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<b>COURSE:</b>	<b>LAWS 3305 B &amp; T – Crime and State in History</b>
<b>TERM:</b>	<b>Fall 2014</b>
<b>PREREQUISITES:</b>	<b>Third year standing</b>
<b>CLASS:</b>	<b>Day &amp; Time: Wednesday 18:05-20:55</b>
	<b>Room: Please check with Carleton Central for current room location.</b>
	<b>Broadcast</b>
	<b>Day &amp; Time:</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Christopher McNaught</b>
<b>CONTACT:</b>	<b>Office: B442 Leob</b>
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### ***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://www2.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://www2.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](mailto: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*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.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.

More information on the University's **Academic Integrity Policy** can be found at:

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

### ***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://www.carleton.ca/law/student-resources/department-policies/>

This course explores historical transformations in the perception and definition of crime and the administration of criminal law. Popular assumptions in common law countries about the evolution of law enforcement, prosecutions and the rights of the accused, the role of counsel, judges and juries in public trials, as well as punishment, are broadly examined.

The course approach sets criminal law evolution in an organic, socio-political context—nothing happens in a vacuum—and moves from the arrival of the Normans in England to the early nineteenth-century and the great law reforms, then back tracks half a century to trace the adoption of the English criminal law system in Canada [ French /aboriginal Canada, the NWMP & opening of the west ], and thereafter shifts into selected issues in law, crime and society such as the historical treatment of women, war crimes, the current focus on 'terrorism,' and the health of the "rule of law in the post-9/11 era and its western responses.

### **COURSE ORGANIZATION**

Lecture (with taped class discussions). Students will be expected to have completed the readings by end of term, or for a particular week's topic as specified in the Schedule set out below. **HOWEVER**, it should be noted that frequent digression from, or expansion on, certain topics will occur in the lectures, as well as the order in which they are engaged, which may differ from the formal schedule below. Students should consider the readings as a body of material to digest during the term, but as background to the lectures, which will not directly repeat or regurgitate the text. **NB.** ( in other words ) ***The schedule below may be dealt with in different sequence, or varied or amended as we focus on certain areas along the way.***

**READING MATERIALS** - *Purchase of the following sourcebook/course manual is required and is available in the university bookstore:*

B. Wright, *Crime and State in History*, (Carleton Coursepack)

Suggested optional texts (not required readings or purchases):

- C. Emsley, *Crime and Society in England, 1750 - 1900* (London: Longmans,), and
- J. Phillips, T. Loo, S. Lewthwaite, eds., *Essays in the History of Canadian Law, Volume 5: Crime and Criminal Justice* (Toronto: University of Toronto Press, 1994)

An extensive selected and eclectic bibliography accompanies this course outline. It lists a selection of books and articles both in criminal law history and modern, more global issues, and may be useful to consult for essay research. Further books and articles will be suggested in the course of the lectures as well as on the CUlearn course website.

### **COURSE EVALUATION- All components must be completed in order to get a passing grade**

- a) **Research Essay 40%** - 12-15 pages, topics as indicated following 'Select General Bibliography' below. Topic is student's choice but consultation is welcome.

**\*\*Essays due: November 12 at Dept. of Law and Legal Studies, by mail or in drop box, Loeb Bldg. C473. NB. PLEASE NOTE If by mail, they are expected same due date: this is not discriminatory; the date is chosen so as to allow ample time for all NO MATTER HOW SUBMITTED**

- b) **Final Examination 60% - 2.5 hour closed book**, scheduled during University Exam Period

### **IMPORTANT NOTES**

Failure to complete any portion of the required evaluation will result in an F grade. Exams are not returned but may be reviewed with the instructor during office hours. Essays must be typed or word-processed and submitted in hard copy. Handwritten papers, computer files or email attachments will not be accepted. Please retain a photocopy or a secure file copy of the submitted essay. The Department of Law assumes no responsibility for essays or assignments which are submitted in an irregular manner. Essays may be picked up at the Law Department during office hours or returned by post (if a **stamped self-addressed envelope** is included).

Assignments must be original. Prior approval of the instructor must be obtained if it is intended to submit work which has previously or concurrently been submitted for credit in this or another course. Please note carefully University regulations concerning plagiarism. The Department of Law also encourages the use of neutral, clear and scholarly language, free of stereotypical, pejorative, and derogatory terms in all submitted course work.

**TOPICS AND READINGS**

All required readings noted in the schedule below may be found in the 3305 Coursepack or in the Carleton Library. The full references for the optional readings are found in the Bibliography below and students are advised to consult these readings if writing an essay on a related topic.

**TOPICS AND READINGS SCHEDULE**

**Please note: Fall break is October 27-31 – no class.**

**Lecture 1**      **Introduction** (Conceptualizing Legal History and Origins of Canada's System)

**What William found after Hastings by way of local 'criminal law'**

Optional:            Bellamy, *The English Criminal Trial, 1300-1600*  
Pollack and Maitland, *Crime and Tort in History of English Law* Vol. 2

**Topic of interest: the notion of the 'King's peace' and the 'great charter' (Magna Carta)- we never really needed the Charter of Rights & Freedoms ?!**

**Lecture 2**      **Eighteenth Century England**

**Please read:**    Hay, "Property, Authority and the Criminal Law"  
Langbein, "Albion's Fatal Flaws"

Optional:        Thompson, *Whigs and Hunters: The Origins of the Black Act*,  
Beattie, *Crime and the Courts in England, 1660 - 1800* chapters 3-5  
Henry Fielding (himself a London magistrate), his novel, *Tom Jones* (1749)

**Topic of interest: daily existence in London's infamous Newgate prison, the harshness of Punishment, first legislation recognizing parliament and individual rights before the courts/law**

**Lecture 3**      **Nineteenth Century England: The Great Transformation - Reform or More Efficient Repression?**

**Please read:**    McGowan, "The Images of Justice and Reform in the Criminal Law in Early Nineteenth Century England"

Optional:            Emsley, chapters 2-4

[socio-literary texts] Charles Dickens' *Oliver Twist*, *David Copperfield*, *Great Expectations*, poetry of Wordsworth, Blake

**Topic of interest: the influence of revolutions, art, literature, philosophy ( Age of Reason, Enlightenment ) on the bloody ritual of daily justice**

**Lecture 4**      **The Reception of English Criminal Law in Canada**

**Please Read:**    Glavin, " The Nisgaa Treaty: Death of an Ideology"  
Hay, "The Meanings of the Criminal Law in Quebec, 1764-1774"  
Parker, "The Origins of the Canadian Criminal Code"

Optional:            Haring, *White Man's Law: Native People in 19<sup>th</sup> century Canadian Jurisprudence*

**Lecture 5      Law Enforcement, the Rise of Police and Public Prosecutions**

**Please read:** Storch, "The Plague of Blue Locusts"  
 Wright, "Law Enforcement and the Administration of Justice in Upper Canada"  
 Macleod, "Canadianizing the West"  
 Hay, "Controlling the English Prosecutor"

Optional: David Cruise and Alison Griffiths, *The Great Adventure: How the Mounties Conquered the West* (Toronto: Viking, 1996) \*\* ( a 'good read' for history-lovers )  
 Emsley, chapters 8 & 7  
 Radzinowicz, *A History of English Criminal Law* Vol. 4  
 Kyte-Senior, "The Influence of the British Garrison on the Development of the Montreal Police, 1832 - 53" in MacLeod (ed), *Lawful Authority*  
 MacLeod, *The North West Mounted Police and Law Enforcement, 1873-1905* ( a 'good read' also )

**Lecture 6      The Criminal Trial and Legal Personnel**

**Please read:** Langbein, "The Criminal Trial Before Lawyers"  
 Beattie, "The Scales of Justice: Defence Counsel and the English Criminal Trial in the 18th and 19<sup>th</sup> Centuries"  
 Thompson, "Subduing the Jury"

Optional: Beattie, *Crime and the Courts in England* (1986) chapters 6, 7  
 Green, *Verdict According to Conscience* (1985)

**\*\* Video: " Garrow's Law ": the famed English barrister who advanced the role of counsel for the defence**

**Lecture 7      Corrections**

**Please read:** Ignatieff, "State, Civil Society, and Total Institutions: A Critique of Recent Social History of Punishment"  
 Taylor, "The Kingston, Ontario Penitentiary and Moral Architecture"

Optional: Beattie, *Crime and the Courts in England* chapters 8-10  
 Beattie, *Attitudes toward Crime and Punishment in Canada, 1830-50*  
 Oliver, Terror to Evil-Doers: Prisons and Punishment in 19th century Ontario

**Topic of interest: a government who will not 'commit sociology'; criminals are for punishment not redemption**

**Selected Issues in Canadian Criminal Law History****Lecture 8      Conquest, the Experience of Native Peoples and Minorities**

**Please read:** Loo, *The Road from Bute Inlet*  
 Schuh, *Justice on the Northern Frontier: Early Murder Trials of Native Accused*

Optional: Haring, *White Man's Law: Native People in 19th century Canadian Jurisprudence*; Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-50*

**Topic of interest: 'First' nations, *last* in our thoughts...a saga of abuse and subjugation ?**

**Lecture 9      The Experiences of Women**

**Please read:** Gavigan, "Petit Treason in 18th Century England"  
Backhouse, "Sayer Street Outrage," Petticoats and Prejudice extracts,  
"Prosecution of Abortions under Canadian Law"

Optional: Greenwood and Boissery, Uncertain Justice: Women and Capital Punishment, 1754-1953  
Strange, "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930"  
Oliver, "To Govern by Kindness: The First Two Decades of the Mercer Reformatory for Women"  
(Strange and Oliver in Phillips, Loo, Lewthwaite, eds.)

**Topic of interest: an eclectic potpourri of notorious women's trials in history**

**Lecture 10 Politics and the Rule of Law in Canada**

**Please Read:** Marquis, "Doing Justice to British Justice"  
McNaught, "Political Trials and the Canadian Political Tradition"

Optional: Greenwood and Wright, Introduction in Canadian State Trials  
Baker, "So Elegant a Web: Providential Order and the Rule of Law in Early Nineteenth Century Upper Canada"

**(new & current; not in the coursepack) the so-called 'age of terrorism': western response to 9/11; the role of criminal law ; security certificates, surveillance; civil rights or extraordinary necessity ( why must they be in conflict ? )**

Roach, *September 11: Consequences for Canada*, McGill/Queen's University Press, 2003

Rutherford, *Weapons of Mass Persuasion, Marketing the War Against Iraq*, UofT Press  
2004

Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, Princeton U. Press, 2005  
*Anti-terrorism Act (Canada)*

**So what's deficient with the Criminal code and related law to deal with terrorist activity; separate judicial processes and the mystification of terrorism**

**Lectures 11      The international scene: war crimes, the Nuremburg legacy, the ICC, the ethics of interventionism, 'just war' ( the seductive advent of drones: targeted execution without charge, process or oversight...)**

**Lecture 12                      Exam Review**

## **ESSAY TOPICS**

Essays should be 12-15 typed pages in length (essays in excess of 20 pages will not be accepted), with a bibliography of at least three book or journal sources (internet research is acceptable, but only in addition to this requirement; **PLEASE NOTE:** 'Wikipedia' is NOT a source to be cited).

At least two sources must relate specifically to your topic (e.g., general textbook material will not suffice). Efforts to evaluate the existing historiography on your topic will be considered in assessing your essay. Please note reference to essays and academic offences on page 2 of the course guide.

Essays can be submitted through the essay drop chute at the Department of Law, Loeb C473, or sent to the Department by mail. Essays sent by email or email attachment will not be accepted. Essays will be returned through the Department of Law office or by mail if a stamped self-addressed envelope is attached.

1. A topic of **your choice** having a criminal law and historical focus, or perhaps a modification of one of the topics below. If you chose this option, please feel free to email me; I may be able to provide some direction. \*\*Canadian, American, British experience and examples are all welcome subject matter for your essays.
2. Examine the activities of the Canadian **North West Mounted Police** in the context of relations with native peoples. Consider the competing views that the Mounties were either (or both) a colonizing agent that helped to suppress aboriginal traditions, cultures and livelihoods, or an important instrument of nation-building?
3. Examine the circumstances of the large-scale **entry of lawyers into the criminal trial process**. Was their impact positive or negative?
4. Was **the jury** an obstacle to the rule of law or has its power over verdicts (e.g. verdict according to conscience or nullification) served as an important check on authority or social reform?
5. The virtual elimination of the formal sentence of death for those convicted of felonies can be explained by the unwieldy system of conditional pardons and **transportation** as well as utilitarian and humanitarian arguments favouring the penitentiary. Explain.
6. A general distinction is often made between offenders and victims when it comes to the experiences of **women** with the criminal law. However, some women who kill can also be understood as victims. Explore this paradox using historical examples.
7. Evaluate the struggles to establish, and the popular reception of, **Peel's Metropolitan London Police**. Be sure to explain the inadequacies of the ancient system of law enforcement and its minor reforms in the 18th century. Also reflect on whether Peel's principles of policing have any relevance today (e.g. debates around community-based policing).
8. Is the **'War on Terror'** a politically-inspired ruse or misnomer? Is it *militarily* winnable? Is 'terror' in fact a new phenomenon—have we had prior 'notice' about such concerns? What are the criminal law responses in the west to the so-called age of terrorism; in Canada for example, are the post 9/11 extensions of the Criminal Code and related immigration and border practices, etc. effective, or improvements upon the pre-existing law? What are the competing values at stake in achieving meaningful, fair, security in a democracy? Is the applicability of the rule of law negotiable in what some argue is a 'supreme emergency'? Compared with disease, drug murders, poverty, war lords, tobacco or cancer-related deaths, is terrorism a supreme and proportionate priority?

### **A. Select General Bibliography**

This bibliography lists a selection of secondary sources, focusing on Canadian and British subjects. Students are urged to also check bibliographical collections such as the *Dictionary of Canadian Biography* and R.S. Smandych, et. al. eds., *Canadian Criminal Justice History: An Annotated Bibliography* (Toronto, 1987) primary materials available in the MacOdrum Library such as cases, legislation, materials in Government Documents and collections such as the Canadian Institute for Microreproductions. Also check specialized journals in the area such as the *Law and History Review*.

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- Backhouse, C., *Petticoats and Prejudice: Women and the Law in Nineteenth Century Canada*, (Toronto, 1991).
- Backhouse, C., *Colour-Coded: A Legal History of Racism in Canada, 1900-50* (Toronto, 1999).
- Baker, G. B., "So Elegant a Web: Providential Order and the Rule of Law in Early Nineteenth Century Upper Canada" (1988) 38 *U. of Toronto Law J.*, 184.
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- Beattie, J.M., *Attitude Towards Crime and Punishment in Upper Canada, 1830-1850*, (Toronto, University of Toronto Centre of Criminology, 1977).
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- Becker, C., "Property in the Workplace: Labour, Capital and Crime in 18th Century British Woollen and Worsted Industry" 69 *Virginia Law Review*, 487.
- Bedford, J.B., "Prostitution in Calgary, 1905-1914" (1981) 29 *Alberta History*, 1-11.
- Beier, A.L., *Masterless Men: the Vagrancy Problem in England 1560-1640*, (London, 1985).
- Beier, A.L., *Vagrants and Social Order in Elizabethan England*, (London, 1974).
- Bellamy, J., *Crime and Public Order in England in the Later Middle Ages*, (London, 1973).
- Bellamy, J. *The English Criminal Trial, 1300-1600* (Toronto, 1997).
- Bentham, Jeremy, *An Introduction to the Principles of Morals and Legislation* (repr. London, Methuen, 1982).
- Bentley, D. *English Criminal Justice in the Nineteenth Century*, (London, 1997).
- Bercuson, D.J., "Labour Radicalism and the Western Industrial Frontier, 1897-1919" (1977) 58 *Canadian Historical Review*, 154-75.
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- Bindon, K.M., (1981) "Hudson Bay Company Law: Adam Thom and the Institution of order in Rupert's Land 1839-54" in Flaherty ed., *Essays in the History of Canadian Law*, Vol. 1, (Toronto, 1981).
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- Blackwell, J.D., "Crime in the London District 1828-1837: A Case Study of the Effect of the 1833 Reform in Upper Canadian Penal Law" (1981) VI *Queens Law Journal*, 528.
- Bleasdale, Ruth, "Class Conflict on the Canals of Upper Canada", in Cross and Kealey eds., *Pre-Industrial Canada 1760-1849*, (Toronto 1982), 100.
- Boothman, J.V., "Facing the Music: Modern Police Discipline and Primitive Police Discipline 1829-1879" 6 *Liverpool Law Review*, 107-38, 7 *Liverpool Law Review*, 1-32.
- Bowker, M.M., "Juvenile Crime in Retrospect - Seven Decades of History in Alberta 1913-1984" 24 *Alberta Law Review*, 234.
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