

**Political Science 9751b
Transitional Justice**

Winter Term 2015
Wednesday 1:30-3:30
Location: SSC 4255

Instructor: Dr. Joanna R. Quinn
Office Location: SSC 4158
Office Hours: Wed. 10:30-12:00
Email: jquinn2@uwo.ca

Course Description

The twentieth century gave rise to some of the bloodiest massacres in history. It also saw the development and implementation of instruments to deal with these crimes. Yet there is still substantial debate and even disagreement about the efficacy and appropriateness of the kinds of mechanisms that have come into being, and about the particular results that each has been able to achieve. As a result, new and different instruments are today being developed.

This course aims to critically examine a number of these mechanisms and instruments. These may be grouped into three broad categories, around which the course is structured: retributive justice; restorative justice; and restitutive justice. The course will focus on the conceptual framework surrounding the various instruments and approaches, as well as both historical and contemporary uses of each. And through the use of selected case studies, a variety of examples of each will be considered.

Required Texts

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

Govier, Trudy. *Forgiveness and Revenge*. New York: Routledge, 2002.

NOTE: Other readings are required. These are either on reserve or available electronically through the D.B. Weldon Library

Important Notice re: Prerequisites/Antirequisites

Unless you have either the requisites for this course or written special permission from your Dean to enroll in it, you may be removed from this course and it will be deleted from your record. This decision may not be appealed. You will receive no adjustment to your fees in the event that you are dropped from a course for failing to have the necessary prerequisites.

Office of the Dean, Faculty of Social Science

Grade Distribution

Essay (due April 08)	60%
Seminar Presentation	20%
Seminar Participation	20%

Essay

You will be required to write one term essay of 25-30 typed, double-spaced pages, or between 6250-7500 words. The topic of the paper may be selected from the list of topics provided below. The completed paper must be submitted **at the beginning of class on Wednesday, April 08, 2015. A late penalty of 10% per day will be applied to papers submitted at any point after the class commences on April 08.**

Essays must be submitted to Turnitin.com, using the link on WebCT/OWL, prior to the start of class on April 08.

Seminar Presentation

Each week, a group of two or more students will present the main points and arguments of the case study as they relate to that week's main theme, also drawing on themes covered earlier in the term, to the class. Each presentation should be approximately 20 minutes in length, and must include a brief hand-out for students in the class that includes the main themes represented in the case study as well as questions for discussion. As the presentation is expected to be a joint project between the students involved, all students in the group will be graded together. Student presenters are expected to refer to material beyond that assigned to the class.

Seminar Participation

This assessment will be based on regular contributions to the class discussion, reflecting some grasp of the relevant materials and some analytical abilities in applying those materials in the discussion. Students should consult the handout "Student Participation" for criteria.

Academic Dishonesty

Many different types of actions may be considered academically dishonest. These might include, although not exhaustively, the following: cheating, submission of work not authored by you, double submission, fabrication, plagiarism. You are advised to familiarize yourself with the guidelines set out in the Handbook of Academic and Scholarship Policy. These may be found at the following url: <http://www.westerncalendar.uwo.ca/2014/pg113.html>

Students with Disabilities

Any student with a disability is advised to contact the Coordinator for Services for Students with Disabilities in order that arrangements can be made through them to accommodate that student. The Centre for Student Development is located in UCC Suite 210; they can be reached by telephone at (519)661-2147, by email at ssc@sdc.uwo.ca, or on the web at <http://www.sdc.uwo.ca/ssd/>

Other Resources

There are many resources at UWO designed to assist you in your learning. You are strongly advised to utilize these services. The Student Development Centre offers many services, including Effective Writing Programs and Learning Skills Services. The Student Development Centre is located in UCC Suite 210; they can be reached by telephone at (519)661-2147, by email at exams@sdc.uwo.ca, or on the web at <http://www.sdc.uwo.ca/>. You should also become familiar with the services offered by the University Library System. The D.B. Weldon Library may be contacted by telephone at (519)661-3162 or by email at dbwref@lib.uwo.ca, or on the web at <http://www.lib.uwo.ca/weldon/#>.

Writing Style

Essays **must** be formatted using Chicago/Turabian style, with footnotes, not in-text citations. Students are advised to consult a writer's handbook when composing their essays in order to see how to format things like bibliography and footnotes. One such excellent handbook is *A Manual for Writers of Term Papers, Theses, and Dissertations* by Kate L. Turabian. A useful link may be found at the following url: <http://www.wisc.edu/writing/Handbook/DocChicago.html>.

As this is an upper-level seminar, grammatical, spelling and other errors are not acceptable. You are responsible for your own work, and, as such, must be careful to proofread your work before turning it in.

Course Outline by Topic

January 7 Introduction

Ruti G. Teitel, "Introduction," *Transitional Justice* (New York: Oxford University Press, 2000), 3-9, (available on WebCT/OWL).

January 14 Three Ways of "Doing" Justice

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

Joanna R. Quinn, "Transitional Justice," in *Human Rights: Politics and Practice*, ed. Michael Goodhart (London: Oxford University Press, Feb. 2009), 363-377, (available on WebCT/OWL).

I. Approaching Retributive Justice

January 21 Clarifying the Concept

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

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

case: My Lai Massacre

Kent A. Russell, "My Lai Massacre: The Need for an International Investigation," *California Law Review* 58.3 (May 1970): 703-729, (available from JSTOR).

January 28 Modern Foundations

Martha Minow, "Foreword," and "Chapter 1: Introduction," in *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998)

David Luban, "Chapter 7: The Legacies of Nuremberg," in *Legal Modernism* (Ann Arbor: The University of Michigan Press, 1994), 335-380, (available on WebCT/OWL).

David Cohen, "Transitional Justice in Divided Germany after 1945," in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster (New York: Cambridge University Press, 2006), 59-88, (available on WebCT/OWL).

case: Tokyo Trial

B.V.A. Rolling, "Introduction," in *The Tokyo Trial and Beyond*, ed. Antonio Cassese (New York: Polity Press, 1993), 1-17, (available on WebCT/OWL).

Richard H. Minear, "Preface" and "Chapter 1: Introduction," in *Victors' Justice: The Tokyo War Crimes Trial* (Princeton: Princeton University Press, 1971), ix-xv, 3-19, (available on WebCT/OWL).

February 04 International Crime

The Rome Statute of the International Criminal Court (1998), Articles 1-33, (available from <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>).

Richard Vernon, "What is Crime Against Humanity?" in *The Journal of Political Philosophy* 10.3 (2002): 231-249, (available from Scholars Portal)

"Genocide Convention," (available from <http://www.un.org/millennium/law/iv-1.htm>).

Laurel E. Fletcher and Harvey M. Weinstein, "A world unto itself? The application of international justice in the Former Yugoslavia," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Eric Stover and Harvey M. Weinstein, eds. (Cambridge: Cambridge University Press, 2004), 29-48, (available in LAW Library Stacks).

case: International Criminal Court: Situation in Uganda

International Criminal Court, "Situation in Uganda," (available from http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200204/Pages/situation%20index.aspx); read "Referral", and "Decision to open investigation" and other documents

February 11 Individual and Collective Responsibility

Larry May, "Prosecuting State Leaders for Crimes Against Humanity," in *Crimes Against Humanity: A Normative Account* (Cambridge: Cambridge University Press, 2005), chapter 8, (available as UWO e-book).

Christopher Browning, "Chapter 18: Ordinary Men," in *Ordinary Men* (New York: Harper Collins, 1998), 159-189, (available on WebCT/OWL).

Neil J. Kritz, *Transitional Justice*, Vol. III (Washington: United States Institute for Peace Press, 1995), (available in LAW Library Stacks).

case: Augusto Pinochet

Human Rights Watch, "The Pinochet Precedent," [article on-line]; (available from <http://www.hrw.org/campaigns/chile98/precedent.htm>; Internet; accessed 31 March 2000).

II. Approaching Restorative Justice

February 18 No class – Reading Break

February 25 Clarifying the Concept

Howard Zehr, *The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002), 3-63 (available on WebCT/OWL).

Jennifer Llewellyn and Robert Howse, *Restorative Justice – A Conceptual Framework* (Ottawa: Law Commission of Canada, 1998), 1-44 only; (available from http://www.nsrj-cura.ca/nsrj-cura/mediabank/File/RJ_-_A_Conceptual_Framework_-_Law_Commission_of_Canada_1_199.pdf).

case: Papua New Guinea

Sinclair Dinnen, "Restorative Justice in Papua New Guinea," in *International Journal of the Sociology of Law* 25.3 (1997): 245-262, (available from Scholars Portal).

March 04 Trials vs. Truth Commissions

Joanna R. Quinn, "Are Truth Commissions Useful in Promoting Restorative Justice?" in *Crosscurrents: International Relations*, 4th ed., ed. Mark Charlton (Toronto: Nelson Canada, 2005), 402-408, (available on WebCT/OWL).

Richard Ashby Wilson, "Challenging Human Rights as Restorative Justice," in *Crosscurrents*, 4th ed., ed. Mark Charlton (Toronto: Nelson Canada, 2005), 399-401, (available on WebCT/OWL).

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

Martha Minow, "The Hope for Healing: What can truth commissions do?" in *Truth v. Justice*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 235-260, (available on WebCT/OWL).

See also *The University of Toronto Law Journal* 49.3 (Summer 1999): 311-466 (all articles), (available from JSTOR).

case: Uganda's Commission of Inquiry into Violations of Human Rights

Joanna R. Quinn, "Constraints: The Un-Doing of the Ugandan Truth Commission," in *Human Rights Quarterly* 26.2 (May 2004): 401-427, (available from JSTOR).

March 11 Other Truth Commissions

Priscilla Hayner, "Chapter 5: Sixteen Less Prominent Commissions," in *Unspeakable Truths*, First ed. (London: Routledge, 2002), 50-71, (available as UWO e-book).

Veerle Opgenhaffen and Mark Freeman, "Transitional Justice in Morocco: Lifting the veil on a hidden face," in *Reconciliation(s): transitional justice in postconflict societies*, ed. Joanna R. Quinn (Montreal: McGill-Queen's University Press, 2009), 53-85, (available on WebCT/OWL).

case: Canada's Indian Residential Schools Truth and Reconciliation Commission

Brian Rice and Anna Snyder, "Reconciliation in the Context of a Settler Society: Healing the Legacy of Colonialism in Canada," in *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, eds. Marlene Brant-Castellano, Linda Archibald, and Mike DeGagné (Ottawa: Aboriginal Healing Foundation, 2008), 43-63; (<http://www.ahf.ca/publications/research-series>).

Jennifer Llewellyn, "Bridging the Gap between Truth and Reconciliation: Restorative Justice and the Indian Residential Schools Truth and Reconciliation Commission," in *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, eds. Marlene Brant-Castellano, Linda Archibald, and Mike DeGagné (Ottawa: Aboriginal Healing Foundation, 2008), 183-204; (<http://www.ahf.ca/publications/research-series>).

Truth and Reconciliation Commission of Canada website (www.trc.ca)

III. Approaching Reparative Justice

March 18 Framework and Context

Martha Minow, "Chapter 5: Reparations," in *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998), 91-117.

Naomi Roht-Arriaza, "Reparations Decisions and Dilemmas," *Hastings International and Comparative Law Review* 27.2 (2003-2004), 157-220, (available from Hein Online).

Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice* (Princeton: Princeton University Press, 2000), (available on WebCT/OWL).

case: comfort women

Yuki Tanaka, *Japan's Comfort Women: Sexual Slavery and Prostitution During World War II and the US Occupation* (New York: Routledge, 2002), 1-32, 167-182 (available as UWO e-book).

March 25 Apology

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

Emily H. McCarthy, "Will the Amnesty Process Foster Reconciliation in South Africa?" in *When Sorry Isn't Enough*, ed. Roy L. Brooks (New York: New York University Press, 1999), 487-491, (available on WebCT/OWL).

Eleanor Bright Fleming, "When Sorry Is Enough: The Possibility of a National Apology for Slavery," in *The Age of Apology: Facing Up to the Past*, ed. Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner (Philadelphia: University of Pennsylvania Press, 2008), 95-108, (available on WebCT/OWL).

Roy L. Brooks, ed., *When Sorry Isn't Enough* (New York: New York University Press, 1999), (available on reserve at D.B. Weldon Library); choose any relevant selection.

case: Australia National Sorry Day/Reconciliation Australia

Roadmap for Reconciliation, (available from <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/10/>).

Kevin Rudd, "Apology to Australia's Indigenous Peoples," Parliament of Australia, *House Hansard*, 13 Feb. 2008), 167-177, (available from [http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/2008-02-13/toc_pdf/5694-9.pdf;fileType=application%2Fpdf#search=%2283T\)%22](http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/2008-02-13/toc_pdf/5694-9.pdf;fileType=application%2Fpdf#search=%2283T)%22)).

April 01 Restitution

Richard Vernon, "Against Restitution," *Political Studies* 51 (2003): 542-557, (available from Scholars Portal).

Tyler Cowen, "How Far Back Should We Go? Why restitution should be small," in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster (Cambridge: Cambridge University Press, 2006), 17-32.

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

case: Canada's Indian Residential Schools Settlement Agreement

Indian and Northern Affairs Canada, "Indian Residential Schools," (available from <http://www.ainc-inac.gc.ca/ai/rqpi/index-eng.asp>); read documents indexed in menu on right side of page.

Indian Residential Schools Class Action Litigation, "Official Court Website," (available from <http://www.residentialschoolsettlement.ca/English.html>).

Assembly of First Nations, "Resources on Indian Residential Schools," (available from <http://www.afn.ca/residentialschools/index.html>).

April 08 Concluding Discussion

Jon Elster, "Conclusion," in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster (New York: Cambridge University Press, 2006), 317-327, (available on WebCT/OWL).

United Nations Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 23 Aug. 2004, S/2004/616, (available from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>).

***** Essays due at beginning of class *****

ESSAY TOPICS

Topic 1: *Theoretical Approaches to Justice After Atrocity*

This 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 soon 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. 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 note that you may not write an essay on any topic/case for which you have made a presentation in class. If you are not sure whether your proposed topic is eligible, please see the instructor.

Essays must be formatted using Turabian/Chicago-Style. This includes Chicago-Style footnotes, which **MUST** be used. (Please do not use endnotes.) In-text citations are not permitted.

Essays must be submitted to Turnitin.com, using the link on WebCT/OWL, prior to the start of class on April 08.

Essays are due at the beginning of class Wednesday, April 08, 2015. A late penalty of 10% per day will be applied to papers submitted at any point after the class commences on April 08.

STUDENT PARTICIPATION

Participation Grading Guide

Grade	Attendance	Discussion	Reading
5	Always	<u>Excellent</u> : leads debate; offers analysis and comments; always has ideas on theme of reading; takes care not to dominate; asks questions	Clearly has done and prepared questions on virtually all readings; intelligently uses this understanding and these questions in discussion
4	Almost always	<u>Very Good</u> : thoughtful comments and questions for the most part; willing, able and frequent contributor	Has done most readings; provides competent analysis of reading when prompted by others
3	Frequent	<u>Good</u> : has basic grasp of key concepts and occasional ideas on the main theme of the reading; arguments are sporadic and at times incomplete or poorly supported; unwilling to ask questions	Displays familiarity with most readings, but tends not to analyze them or to relate them to the course material
2	Occasional	<u>Somewhat Poor</u> : remarks in class marred by misunderstandings of key concepts; seldom contributes effectively to discussion of the main theme; often digresses in unhelpful ways; sporadic	Actual knowledge of material is outweighed by improvised comments and remarks
0-1	Rare	<u>Poor</u> : rarely speaks; parrots text or comments of others	Little or no apparent familiarity with assigned material

ESSAYS
Grading Grid

Argument	
Organization of the Essay	
Quality of evidence	
Communication Skills	
Use of quotations and footnotes	
Creativity	
Other Comments	
Grade	