

Course Outline

COURSE: LAWS 3308C – Punishment and the Law

TERM: WINTER 2019

PREREQUISITES:

CLASS: Day & Time: Wednesdays 2:35-3:25
Room: Please check with Carleton Central for current room location

INSTRUCTOR: Diana Young

CONTACT: Office: C574 Loeb Building
Office Hrs: Tuesdays 12:00-1:00 or by appointment
Telephone: (613) 520-2600 ex 1981
Email: diana.young@carleton.ca

CALENDAR COURSE DESCRIPTION

This course explores justifications and practices of punishment and social control from a socio-legal perspective. Rationalizations and justifications for punishment are considered. Different forms of punishment and control within the law will be examined as well as different theoretical perspectives of punishment.

COURSE DESCRIPTION

A great deal of legal theory is devoted to justifying punishment, in particular reconciling the use of coercion with liberal commitments to the idea of individual freedom and autonomy. We use legal rationalities – which often depend on specifically liberal notions of individual agency and responsibility – to articulate limits on the power to punish; however, on closer examination we see that punishment is shaped not only by these rationalities but by a wide range of historical, institutional, cultural and social forces.

This course will focus on punishment in the criminal justice context. We will examine traditional theories that provide justification for punishment and contemporary sentencing practices, and the extent to which their claims can be maintained in light of some of the larger – and largely contingent – forces affecting punishment and policy. We will also consider the intersection between punishment, therapy, rehabilitation and reconciliation, and the frequent slippages between these concepts. Finally, we will consider whether reform movements might distract us from the alternative of decriminalization, and the penal abolitionist movement.

REQUIRED TEXTS

A course pack will be available at Octopus Books at 116 Third Avenue. The syllabus includes a number of selections that are not in the course pack but which students can access electronically through the MacOdrum Library database. Cases and additional materials will be posted on CuLearn.

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.

Two Reflection Papers, 15% each:

Students will be asked to submit two papers, 600 to 900 words in length, discussing the readings. The first reflection paper can be on any of the readings covered in class from January 16th to February 6th, inclusive, and must be submitted by February 13th at the latest. The second reflection paper can be on any of the readings from February 13th to April 3rd, and must be submitted by April 9th at the latest. *Students may submit their reflection papers prior to the final submission date, and are encouraged to do so as early in the term as possible.*

Mid-term take-home assignment, 30%

A take home assignment, consisting of a choice of essay questions, will be distributed on February 13th, and will be due on February 27th. Students will be responsible for all the readings and material covered in class up to and including February 13th.

Final take-home exam, 40%

A final take home exam, consisting of a choice of essay questions, will be distributed on April 3rd, and due on April 27th.

SCHEDULE**January 9**

Introduction to Course

- Justice as an abstract concept and the socially embedded nature of punishment

January 16

- What Is Punishment? What is Punishable?
- Morality, harm, and the Criminal Law
- Punishment, liberalism, and reason as freedom

Readings:

- HLA Hart, *Law, Liberty and Morality* (Stanford: Stanford University Press, 1963) pp. 1-24.
- Charles Taylor, "Kant's Theory of Freedom" in *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985) pp. 318-330.
- *R. v. Michael* (2014) O.J. No 3609 (posted on CuLearn)
- *Canada (A.G.) v. Bedford* [2013] 3 S.C.R. 1101 (excerpt posted on CuLearn)
- *R. v. Butler* [1992] 1 S.C.R. 452 (excerpt posted on CuLearn)
- *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 (excerpt posted on CuLearn)

January 23

Reason and culpability

- *Mens Rea* and culpability
- Mental illness, reason, and responsibility

Classical Theories of Punishment

- Retributivism, Utilitarianism, Solidarity as Justification for Punishment

Readings:

- Hannah Arendt, *Eichmann in Jerusalem* (New York: Penguin Books, 1992) pp. 276-279.
- David Garland, "Punishment and Social Solidarity" in *Punishment and Modern Society* (Oxford: Oxford University Press, 1990) pp. 23-46
- R.A. Duff, "Consequentialists, Retributivists, and Abolitionists" in *Punishment, Communication and Community* (New York: Oxford University Press, 2001), pp. 3-34.
- Alan Norrie, *Crime, Reason and History: A Critical Introduction to Criminal Law* (London: Butterworths, 2001) pp. 15-31.

January 30

Disgust, Outrage, and Sympathy: The Role of Emotion in Punishment

- Cruel and Unusual Punishment and the concept of ordinary standards of decency
- Disgust for the offender and retribution

Victims and Punishment

- Public Wrongs and the Individual Wronged
- Victims and the Politics of punishment

Readings:

- Leslie J. Moran, *The Emotional Dimensions of Lesbian and Gay Demands for Hate Crime Reform* (2004) 49 McGill L.J. (4) pp. 925-949.
- 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) pp. 473-509.
- Martha H. Nussbaum, "Emotions and the Law" in *Hiding From Humanity: Disgust, Shame and the Law* (Princeton: Princeton University Press, 2004) pp. 46-67.
- *R. v. Latimer* (2001) (excerpt, posted on CuLearn)

February 6

Justifications for Punishment vs Reasons for Punishment: Normative theories and Institutional Norms

- Punishment as the outcome of multiple social, economic, political and cultural pressures
- Retributivist claims, bureaucracy, and discretion in criminal punishment
- Risk theory and punishment

Readings:

- Cheryl Marie Webster and Anthony Doob, *Penal Reform "Canadian Style": Fiscal Responsibility and Decarceration in Alberta, Canada* (2014) 16 Punishment and Society (1) pp. 3-31.
- Dianne Martin, *Distorting the Prosecution Process: Informers, Mandatory Minimum Sentences and Wrongful Convictions* (2001) 39 Osgoode Hall L. J. (3) pp. 513-527.

- Kelly Hannah-Moffat, "Punishment and Risk" in *The SAGE Handbook of Punishment and Society* (London: Sage Publications Ltd., 2013) pp. 129-151.

February 13

**** Last day to submit First Reflection Paper****

****Mid-term take-home assignment distributed****

Risk Theory and punishment continued

Readings:

- Herb Haines, *Flawed Executions, the Anti-Death Penalty Movement, and the Politics of Capital Punishment* (1992) 39 *Social Problems* (2) pp. 125-138.
- Kelly Hannah-Moffat et al., *Negotiated Risk: Actuarial Illusions and Discretion in Probation* (2009) 24 *Can. J. of Law and Society* (3) pp. 391-409.
- Diana Young, *Individual Rights and the Negotiation of Governmental Power: The Risk of HIV Transmission and the Canadian Criminal Law* (2015) 24 *Social and Legal Studies* (1) pp. 113-134.

February 20

Reading Week

February 27

The Political Economy of Punishment

- Marxist approaches to punishment
- Punishment, culture, and the Labour Market

Readings:

- Jeffery G. Murray, "Marxism and Retribution" in Michael Tonry, ed., *Why Punish? How Much? A Reader on Punishment* (Oxford; New York: Oxford University Press, 2011) pp. 127-145.
- Alessandro De Giorgi, "Punishment and Political Economy" in *The SAGE Handbook of Punishment and Society* (London: Sage Publications Ltd., 2013) pp
- Nicola Lacey, "Political Systems: Electoral Arrangements and the Bureaucracy" in *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies* (Cambridge: Cambridge University Press, 2008) pp. 62-90.

March 6

****Mid-term take home assignment due****

Punishment, Violence and The Body

- Violence, Retribution, and Justification

Readings:

- Michel Foucault, "The Body of the Condemned" in *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977) pp. 3-31.
- Robert Cover, *Violence and the Word* (1986) 95 Yale L.J. (8) pp. 1601-1629.

March 13

Punishment and the Soul

- Rehabilitation and Techniques of Power
- The Intersection of Therapy and Criminal Justice

Readings:

- Kelly Hannah-Moffat, "Empowering Prison: Neoliberal Governance" in *Punishment in Disguise* (Toronto: University of Toronto Press, 2001) pp. 162-187. Available in ebook form through the McOdrum Library catalogue.
- Dawn Moore, *Translating Justice and Therapy: The Drug Treatment Court Networks* (2007) 47 Brit. J. Criminology (1) pp. 42-60.

March 20

Prison and Prisoners' Rights

- 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) pp. 162-182.
- Mary E. Campbell, *Gone but Not Forgotten: Should Judges Be Allowed to Remedy by Re-Sentencing?* (2006) 48 Canadian Journal of Criminology and Criminal Justice (2) pp. 305-314.
- Michael Jackson, *The Litmus Test of Legitimacy: Independent Adjudication and Administrative Segregation* (2006) 48 Canadian Journal of Criminology and Criminal Justice (2) pp. 157-196.
- Debra Parks, *Solitary Confinement, Prisoner Litigation, and the Possibility of a Prison Abolitionist Lawyering Ethic* (2017) 32 Canadian Journal of Law and Society (2) pp. 165-185.

March 27

Restorative Justice and "Community-Based" Approaches to Punishment

- What is "Community"?
- Some Restorative Justice Initiatives: What are we restoring?
- Therapeutic Jurisprudence

Readings:

- 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. (Available on CuLearn)
- Melanie Randall, *Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert: Why Feminists Should Critically Engage with Restorative Approaches to Law* (2013) 36 Dalhousie L.J. pp. 461-499.
- Zacharie T. Courtemanche, *The Restorative Justice Act: An Enhancement to Justice in Manitoba?* (2015) 38 Man. L.J. (2) pp. 1-16.

April 3

Forgiveness and Abolition

Readings:

- Nicola Lacy and Hannah Pickard, *To Punish or Forgive? Reconciling Punishment and Forgiveness in Criminal Justice* (2015) 35 Oxford Journal of Legal Studies (4) pp. 665-696.
- Angela Y. Davis and Dylan Rodriguez *The Challenge of Prison Abolition: A Conversation* (2000) 27 Social Justice. (3) pp. 212 – 218.
- Gordon W. West and Ruth Morris, "Introduction to the Case for Penal Abolition" in Gordon West and Ruth Morris, eds., *The Case for Penal Abolition* (Toronto: Canadian Scholars Press, 2000) pp. 3-12. (Available in ebook form through the McOdrum Library catalogue)
- Justin Piché, *Penal Abolition: A Different Kind of Reform* (2009) Criminal Justice Matters 70, 30-31.

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: Please contact 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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (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 as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) www.carleton.ca/pmc

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/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: carleton.ca/sexual-violence-support

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline

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/>