

Course Outline

COURSE:	LAWS 3308B – Punishment and the Law
TERM:	Fall 2022
PREREQUISITES:	LAWS 2301 and 0.5 credit in LAWS at the 2000 level
CLASS:	Day & Time: Wednesdays, 11:35-2:25 Room: Tory Building 446
INSTRUCTOR:	Mike Madden
CONTACT:	Office: n/a Office Hrs: <i>By appointment, scheduled through email to the instructor. Provide several suggested time slots when requesting a meeting.</i> Telephone: 613-884-5384 Email: mike.madden@carleton.ca

CALENDAR COURSE DESCRIPTION

This course explores justifications and practices of punishment and social control from a sociolegal 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

This course is designed to expose students to the theory, rhetoric, and practice of punishment in Canada from a critical perspective. We will learn to become skeptical of reductionist claims that are advanced in favour of both the punishment *status quo* and reform alternatives. Although the course is focused primarily on the concept of punishment in a criminal law context, we will also study some of the blurry margins that exist in legal places where the government's attempt at "not-punishment" looks and feels remarkably similar to punishment.

Readings for each week have been selected in order to offer students a sound academic and often inter-disciplinary basis for discussing the week's topic. In-person lectures (that will often incorporate guest speakers) will build on the readings by fleshing out the specific law that applies to the topic, and by attempting to personalize and humanize aspects of the topic that

are often missed in written academic work, among other things.

The course culminates with the submission of a final research paper on a topic that students will have broad freedom to select themselves. During the introduction to the course that takes place during the first week of class, the instructor will describe the different topics that are available for selection, and will provide some context as to the controversy or debate that makes each topic interesting and potentially worthwhile as a research paper topic.

Elements of Evaluation

Your mark in this course will be comprised of 4 elements.

- (1) **Quizzes.** There will be 11 readings/lecture quizzes that will be available for completion online within Brightspace. These quizzes will open for each of the applicable weeks starting at 19h00 on the relevant Wednesday evening, after both the readings and the lecture for that week have been completed. The quizzes will remain open for 5 days. Your best 8 quizzes will form your mark on this element. The 8 quizzes will be worth 20% of your final grade. You do not need to complete all 11 quizzes, since only your best 8 count, but you are welcome to complete them all if you choose.
- (2) **Annotated Bibliography.** You must select one of the listed research paper topics for the course (these will be posted separately in Brightspace), and then submit an annotated bibliography (not more than 6 pages in length, double spaced) for four academic sources relating to this topic. The assignment is worth 20% of your final grade, and is due on 12 October 2022. More information on this assignment is located on Brightspace in the “Assignment Descriptions” module.
- (3) **Paper Proposal.** You must submit a proposal (not more than 6 pages in length, double-spaced) for your final paper in this course. You will need to include your general topic, introduce your specific topic and how it relates to the general topic, present your thesis statement, and provide an outline of for the rest of the paper. Your outline should include moderate detail, to the point of showing the major arguments that you would make, and the evidence (sources) that you would use to support your arguments. The assignment is worth 20% of your final grade and is due on 2 November 2022. More information on this assignment is located on Brightspace in the “Assignment Descriptions” module.
- (4) **Final Research Paper.** You must submit a fully-written research paper (not more than 16 pages in length, double-spaced) that flows from your paper proposal. Your paper should present and develop a logical, persuasive, and insightful argument that is substantiated with appropriate evidence, support from academic sources, and all of the

necessary citations. The assignment is worth 40% of your final grade and is due on 9 December 2022. More information on this assignment is located on Brightspace in the “Assignment Descriptions” module.

Course Delivery Mechanisms and Course Flow

This course will be delivered in person, but will leverage electronic technology extensively, as appropriate. Quizzes will be conducted within the Brightspace environment. All assignments are to be submitted within Brightspace. Guest speakers may appear via Zoom, if in-person appearances are not practicable.

Students should complete the required readings before the lecture for the week. After both the readings and the Wednesday lecture have been completed, students should complete the online quiz for the week (as appropriate). This cycle should be repeated for each week’s material.

REQUIRED TEXTS

There are no required texts for this course. The readings are available within Brightspace for each week. All of the readings are available electronically through the Carleton University Library. Note: you may need to login for proxy access to the library using your MC1 credentials before the links in Brightspace will work for you. At worst, this may require you to click the links once (to login to the library) and then a second time (to actually access the reading).

Although you are not required to own your own copy, I strongly encourage you to consider purchasing a print copy of McGill Law Journal, *Canadian Guide to Uniform Legal Citation*, 9th ed (Toronto, Ontario: Thomson Reuters, 2018) [*The McGill Guide*]. Copies of this book can be [purchased from the publisher](#). This publication serves as your complete reference for how to cite sources in within Canadian legal writing, and you will be required to use the citation formats described in *The McGill Guide* throughout this course, and subsequent courses that you take within the department. Copies of this publication are available for you to use within the MacOdrum Library; however, I am certain that you will find it more convenient to own your own copy of the book.

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.

As noted above, your grade will be made up of the following elements:

- Readings/Lecture Quizzes – best 8 of 11 possible quiz marks – 20%
- Annotated Bibliography – 20%
- Paper Proposal – 20%
- Final Research Paper – 40%

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Readings/Lecture Quizzes are open for fixed 5-day periods, and cannot be completed outside of the fixed windows.

*Late Assignments Are **NOT** Accepted:*

- Late assignments are not accepted in this course. Students may request an extension before an assignment deadline (if they meet the requirements).

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.

CLASS SCHEDULE

Week/ Date	Readings	Lecture Topics	Quiz
Week 1 – Sep 7, 2022	- Course Outline - Assignment Descriptions in Brightspace	INTRODUCTION 1. Intro to the Course; 2. Intro to Concept of Punishment. 3. Research Paper Topics	No
Week 2 –	- Ronald J Rychlak, "Society's Moral Right to Punish: A Further Exploration of the	(LIBERAL) POLITICAL THEORY AND THE RIGHT TO PUNISH	Yes

Sep 14, 2022	Denunciation Theory of Punishment" (1991) 65 Tul L Rev 299. - <i>R v CAM</i> , [1996] 1 SCR 500, paras 76-82.	1. Tensions between liberty and punishment; 2. Utilitarian, retributivist, and hybrid theories; role of moral theory? 3. Mapping liberal political theory onto punishment theory.	
Week 3 – Sep 21, 2022	- Julian V Roberts & Anthony N Doob, "Sentencing and Public Opinion: Taking False Shadows for True Substances" (1989) 27 Osgoode Hall L J 491. - Elizabeth Janzen, "The Dangers of a Punitive Approach to Victim Participation in Sentencing: Victim Impact Statements after the Victims Bill of Rights Act" (2020) 43 Man LJ 85. - Julian V Roberts & Jan W de Keijser, "Democratizing Punishment: Sentencing, Community Views and Values" (2014) 16 Punishment & Soc'y 474.	VICTIMS, THE STATE, AND SOCIETY 1. Identifying the agents and beneficiaries of punishment; 2. Punishment and victims' needs; 3. Democratizing punishment: public opinion and sentencing.	Yes
Week 4 – Sep 28, 2022	- Julia Nicol, <i>Sentencing in Canada, Publication No 2020-06-E</i> (Ottawa: Library of Parliament, 2020), online: https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2020-06-e.pdf . - Rose Ricciardelli, <i>Surviving Incarceration: Inside Canadian Prisons</i> (Waterloo: Wilfred Laurier UP, 2014), 9-38. - Cheryl Marie Webster & Anthony N Doob, "Missed Opportunities: A Postmortem on Canada's Experience with the Conditional Sentence" (2019) 82:1 Law & Contemp Probs 163.	PUNISHMENT IN CANADA TODAY 1. Sentencing Options; 2. Prisons and Penitentiaries; 3. Sentences in the Community; 4. Overrepresentation of Incarcerated Minorities.	Yes
Week 5 – Oct 5, 2022	- <i>Guindon v Canada</i> , 2015 SCC 41, paras 1-14, and 41-91. - Doug McLeod, "An Unacceptable Standard: Administrative Monetary Penalties and the Erosion of Section 11 Protections in the Wake of Guindon." (2016) 36 NJCL 229. - R Solomon, L MacLeod & E Dumschat, "The Shifting Focus of Canadian Impaired Driving Enforcement: The Increased Role of Provincial and Territorial Administrative	IF IT QUACKS LIKE A DUCK: IDENTIFYING THE BOUNDARIES OF PUNISHMENT 1. Penalties and Punishments; 2. The Role of Stigma; 3. Case Study: New Military Summary Hearings (with Guest Speaker).	Yes

	Sanctions" (2020) 25 Can Crim L Rev 25.		
Week 6 – Oct 12, 2022	- <i>R v Brown</i> , 2022 SCC 18, paras 42-108. - G Greg Brodsky, "Proceed with Extreme Caution: The Not Criminally Responsible Defence" (2017) 40 Man LJ 89.	MENTAL FAULT AND PUNISHMENT 1. Linking the Legitimacy of Criminal Law and Punishment; 2. Blameworthy States of Mind; 3. Understanding the Not-Criminally-Responsible Verdict and its Consequences.	Yes
Week 7 – Oct 19, 2022	- Marijke Malsch & Marius Duker, "Introduction" (1-13) and "Incapacitation: Trends and New Perspectives" (237-251) in Marijke Malsch & Marius Duker, eds, <i>Incapacitation: Trends and New Perspectives</i> (Surrey, UK: Ashgate, 2012); - R Antony Duff, "Punishment, Retribution and Communication" in Gerban Bruinsma, et al, eds, <i>Punishment, Places and Perpetrators: Developments in Criminology and Criminal Justice Research</i> (New York: Willan Publishing, 2012) 78; - Bill Wringe, "Rethinking Expressive Theories of Punishment: Why Denunciation is a Better Bet than Communication or Pure Expression" (2017) 174 Philos Studies 681.	LOOKING CLOSER AT OBJECTIVES OF PUNISHMENT I 1. Incapacitation; 2. Retribution; 3. Denunciation.	Yes
Oct 26, 2022	No Class – Fall Term Break Week		
Week 8 – Nov 2, 2022	- <i>R v Russell</i> , 2021 SKPC 31, online: https://canlii.ca/t/jg5rs . - Athula Pathinayake, "Should We Deter against General Deterrence" (2018) 9:1 Wake Forest J L & Pol'y 63; - Peter J Henning, "Is Deterrence Relevant in Sentencing White-Collar Criminals?" (2015) 61 Wayne L Rev 27.	LOOKING CLOSER AT OBJECTIVES OF PUNISHMENT II 1. General and Specific Deterrence 2. The Law and Economics of Deterrence 3. Punishing the Innocent	Yes
Week 9 – Nov 9, 2022	- DA Andrews & James Bonta, "Rehabilitating Criminal Justice Policy and Practice" (2010) 16 Psychology, Public Policy & Law 39. - Eric P Baumer, Ian O'Donnell & Nicola Hughes, "The Porous Prison: A Note on the Rehabilitative Potential of Visits Home"	LOOKING CLOSER AT OBJECTIVES OF PUNISHMENT III 1. Rehabilitation – how is it achieved and does it work? 2. Recidivism and the revolving door of punishment.	Yes

	<p>(2009) 89 Prison J 119.</p> <p>- Robert Diab, "R v. Khawaja and the Fraught Question of Rehabilitation in Terrorism Sentencing" (2013) 39 Queen's LJ 587, online: https://www.canlii.org/en/commentary/doc/2014CanLIIDocs33503.</p>	<p>3. Case Study: the Canadian Forces Service Prison and Detention Barracks – the most-resourced prison in Canada (with Guest Speaker).</p>	
<p>Week 10 – Nov 16, 2022</p>	<p>- John Pratt, "Scandinavian Exceptionalism in an Era of Penal Excess: Part I: The Nature and Roots of Scandinavian Exceptionalism" (2008) 48 Brit J Criminology 119.</p> <p>- Vanessa Barker, "Nordic Exceptionalism Revisited: Explaining the Paradox of a Janus-Faced Penal Regime" (2013) 17 Theoretical Criminology 5.</p> <p>- Nadirsyah Hosen, "Hudud and Corruption: A Critical Analysis of Proposals to Cut Off the Hands of the Corrupt in Indonesia" in Tim Lindsey & Helen Pausacker, eds, <i>Crime and Punishment in Indonesia</i> (New York: Routledge, 2021) 490, online: https://www.researchgate.net/publication/346360346_Hudud_and_corruption</p>	<p>A COMPARATIVE LOOK AT PUNISHMENT</p> <p>1. A Primer on the How and Why of Comparative Legal Research 2. Proportionality: Uniformly Accepted, Divergently Applied; 3. Mapping Extremes in Punishment</p>	<p>Yes</p>
<p>Week 11 – Nov 23, 2022</p>	<p>- Kanika Samuels-Wortley, "Youthful Discretion: Police Selection Bias in Access to Pre-Charge Diversion Programs in Canada" (2022) 12 Race & Justice 387;</p> <p>- Dennis Dow, "A Get-out-of-Jail-Free Card: Discharge without Conviction in New Zealand" (2017) 4 Pub Int LJ NZ 78.</p> <p>- Matthew G Yeager & Matthew Chappelle, "Restorative Justice: The Feasibility of Alternative Models of Justice" (2022) 25 Contemporary Justice Review 122.</p>	<p>ALTERNATIVES TO PUNISHMENT</p> <p>1. Diversion and Alternative Measures; 2. Absolute and Conditional Discharges; 3. Restorative Justice; 4. Decriminalization 5. Guest Speaker – The Realities of Life In, and After, Maximum Security Prison.</p>	<p>Yes</p>
<p>Week 12 – Nov 30, 2022</p>	<p>- Samantha McAleese, <i>Reforming the Criminal Records Act</i> (Ottawa: John Howard Society, 2016), online: https://johnhoward.ca/wp-content/uploads/2017/04/Criminal-Records-Act-Reform-Final-1.pdf</p> <p>- Sarah E Lageson & Shadd Maruna, "Digital Degradation: Stigma Management in the Internet Age" (2018) 20 Punishment & Soc'y</p>	<p>AFTER PUNISHMENT</p> <p>1. Criminal Records and their Enduring Effects 2. Stigma 3. Clemency 4. Guest Speaker – Collateral Consequences of Conviction and Barriers to Reintegration</p>	<p>Yes</p>

	113.		
Week 13 – Dec 7, 2022	No readings	CONCLUSION AND WRAP-UP	No

University and Departmental Policies

DEPARTMENT POLICIES AND REGULATIONS

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

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/>.

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 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. Read more here:

<https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit:

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

COVID Update

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are [a number of actions you can take](#) to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

Feeling sick? Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you must follow Carleton's [symptom reporting protocols](#).

Masks: Carleton has paused the [COVID-19 Mask Policy](#), but continues to strongly recommend masking when indoors, particularly if physical distancing cannot be maintained. It may become necessary to quickly reinstate the mask requirement if pandemic circumstances were to change.

Vaccines: Further, while proof of vaccination is no longer required as of May 1 to attend campus or in-person activity, it may become necessary for the University to bring back proof of vaccination requirements on short notice if the situation and public health advice changes. Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible, and submit their booster dose information in [cuScreen](#) as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the [University's COVID-19 website](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca.