
When Truth Commissions Improve Human Rights

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Abstract

Most studies of truth commissions assert their positive role in improving human rights. A first wave of research made these claims based on qualitative analysis of a single truth commission or a small number of cases. Thirty years of experience with truth commissions and dozens of examples allow cross-national statistical studies to assess these findings. Two recent studies undertake that project. Their findings, which are summarized in this article, challenge the prevailing view that truth commissions foster human rights, showing instead that commissions, when used alone, tend to have a negative impact on human rights. Truth commissions have a positive impact, however, when used in combination with trials and amnesties. This article extends the question of whether truth commissions improve human rights to how, when and why they succeed or fail in doing so. It presents a ‘justice balance’ explanation, whereby commissions, incapable of promoting stability and accountability on their own, contribute to human rights improvements when they complement and enhance amnesties and prosecutions. The article draws on experiences in Brazil, Chile, Nepal, South Korea and South Africa to illustrate the central argument.

Introduction

Do truth commissions promote improvements in human rights? Such a goal is integral to truth commissions’ existence. The very process of uncovering the violent past aims to prevent its reoccurrence. The words ‘never again,’ which have become so closely connected to truth commissions, call for establishing human rights protections to avoid future state terror, torture, disappearances and political killings.¹

With 30 years of experience and over two dozen examples to draw on, researchers are now in a position to assess truth commissions’ success in achieving their human

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¹ *Nunca Más* (Never Again) was the title of one of the world’s first truth commission reports, by Argentina’s National Commission on the Disappeared (1984).

rights goals.² Transitional justice scholars and practitioners have tended to reach positive conclusions regarding commissions' capacity to establish responsibility for past human rights violations and to encourage reforms that promote human rights. They attribute this success largely to the commissions' ability to avoid the political and moral risks associated with prosecution or amnesty. Former perpetrators seem unlikely to mobilize against nonprosecutorial mechanisms of accountability, which thus establish responsibility without jeopardizing political stability.³ In addition, the collective responsibility acknowledged by truth commissions may heighten awareness in a society of past atrocity, contributing to deterrence of future violations. Scholars and practitioners tend to view truth commissions as a pragmatic middle road between prosecutions and impunity, instability and accountability.⁴ Researchers have thus viewed truth commissions as effective in dealing with past human rights violations, while also achieving victim-centered (for example, official acknowledgment) and societal (for example, reconciliation) goals.

This article challenges the first of these claims. Our research – which brings together a study conducted by Tricia Olsen, Leigh Payne and Andrew Reiter based on the Transitional Justice Data Base (TJDB) project and a study on truth commissions done by Eric Wiebelhaus-Brahm – contends that truth commissions, on their own, tend to have a negative impact on human rights.⁵ Commissions' positive role in improving human rights depends instead on their being accompanied by trials and amnesties. The article summarizes these findings and explores potential explanations for them. It further offers insights into the conditions under which truth commissions contribute positively to human rights. As such, it extends the question of *whether* truth commissions improve human rights to *how*, *when* and *why* they succeed in doing so. We conclude that truth commissions, when used in concert with trials and amnesties, can help provide a 'justice balance' that contributes to human rights improvements.

² There is some disagreement on whether the first truth commission occurred in Uganda in 1974 or in Bolivia in 1982. For a discussion of definitional issues with respect to truth commissions, see, Eric Brahm, 'What Is a Truth Commission and Why Does It Matter?' *Peace and Conflict Review* 3(2) (2009): 1–14.

³ Jaime Malamud-Goti, 'Trying Violators of Human Rights: The Dilemma of Transitional Governments,' in *State Crimes: Punishment or Pardon* (Queenstown, MD: Aspen Institute, 1989); Jamie Malamud-Goti, 'Transitional Governments in the Breach: Why Punish State Criminals?' *Human Rights Quarterly* 12(1) (1990): 1–16; Aryeh Neier, 'What Should Be Done about the Guilty?' *New York Review of Books*, 1 February 1990, 32–35; Carlos S. Nino, 'The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina,' *Yale Law Journal* 100(8) (1991): 2619–2640; Carlos S. Nino, *Radical Evil on Trial* (New Haven, CT: Yale University Press, 1996).

⁴ Neil J. Kritz, 'Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights,' *Law and Contemporary Problems* 59(4) (1996): 127–152; Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, MA: Beacon Press, 1998); Ruti Teitel, 'How Are the New Democracies of the Southern Cone Dealing with the Legacy of Past Human Rights Abuses?' in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J. Kritz (Washington, DC: US Institute of Peace Press, 1995).

⁵ Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: US Institute of Peace Press, 2010); Eric Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy* (New York: Routledge, 2009).

Truth Commissions and Human Rights Goals

A broad range of goals has been attributed to truth commissions. Among them, most scholars recognize human rights improvements as central.⁶ For example, in her seminal study of truth commissions, Priscilla Hayner argues that their overarching goal is ‘to prevent further violence and human rights abuses in the future.’⁷ Human rights also figure prominently among Audrey Chapman’s 13 truth commission aims, which include that they ‘end and prevent violence and future human rights abuses,’ ‘forge the basis for a democratic political order that respects and protects human rights’ and ‘recommend ways to deter future violations and atrocities.’⁸ Tristan Anne Borer similarly outlines 26 truth commission goals that include ‘accountability,’ ‘human rights culture,’ ‘*nunca más*’ (never again) and ‘rule of law.’⁹ Finally, Timothy Garton Ash asks, ‘By what criterion is [a truth commission’s] “success” to be judged, in the first place? Is it Truth? Justice? Reconciliation? Closure? Healing? National Unity? Prevention of future abuses?’¹⁰

Only rarely do transitional justice scholars question this set of goals. David Mendeloff, for example, doubts that human rights improvements represent an appropriate measure of truth commissions’ success.¹¹ Others recognize commissions’ human rights goals but may not always consider them more important than other objectives, such as individual victim and survivor healing. Despite these exceptions, significant widespread agreement exists that truth commissions can and should advance human rights. Their role in bringing human rights improvements, therefore, provides a legitimate measure of success and impact.

Existing studies also outline how truth commissions potentially fulfill the goal of promoting human rights. Ideally, commissions include a broad rather than a circumscribed mandate; sufficient powers and resources; widely respected and unbiased commissioners; easy public access to commission findings; and recommendations that are implemented by the government.¹² Public access to a commission’s

⁶ See, for example, Jason S. Abrams and Priscilla B. Hayner, ‘Documenting, Acknowledging and Publicizing the Truth,’ in *Post-Conflict Justice*, ed. by M. Cherif Bassiouni (Ardley, NY: Transnational Publishers, 2002); David Gairdner, *Truth in Transition: The Role of Truth Commissions in Political Transition in Chile and El Salvador* (Bergen: Chr. Michelsen Institute, 1999); Mike Kaye, ‘The Role of Truth Commissions in the Search for Justice, Reconciliation and Democratisation: The Salvadorean and Honduran Cases,’ *Journal of Latin American Studies* 29(3) (1997): 693–716; Minow, supra n 4.

⁷ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 154.

⁸ Audrey R. Chapman, ‘Truth Finding in the Transitional Justice Process,’ in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, ed. Hugo van der Merwe, Victoria Baxter and Audrey R. Chapman (Washington, DC: US Institute of Peace Press, 2009), 94.

⁹ Tristan Anne Borer, ‘Truth Telling as a Peace-Building Activity: A Theoretical Overview,’ in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame, IN: University of Notre Dame Press, 2006), 26.

¹⁰ Timothy Garton Ash, ‘Truth Confessions,’ *New York Review of Books*, 17 July 1997, 36.

¹¹ David Mendeloff, ‘Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?’ *International Studies Review* 6(3) (2004): 355–380.

¹² Mark Freeman and Priscilla B. Hayner, ‘Truth-Telling,’ in *Reconciliation after Violent Conflict: A Handbook*, ed. David Bloomfield, Teresa Barnes and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003); Priscilla B. Hayner, ‘Fifteen Truth Commissions – 1974 to 1994: A Comparative Study,’ *Human Rights Quarterly* 16(4) (1994): 597–655. See also,

hearings and reports ‘narrows the range of permissible lies,’ as Michael Ignatieff contends.¹³ Denial of abuse by perpetrators, their supporters and bystanders yields to official acknowledgment of victims’ accounts. A commission’s subpoena power and mandate may compel or entice perpetrators to confess to past violence. In so doing, perpetrators subject their past violence to public scrutiny. Even their former supporters may begin to question perpetrators’ heroic, patriotic or national salvation justifications for documented heinous acts.¹⁴ A highly respected truth commission may thus succeed in establishing those acts as morally reprehensible and criminal. Legitimate, well-funded and sophisticated investigations may lead to the implementation of a commission’s recommendations. Permanent human rights investigative bodies, prosecution of human rights violations, human rights laws and other legal and institutional reforms emerging from these recommendations may deter future crimes. Truth commissions, in short, potentially promote human rights goals through official acknowledgment, accountability and a normative, legal and institutional shift toward human rights protections.

Several studies of truth commissions find they have successfully promoted human rights goals. Jason Abrams and Priscilla Hayner contend ‘that [truth] commissions – even those operating in the most tense environments – have almost invariably improved, and not worsened, the human rights climate.’¹⁵ Systematic analyses of individual truth commissions further support this contention. James Gibson, for example, tests the South African Truth and Reconciliation Commission’s (TRC) ability to promote a human rights culture by probing respondents’ views on human rights principles, including the rule of law and legal universalism.¹⁶ He finds that those who accepted the TRC’s conclusions regarding South Africa’s past proved more supportive of human rights than those who did not.

Richard J. Goldstone, ‘Justice as a Tool for Peace-Making: Truth Commissions and International Criminal Tribunals,’ *New York University Journal of International Law and Politics* 28(3) (1996): 485–503; Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice* (New York: Times Books, 1998); Tina Rosenberg, *The Haunted Land: Facing Europe’s Ghosts after Communism* (New York: Random House, 1995); Lawrence Weschler, *A Miracle, a Universe: Settling Accounts with Torturers* (New York: Pantheon, 1990); José Zalaquett, ‘Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations,’ *Hastings Law Journal* 43(6) (1993): 1425–1438; José Zalaquett, ‘Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints,’ *Hamline Law Review* 13(3) (1990): 623–660; Martha Minow, ‘The Hope for Healing: What Can Truth Commissions Do?’ in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton, NJ: Princeton University Press, 2000); Rajeev Bhargava, ‘Restoring Decency to Barbaric Societies,’ in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton, NJ: Princeton University Press, 2000).

¹³ Michael Ignatieff, *The Warrior’s Honor: Ethnic War and the Modern Conscience* (New York: Henry Holt and Co., 1997), 174.

¹⁴ Leigh A. Payne, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Durham, NC: Duke University Press, 2008).

¹⁵ Abrams and Hayner, *supra* n 6 at 292.

¹⁶ James L. Gibson, ‘Truth, Reconciliation, and the Creation of a Human Rights Culture in South Africa,’ *Law and Society Review* 38(1) (2004): 5–40; James L. Gibson, *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* (New York: Russell Sage Foundation, 2004).

Several comparative studies reach similar conclusions. Qualitative studies of Latin American truth commissions have been most prevalent. For example, Mark Ensalaco concludes that the Chilean and Salvadoran truth commissions advanced human rights through their recommendations. These commissions called for an official review of the legal system and ratification of international human rights treaties.¹⁷ Mike Kaye's subsequent study found that the Salvadoran Commission on the Truth's recommendations improved the protection of human rights and bolstered the human rights ombudsman.¹⁸ Most recently, Hunjoon Kim and Kathryn Sikkink's global, cross-national study concludes that truth commissions have had a positive impact on human rights protection.¹⁹ The study assesses the effect on human rights of trials and truth commissions adopted by democracies emerging from authoritarian rule after 1974.

Kim and Sikkink join others in advancing three main explanations for truth commissions' success in relation to human rights improvements: deterrence, accountability and norm promotion.²⁰ They argue that commissions 'outline the weaknesses in the institutional structures or existing laws that should be changed to prevent abuses from reoccurring in the future.'²¹ Moreover, commissions 'promote the accountability of perpetrators of human rights violations,' thereby undermining cultures of impunity.²² In addition, they 'legitimize the culture, beliefs and values associated with human rights as the new framework for imagining social relations,' and consequently strengthen societal norms against human rights violations.²³

While existing single-case, regional and cross-national studies find that truth commissions have a positive impact on human rights protection, they present some methodological concerns. For example, single-case studies often lack comparative data on human rights from prior to the truth commission. Gibson constructs a thoughtful survey instrument and employs sophisticated statistical techniques, but the lack of pre-TRC data undermines the causal argument. Ensalaco's and Kaye's regional studies focus on recommendations. While recommendations are important, no guarantee exists that governments will implement them or that the recommendations will succeed in influencing the behavior of the military, police and judiciary, among others. Indeed, one study contends that only moderately democratic countries and, by extension, human rights protectors are

¹⁷ Mark Ensalaco, 'Truth Commissions for Chile and El Salvador: A Report and Assessment,' *Human Rights Quarterly* 16(4) (1994): 656–675.

¹⁸ Kaye, *supra* n 6.

¹⁹ Hunjoon Kim and Kathryn Sikkink, 'Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries,' *International Studies Quarterly* (forthcoming). See also, Kathryn Sikkink and Carrie Booth Walling, 'The Impact of Human Rights Trials in Latin America,' *Journal of Peace Research* 44(4) (2007): 427–445.

²⁰ Eric Wiebelhaus-Brahm suggests these as three ways of operationalizing human rights to measure truth commission impact.

²¹ Hayner, *supra* n 7 at 29.

²² Freeman and Hayner, *supra* n 12 at 125.

²³ Gairdner, *supra* n 6 at 54.

likely to implement truth commission recommendations.²⁴ Kim and Sikkink's sophisticated cross-national statistical analysis finds a positive relationship between truth commissions and human rights.²⁵ Their model, however, does not allow them to examine country cases in which truth commissions occurred alone and without trials or in which truth commissions accompany amnesties with or without trials.²⁶ We do so in our studies and draw very different conclusions, as we explain further below.

In sum, existing studies tend to agree that truth commissions aim to improve human rights and often succeed in doing so. Our findings challenge these claims. Rather than join scholars and practitioners who promote truth commissions for their positive impact on human rights, therefore, we advocate caution. Our studies demonstrate the limitations of commissions in achieving human rights goals.

Challenges to Existing Assumptions

In her book on truth commissions, Hayner raises a particular concern:

Many comfortable assumptions have been restated over and over again in untested assertions by otherwise astute and careful writers, thinkers, and political leaders . . . Some of the most oft-repeated statements, and those that we perhaps most wish to be true, are due careful scrutiny.²⁷

The relationship between truth commissions and human rights is one such area. Despite the conventional wisdom that truth commissions promote human rights, our research challenges that view. Specifically, we find that truth commissions likely have a negative impact on human rights when used alone. Their positive impacts depends on their being linked to trials and amnesties. After summarizing the findings of our two studies and the challenges they pose to existing perspectives, we present a 'justice balance' theory to explain our results.

To analyze the effect of transitional justice on human rights outcomes, Olsen et al. used Keesing's World News Archive to collect data on three main mechanisms – trials, truth commissions and amnesties – adopted in all transitions from authoritarianism to democracy between 1970 and 2004.²⁸ Using Polity IV's Regime

²⁴ Alexandra Barahona de Brito, Carmen González-Enríquez and Paloma Aguilar, eds., *The Politics of Memory: Transitional Justice in Democratizing Societies* (Oxford: Oxford University Press, 2001).

²⁵ In only one model is the relationship statistically significant at the typical social science confidence level of 95%. In other words, one could conclude from most of their models that there is, in fact, no relationship between truth commissions and human rights.

²⁶ Note that while Kim and Sikkink's operationalization of truth commissions follows that of Olsen et al., their measurement of trials is quite different. They measure 'trial years' and 'cumulative trials years,' both of which are derived from US State Department reports. They refer to a range of prosecutorial activities as 'trials,' rather than focusing only on verdicts. In addition, they utilize different model specifications and include two additional controls (treaty ratification and population change) not present in either Olsen et al. or Wiebelhaus-Brahm.

²⁷ Hayner, *supra* n 7 at 6.

²⁸ The full TJDB project includes data on five transitional justice mechanisms – trials, truth commissions, amnesties, reparations and lustration – for all countries in the world from 1970 to 2007. For more information on mechanism selection, concept formation and operationalization, as well as data collection, see, Olsen, Payne and Reiter, *supra* n 5.

Table 1. Effect of Transitional Justice on Human Rights

	TJ Overall	Only Trials	Only Amnesty	Only TC	Trials & Amnesties	Amnesties & TCs	Trials & TCs	Trials, TCs & Amnesties
Physical Integrity	+	0	N/A	-	N/A	N/A	N/A	0
Political Terror Scale (Amnesty Int'l)	+	0	0	-	+	0	0	+
Political Terror Scale (US State Dept.)	+	N/A	N/A	-	+	N/A	N/A	+

Note: N/A signifies that the model itself with the specified dependent variable was not meaningful; '+' and '-' mean statistically significant positive or negative relationships; and '0' means no statistically significant relationship is evident. The complete methodology and the estimated models are available in Olsen, Payne and Reiter supra n 5.

Transition Variable rendered 91 transitions in 74 countries.²⁹ In total, these transitional countries used 49 trials, 27 truth commissions and 46 amnesties.

To assess the effect of truth commissions, the study uses widely accepted measures of human rights – the Physical Integrity Rights Index (PHYSINT) from Cingranelli-Richards (CIRI) Human Rights Dataset and the Political Terror Scale (PTS) – and calculates the change in these scores over time.³⁰ Both indices derive their data from Amnesty International reports and US State Department country reports on human rights practices. While derived from the same sources, they quantify these reports in different ways. PHYSINT provides a scale that quantifies government protection against specific human rights violations, including torture, extrajudicial killings, political imprisonment and disappearance by counting the frequency of their occurrence in a given country each year. PHYSINT is limited temporally because it begins in 1980 and its coverage is somewhat sporadic during democratic transitions. Nonetheless, it remains a widely accepted cross-national measure of human rights violations. PTS, which begins in 1976, provides a scale indicating the extent to which a country's population is safe from manifestations of state terror, such as wrongful imprisonment and torture.

Table 1 summarizes Olsen et al.'s TJDB project findings regarding truth commissions and human rights. Overall, the study shows that adopting some form of transitional justice proves more likely to improve human rights than failing to do so.³¹ Nonetheless, no transitional justice mechanism when used alone improves human rights protection. Neither trials nor amnesties have a statistically

²⁹ Polity IV, 'Polity IV Project: Political Regime Characteristics and Transitions, 1800–2009,' <http://www.systemicpeace.org/polity/polity4.htm> (accessed 7 September 2010). For a similar use of Polity IV's data to determine transitions and regime types, see, for example, David L. Epstein, Robert Bates, Jack Goldstone, Ida Kristensen and Sharyn O'Halloran, 'Democratic Transitions,' *American Journal of Political Science* 50(3) (2006): 551–569; Sikink and Walling, supra n 19. The TJDB findings presented here are limited to 2004 rather than 2009 because of the coverage of the most recent version of Polity IV at the time of the analysis.

³⁰ 'The CIRI Human Rights Data Project,' <http://ciri.binghamton.edu/> (accessed 7 September 2010); 'Political Terror Scale, 1976–2008,' <http://www.politicalterror scale.org/> (accessed 7 September 2010).

³¹ The key independent variable in the 'TJ Overall' analysis is ordered by the level of accountability a country adopted within the 10-year period, where an amnesty is 1, a truth commission is 2 and a trial is 3. While we recognize that coding a variable in this way introduces strong assumptions

significant effect on those particular political objectives. The relationship between truth commissions and human rights is statistically significant, but the effect is negative. This means that adopting truth commissions alone to address past atrocities increases the likelihood of a negative change in human rights measures. Only two combinations of transitional justice mechanisms show statistically significant, positive effects on human rights: (1) trials and amnesties, and (2) trials, amnesties and truth commissions.

Wiebelhaus-Brahm's study reaches similar conclusions on truth commissions. He focuses on information he updated on the truth commissions identified in existing studies by Priscilla Hayner, the US Institute of Peace and the Centre for the Study of Violence and Reconciliation, with the findings updated with press reports.³² He does not focus solely on democratic transitions, however, which alters somewhat the set of cases for analysis when compared to the TJDB project. His project includes over 150 countries in which 29 truth commissions were used from 1981 to 2005.

Wiebelhaus-Brahm examines the immediate effects and long-term legacies of truth commissions. To gauge the effect of a commission's investigation, he first analyzes each year in which it is in existence. During that time, truth commissions conduct outreach and awareness raising, collect evidence and testimony, sometimes conduct public hearings and generate a final report that summarizes their findings and outlines recommendations for further measures to address the past and to prevent a repeat of abuses in the future. Controlling for additional variables in the model that other studies have found to influence human rights, Wiebelhaus-Brahm finds that human rights protection tends to be more limited in countries in which a truth commission is in progress than in other countries.

Second, to assess potential longer-term impacts, Wiebelhaus-Brahm measures human rights levels each year following a truth commission. For this analysis, he includes only those truth commissions that issue a public report. By doing so, he identifies the commissions most likely to shape public opinion, create a human rights culture, increase pressure for reform and deter human rights abuses. Even when skewing results in favor of certain types of truth commissions that are more likely to have a positive impact, Wiebelhaus-Brahm still finds that countries that have conducted a truth commission in the past tend to have higher levels of human rights abuses than those without one, holding other variables in the model constant.

In sum, both studies challenge prevailing assumptions about truth commissions. On the one hand, we show that truth commissions by themselves are associated with lower levels of subsequent human rights protections, at least physical integrity

(namely, that the difference between choosing between amnesties and a truth commission is the same as choosing between a truth commission and a trial), we are only interested in the direction of the effect, not its size.

³² Hayner, *supra* n 7; US Institute of Peace, 'The Margarita S. Studemeister Digital Collections in International Conflict Management: Truth Commissions Digital Collection,' <http://www.usip.org/resources-tools/digital-collections> (accessed 7 September 2010); Centre for the Study of Violence and Reconciliation, 'Justice in Perspective,' <http://www.justiceinperspective.org.za/> (accessed 7 September 2010).

rights as measured by CIRI and PTS. To put it in another way, countries that have utilized truth commissions alone in the past tend to be worse defenders of human rights than other countries, all else being equal. On the other hand, the results do not suggest that truth commissions always have a negative impact on human rights. On the contrary, our findings diverge from those of other studies by illustrating that commissions can interact with other mechanisms to produce positive results. Olsen et al. find that truth commissions play a positive role in improving human rights when they are accompanied by trials and amnesties. Wiebelhaus-Brahm also finds qualitative evidence that human rights tend to improve when truth commissions are used with other transitional justice mechanisms, such as trials and amnesties. In the remainder of the article, we examine potential explanations for our findings and advance a justice balance theory to explain when, why and how truth commissions succeed in promoting human rights.

Explaining the Findings

What explains the challenges our results pose to prevailing opinion on truth commissions and human rights improvements? Above, we highlighted some of the shortcomings of existing single-case and small-*n* case study research. We also raised some initial comparisons with the only other large-*n* cross-national study of truth commission impact, by Kim and Sikkink. Below, we explore the possible explanations for differences in the three studies' findings due to samples, definitions, measures and methodology.

One explanation could be the selection of truth commission cases. However we use a definition of truth commissions that closely resembles those of the other studies. The TJDB project defines truth commissions as newly established, temporary bodies officially sanctioned by the state or an international governmental organization to investigate a pattern of human rights abuses and issue a report. Wiebelhaus-Brahm adopts Mark Freeman's definition of a truth commission:

An *ad hoc*, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention.³³

In addition, we, like most researchers, exclude preexisting or permanent government institutions that investigate past human rights violations as part of their official duties, as well as commissions created to investigate corruption, embezzlement, fraud and similar crimes. We also share with other researchers the decision to exclude nonstate, independent projects that investigate and uncover the truth about past violations, as they do not represent official decisions made by state actors.

³³ Mark Freeman, *Truth Commissions and Procedural Fairness* (New York: Cambridge University Press, 2006), 18.

Despite a shared definition, the truth commission cases in these and other studies do not always match.³⁴ The number of truth commissions identified by each study varies slightly: the TJDB project finds 27 cases, Wiebelhaus-Brahm finds 29 cases and Kim and Sikkink find 28. Yet, in total, the three studies share only 19 cases. The difference in the cases chosen is due in part to the sample selection strategy used for each study. For example, unlike Wiebelhaus-Brahm, Kim and Sikkink do not include the truth commissions in Morocco or Zimbabwe or the specific commissions in Sri Lanka in 1994 and Uruguay in 2000. Kim and Sikkink use the presence of a democratic transition to define their sample, unlike Wiebelhaus-Brahm, which may account for some of these discrepancies. The TJDB project also requires an attempted transition in order for a country to be included in the sample, rendering a different set of truth commission cases for analysis. Nonetheless, Olsen et al.'s findings are consistent with Wiebelhaus-Brahm, and not with Kim and Sikkink.

It is possible that unique features of the truth commissions upon which the three studies do not agree could be driving the results. While none of the studies uses selection criteria based on the quality of the truth commission, different samples could lead to different outcomes because of those criteria. Thus, if the set of cases includes a preponderance of those commissions with positive attributes, we might expect success on human rights goals. Similarly, if our studies contain more commissions with negative attributes, we might expect negative outcomes. Future research will explore the different truth commission samples in each of the three studies to assess the consistency of the results.³⁵

Studies to determine whether particular attributes of truth commissions explain their success or failure have not yet produced definitive results. Most studies, including ours and Kim and Sikkink's, treat truth commissions as a uniform phenomenon. In the parlance of quantitative studies, they tend to measure truth commissions dichotomously: they either exist or they do not.³⁶ While capturing truth commission differences quantitatively is desirable, attempting to disaggregate truth commissions by particular characteristics introduces methodological challenges. Limited data availability for some truth commission cases makes it difficult to develop a more sophisticated measure that could be applied uniformly across all cases. In addition, the difficulty of quantifying truth commission characteristics in a conceptually clear and theoretically sound manner raises another set of challenges. Belinda Botha, for example, attempts to model strong and weak truth commissions statistically. As a result of the lack of information on her coding and data collection, however, the data set appears subjective.³⁷ Disaggregating truth

³⁴ For a discussion of the range of truth commission cases analyzed by different scholars, see, Brahm, *supra* n 2.

³⁵ The researchers in the TJDB project have recently begun a joint project with Kim and Sikkink to examine the different results in their two studies.

³⁶ Except in a crude sense, such as focusing solely on truth commissions that have issued final reports, as in Wiebelhaus-Brahm, *supra* n 5.

³⁷ Botha includes commissions' resources, the thoroughness of investigations, credibility and publicity as her measures of strength. She provides absolute numbers for the resources and thoroughness

commissions by their attributes, moreover, might reflect normative preferences rather than empirically or theoretically driven sets of characteristics.³⁸

In addition to the sample of cases, the way human rights are measured may help explain why our findings differ. Nearly all quantitative studies of human rights use PTS and CIRI. Nonetheless, these indicators are far from perfect, as some critics argue.³⁹ Scholars challenge PTS, for example, for making subjective assessments about the degree of state terror that citizens face. CIRI, in contrast, counts the frequency of reported abuses. However, this may reflect a different kind of bias due to constraints on reporting abuses. Furthermore, these indices of human rights reduce violations to a linear measure that varies between 1 and 5. Such a measure fails to capture either the complex layers of atrocity or the broad range of economic, cultural and social rights included in international human rights law. A more recent assessment indicates that better data collection by the CIRI and PTS sources makes it very difficult for countries to show improvements, even when they occur. The result is that we might be more confident in those measures of positive change, but we cannot be certain about negative change since it may reflect better information and data, not worse human rights outcomes.⁴⁰ Despite these limitations, CIRI and PTS provide the only measures of violations of physical integrity rights over time – the types of abuses upon which truth commission investigations usually focus.⁴¹ More importantly, these standard measures cannot explain the different results obtained by our studies and the Kim and Sikkink study. All of these quantitative analyses, after all, use the same measures, which thus provide a common approach to human rights. By using more than one index, moreover, the analyses can assess the different types of effects truth commissions have on the range of

data, but budget size and the number of cases investigated appear as a relative figure based on the scope of violence and repression under investigation. Finally, it is unclear how she addressed the problem of missing data, which is a formidable challenge for less well-known truth commissions. See, Belinda M. Botha, 'Truth Commissions and Their Consequences for Legitimacy' (PhD diss., University of Houston, 1998).

³⁸ In analyzing four truth commissions, Wiebelhaus-Brahm (supra n 5) has shown, for example, that the case with the most success (Chile) also had the most restricted, rather than the broadest, mandate. He has further shown that even commissions with strong institutional powers often lack the ability or will to use them. For example, security forces frequently ignore truth commission subpoenas, with little consequence. Resources may help to explain success, as Uganda's Commission of Inquiry into Violations of Human Rights suspended operations several times because of a lack of funds. Yet modest truth commissions with narrow mandates may accomplish as much or more than expensive international tribunals in terms of accountability.

³⁹ Thomas B. Jabine and Richard P. Claude, eds., *Human Rights and Statistics: Getting the Record Straight* (Philadelphia, PA: University of Pennsylvania Press, 1992); James M. McCormick and Neil J. Mitchell, 'Human Rights Violations, Umbrella Concepts, and Empirical Analysis,' *World Politics* 49(4) (1997): 510–525.

⁴⁰ Ann Marie Clark and Kathryn Sikkink, 'Information Effects and Human Rights Data: Is the Good News about Increased Human Rights Information Bad News for Human Rights Measures?' (paper presented at the Midwest Political Science Association annual meeting, Chicago, IL, 22–26 April 2010).

⁴¹ Although this is changing in several recent cases, this has been to the neglect of violations of socioeconomic rights in many cases. See, Zinaida Miller, 'Effects of Invisibility: In Search of the "Economic" in Transitional Justice,' *International Journal of Transitional Justice* 2(3) (2008): 266–291.

rights and measures of human rights.⁴² Therefore, these measures, while imperfect, provide a solid foundation for assessing truth commission impact.

Although the studies use the same measures, they use them differently. For example, Olsen et al. calculate the change in human rights scores by subtracting the score of 10 years posttransition from the score during the year of the transition. This analysis, therefore, only includes those transitional justice mechanisms used prior to and in the first 10 years of a democratic transition. While Wiebelhaus-Brahm employs two-stage least-squares regression, the TJDB project uses linear regression analysis.⁴³ As such, rather than structuring the data in a country-year format, the TJDB project structures the data such that the transition is the unit of analysis. Wiebelhaus-Brahm and Kim and Sikkink, by contrast, organize their data as time series. In other words, they examine year-over-year changes in human rights in a given country. Yet, despite the methodological similarities between the two, Wiebelhaus-Brahm and Kim and Sikkink reach different conclusions, while Wiebelhaus-Brahm and Olsen et al. arrive at the same conclusion despite methodological differences. Different model specifications may help explain the differences between Wiebelhaus-Brahm and Kim and Sikkink, but they do not appear to settle the larger question of the nature of truth commissions' impact on human rights.

In sum, the three studies show similarities and differences in how they structure their statistical models and measure key concepts. Although the TJDB project adopts an alternative approach, its findings are consistent with Wiebelhaus-Brahm. Some other potential weaknesses, such as the measure of human rights, are consistent across the studies. Differences in truth commission cases included in each study seem to be the most promising explanation for the divergent findings. However, more systematic testing of different models and specifications is necessary to reach more definitive conclusions. While further research can explain the different findings methodologically, our qualitative evidence also suggests that truth commissions have had a negative impact on human rights by themselves, while promoting improvement when combined with other mechanisms. Finally, all three studies provide limited theoretical explanations for their findings. In the following section, we outline a justice balance explanation of truth commissions' negative and positive relationship to human rights improvements.

⁴² Using a range of measures is important. Christian Davenport's research, for example, shows that democracy has a different effect on two measures of human rights, physical integrity and civil liberties. See, Christian Davenport, *State Repression and the Domestic Democratic Peace* (New York: Cambridge University Press, 2007).

⁴³ Two-stage least-squares regression is a statistical technique used to account for the suspected endogeneity of a variable (in this case, the presence of a truth commission) in a regression model. In the first stage of the model, the endogenous variable is regressed on all of the exogenous variables in the model. In the second stage, the regression equation is estimated, but with the endogenous variable replaced by predicted values from the first-stage equation. A linear regression model is a basic ordinary least-squares estimation whereby the goal is to identify a model fit that minimizes the sum of squared residuals.

Explaining Truth Commission Impact: The Justice Balance

A 'justice balance' approach assumes that truth commissions on their own tend not to achieve human rights goals as a result of the imbalances they introduce. On their own, truth commissions tend to emphasize either accountability or impunity. Accountability alone can jeopardize stability, a crucial factor for the transition from authoritarian rule. Impunity, meanwhile, fails to create the legal, political or moral environment necessary to deter future human rights violations. Combined with amnesties and trials, by contrast, truth commissions can achieve human rights goals by promoting a balance between stability and accountability. The balance of accountability and stability can occur without truth commissions, as the Olsen et al. study shows. Truth commissions, however, may play an important role in improving human rights by fortifying the balance. In this section, we develop a theoretical explanation for the justice balance argument and undertake a brief plausibility probe of the diverse truth commission cases of Nepal, South Korea and Chile. We also briefly consider some truth commission projects that illustrate particular contextual challenges truth commissions face in achieving the justice balance on their own and without trials and amnesties.

This justice balance approach is consistent with existing explanations for truth commissions' human rights success. One approach considers truth commissions successful when they create a middle road between morally and legally objectionable impunity and politically risky trials. Paradoxically, another suggests that they succeed when they reinforce trials, heightening accountability, deterrence and human rights norms. In the first pathway, to succeed, truth commissions avoid trials. In the second, they succeed by promoting accountability.⁴⁴ Our findings reject both explanations in favor of one that shows how truth commissions complement the work of trials and amnesties rather than emphasizing one outcome (accountability or stability) over the other.

The TJDB project finds that trials and amnesties increase the likelihood of improving human rights with or without truth commissions. This suggests that, rather than navigating a middle path between trials and amnesties, commissions play an important role in enhancing the human rights-promoting qualities of those mechanisms. The capacity of truth commissions to foster human rights under these conditions is consistent with the accountability, deterrence and human rights norms explanations.

Amnesties pose a problem for the explanation, however. The middle-road view suggests that truth commissions appease past perpetrators who might otherwise jeopardize the human rights project. They thus balance political stability through nonprosecutorial accountability mechanisms. This explanation suggests that when

⁴⁴ For a summary of the maximalist, minimalist and moderate approaches to transitional justice and the role that truth commissions play in them, see, Tricia D. Olsen, Leigh A. Payne and Andrew Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: US Institute of Peace, 2010).

they prevent perpetrators from mobilizing against accountability, truth commissions achieve success on the human rights front.

The justice balance approach suggests a way in which truth commissions achieve success in human rights by simultaneously enhancing accountability and defusing perpetrators' opposition to accountability. The process involves linking truth commissions to trials and amnesties. Given the fact that they hold the prospect of punishing wrongdoers, trials should be able to advance accountability without truth commissions. But truth commissions enhance accountability by investigating widespread complicity in past human rights violations. Rather than limit the investigation of criminal responsibility to particular individuals, commissions establish the systematic nature of violations, heightening awareness of past violence in society and potentially promoting human rights norms. Yet, as the TJDB project shows, trials or accountability alone do not seem to be enough to promote improvements in human rights.

Amnesty provides political stability by defusing potential spoilers, but positive results on human rights depend on amnesties accompanying trials. A balance is struck when some perpetrators face trials while others enjoy impunity. Rather than blanket amnesties, therefore, the positive benefits for human rights reflect partial amnesties, which appease those perpetrators who will not be held accountable in a court of law. They also divide perpetrators, limiting the possibility of those facing prosecution successfully mobilizing perpetrators against accountability. Partial amnesties, in other words, allow for some trials. Truth commissions fit into this scenario by exposing and holding accountable through nonprosecutorial processes those perpetrators who have legal immunity. In other words, they enhance accountability even where partial amnesties protect perpetrators from trial. Truth commissions thus succeed in improving human rights along with trials and amnesties by enhancing accountability and maintaining stability.

On their own, truth commissions do not achieve the same level of success. They face barriers in appeasing potential spoilers and promoting accountability. On the accountability side, they raise expectations of truth and justice. Unless trials accompany the process, victims and survivors will not see these promises realized. Truth commissions by themselves, therefore, tend to provoke a backlash from the very groups they aim to defend.

Research on particular cases illustrates these points about the role of truth commissions. For example, studies of victims' reactions to truth commissions reveal deep disappointment, even in the highly acclaimed case of the South African TRC.⁴⁵ Rather than enhancing accountability, truth commissions without trials

⁴⁵ David Backer, 'The Human Face of Justice: Victims' Responses to South Africa's Truth and Reconciliation Commission Process' (PhD diss., University of Michigan, 2004). See also, College of William and Mary, 'West Africa Transitional Justice (WATJ) Project,' <http://www.wm.edu/as/government/research/undergraduateresearch/watj/index.php> (accessed 7 September 2010); Catherine Jenkins, "'They Have Built a Legal System without Punishment': Reflections on the Use of Amnesty in the South African Transition,' *Transformation: Critical Perspectives on Southern Africa* 64 (2007): 27–65; Francesca Pizzutelli, 'Moving Away from the South African Model: Amnesties and Prosecutions in the Practice of 40 Truth Commissions' (paper presented at the Oxford Transitional Justice Research Seminar Series, Oxford, UK, 25 January 2010).

seem to perpetuate impunity, allowing perpetrators to 'get away with murder.' The TRC's truth-for-amnesty provision threatened trials for those who did not come forward. In fact, only a small number of perpetrators faced trials and the prosecution failed to gain a guilty verdict in most cases. The TRC may have heightened demand for accountability, but the trials did not deliver it.⁴⁶

Perpetrators do not always share the view that truth commissions protect them from prosecution, however. Truth commissions, after all, often recommend prosecutions, sometimes interrogate perpetrators and occasionally expose perpetrators to social stigma or retaliation by naming them or disclosing and condemning their past violent acts. Perpetrators thus view truth commissions as violating amnesty law provisions even when they do not put perpetrators on trial. The example of Brazil illustrates this situation. The military responded aggressively to the Brazilian government's recent decision to hold a truth commission, rejecting the decision on the basis that it violated the 30-year-old blanket amnesty law.⁴⁷ In such a scenario, the truth commission option fails to promote either the stability or the accountability necessary for improvements in human rights protection.

Whereas the Brazilian military seems to fear the potential strength of a truth commission, Nepal represents the opposite case of a truth commission being too weak to bring stability and accountability. The Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period was formed in 1990, the same year as the political transition. The Commission had a narrow mandate to investigate 100 cases of human rights violations that occurred during the authoritarian period.⁴⁸ It may have succeeded in appeasing potential human rights violators through its lack of subpoena power and inability to name perpetrators. These reduced powers, however, only allowed the Commission to identify 35 cases as disappearances, with the fates of the remaining 65 victims declared 'unknown.' The government offered amnesty to political prisoners.⁴⁹ While nongovernmental organizations welcomed the move, they continued to pressure for accountability and investigations into additional human rights abuses from the Panchayat period, as well as the subsequent Nepali civil war. In 2007, the Supreme Court seemed to respond by calling for a new commission to conduct investigations into a broader set of human rights abuses. King Gyanendra was accused of human rights violations, but was peacefully deposed in 2008 without standing trial.

Nepal possesses many characteristics conducive to improvements in human rights: broad awareness of and demand for accountability for human rights violations, civil society pressure to promote human rights norms and a transition

⁴⁶ See, David Backer, 'Watching a Bargain Unravel? A Panel Study of Victims' Attitudes about Transitional Justice in Cape Town, South Africa,' *International Journal of Transitional Justice* 4(3) (2010): 443–56.

⁴⁷ 'Lula and the Generals: Don't Look Back,' *Economist*, 9 January 2010; 'Tensions Grow in Brazil: Military Rejects Truth Commission to Investigate HR Crimes,' *Santiago Times*, 4 January 2010; Juliette Kerr, 'Brazilian President Rewords Human Rights Programme Following Objections from Armed Forces,' *Global Insight* 15 (2010).

⁴⁸ Hayner, *supra* n 7.

⁴⁹ Bhola Rana, 'King Birendra Pardons Political Prisoners,' *United Press International*, 17 May 1990.

to a new federal republic. A 2008 Human Rights Watch report, however, remarks that the 1990 Commission's recommendations were never implemented.⁵⁰ While there has been periodic talk of a new truth commission since the civil war's end, it has not been enacted. Indeed, Nepal's Ministry of Peace and Reconstruction only finalized a draft bill on a new truth and reconciliation commission in early 2010. This commission may or may not achieve greater success on the human rights front.

By contrast, case study evidence supports the claim that combining truth commissions with other transitional justice tools improves human rights. For example, Wiebelhaus-Brahm's study provides contextual reasons why truth commissions on their own are unlikely to deter human rights violations.⁵¹ In particular, their success is influenced by the cessation of violence and effective crime control. Amnesties tend to assist in demobilizing combatants and ending violence, as the threat of prosecutions tends to assist governments in deterring crime. Thus, the two human rights-enhancing contextual factors presented by Wiebelhaus-Brahm appear to explain the success of truth commissions on human rights goals when they accompany trials and amnesties. Even where truth commissions could be viewed as only partially successful, they have a positive impact on human rights when they accompany trials and amnesties. South Korea and Chile illustrate this phenomenon. In South Korea, the mobilization of civil society forces against the authoritarian regime led to a democratic transition in 1988, under the tutelage of the military dictatorship of Roh Tae Woo. Prior to the transition, the dictatorship granted amnesty to 2,335 political prisoners, including, most famously, future democratic President Kim Dae Jung. After the transition, the new government continued to grant amnesty to perpetrators of human rights crimes. Despite these amnesties, courts delivered death penalty convictions against Roh Tae Woo and another former dictator, Chun Doo Hwan, for the 1980 Kwangju Massacre of democratic opposition forces, among other charges. Their pardon by democratic President Kim Young Sam, coupled with reparations paid to individual victims, provoked criticism in the human rights community that the government had attempted to cover up, rather than expose and acknowledge, past violence.

Efforts by subsequent democratic governments to reveal the past through a series of commissions of inquiry led to the 2005 establishment of the South Korean Truth and Reconciliation Commission (TRCK). The TRCK could be viewed as having reinforced prosecutorial accountability by investigating particular crimes. It also suggested that courts investigate and judge other crimes, particularly the Kwangju

⁵⁰ Human Rights Watch, 'Nepal,' in *World Report* (2008). For information on the Nepalese truth commission, see also, US Institute of Peace, *Transitional Justice in Nepal: A Look at the International Experience of Truth Commissions* (September 2007); Amnesty International, 'Nepal: Reconciliation Does Not Mean Impunity – A Memorandum on the TRC Bill,' ASA31/006/2007 (13 August 2007).

⁵¹ Wiebelhaus-Brahm, *supra* n 5.

Massacre.⁵² Three years into its term, the TRCK had investigated about 3,000 of the 11,000 cases submitted to it. Of these, it could verify the truth in just 1,813.⁵³

Public opinion remains divided over the TRCK process. According to a *Sisa Journal* poll, Korean society is still split nearly evenly into three groups: those who perceive the truth commission as advancing an important process, those who consider it a negative factor in the process of democratic development and those who believe that the truth process began before Korean society was ready to embrace it.⁵⁴ Thus, while victims have mobilized for justice, others in society credit the military regime with the country's economic success. In other words, no consensus exists on the relative merits of the TRCK. Insufficient support allowed the government to close the TRCK in March 2010.

The high expectations surrounding the TRCK and its limited success show that new democracies that rely solely on a truth commission tend to see an increase in social problems. On the other hand, the case illustrates that when truth commissions accompany amnesties and trials, they do not prevent stability and accountability functions from evolving. Indeed, they complement and reinforce those functions, even when they lack widespread support within society or government.

Similarly, Chile's success on human rights has depended in part on the balance of stability and accountability provided by a truth commission, trials and amnesties.⁵⁵ Former dictator General Augusto Pinochet unexpectedly lost a referendum in 1988. Chile's political right subsequently lost the presidential election the following year to the *Concertación* political alliance. The new president, Patricio Aylwin, sought a middle ground between his core constituents, who demanded accountability, and Pinochet, who famously threatened, 'The day they touch any one of my men, the state of law is ended.'⁵⁶ The military and security forces enjoyed immunity from prosecution under a 1978 amnesty law. Rather than challenge that law, Aylwin created the Chilean Truth and Reconciliation Commission (known as the Rettig Commission) to establish some measure of responsibility for past human rights violations.

⁵² See, Ahn Byung-ook, 'President's Greeting,' in *Truth and Reconciliation: Activities of the Past Three Years* (Seoul: Truth and Reconciliation Commission, Republic of Korea, 2009), http://jinsil.go.kr/pdf/%EC%98%81%EB%AC%B8%EB%B0%B1%EC%84%9C_20MS%ED%8C%8C%EC%9D%BC_0205.pdf (accessed 7 September 2010).

⁵³ Ibid. For additional information on the South Korean process, see, Hunjoon Kim, 'Seeking Truth after Fifty Years: The National Committee for Investigation of the Truth about the Jeju 4.3 Events,' *International Journal of Transitional Justice* 3(3) (2009): 406–423; In-sup Han, 'Kwangju and Beyond: Coping with Past State Atrocities in South Korea,' *Human Rights Quarterly* 27(3) (2005): 998–1045.

⁵⁴ The poll found 36% felt that the truth commission process was necessary, 29.4% believed it was unnecessary and that it deepened the social divisions in the country and 26% found it somewhat necessary but thought it occurred too soon. Ahn Byung-ook, 'Verification of Truth,' *Korea Times*, 26 May 2008.

⁵⁵ For an extended discussion of Chile, see, Wiebelhaus-Brahm, *supra* n 5. See also, Eric Brahm, 'The Chilean Truth and Reconciliation Commission,' *Beyond Intractability* (July 2005), http://www.beyondintractability.org/case_studies/Chilean_Truth_Commission.jsp?nid=5221 (accessed 7 September 2010); Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (University Park, PA: Penn State University Press, 2010).

⁵⁶ *La Epoca*, 11 October 1989, 13.

The Commission's final report in 1991 did not seem to bring either the desired stability or accountability. In an attempt to enhance both, Aylwin publicly called on

the Armed Forces and forces of order, and all who have had participation in the excesses committed, [to] make gestures of recognition of the pain caused and cooperate in diminishing it.⁵⁷

However, the military and the judiciary roundly rejected the Commission's findings.⁵⁸ By contrast, the human rights community criticized the Commission for failing to bring accountability. Political unrest followed, including assassinations of right-wing politicians, most famously Jaime Guzmán. Fearing instability, Aylwin declared the period of reconciliation over.⁵⁹

Although discussion of past human rights abuses was temporarily suppressed, as the decade progressed the prospects for accountability improved. Pinochet's fate attracts the most attention. Although British authorities initially held Pinochet for extradition to Spain to stand trial for human rights violations, they eventually allowed him to return to Chile in 2000.⁶⁰ Nonetheless, he was reduced to fighting criminal and civil charges to the end of his life. Chilean courts, however, were beginning to move even earlier. From the mid-1990s, victims' groups had increasing success in redefining disappearance cases as kidnappings, which fell outside of the amnesty, under what became known as the Guzmán doctrine. The proliferation of court cases, in turn, instigated renewed investigations into human rights abuses during the dictatorship by the National Commission on Political Imprisonment and Torture.

Chile represents a case in which amnesty and truth commissions initially impeded progress on human rights. Nonetheless, the Rettig Commission produced information that eventually contributed to court cases. Moreover, it made several recommendations designed to boost human rights in the future. Although some minor reforms were enacted shortly after the Commission, the Senate blocked many of them. Later, with Pinochet's reputation tarnished by human rights and corruption scandals, the Chilean right grew less hostile to human rights reforms, including some recommended by the Commission. As such, adding trials ultimately produced a justice balance that brought about improvements in human rights.⁶¹

⁵⁷ Human Rights Watch, 'Chile,' in *World Report* (1992).

⁵⁸ Malcolm Coad, 'Pinochet Snubs Report on Killings,' *Guardian*, 29 March 1991; Mark Ensalcado, *Chile under Pinochet: Recovering the Truth* (Philadelphia, PA: University of Pennsylvania Press, 2000).

⁵⁹ Wiebelhaus-Brahm, *supra* n 5.

⁶⁰ Madeleine Davis, ed., *The Pinochet Case: Origins, Progress and Implications* (London: Institute of Latin American Studies, 2003); Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia, PA: University of Pennsylvania Press, 2006). See also, Cath Collins, 'Human Rights Trials in Chile during and after the "Pinochet Years,"' *International Journal of Transitional Justice* 4(1) (2010): 67–86.

⁶¹ In September 2009, the Chilean Congress approved a bill that reopened the truth commission investigations. See, Kaycie Rupp, 'Chile's Re-opened Human Rights Investigations and Piñera's

One final note is that truth commissions' restorative processes also enhance the accountability and stability function of the justice balance. Acknowledgment of, and reparations for, crimes reinforces accountability. Forgiveness encounters, or other mechanisms for perpetrators' confessions, further establish responsibility for crimes. In terms of balancing stability and accountability, some truth commission processes, such as South Africa's TRC and Timor-Leste's Commission for Reception, Truth and Reconciliation, offered amnesty in exchange for confession.⁶² The justice balance argument suggests that success in human rights from these processes will likely result from how they complement trials and amnesties, rather than through substituting for them.

In sum, when a balance is struck between trials that deter human rights violations and amnesties that provide for the long-term stability of the political system, human rights violations tend to decline. Truth commissions added into this mix do not jeopardize the balance, but rather enhance it. They increase accountability by exposing systematic patterns of abuse. They do so without undermining amnesties that are the product of negotiated transitions from authoritarianism or war. Furthermore, they provide a blueprint for reform that, if implemented, should improve human rights protections. The prospects for the implementation of recommendations, however, appear related to some combination of the protection afforded by amnesties and the sanction provided by trials.

Conclusion

Our studies of transitional justice mechanisms defy existing assumptions and claims regarding a simple and positive relationship between truth commissions and human rights improvements. We have revealed the limitations of truth commissions in achieving their human rights goals. These results emerge despite using truth commission definitions, human rights measures and statistical models that are similar to those used in other studies. Even when the methods and sample in our two studies diverged, we achieved the same results. The dual strategy of isolating truth commissions from other mechanisms to see their independent impact and analyzing their interaction with trials and amnesties produced results that challenge expectations.

Our negative findings could be interpreted as a recommendation to avoid truth commissions. Such a conclusion would be premature, shortsighted and artless. We say premature and shortsighted because truth commissions contain many goals, not just the promotion of human rights. More research is needed to determine whether truth commissions succeed in achieving other important goals, such as producing an official truth about the past that allows societies to move forward,

Balancing Act,' Council on Hemispheric Affairs (3 March 2010), <http://www.coha.org/chile's-reopened-human-rights-investigations-and-pinera's-balancing-act/> (accessed 7 September 2010).

⁶² In Timor-Leste, the amnesty process was confined to low-level offenders who had not committed gross human rights violations. For a discussion of how the process worked, see, Patrick Burgess, 'Justice and Reconciliation in East Timor: The Relationship between the Commission for Reception, Truth and Reconciliation and the Courts,' *Criminal Law Forum* 15 (2004): 135–158.

giving voice to victims or recognizing the protagonists of, and the need for, social justice. Indeed, these goals may justify the use of truth commissions, while human rights goals rely on other mechanisms. It would be premature to abandon a truth commission model before sufficient research has determined that such commissions are ineffective or deleterious for these other goals. Moreover, ignoring the other potential goals of truth commissions – beyond human rights – is shortsighted.

An artless use of this study would ignore the findings that truth commissions contribute to human rights improvements when combined with trials and amnesties. Truth commissions, therefore, should not be viewed as necessarily harmful for human rights. After all, statistical studies identify tendencies in a pattern of data but do not predict every case. Instead, the analysis in this article shows that, if they operate alone without any form of accountability from trials or stability from amnesties, truth commissions are likely to have a negative impact. The artful advocacy project that emerges from this study, therefore, is to promote commissions in conjunction with trials and amnesties. It suggests that where impunity prevails, human rights improvements may still occur with the adoption of trials or trials and truth commissions. This combination allows truth commissions to fulfill important social goals without impeding the political goal of protecting human rights.

Even with 30 years of experience, dozens of examples and numerous studies of truth commissions to draw on, we have not resolved all of the questions regarding truth commissions' success. This article cautions against optimistic assumptions regarding commissions' impact when they are established alone. Yet it examines only human rights goals. Additional research should determine where truth commissions on their own might succeed in achieving other important goals. The article further emphasizes the importance of interaction among transitional justice mechanisms, but it has focused exclusively on truth commissions, amnesties and trials. More research might determine truth commissions' success in achieving particular goals when they interact with other forms of transitional justice, such as reparations processes, lustration and vetting and institutional reforms. The number of cases and the history of transitional justice make these dynamic research projects possible.

The findings of this article demonstrate the value of both isolating transitional justice mechanisms and studying their interactions to determine when, how and why they achieve important social justice goals. We conclude that success in improving human rights protection most likely results from the interaction of trials' accountability function and amnesties' stability function. Our quantitative and qualitative analysis suggests that truth commissions can play a valuable role in enhancing that justice balance and in promoting human rights.