



CIPS WORKING PAPER

THE EFFECTS OF TRANSITIONAL JUSTICE MECHANISMS

A SUMMARY OF EMPIRICAL RESEARCH FINDINGS AND IMPLICATIONS FOR ANALYSTS AND PRACTITIONERS

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DIVISION OF TASKS

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EXECUTIVE SUMMARY

The last two decades have witnessed a remarkable proliferation of “transitional justice” (TJ) processes in post-conflict and post-authoritarian societies. TJ mechanisms include trials and other judicial proceedings against individuals alleged to have committed gross violations of human rights; truth commissions designed to establish a factual historical record of past wrongdoing; reparations to victims of past abuses; and vetting of individuals to determine if their past activities or affiliations render them ineligible for public office, law enforcement or other key roles.

There is also a mounting debate over the desirability and effectiveness of TJ as a means of consolidating peace, promoting human rights and democracy, and healing the effects of past wrongs. TJ proponents, on the one hand, argue that some form of transitional justice is beneficial for a transitioning society’s emergence from war or authoritarianism. TJ sceptics, by contrast, argue that the pursuit of TJ can itself undermine prospects for peace or negotiated transitions from authoritarianism. These debates are now particularly contentious with regard to Afghanistan, Northern Uganda, and East Timor.

At the core of these debates lies a series of claims and counter-claims about the causal effects of transitional justice mechanisms. Does TJ strengthen or threaten peace in transitional societies? Does it lead to greater or less respect for human rights and the rule of law? Does it foster reconciliation or exacerbate divisions? We believe that it is essential for local and international policymakers to engage these questions with systematically collected and analyzed evidence.

WHAT DO WE KNOW ABOUT THE EFFECTS OF TRANSITIONAL JUSTICE?

This report’s main purpose is to take stock of what is actually known about the effects of TJ mechanisms. Put differently, what is the field’s state of empirical knowledge? To answer this question, we surveyed the major studies produced to date, as well as several works that have yet to be published. Our principal conclusions are that:

1. **There is little evidence that TJ produces either beneficial or harmful effects.** Few rigorous cross-national analyses of TJ have been completed to date, and the best of these studies acknowledge the difficulty of reaching *any* strong conclusions about the effects of TJ across cases, due in part to the limitations of existing data.
 - In particular, there is insufficient evidence to support proponents’ claims that TJ contributes to reconciliation or psychological healing, fosters respect for human rights and the rule of law, or helps to establish conditions for a peaceful and democratically governed country. Nor is there strong evidence to support sceptics’ claims that TJ undermines progress towards these goals.
 - Given the intensity of the debate over TJ and its obvious policy significance, this conclusion may come as a surprise. It is in fact striking that so many commentators have expressed such strong positions on the basis of so little reliable evidence.

- 2. Moving from “faith-based” to “fact-based” discussions of transitional justice will require more sustained, careful, and comparative analyses of the TJ record.** Until recently, the field was driven by principles rather than data, concerning itself chiefly with asserting the need for TJ and listing the purported strengths and weaknesses of different TJ mechanisms, rather than with gathering and analyzing detailed impact evidence.
- At present, the TJ literature does not provide policymakers with the empirical foundations necessary for making informed decisions about when, where and how to promote transitional justice in countries emerging from war or authoritarianism.
 - With some important exceptions, much of the empirical TJ research to date has been analytically weak, relying largely on impressionistic descriptions of a small number of well-known cases, rather than systematically comparing impacts across a broad range of cases, including societies in which TJ has *not* been pursued.
 - Although most studies find that TJ has either moderately beneficial or no effects at all, these claims should be interpreted with great caution. Systematic research is nascent, and many of its early findings are questionable and contradictory.
- 3. Further TJ research is likely to produce more reliable findings.** A new generation of recent (and yet-to-be published) studies on TJ impacts is laying a foundation for an emerging and more rigorous research program in the coming years.
- TJ processes are complex and its researchers face many challenges (see below); still, a sustained and careful research effort should generate a better understanding of TJ effects in different circumstances. Without careful causal analysis, neither analysts nor policymakers will have much basis for making claims about the effectiveness of TJ in general, or in specific circumstances.
 - Foolproof TJ formulas will never be developed; nevertheless, the goal of reducing the uncertainties surrounding TJ policymaking is both realistic and achievable.

IMPLICATIONS FOR ANALYSTS AND RESEARCHERS

Given the growing reliance on TJ mechanisms and the serious knowledge gaps identified in this report, there is a critical need for more and better data collection, and well as more careful and systematic analysis. Building a reliable TJ knowledge base will require, in the first instance, **clearer definitions of the key variables (causes, effects and controls) to be studied, and large-scale efforts to collect new data.**

No single research method is uniquely suited to analyzing these issues. On the contrary, we argue for **more interdisciplinary and “mixed methods” research.** *Comparative work* across dozens of countries will help to identify the countries and contexts most amenable to specific TJ tools. Careful *process tracing* within strategically chosen individual cases will help identify the multiple causal dynamics through which TJ helps or hinders peace, democracy, stability, and human rights. *Surveys and focus groups* will give us a better sense of how pro- and anti-TJ constituencies emerge in countries of interest. When combined, these and other strategies will boost our

knowledge of when and where specific TJ tools should be used, creating a more rigorous empirical base for policymaking.

Research should also proceed at **both the societal (macro) and individual (micro) levels**. In some cases, findings at both levels may be complementary. Reduced political unrest for a country overall, for example, may also be associated with greater individual trust in the new regime's ability to protect human rights. In other cases, however, findings may be at odds. For instance, amnesties may prevent spoiler backlashes, but they may also trigger distrust and anger among individual citizens and communities. Investigating convergent and divergent effects at all levels will give greater precision to findings on TJ effects.

Researchers interested in examining regional variations within or across countries might also use **quasi-experimental research designs**, focusing on comparing cases where TJ was, and was not, used. If these "treatment" and "control" groups are otherwise sufficiently similar, we may be able to draw stronger conclusions about TJ's unique impact.

To encourage the cumulative growth of knowledge on TJ impacts, we recommend **establishing an international review panel of social scientists and TJ experts to evaluate and write a regular report on the state of knowledge relating to transitional justice**. This publication should survey and disseminate key findings in the field, highlight important knowledge gaps and deficiencies, propose standardized measures for assessing TJ impact over time, and serve as a collective "peer review" mechanism. The members of this panel should include acknowledged TJ experts, but should also involve disinterested academics and practitioners from other fields. In general, TJ evaluation, like in other policy domains, can guard against "group think" by drawing on a diverse community of practitioners, independent scholars and advocates.

IMPLICATIONS FOR POLICY PRACTITIONERS

Given these knowledge gaps, we lack empirical foundations for detailed policy advice on the types of TJ most likely to produce desired outcomes. Moreover, full consideration of TJ options involves moral evaluations beyond the scope of this report. We thus do not put forward a detailed TJ policy framework. The advice we do provide is cautionary, emphasizing the need for policy practitioners to **focus on evidence-based evaluations of TJ options**, and to be wary of claims that specific TJ mechanisms are "particularly effective," or "particularly well suited" to a given society. Although such claims are common, there is still little evidence to support them.

This is not to say that transitional justice should not be pursued for its own sake. Indeed, we share the TJ community's conviction that universal human rights should be respected and upheld everywhere, and at all times. The effects of TJ policies are still unclear and hard to predict, however, and we therefore counsel caution. Policies based more on faith than facts could do considerable damage, even when the intention is to do good.

These considerations lead to the following recommendations for TJ practitioners:

1. **Conduct rigorous planning before pursuing TJ processes.** Such planning should be based on extensive consultation with the affected population, its government, and outside experts. These should feed into a careful analysis of TJ options that includes efforts to

anticipate potential pitfalls (point 2 below), and to closely study other comparable cases (point 3 below).

2. **Beware the possible pitfalls.** Several studies identify potential pitfalls in TJ. Since researchers still do not know when or where such pitfalls are likely to occur, prudent policymakers should be aware of potential dangers, including that:
 - Indictments may prevent rebel leaders from ending the war through a peace deal, and authoritarian leaders may remain in power if they fear prosecution;
 - Leaders placed on trial may use the proceedings to promote nationalist sentiments at home, undermining reconciliation efforts;
 - Trials may produce backlashes from “spoilers” whose acquiescence to the transitional process is required to maintain peace;
 - Individual accountability may give implicated populations an opportunity to deny their own responsibility for crimes committed in their name;
 - Truth commissions may serve as a public relations “smoke screen” for regimes that continue abuses, or be used as a substitute for meaningful reform;
 - Attempts at establishing an accurate record of past abuses may generate resentment among some victims and perpetrators, rekindle animosities, foster new grievances, or re-traumatize victims;
 - High-profile prosecutions may create nationalist “martyrs,” boosting sentiments of collective victimization;
 - Quasi-judicial truth processes may ostracize individuals without due process;
 - Transitional efforts may become enmeshed in local power struggles and be misused to target political opponents; and
 - Purges may have a destabilizing effect, creating a large group of ostracized, alienated or unemployed people.
3. **Focus on comparable cases.** Identify countries or cases that share similar characteristics and in which similar methods have been practiced. No two countries are identical, but careful thinking and better data will encourage appropriate cross-case comparisons.
4. **When in doubt, consider TJ pilot projects and phased approaches.** A gradualist approach could reduce the dangers of unanticipated negative outcomes while also helping observers to evaluate and refine TJ strategies.
5. **Listen to the people.** The views of affected populations should play a major role in TJ choices. Although there is little rigorous research on public TJ attitudes in transitional countries, useful population surveys can be designed and supplemented by interviews and focus groups.

6. **Do no harm.** The record of peacebuilding over the past two decades counsels humility and caution. Outsiders have only limited capacity to understand or change societies, including those in transition, and even well-meaning policy interventions can produce perverse effects. When pursuing TJ, policymakers should embrace the medical dictum of “do no harm.” This dictum is not a license for inaction or a justification for ignoring universal human rights; rather, it serves as a warning against damaging interventions as well as a commitment to take positive action when possible.
7. **Evaluate TJ progress and outcomes, but avoid over-reliance on standard “program evaluation” tools.** TJ efforts should be continuously monitored to evaluate their effects according to a clear set of criteria. Since most traditional methods of program evaluation fail to incorporate controlled comparisons or other forms of comparative analysis, policymakers should also consult social scientific research.

Finally, policymakers in national governments and international organizations also have an interest in **promoting a serious, long-term, cumulative research agenda on the effects of TJ.** Building the knowledge base on TJ impacts is crucial to devising more and better evidence-based policies. In Appendix 3, we set out specific options for the Government of Canada to strengthen TJ evaluation and policy.