the links on Bb with the handout.

3) Because upward crime is seen as more serious than downward crime. Again, remember, even though Black does not talk about it a ton, it is these differences in perceived seriousness that are driving how the law behaves.

Q: "Why is it called upward law?"

A: Because the justice agency delivers the law, on behalf of the lower status victim, against the higher status perpetrator. So the action (from → to) is moving **up** the status ordering.

### 3. Victimless crimes

There were a few questions about victimless crimes. Victimless crimes refer to a range of offenses – drug use, illegal alcohol use, drug sales, illegal alcohol sales, illegal gambling, prostitution and the like. There is no one who is clearly "hurt" in the same way that a victim of an aggravated assault is hurt.

Q: "Society is the victim?"

A: Yes. The offense is against the broader norms and morals of the society. What I suggested in class was that you think about the victim being a typical Philadelphian. A typical Philadelphian.<sup>2</sup> would be a female, aged about 34 years old, either white or African American, a homeowner with a high school degree paying a mortgage of about \$800/month on a house valued at about \$59,000, employed, traveling about 30 minutes to work, with a 1999 household income of about \$40,000. So if someone is selling illegal drugs, like cocaine or crack, then the victim is the typical Philadelphian; her sensibilities are offended by the action.

So if the seller is a lower class person, the crime is an upward crime, and the law delivered will be downward law.

If the seller is an upper class person, the crime is a downward crime, and the law delivered will be upward law.

Since you know that "downward law is greater than upward law" (p. 21), the punishment amount will be greater when the seller is a lower class person than an upper class person.

### 4. The cosmic why on upward/downward

A few of you all seemed to be asking about the cosmic "why" on all this:

Q: "How come when a rich man sells drugs, it is less serious than when a poor person sells drugs?"

A: Another classmate perhaps answered this question "Is it because richer people contribute more to society?"

To be honest, I am not really sure I have an answer to this, beyond the points raised above in 2.

The question seems to be asking a fundamental question about human nature: why does status matter so much? Why are societies, or U.S. society anyway, organized along status lines? I strongly suggest some courses in sociology, social psychology, and anthropology.

### Sideways crime

A few people asked about "sideways" crime, when the perpetrator and offender are of equal status.

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<sup>2</sup> To find what a typical Philadelphian looks like in 2000 do this. Go to the second floor of the tech center or to the drop in labs in the basement of Anderson.

\* Go to: <http://www.factfinder.census.gov>

\* On left, click on decennial census. 2000 Census comes up.

\* click on "**POPULATION FINDER**" on left hand menu.

\* in upper right fill in Philadelphia County for **city/town**, and Pennsylvania for **state**.

\* Under "view more results" click on "Fact sheet"

\* 2006 comes up. Click on tab that says "**2000**"

\* print the file to **Adobe pdf** or just print it out

Black tells us several points about this. First, if something is going on between equal status parties, it is less likely to come to the attention of the law. The parties are more likely to settle it themselves (p. 15). This is especially true if the parties both have lower SES (p. 17).

If it does come to the attention of justice agencies, then all that would matter would be where the two parties are on the status dimension. Black tells us (p. 17): “Law varies directly with rank ... if a poor man commits a crime against another poor man, for example, this is less serious than if both are wealthy.” In short, if the sideways crime is at the low end of the SES range, justice agencies will tend to ignore it but if it does get up on the radar, there will not be much punishment.<sup>3</sup>

Q: “What else is in the toolbox?”

A: So far all that we have been talking about is status, seriousness, and direction and amount of crime and direction and amount of law. We have not talked much about *the type* of law delivered. Is the law delivered punitive, or something different?

In addition, we have not yet talked about **other dimensions of society**. We are going to be getting to those. More specifically we are going to be talking about the horizontal dimension – ethnicity/nativity/native born.

Also, we have not talked about what happens when people go up against organizations. We are going to be talking about that as well.

**The same dynamics are going to apply.**

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<sup>3</sup> Strongly recommend Sally Merry’s book “Getting justice and getting even” about what happens when lower income parties go to court against other lower income parties.