

Course Outline

COURSE:	LAWS 4603A (Transitional Justice)
TERM:	Fall 2017
PREREQUISITES:	Fourth Year honours standing
CLASS:	Day & Time: Tuesdays 2:30-5:30 Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Doris Buss
CONTACT:	Office: Loeb D495 Office Hrs: Tuesdays 12:00 – 2:00 (OR by appointment) Telephone: 613-520-2600 x. 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.

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

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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

Readings have been placed on CU Learn. If you are unaware of how to find course readings on CU Learn please book an appointment with your friendly librarian

Ronald Niezen. 2013. *Truth & Indignation: Canada's Truth and Reconciliation Commission on Indian Residential Schools*: Available for purchase from *Octopus Books*, 116 Third Ave, Ottawa, ON; tel: (613) 233-2589.

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:

Mini essays: (2 x 10 marks/each; due dates below)	20%
Mid-term Assignment, due October 30, 9:00 am)	25%
Final essay (due: 8 December, by midnight)	45%
In-class Attendance + participation:	10%

The 'mini essays' are due at the start of class on the week scheduled and must be submitted via CU Learn. Late submissions within 24 hours will be accepted but with a 2 mark deduction. Submissions more than 24 hours late will not be accepted.

The topic for both the mid-term and final essays will be set by me and made available to the class in October (for the mid-term) and in March (for the final essay). No extensions for any of the assignments will be given except for medical or personal emergency with supporting documentation. No exceptions to this rule will be made.

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.

Mini-Essays

Submit 2 mini-essays – one in the first half of the semester (due either 26 Sept or 10 October) AND one from the second half of the semester (due either) - from the following selection, using the appropriate links on CU Learn, and take careful note of the due date. Your essays should be typed, double –spaced, 12 point, and about 5-7 pages in length.

1. Mini Essay 1: select from the following (your essay is due at the beginning of the class on the noted due date:
 - a. To what extent do you think the events described in *Flowers in the square* challenge or confirm Martha Minnow's conception of the duality between 'vengeance' and 'forgiveness' in a society recovering from violence? (due 26 Sept)
 - b. Do you think Patricia Wald would see international criminal trials as an important venue for recognizing gender harms as outlined by Ni Aolain? (due Oct 10).

2. Mini Essay 2:
 - a. In the past few months, controversy has arisen over the naming of schools, and government buildings after men who advocated and implemented the Indian Residential School system (see links to a few sample articles below). At the same time, violence erupted in the US over the removal of monuments to military leaders from the US civil war era.

To what extent can and should we see monuments and edifices as playing a role in how a society marks (and contests) a narrative of historical events and leadership? When do you think that narrative role can become problematic (if at all)? (due 7 November).

- <http://www.cbc.ca/news/canada/saskatchewan/marie-wilson-responds-melfort-editorial-1.4233621>
- <http://www.cbc.ca/news/politics/indigenous-leaders-hector-langevin-1.3985526>

- b. In what way do you think the conduct of social services and child apprehension are relevant to issues of transitional justice for Canada's survivors of the Indian Residential School System? (due 21 November ** NB: students who opt for this mini-essay may not receive their marks and comments back prior to the due date for the final essay).

SCHEDULE AND READINGS

Week	Themes and Readings	Assign't
1. Sept 12	<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; 	

<p>2. Sept 19</p>	<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: <i>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</i> 	
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conflict.

<p>3. Sept 26</p>	<p>“The Former Yugoslavia” and the International Criminal Tribunal for Yugoslavia (ICTY)</p> <ul style="list-style-type: none"> • Martha Minow. 1998. Ch. 2 Vengeance and Forgiveness, in <i>Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence</i>. Boston: Beacon Press, pp. 9-24 • “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"> ○ About: http://www.icty.org/en/about ○ <i>Mandate and Statute</i>: 	<p>Mini Essay 1, topic ‘a’ due</p>
<p>4. Oct 3</p>	<p>Sexual Violence and Gendering International Criminal Law</p>	

- Doris Buss. 2007. "The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law" *Windsor Yearbook of Access to Justice*: 3 – 18; 21-22.
- Fionnuala Ni Aolain. 2009. "Exploring a feminist theory of harm in the context of conflict and post-conflict societies" University of Minnesota Law School, Legal Studies Research Paper Series Research Paper No. 09-45, download from SSRN at: https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=413634
- <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->

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

5. Oct 10	<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. <p>*Lawrence Douglas. 'Crimes of atrocity, the problem of punishment and the <i>situ</i> of law', pp. 269-294, in Pedrag Dojcinovic, ed. <i>Propaganda, War Crimes Trials and International Law: From Speakers' Corner to War Crimes</i>. Routledge 2002,</p>	Mini essay 1 topic 'b' due
6. Oct 17	<p>The limits of seeing 'victims' and 'perpetrators'</p> <ul style="list-style-type: none"> • Primo Levi. <i>Survival at Auschwitz</i>: pp 13-37; 77-86 • *Erin Baines. 2011. "Gender, Responsibility and the Grey Zone: considerations for Transitional Justice", <i>Journal of Human rights</i> 10: 477-493;. • <i>Ongwen's Justice Dilemma: Perspectives from Northern Uganda</i>, Refugee Law Project report, 2015; • https://www.hrw.org/news/2015/01/09/qa-ira-commander-dominic-ongwen-and-icc 	
7 Oct 24	READING WEEK – no class	
OCT 30	Mid-Term Assessment due 9:00 am	
8. October 31	<p>Guest Lecture – Andrew Costa, PhD student, Department of Law & Legal Studies</p> <ul style="list-style-type: none"> • Rozenberg, Dean and Grazow. 2010. "Centennial hauntings: Reckoning with the 2005 celebration of Alberta's history" <i>Memory Studies</i> 3(4): 395-399; 401-404. 	
9. Nov 7	<p>TJ as truth Seeking</p> <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). 	Mini Essay 2 (a) due
10. Nov 14	<p>What Does 'Reconciliation' mean? South Africa</p> <ul style="list-style-type: none"> - *Mahmood Mamdani, 2002. "Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)" <i>Discritics</i>, 32(3-4): 33-59. - *Claire Moon. 2006. "Narrating Political Reconciliation: Truth and Reconciliation in South Africa" <i>Social & Legal Studies</i> 15(2): 257-275; - *Antjie Krog. 2012. Address, "Justice for Truth is to Embrace Evil: A View on Human Rights through the South African Truth and Reconciliation Commission", at University of New South Wales, Australian Human Rights 	

	Centre website: http://www.ahrcentre.org/news/2012/07/25/310	
11. Nov 21	<p>Canada's History of Colonization and Residential School System:</p> <ul style="list-style-type: none"> • *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 	Mini essay 2, topic 'b' due (NB students opting for this assignment may not receive their comments and grade prior to submitting their final assignment)
12 Nov 28	<p>Canada's Truth and Reconciliation: What does Reconciliation Mean?</p> <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; • *Carole Blackburn. 2007. "Producing Legitimacy: Reconciliation and the Negotiation of Aboriginal Rights in Canada" <i>The Journal of the Royal Anthropological Institute</i> 621-629, ending at the start of the first full paragraph on p. 629 that begins: "How much, however does treaty repudiate assimilation..." as this discussion moves onto the Niga'a treaty itself. The remainder of the article is interesting reading but is not required. • <i>Honouring the Truth, Reconciling for the Future: Summary Report of the Truth and Reconciliation Commission of Canada</i>, pp. 41-70; 71-121; • <i>What we have learned: Principles of Reconciliation</i>, Truth and Reconciliation Commission of Canada, pp. 113-126 	
13 Dec 5	Review class	
8 Dec	Final assignment due - MIDNIGHT	