

# **Transitional Justice and Constitutionalism in a Globalized World**

790:508 (Fall 2015)

Tuesdays 6pm – 8:40pm

Marymount Manhattan College

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## **Course Description**

In this course we will examine competing theories of transitional justice as they in turn relate to questions of constitutionalism. As is well known, most of the original theories of transitional justice developed in the 1990s in the experience of the “velvet revolutions” in Eastern Europe as these nation states moved from so called communist countries to democratic societies. Most of them were associated with democratic proceduralism which often times was reduced to a set of factors that could be universalized for all societies in transition from authoritarian systems to democracies. Such factors include: the move to electoral politics, the development of a free market, and the end of communist party rule which often led to the criminalization of former members of communist governments. These factors were variable but all contained two points: the move from one party rule to an electoral system and the development of capitalist economies.

While this model, which we will explore thoroughly in class, may have been a useful tool in analyzing the switch from communism to democracy in Eastern Europe, we will question if it is adequate when applied to the Middle East and the Global South more generally. We will explore the complexity of transitional justice by looking at actual case studies in the Middle East and Global South and explore the critical literature developed there as a result of colonialism. In this course we will then examine not only transitional justice theories but different parts of our globalized world. We will consider what constitutionalism must look like in all its variegated forms given the particularities of our case studies. Finally, we will investigate the question of embeddedness and indigenous values, especially the roles of identity, gender, and religion in transitional justice.

We hope to provide the students with more than just a simple model of transitional justice but rather the kind of complex tools we will need to analyze transitional justice and constitutionalism in a very fraught and complicated global world.

## **Course Objectives**

The objectives in this course are twofold: 1) To train students in both the theory and practice of society's currently undergoing transitions and 2) To give students a strong theoretical and critical basis for evaluating what we mean as political scientists, lawyers and international activists when we speak of transitional justice. I hope to fine tune our students' critical skills so they can

approach individual case studies, ranging from East European societies, to South America, to the Middle East and South Africa. We are paying great attention to the Global South and the Middle East and putting the cases in conversation with questions of what it would mean to have both the words “transition” and “justice” be meaningful in a theory of transitional justice. Key to this is that the students are going to be challenged and encouraged to develop and criticize conceptual frameworks that I present in the complex array of literature. Therefore I encourage students to actively participate as therefore participation is a key component for the course. One way to encourage participation, is to allow students to make their own presentations so we will be able to work together and grapple with the complex issues at hand. I will require that all cell phones be put away in class and laptops only be used for taking notes. Since this is a real critical journey we will take together, I encourage attendance for every class.

### **Provisional Course Outline**

1. Introduction and the Age of Upheaval
2. Competing Theories of Transitional Justice
3. Rethinking Transitional Justice Theories
4. Islam and Transitional Justice
5. Identity, Difference and Indigenous Values in Transitional Justice
6. Transitions from Communism: East European Cases
7. South Africa
8. Colombia
9. Iraq
10. Truth Commissions
11. Alternative Views of Cosmopolitanism
12. Contending Interpretations of Constitutionalism
13. Democracy, Revolution and the Promise of a New Humanity

### **Books to Purchase**

- Ruti Teitel, *Transitional Justice*. Oxford: Oxford University Press, 2000.
- Oscar Guardiola-Rivera, *What if Latin America Ruled the World?* Bloomsbury: UK, 2010.
- Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*. New York: Three Rivers Press, 1998.
- Seyla Benhabib, *Another Cosmopolitanism*. Oxford: Oxford University Press, 2008.

## **Session 1: Introduction and the Age of Upheaval**

### Readings:

- Hamid Dabashi, *The Arab Spring: The End of Postcolonialism*, Introduction, Chapters 2-3.
- Costas Douzinas, *Philosophy and Resistance in the Crisis: Greece and the Future of Europe*, Prologue.
- *Challenging Hegemony, Social Movements, and the Quest for a New Humanism in Post-Apartheid South Africa*, Nigel Gibson (ed.), Chapter 5: “The Politics of Community Movement.”
- Drucilla Cornell, “For RAWA”, *Signs* 28, No. 1. Gender and Cultural Memory. (Autumn 2002), 433-435.

## **Session 2: Competing Theories of Transitional Justice**

### Readings:

- Donald Horowitz, *A Democratic South Africa?: Constitutional Engineering in a Divided Society*. Berkeley: University of California Press, 1991. Chapter 6 “Designs for Democracy” and Chapter 7 “The Transition to Democracy and the Problem of Hegemony.”
- \*Ruti Teitel, *Transitional Justice*, Chapters 1, 4, 6 and 7.

## **Session 3: Rethinking Transitional Justice Theories**

### Readings:

- Patrick Bond, *The Elite Transition: From Apartheid to Neoliberalism in South Africa*. Read Part II.
- Drucilla Cornell, *Law and Revolution in South Africa: uBuntu, Dignity, and the Struggle for Constitutional Transformation*, Fordham University Press, 2014. Read Introduction.

## **Session 4: Islam and Transitional Justice**

### Readings:

- Hamid Dabashi, *Islamic Liberation Theology: Resisting the Empire*, Chapter 1 “Resisting the Empire” and the conclusion.
- Ali Shariati, *Marxism and Other Western Fallacies: An Islamic Critique*. [Entire]
- *Islam and Muslim Politics in Africa*, Benjamin Soares and René Otayek (eds.), Chapters 3 and 5.

## **Session 5: Identity, Difference and Indigenous Values in Transitional Justice**

### Readings:

- Saba Mahmood, *The Politics of Piety*, Chapter 1.

- Drucilla Cornell, *Ubuntu and the Law: African Ideals and Post Apartheid Jurisprudence*, Introduction and “A Call for Nuanced Jurisprudence: South Africa, uBuntu, Dignity, and Reconciliation.”
- Abraham Acosta, *Thresholds of Illiteracy: Theory, Latin America, and the Crisis of Resistance*. Chapters 2 & 4.

### **Session 6: Transitions from Communism: East European Cases**

#### Readings:

- Lavina Stan & Nadya Nedelsky, eds. *Post-Communist Transitional Justice: Lessons from 25 Years of Experience*, Cambridge University Press, 2015. Selections.
- Kubik, J. and A. Linch, eds. *Postcommunism from Within: Social Justice, Mobilization, and Hegemony*. New York: SSRN/NYU Press, 2013. Selections.
- Eva-Clarita Pettai and Vello Petai, *Transitional and Retrospective Justice in the Baltic States*, Cambridge. Selections.

### **Session 7: Transformative Constitutionalism in South Africa**

#### Readings:

- *The Dignity Jurisprudence of the South African Constitutional Court*, Introduction & Chapter, “Equality and Nondiscrimination”.
- Three Court Cases: Makwanyane, Carmichelle, and Grootboom.
- Drucilla Cornell, *Law and Revolution in South Africa: uBuntu, Dignity, and the Struggle for Constitutional Transformation*. Chapter 3, “Dignity Violated: Rethinking AZAPO through uBuntu.”

### **Session 8: Colombia**

#### Readings:

- \*Oscar Guardiola-Rivera, *What if Latin America Ruled the World?* Read Part III. Bloomsbury: UK, 2010.
- Rodrigo Uprimmy, “The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges,” *Texas Law Review*, 2011.
- Rodrigo Uprimmy and Maria Paula Saffon, “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case,” *Working Paper*.
- Oscar Guardiola-Rivera, *Story of a Death Foretold: The Coup Against Salvador Allende, 11 September 1973*. Chapters 12 “Laws of Darkness” and Chapter 13 “Transition.” Bloomsbury: UK, 2013.

### **Session 9: Iraq**

#### Readings:

- Eric Davis, *Memories of State*, Chapters 2, 3, and 8.

- Eric Stover, Hanny Megally, and Hania Mufti. “‘Bremer’s Gordian Knot’: Transitional Justice and the US Occupation of Iraq.”

### **Session 10: Truth Commissions and Transitional Justice**

#### Readings:

- \*Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*. [Entire]
- Sarah Weirich, “Economic Reconciliation in Tunisia: Maintaining Old Allegiances”
- *Unspeakable Truths: Confronting State Terror and Atrocity*, Chapters 3 - 5, and 7.
- Mahmood Mamdani, “The Truth According to the Truth and Reconciliation Commission,” in *The Politics of Memory: Truth, Healing and Social Justice*, ed. Ifi Amadiume and Abdullahi A. An-Na’im (London: Zed Books, 2000).

### **Session 11: Alternative Views of Cosmopolitanism**

#### Readings:

- \*Seyla Benhabib, *Another Cosmopolitanism*. Oxford University Press, 2008. [Entire]
- Iris Marion Young, *Responsibility for Justice*. Oxford University Press, 2013, Chapter: “Responsibility across Borders”

### **Session 12: Contending Interpretations of Constitutionalism**

#### Readings:

- Ronald Dworkin, *Law’s Empire*, Chapters 1 & 2.
- Habermas. *Between Facts and Norms*. Chapters 1 & 3.
- Carl Schmidt, *Constitutional Theory*. Part I, Sections 1-4.
- John Rawls, *Political Liberalism*, Lecture VI.
- Abdullahi Ahmed An-Na’im. *African Constitutionalism and the Role of Islam*. Chapters 1 & 2.

### **Session 13: Democracy, Revolution and The Promise of a New Humanity**

#### Readings:

- Drucilla Cornell, *Symbolic Forms of a New Humanity*, Chapters 1, 2, and 3.
- Frantz Fanon, *Black Skin, White Masks* [Entire]
- Rosa Luxemburg, *Russian Revolution, and Leninism or Marxism?* Chapters 4, 5, and 6.