Kenworthey Jennifer Bilz

Contact Information

Primary Phone:	(773) 234-4402
Business Fax:	(501) 632-4801
Business address:	University of Illinois College of Law, 504 E. Pennsylvania Ave, Champaign, IL 61820
E-mail address (work):	kbilz@illinois.edu
Email address (personal):	kenworthey@gmail.com

Education

Princeton University
- Degrees: Ph.D.; M.A.
- Field: Experimental social psychology
- Advisor: John M. Darley

University of Chicago—The Law School
- Degree: J.D. with honors

Harvard College
- Degree: A.B. with honors
- Concentration: Government

Work Experience

- *Professor of Law*, University of Illinois College of Law (2011-present)
- *Visiting Professor of Law*, Duke University Law School (Spring 2016)
- *Faculty in Residence*, Stanford Law School (Spring 2011)
- *Visiting Professor of Law*, Illinois College of Law (fall 2010)
- *Associate Professor of Law*, Northwestern University School of Law (2009-2011)
- *Assistant Professor of Law*, Northwestern University School of Law (2006-2009)
- *Visiting Assistant Professor of Law*, Northwestern University School of Law (2004-2006)
- *Teaching Preceptor*, Princeton University (2000-2003)
- *Clerk*, Judge Frank Easterbrook, 7th Circuit Court of Appeals (1998-1999)

Referee Work:

- Journals:
  Criminology, Group Processes and Intergroup Relations, Journal of Applied Social Psychology, Journal of Empirical Legal Studies, Journal of Law & Economics, Journal of Legal Studies, Jurimetrics, Law and Human Behavior, Law and Social Inquiry (member of editorial board, Jan. 2013-2015), Law and Society Review, Toronto Law Journal

- Organizations:
  Conference on Empirical Legal Studies, National Science Foundation (NSF)

- Presses:
  NYU Press, University of Chicago Press

Committee and Other Service Work:

- University Faculty Senate (2014-2016)
- Grants Subcommittee of the Law School Admissions Council (2013-present)
- Hiring Committee Member (2012-2013), Chair (2014-2015)
- Fellowships and VAP Committee Member (2013-2014), Chair (Fall 2015)
- Faculty Scholarship Conference Chair (2011-2012)
- Admissions Committee Member (2011-2012, 2013-2014)
- Rules Committee Member (2010-2011)
- Clerkship Committee Member (2006-2010, 2013-2014), Chair 2007-2008
- JD/PhD Committee (2004-2006)

Classes Taught

- Criminal Law
- Evidence
- Psychology & Law
- Negotiations
- Statutory Interpretation (short course)
- Theories of Crime and Punishment—seminar
- Literary and Psychological Analysis of Law—seminar
- 20th Century American Legal Thought—seminar
- Law, Psychology & Morality—colloquium

Research Interests

I focus on how social psychological processes can inform the study of law. I am especially interested in how legal institutions, rules and practices affect perceptions of legitimacy and morality, which might in turn affect behavior. I am also interested in understanding the ways that social norms, social meaning and social influence can minimize, magnify, or even displace legal regulation. I mine most of my examples from the field of criminal law and evidence.

Publications (all available on BePress and SSRN)

- Kenworthey Bilz, *Testing the Expressive Theory of Punishment* (forthcoming at J. EMP. LEG. STUDIES, 2016)

  This article presents empirical support for the argument that punishment of a wrongdoer affects the social standing of the victim. This argument is most closely associated with the expressive theory of punishment, especially as articulated by the moral philosopher Jean Hampton (Murphy & Hampton, 1988; Hampton, 1992). In three experiments I show support for the basic point of Hampton's expressive theory, that punishing a criminal offender does increase the victim's social standing in the community, and failing to punish diminishes it. I show this effect across three very different types of crime: rape, credit theft, and battery. I also test some logical extensions of Hampton's expressive theory of punishment. For instance, if victims gain or lose social standing as a result of punishing, so—inversely—should offenders. In addition, different punishers should affect different sources of social standing (such as ingroup versus outgroup standing). Finally, the effects on perceived social standing should be felt not just by victims, but by third-party observers as well. I find support for these subsidiary predictions.

- Kenworthey Bilz & Janice Nadler, *The Regulation of Moral Attitudes* (Oxford Handbook of Behavioral Economics, 2013).

  Classically, the ambition of legal regulation is to change behaviors. Legal regulation can accomplish its goals directly, through fear of sanctions or desire for rewards. But it can also do so indirectly—and often more cheaply and effectively—by changing attitudes about desired or undesired behaviors. Though moral attitude change is promising, it is also perilous. In this chapter, we review the ways in which law aims to change moral attitudes. We also review the ways in which it can go awry, and offer predictions about when attempts at moral attitude change will succeed, and when it will fail.

- Kenworthey Bilz, *Dirty Hands or Deterrence? An Experimental Examination of the Exclusionary Rule*, 9 J. EMP. LEG. STUDIES 149 (2012).

  Historically, the Supreme Court has offered two justifications for the Exclusionary Rule: one, it protects the integrity of the judicial system from "dirty" evidence, and two, it deters illegal searches by the police. The former justification has mostly fallen out of favor. Today, decisions turn on whether the Rule would, in fact, deter illegal searches in a given class of cases. As such, most empirical studies about the Rule have focused on whether or not the Rule leads to fewer police searches (illegal or otherwise), or to fewer criminal convictions. This study takes a completely different approach, assessing support for the two competing justifications for the Rule. Two experiments show support for the integrity justification for the Rule, but not for the deterrence justification. Specifically, when deciding whether to exclude evidence found during a search conducted without probable cause, participants are sensitive to a police officer's motive (clean vs. dirty), but not to alternative means of punishing those officers (civil suit, citizen-police review board). A third experiment examines the integrity rationale in more detail. Participants who were obligated to use dirty evidence at trial disproportionately selected a bottle of Purell over a pen as a thank you gift, versus participants who were able to exclude that evidence. In other words, the Exclusionary Rule seems to protect the courts from being metaphorically tainted. These findings are important given that the Rule is not constitutionally mandated. The Supreme Court has held that the Rule can be ignored to the extent that it (a) does not achieve its goals and (b) undermines the perceived legitimacy of the courts by the public. Given this, the Court needs to be right about what those goals are, and whether or not its current deterrence-based jurisprudence enhances legitimacy. These experiments suggest the possibility that reinvigorating the integrity justification would serve the ends of the Rule better than current doctrine does.

- Kenworthey Bilz, *We Don't Want to Hear It: Psychology, Literature and the Narrative Model of Judging.* 2010 ILLINOIS L. REV. 429 (2010).

  The "narrative" model of legal judging argues that legal decision makers both do and should render judgments by assembling sensible stories out of evidence (as opposed to using Bayesian-type, linear models). This model is usually understood to demand that before one may judge a situation, one must give the parties the opportunity to tell their story in a manner that invites, or at least allows, empathy from the judger. This Article refers to this as the "inclusionary approach" to the narrative model of judging. Using psychological research in emotions and perspective taking and the more intuitive techniques of literary criticism, this Article challenges the inclusionary narrative approach, arguing that, in practice, the law gives equal weight to an "exclusionary approach." That is, in order to render sound, legitimate legal judgments, the law deliberately limits the sort of stories parties are allowed to tell—and does so on moral grounds, not, or at least not only, to improve the "accuracy" of the legal judgment. That is, as both a descriptive and normative matter, impoverished narratives can be better than enriched ones in leading decision

makers to morally acceptable legal judgments..

- Kenworthey Bilz, *Defending the (Mis)use of Statistics in Law: Comment*. 166 J. INSTITUTIONAL & THEORETICAL ECON. 194 (2010).

  In this Comment, I argue that the goals and craft norms of law differ so sharply from those of social science that it is a mistake to hold the two disciplines to the same set of standards for the use and interpretation of statistical evidence. First, we can lose more social value when policy makers are too cautious with empirical research than when they are too free. Second, the craft norms of law and policy making are capable of dealing with the misuses that do occur.

- Kenworthey Bilz, *Self-Incrimination Doctrine is Dead; Long Live Self-Incrimination Doctrine: Confessions, Scientific Evidence, and the Anxieties of the Liberal State*. 30 CARDOZO L. REV. 807 (2008).

  Confessions have historically been the most compelling evidence the state could offer at a criminal trial. However, improvements in forensic technologies have led to increased use of scientific evidence, such as DNA typing, pattern-recognition software, location tracking devices, and the like, with very impressive rates of reliability. The reliability of these methods has become so impressive, in fact, that it should lead to a reduced reliance on confessions (and other nonscientific evidence, such as eyewitness identifications) in criminal prosecutions. However, this does not mean that the doctrine of self-incrimination, which regulates the acquisition and use of confessions, will no longer be relevant. The same anxieties that animated the need for a doctrine limiting and regulating confessions, should now shape the development of the very evidence that replaces them. As such, while scientific evidence doctrine is fairly clear and straightforward today (with an almost exclusive focus on "reliability"), it is destined to become as complicated and indeterminate as self-incrimination doctrine ever was. This process (of first, the replacement of confessions with scientific evidence, and second, of the development of a doctrine for scientific evidence that aims to protect the same values that self-incrimination doctrine protects), while still in its infancy, has already begun.

- Kenworthey Bilz & Janice Nadler, *Law, Psychology, and Morality, in* PSYCHOLOGY OF LEARNING AND MOTIVATION, VOL. 50 (D. Medin, L. Skitka, D. Bartels, & C. Bauman, eds.) (2008).

  In a democratic society, law is an important means to express, manipulate, and enforce moral codes. Demonstrating empirically that law can achieve moral goals is difficult. Nevertheless, public interest groups spend considerable energy and resources to change the law with the goal of changing not only morally-laden behaviors, but also morally-laden cognitions and emotions. Additionally, even when there is little reason to believe that a change in law will lead to changes in behavior or attitudes, groups see the law as a form of moral capital that they wish to own, to make a statement about society. Examples include gay sodomy laws, abortion laws, and Prohibition. In this

Chapter, we explore the possible mechanisms by which law can influence attitudes and behavior. To this end, we consider informational and group influence of law on attitudes, as well as the effects of salience, coordination, and social meaning on behavior, and the behavioral backlash that can result from a mismatch between law and community attitudes. Finally, we describe two lines of psychological research—symbolic politics and group identity—that can help explain how people use the law, or the legal system, to effect expressive goals.

- Kenworthey Bilz, *The Puzzle of Delegated Revenge*. 87 B.U. L. REV. 1059-1112 (2007).

  Why should people ever be satisfied when a third party punishes in their name, as opposed to having the opportunity to exact revenge personally? When theories of delegated revenge are offered at all, they explain why a well-ordered society needs centralized punishment as a matter of practicality. But this doesn't adequately explain why they actually the public actually prefers *it, and why they accept some forms of delegated agents more than others. Moreover, these theories do not have a good explanation for why or when delegated revenge will fail to satisfy victims, nor when the state will indulge this preference, as it often does. In this article, I offer a novel explanation for the phenomenon of delegated revenge. Namely, I argue that victims regard punishment as an important device for restoring the losses to their self-worth and social status they suffered as a direct result of their victimization. This approach not only explains why victims delegate their revenge, but also predicts when they won't. Finally, I use this theory to propose ways we can reestablish the government's monopoly on punishment when individuals or even whole communities balk at notion of the state as an appropriate agent of their revenge.*

- Kenworthey Bilz, *The Fall of the Confession Era.* 96 J. CRIM. L. & CRIMINOLOGY 367-384 (2005).

  This book review-essay of Solan & Tiersma's SPEAKING OF CRIME argues that with the advent of new technologies such as improvements in DNA identification, fMRI 'lie detector' tests, and the like, courts will rely less and less on confessions altogether, rendering obsolete much of the doctrine that currently surrounds linguistic interpretation (and other markers) of consent and coercion.

- Kenworthey Bilz & John M. Darley, *What's Wrong with Harmless Theories of Punishment*. 79 CHICAGO-KENT L. REV. 1215-1252 (2004).

  This paper argues that both consequentialist and retributivist punishment philosophies rest on similar analyses of the social value of punishable behavior; that is, they both rest on definitions of what counts as a "harm" of crime. The different outcomes the different philosophies produce stem from competing conclusions about which of those harms are empirically valid or morally legitimate. Once we have spelled out what counts as the harms of crime, however, retributivist and consequentialist philosophies add little to the equation. Alternative punishment regimes at their best are up front about offering a distinctive account of the harms of crime. When such regimes instead try to fit themselves into the mold of traditional

punishment philosophies, their relative advantage is lost. We argue that restorative justice is at risk of going this route.

- John M. Darley, Tom Tyler, & Kenworthey Bilz. *Enacting Justice: The Interplay of Individual and Institutional Perspectives, in* THE SAGE HANDBOOK OF SOCIAL PSYCHOLOGY (Michael Hogg and Joel Cooper, eds., 2003).

  This chapter unites two distinct literatures: one examines the degree to which laws reflect community sensibilities, and the other argues the importance of procedural justice to people's satisfaction with legal institutions. We argue that both of these issues affect institutional legitimacy, and we discuss how institutions lose, gain and "spend" this legitimacy, and to what effect.

Works in Progress, drafts available on request

- Kenworthey Bilz & Wen Bu, *How Dare You: The Effect of Offender Status and Cognitive Reflection on Perceived Wrongdoing*

  In two laboratory experiments, we test the simple hypothesis that people immediately and "hotly" react more negatively to low status offenders than high status offenders. We also test the more complex hypothesis that cognitive reflection is more likely to be spent on low status than high status offenders. This means that additional information about the cause of wrongdoing is more likely to affect how people perceive low status than high status offenders—which can either be to the benefit or the detriment of a low status offender. Consistent with prior research, we find consistent support for the finding that immediate, "hot" reactions to low status offenders are more negative than to high status offenders. Evidence of the effect of reflection and cognitive processing is more mixed, but we do find substantial evidence that indeed, people do reflect on low status offenders more than high status offenders, and when they receive mitigating/aggravating information about an offense, it is more likely to help/hurt the low status offender than the high status one.

- Kenworthey Bilz & Jeffrey Rachlinkski, *A New Look at the Endowment Effect and Why It Matters to the Law*

  The endowment effect is one of the most robust findings in social psychology, with literally hundreds of empirical articles replicating and unpacking the phenomenon, and only a small handful failing to find it. And yet there is a persistent, and possibly growing, set of scholars who insist the phenomenon does not exist. In this article, we explain and defend the persistence of belief in the endowment effect and lawyer's use of it, and end by using the history of the endowment effect in the academy to make a

larger point about the legitimately different outlooks and goals of pure social science versus legal policy.

- Kenworthey Bilz, *Crime, Accidents, and Social Standing: The Psychological Experience of Victimization.*

  Intuitively, losses caused by crimes and those caused by accidents are psychologically different—but how? In three experiments, this article tests the hypothesis that crime is insulting and humiliating in a way that accidents are not. In the first experiment, participants described a time they were a victim of either an accident or a crime. Both explicit dependent measures and content analysis of their responses were consistent with the hypothesis that crimes are more insulting than accidents. This result held true after controlling for differing levels of severity/magnitude of losses across the two types of events, for differing expectations about the likelihood of being compensated, and even for some differing mindsets of criminal versus accidental harmdoers (specifically, how sorry the victim thinks the harmdoer is, or by whether the victim was chosen opportunistically versus maliciously). The second experiment replicated the basic findings of the first, using scenarios of crimes and accidents in order to more tightly control the features of the events, especially the type and magnitude of loss. The final experiment replicated the second experiment, but included a dependent measure to assess cognitive processing (time to respond) across the two types of events.

- Kenworthey Bilz & Andrew Gold, *An Experimental Examination of Civil Recourse Theory.*

  This paper presents a test of civil recourse theory. Civil recourse theory supplies a descriptive explanation for the structure of private law remedies, and its advocates have argued that there are two defining features of private law remedies that distinguish them from self-help solutions and criminal cases. First, the state acts to resolve disputes, deploying public resources and tools for the resolution of disputes—specifically, the civil court system. Second, injured parties themselves must act to resolve disputes, by initiating and participating in law suits. Civil recourse theorists further argue that these elements are critical, as each serves an important, even moral, function. We supply empirical support, grounded in psychological research in procedural justice and emotions, for their claims. Specifically, we present two experiments using scenario studies of two different torts, where we hold constant the case outcome and the effort the injured party must expend to resolve the case. We vary whether the injured party acts alone, the state acts alone, or the injured party acts in concert with the state to resolve the case. We show that participants get greater satisfaction out of case resolutions when they take an active part, as opposed to when the state acts unilaterally, and think justice is served best of all when they act in concert with the state, rather than being left on their own to solve. Moreover, we show that the different emotional responses to the different forms of case resolution

(pride, shame) could be explained by the effect that different case resolutions have on perceptions of the injured party's efficacy and social standing.

Miscellaneous Publications

- Kenworthey Bilz & Janice Nadler, *It's Not Their Cheating Hearts* (op-ed), CHI. TRIB., Dec. 14, 2008.
  "…Just as we're more tempted to litter when the street already seems dirty, frequent and visible corruption investigations facilitate the belief that most politicians have their hand in the till, which can make other politicians more likely to engage in fraud themselves. … So ferret [corruption] out and punish it, sure, but the most promising reforms will make corruption a lot more difficult to commit in the first place."

- Kenworthey Bilz & Janice Nadler, *Serving Up a Bailout With a Side of Justice* (op-ed), CHI. TRIB., Oct. 3, 2008.
  "…Americans are deeply outraged over the events in the financial markets. They see the current credit crisis, rightly or wrongly, not as an unfortunate consequence of free markets, or as a failure of regulation, but as the product of a greedy and reckless disregard for the economic well-being of the rest of the country. In other words, the crisis is perceived as the product of wrongdoing. And wrongdoing must be punished."

Current Projects

- Kenworthey Bilz & Alexis Dyschant, *The Effect of Victim Participation in Criminal Prosecution on Social Standing and Perceptions of Justice*

  This empirical project uses scenarios of criminal wrongdoing to test whether a victim's right to participate in the prosecution of her offender affects victim satisfaction, social standing and perceptions of justice. We also manipulate whether victims' desires to prosecute or not prosecute are respected, and again see whether it affects satisfaction, social standing, and justice.