

Course Outline

COURSE: LAWS 4305B – Criminal Justice Reform

TERM: WINTER 2019

PREREQUISITES: LAWS XXXX

CLASS: Day & Time: Tuesdays 2:35-5:25
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
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CALENDAR COURSE DESCRIPTION

Social transformation and criminal justice reform. Theoretical and practical reasons for the use of criminal law as an instrument of social control. Specific reform initiatives and processes. Alternate responses to social problems.

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 some contemporary examples of criminal justice reform.

REQUIRED TEXTS

All the course readings can be accessed electronically through the MacOdrum Library collection of journals and e-books, on line, or 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.

Grading for the course will be based on the following:

Two take home assignments: 20% each

Research paper: 30%

Group presentation: 20%

Class participation: 10%

The take home assignments will be based on the material covered in class. The first will be posted on cuLearn on January 29th and due on February 12th. The second will be posted on March 12th and due on March 26th.

The research paper can be on any topic related to criminal justice reform, and should be 10 to 12 pages in length, double-spaced. It will be due on April 9th. 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 weeks 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.

SCHEDULE**January 8**

Introduction to course

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

Readings:

Shiner, R.A. (2009). Theorizing Criminal Law Reform. *Criminal Law and Philosophy* 3(2),

167-186.

January 15

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:

Shiner, R.A. (2009). Crime and Criminal Law Reform: A Theory of the Legislative Response. *Critical Review of International Social and Political Philosophy*, 12, 63 – 84.

Keller, M.R. (2014). When is the State's Gaze Focused? British Royal Commissions and the Bureaucratization of Conflict. *Journal of Historical Sociology*, 27(2), 204 – 235.

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 22

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:

Slane, A. (2013). Sexting and the Law in Canada. *Canadian Journal of Human Sexuality*, 22(3), 117 – 122.

Jorgensen, L. (2013). In Plain View? *R. v. Jones* and the Challenge of Protecting Privacy Rights in the Era of Computer Search. *U.B.C. Law Rev.* 46(3), 791-817.

Schmidt, S. "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).

R. v. Vu, [2013] 3 S.C.R. 657 (Headnote only, posted on cuLearn)

Haggerty, K., & Sandhu, A. (2014). Police Crisis of Visibility. *IEE Technology and Society Magazine*. Access online at https://www.researchgate.net/profile/Ajay_Sandhu2/publication/286677818_The_Police_Crisis_of_Visibility/links/56eec4aa08ae59dd41c6f00c.pdf

January 29

First take-home assignment posted

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
 - Emotions and Criminal Justice
 - Sentencing, Hate Crimes and LGBT Rights

Readings:

Haggerty, K.D. From Risk to Precaution: Exploring the Rationalities of Crime. In Ericson, R.V., and Doyle, A. eds. (2003). *Risk and Morality*. Toronto: University of Toronto Press.193-214.

Fuist, T.N. (2013). Culture Within Sites, Culture as Resources, and Culture as Wider Contexts: A Typology of How Culture Works in Social Movement Theory. *Sociology Compass*, 7(12), 1044 – 1052.

Doyle, A. (2006). How Not to Think About Crime in the Media. *Canadian Journal of Criminology and Criminal Justice*, 48(6), 867 – 885.

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

Webster, C.M. & Doob, A.N. (2004). Penal Reform "Canadian Style": Fiscal Responsibility and Decarceration in Alberta, Canada. *Punishment and Society*, 16(1), 3-31.

February 5

Risk Theory and legal principle

The Victims' Rights Movement

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

Readings:

Walklate, S. Risk and Criminal Victimization: Exploring the Fear of Crime. In Hannah-Moffat, Kelly, and O'Malley, P. (Eds.) (2007). *Gendered Risks*. New York: Routledge-Cavendish. 165-181.

Stanbridge, K. & Kenney, J.S. (2009). Emotions and the Campaign for Victims' Rights in Canada. *Canadian Journal of Criminology and Criminal Justice*, 51(4), 473 - 509.

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

February 12

First Take-Home Assignment Due

Wrongful Conviction

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

Readings:

Gerlach, N., (2004). Corrective Justice: Media Events and the Public Knowledge of DNA in the Criminal Justice System. Gerlach, N., *The Genetic Imaginary*. Toronto: University of Toronto Press. 98-132.

Kirk Makin, "The Reliance on Science as a Cure for Injustice", *The Globe and Mail* (November 22, 2004), p. A1.

Howden, P.J., (2002). Judging Errors of Judgment: Accountability, Independence & Vulnerability in a Post-Appellate Conviction Review Process. *Windsor Y.B. Access Just.*, 21, 569

John B. Gould, (2008). The Lessons of Wrongful Convictions. *Criminal Justice Ethics*, 27, 107-111.

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

Excerpt from FTP Heads of Prosecutions Working Group, "Report on the Prevention of Miscarriages of Justice", pp. i – vii (available on CuLearn)

February 19

*****Winter Break – no class*****

February 26

Implementing Criminal Justice Reform: Good intentions and unexpected outcomes

- a) Punishment, treatment, rehabilitation
- b) Regulation of pornography

Readings:

Hannah-Moffat, Kelly. (2001) Empowering Prison: Neoliberal Governance. In Hannah-Moffat, Kelly, *Punishment in Disguise*. Toronto: University of Toronto Press. 162 - 187.

Pound, R., (1910). Law in Books and Law in Action. *American Law Rev.*, 44, 12.

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

March 5

International Criminal Law and Transitional Justice
Developments in Aboriginal Justice

Readings:

Teitel, R. (2000) Criminal Justice. In *Transitional Justice*. New York; Oxford: Oxford University Press, 27-67.

Fine, R. (2000) Crimes Against Humanity. *European Journal of Social Theory* 3(3), 293-311.

R. v. Gladue [1999] 1 S.C.R. 688

R. v. Ipeelee [2012] 1 S.C.R. 433

Jeffries, S, and C.E.W. Bond. "The Impact of Indigenous Status on Adult Sentencing: A Review of Statistical Research Literature from the United States, Canada and Australia." (2012) 10 *Journal of Ethnicity in Criminal Justice*, pp.223-243. <https://www.tandfonline->

com.proxy.library.carleton.ca/toc/wecj20/10/3?nav=toCList

March 12

Second Take-Home Assignment Posted

Community-Based and Restorative Alternatives

Readings:

Randall, M. (2013). Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert: Why Feminists Should Critically Engage with Restorative Approaches to Law. *Dalhousie L.J.* 36, 461.

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

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)

March 19

Prison Reform and Penal Abolition

Readings:

Canadian Civil Liberties Association v. Canada (Attorney General) [2017] O.J. no. 6592 (posted on cuLearn).

British Columbia Civil Liberties Association v. Canada (Attorney General) [2018] B.C.J. no. 52 (Headnote only – posted on cuLearn)

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.

Ains, C., “B.C. Court of Appeal to Hear Solitary Confinement Challenge” (November 13, 2018) *The Globe and Mail*, p. A9.

Parks, D. (2017). Solitary Confinement, Prisoner Litigation, and the Possibility of a Prison Abolitionist Lawyering Ethic. *Canadian Journal of Law and Society* 32(2), 165-185.

West, G.D. & Morris, R. (2000) Introduction to the Case for Penal Abolition. In West, G. and Morris, R. (eds.), *The Case for Penal Abolition*. Toronto: Canadian Scholars Press. 3-12.

Piché, J. (2009). Penal Abolition: A Different Kind of Reform. *Criminal Justice Matters*, 77(1), 30-31.

March 26

Second Take-Home Assignment Due

Group Presentations:

Group 1: Sex Work and Criminal Justice

Group 2: Assisted Suicide

April 2

Group Presentations:

Group 3: Terrorism and Criminal Justice

Group 4: Drug Policy – Decriminalization, Safe Injection Sites

April 9

Group Presentations:

Group 5: Youth Justice Reform

Group 6: Mental Illness and Criminal Law

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.

LAWS XXXX

Term - Year

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