Transitional Justice "Effect"[1]

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Abstract
The literature is replete with grand claims about the ability of transitional justice and its attendant mechanisms to produce any number of effects, including democracy and human rights, and other, broader educative and pedagogic results. Yet little has been done in the way of testing or substantiating these claims, and their validity should be questioned. This paper considers four cases, Canada, Haiti, Solomon Islands, and Uganda, to see whether cross-regional patterns and practices exist, and whether a transitional justice "effect" can be observed.

Introduction
   The transitional justice literature often makes claims about the ability of transitional justice, through mechanisms including trials, truth commissions, and apologies, for example, to bring about democracy and human rights. According to the "origin" story told by prominent transitional justice scholars, the field traces its roots to the transitions to democracy that took place throughout Latin America in the 1970s and 1980s. Arthur contends that such democratic transitions constitute the "dominant normative lens" of the field (2009, 325). From the beginning, transitional justice has had two parallel aims: "first, the goal of providing some measure of justice to those who suffered under repressive state regimes and, second, the goal of facilitating an exit from authoritarianism and shoring up a fragile democracy" (Arthur 2009, 355). All of this was thought to "weaken efforts to prevent the recurrence of human rights abuses and reinforce the rule of law" (Zalaquett 1989, 31). De Brito argues that the "demand for justice was simultaneously ideological and political" (1997, 2). And so, from the beginning, at least according to these authors, ideas of justice were inextricably linked to the consolidation of democratic transitions.
   Ideas of cross-fertilization and contagion were purposefully pursued. That is, scholars and practitioners at conferences and in workshops throughout the 1980s and 1990s (Arthur 2009, 343; Kritz 1995, xix) deliberately sought to "borrow" from other contexts in which particular policies and strategies had been pursued. Building on "a gradual but palpable recognition that many of the details and dilemmas were not so different," they were specifically concerned with "the extent to which the Central and Eastern Europeans and former Soviets who were just emerging from communist rule could learn any useful lessons from the Latin American transitions of the previous decade" (Kritz 1995, xix).
   These two strands—first, the utility of transitional justice for human rights and democratic consolidation, and, second, that scholars and practitioners can and should take the lessons learned in one context and apply them in another—have continued to serve as the dominant narrative of the field. The argument is frequently made that transitional justice, through its various mechanisms, can "practice the democratic principles of the society that [it] is attempting to create" (Rotberg 2000, 9; see also Elster 2006). Much of the literature simply takes these assumptions at face value, without any examination of whether and how they are

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actually true. Yet, in my own empirical experience through fieldwork and research in four different geographic regions, the basis for such claims seems less than convincing.

This paper, then, is intended as a consideration of these claims. What follows is an examination of how and which transitional justice processes appear to have an impact on four effects: democracy, human rights, stability, and peace. The paper further considers the degree to which cross-regional patterns of practice and effects are evident. Utilizing a comparative approach, these effects are considered in Canada, Haiti, Solomon Islands, and Uganda.

Methodology and Case Selection

This paper draws on fieldwork and research that I have carried out since 1998, in countries including Canada, Haiti, Solomon Islands, and Uganda. Each of these countries has pursued similar kinds of transitional justice mechanisms, including formal truth commissions and attempts at litigation. Each is also located in a different geographic region, in an effort to pursue a cross-regional analysis. Although these cases have been chosen somewhat deliberately, leaving a possibility of selection bias, having preliminary knowledge of the cases makes for a stronger research design (George and Bennett 2005, 23).

I have utilized Przeworski and Teune's Most Different Systems Design (MDSD), which allows for intersystemic differences between cases to be disregarded, to allow the research to focus on their one commonality: the outcome of the transitional justice processes (Przeworski and Teune 1970, 31-46). "MDSD allows the researcher to distill out the common elements from a diverse set of cases that have greater explanatory power" (Landman 2002, 904).

I undertake to analyze each of the four cases qualitatively, as to their experiences and the impacts of the transitional justice processes that have taken place there. I am interested in the degree to which identifiable cross-regional patterns and practices can be observed among the cases. And I seek to understand two questions, in particular, that are drawn from the growing literature that seeks to establish both patterns about what is happening and claims about what "works" and what does not (I rely on Olsen et al. 2010; and Sikkink 2011, 147, among others): first, how and which TJ processes impact on democracy, human rights, or stability or peace; and second, the degree to which cross-regional patterns of practice and effects can be observed. In this paper, I attempt to qualitatively disaggregate correlation from causation, while teasing out a nuanced understanding of any coincident effects.

Cases: History of Conflict and Transitional Justice Experience

In many ways, the four cases that have been selected, Canada, Haiti, Solomon Islands, and Uganda, could not be more different. Each is located in a different geographic region. Each is recovering from a different kind of conflict. And each is at a different stage of development and modernization. But the MDSD model allows for those differences to be discounted, and for similarities to become the focus instead. This section lays out the cases themselves, discusses the background and history of the systemic violations of human rights in question, and briefly considers the transitional mechanisms that have been employed.

Canada

The Indian Residential Schools (IRS) operated from the 19th century until the last school closed in 1996. Nearly 150,000 children of Indigenous, Inuit and Métis origin were separated from their families and communities and forced to attend the schools (CBC News). There, they suffered significant physical, sexual, and emotional abuse (Indian Residential School Survivors' Society). In early 1998, in reporting on the Royal Commission on Aboriginal Peoples, then-Minister of Indian Affairs and Northern Development Jane Stewart offered "a solemn offer of reconciliation," which acknowledged the role of the Government of Canada

in the Indian Residential Schools ("Notes" 1998). Although there had been significant nego-tiation between Indigenous groups and the churches that had, in many cases, run the schools, the Government of Canada did very little until it finally signed the *Indian Residential Schools Settlement Agreement* in 2006 ("A Condensed Timeline" 2008, 64-65). The settlement agreement was the Government's response to the largest class-action lawsuit in Canadian his-tory, decided amongst former students and the Assembly of First Nations, along with other Indigenous organizations, the churches, and the Government of Canada (Aboriginal and Northern Affairs Canada). Among other things, the Settlement Agreement included the es-tablishment of a truth and reconciliation commission (TRC). And in 2008, then-Prime Minis-ter Stephen Harper made a "Statement of Apology," which stated: "Therefore, on behalf of the Government of Canada and all Canadians, I stand before you, in this Chamber so central to our life as a country, to apologize to Indigenous peoples for Canada's role in the Indian Residential Schools system" ("Prime Minister" 2008).

　　　The Truth and Reconciliation Commission of Canada was finally appointed on June 1, 2008, with a five-year mandate.[3] The TRC Secretariat worked until December 18, 2015 to carry out these activities, through a series of national and community events, and through the gathering of statements, as well as through a rigorous research and documentation effort.

　　　It is worth noting here that Canada is not normally included among countries in "tran-sition." In so-called "settler" societies, evidence physical and social devastation, including the gross violation of human rights and blatant abuse, along with the lasting impact of that abuse, remains invisible to many. Canada is, therefore, often excluded from discussions of transitional justice.[4]

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[3] Justice Harry LaForme was appointed the first commission chair, but resigned in October 2008. Claudette Dumont-Smith and Jane Brewin Morley were likewise appointed as commissioners, and stepped down June 1, 2009. The second chair appointed was Justice Murray Sinclair, and the new commissioners to be appointed were Marie Wilson and Chief Wilton Littlechild.

[4] It is interesting to note that Canada is included in Olsen, Payne and Reiter's "Transitional Justice Data Base"—although the beginning and end of "transition" are identified as 1970 and 2007, which correspond to no significant dates in any "transition" process that I can discern (Olsen et al. 2010, Appendix 1).

Haiti

Since the country's independence in 1804, governance of the country has been fractious. After more than a century of controversial governments, François "Papa Doc" Duvalier was elected president in September 1956. His pro-Haitian transformations quickly turned to repression and tyranny, and an estimated 30,000 to 60,000 people were killed during his time in office. His personal army, called the *tonton macoutes*, helped to carry out a reign of terror. In 1971, when Duvalier died, Jean-Claude, his 19-year-old son, took over as president. "Baby Doc's," too, was a repressive regime until he was overthrown in 1986. A series of six provisional presidents ruled for the next four years, most of them overthrown in a series of coups d'état, and one of whom served for only three days (Lentz 2013, 357-359).

After being democratically elected in 1990, Fr. Jean-Bertrand Aristide was deposed by a military coup against him. From 1991 until late in 1994, General Raoul Cédras and his supporters, who had staged the coup that forced Aristide into exile, waged violence against Aristide's supporters. Of the total population of just more than 7 million, more than 5,000 people were killed, and thousands more were beaten, tortured, and raped by Haitian military and police officials. It is estimated that at least 50,000 individuals endeavored to escape by boat to the United States; at least 300,000 went into hiding within the country itself; in some areas of the country, key supporters were targeted, while in other areas, whole populations were murdered. On 3 July 1993, the United States brokered the Governor's Island Accord, signed by Aristide and Cédras. The Accord specified a truce and peaceful transition, as well as procedures for the resumption of Parliament, and the confirmation of a Prime Minister. In exchange for their cooperation with provisions of the Accord, UN sanctions were dropped Cédras and his senior leadership were given many thousands of dollars by the Americans. Aristide was returned to power in Port-au-Prince, Haiti's capital, on 15 October 1994 with the support of 20,000 U.S. troops. The constitution required Aristide to step aside after having served one term in office, and he did so in early 1996 (Quinn 2010, Chapter 3).

As Olsen, Payne and Reiter demonstrate, Haiti has utilized trials, a truth commission, amnesties and reparations in an attempt to come to terms with its violent and repressive past (Olsen et al. 2010, Appendix 4). The Haitian courts have subsequently tried some of those who were involved in the violations committed between 1991 and 1994. In 2005, the Supreme Court overturned the convictions of thirty-eight paramilitary and army leaders who had been found guilty in 2000 for murder and torture in the 1994 Raboteau massacre. Most of those convicted were in exile at the time and so were tried in absentia. A truth commission, the Commission Nationale de Vérité et de Justice, was established five months after Aristide's return to office, in May 1995. The Commission carried out 8,650 interviews with people who reported a total of 19,308 violations. Forty Haitian and foreign human rights investigators collected testimony throughout the country in summer 1995 (The Republic of Haiti, 1995, Annèxe III, 1-456). Amnesties were declared in 1972, 1991 and 1993, and reparations were given in 1998 (Olsen et al. 2010, Appendix 4).

Solomon Islands

The conflict relevant to transitional justice analysis is colloquially known as "the Tension". Although the series of events that led to the hostilities is somewhat complicated (see Fraenkel 2004; Braithwaite et al. 2010, 1-36, and especially 20-21), essentially it began in 1998 with the aim of "driving settlers from Malaita off the island of Guadalcanal," and continued with the "defen[se of] Malaitans interests against the Guale rebels" (Braithwaite et al. 2010, 21). The hostilities culminated in an armed coup. "The two militias splintered into a variety of armed criminal groups who indulged in banditry, intimidation and payback against a backdrop of growing impunity facilitated by the effective collapse of the police force"

(Braithwaite et al. 2010, 21). The 2004 Small Arms Survey estimated that approximately 180 people were killed in the violence, and summed up the conflict as follows:

> Police retreated or joined the rebels, villages were burnt, armed crime and rape be-
> came commonplace, and, in a nation of 480,000 people, 40,000–50,000 residents had
> been displaced from their homes. Of these, 23,000 were Malaitans fleeing Guadalca-
> nal. Forced dislocation of families left enduring scars on the islands' traditional, vil-
> lage-based society. The number of single-headed households increased dramatically,
> and ruptured social structures heralded long-term disempowerment for youth. An es-
> timated 100 child soldiers fought in the conflict, and many other children were forced
> to abandon their schooling (Batchelor and Krause 2004, 293).

The conflict itself has been identified as one of "low intensity" (Peters 2011, 81) "a slow-burning political and security crisis" (Wainwright 2003, 3). Even after a series of peace agreements[5] and disarmament and both national and international ceasefire monitoring, the conflict "dragged on" until the middle of 2003 (Jeffery 2013, 195).

Solomon Islands pursued a number of "justice" tracks (Jeffery 2013, 195): First, neo-customary practices were used, a sort of hybrid of traditional *kastom* practices, although they have been criticized as having been corrupted by the payment of what was seen as meaning-less blood money paid for, in part, by loans from the Government of the Republic of China on Taiwan (Waena interview 2014). Second, the government enacted two different Amnesty Acts. One (2000) granted amnesty to rebel forces, the Solomon Islands Police Force and the Solomon Islands Prison Service (Solomon Islands 2000 (No.8 of 2000), s.3), while another (2001) granted amnesty to select rebels (Solomon Islands 2001 (No.3 of 2001), s.3.1, 3.2).

Third, rule of law programs ran concurrently, including a series of arrests and crimi-nal trials. These included the high-profile "Tension Trials" carried out in the domestic courts, which were subject to accusations of selectivity, among other criticisms (Jeffery 2013, 207-210). Fourth, a truth and reconciliation commission operated concurrently. Established in 2009, it was initially given a term of one year, which was eventually extended to two years. The final report was submitted to the Prime Minister in February 2012, but was not officially tabled in Parliament and was not officially available for more than two and a half years, although it was leaked to the public in an effort to force the government's hand. The report was eventually, quietly, tabled in Parliament by Prime Minister D'Arcy Lilo on the last day of its session in September 2014. Fifth, a number of restorative justice programs were being held in the prisons, by groups including women's groups, Prison Fellowship Interna-tional and the Sycamore Tree Program; the government was not officially involved in any of these efforts ("PF Solomon Islands"; Braithwaite et al. 2010, 82-83).

Uganda

After Uganda declared independence in 1962, its leaders pursued policies explicitly designed to divide the population. From 1962 until 1986, Uganda experienced a series of coups, under presidents Milton Obote (twice) and Idi Amin, as well as a series of provisional governments, culminating in a great concentration of power in the hands of the head of state.   Amin over-threw Obote in 1971, suspended the constitution and ruled under a provisional government

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[5] These included the Honiara Peace Accord, signed 28 June 1999; the Panatina Accord, signed 12 Aug. 1999; the Moray Communique, signed 15 July 1999; an MOU signed between the Solomon Islands Government and Guadalcanal Provincial Government, signed 13 June 1999; the Buala Peace Communique, signed 5 May 2000; the Auki Communique, signed 12 May 2000; the Commonwealth Ministerial Action Group meeting, 11 June 2000; Ceasefire Agreement, signed 2 Aug. 2000; the National Peace Conference held aboard the HMNZ *Te Kaha*, 25-27 Aug. 2000; and the Townsville Peace Agreement, signed 15 Oct. 2000 (Jeffery 2014, 202).

structure until 1979. During this period, violence was rampant, and the military and paramilitary mechanisms of the state conducted brutal campaigns of torture (Berg-Schlosser and Siegler 1990, 2999; Khiddu-Makubuya 1989, 141-157). Interim governments were appointed in 1979 and 1980. Then, as the result of rigged elections in 1980, Obote returned to power, whereupon his forces carried out "rampant human rights abuses" ("Uganda," 1998, 852). Estimates of the numbers of people killed under Obote and Amin are between 600,000 to 1,000,000 (Briggs 1998, 2; Museveni 1997, 413; *Uganda* 1998, 53; Ofcansky 1996, 55). From July 1985, a military council governed for six months, until it, too, was overthrown. The current President, Yoweri Museveni, seized power in January, 1986. His presidency has been challenged by a number of rebellions that have arisen since 1986,[6] including the war in Northern Uganda between the Lord's Resistance Army and the Government of Uganda.

Uganda has employed a number of mechanisms to deal with the many acts of violence that have been perpetrated since 1962. There have been two truth commissions: the Commission of Inquiry into the Disappearances of People in Uganda since 25 January, 1971, appointed by Amin in 1974, which came to ruin, its report never released; and the Commission of Inquiry into Violation of Human Rights (1986-1994). In 2000, an amnesty was extended to rebel fighters from any of the rebellions that took place after 1986. Olsen, Payne and Reiter also list amnesties declared in 1983, 1987-1988, 1996-1997, 1999 and 2006 (2010, Appendix 4). Trials were also held, according to Olsen, Payne and Reiter, in 1990 and 1993 (2010, Appendix 4), and the case of *Kwoyelo v. Uganda* began in the newly-created International Criminal Division of the High Court in 2014. The International Criminal Court also unsealed arrest warrants against the top five leaders of the LRA in 2004, and the case of Dominic Ongwen had begun at the ICC at the time of writing.

Cross-Regional Patterns and Practices

"The most different systems designs eliminate factors differentiating social systems by formulating statements that are valid regardless of the systems within which observations are made" (Przeworski and Teune 1970, 39). This allows for a focus on the many similarities that emerge. While those similarities can in many ways be divided into two categories, cause and effect, the "effect" is the most important for the purposes of this essay. Nevertheless, it bears noting that in all four of these cases, a number of factors have played the role in helping to shape the "effect" that is under consideration here. These include a long history of colonialism; the creation of transitional justice out of a process of negotiated political settlement; and the premature use of transitional justice measures before the end of the conflict.

The measures of "effect" are taken from a number of different sources, each of which has claimed that a particular aspect of transitional justice is the key to its eventual success or failure. Each of the following is evaluated, further, below. These include the proclamation of amnesties; the presence of more than one transitional justice mechanism; evidence of persistent economic inequality; questions of selectivity; and addressing underlying causes. Each of these is explored below.

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[6] These include rebellions by the Action Restore Peace, Allied Democratic Forces, Apac rebellion, Citizen Army for Multiparty Politics, Force Obote Back, Former Uganda National Army, Holy Spirit Movement, the Lord's Army, Lord's Resistance Army, National Federal Army, National Union for the Liberation of Uganda, Ninth October Movement, People's Redemption Army, Uganda Christian Democratic Army, Uganda Federal Democratic Front, Uganda Freedom Movement, Ugandan National Democratic Army, Uganda National Federal Army, Ugandan National Liberation Front, Ugandan National Rescue Fronts I and II, Ugandan People's Army, Ugandan People's Democratic Army, Uganda Salvation Army, and the West Nile Bank Front (Hovil and Lomo 2004, 4; Hovil and Lomo 2005, 6).

Amnesties

A number of authors have identified the presence of amnesty as a necessary condition for successful transitions (Putnam 2002). An amnesty effectively prohibits retributive action against those who have committed criminal acts. Amnesty, as a result, facilitates the transition from one regime to the next, and paves the way for other elements of societal transformation. Claims are made about the importance of amnesty for consolidating democracy (Huntington 1993, 215). Olsen, Payne and Reiter even claim that amnesty makes for the most successful kinds of transitions (Olsen et al. 2010, 154-155).

Either amnesty or *de facto* amnesties have played a role in all of the cases explored here. In the Canadian case, the amnesty is a *de facto* amnesty that has come about because of the government's decision not to allow the naming of names by the Truth and Reconciliation Commission "unless that information and/or the identity of the person so identified has already been established through legal proceedings, by admission, or by public disclosure by that individual. Other information that could be used to identify individuals shall be anonymized to the extent possible" (Aboriginal Affairs and Northern Development Canada, Schedule N, s.2(f)). In Haiti, the overturning of the convictions of paramilitary and army leaders who had been found guilty in 2000, by the Supreme Court, amounted to a *de facto* amnesty as well, since the cases were overturned on procedural bases. In the Solomon Islands, the amnesties were individual amnesties, granted on a case-by-case basis. And in the Ugandan case, the amnesty "was conceived as a tool for ending conflict... a significant step towards ending the conflict in the north and working towards a process of national reconciliation" by bringing home the children who had been abducted by the LRA (Hovil and Lomo 2005, 6).

There is little evidence, however, to indicate that amnesty in any of these four cases has had any impact on stability or peace. In none of these conflicts did the human rights abuses abate, nor did the structural or systemic inequalities change noticeably. Even the impact on democracy has been negligible, as it can be seen that democratic measures improved only slightly in three of the four cases under consideration—and on that measure, neither has performed very well. Solomon Islands' score on the Freedom House's Freedom Index stood at 3.5 out of a possible score of 7 in 2014, down from a score of 4.0 in 2001, during the conflict (Freedom House "Solomon Islands"). The scores for Haiti and Uganda moved in a remarkably similar pattern. Canada's score, of course, remains unchanged (Freedom House "Haiti"; Freedom House "Uganda"; Freedom House "Canada"). There is neither any evidence of cross-regional patterns of practice or effect among these four cases on the measure of amnesty.

Neither is there evidence of cross-border pedagogic effects or international norm diffusion, at least based on the measure of amnesty. If anything, all four of these cases were the recipients of lessons learned elsewhere.

The Presence of More than One Mechanism

The literature acknowledges the necessity of what Sikkink calls "multiple and changing transitional justice mechanisms" (2011, 147). These mechanisms may be sequenced or randomly occurring (Quinn 2009, 35-53), or utilized only for political expediency. While Hamber and others caution against the difficulties associated with achieving a holistic approach (2002) many, including Olsen, Payne and Reiter, and the International Center for Transitional Justice, "confirm the holistic approach, which advocates combinations of methods" (Olsen et al. 2010, 153; ICTJ).

Indeed, all the cases discussed here have utilized more than one mechanism. Yet these mechanisms have not been deployed in the same manner, and not either in the same order. For example, Haiti extended amnesties, concurrently held trials, and then convoked its truth

commission, followed by reparations. Uganda, on the other hand, held its first truth commission, then extended amnesties, convoked its second truth commission, convened trials, and extended another amnesty. In Canada, an apology preceded the Settlement Agreement, followed by another apology, after which the truth commission began. And in Solomon Islands, amnesties were extended prior to trials and simultaneous restorative justice processes, followed by the truth commission. There is certainly no discernible pattern of deployment in these cases, and, as Olsen, Payne and Reiter note, "we cannot know which... negatively affects democracy and human rights" (Olsen et al. 2010, 146).

The domestic effects of a combination of transitional justice mechanisms, however, are not any clearer in the aggregate than in the use of amnesty alone, as laid out above. Neither is any cross-border pedagogic effect observable in any of the cases—these countries have in some ways charted their own course, as their neighbours have pursued transitional justice differently, if at all. There does not seem to be any kind of international norm diffusion either.

Persistence of Economic Inequality

In their analysis of the South African Truth and Reconciliation Commission, Hugo van der Merwe and Audrey Chapman consider whether the TRC was able to "contribute to overcoming the legacy of socioeconomic injustice that was created by apartheid... Apartheid was mainly about structural inequality and distributive injustices (through the unequal distribution of resources), rather than a system that simply inflicted harm through police brutality" (van der Merwe and Chapman 2008, 272). Others, including Lambourne, Gready *et al*., Mani, and Sharp, have argued for "bring[ing] together economic justice along with legal, psychosocial, and political justice in an effort to transform both structures and relations" (Waldorf 2012, 179). And while there is no consensus on the meaningful applicability of these standards on transitional justice mechanisms, it is perhaps a useful measure to apply in the evaluation of any transitional justice "effect".

In Canada, there has been no improvement in the socioeconomic fortunes of Indigenous people. In fact, since the beginning of the TRC, increasing numbers of revelations about sub-standard housing and the necessary evacuations of whole reserve communities have surfaced (Loriggio 2013). One of the major concerns, in fact, about the terms of reference of the TRC, is that it has been too narrowly focused on the residential schools, and not more broadly on systemic and structural inequality (Stanton 2010). This is addressed further below.

In Uganda, with the cessation of hostilities in Northern Uganda, some people have begun to return home from the camps, but it has become increasingly apparent that the people of northern Uganda now living in camps may never be able to return to their homes ("UNDMT" cited in Dolan 2005, 167).

> In this case, enforced 'communities' that have sprung up within the IDP camps may be formalised, and the camps themselves will become permanent. If this happens, the forcible dislocation of people from their traditional homes and *gemeinschaft*[7] communities could further hamper the process of attaining freedom from war. Furthermore, the situation of permanent displacement is likely to have a direct impact on the economic sustainability of the region: as urban centres grow and the needs of a population unable to grow its own food or provide for other basic requirements multiply, the

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[7] Ferdinand Tonnies divided societies into two distinct groups: "*Gemeinschaft* society is one in which people live together in primary groups, tightly wound around the institutions of kin, community and church... In *gesellschaft* society, by contrast, people frequently leave their primary groups for association with people who may be strangers. One chooses one's occupation, place of residence, and marriage partner. Ties to primary kin, place of origin, and church are loose and may be cut off entirely" (Howard 1995, 25-26).

need for skilled workers is likely to increase. Meanwhile, the majority of those living in the camps at present possess none of the knowledge required, and thus it is likely, at least for this generation, that those living in IDP camps will be reliant on additional assistance from others (Hovil and Quinn 2005, 9).

In both Haiti and in Solomon Islands, it is more difficult to tease out the socioeconomic effects of transitional justice because of other concomitant factors. In both countries, significant natural disasters in the form of earthquakes, and also a flood in Solomon Islands, have thwarted efforts at socioeconomic development—whether from transitional justice or by other means. Indeed, according to the UNDP Human Development Index (HDI), the HDI score for Solomon Islands had not changed significantly from 2000, when it stood at 0.475 in 2013, when it stood at 0.491 (United Nations). Likewise, Haiti's score has not improved dramatically either; it has moved from 0.433 in 2000 to 0.471 in 2013 (United Nations).

The domestic effects of transitional justice are really unclear for this indicator as well. It is difficult to see whether and how any of the things that the literature claims, including democracy, human rights, and stability or peace, have actually occurred. Likewise, questions of cross-border pedagogic effects and international norm diffusion are not demonstrated in a clear way in any of these three cases. As van der Merwe and Chapman note, as with the TRC, these mechanisms were "not set up to directly address the economic injustices of the past. [They were] mandated to deal with a narrow set of offences" (2008, 272). And so this is perhaps part of the problem in identifying an "effect" here.

Selectivity

In seeking to hold the perpetrators of any abuse to account, the danger of selectivity emerges when "[o]nly a small portion of those who could be charged with violations bec[o]me the target" (Minow 1998, 31). Decisions about who to prosecute, or how the mandates of truth commissions are framed, for example, can have significant consequences. Not addressing all perpetrators can have a significant impact on the population's response to the mechanisms that are ultimately adopted. And this will obviously have a knock-on effect on the success of the transitional justice process.

In Uganda, for example, the exclusion of the leadership of the Government of Uganda from the referral of the situation to the International Criminal Court has led to allegations of bias.[8] Many believe that President Museveni and members of the Uganda People's Defence Force should also be held to account. In Canada, the prohibition against "naming names" in the truth commission has had a chilling effect, compounded by the government's decision not to accept any additional liability or responsibility for what has taken place, outside of its responsibilities under the Settlement Agreement. According to the Settlement Agreement: "It is understood that Canada will not have any obligations relating to the CEP, IAP, truth and reconciliation, commemoration, education and healing except for the obligations and liabilities as set out in [the] Agreement" (Aboriginal Affairs and Northern Development Canada, s.1.10). As a result, "some commentators have argued that there will be an imposed limitation on the "truth" being told: the story may be incomplete without certain key figures being made known (Walker 2009, 20). In Solomon Islands, the corruption of traditional *kastom*

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[8] President Museveni officially referred the situation to the ICC in December 2003. It has been commonly assumed that Museveni approached the Court first. Information has surfaced that the Chief Prosecutor actually approached Museveni to ask him to refer the situation (Waddell and Clark 2008, 43). There is a great deal of debate about what this discrepancy means.

practices also left many unable to move forward; payments were given selectively, but not to all who were involved and not evenly (Fraenkel 2004).

In both Haiti and Solomon Islands, the perpetrator who was never addressed was an outsider to the conflict. In Haiti, it was the United States. During the period from 1991 to 1994, the U.S. government seized materials from the Front for the Advancement and Progress of Haiti (FRAPH), the Haitian military government's principal paramilitary arm, and the Haitian military. They also classified as secret a series of documents implicating various U.S. agencies in various crimes during the same period. Despite numerous requests to the American government by the Commission and through diplomatic channels, the Haitian truth commission was never able to procure any of the more than 60,000 pages from the seizures and documents for which it asked (Human Rights Watch 1996, 2-3; Republic of Haiti, "Letter to Albert Gore" 1995, Annèxe I, 369). In Solomon Islands, the government of Australia responded only latterly, when the request for help finally coincided with the Australians' recognition of strategic interests in the "'arc of instability' around Australia" and an Australia-led international policing force, the Regional Assistance Mission to Solomon Islands (RAMSI), called "Operation *Helpem Fren* (in English, 'Help a Friend')" was dispatched to Solomon Islands (Braithwaite et al. 2010, 50).

Certainly, there have been effects, domestically, from the selective decision-making in all four cases. Distrust and scepticism have been an effect in all four cases. But it is unclear *which* mechanisms have contributed most. The *de facto* amnesties have played a role, as have the selective arrest warrants and the lop-sided Settlement Agreement in Canada.

No spill-over effects are readily apparent, except perhaps for similarities that exist between Canada's process and that of Australia, which had a similar policy. Even a national policy put in place to deal with Australia's legacy, which included the "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families," did not mark any kind of real transition, since then-Prime Minister John Howard steadfastly refused to officially apologize for the role that previous governments had played in the abuses. Canada and Australia appear to be tracking along the same lines, although Australia's transition seems further ahead than Canada's at the time of writing.

Underlying Causes Never Addressed
In their analysis of the South African TRC, Chapman and Ball criticize the fact that the TRC failed to address the underlying causes of apartheid. They argue that "the TRC interpreted its mandate narrowly, it did not focus on the vicious nature of apartheid as a system or explain why its political crimes were directed against specific segments of the South African population... [Posen] characterizes the TRC report as mainly descriptive and lacking an explanatory framework about why the terrible deeds of the past were committed" (Chapman and Ball 2008, 163-164). More generally, Muvingi likewise argues that "[w]hen the context within which human rights are to be protected is already riddled with structural inequality, no amount of rights protections can bring about a just society" (2009, 176).

The same criticism could well be made of all four cases here. None of the four have considered the root causes of the human rights abuses, leaving them, it could be argued, vulnerable to recurrence of violence. In Canada, for example, all transitional justice efforts have been centred on the Residential Schools and the abuses suffered there. As noted above, the systemic and structural inequalities that gave rise to the schools persist. In Haiti, the role of the United States, for example, in supporting the Duvaliers and in taking the side of Cédras over Aristide, has never been fully examined; the United States has been complicit in a number of activities in Haiti since before the 20th century (Quinn 2010, 55-56).

In Solomon Islands, the roots of conflict go back to the Second World War, when significant numbers of Malaitans arrived on Guadalcanal, a neighbouring island, to work on the

U.S. military base that had been established. "When patrilineal Malaitans married women from matrilineal societies, indigenes often resented this as marriage to obtain their land... This was a source of profound cultural misunderstanding" (Braithwaite et al. 2010, 19). All of this was further complicated by the presence of large plantation, mining and timber projects, which employed large numbers of migrant settlers (Fraenkel 2004, 49). Yet none of this has ever been dealt with openly. In Uganda, Museveni has never admitted to the inequality that exists between the north and the south of the country, nor to his part in that inequality.

The domestic effect of transitional justice in these four countries, on the basis of failing to address the underlying causes of conflict, has been to thwart the processes in each. Even if a mechanism or combination of mechanisms goes some distance in addressing the problem that exists, those who have been wronged will not be satisfied until real equality and equality of opportunity is reached. The lack of equality affects democracy, human rights and stability.

A kind of norm diffusion—that is, a pattern of denial—is evident here. That is, in all four cases, governments have framed the transitional conversation narrowly, which has allowed for a very minimal treatment of past events. Whether this represents international norm diffusion is unclear; it does, though, seem like a race to the bottom, with international precedent allowing for structural elements of violence and inequality to remain publicly invisible.

Outcomes

Having parsed a number of effects that transitional justice processes and mechanisms might be expected to have, it is worth exploring a couple of expected outcomes of those effects, if only to highlight the importance of the findings presented above. Two of these are explored here: further violence; and evidence of a transition borne out in changed policies and/or legislation.

Continuing Violence

Scholars have claimed that transitional justice will cause a certain set of domestic effects, among them the cessation of hostilities. Significant claims are made, for example, that countries will "end violence through 'justice and reconciliation programs'" (Verdeja 2014, 190). Or that "transitional justice provides a new tool in the effort to bring peace" (Reiter et al. 2013, 140). Sharp argues, in fact, for "(re)conceptualizing transitional justice as a form of peacebuilding" (2014).

But in all four cases explored here, conflict and systemic abuse simply did not end upon the convocation of the transitional justice mechanisms. Neither did it end upon the completion of the work of the mechanisms. In Canada, for example, things have actually become worse for Indigenous peoples, as laid out above, instead of better. In Haiti, the moment that Aristide stepped on the plane in compliance with his constitutional requirement to leave office, the violence continued—despite the fact that during Aristide's time in office, his "seven-month tenure was marked by fewer human-rights violations and fewer boat people than any comparable period in modern Haitian history" (New York Times article cited in Kurzban 2011). In Solomon Islands, neither of the amnesties, nor the Tension trials, nor the restorative justice programs that were being carried out, had any effect on the cessation of violence; and while hostilities were lower during the work of the truth commission, it seems that this was a result of the conflict being finished before the truth commission was ever appointed. In Uganda, transitional justice mechanisms have continued to be enacted while the conflict is

on-going; I have argued elsewhere that Uganda is, in fact, a "pre-transitional" society that shows little to no evidence of any transition whatsoever (Quinn 2013-2014, 63-79).

As Olsen, Payne and Reiter note, a couple of explanations seem plausible: First, they suggest that "failing to bring perpetrators to justice perpetuates, rather than ends, the culture of impunity;" and second, they note that "encouraging the truth about the past may catalyze spoilers to re-emerge and threaten human rights and democracy" (2010, 147). In the end, they note that the data is not yet clear. Certainly, these four cases do not bring any further clarity.

Evidence of Transition

The International Center for Transitional Justice states that "in... satisfying these obligations, states have duties to guarantee that the violations will not recur, and therefore, a special duty to reform institutions that were either involved in or incapable of preventing the abuses" (ICTJ). More than simply a break with the former regime, states must put policies into place that signal their commitment to "never again" (Quinn 2013-2014, 63-79).

Yet even here, none of the four cases considered comes close to meeting this benchmark. In Canada, the government's refusal to consider the importance of the needs of Indigenous people is evidence of this (Aboriginal Affairs and Northern Development Canada, s.1.10). In Haiti, increased violence and lawlessness, and the continued presence of the United Nations Stabilization Mission in Haiti (MINUSTAH), whose role is to ensure "a secure and stable environment... [and] to assist with the restoration and maintenance of the rule of law, public safety and public order in Haiti," among other things, is a reality (MINUSTAH). In Solomon Islands, although the Tension itself is over, its lasting effects are still being felt. Rates of gender- and sexual-based violence, traced to the significant levels of displacement at that time (Amnesty International 2011, 3), are significant; a 2009 survey conducted by the Secretariat of the Pacific revealed that 64% of women had experienced physical and/or sexual violence (*Solomon Islands Family Health and Safety Study*, 2009). And in Uganda, despite the use of several transitional justice mechanisms, the kinds of policies that would "cement" the transition that had been the target are missing. Even a "transitional justice strategy" that has been in the works for a couple of years has failed to come to fruition, and the policy remains in "draft" form.

The kinds of outcomes that might have been expected, therefore, are absent. Several reasons for this, including the "too soon" question, are explored below. But it is clear by this measure that the success of transitional justice in these four cases is negligible.

Discussion

Of course, this raises a number of interesting and complicated questions that must be considered. What follows is a brief discussion of four of these.

Geographic Region

"Scholars tend to view geographic region as an important explanation for particular patterns of adoption of transitional justice mechanisms" (Olsen et al. 2010, 105). Kim and Sikkink and others suggest "the presence of a cross-border deterrence effect" (Thoms et al. 2008, 38). Kim, specifically, argues that "a state is more likely to initiate and repeatedly use human rights prosecutions if similar prosecutions had already been used by its neighbors" (Kim 2012, 314). This is bound up in assertions that are made about international norm diffusion and cross-border pedagogy.

The difficulty is, as laid out above, that there do not seem to be any spill-over effects in the four cases above. While each of these countries has neighbours that have pursued transitional justice, unlike, say, Uruguay and Paraguay, the processes of the neighbours of the cases considered here look nothing like the processes in any of these cases. Canada's best comparator is likely Australia, and Australia is not geographically proximate to Canada. And Uganda's closest neighbour, Rwanda, went in a completely different direction, appointing significantly different mechanisms—an international tribunal and the neo-traditional *gacaca* courts.

There are, of course, explanations that are offered: Kim further specifies that "a state's decision to use human rights prosecutions is not affected by the practice of neighbors simply defined as geographically adjacent countries. It is rather prosecution precedents in neighboring countries who share common cultural identities such as religion and language that matter" (Kim 2012, 315). Others suggest that "this may be due in part to the sequence in which mechanisms are typically implemented in transitional societies" (Olsen et al. 2010, 106).

I would caution that there simply are not enough data to warrant these kinds of claims. In fact, with such a small number of cases, trying to ascertain causation is problematic. Besides, the sharp qualitative differences that are glaringly apparent at a lower level of abstraction *do* need to be taken into consideration to understand what is actually going on. An abstracted view can not give us what we need. At best, we might suggest that there are coincident effects. But arguing more than that brings an inherent risk of being proven wrong, case by case.

Contagion

It is very difficult to suggest, as Sikkink lays out, that the "justice cascade" has become the norm; rather, "the norm of individual criminal accountability for state officials for human rights violations is not anywhere near becoming internalized or taken for granted" (Sikkink 2011, 12). The two exceptions presented here, of course, are negative: cross-regional patterns *do* emerge in questions of selectivity, and in failing to address underlying causes. That is, some of the cases under consideration here do show similar outcomes.

But the contagion may not be coming, as is suggested immediately above, from neighbours within the region. Instead, norms of transitional justice are being spread by transitional justice "experts" who travel between regions to tell of their failures and successes—if they are happening at all. For example, the Ugandan truth commission (1986) consulted with Dr. José Zalaquett, who had been a member of the Chilean National Truth and Reconciliation Commission, and was formerly Chairman of Amnesty International (Quinn 2010, 70, 73).

Indeed, the International Center for Transitional Justice consulted with the truth commissions in both Canada and Solomon Islands. And Haiti's truth commission was run jointly with the United Nations and the Organization of American States, which had been involved in transitional justice processes elsewhere in the region.

Conversely, the lack of compliance with these so-called emerging norms may be due to the perceived actions of those who have never done anything at all. For example, the continuing freedom of Omar al-Bashir looks suspiciously like the life of freedom that Jean-Claude "Baby Doc" Duvalier experienced as he lived out most of the rest of his life on the French Riviera. And Canada's Prime Minister Harper's steadfast position on the question of what is owed to Aboriginals in that country looked a fair amount like Australia's same policies.

It is likely, therefore, that some of the spill-over effects that are touted by the scholarly literature are instead due to what Sikkink calls "top-down norm diffusion" (Sikkink 2011, 252). Importantly, however, "top-down" practices have a history of failing to be grounded in the needs and wants of the people. And so they may merely be thin artefacts of policies supported by the few—making any claims about an "effect" also quite minimal.

Too Soon
It is entirely possible that the claims made above are premature. Olsen, Payne and Reiter allow that "the effect often does not appear until a decade after the transition" (2010, 146). It stands to reason that it takes time for the effect of the mechanisms to "kick in".

Yet the four countries in the cases presented here have been working on their transitional justice efforts for several decades. In Uganda, for example, the first truth commission was convoked in 1972 and the first amnesty in 1983. In Haiti, the truth commission was convoked in 1995, although amnesties there date to 1971. In Canada, the first apology came in 1998. And even in Solomon Islands, the first amnesty was declared in 2000. In all these cases, therefore, it has been more than a decade. In some cases, the first mechanism was deployed more than 40 years ago. That lag seems too long to support the claim that is made.

The more important "too soon" variable, I think, as outlined above, has to do with factors including the timing of the creation of the mechanisms against the question of the cessation of conflict; the legitimacy of the regime that convokes the mechanism; and the sincerity of the policy that creates the mechanism (Quinn 2014-2015). The large-N studies have so far failed to consider these kinds of variables, but these may prove to be the most important variables of all.

The Place of Transitional Justice in the Broader Picture
As I have argued elsewhere, it is difficult to tell where the boundaries of transitional justice begin and end, and how the growing discipline of transitional justice is situated with respect to other post-conflict activities (Hinan and Quinn 2013). Transitional justice is part of the broader field of post-conflict reconstruction. And "post-conflict work involves merging different perspectives of conflict prevention, humanitarian assistance, human rights monitoring, and traditional development cultures, each with its own 'turf,' time frame and policy prescriptions. [Different facets of the work] involve different, often shorter-term and more measurable goals" than transitional justice (Roht-Arriaza 2003-2004, 191).

As such, though, it is extremely difficult to separate any effects resulting from activities in a contingent sector, for example security sector reform or capacity-building in the justice sector, from those that might be achieved by transitional justice. For example, who can say, if a community suddenly begins to take its cases to the police, that their police involvement is the result of trust built by a truth commission, or whether that trust has been built by a parallel rule of law program. I think it is somewhat sycophantic for the transitional justice

field to believe that transitional justice is or can be responsible for all the changes that take place in society. To some extent, the "effect" that is predicted is insincere, since we cannot know that transitional justice is doing anything of the kind.

Conclusions

Transitional justice scholarship has made a series of claims about the likely effects that are produced through the use of particular mechanisms, whether alone or in combination. These claims reflect assumptions on effects including amnesty; the utility of combining mechanisms; vanishing economic inequality; selectivity; and the addressing of underlying causes. These have been considered here, through the lens of four cases: Canada, Haiti, Solomon Islands, and Uganda. Yet the outcomes in each of these cases simply do not bear out the claims that are made about the emergent effects, particularly with regard to the continuation of violence and evidence of transitions having taken place.

Instead, I argue that the effects are not what they appear to be. Cross-regional patterns and practice, for example, appear to have no effect. And questions of international norm diffusion and a decade-later effect are not what they appear to be. Instead, questions including the timing of policies and mechanisms, as well as the place of transitional justice within broader questions of post-conflict reconstruction need to be considered.

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