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# When Brute Force Fails

HOW TO HAVE LESS CRIME  
AND LESS PUNISHMENT

Mark A. R. Kleiman

PRINCETON UNIVERSITY PRESS  
PRINCETON & OXFORD

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*To Steve Hitchner and Phil Heymann,*

*who got me pointed at the problem,*

*and to Tom Schelling, who provided the tools.*

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Brute force succeeds when it is used.

Effective deterrent threats are never carried out.

—Thomas C. Schelling, *Arms and Influence*



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## ACKNOWLEDGMENTS

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It is just as well that intellectual debts need only be acknowledged, rather than paid; else we would all die bankrupt. Looking back, I realize that I have been preparing to write this book for most of a lifetime, and my list of creditors is correspondingly long. For the most part, I have attempted to economize by naming each person only once. Within categories, names are listed in no particular order. No doubt some have been omitted by mere inadvertence; I sincerely beg their pardon for the oversight. Some are no longer with us, and I treasure their memory.



Studies of criminal careers all agree: When a young man gets involved with drugs and crime, it is usually because he has fallen in with the wrong crowd. The risk is especially grave if those he admires, and whose good opinion he craves, are themselves caught in the drugs-and-crime net. So it was in my case.

Thirty years ago, I was innocently engaged in running a small policy shop in the Boston mayor's office when Philip B. Heymann was appointed assistant attorney general in charge of the Criminal Division of the U.S. Department of Justice. Phil had taught me—or tried to teach me—politics and public management at the Kennedy School of Government at Harvard. He was, and is, both an inspired and inspiring teacher and a great manager. One of his innovations in the Criminal Division was to create the Office of Policy and Management Analysis (OPMA), and to head it he hired Steven B. Hitchner, Jr. Steve had been a couple of years ahead of me in the Kennedy School master of public policy program and was already marked for greatness; only his tragic early death kept him from reaching the highest level of appointive office. The nation is the poorer for it, and Steve's many friends continue to regret his untimely passing.

When Steve invited me to work with him and try to figure out how to prosecute public-corruption cases, I had no particular interest in the

topic. I did, however, have in mind the advice every college freshman hears, “Don’t take courses; take professors.” The chance to work with and for Steve and Phil was too good to pass up. So I joined OPMA, and my career in crime was launched. I have never reformed.

The Criminal Division was a high-morale, high-performance, high-integrity organization. In addition to treasured colleagues in OPMA, including Bud Frank, Bill Fisher, Irvinia Waters, and Julie Samuels, I learned from a dazzling array of fine lawyers and dedicated public servants across the division: Mark Richard, Irv Nathan, David Margolis, Mike DeFeo, Alec Williams, Bill Corcoran, Eric Holder, Kate Pressman, Ruth Wedgwood, and most of all the legendary Jack Keeney. Peter Bensinger and his colleagues in the Drug Enforcement Administration, including John Coleman, taught me the drug business and were remarkably tolerant of my fumbling attempts to make sense of how drug law enforcement could make a difference.

When Phil left at the end of the Carter administration, he was replaced first by Lowell Jensen and then by Steve Trott, who continued my education and earned my deep admiration. I began to collaborate with Peter Reuter at RAND and Susan Ginsburg at the State Department; those two partnerships remain among my most prized resources.



I came to the Justice Department pig-ignorant about its work, but well prepared to learn, thanks to many teachers, starting with my parents, who raised me to prize understanding and to believe in public service. My formal education took place at Elementary School #64, at Pimlico Junior High, at Baltimore City College (actually a high school), and Northwestern High School.

Rhoda Bennett, my first and second grade teacher, taught me that learning could be a source of joy; a child who learns that will eventually learn whatever else he needs to know.

Several people taught me how to write and (the essential prerequisite) to care about writing and to tell good writing from bad; if there is a more demanding art form than English expository prose, I can’t imagine what it might be. Mrs. Hergenroeder (I don’t think it occurred to me that she might have a first name) who taught seventh grade American history,

assigned—and corrected—an essay every night for an entire year, starting with a sentence and working up to 250 words. Her corrections were as much about writing as they were about history, and by the end of the year I could write three consecutive paragraphs without gross errors of grammar or style. Berniece Baer in eighth grade English diagrammed sentences, although the official curriculum no longer allowed it. Stephanie Miller, whose subject was chemistry but who also served as adviser to the school newspaper, initiated me into the mystery of journalistic prose and into the attitude that all writing, including my own, is mere “copy,” capable of being improved, and needing to be improved, by editing. It was not until later that I heard the Golden Rule of prose—“There is no such thing as good writing, only good re-writing”—but it was as the copyeditor of the *Pimlico Pacesetter* that I learned the attitude it expresses. The book you hold is, on average, about a fifth draft.

It was about then that I began to encounter the masters of expository and argumentative writing, whose skill I have been trying to emulate ever since: Bertrand Russell, John Kenneth Galbraith, George Orwell, C. S. Lewis, Michael Walzer, Thomas C. Schelling, and Abraham Lincoln.

Angelo Fortunato, in a single class on the economic origins of the Reformation, gave me a taste for both historical analysis and political economy. Eileen Henze, in the course of teaching Shakespeare, started me on my lifelong love affair with English history. Herbert Bernhardt opened my eyes to the beauty of mathematical reasoning. I recall with affection schoolmates including Arthur Cohen, Steve Krafchik, Ellen Rothman, Stuart Levine, Jeff Liss, Susan Michaelson, and Judy Shub.

All of this took place in a big-city public school system, which makes me impatient both with those who argue that public education must necessarily be deficient and with those who insist that its current state is satisfactory, or even acceptable.

At Haverford College I had a dazzling array of brilliant and dedicated teachers. In chronological order, I encountered Sara Shumer, Holland and Helen Hunter, Ashok Gangadean, Frank Connolly, Bob Gavin, Paul and Rosemary Desjardins, Sid Waldman, Tad Krauze, Wyatt MacGaffey, Ariel Kosman, Louis Green, Richard Bernstein, and Roger Lane, as well as a brilliant philosophy of science teacher who was only there for a year and whose name I have forgotten, without ever forgetting what he taught me. I learned as much from my classmates, including Tom Gowen, Susan Bell,

Jon Delano, Peter Goldberger, and Eric Sterling, and most of all my roommates: Gary Emmett, Dave Hsia, Steve Harvester, and Marc McClaren (from whom I first heard the ironic maxim “When brute force fails, you’re not using enough”).

At the Kennedy School, I studied analytic methods with Edith Stokey, Dick Zeckhauser, Howard Raiffa, and Mike Spence; economics with Tom Schelling and Francis Bator; statistics with Will Fairley and Fred Mosteller; and politics and public management with Richard Neustadt, Phil Heymann, and Mark Moore. Kip Viscusi, Don Shepard, and Steve Hitchner were especially inspired teaching assistants. With such teachers, it would have been difficult not to learn.

Every one of my 24 classmates in the MPP program, and many of my near-classmates, taught me something important; I think especially of Ken Miller, Chris Edley, Kitty Bernick, Michael Eliastam, and Mark Iwry. I learned just as much from housemates Dick Friedman, Jeremy Paretsky, and, most of all, Joel Schwartz.

Harvard also allowed me to take breathtaking courses in political theory with Judith Shklar, Louis Hartz, Harvey Mansfield, and Michael Walzer. Walzer, despite his profound disapproval of my decision to study policy analysis rather than becoming a theorist, gave me my first opportunity to teach, as a section leader for his introductory lecture course on modern political thought. The experience gave me a taste for teaching that has never left me; Walzer’s lectures, and Mansfield’s, set a standard I have never been able to match.

After finishing the master’s degree, I continued my postgraduate education in three positions before landing at the Justice Department. Les Aspin of Wisconsin hired me as a legislative assistant on Capitol Hill; I learned much about both policy and politics from him and from my dazzling colleagues there, including Bill Broydrick, Gretchen Koitz, and Ed Miller. That was not my first Capitol Hill experience; Parren Mitchell of Maryland had introduced me to congressional life one summer during college. That experience followed an exciting shoestring election campaign in which I wound up as the press secretary, and in the process met Tom Edsall, who taught me a great deal both about politics and about the practical business of reporting and who has been a good friend ever since. I doubt I earned my keep that summer, but I learned much, with George Minor and Elinor Bacon trying their best to keep me out of trouble and Sandy Rosenberg helping me make trouble.

My next job after Aspin's office was at Polaroid Corporation, where I was special assistant to Edwin Land, with Carl Kaysen—acting on Francis Bator's recommendation—as my sponsor and mentor. Working for Land was a liberal education in itself; Kaysen helped me interpret what I was experiencing, which was not at all the profit-maximizing firm of the economics textbooks. Bill McCune, Mac Booth, and Shelly Buckler all expanded my mind in various ways.

From Polaroid I went to the Boston job mentioned earlier, running the policy and management shop in the Mayor's Office of Management and Budget. I worked for Jerry Mechling, and with Zack Tumin, Ronnie Levin, Jack Lew, Jim Young, and Bo Holland. That was my first experience of management, and my colleagues did their level best to make up for my many limitations. Joe Jordan, then Boston's police commissioner, taught me the rudiments of police management and introduced me both to his two star lieutenants, Al Sweeney and Bill Bratton, and to his civilian adviser, Bob Wasserman, who were helping to give birth to what was later called "community policing."

After four years at the Justice Department, I returned to Harvard to complete my long-deferred dissertation. Mark Moore was my thesis chair, and Tom Schelling, Phil Heymann, John Kaplan, and Peter Schuck also served on the committee. Phil also gave me an office at the Harvard Law School Center for Criminal Justice, where I encountered Donald Black, whose *Behavior of Law* profoundly shaped my thinking. Lesley Friedman, then an undergraduate, provided invaluable help—bordering on collaboration—in the painful process of writing down my thoughts in thesis form and then turning that thesis into a book.

About then I had the idea of starting a firm to sell policy analysis as a consulting service. BOTEK Analysis Corporation was a professional, though not a commercial, success, and I remain grateful to my long-suffering colleagues in that enterprise, including Jenny Rudolph, David Cavanagh, David Boyum, Richard Mockler, Andrew Chalsma, Ann-Marie Rocheleau, Kerry Smith, Sarah Chayes, Doug Wilson, and the unforgettable Fred Hayes. Kevin Burke, then district attorney of Essex County in Massachusetts, gave us our first assignment, an evaluation of the Lynn Drug Task Force, which started me thinking about the dynamics of enforcement crackdowns. Subsequent clients included the Office of National Drug Control Policy, where John Carnevale and Ross Deck gave us great scope to do sometimes unconventional thinking, and the National



Institute of Justice, where Bud Gropper, Ed Zedlewski, Thom Feucht, Lois Mock, and Jeremy Travis provided intellectual as well as financial support.

My first teaching job after graduate school was a one-year fill-in assignment at the public policy program of the University of Rochester. The program was housed in Rochester's political science department, then the epicenter of the rational choice earthquake that shook American political science to its foundations. Bruce Bueno de Mesquita was our chair, and I learned much from my colleagues, including William Riker, Richard Fenno, David Weimer, Bruce Jacobs, and Chuck Phelps. (Alas, part of what I think I learned was that, except in the hands of a genius such as Riker, "rat-choice" was mostly a dead end.)

From Rochester I returned to the Kennedy School, where the efforts of Tom Schelling and Mark Moore secured me a teaching post and a research affiliation with the program in criminal justice policy and management. There I met, collaborated with, and learned from Frank Hartmann, George Kelling, Bill Spelman, Anthony Braga, Susan Michaelson, and David Kennedy. Among my teaching colleagues, I benefited especially from Glenn Loury, Steve Kelman, Ron Ferguson, Arthur Applbaum, Anne Piehl, Fred Schauer, Al Carnesale, Joe Kalt, Dennis Thompson, and Mike O'Hare. The participants in the executive sessions on community policing and on prosecution, including Lee Brown, Steve Goldsmith, John O'Hair, Dennis Nowicki, Ed Flynn, and Norm Maleng, were generous in sharing their knowledge of the nuts and bolts of the criminal-justice system. While at Harvard, I had the pleasure of serving on the MIT thesis committee of Jonathan Caulkins and of starting Rick Doblin on his way toward a doctorate, and was assisted by a succession of dazzling undergraduates, especially Aaron Saiger and Rebecca Young.

The interdisciplinary project on drugs and drug policy of the university-wide program on Mind, Brain, and Behavior, brought me into contact with such luminaries as Steve Hyman, Gene Heyman, and George Vailant, and with younger research workers, including Will Brownsberger and Deborah Harlow. Jim Harpel was not only a generous donor but a participant in our deliberations.

My next—and current—teaching assignment took me to the then-new public policy department in the equally new UCLA School of Public Affairs, where I have experienced the pleasure of helping to build an

academic enterprise and of working with people genuinely interested in sharing ideas and happy to see me succeed. Archie Kleingartner, our founding dean, and his successors Barbara Nelson and Frank Gilliam, as well as academic dean Fernando Torres-Gil, have been generous in supporting our department and my work in particular, as have chancellors Chuck Young, Al Carnesale, and Gene Block. On the administrative side, VC Powe, Mari Hatta, Karen Kovacs North, Vincent Riggs, Jim Tranquada, and Bill Parent have gone above and beyond the call of duty to advance my work. Tom Plate was more responsible than anyone else for persuading me to make the move to UCLA, and he has been a firm friend ever since.

Karen Friedman has been trying valiantly for more than a decade now to keep all of my balls in the air, and has done so with astounding competence, cheerfulness, and patience.

I am inordinately proud of my current and former colleagues in the public policy department: Dan Mitchell, Arleen Leibowitz, Mark Peterson, Michael Stoll, Sandy Jacoby, Eric Monkkonen, Allen Scott, Meredith Phillips, J. R. DeShazo, Andy Sabl, Amy Zegart, Eric Patashnik, Tom Kane, Sarah Reber, Matt Kahn, Aaron Panofsky, Joel Aberbach, Michael Dukakis, Joel Handler, Sandy Jacoby, Lynne Zucker, and Rob Jensen. And the departmental staff, including Ken Roehrs, Maciek Kolodziejczak, Kyna Williams, and Ronke Epps, has done more with less than seemed humanly possible. Among colleagues from the social welfare and urban planning departments I would be remiss not to mention Rob Schilling, Jorja Leap, Stuart Kirk, Don Shoup, Ted Benjamin, Paul Ong, Joe Nunn, and Zeke Hasenfeld.

UCLA students, including Phil Carter, Myles Collins, Thomas Tran, Amy Hu, Terri Patchen, Paul Fishbein, Alex Sange, Hasmik Badalian, Celeste Drake, and Jack Clift, have assisted and inspired me in various ways.

In the spring of 2000, I was diagnosed with advanced-stage Hodgkins disease. Without treatment by Christos Emmanouilides and the advice of Gary Emmett and Alan Rabson, I might well not have survived to write this book. Both my chances of recovery and my spirits were boosted by an astounding outpouring of love and support. Although I mention specifically the help of Lowry Heussler, Sally Satel, Leonard Pickard, Roy McKinney, Mitch Marcus, Barb Maynard, Tracey Trautman, and Al

Carnesale, that is not to slight the help of many, many others. My department and my school made every possible accommodation when I was too sick to teach.

The great and pleasant surprise of being at UCLA has been the extent to which collaboration across departmental lines is a way of life. Due in large part to following the lead of Jack Hirshleifer, who seemed to be connected to most of the centers of intellectual vitality at UCLA, I have found stimulation in a wide variety of settings:

- the seminar on political economy, including Harold Demsetz, Lynn Stout, and Al Harberger;
- the program on awe-inspiring experiences, funded by the Metanexus Institute, and including Susanne Lohmann and Bob Jesse;
- the behavior, evolution, and culture group, including Dwight Read, Dan Fessler, Rob Boyd, Clark Barrett, Jeff Brantingham, Alan Fiske, Martie Haselton, Joan Silk, and Francis Steen;
- the project on complex human systems, of which John Bragin has been the entrepreneur;
- the Marschak colloquium, under the direction of Mike Intriligator, through which I met, and learned from, such giants as Colin Camerer and George Loewenstein;
- the Integrated Substance Abuse Programs, including Doug Anglin, Rick Rawson, Walter Ling, Yih-ing Hser, Tom Ungerleiter, and Doug Longshore;
- the faculty Tanakh study group (now named in Jack Hirshleifer's memory), a model of truly interdisciplinary activity, starring Chaim Seidler-Feller, Steve Yeazell, Joe Ostroy, Carole Goldberg, Arthur Cohen, Arthur Rosett, Deborah Kennel, Gershon Hepner, César Ayala, Max Novak, Marvin Smotrich, Harry Jerison, Shelley Salamensky, David Rapoport, and Monica Osborne; and
- the seminar series of the philosophy department, where Seanna Shiffrin, Barbara Herman, David Kaplan, Joseph Almog, and Calvin Normore have made me welcome and where speakers including Jerry Cohen and Tim Scanlon have delighted me.

In addition to the visible institutions that have housed me, I have been a member of three "invisible colleges," the informal networks that carry

on the enterprise of building knowledge through journals, conferences, and exchanges of unpublished work. My three “colleges” are the groups that work on drugs and drug policy, crime and crime policy, and public policy and management generally. Unlike the invisible colleges in purely scientific endeavors, these groups include practitioners and journalists as well as scholars.

Among those engaged in research and practice around the drug issue, I have learned from Jerry Jaffe, Bob DuPont, Norman Zinberg, Bob Schuster, David Courtwright, David Musto, Harriet de Wit, Eric Wish, Rob MacCoun, Alison Ritter, Robin Room, John Strang, Marsha Rosenbaum, Michael Farrell, Harold Pollack, Kathleen Kennedy Townsend, Beau Kilmer, Steve Alm, Ann Shulgin, Sasha Shulgin, Maia Szalavitz, Roland Griffiths, Bill Richards, Rick Doblin, Keith Humphreys, Rob Bonner, Herb Kleber, Amanda Fielding, Alexandra Hill, Ana Maria Salazar, Francisco Thoumi, Rosalie Pacula, Adele Harrell, Karyn Model, Mike Isikoff, Peter Kerr, Aric Press, Mark Schoofs, Michael Massing, Steve Morral, Andrew Golub, Karst Bestemann, John Walsh, Chris-Ellyn Johanson, Bob Millman, Herb Okun, John Pinney, Martha Gagne, Mitch Rosenthal, Lew Seiden, and Alan Trachtenberg. The International Society for the Study of Drug Policy represents one visible face of this community of knowledge-seekers.

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Ever since Eugene Volokh suggested that I try my hand at a new literary form called “blogging,” I have been a devotee. James Wimberley, Jonathan Zasloff, Jonathan Kulick, Robert Frank, as well as some others mentioned above, have contributed to *The Reality-Based Community*; Eugene, Andrew Sullivan, Kevin Drum, Ezra Klein, John Amato, Megan

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Some of my heaviest obligations do not fit into any of the categories above: to Newell Mack, Siena Kirwin, Ram Dass, Clare Frank, Mary Ellen Lawrence, Jordan Peterson, Cecily Rayburn, François Lalonde, Alex Desjardins, Margaret Desjardins, David Nielsen, Hope Nielsen, Jim Fadiman, Missy Craig, Alice Schelling, Inna Naletova, Mary Edsall, Robin Krauze, Ruth Albert, David Albert, Beth Albert, Dana Albert, Hilary Albert, Jane and Brett Summers, and last, but never least, my sister Kelly.

I have run up additional debts in the process of writing this book. Financial support came from the National Institute of Justice, under grants OJP-2000-173M and 2001-IJ-CX-0033; Thom Feucht, Christine Crossman, and Marlene Beckman served as admirably nondirective project officers. Of course that sponsorship does not constitute endorsement of the ideas expressed here. UCLA provided additional support in the form of sabbatical leave, and the Urban Institute made me welcome as a visiting scholar for a year. The School of Public Policy at the University of Maryland honored me with the first Thomas C. Schelling visiting professorship.

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Angela Hawken read an entire early draft and provided both much-needed encouragement and several important corrections. David Hsia, Andrew Holmer, Katherine Moore, Nisha Mehling, Kenny Casebere, Greg Midgette, and Julie Quinn also read and commented on the manuscript in whole or part; Rob MacCoun, Rick Tuttle, Kevin Barry, Keith Humphrey, and a person currently behind bars whose cellmate might not approve provided especially thorough and helpful comments. At the invitation of Glenn Loury and with financial support from the Criminal Justice Policy Foundation, an all-star team consisting of Glenn himself, Phil Heymann, Jonathan Caulkins, Will Brownsberger, Phil Cook, David Boyum, and Corey Brettschneider assembled at Brown University for two days of unrestrained criticism. That process led me to reorganize

the volume, rewrite substantial parts of it, and add the chapter on what might go wrong.

At Princeton University Press, Chuck Myers as the acquiring editor and Terri O'Prey as the production editor have been wonderfully supportive and tolerant; Jennifer Malloy performed admirably as the copy-editor; and Richard Comfort prepared an exemplary index.

I hope that this volume will show those mentioned above, and those not mentioned due to my faulty memory, that I have not entirely wasted their gifts.

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