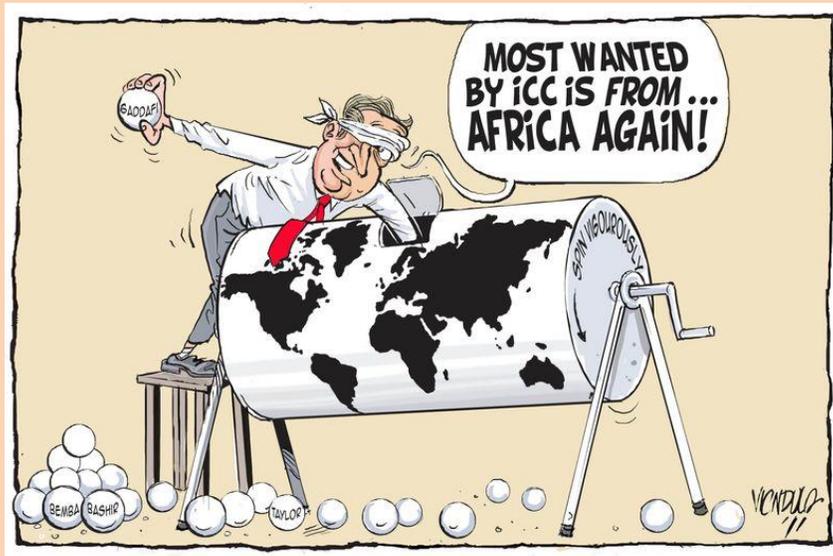


# COMPARATIVE LAW

## Class activities\*

### Class 1 January 11: Introduction

- What are international crimes?
- In your opinion, what are the most pressing International Justice issues and problems?
- Why do they occur? What prompts neighbors to turn against their neighbors and consequently, become indifferent to their murder?
- What is universal jurisdiction?
- What is the role of Comparative Criminal Law?
- What is the role of the United Nations in international crimes?
- Discuss the following cartoon.



### Classes 2 & 3 January 18 & 25: The International Criminal Court



### **Discussion questions**

- 1) Why was the ICC established?
- 2) What States voted against the ICC? Why?
- 3) What is the role of victims in procedures before the ICC?
- 4) Why can't the ICC impose the death penalty? What is your opinion about the death penalty for international crimes?
- 5) What are the rights of those accused of a crime by the ICC?
- 6) What are some of the predecessors to the ICC?

### **Scenarios**

- 1) President Maduro of Venezuela incites its generals to kill all Colombian citizens who reside in Venezuela or in a border city. Generals refuse to follow President Maduro's orders.
- 2) President Maduro of Venezuela incites its generals to rape all Colombian women who reside in Venezuela or in a border city. Generals refuse to follow President Maduro's orders.
- 3) President Maduro of Venezuela incites its generals to rape all Colombian women who reside in Venezuela or in a border city. Generals comply with President Maduro's orders.
- 4) The Canadian Prime Minister orders the killing of all French speaking Canadians residing in Canada. English speaking military personnel comply with the order.
- 5) Cabo Verde president and its armed forces killed, injured, and raped all members of the opposition political party.
- 6) Cabo Verde president and its armed forces inflicted serious mental harm to most members of a minority ethnic group by prohibiting those citizens to participate in cultural, sports, and political activities.
- 7) The US president invaded Irak again and killed thousands of civilians in attacks contrary to the Geneva Conventions.

- 8) A Canadian general in Afghanistan compelled an Afghanistan prisoner to join Canadian armed forces.
- 9) A US general in Afghanistan compelled an Afghanistan prisoner to join the US armed forces.
- 10) The Brazilian president ordered the federal police to arrest all members of the opposition political party and to keep them in secret detention camps. Federal police arrest and detain thousands of members of the opposition party.
- 11) Iranian generals massively torture and rape members of a religious group. The UN Security Council refers this case to the ICC.
- 12) South Africa reinstates the apartheid regime.
- 13) President Donald Trump massively deports millions of undocumented immigrants from the United States.
- 14) Canadian Prime Minister massively deports millions of undocumented immigrants from Canada.
- 15) Canadian Prime Minister massively deports thousands of citizens and permanent resident of Korean ascent.
- 16) Civilians were killed and raped; and homes and stores were looted in the context of an armed conflict between the government of the Central African Republic and rebel forces. Hundreds of rape victims have come forward to tell their stories, recounting crimes acted out with particular cruelty. Victims described being raped in public; being attacked by multiple perpetrators; being raped in the presence of family members; and being abused in other ways if they resisted their attackers. Many of the victims were subsequently shunned by their families and communities.
- 17) There are 1.65 million internally displaced persons in Darfur, Sudan, and more than 200,000 refugees from Darfur in neighbouring Chad. There has been large-scale destruction of villages throughout the three States of Darfur. Sudan is not a member of the ICC, but the UN Security Council referred the situation to the ICC.
- 18) Chilean president killed thousands of Chileans of Mapuche origin. The Chilean Congress impeached the president, who was then prosecuted in a criminal court. The Court found him not guilty. So, the Peruvian government referred the case to the ICC.
- 19) During the 2010/2011 post-electoral violence in Côte d'Ivoire, the government committed crimes against humanity. The post-election violence erupted after Presidential election results between opponents Mr Laurent Gbagbo and Mr Alassane Ouattara were disputed. Côte d'Ivoire became a party to the Rome Statute on May 1, 2013.
- 20) Vladimir Putin, Russian president, persecuted members of a minority religious group living on Russian territory.
- 21) Spanish army generals test new weapons in a low populated zone with no intention to cause harm. However, they end up destroying a nearby village where mostly Roma people live. Roma people are widely discriminated in Europe.

- 22) A young Italian soldier was given the order to rape all women in an African village who opposed to the presence of Italian armed forces. The Italian soldier reluctantly complied with the order from his superior.
- 23) A young Italian soldier was given the order to bomb a hospital that houses both military personnel and civilians in an African village in the context of an armed conflict. The Italian soldier reluctantly complied with the order from his superior.
- 24) French soldiers engaged in a war in an Asian country were given drugs by their government in order to cope with war. As a result of the effects of the drugs, most soldiers raped Asian women and looted their houses.
- 25) A young German contractor working in Afghanistan rapes an Afghanistan girl. Later, European governments plan a systematic killing, torture, and rape of Afghani citizens.

### **Cases**

Choose one of the cases decided by the ICC or currently under consideration of the ICC and explain it.

### **Elements of crimes**

Choose one crime and analyze its elements. Think of examples.

## **Classes 4 & 5: February 1 & 8: Global Sex Trade**

### **Video: Selling Sex in Heaven**

### **Discussion questions**

1. What do you think about sex tourism?
2. Should North American and Western European countries continue to criminalize conducts that take place outside their territories?
3. Who should be considered legally responsible for sex tourism?
4. Should other countries criminalize conducts in Canada that are against their laws?
5. How can sex tourism be prevented? What legal and non-legal measures could be taken?
6. Why do some countries encourage sex tourism?

### **Scenarios**

1) Two college male students went to a travel agency in Toronto to book a Spring Break package. They said they wanted to go to cool a place, since it was their last year in college. The travel agent asked them “What would you like to do during your Spring Break?” The students

replied “You know, we want to have fun, get laid, and get drunk.” The travel agent replied “I have the perfect package for you guys. You will have a lot of fun, and a lot of chances to get laid with beautiful girls in Cambodia.” So, the two students bought a tourist package to Cambodia. On their first day, they had sex with a 12-year old girl and a 16-year old girl, respectively, for US\$ 50.

2) Two college students, aged 20, go to Thailand. One is a US citizen and the other one is Canadian. They pick up girls in a local bar. The girls are 17 years old. The Canadian student has consensual sex with one of the girls. After having sex, the girl tells him that her family lives in poverty. He leaves a US\$ 20-bill on the night table and leaves.

3) The American student has consensual sex with a 17-year old girl in Thailand. They fall in love and start dating. He proposes to her and invites her to go live in the States. They fly to New York, and when they clear immigration at JFK he is arrested.

4) A Canadian citizen travels to Jamaica. He has consensual sex with a 14-year old girl. He doesn't give her any money or presents.

5) While on business in Thailand, a dual Canadian-Thailand businessman has sex with a 13-year old boy for US\$ 60.

6) A Canadian accountant is sent to work in San Jose, Costa Rica for a 12-month period. While in San Jose, he pays a 15-year old female prostitute to have sex with him.

7) After their first several encounters, the Canadian accountant starts dating the girl. They have consensual sex and he never pays her again. They get married in San Jose and come back to Canada when his project in Costa Rica ends.

8) A travel agency in Soo Michigan advertises sex tourist packages in South East Asia. A Canadian female teacher, who is a US permanent resident, buys the package with the intent to have paid sex with young boys. But, once there she changes her mind and spends all her days on the beach and shopping.

9) A Canadian travel agency advertises sex tourist packages in South East Asia. A Canadian female teacher, who resides in Canada, buys the package with the intent to have paid sex with young boys. But, once there she changes her mind and spends all her days on the beach and shopping.

10) A Canadian female teacher travels to the Dominican Republic and has consented sex with a 12-year old girl there. She never pays her.

11) A Canadian permanent resident and Chilean citizen aged 30 travels to Chile with his friend's 14-year old daughter, also a Canadian citizen of Chilean origin. In Santiago, they have consented sex. He buys her expensive gifts, such as jewelry and coats.

12) A Canadian male citizen, aged 35, travels to Vietnam with his wife. There, he has paid sex with a 17-year old girl while his wife was sightseeing. His wife comes back earlier and finds her husband and the girl in the hotel room. She goes to the police. The police arrest her husband, and refer him to a court. He is acquitted because paid sex with anyone over 16 is legal. When the couple comes back to Canada, the wife goes to the police and report the incident that took place in Vietnam.

13) A Canadian male citizen, aged 30, travels to the Dominican Republic and forces a 15-year old boy to have sex with him.

14) A US female citizen, aged 25, travels to the Dominican Republic and forces a 15-year old boy to have sex with her.

15) A Canadian female citizen has consented sex with a 16-year old girl in Haiti. She takes pictures of their sexual acts.

### **Cases**

Find a newspaper article discussing a criminal law case in a foreign country and present it

### **Class 6 Test**

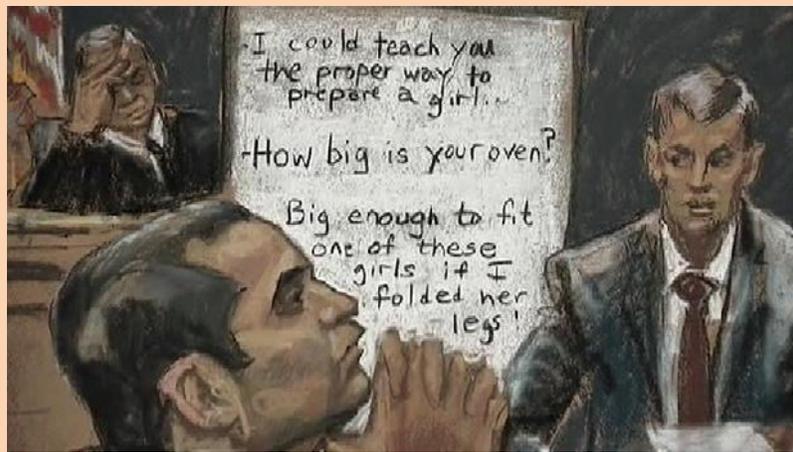


### **Class 7 Soviet Criminal Law**

Read the book Soviet Penal Policy by Ivo Lapenna (1968) available [online](#).

- 1) Summarize the concept of Soviet (Marxist) crime.
- 2) What are the main features of Soviet criminal legislation?
- 3) What are Lenin's views on crimes?
- 4) What is the notion of criminal liability?
- 5) What are the aims of punishment?
- 6) What are the main kinds of punishment?

### **Class 8 March 8 Thought crimes and the criminalization of free speech**



### **Cannibal Cop Thought Crimes**

- 1) Why was Gilberto Valle arrested?
- 2) What did Gilberto Valle do? What didn't he do? Analyze his online posts and chats.
- 3) What happened in the court case? What did the jury decide? What did the judge decide?
- 4) What is a thought crime?
- 5) What is conspiracy? Is it a thought crime?
- 6) Do people always mean what they post on social media? Should governments criminalize evil thoughts, violent ideas, or dark fantasies? Should governments criminalize the communication of these thoughts, ideas, and fantasies?
- 7) Find online other examples of the criminalization of thoughts.

- 8) Should the criminal justice system wait until someone commits a crime? Or should it begin to act before? If so, when? Where should you draw the line between real crimes and fantasies?
- 9) What are the problems and challenges with subjective tests for mens rea?
- 10) Read the US government's [Valle Opening Conspiracy Brief](#) in the case United States v. Gilberto Valle. What are the main US government's legal arguments?

### **Class 9: March 15 Hate Crimes and the criminalization of free speech**

**Read the article and discuss the following questions**

## Toronto professor Jordan Peterson takes on gender-neutral pronouns

By Jessica Murphy BBC News, Toronto

4 November 2016

### A Canadian university professor ignited controversy by refusing to use gender-neutral pronouns. Is he a villain or a victim?

University of Toronto psychology professor Jordan Peterson had enough of what he saw as a campus culture where "social justice warrior, left-wing radical political activists" ran rampant. In September he released [a video lecture series](#) taking aim at political correctness.

He zeroed in on Canadian human rights legislation that prohibits discrimination based on gender identity or expression.

Dr. Peterson was especially frustrated with being asked to use alternative pronouns as requested by trans students or staff, like the singular 'they' or 'ze' and 'zir', used by some as alternatives to 'she' or 'he'.

In his opposition, he set off a political and cultural firestorm that shows no signs of abating.

At a free speech rally mid-October, he was drowned out by a white noise machine. Pushing and shoving broke out in the crowd.

He says the lock on his office door was glued shut.

At the same time, the University of Toronto said it had received complaints of threats against trans people on campus.

His employers have warned that, while they support his right to academic freedom and free speech, he could run afoul of the Ontario Human Rights code and his faculty responsibilities should he refuse to use alternative pronouns when requested.

They also said [they have received complaints from students and faculty that his comments are "unacceptable, emotionally disturbing and painful"](#) and have urged him to stop repeating them. The university is also trying to organise a ["civil and respectful" debate](#), which would include Dr Peterson, to discuss gender provisions in federal and provincial human rights legislation.

Either way, Dr. Peterson is not backing down.

"I've studied authoritarianism for a very long time - for 40 years - and they're started by people's attempts to control the ideological and linguistic territory," he told the BBC.

"There's no way I'm going to use words made up by people who are doing that - not a chance."

Dr. Peterson is concerned proposed federal human rights legislation "will elevate into hate speech" his refusal to use alternative pronouns.

Legal experts disagree.

Bill C-16, currently before Canada's parliament, prohibits discrimination under the Canadian Human Rights Act on the basis of gender identity and expression. The bill covers the federal government and

federally regulated industries like banks or airlines. It also extends hate speech provisions under Canada's criminal code to transgendered people.

"I don't think any legal expert would say using an inappropriate pronoun, while not something that respects the human rights of trans people, would ever result in a criminal conviction," said Kyle Kirkup, a law professor with the University of Ottawa who specialises in gender identity and sexuality law.

But Dr Peterson could face sanction under Ontario's human rights code, which extended protection to trans people in 2012.

Penalties range from fines and damages to mandatory anti-discrimination training.

Dr Peterson says he does not object to trans people or to choosing which traditional pronoun they prefer.

"If the standard transsexual person wants to be regarded as he or she, my sense is I'll address you according to the part that you appear to be playing," he said.

But he argues terms like "gender identity" and "gender expression" are too broad, are the "propositions of radical social constructionists," and are being used to bully opponents into submission.

"There's only two alternatives to that," he said.

"One is silent slavery with all the repression and resentment that that will generate, and the other is outright conflict. Free speech is not just another value. It's the foundation of Western civilization."

Dr Peterson's University of Toronto colleague, Dr Lee Airton, argues he is being alarmist and indulging in "slippery slope fallacies" on the limits of free speech.

"If you actually listen and you parse out the arguments, it becomes very clear that this not about freedom of speech, that this is about reducing transgendered people's needs as excessive and illegitimate."

Dr. Airton, who personally asks to be referred to as 'they', recognises people can find alternative pronouns "very jarring", but says if both sides are open to being accommodating, in practice it becomes "no big deal".

"This is not a freedom of speech debate. This is not a scandal," said Dr. Airton.

"This is people very publicly working through their own lack of familiarity or understanding of trans people's otherwise fairly ordinary lives."

- 1) What does Dr. Peterson complain about?
- 2) What is Bill C-16? Analyze its main provisions.
- 3) What is a hate crime? Discuss hate crimes in the Canadian Criminal Code.

- 4) What does the Ontario Human Rights Act say about discrimination?
- 5) What are the doctrines behind the law? Who are the people behind the doctrines? Why do they scare Dr. Peterson?
- 6) What is political correctness? What is self-censorship? What are the consequences of standing up to political correctness? What does the term 'social justice warrior' mean?
- 7) What was the reaction to Dr. Peterson's arguments?
- 8) Discuss the following quotes from Dr. Peterson "Talking is thinking. If you stop people from talking, you stop them from thinking." "If you don't understand the motivation, look at the outcome and infer the motivation." Do you agree? Why or why not?
- 9) Discuss Lionel Shriver's case. What is cultural appropriation? Find some examples online. What is your opinion about cultural appropriation?
- 10) Are there any signs of political correctness here? If so, what are those signs?
- 11) What can be done to protect freedom of speech?
- 12) Analyze other restrictions on free speech in Canada and the United States.
- 13) Discuss restrictions on free speech in a country other than Canada and the United States.

## Class 10: March 22

### Who is Ethan Couch?



Ethan Couch is escorted Wednesday, the day a judge tentatively ordered him to spend nearly two years in jail.

Authorities said Couch, then 16, was drunk when the pickup he was driving plowed into four pedestrians on a road in Burleson, Texas, in June 2013. Couch's vehicle also struck a parked car, which then slid into another vehicle headed in the opposite direction.

Two people riding in the bed of the teen's pickup were tossed in the crash and severely injured. [At the time, police said one was no longer able to move or talk because of a brain injury.](#)

The case made national news after a psychologist testified that Couch was a victim

of "affluenza," a product of wealthy, privileged parents who never set limits for him. A juvenile court sentenced him to 10 years of probation, despite prosecutors asking for 20 years behind bars.

#### [Opinion: 'Affluenza' isn't as crazy as it sounds](#)

Relatives of the crash victims blasted the sentence, saying they felt Couch got off too easy.

His probation was to be supervised by the juvenile court system until he turned 19, when it would be transitioned to adult court.

#### So why is he facing jail time now?

First, as mentioned, he's already in a Tarrant County jail after a [December arrest in Mexico](#). But we'll get back to that.

Wednesday's decision is technically separate from the Mexico arrest, and some sort of jail time was always possible when he turned 19 as a condition for continued probation.

#### [Lawyer blasts media for 'affluenza' focus](#)

State law mandates that certain young probationers serve a minimum 120 days in jail upon moving from the juvenile system to the adult system, according to prosecutors.

The maximum, Couch's attorney Scott Brown has argued, is 180 days for a transitioning probationer convicted of a second-degree felony like Couch.

So on Wednesday, two days after Couch's 19th birthday, Salvant ordered that Couch serve 720 days, or 180 days for each of the four manslaughter counts.

Couch's attorneys argued Wednesday that the four deaths should be counted as one case, not four. They'll have two weeks to try to convince Salvant.

#### How does Mexico come into play?

Again, Couch is already in jail. Here's how that happened:

As part of his probation, he was ordered to stay away from drugs and alcohol. But in December 2015, a video emerged that allegedly showed him at a party where alcohol was consumed.

His probation officer tried to reach him, but couldn't. A Texas warrant for Couch's arrest was issued in mid-December.

As it turned out, [Couch and his mother, Tonya Couch, fled to Mexico](#) to avoid a probation hearing that might have led to jail time for him, authorities say. Mexican authorities found the pair later that month in a Pacific resort town and detained them. In late January, Couch was returned to Tarrant County, where he's been in jail since.

#### Does the post-Mexico jailing have anything to do with Wednesday's order?

Technically, no. Tarrant County Prosecutor Riley Shaw has said the time to punish Couch for probation violations as a juvenile effectively expired when he turned 19.

However, a judge can take Couch's juvenile probation record into account when setting conditions for his adult probation, Shaw said.

After Couch serves whatever jail term Salvant decides as a probation condition, Couch will be released -- again, on probation. He wouldn't face additional jail time unless he violated the probation terms from that point forward.

Speaking of probation terms, Salvant also set those Wednesday, and they're similar to what he faced as a juvenile. Among them: He can't consume alcohol or a controlled substance, or travel beyond Tarrant and adjacent counties without permission.

#### What about Couch's mother?

Tonya Couch, who, like her son, was returned to the United States, is charged with

hindering her son's apprehension. She was freed on \$75,000 bond, [CNN affiliate KTVT reported](#).

### **Discussion questions**

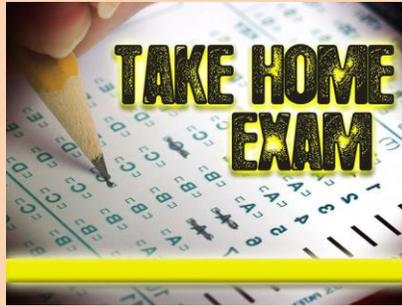
- 1) Discuss the facts and legal issues of the Ethan Couch case.
- 2) What is the affluenza defence? What do you think about it?
- 3) Why did he go to Mexico?
- 4) What responsibility, if any, do his parents have?
- 5) Can rich kids only be spoiled? Why or why not?

### **Comparative Criminal Law method**

Analyze the Criminal Law of the assigned foreign jurisdiction. Focus your research on substantive criminal law, particularly on the theory of offence in that jurisdiction, even if not called as such. Prepare a brief outline with the main aspects of the foreign Criminal Law for the rest of the students. Write 3 scenarios for other students to analyze. Find a video and/or a news article online to illustrate an aspect of the foreign law. Make a short presentation.

1. Germany.
2. Saudi Arabia
3. Louisiana
4. Italy
5. Japan
6. Russia

**Class 11 March 29: Distribution of final take-home**



## **Class 12: April 5: Submission of final take-home**



### **\* TRIGGER WARNINGS**

Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content. Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in the articles assigned for reading in this course are those of the authors and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to reflect the opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.