

Carleton University

Department of Law and Legal Studies
Course Outline

COURSE: LAWS 4603.A Transitional Justice

PREREQUISITES: 4th year Honours standing

TERM: Fall 2012

CLASS: Day & Time: Fridays, 8:35-11:25am
Room: TBA

INSTRUCTOR: Professor Christiane Wilke

CONTACT: Office: D485 Loeb
Office Hrs: Monday 10-12 (walk-in) & by appointment
Email: Christiane_Wilke@carleton.ca
[please mention the course number in the email subject line]

COURSE OBJECTIVES & CONTENT:

Transitional justice refers to policies and institutions for addressing state repression and violence, usually after a regime change. Transitional justice is also the name for a field of research about the ways societies address systemic injustices. Truth commissions, criminal trials, and reparations are central mechanisms of transitional justice. In this course, we will study **the Truth and Reconciliation Commission of Canada in a global context**. There have been more than forty truth commissions worldwide, and the Canadian commission is unique in many ways.

At the end of this course, you will be able to:

- Name and compare different truth commissions,
- Describe typical mandates for these commissions,
- Evaluate different concepts of indigeneity, colonialism, genocide, truth and reconciliation,
- Assess areas of contention about truth commissions in general, and about the Canadian Truth and Reconciliation in particular,
- Engage in a nuanced discussion about the Canadian Truth and Reconciliation Commission and Indian Residential Schools.
- You will improve your critical reading, analysis, research, and writing skills.

In the course, you will:

- Participate in class discussions,
- Give a short (5 minutes) presentation on a reading
- Write three short (5 pages) critical responses to class readings for different weeks,
- Develop a research paper topic, write an outline or first draft of the research paper, and complete the research paper at the end of the term.

**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 **medical conditions, 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 when you find out that you'll need some adjustments or an accommodation for any assignment or course activity. I'd be happy to be flexible, but I need to know about possible concerns and conflicts **well before** the paper deadline, presentation date, etc.

For **Religious and Pregnancy accommodations**, please contact **Equity Services**, x. 5622 or their website: www.carleton.ca/equity and talk to me.

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. After requesting accommodation from PMC, please come to see me to ensure that the accommodation arrangements are appropriate for you.

COURSE MATERIAL:

We will read most of the two books that I'm asking you to buy:

Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (New York: Routledge, 2011), \$ 43.95.

Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2010), \$ 34.95.

The book and the course pack LAWS 4603.A are available from:

Octopus Books, 116 Third Ave, off Bank Street. (613)233-2589, <http://www.octopusbooks.org>. Please check online for book & course pack availability, or call ahead.

All readings are also available on reserve: the two books in hard copy, and the other materials as electronic files and links on ARES (accessible through cuLearn.

Availability indications in the outline: [*online*] means cuLearn, asterisk (*) means required book.

EVALUATION:

- **Class presentation and participation: 15%**
- **Three critical response papers: 15% each (45% combined)**
- **Research paper: 40%**

- **Class presentation and participation:** This is a seminar class with challenging readings. Discussing these texts on the basis of short (5 min.) class presentations will allow us reach a better understanding of the theories and their problems. Presentations should not summarize the text, but provide analysis, context, or critiques of issues arising from the text.
- **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. In this class, attendance counts for **5 points**. After the first class you missed, each further class that is missed without a documented hardship leads to a 1 point deduction. (Example: If you miss two classes, you will get 4 out of 5 points for attendance.)

- **Critical Response Papers** are short essays that offer a critical analysis of or argument about key issues from assigned readings. You choose the readings you write about in 5 pages (double-spaced). Response papers are due at the beginning of the class for which the reading is assigned. **No late response papers are accepted.** If you are unable to print the paper or come to class, please email the paper to me before the beginning of the class in which it is due.

- The first response paper has to be submitted no later than **September 28th**. The second response paper is due no later than **November 2nd**. The third response paper is due no later than **November 30th**. **You cannot write a response paper on the same text that you are giving a presentation on.**

- The **research paper** challenges you to develop a more sustained argument in 15 double-spaced pages based on readings from this class and outside research. The research paper is due on **December 5th**. Over the course of the term, you will have to submit an initial **paper topic (due October 26th)** and a **paper outline or draft (due November 16th)**. Those are **mandatory** but not graded. **I will not mark papers from students who have not submitted paper drafts. You cannot pass the class without submitting an outline/draft.**
Late research papers will not be accepted without a documented emergency.

NOTE ON CLASSROOM LOGISTICS:

No computers, tablets or phones are allowed in this class. Exceptions will only be made for students who need electronic devices as an accommodation.

In class, you will need **hard copies of all the readings** (with your underlinings & annotations) as well as your separate notes on the readings.

This is a **discussion-based** seminar class. You will not have to take many notes in class. Thus, pen or pencil and paper are sufficient (and less distracting for everyone). Just do the readings, take your notes on the readings, bring questions, and focus on the discussion in the classroom.

If you have any questions or concerns about these matters, please let me know.

SCHEDULE:**Week 1—September 7th****Introduction****Week 2 – September 14th****Truth and Reconciliation Commissions and Transitional Justice**

*Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed (New York: Routledge, 2011), 1-44, 210-233. (Introduction, ch. 2, 3,15)

Rosemary Nagy, "Transitional Justice as a Global Project: Critical Reflections," *Third World Quarterly* 29 (2008): 275-289. [online]

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. [online]

Recommended:

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).

Week 3 – September 21st**Approaching The Canadian Context**

- *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)
- Matt James, "Uncomfortable Comparisons: The Canadian Truth and Reconciliation Commission in International Context," *The Ethics Forum* 5 (2010): 23-35. [online]
- 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. [reader]
- 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.

Week 4 – September 28th

[The first critical response paper needs to be written for week 2, 3 or 4]

Truth and Truth Commissions

- *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. [reader]

Recommended:

- 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 5 – October 12th**The work of the Canadian TRC**

Truth and Reconciliation Commission of Canada, *They Came For the Children: Canada, Aboriginal People, and Residential Schools* (2012). Available online:
http://www.attendancemarketing.com/~attmk/TRC_jd/ResSchoolHistory_2012_02_24_Webposting.pdf, 1-53. [online]

Truth and Reconciliation Commission of Canada, *Interim Report* (2012). Available online:
http://www.attendancemarketing.com/~attmk/TRC_jd/Interim_report_English_electronic_copy.pdf, entire. [online]

Resource: Website of the Canadian Truth and Reconciliation Commission:
<http://www.trc.ca/websites/trcinstitution/index.php?p=3>

Week 6 – October 19th**Colonialism, Genocide, Law**

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

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

Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (Toronto: University of Toronto Press, 2007), 3-29, 34-64. [reader]

Resources (mandatory):

Colonialism, Stanford Encyclopedia of Philosophy: <http://plato.stanford.edu/entries/colonialism/>
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:

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.

Week 7 – October 26th

[Research paper topic statements are due in class]

Reconciliation

*Paulette Regan, *Unsettling the Settler Within*, 54-82, 111-143. (ch. 2, 4)

*Priscilla Hayner, *Unspeakable Truths*, 182-194. (ch. 13)

Dirk Moses, "Official apologies, reconciliation, and settler colonialism: Australian indigenous alterity and political agency," *Citizenship Studies* 15 (2011): 145-159. [online]

Recommended:

Carol Blackburn, "Producing Legitimacy: reconciliation and the negotiation of aboriginal rights in Canada," *Journal of the Royal Anthropological Institute* (N.S.) 13 (2007): 621-638.

Brenna Bhandar, "Anxious reconciliation(s): unsettling foundations and spatializing history," *Environment and Planning D: Society and Space* 22 (2004): 831-845.

Week 8 – November 2nd

[You have to submit the second critical response paper for week 8 at the latest]

Storytelling & Memory

*Paulette Regan, *Unsettling the Settler Within*, 171-212. (ch. 6, 7)

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]

Week 9 – November 9th**Reparations**

*Priscilla Hayner, *Unspeakable Truths*, 163-181. (ch. 12)

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. [reader]

Indian Residential Schools Independent Assessment Process, *Guide to the Independent Assessment Process Application*, pdf. [online]

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

Assessment Process, pdf. [online]

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

Recommended:

Ruth Rubio-Marín and Clara Sandoval, "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the *Cotton Field* Judgment," *Human Rights Quarterly* 33 (2011): 1062-1091

Week 10 – November 16th

[Research paper draft or outline is due in class]

Healing?

*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]

Recommended:

Claire Moon, "Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation," *Journal of Human Rights* 8 (2009): 71-91.

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.

Michael Humphrey, "Reconciliation and the Therapeutic State," *Journal of Intercultural Studies* 26 (2005): 203-220.

Week 11 – November 23rd

Cultures of Redress in Canada

With guest speaker, readings TBA.

Week 12 – November 30th

[Last chance for the third critical response paper!]

Justice? Closure?

*Priscilla Hayner, *Unspeakable Truths*, 2nd ed, 91-109. (ch. 8)

*Paulette Regan, *Unsettling the Settler Within*, 213-237. (ch. 8)

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. [online]

Recommended:

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.

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

Don't forget: The research paper is due on December 5th. No excuses, no exceptions.

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/howdol/citing.html.