

Course Outline

COURSE:	LAWS 3308C Punishment and the Law
TERM:	Winter 2022
PREREQUISITES:	LAWS 2301 and 0.5 credit in LAWS at the 2000 level.
CLASS:	Day & Time: Tuesdays, 11:35-2:25 Room: Please check Carleton Central for current Class Schedule. Classes will be held in person in TB 630
INSTRUCTOR:	Diana Young
CONTACT:	Office: LA C574 Office Hrs: Please email me to arrange a meeting via zoom 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, particularly reconciling the use of coercion with liberal commitments to the idea of individual freedom and autonomy. We use legal rationalities – which often depend on 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 economic 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 social forces affecting punishment and policy. We will also consider the intersection between punishment, therapy, rehabilitation and reconciliation, the alternatives of decriminalization, and the penal abolitionist movement.

REQUIRED TEXTS

All course readings will be available through the MacOdrum Library catalogue, on Brightspace, 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 a selection from the course readings. The first reflection paper can be on any of the readings covered in class from January 18th to February 15th, inclusive, and must be submitted by March 1st at the latest. The second reflection paper can be on any of the readings from March 1st to April 5th, inclusive, and must be submitted by April 12th 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 1st, and will be due on March 15th. Students will be responsible for all the readings and material covered in class up to and including March 1st.

Final take-home exam, 40%

A final take home exam, consisting of a choice of essay questions, will be distributed on April 12th, and due on April 28th.

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 11

Introduction to Course

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

January 18

- 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 Brightspace)
- *Canada (A.G.) v. Bedford* [2013] 3 S.C.R. 1101 (excerpt posted on Brightspace)
- *R. v. Butler* [1992] 1 S.C.R. 452 (excerpt posted on Brightspace)

January 25

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 1

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

February 8

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

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.
- Campbell, K.M., and Stephanie Wellman (2020) "Addressing the Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Is Reconciliation a Way Forward?" in (Côté-Lussier, C., Moffette, D., Piché, J., Balfour, G., Bruckert, C., Campbell, K., eds.) *Contemporary Criminological Issues* (Ottawa: University of Ottawa Press) pp. 145-164. (ebook available through the MacOdrum Library).

February 15

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.

February 22*****Winter Break*******March 1******** 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. (ebook available 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 through Ares).
- 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. (ebook available through the MacOdrum Library).

March 8*****Mid-term take-home assignment due*****

Punishment, Violence, 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.
- Michel Foucault, "The Body of the Condemned" in *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977) pp. 3-31. (available through Ares).

March 15

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. (ebook available 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.
- 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.

March 22

Prison and Prisoners' Rights

- 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 29

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.

April 5

Penal 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:

- McDowell, M.G. & Fernandez, L.A. (2018) *Disband, Disempower, and Disarm: Amplifying the Theory and Practice of Police Abolition* (2018) 26 Critical Criminology, (3) pp. 373-391.
- 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.
- 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 12

*****Last Day to Submit Second Reflection Paper*****

*****Final take-home assignment posted*****

Conclusion and review.

Winter 2022 Sessional Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website: https://calendar.carleton.ca/academicyear/</i>	
January 5, 2022	University Reopens.
January 10, 2022	Winter term classes begin.
January 31, 2022	Last day for withdrawal from winter term and winter portion of fall/winter courses with full fee adjustment. Withdrawals after this date will result in a permanent notation of WDN on the official transcript.
February 18, 2022	April examination schedule available online.
February 21, 2022	Statutory holiday. University closed.
February 22-25, 2022	Winter break, no classes.
March 29, 2022	Last day for summative tests or examinations, or formative tests or examinations totaling more than 15% of the final grade before the official examination period (see examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar).
April 12, 2022	Winter Term Ends. Last day of fall/winter and winter term classes.
April 13, 2022	No classes or examinations take place.
April 14- 28, 2022	Final examinations in winter term and fall/winter courses may be held. Examinations are normally held all seven days of the week.
April 15, 2022	Statutory holiday. University closed.
April 28, 2022	All take home examinations are due on this day, with the exception of those conforming to the examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar.

University and Departmental Policies

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/>.

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/student-experience-resources/>.

COVID-19 PREVENTION MEASURES

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions](#)

[\(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

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 [click here](#).

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 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).

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 where 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/equity/sexual-assault-support-services>

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 will be provided to students who compete or perform at the national or international level. 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: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

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For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>.