

Transitional Justice 3001G
Studies in Transitional Justice and Post-Conflict Reconstruction

Winter Term 2018
Wednesday 2:30-5:30
Location: SSC 3014

Instructor: Sarah Nimigan
Office Location: SSC 4136
Office Hours: Wed. 11-12:30
E-mail: snimigan@uwo.ca

Course Description

This course explores issues inherent to regions facing the aftermath of large-scale events of social violence, including war, genocide, and authoritarian rule, with an emphasis on questions of justice and post-conflict reconstruction. Students will examine specific cases of recent attempts to establish just responses to conflict within affected communities.

Learning Objectives

The core learning objective of TJ 3001G is to help to better understand the practices of seeking justice in post-conflict settings. Transitional justice is an inherently interdisciplinary field of research and practice, which seeks to explain and achieve complex and dynamic case-specific goals. Students will be required to consider questions of what it means to introduce various mechanisms of justice in post-conflict settings. This will require critical analysis regarding (i) local, regional, and international approaches to transitional justice; (ii) transitional justice mechanisms such as trials, truth commissions, reparations, lustration, and apology, among others; (iii) gender and indigeneity; (iv) the utility and effectiveness of the transitional justice project; and (v) the future of transitional justice altogether.

Important Notice re: Requisites

The course will draw upon foundational transitional justice theory, particularly stemming from the material covered in Transitional Justice 2001F/G and bridge this theory with practical case studies.

Unless you have the requisites for this course or written special permission from the Director of Studies of the Centre for Transitional Justice and Post-Conflict Reconstruction, 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.

Grade Distribution

| | |
|---------------|------|
| Participation | 20%* |
| Essay | 45% |
| Exam | 35% |

*Participation

Students will be evaluated based on their substantive contribution during lecture and group discussion. Refer to the Participation Grading Guide attached to this course outline for more information regarding participation.

10% of the students' participation grade will be based upon the submission of weekly critical reflection papers. These reflection papers are to be based on the assigned readings but **not a summary**. The object and purpose of this component is to identify any questions/challenges/critiques raised by the assigned reading, which may be used to fuel productive discussion in class. Please note that a hard copy of the critical reflection is required to receive marks, e-mailed assignments will not be accepted: attendance is a requirement for participation.

Reading

Each week has required and additional reading(s). Students must complete all required readings for each week. Additional readings are recommended for further study, should the student be interested in the topic for the purposes of an essay, for example. Additional readings may be used for the purposes of weekly critical reflections, should the student be particularly interested in the topic and/or reading.

Essay

Students are required to write a research paper of 12-14 pages, or between 3000-3500 words (excluding bibliography). The paper should be written in Times New Roman, 12-point font, 1-inch margins.

For the research essay, students will choose from a list of topics/questions that will be provided on OWL. Students must formulate a clear argument, make logical and coherent claims, and support their reasoning with high-quality research.

The essay should rely on independent research outside of the assigned course material. Please employ books, academic journals, research journals, etc.

An essay proposal will be submitted in class on **February 28**. The proposal will outline your thesis statement and cursory arguments. Failure to submit the essay proposal will result in a 10% penalty to your final essay grade. The essay proposal is largely non-binding (i.e. your

arguments may change). However, your essay topic must remain the same.

Late Penalty

The completed paper is due at the **beginning of class on March 28. A late penalty of 10% per day will be applied to papers submitted at any point after the class begins on March 28.**

Students must submit a hard copy of their essay. Please do not e-mail the assignment. Extensions must be granted by academic accommodation, not by the instructor.

Turnitin

Essays must be submitted to Turnitin.com, using the link on OWL, prior to the start of class on March 28.

Citations

You must use footnotes whenever quoting or referencing someone else's work. If you do not use footnotes, or if you fail to give appropriate credit to an author, a penalty of -10% will be applied.

Citation Style

Students are required to use Chicago Style formatting for footnotes, and marks will be deducted for improper use. Students are encouraged to use a writer's handbook for questions related to the formatting of bibliography and footnotes.

See: Kate L. Turabian, *A Manual for Writers of Research Papers, Theses, and Dissertations*, 7th Edition. (Chicago: University of Chicago Press, 2007).

See also: <http://www.wisc.edu/writing/Handbook/DocChicago.html>

Spelling and Typing Errors

Please review your work carefully. Grammar, spelling, and typing errors will be penalized.

Proofreading is imperative to writing a successful essay. Excessive errors will result in a penalty of -10% to your overall essay grade.

Bibliography

You must attach a Bibliography to your essay. Failure to do so will result in a penalty of -10% to your overall essay grade. You must use a **minimum** of five academic sources. If you are unsure as to what counts as an academic source, consult a librarian for clarification (e.g. newspapers, magazines, encyclopedia do not count). Failure to include at least five academic sources will result in a grade of "F". The highest grades in this course typically go to students that have consulted a large number of high-quality source materials. Consulting more than ten sources is highly recommended.

Final Exam

During the April exam period, students will write a two-hour exam based on the material covered from the first day of class to the last day of class. Exam details will be provided in class and posted on OWL.

Completion of All Requirements

The Dean's office has laid out the following rules regarding the completion of all assignments:

- Students who fail to attend a minimum of fifty per cent of the total number of classes, without supporting medical documentation or justifiable and documented extenuating circumstances, can be barred from writing the final exam.
- Students who fail to complete all evaluation components of the course, without supporting medical documentation or justifiable and documented extenuating circumstances will be disqualified from appealing the course's final grade.

Etiquette

Discussion and debate is an important component of this course. However, at times, we will be dealing with sensitive and controversial topics. Therefore, our interactions in each forum must be guided by an ethic of respect. Uncivil, disrespectful, abusive or other inappropriate behaviour will not be tolerated. This includes the respectful use of electronics, described below.

Electronics

Electronics are increasingly an important component of the learning process.

- Computer/laptop/notebook (and similar technologies) use will be permitted during the lecture component of each class only, as long as it does not disrupt the learning experience of other students.
- All cellphones (and similar technologies) must be turned off during the duration of the class. The instructor reserves the right to ensure that you are not text-messaging, surfing the internet, or distracting other students; spot-checks will be conducted during class time.
- No digital taping (either voice or image) of the lectures is allowed.
- Disruptive behaviour will be dealt with on a case-by-case basis and may result in the suspension of laptop privileges.

Course Content Note

The field of transitional justice and post-conflict reconstruction deals with disturbing events like war crimes, crimes against humanity, and genocide, and sometimes we will be discussing historical events that some students may find troubling. If you think specific material could be emotionally challenging for you, I would be happy to discuss any concerns you may have before the subject comes up in class. And if you ever wish to discuss your personal reactions to course

material with the class or with me, I welcome these discussions as an appropriate part of our scholarly work.

If you ever feel the need to step out of the classroom during a class discussion, you may always do so without academic penalty. You will, however, be responsible for any material you miss. If you do leave the room for a significant time, please make arrangements to get notes from another student or see me individually to discuss the situation.

Academic Dishonesty

Many different types of actions may be considered academically dishonest. Scholastic offences are taken seriously and 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 Academic Handbook, Rights and Responsibilities, Scholastic Discipline – Undergrad available at: www.uwo.ca/univsec/pdf/academic_policies/appeals/scholastic_discipline_undergrad.pdf Students are also advised to utilize the Library's tools on plagiarism: <http://www.lib.uwo.ca/tutorials/plagiarism/index.html>

Support Services

Students who are in emotional/mental distress should refer to Mental Health@Western <http://www.uwo.ca/uwocom/mentalhealth/> for a complete list of options for obtaining help.

Students with Disabilities

Any student with a disability is advised to contact the Coordinator for Services for Students with Disabilities in order to make arrangements to accommodate the student. The Centre for Student Development is located in UCC Suite 210; they can be reached by telephone at (519)661-2174, by e-mail at ssc@uwo.ca, or online at <http://www.sdc.uwo.ca/ssd/>

Other Resources

There are many resources at Western designed to assist you in your learning. You are strongly encouraged 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 e-mail at exams@sdc.uwo.ca, or online at <http://www.sdc.uwo.ca/>. 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 e-mail at dbwref@lib.uwo.ca, or online at <http://www.lib.uwo.ca/weldon/#>.

Course Outline by Topic

January 10

Introduction

Overview; No assigned readings. Review your notes from TJ 2001F/Pol 2210F to begin thinking about transitional justice again.

January 17

What is Transitional Justice?

Required Readings:

United Nations Secretary General. S/2004/616. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 2004. Available from: <http://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>

Anja Mihr, "Chapter 1: An introduction to transitional justice." And Andrew G. Reiter, "Chapter 2: The development of transitional justice." In *An Introduction to Transitional Justice*, edited by Olivera Simic (Taylor and Francis, 2016). Available from: ProQuest Ebook Central, <https://ebookcentral-proquest-com.proxy1.lib.uwo.ca/lib/WEST/detail.action?docID=4748686>.

Additional Reading:

Rachel Kerr and Eirin Mobekk, "Chapter 1: Transitional/Post-Conflict Justice," in *Peace and justice: seeking accountability after war* (Cambridge: Polity, 2007).

January 24

Overarching Cross-Currents in Transitional Justice

Required Readings:

Jamie Rebecca Rowen, "We Don't Believe in Transitional Justice:" Peace and the Politics of Legal Ideas in Colombia." *Law & Social Inquiry* 42.3 (2017), 622-647.

Simon Robins, "Transitional Justice as an Elite Discourse," *Critical Asian Studies* 44.1 (2012), 3-30.

Additional Reading:

Arnaud Kurze, Christopher Lamont, Simon Robins, "Contested spaces of transitional justice: legal empowerment in global post-conflict contexts revisited," *The International Journal of Human Rights* 19.3 (2015), 260-276.

January 31

Victimhood, Identity, and Agency

Required Reading:

Marc Forget, "Chapter 4: Crime as Interpersonal Conflict: Reconciliation between Victim and Offender," in *Dilemmas of Reconciliation: Cases and Concepts*, edited by Carol A.L. Prager and Trudy Govier (Waterloo: Wilfred Laurier University Press, 2003), 111-137. E-Book available.

Kieran McEvoy and Kristen McConnachie, "Victims and Transitional Justice: Voice, Agency and Blame," *Social & Legal Studies* 22.4 (2013), 489-513.

Simon Robins, "An Empirical Approach to Post-Conflict Legitimacy: Victims' Needs and the Everyday," *Journal of Intervention and Statebuilding*, 7.1 (2013), 45-64.

February 7

Retributive Justice: Theoretical Background

Required Reading:

Rachel Kerr, "Chapter 3: International criminal justice," in *An Introduction to Transitional Justice*, edited by Olivera Simic (Taylor and Francis, 2016).

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

Gary Bass, "Chapter 1: Introduction," in *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, (Princeton: Princeton University Press, 2002), 3-36.

Additional Reading:

Jean Hampton, "The Retributive Idea," in *Forgiveness and Mercy*, edited by Jeffrie Murphy and Jean Hampton (New York: Cambridge University Press, 1988), 111-161.

February 14

Transitional Justice: the nexus of international human rights law and international criminal law at International ad hoc tribunals, domestic trials, and the International Criminal Court

Required Reading:

Madoka Futamura, "Introduction," in *War crimes tribunals and transitional justice: the Tokyo Trial and the Nuremburg legacy* (New York: Routledge, 2008).

Victor Peskin, "Beyond Victor's Justice? The Challenge of Prosecuting Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda," *Journal of Human Rights* 4.2 (2005), 213-231.

Janine Natalya Clark, "Peace, Justice and the International Criminal Court: Limitations and Possibilities," *Journal of International Criminal Justice* 9.3 (2011), 521-545.

Additional Reading:

Kim Christian Priemel, "Consigning Justice to History: Transitional Trials After The Second World War," *The Historical Journal* 56.2 (2013), 553-581.

Marlies Glasius, "What is Global Justice and Who Decides?: Civil Society and Victim Responses to the International Criminal Court's First Investigations," *Human Rights Quarterly* 31.2 (2009), 496-520.

Louise Mallinder, "Can amnesties and international justice be reconciled?" *International Journal of Transitional Justice* 2.1 (2007), 208-230.

February 28

Restorative Justice Approaches: Truth Commissions

Required Readings:

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

Martha Minow, "Making History or Making Peace: When Prosecutions Should Give Way to Truth Commissions and Peace Negotiations," *Journal of Human Rights* 7.2 (2008) 174-185.

William A. Schabas, "The Sierra Leone Truth and Reconciliation Commission," in *Transitional Justice in the twenty-first century*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 21-42.

Additional Readings:

Jennifer Llewellyn and Robert Howse, "Institutions for Restorative Justice: The South African Truth and Reconciliation Commission," *The University of Toronto Law Journal* 49.3 (1999), 355-388.

Fiona Ross, "On having Voice and Being Heard: Some after-Effects of Testifying Before the South African Truth and Reconciliation Commission," *Anthropological Theory* 3.3 (2003), 325-341.

ESSAY PROPOSAL DUE

March 7

Reparative Justice Approaches: Compensation, Apology, Memorial

Pablo De Grieff, "Introduction, Repairing the Past: Compensation for Victims of Human Rights Violations," in *The Handbook of Reparations*, edited by Pablo De Greiff (Oxford: Oxford University Press, 2006), 1-18.

Melissa Nobles, "Chapter 5: The Weight of History and the Value of Apologies," in *The Politics of Official Apologies* (New York: Cambridge University Press, 2008), 139-154.

Brandon Hamber, Liz Sevckenko and Ereshnee Naidu, "Utopian Dreams or Practical Possibilities? The Challenges of Evaluating the Impact of Memorialization in Societies in Transition," *The International Journal of Transitional Justice* 4 (2010), 397-420.

Additional Readings:

Rudi Teitel, "The transitional apology," in *Taking wrongs seriously: Apologies and reconciliation*, edited by Elazar Barkan and Alexander Karn (Stanford: Stanford University Press, 2006), 101-114.

UN Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (2005), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

The International Criminal Court, "Reparation/Compensation stage"
available from: <https://www.icc-cpi.int/Pages/ReparationCompensation.aspx>

Marieke Wierda and Pablo de Grieff, "Reparations and the International Criminal Court: A Prospective Role for the Trust Fund for Victims," (International Center for Transitional Justice, 2011), *available at:* <https://www.ictj.org/sites/default/files/ICTJ-Global-ICC-TrustFund-2004-English.pdf>

March 14

Combining Transitional Justice Mechanisms

Required Readings:

Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, "The Justice Balance: When Transitional Justice Improves Human Rights and Democracy," *Human Rights Quarterly* 32.4 (2010), 980-1007.

Donald L. Hafner and Elizabeth B.L. King, "Beyond Traditional Notions of Transitional Justice: How Trials, Truth Commissions, and Other Tools for Accountability Can and Should Work Together," *Boston College International and Comparative Law Review* 30.1 (2007), 91-110.

Alison Bisset, "Chapter 3: Coordinating truth commissions and criminal courts at the national level," in *Truth Commissions and Criminal Courts* (Cambridge: Cambridge University Press, 2012), 74-103. *E-Book*.

Additional Readings:

Roman David and Susanne Y.P. Choi, "Getting Even or Getting Equal? Retributive Desires and Transitional Justice," *Political Psychology* 30.2 (2009), 161-192.

Alex Schank, "Sectarianism and transitional justice in Syria: resisting international trials," *Georgetown Journal of International Law* 45.2 (2014), 557-587.

March 21

Local vs. International

Required Readings:

Patricia Lundy and Mark McGovern, "Whose Justice? Rethinking Transitional Justice from the Bottom Up," *Journal of Law and Society* 35.2 (2008), 265-292.

Laura Arriaza and Naomi Roht-Arriaza, "Social reconstruction as a local process," *International Journal of Transitional Justice* 2.2 (2008), 152-172.

Harvey M. Weinstein, Laurel E. Fletcher, Patrick Vinck, and Phuong N. Pham, "Chapter 2: Stay the Hand of Justice: Whose Priorities Take Priority?" in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* edited by Rosalind Shaw, Lars Waldorf, and Pierre Hazan (Stanford: Stanford University Press, 2010), 27-49.

Additional Readings:

Payam Akhavan, "Is Grassroots Justice a Viable Alternative to Impunity?: The Case of the Iran People's Tribunal," *Human Rights Quarterly* 39.1 (2017), 73-103.

Lorna McGregor, "International Law as a 'Tiered Process': Transitional Justice at the Local, National and International Level," in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* edited by Kieran McEvoy and Lorna McGregor (Oxford: Hart Publishing, 2008), 47-74.

March 28

Transitional Justice in Settler Societies: The Canadian Experience

Rosemary L. Nagy, "The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission," *The International Journal of Transitional Justice* 7 (2013), 52-73.

Courtney Jung, "Chapter 7: Canada and the Legacy of the Indian Residential Schools: Transitional Justice for Indigenous People in a Nontransitional Society," in *Identities in Transition: Challenges for Transitional Justice in Divided Societies* edited by Paige Arthur (Cambridge: Cambridge University Press, 2011), 217-250.

***ESSAY DUE TODAY**

April 4

Transitional Justice and Gender

Required Readings:

Susanne Buckley-Zistel and Magdalena Zolkos, "Introduction: Gender in Transitional Justice," in *Gender in Transitional Justice*, edited by Susanne Buckley-Zistel and Ruth Stanley (London: Palgrave Macmillan, 2012), 1-36.

Michelle Staggs Kelsall and Shanee Stepakoff, "'When We Wanted to Talk About Rape': Silencing Sexual Violence at the Special Court for Sierra Leone," *International Journal of Transitional Justice* 1.3 (2007), 355-374.

Julieta Lemaitre and Kristin Bergtora Sandvik, "Beyond Sexual Violence in Transitional Justice: Political Insecurity as a Gendered Harm," *Feminist Legal Studies* 22.3 (2014), 243-261.

Additional Readings:

Shana Tabak, "False Dichotomies of Transitional Justice: Gender, Conflict and Combatants in Colombia," *New York University Journal of International Law and Politics* 44.1 (2011), 103-164.

Ruth Rubio-Marín, "Chapter 2: The Gender of Reparations in Transitional Societies," in *The Gender of Reparations: Unsettling sexual hierarchies while redressing human rights violations*, edited by Ruth Rubio-Marín (Cambridge: Cambridge University Press, 2009), 63-120.

April 11

Power Sharing and Transitional Justice

Required Readings:

Stef Vandeginste and Chandra Lekha Sriram, "Power Sharing and Transitional Justice: A Clash of Paradigms?" *Global Governance* 17.4 (2011), 489-505.

Thomas Obel Hansen, "Kenya's power-sharing arrangement and its implications for transitional justice," *The International Journal of Human Rights* 17.2 (2013), 307-327.

EXAM REVIEW

ESSAYS

Grading Grid

| | |
|--|--|
| Argument | |
| Organization of the Essay | |
| Quality of evidence | |
| Communication Skills | |
| Use of quotations, footnotes or endnotes | |
| Other Comments | |
| Grade | |

STUDENT PARTICIPATION

Participation Grading Guide

| Grade | Attendance | Discussion | Reading |
|-------|---------------|---|--|
| 5 | Always | <u>Excellent</u> : leads debate; offers analysis and comments; always has ideas on theme of reading; takes care not to dominate; asks questions | 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; unwilling to ask questions | 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 marred by misunderstandings of key concepts; seldom contributes effectively to discussion of the main theme; often digresses in unhelpful ways; sporadic | Actual knowledge of material is outweighed by improvised comments and remarks |
| 0-1 | Rare | <u>Poor</u> : rarely speaks; parrots text or comments of others | Little or no apparent familiarity with assigned material |