DO AS THEY SAY, AND AS THEY DO: AN INTEGRATED APPROACH TO THE STUDY
OF NORM INFLUENCE ON TRUTH COMMISSION INITIATION, 1976-2003

Geoffrey Thomas Dancy, B.A.

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APPROVED:

Steven C. Poe, Major Professor
T. David Mason, Minor Professor
J. Michael Greig, Committee Member
James Meernik, Chair of the Department of Political Science
Sandra L. Terrell, Dean of the Robert B. Toulouse
School of Graduate Studies

Truth commissions are bodies established in political transition, and they have the stated purpose of reckoning with human rights abuses committed by members of former regimes. The question driving this research is “Why have truth commissions increased so rapidly in the last 20 years?” This study moves beyond current research, which suggests that particular domestic political circumstances alone determine choice of transitional justice mechanisms. I argue that an international rule of behavior, the transitional restorative norm, has emerged and spread to decision-makers in countries of transition. In support of this notion, I perform a pre-theoretical historical analysis of transitional justice and develop a theory of decision-making in transition—which is later tested with quantitative statistics. This integrated approach allows for increased scientific rigor in the examination of international norms. Ultimately, the study demonstrates an interrelationship between shared ideas and political environments in the determination of domestic policy.
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CHAPTER 1

INTRODUCTION

The Transitional Dilemma

“A house divided against itself cannot stand.” This utterance from Abraham Lincoln in June 1858 concerning the swelling pressure from the slavery issue caused by the possible admittance of Kansas into the Union, would come to be emblazoned as a universal dictum of national health. This proverb may be true, but what is there to do when a house does get divided? And further, what can leaders do when in the aftermath of division? For the United States, the answer to these questions was the Civil War and the controversial policy of Reconstruction, which was followed by decades of turbulence between its citizens.

In the 20th century, the collection of national houses that together form the international neighborhood have been characterized by divisions between leaders and civilians, militaries and oppositions. Since the conclusion of the Second World War, civil wars and mass atrocities have been tandem phenomena. After the termination of these events, states are faced with a dilemma: how to address the abuses that were perpetrated while simultaneously encouraging toleration among festering divisions. Accordingly, in an effort to facilitate societal and political transition framed by this dilemma, states have tested many different policy mechanisms: trial in domestic courts, international tribunals, removal of former officials from public posts, truth commissions, monetary reparations to the vanquished, and sweeping amnesties to former combatants (Hayner, 2001:12)

If we analogize these policy options as items on a restaurant menu, then commissions of inquiry have become the dinner special for decision-makers dining in countries of political transition. Truth commissions (TCs) are now a sort of fall-back option, perhaps considered to be a panacea for those circumstances that ail fledgling states hacking their way through the uncharted path to restoration of order.
Truth Commissions

The establishment of truth commissions1, made globally popular first by the efforts in South America to account for the abuses of government in the form of ordered disappearances and torture, has abounded in recent years. Their attractiveness might lie in the concept that they are a middle ground, or “third way”2, between two other methods for dealing with the past: criminal punishment of and blanket amnesty for officials who committed human rights violations (Chapman and Ball, 2001; van Zyl, 1999). The intensifying appeal of truth commissions may also be associated with the expansion of interest in the nuanced concept of “transitional justice,” a term encompassing the measures taken to both restore rule of law and provide victims redress in societies emerging from repressive regimes (Teitel, 2000, 2003; Elster, 2004).

Since the publication of Priscilla Hayner’s (2001) seminal scholarly examination of these institutions in *Unspeakable Truths: Confronting State Terror and Atrocity*, which examines a total of 21 total bodies, there have been concrete efforts to create truth commissions in ten more countries, including Peru, Uruguay, Panama, Yugoslavia, East Timor, Ghana, Liberia, the Solomon Islands, Fiji, and Morocco.3 An Amnesty Netherlands report has set the number of truth commissions and “related bodies” at over 50 since the 1970s, though there may be some disagreement over whether some of these qualify as truth commissions at all.4 And very recently, authorities in South Korea5,

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1 There is some concern over what term to use in reference to such organizations—truth commissions or truth and reconciliation commissions. Though many refer to them as truth and reconciliation commissions (TRCs), this is a bit misleading due to the fact that not all aim to achieve reconciliation. Therefore, “truth commission”(TC) is a more appropriate designation (Hayner, 2001: 23). This thesis will address truth commissions generally, whether they incorporate the element of reconciliation or not.


3 See Figure 4.2 and Chapter 4 for a discussion of how this list was derived.


Northern Ireland\textsuperscript{6}, Kenya\textsuperscript{7}, Indonesia\textsuperscript{8}, Burundi\textsuperscript{9}, Poland\textsuperscript{10} have been engaged in debates over the specifics of truth commissions, as they seek to form their own versions of these organizations. Still other countries have chosen alternative methods for addressing the past. A group of countries, mainly in Eastern Europe, have pursued lustration laws, which prevent former assailants from holding positions as government officials\textsuperscript{11}. Two African countries, Zimbabwe and Namibia, amidst debate, elected to avoid sanctioning any formal method for confronting past human rights abuses.

Scholarship on truth commissions extends through the fields of international law, sociology, anthropology, psychology, and political science. My goal is not to ride roughshod over previous analysis, but I see patterns that exist within each field—patterns that can be analyzed and critiqued. Yet, throughout each of the patterns, I see an inescapable commonality: lack of clarity concerning the role of political processes in the establishment and ex post facto effectiveness of truth commissions. The politics of truth commissions, understood this way, take place both before and after their initiation. Realizing that this would be too much to study in one paper and desiring to begin a wholesale scientific evaluation of the truth commission trend, I will focus on the former: the political factors that lead to the decision to establish truth commissions in countries of transition.

The defining goal of this paper will be to provide a comprehensive, multi-approached answer to the question, “what explains the rapid growth in the establishment of truth commissions worldwide?”

In this thesis, I will first present developments in previous literature, defining truth commissions and highlighting the contributions of three fields to their study: sociology, international


\textsuperscript{8} See “Truth, Reconciliation Pose a Challenge for the Government”, \textit{The Jakarta Post} 21 Feb 2005.


law, and political science. After demonstrating the distinct undercoverage of international norms in the literature on truth commissions, the study will shift to a historical analysis of transitional justice that centers on the development and spread of the concept of restorative justice. Third, I will present a theory of truth commission onset, which will involve both normative factors external to and political factors internal to the nation-state that influence the behavior of decision-makers. I will then provide a detailed discussion of my methods, analysis, and results. Finally, I will offer a conclusion that emphasizes the importance of the diffusion of ideas, though not to the nullification of political opportunity structures that exist in countries that have chosen to institute truth commissions.
CHAPTER 2

PERSPECTIVES FROM SOCIOLOGY, LAW, AND POLITICAL SCIENCE

Research designs appraising truth commissions have been bountiful, and the goals of each have been disparate. The purpose of this review will be to form a categorization into which all of the work can be placed. The more immediate goal, however, will be to briefly compare definitions from the growing literature and adopt one to be used for the remainder of this thesis. The review will then extend into three separate branches of truth commission scholarship. It will be shown that the most consistent omission in this scholarship is focus on the political antecedents to truth commission establishment. Political science, the field one might assume would engage this particular area, has provided an unsatisfactory assessment of transitional mechanisms due to failure to extend beyond particular theoretical predispositions and limited research programs.

Truth Commissions Defined

Truth commissions can be defined as “an official investigative body that documents a pattern of past human rights abuses” (Baker, 2001 cited in Hendy, 2005). This definition, though, may be too broad. For example, in 1992 Nicaraguan President Chamorro established a Tripartite Commission, through an executive order, to examine past human rights abuses. Because its weak legitimacy did not provide it sufficient power to probe crimes that occurred under the Sandinista government, it is widely disregarded in discussions of truth commission work (O’Shaughnessy and Dodson, 1999). Clearly, a better operationalization is needed. The seminal work on truth commissions, Priscilla Hayner’s Unspeakable Truths: Confronting State Terror and Atrocity (2001), delineates additional characteristics: they “focus on the past”; they investigate the abuses that occurred over a “period of time”; “they are temporary bodies”; and they are “sanctioned, authorized, or empowered by the state” (2001:14). The Center for Development Research (2001) adds key
commonalities to this list. TCs, to this group, also focus on the human rights violations committed by individuals; are endowed with a certain sense of “authority…such as the power to search for and seize information”; and “they utilize scientific methodologies derived from human rights documentation.”

For the purposes of this thesis, Hayner’s (2001) definition will be utilized because it is that which is more widely accepted; since other scholars use Hayner’s book as a guide, defining truth commissions as she does ensures that this study will be zeroing in on the same institutions considered by others.

Before separating the disciplines and tracing through their respective contributions, I must acknowledge a fundamental divergence that exists within the debate on truth commissions and the intention on their work. The assumption implicit in the terminology used to describe these institutions is that they are created with the intention of serving the truth. How they serve the truth and what exactly the truth entails are topics for dispute among the modernist and post-modernist schools (Norval, 1999). Modernists, who assume that there is an objective truth, a factual set of events that occur and are communicable, see the work of the truth commission as one of bringing this truth to light. Hayner (2001), who finds the perfunctory goal of these institutions to be one of providing an unswerving, accurate record of past events, might side with the modernists. Everyone who lived through the horrors of the past is aware of what happened, the argument goes, so a truth commission’s duty is to “acknowledge” that truth, not necessarily discover new knowledge (Hayner, 2001:26). Post-modernists, who see truth as malleable and context-dependent, might look upon the work of the truth commission as that which is socially and politically constructive, choosing a particular account of the past that reframes history and shifts power from one group to another (Chapman and Ball, 2001; Wilson, 2001). This epistemic debate is one that is virtually irreconcilable, and it is one that comes to a head within the field of political science. Are we analyzing reality or perception,

rationalism or constructivism? A social scientists’ orientation in this division will help determine his/her conclusions about the truth commission’s role in society and the institutional processes that shape their establishment. I, on the other hand, attempt to maintain neutrality on the nature of truth, seeking a value-less description of an observable phenomenon in the world today: the rapid and increasing birth of truth commissions.

A final point worth noting is that the literature on transitional mechanisms is not isolated to the halls of academia. In many cases, writers on the subject have been involved on the ground and have personal experiences that inform their analyses. According to Forsberg (2001:59), “Discourse about settling the past is now both political and academic, and mixes the roles of practitioners and theoreticians.” This does not mean that all of the research is non-objective or tainted, but it does suggest that much of the literature is both constituted by and constitutive of the normative atmosphere surrounding the truth commission phenomenon.13 Every researcher begins with a particular question, and it makes sense that their academic or intellectual predispositions color the nature of this question and its answers. While a lawyer may ask “What affect does this decision have on the future of international law,” a sociologist may wonder “How does a truth commission affect interpersonal interaction and tradition?” While ontologically the foundation of all three of the approaches I emphasize may be a utilitarian pursuit of peace, the paths they each blaze are noticeably disparate.

I start by dividing scholarly approaches along the lines of what each holds to be the most important goal in transition: the fomentation of societal reconciliation through the psychological well-being of victims; the promotion of a transitional legal jurisprudence; or the balancing of constraints in extraordinary political circumstances. Splitting the literature this way makes the most

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13 I return to this point in Chapter 3.
sense because it captures the essential assumptions that motivate the alternate modes of social scientific analysis.\footnote{This categorization, though useful, is not airtight. Some works fall into more than one category. An illustrative example is the work of political scientist James Gibson. His research, with an emphasis on survey data, evaluates psychological and social aspects of South African reconciliation, multiple theoretical interpretations of justice, and political compromise. For this reason, his work will be considered in each section. Hayner’s book is a kind of comprehensive survey of truth commissions, so her work, too, will be mentioned throughout.}

Psycho-Sociological Approach—Reconciliation

This vanguard of research on transitional societies places a premium on societal reconciliation, or how conflicted states may cope with and overcome problems in the past. In their dealings with the truth commission phenomenon, studies on reconciliation exude a few common characteristics. First, they do not typically take a stance on how truth commission establishment comports or derogates from international legal duties. Second, biased possibly by a functionalist\footnote{I use “functionalist” to mean the assumption that institutions are created solely to perform a specific task, or that specific institutions arise when a particular function needs to be performed. For more on functionalism, see Sterling-Folker (2003). For more on the peace assumption, see Mendeloff (2004).} logic, which suggests that transitional institutions are created in order to promote peace, studies focused on society pass over the notion that transitional mechanisms may in fact be the product of primarily political considerations. Third, and in part as an extension, society-centric studies have been preoccupied with the repercussions of both trials and truth commission, or the effectiveness of punishment and truth-telling at achieving peace. To this end, researchers have expended a great deal of energy constructing theoretical models and complex definitions of reconciliation.

Beginning in the mid-1990s, the term “reconciliation” began to be used \emph{ad nauseum} in intellectual and scholarly assessments of transitional states. Normally coupled with truth, reconciliation has become a catch-all term enveloping the goals of a transitional society\footnote{See Burr (2001): “…the concepts of truth and reconciliation are often made to work on different levels, meaning that their significance changes considerably depending on usage and context” (2001:2).}. Reconciliation has been used to encompass forgiveness, empathy, restoration, reconnection with
others, social reconstruction, and peace. I understand this to be an artifact of psycho-sociological theorizing. Whereas the international legal perspective fixates on the duty of states in transition, psychological analyses place the well-being of the victim center-court. Sociological accounts of transitioning societies are enthralled by the interaction between people and how dents placed in macro-level social structures may be pounded out. For clarification, it may be useful to think of the difference between psychological and sociological consideration in terms of Priscilla Hayner’s (2001) dichotomy between “individual” and “national reconciliation.” Psychological analysis redounds back in sociological analysis because they are both primarily concerned with reparations made for the victim(s).17 Upcoming is a portrait of psychological research, which will be followed by a discussion of sociological work.

Psychology—Atrocity and Mental Health

Psychological research suggests that atrocity is a great source of trauma for the victimized, or homo sacer, the group of humans that could formerly be harassed with impunity18. Examination of the stress caused by this trauma hinges on the kind of mental state that is formed during a period of widespread human rights violations. Danieli (1995) characterizes victimization as a “rupture, a possible regression, and a state of being ‘stuck’ or ‘frozen’ in this free flow, which I have called fixity” (574). This description of being trapped in a perplexity, a kind of mental purgatory, is echoed by others. Hamber and Wilson (2002) portray the victim’s state as one that occupies a “liminal space,” where the individual is both part of society and not part of society (37). They compare this to the Freudian concept of the uncanny, or “ontological uncertainty” that results in an insurmountable confusion and “unreality of death” (39-41). Krohn-Hansen (1994) explains that

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17 I use this term here not in the legal sense, which entails compensation—usually monetary—to the victim. Instead, I mean reparation to reflect almost literally “repair,” be it strictly personal or interpersonal. For a discussion, see David and Yuk-ping (2005).

people living in a state of terror, where there is a breakdown of law and order, experience “magic realism…in a culture of inconceivable violence that dominated them” (375). These representations all suggest a kind of torture shock that pervades a person’s thought processes, relentlessly gripping even after the conflict subsides.

Faced with the dilemma of how to help victims overcome this state, psychologists highlight the importance of individual rehabilitation. How best to facilitate this rehabilitation is yet another point of divergence for the theoretical literature. The first method proposed for accomplishing this task is monetary compensation. Known legally as reparation, compensation is comprised simply of providing funds for victims both for actual wages lost during periods of imprisonment and as symbolic payment for those who have lost family members (David and Yuk-ping, 2005; Danieli, 1995; van Boven, 1995). Money given to victims of atrocity “concretizes for the victim the confirmation of responsibility, wrongfulness, [that] s/he is not guilty, and somebody cares about it” (Danieli 1995:578). Compensation is physical proof of government admission and acknowledgement, and such compensation is considered by some to be a necessary step for strengthening the victim. Survey evidence corroborates this notion by showing that attempts at reparation are popular among the people in South Africa (Gibson 2002) and the former Czech Republic (David and Yuk-Ping 2005). The failure of this survey data, which consists of hypothetical questions asked to citizens of transitional polities, is that in many cases it fails to reflect the way people really feel. Argentina is a case in point. Victims there were not satisfied solely with government-issued payments: the Mothers de Plaza de Mayo issued a statement to the government that they would not be “paid off” for the loss of their loved ones (Hamber and Wilson, 2002).

A second approach to achieving rehabilitation, or healing, is the establishment of a true record of past events. The simple theory that truth is a stimulant for personal healing is the central strand around which the fabric of the modern intellectual debate on transitional justice is wound.
Discovery of the truth of past events is especially powerful in situations where large numbers of people were disappeared, imprisoned, and tortured, because these are activities that typically occur under a veil of secrecy and denial. With the establishment of official truth, the argument goes, comfort can return to the victim, who must no longer listen to disavowal from the government. There is, though, contention over which method is superior for discovering the truth, and over whether truth has any effect at all.

International legal experts might make the claim that trials can accomplish the task of personal rehabilitation through the discovery of truth and allowance of victim testimony (Orentlicher, 1995; Bassiouni, 1997). Dian Orentlicher (1995) makes the weighty claim that judicial proceedings are the supreme method for providing a complete record of the past. This, however, is widely considered to be a stretch. Trials have the unfortunate issue of selectivity to deal with; because only a small percentage of criminals are prosecuted, a small percentage of witnesses are allowed to testify (Humphrey, 2003). On top of that, the assumption that they provide healing for those involved in the trial process is one that is myopic and stylized. Theoretical reasoning posits that a lengthy litigation, which features a two-partied, oppositional structure, may in fact be therapeutically counterproductive for the victim (Fletcher and Weinstein, 2002).

A much more accepted opinion is that truth commissions, by placing a premium on hearing individual victims’ stories of torment, provide a much better platform for personal closure. As Hayner (2001:36) documents, victims have “a very basic need to tell the story.” Akin to the Western model of psychotherapy, where patients purge their problems to an attentive expert, truth commission proceedings are believed to serve a curative function for the individual. It is this modus operandi that has been the primary justification for establishment of commissions, as opposed to trials, which are normally understood to seek primarily justice. According to Humphrey (2002:108), “Truth commissions have been established on a health rather than a legal paradigm.” Some victims
who have testified in the South African TRC have acknowledged this justice, noting an ability to “now be able to put the past behind” after their testimony (van Zyl, 1999:6). However, the role of TCs in eliciting personal growth is not without its critics. Some victims, seeing the forest through the trees, have been incensed by the process, wondering why perpetrators of horrible crimes get to roam free while all they get is to tell a story. Yet others have noted that they experienced little closure in the wake of their truth commission hearings (Walaza, 2001). Hayner herself recognizes the potential shortfall of the truth commission: “it is clear that this notion of healing is a bit overstated, at least” (2001:6).

Moreover, some anecdotal evidence implies that witnesses, when prompted to tell their versions of the past, actually become “re-traumatized.” Hayner (2001:144) recounts the story of a man from Soweto, who “as a result of giving his statement…suffered a mental breakdown and had to be immediately admitted to a mental hospital.” An extension of this concern is that of “psychological evasion”: a person who has suffered under the ferocity of state violence might not be able to access an accurate narrative in a public setting (Humphrey, 2002: 112). Certainly, it is easy to understand how this may be the case given that number of clinical examples there are of people who have repressed former experiences due to the trauma they inflict. What this means is we should not automatically surmise a link between truth commissions and therapy, as the process of truth-telling might be fraught with complications for the victim.

**Sociology—Reconciliation and Peace**

The debatability of the above assumption—that revealing equates to personal healing—is crucial. Research that appraises the role of transitional institutions on macro-level societal progress, or national reconciliation, seems undoubtedly related to those that concern the individual psyche.
Society, seen as a collection of individuals, an agglomeration of single units into one big unit, could be viewed to have a “collective memory” or “national psyche.” The problem that this poses for studies of both trials and truth commissions as they relate to national reconciliation is that it leaves both at the mercy of the foundational psychological assumption, which in turn leads to the creation of unsubstantiated and untestable statements. To assume that a truth commission “will heal the wounds of a nation” is to first assume that a truth commission will heal the wounds of the victims, or quell their desires for revenge. I read a levels-of-analysis problem into this dilemma, one that is familiar to those that have forever plagued survey research and studies of political culture. An obstacle to research arises when we consider that there may be a noticeable divide between the effect of different institutions on the whole polity and on the individual citizen.

In the literature, the expression of this problem is fundamentally oppositional theoretical statements that cannot be adjudicated. I look first to the claims surrounding trial justice and national reconciliation. As was mentioned in Section II, some international legal scholars contend that trials promote large-scale reconciliation. Beyond reclaiming the rights of the individual, it can be argued that trials re-establish rule of law, then helping to emblematize a new social order. An outgrowth of this order is deterrence of future abuses. “Trials…seek to achieve social healing by identifying the source of the violence in the accused and expelling (imprisoning, executing) those responsible from society as punishment” (Humphrey 2003:50). The implied meaning of reconciliation being promoted here is individual satisfaction with punishment and the subsequent order that it brings. Akhavan (2001:8) views this reconciliation as the key pursuit of international trials: the “hardest test of their effectiveness is whether tribunals have contributed to post-conflict peace building and reconciliation.” However, the connectivity of trials to reconciliation may be a

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19 See Olick (1997) for a discussion on “collective memory” and Hamber and Wilson (2002) for a discussion of “national psyche.”
20 See the critique of Ronald Inglehart’s work on civic culture in Seligson (2002).
fallible notion. Minow (1998:26) writes that “Reconciliation is not the goal of criminal trials except in the most abstract sense.”

In a highly developed criticism of the work positing a linkage between trials and reconciliation, Fletcher and Weinstein (2002) show that criminal trials only aim toward social rebuilding, while at the same time unintentionally reinforcing confrontation between groups within society. Citing a UC-Berkeley study of legal professionals within the former Yugoslavia, they write, …the focus on punishment of perpetrators may have the inadvertent consequence of transforming these wrongdoers into scapegoats or victims in order to perpetuate the political mythology of a particular social group. This may exert an untoward effect that undercuts the advantages of punishing perpetrators. (2002:592)

This research finds that those who witness the trials tend to constantly side with those from their own identity group as the victims of bad decision, which props up an “us vs. them” mentality (Fletcher and Weinstein 2002; Hayner 2001:101). So we see, on one side of the balance there is the argued solidification of rule of law, and on the other there is the further entrenchment of societal conflict. What does not add up is that on-the-ground evidence suggests that trials further invigorate the cleavages of the individuals in the society, which means that trials do not satisfy people necessarily. For example, ballots for Serbian general elections in December 2003 included candidates who were undergoing trial in the Hague. This was the rightist party leaders’ way of taking a stab at the justice effort, and the result of this move was to reinforce divisiveness left over from the war.21 If reconciliation is argued to be a kind of collective healing, then the kind of trials taking place for the former Yugoslavia seem not to be the best way to promote it.

The opposing theoretical viewpoint, that the truth commission’s exposition of past events is a way of rectifying differences among victims and former criminals, coalescing into a national

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21 Deutsche-Presse Agentur, December 29, 2003, Monday, Politics, “Serbian nationalists' poll showing "sends negative signal””, Belgrade.
reconciliation, is the subject of great scholarly attention. Blanket theoretical statements have been made in regard to this idea of reconciliation. For example, in relation to the transition in Rwanda, Bradley (1998:7) writes, “A truth and reconciliation commission will allow the nation to move on, and will facilitate some kind of closure about the past. It would also allow moderate Hutus to be further united with the Tutsis, and, therefore, allow [sic] them to stand together against the extremists.” Yet, when it comes time to substantiate claims such as this with evidence, approaches to study vary along with conclusions concerning outcomes of truth commissions. One way that researchers have approached assessment of TCs is through the development of theoretical models.

One such model is constructed by Lorna McGregor (2001:38), who in a case study of South Africa, develops a step-by-step theoretical assessment of personal growth and change that goes along with the revelations created by the TRC. She points to the “apology-forgiveness model” that is promoted by the confessional nature of its proceedings. The apology can serve to not only help the victim in forgiveness, but it can also indirectly shame the perpetrator, whose declaration of guilt is admonished by the public. Healing, to McGregor (2001) comes in the form of the truth commission’s joint appeal to both forgiveness and concealed vengeance.

Other studies have promoted alternative models of individual and societal reconciliation that move beyond forgiveness alone. Halpern and Weinstein (2004) argue that reconciliation has an additional element: empathy between the former conflict groups. If peace is to be achieved, different groups must not only bear but also “rehumanize” one another. Reconciliation, in each of these accounts, is viewed as an integral component of transition after atrocity or internal war. They observe how victims in South Africa, after they had an emotional apology session with former apartheid leader Eugene de Kock, were more able to forgive. Forgiveness, though, they argue, is not enough. Forgiveness is a first step toward empathy, or an ability to “put oneself in another’s shoes.”

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22 This scholarly debate is symptomatic of a schism in the international human rights regime between proponents of retributive and restorative transitional justice models. Chapter 3 deals in detail with this split.
Empathy allows victims to actually live with their former tormenters, and thus it produces an atmosphere of tolerance (Halpern and Weinstein, 2004).

David and Yuk-ping (2005:431-2) carried out research in the Czech Republic, a society that made use of lustration, as opposed to either trials or a TC, to account for past political imprisonments. They use survey data to develop independent and dependent measures of reconciliation. They based their concept of progress in transition Herman’s “three stages of victim recovery: the establishment of safety, remembrance and mourning, and reconnection with others.” Victims’ needs, they theorize, are a precursor to reconciliation. The study also promotes a dual form of reconciliation, which incorporates both “inner healing” and “sociopolitical redress” (410). To measure these items of reconciliation and use them as dependent variables in a regression analysis, they asked individual victims “if they felt rehabilitated” and if “they were satisfied with democratization” (411). They find that monetary reparation is a strong predictor of high levels of rehabilitation for individual victims. The reason that I include this study is to reiterate the paradigm of studies of public opinion (e.g. David and Yuk-ping, 2005 and Gibson, 2002), is one that assumes the sentiments of the randomly chosen victims represent the accomplishments of transitional institutions via reconciliation.

The public opinion studies that I have examined, and those that theorize about individual healing specifically, closely align with the work of sociologists in consideration of one type of collective memory, that is the “socially framed individual memories” (Olick 1997). Because they operate by agglomerating multiple individuals’ opinions, we can think of these as studies of “collected” memories as opposed to a collective memory (Olick 1997: 337). Collective memory, on the other hand, can be understood as an intersubjective understanding of events that exists in a distinctly social space, or “collective commemorative representations and mnemonic traces” (Olick 1997:336). To Olick, individual memory is something that can be shaped by the social and political
context of a polity, meaning first that truth is malleable and second that humans should not be
treated as if what they remember is ironclad. The shortfall of the studies of reconciliation that look
at individual victims’ opinions is one that can be expressed by the ecological fallacy: they look to
individual healing and assume national healing as an extension. This ignores a host of factors that
exist at the social and political levels, include shared meanings, selective interpretations promoted by
the government, identity groups, and ritual, which themselves can be examined to produce a picture
of national reconciliation.

Michael Ignatieff notes this levels-of-analysis problem in the opposite direction,

We tend to vest our nations with conscience, identities and memories as if they were
individuals. It is problematic enough to vest an individual with a single identity…the identity
of a nation is additionally fissured by region, ethnicity, class, and education. (cited in Hamber
and Wilson, 2002:36)

Hamber and Wilson (2002) see the assumption of a “national psyche” as the downfall of truth
commission work in general. By viewing the nation as one, truth commissions ignore the plights
and demands of individuals, who have widely disparate needs. In other words, for social
reconciliation to exist among groups, members of the groups must be substitutable for one another.
Because every individual is different, this is not the case. The work of the public opinion researchers
lends credibility to this assumption, but they are equally guilty in their own assumptions. While
perhaps proponents of truth commissions assume the individual from the whole, they assume the
whole from the individual.

So far the reviewed studies have drawn conclusions regarding individual psychology and
extrapolated to the societal level. Additional studies have documented the importance of a distinctly
social aspect of transitional mechanisms. In a direct refutation to Hamber and Wilson’s critique,
some society-centric works have emphasized the role of ritual in truth commission functions. They
show that truth commissions actually constitute shared meanings, which then filter down to the
individual. If this were true, it would mean that the assumption of a national psyche is not
necessarily a pitfall for truth commissions, given that they facilitate a communal bandage, of sorts, to apply to old wounds, even if the bandage is not made specifically for each victim. Tim Kelsall (2005), a scholar who actually visited the proceedings in Sierra Leone, emerged skeptical of the commission’s ability to promote a record of the truth common to everyone. He states, “…most curiously, in truth commissions, the truth is rarely told” (363). Many of the former perpetrators, for a week of hearings, blatantly lied about their involvement in former crimes as RUF members. This sent pangs of distress through the audience, which included victims. Seemingly hopeless, the formalistic testimony portion of the truth commission hearings did little to help reconcile the victims. But, at the end of the hearings, a service was held to ritually cap the truth commission’s work. During this ritual, victims and perpetrators interacted spiritually and experienced a moving, joint catharsis, after which “there were smiles on faces and a palpable feeling of release” (380). This particular truth commission, then, served as a grounds for public ritual, not simply a drab, straightforward documentation of truth. The truth commission, then, actually entered the shared social space of the country.

The importance of ritual is stressed also in a country that did not have any formal institutional method for responding to past abuses, Zimbabwe. In this country, former victims and perpetrators share the belief that spirits of those killed in civil war battles can return and inhabit the bodies of family members. If this happens, a religious ritual must take place to exorcise the spirit, and the ritual many times incorporates a confession made by the killer. Though the country officially chose national amnesia as its method for dealing with past crime, it seems that local rituals established the kind of response needed (Schmidt 1997). Schmidt induces three hypotheses from his study: first, “healing is a social practice that cannot be understood out of context”; second, “healing is a process in which power relations are being re-negotiated”; and third, “collective experiences of violence require social healing which is located in the religious sphere” (302).
Though it is not clear how generalizable these hypotheses are, this is important evidence for the lesson that a transitional mechanism needs to have a social character.

W. James Booth (2001), in thought-provoking study on the nature of memory and justice, teases out two additional concepts that we must consider in the context of transition: memory-justice and memory-identity. These concepts represent a fusion of the individual and the social. Memory-justice is the surviving victim’s “memory of evil,” a “sepulcher that gives survival to what is remembered” (781). This, he argues, is a duty of those related to the dead, to not allow their experience of horror to dissipate. Memory-justice, which he likens to that held by the Furies in Aeschylus’ *Eumíndes* can overwhelm its possessor, and destroy the “civic peace” (784). What is also needed is a memory-identity, that forges a connection between the individual’s duty to the dead and the community’s shared narrative.

Memory’s truth, as it appears in such contexts, is uneven, jagged, and tied to collective memory and the community’s autobiography….Memory-justice and memory-identity are not two utterly distinct phenomena; they are the ingathering of the past of justice and injustice as part both of doing justice and of affirming continuity or identity…of a community. (787)

The surprising conclusion to his comprehensive assessment is that neither trials nor truth commissions serve the purposes of the victims fully. Victims need to observe a kind of public shame for wrong-doing, and that shame must be preserved. This means that remembrance needs to be ritualized through monuments, popular culture, and political interaction.

Just as Booth’s philosophical portrait hints that truth commissions, alone, are not enough, and that they must be part of a broader process of social recognition, Fletcher and Weinstein (2002) see truth commission work as a key piece in a larger puzzle of social reconstruction. The constituent parts of reconstruction for them are justice, democracy, and economic prosperity. The “ecological model,” as they refer to it, is predicated upon their consideration of “the process of social breakdown” (2002: 619-23). The authors build this model of breakdown based on former research
in sociology. It takes into account causes of mass violence, resource mobilization theory, collective action theory, and rational choice. In is complexity, it demonstrates a causal chain.

Figure 2.1. The Ecological Model of Social Breakdown

Economic/Political Instability $\rightarrow$ Organized Resistance $\rightarrow$ Episodes of violence $\rightarrow$ Repression $\rightarrow$ War or Mass Violence $\rightarrow$ Social Breakdown

- Destruction of Infrastructure, Displacement, Economic Chaos, Social and Health Chaos, War Crimes, and Civilian Deaths

Though it is not an air-tight model, it depicts a multivariate approximation of the situation faced by a society that has devolved into one that promotes massive human rights violations.

Using this understanding of breakdown, they then formulate a model of reconstruction. The usefulness of this cross-level model of reconstruction is that it demonstrates the likeliness of interaction between both legal and truth-seeking functions of state-led institutions. It also shows that truth commissions are embedded in a greater process of social reconstruction. Finally, it puts forth promotion of democracy as the premier goal of a transitional regime.

**Evaluation**

There are multiple hindrances for the psycho-sociological approach, which has directed its scholarship toward the overall social effect of justice mechanisms. First, there is little agreement over the meaning of the term reconciliation, the stated purpose of the transitional polity. Does
reconciliation mean personal healing, forgiveness, empathy, toleration, reconstruction, or promotion of democracy? Or all of them? Second, pieces that attempt to assess the personal needs of victims, or inversely the needs of the whole society, typically face a levels-of-analysis problem, in part due to the nature of the methods employed (i.e. survey data). Finally, after reconciliation is operationalized, there appears to be little agreement over legally and politically constructive role of transitional institutions. Much of the psycho-sociological research has passed over the legal facets unique to transitional situations. The devotion to reconciliation in scholarship and discourse favors abstraction over legal and political relevancies in transitions. Reminding us of these elisions created by this devotion, Wilson (2001:97) writes, “Reconciliation is not a term with any legal standing, like ‘proportionality’ or ‘gross human rights violation.’”

Examination of the effect of trials and truth commissions on reconciliation, and ultimately peace, has masked the question of what state duty is under international law. Legal experts, however, have looked precisely at this question. A division exists in research on international law: some have found the duty of the post-transitional regime to be individual accountability through punishment of former officials, whereas others argue for a duty to record the truth. A debate thus emerges between human rights maximalists and minimalists—a debate that represents a larger cleavage in international norms. The next section of the literature review will explore a separate strain of scholarship that employs an international legal framework to make judgments about what regimes ought to do when faced with the transitional dilemma, as opposed to the ramifications of what they have already done.

International Law—Justice in Transition

This section will present the determinations of legal research, which forms a separate branch of scholarship that considers transitional justice mechanisms. Considered here are different
theoretical notions of justice and how they are related to international law. Legal scholars make an
effort to both reframe the discussion of reconciliation and isolate the specific characteristics of law
and state duty in transitional societies. To many international human rights lawyers and scholars, the
objectives of the state in transition are to focus on the perpetrators of violence, with an eye toward
achieving deterrence of future crimes and reclamation of victims’ rights through a denial of
impunity. In this sense, transitional justice is the rarest sort: it has to be both backward-looking and
forward-looking in an attempt to simultaneously cure the problems of the past and the future
(Teitel, 2000; Mani, 2002). While many have focused specifically on the theoretical features of
transitional justice, others look to international legal norms and positive law to reach conclusions
regarding the duty of transitional regimes under legal contract and precedent. Because many states
are party to conventions stressing particular types of responses to human rights violations, some
scholars adopt the position that they should be legally bound to make use of certain transitional
institutions—trials, truth commissions, reparations, or all of the above.

A comprehensive theoretical description of the multifarious elements of transitional justice is
advanced by Rama Mani (2002). In any transitional polity, there are three kinds of justice that must
be addressed: legal justice, that which pertains to the codification of a new rule of law( i.e. non-
corrupt security forces); distributive justice, which embodies economic and cultural rights; and
rectificatory justice, which “refers to…dealing with injustice in terms of direct physical violence
suffered by people during conflict” (2002:7). Rectificatory justice, based on an Aristotelian concept,
has been highlighted by the human rights movement since the 1970s. This type of justice, centered
on the rights of the victim, can be further broken down into two forms: retributive and restorative
justice. (Figure 2.2 presents this conceptual dissection.)
Retributivists, who typically find trials to be the best method for reclaiming victims’ rights, align with a “maximalist” position. Inversely, those who champion restorative justice follow a “minimalist” legal logic (2002:26). Where minimalists stress the regular administration of law, whatever the laws may be, maximalists stress the natural justice of laws.23

The boundary between the rule of law and human rights is unclear both in theory and practice. The minimalist view regards human rights as entirely separate from and unrelated

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23 To further clarify this dichotomy, we could consider Martin Luther King’s claims in “Letter from a Birmingham Jail.” He contends that a law is not a law if it is unjust. This is a maximalist position. A minimalist would likely support the police who arrested King because of his defiance of the established law, whether or not that law was just.
to the rule of law. In contrast, the maximalist view considers human rights and values to be a fundamental underpinning of the rule of law. (Mani, 2002:29)

The ontological stance of legal scholars and their particular understanding of the relationship of law to human rights will thus determine their position on what should be done in a transitional state.

Retributive Justice

To the legal maximalist, accountability should be the number goal of a society in transition. Many see trials as the most effective method to combat the rampant impunity that pervades states of terror. Cherif Bassiouni (1997:8) is one of the most hopeful advocates of trials. He emphasizes five outcomes of this system of accountability: cessation of the conflict, prevention of future conflicts, deterrence of conflicts in the future, rehabilitation of the society as a whole, and reconciliation of the victims. This conceptualization of trial effectiveness is one that is rooted in a commitment to retributive justice. Retribution, anthropologically, is the oldest form of justice (Vidmar, 2002). As long as human conflict and criminal transgressions have existed, there has been a desire among victims for some form of retaliation. Justice Stewart wrote, “The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society of government by law” (cited in Vidmar 2002:31). Minow writes that a criminal trial is simply vengeance facilitated by an intermediary (1998:12). Punishment, to retributivists, is based on the idea of a “just desert,” where criminals reap what they sow (Malamud-Goti, 1995). In addition, for many in a transitional society, knowing that the genocidaire or torturer responsible for the death of a family member will undergo the pain of punishment is a sort of relief.

Some argue that under international law, violations of human rights by necessity cannot escape such retributive punishment (van Boven et al., 1995). Van Boven (1990), under the auspices of the UN, was charged with eliciting those pieces of international law that demonstrate the
responsibility of the state to prosecute members of the former regime. To van Boven, state responsibility is first precedented under customary law. As a corrolary, he looks to Article 2(3)(a) of the International Covenant on Civil and Political Rights and Article 6 of the Declaration on the Elimination of All Forms of Racial Discrimination as legal basis for “effective remedy” for victims of human rights violations (van Boven 1990:515). Further, he shows that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides for not only “compensation” but also “psychological assistance” (516). So it seems, the transitional state is responsible for attending to the needs of the victim.

Similarly, Diane Orentlicher (1995:386) examines the duty of the state to prosecute under the Nuremberg precedent, which established individual accountability for crimes against humanity that transcend state boundaries. Crimes against humanity can be committed in an intrastate conflict situation, which eschews limitations under the Geneva Conventions. Orentlicher (1995:389-391) also views the Genocide and Torture Conventions as a strong statement for the necessity of punishment. The point is clear: no matter the political situations faced by transitional governments, institutions compliant with international law cannot support amnesty, which in effect is implied pardon for criminals. The duty of the state and the rights of the victim under international law, as outlined in the above research, is in tandem with the “maximalist” legal position, under which human rights crimes must be prosecuted. For maximalists, amnesty to members of the former regime is anathema, both a way to reinforce impunity and send a clear signal to future combatants that international law is weak and easily dismissed.

This position concerning state duty, though, has come under fire from many angles. Scharf (1996) demonstrates that the transitional regime in Haiti, for instance, could find loopholes to

24 Van Boven cites the Chorzow Factory (Indemnity) Case, a ruling under the Permanent Court of International Justice.
25 Her discussion extends much further, but for the sake of brevity, I present only this truncated version.
escape obligation under each element of international law. For example, violence at the hands of the Duvalier regime could not be proven to have genocidal intent, and Haiti is not a signatory to the Torture Convention. Plus, crimes in Haiti, he argues, only meet two of the four requirements necessary to qualify as Crimes Against Humanity. What results is a case that can slip through the cracks of the international legal pavement. This potential for this to happen again is not small, making this a puissant critique of the legal argument. Teitel (1995) lodges an additional complaint against this claim of international obligation. To her, certain legal analysts “rely on interpretive leaps” to demonstrate the duty to punish when the actual legal documents “say nothing about punishment”(148). The only out for the international law argument, she continues, is to show that punishment is beyond hesitation a deterrent to future criminals.

Many posit an effectual deterrence of future violence that takes place as a result of trial justice. Trials can invigorate the judiciary and support rule of law, thereby helping to springboard a peaceful system of democracy. This theory, called the “Democracy Thesis” consigns the success of trials to an eventuality that exists only theoretically. Teitel shows that, empirically, there is a tenuous chain of events involved in this process27. She writes, “…conditional amnesties, and not punishment, appear to have been precursors to the transition to democratic rule” (1995:150). This observation—that virtually no countries that chose trials have a thriving democracy--turns the support for this viewpoint on its head.

Another downfall for proponents of trials is that political considerations are decidedly absent from their analyses. Diplomats who have been at the negotiating table, or in positions of influence, in transitional countries note a lack of attention paid to political expediency in these torn societies. Jose Zalaquett, of the Chilean truth commission, stresses advice from Max Weber: a political leader must act according to an “ethic of responsibility” not an “ethic of conviction” (1995:205). An

27 See also Fletcher and Weinstein (2002).
unwavering political leader who focuses only on achieving retribution for the victim will likely find herself battling a military that still clings to power. Full and unyielding punishment might be counterproductive for a quasi-democratic state. Carlos Nino, a former member of the Argentinian government, argues that universalizing punishment is an “irrational” position (1995:421). Forging ahead aggressively with trials in Argentina would have led to a military backlash from the junta that would have de-legitimized the new government. Three additional political roadblocks also prevented immediate prosecutions from happening: overturning the junta’s amnesty law would have been an exercise in retroactivity; the criminal trials were under the jurisdiction of the still extant military; and the military’s “due obedience law” had the effect of absolving mid-level officials of culpability (1995:422-23). The on-the-ground circumstances often render the maximalist position stuffy, unmanageable, and dangerous. Scharf (1996:2) provides a summation of legal research:

> To date, most of the scholarly writing on the subject has been in the abstract, glossing over the political realities and jurisprudential nuances that come into play…these writings have been afflicted by what Professor Bruno Simma describes variously as “wishful thinking,” “missionary aspirations,” and “human rights vigilantism.”

Clearly, decision-makers must make compromises, but what might these compromises entail, and what are the implications? And more importantly, how do truth commissions factor in?

**Restorative Justice**

Where trials are championed by maximalist advocates of human rights and humanitarian law, truth commissions are promoted by minimalists, who place a premium on restorative justice for societies between two governments. Because truth commissions are commonly viewed as an alternative to trial justice, and are correlated with the existence of amnesty or clemency for perpetrators, they are oftentimes seen as antithetical to the search for justice. Debates have been
frequently framed as “truth v. justice,” and the two are understood to stand in opposition. For retributivists, truth commission work is observed to be only tangential to achieving justice for the victim: without trials, there can be no assertion of rule of law or victim’s rights.

The restorative model of justice has arisen as an intellectual compromise between the absolute demands for punishment of many human rights advocates and the political complications of transitional periods. Henham (2003:81), in the context of advocating international criminal legal trials, glances at the meaning of this restorative conception of justice: “The use of the word ‘restorative’ intrinsically implies notions of ‘rebuilding’; ‘repairing’; ‘reinstating’; ‘replacing’; ‘re-establishing’….” In the context of South Africa, the traditional idea of ubuntu is parallel with restorative justice. Desmond Tutu writes, “Ubuntu says I am human only because you are human…You must do what you can to maintain this great harmony, which is perpetually undermined by resentment, anger, desire, and vengeance” (quoted in Gibson, 2002: 543). Truth commissions, if they serve to assist the community re-establish itself by revitalizing old relationships, attempt to achieve this form of justice.

James Gibson, a student of political opinion and culture, assesses restorative justice by conducting survey research in South Africa. Gibson composed and conducted in 2002 that used interview data again to assess the amnesty judgments made by South Africans based on perceptions of justice: distributive (monetary reparations), restorative, procedural, and retributive (Gibson, 2002). Using hypothetical questions that appealed to each of these ideas of justice, he came to the conclusion that amnesty was still widely unpopular, that distributive justice in the form of reparations is the most appealing, and that sincere apologies—in the interest of restorative justice—also make a difference (Gibson, 2002: 553-4). He concludes that people set a high price on fairness, and they look for this fairness is all kinds of justice. Gibson (2002) measures restorative justice with

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28 See, for instance, Martha Minow (1998).
the presence of an apology articulated by the perpetrator to the victim. He argues that interaction between the victim and the criminal, especially when the perpetrator is making an apology, to be integral to the restorative capacity of the truth commission. To him, victim forgiveness is a necessary prerequisite to restorative justice.

Gibson’s work is demonstrative of a larger effort to merge the sociological concept of reconciliation to concepts of justice. Cynics claim that the advancement of the restorative model over the retributive model is a way of disguising what is the unfortunate allowance of amnesty and indemnity for criminals in the former regime (See Wilson, 2001).

However, like the scholars reviewed above who find international legal duty for punishment of offenders, others have argued that the right to truth is embedded in international law. According to Juan Mendez, former president of the International Center for Transitional Justice (1997:261),

> With respect to the right to know the truth, even though the international community has only recently begun discussing this right, a recent meeting of experts convened by the United Nations has argued that the right to know the truth has achieved the status of a customary international law.

The right to know truth, especially in the last twenty years, has emerged as a legal alternative for punishment geared toward the realization of human rights for the victims.

Though Mendez does see truth commissions as a way of pursuing compliance with international law, he further proposes that transitional legal precedent is multi-faceted and not limited to the right to truth. The right to truth is supported by other legal norms, such as the duty to punish, to offer victims monetary reparations, and to purge law enforcement agencies of criminals (1997: 261). These legal duties are substitutable, meaning that if one cannot be achieved (for instance, punishment of former heads of state), then others should be sought after. This

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29 Gibson has conducted other studies as well (Gibson and Gouws, 1999; Gibson and Gouws, 2000). These studies come to multiple conclusions regarding social identities, intolerance, and blame attribution in S. Africa. What should be noted, though, is that there is not a consistent message of success or failure in these pieces. What we can take from them is that ethnicity still divided S. Africa, but the truth commission might be helping the society along.
understanding of international law seemingly supports hybrid systems of transitional justice, where numerous institutions are established at once to achieve different goals. This “approach” might also “serve as a way for the human rights movement to avoid self-defeatism and reject all solutions because one of them, punishment, becomes unavailable” (Mendez, 1997:263). A final implication of this consideration of overlapping legal norms is that truth and justice, as previously opined, are not mutually exclusive. Instead, truth and justice can theoretically serve to reinforce one another.

Mounting research corroborates the supportive nature of truth and justice. Popkin and Roht-Arriaza (1995) argue that “naming names” in truth commission reports is a move toward achieving accountability for criminals30 (280). Truth commissions are often viewed as a gateway to future prosecutions, as was the case in Argentina. In this way, we might understand truth commission to be an initial move in the game to counteract impunity. A study by Carsten Stahn (2001) of the newly formed UN Transitional Administration in East Timor (UNTAET) shows that more integrated, hybrid approach is possible. Multiple truth commissions within East Timor have been “developed into a justice-supportive machinery, designed to complement rather than replace national or international prosecution” (Stahn 2001:954).31 Hendy (2005) proposes such a hybrid system to deal with the crimes of Saddam Hussein in Iraq. In line with those who consider truth commissions a “third way,” perhaps they serve a phase-in function, avoiding the pitfalls of early action and allowing a convenient delay between regime change and prosecution for past crimes.

Evaluation

Though newer strains of legal research have begun to engage some the practicalities of the transitional process, by and large it has limited itself to legal-theoretic considerations that eschew

30 See also Kaye (2001).
31 This is not entirely new, as other truth commissions have supported judicial activity (e.g. Chile, Argentina, Guatemala, South Africa, and Uganda), but this is the first time that one has stated its intention to have a quasi-judicial function.
recognition of political realities. Concentration has been placed on what actions states ought to take, not what actions they do take. Where this literature makes its most significant contribution to this is in its weighing of international norms that outline the duty of states in transition. Extant international norms regarding behavior in times of transition concern political science if and when they begin to limit or expand the behavior of political actors. However, the transitional normative framework has not been examined to its full extent in any field to this point. In other words, there has been no succinct answer to the question, “How do international legal norms affect transitional regimes?”

Political scientists have begun to study the role of international norms in domestic politics (Klotz, 1995; Checkel, 1995, 1999; Cortell and Davis, 1996, 2000; Legro, 1997; Farrell, 2001; Acharya, 2004), but no where have they examined norms within the context of domestic transition. According to Ruti Teitel (2000:228), transitional justice concerns “illuminate” the connection of the legal to the political:

One place this is seen is in the connection between transitional jurisprudence and human rights law, because it is evident that the most vigorous enforcement of human rights law occurs in transitional periods.

Therefore, transitional states form a kind of theoretical laboratory where we can put norms under the microscope and measure their influence. To date, no work has entered this laboratory, though political scientists possess the tools with which to do so.

Political Science—Process and Decision-Making

All of the literature I have observed so far I do not characterize as political science, not out of an exclusionary zeal, but in order to separate theories of political processes and decision-making from
theories of legal *duty* and social *effects*.

The research described in this third section is that which has so far attempted to examine the political circumstances surrounding transitional mechanisms. It is also the branch of research most directly related to the questions posed at the beginning of this thesis, which are “What factors have led to the decision to initiate truth commissions” and “Why has this decision been made so often in recent years?” I intend to demonstrate that the conspicuous omission in current political science work addressing these questions is the influence of international norms on the behavior of transitional regimes. I will then argue that research on legal norms can be fused with political science to provide a fuller understanding of the worldwide spread of the truth commissions.

Whether one chooses to frame the emergence of truth commissions within the confines of the legal paradigm or as a piece of the transitional storyboard for the societal narrative, it could be said confidence that establishment of truth commissions has been a result of political processes. Focusing only on the legal and societal implications “runs the risk of reducing the work of the TRC to its ethical and historical functions; and of losing sight of the manner in which *political decisions* have shaped the transition process” (Norval 1999:505). Truth commissions are fundamentally political bodies, both in their foundation and their effect.

Many onlookers would have like for the TRC [in South Africa] to be above politics. But it would have been foolhardy to expect an institution that was born of political compromise, that has operated in a politically charged environment, and whose mandate includes politically loaded concepts as truth, reconciliation, and amnesty to be anything but political. (Shea, 2000:23)

Just as Bueno de Mesquita and Lalman (1992) assume that war is the outcome of a series of rational decisions, others see institutional creation of transitional mechanisms to be a result of a number of political decisions made in succession. Truth commissions have been seen as a third way, a compromise approach to transitional justice—this compromise is one that is political.

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32 Again, the one exception to this statement would have to be James Gibson, whose work is typically considered political science, but falls within all three of the presented categories.
There is a void that exists within the field of political science in regards to the transitional institutions; there is no systematized analysis of either the necessary and sufficient conditions for establishment of different mechanisms like truth commissions or the necessary and sufficient conditions for truth commission effectiveness. Hence, we commonly see scholars declaim a wooliness that surrounds truth commission work. I think that in the discussions of the politics of truth commission—which are normally featured in research as background information tangential to the true issue at hand—there is enough information to glean pieces of the process that I am trying to study. A few studies have looked specifically toward the commonalities across transitional countries to key in on the political trends that bring truth commissions into existence.

The condition that is first analyzed in conjunction with the formation of transitional institutions is the type of transition. Jon Elster (2004) creates a framework in which to arrange different types of transitions throughout history. In his model, a transition can take place following an endogenous or an exogenous autocratic regime—that is, a regime that grows politically within the state or is imposed by an external or colonial power. Additionally, transitional justice can either be instituted endogenously (by the state itself) or exogenously (by a foreign power). In additional to this politico-spatial grouping, he further separates attempts at transitional justice temporally. They can be either immediate, protracted, second-wave, or postponed. Though this classification does make sense theoretically given historical patterns, a few of its features limit its overall applicability. First, Elster is considering all transitions in historical context, dating back to Athens in the 5th Century B.C. Because of this, many of his conclusions are not time-relevant. Second, Elster does not examine many of the cases of transition that have taken place since the mid-1970s. Third and finally, he expounds hardly any generalized conclusions regarding these different types of transition and their precursors or aftereffects. In fact, Elster (2004:77) issues a rather dismal warning for science: “laws of transitional justice cannot be found.”
For an alternative and more updated analysis regarding transitions toward the end of the 20th century, we can look to influential political theorist Samuel Huntington, who distinguishes between three kinds of democratic transitions among the third wave democracies\(^{33}\): transformations, replacements, and transplacements (1995:65). Transformations occur when the government in power is stronger than its opposition, imposing change on its own rule. Replacement is when the opposition grows increasingly stronger until it is able to overhaul the old order. Transplacement features negotiation, a push-and-pull, between the government and the opposition. A transplacement, Huntington argues, is more likely to include an amnesty, which we see is many times coupled with truth commissions. While some transitions contain elements of each type, making this division somewhat blurry, there is a heuristic value to this separation.

The observation that truth commissions are many times the result of negotiation is corroborated by comparative political science. O'Shauhnessy and Dodson (1999), in a comparative study of El Salvador and Nicaragua, show that one important factor in El Salvador was concession by both the state and the FMLN. The state agreed to abolish its security forces and establish a truth commission in trade for the demobilization of the FMLN. They also show that Nicaragua was not home to the same kind of compromise because “key elites refused to ‘underutilise’ their power” (1999:114). Mixed in was also the presence of the United Nations, an external actor, in the case of El Salvador. This, they argue, is a key condition dividing the two as well. The entire transitional context, Roehrig (2002:15) argues, is shaped by points of departure decided upon in the process of negotiation: “the transition will be strongly affected by the extent to which there is intense dispute or substantial agreement between the military and the incoming government.”

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\(^{33}\) The third-wave democracies, starting in 1974, include Portugal, Greece, Spain, Ecuador, Peru, Bolivia, Honduras, Argentina, Turkey, El Salvador, Guatemala, Uruguay, Brazil, the Philippines, South Korea, Taiwan, Chile, Former Soviet States, South Africa, and Paraguay (Roehrig, 2002:12)
Second and relatedly, the “balance of power” between state and opposition forces is a factor highlighted by more than one study in relation to the presence of truth commissions (Huyse, 1995; Pion-Berlin, 1995; Sieff and Wright, 1999). Pion-Berlin (1995:88) theorizes in his comparative study of transitions in the southern cone of South America that “civil-military balance of power has much to do with the terms of the transition to democratic rule.” If the legitimacy of the ruling military is struck a blow, as it was in the Argentine case by the Falklands War, then the prospects for prosecution increase. In the Uruguayan case, the outgoing authoritarian regime and the opposition entered into negotiation “as coequals” (89). To compare to the case of South Africa, this significantly decreased the chances that prosecutions would be the outcome. Sieff and Wright (1999) add theoretical support, arguing that in the event of a complete military defeat, prosecutions are a “viable option,” whereas they are “unlikely” in the event of negotiation.

The binding nature of the negotiations has been assumed to be such an integral piece of the transitional puzzle that scholars like Jon Elster (2004) make statements such as the following:

…many of these decisions did not reflect deliberate choices among alternatives. In negotiated transitions, some options may be excluded by the outgoing leaders as a condition for handing over power. (Elster, 2004:116)

Constraints placed on leaders by military power and negotiated compromises can have a highly limiting effect on methods chosen to address transitional justice. Though this makes intuitive sense, Elster’s claim seems to be a bit of an exaggeration. Even in the cases of negotiation, leaders of the new regime still have a range of options to choose from, including the absence of response, lustration, and monetary reparations. Leaders deliberate and make decisions based on a number of constraints; the choice for a truth commission or a trial is a result of a balance of these constraints and the opportunities that still exist. To argue that negotiations make only one opportunity available is to ignore the multiplicity that exists in current transitional justice mechanisms, and to overdetermine the causation of negotiations.
The evaluation of transitional choices advanced by those who look predominantly at balance of power and negotiations could be considered a relic of the realist perspective, which assesses solely power and the immediate economic interests of actors. The realist perspective, however, tends not to pay heed to the role of norms in the transitional political landscape.

…diverse state responses do not appear to turn on a simple calculus of the balance of power. The question of whether there are public inquiries is hardly explicable in terms of ordinary understandings of political power. (Teitel, 2000:97)

Transitions are times of limbo, where the primacy of politics or law is not established. Realist political accounts have the tendency to place political considerations first, assuming that establishment of rule of law is a byproduct of whatever institutions are established. Instead of this unidirectional movement from political consolidation to legal codification, what should be visualized is a parallel evolution of each, where law and politics exist in a mutually constitutive relationship. In other words, law changes politics, and politics changes law. “Transitional jurisprudence” paves the bridge between the legal and the political, as the polity collectively searches for new definitions of both (Teitel, 2000). Amidst this liminal transitional state, Wilson (2001:5) adds,

…the law is always a form of politics by other means, as it is normative as well as merely formal, rational and self-referential. Legal meaning is enmeshed in wider value systems, and is caught between other competing normative discourses which are political, cultural, and more often than not, nationalist.

What this suggests is that when fomentation of a new order within a transitional state is being sought by the polity, norms can play a constructive role. These norms, we might speculate, do not have to emanate from within the polity alone, but can be externally driven.

In agreement is the notion that truth commission establishment is the result of ideational pressure in the form of activism. Pion-Berlin (1995:96) labels this “mass pressures” that come from human rights organizations, and Sieff and Wright (1999:3) place this under the framework of transnational advocacy networks (TANs). Pion-Berlin (1995) looks predominately at the groups extent within the country during transition, making his assessment one bound to the state level.
Sieff and Wright (1999) see the influence of human rights activism as an international factor, with groups like Human Rights Watch and Amnesty taking an interest. TANs in a transitional state can provide “quantitative measures of violent crimes”; can “name crimes through stories and testimony”; and “advocate solutions” (1999:3-4). Though this study points to evidence of human rights advocacy in South America, it does little to link the TAN to larger trends in international politics, nor does it show the way this affects decision-making within states: it only propounds a general theory of pressure through networking tactics.

An international political factor related to advocacy is that of “contagion,” or ideational demonstration from one country to another. Pion-Berlin (1995:98) notes that the “political winds” in the southern cone blew from Argentina to neighboring countries, and this helped determine the types of transitional mechanisms pursued. Though the relationship is not systematically supported with cross-national evidence, implied in the intriguing suggestion that methods for transitional justice are temporally and spatially related. In Eastern Europe, lustration was the popular choice, while 1980s South America and 1990s Africa were witness to an abundance of truth commissions. We can observe continental and an inter-continental expression of this type of diffusion in some countries of Africa: Sierra-Leone, for instance, sought consultation from Luis Moreno Ocampo and experts from South Africa in its consideration of a truth commission. However, the concept of diffusion, like that of advocacy, is not systematically analyzed; this theory is fundamentally based on anecdotal evidence, or the mere appearance of a pattern across cases.

While Sieff and Wright (1999) and Pion-Berlin (1995) specify different necessary and sufficient conditions for the establishment of truth commissions, Pion-Berlin’s (1995) is the only study that moves toward testing them in any kind of sophisticated manner. For Argentina, Chile, and Uruguay, he codes the presence of six factors as either strong, moderate, or weak.
Table 2.1 Pion-Berlin’s Individual and Comparative Effects of Independent Variables on Human Rights Policies in South America

<table>
<thead>
<tr>
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<th>Argentina</th>
<th>Uruguay</th>
<th>Chile</th>
<th>Comparative</th>
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<tr>
<td>State Terror</td>
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<td>Balance of Power</td>
<td>S</td>
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<td>W</td>
<td>W-M</td>
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<tr>
<td>LeaderPrefs.</td>
<td>S</td>
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<td>S</td>
<td>S-M</td>
</tr>
<tr>
<td>Strategic Calc.</td>
<td>S</td>
<td>S</td>
<td>S</td>
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<td>Mass Pressures</td>
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<td>W</td>
<td>W</td>
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<tr>
<td>Contagion</td>
<td>N/R</td>
<td>W</td>
<td>M</td>
<td>W-M</td>
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</table>

From this comparative analysis, summarized in Table 2.1, Pion-Berlin draws the conclusion that “legacies of authoritarianism, the terms of transition to democratic rule, and the resultant balance of power … set boundaries to political action” (103). But, he concludes, political leaders acted with great variance within their constraints, making each case particular and difficult to generalize. One might wonder what explains this variance in the behavior of leaders. Applying this to the work of Sieff and Wright, we might be find answers in the normative influence that is exerted on decision-makers, or the degree to which leaders learn from goings-on in other countries.

**Evaluation**

To conclude, most work on the determinants of truth commission initiation has relied on the domestic structures and the power-related interests of state actors to explain the outgrowth of different justice mechanisms. Only two pieces have considered the idea that pressure by advocacy groups and the informational spread among different nations affects the choices of decision-makers. But these pieces have been limited in scope, not extending beyond the Latin American experience or presenting a comprehensive amount of empirical evidence. This paucity of research on the source of new ideas for policy, and how they might find their way into the decision-making environment...
leaves open a gap in the literature that should be investigated. This opening for research becomes especially important when we consider that the transitional environment, as some critical legal theorists like Ruti Teitel have argued, is prone to normative flux. New ideas flood in during times of change, and for this reason, examining transitions might allow us to demonstrate how particular ideas are magnified and institutionalized.

Concluding Remarks

This chapter has provided a comprehensive view of literature on transitional justice and its attendant mechanisms. Viewed as a whole, current literature on transitional justice in general, and truth commissions specifically, is remarkably silent regarding the necessary and sufficient conditions that lead to the choice of a new regime to establish a particular type of justice institution. Most of the psycho-sociological and legal research on this topic has fallen into the trap of abstruseness, appraising esoteric theories of justice and truth. The pocket of literature that objectively evaluates the establishment of transitional institutions proposes two divergent theories regarding political inputs. One is based on power, honing in on the political realities and insurmountable constraints faced by new regime leaders; these include concessions made in negotiation and awareness of military strength. The other, drawing on the spread of legal norms to transitional countries, has not passed the level of pre-theory. Some have provided accounts of existing legal norms dictating what leaders ought to do in such times, but none have systematically studied how these norms spread to leaders over time. The remainder of this analysis will be devoted to bridging these two theories of transitional behavior. It could be, and it seems reasonable, that both the spread of norms and internal political factors exert influence over the choices of leaders. The questions that must be asked are “How are these two related?” and “Which better explains the spike in the number of truth commissions that have been established over the last decade?”
In the upcoming chapter, I isolate and define an international norm of behavior that has been articulated to leaders of transitional regimes. The *transitional restorative norm*, I contend, grew out of a collision between human rights norms being spread by transnational activists and the political predicament caused by elections after the fall of the junta in Argentina. Fully flowering in South Africa, this norm would come to be advocated by a transnational network in the mid-1990s, and as a result, investigatory commissions began to splay out across the world.
CHAPTER 3

WHAT’S IN A NORM? A HISTORICAL ANALYSIS OF THE DEVELOPMENT OF TRANSITIONAL RESTORATIVE JUSTICE

The central question guiding this project, to reiterate, is inelaborate: What has lead to the rapid growth of truth commission establishment in recent years? As was shown in Chapter 2, a traditionalist response to this question is simply “the nature of the transitional situation.” Though it makes intuitive sense, an evaluation of basic facts makes this answer seem unsatisfactory. Since the emergence of the nation-state system in 1648 with the Treaty of Westphalia, there have been 31 truth commissions\(^{34}\), and they have all been established since 1983. Is it that political transition, and its accompanying difficulties, is a phenomenon isolated to the last two decades, or is it that new ideas have materialized and inspired new policies during this time?

It is my contention that the in the latter part of the 20\(^{th}\) century, political particularities of certain transitional states melded with international norms of behavior to produce a new political-legal institution\(^{35}\), the truth commission. Once this institutional innovation took place, decision-makers in political transition, like car-makers confronted with new energy-efficient engines, began to build their own specialized version of these institutions. The process of political mimicry and evolution continues today, informed by a missionistic normative advocacy network supportive of these developments.

To demonstrate that the uniqueness of the transitional dilemma is not limited to the last 25 years--and thus not a complete explanation for the newfound popularity of TCs--I intend to trace the evolutionary progress of a transitional justice norm from the times of ancient Athens to the present day. In brief, the norm of transitional justice, with hints in European history, come to the

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\(^{34}\) See Chapter 4 and Table 4.2.

\(^{35}\) It is important to note, to avoid confusion, that I am making use of the term institution in a way that simply denotes a body with rules and procedures. Sociologists typically use institution to mean something like a norm. For a discussion, see Finnemore and Sikkink, 1998: 891.
Before the measures to hold Nazi leaders accountable after World War II, after which it endures ambivalence during the Cold War period. With a flurry of human rights activity beginning in the late-1970s, the transitional justice norm divided, and assumed two forms: retributive transitional justice and restorative transitional justice.

Then, drawing heavily on the research program outlined by Finnemore and Sikkink (1998), I will follow the development of the restorative transitional norm through the present day. I will use a historical methodology to pinpoint critical junctures along the way, where political opportunities merged with innovative ideas to produce new policies. The normative offspring of these points in history, I will argue, have proven influential for decision-makers in recent political transitions. The end of this chapter will then suggest ways that lessons can be extracted from this qualitative assessment and applied to a theory of decision-making in transitional countries. But before I embark on this passage through the history of transitional justice, I will first summarize the contributions of recent work on international norms. To study norms, it is first necessary to understand what they are, and consult modern scholarship to determine how to pursue appropriate research.

Research on Norms

Whenever a difficult decision must be made, people make deliberations before they act. These deliberations incorporate both the situational circumstances and appropriate behaviors that commonly apply to these circumstances. Take, for instance, the decision of how to punish a child who broke a vase. A parent will take into consideration facts of the offense, which made include the following: the age of the child, whether he/she was intentionally deviant, the degree of annoyance caused, and perhaps even the cost of committed act. But at the same time, the parent might consider what is commonly considered acceptable in the situation. Throwing the child out of window would certainly not be in the list of accepted behaviors; defenestration is both illegal and
unwarranted. Spanking, calling a timeout, or issuing “a stern talking to” are more accepted behaviors, and those more commonly practiced. These implied rules of acceptable behavior are called norms, and they swarm around us. The popularity of each will vary depending upon a multitude of factors, including what is being promoted at the time. In Western culture, for example, spanking use to be a common response, but the violence of the behavior has more recently been called into question. This norm has been forced to compete with more passive norms, such as timeout.

Norms apply to all areas of decision-making, even in political situations concerning the behavior of nation-states. Both the theoretical makeup and the invisible activity of norms in international politics have moved center-court in epistemological debates in the field of political science. The intellectual attention devoted to norms, understood generally to be patterns of behavior, resembles the early-20th century commotion over the nature of the atom. Norms and rules, like atoms of behavior, follow laws of attraction and repulsion, and in their constant motion around us, collide and overlap. But the genesis of these norms and the way in which they come to modify human behavior is disputed both in international relations and comparative politics.

The recent burgeoning scholarship on norms could be framed as a new movement in political science, but it is more of a resurgence of pre-behavioralist\(^{36}\), qualitative studies of political events (Finnemore and Sikkink, 1998). Norms can be defined in different ways, but most definitions hold in common the concepts of inter-subjectivity and properness of certain behavior (see Krasner, 1982; Legro, 1997; Finnemore and Sikkink, 1998; Keck and Sikkink, 1998; Cortell and Davis, 1996, 2000). That is, norms outline broadly shared understandings of what people ought to do. I adopt the definition set forth by Cortell and Davis (2000:68-9) in their comprehensive research note role of international norms in domestic politics: norms are “prescriptions for action in

\(^{36}\) Behavioralism, in short, is the notion that political actions follow laws of cause and effect. Behavioralism has been coupled with the use of statistics to model causality of political events.
situations of choice.” Norms, understood as such, exude other characteristics. First, they may either “regulative” or “constitutive,” meaning that they can either limit the range of behavior or create new forms of behavior (Finnemore and Sikkink, 1998:891). And second, they are “continuous rather than dichotomous, entities; they do not just exist or not exist but instead come in varying strengths” (Legro, 1997:33). What follows from this is that norms can be conceptualized to have progressive or regressive stages of development. One form of progression that can take place is the embedding of a norm into a “regime.” Regimes are “systems of norms and decision-making procedures accepted by states as binding in a particular issue area” (Donnelly, 2003:127). Regimes, one could argue, are a collection norms made concrete through regularized procedures.

In the preceding chapter, I framed theories of truth commission establishment in terms of competition between political realism and normative concerns. This, however, is a stylized categorization that glosses over highly nuanced ontological and methodological disagreements in political science, and for this reason, I intend to clarify and further elaborate upon this dichotomy. In the field of international relations, the schools of realism and liberal institutionalism ascribe a restricted role to international norms. Both conceptualize norms only as patterns of cooperation between states within predetermined structures (Checkel, 2001). These schools clearly do not suffice when generalizations of state domestic behavior are sought, nor when attempts to describe domestic compliance with international norms are made.

To examine the nexus between domestic and international politics, the assumption of unitary, black-box states must be relaxed, and the interests and identities of domestic actors must be assessed. Yet, even after assumptions regarding the impenetrable structure of states are jettisoned, divisions remain. One such division is that between rationalism and constructivism. Rationalism

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37 For an example of realism, which describes the structure of international politics as anarchic, see Waltz (1979). For liberal institutionalism, which finds politics between nations to be better described by a situation of complex interdependence, see Keohane and Nye (2001).

38 See Gourevitch (1978) and Putnam (1988) for examples of domestic-international combination theories.
relies on the unchanging reality of political structures, even if these structures include those internal to states. Norms are the “political facts” that act as rules of the game for decision-makers (Zehfuss, 1999:4). Constructivism, on the other hand, militates against this static view by framing reality as an amalgamation of subjectively shared meanings (Zehfuss, 1999). To constructivists, structure is “determined by the distribution of ideas” (Finnemore and Sikkink, 1998:894). In this formulation, norms comprise the whole of international structures because our perception of the environment is equivalent to what is. Constructivism, defined this broadly, is an elusive approach, one difficult to pin down precisely, because it has come to signify myriad different epistemologies.39

Turning to comparative politics, the same debate is hashed out between historical and rational-choice institutionalists, though the conceptual positions of each are easier to distinguish. It is important to note that, due to interdisciplinary intersection, political scientists in these fields use the term institutions to indicate something very similar to norms (Finnemore and Sikkink, 1998).40 Rational choice institutionalists conceive of norms as rules that outline solutions to collective action problems; norms, then, shape interactions between actors in situations where preferences are pre-defined. This school approaches empirical problems by defining game-theoretic equilibria and demonstrating the role of norms in the formation of strategic resolutions.41 Historical institutionalists, on the other hand, view norms as patterns of interaction that shape preferences of political actors in ill-defined circumstances. The method they employ to study norms is historical process-tracing, where “critical junctures of choice become essential for broader understanding of political history” (Thelen and Steinmo, 1992:27). Decision-makers, the actors behind these choices,

39 According to Zehfuss (1999:6), “In this representation any approach that challenges the rationalist assumption of unchanging facts is subsumed under the category of constructivism. This covers a range of approaches and therefore the constructivist category is then often subdivided, for example into modernist and post-modern, or conventional, critical, and postmodern.”

40 The authors do, however, state, “one difference is that institutions are collections of standards, whereas norms are singular standards” (891). Despite this discrepancy, in this discussion I will substitute the term “norms” for “institutions” to maintain consistency.

41 For an example, see Bates, et al. (1998) for a group of studies called “analytic narratives,” which qualitatively examine problems this way.
are both agents and subjects of political evolution: they may be affected by the political facts, but they can also change the political landscape with their unique behaviors. Historical institutionalism, in the field of comparative politics, is the analogue of what some IR theorists refer to as social constructivism (See Landolt, 2004 and Checkel, 2001).

The central proposition supported by social constructivists is that ideational norms find their way through international politics, trickling down into and become internalized within the identity and behavior of domestic political actors. The analyses that operate in this paradigm have been criticized for fallaciously begging the question: because the growing presence and adoption of a norm alone is taken as evidence of the norm’s impact, the constructivist assumption doubles as its empirical proof. In Legro’s words (1997:33), this “failure to conceptualize norm robustness independent of the very effects attributed to norms” leads to “tautology.”

The upshot of this treatment of norms is failure to comport with scientific standards of research. In addition to the charge of tautology, constructivist research on norms previously failed to specify and operationalize the channels through which norms travel from the international spectrum to the domestic sphere (Checkel, 1999). Rational-choice accounts more clearly elucidate such processes, arguing that norms, in addition to other structural political determinants, serve as constraints on decision-making. However, rational choice studies of norms have not escaped criticism either. Even when the routes of normative internalization are studied comparatively, there has been a general tendency to pass over negative cases of the dependent variable (Legro, 1997; Checkel, 1999, 2001). In other words, the following question has been overlooked: “What explains why some states do not internalize norms, when others do?” This creates an affinity toward observing norms “that worked,” or that seemed to significantly alter the decision-making atmosphere (Legro, 1997:33).
For a scientific study to be considered methodologically and logically sound, selection on the dependent variable must be avoided (Most and Starr, 1989). Explanation of negative cases, where the observed event does not take place, usually necessitates theoretical corollaries, or hypotheses regarding alternate causal mechanisms for the same political phenomenon. For instance, if one where attempting to explain the emergence of international norms regulating human rights observance, it would not be enough to speculate that the overwhelming reception of human rights in North America and Europe shows that ideational norms have an independent effect on state behavior. One must also show why the Middle East and Asian countries have been more recalcitrant in their adoption of human rights standards. The explanation, in some cases for instance, might be cultural: polities within these regions are more communitarian and tend to view liberalized theories of rights with disdain. So, an analysis that finds power in the presence of norms would end up having to rely on cultural arguments to provide a full account.

Studies of norm compliance have begun addressing the question of “why some norms are more influential than others in particular situations” (Legro, 1997:33). Two strains of this literature have emerged; one focuses on the role of international norms at the international level, and the other stresses the role of international norms at the domestic level.42 This process of norm adoption in the domestic sphere has been referred to as both “norm transplantation” (Farrell, 2001) or “norm instantiation” (Lindeman, 2006). Two main foci have been magnified in these studies: the salience of the norm in question and the structural context (Cortell and Davis, 2000). Klotz (1995) finds that the both the structure of Congressional politics (specifically moderate Republicans’ desire for reelection) and the rising popularity of the anti-racism norm in the United States led to its choice to sanction South Africa during the apartheid regime. Legro (1997) studies the “specificity, durability, and concordance” of “prohibitory norms” during WWII; these three characteristics are a form of

42 Because this study is driven by question regarding events within countries facing transition, I will limit the review to the latter
operationalization for the salience of the norms. Cortell and Davis (2000:73) make the argument that five factors contribute to the salience of a norm: cultural match between the society and the norm; rhetoric supporting the norm; domestic interests; domestic legal institutional adoption; and international socialization.

Ostensibly, norm salience in domestic politics is affected by diffusion, which has also received a good deal of attention in political science. Diffusion can be defined as the “transfer or transmission of objects, processes, ideas and information from one population or region to another”; diffusion occurs when an “innovation is communicated through certain channels over time among members of a social system” (Checkel, 1999:85). Diffusion, properly defined, does not necessarily include active promotion, or agency, though there is evidence that agency has the effect of spreading norms.

Martha Finnemore (1993), in an influential study of UNESCO, demonstrates how the UN, an external agent, has acted as an agent of diffusion with regard to science policy. She concludes that states are influenced by intersubjective understandings championed, in some cases, by international organizations. Keck and Sikkink (1998) agree, but situate the agency of international organizations within larger actors called transnational advocacy networks (TANs), which combine international organizations, members of government, and non-governmental organizations. Research on agency moves beyond “mere diffusionist explanations” because it “incorporates choice” and not simply demonstration or contagion. They make the point clear in their seminal piece on activism that agency does not alone create norm observance, but interacts closely with political structures within states.

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43 This social definition should be compared to that of war studies (Most and Starr, 1980), democracy (Starr, 1991; Starr and Lindborg, 2003) and terrorism (Midlarsky, Crenshaw, and Yoshida, 1980; Hamilton and Hamilton, 1983). These works define diffusion as a kind of contagious spread of a particular phenomenon among regions. I use the terms “contagion” and “diffusion” interchangeably.
The structure of the state and its amenability to norm compliance is the remaining variable emphasized by researchers, and according to Checkel (1999), it intervenes between diffusion/agency and norm instantiation. He delineates four types of state structures: liberal, corporatist, statist, and state-above society. In this order, these four range on a continuum from highly constrained elites to elites that are mostly unconstrained. If the state is liberal, then whether the elites are versed in the language of the norm will have little impact over the norm’s eventual acceptance, whereas in a state-above-society, elite internalization of the norm will make all the difference. Moving from left to right on this continuum, normative change will start as bottom-up, meaning that it is driven by the behavior of the civilian groups. The more powerful the elites in society, the will likely change will take on a top-down character.

As these studies of domestic compliance continue to advance, the conceptual separation between rational-choice institutionalism and social constructivism grows more and more nebulous. Theorists are moving toward integration of these two schools of thought. Because political behavior ostensibly involves both structured political circumstances and choices based on understandings of the environment and new ideas, theories become more explanatory when they engage both.

…processes of social construction and strategic bargaining are deeply intertwined…a staged theoretical treatment of this relationship between rationality and social context could run either way: one could model rational choice as producing social knowledge as easily as one could model social context as a background for rational choice. (Finnemore and Sikkink, 1998:911).

Pinpointing whether normative construction of preferences or whether the rules of the political game are prior is an extremely difficult undertaking. One might then conclude that the best approach is to examine how they two interrelate in historical situations.

The norms literature reviewed to this point gives us a description of the theoretical components of norms; the role of norm salience, agency, and domestic structures on eventual norm empowerment; and the pitfalls of norm research, including absence of negative cases and omission
of alternate explanations for norm compliance. But, one facet that remains missing is a discussion of how one might, through analysis, isolate a particular norm in the interest of studying its effects. This intention of this portion of the study is to demonstrate the normative dimensions of transitional justice, but what approach might one take to accomplishing this scientifically through research?

Martha Finnemore and Kathryn Sikkink (1998) develop a program for the study of norms, which explicitly outlines three stages within a norm’s existence. The “life cycle” of a norm travels from “emergence and agreement” to a “tipping point,” which is then followed by a “critical mass.” Fortunately, to support these thick concepts, the authors provide operational directives for how to situate a norm within each of these three stages. They advocate process-tracing, much like that practiced by historical institutionalists, to shed light on each nodal point of normative growth. At the first level, what “we often see is a process by which domestic ‘norm entrepreneurs’ advocating a minority position use international norms to strengthen their position in domestic debates” (1998:893). The initial growth of a new norm will feature the work of motivated individuals searching for application of international norms in domestic environments. For a norm to move into its second stage, “it must become institutionalized in specific sets of international rules and organizations” and “more countries begin to adopt new norms more rapidly with less domestic pressure…” (900-902). We can extrapolate from this that the involvement of international organizations in the spread of the norm is evidence that it is approaching a tipping point. Finally, for a norm to reach a “critical mass,” approximately one-third of states in the international system” accept its terms. At this node, “norms become so widely accepted that they are internalized by actors and achieve a taken-for-granted quality” (901-904).

44 It is at this point, when a norm is coupled with sets of rules, procedures, and advocacy, that we would begin talk of a “regime.”
Adopting this theoretical framework, and citing work by legal scholar Ruti Teitel, I intend to trace the growth of a transitional justice norm from 5th Century B.C. Athens to the present day. Though norms regarding transitional justice have existed for thousands of years, they were in a primordial state until after World War II, when international actors again considered how to deal with abusive leaders. Toward the end of the Cold War, it will be argued, a new transitional justice sub-norm emerged in response to a spate of problematic domestic transitions. After the South African post-apartheid experience, this sub-norm, restorative transitional justice, would reach a tipping point, becoming institutionalized through three different processes: international legal definition, transnational advocacy, and regional diffusion. Evidence from the turn of the century hints at the presence of a critical mass, where this norm became presumed. In accordance with the reviewed works on norms, emphasis will be placed on the ways in which norms interact with political circumstances, and the nexus between actors’ preferences and the rules of the game. I will also examine, as Legro suggests, why some norms, in the transitional situation, are more widely accepted than others.

A Meta-History of Transitional Justice

Athenian democracy, the cradle of and inspiration for the culture that gave the world drama and philosophy, began to slide into imperialism in the late 5th Century B.C. Athens sought to conquer Sicily in an extravagant demonstration of expansionism, and failed shamefully in 415. As a result, “in the summer of 411, the oligarchs staged a coup and terrorized the assembly into abdicating its powers to them” (Elster, 2004:7). The subsequent rule of the Council of Four Hundred was but a flash, lasting only four months. Following this four months, democracy was re-installed, and justice was exacted upon the oligarchs. Many were subject to “relentless prosecution,” and still more “lost their political rights” (Elster, 2004:8). Further military defeats in 405 gave way to
another oligarchic rule under the Thirty Tyrants, whose rule was one of reprisal and blood. Democrats were exiled to Piraeus, where they gathered forces and overcame the Thirty Tyrants in 403. In order to prevent the festering of hatred upon the democrats return after victory, Sparta constructed the terms of an amnesty for all who supported the Tyrants. Victims of the conflict were encourage to move on for the sake of the city (Booth, 2001; Elster, 2004).

What we witness here is the origins of both retributive transitional justice and restorative transitional justice (Elster, 2004:21). Retribution, which took place in a city still divided along a cleavage in political ideology, was only to cause future conflict. Efforts at limited retribution and amnesty in the second transition was meant to eradicate this problem. Even in ancient transitions, the potential instability caused by prosecution of the former regime posed challenges, and an external power, willing and able to limit the disruptive force of vengeance, took action to promote reconciliation.

Transitional justice would, after the Athenian case, lie dormant for over 2,000 years. The Declaration of Breda, issued by Charles II of England on April 4, 1660, promised former enemies of the monarchy that no harm would be done to them after its restoration; this was signed into law the day after his resumption of the throne with the Bill of Oblivion and Indemnity (Elster, 2004:49). After two monarchic restorations that would take place after the ousters of Napoleon in 1814 and 1815, Louis XVIII gave the Cambria Proclamation, similarly guaranteeing the safety of Napoleon’s supporters. The French government would go even further, providing terms for the provisioning of property confiscated during the civil wars (Elster, 2004:49). In both of these cases, like that of the second Athenian transition, victor’s justice was limited by awareness of the political ramifications of entrenching divisions in the populace. Though the seeds of transitional justice were sown in these historical examples, the legal precedent formed as a result was virtually non-existent.

Acknowledgement of the necessity for justice in transition would halt again, to be resumed in the
20th century.

Not until the atrocities that would be committed in a newly emerging technological warfare would transitional justice again become a concern. The heinous crimes committed by the Nazis in World War II paved the way for the establishment of international law as we know it today. According to Ruti Teitel (2000:73), the “period immediately following World War II was the heyday of international justice.” The type of transitional justice pursued was a direct response to the character of the war: because the war was fought amongst allied nations, the legal response was collective and organized multilaterally. “National justice was displaced by international justice” (Teitel, 2000:72). The aim of justice shifted from economic reparations, which were rightly rejected because of the legacy of the Treat of Versailles following WWI, to individual criminal accountability. A newfound “commitment to individual rights” (Teitel, 2000:74) would extend to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Genocide Convention (Bass, 2000; Teitel, 2000; Elster, 2004). This would be the groundwork for the “human rights regime” (Donnelly, 2003:136). Simultaneously, the transitional justice norm was born, and its legacy of punishment, decried by some as victor’s justice, would extend to the post-Cold War period. However, this form of transitional justice, featuring the execution of military officers, to this day has not been emulated, apparently an artifact of the world’s ugliest war and what was a decisive international victory against a great power.

In Southern Europe, three countries began the third-wave of democratization theorized by Huntington: Portugal and Greece transitioned in 1974, and Spain transitioned in 1976. The response of each country varied. Portugal “set in motion a zigzag of purges and counterpurges” of officials, some of whom went into exile and others of whom landed in jail (Elster, 2004:61). Greece embarked on a complicated plan of “dejuntaification,” which replaced thousands of military personnel and brought civil suits against hundreds of military police, but ended “ambiguously”
Finally, Spain passed the Amnesty Law of 1977, which set in motion a national policy of amnesia. The lack of consistent response shows that the normative atmosphere was not consistent. Cold War bipolarity brought with it lack of international interest in justice for intra-state conflicts, and national responses were atomistic.

Up to this point, in what Teitel (2000) labels Phase I of the transitional justice norm, no clear-cut norm of behavior existed regarding what to do in times of transition. The normative outcroppings of the Nuremberg trials led to only to diluted retributive transitional justice in the form of purges and weak national trials. The political realities faced by leaders in transitional regimes were apparently stifling, and international assistance was nowhere to be found. It seemed the rights of individuals, vanquished by war and authoritarianism, would continue to be discarded. However, the human rights regime was concurrently beginning to make advances in the 1970s. By 1975, according to Donnelly (2003:130), the human rights regime had moved from “declaratory” to “promotional,” meaning that activism was making inroads into politics, and networks were being formed. The transitional justice norm was about to be revitalized by the human rights network—this revitalization would take place in Argentina.

Norm Emergence—Argentina and South Africa

Argentina

In 1976 to 1983, a military regime led by President Jorge Videla waged a “Dirty War” in Argentina. Choosing targets based on the ideological precepts of national security and free-market capitalism, the Argentine junta disappeared and murdered more than 10,000 to 15,000 people, and created what is commonly held to be the exemplar state of terror and repression (Pion-Berlin and Lopez, 1991; Ocampo, 1999). “The state inflicted human rights abuses were scattered and, with a kind of Orwellian logic, the agents of the military government seemed to strike arbitrarily…” (Pion-
Berlin and Lopez, 1991:64). Though the government founded the Permanent Assembly of Human Rights in 1975, relatives of victims were regularly denied writs of habeus corpus, but US Embassy and OAS officials could only suggest that they futilely continue to seek them (Simpson, 1985). This blatant denial of civil rights by the military regime was not a tactic restricted to Argentina: neighboring states of the southern cone of South America, Chile and Uruguay, practiced similar forms of authoritarian repression.

The abuses of these regimes, however, were not beyond the reach of the global human rights regime. In fact, a transnational advocacy network combining elements from both within and outside the country began to take shape. In response to a group of women who persistently sought writs from the government, the Ministry of the Interior “set aside a small office for them so that their cases could be ‘processed.’ In fact, processing meant that the cases would be ignored” (Simpson, 1985:156). However, the women who began meeting in that office would form the Madres de la Plaza de Mayo, a group dedicated to learning of the whereabouts of its family members. The Madres began demonstrating in the very public Plaza de Mayo as soon as April 13, 1977. Though their protests were fraught with danger, the Madres donned white scarves and made their grievances vocal. Initially thought to be insignificant, the government would take notice of the Madres, quashing protests with government forces and reactive disappearances. The Madres, however, stayed the course, protesting every Thursday. The Permanent Assembly for Human Rights, established in 1975 under Raul Alfonsin, instituted a “fact-finding force that would become the basis for further probings” (Ocampo, 1999:23).

This bottom-up pressure for human rights recognition that was being applied by the Madres and other human rights groups was coupled with that of the international community. “The country’s human rights groups were force to act in appalling solitude, and only international backing spared them from being eliminated (Ocampo, 1999:24). In 1976, Amnesty International conducted
a report of the actions of the government; it detailed the specifics of the junta’s affront to civil and political liberties, and it urged action by the world. Amnesty’s widespread efforts to promote human rights in South America would reverberate in actions by international organizations, government officials, and private actors. “International human rights offices were flooded weekly with reports of the abductions, murders and disappearances of a diverse mixture of citizens…” (Pion-Berlin and Lopez, 1991:64). The Carter Administration, having just won an election in 1976, would immediately usher in a US interest in human rights observance in Argentina. Only one month after Carter took office, Cyrus Vance announced to the Senate Foreign Affairs Committee that the amount of military aid to Argentina would be slashed until the brutality within the country subsided (Simpson, 1985). Texas Harris, the US ambassador to Argentina, acted as the “eyes and ears” for Jimmy Carter: he took time to field the complaints of the Madres and other individual citizens who were being targeted by the government (Simpson, 1985:269).

The outcry by the NGOs and the Carter Administration’s threats to the junta concerning the general human rights atmosphere in the country were coupled with an international demand for justice in the South American states under authoritarian rule. On December 20, 1978, the UN General Assembly passed through Resolution 33/173, “calling on governments to investigate and punish those responsible for disappearances and calling on the UN Commission on Human Rights to take up the matter” (Lutz and Sikkink, 2000:637). In 1979, the Inter-American Human Rights Commission arrived in Argentina to shut down detention camps (Ocampo, 1999:24). The UNCHR installed the UN Working Group on Disappearances, which in 1981 publicized evidence of widespread disappearances in ten different Latin American countries but which highlighted the southern cone of South America. The UN’s call for justice, fixed within a larger concern for human rights, reflected the Nuremberg legacy of retributive justice for tyrannical rulers—that is,
investigation and punishment. In this respect, the global human rights regime, or transnational action network, was actively propping up the Phase I (post-World War II) transitional justice norm.

As evidence of human rights abuse continued to amass at the hands of the concerned global community, private actors would also take it upon themselves to participate in the cause. Toward the early 1980s, “reports of serious human rights violations in Argentina, objective and well-researched, began emerging in Britain and elsewhere” (Simpson, 1985:360). Newspapers like the New Statesmen ran articles to publicize the plight of citizens within Argentina. In 1982, Missing, an American movie about a father trying to find his son disappeared by the Chilean government, premiered to sold-out crowds in Argentina (Simpson, 1985). The initial work of human rights advocates, followed by US governmental pressure, and given direction by UN and its supporting institutions, had now formed an intricate web of pressure that began to wear down on the Argentine military government. Claims for rights were piling up, creating a welt on the Argentine body politic. The junta was sensitive to the demands and the spreading information about the maltreatment of its citizens. After all, this was a regime that was welcomed and supported by the international community when it came to power over the Peronists in a coup, and it desired to be viewed as a bastion of democracy (Simpson, 1985). However, the unrest created by the spread of information was not enough to alone lead to the junta’s demise. A window of opportunity would have to be opened before human rights claims would be observed by the government.

This political opportunity was created by the Falklands War in 1982. The military, in search for a way to reaffirm a “civic-military alliance,” which grew tenuous following an immense protest under the leadership of unions opposed to the government’s control of the economy, found an answer in military conquest in the Falkland islands (Ocampo, 1999:32). The junta challenged the dominion of the United Kingdom, appealing to cultural history and winning over much of the Argentine public. Margarent Thatcher responded by sending the British navy to the islands, to the surprise of many
observers, and the Argentine military effort was dismantled with defeating quickness. This sent the polity and the ruling regime into a tailspin: “the Argentine people took less than three months to turn from near-hysterical support for the invasion of the islands to an outright contempt for the leaders who lost the war with Britain…” (Simpson, 1985:330). The last strain of legitimacy, which the military sought to artificially buttress with a war effort, was dissolved.

During the brief war, which lasted less than two weeks, the British military captured Carlos Astiz, which would lead to an interesting international legal dilemma. Astiz, who for years had led the arm of the military responsible for disappearances, was now a British prisoner. The international legal community, seeing a prospect for action, insisted that Britain bring charges against Astiz in court to militate against indemnity for the junta leaders. Citing the non-derogable, binding nature of the Third Geneva Convention—which had been signed by both Argentina and the UK in 1949—authorities argued that it was a “crime to torture people in an internal armed conflict, and that prosecutions were open to any country under the terms of the Convention, regardless of where the crime was committed” (Simpson, 1985:354). In line with this understanding of *pacta sunt servanda*, international lawyers contended that Britain was under legal obligation to prosecute Astiz. Ultimately, the British government would dodge this obligation, striking a blow to the Nuremberg legacy of international justice for crimes against humanity perpetrated by state leaders. Again, the transitional justice precedent established by World War II trials was not upheld.

In the wake of the Falklands War, the military regime was in a crisis situation. On December 16, 1982, hundreds of thousands of people marched in Buenos Aires in support of democratic rule (Simpson, 1985:369). Even so, many military leaders remained steadfast, believing “that there should be at least another four years of military rule before it would be safe to hand over power to civilians” (Simpson, 1985:369). Junta leaders had not yet internalized the importance of human rights, necessarily; instead, they were concerned about continuing in the same direction in
the interest of national security and avoidance of internal war. However, finding the probability of loss to be inevitable, ruling president Reynaldo Benito Bignone made the controversial decision, in the face of dissent by military factions, to announce that democratic elections would take place by the end of 1983 (Simpson, 1985:376). To ensure the impunity of its leaders, the junta declared an amnesty one month before the election took place (Ocampo, 1999). The following multi-party election would be partially decided by candidates’ stances on this amnesty provision. Raul Alfonsin of the Radical Party, a proponent of human rights who had led the government’s only human rights commission, promised to ignore the amnesty and mete out trial justice to the former military leaders. Italo Luder, the Peronist candidate, declared that he would uphold the amnesty. Largely on the back of his promises, Alfonsin was elected president, and his first action was to draft a law nullifying the amnesty (Simpson, 1985; Ocampo, 1999; Elster, 2004). Democratic elections, it seems, served as an entry point for those that subscribed to both human rights, and retributive transitional justice, norms; Alfonsin was elected by supporters of justice for criminals against humanity.

Once in power, Alfonsin found himself in a bit a quandary. Though the transition was not facilitated by a negotiation, the power of the military was still palpable, and civilians had not gained full control of the polity. Alfonsin would have to renege on some assurances he made in his campaign. According to Jose Zalaquett, “In Argentina the president aimed too high. As a result he faced a backlash [by the military]…” (quoted in Shea, 2000:79). Conducting criminal trials, which the public desired, immediately would have alienated a still-powerful military and created the potential for reversion to civil war. To compound the problem, human rights groups like the Madres continued to demand “the truth” about the fate of their relatives. Staring down both the structural constraints of the situation and the normative demands of his human rights constituency, Alfonsin established the National Commission on Disappeared People (CONADEP). This would serve as the first truth commission as we know them today: after hearing testimony from 50,000
victims, CONADEP published a report entitled *Nunca Mas*, which was highly publicized (Ocampo, 1999; Hayner, 2001).

Whether this was viewed as simply a delay tactic by a president ultimately desirous of trial punishment (which would later be unsuccessfully pursued) or if this was viewed as an end in itself, the commission would mark the beginning of Phase II of transitional justice (Teitel, 2003), where a balance is struck between retributive justice and impunity for human rights abusers. In this phase, the impracticalities of trial justice of the Nuremberg sort formed a dialectic with the wish for peace in divided countries. The truth commission emerged as an alternative strategy to trials, “a bureaucratic response to bureaucratic murder” (Teitel, 2000:77). Further, “there was a move away from the Phase I focus on universalizing judgment to a focus on rebuilding political identity through rule of law, premised on local understandings of legitimacy” (Teitel, 2003:71-2). The truth commission, the representation for a new normative branch of transitional justice, would spread like political pollen to neighboring Latin American states like Chile and Uruguay, which later formed their own versions of the institutional inquiry in response to military regimes (Pion-Berlin, 1995).45

In this detailed description of the Argentine transition, and the situation that the newly elected president found himself in, both the normative environment and the political structure were as instrumental as they were intertwined. Establishing primacy for one or the other is challenging. International human rights norms regarding accountability were domestically instantiated, or given political expression, by groups like the Madres in the 1983 elections. Alfonsin was constrained by this activism, but the power of the military also constrained his actions. One might make the rational choice argument that human rights norms simply served as rules for what to do in a bargaining process shaped by political conditions and pre-determined preferences. However, the

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45 This is not to overstate the similarities between the political circumstances in those countries. The truth commissions in Chile and Uruguay were established in negotiations, and included recognition of amnesty provisions; however, the mere fact that such truth commissions emerged so shortly after the one in Argentina suggests a demonstration effect. For a discussion, see Pion-Berlin (1995).
“game” and the preferences of the actors themselves were changed by pressure applied by international norm entrepreneurs. For instance, the junta leader might never have declared an amnesty without knowledge of the intention to eventually prosecute, which was promoted by international organizations. The conclusion to be drawn is that, at this critical juncture in the development of transitional justice, norms exerted influence over both the structure and the outcome of the situation. First forged as a new alternative in response to human rights demands both from the international community and the Argentine selectorate, the restorative legal norm would not be fully defined until the South African experience.

South Africa

Where the Argentine transition could be categorized in the Huntingtonian sense as a replacement, where the democratic government overpowered the military regime, the South African transition was more of a transplacement, a result of negotiations between the ancien and the new regimes. Both transitions were, on the other hand, endogenous, meaning that they were overseen by political participants from within the state. South Africa was a unique case where the ruling apartheid regime, under intense pressure from the international community in the form of economic sanctions, entered into negotiations with the then-banned African National Congress (ANC). In the early-1990s, a multi-party negotiation process began, and the issue of how to address human rights abuses under the racially unequal government was the primary focus. Many compromises between two radically different positions: the National Party sought “indemnity from criminal prosecutions through an amnesty agreement” (Graybill, 2002:59), whereas the ANC preferred the option of “Nuremberg-like trials” (Boraine, 2000:13). However, the ANC was fully aware of the difficulties that might result from such an approach. To quote future president Thabo Mbeki,

Within the ANC the cry was ‘to catch the bastards and hang them.’ But we realized that you could not simultaneously prepare for a peaceful transition. (cited in Boraine, 2000:13-4)
As a result, an amnesty provision was included in the interim constitution of 1993\textsuperscript{46}; this provision would then dovetail into the creation of the Promotion of National Unity and Reconciliation Act passed by the Government of National Unity in 1995 (Graybill, 2002).

What would emerge was a quasi-judicial truth commission with the task of determining if applicants for amnesty committed crimes against humanity for political reasons, which would be excused, or for personal economic and social reasons.

According to Dullah Omar of the ANC, “Without the amnesty provision, there would have been no political settlement. It was the one issue that stood in the way of democratic elections” (cited in Graybill, 2002:59). It was thus clear prior to the transition to democratic rule that the retributive justice model of World War II would not be the solution. In a purely realist account, this initial compromise would serve as the primary determinant of truth commission establishment. But one must ask the question, “How did South African officials come to choose a truth commission specifically?”

Alex Boraine, a South African official who participated in the negotiations, recounts the extensive process of deliberation surrounding the choice. According to Boraine, when the terms of justice began to be addressed in 1992, he and his colleagues “began to be aware that there was a new problem in the field of human rights, which had emerged as a consequence of the transition to democracy” (2000:14). The problem of course is how to handle the trade-off between impunity and justice. Searching for answers to this problem, Boraine went to Aryeh Neier, a human rights advocate, to discuss possible solutions. Neier pointed him in the direction of Eastern and Central Europe and also to “the recent transitions in Latin America and in particular in Argentina and Chile” (2000:16). Boraine responded by planning a conference which would feature discussion by officials

\textsuperscript{46}The provision reads: “In order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions, and offenses associated with political objectives, and committed in the course of the conflicts of the past.” (Graybill, 2002:59).
from transitional countries world over under the auspices of the Institute for a Democratic Alternative in South Africa (IDASA). The conference included members from Chile, Poland, Argentina, El Salvador, Hungary, Germany, Bulgaria, and the Czech Republic.47

It is evident from Boraine’s account of the conference that the discussion had a observable affect on the political happenings within the country:

> The contribution made by this astonishingly knowledgeable and experienced group cannot be overestimated. Anyone who reads the Promotion of National Unity and Reconciliation Act which was written months later will detect their influence…let me emphasise how fortunate South African has been in receiving guidance from people who have had particular experience in their own countries or in international human rights, which gave us a road map with which to pursue our own quest. (2000:17)

The implication here is that the South African experience was shaped to a great extent by the entrepreneurs spreading lessons concerning both human rights and transition justice. The former practitioners of truth commissions and other non-trial forms of redress (like lustration), by the time of the South African transition, had become teachers and missionaries of transitional judicial tactics.

This network of political elites was not the only active influence on the South African transition:

> The duties of states and the rights of victims…were vigorously promoted by the action of non-governmental organizations and the victims’ families, all working to bring injustice to an end. The legal debate that was generated in the national arena and in international forums also contributed to the cause. (Valdez, 2001:51)

Though organizations and individuals from within the country were active, forming a bottom-up reinforcement of top-down policy decisions, the public call for solutions had not necessarily landed on the truth commission as the best answer. As a matter of fact, a majority of the South African public, as of 1997, believed that police and military officials should be brought to trial (Graybill, 2002:58). Additionally, academic and political skeptics of the Truth and Reconciliation Commission

47 Members included Pepe Zalaquett, Adam Michnik, Juan Mendez, Lawrence Welscher, Roberto Canas, Andras Sajo, Tina Rosenberg, Joachim Gauck, Dimitrina Petrova and Karel Schwarzenberg. Many of these people have both helped shape the politics of transitional countries, and in addition added to the growing body of academic literature on the phenomenon of transition.
lodged the criticism that “failure to punish might lead to cynicism about the rule of law and a government’s commitment to human rights” (Graybill, 2002:58). But, the transitional regime, led by the ANC’s National Executive Committee (NEC), was bound by the concessions it made during negotiations. Sweeping trials were not an option. Faith had to be placed in the operation of the Truth and Reconciliation Commission (TRC).

The first hearing began on April 16, 1996, after much political wrangling to receive enough funds and to appoint commissioners. In the process, a crucial decision was made to place Archbishop Desmond Tutu at the helm. It was Tutu who would build on the mandate of the National Unity and Reconciliation Act. The concept of reconciliation was written into this mandate:

AND SINCE the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society; AND SINCE the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization.48

Tutu would be instrumental in helping to rhetorically convert what began as a political compromise into a new form of transitional justice, that is, restorative justice.49 Tutu became an avid promoter of this form of societal justice, which restores order to divided societies. His work on the commission was driven by an effort to shift the transitional justice paradigm from one of retribution and accountability to one of restoration and peace (Boraine, 2000; Forsberg, 2001; Shriver, 2001; Graybill, 2002). Tutu, in the foreword to the TRC’s published report, preaches the ramifications of this new-fangled understanding:

South Africa’s peaceful transition to democracy, culminating in the Truth and Reconciliation Process, is spoken of in almost reverent tones, as a phenomenon that is unique in the annals of history, one to be commended as a new way of living for humankind.50

49 See Chapter 2, page 26, for a discussion of the restorative model, which includes a quotation by Tutu on the subject.
This “new way of living,” it seems, is an emergent way of dealing with former human rights abuses in transition.

Tutu’s remarks concerning the reverence of the South African method are not exactly overstated. Work on restorative justice has abounded since the mid-1990s, and this is likely a result of the TRC’s widespread publicity and impact.\(^\text{51}\) This is symptomatic of the growth of a divergent new norm: transitional restorative justice. Patricia Valdez (2001:51) writes in reference to the TRC, “The rights of victims and of society as a whole to know the truth emerged as a new principle with significant force.” Donald Shriver (2001:32) confidently buttresses this claim with the following assertion: “I can report that there is new, overdue, and worldwide interest in the concept of ‘restorative justice’, which comports closely with the notion of forgiveness in politics.” Shriver goes on to posit a relationship between democratic politics as a whole and restorative justice: because restorative justice is a “nonviolent judicial process,” it directly supports the civic cohesiveness and tolerance needed in democracy.

Although I have traced the beginning of the transitional restorative justice norm to its roots in Argentina, South Africa is the embodiment of its main defining principles—that is, a transitional regime seeking peace should perform a truth-seeking investigation of the former regime. Norms such as this one are coupled with policies or institutional mechanisms that comply; in the case of the restorative norm, the truth commission is this institution (See again Figure 2.1). The South African TRC, then, solidified Phase II of the evolution of transitional justice, where a “jurisprudence of forgiveness and reconciliation” transpires. In this second phase, a more relaxed approach is adopted toward amnesty, and the discourse changes from law to “ethics, medicine, and theology” (Teitel, 2003:82). This is precisely what happened in South Africa: notions of victims rights defined as achievement of accountability for criminals morphed into considerations of societal healing and ubuntu.

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\(^{51}\) See Chapter 2 for a reflection of the advances made in literature on restorative justice and reconciliation.
To situate the transitional restorative norm within the “life cycle” framework, it will be necessary reiterate three lessons from Finnemore and Keck (1998) regarding norm emergence. First, “norms emerge in a highly contested normative space” (897). The Argentine and South African cases bear a clear resemblance to this theoretical tenet. In Argentina, Alfonsin made moves toward retributive punishment at the behest of a human rights regime (of which he was a part) that stressed accountability. Some of the same elements of the human rights network debated the NEC’s decision to extend amnesty in South Africa, while others pointed to the Latin American examples of a new kind of justice from truth. Therefore, it appears, transitional restorative justice arose amongst intellectual, political, and ethical critiques. Second, norm emergence is “attributable to norm entrepreneurs, who engage in a kind of moral proselytism” (Finnemore and Sikkink, 1998:897): in Argentina this came in the form of popular demands, like those of the Madres, to uncover the truth masked by a stealthy terror regime, and in South Africa this came in the form of both political practitioners from other countries and religious leaders like Desmond Tutu. Third and finally, an account of “norm building” might “stress human agency, indeterminacy, chance occurrences, and favorable events” (1998:896). The Falklands War and subsequent presidential elections no doubt qualify as events amenable to the public voicing of human rights concerns by citizens, just as the power of the military post-election was a source of indeterminancy for the new regime. Both were factors conducive to the establishment of CONADEP.

When taken together, the growth of the restorative transitional justice norm, with a reliance on the truth commission as a representative institution, was a result of political circumstance, a marriage of transitional justice to human rights, and the diffusion of methods by international policymakers and experts. But, for a norm to reach the second stage of development, it must begin a process of international codification, at which point it becomes institutionalized.
Norm Tipping Point—Diffusion

For a norm to move into the second stage of its development, “it must become institutionalized in specific acts of international rules and organizations…In this stage, contagion, and actual active promotion, of the norm begins.” (Finnemore and Sikkink, 1998:900). It is my argument that the restorative transitional justice norm became institutionalized through three concomitant processes: international legal definition, transnational advocacy network (TAN) promotion, and regional diffusion. While these processes were ongoing, the restorative model of justice had to compete with another sub-norm under the umbrella of transitional justice: retribution. I intend to show that due to a kind of organizational marketing and sponsorship of the truth commission, in tandem with regional demonstration, the restorative norm came to be favored over the other by the turn of the century.

Definition

The first hint of institutionalization of a norm is observable when it begins to become a part of international law, which is comprised of customary state behavior, binding conventions, judicial and quasi-judicial precedent, and nonbinding resolutions (Mendez, 1997). One could extrapolate that as more precedents regarding transitional justice amass, the more of a legal foundation it gains. In line with the presentation in this paper, Juan Mendez, as of 1997, argued that the cluster of four rights—to prosecution, to truth, to reparations, and to accountable institutions—were “emerging principles” (260). However, one could posit that, increasingly, the behavior of states and of the international community has served to institutionalize these rights, or at least certain ones of these rights. In regard to transitional justice, norms of state behavior has less support in binding law, but it has found support on a customary law and quasi-judicial precedent. One way that this has happened is through UN definition.
According to Barnett and Finnemore (1998:710), and in line with recent conceptualizations of international organizational behavior, one of the powers that the UN has is the “classification” or “fixing of meanings.” In specific regard to international law, the UN serves as a clearinghouse for legal definitions and state duties. The UN passes resolutions, issues declarations, and drafts conventions that altogether comprise a main portion of the body of international law. This is especially important with regard to human rights law, which has become a “hegemonic” source of state duties. As we have seen, concern for human rights has translated into concerns for victims of tyrannical regimes, and thus into an exploration of transitional jurisprudence. The UN has devoted attention to the rights of victims in transition, defining rules of state behavior, but less so than it has to other issue areas like torture and genocide.

As was made evident earlier, the UN had an expressed interest in the Latin American bout with human rights abuse, issuing a resolution in 1978 that led to the creation a Working Group on Disappearances. This specific focus on disappearances, though, would give way to a larger focus on transitional justice. In 1985, the UN issued the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This declaration defines what constitutes victimization, and follows with a four areas of entitlement for those who qualify: access to justice, restitution, compensation, and assistance. Under “Access to Justice,” the declaration demonstrates a kind of vagueness with regards to judicial methods:

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

That transitional justice was spotlighted by the General Assembly is evidence of growing concern, but indifference toward which mechanism best serves justice evident in this passage of the declaration show the puzzling and indeterminate nature of new regime responsibilities. The UN’s

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52 See Abbot and Snidal (2001)
lack of emphasis on punishment might have been a response to the recent adoption of truth commissions in the southern cone, or it might have been a way of leaving open different options for later consideration.

In a final report to the UNHCR in 1993, Special Rapporteur Theo van Boven emphasized the right to restitution for victims of gross violations of human rights. He argued that on the subject of duties in transition, “the Human Rights Committee has repeatedly expressed the view that the State party is under obligation [by the Optional Protocol to the International Covenant on Civil and Political Rights]: a) to investigate the facts; b) to take action thereon as appropriate; c) to bring to justice persons found to be responsible; d) to extend to the victims treatment…; e) to provide medical care; and f) to pay compensation to the victim(s)…” (cited in Kritz, 1995:523-4). This list of directives for a transitional country are never followed in entirety, leading experts like Mendez (1997:260) to label them “scattered.”

This scattering of rules for transitional regimes should be juxtaposed to the concentration provided by the legal conventions on genocide and torture. Regimes that must respond to such atrocities are under clearer obligations: This is reflected in the UN establishment of tribunals for the former Yugoslavia in and Rwanda. Ostensibly, then, the message conveyed by the UN is that justice should be tailored to the particulars of the human rights abuses of the ancien regime. But the message from the UN is also straightforward in its opposition to amnesty:

The UN Human Rights Committee, which is the authoritative interpreter of the ICCPR, has said that blanket amnesty laws and pardons are inconsistent with the Covenant because they create “a climate of impunity” and deny the victims the “right to remedy.” (Mendez, 1997: 258)

Once again the question of what a transitional regime is to do when an amnesty has been declared, when political circumstances complicate prosecutions, or when the legacy of genocide and torture is
unclear (as it is in the case of disappearances). In these cases, the response of the new regime is less bound by ironclad international law.54

The legal normative message set forth by the UN’s written body of law is indistinct in regards to most transitions, but this does not necessarily entail the stifling of the normative development. Norms can reach a tipping point in the absence of precisely articulated written rules. If a norm is to become institutionalized in this blurry atmosphere, it must as a result of focused organizational activity and specific acts that are repeatedly taken (Finnemore and Sikkink, 1998). Barnett and Finnemore (1998) advance a Weberian interpretation of international organizational activity, showing that the UN exhibits bureaucratic inertia. It operates in line with preset meanings and static patterns of activity. The UN, with its multiple levels of bureaucracy, acts independently of states, but also it exerts and independent agentic influence.55 This influence can be supported by a larger transnational action network consisting of non-governmental organizations, international organizations, and individual governmental officials (Keck and Sikkink, 1998). In the case of transitional justice, the UN has promoted both “tribunality”56 and historical investigation of human rights abuse, but a TAN has formed around the right to truth, and truth commission establishment.

Transnational Promotion

The UN International Criminal Tribunal for the Former Yugoslavia (ICTY) and the UN International Criminal Tribunal for Rwanda (ICTR) were created in 1991 and 1993, respectively, and have continued conducting trials to the present day. These tribunals were in response to international outrage at the related forms of genocide that occurred in each country, including rape,

54 This is the genesis of the debate between those who find adequate international legal standards regarding state response (See Ortenlicher, 1995; Mendez, 1997) and those who find inadequacies that may lead to legal circumvention (See Nino, 1995; Scharf, 1996).
55 This challenges the traditional realist and liberal institutionalist assumptions that international organizations are merely regimes, or depositories of rules and institutions, that are forged and parented by the watching eye of participatory states.
56 See Kaminski, et al., 2006, p. 96.
summary execution, and displacement of large portions of particular ethnic and religious groups (Bass, 2000). The steadfastness with which these tribunals were constructed should not, though, conceal the fact that truth commissions were also instituted in both countries. This suggests a kind of dual programmatic focus that instructs UN assistance in transitional states, one that pursues both transitional retributive and transitional restorative justice. These cases are more the exception than the rule for transitional justice, however, and this is likely attributable to a few different factors. First, both the conflict in the Balkans and the war in Rwanda were terminated by victories over the more aggressive, criminal side. This allowed for more heavy-handed reprisals. Second, the element of genocide within these civil wars called for more targeted punitive action as per the recommendations set forth in the Geneva and Genocide Conventions. In other words, these cases did not fall prey to the transitional dilemma of impunity vs. justice.

When the transitional situation is less straightforward, UN response has proven to be different. El Salvador serves as a prime example of UN willingness to forfeit trials for political reasons. By 1991, the El Salvadoran government had been embroiled in a 12-year civil war with the Farabundo Martí National Liberation Front (FMLN). At the end of the year, the war was brought to an end by a process of negotiations that was overseen by the United Nations. A main component of the peace agreement was that the Commission on the Truth for El Salvador would be set up to investigate human rights violations perpetrated by the government (Hayner, 2001). The commission was run completely under the jurisdiction of the UN: no Salvadorans acted as staff members, and funds came solely from UN coffers (Hayner, 2001:38-9). The commission produced a report that named prominent officials, and when released, proved to be a “major political event in El Salvador” (Hayner, 2001:39). However, because of concessions made in negotiations, no trials were pursued, and in fact, “Five days after the report’s release, a sweeping amnesty law was passed that prevented

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57 In the Balkans, this was the Bosnian-Serb army, and in Rwanda, this was the Hutu military and interhawme groups.
action against the perpetrators” (Hayner, 2001:40). This example shows that the UN, an active member in the negotiation process, conceded efforts at retributive justice in favor of a truth-seeking investigation. A similar situation transpired after the UN-sponsored negotiations in Guatemala in the early 1990s: a truth commission was agreed to by the government and rebel URNG, and it was administered under the auspices of the UN (Hayner, 2001). Again, in the Guatemalan case, no national trials took place.

In these brief illustrations, a definite pattern comes into focus. Where negotiations take place in the aftermath of civil conflict, a truth commission appears to be the compromising solution for how to address justice, as opposed to national or international trials. UN mediation does not appear to counteract this outcome, nor prevent measures for amnesty, even though its human rights bodies have been ardent opponents of impunity. John Dugard (cited in Graybill, 2002:58) posits that, empirically, the UN actually promotes amnesty as precursor to peace efforts. Formerly, the UN had been consistent in its beckoning call for measures against impunity, but it would begin to break from its previous embrace of the maximalist position. The UN, through mediation, apparently began to spread the restorative transitional norm, with its emphasis on truth commission establishment and peaceful transition after negotiations. UN agency, in these cases, simultaneously promoted a norm and constructed the strategic environment in which state leaders would find themselves.

The early 1990s and the end of the Cold War ushered in an experimental time for the UN: no longer stymied by Security Council impasse, it had a freer range of action (Charney, 1999; Teitel, 2003). It could be argued that the UN’s handling of transitional justice was resultantly experimental. The examples of the Balkans, Rwanda, El Salvador, and Guatemala show a bi-directional movement of UN influence: it instituted both trials and truth commissions. In this period, negotiations appear

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58 For a more extended discussion, see Brahm (2006) and O’Shaunessy and Dodson (1999).
59 United Revolucionaria Nacional Guatemalteca.
to be the intervening factor that altered response, causing the UN to be more politically pragmatic.\textsuperscript{60}

But, it must be stressed that these four responses came before the South African restorative model had been come into form, that is, before the restorative transitional justice norm had fully emerged.

As was previously demonstrated, the South African TRC served as a normative critical juncture, molding the discourse of transitional justice and framing the solution in terms of reconciliation and societal rehabilitation. According to the TRC's final report, before the South African mandate was established, “no consistent reparations policy [had] evolved in international human rights law.”\textsuperscript{61} After the TRC, though, the language of reconciliation that subsequently grew out of the South African experience would be adopted by the United Nations, non-governmental organizations, and thus, policymakers within transitional countries. “In the TRC mandate and laws, discussions of truth seem naturally to lead to discussions of reconciliation. This is [now] a feature of TCs worldwide” (Wilson, 2001:15). Within the UN, peacebuilding efforts have been injected with the notion of societal reconciliation. Amongst human rights NGOs, particularly those with a mandate centered on transitional justice, the restorative model has become the dominant paradigm.

UN peacebuilding efforts began only in 1992, with the goal of keeping peace and preventing war through economic and social development\textsuperscript{62}. Peace-building has variegated goals, but according to Mani (2002:76), peacebuilders have been preoccupied with “programmatic minimalism” when it comes to law, meaning that they focus on the “institutions of law, not the ethos of the law thus enforced.” This is an approach that highlights restoration of society, i.e. restorative justice. Truth

\begin{footnotesize}
\begin{enumerate}
\item It should be noted that a pattern in one cluster of post-communist transitional European countries during the late-1980s and early-1990s was to pursue “lustration,” which features a legal ban of former state criminals from holding government office (See note 10; see also Nalepa 2003a, 2003b and Elster, 2004). Though lustration is an example of an alternate method for how a country might address transitional justice, it has been left out of this analysis for two reasons. First, lustration has not been actively promoted by the international human rights community at any great length; debates about transitional justice have continued to involved predominantly trials and truth commissions. Second, it appears to be the product a particularistic national response to Communism that does not extend beyond the time period immediately following the breakdown of the Soviet Union (Teitel, 2000).
\item See http://www.un.org/Overview/brief2.html.
\end{enumerate}
\end{footnotesize}
commission promotion is an upshot of the peacebuilding program, a result of the effort to “find a singly definitive solution that could be applied, with minor adaptation, across disparate cases” (Mani, 2002:87). The UN response to the advancement of peace has thus increasingly looked to quasi-judicial truth and reconciliation commissions to accomplish this goal.63

The transitional restorative norm has also found its way into non-governmental organizations en masse. A website run jointly by the Program on Negotiation at Harvard Law School, the Search for Common Ground, and the European Centre for Common Ground—truthcommission.org—is an example of the efforts being made by NGOs. This website has been posted with the intention of assisting leaders of “societies emerging from a regime marked by grave and serious violations of human rights” by “organizing the leading research to help build a Truth Commission that fits their unique needs.”64 Another NGO devoted to the promotion of reconciliation is the International Center for Transitional Justice, established 2001, which “assists countries...where historical injustices or systemic abuse remain unresolved.” According to its mandate, members “aim at “facilitating reconciliation processes”65; it has been involved in conferences over the development of such initiatives in countries like Sri Lanka. An umbrella NGO called the Transitional Justice Working Group, which included members from many international and local organizations, is a main player in newer negotiations over transitional judicial methods.66 What is evident in the proliferation of such groups is that transitional justice as a whole, and that of the transitional restorative model, is beginning to be actively promoted in needy polities.

The groups, along with many others, in conjunction with the United Nations and US governmental organizations like the USAid Office of Transitional Initiatives67, have formed a

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64 “Strategic Choices in the Design of Truth Commissions.” Available at http://www.truthcommission.org/.
67 The Office of Transitional Initiatives was established in 1994 as “part of USAID’s Bureau for Democracy, Conflict, and Humanitarian Assistance, [and] has laid the foundation for long-term development in thirty-one conflict-prone
transnational action network that has infiltrated the decision-making processes within transitional countries. Evidence of this TAN’s reach can be found in Executive Summary of the Truth Reconciliation Act of Liberia.\textsuperscript{68} According to this document, the mandate for the truth commission was the outcome of a process involving many organizational actors:

In accordance with Article XIII of the Liberian Comprehensive Peace Agreement, which calls for the establishment of a Truth and Reconciliation Commission in Liberia, UNMIL’s Human Rights and Protection Section, together with the United Nations Development Program, and the Center for Democratic Empowerment, a member of the Transitional Justice Working Group, collaborated to hold a series of activities, which culminated in the production of this TRC Act. In particular, these groups, with the assistance of the USAID / Office of Transitional Initiatives, collaborated to hold national consultations in June 2004 with Liberian society in five counties and conducted a survey of such groups’ expectations for the role of a TRC in Liberia. A TRC Draft Act Workshop gathering more than 70 civil society organizations and individuals was then conducted in July 2004 to discuss issues to be considered in a draft TRC Act.

The buzz surrounding truth commissions, and the official and scholarly promotion of their establishment, seems to have undeniable influence in Liberian example. It appears as if the international community has rallied around these institutions, and around the idea of reconciliation. What was, as of the mid-1990s, only an emergent normative subcategory of transitional justice has become the product of a full-blown transnational effort.

Regional Diffusion

Examined so far is the role of the international law and TAN agency in the spread of the restorative model of transitional justice. One final way that the transitional restorative norm, and its attendant supportive truth-finding institutions, has moved from the first to the second stage of development is through a process of regional diffusion, where state leaders learn from and mimic political choices of their neighbors. If we look at truth commission initiation as evidence of

\textsuperscript{68} Available at \url{http://www.unmil.org/images/liberia_trc_act_summary.pdf}.
compliance with the restorative norm, then the spatial clustering of countries with truth
commissions ultimately demonstrates the predominance of the norm in certain regions.69

Secondary historical evidence seems to suggest that such a course of normative diffusion
exists, particularly within the Americas and Africa. Beginning with Argentina, the truth commission
mechanism became a popular choice among state leaders facing the termination of civil wars and
democratic transition. Discussed previously, Pion-Berlin (1995) visualizes a “political wind” that
spread the truth commission idea from Alfonsin’s democracy to the neighboring countries of Chile
and Uruguay. Chile’s newly inaugurated president, Patricio Alywin, facing an amnesty law enacted
by Pinochet, decided on a truth commission under many of the same legal and political constraints
that reigned over Alfonsin’s decision. The Chilean Rettig commission, in turn, completed its
investigation in 1991, shortly before El Salvador embarked on its own mission for truth. Hayner
(2001:38) contends that the Salvadoran effort “served as a point of reference (and the origin of the
idea) for peace negotiators.” The chain of dominoes originally tipped over by the Argentine
experience would then travel to Guatemala, whose referent was the El Salvadoran commission
report published in 1993 (Hayner, 2001). Apparently, truth commission practitioners studying the
behavior of their neighbors, which formed a didactic contribution not only to peace negotiations but
also to eventual decisions concerning transitional justice.

African countries appear to engage in the same process of political learning, whereby the
peculiarities of one model are copied over time. The South Africa restorative model was
exceptional, but as Desmond Tutu wrote in the TRC’s report, “Other countries have had truth
commissions, and many more are following our example.”70 One such follower was Sierra Leone,
whose Truth and Reconciliation not only bore the same name as South Africa’s but also “like South

69 The regional clustering of certain political events and policy behaviors, such as adoption of constitutions, has been
taken as evidence of contact and learning. For more on this, see Chapter 4.
70 See note 45.
Africa’s [TRC], valorized a particular kind of memory practice: ‘truth telling,’ the public recounting of memories of violence” (Shaw, 2005). South Africa’s experience also had an impact on one of Sierra Leone’s Anglophone West African neighbors, Ghana. Reporting on the initial declaration to establish a commission, Kwaku Sakyi-Addo of the BBC stated, “President John Kufuor has inaugurated a National Reconciliation Commission in Ghana, fashioned after similar panels in South Africa and Nigeria, to look into past human rights violations.”

A Critical Mass?

After the end of the Cold War, the United Nations was torn between two different prescriptions for effective remedy in transitions. As of the 1990s, international law contained precedents for both retributive punishment and restorative truth-seeking. In response to the Balkan and Rwandan atrocities, the UN sought trial justice in the form of international tribunals. Following El Salvadoran and Guatemalan negotiated settlements in which it took part, the UN chose not to pursue trials in favor of more pragmatic commissions of inquiry. The turning point for normative development, however, occurred when South Africa declared the innovation of a new restorative model of justice, which placed emphasis on societal reconciliation. Reconciliation became the talking point of the international community, and the UN adopted this transitional restorative model for its peace-building initiatives. Organizational bodies of the UN worked beside NGOs such as the ICTJ to spread the message of reconciliation to countries in political transition, at the expense of more retributive forms of justice. Decision-makers in these countries, like Liberia and Sierra Leone, were then inspired to take the advice of this advocacy network and institute truth commissions.

But is there definitive evidence that this norm has reached the third stage of its development, one of “critical mass,” and can one argue that the transitional restorative norm has become

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internalized by state leaders? One distinguishing point between stages two and three of norm development is the ease with which state leaders begin to comply. In the second stage, the missionistic spread of the norm by TANs influences leaders to make appropriate decisions. In the third stage, political elites are more likely to behave pursuant to the norm, even without immense pressure from domestic or international organizations. In the case of transitional justice, the restorative norm could be considered to be at a critical mass if leaders default to truth commissions when the opportunity arises.

There is some theoretical speculation that establishment of truth commissions has reached such a critical, and unquestioned, level of appeal. Elshtain (2001:40), for instance, argues the world political community has been overtaken by “contrition chic,” where political forgiveness and reconciliation has become a kind of stylistic ideal for leaders in transition. Shaw (2005:3) corroborates this claim, arguing that truth commissions have become a “standard part of conflict resolution ‘first aid kits.'” Again I return to the analysis of Ruti Teitel (2003:85-90), who argues that transitional justice itself has “expanded over time to become a persistent trope,” moving “from the periphery to the center.” This is Phase III for transitional justice, where the consideration of post-atrocity reparation becomes the central focus of human rights dialogue.

The taken-for-granted necessity of truth commissions might also be supported in anecdotal evidence from two countries where the decision to adopt the restorative model took place very quickly, and with little pretense. The first example is Panama, whose president, Mireya Elisa Moscoso de Gruber, swiftly announced the founding of a truth commission after the discovery of a mass grave filled with 150 bodies.72 This announcement, interestingly, did not come in a time of transition. A similar situation took place in Ghana, where a newly elected president opted for a truth commission, even though the state was not in a period of political flux, nor in a period following a

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great atrocity. Some pointed to the Ghanian example as one where the political party victorious in a free-and-fair election decided to institute a truth commission in order to defame the losing candidate—in this case Jerry Rawlings. Both of these examples briefly demonstrate that the transitional restorative norm of behavior, to a certain extent, has moved beyond the political circumstances that originally made it a necessity. It is being complied with in cases where it is not entirely warranted. This, one could argue, is due to the regularized nature of the norm, which has led to its internalization by domestic political leaders.

A second, discursive argument can be made in advancement of the critical nature of the restorative norm. Friedrich Kratochwil (1989) argues that public appeal to other states’ actions in justification of certain political choices is evidence of the intersubjective acceptance of a norm.

…common understandings can be arrived at through the stabilization and evocation of generally shared expectations among actors in a specific situation. The medium of understanding is then neither logical cogency or semantic truth, but rather claims to the validity of norms on the basis of which actors can communicate… (Cited in Zehfuss, 1999:120)

The Ghanian truth commission’s mandate is a recent example of this form of communication. It elicits the generally accepted status of institutional inquiry in world politics: “Throughout the contemporary world, Truth and Reconciliation Commissions (TRCs) have emerged as a critical part of the responses of states, especially those undergoing political transition…” Drawing on its widely accepted status, policymakers now seem to have internalized the transitional restorative norm, and its resultanty intersubjective nature seems to be having an effect on truth commission establishment.

The theoretical argument for internalization and critical mass of the restorative norm, however, should not be overstated. Even after the rapid spread of truth commissions and the discourse of reconciliation, there is evidence of renewed interest in retributive justice. Hybrid

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models of transitional justice, which incorporate both retributive and restoration, have emerged in East Timor and in Sierra Leone (Borer, 2006). In addition, the creation of the International Criminal Court represents efforts to return to the Nuremberg model of transitional justice that has received continued, albeit sparing, attention over the last two decades (Teitel, 2000). It is apparent that the two main sub-norms of transitional justice, embodied by trials and truth commissions, remain in simultaneous existence, and they are beginning to overlap rather than contradict. This suggests an unclear and uncharted future for the restorative norm specifically, as the future may bring further adaptations.

Toward a Testable Theory of Normative Influence

The purpose of this chapter is not to make predictions regarding the future of the normative environment, nor is it to assess the effectiveness of transitional justice mechanisms. Instead, the purpose has been twofold: first, to trace the evolution of the transitional justice norm, with specific focus on how a sub-norm, of transitional restorative justice emerged and became the focal point of a transnational advocacy network; and second to show how the normative environment has consistently intermingled with political structures to shape actor’s preferences and political outcomes. Supporting Teitel’s claim concerning the normative ripeness of times of political transition, evidence from Argentina and South Africa shows how human rights entrepreneurship influenced both the transitional political environment and their institutional outcomes, coalescing into the emergence of a new norm outlining behavior in new regimes.

From this historical analysis, I formulate three different hypotheses addressing the way that norms affect transitional polities. The first is that political openings created by new democratic institutional development and elections afford domestic actors the opportunity to appeal to norms. The supports Cortell and Davis’s (1996:460) theory that
institutional arrangements linking societal actors to the policy process serve a dual role: not only enabling societal actors to invoke the international rule, but also according them a legal right by which to elicit the government’s implementation…

During norm emergence, this process was bottom-up: domestic groups like the Madres appealed to more general human rights and traditional transitional justice norms. After the restorative norm had been codified, though, normative appeal in transition took on a more top-down nature. Advocates in transnational networks and officials within new regimes in countries like Liberia, Sierra Leone, and Ghana made arguments concerning the necessity of truth commissions for the public.

A second hypothesis regarding norm influence deals with the complex role of the UN agency. UN mediation, first, appears to construct the nature of the terms political transition. Though negotiations are mainly conducted sub rosa, limiting concrete proof of what actually happens, evidence from El Salvador and Guatemala, in addition to theoretical argumentation, hints that the UN might indeed promote amnesty as a precursor to peace. Moreover, the UN seems to be having a norm promotional function in transitional countries. Because UN organizations like the Development Program are parts of the TAN surrounding the restorative norm, as is evidenced by the case of Liberia, UN presence alone in a transitional polity might serve to advertise the institution of truth commissions.

Third and finally, empirical support seems to verify the notion that leaders begin to learn and internalize normative lessons from their neighbors. Especially in the countries of Latin America and Africa, regional diffusion looks to be in full effect. I, therefore, hypothesize that that decision-makers observe and mimic political choices from other countries. By repeatedly appealing to the intersubjective notion of reconciliation, and assuming the beneficial nature of truth commission establishment, leaders might be demonstrating the now taken-for-granted quality of the restorative transitional norm. Examples of the celerity with which executives have embraced truth
commissions and reconciliation are Panama and Ghana, where the political environment did not necessarily even warrant such institutions.

In sum, this study lends credibility to the theories of normative domestic instantiation, agency, and diffusion, while concomitantly tracing the development of a yet undefined restorative legal norm. At the same time, though, the methodology employed precludes this study from escaping the criticisms commonly lodged against analyses of norms. First, it could be argued that failure to evaluate cases where the restorative norm did not infiltrate domestic politics makes this research tautological. For an independent normative effect to be determined, it is necessary to include in a study not only the cases where the social context influenced behavior, but also the cases where it did not. This study operates on the theoretical assumption that the discursive appeal to reconciliation and truth commission establishment are evidence of the popularity of a particular transitional justice norm; however, I only cases where these events took place (South Africa, El Salvador, Guatemala, Liberia, Sierra Leone, and Ghana). This creates tautology because the evidence of normative influence is equivalent to my definition of the dependent variable. In other words, the restorative legal norm exists and has influence because it appears to exist and have influence.

A second problem with this analysis is that alternative explanations for the establishment of truth commissions are not fully assessed. Jeffrey Legro (1997) attempts to warn researchers of the flaws generated by such oversight. Without recognition of alternate causality, studies hazard the problem of overdetermination. It might be that transitional countries with truth commissions have structural or cultural similarities that supply a better explanation for their initiation. The literature review in Chapter 2 presents the few extent theoretical suppositions concerning the political determinants of official inquiries. Many authors have attributed truth commission establishment solely to political outputs from negotiations and the status of the military-opposition balance, which shapes the type of transition undergone. My loosely comparative depiction of cases hints at a wide
array of transitional political constraints, including types of transition, presence of negotiation,
exogenous or endogenous oversight, balance of power, and presence of an election (See Table 3.1).

Table 3.1  A Comparison of Political Environments Leading up to Truth Commissions\textsuperscript{75}

<table>
<thead>
<tr>
<th>Country</th>
<th>Type of Transition (Huntington)</th>
<th>Negotiations</th>
<th>Exogenous or Endogenous (Elster)</th>
<th>Opposition-Military Balance of Power</th>
<th>Election Within one year of TC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Replacement</td>
<td>No</td>
<td>Endogenous</td>
<td>Equal</td>
<td>Yes</td>
</tr>
<tr>
<td>South Africa</td>
<td>Transplacement/Replacement\textsuperscript{76}</td>
<td>Yes</td>
<td>Endogenous</td>
<td>Equal</td>
<td>Yes</td>
</tr>
<tr>
<td>Federal Republic of Yugoslavia\textsuperscript{77}</td>
<td>Replacement</td>
<td>Yes (Belgrade)</td>
<td>Endogenous</td>
<td>Unequal (Civilian)</td>
<td>Yes</td>
</tr>
<tr>
<td>Rwanda</td>
<td>Replacement</td>
<td>No</td>
<td>Exogenous</td>
<td>Unequal (Military)</td>
<td>No</td>
</tr>
<tr>
<td>El Salvador</td>
<td>Transformation</td>
<td>Yes</td>
<td>Exogenous</td>
<td>Equal</td>
<td>Yes</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Transformation</td>
<td>Yes</td>
<td>Exogenous</td>
<td>Equal</td>
<td>No</td>
</tr>
<tr>
<td>Liberia\textsuperscript{78}</td>
<td>Transformation</td>
<td>Yes</td>
<td>Exogenous</td>
<td>Unequal (Military)</td>
<td>Yes</td>
</tr>
<tr>
<td>Sierra Leone\textsuperscript{79}</td>
<td>Transformation</td>
<td>Yes</td>
<td>Exogenous</td>
<td>Equal</td>
<td>Yes</td>
</tr>
<tr>
<td>Ghana</td>
<td>None</td>
<td>No</td>
<td>Endogenous</td>
<td>Unequal (Civilians)</td>
<td>Yes</td>
</tr>
</tbody>
</table>

It could be argued that each of these variables shapes the opportunity for decision-makers in
transition, but an examination of these cases does not generate a consistent pattern of pre-truth

\textsuperscript{75} As this table is only for illustration, approximations are made mainly from the information already presented in this text. Additional sources footnoted by country.

\textsuperscript{76} This is a difficult judgment to make. The South African ruling National Party, on its own volition (and as a result of immense international pressure), made the decision to enter into negotiations with the ANC. This would qualify the transition as one of transplacement. This also has elements of replacement, though, as the former opposition emerged to take control of the country.

\textsuperscript{77} The FRY pose problems for generalization because of the fragmented nature of the political situation, in addition to the both intrastate and interstate elements of the war. Information gathered from US Department of State “Yugoslavia, Federal Republic of—2002.” March 31, 2003. Available at \url{http://www.state.gov/g/drl/rls/hrrpt/2002/18401.htm}.


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commission components. Part of the problem is methodological: there are too many variables for too few cases that are neither arranged in a most-similar nor a most-different design, subjecting it to the small-N deficiencies of comparative analyses. The focused intention of my study thus hindered it from adequately evaluating political constraints in favor of describing the evolution of the international normative environment.

A third and final shortfall of this historical analysis is lack of a plain theory of decision-making in transitional situations. For a theory of domestic norm instantiation or compliance to get off the ground, a comprehensible model of the process must be designed and tested.

…constructivism needs a decision-making theory which includes in its analysis the way in which preferences, beliefs, and desires are shaped by participation in the decision-making process itself. (Checkel, 2001:579)

This chapter’s analysis, then, could only be characterized as a pre-theory of normative influence, as it fails to extend beyond suggestions regarding the interaction between political facts and social context. At best, the study creates an elevated state of confusion regarding the interrelation between the political process and evolving ideas about proper behavior in times of political transition. In short, both seem to affect decisions.

80 See Przeworski and Teune (1971).
CHAPTER 4
JUST CIRCUMSTANCE? AN INTEGRATED ANALYSIS OF
DECISION-MAKING IN TRANSITION

This chapter will attempt, using quantitative methodology, to cure the problems with the sweeping qualitative assessment described at the conclusion of Chapter 3. Specifically, I will undertake an effort that will start with selection an adequate population of transitional cases where the chosen dependent variable, truth commission establishment, might have occurred. I will then borrow from traditional notions of opportunity and willingness to construct a model of decision-making in political transition. After that, the chapter will move into a theoretical discussion of independent variables that will define and operationalize the pre-theoretical concepts introduced above, with the intention of statistically testing alternate explanations for truth commission initiation. Unburdened by an ideological alliance with either social constructivism or rationalism, I seek to objectively weigh the contributions of these opposing schools of thought to the original research question, which again is “Why has there been such a rapid worldwide increase in the incidences of truth commission establishment over other forms of transitional justice?” What will result is support for more integrated, cumulative approaches to empirical political science.

Population of Transitions

Because my research question revolves around why and under what conditions state decision-making apparatuses choose to establish truth commissions, I must first determine what pool of cases are likely to opt for such institutions. Providing such a population will prevent selection based on the presence of the dependent variable. Typically, truth commissions are a

81 To some purer constructivists, who lean more toward relativist understandings of the world, my embrace of statistical research would translate into tacit support of rationalism and the universality of elements of human behavior. I am, however, unbothered by this interpretation, as I find quantitative methods to be a way of mediating between the plaguing uncertainty of comparative work and the desire to have a fuller understanding of historical events.
mechanism of transitional justice, or “justice associated with periods of political change” (Teitel, 2003). What is left unaddressed, or subtly contested in the literature, is the nature of this political change. Teitel (2000) and Elster (2004) both frame their studies of transition in terms of liberalizing states, those that are moving from a more autocratic government to one that is more inclusive. Similarly, Huntington (1993) studies democratizing states of the third-wave, but this is a very specific pool of countries that ranges by region and time. There are two limitations created by a focus on democratizing countries. First, selection of a population of cases will be affected by how one chooses to operationalize democratic transition. In a constitutionalist framework, the formation of democratic procedures including national elections might be considered evidence of transition (Wilson, 2001). However, one might decide instead to view the growth of civil society as an indication of true democratic emergence; this would represent a shift in focus from democratic transition to consolidation (Roehrig, 2002:7). Either way, the choice for how to systematically construct a population will chance passing over cases that need to be included, and thus will be perilous.

Second, from a brief evaluation of countries with truth commissions, it becomes obvious that many chose to institute these bodies in the absence of democratic transition. Referring back to the previous chapter, El Salvador and Guatemala both established truth commissions after the negotiated termination of a civil war. In the words of Mendez (1997:256), “the broad range of contexts in which accountability problems occur suggests that accountability for past abused must be considered not only in transitions to democracy, but in seeking solutions to armed conflicts as well.” Mani (2002), perhaps in recognition of this issue, chooses to base selection for her analysis of

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82 See also Hayner (2000:12) and Kritz (1995).
83 See Chapter 2, note 30, for a list of these countries.
84 In the theory-building for this study, Dr. Steven Poe and I experimented with case selection based on any positive change in the Polity II measure of democracy. This, we determined, not only created an unmanageably large N but also included cases that clearly did not involve transition of any type.
rectificatory justice on post-civil war cases. For the purposes of truth commissions, though, this also falls short. Widely accepted scientific qualifications for civil war set by Correlates of War are too stringent for this examination. Though a majority did, not all countries undergoing transition from abusive regimes experienced civil war. In other words, civil war is not a necessary or sufficient precursor to transition. A prime example is Argentina from 1976-1979, which was witness to a terror state during the control of the *junta* regime and subsequently underwent transition to an electoral democracy, but is not considered a civil war by COW\(^8\).

Fletcher and Weinstein (2002:574) add some insight to the problem of selection by specifying that the political antecedent in cases of transition is normally a repressive regime. Placing this in the context of transitional justice, Demitrijevic (2006:374) writes,

> All commissions have one thing in common: they are established after the regime change, in countries where the consequences of massive and systematic violence and abuse of human rights represent the main feature of the heritage of the past.

Blending this conceptualization with those above, I envision transitional justice as being important in the context of *political change away from abusive regimes*. One upshot of this definition is that it requires a set of cases that both subsumes civil wars and incorporates other events. Fletcher and Weinstein (2002) suggest that a larger process of social breakdown occurs prior to transition, one that involves multiple political and economic failures. Their vision of social breakdown is one that spreads into six categories: destruction of infrastructure, displacement, economic chaos, social and health chaos, war crimes, and civilian deaths (619-623). Unfortunately, the authors do not provide a collection of cases that match the criteria they put forth. For this reason, data that best approximate this more pervasive concept of social breakdown had to be found.

The data I chose is from the Political Instability Task Force, which compiles information on

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\(^8\) Data available at Correlates of War home: [www.correlatesofwar.org](http://www.correlatesofwar.org).
state failure events\textsuperscript{86}. According to the PITF webpage, “State failure’ is a label that encompasses a range of severe political conflicts and regime crises exemplified by macro-societal events”\textsuperscript{87}. I chose nations that had consolidated state failures, meaning that they had any combination of four events: ethnic wars, revolutionary wars, adverse regime changes, and genocides or politicides. This conceptualization is best because of the wide range of types of conflict and social phenomena it entails, each of which might reasonably be expected to lead to the need for truth-finding, justice, institutional responsibility, reform, and reconciliation—the set of goals for which truth commissions are frequently begun.\textsuperscript{88} An additional benefit of this choice of cases is that it creates the opportunity to test the independent effects of political openings brought about by democratic transition on the likelihood on the type of transitional justice mechanism chosen. In other words, this makes testing for the effects of elections and heightened democratic institutionalization on truth commission establishment. The dataset for this analysis extends from 1976 to 2003, beginning the year after the first truth commission was established.\textsuperscript{89} Consolidated state failures within this range total 77\textsuperscript{90} (See Appendix for list), and the list thus produced captures civil war cases, traditionally accepted cases of democratic transition, as well as those of genocide and extreme repression.\textsuperscript{91}

The Dependent Variable

Interested in capturing the determinants of truth commission establishment, as opposed to effectiveness, I focus on the initiation of these transitional institutions. In order to do this, I compiled a comprehensive set of truth commission start dates, beginning with Uganda’s 1975

\textsuperscript{86} Available at http://globalpolicy.gmu.edu/pitf/pitftabl.htm.
\textsuperscript{87} Ibid.
\textsuperscript{88} See Chapter three of Hayner (2001), which outlines the purposes of the truth commissions that have been constituted thus far. The degree of emphasis placed on these goals differs from case to case.
\textsuperscript{89} In the analyses to be presented later, we will have to effectively exclude the first two years of data from our analysis, meaning that they will cover 1978-2003.
\textsuperscript{90} The COW dataset has only 69 cases in this range.
\textsuperscript{91} One criticism of this population is that it excludes some of the Eastern European countries that passed lustration laws, but this is a sacrifice made in the interest of methodological rigor.
commission of inquiry and ending with Liberia’s 2003 Truth and Reconciliation Commission. To qualify as a truth commission, the established political bodies had to meet the operational requirements defined by Hayner (2001). They had to “focus on the past”; investigate abuses that occurred over a “period of time”; be commissioned for as “temporary bodies”; and be “sanctioned, authorized, or empowered by the state” (14). Particularly useful in helping to construct this list was a webpage run by Eric Brahm for Beyond Intractability, which provided a list of the cases he had considered to be truth commissions up until 2002. I added to that list through our own investigation of Keesing’s Record of World Events and Lexis Nexis. I coded “1” for each country in the year of commission, or simply, when it was declared that a truth commission would be established. For each year that a country did not have such a declaration, I coded “0”. In all, I coded 26 instances of truth commissions in the data set (see Table 4.1).

Table 4.1 List of Truth Commissions in Chronological Order by Date of Establishment

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of Commission</th>
<th>Time Covered</th>
<th>Region</th>
<th>Included in Data Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uganda</td>
<td>1974</td>
<td>1971-1974</td>
<td>Africa</td>
<td>No*</td>
</tr>
<tr>
<td>Uruguay</td>
<td>1985</td>
<td>1973-1982</td>
<td>S. America</td>
<td>No*</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>1985</td>
<td>1983</td>
<td>Africa</td>
<td>Yes</td>
</tr>
<tr>
<td>Philippines</td>
<td>1986</td>
<td>1972-1986</td>
<td>Asia</td>
<td>Yes</td>
</tr>
<tr>
<td>Chile</td>
<td>1990-1991</td>
<td>1973-1990</td>
<td>S. America</td>
<td>Yes</td>
</tr>
</tbody>
</table>

92 This list was adapted from Eric Brahm’s list available at [http://www.beyondintractability.org/essay/truth_commissions/](http://www.beyondintractability.org/essay/truth_commissions/). The table was updated past 2002 with using Keesing’s Record of World Events and LexisNexis.
<table>
<thead>
<tr>
<th>Country</th>
<th>Date of Commission</th>
<th>Time Covered</th>
<th>Region</th>
<th>Included in Data Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>1992-1994</td>
<td>1949-1989</td>
<td>Europe</td>
<td>No*</td>
</tr>
<tr>
<td>Ecuador</td>
<td>1996-1997</td>
<td>1979-1996</td>
<td>S. America</td>
<td>No*</td>
</tr>
<tr>
<td>Liberia</td>
<td>1997-1998</td>
<td>Not specified</td>
<td>Africa</td>
<td>Yes</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>1997-2000</td>
<td>1991-1997</td>
<td>Europe</td>
<td>Yes</td>
</tr>
<tr>
<td>Lesotho</td>
<td>2000-2002</td>
<td>1998</td>
<td>Africa</td>
<td>Yes</td>
</tr>
<tr>
<td>Panama</td>
<td>2001-2002</td>
<td>1968-1989</td>
<td>N. America</td>
<td>Yes</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>2002-present</td>
<td>1991-2001</td>
<td>Europe</td>
<td>Yes</td>
</tr>
<tr>
<td>East Timor</td>
<td>2002-present</td>
<td>1974-1999</td>
<td>Australia/S. Pac</td>
<td>Yes&lt;sup&gt;93&lt;/sup&gt;</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>2002-present</td>
<td>1991-1999</td>
<td>Africa</td>
<td>Yes</td>
</tr>
<tr>
<td>Ghana</td>
<td>2002-present</td>
<td>1966-2001</td>
<td>Africa</td>
<td>Yes</td>
</tr>
<tr>
<td>Liberia</td>
<td>2003-present</td>
<td>1979-2003</td>
<td>Africa</td>
<td>Yes</td>
</tr>
<tr>
<td>Morocco</td>
<td>2004-2006</td>
<td>1956-1999</td>
<td>Africa</td>
<td>No*</td>
</tr>
<tr>
<td>Fiji</td>
<td>2005-present</td>
<td>1987-2000</td>
<td>Australia/S. Pac</td>
<td>No*</td>
</tr>
<tr>
<td>Solomon Isl.</td>
<td>2005-present</td>
<td>1998-2003</td>
<td>Australia/S. Pac</td>
<td>No*</td>
</tr>
</tbody>
</table>

<sup>93</sup> East Timor is included in my data, but I code the East Timorese truth commission as an Indonesian case. The reason that I do this is that East Timor became independent of Indonesia in the same year that the TC was established, so the political precursors to TC onset would have occurred in Indonesia.
Independent Variables

Recall from Chapter 3 that the stated intention of this part of the study is to develop a model of decision-making in the norm-enriched, politically involved time of transition. To this end, I make the following assumptions: the decision to establish a truth commission is one that is by nature political. It involves deliberation over what mechanism will best serve the needs of both the decision-makers and the transitioning states of which they sit at the helm. Because political decisions, especially those of great consequence, do not occur in a vacuum, it is necessary to place them within a larger framework. For the purposes of this examination, the Sproutian concept of “ecological triad” seems most appropriate. The Sprouts (1969) divide decision-making into three constituent parts: entity, environment, and entity-environment relationship.94

Figure 4.1 Ecological Triad

![Ecological Triad Diagram]

The benefit of this framework is that it allows evaluation of the flux between changes in decision-makers’s preferences, changes in the environment, and the exchange between the two. The decision-making entity can take many forms, and the environment in which it acts is composed of both national and international elements. While I recognize that leaders of the states I have chosen

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94 See also Most and Starr (1989), pg. 27 and Starr and Lindborg (2003), pg. 493.
vary in their personal attributes and goals, I focus primarily on the environmental factors both external and internal to the state that affect the opportunity and willingness to choose truth commissions.

External Factors

a. Diffusion

The concept of diffusion is one that is meant to describe patterns of event occurrence over time. The effects of diffusion have been demonstrated in regard to a variety of international relations, including most notably the spread of war (i.e., Most and Starr, 1980), the extension of democracy as a form of governance (Starr, 1991; Starr and Lindborg, 2003) and the contagion of terrorism (i.e., Midlarsky, Crenshaw and Yoshida, 1980; Hamilton and Hamilton, 1983). Just from a quick observation of the spread of truth commissions since 1975, one might argue that a global pattern of demonstration is unfolding, whereby transitional states look to examples from the entirety of world political events (See Figure 4.2). From the qualitative evidence in the previous section, there is reason to believe that some decision-makers, like those in South Africa, look to other countries from other regions and continents to inform their decisions about transitional mechanisms.

We may view this as an artifact of the international normative environment. Truth commissions may be institutional subset of the human rights trend, or more importantly, we may instead view their use as an expression of a newly developed norm regarding behavior in transition. Rudi Teitel (2003), we recall, envisions truth commissions to be a node in the evolution of international standards of transitional justice, coming after emphasis on individual accountability, which finds international legal precedent at Nuremberg. The constructive norm that inspires institutional inquiry I have labeled the transitional restorative legal norm because it focuses on the
reparation of society more so than the retributive legal prosecution of criminal perpetrators. It seems to us that a trend toward increased truth commission usage has begun and continues, appearing to affect the policy choices of decision-makers increasingly over time. For this reason, I propose the following hypothesis:

**Hypothesis 1a:** An increase in the number of international truth commissions over time will increase the likelihood that decision-makers will adopt truth commission in times of transition, ceteris paribus.

Research has more commonly investigated the relationship between proximity and diffusion, as opposed to relying on global temporal diffusion more generally. Most and Starr (1980:933) separated the concept of diffusion into four component parts, two of which relate particularly well to this study: positive spatial diffusion and negative spatial diffusion. Positive spatial diffusion, in the context of war, means the following: “the process in which the occurrence of a new war participation in a nation increases the likelihood that other nations will experience subsequent war participations.” Negative spatial diffusion implies just the opposite. Positive spatial diffusion, they
find, is likely to increase war among neighboring states, which they theorize is due to high levels of interaction between contiguous nations.

More recently, positive spatial diffusion has been applied to the spread of norms such as collective security and democracy across borders. Starr (1991) proposes that democracy is also more apt to spread in regional clusters across time, and Starr and Lindborg (2003) find a relationship between adoption of freer democracies among states over time. It is argued that the ideology of human rights and personal integrity is another such norm that has spread increasingly across regions of the globe since the Universal Declaration of Human Rights was drafted in 1948. Donnelly (2003:40) goes as far as to label human rights a modern “hegemonic discourse” in that “most leading elements in almost all contemporary societies endorse the idea that every human being has certain equal and inalienable rights…” (51). Recognition of such ideational diffusion is not necessarily related to agency, in that it can rely on the “asocial” presence of demonstration effects, which serve as informational beacons to decision-makers. Lutz and Sikkink (2000) have explored the concept of “norms cascades,” or “a rapid shift toward new international human rights norms,” to explain the behavior of Latin American states in compliance to human rights law in the 1980s. Such cascades, they argue, can develop steam and spread with celerity worldwide. This may happen even in the absence of a particular agent promoting change.

On the other hand, diffusion may also be found to have a social dimension as well. Regional proximity forms opportunity structures for decision-makers by simply “facilitating interaction,” but it can also create willingness because leaders are more apt to find relevant those events that unfold in contiguous states (Greig, 2004). Because neighboring states are closer in terms of simple geography, and because they share networks of information, they are likely to mimic one another. This could support the notion of regional intersubjectivity proposed in relation to the mandate for the Ghanian National Reconciliation Commission, which referenced the growing trend of institutional inquiry.
across the African continent. Regional diffusion, in this case, is not limited to ideas necessarily; it can also be observed in relation to adoption of kind of policy. “Systematic contagion” has also been demonstrated in relation to the enacting of similar economic growth policies in Africa (Easterly and Levine, 1998). This supports the notion that a specific policy or institutional solution to a problem propagates among regional neighbors.

Figure 4.3  Regional Count of Truth Commissions by Year

One reason that truth commissions may have spread so quickly among the Americas and Africa is that leaders learn of the benefits of this type of mechanism from contact with their neighbors. A clearer articulation of this is that diffusion of truth commissions might have occurred because likely to serve as an environmental factor that decreases uncertainty for the decision-maker. If happenings elsewhere can be easily observed and learned from, then choices become clearer. Of this characteristic of regional diffusion, Axelrod (1984:158) writes, “A neighbor can provide a role model. If the neighbor is doing well, the behavior of the neighbor can be initiated. In this way
successful strategies can be spread throughout a population…. Overall, it seems that methods of transitional justice cluster, like democracy, in certain regions. In Eastern Europe, lustration was a popular choice, while 1980s Latin America and 1990s Africa were witness to an abundance of truth commissions (up to 12 in Africa by 2003). For this reason, I hypothesize that truth commission establishment will diffuse regionally.

**Hypothesis 1b:** An increase in the number of truth commission over time in a particular region will increase the likelihood that decision-makers in the same region will adopt truth commissions in times of transition, ceteris paribus.

b. International Agency

Some scholars maintain that diffusion alone is unable to account for the spread of norms in the modern international atmosphere. To reiterate an earlier point, Keck and Sikkink (1998:33) argue that transnational advocacy networks, composed of NGOs and international organizations, extend the analysis beyond “mere diffusionist explanations.” This is the case because observing diffusion alone passes over the element of agency. In many cases, for decision-makers to subscribe to intersubjective meanings and global idea progressions, there must be an intermediary that translates messages to them. Barnett and Finnemore (1993:705) argue that international organizations are not simply “empty shells,” or depositories of rules and agreements between states, as they have been conceived by both neo-realism and neo-institutionalism. Instead, they serve a constitutive function; they independently cementing the meaning of certain ideas and then actively transfusing these ideas like missionaries. In this way, they move beyond “regimes” to “agents” of information who carry their own policy interests into the realm of state politics (700-1). Developing states, they find, are the subjects most vulnerable to this kind of institutional mission.

Along these lines, but in regard to human rights policy, and more specifically transitional justice, the UN has been increasingly active. To briefly rehash, in 1978, the General Assembly responded to a spate of disappearances in South America by calling on the UNHRC to investigate
(Lutz and Sikkink, 2000). In 1990, in a rejoinder to the dilemma posed by the multiplying cases of transition, the UN commissioned international legal experts to elicit those pieces of international law that demonstrate the responsibility of the state to prosecute members of the former regime (van Boven, 1990), only to follow by helping to establish truth commissions through mediated negotiations in El Salvador and Guatamala. Finally, the introduction of the Liberian Truth and Reconciliation Act, which mentions its connection to the UN Development Program and UNMIL, demonstrates that the UN has been active in its endorsement of newer truth commissions in its peace-building initiatives.

UN advocacy, like regional proximity, is complicated by its parallel roles. It can both manufacture the opportunity structure for transitional decision-makers (through its tacit support of amnesty during mediation) and influence the willingness of leaders to endorse transitional justice norms. Initially, it promoted retribution, but then it came to adopt the discourse of reconciliation embodied by the transitional justice norm. Therefore, we are likely to witness a process by which UN mediation results in the establishment of truth commissions by both limiting leaders’ options and leading them down a particular institutional road to peace.

Because of the cross-national nature of our study, it is difficult to qualitatively assess the influence of the UN in each specific case of truth commission establishment, though I suspect that a multitude of such relationships exist. It might also be that the UN spreads the restorative justice norm in ways that are not openly observable. If, as some suggest, truth commissions are a result of political negotiations within countries, and we know that the UN is many times party to negotiations in conflict-ridden states, then it might be that the UN expresses ideas in the context of these negotiations. In Chapter 3, emphasis was placed on peace-building initiatives in line with Mani’s

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(2002) work on transitional justice; however, limited data is available for peace-building, given that the number of such operations is relatively low and has a regional as opposed to a state focus.

In addition to mediation, one could also argue that the presence of a UN peacekeeping operation in the transitional state is related to the policy choice of the emerging regime\textsuperscript{96}. The UN’s choice to pursue peacekeeping signals that its interests lie in a particular state’s stability. Peacekeeping work, then, may bleed over into the policy realm through linkage of force and diplomacy. A possible example of this bleedover is in East Timor, where the UNTAET serves an administrative function for the new regime’s transitional institutions (Stahn, 2001).

\textbf{Hypothesis 2a}: If the UN attempts mediation in a transitional state, then the state is more likely to have a truth commission, ceteris paribus.

\textbf{Hypothesis 2b}: If the UN has a peacekeeping force in the transitional state, then the state is more likely to have a truth commission, ceteris paribus.

\textit{Internal Factors}

In this theory so far, I have highlighted the external normative context that may help to place certain options on the policy menu and/or create the willingness to choose one option over the other. But the picture is left unfinished without a parallel consideration of the internal political milieu that either provides possibilities to or constrains the decision-maker. This political milieu is comprised of distinct institutional and structural characteristics. Social movement theorists have made wide use of the term \textit{political opportunity structure} to encompass a host of factors that make different state structures more or less amenable to movement growth (McAdam, \textit{et al.}, 1997). Though I am not observing revolutions or social movements, I find this term, and its conceptual accompaniment, to be of use. Opportunity structure is comparable to the Sprouts’ (1969) concept

\textsuperscript{96} We are aware that mediation and peacekeeping are both responses to intra-state conflict, which poses a problem given that we did not select our cases based on civil war. However, because most civil war cases in the time period are in states that also experienced state failures, we still deem this a valuable measure of UN influence.
of “environmental probabilism,” which is based on the assumption that “as decision makers view the environment, the characteristics of that environment provide cues as to the probability of certain outcomes.” Truth commissions have been understood to be a result of political pragmatism, a midpoint between the desire for punishment of the former regime and impunity for war criminals (Zalaquett, 1995; Nino, 1995; Minow, 1998). It is argued that they have become popular because of their ability to fit nicely within the environment in transitional regime—an environment comprised of distinct political features.

a. Democracy

Countries that are under the rule of nascent democracies typically must come to grips with a military that is still powerful, sometimes more powerful than the new regime. What this means is that the wrong move can land the new leader in an ouster, and the country can slip back into turmoil (Diamond et al., 1999). At the same time, democracy opens the floodgates for popular expression of normative concerns. More generally, studies have shown that democracies are more likely to exhibit behavior respectful of human rights (Henderson, 1991; Poe and Tate, 1994). More specifically, Cortell and Davis (1996) study the way that norms enmesh into domestic institutions, and they find that institutional features that provide wider involvement help pressure the government. They write, “institutional arrangements…serve a dual role: not only enabling actors to invoke the international rule, but also according them a legal right by which to elicit the government’s implementation of the rule’s prescriptions” (1996:457). Democratic institutional development, then, by affording more groups in society access to the government, increases the likelihood that demands for norm compliance will be heard. We know from James Gibson’s work that justice in the form of accountability for past crimes is a popular rallying cry for former victims living in transitional South Africa (See Gibson and Gouws, 1998; Gibson, 2002). The political tightrope act that a leader must perform in a transition to democracy, then, is one that lends itself to truth commission onset. A
country overcoming the rule of an abusive regime is faced with the threat of the military and popular demands for justice. A likely choice for the decision-maker given these two stimuli is the truth commission. In other words, institutional democracy helps shape the opportunity structure of the political environment.

**Hypothesis 3a:** The more institutionally democratic the state in transition, the more likely it is to establish a truth commission, ceteris paribus.

A component of democratic development, or at least an initiator of transition, is the presence of elections. Presidential elections do not ensure that a successful democratic transition will occur, but they do signal that such a transition is under way. With regard to the onset of truth commissions, I theorize that presidential elections will be correlated for three reasons. The first two are more substantive: because elections grant citizens a form of direct participation, we could assume that they will use this channel to air concerns over justice during times of transition. Making the assumption that decision-makers are rational actors seeking reelection, they are bound to the public through domestic audience costs (Fearon, 1994). In other words, if they do not satisfy the demands of the selectorate, they will not gain reelection—a suboptimal outcome for the leader. For this reason, I would expect leadership in transitional countries with elections to be somewhat more responsive to public demands. Second, there are reasons to believe that party politics will affect the choices of the leader who eventually obtains office. Elster (2004:247) argues how campaign promises may lead to more responsiveness from the leader in the form of truth commission establishment: “To do well in elections, political parties may engage in vote seeking, by proposing policies which they believe will appeal to the voters.” He uses the example of Raul Alfonsin in Argentina, who promised voters that, if he were elected over the Peronist favorite, he would mete out justice against the former junta leaders. This promise prevented the leader from fully backing down from the military when he was threatened with backlash. Another example of the political openings
created by elections comes from Ghana, where it has been argued that president-elect John Kuofor established a truth commission simply to weaken the party of the former president, Jerry Rawlings.

A third reason elections may lead to truth commission establishment is more probabilistic. Elections in the context of state failure are necessarily transitional, in that they represent a break from the past. If we assume that a country in transition is more likely to have an election than one that is not, then elections should be correlated with truth commission establishment.

**Hypothesis 3b**: If a country in transition holds a presidential election, it is more likely to establish a truth commission, ceteris paribus.

b. Negotiations

Negotiated settlements have been shown to assist with the stabilization of civil war countries given certain conditions (Hartzell, 2001; Hoddie and Hartzell, 2003). In this examination of the reasons for the establishment of truth commissions, I am less concerned with the pacifying effects of settlements, and more concerned with the provisions within them. Negotiations provide constraints on the decision-maker by making his decision subject to the demands of the opposition over which he will soon rule. I theorize that this process is conducive to onset of truth commissions because leaders in transition trade amnesty for promises of peace from military leaders. The observation that truth commissions are often the result of negotiation is corroborated by works in comparative political science. O’Shaunessy and Dodson (1999), in a study of El Salvador and Nicaragua, show the one important factor in El Salvador was concessions made by both the state and the FMLN. The state agreed to abolish its security forces and establish a truth commission in trade for the demobilization of the FMLN. They also show that Nicaragua was not home to the same kind of compromise because the “key elites” were not under pressure to “underutilise’ their power” (1999:14). In addition, political amnesties in South Africa were the result of compromise between the ANC and the former Afrikaner government. Consistent with these occurrences, then, I
believe that negotiated settlements will be associated with truth commission initiation due to their constraining effect on the political opportunity structure:

**Hypothesis 4a:** If a country in transition is witness to a negotiated settlement between two or more parties, then there is an increased likelihood for truth commission establishment, ceteris paribus.

c. Balance of Power

The “balance of power” between state and opposition forces is a factor stressed by more than one study in relation to the presence of truth commissions (Huyse, 1995; Pion-Berlin, 1995; Sieff and Wright, 1999). As I earlier discussed in relation to democratic transition, “civil-military balance of power has much to do with the terms of transition to democratic rule” (Pion-Berlin, 1995:88). If the legitimacy of the ruling military is struck a blow, as it was in Argentina, then prospects for retribution increase. In the Uruguayan case, the outgoing authoritarian regime and the opposition entered into negotiation as “coequals” (1995:89). This significantly decreases the chances that prosecutions would be the outcome. Sieff and Wright (1999) add theoretical support, arguing that in the event of a complete military defeat, prosecutions are a “viable” option, whereas they are “unlikely” in the event of a negotiation. Unfortunately, from the perspective of the quantitative analyst, it is a tall order to operationalize the concept of balance of civil and military power, or even the balance of power between the opposition and the government in civil war, on a cross-national basis. So, as a proxy, I look to the existence of a power-sharing arrangement as evidence of more pared power between parties in a state failure. Power-sharing agreements entail “the sharing or dividing of military power among former combatants” (Hoddie and Hartzell, 2003). I assume that such arrangements would not be agreed upon by either side if they were not absolutely necessary—necessary due to the incapability to dominate the other side.

**Hypothesis 4b:** If a country in transition is witness to a power-sharing arrangement between two or more parties, then there is an increased likelihood for truth commission establishment, ceteris paribus.
d. Ethnic Fractionalization

Structural characteristics of a state might serve to further constrain the behavior of decision-makers during times of transition. Intra-state turmoil, especially in recent years, has begun to take on an ethnic dimension. As Ted Gurr stated succinctly in an early piece on ethno-national conflict: “In 1994, only 5 out of 23 internal conflicts did not have an ethnic dimension.” Again, though I am not directly observing civil wars, my dataset includes many states that are overcoming genocidal events, or are in a period following protracted ethnic conflict. Conflict of this kind is more likely to occur in countries that are ethnically divided because fractionalization creates the opportunity for more clashes over ethnicity-based interests. Ethnic cleavages within states, including those that are in transition, seem to have a lasting power greater than cleavages along simply political lines. Additionally, ethnic conflict has a way of involving everyone in the polity because participants can more easily identify and align themselves with those of similar ethnicity. For these reasons—both their lingering and pervasive nature—I expect ethnically divided states to be more difficult to resolve through further punishment. In the event of retribution for former crimes, entire ethnic groups make become embittered and rally toward nationalist movements. This kind of effect has been observed in relation to prosecutions at the International Criminal Tribunal for the Former Yugoslavia (ICTY), which has inspired outrage and indignation among Serbians (Fletcher and Weinstein, 2002). Wilson (2001) finds also that truth commissions function to spread the discourse of civic nationalism, in an effort to replace what was once ethnic nationalism. Decision-makers in ethnically fractionalized countries, being aware of the dangers created by punishment, might choose the more compromising and less austere truth commission to assist in peace-building.

**Hypothesis 5a:** If a transitional state is more ethnically fractionalized, then it is more likely to establish a truth commission, ceteris paribus.

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97 Emphasis added.
c. Islamic Majority

To the ire of many clerics and Islamic scholars in academic circles, recent attention has been given to the incompatibility between Muslim beliefs and human rights observance. Jack Donnelly (2003) contends that this is so because, structurally, Islam consigns human rights to the domain of God, and thus implicitly rejects the Kantian notion that individuals have rights unto themselves simply based on their being. Berween (2002) rejects this argument, finding that human rights are inlayed into Q’uranic doctrine. More importantly for this study, he writes that in Islam “justice is a duty of every citizen” (66). Neil Hicks (2002) uncovers a compromise position between these two opposing theoretical viewpoints. The human rights movement and political Islam, he posits, agree on a number of issues. Muslim countries, for instance, are signatories on a number of human rights documents and treaties. However, the same countries tend to exercise hostility toward human rights- promoting institutions because they are viewed as representative of Western secularist values. While not making any judgments about particular beliefs, I theorize based on Hicks’ argument that the transitional restorative legal norm, because of this general hostility toward Western institutions, will have a tougher time finding its way into Muslim countries. Decision-makers in such countries might understand that a truth commission would widely be disparaged by elements of the public, and would arouse more debate than reconciliation.

**Hypothesis 5b:** If a transitional state has a higher percentage of Muslims, then it is less likely to establish a truth commission, ceteris paribus.

**Controls**

In lieu of the myriad studies of political science that find economic development and population to be correlated with human rights behavior (Poe and Tate, 1994) and democracy (See Lipset, 1960), I include measures of both in our model. It is possible that more economically developed countries are less impressionable to active promotion of norms by agents like the UN, as
is insinuated by Barnett and Finnemore (1998). Countries with established infrastructures are liable to have institutions that rely less on external actors. Decision-makers in states with larger populations might see less utility in establishing truth commissions because of the nature of their work: inquiries into the past are more useful when their investigations and findings reach out to a larger proportion of those victimized by the former regime. A state with an immense population might find many logistical roadblocks to effective commission activity.

Finally, unrelated to any theoretical concern, a set of variables will be included in the model to control the effects of temporal dependence. Because the dependent variable is binary, the statistical method of choice is Logit, a Maximum Likelihood Estimation technique. Yet special problems arise when Logit is used in the context of pooled cross-sectional time series data. According to Beck, Katz, and Tucker (1998), if observations are related across time, the results of ordinary Logit analyses can prove misleading because they will underestimate the standard errors, thus yielding over-optimistic estimates of the statistical significance of relationships (1998, 1261). The observations for a particular country are not apt to be independent in the pooled cross-sectional time series framework, as would be assumed in ordinary Logit.

Methods

The dependent variable, truth commission initiation, is coded “1” for the first year that a country experiences a truth commission and “0” for those that do not. To measure the diffusion of the transitional restorative norm, counter variables that indicate the increase in truth commissions over time were created. For the global diffusion variable, each country-year was assigned a number based on how many truth commissions had been established in the world by that year. In 1976, all

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98 See Table A.2 in Appendix for a breakdown of theoretical concepts, their operationalizations, and the data used for measurement.
countries were coded “1”, whereas by 2003, all countries were coded “31”, the total number of truth commissions up to that point.

For the regional diffusion variable, I split the world into the five regions categorized by Correlates of War: Europe, the Middle East and North Africa, sub-Saharan Africa, Asian, and the Americas. I then created a counter for each region across the sample years. Africa, for instance, begins with “1” in 1976 and ends with “12” in 2003. Each country in a particular region was given the same values as all other members of its region, depending on the number of truth commissions experienced. An alternative measure for regional temporal diffusion was also included: the percent of countries in a region that have had a truth commission. The reason that this measure was crafted was to address the possibility that leaders are influenced not by the regional count alone but by the relative salience of truth commissions in comparison to other regions. For instance, the Americas, by 2003, only saw a total of only six commissions of inquiry, but this is the equivalent of 28.5% of countries in the region with such a body. Oppositely, in Africa, the count of truth commission by 2003 is a high 12, but the total percentage of TC countries is only 25%.

Theories of regional diffusion do not seem to address which formulation will more successfully represent the effects of contact and learning between proximal leaders. If relative salience matters more, or shows a different relationship to the dependent variable than does the raw total, this should be reflected in the results of the analysis. Speculation could be made that the raw total corresponds to political opportunity, as it increases the probability that leaders will interact. The percentage variable could then be argued to be a measure of willingness, as the relative success

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99 Though there are probably more sophisticated econometric measures that could be used, use of a counter is not unprecedented. In the literature on enduring rivalries, many studies employ a “dispute-density” measure to code the existence of a rivalry. For instance, if a sum total of 6 disputes exists between a dyad in 20 years time, they are considered to be rivals. See Goertz and Diehl (1993) for a discussion.

100 The EUGene software package was used to create this variable. I began by compiling a list of how many countries were in each region in each of the 27 years of the study. I then took the regional counter variable, and divided its value by the total number of countries for each year. This generates a percent proportion of truth commission countries to total number of countries for each region.
of the truth commission in a region might cause the leader to see higher expected utility in its functions.

For UN Mediation, data from Jacob Bercovitch’s Mediation Project was employed, and updated past 1995 using *Keeling’s Record of World Events*. All instances of interstate conflict mediation were thrown out, given the focus of the study is intra-state events. When the U.N. made an attempt to mediate a dispute, the corresponding country-years and the following year, were coded as “1”; otherwise, country-years were coded “0”. Peacekeeping data were gathered directly from the UN. When the UN had peacekeeping troops in a country, I coded this variable as “1” for that and the following year. The reason that this inclusive lag was created for these variables is that, even as mediation attempts or peacekeeping might lead to conditions conducive to truth commissions, as with the creation of any new institution, the establishment of these commissions usually takes considerable time. Though they have in some circumstances been constituted very quickly, it is more frequently the case that it takes one or two years for the institutions to be designed, positions filled, and staffs hired so that their work can begin.

To measure democracy, Polity II data were used, a choice consistent with the theoretical interest in institutional characteristics. Each country in the sample was assigned a Polity value from –10 to 10, corresponding to whatever it was coded in that year. For presidential elections, the variable was coded “1” for every year that a country held an election, as well as the year after the election; otherwise, it was coded “0”. The reasoning for coding the year after the election as “1” is similar to that rehearsed above, in regard to the effects of peacekeeping and negotiation. The

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101 Available at <http://www.posc.canterbury.ac.nz/jbercovitch/mediation.html>.
102 Each time a mediation was attempted between the UN and two parties from different states, it was struck from the data set.
104 This variable is a combination of the former democracy and autocracy scores provided by the Polity data. Following Jaggers and Gurr (1995), it is hoped that by combining them a somewhat more discriminating measure is accomplished.
105 Data were gathered from Golder (2005) and updated after the year 2000 using <www.electoralworld.org/calendar.htm#1995>. 

107
effects of an election, pressure on the president, and subsequent response probably all take some

time to affect the polity and to result in a truth commission. Here only the year after the election is

considered to be a window for change, however, for two reasons. First, the civic discussion that
culminates in the call for a truth commission in the wake of negotiations and peacekeeping
	oftentimes takes place prior to the election, during the election campaign. This means that this
variable’s effect will be felt more quickly after an election than it would after some other events.
Further, moved by the election calendar, and the knowledge that his or her time in power might be
limited, the president with a mandate to form a truth commission will tend to move quickly. For
these reasons, coding presidential elections as though the year of the election and the year after were
most conducive to truth commissions seemed most appropriate.

To operationalize the concept of type of transition and balance of power, respectively, I use
two variables: power-sharing arrangements and negotiated agreements. Country-years in which those
events took place (and two years thereafter) were coded as “1”, and “0” for all years when they did
not. The data were adopted from Hartzell (2001), and updated through 2003 using Keesing’s Record of
World Events. For power-sharing arrangements, the same coding operations were performed. Data
were gathered from Hartzell and Hoddie (2003). Since this data only extends from 1980-1996, I
coded years from 1976 to 1980 and from 1996 to 2003 using Keesing’s Record of World Events. In each
case, the authors’ coding rules were employed. The reasoning for coding the two years after the

\[\text{106} \text{ Finally, as a practical matter, in some instances the election cycle is only four years. In these instances, were I to code}
elections so that their effects could be captured up to two years thereafter, the majority of years in the country would
have been coded as presidential election years. I deemed this to be counter-intuitive.}

\[\text{107} \text{ A negotiated settlement is reached if “representatives of the opposing sides to a conflict participated in the direct}
talks that led to the agreement. Third-party actors might play a role in the negotiations, but the antagonists had to meet
to discuss conditions relevant to ending the dispute” (Hartzell and Hoddie, 2003:309). A power-sharing agreement is}
indicated by one of four of the following: “1. creation of the state’s security forces through integration of former
antagonist’s armed forces on the basis of a formula representative of the size of the armed groups; 2. creation of the
state’s security forces on the basis of equal numbers of troops drawn from the antagonist’s armed forces; 3. appointment
of members of armed faction(s) that do not dominate the state, or of weaker armed factions, to key leadership positions
in the state’s security forces; and 4. allowing antagonists to retain their own armed forces or to create their own security}
forces.” (Hartzell and Hoddie, 2003:309).}
truth commission as “1”, similar to the arguments above, is that frequently a truth commission
would not take effect directly after the signing of a negotiated settlement.

Both the Ethnic Fractionalization and the Percent Muslim variables were coded using data
from Fearon and Laitin’s Ethnicity, Insurgency, and Civil War project\textsuperscript{108}. Their data set was merged
with mine by country-year. Ethnicity is an indexed measure, while the Islam measure is simply the
percentage of Muslims in each country. Finally, following the method suggested in Beck, Katz and
Tucker (1998), I will include three cubic spline variables, in addition to a counter variable measuring
number of years without a truth commission, in each model to control any problems that would be
caused by temporal dependence.

To summarize, then, the baseline model (Model 1) is as follows:

\[
\text{TRUTH COMMISSION INITIATION}_t = a + \beta_1 \text{GLOBAL TEMPORAL DIFFUSION} \\
+ \beta_2 \text{REGIONAL TEMPORAL DIFFUSION} + \beta_3 \text{UN MEDIATION} + \beta_4 \text{POLITY II} \\
\text{DEMOCRACY} + \beta_5 \text{PRESIDENTIAL ELECTION} + \beta_6 \text{NEGOTIATED} \\
\text{SETTLEMENT} + \beta_7 \text{POWER-SHARING ARRANGEMENT} + \beta_8 \text{ETHNIC} \\
\text{FRACTIONALIZATION} + \beta_9 \text{PERCENT MUSLIM} + \beta_{10} \text{ECONOMIC} \\
\text{DEVELOPMENT} + \beta_{11} \text{POPULATION} + \beta_{12,13,14} \text{SPLINES} + \beta_{15} \text{YEARS}
\]

\text{WITHOUT TRUTH COMMISSION}\textsuperscript{109}

Where, for country \(j\) at time \(t\),

\textbf{TRUTH COMMISSION INITIATION} is a binary variable with "1" indicating years in
which a truth commission was established and "0" years in which a state-failure country
remained without a truth commission.

\textsuperscript{108} Available at \url{http://www.stanford.edu/group/ethnic/}.

\textsuperscript{109} The astute reader will notice that lags were not subscripted for the UN mediation, Polity II Democracy, Presidential
Election, Negotiated Settlement, and Power-Sharing Agreement variables. The reason for this omission is that I use
non-traditional lags, as described in the methods section. For instance, the subscript for our Polity II Democracy
variable would be \(t \cdot (t+1) \cdot (t+2)\), which simplifies to \((3t + 3)\). To avoid the confusion that would be caused by this, I
leave the subscripts out of the equation.
GLOBAL TEMPORAL DIFFUSION is a counter variable measuring the cumulative total of prior truth commissions in the world from 1976 to 2003.

REGIONAL TEMPORAL DIFFUSION (in Models 1 and 2) is a counter variable measuring the cumulative total of prior truth commissions across each of five world regions from 1976 to 2003.

REGION PERCENT (in Models 3 and 4) is a variable that divides the total number of truth commissions in a given year by the total number of countries within each of five regions in the world in the same year.

UN MEDIATION is a binary variable with "1" indicating a mediation attempt in a country in one year and two years thereafter; “0” indicates no such attempt.

POLITY II DEMOCRACY is based on the 20-point autocracy/democracy scale compiled by Polity II.

PRESIDENTIAL ELECTION is a binary variable with “1” indicating a presidential election in one year and two years thereafter; “0” indicates no such election.

NEGOTIATED SETTLEMENT is a binary variable with “1” indicating the signing of a negotiated settlement in one year and two years thereafter; “0” indicates no such attempt.

POWER-SHARING ARRANGEMENT is a binary variable with “1” indicating the presence of a power-sharing arrangement in one year and two years thereafter; “0” indicates no such arrangement.

ETHNIC FRACTIONALIZATION is an indexed variable measuring ethnic division.

PERCENT MUSLIM is a percentage measure of each country’s population that is Muslim.

ECONOMIC DEVELOPMENT is a logged per capita GNP.

POPULATION is a logged measure of the number of people in each country.

Statistical Analysis: A Test of Two Models

The results of the original Logit are presented in Table 4.2. The figures under the Model 1, on the left-hand side, are the output from the baseline model constructed above. The results do not support all of the hypotheses presented in the theory section, but many of the proposed relationships do appear to hold empirical relevance. In the theory, external factors or international

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110 Parts of this section closely resemble the statistical analysis within a previous conference paper (See Dancy and Poe, 2006). However, it has been re-written in full with updated analyses to best avoid intellectual borrowing.
Table 4.2  Logit Analysis of the Hypothesized Determinants of Truth Commissions in Instances of State Failure, 1978-2003

<table>
<thead>
<tr>
<th>Variables</th>
<th>Model 1 Coefficients*</th>
<th>Standard Errors</th>
<th>Model 2 (trimmed) Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporal Diffusion</td>
<td>-0.195**</td>
<td>0.094</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Temporal Diffusion</td>
<td>.866***</td>
<td>0.250</td>
<td>0.422***</td>
<td>0.105</td>
</tr>
<tr>
<td>United Nations Mediation</td>
<td>2.20***</td>
<td>0.792</td>
<td>1.568***</td>
<td>0.6105</td>
</tr>
<tr>
<td>U.N. Peacekeeping</td>
<td>0.303</td>
<td>1.07</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Polity 2 Democracy</td>
<td>0.067</td>
<td>0.060</td>
<td>0.082*</td>
<td>0.057</td>
</tr>
<tr>
<td>Presidential Election</td>
<td>0.855*</td>
<td>0.543</td>
<td>0.934**</td>
<td>0.508</td>
</tr>
<tr>
<td>Negotiated Settlement</td>
<td>1.730**</td>
<td>0.997</td>
<td>0.874*</td>
<td>0.603</td>
</tr>
<tr>
<td>Power Sharing Agreement</td>
<td>-1.377</td>
<td>1.262</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ethnic Fractionalization</td>
<td>-1.226</td>
<td>0.987</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent Muslim</td>
<td>-0.014*</td>
<td>0.012</td>
<td>0.030***</td>
<td>0.011</td>
</tr>
<tr>
<td>Economic Development</td>
<td>-0.360</td>
<td>0.327</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>0.246</td>
<td>0.255</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peace Years</td>
<td>0.287</td>
<td>0.537</td>
<td>0.388</td>
<td>0.537</td>
</tr>
<tr>
<td>Spline 1</td>
<td>-0.003</td>
<td>0.030</td>
<td>0.007</td>
<td>0.030</td>
</tr>
<tr>
<td>Spline 2</td>
<td>0.008</td>
<td>0.022</td>
<td>0.000</td>
<td>0.021</td>
</tr>
<tr>
<td>Spline 3</td>
<td>-0.005</td>
<td>0.008</td>
<td>-0.002</td>
<td>0.007</td>
</tr>
<tr>
<td>Constant</td>
<td>-11.53</td>
<td>4.82</td>
<td>-6.315</td>
<td>1.304</td>
</tr>
<tr>
<td>N</td>
<td>864</td>
<td></td>
<td>987</td>
<td></td>
</tr>
<tr>
<td>Chi²</td>
<td>56.13(16)</td>
<td></td>
<td>49.49(9)</td>
<td></td>
</tr>
<tr>
<td>Prob Chi²</td>
<td>.0000</td>
<td></td>
<td>.0000</td>
<td></td>
</tr>
<tr>
<td>Pseudo-R²</td>
<td>.307</td>
<td></td>
<td>.264</td>
<td></td>
</tr>
</tbody>
</table>

*Significance Tests for all substantive variables are one-tailed, significance tests for the spline variables are two-tailed. Population and Economic development are logged. Three asterisks indicate that the .01 level was reached, two, the .05 level, and one, the .10 level, respectively.

Contextual factors were separated from internal political factors that create opportunity structures for decision-makers. The first of these elements of the external atmosphere was simply diffusion of the transitional restorative norm, which is measured both globally and regionally. The variable representing the total number of truth commissions across the globe over time, Global Temporal Diffusion, was included in the model to capture the effects of international policy demonstration. Historical evidence presented in Chapter 3 demonstrated the possibility that leaders in transitional states observe patterns of policy emanating from areas to which they are not akin, or that diffusion
occurs between regions. Examples include South African leaders’ copious efforts to study Latin American and Eastern European solutions to transitional dilemmas. Though anecdotal evidenced supports the hypothesis, the results show an opposite trend. Global Temporal Diffusion, contrary to what was hypothesized, actually proves to have a negative effect on truth commission initiation, significant at the .05 level. Because the directional nature of Hypothesis 1a necessitates a one-tailed test, this variable becomes insignificant, as it moves in a direction opposite of that which was predicted.

A partial explanation for insignificance of the global diffusion variable is likely the overpowering Regional Temporal Diffusion variable, which is the most robust in the model. This variable was based on the theory that state leaders receive behavioral cues from their neighbors. Proximity can create both opportunity in the form of increased probability for informational spread and/or willingness to mimic regionally salient, intersubjectively understood patterns of policy. The Regional Temporal Diffusion achieves significance at the .01 level (one-tailed test), which indicates an obvious tendency for state leaders to follow regional patterns of behavior and supports Hypothesis 1b. Because such a strong relationship appears to exist among regional neighbors, the effect of global diffusion is likely to be diluted, i.e., non-neighbor diffusion in comparison will seem even to have a negative effect.

The results above appear to be relatively definitive evidence of the influence of the normative environment on decision-making during times of transition. But diffusion theories, and the variables in the model that represent these theories, rely primarily on the assumption of informational dissemination, even if this has an “asocial” character. That is, the microfoundations of diffusion remain on the level of speculation; whether diffusion is due merely to demonstration, publicization, or advocacy remains unclear. In an effort to infuse agency, or active international socialization into this analysis, measures of UN involvement were included. Based on the theory
that the UN acts as an agent of norm codification and promotion, Hypotheses 2a and 2b proposed a relationship between mediation and peacekeeping on the transitional mechanism adopted in polities overcoming state failure. The essential idea is that UN participation alters the course of policy deliberation. The results obtained from the UN Mediation variable lend strong support to the notion that the UN takes part in the development of new norms. The coefficient is positive and statistically significant at the .01 level (one-tailed test), meaning that states where the UN acted as a mediator will more likely to establish a truth commission, all other things being held equal. This supports Hypothesis 2a. The Peacekeeping variable also has a positive sign, as predicted, but it does not even approach statistical significance. Peacekeeping’s relative lack of explanatory power could be due to the fact that the operations are not limited to diplomacy. Use of force, institution-building, relief, and development projects can all occur under the peacekeeping umbrella. UN mediation, however, is focused primarily on reaching politically feasible options during tumultuous times. As was theorized, truth commissions arise from a process of concession and appeasement by the regime that will be assuming control of the country. UN Mediation captures the organization’s influence during this process, whereas Peacekeeping does not.

Moving beyond the effects of the international social context, or external stimuli, the model also elicits support for various features of the internal political environment, and openings in the political opportunity structure. Democracy, intended to account for institutional development within post-state failure states, though positive, fails to approach conventional standards of statistical significance. This is an intriguing failure of the model. Many propose that truth commissions are a distinctive outgrowth of democratic transitions specifically (e.g. Wilson, 2001; Teitel, 2000; Elster, 2004), and the qualitative analysis in Chapter 3 suggested that openings in the institutional environment would allow civil society an entry point into the decision-making process. This seems, however, to not be the case. However, the Presidential Elections variable, also positive, gets closer
to statistical significance, though it barely falls short of the .05 level (one-tailed test). It should be noted that Model 3 (in Table 4.3), which makes use of the alternate measure of regional diffusion, produces a positive coefficient for the Presidential Elections variable, which is statistically significant at the .05 level.

Table 4.3  Logit Analysis of the Hypothesized Determinants of Truth Commissions in Instances of State Failure, 1978-2003 (With changed measure of Regional Diffusion)

<table>
<thead>
<tr>
<th>Variables</th>
<th>Model 3 Coefficients*</th>
<th>Standard Errors</th>
<th>Model 4 (trimmed) Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporal Diffusion</td>
<td>-0.093*</td>
<td>0.060</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Regional Temporal Diffusion</td>
<td>22.61***</td>
<td>5.858</td>
<td>18.37***</td>
<td>4.499</td>
</tr>
<tr>
<td>United Nations Mediation</td>
<td>1.790***</td>
<td>0.715</td>
<td>1.566***</td>
<td>0.610</td>
</tr>
<tr>
<td>U.N. Peacekeeping</td>
<td>0.473</td>
<td>1.05</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Polity 2 Democracy</td>
<td>0.817*</td>
<td>0.056</td>
<td>0.067*</td>
<td>0.051</td>
</tr>
<tr>
<td>Presidential Election</td>
<td>0.979**</td>
<td>0.534</td>
<td>0.918**</td>
<td>0.513</td>
</tr>
<tr>
<td>Negotiated Settlement</td>
<td>1.488*</td>
<td>0.976</td>
<td>1.028**</td>
<td>0.602</td>
</tr>
<tr>
<td>Power Sharing Agreement</td>
<td>-1.107</td>
<td>1.224</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Ethnic Fractionalization</td>
<td>-0.066</td>
<td>0.956</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Percent Muslim</td>
<td>-0.022**</td>
<td>0.123</td>
<td>-0.029***</td>
<td>0.011</td>
</tr>
<tr>
<td>Economic Development</td>
<td>-0.046</td>
<td>0.305</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Population</td>
<td>0.147</td>
<td>0.221</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Peace Years</td>
<td>0.261</td>
<td>0.550</td>
<td>0.410</td>
<td>0.554</td>
</tr>
<tr>
<td>Spline 1</td>
<td>-0.006</td>
<td>0.031</td>
<td>0.005</td>
<td>0.030</td>
</tr>
<tr>
<td>Spline 2</td>
<td>0.012</td>
<td>0.022</td>
<td>0.003</td>
<td>0.021</td>
</tr>
<tr>
<td>Spline 3</td>
<td>-0.007</td>
<td>0.008</td>
<td>-0.003</td>
<td>0.007</td>
</tr>
<tr>
<td>Constant</td>
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<td>4.32</td>
<td>-6.426</td>
<td>1.352</td>
</tr>
<tr>
<td>N</td>
<td>864</td>
<td></td>
<td>987</td>
<td></td>
</tr>
<tr>
<td>Chi²</td>
<td>50.67(16)</td>
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<td>50.14(10)</td>
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</tr>
<tr>
<td>Prob Chi²</td>
<td>.0000</td>
<td></td>
<td>.0000</td>
<td></td>
</tr>
<tr>
<td>Pseudo-R²</td>
<td>.278</td>
<td></td>
<td>.267</td>
<td></td>
</tr>
</tbody>
</table>

*Significance Tests for all substantive variables are one-tailed, significance tests for the spline variables are two-tailed. Population and Economic development are logged. Three asterisks indicates the .01 level was reached, two, the .05 level, and one, the .10 level, respectively.

Taken together, both models seem to be generally supportive of Hypothesis 3b, which is that presidential elections, like they served to in Argentina, help hold the decision-making apparatus accountable to the general public. As a result, presidential elections increase the chance that truth
commission will be established, ceteris paribus. This can be compounded by the fact that the selectorate continues to exert pressure on the executive after his or her electoral victory, bleeding over and serving as a constraint in the decision-making process.

The two remaining variables were meant to test the effects of political facts on the course of the decision-making process are Negotiations and Power-sharing Arrangements. Negotiated Settlements normally arise after protracted periods of violence between two relatively equal forces. This variable is meant to encapsulate both the type of transition (transplacement) and elements of the balance of power theory of truth commission initiation. Negotiations, it has been argued, are entered into due to the intractability of the conflict situation caused by long-term costs to both sides, and they also shape the nature of the transition through adherence to agreed-to terms. The coefficient of the Negotiations variable is positive and statistically significant at the .05 level (one-tailed test), meaning that, other things equal, presence of negotiated settlements lead to truth commission establishment in state failure countries. This result supports Hypothesis 4a. The Power-sharing Arrangement variable, designed to be a more stringent measure of balance of power, due to the extreme compromise evident in this type of agreement, bears an unpredicted negative direction that does it is not statistically significant. Reasons for this could be the relatively small number of such arrangements that fall within the data range, or a fundamental misunderstanding of the type of power balance that leads to such an arrangement. For instance, it could be that PSA’s actual reflect less of a power balance because the ruling power is willing to include the smaller opposition as a painless way of avoiding future disputes.

The remaining variables in the model were the controls for different structural characteristics that might predispose a failed state to truth commission establishment. Of these, the only one that achieved statistical significance (at the .01 level) was the Muslim variable, which was in the predicted negative direction. As an extension, we can conclude that a state with a larger Muslim population is
substantially less likely to institute a truth commission, *ceteris paribus*, in agreement with Hypothesis 5b. Ethnic Fractionalization, likewise, exhibits a negative sign, but this is an unexpected direction for the coefficient, which does not ultimately achieve statistical significance. To round out the analysis, the controls for Economic Development and Population, both logged variables, do not obtain significant results. The final cluster of variables, a count of Peace Years and three cubic splines, included to control for temporal dependence, also fail to achieve significance. This indicates that the model is not subject to this statistical deficiency.

The right-hand side of Table 4.2 reports the coefficients for a trimmed model, which was constructed by removing those variables that did not reach conventional levels of significance in Model 1, and re-running the Logit. In Model 2 the controls for temporal dependence were also re-run, so as not to take for granted the statistical soundness of the altered model. The Polity 2 Democracy variable was left intact, though it was not significant in the first run. The reason for this decision was the suspicion that its insignificance was due to moderate collinearity with the Economic Development variable. The effect of this model streamlining did not change the goodness of fit of the model to a great degree: the Pseudo-R2 moved from .307 to .264. The multicollinearity existent in Model 1 does decrease, though, which has the effect of boosting the significance of the Democracy variable to the .10 level, and increasing the Presidential Election variable to the .05 level of statistical significance. Negotiated Settlement, however, moved from the .05 level to the .10 level of statistical significance.

Model 3, presented on the left-hand side of Table 4.3, is the analogue of Model 1 with the exception of the regional diffusion variable, which is changed to the alternate measure, indicating the percentage of countries in the region that have experienced a truth commission. The only difference from Model 1 is the significance of the Democracy variable, which here achieves significance at the .111 Tests in Stata 8.0 showed a correlation term of .467 between Democracy and Economic Development.
.10 level. Also, Presidential Election achieves the .05 level of significance. Model 4 is trimmed in a
similar fashion to Model 2, and this heightens the significance of both Negotiated Settlements and
Percent Muslim. The goodness of fit of both models hovers around the values for Models 1 and 2.
Overall, there is little noticeable difference when the alternate measure of regional diffusion is
employed.

Measuring Competing Explanations: Simulations using Marginal Effects

The reader may remember that because the dependent variable for this analysis is
dichotomous, Logit, a maximum likelihood regression tool, was used to run the models.
Unfortunately, one of the weaknesses of this approach is that the non-linearity of maximum
likelihood predictions renders the coefficient’s actual values virtually useless. In opposition to OLS
regression, where the resulting coefficients correspond to a linear increase or decrease in the value of
the dependent variable, Logit coefficients represent a non-linear relationship following an S-shaped
curve. This makes interpretation of the magnitude of importance of the effects more difficult, and
less easy to present.

One way of battling this necessary evil caused by use of Logit is exploration of marginal
effects, which express the probability of the occurrence of the dependent variable as a result of
changes in the values of each independent variable. So far, the models show that both the theorized
elements of the international normative environment and the political opportunities/constraints
from within the country have substantively significant effects, but there is no way of demonstrating
the relative importance of these different variables.

In the interest of providing such a demonstration, a simulation of the marginal impact of
both internal and external factors is presented in Table 4.4. This table highlights the influence of the
two variables that are the most robust in the analyses—Regional Diffusion and UN Mediation—on
the probability of truth commission establishment within a country. Portrayed are four hypothetical countries from 2003, the last year of the sample. To simplify the calculations required to create the simulation, Model 2 was used, and the values of some variables are pre-assigned and held constant throughout. Democracy, the least significant of the Model 2 variables, is held constant at 7, which is the modal value for all countries that instituted a truth commission in our sample. This choice is made in recognition of the fact that some non-democracies—including Burundi, Uganda, and Rwanda—have chosen to establish truth commissions. While this may not be completely justifiable methodologically, this simulation is for the purpose of illustration, and there is no reason to assume that these three cases would nullify its heuristic usefulness. The other variable that is held constant is Percent Muslim, which keeps a value of 10 throughout the simulation. This is not to say that this structural characteristic is theoretically uninteresting; it is, however, to acknowledge that it contributes little to the relative weight of norm-based and political explanations for truth commission establishment.

Table 4.4  Probability of the Onset of a Truth Commission After State Failure, Four Simulated Cases

<table>
<thead>
<tr>
<th>Assuming a case:</th>
<th>Developing Democracy in Region with no past TCs</th>
<th>Developing Democracy in Region with 4 TCs (i.e., Asia)</th>
<th>Developing Democracy, 6 TCs in Region (i.e., S. America)</th>
<th>Developing Democracy in Region with 12 TCs (i.e., Africa)</th>
</tr>
</thead>
<tbody>
<tr>
<td>With the attributes making it least likely to have a T.C.:</td>
<td>.011</td>
<td>.058</td>
<td>.124</td>
<td>.642</td>
</tr>
<tr>
<td>Add a U.N. Mediation:</td>
<td>.051</td>
<td>.227</td>
<td>.405</td>
<td>.895</td>
</tr>
<tr>
<td>Add a Negotiated Settlement:</td>
<td>.115</td>
<td>.413</td>
<td>.621</td>
<td>.954</td>
</tr>
<tr>
<td>Add a Presidential Election:</td>
<td>.248</td>
<td>.641</td>
<td>.806</td>
<td>.981</td>
</tr>
<tr>
<td>Subtract U.N. Mediation:</td>
<td>.064</td>
<td>.273</td>
<td>.465</td>
<td>.916</td>
</tr>
</tbody>
</table>

*I assume a similar percentage of Islamic population for all of the hypothetical countries in this table (10%). I operationalize “developing democracy” as a Polity score of 7, which is the modal category for all cases that had TCs in our data.

112 Recall that Model 2 included the variables controlling for temporal dependence. To neutralize the effect of these insignificant variables and hold them constant, Peace Years was assigned the value of 4 (the rounded mode for all truth commission countries), and the cubic splines were each assigned the value of zero.

113 Table A.3 (in Appendix) presents the independent marginal effects of percent of the Islamic population on the probability of truth commission establishment.
The columns of the table represent four different hypothetical countries that vary with respect to the sum total of truth commissions that were instituted in their respective regions. From left to right, the number of regional truth commissions equals 0, 4, 6, and 12. This corresponds to how many commissions were established in the Middle East, Asia, the Americas, and Africa as of 2003.\textsuperscript{114} To summarize, the first column is thus meant to represent a developing democracy, with a relatively low Islamic population, whose region witnessed the creation of no truth commissions.\textsuperscript{115} The second column represents the same kind of country in a region with only four truth commissions as of 2003. This continues on through the fourth column. Thus, the sole disparity between columns is the number of regional truth commissions. To assist in assessment of the significance of these probabilities, it might be of use to note that of 1395 country-years that faced state failure, a total of 26 included truth commissions.\textsuperscript{116} This represents a probability of .019 that a failed state would establish a truth commission in any given year.

The rows of the table reflect a statistical manipulation of conditions present in each simulated country. Excluding those variables that are held constant and the regional diffusion counter, which varies by column, only three significant variables remain. These are UN Mediation, Negotiated Settlement, and Presidential Election. From top to bottom, the table represents the marginal effect of addition of each of these variables, from most significant to least significant in Model 2. The first row represents the absence of all of these characteristics. Beginning with the upper-leftmost statistical cell, we see the probability for truth commission initiation in a country with no amenable internal or external characteristics. The upper-rightmost statistical cell shows the same

\textsuperscript{114} Europe is excluded because, with only two commissions as of 2003, it represents a midpoint between areas of no diffusion and little diffusion. For this reason, it would clog the table without adding much to the presentation. One could reasonably arrive at the effect for Europe by simply comparing to the Middle East and Asia.

\textsuperscript{115} This is somewhat unrealistic, as only a country in the Middle East would have experienced no truth commissions; such a country would no doubt have more than 10 percent Muslim population on average. But again, the purpose is to show the independent effect of regional diffusion, even if it means simulating such anomalous hypotheticals.

\textsuperscript{116} Of these 1395 cases, there are eight missing values. Before any effort to publish this paper is made, these cases will be removed from the data.
probability with only one exception, the presence of 12 prior regional truth commissions. A comparison of probabilities shows the strength of the regional diffusion variable. The country with no conducive attributes and no regional examples has initiation probability of .011, whereas that with 12 regional examples has a probability of .642.\textsuperscript{117} Looking at the values in Row 4, we see that with all contributing factors present, the country in the region with zero truth commission has an initiation probability of .248, whereas in the region that had witnessed 12, the probability is a very high .981. When comparing these probability values, it becomes obvious that the regional diffusion variable, in a simulated African country, outweighs the combined effect of all of the other determinants of initiation in regions with few truth commissions.

Row 4 presents the probabilities for each region when all other determinants are present. Row 5, then, demonstrates the decrease in probability that would accompany the subtraction of UN mediation from the most likely cases. Because UN mediation was added first in the simulation, Row 2 shows only its affect only in cases without the other two contributing factors. When subtracted from the most likely cases, the UN Mediation variable proves to be quite substantial, though its marginal effect varies across region, ranging from .184 in the region with zero TCs to .065 in the region with 12 TCs.\textsuperscript{118} The conclusion to be drawn from this is that a UN mediation attempt in a country changes the decision-making landscape by ushering in new norms of behavior for leaders to consider.

In Chapter 3, I presented evidence suggesting that the restorative norm reached a tipping point in the mid-1990s, with the publicity of the South African Truth and Reconciliation Commission. One byproduct of this new level of development was more active promotion by

\textsuperscript{117} These probabilities were arrived at with use of the “mfx compute” function in Stata 8.0. The upper-leftmost value, for example, was determined with the command, “mfx compute, at (0 0 7 0 0 10 0 0 0 1)”. The upper-right most value, on the other hand, was determined with the command, “mfx compute, at (12 0 7 0 0 10 4 0 0 0 1)”.
\textsuperscript{118} I arrived at this figures by subtracting the probabilities in Row 5 from those in Row 4.
networks of international advocates. If this is true, one could presume that the effect of UN involvement is heightened during this period. For this reason, the same simulation procedure as above was run holding the regional number of truth commissions constant at the 1995 level. The idea is to compare the robustness of UN mediation in this period compared to the 2003 period.

Table 4.5  Probability of the Onset of a Truth Commission After State Failure, Four Simulated Cases, With Regional Totals from 1995

<table>
<thead>
<tr>
<th>Assuming a case:</th>
<th>Developing Democracy in Region with no past TCs</th>
<th>Developing Democracy in region with 3 TCs (i.e., Asia)</th>
<th>Developing democracy, 5 TCs in region (i.e.,S. America)</th>
<th>Developing Democracy in region with 7 TCs (i.e., Africa)</th>
</tr>
</thead>
<tbody>
<tr>
<td>With the attributes making it least likely to have a T.C.:</td>
<td>.011</td>
<td>.038</td>
<td>.085</td>
<td>.178</td>
</tr>
<tr>
<td>Add a U.N. Mediation:</td>
<td>.051</td>
<td>.161</td>
<td>.309</td>
<td>.510</td>
</tr>
<tr>
<td>Add a Negotiated Settlement:</td>
<td>.115</td>
<td>.315</td>
<td>.517</td>
<td>.713</td>
</tr>
<tr>
<td>Add a Presidential Election:</td>
<td>.248</td>
<td>.540</td>
<td>.731</td>
<td>.864</td>
</tr>
<tr>
<td>Subtract U.N. Mediation:</td>
<td>.064</td>
<td>.328</td>
<td>.532</td>
<td>.570</td>
</tr>
</tbody>
</table>

*With Democracy held constant at 7 and Muslim Percent held constant at 10.

When UN mediation is subtracted from the most likely case, as it was in the former simulation, the results a range of marginal effects from .184 to .294. This should be compared to the simulation using 2003 TC totals, which yielded a marginal effects range from .065 to .184. The effect of UN mediation in 1995, then, appears to be stronger across regions than it is in 2003. In fact, the effect of UN mediation in a state similar to one residing in 1995 Africa is .294, whereas it is only .065 in 2003. This has a very important implication, one that bolsters the claims made in Chapter 3. In the mid-1990s, when the restorative norm was in its second stage of development, advocacy was the medium through which the norm was spread. As it began to reach a third stage, where it became a crucial part of the intersubjective regional environment in Africa, the behavioral tendencies of the region entrenched the norm, and UN mediation became less important.

The effect of African diffusion is plotted in Figure 4.4. To arrive at the probability figures on the y-axis, I took the least likely case for truth commission establishment, and only made
variations in the regional counter corresponding to how many TCs existed in Africa in each year. As
the number of previous TCs increases, so does the probability that a future commission will be
initiated. Figure 4.4 depicts probability values that steadily increase over time, suggesting that the
diffusion effect gets stronger and stronger.

Figure 4.4  The Marginal Effect of Regional Diffusion Over Time

A final test using marginal effects was performed with the intention of contrasting the two
competing explanations for truth commission initiation: external normative environment and the
internal political circumstances (See Table 4.6). To execute this text, Regional Diffusion and UN
Mediation would have to be set against Negotiated Settlements, Democracy, Presidential Elections,
and Percent Muslim, after which the effects of each group could be compared. In this three-step
test, the variable values least conducive to truth commission establishment were input: Percent
Muslim was set to 100; Presidential Elections and Negotiated Settlement were set to 0; and the
Democracy was given a -10 value, representing an extremely non-democratic government. The
regional counter was set to 0, as was UN Mediation. The probability of truth commission establishment when this was run was only .0001. In step two, the Regional Diffusion and UN Mediation variables were set to 12 and 1, respectively (the levels most conducive to truth commissions that were found in the sample), with all other variables held at the same level. The result was a .127 probability of truth commission initiation. In step three, the external variables were set at 0 (or levels least conducive to truth commissions) but this time, all of the domestic variables were set at the values most conducive to TC establishment— that is, Presidential Election and Negotiated Settlement at 1; Democracy at 10; and Muslim Percent at 0. When this was run, the probability of establishment rose only to .107, less than the effect of the external variables. Out of curiosity, to see how much of this probability was being explained by very robust Muslim Percent variable, I set again set this equal to 100 (as it was in step one), then re-ran the test. When the internal variables do not include a zero-percent Muslim population, the total probability of truth commission establishment plummets to .005.

Table 4.6 Competing Total Marginal Effect of Internal Versus External Variables

<table>
<thead>
<tr>
<th>Assuming a case:</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>With all attributes making it least likely to have a T.C.:</td>
<td>.0001</td>
</tr>
<tr>
<td>With least likely attributes except for external variables</td>
<td>.127</td>
</tr>
<tr>
<td>With least likely attributes except for internal variables</td>
<td>.106</td>
</tr>
<tr>
<td>Effect of internal variables with Islam held at 100%</td>
<td>.006</td>
</tr>
</tbody>
</table>

From this, we can draw the conclusion that the international variables do a somewhat better job of explaining the initiation of truth commissions than do the political opportunity variables highlighted in the previous literature. These marginal effects tests, though somewhat unorthodox, have the benefit of allowing measurement of the change in the probability of the dependent variable’s occurrence caused by the change in one independent variable at a time. As a result, then,
these simulations procedures could be likened to a series of statistical Most-Similar-Systems designs; though the data stays the same, it is artificially manipulated to accomplish the goals of comparative research. So in the end, evidence suggests that international variables are somewhat more important in leading to truth commissions than the domestic opportunity variables. In addition, it can be speculated how the international variables change over time: the advocacy of the UN, instrumental in the mid-1990s, is swept aside by the slippery slope of regional diffusion. This could be viewed as statistical support of the stages of the restorative norm’s movement from a tipping point to a critical mass.

It is imperative to note, however, that conclusions based on the above statistical analyses should not be made too grandiose. To say that the model is definite proof of a linkage between the international normative environment and decision-making in transition would be an exercise in overstatement. In most social scientific models, there are the persistent concerns of correct specification—or inclusion of any and all variables that matter—and assured evidence of causality. The models, however, do demonstrate a fairly firm relationship between the included independent variables and the dependent variable. At this point, it is the burden of theoretical discussion to shed light on these relationships.

The final chapter of this thesis will be an interpretive conclusion. In the discussion section, I will address how the combination of qualitative of Chapter 3 and quantitative analyses in Chapter 4 provides for a fuller account of truth commission initiation than has been presented in literature to this date. Namely, focus will be placed on the usefulness of incorporating norms into an opportunity and willingness framework. I will then hone in on the potential criticisms of this piece, and elucidate what this thesis suggests for future study. In the conclusion section, emphasis will be given to the power of ideas, but at the same time, caution will be issued regarding the how the political science community handles research on norms.
CHAPTER 5

TRANSITIONAL THOUGHTS

Discussion

The second chapter of this thesis was a near-exhaustive survey of scholarship hovering around the transitional dilemma, which pits two desires of the new regime against one another: achievement of peace and accountability for previously violated human rights. A wealth of research has devoted attention to the social consequences of different responses, specifically trials and truth commissions. These studies, in a preoccupation with the national health and peace, take the presence of such institutions as a given. Legal studies do not. Scholars who study international law are skeptical of domestic responses to transitional justice, and they expound opposing interpretations of what state leaders are obliged to do, and what policies they should enact. International lawyers isolate and clarify fundamental principles embedded within the law, and legal norms, but they do not show how this might find their way into the practice of domestic governments. Finally, studies that focus on the politics of transition argue that the choices of state leaders are highly constrained, and their eventual decisions are framed mainly by these constraints.

In Chapter 3, I argued that leaders in times of transition have indeed been constrained, but this cannot serve as a full explanation for the swift proliferation of truth commissions in the last 20 years. Difficulties of transition have existed since ancient times, or since the fluidity of reign was first realized. Thucydides in the History of the Peloponnesian War, Machiavelli in Discourse on Livy, and Shakespeare in the Tempest all presented perspectives on how to handle citizens after domestic shifts of power. Why is it that truth commissions suddenly became of political fad in the late 20th century?

I answer this by showing their genesis in the unique Argentine transition, where the ideas being championed by the international human rights regime, and outgrowth of WWII, trickled into the decision-making process. Devoting attention to victims of former repression became a
paramount concern, whereas before it had been locked away in the uninteresting world of “soft politics.” The institutional solution of the Argentines was to find and publicize the truth. A new approach to the transition dilemma was thus formed and added to the list of acceptable behaviors, or norms, in particular circumstances. The normative environment would remain unclear until Desmond Tutu gave an ethical and religious voice to truth-seeking, and the tactic came into focus as restorative justice.

Transitional restorative justice, or the idea that to pursue peace, leaders in transition should investigate the truth of former human rights offenses, was then advertised to transitional leaders by a TAN consisting of NGOs, leaders, and the United Nations. A shift in discourse came about, and truth commissions spread as a hopeful new alternative. By the turn of the century, the restorative norm had become widely accepted in the African region, where leaders acted in accordance, establishing truth commissions with little provocation. These progressions are evident of a process of norm maturation, which occurs in stages—going from emergence to a tipping point, then to a critical mass.

Trying to scientifically stipulate exactly how the idea embodied by a norm makes it into the head of the decision-maker, or infiltrates the decision-making apparatus is difficult. Norms research has fallen back on the same qualitative data to both define and empirically prove the influence of norms. And to compound the problem, studies have focused only on instances where norms seemed to make a difference, rather than comparing those cases to others where norms did not seem to matter. Finally, few theories of norm influence have examined the avenues through which norms travel into the decision-making game, preferring to take sides between social constructivism and rationalism prior to research.

Chapter 4 presented a quantitative analysis meant to combat these problems, while elucidating a theory of transitional decision-making. First, the selection of a population of
transitional cases, over half of which did not have truth commissions, solved the problem of selection on the dependent variable. Second, norm influence was situated within the context of an opportunity and willingness framework so that the pre-theoretical notions of Chapter 3 could be operationalized. Diffusion variables based on the density of truth commissions in each region of the world, and the world as a whole, were grouped with UN mediation as indicators of the international normative environment, which serves to pique the willingness of domestic leaders. Then, borrowing from previous literature on truth commission initiation, facts of the domestic political landscape were added to the model to capture the role of opportunity. Democratic development, negotiations, balance of power, and elections were all tested. In the end, the measures of the external normative atmosphere performed extraordinarily well. Though the domestic political variables also proved to be substantively important, assessments of the findings showed that the former were more robust.

The benefits of the dual approach formed by a combination of Chapters 3 and 4 are multiple. To being, the case study, historical process-tracing employed by comparative institutionalists affords one the ability of examining the scattered factors that led to the events in question. In this case, we see how both the political facts within countries like Argentina and South Africa, in addition to the normative atmosphere, blended to form policy behavior. As David Collier (1991) contends, small-N cases studies permit such a comparison of contexts and the elucidation of different mechanisms operational in these contexts. Ragin (1997) extends on this, arguing that there are often multiple or “conjunctural causes” for events, and this cannot be represented solely through statistical studies. Case study comparison is thus useful for determining these different causes, which can then be helpful for theory building. Testing theories with case studies is decidedly more difficult. Often, there are too many variations in cases, making the isolation of key variables difficult (as was shown in Table 3.1). For this reason, research on norms, depending upon which cases are selected, come to different conclusions about their ultimate impact.
The case study in Chapter 3, taken to be a tool for theory-building, was infused into a statistically measurable theory of truth commission initiation. The theoretical model also shows the usefulness of the opportunity and willingness framework at incorporating different causal explanations, and solving the remaining problems of comparative analyses of norm influence. This framework was employed to give teeth to the pre-theoretical notions suggested by thick qualitative research. The theory subsequently created was simple: a decision-maker will have the opportunity to perform certain actions in a given situation, and he/she will also have the willingness to choose some actions over others. Ideas, and the normative environment, feed into this willingness, while the political circumstances shaped the opportunities. To a great degree, this theory was borne out in cross-national empirical evidence.

The opportunity and willingness framework makes judging between rationalism and constructivism more complex, but it also removes the necessity of some of the arguments between the two. Both the political opportunities and behavioral cues facing leaders help explain the spread of truth commissions in the late 20th century. And it appears that the rules of the game and the preferences of the actors in the game are, to some degree, pliable and prone to fluctuations. The analysis of truth commission establishment in this thesis, though, does hint though at an interesting pattern regarding the interplay between political factors and the power of norms. That is, as norms get more accepted, becoming intersubjectively prevalent, they began to exert more influence than do political calculations. At the beginning, the choice to initiate a truth commission seemed to be tempered by both forces equally, but as time wore on, and the discourse supporting restorative justice reached a critical mass, truth commission began to arise like dominoes fall.

The proposed “integrated” theory, though, is not without its potential problems. There is no right or wrong way to statistically model the spread of international norms into the domestic sphere. Because of this, the analysis presented in Chapter 4 had to rely on theoretical assumptions
when operationalizing the variables. In the model, UN mediation is assumed to be a representation of international ideational influence during the process of domestic transition. Basically, UN mediation is considered to be no different from endogenous negotiations, except for the element of international agency. Though this makes sense, it might be that the presence of a UN mediation attempt in a country actually represents structural characteristics of conflict that are not present when regular negotiations take place. Political transitions overseen by the UN might be more intractable than those alleviated with internal negotiations because they indicate a certain unwillingness of the oppositional groups to compromise without an arbiter (Greig and Diehl, 2005). If this is indeed the case, it would mean that the statistical model is in fact capturing political constraints when it should be capturing normative elements within the transition, and is thus guilty of concept-stretching (Lijphart, 1971). Although this criticism is worthwhile, I would make the argument that the qualitative evidence presented in Chapter 3 suggests that the UN spreads the restorative norm during its mediations. So, though UN mediation is not a concrete measure of norm influence, the efforts taken to qualitatively build theory at least show that the assumption is somewhat warranted.

Another possible problem is that the model is not correctly specified, or that it omits key variables. One area where this may be justified is in the exclusion of NGOs from the statistical analysis. It was the argument throughout Chapter 3 that NGOs play (and have played) a crucial role in the promotion of the transitional restorative legal norm. Sometimes, as the reader will recall, NGOs even receive mention in truth commission mandates. As a result, NGO involvement in a transitional country would likely serve as an additional measure of normative influence. The reason that this variable was not included is due to measurement difficulties. Defining which NGOs make a difference and then coding the involvement of these NGOs would be two tricky tasks. If such research is pursued further, this seems like an area worthy of further examination.
Conclusion

In an answer to the question posed at the outset of this thesis—“What explains the rapid increase of truth commissions in the last 20 years?”—I propose that it is both the tight spot leaders find themselves in, but more importantly, it is the new behavioral norms about how to maneuver out. In other words, ideas make a difference to the decision-maker. These ideas they receive in the form of behavioral cues from regional neighbors and from active transnational lobbies. The case of truth commission initiation makes a strong case for the capacity of ideas to travel in the modern world, which has profound implications for the scholarly and intellectual community.

When scholars perform research on interesting questions, many times they begin to forfeit their position of objectivity, if they ever assumed this position in the first place. When the topic of study is something like transitional justice, which encompasses a host of ethical, religious, and philosophical concerns, it is almost more difficult to remain aloof, staving off the desire to chime in about what ought to be. Work done under the ambit of transitional justice rings of both intellectualism and activism, and as was shown in Chapter 1, many times scholars and practitioners are difficult to distinguish.

The research in this thesis comes to the conclusion that norms constitute change, but it takes no stance on whether the outcomes are desirable or fallible. Studying norms is, then, different from advocating them. There is reason to believe that the transitional restorative legal norm preaches the wrong behavior, or that it has been used to rationalize rebarbative compromises that trade what is right for what is expedient.

While exalting a new ‘culture of human rights’ and rational rule of law, new political leaders wrap their complicity within the sophistry of reconciliation talk. Reconciliation was the Trojan horse used to smuggle an unpleasant aspect of the past (that is, impunity) into the present political order… (Wilson, 2001:103)
Whether this norm has been promoted to the detriment of true achievement of rights, or has
masked government subterfuge, is not clear. In fact, it is my opinion that the effectiveness of the
new message of truth and healing can only be determined through further research.
Unfortunately, normative bandwagoning has surpassed careful study, and truth commissions have
been proposed in the absence of evidence confirming their ability to ward off the stormy petrel of
internal strife.

This thesis has shown that ideas influence policy choices. In the self-reflexive, increasingly
interconnected world in which we live, meanings take flight with greater speed and frequency.
Because social scientific analyses of events might be characterized by the Heisenberg Principle,
where observance alters the course of the observed, research may serve as a wellspring for ideas that
find their way into policy. In terms of transitional justice, and with the emergence of new legal
institutions such as the International Criminal Court, and questions surrounding how to mete out
justice in Iraq, we as social scientists should take caution when we record our observances, for we do
not know where our ideas might land.
APPENDIX
Table A.1. Consolidated State Failures Events from 1955-2001 That Did Not End Before 1976\textsuperscript{119}

<table>
<thead>
<tr>
<th>Country</th>
<th>Began</th>
<th>Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>April 1978</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Albania</td>
<td>May 1996</td>
<td>May 1997</td>
</tr>
<tr>
<td>Algeria</td>
<td>May 1991</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Angola</td>
<td>January 1975</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Argentina</td>
<td>March 1976</td>
<td>December 1980</td>
</tr>
<tr>
<td>Armenia</td>
<td>July 1995</td>
<td>September 1996</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>August 1991</td>
<td>June 1997</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>December 1974</td>
<td>June 1991</td>
</tr>
<tr>
<td>Belarus</td>
<td>April 1995</td>
<td>November 1996</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>April 1992</td>
<td>December 1995</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>November 1980</td>
<td>November 1980</td>
</tr>
<tr>
<td>Burma (Myanmar)</td>
<td>August 1961</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Burundi</td>
<td>August 1988</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Cambodia</td>
<td>March 1970</td>
<td>May 1991</td>
</tr>
<tr>
<td></td>
<td>July 1997</td>
<td>July 1997</td>
</tr>
<tr>
<td>Chad</td>
<td>October 1965</td>
<td>October 1994</td>
</tr>
<tr>
<td>Chile</td>
<td>September 1973</td>
<td>December 1976</td>
</tr>
<tr>
<td>China</td>
<td>July 1988</td>
<td>December 1998</td>
</tr>
<tr>
<td>Colombia</td>
<td>May 1984</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Comoros</td>
<td>January 1976</td>
<td>January 1976</td>
</tr>
<tr>
<td></td>
<td>September 1995</td>
<td>April 1999</td>
</tr>
<tr>
<td></td>
<td>March 1992</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Croatia</td>
<td>June 1991</td>
<td>December 1995</td>
</tr>
<tr>
<td>Egypt</td>
<td>February 1992</td>
<td>March 1999</td>
</tr>
<tr>
<td>El Salvador</td>
<td>February 1977</td>
<td>January 1992</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>February 1999</td>
<td>June 2000</td>
</tr>
<tr>
<td>Fiji</td>
<td>December 1987</td>
<td>December 1987</td>
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<td>Georgia</td>
<td>June 1991</td>
<td>December 1993</td>
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<td>Ghana</td>
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<td>December 1981</td>
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<td>Guatemala</td>
<td>July 1966</td>
<td>December 1996</td>
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<td>Guinea-Bissau</td>
<td>June 1998</td>
<td>May 1999</td>
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<td>Guyana</td>
<td>April 1978</td>
<td>October 1980</td>
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<tr>
<td>Haiti</td>
<td>January 1999</td>
<td>November 2000</td>
</tr>
<tr>
<td>India</td>
<td>April 1983</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Indonesia</td>
<td>December 1949</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Iran</td>
<td>October 1977</td>
<td>December 1992</td>
</tr>
<tr>
<td>Iraq</td>
<td>September 1980</td>
<td>December 1998</td>
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<tr>
<td>Israel</td>
<td>December 1987</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Kenya</td>
<td>October 1991</td>
<td>September 1993</td>
</tr>
<tr>
<td>Laos</td>
<td>January 1960</td>
<td>June 1979</td>
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</table>

\textsuperscript{119} This table was adapted from the one at the State Failure Project webpage:  
[http://www.cidem.umd.edu/inscr/stfail/sftable.htm](http://www.cidem.umd.edu/inscr/stfail/sftable.htm). All state failures that ended before 1976 were not considered in our data, and thus are excluded from the table.
Table A.1 (continued).

<table>
<thead>
<tr>
<th>Country</th>
<th>Began</th>
<th>Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lebanon</td>
<td>April 1975</td>
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<td>Lesotho</td>
<td>May 1998</td>
<td>January 1999</td>
</tr>
<tr>
<td>Mali</td>
<td>June 1990</td>
<td>January 1995</td>
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<tr>
<td>Moldova</td>
<td>March 1992</td>
<td>December 1992</td>
</tr>
<tr>
<td>Morocco</td>
<td>October 1975</td>
<td>November 1989</td>
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<td>Mozambique</td>
<td>July 1976</td>
<td>October 1992</td>
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<td>Nepal</td>
<td>February 1996</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>September 1978</td>
<td>March 1988</td>
</tr>
<tr>
<td>Nigeria</td>
<td>December 1980</td>
<td>April 1985</td>
</tr>
<tr>
<td>Oman</td>
<td>June 1970</td>
<td>March 1976</td>
</tr>
<tr>
<td>Pakistan</td>
<td>February 1973</td>
<td>August 1983</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>May 1989</td>
<td>May 1997</td>
</tr>
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<td>Peru</td>
<td>March 1982</td>
<td>April 1997</td>
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<td>Philippines</td>
<td>November 1969</td>
<td>Ongoing</td>
</tr>
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<td>Romania</td>
<td>December 1989</td>
<td>December 1989</td>
</tr>
<tr>
<td>Russia</td>
<td>October 1994</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Rwanda</td>
<td>October 1990</td>
<td>July 2001</td>
</tr>
<tr>
<td>Senegal</td>
<td>September 1992</td>
<td>December 1999</td>
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<tr>
<td>Sierra Leone</td>
<td>March 1991</td>
<td>Ongoing</td>
</tr>
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<td>Somalia</td>
<td>May 1988</td>
<td>Ongoing</td>
</tr>
<tr>
<td>South Africa</td>
<td>August 1984</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>July 1983</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Sudan</td>
<td>July 1983</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Syria</td>
<td>April 1981</td>
<td>February 1982</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>April 1992</td>
<td>December 1998</td>
</tr>
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<td>Thailand</td>
<td>November 1965</td>
<td>December 1983</td>
</tr>
<tr>
<td>Turkey</td>
<td>September 1980</td>
<td>February 2000</td>
</tr>
<tr>
<td>Uganda</td>
<td>May 1966</td>
<td>December 1999</td>
</tr>
<tr>
<td>USSR</td>
<td>August 1991</td>
<td>December 1991</td>
</tr>
<tr>
<td>Yemen, South</td>
<td>January 1986</td>
<td>February 1986</td>
</tr>
<tr>
<td>Yemen</td>
<td>April 1994</td>
<td>July 1994</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>June 1991</td>
<td>January 1992</td>
</tr>
<tr>
<td></td>
<td>February 1998</td>
<td>June 1999</td>
</tr>
<tr>
<td>Zambia</td>
<td>November 1996</td>
<td>November 1996</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>December 1972</td>
<td>December 1987</td>
</tr>
</tbody>
</table>
### Table A.2. Concepts, Variables, and Data Matched

<table>
<thead>
<tr>
<th>Theoretical Concept</th>
<th>Variable Name</th>
<th>Data Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Global increase in number of truth commissions across time</td>
<td>Temporal Diffusion</td>
<td>A counter variable from 1976 to 2003 measuring global number of truth commissions Sources: Eric Brahm (2002), <em>Keesings Record of World Events</em>, and LexisNexis</td>
</tr>
<tr>
<td>Regional (Continental) increase in number of truth commissions across time</td>
<td>Regional Temporal Diffusion</td>
<td>A counter variable from 1976 to 2003 measuring regional number of truth commissions Sources: Same as above</td>
</tr>
<tr>
<td>Influence of the UN diplomacy in times of transition</td>
<td>UN Mediation</td>
<td>Dichotomous variable coded “1” in the event of mediation attempt in a year. Source: The Mediation Project and <em>Keesings Record of World Events</em></td>
</tr>
<tr>
<td></td>
<td>UN Peacekeeping</td>
<td>Dichotomous variable coded “1” every year a peacekeeping operation took place in a given country. Source: <a href="http://www.UN.org">www.UN.org</a></td>
</tr>
<tr>
<td>Affect of changes in institutional democracy on decision-making</td>
<td>Polity II Democracy</td>
<td>-10 to 10 based on level of democracy/autocracy assigned by PolityII</td>
</tr>
<tr>
<td></td>
<td>Presidential Election</td>
<td>Dichotomous variable coded “1” every year a country held a presidential election. Source: Nico Rost, friend</td>
</tr>
<tr>
<td>Negotiations between opposition groups</td>
<td>Negotiated Settlement</td>
<td>Dichotomous variable coded “1” every year a country had a signed negotiated settlement</td>
</tr>
<tr>
<td>Balance of forces in the transitional country</td>
<td>Power-Sharing Arrangement</td>
<td>Dichotomous variable coded “1” every year a country had a signed power-sharing agreement</td>
</tr>
<tr>
<td>Intensity and intractability of conflict in transitional state</td>
<td>Ethnic Fractionalization</td>
<td>Index measure created by Fearon and Laitin (2003)</td>
</tr>
<tr>
<td>Ideological Constraints on the decision-maker</td>
<td>Percent Muslim</td>
<td>Percent measure from Fearon and Laitin (2003)</td>
</tr>
<tr>
<td>Controls</td>
<td>Economic Development</td>
<td>GDP per capita measures taken from the World Bank</td>
</tr>
</tbody>
</table>
Table A.3. Affect of Muslim Population on the Probability for TC Establishment When Applied to Most Likely Cases for each Simulated Region

<table>
<thead>
<tr>
<th>Assuming a case:</th>
<th>Developing Democracy in Region with no past TCs</th>
<th>Developing Democracy in region with 4 TCs (i.e., Asia)</th>
<th>Developing democracy, 6 TCs in region (i.e., S. America)</th>
<th>Developing Democracy in region with 12 TCs (i.e., Africa)</th>
</tr>
</thead>
<tbody>
<tr>
<td>With the attributes making it most likely to have a T.C.:</td>
<td>.248</td>
<td>.641</td>
<td>.806</td>
<td>.981</td>
</tr>
<tr>
<td>Add average percent Muslim populations for each region:</td>
<td>(85% Muslim) .034</td>
<td>(33% Muslim) .474</td>
<td>(1% Muslim) .844</td>
<td>(31% Muslim) .965</td>
</tr>
</tbody>
</table>

*To clarify, regional averages were added to the most likely cases in order to determine the precise effect of Islam in each region.*
WORKS CITED


King, Jr. Martin Luther. April 16, 1963. “Letter for Birmingham Jail” Courtesy the King Center, Atlanta, Georgia.


Nalepa, Monika (2003a) “Punish all Perpetrators or Protect the Innocent? Designing Institutions of Transitional Justice,” unpublished manuscript, Department of Political Science, Columbia University.


