

## Course Outline

**COURSE:** LAWS 4603 A - Transitional Justice

**PREREQUISITES:** 4<sup>th</sup> year Honours standing

**TERM:** Fall 2007

**CLASS: Day & Time:** Tuesdays, 2:35-5:25 pm  
**Room:** A620 Loeb

**INSTRUCTOR:** Professor Christiane Wilke

**CONTACT:** **Office:** D485 Loeb  
**Office Hrs:** Monday 2-4 (walk-in) & by appointment  
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**Email:** cwilke@connect.carleton.ca  
*[please mention the course number in the email subject line]*

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is November 9, 2007 for December examinations and March 14, 2008 for April examinations. With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

**COURSE OBJECTIVES & CONTENT:**

In this course, we will ask the hard questions about the possibility of justice after periods of mass injustices. New democracies often face the task of addressing widespread acts of torture, murder, dispossession, or detention committed by a former government. These constellations challenge us to rethink our ideas about justice, responsibility, and reconciliation. In this course, we will focus on criminal trials and related proceedings. How can we think about individual responsibility or state responsibility for grave injustices? What do criminal trials for massive human rights violations achieve? Do they change the way that different people think about the past? Should victims of injustices be compensated? Who counts as a victim? And who are the perpetrators? In this course, we will combine a theoretical inquiry into key concepts with a critical examination of case studies from Latin America, Africa, and Eastern Europe.

**COURSE MATERIAL:**

The course pack LAWS 4603.A is available from:

Octopus Books, 116 Third Ave, off Bank Street. (613)233-2589, <http://www.octopusbooks.org>.

*A copy of the same course pack is on reserve at the library. You make take it out to read and photocopy, but please make sure to put all items back in the same order.*

Please note the availability indications in the outline next to the readings. Materials marked [*lexis-nexis*] are available through lexis-nexis, and you are responsible for locating them. (If you should have trouble accessing them, please ask me.) Materials marked [*pdf*] or [*WebCT*] are posted on WebCT.

**EVALUATION PROCEDURES:**

- **Class presentation and participation: 15%**
- **Three response papers: 15% each (45% combined)**
- **Final 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. If everyone brings their own critical perspectives on the texts to the table, we will be able to gauge the range of possible interpretations and critiques of the texts. Thus, everyone's active participation is crucial for the success of the class. Participation presumes, of course, that you have read the texts carefully.
  
- **Critical Response Papers** offer a critical analysis of (or response to) key arguments from assigned readings. You choose the readings to which you will respond in about 4-5 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.** The first response paper has to be submitted no later than **October 2<sup>nd</sup>**. The second response paper is due no later than **October 30<sup>th</sup>**. The third response paper is due no later than **November 27<sup>th</sup>**. **You cannot write a response paper on the same text that you are giving a presentation on.**
  
- The **Final Research Paper** challenges you to develop a more sustained argument about the readings on 12-15 pages (double-spaced). The final paper is due on **December 3<sup>rd</sup>**. Over the course of the term, you will have to submit an initial **paper topic** and a **paper draft**. Those are **mandatory** but not graded. **I will not mark final research papers from students who have not submitted a paper outline or draft.**

**SCHEDULE:****1. September 11<sup>th</sup>****Introduction****2. September 18<sup>th</sup>****Addressing Injustices: Mapping the Terrain**

Juan Mendez, "In Defense of Transitional Justice," in James McAdams, ed, *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame: University of Notre Dame Press, 1997). [*course pack*]

Martti Koskenniemi, "Between Impunity and Show Trials," *Max Planck Yearbook of UN Law*, Vol. 6 (2002). 1-35. [*pdf*]

John Borneman, *Settling Accounts: Violence, Justice, and Accountability in Postsocialist Europe* (Princeton: Princeton University Press, 1997), 3-25. [*course pack*]

**Recommended:**

Carlos Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996), ch.1

Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004).

Luc Huyse, "Justice after Transition: On Choices Successor Elites Make in Dealing with the Past," *Law & Social Inquiry*, Vol. 20, No. 1 (1995), 51-78.

**3. September 25<sup>th</sup>****Responsibility and Guilt**

Karl Jaspers, *The Question of German Guilt*. [1946] Excerpts in: *Transitional Justice*, Vol. I, ed. By Neil Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 157-171. [*course pack*]

Hannah Arendt, "Personal Responsibility Under Dictatorship." In: Arendt, *Responsibility and Judgment*, ed. by Jerome Kohn (New York: Schocken, 2003), 17-49. [*course pack*]

Farid Abdel-Nour, "National Responsibility," *Political Theory*, Vol. 31, No. 5 (2003), 693-719. [*pdf*]

**Recommended:**

Andrew Schaap, "Guilty Subjects and Political Responsibility: Arendt, Jaspers, and the Resonance of the 'German Question' in Politics of Reconciliation," *Political Studies*, Vol. 49 (2001), 749-766.

Hannah Arendt, "Collective Responsibility." In: Arendt, *Responsibility and Judgment*, ed. by Jerome Kohn (New York: Schocken, 2003), 147-158.

**4. October 2<sup>nd</sup>****Trials in Argentina**

Carlos Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996), 41-104. [course pack]  
 Horacio Verbitsky, *The Flight: Confessions of an Argentine Dirty Warrior* (New York: Free Press, 1996), 17-57. [course pack]

Recommended:

Trial of Members of the Former Military Junta (Federal Appeals Court Decision). In: *Transitional Justice*, vol. III, ed. By Neil Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 481-499.  
 Mark Osiel, "The Making of Human Rights Policy in Argentina: The Impact of Ideas and Interests on a Legal Conflict," *Journal of Latin American Studies*, Vol. 18, No. 1 (May 1986), 135-180.  
 Jaime Malamud Goti, *Game Without End* (Norman: University of Oklahoma Press, 1996), 3-27.  
 Carlos Acuña and Catalina Smulovitz, "Guarding the Guardians in Argentina: Some Lessons about the Risks and Benefits of Empowering the Courts." In *Transitional Justice and the Rule of Law in New Democracies*, ed. by James McAdams (Notre Dame: University of Notre Dame Press, 1997).

[The first response paper has to be submitted in or prior to the class of October 2<sup>nd</sup>]

**5. October 9<sup>th</sup>**

**Judgment and Ambiguity**

Primo Levi, *The Drowned and the Saved* (New York: Vintage, 1989), 36-69. [course pack]  
 Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor: University of Michigan Press, 2004), 41-80. [course pack]  
 Jacobo Timerman, *Prisoner Without a Name, Cell Without a Number* [1981] (Madison: University of Wisconsin Press, 2002), 3-11, 22-41. [course pack]

Recommended:

Orna Ben-Naftali and Yogev Tuval, "Punishing International Crimes Committed by the Persecuted: The *Kapo* Trials in Israel (1950s-1960s)," *Journal of International Criminal Justice*, Vol. 4 (2006), 128-178.  
 Tristan Anne Borer, "A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa," *Human Rights Quarterly*, Vol. 25 (2003), 1088-1116.

**6. October 16<sup>th</sup>**

**The Presence of the Pasts: Trials in Germany**

Christoph Burchard, "The Nuremberg Trial and its Impact on Germany," *Journal of International Criminal Justice*, Vol. 4 (2006), 800-829. [pdf]  
 John Borneman, *Settling Accounts: Violence, Justice, and Accountability in Postsocialist Europe* (Princeton: Princeton University Press, 1997), 59-79, 99-110. [course pack]  
 Trials of the Border Guards: Berlin State Court, Docket (523) 2 Js 48/90 (9/91). In: *Transitional Justice*, Vol. III, ed. by Neil Kritz (Washington, D.C.: United States Institute of Peace, 1995), 576-585.

[course pack]

Recommended:

- Inga Markovits: Selective Memory: How the Law Affects What We Remember and Forget About the Past – The Case of East Germany,” *Law & Society Review*, Vol. 35 (2001), 513-563.
- Manfred Gabriel, “Coming to Terms with the Border Guards Cases,” *Columbia Journal of Transnational Law*, Vol. 38 (1999), 375-418.
- James McAdams, *Judging the Past in Unified Germany* (Cambridge: Cambridge University Press, 2001).
- Ruti Teitel, *Transitional Justice* (Oxford and New York: Oxford University Press, 2000).

[The topic for the research paper has to be submitted in or prior to the class of October 16<sup>th</sup>]

**7. October 23<sup>rd</sup>**

**Vetting in Germany and Beyond**

- Christiane Wilke, “The Shield, The Sword, and the Party: Vetting the East German Public Sector,” in Alexander Mayer-Rieckh and Pablo de Greiff, ed, *Justice as Prevention: Vetting Public Employees in Transitional Societies* (New York: SSRIC, 2007), 348-400. [pdf]
- Inga Markovits, *Imperfect Justice: An East-West German Diary*. (New York and Oxford: Oxford University Press, 1995), 110-113, 128-151, 156-159, 188-199. [course pack]
- Kieran McEvoy and Ciaran White, ‘Security Vetting in Northern Ireland: Loyalty, Redress and Citizenship,’ *Modern Law Review*, Vol. 61 (1998), 341-361. [pdf]

Recommended:

- Roger Duthie, “Introduction,” in Alexander Mayer-Rieckh and Pablo de Greiff, ed, *Justice as Prevention: Vetting Public Employees in Transitional Societies* (New York: SSRIC, 2007), 16-38. [pdf]
- Inga Markovits: Selective Memory: How the Law Affects What We Remember and Forget About the Past – The Case of East Germany,” *Law & Society Review*, Vol. 35 (2001), 513-563.
- Roman David, “From Prague to Bagdad: Lustration Systems and their Political Effects,” *Government and Opposition*, Vol. 41 (2006), 347-372.
- Timothy Garton Ash, *The File* (New York: Vintage, 1998).

**8. October 30<sup>th</sup>**

**The Truth and Reconciliation Commission in South Africa**

- Richard Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2001), 1-30. [course pack]
- Hugo van der Merwe, “National Narrative versus Local Truths: The Truth and Reconciliation Commission’s Engagement with Duduza,” In Deborah Posel and Graeme Simpson, ed, *Commissioning the Past* (Johannesburg: Witwatersrand University Press, 2002), 204-219. [course pack]

Claire Moon, "Narrating Political Reconciliation: Truth and Reconciliation in South Africa," *Social & Legal Studies*, Vol. 15 (2006), 257-275. [[pdf](#)]

Recommended:

Deborah Posel and Graeme Simpson, ed., *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission* (Johannesburg: Witwatersrand University Press, 2002).

Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2002).

Robert Rotberg and Dennis Thompson, ed., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000).

[The second response paper has to be submitted in or prior to the class of October 30<sup>th</sup>]

**9. November 6<sup>th</sup>**

**Amnesty in South Africa**

*Azapo et al. v. TRC et al.*, South African Constitutional Court, CCT 17/96. [[pdf](#)]

Richard Lyster, "Amnesty: the burden of victims," in Charles Villa-Vicencio and Wilhelm Verwoerd, ed., *Looking Back, Reaching Forward* (Cape Town: University of Cape Town Press, 2000), 184-192. [[course pack](#)]

Nkosinathi Biko, "Amnesty and Denial," in Charles Villa-Vicencio and Wilhelm Verwoerd, ed., *Looking Back, Reaching Forward* (Cape Town: University of Cape Town Press, 2000), 193-198. [[course pack](#)]

Mamphela Ramphele, "Political Widowhood in South Africa: The Embodiment of Ambiguity," *Daedalus*, Vol. 125 (1996), 99-117. [[pdf](#)]

Recommended:

Charles Villa-Vicencio and Erik Doxtader, ed., *The Provocations of Amnesty: Memory, Justice, and Impunity* (Cape Town: David Philips, 2003).

Alex Boraine, *A Country Unmasked* (New York and Oxford: Oxford University Press, 2000).

[The draft or outline of the research paper has to be submitted in or prior to the class of November 6<sup>th</sup>]

**10. November 13<sup>th</sup>**

**Geographies of Justice, Subjects of Justice**

Chandra Lekha Sriram and Amy Ross, "Geographies of Crime and Justice: Contemporary Transitional Justice and the Creation of 'Zones of Impunity,'" *International Journal of Transitional Justice*, Vol. 1 (2007), 45-65. [[pdf](#)]

Katherine Franke, "Gendered Subjects of Transitional Justice," *Columbia Journal of Gender & Law*, Vol. 15 (2006), 813-828. [[lexis-nexis](#)]

Augustine Park, "'Other Inhumane Acts': Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone," *Social & Legal Studies*, Vol. 15 (2006), 315-337. [[pdf](#)]

Recommended:

James Cockayne, "Hybrids or Mongrels? Internationalized War Crimes Trials as Unsuccessful Degradation Ceremonies," *Journal of Human Rights*, Vol. 4 (2005), 455-473.

**11. November 20<sup>th</sup>****Globalized Transitional Justice**

Immi Tallgren, "The Sensibility and Sense of International Criminal Law," *European Journal of International Law*, Vol. 13 (2002), 561-595. [*pdf*]

Additional readings (on Iraq) TBA

**12. November 27<sup>th</sup>****Reconciliation, Memory, and Political Communities**Readings:

John Torpey, *Making Whole What has Been Smashed* (Cambridge, MA: Harvard University Press, 2006), 8-41. [*course pack*]

John Borneman, "Reconciliation after Ethnic Cleansing: Listening, Retribution, Affiliation," *Public Culture*, Vol. 14, No. 2 (2002), 281-304. [*pdf*]

Karl Jaspers, "Who Should Have Tried Eichmann," transl. A. Cassese, *Journal of International Criminal Justice*, Vol. 4 (2006), 853-858. [*pdf*]

[*The third response paper has to be submitted in or prior to the class of November 27<sup>th</sup>*]

**Don't forget: The research paper is due on Monday, December 3<sup>rd</sup>.**

**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](http://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/howdoin/citing.html](http://www.library.carleton.ca/howdoin/citing.html).