
COURSE:	LAWS 4305A Criminal Justice Reform
TERM:	FALL 2020
PREREQUISITES:	LAWS 2908, CRCJ 3001 or CRCJ 3002 and LAWS 2301, LAWS 2302 and fourth-year Honours standing
CLASS:	Day & Time: Tuesdays 8:35-11:25 a.m. Room: All Courses in the Fall 2020 term are offered online. Please check Carleton Central for current Class Schedule.
INSTRUCTOR:	Diana Young
CONTACT:	Office: By appointment. Please email to arrange a time to meet via zoom. Office Hrs: By appointment. Please email to arrange a time to meet via zoom. Telephone: Email: diana.young@carleton.ca

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 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.

The course will be structured in a way that, I hope, will facilitate student engagement in material being delivered in an on line format. The course will employ a hybrid of synchronous and asynchronous approaches. One week before each class I will post several videos, about 15 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 the 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 September 15, 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 Wednesday from 8:35 to 9:55. Group two will be scheduled to meet via zoom every Tuesday from 10:10 to 11:25. These meetings will be devoted to discussion of the week's reading materials and any other issues that students would care to raise.

REQUIRED TEXTS

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

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.

Grading for the course will be based on the following:

First take home assignment: 20%

Second take home assignment **OR** a research paper: 30%

Two Reading Reflections: 15% each

Class participation: 20%

The take home assignments will be based on the material covered in class. Students will be provided with a choice of questions to be answered in essay form. The first assignment will be posted on cuLearn on **October 20** and due on **November 10**. The second assignment will be posted on cuLearn on **December 8** and due on **December 23**. Instead of the second assignment, students may submit a research paper on a subject of their choice pertaining to criminal justice reform. The paper should be about 2,500 words in length and will be due on **December 11**.

The reading reflections can be on any of the course readings. Reflection #1 can be on any of the readings from September 22 to October 13, and must be submitted by **October 20**. Reflection #2 can be on any of the course readings from October 20 to December 8 and must be submitted by **December 11**. More detailed information concerning the expectations for this assignment will be posted on cuLearn.

The class participation grade is based on the frequency of students' participation in class discussions and the degree to which students' comments and questions show thoughtfulness

and preparation. I will also monitor the weekly forum and give students who provide comments or questions credit for their input.

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

September 15

Introduction to course

This class will be conducted in real time over zoom, with all students in attendance. I will provide an overview of the course subject matter, the grading procedure, and the way in which course content will be delivered. This is a good opportunity for students to raise any questions they might have about the structure of the course, grading, or technical issues.

PART I:

There are many components of the criminal justice system; reform does not only involve changes to the law but also changes to such things as the professional practices that guide the use of discretion among police, Crown Attorneys and institutional bureaucracies. Over the next two weeks we will focus on formal mechanisms of *law* reform - legislatures and courts – in criminal justice reform. We will be considering issues such as how the imposition of criminal sanctions is legitimized in liberal democracies, controversies regarding the courts and criminal law reform, the concept of judicial dialogue, and the role of Royal Commissions of Inquiry in framing controversies. We will also introduce the concept of public reason, and how individual problems come to be seen as matters of public concern.

September 22

Legislatures

Readings:

Shiner, R.A. (2009) Theorizing Criminal Law Reform. *Criminal Law and Philosophy*, 3(2): 167-186.

Shiner, R.A. (2009) Crime and Criminal Law Reform: A Theory of the Legislative Response. *Critical Review of International Social and Political Philosophy*, 12(1): 63 – 84.

Bracey, G. E. (2015) Black Movements Need Black Theorizing: Exposing Implicit Whiteness in Political Process Theory. *Sociological Focus*, 49(1): 11-27.

Cossman, B. (2020) The 1969 Criminal Amendments: Constituting the Terms of Gay Resistance. *University of Toronto Law Journal*, 70(3): 245-262.

September 29

The role of the courts in criminal justice reform

- Tough on Crime legislation and judicial resistance
- Judicial Discretion and the Rule of Law

Royal Commissions of Inquiry

- Framing the issues and public debate
- Politics, value conflicts and legalization

Readings:

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).

PART II:

Over the next few weeks we will move beyond formal mechanisms of law reform to consider how a particular problem becomes a matter of broad public concern, what incites public outrage at a particular moment in time, giving rise to demands for action through the criminal justice system. In Part II, we will look at the how the interaction of changes in technology, cultural norms, high profile tragedies, and perceptions of risk produce calls for reform.

October 6

Problematizing Criminal Justice: Politics, Culture, Technology and Society

- a) Criminal justice reform as a response to specific incidents

- b) Technological change and criminal law reform
 - On-line “bullying” – controversies over privacy and security
 - The politics of legislative amendments

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] 2 S.C.R. 1212 (posted on cuLearn).

R. v. Jarvis, [2019] 1 S.C.R. 488 (posted on cuLearn)

October 13

Problematizing Criminal Justice continued: How technology exposed the issue of wrongful conviction and incited calls for reform in the criminal justice system.

Video:

“Steven Truscott: His Word Against History” *The Fifth Estate* CBC. 29 March 2000. Television. (Available online at <https://www.cbc.ca/fifth/episodes/40-years-of-the-fifth-estate/steven-truscott-his-word-against-history>)

Readings:

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

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

John B. Gould, (2008) The Lessons of Wrongful Convictions. *Criminal Justice Ethics*, 27(1): 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)

October 20

Problematizing Criminal Justice continued: Risk theory and criminal justice reform.

Readings:

Nowotny, K. (2020) COVID-19 Exposes Need for Progressive Criminal Justice Reform. *American Journal of Public Health*, 110(7): 967-968.

Goldsmith, A.J., (2010) Policing's New Visibility. *British Journal of Criminology*, 50(5): 914-934.

Walklate, S. (2007) Risk and Criminal Victimization: Exploring the Fear of Crime. In (Hannah-Moffat, Kelly, and O'Malley, P. eds.) *Gendered Risks*: 165-181. New York: Routledge-Cavendish. (Available in ebook form through the MacOdrum Library)

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

Young, D. (2015) Individual Rights and the Negotiation of Governmental Power: The Risk of HIV Transmission and the Canadian Criminal Law. *Social and Legal Studies*, 24(1): 113-134.

October 27 *Reading week*******PART III**

In this part we will look at social movements; how do they arise, who represents them, how they are constituted, and how they frame issues of reform. We will also consider the role of emotion in public discourse and criminal justice reform.

November 3

*****First Take-Home Assignment posted on CuLearn**

*****Last day to submit first Reading Reflection**

Social Movements Theory and the criminal Justice System

- Cultural Resources, Framing and Being Heard
- Black Lives Matter and technology
- The Victims' Rights Movement

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.

Benford, R.D. & Snow, D.A. (2000) Framing Processes and Social Movements: An Overview

and Assessment. *Annual Review of Sociology*, 26(1): 611-639.

Nummi, J. et al., (2019) #BlackLivesMatter: Innovative Black Resistance. *Sociological Forum*, 34(1): 1042-1064.

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.

November 10

***First Take-Home Assignment due.

Social Movements Continued: Intersectionality and identity politics. Whose social movement?

Readings:

Michalson, V. (2019) Abolitionist Feminisms as Prisons Close: Fighting the Racist and Misogynist "Child Welfare" System. *The Prison Journal*, 99(4): 504-511.

Keleta-Mae, N., (2020) Black Lives Matter: Sit-In at Toronto Pride. In (Diverlus, R. et al., eds.) *Until We Are Free: Reflections on Black Lives Matter in Canada*:163-275. Regina: University of Regina Press. (Available in ebook form through the MacOdrum Library.)

Wilkins, D.J. et al., (2019) Whose tweets? The rhetorical functions of social media use in developing the Black Lives Matter movement. *British Journal of Social Psychology*, 58(4): 786-805.

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

November 17

Emotions and criminal justice reform; the effect of popular media on reform and attitudes toward criminal justice.

Readings:

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

McLean, K. (2017) From "Junkies" to "Soccer Moms": Newspaper Representations of Overdose, 1988-2014. *Critical Criminology*, 25(3): 411-432.

Kennedy, L. (2018) Man I'm All Torn Up Inside: Analyzing Audience Responses to *Making a Murderer*. *Crime Media Culture*, 14(3): 391-408.

Moran, L.J. (2004) The Emotional Dimensions of Lesbian and Gay Demands for Hate Crime Reform. *McGill Law Journal*, 49(4): 925-949.

PART IV

In this part, we will look at reform initiatives that are initially thought to be progressive, and how these initiatives might have unintended consequences. We will also look at so-called community based or restorative approaches to criminal justice and their limitations.

November 17

Implementing Criminal Justice Reform: Good intentions and unexpected outcomes

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

Readings:

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

Cossmann, B. (2003) Disciplining the Unruly: Sexual Outlaws, Little Sisters, and the Legacy of Butler. *U.B.C.L. Rev*, 36(1): 77 - 99.

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

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>

November 24

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 Law Journal*, 36(2): 461-499.

Courtemanche, Z.T. (2015) The Restorative Justice Act: An Enhancement to Justice in Manitoba? *Manitoba Law Journal*, 38(2): 1-16.

Young, D. (2011) Power and Resistance in Community-Based Sentencing. In (Moore, D. & Doyle, A., eds.) *Critical Criminology in Canada* : 162-182, Vancouver: UBC Press, 2011. (Available on cuLearn)

December 1

Prison Reform and Penal Abolition

Readings:

Canadian Civil Liberties Association v. Canada (Attorney General) [2019] O.J. no. 1537 (Ont CA) (posted on cuLearn).

British Columbia Civil Liberties Association v. Canada (Attorney General) [2019] B.C.J. no. 1115 (BCCA) (Headnote only – posted on cuLearn)

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.

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.

December 8

*****Second Take-Home Assignment Posted on CuLearn**

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:

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*: 3-12. Toronto: Canadian Scholars Press.

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

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

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/>