

Course Outline

COURSE:	LAWS 4504 A: Indigenous Criminal Justice
TERM:	Winter 2020
PREREQUISITES:	<u>LAWS 2908</u>, <u>CRCJ 3001</u> or <u>CRCJ 3002</u> and <u>LAWS 2301</u>, <u>LAWS 2302</u> and fourth-year Honours standing
CLASS:	Tuesdays 6:05 pm-8:55 pm
ROOM:	<i>Please check Carleton Central for current room location</i>
INSTRUCTOR:	Jo-Anne Lawless, BA, Contemporary Studies (Option in Indigenous Studies) MA, Cultural Analysis and Social Theory
CONTACT:	Office: B442 Loeb Building (Contract Instructor's Office) Hours: Tuesdays 4:30-5:30 pm Telephone: (613) 520-3690 Email: joanne.lawless@carleton.ca

CALENDAR COURSE DESCRIPTION

Indigenous peoples and the administration of Canadian criminal justice including policing, courts, corrections, and aftercare. Content and effects of past and present policies, processes and laws. Alternatives such as self-government and self-determination; potential approaches to an appropriate justice system for Indigenous peoples.

COURSE DESCRIPTION

This course critically explores the relationship between Indigenous peoples in Canada and the criminal justice system. We consider the causes and ramifications of offending amongst the Indigenous population, and their over-representation in a western-based system. Policy approaches aimed at ameliorating the effects of over-incarceration and repairing the relationship between Indigenous peoples and the state, and the Crown's coercive apparatus are critiqued.

Prerequisite(s): LAWS 2908, CRCJ 3001 or CRCJ 3002 and LAWS 2301, LAWS 2302 and fourth-year Honours standing.

Lectures: three hours per week.

By the end of the course, students will be expected to be able to:

- Demonstrate an understanding of the ways in which colonization has affected the Indigenous experience in Canada's criminal justice system;
- Illustrate their comprehension of how Canada's current criminal justice regime exists in a changing, post-colonial, and social context and be able to critically analyze how that context affects the operation of criminal justice law in relation to Indigenous populations;
- Discover an appreciation for other avenues to address criminal offending, with reference to historical approaches in Canada and current restorative justice processes; and
- Critically analyze the efficacy of western-based criminal justice systems in light of the intergenerational trauma experienced by First Nations, Metis, and Inuit people

REQUIRED TEXTS

All required reading will be available online. No textbook is required.

WEBSITE

Further course information, summary slides, updates, and other important materials will be posted on the course website on **CU Learn**. Announcements and grades will also be communicated through CU Learn. Students are strongly encouraged to *regularly check* the website, along with their email. Visit <https://culearn.carleton.ca>, and log in using the same username and password that you use for your email or Connect accounts. You must be registered in LAWS 4504 A to access the course website.

EVALUATION

Evaluation will be based on the following:

- Attendance and participation in lecture: **20%**
- In-class presentations: **30%**
- Weekly blog entry: **20%**
- Research Essay (Due March 23rd): **30%**

Attendance and Participation in Lecture: worth **20%** of final course grade. As there is no final exam in this course, our focus will lie in close engagement with weekly readings. *Participation in lecture is expected and encouraged*, in order for you to fully understand course concepts which will be incorporated into weekly blog posts, in-class presentations, and the final research essay.

In-Class Presentation: worth **30%** of the final grade. Each week, two students will be required, separately, to locate one or two recent, good-quality, research articles or reports which are *directly relevant* to the subject covered in that day's seminar. Presenters will be required to facilitate discussion by presenting a *critical summary of the article(s)* or report(s) and *contextualize those studies* within the assigned readings for the week (**15%**). The short presentations (20 minutes) will be based on a 4 to 5-page paper (**15%**) that will be submitted to the instructor in class *on the date of the presentation*. Topics will be chosen during the introductory class.

Weekly Blog Entry: worth **20%** of the final course grade. Students will create a **150-word blog entry** on CU Learn, synthesizing the main elements of the readings for the week; *eight of ten blog posts* in total are required. Blog posts must be submitted no later than the day before the seminar which addresses the topic (ie: Monday by midnight) to receive a mark.

The Research Paper: worth **30%** of the final grade. The essay will be written on a topic of your choosing, and will incorporate themes from the course. The paper will be **15-18 double-spaced pages long**; no more, no less, *not* including cover page, footnotes, and bibliography, and must be written in Times New Roman 12-point font. The Law and Legal Studies research librarian will speak to the class on January 21st, to provide guidance on conducting research and on citing sources in McGill format.

The research essay will **be due by 4:30 pm, on Monday, March 23rd** and will be **submitted online** only (no hard copies) *through the LAWS 4504 A CU Learn website*. You are strongly advised to save your work regularly in multiple ways, and to retain a copy of all submitted papers. Essays submitted past the due date will incur a late penalty of *five percent for each 24-hour period* following the deadline of 4:30 pm on the 23rd of March, including weekends. Papers submitted beyond seven days late will be accepted towards course completion, but will receive a mark of 0. Suspected incidents of plagiarism will be reported to the Dean's office, pursuant to Carleton University policy.

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.

SCHEDULE AND READINGS

January 7, 2020. Week 1: **Course Introduction**

January 14. Week 2: **Framing the Context of Indigenous Criminal Justice: History, Colonization, and Trauma**

Readings: Maria Yellowhorse Braveheart, Josephine Chase, Jennifer Elkins & Deborah Altshul, 'Historical Trauma Among the Indigenous Peoples of the Americas: Concepts, Research, and Clinical Considerations', 43(4) Journal of Psychoactive Drugs (2011):282-290.

Les B. Whitlock, Gary W. Adams, Dan R Hoyt & Xiaojin Chen (2004) Conceptualizing and Measuring Historical Trauma Among American Indian People. *American Journal of Community Psychology*, 33(3/4) 119-130.

Amy Bombay, Kim Matheson & Hymie Anisman, 'The Intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma', 51(3) *Transcultural Psychiatry* (2014):320-338.

January 21. Week 3: **The Impacts of Trauma: Offending Patterns and Over-Representation**

Readings: Statistics Canada, 'Victimization of Aboriginal People in Canada, 2014, The Daily, Tuesday, June 28, 2016.

Lynn F. Lavalley and Jennifer M. Poole, 'Beyond recovery: Colonization, health and healing for Indigenous people in Canada.' *International Journal of Mental Health and Addiction* 8, no. 2 (2010): 271-281.

Julian V. Roberts and Andrew Reid, Aboriginal Incarceration in Canada since 1978: Every Picture Tells the Same Story, 59(3) *Canadian Journal of Criminology and Criminal Justice* (2017):313-345.

January 28. Week 4: **The Role of the System: Policing**

Readings: Nicholas Jones, Rick Ruddell, Robe Nestor, Kaitlan Quinn & Breeann Phillips, 'First Nations Policing in Canada: Issues and Challenges', and 'Policing Arrangements', in Jones et al, *First Nations Policing: A Review of the Literature*, University of Regina: Collaborative Centre for Justice and Safety, 2010: 49-65.

Amanda Nettelbeck & Russell Smandych, 'Policing Indigenous People on Two Colonial Frontiers: Australia's Mounted Police and Canada's Northwest Mounted Police', 43 *Australian and New Zealand Journal of Criminology* (2010):356-375.

Savvas Lithopoulos & Rick Ruddell, 'Policing isolated Aboriginal communities: perspectives of Canadian officers', 34(3) *Policing: An International Journal of Police Strategies & Management* (2010):434-453.

February 4. Week 5: **Indigenous People and the Courts**

Readings: Samantha Jeffries & Phillip Stenning, 'Sentencing Aboriginal Offenders: Law, Policy and Practice in Three Countries', *Canadian Journal of Criminology and Criminal Justice* July (2014):447-494.

Don Weatherburn, Jackie Fitzgerald & Jiuzhao Hua, 'Reducing Aboriginal Over-representation in Prison', *Australian Journal of Public Administration* 62(3), (2003):65-73.

Shelley Johnson, 'Developing First Nations Courts in Canada: Elders as Foundational to Indigenous Therapeutic Jurisprudence', *Journal of Indigenous Social Development* 3(2) (2014):1-14.

February 11. Week 6: **'Indigenizing' Justice**

Guest speakers from the Ottawa Gladue Court. In preparation, please read *R. v. Gladue*, [1999] 1 SCR 948. *Note that dates for guest speakers are tentative, and subject to change.

Week 7: **Reading Week – No Class**

February 25. Week 8: **Indigenous People, Social Context Evidence and Gladue**

Readings: *R. v. Gladue*, [1999] 1 SCR 948

R. v. Ipeelee, [2012] 1 S.C.R. 433.

Alexandra Hebert, 'Change in Paradigm or Change in Paradox: Gladue Report Practices and Access to Justice.' *Queen's LJ* 43 (2017): 149.

Kelly Hannah-Moffat & Paula Maurutto, 'Re-Contextualizing Pre-Sentence Reports: Risk and Race', *Punishment and Society* 12(3) (2010):262-286.

March 3. Week 9: **The Experience of Incarceration by Indigenous Offenders**

Readings: Julian V. Roberts & Ronald Melchers, 'The Incarceration of Aboriginal offenders: Trends from 1978-2001', *Canadian Journal of Criminology and Criminal Justice*. April 2003: 211-242.

Jen MtPleasant, "Indigenous Gangs" in 'Missing and Murdered Indigenous People in "Canada": an inclusionary approach to understanding violence against the original people of Turtle Island,' Independently published. ISBN - 13:9781072677772: (2010).

Jason Demers, 'Warehousing Prisoners in Saskatchewan: A Public Health Approach' (Regina: Canadian Centre for Policy Alternatives, 2014).

March 10. Week 10: **Coming Home: Parole, Aftercare, and Reintegration of Indigenous Offenders**

Readings: Jason D. Brown, 'Managing the Transition from Institution to Community: A Canadian Parole Officer Perspective on the Needs of Newly Released Federal Offenders', *Western Criminology Review* 5(2) (2004):97-107.

Matthew Willis, 'Reintegration of Indigenous prisoners: key findings', *Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice*, August 2008.

Wai-Yin Wan, Suzanne Poynton & Don Weatherburn, 'Does parole supervision reduce the risk of reoffending?' *Australia and New Zealand Journal of Criminology* 49(4) (2016):497-511.

March 17. Week 11: **Returning to the Teachings: Restorative Justice and Indigenous Justice Reform**

Readings: Meagan Berlin, 'Restorative Justice Practices for Aboriginal Offenders: Developing an Expectation-Led Definition for Reform', 21(3) *Appeal* (2016):3-20.

William R. Wood, 'Why Restorative Justice will not Reduce Incarceration' 55 *British Journal of Criminology* (2015):883-900.

Ann-Claire Larsen & Peter Milnes, 'A Cautionary Note on Therapeutic Jurisprudence for Aboriginal Offenders', *Murdoch University Electronic Journal of Law* 18 (2011):1-27.

March 24. Week 12: **The Place of Circles in Indigenous Criminal Justice**

Readings: Mary Crnkovich, 'The role of the victim in the criminal justice system: Circle sentencing in Inuit communities, paper presented at the Canadian Institute for the Administration of Justice Conference, Banff, Alberta, November 1995.

Jacqueline Fitzgerald, 'Does circle sentencing reduce Aboriginal offending?' *Crime and Justice Bulletin* No.115, May 2008.

Native Counselling Services of Alberta, *A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process*. Aboriginal Healing Foundation, 2001.

<https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/cst-bnft-hllw-wtr/index-en.aspx>

March 31. Week 13: **The Future of Indigenous Justice Reform**

Readings: Fiona Alison & Chris Cunneen, 'The role of Indigenous justice agreements in improving legal and social outcomes for Indigenous people', 32 Sydney Law Review (2010):645-669.

William R. Wood and Masahiro Suzuki, 'Four Challenges in the Future of Restorative Justice.' Victims & Offenders 11, no. 1 (2016): 149-172.

David Milward, 'Sweating it out: Facilitating corrections and parole in Canada through Aboriginal spiritual healing.' Windsor YB Access Just. 29 (2011): 27.

April 7. Week 14. Make-up class for any earlier canceled classes.

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: Please contact 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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (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 as soon as possible to ensure accommodation arrangements are made. Please consult the PMC website for their deadline to request accommodations for the formally-scheduled exam (if applicable) www.carleton.ca/pmc

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

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 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: carleton.ca/sexual-violence-support

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.

<https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline

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/>