

Course Outline

COURSE: LAWS 4603 B – Transitional Justice

TERM: Winter 2009

PREREQUISITES: Fourth-year Honours standing

CLASS: Day & Time: Friday 8:35 am-11:25 am
Room: LA B146 (Loeb)

INSTRUCTOR: Dr. Clinton Timothy Curle

CONTACT: Office: Loeb D582
Office Hrs: Monday 11:30-12:30, Thursday 10:30-11:30
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“Students with documented disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC at 613-520-6608, early each term to ensure that your Instructor receives your Letter of Accommodation no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by March 6, 2009 for April exams.” Also available at http://www.carleton.ca/pmc/faculty/acom_statement.html . For Religious and Pregnancy accommodations, please contact Equity Services, 613-520-2600 x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

Transitional justice is catch-phrase that describes a range of responses to systematic or widespread violations of human rights. Transitional justice is not a special form of justice, but rather justice adapted to societies transforming themselves after a period of pervasive human rights abuses. This approach emerged in the late 1980s and early 1990s in response to political changes in Latin America and Eastern Europe. There was a widespread call to address the systematic abuses of former regimes, but in a fashion that did not endanger ongoing political transformations. Since these changes were popularly called “transitions to democracy,” the term “transitional justice” was picked up as a label to describe this new multi-disciplinary field of inquiry.

As the field has developed, five primary interventions have come to the fore. In large measure these interventions set the parameters for transitional justice. The course is organized around these five responses to broad-scale rights violations. We will devote two classes to each intervention, first looking into the theoretical framework of the intervention, and then in the second class engaging in a case study of a specific application of the intervention. The five interventions are:

1. Criminal prosecutions

Judicial investigations of those thought to be responsible for past systemic human rights violations are one of the main legal vehicles for pursuing transitional justice. The focus is usually on the leaders rather than the rank-and-file authorities of the former regime.

2. Truth commissions

These commissions of inquiry investigate and report on recent past abuse. They are generally part of the new state's legal institutions, and are empowered to make recommendations to remedy past abuses and prevent their recurrence.

3. Reparation programs

These are state-sponsored initiatives to repair the material and moral harm of past rights violations. These programs typically seek to give symbolic as well as financial compensation to victims; e.g., a monetary benefit may be accompanied by an official apology.

4. Institutional reform

Post-trauma states often attempt to transform their military, police, judiciary and related state institutions from instruments of repression and corruption into instruments of public service and integrity.

5. Memorialization efforts

Public displays, such as museums and memorials, try to preserve the community's memory of "what happened" and raise moral consciousness about past abuses. They are constructed both to honour the victims and to forestall a recurrence of widespread rights violations.

While these initiatives are widely understood to form the basis for transitional justice efforts, they should not be regarded as a set of tools for "fixing" a "broken" state. The issues present in a post-trauma community are both complex and dynamic. Every context should be approached with sensitivity, flexibility, critical reflection (directed first at ourselves) and a commitment to listen. Some post-trauma communities have developed creative approaches to past abuse, which has helped the field of transitional justice grow in richness and diversity over the last two decades.

REQUIRED TEXTS

Martha Minow, *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998).

Ksenija Bilbija, Jo Ellen Fair, Cynthia Milton and Leigh Payne, eds., *The Art of Truth-Telling about Authoritarian Rule* (Madison: University of Wisconsin Press, 2005).

In addition, weekly readings will be assigned throughout the term according to the class schedule below. I will try to make most of these available through Web-CT.

EVALUATION

(All components must be completed in order to get a passing grade)

1. Participation 20%

This is a seminar course. Accordingly, all students are expected to not only attend class, but also to participate in an enthusiastic and informed manner in our class discussions. The assigned readings must be thoughtfully read prior to each class. The participation grade is based on attendance and quantity and quality of discussion contributions.

2. Text Presentation 10%

Each student will present one of the assigned readings to the class. This involves a verbal summary of the text, some reflections upon it, and two questions to launch our discussion. The best presentations are accurate, concise, thoughtful, interesting and thought-provoking. You will be graded on the content and delivery of the material as well as your discussion questions. Plan for a half-hour presentation including questions.

3. Class Quizzes 10%

To encourage class attendance and careful reading of texts, I will be administering several surprise quizzes over the course of the term. These quizzes will cover the readings for the day in question, be multiple-choice, and will be administered at the beginning of our class time.

4. Two Response Papers to *The Art of Truth-Telling about Authoritarian Rule* 20%

Students will submit **two** 3-4 page critical response papers to *The Art of Truth-Telling about Authoritarian Rule*. The

book consists of eight chapters. In each response paper I expect you to engage personally with *one* of the chapters, addressing *all* the articles in the chapter. Your critical responses will include but go beyond mere summaries or personal reactions and will be graded on clarity, focus, coherence, critique and argument. I am looking for close readings, analyses and articulations of the articles in the chapter. Try to make connections with what we are talking about in class. In preparing your response papers, ask the following questions:

- How does the chapter problematize the interventions discussed in class?
- Does the chapter expand your understanding of a key concept, theory or practice?
- How do the articles in the chapter harmonize or conflict with each other?
- What questions does the chapter leave you asking?
- Are there ideas in the chapter which you can develop further?
- What connection to other course texts can you make?

Each response paper is worth 10% of the final grade. Your first response paper is due **January 30, 2008**. Your second response paper is due **February 27, 2008**.

5. Term Essay 40%

A term essay of 10-12 pages is due **April 7, 2008**. You may write either a research paper or a philosophical essay, but your work must address one of the interventions discussed in the course. All students must submit their essay topics by email for my approval by **March 20, 2008**. Late essays should be handed in to the law department office, and will be penalized 5% per day based on the law department's date stamp on the essay.

SCHEDULE

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|-------------------|---|
| January 9 | <p>Introduction</p> <ul style="list-style-type: none"> – Minow chapters 1 & 2. |
| January 16 | <p>Criminal Trials I</p> <ul style="list-style-type: none"> – Minow chapter 3. – Trudy Govier, "Revenge and Retribution," in <i>Forgiveness and Revenge</i> (London: Routledge, 2002), 1. – Darryl Robinson, "Defining 'Crimes Against Humanity' at the Rome Conference" (1999) 93:1 <i>American Journal of International Law</i> 43. |
| January 23 | <p>Criminal Trials II - Argentina</p> <ul style="list-style-type: none"> – CONADEP, "Torture," in <i>Nunca Más: The Report of the Argentine National Commission on the Disappeared</i>, 1984. Stable URL: http://web.archive.org/web/20031013224507/nuncamas.org/english/library/neveragain/neveragain_014.htm – "Trial of Members of the Former Military Junta (Federal Appeals Court Decision)," in <i>Transitional Justice</i>, vol. III, Neil Kritz, ed. (Washington: United States Institute of Peace Press, 1995), 481. – Carlos Nino, <i>Radical Evil on Trial</i>, (New Haven: Yale University Press, 1996), 41-104. |
| January 30 | <p>Truth Commissions I</p> <ul style="list-style-type: none"> – Minow chapter 4. – Jonathan Allen, "Balancing justice and social unity: political theory and the idea of a truth and reconciliation commission" (1999) 49:3 <i>University of Toronto Law Journal</i> 315. – Mark Amstutz, "The Possibility and Promise of Political Forgiveness," in <i>The Healing of Nations: The Promise and Limits of Political Forgiveness</i> (Oxford: Rowman & Littlefield Publishers, 2005) 66. – *** RESPONSE PAPER #1 DUE *** |
| February 6 | <p>Truth Commissions II – South Africa</p> <ul style="list-style-type: none"> – Amnesty Hearing of A. Smuts (0056/96), TRC, Durban SA, August 12, 1996. Stable URL: http://www.doj.gov.za/trc/amntrans/durban/smuts.htm |

- Amnesty Committee Decision of David Petrus Botha, Adriaan Smuts and Eugene Marais (AC97/0053), TRC. Stable URL (scroll down for English):
http://www.doj.gov.za/trc/decisions/1997/970905_bothasmutsmarais.htm
- *Azapo v. the President of the Republic of South Africa*, (1996) South African Constitutional Court CCT 17/96 (summary). Stable URL:
<http://41.208.61.234/uhtbin/cgiisirs/20081201003756/SIRSI/0/520/S-CCT17-96>
- Lyn S. Graybill, "Pursuit of Truth and Reconciliation in South Africa" (1998) 45 *Africa Today: a Quarterly Review* 103.
- Tristan Anne Borer, "A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa" (2003) 25 *Human Rights Quarterly* 1088.

February 13 **Reparation Programs I**

- Minow chapter 5.
- Lisa Magarell, "Reparations in theory and Practice" (2007) International Center for Transitional Justice, Reparative Justice Series. Stable URL:
<http://www.ictj.org/static/Reparations/0710.Reparations.pdf>
- Pablo de Greiff, "The Role of Reparations in Transitions to Democracy," Carnegie Council on Ethics and International Affairs, Achieving Global Justice Seminar Series, May 6, 2004. Stable URL:
http://www.cceia.org/resources/articles_papers_reports/4980.html/res/id=sa_File1/4980_Greiff_Reparations_and_Democracy.pdf

February 20 **Reading Week – NO CLASS**

February 27 **Reparation Programs II – Japan**

- Roy L. Brooks, "What Form Redress?" in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999), 87.
- 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.
- 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.
- "Japan's Official Responses to Reparations," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999), 126.
- *** RESPONSE PAPER #2 DUE ***

March 6 **Institutional Reform I**

- Office of the UN High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States. Vetting: An Operational Framework* (HR/PUB/06/5), 2006.
- United Nations Development Program, "Security Sector Reform and Transitional Justice: a crisis post-conflict programmatic approach," 2003. Stable URL:
www.undp.org/cpr/documents/jssr/ssr/UNDP_2003_JSSR_Approach.doc
- Ruti Teitel, "The Rule of Law in Transition," in *Transitional Justice* (Oxford: Oxford University Press, 2000), 11. Available in "My-I-Library" through the Carleton University Library website.

March 13 **Institutional Reform II – Sierra Leone**

- Mohamed Gibril Sesay & Charlie Hughes, "Human Rights Assistance to Sierra Leone," in *Promoting Democracy in Postconflict Societies*, Jeroen De Zeeuw & Krishna Kumar, eds., (London: Lynne Rienner Publishers, 2006), 151.
- J. 'Kayode Fayemi, "Governing Insecurity in Post-Conflict States: the Case of Sierra Leone and Liberia," in *Reform and Reconstruction of the Security Sector*, Alan Bryden, Heiner Hänggi, eds. (Geneva: DCAF, 2004).

March 20 **Memorialization Efforts I**

- Judy Barsalou and Victoria Baxter, "The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice," The United States Institute of Peace, Stabilization and

- Reconstruction Series no. 5, January 2007.
- Sebastian Brett, Louis Bickford, Liz Ševčenko, and Marcela Rios, “Memorialization and Democracy: State Policy and Civic Action,” a report based on the international conference of the same name, held June 20–22, 2007, in Santiago, Chile.
 - Daniel Abramson, “Make History, not Memory: History’s Critique of Memory” (1999) 9 Harvard Design Magazine 1.

March 27 **Memorialization Efforts II – Ireland**

- Brandon Hamber, “Public Memorials and Reconciliation Processes in Northern Ireland,” Paper presented at the “Trauma and Transitional Justice in Divided Societies Conference,” Airlie House, Warrington, Virginia, USA, March 27-29, 2004.
- Sara McDowell, “Armalite, the ballot box and memorialization: Sinn Fin and the state in post-conflict Northern Ireland” (2007) 96:393 *The Round Table* 725.

April 3 **Course Review**

- Minow chapter 6.

April 7 ***** Term Essay due *****