

## Course Outline

COURSE:	LAWS 4305B – Criminal Justice Reform
TERM:	Winter 2015
PREREQUISITES:	Fourth-year Honours standing and LAWS 2301 and LAWS 2302
CLASS:	<b>Day &amp; Time:</b> Fridays 8:35-11:25 <b>Room:</b> Please check with Carleton Central for current room location
INSTRUCTOR:	Diana Young
CONTACT:	<b>Office:</b> UC 376 <b>Office Hrs:</b> Mondays 12:00 to 1:00 or by appointment <b>Telephone:</b> (613) 520-2600 ex 1981 <b>Email:</b> Diana_Young@carleton.ca

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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://www2.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://www2.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](mailto: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://www2.carleton.ca/pmc/new-and-current-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://www2.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://www.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://www.carleton.ca/law/student-resources/department-policies/>

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## **COURSE DESCRIPTION**

There are a number of mechanisms through which changes to criminal justice policies and the criminal law occur. Legislators respond to criminal justice issues by enacting new law or amending existing law. Courts respond to new challenges by reinterpreting legal rules, implementing changes that seem to be mandated by the *Charter* – and sometimes finding ways of resisting law reform measures taken by legislators. In addition, reform may occur through the changes in discretionary practices of criminal justice officials and policies at a more micro level. Less clear are the broader social forces that motivate reform.

In this course we will consider the political, economic, and cultural conditions that problematize aspects of criminal justice, the mechanisms through which courts, legislatures and other actors in the criminal justice system interpret and respond to pressures for change, and examine contemporary examples of criminal justice reform.

## **REQUIRED TEXTS**

The course readings are all available through the library. Most of the readings can be accessed electronically; hard copies of a few of the readings will be available on reserve at the library. Links to most of the readings will be available through the Ares system.

## **EVALUATION**

Grading for the course will be based on the following:

Midterm assignment: 30%

Research paper: 40%

Group presentation: 20%

Class participation: 10%

The midterm assignment will be based on the material covered in class. It will be posted on cuLearn on February 13 and due on February 27.

The research paper can be on any topic related to criminal justice reform, and should be 10 to 12 pages in length. It will be due on April 8. Students should provide me with a brief outline of their research project well before the due date to ensure that it meets the course requirements.

Students will be asked to sign up for one of six groups that will give presentations to the class on various criminal justice reform topics over the last three days of the course. Students from two groups not presenting on a particular day will be asked to provide a brief written comment on each presentation. I will summarize the comments and forwarded them to the presenters.

The class participation grade is based on a combination of attendance, frequency of students' participation in class discussions and the degree to which students' comments and questions show thoughtfulness and preparation. Students who fail to submit comments on the class presentations will lose participation marks.

***Extensions on assignments will only be granted in extenuating circumstances, such as a verifiable medical condition or family emergency. Students requesting extensions will be required to provide appropriate documentation.***

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 Dean.

## **SCHEDULE**

### **January 9**

Introduction to course

Sites of reform – criminal law, criminal justice policy and discretion

Readings:

Roger A. Shiner, *Theorizing Criminal Law Reform* (2009) 3 *Criminal Law and Philosophy* 167-186.

### **January 16**

Formal Mechanisms of Criminal Justice Reform:

- a) Legislators and the Courts
  - Social Movements Theory: What makes law-makers act?
  - Tough on Crime legislation and judicial resistance
  - Judicial Discretion and the Rule of Law
- b) Royal Commissions of Inquiry
  - Framing the issues and public debate
  - Politics, value conflicts and legalization

Readings:

Don Stuart, *The Charter Balance Against Unscrupulous Law and Order Politics* (2012) 57 *S.C.L.R.* 13.

Roger A. Shiner, *Crime and Criminal Law Reform: A Theory of the Legislative Response* (2009) 12 *Critical Review of International Social and Political Philosophy* 63.

Matthew R. Keller, *When is the State's Gaze Focused? British Royal Commissions and the Bureaucratization of Conflict* (2014) 27 *Journal of Historical Sociology* 204.

*R. v. Cuerrier* (1998), 2 *S.C.R.* 371 (excerpt posted on cuLearn).

*R. v. Mabior* (2012), 2 *S.C.R.* 584 (headnote posted on cuLearn).

*R. v. Michael* (2014), O.J. No 3609 (posted on cuLearn).

**January 23**

## Problematizing Criminal Justice: Politics, Culture, Technology and Society

- a) Criminal justice reform responses to individual incidents
- b) Technological change and criminal law reform
  - On-line “bullying” – controversies over privacy and security
  - The politics of legislative amendments
  - Courts, “sexting” and the Criminal Code

## Readings:

Andrea Slane, *Sexting and the Law in Canada* (2013) 22 *Canadian Journal of Human Sexuality* 117.  
 Lisa Jorgensen, *In Plain View? R. v. Jones and the Challenge of Protecting Privacy Rights in the Era of Computer Search* (2013) 46 *U.B.C. Law Rev.* 791.  
 Ivor Tossell, *The Child Porn Gaffe Aside, Bill C-30 Has Real Dangers* *The Globe and Mail*, (Feb 21, 2012) p. L2  
 Sarah Schmidt, *Tories Say a Vote Against Bill Would be a Vote for Child Porn: Privacy Watchdog, Opposition Parties Up in Arms* *The Calgary Herald*, (February 15, 2012) p. A3  
*R. v. Spencer*, [2014] S.C.J. No. 43 (posted on cuLearn).

**January 30**

## Problematizing Criminal Justice, continued

- a) Risk theory and criminal justice reform
- b) The political economy of criminal justice and reform
- c) Social Movements Theory and the criminal Justice System
  - Cultural Resources, Framing and Being Heard
  - Sentencing, Hate Crimes and LGBT Rights

## Readings:

Todd Nicholas Fuist, *Culture Within Sites, Culture as Resources, and Culture as Wider Contexts: A Typology of How Culture Works in Social Movement Theory* (2013) 7 *Sociology Compass* 1044.  
 Pat O'Malley, *Crime and Risk* (London: Sage Publications Inc. 2010) Chapter 1. (hard copy on reserve at the library).  
 Aaron Doyle, *How Not to Think About Crime in the Media* (2006) 48 *Canadian Journal of Criminology and Criminal Justice* 867.  
 Leslie J. Moran, *The Emotional Dimensions of Lesbian and Gay Demands for Hate Crime Reform* (2004) 49 *McGill L.J.* 925.  
 Cheryl Marie Webster and Anthony Doob, *Penal Reform "Canadian Style": Fiscal Responsibility and Decarceration in Alberta, Canada* (2014) 16 *Punishment and Society* 3.

**February 6**

## The Victims' Rights Movement

- a) Agency and Law and Order
- b) Risk Theory and Criminal Justice Reform

## Readings:

Sandra Walklate, "Risk and Criminal Victimization: Exploring the Fear of Crime" in Hannah-Moffat, Kelly, and Pat O'Malley, eds., *Gendered Risks* (New York; Oxon: Routledge-Cavendish, 2007) pp. 165-181.

Elizabeth A. Stanko, "Victims R Us: The Life History of "Fear of Crime" and the Politicization of Violence" in T. Hope and R. Sparks (eds.) *Crime, Risk, and Insecurity* (London: Routledge, 2000)

Karen Stanbridge and J. Scott Kenney, *Emotions and the Campaign for Victims' Rights in Canada* (2009) 51 *Canadian Journal of Criminology and Criminal Justice*, 473.

*Jane Doe v. Metropolitan Toronto Police* [1998], O.J. No. 487, (1998) 39 O.R. (3d) 487. (excerpt posted on cuLearn).

**February 13**

**\*\*\*\*\*Midterm assignment posted\*\*\*\*\***

## Wrongful Conviction

- a) Technology, wrongful conviction and exoneration
- b) Policing, Crown Policy and Reform

## Readings:

Neil Gerlach, "Corrective Justice: Media Events and the Public Knowledge of DNA in the Criminal Justice System" in Neil Gerlach, *The Genetic Imaginary* (Toronto: University of Toronto Press, 2004)

Kirk Makin, "The Reliance on Science as a Cure for Injustice", *The Globe and Mail*, November 22, 2004, p. A 1.

The Honourable Mr. Justice Peter H. Howden, *Judging Errors of Judgment: Accountability, Independence & Vulnerability in a Post-Appellate Conviction Review Process* (2002) 21 Windsor Y.B. Access Just. 569

John B. Gould, *The Lessons of Wrongful Convictions* 27 *Criminal Justice Ethics*, 107-111

Unknown, *Eyewitness Identification Reform* (2011) 95 *Judicature* 105-106

Excerpt from FTP Heads of Prosecutions Working Group, "Report on the Prevention of Miscarriages of Justice", pp. i - vii

**February 20**

\*\*\* Reading Week \*\*\*

**February 27**

**\*\*\*\*\*Midterm Assignment Due\*\*\*\*\***

## Readings:

Implementing Criminal Justice Reform: Good intentions and unexpected outcomes

- a) Prison reform
- b) Regulation of pornography

## Readings:

Kelly Hannah-Moffat, "Empowering Prison: Neoliberal Governance" in *Punishment in Disguise* (Toronto: University of Toronto Press, 2011) 162.

Roscoe Pound, *Law in Books and Law in Action* (1900) 44 *American Law Rev.* 12.

Brenda Cossman, "Disciplining the Unruly: Sexual Outlaws, Little Sisters, and the Legacy of Butler", (2003) 36 *U.B.C. L. Rev.* 77

### **March 6**

\*\*\*TBA\*\*\*

### **March 13**

Restorative Justice and Penal Abolition  
Summing Up

Readings:

Angela Y. Davis and Dylan Rodriguez *The Challenge of Prison Abolition: A Conversation* (2000) 27 *Social Justice* 212 – 218.

Justin Piché, *Penal Abolition: A Different Kind of Reform* (2009) *Criminal Justice Matters* 70, 30-31.

### **Student Presentations**

#### **March 20**

Group 3: Prostitution

Group 4: Assisted Suicide

#### **March 27**

Group 5: Terrorism

Group 6: Drug Policy – Decriminalization, Safe Injection Sites

#### **April 3**

\*\*\* Statutory Holiday – No Class \*\*\*

#### **April 8**

Group 1: Youth Justice Reform

Group 2: Mental Illness and Criminal Law