Criminological Theories and Models of Law Enforcement

Lesson 1 + 2

No consensus on definitions of theory
- SCHUTT: 'a logically interrelated set of propositions about empirical reality'
- Positivists: etiological (basic concepts), functional relationships (relating the basic concepts in a casual way) and operational definitions (relating theoretical statement to a set of possible observations)
    o Success of a theory depends on its testing

No consensus on theory value added
- Key propositions of BOTTOMS
    o Engagement with theory is necessary to practice social science: social phenomena exist because they are created by those who are involved (*constructivism*)
    o There is a world out there and we can judge which interpretation is nearer to the truth (*realism*)
- Three implications of these key propositions (BOTTOMS)
    o Without commitment to realism and etiology, no crime prevention or other policy interventions are possible
    o Theories can be evaluated on the basis of their fit with real world
    o Accumulation of knowledge is possible

Different types of theories
- Not all criminological theories are equal: criminology a cookbook?
- Substantive theories
    o Etiological (biological, psychological, sociological, integrated theories): no consensus
    o Theories in social sciences with concepts + General Social Theories
- Normative theories: crime is a label to express 'censure', does not seek scientific truth, policy recommendations always entail normative theory
- 'Background theories'
    o Theories in epistemology (philosophy of nature of knowledge)
    o Theories in ontology (philosophy reflecting on being and nature of human condition)
    o Theories in methodology (philosophy of scientific method)
- Classified in the two continuums of HENRY & MILOVANOVIC
    o Individual behavior and social behavior (IO + SO)
    o Passive subjects and active subjects (PS + AS)
- The theory/data relationship has changed over time (BOTTOMS)
    o Work of SAMPSON & LAUB has a good (and evolving) relationship

Classical school (AS-IO-T/N: BECCARIA + BENTHAM)
- Rational human beings + focus on punishment to prevent crime
- No systematic research: deficient theory/data relationship

Positivism (PS-IO-T: LOMBROSO)
- Importing the natural sciences, emphasis on observations, neutrality and causality + focus on the 'criminal man'
- Hypothetic-deductive: experimental in evaluations + quantitative
- Three attacks since the 1960s
    o *Labelling and ethnography*: dismissal of causality, focus on the definition, A (or P) S-SO-T (variant: constructivism)
    o *Neo-classicism*: rational man, focus on opportunity, few empirical analyses, decontextualization of offenders, AS-IO-T (two variants: rational choice and routine activities)
    o *Conflict, radical, Marxist theories*: emphasis on the normative dimension, passional aim to change the way that sometimes comes in the way of doing good research, A (or P) S-SO-T

Five approaches to criminology (BOTTOMS)
- Classicism
    o Positive: normative dimension
    o Negative: no empirical research
- Natural science-based positivism
    o Positive: careful and precise observations, scientific detachment, search for causes and explanations
    o Negative: assumption of theory-neutral facts and equivalence of natural and social science, weak ability to handle the normative
- Active-subject socially-oriented criminologies
    o Positive: no assumption of theory-neutral facts, emphasis on need to deconstruct actors' frames of reference, careful observations based on immersion in the social world
    o Negative: often shies away from theoretical generalizations and search for causes, can relapse into relativism
- Active-subject individually-oriented criminologies
    o Positive: emphasizes on reasoning powers of subject
    o Negative: also over-emphasizes on individual rational-choice and therefore decontextualizes human subjects
- Political-activist criminologies
    o Positive: research and knowledge itself is part of a political process
    o Negative: political goals can override the search for truth

'Methodological theories'
- Hypothetical-deductive method/theory
    o Theory → hypotheses → middle theories → quantitative data
    o Negative: assumes theories can be tested against the real world without problems, can restrict the researchers' focus
- Grounded theory (inductive theory that prioritizes qualitative data)
    o Negative: assumes the existence of theory-neutral facts
- Adaptive theory (LAYDER)
    o Constant interaction between theory and data: starts from theory but can be changed (both inductive and deductive)

Causation ("if C, then always E")
- Ability to make a prediction
- Process that connects cause and effect: a cause must not only be correlated, it must also be responsible for the effect
- Criminology is still stuck in risk factor approach
  - Gender, age and race cannot be causes though
  - We need to move to a more explanatory approach
  - We need to make a difference between necessary and sufficient causes
- Intersection of two or more factors sets in motion a causal process producing an effect: causal interaction
  - For WIKSTRÖM crime results from the interaction between individual and setting
- Causes v. causes of the causes
  - Immediate causes point out why one decides to steal (to explain a specific crime in a very specific moment and context)
  - Causes of the causes explain why this person has come to consider stealing something as an acceptable option
- Establishing causation
  - Manipulation of cause: scientific experiment
- Emphasized by positivists, but poorly understood criminology often stops at risk factors: for full explanation, theory is necessary

A & A Criteria	Definitions
Focus	Main question theory addresses
Type and range of theory	Substantive/normative, etiological or not, PS/AS or IO/SO Specific crime/all crimes, criminal policy (intervention) or GST
Ontological assumptions	External world: yes/no; objectively experienced: yes/no; man: free will/determinism
Epistemological assumptions	Neutrality/Involvement of researcher + Explanation/Interpretation
Research methods (and related methodological theories)	Quantitative/qualitative Hypothetical-deductive/grounded/adaptive theory
Scientific quality	Internal consistency of theory/Empirical confirmations/ Causal mechanism/Integration of levels of explanation
Other (de-)merits	Innovative/policy relevant topic or approach, other strengths or weaknesses
Fitting/non-fitting cases	Examples of crimes/criminal policy interventions (not) covered
Policy implications	Policy measures drawn from theory

Lesson 3

SAMPSON's Theory of Collective Efficacy
- *Collective efficacy*: social mechanism that is not empirically observable but can be a causal mechanism to understand persistent neighborhood effects and changes in cities → meso-level
    o Two components
        ▪ Social cohesion/trust (collectivity part)
        ▪ Shared expectations for social control (efficacy part)
    o Focus on agency, rather than structure
    o Cf. BANDURA's idea of self-efficacy: believe in ability to complete tasks and reach goals
    o Depends on concentrated disadvantage, racial segregation, immigration and residential instability
        ▪ It does have independent explanatory power
    o Associated with lower rates of violence (RAUDENBUSH & SAMPSON)
        ▪ Dynamic process in which prior violence depresses the collective efficacy, while collective efficacy helps stave off future crime
        ▪ Association of concentrated disadvantage and residential instability with higher violence declined after collective efficacy was controlled
        ▪ Correlation of -0.303 with crime rates (PRATT & CULLEN)
    o A situational concept not just associated to crime, but also with reduced domestic violence, asthma, birth weight, increased self-rated health and other rates of well-being
    Links with theories covering *social disorganization* (Chicago School)
    o Weaknesses: poor communities are not always disorganized, crime was initially used as an indicator of social disorganization (tautology), control cannot be based on personal ties only
- *Ecometrics*:
    o Strategy aiming to measure community's social and institutional processes that are treated as ecological or collective phenomena
    o Two main methodological components
        ▪ Detailed observations in the community
        ▪ Community-based surveys focusing on these processes
    o Theory is transferable to other cities: negative relationship between collective efficacy and the expected rate of violence based on a neighborhood's disadvantage, stability and minority / immigrant composition
- Review of HAGAN & RYMOND-RICHMOND
    o Praise of SAMPSON's work: needed correction of the individualist bias of the 'Age of Reagan' criminology (innovative)
        ▪ Challenged this criminology by reasserting a sociological emphasis on context and by using time and place to leverage this shift (the 'Age of Roosevelt' criminology)
        ▪ Collective efficacy is empowering for the community

WIKSTRÖM's Situational Action Theory
- Why do people commit crime? Criminology is unable to fully address the problem of crime causation: (1) unclear definition of crime, (2) lack of theory of action and (3) poor integration of levels of explanation
  - Crime are actions that breach (moral) rules of conduct
  - Sometimes there is a difference in what the law says and what people think: high level of compliance
- Key proposition
  - P x E > C
    - P = crime *propensity*: depends on morality (moral rules and moral emotions) and the ability to exercise self-control
    - E = criminogenic exposure to settings: depends on moral rules of the setting and their level of enforcement
    - x = interaction between propensity and exposure: critical
    - > = perception-choice process initiated by the interaction
    - C = acts of crime
  - The factors that influence the development of one's propensity, the emergence of criminogenic settings and one's exposure to such settings are called '*causes of the causes*'
  - In most cases we have a *moral filter* (outcome of the interaction between personal morality and moral norms of the setting) that prevents us from seeing crime as an option by providing action alternatives. If crime is seen as an alternative, we have to choose
    - Rational deliberation → controls influence the process, internal (through process of self-control) and external (through process of deterrence): morality ≠ control
    - Habit → crime
- PADS+
  - People with high crime propensity and criminogenic exposure have greater crime involvement
  - Ares with high presence of crime-prone people and high-level of criminogenic traits have a greater concentration of crime
  - Crime occur when people with high crime propensity converge in criminogenic settings
  - Some are crime resistant, other prone, depending on propensity
- *Policy implications*
  - Focus on moral filter through the activities of key social institutions: most effective crime prevention measure
  - Focus on crime habits by counteracting the development of environments supportive of crime and one's exposure to it
  - Focus on controls by affecting the ability to exercise self-control and by deterrence and situational crime prevention measures
- MESSNER's criticisms
  - Measurement of key concepts is not always ideal: 'slippage' between the definition of the setting and the operationalization
  - The measurements of morality are limited to a rather simple scale
  - Motivation, key feature of the choice process, was not addressed

Lesson 4

Feminist waves
- To understand feminist perspectives, we have to understand the context
- First wave (suffrage)
  - Rooted in two ideas: (1) enlightenment and French revolution and (2) slavery abolitionism
  - From the 1700s to the 1900s voting for women was the main target
- Second wave (women's liberation movement): around the 1960s-1990s
  - Main object: equality in every area (family, sexuality and work)
  - Most influential work: 'The Second Sex' by SIMONE DE BEAUVOIR which wonders why women are defined as 'others' and 'inferior'
- Third wave (has been called 'girly feminism'): 1990s to now
  - Focusing on difference: proud to be women
- Some people talk about a fourth wave and that we are riding it right now
  - Focus on protest and not taking it anymore (#MeToo-movement)

Myths of feminism
- Lack of objectivity
- A narrow focus
  - Feminist inquiry is not limited to topics on or about women
- THE feminist analysis
  - Does not exist: feminist thought is a set of perspectives which are linked to different assumptions
  - There are a lot of *perspectives*: liberal feminism, radical feminism, Marxist feminism, socialist feminism, postmodern feminism, black feminism and critical race feminism
  - Elements of a feminist analysis
    - Gender is a social, historical and cultural product and orders social life and social institutions in fundamental ways
    - Gender relations are not symmetrical but are based on an organizing principle of men's superiority and social and political-economic dominance
    - Women should be at the center of intellectual inquiry
    - Theorizing of gender is important

Feminism in the 60s and 70s
- 'The Awakening' around the 60s: two problems
  - '*Generalizability problem*': can general theories that describe men offending apply to women?
  - '*Gender ratio/gap problem*': who do women commit less crime?
- Feminist criminology was born during the second wave: comprehensive critique of the discipline → exposure of criminology as the criminology of men (gender discrimination in law schools and criminal justice system)
  - SIMON & ADLER (pioneers in the 70s) '*emancipation thesis*': liberation causes crime (controversial view)
- After pioneers, we see a rise of feminist empiricism

Developments in feminist criminology
- Theorizing about women's victimization: most significant achievement
    - Had not been done before → impact on policy
    - Significant findings: rape and violence are far more prevalent than previously imagined, female victims feel stigma and shame, male offenders minimize their behavior, etcetera
    - Strategies for change include empowering women to speak up, shelters, legal advocacy and changing men's behavior
- *Carceral feminism*: point for concern!
    - Accusing parts of feminism of having too much faith in 'the siren call of law' → co-opted by the neoliberal agenda of punishment
- More and more women are accused of crime: point for concern!
    - *Backlash politics*: gender bias in the criminal justice system?
        - Chivalry thesis: women are treated more leniently than men
        - Double deviance thesis: women are treated more harshly because they are guilty of being doubly deviant
        - Double jeopardy theory: ex. Black women are sentenced for their crimes and marginalized status
    - *Masculinization theory*: assumption that girls are becoming more like boys (moral panic)
    - *Criminalizing of women*
        - Mandatory arrest of domestic violence backfired → more and more women were arrested
        - More zero tolerance, different police behavior, net widening, from welfarization to criminalization, increased reporting, a 'youth' problem and media influence
    - *Vengeful equity*: by making women more visible, did women become too visible?

Lesson 5

Cultural criminology
- Criminological perspective, not a theory, that draws influence from the sociological understandings of crime and deviance (firstly inspired by traditions of interpretivism and subcultural theory, but also inspired by the strain theory, the labelling theory and the Marxist, critical criminology)
    o Introduces new influences into criminology
    o Explores the connections between (consumer) culture and crime
        ▪ Late Modernity: nation state and identify are less important
        ▪ 'The Crime Consumerism Nexus' (HAYWARD): filling the void with consumerism (background cause of crime)
        ▪ Feeling of 'Vertigo': feeling that you will fall into a lower class at an instant and thus always have to watch your balance
        ▪ Crime is consumed in the media and also advertised
    o Labelling theory: 'crime' is a social construct and state intervention reduces crime by scaring offenders straight, rehabilitating them, or incapacitating them
- Criticism of 'orthodox' criminology (some identify themselves as radical)
    o Misleading positivism, a lack of sociological insight and politically harmful (crime control is highly political and highly emotional)
- Focus on criminal event itself and the situational factors and influences
    o Links with situational crime prevention measures
        ▪ Easier to change or manipulate environments than people
        ▪ More cost-effective and can be measured easily
        ▪ Negative features: displacements of crime and does not address all crime
    o FERRELL et al.: methods and the type of data are important
        ▪ 'Verstehen', ethnography, participative action research, media analyses, narrative criminology and visual methods
- *'Emotional foreground of crime'* (KATZ)
    o Crime tends to be either understood deterministically or through notion of 'rational choice'
    o Aside from any reward, criminal activity is often charged with various emotions → crime thus possesses its own 'seductions' → we need to focus more on experiences of crime as and when it occurs
    o Lifestyles with seductions and edgework are rationalized
        ▪ Cultural criminology is more about transgression, instead of crime (wider), because it reinforces and reproduces social norms and structures
    o The study of emotions is a long-neglected theme in criminology
- *Criticisms of cultural criminology*
    o Feminism: academic boys club that ignores feminist perspectives and focusses on male subcultures → 'malestream criminology'
    o Romanticism: romanticizing of crime
    o Politics: not enough attention for political structure
    o Its flexibility remains a possible strength and a weakness

Lesson 6

Critical criminology
- Range of perspectives united by two central features: addressing crime and control while (1) offering radical analysis of capitalist power relations and (2) advocating substantial political change
    - REIMAN: criminology bears the burden of having the object of its study determined by the state → responsibility: criminology must either declare its independence or serve as an arm of the state
- Emerged in the 1970s, continuing today
    - Set up as an alternative to the mainstream criminology
    - Left-wing critique with a Marxist focus on social and class inequality → advocating for a more inclusive society
        - MARX: class system with those who labor and those who profit from it, capitalism has a tendency to crisis → wide gap between rich and poor (we accept this as natural) → class consciousness is to be aware of the class conflict
            - Criminal justice system permits the selfish greed of the rich but criminalizes that of the poor: egoism (BONGER)
            - Marxism doesn't propose a solution → left realism
        - Tendency to criticize the state (cf. REIMAN)

Left realism
- Agrees with critical criminology and Marxism, but is much more engaged in its policy → to integrate critical criminological thinking into more conventional debates and to deal with 'causes' of crime to focus on the problem of class inequality, social exclusion and relative deprivation
    - If we want to reduce crime, we need political policies to address the causes of exclusion and precariousness
- Background
    - Right realism implemented more simple measures to deal with crime → tougher policing and more punishment, especially prison
    - Critiquing left idealism → we should acknowledge the harms done to the working class by crime
- Lost credibility → in the 21st century *cultural criminology*, Ultra-Realism and *deviant leisure* (combination of Ultra-Realism, zemiology and green criminology that explores how harms are embedded within forms of leisure) are the more leading perspectives in critical criminology

Ultra-Realism (HALL & WINLOW)
- Alternative innovation: why do some individuals and groups risk harm to others as they pursue their instrumental and expressive interests?
- Advocating political change → starts from extreme political pessimism
- Influenced by victimology, feminist criminology, left realism and supports the focus on harm and the attempt to unearth causes behind criminal behavior → critical on its focus on policy, rather than social change
- Critical of cultural criminology

Lesson 7

Zemiology (HILLYARD & TOMBS)
- Started with '*critical' critique of criminology*: (1) crime has no ontological reality, (2) crime excludes many serious harms → criminal justice system creates wider social harm, (3) crime control is ineffective and (4) crime serves to maintain power relations
- Social harm approach, with a focus on communities, to consider social harms affecting people's welfare → the *focus on harm* would (1) allow comparisons of different harms, (2) make allocation of responsibility possible, (3) allow greater consideration for appropriate policies, (4) shift focus to mass harm and more general policies, (5) challenge conservative power knowledge of criminology and role of state and (6) challenge overly-individualistic analysis of risks and shift focus on collective responses
  o Defining harm is a productive and positive process
    ▪ Key question is how to weigh up harms and rights: which are more important (normativity)
- MUNCIE's review
  o Redefining of crime as harm opens up the possibility of dealing with it through negotiation
  o Harm is not a unitary or an uncontested concept → depends on perspective and normativity (political project)

GREENFIELD & PAOLI
- Harm is a criterium for criminal policies, but is normative and relational
  o No scientific way to say what is more important to care about
- Taxonomy
  o Four classes of bearers: individual, private-sector entities, public-sector entities and social and physical environment
  o Four interest dimensions: functional integrity, material support, reputation and privacy and autonomy
- Methodology (*Harm Assessment Framework*)
  o Step 1: Construct a business model/script of crime (template)
  o Step 2: Identify possible harms on a normative basis (taxonomy)
  o Step 3: Evaluate severity (catastrophic, grave, serious, moderate, marginal) and incidence (continuously, persistently, occasionally, seldom, rarely) of harm
  o Step 4: Rate the severity and incidence (scale)
  o Step 5: Rank and prioritize harms in a matrix (very high, high, medium or low priority)
  o Step 6: Establish the causality of harm in a two-stage exercise
    ▪ Remoteness of harm (direct v. remote)
    ▪ Dependence of harm on policy

Green criminology (WHITE)
- Study of environmental harms, law and regulations: wide range
- Political activists that want to change things: three main aims
    o To investigate the nature of environmental harm
    o To investigate the nature of regulatory mechanisms and social control of environmental harms
    o To investigate the nature of the relationship between changes in or to specific environments and the criminalization process
- Idea of ecological citizenship: human obligations to all living things
- Their overarching policy aim is to prevent ecological disaster and degradation with attention to links with social issues
- Different *philosophies*
    o Anthropocentric: interest of the humans counts more than the interest of animals or nature (human superiority)
    o Biocentric: humans are one specie like others, and we need to protect all species
    o Ecocentric: preservation of forests combined with long term human needs (combination: human responsibility)
- Different *definitions of crime/harm*
    o Primary: crimes that are clearly affecting the environment
    o Secondary: crimes that are associated with environmental harms, but are not necessarily causing harm
    o Debate concerning the legal-procedural (harm recognized by the state) v. the socio-legal (harm derives from normal social practice) approach for defining harm
- Different *(normative) approaches to harm and justice*
    o Environmental justice: distribution of environments among people
        ▪ A more anthropocentric, ecocentric approach
    o Ecological justice: relationship of human beings to rest of the world
        ▪ A more biocentric approach
    o Species justice: animal rights are prioritized, harms seen in relation to them (but how to construct animal rights?)
- Different *perspectives*
    o Focal considerations (victims of harm)
        ▪ Environmental v. ecological v. animal rights
    o Geographical considerations
        ▪ International v. national v. regional v. local
    o Locational considerations
        ▪ Built environments v. natural environments
    o Temporal considerations
        ▪ Short-term v. long-term

Lesson 8 + 9

Criminal policies (only policy in which the state intends to harm: punishment)
- Lot of discussion on the justification of it all: two types of answers
  - o Instrumentalist/*consequentialist*
    - ▪ As long as it is effective, focus on deterrence
    - ▪ MILL's Harm Principle: only purpose for which power can be exercised over any member of a community, against his will, is to prevent harm to others → scholars qualify this with requirements of justice or by adding offence principle
      - • Aims: reduce crime through criminalization, policing, punishment, crime prevention, governance of security, victims' assistance and restorative justice
  - o Non-instrumentalist (legal moralism and retributive justice)
    - ▪ Appropriate response to conduct, what is rightful
    - ▪ *Legal moralism* with two variants (mix of values is necessary)
      - • Positive moralists: aim is to achieve retributive justice by punishing all people who did something wrong
      - • Negative moralists: crime is a public (≠ private) wrong
    - ▪ Aims
      - • Positive retributivism: punish those found guilty of criminal offences to the extent that they deserve, because they deserve it ('just desert')
      - • Negative retributivism: punish only those who deserve it, and only in proportion with their desert

How far are these aims actually being achieved?
- Deterrence
  - o Much more empirical support for the deterrent effect of changes in the certainty than changes in the severity of punishment
    - ▪ Most important: informal sanction costs (e.g. 'fear of arrest')
  - o Limited evidence of the deterrent effect of imprisonment
    - ▪ On the contrary, there is a lot of evidence that points to the criminogenic effect of the prison experience
  - o More evidence about the deterrent effect of policing: 'sentinel' function, focus on places where a lot of crime occurs
- Incapacitation (costly)
  - o Modest effect that declines when the prison population grows
  - o Limited evidence for policing incapacitation
- Retributive justice (JEHLE & WADE)
  - o Increasing number of criminal proceedings → fewer and fewer regular trials → prosecutors become 'judges before the judges'
  - o Strategies to cope with the workload: increase police discretion, increase prosecutorial discretion, courts' growing reliance on prosecutorial decisions and decriminalize
  - o Deviating from original aims, pre-trial institutions are given powers
  - o WADE speaks of techniques of neutralization to deny deviations

Harm reduction
- *'Side-constrained' consequentialism*
    - o Sanctions should achieve other goals than just to punish: through criminal law and policy one should try to reduce harm
    - o Imprisonment is justified only to the extent that it helps reducing overall harm: negative impact bigger → change the policy
- Legal history
    - o In early legal systems, sanctions primarily aimed at the restoration of harm: only with Normans the focus shifted from harm to individuals' and community interests to harm to the ruler → victims were displaced, and criminal sanctions lost restorative aim
    - o In criminology, there is a growing interest in harm
    - o In criminalization, harm prevention has long served as a main aim of criminal law in the US and in Europe. Despite shift to retributivism, recent trends have expanded relevance of harm, but there has not been a conceptualization or assessment of harm
    - o Since the 70s there was a growing concern for victims, a boom of restorative justice (no clarification of 'harm' though) and a crime prevention boom (no explicit reference to harm though)
- GREENFIELD & PAOLI
    - o There is an uneven recognition of harm in criminal policy
    - o Methodology contains potential contributions to policy
        - ▪ Step 1: Assess harms (baseline estimation)
        - ▪ Step 2: Assess current and proposed policy measures (policy evaluation)
    - o No scientific way to say what policy is better: normativity
    - o Harm assessment is a way of advancing justice understood as 'nyaya' (realizations), not 'niti' (institutions and rules)
        - ▪ We need to imply the best policy (reduces the most harm)

Major differences in statistics
- UN Homicide Monitor (rate per 100.000 inhabitants)
    - o Belgium's rate is quite high (2 v 0,6 in the Netherlands)
- Number of police officers (rate per 100.000 inhabitants)
    - o Belgium's rate is again quite high (419,2 v 236,8 in the Netherlands)
- Belgium has a very high percent of foreign detainees in prisons (44,2%)
- Imprisonment rate (rate per 100.000 inhabitants)
    - o Eastern European the highest, Scandinavian the lowest
    - o Western Europe: The United Kingdom and Spain the highest, the Netherlands the lowest
    - o Belgium: quite flat (ca. 80-100)
- Comparison of criminal policy resources, outcomes and trends shows
    - o Different outcomes, even across Europe
    - o Different imprisonment rates (much higher in Russia and USA)
    - o Divergent trends in imprisonment rates: recent declines in Spain and the Netherlands and increase at lower rates in Belgium
    - o It is not true that all western societies are becoming more punitive

Phases and actors of criminal policy
- Criminalization (policymakers) → crime control (policymakers, police and prosecution services → adjudication (prosecution services and courts) → sentencing and punishment (policymakers, courts and prisons)
  - o Besides those four phases actors of crime prevention and actors of victims' assistance and restorative justice are important
  - o The last three phases are the penal policies stricto sensu
    - ▪ TONRY focuses on *penal policy*: criminal behavior described as a function of dynamic risk and protective factors
      - • Most of the things invoked to explain increased punitiveness are *nonfactors*: background conditions

TONRY
- *National features*
  - o General political culture
    - ▪ Conflict system (UK, US): higher imprisonment rate
    - ▪ Consensus system (most of Europe): lower imprisonment rate
      - • Greater gender equality, greener environmental policies and more human criminal justice policies
  - o Constitutional structure, which impacts upon:
    - ▪ Degree of politicization of criminal justice which depends on political or meritocratic selection of prosecutors and judges
      - • In the US prosecutors/judges are frequently elected
      - • In the UK there is no separation of powers
    - ▪ Degree of involvement of elected politicians in decision making about individual cases
  - o Mass media characteristics
    - ▪ Despite cross-country growth of sensationalism (especially where newspapers are sold at newsstands (e.g. the UK)), large differences persist in media reporting about crime
      - • Mass media style and politician's reactions to crime
  - o Anglo-Saxon culture: higher rates, more punitiveness: unclear why
  - o Populist conceptions of democracy
    - ▪ Countries differ in (1) the relative weight to be given in policy making to public opinion v. professional knowledge, (2) the insulation of decisions on individual cases from public emotions and (3) in the protection of individual rights
- Imprisonment rate (statistical analyses)
  - o Inversely correlated with welfare indicators, inversely correlated with institutional trust and legitimacy and social capital, negatively correlated with normative legitimacy and positively correlated with the fear of crime and punitiveness
- *Protective factors*
  - o Consensus political cultures, nonpartisan judges and prosecutors, Francophone cultures and expert-informed policy processes
  - o High levels of social trust and political legitimacy, strong welfare state (LAPPI-SEPPÄLÄ)

Lesson 10

Crimes in Belgium
- General decline, started only in 2012 – later than other western countries
    o Property crimes dominate the picture (theft and extorsion)
        ▪ There has been a 36% decrease since 2000 though
        ▪ Responsive security theory (VAN DIJK): the late decline in property crime might be due to late adoption of prevention measures by the Belgian public
    o Surprising increase in violent crime, primarily in assault
        ▪ 74,8% increase of homicide: Belgian statistics don't make a difference between attempted and completed homicide
            • Even with the split, Belgium has the highest homicide rate in Western Europe: unclear why but worrisome!
        ▪ Might be due to changing sensitivities in public and police

Penal policies in Belgium
- Prosecution is waived in 72% of all cases (65% for technical reasons)
    o Prosecutors only refer 5% of the cases to courts
- Fines are the most frequent (87%)
- Most prisons sentences (82%) are below one year
    o More frequent: pre-trail confinement and long prison sentences
        ▪ Increase in prison population due to longer sentences and tightening of early release for long-term prisoners
        ▪ Decrease since 2014 due to decrease of prisoners serving short sentence (that can be explained by non-execution, electronic monitoring and early release)
    o *Bifurcation policy* (SNACKEN): imprisonment as a last resort
        ▪ Expansion of prosecutorial diversions, prison alternatives, mediation and restorative justice initiatives for less serious offenses, no implementation of sentences below three years
        ▪ Longer sentences for the most serious offences

Reforms of criminal policy
- Belgium has known many radical reforms since the 90s, driven by:
    o 'Black Sunday' in 1991 (electoral victory of right-wing Vlaams Blok)
        ▪ Security and prevention contracts with cities, the so-called Pentecost plans, were the beginning of a more developed integral security policy → in 2016 new framework paper
    o Dutroux case in 1996
        ▪ Octopus agreement in 1998 → reform of the police in 2001
        ▪ Acts that reinforced the position of victims in the criminal justice process, their rights and victim assistance
- No major reforms of penal policy
    o Reform of prison law had only (partially) been adopted in 2006
    o Overcrowding remains a problem: Justice Plan and Masterplan Prisons were not approved due to government fall

Determinants of Belgian criminal policy
- SNACKEN considers it to be a complex interaction of different factors
    o Criticizes GARLAND's Culture of Control
        ▪ Belgium never experienced the rise and fall of rehabilitation
            • More typical for the US or the Uk
        ▪ There are some similarities in changing demographic and economic characteristics and resulting feeling of insecurity and intolerance, but scarce impact on concrete policies
        ▪ Further differences in: (1) the importance and credibility of expert advice in media and politics, (2) continued influence of interactionist and radical criminology, (3) a balanced approach between victims' and offenders' interests and (4) influence of restorative justice and an emphasis on human rights
    o There are more differences than similarities in intermediate factors
        ▪ These differences may explain why thus far more diverse policy options have been possible
- Main question:
    o How will politicians cope with competition between increased populist pressures and more moderate, balanced, humane and expert-based proposals for change?
- Other determinants worth mentioning are the state reforms in Belgium (the sixth state reform in 2014 shifted competencies also in criminal policy to regions) and budgetary pressure

Lesson 11

Criminal policies in the Netherlands (Van Swaaningen)
- Punitiveness is an unclear concept, defined in different ways
  - Punitiveness of penal policies involves high imprisonment rates and prison as the obvious reaction to crime
- Penal climate in the Netherlands
  - Mild penal climate: pre-1973 decline and stability (D/S)
    - Penal liberalism, focus on rehabilitation and prisoners' rights
    - Key factors for D/S
      - Roles of penal experts and type of penal expertise
      - Political will: ashamed of appalling prison conditions
      - Fear of crime and role of media: no need for sensationalism, since newspapers sold via subscription
  - From the mid 80s onwards, there was growing punitiveness with a steady growth of the imprisonment rate: 1973-2005 growth (G)
    - Enormous expansion of non-custodial sentences, intrusive 'preventative' measures, penal crises, etcetera
    - Growing emphasis on protection of society → expansion of security and prevention policy
    - Key factors for G
      - Roles of penal experts and type of penal expertise: experts no longer comment on punitiveness
      - Political will: political will to keep prison population low disappeared + expansion of security
      - Fear of crime and role of media: mediatization of crime and safety with the emergence of commercial television since the 80s and safety and fear of crime became key electoral themes
      - Crime rates: unlikely that crime growth let to higher imprisonment rates, if at all only with huge time lag, but has crime got more serious?
      - Factors/trends internal to the criminal justice system: more punitiveness → fail to solve by social policy
      - Legislative changes: favored growth of population
  - Decrease after 2005 despite no obvious changes in socio-cultural fabric, politics or criminal policy: post-2005 decline (D)
    - Key factors for D
      - Fear of crime and the media: decreasing fear of crime since 1999 and due to economic crisis crime plays a less prominent role in the media
      - Crime rates: decline in crime rates since 90s, but crime declined in countries when imprisonment rate did not
      - Factors/trends internal to the criminal justice system: less punitiveness → correlated to imprisonment rate?
      - Legislative changes (e.g. Fokkens regulation)
- Despite the decrease, other forms of punitiveness persist: still liberal

Criminal policies in the United Kingdom (NEWBURN)
- Punitive turn from early 1990s on, despite declining crime
    o Law and order has increasingly become a political issue since the 70s → crime rates fell from mid 90s, but not in people's perceptions
    o Cultural and economic conditions of neoliberalism seem to have provided the basis for this shift
- Sharp decline in crime rates since early 90s until 2014
    o Small increase since then, especially for violent crime
- Trends in punishment
    o Prison population started growing in the period after WWII → slight decline due to measures introduced by conservative government
    o Huge increase since early 90s, when crime rates declined
        ▪ Increased severity is main factor in expanding the prison population (not the number of offenders caught/convicted and not the seriousness of offences before courts)
            • Less leniency with first offenders
            • Strong increases in time served
        ▪ Imprisonment overcomes fine as most frequent sentence
- Changes since 1993
    o Appointment of Howard to Home Secretary signed shift to a more populist and punitive penal policy → series of punitive laws were introduced, massive expansion of prevention and security policy
    o The long period of the Labour cabinets made penal policies more punitive → bigger expansion of the prison population
    o Mixed signals from Tory-led cabinets: (1) acts increasing minimum sentence length for some offences and plan to build mega-prisons and (2) closure of nine prisons and emphasis on rehabilitation
- Hybrid between the US and European policies
    o Socio-economic context (neo-liberalism) as a key determinant of penal policies → UK is most neoliberal country in Europe
    o Cultural and political circumstances distinguish UK from US

Criminal policies in Scandinavia (LAPPI-SEPPÄLÄ)
- Lowest imprisonment rates: associated with consensus political systems, high spending on welfare, low inequality, trust in government and society
    o Denmark, Iceland, Norway and Sweden: stability since the 50s
    o Finland: huge decrease, despite increasing crime rates
        ▪ Different history than the rest of Scandinavia, but after WWII Finland wanted to emulate their mild penal policies
        ▪ Key explanatory factors
            • Key role of experts ('humane neoclassicism': to still punish offenders, but in a humane way)
            • Economic growth, increase in welfare spending and decrease in income inequality
            • Characteristics of political system, society and culture
            • Media characteristics
- Might the rise of right-wing parties lead to toughening of its policies?

Lesson 12

Criminal policies in the United States
- Penal policies and outcomes stand out vis-à-vis those of all other western countries → retains death penalty, the world's highest imprisonment rate
- Historical perspective
    o First phase: up to 1973 stability in the imprisonment rate
    o Second phase: significant growth since 1972
        ▪ 1973-1980: general increase in commitment of marginal felons to prisons
        ▪ 1985-1992: emphasis shifted to drugs
            • New drug laws that had a big impact
            • Drug offenders are nearly half of all federal prisoners, primarily because of mandatory minimum sentences
        ▪ 1992-2007: new politics of punishment: Megan Laws, 'three strikes and you are out' laws, truth in sentencing laws
    o Third phase: since 2010 slow decline
- Incarceration is just one piece of the much larger system of correctional control, for example probation and parole
- Other characteristics: big differences among states, strong racial bias
- Good news
    o Recent decline prompted by changing views and legal and 'soft' changes especially at state level: non-serious offenders were sent to county jails instead of state prisons and parole was increased (a policy called 'realignment')
    o *Bipartisan consensus* that the system does not work but no full consensus on how: even elected criminal justice officials are willing to support reform
    o Next step is to change laws concerning violent offenders and to change our responses to more serious and violent crime
- Features to explain why imprisonment rates skyrocketed (TONRY)
    o Crime is not the answer: income inequality, the political system, welfare, citizens' trust in each other and government surely relate to the imprisonment rate, but does not explain its exceptionalism
    o *Political paranoia*: recurring feature of American politics
        ▪ The right-wing of the Republican Party has been responsible for revitalizing the paranoid style since the 70s in two ways
            • Use crime, welfare and affirmative action to provoke white southern, working-class enmities towards blacks
            • Incorporate ideas of the John Birch Society, reducing legitimacy of judges and offenders' rights
    o *Protestant fundamentalism*
        ▪ Religion-based intolerance used to express xenophobia
    o *Obsolescence of American constitution*
    o *Race relations*: the war on crime, the war on drugs were used as a way of keeping the black people in a subordinate position
- Globalization and neo-liberalism do not account for differences

Criminal policies in Japan
- Exceptional position
  - Very low levels of crime in comparison to other countries
  - Sharp increase up to 2002, but sharp decrease since then
    - Sharp decline for thefts, low levels for violence crime
      - Murder rate is 0,3 (v. 2 in Belgium and 5,3 in the US)
    - Sharp decline in yakuza groups too, despite the lack of criminalization
  - Increased feeling of security and informal social control
- Penal policies
  - Exceptional: aimed at rehabilitation through lenient sanctions
    - Very low imprisonment rate
  - Shadows
    - Big increase in forms of formal (e.g. security policies) and informal social control → more efficient than the police
    - Despite crime decrease, the number of police officers has grown → even the pettiest crimes are investigated
    - Disturbing practices in investigation and prosecution stages
    - Possible increase in punitiveness (except imprisonment rate)
      - Death penalty is still used
      - New crimes introduced in penal code (increased sentences for others)
      - Sentences have also grown more severe
      - Semi-private prisons were built
      - Prison life can be psychologically very harsh
- Explanatory factors
  - Perception of crime crisis, pervasive sense of insecurity after 2000
  - Long-lasting economic crisis, growing inequality and poverty, rising divorce rate and number of single-parent families
  - Increase of resident foreigners and related fears
  - Politician's populism
  - Lower trust in police due to scandals and decreasing clearance rate until 2006
  - Declining insulation of law enforcement officials
  - Shock of 1995 gas attacks in Tokyo subway and other crimes publicized by the media
- Indicators of growing severity (e.g. death penalty, increasing sentences)
  - Not much reason to justify a full comparison: criminal policies remain very lenient → the parallel should not be emphasized
    - Above all, Japan's communitarianism is not discussed

Lesson 13

Summing up
- Goals of retributive justice
  - Presupposes fair and respect of prisoners
    - In Belgium and other countries full trial has become more exception than rule though (JEHLE & WADE)
    - Prisoners' rights are not always respected (e.g. Belgium, US)
- Goals of consequentialism
  - Some serious doubts about deterrence through imprisonment
    - Incapacitation can only be reached punctually
    - Growing consensus that imprisonment causes much harm
  - More positive evaluation about deterrent effects of policing
  - Some prevention programs work, but only in specific conditions
  - Positive evaluation of restorative justice for victims and offenders
  - Shift from criminal policy to security policy → growing emphasis on consequentialism (and particularly harm reduction)
    - Punishment is no longer out of principle but opportunistic in private governance of security ('post-crime' → 'pre-crime')
    - Positive development, but also risks in 'actuarial justice' (risk assessment methods focus on single offenders' likelihood of violent behavior and crime)
  - No empirical systematic assessment of harms of different crimes
  - No evaluation of criminal policy goals or of priorities has been set
- What is a good criminal policy and a good theory?
  - Criminal policy
    - Identification depends on
      - What we understand with 'criminal policy': for some only penal policy, others governance of security
      - The assessment of goals/criteria we choose
      - The weight we give to different goals/criteria
    - If we adopt side-constrained consequentialism, the Finnish policy scores best → reduction of harm of crime and criminal policy is set as an explicit goal, but even in Finland there has not been an empirical assessment of harm
    - If other goals/criteria are adopted, the choice might differ
  - Theory
    - Identification depends on
      - What we understand with 'theory'
      - The assessment of criteria we choose
      - The weight we give to different criteria
    - If we adopt positivist understanding of theory (etiological and quality criteria, WIKSTRÖM's SAT is probably the best
      - SAMPSON's collective efficacy theory also scores high
        - No integrated explanation
      - Other theories score less well on 'scientific quality'
    - GREENFIELD & PAOLI's theory is primarily methodological