

Course Outline Template

COURSE:	LAWS 3306B Crime, Law, Process and Politics
TERM:	Winter 2024
PREREQUISITES:	LAWS 2301 and 2302
CLASS:	Day & Time: Thursdays at 11:35-14:25 Room: Please check Carleton Central for class schedule. <i>(In-person)</i>
INSTRUCTOR:	Diana Young
CONTACT:	Office Hrs: Please contact me by email to arrange a meeting in person or via zoom. Telephone: (613) 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, 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 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 January 11th to February 15th, and must be submitted by February 29th at the latest. The second reflection paper can be on any of the readings from February 29th to April 4th, and must be submitted by April 10th 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 posted on Brightspace on February 29th, and will be due on March 14th.

Final take-home exam, 40%

A final take-home exam, consisting of a choice of essay questions, will be posted on Brightspace on April 4th, and will be due on April 25th.

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 short-term extensions, 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>.

For more information regarding academic consideration for short-term incapacitation (illness, injury, or extraordinary circumstances beyond a student's control), please visit the following link: <https://students.carleton.ca/course-outline/#academic-consideration-for-short-term-incapacitation>

SCHEDULE**January 11**

Introduction to course

January 18

Morality, Liberalism, and the Criminal Law

Readings:

- HLA Hart, *Law, Liberty and Morality*: pp. 1-24 Stanford: Stanford University Press, 1963. (available through Ares)
- Lacy, N. (1988) Punishment and the Liberal World: Liberalism and Theories of Punishment. In *State Punishment: Political Principles and Community Values*: pp. 142-168 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.

January 25

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 Darcy, K.M. (2021) Sexting: What's Law Got to Do with It? *Archives of Sexual Behavior* 50: 563-573.
- McFarland, E., Drake, A., and Hiebert, J. (2023) The Legislative Process and Charter Rights: Criminal Justice Policy and the Harper Government. In *Legislating Under the Charter: Parliament, Executive Power, and Rights*: pp. 68-85. Toronto: University of Toronto Press.

February 1

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

Readings:

- *R. v. Michael*, 2014 On C.J. 360; (2014) 121 O.R. (3d) 244 (posted on Brightspace).
- McFarland, E., Drake, A., and Hiebert, J. (2023) Legislative Responses under the Charter: Medical Assistance in Dying Policy. In *Legislating Under the Charter: Parliament, Executive Power, and Rights*: pp. 131-159. Toronto: University of Toronto Press. (ebook available through the MacOdrum Library).
- *Carter v. Canada (Attorney General)*, 2015 SCC 5; [2015] 1 S.C.R. 331 (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)

February 8

Policing

Pretrial Processes: 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*: pp. 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.
- Yule, C.; Schumann, R. (2019) Negotiating Release: Analysing Decision Making in Bail Court. *Canadian J Criminology & Criminal Justice* 61(3): 45-66.

February 15

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): 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 Law Journal* 39(3): 513-527.

February 22

Winter Break, No classes

February 29

**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): 287-308.
- Marutto, P.; Hannah-Moffat, K. ; Lynch, M. (2012), Shifting and targeted forms of penal governance: Bail, punishment and specialized courts. *Theoretical criminology* 16(2): 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): 451-471.
- Kilty, J. M. 2012. 'It's like They Don't Want You to Get Better': Psy Control of Women in the Carceral Context. *Feminism & Psychology* 22 (2): 162-82.

March 7

Restorative Justice, 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) (Headnote only - 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. (link posted on Brightspace)
- Barker, V. (2013) Nordic Exceptionalism Revisited: Explaining the Paradox of a Janus-Faced Penal Regime. *Theoretical Criminology* 17(5): 5-25

March 14

Mid-term assignment due

Wrongful conviction

Video:

- Please watch at home: “Steven Truscott - His Word Against History” *The Fifth Estate* CBC. 29 March 2000. Television. (Available for streaming 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*: pp. 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)
- Umamaheswar, J. (2023) Wrongful Conviction as Racialized Cumulative Disadvantage. *The British Journal of Criminology* 63(3): 537-552.

March 21

Risk Theory and Actuarial Justice, Popular perceptions of Risk

Readings:

- O’Malley, P. (2004) Risk, Crime Control and Criminal Justice. In *Risk, Uncertainty and Government*: pp. 135-154. London: GlassHouse Press. (ebook available through the MacOdrum Library)

- Hannah-Moffat, K. Maurutto, P., and Turnbull, S. (2009) Negotiated Risk: Actuarial Illusions and Discretion in Probation. *Can. J. of Law and Society* 24(3): 391-409.
- Chan, W., Rigakos, G. (2002) Risk Crime and Gender. *British Journal of Criminology* 42(4): 743-761

March 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.
- Jane Doe v. Toronto (Metropolitan) Commissioners of Police [1998] 39 O.R. (3d) 487. (excerpt posted on Brightspace)
- 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.

April 4

****Final take-home exam posted on Brightspace**

Penal Abolitionism

Review and Wrap-Up

Video: Please watch at home: Shigematsu, S. (2012) Visions of Abolition: From Critical Resistance to a New Way of Life (video available for streaming 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.
- Morris, R.; West, W. G. (2000) Introduction. *The Case for Penal Abolition*: pp. 3-15. Toronto: Canadian Scholars' Press. (ebook available through the MacOdrum Library)

Winter 2024 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 8, 2024	Winter term begins.
January 19, 2024	Last day for registration and course changes (including auditing) in full winter and late winter courses.
January 31, 2024	Last day to withdraw from full winter and the winter portion of fall/winter courses with a full fee adjustment.
February 19, 2024	Statutory holiday. University closed.
February 19-23, 2024	Winter break. No classes.
March 15, 2024	Last day for academic withdrawal from full winter, late winter, and fall/winter courses.
March 27, 2024	Last day for summative tests or examinations, or formative tests or examinations totaling more than 15% of the final grade, in full winter term or fall/winter undergraduate courses, before the official April final examination period (see examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar).
March 29, 2024	Statutory holiday. University closed.
April 10, 2024	Winter term ends.
	Last day of full winter, late winter and fall/winter term classes.
	Classes follow a Friday schedule (full winter and later winter courses).
	Last day for handing in term work and the last day that can be specified by a course instructor as a due date for term work for full winter term and late winter courses.
	Last day for take home examinations to be assigned.
April 13-25, 2024	Final examinations in full winter, late winter and fall/winter term courses will be held. Examinations are normally held all seven days of the week.
April 25, 2024	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

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This 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, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one’s own; and
- failing to acknowledge sources through the use of proper citations when using another’s work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course’s instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the

student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of “F” for the course.

STATEMENT ON STUDENT MENTAL HEALTH

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

Emergency Resources (on and off campus):

- <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Empower Me: 1-844-741-6389, <https://students.carleton.ca/services/empower-me-counselling-services>
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

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 more details about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

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/>.