

Course Outline

COURSE:	LAWS 3308A - Punishment and the Law
TERM:	Fall 2014
PREREQUISITES:	LAWS 2301
CLASS:	Day & Time: Mondays, 11:35 – 2:25 Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Diana Young
CONTACT:	Office: Loeb C574 Office Hrs: Mondays 3:00 – 4:00 or by appointment Telephone: (613) 520-2600 ex 1981 Email: Diana_Young@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://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 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/>

COURSE DESCRIPTION

A great deal of legal theory is devoted to justifying punishment, in particular how we reconcile the use of coercion with liberal commitments to the idea of individual freedom and autonomy. We use legal rationalities – which often depend on specifically liberal notions of individual agency and responsibility – to articulate limits on the power to punish; however, on closer examination we see that punishment is shaped not only by these rationalities but by a wide range of historical, institutional, cultural and social forces.

This course will focus on punishment in the criminal justice context. We will examine traditional theories that provide justification for punishment and contemporary sentencing practices, and the extent to which their claims can be maintained in light of some of the larger – and largely contingent – forces affecting punishment and policy. We will also consider the intersection between punishment, therapy, and reconciliation, and the frequent slippages between these concepts.

REQUIRED TEXTS

A course pack will be available at Allegra Print and Imaging at 99 Bank Street. The syllabus includes a number of journal articles that are not in the course pack but which students can access electronically through the Library website. Cases will be posted on CuLearn.

EVALUATION

(All components must be completed in order to get a passing grade)

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 800 words in length, discussing the readings. The first reflection paper can be on any of the readings covered in class from September 15th to October 13th, and must be submitted by October 20th at the latest. The second reflection paper can be on any of the readings from October 20th to December 1st, and must be submitted by December

8th at the latest. *Students may submit their reflection papers prior to the final submission date, and are encouraged to do so early in the term.*

Mid-term take-home assignment, 30%

A take home assignment, consisting of a choice of essay questions, will be distributed on November 3rd, and will be due on November 17th. Students will be responsible for all the material covered in class up to and including October 20th.

Final take-home assignment, 40%

A final take home exam, consisting of a choice of essay questions, will be distributed on December 8th, and due on December 21st. Students will be responsible for all the material covered in class from November 3rd up to and including December 8th.

SCHEDULE

September 8

Introduction to Course

Justice as an abstract concept and the socially embedded nature of punishment

September 15

What Is Punishment? What is Punishable?

- Morality, harm, and the Criminal Law
- Punishment, liberalism, and reason as freedom

Readings:

- HLA Hart, *Law, Liberty and Morality* (Stanford: Stanford University Press, 1963) pp. 1-24.
- Charles Taylor, "Kant's Theory of Freedom" in *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985) pp. 318-330.
- *R. v. Michael* (2014) O.J. No 3609 (posted on CuLearn)
- *Canada (A.G.) v. Bedford* [2013] 3 S.C.R. 1101 (excerpt posted on CuLearn)
- *R. v. Butler* [1992] 1 S.C.R. 452 (excerpt posted on CuLearn)

September 22

Reason and culpability

- *Mens Rea* and culpability
- Mental illness, reason, and responsibility

Classical Theories of Punishment

- Retributivism, Utilitarianism, Solidarity as Justification for Punishment

Readings:

- Hannah Arendt, *Eichmann in Jerusalem* (New York: Penguin Books, 1992) pp. 276-279.

- David Garland, "Punishment and Social Solidarity" in *Punishment and Modern Society* (Oxford: Oxford University Press, 1990) pp. 23-46
- R.A. Duff, "Consequentialists, Retributivists, and Abolitionists" in *Punishment, Communication and Community* (New York: Oxford University Press, 2001), pp. 3-34.
- Alan Norrie, *Crime, Reason and History: A Critical Introduction to Criminal Law* (London: Butterworths, 2001) pp. 15-31.

September 29

Disgust, Outrage, and Sympathy: The Role of Emotion in Punishment

- Cruel and Unusual Punishment and the concept of ordinary standards of decency
- Disgust for the offender and retribution

Victims and Punishment

- Public Wrongs and the Individual Wronged
- Victims and the Politics of punishment

Readings:

- Leslie J. Moran, "The Emotional Dimensions of Lesbian and Gay Demands for Hate Crime Reform" (2004) 49 McGill L.J. 925
- Karen Stanbridge and J. Scott Kenney, "Emotions and the Campaign for Victims' Rights in Canada" (2009) 51 Canadian Journal of Criminology and Criminal Justice 4, 473.
- Martha H. Nussbaum, "Emotions and the Law" in *Hiding From Humanity: Disgust, Shame and the Law* (Princeton: Princeton University Press, 2004) pp. 46-67.
- *R. v. Latimer* (2001) (excerpt, posted on CuLearn)

October 6

Justifications for Punishment vs Reasons for Punishment: Normative theories and Institutional Norms

- Punishment as the outcome of multiple social, economic, political and cultural pressures
- Retributivist claims, bureaucracy, and discretion in criminal punishment
- Popular culture and representations of punishment
- Culture, value, and everyday life

Readings:

- David Garland, "Crime Complex: The Culture of High Crime Societies" in *The Culture of Control* (Chicago: University of Chicago Press, 2001) pp. 139-165.
- David Garland, *Concepts of Culture in the Sociology of Punishment* (2006) 10 Theoretical Criminology 419.
- Cheryl Marie Webster and Anthony Doob, *Penal Reform "Canadian Style": Fiscal Responsibility and Decarceration in Alberta, Canada* (2014) 16 Punishment and Society 3-31

October 13

*****Statutory Holiday – no class*****

October 20

******Last Day to Hand in Reflection Paper #1******

Punishment and Risk Theory

Readings:

- Kelly Hannah-Moffat et al., *Negotiated Risk: Actuarial Illusions and Discretion in Probation* (2009) 24 Can. J. of Law and Society 391.
- John Tulloch, "Fear of Crime and the Media: Sociocultural Theories of Risk" in Deborah Lupton, ed., *Risk and Sociocultural Theory: New Directions and Perspectives* (Cambridge: Cambridge University Press, 1999) 34-58.
- Herb Haines, *Flawed Executions, the Anti-Death Penalty Movement, and the Politics of Capital Punishment* (1992) 39 Social Problems (2) 125-138.

*******Reading Week*******

November 3

******Take-Home Assignment Distributed******

The Political Economy of Punishment

- Marxist approaches to punishment
- Punishment and the Labour Market

Readings:

- Jeffery G. Murray, "Marxism and Retribution" in Michael Tonry, ed., *Why Punish? How Much? A Reader on Punishment* (Oxford; New York: Oxford University Press, 2011) pp. 127-145.
- Alessandro De Giorgi, *Toward a Political Economy of Post-Fordist Punishment* (2007) 15 Critical Criminology, 243-65.

November 10

Punishment, Violence and The Body

- Violence, Retribution, and Justification
- Violence and Statehood

Readings:

- Michel Foucault, "The Body of the Condemned" in *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977) pp, 3-31.
- Robert Cover *Violence and the Word* (1986) 95 Yale L.J. 1601.
- Anne Norton, "After the Terror: Mortality, Equality, Fraternity" in Austin Sarat, ed., *The Killing State: Capital Punishment in Law, Politics, and Culture* (Oxford; Now York: Oxford University Press, 1999) pp. 27-39.
- Franz Kafka, *In the Penal Colony* (1914) (Short story, posted on CuLearn)

November 17

******Take-Home Assignment Due******

Punishment and the Soul

- Rehabilitation and Techniques of Power
- The Intersection of Therapy and Criminal Justice

Readings:

- Kelly Hannah-Moffat, "Empowering Prison: Neoliberal Governance" in *Punishment in Disguise* (Toronto: University of Toronto Press, 2011) 162-187.
- Michel Foucault, *The Means of Correct Training in Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977) 170-194.
- Dawn Moore, *Translating Justice and Therapy: The Drug Treatment Court Networks*, 47 Brit. J. Criminology 1, 42.

November 24

Restorative Justice and "Community-Based" Approaches to Punishment

- What is "Community"?
- Some Restorative Justice Initiatives: What are we restoring?

Readings:

- Nicola Lacey and Lucia Zedner, "Discourses of Community in Criminal Justice" (1995) 22 J. of Law and Society 301.
- Diana Young, "Power and Resistance in Community-Based Sentencing" in Dawn Moore and Aaron Doyle, eds., *Critical Criminology in Canada* (Vancouver: UBC Press, 2011) pp. 162-182.
- Rob White, "Restorative Justice and Social Inequality" in Bernard Schissel and Carolyn Brooks, eds., *Marginality and Condemnation* (Black Point, N.S.: Fernwood Publishing, 2002) 381.

December 1

Forgiveness and Abolition

Readings:

- Angela Y. Davis and Dylan Rodriguez "The Challenge of Prison Abolition: A Conversation" *Social Justice*. 27.3 (Fall 2000): pp. 212 – 218.
- Joo Heung Lee, "Beyond Control and Responsibility: The Beauty of Mercy" in Sarat, A. ed., *Crime and Punishment: Perspectives from the Humanities* (Oxford: Eslevier Ltd., 2005) pp.141-157.
- Justin Piché, "Penal Abolition: A Different Kind of Reform" (2009) *Criminal Justice Matters* 70, 30-31.

December 8

******Last Day to Hand in Reflection Paper #2******

******Final Exam Distributed******

Summing up
Discussion of take-home exam