

Stellenbosch University Summer School

Course: Transitional Justice

Lecturer: Tyrone Savage

Among the most pressing challenges facing societies emerging out of war or authoritarianism is how to respond to gross violations of human rights committed in the madness and mayhem of conflict. History is filled with examples of societies that attempted, often in the name of moving forward, to ignore crimes such as torture, enforced disappearance, the killing of non-combatants and destruction of sites of cultural heritage – crimes that undermine the very meaning of our humanity. Digging a hole and attempting to bury the past, it is increasingly acknowledged, only precipitates more conflict, entrenches animosity and eventually escalates destructivity and dysfunctionality.

South Africa's Truth and Reconciliation Commission represents a much celebrated – and heavily critiqued – model of transitional justice. This course sets the commission in historic context and critically examines it through a theoretical lens that highlights questions about truth recovery, justice, reparations, and guarantees of non-repetition. Setting it against the backdrop of efforts in Latin America to establish the truth about enforced disappearances, the course critically engages the innovations of the SATRC, the political compromises that underpinned its functioning, before tracing its imprint in growing international efforts to tackle gross human rights violations. The course looks at growing international commitments to criminal accountability (through the International Criminal Court), at two subsequent truth commissions (Guatemala and Morocco), and at the growing role of civil society (in Zimbabwe and Cambodia).

The course thus offers an illustrated introduction to the concept and emergence of the field loosely described as Transitional Justice, while also providing a comparative view of the South African transitional justice process vis-à-vis the crucial questions: Has the truth about past violations been revealed? Has Justice been asserted? Has Reparation been made? Has South African society been restructured to prevent repetition of its gruesome past? Have South Africans reconciled?

Topics to be examined include:

- Core concepts: What are human rights, and how do gross violations of human rights impact conflict? Is justice possible? Are reparations possible? Why does “truth” become so important in - and after - situations of conflict?
- Argentina: The “nunca mas” imperative
- Chile: truth versus Pinochet
- South Africa: an innovative commission or a betrayal of justice?
- Internationalizing criminal justice: the International Criminal Court.
- Morocco: a model for the Arabophone world?
- Guatemala: an innovative commission (and a complementary initiative in civil society)
- NGO initiatives: Zimbabwe, Cambodia.
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Resources

Background reading.

- On Truth Commissions: Hayner, Priscilla. *Unspeakable Truths: Confronting state terror and atrocity*. (New York: Routledge, 2001). [recommended optional book for own purchase]
- On the South African Truth and Reconciliation Commission: Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission*. (Oxford: Oxford University Press, 2000). [recommended optional book for own purchase]
- *Guidance Note Of The Secretary-General : United Nations Approach to Transitional Justice*. Available at https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf
- USIP. Margarita S. Studemeister Digital Collections in International Conflict Management: Truth Commissions Digital Collection: Truth Commissions.

<https://www.usip.org/publications/2011/03/truth-commission-digital-collection>

Required reading

- Sisson, Jonathan. "A Conceptual Framework for Dealing with the Past" in "Dealing with the Past", *Politorbis*, N°50 3/2010. Available at http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/DwP_Conceptual_Framework_October2012.pdf
- Miall, Hugh. *Conflict Transformation: A Multi-dimensional Task*. edoc.vifapol.de/opus/volltexte/2013/4682/pdf/miall_handbook.pdf – for the distinction between Conflict Management, Conflict Resolution & Conflict Transformation made on **pages 3 and 4**.
- Robert Jackson, *Opening Address for the United States*, "Opening Remarks", accessible at <http://fcit.usf.edu/Holocaust/resource/document/DocJac01.htm>
- Re the International Criminal Court & specifically the crimes it prosecutes: <https://www.icc-cpi.int/about/how-the-court-works>
- What is international human rights law? <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>
- What is international humanitarian law? www.icrc.org/eng/assets/files/other/what_is_ihl.pdf
- Orentlicher, Diane. "Updated Set of principles for the protection and promotion of human rights through action to combat impunity" (E/CN.4/2005/102/Add.1; 8 February 2005). Available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=10800 [**pages 2 – 4**]
- UN General Assembly Resolution 60 / 147, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (21 March 2006; A/RES/60/147) [**paras 19 – 23**]. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>
- Simon JA Mason (and Berghoff / swisspeace / CSS), "Insider Mediators: Exploring Their Key Role in Informal Peace Processes" Available at <http://www.css.ethz.ch/publications/pdfs/Insider-Mediators.pdf>.
- Zalaquett, Pepe. Introduction to Chilean TRC report, pages 6 to 17. Available at http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report_PartI.pdf
- Christian Tomuschat. "Clarification Commission in Guatemala." *Human Rights Quarterly* 23, (2001): 233-258. <https://muse.jhu.edu/article/13776>
- Savage, Terry. "Truth and reconciliation" commissions and the emergence of a victimological approach to truth" Published in French in *Revue Les cahiers de la justice* n° 2/2018, co-éditée par l'ENM et les Editions Dalloz (https://www.dalloz-revues.fr/revues/Les_cahiers_de_la_justice-47.htm) .
- Villa-Vicencio, C. "Learning to sit under the same tree". (Institute for Justice and Reconciliation)
- Veerle Opgenhaffen, Mark Freeman, *Transitional Justice in Morocco: A Progress Report*. International Centre for Transitional Justice, 2005. <http://www.ictj.org/publication/truth-and-reconciliation-morocco>
- Shari Eppel, "A Tale of Three Dinner Plates' – forensic, narrative and psychological truths and the challenges facing human rights researchers in Zimbabwe". Bram Fischer Memorial Day, New College, Oxford, November 2008. Available at <http://www.solidaritypeacetrust.org/493/a-tale-of-three-dinner-plates/>

Protocols

Student deliverables

- Participation (10%)
- A Multiple-Choice Quiz (20%)
- One research paper (40%)
- A 20-minute class presentation on the last day of class (30%)
- For those doing the top-up (3 credit) option: Provide two thoughtful summaries - one of the Sisson reading and one of the Savage reading – noting, and concluding your summary with, questions you might have. The summaries including questions should each be between 650 and 800 words each.

Grading criteria (written deliverables and presentations):

- Does the deliverable respond to one focused and clearly articulated question?
- Is a link clear between the deliverable and the core concerns of the course?
- Does the deliverable grasp the different sides to from the question?
- Do the readings used to inform the argument comprise a mix of books and shorter online resources.
- Is citation style responsibly managed and consistent?

Citation style: You may use any citation style with which you are comfortable, provided you are consistent and your citation contains all the essential elements of a reference; e.g. for a book, you need author's name, the book title, and place, publisher, year of publication and page number. What's important here is intellectual honesty; plagiarism will result in a zero for the course and possible disciplinary action.

The research paper (4500 to 5000 words): You have a choice!

- An analysis of a completed transitional justice process, structured in response to one salient and explicitly articulated question and following the grading criteria indicated above.
- A contemporary case study. The case study should draw your learning in the course together into an analysis of one Transitional Justice process either underway or mooted in a particular context (you can choose which context). The study should begin by motivating for a Transitional Justice Process through a situation analysis that includes a preliminary identification of trends and salient incidents of gross human rights violation. Obstacles to transitional justice should be identified, as well as any dilemmas that arise, as the paper moves to provide a realistic strategic vision. Resources for transitional justice should be identified, such as NGO archives for truth recovery, a strong Supreme Court etc.