

CPO 5934 03: TRANSITIONAL JUSTICE

Thursday 11a-2:15p

Room: Bel 118

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Office Hours: Wednesday 3:30-5p, Thursday 9:30-11a, or by appointment

Course Objectives

Transitional justice encompasses the study of how societies deal with the legacies of violence and human rights abuses— e.g. how they punish those responsible, rehabilitate victims, heal deep social and ideological divisions, and remember (or forget) the past. There is a growing acceptance around the world that gross human rights violations and acts of mass atrocity must be addressed. A variety of mechanisms have been devised and employed with growing frequency in an attempt to provide some form of accountability. This course will draw upon the insights of the interdisciplinary transitional justice field to examine a range of conceptual, empirical, and ethical questions related to dealing with histories of conflict and repression. Specifically, we will consider: how transitional justice influences democratization processes; why countries deal with troubled pasts in different ways; the role of the international community in transitional justice processes; the tension between different conceptions of and demands for justice that exist at local, national, and international levels; and the moral bases for engaging in different forms of transitional justice. During the semester, we will study a range of transitional justice mechanisms including international tribunals, trials, amnesties, truth commissions, vetting procedures, and reparations. Throughout the course, students will critically examine the theories underlying transitional justice and explore case studies from around the world.

Course Requirements

The final course grade will be made up of six components that will be weighted as follows:

5% Attendance

10% Lead Class Discussion

30% Analysis of a Country's Experience of Conflict/Repression

45% Transitional Justice Plan

5% Annotated Bibliography

5% Presentation

Attendance

Given that this class is a seminar, we will spend much of our time engaged in group discussion. I expect you to contribute to the discussion. Therefore, you are required to have completed the reading and to be prepared to critically discuss it. Students who are prepared for class and contribute positively to the discussion will receive 100% for attendance. Should you be unprepared or absent, you will lose points accordingly. If you

are ill, observing a religious holiday, or participating in an official university activity, your absence will be excused if you provide appropriate documentation (please provide prior to the absence if possible).

Discussion Leadership

Once during the semester, you will be required to lead our class discussion. You will likely work with one or more classmates in this task. You will identify the key points and controversies in the readings. I will meet with you prior to class to help you develop your discussion points and outline for the class session. We will set up the schedule during the first week of class.

Conflict/Repression Analysis

For this assignment, you will examine a period of violence or repression in a particular country for which there are demands for transitional justice. The period of abuses may be ongoing or historical and may engulf all or part of a country. The country must not yet be actively engaged in transitional justice to deal with the abuses. The purpose of the assignment is to gain knowledge of a particular period of human rights abuses and a familiarity with accessing primary sources such as documents, reports, summaries, and resolutions. The International Center for Transitional Justice's monthly newsletter, *Transitions*, is a good source for ideas. Also, the United Nations, International Crisis Group, Human Rights Watch, and Amnesty International will likely be valuable, but these are not an exhaustive list of useful sources. Instructor approval of the topic is required.

You will write a five page analysis that provides an overview of the conflict/repression. The analysis should include details such as what is/was the nature of the violence, identifying the important actors, and highlighting their motivations and capabilities. The paper must be double spaced and printed or typed on 8.5 x 11 inch white paper. A title page is required and must contain the title, your name, the date, and the course number. You also must include a bibliography on a separate page at the end of the paper and include citations for the factual and conceptual content of your paper following a recognized citation format such as the American Psychological Association, American Economic Association, or American Political Science Association. If you have questions about proper citations, see me prior to turning in your paper. Failure to cite properly will result in a letter grade reduction for your total paper grade. The title page and bibliography do not count in the page count. The paper must be stapled in the upper left hand corner. Please use 11 or 12 point Times font. Although grammar and spelling will not be specifically penalized, they can reduce the clarity of your argument and result in a less professional final product.

Papers are due in class on February 10. Papers that are late will receive a reduction of one letter grade for each 24 hour period that they are late.

Transitional Justice Plan

In this assignment, you are to construct a transitional justice plan for the period of violence you researched for the first paper. The plan should be approximately 20 pages

long. An **annotated bibliography** is due in class on March 3. This will contain a list of the sources that you plan to use in your paper, a brief description of each source's content, and how you plan to use them. Your annotated bibliography should include books, articles, and web-based resources. This should be a broad review of the literature, which will allow me to make suggestions about the direction of your research. Aside from our library, the following are valuable resources:

- Brandon Hamber's Transitional Justice Bibliography:
<http://www.brandonhamber.com/resources-tjbibliography.htm>
- Andrew G. Reiter's Transitional Justice Bibliography:
<http://sites.google.com/site/transitionaljusticedatabase/transitional-justice-bibliography>

You also will prepare a 12 minute **presentation** on your research, which will be made in class on either March 31 or April 7 (we will set up the schedule later in the semester). In the presentation, you will provide an overview of the violence and outline your transitional justice plan to address the violence. Explain the basis for your recommendations.

The **final paper** is due in class on April 21. Refer to the instructions above for paper mechanics and for details on how late papers will be penalized.

Grading Scale

The grading scale for final grades are as follows: A, 92-100%; A-, 90-92%; B+ 88-90%; B, 82-88%; B-, 80-82%; C+, 78-80%; C, 72-78%; C-, 70-72%; D+, 68-70%; D, 62-68%; and F, below 60%.

Syllabus Change Policy

Except for changes that substantially affect implementation of the evaluation (grading) statement, this syllabus is a guide for the course and is subject to change with advance notice.

Florida State Honor Code

"The Florida State University Academic Honor Policy outlines the University's expectations for the integrity of student's academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process. Students are responsible for reading the Academic Honor Policy and for living up to their pledge to "be honest and truthful and . . . [to] strive for personal and institutional integrity at Florida State University." (Academic Honor Policy)

ADA Policy

Students with disabilities needing academic accommodation should:

(1) register with and provide documentation to the Student Disability Resource Center; and

(2) bring a letter to the instructor indicating the need for accommodation and what type. This should be done during the first week of class.

This syllabus and other class materials are available in alternative format upon request.

For more information about services available to FSU students with disabilities, contact the:

Student Disability Resource Center
874 Traditions Way
108 Student Services Building
Florida State University
Tallahassee, FL 32306-4167
(850) 644-9566 (voice)
(850) 644-8504 (TDD)
sdr@admin.fsu.edu
<http://www.disabilitycenter.fsu.edu/>

Required Texts

David Art, *The Politics of the Nazi Past in Germany and Austria* (New York: Cambridge University Press, 2006) ISBN-10: 0521673240

Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (New York: Cambridge University Press, 2004) ISBN-10: 0521548543

Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2010). ISBN-10: 0415806356

Rachel Kerr and Eirin Mobekk, *Peace & Justice: Seeking Accountability After War* (Cambridge: Polity Press, 2007). ISBN-10: 0745634230

Carlos Santiago Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996) ISBN-10: 0300077289

Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts After Communism* (New York: Vintage, 1996) ISBN-10: 0679744991

Other readings are available either online (I have included the urls) or via databases available through the library. To access the databases from home on Blackboard, click on FSU Libraries on the left menu. There are different search options, but one way to access is to select the Journal tab and search for the name of the journal in which the article appears. Select a database that has the appropriate date range. You also can search for the article title. Either way, you will be prompted to log in using your FSUID and password. Then browse for the correct issue. If you are unsure how to find, please consult me or a librarian well in advance of the due date.

Course Schedule

January 6 **Introductions**

January 13 **Defining Transitional Justice**

Reading Assignments:

- Boraine, Alexander L., “Transitional Justice: A Holistic Interpretation”, *Journal of International Affairs* 60:1, Fall 2006.
- McEvoy, Kieran, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice”, *Journal of Law and Society* 34:4, 2007.
- International Center for Transitional Justice, “What is Transitional Justice?” Available at <http://www.ictj.org/en/tj/>
- Kerr, Rachel and Eirin Mobekk. “Peace and Justice: An Introduction” *Peace & Justice: Seeking Accountability After War* (Cambridge: Polity Press, 2007).
- Kriger, Norma, “Traditional Justice as Socioeconomic Rights”, *Peace Review* 12:1, March 2000.
- United Nations Security Council. Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (S/2004/616) 3 August 2004. Available at <http://www.reliefweb.int/rw/lib.nsf/db900sid/SSHN-797F7P?OpenDocument>

January 20 **The Transitional Justice ‘Environment’**

Reading Assignments:

- Elster, Jon, *Closing the Books: Transitional Justice in Historical Perspective* (New York: Cambridge University Press, 2004). Chapters 4-9.

January 27 **International Tribunals**

Reading Assignment:

- Barrai, Lilian A. and Steven D. Roper, “How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR,” *International Journal of Human Rights* 9:3 (2005) 349-368.
- Cockayne, James, “The Fraying Shoestring: Rethinking Hybrid War Crimes Tribunals,” *Fordham International Law Journal* 28 (2004-5).
- Dickinson, Laura, “The Promise of Hybrid Courts,” *American Journal of International Law* 97 (2003).
- Humphrey, Michael. “International Intervention, Justice and National Reconciliation: The Role of the ICTY and ICTR in Bosnia and Rwanda.” *Journal of Human Rights* 2:4 (December 2003) 495-505.
- Kerr, Rachel and Eirin Mobekk. “Chapter 2: Ad Hoc International Tribunals: The ICTY and ICTR” and “Chapter 4: ‘Internationalized’ Courts” *Peace & Justice: Seeking Accountability After War* (Cambridge: Polity Press, 2007).
- Mose, Erik. “Main Achievements of the ICTR.” *Journal of International Criminal Justice* 3:4 (2005): 920-943.
- Nsanzuwera, Francois-Xavier. “The ICTR Contribution to National Reconciliation.” *Journal of International Criminal Justice* 3:4 (2005): 944-949.
- Saxon, Dan. “Exporting Justice: Perceptions of the ICTY Among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia.” *Journal of Human Rights* 4:4 (2005): 559-572.

February 3 **The International Criminal Court**

Reading Assignment:

- The Rome Statute of the International Criminal Court (United Nations, 1998). Available at <http://untreaty.un.org/cod/icc/statute/romefra.htm>
- Burke-White, William W., “Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice.” *Harvard International Law Journal* 49:1 (Winter 2008).
- Kerr, Rachel and Eirin Mobekk. “Chapter 3: The International Criminal Court,” *Peace & Justice: Seeking Accountability After War* (Cambridge: Polity Press, 2007).
- Kirsch, Philippe. “The International Criminal Court: Current Issues and Perspectives.” *Law and Contemporary Problems* 64:1 (2001): 3-12.
- Moreno Ocampo, Luis, “Impunity No More”, *The New York Times*, 9 July 2009.
- O’Callaghan, Declan (2008), “Is the International Criminal Court the Way Ahead?” *International Criminal Law Review* 8 (2008), 533–556.
- Waddell, Nicholas and Phil Clark. Eds. *Courting Conflict? Justice, Peace and the ICC in Africa*. (London: Royal African Society, 2008). Available at: http://www.royalafricansociety.org/index.php?option=com_content&task=view&id=415 Read Chapter 1 (7-12); Chapter 2 (13-20); Chapter 5 (37-45); Chapter 7 (55-64); Chapter 8 (65-72); Chapter 9 (73-80).

February 10 **Domestic Prosecution**

Reading Assignments:

- Nino, Carlos Santiago, *Radical Evil on Trial* (New Haven: Yale University Press, 1996).
- Kerr, Rachel and Eirin Mobekk. “Chapter 5: Domestic Trials” *Peace & Justice: Seeking Accountability After War* (Cambridge: Polity Press, 2007).

Conflict/Repression Analysis Due

February 17 **Truth Commissions**

Reading Assignments:

- Hayner, Priscilla B., *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2010).
- Kerr, Rachel and Eirin Mobekk. “Chapter 6: Truth Commissions” *Peace & Justice: Seeking Accountability After War* (Cambridge: Polity Press, 2007).

February 24 **Vetting**

Reading Assignments:

- David, Roman, “From Prague to Baghdad: Lustration Systems and their Political Effects,” *Government and Opposition* 41:3 (2006), 347-372.
- Rosenberg, Tina, *The Haunted Land: Facing Europe's Ghosts After Communism* (New York: Vintage, 1996).

March 3 **Reparations**

Reading Assignments:

- de Greiff, Pablo, “Repairing the Past: Compensation for Victims of Human Rights Violations.” and “Chapter 12 – Justice and Reparations.” In de Greiff, Pablo, ed. *The Handbook of Reparations* (New York: Oxford University Press, 2006). Available at

<http://www.oxfordscholarship.com/oso/public/content/politicalscience/9780199291922/to c.html>

- Guembe, Jose Maria, "Economic Reparations for Grave Human Rights Violations: The Argentinean Experience." In de Greiff, Pablo, ed. *The Handbook of Reparations* (New York: Oxford University Press, 2006). See also "Primary Documents: Argentina." Page 701-731.
- Roht-Arriaza, Naomi, "Reparations Decisions and Dilemmas," *Hastings International and Comparative Law Review* 27 (2003-2004): 157-220.

Annotated Bibliography Due

March 10 Spring Break

March 17 "Traditional" Approaches to Transitional Justice

Reading Assignments:

- Baines, Erin K. "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda." *The International Journal of Transitional Justice* 1 (2007): 91-114.
- Clark, Phil. "Hybridity, Holism and 'Traditional' Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda." *George Washington International Law Review* 39 (February 2008): 765-837.
- Huyse, Luc and Mark Salter. Eds. *Traditional Justice and Reconciliation After Violent Conflict: Learning from African Experiences* (Stockholm: IDEA, 2008). Pages 1-21, 61-84 (Mozambique), 123-148 (Sierra Leone), and 181-192. Available at http://www.idea.int/publications/traditional_justice/upload/Traditional_Justice_and_Reconciliation_after_Violent_Conflict.pdf
- Kerr, Rachel and Eirin Mobekk. "Chapter 7: Traditional Informal Justice Mechanisms" *Peace & Justice: Seeking Accountability After War* (Cambridge: Polity Press, 2007).
- Quinn, Joanna. "Social Reconstruction in Uganda: The Role of Informal Mechanisms in Transitional Justice." *Human Rights Review* 8:4 (2007): 173-190.

March 24 Amnesties and Amnesia

Reading Assignments:

- Bakker, Christine A.E. "A Full Stop to Amnesty in Argentina: The Simon Case." *Journal of International Criminal Justice* 3:5 (2005): 1106-1120.
- Battini, Michele, "Sins of Memory: Reflections on the Lack of an Italian Nuremberg and the Administration of International Justice after 1945", *Journal of Modern Italian Studies* 9:3 (2004).
- Bull, Anna Cento, "The Italian Transition and National (non)-Reconciliation", *Journal of Modern Italian Studies*, 13:3 (2008).
- Encarnación, Omar, "Reconciliation after Democratization: Coping with the Past in Spain", *Political Science Quarterly*, 123:3 (2008).
- Mallinder, Louise. "Can Amnesties and International Justice be Reconciled?" *International Journal of Transitional Justice* 1:2 (2007): 208-230.

March 31 **Student Presentations Part I**

April 7 **Student Presentations Part II**

April 14 **Development and Distributive Justice in Transition**

Reading Assignment:

- Arbour, Louise. "Economic and Social Justice for Societies in Transition." *N.Y.U. Journal of International Law and Politics* 40:1 (2007-2008): 1-27.
- Magaisa, Alex. "The Land Question and Transitional Justice in Zimbabwe: Law, Force, and History's Multiple Victims." Oxford Transitional Justice Working Paper Series (30 June 2010). Available online at: <http://www.csls.ox.ac.uk/documents/MagaisaLandinZimbabweRevised290610.pdf>
- Mani, Rama. "Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development." *International Journal of Transitional Justice* 2:3 (2008): 253-265.
- Miller, Zinaida. "Effects of Invisibility: In Search of the 'Economic' in Transitional Justice." *International Journal of Transitional Justice* 2:3 (2008): 266-291.
- Mvingi, Ismael. "Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies." *International Journal of Transitional Justice* 3.2 (2009): 163-182.

April 21 **Transitional Justice Across Generations**

Reading Assignment:

- Art, David, *The Politics of the Nazi Past in Germany and Austria* (Cambridge: Cambridge University Press, 2006).
- Horowitz, David "The Latest Civil Rights Disaster: Ten Reasons Why Reparations are a Bad Idea, and Racist, Too," *Salon* May 30, 2000, available at <http://www.salon.com/news/col/horo/2000/05/30/reparations>.
- Allen, Jr., Ernest and Robert Chrisman "Ten Reasons: A Response to David Horowitz," available at <http://www.umass.edu/afroam/hor.html>.

Transitional Justice Plan Due