

**TRANSITIONAL JUSTICE:
PROSPECTS FOR POST-WAR PEACE AND HUMAN RIGHTS**

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Chapter 11 in *What Do We Know About Civil Wars?* (eds. Sara McLaughlin Mitchell and T.

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In early 2011, Egyptians inspired by the Tunisian revolution launched a wave of popular protests. President Mubarak's National Democratic Party and his military responded with violence, culminating in the February 2 attacks on demonstrators in Tahrir Square. Allegations of torture, killings, and sexual assaults surfaced, and on February 11, Mubarak stepped down. Power was transferred to Egypt's Supreme Council of Armed Forces, which suspended the constitution and dissolved parliament. They vowed to transfer power to an elected civilian government, and Mohamed Morsi of the Muslim Brotherhood became Egypt's first democratically elected President in June of 2012. Yet discontent increased and ultimately, millions took to the streets and called for Morsi to relinquish power. Egypt's army intervened and took the reins of power in July 2013. Once again, the military suspended the constitution. Police backed by armored vehicles and bulldozers violently dispersed groups of Morsi's supporters; hundreds were killed.

Political upheaval, civil war and human rights are inextricably linked. State-perpetrated abuse of fundamental human rights leads to popular dissent, mobilizing the opposition and risking escalation to war (e.g., Gurr 1970; Lichbach 1998; Tilly 1978; Young, 2012 and this volume). Abuse is more widespread and severe during war than at other times, as states employ repression to defeat their opposition (e.g., Hibbs 1973; Kalyvas 2000; Mason and Krane 1989; Poe and Tate 1994). And genocide, often considered the most heinous form of abuse, occurs almost exclusively in the context of civil and interstate war (e.g., Harff 2003; Krain 1997; Licklider 1995; Valentino 2005).¹

When international war ends, opponents return to their own distinct territories. But when civil war ends, the people remain together in the same country. To paraphrase Licklider (1993,

¹ Genocide is the extermination or attempted extermination of a people because of their indelible group membership (race, ethnicity, religion, or language).

4), how do groups of people who have been killing one another with considerable enthusiasm and success come together in a single community? How can you coexist with the people who imprisoned, disappeared, tortured or killed your parents, your children, your friends or lovers? How can Egyptians who lived through the recent uprising stabilize their world and move forward together?

Transitional justice (TJ) is the implementation of measures designed to redress legacies of mass human rights abuses during periods of radical political change, including democratization and civil war (Teitel 2000). As the International Center for Transitional Justice (ictj.org) notes, “it seeks recognition for the victims and to promote possibilities for peace, reconciliation, and democracy.” In Egypt, the Ministry for Transitional Justice and National Reconciliation was created in June 2014; it will consider the variety of institutions and processes that have evolved in pursuit of these goals, including (for example) criminal prosecutions, truth commissions, lustrations, and amnesties.²

The *prima facie* argument for transitional justice is clear. Advocates argue that holding individuals accountable for their abhorrent treatment of others satisfies fundamental principles of fairness. It pressures governments to adhere to publicly known and widely accepted standards of conduct, and represents a break with a past in which the government failed to abide by those standards. And it offers victims a sense of justice, which promotes healing and reconciliation while dampening the desire for retribution. In short, transitional justice helps metamorphosing states establish a foundation for a peace (e.g., Akhavan 2001; Goldstone 1996; Malamud-Goti 1990; Méndez 1997).

² I define these terms in greater detail later in this chapter.

Others have been less optimistic. Skeptics argue that dredging up the recent past will undermine efforts to move on, sharpening societal divisions in ways that exacerbate or renew conflict, weaken fledgling democratic institutions, and generally “cause more harm than the original crime it purports to address” (Goldsmith and Krasner 2003:51; see also Grono and O’Brien 2008; Huntington 1991; O’Donnell and Schmitter 1986; Vinjamuri and Snyder 2004; Zalaquett 1992).

Recently, the use of transitional justice in the aftermath of atrocities has become increasingly accepted and increasingly common. Until 2002, for example, the international community had to establish ad hoc tribunals like the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in order to criminally prosecute perpetrators of egregious human rights abuse. Since 2002, that role has been transferred to the permanent International Criminal Court. More generally, there has been a “rapid and dramatic shift in the legitimacy of the norms of individual criminal accountability for human rights violations and an increase in actions (such as trials) on behalf of those norms” (Sikkink and Kim 2013, 170). In the context of civil war, TJ in one form or another is now a part of most post-war peace processes, and trials and truth commissions in particular have emerged as “staple[s] of post-conflict peacebuilding efforts” (Brahm 2007:16; Bates et al. 2007; Thoms, Ron, and Paris 2010). Scholars have called this the *justice cascade* (e.g., Lutz and Sikkink 2001; Savelsberg 2010; Sikkink 2011; Sikkink and Kim 2013), and it has spawned a new wave of social scientific research on the origins, spread, and effectiveness of transitional justice.

As other chapters in this volume make clear, the post-civil war period is not characterized by a durable peace, stability, or prosperity. In chapter 9, for example, Diehl notes that current civil war begets future civil war in over 40% of states. Thyne describes in chapter 10 how

health, education, and the economy suffer. These deleterious effects may be mitigated through negotiated settlements, the deployment of peacekeeping missions, policy interventions, and the promotion of democracy (see chapters 8-10, this volume). But none of these strategies is a panacea for the common afflictions of post-conflict states. Can transitional justice ameliorate these problems?

This chapter maps out the emerging stream of systematic empirical research on how transitional justice affects the prospects for post-war peace, focusing particularly on its effects on recurrent conflict and government respect for human rights.³ After introducing the most common mechanisms of transitional justice, I summarize the universe of existing empirical results in the political science literature linking TJ to two state-level outcomes: civil war and post-war human rights. Despite a growing number of systematic studies, this literature is still in its very early stages and our cumulative understanding of the effects of transitional justice in the context of civil war is limited. I argue that this limitation follows from a lack of rigorous causal theory, which produces ungrounded differences in scope conditions and the operationalization of key concepts across existing studies. These differences prevent the literature as a whole from making compelling correlational or causal claims. I identify new goals that I believe transitional justice scholars should pursue, discuss several new datasets that are well-equipped to help in that pursuit, and raise a series of as-yet unasked questions about transitional justice, civil war, and human rights.

³ Other empirical work falls outside the scope of this chapter, but may be of interest to this volume's audience. First, scholars have investigated the conditions under which states pursue transitional justice, both in general and with respect to specific mechanisms or packages (see, for example, Dancy et al. 2010; Dancy and Poe 2006; Elster 1998; Kim 2012; Mallinder 2008, 2009; Nalepa 2010; Olsen, Payne and Reiter 2010a; Powers and Proctor 2015; Roper and Barria 2009; Skaar 1999). Second, studies have probed impacts of transitional justice not covered here, including democratization, the rule of law, and reconciliation (e.g., Call 2007; de Brito et al. 2001; Gibson 2004, 2006; Goldstone 1995; Kenney and Spears 2005; Stromseth et al. 2006).

TJ Institutions and Processes

Transitional justice mechanisms include criminal prosecutions, truth commissions, reparations, memory projects, lustrations, amnesties, purges, and exiles. *Criminal prosecutions*, including trials and tribunals, are retributive mechanisms aimed at holding perpetrators accountable and punishing them for abuse (Elster 2004). Many prosecutions, such as those in Peru, Venezuela, and Egypt, occur within the society where the crimes occurred. When societies emerging from transition lack the capacity or political will to prosecute perpetrators domestically, justice may be pursued through hybrid courts that include international and domestic actors and draw upon international standards and practices; this was the case in Sierra Leone, Kosovo, Bosnia, Timor-Leste, and Cambodia. Finally, prosecution may occur in a purely international context, through ad hoc tribunals like the ICTY and ICTR, or through the International Criminal Court.

Regardless of the context in which it occurs, advocates believe that establishing criminal responsibility offers victims a sense of justice, deters future abusers, and strengthens the rule of law (e.g., Akhavan 2001; Kritz 1996; Minow 1998; Stromseth 2003). Alternatively, one might argue that the pursuit of justice through prosecution undermines the goal of reconciliation.

Other TJ mechanisms are non-retributive, designed to offer reparation or compensation to victims (Gloppen 2005). *Truth commissions*, like the South African Truth and Reconciliation Commission and the Chilean Comisión Nacional de Verdad y Reconciliación, are temporary, non-judicial bodies that are officially sanctioned, authorized, or empowered by the state to investigate a pattern of abuses over a period of time (Hayner 2001, 14). They create historical records of human rights abuse that help victims find closure by learning more about the events they suffered, making it difficult to deny or rewrite history, and signaling an official commitment

to prevent recurrent atrocities (Brahm 2007; Goldstone 1996). *Reparations* may be material, such as financial payments and social services like education or health care. They may also be symbolic, such as public acknowledgement or apology. In East Timor, for example, perpetrators made amends by rebuilding homes that had been destroyed or providing a set number of hours of community service (Magarrell 2007). *Memory projects*—like the monuments, annual prayer ceremony, and mass grave in northern Uganda—create records and preserve memories of people or events (Shaw et al. 2010). Proponents believe that these non-retributive measures pave the way for reconciliation by helping victims acknowledge and recover from the physical, psychological, and social damage caused by past brutality (e.g., Aukerman 2002; Borer 2006; Drumbl 2007; Long and Brecke 2003). Alternatively, one might argue that these measures sacrifice people’s desire for justice in the hopes of achieving reconciliation.

A third set of TJ mechanisms has both retributive and non-retributive elements. *Lustration* identifies politicians who collaborated with past abusive regimes and either limits their access from public office or disqualifies them from holding office entirely. This helps to ensure that the new government will neither appear nor behave like the old regime, and signals a new chapter in state history (Cohen 1995; David 2011; Kaminski and Nalepa 2006; Nalepa 2010). *Amnesties* are granted by passing retroactive laws “to eliminate any record of crimes occurring by barring criminal prosecutions and/or civil suits. In extinguishing liability for a crime, amnesty assumes that a crime has been committed” (Mallinder 2009, 2-3). They are typically granted in exchange for truth, and mark a turning point between the conflict-ridden climate of the past and a new, more peaceable social climate (Cobban 2007, 199; see also Huyse 1995; Kritz 1995). Finally, *purges* remove perpetrators from public office, while *exiles* remove them from the state. Like lustrations, these mechanisms impose tangible punishment for abuse

while also providing a psychological break with the past (Arthur 2009; Elster 2004; Teitel 2000, 2003).

These TJ institutions and processes are not mutually exclusive and multiple mechanisms are often used in a single case. In the aftermath of its 1994 genocide, for example, Rwanda adopted mechanisms including domestic criminal prosecution (the Gacaca courts), international criminal prosecution (the International Criminal Tribunal for Rwanda), and a truth commission (the National Unity and Reconciliation Commission).⁴ More generally, almost two-thirds of transitional countries that established truth commissions between 1979 and 2004 also held trials, and many of these had amnesties as well (Sikkink and Walling 2007: 430).

Empirical Evidence of TJ's Effects

So how do the various TJ mechanisms described above affect civil war and post-war human rights? I explore this question in this section by reviewing empirical work on the topic.

Effects of Individual Mechanisms

Between 1991 and 2001, as Yugoslavia dissolved, a series of separate but related military conflicts occurred within its boundaries.⁵ In April 1992, the Yugoslav republic of Bosnia-Herzegovina declared its independence and the Bosnian War began. Bosnian Serb forces, backed by the Serb-dominated Yugoslav army, set out to “cleanse” their territory of Bosnian Muslims (known as Bosniaks) and Bosnian Croats (Croatian civilians). By 1995, around 100,000 people were dead. 80 percent of the victims were Bosniak (Malcolm 1996).

⁴ The Gacaca courts also have non-retributive objectives, including the reconstruction of what happened during the genocide and the reconciliation of all Rwandans (Daly 2002).

⁵ In addition to the Bosnian War discussed here, conflicts occurred in Slovenia, Croatia, Kosovo, the Preševo Valley, and the Republic of Macedonia.

The most famous and deadly event was the July 1995 massacre at Srebrenica, a Bosniak-dominated town under the watch of UN peacekeepers. Serb General Ratko Mladić and his forces entered the town and murdered roughly 7,000 men and boys; it was the single largest massacre in Europe since World War II. Many of those who survived the initial massacre were sent to concentration or detention camps where they were beaten, tortured, and executed en masse. Srebrenica women were often taken to rape camps, there to be raped and tortured until they became pregnant (Honig 1996).

The International Criminal Tribunal for the former Yugoslavia was established in 1993 to prosecute war crimes committed during each of the Yugoslav Wars, including the events and Srebrenica and other instances of ethnic cleansing that occurred in Bosnia-Herzegovina. Ratko Mladić was arrested on May 26, 2011, and was charged with two counts of genocide, five counts of crimes against humanity, and four counts of violations of the laws or customs of war. His trial began in May 2012, and judgment is expected in November 2017.⁶ More generally, the ICTY's prosecutions have "dramatically changed the civil landscape and permitted the ascendancy of more moderate political forces backing multiethnic co-existence and nonviolent democratic process" (Akhavan 2001, 9). In Bosnia-Herzegovina and throughout the former Yugoslavia, the ICTY seems to have played an appreciable role in preventing a relapse to civil war and limiting post-war human rights abuse.

This case narrative suggests that retributive TJ improved the prospects for post-war peace and human rights in the former Yugoslavia. Is this result generalizable? The earliest empirical research of TJ's effects on post-war peace looked at the impacts of retributive mechanisms (i.e., criminal prosecutions) like the ICTY. With respect to recurrent civil war, anecdotal evidence

⁶ For updates and the full criminal proceedings of the ICTY, visit www.icty.org.

suggests that criminal prosecutions reduce the risk of recurrent conflict (Akhavan 2001), while several systematic studies find that prosecutions have no discernable effect on recurrent conflict (Meernik 2005; Sikkink and Walling 2007; Lie, Binningsbø, and Gates 2007; Meernik, Nichols, and King 2010; Sikkink 2011). In a more nuanced analysis, Loyle and Appel (2014) find that trials selectively and solely targeting the opposition do not affect the risk of relapse to civil war, while comprehensive trials targeting both governments and rebels do reduce the risk of recurrence.

Research into criminal prosecutions' effects on post-war human rights produces two contrasting findings. Several studies (Sikkink and Walling 2007; Kim and Sikkink 2010, 2013; Sikkink 2011; Sikkink and Kim 2013) find that prosecutions improve state respect for human rights⁷, while another study (Meernik, Nichols, and King 2010) finds that prosecutions have no effect on state respect for human rights.

With respect to non-retributive mechanisms, scholars have focused specifically on truth commissions. Some analyses (Long and Brecke 2003; Snyder and Vinjamuri 2003/2004; Lie, Binningsbø, and Gates 2007; Loyle and Appel 2014) suggest that such commissions reduce the risk of recurrent civil war. Wiebelhaus-Brahm (2010) examines truth commissions' effect on state respect for human rights; his multi-method approach produces two very different results, suggesting first that truth commissions improve respect for human rights, and then that these commissions actually worsen respect for human rights. Lastly, Lie, Binningsbø, and Gates (2007) examine the effects of reparations on recurrent civil war. They find that reparations have

⁷ Here, human rights refer to physical integrity rights including extrajudicial killing, torture, imprisonment for political views, and disappearances (e.g., Cingranelli and Richards 2010; Poe and Tate 1994; Wood and Gibney 2010).

no effect on recurrence in all states taken together, or in authoritarian regimes considered alone. However, reparations do reduce the risk of civil war relapse in democracies.

Finally, with respect to mechanisms with both retributive and non-retributive elements, four studies examine the effects of amnesties on the risk of recurrent civil war. Both Loyle and Appel (2014) and Snyder and Vinjamuri (2003/2004) find that amnesties reduce the risk of civil war recurrence. The two remaining studies find that amnesty's impact depends on political institutions (i.e., regime type): Lie, Binningsbø, and Gates (2007) find that amnesties have no effect on recurrence in all states taken together, or in authoritarian regimes on their own. In democracies, amnesties appear to increase the risk of relapse to civil war. Melander (2013) finds that amnesty provisions in peace agreements reduce the risk of civil war recurrence, but only in authoritarian regimes; in democracies or regimes in flux, his results show no significant effect of amnesties on a return to civil war.

Beyond amnesties, Lie, Binningsbø, and Gates (2007) find that the effect of exiles depends on regime type, such that they reduce the risk of recurrent civil war in democracies but have no significant effect in other regimes. And purges, in their results, have no effect on recurrent civil war regardless of the type of regime in which they occur. Lastly, Loyle and Appel (2014) find that reparations are associated with a reduced risk of recurrence.

Effects of Multiple Mechanisms

The findings described above examine the effects of one transitional justice mechanism in isolation, or consider them as independent influences in multivariate analyses. Yet as mentioned above, multiple mechanisms are often used in a single case. When considered as an additive index (so that the presence of one more TJ mechanism increases the amount of TJ by a

value of one), the use of additional mechanisms has no significant impact on the recurrence of civil wars (Lie, Binningsbø, and Gates 2007).

When considered as available “packages” of TJ, however, anecdotal evidence suggests that different combinations of mechanisms may reduce the risk of civil war relapse. Consider, for example, East Timor. Following the 1974 Portuguese revolution, Portugal abandoned its colony on Timor; in 1975, civil war broke out between East Timorese political parties. Indonesia invaded shortly thereafter, fearing a communist state in the region. The Indonesian occupation lasted for 24 years, and was marked by violence and brutality. East Timorese civilians suffered displacement, sexual violence, and torture. Approximately 18,600 civilians were killed, and another 84,200 died from hunger and illness (Burgess 2004).

In 1999, the UN organized a referendum on autonomy of East Timor. In the months leading up to the vote, paramilitary groups attacked independence activists and warned of a “bloodbath” in the event of a vote for independence (Nevins 2005, 91). When 78.5 percent of East Timorese voted for independence, Indonesian security forces and their militia began attacking civilians and setting fires around the capital city, Dili. Ultimately, more than 1,4000 lives were lost (Nevins 2005).

In the wake of the Indonesian occupation and post-referendum violence, three separation TJ institutions were established. In 1999 the UN set up the Serious Crimes Investigations and Prosecutions Process to investigate serious crimes committed during the conflict and indicted nearly 400 subjects. In 2002, the independent Commission for Reception, Truth, and Reconciliation (CAVR) was established to “inquire into human rights violations committed on all sides, between April 1974 and October 1999, and facilitate community reconciliation with

justice for those who committed less serious offenses”.⁸ In 2005, Indonesia and East Timor established the bilateral Commission for Truth and Friendship (CTF). Perhaps as a result of these efforts at transitional justice, East Timor has seen neither recurrent civil war nor exceptionally high levels of repression since the 1999 referendum.

Trials and truth commissions also reduced the risk of recurrence in the former Yugoslavia (except Macedonia), and Peru. Formal amnesties combined with truth commissions reduced the likelihood of civil war renewal in El Salvador and South Africa; and the combination of de facto amnesty and a truth commission reduced the risk of relapse in Guatemala (Snyder and Vinjamuri 2003/2004).

The effects of multiple mechanisms on state respect for human rights are cohesive, and suggest that different combinations of mechanisms lead to less human rights abuse than we might otherwise expect. Snyder and Vinjamuri (2003/2004) suggest that the TJ packages that reduced the risk of recurrent civil war also contributed to improved human rights practices in those same states. Sikkink and Walling (2007) show that the combination of trials and truth commissions improves human rights performance more than trials alone. Olsen, Payne, and Reiter (2010b, 2010c) find that trials and amnesties, as well as trials, amnesties, and truth commissions, generate improvements in state respect for human rights. In short, transitional justice mechanisms may be more effective in reducing conflict and human rights abuses in the long term when multiple TJ approaches are adopted in the post-conflict environment.

Synthesis and Limitations

The empirical study of transitional justice’s impacts on post-war peace and human rights has made great strides in the past decade. Perhaps the most notable development has been a move

⁸ For the full text of the CAVR mandate, see <http://www.cavr-timorleste.org>.

away from the earlier tendency to concentrate only on cases that have experienced TJ (Thoms et al. 2010, 346). Certainly this literature has followed a pattern common to many areas of conflict studies, starting with historiographic description and debate that relied on anecdotal evidence and suffered from sample selection bias, and then growing more sophisticated in both case selection criteria and methods of analysis. Of the sixteen empirical tests discussed above, only two focus solely on cases where transitional justice was used; the other fourteen examine both positive and negative cases. With respect to methodology, only one of the studies relies exclusively on anecdotal evidence. Four others use correlational statistics, eight make use of multivariate analysis, and the remaining three employ some combination of these methods.

Overall, most studies find that TJ has either desirable or negligible effects, and evidence of strong negative impacts is relatively rare. This conclusion is tenuous, however, largely because extant work has privileged ad hoc hypotheses over causal logic. Scholars have tended to ask *whether* transitional justice strengthens post-war peace and human rights rather than focusing on *how* and *why* these improvements occur. When scholars have developed causal logic that points the way to new research questions and empirical expectations, others in the community have failed to engage. This failure has also led to major differences in scope conditions and in the operationalization of key concepts across empirical efforts. Consequently, the literature has been unable to achieve the kind of cumulative knowledge that allows social scientists to make compelling causal—or even correlational—claims.

Causal Theory?

A rigorous theory should explain known empirical patterns, rendering facts informative by specifying logical linkages among the terms in our hypotheses. It should also point the way forward, guiding the search towards new questions and new empirical regularities. Consider, for

example, this simple stylized story. Assume that state leaders are driven to maintain power and a monopoly on the forces of coercion within their borders. When faced with domestic challenges, such leaders are likely to respond with human rights abuses. Repression, after all, is a highly effective and relatively inexpensive way to quell dissent, dissuade future opposition to the regime, and consolidate power and control.

If all this is true, then one way for transitional justice to reduce repression is to deter leaders from abusing their citizens by threatening their grasp on power. Retributive TJ is capable of imposing such a threat, while wholly non-retributive TJ is not. Thus we might expect that criminal prosecutions would reduce post-war human rights abuse, while truth commissions would not. This explains findings in Lie, Binningsbø, and Gates (2007), Sikkink and Walling (2007), Kim and Sikkink (2010, 2013), Sikkink (2011), and Sikkink and Kim (2013). Because the causal pressure here is the *threat* of retributive TJ, we should expect these mechanisms to reduce human rights abuse when and where they are applied, *and* anywhere else they raise leaders' expectations of punishment for abuse. Thus retributive TJ may have deterrent effects for the post-war leadership, or in states that share borders or other linkages with the state where TJ is used. And, in fact, Sikkink and Kim (2013) find just such a neighborhood effect.

This causal logic also implies that leaders are most vulnerable when their transgressions are readily identified as well as punished. Thus human rights abuse should be deterred more in the context of both truth commissions *and* trials than in the presence of trials alone. Empirical results from Snyder and Vinjamuri (2003/2004), Sikkink and Walling (2007), Olsen, Payne, and Reiter (2010b, 2010c) supports these expectations.

This brief exercise demonstrates the power of careful theorizing. While the empirical studies of TJ's effects on human rights do not advance a causal logic, two studies focused on

civil war recurrence do invest in theory.⁹ For Melander (2013), the research question is whether amnesty provisions in peace agreements reduce the likelihood of civil war recurrence. His theoretical argument begins with the claim that amnesties are only effective (i.e., capable of increasing societal peace and reducing the risk of conflict recurrence) when they are credible and enforceable. In democratic states and regimes in flux, leadership changes are likely and the political future is uncertain. Authoritarian regimes, in contrast, are both less changeable and more certain. Because authoritarian regimes are more credible, then, amnesties in these states are more likely to be enforced and less likely to be undermined. Thus amnesties should reduce the risk of conflict recurrence, but only when political institutions are authoritarian.

Empirical results support Melander's expectations. Perhaps more importantly, his theoretical framework points the way to new and promising research questions and empirical expectations. Do political institutions condition the effectiveness of other forms of transitional justice? Truth commissions, for example, depend on individual victims to identify perpetrators; if victims are unwilling to come forward, then crimes cannot be acknowledged and truth cannot be told. Might victims be unwilling to name names in the shadow of uncertainty cast by regularized leadership change? If so, then truth commissions in democracies seem less likely to reduce political violence than comparable commissions in an autocratic context. Lustrations ban collaborators with abusive regimes from participation in the new government. Might they be poorly equipped to prevent a return to civil war or widespread abuse when the new government is likely to be replaced in a relatively short time, through regularly-scheduled elections or another institutionalized political process?

⁹ Another example of rigorous theory and research design is Nalepa (2010), whose focus is on the strategic conditions that make TJ implementation both possible and desirable. In particular, she engages decisions (not) to lustrate in Eastern Europe.

For Loyle and Appel (2014), the research question is whether post-conflict justice (i.e., transitional justice occurring in the aftermath of civil war) reduces the risk of recurrent civil war. Building on the civil conflict literature cited throughout this volume, they argue that recurrence depends on how easily conflict entrepreneurs can mobilize former rebels and their supporters against the government. Mobilization is easier when potential opponents feel aggrieved against the government, so one way to avoid recurrence is to address and lessen those grievances. Post-conflict justice is well equipped to mitigate grievances that result from a previous conflict; it also signals the post-conflict government's continued commitment to addressing future grievances as they arise. Thus post-conflict justice attenuates conflict entrepreneurs' ability to mobilize would-be opponents by addressing and alleviating their motivations to rebel.

Empirical results support the insight that TJ reduces the likelihood of civil war relapse only when it helps alleviate grievances. Loyle and Appel's theoretical framework suggests some new and promising research questions and empirical expectations. Might non-retributive TJ mechanisms increasingly reduce the likelihood of civil war recurrence as they are increasingly able to address lingering or new grievances at civil war's end? If so, then truth commissions with broad investigatory powers may reduce political violence more than comparable commissions who are limited in the issues they can engage. Reparations can be either material or symbolic; is one form more powerful for reducing grievances than the other? Given a limited pool of resources, might reparations spread more thinly but extended to more potential opponents more effectively reduce political violence than larger reparations packages offered to fewer potential opponents?

Theoretical logic can also be found in research that does not contain systematic empirical tests. Hayner (2010, 182) suggests that truth commissions aim to prevent further violence and

rights abuse "by breaking the cycle of revenge and hatred between former enemies, somehow encouraging reconciliation between opposing groups who may feel they have much to hate or fear in the other, or a history to avenge." These attempts are embedded in truth commission reports, and include recommended prosecutions, reparations, lustrations, apologies, and political and institutional reforms. Their success has varied widely but systematically, based on several factors. Does the truth commission have the power to make binding recommendations? If so, does it have direct powers of enforcement to ensure that those recommendations are implemented? Success also varies, Hayner argues, with the specificity of the recommendations and the international community's willingness to push national authorities towards implementation. The United Nations, for example, led a strong push for implementation in El Salvador, but was "considerably less assertive" in its stance towards implementation in Sierra Leone (Hayner 2010, 194). Thus Hayner lays out a clear causal pathway for TJ influence, and provides some observable indicators likely to co-vary with success. Yet this process, and the hypotheses it implies, has not yet been engaged by the empirical literature.

Rather than engage these new questions and expectations, or develop new causal arguments, most extant work has used empirical analysis to test ad hoc hypotheses—expectations based on hunches rather than carefully derived from a logical framework (Zinnes 1976). As a result, it is difficult to know how to interpret puzzling empirical results. Scholars have relied on post hoc explanations, which do little to further our cumulative understanding of how, why, or the conditions under which TJ improves the prospects for post-war peace.

Scope Conditions and Operational Choices?

The lack of careful and rigorous theorizing has also led to problematic differences in scope conditions and operationalization of key concepts across existing research efforts. A theory's

scope is “a set of conditions such that, if the conditions are satisfied, the theory will not be found false” (Walker and Cohen 1985, 291; see also Freese 1980; George and Bennett 2004; Toulmin 1957). It is, in other words, a domain of applicability or a context within which a given hypothesis is expected to hold. A central goal of the empirical transitional justice literature has been to construct general theories of TJ’s effects. Thus, hypotheses take the general form “the presence of transitional justice mechanisms decreases the likelihood of civil war (or increases human rights performance).” Nonetheless, nearly every study reviewed above imposes systematic and consequential restrictions on the sample subjected to empirical testing. Of the 18 tests discussed in this chapter, two are case-specific. Three include only states undergoing democratic transition in Latin America, and five include only democratic transitions without regional limitation. Six include only countries emerging from civil war, one includes only post-civil war democracies, and one imposes no scope restrictions whatsoever. Because results within one context cannot be assumed to generalize outside that context, and in the absence of theoretical justification for limited scope, the literature’s ability to make broad claims about the effects of transitional justice is limited.

Accumulation of knowledge has been limited, too, as a result of differences in operationalization. With respect to independent variables, different scholars have operationalized transitional justice differently. Most tests are designed to assess the effects of a specific TJ mechanism and authors are careful to limit their conclusions appropriately. The problem arises within these subsets, when one concept is operationalized in multiple ways *but conclusions about that concept’s (in)effectiveness are largely unqualified*. With respect to criminal prosecutions, for example, some studies (e.g., Kim and Sikkink 2010) allow trials to affect their outcomes of interest only in years in which a trial was ongoing (country prosecution years). Others (Meernik

et al. 2010) allow domestic prosecutions to have an effect beginning in the year the first trial began and continuing for the five-year period after the trial's end, allowing international tribunals to have an effect beginning in the year of establishment and continuing throughout their temporal domain.

Regarding truth commissions, one study (Long and Brecke 2003) investigates the impacts of reconciliation events including but not limited to truth commissions, while another (Wiebelhaus-Brahm 2010) examines the presence/absence of a truth commission as well as its issuance of a final report. And in the case of studies investigating multiple TJ institutions and processes, those mechanisms are sometimes considered independent influences (e.g., Snyder and Vinjamuri 2003/2004) and at other times they are treated additively (e.g., Sikkink and Walling 2007). These studies also measure specific mechanisms differently. Sikkink and Walling (2007), for example, measure the presence or absence of trials at any part of the prosecution process, while Olsen, Payne, and Reiter (2010b, 2010c) account only for trials that ended in verdicts.

Measurement choices also commonly differ across studies purporting to engage the same dependent variable. Most studies of TJ's effects on wars leverage data from the PRIO/Uppsala Armed Conflict Database (e.g., Kim and Sikkink 2010, 2013; Lie et al. 2007; Meernik et al. 2010), but one relies instead on a 32-death threshold (Long and Brecke 2003). Differences also exist within the subset of studies using the PRIO/Uppsala data: some (e.g., Sikkink and Walling 2007; Sikkink 2011) combine civil and interstate wars into a single outcome of interest, while others (Lie et al. 2007; Meernik et al. 2010) focus only on civil war. And while all studies of TJ's effects on human rights use the Political Terror Scale (PTS), the Cingranelli-Richards Physical Integrity Index (CIRI), or both, there are differences in how those data are employed:

some (e.g., Olsen et al. 2013b, 2013c; Wiebelhaus-Brahm 2010) use the levels of the relevant measure(s), while others (e.g., Meernik et al. 2010; Sikkink and Walling 2007) use binary indicators of positive change.¹⁰

Operational differences, then, are quite common in both independent and dependent variables. More importantly, these differences appear random rather than driven by different—and explicit—theoretical concepts. Scholars tend not to place their own measurement choices in the context of the broader literature, or consider how different decisions may lead to different conclusions without casting doubt on earlier work. Without this type of cross-study engagement, and careful grounding in conceptual definitions, empirical results cannot come together to advance our collective knowledge of post-war transitional justice.

Paths Forward

In this penultimate section, I suggest two ways that the limitations noted above might be addressed, I describe two new TJ data collection efforts and suggest some profitable future data collection possibilities, and I raise some as-yet unasked questions about how TJ relates to post-war peace and human rights.

New Goals

To some extent, scholars have already begun to engage scope conditions as described above. Meernik et al., for example, consider the potential effects of domestic trials independent of international tribunals, and vice versa. Wiebelhaus-Brahm investigates whether truth

¹⁰ PTS ranges from 1 to 5 with higher values capturing increasing government violations of physical integrity rights including extrajudicial killing, torture, disappearances, and political imprisonment. CIRI ranges from 0 to 8 with higher values capturing increasing government respect for the same set of physical integrity rights. For more on PTS, see Wood and Gibney (2010) or www.politicalterroryscale.org. For more on CIRI, see Cingranelli and Richards (2010) or www.humanrightsdata.com.

commissions have differential impacts when they do or do not publicly issue a final report. Long and Brecke find that reconciliation events produce a lasting peace only when they involve public truth telling and the redefinition of perpetrators' identities and social roles. Snyder and Vinjamuri find that TJ success depends on weak spoilers, a strong judiciary, and well-established democratic institutions. And Lie et al. find that TJ has effects in post-conflict democracies that are not clear across all post-conflict states. The trouble stems not from a lack of attention, but from a lack of systematic and rigorous causal logic. An abundance of post hoc theorizing and the failure to make scope conditions explicit are symptomatic of this problem.

Cumulation in social science can (perhaps should) begin with precise theorizing, which leads naturally to the thoughtful identification of suitable samples and operationalization of key concepts both within and across individual efforts. One goal of future research should be the careful development of causal arguments, particularly with regards to context. As noted earlier, researchers should ask not only *whether* transitional justice strengthens post-war peace and human rights, but also *how* and *why* these improvements occur. They should be mindful of circumstances in which their arguments may not apply, including limitations with respect to transition type, regime type, geography, time, and other characteristics. And they should test their theories aptly, measuring concepts and defining samples in ways that reflect theoretical expectations.

Currently, scholars impose scope conditions and operationalize concepts implicitly. A second goal of future research, related to and following naturally from the first, should be to theoretically-grounded stated assumptions and choices explicitly. The more transparent a research effort is, the more directly it can be engaged by future efforts and the more easily we

can pursue a collective understanding of post-war TJ. A discussion of the generalizability of results would be another welcome addition to any (or every) new empirical contribution.

New Data

The push for cumulation can also be pursued through data. Heretofore, most TJ researchers have coded their own data.¹¹ This isolation inevitably leads to a diverse set of coding rules. As more scholars test theoretical expectations using data borne of a single set of coding rules, the reliability of the literature's results—taken as a set—can only grow. The recent introduction of two publicly available data collection efforts should make this goal increasingly easy to achieve.¹²

First, the Justice Data Project is meant for scholars wishing to test hypotheses about transitional justice in both the wartime and post-war environments (Binningsbø, Loyle, Elster, and Gates 2012a, 2012b). The project includes two distinct datasets: the Post-Conflict Justice (PCJ) dataset contains information on TJ in the aftermath of all internal, internationalized internal, and extrasystemic armed conflicts identified by the PRIO/Uppsala Armed Conflict Dataset between 1946 and 2006, and version 1 is available in its entirety; these are the data used by Loyle and Appel (2014) as discussed above. The During-Conflict Justice (DCJ) dataset expands the PCJ scope of inquiry to include TJ processes implemented while conflict is still ongoing. DCJ data collection is complete, and the data are being finalized for public release.

¹¹ Meernik et al. (2010) is an exception, as these authors leveraged Kim and Sikkink's prosecutions data rather than coding the same concept on their own.

¹² This is not an exhaustive list; mechanism-specific datasets are also newly and publicly available. Perhaps most notably, Mallinder's Amnesty Law Database (<http://incore.incore.ulst.ac.uk/Amnesty/>) contains information on over 520 amnesty laws in 138 countries since the end of World War II and Powers and Proctor's (2015) data records which countries awarded and paid out reparations in each year from 1969 to 2006.

Both datasets contain detailed information on TJ processes including criminal prosecutions, truth commissions, reparations, amnesties, purges, and exiles.

Second, the Transitional Justice Research Collaborative allows scholars to test hypotheses about transitional justice during regime shifts towards democracy (Payne and Sikkink 2014), including democratization on the heels of civil war. The data include information on TJ in the context of 109 democratic transitions in 86 countries around the world between 1970 and 2012. Detailed information on criminal prosecutions, truth commissions, and amnesties is currently available, and data collection on four additional mechanisms—civil trials, vetting and lustration, reparations, and customary forms of justice—is underway.

These new datasets will enable scholars to test many hypotheses derived from systematic causal theories about TJ's impacts on post-war peace. As our theories grow more nuanced and sophisticated, though, they may produce expectations that cannot be engaged with data focused on the configuration and operation of TJ institutions themselves. Many of the causal mechanisms proposed throughout this chapter, for example, emphasize individual-level factors including norms, beliefs, opinions, and preferences. Testing the observable implications of these mechanisms, and discriminating between them, will require more fine-grained micro-level data. Interviews with survivors and victims' relatives, human rights advocates, and scholars may provide such data, as might interviews with officials from governments and TJ institutions themselves (e.g., Brounéus 2008; Hayner 2001, 2010; Nalepa 2010). Surveys, and perhaps survey experiments, may also prove valuable in the collection of micro-level data (e.g., Brounéus 2010; Gibson 2004a, 2004b; Nalepa 2010). While undoubtedly time- and resource-intensive, such efforts will further advance our understanding of transitional justice, including its ability to limit recurrent civil war and human rights abuse.

New Directions

In addition to reconciling existing issues within the post-war TJ literature, these new datasets—both those being collected and those as-yet-undeveloped—will facilitate the asking and answering of new research questions. Many such questions are suggested by the ad hoc hypotheses and post hoc explanations that typify the state of the literature.

Long and Brecke, for example, find that where reconciliation events led to a lasting peace, the events involved a protracted process of public truth telling, the redefinition of the identities and social roles of perpetrators, and “partial justice short of revenge.” They infer that “reconciliation events are often, but not uniformly, correlated with restoration of civil...order” (Long and Brecke 2003, 13). Their conclusion taps into the causal process suggested by Hayner (2001, 2010), suggesting that transitional justice may work indirectly. In particular, it may work by changing societal norms and individual-level beliefs and preferences in ways that make political violence less likely.

The current literature tends to focus on efforts initiated by the state in which atrocities occurred, or those initiated by the international community. Yet unofficial or bottom-up institutions and processes also exist, both in cases where state actors have shown little interest in pursuing justice and alongside these top-down TJ mechanisms. These endeavors are often truth telling initiatives, and may be initiated by local communities or civil society organizations (Bickford 2007). Examples include Brazil’s *Nunca Mais*, Zimbabwe’s *Breaking the Silence*, and Northern Ireland’s *Ardoyne Commemoration Project*. If TJ works by influencing norms and preferences at the individual level, then these unofficial mechanisms may also be equipped to enact desirable change. Is the establishment of these unofficial mechanisms a developing trend

in transitional justice, or a small set of isolated cases? Where, when, and under what conditions are they established? What effects—if any—do unofficial TJ efforts have on post-war peace, human rights performance, or other outcomes of interest to the TJ community? Do these effects differ from those resulting from official mechanisms, and if so, why? What is the relationship between these efforts and those initiated at the state level? These are interesting but as-yet unasked questions, and their answers seem likely to inform both scholars and policymakers focused on transitional justice.

If TJ works through changing norms and preferences, should studies of transitional justice and human rights look beyond abuses perpetrated by the state? Other actors also abuse human rights; in the context of civil war, insurgents are especially likely to engage in civilian victimization (e.g., Kalyvas 2000; Eck and Hultman 2007; Wood 2010). Does transitional justice implemented during ongoing conflict reduce human rights abuse by non-state actors? When implemented after war's end, does it prevent rebel groups that oppose the state and engage in atrocities from regrouping or rearming in ways that lead to recurrent war? Broadening the scholarly focus beyond state-perpetrated abuse, and focusing also on non-state actors, may reveal new opportunities for transitional justice to beget positive change.

Next, in a conclusion they term the *justice balance*, Olsen, Payne, and Reiter submit that both trials and amnesties are essential to advancing human rights because “trials provide accountability and amnesties provide stability” (Olsen et al. 2010c, 980). Results also imply that truth commissions serve a positive role, but only when combined with trials and amnesties. This, again, is in line with Hayner; it echoes her claim that truth commissions are most effective when they lead to the implementation of additional TJ mechanisms, and from there produce political and institutional reforms.

If TJ leads to political and institutional reforms, it seems likely to affect other war-related outcomes, including many that are particularly relevant for those interested in the relationship between transitional justice and civil war. Can transitional justice initiated during civil war reform institutions in ways that affect the severity of that war? Can such reforms affect the length of time that passes before the war ends, or influence whether that end comes via military victory or negotiated settlement? When implemented in the post-conflict environment, does transitional justice affect peace duration directly? Or might reforms affect the underlying mechanisms (greed and grievance, for example, or ethnic fractionalization) that lead to outbreak and relapse? Does TJ reduce violence, regardless of when it is implemented, by changing the decision calculus of state and rebel leaders (i.e., principals)? Might it also deter individuals on the ground (i.e., agents) from taking actions that prolong or renew conflict? Focusing on conflict-related effects of TJ other than its direct impact on recurrence, and particularly on effects resulting from political and institutional reforms, seems one promising avenue for future research in this area.

Note, too, that not all TJ mechanisms actually produce the kinds of reforms that seem likely to encourage post-war peace. Yet to a large extent, current work relies on binary indicators of the presence or absence of a given TJ mechanism. Those exceptions that exist tend to be additive indices of the number of institutions or processes operating in a given observation. In Chapter 8 of this volume, Hartzell suggests that not all peace agreements are alike in determining the durability of peace. Similarly, transitional justice may matter not merely because it exists, but also because of how it is implemented (Wiebelhaus-Brahm 2010). Hayner suggests that specificity and international support affect TJ's impacts. The transparency or perceived legitimacy and fairness of these institutions may also matter, as might any number of

other measures of TJ quality. A small number of studies now underway move beyond a binary conceptualization of transitional justice (Loyle and Appel 2014; Miller 2014; Nichols 2014), and there remains much more to explore.

Finally, Snyder and Vinjamuri (2003/2004) conclude that TJ works only under specific conditions: trials contribute to ending human rights abuse only when peace spoilers are weak and the domestic justice infrastructure is already well-established, and truth commissions have negligible or harmful impacts unless employed in countries where democratic institutions are already fairly well-established. In addition, truth commissions often provide political cover for amnesties; whether formal or de facto, amnesties with effective political backing and institutions capable of enforcement can help pave the way for peace. These suggestions are in line with Melander's (2013) general claim that the effectiveness of transitional justice depends on the context in which it occurs, including the nature of political institutions.

Might context also condition the effectiveness of transitional justice for other outcomes, including some that affect the prospects for post-war peace? Extant research on TJ's impact on human rights is focused exclusively on state-perpetrated violations of physical integrity rights, but group rights—and particularly women's rights—may also be affected in desirable ways. There is strong evidence of the link between gender equality and various facets of civil war. As women increasingly participate in society, economics, and politics, the likelihood of involvement in civil war declines (Caprioli 2005; Melander 2005a). When paired with peacekeeping operations, female participation in post-civil war society reduces the likelihood of renewed conflict within five years (Gizelis 2009). Female participation also reduces the risk of relapse to civil war (DeMeritt, Nichols, and Kelly 2014). Gender equality is linked to lower levels of the physical integrity abuse that so often precedes and occurs in the context of civil war (Melander

2005b). Given this set of results, does transitional justice affect women's rights in ways that reduce the likelihood of civil war occurrence or recurrence? If so, is this a general effect or is it specific to certain TJ institutions or processes? Is it specific to TJ implemented under certain scope conditions? Clarifying the effects of transitional justice on civil war and human rights may mean pushing this line of inquiry past its current focus on physical integrity abuse.

Conclusion

Transitional justice has become increasingly common, and scholars have increasingly turned their attention to its outcomes and consequences. In line with this volume's theme, I have generally focused on the state-level effects of transitional justice in the context of civil war. Simply put, and despite great strides forward in recent years, the state of our collective knowledge remains relatively weak. Few studies find that TJ has negative effects on civil war or post-war human rights, but evidence on whether its overall impact is desirable or negligible is mixed.

I argue that moving the empirical TJ literature toward consensus will require more careful attention to causal forces, which will also enable explicit decisions and statements about scope conditions and how we operationalize key concepts. The pursuit of consensus is important and worthwhile, as scholarly insights have the potential to affect developing policy standards and practices. Current discussions of transitional justice are largely faith-based rather than fact-based (Thoms et al. 2010); moving toward the latter will enable scholars to make recommendations and offer advice to those who design and implement TJ, but will be difficult in the absence of cohesive and coherent evidence.

As is true of any young literature, the empirical study of transitional justice is rich with untapped potential. In addition to the need for the reconciliation of existing evidence, there is a

wealth of unasked questions about the various effects of transitional justice. Some of these questions are already being engaged, but opportunities abound for new studies, and new scholars, with an interest in the relationships among transitional justice, human rights, and civil war.

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