

Hybrid Tribunals Literature Review

Citation	Abstract and/or Summary of Findings	Methods	Key Evidence or Figures
Evaluations (and theories of evaluation)			
<p>Ainley, Kirsten, "Evaluating the Evaluators: Transitional Justice and the Contest of Values", <i>International Journal of Transitional Justice</i>, 2017, 11 (3): 421-442.</p>	<p>The analysis finds that evaluations of Sierra Leonean TJ can be found displaying each of the six value orientations, with no agreement about the success of the TJ programme from within orientations, let alone across them. Value frameworks for evaluation are:</p> <ol style="list-style-type: none"> 1. Retributive justice for its intrinsic value 2. Retributive justice for its instrumental value, 3. Restorative justice for its intrinsic value, 4. Restorative justice for its instrumental value, 5. Transformative Justice for its intrinsic value, 6. Transformative justice for its instrumental value. 	<p>Review of the literature evaluating the TJ process in Sierra Leone.</p>	<p>Evaluations of SL TJ can be found in each category, and there is no agreement about the success or otherwise of SL TJ program (or even individual TJ mechanisms) from within value positions, let alone across them. The lack of agreement within any of the value positions is surprising, and helps to explain why TJ evaluations can be so frustrating a field for both scholars and practitioners.</p> <p>Even dividing research according to which of 6 different perspectives it most closely reflects does not resolve disagreements about whether TJ was a success in a case that should be relatively straightforward to evaluate. Despite a relatively significant amount of discussion within the conceptual literature in the different meanings of justice, the retributive/restorative/transformational distinction is rarely mentioned in evaluative work on TJ. Evaluators are not attentive to, or perhaps even aware of, the ideals that lie behind their judgments.</p>
<p>Dancy, Geoff, "Measuring the Impact of Human Rights: Conceptual and Methodological Debates" (with Christopher J Fariss), <i>Annual Review of Law & Social Sciences</i> 13:273-94 (2017).</p>	<p>Fifty years ago, the world had very few human rights laws and very little information on human rights violations. Today, the situation could not be more different. The world is awash in laws and indicators of legal violations, and two perspectives have developed to explain their relationship. The factalist approach measures whatever information is available, however imperfectly, and assumes that the resulting indicators are valid representations of the theoretical concepts of interest. The constructivist approach reminds us that these processes are not independent and that a science of law and human rights is fallible. Though the conclusions from these perspectives diverge radically, they agree on a central notion: that international human rights law has contributed very little to social progress. We disagree and offer an alternative, constitutive approach that both accepts the critique of indicators and offers a way forward that encourages scholars to treat measurement itself as an object of theorizing and inquiry.</p>		
<p>Dancy, Geoff, "The Difference Law Makes: Domestic Criminal Laws Against Atrocity and Transitional Human Rights Prosecutions" (with Mark Berlin) <i>Law & Society Review</i> 51(3): 533-566 (2017).</p>	<p>This article offers the first systematic analysis of the effects of domestic atrocity laws on human rights prosecutions. Scholars have identified various political and sociological factors to explain the striking rise in human rights prosecutions over the past 30 years, yet the role of domestic criminal law in enabling such prosecutions has largely been unexamined. That is surprising given that international legal prohibitions against human rights atrocities are designed to be enforced by domestic courts applying domestic criminal law. We argue that domestic criminal laws against genocide and crimes against humanity facilitate human rights prosecutions in post-authoritarian states by helping to overcome formal legal roadblocks to prosecution, such as retroactivity, amnesties, immunities, and statutes of limitations. Using original data on domestic atrocity laws and human rights prosecutions in new democracies, we find that atrocity laws increase the speed with which new democracies pursue prosecutions, as well as the overall numbers of trials they initiate and complete.</p>		
<p>Dancy, Geoff, "Behind Bars and Bargains: New Findings on Transitional Justice in Emerging Democracies" (with Bridget Marchesi, Tricia Olsen, Leigh A. Payne, Andrew Reiter, and Kathryn Sikkink). <i>Accepted, International Studies Quarterly</i> (2018).</p>			
<p>Dancy, Geoff, "Unintended Positive Complementarity: How ICC Investigations Increase Domestic Human Rights Prosecutions" (with Florencia Montal), <i>American Journal of International Law</i> 111(3): 689-723 (2017).</p>	<p>The International Criminal Court (ICC) is controversial, acutely so in Africa. The first thirty-nine people it indicted were all African. It did not open any formal investigations outside Africa until the 2016 decision to investigate conduct related to the 2008 Georgia-Russia war. The first three notifications of withdrawal from the ICC Statute, each made in 2016, were by Burundi, South Africa, and Gambia. While South Africa and Zambia reversed their initial intentions, Burundi in fact became the first state party to withdraw from the ICC in October 2017. These maneuvers are closely connected to country-specific political and legal considerations, but they overlap with concerns expressed by governments in other countries including Kenya and Namibia. Among these concerns is that "the ICC has become the greatest threat to Africa's sovereignty, peace and stability," and that "the ICC is a colonial institution under the guise of international justice."</p>		

<p>Fletcher, Laurel E., and Harvey M. Weinstein. "Violence and social repair: Rethinking the contribution of justice to reconciliation." <i>Human Rights Quarterly</i> 24, no. 3 (2002): 573-639.</p>	<p>Very little data can be found on the linkages between trials and reconciliation, and instead, the relationship between the two has solidified into articles of faith that guide policy decisions in the international arena. The question that animates this article is how does justice contribute to social reconstruction in the aftermath of mass violence. We have proposed an ecological model of response to social breakdown. This model locates justice in the web of possible interventions that must be addressed in order to promote social reconstruction. As indicated, justification for criminal trials offered by many in the international community and human rights organizations is the assumption that establishment of the rule of law and democracy is a critical component of reconciliation. In particular, advocates for war crimes trials subscribe to the belief that individual accountability is necessary to achieve this goal. War crimes trials do not address the phenomenon of collective power and its influence on individuals. Since trials are responsive only to one dimension of the abuse of power, their limitations with respect to addressing the social and collective forces that lead to the violence must be recognized.</p>	<p>Quantitative. Study provides some data from a country-wide sample of thirty-two judges and prosecutors, additional support for the findings is found in companion studies involving house- to-house surveys, focus groups, and key informant interviews in the former</p>	<p>This study focuses on the ICTY, but the question is interesting for hybrid courts—is there a relationship between "justice" and reconciliation, or resilience? As the summary of the social science literature indicate, trials, with their emphasis on individual accountability, offer bystanders the opportunity to rationalize inaction in preventing atrocities like ethnic cleansing or genocide. The traditional lack of attention to the issue of collective responsibility—if not accountability—is a vulnerability of transitional justice mechanisms that may lead to future violence. This vulnerability should be addressed through specific intervention(s) that challenge bystander denial, rationalization, and feigned ignorance that explain away inaction.</p>
<p>Kim, Hunjoon, and Kathryn Sikkink. "Explaining the deterrence effect of human rights prosecutions for transitional countries1." <i>International Studies Quarterly</i> 54, no. 4 (2010): 939-963.</p>	<p>Human rights prosecutions have been the major policy innovation of the late twentieth century designed to address human rights violations. The main justification for such prosecutions is that sanctions are necessary to deter future violations. In this article, we use our new data set on domestic and international human rights prosecutions in 100 transitional countries to explore whether prosecuting human rights violations can decrease repression. We find that human rights prosecutions after transition lead to improvements in human rights protection, and that human rights prosecutions have a deterrence impact beyond the confines of the single country. We also explore the mechanisms through which prosecutions lead to improvements in human rights. We argue that impact of prosecutions is the result of both normative pressures and material punishment and provide support for this argument with a comparison of the impact of prosecutions and truth commissions, which do not involve material punishment.</p>	<p>Quantitative analysis of a new data set on domestic and international human rights prosecutions in 100 transitional countries to explore whether prosecuting human rights violations can decrease repression.</p>	<p>We find that human rights prosecutions after transition lead to improvements in human rights protection, and that human rights prosecutions have a deterrence impact beyond the confines of the single country. The basic structure of the data is an unbalanced time series cross-sectional data. Three models were used. First, in line with most studies of repression, we used pooled ordinary least squares (OLS) regression with panel-corrected standard errors (PCSE) and a lagged dependent variable. Second, country-specific fixed-effects regression models were used. Fixed effects regression is an effective way to examine how changes in human rights prosecutions affect repression in a given state. The third model deals with the possibility of reverse causation in our previous equations. It is possible that repression itself could affect the likelihood and persistence of human rights prosecutions. Many think that endogeneity is possible because the main function of prosecutions is to address past human rights violations. Thus, the current level of repression possibly determines whether a country will have human rights prosecution, and for how many years it will continue to pursue prosecutions. If this effect were true, then the resulting endogeneity of our prosecutions variable will bias our coefficient estimates. Thus, we employed a two-stage estimation of simultaneous equations.</p>
<p>Meernik, James D., Angela Nichols, and Kimi L. King. "The impact of international tribunals and domestic trials on peace and human rights after civil war." <i>International Studies Perspectives</i> 11, no. 4 (2010): 309-334.</p>	<p>We analyze whether international criminal tribunals and domestic human rights trials can play an important role in peacebuilding in post- conflict societies. We test the impact of international tribunals and domestic trials on the recurrence of civil war and human rights improvements in states that have emerged from civil war since 1982. The evidence regarding their beneficial impacts is fairly clear, however, and suggests that while domestic human rights trials and international tribunals do not exercise any negative effects, they do not appear to contribute to reducing the recurrence of civil war or improvements in human rights practices.</p>	<p>Quantitative. Analysis of the absence of civil war and observable respect for human rights from nations that have emerged from a civil war since 1982, and</p>	<p>While domestic human rights trials and international tribunals do not exercise any negative effects, they do not appear to contribute to reducing the recurrence of civil war or improvements in human rights practices.</p>
<p>Millar, Gearoid. "Disaggregating hybridity: Why hybrid institutions do not produce predictable experiences of peace." <i>Journal of Peace Research</i> 51, no. 4 (2014): 501-514.</p>	<p>While widely deployed, hybridity itself is under-theorized and variably applied by scholars. Major concerns arise, therefore, concerning the concept's usefulness for peacebuilding theory, policy, and practice. This theory distinguishes between four levels of hybridity – institutional, practical, ritual, and conceptual – characterized by their variable amenability to purposeful administration. The article illustrates how prescriptive approaches that assume direct and predictable relationships between institutions and experiences fail to recognize that concepts underpin local understandings and experiences of the world and, therefore, play a mediating role between institutions and experiences. Using examples from Sierra Leone, the article shows that while concepts are always hybrid, conceptual hybridity is inherently resistant to planned administration. As a result, internationally planned and administered hybrid institutions will not result in predictable experiences and may even result in negative or conflict-promoting experiences. T</p>		

Sikkink, Kathryn, and Carrie Booth Walling. "The impact of human rights trials in Latin America." <i>Journal of peace research</i> 44, no. 4 (2007): 427-445.	Relatively little multi-country empirical work has been done to test such claims, in part because no database on trials was available. The authors have created a new dataset of two main transitional justice mechanisms: truth commissions and trials for past human rights violations . With the new data, they document the emergence and dramatic growth of the use of truth commissions and domestic, foreign, and international human rights trials in the world. The authors then explore the impact that human rights trials have on human rights, conflict, democracy, and rule of law in Latin America.	Quantitative. Validity of the argument about the necessity of deciding between "truth vs. justice." Comparative and evaluative quantitative analysis of peace "outcomes" in Latin American countries.	Their analysis suggests that the pessimistic claims of skeptics that human rights trials threaten democracy, increase human rights violations, and exacerbate conflict are not supported by empirical evidence from Latin America. In Latin America, every country that used truth commissions also held human rights trials. In Latin America, countries that choose both have seen better human rights practices than those that have chosen to use fewer alternatives.
Vasiliev, Sergey, "Fairness and its Metric in International Criminal Procedure", Grotius Centre for International Legal Studies (2013).	This Chapter addresses the questions of whether and why 'fairness' presents a suitable parameter for evaluating international criminal justice and its procedural law, and how it is to be used. The contours of 'fairness' in international criminal procedure will be explored from a normative perspective, as a set of binding legal standards and factors impacting on international criminal practice. This focus aims at highlighting the methodological position that is suggested for adoption in any appraisal of the procedural arrangements in the international criminal courts. International human rights law (IHRL), as the 'external' framework of fairness and a yardstick for review of the performance of the tribunals, shapes their internal practices in several ways. The normative effects of IHRL in the tribunals' legal environments, the legal grounds for this impact, and specific paths of legal and policy reasoning employed by the courts when drawing upon the notions of IHRL (and when departing from them) are questions which warrant a closer look. What value do the IHRL norms and precedents have in the application of statutes and rules of procedure and evidence? What type of procedural outcomes attracts the finding of inconsistency with that law, and what are the consequences? If the tribunals are to be accorded a certain 'margin of appreciation' in applying the IHRL provisions within their specific context, what are the boundaries of the normatively acceptable contextual interpretation and application of human rights law? The answers to these queries would assist in establishing how the evaluative criterion of 'fairness' is to be applied and what		
Comparative Analyses			
Cohen, David. "Hybrid justice in East Timor, Sierra Leone, and Cambodia: lessons learned and prospects for the future." <i>Stan. J. Int'l L.</i> 43 (2007): 1.	Describes the under resourcing of the Dili District Court, and argues that justice "on the cheap" shouldn't be the goal of future hybrid tribunals by describing the challenges faced by the judiciary, the prosecutor's office, and the defense.	Interviews, institutional and functional analysis	Proceeding with trials on the cheap undermines fair trial standards. If the UN is establishing a hybrid tribunal, it should set up both prosecution and defense under direct UN administrative control so as to ensure adequate defense resources. This is the model used at the ICTR and the ICTY, and it should be followed everywhere the UN engages. The UN should not commit itself to achieving a tribunal that is willing to
Dickinson, Laura A. "The promise of hybrid courts." <i>American Journal of International Law</i> 97, no. 2 (2003): 295-310.	Comparatively little attention has been paid, however, to a fifth, newly emerging, form of accountability and reconciliation: hybrid domestic-international courts. Such courts are "hybrid" because both the institutional apparatus and the applicable law consist of a blend of the inter- national and the domestic.	Literature and theoretical analysis	These courts, though often hampered by underfunding and other logistical difficulties, at least have the potential to address three serious drawbacks of both international and domestic tribunals. First, they may be more likely to be perceived as legitimate by local and international populations because both have representation on the court. Second, the existence of the hybrid court may help to train local judges and funnel money into local infrastructure, thereby increasing the capacity of domestic legal institutions. Third, the functioning of hybrid courts in the local community, along with the necessary interaction-both formal and informal-among local and international legal actors may contribute to the broader dissemination (and adaptation) of the norms and processes of international human rights law.
Romano, Cesare PR, André Nollkaemper, and Jann K. Kleffner, eds. <i>Internationalized Criminal Courts and Tribunals: Sierra Leone, East Timor, Kosovo, and Cambodia</i> . Oxford University Press, 2004.	This work assesses a major innovation in the field of international criminal law. It provides in-depth analysis of the operation of these specialized courts and considers the prospects for further application of internationalized courts.		
Sriram, Chandra Lekha, and Suren Pillay. "Peace versus justice? The dilemma of transitional justice in Africa." (2010).	The chapters in this collective volume are revised versions of papers presented at a workshop on Truth and Reconciliation Commissions and war tribunals in Africa, held in Cape Town in May 2007. They examine a wide array of experiences with transitional justice. The final section addresses the emergent role played by the International Criminal Court (ICC) on the African continent, particularly in Darfur (Sudan), northern Uganda, the Democratic Republic of Congo, and the Central African Republic (Chandra Lekha Sriram, Dumisa Buhle Ntsebeza).		
Stensrud, Ellen Emilie. "New dilemmas in transitional justice: Lessons from the mixed courts in Sierra Leone and Cambodia." <i>Journal of Peace Research</i> 46, no. 1 (2009): 5-15.	This article argues that the mixed tribunals of Sierra Leone and Cambodia provide important lessons about the problems and dilemmas in achieving the legitimacy that is necessary for transitional justice mechanisms to have a positive local impact. High hopes have been held for the mixed model, but experiences show that this model is no easy fix to the legitimacy problems faced by the international tribunals for the former Yugoslavia and Rwanda. By locating a tribunal in the post-conflict setting, new dilemmas of legitimacy may arise. This article suggests that transitional justice mechanisms should strike a balance between backward-looking and forward-looking justice, and between international and national participation in the tribunals, but this is not done by simply locating a tribunal in the affected country.		
Theoretical - Legal, institutional, or normative			

<p>Baylis, Elena, "The Persuasive Authority of Internationalized Criminal Tribunals", <i>American University International Law Review</i> 611 (2017): 612-641.</p>	<p>After a period in which it seemed as though hybrid criminal tribunals were waning, proposals for such tribunals are proliferating again. The recent success of the Extraordinary African Chambers in trying Hisséne Habré highlights the resurgent trend toward ad hoc internationalized courts and chambers to try cases of genocide, war crimes, and crimes against humanity. The international community could make strategic choices in designing this new generation of tribunals to maximize their effectiveness. One way that international courts spread their influence is through their persuasive authority. Even if their decisions are not binding on the concerned national courts, by persuading those national courts to adopt their rulings and analysis, international courts can extend their influence through the national justice system. This article argues that future hybrid criminal courts and chambers should focus on influencing national courts in post-conflict states through their judgments, as a way of increasing their impact in those states. However, effectively operationalizing this function is a complex task, both conceptually and practically. To identify factors that tend to make courts more or less persuasive vis-à-vis their counterparts, this article draws on studies of international court influence and on a case study of national trials in mass tort cases. It then suggests design features and collaborative strategies that future internationalized tribunals could adopt.</p>		
<p>Carlson, Kerstin Bree, "Model(ing) Justice: Perfecting the Promise of International Criminal Law", Cambridge University Press (forthcoming 2017).</p>	<p>The International Criminal Tribunal for the former Yugoslavia (ICTY) was the first and most celebrated of a wave of international criminal tribunals (ICTs) built in the 1990s and designed to advance liberalism through international criminal law. Model(ing) Justice examines the practice and case law of the ICTY to make a novel theoretical analysis of the structural flaws inherent in ICTs as institutions that inhibit their contribution to social peace and prosperity. Kerstin Bree Carlson proposes a seminal analysis of the structural challenges to ICTs as socially constitutive institutions, setting the agenda for future considerations of how international organizations can perform and disseminate the goals articulated by political liberalism.</p>		
<p>Carlson, Kerstin Bree, "Post Rule of Law: The Structural Problem of Hybridity in International Criminal Procedure", <i>The Italian Law Journal</i> 2, 1 (2016).</p>	<p>The value of developing hybrid international criminal procedure (ICP) is that it is arguably inclusive (representing two major legal traditions) and distinct from any domestic system, thus creating a separate, sui generis realm for international criminal law (ICL) jurists to meet. Since its inception at Nuremberg, individual elements of hybridity have consistently caused concern amongst practitioners and legal theorists, largely around questions of transposition as jurists from one tradition resisted practices from the other. Transposition problems remain unresolved in modern ICP and have received extensive attention in the literature. The practice of hybridity itself, however – the determination to operationalize ICL through procedures drawing from different legal traditions, with specific practices drawn from singular jurisdictions – has received less critical scrutiny. This article addresses the practice of hybridity in ICP, drawing examples from the construction and evolution of hybrid procedure at the International Criminal Tribunal for the Former Yugoslavia (ICTY), to argue that the hybridity practiced by international criminal tribunals renders them 'post rule of law' institutions, thus challenging their central didactic and norm-constructing roles</p>		
<p>Fichtelberg, Aaron, "Crimes Beyond Justice? Retributivism and War Crimes", <i>Criminal Justice Ethics</i> 24, 1 (2005): 31-46.</p>			
<p>Hobbs, Harry, "Hybrid Tribunals and the Composition of the Court: In Search of Sociological Legitimacy", <i>Chicago Journal of International Law</i> 16, 2 (2016): 482-522.</p>	<p>Sociological legitimacy is a critical yet under theorized element of a successful international criminal tribunal. This Article examines the link between sociological legitimacy and the composition of hybrid courts by analyzing the practice of five international criminal tribunals: the ICC, ICTY, ICTR, SCSL, and the ECCTC. It finds that the presence of local judges on international criminal courts offers a firmer normative basis for enhancing their legitimacy among the local community. However, the Article also finds that despite impressive scholarly efforts to demystify the "homogenous" international community, international judges are not sufficiently particularized. The solution I offer is both principled and pragmatic. The appointment of international judges should prioritize individuals from regional states (provided the states were not involved in the conflict), those of the same legal tradition, and individuals who speak a language of the affected state. This solution pays greater respect to national sovereignty and enhances the prospect that judges sensitive to local</p>		
<p>Hobbs, Harry, "Towards a Principled Justification for the Mixed Composition of Hybrid International Criminal Tribunals", <i>Leiden Journal of International Law</i> 30 (2017): 177-197.</p>	<p>The justification for a majority of international judges sitting on hybrid international criminal tribunals is tremendously under theorized. At present, policymakers must rely on base pragmatic considerations that allege that local judges are either too incapable or too corrupt. This may or may not be true. It is, however, certainly unattractive and inadequate as an argument. In this article, I sketch out a principled theoretical argument defending internationalization of hybrid tribunals. Drawing on debates in municipal jurisdictions on the principle of fair reflection, my principled justification centres on institutional and sociological legitimacy. As international crimes strike at two societies – the local and the global – hybrid tribunals should be composed of both international and local judges. In principle, the severity of international crimes dictates that international judges should predominate. However, peculiar contextual factors may suggest moderating the principle of fair reflection in appropriate circumstances.</p>		
<p>Rindler, Julian. "Hybrid courts and their impact on the development of substantive international criminal law." PhD diss., University of the Western Cape, 2013.</p>	<p>A comparison of legal frameworks and jurisprudence of hybrid courts. Legalistic perspective on "impacts".</p>	<p>Literature review and legal analysis</p>	
<p>Sriram, Chandra Lekha, "Globalizing justice for mass atrocities: A revolution in accountability", Routledge (2005).</p>	<p>This major new study examines the developing practice of universal jurisdiction, as well as the broader phenomenon of "globalizing" justice, and its ramifications.</p>		
<p>Theoretical - Structural or functional</p>			
<p>Baylis, Elena A., "Transitional Justice and Development Aid to Fragile and Conflict-Affected States: Risks and Reforms," in <i>Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies</i>, Roger Duthie and Paul Seils, eds., New York: ICTJ (2017).</p>	<p>Transitional justice initiatives are expensive. As such, whether they consist of war crimes trials, truth commissions, or rule of law projects, post-conflict justice programs have to garner considerable financial resources from donors in order to succeed. Development aid is a major source of funding for transitional justice. But what determines whether development donors will invest in transitional justice, among the many kinds of programs they could support? This paper examines transitional justice as one aspect of development aid. It identifies factors that affect whether and how development donors fund transitional justice initiatives and explores the potential ramifications of recent reforms to aid for fragile and conflict-affected states.</p>		

<p>Baylis, Elena A., "What Internationals Know: Improving the Effectiveness of Post-Conflict Justice Initiatives", Washington University Global Studies Law Review 14, 243 (2015): 244-305.</p>	<p>The field of post-conflict or transitional justice has developed rapidly over the last thirty years. The United States, the United Nations, and many other international organizations, governments, and institutions have contributed to hundreds of international criminal trials and rule of law programs. International staff, known as "internationals," travel among post-conflict states and international criminal tribunals to carry out these initiatives. In addition to being a field of work, post-conflict justice also constitutes an emergent body of legal knowledge, composed of substantive standards, rules of procedure, best practices, and other elements. Just as the programs and institutions of post-conflict justice have grown quickly on the ground, so also its body of knowledge has become an established, if still evolving, set of norms and practices. This Article contributes to the literature on transitional justice by examining how internationals are developing the information and skills that comprise post-conflict justice knowledge, and whether they are able to effectively implement that knowledge in their work.</p>		
<p>Denton, Fidelma, "The Contribution of Hybrid Courts to the Prosecution of International Crimes" in William A. Schabas, "The Routledge Handbook on International Criminal Law", Routledge Publishers (2010).</p>			
<p>Hobbs, Harry, "Victim Participation in International Criminal Proceedings: Problems and Potential Solutions in Implementing an Effective and Vital Component of Justice", SSRN (2014).</p>	<p>Effective and meaningful victim participation in international criminal proceedings is a vital component of transitional justice. In post-conflict societies, victim participation can empower survivors, engender individual healing and social trust, and promote accountability and the rule of law. Although victim participation is well established and noncontroversial in domestic civil law jurisdictions, it cannot simply be translated into the international arena. A host of difficulties, beginning with the potentially enormous number of victims of international crimes, plague implementation of this crucial component of justice. This Article examines many of the difficulties involved in institutionalizing effective victim participation into international criminal proceedings, but it also proposes three solutions. These solutions offer a way forward for systemic development of the International Criminal Court (ICC) and future ad hoc international tribunals.</p>		
<p>Hobbs, Harry, "Victim Participation in International Criminal Proceedings: Problems and Potential Solutions in Implementing an Effective and Vital Component of Justice", SSRN (2014).</p>	<p>Effective and meaningful victim participation in international criminal proceedings is a vital component of transitional justice. In post-conflict societies, victim participation can empower survivors, engender individual healing and social trust, and promote accountability and the rule of law. Although victim participation is well established and noncontroversial in domestic civil law jurisdictions, it cannot simply be translated into the international arena. A host of difficulties, beginning with the potentially enormous number of victims of international crimes, plague implementation of this crucial component of justice. This Article examines many of the difficulties involved in institutionalizing effective victim participation into international criminal proceedings, but it also proposes three solutions. These solutions offer a way forward for systemic development of the International Criminal Court (ICC) and future ad hoc international tribunals.</p>		
<p>Nesiah, Vasuki, "Theories of Transitional Justice: Cashing in the Blue Chips", in Anne Orford and Florian Hoffman, Oxford Handbook of International Legal Theory, Oxford University Press (2006).</p>	<p>This chapter examines the utopias called forth by the marriage of human rights accountability mechanisms on the one hand, and, on the other, arguments about the practical significance of these initiatives as preconditions for development, democracy, and political society. Transitional justice is seen to marry the ethical charge of the human rights field's march against impunity, with an instrumental potential facilitating transition from the rule of violence into the rule of law. If the normative theories and agendas implicated by this marriage are advanced as being in the interests of justice, the accompanying instrumental theories and agendas are advanced in the interests of transition. Justice and transition operate here as allied and mutually reinforcing aspirations of and rationales for transitional justice institutions. Thus, this chapter identifies and analyses the stakes that attend this marriage of 'ethics' and 'expertise' in constituting the utopian political imagination of transitional justice.</p>		
<p>Sriram, Chandra Lekha, "Confronting past human rights violations: Justice versus peace in times of transition", Frank Cass (2004).</p>	<p>This book examines what makes accountability for previous violations more or less possible for transitional regimes to achieve. It closely examines the other vital goals of such regimes against which accountability is often balanced. The options available are not simply prosecution or pardon, as the most heated polemics of the debate over transitional justice suggest, but a range of options from complete amnesty through truth commissions and lustration or purification to prosecutions. The question, then, is not whether or not accountability can be achieved, but what degree of accountability can be achieved by a given country. The focus of the book is on the politics of transition: what makes accountability more or less feasible and what strategies are deployed by regimes to achieve greater accountability (or alternatively, greater reform). The result is a more nuanced understanding of the different conditions and possibilities that countries face, and the lesson that there is no one-size-fits-all prescription that can be handed to transitional regimes.</p>		

<p>Van Schaack, Beth, "The Building Blocks of Hybrid Justice", SSRN (2016).</p>	<p>The commission of mass atrocities — genocide, crimes against humanity, and war crimes — inevitably generates clamor calls for accountability from a range of international actors, including civil society organizations, governments, and United Nations bodies. These demands often center on an appeal that the situation be taken up by the International Criminal Court (ICC) via a Security Council referral or action by the Prosecutor herself. Although the ICC is now fully operational, its jurisdiction remains incomplete and its resources limited. Furthermore, the ICC is plagued by challenges to its legitimacy, erratic state cooperation, and persistent perceptions of inefficacy and inefficiency. Originally envisioned as a standing institution that would obviate the need for new ad hoc courts, it is now clear that the ICC cannot handle all the atrocity situations ravaging our planet. As such, there is an enduring need for the international community to create, and enable, additional accountability mechanisms to respond to the commission of international crimes when the political will for an ICC referral is lacking, the ICC is inappropriate or foreclosed for whatever reason, or only a fraction of the abuses or perpetrators in question are before the ICC.</p> <p>This contribution analyzes the accumulated experience with international, hybrid, and internationalized judicial institutions prior to and since the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994. This paper assumes the continuing utility of such mechanisms as tools to provide accountability for mass violence amounting to international crimes, particularly in situations requiring an alternative or supplement to the ICC. It thus focuses on practical elements of institutional design, with particular attention to the origins, structure, jurisdictional limitations, financing, and procedures of the hybrid courts, dedicated chambers, specialized prosecutorial cells, and other accountability innovations established to prosecute atrocity crimes at the domestic level with some measure of international support, expertise, and/or personnel. From this historical and comparative analysis, the paper develops a taxonomy of models and a "menu" of elements that can be mixed and matched as new accountability mechanisms are under consideration for historical, current, and emerging atrocity situations, such as Syria, the Central African Republic, the Democratic Republic of Congo, Colombia, North Korea, South Sudan, Sri Lanka, Libya, Burundi, and even the July 2014 downing of Malaysian Air Flight 17 (MH-17) over rebel-controlled Ukraine.</p>		
<p>Weirda, Marieke and Caitlin Reiger, "Maximizing the Legacy of Hybrid Tribunals", United Nations Office of the High Commissioner for Human Rights (2008).</p>			
<p>Other internationalized courts</p>			
<p>Macdonald, Anna, "The Trial of Thomas Kwoyelo: opportunity or spectre? Reflections from the ground on the first LRA prosecution," <i>Africa</i> 86, 4 (2016): 698–722.</p>	<p>The article considers what Kwoyelo's trial means for those most affected by the crimes he allegedly committed, and, more broadly, what it means for the 'transitional justice' project in Uganda. The article is concerned primarily with how the trial has been interpreted 'on the ground' in Acholliland: by local leadership; by those with a personal relationship to Kwoyelo; by direct victims of his alleged crimes; and by those who were not.</p>	<p>Ethnography, informant interviews</p>	<ul style="list-style-type: none"> • Post-conflict perspectives on justice and redress are marked by heterogeneity rather than by consensus. The different representations of Kwoyelo and varying conceptions of the 'justness' of his trial are rooted in intricate conceptions of crime, accountability (often associated with payments of compensation and social acceptance of responsibility) and appropriate ways to redress wrongdoing, which, in turn, are linked to notions of moral community and the importance of achieving social harmony. • In some instances, the ICD and the Kwoyelo trial made sense from the perspective of these logics; in others, neither was seen as a constructive way of restoring peace and stability to a society attempting to recover from a relentlessly long and destructive conflict. • The question then remains: how should transitional justice advocates integrate the divergent opinions of victims in their programming? A good start would be to develop an evidence-based understanding of the 'victim' category in any given situation.
<p>Carlson, Kerstin Bree, "Reconciliation Through a Judicial Lens: Competing Legitimation Frameworks in the ICTY's Plavšić and Babić Judgments", <i>Denver Journal of International & Comparative Law</i> 44, 2 (2016).</p>			
<p>Cruvellier, Thierry, "The Court of Remorse: Inside the International Criminal Tribunal for Rwanda", The University of Wisconsin Press (2010).</p>			
<p>Kendall, Sara and Sarah Nouwen, "Speaking of Legacy: Toward an Ethos of Modesty at the International Criminal Tribunal for Rwanda", <i>American Journal of International Law</i> 110 (2016): 212-232.</p>	<p>This paper is the longer version of an article that will appear in a Symposium in the <i>American Journal of International Law</i> on the legacy of the ad hoc tribunals for the former Yugoslavia and Rwanda.</p> <p>Even before the International Criminal Tribunal for Rwanda had closed down, there was already much talk about its legacy. This article demonstrates a sharp contrast between the ambiguities of what is and can be known about the Tribunal's legacy and the certainty of the assertions made in the field and by the Tribunal itself about what it will have been. Building on social theorist Zygmunt Bauman's work on "bids for immortality", we identify the phenomenon of "legacy talk": attempts to consolidate a set of interpretations about the substance and value of what is left prior to the departure of the legator.</p>		

<p>Kim, Hunjoon, and Kathryn Sikkink. "Explaining the deterrence effect of human rights prosecutions for transitional countries1." <i>International Studies Quarterly</i> 54, no. 4 (2010): 939-963.</p>	<p>Human rights prosecutions have been the major policy innovation of the late twentieth century designed to address human rights violations. The main justification for such prosecutions is that sanctions are necessary to deter future violations. In this article, we use our new data set on domestic and international human rights prosecutions in 100 transitional countries to explore whether prosecuting human rights violations can decrease repression. We find that human rights prosecutions after transition lead to improvements in human rights protection, and that human rights prosecutions have a deterrence impact beyond the confines of the single country. We also explore the mechanisms through which prosecutions lead to improvements in human rights. We argue that impact of prosecutions is the result of both normative pressures and material punishment and provide support for this argument with a comparison of the impact of prosecutions and truth commissions, which do not involve material punishment.</p>	<p>Quantitative analysis of a new data set on domestic and international human rights prosecutions in 100 transitional countries to explore whether prosecuting human rights violations can decrease repression.</p>	<p>We find that human rights prosecutions after transition lead to improvements in human rights protection, and that human rights prosecutions have a deterrence impact beyond the confines of the single country. The basic structure of the data is an unbalanced time series cross-sectional data. Three models were used. First, in line with most studies of repression, we used pooled ordinary least squares (OLS) regression with panel-corrected standard errors (PCSE) and a lagged dependent variable. Second, country-specific fixed-effects regression models were used. Fixed effects regression is an effective way to examine how changes in human rights prosecutions affect repression in a given state. The third model deals with the possibility of reverse causation in our previous equations. It is possible that repression itself could affect the likelihood and persistence of human rights prosecutions. Many think that endogeneity is possible because the main function of prosecutions is to address past human rights violations. Thus, the current level of repression possibly determines whether a country will have human rights prosecution, and for how many years it will continue to pursue prosecutions. If this effect were true, then the resulting endogeneity of our prosecutions variable will bias our coefficient estimates. Thus, we employed a two-stage estimation of simultaneous equations.</p>
<p>Van Schaack, Beth, "More than a Domestic Mechanism: Options for Hybrid Justice in Sri Lanka", <i>Stanford Public Law Working Paper SSRN 2705097</i> (2015).</p>	<p>After years of resistance, the new government of Sri Lanka has now committed to launching a genuine transitional justice program to address, and redress, the grave international crimes committed by all sides in the almost 30-year conflict with the Liberation Tigers of Tamil Eelam (LTTE). In addition to comprehensive political reforms focused on good governance, the devolution of power, security sector reform, and the rule of law, the future transitional justice process will reportedly involve four main pillars: a truth and reconciliation commission; a reparations process; an office to investigate and resolve disappearances; and an accountability mechanism. These building blocks find expression in a landmark consensus resolution by the Human Rights Council issued in September 2015 with Sri Lanka as a co-sponsor. Although this will be a Sri Lankan process, the resolution calls upon government actors to take advantage of "expert advice from those with relevant international and domestic experience" and to draw upon "international expertise,</p>		