Course Description

Transitional Justice

Lecturer: Nenad Dimitrijevic
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Meeting time: Mondays and Wednesdays 11.00-12.40, FT908
Office hours: Mondays and Wednesdays 14.00-16.00, FT905
Type of course: elective
Number of credits: 4 (8 ECTS credits)
Teaching format: a lecture and a seminar cover each topic

Course Overview

This course is organized around controversies over the issue of the proper dealing with the grave violations of human rights committed by a recently ousted regime and its supporters. We will depart from the assumption that the complex task of democratic transition acquires yet another dimension in societies whose immediate past has been marked not only by the authoritarian nature of the previous regime, but also by mass regime-sponsored (and sometimes widely supported) atrocities. The basic question reads: does the new political community, legitimized by its democratic intentions, need to reckon with such wrongdoings? Dilemmas brought up by this question span legal, practical-political and moral considerations.

The general goal of the course is to introduce students to the practice and theory of transitional justice: we will examine incentives, conditions and constraints of establishing accountability and achieving truth and justice in post-criminal societies. The normative focus is on the question of whether such societies should promote ‘politics and culture of forgetting’ or ‘politics and culture of accountability and recognition’. The analytical focus is on the question why approaches to, and mechanisms of, transitional justice differ from one post-conflict society to another.

The course is divided in two parts. The first part (Concepts and Controversies) introduces basic categories and addresses focal questions in the debate; case studies will be used to elucidate political, legal, and moral controversies that surround the key concepts, and to
illustrate diverging answers. In the second part (Mechanisms of Transitional Justice) we will be exploring different (regular and extraordinary) legal, political and societal instruments and strategies that are used to /1/ tackle multiple forms of responsibility of wrongdoers, /2/ acknowledge the suffering of victims, /3/ deter future conflicts, and /4/ create and stabilize a new democratic legitimacy. We will again combine theoretical analysis with the extensive references to empirics.

**Expected outcomes**

Students will learn that the issue of the proper attitude to recent atrocities is of direct relevance for sustainability of a new democracy. They will be expected to master different approaches to dealing with the evil past. By the end of the course they should be able to figure out the practical-political importance of legal, political, cultural, and moral issues that are raised after the fall of a repressive regime. In addition, it is expected that the course will achieve the following:

1. Elucidating the key concepts used in the field;

2. Identifying and explaining the relationship between the wealth of cases of transitional justice, on the one hand, and core analytical features pertaining to each case, on the other hand;

3. Understanding the interplay between moral imperative to address the past crime and policy constraints of a democratic transition.

**Course requirements and evaluation**

This is a four-credit course. A lecture and a seminar will cover each topic (with the exception of topic three, where my lecture on memory, silence and denial will be followed by two seminars, on Germany and Spain, respectively).

One of you will be asked to prepare a short presentation for each seminar class, as the basis for a more concentrated discussion. Your presentation will take approx. 20 minutes, and it will be based on a short position paper (2-3 pages), that you will distribute electronically to all class participants and to me before 4 PM, on the day preceding the seminar class. Your presentation should contain short critical evaluation of the topic and the way it is presented in the assigned readings, as well as questions that you think need to be raised in the seminar discussion. A general class discussion will follow. The presentation will be graded In addition, each class participant will contribute to the seminar preparation by sending three questions/comments. The same deadline applies. I will provide written comments on your background paper and on your questions.

Questions and comments during lectures are welcome. Active participation in seminars is required. You should write an approx. 15-20 pages long (Times New Roman 12, double-spaced) final essay. The topic should be chosen - upon my approval – by December 1. Do not hesitate to discuss your final paper ideas with me throughout the semester. Final papers are due December 21, 2015.
Classes are mandatory for all of you who take the course for grade. I will take attendance. In case of absence, you will need to provide written documentation of legitimate circumstances that prevented you from attending class. Legitimate circumstances include illness, serious family emergencies and participation in group activities sponsored by CEU. Should you not meet these conditions, you will not receive credits for the course.

You are expected to be familiar with the CEU policies on scholarly dishonesty. Plagiarism and other acts of academic dishonesty will result in automatic failure of the course and immediate referral to the appropriate committee for academic discipline.

The use of electronic devices (laptops, tablets, e-readers, phones, etc.) is not allowed.

Grading will depend on the above-presented features, in the following way:

- presentation: 25%
- class participation 25%
- final essay 50%

Topics

Part One: Concepts and Controversies

First meeting (zero week). Introducing the course (Summarizing the core questions, structure and main topics of the course. Discussing requirements)

Topic 1. What is transitional justice (The subject of transitional justice: dealing with mass atrocities and their legacies. Identifying mass atrocities: actions, goals, wrongdoers, victims. Is justice in transitions from the criminal past special? Defining transitional justice. A historical overview, with an emphasis on the development of transitional justice after WW II)

Mandatory readings


Optional readings


**Topic 2. Dilemmas of transitional justice** (Making sense of the triad: an evil past – transitional condition – a democratic future. Is compromise necessary? Normative principles vs. contextual constraints. Focusing on wrongdoers or focusing on victims? Retribution vs. restoration; Truth vs. justice; Democracy vs. justice; Peace vs. justice; Reconciliation.)

**Mandatory readings**

**Optional readings**

**Topic 3A. Memory and ‘forgetting’** (Arguments against remembrance: politics of silence. Memory, why it matters. Who remembers and how. Conflicting memories. Denial, its agents and types.)

**Mandatory readings**

**Optional readings**

**Topic 3B. Seminar on memory and denial I: German Historians’ Dispute** (The factual and normative background of the *Historikerstreit*. Habermas vs. Nolte. The Nazi past
between history and memory. What should present generations do: between relativist normality and universalist moral duty of reflection)

Mandatory readings

Optional readings
- Maja Zehfuss, Wounds of Memory. The Politics of War in Germany (Cambridge: Cambridge University Press, 2007)
- Siobhan Kattago, Ambiguous Memory: The Nazi Past and German National Identity (Westport: Praeger, 2001)

**Topic 3C. Seminar on memory and denial II: Spain** (‘Pact of oblivion’: why Spaniards chose silence after the regime change. Ambiguity of the past. Amnesty. Return of the past: social and political dynamics of memory)

Mandatory readings

Optional readings
- Georgina Blakeley, “Digging up Spain’s Past: Consequences of Truth and Reconciliation” Democratization, Vol. 12, No. 1, 2005
- Paloma Aguilar, Memory and Amnesia: The Role of the Spanish Civil War in the Transition to Democracy (New York: Berghahn Books, 2002)
- Andrew Rigby, Justice and Reconciliation after the Violence (Boulder: Rienner, 2001)

Mandatory readings
- Robert Downie, “Responsibility and Social Roles”
- David Cooper, “Responsibility and the ‘System’”

Downie’s and Cooper’s texts are taken from Peter French (ed.), *Individual and Collective Responsibility. Massacre at My Lai* (Cambridge, Mass.: Schenkman, 1972)

Optional readings
Part Two: Mechanisms of Transitional Justice

Topic 5. Accountability Mechanisms: A General Overview (Definition and typology. How to choose appropriate mechanisms. ‘Holistic approach’: Combining different mechanisms of transitional justice)

Mandatory readings


Optional readings


Mandatory readings


Optional readings


Steven Ratner, Jason Abrams and James Bischoff, Accountability for Human Rights Atrocities in International Law. Beyond the Nuremberg Legacy, Chs. 1, 7, 8 (Oxford: Oxford University Press, 2009)


**Mandatory Readings**

- Rachel Kerr and Eirin Mobekk, Peace and Justice. Seeking Accountability after War, Ch. 3 (Cambridge: Polity Press, 2007)

**Optional Readings**

- Dubravka Zarkov and Marlies Glasius (eds.), Narratives of Justice In and Out of the Courtroom. Former Yugoslavia and Beyond (Cham: Springer, 2014)
- Steven Ratner, Jason Abrams and James Bischoff, Accountability for Human Rights Atrocities in International Law. Beyond the Nuremberg Legacy, Ch. 9 (Oxford: Oxford University Press, 2009)

**Mandatory Readings**

**Optional Readings**


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**Optional Readings**


• Natalia Letki, “Lustration and Democratization in East Central Europe”, *Europe-Asia Studies*, Vol. 54, No. 4, 2002
**Topic 11. Reparation and Compensation for Victims** (An element of justice for victims, families and society. Legal, political and moral aspects. Different types. Some interesting cases)

**Mandatory Readings**

**Optional Readings**
- Barbara Johnston and Susan Slyomovics (eds.), *Waging War, Making Peace. Reparations and Human Rights* (Walnut Creek: Left Coast Press, 2009)

**Topic 12. Concluding discussion: can wrongs be righted?** (Re-assessing goals and achievements of transitional justice in terms of moral rights of victims and moral duties of wrongdoers. Asymmetry, or moral inequality between the two groups. Restorative justice and its components. Reconciliation: is it a feasible goal; is it a legitimate goal? Apology: victims’ right, wrongdoers’ duty? Forgiveness: response to apology or victims’ privilege? Do wrongdoers who try to make amends have the right to expect restoration of their moral status?)

**Mandatory Readings**

**Optional readings**
• Rajeev Bhargava, “Difficulty of Reconciliation”, Philosophy and Social Criticism, Vol. 38, No. 4-5, 2012