

COURSE: LAWS 4603 B - Transitional Justice
PREREQUISITES: 4th year Honours standing
TERM: Winter 2008
CLASS: Day & Time: Fridays, 8:35-11:25am
Room: 206 Tory
INSTRUCTOR: Professor Christiane Wilke
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[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 March 14, 2008 for April examinations. For further information, please see, http://www.carleton.ca/pmc/students/accom_policy.html

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:

We will read most of the one book that I'm asking you to buy: Leora Bilsky, *Transformative Justice* (Ann Arbor: University of Michigan Press, 2004, \$27.95)

The book and the course pack LAWS 4603.B 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.

The book and a copy of the course pack are also on reserve at the library. You make take out the course pack 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. The star (*) means that the reading is from the required book.

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. Presentations should not aim to summarize the text, but to provide analysis or critiques of selected issues from the text.
- 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** 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 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 **February 1st**. The second response paper is due no later than **March 7th**. The third response paper is due no later than **April 7th**. **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 **April 7th**. Over the course of the term, you will have to submit an initial **paper topic statement (due on February 29th)** and a **paper draft (due on March 19th)**. Those are **mandatory** but not graded. **I will not mark final research papers from students who have not submitted a detailed paper outline or draft. You cannot pass the class without submitting an outline/draft.**

SCHEDULE:**1. January 11th****Introduction****2. January 18th****Addressing Injustices: Mapping the Terrain**

* Leora Bilsky, *Transformative Justice*, 1-16. (Introduction: Transformative Trials and Dilemmas of Democracy)

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]

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. January 25th**Trials in post-unification Germany**

Helga Welsh, "When Discourse Trumps Policy: Transitional Justice in Unified Germany," *German Politics*, Vol. 15, No. 2 (June 2006), 137-152. [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).

4. February 1st**Judgment and Ambiguity**

- * Leora Bilsky, *Transformative Justice*, 19-82 (Chapters: Performing the Past; From Faust to Kastner; The Poet's Countertrial)
 Primo Levi, *The Drowned and the Saved* (New York: Vintage, 1989), 36-69. [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.
 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.

[The first response paper has to be submitted in or prior to the class of February 1st]

5. February 8th**Trials for the disappearances in Argentina**

- Carlos Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996), 41-104. [course pack]
 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. [course pack, excerpts t.b.a.]
 Horacio Verbitsky, *The Flight: Confessions of an Argentine Dirty Warrior* (New York: Free Press, 1996), 17-57, 141-157. [course pack]

Recommended:

- 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).

6. February 15th**The Truth and Reconciliation Commission in South Africa**

- Richard Wilson, "Reconciliation and Revenge in Post-Apartheid South Africa: Rethinking Pluralism and Human Rights," *Current Anthropology*, Vol. 41, No. 1 (2000), 75-87. (also read the responses on pages 87-96, included in the file). [pdf]
Azapo et al. v. TRC et al., South African Constitutional Court, CCT 17/96. [pdf, excerpts t.b.a.]
 Elizabeth Cole, "Performance, Transitional Justice, and the Law: South Africa's Truth and Reconciliation Commission," *Theatre Journal*, Vol. 59 (2007), 167-187. [pdf]
 Zenzile Khoisan, *Jakaranda Time: An Investigator's View of South Africa's Truth and Reconciliation Commission* (Observatory, S.A.: Garib Communications, 2001). xii-xiii, 2-8, 66-73, 157-160. [course pack]

Recommended:

- Claire Moon, "Narrating Political Reconciliation: Truth and Reconciliation in South Africa," *Social & Legal Studies*, Vol. 15 (2006), 257-275.
- 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).
- Tristan Anne Borer, "A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa," *Human Rights Quarterly*, Vol. 25 (2003), 1088-1116.

7. February 29th**Rethinking International Criminal Justice**

- Martti Koskeniemi, "Between Impunity and Show Trials," *Max Planck Yearbook of UN Law*, Vol. 6 (2002), 1-35. [[pdf](#)]
- Katherine Franke, "The Gendered Subjects of Transitional Justice," *Columbia Journal of Gender & Law*, Vol. 15 (2006), 813-828. [[pdf](#)]
- Doris Buss, "The curious visibility of wartime rape: gender and ethnicity in international criminal law," *Windsor Yearbook of Access to Justice*, Vol. 25, No. 1 (2007), 3-22. [[course pack](#)]

Recommended:

- Augustine Park, "'Other Inhumane Acts': Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone," *Social & Legal Studies*, Vol. 15 (2006), 315-337.
- James Cockayne, "Hybrids or Mongrels? Internationalized War Crimes Trials as Unsuccessful Degradation Ceremonies," *Journal of Human Rights*, Vol. 4 (2005), 455-473.

[The research paper topic has to be submitted in or prior to the class of February 29th]

8. March 7th**The Eichmann Trial**

- * Leora Bilsky, *Transformative Justice*, 85-165. (Chapters: A Tale of Two Narratives; Reflective Judgment and the Spectacle of Justice; Social Criticism in the Shadow of a Transformative Trial)
- Karl Jaspers, "Who Should Have Tried Eichmann," transl. A. Cassese, *Journal of International Criminal Justice*, Vol. 4 (2006), 853-858. [[pdf](#)]

Recommended:

- Lawrence Douglas, *The Memory of Judgment* (New Haven: Yale University Press, 2001)
- Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002).
- Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 1994).

[The second critical response has to be submitted in or prior to the class of March 7th]

9. March 14th

No class; research paper group meetings

[The research paper draft or detailed outline has to be submitted by March 19th]

10. March 28th

No class

11. April 4th

Victims, Memory and Reconciliation

Michael Humphrey, "From Victim to Victimhood: Truth Commissions and trials as Rituals of Political Transition and Individual Healing," *Australian Journal of Anthropology*, Vol. 14, No. 2 (2003), 171-187. [pdf, the page numbers in the file are 1-17]

Kimberly Theidon, "Justice in Transition: the Micropolitics of Reconciliation in Postwar Peru," *Journal of Conflict Resolution*, Vol. 50 (2006), 433-457. [pdf]

Christiane Wilke. "Recognizing victims: narratives and the politics of rehabilitation in post-unification Germany," *Journal of Human Rights*, Vol. 6 No. 4 (2007). [pdf]

12. April 7th (Monday)

Concluding Discussion

* Leora Bilsky, *Transformative Justice*, 237-257. (Conclusion: Between Transformative Trials and Truth Commissions)

[The third critical response has to be submitted in or prior to the class of April 7th]

Don't forget: The research paper is due on Monday, April 7th.

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.