

Carleton University
Department of Law and Legal Studies
Course Outline

Course: LAWS 4303B – Drugs, The User and The State

Term: Fall 2015

Prerequisites: Fourth-year Honours standing and one of LAWS 2301, LAWS 2302.

Class: Day & Time: Tuesdays 6:05pm – 8:55pm
Room: Please check with Carleton Central for current room location

Instructor: Kourosh Farrokhzad-Naraghi
(Contract)

Contact: Office: B442 Loeb Building
Office Hrs: Wednesdays 11:30 am – 1:00 pm
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Academic Accommodations:

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two

weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://carleton.ca/pmc/students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at: <http://carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

COURSE DESCRIPTION

A single mother below the poverty line is incarcerated for possession of cocaine for the purpose of trafficking. A student, as part of a marijuana compassion club, is charged for illegal possession of a controlled substance. A black man driving an SUV is stopped by Ontario Provincial Police on the suspicion that he is a drug dealer simply because he is driving an expensive car. Record profits are reaped by a pharmaceutical company from marketing a controversial psychotropic drug. Canada is engaged in a war to restore law and order in Afghanistan and yet the flow of the illegal opium trade internationally has reached levels far exceeding that under the Taliban regime. What do these occurrences have in common?

In this course we attempt to make sense of the Canadian state's historical and contemporary efforts to control drugs and drug users by exploring different aspects of drug control through ideological and institutional state apparatuses. The purpose of this course is to encourage students to think critically about both Canadian and International experiences in drug control. We explore different forms of drug control, looking at the role of both criminal and administrative law in attempts to regulate substances. Students will be encouraged to challenge common discourses around drugs by thinking through developments in drug control from social, cultural, legal, political, economic and international standpoints.

EVALUATION

(All components must be completed in order to get a passing grade)

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Evaluation Scheme:

Class Participation	20%
In-Class Facilitation	10% (date to be assigned in class)
Outline for Term Paper	10% (due: October 13, 2015)
Term Paper	60% (due: December 7, 2015)

Explanation of Evaluation Methodology:

Class Participation

Value: 20%

This course is founded upon participation. The more you participate, the more marks you will likely get. Higher participation and meaningful interventions by all students in in-class discussions and presentations will also increase the level of discussion and its relevance to participants. Students are encouraged to ground their comments in a critical approach to the readings. Personal and political opinions are relevant in this course, but such opinion must engage with the specific themes of the course being explored. There is no “right” view of the course material, but whatever approach students take must be justified.

In-Class Facilitation

Value: 10%

Throughout the term, students will lead and facilitate discussion based on the course readings. Facilitation may be done independently or in groups. Students will prepare several questions to help guide the general discussion. Avoid power point presentations and prepared lectures or reading from notes. The facilitator’s job is to raise questions for discussion and provide a framework for same – not to present the readings, which it is assumed that all of the students have already done.

While participation of all students will be assessed throughout the term, the facilitators will be evaluated on the basis of their questions, quality of discussion and analysis during their chosen facilitation day. In addition to the assigned readings, the facilitators are encouraged to introduce one external reading of their choice into the discussion.

Outline for Term Paper

Value: 10% (due October 13, 2015 at 11:55pm via cuLearn)

To make sure that students develop a considered and coherent strategy for their term

papers, they will submit a two to five page abstract including a bibliographical list of ten sources. The abstract should contain a clear thesis statement and one or several paragraphs describing the topic and approach to be taken, followed by a skeleton or point form outline of the essay. The bibliography need not be annotated; however, points will be deducted where at least ten sources are not cited and/or it appears that the sources cited are not specifically related to the topic in question or would not otherwise advance the agenda of research.

Term Paper

Value: 60% (due December 7, 2015 at 11:55pm via cuLearn)

You are to submit a 15 to 20 page term paper or research project that demonstrates your analysis of the course content and its themes. While I had previously provided a list of topics for the term paper previously, this is no longer the case. Topics are completely open, which means that you are free to write on any issue or subject-matter as long as it relates to the core themes of this course, with a minimum of fifteen bibliographic sources. I would encourage each student to speak with me about her or his selected topic before beginning the outline as all topics must be finalized by the instructor at this stage.

SCHEDULE

WEEK 1: SEPTEMBER 8, 2015 - INTRODUCTION

The introductory seminar will address the rationale and history of having a regulatory framework of drugs in Canada. What constitutes a drug? Why are certain substances regulated in Canada?

Readings:

Althusser, Louis, "Ideology and Ideological State Apparatuses: Notes Towards an Investigation" in *Lenin and Philosophy* (London: New Left Books, 1971), pp. 127-186

Mitchell, C.N. (Chapter 1) *The Drug Solution: Regulating Drugs According to Principles of Efficiency, Justice and Democracy* (Carleton University Press, 1990). pp 5 - 31.
ISBN: 088629116X

Further Readings:

Riley, Diane, "Drugs and Drug Policy in Canada: A Brief Review and Commentary" Canadian Foundation for Drug Policy, 1998 [This study was prepared for Senator Pierre Claude Nolin as a background document for his June 1999 motion to have Canada's Senate conduct a thorough review of Canadian drug law and policy - Canadian Foundation for Drug Policy] See: <http://www.cfdp.ca/sen1841.htm>

Controlled Drugs and Substances Act, SC 1996, C. 16

<http://www.canlii.org/ca/sta/c-38.8/>

Liquor License Act, R.S.O. 1990, L-19

<http://www.canlii.org/on/laws/sta/l-19/20061120/whole.html>

Criminal Code of Canada, R.S.C. 1985, c. C-46

<http://www.canlii.org/ca/sta/c-46/>

Tobacco Act, S.C. 1997, C. 13

<http://www.canlii.org/ca/sta/t-11.5/>

PART ONE: STATE APPARATUS AND THE EXCLUSION OF "DIFFERENCE"

WEEK 2: SEPTEMBER 15, 2015 – ILLEGAL SUBSTANCES AND PROHIBITION OF RACE: A BRIEF HISTORY OF DRUGS IN CANADA

The current systems of regulating drugs in Canada find their origins in social, economic and political conditions, which have variously defined the nature of what constitutes a

drug, the public need for drug regulation and the permissible scope of drug usage. This seminar will explore the history of drug regulation and its relationship to treatment of Canada's First Nations and diverse ethnic and cultural immigrant communities.

Readings:

Giffen, P.J. et al. (1991). *Panic and Indifference: The Politics of Canada's Drug Laws*. Ch 2 - Social Origins of Narcotic Prohibition.

Carstairs, Catherine. (1999). "Deporting 'Ah Sin' to Save the White Race: Moral Panic, Racialization and the Extension of Canadian Drug Laws in the 1920s." in CBMH.

Further Reading:

Mawani, R., "Mixed-Race Identity, Liquor and the Law in British Columbia, 1850-1913" in *Race, Space and the Law: Unmapping a White Settler Society*, S. Razack ed. (Toronto: Between the Lines, 2002) at pp. 47-62.

Murphy, Emily F., *The Black Candle* (Toronto: T. Allen, 1922)

See: <http://cannabislink.ca/papers/murphy/menace.htm>

WEEK 3: SEPTEMBER 22, 2015 - THE WAR ON DRUGS

The War on Drugs in Canada has institutionalized an essentialist state view of a prohibition only strategy towards drug control. What does this approach mean for the poorest and most chronically affected drug users in Canada? Is Canada's war on drugs a product of American hegemony? Who are the direct or implicit targets of the War on Drugs? Who benefits from this so called "war"?

Readings:

Jensen, Eric & Jurg Gerber. (1993). "State Efforts to Construct a Social Problem: The 1986 War on Drugs in Canada."

Jensen, Eric et al. (1999). "Social Consequences of the War on Drugs: The Legacy of a Failed Policy." *Criminal Justice Policy Review*.

Moore, Dawn & Kevin Haggerty. (2001). "Bring it on Home: The Relocation of the War on Drugs." in *Social and Legal Studies*.

Further Reading:

McCoy, Alfred and Block, Alan. (1992) "War on Drugs: Studies in the Failure of US Narcotics Policy" Chapter 1

WEEK 4: SEPTEMBER 29, 2015 – POLICING AND DRUGS

Is there a systemic bias in policing which targets certain racial and/or socio-economic groups in the investigation of drug crimes? How are the public policy objectives of policing determined and for whose benefit? Are current methods of policing effective in reaching their objectives?

Readings:

R v. Khan (2004) 189 CCC (3d) 49 (Ont. SCJ) **(cuLearn)**

R v. Curry (2005) 206 CCC (3d) 100 (Ont. C.A.) **(cuLearn)**

Lichtenburg, Illya. (2006). "Driving While Black (DWB): Examining Race as a Tool in the War on Drugs." in *Police Practice and Research* 7(1) at pp. 49-60.

Further Reading:

Stokes, Larry D. (2007). "Legislative and Court Decisions That Promulgated Racial Profiling: A Sociohistorical Perspective." in *Journal of Contemporary Criminal Justice* 23(3) at pp. 263-275.

WEEK 5: OCTOBER 6, 2015 – INTERNATIONAL DRUG CONTROL

What are Canada's obligations under international conventions with respect to drug control and how do these obligations translate into domestic policy? What is Canada's commitment to fighting the War on Drugs in its foreign policy? The case study of Afghanistan will be specifically considered.

Readings:

Fazey, Cindy. (2003). "The Commission on Narcotic Drugs and the United Nations International Drug Control Programme: Politics, Policies and Prospect for Change." in *The International Journal of Drug Policy*. 14.

Boyd, Susan (2004). *From Witches to Crack Moms: Women, Drug Law and Policy*. (Chapter 6)

Mercille, Julien. (2011). "The U.S. 'War on Drugs' in Afghanistan: Reality or Pretext?" in *Critical Asian Studies* 43(2), pp. 285-309.

Further Readings:

Single Convention on Narcotic Drugs, 1954 (Single Convention, 1954)

The Convention on Psychotropic Substances of 1971

The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention)

Scott, Peter Dale. (2011). "Obama and Afghanistan: America's Corrupted Drug War." in *Critical Asian Studies* 43(1), pp. 111-138.

WEEK 6: OCTOBER 13, 2015 – THE REGULATION OF PHARMACEUTICALS, THE DRUG CORPORATION AND HUMAN HEALTH

(Outline due October 13, 2015)

What determines whether a drug will be regulated as a pharmaceutical? What role do pharmaceutical corporations play in controlling the supply and demand for pharmaceutical drugs? Is Health Canada a reliable and effective regulator for control of drugs in Canada?

Film Excerpt: *The Corporation* (2003), Directed by Mark Achbar, Jennifer Abbott

Reading:

Crister, Greg. The End of the Great Buffer (Chapter Four), *Generation RX: How Prescription Drugs are Altering American Lives, Minds and Bodies* (Boston: Houghton Mifflin Books, 2005).

Clarke, Juarne N., "The Medical-Industrial Complex" (Chapter 16) in *Health, Illness and Medicine in Canada* (4th ed.) (Toronto: Oxford University Press, 2004) pages 370-397.

Further Readings:

Gardner, Paula. (2003) "Distorted Packaging: Marketing Depression as Illness, Drugs as Cure." in *Journal of Medical Humanities* 24(1 / 2) pp. 105-130.

Lewis, Bradley E. (2003) "Prozac and the Post-human Politics of Cyborgs." in *Journal of Medical Humanities* 24 (1 / 2) pp. 49-63.

PART TWO: DRUG POLICY AND MORAL REGULATION

WEEK 7: OCTOBER 20, 2015 – HARM REDUCTION

Is harm reduction a desirable and feasible approach to the issue of drug use in Canadian society? This seminar will focus upon the challenges and successes of harm reduction in different contexts looking at the pilot project of the Safe Injection Facility (SIF) known as InSite in Vancouver's Downtown East Side as well as the Safe Inhalation Project (also referred to as the "Crack Pipe" program) in Ottawa. Guest speakers will present views on the social, political and ideological controversies surrounding these harm reduction initiatives.

Readings:

Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44
(cuLearn)

Fafard, Patrick. (2012). "Public Health Understandings of Policy and Power: Lessons from Insite." in *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 89(6) pp. 905-912.

Hyshka, Elaine et. al. "Prospects for Scaling Up Supervised Safe-Injection Facilities in Canada: The Role of Evidence in Legal and Political Decision-Making." in *Addiction Policy Case Studies* 108 pp. 468-476.

Further Reading:

Hathaway, Andrew D. and Tousaw, Kirk I. (2008). "Harm Reduction Headway and Continuing Resistance: Insights from Safe Injection in the City of Vancouver." in *The International Journal of Drug Policy* 19 pp. 11-16

OCTOBER 26-30, 2015: FALL BREAK, NO CLASSES

WEEK 8: NOVEMBER 3, 2015 – DRUG USERS

What are the social, economic and personal factors, which influence drug use in society? What is the explanation for the moral panic that surrounds dominant ideas about drug use and drug users? How are these moral attitudes reflected in drug policy?

Readings:

Reynolds, MaryLee. (2008). "The War on Drugs, Prison-Building and Globalization: Catalysts for the Global Incarceration of Women." in *NWSA Journal* 20(2), pp. 72-95.

Bourgeois, Phillippe. (2003). "Crack and the Political Economy of Social Suffering." in *Addiction and Research Theory*. 11(1). 31 - 7.

Logan, Enid. (1999). "The Wrong Race, Committing Crime, Doing Drugs and Maladjusted for Motherhood: The Nation's Fury Over Crack Babies."

Further Reading:

Radosh, Polly F. (2008). "War on Drugs: Gender and Race Inequities in Crime Control Strategies." in *Criminal Justice Studies* 21(2) pp. 168-178.

WEEK 9: NOVEMBER 10, 2015 - DISABILITY AND THE NORMATIVE USE OF

PRESCRIPTION DRUGS

People take drugs for different reasons. The manner of dispensation of drugs has a direct bearing upon the perceived legitimacy of drug use in society. Can the use of illicit drugs be morally justified for the treatment of disability? What are the limits of moral justification? Are the public policy reasons, which define the regulatory control of prescription drugs and exceptional use of controlled substances responsive to the needs of disabled persons?

Reading:

Clarke, Juanne N., "Medicalization: The Medical-Moral Mix" (Chapter 16) in *Health, Illness and Medicine in Canada* (4th ed.) (Toronto: Oxford University Press, 2004) pages 220-238.

Moore, Dennies and Li, Li. (2001). "Disability and Illicit Drug Use: An Application of Labeling Theory." 22(1) pp. 1-21.

Chaplin, Eddie et al. (2011). "Recreational Substance Use Patterns and Co-Morbid Psychopathology in Adults with Intellectual Disability" in *Research in Developmental Disabilities* 32, pp. 2981-2986.

PART THREE: CRIMINALIZATION AS A TOOL OF NORMALIZING BEHAVIOUR

WEEK 10: NOVEMBER 17, 2015 – DRUGS AND CRIME

Is there a positive and necessary correlation between the use of drugs and crime? Does drug use make users violent? Is prohibition the safest and most effective method of reducing crime? How does the Canadian state react to drug crimes?

Readings:

Martin, Susan et al (2004). Trends in Alcohol Use, Cocaine Use and Crime." in International Journal of Drug Policy.

Bennett, Trevor and Holloway, Katy (2005). "Understanding drugs, alcohol and crime." Chapter 9.

Further Reading:

Robinson, Matthew and Scherlen, Renee. (2007). "Lies, Damned Lies and Drug War Statistics: A Critical Analysis of Claims Made by the Office of National Drug Control Policy." Chapters 1 and 8.

WEEK 11: NOVEMBER 24, 2015 – SENTENCING IN DRUG OFFENCES AND DRUG TREATMENT COURTS

When a person accused of a drug crime is convicted, he or she is then subjected to a judicial sentence. What factors determine the gravity of this sentence? Are the dynamics of sentencing principles consistent with the social, economic and political realities of drug use in Canada? Should sentencing principles be reassessed?

Readings:

Fisher, Benedikt et al. (2002). "Compulsory Drug Treatment in Canada: Historical Origins and Recent Developments." in Addiction Research.

Chiodo, Anida. (2002). "Sentencing Drug-Addicted Offenders and the Toronto Drug Treatment Court." in Criminal Law Quarterly (45).

Moore, Dawn (2009). "The Drug Treatment Court Movement." In Perspectives From North America, Centre for Crime and Justice Studies.

Moore, Dawn (2011). "Spatio-Therapeutics: Drug Treatment Courts and Urban Space" in Social and Legal Studies 20(2), 157-172.

WEEK 12: DECEMBER 1, 2015 – DECRIMINALIZATION OF MARIJUANA

(Final paper due last day of classes: December 7, 2015)

Two hundred years ago, the production of cannabis sativa was encouraged in North America and promoted as a rotational crop. With the advent of Mexican immigration to the United States in the 1920s, attitudes towards marijuana changed throughout North America and its use and possession became criminalized. Is the criminalization of marijuana historically justifiable? Are current laws prohibiting marijuana in Canada effective in protecting society from harm? Is the regulatory exception for use of marijuana for medicinal purposes a sufficient response? Should marijuana be decriminalized in Canada?

Readings:

R. v. Parker 2000 O.J. 2787 (C.A.) (cuLearn)

R. v. Clay [2003] 3 SCR 735 (cuLearn)

R. v. Mernagh, 2011 ONSC 212 (CanLII) (cuLearn)

Hickenlooper, John W. "Experimenting With Pot: The State of Colorado's Legalization of Marijuana" in *Milbank Q.* 2014 Jun; 92(2): 243–249.

Further Reading:

Husak, Douglas (2000x). "Legalize This! The Case For Decriminalizing Drugs" Chapter 3, pp125-151.

TBA – OPTIONAL REVIEW CLASS

(To be scheduled prior to last day of classes – December 7, 2015)