

At What Cost? The Political Economy of Transitional Justice

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Abstract

Transitional justice mechanisms, specifically trials, truth commissions, and amnesties to deal with past state-sponsored violence, have proliferated throughout the world since the mid-1970s. While a well-developed scholarly literature corresponds to these global practices, the political economy of transitional justice remains understudied by scholars and practitioners. Drawing on the Transitional Justice Data Base, this essay tests the existing assumptions concerning the political economy of transitional justice in the literature. Specifically, are democratic leaders less likely to adopt costly transitional justice mechanisms rather than cheaper ones in countries that face economic constraints? Or, will transitional justice choices depend not on domestic economic issues, but rather on international pressure to comply with an accountability norm? Our findings highlight the sets of political economy trade-offs that new democracies face in balancing the pressures of the domestic economy and international norms. We conclude that a political economy of transitional justice exists and that a country's economic health shapes its transitional justice choices.

Key words: Transitional justice, political economy, democratization, truth commissions, trials, reparations, lustration, amnesty.

“Justice is not cheap,” claimed the lead prosecutor for the International Criminal Tribunal for the former Yugoslavia (ICTY), Carla del Ponte.¹

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¹ Integrated Regional Information Networks, “Justice for a Lawless World? Rights and Reconciliation in a New Era of International Law,” June 27, 2006, <http://www.irinnews.org/IndepthMain.aspx?IndepthId=7&ReportId=59464> (accessed June 1, 2010).

Experiences with transitional justice around the world appear to support her claim. The Extraordinary Chambers in the Courts of Cambodia originally budgeted U.S. \$56 million² for the Khmer Rouge tribunal. When that money ran out in June 2008, UN officials requested that the international community contribute an additional \$114 million to try the five detained defendants.³ In 2004, the Peruvian Truth and Reconciliation Commission calculated its recommended reparations payments for 200,000 survivors at between \$45 million and \$60 million annually.⁴ Similarly, the South African Truth and Reconciliation Commission's final report recommended setting aside \$385 million for apartheid-era victims.⁵ Justice, indeed, is rarely, if ever, cheap.

The transitional justice literature seems to assume that states will ignore the high price of justice in an effort to comply with international expectations that new democracies will bring forth justice for past abuses. New democracies, in other words, cannot resist the increasingly strong international norm against *de jure* and *de facto* amnesties for past atrocities. International human rights law and dense networks of epistemic communities condemn such amnesties. New governments around the world have adopted specific justice mechanisms to deal with past state violence—despite their high cost—to signal their shift to a fully democratic form of governance and to receive the international political and economic benefits of doing so.

This essay probes the claim in the literature regarding the insignificance of costs to democratic countries implementing transitional justice. Have new democracies ignored the cost of transitional justice? Or, is it available only to certain countries that can afford it? Do international norms trump domestic political economy constraints? Does a trade-off exist between the current economic health of transitional countries and pressure to comply with the international accountability norm? To answer these questions, we first critically analyze the relationship between a state's economic health and the adoption of transitional justice mechanisms. We then empirically test a set of hypotheses regarding the nature of this relationship. While controlling for alternative explanations, we use panel data to estimate the effects of domestic economic factors on adopting transitional justice mechanisms for all transitional countries over three decades (1970-2004). The essay concludes with a discussion of the

² All dollar amounts in this essay are in U.S. dollars.

³ "Hun Sen: We Cannot Work without Support," *Mekong Times Daily*, June 11, 2006, http://www.krtrial.info/showarticle.php?language=english&action=showarticle&art_id=2649&needback=1 (accessed June 1, 2010).

⁴ "South America/Peru," Justice in Perspective, December 7, 2007, http://www.justiceinperspective.org.za/index.php?option=com_content&task=view&id=82&Itemid=132 (accessed June 1, 2010). The victims who received reparations are those who suffered during the war between the government and insurgent groups in the 1980s and into the 1990s.

⁵ "Cost of Trials," Global Justice Program, March 7, 2001, www.gjp.ubc.ca/_media/srch/030701costsoftrials.pdf (accessed July 16, 2009).

implications of these findings for transitional justice policies and practices.

Accountability Norm Costs

Much of the literature on transitional justice focuses on political, rather than economic, costs. Those advocating justice for past atrocities overlook the potential trade-off between the legal and moral imperatives to hold perpetrators accountable, and a country's economic situation.⁶ Indeed, cases of trade-off do exist. Haiti, for example, held human rights trials in 1986, 1995, and 2000, despite its status as one of the poorest countries in the world. International norms and pressure, it might be argued, rather than domestic political economy constraints, may drive mechanism adoption.

Other evidence suggests that the international accountability norm creates economic incentives for poorer countries, such as Haiti, to adopt expensive transitional justice mechanisms. Jelena Subotic, for example, suggests that new democracies may strive to appear to comply with the accountability norm to secure much-needed development aid.⁷ Transitional justice thus signals to the international community that the state has put its barbaric past behind it and joined the community of modern nations, and thus deserves the corresponding economic benefits of that new status.⁸ Jon Elster further suggests that failing to address past atrocities may prove costlier for new democracies than implementing transitional justice.⁹ The benefits of adopting transitional justice and the costs of failing to do so lead to the following hypothesis:

Hypothesis 1. A state's domestic economy will not affect its choices concerning transitional justice.

The political economy of the international accountability norm suggests that new democracies receive economic benefits for adopting transitional justice and may face economic costs for failing to do so. No trade-off, in other words, necessarily exists between the international justice norm and domestic economic demands. Not all researchers, however, agree with this set of assumptions.

⁶ Ellen Lutz and Kathryn Sikkink, "The Justice Cascade: The Evolution and Impact of Human Rights Trials in Latin America," *Chicago Journal of International Law* 2, no. 1 (2001): 1-34; Diane Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *Yale Law Journal* 100, no. 8 (1991): 2537-2615; and Naomi Roht-Arriaza, "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law," *California Law Review* 78, no. 2 (1990): 451-513.

⁷ Jelena Subotic, *Hijacked Justice: Dealing with the Past in the Balkans* (Ithaca, NY: Cornell University Press, 2009).

⁸ *Ibid.*

⁹ Jon Elster, *Retribution and Reparation in the Transition to Democracy* (Cambridge, England: Cambridge University Press, 2006).

Justice Trade-off

Elster, one of the few researchers examining the political economy of transitional justice, contends that a trade-off does exist. He suggests that, historically, transitional countries have made transitional justice a lower priority relative to immediate and pressing economic concerns. Western Europe, for example, placed economic reconstruction above reparations to victims after World War II. Similarly, Eastern European countries placed the shift from a command to a market economy after the collapse of the Soviet Union above justice for the authoritarian past.¹⁰ Rather than lament these trade-offs, Elster concludes that transitional justice is a luxury most new democracies cannot, and should not have to, afford. The long-term legitimacy and strength of the democratic system in fragile economies, he contends, demands that country leaders address more pressing needs.

Peter Boettke and Christopher Coyne also recognize a trade-off between economic and justice demands. As they state, "It is important to realize that investing resources in the administration of justice means that those resources are diverted away from other transition activities that can also yield a future stream of benefits. In other words, there is an opportunity cost to investing resources in the administration of justice."¹¹ They further argue that when new democracies with limited resources pursue transitional justice, they send a weak signal that the regime has made a meaningful transformation, resulting in reduced credibility.¹²

Democratic theory somewhat reinforces the notion of a trade-off between economic development and justice. Modernization theory, for example, draws on an Aristotelian notion that the wealthier a country, the more likely it is to adopt and sustain democracy.¹³ Adam Przeworski and Fernando Limongi similarly argue that affluence, growth with moderate inflation, and declining inequality explain the endurance of democracies.¹⁴ By extension, we would expect that the strength of democracy depends less on the application of the justice norm than on economic development.

In addition to these expectations about the relationship between wealth and strength of democracy, richer transitional countries simply have more resources than poorer ones to adopt justice mechanisms and hold perpetrators accountable. They not only will have the funds to pay for costly and lengthy

¹⁰ Ibid.

¹¹ Peter J. Boettke and Christopher J. Coyne, "Political Economy of Forgiveness," *Society* 44, no. 2 (2007): 53-59.

¹² Ibid., 57.

¹³ Seymour M. Lipset, *Political Man: The Social Basis of Politics* (Baltimore, MD: Johns Hopkins University Press, 1959).

¹⁴ Adam Przeworski and Fernando Limongi, "Modernization: Theories and Facts," *World Politics* 49, no. 2 (1997): 155-183.

judicial proceedings, but also they more likely will possess the necessary institutions to place perpetrators on trial. In addition, they likely will face less serious credibility crises than poorer democracies. They have the financial resources to pursue justice and economic development simultaneously, rather than trading justice for economic development. Wealthier countries, therefore, possess greater safeguards—including legitimacy via economic and political stability—than less affluent ones to pursue justice for past state violence. We thus hypothesize:

Hypothesis 2. Wealthier states are more likely than poorer ones to adopt expensive transitional justice mechanisms.

Economic constraints not only potentially influence government preferences but also potentially shape civil society preferences. Demands for retrospective justice may shrink when faced with economic instability or crisis. Civil society pressure for transitional justice may prove less intense and more easily ignored in states facing high levels of unemployment and soaring costs than in states with sounder economic footing. In times of economic crisis, even those most directly affected by the past regime—victims and survivors—may worry more about their own or their family’s economic well-being than about justice for perpetrators of past crimes. In this scenario, Elster suggests that:

Funds, personnel, and political attention may be channeled into such forward looking tasks as constitution making, economic reconstruction, or economic transformation, rather than into the backward tasks of trials and purges.¹⁵

Without this pressure for transitional justice, countries strained economically will not risk costly mechanisms.¹⁶ Thus, the hypothesis stands:

Hypothesis 3. Poorer states are more likely than richer ones to adopt less expensive transitional justice mechanisms.

The justice trade-off, therefore, may affect poorer countries with fewer resources and less demand for justice than wealthier ones. But even in poorer

¹⁵ Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge, England: Cambridge University Press, 2004), 213. See a summary of this argument in Roger Duthie, “Toward a Development-sensitive Approach to Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008): 292-309.

¹⁶ We cannot yet measure societal demand (or lack thereof) for transitional justice. While some studies of demand exist, data are not yet systematically gathered in the same way or across a broad enough array of countries. We are able to measure only government response, which may or may not be mediated by civil-society demands.

countries, mechanisms may exist that allow for pursuing both economic and justice objectives. Not all justice mechanisms carry the same monetary costs. Financially strapped democracies may adopt less expensive justice mechanisms to meet the accountability norm without undermining their credibility.

The Relative Cost of Transitional Justice

Every transitional justice mechanism comes with an economic cost, but not all mechanisms have the same price tag. Thus while del Ponte recognized that justice is not cheap, not all forms of justice are necessarily expensive. Strapped economies do not have to avoid transitional justice, but rather they must find less expensive alternatives within the array of mechanisms.

To date, no systematic data exist on the actual cost of the more than eight hundred transitional justice mechanisms used around the world over the past four decades. Yet journalists, scholars, and policymakers have identified the costs of a number of mechanisms used by specific countries. We can glean from those reports a scale of costs by mechanism from the most expensive (trials), to moderately expensive (truth commissions), to least expensive (amnesty). This scale fails to distinguish between high- and low-cost options within particular categories of mechanisms. Romania's show trial for top leader Nicolae Ceausescu, for example, would cost less than efforts to try all perpetrators following Rwanda's genocide. Likewise, South Africa's extensive and expensive Truth and Reconciliation Commission can be contrasted with the restricted budget and limited truth process undertaken in Thailand. Despite these variations, the discussion below of the cost of each mechanism type justifies our approximations of the relative costs of mechanisms and allows for insights into the political economy of transitional justice.¹⁷

Trials: The Costliest Mechanism

The publicity surrounding the high cost of international trials confirms its categorization as the "most expensive" of the three mechanisms. The ICTY, for example, includes an annual budget of over \$300 million, and has already cost well over \$1 billion.¹⁸ The 2002-2003 budget for the International Criminal

¹⁷ We do not include reparations and lustration in this analysis. Reparations represent too broad a range in cost to categorize and we cannot order them with certainty, as we can with trials, truth commissions, and amnesties. For example, in 1994, the government of Malawi awarded reparations to victims of Operation Bwezani, paying a total of \$99,000 over two years. In contrast, from 1992 to 2001, Chile paid over \$8 million in reparations to victims of human rights violations committed by the former authoritarian regime. Lustrations' costs are largely secondary, resulting from banning skilled personnel from public positions. Future research, however, may lead to sufficient data on the costs of transitional justice to include these two mechanisms.

¹⁸ International Criminal Tribunal for the former Yugoslavia, "The Cost of Justice," <http://www.icty.org/sid/325> (accessed July 16, 2009).

Tribunal for Rwanda totaled \$208.4 million and—even with a seemingly large budget—there was a freeze on all recruitment activity in 2004 due to a lack of funds.¹⁹ This analysis does not include international trials (because they do not require an outlay from the domestic budget). Even so, domestic trials also require large budgets—which the new, financially-strapped government must somehow meet. The costs include salaries to judges, prosecutors, and investigators. Costs also include the wide-ranging investigations, taking testimony from witnesses and multiple defendants, gathering evidence, and protecting and detaining witnesses and defendants.

Indeed, the high associated expenses of trials, particularly adequate security for witnesses, judges, and defendants, have heightened criticism of the processes. The Argentine judiciary, for example, faced severe criticism for failing to invest sufficient funds into a witness protection program. Had it done so, the disappearance of a key witness in one of its first post-amnesty trials in 2006 might not have occurred.²⁰ On the other hand, when countries spend funds on other related costs of trials, they also face criticism. The Chilean government built a \$2.7 million prison specifically for high-ranking military officers convicted of human rights abuses. Observers critiqued the government for spending approximately \$10,000 each month per inmate at that prison, compared to only \$800 per inmate for commonplace criminals detained in existing prisons.²¹ Trials are particularly expensive in countries emerging from authoritarian rule because of weak or nonexistent legal institutions and infrastructure. In sum, the high degree of complexity of trials—especially for new democracies—makes them the most expensive transitional justice mechanism.

Trials constitute a considerable financial burden for many transitioning countries. They often lack the resources to cover these financial costs, particularly if they have inherited severe economic problems from past authoritarian regimes. As a result of these high costs, new democratic governments may decide to divert scarce resources toward economic development, rather than expensive justice mechanisms, to increase their domestic strength and legitimacy.

Truth Commissions: Mid-level Cost

Truth commissions generally cost less than trials. South Africa's Truth and Reconciliation Commission, even though it relied on an existing infrastructure

¹⁹ Global Policy Forum, "Budget Committee Told Unpaid Contributions to Former Yugoslavia, Rwanda Tribunals, Resulting Recruitment Freeze, Could Affect Completion Dates," November 24, 2004, www.globalpolicy.org/finance/docs/2004/1124unpaid.htm (accessed July 16, 2009).

²⁰ Fiona Ortiz, "Missing Witness Stirs Old Fears in Argentina," *Washington Post*, September 29, 2006.

²¹ Calvin Sims, "Chilean Jail for Officers is Gracious, but Still Jail," *New York Times*, November 24, 1995.

and working legal system, cost around \$20 million. Critics thus challenge the cost of truth commissions, particularly when they perceive a limited justice outcome.²² Defenders claim, on the other hand, that inadequate funding impedes the effectiveness of truth commissions.²³ The Philippines Commission on Human Rights could afford only a few commissioners but could not support staff or other necessary expenditures to assist in the truth process. Hayner unsurprisingly notes that the committee members became “overwhelmed by the large volume of complaints... [and] the committee’s work was thus cut short, and nothing definitive was ever produced, despite a year of investigation and the filing of a number of high level cases in court.”²⁴

Lowering the expense of a truth commission’s work may also undermine it. In Chad, for example, the truth commission saved money by using an existing space for its hearings: a former detention center where the previous regime had committed most of the violent crimes the commission would investigate. Many victims avoided participating in the truth commission because of the retraumatization involved in testifying at the site of past atrocities.²⁵ Likewise, the Chilean truth commission kept costs low—one million dollars—by providing salaries to support staff but not commissioners.²⁶ The 2001 Peruvian truth commission, in contrast, staffed five regional offices to collect testimonies, costing an estimated 13.2 million dollars.²⁷

Empirical evidence suggests, therefore, that truth commissions offer a less expensive form of justice for past abuse than trials. They are not “cheap,” but do not incur the same kinds of salary, training, infrastructure, or security costs of trials. New democracies with economic problems might opt for the less expensive truth commission process to avoid the justice trade-off.

Amnesty: The Cheapest Option

Amnesty offers the least expensive mechanism for dealing with past state violence. The amnesty option avoids the investigation, salary, infrastructure,

²² David Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?” *International Studies Review* 6, no. 3 (2004): 355-380.

²³ David Cohen, “Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future?” *Asia Pacific Issues* 61 (2002): 1-8, and Douglas W. Cassel Jr., “International Truth Commissions and Justice,” *Aspen Institute Quarterly* 5, no. 3 (1993): 77-90.

²⁴ Priscilla B. Hayner, “Fifteen Truth Commissions—1974 to 1994: A Comparative Study,” *Human Rights Quarterly* 16, no.4 (1994): 620.

²⁵ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 238.

²⁶ United States Institute of Peace, “Report of the National Commission on Truth and Reconciliation,” Chile, February 1991, p. 9, <http://www.usip.org/resources/truth-commission-chile-90> (accessed January 11, 2010).

²⁷ United States Institute of Peace, “Report of the National Commission on Truth and Reconciliation,” February 1991, Peru, p. 9 <http://www.usip.org/resources/truth-commission-peru-01> (accessed January 11, 2010).

training, and security costs associated with trials and truth commissions. Amnesties normally require no enforcement mechanism, implementation, staffing, or outlay of funds, and they consume very few government resources. Compared with trials and truth commissions, amnesties provide the cheapest option at the disposal of transitional democracies.²⁸

Most advocates of transitional justice do not consider amnesties an acceptable mechanism for dealing with the past, however. They do not hold individuals accountable for their crimes in either a restorative or retributive way. Nevertheless, defenders of amnesty contend that amnesties offer acknowledgment of past crimes; to grant an amnesty requires recognition that wrongdoing occurred. They also contend that the strength and stability of the new democratic system hinges on putting the past in the past, without recriminations that might catalyze spoilers. In addition, the trend toward accountability has not eroded the use of amnesties throughout the world. Amnesties may persist in part due to their cost-effectiveness. New and fragile democracies may consider other transitional justice mechanisms out of reach, and opt instead for the cheapest acknowledgment-without-justice, or the amnesty mechanism.

Empirical Analysis and Findings

To test the hypotheses regarding the political economy of transitional justice, we utilize the recently created Transitional Justice Data Base. We also draw from data on the economic health of countries and our designation of the range of transitional justice options from most to least expensive for this analysis.

The Transitional Justice Data Base (TJDB)

The TJDB contains data on a variety of transitional justice mechanisms, coded from *Keesing's World News Archive*, implemented worldwide during a forty-year period.²⁹ Our decision to utilize Keesing's is based on a combination of factors. Keesing's provides the coverage—geographically and temporally—necessary to develop a cross-national dataset of transitional justice over nearly four decades. Utilizing news sources from around the world, including newspapers, wire services, and government reports, Keesing's, moreover, provides an unparalleled source of unbiased summaries of world events. Finally, Keesing's constitutes a respected and reliable resource for coverage of political, social, and economic events (e.g., Engene, 2007), making it an

²⁸ Although it should be noted that, similar to a truth commission being paired with reparations, amnesties can be combined with disarmament, demobilization, and reintegration programs that could increase the cost of such a mechanism.

²⁹ Keesing's World News Archives includes Keesing's Contemporary Archives (1931-1987) and Keesing's Record of World Events (1987-Present).

ideal resource for information on transitional justice mechanisms. Our dataset begins in 1970.³⁰ While transitional justice mechanisms occurred prior to that year, we choose this time frame to capture the commencement of the third wave of democracy—an era in which these mechanisms began to assume a more frequent and prominent role in the aftermath of atrocity.

The three mechanisms of interest in this essay are trials, truth commissions, and amnesties. We define trials where perpetrators of human rights violations are held criminally accountable in a court of law. To be counted in the dataset, a verdict must conclude the trial. We include only domestic trials, excluding those operated directly by the UN, to assess the impact of UN intervention on state transitional justice choices.³¹ The database includes trials held in domestic, international, or hybrid courts. Since this analysis involves domestic budgets as a determination of countries' choices, we have excluded international trials that are partially or fully funded by international organizations.

We define truth commissions as newly established, temporary bodies officially sanctioned by the state to investigate a pattern of human rights abuses.³² Our definition closely matches Hayner (2001) and Brahm, Dancy, and Kim (2010).³³ We exclude pre-existing government institutions that investigate past human rights violations as part of their official duties. We include amnesties in our dataset because they persist as a mechanism to deal with the past. We code amnesties when a state officially declares that those accused or convicted of human rights violations, whether individuals or groups, will not be prosecuted, further prosecuted, and/or will be pardoned for their crimes and released from prison. We have included in our analysis the category of *de facto* amnesties, or cases in which no form of transitional justice has yet occurred.³⁴

While our dataset includes mechanisms for all countries in the world, we limit our analysis in this essay to all transitions from authoritarian rule to democracy from 1970 to 2003, as defined by the coding of Polity IV.³⁵

³⁰ Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: United States Institute of Peace Press, 2010).

³¹ We should note, however, that only one state (Sierra Leone) experienced an internationally operated trial without also pursuing its own domestic prosecutions, thus including or excluding international mechanisms would not greatly alter our findings.

³² We exclude nonstate, independent projects, which investigate and uncover the truth about past violations, since they do not represent official decisions on behalf of state actors. Future research could expand the dataset and catalogue these efforts.

³³ Hayner, *Unspeakable Truths*, and Geoff Dancy, Hunjoon Kim, Eric Wiebelhaus-Brahm, "The Turn to Truth: Trends in Truth Commission Experimentation," *Journal of Human Rights* (Forthcoming, 2010).

³⁴ Due to the limited systematic information on reparations, lustration or vetting, and other transitional justice mechanisms, we have limited the analysis to these mechanisms.

³⁵ Our analysis is limited to 2003 due to the coverage of Polity IV, which does not go beyond that year.

Following other scholars of democratization and transitional justice, we utilize Polity IV's Regime Transition Variable to identify transitions.³⁶ We find a total of ninety-one transitions from authoritarian to democratic rule in seventy-four countries.³⁷ Also included in this sample are those countries that experienced a state transformation or state creation where the previous state was an autocracy and the new regime is a partial or full democracy.³⁸ This method is limited in some regards, since we exclude some cases in which transitional justice mechanisms are well known. Rwanda, for example, is excluded due to the fact that the post-genocide Tutsi regime is not considered democratic. The advantages of this methodological choice, however, outweigh its minor shortcomings since we are able to objectively and systematically identify the full sample of democratic transitions. We organize the data such that our unit of analysis is a country-year, where mechanisms are coded for each year in which they occur, and we examine all years in a country from its transition forward.

Political Economy and Transitional Justice Choices

The transitions from authoritarian to democratic rule designated by our selection process use amnesties more than any other mechanism: thirty-two cases (43 percent). Truth commissions do not fall too far behind: thirty cases (41 percent). Trials occur only slightly less frequently: twenty-eight cases (38 percent). *De facto* amnesty, or doing nothing at all, occurs in nearly the same number of cases: thirty cases (41 percent).³⁹ These numbers suggest a relatively even distribution among transitional justice choices.

If political economy plays an important role in transitional justice choices, we might expect behavior to vary according to a country's level of economic well-being. Below, with descriptive statistics, we determine the economic-health category for each country using the World Bank figures for GDP and GDP per capita.⁴⁰ Based on the findings presented in table 1, economic health appears to influence transitional justice choices. It shows that, on average, richer countries tend to opt for trials, while poorer countries either grant amnesties or settle for *de facto* amnesty. Somewhat contradicting the assumptions behind the political economy of transitional justice, middle-level economies appear to use all mechanisms relatively equally.

³⁶ For a similar use of Polity IV's data to determine transitions and regime types see, for example, David L. Epstein, Robert Bates, Jack Goldstone, Ida Kristensen, and Sharyn O'Halloran, "Democratic Transitions," *American Journal of Political Science* 50, no. 3 (2006): 551-569.

³⁷ Defined as a change of three points or greater on the underlying authoritarian (-10) to democratic scale (+10). For a complete list of cases see appendix A.

³⁸ State transformation and state creation are coded as 97 and 99 in Polity.

³⁹ Note that percentages total more than 100, because states are able to use more than one mechanism.

⁴⁰ Those countries choosing only reparations or lustration (or both) are dropped from the analysis.

Table 1. TJ Choices according to Economic Health

	<i>De facto</i> Amnesty	Amnesty	TCs	Trials
Poor	Armenia (1991) Armenia (1998) Benin Burkina Faso Republic of Congo Georgia Ghana (1970) Guinea-Bissau (2000) Lesotho (1993) Lesotho (2002) Moldova Mongolia Niger (1992) Niger (1999) Sierra Leone (1996)	Albania Cambodia Ghana (1979) Guinea-Bissau (1994) Haiti (1990) Madagascar Mali Nicaragua Uganda	Central African Republic Haiti (1994) Sierra Leone (2002) Uganda Zambia	Albania Ghana (1979) Haiti (1994) Mali Sierra Leone (2002)
Medium	Azerbaijan Bangladesh Belarus Côte d'Ivoire Croatia Ecuador Estonia Kenya Pakistan (1973) Senegal Slovenia Thailand (1974)	Bangladesh (1972) El Salvador Guatemala Honduras Nigeria (1979) Panama Uruguay	Bolivia El Salvador Ghana (1996) Guatemala Honduras Lithuania Nepal Panama Paraguay Serbia & Montenegro Uruguay	Bolivia Bulgaria El Salvador Ethiopia Guatemala Latvia Lithuania Panama Serbia & Montenegro
Rich	Bangladesh (1991) Iran Pakistan (1988) Peru (1980) Thailand (1978) Turkey (1973) Turkey (1983)	Argentina (1983) Nigeria (1999) Peru (1993) Philippines Portugal Romania South Korea Thailand (1992)	Argentina (1983) Brazil Chile Germany Mexico Nigeria (1999) Peru (1993) Poland South Korea	Argentina (1983) Chile Germany Greece Hungary Peru (1993) Portugal Romania South Korea

Note: Rich, medium, and poor categories are three subsamples of the data based upon GDP figures from World Bank "World Development Indicators." Some countries are listed more than once, either because that country had more than one transition (indicated by the year) or because country leaders employed more than one mechanism.

The second stage of our research quantitatively examines the hypotheses presented above. We code trials as the most expensive transitional justice mechanism, receiving a value of three in our coding schema; followed by truth commissions, two; amnesties as least costly, one; and *de facto* amnesty, zero. To generate this variable, however, we engage two coding issues. First, countries adopt multiple mechanisms throughout the post-transition period. To effectively address this situation, we code for the most expensive mechanism when two mechanisms are used. This means that we capture the most, rather than the least, costly mechanisms adopted. A second problem results from years in which no mechanism occurred. To avoid inflating the number of *de facto* amnesties for countries that adopted a trial, truth commission, or amnesty, we carry over the dependent variable value. This captures the use of multiple mechanisms and avoids over-representing the number of country-years in which no transitional justice mechanisms are in play.

This coding schema is best illustrated with an example. If a country became a democracy in 1980, issued an amnesty in 1982, and held trials in 1990, the dependent variable would receive a value of zero in 1980 and 1981; a value of one from 1982 through 1989; and a value of three from 1990 through the end of the data in 2007. This coding schema allows us to use similar logic to capture the effect of the most expensive mechanism, while also ensuring the accuracy of our results by distinguishing between those countries doing nothing because they already adopted a transitional justice mechanism and those countries that used no transitional justice mechanisms at all.

Our key independent variables are two different measures of the countries' economic health. Social scientists tend to use GDP and GDP per capita. The first measure—GDP—identifies the country's economic health by assessing the overall growth of the economy.⁴¹ The second measure—GDP per capita—identifies the country's level of development.⁴² Although economists and political scientists previously focused on overall economic growth as a measure of a country's economic health, subsequently they have viewed economic strength in terms of the economic outlook of individuals so as to include not just growth, but also distribution of wealth in this assessment.

⁴¹ Roy Harrod, "An Essay in Dynamic Theory," *Economic Journal* 49, no. 193 (1939) 14-33; Evsey Domar, "Capital Expansion, Rate of Growth, and Employment," *Econometrica* 14, no.2 (1946): 137-147; Robert Solow, "A Contribution to the Theory of Economic Growth," *Quarterly Journal of Economics* 70, no.1 (1956): 65-94; and Alexander Gerschenkron, *Economic Backwardness in Historical Perspective: A Book of Essays* (Cambridge, MA: Belknap Press of Harvard University Press, 1962).

⁴² In response to the inadequacies of the neoclassical growth theory, the endogenous growth theory attempts to address the origins of growth, by allowing aspects internal to the model to generate growth. See Paul Romer, "Increasing Returns and Long-Run Growth," *Journal of Political Economy* 94, no. 5 (1986): 1002-1037, and Robert Lucas, "Making a Miracle," *Econometrica* 61, no. 2 (1988): 251-272.

Empirical evidence shows that developing countries with higher levels of income inequality experience lower growth than those with more income equality.⁴³ By using both measures, we examine the different interpretations of economic growth and the change in both measures.⁴⁴ Each variable, moreover, has distinct implications for policymakers, international actors, and advocates of transitional justice in terms of identifying the particular cases in which advocates of specific transitional justice mechanisms may have more or less success. Following standard procedures, each measure is lagged by one year to capture the economic environment for that year.⁴⁵

We include control variables to ensure that the findings are robust, while also maintaining a parsimonious model. First, the timing of a country's transition to democracy may play an important role in the likelihood that it will adopt transitional justice mechanisms. We thus include a count of years since transition for each panel in order to control for trends over time.⁴⁶ An indicator variable based on UN region codes is included to control for region.⁴⁷ We include an indicator variable for each year in which a country receives aid from international bodies to fund or partially fund a trial, to explain the variation we would see in these cases (i.e., these countries are less likely to pursue their own trial if international bodies are doing so).⁴⁸ As mentioned earlier, economic development and institutional development often are correlated. To control for this factor, we include the POLITY2 variable from the Polity IV dataset as a proxy for institutionalization. This variable is a weighted score derived from coding the competitiveness of political participation, the regulation of participation, and the openness and competitiveness of executive recruitment and constraints on the executive. Finally, we include an indicator variable for

⁴³ Thorsten Persson and Guido Tabellini, "Is Inequality Harmful for Growth?" *American Economic Review* 84, no. 3 (1994): 600-621, and Alberto Alesina and Dani Rodrik, "Distributive Politics and Economic Growth," *Quarterly Journal of Economics* 109, no. 2 (1994): 465-490.

⁴⁴ "World Development Indicators," *WDI online*, World Bank Group, Washington, D.C., <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,menuPK:232599~pagePK:64133170~piPK:64133498~theSitePK:239419,00.html> (accessed January 11, 2010).

⁴⁵ Other commonly cited statistics, such as unemployment levels or Gini coefficients, unfortunately have substantial missing data, which precludes their inclusion in the analysis.

⁴⁶ In addition, this analysis was completed utilizing splines, counters to control for temporal dependence, one between each value of the dependent variable. See Nathaniel Beck, Jonathan N. Katz, and Richard Tucker, "Taking Time Seriously: Time Series-Cross-Section Analysis with a Binary Dependent Variable," *American Journal of Political Science* 42, no. 4 (1998): 1260-1288.

⁴⁷ United Nations Statistics Division, "Composition of Macro Geographical (Continental) Regions, Geographical Sub-regions, and Selected Economic and Other Groupings," <http://unstats.un.org/unsd/methods/m49/m49regin.htm> (accessed January 11, 2010).

⁴⁸ These include: Croatia, Macedonia, Sierra Leone, and Montenegro. Note, however, that the international and hybrid trials are not included in this analysis because domestic governments do not carry the majority of the financial burden.

Table 2. Political Economy Summary Statistics

Explanatory Variables	Mean	Standard Deviation	Minimum	Maximum
Log of GDP	23.45	1.85	18.73	27.29
GDP per capita (U.S.\$)	4,930.04	4,252.50	186.98	20,642.29
Change in GDP	0.001	0.003	-0.026	0.049
Change in GDP per capita (U.S.\$)	0.017	0.065	-0.407	0.776
Years since Transition	25.41	7.43	1	35
International TJ	0.02	0.144	0	1
Multiple Transition	0.29	0.45	0	1
Polity Score	5.030	5.049	-9	10

Source: Authors' calculations based on Marshall and Jaggers, "Polity IV Project"; GDP and GDP/capita is extracted from World Bank "World Development Indicators."

those countries that experience more than one transition during the observed period, as multiple transitions may affect the likelihood that a country would employ transitional justice mechanisms.

The Effect of Economic Health on Transitional Justice Choices

The descriptive statistics provided in table 1 above give partial confirmation to some of our theoretical expectations. High- and middle-income countries tend to adopt trials and truth commissions at roughly the same rate, while low-income countries use amnesties or *de facto* amnesty. These trends become clearer across time, as illustrated by the temporal breakdowns in table 3. The GDP during the year in which countries employ an amnesty (\$4.72 billion) is less than the GDP during the year in which a truth commission is created (\$8.98 billion). Even more notable, the average GDP during the year in which a country tries past perpetrators (\$43.7 billion) is nearly ten times as large as those years in which an amnesty is employed. Similar results are found with the GDP per capita measure. This economic indicator increases with the cost of each mechanism: amnesty (\$1,641.71), truth commission (\$2,730.54), and prosecutions (\$6,699.22).

Descriptively, the results seem to confirm the expectations that countries adopt the transitional justice mechanisms that correspond to their level of development. To increase our confidence in these findings, we address some specific methodological concerns. In addition to addressing endogeneity concerns by including lagged explanatory variables, as noted above, we also take specific measures to address selection effects. Because the countries in our sample are not randomly selected, we include a propensity score to ensure that the independent variables explain transitional justice choices, not other

Table 3. Average GDP and GDP per Capita, by TJ Mechanism

	<i>De facto</i> Amnesty	Amnesty	Truth Commission	Trials
GDP, in billions, US\$ (all yrs)	6.76	4.72	8.98	43.70
1970 - 1980	6.28	1.61†	--	4.10
1981 - 1990	7.93	5.02	1.14	16.10
1991 - 2000	6.17	4.64	12.20	46.40
2001 - 2006	7.26	5.17	8.00	64.80
GDP/capita, US\$ (all yrs)	2,355.84	1,641.71	2,730.54	6,699.22
1970 - 1980	2,498.13	220.08	--	4,427.91
1981 - 1990	2,647.52	2,227.17	1,584.80	5,479.45
1991 - 2000	2,193.33	1,332.38	3,632.33	6,785.11
2001 - 2006	2,445.61	401.62†	2,295.50	7,983.78

Source: GDP and GDP/capita are extracted from World Bank "World Development Indicators."

† These numbers are based on one observation only. Bangladesh was the only country in the 1970s to use an amnesty, and Nigeria was the only country to use amnesty after 2000 (Peru also issued an amnesty in 2001, but the same year it also utilized a truth commission, so it falls into the latter category).

Table 4. Ordered Probit Results: Influence of Economic Health on TJ Choices

	Coefficient	Standard Error
Log of GDP	0.068	(0.081)
Change in GDP	73.181***	(27.379)
GDP per capita	0.001	(0.001)
Change in GDP per capita	-0.518	(0.821)
Years since Transition	0.048**	(0.019)
International TJ	-1.234	(0.998)
Multiple Transition	0.793***	(0.251)
Polity Score	0.031	(0.021)
Americas	-0.553	(0.407)
Asia	-1.064	(0.691)
Africa	-0.960	(0.771)
Propensity Score	-0.457	(1.163)
τ 1	0.557	(2.292)
τ 2	1.170	(2.313)
τ 3	1.837	(2.307)
N = 1,069; R ² = 0.30		

Note: * = significance at 90% level; ** = significance at 95%; *** = significance at 99%.

factors common only to transitioning countries.⁴⁹ We estimate an ordered probit model to test the hypotheses, with panel corrected standard errors, to predict the likelihood that countries will adopt specific transitional justice mechanisms.⁵⁰

The size of the economy (GDP), the level of development (GDP per capita), and the change of development (change in GDP per capita) do not significantly affect a country's transitional justice choices, despite the patterns illustrated above with descriptive statistics. The multivariate analysis, however, illustrates that the change in growth (change in GDP) has a positive, significant influence on transitional justice choices. This positive coefficient indicates that countries with growing domestic economies are more likely to move up the underlying scale of transitional justice and employ more expensive mechanisms. This finding is consistent with the patterns presented earlier from the descriptive statistics. The marginal values illustrate that the likelihood of using trials is high (43 percent) if the country is experiencing maximum change in GDP, whereas the likelihood of using trials is low (only 1.1 percent) if the change in GDP is at the low end. Alternatively, the probability that a country will do nothing is more than six times greater for countries with the smallest change in GDP compared to those with the largest change in GDP (13.4 percent compared to 84.5 percent).

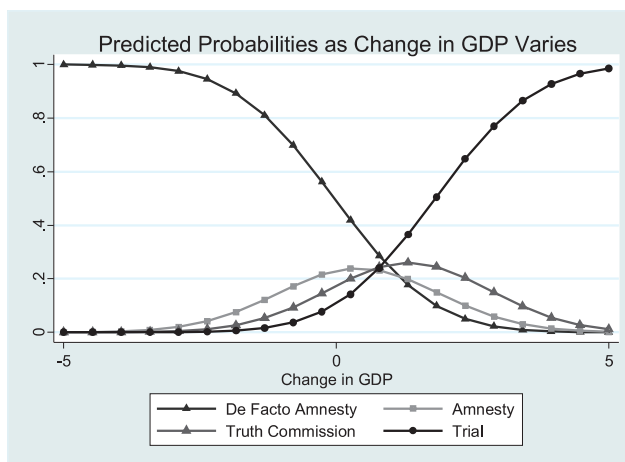
Figure 1 displays these trends graphically. The probability of granting amnesties peaks somewhat earlier than the probability of holding truth commissions. These results indicate that poorer countries are more likely to grant amnesties, and countries with moderate growth are more likely to adopt truth commissions. In addition, the probability that countries will adopt amnesties decreases with economic improvements. The probability that a

⁴⁹ The propensity score is generated by matching each treated observation (in this case, each country-year observation for a transitioned country) with a control observation for which the values of the explanatory variables are as close to identical as possible (known as nearest neighbor or one-to-one propensity matching). The propensity score, then, is a value between zero and one that measures the predicted probability that a country will be in our sample. Including the propensity score in the final model allows us to avoid overestimating our coefficients because we control for possible selection bias. We used the PSMATCH2 module for Stata to complete this exercise. See Edwin Leuven and Barbara Sianesi, "PSMATCH2: Stata module to perform full Mahalanobis and propensity score matching, common support graphing, and covariate imbalance testing," (2003) <http://ideas.repec.org/c/boc/bocode/s432001.html> (accessed July 16, 2009). Also see Daniel Ho, Kosuke Imai, Gary King, and Elizabeth Stuart, "Matching as Nonparametric Preprocessing for Reducing Model Dependence in Parametric Causal Inference," *Political Analysis* 15, no. 3 (2007): 199-236, and Alberto Abadie and Guido Imbens, "Large Sample Properties of Matching Estimators for Average Treatment Effects," <http://ksghome.harvard.edu/~aabadie/sme.pdf> (accessed July 16, 2009).

⁵⁰ We were unable to use a time-series cross-sectional model due to the unbalanced nature of our data. See Nathaniel Beck and Jonathan N. Katz, "What to Do (and Not to Do) with Time-Series Cross-Section Data," *American Political Science Review* 89, no. 3 (1995): 634-647, and Beck et al., "Taking Time Seriously."

country will use a truth commission decreases as a country begins to grow more rapidly. Those countries with rapid growth are more likely to hold trials than to adopt a truth commission or an amnesty. The multivariate analysis confirms that the greatest shift in predicted probabilities occurs with the *de facto* amnesty and trial mechanisms. The probability of *de facto* amnesty increases sharply with low or negative growth. In contrast, the probability of holding trials increases sharply just shortly after countries begin to grow. These findings suggest that policymakers and advocates may be more successful in promoting truth commissions in countries with moderate economic growth, and trials in countries with higher growth.

Figure 1. Predicted Probability of TJ Mechanism Adoption as GDP Changes



While the economic health of a country certainly plays a role, the statistical analysis shows that time also has a positive, significant effect on the likelihood that a country will adopt more expensive transitional justice mechanisms. The predicted probabilities also reflect this trend. As the time since the transition increases from five years to thirty-five years, the likelihood that a country will employ a trial increases tenfold, while the likelihood that a country will do nothing actually decreases by half. This finding suggests that, as democracies develop and strengthen over time, they will prove more likely to use transitional justice to bring perpetrators of crimes to justice.

The indicator for multiple transitions also has a positive effect on transitional justice mechanisms. This may suggest that those countries with more tumultuous pasts are more likely to move up the underlying scale of transitional justice. Those countries with more than one transition prove more likely to adopt transitional justice following one or more of those transitions.

The other controls—region, propensity score, international transitional justice, or POLITY2 score—are not found to be significant.⁵¹

Conclusion

The domestic political economy is a significant explanation for the decisions by leaders of countries to adopt transitional justice. Specifically, the health of the economy affects a country's transitional justice choices. Those countries with economic growth are more likely to move up the cost scale of transitional justice mechanisms (i.e., trials), while those countries with no growth or with shrinking economies are more likely to adopt inexpensive mechanisms (i.e., amnesties or *de facto* amnesties). Poorer countries are also less likely than richer ones to adopt expensive transitional justice mechanisms. A statement in June 2008 by Cambodia's prime minister, Hun Sen, illustrates the empirical reality of our findings: "Regarding Cambodia's possibility to provide additional budget [for the tribunal], my answer is that, if [I offer money], it will be a small amount because I need to build bridges, roads and canals for the people."⁵² His sentiment is surely felt by other leaders of newly democratized nations. He is signaling that—when faced with pressing developmental needs—he cannot commit or contribute to expensive transitional justice.

Our analysis thus provides insights into the political economy of transitional justice. The scholarship has tended to ignore what turns out to be a crucial explanation for the transitional justice choices which countries make. While the literature repeatedly emphasizes the danger of one-size-fits-all models, it has failed to explain why some countries adopt certain mechanisms instead of others. Indeed, the literature has assumed that the international justice norm will override these economic factors, leading those countries without resources to adopt trials and truth commissions. Our research challenges this view. Economic health provides an explanation for the variation not only in the decision between trials and truth commissions, but also in decisions regarding amnesties. Particular governments may prefer trials to truth commissions or amnesties, but we did not find that they regularly act on these preferences when economic growth and developmental factors prevent them from covering high costs.

Our research to date, however, cannot explain why rich countries adopt trials. We might expect that legal institutions, the legal and human rights community, and public demand might be stronger in more developed economies than in weaker ones, placing more pressure on countries to adopt

⁵¹ Although not significant, the propensity score remains in the model because the results changed substantially with its removal. This highlights the importance of controlling for sample selection.

⁵² "Hun Sen: We Cannot Work without Support," *Mekong Times Daily*.

trials. In less developed economies, citizens may have lower expectations regarding their rights and protections or have less influence over political and legal institutions. Demand for trials, therefore, may correspond to economic health. Without systematic and reliable institutional and collective action data, we cannot sufficiently test this more nuanced explanation.

The transitional justice literature has tended to view processes as static. A more dynamic model—that takes into account changes over time—shows that with economic improvements, countries prove likely to adopt more expensive mechanisms of accountability, which they cannot afford during periods of pressing domestic economic constraints. This finding further suggests that considering transitional justice as a dynamic rather than static process allows for shifts in transitional justice choices over time. A political economy approach implies that countries may pursue delayed justice based not only on passage of time and reduced threat, but also on their economy's growth.

Finally, this analysis raises questions about the role that international forces play in transitional justice. It appears that the international community's economic or political incentives do not offset the costs of transitional justice enough to encourage poorer countries to adopt mechanisms that are more expensive than would otherwise be feasible. Has the literature on transitional justice exaggerated the role that international factors play in promoting transitional justice? At least in political economy terms, it appears so.