

**Political Science 4427g
Transitional Justice**

Winter Term 2013
Wednesday 1:30-3:30
Location: SSC 4255

Instructor: Dr. Joanna R. Quinn
Office Location: SSC 4158
Office Hours: Wed. 10:30-12:00
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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 10)	50%
Seminar Presentation	25%
Seminar Participation	25%

Essay

You will be required to write one term essay of 15-20 typed, double-spaced pages, or between 3750-5000 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 10, 2013. A late penalty of 10% per day will be applied to papers submitted at any point after the class commences on April 10.**

Essays must be submitted to Turnitin.com, using the link on WebCT/OWL, prior to the start of class on April 10.

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.uwo.ca/univsec/handbook/appeals/scholoff.pdf>

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@sd.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@sd.uwo.ca, or on the web at <http://www.sdc.uwo.ca/ssd/>. 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 9 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 16 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 23 Modern Foundations

David Luban, “Chapter 7: The Legacies of Nuremberg,” in *Legal Modernism* (Ann Arbor: The University of Michigan Press, 1994), 335-380, (available on reserve at D.B. Weldon Library)

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 reserve at D.B. Weldon Library)

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 reserve at D.B. Weldon Library)

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 reserve at D.B. Weldon Library)

January 30 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>)

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 06 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 reserve at D.B. Weldon Library)

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 13 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)

February 20 No class – Reading Break

February 27 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 reserve at D.B. Weldon Library)

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 06 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 reserve at D.B. Weldon Library and on Web CT/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 13 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)

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 20 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 reserve at D.B. Weldon Library)

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 reserve at D.B. Weldon Library)

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)

March 27 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.

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 03 No Class—Essay Preparation Day

April 10 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 reserve at D.B. Weldon Library)

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.

Essays must be formatted using Turabian/Chicago-Style. This includes Chicago-Style footnotes, which **MUST** be used. 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 10.

Essays are due at the beginning of class Wednesday, April 10, 2013. A late penalty of 10% per day will be applied to papers submitted at any point after the class commences on April 10.

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	

**APPENDIX TO UNDERGRADUATE COURSE OUTLINES
DEPARTMENT OF POLITICAL SCIENCE**

Prerequisite checking - the student's responsibility

"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."

Essay course requirements

With the exception of 1000-level courses, most courses in the Department of Political Science are essay courses. Total written assignments (excluding examinations) will be at least 3,000 words in Politics 1020E, at least 5,000 words in a full course numbered 2000 or above, and at least 2,500 words in a half course numbered 2000 or above.

Use of Personal Response Systems ("Clickers")

"Personal Response Systems ("clickers") may be used in some classes. If clickers are to be used in a class, it is the responsibility of the student to ensure that the device is activated and functional. Students must see their instructor if they have any concerns about whether the clicker is malfunctioning.

Students must use only their own clicker. If clicker records are used to compute a portion of the course grade:

- the use of somebody else's clicker in class constitutes a scholastic offence,
- the possession of a clicker belonging to another student will be interpreted as an attempt to commit a scholastic offence."

Security and Confidentiality of Student Work (refer to current *Western Academic Calendar* (<http://www.westerncalendar.uwo.ca/>))

"**Submitting or Returning Student Assignments, Tests and Exams** - All student assignments, tests and exams will be handled in a secure and confidential manner. Particularly in this respect, leaving student work unattended in public areas for pickup is not permitted."

Duplication of work

Undergraduate students who submit similar assignments on closely related topics in two different courses must obtain the consent of both instructors prior to the submission of the assignment. If prior approval is not obtained, each instructor reserves the right not to accept the assignment.

Grade adjustments

In order to ensure that comparable standards are applied in political science courses, the Department may require instructors to adjust final marks to conform to Departmental guidelines.

Academic Offences

"Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following Web site:

<http://www.uwo.ca/univsec/handbook/appeals/scholoff.pdf>."

Submission of Course Requirements

ESSAYS, ASSIGNMENTS, TAKE-HOME EXAMS **MUST** BE SUBMITTED ACCORDING TO PROCEDURES SPECIFIED BY YOUR INSTRUCTOR (I.E., IN CLASS, DURING OFFICE HOURS, TA'S OFFICE HOURS) OR UNDER THE INSTRUCTOR'S OFFICE DOOR.

THE MAIN OFFICE DOES NOT DATE-STAMP OR ACCEPT ANY OF THE ABOVE.

Note: Information excerpted and quoted above are Senate regulations from the Handbook of Scholarship and Academic Policy. <http://www.uwo.ca/univsec/handbook/>

Students registered in Social Science should refer to <http://counselling.ssc.uwo.ca/> <http://counselling.ssc.uwo.ca/procedures/havingproblems.asp> for information on Medical Policy, Term Tests, Final Examinations, Late Assignments, Short Absences, Extended Absences, Documentation and other Academic Concerns. Non-Social Science students should refer to their home faculty's academic counselling office.

Plagiarism

"Plagiarism: Students must write their essays and assignments in their own words. Whenever students take an idea, or a passage from another author, they must acknowledge their debt both by using quotation marks where appropriate and by proper referencing such as footnotes or citations. Plagiarism is a major academic offence." (see Scholastic Offence Policy in the Western Academic Calendar).

Plagiarism Checking: "All required papers may be subject to submission for textual similarity review to the commercial plagiarism detection software under license to the University for the detection of plagiarism. All papers submitted for such checking will be included as source documents in the reference database for the purpose of detecting plagiarism of papers subsequently submitted to the system. Use of the service is subject to the licensing agreement, currently between The University of Western Ontario and Turnitin.com (<http://www.turnitin.com>)."

Multiple-choice tests/exams: "Computer-marked multiple-choice tests and/or exams may be subject to submission for similarity review by software that will check for unusual coincidences in answer patterns that may indicate cheating."

Note: Information excerpted and quoted above are Senate regulations from the Handbook of Scholarship and Academic Policy. <http://www.uwo.ca/univsec/handbook/>

PLAGIARISM*

In writing scholarly papers, you must keep firmly in mind the need to avoid plagiarism. Plagiarism is the unacknowledged borrowing of another writer's words or ideas. Different forms of writing require different types of acknowledgement. The following rules pertain to the acknowledgements necessary in academic papers.

A. In using another writer's words, you must both place the words in quotation marks and acknowledge that the words are those of another writer.

You are plagiarizing if you use a sequence of words, a sentence or a paragraph taken from other writers without acknowledging them to be theirs. Acknowledgement is indicated either by (1) mentioning the author and work from which the words are borrowed in the text of your paper; or by (2) placing a footnote number at the end of the quotation in your text, and including a correspondingly numbered footnote at the bottom of the page (or in a separate reference section at the end of your essay). This footnote should indicate author, title of the work, place and date of publication, and page number.

Method (2) given above is usually preferable for academic essays because it provides the reader with more information about your sources and leaves your text uncluttered with parenthetical and tangential references. In either case words taken from another author must be enclosed in quotation marks or set off from your text by single spacing and indentation in such a way that they cannot be mistaken for your own words. Note that you cannot avoid indicating quotation simply by changing a word or phrase in a sentence or paragraph which is not your own.

B. In adopting other writers' ideas, you must acknowledge that they are theirs.

You are plagiarizing if you adopt, summarize, or paraphrase other writers' trains of argument, ideas or sequences of ideas without acknowledging their authorship according to the method of acknowledgement given in 'A' above. Since the words are your own, they need not be enclosed in quotation marks. Be certain, however, that the words you use are entirely your own; where you must use words or phrases from your source, these should be enclosed in quotation marks, as in 'A' above.

Clearly, it is possible for you to formulate arguments or ideas independently of another writer who has expounded the same ideas, and whom you have not read. Where you got your ideas is the important consideration here. Do not be afraid to present an argument or idea without acknowledgement to another writer, if you have arrived at it entirely independently. Acknowledge it if you have derived it from a source outside your own thinking on the subject.

In short, use of acknowledgements and, when necessary, quotation marks is necessary to distinguish clearly between what is yours and what is not. Since the rules have been explained to you, if you fail to make this distinction your instructor very likely will do so for you, and they will be forced to regard your omission as intentional literary theft. Plagiarism is a serious offence which may result in a student's receiving an 'F' in a course or, in extreme cases in their suspension from the University.

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Adopted by the council of the Faculty of Social Science, October, 1970; approved by the Dept. of History August 13, 1991

Accessibility at Western: Please contact poliscie@uwo.ca if you require any information in plain text format, or if any other accommodation can make the course material and/or physical space accessible to you.

Mental Health at Western: If you or someone you know is experiencing distress, there are several resources here at Western to assist you. Please visit <http://www.uwo.ca/uwocom/mentalhealth/> for more information on these resources and on mental health.