

Carleton University

Department of Law and Legal Studies

Course Outline

COURSE: LAWS 3908.E **Approaches in Legal Studies II**
PREREQUISITES: LAWS 2908
TERM: Winter 2014
CLASS: Day & Time: Wednesday, 2:35pm – 5.25pm
INSTRUCTOR: Professor Christiane Wilke
CONTACT: Office: D499 Loeb
Office Hours: Walk-in: Monday 10am -12pm, Thursday 1-3pm, or by appointment.
Email: Christiane.Wilke@carleton.ca
[please mention the course number in the email subject line]

COURSE OBJECTIVES & CONTENT:

This course combines discussions of theories and research methods in legal studies with the study of a theme (the Canadian Truth Commission in a global context). The emphasis is on research as a process that involves asking questions, drawing on theories, interpreting texts, questioning concepts, and assembling the outcome of this messy process in a coherent form (a research paper). We will review some basic research techniques (finding articles and documents), but mostly focus on understanding different theories, using them for asking research questions, answering these questions, and thinking about the ways we construct knowledge.

Why the Canadian Truth and Reconciliation Commission (TRC)? The TRC has the task of addressing the massive human rights violations that occurred in Indian Residential Schools (IRS). The Canadian TRC is in part modeled on TRCs in other countries. It is special because it only deals with violence and violations of the rights of Indigenous people. Research on the TRC raises a series of challenging questions: What was the history behind the IRS, and how has this history been presented? What was the role of Western forms of research and knowledge production in colonialism and the IRS? How and to which degree does the IRS respond to the demands and visions of Indigenous communities, and to which degree does it respond to the Western legal system that established it?

In this course, we will ask the hard questions about research, truth commissions, truth, responsibility, indigeneity, colonialism, and justice. We will work on research skills and we will ask why certain forms of knowledge creation and knowledge presentation are privileged over others.

NOTE ON ACADEMIC ACCOMMODATION**(STUDENTS WITH DISABILITIES, RELIGIOUS OBLIGATIONS, PREGNANCY)**

You may need special arrangements to meet your academic obligations during the term because of disability, pregnancy or religious obligations. Please review the course outline promptly and 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.

Students with disabilities requiring academic accommodations in this course must register with the **Paul Menton Centre for Students with Disabilities (PMC)** for a formal evaluation of disability-related needs. Documented disabilities could include but not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. Registered PMC students are required to contact the PMC, 613-520-6608, every term to ensure that your Instructor receives your Letter of Accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the last official day to withdraw from classes in each term.

Students requiring accommodation on the grounds of religious observance must submit to their instructors a formal request with suggestions for alternate dates and/or means of satisfying any academic requirements involved. Such requests should be made during the first two weeks of any given academic term, or as soon as possible after a need for accommodation is known to exist, but in no case later than the second-last week of classes in that term.

Pregnancy accommodation may involve a temporary modification of the elements of the student's academic program (e.g., laboratory, mid term, final exam, or field work).

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/accommodation>

A NOTE ON ACADEMIC FREEDOM:

In this course, we will discuss history, literature, culture and ideas in connection to human rights in South Africa. The course material might contain or convey ideas about ethics, law, and culture that will be unfamiliar and sometimes disturbing. The course material is not designed to convey a particular "conclusion" but to encourage discussion about complex issues. All participants in the course must be willing to examine the relevant texts, must make a sincere effort to understand the presuppositions of others, and be willing to discuss, verbally and in writing, the objects of study. By enrolling in this course, students accept a commitment to academic freedom for all participants, themselves, and the instructor. If you have any questions relating to this statement, please let me know.

COURSE MATERIAL:

Materials marked with an asterisk (*) are in the course reader, available at Octopus Books (116 3rd Ave, off Bank St). All other materials are accessible through cuLearn and ARES.

EVALUATION:

- **Attendance: 5%**
- **Participation: 5%**
- **Paper 1: 15%**
- **Paper 2: 15%**
- **Paper 3 (conference report): 5%**
- **Paper 4: 15%**
- **Final Exam (take home) or research paper: 35%**

- **Attendance and participation:** This class is structured around discussions and workshops on doing research. So it is important that you both do the readings that will be the basis of our discussions and group work, and that you come to class to participate in the workshops. Attendance and participation are valued at 10% combined, but regular attendance and informed participation will help you write much better assignments.
- **Everyone's active participation** is crucial for the success of the class. Participation is valued at **5 points** and presumes, of course, that you have read the texts carefully and that you attend class.
- **Attendance policy:** regular attendance is the key to the success in seminar classes. Attendance counts for **5 points**. After the first class you missed, each further class that you miss without a documented excuse leads to a 1 point deduction. (Example: If you miss two classes, you will get 4 out of 5 points for attendance.)

- **Short papers 1 and 2 (5-6 pages each)** are responses to essay questions/tasks that will be handed out in class in advance. You will answer one out of two or more questions. The emphasis is on applying theoretical concepts from the readings to primary material. Some of the questions/task will ask you to construct your own research question.
- **Short paper 3 (2-3 pages)** is a conference report. You will attend at least one session of the 2014 Legal Studies Graduate Student Conference and write a brief reflective report.
- **Short paper 4** is a research paper proposal, including a literature review and a bibliography of no less than twelve items, ten of which have to be scholarly publications.

- **The short papers are due on these dates (not in class!):**
- **Paper 1: February 10th,**
- **Paper 2: March 10th**
- **Paper 3: March 17th**
- **Paper 4: March 25th**
- **Late penalty for short papers: 10% (1.5 points out of 15, or 0.5 points out of 5) per day.**
- **The final exam** will be a take-home exam in form of a research paper (12-15 pages, excluding bibliography).
- The **final exam is due on April 26th 2014**. No late final exams will be accepted without documented medical or equivalent legitimate reasons.

SCHEDULE:**1. January 8th****Introduction****Week 2 – January 15th****Truth and Reconciliation Commissions in Canada and South Africa**

What are Truth and Reconciliation Commissions? How can we think about them in comparison?

- * Courtney Jung, “Canada and the Legacy of the Indian Residential Schools: Transitional Justice for Indigenous People,” in *Identities in Transition: Challenges for Transitional Justice in Divided Societies*, ed. by Paige Arthur (New York: Cambridge University Press, 2011), 217-250.
- * Catherine Cole, *Performing South Africa’s Truth Commission: Stages of Transition* (Bloomington and Indianapolis: Indiana University Press, 2010), 1-27.
- Rosemary Nagy, “Truth, Reconciliation and Settler Denial: Specifying the Canada-South Africa Analogy,” *Human Rights Review* 13 (2012): 349-367.

Recommended:

- Rosemary Nagy, “Transitional Justice as a Global Project: Critical Reflections,” *Third World Quarterly* 29 (2008): 275-289.
- Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed (New York: Routledge, 2011), 1-44, 210-233
- Paige Arthur, “How ‘Transitions’ Shaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31 (2009): 321–367.
- Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (New York: Routledge/GlassHouse, 2011).
- Matt James, “Uncomfortable Comparisons: The Canadian Truth and Reconciliation Commission in International Context,” *The Ethics Forum* 5 (2010): 23-35.

Week 3 – January 22nd**Truth Commissions, Indigenous Peoples, and Research**

What is special about research on indigenous peoples and truth commissions on injustices suffered by Indigenous peoples? What are research methods? How are they connected to questions about indigeneity?

- * Linda Tuhiwai Smith, *Decolonizing Methodologies* [1999] (London & New York: Zed, 2012), 1-19, 44-60.
- Ian Mosby, “Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952,” *Social History* XLVI (2013): 145-172.
- TRC Mandate (Indian Residential Schools Settlement Agreement, Schedule N):

<http://www.trc.ca/websites/trcinstitution/index.php?p=7> [online]

Recommended:

- Sarah de Leeuw, "If anything is to be done with the Indian, we must catch him very young': colonial constructions of Aboriginal children and the geographies of Indian residential schooling in British Columbia, Canada," *Children's Geographies* 7 (2009): 123-140.
- Jeff Corntassel and Cindy Holder, "Who's Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru," *Human Rights Review* 9 (2008): 465-489.
- Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2010), 2-18, 83-110. (Introduction, ch. 3)

Week 4 – January 29th

Different Histories

How do people write history and how does it matter? How is the history of the IRS told?

- * Linda Tuhiwai Smith, *Decolonizing Methodologies* [1999] (London and New York: Zed, 2012), 20-43.
- Truth and Reconciliation Commission of Canada, *They Came For the Children: Canada, Aboriginal People, and Residential Schools* (2012), 1-53. Available online:
http://www.attendancemarketing.com/~attmk/TRC_jd/ResSchoolHistory_2012_02_24_Webposting.pdf.

Primary Documents:

- * From: Jennifer Henderson and Pauline Wakeham (eds.), *Reconciling Canada: Critical Perspectives on the Culture of Redress* (Toronto: University of Toronto Press, 2013), 299-321.

Recommended:

- John S. Milloy, "A National Crime": *The Canadian Government and the Residential School System, 1879 to 1986* (Winnipeg: The University of Manitoba Press, 1996), 3-11, 23-47, 51-75.

Week 5 – February 5th

Truths

What is truth, and what are truths? How do people produce knowledges?

- Claire Moon, "Narrating Political Reconciliation: Truth and Reconciliation in South Africa," *Social & Legal Studies* 15 (2006): 257-275.
- Ian Hacking, *The Social Construction of What?* (Cambridge, MA: Harvard University Press, 1999), 1-34.
- * Linda Tuhiwai Smith, *Decolonizing Methodologies* [1999] (London and New York: Zed, 2012), 61-80

Recommended:

Matt James, "A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission," *International Journal of Transitional Justice* 6 (2012): 182-204.

Margaret Kovach, *Indigenous Methodologies* (Toronto: University of Toronto Press, 2009).

Truth and Reconciliation Commission of Canada, *Interim Report* (2012). Available online:

http://www.attendancemarketing.com/~attmk/TRC_jd/Interim_report_English_electronic_copy.pdf.

Priscilla Hayner, *Unspeakable Truths*, 2nd ed., 75-90. (ch. 6, 7)

Anne Orford, "Commissioning the Truth," *Columbia Journal of Gender and Law* 15 (2006): 851-883. [online]

Lars Buur, "Monumental Historical Memory: Managing Truth in the Everyday Work of the South African Truth and Reconciliation Commission," in Deborah Posel and Graeme Simpson, ed., *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission* (Johannesburg: Witwatersrand University Press, 2002), 66-93.

Matthew Keller, "Commissioning Violence: The Global Logics of National Violence Commissions in the Twentieth Century," *Politics & Society* 37 (2009): 352-396.

Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (New York: Routledge/GlassHouse, 2011), 20-60.

Week 6 – February 12th

**[Paper #1 is due on February 10th]
Testimony, Witnessing, and Listening at the TRC**

*How can we work with truth commission testimonies?
What do we need to know about testimony, witnessing and storytelling practices?*

Fiona Ross, "On Having Voice and Being Heard: Some after-Effects of Testifying Before the South African Truth and Reconciliation Commission." *Anthropological Theory* 3 (2003), 325-341.

* Julia Emberley, "Epistemic Heterogeneity: Indigenous Storytelling, Testimonial Practices, and the Question of Violence in Indian residential Schools," in Jennifer Henderson and Pauline Wakeham (eds.), *Reconciling Canada: Critical Perspectives on the Culture of Redress* (Toronto: University of Toronto Press, 2013), 143-158.

Primary Material:

Truth and Reconciliation Commission (South Africa), Human Rights Violation Hearing Yvonne Khutwane (24 June 1996, Worcester). Online: <http://www.justice.gov.za/trc/hrvtrans/worcest/ct00530.htm>.

Truth and Reconciliation Commission (South Africa), Amnesty Hearing Mthetheli Crosby Kolela, Bafo Gift Nqunge, Mabitani Mani (25 May 1999, East London). Online: http://www.doi.gov.za/trc/amntrans/1999/99052527_el_990525el.htm.

Truth and Reconciliation Commission (South Africa), Amnesty Decision AC/99/0213 (Ngcunge, Kolela, Mani), 1 June 1999. Online: <http://www.justice.gov.za/trc/decisions/1999/ac990213.htm>.

Recommended:

Naomi Angel, "Before Truth: The Labors of Testimony and the Canadian Truth and Reconciliation Commission," *Culture, Theory and Critique* 53 (2012): 199-214.

Week 7 – February 26th

Colonialism, Genocide, Law

What is genocide? How is the concept defined, how do definitions matter, and to whom do they matter?

Andrew Woolford, "Nodal repair and networks of destruction: residential schools, colonial genocide, and redress in Canada," *Settler Colonial Studies* 3 (2013): 65-81.

* Samuel Totten, William S. Parsons, and Robert K. Hitchcock, "Confronting Genocide and Ethnocide of Indigenous Peoples: An Interdisciplinary Approach to Definition, Intervention, Prevention, and Advocacy," in Alexander Laban Hinton (ed), *Annihilating Difference: The Anthropology of Genocide* (Berkeley and Los Angeles: University of California Press, 2002), 54-91.

Primary Sources

Jules Koostachin, "Remembering Inninimowin: The Language of the Human Beings," *Canadian Journal of Law and Society* 27 (2012): 75-80.

Convention on the Prevention and Punishment of the Crime of Genocide (1948). UN Treaty Series, vol. 78, p. 277.
Online: <http://www.icrc.org/ihl.nsf/INTRO/357?OpenDocument>

Recommended:

David B. MacDonald and Graham Hudson, "The Genocide Question and Indian Residential Schools in Canada," *Canadian Journal of Political Science* 45 (2012): 427-449.

Lisa Laplante, "Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes," *Virginia Journal of International Law* 49 (2009), 915-984.

Margery Fee and Lynette Russell, "'Whiteness' and 'Aboriginality' in Canada and Australia: Conversations and identities," *Feminist Theory* 8 (2007): 187-2008.

Andrew Woolford, "Ontological Destruction: Genocide and Canadian Aboriginal Peoples," *Genocide Studies and Prevention* 4 (2009), 81-97.

Week 8 – March 5th

Reparations

How are reparations administered in Canada? What do reparations mean to whom?

Readings:

Claire Moon, "'Who'll Pay Reparations on My Soul? Compensation, Social Control and Social Suffering," *Social & Legal Studies* 21 (2012): 187-199.

Gwen Reimer et al., *The Indian Residential Schools Settlement Agreement's Common Experience Payment and*

Healing: A Qualitative Study Exploring Impacts on Recipients (Ottawa, Aboriginal Healing Foundation, 2010), 1-55.

Primary Documents:

Indian Residential Schools Independent Assessment Process, *Guide to the Independent Assessment Process Application*.

Indian Residential Schools Independent Assessment Process, *Application to the Independent Assessment Process*.

Recommended:

Ruth Rubio-Marín, Claudia Paz y Paz Bailey, and Julie Guillerot, "Indigenous Peoples and Claims for Reparation: Tentative Steps in Peru and Guatemala," in Paige Arthur, ed. *Identities in Transition: The Challenge of Transitional Justice in Divided Societies* (New York: Cambridge University Press, 2011), 17-53.

John Borneman, "On Money and the Memory of Loss," *Etnográfica*, VI (2002), 281-302.

Week 9 – March 12th

[Paper #2 is due on March 10th]

No regular class. You will attend at least one session of the Carleton Legal Studies Graduate Student Conference. Precise time and location TBA.

How do conferences work as sites of knowledge production?

Week 10 – March 19th

Paper #3 (Conference Report) is due on March 17th.

Reconciliations?

*How do approaches to apologies and reconciliation differ?
Which concepts are being used in practice, and to which effect?*

Readings:

Andrew Woolford, "The limits of justice: certainty, affirmative repair, and aboriginality," *Journal of Human Rights* 3 (2004): 429-444.

* Eva Mackey, "The Apologizer's Apology," in Jennifer Henderson and Pauline Wakeham (eds.), *Reconciling Canada: Critical Perspectives on the Culture of Redress* (Toronto: University of Toronto Press, 2013), 47-62.

Primary Documents:

* Canadian Government, Official Apologies and Responses. Hansard, 39th Parliament, 2nd session, 11 June 2008).

Online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3568890#Int-2527580>.

(Statements by: Harper, Layton, Fontaine, Simon, Chartier, Jacobs.)

Recommended:

- Elizabeth Jelin, "Silences, Visibility, and agency: Ethnicity, Class, and Gender in Public Memorialization," in Paige Arthur, ed., *Identities in Transition: The Challenge of Transitional Justice in Divided Societies* (New York: Cambridge University Press, 2011), 187-213. [reader]
- Paulette Regan, *Unsettling the Settler Within*, 171-212. (ch. 6, 7)
- Priscilla Hayner, *Unspeakable Truths*, 145-162. (ch. 11)
- Robyn Green, "Unsettling Cures: Exploring the Limits of the Indian Residential School Settlement Agreement," *Canadian Journal of Law and Society* 27 (2012): 129-148. [online]
- Vanessa Pupavac, War on the Couch: The Emotionology of the New International Security Paradigm," *European Journal of Social Theory* 7 (2004): 149-170. [online]
- Claire Moon, "Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation," *Journal of Human Rights* 8 (2009): 71-91.
- Michael Humphrey, "Reconciliation and the Therapeutic State," *Journal of Intercultural Studies* 26 (2005): 203-220.

Week 11 – March 26th**[Assignment #4 is due on March 24th]****From Trauma to Resistance**

What are some of the issues that Indigenous communities have mobilized around that are not touched upon in the TRC process?

- Karen Engle, "On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights," *European Journal of International Law* 22 (2011): 141-163.
- Terry Wotherspoon and John Hansen, "The "Idle No More" Movement: Paradoxes of First Nations Inclusion in the Canadian Context," *Social Inclusion* 1 (2013), DOI: 10.12924/si2013.01010021.

Recommended:

- James (Sa'ke'j) Youngblood Henderson, "Incomprehensible Canada," Jennifer Henderson and Pauline Wakeham (eds.), *Reconciling Canada: Critical Perspectives on the Culture of Redress* (Toronto: University of Toronto Press, 2013), 115-126.
- Jen Preston, "Neoliberal settler colonialism, Canada and the tar sands," *Race & Class* 55 (2013): 42-59.
- Wendee Kubik, Carrie Bourassa and Mary Hampton, "Stolen Sisters, Second Class Citizens, Poor Health: The Legacy of Colonization in Canada," *Humanity & Society* 33 (2009): 18-34.
- Brandon Hamber and Richard Wilson, "Symbolic Closure through memory, reparation and revenge in post-conflict societies," *Journal of Human Rights* 1 (2002): 35-53.

Week 12 – April 2nd

Evaluating Truth and Reconciliation?

How can we evaluate the work of TRCs?

Which kinds of methods are available, and which ones are most appropriate? How do the methods shape the results?

Michal Ben-Josef Hirsch, Megan MacKenzie and Mohamed Sesay, "Measuring the impacts of truth and reconciliation commissions: Placing the global 'success' of TRCs in local perspective." *Cooperation and Conflict* 47 (2012): 386-403.

* Linda Tuhiwai Smith, *Decolonizing Methodologies* [1999] (London and New York: Zed, 2012), 217-233.

Recommended:

Jeff Corntassel, Chaw-win-is and T'lakwadzi, "Indigenous Storytelling, Truth-Telling, and Community Approaches to Reconciliation," *ESC: English Studies in Canada* 35 (2009): 137-159.

Note on the assignments: All assignments have to be original work by the student who is submitting them. Collaboration on assignments is not permitted. (The only possible exception to this rule in this course may be joint presentations of two or more students with the specific permission of the instructor.) In addition, students should note Carleton University's policy on instructional offences, available at www.carleton.ca/cuuc/regulations/acadregsuniv14.html. Penalties for academic offences may range from a reprimand to expulsion from the university. The use of outside material without proper references is one of the most common and most easily avoidable instructional offences. Whatever language and ideas you take from other sources needs to be referenced. Make yourself familiar with different citation styles! The Carleton University library has many resources that can help you. See: www.library.carleton.ca/howdoi/citing.html.