
COURSE:	LAWS 3308C Punishment and the Law
TERM:	Winter 2021
PREREQUISITES:	LAWS 2301 and 0.5 credit in LAWS at the 2000 level.
CLASS:	Day & Time: Please check Carleton Central for current Class Schedule. Room: All Courses in the Winter 2021 term are offered online. This course will be given in hybrid form. I will upload recorded lectures and we will meet via zoom each week during the regularly scheduled class time.
INSTRUCTOR:	Diana Young
CONTACT:	Office Hrs: Please email for an appointment to meet via Zoom. Telephone: 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. We will also consider whether reform movements might distract us from the alternative of decriminalization, and the penal abolitionist movement.

The course will be structured in a way that, I hope, will facilitate student engagement in material

being delivered in an on line format, employing a hybrid of synchronous and asynchronous approaches. In the week prior to each class I will post several videos, about 20 minutes in length, discussing the readings and highlighting the main points I would like students to take away from the material. I will also post some questions in the weekly forum that I would like students to think about before we meet online for our class. Students will be expected to attend weekly zoom meetings having viewed the videos and completed the readings for the week. I will also open a forum session on CuLearn each week so that students can share ideas, questions, or comments on the course material.

Our first class, on January 14, will be an introduction and orientation to the course. In order to facilitate class discussion, for subsequent classes I will divide the class into two groups – group one will be scheduled to meet via zoom every Thursday from 11:35 am to 12:50 pm. Group two will be scheduled to meet via zoom every Thursday from 1:10 pm to 2:25 pm. These meetings will be devoted to discussion of the week's reading materials and any other issues that students would care to raise. I will post a few questions on the "forum" section of our cuLearn page each week for students to consider in advance of each week's class. Students are invited to post their own responses, questions, or comments on the forum.

REQUIRED TEXTS

All course readings will be available through the MacOdrum Library catalogue or through Ares.

EVALUATION

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 14th to February 25th, inclusive, and must be submitted by March 4th at the latest. The second reflection paper can be on any of the readings from March 4th to April 1st, inclusive, and must be submitted by April 8th 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 March 4th, and will be due on March 18th. Students will be responsible for all the readings and material covered in class up to and including March 4th.

Final take-home exam, 40%

A final take home exam, consisting of a choice of essay questions, will be distributed on April 8th, and due on April 27th.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

SCHEDULE

January 14

Introduction to Course

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

January 21

- 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. (available through Ares)
- Lacy, N., "Punishment and the Liberal World: Liberalism and Theories of Punishment" in *Punishment and the Liberal World* (London and New York: Routledge, 1988) pp.142-168. (ebook available through McOdrum Library).
- *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 28

Classical Theories of Punishment

- Retributivism, Utilitarianism, Solidarity as Justification for Punishment

Readings:

- David Garland, "Punishment and Social Solidarity" in *Punishment and Modern Society* (Oxford: Oxford University Press, 1990) pp. 23-46. (available in ebook form through McOdrum Library).
- R.A. Duff, "Consequentialists, Retributivists, and Abolitionists" in *Punishment, Communication and Community* (New York: Oxford University Press, 2000), pp. 3-34. (available in ebook form through McOdrum Library).

- Chris Cunneen and Juan Tauri, "Reconceptualising Sentencing and Punishment from an Indigenous Perspective" in *Indigenous Criminology* (Chicago: Policy Press, 2016), pp. 111-132.

February 4

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. (ebook available through McOdrum Library).
- *R. v. Latimer* (2001) (excerpt, posted on CuLearn)

February 11

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.
- Lisa Kerr, *Sentencing Ashley Smith: How Prison Conditions Relate to the Aims of Punishment* (2017) 32 Canadian Journal of Law and Society (2) pp. 287-308.
- Julian V. Roberts and Andrew Reid, *Aboriginal Incarceration in Canada since 1978: Every Picture Tells the Same Story*, (2017) 59 Canadian Journal of Criminology and Criminal Justice (3) pp. 313-345.

February 18

Winter Break

February 25

Risk Theory and Actuarial Justice

Readings:

- Pat O'Malley, "Risk, Crime Control and Criminal Justice" in *Risk, Uncertainty and Government* (London: GlassHouse Press, 2004) pp. 135-154. (ebook available through the MacOdrum Library)
- Kelly Hannah-Moffat, "Punishment and Risk" in *The SAGE Handbook of Punishment and Society* (London: Sage Publications Ltd., 2013) pp. 129-151. (available through Ares).
- 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.

March 4

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

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

The Political Economy of Punishment

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

Readings:

- Garland, D. (1990) "The Political Economy of Punishment: Rusche and Kirchheimer and the Marxist Tradition" in *Punishment and Modern Society*: 83-110. Chicago: University of Chicago Press. (available in ebook form through the MacOdrum Library)
- Alessandro De Giorgi, "Punishment and Political Economy" in *The SAGE Handbook of Punishment and Society* (London: Sage Publications Ltd., 2013) pp. 40-59. (available in ebook form through the MacOdrum Library)
- Alan Norrie, "The Historical Context of Criminal Doctrine" in *Crime, Reason and History: A Critical Introduction to Criminal Law* (London: Butterworths, 2014) pp. 19-38. (available in ebook form through the MacOdrum Library).

March 11

Punishment, the Soul and the Body

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

Readings:

- Robert Cover, *Violence and the Word* (1986) 95 Yale L.J. (8) pp. 1601-1629.

- 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 18

Mid-term take-home assignment due

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.
- 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.
- Pate, K., "Solitary By Any Other Name is Just as Cruel: Bill C-83, the Federal Legislation that Claims to Eliminate Solitary Confinement, Is, In Reality, Just Linguistic Trickery" (November 13 2018) *The Globe and Mail*, p. A13.
- Sara Turnbull, *Aboriginalising the Parole Process* (2014) 16 Punishment and Society (4) pp. 385-405.

March 25

Restorative Justice and "Community-Based" Approaches to Punishment

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

Readings:

- Zacharie T. Courtemanche, *The Restorative Justice Act: An Enhancement to Justice in Manitoba?* (2015) 38 Man. L.J. (2) pp. 1-16.
- 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.
- 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)

April 1

Forgiveness and Abolition

Video:

- Shigematsu, S. (2012) Visions of Abolition: From Critical Resistance to a New Way of Life (video available online through the MacOdrum Library).

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

April 8

Final take-home assignment posted

Conclusion and review.

January 11, 2021

February 15 – 19, 2021

April 14, 2021

April 16 – 27 2021

Classes Begin

Winter Break, No Classes

Winter Term Ends

Formally Scheduled Final Exams

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

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 Department of Equity and Inclusive Communities (EIC): <https://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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

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) <https://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: <https://carleton.ca/registrar/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: <https://carleton.ca/studentssupport/svpolicy/>

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: <https://students.carleton.ca/services/accommodation/>

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