

SEMINAR IN TRANSITIONAL JUSTICE (LAW: 454)

Fall, 2009

Professor J. L. Gibson

Course Description:

This seminar focuses on transitional law and justice, and especially on the meaning, causes, and consequences of “reconciliation.” As such, the course considers how the past can set limits on the possibilities for peace and for any possible transition to democratic governance. Several key questions guide the seminar: What is reconciliation? Under what conditions does truth – understanding the past – contribute to reconciliation? Under what conditions, if any, and via what types of legal and political institutions, can the injustices of the past be overcome? What specific processes lead to reconciliation? Do trials contribute to successful transitions? How can the retributive justice deficit created by amnesties be overcome? What connections exist between reconciliation and successful democratization? What accounts for the variability of transitional justice institutions in bringing about successful democratization? Because the South Africans have been the most successful nation in the world in using a truth commission to promote reconciliation and democratization, considerable attention will be given in this seminar to that country’s transition from the apartheid system to the most successful democracy in Africa.

Meeting Times and Location:

Thursdays, 16:15 – 19:15

Room P300

Grading Elements:

Class participation (20 %); final research paper (80 %; see below)

No final exam will be administered

Seminar Rules:

You must complete all of the assignments by the end of the term. I also observe all university drop and other deadlines. You should familiarize yourself with the university's rules on ethics and academic misconduct. I strictly adhere to these rules.

Contact Information:

Office hours: By appointment

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Required Books (all available in the bookstore):

Gibson, James L. 2004. *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* New York: Russell Sage Foundation.

Gobodo-Madikizela, Pumla. 2003. *A Human Being Died That Night: A South African Story of Forgiveness*. Boston: Houghton Mifflin Company.

Hayner, Priscilla. 2002. *Unspeakable Truths: Facing the Challenges of Truth Commissions*. New York: Routledge.

Nobles, Melissa. 2008. *The Politics of Official Apologies*. New York: Cambridge University Press.

Research Paper:

The research paper will constitute 80 percent of your final grade. You should select a topic within the broad rubric of transitional justice issues. The subject matter of your paper must pertain to some aspect of democratization, transitional justice, or truth and reconciliation processes, but otherwise there are few restrictions on the types of paper you might select. I am very flexible as to the subject matter of your paper, and I believe it possible to transform virtually any of your substantive interests into a question of transitional justice. Your paper should be a minimum of 35 pages and a maximum of 50 pages long, with these limits strictly enforced. You should use a standard format (e.g., 1 inch margins) in preparing your paper.

The final paper is due on **December 7, 2009**. You must turn the paper in to the Registrar by 4:00 p.m. on the 7th. Following Law School rules, there are severe penalties (e.g., one letter grade per day) for late papers (if they are accepted at all). Throughout the term, you will be required to give oral reports to me on the progress of your paper.

The general approach to writing this paper should be one of preparing an article for publication. You may wish to select a particular article you like and copy its style and organization. You should use a style manual in writing your paper. I do not care which one – but would recommend the style of the *Law and Society Review* – but you should select a style, and use it consistently.

READING ASSIGNMENTS

9/24 **Organizational Seminar**
Social Science Approaches to the Study of Transitional Justice

10/1 **Democracy, Democratization, and Alternatives to Democracy**

Geddes, Barbara. 1999. "What Do We Know About Democratization After Twenty Years?"

Annual Review of Political Science 2: 115-144.

Huntington, Samuel P. 1991. "Democracy's Third Wave." *Journal of Democracy* 2 (#2, Spring): 12-34.

Sen, Amartya. 1999. "Democracy as a Universal Value." *Journal of Democracy* 10 (#3): 3-17.

Zakaria, Fareed. 1997. "The Rise of Illiberal Democracy." *Foreign Affairs* 76 (November/December): 22-43.

Huntington, Samuel P. 1997. "After Twenty Years: The Future of the Third Wave." *Journal of Democracy* 8 (#4): 3-12.

The Role of Political Culture in Democratization

Putman, Robert D. 1995. "Bowling Alone: America's Declining Social Capital." *Journal of Democracy* 6 (1): 65-78.

Inglehart, Ronald, and Christian Welzel. 2002. "Political Culture and Democracy." In *New Directions in Comparative Politics*, ed. Howard Wiarda. New York: Westview Press, 141-164.

Lipset, Seymour Martin. 1994. "The Social Requisites of Democracy Revisited: 1993 Presidential Address." *American Sociological Review* 59 (#1, February): 1-22.

Gibson, James L. 2003. "The Legacy of Apartheid: Racial Differences in the Legitimacy of Democratic Institutions and Processes in the New South Africa." *Comparative Political Studies* 36: (#7, September): 772-800.

10/8 **The Problem of Transitional Justice: The Need for and Methods of Dealing with the Past**

Gibson, *Overcoming Apartheid*, Ch. 1.

Zalaquett, José. 1991-1992. "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations." *Hastings Law Journal* 43 (#6): 1425-1438.

Thompson, Janna. 2001. "Historical Injustice and Reparation: Justifying Claims of

Descendants.” *Ethics* 112 (October): 114-135.

Huyse, Luc. 1995. “Justice After Transition: On the Choices Successor Elites Make in Dealing with the Past.” *Law and Social Inquiry* 20 (#1, Winter): 51-78.

Gibson, James L. Forthcoming. “Land Redistribution/Restitution in South Africa: A Model of Multiple Values, as the Past Meets the Present.” *British Journal of Political Science* forthcoming.

Do Institutions Matter?

Keith, Linda Camp, C. Neal Tate, Steven C. Poe. 2009. “Is the Law a Mere Parchment Barrier to Human Rights Abuse?” *The Journal of Politics* 71 (#2, April): 644-660.

10/15 Developing, Creating, and Changing Collective Memories

Savelsberg, Joachim J., and Ryan D. King. 2007. “Law and Collective Memory.” *Annual Review of Law and Social Science* 3:189-211.

Gibson, *Overcoming Apartheid*, Ch. 3.

Griffin, Larry J. 2004. “‘Generations and Collective Memory’ Revisited: Race, Region, and Memory of Civil Rights.” *American Sociological Review* 69 (#4, August): 544-557.

Gibson, James L. 2009. “On Legitimacy Theory and the Effectiveness of Truth Commissions.” *Law and Contemporary Problems* 72: forthcoming.

Myers, William, and Reginald S. Sheehan. 2009. “The Australian High Court and Attitudes Toward Aborigines: A Test of Court Influence on Australian Public Opinion.” Paper delivered at the 2009 Annual Meeting of the American Political Science Association, September 3 – 6, Toronto, Canada.

Paluck, Elizabeth Levy. 2009. “Reducing Intergroup Prejudice and Conflict Using the Media: A Field Experiment in Rwanda.” *Journal of Personality and Social Psychology* 96 (#3): 574-587.

10/22 Transitional Justice Institutions and Mechanisms

Hayner, Priscilla. 2002. *Unspeakable Truths: Facing the Challenges of Truth Commissions*. New York: Routledge.

Snyder, Jack, and Leslie Vinjamuri. 2003. “Trials and Errors: Principle and Pragmatism in Strategies of International Justice.” *International Security* 28 (3): 5-44.

Sikkink, Kathryn, and Carrie Booth Walling. 2007. “The Impact of Human Rights Trials in Latin America.” *Journal of Peace Research* 44 (#4, July): 427-445.

Gibson, James L. 2006. “The Contributions of Truth to Reconciliation: Lessons from South Africa.” *Journal of Conflict Resolution* 50 (#3, June): 309-432.

- Goodliffe, Jay, and Darren Hawkins. 2009. "A Funny Thing Happened on the Way to Rome: Explaining International Criminal Court Negotiations." *The Journal of Politics* 71 (#3, July): 977-997.
- Gibson, James L. 2009. "On Legitimacy Theory and the Effectiveness of Truth Commissions." *Law and Contemporary Problems* 72: forthcoming.
- Gibson, *Overcoming Apartheid*, Ch. 8.
- Fletcher, Laurel, and Harvey M. Weinstein, with Jamie Rowen. 2009. "Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective." *Human Rights Quarterly* 31: 163-220.

10/29 **Two Case Studies: South Africa and Cambodia**

- Gibson, *Overcoming Apartheid*, Ch. 4, 5, 6, 8.
- Gobodo-Madikizela, Pumla. 2003. *A Human Being Died That Night: A South African Story of Forgiveness*. Boston: Houghton Mifflin Company.
- Gibson, James L. 2005. "The Truth About Truth and Reconciliation in South Africa." *International Political Science Review* 26 (#4, October): 341-36.
- McGonigle, Brianne N. 2009. "Two for the Price of One: Attempts by the Extraordinary Chambers in the Courts of Cambodia to Combine Retributive and Restorative Justice Principles." *Leiden Journal of International Law* 22: 127-149.
- Gibson, James L., et al. 2009. "Cambodians' Support for the Rule of Law on the Eve of the Khmer Rouge Trials." Unpublished manuscript, Washington University in St. Louis. [Additional Cambodian papers may be assigned from our Trials of the Khmer Rouge project.]

11/5 –

11/12 **Amnesty, Apologies, and Micro-Level Processes of Forgiveness/Reconciliation**

- Nobles, Melissa. 2008. *The Politics of Official Apologies*. New York: Cambridge University Press.
- Darley, John M. 2009. "Morality in the Law: The Psychological Foundations of Citizens' Desires to Punish Transgressions." *Annual Review of Law and Social Science* 5:1-23.
- Blatz, Craig W., Karina Schumann, and Michael Ross. 2009. "Government Apologies for Historical Injustices." *Political Psychology* 40 (#2): 219-241.
- Shnabel, Nurit, and Arie Nadler. 2008. "A Needs-Based Model of Reconciliation: Satisfying the Differential Emotional Needs of Victim and Perpetrator as a Key to Promoting Reconciliation." *Journal of Personality and Social Psychology* 94 (#1): 116-132.
- Lie, Tove Grete, Helga Malmin Binningsbø, and Scott Gates. "Post-Conflict Justice and Sustainable Peace." PRIO Working Paper.

11/19 **Beyond Reconciliation: Social Justice and Reparations**

Gibson, James L. 2008. "Group Identities and Theories of Justice: An Experimental Investigation into the Justice and Injustice of Land Squatting in South Africa." *The Journal of Politics* 70 (#3, July): 700-716.

Arbour, Louise. 2007. "Economic and Social Justice for Societies in Transition." *International Law and Politics* 40 (#1): 1-27.

Hadfield, Gillian K. 2008. "Framing the Choice Between Cash and the Courthouse: Experiences With the 9/11 Victim Compensation Fund." *Law and Society Review* 42 (#3): 645-682.

Bond, Patrick. 2008. "Can Reparations for Apartheid Profits Be Won in US Courts." Draft of *Africa Insight* article, December 2008.

12/7 **Term Paper Due**