

Course Outline Template

COURSE: LAWS 3306A – Crime, Law, Process and Politics

TERM: Fall 2023

PREREQUISITES: LAWS 2301 and 2302

CLASS: **Day & Time:** Tuesdays 11:35-2:25
 Room: Please check Carleton Central for room location

INSTRUCTOR: Diana Young

CONTACT: **Office:** LA C574

Office Hrs: Please make an appointment by email
 Telephone: 520-2600 ex 1981
 Email: diana.young@carleton.ca

CALENDAR COURSE DESCRIPTION

Criminal law process in Canada; structure and use of the process examined for fairness, defects, and possible reform initiatives. Issues concerning gender, race and class bias in the implementation and application of the criminal law.

COURSE DESCRIPTION

In Canada great deal of legal theory is devoted to justifying the use of the criminal justice system's coercive power by ensuring that it respects individual autonomy, the requirements of fairness and the rule of law. However, in practice the criminal justice system is a complex assemblage, consisting not only of legislative and judge-made law, but also subsystems consisting of an array of professional disciplines, material circumstances, and broader social forces. In this course we will examine how outcomes in criminal justice are affected, not only by theoretical and legal rationalities, but also by the activities of Crowns, police, political activists, experts, the media and other influences that interact to produce sometimes unpredictable results.

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.

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 September 12th to October 17th, inclusive, and must be submitted by October 31st at the latest. The second reflection paper can be on any of the readings from October 31st to November 28th, inclusive, and must be submitted by December 5th 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. Additional guidelines for this assignment will be posted on Brightspace.*

Mid-term take-home assignment, 30%

A take home assignment, consisting of a choice of essay questions, will be distributed on October 31st, and will be due on November 14th.

Final take-home exam, 40%

A final take home exam, consisting of a choice of essay questions, will be distributed on December 5th, and due on December 22nd.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS**Recommended text 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 12**

Introduction to course

September 19

Morality, Liberalism, and the Criminal Law

Readings:

- HLA Hart, *Law, Liberty and Morality* (Stanford: Stanford University Press, 1963) pp. 1-24. (available through Ares)
- Lacy, N. (1988) Punishment and the Liberal World: Liberalism and Theories of Punishment. In *Punishment and the Liberal World*: 142-268 London and New York: Routledge. (ebook available through McOdrum Library).
- Borrows, L. (2016) Dabaadendiziwin: Practices of Humility in a Multi-Juridical Legal Landscape. *Windsor Yearbook of Access to Justice*, 33(1): 149-165.

September 26

Law making, Legislation, and Law Reform

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.
- Cossman, B. (2020) The 1969 Criminal Amendments: Constituting the Terms of Gay Resistance. *University of Toronto Law Journal*, 70(3): 245-262.
- Lee, J.R. and Kathleen M. Darcy, (2021) Sexting: What's Law Got to Do with It? *Archives of Sexual Behavior*, 50: 563-573.

October 3

Law Making and Judicial Discretion, *The Charter of Rights and Freedoms* and the Rule of Law

Readings:

- *Carter v. Canada (Attorney General)*, 2015 SCC 5; [2015] 1 S.C.R. 331 (posted on Brightspace).
- *Truchon v. Procureur General du Québec*, 2019 QCCS 3792; [2019] Q.J. No. 7750 (Posted on Brightspace)
- Cossman, B. (2003) Disciplining the Unruly: Sexual Outlaws, Little Sisters, and the Legacy of Butler. *U.B.C. Law Review*, 36(1): 77 - 99.
- *R. v. Butler* [1992] 1 S.C.R. 452 (excerpt posted on Brightspace)
- *R. v. Michael*, 2014 On C.J. 360; (2014) 121 O.R. (3d) 244 (posted on Brightspace).

October 10

Pre-trial Processes: Policing, Bail

Readings:

- Goldsmith, A.J. (2010) Policing's New Visibility. *British Journal of Criminology*, 50(5): 914-934.
- Ericson, R. and Haggerty, K. (1997). Policing as risk communications. In *Policing the Risk Society*: 17-38. Toronto: University of Toronto Press. (ebook available through the MacOdrum Library)
- Pelvin, H. (2019) Remand as a Cross-Institutional System: Examining the Process of Punishment before Conviction. *Canadian J. Criminology & Crim. Justice* 61(2): pp. 66-87.

October 17

Pre-trial Processes: Crown Attorneys and Prosecutorial Discretion

Readings:

- Mitchell, G.G. (2001) No Joy in This for Anyone: reflections on the Exercise of Prosecutorial Discretion in *R. v. Latimer*. *Sask. Law Review* 64(2): pp. 491-510.
- Leclerc, C. & Elsa Euvrard, (2019) Pleading Guilty: A Voluntary or Coerced Decision. *Canadian Journal of Law and Society* 34(3): 457-478.

- Grodensky, C.A.; Crozier, W.E.; Gifford, E.J.; Garrett, B.L. (2023) Understanding Prosecution in a New Progressive DA's Office. *Criminal Justice and Behavior* 50(3): 429-453.
- Martin, D. (2001) Distorting the Prosecution Process: Informers, Mandatory Minimum Sentences and Wrongful Convictions. *Osgoode Hall L. J.* 39(3): pp. 513-527.

October 31

****Last day for submission of the first reflection paper**

****Mid-term take-home assignment distributed**

Retributivist claims and realities of punishment
Specialized courts

Readings:

- Kerr, L. (2017) Sentencing Ashley Smith: How Prison Conditions Relate to the Aims of Punishment. *Canadian Journal of Law and Society* 32(2): pp. 287-308.
- Maurutto, P.; Hannah-Moffat, K. ; Lynch, M. (2012), Shifting and targeted forms of penal governance: Bail, punishment and specialized courts. *Theoretical criminology* 16(2): pp. 201-219.
- Marutto, P. and Kelly Hannah-Moffat (2016) Aboriginal Knowledges in Specialized Courts: Emerging Practices in Gladue Reports. *Canadian Journal of Law and Society* 31(3): pp.451-471.

November 7

Restorative Justice 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).

- 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 14

Wrongful conviction and the role of technology

Video:

- “Steven Truscott - His Word Against History” *The Fifth Estate* CBC. 29 March 2000. Television. (Available online at <https://www.cbc.ca/player/play/2647922641>)

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)
- Martin, D. (2002) Lessons about Justice from the Laboratory of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence, *UMKC Law Review* 70(4): pp. 847-864.
- Excerpt from FTP Heads of Prosecutions Working Group, “Report on the Prevention of Miscarriages of Justice”, pp. i – vii. (posted on Brightspace)

November 21

Risk Theory and Actuarial Justice

Readings:

- O’Malley, P. (2004) Risk, Crime Control and Criminal Justice. In *Risk, Uncertainty and Government*: 135-154. London: GlassHouse Press. (ebook available through the MacOdrum Library)
- Kelly Hannah-Moffat et al. (2009) Negotiated Risk: Actuarial Illusions and Discretion in Probation. *Can. J. of Law and Society* 24(3) pp. 391-409.
- 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): pp. 113-134.
- *R. v. Cuerrier* (1998), 2 S.C.R. 371 (excerpt posted on Brightspace).

November 28

Social Movements

Readings:

- 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.
- 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.
- 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.

December 5

****Last day for submission of the second reading reflection**

****Second take-home assignment posted on Brightspace**

Penal Abolitionism

Review and Wrap-Up

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. *Critical Criminology*, 26(3): 373-391.
- 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.

Fall 2023 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, 2023	Fall term begins.
September 19, 2023	Last day for registration and course changes (including auditing) in fall and fall/winter courses.
September 30, 2023	Last day to withdraw from full fall and fall/winter courses with a full fee adjustment.
October 9, 2023	Statutory holiday. University closed.
October 23-27, 2023	Fall break, no classes.
November 15, 2023	Last day for academic withdrawal from full fall courses.
November 24, 2023	Last day for summative tests or examinations, or formative tests or examinations totaling more than 15% of the final grade, in fall term or fall/winter undergraduate courses, before the official December final examination period (see examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar).
December 8, 2023	Fall term ends.
	Last day of fall classes.
	Classes follow a Monday schedule.
	Last day for final take-home examinations to be assigned, 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.
	Last day that can be specified by an instructor as a due date for term work for full and late fall courses.
	Last day for receipt of applications for undergraduate degree program transfers for winter term.
December 10-22, 2023	Final examinations in full fall and late fall courses and mid-term examinations in fall/winter courses will be held. Examinations are normally held all seven days of the week.
December 22, 2023	All final 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

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 that can be found at:

<https://carleton.ca/equity/contact/form-pregnancy-accommodation/>

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, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>

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. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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/>.