

Praise for *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*

“Assessing success is one of the most vexing issues for scholars of transitional justice. While ‘coming to terms with the past’ has become a modern political expectation for societies in transition, not enough is known about the actual impact of transitional justice exercises, whether they are effective at achieving their goals, or even whether they do more good than harm. The authors of this volume persuasively argue that before we can know what works, we must first figure out how to figure it out. Determining the most appropriate methodology for answering the question ‘how do we know?’ is the core lesson of this book. A good research design can test assumptions and make the abstract real and knowable; any study that achieves this should automatically move to the front of the transitional justice scholarship line. This book will certainly help this movement along.”

—**Tristan Anne Borer**, PhD, Connecticut College

“This timely and important contribution to transitional justice research and policy offers original insights and raises key arguments that will jump start renewed debate of transitional justice mechanisms.”

—**Anita Isaacs**, Benjamin R. Collins Professor of Social Science, Haverford College

“Amid the international interest in truth commissions and other post-conflict justice efforts, there have been many more assertions about what works and what doesn’t work than sustained effort to build and revise meaningful assessments. This fascinating collection brings diverse methodological approaches to bear on transitional justice in diverse settings and should be of immediate interest to policy-makers, scholars, and local communities.”

—**Martha Minow**, Jeremiah Smith Jr. Professor, Harvard Law School, and author of *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence*

“Thirteen years following USIP’s three volumes on Transitional Justice, editors Hugo van der Merwe, Victoria Baxter, and Audrey Chapman revisit the state of this interdisciplinary field, this time building on its theoretical and methodological developments since 1995. The result is a comprehensive assessment of the state of our knowledge about transitional justice mechanisms and how they contribute to peace, justice, and reconciliation. Methodologically, the collection of chapters spans a diverse cross section of fields from law and area studies to political science and psychology. But it offers more than just an update on the state of the discipline by providing researchers with tips and pointers on how to do systematic research on ways in which societies come to terms with pasts that are as atrocious as they are unique.”

—**Monika A. Nalepa**, Rice University

“For too long, the ‘transitional justice’ field has been dominated by lawyers, who may master the mechanics of courts and truth commissions but who don’t always know whether these really work to heal divided societies. Finally, with this path-breaking study, social science methodologies are being brought to bear upon such a vital topic, informing existing strategies and pointing the way to new ones.”

—**William Schabas**, Irish Centre for Human Rights, National University of Ireland, Galway

“Thoroughly researched, full of fresh empirical and comparative analysis, this volume offers an indispensable resource for contemporary debates about policymaking in transitional justice.”

—**Ruti Teitel**, Ernst Stefel Professor of Comparative Law, New York Law School, and author of *Transitional Justice*

“This book illustrates well the dilemmas that underlie the current state of research in the field of transitional justice. Given the groundswell of international support for truth commissions, trials, and other forms of transitional justice, researchers are faced with the unenviable task of confronting widespread assumptions about the effects of these mechanisms. The book’s authors recognize clearly the challenges of collecting empirical data to substantiate or refute these assumptions while simultaneously translating their findings into policy-oriented recommendations that will influence local and international decision-makers. The focus on methodology and the need for comparative study is an important contribution to a nascent but burgeoning field.”

—**Harvey M. Weinstein**, MD, MPH

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Challenges for Empirical Research

edited by

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Foreword

It has become almost routine. After the shooting stops, or the dictator is deposed, there is the talk of reckoning. Often it starts earlier: during peace talks, or, in recent years, with indictments by an international criminal court. Once considered a rarity, international negotiators, aid agencies, human rights groups, and even governments now speak of the need for transitional justice as a key to the emergence of a new, more just as well as peaceful social order. The term transitional justice raises questions. Transition from what to what? Transition by whom? Transition as a set of legal arrangements or as a moral and social rebirth? Given these ambiguities, one could opt instead for the term post-conflict justice, but that term raises the question of whether any society is, or ever could be, post-conflict. Perhaps post-armed conflict is the best we can aspire to. For the purpose of this book, I'll define transitional justice as that set of practices, mechanisms, and concerns that are aimed at confronting and dealing with the legacies of past violations of human rights and humanitarian law.

Until the 1990s, transitional justice measures were rare. The Nuremberg and Tokyo tribunals, the subsequent trials of Nazis in zones under Allied occupation, reparations by Germany for the Holocaust, and the trials of the Greek colonels in the 1970s were the main examples. Argentina was a precursor of the modern era in many ways. In 1983 the incoming civilian government created an investigative truth commission to look into forced disappearances during the former military regime, and in 1985 the Argentine juntas were prosecuted for human rights-related crimes arising from their rule and later, reparations were provided for the victims. The following decades saw an explosion of truth commissions, aimed at documenting the crimes, telling the stories of survivors, and recommending measures to make the promise of "never again" a reality. Early commissions focused on uncovering violations that governments had tried to disguise or cover up. Later ones such as those of South Africa, Sierra Leone, and Peru added public hearings and ceremonies aimed at giving a public voice to those who had suffered.

Starting in the early 1990s, the legacy of Nuremberg was revived in the form of international criminal tribunals. The first such tribunal dealt with ongoing crimes in the former Yugoslavia and was based on a UN Security Council resolution. It was followed a year later by a similar tribunal to deal with the 1994 genocide in Rwanda. Over time, the tribunals became more able to find and arrest suspects, including heads of state and key military

figures. Their jurisprudence began filling in the contours of international criminal law outlined in a series of post–World War II treaties and resolutions. The international tribunals were criticized, however, for a lack of connection to the population they were intended to succor and for the lack of support for local courts.

A number of responses were developed to correct the perceived shortcomings of the two Security Council tribunals. One was the creation in 1998 of a permanent, treaty-based International Criminal Court, which would act as a backstop, not a substitute, for national prosecutions. The other response was the creation a handful of hybrid courts, set up by agreement between the national government and the United Nations, that combined national and international law and that operated in Sierra Leone, East Timor, Kosovo, Cambodia, and eventually, Lebanon. In addition, national courts became more active, trying their own cases, and also, on occasion investigating crimes committed elsewhere pursuant to laws that allow for universal jurisdiction over certain particularly heinous international crimes. The most famous of these cases involved the 1998 arrest in the United Kingdom of former Chilean dictator Augusto Pinochet on a Spanish warrant.

Other transitional justice measures focused on reparations. Government-run administrative reparations programs provided at least some services and some money to survivors and the families of victims. Governments apologized for the harm, erected monuments and memorial parks, and vetted the security forces and the military based on their human rights records. By the turn of the twenty-first century, states as well as local communities had begun adapting and recreating modes of informal or traditional justice as a way of reintegrating ex-perpetrators into communities while recognizing the victims' demands for some accounting. In all, the panorama of transitional justice became more complex, more variegated, at the same time more diverse and more based on an internationally recognized set of bedrock anti-impunity principles. Not that impunity was vanquished during this period, far from it, but amnesty laws became more nuanced, and in cases where efforts to impose sheer amnesia prevailed, they were criticized by other governments, civil society, and intergovernmental institutions.

And yet there was a nagging question underneath this expanding architecture of transitional justice. Did it make a difference? Were survivors succored, did the formerly persecuted now feel themselves recognized and included, did these measures usher in an accessible and just rule of law, or, indeed, were any of the proclaimed goals of transitional justice measures actually achieved? Did truth commissions actually lead to "closure" or catharsis for victims or lead to a more unified understanding of the causes of conflict? Did reparations divide and disempower the beneficiaries or lead

to improved economic outcomes? Did trials—national, international, or mixed—do more harm or good, and according to what measure?

Responses to these questions have become more urgent as the difficulties have multiplied. Seeking justice in the midst of ongoing conflict has again raised calls for a prioritization of peace over justice, as if the two could ever really be separated. A new emphasis on context and particularity has accompanied a critique of “toolkit” or “cookie-cutter” approaches.

Answers proved elusive, although theories abounded. In part, many of those most involved in transitional justice had neither the time, the resources, nor the academic training to conduct the kinds of rigorous social science research needed to answer the many questions raised. The confounding variables were many, and the long-term data sets that would allow for comparisons over time were few and far between. How then can one evaluate the considerable efforts of the last quarter century?

This book begins to provide some answers. The authors, all experts in various methodologies or parts of the world, have carried out surveys, organized focus groups, interviewed perpetrators, immersed themselves in local histories, and meditated on the value of comparative research. Through both the specifics of their studies and the lessons they teach about methodological problems and possibilities, we can begin to imagine what exploring “did it make a difference?” might look like. The answers are, of course, tentative and replete with difficulties, but they point to ways of moving forward.

And the answers, as they should, raise more questions about generalizations, particularities, time frames, purposes, and about our own roles as researchers and advocates. Are we too professionally invested in the very processes we are seeking to evaluate? Whose voices are we seeking out, and whose are we hearing when we ask the necessary questions? The chapters in this volume begin to speak to those issues in ways that challenge, inform, and even inspire. This volume reminds us of how far transitional justice as a field of study has come and how much more we need to learn.

Naomi Roht-Arriaza
San Francisco, October 2008

