

WESTERN UNIVERSITY
Department of Political Science

POL 9751b
TRANSITIONAL JUSTICE

Winter Term 2014
Wednesday 1:30-3:30 pm
Location: SSC 4255

Instructor: Dr. Cristina Badescu
Office Location: SSC 4097
Office Hours: Wednesday 3:30-5:00 pm
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Course Description

In this seminar course we discuss some of the leading controversies within the topic of transitional justice. Gross violations of human rights will be the reference point for a critical reflection on various transitional justice mechanisms. The twentieth century was often referred to as ‘the age of atrocity’, as it produced some of the bloodiest and most atrocious massacres in history. This was also the age in which mechanisms to deal with these crimes were systematically developed and implemented. Nonetheless, there is still significant debate about the efficacy and correctness of various kinds of mechanisms that have come into being to respond to atrocities. Apart from the various types of instruments, the results that each of these has been able to achieve also come under intense scrutiny.

The course seeks to critically examine a number of these mechanisms and instruments. They can be grouped into three broad categories, around which the course is structured: first, *retributive justice*, which encompasses the idea that those who perpetrate atrocities should be held accountable and punished, as criminals are; second, *restorative justice*, which emphasizes the overriding need to restore the possibility of a just and peaceful future, in the aftermath of atrocity; and, third, *restitutive justice*, which is centered on the idea that the victims of atrocity deserve compensation.

This course focuses on the conceptual framework surrounding the three approaches (retributive, restorative and restitutive), while also covering both historical and more contemporary uses of each, through the use of selected case studies. As such, the readings for each week blend theoretical accounts with historical discussions and critical assessments.

There is no text-book for this course. The weekly readings will be posted on the OWL site for the course, unless the links are provided in the course outline.

Important Notice re: Prerequisites/Antirequisites

Unless you have either the requisites for this course or written special permission from your Dean to enroll in it, you may be removed from this course and it will be deleted from your record. This decision may not be appealed. You will receive no adjustment to your fees in the event that you are dropped from a course for failing to have the necessary prerequisites.

Office of the Dean, Faculty of Social Science

Grade Distribution

Graduate Students

Essay (due April 2)	60%
Seminar Presentation	20%
Seminar Participation	20%

Essay

You will be required to write one term essay of 25-30 typed, double-spaced pages, or between 6250-7500 words. The topic of the paper may be selected from the list of topics provided below. The completed paper must be submitted **at the beginning of class on Wednesday, April 2, 2014. A late penalty of 10% per day will be applied to papers submitted at any point after the class commences on April 2.**

Essays must be submitted to Turnitin.com, using the link on WebCT/OWL, prior to the start of class on April 2.

Essay Topics:

Topic 1: Theoretical approaches

This essay topic asks you to focus on one or more of the theoretical approaches (retributive, restorative, restitutive) used in the course and to critically evaluate the approach(es) you select. You may choose to illustrate your points by use of a case study, where appropriate, although this is not required. You may consider only one approach, or you may compare and contrast different approaches.

Topic 2: Instrument or mechanism of justice after atrocity

This topic asks you to consider one instrument or mechanism that has been or may be used to promote some form of justice after atrocity and to evaluate its strengths and weaknesses, as well as provide an assessment of where it might best be used. You may choose to illustrate your points by use of a case study, where appropriate, although this is not required.

Topic 3: Case study of an instance of the use of one instrument or mechanism

This topic asks you to look at a specific use of one of the instruments of justice after atrocity, which has been used. By definition, therefore, in choosing this option, you will be looking at something which has already taken place. You are, however, asked to evaluate the mechanism and *not* the event. Therefore, you must also take care not to dwell on the event(s) itself, but rather to make the instrument or mechanism the focus of your essay.

Your paper will be graded for:

Content (50%)	Clarity of your research question, consistency of the central argument, relevance of the analysis, ability to synthesize material, and strength of your thesis
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Structure (20%)	General organization of your paper, and the quality of your introduction and conclusion
Research (20%)	The relevance and quality of your sources, and the argumentation based on the relevant literature
Style (10%)	Quality and consistency of the reference system, bibliography, grammar, and syntax

Seminar Presentation

Each week, a group of two or more students will present the main points and arguments of the case study as they relate to that week's main theme, also drawing on themes covered earlier in the term, to the class. Each presentation should be approximately 20 minutes in length, and must include a brief hand-out for students in the class that includes the main themes represented in the case study as well as questions for discussion. As the presentation is expected to be a joint project between the students involved, all students in the group will be graded together. Student presenters are expected to refer to material beyond that assigned to the class.

Seminar Participation

This assessment will be based on regular contributions to the class discussion, reflecting some grasp of the relevant materials and some analytical abilities in applying those materials in the discussion.

This is an upper-level seminar course where students are expected to come to class already having completed the readings each week and prepared with relevant questions and ideas in order to participate actively in general discussion and debate.

See the table below for criteria used to evaluate seminar participation:

Grade	Attendance	Discussion	Reading
5	Always	<u>Excellent</u> : offers analysis and comments; always has ideas on themes of reading; takes care not to dominate	Clearly has done and prepared questions on virtually all readings; intelligently uses this understanding and these questions in discussion
4	Almost always	<u>Very Good</u> : thoughtful comments and questions for the most part; willing, able and frequent contributor	Has done most readings; provides competent analysis of reading when prompted by others
3	Frequent	<u>Good</u> : has basic grasp of key concepts and occasional ideas on the main theme of the reading; arguments are sporadic and at times incomplete or poorly supported	Displays familiarity with most readings, but tends not to analyze them or to relate them to the course material
2	Occasional	<u>Somewhat Poor</u> : remarks in class marked by misunderstandings of key concepts; seldom contributes	Actual knowledge of material is outweighed by improvised comments and remarks

		effectively to discussion of main themes	
0-1	Rare	<u>Poor</u> : rarely speaks	Little or no apparent familiarity with assigned material

Academic Dishonesty

Many different types of actions may be considered academically dishonest. These might include, although not exhaustively, the following: cheating, submission of work not authored by you, double submission, fabrication, plagiarism. You are advised to familiarize yourself with the guidelines set out in the Handbook of Academic and Scholarship Policy. These may be found at the following url: <http://www.uwo.ca/univsec/handbook/appeals/scholoff.pdf>

Students with Disabilities

Any student with a disability is advised to contact the Coordinator for Services for Students with Disabilities in order that arrangements can be made through them to accommodate that student. The Centre for Student Development is located in UCC Suite 210; They can be reached by telephone at (519)661-2147, by email at ssc@sd.uwo.ca, or on the web at <http://www.sdc.uwo.ca/ssd/>

Other Resources

There are many resources at UWO designed to assist you in your learning. You are strongly advised to utilize these services. The Student Development Centre offers many services, including Effective Writing Programs and Learning Skills Services. The Student Development Centre is located in UCC Suite 210; they can be reached by telephone at (519)661-2147, by email at exams@sd.uwo.ca, or on the web at <http://www.sdc.uwo.ca/ssd/>. You should also become familiar with the services offered by the University Library System. The D.B. Weldon Library may be contacted by telephone at (519)661-3162 or by email at dbwref@lib.uwo.ca, or on the web at <http://www.lib.uwo.ca/weldon/#>.

Writing Style

Essays **must** be formatted using Chicago/Turabian style, with footnotes, not in-text citations. Students are advised to consult a writer's handbook when composing their essays in order to see how to format things like bibliography and footnotes. One such excellent handbook is *A Manual for Writers of Term Papers, Theses, and Dissertations* by Kate L. Turabian. A useful link may be found at the following url: <http://www.wisc.edu/writing/Handbook/DocChicago.html>.

As this is a graduate-level seminar, grammatical, spelling and other errors are not acceptable. You are responsible for your own work, and, as such, must be careful to proofread your work before turning it in.

Policy on Late Penalties

There is no grace period, unless you have been granted an extension. Reasonable extensions for the submission of papers can be granted for good reasons, which do not include exams in other classes or multiple assignments coming due at the same time (plan ahead in order to finish some of them early). Should you request an extension, please *do so in advance* if possible and provide relevant documentation. Please keep in mind that extensions are granted only under extreme circumstances, and you must show documentation of your reason for requesting an extension.

Course outline by topic:

Week 1: January 8 – Introduction

Distribution of syllabus; outline of topics to be covered, objectives of the course, student responsibilities, seminar presentations and class materials.

Week 2: January 15 – Three Categories of Justice

Neil J. Kritz, “The Dilemmas of Transitional Justice,” in *Transitional Justice*, Vol. III (Washington: United States Institute for Peace Press, 1995) xxi-xxxii.

Luc Huyse, “Justice”, in “*Reconciliation after Violent Conflict: A Handbook*”, eds. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003) 97-115.

Martha Minow, “Chapter 6: Facing History,” in *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998) 118-147.

I. Retributive Justice

Week 3: January 22 – Clarifying the Concept of Retribution

Trudy Govier, “Chapter 1: Revenge and Retribution,” in *Forgiveness and Revenge* (New York: Routledge, 2002) 1-22.

Martha Minow, “Chapter 3: Trials,” in *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998) 25-51.

Case Study: Nuremberg

David Luban, “Chapter 7: The Legacies of Nuremberg,” in *Legal Modernism* (Ann Arbor: The University of Michigan Press, 1994) 335-378.

Week 4: January 29 – International Crime

The Rome Statute of the International Criminal Court (1998), Articles 1-33, (available from <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>)

Richard Vernon, “What is Crime Against Humanity?” in *The Journal of Political Philosophy* 10.3 (2002): 231-249.

“Genocide Convention” (available from <http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=1507EE9200C58C5EC12563F6005FB3E5>)

Case study: International Criminal Court: Situation in Kenya

International Criminal Court, “Situation in Kenya,” (available from http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/Pages/situation%20index.aspx)

What’s in Blue? Insights on the work of the UN Security Council, “AU Request for ICC Deferral of Kenyan Situation” (available from <http://www.whatsinblue.org/2013/11/au-request-for-icc-deferral-of-kenyan-situation.php>).

Week 5: February 5 – Individual versus Collective Responsibility

Larry May, “Chapter 8: Prosecuting State Leaders for Crimes Against Humanity”, in *Crimes against Humanity: A Normative Account* (Cambridge: Cambridge University Press, 2005), 139-156.

Christopher Browning, “Chapter 18: Ordinary Men,” in *Ordinary Men* (New York: Harper Collins, 1998) 159-189.

Case study: My Lai Massacre

Stanley Bates “My Lai and Vietnam”, in *Individual and Collective Responsibility*, ed. Peter French (Rochester: Schenkman Books, 1972) 191-209.

Doug Linder, “An Introduction to the My Lai Courts-Martial,” Social Science Research Network, 2007 (available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1029398).

II. Restorative justice

Week 6: February 12 – Clarifying the Concept of Restorative Justice

Mark Freeman and Priscilla B. Hayner. “Truth-Telling”, in *Reconciliation after Violent Conflict: A Handbook*, eds. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003) 122-138.

Joanna R. Quinn, “Are Truth Commissions Useful in Promoting Restorative Justice?” in *Crosscurrents*, 4th ed., ed. Mark Charlton (Toronto: Nelson Canada, 2004).

Richard Ashby Wilson, "Challenging Human Rights as Restorative Justice," in *Crosscurrents*, 4th ed., ed. Mark Charlton (Toronto: Nelson Canada, 2004).

Case study: Uganda's Truth Commission

Joanna R. Quinn, "Constraints: The Un-Doing of the Ugandan Truth Commission," in *Human Rights Quarterly* 26.2 (May 2004): 401-427.

Week 7: February 19 – No classes (reading week)

Week 8: February 26 – Trials versus Truth Commissions

Darryl Robinson, "Serving the Interests of Justice", in *Bringing Power to Justice: The Prospects of the International Criminal Court*, eds. Joanna Harrington, Michael Milde and Richard Vernon (Montreal & Kingston: McGill-Queen's University Press, 2006) 210-243.

Martha Minow, "The Hope for Healing: What can Truth Commissions do?" in *Truth versus Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000) 235-260.

Priscilla Hayner, "Chapter 7: Truth versus Justice: Is it a Trade-Off?" in *Unspeakable Truths* (London: Routledge, 2002) 86-106.

Case study: South African Truth and Reconciliation Commission

Alex Boraine, "Truth and Reconciliation in South Africa: The Third Way" in *Truth versus Justice: The Morality of Truth Commissions*, eds. Robert Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000) 141-157.

Week 9: March 5 – Reconciliation, Forgiveness, Apology

Trudy Govier, "Chapter 8: Forgiveness and Reconciliation," in *Forgiveness and Revenge* (New York: Routledge, 2002) 141-157.

Michael Feher, "Terms of Reconciliation", in *Human Rights in Political Transitions: Gettysburg to Bosnia* (New York: Zone Books, 1999) 325-338.

Kathleen A. Gill, "The Moral Functions of an Apology", in *Injustice and Rectification*, ed. Rodney Roberts (New York: Lang, 2002) 111-129.

Case study: Rwanda's Healing Process after Genocide

Charles Mironko and Ephrem Rurangwa, "Post-Genocide Justice and Security Reform", in *Constructing Justice and Security after War*, ed. Charles Call (Washington DC: United States Institute of Peace, 2007) only 193-212.

Ervin Staub, "Justice, Healing, and Reconciliation: How the People's Courts in Rwanda can Promote Them", in *Peace and Conflict: Journal of Peace Psychology*, 10:1, (2004) 25-32.

III. Restitutive Justice

Week 10: March 12 - Framework and Context

Naomi Roht-Arriaza, "Reparations in the Aftermath of Repression and Mass Violence," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004) 121-139.

Conor McCarthy, "Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory", *The International Journal of Transitional Justice*, Vol. 3, 2009, 250–271.

Case study: Comfort women

Roy L. Brooks, "What Form Redress?" in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 87-91.

Karen Parker and Jennifer F. Chew, "The Jugun Ianfu System," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 95-100.

George Hicks, "The Comfort Women Redress Movement," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 113-125.

"Japan's Official Responses to Reparations," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 126-131.

Week 11: March 19 – Restitution

Elazar Barkan, "Chapter 12: Restitution for Slavery: Opportunity or Fantasy?" in *The Guilt of Nations* (Baltimore: The Johns Hopkins University Press, 2000) 283-307.

Richard Vernon, "Against Restitution," *Political Studies* 51 (2003): 542-557.

"UN: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power General Assembly Resolution 40/34 (Nov 29, 1995)," in *Transitional Justice*, Vol. III (Washington: United States Institute for Peace Press, 1995) 645-649.

Case study: Compensation claims for Nazi atrocities

Hubert Kim, "German Reparations: Institutionalized Insufficiency," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 77-80.

United States Department of Justice Foreign Claims Settlement Commission, "German Compensation for National Socialist Crimes: March 6, 1996," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 61-67.

Week 12: March 26 – Guest Lecture

*** Readings to be assigned by our Guest speaker ***

Week 13: April 2 - Concluding Discussion

Jon Elster, "Conclusion," in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster (New York: Cambridge University Press, 2006), 317-327.
United Nations Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 23 Aug. 2004, S/2004/616, (available from <http://www.refworld.org/docid/45069c434.html>)

***** Essays due at beginning of class *****