Truth Commission Impact: A Participation-Based Implementation Agenda

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TRUTH COMMISSION IMPACT: 
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IMPLEMENTATION AGENDA  

Tara J. Melish*  

INTRODUCTION  

The growth in the transitional justice literature over the last decade has been exponential,1 a trend mirroring the increased frequency with which global actors deploy an expanding range of transitional justice mechanisms,2 including truth commissions,3 trials,4 reparation,5 amnesties,6 vet-  

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2. Ruti Teitel observes that the twenty-first century has brought a “steady state” phase, in which transitional justice has moved from the exception to the norm, having become a paradigm of rule of law. Ruti G. Teitel, Transitional Justice Genealogy, 16 Harv. Hum. Rts. J. 69, 71 (2003); see also Naomi Roht-Arriaza, Foreward, in Assessing the Impact of Transitional Justice: Challenges for Empirical Research vii (Hugo Van der Merwe et al. eds., 2009) [hereinafter Assessing TJ Impact] (observing that recourse to transitional justice has become “almost routine”).  
4. See Kathryn Sikkink, The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics (2011) (referring to increased frequency with which transitional states pursue criminal prosecutions over amnesties as a “justice cascade,” in which prosecutions become the new global norm). Others have nonetheless questioned the thesis that international justice norms have reduced the adoption of amnesties following democratic transitions, observing that while the raw number of prosecutions has risen steadily over the past decade, the ratio of trials and amnesties to democratic transitions has remained constant. See Tricia D. Olsen et al., Transitional Justice in Balance: Comparing Processes, Weighing Efficacy 99 (2010) (concluding rate of accountability over time has actually fallen from its peak in the mid-1970s)  
ting and lustration, memorialization, and other increasingly community-based initiatives. The use of truth commissions in particular has become so prevalent that "it is difficult to conjure an example of a political or post-conflict transition (since the 1990s) in which the idea of establishing a truth commission has been overlooked."

An important core of the transitional justice scholarship has correspondingly centered on assessing the relative effectiveness of truth commissions and other transitional justice mechanisms, both within and across societies. Encompassing vastly different perspectives, it has comprised at least four identifiable approaches to assessing "impact" or "success." Each has added important and complementary insights to the field. Nonetheless, each has also exhibited important weaknesses in its ability to speak persuasively to the question of meaningful long-term impact on the societal dynamics and institutions that lead to violence in the first place. I attribute these limitations to the general sidelining in such approaches of attention to the engagement dynamics that surround a transitional justice mechanism, particularly after it completes its mandate. How does broader society engage with the processes, outputs, and work product of such mechanisms, including in particular the final report and formal policy recommendations of truth commissions?

This Essay proposes a new more process-oriented research agenda for measuring the impact of transitional justice mechanisms that more directly takes these engagement and implementation factors into account. Such an


7. See, e.g., JUSTICE AS PREVENTION: VETTING PUBLIC EMPLOYEES IN TRANSITIONAL SOCIETIES (Alexander Mayer-Rieckh & Pablo de Greiff eds., 2007) (exploring comparative practices through which abusive or corrupt employees are excluded from public office).


agenda, I argue, not only is better able to reflect the inherent limitations of transitional justice mechanisms as short-term institutions, but better captures the key purposes for which they are created. It is thus an important and necessary complement to current approaches favored in the literature.

With a focus on truth commissions, the Essay proceeds in four parts. Part I introduces some of the key desiderata for assessing truth commission impact, suggesting why a shift to the broader social dynamics and political processes of implementation is warranted. It proposes a new set of metrics or methodological indicators to help guide assessments of truth commission impact. Part II places these metrics in context by reviewing the current state of research in the field; it highlights the four dominant approaches used today to assess impact or success, and notes their major weaknesses. Part III addresses how the proposed metrics respond to some of these weaknesses and hence are better able to capture the key objectives of transitional justice. I identify these as norm reconstruction, civic reengagement, and structural-institutional reform, each equally necessary for ensuring the overarching goal of transitional justice: preventing the recurrence of past violence and abuse. Part IV concludes with final observations.

I. ASSESSING IMPACT

What are the primary goals truth commissions aim to achieve? Clarity around such objectives is of course necessary for identifying the relevant metrics or indicators for assessing a commission’s effectiveness or “success.” A wide range of objectives have correspondingly been identified. Neil Kritz identifies truth, justice, democratic reform and durable peace as the “four basic objectives of any transitional justice program,” and hence “the standards by which all transitional justice policies should be evaluated.”12 Others have spotlighted “reconciliation” as the overarching aim, a term whose definition has nonetheless proved highly elusive. With no commonly accepted content, either among scholars or distinct transitional communities, it has come to assume “multiple meanings and understandings” among distinct constituencies over the last twenty years.13 This lack of shared meaning has created significant difficulties for using “reconciliation” as a meaningful metric for determining the impact or success of a truth commission. The same is true for other commonly cited transitional justice goals, particularly “truth,” “justice,” and “peace,” all of which as-
sume a wide variety of meanings for different social constituencies and stakeholders.\textsuperscript{14}

This Essay proposes taking a step back to spotlight attention on a more overarching and concrete framework objective of transitional justice: \textit{preventing the recurrence of past violence and abuse.}\textsuperscript{15} How does society organize itself to transform the underlying norms, structures, conditions, behaviors, and relationships of power that allowed violence and human rights abuse to occur in the first place? It is only through such broadly understood transformation, conceptualized as a long-term, multi-layered process of active and creative stakeholder engagement and self re-creation, that a return to the past can effectively be ensured against. A focus on the societal transformations necessary for prevention—measured by outcome, process and structural indicators—thus serves as a better metric for “success” in the work of truth commissions and other transitional justice mechanisms, I would contend, than do other more limited or contested standards, such as “truth,” “reconciliation,” “peace,” or “justice.”\textsuperscript{16} By maintaining a forward-looking, instrumental, and engagement-centered perspective on transition, such a metric likewise has the advantage of not conflating success with the mere absence of fighting or a thin retributive or restorative model that seeks merely to return victims to the status quo ante.\textsuperscript{17} Rather, it aims to ensure that the focus of analysis and assessment in the transitional context remains tightly focused on how transitional justice mechanisms contribute in fact to the much more complex social and institutional interactions and engagements that are necessary to prevent similar abuses from occurring in the future.

The centrality of prevention as an overarching goal of transitional justice has indeed repeatedly been conveyed in the titles of truth commission

\begin{quote}
\textsuperscript{14} See, e.g., Johan Galtung, \textit{Violence, Peace, and Peace Research}, 6 J. \textit{PEACE RES.} 167 (1969) (discussing different definitions of the word “peace” often used by researchers).

\textsuperscript{15} As Priscilla Hayner observes, “[p]erhaps the most important aim of any truth commission should be to prevent further violence and rights abuses in the future.” \textsc{Hayner}, supra note 3, at 182.

\textsuperscript{16} Indeed, it is for the \textit{purpose} of preventing further abuse that mechanisms to establish truth, justice, reconciliation, and democratic reform are created, the latter being \textit{means} for achieving the primary end of prevention and non-recurrence.

\textsuperscript{17} Contrasted with narrower retributive and restorative models of justice, this approach is sometimes referred to as “transformative justice,” understood as a paradigm working not to restore a harmony that never existed, but to create a new equilibrium where social exploitation, marginalization and disenfranchisement are overcome.
\end{quote}
reports: “Nunca Más,” “Nunca Mais,” or “Never Again.”\textsuperscript{18} It is likewise emphasized in the opening statements and guiding purposes of virtually all truth commission reports.\textsuperscript{19} It may even be reflected in the very definition of a truth commission.\textsuperscript{20} Dr. Theresa Chun, a victim-survivor of the Korean War, echoes the sentiment in this Issue, lamenting the need to continue to talk after-the-fact, time and again, about “[t]ruth and reconciliation and reparations.” The primary goal is: “how do we make it not happen in the first place?”\textsuperscript{21}

And, yet, the evidence is questionable that nations that sponsor truth commission processes are in fact any more democratic, stable, respectful of


\textsuperscript{19} See, e.g., \textit{WITNESS TO TRUTH: REPORT OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION 7, \S 1} (2004) (“It is only through generating such understanding that the horrors of the past can effectively be prevented from occurring again”); \textit{TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA, COMPREHENSIVE REPORT, VOL. 1}, at 56 (2010) (recognizing commission mandate to “take steps to prevent such incidents from recurring”) [hereinafter \textit{COMPREHENSIVE REPORT}]. \textit{See also OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: TRUTH COMMISSIONS} 2 (2006) (emphasizing objective of truth commissions to “prevent further abuses” through specific recommendations for institutional and policy reforms).

\textsuperscript{20} Mark Freeman defines a truth commission as:

\textit{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.}

\textit{FREEMAN, supra note 10, at 18 (emphasis added). See also HAYNER, supra note 3, at 11 (recognizing as part of what defines a truth commission its intention “to address the past in order to change policies, practices, and even relationships in the future”).}

\textsuperscript{21} Dr. Theresa Chun, \textit{A Survivor’s Testimony: Closing Remarks to the Conference on “Implementing Truth and Reconciliation: Comparative Lessons for Korea,”} 19 \textit{BUFF. HUM. RTS. L. REV. 73} (2012). As Dr. Chun insists, we must work to ensure that “other persons do not die like my brother and other families won’t be like our family and myself.” \textit{Id.}
human rights, or likely to avoid a renewed outbreak of violence, internal conflict or repressive activity. Many societies are left deeply disappointed, even disillusioned, at the close of a truth commission’s mandate, especially as it becomes clear that the government has little will to implement the commission’s recommendations for victim redress and institutional reform.\textsuperscript{22} Although there are individual examples where democratic reforms and a better human rights record follow upon truth and reconciliation processes, recent studies suggest that these examples may be outliers and that there is little, if any, direct correlation between truth commission processes and societal transformation.\textsuperscript{23}

What accounts for this lack of impact? Many factors may credibly be posited. The very depth of dysfunction or divisionalism in many transitional societies may surely contribute.\textsuperscript{24} A lack of local interest in pursuing the past as a useful response to mass atrocity may also be a factor,\textsuperscript{25} as may

\begin{enumerate}
\item\textsuperscript{22} See Kritz, supra note 12, at 17 (noting frustration created by “enormous chasm between . . . the wonderful mandates to develop detailed recommendations, directed at all sectors, on major societal reforms . . . and . . . the virtual dismissal, or at least nonimplementation, of these recommendations by the governments that receive them”).
\item\textsuperscript{23} See Eric Wiebelhaus-Brahm, Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy (2010) (concluding negative impact based on statistical regression analysis, but pointing to four case studies of positive correlation); Olsen et al., supra note 4 (concluding that truth commissions produce negative impacts on a nation’s human rights and democracy outcomes when pursued in isolation, but positive impacts when pursued in combination with trials and amnesties); Jack Snyder & Leslie Vinjamuri, Trials and Errors: Principle and Pragmatism in Strategies of International Justice, 28 Int’l Security 5 (2003) (concluding that truth commissions may be irrelevant or harmful unless employed in countries well on the road to democracy and, even then, may mask the real facilitators of peace by providing political cover for amnesties; properly designed and enforced amnesties do a better job of ending civil wars, and encouraging human rights, democracy and the rule of law).
\item\textsuperscript{25} See, e.g., Hayner, supra note 3, at 196-198 (noting Mozambique, where local population has rejected processes of investigating the past in favor of social practice of “forgetting”); Rosalind Shaw, U.S. Inst. of Peace, Rethinking Truth and Reconciliation Commissions: Lessons From Sierra Leone 9 (2005) (noting longstanding Sierra Leonean practice of social forgetting as mechanism used to “cool the heart” and reestablish the community).
\end{enumerate}
design failures in the assigned mandate, powers, or even choice of a truth commission. A simpler, more generalizable rationale may nevertheless be the most compelling explanation: Truth commissions, no matter how structured, cannot by themselves transform society. As short-term institutions with only weak investigatory powers, they can merely begin processes, act as enablers, and sow seeds of transformation, providing important tools or resources for leveraging behavioral change in recalcitrant institutions and social relationships. To effect real change or transformation, these tools must be taken up by broader civil society and institutional actors.

Too often, however, the transitional justice literature adopts easy and comfortable, even complacent, assumptions about what truth commissions can accomplish to guide assessments of their success. These assumptions take certain major conclusions for granted. One is that a definitive accounting of dark, hidden, and complex pasts can in fact be achieved over the course of a truth commission's mandate, short, circumscribed and politically compromised as it is. Perhaps more importantly, they presuppose a direct causal connection between truth-telling and the broader goals of transitional justice, uncritically concluding that the public airing of truths about the past will in fact bring about institutional learning, official acknowledg-


27. These tools include, for example, detailed investigative reports regarding particular incidents, lists of victims, the identification of patterns of institutional conduct and responsibilities, the exhumation of graves, a set of causal narratives, and a list of specific recommendations to the state and other actors for additional steps to be taken moving forward.

28. Hayner, supra note 3, at 4 (“Many comfortable assumptions [about what a process of truth-seeking is and what it might lead to] have been restated over and again in untested assertions by otherwise astute and careful writers, thinkers, and political leaders.”).

29. See, e.g., Shaw, supra note 25, at 3 (observing that it is “deeply problematic for a national commission to produce a single ‘impartial’ historical record—a definitive national memory—and to expect it to command agreement and heal social divisions”); Tristram Hunt, Whose Truth? Objective Truth and a Challenge for History, 15 CRIM. L.F. 193 (2004).
ment, and social healing, causing victims and perpetrators to come together in reconciliation and forgiveness. That is, they presume a natural, even inevitable, progression from truth to reconciliation to the institutional reforms, social healing, and civic reengagements necessary to prevent future violations.\textsuperscript{30}

These suppositions are implicit in many, if not most, truth commission initiatives. South Africa, for example, celebrated its truth commission under the banner “Truth: The Road to Reconciliation.”\textsuperscript{31} South Korea, too, has pursued a policy of “reconciliation through truth.”\textsuperscript{32} As former commissioner Kim Dong-Choon has noted, the act establishing Korea’s truth and reconciliation commission neither defined reconciliation nor identified how it was to be achieved, including by or between whom; rather, the assumption underlying the body’s mandate was that “reconciliation” and “national legitimacy” would follow automatically from establishing the “truth” of the past.\textsuperscript{33}

Truth, however, no matter how comprehensive or impartial, can never by itself achieve the ends of transitional justice. Its role is far more instrumental. In particular, while its recognition can serve important dignitary ends for victims and their families, its primary role may be as a process predicate, opening the door to a far broader set of reconciliatory, reconstructive, and democracy-enhancing initiatives in larger society.\textsuperscript{34} By opening processes for truth-telling, a commission may, for example, make it safe


32. Kim Dong-Choon, \textit{supra} note 26, at 102 (emphasis added).

33. \textit{Id.; see also} Kang Hyun-kyung, \textit{Ahn Unveils 3 Steps for Forgiveness, Reconciliation}, \textit{KOREA TIMES}, Apr. 8, 2009 (quoting President of TRCK as saying “To move on, our society needs to offer a sincere apology to those victims so that they can accept it and forgive what the past regimes did to them. We will be able to remove the hurdle as mutual recognition will naturally lead to reconciliation”) (emphasis added).

34. See, e.g., Laura Arriaza & Naomi Roht-Arriaza, \textit{Social Repair at the Local Level: The Case of Guatemala}, in \textit{TJ FROM BELOW}, \textit{supra} note 9, at 143, 158-64 (documenting community-based truth-telling, cleansing, memorialization, and dispute resolution initiatives that followed Guatemala’s deployment of national-level truth commissions).
to talk openly about the past, stimulating new truth-telling projects that bring in far more facts, complexities, perspectives, and experiences.\textsuperscript{35} By compiling lists of names of victims whose cases have been verified, truth commissions may open the possibility of payment of often significant reparations to thousands of victims or families, as has been the case in Argentina, Chile, and Morocco.\textsuperscript{36} Their documentation work may likewise lead to important prosecutions, even when such prosecutions would not have been possible at the time the commission functioned.\textsuperscript{37} And, a commission’s report may receive a great amount of attention, making it more difficult to question the fact that the state was responsible for grossly abusive practices.\textsuperscript{38} Perhaps most importantly, the process of truth telling may be taken up by local actors as a tool for conscientization and movement building.

In this latter regard, truth commissions serve a critical instrumental function by using their investigations to lay out a series of specific policy recommendations for the government and other relevant actors to take forward,\textsuperscript{39} sometimes accompanied by a mandatory implementation proviso.\textsuperscript{40}


\textsuperscript{36} See \textit{Hayner}, supra note 3, at 167-173.

\textsuperscript{37} Id. at 93-97 (highlighting experiences of Argentina, Peru and Chad, although noting that decision to pursue trials is generally the result of multiple factors outside of a commission’s control).

\textsuperscript{38} In early 2012 in South Korea, for example, the ruling Saenuri Party withdrew its selection of two candidates for National Assembly elections amid growing criticism of their alleged “distortion of modern Korean history” and their seemingly inappropriate comments on historic events. One of those candidates was a former TRCK Chair who had sought to ban distribution of a TRCK report and insisted that two historic civic movements were acts of illegitimate violence. \textit{See} Lee Tae-hoon, \textit{Ruling Party Cancels Ex-Truth Commission Chief’s Candidacy}, \textit{Korea Times}, Mar. 14, 2012

\textsuperscript{39} See \textit{Freeman}, supra note 10, at 18 (incorporating issuance of specific reform recommendations into very definition of a truth commission).

\textsuperscript{40} El Salvador, Sierra Leone, Liberia, and South Korea are examples. \textit{See Hayner}, supra note 3, at 191-93 (highlighting experiences of El Salvador, Sierra Leone, and Liberia, while recognizing latter’s “show cause” provision for non-compliance);
These recommendations are not dispositive of future directions, but they can serve as key leverage for taking forward the broader transitional justice project, allowing civil society actors to take ownership of it and develop it contextually in appropriate and homegrown ways. Without these responsive initiatives, undertaken in parallel at national, community, and inter-individual levels, truth commissions and their formal outputs are unlikely to have much, if any, meaningful impact on the attitudes, behaviors, norm systems, and institutional relationships that allowed abuse to occur in the first place. This is both because circumstances on the ground vary widely, requiring tailored responses both within and across societies to address local contingencies, power relationships, and other relational complexities, and because formal transitional justice mechanisms promoted “from above” are often captured or manipulated by political elites to serve their own interests and agendas.41

And, yet, when a truth commission’s term comes to an end and the story it has told is incomplete, when individuals and communities continue to feel pain and resentment, or when perpetrators are not brought to account and institutions not reformed, critics inevitably tend to call foul. They blame the inadequacy of the truth commission or the obstinacy of government.42 Some will see the commission as a political white-wash—a tool pursued by the government to gain international legitimacy by showing foreign counterparts that it “cares about human rights,” while doing nothing to implement real change at home. The resulting discontent and political disillusionment with the associated transitional justice project may in fact com-


42. Of course, both of these may be true. A truth commission can always be designed to have stronger, broader, or more defined powers. Its mandate might profitably have been extended, broadened, or even narrowed. Likewise, the government may have little incentive to take up a truth commission’s recommendations or to take any further reform measure. In many cases, as in the South Korean example, it will claim that it is time to stop looking backward and focus instead on the future.
pound social divisions, reopen wounds, and perpetuate underlying disputes, as the South African and other recent examples may attest.\textsuperscript{43} The prevalence of comfortable assumptions about what truth commissions can accomplish likewise impacts scholarship. Indeed, if it is presumed that the public airing of truth will lead discretely to the other goals of transitional justice—reconciliation, justice, democratic reform, durable peace\textsuperscript{44}—the relevant question for assessing truth commission success becomes the quality or quantity of truth a commission is able to reveal. If we can only design a truth commission’s mandate and powers well enough, it is imagined—enabling it to expose the most thorough or important truths of the past—social norms can be reconstructed and social institutions rebuilt so as to prevent a repetition of the past. Under this institutional design approach, scholarly assessments will tend to focus analysis on the jurisdictional attributes associated with distinct commissions:\textsuperscript{45} Does truth commission X have the power of search and seizure, to compel witness testimony; to demand national security documents, to grant amnesty in exchange for testimony? Did it allow for victim hearings and were they public? Did it include institutional or thematic hearings, or was testimony limited to written responses? How limited or expansive was the commission’s substantive and temporal mandate? Each of these questions is important and necessarily relevant, but they do not speak directly to long-term preventative impact.\textsuperscript{46} To do so, one must look not only at truth commission powers, but, much more importantly, at what happens after a truth commission shuts its doors and releases its final report. How does broader society engage with its outputs, and particularly with its recommendations?

A more humble view of what truth commissions can accomplish would, by contrast, do two things. First, it would change the political


\textsuperscript{44} See Kritz, supra note 12, at 13.

\textsuperscript{45} See, e.g., James L. Gibson, On Legitimacy Theory and the Effectiveness of Truth Commissions, 72-SPG LAW & CONTEMP. PROBS. 123, 125 (2009) (associating truth commission effectiveness with public hearings and media attention that garner widespread public attention).

\textsuperscript{46} At the same time, they tend to cast the South African experience as the standard to emulate. As numerous observers have noted, that experience is not particularly replicable in most transitional settings and hence should not be invoked as the inevitable comparator. See, e.g., Kritz, supra note 12, at 14.
calculus of transitional justice implementation, shifting the onus of implementation away from temporary bodies with limited mandates toward a more robust national effort that depends for its success on the comprehensive engagement of civil society.\textsuperscript{47} Second, it would spotlight attention on a very different set of assessment indicators for measuring truth commission success. Those indicators would not focus on the nature or quality of truth revealed by a truth commission's work, recognizing that such truth will always be partial, incomplete, and selective.\textsuperscript{48} Rather, they would focus on how a transitional society organizes itself to respond to and engage with the processes and outputs of a truth commission. That is, a concern about impact and particularly prevention should lead observers to shift attention from what happens within a truth commission to what happens in response to it after its mandate ends. How do both government and civil society engage with the broad policy recommendations officially put forward by a truth commission to take forward the justice project?

Under this proposed approach three specific assessment indicators would require systematic monitoring and assessment. Representing key process, structural and outcome indicators, these include: (1) the density, distribution and scope of domestic civil society groups organized around the implementation process, (2) the institutional framework established by government to orchestrate the implementation process, including how that framework incorporates civil society participation at both local and national levels, and (3) the extent of implementation of a TRC’s recommendations, both quantitatively and qualitatively. These indicators, I argue, are better able to assess the impact of a truth commission on the societal transformations necessary to prevent a repetition of past violence. They are thus particularly relevant for those concerned about impact and particularly prevention.

II. CURRENT ASSESSMENT APPROACHES

As the fledgling transitional justice field has begun to mature and fracture, a growing emphasis has been placed on identifying appropriate impact assessment indicators to guide decision-making about what kinds of transi-

\textsuperscript{47} The need for this shift is not to suggest that acknowledgment of an “official truth” is not important in its own right, nor that it is not related in key ways to promoting social healing, national reconciliation, norm reconstruction, and institutional reform. It is merely to recognize that acknowledgment, by itself, will not serve the larger ends of societal transformation.

tional justice mechanisms—or kinds of combinations and sequences of them—to pursue. And, yet, none of the major methodological approaches taken at present to assessing impact, especially with respect to truth commissions, appear to take the above considerations directly into account. Rather, these approaches have tended to converge around four major methodological lines of inquiry or measurement. I call these “Quantifiable Truth,” “Victim Perception,” “Formal Political Rights,” and “Redistributive Development.” The sections that follow describe each respectively. In particular, they highlight the major limitations of the four approaches for accurately assessing the utility and impact of truth commissions as effective mechanisms of transitional justice.

A. Quantifiable Truth

The first approach to assessment has been perhaps the most frequently employed in the transitional justice literature. Dominating the “first wave” of truth commission research, it has defined truth commission “success” largely by how much “truth” a commission is able to reveal over its tenure. The more or higher quality truth that is publicly clarified, it is presumed, the more “successful” the commission. Scholarship in this vein has correspondingly tended to comprise single country case studies or small “N” comparative analyses that focus, mostly descriptively, on the final deliverables or internal jurisdictional attributes of distinct commissions: the scope of a body’s mandate, the timeframe of its operation, the types of abuses it can address, how many cases it has investigated, and what powers of enforcement or compulsion it wields. Particular strands, in turn, have focused less on the nature of the truth produced than on how that truth was

49. Much of this literature has nonetheless focused on defending particular kinds of transitional justice mechanisms. See, e.g., Olsen et al., supra note 4, at 16-25 (categorizing literature on the “success” of transitional justice mechanisms into four major approaches: a maximalist approach, minimalist (or consequentialist) approach, moderate approach, or holistic approach, each corresponding to a defense of trials, amnesties, truth commissions, or combinations thereof, respectively). This Essay adopts a different, more methodologically-focused categorization of the impact assessment literature.

50. See WIEBELHAUS-BRAHM, supra note 23, at 7-8, 23 (observing that early literature on truth commission success focused on descriptive assessments of “deliverables,” including whether a final report was in fact released and publicized and the extent of the report’s substantive coverage).

publicized. Were hearings public or otherwise well covered by the media?\textsuperscript{52} Was the commission's final report publicly released? If so, what steps were taken, if any, to make it widely accessible?\textsuperscript{53}

Several common features have nonetheless characterized this scholarship. One is that case studies have tended to focus on a small set of exceptional national experiences.\textsuperscript{54} As a result, their conclusions may result from a biased sample, rendering them of limited relevance to other national experiences and difficult, even dangerous, to generalize.\textsuperscript{55} Another is that the scope of inquiry in much of this literature has tended not to extend much beyond the completion date of the commission's mandate or the release of its final report.\textsuperscript{56} Given this limited time-frame, its capacity to assess a truth commission's impact on broader societal changes or actual institutional reforms—indeed, anything exogenous to the truth commission itself—is highly limited.\textsuperscript{57} A third related characteristic is the literature's analytical

\textsuperscript{52} See, e.g., Gibson, supra note 45, at 125.

\textsuperscript{53} See, e.g., Mary L. Popkin & Naomi Roht-Arriaza, \textit{Truth as Justice: Investigatory Commissions in Latin America}, 20 \textit{Law \& Social Inquiry} 38 (1995) (suggesting truth commissions unlikely to be successful unless they produce recommendations that are publicized). Others have sought to combine the focus on deliverables, internal jurisdictional attributes, and publicity. See B.M. Botha, "Truth Commissions and Their Consequences for Legitimacy," Ph.D. dissertation, University of Houston (1998) (coding truth commission as strong or weak based on four factors: resources (budget and number of commissioners and staff), thoroughness (number of cases investigated, scope of mandate, length of work), credibility (societal representation of commissioners), and publicity (final report released, public or televised hearings, media coverage)).

\textsuperscript{54} South Africa in particular has dominated the truth commission literature. Priscilla Hayner characterizes the five strongest truth commissions to date as those of South Africa, Guatemala, Peru, Timor-Leste, and Morocco. See Hayner, supra note 3, at xv.

\textsuperscript{55} See, e.g., Kritz, supra note 12, at 14 (noting dangers of overwhelming focus on South Africa in literature); Hayner, supra note 3, at 183 (underscoring conclusions not necessarily transferable elsewhere).

\textsuperscript{56} See WIEBELHAUS-BRAHM, supra note 23, at 8 (attributing this to fact that much of the truth commission literature is written by former commissioners and staff or other "members of the international human rights community, who usually move on to the next hotspot shortly after the aftermath of the release of the commission's final report").

\textsuperscript{57} See id. ("[A]t present, we still have little sense of the longer-term consequences of conducting truth commissions."); David Backer, \textit{Cross-National Comparative Analysis, in Assessing TJ Impact}, supra note 2, at 23, 51 ("[A] great deal is known about the literal mechanics of transitional justice processes, but far less is understood about the resulting implications."). In this respect, Brahm highlights the importance of distinguishing between a truth commission’s “success” (the degree to which it fulfills its mandate) from its “impact (the social and political consequences of its examination of past human rights abuses). See WIEBELHAUS-BRAHM, supra note 23, at 23.
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weakness: Lacking a consistent and empirically-testable basis for assessment across cases, its findings and conclusions have been largely impressionistic or anecdotal, often reflecting the particular normative biases of the researcher, as derived from a particular set of values or country-specific experiences. More systematic cause-effect relationships and comparisons of quantifiable impacts across a wide range of cases, "including societies in which transitional justice has not been pursued," have not been addressed. Instead, attributions of commission effectiveness have tended to be based on the mere conviction that "more" truth is good, and that the public revelation of such truth positively impacts longer term reconciliation, peace, and reform objectives.

From the perspective of impact assessment, several manifest difficulties accompany the approach. The first is that truth, as a dynamic and dialogical social construct that tends toward political capture, cannot easily be assessed in quantitative terms. Epistemologically, what is "more" truth? Does it run deep or wide? Is "more" truth revealed when all cases of official torture or narrowly-construed assaults on physical integrity rights are investigated or when a broader range of abuses—including structural or systemic abuses against entire communities of victims—are addressed albeit less exhaustively? Should truth discovery favor complexity or a simple storyline? Who decides, and what broader narrative frames such discovery?

58. See WIEBELHAUS-BRAHM, supra note 23, at 8, 13 ("[V]ague concepts, questionable theorizing, and weak empirics have allowed many observers to draw conclusions that support pre-existing normative convictions. Cause effect relationships have often been asserted rather than empirically tested."). These value judgments often derive from assessments about whether the truth commission fulfilled the "legal" obligations of the state under international human rights law or its "moral" obligations to victims. Id. at 9-10.


deed, whose truth is it, and how does that truth limit competing perspectives? These definitional questions have increasingly been addressed in the critical scholarship.

At the same time, the idea that "more" revealed truth (however defined) leads to greater social stability, institutional reform and psychological repair does not appear to be supported by the empirical data. There may indeed even be a negative correlation between such ends, with official truth clarification hardening adversarial positions, deepening social fissures, or accentuating psychological pain. Accordingly, while scholarship focused on quantifiable truth may provide important comparative and institutional design insights into the different ways that truth commissions are structured, the diversity in their mandates, and how their work products are publicized, it cannot tell us much, if anything, about whether the truth revealed—whether narrow or robust, shallow or deep, focused on complexity or a simple narrative story-line—has any measurable impact on behavioral, normative or institutional changes on the ground over the medium or long term.

To measure these critical changes the researcher must extend her vision beyond the internal functions and operations of a truth commission to look at how distinct social actors respond on the ground to those operations and their outputs. That response is likely to change markedly with time and to vary over spatial and cultural geography, given distinct inter-group and regional experiences with violence, both vertically and horizontally. Social responses are, moreover, likely to evolve dynamically with changing political conditions and approaches to implementation, the relative activism of peer groups and cross-national or intra-national learning processes, human and financial resource availabilities, evolving issues of trust, and many other organizational incentives or disincentives to mobilization. A longer-term, more endogenous perspective is thus necessary for an accurate assessment of impact.

B. Victim Perception

A second approach to assessment has sought to transcend some of the above difficulties by turning its lens toward the actual targets of transitional justice initiatives. It has focused not on how much "truth" is produced by a transitional justice mechanism, but rather how that mechanism and its operations are perceived by the target audience. Using public perception as the relevant measure of effectiveness, a truth commission's "success" thus de-

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61. See, e.g., Ramji-Nogales, supra note 26, at 24, 50-53.
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pends on whether the broader public views the body’s work as sociologically legitimate and hence worthy of public adhesion and support.62

This understanding of success derives from its proponents’ priority attention to democratic legitimacy theory and to norm reconstruction as the primary driving goal of transitional justice. The effectiveness of a truth commission in contributing to norm reconstruction will correspondingly depend on the existence of at least two predicate conditions: whether a given commission is able to attract the attention of its constituents and, most directly, whether its work product and processes are perceived as legitimate among members of the mass public.63 Only where perceptions of legitimacy are high, it is understood, will social stakeholders view the institution’s professed norms against mass violence as meaningful and hence worthy of internalization. Such norm internalization (by affected populations, perpetrators, and political elites alike) is the predicate condition upon which the social reconstruction of norms against mass violence is built.64 Truth commission success thus depends on it.

While no doubt adding importantly to the field,65 this approach nonetheless likewise has its shortcomings. The first relates, again, to the profound difficulties of measurement. In particular, results may vary markedly depending on how questions are framed, how participants are selected, and at what stage of the process a survey is conducted, given that public

62. Sociological legitimacy exists when “the relevant public regards [the institution] as justified, appropriate or otherwise deserving of support for reasons beyond fear of sanctions or mere hope for personal reward.” Richard H. Fallon, Jr. Legitimacy and the Constitution, 118 HARV. L. REV. 1787, 1795 (2005). See also Ian Hurd, Legitimacy and Authority in International Politics, 53 INT’L ORGS. 379, 281 (1999) (“[L]egitimacy . . . refers to the normative belief by an actor that a rule or institution ought to be obeyed.”).

63. See Gibson, supra note 45, at 125. See also Ramji-Nogales, supra note 26, at 11 (“Effective norm reconstruction requires that societal stakeholders, particularly afflicted populations, perpetrators and political elites, view these new or revitalized norms against mass violence as legitimate.”) (emphasis in original).

64. See Ramji-Nogales, supra note 26, at 12 (“This internalization will enable the norms laid out by the transitional justice mechanism to take root fully, recreating the moral fabric of a society recovering from mass violence.”); id. at 67 (depicting relationship in graphical form).

65. The approach is particularly useful for “design” questions at the front end of transitional justice processes, and for ensuring continual public feedback and input into questions of design modification moving forward, especially where international pressure to adopt particular standardized mechanisms is strong.
perceptions tend inevitably to evolve over the life of a transitional justice body.66

Perceptions may likewise shift based on who administers the survey, how it is introduced, or what cultural assumptions underlie particular question sets.67 While scholars respond by underscoring the importance of supplementing surveys, polling, and questionnaires with structured interviews and extending them over time, these studies often suffer from similar selection biases. In South Africa, for example, one of the only nations in which wide-scale individual-level victim studies have been conducted,68 observers come to radically different views about the TRC's "success" and public legitimacy. For instance, while a national poll in 1998 found that fifty-seven percent of those surveyed believed that the TRC had been good for the country,69 structured interviews conducted contemporaneously with more limited numbers of direct victim constituencies found significant dissatisfaction with the body.70 An additional survey found large majorities believing the TRC had in fact worsened race relations, with only eighteen percent disagreeing.71 The same incompatibilities in results have been documented in other national contexts.72

What conclusions are, then, to be drawn for legitimacy? Whose opinions matter? Do some take priority? How do we take account of differences in perception between organized and unorganized groups, urban and rural communities, gender and age groups, and distinct types of victim populations, including those whose experienced harms were not addressed by the

66. See, e.g., Sarkin & Daly, supra note 30, nn. 48 (noting significant change in societal beliefs about effectiveness of South African TRC as measured by country-wide surveys from 1996 to 1998).


68. See WIEBELHAUS-BRAHM, supra note 23, at 11 (noting almost universal disappointment with truth commissions on the part of victims in South Africa).


72. See, e.g., Ramji-Nogales, supra note 26, at 51 (noting inconsistent survey results regarding TRC in Sierra Leone, including fact that while nearly 60 percent respondents believed TRC facilitated "reconciliation," only 44 percent believed people had a positive attitude toward it).
commission73 Is a truth commission a success if public support was high throughout its operations, but plummets at the stage of implementing recommendations, as the majority comes to see the body as a political whitewash? Changing legitimacy perceptions over space and time thus present significant assessment difficulties that require a different set of methodological tools and supplementary measurement indicators.

A second limitation with the approach results from its arguable overemphasis on norm internalization as the key to social transformation, sideline other more concrete or measurable indicators of social change. Perception data can thus lead scholars to conclude “effectiveness” of a transitional justice mechanism on the mere ground that society is broadly aware of truth commission hearings or operations,74 or considers them abstractly legitimate.75 Neither is sufficient to ensure that society, meaning the real people who constitute it, have in fact effectively integrated those norms into their daily routines, practices, identities and day-to-day interactions. Some other set of supplementary assessment indicators is necessary to capture the important process of how general norm legitimacy or acceptance leads in fact to meaningful changes in on-the-ground behaviors, relationships, structural conditions, and institutional practices. Conclusions of effectiveness will remain questionable if these broader structural, institutional and behavioral changes are not somehow observed empirically and, importantly, can causally be attributed in some degree to the work of the mechanism, rather than some other broader set of factors.

C. Formal Political Rights

A third approach to impact assessment has turned to quantitative statistical analysis to address some of these shortcomings, focusing on states’ relative levels of post-conflict protections for formal political rights. In par-

73. Compare, for example, Lisa Laplante, Negotiating Reparation Rights: The Symbolic and Participatory Quotients, 19 BUFF. HUM. RTS. L. REV. 217 (2012) (documenting significant dissatisfaction with government’s reparations plan in Peru among organized victim rights groups), with ICTJ & APRODEH, PERÚ: ¿CUÁNTO SE HA REPARADO EN NUESTRAS COMUNIDADES? (2011), <http://www.ictj.org/sites/default/files/ICTJ-Peru-Reparaciones-2011-Español.pdf> (concluding that victim communities that have received collective reparation are largely satisfied with the programs implemented to date).

74. See Gibson, supra note 45, at 125 (suggesting key to effectiveness of South African truth commission was its televised and otherwise broadly reported public hearings).

75. See Ramji-Nogales, supra note 26, 61, 63-67 (suggesting key to effectiveness of transitional justice mechanisms is ensuring broad public input in their design, as measured through perception studies and survey data).
particular, the approach has relied on increasingly sophisticated large-N cross-national regression analyses in an effort to isolate and control for measurable improvements in a transitional state's achievement of a limited set of "democracy" and "human rights" indicators. By doing so, quantitative researchers have aimed to rectify some of the deficiencies observed in the more qualitative or perceptual case-based approaches addressed above.

As a methodological matter, the approach aspires to tackle more directly the typically undervalued problems of endogeneity and causation in truth commission impact assessments: Is it the truth commission itself that has caused distinct societal changes, or would those same changes have occurred without the operation of a truth commission? Quantitative social science researchers have correspondingly turned increasingly to two-stage least squares (or simple bivariate) regression analyses in an effort to isolate the impact of distinct transitional justice initiatives on the dependent variables of interest—most commonly, peace, human rights, and democracy. The regression technique, it is noted, controls for the possibility that truth commissions may be established in environments that are already conducive to democracy and better human rights protection.

The approach has likewise sought to avoid the research difficulties associated with the largely "impressionistic, anecdotal" findings of other approaches, as well as the issue of non-uniformity in the standards that underlie them. Both problems, it has been noted, have led to idiosyncratic and contradictory conclusions that defy generalization and "empirically grounded theory building." By utilizing a set of quantitative metrics that can be applied consistently across a large number of nations, the new approach, it is maintained, allows researchers to reach generalized conclusions

76. See WIEBELHAUS-BRAHM, supra note 23, at 17, 31, 137-38.

77. See id. at 130 ("To date, quantitative research that treats truth commissions as independent variables has focused on three outcomes of interest: peace, human rights, and democracy."). As Brahm notes, as of 2010 only one quantitative study of truth commission effects on peace had been conducted. It found them to be largely irrelevant for peace-building, but positively related to sustaining peace in countries that were already democratic. Id. (citing T.G. Lie et al., "Post-Conflict Justice and Sustainable Peace," World Bank Policy Research Working Paper 4191, Post Conflict Transitions Working Paper No. 5 (2007)).

78. See id. at 138. "Measurement validity" nonetheless remains a major problematic issue in all quantitative social science research, given the manifest difficulties of representing complex social phenomena through quantitative indicators and the inability to control for all relevant influencing factors.

79. Id. at 6.

80. OLSEN ET AL., supra note 4, at 25 (noting "field has [thus far] tended to rely on wishful thinking rather than empirically grounded theory building").
about the real-world impact of transitional justice initiatives on some of the key objectives of transitional justice.\(^8\)

In substantively determining which of these objectives to focus their analyses on, quantitative “large N” researchers have, unsurprisingly, turned to those that are most easily measured or for which well-respected global quantitative datasets or indices already exist.\(^2\) Four global datasets purporting to measure “democracy” and “human rights” have been a particular draw, justified on the ground that improvements in such metrics reflect central objectives of transitional justice. Given the relative comprehensiveness of their respective datasets, the Cingranelli and Richards Physical Integrity Rights Index (CIRI-PHYSINT) and the Political Terror Scale (PTS) have been relied upon most commonly to assess a nation’s human rights record. The similarly comprehensive Polity IV and Freedom House databases, in turn, have been used to measure “democratic development.”\(^3\) The resulting quantitative and empirically-based findings, it is contended, are more effective in assessing the real-world impacts of transitional justice initiatives than the largely anecdotal findings associated with other approaches.

The results have been revelatory. In particular, two recent studies conclude that truth commissions do not appear to have any appreciable impact on either democratic consolidation or improved human rights performance.\(^4\) In fact, truth commissions may statistically correspond with worsening human rights records in the nations that deploy them. Such results raise serious questions for the transitional justice community. The findings have indeed led one group of researchers to conclude that truth commissions, at least when pursued in isolation from trials and amnesties, provide no positive additive value to human rights or democracy in transitional contexts.\(^5\) The necessary implication is that they are not a cost-effective choice from

\(^8\) See Thoms et al., supra note 59, at 54 (cautioning that trend toward quantitative measures in impact assessments “only creates a patina of precision”).

\(^2\) See Wiebelhaus-Brahm, supra note 23, at 38 (describing reasons for selection).

\(^3\) Less frequently, the UNDP Electoral Democracy Index and the World Bank’s Governance dataset (measuring “rule of law” progress) are likewise utilized.

\(^4\) See supra note 23. But see Thoms et al., supra note 59, at 31 (underscoring that “existing empirical knowledge about the impacts of transitional justice is still very limited, and does not support strong claims about the positive or negative effects of TJ across cases”) (emphasis in original).

\(^5\) See Olsen et al., supra note 4, at 153-54 (concluding that “truth commissions, when used alone, have a significant, negative effect [on democracy and human rights]” and that “the most successful transitional justice projects for achieving stronger democracies and human rights records will include trials and amnesty,” with or without truth commissions).
the perspective of human rights and democracy, and should be pursued with caution, if at all.\textsuperscript{86}

Other researchers have come to more nuanced conclusions by combining the advantages of large-N statistical analysis with the detailed process-tracing of small-N comparative research. Eric Wiebelhause-Brahm, for example, concurs that quantitative statistical regression analyses demonstrate that truth commissions have no meaningful effect on democratic outcomes and actual negative impacts on human rights. He nonetheless considers these outcomes in light of his own qualitative case-studies of a small sample of otherwise prominent national experiences, for which the statistical findings do not hold.\textsuperscript{87} Such discrepancies, he concludes, highlight the need for better causal tracing in qualitative national case studies to help identify what makes certain experiences "exceptional." Truth commission expert Priscilla Hayner agrees, noting that truth commission impact assessments will continue to need to take qualitative, case-specific comparisons into account in order to ensure that contextual issues are effectively taken on board in making comparisons and conclusions based on statistical data.\textsuperscript{88} It is clear, then, that an additional set of intra-society indicators is necessary to help identify what causes truth commissions to impact human rights and democracy positively in some settings and negatively in others.

Other factors similarly urge caution in using such statistical impact assessment approaches, at least in isolation from other methods. These concerns derive in large measure from the biases built into the approach’s baselines and the normative preferences of its favored datasets. As measures of a nation’s human rights record, for example, the CIRI-PHYSINT and PTS indices limit their scope to a highly select set of physical integrity violations: extrajudicial killings, disappearance, torture, and political imprisonment.\textsuperscript{89} Their scores thus measure only one limited dimension of a nation’s

\textsuperscript{86} The researchers do not conclude this outright, yet it is implicit in the conclusion that favored outcomes are equally successful when trials and amnesties are combined or sequenced “with or without truth commissions.” Id. at 155 (emphasis added).

\textsuperscript{87} See Wiebelhause-Brahm, supra note 23, at 35-125 (discussing case studies of South Africa, Chile, El Salvador, and Uganda).

\textsuperscript{88} See Hayner, supra note 3, at 26.

\textsuperscript{89} CIRI PHYSINT measures torture, extrajudicial killing, political imprisonment and disappearance, while PTS measures wrongful imprisonment and torture. See Olsen et al., supra note 4, at 136. Both datasets, moreover, are coded from annual reports on human rights practices produced by Amnesty International and the U.S. Department of State, and hence may incorporate the particular biases of these institutions (as well as those of coders). At the same time, their scales are limited to nine and five points, respectively, meaning that the gaps between scores may conceal more than they reveal. For more on the problems associated with use of such quantitative datasets, see Emilie
human rights record, and hence its transition. Although researchers often describe this focused perspective as part of the approach’s “attractiveness,” its effect in practice is to misrecognize the lived reality of immense numbers of victims of mass violence, who may find no improvement in their own day-to-day situation despite formally improved PTS scores. More directly, it leaves out much of what truth commissions are expected to do in terms of addressing the underlying causes and consequences of mass violence. The fact that so many past truth commissions have limited their investigatory work to this narrow subset of human rights violations has increasingly been criticized by victim populations for not addressing their real day-to-day concerns and experiences; more recent commissions have correspondingly taken a broader view. Relying on the CIRI and PTS datasets as the exclusive metric for truth commission success in the area of human rights is thus decidedly fraught.

As statistical measures of “democratic development,” the Polity IV and Freedom House databases are similarly problematic. Their scope is largely limited to the formal and institutional dimensions of national-level electoral democracy and related rules governing the formal political system: who votes, who can be elected, and what are the constraints on executive power. These dimensions not only have not been central to a typical truth


90. Others question the very idea that human rights can be measured with a numerical score. See Thoms et al., supra note 59, at 43 (“The notion of measuring complex social phenomena such as ‘respect for human rights’ with a numerical scale is, for many, a formalistic abstraction that defies common sense.”).

91. WIEBELHAUS-BRAHM, supra note 23, at 131.

92. See Freeman, supra note 10, at 18 (including this purpose in very definition of a truth commission).


94. Polity IV measures political competitiveness, the regulation of political participation, the openness and competitiveness of executive recruitment, and the constraints on the executive. The Freedom House Project measures “political rights” and “civil liberties”—the former including the right to vote, compete for public office, and elect responsible representatives, while the latter considers freedom of expression, associational and organizational rights, rule of law and personal autonomy. See Olsen et al.,
commission's mandate, but are generally determined at the constitutional level or through negotiated political settlements before a truth commission is established.\textsuperscript{95} Both of these factors can explain why researchers would find no causal relationship between truth commission operations and enhancements in these important but limited dimensions of democracy.

An even more critical concern lies in what these "democracy" indices fail to measure. Indeed, in their baseline focus on the more formalistic national-level aspects of institutional democracy, they neglect many of the more instrumental and perhaps critical components of active and localized democracy, including the level of domestic civil society engagement in all aspects of public affairs. Given the diversity of forms such engagement may take, such assessment requires a distinctly more qualitative, or at least multi-method, approach. At the same time, if purporting to measure the actual causal links between truth commissions and expanded democratic engagement, impact assessment techniques should presumably aim to measure the degree to which domestic civil society actors in fact invoke truth commission processes and work products to promote enhanced engagement. Such engagement must be measured not only at the national level but also in terms of localized and place-based follow-up or extension initiatives in a nation's diverse communities. The favored quantitative databases do not, however, take these critical engagement considerations into account.

The limits of the chosen metrics are likewise apparent at their intersection. A large percentage of localized civil society and other stakeholder initiatives will indeed focus on peace-building activities that do not directly relate to questions of torture, extrajudicial execution and other formal political rights violations. Rather, they will encompass issues central to community-based healing, livelihood improvements, relationship building, dispute resolution, and the search for redistributive justice, including with respect to access to productive resources like land, water, jobs, and education.\textsuperscript{96} The

\textsuperscript{95} See Wiebelhaus-Brahm, supra note 23, at 141.

\textsuperscript{96} Such initiatives may be especially prevalent in contexts where the footprint of international "transitology" is soft. "Transitology" is a term used increasingly to describe and disparage the international transitional justice community and the standardized tool-kit approach it tends to promote.

focus on formal political rights thus belies a narrow, programmatic set of assumptions about transitional justice that have been deeply normalized in international justice work, yet do not necessarily correspond to the way that rights and democracy are most prevalently experienced by victim communities on the ground.  

Correspondingly, while the “formal political rights” approach responds in important ways to key deficits in other assessment approaches, its metrics are similarly deficient for a reliable accounting of real-world truth commission impact. A more accurate and robust assessment picture will require the deployment of additional sets of impact indicators. Such indicators must focus not only on outcome and structural indicators—as important as they are—but just as critically on process indicators, especially those related to active civil society participation in implementation efforts at all levels of community and social organization.

D. Redistributive Development

Though not yet fully developed in the research literature, a fourth assessment approach has begun to emerge over the last several years. Like the formal political rights approach, it endeavors to track empirically measurable outcomes in the larger political economy as the basis for assessing impact or success in the transitional justice field. It nevertheless aims to expand the focus of impact assessment beyond the narrow set of physical integrity and political rights violations typically privileged in the transitional justice literature. At the same time, it seeks to move beyond the field’s traditional preoccupation with a highly individualized approach to violations, responsibility, and reparation. Instead, the approach has sought to turn analytical attention more squarely toward the nature, quality, and impact of redistributive reforms that result from a nation’s transitional justice initiatives.

Attention to this perspective is relatively new, particularly from a quantitative vantage. Indeed, the dominant paradigm of transitional justice emerging from the 1980s and 1990s has tended to sideline core economic and social rights from its agenda, seeing them as mere background conditions that can be addressed once democracy and rule of law is restored. As a result, truth commissions and other transitional justice initiatives have not tended to consider these rights as central. Neither have the researchers studying them.

The lack of attention to socio-economic marginalization and other kinds of “economic violence” at the heart of past (and typically continuing) violence in transitional societies has nonetheless led an increasing number of commentators to call for greater attention to questions of distribution, discrimination, and marginalization in transitional justice initiatives. In calling for a greater focus on the conditions of exclusion that enabled the commission of past crimes, and the power relationships that sustain and drive violence, these voices have insisted that justice and reconciliation cannot be achieved in any meaningful sense if the plunder, exploitation, displacement, dispossession, and coerced marginalization that accompanied mass violence is not directly addressed in the transitional justice process.

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98. See Dustin N. Sharp, Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice, 26 Harv. Hum. Rts. J. (forthcoming 2013) (arguing that a new phase or “fourth generation” of transitional justice preoccupations has arisen, characterized in part by an increasing willingness to grapple with those issues that have historically sat at the periphery of transitional justice concerns, including those related to economic and social rights).

99. See Hafner-Burton & Ron, supra note 89, at 365 (noting that “there are still no widely agreed upon cross-national time-series measures for economic and social rights, making it hard for quantitative scholars to gain much traction”); but see id. at 365 n.33 (recognizing limited use of two composite development indexes, and noting “[n]ew initiatives are under way to build new measures”). One new measure is the SERF Index. See Susan Randolph, Sakiko Fukuda-Parr & Terra Lawson-Remer, Economic and Social Rights Fulfillment Index: Country Scores and Rankings, 9 J. Hum. Rts. 230 (2010).

100. See Paige Arthur, How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice, 31 Hum. Rts. Q. 321, 325-26, 340 (2009) (arguing that because “transition to democracy” was the dominant normative lens through which political change was viewed in the 1980s and 1990s, certain legal-institutional reform measures (prosecutions, truth-telling, restitution, institutional reforms) were recognized as legitimate “justice measures,” while others—such as claims for distributive justice or socioeconomic transformation—were sidelined).

small, but growing number of transitional justice initiatives are thus begin-
ning to take these critical distributive issues into account, particularly as
they relate to access to land and productive resources. The cases of Guate-
mala, Colombia, Kenya, South Africa, Bosnia and Herzegovina, Chile,
Peru, and Morocco are examples.

Scholars have thus begun to promote an emergent research agenda to
map these processes and their effects as a key part of assessing the impact
of transitional justice. While many do so under a broadened “restorative” or
“distributive justice” model, others have promoted the idea of “trans-
formative reparations” to capture the importance of not merely seeking to
return victims to the status quo ante—a status quo that is often one of injus-
tice, vulnerability, and socially-enforced deprivation. Rather, the aim
must be “to transform the relationships of subordination and social exclu-
sion that are at the root of the conflict meant to be overcome.”

As a research agenda, this impact assessment approach is still in its
infancy. Increased efforts will, however, be made in both qualitative case-
based and quantitative statistical research to track the distributive conse-
quences of transitional justice programs and their causal effect on the enjoy-
ment of core economic, social and cultural rights by victim communities.
This includes comparative attention not only to how reparations payments
and other direct benefits policies are structured for individuals and commu-
nities, but also how truth commission reports and recommendations are fol-
lowed up on through local laws and policies related to land ownership,
housing construction and availability for displaced populations, employ-
ment and health care services, water and sanitation, and access to other vital
livelihood resources. The success of a particular transitional justice

102. See, e.g., DISTRIBUTIVE JUSTICE IN TRANSITIONS (Morten Bergsmo et al., eds.
2010).

103. See Rodrigo Uprimny & Maria Paula Saffon, Reparaciones Trans-
formadoras, Justicia Distributiva y Profundización Democrática, in REPARAR EN CO-
LUMBIA: LOS DILEMAS EN CONTEXTOS DE CONFLICTO, POBREZA Y EXCLUSIÓN 31
(Catalina Díaz et al. eds., 2009).

104. Maria Paula Saffon & Rodrigo Uprimny, Distributive Justice and the Restitu-
tion of Dispossessed Land in Colombia, in DISTRIBUTIVE JUSTICE IN TRANSITIONS,
supra note 102, at 379, 390 (understanding reparations as an opportunity to effect dem-
ocratic transformations of societies, not merely as a way to deal with the suffering
caused by atrocities).

105. There has been growing attention in this regard to the links between eco-
nomic development and transitional justice, including the question of linking repara-
tions programs with development policies. See, e.g., TRANSITIONAL JUSTICE AND
DEVELOPMENT: MAKING CONNECTIONS (Pablo de Greiff & Roger Duthie eds., 2009). The
Peruvian TRC’s experience with designing its proposed reparation program is in-
triguing in grappling, ultimately unsuccessfully, with these links. See Lisa Magarrell,
mechanism can thus be assessed, at least in part, based on how it contributes to more equitable societal outcomes in each of these core development areas. From a quantitative perspective, improved Gini coefficients, SERF Index scores, land-to-person ratios, and rising percentages of the population with reliable access to productive assets, quality food and health care services, sources of potable water and sanitation, adequate housing and educational opportunities, and legal representation may all be important indicators of success, at least to the extent they can be traced back in some way to processes initiated through, or in response to, truth commission or other transitional justice mechanisms.106

Such an approach is critically needed in the literature, providing a more robust and responsive picture of truth commission impact in a variety of national settings. Efforts to track these outcome-based distributive or developmental metrics, both quantitatively through large-N statistical analyses and qualitatively through case studies, may nevertheless attract many of the same difficulties associated with prior approaches. These include, in particular, insufficient attention to causality, inconsistent or overly simplistic standards, and lack of attention to the social and political processes that bring such changes about in the first place. Thus, additional indicators seem necessary to complete the picture of how to assess a truth commission or other transitional justice mechanism’s impact on achieving the core ends of preventing a return to past violence, including the discrimination, marginalization, and abuse that always underlies, drives, and constitutes it.


106. As Hafner-Burton and Ron note, some scholars use two composite development indexes to measure respect for economic and social rights: the Human Development Index (HDI) and the Physical Quality of Life Index (PQLI). The former is a composite of a population’s life expectancy at birth, adult literacy rate, gross enrollment ratio for primary, secondary and tertiary schools, and GDP per capita in Purchasing Power Parity dollars. The latter is a composite of national life expectancy at age one, adult literacy, and infant mortality. There are nonetheless multiple problems with the use of such datasets. These include not only problems of missing data and over-time comparability (like the CIRI and PTS indices), but also the fact that they measure socioeconomic outcomes, rather than government efforts to fulfill social and economic rights, and hence may miss critical issues of causality and agency. See Hafner-Burton & Ron, supra note 89, at 365 n.33, 387. The SERF Index is a new quantitative measurement tool that seeks to take government effort to fulfill the rights to food, education, health, and decent work into account. See Randolph et al., supra note 99.
III. A NEW RESEARCH AGENDA

As noted, each of the four above approaches provides important and complementary insights into the impacts and functioning of distinct transitional justice initiatives; each should continue to be pursued and cross-referenced in increasingly sophisticated and multi-method research studies. Nonetheless, each also fails to capture several key elements of truth commission processes that seem critical for a full and meaningful assessment of their success. In this part, I thus propose a new approach to impact assessment—one which might be termed “Participatory Engagement”—that can be used in combination and conversation with the above approaches to gain fuller insight into truth commission success. Such an agenda, I argue, is able to reflect not only the inherent limitations of transitional justice mechanisms as short-term institutions, but captures the key purposes for which they are created.

Under this proposed approach three specific assessment indicators would require systematic monitoring and multi-method assessment. Let me call them indicators 1, 2, and 3. Indicator 1, a process indicator, would measure and map the density, distribution and scope of domestic civil society groups organized around the implementation process. Indicator 2, a structural indicator, would appraise the institutional framework established by government to orchestrate the implementation process, including how that framework incorporates civil society participation at both local and national levels. Indicator 3, an outcome indicator, would measure the extent of implementation of a truth commission’s recommendations, both quantitatively and qualitatively. These indicators, I argue, are critical for assessing the impact of a truth commission on the societal transformations necessary to prevent a repetition of past violence.107

Several reasons compel this shift toward the broader social dynamics and political processes of implementation. The first is the simple fact that truth commissions are not designed to be implementation bodies. They are short-term investigatory bodies with very limited aims and powers.108 They

107. A much fuller explication of the details, complexities, and measurement methodologies of these broad indicators is of course necessary, but beyond the scope of this short Essay, the aim of which is simply to introduce and underscore the key importance of such indicators in impact assessment research.

108. This is true both in terms of its outputs and processes. A truth commission can investigate only a small number of cases, exhum only certain mass grave sites, and look at only particular sets of violations. The truth it is able to tell will thus always be partial and selective. Likewise, truth commissions can only begin processes of social reconciliation, which, to be meaningful, must occur through multiple and overlapping processes, with broad social buy-in and participatory engagement.
are tasked with investigating a defined set of past events or patterns of abuse and presenting a public report on their findings and conclusions.\textsuperscript{109} Those conclusions will generally identify steps and measures for other actors to take to achieve the various goals of transitional justice.\textsuperscript{110} Meaningful assessment of a truth commission's success or impact must then include sustained attention to how those actors—and particularly those tasked with leveraging them—engage with the commission's work and recommendations. Indicators 1 and 2 are designed to do this.

The second reason compelling this shift, and particularly its focus on engagement with and implementation of truth commission recommendations, relates to the special role played by truth commissions in identifying necessary reform measures and other mechanisms of societal redress in transitional settings. Truth commissions are tasked with helping to understand the underlying causes of serious human rights abuse. As such, they generally are in close contact with many victims, understand the global picture of official abuses, have a good sense of the types of harms suffered, and can design reform or reparations programs that will fit within a range of other reform and recognition policies.\textsuperscript{111} Ideally, they will, moreover, engage in broad processes of public consultation with victim groups and other civil society actors on the appropriate scope and content of relevant policies, thereby enhancing the legitimacy and responsiveness of proposed transitional measures.\textsuperscript{112} They may also take express account of the comparative experiences and recommendations of other truth commissions that have confronted similar challenges.\textsuperscript{113} As compared to other political actors in

\textsuperscript{109} See Hayner, \textit{supra} note 3, at 14-15. See also Freeman, \textit{supra} note 10, at 18 (definition of truth commission).

\textsuperscript{110} If those actors do not independently take up such measures, or otherwise are leveraged to do so, little in the way of impact can be expected.

\textsuperscript{111} See Pablo de Greif, \textit{Introduction, in The Handbook of Reparations, supra} note 5, at 1, 10-11 (emphasizing importance of both "internal" and "external coherence" in the design of effective reparation programs)

\textsuperscript{112} See, e.g., Cristián Correa, Julie Guillerot & Lisa Magarrell, \textit{Reparations and Victim Participation: A Look at the Truth Commission Experience, in Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making} 385 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., 2009); Hayner, \textit{supra} note 3, at 192 (describing experience in Guatemala, in which commission held a public conference on its recommendations, with over 400 Guatemalans participating, including legislators and key civil society leaders from across the political spectrum, and together they drafted long lists of proposed policy recommendations).

\textsuperscript{113} In crafting its recommendations, the TRCK, for example, studied not only the recommendations of prior truth commissions in Korea, but also those of foreign truth commissions in an effort to ensure its own recommendations were "more objective and
transitional settings, truth commissions are thus uniquely well-situated to identify—or take the first stab at identifying—the particular programs, policies, relationships, and institutions that require reform or transformation in a given society. It accordingly makes sense to focus on their recommendations as a starting point for ensuring that changes and dynamics are fostered that can ensure against repetition of past abuses.

Finally, and perhaps most importantly, a shift toward the three implementation indicators highlighted above is compelled by the very ends of transitional justice, and how those ends can most effectively be assessed on an empirical basis. Though often referred to undifferentiatingly under the expansive cover of “reconciliation,” those goals, I would argue, include three distinct, but overlapping normative, behavioral, and institutional components: (1) the reconstruction of social norms opposed to mass violence, (2) the reestablishment of civic or social trust necessary for effective democracy, and (3) the actual entrenchment of legal, policy, and structural reforms to safeguard against future abuse, including by addressing root causes. All three of these core goals—norm reconstruction, civic reengagement, and institutional-structural reform—are necessary for achieving the ultimate end of transitional justice: the prevention of future violence and abuse. Truth commissions correspondingly generally attempt to engage each of them in crafting their recommendations.

Effective assessment of a truth commission’s transitional justice impact should then focus on how truth commissions contribute to these three goals. My central claim is that the engagement and implementation indicators proposed here (with all their measurement and methodological complexities) do a better job of assessing that contribution than do other indicators more typically used to assess impact or success in the transitional justice field. To illustrate why, some of the connections are sketched below.

114. See, e.g., RECONCILIATION(S), supra note 13, at 5, 12, 290 (highlighting elusiveness of definition of “reconciliation”).

115. It is to be emphasized that no set of indicators can perfectly capture the impacts of complex social phenomena and their causal determinants. My claim is simply that these indicators reflect key features of truth commission-linked societal transformations that have been ignored or under-addressed in other impact-focused research approaches, and that a research agenda focused on them can contribute importantly to the field.
A. Reconstruction of Social Norms

Although admittedly of profound difficulty to observe empirically and hence to measure, a primary goal of transitional justice is the successful reconstruction of social norms opposed to mass violence.\(^{116}\) It is indeed the orchestrated and systematic breakdown of such norms that allows otherwise ordinary people within society to rationalize and hence engage in or tolerate extraordinary violence and inhumanity toward members.\(^{117}\) Truth commissions contribute to the reconstruction of norms of dignity and social protection in a number of ways. Most directly, through their very creation and operation, truth commissions signify a normative break with the past. They represent official acknowledgment that gross human rights abuses were perpetrated or acquiesced in by public authorities and other social actors, and that those gross abuses must be systematically acknowledged, condemned, diagnosed, and prevented from recurring. Likewise, by focusing sustained attention on the dignity, voice and redress of victim populations, truth commissions reinforce the normative authority of human rights, the importance of social accountability, the need for institutional safeguards for individual dignity and minority protection, and the requirement of official reparation to make victims whole for harms suffered as a result of public misconduct.\(^{118}\) Their expressive contribution to the process of social transformation is thus a key part of their appeal.\(^{119}\)

How precisely they make this contribution is, however, less well understood. While sociological institutionalism and constructivist norm theory tend to attribute social change dynamics to the institutionalization of world models and global scripts (such as those represented by truth commissions)

\(^{116}\) See, e.g., Ramji-Nogales, supra note 26, at 3 (2010).

\(^{117}\) See generally Eric L. Muller, Of Nazis, Americans, and Educating Against Catastrophe, 60 Buff. L. Rev. 323 (2012) (underscore role that professional ambition unchecked by the restraining force of internalized moral norms can play in leading “ordinary men” to tolerate and collaborate in systems of repression, brutality and murder).

\(^{118}\) It may be for this reason that so many states adopt them as a form of reestablishing “national legitimacy.” See, e.g., Framework Act, supra note 40, art. 1 (creating the Truth and Reconciliation Commission, Republic of Korea).

that influence and become internalized in local communities, they are notoriously bad at addressing the "how" of these process and agency questions. National polls and perception surveys similarly fail to address this question, while they are additionally susceptible to methodological manipulation, variable findings, and interpretive failures in capturing place-based cultural meanings and expressive signals. Within this context, a complementary and more empirically observable metric for assessing whether and how truth commissions in fact contribute to norm internalization and reconstruction may be said to lie in indicator 1. Indeed, by tracking the extent to which domestic civil society groups organize themselves to engage with a truth commission's recommendations, indicator 1 is able to capture not only the depth and breadth of social awareness around truth commission processes and outcomes, but also, in large measure, the degree to which the norms they represent have been internalized by domestic social actors.

This understanding follows from the basic behavioral premise that social actors will not generally expend the time, resources, and energy to engage in collective action around truth commission recommendations and their implementation if they do not perceive the underlying norms as just, appropriate and legitimate.

120. See JW Meyer et al., World Society and the Nation-State, 103 Am. J. of Soc. 144, 145 (1997) (observing that "[w]orldwide models define and legitimate agendas for local action, shaping the structures and policies of nation-states and other national and local actors" and helping to explain the adoption of standardized processes and norms across otherwise dramatically diverse contexts); John G. Ruggie, What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge, 52 Int'l Org. 855 (1998) (positing that interests and identities of individual actors are socially constructed in important part through the proliferation of global norms or shared cultural understandings).

121. See text accompanying supra notes 63-64. In this sense, it captures a third criteria identified as necessary for truth commission effectiveness: its ability to engage all of society in serious soul-searching around its own ills that make abuses possible, and to elicit thereby a sense of public ownership in the process. As has been noted, this "process is extremely difficult to do without the active participation of a fairly robust civil society." Kritz, supra note 12, at 18 ("Otherwise, a country has merely a nice history lesson, destined for the bookshelf.").


Of course, this premise can be challenged. In particular, social actors may invoke externally-favored norms for instrumental ends alone, especially when tied to funding
As a matter of theory, such an approach likewise serves to avoid some of the dangers associated with social constructivist thought and other acculturation-based models of social change. As noted, such scholarship tends to focus on the proliferation of global norms or shared cultural scripts—such as those expressed by truth commissions—looking at how identities and interests of individual or group actors are socially constructed by them. Serious shortcomings can nonetheless result when ideational factors become the exclusive or near exclusive focus of policy analysis or regime design, failing to take more explicit account of the actual mechanics of and actors involved in effectuating social change. In particular, by overemphasizing normative orthodoxy and institutional isomorphism (e.g., a set truth commission script or checklist of final policy recommendations), seeing success in their formal uptake, attention can be diverted from what is actually happening (or not happening) on the ground. These actions may include strategically calculated and formalistic uptake practices, extensively described in the literature on “decoupling” and “creative compliance.” Attention may likewise be diverted from “strategies of resistance” used by elites wishing to avoid real change. In either case, suboptimal localized im-

resources. It is accordingly important to take the range of civil society groups, as well as their distinct identities and funding sources, into account when surveying the actors organized around the implementation or follow-up process (indicator 1). Given the limitations of both victim perception studies and mobilization dynamics as perfect proxies for norm internalization, the two methodologies should be used together where possible. In all events, indicator 1 remains a key measure of civic reengagement, a complementary goal of transitional justice that is decidedly easier to operationalize, observe empirically, and hence to assess methodologically. See Part III(B) infra.


plementation or superficial institutional reform efforts may result, even where external observers claim "success."\(^{126}\)

At the same time, by embracing an understanding of systemic transformation that flows primarily from "higher" normative scripts to "lower" individual actors, the important ways that transitional justice norms are constituted and reconstituted from below can be overlooked.\(^{127}\) By contrast, an approach that focuses on how society organizes itself, both locally and nationally, to leverage societal transformation through truth commission processes may be able to tell us far more about how norms, behaviors, and identities are in fact constituted and reconstituted in transitional settings.\(^{128}\) The proposed indicators, especially indicator 1 and its relationship to indicators 2 and 3, are essential to this end.

B. Reestablishing Civic Trust

A second major goal of transitional justice is the reestablishment of the civic trust necessary for effective democracy. It can likewise be empirically assessed by reference to indicators 1 and 2. By focusing on organized domestic civil society's engagement with a truth commission's recommendations and the state's follow-up structures for implementation, both indicators reflect renewed forms of social and civic engagement, signaling key attitudinal and behavioral changes on the part of government and domestic civil society alike. Both are necessary for deepening democracy and rebuilding deep social trust.\(^{129}\) Indeed, mass violence has the effect of undoing the civic and social trust necessary for effective democracy, both verti-

\(^{126}\) See Melish & Meidinger, supra note 124, at 311-312.

\(^{127}\) Id. at 313.

\(^{128}\) The upshot of this approach may be that truth commissions cannot be effective without a fairly robust civil society, a proposition that I am inclined to support. See Kritz, supra note 12, at 18.

\(^{129}\) In this sense, this Special Issue takes a different approach to civil society engagement with the state than other recent scholarship on the Truth and Reconciliation Commission, Republic of Korea (TRCK). In particular, the only other major work published in English on the commission takes a particularly critical approach to the TRCK as an epistemological project, questioning the ultimate meaning, purpose and possible subordination of the TRCK's goals to the power of the state. It wonders, therefore, whether a state-sponsored truth commission can ever achieve the goals of truth and reconciliation. See Special 2010 issue of Critical Asian Studies, which will be published later this year as a book titled Truth and Reconciliation in the Republic of Korea: Between the Present and Future of the Korean Wars. This Special Issue takes a different approach, while maintaining a critical focus. It understands direct and sustained civic engagement with state and social institutions as a sine qua non of transitional justice, and a key indicator of a truth commission's success.
cally (between state and citizen) and horizontally (between communities). It turns victim communities inward, a process that can keep them marginalized, isolated, and hence prone to both continued abuse and even extremism.130

A major ambition of transitional justice is thus to bring all groups back into the fold, deepening participatory democracy and ensuring that all groups feel safe expressing their views, interests, and opinions in public fora, at both local and national levels. It may be recognized in this latter regard that a majority of transitional justice initiatives may remain local and community-based at the early stages of transition, especially in contexts characterized by the absence of an effective state, continuing violence, or deep social divisions. Such a reality should not, however, counsel against efforts to ensure that national-level orchestrating processes are in place to facilitate cross-project learning, linking, and scaling up, as appropriate. These soft engagements can create new spaces for building trust across sectors and communities, facilitating exchanges and interchanges between groups that might not otherwise interact.

It merits special emphasis that the goal of reestablishing civic trust is separate from reconciliation in the sense of forgiveness. It reflects a willingness of former adversaries to engage each other directly in sustained democratic discourse without threat or fear of retaliatory violence or other abuse of power.131 It is in essence a requirement for rights-based democratic governance. Many societies in fact reject any concept of reconciliation that goes beyond this basic civic goal, disavowing that forgiveness is possible in transitional settings, or even a worthy goal of transitional justice.132


131. In Chile, for example, the director of the truth commission’s follow-up body defines reconciliation as “respecting the rules of the democratic game. There is a civilized dialogue between the government and opposition, and no sector wants to take over anti-democratically.” Hayner, supra note 3, at 186. See also Ron Dudai & Hillel Cohen, Dealing with the Past when the Conflict Is Still Present: Civil Society Truth-Seeking Initiatives in the Israeli-Palestinian Conflict, in Localizing TJ, supra note 9, at 228, 235-42 (mapping local initiatives among small groups of Palestinians and Israelis aimed at recognizing, understanding, and taking responsibility for past abuses on both sides of the conflict, and emphasizing the indispensability of such initiatives for moving beyond opposing “meta narratives” of exclusive victimhood and collective denial of the other side’s suffering, which function to inhibit any political compromise from being reached).

132. See Hayner, supra note 3, at 187-188 (highlighting example of Argentina, where strong resistance exists to the very idea that reconciliation in the sense of forgiveness is either possible or even a worthy goal).
Indicators 1 and 2 reflect these goals with respect to truth commission processes. They seek to map and measure how effectively truth commission processes and outputs are used by domestic social actors to deepen democratic engagement around the implementation of identified reforms. Such processes must come both "from above" and "from below." Indicator 1 measures the former, reflecting the degree to which distinct domestic civil society actors feel safe and empowered enough to engage directly with government and other stakeholders in the implementation process. Indicator 2, by contrast, measures the government's commitment to renewing civic engagement through the truth commission process, and setting the foundation for maintaining it thereafter. It understands that governments should establish some kind of institutional framework for facilitating implementation and orchestrating the contributions and engagements of all stakeholders within society, supporting and encouraging their active participation, innovative ideas, and creative entrepreneurship. Such frameworks should not seek to centralize processes, but rather to understand, support, link, and not undermine them. When structured in this way, their very existence can have important "symbolic" and "participatory" elements that can significantly aid reform efforts.\textsuperscript{133}

C. Institutional Reform

Finally, indicator 3 aims to track a third major goal of transitional justice: institutional and structural reform. It is indeed difficult to conclude that a transitional justice project is successful if the basic legal architecture and institutional structures, policies, and relationships that existed during mass violence remain unchanged. Correspondingly, truth commissions invariably spotlight attention in their reports and recommendations on the laws, institutions, policies, and practices that allowed unrestrained violence and systemic human rights abuses to take place, calling for their reform. Indicator 3 would measure the extent of implementation of these critical recommendations, both qualitatively and quantitatively. In many cases, especially where official recommendations were framed vaguely or proposed without programmatic detail, the metric might extend further to consider broadly supported civil society proposals that directly draw from or extend the main objectives or ambitions of official recommendations.

Such measurement and tracking is essential. Indeed, where a truth commission's recommendations are not implemented or related institutional reforms put in place, a society not only remains vulnerable to a slippage

\textsuperscript{133} See generally Laplante, supra note 73 (emphasizing importance of "symbolic" and "participatory quotients" in economic reparations plans).
into past conduct or a resurgence of norms tolerating mass violence, but will likely also feel profoundly let down by, and even resentful of, the transitional justice project, as the South African and other examples attest. In this regard, indicator 3, as an outcome measure, is likewise necessary to avoid results that over-privilege process or formal structure. A careful balance between process, structure, and outcome metrics is indeed critical in impact assessments. Consider, for instance, a domestic civil society that is well organized and broadly engaged in pushing for implementation of a truth commission’s recommendations. Consider, too, that the government has created a formal follow-up body to oversee the implementation process. Is the truth commission a success? Such a claim is difficult to make, I would argue, if progress is not likewise being made in the actual implementation of reform proposals and commission recommendations.

The goals of norm reconstruction, civic trust, and actual implementation of the institutional and social reforms recommended by truth commissions are, in this sense, integrally and indelibly related in transitional justice work. As Ereshnee Naidu underscores in her contribution on South Africa, it is not only true that one can expect little in the way of civic reengagement or policy reform if society remains unaware of or unconvinced by a truth commission’s work. Rather, it is equally true that a failure to implement truth commission recommendations will undermine a truth commission’s legitimacy, the social norms it represents, and the civic trust it hopes to rebuild.134 Close attention to this latter indicator is thus imperative for composing a meaningful assessment of a truth commission’s impact.

In sum, the goals of norm reconstruction, civic trust, and institutional-structural reform go hand-in-hand (in-hand) in the quest for prevention. In assessing truth commission impact, each must therefore be closely tracked. The indicators proposed here aim to do that, and to do so in an empirically measurable way. Indeed, the ultimate purposes of transitional justice mechanisms are not to expose a given number of truths or put x number of perpetrators in jail. Rather, they are to change social and institutional dynamics, deepening democracy and entrenching human rights protections, so as to prevent the repetition of grave violence and human suffering.

While the research agenda proposed here is not a panacea to the problems identified in other assessment approaches, it provides a critical and complementary perspective that can significantly thicken our understanding of the conditions under which truth commission impact can be maximized.

IV.  Looking Forward

As noted, the frequency by which truth commissions are being deployed by global actors is increasing. At least twenty new truth commissions were created in the first decade of the twenty-first century, the same number created over the entire prior quarter century.\footnote{135} By 2010, a wide range of diverse countries, including Canada, Ecuador, Kenya, Mauritius, the Solomon Islands, South Korea, and Togo, all had actively operating truth commissions. Liberia, meanwhile, had just concluded its truth commission, while Brazil and Nepal were drafting terms of reference for theirs, and a half dozen more countries were in serious discussion or planning toward the creation of a truth commission.\footnote{136} With active hostilities still raging, hundreds of delegates prepared to gather in early 2013 to make transitional justice plans for a post-Assad Syria, including discussions for the possible creation of a truth commission.\footnote{137}

Given this growing regularization in the global use of truth commissions, it is particularly urgent to ensure that the deployment of such bodies is in fact contributing to the primary goals of transitional justice. This Essay has considered prevention of repetition to be the overarching goal, a complex objective that requires concrete attention to how social actors incorporate human rights norms into their everyday practices and behaviors, reengage with one another in civic life and social problem-solving, and institutionalize key policy and structural reforms. Current impact assessment approaches, nevertheless, do not tend to take these critical components, and particularly their intersections, into direct methodological account in their research programs.

The indicators and research agenda proposed here help to fill this gap. Introducing new assessment variables, they do so by turning policy attention squarely toward the social dynamics, institutions, and processes through which social stakeholders contribute to truth commission follow-on initiatives and recommendation implementation efforts. Although measurement of the proposed indicators will require the multi-method use of qualitative case studies, small-N comparative research, large-N quantitative

\footnote{135} See Hayner, supra note 3, at 6. Five of these were inaugurated in 2009 alone, the largest number to date in any one year. Id.

\footnote{136} See id.

statistical analysis, and victim perception studies, the indicators advert in a direction different from current approaches most commonly used in the field. In particular, they seek to shine a light on the who and how of localized transformative change in transitional societies: Who are the domestic social actors that are mobilizing as change agents, and what are the levers in society that they are seeking to pull, successfully or unsuccessfully? By spotlighting attention on such actors and processes, a great deal may be accomplished. Three programmatic advantages may be highlighted in particular.

First, there is growing recognition among transitional justice scholars and practitioners of the dangers associated with top-down approaches and off-the-shelf "justice" initiatives for which victims are passive recipients, feeling no local ownership or sense of relevance to their day-to-day lives. Although such approaches are conceptually inconsistent with basic development thinking and the participatory norms of human rights law—and may engender stinging indictments of neocolonial intervention and massive resource waste—they nonetheless persist in the operational programs of many international agencies and funders "doing" transitional justice. These funders and agencies often lack deep knowledge of what is happening locally, or, where local projects become known, may seek to adapt indigenous initiatives into financeable projects that more closely resemble the standardized forms with which they are most familiar and comfortable.

The research agenda proposed here can assist in reversing this dynamic by refocusing a lens more directly and systematically on the agency, values, and priorities of local actors: What, specifically, are distinct and methodologically disaggregated groups of domestic actors (with and without international project funding) doing locally, how are they doing it, and toward what ends? Indeed, a tracking of localized civil society initiatives can enable critical information to be gathered about what matters to local communities, how they envision solutions and the contributions of other stakeholders, and what obstacles and opportunities they face on the ground in promoting—and defining for themselves—the objectives of transitional

138. In contrast to the “victim perception approach” discussed in Part II.B supra, the “participatory engagement” approach would tend to use victim perception studies not primarily as a measure of norm reconstruction/internalization, but rather as one of several methods to measure the quality of implementation efforts (indicator 3).

139. See, e.g., supra note 9.

justice.\textsuperscript{141} It can thus facilitate deep social and institutional learning about how best to support, and not undermine, such actors and processes. Without proper attention to these dynamics, important engagement initiatives may be rendered invisible to the mainstream transitional justice lens. A blessing perhaps in some circumstances,\textsuperscript{142} in others it may mean that small, isolated, but innovative and locally-owned initiatives falter for lack of opportunities to link with and learn from other key initiatives in broader society. The research focus thus offers the potential for enhanced linkage, learning, and scaling up, where appropriate.\textsuperscript{143} It may thereby serve to improve local responsiveness, relevance, and on-the-ground impact.

Second, the analytical shift toward a participation-based focus on implementation has the potential to better shape stakeholder incentives in support of needed reforms. By closely tracking the proposed indicators and publicizing the results, a spotlight can be shone on comparative best and worst practices in promoting deep participatory engagement in transitional justice decisionmaking and implementation. Policies can thus be crafted and supported, particularly through the introduction of hard and soft incentive systems, to help strengthen the hand of community-based actors seeking to use truth commission processes to implement meaningful on-the-ground changes. Such systems might include truth commission score cards or rating systems, in which ranks were allotted based on how well governments scored on each of the proposed indicators. Such exposure would shift political incentives toward participatory reform in important ways, especially if international aid or assistance were tied in some way to progress on each of the three metrics, particularly indicator 3.\textsuperscript{144} Perhaps more importantly, domestic rating or ranking systems could be developed for individual

\textsuperscript{141} Despite prominent rhetorical attention to the importance of adhering to local priorities and definitional understandings, international transitional justice scholars and practitioners have demonstrated remarkable resistance to the idea of expanding the field beyond traditional categories of activities, such as rule of law, criminal prosecutions, truth, and demobilization and reintegration of combatants. This is particularly true where economic and social rights or issues of structural violence are proposed.

\textsuperscript{142} See Arriaza & Roht-Arriaza, supra note 34, at 164 (pondering whether spontaneous, culturally-specific and local-level initiatives “lose their value if ‘programmed’ or even encouraged by governments or international actors”).

\textsuperscript{143} See id. at 166 (concluding that “[w]ithout the building blocks carefully understood and differentiated, larger-scale attempts at social reconstruction will surely crumble”).

\textsuperscript{144} See Kritz, supra note 12, at 18 (advocating tying donor aid to improved implementation of truth commission recommendations); Hayner, supra note 3, at 191, 193 (noting key role of international community in pressing Salvadoran authorities to implement truth commission recommendations, and advocating linking international assistance with implementation of domestic truth commission recommendations).
agencies or politicians with direct implementation responsibilities, allowing local actors to better leverage publicity and public action to alter the incentive systems they face in following through on recommended reforms. Continual feed-back loops would nonetheless need to be ensured in such systems, permitting local input into and ownership of indicator assessments, scores, and ranks.¹⁴⁵

Third, a participation-based implementation agenda can yield important reference points for questions of institutional design and sequencing strategy. An understanding of the proposed impact indicators as key to truth commission success would, for example, foreground the importance of building participatory follow-on and orchestration bodies into the initial design of truth commission processes. Such a design shift would help to ensure that expectations about what a truth commission can itself deliver are kept in check, redirecting the primary focus of assessment initiatives to the effectiveness of implementation and the quality and distribution of follow-on activities across distinct segments of society. At the same time, findings from the assessment approach may convey important information about when a comprehensively mandated truth commission is in fact an appropriate response mechanism in times of transition. It has been suggested in this regard that a truth commission should be established only where a moderately robust civil society remains intact at the time of its creation.¹⁴⁶ Otherwise, a narrower truth commission, styled along the lines of a research initiative or other top-down initiative, might be the better option,¹⁴⁷ at least until civil society is more firmly positioned to take on the responsibilities of leveraging comprehensive follow-up. Where domestic civil society organizations remain active and engaged, nevertheless, participatory engagement with truth commission follow-on initiatives should be recognized as a key driver and objective of truth commission impact assessment.

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In closing this special symposium issue on the Truth and Reconciliation Commission, Republic of Korea (TRCK), a couple of conclusions for the TRCK process may be highlighted. As indicated in the opening essay,¹⁴⁸

¹⁴⁵. See generally Melish, Maximum Feasible Participation, supra note 35 (discussing misuses of competitive incentive systems in administrative regulation, particularly through the top-down selection of performance-based indicators and targets that fail to reflect local needs and improved dignitary outcomes).

¹⁴⁶. See Kritz, supra note 12, at 18.

¹⁴⁷. See id.

virtually all contributions to this special issue have highlighted the importance of civil society engagement and the creation of a permanent follow-up body to ensure that truth commission recommendations are indeed implemented in practice. It is important to always keep present in this respect that implementation is not a responsibility of government only. It is fundamentally a responsibility of all social stakeholders, responsibly supported by the international community and other human rights actors across the globe. Measurement and assessment of the indicators proposed here can assist this process, helping to ensure the availability of accountability structures for failures to act or for failures to ensure broad civil society participation in implementation efforts.

We hope this special issue contributes to the process of encouraging broad sets of stakeholders in South Korea to engage the TRCK’s final recommendations, the government’s follow-up body, and creative follow-on initiatives throughout society. Only through such broad participation-based implementation efforts, we contend, can enduring progress be made in ensuring that atrocities like those that befell the nation over the last century never have an opportunity structure in which they can reoccur. The participation-based implementation agenda proposed here supports this end.

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149. Although the focus of transitional justice efforts should always remain on domestic agency and process, it may be normatively useful in this latter regard to progressively strengthen linkages between truth commission follow-up processes and the increasingly prominent subsidiarity-based concept of the “responsibility to protect” in international law, particularly its under-theorized and under-implemented responsibilities to “prevent” and to “rebuild.” See Gareth Evans, From Humanitarian Intervention to the Responsibility to Protect, 24 WIS. INT’L L.J. 703 (2006) (noting former includes duty to address “both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk,” while the latter requires providing “full assistance with recovery, reconstruction, and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert”).