

Book Review

Methods of Human Rights Research, eds. Fons Coomans, Fred Grünfeld and Menno T. Kamminga. Intersentia, October 2009, 262pp. ISBN: 9789050958790 – paperback (€49).

Transitional Justice in Balance: Comparing Processes, Weighing Efficacy, Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter. US Institute of Peace, June 2010, 248pp. ISBN: 9781601270535 – paperback (\$21.95).

One of the biggest challenges facing researchers and practitioners working in transitional justice is the urgent need to create an evidentiary foundation that justifies and facilitates decision making in policy and practice. The two books reviewed here provide methodological tools and a groundbreaking empirical analysis of multiple combinations of transitional justice mechanisms across regions, countries and time periods.

The editors of *Methods of Human Rights Research*, Fons Coomans, Fred Grünfeld and Menno Kamminga, selected a group of authors to examine ways of improving the methods of human rights research, including research done through or about transitional justice mechanisms. The editors observe that ‘scholarship in the field of human rights is often lacking in attention to methodology’ (p. 11). Since, as Paul Gready notes, both transitional justice and human rights research in general are part of ‘an enterprise manufacturing legitimacy’ (p. 159), the editors emphasize the importance of ensuring the audience is informed about what is researched, how this is undertaken, why a particular approach is chosen and why alternative methodologies were rejected.

The main strength of the 12 contributions is that they provide a *tour d’horizon* of the methodological perspectives of the scholarly fields most relevant to human rights research: law, the social sciences, philosophy and history. Through this structure, the editors successfully present the diversity of approaches and caution that no one methodology is applicable to all research questions. As a result, they encourage researchers to consider a broad range of possible methodological approaches instead of taking shortcuts in research in order to reach the conclusions they are hoping to find. An essential component of research, such reflection on methodology should also be adequately reported in the research product. In short, the editors convincingly advocate against viewing reflection and reporting on methodology as a luxury that detracts time and space from substantive research efforts.

A frequent complaint is that the legal literature on transitional justice in particular abounds with studies that fail to articulate the implicit and sometimes pollyannaish assumptions about the superiority of a legal human rights discourse. Furthermore, Forsythe posits that studies often show excessive deference towards

case-law emanating from international human rights bodies and international criminal tribunals 'as if lawyers [are] uncomfortable with analysis of impact, believing it [to be] the domain of others' (p. 71). The chapter by Eva Brems provides an example of a detailed research report that is attentive to methodology in legal research. It elaborates on her conclusion that methodological reflection is insufficient in the legal study of human rights-related research. Brems values a methodology according to the extent to which it furthers the quality of the research results and allows others to assess that quality. Although the author acknowledges the response that 'the fact that we [human rights researchers trained in law] do not report on method in our publications does not mean that we do not have a valid method' (p. 89), she rightly challenges that approach to scholarship and lists the benefits of reporting one's methodology. Jan Smits' and David Forsythe's contributions, meanwhile, question the merit of viewing law as operating in a social, economic and political vacuum. Their chapters will resonate with many transitional justice researchers who work in fragile post-conflict contexts or who study situations where international legal norms are simply one aspect of highly complex endeavors to address a violent past. Forsythe claims not that all legal approaches are necessarily 'legalistic,' meaning excessively reliant on legal rules, but rather that human rights studies, particularly those conducted by researchers trained in law, often fail to acknowledge that an exclusive focus on human rights law and criminal justice may not necessarily always advance the cause of human dignity more than a political or diplomatic approach.

Against this background, legal transitional justice research is complemented with research by social scientists who offer findings that can be empirically challenged and verified. The editors warn, however, that social scientists 'run the risk of ignoring or misinterpreting applicable legal standards' (p. 12). A concrete example of how research traditions can be successfully bridged is Koen De Feyter's chapter on treaty interpretation and the social sciences. De Feyter focuses on how abstract treaty rules open the debate on the meaning of rules in specific circumstances and how the understanding of a term in society – as evidenced through the use of social science methodology – can inform the interpretation of international human rights treaties. Finally, Todd Landman concludes his contribution on social science methods and human rights with a statement that summarizes not only the volume's central call to action but also the acute need for methodologically sound evaluations of transitional justice: the human rights community 'needs sound analysis and a systematic evidence base from which to make strong arguments' (p. 43).

Of particular interest to transitional justice are the chapters on applied research. In applied research contexts, and certainly in transitional justice, researchers are often under pressure to come up with preset conclusions. Gready focuses on the methodological challenges of research undertaken by truth commissions. He cautions that such research requires particularly careful methodological thinking not only because truth commissions are particularly large-scale human rights research projects but also because they operate in particularly

power-saturated research environments. Gready analyzes the methodology employed by the South African Truth and Reconciliation Commission (TRC) and argues that the TRC operated with what were often *post hoc* rationalizations in support of a politically informed mandate. While Gready unambiguously qualifies this as 'bad social science' (p. 161), he suggests that the TRC's conceptual model, with its fourfold categorization of truth, could provide a useful starting point for discussions about what is meant by truth in a particular transitional context. Methods should then be determined by 'truth objectives' and not vice versa.

Gready also offers advice on how the methodological design of truth commission research could combine individual accounts with analyses of patterns of abuses. While it has been argued that the highlighting of patterns provides an authoritative account of the past abuses,¹ Gready suggests that the two levels of analysis are not mutually exclusive. His main point is that researchers should be honest and explicit about what privileging one level of analysis over another means and should not simply assume that 'facts speak for themselves' without a unifying explanatory historical narrative. In line with the volume's general call to inquire into the broader effects of research, Gready also challenges the idea of viewing research output (such as a truth commission final report) as the best measure of success. He insists that 'process (how we work; who we reach) matters as much as product (what we write); and processes can be products (hearings)' (p. 175).

Methods of Human Rights Research is a long-awaited book for anyone interested in assessing and improving his or her methods of engaging with human rights research questions, including questions concerning transitional justice. The greatest merit of the volume could be summarized as methodological awareness raising. In addition, each chapter provides a number of suggestions and examples of research approaches and their applicability in practice.

The book excels as an invitation for researchers – especially researchers working in multidisciplinary and applied research projects, such as numerous transitional justice research undertakings – to reflect critically on their work and the level of transparency in their methodological choices.

Somewhat contradictorily, the editors warn in the introductory chapter of the challenges of interdisciplinary research and advise researchers to focus on work within their disciplines, 'because few researchers are fully qualified in more than one discipline' (p. 17). Nevertheless, the majority of contributions in this compilation actually appear to present multidisciplinary approaches. This ambiguity aside, the book will undoubtedly be of great assistance to those who want to broaden their perspective on how they have so far approached their research questions and what other alternatives they could, or should, consider. Readers

¹ Audrey R. Chapman and Patrick Ball, 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala,' *Human Rights Quarterly* 23(1) (2001): 1–43. Chapman and Ball argue that truth commissions are better suited to pursue 'macro-truth' rather than specifics of particular events, cases and people.

designing or analyzing transitional justice research projects will have the benefit of a concise but comprehensive overview of possible methodological options and pitfalls before commencing their research.

Transitional Justice in Balance: Comparing Processes, Weighing Efficacy, meanwhile, reads as if it was designed to provide a first solid answer to the questions posed in *Methods of Human Rights Research*. The volume, by Tricia Olsen, Leigh Payne and Andrew Reiter, uses quantitative social sciences methods empirically to test some of the most popular claims in the English-language literature on transitional justice. For the purpose of this study, the authors and their team at the University of Wisconsin–Madison created a comprehensive information database of 854 transitional justice mechanisms established in 161 countries from 1970 to 2007.

The book pursues two types of questions: those concerning the adoption of transitional justice, and those concerning its outcomes. First, the authors examine factors that facilitate or impede the adaptation of transitional justice mechanisms to each context. They also study why countries engaged in transitional justice projects have chosen one mechanism over another or undertaken a combination of mechanisms. Second, the authors attempt to answer whether the applied mechanisms achieve the desired goals of transitional justice. The mechanisms analyzed include trials, truth commissions, amnesties and, to a lesser extent, reparations and vetting policies. The authors analyze central but untested claims made in relation to the outcomes of transitional justice, such as the hypothesis that trials increase respect for democracy and human rights or, conversely, that prosecutions undermine stability and may therefore lead to more human rights violations. The authors' main conclusions are that 'the balance is crucial' and that it 'involves the legal imperatives for justice with protecting public safety by granting amnesty to perpetrators' (p. 154).

Given their numerous findings, it is certainly notable that after analyses of various countries and mechanisms, the authors conclude that transitional justice does have a positive impact on human rights and democracy. In particular, one of their main findings supports arguments in favor of a 'holistic approach,' which hold that the combination and sequencing of transitional justice initiatives matter more than a single mechanism alone.²

The authors do not, however, find strong support for the argument that a 'justice cascade' has led an increasing number of countries to opt for legal accountability for human rights violations, in contrast to an earlier tendency toward amnesty.³ Controlling for the increase in the number of transitions over time, the authors find that the justice cascade is overstated and that the proportion of prosecutions and amnesties has remained relatively stable. Another notable

² International Center for Transitional Justice (ICTJ), 'What Is Transitional Justice?' <http://www.ictj.org/en/tj/> (accessed 30 November 2010). See also, Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, MA: Beacon Press, 1998).

³ Ellen Lutz and Kathryn Sikink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America,' *Chicago Journal of International Law* 2(1) (2001): 1–34.

finding is that the presence of peacekeepers correlates with a higher likelihood that countries will adopt accountability measures in the aftermath of conflict. The authors speculate that where ‘the international community has invested significant resources, particularly troops, with the goal of ending a conflict, it [tends] to play a large role in post-conflict decisions on truth and justice’ (p. 117).

Chapter 8 may be the book’s most policy-relevant, but it is also the most controversial one. It boldly promises to show whether transitional justice works. The analysis is confined to the macro-level effects of trials, amnesties and truth commissions on countries’ respect for democracy and human rights. As a first step, the authors examine whether, generally, countries that have adopted any transitional justice mechanism are more likely to achieve improvements in democracy and human rights than those that have not adopted any such mechanisms. The descriptive statistics confirm this hypothesis, and countries that took no measures to address the atrocities of the past (10 years after transition) fare the worst. As a second step, the authors examine the outcome of adopting individual or combined transitional justice mechanisms, trials, truth commissions and amnesties. To measure the dependent variable – the outcome of transitional justice – they examine positive changes in democracy and human rights, which, according to the authors, are the principal goals of transitional justice.

Unfortunately, the data on improvements in human rights merely concerns a small set of essentially four types of violations of civil and political rights (torture, political imprisonment, disappearances and extrajudicial killings) rather than the full spectrum of human rights. While the authors acknowledge that there is often no consensus on the goals of transitional justice (or if universal goals for all transitional justice should be assumed at all), the reliance on the available democracy data and an extremely narrow set of human rights possibly affects the results of the empirical study. While the researchers were understandably constrained by the limited number of existing datasets, an explicit discussion of the potential implications of the narrowness of these human rights measurements, for example in relation to gender or social justice would have been highly desirable.⁴

Truth commissions, according to Olsen, Payne and Reiter’s results, only positively impact on democracy and human rights if they are used in combination with other mechanisms. Given the wide variety of such bodies (and the fact that the current dataset includes commissions that collapsed long before completing their mandate), a more nuanced empirical analysis of truth commissions will assist in the evaluation of this finding. Therefore, the authors of *Transitional Justice in Balance*, together with Eric Wiebelhaus-Brahm, recently refined their analysis by classifying various types of truth commissions.⁵

⁴ See, for instance, Rama Mani, ‘Editorial Note: Dilemmas of Expanding Transitional Justice,’ *International Journal of Transitional Justice* 2(3) (2008): 253–265.

⁵ Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter and Eric Wiebelhaus-Brahm, ‘When Truth Commissions Improve Human Rights,’ *International Journal of Transitional Justice* 4(3) (2010): 457–476.

Another provocative finding concerns the use of amnesties. The authors measure empirical improvements in democracy and human rights when amnesties are combined with trials and with or without truth commissions. Moving from empirical observation to prescription is where the controversy arises. The authors recommend that ‘countries emerging from negotiated transitions should first pursue the secure path of amnesty and later fulfill legal and moral imperatives to bring justice for past atrocity’ (p. 159). While the empirical observations on the use of amnesties since 1970 may be accurate, the international scene has changed. More than 10 years after the negotiations of the Lomé Peace Accord,⁶ the use of at least some amnesties (such as blanket amnesties or amnesties for alleged perpetrators of international crimes) is no longer accepted by the international community, precisely because it is assumed that a qualitative difference exists between committing atrocities and violating traffic laws. Moreover, even if amnesty is granted domestically, alleged perpetrators may face prosecution before an international tribunal such as the International Criminal Court or in a foreign jurisdiction. Actors who are advised to opt for amnesties without guidelines on the limits of their scope risk facing sizable opposition to broad-based amnesty clauses, including by UN mediators, who will not acknowledge agreements containing certain amnesties.⁷ In other words, some of the options examined by the authors may no longer be available.

This concern is mitigated by the fact that Olsen, Payne and Reiter conclude the volume with an outstanding list of suggestions for further research. An investigation into the variability of amnesties and how decision making on transitional justice might be influenced by the evolving international environment is appropriately included in their list. Will alleged perpetrators participate in a process if they know that trials may be pending? How and by whom are decisions made about which acts should be covered by amnesties and when or of whom trials should be held? Whether the ‘justice balance’ works may depend on how such choices are made and by whom and on what type of amnesty is at stake. It probably makes a difference to transitional justice outcomes whether former leaders grant themselves a blanket amnesty or whether a deliberate and participatory process has been used that leads to conditional and limited amnesties combined with other measures.⁸ As it stands now, the idea that the views of those who are most directly concerned not only with the past atrocities but also with the design choices of transitional justice mechanisms should be taken into account is remarkably absent from the analysis, despite the fact that it is seen

⁶ Before signing the agreement, the UN representative added a notation next to the signature line saying that the amnesty provision would not apply to international crimes.

⁷ Priscilla Hayner, *Negotiating Justice: Guidance for Mediators* (Geneva: Centre for Humanitarian Dialogue/International Center for Transitional Justice, 2009).

⁸ Louise Mallinder, ‘Can Amnesties and International Justice be Reconciled?’ *International Journal of Transitional Justice* 1(2) (2007): 208–230; Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Oxford: Hart, 2008).

by many as a cornerstone of the 'holistic approach.'⁹ As the authors acknowledge, it may thus be necessary to spend far more resources on understanding domestic demands for justice.

Just as *Methods of Human Rights Research* cautions, transitional justice in particular depends on sound research and analysis. *Transitional Justice in Balance* is a groundbreaking effort to provide transparency and clarity about the methodology and implications of research on transitional justice mechanisms. Perhaps for this reason, many readers will legitimately identify points of disagreement with the methods, coding or focus of the book. Because it is transparent and systematic in examining what has been researched and how, *Transitional Justice in Balance*, however, is likely to spark further research and debate. As Ruti Teitel writes in the book's foreword, the volume is one of the first of its kind to compare multiple mechanisms and combinations of mechanisms across countries and time. It does so in a well-written and accessible way and therefore provides a timely account of the available data and one possible evaluation with the use of quantitative methodology. In short, there is no doubt that Olsen, Payne and Reiter substantially contribute to attenuating the frequent complaint that the study of the underpinnings and outcomes of transitional justice remain underdeveloped.

The two books reviewed here both recognize the manifold challenges of transitional justice research. They explore ways to bridge current gaps in the evaluation of complex transitional justice endeavors. By stimulating reflection on available research methods, the two volumes have as a desirable side effect to inspire some confidence in the possibilities to build strong arguments based on methodologically sound analysis.

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⁹ ICTJ, *supra* n 2. See also, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616 (3 August 2004), para. 16.