Carleton University

Department of Law and Legal Studies

Course Outline

COURSE: LAWS 4603B (Transitional Justice)

TERM: Winter Term 2015

PREREQUISITES: Fourth-year Honours standing

CLASS: Day & Time: Fridays 11:30-2:30

Room: CO 213 (But **check with Carleton Central for current room location)

INSTRUCTOR: DORIS BUSS

(CONTRACT)

CONTACT: Office: D495

Office Hrs: Fridays 3:00-4:00 or by appointment

Telephone: 613 520 2600 EXT 8011 Email: Doris.buss@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

'Transitional justice' broadly refers to the ethical commitments and different institutional mechanisms designed to assist a society transitioning from periods of conflict, authoritarian political rule, or violence. Some high profile examples of contemporary transitional justice processes include South Africa's Truth and Reconciliation Commission, instituted at the end of the Apartheid era, and the newly established (since 2002) International Criminal Court that prosecutes individuals accused of committing grave violations of international law. The recent expansion in the field of transitional justice is generally traced back to the use of trials and truth commissions in several South American countries transitioning from periods of authoritarian rule in the 1980s, as well as the establishment of new international courts in the 1990s and early 2000s to deal with specific conflicts related to the violent dissolution of Yugoslavia, the 1994 Rwanda genocide, armed conflict in Sierra Leone, and genocide in Cambodia. For the purposes of this course, we will focus on two main transitional justice mechanisms – criminal trials and truth commissions – but with some additional reference to memorials and memorialization, and we will equally limit our class discussions to only a few country examples. The objectives of the course are to:

- a. Introduce the expansive field of transitional justice and provide an opportunity to become familiar with 2 or 3 main types of transitional justice mechanisms;
- b. Explore the different 'transitional' needs in a society that has experienced violence, conflict, and/or authoritarian rule;
- Consider the different harms and violences experienced individually and collectively, and how these shape the need for and operation of different transitional justice mechanisms.

REQUIRED TEXTS

Primo Levi. 1989. The Drowned and the Saved, and Ronald Niezen. 2013. Truth & Indignation: Canada's Truth ad Reconciliation Commission on Indian Residential Schools:

BOTH are available for purchase from *Octopus Books*, 116 Third Ave, Ottawa, ON; tel: (613) 233-2589.

All other materials are available on line and/or in the Carleton library.

CELL PHONE/LAP TOP IN CLASS POLICY:

Cell phones MUST BE turned OFF and stowed away in a bag. They CANNOT be on your desk or in a pocket on your person. NO EXCEPTIONS. Lap tops are permitted in the classroom, but students are required to exercise good laptop etiquette: students who wish to achieve a good mark in this class need to pay attention to class material and discussion. Surfing the web, playing on social media are activities that distract you and your fellow students.

EVALUATION

(All components must be completed in order to pass the course)

Assignments:

Journals (complete 3): (5% each)	15%
Critical comment on academic readings (complete 2) (Comment 1 = 10%; comment 2 = 15%)	25%
Presentation or written backgrounder (complete 1)	20%
Final essay (due: 6 April, 2015)	40%

Critical comments and Journals are due at the start of class on the week where the reading is scheduled and must be submitted via CU Learn. Late submissions within 24 hours will be accepted but with a 3 mark deduction. Submissions more than 24 hours late will not be accepted.

Students will sign up for a presentation or written backgrounder on a list distributed in class. For students doing a written backgrounder, these are due at the start of the class for the date noted on the circulated list. Late submissions of backgrounders within 24 hours will be accepted but with a 3 mark deduction. Submissions more than 24 hours late will not be accepted.

The topic of the final essay will be set by me and made available to the class in March. The final essay will be due by the end of the day 6 April 2015. No extensions will be given except for medical or personal emergency with supporting documentation. No exceptions to this rule will be made.

EVALUATION CRITERIA

a. <u>Journal</u>: these assignments ask you to reflect on the readings and other material shown and discussed in class (such as videos), guided by a specified question or topic. The journal entries are to be reflective; an opportunity for you to think and write about the class themes, drawing on your own experiences, ideas, reactions, books or movies you've read. Unlike other academic assignments, the structure is looser (it does not need to read like a university paper), and your contributions can explore directions that make sense to you. Full marks are awarded for journal entries submitted on time that make a clear effort to reflect on the questions/themes raised in the assignment.

Submit 3 from the following 4 journal assignments and take careful note of the due date:

- 1. Journal Assignment 1 (due at the start of class Jan. 16): Reflect on an actual or imagined conflict/wrong in your own life or someone you know: perhaps an argument with a friend, or a dispute with your parents or an employer; or a wrong that was done to you/someone you know:
 - How did the experience of conflict/wrong affect you/the person you know?
 - How do you think the conflict/wrong impacted on relationships with friends/family/employers?;
 - In an ideal world, how should the conflict/wrong been resolved best?
- 2. Journal Assignment 2 (due at the start of class 23 January): Reflect on the people in the Bosnian village showcased in the documentary we watched in class. How did they describe their relationships with neighbours before the war? What factors do you think the documentary makers were trying to highlight in explaining how and why those relationships broke down? What was the role of fear, for example? What do you think would be needed for the main couple highlighted in the documentary to be able to return to their home and live again among their neighbours?
- 3. Journal Assignment 3 (due at the start of class 30 Jan): Reflect on a movie, book, or TV show that focuses on a criminal trial (of whatever type). What happens in the trial to the characters involved (ie the witnesses, judges, lawyers)? What message do you think the show/book is trying to convey about the trial process; the events in the courtroom? How important do you think criminal trials are to your/popular conceptions of justice? How important do you think the 'fact' of a criminal trial the performance of prosecuting someone for an egregious violation of international law is to the idea of transitional justice?

4. Journal assignment 4 (due at start of class 13 Feb): Reflect on the Italian documentary (links below) that we watched in class about Primo Levi's return to Auschwitz. In his writings and in this documentary, Levi describes the conditions in the camps in ways that avoid depicting people in the camp as wholly 'good' or 'evil'? He seems to have moved beyond 'hatred' or bitterness for the years spent in the camps. What do you think of the way he talks about the camp in the documentary? What do you think might be going on for him as he revisits Auschwitz? What stands out for you about his comments/reactions to returning to the camp?

https://www.youtube.com/watch?v=cPOKXfHOuw4; https://www.youtube.com/watch?v=IA7Xa2ANx2c

<u>b. Critical Comments</u>: You are required to write two comment pieces on two articles selected from the course materials marked with an asterisk. You cannot produce more than one comment on readings from the same week and the comments are due at the start of the class on the week for which the article is listed. The comments should be 3-4 pages long (but no more than 5), and provide a succinct and accessible overview of the article, identifying first: the author's main point, the underlying problem that gave rise to the author's intervention, and the means by which the author makes their argument (what tools of analysis do they draw upon; what subjects/material do they explore): about 1 page. Second: raise and then explore questions and analytical lines of inquiry stemming from the article: what are the implications of the author's arguments for other readings and discussions in this course? What are the implications of the author's analysis for the other readings set for that week's class? And/or how does the article relate to/trouble themes discussed in class? (this section should be the heart of your assignment: about 2-3 pages).

Please note: If you want feedback on your first comment (worth 10%) before writing your second (worth 15%), ensure you leave a 3 week gap between assignment (I will endeavor to return assignments within a 2 week period). For further evaluation guidance: see marking grid, CU Learn.

CRITICAL COMMENTS ARE <u>DUE</u> (without exception) AT THE START OF THE CLASS for which THE READING IS ASSIGNED.

c. <u>Presentations/Backgrounders:</u> (sign-up in class for one of these):

This assignment requires that you present/outline the history and circumstances of a particular conflict/series of human rights violations that are the subject of our discussion during that week's class. The presentation/backgrounder will draw from the readings set (and recommended) but also your own preliminary background research on the history and circumstances of the events in questions, identifying a timeline of what happened; outlining the different categories of violence and harm, the effects of the events overtime, and a general overview of some of the challenges or implications for transitional justice.

By the end of your presentation/backgrounder, your audience should have a better familiarity of a particular situation and be able to move directly into a conversation of the issues and challenges of transitional justice.

Presentation: Your presentation should be about 15-20 minutes in length, plus 5-10 minutes for questions at the end. Each individual presenter must also submit their own 1-2 page outline of the presentation which concludes by setting out a question or problem raised by the events in question for the themes of the course. Marks will be awarded for creativity in the presentation and an understanding of the events that reflects some research beyond the course materials.

<u>OR</u>

Backgrounder: These should be 8-10 pages in length, provide a succinct but authoritative overview of the events in question, demonstrating breadth of knowledge about the events and independent research. The 'backgrounder' should conclude with a discussion of some of the implications for 'transition' raised by the events in question. Marks will be awarded for the use (not just citation!) of a range of sources, an ability to marshal large amounts of information into a succinct overview, and an ability to connect the factual 'background' of a situation to the themes of the course. For example, in what ways should the events discussed in the backgrounder be/not be the subject of 'transitional justice'? What issues of 'transition' are raised? What might 'justice' mean in the context of the events discussed?

You cannot write a critical comment on any of the readings included in a week for which you are also doing a presentation/writing a backgrounder.

d. <u>Final Essay:</u> This will be on a topic set by me and distributed in class in March. The essay topic will require that you draw extensively on the course readings and class discussion/materials to explore a particular problem or themes/challenges emerging from the field of transitional justice. This is not a research assignment but will require that you have read and followed the course material, including class discussion, closely throughout the term. Further guidance and information will be distributed in class.

SCHEDULE AND READINGS

Week	Themes and Readings	Assign't due
1.Jan 9	Introduction: • International Centre for Transitional Justice, "What is Transitional Justice" at www.ictj.org • http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom • http://www.cbc.ca/news/canada/nova-scotia/dalhousie-facebook-posts-completely-unacceptable-says-professor-1.2889231 • Class discussion – please note: this class will run the full time allotted: • review course materials and assignments; • introduction to the topic of transitional justice • review a video with discussion questions for your journal.	none
2. Jan 16	What do we mean by violence, conflict and harm • Naomi Roht-Arriaza. "The New Landscape of Transitional Justice."	Journal assignme nt 1 due
	Naomi Roht-Arriaza and Javier Mariezcurrena, eds. <i>Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice</i> . Cambridge: Cambridge University Press. Pages 1-16 (on-line, Carleton library)	
	 Johann Galtung. 1969 "Violence, Peace and Peace Research", Journal of Peace Research 6(3): 167-191 (on-line, Carleton library) 	
	* note: this is an older piece of scholarship that has had an enormous influence on how we think about and study 'violence'. The piece, written in the late 1960s, has a formal, somewhat outdated authorial 'voice'. It might take a bit of work for you the reader to look beyond the strange cadence of the writing, but as you do so, consider how Galtung's approach to the study of violence would shift how you might understand violence in relation to, for example, residential schools, missing and murdered aboriginal women, or the violence that unfolds during civil wars, as in the case of the former Yugoslavia	
	 Prosecutor v. Tadic: http://icty.org/x/cases/tadic/tjug/en/tad-tsj70507JT2-e.pdf This is the trial judgment of the first criminal court case by the International Criminal Tribunal for the former Yugoslavia: 	
	Read paragraphs 55 – 113 (NB – I am using para numbers, not page numbers); 118-122; 137 This is the Tribunal's summary of the events leading up to the conflicts in the former Yugoslavia and then specifically in the country we now know as Bosnia Herzegovina, and then specifically in one region of Bosnia. There are a lot of	

acronyms here and different military organizations. In reading this section, try to keep an eye on which details the court is including in its summary, as well as attending to what the main 'story' the judges are trying to tell about WHY and HOW this conflict emerged. Why do you think the judges are emphasizing the details about armies, for example? What are the main arcs of the story about what happened in Yugoslavia, and what happened in Bosnia?

Read paragraphs 147-174:

In this section the Tribunal summarizes some – not all – of the extreme, disturbing findings about human rights abuses committed against civilian populations in this one area of Bosnia. This is disturbing reading but it is important to understand the kinds of behaviours and experiences that characterized this conflict so that we can better understand the reasons why an international criminal court was established to bring war crimes charges, first, and second, the challenges facing this society when it was time to rebuild after the conflict.

 In class: we will be watching a video that is in my personal collection and not available outside the classroom. The journal assignment due next week requires that you have watched the video.

3. Jan 23	International Criminal Trials and Transitional Justice	Journal
	 Patricia M. Wald. 2008. "Foreword: War tales and war trials" Michigan Law Review 106: 901-923 (on-line, Carleton); Tim Meijers, Marlies Glasius. 2013. "Expression of Justice or Political Trial? Discursive Battles in the Karadźić Case" Human Rights Quarterly 35(3): 720-752 (on-line, Carleton) Kathryn Sikkink. 2008. "From Pariah State to Global Protagonist: Argentina and the Struggle for International human Rights" Latin American Politics and Society 50(1): 1-29 (on-line, Carleton) *Statute of the International Criminal Tribunal for the Former Yugoslavia, (CU Learn) 	assign't 2 DUE
4. Jan 30	Naming harms and the gender of justice	Journal
	 *Fionnuala Ni Aolain. 2009. "Exploring a Feminist Theory of Harm in the Context of Conflicted and Post-conflict Societies", http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1507793 *Kimberley Theidon. 2007. "Gender in Transition: Common Sense, Women and War", Journal of Human Rights 6: 453-478 (on-line Carleton) *Jelke Boesten. 2010. Analyzing Rape Regimes at the Interface of War and Peace in Peru", International Journal of Transitional Justice 4: 110-129 (on-line, Carleton); Ariel Dorfman, "Hope", poem, on CU learn: what kinds of harm is the poem about, do you think? Recommended: 20 min video "remember me" http://www.ictj.org/news/documentary-film-remember-me 	assign't 3 DUE
5. Feb 6	The limits of seeing 'victims' and 'perpetrators'	
	 Primo Levi. The Drowned and the Saved; [students are required to buy this book from Octopus books] – read the whole book; *Erin Baines. 2011. "Gender, Responsibility and the Grey Zone: considerations for Transitional Justice", Journal of Human rights 10: 477-493 (on-line, Carleton). Podcast, "In case of fire in a foreign land", CBC's Ideas, (link on CU Learn, or: http://www.cbc.ca/ideas/episodes/2014/09/10/in-case-of-fire-in-a-foreign-land/): Listen to the first 15 minutes of this podcast (or more if you are interested – the first 30-40 minutes are directly relevant to many of the themes in this course) and particularly the clip of Sigourney Weaver in the film version of the play by Dorfman "Death and the Maiden" What is significant about a torturer's love of classical 	

music, for Dorfman? In the play, the audience is never entirely sure if the doctor held hostage is in fact the rapist/torturer of Paulina. What is significant about this ambiguity, do you think?

- Further questions to guide your reading:
 - Levi spends a lot of time describing the structures of the camp – the relations of authority, the role of 'capos', the regulation of daily activities. Why does he do this? Are you surprised by the orderliness of the camp structures? How do these structures then impact on the types and experiences of violence and agency?
 - What is the 'grey' zone? How can Auschwitz possibly described as having 'grey' zones?
 - In various ways in the book, Levi refers to himself as 'lucky'. Do you agree?
 - Do you agree with Erin Baines' description of the grey zone between perpetrators and victims in the conflict in northern Uganda? What are the implications for transitional justice if we recognize a blurring of the boundaries between perpetrators and victims?

6. Feb 13	Truth and Reconciliation	Journal
	Priscilla Hayner, 2001. Unspeakable Truths: Transitional Justice and	assign't 4
	the Challenge of Truth Commissions. Routledge: Chapters 1, 2 and	due
	3 (ie pp. 1-31)** NB there is a second edition (2011) which you	
	should use if you can access it. Carleton only has the first (2001)	
	edition on line, as far as I can tell, which is why I list this edition and	
	its page numbers.	
	h = 1	
	Effects of Testifying Before the South African Truth and	
	Reconciliation Commission" Anthropological Theory 3(3): 325 -341;	
	*Jennifer J. Llewellyn, 2002. "Dealing with the Legacy of Native	
	Residential School Abuse in Canada: Litigation, ADR, and	
	Restorative Justice" <i>University of Toronto Law Journal</i> 52: pp. 253-	
	276; 288-300 (on-line, Carleton);	
	 NB: Llewellyn's article engages with a debate among legal 	
	scholars on 'alternative dispute resolution' (ADR) – this is	
	less relevant for our purposes here. Her discussion on	
	litigation and 'restorative justice' provides a good overview	
	of some of the issues to consider such as the significance of	
	revealing the complexity of harms in transitional justice.	
	Second, when reading this piece, reflect on the difference	
	between tort litigation and criminal court trials. Some of	
	the limits of tort litigation outlined here pertain to criminal	
	courts as a TJ mechanism; others may not. What are the	
	•	
	differences between the two in terms of TJ aims?	
7. Feb 20	READING WEEK – no class	
7. Feb 20 8. Feb 27		Present'n
	READING WEEK – no class Canadian Truth and Reconciliation	Present'n
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	READING WEEK – no class Canadian Truth and Reconciliation *Sue Campbell, "Remembering for the Future" in S. Campbell, C Koggel, R Jacobsen, Our Faithfulness to the Past: the Ethics and Politics of Memory, OUP, 2014, library, on-line, Ch. 7 (pp. 136-164) Ronald Niezen, Truth & Indignation: Canada's Truth and Reconciliation Commission on Indian Residential Schools. U Toronto Press 2013: pp. 15-20; Ch 2: pp. 25-39; Ch 4: 58-79;	Present'n
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	 *Sue Campbell, "Remembering for the Future" in S. Campbell, C Koggel, R Jacobsen, Our Faithfulness to the Past: the Ethics and Politics of Memory, OUP, 2014, library, on-line, Ch. 7 (pp. 136-164) Ronald Niezen, Truth & Indignation: Canada's Truth and Reconciliation Commission on Indian Residential Schools. U Toronto Press 2013: pp. 15-20; Ch 2: pp. 25-39; Ch 4: 58-79; TRC Mandate (Indian Residential Schools Settlement Agreement, Schedule N): http://www.trc.ca/websites/trcinstitution/index.php?p=7[online] Truth and Reconciliation Commission of Canada, They Came For the Children: Canada, Aboriginal People, and Residential Schools (2012). Available online:	Present'n
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- Justice, Redressing Indigenous Harm: A New Conceptual Approach", *International Journal of Transitional Justice* 8: 194-216;
- *Emily Haslam. 2012. "Redemption, Colonialism and International Criminal Law: The Nineteenth Century Slave-Trading Trials of Samo and Peters" in Dian Kirkby, ed., Past Law, Present Histories, Australian National University, pp. Open access, available at: http://press.anu.edu.au/titles/australia-and-new-zealand-school-of-government-anzsog-2/past-law-present-histories-2/pdf-download/
- Caroline Elkins, Imperial Reckoning: (on reserve: preface: pp. 1-2; ch.3 Screening (whole chapter); recommended: chapters 1 and 2;
- http://www.redress.org/case-docket/mutua-and-others-v-the-foreign-and-commonwealth-office
- http://www.bbc.com/news/uk-12997138
- http://www.theguardian.com/world/2011/apr/11/mau-mau-high-court-foreign-office-documents
- http://www.khrc.or.ke/media-centre/news/146-truth-was-told-justice-at-last.html

Recommended:

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

10. March 13	Kenya – Transition from Authoritarian and Violent Rule	Present'n
	 Report of the Truth, Justice and Reconciliation Commission. 2013., Vol Executive Summary, pp. vi-xx; Background to the Commission: pp. (download, available from a number of links including:	
	 Christopher Gitari Ndungú, "Lessons to be learned; An Analysis of the Final Report of Kenya's Truth, Justice and Reconciliation Commission", International Centre for Transitional Justice Briefing, May 2014, available from: https://www.ictj.org/publication/kenya- TJRC-lessons-learned 	
	 Prosecutor v. Francis Kirimi Muthaura Uhuru Muigai Kenyatta and Mohammed Hussein Ali, locate the decision on confirmation of charges on the international criminal court website (http://www.icc-cpi.int/en_menus/icc/Pages/default.aspx) and skim section I so you have a sense of the procedural background and then read section II: The Charges (para 21). 	
	http://www.ijmonitor.org/kenya-cases-background/	
	http://www.aljazeera.com/video/africa/2014/12/mixed-reaction- kenya-icc-acquital-2014126231025945891.html	
	• http://gathara.blogspot.ca/2014/10/the-iccs-dilemma-in-uhuru-ruto-cases.html?m=0	
	Recommended	
	 Human Rights Watch, "Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance" 20(1) (A), March: http://www.hrw.org/sites/default/files/reports/kenya0308web.pdf 	
11. March 20	Memorialization	
	 *Christiane Wilke. 2013. "Remembering Complexity? Memorials for Nazi Victims in Berlin", <i>International Journal of Transitional Justice</i> 7: 131-56 (on-line, Carleton); *Elizabeth Jelin. 2011. "Silence, Visibility, and Agency: Ethnicity, Class, and Gender in Public Memorialization" in Paige Arthur, ed., <i>Identities in Transition: Challenges for Transitional Justice in Divided Societies</i>. International Center for Transitional Justice and Cambridge University Press. 	
12. March 27	The Boundaries of Transitional Justice	Present'n

	 *Graeme Simpson, 'A Snake gives birth to a snake': Politics and Crime in the Transition to Democracy in South Africa', in in Justice Gained? Crime and Crime Control in South Africa's Transition, ed. Bill Dixon and Elrena van der Spuy (Cape Town: University of Cape Town Press, 2004) (on reserve, Carleton library); *Christopher J. Colvin. 2008. "Purity and Planning: Shared Logics of Transitional Justice and Development" International Journal of Transitional Justice 2: 412-425 (on-line, Carleton). 	
13. April 3	Review and discussion of final assignment	