

Course Outline

COURSE: LAWS 4603.A - Transitional Justice

TERM: FALL 2019

PREREQUISITES: LAWS 2908 or PAPM 3000 and Fourth-Year Honours standing

CLASS: **Day & Time:** Tuesdays, 8:35am - 11:25am
 Room: Please check with Carleton Central for current room location

INSTRUCTOR: Professor Christiane Wilke

CONTACT: **Office:** D499 Loeb Building
 Office Hrs: TBA
 Email: christiane.wilke@carleton.ca
 [please include 'LAWS 4603' in the subject line]

CALENDAR COURSE DESCRIPTION

Legal and ethical responses to human rights violations in the transition to democracy. Topics include: dilemmas of the rule of law; truth and reconciliation; prosecution and punishment; amnesty; retribution and revenge; restorative justice; administrative remedy; reparations. Theoretical arguments about justice in context of country and international case studies.

COURSE DESCRIPTION

What can or should justice for state violence look like? What would a 'transition' from settler colonialism look like? We draw on the literature on transitional justice, especially the South African Truth and Reconciliation Commission (TRC) to analyze the politics of truth, reconciliation and (attempts at) justice in Canada. We consider theories of decolonization, of "implicated subjects," and of justice beyond the terms of the settler colonial state.

REQUIRED TEXTS

Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019).

Course pack for LAWS 4603.A

Both texts are available from Octopus Books, 161 Third Avenue (www.octopusbooks.ca). If you cannot purchase the texts, please contact the professor for alternate arrangements.

All other texts are available via the cuLearn website. Please download and/or print the texts so you can underline and make notes as you read. This will save you a lot of time when you write your papers.

EVALUATION

In order to get a passing grade, you must attend at least nine of the twelve seminar sessions (excused absences excluded), complete at least two of the three short papers, the paper proposal, and the final research paper.

- **Class presentation and participation: 10%**
- **Three short analysis & response papers: 15% each (45% combined)**
- **Research paper outline: 5%**
- **Research 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 summarize the text, but provide analysis, context, or critiques of issues arising from the text. There is no “right” way to present on a text. You do not have to make any slides or handouts, and you will not be moderating the class discussion. Your presentation allows you to shape the agenda for the discussion.
- **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. Attendance is not marked, but if you miss more than three classes without a documented excuse, I

- **Short Analysis & Response Papers** are short essays on a topic of your choice that is raised by the readings for the upcoming class. The papers combine analysis (of how the readings have engaged with the issue you picked) and argument (about the implications of your analysis).
- **The analysis & response papers are 4-5 pages long (double-spaced), properly referenced, and due at the beginning of the class in which the readings discussed in the paper are 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.

When are the Assignments Due?

- The first response paper has to be submitted no later than **October 1st**. The second response paper is due no later than **October 29th**. The third response paper is due no later than **December 3rd**. **You cannot write a response paper on the same text that you are giving a presentation on.**
- The **research 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 research paper is due on **December 9th**. Over the course of the term, you will have to submit an initial **research paper proposal (due November 8th)**.
- **Late research papers will not be accepted without a documented emergency.**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

SCHEDULE

Notes:

Readings marked (*) are from the book available at Octopus Books.

Readings marked (**) are from the course pack, also available at Octopus Books.

Recommended readings: Do not read them for class (unless you really want to). These readings might be useful for those of you who want to write a research paper on the topic.

Week 1 (September 10th) – Introduction

Please watch the following short documentaries before class:

On South Africa:

IJR, Truth Justice Memory: South Africa's Truth and Reconciliation Process

(<https://www.youtube.com/watch?v=W3taLI3moaM>)

On Canada:

KM Productions, “They Came for the Children,” Part 1. <https://youtu.be/m9tRe5aN0eE>

Week 2 (September 17th) – Transitional Justice

Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31 (2009): 321-367.

Catherine Cole, “Performance, Transitional Justice, and the Law: South Africa's Truth and Reconciliation Commission,” *Theatre Journal* 59 (2007): 167-187.

*Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019), 1-28.

Week 3 (September 24th) – Settler Colonialism

Eve Tuck and K. Wayne Yang, “Decolonization is not a Metaphor,” *Decolonization: Indigeneity, Education & Society* 1 (2012): 1-40.

**Darryl Leroux, *Distorted Descent: White Claims to Indigenous Identity* (Winnipeg: University of Manitoba Press, 2019), 1-23, 135-176.

Recommended:

Hagar Kotef, “Violent Attachments,” *Political Theory* (2019): 1-26 (pre-print)

Week 4 (October 1st) – Transitional Justice and Settler Colonialism

[This is the last chance for writing the analysis & response paper #1]

Rosemary Nagy, “Truth, Reconciliation, and Settler Denial: Specifying the Canada-South Africa Analogy,” *Human Rights Review* 13 (2012): 349-367.

Jennifer Matsunaga, “Two faces of transitional justice: Theorizing incommensurability of transitional justice and decolonization in Canada,” *Decolonization: Indigeneity, Education & Society* 5 (2016): 24-44.

Leslie Thielen-Wilson, “Troubling the Path to Decolonization: Indian Residential School Case Law, Genocide, and Settler Illegitimacy,” *Canadian Journal of Law and Society* 29 (2014): 181-197.

Recommended:

Jennifer Balint, Julie Evans, and Nesam McMillan, “Rethinking Transitional Justice, Redressing Indigenous Harm: A New Approach,” *International Journal of Transitional Justice* 8 (2014): 194-216.

Augustine Park, “Settler Colonialism and the Politics of Grief: Theorising a Decolonising Transitional Justice for Indian Residential Schools,” *Human Rights Review* 16 (2015): 273-293.

Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2 (2008): 266-291.

Week 5 (October 8th) – Truth and Transitional Justice

Erin Daly, “Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition,” *International Journal of Transitional Justice* 2 (2008): 23-41.

*Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019), 31-58.

***Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019), 89-127.

Recommended:

Berber Bevernage, "Writing the Past Out of the Present: History and the Politics of Time in Transitional Justice," *History Workshop Journal*, Issue 69 (2010): 111-131.

Tshepo Madlingozi, "On Transitional Justice Entrepreneurs and the Production of Victims," *Journal of Human Rights Practice* 2 (2010): 208-228.

Kieran McEvoy and Kirsten McConnachie, "Victims and Transitional Justice: Voice, Agency, and Blame," *Social & Legal Studies* 22 (2013): 489-513.

Week 6 (October 15th) – Genocide

Convention on the Prevention and Punishment of the Crime of Genocide.

<https://www.un.org/en/genocideprevention/genocide-convention.shtml>

Andrew Woolford and James Gacek, "Genocidal carcerality and Indian residential schools in Canada," *Punishment & Society* 18 (2016): 400-419.

**National Inquiry into Missing and Murdered Indigenous Women and Girls, *Supplementary Report: Genocide* (2019): https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf

Valery Deacon and Daniel Rueck, "The Eighth Stage of Genocide," *Active History*, July 2019: <http://activehistory.ca/2019/07/the-eighth-stage-of-genocide/>.

Week 7 (October 29th) – Reparations: Individual Compensation

[This is the last chance for writing the analysis & response paper #2]

Rachel L. Swarns, "272 Slaves Were Sold to Save Georgetown. What Does It Owe Their Descendants?" *New York Times*, 16 April 2016. <https://www.nytimes.com/2016/04/17/us/georgetown-university-search-for-slave-descendants.html>

Kitty Kelly, "A Reparations Movement Begat at Georgetown," *The New Yorker*, 20 May 2019. <https://www.newyorker.com/magazine/2019/05/20/a-reparations-movement-begat-at-georgetown>

*Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019), 59-86.

Kent Roach, "Blaming the Victim: Canadian Law, Causation, and Residential Schools," *University of Toronto Law Review* 64 (2014): 566-595.

Cindy Hanson, "Gender, Justice, and the Indian Residential School Claims Process," *The International Indigenous Policy Journal* 7 (2016).

Recommended:

Lauren Marie Balasco, "Reparative development: re-conceptualising reparations in transitional justice processes," *Conflict, Security & Development* 17 (2017): 1-20.

Week 8 (November 5th) – Reparations: Land

[Research paper proposals are due on November 8th before 4pm. Submit to: Department of Law & Legal Studies, room C473 Loeb, drop box]

Shiri Pasternak, “Jurisdiction and Settler Colonialism: Where do Laws Meet?” *Canadian Journal of Law and Society* 29 (2014): 145-161.

Themba Kepe and Ruth Hall, “Land Redistribution in South Africa: Towards Decolonisation of Recolonisation?” *Politikon* 45 (2018): 128-137.

Leanne Simpson, “Toxic Contamination: Undermining Indigenous Food Systems and Indigenous Sovereignty,” *Pimatiziwin: A Journal of Aboriginal and Indigenous Community Health* 1 (2): 129-134.

Week 9 (November 12th) – Reconciliation and/or Perpetuation?

*Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019), 119-145.

Tyler McCreary, “Historicizing the Encounter between State, Corporate, and Indigenous Authorities on Gitksan lands,” *Windsor Yearbook of Access to Justice* 33 (2016): 163-198.

Ashley Courchene, “Reframing Reconciliation: A move towards conciliation in academia,” *Academic Matters*, Spring 2019: 21-24. <https://academicmatters.ca/a-move-towards-conciliation-in-academia/>

Week 10 (November 19th) – Calls to Action: Focus on Health and Children

***Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019), 413-426, 432-446, 461-471, 488-502.

Raven Sinclair, “The Indigenous Child Removal System in Canada: An Examination of Legal Decision-making and Racial Bias,” *First Peoples Child & Family Review* 11 (2016): 8-18.

Sarah de Leeuw, Margo Greenwood, and Emilie Cameron, “Deviant Constructions: How Governments Preserve Colonial Narratives of Addiction and Poor Mental Health to Intervene into the Lives of Indigenous Children and Families in Canada,” *International Journal of Mental Health* 8 (2010): 282-295.

Recommended:

Daniella Bendo, Taryn Hepburn, Dale Spencer, and Raven Sinclair, “Advertising ‘Happy’ Children: The Settler Family, Happiness, and the Indigenous Child Removal System,” *Children & Society* 33 (2019): 399-413.

Week 11 (November 26th) – Doing Law Differently?

**James (Sa’ke’j) Henderson, “Incomprehensible Canada,” in Jennifer Henderson and Pauline Wakeham (eds), *Reconciling Canada* (Toronto: University of Toronto Press, 2013), 115-126.

**Lindsay Keegitah Borrows, *Otter's Journey Through Indigenous Language and Law* (Vancouver: UBC Press, 2018), 3-30.

Sibusiso Blessing Radebe and Moses Retselisitsoe Phooko, "Ubuntu and the law in South Africa: Exploring and understanding the substantive content of ubuntu," *South African Journal of Philosophy* 36 (2017): 239-251.

Recommended:

Peter Mwipikeni, "Ubuntu and the modern society," *South African Journal of Philosophy* 37 (2018): 322-334.

Drucilla Cornell, "uBuntu, Pluralism and the Responsibility of Legal Academics in the New South Africa," *Law & Critique* 20 (2009): 43-58.

Week 12 (December 3rd) – Concluding Reflections

[This is the last chance for writing the analysis & response paper #3]

*Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019), 149-170, 199-203.

Abdullahi Ahmed An-Na'im, "Editorial Note: From the Neocolonial 'Transitional' to Indigenous Formations of Justice," *International Journal of Transitional Justice* 7 (2013): 197-204.

Research papers are due Monday, December 9th (before 4pm). Please submit to the drop box (next to C473 Loeb).

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: Please contact 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:

<https://carleton.ca/equity/accommodation/academic/students/>

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:

<https://carleton.ca/equity/accommodation/academic/students/>

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (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). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable).

<https://carleton.ca/pmc/students/accommodations/>

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:

<https://carleton.ca/registrar/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/sexual-violence-support/>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://carleton.ca/equity/accommodation/academic/>

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/>

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