

COURSE:	LAWS/HIST 3305C/V – Crime and State in History	
TERM:	Winter - 2018	
PREREQUISITES:	Third-year Standing	
CLASS:	Day & Time:	Thursday, 08:35 – 11:25AM
	Room:	Please check with Carleton Central for room number.
CONTRACT INSTRUCTOR:	Darren Pacione, Ph.D.	
CONTACT:	Office:	B442 Loeb
	Office Hrs:	TBD
	Email:	Darren.Pacione@carleton.ca

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 visit the Equity Services website: <http://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 Equity Services website: <http://carleton.ca/equity/>

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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website (www.carleton.ca/pmc) for the deadline to request accommodations for the formally-scheduled exam (*if applicable*).

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

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.

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<http://carleton.ca/studentaffairs/academic-integrity/>

Student Services: The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4th floor of MacOdrum Library or online at carleton.ca/csas

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.

<http://carleton.ca/law/current-students/>

COURSE DESCRIPTION

Crime and State in History urges students to consider how criminal law operates as a function of social transformation, tension, and mobilization. In what ways does the state marshal the criminal law? What does the state say criminal law does and what does criminal law accomplish in the everyday? In extraordinary circumstances? Through interrogating the historical seepage of criminalization narratives into public spaces (e.g., the criminalization of dissent), this class will challenge students to think and write about Canadian historical moments. Using historical case studies, this course will explore the thresholds of legality. For example, when do democratic rights to associate become illegal demonstrations? Or, when does political activism emerge as a national security threat or a riot?

From examples of political dissent (e.g., Indigenous resistance, trade union organizing, nationalist militancy) to how the state feared the spread of communism (e.g., the Cold War kicked-off in Canada!), this course examines how the discretion of the police, state, prosecutors, judiciary, and the public constructed and continues to construct criminality. Working from archival materials (e.g., cabinet memorandums, state enquires and commissions, and declassified government documents), case law, law reports, documentary film evidence, judicial decisions, and state-produced summative accounts, students will hone abilities to read, analyze, and write using primary source materials.

REQUIRED TEXTS

- ❖ All required course texts and articles will be made available through cuLearn and Ares. No purchased text book needed.

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.
- ❖ Consult 'Course Evaluations' and 'Assignment Supplements' in cuLearn for assignment and evaluation details. Assignments, except for the final project, will usually be graded and returned to students around in approximately two weeks.

- ❖ All assignments will be submitted online through cuLearn.
- ❖ All assignments must include a title page, a bibliography, page numbers, default margins, and be typed in 12-point Times New Roman font. Diverging from these initial instructions will result in lost marks.
- ❖ All feedback on submitted assignments will be delivered online through cuLearn.

	LAWS/HIST 3305C/V: Assignments and Evaluations	% of Grade	Due Date
1	Film Essay: <i>Acts of Defiance</i> (1992)	35	8 February 2018
2	Digital Archive Project – Argument and Research Proposal	15	8 March 2018
3	Digital Archive Project – Final Essay	50	5 April 2018

LATE POLICY

- ❖ Late submissions of any assignment will be accepted at the cost of one (1) mark per day. If you require an extension due to extenuating circumstances, please email the instructor. Depending on the situation, documentation may be required.

GRADING

- ❖ In accordance with the Carleton University Undergraduate Calendar, the letter grades assigned in this course will have the following percentage equivalents:

A+ = 90-100	A = 85-89	A- = 80-84
B+ = 77-79	B = 73-76	B- = 70-72
C+ = 67-69	C = 63-66	C- = 60-62
D+ = 56-59	D = 53-56	D- = 50-52 F = Below 50

SCHEDULE

INTRODUCTION

- ❖ **WEEK 1: (11 January 2018) – Remarks to Crime and State in History**

Outline course structure, reading materials, and evaluative objectives; introduce students to ARES and the CuLearn Portal; and their interactions with teaching assistants. Introduce <http://historyofrights.ca/> as a digital Canadian archival material portal (e.g., Gouzenko Affair-related case law and relevant legislation, *Official Secrets Act*, 1939).

Readings:

- 1) *Official Secrets Act*, 1939.
Accessed: https://historyofrights.ca/wp-content/uploads/statutes/CN_Official-Secrets-Act-1939.pdf
- 2) *War Measures Act*, 1914 (Second session), c 2, s. 4, R.S. 1927. Available online at: http://historyofrights.ca/wp-content/uploads/statutes/CN_War_Measures.pdf

❖ **WEEK 2: (18 January 2018) – Considering ‘Political Trials in Theory and History’**

Readings:

- 1) [ARES] Meierhenich, Jens and Devin O. Pendas, “The Justice of My Cause is Clear, but There’s Politics to Fear’: Political Trials in Theory and History.” In *Political Trials in Theory and History*, edited by Jens Meierhenich and Devin O. Pendas, 1-64. Cambridge: Cambridge University Press, 2016.

Supplement:

- 1) Allo, Awol K. and Beza Tesfaye. “Spectacles of Illegality: Mapping Ethiopia’s show trials.” *African Identities* 13, no. 4 (2015): 279-296.
- 2) Allo, Awol K. “The Show in the Show Trial: Contextualising the Politicization of the Courtroom.” *Barry Law Review* 15 (2010): 41-72.
- 3) Becker, Theodore L., ed. *Political Trials*. New York: The Bobbs-Merrill Company, Inc., 1971.
- 4) Belknap, Michael, ed. *American Political Trials*. New Jersey: Transaction Publishers, 1994.
- 5) Bilsky, Liora. “Criminal Trials in an Age of Terror.” *Adalah’s Review* 5 (2009): 11-27.
- 6) Crelinsten, Ronald. “A political theory of political trials.” *Journal of Criminal Law and Criminology* 74, no. 2 (1983): 547-577.
- 7) Duff, Antony, Lindsay Farmer, Sandra Marshall, and Victor Tadros, eds. *The Trial on Trial, Volume Two: Judgment and Calling to Account*. London: Hart Publishing, 2006.
- 8) Falk, Barbara J. *Making Sense of Political Trials: Causes and Categories*. Toronto: University of Toronto, 2008.
- 9) Friedman, Lawrence. “Front Page: Notes on the Nature and Significance of Headline Trials.” *Saint Louis University Law Journal* 55 (2011): 1234-1283.
- 10) Hakman, Nathan. “Political Trials and Legal Order: A Political Scientist’s Perspective.” *Journal of Public Law* 21 (1972): 73-126.
- 11) Waysdorf, Susan L. “Popular Tribunals, Legal Story Telling, and the Pursuit of a Just Law.” *Yale Journal of Law and Liberation* 2 (1991): 67-84.

❖ **WEEK 3: (25 January 2018) – Revising History or Competing Perspectives? Oka, 1990**

Readings:

- 1) Lackenbauer, P. Whitney. "Carrying the burden of peace: The Mohawks, the Canadian Forces, and the Oka crisis," *Journal of Military and Strategic Studies* 10, no. 2 (2008): 1-71 (double-spaced). Accessed: <http://jmss.org/jmss/index.php/jmss/article/view/89>
- 2) Dhamoon, Rita and Yasmeen Abu-Laban, “Dangerous (Internal) Foreigners and Nation-Building: The Case of Canada,” *International Political Science Review / Revue internationale de science politique* 30.2 (2009): 163-183. [ARES]

Supplement:

- 1) Swain, Harry. *Oka: A Political Crisis and its Legacy*. Vancouver: D&M Publishers Inc., 2010.
- 2) York, Geoffrey and Loreen Pindera. *People of the Pines: The Warrior Legacy of Oka*. Toronto: Little Brown, 1991.
- 3) Hill, Gord. *The 500 Years of Resistance Comic Book*. Vancouver: Arsenal Pulp Press, 2012.

Film:

Alec G. MacLeod. *Acts of Defiance*. National Film Board of Canada. 1992. 104 mins.

*****ASSIGN AND VIEW FILM IN CLASS RE: FILM ESSAY *****

❖ **WEEK 4: (1 February 2018) – Case Law as History: Crime, *Felquistes*, and October 1970**

Readings:

- 1) *War Measures Act*. R.S.C., 1970, c. W-2, s. 2.
- 2) Dominique Clément, "The October Crisis of 1970: Human Rights Abuses Under the *War Measures Act*," *Journal of Canadian Studies* 42, no. 2 (2008): 160-186.
- 3) *Vallières v. The Queen* (1969) Québec Queen's Bench [Appeal Side] Que. 20, 9 CRNS 24 (1970) 4 CCC 69.

Supplement:

- 1) Charters, David A. "The Amateur Revolutionaries: A Reassessment of the FLQ." *Terrorism and Political Violence* 9, no. 1 (1997): 133-169.
- 2) Maloney, Sean. "A Mere Rustle of Leaves": Canadian Strategy and the 1970 FLQ Crisis," *Canadian Military Journal* 1, no. 2 (2000): 71-84.

❖ **WEEK 5: (8 February 2018) – The State and Digital Archives: Spy Trials, 1946-49******* DUE: FILM ESSAY *******Readings:**

- 1) Ian Milligan, "Mining the 'Internet Graveyard': rethinking the historians' toolkit." *Journal of the Canadian Historical Association/Revue de la Société historique du Canada* 23, no. 2 (2012): 21-64. Accessed: <https://www.erudit.org/fr/revues/jcha/2012-v23-n2-jcha0589/1015788ar/>
- 2) Dominique Clément, "The Royal Commission on Espionage and the Spy Trials of 1946-9: A Case Study in Parliamentary Supremacy," *Journal of the Canadian Historical Association* 11.1 (2000): 151-172. [ARES]

Supplement:

- 1) Dozois, Paulette. "'Watching' the October Crisis through its archival records." *Québec Studies* 55 (2013): 69-75.
- 2) Mawani, Renisa "Law's Archive," *Annual Review of Law and Social Science* 8 (2012): 337-365.

❖ **WEEK 6: (15 February 2018) – Seditious Conspiracy and Deportations: Post-Winnipeg General Strike Trials*******ASSIGN AND DISCUSS DIGITAL ARCHIVE PROJECT PROPOSAL*******Readings:**

- 1) Molinaro, Dennis G. "Section 98: The Trial of *Rex v. Buck et. al.* and the "State of Exception" in Canada, 1919-36." In *Canadian State Trials, Volume IV: Security, Dissent, and the Limits of Toleration in War and Peace, 1914—1939*, edited by Barry Wright, Eric Tucker and Susan Binnie, 324-363. Toronto: University of Toronto Press, 2015.
- 2) Trial of the Montréal Five chapter [Available on cuLearn]

Supplement:

- 1) Brown, Desmond H. "The Craftsmanship of Bias: Sedition and the Winnipeg Strike Trial 1919." *Manitoba Law Journal* 14 (1984): 1-33.

❖ **WEEK 7: (22 February 2018) – READING WEEK - NO CLASS**❖ **WEEK 8: (1 March 2018) – Constructions of Criminality: Colonial Legacies**

*****GUEST SPEAKER*******Readings:**

- 1) Molinaro, Dennis G. "A Species of Treason?": Deportation and Nation-Building in the Case of Tomo Čačić, 1931-1934," *The Canadian Historical Review* 91.1 (2010): 61-85.
- 2) Mithi Mukherjee, "Sedition, Law, and the British Empire in India: The Trial of Tilak (1908)," *Law, Culture and the Humanities* (2017): 1-27.

Supplement:

- 1) Carolyn Strange and Tina Loo, "Spectacular Justice: The Circus on Trial, and the Trial as Circus, Picton, 1903," *The Canadian Historical Review* 77.2 (1996): 159-184.

❖ WEEK 9: (Thursday, 8 March 2018) – Theorizing Constitutions and Criminalization in Times of Crisis***** DUE: DIGITAL ARCHIVE PROJECT PROPOSAL*******Reading:**

- 1) David Dyzenhaus, "The compulsion of legality," in Victor Ramraj, ed. *Emergencies and the Limits of Legality*. Cambridge University Press, 2008, pp. 33-59.
- 2) Oren Gross, "Extra-legality and the ethic of political responsibility," in Victor Ramraj, ed. *Emergencies and the Limits of Legality*. Cambridge University Press, 2008, pp. 60-93.

❖ WEEK 10: (Thursday, 15 March 2018) – A National (State) Crime? Historical Enquiry Teams (HETs) and Truth and Reconciliation Commissions (TRCs)**Readings:**

- 1) Nagy, Rosemary. "Introduction: Residential Schools and Decolonization." *Canadian Journal of Law and Society* 27, no. 1 (2012): 67-73.
- 2) Nagy, Rosemary and R.K. Sehdev. "The Truth and Reconciliation Commission of Canada: Genesis and Design." *Canadian Journal of Law and Society* 29.2 (2014): 199-217.
- 3) Lundy, Patricia. "Exploring Home-Grown Transitional Justice and Its Dilemmas: A Case Study of the Historical Enquiries Team, Northern Ireland." *The International Journal of Transitional Justice* 3 (2009): 321-340.

Supplement:

- 1) Lundy, Patricia. "Can the Past be Policed? Lessons from the Historical Enquires Team Northern Ireland." *Journal of Law and Social Challenges* 11 (2009): 109-171.
- 2) Lundy, Patricia. "Paradoxes and challenges of transitional justice at the 'local' level: historical enquiries in Northern Ireland," *Contemporary Social Science* 6, no. 1 (2011): 89-105.

❖ WEEK 11: (Thursday, 22 March 2018) – Political Policing and State Commissions**Readings:**

- 1) Brodeur, Jean-Paul. "High Policing and Low Policing: Remarks about the Policing of Political Activities." *Social Problems* 30, no. 5 (1983): 507-520.
- 2) Parnaby, Andrew, and Gregory S. Kealey. "The Origins of Political Policing in Canada: Class, Law, and the Burden of Empire." *Osgoode Hall LJ* 41 (2003): 211.

❖ WEEK 12: (Thursday, 29 March 2018) – Recidivism and Victimhood**Readings:**

- 1) Amirault, Joanna and Martin Bouchard. "A group-based recidivist sentencing premium? The role of context

and cohort effects in the sentencing of terrorist offenders." *International Journal of Law, Crime and Justice* 43, no. 4 (2015): 512-534.

2) Jacoby, Tami Amanda. "A Theory of Victimhood: Politics, Conflict and the Construction of Victim-based Identity." *Millennium: Journal of International Studies* 43, no. 2 (2015): 511-550.

WEEK 13: (Thursday, 5 April 2018) – Reflecting on State Declared Emergencies

***** DUE: FINAL DIGITAL ARCHIVE PROJECT (RESEARCH ESSAY) *****

Film: Michel Brault. *Les Ordres*. Canadian Film Development Corporation. 1974. 107 mins.