

PACS6927 TRANSITIONAL JUSTICE AND PEACEBUILDING
Postgraduate Program in Peace and Conflict Studies, University of Sydney
Winter School, July 2009

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Dates and Themes: Wednesday 15 July Transitional Justice Theory & History
 Thursday 16 July Transitional Justice in Practice
 Friday 17 July Truth Commissions
 Monday 20 July Criminal Tribunals
 Tuesday 21 July Peace v. Justice

Location: Mackie Building, Seminar Room 107
Centre for Peace and Conflict Studies
Arundel St, University of Sydney

Times: 10.00 am – 5.00 pm (lunch: 12.30 – 1.30 pm approx.)

OVERVIEW

Transitional justice is a rapidly emerging interdisciplinary field of study focusing on processes dealing with past human rights violations and the transition to a more peaceful and more democratic state. Originally located within international law and human rights discourse, transitional justice has now expanded to incorporate the contributions of a number of other disciplines including criminology, sociology, psychology, anthropology, theology, development studies and peace and conflict studies.

In this unit of study we will explore the evolution of transitional justice theory and practice, including a critical examination of truth commissions, criminal trials and traditional practices as a means of supporting sustainable peacebuilding. Transformative justice is proposed as a concept to encapsulate the dynamic and holistic nature of transitional justice which addresses the past with a view to building peaceful relationships in the future, and which incorporates psychosocial, socioeconomic and political as well as legal aspects of justice.

Case studies to be discussed include post-apartheid South Africa, post-genocide Rwanda and Cambodia, the post-violence transitions in Peru and Guatemala, and post-civil war Mozambique,

Liberia and Sierra Leone. On the final day we will discuss the implications of the International Criminal Court for the peace versus justice dilemma, with particular reference to Northern Uganda.

Cases have been selected to highlight themes and key issues of transitional justice theory and practice, including the apparent tension between justice and reconciliation, or between retributive and restorative justice; the interaction between formal legal justice mechanisms and traditional, indigenous approaches; and the relationship between outside interveners and local communities, and between political leaders and civil society, in the design and implementation of transitional justice mechanisms.

AIMS & OUTCOMES

It is expected that students will:

- develop an awareness of the evolution of transitional justice theory and practice, with particular reference to truth commissions, criminal tribunals and traditional indigenous approaches
- develop an understanding of how transitional justice can contribute to conflict transformation and sustainable peacebuilding
- learn to analyse the complexities and apparent contradictions sometimes involved in the pursuit of transitional justice, including the challenges of balancing peace with justice
- develop skills in critically assessing the design and impact of transitional justice mechanisms and approaches with reference to both theory and practice.

RESOURCES

There is no required textbook for this course. Students are instead required to purchase a hardcopy course reader and a softcopy reader (on memory stick) with additional readings, both from the Centre for Peace and Conflict Studies. All of the readings listed in the course outline are available either in the hardcopy reader or the softcopy memory stick.

These key readings are sufficient for class preparation but will generally not be sufficient for assignments. For the final essay students are required to conduct wider research and to consult library resources including journals, many of which are available electronically via the Fisher Library catalogue.

Class resource boxes and other references are available for students to consult in the CPACS Resource Centre, as well as the collection of relevant resources held by the Lecturer (in Room 108). Previous years' course outlines, readers and the class resource boxes for PACS6902 Reconciliation and Conflict Transformation will also be useful for students in this course.

Useful Journals

Ethics and International Affairs

Human Rights Quarterly

International Journal of Transitional Justice

Peace Review

In general, any human rights or international law journal.

Useful Websites

Centre for the Study of Violence and Reconciliation	http://www.csvr.org.za
Institute for Justice and Reconciliation	http://www.ijr.org.za/
International Center for Transitional Justice	http://www.ictj.org
Project on International Courts and Tribunals	http://www.pict-pcti.org/index.html
Reconciliation Resource Network	http://www.idea.int/rrn/
United States Institute of Peace	http://www.usip.org

OUTLINE OF SESSIONS

Day 1, Wednesday 15 July

**Introductions and Course Overview
Transitional Justice Theory and History
Dr Wendy Lambourne**

The first day will begin with introductions and an overview of the course including aims and outcomes, course outline, resources and assessment. An introductory discussion will be facilitated exploring the historical context and evolution of thinking about transitional justice, followed by more detailed exploration of the complex and sometimes contested relationships between the core concepts of justice, reconciliation, truth, healing and peace. This discussion will be located within a theoretical framework of transformative justice and sustainable peacebuilding.

Required readings:

TRANSITIONAL JUSTICE THEORY AND HISTORY
Boraine, A. (2006) “Defining Transitional Justice: Tolerance in the search for justice and peace” in Boraine, A. & Valentine, S. (eds) <i>Transitional Justice and Human Security</i> . Cape Town: International Center for Transitional Justice, pp. 22-37.
Roht-Arriaza, N. (2006) “The New Landscape of Transitional Justice” in Roht-Arriaza, N. & Mariexcurrena, J. (eds) <i>Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice</i> . Cambridge, UK: Cambridge University Press, pp. 1-16.
Lambourne, W. (2009) “Transitional Justice and Peacebuilding After Mass Violence”, <i>International Journal of Transitional Justice</i> , 3, pp. 28-48.
Mani, R. (2005) “Building an Inclusive Political Community After War”, <i>Security Dialogue</i> , 36:4, pp. 511-526.
United Nations Security Council (2004), Report of the Secretary-General, “The rule of law and transitional justice in conflict and post-conflict societies”, S/2004/616, 23 August 2004.

Recommended readings:

TRANSITIONAL JUSTICE THEORY AND HISTORY
Parmentier, S. (2003) "Global Justice in the Aftermath of Mass Violence. The Role of the International Criminal Court in Dealing with Political Crimes", <i>International Annals of Criminology</i> , 41:1/2, pp. 203-223.
Borer, T. A. (ed.) (2006) "Truth Telling as a Peace-Building Activity" in <i>Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies</i> . Notre Dame, Indiana: University of Notre Dame Press, pp. 1-57.
and other readings on the memory stick softcopy reader.

Day 2, Thursday 16 March

Transitional Justice in Practice

Dr Wendy Lambourne

We will review the history and practice of transitional justice including an overview of the three mechanisms of truth commissions, legal trials and traditional indigenous approaches. The perceived conflict between reconciliation and justice will be unpacked with reference to the relationship between retributive and restorative justice and how these may be seen to merge in many traditional approaches to justice and reconciliation.

Rwanda will be discussed as an example of a conflict which ended with a victory rather than a peace agreement, and the consequent emphasis on retributive justice for the crimes of the genocide, including both an international tribunal and local trials. Subsequently the Rwandan government moved to focus more on reconciliation, and introduced a modified form of the traditional justice process of *gacaca* which, despite being lauded as a restorative justice mechanism, retains a strong focus on retribution.

The South African Truth and Reconciliation Commission with its emphasis on truth, forgiveness and reconciliation has been held up as a model of restorative justice for transitional societies dealing with past human rights abuses. We will critically examine the TRC and the transferability of this model to other transitional justice contexts and cultural settings. The documentary 'Long Night's Journey Into Day' will provide material for reflection and discussion.

Finally, we will briefly discuss the case of Mozambique which avoided any international or national transitional justice processes, but instead relied on traditional reintegration rituals at the community level.

Required readings:

TRANSITIONAL JUSTICE IN PRACTICE
Bloomfield, D. (2003) "Justice' in <i>Reconciliation After Violent Conflict: A Handbook</i> . Stockholm: International IDEA, pp. 97-115.
Gloppen, S. (2005) "Roads to Reconciliation: A Conceptual Framework" in Skaar, E., Gloppen, S. & Suhrke, A. (eds) <i>Roads to Reconciliation</i> . Lanham, Maryland: Lexington Books, pp. 17-50.
Hayner, P. B. (1999) "In Pursuit of Justice and Reconciliation: Contributions of Truth Telling" in Arnson, C. J. (ed.), <i>Comparative Peace Processes in Latin America</i> . Washington, DC: Woodrow Wilson Center Press, pp. 363-383.

Recommended readings:

Lambourne, W. (2005) "Justice in the Aftermath of Mass Crimes: International Law and Peacebuilding" in Dolgopol, U. & Gardam, J. (eds) <i>The Challenge of Conflict: International Law Responds</i> . The Hague: Martinus Nijhoff, pp. 261-279.
Lutz, E. (2006) "Transitional Justice: Lessons Learned and the Road Ahead" in Roht-Arriaza, N. & Mariexcurrena, J. (eds) <i>Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice</i> . Cambridge, UK: Cambridge University Press, pp. 325-341.
RWANDA
Reyntjens, F. & Vandeginste, S. (2005) "Rwanda: An Atypical Transition" in Skaar, E., Gloppen, S. & Suhrke, A. (eds) <i>Roads to Reconciliation</i> . Lanham, Maryland: Lexington Books, pp. 101-127.
Clark, P. (2005) "When the Killers Go Home", <i>Dissent</i> , Summer 2005.
Clark, P. (2007) "Hybridity, Holism, and 'Traditional Justice': The Case of the <i>Gacaca</i> Courts in Post-Genocide Rwanda", <i>George Washington International Law Review</i> , 39:4, pp. 765-837.
Lambourne, W. (2006) "Justice After Genocide: The Rwandan Experiment with Gacaca Community Justice", Paper presented to the Conference 'Social Justice and Human Rights in the Era of Globalisation', Katholieke Universiteit Leuven, August 2006.
Uvin, P. & Mironko, C. (2003) "Western and Local Approaches to Justice in Rwanda", <i>Global Governance</i> , 9, pp. 219-231.
SOUTH AFRICA
Villa-Vicencio, C. (2001) "Restorative Justice in Social Context: The South African Truth and Reconciliation Commission" in Biggar, N. (ed.) <i>Burying the Past: Making Peace and Doing Justice after Civil Conflict</i> . Washington, DC: Georgetown University Press, pp. 207-222.
Finca, B. (2006) "They treat the wounds of my people cheaply" in Boraine, A. & Valentine, S. (eds) <i>Transitional Justice and Human Security</i> . Cape Town: International Center for Transitional Justice, pp. 56-72.
MOZAMBIQUE
Honwana, A. M. (1997) "Healing for Peace: Traditional Healers and Post-War Reconstruction in Southern Mozambique", <i>Peace and Conflict: Journal of Peace Psychology</i> , 3:3, pp. 293-306.

Day 3, Friday 17 July**Truth Commissions**

Dr Wendy Lambourne

with guests James Dhizaala, Vivianna Rodriguez Carreon & Christoph Sperfeldt

Examples of truth commissions will be examined in depth, including East Timor and Liberia in the morning, and Peru and Guatemala in the afternoon. Themes to be discussed include the melding of traditional and introduced mechanisms; civil society participation and inclusion of diaspora in truth commission hearings; the pursuit of gender justice; and the politics of reparations.

James Tonny Dhizaala is a PhD candidate with CPACS looking at the Liberian Truth and Reconciliation Commission and its groundbreaking inclusion of the diaspora in its mandate. James has just returned from fieldwork in Ghana, Liberia and the UK.

Vivianna Rodriguez Carreon is also working on her PhD with CPACS. Her research is concerned with analysing the agency and political participation of women in a peacebuilding context. Her case studies are Peru and East Timor.

Christoph Sperfeldt currently works for the German Development Service (DED) as an advisor to the Cambodian Human Rights Action Committee supporting victim participation in the Khmer Rouge Tribunal. Previously, Christoph completed an internship with the ICTR and a Masters thesis comparing the politics of transitional justice and reparations in Guatemala and Sierra Leone.

Recommended readings:

TRUTH COMMISSIONS
Freeman, M. (2006) "Truth Commissions" in <i>Truth Commissions and Procedural Fairness</i> . Cambridge, UK: Cambridge University Press, pp. 3-40.
Crocker, D. (2000) "Truth Commissions, Transitional Justice, and Civil Society" in Rotberg, R. I. & Thompson, D. (eds) <i>Truth v. Justice: The Morality of Truth Commissions</i> . Princeton, NJ: Princeton University Press, pp. 99-121.
GENDER JUSTICE: PERU, SIERRA LEONE & EAST TIMOR
Dal Secco, A. (2008) "Truth and Reconciliation Commissions and Gender Justice" in Pankhurst, D. (ed.) <i>Gendered Peace: Women's Struggles for Post-War Justice and Reconciliation</i> . New York: Routledge, pp. 65-106.
EAST TIMOR
Burgess, P. (2006) "A New Approach to Restorative Justice – East Timor's Community Reconciliation Process" in Roht-Arriaza, N. & Mariexcurrana, J. (eds) <i>Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice</i> . Cambridge, UK: Cambridge University Press, pp. 176-205.
LIBERIA
Lamin, A. R. "Truth, Justice and Reconciliation: Analysis of the Prospects and Challenges of the Truth and Reconciliation Commission in Liberia" in Agboaye, F. & Bah, A. M. S. (eds), <i>A Tortuous Road to Peace: The Dynamics of Regional, UN and International Interventions in Liberia</i> . Pretoria: Institute for Security Studies, pp.229-247.
Pajebo, E. (2007) "Civil Society and Transitional Justice in Liberia", <i>International Journal of Transitional Justice</i> , 1, pp. 287-296.
GUATEMALA
Tomuschat, C. (2001) "Clarification Commission in Guatemala", <i>Human Rights Quarterly</i> , 23:2, pp. 233-258.

Day 4, Monday 20 July

Criminal Tribunals

Dr Wendy Lambourne

with guests Christoph Sperfeldt & Pheng Pong-Rasy

The day will start with a presentation and discussion on the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL). In the afternoon we will focus on the Extraordinary Chambers in the Courts of Cambodia (popularly known as the Khmer

Rouge Tribunal), finally established 30 years after the genocide in that country. Issues and themes to be highlighted include the role of documentation and education, victim participation, outreach and the question of ‘justice for whom?’

Christoph Sperfeldt currently works for the German Development Service (DED) as an advisor to the Cambodian Human Rights Action Committee supporting victim participation in the Khmer Rouge Tribunal. Previously, Christoph completed an internship with the ICTR and a Masters thesis comparing the politics of transitional justice and reparations in Guatemala and Sierra Leone.

Pheng Pong-Rasy is currently Team Leader for the Genocide Education Project and the Victim Participation Project at the Documentation Center of Cambodia, where he has worked for the past 12 years including experience in documentation, forensic analysis and mapping. Rasy has qualifications in education and librarianship, and previously worked with the National Library of Cambodia.

Recommended readings:

INTERNATIONAL CRIMINAL JUSTICE
Roht-Arriaza, N. (1999) “Institutions of International Justice”, <i>Journal of International Affairs</i> , 52:2, pp. 473-491.
Kritz, N. (1996) “Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights”, <i>Law and Contemporary Problems</i> , 59:4, pp. 127-152.
Pentelovitch, N. (2008) “Seeing Justice Done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals”, <i>Georgetown Journal of International Law</i> , 39, pp. 445-494.
RWANDA
Moghalu, K. C. (2005) “Conclusion: The Impact of the Arusha Tribunal” in <i>Rwanda’s Genocide: The Impact of Global Justice</i> . Basingstoke, Hampshire: Palgrave Macmillan, pp. 201-207.
Kamatali, J. M. (2003) “The Challenge of Linking International Criminal Justice and National Reconciliation: the Case of the ICTR”, <i>Leiden Journal of International Law</i> , 16, pp. 115-133.
SIERRA LEONE
Horowitz, S. (2006) “Transitional Criminal Justice in Sierra Leone” in Roht-Arriaza, N. & Mariexcurrena, J. (eds) <i>Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice</i> . Cambridge, UK: Cambridge University Press, pp. 43-69.
Schabas, W. A. (2004) “A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone”, <i>Criminal Law Forum</i> , 15, pp. 3-54.
CAMBODIA
Etcheson, C. (2005) “Documenting Mass Murder” in <i>After the Killing Fields: Lessons from the Cambodian Genocide</i> . Westport, Connecticut: Praeger, pp. 53-76.
Hirsch, S. (2005) “Justice Delayed”, <i>National Journal</i> , 7/2/05, pp. 2122-6.
Chhang, Y. (2007) “The Thief of History: Cambodia and the Special Court”, <i>International Journal of Transitional Justice</i> , 1, pp. 157-172.

Day 5, Tuesday 21 July Role Play: Designing a Transitional Justice Process
Debate: Peace v. Justice
 Dr Wendy Lambourne

Students will be asked to prepare for and participate in either:

- 1) a role play in which conflict participants and outside interveners collaborate to design a transitional justice process. Students will be assigned specific roles of conflict participants and outside interveners. The goal is for students to engage in the dynamics of a conflict and the dilemmas of designing a transitional justice process. The case study for the role play will be decided in consultation with students, depending on knowledge and interest. Proposed case studies include Sri Lanka, Solomon Islands or a hypothetical conflict scenario.

or

- 2) a debate concerning the International Criminal Court and its issuing of indictments during armed conflict, i.e. prior to a peace agreement being reached. The debate will raise issues concerning the apparent conflict between achieving peace and pursuing justice, and claims that, in Northern Uganda, traditional indigenous processes could replace international legal accountability. The focus will be on the case of Northern Uganda, although reference to other cases could enrich the debate.

Further details about the role play, debate and assessment process will be provided in class.

Required readings:

CIVIL SOCIETY PARTICIPATION
Lundy, P. & McGovern, M. (2008) "The Role of Community in Participatory Transitional Justice" in McEvoy, K. & McGregor, L. (eds) <i>Transitional Justice from Below</i> . Oxford/Portland, Oregon: Hart Publishing, pp. 99-120.
PEACE v. JUSTICE
Goldstone, R. J. (1998) "Bringing War Criminals to Justice during an Ongoing War" in Moore, J. (ed.) <i>Hard Choices: Moral Dilemmas in Humanitarian Intervention</i> . Lanham, Maryland: Rowman & Littlefield, pp. 195-210.
Mani, R. (2005) "Balancing Peace with Justice in the Aftermath of Violent Conflict", <i>Development</i> , 48:3, pp. 25-34.
NORTHERN UGANDA & THE ICC
Waddell, N. & Clark, P. (eds) (2008) <i>Courting Conflict? Justice, Peace and the ICC in Africa</i> , London: Royal African Society.

ASSESSMENT

(a) Class Participation, including role play *or* debate (25 %)

Students will be assessed on their **participation in class discussions** including evidence of reading and thoughtful reflection on key issues and themes (10%). Key readings have been identified for each session and are included in the course reader. You are expected to read all of the key readings prior to each class. Additional references for each session have been listed for those interested in pursuing particular topics, and as a resource for assignments.

Student **participation in a role play** involving the design of a transitional justice process, **or a debate** on issues relating to peace versus justice, will also be assessed based on evidence of preparation and creative engagement in the role play or debate in class **on Day 5, Tuesday 21 July** (15%). More details will be provided in class.

(b) Assignment 1: Reflection Exercise (20%) 1200 words DUE 31 JULY

For this assignment you are required to reflect on your experience of either the role play or debate on the final day of class, with reference to your participation and the experiences of others, what you learnt and the key issues which arose. Reference to relevant transitional justice and peacebuilding theory is expected, but a formal list of references is not required. Assessment criteria will include your ability to express your ideas clearly and fluently and an emphasis on analysis rather than description.

(c) Assignment 2: Essay (55%) 3500 words DUE 21 AUGUST

For this assignment students are required to **write a scholarly essay critically analysing the theory and practice of transitional justice focussing on either:**

1) a particular conflict, country or context

or

2) a particular type of mechanism and compare two case studies

The aim of the assignment is to link theories and practice of transitional justice to theories of conflict transformation and peacebuilding. The essay is due to be submitted one month after the course ends (Friday 21 August).

You may choose to base your essay on a country or case study covered in class, such as the truth commissions in South Africa, Peru or Liberia; traditional indigenous approaches in Mozambique or Rwanda; tribunals in Sierra Leone or Cambodia; or the ICC in northern Uganda. Alternatively, you may choose to focus on transitional justice in other contexts such as post World War II, Northern Ireland, Chile, Bosnia, Iraq or Afghanistan.

YOU ARE REQUIRED TO CONFIRM YOUR ESSAY TOPIC WITH DR WENDY LAMBOURNE BY EMAIL BY TUESDAY 28 JULY.

Criteria for assessment:

- evidence of research and understanding of the transitional justice mechanism/s or approach/es chosen for analysis
- ability to identify relevant theories, models and ideas relating to transitional justice and to critically assess how transitional justice mechanisms have (or have not) been implemented in the particular context chosen
- evidence of creative application of theory to practice by suggesting improvements or alternative approaches to enhance the contribution of transitional justice processes to conflict transformation and sustainable peacebuilding
- ability to express ideas clearly, fluently and intelligently
- ability to develop and present a coherent argument within the required word limit
- evidence of reflective and critical wider reading and research, with full reference list of sources

Further details regarding referencing styles, presentation and submission of assignments may be found in the **CPACS Assignment Presentation and Assessment Guidelines**. Please note that students are required to attach an **Assignment Cover Sheet** to all work submitted and to sign the **Plagiarism Compliance Statement** before assignments can be marked. Extensions should be requested in advance where possible. Late submission of assignments will attract a penalty, except when an extension has been granted on medical or other emergency grounds. Written work that exceeds the word limit may also incur a penalty.

Students must pass all three sections of the assessment (class participation/role play or debate, reflection exercise and essay) for successful completion of the course. Failure to attend at least 80% of classes without reasonable cause is grounds for failure.