Transitional Justice is an emerging field of policy, practice, and study that focuses on the moral, legal, and political dilemmas encountered as individuals, communities, and nations attempt to grapple with historical legacies of war crimes, crimes against humanity, genocide, and other large-scale human rights violations. In such circumstances: Who must be punished and who may be pardoned? Do vigorous efforts to promote legal accountability jeopardize the emerging and fragile peace? What is the proper role and responsibility of the so-called international community in such circumstances? In this class, we will examine the complementarity and conflict between the often overlapping demands that nations face in the wake of large-scale human rights abuses, including retribution, reconciliation, restitution, memory, and other forms of accountability. This will include study of the traditional range of transitional justice tools and interventions that have evolved, including international tribunals from Nuremberg to the ICC, truth commissions, reparations programs, public memorials, vetting and lustration initiatives, and broader institutional reform. Along the way, we will probe the blind spots, assumptions, and limitations of varying transitional justice mechanisms, together with the transitional justice project in general.

Course Goals

This course will examine the range of possible legal, institutional, and policy frameworks that have been marshaled in an attempt to respond to large-scale human rights atrocities. Students are introduced to a series of debates and discussions surrounding the modalities and effectiveness of such interventions. The complexity of actors and influences in the transitional justice process—local, national, and international—will be highlighted, along with lessons learned from past initiatives. Students will be introduced to the tensions between the different articulated goals of transitional justice interventions, and will have an opportunity to apply this knowledge by working in teams on particular case studies.
Learning Objectives:

1. Analyze the range of options—legal, policy, and institutional—that are available to communities and policy makers in order to respond to massive human rights violations in the midst of or in the wake of conflict. Identify those factors in a particular context—whether political, historic, military, socio-economic, governance, organizational or institutional—that have served to shape or constrain the range of options for intervention that are available.

2. Evaluate the tradeoffs, tensions, and debates that surround the choice between different intervention options. Evaluate the various levels at which transitional justice interventions can or need to take place, including the possibly complementary or contradictory roles to be played by local, national, and international actors.

3. Articulate theories about the relationship (or lack thereof) between transitional justice interventions and longer-term peace, stability, and development.

4. Continue to analyze and evaluate research from the field, so as to foster their own learning and that of others who are committed to being more effective in their work.

Please Note:  This syllabus is a road map to get us started, not a final contract carved in stone! The instructor reserves the right to alter requirements and/or course content throughout the semester based on his assessment of student needs and attainment of learning objectives.

COURSE REQUIREMENTS

(0) Participation & Attendance (Not a percentage of your grade, but read carefully)

Your participation in the classroom is essential to the success of this course. All reading assignments are to be completed PRIOR to our class each session. I will regularly “cold-call” students to ask them questions about the readings. Be prepared! You are expected to thoroughly prepare for and actively engage in discussions, role-plays, debates, and other activities. This means you need to talk, ask questions, and debate issues. Please make sure you express informed opinions about the subject matter. Ask questions based on your knowledge of the readings, agreeing or disagreeing with the viewpoints of our authors. Evaluation of your participation will be based on the quality of your interventions, not quantity alone. Please note that missing more than one class will negatively affect your participation assessment. You are expected to be in class a few minutes before the start of class so that we may all begin on time with no interruptions.
I will not assign you a letter grade for participation. However, those with multiple absences, who regularly arrive late, or who fail to participate in class may have their final grade in the class as a whole knocked down somewhat. Those who make valuable contributions to class that demonstrate preparedness and reflection may have their final grade bumped up somewhat. Please note that participation is about quality, not just quantity.

1. **Group Research Presentation: (15%)**

Prior to session four, students will be divided into four groups of approximately three students each. Each group will be tasked with conducting research into the context and controversies surrounding the ICC’s involvement in a particular African country: Sudan, Uganda, Kenya, Cote d’Ivoire. Your basic task is to explain to your fellow students during our fourth session: (1) what historical conditions triggered the ICC’s involvement; (2) why and how the ICC became involved in your assigned country; (3) why ICC involvement has created controversy; (4) whether any lessons can be drawn from the experience with regards to ICC involvement in new country situations going forward. Your presentation should take **20 min, including Q and A.**

When I grade oral presentations, I am generally assigning points based on:

- **(A)** Whether the presentation provided a generally well-prepared and cogent overview of the topic (approximately 60% of the points)
- **(B)** Whether the presenter exemplified good presentation skills, not mumbling, making eye contact, not speaking too quickly, etc. (approximately 30% of the points)
- **(C)** Whether the presentation showed creativity, or was especially thoughtful or thought provoking. (approximately 10% of the points)

2. **Group Research Presentation (35%)**

Students will team up in six groups of 2 students each (one group may need to have three students though) to carry out research into a transitional justice theme or topic. Ideally, research presentations should introduce fellow students to a topic—a country, regional, or cross-cutting theme—not otherwise thoroughly covered in class. Students should choose a topic in consultation with the instructor to make sure that it is acceptable, and that it does not replicate another group’s presentation. The presentation should provide background and context to the transitional justice issue you are analyzing, including the political, historic, military, socio-economic, governance, organizational or institutional issues that have changed/evolved/developed over time to contribute to the existence of the current situation. The presentations should do more than present information, but should take and argue a position, while giving your audience enough information to disagree with you. The presentation should tie the subject of your analysis to the broader theoretical issues in the course, but should also be pragmatic in the sense that it attempts to extract policy recommendations for transitional justice initiatives in the future. The findings should represent a consensus among the group or alternative perspectives may
be presented. The presentation will be **40 minutes followed by 15 minutes of questions and answers.** Most students in the past have used powerpoint and other multimedia to help animate your presentation. Please remember that while good powerpoint can be a helpful learning tool, bad powerpoint can be really awful.

3. **Final Take-Home Exam (50%)**

Immediately following the last session of class, I will email students a final, take-home exam. The exam will contain a series of questions that will ask you to write thoughtful, but concise (word limited) answers. Some questions might be answered in a paragraph, while others will likely require short essays. Answering questions will not require research outside of the readings and discussions we will have done (though it is not prohibited), but will require you to synthesize and evaluate some of the big-picture questions and critiques of transitional justice that we have discussed all semester. The paper will be due one week after I send it out via e-mail. However, word limits for each question will be tight enough that it will certainly not take you that long to write it! Please spend a lot more time thinking than writing.

The best answers will demonstrate an engagement with the required or recommended readings. You may cite the readings based on a style guide of your own choosing (APA, Bluebook, Chicago Manual of Style, etc).

**Course Readings**

This is a reading-intensive graduate seminar class, with an average of 110 pages of reading per session. The readings are not drawn from textbooks, but from (at times) dense legal, policy, and academic documents. Make no mistake, doing the readings is a serious commitment, but also an investment that will pay dividends as the semester unfolds. For many students, the readings are the richest and best part of this course. If you try to get by on classroom discussions alone, you will miss much of the depth of the course. You will also find it harder to do well on the final exam. Classroom discussions will not be used to summarize the readings, but to debate them and discuss the strengths and weaknesses of the arguments they present. I do occasionally “cold call” students to ask them questions about the readings, and I do so on the assumption that you have taken the time to read them. You have been forewarned!

Readings will be found either in the various textbooks listed below, or on USD blackboard website: https://ole.sandiego.edu. You will need to check blackboard for each class in order to download readings not found in the various course books, or the hypothetical scenarios we will sometimes use as the basis for in-class debates. On occasion, I will e-mail additional brief news clips or other readings for certain sessions.
Required Texts (To purchase, at campus bookstore or via Amazon, etc):

- **MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE** (Beacon Press 1998).

**NB—Readings below are coded as follows:**

CB = Readings from one of the purchased course books listed above  
BB = Readings available on the USD Blackboard website.
PART I: INTRODUCING TRANSITIONAL JUSTICE

Session 1 (Jan 27): “Transitions” and “Transitional Justice”

What is “transitional justice” and how is it different from ordinary justice? Justice for whom, by whom, and for what? Why should states rising from the ashes care about justice given all of the other problems they are facing? What are their different policy options for dealing with the past? In what ways do different types of transitions affect the possibilities for and modalities of transitional justice? Is justice an end in itself, or only a vehicle for transition?

Readings:

• Neil Kritz, The Dilemmas of Transitional Justice, in TRANSITIONAL JUSTICE, pp. xxi-xxxii. (CB)
• Areyeh Neier, What Should be Done about the Guilty?, in TRANSITIONAL JUSTICE, pp.172-83. (CB)
• Guillermo O’Donnel and Philippe C. Schmitter, Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies, in TRANSITIONAL JUSTICE, pp. 57-64. (CB)
• Samuel P. Huntington, The Third Wave: Democratization in the Late Twentieth Century, in TRANSITIONAL JUSTICE, pp. 65-81. (CB)

Recommended Readings:


Hypothetical case study for in-class discussion: When you finish the readings above, please read “Regime Change in Whazaristan.” As you read the hypo, try to think a bit about what the different constituencies and stakeholder groups might consider to be an acceptable set of transitional justice mechanisms, and how these ideas might accord or conflict with each other in the context of a post-conflict political settlement. We will discuss the hypo toward the end of class. The hypothetical will be found on Blackboard. Modified versions of this hypo will appear in future sessions. In those cases, make sure to read the updated version of the hypo, not the one for this early session.

Vocabulary terms with which to familiarize yourself prior to class:

• Consequentialist/Utilitarian ideas about justice and deontological ideas about justice.
• Quick and dirty difference between “Civil and political rights” and “Economic and social rights”
• Quick and dirty difference between “International human rights law,” “International humanitarian law,” and “International Criminal Law”

There won’t be a quiz, and you don’t need to devote a lot of time to this as we will develop our ideas about some of these terms over the course of the semester. But it will be helpful if you do a brief review of any terms that might be unfamiliar to you.

Assignment for session two: Prepare for structured debate on the Nuremburg tribunal.
PART II: PROSECUTIONS AND RETRIBUTIVE JUSTICE

Session 2 (Feb 3): War Crimes Tribunals & Nuremberg

Who can be prosecuted and who must be protected? Is following orders ever a defense? What are the trade-offs between criminal and non-criminal sanctions? What international and domestic factors made the Nuremberg Trials possible? What is “victors’ justice” and what relationship does it have to building rule of law and settling accounts with the past? To reconcile the past, what alternative existed to trials, and particularly trials administered by the Allied Powers? In what ways do you think Nuremberg created a valuable precedent for future international trials and courts? In what ways has it become a problematic case for reconciling the past?

Readings:

• Martha Minow, Trials, in BETWEEN VENGEANCE AND FORGIVENESS, pp 25-51. (CB)
• Otto Korchheimer, Trial by Fiat of the Successor Regime, in TRANSITIONAL JUSTICE, pp. 350-74). (CB)
• Carl Jaspers, The Question of German Guilt, in TRANSITIONAL JUSTICE, pp. 157-171. (CB)
• Major William Parks, Command Responsibility for War Crimes, in TRANSITIONAL JUSTICE, pp. 456-458. (CB)
• GARY BASS, STAY THE HAND OF VENGEANCE: THE POLITICS OF WAR CRIMES TRIBUNALS, Chapter 2 (pp.147-205) (CB)

Class Activity: Structured debate on Nuremberg

Assignment: Prepare for structured debate on the merits of the ICTY and ICTR.
Session 3 (Feb 10): Ad Hoc International Tribunals: the ICTY, ICTR, and the Legacy of Nuremburg

When and how should international organizations or foreign governments become involved in addressing the past? What purpose are modern-day war crimes tribunals supposed to serve, and how well do they go about serving their goals? What do international court processes and decisions mean on the local level? Do they help to build domestic rule of law? Do they provide citizens with the sense that justice has been served?

Readings:

- Gary Bass, Stay the Hand of Vengeance: The Politics of War Crimes Tribunals, Chapter 6 (pp. 206-275) (CB)
- Alison des Forges and Timothy Longman, Legal Responses to Genocide in Rwanda, in My Neighbor, My Enemy, pp. 49-68. (CB)

Class Activity: Structured debate on the merits of the ICTY and ICTR.

Assignment: Prepare for your group ICC presentations next session.
Session 4 (Feb 17): The ICC and its Controversies

Has the Africa-heavy emphasis of the Court thus far impacted its credibility? Does the work of the Court have the capacity to derail peace processes? Should the United Nations Security Council freeze indictments?

Note: this session assumes that you have some basic familiarity with the ICC. If you did not take the International Human Rights class last semester, you are urged to review the “recommended readings” below.

Required Readings:


Recommended Readings:


Class Activity: Country Case Studies on the ICC in Africa: Student groups will present the context and controversies surrounding the ICC involvement in the following countries:

• Sudan
• Uganda
• Kenya
• Cote d’Ivoire

Following the presentations, we will hold a discussion on the future of the ICC in Africa in light of the various case studies presented.

Assignment: Prepare for debate on merits of Gacaca.
Session 5 (Feb 20) FRIDAY SESSION: The Global, the Local, and the “Hybrid”

Are the needs and goals of the international justice movement the same as the local communities affected by conflict? What level of international involvement in truth commissions and trials is acceptable and helpful? When does such involvement distort justice itself or derail domestically centered processes of change? What about hybrid mechanisms? What kind of balance between local, national and international mechanisms is appropriate?

Readings:

- Dustin Sharp, *Dilemmas of the Global and the Local in Transitional Justice* (BB)
- IRIN, “Jury Still out on Effectiveness of Gacaca Courts,” June 23, 2009 (BB)

Optional Reading:


Activity: Debate on merits of Gacaca.

PART III: BEYOND RETRIBUTIVE JUSTICE

Session 6 (Feb 24): Truth Commissions

Does establishment of the “truth” constitute “justice”? Should punishment and prosecutions necessarily accompany the process? Is it useful to think of things in terms of a “right” to truth? How is it that the South African TRC became the model for export throughout the world? Are there reasons to question the relevance of the South African model to other contexts?

Note: this session assumes that you have some basic familiarity with the truth commissions. If you did not take the International Human Rights class last semester, it is highly recommended that you review with “recommended readings” below.

Readings:

• Alex Boraine, Truth and Reconciliation in South Africa, in TRUTH V. JUSTICE, pp 141-157 (BB)
• Jonny Steinberg, Liberia’s Experiment with Transitional Justice, 109 AFRICAN AFFAIRS 136 (2009) (BB)
• Pricilla B. Hayner, UNSPEAKABLE TRUTHS, pp. 145-162, 182-194 (CB)
• Dermot Groome, The Right to Truth in the Fight Against Impunity, 29 BERKELEY JOURNAL OF INTERNATIONAL LAW 175 (2011) (BB) (skim)

Recommended Readings:

• Pricilla B. Hayner, UNSPEAKABLE TRUTHS, pp. 1-44, 91-109 (if you did not read it last semester) (CB)
• Reed Brody, Justice: The First Casualty of Truth?, NATION, Apr. 30, 2001 (BB
• ROSALIND SHAW, UNITED STATES INSTITUTE FOR PEACE, RETHINKING TRUTH AND RECONCILIATION COMMISSIONS; LESSONS FROM SIERRA LEONE, Special Report 130 (2005).

Class Activity: Structured debate on Truth v. Justice. The debate will be based on a slightly modified version of the “Regime Change in Whazaristan” hypothetical. Please read the modified version and prepare accordingly. It can be found on Blackboard.

Assignment: Prepare for structured debate on reparations for US slavery.
Session 7 (March 10): Reparations

When do truth, apologies, and retributive justice fail to suffice? How far back must we look to settle accounts with the past? Do decedents of those directly injured deserve compensation? Do apologies for things like slavery, colonization, and Galileo suffice? What more should be done?

Readings:

• Martha Minow, Reparations, in BETWEEN VENGEANCE AND FORGIVENESS, pp 91-117. (CB)
• Naomi Roht-Arriaza, Reparations in the Aftermath of Repression and Mass Violence, in MY NEIGHBOR, MY ENEMY, pp. 121-139. (CB)
• Roy Brooks, What Form Redress?, in WHEN SORRY ISN’T ENOUGH, 87-91. (CB)
• Karen Parker and Jennifer Chew, The Yugen Ianfu System, in WHEN SORRY ISN’T ENOUGH, 95-100. (CB)
• George Hicks, The Comfort Woman Redress Movement, in WHEN SORRY ISN’T ENOUGH, 113-125. (CB)
• Japan’s Official Response to Reparations, in WHEN SORRY ISN’T ENOUGH, 126-134. (CB)
• Guardian.co.uk, “Japan rules out new apology to ‘comfort women’,” March 5, 2007. (BB)
• Japanese American Internment Articles, in WHEN SORRY ISN’T ENOUGH, 157-204. (CB)
• Andrew Vails, Racial Justice as Transitional Justice, 36 POLITY 53, 53-71 (BB)
• VOA News, “In Zimbabwe, Controversy Still Accompanies Land Re-Distribution,” October 23, 2009 (BB)

Class Activity: Structured debate on reparations for slavery.
Session 8 (March 13) FRIDAY SESSION:
Beyond Tribunals and Truth Commissions

Beyond tribunals and truth commissions, what other forms of remembrance, ritual, and reconciliation serve the aims of transitional justice? What is the role of official or unofficial, formal or informal memorials and monuments, days of commemoration, public apologies by governments or perpetrators, and forgiveness encounters between victims and their perpetrators orchestrated by religious groups or therapeutic communities? Are these restorative justice efforts capable of satisfying and even replacing the demand for retributive justice? When and how? What kinds of restorative justice mechanisms, and under what conditions, prove most and least effective in settling accounts with the past?

Readings:

- Martha Minow, Facing History, in BETWEEN VENGEANCE AND FORGIVENESS, pp 118-147. (CB)
- Explore Fambul Tok website: http://www.catalystforpeace.org/fambultok/
- Timothy Longman and Theoneste Rutagengwa, Memory, Identity, and Community in Rwanda, in MY NEIGHBOR, MY ENEMY, pp. 162-182. (CB)

Assignment: Prepare for structured debate on amnesties for human rights violations.

Student Group Presentation: Group 1

Is there a case to be made for settling accounts through blanket amnesties and without any truth-telling or criminal process? When might amnesties succeed, and how would we measure that success? What are the costs and benefits of such a strategy? Is there a duty to punish under international law?

Readings:

• Pricilla Hayner, *Leaving the Past Alone*, in *UN SPEAKABLE TRUTHS*, pp. 195-209. (CB)
• Miklos Biro et al, *Attitudes Toward Justice and Social Reconstruction in Bosnia and Hergovina and Croatia*, in *MY NEIGHBOR, MY ENEMY*, pp. 183-205. (CB)
• The duty to punish debate, in *TRANSITIONAL JUSTICE*, pp. 375-438 (CB)

Student Group Presentation 2

Assignment: Prepare for debate on “thick” v. “thin” concepts of transitional justice.

Session 10 (March 24) – Student Group Presentations: Groups, 3, 4, 5
PART IV: BOUNDARIES AND LIMITATIONS OF “THE FIELD”

Session 11 (March 27) FRIDAY SESSION: Transitional Justice and the Economic

How do existing transitional justice mechanisms serve to address the underlying conditions of conflict? Should transitional justice initiatives take a “narrow” view of the problem, looking only to justice for violent crimes committed during a conflict? Or should they take a “broad” view and attempt to serve justice for violations of social and economic rights and other structural issues that led to the conflict in the first place? How would taking a broader view of the problem represent a departure over previous “generations” of transitional justice interventions? Would this be the work of “transitional justice” or part of “development”?

Readings:


Recommended Readings:


Class Activity: Structured debate on “thick” v. “thin” concepts of transitional justice. One side will argue a broader approach to transitional justice that includes economic issues, and the other side will argue for a narrower, more traditional approach to transitional justice that excludes economic issues. We will use the “Regime Change in Whazaristan” hypo as a fact pattern. Please re-familiarize yourself with it prior to class.

*** Second Spring Break ***
Session 12 (April 7): Transitional Justice and Gender

To what extent have transitional justice mechanisms adequately accounted for the gendered-dimensions of conflict? To what extent have they been “part of the problem?” How has the field of international law more generally helped set the stage for some of these blindspots? Does the “feminist critique” of transitional justice suggest the need for significant changes to the field? If so, what should be done going forward?

Readings:

- Pricilla B. Hayner, *Unspeakable Truths*, pp. 85-90 (CB)

Final Student Group Presentation: Group 6

Course Evaluations: because this will be the last session at which I can guarantee 100% attendance, we will need to do our course evaluations a bit early.
Session 13 (April 14): Transitional Justice and (Liberal) Peacebuilding

Does TJ lead to longer-term “rule of law”? If so, how, and what kind of rule of law? What, if anything, is the exact contribution of transitional justice initiatives to “peace”? To what extent should transitional justice initiatives be designed to work in tandem with other elements of post-conflict reconstruction like DDR and SSR? What is the critique of “liberal international peacebuilding”? To the extent that you find that critique troubling, is TJ part of the problem?

Readings:

- Thomas Carothers, The Rule of Law Revival, FOREIGN AFFAIRS 77, no. 2 (March/April 1998) (BB)
- Augustine Park, Peacebuilding, the Rule of Law and the Problem of Culture: Assimilation, Multiculturalism, Deployment, 4 JOURNAL OF INTERVENTION AND STATEBUILDING 413 (2010) (BB)
- Brian Tamanaha, Alternative Rule of Law Formulations Chart (BB)

Assignment: Prepare for “the future of transitional justice” debate for final class.

Class Debate: Students will be assigned to two sides, with one side arguing that TJ is, at base, a project of Western liberal post-conflict governance with neo-colonial undertones. The other side will argue that the picture is more nuanced, and that it is too simplistic to say it's a Western Liberal imposition. Because attendance at this session may be quite limited, we may do this as a group brainstorming session, trying to flesh out both sides of the argument together, rather than as a formal debate.
Session 14 (April 21): Taking Stock and Looking Forward: Is There a Need to Rethink Transitions and Transitional Paradigms?

In looking at the UN Secretary General’s 2010 Guidance Note, how much institutional uptake has there been of historic critiques and challenges? Even with some of the progress that has been made, is there a more fundamental need to rethink the utility of “transitions” paradigm altogether? Does it make sense to talk about TJ in consolidated democracies, in cases of transitions to new forms of authoritarianism, or where there has been no transition at all? Is there any empirical evidence that TJ as it has been understood thus far “makes a difference”?

Readings:
- Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice (March 2010) (BB)
- Abdullahi An-Na’im, Editorial Note: From the Neocolonial ‘Transitional’ to Indigenous Formations of Justice, 7 INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE 197 (2013) (BB)
- Thomas Obel Hansen, Transitional Justice: Toward a Differentiated Theory, 13 OREGON REVIEW OF INTERNATIONAL LAW 1 (2011) (skim to get central points) (BB)

Recommended Readings:
- Dustin Sharp, Interrogating the Peripheries; The Preoccupations of Fourth Generation Transitional Justice, 26 HARV. HUM. RTS. J. 149 (2013). (BB)

Final Debate: Students will be assigned to two sides, “Transitional Justice Optimists” and “Transitional Justice Pessimists” and asked to debate the future of transitional justice. Because class size may well be quite limited, we may do this as a group brainstorming session, trying to flesh out both sides of the argument together, rather than as a formal debate.