

Course Outline

Course: **LAWS 4601 B - Transnational Law and Human Rights**

Term: **Winter - 2018**

Prerequisites: **One of LAWS 3503, 3602 or LAWS 4604**

Class: **Day & Thursdays 2:35pm – 5:25pm**

Time:

Room: **Please check with Carleton Central for current room location**

Instructor: **Professor Christiane Wilke**

Contact: **Office: D499 Loeb**

Office Hrs: **Mondays & Fridays 10-12 (drop-in, no appointment necessary)**

Email: **christiane.wilke@carleton.ca**

Course Description:

What do we do with human rights? How have human rights been mobilized on different scales and in relationship to different legal orders? How do rights claims in different registers respond to human suffering? In this course we will consider how human rights claims work with and against different legal orders, including international law, state laws, Indigenous laws, and municipal law. We will read about issues and struggles from South Africa, Canada, and Latin America as well as the transnational or de-nationalized spaces in the borderlands between Mexico and the US and between Africa and Europe. The issues include transnational litigation for human rights violations, the rights of migrants and refugees, enforced disappearances, and the right to water. We also consider the limits of human rights frameworks for expressing claims about justice and injustice: for example, we will read about the weaponization of nature against undocumented migrants in the Americas and Europe, and we will read about relationships between humans, water, and non-humans that complicate the divisions between the subjects and objects of human rights.

The course is interdisciplinary and doesn't presume familiarity with international human rights law and institutions. Students will gain familiarity with international human rights institutions; debates about human rights, universalism, and imperialism; indigenous rights and human rights; human rights and legal subjectivities; and knowledge production about human rights. Readings include scholarly writings as well as court decisions, legal documents, and human rights reports.

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/>

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*). **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.

More information on the University's **Academic Integrity Policy** can be found at:
<http://carleton.ca/studentaffairs/academic-integrity/>

Student Services: The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4th floor of MacOdrum Library or online at carleton.ca/csas

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 MATERIAL:

All materials will be available on cuLearn.

EVALUATION:

- **Presentation on class readings: 5%**
- **Attendance: 5%**
- **Participation: 5%**
- **Three critical response papers: 15% each (45% combined)**
- **Research paper: 40%**

- **Class format:** This is a seminar, and we will read texts that are open to a range of interpretations and critiques. Discussions will be essential in allowing us to see and understand some of these interpretations, their background contexts, and their implications.
- In order to focus and facilitate discussion, we will have **short class presentations** (5 min., worth **5 points**). A presentation should not summarize the text. Instead, the presenter has the choice of highlighting some issues in the text that they think are interesting to discuss. The presenter will not moderate the class discussion

- **Attendance policy:** regular attendance is the key to the success in seminar classes. **If you miss three or more classes, you probably have missed so much of the material and class discussion that you should consider withdrawing from the course. If you're in this situation, please come and see me.**
- Attendance marks: For full attendance marks, you will have to attend (or have a documented excuse for) twelve out of the thirteen classes. Every unexcused absence beyond the first one results in a reduction of the attendance mark by one point out of five. For example, if you miss three classes, your attendance mark is 3/5.

- **Critical Response Papers** are short essays that offer an argument about key issues from assigned readings. You choose which question raised in or by the readings you write about. This means that your paper might reference one of the readings assigned for the week, or all of them, or some of them. You choose a question and argument that addresses a major point raised in the readings. The goal is not to summarize the readings, but to provide a critical response to them. This should all fit in 5 pages (double-spaced). **Response papers are due at the beginning of the class for which the reading is assigned. Papers handed in during or after class are late and will not be accepted (no exceptions).** 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. You will still have to submit a hard copy after class.

- The first response paper has to be submitted no later than **January 30th**. The second response paper is due no later than **March 6th**. The third response paper is due no later than **April 10th**.
- **You cannot write a response paper on the same text that you are giving a presentation on. You cannot write more than one response per week.**

- The **research paper** challenges you to develop a more sustained argument in 12-15 double-spaced pages (20 pages for graduate students) based on readings from this class and outside research. The research paper is due on **Monday April 16th at 8:30am**. Over the course of the term, you will have to submit a **paper proposal (due March 20th)**. The proposal is not graded, but it is mandatory. I will not read

**research papers from students who have not submitted a proposal.
Late research papers will not be accepted without a documented emergency.**

The Schedule

Clarification on “recommended” readings: you are not expected to read these texts for the class. Consider these texts as a B-list of readings that did not quite make it on the list of officially assigned class readings. This means that the “recommended” section can be a great resource for your research papers.

Key to the abbreviations:

[C] – Course pack

[cuL] – cuLearn (online)

[B] – Book: Itamar Mann, *Humanity at Sea*

Week 1 – January 9th

Introduction

Week 2 – January 16th

Human Rights: Transnational Ideas and Practices

Boaventura de Sousa Santos, “Human Rights as an Emancipatory Script? Cultural and Political Conditions” in: Boaventura de Sousa Santos, ed., *Another Knowledge is Possible: Beyond Northern Epistemologies* (London & New York: Verso, 2007), 3-40. [C]

Sally Engle Merry, “Transnational Human Rights and Local Activism: Mapping the Middle,” *American Anthropologist* 108 (2006): 38-51. [cuL]

Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (New York: Cambridge University Press, 2016), 1-20. [B]

Recommended:

Costas Douzinas, *Human Rights and Empire: The political philosophy of cosmopolitanism* (Abingdon: Routledge/GlassHouse, 2007), 3-33.

Ratna Kapur, “Human Rights in the 21st Century: Take a Walk on the Dark Side,” *Sydney Law Review* 28 (2006): 665-687.

Week 3 – January 23rd**Histories and Theories of Human Rights**

Samuel Moyn, "A Powerless Companion: Human Rights in the Age of Neoliberalism," *Law and Contemporary Problems* 77 (2014): 147-169. **[cuL]**

Meredith Terretta, "'We Had Been Fooled into Thinking that the UN Watches over the Entire World,': Human Rights, UN Trust Territories, and Africa's Decolonization," *Human Rights Quarterly* 34 (2012): 329-360. **[cuL]**

Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (New York: Cambridge University Press, 2016), 21-55. **[B]**

Recommended:

Steven L.B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (New York: Cambridge University Press, 2016).

Thomas W. Lacqueur, "Mourning, Pity, and the Work of Narrative in the Making of 'Humanity,'" in Richard Ashby Wilson and Richard D. Brown, eds., *Humanitarianism and Suffering* (New York: Cambridge University Press, 2009), 31-57.

Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap/Harvard University Press, 2010).

Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (Oxford: Oxford University Press, 2012).

Week 4 – January 30th**The South African Truth and Reconciliation Commission: Truth, Justice, and Amnesty**

[Critical Response Paper #1 due no later than this week]

Richard Wilson, *The Politics of Truth and Reconciliation in South Africa* (New York: Cambridge University Press, 2001) 1-32. **[C]**

Mahmood Mamdani, "Amnesty of Impunity: A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)" *Diacritics* 32 (2002): 33-59. **[cuL]**

AZAPO v. South Africa, Constitutional Court of South Africa, Case 17/1996, para. 1-32. **[C]**

Recommended:

Tristan Anne Borer, "A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa," *Human Rights Quarterly* 25 (2003): 1088-1116.

Anna Greal, "Challenging Corporate 'Humanity': Legal Disembodiment, Embodiment, and Human Rights," *Human Rights Law Review* 7 (2007): 511-543.

Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal* 42 (2001): 201-245.

Week 5 – February 6th

Unfinished Business?

Rita Kesselring, *Bodies of Truth: Law, Memory, and Emancipation in Post-Apartheid South Africa* (Stanford: Stanford University Press, 2017), 23-76. [C]

Rosemary Nagy, "Postapartheid Justice: Can Cosmopolitanism and Nation-Building be Reconciled?" *Law & Society Review* 40 (2006): 623-649. [cuL]

United States District Court of the Southern District of New York, *In Re South African Apartheid Litigation*; Ntsebeza et al. v. Ford et al., 28 August 2014. Available at:

<https://www.khulumani.net/khulumani/documents/category/5-us-lawsuit.html> [C]

Ingrid Gubbay, "Lessons drawn from the Khulumani (Apartheid) Alien Torts Act (ACTA) case: an international law perspective." 19 February 2013. Available at:

<https://www.khulumani.net/khulumani/documents/category/5-us-lawsuit.html> [C]

Week 6 – February 13th

The Right to Truth: Bodies, Disappearances, Dignity & Knowledges

Patricia Naftali, "Crafting a 'Right to Truth' in International Law: Converging Mobilizations, Diverging Agendas?" *Champ penal/Penal field* XIII (2016); online: <http://champpenal.revues.org/9245>. [cuL]

Adam Rosenblatt, *Digging for the Disappeared: Forensic Science after Atrocity* (Stanford: Stanford University Press, 2015), 1-37. [C]

Mercedes Doretti, Carmen Osorno Solís and Rachel Daniell, "The Border Project: a regional forensic mechanism for the identification of missing migrants," in IOM, *Fatal Journeys*, Vol. 3, part I: *Improving Data on Missing Migrants* (Geneva: IOM, 2017), 99-117). Available at:

https://publications.iom.int/system/files/pdf/fatal_journeys_volume_3_part_1.pdf [C]

Recommended:

Reed Brody and Felipe González, "Nunca Más: An Analysis of International Instruments on 'Disappearances,'" *Human Rights Quarterly* 19 (1997): 365-404.

Alyson Brisk, "From Above and Below: Social Movements, the International System, and Human Rights in Argentina," *Comparative Political Studies* 26 (1993): 259-285.

Yasmin Naqvi, "The right to truth in international law: fact or fiction?" *International Review of the Red Cross* 88

(2006): 245-273.

Elizabeth Jelin, "Investigating what happened: On truth commissions in processes of transition," *International Sociology* (2016), 1-10.

Banu Bargu, "Sovereignty as Erasure: Rethinking Enforced Disappearances," *Qui Parle: Critical Humanities and Social Sciences* 23 (2014): 35-75.

Kathryn Sikkink, "Latin America's Protagonist Role in Human Rights," *Sur* 12 (2015): 207-215.

Week 7 – February 27th

Rights on the Move: Refugees, Migrants, and Rightlessness

Hannah Arendt, *The Origins of Totalitarianism* [1951] (New York: Harcourt, Brace & Co., 267-302. [C]

Liette Gilbert, "Immigration as Local Politics: Re-Bordering Immigration and Multiculturalism through Deterrence and Incapacitation," *International Journal of Urban and Regional Research* 33 (2009): 26-42. [cuL]

Ioannis Kalpouzos and Itamar Mann, "Banal Crimes against Humanity: The Case of Asylum Seekers in Greece," *Melbourne Journal of International Law* 16 (2015): 1-28. [cuL]

Recommended:

William Walters, "Migration, vehicles, and politics: Three theses on viapolitics," *European Journal of Social Theory* 18 (2015): 469-488.

Alison Mountz et al., "Conceptualizing detention: Mobility, containment, bordering, and exclusion," *Progress in Human Geography* 37 (2012): 522-541.

Sharon Pickering and Leanne Weber, "New Deterrence Scripts in Australia's Rejuvenated Offshore Detention Regime for Asylum Seekers," *Law & Social Inquiry* 39 (2014): 1006-1026.

Lauren L. Martin, "'Catch and Remove': Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice," *Geopolitics* 17 (2012): 312-334.

Nicholas De Genova, "The European Question: Migration, Race, and Postcoloniality in Europe," *Social Text* 128 (2016): 75-102.

Week 8 – March 6th

Migrants Deaths

[Critical Response Paper #2 due no later than this week]

Missing Migrant Project website: <https://missingmigrants.iom.int> [cuL]

Jason de León, *The Land of Open Graves: Living and Dying on the Migrant Trail* (Oakland: University of California

Press, 2015): 1-85. [C]

Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (New York: Cambridge University Press, 2016), 56-101. [B]

Week 9 – March 13th

Law and the Scope of Responsibility

Itamar Mann, "Maritime Legal Black Holes: Migration and Rightlessness in International Law," forthcoming in *European Journal of International Law*. [cuL]

Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (New York: Cambridge University Press, 2016), 163-186. [B]

Report of the UN Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, "[Unlawful deaths of refugees and migrants](#)" (15 August 2017). Online: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/335. [C]

Week 10 – March 20th

Indigenous Rights and Legalities

[Research Paper Proposal due no later than this week]

Karen Engle, "On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights," *European Journal of International Law* 22 (2011): 141-163. [cuL]

Jonas Perrin, "Legal Pluralism as a Method of Interpretation: A Methodological Approach to Decolonising Indigenous People's Land Rights under International Law," *Universitas: Revista de Ciencias Sociales y Humanas* 15 (2017): 23-60. [cuL]

Cesar A. Rodriguez-Garavito and Luis Carlos Arenas, "Indigenous Rights, Transnational Activism, and Legal Mobilization: The Struggle of the U'wa People in Colombia," in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito, eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (New York: Cambridge University Press: 2005. [C]

Recommended:

Jo M. Pasqualucci, "The Evolution of International Indigenous Rights in the Inter-American Human Rights System," *Human Rights Law Review* 6 (2006): 281-322.

Rebecca Tsosie, "Indigenous Peoples and Epistemic Injustice: Science, Ethics, and Human Rights," *Washington Law Review* 87 (2012): 1134-1201.

Week 11 – March 27th

Water: Laws, Knowledges

Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings* (Cambridge: Cambridge University Press, 2015), 29-66, 163-215. [C]

Coleen A. Fox et al., “‘The river is us; the river is in our veins’: re-defining river restoration in three Indigenous communities,” *Sustainable Science* 12 (2017): 521-533. [cuL]

Recommended:

Bronwen Morgan, *Water on Tap: Rights and Regulation in the Transnational Governance of Urban Water Services* (New York: Cambridge University Press, 2011).

Upendra Baxi, “Writing about impunity and environment: the ‘silver jubilee’ of the Bhopal catastrophe,” *Journal of Human Rights and the Environment* 1 (2010): 23-44.

Week 12 – April 3rd

Legalities of Water and Land in Turtle Island

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

Zoe Todd, “From a Fishy Place: Examining Canadian State Law Applied in the *Daniels* Decision from the Perspective of Métis Legal Orders,” *Topia* 36 (2016): 43-57. [cuL]

Zoe Todd, “Fish, Kin and Hope: Tending to Water Violations in *amiskwaciwâskahikan* and Treaty Six Territory,” *Afterall: A Journal of Art, Context and Enquiry*, no. 43 (2017): 102-107. [cuL]

Week 13 – April 10th

Conclusion

[Critical Response Paper #3 due no later than this week]

Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (New York: Cambridge University Press, 2016), 187-226. [B]

Boaventura De Sousa Santos, *If God Were a Human Rights Activist* (Stanford: Stanford University Press, 2015), 1-9. [C]

Recommended:

Angela Failler, “Hope Without Consolation: Prospects for Critical Learning at the Canadian Museum for Human Rights,” *Review of Education, Pedagogy, and Cultural Studies* 37 (2015): 227-250.

Heather Milne, “Human Rights and/or Market Logic: Neoliberalism, Difficult Knowledge, and the Canadian Museum for Human Rights,” *Review of Education, Pedagogy, and Cultural Studies* 37 (2015): 106-124.