

Course Outline

COURSE:	LAWS 4305 A Criminal Justice Reform
TERM:	Fall 2021
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
	Room: Please check Carleton Central for current Class Schedule. Classes will be conducted in person
INSTRUCTOR:	Diana Young
CONTACT:	Office: C574 LA
	Office Hrs: Students who would like to meet with me should set up an appointment by email. Meetings will take place via zoom.
	Telephone: (613) 520-2600 ex 1981
	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 laws or amending existing laws. 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.

REQUIRED TEXTS

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

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:

Mid-term take home assignment: 20%

Final take home exam: 20%

Research paper: 30%

Group presentation: 20%

Class participation: 10%

The mid-term take home assignment will be posted on Brightspace on October 5 and due on October 19. The final take-home exam will be posted on November 16 and due on December 23, although students who would like their grade prior to the end of classes may submit the exam earlier.

The research paper can be on any topic related to criminal justice reform, and should be about 10 pages in length, double-spaced. It will be due on December 10. 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 and anonymize the comments and forward them to the presenters. Guidelines for the presentations will be posted on Brightspace.

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.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Extensions on assignments will only be granted in extenuating circumstances, such as a verifiable medical condition or family emergency. Requests for extensions should be made prior to the due date. Late assignments will be subject to a penalty of 5% per day.

SCHEDULE**September 14**

Introduction to course

Readings:

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

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

PART I:

There are many components of the criminal justice system; reform does not only involve changes to the law but also changes to 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 21

Formal Mechanisms of Criminal Justice Reform:

- Legislation: How are the means of social control selected and what makes law-makers act?

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(1): 63 – 84.

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

Khan, U. (2018) *From Average Joe to Deviant John: The Changing Construction of Sex Trade Clients in Canada*. In (van der Muellen, E, Durisin, E.M., Bruckert, C., eds.) *Red Light Labour: Sex Work Regulation, agency, and Resistance: 67-81*. Vancouver, Toronto: UBC Press. (ebook available through the MacOdrum Library).

September 28

Judicial Discretion and the Rule of Law

- Tough on Crime legislation and judicial resistance

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.

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.

R. v. Cuerrier (1998), 2 S.C.R. 371 (excerpt posted on Brightspace).

R. v. Mabior (2012), 2 S.C.R. 584 (headnote posted on Brightspace).

R. v. Michael (2014), O.J. No 3609 (posted on Brightspace).

PART II:

Over the next two weeks we will move beyond formal mechanisms of law reform to consider how a problem becomes a matter of broad public concern, what incites public outrage at a particular moment in time, and gives rise to demands for action through the criminal justice system. 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 5*****First take-home assignment posted on Brightspace*****

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:

Lee, J.R. and Kathleen M. Darcy, (2021) Sexting: What’s Law Got to Do with It? *Archives of Sexual Behavior*, 50: 563-573.

Cohen, T., “Criminal Code Enters Era of Sexting; Cyberbullying Bill would give Police New Tools”, *The Calgary Herald*, (November 21, 2013) p. A18.

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

Criminal Code, s. 162.1 (posted on Brightspace).

Criminal Code, s. 163.1 (posted on Brightspace).

R. v. Spencer, [2014] 2 S.C.R. 1212 (posted on Brightspace).

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

October 12

Problematizing Criminal Justice continued:

- a) Police misconduct in the digital age
- b) 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. (ebook available through the MacOdrum Library)

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.

Excerpt from FTP Heads of Prosecutions Working Group, “Report on the Prevention of Miscarriages of Justice”, pp. i – vii. (posted on Brightspace)

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

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.

October 19

*****First take-home assignment due*****

Social Movements Theory and the criminal Justice System

- Cultural Resources, Framing and Being Heard
- Social movements 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.

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.

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.

October 26 *Reading week*****

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.

November 2

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. (Available in ebook form through the MacOdrum Library)

Cosman, 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

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*: 145-164. Ottawa: University of Ottawa Press. (ebook available through the MacOdrum Library).

November 9

Restorative Alternatives and Prison Reform

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.

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

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

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.

November 16

*****Final Take-Home Exam Posted on Brightspace*****

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. (ebook available through the MacOdrum Library)

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.

PART V: Student Presentations**November 23**

Group One: Sex Work and Criminal Justice

Group Two: Medical Assistance in Dying

November 30

Group Three: Terrorism and Criminal Justice

Group Four: Drug policy: criminalization and alternatives

December 7

Group Five: Youth Justice Reform

Group Six: Mental Illness and Criminal Justice

Fall Term 2021 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>	
September 6, 2021	Statutory holiday. University closed.
September 8, 2021	Fall term begins. Fall and fall/winter classes begin.
October 11, 2021	Statutory holiday. University closed.
October 25-29, 2021	Fall break, no classes.
November 26, 2021	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).
December 10, 2021	Fall term ends. Last day of fall term classes. Classes follow a Monday schedule.
December 11-23, 2021	Formally Scheduled Final Exams may be held.
December 23, 2021	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.
December 25, 2021 through January 1, 2022 inclusive	University closed.

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

Academic Accommodation

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>

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/>.

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/>.

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/>.