

Course Outline

COURSE:	LAWS 4603B — Transitional Justice
TERM:	Fall 2023
PREREQUISITES:	LAWS 2908 or PAPM 3000 and fourth-year honours standing
CLASS:	Wednesday, 2:35 pm — 5:25 pm
INSTRUCTOR:	Prof. Umut Özsu
CONTACT:	Office Hours: Wednesday, 12:35 pm— 1:25 pm (drop-in online office hours)
	Email: Umut.Ozsu@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

The subject of a large and varied body of academic and policy-oriented writing, “transitional justice” is the set of norms, practices, and mechanisms with which states that have shifted from one mode of political administration to another attempt to take stock of legacies of violence, repression, or systemic discrimination. The “justice” that is devised for such periods of “transition” typically relies upon both domestic and international law, and is premised upon some combination of the following elements: institutional reforms, reparations initiatives, large-scale criminal prosecutions, investigations into pervasive human rights violations, and the establishment of commissions for the ascertainment of “truth” and the facilitation of societal “reconciliation”.

This course provides an interdisciplinary introduction to key debates concerning transitional justice. We will grapple with the theoretical content and political significance of transitional justice, examine its domestic and international legal dimensions, and study its operation in a variety of different national and regional contexts.

REQUIRED TEXT

All required readings are available online, via the Carleton University Library, or will be made available on Brightspace. As a result, you do not need to purchase any text for this course.

EVALUATION

There are four formal evaluation components to this course:

Research paper: 40% (due midnight on Wednesday, 13 December 2023)

Response note: 20% (due midnight on Friday, 20 October 2023)

Presentation: 20%

Class participation: 20%

These formal evaluation components are structured as follows:

1. Research paper: The research paper must be between 3500 and 4000 words in total (including notes). It must have a clear thesis, be driven by a structured argument, and provide a sustained analysis of at least one of the issues or debates that we have examined in the course. While you must engage with some of the literature that we have studied, you will be expected to conduct independent research. For detailed guidelines, please consult the “Advice on Writing Assignments” document with which you have been provided alongside this syllabus. (This document is also available on Brightspace.)

Do not submit the research paper late. A grade reduction of 5% will apply for every 24 hours that the paper is late. (This includes weekends.) Extensions will be accorded only under appropriate circumstances, such as illness or death of a family member. Whenever applicable, appropriate documentation must accompany requests for extensions.

2. Response note: The response note must be 1500 words in total (including notes). It is intended to give you an opportunity to analyze—carefully but concisely—one of the required pieces of assigned reading that appears on this syllabus. You are not expected to recapitulate the author’s various points at great length. Indeed, limiting yourself to such recapitulation will almost certainly result in a grade reduction. Rather, you are expected to engage critically with the author’s theoretical approach and central argument in light of the materials that we have studied, and to do so with a view to evaluating their strengths and weaknesses. For detailed guidelines, please consult the “Advice on Writing Assignments” document with which you have been provided alongside this syllabus. (This document is also available on Brightspace.)

Do not submit the response note late. A grade reduction of 5% will apply for every 24 hours that the note is late. (This includes weekends.) Extensions will be accorded only under appropriate circumstances, such as illness or death of a family member. Whenever applicable, appropriate documentation must accompany requests for extensions.

3. Presentation: You are required to prepare and deliver a twenty-minute-long presentation. Your presentation must relate to one of the required pieces of assigned reading that we will be discussing. (You will choose the piece of assigned reading that you will be presenting during our first or second session.) You will be expected to outline the article's central argument and theoretical orientation, discuss its various strengths and weaknesses, and pose questions for general class discussion.

4. Class participation: Class participation will be assessed on the basis of your attendance in class and demonstrated familiarity with assigned readings, as manifested through the frequency with which you engage in serious and sustained discussion.

IMPORTANT DATES

For your reference, the Academic Year (Graduate and Undergraduate Studies) Calendar can be found [here](#).

SUPPLEMENTARY NOTE

Please note that there will be *no* make-up assignments or “grade-booster” assignments under any circumstances. Failure to complete *all* assignments in the course will result in a failing grade for the course. Deferrals are granted by the Registrar's Office.

Please also note that standing in a course is determined by the course instructor subject to the approval of the Department of Law and Legal Studies and the Dean of the Faculty of Public Affairs. 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 dean.

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All components must be successfully completed in order to obtain a passing grade.

SCHEDULE

Session I [Wednesday, 6 September 2023]—Introductory session

[No assigned readings.]

Session II [Wednesday, 13 September 2023]—What (and when) is “transitional justice”?

International Center for Transitional Justice, “What is Transitional Justice?”, available [here](#).

Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice” 31 (2009) *Human Rights Quarterly* 321–67.

Ruti G. Teitel, “Transitional Justice Genealogy” 16 (2003) *Harvard Human Rights Journal* 69–94.

Hannah Franzki and Maria Carolina Olarte, “Understanding the Political Economy of Transitional Justice: A Critical Theory Perspective” in *Transitional Justice Theories*, ed. Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun, and Friederike Mieth (Abingdon: Routledge, 2014), 201–21.

Session III [Wednesday, 20 September 2023]—International legal dimensions of transitional justice

Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (1998), available [here](#).

Obiora Chinedu Okafor and Uchechukwu Ngwaba, “The International Criminal Court as a ‘Transitional Justice’ Mechanism in Africa: Some Critical Reflections” 9 (2015) *International Journal of Transitional Justice* 90–108.

Jens Iverson, “Transitional Justice, *Jus Post Bellum* and International Criminal Law: Differentiating the Usages, History and Dynamics” 7 (2013) *International Journal of Transitional Justice* 413–33.

Session IV [Wednesday, 27 September 2023]—After the Second World War

Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000), ch. 5.

B. V. A. Röling, *The Tokyo Trial and Beyond: Reflections on a Peacemonger*, ed. Antonio Cassese (Cambridge: Polity Press, 1993) at 1–6, 19–91.

Session V [Wednesday, 4 October 2023]—After *apartheid*

Mahmood Mamdani, “Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)” 32 (2002) *Diacritics* 33–59.

Claire Moon, “Narrating Political Reconciliation: Truth and Reconciliation in South Africa” 15 (2006) *Social and Legal Studies* 257–75.

Matthew Evans, “Land and the Limits of Liberal Legalism: Property, Transitional Justice and Non-Reformist Reforms in Post-Apartheid South Africa” 48 (2021) *Review of African Political Economy* 646–55.

Session VI [Wednesday, 11 October 2023]—Case studies: Morocco, Rwanda, Tunisia

Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda’s *Gacaca* Courts” 81 (2011) *Africa* 373–90.

Susan Slyomovics, “The Moroccan Equity and Reconciliation Commission: The Promises of a Human Rights Archive” 24 (2016) *Arab Studies Journal* 10–41.

Corinna Mullin, Nada Trigui, and Azadeh Shahshahani, “Decolonizing Justice in Tunisia: From Transitional Justice to a People’s Tribunal” 71 (2019) *Monthly Review*, available [here](#).

Session VII [Wednesday, 18 October 2023]—Latin America

Cath Collins, “Human Rights Trials in Chile During and After the ‘Pinochet Years’” 4 (2010) *International Journal of Transitional Justice* 67–86.

Greg Grandin, “The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala” 110 (2005) *American Historical Review* 46–67.

Ari Edward Gandsman, “Retributive Justice, Public Intimacies and the Micropolitics of the Restitution of Kidnapped Children of the Disappeared in Argentina” 6 (2012) *International Journal of Transitional Justice* 423–43.

[No class on Wednesday, 25 October 2023 due to the fall break.]

Session VIII [Wednesday, 1 November 2023]—The “post-communist world”

Kora Andrieu, “An Unfinished Business: Transitional Justice and Democratization in Post-Soviet Russia” 5 (2011) *International Journal of Transitional Justice* 198–220.

Władysław Bułhak, “In Search of Political Justice, 1939–2000: From the Main Commission for the Investigation of German Crimes in Poland to the Institute of National Remembrance” in *Political and Transitional Justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s*, ed. Magnus Brechtken, Władysław Bułhak, and Jürgen Zarusky (Göttingen: Wallstein Verlag, 2019), 179–93.

Kirsten Campbell, “The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia” 1 (2007) *International Journal of Transitional Justice* 411–32.

Boris Kagarlitsky, “Boris Berezovsky and the Triumph of Historical Justice” *Counterfire* (26 March 2013), available [here](#).

Session IX [Wednesday, 8 November 2023]—Canada

Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015), available [here](#), “Introduction”, “Commission Activities”, and “Calls to Action”.

Rosemary Nagy, “The Truth and Reconciliation Commission of Canada: Genesis and Design” 29 (2014) *Canadian Journal of Law and Society* 199–217.

Pamela Palmater, “Genocide, Indian Policy, and Legislated Elimination of Indians in Canada” 3 (2014) *Aboriginal Policy Studies* 27–54.

National Inquiry into Missing and Murdered Indigenous Women and Girls, *Supplementary Report—Genocide*, available [here](#).

Umut Özsu, “Genocide as Fact and Form” 22 (2020) *Journal of Genocide Research* 62–71.

Session X [Wednesday, 15 November 2023]—Memory

Jan-Werner Müller, “East Germany: Incorporation, Tainted Truth, and the Double Division” in *The Politics of Memory: Transitional Justice in Democratizing Societies*, ed. Alexandra Barahona De Brito, Carmen González-Enríquez, and Paloma Aguilar (Oxford: Oxford University Press, 2001) 248–74.

Omar G. Encarnación, “Reconciliation after Democratization: Coping with the Past in Spain” 123 (2008) *Political Science Quarterly* 435–59.

Dirk Moses, “The Canadian Museum for Human Rights: The ‘Uniqueness of the Holocaust’ and the Question of Genocide” 14 (2012) *Journal of Genocide Research* 215–38.

Arundhati Roy, “Intimations of an Ending” *The Nation* (13 January 2020), available [here](#).

Session XI [Wednesday, 22 November 2023]—Reparations

Thembele Kepe and Ruth Hall, “Land Redistribution in South Africa: Towards Decolonisation or Recolonisation?” 45 (2018) *Politikon: South African Journal of Political Studies* 128–37.

Zina Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice” 2 (2008) *International Journal of Transitional Justice* 266–91.

Benoit Mayer, “Climate Change Reparations and the Law and Practice of State Responsibility” 7 (2017) *Asian Journal of International Law* 185–216.

Adolph Reed Jr., “The Case Against Reparations” (2000) *The Progressive*, available [here](#).

Session XII [Wednesday, 29 November 2023]—Discussion of Research Papers

Session XIII [Wednesday, 6 December 2023]—Discussion of Research Papers

ACADEMIC ACCOMMODATIONS

Academic accommodation: You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please 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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

Religious obligation: Please 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, please [click here](#).

Academic accommodations for students with disabilities: 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). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

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 where 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/equity/sexual-assault-support-services>

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 will be provided to students who compete or perform at the national or international level. 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: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

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/>.

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. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>. For more information on academic accommodation, please 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/student-experience-resources/>.