

Carleton University

Department of Law

Course Outline

COURSE: LAWS 4603.A Transitional Justice

PREREQUISITES: 4th year Honours standing

TERM: Winter 2010

CLASS: Day & Time: Mondays, 2:35-5:25pm
Room: TBA

INSTRUCTOR: Professor Christiane Wilke

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

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.

**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 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. 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.

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/accommodation>

Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities could include but not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. Registered PMC students are required to contact the PMC, 613-520-6608, every term to ensure that your Instructor receives your Letter of Accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the last official day to withdraw from classes in each term.

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, \$25.95)

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.

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:

- **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.
- **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 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.** 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 **January 25th**. The second response paper is due no later than **March 1st**. The third response paper is due no later than **March 29th**. **You cannot write a response paper on the same text that you are giving a presentation on.**

- The **final paper** challenges you to develop a more sustained argument in 12-15 double-spaced pages based on readings from this class and outside research. The final paper is due on **April 7th**. 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 papers from students who have not submitted paper drafts. You cannot pass the class without submitting an outline/draft.** **Late final papers will not be accepted without a documented emergency.**

SCHEDULE:**1. January 4th****Introduction****2. January 11th****Addressing Injustices: Mapping the Terrain**Readings:

- * 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*]
- Rosemary Nagy, "Transitional Justice as a Global Project: critical reflections," *Third World Quarterly*, Vol. 29 (2008), 275-289. [*pdf*]

Recommended:

- Kieran McEvoy, "Beyond Legalism: Towards a Thicker Understanding of Transitional Justice," *Journal of Law and Society*, Vol. 34 (2007), 411-440.
- 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 18th**Trials in post-unification Germany**Readings:

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

- Helga Welsh, "When Discourse Trumps Policy: Transitional Justice in Unified Germany," *German Politics*, Vol. 15, No. 2 (June 2006), 137-152.
- 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. January 25th

Judgment and Ambiguity

[*The first response paper has to be submitted in or prior to the class of January 25th*]

Readings:

* 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.

5. February 1st

Trials for the disappearances in Argentina

Readings:

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.*]
 Margarita O'Donnell, "New Dirty War Judgments in Argentina: National Courts and Domestic Prosecutions of International Human Rights Violations." *N.Y.U. Law Review* 84 (2009), 333-374. [*pdf*]

Recommended:

EAAF, Annual Report on Argentina (2007). Available online:
http://eaaf.typepad.com/annual_report_2007/An07_Argentina-8.pdf
 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).
- Roxana Ferllini, *Forensic Archeology and Human Rights Violations* (Springfield: Charles C Thomas Publishers, 2007).

6. February 8th

The South African Truth and Reconciliation Commission

Readings:

- Richard Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2002), 1-30, [course pack]
- Azapo et al. v. TRC et al.*, South African Constitutional Court, CCT 17/96. [pdf, excerpts t.b.a.]
- Fiona Ross, “Using rights to measure wrongs: case study of method and moral in the work of the South African Truth and Reconciliation Commission,” in Richard Ashby Wilson and Jon P. Mitchell, ed., *Human Rights in Global Perspective* (London and New York: Routledge, 2003), 163-182. [course pack]
- Stephanie Nolen, “What’s Bred in the Bones,” *Globe & Mail* (20 October 2007). [WebCT]

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.
- Zenzile Khoisan, *Jakaranda Time: An Investigator’s View of South Africa’s Truth and Reconciliation Commission* (Observatory, S.A.: Garib Communications, 2001).

7. February 22nd

Performances of Memory, Gender and Kinship

[The research paper topic has to be submitted in or prior to the class of February 22nd]

Readings:

- Elizabeth Cole, “Performance, Transitional Justice, and the Law: South Africa’s Truth and Reconciliation Commission,” *Theatre Journal*, Vol. 59 (2007), 167-187. [pdf]
- Leigh A. Payne, “Confessional Performances: Perpetrators’ Testimonies to the South African Truth and Reconciliation Commission,” in Neil Whitehead, ed., *Violence* (Santa Fe: School of American Research Press, 2004), 243-265. [course pack]
- Elizabeth Jelin, “Victims, Relatives, and Citizens in Argentina: Whose Voice is Legitimate Enough?” In

Richard Ashby Wilson and Richard Brown (ed), *Humanitarianism and Suffering: The Mobilization of Empathy* (Cambridge: Cambridge University Press, 2008), 177-201. [*course pack*]

Recommended:

- Joyce Marie Mushaben, "Memory and the Holocaust: Processing the Past through a gendered lens," *History of the Human Sciences*, Vol. 17 (2004), 147-185.
- Brandon Hamber, "Masculinity and Transitional Justice: An Exploratory Essay," *International Journal of Transitional Justice*, Vol 1 (2007), 375-390. [*pdf*]

8. March 1st

The Eichmann Trial

[The second critical response has to be submitted in or prior to the class of March 1st]

Readings:

- * 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)
- Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 1994), 253-298. (Epilogue and Postscript) [*course pack*]

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).

9. March 8th

Rethinking International Transitional Justice

Readings:

- Marti Koskeniemi, "Between Impunity and Show Trials," *Max Planck Yearbook of UN Law*, Vol. 6 (2002). 1-35. [*pdf*]
- Doris Buss, "Rethinking 'Rape as a Weapon of War.'" *Feminist Legal Studies* 17 (2009), 145-163. [*pdf*]
- Vanessa Pupavac, "War on the Couch: The Emotionology of the New International Security Paradigm." *European Journal of Social Theory* 7 (2004), 149-170. [*pdf*]

Recommended:

- Katherine Franke, "The Gendered Subjects of Transitional Justice," *Columbia Journal of Gender & Law*, Vol. 15 (2006), 813-828. [*pdf*]
- Kimberly Theidon, "Gender in Transition: Common Sense, Women, and War," *Journal of Human Rights*, Vol. 6 (2007), 453-478. [*pdf*]
- 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.

10. March 15th

Victims, Apologies and the Promise of Reconciliation

[The research paper draft or detailed outline has to be submitted by March 15th]

Readings:

Mandate for the Canadian Truth and Reconciliation Commission:

http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf

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* (Spring 2008). [*pdf*]

Andrew Woolford, "The Limits of Justice: certainty, affirmative repair, and aboriginality," *Journal of Human Rights*, Vol. 3 (2004), 429-444. [*pdf*]

Mitch Miyagawa, "A Sorry State." *The Walrus*, December 2009. Available online:

<http://www.walrusmagazine.com/articles/2009.12-society-a-sorry-state/>.

Recommended:

John Borneman, "On Money and the Memory of Loss," *Etnográfica*, Vol. VI (2002), 281-302.

Michael Humphrey and Estela Valverde, "Human Rights, Victimhood, and Impunity: An Anthropology of Democracy in Argentina," *Social Analysis*, Vol. 51 (2007), 179-197.

Lisa Silverman, "Repossessing the Past? Property, Memory and Austrian Jewish Narrative Histories," *Austrian Studies*, Vol. 11 (2003), 138-53.

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.

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 (2007).

11. March 22nd

Spaces of Memory

Readings:

Elizabeth Jelin, "Public Memorialization in Perspective: Truth, Justice and Memory of Past Repression in the Southern Cone of South America," *International Journal of Transitional Justice*, Vol. 1 (2007), 138-156. [*pdf*]

Sabine Marschall, "Commemorating 'Struggle Heroes': Constructing a Genealogy for the New South Africa," *International Journal of Heritage Studies*, Vol. 12 (2006), 176-193. [*pdf*]

Lisa Silverman, "Repossessing the Past? Property, Memory and Austrian Jewish Narrative Histories." *Austrian Studies* 11 (2003), 138-153. [*pdf*]

Recommended:

Svetlana Boym, *The Future of Nostalgia* (New York: Basic Books, 2001), 173-218.

Andreas Huyssen, *Present Pasts: Urban Palimpsests and the Politics of Memory* (Stanford: Stanford University Press, 2003), 11-29.

Silvia R. Tandeciarz, "Citizens of Memory: Refiguring the Past in Postdictatorship Argentina," *PMLA*, Vol. 122 (2007), 151-169.

Annie E. Coombes, *History After Apartheid: Visual Culture and Public Memory in a Democratic South Africa* (Durham: Duke University Press, 2003).

12. March 29th

Concluding Discussion

[*The third critical response has to be submitted in or prior to the class of November 26th*]

Readings:

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

Don't forget: The research paper is due on Wednesday, April 7th. 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/howdoI/citing.html.