

DRAFT – August 17, 2020

**KROC 572/LWIC 590
Transitional Justice (3 Units)
Fall Semester 2020**

*Meets regularly on Wednesdays from 9:05 to 11:55
and
Two Fridays (Sept 18, Oct 16) from 13:00 to 15:50*

Sessions will be conducted via ZOOM.¹ Passcode = peacefrog

**Dr. Dustin N. Sharp
dsharp@sandiego.edu
KIPJ 274, 619-260-7807**

Office Hours via Zoom:
Mondays from 14:30 to 16:30
Tuesdays from 12:30 to 15:30

Course Description

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 Nuremburg 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.

Learning Objectives

¹ And in KIPJ 249 if Covid conditions ever allow.

DRAFT – August 17, 2020

1. Analyze the moral, legal, political, and institutional frameworks associated with transitional justice theory and practice.
2. Identify how the “justice” of transitional justice overlaps or fails to overlap with broader and diverse concepts of ethics, peace, justice, and, crime.
3. Create and defend reasoned arguments for and against varied understandings of transitional justice both orally and in writing.
4. Using research from the field and comparative analysis of the limitations and blindspots of historic transitional justice practice, articulate a vision for where transitional justice theory and practice should be changed in the future.

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.

Academic Integrity: As part of this class, you are required to read USD’s academic integrity policy: http://home.sandiego.edu/~kaufmann/USD_academic_integrity.html. I am also requiring all students to familiarize themselves with what plagiarism means and take this quiz: <http://library.sdsu.edu/guides/tutorial.php?id=28>. It is your job to understand what plagiarism means. Violations of USD’s academic integrity policy will be dealt with harshly. I will use turnitin.com on your assignments. This means that if you plagiarize, I will catch it, and you will be sanctioned.

Course Requirements

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

Your participation in the (Zoom) classroom is essential to the success of this course. **You are expected to participate in all of our Zoom sessions synchronously.** 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. **You are expected to be in class/Zoom a minute or two early before the start of class so that we may all begin on time with no interruptions.**

1. Short Case-Study Presentation: (15%)

During sessions **four** and **six** of the class, we will spend about half of each class listening to four case study presentations. This means we will need a total of eight presentations. Based on enrollments, these will need to be done in groups of 2-3. Each group will be tasked with conducting research into the context and controversies surrounding either a particular ICC intervention (session 4), or a particular truth commission (session six).

For the ICC case studies (Sudan, Uganda, Kenya, Cote d’Ivoire): your basic task is to explain to your fellow students: (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 **12 min.**

For the truth commission case studies (Argentina, Canada, Liberia, Tunisia): your basic task is to (1) provide some basic context into why and how the truth commission was established; (2) highlight any unique or stand-out features of the truth commission in question; (3) address whether the truth commission existed alongside other transitional justice mechanisms; (4) assess whether you think the truth commission in question was a “success” and why; (5) address whether any lessons can be drawn from the experience for future truth commission around the world. Your presentation should take **12 min.**

Please **pre-record your video group presentation** using software of your choice and then upload it to YouTube (or another site) so that it can be played for the class as a whole during our class time together using a screen share. Please religiously respect the 12-min time limit for your recording, which will leave us with a little bit of Q&A time for each presentation.

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. Long Group Research Presentation (35%)

Students will team up in 8 groups of 2-3 students each 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 should be **35-40 minutes**.

You will need to record your video presentation using software of your choosing and then post a link to your presentation in the dedicated message board section of the course blackboard page. Please create a new thread for each presentation so that we can have a separate discussion space for each one. **Your group’s video should be posted on or before October 20.**

In addition to presenting, to get a grade on the assignment all students in class are required to watch all of the presentations. Each student needs to post at least 3 substantive (200+ word) responses to your fellow students’ presentations offering feedback, comment, praise, and critique. To be clear, this does not mean that you need to comment on each presentation; only that you respond to three of them. Ideally, this will generate some back-and-forth online discussion. All of your comments should be posted **on or before November 17**. I will not be grading your comments individually, but

you will not get a grade for the video presentation assignment if you haven't posted your comments. Please note that some of our Zoom sessions together have either been shortened or eliminated to give you time to watch and comment on presentations.

3. Final Assignment (50%)

Option A: Take-Home Exam (default option)

Immediately following the last session of class, I will email students a final, take-home exam. The exam will consist of one or two “big picture” questions that will ask you to write thoughtful, but concise (word limited) answers. 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 central questions and critiques of transitional justice that we have discussed all semester. The paper will be due two weeks after I send it out via e-mail (On December 2). However, word limits 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. Please cite sources based on a style guide of your own choosing (APA, Bluebook, Chicago Manual of Style, etc). I do not have a preference on which guide you use so long as you are consistent. **Please e-mail your reports to me in .doc/docx format (not .pdf. or a Google Docs link). The title of your file should follow this pattern: Jane Doe TJ Exam.docx**

OPTION B: Research Paper (opt-in required)

MAPJ students looking to fulfill the substantial written work requirement for the MAPJ Portfolio may elect to do a final research paper in lieu of the final take-home exam. This option is also open to non-MAPJ students looking to develop an idea or get more practice doing academic writing.

Your final paper should be a minimum of 5000 words and should not exceed 10,000 words, which is the limit for most professional journals. (All word counts are inclusive of references). Please use your word count function to make sure you stay within the 5000-10,000 word range. Please note that this is an opt-in assignment: you need to tell me you are choosing the research paper option BEFORE I send out the final exam to the class, and ideally you will have talked to me during office hours about your idea well before that.

Research papers must relate to a transitional justice/international criminal law topic, broadly construed. If there are any doubts about the suitability of your topic, please run

DRAFT – August 17, 2020

it by me before you do too much work on it. You should also make sure that your research paper **has a central point, thesis, or argument, clearly set forth early on in the paper.** Do not simply “describe” or “explore” a problem! The reader should very easily be able to complete the following sentence within the first couple of pages: “In this paper, the author argues X and Y.” The best papers also tend to **find a problem or puzzle and something to say about it that is actually interesting.** While I do not expect you to say something completely original, arguments should go beyond some version of “Genocide/violence against women/etc is bad and needs to stop.”

Errors of grammar, spelling, etc, will count against you. It is recommended that you proofread very carefully. You should cite the readings and other materials based on a recognized style guide of your choosing (APA, Chicago, Blue Book, etc). This means that you are free to use footnotes, endnotes, in-line citations, etc., based on the style guide you choose.

Research papers are **due to me at any time on or before December 2.** Because you can turn it in any time before the due date, this means you do not have to wait until the end of our time together to turn your paper in. If you want to avoid pressure towards the end of the semester, consider doing your paper earlier on. The deadline will not be extended.

I am happy to meet with you in office hours as many times as you find helpful to talk about your thesis, paper structure, trouble shoot problems, offer suggestions, etc. I do not review rough drafts. That said, if you are doing this for the MAPJ Portfolio, you can expect to do a round of revisions of the final paper that you do turn in.

Please e-mail your reports to me in .doc/docx format (not .pdf. or a Google Docs link). The title of your file should follow this pattern: Jane Doe TJ Research Paper.docx

To Summarize the Assignments and their Due Dates

Assignment	Due Date
ICC Case Study Presentations	In class on Sept 18
Truth Commission Case Study Presentations	In class on Sept 30
Long Group Research Presentations	Oct 20
Comments to Long Group Research Presentations	Nov 17
Final Assignment	Dec 2

A Word on Group Projects

As you will notice above, some of your grade will be based on group work with other students. I do this for a number of reasons. First, because in the “real world” of practice,

it is my experience that most work is inevitably group work, with all of the good and bad that comes with it. Second, having you all to work together on projects allows you to get to know each other, which tends to make for better classroom discussions. Finally, learning to teach and present is a skill that frightens a lot of people, but which is incredibly useful across a range of jobs. In the past, some students have expressed a frustration that they would rather listen to me talk than their fellow students. Please take this as a challenge to demonstrate professionalism and subject mastery. You are in effect co-teachers of the class and the more you all put into these presentations, the more we will all get out of it. For the most part, you will all be getting the same grade for your group presentations. This means that you are all responsible for the quality of the powerpoint slides, etc. The one exception is that if a particular student is a really weak presenter, their final grade might be somewhat lower than those in the group who were strong presenters.

A Note on 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.

Zoom Rules & Etiquette

I have posted USD’s Zoom Rules for Students on the BlackBoard site. Please read them. I would also highlight the following:

To preserve the feeling of a small, interactive seminar, **you are expected to participate in all of our Zoom sessions synchronously**. If you are unable to connect to Zoom on your computer due to technical difficulties, you can always try doing so on your

DRAFT – August 17, 2020

phone/tablet, and in the worst case, our sessions will have a call in number so that you can at least join via audio.

Please be aware that our sessions together will be recorded for later viewing (from the Panopto folder on Blackboard), or for those unable to participate synchronously due to illness. To protect the privacy of students, students themselves are prohibited from making their own recordings of class sessions, from taking screenshots of class sessions, and from sharing recordings with anyone not in the class. Doing so may be considered a USD Code of Conduct violation.

To facilitate communication, community building, and engagement, please leave your camera on during our sessions, and try to look at the camera when speaking so that we can have some semblance of eye contact. If you need to temporarily turn the camera off due to a disturbance on your end or to go to the bathroom, that is of course fine. Please also try to be present for your session together and avoid the temptation to multitask by checking email and so on.

Please leave your microphone muted until you want to speak. To signal your desire to speak, you can raise your virtual hand, your physical hand, or send me a note in the chat box saying you want to speak. I want to keep our sessions as interactive as possible, so if I miss your signal, please try again.

Professional Courtesy and Conduct

This is a professional degree program, and you are expected to treat your classmates and professors professionally – after all, they will shortly be your colleagues in the peacebuilding field. Nowhere will this be more important than in our discussions. The latter are intended to be helpful, and you are encouraged to critique the ideas of your peers and professors in respectful, constructive, and professional terms.

In our interactions, please try to keep the **Charity Principle** in mind: When listening to a speaker, interpret ambiguous statements in the most generous and least offensive way possible. Do not seek to take offense for the sake of occupying a moral high ground, or look for the most nefarious possible interpretation of what they have said. In responding to arguments, always “steel man” (or “steel woman”) the argument in question rather than responding to a “straw man” version of that argument. That is, even if an argument was not articulated as well as it could have been, try to respond to the strongest possible version of that argument that could have been made. You will find that your own arguments will be all the stronger and more persuasive for it. Try also to adopt a posture of **intense curiosity**, making the goal more to *understand* your classmate’s position than to win a debate. Remember that to truly understand someone’s argument does not mean you have to agree with it. Finally, it is a lot easier to learn from others if you adopt a posture of **intellectual humility**, remembering the

importance of questioning everything you think you know, and avoiding the seductions of final answers and absolute certainty.

A Note on Class Scheduling & Friday Sessions

The Law School operates on a different calendar than all of the other graduate programs at USD, starting earlier and ending earlier than everyone else. This class is cross-listed between the Law School and the School of Peace Studies, which creates calendar conflicts. The only way to make the cross-listing work while maintaining the required number of contact hours is to schedule several Friday sessions in addition to our normal Wednesday sessions. In effect, this makes for a compressed, somewhat intense semester as we will be doing all of our fourteen sessions together between Sept 2 and Nov 18. To be clear, the Friday sessions are not bonus, optional, or extra sessions, but simply what we need to get the required number of contact hours together. We will be meeting no more or less than a regular class.

Use of Office Hours

It has been one of my great joys and privileges as a professor that I teach small classes and really get to know my students well. Because we will not be meeting in person for the time being, I would especially encourage you to schedule one-on-one time with me during office hours so we can chat. You do not need to have some kind of cosmic question about an assignment to do so. I enjoy just hearing a bit about you and getting to know you as a human being. On a more pragmatic level, it's also a lot easier for me to write letters of recommendation for students I was able to get to know a bit outside the formality of the classroom.

Required Texts to Purchase

- TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES, VOLUME I. GENERAL CONSIDERATIONS (Neil Kritz ed., United States Institute of Peace 1995)
- GARY JONATHAN BASS, STAY THE HAND OF VENGEANCE: THE POLITICS OF WAR CRIMES TRIBUNALS (Princeton University Press 2000).
- MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE (Beacon Press 1998).
- MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY (Eric Stover and Harvey M. Weinstein eds., Cambridge University Press 2004).
- PRISCILLA HAYNER, UNSPEAKABLE TRUTHS: FACING THE CHALLENGE OF TRUTH COMMISSIONS (Routledge, 2nd edition, August 25, 2010)
- DUSTIN SHARP, RE-THINKING TRANSITIONAL JUSTICE FOR THE 21ST CENTURY: BEYOND THE END OF HISTORY (Cambridge University Press, 2019).

NB--Readings below are coded as follows:

DRAFT – August 17, 2020

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 (Sept 2): “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:

- Dustin Sharp, “Chapter 1 - Introduction: Transitional Justice Foundations,” in RE-THINKING TRANSITIONAL JUSTICE FOR THE 21ST CENTURY: BEYOND THE END OF HISTORY (Cambridge: Cambridge University Press, 2018). (CB)
- Guillermo O’Donnell 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*, in TRANSITIONAL JUSTICE, pp. 65-81. (CB)
- United Nations Secretary General, “The Rule of Law and Transitional Justice in Post-Conflict Societies,” UN Doc. S/2004/616 (August 23, 2004). (BB)

Recommended Readings:

- Kathryn Sikkink, Introduction, in THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS, pp 1-28. (BB)
- Paige Arthur, *How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 HUM. RTS. Q. 321, 321-367 (2009) (BB)

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.

DRAFT – August 17, 2020

Vocabulary terms with which to familiarize yourself prior to class:

- Distributive Justice, Retributive Justice, Restorative Justice, Procedural Justice, Substantive Justice, Social justice.
- 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 (Sept 9): War Crimes Tribunals & Nuremburg

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)
- GARY BASS, STAY THE HAND OF VENGEANCE: THE POLITICS OF WAR CRIMES TRIBUNALS, Chapter 2 (pp.147-205) (CB)
- Carl Jaspers, *The Question of German Guilt*, in TRANSITIONAL JUSTICE, pp. 157-171. (CB)
- Jeanne L. Bakker, *The Defense of Obedience to Superior Orders: The Mens Rea Requirement*, in TRANSITIONAL JUSTICE, pp. 441-455. (CB)
- Major William Parks, *Command Responsibility for War Crimes*, in TRANSITIONAL JUSTICE, pp. 456-458. (CB)

Class Activity: Structured debate on Nuremburg. If enrollments are large, we may run this activity as a small-group discussion rather than a class-wide debate.

Assignment: Prepare for structured debate on the merits of the ICTY and ICTR.

Session 3 (Sept 16):

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)
- Laurel Fletcher and Harvey Weinstein, *A World unto itself? The Application of International Justice in the Former Yugoslavia*, in *MY NEIGHBOR, MY ENEMY*, pp. 29-48. (CB)
- Alison des Forges and Timothy Longman, *Legal Responses to Genocide in Rwanda*, in *MY NEIGHBOR, MY ENEMY*, pp. 49-68. (CB)

Recommended Readings: (these will be especially helpful for the debate)

- Makau Mutua, *Never Again: Questioning the Yugoslav and Rwanda Tribunals*, 11 *TEMP. INT'L & COMP. L.J.* 167, 167-187 (1997) (BB).
- Peter Rosenblum, *Save the Tribunals: Salvage the Moment, A Response to Makau Mutua*, 11 *TEMP. INT'L & COMP. L.J.*, 189, 189-197 (1997) (BB).

Class Activity: Structured debate on the merits of the ICTY and ICTR. If enrollments are large, we may run this activity as a small-group discussion rather than a class-wide debate.

Assignment: Prepare for your group ICC presentations next session.

Session 4 (Sept 18): The ICC and its Controversies

¡FRIDAY SESSION!

What is the historic significance of the existence of the International Criminal Court? In what ways is it an improvement over what came before, and in what ways does it represent continuity? How well does it contribute to the enforcement of international criminal law? Does the existence of the Court change the behavior of would-be perpetrators? Has the Africa-heavy emphasis of the Court inflicted a fatal wound to the Court's credibility? Does the work of the Court have the capacity to derail peace processes? Should the United Nations Security Council freeze indictments, or let justice "run its course"?

Required Readings:

- Rome Statute of the International Criminal Court, U.N. Doc A/CONF.183/9 (1998), Articles 1-33 (BB).
- William Schabas, *The Banality of International Justice*, *Journal of International Criminal Justice* (2013) (BB).
- Adam Branch, "Neither Liberal nor Peaceful? Practices of 'Global Justice' by the ICC," In *A LIBERAL PEACE? THE PROBLEMS AND PRACTICES OF PEACEBUILDING*, Susanna Campbell, David Chandler and Meera Sabaratnam (eds.) (Zed Books, 2011) (BB)
- Ken Roth, "African Attacks the International Criminal Court," *The New York Review of Books*, Feb 6, 2014.

Recommended Readings:

- Robert Cryer, *International Criminal Law*, pp 540-557, in *INTERNATIONAL HUMAN RIGHTS LAW* (New York: Oxford University Press, 2010) (BB).

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 (Sept 23): 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, “Chapter 3: Justice for Whom?” in RE-THINKING TRANSITIONAL JUSTICE FOR THE 21ST CENTURY: BEYOND THE END OF HISTORY (Cambridge: Cambridge University Press, 2018). (CB)
- Caitlin Reiger, *Hybrid Attempts at Accountability for Serious Crimes in Timor Leste*, in TRANSITIONAL JUSTICE IN THE 21ST CENTURY, pp 143-170. (BB).
- Christopher Le Mon, *Rwanda’s Troubled Gacaca Courts*, Human Rights Brief, Vol. 14, No. 2, p. 16, Winter 2007 (BB).
- IRIN, “Jury Still out on Effectiveness of Gacaca Courts,” June 23, 2009 (BB)

Recommended Readings:

- Jenny Peterson, *A Conceptual Unpacking of Hybridity: Accounting for Notions of Power, Politics and progress in Analyses of Aid-Driven Interfaces*, 7 JOURNAL OF PEACEBUILDING AND DEVELOPMENT 9 (2012) (BB)
- Padraig McAuliffe, *Hybrid Tribunals at Ten: How International Criminal Justice’s Golden Child Became an Orphan*, 7 J. INT’L L & INT’L RELATIONS 1, 36 (2011) (BB)

Activity: Debate on merits of Gacaca. If enrollments are large, we may run this activity as a small-group discussion rather than a class-wide debate.

PART III: BEYOND RETRIBUTIVE JUSTICE

Session 6 (Sept 30): Truth Commissions

Does establishment of the “truth” constitute “justice”? Should punishment and prosecutions accompany the process? 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? Why do we assume that “the truth” necessarily promotes reconciliation and national healing? Are arguments about truth commissions based on faith or science?

Readings:

- Pricilla B. Hayner, UNSPEAKABLE TRUTHS, pp. 1-44, 145-162, 182-194 (just read as much or as little as you can. The whole book is good).
- Reed Brody, *Justice: The First Casualty of Truth?*, NATION, Apr. 30, 2001
- ROSALIND SHAW, UNITED STATES INSTITUTE FOR PEACE, RETHINKING TRUTH AND RECONCILIATION COMMISSIONS; LESSONS FROM SIERRA LEONE, Special Report 130 (2005).
- “Reconciliation,” Stanford Encyclopedia of Philosophy, May 11, 2015.

Recommended Readings:

- Alex Boraine, *Truth and Reconciliation in South Africa*, in TRUTH V. JUSTICE, pp 141-157 (BB)
- David Mendeloff, *Truth Seeking, Truth Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?*, 6 INTERNATIONAL STUDIES REVIEW 355 (2004) (BB)

Class Activity: Truth Commission Case Studies: Student groups will present the context and evaluate the strengths and weaknesses of truth commissions in the following countries:

- Argentina
- Liberia
- Canada
- Tunisia

Assignment: Prepare for structured debate on reparations for US slavery.

Session 7 (Oct 7): 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)
- Materials on the Comfort Woman & Japanese American Redress Movements, from WHEN SORRY ISN'T ENOUGH, edited by Roy Brooks (1999).
- China Daily, "Comfort Women Distortion Stirs Indignation," July 13, 2005. (BB)
- Guardian.co.uk, "Japan rules out new apology to 'comfort women'," March 5, 2007. (BB)
- 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. If enrollments are large, we may run this activity as a small-group discussion rather than a class-wide debate.

Session 8 (Oct 14): 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)
- Tim Kelsall, *Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone*, 27 HUM. RTS. Q. 361, 361–391 (2005) (BB)
- Patrick Burgess, *A New Approach to Restorative Justice – East Timor’s Community Reconciliation Process*, in TRANSITIONAL JUSTICE IN THE 21ST CENTURY, pp. 176-205. (BB)
- 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)
- Jonathan I. Leib, et al, *Rebel with a Cause? Iconography and Public Memory in the Southern United States*, 52 GEOJOURNAL 303, 303–310 (2000) (BB)

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

Class should end roughly one hour early today to accommodate work on group presentations.

Session 9 (Oct 16): On Doing “Nothing”: Amnesties, Political Amnesia, “Forgive & Forget.” **!FRIDAY SESSION!**

Is there a case to be made for settling accounts through blanket amnesties and without any truth-telling or criminal process? When and how 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 Is there a duty to provide for some kind of a remedy?

Readings:

- Pricilla Hayner, *Leaving the Past Alone*, in UNSPEAKABLE TRUTHS, pp. 195-209. (CB)
- Policy Statement on Impunity, Amnesty International, in TRANSITIONAL JUSTICE 217-21. (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)
- Martin Fackler, “Pressure in Japan to Forget Sins of War,” THE NEW YORK TIMES, October 28, 2014. (BB)

Recommended Readings:

- The Belfast Guidelines on Amnesty and Accountability
- UN Basic Principles and Guidelines on The Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law.

Class Activity: Structured debate on Amnesty v. Accountability. 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. If enrollments are large, we may run this activity as a small-group discussion rather than a class-wide debate.

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

Session 10 (Oct 21) – There will be no Zoom meeting today to accommodate review and commenting on group presentations.

PART IV: BOUNDARIES AND LIMITATIONS OF “THE FIELD”

Session 11 (Oct 28): 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:

- Séverine Autesserre, “Dangerous Tales: Dominant Narratives on the Congo and their Unintended Consequences,” *African Affairs* (January 2012) (BB)
- Dustin Sharp, “Chapter 2: Justice for What?” in *RE-THINKING TRANSITIONAL JUSTICE FOR THE 21ST CENTURY: BEYOND THE END OF HISTORY* (Cambridge: Cambridge University Press, 2018). (CB)
- Lars Waldorf, *Anticipating the Past: Transitional Justice and Socio-Economic Wrongs*, 21 *SOCIAL & LEGAL STUDIES* 171 (2012) (BB)

Recommended Readings:

- Kora Andrieu, *Dealing with a “New” Grievance: Should Anticorruption Be Part of the Transitional Justice Agenda?*, 11 *JOURNAL OF HUMAN RIGHTS* 537 (2012) (BB)

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. If enrollments are large, we may run this activity as a small-group discussion rather than a class-wide debate.

Session 12 (Nov 4): 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:

- Dyan Mazurana and Keith Proctor, *Gender, Conflict, and Peace*, World Peace Foundation Occasional Paper, October 15, 2013 (BB)
- Hilary Charlesworth, *The Hidden Gender of International Law*, 16 TEMPLE INTERNATIONAL AND COMPARATIVE LAW JOURNAL 93 (2002) (BB)
- Doris Buss, *Performing Legal Order: Some Feminist Thoughts on International Criminal Law*, 11 INTERNATIONAL CRIMINAL LAW REVIEW 409 (2011) (BB)
- Fionnuala Ni Aolain, *Advancing Feminist Positioning in the Field of Transitional Justice*, 6 INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE 205 (2012) (BB)
- Pricilla B. Hayner, UNSPEAKABLE TRUTHS, pp. 85-90 (CB)
- 2012 Human Security Report, *Overview*, Human Security Report Project, Simon Fraser University, pp 1-9 (BB)

Class should end roughly one hour early today to accommodate review and commenting on group presentations.

Session 13 (Nov 11): 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:

- Dustin Sharp, “Chapter 5: Peacebuilding and Liberal Post-Conflict Governance,” in RE-THINKING TRANSITIONAL JUSTICE FOR THE 21ST CENTURY: BEYOND THE END OF HISTORY (Cambridge: Cambridge University Press, 2018). (CB)
- Dustin Sharp, “Chapter 6: Transitional Justice and Liberal International Peacebuilding,” in RE-THINKING TRANSITIONAL JUSTICE FOR THE 21ST CENTURY: BEYOND THE END OF HISTORY (Cambridge: Cambridge University Press, 2018). (CB)
- Padraig McAuliffe, “The Marginality of Transitional Justice within Liberal Peacebuilding: Causes and Consequences,” 9 *Journal of Human Rights Practice* (2017).

Recommended Readings:

- Catherine Baker and Jelena Obradovic-Wochnik, *Mapping the Nexus of Transitional Justice and Peacebuilding*, 10 *J. OF INTERVENTION AND STATEBUILDING* (2006): 281-301.
- Wendy Lambourne, *Transitional Justice and Peacebuilding After Mass Violence*, 3 *INT’L J. OF TRANSITIONAL JUSTICE* (2009): 28-48.
- Rama, Mani, *Rebuilding an Inclusive Political Community after War*, 36 *SECURITY DIALOGUE* 36 (2005): 511-26.
- Chandra Lekha Sriram, *Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice*, 21 *GLOBAL SOCIETY* (2007): 579-591.

Class should end roughly one hour early today to accommodate review and commenting on group presentations. Now is the time to get your comments in if you have not already done so!

Session 14 (Nov 18): 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)
- Thomas Carothers, *The End of the Transitional Paradigm*, 13 J. OF DEMOCRACY 5 (2002) (BB)
- Abdullahi An-Na’im, *Editorial Note: From the Neocolonial ‘Transitional’ to Indigenous Formations of Justice*, 7 INTERNATIONAL J. OF TRANSITIONAL JUSTICE 197 (2013) (BB)
- Padraig McAuliffe, *Transitional Justice’s Expanding Empire: Reasserting the Value of the Paradigmatic Transition*, 2 J. OF CONFLICTOLOGY 32 (2011) (BB).
- Oskar Thoms, James Ron, and Roland Paris, *State-Level Effects of Transitional Justice: What do we Know*, 4 INTERNATIONAL J. OF TRANSITIONAL JUSTICE 329 (2010) (BB).

Final Activity: Small-group discussion on the future of transitional justice.