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## Reconciliation in a Transitional Justice Perspective

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Reconciliation is one of the most contested concepts in the scholarly debate on transitional justice, and arguably also the most difficult to measure empirically. This article provides an overview and assessment of current knowledge on the relationships between transitional justice mechanisms aimed at promoting “truth” and “justice” and the (end) goal of “reconciliation” in its multiple forms. It first spells out the claims about how to foster reconciliation and about how different mechanisms such as truth commissions, trials, amnesties, and local justice initiatives can be expected to contribute toward this end goal. Next, it takes stock of single-case, comparative and broad sample impact studies of reconciliation processes. It finds that reconciliation may be most usefully studied as a process rather than as a goal, and that more attention should be given to the interplay between formal and local transitional justice processes. The article concludes that methodological challenges for cross-country analysis include (1)

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specifying a concept of reconciliation that is narrow enough to be measurable across cases, and (2) allowing sufficient time to go by before measuring the impact of mechanisms that are postulated to bring about reconciliation.

### Introduction

In recent years, Kenya, the Solomon Islands, and Brazil have joined the growing number of countries that have established truth commissions, following the example first set by Argentina in 1983.<sup>2</sup> Cambodians are in the process of prosecuting the worst human rights abusers from the Pol Pot regime of the 1970s. Spaniards are digging up mass graves stemming from the fascist Franco regime. And donor governments are pouring millions of dollars each year into “transitional justice” projects.<sup>3</sup>

In the past two decades, there has been an almost unquestioned faith in the potential for transitional justice mechanisms such as truth commissions and trials to heal and transform wounded societies. The end goals commonly promoted include sustainable peace, rule of law, greater accountability, social reconstruction and a deepening of democracy. Although substantial intellectual capacity has been devoted to impact assessment of transitional justice in recent

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<sup>2</sup> By some accounts, the Uganda truth commission set up by dictator Idi Amin in 1974 was the first to be set up. See United States Institute of Peace’s Truth Commission Digital Collection, <http://www.usip.org/publications/truth-commission-digital-collection>. See also Eric Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy* (New York: Routledge, 2010). However, other well informed sources do not recognize this commission, possibly because it never issued a report.

<sup>3</sup> According to one report, private foundations in the United States alone invested over US\$90 million in the transitional justice field between 2003 and 2007. Louis Bickford and Debra Schultz, *Memory and Justice: Confronting Past Atrocity of Human Rights Abuse* (New York: International Centre for Transitional Justice, 2008), 24, as cited in Colleen Duggan. “‘Show me your impact’: Evaluating Transitional Justice in Contested Spaces”, Special Issue: ‘Evaluation in Contested Spaces’, *Journal of Planning and Program Evaluation* 35.1 (2010): 1.

years, the prevailing conclusion has been that we still know very little.<sup>4</sup> Historically, the impact of transitional justice has been the business of single case studies, which has limited their generalizability. To amend this gap, in recent years a number of statistical studies has made advances in terms of finding plausible correlations between various transitional justice mechanisms (principally trials, truth commissions, and amnesty laws) on the one hand, and the various goals of transitional justice (“peace”, “rule of law”, “democracy”, “human rights abuses”) on the other hand.<sup>5</sup> Although the methodologies for assessing impact are advancing,<sup>6</sup> there is as of yet no

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<sup>4</sup> This was the common conclusion of three general literature review studies: Pierre Hazan, “Measuring the impact of punishment and forgiveness: A framework for evaluating transitional justice,” *International Review of the Red Cross* 88.861 (2006): 19-47; David Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?” *International Studies Review* 6.3 (2004): 355-380. Oskar N. T. Thoms, James Ron, and Roland Paris, “The effects of transitional justice mechanisms: A summary of empirical research findings and implications for analysts and practitioners,” in *CIPS Working Paper, Center for International Policy Studies* (Ottawa, 2008), 1-91. See also Colleen Duggan, Guest Editor, “Special Issue: Transitional Justice on Trial—Evaluating its Impact,” *International Journal of Transitional Justice* 4.3 (2010).

<sup>5</sup> Tove Grete Lie, Helga Malmin Binningsbø, and Scott Gates, “Post-Conflict Justice and Sustainable Peace,” *World Bank Policy Research Working Paper 4191* (Washington, D.C.: April 2007); Kathryn Sikkink and Carrie Booth Walling, “The Impact of Human Rights Trials in Latin America,” *Journal of Peace Research* 44.4 (2007): 427; Hunjoon Kim and Kathryn Sikkink, “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries,” *International Studies Quarterly* 54.4 (2010): 939-963; Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, eds., *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington D.C.: United States Institute of Peace Press, 2010).

<sup>6</sup> See, for example, Hugo van der Merwe, Victoria Baxter, et al., eds., *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington, DC: United States Institute of Peace Press, 2009). See also Duggan, “Show me your impact,” for challenges and opportunities in evaluating the effects of transitional justice programs, though not the impact of the TJ mechanisms themselves on any given societal process or goal.

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comprehensive analytical framework for assessing the impact of transitional justice mechanisms.

In particular, there is a huge gap in our empirical knowledge with respect to what transitional justice may or may not do for reconciliation. “Reconciliation” has emerged as a specific goal of many transitional justice processes. But there is still much debate about the meaning of the term, and little empirical evidence of how different transitional justice mechanisms may affect achievement of this desired outcome. The bulk of impact assessment studies on reconciliation are single-case studies, which although may be superbly conducted have relatively limited value in terms of generalization. Indeed, I am not aware of any joint impact assessment of multiple transitional justice mechanisms employed in a given country to advance reconciliation. Nor I am aware of any cross-country analysis that systematically tries to assess the impact of a single mechanism, such as trials or truth commissions, on reconciliation.<sup>7</sup> Finally, no existing statistical study has attempted to gauge the impact of transitional justice mechanisms on reconciliation. This is where the scholarly knowledge on how transitional justice processes may affect reconciliation stands at the moment.

The modest aim of this article is therefore to assess the current scholarly knowledge about the relationships between transitional justice mechanisms and reconciliation. The rest of this article is divided into three parts. The first part provides a short overview of a selection of the many meanings and definitions of the two central concepts “transitional justice” and “reconciliation”, simply to point out some of the multiple ways

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<sup>7</sup> A few cross-country analyses of a small number of cases exist for single mechanism, which provide very useful insights, empirically as well as methodologically—though these studies do not measure impact on reconciliation. For the impact of truth commissions, see Eric Wiebelhaus-Brahm, “Uncovering the Truth: Examining Truth Commission Success and Impact,” *International Studies Perspectives* 8.1 (2007): 16-35; Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies*.

that reconciliation as a concept has been understood and used in the scholarly literature on transitional justice.

The second part evaluates *claims* commonly made about the relationships between four key transitional justice mechanisms—trials, truth commissions, amnesties, and local justice processes—and reconciliation.<sup>8</sup> Though many scholars before me have examined the various claims of transitional justice, this article is the first to systematically examine the claims with respect to reconciliation specifically. I find that there is little scholarly agreement on what and how these four transitional justice mechanisms are meant to contribute to reconciliation (in its many diverse forms). Along with presenting the claims, I also examine some of the existing empirical research on the *impact* of these selected transitional justice mechanisms on reconciliation. The overarching question is to what extent there is empirical support for claims that societies that formally address past human rights violations have a better chance to reconcile after conflict than those that do not. Drawing on a non-exhaustive selection of findings from the growing body of single-case, comparative, and broad sample impact studies, I note that evidence is unevenly spread across cases, sparse, frequently conflicting, and at times highly contested.

The third part maps out some *methodological challenges* for future research on transitional justice and reconciliation and presents tentative suggestions of how to address these challenges. The two main methodological challenges to systematic comparative empirical research on how transitional justice mechanisms may affect reconciliation processes seem to be (1) to specify a concept of reconciliation that is narrow

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<sup>8</sup> Due to limits of space, we focus on these four key mechanisms rather than on the full range of transitional justice responses, which also include, *inter alia*, reparations, social shaming, lustration (banning of perpetrators from public office), vetting processes, public access to police records, public apologies, reburial of victims, literary and historical writings, and memorials. See Siri Gloppen, “Reconciliation and Democratisation: Outlining the Research Field,” Report no. 5, Chr. Michelsen Institute, Bergen, 2000.

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enough to be measurable across cases, and (2) to allow sufficient time to go by before measuring impact of the mechanisms that are postulated to bring about reconciliation.

## Defining transitional justice and reconciliation

### *Defining transitional justice*

Though the roots of transitional justice stretch back much further, the concept was first coined by Ruti Teitel in 1991.<sup>9</sup> She defined transitional justice as “the conception of justice associated with periods of political change, characterized by *legal responses* to confront the wrongdoings of repressive predecessor regimes” (emphasis added).<sup>10</sup> Teitel’s definition emphasises the international legal duty to prosecute genocide, war crimes and crimes against humanity, a perspective grounded in mid-twentieth-century developments in human rights law. This definition has since been broadened, both in terms of the possible responses to violence and in terms of the desired outcomes of these responses.

According to the UN Secretary General, transitional justice “comprises the full range of processes and mechanisms associated with a society’s attempt to come to terms with a

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<sup>9</sup> See Ruti Teitel, “Editorial Note: Transitional Justice Globalized,” *International Journal of Transitional Justice* 2.1 (2008):1-4. Another well-cited early user of the concept “transitional justice” is Neil Kritz, ed., *Transitional Justice. How Emerging Democracies Reckon With Former Regimes*, vols. I-III (Washington D.C.: United States Institute of Peace Press, 1995). See also Jon Elster, *Closing The Books: Transitional Justice In Historical Perspective* (Cambridge: Cambridge University Press, 2004).

<sup>10</sup> Ruti Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 (Spring 2003): 1. In her earlier book, *Transitional Justice*, Teitel makes the point even more strongly, claiming that “only trials are thought to draw a bright line demarking the normative shift from illegitimate to legitimate rule.” Teitel distinguishes between criminal justice, historical justice, reparatory justice, administrative justice, and constitutional justice. One main schism in the debate has been the distinction between backward-looking and forward-looking justice. See Ruti Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), 7.

legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve *reconciliation*” (emphasis added).<sup>11</sup> Along the same lines, Rachel Kerr and Eirin Mobekk define transitional justice as “the range of judicial and non-judicial mechanisms aimed at dealing with a legacy of large-scale abuses of human rights and/or violations of international humanitarian law.”<sup>12</sup> The International Center for Transitional Justice (ICTJ), a leading nongovernmental organisation in the field, stresses that transitional justice “seeks *recognition for the victims* and to promote possibilities for peace, *reconciliation* and democracy” (emphasis added).<sup>13</sup> These broader definitions, then see criminal prosecutions as relevant, but not as the only or even the first measures to pursue. Moreover, transitional justice is now seen as a *driver* of transition rather than only as interventions that follow a transition.<sup>14</sup> Its goals have become far more ambitious and less easily reconcilable with each other.<sup>15</sup>

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<sup>11</sup> UN Report on Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 23 August, 2004, S/2004/616.

<sup>12</sup> Rachel Kerr and Eirin Mobekk, *Peace and Justice* (Malden, MA: Polity Press, 2007), 3.

<sup>13</sup> International Center for Transitional Justice, “What is Transitional Justice?” www.ictj.org. Similarly, Martha Minow takes a more general approach, writing that justice in transition amounts to replacing “violence with words and terror with fairness.” Presumably the instrumentalities through which this may be achieved are open. Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998), 2.

<sup>14</sup> This issue has been addressed first and foremost in the case of Colombia. See, for example, Jemima García-Godos and Knut Andreas Lid, *Truth and Reparation before the End of a Conflict - The case of Colombia*, Oslo: NCHR Project Report, No. 55, University of Oslo, 2008; Maria José Guembe and Helena Olea, “No justice, no peace: Discussion of a legal framework regarding the demobilization of non-state armed groups in Colombia,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 120-142; Maria Paula Saffon and Rodrigo Uprimny, *Uses and Abuses of Transitional Justice in Colombia* (Bogota: DeJusticia, 18 January 2007). See also Special Issue on “Drivers of Justice,” *Nordic Journal of Human Rights*, guest eds. Elin Skaar and Astri Suhrke (forthcoming June 2013).

<sup>15</sup> See, generally, Bronwyn Anne Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30.1 (2008): 95-118.



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This trend is partly attributable to the proliferation of supposedly “post-conflict” settings where violence in fact continues. In such circumstances, an overzealous focus on retributive justice may serve to sustain or even deepen the schisms between the warring parties—as, for example, in Rwanda, the former Yugoslavia, and Northern Uganda.<sup>16</sup> Another reason is the recognition that measures other than formal criminal trials may serve similar if not identical purposes. South Africa’s well-documented experience with its Truth and Reconciliation Commission highlights one such option. Finally, affected populations themselves often have non-legalistic views of what justice requires. Conducting interviews in conflict-affected communities in Mozambique, South Africa and Rwanda, Helena Cobban found that most people “speak about burning matters of economic justice before they say anything about seeking prosecutions, trials, or punishments of wrongdoers.”<sup>17</sup> Nevertheless, Teitel notes, “the question remains whether there are any transitional justice baselines or any threshold minimum beyond which historical, psychological, or religious inquiry ought to be characterized as justice-seeking.”<sup>18</sup> In the end, and as noted by Charles Villa-Vicencio, “both traditional [African] and modern forms of restorative justice prioritize the need to salvage and affirm the moral worth and dignity of everyone involved.”<sup>19</sup>

Teitel has divided the conceptual and empirical development sketched above into three major phases. Phase I,

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<sup>16</sup> Thoms, Ron, and Paris, “The effects of transitional justice mechanisms,” 32; Lars Waldorf, “Mass justice for mass atrocity: Rethinking local justice as transitional justice,” *Temple Law Review* 79.1 (2006):1-88; Sverker Finnström, “Reconciliation grown bitter? War, retribution and ritual action in northern Uganda,” in *Localizing Transitional Justice: Justice Interventions and Priorities after Mass Violence*, eds. Rosalind Shaw, Lars Waldorf, and Pierre Hazan (Stanford, California: Stanford University Press, 2010).

<sup>17</sup> Helena Cobban, *Amnesty after Atrocity? Healing Nations after Genocide and War Crimes* (Boulder, Co.: Paradigm Publishers, 2007), 239.

<sup>18</sup> Teitel, “Transitional Justice Genealogy,” 89.

<sup>19</sup> Charles Villa-Vicencio, *Walk with Us and Listen: Political Reconciliation in Africa* (Washington D.C. : Georgetown University Press, 2009), 145.

between the end of World War II and the onset of the Cold War, was characterised by interstate cooperation, war crimes trials and sanctions, as seen in the Nüremberg and Tokyo trials. Phase II, the post–Cold War phase, coincided with the “third wave of democratization.”<sup>20</sup> This period saw diversification of the formal mechanisms employed to bring about transitional justice, including a series of non-legal mechanisms such as truth commissions. The TJ discourse expanded from an almost exclusive focus on legal responses, intended primarily to ensure the rule of law, to a more diverse focus on “truth” and “justice,” with reconciliation as a desired outcome.<sup>21</sup>

In Phase III, the current phase, - and as reflected in the definition by Kerr and Mobekk (2007) - transitional justice has become an established component of post-conflict processes. Discussions of transitional justice frequently begin even before a conflict has ended. A particular feature of this phase is an increased interest in local or traditional processes of justice and

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<sup>20</sup> Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (New York: Cambridge University Press, 1991).

<sup>21</sup> See, for example, David Bloomfield, Teresa Barnes, and Luc Huyse, eds., *Reconciliation After Violent Conflict: A Handbook* (Halmstad, Sweden: International Institute for Democracy and Electoral Assistance (IDEA), 2003); Audrey R. Chapman and Hugo van der Merwe, eds., *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (Philadelphia, Pennsylvania: University of Pennsylvania Press, 2008); Phil Clark, *The Gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers*, vol. XII (Cambridge: Cambridge University Press, 2010); James L. Gibson, “Does Truth Lead to Reconciliation? Testing the Causal Assumptions of the South African Truth and Reconciliation Process,” *American Journal of Political Science* 48.2 (2004): 201-217; Jean Marie Kamtali, “The Challenge of Linking International Criminal Justice and National Reconciliation: the Case of the ICTR,” *Leiden Journal of International Law* 16.1 (2003): 115-133; Jeremy Sarkin, “The Tension Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due process and the Role of the Gacaca Courts in Dealing with the Genocide,” *Journal of African Law* 45.2 (2001.): 143-172; Elin Skaar, “Argentina: Truth, Justice and Reconciliation,” in *Roads to Reconciliation*, eds. Elin Skaar, Siri Gloppen, and Astri Suhrke (Lanham, Md.: Lexington Books, 2005), 157-175.

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reconciliation.<sup>22</sup> Another feature of the third phase is diversification of actors: in addition to local actors, including ordinary citizens at the grassroots level, there has been a proliferation of donors eager to contribute to a “justice cascade.”<sup>23</sup> Human rights and international legal norms are increasingly cited by both academics and practitioners.<sup>24</sup>

The transitional justice literature was initially dominated by legal scholars and political scientists, who tended to take a narrow approach to the topic. More recent contributions from philosophers, anthropologists, criminologists, sociologists, historians, and psychologists, amongst others, have made the field truly interdisciplinary. The debate has, as a result, become increasingly complex. From a focus on retributive justice and the rule of law, the discussion of transitional justice has broadened to include other elements such as forgiveness, healing and reconciliation. This increased diversity in the academic debate reflects the increased diversity of practical approaches to transitional justice on the ground.

The literature on transitional justice is full of claims about the intended or desired impact of various processes. Among the outcomes, justice, truth and reconciliation are cited

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<sup>22</sup> See, for example, Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences* (Stockholm: IDEA, 2008); Rosalind Shaw and Lars Waldorf, with Pierre Hazan, eds., *Localizing Transitional Justice: Justice Interventions and Priorities after Mass Violence*, Stanford, California: Stanford University Press, 2010; Lars Waldorf, “Mass justice for mass atrocity: Rethinking local justice as transitional justice,” *Temple Law Review* 79.1 (2006): 1-88; Joanna R. Quinn, ed., *Reconciliation(s): Transitional Justice in Postconflict Societies* (Montreal: McGill-Queen’s University Press, 2009).

<sup>23</sup> See Ellen Lutz and Kathryn Sikkink, “The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials,” *Chicago Journal of International Law* 2.1 (2001): 1-33.

<sup>24</sup> See, for example, Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights. International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

most frequently.<sup>25</sup> Claims regarding the interrelationship between these three have shifted over time. Justice and reconciliation have been seen both as conflicting and as mutually reinforcing. Likewise, publicly revealing the truth about past abuses has been considered an obstacle to reconciliation (especially in the short run) but also a prerequisite for reconciliation (in the long run).<sup>26</sup> Truth, in turn, has been viewed as both an obstacle to and a prerequisite for justice.<sup>27</sup>

### ***Diverse definitions of reconciliation***

The focus on reconciliation in the field of transitional justice has been present since the beginning of the so-called second phase.<sup>28</sup> The aim of this section is to map out some of the numerous approaches to understanding and defining reconciliation to illustrate the many facets of this elusive concept. The aim is thus *not* to come up with a working definition of the concept, as I do not see the utility of aiming for one, universal definition.

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<sup>25</sup> Other desired outcomes include a strengthening of the rule of law, a more stable peace, accountability, social reconstruction, a deepening of democracy, and assurance that gross human rights violations will not happen again.

<sup>26</sup> In the case of the International Criminal Tribunal for the former Yugoslavia, Madeleine Albright in 1994 argued that “establishing the truth about what happened in Bosnia is essential to—not an obstacle to—national reconciliation.” Cited in Bronwyn Anne Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30.1 (2008): 96.

<sup>27</sup> In the 1980s and 1990s, there was “a suspicion that truth commissions are likely to weaken the prospect for proper justice in the courts, or even that commissions are sometimes intentionally employed as a way to avoid holding perpetrators responsible for their crimes.” See Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 86.

<sup>28</sup> See Carol A.L. Prager, “Introduction,” in *Dilemmas of Reconciliation: Cases and Concepts*, eds. Carol A. L. Prager and Trudy Govier (Waterloo, Ont.: Wilfrid Laurier University Press, 2003), 1. Central early works on reconciliation include Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998); and Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick, NJ: Transaction, 1997).

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To begin with, reconciliation may be understood as a moral, political or religious concept. Whereas reconciliation previously has been “associated with the imperative of compromise in the name of stability,” more recent scholarship has associated reconciliation with “the long-term aspiration for political community based on consent and shared norms.”<sup>29</sup> Definitions of reconciliation range on a scale from “thin” to “thick.”<sup>30</sup> On the thin side, reconciliation may be understood as “nothing more than “simple coexistence”, in the sense that former enemies comply with the law instead of killing each other.”<sup>31</sup> Thicker conceptions of reconciliation may include elements such as forgiveness, mercy (rather than justice – though sometimes also justice), a shared comprehensive vision, mutual healing and harmony. Karen Bronéus defines reconciliation broadly as “finding a way to balance issues such as truth and justice so that the slow changing of behaviours, attitudes and emotions between former enemies can take place.”<sup>32</sup> The thin criteria of reduced violence or absence of violence are reasonably easy to observe, while the thick criteria are harder both to define and to observe.

Reconciliation may be conceived as a goal or a process or both.<sup>33</sup> According to Susan Dwyer, “reconciliation is fundamentally a process whose aim is to lessen the sting of a tension: to make the sense of injuries, new beliefs, and attitudes

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<sup>29</sup> Leebaw, “The Irreconcilable Goals of Transitional Justice,” 105.

<sup>30</sup> David A. Crocker, “Reckoning with Past Wrongs: A Normative Framework,” in *Dilemmas of Reconciliation: Cases and Concepts*, eds. Carol A. L. Prager and Trudy Govier (Waterloo, Ont.: Wilfrid Laurier University Press, 2003), 54.

<sup>31</sup> Ibid.

<sup>32</sup> Karen Bronéus, “Reconciliation and Development,” a paper read at “Building a Future on Peace and Justice,” Nuremburg, 25-27 June, 2007, 3.

<sup>33</sup> Daniel Bar-Tal and Gemma H. Bennink, “The Nature of Reconciliation as an Outcome and as a Process,” in *From conflict resolution to reconciliation*, ed. Yaacov Bar-Siman-Tov (New York: Oxford University Press, 2004), 11–38.

in the overall narrative context of a personal or national life.”<sup>34</sup> This understanding of reconciliation applies to both the micro and the macro levels. When it is defined as a process, reconciliation may be thought of as top-down or as bottom-up.

Reconciliation may happen at different levels. At the *individual level*, reconciliation must take place between the victim and the offender/perpetrator.<sup>35</sup> Unlike apologies or expressions of forgiveness, which can be one-sided processes, reconciliation requires mutuality. That is, there must be a process of direct interaction between the victim and the perpetrator. The perpetrator asks forgiveness; the victim grants forgiveness. At the *societal or national level*, reconciliation may be understood as “a societal process that involves mutual acknowledgement of past suffering and the changing of destructive attitudes and behaviour into constructive relationships towards sustainable peace.”<sup>36</sup> There may be cases where reconciliation may be psychologically impossible—at either the individual or group level.<sup>37</sup> Some authors make a parallel distinction between micro- and macro-level reconciliation, in which “the former typically involves local, face-to-face interactions—say between two friends—and the latter concerns more global interactions between groups of persons, or nations, or institutions, which are often mediated by proxy.”<sup>38</sup> Group or national-level reconciliation may also be referred to as either interethnic

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<sup>34</sup> Susan Dwyer, “Reconciliation for Realists,” in *Dilemmas of Reconciliation: Cases and Concepts*, eds. Carol A. L. Prager and Trudy Govier (Waterloo, Ont.: Wilfrid Laurier University Press, 2003), 106.

<sup>35</sup> Marc Forget, “Crime as Interpersonal Conflict: Reconciliation Between Victim and Offender,” in *Dilemmas of Reconciliation: Cases and Concepts*, eds. Carol A. L. Prager and Trudy Govier (Waterloo, Ont.: Wilfrid Laurier University Press, 2003), 111-35.

<sup>36</sup> Brounéus “Reconciliation and Development,” 5. On societal reconciliation (a society reconciling with its past and groups reconciling with each other), see also Hayner, *Unspeakable Truths*, chapter 10.

<sup>37</sup> Dwyer, “Reconciliation for Realists,” 91-110.

<sup>38</sup> *Ibid.*, 93.

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reconciliation or political reconciliation, depending on the root of the conflict.<sup>39</sup>

A number of elements are believed to play a critical role in reconciliation, helping to “repair torn relationships between ethnic, religious, regional or political groups, between neighbours, and between political parties.”<sup>40</sup> These essential components of reconciliation vary depending on the level, the type of conflict, and other factors. *Acknowledgement*,<sup>41</sup> *forgiveness*,<sup>42</sup> and *healing*<sup>43</sup> may be particularly important at the individual level. *Remembrance* of past violations has also been mentioned as a prerequisite for reconciliation, at both the individual and the

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<sup>39</sup> See, for example, Claire Moon, *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission* (Plymouth, UK: Lexington Books, 2008). See also Charles Villa-Vicencio, *Walk with Us and Listen: Political Reconciliation in Africa*. (Washington D.C.: Georgetown University Press, 2009).

<sup>40</sup> Hayner, *Unspeakable Truths*, 133.

<sup>41</sup> “[A]cknowledging... wrongs will assist victims to heal, will mark a separation from the wrongdoings of the past and a commitment to reform, and may constitute a first step towards reconciliation.” Trudy Govier, “What is Acknowledgement and Why is it Important?” in *Dilemmas of Reconciliation: Cases and Concepts*, eds. Carol A. L. Prager and Trudy Govier (Waterloo, Ont.: Wilfrid Laurier University Press, 2003), 84. See also Michael R. Marrus, “Overview,” in *Dilemmas of Reconciliation: Cases and Concepts*, eds. Carol A. L. Prager and Trudy Govier (Waterloo, Ont.: Wilfrid Laurier University Press, 2003).

<sup>42</sup> See, for example, Thomas Brudholm and Thomas Cushman, eds., *The Religious in Responses to Mass Atrocity: Interdisciplinary Perspectives* (Cambridge: Cambridge University Press, 2009); Phil Clark, “The Rules (and Politics) of Engagement: The Gacaca Courts and Post-Genocide Justice, Healing and Reconciliation in Rwanda,” in *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, eds. Phil Clark and Zachary D. Kaufman (London, Hurst, New York: Columbia University Press, 2009); Quinn, *Reconciliation(s)*.

<sup>43</sup> See, for example, Cobban, *Amnesty after Atrocity?* See also Alcinda Honwana, “Healing and Social Integration in Mozambique and Angola,” in *Roads to Reconciliation*, eds. Elin Skaar, Siri Gloppen and Astri Suhrke (Lanham, Md.: Lexington Books, 2005); Kimberly A. Maynard, *Healing Communities in Conflict. International Assistance in Complex Emergencies* (New York: Columbia University Press, 1999); Gearoid Millar, “Assessing Local Experiences of Truth-Telling in Sierra Leone: Getting to ‘Why’ through a Qualitative Case Study Analysis,” *International Journal of Transitional Justice* 4.3 (2010): 477-496.

group/national levels.<sup>44</sup> Another central element of reconciliation is *mutual respect*, that is, willingness to judge people as individuals and not brand them with group stereotypes.<sup>45</sup>

The next part spells out in more details the scholarly claims connecting reconciliation to four central transitional justice mechanisms: trials, truth commissions, reparations, and local justice initiatives. It also provides illustrations of how these claims are supported – or not – by empirical evidence.

### **What transitional justice is supposed to achieve: Scholarly claims and empirical evidence**

#### ***Trials and reconciliation: Claims and evidence***

##### *Claims*

Claims regarding the positive role of trials in promoting reconciliation are relatively recent. Until the late 1980s (and based mainly on the Latin American experience), prosecutions were considered anathema to the goal of securing peace, and thereby reconciliation.<sup>46</sup> Recent scholarship is more nuanced. Today, many advocates of prosecution make the case that trials, whether alone or in combination with other mechanisms such as truth commissions, can contribute to peace, and hence reconciliation. Mendeloff, for example, argues that the truth telling that takes place during trials uncovers individualized responsibility for crimes, which promotes group reconciliation.<sup>47</sup>

Others are more sceptical to the potentially reconciliatory effect of trials. Laurel E. Fletcher and Harvey M.

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<sup>44</sup> “... [T]here can be no reconciliation without remembrance,” Marrus, “Overview,” 29.

<sup>45</sup> Gibson, “Does Truth Lead to Reconciliation?” 205.

<sup>46</sup> The potential causal relationship(s) between peace and reconciliation is a large scholarly debate and will not be ventured into here for reasons of time and space. Note, however, that in the author’s opinion reconciliation forms an integral part of what is frequently referred to as “positive peace”, i.e. a ‘thicker’ peace that goes beyond the mere absence of large-scale violence.

<sup>47</sup> Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding,” 358-59.



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Weinstein caution that “the assumption that holding individuals accountable for atrocities alleviates despair, provides closure, assists in creating and strengthening democratic institutions and promotes community rebuilding overstates the results that trials can achieve.”<sup>48</sup> According to these authors the causes of war must be understood and addressed before social repair (which reconciliation is defined as a part of) can be achieved. Placing individual accountability does in their view not necessarily solve the collective guilt problem. They stress “that 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.”<sup>49</sup>

Other scholars, like Jack Snyder and Leslie Vinjamuri, also suggest that prosecuting perpetrators of human rights after periods of conflict may undermine peace and lead to renewed violence or an increase in repression.<sup>50</sup> Hunjoon Kim and Kathryn Sikkink claim that in situations of civil conflict and war, human rights prosecutions will exacerbate human rights violations.<sup>51</sup> Under these scenarios, trials may be detrimental to reconciliation. Many argue that “digging up the past” in post-conflict settings can trigger new tensions by provoking a backlash on the part of those to be prosecuted – and hence limit the possibilities for reconciliation. According to Leebaw, “the criminalization of political violence is likely to be controversial and potentially destabilising, whether this takes the form of prosecution and punishment or the acceptance of state

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<sup>48</sup> Laurel E. Fletcher and Harvey M. Weinstein, “Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation,” *Human Rights Quarterly* 24.3 (2002): 601.

<sup>49</sup> *Ibid.*, 592.

<sup>50</sup> Jack Snyder and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security* 28. 3 (2004): 5-44.

<sup>51</sup> Kim and Sikkink, “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries,” 939–963.

responsibility through official acknowledgement, apology, or reparations.”<sup>52</sup> Where wars have not yet ended, the prospect of prosecutions many reduce leaders’ incentives to put down their guns.<sup>53</sup> Most sceptics do not entirely deny the potential benefit of trials, but they urge a sequenced approach that postpones legal punishment until peace is sufficiently established.<sup>54</sup>

### *Evidence*

Although prosecution for gross human rights violations have become more common over the last decade, empirical evidence is inconclusive as to how and in which ways trials may potentially influence reconciliation – be it at the individual, societal or national levels.<sup>55</sup> This is in part because too short time has gone by for most of these trials to say anything sensible about the potential impact on reconciliation, and in part because it is difficult to trace the exact mechanisms whereby trials influence the process of reconciliation. Finally, most trials are, after all, conducted principally for other purposes than to achieve reconciliation – like doing justice, correct wrongs of the past, prevent future violations, establish a break with the past, strengthen the rule of law and democratic institutions etc.

This fact is reflected in the statistical studies that try to gauge the effects of trials: none of the studies to date attempt to measure the implications for “reconciliation” directly. Yet, they

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<sup>52</sup> Leebaw, “The Irreconcilable Goals of Transitional Justice,” 97.

<sup>53</sup> For example, in the case of Northern Uganda, critics, including Ugandan President Museveni, have argued that the arrest warrant against rebel leader Joseph Kony by the International Criminal Court, has hindered peace negotiations.

<sup>54</sup> See Cobban, *Amnesty after Atrocity?*

<sup>55</sup> At the beginning of the new millennium, successful prosecution of rights abusers in countries in transition from authoritarian rule or after violent armed conflict was still rare. A decade later, trials are taking place in a growing number of countries, both in national courts and in international or mixed tribunals. Yet there are even more examples of countries where trials have been avoided altogether. There are a host of reasons why it may be difficult to conduct trials, ranging from poorly functioning judicial systems to scarcity of resources to weak political will or the presence of amnesty laws.

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try to measure impact on factors which in turn may influence reconciliation. Kathryn Sikkink and Carrie Booth Walling, in their analysis of all Latin American countries for the period 1979-2004, find that human rights trials have *not* undermined democracy or led to an increase in human rights violations or exacerbated conflict in Latin America.<sup>56</sup> Expanding the universe of cases beyond Latin America to include 100 transitional countries across the world for the period 1980-2004, Kim and Sikkink find that human rights trials help decrease repression (defined as torture, summary execution, disappearances, and political imprisonment) and hence have a positive effect on human rights protection.<sup>57</sup> In contrast to the two studies, Olsen, Payne and Reiter, using 161 countries over 40 years (1970-2007), find that trials alone do not have statistically significant and positive effects on democracy and human rights.<sup>58</sup>

The case material detailing these statistical findings at the country level is surprisingly scarce. The effects on reconciliation of trials conducted in national courts seem to be particularly understudied.<sup>59</sup> Empirical studies aiming to show that trials facilitate reconciliation between former warring parties (at the societal or national level) are mainly based on UN sponsored war crimes tribunals, or so-called mixed courts – in addition to a large literature on the *gacaca* trials in Rwanda (see separate treatment under section on local justice initiatives). There is in fact now an emerging literature on the role of genocide trials with respect to reconciliation. This may suggest (though I have no proof) that different expectations are tied to genocide trials than for other kinds of human rights trials conducted in national courts.

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<sup>56</sup> Sikkink and Booth Walling, "The Impact of Human Rights Trials in Latin America," 427. The authors have created a new dataset on truth commissions and trials for past human rights violations. In this particular article, they only explore the effects of trials.

<sup>57</sup> Kim and Sikkink, "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries," 939-963.

<sup>58</sup> Olsen et al., *Transitional Justice in Balance*.

<sup>59</sup> In fact, I have come across no such study.

The International Criminal Tribunal for the former Yugoslavia (ICTY), for example, was explicitly established to help bring an end to the on-going conflict in the Balkans<sup>60</sup> and facilitate reconciliation. As Teitel explains, “It was hoped that condemnation of ethnic persecution, together with individual accountability, would transcend identity politics and advance a shift towards a more liberal order.”<sup>61</sup> Although the ICTY failed in this respect,<sup>62</sup> the argument remains relevant. By alleviating collective guilt through the identification of discrete “bad guys,” prosecution can cool the ardour for collective vengeance. On a practical level, criminal punishment removes troublemakers and deters future ones.<sup>63</sup> Nevertheless, recent research on the ICTY, which draws on fieldwork in Bosnia, proposes that “the linkage between criminal trials and reconciliation is especially tenuous in genocide cases.” Janine Natalya Clark questions the argument that “genocide trials foster reconciliation by dealing with the broader responsibility of bystanders, identifying those individuals with genocidal intent and facilitating closure” and cautions “against an over-reliance upon criminal trials.”<sup>64</sup>

This is a point that has been pushed by other scholars earlier. In their edited collection on post-war social reconstruction, Eric Stover and Harvey Weinstein use qualitative and quantitative studies to examine whether criminal trials in post-genocide Rwanda and the former Yugoslavia served the transitional goals they set out to achieve. They conclude that “there is no direct link between criminal trials (international, national, and local/traditional) and reconciliation... In fact, we

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<sup>60</sup> Launched under the Security Council’s Chapter 7 powers, the ICTY was created to stop conflict. See S.C. Res. 808, U.N. Doc. S/RES/808 (Feb. 22, 1993).

<sup>61</sup> Ruti Teitel, “The law and politics of contemporary transitional justice,” *Cornell International Law Journal* 38.3 (2005): 837-862.

<sup>62</sup> See Fletcher and Weinstein, “Violence and Social Repair.”

<sup>63</sup> Payam Akhavan, “Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?” *American Journal of International Law* 95.1 (2001): 12.

<sup>64</sup> Janine Natalya Clark, “The ‘crime of crimes’: genocide, criminal trials and reconciliation,” *Journal of Genocide Research* 14.1 (2012): 55-77.

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found criminal trials—and especially those of local perpetrators—often divided small multi-ethnic communities by causing further suspicion and fear.”<sup>65</sup> Almost a decade later, in-depth research on the legal responses to mass violence in Rwanda concludes that “of the available methods of legal redress in post-genocide Rwanda, the *gacaca* courts are most effective in performing the function of reconciling trauma and establishing collective memory.”<sup>66</sup>

***Truth commissions and reconciliation: Claims and evidence***

*Claims*

Opinions have shifted as to whether or not truth promotes reconciliation. Until quite recently, revealing the truth about gross human rights violations was seen as an obstacle to reconciliation, in that it could promote animosity, reopen old wounds, and increase political instability. Currently, however, “the idea that a durable peace requires countries to address past violence is now widely held and promoted by influential leaders and institutions under the broad heading of “transitional justice.”<sup>67</sup> Truth commissions are expected to have an impact at different levels.

Starting with the national or political level, the fact that a government sets up a truth commission may in itself be perceived as an effort to uncover crimes of the past, thus publicly acknowledging that violence has taken place – which is important for those who have suffered repression and violence. Truth commissions have been seen as a way to promote political

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<sup>65</sup> Eric Stover and Harvey M. Weinstein, eds., *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004), 323.

<sup>66</sup> Carla De Ycaza, “Performative Functions of Genocide Trials in Rwanda: Reconciliation Through Restorative Justice? An Examination of the Convergence of Trauma, Memory and Performance Through Legal Responses to Genocide in Rwanda,” *African Journal of Conflict Resolution* 10.3 (2010): 9-28.

<sup>67</sup> Leebaw, “The Irreconcilable Goals of Transitional Justice,” 96.

reconciliation by fostering dialogue across lines of political and social conflict.<sup>68</sup> Amy Gutmann and Dennis Thompson argue that truth commissions can foster deliberative democracy, and in turn reconciliation, by encouraging “accommodation to conflicting views that fall within the range of reasonable disagreement.”<sup>69</sup> Reports issued by truth commissions may also have a reconciliatory effect. According to David A. Crocker, “if reconciliation in any... sense is to take place, there must be some agreement about what happened and why.”<sup>70</sup> The official, authoritative historical record provided by truth commissions may establish a “new shared history,” thus fostering group reconciliation.<sup>71</sup> One must note, however, with James L. Gibson, that “a truth process pointing to unilateral blame is not likely to produce reconciliation.”<sup>72</sup> Another point articulated by Cavallaro and Albuja, is that the mandates of truth commissions are too limited to allow them to contribute effectively to the consolidation of democratic regimes. Citing research that shows a correlation between citizens’ experiences of corruption and low public legitimacy of their governments, James Cavallaro and Sebastian Albuja argue that it is necessary to address economic crimes as well as civil and political ones in order to strengthen prospects for reconciliation.<sup>73</sup>

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<sup>68</sup> Osiel, *Mass Atrocity, Collective Memory, and the Law*.

<sup>69</sup> Amy Gutmann and Dennis Thompson, “The Moral Foundations of Truth Commissions,” in *Truth V. Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 41.

<sup>70</sup> Crocker, “Reckoning with Past Wrongs.”

<sup>71</sup> This argument and its logic are reviewed by Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding,” 358.

<sup>72</sup> James L. Gibson, “Overcoming Apartheid: Can Truth Reconcile a Divided Nation?” *Politikon* 31.2 (2004): 149.

<sup>73</sup> James Cavallaro and Sebastian Albuja, “The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond,” in Kieran McEvoy and Lorna McGregor, eds., *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford: Hart Publishing, 2008), 140. Their point is made on the basis of the experience of the Liberia’s truth commission, which did have a mandate to address corruption.

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Moving from the political to the societal and individual levels, there are many and conflicting claims connected to the process of *truth telling* itself. Luc Huyse and Mark Salter include truth telling as one of four necessary mechanisms for achieving reconciliation.<sup>74</sup> Payam Akhavan asserts that “truth-telling promotes interethnic reconciliation through the individualisation of guilt in hate-mongering leaders and by disabusing the people of the myth that adversary ethnic groups bear collective responsibility for crimes.”<sup>75</sup> Along the same lines, truth telling is believed to contribute to psychological healing of individual victims and thus promotes social healing and group reconciliation.<sup>76</sup> Some claim that “truth telling demanded by victims is essential for reconciliation.”<sup>77</sup> Yet, this is not uncontroversial as other scholars claim that truth-telling may lead to re-traumatisation of the victims.

Not all scholars then view truth commissions favourably. Many of the claims for the relationship between truth telling and reconciliation in a context of peace building are flawed or at least questionable. In David Mendeloff’s opinion, “truth telling advocates claim more about the power of truth telling than logic or evidence dictates.”<sup>78</sup> To succeed in promoting reconciliation, truth commissions must be managed in a sensitive way. While truth telling can be considered a cornerstone of transitional justice, it is also essential to recognize that “too much truth-telling can be counterproductive and instead of healing social cleavages can generate more.”<sup>79</sup>

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<sup>74</sup> Huyse and Salter, *Transitional Justice and Reconciliation after Violent Conflict*.

<sup>75</sup> Payam Akhavan, “Justice in The Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal,” *Human Rights Quarterly* 20.4 (1998): 766.

<sup>76</sup> This, according to Mendeloff, is one of the primary claims of the post-conflict and peace-building literatures. Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding,” 358. See also Hayner, *Unspeakable Truths* and Minow, *Between Vengeance and Forgiveness*.

<sup>77</sup> Prager, “Introduction,” 12.

<sup>78</sup> Ibid. See also Gibson, “Overcoming Apartheid.”

<sup>79</sup> Verwoerd 2003, cited in Prager, “Introduction,” 12.

*Empirical evidence*

Many of the claims above are of course based on specific country experiences with truth commissions. Although the mandates of truth commissions vary widely, many have had reconciliation as a specific end goal.<sup>80</sup> Yet surprisingly few scholarly studies have examined the impact of truth commissions in general, and even fewer have examined their impact on reconciliation in particular.<sup>81</sup> This is also true for all existing statistical studies. The picture portrayed by statistical analysis of the impact of truth commissions more generally on factors which may directly or indirectly impact on reconciliation is mixed. Whereas Kim and Sikkink find that truth commissions help *decrease repression* (defined as torture, summary execution, disappearances, and political imprisonment) and hence have a *positive effect* on human rights protection (and presumably reconciliation), Olsen et. al. find that truth commissions in isolation have a *negative* rather than the expected positive impact

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<sup>80</sup> This is reflected in the names of many commissions, such as the National Commission for Truth and Reconciliation (Chile); Commission for Reception, Truth and Reconciliation (East Timor); National Reconciliation Commission (Ghana); National Commission for Truth and Justice (Haiti); Truth and Reconciliation Commission (Peru); Truth and Reconciliation Commission (Sierra Leone); Truth and Reconciliation Commission (South Africa); Truth and Reconciliation Commission for Serbia and Montenegro (Yugoslavia).

<sup>81</sup> Several studies that have attempted to analyze the impact of truth commissions all conclude the same. See Mendeloff, "Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding," and Hazan, "Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding" Two studies on truth commissions that provide very useful insights, empirically as well as methodologically are Eric Wiebelhaus-Brahm, "Uncovering the Truth,"; Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies*. However, Wiebelhaus-Brahm's (2007) analysis of truth commissions in 78 countries from 1980-2003 reaches no convincing conclusions regarding their impact on human rights protection and democratic practice. He does not address the impact on reconciliation.



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on democracy and human rights, both in post-authoritarian and in post-armed conflict contexts.<sup>82</sup>

These inconclusive findings are also reflected in the few analytical impact studies that exist at the country level. The methodologically stringent case studies on impact of truth commissions on reconciliation in the African context are almost exclusively from South Africa,<sup>83</sup> giving skewed case-based knowledge from the African continent. In Latin America, the following cases have received the most scholarly attention: Chile, Argentina, Guatemala, and Peru. For Asia, only East Timor seems to have been subject to scholarly study focusing on the links between truth commissions and reconciliation.

There are several reasons for this limitation in empirical material. First, many truth commissions have been set up only in the last few years, so that not enough time has passed to effectively measure or assess their impact. Second, many of the studies of truth commissions are based on moral conviction and rely primarily on anecdotal evidence. Third, and most important, much of the literature on truth commissions is limited to descriptive narrative and lacks an analytical focus on results. Studies that do attempt to gauge success or failure often stop with the immediate reception of the commission's report, rather than assessing the long-term impact on goals such as reconciliation.<sup>84</sup>

In the rest of this section I have decided to limit my discussion principally to two case studies: South Africa and East Timor. This for two reasons: (1) data availability and (2)

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<sup>82</sup> See Kim and Sikkink, "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries," and Olsen et al., *Transitional Justice in Balance*.

<sup>83</sup> Indeed, outside South Africa, there are hardly any individual-level data analyses of reconciliation processes available. See Wiebelhaus-Brahm, "Uncovering the Truth," 20. A notable exception is recent work on the healing potential of the Sierra Leone truth commission. See Millar, "Assessing Local Experiences of Truth-Telling in Sierra Leone," 477-96.

<sup>84</sup> This point has been highlighted by several scholars on different occasions. See, for example, Duggan, "Transitional Justice on Trial."

methodology. The substantial body of empirical evidence for evaluating both the South African and East Timor experiences with truth commissions' impact on reconciliation gives a more nuanced reading than for those countries for which there may be only a single, or perhaps two, case studies that evaluate the truth commission's impact on reconciliation. Furthermore, these two very different cases aptly illustrate some of the conceptual and methodological dilemmas involved in evaluating the impact of truth commissions on reconciliation. They also show how scholars may arrive at very different conclusions with respect to the same truth commission experience.

*The impact of truth commissions: Lessons from South Africa*

Of all truth commissions to date, it is the South African Truth and Reconciliation Commission (TRC) that has most effectively captured world public attention as well as provided a model for subsequent commissions – in spite of the uniqueness of this commission. Not surprisingly therefore, the TRC has by far the most abundant data, assessed by South African as well as international scholars.

To start off with, the TRC had a far more expansive mandate than most truth commissions. Its task was to go beyond truth finding to promote national unity and reconciliation across social divisions, facilitate the granting of amnesty to those who made full factual disclosure, restore the human and civil dignity of victims by providing them an opportunity to tell their own stories, and make recommendations to the president on measures to prevent future human rights violations. The TRC recognised multiple types of truth—narrative, forensic, historical and social or dialogic.<sup>85</sup> It also recognised and made use of multiple understandings of reconciliation. Evaluating the impact of the

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<sup>85</sup> *Report of the Truth and Reconciliation Commission of South Africa* (Cape Town: Juta and Company Ltd., 1998), vol. 1, chapter 5, cited in Erin Daly, "Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition," *International Journal of Transitional Justice* 2.1 (2008): 25.

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TRC on reconciliation has thus proved a complicated task for scholars, who have arrived at strikingly different answers to the question of whether the TRC produced truth that has contributed to reconciliation.<sup>86</sup> In the following I have selected two comprehensive studies to illustrate how the application of complementary methodologies may come to different conclusions.<sup>87</sup> Rather than view these two studies as comparing “apples and pears,” as some scholars may object to, I find that these studies jointly shed valuable light on the complexities involved in gauging the impact of a truth commission on reconciliation.

Based on rigorous analysis of individual-level data collected in an extensive survey of 3,700 individual respondents, beginning in 2001, James L. Gibson concluded that truth has contributed to reconciliation in South Africa. “The truth and reconciliation effort,” in his words, “was successful at exposing human rights abuses by all sides in the struggle over apartheid—thereby contributing to the country’s collective memory about its apartheid past.”<sup>88</sup> He added, however, that different racial groups assess the truth generated by the TRC differently. A majority of white, Asian and Coloured South Africans surveyed said that truth contributed to interracial reconciliation. Among black South Africans, however, truth seemed to contribute little to reconciliation. Even though this may be a disappointing finding, he writes, “in no instance is truth associated with *irreconciliation*.”<sup>89</sup>

This raises an interesting question: Do truth commissions lead to more reconciliation amongst the people

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<sup>86</sup> The issue of different types of truths produced by truth commissions (in a comparative perspective) is addressed in Audrey Chapman and Patrick Randall, “The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala,” *Human Rights Quarterly* 23.1 (2001): 1-43.

<sup>87</sup> James L. Gibson, *Overcoming Apartheid: Can Truth Reconcile a Divided Nation* (New York: Russell Sage Foundation, 2004); Chapman and van der Merwe, *Truth and Reconciliation in South Africa*.

<sup>88</sup> Gibson, *Overcoming Apartheid*, 207.

<sup>89</sup> *Ibid.*, 214.

who were *not* directly affected by a conflict by giving them a deeper understanding of the past, even though no effect on reconciliation is seen in victims or others who were directly involved? If so, truth commissions may play a vital role in reconciliation at the national level even while posing risks for those on whom these processes depend.<sup>90</sup> Gibson, however, explicitly questions whether lessons from the South African TRC apply elsewhere, given the particular circumstances of apartheid. Gibson does not argue on the basis of this analysis that truth inevitably leads to reconciliation. In his words, “the most puissant characteristic of the collective memory created by South Africa’s TRC was its willingness to attribute blame to all parties in the struggle over apartheid... Another effective but idiosyncratic element of South Africa’s truth and reconciliation process was its emphasis on non-retributive forms of justice... A different truth process might well have led to an entirely different outcome.”<sup>91</sup>

A second in-depth study, by Audrey Chapman and Hugo van der Merwe, provides a comprehensive evaluation of the TRC process and its impact on South African society. Drawing on an extensive analysis of the victim hearings, amnesty hearings, institutional hearings, and public opinion survey data, as well as on extensive interviews with a range of TRC staff, people who worked with the commission, and members of different communities affected by it, the authors raise fundamental questions about the TRC and indeed about all truth commissions. They question the capacity of such bodies to carry out the mandates assigned to them and particularly to achieve the difficult balance between truth finding and reconciliation. At best, they argue, the South African TRC established only “an incomplete truth,” which in turn may have had a negative impact on reconciliation. Part of the problem rested with the failure of

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<sup>90</sup> Brounéus “Reconciliation and Development.”

<sup>91</sup> James L. Gibson, “Overcoming Apartheid: Can Truth Reconcile a Divided Nation?” *Annals of the American Academy of Political and Social Science* 603.82 (2006): 103.

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the commissioners to agree on what they meant by the “truth” or whose “truth” should be documented and made public. In addition, the TRC never defined precisely what it meant by the term “reconciliation,” making any evaluation of impact very difficult.

These authors also conclude that the TRC “effectively put a hold on attempts to secure justice by survivors of human rights abuses,” and thus the process “robbed survivors of justice for over 1000 incidents of abuse.”<sup>92</sup> They ask whether the work of a truth commission may in fact deepen rather than close the wounds of victims and survivors of gross human rights violations, at least in the short term. And they stress the need to distinguish between short-term and long-term effects on society, including reconciliation.<sup>93</sup> In short, even evaluations of the model TRC in South Africa point to sharply different conclusions on whether or the net impacts contribute to reconciliation.

*The impact of truth commissions: Lessons from East Timor/Indonesia*

The Timor-Leste and Indonesian Commission of Truth and Friendship (CTF) was established in 2005 to investigate the 1999 violence that erupted in connection with East Timor’s declaration of independence from Indonesia. It completed its final report in 2008. The commission’s stated goals were “to conduct a shared inquiry with the aim of establishing the conclusive truth about the reported human rights violations and institutional responsibility, and to make recommendations which can contribute to healing the wounds of the past and further

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<sup>92</sup> Chapman and van der Merwe, eds., *Truth and Reconciliation in South Africa*, 284.

<sup>93</sup> See also Wilhelm Verwoerd, “Toward a Response to Criticisms of the South African Truth and Reconciliation Commission,” in *Dilemmas of Reconciliation: Cases and Concepts*, eds. Carol A.L. Prager and Trudy Govier (Waterloo, Ont.: Wilfrid Laurier University Press, 2003), 245-78.

*promoting reconciliation* and friendship and ensuring the non-recurrence of similar events” (emphasis added).<sup>94</sup>

Though it may be too soon to evaluate the impact of this commission on Timorese society, observers have drawn attention to deficiencies in the process that have severely reduced the chances for positive short-term or long-term impact on reconciliation.<sup>95</sup> A report from the ICTJ concluded that the CTF was created not to ensure truth telling and reconciliation, but rather as a means to stave off calls by the United Nations and the larger international community to deal with the atrocities through criminal justice processes. The UN boycotted the commission because it considered it deeply flawed. The ICTJ concluded that “the CTF has not yet delivered substantive transitional-justice benefits, and its public hearings have seriously compromised the goals of truth and reconciliation... fundamental weaknesses in the Commission’s Terms of Reference... were compounded by the poor design and inadequate preparation of the public hearing process.”<sup>96</sup> In particular, the CTF’s terms of reference included a mechanism for recommendations of amnesty while prohibiting recommendations for new judicial processes. What this example illustrates is that the *political intentions* behind a truth commission, as well as the manner in which the truth commission hearings are conducted, may be decisive for its impact on society.

To briefly sum, these selected case studies point to two important issues relevant for impact assessment of truth

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<sup>94</sup> *Final Report of the Commission of Truth and Friendship (Ctf) Indonesia - Timor-Leste*, ix; available from <http://www.laohamutuk.org/Justice/Reparations/CTFReportEn.pdf>; accessed 27 June, 2012.

<sup>95</sup> These points are taken from “Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste,”—found in email from President Juan E. Méndez. The monitoring report is accessible at <http://ictj.org/sites/default/files/ICTJ-Indonesia-Commission-Monitoring-2008-English.pdf>; accessed August 2011.

<sup>96</sup> Megan Hirst, “Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste,” (New York, NY: International Center for Transitional Justice, 2008), 1.

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commissions on reconciliation: The South African case underlines the complexity of the concept and goal of reconciliation. The East Timor/Indonesia case serves as a cautionary example for assuming that all truth commissions can be assumed to be productive, and thus have a positive impact on reconciliation.

***Amnesties and reconciliation: Claims and empirical evidence***

*The claims*

Amnesty, rather than prosecution, was the common response to mass atrocity between the end of the Second World War and the end of the Cold War. In spite of the world-wide increase in criminal prosecution of past human rights violations, the number of countries imposing amnesties for gross human rights violations, either during peace negotiations or after the end of violence, has in fact been growing in recent years.<sup>97</sup> This implies that amnesties are frequently accompanied by some form of criminal accountability.

Indeed, amnesties have increasingly been considered a transitional justice mechanism in its own, not only as an anti-thesis to prosecutorial justice. Prior to about 1990, it was assumed that amnesties contributed to impunity rather than to safeguard human rights.<sup>98</sup> After the establishment of the ICC in 2002 and the spread of universal jurisdiction, there has been a growing international legal trend against using amnesties for the most serious crimes, such as war crimes, crimes against humanity, and genocide. Simultaneously, there has been a more nuanced scholarly debate with respect to what purposes amnesties may serve, especially in transitions from violent armed conflict.

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<sup>97</sup> Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Oxford and Portland, Oregon: Hart Publishing, 2008).

<sup>98</sup> See Mark Freeman, *Necessary Evils: Amnesties and the Search for Justice* (New York: Cambridge University Press, 2009), 2.

Amnesties have historically been used when governments are either unwilling or politically unable to prosecute alleged human rights violators after the political transition to a democratic regime. Amnesties come in many shapes and forms: self-amnesties, partial amnesties, blanket amnesties etc.<sup>99</sup> An important point to note is that amnesties do not necessarily foreclose all kinds of prosecution, as some crimes or some kind of perpetrators may be excluded from the amnesty law.

The main argument *for* amnesties is that they can, in the *short term*, reduce political conflict and lessen the chances of recurring violence, thereby fostering peace and reconciliation. Amnesties have often been considered vital to secure transitions from authoritarianism to democracy, or from armed conflict to peace. As convincingly argued by Mark Freeman, “for societies to regenerate after mass violence or genocide, there may, in fact, be no other choice.”<sup>100</sup> The transition itself is considered a prerequisite for reconciliation to take place. More than anything else, legal amnesties have been considered a tool to ensure political stability, and thus a necessary measure to facilitate reconciliation. Critics, however, counter that amnesty cannot lead to *long-term* reconciliation, among other reasons because “amnesia is the enemy of reconciliation.”<sup>101</sup>

Increasingly, scholars have started to argue for combining amnesties with other measures. Mallinder contends that amnesties can even have positive impacts “provided that they are introduced in good faith and are accompanied by other transitional justice mechanisms and institutional reforms.”<sup>102</sup> When combined with truth commissions, amnesties may

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<sup>99</sup> Mallinder, *Amnesty, Human Rights and Political Transitions*, 18. See pp. 3-7 for a comprehensive definition of amnesty, and the many types of amnesties.

<sup>100</sup> Freeman, *Necessary Evils*, 6.

<sup>101</sup> Luc Huyse, “The Process of Reconciliation,” in *Reconciliation after Violent Conflict: A Handbook*, eds. David Bloomsfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 2003), 30.

<sup>102</sup> Mallinder, *Amnesty, Human Rights and Political Transitions*, 18.



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encourage the disclosure of more extensive information. This information may, in the long run, be used for prosecutions and hence promote justice, adding another element needed for reconciliation.

*Empirical evidence*

The recent creation of data bases on amnesties has facilitated some interesting statistical cross-country analysis. Olsen et al (2010) find that amnesties used alone do not have statistically significant and positive effects on “democracy” and “human rights”. However, they show that amnesties in combination with trials or truth commissions explain improvements in those two political goals. This is a surprising finding given that trials and amnesties are generally considered incompatible.<sup>103</sup>

Moving to single case studies, the subject of impact of amnesties on reconciliation is an understudied topic. The cases of postcolonial Angola, Mozambique, and post-Franco Spain, where blanket amnesties for past crimes were issued but no other formal mechanism was put in place to pursue truth, justice or reconciliation after the end of civil war, seem to defy the rule that collectively forgetting the past will open the way for renewed conflict.<sup>104</sup> Yet, this does not mean that societies have become reconciled. For reasons of time and space I here limit my very brief synopsis to these three countries. The question as to how far these societies have reconciled with their past remains open. Moreover, if they have reconciled, the question is whether this is due to the presence of an amnesty law, or to local justice processes that may have developed in the absence of adequate state response to violence. Here the picture is certainly mixed.

Angola has managed to secure a negative peace, but though this has not been carefully documented using survey material, there are reasons to believe that the country has a long

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<sup>103</sup> Olsen et al., *Transitional Justice in Balance*.

<sup>104</sup> See Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding,” 367.

way to go in terms of reconciliation.<sup>105</sup> Mozambique is often put forward as a successful case of political reconciliation, but that may be due to the implementation of a series of local reconciliation practices rather than to the presence of an amnesty law. The effectuation of reconciliation processes rooted in local rituals and practices may have compensated for the absence of government initiated transitional justice processes (see more below). Spain too has recently revisited its violent past through attempts at digging up mass graves from the Franco fascist period, signalling that reconciliation is at best partial and that people still have a need to know what happened in the past.

### ***Local justice initiatives and reconciliation***

#### *Claims*

Scholars of local justice practices in the context of political transition emphasize the potential role of these practices, such as ritual ceremonies, in promoting reconciliation among families and communities – especially in the context of absence of formal transitional justice mechanisms. In recent years, a large and growing literature has developed on this subject. The main general claims coming out of this burgeoning literature is that civil society initiated processes aiming for some form of restorative justice will help mend the social fabric after a society has been torn apart by internal armed conflict or genocide. Typically, rituals enacted to promote reconciliation directly engage victims and perpetrators, contain elements of dialogue or rites, aim at social inclusion rather than punishment, and are ultimately aimed at making people who were former enemies cope with living in the same community or society without resorting to violence.

#### *Empirical evidence*

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<sup>105</sup> See Elin Skaar, Camila Gianella, and Trine Eide, “Angola: Peace but no democracy in the shadow of impunity,” in Elin Skaar, Camila Gianella, and Trine Eide, *A way out of violent conflict: The impact of transitional justice on peace and democracy*. (manuscript under review with Intersentia, 2012).

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Lars Waldorf in 2006 observed that the literature that existed on local justice included “mostly theoretical, macro-level assessments of state-initiated mechanisms, rather than empirical, micro-level studies of how those mechanisms are actually functioning at the local level.”<sup>106</sup> Since then, a lot of serious empirical work has been undertaken that provides interesting insights regarding how local justice practices may contribute to reconciliation. The study of local justice practices has so far been limited to individual case studies. It has not been subject to systematic cross-country comparison, though there has been a proliferation of edited volumes on local justice in the last couple of years, some of them with a cross-regional focus.<sup>107</sup> Yet, this is probably the part of the transitional justice literature that has brought the most valuable insights to the understanding of reconciliation after periods of acute state-sponsored violence. The vast bulk of literature on local justice practices and reconciliation centre on African experiences (principally Rwanda, Burundi, Uganda, Sierra Leone, Mozambique), though local justice processes in countries such as East Timor, Guatemala, Northern Ireland, and Israel-Palestine have also attracted some scholarly attention. All of these studies take on a micro-perspective, most of them are based on interview material, and most study the idiosyncratic local justice processes that are unique to each of the countries in question. Unlike formal transitional justice mechanisms, which have become an export “industry” where international funding and international expertise has “transported” various transitional justice mechanisms to virtually all corners of the world, local justice practices are rooted in local experiences and are therefore not immediately comparable. Since providing detailed analyses of each case falls outside the scope of this article, this section

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<sup>106</sup> Waldorf, “Mass justice for mass atrocity,” 6.

<sup>107</sup> See, among others, Phil Clark and Zachary D. Kaufman, eds., *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (New York: Columbia University Press, 2009); Huyse and Salter, *Traditional Justice and Reconciliation after Violent Conflict*; Shaw and Waldorf with Hazan, *Localizing Transitional Justice*; Quinn, *Reconciliation(s)*.

simply draws attention to the variety of local justice practices and points to some findings that may have implications for the study of reconciliation. I have selected four country studies. Two illustrate bottom-up approaches (Northern Uganda and Mozambique) and two illustrate top-down approaches to local justice (Rwanda and East Timor). The main themes linking these cases are processes that aim to foster healing, forgiveness, and social reintegration of perpetrators of violence.

#### *Northern Uganda*

In Northern Uganda, traditional Acholi conflict resolution practices, particularly a process known as *mato oput*, is said to assist the reintegration of ex-combatants, including abducted children and “bush wives,” into their original societies. James Ojera Latigo describes the process as follows:

Tolerance and forgiveness are enshrined in the principles of *mato oput* and other associated rituals. ... The process recognizes and seeks to salvage and affirm the moral worth and dignity of everyone involved—victims, perpetrators and the community at large—in the pursuit of a decent society, with the primary focus on coexistence and the restoration of relationships between former enemies as a basis for the prevention of the recurrence of gruesome crimes... The act of slaughtering the goat and ram and exchanging the heads reminds the perpetrators and those witnessing the ceremony that there is a price to be paid for violating the agreed rules of coexistence. *Mato oput* embodies the principle that society and the perpetrator contribute to the extent possible to the emotional restoration and repair of the physical and material well-being of the victim.<sup>108</sup>

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<sup>108</sup> James Ojera Latigo, “Northern Uganda: tradition-based practices in the Acholi region,” in *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, eds. Luc Huyse and Mark Salter (Stockholm: IDEA, 2008), 108. Latigo and Ali report similar rituals among the Mende in Sierra Leone. See James Ojera Latigo and Joe A. D Ali, “Reconciliation and traditional justice: tradition-based practices of the Kpaa Mende in Sierra

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Latigo acknowledges that the Acholi justice system is not suited to address war crimes or crimes against humanity, and it therefore does not include the “LRA architects of terror” or, for that matter, the Ugandan government within its remit.

*Mozambique*

In central Mozambique, according to research by Victor Igreja, *magamba* spirit ceremonies in a community lead to reconciliation, “since the spirits create conditions for reconciliation between the living people, between the living and the spirits and among the spirits themselves.”<sup>109</sup> Igreja, who has observed the *magamba* spirit ceremonies in central Mozambique for more than a decade, claims that “socio-cultural processes such as those presented by *magamba* spirits and healers and war survivors in general in Gorongosa unequivocally demonstrate the potential of human beings to utilize available mechanisms for a peaceful resolution of war-related conflicts.”<sup>110</sup> Alcinda Honwana, who studied the role of therapeutic strategies and healing mechanisms used in rural areas of Mozambique to deal with the war, argues that “an acknowledgement of the atrocities committed and the subsequent break from the past is articulated through ritual performance.” Honwana concludes—contrary to the assumptions underlying the processes of formal truth commissions—that reconciliation may sometimes be more efficiently achieved through symbols and rituals than through words.<sup>111</sup> From a more outsider’s macro-perspective, Helena

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Leone,” in *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, eds. Luc Huyse and Mark Salter (Stockholm: International IDEA, 2008), 44.

<sup>109</sup> Victor Igreja, “Gamba Spirits and the Homines Aperti: Socio-Cultural Approaches to Deal with Legacies of the Civil War in Gorongosa, Mozambique,” a paper read at Building a Future on Peace and Justice, Nüremberg, 25-27 June 2007, 12.

<sup>110</sup> *Ibid.*

<sup>111</sup> Alcinda Honwana, “Healing and Social Integration in Mozambique and Angola,” in *Roads to Reconciliation*, eds. Elin Skaar, Siri Gloppen, and Astri Suhrke (Lanham, MD: Lexington Books, 2005).

Cobban argues that the combination of official amnesty and local reconciliation suits the unique nature of this country's conflict, in which many combatants, including children, were forced to participate. Cobban reports from her interviews a "very high level of general satisfaction in the 'forgive, heal and rebuild' policy that the government adopted in 1992."<sup>112</sup>

### *Rwanda*

Few countries in the world – if any – have dealt as extensively with its *genocidaires* as Rwanda. The perpetrators of the genocide have been dealt with through three sets of courts: The ICTR, the national courts, and the local courts known as *gacaca*. Unlike the traditional justice processes in Northern Uganda and Mozambique that emerged out of civilians' need to deal with a traumatic past, *gacaca* in Rwanda are centrally managed at the official political level. According to official claims, the process known as *gacaca* was meant to "put the genocide behind us" rather than end impunity as such.<sup>113</sup> Scholars differ widely in their assessments of the potential of *gacaca*, but the balance of early evidence on impact indicates that it is unlikely to accomplish either of these goals.

Waldorf, critically assessing the impact of the *gacaca* courts on the goals of retributive justice and reconciliation, reported in 2006 that a one-sided focus on Hutu crimes during the genocide had deepened, rather than smoothed, ethnic divisions.<sup>114</sup> Almost half of all Hutu men can be considered genocide suspects, following accusations and confessions in *gacaca* proceedings.<sup>115</sup> A good number of those have been deprived of their right to vote.<sup>116</sup> Some have been detained for more than 10 years. Waldorf also noted that for the period he

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<sup>112</sup> Ibid., 193.

<sup>113</sup> Cited in Waldorf, "Mass justice for mass atrocity," 50.

<sup>114</sup> Ibid., 75. In fact, in April 2005, more than 6500 Hutu fled Rwanda, reportedly for fear of being killed in revenge for being named in *gacaca*.

<sup>115</sup> Estimates range from 700,000 to 1 million genocide suspects. Ibid., 80.

<sup>116</sup> Following convictions of category 1 or 2 crimes, according to the *Gacaca* law.

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examined, perpetrators who confessed rarely showed remorse, and they often received light sentences. Therefore, argued Waldorf, it was unlikely that *gacaca* would contribute to a sense of justice among survivors. In fact, as one Rwandan psychologist noted, “Confessions and seeking forgiveness do not remove fears and anger—they even increase them.”<sup>117</sup> Waldorf too observed that “in several communities, pre-trial *gacaca* proceedings caused a worsening of interethnic social relation” and cautioned that we should lower expectations with respect to what local justice – indeed any kind of transitional justice – can reasonably be expected to accomplish after mass atrocity.<sup>118</sup> Along the same lines, although slightly less critical, Trine Eide, based on her in-depth knowledge of Rwandan culture, concluded that under the apparent mask of peaceful coexistence, both Hutus and Tutsis perceived the *gacaca* processes as imposed by the government. What Rwandans at the grassroots level say with respect to reconciliation is different from what they feel in their hearts.<sup>119</sup>

Some of this pessimism has over time given way to cautious optimism as the *gacaca* proceedings have unfolded in almost 9000 *gacaca* courts across the country. In the view of Clark, a prominent specialist on *gacaca*, “critics have ignored *gacaca*’s capacity to facilitate restorative justice via meaningful engagement between parties previously in conflict, in the form of communal dialogue and cooperation, which are crucial to fostering reconciliation after genocide.” Based on careful empirical analysis, Clark finds reason for “qualified optimism regarding *gacaca*’s contribution to justice, healing and reconciliation after the genocide.” Still, he thinks it is too soon to pass a final judgment on these processes.<sup>120</sup>

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<sup>117</sup> Ibid., 74, full reference note 439.

<sup>118</sup> Ibid., 75 and 86.

<sup>119</sup> Trine Eide, *Pretending peace: discourses of unity and reconciliation in Rwanda*, M.A. Thesis, Department of Social Anthropology, University of Bergen, Norway, 2007.

<sup>120</sup> Clark, “The Rules (and Politics) of Engagement,” 300-301.

*East Timor*

Like Rwanda, East Timor too has opted for a top-down approach in an attempt to facilitate reconciliation among former warring parties. Recent violence between groups in the east and west of East Timor as well as on-going tensions with Indonesia suggest that reconciliation at the national and international levels remains elusive.<sup>121</sup> The Commission for Reception, Truth and Reconciliation (CAVR) also initiated a continuing Community-Based Reconciliation Process (CRP) that deals with minor offences. The record of that program is mixed. According to a program review published in 2004:

While [the CRP] has resolved some problems and facilitated the integration of many deponents back into their communities it has raised a host of new issues that are left unresolved. ... The voluntary nature of the process has meant that only some deponents have participated in the process, leading to resentment amongst victims and deponents alike of those who have not yet come forward... More critically, the CRP has inadvertently 'stirred the pot' with respect to serious crimes issues, raising expectations that the 'big fish,' some of whom are perceived to be living back in the community, will now be investigated and prosecuted. Indeed, while serious crimes issues remain unresolved, it is perhaps premature for many to contemplate questions of 'community harmony'.<sup>122</sup>

Observers have noted that local practices adopted into the transitional justice strategy have tended to reinforce pre-existing power structures. Survivors frequently deferred to the village head's opinion with respect to punishment, and in some cases

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<sup>121</sup> I have written a section on East Timor/Indonesia under the heading of truth commissions as well as under the heading of local justice initiatives above since they have not been treated together in the literature.

<sup>122</sup> Judicial System Monitoring Program, "Unfulfilled Expectations: Community Views on the CAVR's Community Reconciliation Process," Dili: East Timor, 2004, 40.



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the fear of retribution prevented people from requesting stiff sanctions or from speaking out at all. Within the CVAR itself, there was evidence that staff members exercised bias to protect family members who were known perpetrators from punishment.<sup>123</sup>

To sum up, while local justice practices such as the ones depicted above may promote reconciliation within a given community, they usually do not apply to divisions at the national level. In three of the countries mentioned (Northern Uganda, Mozambique, and East Timor), the practices were used only within specific ethnic groups or specific regions. Since war typically brings the mixing of groups and heightens conflicts between them, such local practices are not suitable for settling many types of disputes. For instance, among the East Timorese, reconciliation—what is termed locally *nabe biti*, or stretching the mat—is perceived as “embracing not only the notion of meeting, discussion and agreement in order to reach a consensus among the opposing factions... it is also part of a grand process that aims to link the past and the future and bring society into an ultimate state of social stability, where peace, tranquillity, and honesty prevail.”<sup>124</sup> But as implemented in the Community-Based Reconciliation Process, it explicitly targeted only small-time criminals.<sup>125</sup> In Rwanda, by contrast, those involved in the genocide were treated an all three sets of courts, depending on their level of involvement and command. The achievements of the *gacaca* should therefore ideally be explored in the context of the existence of three sets of courts three seeking justice and truth/prosecution, and the inherent tensions between them.

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<sup>123</sup> Elizabeth Stanley, “The Political Economy of Transitional Justice in Timor-Leste,” in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, eds. Kieran McEvoy and Lorna McGregor (Oxford: Hart Publishing, 2008), 184.

<sup>124</sup> Dionísio Babo-Soares, “*Nabe Biti*: Grassroots Reconciliation in East Timor,” in *Roads to Reconciliation*, eds. Elin Skaar, Siri Gloppen and Astri Suhrke (Lanham, MD: Lexington Books, 2005), 225.

<sup>125</sup> Stanley, “The Political Economy of Transitional Justice in Timor-Leste,” 182.

***Tensions between transitional justice mechanisms and reconciliation***

Despite claims regarding the positive effects of various TJ mechanisms on reconciliation, the traditional view of transitional justice as a threat to national reconciliation has not been refuted. Because “truth commissions and criminal tribunals investigate extremely divisive and violent histories,” writes Bronwyn Anne Leebaw, “they have often been viewed as obstacles to reconciliation and charged with “opening old wounds,” generating political instability and interfering with forward-looking political change.”<sup>126</sup> Since these mechanisms have also been promoted as vehicles for reconciliation, the debate has focused on tensions, trade-offs and dilemmas associated with transitional justice. In the 1990s, the dominant perspective was of a forced choice between truth (seen as a second-best option) and justice (the preferred option).<sup>127</sup> More recent scholarship has portrayed truth and justice as mutually dependent and mutually reinforcing. The dominant current view is that societies seeking reconciliation should employ a variety of transitional justice mechanisms rather than just one – echoing what Fletcher and Weinstein (2002) suggested a decade ago.<sup>128</sup> Proponents of this

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<sup>126</sup> Leebaw, “The Irreconcilable Goals of Transitional Justice,” 96-97.

<sup>127</sup> Robert I. Rotberg, and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton, New Jersey: Princeton University Press, 2000). Hayner argues forcefully that truth commissions should not be seen as a replacement for prosecutions, that is, not as a second-best or weaker option. Hayner, *Unspeakable Truths*, chapter 7.

<sup>128</sup> For instance, Crocker, in “Reckoning with Past Wrongs,” argues that societies seeking reconciliation in the wake of serious wrongdoings should strive to (1) investigate the truth about the relevant past events, (2) provide a public platform for victims to tell their stories about what happened to them, (3) establish some measure of accountability and appropriate sanctions for the most significant perpetrators of wrongdoings, (4) comply, and show compliance with, the rule of law, (5) appropriately compensate the victims of wrongdoing, (6) contribute to institutional reform and long-term development, (7) reconcile previously opposed groups and individuals, and (8) deepen and strengthen the quality of public deliberation.

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view assume that different transitional justice mechanisms can be mutually reinforcing and complementary, contributing jointly to the goal of reconciliation.

Leebaw, however, makes a strong case that more attention should be given to their irreconcilable goals. Referring to the political role of transitional justice mechanisms, she contends that “their efforts to expose, remember, and understand political violence are in tension with their role as tools for establishing stability and legitimating transitional compromises.”<sup>129</sup> Thus, the debate has not yet reached a conclusion. We agree with Brounéus that “claims made of the relationship between for example truth, justice, peace and reconciliation are in need of empirical backing.”<sup>130</sup>

***The impact of mixed approaches on reconciliation: Empirical evidence***

Although many countries have employed two or more transitional justice mechanisms in combination, hardly any empirical qualitative cross-country comparative analysis exists on the complementary or contradictory effect of these mechanisms on the process(es) of reconciliation. Another key issue which seems to be seriously underplayed in the literature is how the timing and sequencing of TJMs may affect reconciliation in the short term and the long term. Those who have dealt with systematic cross-country evaluation of the impact of various transitional justice mechanisms have avoided the concept of reconciliation altogether. Instead, the steadily increasing number of statistical studies published in recent years has attempted to gauge the impact of TJMs on more measurable concepts such as “peace”, “democracy” and “human rights” – all of which may relate to, but are different from, reconciliation. Three of the to-date four existing statistical studies (which I have referred to

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<sup>129</sup> For a good overview of the changing ideas about the relationship between transitional justice and reconciliation, see Leebaw, “The Irreconcilable Goals of Transitional Justice,” 97-99.

<sup>130</sup> Brounéus, “Reconciliation and Development,” 3-4.

earlier in this article) deal with the joint effects of two or more of the transitional justice mechanisms examined here (truth commissions, trials, and amnesties). I find it useful to provide a very brief summary of their main findings here, since these studies have advanced the TJ field methodologically and may provide insights useful for assessing the impact of transitional justice on reconciliation in future studies.

In an early attempt to evaluate the impact of transitional justice mechanisms, Lie, Binningsbø and Gates find that the impact of multiple transitional justice mechanisms on the duration of post-civil war peace in general is weak.<sup>131</sup> Kim and Sikkink, by contrast, find empirical support for claiming that human rights trials as well as truth commissions help decrease repression and hence have a positive effect on human rights protection.<sup>132</sup> In the largest and most comprehensive cross-country study of transitional justice to date, Olsen, Payne and Reiter find that single TJ mechanisms used alone do not have statistically significant and positive effects on democracy and human rights.<sup>133</sup> By contrast, the authors show that specific combinations of mechanisms—trials and amnesties; or trials, amnesties, and truth commissions—explain improvements in those two political goals. Notably, they find support for a combination of two TJ mechanisms—trials and amnesties—that are generally considered incompatible. They contend that trials provide accountability and amnesties provide stability, leading to improvements in democracy and human rights. Another interesting finding is that truth commissions have a positive impact when combined with trials and amnesties. These findings are true across different kinds of contexts.

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<sup>131</sup> Lie et al., "Post-Conflict Justice and Sustainable Peace." Lie et al. understand peace as negative peace, i.e. the absence of civil war. We may take this to correspond to a "thin" definition of reconciliation, though the parallel is strenuous.

<sup>132</sup> Kim and Sikkink, "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries."

<sup>133</sup> Olsen et al., *Transitional Justice in Balance*.

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To sum up, these three statistical studies produce very different findings with respect to the impact of *trials and truth commission* on “peace”, “democracy” and “human rights”. The only study that assesses the impact of amnesties, views amnesties positively when combined with truth commissions and trials. The lesson drawn from these studies, relevant for studies of reconciliation, is that one is likely to arrive on very different conclusions when using different definitions/understandings of the dependent variable. This is, of course, a methodological problem inherent in the social sciences. Yet, our hunch is that the concept “reconciliation” poses particular problems for cross-country analysis.

The potential for carrying out studies of multiple transitional justice mechanisms on reconciliation is certainly there. Several countries have employed so-called mixed approaches to reconciliation, combining two or more transitional justice mechanisms. Limiting the countries to those that have employed two or more of the four examined in this article, we end up with the following non-exhaustive list: Chile (truth commission and amnesty, later trials); Argentina (truth commissions, trials and amnesty); Brazil (amnesty, later truth commission); Uruguay (amnesty, later truth commissions and trials); Peru (amnesty, truth commission, later trials); Guatemala (amnesty, truth commission, later trials, local justice processes); the former Yugoslavia (international war crimes tribunal, national trials); Rwanda (international war crimes tribunal, national trials, *gacaca* process); Uganda (International Criminal Court and local reconciliation mechanisms); Sierra Leone (truth commission, trials, *Kpaa Mende* rituals); Mozambique (amnesty, *magamba* rituals); East Timor/Indonesia (national trials, UN-sponsored trials, national truth commission, international truth and friendship commission, *nabe biti* local justice initiatives).

**Methodological challenges and recommendations for future research**

As more and more countries make use of transitional justice mechanisms to deal with a violent past, there is an urgent need

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for reliable empirical evidence on the effects such mechanisms are likely to have. As the cases of South Africa and Rwanda illustrate, identifying effects is not easy, even in countries that have been studied extensively. Yet it would be a mistake to rely on assumptions about presumed effects rather than on knowledge we can glean from experience to date.

As mentioned at the beginning of this article, the concern with impact assessment and appropriate methodology in the transitional justice field is of relatively recent origin. I support authors who advocate the use of social science techniques to add more rigour to transitional justice analysis.<sup>134</sup> Using what we do *not* know as a point of departure, I suggest that at least three different areas pertaining to reconciliation need systematic scholarly attention. Research priorities include:

- More in-depth studies of single cases employing two or more TJ mechanisms, looking at how these interact and affect the process of reconciliation.
- More systematic qualitative comparative cross-country analysis exploring the impact of the same combination of TJ mechanism(s) on reconciliation processes.
- More systematic qualitative analysis of the interplay between formal TJ processes and local/traditional reconciliation processes.

For all three scenarios, specific attention should be given to the different contexts in which these transitional justice/reconciliation processes play out. My hunch is that formal as well as informal transitional justice mechanism will be more explicitly geared towards facilitating reconciliation in contexts of armed conflict/mass violence than in post-authoritarian situations simply because the level of interpersonal violence may be assumed to be on a substantively smaller scale in authoritarian regimes.

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<sup>134</sup> See Phuong Pham and Patrick Vinck, "Empirical Research and the Development and Assessment of Transitional Justice Mechanisms," *International Journal of Transitional Justice* 1.2 (2007): 231-248.

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To advance empirical knowledge on reconciliation, there must therefore be more systematic attention to research design. The major challenges may be grouped into four categories, namely, concepts, causal connections, appropriate methods, and time frames.

*How to investigate reconciliation*

I propose that reconciliation should be understood as a *process* rather than as a goal. This first and foremost because it seems impossible to conclude in any given empirical situation that an individual or a society is fully reconciled. More usefully, I think, reconciliation could be thought of as a continuum, ranging from “thin” to “thick”. David Crocker’s three-fold typology may be a useful starting point. He distinguishes between “simple co-existence” (i.e. low levels of reconciliation), “democratic reciprocity” (i.e. intermediate levels of reconciliation) and a comprehensive reconstruction of social bonds between victims and perpetrators.<sup>135</sup>

For stringent cross-country analysis there should be a minimal (“thin”) or intermediary rather than maximal (“thick”) definition so that the reconciliation process can be measured by observable phenomena such as reduced levels of violence and increased levels of civic trust. For in-depth case studies, by contrast, it may be more useful to study the process of reconciliation as taking place at multiple levels (the individual, the societal, the national). As existing research suggests, understandings of reconciliation are highly context-specific and may differ from one group to another within the same country. It is important to pay attention to those differences if we want to gain a deeper understanding of reconciliation processes.

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<sup>135</sup> David A. Crocker, “Truth Commissions, Transitional Justice, and Civil Society,” in *Truth v. Justice. The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson (Princeton, New Jersey: Princeton University Press, 2000).

*Concepts and causal connections*

In any analysis it is essential to clarify the independent variables postulated to have an effect on reconciliation. It matters whether we look at the impact of *transitional justice mechanisms* on reconciliation, or whether we focus on the relationships between “*truth*” and/or “*justice*” (both of which may be brought about by a range of different formal and informal transitional justice mechanisms) on reconciliation. Starting with the latter, the concept of “justice” has generated an expansive set of subcategories: forward-looking justice, backward-looking justice, retributive justice, restorative justice, retroactive justice, reparatory justice, administrative justice, local justice, traditional justice, historical justice, and more. Each term has different content and connotations. Local perceptions of what justice means will probably display even more variance than the collection of terms listed above. Any rigorous study must carefully delimit the particular concept of justice and the mechanism used for the cases considered. “Truth” is another problematic concept needing clarification and operationalization. As demonstrated in the South African case, it matters what kind of truth and whose truth is the focus of analysis.

Turning to the transitional justice mechanisms, it is particularly important to determine through comparative analysis the precise criteria that define each mechanism, rather than presuming that all mechanisms called by the same name are comparable. In the case of truth commissions, for example, there is clear agreement that South Africa’s TRC, established to investigate decades of violence under the apartheid system, belongs on the list. But what about the Greensboro Truth and Reconciliation Commission, set up in the U.S. state of North Carolina in 2004 to look a specific episode of killings by the Ku Klux Klan in 1979? Or Uruguay’s small, underfunded, NGO-initiated truth commission? Are we talking about a single mechanism in all three cases? Similarly, when discussing the impact of punitive justice or trials on the recovery of “truth” and “justice”, can a trial of selected junta members by national courts (as in Argentina) be sensibly compared with the thousands of



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prosecutions taking place in the *gacaca* processes in Rwanda, or in the UN *ad hoc* tribunal set up for that country? I leave these questions unanswered, but they illustrate the choices that must be made in any cross-country comparative study.

In the transitional justice literature, concepts such as truth, justice and reconciliation, in addition to carrying a multiplicity of meanings, are often treated simultaneously as independent variables and dependent variables. This ambiguity obviously complicates the task of establishing causal connections. An important and related challenge is to clarify whether we are “measuring” the impact of a given transitional justice mechanism at the individual, community, regional or national level.

*Deciding on an appropriate scientific method*

Using interview or survey data is the most fruitful way of gaining in-depth understanding of the multiple layers of reconciliation processes. For in-depth cross-country analysis there is an additional need for more easily accessible quantifiable or operational measures. There is much room for additional investigation of what combination of methods may be most fruitful.

*Determining the appropriate time frame for analysis*

If the study focuses on the effects of specific transitional justice mechanisms on reconciliation, the minimum time frame is set by the prerequisite that the TJ mechanism in question must have completed its mandate. Trials must have been conducted in a timely fashion, with fair procedures. Truth commissions must have completed their work and issued a report. Moreover, implementation of the recommendations made by truth commissions with respect to reparations, institutional reforms and memorials (an additional set of TJ mechanisms not discussed in this article) should also be considered, an important point that is frequently overlooked in the literature.

All this points to the need to allow sufficient time for analysing the impact of (formal and informal) transitional justice

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mechanisms on reconciliation processes. Trials, truth commissions and local justice initiatives may take years to complete; amnesty laws may be passed only to later be modified or overturned; and there is frequently an additional time lag between the publication of truth commission recommendations and their implementation. Reconciliation processes inevitably and indisputably take time. While the need to wait for results before making a firm evaluation may be seen as an obstacle, it is also an opportunity. That is, there is the possibility of beginning research at a stage when it is possible to capture the dilemmas and dynamics of formulating and implementing transitional justice strategies, even though the final effects cannot yet be measured.

### **Concluding remarks**

From this overview, we conclude that no scholarly agreement exists regarding the expected impact of transitional justice mechanisms on the process of reconciliation. Empirical evidence on the extent to which truth commissions, trials, amnesties and traditional justice approaches actually contribute to reconciliation is, at best, inconclusive.

I agree with Thoms, Ron and Paris that “moving from ‘faith-based’ to ‘fact-based’ discussions on transitional justice will require more sustained, careful, and comparative analyses of the transitional justice record.”<sup>136</sup> This will require a combination of rigorous comparative thick descriptive analysis and richly detailed case studies employing a long time perspective. I join Eric Wiebelhaus-Brahm in advocating a multi-method approach and broad definitions of impact, such as “whether the experience [e.g., a truth commission] resulted in substantive change.”<sup>137</sup> Large-N analysis thus seems particularly unsuited to shed light on the complex and elusive reconciliation processes.

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<sup>136</sup> Oskar N.T. Thoms, James Ron, and Roland Paris, “State-Level Effects of Transitional Justice: What Do We Know?” *International Journal of Transitional Justice* 4.3 (2010): 329-354.

<sup>137</sup> Wiebelhaus-Brahm, “Uncovering the Truth,” 18. In this article, Wiebelhaus-Brahm deals with impact of truth commissions on subsequent

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While tentative assessments are both possible and necessary, the greatest challenge will be to let sufficient time elapse before passing (final) judgement. As I am reminded by the recurring debates on the Holocaust and the Armenian genocide, the exhumations of mass graves in Spain, and the ongoing post-transition trials in countries like Argentina, Chile, and Uruguay, reconciliation may take decades—even generations.

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human rights practices and democratic development, yet we find many of his theoretical points relevant to the challenges of assessing impact on reconciliation.

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