

Course Outline

COURSE:	LAWS 4603.A – Transitional Justice
TERM:	FALL 2020
PREREQUISITES:	LAWS 2908 or PAPM 3000 and fourth-year Honours standing.
CLASS:	Day & Time: Mondays, 2:35 – 5:25 pm Room: cuLearn and Zoom
PROFESSOR:	Christiane Wilke
CONTACT:	Office Hrs: Please email me for an appointment. Email: christiane.wilke@carleton.ca

CALENDAR COURSE DESCRIPTION

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

COURSE DESCRIPTION

Transitional justice is a field of practice and scholarship about addressing past state violence. Truth and Reconciliation Commissions are key transitional justice institutions. Taking the Canadian Truth and Reconciliation Commission for Indian Residential Schools as a starting point, we ask questions about transitional justice in Canada. Is transitional justice the appropriate concept for dealing with the complex injustices of colonialism? Which injustices are foregrounded by theories of transitional justice, and which ones are obscured? How can we talk about imagined futures? Instead of focusing on Indigenous people as victims, this course centers Indigenous perspectives on the injustices and harms of colonialism, resources for resurgence, and nonviolent futures.

RECOMMENDED TEXTS

All readings will be made available on cuLearn/ARES. There is one book we read in full, and you might consider purchasing it:

Hadley Louise Friedland, *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (University of Toronto Press, 2018).

You can order the book via Octopus Books, a local, independent, and incredibly competent bookstore (octopusbooks.ca).

SUPPLEMENTARY TEXTS

We will read excerpts from a number of books. If you are interested in the subject matter, these are three books I can recommend to consider purchasing and reading in full:

Lindsay Keegitah Borrows, *Otter's Journey through Indigenous Language and Law* (UBC Press, 2018).

Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke University Press, 2014).

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

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

LOGISTICS**How are we holding the class?**

For reasons beyond our control, this seminar has to be held online. While this is convenient for commuters, this format can be challenging for students with poor internet connection, limited privacy, or living in a different time zone.

This class will use elements that are scheduled at the regular class time (synchronous) as well as elements that allow for engagement outside of the scheduled class time (asynchronous).

This makes it a blended course.

Gearing up: Wednesday to Monday

The class is scheduled for Monday at 2:35pm. From the Wednesday the week before to Monday at noon, we're gearing up for class and are in the asynchronous period. If you are introducing a reading, please post the discussion forum introduction no later than Wednesday at noon (in the week before the class). From Wednesday at noon to Monday at noon, you have time to read the introductions on the texts, post questions and comments, and write your analysis & response paper.

Live Discussion: Monday at 2:35/4pm.

On Monday afternoon, we will hold a live discussion seminar. In order to make this more manageable, I am dividing the class into two groups. **Group 1 will have a seminar from 2:35 to 3:35 pm. Group 2 will have the same seminar from 4 to 5 pm.** I will post the group assignments on cuLearn.

Reading and participation are essential: In a seminar class, you will learn by doing the readings ahead of the class and discussing your interpretations and questions with your peers. My role is to facilitate and steer the discussion, to provide background information, to help you if you have questions (that's what office hours are there for), and to help you make connections between the themes and texts. I will not lecture. Your active participation in the online discussion forums as well as the class will be essential for your learning as well as for everyone else. (You will learn better from asking questions and making comments than from just listening to me. Trust me.)

Barriers: We will do our best to make sure that all students can fully participate in the class. This includes a commitment to listening, understanding and respect in discussions (see below). But it might also include being mindful of technological and logistical barriers. Not everyone has the stable internet connection and privacy that's conducive to participating in the Zoom portion of the class. For this reason, there will be no marks given for the participation in the Zoom portion of the class. And while it would be ideal if everyone could have their camera on for the Zoom sessions, we will not require it. Turning video off can be necessary due to unstable internet connection or privacy issues. I hope that everyone will be motivated to participate as much as possible.

Considerations for Navigating Discussions (asynchronous and synchronous) in this class

Due to circumstances beyond our control, this class will be online. It will have an asynchronous component (online discussion forums) and a synchronous component (online seminar discussion). Both components allow you to engage with the class material, to ask questions, make connections between readings, and make observations. Yet written online posts as well as discussions on an online platform can be hard because the tone and intention of the contributions is easily misread.

Bearing the limitations of the platforms in mind is especially important because we will be reading materials and having discussions about matters such as settler colonialism, anti-Indigenous racism, and the politics of reconciliation. These are not just abstract topics; they are matters that affect each of us, but not in the same way. We are going to have discussions that might be uncomfortable for some of us. But we need to have them in ways that affirm principles of inclusion and understanding.

Some suggestions for posting/making questions or comments:

1. We engage with each other's questions, arguments, observations, experiences, and opinions. When we object, it's an objection to a statement and not to a person. We give everyone chance to learn from others, but we need to draw lines where one person's statement diminishes the humanity of others.
2. An argument is a conclusion derived from evidence. An opinion is an expression of personal preference or judgment. While we will be expressing opinions from time to time, let's try to focus on arguments. When we make arguments, we have to focus on evidence, and we are accountable to others for providing evidence.
3. If there is anything we are unsure about, let's ask questions instead of making assumptions. This includes asking posters to clarify a statement, or asking a question about something in the text that didn't seem clear to you.
4. If any materials are too challenging or uncomfortable for you to comment on, try to observe, read, reflect, and maybe ask questions.
5. If you are responding to someone: listen or read closely. Interpret their comments charitably. This means that you do your best to understand their comments as a sincere contribution and choose an interpretation of their comments that takes them seriously. (Words have complex meanings and as the speaker it's sometimes hard to control these meanings.)
6. If you have any concerns or questions about past, ongoing, or future, discussions (discussion board or seminar), please let me know.

7. If I see any comment on the discussion board that is an attack on a person (as opposed to an argument/idea), that is based on indefensible assumptions (including racism, sexism, homophobia, and transphobia), I will delete it. If you see a comment that you think should be deleted (and/or be discussed with the poster), please let me know.

ASSIGNMENTS

Due to the circumstances, I have chosen an assignment structure that prioritizes weekly engagements with the readings and gives opportunities for analysis and arguments within smaller assignments. If there is a larger research project you really want to do for this class, I'm open to crafting a different assignment structure for you. Please send me an email.

1. Early reflection paper (due September 21st, 2:30pm): 10%

- In 5-6 double spaced pages, please reflect on the two films we watched for week one, the readings for week two, as well as your experiences, concerns, and expectations as we are starting this course. This assignment will get you to start your writing process for the class and will allow me to see your questions and concerns early in the term.

2. Discussion forums (25%):

- Instead of giving a presentation on a reading, please write a short post introducing the discussion forum on the reading. You may choose to highlight 2-3 aspects of the readings or ask questions about it. 5%
- Each week, post at least two comments or questions on the readings (10 x 2 x 1% = 20%)

3. Reading analysis & response (4-5 pages, each 10%) (40% or 50%)

- You can write reading analysis & response papers on weeks of your choice. Please engage with all of the readings from the week, but focus on a specific theme or question.
- Papers are due before the class in which we discuss the readings you are writing about begins.
- You can either write four or five analysis & response papers. If you write four short papers, you will write a final essay. If you write five short papers, your final project will be a smaller reflection in a format of your choice.
- Within the course schedule, I indicate the last week for writing analysis & response paper 1, 2, 3, and 4. These dates are included for our mutual benefit: I would like to see

some of your writing in regular intervals, and you don't want to be forced to write four papers in four weeks. The deadlines are set to aid you in spacing out the work, and they can be modified if need be.

- If one or more of these papers don't turn out the way you (and I) are happy with, you are welcome to write additional papers. The best four analysis & response paper marks count. I will erase and forget any marks that have been superseded by better marks.

4. Final project (15% or 25%)

- The scope of your final project is determined by how many analysis & response papers you have written. If you are interested in a larger final project, write four papers and reserve some time for a final essay. If you would rather not do a larger project, write five papers. If you would prefer a different assignment distribution (for example a full research paper with fewer response papers), please ask me.
- **If you have written four analysis & response papers:** Your final essay (8-10 pages) allows you to extend and deepen the analysis on one of the topics we discussed or touched upon in class. 25%
- **If you have written five analysis & response papers:** your final project is a reflection and examination of issues we raised in the course that can take any shape you deem appropriate. For an essay, I recommend 5-6 pages; for a video or audio recording, photo essay, or other format, let's talk about the length. 15%.

Office hours:

- In a regular year, I would have held office hours in my office and would have waited for you to come and see me. Opening a zoom meeting for two hours and waiting for you to stop by would seem alienating in comparison.
- I would like to talk to your about the course, your plans, your interests, and any challenges you face. So can everyone please email me to set up an appointment within the first month of the course?
- If you would like to talk to me after the first month: just send me an email and we can talk by zoom or phone.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

In this course, deadlines for different assignments are set for different reasons, but they should not become barriers. Depending on the reasons for the deadlines, we can either move the deadline or modify the assignments for any student who is experiencing significant barriers

(medical or otherwise) to completing the assignments.

The discussion posts and analysis & reflection papers are due before the class discussion because we want to build towards the class discussion. But you don't have to do these assignments every week, so there is always flexibility to work around weeks in which you have to take a break from school work. If such a situation occurs, please let me know and we make a plan about how you can fulfill the course requirements in other ways.

The reflection paper and the final essay have deadlines for two reasons: (1) fairness to everyone, and (2) we want to be able to move on instead of lingering on the assignments. If you are dealing with circumstances that prevent you from dedicating the usual amount of time to this class and you require an extension on these assignments, please let me know.

For shorter extensions (up to five days), an email is sufficient. For longer extensions and requests to modify the assignment or evaluation structure due to medical or other urgent issues, please complete this form: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf> and send it to me via email.

Official Disclaimer:

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**Week 1 – September 14th****Introduction: Residential Schools and Colonialism**

Prior to class, please watch the following two videos:

Canada's Dark Secret. <https://www.aljazeera.com/programmes/specialseries/2017/01/canada-dark-secret-170130091149080.html>

Invasion. https://www.youtube.com/watch?v=D3R5Uy5O_Ds

Week 2 – September 21st**Settler Colonialism & Indigenous Resurgence**

[Early Reflection Paper Due on September 21st at 2:30pm]

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

Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke University Press, 2014), 1-35.

Michael Asch, "Canadian Sovereignty and Universal History," in: *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, ed. by Hester Lessard, Rebecca Johnson, and Jeremy Webber (UBC Press, 2011), 29-39.

Week 3 – September 28th**Transitional Justice**

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

Maegan Hough, "Taking Responsibility for Intergenerational Harms: Indian Residential Schools Reparations in Canada," *The Northern Review* 50 (2020): 137—178.

Augustine SJ Park, "Settler Colonialism, Decolonization and Radicalizing Transitional Justice," *International Journal of Transitional Justice* 14 (2020): 260—279.

Week 4 – October 5th**Decolonization and Being Implicated**

Eve Tuck and K. Wayne Yang, "Decolonization is not a Metaphor," *Decolonization: Indigeneity,*

Education & Society 1 (2012): 1-40.

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

Week 5 – October 19th

Genocide

[Last week for Analysis & Response Paper 1]

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

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

Kathleen Mahoney, (2019) Indigenous Legal Principles: A Reparation Path for Canada's Cultural Genocide, *American Review of Canadian Studies* 49 (2019), 207-230.

Umut Özsu, "Genocide as Fact and Form," *Journal of Genocide Research* 22 (2020): 62-71.

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

Week 6 – November 2nd

The Ethics and Politics of Descent

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.

Darryl Leroux, *Distorted Descent: White Claims to Indigenous Identity* (Winnipeg: University of Manitoba Press, 2019), 1-23, 41-72.

Week 7 – November 9th

Land

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

Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (2019). Available online: <https://redpaper.yellowheadinstitute.org/wp-content/uploads/2019/10/red-paper-report-final.pdf>

Week 8 – November 16th

Extractivism & Reclamation

[Last Week for Analysis & Response Paper 2]

- Jen Preston, "Racial extractivism and white settler colonialism: An examination of the Canadian Tar Sands megaprojects," *Cultural Studies* 31 (2017): 353—375.
- Julie Tomiak, "Unsettling Ottawa: Settler Colonialism, Indigenous Resistance, and the Politics of Scale," *Canadian Journal of Urban Research* 25 (2016): 8—21.
- Theo LeQuesne, "Petro-hegemony and the matrix of resistance: What can Standing Rock's Water Protectors teach us about organizing for climate justice in the United States?" *Environmental Sociology* 5 (2019): 188—206.

Week 9 – November 23rd

Knowledges

- John Borrows, *Canada's Indigenous Constitution* (University of Toronto Press, 2010), 6-58.
- Peter W. Choate, Taylor Kohler, Felicia Cloete, Brandy CrazyBull, Desi Lindstrom and Parker Tatoulis, "Rethinking *Racine v Woods* from a Decolonizing Perspective: Challenging the Applicability of Attachment Theory to Indigenous Families Involved with Child Protection," *Canadian Journal of Law and Society* 34 (2019): 55–78.

Week 10 – November 30th

Rethinking Law & Care

[Last Week for Analysis & Response Paper 3]

- Hadley Louise Friedland, *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (University of Toronto Press, 2018), 11-112.

Week 11 – December 7th

Reconciliation & Perpetuation

- Brandon Hamber and Gráinne Kelly, "Beyond Coexistence: Towards a Working Definition of Reconciliation," in *Reconciliation(s): Transitional Justice in Postconflict Societies*, ed. by Joanna R. Quinn (McGill-Queens University Press, 2009), 286-310.

Glen Coulthard, Red Skin, *White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, 2014), 105-130.

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

Week 12 – Friday, December 11th

Concluding Discussion

[Last Week for Analysis & Response Paper 4]

Alexis Shotwell, *Against Purity: Living Ethically in Compromised Times* (University of Minnesota Press, 2016), 23-54.

Final Essays or Projects are due on December 16th.

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

Pregnancy obligation

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 Department of Equity and Inclusive Communities (EIC): <https://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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

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>

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/studentsupport/svpolicy/>

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://students.carleton.ca/services/accommodation/>

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: <https://carleton.ca/law/current-students/>