

Transitional Justice – Fall 2022

Course Number: LAW 538 & PLSC 537S

Meeting Time: Thursdays 8:55-10:45 a.m. | Room: 4046

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<https://calendly.com/mrevkin/officehours?month=2022-08&date=2022-08-18>

1. COURSE DESCRIPTION

This 2-credit seminar will provide an introduction to the field of “transitional justice,” which refers to a broad range of processes and mechanisms that have been developed to respond to major violations of human rights that often occur during armed conflicts, under the rule of authoritarian regimes, or in divided societies where a dominant ethnic, racial, or religious group has systematically persecuted members of a minority or other marginalized group. Transitional justice seeks to achieve one or more of the following objectives depending on the context: providing redress for victims and accountability for perpetrators through judicial or non-judicial mechanisms (while recognizing that these are not binary categories and the same person can be both a victim and a perpetrator), repairing damaged relationships between offenders and victims (also known as “restorative justice”), promoting peaceful coexistence between previously adversarial groups, truth-telling and memorialization of the historical record of human rights violations, and legal or political reforms that address the root causes of the conflict in order to prevent its recurrence in the future. The seminar will also explore the importance of different types of data or evidence both for documenting international crimes and other forms of injustice and harm that transitional justice processes seek to address, and for empirically evaluating the effectiveness of peacebuilding programs that have been implemented in Iraq, Colombia, and other contexts.

The seminar will also engage with important critiques and limitations of the field of transitional justice, which has historically been dominated by scholars and institutions from the Global North, and by Eurocentric concepts of justice that are not necessarily universal. Contemporary transitional justice efforts have focused disproportionately on what are often described as “tribal,” “ethnic,” and “sectarian” conflicts in the Middle East and Africa, but have paid considerably less attention to the enduring legacies of colonial and white supremacist violence in North America. Transitional justice also tends to prioritize accountability for some forms of violence, conflict, and crime over others. For example, compensation is often provided for victims of lethal violence (e.g., “condolence” payments made by the U.S. military in Iraq and Afghanistan to family members of civilians killed in airstrikes) but not for other forms of non-lethal harm such as sexual violence. Students will come away from the seminar with a strong understanding of the primary tools and mechanisms for transitional justice (e.g., trials, truth and reconciliation commissions, compensation), important debates and critiques that have shaped the field, and knowledge of diverse case studies including Iraq, the United States (including examples from North Carolina), South Africa, and Colombia.

2. COURSE REQUIREMENTS AND GRADING

This is a discussion-based seminar with no exam. Grades will be based on participation and written assignments (more details below). Students can choose one of three options to fulfill the writing requirement:

1. **A research paper** of approximately 20-25 pages due on the last day of the exam period, December 16. LAW students have the option to satisfy the JD Upper-Level Writing Requirement through extension of the paper to 30 pages)
2. **5 short response papers** on weekly readings in the approximate range of 1,400-1,750 words due by 9 a.m. on the Wednesday before class.
3. **A proposal for an original research project** using any empirical methods (e.g., qualitative, quantitative, archival) of around 20 pages that could be used to apply for a [Duke Summer Scholarship Grant](#) (up to \$2,500) due on the last day of the exam period, December 16.

I will circulate a survey by email after our second class for students to select one of these three options.

3. CONTENT AND ORGANIZATION OF THE COURSE

This is a discussion-based seminar where our collective learning depends on everyone's preparation and participation. I will begin each class with an introductory lecture (20 minutes or less) to provide context for the readings and highlight key points. I will then moderate an interactive discussion for the remainder of the class time starting with the 2-3 questions I have written into the syllabus for you to consider with each week's readings. I will guide the discussion as needed to cover the assigned readings, but I aim to speak for less than 30 percent of the total class time.

I have organized the semester into three general parts. Part I (Weeks 1-6) will examine concepts, critiques, and debates in transitional justice. Building on this foundation, Part II (Weeks 7-10) provides an introduction to transitional justice mechanisms and processes including international tribunals and truth commissions. In Part III (Weeks 11-13), "Transitional Justice in Practice," we will discuss lessons learned from practitioners about the challenges of implementing theories of transitional justice on the ground, and the importance of evidence/data both for documenting injustice and for evaluating the success or failure of specific transitional justice policies and programs.

4. COURSE MATERIALS AND WEBSITE

There is no textbook for this course. The assigned readings include academic articles, excerpts of books, reports of human rights organizations and United Nations agencies, and news or magazine articles. All readings will be posted on the Sakai course website individually and compiled as a course pack. Since this is a new seminar, I expect to make some adjustments to the syllabus over the course of the semester and will update the course pack accordingly.

5. OFFICE HOURS AND EMAIL

For any administrative or substantive questions that can be answered briefly, please email me at revkin@law.duke.edu. I typically respond to emails within 24 hours on weekdays. My office number is (919) 613-8542.

My office hours are Thursdays from 3-5 p.m. at my office (3016) or by Zoom. Sign up here: <https://calendly.com/mrevkin/officehours?month=2022-08&date=2022-08-18>. I encourage all students to sign up for office hours at least once during the semester. In order to accommodate as many students as possible, the default time slot is 15 minutes. If you have a quick question, please sign up for a 15-minute slot. If you would like to have a longer conversation about class, research, careers, or anything else, please select two time slots for a 30-minute meeting.

6. EXPECTATIONS FOR ATTENDANCE AND CLASS PARTICIPATION

As noted above, attendance and active class participation are essential to the functioning of the seminar. I will not cold-call, but I may invite students to elaborate on relevant points from their response papers. I value quality over quantity, and I define participation broadly to include questions and comments during class time, office hours, and the discussion page on the course website. Students who miss more than one seminar meeting will be required to write additional response papers.

7. LAPTOP POLICY

Laptops and tablets will be allowed in class to take notes and access readings. I am trusting students not to use these devices for email or other purposes, and I will consider adopting a no-laptop policy as needed.

8. CLASS RECORDINGS

The seminar will be recorded but will only be available to students upon request in cases of excused absences. Please let me know if you expect to be absent and would like access to a seminar recording.

9. FEEDBACK

As a new faculty member teaching a new course offered at Duke for the first time this semester, I welcome your feedback and constructive suggestions for improvement. In addition to the required end-of-semester teaching evaluation, I will ask students to complete a brief anonymous online survey after the first two weeks of class so that I can incorporate your feedback early in the semester. In addition to the online survey, you can submit anonymous feedback or suggestions at any time through this Google Form: <https://forms.gle/YKuqq2ppuUKiok9y7>.

10. DRAFT SYLLABUS

PART I (WEEKS 1-6): CONCEPTS, CRITIQUES, AND DEBATES IN TRANSITIONAL JUSTICE

WEEK 1, AUGUST 25

What is Transitional Justice? Concepts, Theories, Critiques

- *What is Transitional Justice?*, INT'L CENTER TRANSITIONAL J. (2009), <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>.
- Rosemary Nagy, *Transitional Justice as Global Project: Critical Reflections*, 29 THIRD WORLD Q. 275-289 (2008).
- Paige Arthur, *How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 HUM. RTS. Q. 321-367 (2009).
- Paul Gready & Simon Robins, *Transitional Justice and Theories of Change: Towards Evaluation as Understanding*, 14 INT'L J. TRANSITIONAL JUST. 280-289 (2020)(stop before the section on "Impact and Evaluation" which we will read in Week 13).

Questions to consider:

1. Arthur (2009) notes that the term "transitional justice" first emerged in the late-1980s as several formerly authoritarian regimes in Latin America and Eastern Europe began transitions to democracy. However, other scholars have argued that many of the theories and practices now associated with the term "transitional justice" have much older origins that can be traced back to ancient Greece and other pre-modern societies. Is it even possible to determine when and where "transitional justice" originated?
2. There are many different definitions of transitional justice and its objectives. How do you think it should be defined? Why do definitions matter?

WEEK 2, SEPTEMBER 1

Blind Spots in Transitional Justice: Gender, Race, Environmental and Economic Harm, Non-Lethal Violence

- Dustin N. Sharp, *Chapter 2: Justice for What?* in RE-THINKING TRANSITIONAL JUSTICE FOR THE 21ST CENTURY 19-38 (2018).
- Zinaida Miller, *Transitional Justice, Race, and the United States*, JUST SECURITY (Jun. 30, 2020), <https://www.justsecurity.org/71040/transitional-justice-race-and-the-united-states/>.
- Katherine Fobear & Erin Baines, *Pushing the Conversation Forward: The Intersections of Sexuality and Gender Identity in Transitional Justice*, 24 INT'L J. HUM. RTS. 307-312 (2020).
- Valeria Vegh Weis & Diego Zysman-Quirós, *White Collar-Crime (or the Remaining Blind Spot in Criminology and Transitional Justice)*, J. WHITE COLLAR & CORP. CRIME 122-124 (2022).

Questions to consider:

1. The field of transitional justice has tended to prioritize accountability for certain types of harm over others (e.g., lethal violence is often prioritized over non-lethal forms of violence such as slavery and sexual assault). Why is this? Consider how jurisdictional limits, evidentiary challenges, gender and racial hierarchies and biases, and resource constraints affect the prioritization of different categories of victims and different types of harm.
2. Relatedly, how do the constraints above limit the types of perpetrators who can be held accountable? In addition to corporations and UN peacekeepers (mentioned in the readings), can you think of other examples of individuals and entities that are difficult to hold accountable, and what are the barriers to accountability?

WEEK 3, SEPTEMBER 8

False Dichotomies, Hierarchies, and Politics of Victims

- Tshepo Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, 2 J. HUM. RTS. PRAC. 208-228 (2010).
- Kieran McEvoy & Kirsten McConnachie, *Victimology in Transitional Justice: Victimhood, Innocence and Hierarchy*, 9 EUR. J. CRIMINOL. 527–538 (2012).
- Laura De Guissmé & Laurent Licata, *Competition Over Collective Victimhood Recognition: When Perceived Lack of Recognition for Past Victimization Is Associated with Negative Attitudes Towards Another Victimized Group*, 47 EUR. J. SOC. PSYCHOL. 148–150 (2017)(stop before the section entitled, “Study 1”).
- Michael Isikoff, *U.S. Weighs “Genocide” Label For IS In Iraq — And More Than A Word May Be At Stake*, YAHOO NEWS (Nov. 12, 2015), <https://www.yahoo.com/news/u-s-weighs-genocide-label-1298023405674550.html>.

Questions to consider:

1. What differences do you see between the international community’s current response to Ukrainian refugees in comparison with previous waves of Afghan, Syrian, and Iraqi refugees? Some examples for **optional reading**:
 - Magazine Cover: £350-A-MONTH THANK YOU FOR GIVING REFUGE, (Mar. 13, 2022), <https://www.bbc.com/news/blogs-the-papers-60724726>.
 - Magazine Cover: *SOARING COST OF TEACHING MIGRANT CHILDREN*, DAILY EXPRESS (May 16, 2016). <https://pbs.twimg.com/media/Cihp24IXEAAyXxB.jpg>.
 - Andie Judson, *Millions of Afghans in limbo as U.S. Immigration responds to Ukraine in record time*, ABC NEWS (May 17, 2022), <https://www.abc10.com/article/news/investigations/immigration-ukraine-afghan-helped-american-forces-danger-abc10-originals/103-fb8fb2a5-8866-43aa-b493-44a62c7f8053>.
 - Screenshots from U.S. Citizenship and Immigration Services (USCIS) website (Sakai)
2. The readings focus on hierarchies and politics of victims (e.g., “good victims” and “bad victims”). Do you see similar hierarchies in the treatment of different types of perpetrators (in these readings, current events, or your own experiences)?

WEEK 4, SEPTEMBER 15 VIRTUAL CLASS ON ZOOM

What are the Necessary Conditions for and Limits of Forgiveness?

- Neelke Doorn, *Forgiveness and Reconciliation in Transitional Justice Practices*, 15 ETHICAL PERSPECTIVES 381-398 (2008).
- Martha Minow, *Forgiveness, Law, and Justice*, 103 CALIF. L. REV. (2015): 1615-1645.
- Isabel Coles, *'I'll warm myself on fire of revenge' - Hatred hangs in ruins of Iraq's Sinjar*, REUTERS (Nov. 19, 2015), <https://www.reuters.com/article/uk-mideast-crisis-iraq-sinjar/ill-warm-myself-on-fire-of-revenge-hatred-hangs-in-ruins-of-iraqs-sinjar-idUKKCN0T81UX20151119>.
- Jen Kirby, *The Impossible Task of Truth and Reconciliation*, VOX (Mar. 24, 2022), <https://www.vox.com/22979953/forgiveness-reconciliation-truth>.

WEEK 5, SEPTEMBER 22

Top-Down and State-Led vs. Bottom-Up and Non-State Justice

- Patricia Lundy & Mark McGovern, *Whose Justice? Rethinking Transitional Justice from The Bottom Up*, 35 J. LAW & SOC. 265-292 (2008).
- Janine Ubink & Anna Rea, *Community Justice or Ethnojustice? Engaging With Customary Mechanisms to Reintegrate Ex-Combatants in Somalia*, 11 INT'L J. TRANSITIONAL JUST. 276-296 (2017).
- Karen Brounéus, *Truth-telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts*, 39 SEC. DIALOGUE 55-76 (2008).

PART II (WEEKS 6-10): MECHANISMS AND PROCESSES FOR TRANSITIONAL JUSTICE

WEEK 6, SEPTEMBER 29

Amnesties, Vetting, Disarmament, and Reintegration

- Office of the UN High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Amnesties*, (2009), https://www.ohchr.org/sites/default/files/Documents/Publications/Amnesties_en.pdf (excerpts).
- Kieran McEvoy & Louise Mallinder, *Amnesties in Transition: Punishment, Restoration, and the Governance of Mercy*, 39 J. L. & SOC. 410-440 (2012)(excerpts).
- Kimberly Theidon, *Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former combatants in Colombia*, 1 INT'L J. TRANSITIONAL JUST. 66-90 (2007)(excerpts).
- Mara Revkin, *Iraq's Harsh Approach to Punishing Islamic State 'Collaborators' Stands to Have Counterproductive Consequences*, LAWFARE (Jun. 11, 2018), <https://www.lawfareblog.com/iraqs-harsh-approach-punishing-islamic-state-collaborators-stands-have-counterproductive>.

WEEK 7, OCTOBER 6

Domestic and International Trials

- Martha Minow, *Chapter 3: Trials* in BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE 25-51(1998).
- Kathryn Sikkink, *Human Rights Trials Strengthen the Rule of Law*, N.Y. TIMES (Mar. 4, 2013), <https://www.nytimes.com/roomfordebate/2013/03/04/can-we-afford-to-forgive-atrocities/human-rights-trials-strengthen-the-rule-of-law>.
- Sareta Ashraph, *Justice for Syria: Lessons from Innovative Tools for Accountability*, PEACELAB (Oct. 9, 2018), <https://peacelab.blog/2018/10/justice-for-syria-lessons-from-innovative-tools-for-accountability>.
- Zoha Siddiqui, Nathaniel Liu, Daniel Posthumus & Kelebogile Zvobgo, *Could Putin Actually Face Accountability at the ICC?*, FOREIGN POL’Y (Mar. 4, 2022), <https://foreignpolicy.com/2022/03/04/icc-investigation-russia-ukraine-putin-war-crimes/>.

FALL BREAK

WEEK 8, OCTOBER 20

Truth, Memory, and Museums

- *Truth and Memory*, INT’L CENTER TRANSITIONAL J. (accessed Aug. 18, 2022), <https://www.ictj.org/truth-and-memory>.
- Marsin Alshamary, *Important Iraqi Archives Are Now Back in Baghdad. Where Were They, and What Happens Now?*, WASH. POST (Sept. 15, 2020), <https://www.washingtonpost.com/politics/2020/09/15/important-iraqi-archives-are-now-back-baghdad-where-were-they-what-happens-now/>.
- Susanne Buckley-Zistel, *Remembering to Forget: Chosen Amnesia as a Strategy for Local Coexistence in Post-Genocide Rwanda*, 76 AFRICA 131-150 (2006).
- Cheyenne McNeill, *Four N.C. Schools Identified in Interior Department’s Federal Indian Boarding School Report*, EDNC (May 13, 2022), <https://www.ednc.org/four-n-c-schools-identified-in-interior-departments-federal-indian-boarding-school-report/>.
 - **Optional listening:** Nasher Museum of Art at Duke University, *Nasher Museum Podcast: Artist Bishop Ortega with Scarlett Guy (Eastern Band of Cherokee Indians) and Danny Bell (Lumbee/Coharie)*, (Jul. 10, 2022), <https://nasher.duke.edu/stories/nasher-museum-podcast-artist-bishop-ortega-scarlett-guy-danny-bell/>.
- Julie Turkewitz & Genevieve Glatsky, *Colombia Panel’s Report Is a Step Toward Mending a Civil War’s Scars*, N.Y. TIMES (Jun. 28, 2022), <https://www.nytimes.com/live/2022/06/28/world/colombia-truth-commission-report>.

WEEK 9, OCTOBER 27

Economic, Environmental, and Health Justice

- Helena Alviar García, *Transitional Justice and Property: Inextricably Linked*, 17 ANN. REV. L. SOC. SCI. 227-238 (2021)(excerpt).

- Ereshnee Naidu-Silverman, *What South Africa Can Teach the U.S. About Reparations*, WASH. POST (Jun. 25, 2019), <https://www.washingtonpost.com/outlook/2019/06/25/what-south-africa-can-teach-us-about-reparations/>.
- Danielle Moylan, *How Much for Your Child? Afghan Condolence Payments Draw Scrutiny*, NEWSWEEK (Apr. 9, 2016), <https://www.newsweek.com/2016/04/22/afghanistan-condolence-payments-kunduz-doctors-without-borders-airstrike-us-446017.html>.
- Tom Philpott, *After a Century of Dispossession, Black Farmers Are Fighting to Get Back to the Land*, MOTHER JONES (2021), <https://www.motherjones.com/food/2021/04/black-land-matters-farmers-justice-leah-penniman-fannie-lou-hamer-cory-booker-land-tenure/>.
- KIMBERLY THEIDON, LEGACIES OF WAR: VIOLENCE, ECOLOGIES, AND KIN (2022)(excerpt).
- Karen Hulme, *Using a Framework of Human Rights and Transitional Justice for Post-Conflict Environmental Protection and Remediation* in ENVIRONMENTAL PROTECTION AND TRANSITIONS FROM CONFLICT TO PEACE: CLARIFYING NORMS, PRINCIPLES, AND PRACTICES 119–142 (2017).

WEEK 10, NOVEMBER 3

Reform of Legal, Political, and Security Institutions

- Christine Bell, *Introduction: Bargaining on Constitutions – Political Settlements and Constitutional State-building*, 6 GLOBAL CONST 13-32 (2017).
- Ana Cutter Patel, *Transitional Justice, DDR, and Security Sector Reform*, ICTJ RESEARCH BRIEF (2010).
- Katrin Bennhold & Melissa Eddy, *In Germany, Confronting Shameful Legacy Is Essential Part of Police Training*, N.Y. TIMES (Jun. 23, 2020), <https://www.nytimes.com/2020/06/23/world/europe/germany-police.html>.

PART III (WEEKS 11-13): TRANSITIONAL JUSTICE IN PRACTICE

WEEK 11 (NOV. 10).

Lessons Learned from Practitioners

- Tobias Denskus, *Peacebuilding Does Not Build Peace*, 17 DEV. PRAC. 656-662 (2007).
- Jessica Alexander, *Building Peace, From the Bottom Up: A Q&A with Séverine Autesserre*, NEW HUMANITARIAN (May 13, 2021), <https://www.thenewhumanitarian.org/interview/2021/5/13/building-peace-from-the-bottom-up-severine-autesserre>.
- Huma Saeed, *The Failure of Transitional Justice in Afghanistan: Impunity Turned into Law*, JUST SEC. (Sept. 16, 2021), <https://www.justsecurity.org/78252/the-failure-of-transitional-justice-in-afghanistan-impunity-turned-into-law/>.

WEEK 12, NOVEMBER 17.

The Importance of Evidence and Data for Documenting Injustice

- Kate Cronin-Furman & Roxani Krystalli, *The Things They Carry: Victims' Documentation of Forced Disappearance in Colombia and Sri Lanka*, 27 EUR. J. INT'L REL. 79-101 (2021).
- Azmat Khan & Anand Gopal, *The Uncounted*, N.Y. TIMES (Nov. 16, 2017), <https://www.nytimes.com/interactive/2017/11/16/magazine/uncounted-civilian-casualties-iraq-airstrikes.html>.
- *Report of the Durham Racial Equity Task Force*, (July 2020)(excerpts: p. 1, "Executive Summary," and pp. 9-11, "Let the Record Show: Stories, Data, Transparency, and Accountability"), <https://www.durhamnc.gov/DocumentCenter/View/32853/FINAL-REPORT-Durham-Racial-Equity-Task-Force-72220>.
- Justin Hendrix, *Ukraine May Mark a Turning Point in Documenting War Crimes*, JUST SECURITY (Mar. 28, 2022), <https://www.justsecurity.org/80871/ukraine-may-mark-a-turning-point-in-documenting-war-crimes/>.
- J.M. Porup, *Hunting for Mexico's Mass Graves with Machine Learning*, ARS TECHNICA (Apr. 17, 2017), <https://arstechnica.com/information-technology/2017/04/hunting-for-mexicos-mass-graves-with-machine-learning/>.

THANKSGIVING BREAK

WEEK 13, DECEMBER 1

Evaluating the Impact of Transitional Justice: How Do We Measure Success or Failure?

- Paul Gready & Simon Robins, *Transitional Justice and Theories of Change: Towards Evaluation as Understanding*, 14 INT'L J. TRANSITIONAL JUST. 280-289 (2020)(picking up where we stopped in Week 1 at "Impact and Evaluation").
- *Measuring Results and Monitoring Progress of Transitional Justice Processes*, INT'L CENTER TRANSITIONAL J. (Jan. 2021), https://www.ictj.org/sites/default/files/ICTJ_Report_Measuring%20Results_EN.pdf.
- Laia Balcells, Valeria Palanza & Elsa Voytas, *Chileans Vote This Weekend Whether to Rewrite the Pinochet-era Constitution*, WASH. POST (Oct. 22, 2022), <https://www.washingtonpost.com/politics/2020/10/22/chileans-vote-this-weekend-whether-rewrite-pinochet-era-constitution/>.
- Peter Keating & Shaun Assael, *The USA Needs a Reckoning. Does "Truth and Reconciliation" Actually Work?*, MOTHER JONES (Mar. 5, 2021), <https://www.motherjones.com/politics/2021/03/greensboro-massacre-does-truth-and-reconciliation-actually-work/>.