

Course Outline

COURSE:	LAWS 4603 B (Transitional Justice)
TERM:	Winter Term 2017
PREREQUISITES:	Fourth Year Honour's standing
CLASS:	Day & Time: Mondays 8:30-11:30 Room: **check with Carleton Central for current room location)
INSTRUCTOR: (CONTRACT)	DORIS BUSS
CONTACT:	Office: D495 Office Hrs: Mondays 12:30-2:00 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://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://carleton.ca/equity/>

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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website (www.carleton.ca/pmc) for the deadline to request accommodations for the formally-scheduled exam (*if applicable*).

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/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:

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

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

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 – to anchor our discussions of the role of law in facilitating social transition from periods of political violence and armed conflict. The objectives of the course are to:

- a. Introduce the expansive field of transitional justice and provide an opportunity to become familiar with some main types of transitional justice mechanisms;
- b. Explore the different 'transitional' needs in a society that has experienced violence, conflict, and/or authoritarian rule;

- c. Consider the different harms and forms of violence experienced individually and collectively, and how these shape the need for and operation of different transitional justice mechanisms.

REQUIRED TEXTS

Course Materials, for purchase (see below)

Primo Levi. 1989. *The Drowned and the Saved*, and

Ronald Niezen. 2013. *Truth & Indignation: Canada's Truth and Reconciliation Commission on Indian Residential Schools*:

All 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:

Participation:	15%
- Online Participation:	6%
- Journal entries:	4%
- In-class Attendance:	5%
Critical comment on academic readings (complete 2) (Comment 1 = 5%; comment 2 = 15%)	20%
Mid-term Quiz	20%
Final essay (due: 8 April, 2017, by midnight)	45%

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.

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 8 April 2016. 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. Participation: Effective participation in and outside the classroom contributes to your own and other's learning. All students should attend as many classes as possible, having done all the readings, and having given some thought to the readings and themes of the course in relation to their everyday lives (current events, key developments in Canadian law and politics; interpersonal encounters and so on). Out of class discussions, attendance at events (speakers, forums) and on-line exchanges where ideas and concepts about transitional justice are considered, can also be important to the learning process.

In this course, and to underscore the importance of participation, students can earn participation marks in three ways: by attending classes regularly (maximum 5 marks); contribute to online discussion forums (see participation prompts scattered throughout the course syllabus – maximum 6 marks), and through two journal entries (journals are read by me only and are not made public – maximum 4 marks).

(i) journal entries: 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 2 from the following 3 journal assignments, using the appropriate links on CU Learn, and take careful note of the due date. Journals are not made public and are read only by me:

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 21 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 4 Feb): 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?

(ii) On-line participation: The course syllabus, in the right hand column, lists questions at different stages of the course that are meant to stimulate your thinking about the materials, course themes, and current developments. Students can post a response to these questions on the on-line forum for a mark. Students are also encouraged to post their own questions, discussions, reflections on the course forum. These can also be awarded marks where the content is substantive (reflecting course readings and discussions), respectful, and aimed at provoking discussion and reflection in yourself and others.

Timing: online posts that address the questions posed in the syllabus should be made at some point in the week where they are listed (ie the week running Monday – Sunday). Students can earn a maximum of 4, on-line participation marks during the period Jan 07- March 3; and a maximum of 2 marks during the period March 10-March 31, 2016 (ie, participation must be spread out over the term).

- b. Critical Comments: You are required to write two comment pieces on 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.

A critical comment 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).

Critical comment 1 will be marked out of 5 and Comment 2 out of 15 marks to give students a chance to receive and incorporate feedback.

Please note,

- Comment 1 must be completed in the first half of the course (ie up to Feb 20) and Comment 2 must be completed in the second half (ie on the readings from March 7).

CRITICAL COMMENTS ARE DUE (without exception) AT THE START OF THE CLASS for which THE READING IS ASSIGNED. Students who fail to complete a critical comment within the established time frames (above) will receive a 0 for that assignment.

c. Final Essay: 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
1.Jan 9	<p>Introduction:</p> <ul style="list-style-type: none"> • International Centre for Transitional Justice, “What is Transitional Justice” at www.ictj.org • “Stolen Children-Residential Schools Survivors” https://www.youtube.com/watch?v=vdR9HcmiXLA • CBC clip of Truth and Reconciliation Commission of Canada, final event: http://www.cbc.ca/news/aboriginal/truth-and-reconciliation-looking-back-on-a-landmark-week-for-canada-1.3102956 • http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom <p>Class discussion – please note: this class will run the full time allotted:</p> <ul style="list-style-type: none"> • review course materials and assignments; • introduction to the topic of transitional justice • discussion of Canada’s Truth and Reconciliation Commission and what transition might mean in a Canadian context; • review parts of the documentary “Finding Dawn” to consider different ways of conceiving harm, wrong and the challenges to reconciliation. 	none

2. Jan 16	<p>What do we mean by violence, conflict and harm</p> <ul style="list-style-type: none"> • Naomi Roht-Arriaza. “The New Landscape of Transitional Justice.” 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 ; • Johann Galtung. 1969 “Violence, Peace and Peace Research”, <i>Journal of Peace Research</i> 6(3): 167-191; • <i>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...</i> • http://www.icty.org/en/about/what-former-yugoslavia • http://www.icty.org/en/about/what-former-yugoslavia/conflicts • 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: <p>Read paragraphs 55 – 113; 118-122; 147-153</p> <p><i>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?</i></p> <ul style="list-style-type: none"> • Read paragraphs 154-179: 	<p>Journal assignment 1 due</p>
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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.

<p>3. Jan 23</p>	<p>“The Former Yugoslavia” and the International Criminal Tribunal for Yugoslavia (ICTY)</p> <ul style="list-style-type: none"> • “Flowers in the Square”, International Centre for Transitional Justice, https://www.ictj.org/flowers-square-prijedor/; • *Patricia M. Wald. 2008. “Foreword: War tales and war trials” <i>Michigan Law Review</i> 106: 901-923 (on-line, Carleton); • <i>International Criminal Tribunal for the Former Yugoslavia</i>: <ul style="list-style-type: none"> ○ <i>About</i>: http://www.icty.org/en/about ○ <i>Mandate and Statute</i>: • Diane Orentlicher. 2010. “‘That Someone Guilty be Punished’: The Impact of the ICTY in Bosnia”, Open Society Initiative/International Centre for Transitional Justice; pp. 8-10; 11-19; 26-27; 30-46. 	<p>Journal assignment 2 due</p> <p>Critical Comment of Wald</p> <p>On-line participation (1 mark):</p> <p>Read Ariel Dorfman’s poem: “Hope”, poem: Post on the course discussion forum: what do you think the poem is about? What kinds of harm does the poem speak to? What kinds of challenges to ‘transition’ might flow from those harms?</p>
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<p>4. Jan 30</p>	<p>Sexual Violence and Gendering International Criminal Law</p> <ul style="list-style-type: none"> • *Lynda E. Boose. 2002. "Crossing the River Drina: Bosnian Rape Camps, Turkish Impalement, and Serb Cultural Memory" <i>Signs</i> 28(1): 71-96; • *Jelke Boesten. 2010. Analyzing Rape Regimes at the Interface of War and Peace in Peru", <i>International Journal of Transitional Justice</i> 4: 110-129; • <i>Prosecutor v. Jean-Paul Akayesu</i>, ICTR-96-4-T, 2 Sept 1998, paragraphs 112-129; 142-156; 416-460; • http://www.theguardian.com/world/2015/dec/28/japan-to-say-sorry-to-south-korea-in-deal-to-end-dispute-over-wartime-sex-slaves • http://www.bloombergview.com/articles/2015-12-28/how-korea-s-deal-with-japan-fails-comfort-women- <p>This class also introduces students to different international courts – the International Criminal Tribunal for Rwanda and the permanent International Criminal Court. Students should also consult the ICC webpage and review the different parts of the court described in the 'About the court' section: https://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx</p>	<p>Critical comment of Boose or Boesten;</p> <p>On-line participation (max 2 marks):</p> <p>Write a post on 1 or more of these questions: What are the different ways that the issue of Japanese 'sex slaves' in WWII have tried to draw attention to their suffering (hint: you will need to do some research on the internet)? Why do you think there has been resistance to accepting responsibility for the harms to these women? Does it matter now, when so many of the women have already died, for Japan to apologise? Why?</p>
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5. Feb 4	<p>Srebrenica and Genocide</p> <ul style="list-style-type: none"> • <i>Prosecutor v. Krstic</i>, ICTY trial judgment: paragraphs: 1-96; 539-540; 542-547; 550-556; 559-562; 569-584; 590-599; 622-624; 631-635. • *Maria Elander, 2013. "The Victim's Address: Expressivism and the Victim at the Extraordinary Chambers in the Court for Cambodia" <i>International Journal of Transitional Justice</i> 7: 95-115 • Thabo Mbeki and Mahmood Mamdani. 2014 "Courts Can't End Civil Wars", Op Ed New York Times, Feb 5, 2014: http://www.nytimes.com/2014/02/06/opinion/courts-cant-end-civil-wars.html?_r=0 • Laura Nyantung Beny. 2014. "Think Courts Aren't Relevant: Ask the Victims" blog, endogenocide.org, Feb. 25, 2014. http://endgenocide.org/think-courts-arent-relevant-ask-victims/ 	<p>Journal assignment 3 due</p> <p>Critical comment of Elander article</p>
6. Feb 13	<p>The limits of seeing 'victims' and 'perpetrators'</p> <ul style="list-style-type: none"> • *Primo Levi. <i>The Drowned and the Saved</i>; [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", <i>Journal of Human rights</i> 10: 477-493;. <ul style="list-style-type: none"> ○ 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? • <i>Ongwen's Justice Dilemma: Perspectives from Northern Uganda</i>, Refugee Law Project report, 2015; • https://www.hrw.org/news/2015/01/09/qa-lra-commander-dominic-ongwen-and-icc 	<p>Critical comment of Levi or Baines readings;</p> <p>On-line discussion (1 mark): Do you agree with Erin Baines' description of the grey zone between perpetrators + victims in the case of northern Uganda? What are the implications for transitional justice if we recognize a blurring of the boundaries between perpetrators and victims?</p>
7. Feb 20	READING WEEK – no class	

8. Feb 27	Mid-term quiz – details TBA	Quiz
9. Mar 6	TJ as truth Seeking <ul style="list-style-type: none"> • *Nevin T. Aiken. 2015. The Bloody Sunday Inquiry: Transitional Justice and Post-Conflict Reconciliation in Northern Ireland, <i>Journal of Human Rights</i> 14(1): 101-123; • *Matt James. 2012. “A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission” <i>International Journal of transitional Justice</i> 6: 182-201 • Priscilla Hayner, 2001. <i>Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions</i>. Routledge: Chapters 1, 2 and 3 (pp. 1-31). 	Critical comments on Aiken or James articles
10. March 13	What Does ‘Reconciliation’ mean? South Africa <ul style="list-style-type: none"> - *Claire Moon. 2006. “Narrating Political Reconciliation: Truth and Reconciliation in South Africa” <i>Social & Legal Studies</i> 15(2): 257-275; - *Judith Renner. 2014. “The Local Roots of the Global Politics of Reconciliation: The Articulation of ‘Reconciliation’ as an Empty Universal in the South African Transition to Democracy” <i>Millenium</i> 42(2): 263-285; - *Fiona Ross. 2003. “On Having Voice and Being Heard: Some After-Effects of Testifying Before the South African Truth and Reconciliation Commission” <i>Anthropological Theory</i> 3(3): 325 - 341; 	Critical Comments of Moon, Renner, or Ross articles. On-line participation: Is it possible to have multiple truths for there to be meaningful ‘transitional justice’? why or why not?
11. March 20	Canada’s History of Colonization and Residential School System: <ul style="list-style-type: none"> • <i>Honouring the Truth, Reconciling for the Future: Summary Report of the Truth and Reconciliation Commission of Canada</i>, pp. 41-70; 71-121; • *Sarah de Leeuw. 2016. “Tender Grounds: Intimate Visceral Violence and British Columbia’s Colonial Geographies”, <i>Political Geography</i> 52: 14-23; • *John Borrow. 2014. “Residential schools, respect, and responsibilities for past harms”, <i>University of Toronto Law Journal</i> 14(4): 486-504. • TRC Mandate (Indian Residential Schools Settlement Agreement, Schedule N): http://www.trc.ca/websites/trcinstitution/index.php?p=7 	Critical Comment of de Leeuw or Borrow articles On-line discussion: What is required in order for remembering to be an ethical act aimed at reconciliation?

12 March 27	Canada's Truth and Reconciliation: What does Reconciliation Mean? <ul style="list-style-type: none"> • *Ronald Niezen, <i>Truth & Indignation: Canada's Truth and Reconciliation Commission on Indian Residential Schools</i>. U Toronto Press 2013: pp. 15-20; Ch 2: pp. 25-39; Ch 4: 58-79; • <i>What we have learned: Principles of Reconciliation</i>, Truth and Reconciliation Commission of Canada, pp. 113-126 	LAST chance to do a Critical Comment of Niezen readings. Final assignment made available and discussed in class
13 April 3	Review class	
April 7	Final assignment due	