

COURSE: LAWS 4603.A – Transitional Justice

TERM: Winter 2022

PREREQUISITES: LAWS 2908 or PAPM 3000 and fourth-year Honours standing.

CLASS: Day &
Time: Tuesdays, 8:35 – 11:25 am
Where: Zoom

INSTRUCTOR: Christiane Wilke

CONTACT: Office Hrs: By appointment, on Zoom
Email: christiane.wilke@carleton.ca [please include course number in the subject line]

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.

REQUIRED TEXT

Most readings will be made available on Brightspace. The exception is the one book we read in full. Please purchase it, ideally from an independent bookseller near you. It is also available as an e-book (pdf) directly from the publisher.

Mary Jane Logan McCallum and Adele Perry, *Structures of Indifference: An Indigenous Life and Death in a Canadian City* (University of Manitoba Press, 2018).

You can order the book via Octopus Books, a local, independent, and incredibly competent bookstore (octopusbooks.ca, 116 3rd Avenue, Ottawa).

SUPPLEMENTARY TEXTS

We will read excerpts from a number of books. If you are interested in the subject matter, these are four books I can recommend to consider purchasing and reading in full. They have not been ordered in advance for this class, but Octopus Books would be happy to get them for you.

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: Thursday to Monday

The class is scheduled for Tuesday at 8:35am. From the Thursday the week before to Monday at 5pm, 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 5pm (in the week before the class). From Thursday morning to Monday at 5pm, you have time to read the introductions on the texts, post questions and comments, and write your analysis & response paper.

Reading introductions: due **Wednesday at 5pm** in the week before the class.

Discussion forum participation: your short comments and questions are due on **Monday before class at 5pm**.

Live Class: Tuesday at 8:50am /10:15am.

On Tuesday morning, 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 8:50 to 10am. Group 2 will have the same seminar from 10:15 to 11:25 am.** I will post the group assignments on Brightspace.

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 fraught 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. If you would like to do an alternative project, please send me an email to discuss an alternate grading scheme.

1. Discussion forums (25%):

- Please write a short post introducing the discussion forum on the reading. The post does not need to summarize the text. Instead, it is recommended to highlight 2-3 aspects of the readings You may choose to pose questions for further discussion. 5%
- Each week (for ten weeks), post at least two comments or questions on the readings (10 x 2 x 1% = 20%)

3. Reading analysis & response papers (5-6 pages, each 15%)

- You can write reading analysis & response papers on weeks of your choice. **Please engage with all (or at least most) of the readings from the week, but focus on a specific theme or question.**
- **Show connections between the readings:** As a reflection of the cumulative learning throughout the course, the analysis & response papers should get more complex as the term progresses. The first paper might be a tentative step into reading texts on transitional justice and decolonization. Subsequent papers should refer back to previous course readings as appropriate.

- Papers are due before the class in which we discuss the readings you are writing about begins.
- 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 analysis & response paper marks count. I will erase and forget any marks that have been superseded by better marks.
- These combinations of analysis & response papers and final projects are possible:
 - 3 analysis & response papers (3 x 15% = 45%): write a 12-15 page research paper (30%)
 - 4 analysis & response papers (4 x 15% = 60%): write a 7-8 page final essay (15%)
 - 5 analysis & response papers (5 x 15% = 75%): no final project
- **The first analysis response paper has to be submitted in week 2, 3 or 4 of the course.** This allows me to see your writing and give you early feedback. The dates for the other analysis & response papers are up to you. I recommend making a schedule ahead of time and sticking to it.

4. Final project (15% or 30%)

- **30% Final Paper (12-15 pages):** a full research paper on a topic of your choice that's related to the course materials. It's strongly recommended that we have a conversation about your topic 3-4 weeks before the due date. A minimum of 8 secondary sources (including scholarly writings as well as writings/teachings by Indigenous knowledge keepers in other formats) are required.
- **15% Final Essay (7-8 pages):** a short essay/research paper on a topic of your choice. It's strongly recommended that we have a conversation about your topic 2-3 weeks before the due date. The paper will be based on primary and secondary sources as appropriate. A minimum of 5 secondary sources (including scholarly writings as well as writings/teachings by Indigenous knowledge keepers in other formats) are required.

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 please email me to set up an appointment if you would like to talk.

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.

Writing Resources:

When writing about settler colonialism and Indigenous peoples, we need to be careful that our language does not perpetuate the harms that we want to analyze. Before you write any discussion posts or analysis & response papers for this course, please have a look at these resources on using respectful, precise, and appropriate language. Thank you.

Tara Campbell, "A Copy Editor's Education in Indigenous Style," *The Tyee.ca* (17 Jan 2020); <https://thetyee.ca/News/2020/01/17/Copy-Editor-Indigenous-Style/>.

University of British Columbia, "Indigenous Peoples: Language Guidelines" (2018); https://assets.brand.ubc.ca/downloads/ubc_indigenous_peoples_language_guide.pdf.

SCHEDULE**Week 1 – January 11th****Introduction: Residential Schools and Colonialism**

Prior to class, please watch the following two videos:

Canada's Dark Secret. <https://www.aljazeera.com/program/featured-documentaries/2017/2/3/canadas-dark-secret>

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

Week 2 – January 18th**Settler Colonialism & Contested Sovereignties**

Aaron Mills, "Rooted Constitutionalism: Growing Political Community," in Michael Asch, John Borrows and James Tully (eds), *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (University of Toronto Press, 2018), 133-173.

Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke

University Press, 2014), 1-35.

Veldon Coburn and Margaret Moore, "Occupancy, Land Rights and the Algonquin Anishinaabeg," *Canadian Journal of Political Science* (2021), online first.

Week 3 – January 25th

Transitional Justice

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

Chelsea Vowel, *Indigenous Writes: A Guide to First Nations, Métis, and Inuit Issues in Canada* (Highwater, 2016), 171-180.

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

Week 4 – February 1st

Settler Colonialism, Truth telling, Contention, and Redress

Jennifer Matsunaga, "The red tape of reparations: settler governmentalities of truth telling and compensation for Indian residential schools," *Settler Colonial Studies* 11 (2021): 21-41.

Karine Vanthuyne, "'I want to move Forward. You Can Move Forward too.' Articulating Indigenous Self-Determination at the Truth and Reconciliation Commission of Canada," *Human Rights Quarterly* 43 (2021), 355-377.

Samuel J. Spiegel, "Climate injustice, criminalisation of land protection and anti-colonial solidarity: Courtroom ethnography in an age of fossil fuel violence," *Political Geography* 84 (2021) 102298.

Recommended:

Anne-Marie Reynaud, "Dealing with Difficult Emotions: Anger at the Truth and Reconciliation Commission of Canada," *Anthropologica* 56 (2014): 369-382.

Week 5 – February 8th

Truth and Unforgetting: Unmarked Graves

Kate Adach, "'It has never been a secret that children went missing': Will the loss of 215 be a watershed moment?" CBC (11 June 2021), <https://www.cbc.ca/radio/unreserved/what-happens-when-hidden-histories-become-a-national-conversation-1.6059520/it-has-never-been-a-secret-that-children-went-missing-will-the-loss-of-215-be-a-watershed-moment-1.6059530>.

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

Truth and Reconciliation Commission of Canada, Final Report, Vol. 4: Missing Children and Unmarked Burials (2015), 1-138.
https://publications.gc.ca/collections/collection_2015/trc/IR4-9-4-2015-eng.pdf. [focus on executive summary and choose which other sections you want to engage with]

Week 6 – February 15th

Genocide

Jeff Benvenuto, Andrew Woolford, and Alexander Laban Hinton, "Introduction: Colonial Genocide in Indigenous North America," in: Andrew Woolford, Jeff Benvenuto and Alexander Laban Hinton (eds), *Colonial Genocide in Indigenous North America* (Duke University Press, 2014), 1-25.

Kiera Ladner, "Political Genocide: Killing Nations through Legislation and Slow-Moving Poison," in: Andrew Woolford, Jeff Benvenuto and Alexander Laban Hinton (eds), *Colonial Genocide in Indigenous North America* (Duke University Press, 2014), 226-245.

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 7 – March 1st**The Ethics and Politics of Descent**

Darcy Lindberg, "Imaginary passports or the wealth of obligations: seeking the limits of adoption into indigenous societies," *AlterNative* 14 (2018): 326-332.

Darryl Leroux, *Distorted Descent: White Claims to Indigenous Identity* (Winnipeg: University of Manitoba Press, 2019), 1-32, 135-175.

Kim TallBear, "Indigenous 'Race Shifting' Red Flags: A Primer for Reporters and Others," <https://kimtallbear.substack.com/p/indigenous-race-shifting-red-flags>.

Justin Brake, "KTAQMKUK," *Maisonneuve* (29 June 2021), <https://maisonneuve.org/article/2021/06/29/ktaqmkuk/>.

Brett Forester, "Universities should publicly apologize for perpetuating Indigenous identity fraud: chief," APTN (23 November 2021), <https://www.aptnnews.ca/national-news/universities-should-apologize-indigenous-identity-fraud/>.

Week 8 – March 8th**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.

Jen Preston, "Racial extractivism and white settler colonialism: An examination of the Canadian Tar Sands megaprojects," *Cultural Studies* 31 (2017): 353—375.

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 9 – March 15th**Knowledges: Laws**

John Borrows, *Canada's Indigenous Constitution* (University of Toronto Press, 2010), 23-58.

Aimeé Craft, *Anishinaabe Nibi Inaakonigewin Report: Reflecting the Water Laws Research Gathering conducted with Anishinaabe Elders* (2014).

<https://static1.squarespace.com/static/54ade7ebe4b07588aa079c94/t/54ec082ee4b01dbc251c6069/1424754734413/Anissinaabe-Water-Law.pdf>

Week 10 – March 22nd

Cities & Land Claims

Mary Jane Logan McCallum and Adele Perry, *Structures of Indifference: An Indigenous Life and Death in a Canadian City* (University of Manitoba Press, 2018), 1-61.

Julie Tomiak, "Unsettling Ottawa: Settler Colonialism, Indigenous Resistance, and the Politics of Scale," *Canadian Journal of Urban Research* 25 (2016): 8—21.

Week 11 – March 29th

Knowledges: Care

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.

Mary Jane Logan McCallum and Adele Perry, *Structures of Indifference: An Indigenous Life and Death in a Canadian City* (University of Manitoba Press, 2018), 62-145.

Week 12 – April 6th

Reconciliation?

Courtney Jung, "Reconciliation: six reasons to worry," *Journal of Global Ethics* 14 (2018): 252–265

Michelle Daigle, "The spectacle of reconciliation: On (the) unsettling responsibilities to Indigenous peoples in the academy," *EPD: Society and Space* 37 (2019): 703–721.

Eva Jewell and Ian Mosby, *Calls to Action Accountability: A 2020 Status Update on Reconciliation*. Yellowhead Institute, 2020. <https://yellowheadinstitute.org/wp-content/uploads/2020/12/yi-trc-calls-to-action-update-full-report-2020.pdf>

Week 13 – April 13th

Knowledges: Research

Adam Gaudry and Danielle Lorenz, "Indigenization as inclusion, reconciliation, and decolonization: navigating the different visions for indigenizing the Canadian Academy," *AlterNative* 14 (2018), 218-227.

Eve Tuck, "Suspending Damage: A Letter to Communities," *Harvard Education Review* 79 (2009): 409-427.

Final Research Papers or Essays are due on April 20th.

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

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/studentssupport/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/>