

Introduction

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At this writing, several nations throughout the world are confronting the challenge of how best to come to terms with a history of human rights violations and abuses of power. Many are attempting to bring into the public forum stories of individual and private suffering and to ponder how to provide redress to victims of unspeakable atrocities. Even given the will to take action, the path to these goals is anything but clear. For example, the trial of former Liberian president Charles Taylor raises the opportunity for a legal remedy to some of the abuses committed in the West African region's turbulent recent history. But views differ sharply on the adequacy and appropriateness of these interventions. Should there be some domestic form of accounting as well? What role might a truth commission play? Should some perpetrators receive amnesty in exchange for their testimony and information? What kinds of reparations are due the victims? What are the likely consequences of these measures? And how do these options best provide a foundation for a democratic future based on respect for fundamental human rights norms and the rule of law? Rather than responding to an emotive call for justice, policymakers need to look at the consequences for fragile, war-shattered nations and their many victims of human rights abuses. How can we most effectively address the needs for justice, truth, reconciliation, and healing? At this point, no one seems to have clear answers.

And yet, these are not new questions. During the final decades of the twentieth century, countries in virtually every region of the world experienced severe repression, systematic human rights abuses, or intense social and political conflict that deepened internal social divisions and, in some situations, provoked collective violence. In the opening years of the twenty-first century, political change is the order of the day in many of these deeply divided societies. Settlements, some internationally brokered, have at least temporarily suspended several of the most destructive civil conflicts. New forms of government, some elected and some appointed, have replaced a series of repressive and authoritarian regimes.

These new administrations face the multiple challenges of coming to terms with their violent past and rebuilding and healing their societies. Many analysts and advocates use the term "transitional justice" to refer to societal responses to severe repression, societal violence, and systematic human rights violations that seek to establish the truth about the past, determine account-

ability, and offer some form of redress, at least of a symbolic nature. Beyond these initiatives, there is also the need to find ways to overcome or at least manage the conflicts among contending groups, rebuild the institutional and social infrastructure, and promote a sense of shared commitment to the new political system. Many of the societies moving away from repressive political systems and dictatorial rule also have the goal of establishing more democratic forms of governance.

All these processes are more fragile and fraught with peril than the terminology implies. One analyst suggests that the “transitional” paradigm often applied to these states is misleading because it implies that countries moving away from a problematic past will necessarily make the transition toward democracy and stability, when in fact few actually do so (Carothers 2002). Similarly, some analysts refer to deeply divided societies as “post-conflict societies” (Bloomfield, Barnes, and Huyse 2003). But the political settlements that end such internal conflicts or bring about the resignation of repressive regimes are not necessarily stable and enduring. In many instances the problems that gave rise to the strife persist, and efforts to deal with the past can give rise to new tensions. Often so-called transitional justice processes provide little in the way of meaningful justice to victims and to groups persecuted or disadvantaged by predecessor regimes.

Transitional Justice Mechanisms

Increasing numbers of societies are attempting to deal with a legacy of collective violence and severe human rights violations by introducing transitional justice mechanisms. These can take a variety of forms, the most common being truth commissions. Priscilla Hayner (2001, 23), the author of the most authoritative comparative study of such bodies, notes, “In virtually every state that has recently emerged from authoritarian rule or civil war, and in many still suffering repression or violence but where there is hope for a transition soon, there has been interest in creating a truth commission—either proposed by officials of the state or by human rights activists or others in civil society.”

The mechanisms used in different national contexts vary widely. While the insistence on addressing the past has become almost universal, the range of options remains vast, and the policy choices very complex. While truth commissions have become a popular model, even these vary dramatically in structure, composition, and goals. Some countries have opted for a mix of mechanisms, and formal state processes often operate alongside a range of informal transitional justice initiatives.

Policy choices confront international bodies, national governments, and even local communities and institutions as they seek to deal with the legacy

of systematic abuses at all these levels. Transitional justice mechanisms can be either formal or informal, involving international agencies and formal legal structures codified in treaties and legislation or local bodies relying on voluntary processes and traditional values.

Transitional justice mechanisms are often tasked with a wide range of responsibilities and expectations, some explicit and others implicit. Typically, the mandates of formal mechanisms, particularly truth commissions, include establishing an authoritative record of the past in order to overcome communal and official denial of the atrocity, violence, or abuses and to get official and public acknowledgment. But transitional justice mechanisms are generally also expected to accomplish a wide range of other goals:

- restoring dignity to victims and promoting psychological healing; ending violence and human rights abuses and preventing them in the future;
- creating a “collective memory” or common history for a new future not determined by the past;
- forging the basis for a democratic political order that respects and protects human rights;
- identifying the architects of the past violence and excluding, shaming, and diminishing perpetrators for their offenses;
- legitimating and promoting the stability of the new regime;
- promoting reconciliation across social divisions;
- educating the population about the past; and
- recommending ways to deter future violations and atrocities.¹

This list points to the great hopes pinned on transitional justice mechanisms, and yet it is questionable whether a single effort can manage all or even many of these responsibilities. What seems desirable or appropriate in theory may not be feasible in practice, since each of these tasks is a major undertaking. Moreover, several of these goals have differing requirements that may actually conflict with one another. Such is often the case when trying to balance truth finding with legitimating a new regime and promoting reconciliation. Efforts to reconstruct the past may be divisive in the short term. The examination of the legacy of past human rights violations and collective violence risks reopening deep wounds and may exacerbate societal divisions. In a deeply divided society, the process of truth seeking and the conclusions drawn can be contentious and leave actors holding a wide range of perspectives, including deep dissatisfaction with, and alienation from, the process.

1. For lists of tasks assigned to various truth commissions, see Parlevliet (1998, 149) and Minow (1998, 88).

The Importance of Research

As transitional justice mechanisms, particularly truth commissions, become a significant means for transitional societies to deal with past human rights abuses and establish a basis for more democratic political systems, it becomes vital that the effectiveness and impact of these mechanisms be studied and evaluated. Much of the present debate about truth commissions is based on popular conceptions (or misconceptions) of the benefits and drawbacks of different models and on romanticized notions of their achievements. Empirically based research can make a vital contribution to understanding what it means for a society to go through a transitional justice process, and it can help analyze the process's short- and long-term impact. Such research can serve as the basis for more informed policy decisions in the future.

Empirical research moves beyond mere descriptions to evaluate systematically what transitional justice mechanisms have achieved and to answer the questions of why some initiatives have been more successful than others in reaching their target groups. The important growing body of literature on truth commissions and other transitional mechanisms provides the basis for understanding how these initiatives are structured and operate, but more research must be conducted on their impact and effectiveness. To date, the literature on transitional justice mechanisms has considered such varied topics as the rationales for certain transitional justice policies, the relative strengths and weaknesses of truth commissions compared with tribunals and with the prosecution of perpetrators through national courts, and the transitional justice mechanisms' legal foundations. Researchers dealing with truth commissions have explored such topics as the commissions' mandates, compositions, methodologies and approaches to truth finding, resources, research capacity, amnesty procedures, and recommendations for reparations. Other work addresses the nature of the commissions' findings and recommendations.² These are all useful investigations, but they often tell us little about the even more significant issue of the transitional justice process's impact on various sectors of society.

Empirical research can begin to answer some of the questions of impact and provide the very necessary basis for evaluating the mechanisms. It can investigate the reactions of various groups and sectors of society to the transitional justice policy, preferably at a series of points in time. For example, when a country uses a truth commission, a series of questions can be asked about how different groups evaluate or perceive the process. To what extent do key groups—victims, survivors, perpetrators, architects of the violence,

2. See, for example, Kritz (1995).

beneficiaries, and bystanders—believe that a truth commission proceeded in an unbiased, fair, and objective manner? Do most people believe that the commission used appropriate methodologies and considered valid sources of evidence? To what extent, and by which individuals and groups, were the findings contested, and on what basis? These questions and their answers are key components in understanding the commission's impact. And similar questions can be posed to get at the impact, effectiveness, and validity of other mechanisms as well.

The toughest test of a specific transitional justice mechanism's efficacy is not only how well it engages with past human rights violations but also how effectively it builds institutions, policies, and practices that will enable the embryonic democracy to deal with emerging and potential patterns of social conflict and violence. Amid all the change taking place, the harsh reality is that frequently too much stays the same, including the structural underpinnings of violence, the experiences of marginalization and racial or ethnic exclusion, and popular attitudes toward "the other" in historically divided societies. Can a transitional justice mechanism help forge the basis for a democratic political order that respects and protects human rights? Can it help legitimate a new constitutional order based on democratic values?

Whatever the goals of the transitional justice mechanism, whatever its methodologies and processes, there is no way to assess its ability to restore dignity to victims and promote psychological healing except by studying the experiences and responses of former victims. And this is quite complicated, especially since it calls for very sensitive methodologies that do not harm (or further traumatize) those participating in the research. Moreover, victims are not a homogeneous group. The nature of the abuses they have suffered varies, and in many cases, the victim category includes relatives of those killed. In some circumstances, entire groups and communities of people were victimized under repressive regimes. In others, the primary victims were a smaller group of political dissidents. Even the term "victim" itself can be problematic, with individuals who have suffered human rights violations preferring to call themselves "survivors."

Empirical research on the impact of transitional justice mechanisms requires very different methodologies from the legal and philosophical analysis that has dominated the literature to date. Instead, researchers will need to use a range of social science methodologies. A multitude of potential research methodologies exists, including surveys, focus groups, interviews, oral histories, transcript analysis, community studies, institutional change studies, and policy impact analysis. The selection of the most appropriate methodology will depend on the context of the situation, the types of data available, and the specific needs and goals of the research design. Each of these approaches must be adapted to the requirements of the research and

the conditions in the transitional society it is studying. In virtually all cases, researchers will have to identify and study significant subgroups, and often this complexity will require refining methodologies. In most situations, the best approach will be to use several complementary methodologies.

About This Volume

This volume explores the strengths and weaknesses of a wide range of approaches and methodologies that can be adopted for empirical research on transitional justice mechanisms. Rather than attempt to summarize or present findings of individual cases, the various authors discuss potential research approaches and methodologies. The goal is to encourage further systematic empirical research by giving an overview of research's usefulness in developing this new field, to clarify key concepts, and to examine (using some practical examples) various methodologies that can be employed to assess transitional justice processes.

The impetus for this book emerged from a conference convened by the Centre for the Study of Violence and Reconciliation (CSVR) and the American Association for the Advancement of Science (AAAS) to discuss the latest developments in transitional justice research. The conference brought together experts on transitional justice research and policy to discuss existing research and exchange ideas about how research methodology in this field can be further developed. The chapters in this book are based on papers presented at the conference and also incorporate feedback from other participants. Our hope is to address a broader audience of researchers interested in this exciting new field.

The conference, held in South Africa in 2002,³ served as a kick start for a process of networking among transitional justice researchers and the starting point for a more formal collaborative process of information sharing and capacity building within the field. The overall aim of the conference and of the activities of the networks that are emerging from it is to provide a platform to coordinate cooperative research efforts, build research capacity, and provide mutual support and assistance to researchers, policymakers, and activists. This volume is the first product of this project and will hopefully serve as a valuable resource to all researchers as they wrestle with their own research designs on transitional justice issues.

3. The Transitional Justice Research Conference took place in Stellenbosch, South Africa, in November 2002 and was sponsored by the United States Institute for Peace, the European Union's Conference, Workshop and Cultural Initiative Fund, the Ford Foundation, and the South African Foundation for Human Rights.

Overview of Contents of the Volume

This book seeks to demonstrate the value of empirical research in developing the field of transitional justice. It explores the various important ways that research can help us understand what works, what doesn't, and how policy choices and strategies can be assessed. It is not, however, a simple how-to manual. Rather, it is an attempt to unpack the difficulties of doing this kind of research, examining both the conceptual and the practical challenges in conducting such studies.

The contributors to this volume reflect on the challenges faced in past studies—their own and those of others in the field—and make suggestions on how to address these challenges in the future. These suggestions include ideas on how research questions could be better formulated and on choosing appropriate methodologies or approaches for particular research questions, strategies to improve the quality of data, and considerations and approaches to dealing with ethical challenges, to name but a few. The book thus serves as a reflection on the experience of key researchers in the field as they confront how their research is used and how it affects the context in which new research is conducted.

The first section of the book addresses the broader question of the utility of transitional justice research: What role can it play in conceptual clarification, policy development, and practical intervention strategies?⁴ Neil Kritz outlines several ways that empirical research can contribute to a greater understanding of what policy options are available both to transitional regimes and to donor countries. He points to several specific areas where more research would improve the current understanding of transitional justice policy. Complementing that chapter, David Backer provides a broad overview of comparative analyses covering a wide array of transitional justice mechanisms. Backer's chapter advocates international comparative analysis as a useful methodology for empirical research on transitional justice processes. He discusses key methodological design parameters—what to compare, when to compare, and how to compare—as well as the various hurdles complicating the task of analysis. Backer also makes suggestions for future research with this methodology.

The second section deals with the challenges of clarifying key concepts addressed by empirical studies. It seeks to clarify these questions: What is the goal of transitional justice? How do we define and make practical sense of terms such as “truth,” “justice,” and “reconciliation”? How can we define these terms in a way that allows us to measure their achievement? What indicators can conceivably be used to determine whether a mechanism has

4. More information on this transitional justice research network is available at www.transitionaljustice.org.za.

been successful? What competing interpretations have been used, and how do we make sense of the overlapping and sometimes contradictory meanings attached to these terms?

Looking at practical experience and existing literature, this section deals with how empirical research can use key concepts effectively and outlines an agenda for future research. Establishing the truth about past human rights violations and patterns of violence is a central dimension of transitional justice processes. However, as Audrey Chapman's chapter on truth finding points out, truth recovery is a complex and ambiguous task affected by a wide range of factors, including conceptions of what constitutes social truth; the mandate, methodology, and resources of the body undertaking the truth finding; procedural decisions made by those working within a specific transitional justice mechanism; and social and political receptivity to the process. Hugo van der Merwe shows that in a transitional justice context, "justice" takes on a very specific, though somewhat narrow, meaning, focusing on abuses that were motivated by gaining or maintaining political control and effectively ignoring other economic or social abuses that generally occur in oppressive regimes. According to van der Merwe, the conceptual clarification of justice and its components requires further development, and he outlines specific conceptual and practical challenges along with suggestions for clarification and agenda setting. In the next chapter, Chapman discusses the conceptual and methodological ambiguities related to reconciliation and their implications for conducting research in transitional justice contexts. She argues that within a transitional justice framework, reconciliation takes on meanings and assumptions different from those typically applied to interpersonal or religious conceptions of reconciliation. Chapman characterizes reconciliation as a multidimensional, long-term process and suggests that social or political reconciliation on a national level is particularly relevant for transitional justice research.

The third section of the book provides specific examples of research methods. Each chapter presents an overview of a specific methodology and discusses that approach's relative utility in determining the impact of transitional justice mechanisms. Using research by the chapter author and others, each discussion explains conceptual and practical challenges inherent in those approaches and gives suggestions and guidance on how future studies might address the challenges.

The section begins with a discussion of public opinion research. James Gibson's chapter draws on the author's long history of conducting public opinion studies on justice, reconciliation, and perceptions of the South African Truth and Reconciliation Commission (TRC). He discusses in depth how to design measures for reconciliation, justice, and other key concepts and assesses the strengths and weaknesses of such measures.

This section presents two chapters of studies with key actors in a transitional justice context: victims/survivors and perpetrators. Jeffrey Sonis has researched the effects on survivors of human rights violations of submitting a statement to, or testifying before, the TRC in South Africa, and his chapter discusses the challenges of conducting research studies with survivors of human rights abuses. He shows how to determine the most important questions to address in evaluating the effects of truth commissions on survivors of human rights violations and discusses the most suitable research designs and methods for such studies. Sonis makes a further important contribution by outlining the ethical principles that must be followed in research with survivors. Leigh Payne's chapter is an excellent example of the methodological eclecticism that may be required to study the impact of a transitional justice mechanism. In her study of perpetrators' confessions, Payne uses a performative approach that goes beyond a content analysis of the confessional text to explore the functions of the confessional act in a society. In her approach, the interaction of the actor (the perpetrator), script (the confession), timing, stage (the transitional justice mechanism), and audiences produces political meaning and political action. The author describes her work using this approach and describes its potential applications and limitations for future research projects.

Janet Cherry uses her experience as a researcher with the South African TRC to flesh out many of the issues related to the documentation of truth in a transitional justice process. She discusses how the TRC struggled to find the balance between forensic and narrative truth, qualitative and quantitative research, the global and the local, and the factual and the explanatory. She argues that an eclectic and multimethodological approach may hold the most promise in determining what is "truth."

Brandon Hamber and Gráinne Kelly discuss the methodology used in their research project on how reconciliation is conceived and implemented, politically and at the grassroots, in different areas of Northern Ireland. Differences were found not just between competing sides of the political divide but at various other levels as well. The research reflects the difficulty of using specific definitions of a key term such as "reconciliation," which means very different things to different people even within the same country. The impact of interventions is thus judged from very different angles, making such judgments a complex task engaging funding agendas, ideologies, and local political perspectives.

In her chapter on community studies, Matilde González argues that the local level is a privileged vantage point for observing the dynamics of conflict and transition. Using her sociohistorical research study on the internal armed conflict in Guatemala from the perspective of the Maya-K'iche community, she discusses the methodological challenges in conducting long-

term microlevel community studies. Such research provides insight into the impacts of different transitional justice policies by demonstrating the stark contrast between national-level rhetoric surrounding transitional justice policies and the entrenchment of authoritarian concepts and the exercise of power at the societal level.

The chapter on international comparative analysis gives an overview of the methodology, as well as an example derived from an actual study. Victor Espinoza Cuevas and María Luisa Ortiz Rojas's chapter describes the many choices researchers face when mounting a large international comparative study. Using their five-country study of the implementation of truth commission recommendations in four Latin American countries and South Africa, the authors discuss issues of selecting cases, locating respondents, and synthesizing the research findings into a manageable format.

Although this volume will not provide a definitive answer on how to assess the impacts of transitional justice mechanisms, it will offer insights into the methodological considerations crucial to designing studies of those mechanisms. Taking into account the number of countries around the world facing the decision to opt for one transitional justice policy over another, this is no trivial matter. With limited resources and mounting pressure to take action, newly elected leaders, donors, and civil society groups enter the fray armed with the best intentions but, too often, with a paucity of research findings from other contexts.

This book's chief contribution to the research on transitional justice mechanisms is to raise the methodological considerations that too often are underdeveloped or remain an implicit rather than explicit part of the research dialogue. By focusing on methodology, we hope to allow future researchers the means to mull over the approaches, constraints, and relative strengths and utility of several different research methods. As the various chapters illustrate, the challenges of doing research are a complex interface between the research questions being asked, the difficult context of transitional societies, and the selected methodologies. Each element presents its own challenges.

Exciting and eminently useful research now under way holds great promise for helping policymakers arrive at more informed decisions when deciding transitional justice policy. We hope that this book will stimulate further quality research in this field.

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