

Course Outline

COURSE:	LAWS 3305 C/V – Crime and State in History
TERM:	Winter 2007-08
PREREQUISITES:	Third year standing
CLASS:	Day & Time: Tuesday, 6:00-9:00 pm Room: 624 SA (Southam Hall)
BROADCAST:	Day & Time: Wednesday, 2:30-5:00 pm
INSTRUCTOR: (CONTRACT)	Christopher McNaught
CONTACT:	Office Hrs: TBA Telephone: 613-946-9993 during office hours Email: Chris.mcnaught@justice.qc.ca

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is March 14, 2008 for April examinations. For further information, please see, http://www.carleton.ca/pmc/students/accom_policy.html

This course explores dramatic, historical transformations in the perception and definition of crime and the administration of criminal law. Popular assumptions in common law countries about the evolution of law enforcement, prosecutions and the rights of the accused, the role of counsel, judges and juries in public trials, as well as punishment, are broadly examined.

The course approach aims at setting criminal law evolution in its organic, socio-political context—nothing happens in a vacuum—and moves from the arrival of the Normans in England to the early nineteenth-century, into the adaption of the English criminal law system to Canada [French /aboriginal Canada, opening of the west, and the NWMP], and thereafter, into selected issues in law, crime and Canadian society, such as the historical treatment of women under criminal law, the age of ‘terrorism’ and hot-button issues in criminal law.

COURSE ORGANIZATION

Lecture and class discussions. Students will be expected to have completed the readings for a particular week's topic as specified in the Schedule set out below.

READING MATERIALS

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Purchase of the following sourcebook/course manual is required. It contains all assigned readings and is available in the university bookstore:

B. Wright, *Crime and State in History*, (Carleton Coursepack)

Suggested optional texts (not required readings or purchases):

- C. Emsley, *Crime and Society in England, 1750 - 1900* (London: Longmans, 1987)
- J. Phillips, T. Loo, S. Lewthwaite, eds., *Essays in the History of Canadian Law, Volume 5: Crime and Criminal Justice* (Toronto: University of Toronto Press, 1994)

A selected bibliography accompanies this course outline. It lists a selection of books and articles in criminal law history and may be useful to consult for essay research. Further books and articles will be suggested in the

course of the lectures.

COURSE EVALUATION

- a) **Research Essay** **30%**
 (12-15 pages, topics as indicated following suggested bibliography below. **Essays due: April 4**
 (mailed to or dropped off at the Law Department office, C473, Loeb Building)
- b) **Final Examination** **70%**
 (3 hour closed book, scheduled during University Exam Period),

IMPORTANT NOTES

Failure to complete any portion of the required evaluation will result in an F grade. Exams are not returned but may be reviewed with the instructor during office hours. Essays must be typed or word-processed and submitted in hard copy. Handwritten papers, computer files or email attachments will not be accepted. Please retain a photocopy or a secure file copy of the submitted essay. The Department of Law assumes no responsibility for essays or assignments which are submitted in an irregular manner. Essays may be picked up at the Law Department during office hours or returned by post (if a **stamped self-addressed envelope** is included).

Assignments must be original. Prior approval of the instructor must be obtained if it is intended to submit work which has previously or concurrently been submitted for credit in this or another course. Please note carefully University regulations concerning plagiarism. The Department of Law also encourages the use of neutral, clear and scholarly language, free of stereotypical, pejorative, and derogatory terms in all submitted course work.

TOPICS AND READINGS

All required readings noted in the schedule below may be found in the 3305 Coursepack. The full references for the optional readings are found in the Bibliography below and students are advised to consult these readings if writing an essay on a related topic. The schedule below may be dealt with in different sequence.

TOPICS AND READINGS SCHEDULE

- Lecture 1** **Introduction** (Conceptualizing Legal History and Origins of Canada's System)
 Wright, "Historical Perspectives on Criminal Law"; "Legal Historical Research Methods"; "Early Developments..."; & "Overview..."
- Lecture 2** **The Roman legacy, what William found** after Hastings by way of local 'criminal law'
Optional: Bellamy, *The English Criminal Trial, 1300-1600*
 Pollack and Maitland, Crime and Tort in History of English Law Vol. 2
- Lecture 3.** **Eighteenth Century England**
Please read: Hay, "Property, Authority and the Criminal Law"
 Langbein, "Albion's Fatal Flaws"
Optional: Thompson, *Whigs and Hunters: The Origins of the Black Act*,
 Beattie, *Crime and the Courts in England, 1660 - 1800* chapters 3-5
 Henry Fielding (himself a London magistrate), the novel, *Tom Jones* (1749)

Lecture 4. Nineteenth Century England: The Great Transformation - Reform or More Efficient Repression?

Please read: McGowan, "The Images of Justice and Reform in the Criminal Law in Early Nineteenth Century England"

Optional: Emsley, chapters 2-4
[societal/literary contexts] Dickens' *Oliver Twist*, *David Copperfield*, *Great Expectations*

Lecture 5. The Reception of English Criminal Law in Canada

Please Read: Glavin, "The Nisgaa Treaty: Death of an Ideology"
Hay, "The Meanings of the Criminal Law in Quebec, 1764-1774"
Parker, "The Origins of the Canadian Criminal Code"

Optional: Harring, *White Man's Law: Native People in 19th century Canadian Jurisprudence*

Part 2 - The Development of Criminal Law Institutions and Administration:**Lecture 6. Law Enforcement, the Rise of Police and Public Prosecutions**

Please read: Storch, "The Plague of Blue Locusts"
Wright, "Law Enforcement and the Administration of Justice in Upper Canada"
MacLeod, "Canadianizing the West"
Hay, "Controlling the English Prosecutor"

Optional: Emsley, chapters 8 & 7
Radzinowicz, *A History of English Criminal Law* Vol. 4
Kyte-Senior, "The Influence of the British Garrison on the Development of the Montreal Police, 1832 - 53" in MacLeod (ed), *Lawful Authority 1873-1905*
McLeod, *The North West Mounted Police and Law Enforcement, 1873-1905*
David Cruise and Alison Griffiths, *The Great Adventure: How the Mounties Conquered the West* (Toronto: Viking, 1996)

Lecture 7. The Criminal Trial and Legal Personnel

Langbein, "The Criminal Trial Before Lawyers"
Beattie, "The Scales of Justice: Defence Counsel and the English Criminal Trial in the 18th and 19th Centuries"
Thompson, "Subduing the Jury"

Optional: Beattie, *Crime and the Courts in England* (1986) chapters 6, 7
Green, *Verdict According to Conscience* (1985)

Lecture 8. Punishment

Please read: Ignatieff, "State, Civil Society, and Total Institutions: A Critique of Recent Social History of Punishment"
Taylor, "The Kingston, Ontario Penitentiary and Moral Architecture"

Optional: Beattie, *Crime and the Courts in England* chapters 8-10
Beattie, *Attitudes toward Crime and Punishment in Canada, 1830-50*
Oliver, *Terror to Evil-Doers: Prisons and Punishment in 19th century Ontario*

Part 3 - Selected Issues in Canadian Criminal Law History**Lecture 9 Conquest, the Experience of Native Peoples and Minorities**

Please read: Loo, *The Road from Bute Inlet*
Schuh, *Justice on the Northern Frontier: Early Murder Trials of Native Accused*

Optional: Harring, *White Man's Law: Native People in 19th century Canadian Jurisprudence*
Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-50*

Lecture 10 The Experiences of Women

Please read: Gavigan, "Petit Treason in 18th Century England"
Backhouse, "Sayer Street Outrage," *Petticoats and Prejudice* extracts,
"Prosecution of Abortions under Canadian Law"

Optional: Greenwood and Boissery, *Uncertain Justice: Women and Capital Punishment, 1754-1953*
Strange, "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930"
Oliver, "To Govern by Kindness: The First Two Decades of the Mercer Reformatory for Women"
(Strange and Oliver in Phillips, Loo, Lewthwaite, eds.)

Lecture 11 Politics and the Rule of Law in Canada

Please Read: Marquis, "Doing Justice to British Justice"
McNaught, "Political Trials and the Canadian Political Tradition"

Optional: Greenwood and Wright, *Introduction in Canadian State Trials*
Baker, "So Elegant a Web: Providential Order and the Rule of Law in Early Nineteenth Century Upper Canada"

(new & current ; not in the coursepack)

The so-called 'age of terrorism', western response; the role of criminal Law : (further readings will be suggested in class)

Roach, *September 11: Consequences for Canada*, McGill/Queen's University Press, 2003

Rutherford, *Weapons of Mass Persuasion, Marketing the War Against Iraq*, UofT Press 2004

Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, Princeton U. Press, 2005
Anti-terrorism Act (Canada)

Lecture 12 Exam Review

Select General Bibliography

This bibliography lists a selection of secondary sources, focusing on Canadian and British subjects. Students are urged to also check bibliographical collections such as the *Dictionary of Canadian Biography* and R.S. Smandych, et. al. eds., *Canadian Criminal Justice History: An Annotated Bibliography* (Toronto, 1987) primary materials available in the MacOdrum Library such as cases, legislation, materials in Government Documents and collections such as the Canadian Institute for Microreproductions. Also check specialized journals in the area such as the *Law and History Review*.

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- Atkin, R., *Maintain the Right: The Early History of the North West Mounted Police, 1873-1900*, (London, 1973).
- Backhouse, C., "Desperate Women and Compassionate Courts: Infanticide in 19th Century Canada" (1984) 34 *University of Toronto Law Journal*, 416.
- Backhouse, C., "19th Century Canadian Rape Law" in Flaherty ed., *Essays in the History of Canadian Law*, Vol. 2, (Toronto, 1983).
- Backhouse, C., *Petticoats and Prejudice: Women and the Law in Nineteenth Century Canada*, (Toronto, 1991).
- Backhouse, C., *Colour-Coded: A Legal History of Racism in Canada, 1900-50* (Toronto, 1999).
- Baker, G. B., "So Elegant a Web: Providential Order and the Rule of Law in Early Nineteenth Century Upper Canada" (1988) 38 *U. of Toronto Law J.*, 184.
- Barlow, D., *Dick Turpin and the Gregory Gang*, (London, 1973).
- Bates, F., "Corporal Punishment in Legal, Historical and Social Context" (1983) 12 *Manitoba Law Journal*, 337.
- Beale, R. and Macleod R., *Prairie Fire: The 1885 North-West Rebellion*, (Edmonton, 1984).
- Beattie, J.M., *Attitude Towards Crime and Punishment in Upper Canada, 1830-1850*, (Toronto, University of Toronto Centre of Criminology, 1977).
- Beattie, J.M., *Crime and the Courts in England, 1660-1800*, (Princeton, 1986).
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- Beattie, J.M., "Scales of Justice: Defence Counsel and the English Criminal Trial in the 18th and 19th Centuries" (1991) 9 *Law and History Review*, 221.
- Becker, C., "Property in the Workplace: Labour, Capital and Crime in 18th Century British Woollen and Worsted Industry" 69 *Virginia Law Review*, 487.
- Bedford, J.B., "Prostitution in Calgary, 1905-1914" (1981) 29 *Alberta History*, 1-11.
- Beier, A.L., *Masterless Men: the Vagrancy Problem in England 1560-1640*, (London, 1985).
- Beier, A.L., *Vagrants and Social Order in Elizabethan England*, (London, 1974).
- Bellamy, J., *Crime and Public Order in England in the Later Middle Ages*, (London, 1973).
- Bellamy, J. *The English Criminal Trial, 1300-1600* (Toronto, 1997).
- Bentham, Jeremy, *An Introduction to the Principles of Morals and Legislation* (repr. London, Methuen, 1982).
- Bentley, D. *English Criminal Justice in the Nineteenth Century*, (London, 1997).
- Bercuson, D.J., "Labour Radicalism and the Western Industrial Frontier, 1897-1919" (1977) 58 *Canadian Historical Review*, 154-75.
- Betke, C., "Pioneers and Police on the Canadian Prairies, 1885-1914" Canadian Historical Association, *Historical Papers* (1980), 9.
- Bindon, K.M., (1981) "Hudson Bay Company Law: Adam Thom and the Institution of order in Rupert's Land 1839-54" in Flaherty ed., *Essays in the History of Canadian Law*, Vol. 1, (Toronto, 1981).
- Bingaman, S.E., "The Trials of Poundmaker and Big Bear, 1885" (1975) 27 *Saskatchewan History*, 81.
- Blackwell, J.D., "Crime in the London District 1828-1837: A Case Study of the Effect of the 1833 Reform in Upper Canadian Penal Law" (1981) VI *Queens Law Journal*, 528.
- Bleasdale, Ruth, "Class Conflict on the Canals of Upper Canada", in Cross and Kealey eds., *Pre-Industrial Canada 1760-1849*, (Toronto 1982), 100.
- Boothman, J.V., "Facing the Music: Modern Police Discipline and Primitive Police Discipline 1829-1879" 6 *Liverpool Law Review*, 107-38, 7 *Liverpool Law Review*, 1-32.
- Bowker, M.M., "Juvenile Crime in Retrospect - Seven Decades of History in Alberta 1913-1984" 24 *Alberta Law Review*, 234.
- Boyd, Neil, "The Origins of Canadian Narcotics Legislation: The Process of Criminalization in Historical Context" 8 *Dalhousie Law Journal*, 102.
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- Brown, D.H., "The Craftsmanship of Bias: Sedition and the Winnipeg Strike Trial 1919" (1984) 14 *Manitoba Law Journal*, 1-33.
- Brown, D.H., "The Meaning of Treason, 1885" (1975) 28 *Saskatchewan History*, 65-73.
- Brown, D.H., "Unpredictable and Uncertain: Criminal Law in the Canadian Northwest Before 1886" (1979) 17 *Alberta Law Review*, 497-512.
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- Brown, L. and Brown, C. *An Unauthorized History of the R.C.M.P.*, (Toronto, 1978).
- Carrigan, D. Owen, *Crime and Punishment in Canada: A History* (Toronto, McClelland and Stewart, 1991).
- Carswell, M., "Social Controls Among the Native Peoples of the N.W.T. in the Pre-contact Period" (1984) 22 *Alberta Law Review*, 303.
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- Comack, A. Elizabeth, "'We Will Get Some Good Out of This Riot Yet': the Canadian State, Drug Legislation and Class Conflict" in S. Brickey and E. Comack eds., *The Social Basis of Law*, (Toronto, 1986).
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- Cooper, D.D., *The Lesson of the Scaffold: The Public Execution Controversy in Victorian England*, (London, 1974).
- Corrigan, P. and Sayer, D., *The Great Arch: English State Formation as Cultural Revolution*, (Oxford, 1985).
- Craven, Paul, "Law and ideology: The Toronto Police Court, 1850-1880" in D. Flaherty ed., *Essays in the History of Canadian Law*. Vol. 2, (Toronto, 1983).
- Cross, Michael, "The Laws are Like Cobwebs: Popular Resistance to Authority in Mid-Nineteenth Century British North America" in Waite, Oxner and Barnes, eds., *Law in a Colonial Society*, (Toronto, 1984).
- Cross, Michael, "Stony Monday 1849: The Rebellion Losses Riot in Bytown" (1971) 63 *Ontario History*, 177.
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- Ericson, Kai T. *Wayward Puritans - A Study in the Sociology of Deviance*, (New York, 1966).
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- Gordon, M.D., "The invention of common law crime: perjury and the Elizabethan courts" 24 *American Journal Legal History*, 145.
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### **ESSAY TOPICS**

Essays should be 12-15 typed pages in length (essays in excess of 20 pages will not be accepted), with a bibliography of at least three book or journal sources (internet research is acceptable, but only in addition to this requirement).

At least two sources must relate specifically to your topic (eg., general textbook material will not suffice). Efforts to evaluate the existing historiography on your topic will be considered in assessing your essay. Please note reference to essays and academic offences on page 2 of the course guide.

The essay is due Friday, March 16. It can be submitted to me at class, placed through the essay drop chute at the Department of Law, Loeb C473, or sent to the Department by mail. Essays sent by email or email attachment will not be accepted. Essays will be returned through the department of Law office or by mail if a stamped self-addressed envelope is attached.

1. A topic of your choice having a criminal law and historical focus, or perhaps a modification of one of the topics below. If you chose this option, please advise me by phone or e.mail; I may be able to provide some direction.
2. Examine the activities of the Canadian North West Mounted Police in the context of relations with native peoples. Consider the competing views that the Mounties were either (or both) a colonizing agent that helped to suppress aboriginal traditions, cultures and livelihoods, or an important instrument of nation-building?
3. Examine the circumstances of the large-scale entry of lawyers into the criminal trial process. Was their impact positive or negative?
4. Was the jury an obstacle to the rule of law or has its power over verdicts (eg. verdict according to conscience or nullification) served as an important popular check on authority or social reform mechanism?
5. The virtual elimination of the formal sentence of death for those convicted of felonies can be explained by the unwieldy system of conditional pardons and transportation as well as utilitarian and humanitarian arguments favouring the penitentiary. Explain.
6. Why was the Kingston Penitentiary built? Did it reflect the same factors contributing to the rise of the penitentiary in Britain and the US or particular local circumstances?
7. A general distinction is often made between offenders and victims when it comes to the experiences of women with the criminal law. However, some women who kill can also be understood as victims. Explore this paradox using historical examples.
8. Evaluate the struggles to establish, and the popular reception of, Peel's Metropolitan London Police. Be

sure to explain the inadequacies of the ancient system of law enforcement and its minor reforms in the 18th century. Also reflect on whether Peel's principles of policing have any relevance today (eg. debates around community-based policing).

9. Is the 'War on Terror' a politically-inspired ruse or misnomer? What are the criminal law responses in the west to the so-called age of terrorism; in Canada for example, are the post 9/11 extensions of the Criminal Code and related immigration and border practices, etc. effective, or improvements upon the pre-existing law? What are the competing values at stake in achieving meaningful, fair, security in a democracy?