

# UNIVERSITY OF TORONTO

## POL 380 HF TRANSITIONAL JUSTICE

*Fall Term 2010*  
*Monday 6:10 - 8:00 pm*  
*Location: UC 161*

Instructor: Dr. Cristina G. Badescu  
Office Location: University College H-10  
Office Hours: Tuesday 4:30-6:30 pm  
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### **Course Description**

Gross violations of human rights will be the reference point for a critical reflection on various transitional justice mechanisms. The twentieth century was often referred to as ‘the age of atrocity’, as it produced some of the bloodiest and most atrocious massacres in history. This was also the age in which mechanisms to deal with these crimes were systematically developed and implemented. Nonetheless, there is still significant debate about the efficacy and correctness of various kinds of mechanisms that have come into being to respond to atrocities. Apart from the various types of instruments, the results that each of these has been able to achieve also come under intense scrutiny.

The course seeks to critically examine a number of these mechanisms and instruments. They can be grouped into three broad categories, around which the course is structured: first, *retributive justice*, which encompasses the idea that those who perpetrate atrocities should be held accountable and punished, as criminals are; second, *restorative justice*, which emphasizes the overriding need to restore the possibility of a just and peaceful future, in the aftermath of atrocity; and, third, *restitutive justice*, which is centered on the idea that the victims of atrocity deserve compensation.

This course focuses on the conceptual framework surrounding the three approaches (retributive, restorative and restitutive), while also covering both historical and more contemporary uses of each, through the use of selected case studies. As such, the readings for each week blend theoretical accounts with historical discussions and critical assessments.

### **Course Aims and Objectives**

The aims of this course are: 1) to introduce students to the debate about transitional justice in the aftermath of gross human rights violations; 2) to provide students with a foundation in the theory and practice of various mechanisms and instruments of transitional justice; 3) to advance students’ critical analysis and research skills.

The learning objectives of the course therefore include the development of oral, written, and research skills through essays, presentations, class discussions, and the constant need to evaluate complex and often contradictory material.

## **Class Information**

The focus in this class is on strong critical thinking, reading, and writing skills. The class is based on a combination of lectures, group reports (student presentations), and class discussions. All students are expected to have read the required readings each week and attend class prepared to discuss them in relation to the points made during group reports. Group reports, essays, and contributions to class discussions are expected to be analytical and scholarly.

In order to make this a positive learning experience for all, this class will adhere to the principles of academic honesty and integrity, and the university's codes of conduct, as well as respect for diversity of opinions and background.

### **➤ Grading and Description of Assignments**

Performance will be evaluated on the basis of ongoing contribution to class discussions, one group report, a mid-term test, and a final research paper. Each component will have the following weight in the calculation of the final grade:

ASSIGNMENTS	BREAKDOWN
Group report	15%
Mid-term test (October 25)	40%
Final research paper (due November 29)	45%

### **Group Report**

Each week, a group of seven or eight students will get together to present to the class a report on the major points and arguments pertaining to that week's main topic, in relation to three specific themes or areas from the assigned weekly readings they (as a group) regard as the most intriguing/contentious/important. Presenting the group report must not exceed 20 minutes in length, and must include a brief handout for myself, which will be posted on overhead (or powerpoint).

The group report should include key arguments made by authors, the students' assessment of the authors' arguments and how the readings inter-relate to other readings assigned for that particular week and to other parts of the course. Also, find one external material (drawn e.g. from current affairs, news, additional literature, other courses you are taking) and link it to the class readings covered in your group report. For the group report exercise, do not simply describe the content of the readings or recap the key points from the lecture, but rather try to engage with the reading material analytically. For useful guidelines on critical reading, please see <http://www.writing.utoronto.ca/advice/reading-and-researching/critical-reading>.

Students can choose the week of their group report in the first two weeks of class. This exercise is meant to encourage analytical collaborations among students and exchange of ideas, and it is up to the students in the group to divide their contributions towards the final group report. As the group report is expected to be a joint project between the students involved, all students in the group will be graded together.

### **Mid-term Test**

The mid-term test is scheduled for **October 25**, based on the materials covered up to that date in the course. On October 11 I will post on blackboard the essay questions you need to prepare for the mid-term. On the day of the test you will get to write a short essay addressing one of these questions, and you will have one hour and a half to do this. Please bring a pen. No laptops, notes or aids will be permitted.

### **Final Research Paper**

Students are required to write one final research paper on one of the three essay topics provided below, which will be submitted electronically, via Turnitin.com. Please see the section on Turnitin.com below for details. Submissions cannot be emailed, a hard copy must be delivered **at the beginning of class on November 29**.

The essay should be 10 typed pages, double-spaced, 12-point Times New Roman, and one-inch margins. 10 pages is the maximum length allowed, and it includes endnotes/footnotes and bibliography – do not fudge these measurements. Conforming to a set page limit is an important writing skill that denotes the ability to be concise, which is a skill students are expected to demonstrate.

A **late penalty of 3% per day** will be applied to papers submitted at any point after the class commences on November 29 (including weekends and holidays). Reasonable extensions for the submission of papers can be granted for good reasons, which do not include exams in other classes or multiple assignments coming due at the same time (plan ahead in order to finish some of them early). Should you request an extension, please do so in advance if possible and provide relevant documentation.

### **Essay Topics:**

#### **Topic 1: Theoretical approaches**

This essay topic asks you to focus on one or more of the theoretical approaches (retributive, restorative, restitutive) used in the course and to critically evaluate the approach(es) you select. You may choose to illustrate your points by use of a case study, where appropriate, although this is not required. You may consider only one approach, or you may compare and contrast different approaches.

Topic 2: Instrument or mechanism of justice after atrocity

This topic asks you to consider one instrument or mechanism that has been or may be used to promote some form of justice after atrocity and to evaluate its strengths and weaknesses, as well as provide an assessment of where it might best be used. You may choose to illustrate your points by use of a case study, where appropriate, although this is not required.

Topic 3: Case study of an instance of the use of one instrument or mechanism

This topic asks you to look at a specific use of one of the instruments of justice after atrocity, which has been used. By definition, therefore, in choosing this option, you will be looking at something which has already taken place. You are, however, asked to evaluate the mechanism and *not* the event. Therefore, you must also take care not to dwell on the event(s) itself, but rather to make the instrument or mechanism the focus of your essay.

Please staple your essay in the upper left-hand corner.

Your paper will be graded for:

Content (50%)	Clarity of your research question, consistency of the central argument, relevance of the analysis, ability to synthesize material, and strength of your thesis
Structure (20%)	General organization of your paper, and the quality of your introduction and conclusion
Research (20%)	The relevance and quality of your sources, and the argumentation based on the relevant literature
Style (10%)	Quality and consistency of the reference system, bibliography, grammar, and syntax

➤ **Other Rules and Regulations**

**Submission of Class Work**

All work must be submitted *on time* and on paper, in order to avoid penalty. There are no exceptions. No assignments will be accepted via email or fax. You must come to class and turn in your assignments.

**Turnitin.com**

Normally, students will be required to submit their course essays to Turnitin.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com website.

### **Policy on Late Penalties**

Students who fail to submit their research papers on time (i.e. at the beginning of class on November 29) will lose three points per day (this includes holidays and weekends). No grace period, unless you have been granted an extension. Reasonable extensions for the submission of papers can be granted for good reasons, which do not include exams in other classes or multiple assignments coming due at the same time (plan ahead in order to finish some of them early). Should you request an extension, please *do so in advance* if possible and provide relevant documentation. Please keep in mind that extensions are granted only under extreme circumstances, and you must show documentation of your reason for requesting an extension.

### **Policy on Grade Revision**

If you contest a grade, a typed-letter explaining your case must be received no later than one week after the grade was given.

### **Academic Dishonesty and Plagiarism**

Many different types of actions may be considered academically dishonest. These might include, although not exhaustively, the following: submission of work not authored by you, double submission, fabrication, and plagiarism. When you use other people's arguments and words, you must properly cite them, regardless of where these words come from (reading materials, internet, class discussions, etc). Failing to do so constitutes plagiarism, which is a very serious academic offense. Plagiarism will be dealt with accordingly. For further clarification and information, please see the University of Toronto's policy on Plagiarism at <http://www.utoronto.ca/writing/plagsep.html> and see also <http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>.

### **Blackboard**

It is your responsibility to log into Blackboard to access the information posted regarding the course ([portal.utoronto.ca](http://portal.utoronto.ca)). Announcements will be available through blackboard. Some course materials will be posted on blackboard, including the questions to prepare for the mid-term exam (posted on October 11).

### **Readings**

Readings should be completed *before* class on the date for which they are assigned. I first introduce them in lectures, and then you get the chance to detail their content in preparation for class. I expect all students to have read the required readings each week and attend class prepared to discuss them. Group reports, essays, and discussions are expected to be analytical and scholarly.

To access the course readings, please see the course reader comprising articles and book chapters that are not available online -- available at Canadian Scholars' Press Inc. (CSPI) 180 Bloor St. West, Suite 801, Toronto, Tel: (416) 929-CSPI (2774). Links are provided in the syllabus for all journal articles and reports available electronically through the University of Toronto library website. Martha Minow's book, "*Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998) is placed on course reserves Robarts Library.

## **Documentation for Student Absences**

- 1) Students who have been absent from class for medical or other unavoidable reasons AND require an accommodation for missed or late term work must record their absence using the ROSI Absence Declaration.
  - 2) For the academic year 2010-2011, The Faculty of Arts & Science has decided that instructors may require further documentation such as the UofT Medical Certificate, in addition to this ROSI Declaration (this is no longer sufficient documentation as was the case in the 2009-2010 academic year).
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## **Course Outline by Topic**

\*\*journal articles and reports were not included in the course reader, as most of them are available online from Robarts Library (see the provided electronic links)\*\*

### **September 13 – Introduction**

Distribution of syllabus; outline of topics to be covered, objectives of the course, student responsibilities, grading, and class materials; lecture introducing the following week's reading materials

### **September 20 – Three Categories of Justice**

Neil J. Kritz, "The Dilemmas of Transitional Justice," in *Transitional Justice*, Vol. III (Washington: United States Institute for Peace Press, 1995) xxi-xxxii.

Luc Huyse, "Justice", in "*Reconciliation after Violent Conflict: A Handbook*", eds. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003) 97-115.

Martha Minow, "Chapter 6: Facing History," in *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998) 118-147 (on course reserves Robarts).

#### **I. Retributive Justice**

### **September 27 – Clarifying the Concept of Retribution**

Trudy Govier, "Chapter 1: Revenge and Retribution," in *Forgiveness and Revenge* (New York: Routledge, 2002) 1-22.

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

#### ***Case Study: Nuremberg***

David Luban, "Chapter 7: The Legacies of Nuremberg," in *Legal Modernism* (Ann Arbor: The University of Michigan Press, 1994) 335-378.

## **October 4 – International Crime and the International Criminal Court (ICC)**

Richard Vernon, “What is Crime Against Humanity?” in *The Journal of Political Philosophy* 10.3 (2002) 231-249. Available from <http://simplelink.library.utoronto.ca/url.cfm/98416>

“Text of the UN Genocide Convention,” in *Genocide: An Anthropological Reader*, ed. Alexander Laban Hinton (Oxford: Blackwell, 2002) 43-47.

### ***Case study: The International Criminal Court (ICC)***

Philippe Kirsch, “The International Criminal Court and the Enforcement of International Justice”, *Pace International Law Review*, Paper 239, 2005. Available from <http://digitalcommons.pace.edu/intlaw/239/>.

Kambala wa Kambala, Olivier. “International Criminal Court in Africa: ‘alea jacta est’”. Oxford Transitional Justice Research Essay Online. July 2010. Available on blackboard.

Oxford Transitional Justice Research (OTJR). Debating International Justice in Africa. OTJR Collected Essays, 2008–2010. Read Comfort Ero, “Understanding Africa’s Position on the International Criminal Court” (pp. 11-14); Stephen Oola, “Bashir and the ICC: The Aura or Audition of International Justice in Africa?” (pp. 63-65); Lutz Oette, “Another Piece in the Puzzle: Accountability and Justice for International Crimes in Sudan” (pp. 66-68); Zachary Manfredi, “The Perils of an Article 16 Deferral for Bashir” (pp. 70-71). Available from [http://www.fljs.org/uploads/documents/Justice\\_in\\_Africa.pdf](http://www.fljs.org/uploads/documents/Justice_in_Africa.pdf).

## **October 11 – No class: Thanksgiving Day**

## **October 18 -- Individual versus Collective Responsibility**

Larry May, “Chapter 8: Prosecuting State Leaders for Crimes Against Humanity”, in *Crimes against Humanity: A Normative Account* (Cambridge: Cambridge University Press, 2005), 139-156.

Christopher Browning, “Chapter 18: Ordinary Men,” in *Ordinary Men* (New York: Harper Collins, 1998) 159-189.

### ***Case study: My Lai Massacre***

Stanley Bates “My Lai and Vietnam”, in *Individual and Collective Responsibility*, ed. Peter French (Rochester: Schenkman Books, 1972) 191-209.

Doug Linder, “An Introduction to the My Lai Courts-Martial,” Social Science Research Network, 2007. Available from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1029398](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1029398).

## **October 25 – Mid-term Test (in class)**

## II. Restorative justice

### November 1 – Clarifying the Concept of Restorative Justice

\*\*Guest speaker: Dr. Joanna Quinn, The University of Western Ontario\*\*

Mark Freeman and Priscilla B. Hayner. "Truth-Telling", in *Reconciliation after Violent Conflict: A Handbook*, eds. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003) 122-138.

Joanna R. Quinn, "Are Truth Commissions Useful in Promoting Restorative Justice?" in *Crosscurrents*, 4th ed., ed. Mark Charlton (Toronto: Nelson Canada, 2004).

Richard Ashby Wilson, "Challenging Human Rights as Restorative Justice," in *Crosscurrents*, 4th ed., ed. Mark Charlton (Toronto: Nelson Canada, 2004).

#### *Case study: Uganda's Truth Commission*

Joanna R. Quinn, "Constraints: The Un-Doing of the Ugandan Truth Commission," in *Human Rights Quarterly* 26.2 (May 2004): 401-427. Available from <http://simplelink.library.utoronto.ca/url.cfm/98422>.

### November 8 – No classes (fall break)

### November 15 – Trials versus Truth Commissions

Darryl Robinson, "Serving the Interests of Justice", in *Bringing Power to Justice: The Prospects of the International Criminal Court*, eds. Joanna Harrington, Michael Milde and Richard Vernon (Montreal & Kingston: McGill-Queen's University Press, 2006) 210-243.

Martha Minow, "The Hope for Healing: What can Truth Commissions do?" in *Truth versus Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000) 235-260 (on course reserves Robarts).

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

#### *Case study: South African Truth and Reconciliation Commission*

Alex Boraine, "Truth and Reconciliation in South Africa: The Third Way" in *Truth versus Justice: The Morality of Truth Commissions*, eds. Robert Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000) 141-157.

### November 22 – Reconciliation, Forgiveness, Apology

Trudy Govier, "Chapter 8: Forgiveness and Reconciliation," in *Forgiveness and Revenge* (New York: Routledge, 2002) 141-157.

Michael Feher, "Terms of Reconciliation", in *Human Rights in Political Transitions: Gettysburg to Bosnia* (New York: Zone Books, 1999) 325-338.

Kathleen A. Gill, "The Moral Functions of an Apology", in *Injustice and Rectification*, ed. Rodney Roberts (New York: Lang, 2002) 111-129.

***Case study: Rwanda's Healing Process after Genocide***

Charles Mironko and Ephrem Rurangwa, "Post-Genocide Justice and Security Reform", in *Constructing Justice and Security after War*, ed. Charles Call (Washington DC: United States Institute of Peace, 2007) only 193-212.

Ervin Staub, "Justice, Healing, and Reconciliation: How the People's Courts in Rwanda can Promote Them", in *Peace and Conflict: Journal of Peace Psychology*, 10:1, (2004) 25-32. Available <http://simplelink.library.utoronto.ca/url.cfm/98425>.

### **III. Restitutive Justice**

#### **November 29 - Framework and Context**

**\*\* Essays due at the beginning of class \*\***

Naomi Roht-Arriaza, "Reparations in the Aftermath of Repression and Mass Violence," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004) 121-139.

Conor McCarthy, "Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory", *The International Journal of Transitional Justice*, Vol. 3, 2009, 250–271. Available from <http://simplelink.library.utoronto.ca/url.cfm/98423>

***Case study: Comfort women***

Roy L. Brooks, "What Form Redress?" in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 87-91.

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) 95-100.

George Hicks, "The Comfort Women Redress Movement," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 113-125.

"Japan's Official Responses to Reparations," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 126-131.

#### **December 6 – Restitution**

Elazar Barkan, "Chapter 12: Restitution for Slavery: Opportunity or Fantasy?" in *The Guilt of Nations* (Baltimore: The Johns Hopkins University Press, 2000) 283-307.

Richard Vernon, "Against Restitution," *Political Studies* 51 (2003): 542-557. Available from <http://simplelink.library.utoronto.ca/url.cfm/98426>.

"UN: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power General Assembly Resolution 40/34 (Nov 29, 1995)," in *Transitional Justice*, Vol. III (Washington: United States Institute for Peace Press, 1995) 645-649.

***Case study: Compensation claims for Nazi atrocities***

Hubert Kim, "German Reparations: Institutionalized Insufficiency," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 77-80.

United States Department of Justice Foreign Claims Settlement Commission, "German Compensation for National Socialist Crimes: March 6, 1996," in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999) 61-67.