

COURSE:	LAWS 4308 C - Sentencing
TERM:	Winter 2015
PREREQUISITES:	Fourth-year Honours standing and LAWS 2301, LAWS 2302. This course may not be taken by students who have completed the course as a special topics course.
CLASS:	Day & Time: Mondays, 2:35 - 5:25 pm Room: RB 3201
INSTRUCTOR:	Professor Diana Young
CONTACT:	Office: LA C574 Office Hrs: Mondays 12:00 to 1:00 pm or by appointment Telephone: 613-520-2600 ex 1981 Email: 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**

The Criminal Justice System carries a heavy burden in our society. The process of sentencing brings this burden into sharp focus. We look to punishment as a means of restoring and maintaining order, assuaging the public's anxieties by creating a sense of security, articulating society's values, recognizing the harm caused to victims and reasserting their moral worth, and perhaps affirming our own status as members of the law-abiding public through the creation of a stigmatized criminal class. But we also expect sentences to rehabilitate offenders, by encouraging a sense of personal responsibility for the harm caused by the offence and by attempting to address the underlying problems - addiction, psychological disorders, social location - that may have contributed to its commission.

This course aims to provide students with a grasp of general sentencing theory and principles, the variety of sentencing options that are available to judges and the considerations that may influence sentencing decisions. The material will also cover a discussion of some alternatives to traditional forms of punishment and their potential for reconciling the often conflicting principles and interests at stake in the sentencing process.

The course will also explore the diffuse nature of the power to punish. Legal doctrine and principle only tell part of the story with respect to sentencing practices, and we will see that a complete discussion of sentencing must include an examination of a complex web of interactions between the law, the discretionary powers exercised by such actors as police, probation officers and Crown Attorneys, and the influences flowing from other kinds of professionals and various communities in society as a whole. Finally, the course will include consideration of the offender's actual experience of punishment, particularly imprisonment, over which the sentencing court has limited control.

## **REQUIRED TEXT**

Articles, book chapters, and government documents that are assigned will be available on line through Ares. Court cases included in the assigned readings will be posted on CULearn.

## **EVALUATION**

### ***Take-Home Assignment – 20% of final grade:***

You will be given a brief take-home assignment, for which you will be required to write a

response to two out of three questions. The assignment will be distributed in class on March 2 and will be due on March 16. Your response to each question should be three or four pages in length, double spaced.

**Research Paper – 50% of final grade:**

You will be required to submit a 10 to 12-page research paper dealing with a sentencing issue of your choice. You may select an aspect of sentencing that we have discussed in class; however, please remember that your research and analysis are expected to go beyond the material we cover in class. You will also be asked to submit a very brief outline of your topic to the instructor for approval. This will help to ensure that your proposed topic is feasible and that it will meet the course requirements. The paper is due on April 8.

**Group Presentations - 20% of final grade:**

Students will be divided into six groups, each of which will be responsible for presenting a sentencing topic to the rest of the class. Groups may distribute a handout or readings to the class the week prior to the scheduled presentations. The presentations will be 45 minutes to an hour in length, and will be followed by discussion. Other members of the class will be asked to provide brief written feedback on the presentations.

**Class Participation – 10% of final grade**

***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.***

## **SCHEDULE**

### **January 5**

Introduction to course

*Readings:* Robert Cover, "Violence and the Word" (1986) 95 Yale L.J. 1601

### **January 12**

*Readings:*

Jeffrie G. Murphy, "Retributivism, Moral Education and the Liberal State" (1985) 4 Criminal Justice Ethics 3.

Matt Travers, "Consequentialism" in *Justice and Punishment: The Rationale of Coercion* (Oxford; New York: Oxford University Press, 2000) pp. 1-28

David Garland, "Sociological Perspectives on Punishment" (1991) 14 Crime and Justice 115.

*R. v. Brush* [1995] O.J. No. 656

*Canadian Centre for Justice Statistics, "Adult Criminal Court Statistics, (2010/2011, 2011/2012)"*

- a) Why punish?
  - theories of punishment: justifications for the infliction of harm
- b) Resource management and the public face of fairness
  - Non-judicial sites of discretion
    - i) plea bargains: private negotiations and public consequences
    - ii) defining the offence

**January 19***Readings:*

*R. v. Arcand* (2010) ABCA 363, 264 C.C.C. (3d) 134, 40 Alta. L.R. (5<sup>th</sup>) **paras. 1-70**

*R. v. Hamilton* (2004) O.R. (3d) 1

*R. v. Sinclair* [2004] M.J. No. 144

Michel Foucault, "The Body of the Condemned" in *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977) pp, 3-31. (On reserve at the library)

Dianne Martin, "Distorting the Prosecution Process: Informers, Mandatory Minimum Sentences and Wrongful Convictions" (2001) 39 Osgoode Hall L. J. 513

- a) Disciplinary and Sovereign Power
- b) Sentencing reform
- legislative attempts to circumscribe judicial discretion and the problem of disparity
- c) sentencing principles and purposes
- d) Judicial discretion
- discretion and the rule of law
- Mandatory minimum sentences
- e) Special cases – Social location and judgment in sentencing

**January 26***Readings: R. v. Arcand paras 92-181*

Michelle S. Lawrence and Simon N. Verdun-Jones, *Sentencing Hate: An Examination of the Application of s. 718.2(a)(i) of the Criminal Code on the Sentencing of Hate-Motivated Offences* (2011) 57 Crim. L.Q. 28

Leslie J. Moran, *The Emotional Dimensions of Lesbian and Gay Demands for Hate Crime Reform* (2004) 49 McGill L.J. 925

Karen Stanbridge and J. Scott Kenney, *Emotions and the Campaign for Victims' Rights in Canada* (2009) 51 Canadian Journal of Criminology and Criminal Justice 4, 473.

- a) Ranges and starting points
- b) Aggravating and mitigating factors
- Hate crimes
- The identity of victims
- The politics of sentencing: emotion, public discourse and pitfalls of reform

**February 2***Readings:*

*R. v. Poorman* (1991), 93 Sask. R. 1, 66 C.C.C. (3d) 82.

*R. v. Hildebrandt* (2005), SKPC 35, Sask. R. 163, 198 C.C.C. (3d) 546.

Kelly Hannah-Moffat et al., *Negotiated Risk: Actuarial Illusions and Discretion in Probation* (2009) 24 Can. J. of Law and Society 391.

- a) Fact-finding
  - the evidentiary basis for discretion
  - the role of experts
- b) Knowledge and power in sentencing

- Disciplinary power
- Risk knowledges

## February 9

Readings:

*R. v. Arcand* paras. 71-91, 182-298;

Excerpt from *R. v. Latimer* [2001] 1 S.C.R. 3.

Nicola Lacey and Lucia Zedner, "Discourses of Community in Criminal Justice" (1995) 22 J. of Law and Society 301.

Diana Young, "Power and Resistance in Community-Based Sentencing" in Dawn Moore and Aaron Doyle, eds., *Critical Criminology in Canada* (Vancouver: UBC Press, 2011) pp. 162-182.

Sentencing and Courts of Appeal

- a) disparity and deference
- b) Charter issues in sentencing
- the rule of law and conceptions of equality

Sentencing Options

- a) Sentencing options and the principles of sentencing
- b) "Community based" sentencing
  - Decreasing the prison population
  - Conditional sentences
  - Communities and the criminal justice system – policy and commitment

## February 16

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

## February 23

Readings:

Mary E. Campbell, "Gone but Not Forgotten: Should Judges Be Allowed to Remedy by Re-Sentencing?" (2006) Canadian Journal of Criminology and Criminal Justice 48

Martin Silverstein, "The Ties that Bind: Family Surveillance of Canadian Parolees" (2001) 42 The Sociological Quarterly 395.

Jennifer M. Kilty, *It's Like They Don't Want you to Get Better: Psy Control of Women in the Carceral Context* (2012) 22 Feminism and Psychology 2 162-182.

- a) Prison
  - Corrections and the legitimacy of sentencing – "Violence and the Word" and the prison experience
  - Parole as imprisonment

## March 2

Readings: *R. v. Gladue* [1999] 1 S.C.R. 688 (headnote).

Excerpt from *R. v. Ipeelee* [2012] 1 S.C.R. 433.

Jane Dickson-Gilmore and Carole La Prairie, "Testing the "Magic": Sentencing Circles in Aboriginal Community Restorative Justice" in Jane Dickson-Gilmore and Carol La Prairie, *Will the Circle Be*

*Unbroken? Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change* (Toronto: University of Toronto Press, 2007) 131-142.

Don Clairmont, *The Development of an Aboriginal Criminal Justice System: The Case of Elsipogtog* (2013) 64 U.N.B.L.J. 160.

Frederic Megret, *Is There Ever a Right to One's Own Law?* (2012) 45 Israel Law Rev. 3.

- a) Aboriginal people and the criminal justice system
  - Problems in equality and the rule of law
  - Sentencing as a means of addressing discrimination and discrimination in sentencing

### **Take-home assignment distributed**

#### **March 9**

Rob White, "Restorative Justice and Social Inequality" in Bernard Schissel and Carolyn Brooks, eds., *Marginality and Condemnation* (Black Point, N.S.: Fernwood Publishing, 2002) 381

Marie Manikis, *Recognizing Victims' Role During Plea Bargaining* (2012) 58 Crim L.Q. 411.

- a) Sentencing and the Role of Victims
- b) Restorative justice
  - Some restorative justice initiatives – what are we restoring?
  - Community based sentencing revisited – Who are victims and what do we mean by "community"?
  - Other sentencing alternatives: Family Group Conferences and Victim-Offender Mediation
  - Sentencing circles and Aboriginal justice – self-determination and the criminal justice system's conception of Aboriginal culture

#### **March 16**

Angela Y. Davis and Dylan Rodriguez "The Challenge of Prison Abolition: A Conversation" *Social Justice*. 27.3 (Fall 2000): pp. 212 – 218.

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

Penal Abolition

- a) Abolition or Reform?

### **Take-home assignment due**

#### **March 23**

Group Presentations:

Group 1 – Drug Treatment Courts

Group 2 – Dangerous Offenders

#### **March 30**

Group Presentations:

Group 3 – Post-sentence surveillance of sex offenders: Offender Registration programs, Criminal Code s. 810.1

Group 4 – Mentally Ill Offenders

**April 6**

Group Presentations:

Group 5 – Sentencing Youth

Group 6 – Women and Prison