

Course Outline

COURSE:	LAWS 3305 C/V & HIST 3305 C/V – Crime and State in History
TERM:	Winter 2010
PREREQUISITES:	Third year standing
LECTURE:	Monday 6- 9 pm (See Carleton Central for current room location)
BROADCAST:	Day & Time: Tuesday 5- 8 pm
INSTRUCTOR: (CONTRACT)	Christopher McNaught
CONTACT:	Office Hrs: TBA
	Telephone: 613-946-9993 during office hours
	Email: Chris.mcnaught@justice.gc.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

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 sets criminal law evolution in an organic, socio-political context—nothing happens in a vacuum—and moves from the arrival of the Normans in England to the early nineteenth-century, to the adoption of the English criminal law system in Canada [French /aboriginal Canada, the NWMP & opening of the west], and thereafter shifts into selected issues in law, crime and Canadian society such as the historical treatment of women under criminal law, the age of 'terrorism' and various 'hot-button' issues (assisted suicide, gun-control, capital punishment, etc.).

COURSE ORGANIZATION

Lecture (with taped 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 - *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 - (All components must be completed in order to get a passing grade)

- a) **Research Essay** **30%**
 (12-15 pages, topics as indicated following ' Select General Bibliography ' below. **Essays due: Monday, March 22**, 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)

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
 [socio-literary texts] Dickens' *Oliver Twist*, *David Copperfield*, *Great Expectations*,
 Wordsworth, Blake

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*
 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 (& eclectic video clips of law in action)

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).
- Beattie, J.M., "The Criminality of Women in Eighteenth-Century England" (1975) 8 *Journal of Social History*, 80-116.
- 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.
- Brent, A.S. (1984) "Illegally Obtained Evidence: an Historical and Comparative Analysis" 48 *Saskatchewan Law Review*, 1.

- Brewer, J. and Styles J., eds., *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth-Centuries*, (London, 1980).
- 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.
- Brown, D.H., *The Genesis of the Canadian Criminal Code of 1892*, (Toronto, 1989).
- 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.
- Chapman, T.L. and Knafla, L., "Criminal Justice in Canada: A Comparative Study of the Maritimes and Lower Canada 1760-1812" (1983) 21 *Osgoode Hall Law Journal*, 245.
- Chesney, K., *The Victorian Underworld*, (Harmondsworth, 1972).
- Clark, S.D., *Movements of Social Protest in Canada 1640-1840*, (Toronto, 1972).
- Cockburn, J.S. ed., *Crime in England 1550-1800*, (Princeton, 1977).
- Cockburn, J.S. *A History of English Assizes, 1558-1714*, (Princeton, 1972).
- Cockburn, J.S. and Green, T.A. eds., *Twelve Good Men and True: The Criminal Trial Jury in England 1200-1800* (Princeton, 1988).
- 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).
- Comack, A. Elizabeth, "The Origins of Canadian Drug Legislation: Labelling Versus Class Analysis" in Fleming ed., *The New Criminologies in Canada: Crime, State and Control*, (Toronto, 1985).
- Cook, Shirley, "Canadian Narcotics Legislation 1908-1923: A Conflict Model Interpretation" (1969) 6 *Canadian Review of Sociology and Anthropology*, 36.
- 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.
- Cross, Michael, "The Shiners' War: Social Violence in the Ottawa Valley in the 1830's" (1973) LIV *Canadian Historical Review*, 1-26.
- Cruikshank, E.A., "John Beverley Robinson and the Trials for Treason in 1814" (1929) 25 *Ontario History SPRA*, 191.
- Curtis, D., "Kingston Penitentiary: the First Hundred and Fifty Years, 1835-1935", (Ottawa, Correctional Service of Canada, 1985).
- Curtis, T., "Explaining Crime in Early Modern England" (1980) 1 *Criminal Justice History*, 117-37.
- Donajgradski, A.P. ed., *Social Control in Nineteenth-Century Britain*, (London, 1977).
- Eckirch, R., *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775*, (New York, 1989).
- Edwards, J.L.L.J., *The Law Officers of the Crown*, (London, 1964).
- Edwards, J.L.L.J., "The Advent of English (not French) Criminal Law and Procedure in Canada - a Close Call in 1774" (1984) 26 *Criminal Law Quarterly*, 464.
- Eigen, J.P., *Witnessing Insanity: Madness and Mad Doctors in the English Court*, (Cambridge, 1993).
- Elliott, J.K., "Crime and Punishment in Early Upper Canada" (1931) 27 *Ontario History S.P.R.S.*, 335.
- Emsley, C., *Crime and Society in England 1750-1900*, (London, 1987). (recommended optional purchase).
- Ericson, Kai T. *Wayward Puritans - A Study in the Sociology of Deviance*, (New York, 1966).
- Evans, R., *The Fabrication of Virtue: English Prison Architecture, 1750-1840*, (Cambridge, 1982).
- Fielding, H., *An Enquiry into the Causes of the Late Increase of Robbers with some Proposals for Remediating this Growing Evil* (1751).
- Fitzgerald, McLennan and Pawson eds., *Crime and Society: Readings in History and Theory*, (London, 1981).
- Flanagan, T., *Riel and Rebellion: 1885 Reconsidered*, (Saskatoon, 1983).
- Flanagan, T. and Watson, N., "The Riel Trial Revisited: Criminal Procedure and Law in 1885" (1981) 34 *Saskatchewan History*, 527-73.

- Foster, H., "The Kamloops Outlaws and Commissions of Assize in Nineteenth-Century British Columbia" in Flaherty ed., *Essays in the History of Canadian Law*, Vol. 2, (Toronto, 1983).
- Foster, H., "Sins Against the Great Spirit: The Law, The Hudson's Bay Company and the MacKenzie River, 1835-39" (1989) 10 *Criminal Justice History*, 23.
- Foucault, M., *Discipline and Punish: The Birth of the Prison*, (New York, 1977).
- Foucault, M., *Power/Knowledge*, (Brighton, 1986).
- Friedland, Martin, "R.S. Wright's Model Criminal Code: A Forgotten Chapter in the History of Criminal Law (1981) *Oxford Journal of Legal Studies*.
- Friedman, Lawrence M., *Crime and Punishment in American History* (New York: Basic Books, 1993).
- Gatrell, U.A.C., Lenman, B., Parker, G., eds., *Crime and the Law: The Social History of Crime in Western Europe since 1500*, (London, 1980).
- Gavigan, S., "Petit Treason in Eighteenth-Century England: Women's Inequality Before the Law" (1989), *Canadian Journal Women and the Law*.
- Gavigan, S. "The Criminal Sanctions as it Relates to Human Reproduction: The Genesis of the Statutory Prohibition of Abortion" (1984) 5 *Journal of Legal History*, 20.
- Gibson, J.A., "Political Prisoners, Transportation for Life and Responsible Government in Canada" (1975) LXVII *Ontario History*, 185.
- Gordon, M.D., "The invention of common law crime: perjury and the Elizabethan courts" 24 *American Journal Legal History*, 145.
- Gough, Barry, (1974) "Keeping British Columbia British: the Law & Order Question on a Gold Mining Frontier" *Huntington Library Quarterly*, 269.
- Graff, H.J., "Pauperism, Misery and Vice: Illiteracy and Criminality in the Nineteenth-Century" (1977) 11 *Journal of Social History*, 245.
- Green, Melvyn, "A History of Canadian Narcotics Control: The Formative Years" (1979) 37 *University of Toronto Faculty of Law Review*, 42.
- Green, T.A., *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800*, (Chicago, 1985).
- Greenwood, F.M. *Legacies of Fear: Law and Politics in Quebec in the Era of the French Revolution* (Toronto, Osgoode Society, 1993).
- Greenwood, F.M., "Apprehended Insurrection and the Administration of Justice in Canada: A Historians Viewpoint" (1980) *Revue d'histoire l'Amerique francaise*.
- Greenwood, F.M., "The General Court Martial of 1838-39 in Lower Canada: An Abuse of Justice" in Wright and Pue eds., *Canadian Perspectives on Law and Society: Issues in Legal History*, (1988).
- Greenwood, F.M., "The Drafting and Passage of the War Measures Act in 1914: Object Lessons in the Need for Vigilance" in Wright and Pue eds., *Canadian Perspectives on Law and Society: Issues in Legal History*, (1988).
- Greenwood, F.M. and Boissery, B. Uncertain Justice: Canadian Women and Capital Punishment, 1754-1953 (Toronto: Dundurn, 2000).
- Gressley, B.A., "Lord Selkirk and the Canadian Courts" in Bumstead ed., *Canadian History Before Confederation: Essays and Interpretations*, (Georgetown, 1979), 278.
- Hamburger, P., Levy, L.W., Rabban, D., "Historical Perspectives on the Free Press. The Development of the Law of Seditious Libel and Control of Press" (1985) 37 *Stanford Law Review*, 661.
- Hargrave F., Cobbett W., Howell T.B., Howell T.J. eds., *State Trials* [1809-20] reprinted.
- Hart, H.L.A. *Essays on Bentham: Jurisprudence and Legal Theory* (Oxford, 1982).
- Hart, J., "Reform of the Borough Police, 1835-1856" (1955) 70 *English Historical Review*, 441-427.
- Hartz, L., "Violence and Legality in Fragment Cultures" (1969) *Canadian Historical Review*, 123.
- Hay D., "The Criminal Prosecution in England and its Historians" (1984) 47 *Modern Law Review*, 1.
- Hay, D., "Controlling the English Prosecutor" (1983) 21 *Osgoode Hall Law Journal*, 165.
- Hay, Douglas, "The Meanings of the Criminal Law in Quebec 1764 to 1774", in Louis Knafla ed., *Crime and Justice in Europe and Canada* (Waterloo, 1985), 77.
- Hay, D., Linebaugh, P., Thompson, E.P., eds., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, (New York, 1975).
- Hay, D. and Snider F., *Policing and Prosecution in Britain, 1750-1850* (Oxford, 1989).
- Highley, D.D., *O.P.P.: The History of the Ontario Provincial Police Force* (Toronto: Queen's Printer, 1984).
- Hill, L.M. "The Two Witness Rule in English Treason Trials: Some Comments on the Emergence of Procedural Law" (1968) 12 *American Journal of Legal History*, 95.
- Hobsbawm, E. and Rude, G., *Captain Swing*, (London, 1970).
- Holdsworth, Sir William, *A History of English Law*, 16 vols. (London, 1922-1964).

- Homel, G., "Denison's Law: Criminal Justice and the Police Court in Toronto, 1877-1921" (1981) LXXXIII *Ontario History*, 171-184.
- Horall, S.W., "Sir John A. MacDonald and the Mounted Police Force for the North West Territories" (1972) 53 *Canadian Historical Review*, 201-225.
- Horall, S.W., "The Royal North West Mounted Police and Labour Unrest in Western Canada, 1919" (1980) 61 *Canadian Historical Review*, 169-90.
- Hostettler, John, *The Politics of Criminal Law: Reform in the Nineteenth Century* (Chichester, Black Rose, 1992).
- Howard, John, *The State of the Prisons in England and Wales*, (repr. London, 1929).
- Ignatieff, M., *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*, (New York, 1978).
- Ignatieff, M., "State, Civil Society and Total Institutions: A Critique of Recent Social History of Punishment" in Sugarman ed., *Legality, Ideology and the State*, (Toronto, 1985).
- Ireland, R.W., (1987) "Theory and Practice Within the Medieval English Prison" 31 *American Journal of Legal History*, 56.
- Jones, D., *Crime, Protest, Community and Police in Nineteenth Century Britain*, (London, 1982).
- Jones, Gareth Stedman, *Outcast London*, (Hammonsworth, 1976).
- Jones, Gareth Stedman, "Class Expression v. Social Control (1977) IV *History Workshop Journal*, 163-171.
- Kealey, G.S., *Toronto Workers Respond to Industrial Capitalism, 1867-1892*, (Toronto, 1980).
- Kenny, Stephen, "Cahoots and Catcalls: An Episode of Popular Resistance in Lower Canada at the Outset of Union" (1984) LXV *Canadian Historical Review*, 184-208.
- Knafla, L.A. ed., *Crime and Criminal Justice in Europe and Canada*, (Waterloo; Wilfred Laurier University Press, 1985).
- Lachance, A., "Women and Crime in Canada in The Early Eighteenth Century, 1712-59" in L. Knafla ed., *Crime and Criminal Justice in Europe and Canada*, (Waterloo, 1985), 157.
- Lane, Roger, *Policing the City: Boston 1822-1855*, (Cambridge, Mass., 1967).
- Langbein, J.H., "The Criminal Trial Before Lawyers" (1978) 45 *University of Chicago Law Review*, 263-316.
- Langbein, J.H., "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources" (1983) 50 *University of Chicago Law Review*, 1-136.
- Langbein, J.H., "Albion's Fatal Flaws" (1983) 98 *Past and Present* 96-120.
- Langbein, J.H., *Torture and the Law of Proof: Europe and England in the Ancien Regime*, (Chicago, 1977).
- Lewis, W.D., *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1746-1848*, (Ithaca, 1965).
- Linebaugh, P., "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein" (1985) 60 *New York University Law Review*, 242.
- Linebaugh, P., *The London Hanged: Crime and Civil Society in the Eighteenth Century*, (Cambridge, 1992).
- Loo, T., "Dan Cranmer's Potlatch: Law as Coercion, Symbol and Rhetoric in British Columbia, 1884-1951" (1992) 72 *Canadian Historical Review*, 125-65.
- Loo, T., *Making Law, Order and Authority in British Columbia, 1821-71*, (Toronto, 1993).
- MacFarlane, A., *The Justice and the Mare's Ale: Law and Disorder in Seventeenth-Century England*, (London, 1981).
- MacLeod, R.C., *The North-West Mounted Police and Law Enforcement, 1873-1905*, (Toronto: University of Toronto Press, 1979).
- MacLeod, R.C., "Canadianizing the West: the NWMP as Agents of the National Policy, 1873-1905" in L.H. Thomas ed., *Essays on Western History*, (Edmonton, 1976).
- MacLeod, R.C., (1978) "The Shaping of Canadian Criminal Law 1892-1902" *Canadian Historical Association Historical Papers*, (1978), 64.
- MacLeod, R.C., *Lawful Authority: Readings on the History of Criminal Justice in Canada*, (Toronto, 1988).
- Marquis, Greg, "A Machine of Oppression Under the Guise of the Law: the Saint John Police Establishment 1860-1890" (1986) XVI *Acadiensis*, 73.
- Marquis, G., *Policing Canada's Century: A History of the Canadian Association of Chiefs of Police* (Toronto: Osgoode Society, 1993).
- McConville, A., *A History of English Prison Administration 1750-1877*, (London, 1981).
- McGowen, R., "The Images of Justice and Reform in the Criminal Law in Early 19th Century England" (1983) 32 *Buff Law Review*, 89.
- McLaren, J., "Chasing the Social Evil: Moral Fervour and the Evolution of Canada's Prostitution Laws, 1867-1917" (1986) 1 *Canadian Journal of Law and Society*.
- McMullan, J.L., *The Canting Crew: London's Criminal Underworld, 1550-1700*, (New Jersey, 1984).
- McNaught, K., "Violence in Canadian History" in Horn, M. and Saviourin, R. eds., *Studies in Canadian Social History*, (Toronto, 1974).



- McNaught, Kenneth, "Political Trials and the Canadian Political Tradition" in M.L. Friedland, ed., *Courts and Trials: A Multidisciplinary Approach*, (Toronto, 1975) 137.
- McNaught, K. and Bercuson, D.S., *The Winnipeg General Strike 1919*, (Toronto, 1974).
- Melossi, D. and Pavarini, M., *The Prison and the Factory: Origins of the Penitentiary System*, (London, 1981).
- Mewett, A.W., "The Criminal Law 1867-1967" (1967) 56 *Canadian Bar Review*, 726.
- Milsom, S.F.C., *Historical Foundations of the Common Law*, 2nd ed. (London, 1981).
- Morton, D., "Cavalry or Police: Keeping the Peace on two Adjacent Frontiers, 1870-1900 (1977) 12 *Journal of Canadian Studies*, 27-37.
- Morton, D., *The Queen v. Louis Riel*, (Social History of Canada, Vol. 19) (Toronto, 1974).
- Harring, S.L., *White Man's Law: Native People in Nineteenth Century Canadian Jurisprudence* (Toronto, 1998)
- Ogilvie M.H., *Historical Introduction to Legal Studies*, (Toronto, 1982).
- Oliver, P., *Terror to Evil-Doers: Prisons and Punishments in Nineteenth Century Ontario* (Toronto, 1998).
- Paley, R., "An Imperfect, Inadequate and Wretched System? Policing London Before Peel" (1989) 10 *Criminal Justice History*, 95.
- Palmer, B., "Discordant Music: Chairivdris and Whitecapping in Nineteenth Century North America" (1978) 3 *Labour/Le Travail*, 5.
- Palmer, S.H., *Police and Protest in England and Ireland, 1780-1880*, (Cambridge, 1988).
- Parker, G., "The legal regulation of sexual activity and the protection of females" (1983) 21 *Osgoode Hall Law Journal*, 187.
- Parker, G., "The Origins of the Canadian Criminal Code" in Flaherty ed., *Essays in History of Canadian Law*, Vol. 1, (Toronto, 1981), 249.
- Phillips J. and Girard P. eds., *Essays in the History of Canadian Law Vol. III: Nova Scotia*, (Toronto, 1990).
- Phillips, J., Loo, T. and Lewthwaite, S., eds., *Essays in the History of Canadian Law, Vol. 5: Crime and Criminal Justice* (Toronto, 1994) (recommended optional purchase).
- Phillips, D., *Crime and Authority in Victorian England*, (London, 1977).
- Platt, A.M., *The Child Savers: The Invention of Delinquency*, (Chicago, 1969).
- Pollock, Sir Frederick and Maitland, F.W., *The History of English Law*, Vol. 2, (Cambridge, 1968).
- Pue, W.W., "Criminal Twilight Zone: Pretrial Procedures in the 1840's" 21 *Alberta Law Review*, 335.
- Pue and Wright, B. eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa, 1988).
- Pugh, R.B., *Imprisonment in Medieval England*, (Cambridge, 1968).
- Radzinowicz, Sir Leon, *History of English Criminal Law and its Administration From 1750*, 5 Vols., (London, 1948-1968).
- Riddell, W.R., "A Criminal Circuit in Upper Canada a Century Ago" (1920) XL *Canadian Law Times*, 711.
- Riddell, W.R., "Criminal Law in Upper Canada a Century Ago" (1920) *Journal of Criminal Law*, 516.
- Riddell, William Renwick, "The Ancaster 'Bloody Assize' of 1814" (1923) XX *Ontario History S.P.R.A.*, 107.
- Riddell, W.R., "Benajah Mallory, Traitor" (1930) XXVI *Ontario History S.P.R.A.*..
- Roberts, B. *Whence They Came: Deportation from Canada 1900-1935*, (Ottawa, 1988).
- Rogers, N., "Serving Toronto the Good: The Development of the City Police Force 1834-1884" in Russell V. ed., *Forging a Consensus: Historical Essays on Toronto*, (Toronto, 1984).
- Romney, P., "The Ten-Thousand Pound Job: Political Corruption, Equitable Jurisdiction and the Public Interest in Upper Canada 1852-1856 in Flaherty ed., *Essays in the History of Canadian Law*, Vol. 1, (Toronto, 1981).
- Romney, P., *Mr. Attorney: The Attorney General for Ontario in Court, Cabinet and Legislature 1791-1899*, (Toronto, 1986).
- Romney, P., "Very Late Loyalist Fantasies: Nostalgic Tory History and the Rules of Law in Upper Canada" in Pue and Wright eds., *Canadian Perspectives on Law and Society: Issues in Legal History*, (1988).
- Romney, Paul, "From Constitutionalism to Legalism: Trial by Jury, Responsible Government, and the Rule of Law in the Upper Canada" (1989) 7 *Law and History Review*, 121.
- Rothman, D.J., *The Discovery of the Asylum*, (Boston, 1971).
- Rudé, G., *The Crowd in History: A Study of Popular Disturbances in France and England, 1930-1948*, (New York: 1964).
- Rudé, G., *Protest and Punishment: The Story of the Social and Political Protestors Transported to Australia, 1788-1868*, (Exford, 1978).
- Schuh, C., "Justice on the Northern Frontier: Early Murder Trials of native accused" (1979) 22 *Criminal Law Quarterly* 74.
- Senior, H. *Constabulary: The Rise of Police Institutions in Britain, the Commonwealth and the United States* (Toronto, 1995).
- Shapiro, A.H. "APolitical Theory and the Growth of Defensive Safeguards in Criminal Procedure: The origins of the Treason Trials Act, 1696" (1993) 11 *Law and History Review*, 215.

- Sharpe, J.A., "The History of Crime in Late Medieval and Early Modern England: A Review of the Field" (1982) 7 *Social History* 187-203.
- Sharpe, J.A., *Crime in Seventeenth-Century England: A Country Study*, (Cambridge, 1983).
- Shaw, A.G.L., *Convicts and the Colonies*, (London, 1971).
- Smandych, R., "Marxism and the Creation of Law: Re-Examining the Origins of Canadian Anti-Combines Legislation 1890-1910" in Fleming ed., *The New Criminologies in Canada: State, Crime and Control*, (Toronto, 1985).
- Smandych, R., "Beware of the Evil American Monster: Upper Canadian Views on the Need for a Penitentiary, (1991) *Canadian Journal of Criminology*, 126.
- Smandych, R., "Tory Paternalism and the Politics of Penal Reform in Upper Canada, 1830-34: A Neo-revisionist Account of the Kingston Penitentiary" (1991) 10 *Criminal Justice History*, 57.
- Smith, A.E., *Colonists in Bondage: White Servitude and Convict Labour in America, 1607-1776*, (Gloucester, Mass., 1965).
- Smith, A.E., "The Transportation of Convicts to the American Colonies in the Seventeenth Century" (1933-34) 39 *American Historical Review*.
- Solomon, R. & Green, M., "The First Century: The History of Non medical Opiate Use and Control Policies in Canada 1870-1970" 20 *University of Western Ontario Law Review*, 307.
- Soman, A., "Criminal Jurisprudence in Ancien Regime France", in L. Knafla ed., *Crime and Criminal Justice in Europe and Canada*, (Waterloo, 1985), 43.
- Sprague, D.N., "Government Lawlessness in the Administration of Manitoba Land Claims 1870-1887" 10 *Manitoba Law Journal*, 415.
- Stenning, P.C., *Appearing for the Crown: A Legal and Historical Review of Criminal Prosecutorial Authority in Canada*, (Cowansville, 1986).
- Stephen, Sir James Fitzjames, *History of the Criminal Law of England*, 3 Vols., London, 1883.
- Stone, L., "Interpersonal Violence in English Society, 1800-1980" (1983) 101 *Past and Present*.
- Stone, T., "The Mounties as Vigilantes: Perceptions of Community and Transformation of Law in the Yukon: 1885-1897 (1979) 14 *Law and Society Review*, 83-14.
- Storch, R.O., "The Plague of Blue Locusts: Police Reform and Popular Resistance in Northern England, 1840-1857" (1975) XX *International Review of Social History*, 61-90.
- Strange, C., "The Criminal and Fallen of Their Sex: the Establishment of Canada's First Women's Prison 1874-1901" (1985) 1 *Canadian Journal Women and the Law*, 79.
- Strange, C., and Loo, T. *Making Good: Law and Moral Regulation in Canada, 1867-1939* (Toronto, 1997).
- Taylor, C.J., "The Kingston, Ontario Penitentiary and Moral Architecture" in R. Macleod ed., *Lawful Authority*, (Toronto, 1988).
- Thompson, E.P., *Whigs and Hunters: The Origin of the Black Act*, (London, 1975).
- Thompson, E.P. "The Moral Economy of the English Crowd" (1971) 50 *Past and Present*, 76-136.
- Tobias, J.J., *Crime and Industrial Society in the 19th Century*, (London, 1972).
- Tucker, E., "That Indefinite Area of Toleration: Criminal Conspiracy and Trade Unions in Ontario" (1990) 27 *Labour/Le Travail*, 15.
- Valverde, M., *The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925*, (Toronto, 1991).
- Waite, P.B., Osner, S. and Barnes, T., eds., *Law in a Colonial Society: The Nova Scotia Experience*, (Toronto, 1984).
- Walden, Keith, *Visions of Order*, (Toronto, 1982).
- Walker, N., *Crime and Insanity in England*, (London, 1987).
- Watson, N.B. and Thorner, T., "Keepers of the King's Peace: Colonel G.F. Sanders and the Calgary Police Magistrate's Court" (1984) XII *Urban History Review*, 45-55.
- Webb, B. and Webb, S., *English Prisons Under Local Government*, (London, 1922).
- Whiting, J.R.S., *Prison Reform in Gloucestershire, 1775-1820*, (London, 1975).
- Whittingham, M.D., "Crime, Punishment, Correction and the Rise of the Institutional State in England and Upper Canada" 19 *Gazette*, 201.
- Williams, D.R., (1986) "The administration of criminal and civil justice in the mining camps and frontier communities of British Columbia in Knafla ed., *Law and Justice in a New Land: Essays in Western Canadian Legal History*, (Calgary, 1986).
- Wright, Barry, "Towards a New Canadian Legal History" (1984) 22 *Osgoode Hall Law Journal*, 349.
- Wright, Barry, "Ned Slinker and England's Order" (1986) 24 *Osgoode Hall Law Journal*, 699.
- Wright, Barry and Pue, Wesley eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988).
- Wright, Barry, "The Ideological Dimensions of Law in Upper Canada: The Treason Proceedings of 1838" (1989) 10 *Criminal Justice History*, 131.

Wright, Barry, "Criminal Proceedings and the Transformative Potential of Law: Taking Historical Experiences Seriously" (1991) 3 *Journal of Human Justice*, 7.

Wright, Barry, "Sedition in Upper Canada: Contested Legality" (1992) 29 *Labour/Le Travail*, 7.

Wright, Barry and Greenwood, F. Murray, eds., *Canadian State Trials: Law, Politics and Security Measures, 1608-1837* (Toronto: University of Toronto Press, 1996).

### **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; **PLEASE NOTE:** ' *Wikipedia*' is NOT a source to be cited ).

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, Monday, March 22**. It can be submitted 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 check on authority or social reform ?
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 ? Is it *militarily* winnable ? Is 'terror' in fact a new phenomenon—have we had prior 'notice' about such concerns ? 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 ? Is the applicability of the rule of law negotiable in what some argue is a 'supreme emergency' ?