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The Data of Transitional Justice

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Abstract

Transitional justice database projects continue to multiply, even amid mounting suspicion that systematic comparative analysis has little to offer the field. In an effort to confront these suspicions, this chapter offers a brief history of the Transitional Justice Research Collaborative, explaining the decisions behind the creation of its database, its evolution over time, and its contribution to knowledge on complex issues. The authors also respond to common criticisms that the goal of data projects is to engage in veiled activism, or in the opposite, to apologize for the status quo. In the end, the chapter calls for more efforts at data collection and analysis, so long as they remain open to scrutiny.

Keywords: evidence, database, comparison, impact, methods, criticism

1. Introduction

A decade into the twenty-first century, transitional justice (TJ) norms were cascading. In nearly every instance where abusive autocrats fell out of power, or the end of war gave way to the promise of peace, both domestic and international advocates called for accountability for past human rights violations. Academics mirrored practice. In 2008, the *International Journal of Transitional Justice* entered its second year of operation, signaling the emergence of a new interdisciplinary “field” (Bell, 2008) in which authors focused on the law and politics of human rights accountability. At the same time, a variety of forthcoming volumes focused on the globalization of criminal justice (Sikkink, 2011; Teitel, 2011), the complexities of pursuing TJ amid peace negotiations (Bell, 2008), and the promise and challenge of using mechanisms like reparations, amnesties, and truth commissions (Mallinder, 2008; Olsen et al., 2010; Wiebelhaus-Brahm, 2010).

At the very moment that TJ became professionalized, scholars issued a warning: practice had outpaced assessment of impact. As a 2008 report from the Center for International Policy Studies (CIPS) in Ottawa claimed, “existing empirical knowledge about the impacts of TJ is still limited. Systematic research is nascent, and many early findings are questionable or contradictory” (Thoms et al., 2008, 12). The report made its rounds, and TJ practitioners took it as an affront. What the CIPS report obscured, however, was the fact that a wave of evidence-based research was already under way (Van der Merwe et al., 2009).

We situate our work within this wave of evidence-based research, which uses systematically collected data to assess variations in TJ mechanisms and their outcomes in different countries. At least 20 different cross-national database projects on TJ were in existence when Mallinder and O’Rourke (2016) wrote the first comprehensive review of such efforts,¹ and

a number of new projects have emerged since. Among these are the TJ and Democratic Stability Lab's Global Transitional Justice Database (Bates et al., 2020); the International Justice Lab's Varieties of Truth Commissions Database (Zvobgo, 2020); the Beyond Words truth commission recommendations database (Skaar et al., 2022); the Reparations, Responsibility and Victimhood in Transitional Societies Project's Reparations Database;² and the PA-X Amnesties, Conflict, and Peace Agreements (ACPA) Dataset.³ Our task in this chapter is not to compare or comprehensively analyze these various projects. In general, we agree with the Mallinder and O'Rourke's (2016, 510) conclusion that "despite working within the same field, TJ database researchers make different methodological choices . . . which can fundamentally impact the nature of the knowledge produced." For us, however, the growing diversity of data collection projects in the field—where accompanied by researchers' transparency about their methodological decisions—is a strength. It is part of the normal operation of social science.

What we intend to do in this chapter is offer a defense of evidence-based cross-national research on TJ. To that end, we will provide a detailed retrospective on our own Transitional Justice Research Collaborative (TJRC) Database project, including why we created it, and how we find the resort to data collection useful. We offer this history for three reasons. First, doing so could illustrate the promise of systematic empirical research, which allows one to discover relationships that would be unobservable in the absence of large-*N* data. Among other things, comparative evidence suggests that TJ has a role to play as a guarantor of rights and democratic outcomes, despite claims to the contrary. Second, it is often assumed that database projects remain static, the product of a series of heavy assumptions that remain frozen in time and space. However, the TJRC grew out of theoretical tensions and evolved over time toward fewer assumptions and greater case inclusiveness. And the lessons learned from a decade of data

collection, management, and upkeep now inform a newer project, the Transitional Justice Evaluation Tools (TJET), which got underway in the summer of 2021.

Third, we will reflect on why our kind of work seems to be increasingly unpopular. Publishing evidence-based findings which strongly suggest the last 30 years have brought progress around accountability for human rights violations is often unwelcome. Some understand our pursuit to be a kind of veiled promotionalism, while others see it as the opposite: an apology for existing power structures. Furthermore, the critical turn in the field of TJ over the last decade has brought a great deal of suspicion toward research using cross-national data, especially if those data are quantitative. Whereas in 2008 skeptics called for more science to address the impact of TJ, today's critics have turned their skepticism against the concept of social science writ large. Generalists argue that "big data," wielded by invisible and sinister forces, are making life worse (Muller, 2018; O'Neil, 2016). Specialists in the field of TJ similarly argue that data-driven comparative research promotes overly technical, one-size-fits-all policies ill-suited to local problems (e.g., Nagy, 2008; Robins, 2011; Zunino, 2011). Reflecting on our experience with data collection and management, we will argue that current criticism of work using data is too sweeping, and it betrays a number of misconceptions about evidence-based research as a whole.

2. The Transitional Justice Research Collaborative: An Institutional History

Background

The Transitional Justice Research Collaborative (TJRC) was an international collaboration involving scholars and students from the United States and the United Kingdom, which was originally supported with joint funding from the US National Science Foundation (NSF) and the UK Arts and Humanities Research Council (AHRC).⁴ The TJRC began in 2010 as

a collaboration of research teams originally from the University of Oxford and the University of Minnesota, and it operated out of Tulane University under the direction of Geoff Dancy between 2014 and 2020. During this time, the TJRC developed a global database of qualitative and quantitative data on TJ mechanisms for every country in the world. This database spans the years 1970 to 2010, and at the time of this writing, we are refining and updating the data through the year 2020, with the support of a grant from Global Affairs Canada. Moving forward, the project will rebrand as Transitional Justice Evaluation Tools (TJET).

The TJRC team has collected data spanning 40 years and covering all regions of the world on human rights-related criminal prosecutions, truth commissions, and amnesties, as well a wide range of alternative accountability mechanisms including civil trials, reparations, vetting and lustration, and customary forms of justice. The publicly available TJRC database allows researchers to study quantitatively and qualitatively the nature, scope, and effects of specific TJ mechanisms or combinations of mechanisms. The team also conducted historical research into particular TJ mechanisms, focusing on those characteristics and contexts that allow the researchers to test theoretical assumptions about their origins; their method of adoption (executive, judicial, or legislative order or international ruling); the laws or policies enacting the mechanisms; their mandate and coverage; their implementation; and surrounding controversies or challenges. This information was entered on the online database in numeric and textual form.

The founding of the TJRC and the database emerged from theoretical disagreements about the impact of TJ. The primary investigators on the TJRC—Leigh Payne and Kathryn Sikkink—had previously completed extensive qualitative and quantitative research on TJ, including the creation of previous databases. At the time, Payne was at the University of Wisconsin and Sikkink at the University of Minnesota. Initially unbeknownst to each other, the

two scholars began pursuing parallel TJ data collection efforts around 2006. They used different source materials, applied different coding schemes, and produced discrepant findings. Payne and her colleagues developed a “justice balance” approach, which claimed that TJ mechanisms advance human rights and democracy through the combined use of amnesties and trials or in the combination of amnesties, trials, and truth commissions (Olsen et al., 2010). Potentially conflicting mechanisms thus were not conceived of as zero-sum, but as capable of performing mutually reinforcing functions. Sikkink and her co-authors, on the other hand, argued that human rights trials and truth commissions independently exerted downward pressure on repressive violence (Kim and Sikkink, 2010; Sikkink and Booth Walling, 2007). Payne and Sikkink’s findings diverged in their discussion of the role of amnesties and of whether combinations of TJ mechanisms were necessary to produce positive social outcomes.

In conversations starting in 2010, Payne and Sikkink recognized that their contradictory findings may have resulted from different definitions and coding of mechanisms, or from the fact that they did not have adequate time and funding to do a more complete collection of data. They then applied for grant funding as primary investigators (PIs) on a joint project. Since Payne had relocated to Oxford University, the project would be based in Oxford and Minnesota, and it received research grant funding from both US and UK foundations to merge and expand the original databases.

The collaboration was not driven by data collection for its own sake. Instead, the PIs believed that better data were needed to address their own differences in research findings as well as many unresolved differences in the field of TJ as a whole. The data project was intended to create a public good for the TJ community, and to advance the authors’ diverging research agendas.

The TJRC made strides in coding design and data collection that expanded the scope of the project and significantly improved the quality of the data. Previous databases had three shortcomings TJRC attempted to address. First, they focused on particular mechanisms in isolation, giving focus only to trials or amnesties or truth commissions, etc.⁵ Second, they made unclear and often unstated assumptions prior to data collection. These assumptions critically altered the shape and content of final datasets. Third and finally, previous databases were quite crude, recording the presence or absence of various mechanisms in binary fashion with very little additional information. These early efforts were justifiably criticized for lacking sufficient nuance.

An Evolving Process

In its initial research phase (2010–2011), the TJRC discovered that the separate Payne and Sikkink datasets were unmatched on roughly 40 percent of observations. If one thinks in terms of a Venn diagram, the intersection of the two sets included three-fifths of observations. The team thus decided to begin with the comprehensive union of the datasets and perform further research on all cases. To do so, we drew our data from a wider variety of source materials to gather refined data on those mechanisms. These sources include *Keesing's World Archives*, US State Department Country Report on Human Rights Practices, Human Rights Watch reports, International Center for Transitional Justice country reports, TJ laws and decrees, secondary literature on specific countries, and in-country media sources. By systematically expanding the sources used to collect and code data, the TJRC constructed a dataset rich in information on processes, sanctions, victim and perpetrator participation, legal challenges, and outcomes.

The TJRC also developed more fine-grained coding procedures to capture the prevalence, types, and quality of TJ mechanisms. Even if one is observing like mechanisms (e.g., Truth

Commission 1 in Country A and Truth Commission 2 in Country B), no two TJ mechanisms are entirely the same. Ideas about institutional design may be borrowed from abroad but they are also tailored to local context. What may seem like minor differences in institutional design and practice could have an outsized impact. For example, partial amnesties that protect perpetrators of some crimes while allowing for the prosecution of others may have a different effect than blanket amnesties. Likewise, prosecutions of high-level officials may have a greater deterrent effect than prosecutions of lower-level officials. The TJRC made every effort, based on extensive research, to catalog variations in mandate, design, implementation, and outcomes for each TJ process we observed.

The Collaborative’s research proceeded in two main rounds, each of which was supported by separate NSF grants. In the first round, the TJRC produced qualitative and quantitative data on three main TJ mechanisms—prosecutions, truth commissions, and amnesties—in countries undergoing a change from autocratic to democratic rule. The research focused on the 89 countries that had experienced at least one democratic transition after 1970. Of those transitional countries, at least 70 adopted one or more TJ mechanisms (Dancy et al., 2019). Indeed, both supply and demand for programs that officially reckon with legacies of human rights abuses—be it through criminal accountability, a focus on truth, or a push for indemnity—are high.

Right away, the TJRC faced difficult decisions. First, what qualifies as a TJ mechanism? How would we decide what is a “human rights prosecution” or a “truth commission” across different contexts? One of our specific research tasks, then, was to derive theoretically driven, shared definitions, and coding of mechanisms. At first, the group’s definitions were exacting. Following previous scholarship, the group decided that a truth commission had to produce a

report to count as a truth commission (Dancy et al., 2010; Hayner, 2001). After a series of discussions, it became clear that this requirement was too stringent. Making report production a defining element of truth commissions would arbitrarily exclude certain cases, such as the ill-fated Serbian truth commission. Instead, the team chose to treat report production as a source of variation among different truth commissions (see Dancy and Thoms, 2022). The project team began to embrace a standard of definitional minimalism: include in definitions only those elements that are absolutely necessary to distinguish the phenomena in which we are interested.

Second and related, would TJRC incorporate all observed TJ mechanisms into the dataset, even if they were unfair, or in violation of commonly accepted legal standards? On the one hand, it would be irresponsible to call a prosecution a mechanism of “justice” if it were a show trial with little provision for rights of the accused. On the other hand, if flawed mechanisms were excluded, one might end up with a very small collection of cases: after all, TJ occurs in “very imperfect worlds” (De Greiff, 2012, 35). Rather than excluding cases based on our own particular beliefs, the project decided to lean toward inclusion. All observed mechanisms would gain entry into the database. The caveat is that we had to collect a great deal of additional information to capture meaningful variations. That way, mechanisms could later be filtered or sorted by their relative “worthiness,” or lack thereof.

A third difficult decision concerned the tension between international and domestic mechanisms. Our initial goal was solely to investigate domestic TJ processes. This was rooted in the hunch that the great bulk of human rights prosecutions occur in domestic courts, even though the preponderance of literature on prosecutions was preoccupied with focal international tribunals. As we embarked, however, we wondered what purpose it would serve to collect information on domestic accountability mechanisms while leaving out international mechanisms.

Including both in the database would allow for comparisons across jurisdictions. Importantly, then, we decided to document international, foreign, and domestic criminal human rights prosecutions.

We completed the first round of data collection at the end of 2012. Soon after, we began a second round, but this was not by design. Originally, we planned on a single, two-year data collection effort. However, upon completion of the project, we realized we had two problems: case selection and mechanism preference. Regarding case selection, in deciding to examine only democratizing countries since 1970, we unnecessarily omitted a group of post-civil war states that did not also feature a political regime change. Therefore, our database inadvertently ignored some signature post-conflict justice cases like Rwanda and Bosnia. In the Bosnian case, this was particularly awkward because Serbia appeared in our dataset after its democratic transition starting in 2000. Yet Bosnia did not appear because it was widely considered to be lacking an independent governing regime. The second problem, mechanism preference, refers to our arbitrary choice to study prosecutions, amnesties, and truth commissions out of intellectual interest, at the expense of a variety of other TJ processes.

To confront both of these problems, we applied for a second NSF/AHRC grant, with two goals in mind. First, we would document a wider range of alternative accountability mechanisms, including foreign and domestic civil trials for damages, lustration and vetting, reparations, and customary forms of justice. At the time of the grant proposal, we argued that in-depth analysis had explored these TJ mechanisms within single countries, or examined singular mechanisms cross-nationally, but that cross-national data did not exist for scholars to analyze all of these mechanisms in all transitional countries.

The coding for the second round wrapped in 2014, and we released a website that allows users to browse the data. Since then, the database has undergone two updates. The first involved expanding to collect data from all countries of the world, even if they were not cases of democratic transition or post-conflict transition. This would allow us to capture human rights accountability mechanisms in countries like Colombia, which began TJ processes in 2005 despite its status as a stable democracy at civil war since before its entry into our dataset in the year 1970. This update was completed in 2015. The second update, involving the collection of information for all countries and all mechanisms through the data year 2015, was completed in 2017.

Through these stages, the TJRC effectively became a global database, with information on every country in the world. The main challenges the TJRC faced in the years after 2017 were upkeep and ease of use. As the project transitions to TJET, the main challenge is to streamline the process for regularly filtering and translating massive quantities of data into usable form. To understand this, one must further understand the nature of the database.

The Nature of the Database

What does the final TJRC database look like? This is a question worth answering because it is the source of misunderstanding. The TJRC database is not exclusively quantitative. It is also not static; instead, it sits in constant flux between being and becoming. For technical researchers, the database is a relational MySQL data matrix comprising many rows and columns that sits on an online server. It contains tens of thousands of discrete pieces of information, some words and some numbers, which are separated from each other by commas.⁶ For qualitative researchers, the database as presented on the website also contains a wealth of narrative information about such issues as the historical origins of TJ policies, the names of victims and the accused in

prosecutions, the scope of amnesty policies, and the mandate of the truth commissions. These data can be viewed with a built-in browse function.

TJRC researchers have sampled from the main database to compile offshoot events-history datasets that use additive count measures within each country-year. This provides much richer information about the actual number of prosecutions, amnesties, truth commissions, and reparations policies in a country (Dancy et al., 2019). These datasets also include information on the quality and outcomes of the processes. For example, we are exploring Bayesian techniques for measuring the latent robustness of truth commissions based on various observable properties of each body. This would produce something like a truth commission “performance indicator” that captures variation in quality across cases.

The TJRC developed a relational database because of the sheer amount and variety of information that needed to be handled. There are different ways of sampling countries (democratic or post-conflict transitions), different mechanisms (trials, truth commissions, amnesties, etc.), and different outcomes of interest (human rights protection, termination of conflict, democratic consolidation, etc.). With relational data, all of these data can be kept in separate rooms within the same house and brought together if and when it is time to meet.

The drawback of the relational approach is that it is non-intuitive and difficult to understand. One common misconception is that the database has one single structure with unchanging content. Scholars often write to ask for a copy of the TJRC dataset, an understandable request that is also unfulfillable, technically speaking, since the database is a digitally housed collection of many data-sets that can be queried to create any number of data files. This means that we have to respond to interested researchers with a question: what data would you like? Often, though, they just want to peruse or scroll through the data. For this

reason, the TJRC's web developers created tabbed filters that allow users to browse that data. One can automatically filter the database to view mechanisms by country, year, regime, civil war context, and crimes covered. Still, users' most common impulse is to ask for a single complete data-set that they can view in their most preferred applications. One does not exist—nor does a single master list, or count, of TJ processes. What does exist, instead, are a series of datasets that the TJRC project members have sampled, extracted, and frozen in particular moments for the purpose of analysis.

The benefit of the relational approach to database creation—wherein a variety of pieces of information are stored online and wait for the user to fit them into a structure—is that it allows the data to remain flexible, and adaptable to purpose. One can design a dataset to answer specific questions such as does holding more human rights prosecutions amid civil war prolong hostilities? To answer this question, one must query the database to provide a list of cases in which civil war is ongoing, and accompany that list with a quantitative indicator of how many prosecutions occur amid fighting (see Dancy and Wiebelhaus-Brahm, 2018). In another example, the TJRC collected data on over 6,000 records on domestic criminal prosecutions, but in our most extensive study on the impact of TJ in democratizing states, we include information on only 555 trials. This pruning was theory driven. The point of this study was to analyze the impact on future patterns of repressive violence caused by more extensive efforts at prosecuting former state agents after a democratic transition (Dancy et al., 2019). So we had to select only those prosecutions based on context (following democratic transition), accused (whether they were state agents in the previous regime), harms (which must be human rights violations), and evidentiary validity (whether the trial event was verified by two or more sources). Theory-driven data-set generation of this type allows for the most accurate analyses of research questions. Too

often in social science, scholars allow data availability to guide inquiry; one answers questions for which one possesses reliable data. This may limit progress because it means that scholars continue to pick over the same data to find minor relationships (Schrodt, 2014). Overcoming this problem in the future means unfreezing information and allowing research questions to guide dataset creation.

3. Evidence-Based Findings

The TJRC began with the hope that compiling more information on as wide a variety of TJ phenomena as possible would enrich our understanding, help resolve theoretical debates, and improve causal inference. It has. In this section, we highlight three broad lines of inquiry in which the TJRC data have been put to productive use.

Origins of TJ

Where does TJ come from? What explains variation in the initiation of TJ? We know that the number of TJ processes have diffused regionally and internationally over the last 40 years, but scholars disagree as to why. Comparativists tend to emphasize domestic political factors in the formation of post-authoritarian or post-conflict justice policies. As Mark Aranhövel (2008, 577) writes: “In the vast majority of cases, transitional justice . . . has been seen as an exclusively domestic affair.” Primacy in these accounts is afforded to the role of power brokers and parties in the domestic political processes surrounding the establishment and operation of prosecutions and other tools of TJ (Huntington, 1991; O’Donnell and Schmitter, 1986). Those who approach the issue from an international relations perspective, on the other hand, are more intrigued by the simultaneous, spiking trends in the establishment of human rights trials, truth commissions, and peace agreements following 1990 (Bell, 2008; Daly, 2008; Sikkink, 2011). To an international relations scholar, it is unlikely that such trends are simply the aggregate byproduct of

independent, country-by-country decisions. But what is driving the cross-national outcropping of relatively similar institutional events, and is there a consistent explanatory mechanism that lies at the root?

One answer is that “TJ norms” exist, and that ruling elites unthinkingly draw on those norms to develop policy in their home countries (Kritz, 2009; Subotić, 2009). TJRC data have been used to show, instead, that international legal tools are mobilized by domestic reform coalitions to push for TJ. For example, states that have ratified international human rights treaties with provisions promoting individual accountability are more likely to hold criminal prosecutions of state agents for abuses to physical integrity (Dancy and Sikkink, 2012). Similarly, states that incorporated domestic “atrocities” statutes prohibiting genocide and crimes against humanity are more likely to have criminal prosecutions of abusive actors in government (Berlin and Dancy, 2017). The existence of these statutes helps overcome formal legal roadblocks to prosecution, creating an opportunity to hold state agents accountable. How do anti-atrocity and human rights laws come to be part of the domestic criminal code in the first place? Usually, it is local lawyers trained in international law that are responsible for altering legal codes (Berlin, 2015). Therefore, one can infer that TJ is in part the result of a strategic but gradual legal mobilization.

This argument is buttressed by additional findings that show the push for accountability comes from private actors seeking redress; in short, human rights enforcement “comes from below” (Dancy and Michel, 2016; Michel and Sikkink, 2013). This is true even in countries with weak or poor judicial institutions. Research using TJRC data also demonstrates that the number of domestic prosecutions for state agents spikes in countries actively investigated by the International Criminal Court (ICC). The reason is that pro-reform coalitions use the attention

garnered by the ICC to put added pressure on local ruling elites (Dancy and Montal, 2017).

Before scholars were able to pull from a database with yearly trends in the number of prosecutions, these demand-side forces remained largely hidden.

Impact on Democratizing States

A common reaction to the discovery that there is a profusion of accountability mechanisms in certain contexts is to contend that these mechanisms are either futile or perverse. In the first formulation, TJ is weak, ineffectual, or simply a reflection of local power dynamics (see, for example, the brilliantly crafted study by Lake, 2017). Since justice processes are endogenous to local politics, they cannot hope to have any measurable independent impact on society (Vinjamuri and Snyder, 2015). The second argument is that TJ produces negative unintended consequences by threatening elites who jealously guard their power (Goldsmith and Krasner, 2003; Snyder and Vinjamuri, 2003).

Despite these disputes, evidence continues to mount indicating that human rights prosecutions are, on average, advantageous for states undergoing democratic transition. The first article produced by the original TJRC team shows that prosecutions are not associated with greater risks of regime breakdown or elite-led violence. Furthermore, building on previous scholarship (Kim and Sikkink, 2010; Sikkink, 2011), this article shows that democratizing countries with more prosecutions over time engage in less repressive violence, and that this effect is enhanced when trials result in convictions (Dancy et al., 2019). This finding holds regardless of whether high- or low-level officials are tried, and exists even in cases where amnesty laws are present.⁷ Paradoxically, amnesty laws themselves have a positive impact on democratizing states. Unlike trials, amnesties are unrelated to the prevention of violence but they are correlated with greater protections of civil and political rights like freedom of association and

movement. We take this to mean that a productive struggle between law and democracy is built into TJ practices: punishing human rights violators strengthens the rule of law (Pion-Berlin and Trinkunas, 2010), while passing amnesty laws reinforces democratic competition by protecting some actors from being excluded from the political process.

This is not the only instance where utilizing cross-national data actually helped steer the field away from stylized assumptions toward greater theoretical complexity. TJRC partners used the project's data to test whether truth commissions in fact improve or enrich democracy, a claim that has been around for over two decades. Based on extensive tests, Dancy and Thoms (2022) answer that "it depends." The operation of truth commissions in states undergoing regime transition is associated with improvements to democratic *behaviors* but not democratic *institutions*. That is, citizens are more likely to vote and assemble, and state agents more likely to refrain from repressive violence, in countries that have featured a truth commission; however, these countries are no more likely to undergo reform to the executive or the judiciary. Similar to the findings from other database projects—like Ang and Nalepa's (2019) fascinating discovery that lustration is associated with greater democratic representation—these subtle relationships would remain concealed were it not for the systematic analysis of data.

Impact on Civil War States

What about the effect of TJ mechanisms on states at war, or in the aftermath of war? Prior work in the TJ field argued that amnesties were the only option in such scenarios: human rights violators would have to be forgiven if they were to be relied upon as future partners in peace (Cobban, 2007; Snyder and Vinjamuri, 2003). Criminal prosecutions would only disrupt the potential for reconciliation.

Research carried out thus far using TJRC data contradicts this conclusion, suggesting that prosecutions amid civil war have no observable relationship—positive or negative—to patterns in violence (Dancy and Wiebelhaus-Brahm, 2018). It remains to be seen whether criminal trials are productive in the post-war period, though initial evidence suggests that they are. As for amnesties, new TJRC research finds that they too are unrelated to improvements if offered amid fighting hostilities; rather, they are associated with longer spells of fighting, primarily because rebels take amnesty offers to be a sign of weakening resolve on the part of the government. Amnesties passed following conflict termination, on the other hand, help resolve civil wars because they help to create credible commitments to peace deals. Importantly, though, this relationship holds only for amnesties that stop short of providing immunity for serious rights violations like torture, rape, and other crimes against humanity (Dancy, 2018). Offering blanket amnesties only emboldens future rebels. This nuanced discovery would not be possible were it not for the relational database that allows one to group amnesties by whether they were offered amid war or post-termination, and to observe important variations such as exceptions for serious human rights violations.

Common Criticisms

We regularly encounter a familiar set of criticisms to our work on TJ, and we think much of that criticism stems from uneasiness with the idea of “data” itself. The first complaint is foundational, and it replicates itself in broader critiques of the mainstreaming of evidence-based research in TJ. It goes something like this: efforts to assemble big social science databases risk fetishizing numeracy, privileging technical details over practical political knowledge, and creating barriers to entry in the production of knowledge (for examples of these arguments from completely different periods in time, see Sharon and Zandbergen, 2017; Wolin, 1969). We

recognize that very real methodological cleavages divide scholars who use quantitative modeling tools and those who use qualitative and narrative methods. However, we reject the premise that systematically collecting data implies a preference for statistical modeling.

All scholars use data. By this, we mean that they reference samples of information to illustrate their arguments. Some of that information is lexical, and some of it numerical. The nastiest disagreements among social scientists form not around the necessity of data per se but around intellectual and aesthetic preferences over (1) whether to favor lexical or numerical data, and (2) whether to use systematic and technical methods to search for, collect, store, and present those data. The first clash of preferences has a name, the “qualitative–quantitative” divide. On this, the TJRC is neutral. The principal investigators and all members of the original team use both qualitative and quantitative tools, and our database includes words and numbers. The second divide is unnamed, but it goes to the heart of malaise about “big data.” Scholars often lament that selectively clipping and storing bits of information removes that information from context in a way that sheds meaning. Just as converting music into binary code for the purposes of digital playback means losing the fidelity of the original performance, so too does converting the reality of TJ into a relational online database.

We sympathize. We know how it feels to witness momentous political events or interactions, and to know “you had to be there.” However, concern over fidelity to context is shaky ground for challenging database projects for two reasons. First, *all* scholarship is an exercise in translating events into representative narratives, and this necessarily entails de-contextualization. Whether one conducts interviews and writes field notes, or whether one reads hundreds of criminal codes to cull and quantify information on legal statutes, levying those data to make an argument will require methodological decisions: how do I select particular pieces of

information; what am I leaving out; how do I store and sort through what I have collected; and how do I place these data into a framework, story, or structure? Second, where scholars often vary is not on whether they systematically make these decisions but whether they are transparent about their system. The loss of context endemic to scholarly writing and modeling is called error. The difference between the TJRC project and a lot of other work on the politics or impact of TJ is that we were open and excruciatingly detailed about the decisions we made. As a result, we are able to estimate the magnitude of our errors.

Still, despite what we have written here—or perhaps because of it—many critical scholars will approach this database project with skepticism or distaste. While we appreciate skepticism, inherent suspicion of “data” can build into a broader critique that is unfounded. We briefly outline two of these: the data-as-activism and data-as-apology critiques.

Data as Activism

The data-as-activism critique is based on the suspicion that the TJRC convened with the express purpose—stated or unstated—of promoting a particular set of policies in the world. When we present our findings, interlocutors often confuse the conclusions we have reached with advocacy. For example, after a presentation on amnesties, a prominent South African scholar of TJ once said to Dancy, “I don’t know how you made the data say that, but I agree, and I’m thankful.” Other scholars assume that, because TJRC research shows criminal prosecutions to generate positive outcomes in certain circumstances, we think trials should be pursued in all cases. They then proceed to attack a trials-everywhere straw man, by emphasizing how ‘feasibility constraints’ like violent spoilers or unwilling politicians prevent legal mobilization in some cases. Each of these receptions of the work is understandable, but wrongheaded.

We are not policy-makers, and we know that lack of political will blocks meaningful actions in certain contexts. The difference between our method and others' is that we find it useful to construct baseline expectations rooted in previous practice. For instance, in cases where one observes criminal prosecutions, might one expect improving or declining human rights conditions? Findings thus far suggest that prosecutions are baseline minimally positive. If one theorizes that political will is responsible for these impacts, then a worthwhile strategy would be to systematically collect information on political will across cases and explain how we should update our expectations.

Establishing baselines is not the same as activism. When we are called upon to act or make judgments, we draw upon knowledge and experience to the best of our ability, but that process is different from collecting and analyzing for the purpose of evaluating theories. For instance, when engaged in hypothesis testing with evidence, TJRC members often discovered empirical relationships that surprised them, or challenged their own experiences and normative predispositions. When that happened, we did our best to analyze our own cognitive dissonance and remain open to new ideas.

Data as Apology

Some interpret the pursuit of baseline expectations in evidence-based research in an opposite way, arguing that it endorses nomothetic and deductive reasoning at the expense of idiographic or inductive reasoning (Geertz, 1973). Furthermore, this deductive theorizing tries to locate the average, fashion one-size-fits-all policies, and eliminate or explain away deviance. The knock-on effect of databased power-knowledge, then, is to reproduce the status quo. In short, work with data is conservative, or counter-reformative. This data-as-apology perspective is compelling, especially when applied to the widespread use and construction of “performance

indicators” (Davis et al., 2015). Some indices are used to grade behavior, and discipline states or actors that fall out of line with international norms. Indicator construction and deployment is an expanding and quite influential global practice (Kelley and Simmons, 2014). For instance, corruption and credit-worthiness benchmarks alter patterns in investment, and quite possibly regenerate capitalist inequalities. In similar fashion, could not indicators of TJ policies instantiate inequities in the pursuit of justice?

This critique goes too far. First, hypothesis testing with evidence does not have to be a wholly deductive or nomothetic process. In fact, it toggles between deduction, applying preset theoretical concepts, and inductive learning. For example, TJRC began its first round of coding by deductively generating a coding scheme. It then piloted that scheme with trained coders, only to find that many categories did not make sense or could not serve as a useful guide in the collection of information. In response to inductive knowledge gained in the pilot, the team updated the coding scheme. This type of updating might better be referred to as “abduction,” where previous ideas are tested, adapted, and reconstructed to make for more refined hypotheses and inference (Fann, 1970). Like the finished relational database, the process itself was designed to learn from and capture complicated realities that do not “fit” into the scheme.

Second, the goal of the TJRC project was not exclusively to create performance indicators, though one could certainly use the database to do so. Not all indicators are used as grades. Some are merely used to map an overwhelming collection of historical events, and to record patterns in those events. The most common use for events history data such as these is to evaluate the veracity of common claims. For example, with Stephen Hopgood (2013), one might argue that a yawning gap is opening between human rights legal institutions and practices, or that local disillusionment with global rights-based practices has reached peak levels. However,

scholars are rarely explicit about what data they use to arrive at such claims. With databases like TJRC, one can observe real-world patterns and assess whether institutions are growing less numerous, or whether they produce fewer remedies for harms. Thus far, in our investigations of such phenomena, we find little evidentiary support for claims that the sky is falling (Dancy and Sikkink, 2017).

Still, in producing quantitative studies showing correlations between some TJ processes and positive outcomes, are we in effect blocking more transformative approaches? Are we not guilty of papering over unjust processes? To this, we ask a counter-question: unjust compared to what? As Sikkink has pointed out in previous work (2008, 2017), many TJ theorists implicitly use a method called comparison to the ideal. A comparison to the ideal involves contrasting what has actually happened with what *should* happen in an ideal world. Empirical comparison, on the other hand, contrasts what is actually happening to what has happened in the same country in the past, or to what is happening in other countries at the same time. Counterfactual reasoning based on individual case studies is also common in the TJ literature. So empirical comparison of international criminal justice might compare the level of impunity in a world with international criminal tribunals compared to a previous political period when such tribunals did not yet exist, or it might compare impunity in countries subject to international criminal jurisdiction to those where such jurisdiction does not exist.

The editors of this *Handbook* wrote an “Overview for Contributors” highlighting within it that the TJ “endeavor has generated its share of troubling if not pathological outcomes in changing societies.” They also stress that they intend the *Handbook* to focus on TJ’s “performance as a guarantor of rights and democratic outcomes.” In order to engage both of these important issues, we repeat our question: compared to what? Are TJ outcomes in some

countries troubling and pathological compared to countries that have not adopted TJ, to countries that have adopted better TJ policies, or to previous historical periods when TJ policies were never or rarely used? We suspect that the editors view TJ policies as troubling and pathological in comparison to the ideal outcomes they hold in their imaginations. We argue that empirical comparisons are a better method to evaluate TJ's performance, and on this basis, we conclude that states with extensive TJ processes are better off than they would be otherwise. For this, we may be seen *not* simply as using a different method of evaluation, but rather as “blindly applauding” TJ, even supinely ignoring its “status as ideology,” in the words of the editors of the volume.

We agree with the editors that it is important to interrogate the very normative desirability of transitional justice” and “subject the practices, process, and performances of transitional justice to critical scrutiny, but we do not think it is possible to do this seriously without being more open about methodology. Evaluating observed institutions and behaviors with utopic standards can be a productive political exercise (McKean, 2016); however, it is imperative that scholars who engage in such an exercise do so systematically and transparently. We contend that our project provides exactly the kinds of information that make it possible to question the validity of claims and contributions made about TJ, and subject it to further critical scrutiny. For those who disagree, or who see the practice of database creation as a harmful or unjust exercise, we say this: show us the evidence.

4. Conclusions

The TJ field experienced a turn to data 10 years ago. Research has since made a number of important contributions to the field. First, it shows how human rights legalization over the last few decades inspired bottom-up moves toward TJ; it also created tools for legal practitioners to

push for accountability when the opportunity arises. Second, many early theories that favored one mechanism over another, or that treated the politics of justice as zero-sum, are not in tune with the reality of practice. TJ trajectories are various, overlapping, and complex. TJ is not a menu of good policies from which leaders freely choose—that is far too voluntarist a formulation. Quite to the contrary, the establishment of accountability institutions is a fraught process with a great deal of political maneuvering, manipulation, and subterfuge between pro-reform and anti-reform coalitions. In short, the politics of TJ are not deliberative but agonistic (Mouffe, 2013). Still, on average, TJ mechanisms like prosecutions produced gradual but positive impacts by decreasing repressive violence and mass atrocity in democratizing states. Amnesties, too, are associated with positive outcomes under certain conditions. We reached these conclusions following an intense process of data collection, tabulation, and analysis, all of which involved sifting through mountains of documents for information. While our purpose is not to proselytize, or convert every TJ commentator into a positivist, we think the field will continue to profit from extensive engagement with the data of TJ.

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¹ Most notable among these are the Human Rights Prosecutions Database (Sikkink and Walling, 2007); the Amnesty Law Database (Mallinder, 2008); the Transitional Justice Database (Olsen et al., 2010); the During-Conflict Justice Dataset (Loyle and Binningsbø, 2018); the Post-Conflict Justice Database (Binningsbø et al., 2012); Horne’s Lustration Dataset (Horne, 2017); and the Transitional Justice Research Collaborative Database (Dancy et al., 2019)

² <https://reparations.qub.ac.uk/reparations-database/>

³ <https://www.peaceagreements.org/amnesties/>

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⁵ Mallinder and O'Rourke (2016) find that truth commissions are the subject of more data collection efforts than other mechanisms.

⁶ For a hypothetical example, a row pertaining to a truth commission may have the name of that commission, followed by the number 12, which applies how many commissioners it had. The database also contains information on country identifiers, years, democracy measures, and political violence, among other things. Pieces of information, or data points, were uploaded onto this online matrix using an online data entry platform. TJRC coders using this system could enter the name of an accused person in a human rights prosecution, and also select from a drop-down menu of criminal charges that apply in that case. Every time a coder added or changed a piece of information—which occurred constantly—the data matrix as a whole changed as well. One cannot analyze this database directly. One must instead make “queries” that produce smaller matrices that can be viewed in a spreadsheet. Because the data are relational, the queries can produce data structured by different units of analysis. One can make a dataset that is a list of every truth commission around the world. Alternatively, one can fashion a dataset whose unit of analysis is the country-year, and include indicators for whether a truth commission was operative in Country Y in Year X. An almost unlimited number of quantitative indicators can be created using these data, but doing so requires carefully written scripts that convert the relational information into a usable format. For example, if a user wants to know how many prosecutions occurred in Argentina in 1986, she has to instruct a program to transform a list of prosecutions that start in 1986 into a single number that would be assigned to the Argentina-1986 cell of a new spreadsheet.

⁷ Research has revealed a set of pathways used around the world to circumvent amnesties and allow for trials and improvements in human rights and democracy (Lessa et al., 2014a, 2014b; Olsen et al., 2012; Payne et al., 2015).