

Course Outline

COURSE: LAWS 3306 V – Crime, Law, Process and Politics

TERM: Winter 2010-11

PREREQUISITES: LAWS 2004

CLASS: **BROADCAST:** Monday – 10:00am-1:00pm

INSTRUCTOR: Chris McNaught
(CONTRACT)

CONTACT: **Office Hrs.:** Preferred route of contact is via business phone or mail
 Telephone: 613-960-0848
 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://www2.carleton.ca/pmc/accommodations/> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **for December examinations**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

OBJECTIVES & CONTENT:

This course focuses on the politics inherent in the use of the criminal justice system to maintain social order. Students will explore the nature of "political crimes" such as treason and conspiracy, as well as the use of conventional criminal sanctions against the politically motivated offender – 'terrorism' is prominent in this current discussion. The course will identify current issues focusing on the shift of mores and power in western society, and examine the use of the criminal justice system and the 'dominant discourse' of media and politics, both to maintain the status quo and to effect political change. In that context, a frequent comparison with American judicial and political experience will be explored.

REQUIRED READING:

LAWS 3306 Course Pack.

SUPPLEMENTARY READING:

Please check course *Webct* for extensive articles, editorials, and items expanding on lectures. As well, other readings will be suggested in class from time to time.

Pocket Criminal Code. [any current edition] would be useful reference tool.

Verdun-Jones, Simon. Criminal Law in Canada: Cases, Questions and the Code, 3rd ed. Toronto: Harcourt Canada, 2002.

EVALUATION PROCEDURES: Midterm Exam - 30% Final Exam - 70%

1. **Midterm Exam** - The **midterm (closed book- 1 ½ hrs) is scheduled for Saturday, February 5, 9-10:30 a.m.** Please double-check the CUTV web site for the date, time and location. Exam will consist of an essay chosen from several topics.

Please note: **It is your responsibility to pick up from the Law dept. or arrange to receive from CUTV your midterm exam. I cannot tell a student his or her mark over the phone or by email.**
2. **Final Exam** - The final exam will be a university scheduled closed book exam of 2.5 hrs. The final exam may consist of a fact situation and also contain essay-style questions, with choices. Details will be discussed in the class. Final exams are not returned to the student but are retained by the Department. If you wish to see your exam after it has been marked, please contact the department and you can arrange a time to do so.

IMPORTANT NOTE: Failure to complete any portion of the required evaluation will result in an F grade. Students who fail to meet this course's requirements, ie. complete the midterm exam, may be assigned an **FND** grade on the FGR. A deferral granted by the Registrar's Office *prior* to receipt of the FGR may be rescinded if this grade is assigned.

COURSE OUTLINE:

All required readings are in the course pack.

PLEASE NOTE: Course pack readings are considered as a foundation source which enable class discussion, and are not required to be read in any particular sequence, but you are entrusted with doing that reading. That said, **LECTURES are not based on or directly linked to the course pack readings per se.** I do not provide electronic notes; please pay attention to the class lectures & discussions to absorb the key themes. HAVE FAITH! Any apparent vagueness in material discussed or referenced will resolve itself as lectures progress; you will be invited to think, analyze, and be critical, rather than regurgitate notes.

1. **Introduction; the political state of things, media impact on perceptions, the rule of law**
2. **Violence and Authority as Social Constructs**

Readings: Karim Karim, Violence and the Media@ in Islamic Peril: Media and Global Violence. Black Rose Books, 2000.
Nicolo Machiavelli, Excerpts from The Prince, c. 1505. The Modern Library, 1950.
Stuart Hall, Chas. Critcher, Tony Jefferson, John Clarke and Brian Roberts, Policing the Crisis: Mugging, the State and Law and Order. Macmillan Press, 1978.
3. **The Criminal Trial as a Social Ritual: The Politically Motivated Lawyer**

Readings: Peter Gabel and Paul Harris, Building Power and Breaking Images.@ 11 N.Y.U. Review of Law & Social Change: 369. *Copy to v. The Queen* (1987), 24 Ont. A.C. 81
4. **The Criminal Trial as Social Ritual: The Politically Motivated Defendant**

Readings: Toni Pickard and Phil Goldman, The Politics of Defendants, in Dimensions of Criminal Law, 2d ed. Emond Montgomery, 1996. Sachs, Justice in South Africa. University of California Press, 1973. John Cuddihy, "A Tale of Two Hoffmans: The Decorum Decision and the Bill of Rights", in The Trial of the Chicago Seven.

5. Political Offences I: Treason

Readings: Criminal Code of Canada, s. 46.
Toni Pickard and Phil Goldman, *The Trial of Louis Riel in Dimensions of Criminal Law*, 2d ed. Emond Montgomery, 1996.

6. Political Offences II: Sedition, Unlawful Assembly, Sabotage & Relative Political Offences

Readings: Criminal Code of Canada, Part II Offences Against Public Order.
United States v. LaForge and Katt (unreported), Cr. 4-84-66 slip at 20, D. Minn., November 8, 1984, cited in *United States v. Kabat*, 797 F. 2d 580, footnote 4.

7. Civil Disobedience and Lawful Expressions of Dissent

Reading: Henry David Thoreau, "On the Duty of Civil Disobedience". New American Library, 1960.

8. Political Defences I: Colour of Right and Necessity

Readings: Criminal Code of Canada, ss. 8(3), 322 and 429-446.
R. v. Ashini et. al. [1989] 2 C.N.L.R. 119 (Nfld. Prov. Ct.)
R. v. Gary Potts [1990] O.J. 2567 (Ct. of Justice, Prov. Div.)
R. v. Drainville [1991] O.J. No. 430, Action No. C27/91, January 15, 1991.
Linda Vance, *The Necessity Defence in Political Trials: An Appraisal* (1986), 12 Vermont Bar Journal & Law Digest 8-11.
Williams and London Borough of Southwark v. Anderson [1971] 2 All E.R. 175 (C.A.)
Leigh v. Gladstone (1909), 26 T.L.R. 139 (K.B.)

9 State Crime

Readings: Joseph Rikhof, *War Crimes Law, as Applied in Canada*, in *Modern Global Crises and War Crimes: Canada, Peacekeeping and International Humanitarian Law*. Edited by Richard Wiggers and Ann Griffiths. Centre for Foreign Policy Studies, 2002.
Joseph Rikhof and Tom Quiggin, *Intelligence and War Crimes - Some Views From Operational Experience*, in *Modern Global Crises and War Crimes: Canada, Peacekeeping and International Humanitarian Law*. Edited by Richard Wiggers and Ann Griffiths. Centre for Foreign Policy Studies, 2002.

10 Political Defences II: Improper Political Motive

Readings: *R. v. Appleby* (1990), 78 C.R. (3d) 282 (Ont. Prov. Ct.)

11. State Surveillance: Shifting the Balance Between Citizen and State, the slippery slope, national security vs civil liberty, the 'war on terrorism'

Readings: Valerie Steeves, *Privacy and New Media in Mass Communication: A Reader*. Edited by Leslie Shade and Paul Attallah. Nelson, 2002.

12. Review/Exam Preparation & Documentary video on the FLQ crisis, 1970

Eclectic Reading List

Ayoob, Mohammed. 2001. "Humanitarian Intervention and International Society."
Global Governance 7(3), 225-230.

Bellamy, Alex. 2005. "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq." *Ethics and International Affairs* 19(2), 31-53.

Brownlie, Ian. 1963. International Law and the Use of Force by States. Oxford: Clarendon Press.

Burkhart, Ford. "Sudan," New York Times Online, May 31, 2007.
<http://topics.nytimes.com/top/news/international/countriesandterritories/sudan/index.html?inline=nyt-geo>

Clinton, Bill. (2005). Keynote Address presented at the Campus Progress National Student Conference. Swarthmore College, Swarthmore, PA. [CampusProgress.org Online transcript: http://campusprogress.org/common/388](http://campusprogress.org/common/388)

Dyck, Rand. 2004. "Canadian Politics: Critical Approaches." Fourth Edition. Nelson Thomson Canada Limited.

Dyer, Gwynne. 2004. Future: Tense. Toronto: McClelland and Stewart Ltd.

Farer, Tom et al. 2005. "Roundtable: Humanitarian Intervention after 9/11."
International Relations 19(2), 211-250.

Harsch, Ernest. 2004. "The world reflects on Rwanda genocide", *Africa Recovery*, United Nations, New Releases. <<http://www.un.org/ecosocdev/geninfo/afrec/newrels/rwanda.htm>>

Holzgrefe, J. L. and Robert O. Keohane, eds. 2003. Humanitarian Intervention: Ethical, Legal and Political Dilemmas. New York: Cambridge University Press.

Johnson, Chalmers. 2004. The Sorrows of Empire. New York: Metropolitan Books.

Roth, Kenneth. 2005. "War in Iraq: Not a Humanitarian Intervention" in Richard Ashby Wilson, ed., Human Rights in the 'War on Terror'. Cambridge: Cambridge University Press.

'Situation of human rights in the Darfur region of the Sudan', Report of the High Commissioner for Human Rights, *E/CN.4/2005/3*, 7 May 2004, 3
[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2005.3.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2005.3.En?OpenDocument)

Williams, Ian. 2002. "Righting the Wrongs of Past Interventions: A Review of the International Commission on Intervention and State Sovereignty." *International Journal of Human Rights* 6(3), 101-113.

Youngs, Tim. "Sudan: Conflict in Darfur," Research Paper 04/51, House of Commons Library, June 23, 2004

(re Terrorism & global insecurity, etc.)

A Bright Shining Lie: John Paul Vann and America in Vietnam, Neil Sheehan, Vintage, 1988

Augusto Pinochet and International Law, Wedgewood, R., (2000) 46 McGill Law Journal 241

Beyond Jihad vs McWorld, Benjamin Barber, *The Nation*, 2002 Issue, January 21

- “Canadian Politics: Critical Approaches.”** Dyck, Rand. 2004, Fourth Edition. Nelson Thomson Canada Limited.
- Christians and War: Thomas Aquinas refines the "Just War" Theory
http://olympia.anglican.org/churches/B/stdunstan/Beliefs/Christians_War/Christians_War_2.htm
- Dark Days: The Story of Four Canadians Tortured in the Name of Fighting Terror**, Kerry Pither, Penguin, 2006
- Global Organized Crime and International Security.** Viano, E, ed. Vermont: Ashgate Publishing Co, 1999.
{ *Global Policy Forum* }, read various topics there, including *Defining Globalization, and Globalization of Law*
www.globalpolicy.org/globaliz/index.htm
- Human Rights and Terrorism**, Paul Hoffman, *Human Rights Quarterly*, vol. 26, Number 4, Nov. 2004, pp.932-955
- Human Rights as Politics and Idolatry**, Ignatieff, Michael (2001) Princeton & Oxford: Princeton University Press.
ISBN 0691088934
- In Defense of Human Rights: A Non-Religious Grounding in a Pluralistic World**, Kohen, Ari (2007). Routledge.
ISBN 0415420156 , ISBN 978-0415420150
- International Human Rights in Context: Law, Politics, Morals**, Steiner, J. & Alston, Philip. (1996).. Oxford:
Clarendon Press. ISBN 019825427X
- International Criminal Law**, Kittichaisaree, K., OUP 2001
- International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law**, Bruce
Broomhall, Oxford Monographs, 2003
- Islam: The Straight Path**, Esposito, John L. (2005).. Oxford University Press. ISBN 0195182669
- Jihad vs McWorld, How Globalism and Tribalism are Reshaping the World**, Benjamin R. Barber, New York,
Ballantine, 1996
- Media Ethics: Cases and Moral Reasoning**, Christians, Clifford G.; et al. (2004). *7th edition*. Allyn & Bacon. ISBN
0-205-41845-7.
- Nemesis: The Last Days of the American Republic**, Chalmers Johnson, Metropolitan Books, 2007
- Non-State Actors and Human Rights**, Alston, P. (Ed) OUP 2005
- Nuremberg and Vietnam: an American Tragedy**, Telford Taylor, New York Times Books, 1970
(also) Quadrangle 1970
- Philosophy and the Mirror of Nature**, Richard Rorty, Princeton University Press, 1980
- Principles of International Law**, Brownlee, I., OUP (Oxford University Press) 2003
- "Principles, Publicity, and Politics: Notes on Human Rights Media"**, McLagan, Meg (2003) *American
Anthropologist*. Vol. 105 (No. 3). pp. 605-612
- “Private authority: Non-State Actors and Global Governance”** Hall, Rodney Bruce. *Harvard International
Review*, 27.2 (Summer 2005): 66-70.
- Reflections on the Prosecution of War Crimes by International Tribunals**, Meron, T., *American Journal of
International Law*, July 2006, Vol. 100, No. 3
- “Righting the Wrongs of Past Interventions: A Review of the International Commission on Intervention and
State Sovereignty.”** Williams, Ian. 2002. *International Journal of Human Rights* 6(3), 101-113.

“Roundtable: Humanitarian Intervention after 9/11.” Farer, Tom et al. 2005 *International Relations* 19(2), 211-250.

September 11: Consequences for Canada, Kent Roach, Queen's/McGill U. Press, 2003

“Sudan,” Burkhart, Ford. New York Times Online, May 31, 2007.
<http://topics.nytimes.com/top/news/international/countriesandterritories/sudan/index.html?inline=nyt-geo>

(*Introduction*): **The Challenge of Imposing Human Rights on Corporate Actors** De Schutter, O., NYU Global Law Working Paper, 2005 http://www.nyulawglobal.org/workingpapers/gl_2005.htm

“The Economics of Organized Crime and Optimal Law Enforcement” Garoupa, Nuno December 1997.
<http://www.econ.upf.es/deehome/what/wpapers/postscripts/246.pdf>

The Globalization of World Politics: An introduction to international relations, Baylis, J., S. Smith. Second Ed. New York: OUP, 2001.

The Just War Theory: A traditional Catholic moral view, Benson, Richard, The Tidings (2006).

The Lesser Evil: Political Ethics in an Age of Terror, Michael Ignatieff, Princeton University Press, 2003

“The Responsibility to Protect”, International Commission on Intervention and State Sovereignty, December 2001. <http://www.iciss.ca/report2-en.asp>

The Retreat of the State: The Diffusion of Power in the World Economy. Strange, Susan, Cambridge: Cambridge University Press, 2004.

The Return of History and the End of Dreams, Robert Kagan, Random House, 2008

The Sorrows of Empire, Johnson, Chalmers. 2004 New York: Metropolitan Books

The Sun Climbs Slow: Justice in the Age of Imperial America, Erna Paris, Random House, 2008

The Trial of Henry Kissinger, Hitchens, Christopher (2002) Verso. ISBN 1859843980

The United States and the International Criminal Court: The ICC's Jurisdiction Over the Nationals of Non-Party States: A Critique of the US Position, Scharf, M., 64 *Law & Contemporary Problems* 67 (2001) (also internet) <http://www.law.duke.edu/journals/lcp/>

“The UN Responds to the Crisis in Darfur: A Timeline”, United Nations
http://www.un.org/News/dh/dev/scripts/darfur_formatted.htm

“The world reflects on Rwanda genocide”, *Africa Recovery*, United Nations, New Releases. <<http://www.un.org/ecosocdev/geninfo/afrec/newrels/rwanda.htm>>

“Transnational Criminal Organisations and International Security” In In Athena's Camp: Preparing for Conflict in the Information Age, Williams, Phil
http://rand.org/pubs/monograph_reports/MR880/MR880.ch14.pdf

Uncle Sam and Us, Globalization, Neoconservatism, and the Canadian State, Stephen Clarkson, U. of Toronto Press, 2000,

Universal Jurisdiction: Clarifying the Basic Concept, O'Keefe, R., *Journal of International Criminal Justice*, 2004 2 (3): 735 http://www.oxfordjournals.org/jicjus/awards_inlannual.html

Vietnam, A History, Stanley Karnow, Viking Press, 1983; Penguin 1997

Weapons of Mass Persuasion : Marketing the War Against Iraq, **Paul Rutherford, U. of Toronto Press**, 2004
(documents / materials)

Draft united Nations Convention Against Transnational Organized Crime . Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime. United Nations General Assembly, First Session, January 1999. <http://www.uncjin.org/Documents/Conventions/dcatoc/4e.pdf>

Extradition Act (Canada)

Geneva Convention relative to the Treatment of Prisoners of War Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949, entry into force 21 October 1950

General Assembly Resolution 95 Affirming the Principles of International law Recognized by the Charter of the Nuremburg Tribunal

(International Criminal Court site; note under 'Highlights' that some hearings are streamed video...)
<http://www.icc-cpi.int/home.html&l=en>

London Charter of the International Military Tribunal (Nuremburg)

Rome Statute of the ICC

The National Security Strategy of the United States of America, White House Washington, Sept. 2002,
<http://www.whitehouse.gov/nsc/nss.html>

United Nations Charter

Cases

A-G of the Government of Israel v Eichmann (1961) 36 International Law Reports 5

US v Calley 22 USMCA 534 (1973)