



AMERICAN  
CONSTITUTION  
SOCIETY

Program Guide

August 2021

## Truth, Racial Healing, and Transformation

*I believe that truth and reconciliation are sequential. You have to tell the truth first. You have to create a consciousness around the truth before you have any hopes of reconciliation. And reconciliation may not come, but truth must come. That's the condition.*

– Bryan Stevenson

Racial inequality is rooted in the legal infrastructure of this country, from the drafting of our founding documents to the very design of our government. We need a concerted reckoning with our country's history and coordinated and transformative change if we are to dismantle white supremacy and we need a mechanism and framework for driving such comprehensive transformation. To that end, ACS has joined the growing movement calling for a national truth, racial healing, and transformation commission.

As demonstrated by other nations that have attempted to transition from periods of systemic human rights violations, truth-telling is a prerequisite for moving past shared traumas and identifying the policies and structures that need to be changed to ensure that history does not repeat itself. As a part of our commitment to the truth, racial healing, and transformation process,<sup>1</sup> ACS encourages chapters to host programming on how our laws and legal systems have been used to sustain and legitimize racial oppression and how best to support transformative legal change.

This Program Guide examines truth and reconciliation commissions as a transitional justice tool. It serves as another resource in ACS's continued focus on anti-racism work, including our 2020 Program Guide, "[Combatting Anti-Black Racism Through Law and Policy](#)," which features an examination of the movement for reparations, and our series of programs on the U.S. Constitution's "[Founding Failures](#)," which have examined the racial inequalities and

---

<sup>1</sup> The most widely used term for such a process in the international context is "truth and reconciliation." ACS uses the term "truth, racial healing, and transformation" to describe our objectives in solidarity with those doing the work within the United States. In the American context, our legal infrastructure has, since our founding, been written for white men by white people and "reconciliation" does not capture the enduring power imbalance that has defined our laws and legal systems since their origin.

systemic racism that permeate our laws and make the case that truth, racial healing, and transformation are what is needed.

## I. The Definition and Purpose of a Truth and Reconciliation Commission

Truth and reconciliation commissions have taken several forms but share a set of common features. According to the [United Nations](#), “[t]ruth commissions are official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years. These bodies take a victim-centered approach and conclude their work with a final report of findings of fact and recommendations.” Truth and reconciliation commissions are considered one of the several tools in the transitional justice<sup>2</sup> toolbox available to nations that are seeking to [rebuild societies](#) in the wake of conflict and/or trauma. Other components of transitional justice include criminal prosecutions, reparations, memorialization, and institutional reform, but truth-seeking is often considered the primary function of a truth and reconciliation commission and is a foundational piece of the reconciliation process. Truth and reconciliation commissions can be formed exclusive of or in conjunction with these other forms of justice-seeking.

One of the arguments frequently voiced by proponents of using truth and reconciliation commissions as the vehicle to achieve reconciliation is the value of restorative justice. Restorative justice, [according to Professor Carrie Menkel-Meadow](#), “is the name given to a variety of different practices [...] to provide healing and reintegration of offenders into their communities, with or without additional punishment.” Scholars, advocates, and even nations are split on whether [restorative justice alone](#) is the goal of a truth and reconciliation commission, as opposed to retributive justice<sup>3</sup> or some combination of the two, but all generally agree that these commissions occupy a role that traditional litigation cannot fill entirely – establishing a definitive historical record and suggesting redress for systemic harms and trauma.

## II. International Experience with Truth and Reconciliation Commissions

There have been over 40 national truth and reconciliation commissions established in countries throughout the world. Notable early examples include the [Argentinian National Commission on the Disappeared](#) of 1983-1984 and the [Chilean Rettig Commission](#) of 1990-1991, both

---

<sup>2</sup> Transitional justice, as defined by the [International Center for Transitional Justice](#), “refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response. [...] It is not a particular type of justice like restorative justice, distributive justice, or retributive justice. It is the application of a human rights policy in particular circumstances.”

<sup>3</sup> [Retributive justice](#) is “restoration of a sense of justice through the imposition of punishment, in [the] form of adjudication or revenge.”

established to document human rights abuses that resulted in death or disappearance under dictatorial regimes.

In the wake of apartheid, South Africa was the [first nation](#) to design a truth commission with an emphasis on reconciliation. Victims and perpetrators were invited to testify before the Truth and Reconciliation Commission during televised hearings to, as Professor Olúfémi Táíwò [has described](#), “enter into the record the ugly history of deprivations, violence and denial of humanity of black people perpetrated by the white-dominated state and other groups within it, so that no one could reasonably disavow what happened or claim ignorance of what was done in their name and to their benefit.”

There remains disagreement as to the efficacy of the commission. Some experts have maintained that the commission disproportionately weighted restorative justice over retributive justice. In his [forward to the Commission’s final report](#), Archbishop Desmond Tutu noted that “[i]t is something of a pity that, by and large, the white community failed to take advantage of the Truth and Reconciliation process.” And several scholars and activists have [criticized](#) the commission for its failure to discuss the socio-economic effects of apartheid and instead focused on acts of violence that could have been addressed by existing criminal law. The [international community largely held the project to be a success](#) and many countries have chosen to model their own commissions after it.

For example, the [Truth and Reconciliation Commission of Canada](#) was modeled in part after South Africa’s commission and was created as part of a [settlement agreement](#) between former students of Indian residential schools, the Canadian government, and four national churches in the [largest](#) class action in Canadian history.<sup>4</sup> The commission ultimately [found](#) that “children were abused, physically and sexually, and they died” at horrific rates at schools “created for the purpose of separating Aboriginal children from their families, in order to minimize and weaken family ties and cultural linkages.” The [final report](#) included [94 calls to action](#) to further reconciliation between Canadians and Indigenous peoples. While the Canadian government claims that 80% of the 76 recommendations that are under their [sole or shared jurisdiction](#) have either been completed or are “well underway,” members of the commission are [frustrated](#) with the pace of implementation and experts [have concluded](#) that much work remains.

### III. The American Context

Professor Colleen Murphy [argues](#) in *Conceptual Foundations of Transitional Justice* that the United States shares three features with South Africa and similarly situated nations that give rise to the need to pursue transitional justice: pervasive structural inequality, normalized political wrongdoing, and serious existential uncertainty. And as the Brookings Institution’s Quinta

---

<sup>4</sup> Indian Residential Schools were [boarding schools](#) “established by the Canadian government to forcibly remove Indigenous children from their communities and families for the purpose of assimilating them to mainstream culture and Eurocentric beliefs and values.” According to the [CBC](#), about 150,000 Indigenous children attended residential schools from the 1880s until the last school was closed in 1996.

Jurecic has [noted](#), truth and reconciliation commissions are “particularly well suited to addressing societies divided not merely by political differences but by wholly different understandings of history.” There is no doubt that the United States is increasingly a nation operating under wholly different understandings of our history, particularly when it comes to race. A recent example is the publication of the [1619 Project](#) by the New York Times, which sought to “reframe the country’s history” by centering Black Americans in the national narrative, and a resulting [backlash](#) from a group of [historians](#), [conservative groups](#), [commentators](#), and [politicians](#).<sup>5</sup>

If, as historian Michael Ignatieff [has theorized](#), “the function of truth commissions, like the function of honest historians, is [...] to narrow the range of permissible lies,” then a national truth-finding commission may prove a powerful tool in the growing fight within the U.S. over disinformation.

## IV. American Truth and Reconciliation Commissions

### A. Notable State and Local Commissions

Truth and reconciliation commissions established within the United States have historically been the [result of grassroots organizing](#), and with the exception of the national commission created to review the internment of Japanese Americans during World War II (discussed below), established at the state or local level.

The Greensboro Truth and Reconciliation Commission (GTRC), established in 2004, investigated the violence committed by the KKK at a social justice demonstration in Greensboro, North Carolina on November 3, 1979. The GTRC was organized and executed by [community organizers and volunteer commissioners](#) without the support of local government. A [final report](#) was released in May 2006 and while not initially received enthusiastically by local officials, several recommendations were eventually implemented, including the [issuance](#) of an official apology, the [approval](#) of a historical marker to be placed near the site, and the [passage](#) of a living wage for municipal employees.

The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (MWTRC), formed by an agreement between Wabanaki leaders and the Governor of Maine in 2012, studied the state’s removal of Wabanaki children from their families dating from the passage of the Indian Child Welfare Act of 1978 (ICWA). For two years, the MWTRC collected testimony and reviewed state child welfare documents. The Commission’s [report](#), published in 2015, found that Native children in Maine were entered into foster care at disproportionate rates and identified flaws in the state welfare system and in federal laws that led to the cultural genocide

---

<sup>5</sup> The Trump Administration’s establishment of the 1776 Commission was a [direct result](#) of this backlash, feeding upon the conservative right’s unabated outrage. The 1776 Commission’s [final report](#), a provocative document widely condemned by a larger group of [historians](#) and [scholars](#), equates the country’s current division over the meaning of our history with the conditions that led to the American Revolution and the Civil War.

of the Wabanaki people. Among their recommendations were the development of intensive Department of Health and Human Services, legal and judicial trainings “to recognize bias and build cultural awareness at all levels of leadership and accountability in ways that frame ICWA within historical context,” and the development of a policy to monitor compliance with ICWA in consultation with the tribes.

Established by [House Bill 307](#) in 2019, the Maryland Truth and Reconciliation Commission (MLTRC) has [begun](#) to bring focus to the state’s history of racist lynchings from 1854 to 1933. The MLTRC can issue subpoenas for testimony and documents through the state AG’s office. In their 2020 [interim report](#), the Commissioners note that the MLTRC “is the first of its kind in the United States, and as such, holds the potential to serve as a model for communities across the country that continue to bear the weight of the brutal history of racial terror lynching.”

Since last summer, at least [27 localities](#) in the United States have established truth and reconciliation initiatives, with several prominent cities announcing their intention to do the same.

## B. Federal

The only national truth commission was established by [federal law](#) in 1980 to review the impact of [Executive Order 9066](#) and all U.S. military directives issued to create and maintain internment camps for Japanese Americans during World War II. After conducting hearings in several cities across the country and taking the testimony of over 750 witnesses, the Commission on Wartime Relocation and Internment of Civilians (CWRIC) issued a [report](#) in 1981. To implement the recommendations of the CWRIC, Congress passed the [Civil Liberties Act of 1988](#), finding that “a grave injustice” was done to Japanese Americans and Aleuts “motivated by racial prejudice, wartime hysteria, and a failure of political leadership” and that the United States had not made appropriate compensation. Congress formally apologized on behalf of the United States and granted reparation payments of \$20,000 to eligible Japanese Americans and \$12,000 to eligible Aleuts.

## V. Recent Legislative Proposals for National Commissions

### A. Commission to Study and Develop Reparation Proposals for African Americans

Championed and introduced for decades by former Representative John Conyers and now Representative Sheila Jackson Lee, [H.R. 40](#) calls for the creation of a commission to “examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies.” The bill received a subcommittee hearing for the first time in [2019](#) and again in [2021](#).

## B. United States Commission on Truth, Racial Healing, and Transformation

First introduced in the wake of George Floyd's death and reintroduced on February 25, 2021, Representative Barbara Lee's [H. Con. Res. 19](#) urges the establishment of a United States Commission on Truth, Racial Healing, and Transformation "to properly acknowledge, memorialize, and be a catalyst for progress toward – (a) jettisoning the belief in a hierarchy of human value; (b) embracing our common humanity; and (c) permanently eliminating persistent racial inequalities." The text of the resolution states that the scope of the commission would include the injustices suffered by people of color and clarifies that the commission would not supplant the work called for by [H.R. 40](#).

## C. Truth and Healing Commission on Indian Boarding School Policy

[H.R. 8420](#) was introduced in the 116<sup>th</sup> Congress by lead sponsors then-Representative Deb Haaland and Senator Elizabeth Warren on September 29, 2019. The bill would establish a federal Truth and Healing Commission to investigate and document "cultural genocide, assimilation practices, and human rights violations of Indian Boarding Schools in the United States, to study the impact and ongoing effects of historical and intergenerational trauma in Tribal communities, and to provide a forum for indigenous victims and families to discuss the personal impacts of physical, psychological, and spiritual violence" and develop recommendations for an appropriate federal response. The bill has yet to be reintroduced in the 117<sup>th</sup> Congress.

## VI. Opposition

Opposition to or skepticism of a national truth and reconciliation commission focused on racial injustices often centers on the unlikelihood of successful reconciliation (or even establishing a shared truth) and/or the very high level of expense and logistical burdens. For example, when asked on Meet the Press for her thoughts on the likelihood that our current political environment would allow a commission to be formed, reporter and commentator Yamiche Alcindor [expressed skepticism](#), pointing to the Trump administration's desire to "completely create a new version of the truth" and the 75 million Americans who support it. She concluded, "I'm not sure if we can get to a place where Americans can sit down and say, 'Let's talk about our differences,' when we can't even agree on the facts." Transitional justice expert Adam Kochanski similarly [believes](#) that that the United States is not ready for an effective commission due to the current deep political division and that "work needs to be done around restoring trust in government and reestablishing truth" before such an initiative should be undertaken.

Others believe truth and reconciliation commissions are too often used to assuage the guilt of the offenders rather than responding to the harm experienced by the victims. As German philosopher Theodor Adorno [explained](#) this line of critique, "[c]oming to terms with the past does not imply a serious working through of the past, the breaking of its spell through an act of clear consciousness. It suggests, rather, wishing to turn the page and, if possible, wiping it from memory. The attitude that it would be proper for everything to be forgiven and forgotten by



those who were wronged is expressed by the party that committed the injustice.”

## DISCUSSION QUESTIONS

How would the work of a truth and reconciliation commission impact other transitional justice projects that have been recently proposed (including calls for [reparations](#), [an official apology from the United States](#), [public memorials](#), etc.)? What scope should a national commission have? With the deeply divided political climate we are currently in, how should a commission be structured and its work publicized to actually hold credibility for all parties? How can meaningful support from impacted communities be best achieved and measured? What lessons can be learned from other nations’ experiences with truth and reconciliation commissions?

## FOR MORE INFORMATION

Jordan Green, *Can Greensboro Model a National Truth and Reconciliation Process?*, SOJOURNERS (Oct. 14, 2020); Bonny Ibhawoh, *Do truth and conciliation commissions heal divided nations?*, THE CONVERSATION (Jan. 23, 2019); Peter Keating and Shaun Assael, *The USA Needs a Reckoning. Does “Truth and Reconciliation” Actually Work?*, MOTHER JONES (Mar. 5, 2021); Yuvraj Joshi, *Racial Transition*, 98 WASH. U. L. REV. 1181 (2021); Rachel Ramirez, *“No healing without the truth”: How a federal commission could help America understand systemic racism*, VOX (Mar. 4, 2021); Ovetta Wiggins, *Landmark commission begins tackling ‘unconfronted truth’ of racially motivated lynchings in Md.*, WASH. POST. (Sept. 18, 2020); APERTURE, *Truth and Reconciliation* (Apr. 25, 2018); E PLURIBUS UNUM, *Divided by Design: Findings From the American South* (Oct. 2019); SOUTHERN POVERTY LAW CENTER, *Whose Heritage? Public Symbols of the Confederacy* (Feb. 2019); Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Racial Intolerance, *Reparations for Racial Discrimination, Slavery, and Colonialism*, U.N. Doc. A/74/321 (Aug. 21, 2019); Video: *Founding Failures: Transformational Change and the Movements for Racial Equity*, AM. CONST. SOC’Y (Aug. 3, 2021); Video: *The urgent need for reconciliation in the United States: Bryan Stevenson*, TED ARCHIVE (Aug. 15, 2017); NYU School of Law, *Reckoning with Racial Injustice in America*, YouTube (Nov. 9, 2017); Podcast: Broken Law, *Why We Need Truth, Racial Healing, and Legal Transformation* (Aug. 3, 2021); Podcast: All Things Considered, *Reparations Can – And Should – Take Many Forms, Says Human Rights Researcher* (Mar. 26, 2021).

## Speakers List

The following list includes a variety of scholars, advocates, and litigators you may contact when planning your chapter's events around anti-racism work this year. The speakers are listed in alphabetical order, according to their names and specialties. We have provided their title, organization, and the broad legal issues related to their fields of research, litigation, and advocacy. These categories are necessarily simplistic. When considering any of the experts listed below for your programming, you should research the speaker to ensure their specialties align with the goals of your event.

This speakers list is not exhaustive. Instead, it is intended to provide you with a sampling of the scholars, advocates, institutions, and organizations that work on these issues. When developing your events, you should also consider local experts and practitioners and consult law school faculty members, including ACS student chapter faculty advisors, for additional suggestions.

For ease of reference, this speakers list includes only speakers with expertise on the narrow areas of truth and reconciliation commissions, reparations, transitional justice, and the movement for truth, racial healing, and transformation. The [2020 Program Guide and Speakers List](#) includes additional resources and suggested speakers on the movement for reparations and we encourage you to revisit our previous guides for suggested speakers whose work focuses on both the causes and effects of systemic racism and the underlying needs for truth, racial healing, and transformation.

Name	Title	Affiliation	State	Specialty
<b>Michèle Alexandre</b>	Dean and Professor of Law	Stetson University College of Law	FL	Constitutional Law; International Law
<b>Esther Anne</b>	Policy Associate, Children, Youth, and Families Program, Cutler Institute	University of Southern Maine	ME	Local Initiatives
<b>Daniel Brinks</b>	Associate Professor of Law	University of Texas at Austin School of Law	TX	International Human Rights Law



<b>Name</b>	<b>Title</b>	<b>Affiliation</b>	<b>State</b>	<b>Specialty</b>
<b>Ruben Carranza</b>	Director, Reparative Justice Program	International Center for Transitional Justice	NY	Transitional Justice
<b>Dr. Gail Christopher</b>	Executive Director	National Collaborative for Health Equity	DC	Truth, Racial Healing, and Transformation
<b>Richard Delgado</b>	John J. Sparkman Chair of Law	University of Alabama School of Law	AL	Constitutional Law; Critical Race Theory
<b>Raff Donelson</b>	Associate Professor of Law	Pennsylvania State University Dickinson Law	PA	Local Initiatives
<b>Ariel Dulitzky</b>	Clinical Professor of Law	University of Texas at Austin School of Law	TX	International Human Rights Law
<b>Karen Engle</b>	Minerva House Drysdale Regents Chair in Law	University of Texas at Austin School of Law	TX	International Human Rights Law
<b>Aya Fujimura-Fanselow</b>	Clinical Professor of Law; Supervising Attorney, International Human Rights Clinic	Duke University School of Law	NC	Transitional Justice
<b>Katherine Franke</b>	James L. Dohr Professor of Law	Columbia Law School	NY	Reparations

<b>Name</b>	<b>Title</b>	<b>Affiliation</b>	<b>State</b>	<b>Specialty</b>
<b>Linda Sheryl Greene</b>	Dean and MSU Foundation Professor of Law	Michigan State University College of Law	MI	Social Movements; Race and Inequality
<b>Pablo de Greiff</b>	Director, Transitional Justice Program	New York University Law School	NY	Transitional Justice
<b>Dreisen Heath</b>	Researcher/Advocate	Human Rights Watch	DC	Reparations; Restorative Justice
<b>Marcus Anthony Hunter</b>	Professor; Scott Waugh Endowed Chair in the Division of the Social Sciences	University of California, Los Angeles	CA	Reparations; Truth, Racial Healing, and Transformation
<b>Zenita Wickham Hurley</b>	Chief Counsel for Civil Rights	Maryland Office of the Attorney General	MD	Local Initiatives
<b>Yuvraj Joshi</b>	Assistant Professor	University of British Columbia Allard School of Law	BC	Transitional Justice
<b>Lisa Laplante</b>	Professor of Law	New England Law   Boston	MA	Transitional Justice
<b>Hon. Barbara Lee<sup>6</sup></b>	Representative (CA-13)	U.S. House of Representatives	CA	Truth, Racial Healing, and Transformation

---

<sup>6</sup> Please note that Representative Lee may not receive any honorarium for her participation in any speaking opportunities

<b>Name</b>	<b>Title</b>	<b>Affiliation</b>	<b>State</b>	<b>Specialty</b>
<b>Rachel Lopez</b>	Associate Professor of Law	Drexel University Thomas R. Kline School of Law	PA	Transitional Justice
<b>Lisa Magarrell</b>	Former Advisor	Greensboro Truth and Reconciliation Commission	NY	Local Initiatives
<b>Christine Diindiisi McCleave</b>	CEO	National Native American Boarding School Healing Coalition	MN	Local Initiatives
<b>Carrie Menkel-Meadow</b>	Distinguished and Chancellor's Professor of Law	University of California, Irvine School of Law	CA	Transitional Justice
<b>Dr. Zinaida Miller</b>	Assistant Professor	Seton Hall University	NJ	International Law; Human Rights; Transitional Justice; International Criminal Law
<b>Colleen Murphy</b>	Roger and Stephany Joslin Professor of Law	University of Illinois College of Law	IL	Transitional Justice
<b>Michael Newman</b>	Senior Assistant Attorney General	California Department of Justice	CA	Reparations; Local Initiatives
<b>Jaya Ramji-Nogales</b>	Associate Dean for Academic Affairs; I. Herman Stern Research Professor	Temple University Beasley School of Law	PA	Transitional Justice

<b>Name</b>	<b>Title</b>	<b>Affiliation</b>	<b>State</b>	<b>Specialty</b>
<b>Nelson Camilo Sánchez León</b>	Assistant Professor of Law	University of Virginia School of Law	VA	Transitional Justice
<b>Graeme Simpson</b>	Lecturer in Law	Columbia Law School	NY	International Truth and Reconciliation Commissions; Transitional Justice
<b>Ronald Slye</b>	Professor of Law	Seattle University School of Law	WA	Transitional Justice
<b>Marbre Stahly-Butts</b>	Executive Director	Law 4 Black Lives	NY	Social Movements; Race and Inequality
<b>Don Tamaki</b>	Founder	Stop Repeating History	CA	Reparations
<b>Jennifer Taylor</b>	Senior Attorney	Equal Justice Initiative	AL	Restorative Justice
<b>Jenny Thompson</b>	Independent Historian	City of Evanston Reparations Program (Consulting Historian)	IL	Local Initiatives
<b>Christie S. Warren</b>	Professor of the Practice of International and Comparative Law	William & Mary Law School	VA	Comparative Law; Comparative Constitutional Law; Post-Conflict Justice and the Rule of Law; Islamic Law

## About the American Constitution Society

The American Constitution Society (ACS) believes that law should be a force to improve the lives of all people. ACS works for positive change by shaping debate on vitally important legal and constitutional issues through development and promotion of high-impact ideas to opinion leaders and the media; by building networks of lawyers, law students, judges and policymakers dedicated to those ideas; and by countering the activist conservative legal movement that has sought to erode our enduring constitutional values. By bringing together powerful, relevant ideas and passionate, talented people, ACS makes a difference in the constitutional, legal and public policy debates that shape our democracy.