

## Chapter 8: Does Transitional Justice Work?

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Governments, societies, and international actors have high expectations for transitional justice. So much so, that it seems to be overloaded with goals. These goals include: paving the way for stronger democracies, deterring future human rights violations, establishing rule of law, discovering the truth, bringing perpetrators to justice and ending the culture of impunity, restituting victims of past violence and restoring their dignity, drawing a thick line to separate the past from the present, and reconciling the past. Regardless of how comprehensive its programs, transitional justice could not possibly fulfill all of these goals.

For researchers and policymakers additional problems arise with regard to transitional justice and goal-fulfillment. Definition and measurement problems plague the study of transitional justice. Multiple and often conflicting definitions confound understanding of the goals themselves. Truth, justice, democracy, human rights, perpetrators, reconciliation, and reparations all mean different things to different social actors and social scientists. Researchers cannot measure success in achieving these goals when no consensus exists on what the most important goals are, or even how to define them. Measuring success also faces challenges. For some, the very establishment of a truth commission or a trial demonstrates success in overcoming prevailing silence and impunity. For others, anything less than the whole truth or

justice for all perpetrators undermines these processes. Some of the concepts defy satisfactory measurement. How would one know if transitional justice brought dignity to victims, for example?

On two transitional justice goals – democracy and human rights – good measurements do exist. They exist for all countries of the world and over a long period. These measurements allow us to avoid the limitations of earlier studies that focus on successes in only one or a set of countries, and begin to discover whether transitional justice works. We can study the impact of transitional justice over time and across countries and regions of the world. Near consensus exists, moreover, regarding the importance of these two goals for societal, governmental, and international actors.

This chapter, thus, examines the capacity of transitional justice to achieve two of its fundamental goals: democracy and human rights. We look at this success in terms of improvements in both areas. We not only examine transitional justice as a general set of mechanisms, but also look at the relative success of individual mechanisms and combined mechanisms.

## **Expectations**

Scholars and policymakers share an expectation that transitional justice should strengthen democracy and improve human rights. One review of the transitional literature, for example, refers to the “passion and beguiling simplicity [in the literature] that the prospects for democracy will be seriously helped or endangered by the decisions governments make about TJ [transitional justice].”<sup>1</sup> What the criticism considers “beguiling simplicity” involves a process by which

engaging the past authoritarian rule advances acknowledgment and condemnation of human rights violence and contributes to building a rights-based democracy and deterring future human rights violations. Failure to engage the past, on the contrary, will perpetuate tolerance for authoritarianism, human rights violations, and a culture of impunity. The literature thus generates the following hypotheses:

*HYPOTHESIS 1: Countries that adopt transitional justice mechanisms – of any kind – are more likely to achieve improvements in democracy and human rights than those countries that do not.*

While scholars and policymakers agree on the basic argument, they disagree over whether all mechanisms serve democracy and human rights goals. Not only do some scholars and policymakers prefer certain mechanisms to others, they believe adopting other mechanisms weaken countries' capacities to strengthen democracy and human rights. The disagreement follows the maximalist, minimalist, moderate, and holistic approaches discussed in chapter 1.

A maximalist approach, for example, contends democracy and human rights goals require transitional countries to put perpetrators on trial for past abuses. Prosecutions play three important roles for the future of the new democracy and protection of human rights. First, they indicate that criminal actions – even when carried out by state or military officials – will face investigation and prosecution. This signals an end to the culture of impunity and establishes equality under the law, key principles of democracy. Thus, the courts become a legitimate and powerful check on the state and a mechanism by which citizens can defend their rights and seek protection. Second, putting the authoritarian regime's officials on trial demonstrates a clear break

with the former regime and establishes a new political and legal order. Third, holding individuals accountable for past human rights violations demonstrates obeying orders and extraordinary circumstances will provide no protection under the law. By prosecuting past acts the courts make clear that future violators will also face prosecution, thereby contributing to deterrence.

This approach does not only defend prosecutions; it rejects amnesties. Amnesties undermine democracy and human rights protections, according to a maximalist approach. By failing to prosecute perpetrators, amnesties suggest certain individuals or acts in particular contexts are above the law. This perpetuates the culture of impunity, weakens the rule of law, and undermines the legitimacy of the new democratic order. A maximalist approach thus suggests this set of hypotheses:

*HYPOTHESIS 2. Countries that use trials to are more likely to achieve improvements in democracy and human rights than countries that use amnesties.*

A minimalist approach, in stark contrast, considers trials dangerous for democracy and human rights and views amnesties as a mechanism to make improvements. It focuses primarily on the stability of the democratic process. If countries never transition, they will not see improvements in democracy and human rights; and transitions depend on amnesties. Without amnesties, those facing trial will threaten democratic stability. Coups and political turmoil will result. Amnesties, on the other hand, appease spoilers, allowing democracy and human rights protections to flourish unimpeded. A minimalist approach assumes, therefore, countries that adopt amnesties are likely to experience improvements in measures of democracy and human rights. It further asserts that trials will jeopardize democracy and reduce human rights violations

by perpetuating conflict in the country. A minimalist approach promotes the following hypotheses:

*HYPOTHESIS 3. Countries that adopt amnesties are more likely to experience improvements in democracy and human rights than countries that adopt trials.*

A moderate approach concurs with the minimalist approach in that trials potentially jeopardize democratic transitions and prompt authoritarian reversals. Unwilling to sacrifice democracy to trials, therefore, this approach shares the view that trials threaten progress on both democratic and human rights fronts. The moderate approach does not promote amnesty as a better alternative. Instead, it shares with the maximalist approach an unwillingness to relinquish accountability for past violations. Thus, the approach advocates truth commissions as the ideal mechanism for promoting democracy and human rights protections. This path provides a stable transition to democracy while also holding perpetrators accountable for their acts and ending the culture of impunity. It also allows victims, survivors, and perpetrators to participate in a public and democratic process of restorative justice. The following hypothesis, thus, emerges from the moderate approach to transitional justice:

*HYPOTHESIS 4. Countries that adopt truth commissions are more likely to experience improvements in the measure of democracy and human rights than those that adopt trials or amnesties.*

The holistic approach argues that no one mechanism will achieve these transitional justice goals. They assume any single mechanism will prove inadequate to strengthen democracy and human rights protections. Single mechanisms operate on single levels of society. Trials, for example, may strengthen the courts, but they do not necessarily provide the restorative justice mechanisms that prove meaningful for victims and for society as a whole. Amnesties do not achieve accountability on their own, but in combination with truth commissions or select trials, they may provide the stability needed to transition to democratic rule and the accountability necessary to defend victims of violence and deter future violators. The holistic approach thus advocates combinations of mechanisms to improve human rights and democracy:

*HYPOTHESIS 5. Countries that adopt a combination of mechanisms are more likely to experience improvements in democracy and human rights than those countries that adopt single mechanisms.*

The proliferation of mechanisms and these multiple interpretations of their success notwithstanding, we know very little, to date, about whether transitional justice actually achieves the lofty goals it promises. Measurement of success in current scholarship follows two unsatisfactory patterns. On the one hand, a proliferation of single-case and small-N studies makes claims about transitional justice's contribution to democracy and human rights protections without comparative analysis. On the other hand, those studies that extend across countries and regions often focus on single mechanisms. Therefore, they do not tell us whether these mechanisms fare better (or just as well) as other mechanisms. To develop theory around transitional justice and to guide policymakers considering these mechanisms we have conducted

systematic cross-national research on the effect of transitional justice on democracy and human rights.

## **Measuring Transitional Justice Goals**

To test the hypotheses generated by the literature we establish measures for the dependent variables (human rights and democracy) and independent variables (transitional justice). Both sets of variables are discussed below. To measure the goals of democracy and human rights we use widely accepted data bases. Scholars have used both Polity IV and Freedom House to measure improvements in democracy over time. Cingranelli and Richards (CIRI) and Political Terror Scale (PTS) are the commonly used data bases for measuring improvements in human rights. We discuss each measurement below.

### ***Democracy***

Polity IV and Freedom House measure democracy slightly differently, but they tend to concur in their assessments of democracy overall. The first measure, “Polity” from the data set Polity IV, is a weighted score derived from coding of the competitiveness of political participation, the regulation of participation, the openness and competitiveness of executive recruitment, and constraints on the executive. The scale ranges from -10 to 10 which indicates whether a country is completely autocratic (receiving a score of -10), a full democracy (10), or somewhere in between. This measure is especially attractive because of its comprehensive temporal and geographical coverage.

The second measure of democracy comes from the Freedom House Project. It provides two separate measures: political rights and civil liberties. Political rights, as defined by Freedom House, are a participatory measure that includes the right to vote, compete for public office, and elect responsible representatives. Civil liberties, on the other hand captures the institutional side of democratic quality and take into consideration freedom of expression and belief, associational and organizational rights, rule of law, and personal autonomy. The score, which is generated by surveys distributed to industry experts, ranges from one to seven where one represents a completely “free” society and seven represents those states whose citizens are “not free.” For our analysis, we have recoded this variable so a higher score indicates a stronger, freer democracy, and is therefore consistent with the other measures we use. One limitation of our analysis is that this data source only begins in 1980. Therefore, when we utilize Freedom House scores we are unable to include the observations for those cases that transitioned to democracy anytime before 1980. We retain Freedom House despite its limited coverage and the scholarly criticism it has received, largely because many scholars consider it a better measure of the specific aspects of democracy (rights and freedoms) that transitional justice is most likely to affect.<sup>2</sup> Transitional justice may have only an indirect impact on the types of institutional measures that Polity IV emphasizes.<sup>3</sup>

### ***Human Rights***

Using two measures of human rights also results from disagreement in the literature over which data base provides the best measure. The Physical Integrity Rights Index (PHYSINT) generated by Cingranelli and Richards (CIRI) and the Political Terror Scale (PTS) use the same sources for their data: Amnesty International (AI) Reports and the U.S. State Department (USSD) Country

Reports on Human Rights Practices. Despite these similarities, the two data bases measure human rights in different ways.

CIRI's PHYSINT provides a scale to measure government protection of the following set of human rights violations: torture, extrajudicial killing, political imprisonment, and disappearance. The scale ranges from 0 to 8, with 0 being no government respect and 8 being full protection. The CIRI data base is somewhat limited, again, since it begins in 1980, leaving a full ten years of transitions undocumented. Another major limitation of CIRI is its sporadic coding of countries while undergoing transitions or achieving independence. We have used it, however, since it is one of the most widely accepted measures of human rights violations.

PTS provides a five-level "terror scale" where a five means that terror has expanded to the entire population and a one indicates that citizens are relatively safe and protected from wrongful imprisonment and torture.<sup>4</sup> As in the case of Freedom House, we have recoded these measures so that a higher number indicates more respect for human rights.<sup>5</sup> The scholars compiling data for the PTS assign two different values for each country corresponding to the source (AI or USSD). PTS begins in 1976, which limits the observations we include in our analysis, although not to the degree that the CIRI data does.

### ***Independent and Control Variables***

Our key independent variables for this analysis are the specific transitional justice mechanisms included in our data base, as defined in chapter 2. First, to establish a general measure of the impact of transitional justice on improvements in democracy and human rights, we examine all mechanisms adopted prior and post-transition. We have included a *de facto* amnesty measure to evaluate the impact of not adopting specific transitional justice mechanisms on democracy and

human rights. Our *de facto* amnesty measure includes those countries that have failed to implement any of the five principle transitional justice mechanisms (trials, truth commissions, amnesty, lustrations, or reparations). It allows us to test whether choosing to eschew transitional justice entirely influences levels of democracy and human rights.

We then examine each of the three main transitional justice mechanisms: trials, truth commissions, and amnesties. We are able to look at the set of hypotheses that predict some mechanisms will bring about improvements while others will lead to a decrease in levels of democracy and human rights. We do this to evaluate the maximalist, minimalist, and moderate approaches. To test the holistic approach, we create combinations of transitional justice mechanisms.

We control for several alternative explanations for improvements in democracy and human rights, specifically wealth, timing of transitions, level of repression, and region. Theories claim the wealthier the country, the more democratic it will be and the lower its level of human rights violations. We have thus used GDP per capita to control for economic explanations.<sup>6</sup> We apply data provided by the World Bank's World Development Indicators to control for this factor. This measure of GDP per capita is adjusted to be in constant 2000 USD to facilitate comparison across cases.

We suspect timing may also have an independent effect on improvements in democracy and human rights. The more time has passed since transition, regardless of the mechanism adopted, the greater the likelihood the country's democracy and human rights protections will improve. A country that transitioned in the 1970s is thus more likely to have had the time to establish a democracy and improve its human rights record, compared to one that transitioned in

the 1990s. Therefore, we must control for countries beginning their transitions at different points. To do so, we include a count for each panel to control for trends that have occurred over time.

We also control for the level of repression prior to the transition to democracy. We do so because the prior level will influence the measure of improvement in democracy and human rights. A country with a very low level of repression, for example, will look like it has not improved much at all, even if its human rights abuses decline. Extremely repressive countries need not do much at all to experience improvements. The level of repression, therefore, and not the transitional justice mechanism is likely to affect the levels of improvements. We employ a lagged measure of Polity IV's POLITY2 score to account for level of repression prior to the transition to democracy.<sup>7</sup>

We consider region to be another possible alternative explanation, since scholars have noted certain regions have utilized a particular type of mechanism more frequently than others have. To avoid merely measuring regional differences, rather than transitional justice mechanisms, we control for this effect as well by including regional indicators.<sup>8</sup>

## **Descriptive Statistics<sup>9</sup>**

We empirically examine the effect of transitional justice on democracy and human rights. To do so, we look at improvements over time. We explore the changes in levels of democracy and human rights from the year prior to the transition, to five years after, and then a decade later. Each row includes data for those countries that adopted the mechanism listed on the left.<sup>10</sup>

### ***Democracy***

The measures of democracy outlined in the descriptive table below demonstrate the compatibility of Polity IV and Freedom House. The pattern is the same whether we measure democracy by institutions or rights, although some differences exist between amnesties for opposition forces.

The descriptive statistics provided in table 8-1 partly confirms a maximalist approach. Those countries that utilize trials – according to the POLITY2 and Freedom House scores – improve the most after both the five- and 10-year marks. This directly contradicts the minimalist assumption that trials will harm democracy. Truth commissions lead to less improvement than trials, corresponding to a maximalist assumption about the lower level of accountability. The assumption in a moderate approach that truth commissions bring more improvements in democracy does not hold when compared to the impact of trials. It does hold, however, when compared to amnesties. While amnesties bring improvement in democracy, these improvements are less than those seen for those countries that utilize truth commissions. Because amnesties do lead to improvements, our findings do not support the assumption in the maximalist approach that amnesties will prove harmful to democracy. Those countries that fall into the *de facto* amnesty category – or those that did nothing to address the atrocities of the past – fare the worst. They nonetheless show improvements over time, reaffirming the assumption that a certain degree of improvement in levels of democracy is due to the transition itself and not transitional justice choices. The descriptive statistics cannot confirm the hypotheses, therefore, that trials, amnesties, or *de facto* amnesty harm democracy. They do suggest, however, the more accountability, the greater the improvement in democracy.

**Table 8-1. Descriptive Statistics for Democracy Measures**

	Polity (Yr Prior)	Freedom House (Yr Prior)		Polity (5 Yrs After)	Freedom House (5 Yrs After)		Polity (10 Yrs After)	Freedom House (10 Yrs After)	
		PR	CL		PR	CL		PR	CL
Trials – State Agent	-2	3.12	3.52	6.08	5.26	4.92	7.29	5.87	5.34
Truth Commission	-2.53	3.21	3.64	5.29	5	4.69	6.14	5.19	4.86
Amnesty – State Agent	-1.1	3.19	3.74	4.93	4.72	4.58	5.15	5	4.72
No TJ	-1.17	3.09	3.5	2.48	4.25	4.29	3.61	4.41	4.24
Total	89	79	80	84	78	78	71	67	66

### ***Human Rights***

The measures included to assess the improvements in human rights illustrate a less straight-forward pattern. Countries that employ *de facto* amnesties show the least improvement in human rights. This holds regardless of whether we used CIRI’s physical integrity measure or PTS’s measure. The only difference in the two sets of results is both the AI and USSD used in PTS show worsening human rights over time for those countries employing *de facto* amnesties, while the CIRI data show some slight improvements. The descriptive statistics provide some evidence to support the hypothesis that employing transitional justice of any kind will bring improvements in human rights.

When we examine specific mechanisms, the patterns from CIRI and PTS match. Countries adopting truth commissions show the least improvement in human rights. Countries employing some sort of amnesty – either for state or opposition forces – demonstrate a higher

level of improvement than truth commissions. Trials show the greatest amount of improvement in the physical integrity score.

While supporting the general view that adopting transitional justice is better than doing nothing with regard to human rights, the patterns do not lend strong support to any particular approach. Countries that use trials experience the greatest improvements, but those that employ amnesties also saw improvements. A minimalist approach, confirmed by improvements in human rights for those countries that use amnesties, cannot account for the greater improvements by those countries that use trials. A moderate approach simply is not confirmed by this descriptive data. Based on descriptive statistics alone, we can only say those countries that employ some form of transitional justice should experience greater improvements compared to those that do not; and that the greatest improvements will accompany trials.

**Table 8-2. Descriptive Statistics for Human Rights Measures**

	Physical Integrity (Yr Prior)	PTS (Yr Prior)		Physical Integrity (5 Yrs After)	PTS (5 Yrs After)		Physical Integrity (10 Yrs After)	PTS (10 Yrs After)	
		USSD	AI		USSD	AI		USSD	AI
Trials – State Agent	3.09	2.56	2.5	5.04	3.67	3.5	5.77	3.84	3.43
Truth Commission	2.96	2.47	2.39	4.38	3.17	3	4.6	3.29	3.17
Amnesty – State Agent	2.75	2.8	2.56	4.72	3.29	3.23	4.75	3.39	3.2
<i>De facto</i> Amnesty	5.06	4.11	3.13	4.5	3.35	3.26	5.19	3.48	3.06
Total	61	44	65	69	84	77	65	74	66

## *Findings*

In this section of the analysis, we construct our data so that each unit of analysis represents a country's transition to democracy. Since we are interested in the aggregate changes a country does or does not experience due to transitional justice choices, our analysis is rather straightforward. It includes all countries that transitioned from authoritarian rule to democracy from 1970-2004. We determine this subsample by using Polity IV's Regime Transition Variable, as described in chapter 2. We find 91 transitions from authoritarian to democratic rule in 74 countries, a full listing of which can be found in appendix 1.

Our first hypothesis seeks to assess the extent to which adopting any transitional justice mechanism influences overall improvements in democracy and human rights. Each dependent variable is measured (explained above) ten years after the transition to democracy. Our results are in two tables below (table 8-3 and table 8-4). In the first table, the key independent variable – transitional justice – is an ordered measure of the mechanism with the “most accountability” each country adopts. If a country adopts trials at any point in its history, this variable is coded as a 3, representing the maximum form of accountability. Truth commissions, coded as 2, represent the middle level of accountability, and amnesty, coded as 1, is the lowest form of accountability. We also include an indicator for those countries characterized as following a path of *de facto* amnesty. The second table captures the effect of transitional justice in a shorter period. Here, we assess the influence of those transitional justice mechanisms utilized within the first five years post-transition.

We find (table 8-3) the adoption of some form of transitional justice has a positive effect on both Freedom House's civil liberties and political rights variables, but no effect on the polity score. For human rights, the adoption of transitional justice mechanisms has a positive effect for

all three measures (PHYSINT and both PTS measures). Since the key independent variable, transitional justice, is ordered, these results tell us that moving up the underlying scale of transitional justice has a significant, positive effect on nearly all measures of democracy and human rights.

**Table 8-3. OLS Results: TJ Overall (10 Years Post-Transition)**

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
	<b>Polity</b>	<b>Civil Liberties (FH)</b>	<b>Political Rights (FH)</b>	<b>Physical Integrity</b>	<b>PTS (AI)</b>	<b>PTS (USDD)</b>
<b>TJ Overall</b>	0.301 (0.530)	0.451** (0.176)	0.518* (0.308)	0.923* (0.517)	0.331*** (0.108)	0.313* (0.162)
<b>No TJ</b>	-1.111 (1.773)	0.488 (0.498)	0.682 (0.870)	1.302 (1.290)	-0.576 (0.592)	0.052 (0.574)
<b>GDP/capita</b>	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)
<b>Time</b>	-0.233** (0.100)	-0.0724*** (0.019)	-0.0921** (0.044)	-0.086 (0.135)	-0.028 (0.026)	-0.040 (0.026)
<b>Polity (Yr Prior)</b>	0.022 (0.127)	0.053 (0.047)	0.072 (0.072)	0.018 (0.105)	0.102** (0.041)	-0.013 (0.046)
<b>Polity (Tran Yr)</b>	-0.133 (0.250)	0.024 (0.069)	0.047 (0.120)	0.095 (0.172)	0.058 (0.072)	0.006 (0.083)
<b>Multi Transition</b>	-0.338 (1.386)	0.267 (0.349)	0.428 (0.529)	-0.583 (0.795)	0.434 (0.353)	0.288 (0.407)
<b>Americas</b>	2.927* (1.664)	0.189 (0.505)	0.423 (0.742)	1.225 (1.072)	1.408*** (0.383)	0.511 (0.455)
<b>Asia</b>	1.313 (1.769)	0.135 (0.498)	-0.349 (0.758)	-0.503 (0.983)	1.911*** (0.439)	0.404 (0.444)
<b>Africa</b>	-3.122 (2.064)	-0.656 (0.503)	-2.170** (0.849)	-1.288 (1.360)	1.073* (0.531)	0.127 (0.496)
<b>Constant</b>	3.564 (3.353)	0.570 (0.773)	1.074 (1.504)	0.060 (3.184)	-3.509*** (0.767)	-2.271** (0.989)
<b>N</b>	66	62	62	38	43	51
<b>R<sup>2</sup></b>	0.36	0.31	0.34	0.33	0.49	0.17
Note: Robust standard errors in parentheses *** p<0.01, ** p<0.05, * p<0.1						

When we narrow the time horizon and only assess the influence of those mechanisms adopted within the first five post-transition years on measures of democracy and human rights a

decade after the transition (table 8-4), we find transitional justice choices have no effect on measures of democracy. With regard to human rights, however, utilizing transitional justice has a positive, statistically significant effect on CIRI's PHYSINT score. While these findings are not found in the model with PTS' AI score, we see choosing a *de facto* amnesty has a negative effect on this measure of human rights.

**Table 8-4. OLS Results: TJ Overall (5 Years Post-Transition)**

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
	<b>Polity</b>	<b>Civil Liberties (FH)</b>	<b>Political Rights (FH)</b>	<b>Physical Integrity</b>	<b>PTS (AI)</b>
<b>TJ (first 5 yrs)</b>	-0.030 (0.479)	0.204 (0.209)	0.357 (0.306)	0.930** (0.408)	0.174 (0.130)
<b>No TJ</b>	-1.709 (1.400)	-0.133 (0.450)	0.131 (0.702)	0.728 (0.960)	-1.067* (0.621)
<b>GDP/cap (5 yrs)</b>	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	9.49e-05*** (0.000)
<b>Time</b>	-0.251** (0.100)	-0.0878*** (0.023)	-0.113** (0.045)	-0.038 (0.135)	-0.036 (0.028)
<b>Polity (Yr Prior)</b>	0.061 (0.138)	0.073 (0.052)	0.097 (0.073)	0.076 (0.113)	0.0845* (0.046)
<b>Polity (Tran Yr)</b>	-0.175 (0.233)	-0.005 (0.070)	-0.001 (0.121)	-0.114 (0.163)	0.044 (0.070)
<b>Multi Transition</b>	-0.348 (1.375)	0.217 (0.375)	0.385 (0.586)	-0.411 (0.742)	0.549 (0.404)
<b>Americas</b>	3.125* (1.768)	0.380 (0.588)	0.704 (0.840)	1.642 (1.074)	1.479*** (0.430)
<b>Asia</b>	1.362 (1.859)	0.225 (0.551)	-0.158 (0.822)	-0.025 (1.205)	1.925*** (0.446)
<b>Africa</b>	-2.911 (2.054)	-0.558 (0.548)	-1.996** (0.871)	-0.536 (1.425)	1.053* (0.551)
<b>Constant</b>	4.711* (2.786)	1.595* (0.866)	2.155 (1.367)	0.479 (2.389)	-2.962*** (0.797)
<b>N</b>	67	62	62	38	47
<b>R<sup>2</sup></b>	0.36	0.25	0.33	0.37	0.35

Note: Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Note: The model for PTS' USSD measure was not significant, and therefore, is not included here.

To address the arguments made about the influence of transitional justice mechanisms more directly, we also want to examine the influence – if any – of specific mechanisms. First, we assess whether or not those countries that carry out only prosecutions (not truth commissions or amnesties) for past authoritarian state violations experience improvements in the measures described above. We find (table 8-5) trials alone have no effect on the any of the measures of democracy or human rights. Instead, time alone appears to account for much of the variation in democracy and human rights improvements.

**Table 8-5. OLS Results: Trials Only**

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
	<b>Polity</b>	<b>Civil Liberties (FH)</b>	<b>Political Rights (FH)</b>	<b>Physical Integrity</b>	<b>PTS (AI)</b>
<b>Trials only</b>	1.941 (1.900)	0.042 (0.741)	0.024 (0.892)	-0.441 (0.765)	0.182 (0.799)
<b>GDP/capita</b>	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	9.15e-05** (0.000)
<b>Time</b>	-0.226** (0.100)	-0.0818*** (0.022)	-0.103** (0.044)	-0.073 (0.144)	-0.026 (0.032)
<b>Polity (Yr Prior)</b>	0.023 (0.136)	0.068 (0.054)	0.090 (0.076)	0.031 (0.116)	0.109** (0.051)
<b>Polity (Tran Yr)</b>	-0.193 (0.264)	0.006 (0.068)	0.030 (0.116)	0.041 (0.176)	0.008 (0.065)
<b>Multi Tran</b>	-0.811 (1.267)	0.149 (0.351)	0.310 (0.554)	-0.896 (0.738)	0.176 (0.402)
<b>Americas</b>	3.742* (2.056)	0.374 (0.701)	0.612 (1.003)	1.021 (1.026)	1.408* (0.705)
<b>Asia</b>	1.489 (2.196)	0.023 (0.673)	-0.457 (1.003)	-1.330* (0.737)	1.608** (0.676)
<b>Africa</b>	-2.658 (2.510)	-0.634 (0.725)	-2.142* (1.125)	-1.963 (1.229)	0.821 (0.876)
<b>Constant</b>	3.326 (3.291)	1.628* (0.946)	2.324 (1.485)	2.553 (2.365)	-2.683*** (0.901)
<b>N</b>	66	62	62	38	43
<b>R<sup>2</sup></b>	0.34	0.22	0.30	0.24	0.30

Note: Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Note: The model for PTS' USSD measure was not significant, and therefore, is not included here.

Whether amnesties influence the quality of democracy and respect for human rights, is important for both the maximalist and minimalist approaches. In direct contrast to their claims, the use of only amnesty has no significant, negative effect on the quality of democracy or human rights measures (table 8-6).

**Table 8-6. OLS Results: Amnesty Only**

	<b>1</b>	<b>2</b>	<b>3</b>	<b>5</b>
	<b>Polity</b>	<b>Civil Liberties (FH)</b>	<b>Political Rights (FH)</b>	<b>PTS (AI)</b>
<b>Amnesty only</b>	-0.855 (1.989)	-0.540 (0.347)	-0.728 (0.792)	0.413 (0.436)
<b>GDP/capita</b>	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	8.88e-05** (0.000)
<b>Time</b>	-0.240** (0.095)	-0.0855*** (0.021)	-0.108** (0.043)	-0.022 (0.034)
<b>Polity (Yr Prior)</b>	0.033 (0.147)	0.077 (0.055)	0.102 (0.078)	0.0982* (0.053)
<b>Polity (Tran Yr)</b>	-0.149 (0.260)	0.021 (0.071)	0.050 (0.119)	-0.014 (0.065)
<b>Multi Tran</b>	-0.590 (1.204)	0.222 (0.337)	0.406 (0.521)	0.156 (0.402)
<b>Americas</b>	3.398* (1.733)	0.444 (0.613)	0.714 (0.852)	1.293** (0.538)
<b>Asia</b>	0.982 (1.808)	0.024 (0.540)	-0.446 (0.778)	1.513*** (0.467)
<b>Africa</b>	-3.067 (2.189)	-0.567 (0.586)	-2.041** (0.927)	0.655 (0.674)
<b>Constant</b>	3.870 (3.037)	1.624** (0.777)	2.308* (1.269)	-2.599*** (0.778)
<b>N</b>	66	62	62	43
<b>R<sup>2</sup></b>	0.34	0.23	0.30	0.31

Note: Robust standard errors in parentheses  
\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Note: The models for PTS' USSD and the PHYSINT measure were not significant, and therefore, not included here.

Finally, a moderate approach assumes truth commissions have a statistically significant relationship with democracy and human rights outcomes. We find (table 8-7) that they do, but

the relationship is negative for all human rights measures. This means that truth commissions, and not amnesties or trials, have a negative impact on human rights protections.

**Table 8-7. OLS Results: Truth Commission Only**

	1	2	3	4	5	6
	<b>Polity</b>	<b>Civil Liberties (FH)</b>	<b>Political Rights (FH)</b>	<b>Physical Integrity</b>	<b>PTS (AI)</b>	<b>PTS (USSD)</b>
<b>TCs only</b>	1.639 (1.827)	-0.206 (0.484)	-0.898 (1.022)	-2.578* (1.343)	-1.017** (0.461)	-1.642*** (0.474)
<b>GDP/capita</b>	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	7.99e-05** (0.000)	0.000 (0.000)
<b>Time</b>	-0.234** (0.098)	-0.0823*** (0.021)	-0.105** (0.043)	-0.078 (0.137)	-0.028 (0.032)	-0.047 (0.031)
<b>Polity (Yr Prior)</b>	0.054 (0.153)	0.063 (0.063)	0.068 (0.088)	-0.063 (0.115)	0.082 (0.050)	-0.045 (0.050)
<b>Polity (Tran Yr)</b>	-0.148 (0.266)	0.003 (0.068)	0.016 (0.119)	-0.040 (0.143)	-0.013 (0.063)	-0.058 (0.061)
<b>Multi Tran</b>	-0.436 (1.350)	0.121 (0.376)	0.176 (0.579)	-1.509* (0.765)	0.019 (0.418)	-0.085 (0.430)
<b>Americas</b>	3.268* (1.747)	0.361 (0.604)	0.596 (0.850)	1.087 (0.916)	1.336** (0.489)	0.409 (0.493)
<b>Asia</b>	0.820 (1.774)	0.026 (0.537)	-0.398 (0.782)	-0.964 (0.574)	1.599*** (0.467)	0.147 (0.434)
<b>Africa</b>	-3.371 (2.080)	-0.620 (0.581)	-2.034** (0.906)	-1.384 (1.260)	0.839 (0.648)	-0.117 (0.538)
<b>Constant</b>	3.663 (3.141)	1.678** (0.800)	2.489* (1.330)	3.178 (2.140)	-2.374*** (0.777)	-0.913 (0.857)
<b>N</b>	66	62	62	38	43	51
<b>R<sup>2</sup></b>	0.34	0.22	0.30	0.31	0.35	0.21
Note: Robust standard errors in parentheses *** p<0.01, ** p<0.05, * p<0.1						

Other than truth commissions, which have an unanticipated negative impact on human rights, none of the other single mechanisms has a statistically significant impact on democracy

and human rights. Next, we seek to investigate whether the holistic, or multiple mechanism approach, might better fulfill the goals of improvements in democracy and human rights. Various combinations of mechanisms prove to be statistically significant: trials and amnesties (table 8-8); truth commissions and amnesties (table 8-9); and trials, truth commissions and amnesties (table 8-10).<sup>11</sup> The trials and amnesties combination, for example, has a positive effect on Polity IV's democracy measure and a positive impact on all three measures of human rights (CIRI's PHYSINT and the PTS AI and USSN measures). Of those combinations, the least successful involved the dual – truth commission and amnesty – combination. This combination only contributes positively to Freedom House's civil liberties indicator. The other two combinations show much stronger success on both human rights and democracy. The combination of three methods – trials, truth commissions, and amnesties – provide the same positive results, but with different indicators. This combination has a positive impact on democracy, but only for Freedom House's civil liberties measurement. The three-way combination also has a positive impact on human rights, but only when analyzed in terms of the PTS index for AI and USSD.

**Table 8-8. OLS Results: Trials and Amnesties**

	<b>1</b>	<b>2</b>	<b>3</b>	<b>5</b>	<b>6</b>
	<b>Polity</b>	<b>Civil Liberties (FH)</b>	<b>Political Rights (FH)</b>	<b>PTS (AI)</b>	<b>PTS (USSD)</b>
<b>Trial &amp; Amnesty</b>	3.468** (1.353)	0.808 (0.635)	0.888 (1.062)	0.965* (0.492)	1.050*** (0.361)
<b>GDP/capita</b>	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	9.38e-05*** (0.000)	0.000 (0.000)
<b>Time</b>	-0.261*** (0.097)	-0.0881*** (0.022)	-0.110** (0.047)	-0.024 (0.033)	-0.0479* (0.029)
<b>Polity (Yr Prior)</b>	0.001 (0.138)	0.063 (0.055)	0.085 (0.076)	0.105** (0.049)	-0.011 (0.050)
<b>Polity (Tran Yr)</b>	-0.109 (0.264)	0.022 (0.069)	0.047 (0.119)	0.033 (0.073)	-0.004 (0.075)
<b>Multi Tran</b>	-0.314 (1.326)	0.240 (0.346)	0.408 (0.547)	0.250 (0.406)	0.279 (0.426)
<b>Americas</b>	3.860** (1.832)	0.511 (0.578)	0.769 (0.866)	1.506*** (0.488)	0.755 (0.518)
<b>Asia</b>	1.251 (1.780)	0.091 (0.508)	-0.376 (0.780)	1.626*** (0.413)	0.272 (0.428)
<b>Africa</b>	-3.004 (2.020)	-0.584 (0.538)	-2.081** (0.872)	0.930 (0.601)	0.047 (0.497)
<b>Constant</b>	3.378 (3.028)	1.506** (0.749)	2.182* (1.235)	-3.024*** (0.834)	-1.713* (0.936)
<b>N</b>	66	62	62	43	51
<b>R<sup>2</sup></b>	0.37	0.24	0.31	0.32	0.14
Note: Robust standard errors in parentheses *** p<0.01, ** p<0.05, * p<0.1					

Note: The model for the PHYSINT measure was not significant, and therefore, not included here.

**Table 8-9. OLS Results: Amnesties and Truth Commissions**

	<b>1</b>	<b>2</b>	<b>3</b>	<b>5</b>
	<b>Polity</b>	<b>Civil Liberties (FH)</b>	<b>Political Rights (FH)</b>	<b>PTS (AI)</b>
<b>TCs &amp; Amnesty</b>	-0.999 (1.302)	-1.014* (0.575)	0.303 (0.430)	0.403 (0.383)
<b>GDP/capita</b>	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	8.94e-05** (0.000)
<b>Time</b>	-0.229** (0.100)	-0.0764*** (0.022)	-0.105** (0.044)	-0.031 (0.033)
<b>Polity (Yr Prior)</b>	0.032 (0.143)	0.078 (0.054)	0.086 (0.077)	0.101* (0.052)
<b>Polity (Tran Yr)</b>	-0.175 (0.257)	0.006 (0.070)	0.030 (0.116)	0.007 (0.065)
<b>Multiple Transition</b>	-0.802 (1.309)	0.008 (0.350)	0.355 (0.563)	0.260 (0.394)
<b>Americas</b>	3.423* (1.785)	0.521 (0.598)	0.559 (0.869)	1.290** (0.538)
<b>Asia</b>	1.059 (1.848)	0.130 (0.524)	-0.500 (0.796)	1.472*** (0.491)
<b>Africa</b>	-3.118 (2.124)	-0.527 (0.592)	-2.186** (0.929)	0.684 (0.673)
<b>Constant</b>	3.825 (3.070)	1.562* (0.784)	2.356* (1.276)	-2.535*** (0.781)
<b>N</b>	66	62	62	43
<b>R<sup>2</sup></b>	0.37	0.24	0.31	0.32
Note: Robust standard errors in parentheses *** p<0.01, ** p<0.05, * p<0.1				

Note: The models for the PTS' USSD and PHYSINT measures are not significant, and therefore, not included here.

**Table 8-10. OLS Results: Trials, Truth Commissions, and Amnesties**

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
	<b>Polity</b>	<b>Civil Liberties (FH)</b>	<b>Political Rights (FH)</b>	<b>Physical Integrity</b>	<b>PTS (AI)</b>	<b>PTS (State Dept)</b>
<b>Trials, TCs, Amnesty</b>	-0.740 (1.567)	1.076* (0.572)	0.936 (0.804)	1.122 (1.457)	0.906* (0.449)	1.012* (0.510)
<b>GDP/capita</b>	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)
<b>Time</b>	-0.241** (0.104)	-0.0714*** (0.021)	-0.0942** (0.044)	-0.068 (0.145)	-0.020 (0.030)	-0.038 (0.029)
<b>Polity (Yr Prior)</b>	0.033 (0.138)	0.051 (0.054)	0.075 (0.081)	0.011 (0.106)	0.0882* (0.049)	-0.023 (0.050)
<b>Polity (Tran Yr)</b>	-0.188 (0.261)	0.027 (0.068)	0.048 (0.117)	0.054 (0.176)	0.034 (0.068)	0.000 (0.077)
<b>Multiple Transition</b>	-0.622 (1.300)	0.078 (0.325)	0.247 (0.543)	-0.995 (0.742)	0.085 (0.378)	0.078 (0.407)
<b>Americas</b>	3.665* (2.190)	-0.216 (0.605)	0.102 (0.903)	0.461 (1.357)	0.795 (0.614)	-0.142 (0.612)
<b>Asia</b>	1.058 (1.875)	-0.156 (0.547)	-0.609 (0.794)	-1.364* (0.712)	1.325** (0.514)	-0.125 (0.483)
<b>Africa</b>	-3.076 (2.169)	-0.896 (0.616)	-2.366** (0.969)	-1.971 (1.187)	0.428 (0.677)	-0.461 (0.553)
<b>Constant</b>	4.015 (3.070)	1.468* (0.774)	2.181* (1.265)	2.382 (2.487)	-2.659*** (0.712)	-1.358 (0.902)
<b>N</b>	66	62	62	38	43	51
<b>R<sup>2</sup></b>	0.34	0.27	0.31	0.26	0.36	0.17
Note: Robust standard errors in parentheses *** p<0.01, ** p<0.05, * p<0.1						

## Conclusion

Our findings make an important contribution to understanding the effect of transitional justice, but they defy most expectations. Advocates of transitional justice will be satisfied transitional justice, in general, appears to have a positive and significant influence on democracy and human rights. That effect, however, does not show up in the first five years after the transition.

While transitional justice has a positive impact as a whole, advocates of particular mechanisms may be disappointed. Particularly those advocating truth commissions will not understand the puzzling finding that truth commissions on their own have a negative and significant impact on human rights and democracy. Why? It might be that by failing to bring perpetrators to justice, they do not strengthen political institutions and perpetuate cultures of impunity. In that context, encouraging the truth about the past may catalyze spoilers to re-emerge and threaten human rights and democracy. Certainly, this puzzling finding echoes our earlier discussion about the importance of creating categories of truth commissions. Without those categories, we cannot know what it is about this broad category of mechanism that is having the negative impact.

Neither maximalist nor minimalist approaches fare well either. In most cases, trials or amnesties simply do not prove statistically significant on their own in terms of improving human rights or democracy. This means those supporting trials cannot claim that trials alone improve human rights or democracy; however, neither can those advocating amnesties make such a claim.

Only the holistic approach would have perhaps predicted the positive and significant role trials and amnesties together, or trials, amnesties, and truth commissions together, would have on democracy and human rights. These combinations suggest two possibilities. On one hand, it may be that combinations provide a middle ground of accountability and appeasement we identified as a moderate approach. By providing amnesty for some groups, prosecuting others, and engaging victims in restorative justice, the democratic government may be signaling no tolerance for kinds of illegal acts, while recognizing the lesser culpability of others. It may suggest fairness and pragmatism by not holding all perpetrators accountable, but it may also demonstrate its willingness to prosecute egregious acts of misconduct. Such a combination may also prove strategic by dividing and conquering potential spoilers, or threatening illegal political acts with concrete punishment.

Another interpretation of the positive combinations is that these mechanisms are sequenced, rather than simultaneous. Such an interpretation gives both a minimalist and maximalist approach some claims. For example, the amnesty might be offered in the first few years, as our findings in this book suggest (see chapter 6). Once democracy is established, trials arrive in the form of delayed justice. By this point, the spoilers have largely accommodated themselves within the new democratic government, weakening their capacity to destabilize the system. The truths gathered through trials and commissions and the accountability signaled by the human rights trials, send a warning about future transgressions of domestic and international human rights laws.

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## Notes: Chapter 8

1. Matt Murphy, "Political Justice and Regime Change: A Case for Transitional Justice as a Foundational Rather Than Transitional Act," paper presented at the annual meeting of the American Political Science Association, Boston, MA (2002).
2. See Gerardo L. Munck and Jay Verkuilen, "Conceptualizing and Measuring Democracy: Evaluating Alternative Indices," *Comparative Political Studies* 35, no. 1 (2002).
3. See discussion by Brahm, *Truth and Consequences*.
4. Cornett, et al., "Political Terror Scale 1976-2006."
5. In an earlier study we included the measurement of rule of law using a proxy of judicial independence compiled by Linda Camp Keith, "Judicial Independence and Human Rights Protection Around the World," *Judicature* 85, no. 4 (2002). This measure is an aggregated index based on nine empirical measures of the independence, and thus quality, of the judiciary coded from 1974-1996. These measures include: guaranteed terms of office, finality of decisions, exclusive authority, ban against exceptional or military courts, fiscal autonomy, separation of powers, and enumerated qualifications. Each variable is coded as a 0 (no constitution or the constitution does not provide this element), 1 (constitution provides for this element to a limited degree), or 2 (constitution provides for this element fully and explicitly) depending upon whether a country did not comply, partially complied, or completely complied with the above indicator. This measure is also limited in that it does not cover the entire period nor sample of our data base.
6. Adam Przeworski, Michael E. Alvarez, Jose Antonio Cheibub, and Fernando Limongi, *Democracy and Development: Political Institutions and Well-Being in the World, 1950-1990* (New York: Cambridge University Press, 2000).
7. Note that although we include the transition year and prior year measures of Polity, these variables are not highly collinear (correlation = 0.06).
8. We once again utilize UN region codes as described in chapter 2.

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9. We examined rule of law data as well but did not feel confident about the results. These data has the least amount of coverage of any other measures presented here. The results are interesting nonetheless. They show the greatest improvements in rule of law in countries using *de facto* amnesty both five and ten years after the transition. Those countries that adopted trials experienced the second greatest improvement. There is no difference between those countries that adopted opposition amnesties and truth commissions at the five year mark and, after 10 years. Those that adopted opposition amnesties actually had slightly greater improvements than their counterparts that utilized truth commissions.

10. Note this means that countries may be counted twice. If a country employs an amnesty and a trial, they would be included in both the amnesty and trial rows. In the regression analysis below, however, we do not double count and only include those countries that utilized either a single mechanism or a combination of mechanisms.

11. There were no observations for the trial and truth commission combination.